

Expert Report of Ross Fishman

October 18, 2010

Robert L. Habush and Daniel A. Rottier, Plaintiffs

v.

William M. Cannon, Patrick O. Dunphy, et. al., Defendants

Milwaukee County Case No. 09CV18149

Assignment:

Pursuant to the case of *Robert L. Habush and Daniel A. Rottier v. William M. Cannon, Patrick O. Dunphy and Cannon & Dunphy, SC*, Milwaukee County Case No. 09-CV-18149, the defendants have engaged me as an expert witness to provide information pertaining to the marketing of legal services and the application of Wisconsin Statutes Section 995.50(2)(b) to the use of the purchase of key words from a search engine.

Professional Qualifications

My qualifications to render an expert opinion in this matter are:

- Twenty years as a full-time law firm marketing professional. Founded Ross Fishman Marketing, Inc. (now d/b/a Fishman Marketing, Inc.) in 1998. As CEO of Fishman Marketing, Inc., I help law firms develop differentiation strategies and creative marketing campaigns. This includes marketing planning; branding, differentiation and positioning; practice-group marketing; and the development of collateral materials including, e.g. advertising, websites, brochures, *etc.*
- I held two in-house marketing positions - Public Relations Manager and Marketing Director of 500-attorney Winston & Strawn, 1990-1994; and Marketing Partner of [Coffield] Ungaretti & Harris 1994-1997.
- Fishman Marketing (FM) has created marketing campaigns for over 75 law firms.
- FM campaigns have received over a dozen first-place trophies from the 3500-member Legal Marketing Association (or "LMA," formerly NALFMA, the National Association of Law Firm Marketing), for a wide range of creative marketing campaigns and categories. These include the LMA's optional Best of Show award five of the ten times ever presented; no other firm or agency has ever received it more than once. In fact, the Best of Show award was created in 1996 specifically so that our entry in the LMA's "Your Honor Awards" would win one grand prize instead of nearly all of the individual trophies at the national conference. Additional honors include:
 - In 1996, our Service Guarantee campaign received one of *Inc.* magazine's ten national Marketing Masters awards for "brilliant and successful" marketing.
 - Recipient of a peer-selected LMA 1998 Lifetime Achievement Award.
 - One of four legal marketers selected for induction into the LMA's inaugural Hall of Fame.
 - Selected as a Fellow of the College of Law Practice Management.
 - My article, "A Personal History of Law Marketing" received the ABA's 2006 "Silver Edge Award." for one of the best articles written that year in *Law Practice Management* magazine.
- Created what we believe to be the legal profession's first:
 - Computer game, for Orrick.
 - RSS-based advertising, for Sterne, Kessler, Goldstein & Fox PLLC.
 - Total Quality Management (TQM) initiative, for Winston & Strawn
 - Firm-wide cross-selling program for a major law firm, for Winston & Strawn.
 - Combined law school recruiting/marketing campaign, for Fenwick & West.
- Written hundreds of bylined articles, including five monthly columns.

- Sat on the editorial board of five national magazines.
- Quoted hundreds of times in publications worldwide, from the *New Zealand Lawyer* to National Public Radio's "All Things Considered," including being identified as:
 - "One of the country's leading experts on law firm marketing" by *Lawyers Weekly USA*.
 - "The creative mind behind a host of law firm campaigns that have redefined the field" by the *San Jose Business Journal*.
 - "A litigator-turned-marketer whose company offers branding services and ideas to law firms" by *The New York Times*.
- An active LMA member since 1990, I was the 1998 national Vice President. At various times I have also been a member of the Strategic Planning Committee, Best Practices Task Force, and Education Committee. Further, at the request of LMA leadership:
 - I co-hosted and emceed six consecutive international "Your Honor Awards" ceremonies.
 - I chaired and moderated seven consecutive day-long QuickStart/Boot Camp programs at the annual conferences.
 - I created and hosted for the 2010 annual conference its first full-day program exclusively for lawyers, called "Just JDs." I have been asked to repeat this responsibility in 2011.
- Conducted hundreds of law firm retreats and training programs for law firms and legal industry vendors and networks worldwide, including numerous Ethics-related CLE courses. Also, keynoted a series of marketing programs at a 5-day conference in Bangkok to a group of 20 United Nations Asian government ministers and business leaders.
- A commercial litigator from 1985-90 at two Chicago law firms, Pedersen & Houpt and Schwartz & Freeman (now part of Michael Best & Friedrich).
 - Licensed to practice law in Illinois since 1985. Law license remains current and in good standing.
 - In 1986 I became a member of the federal Trial Bar (N.D. Ill).
- I received a B.A. in Speech Communications, *cum laude*, from the University of Illinois, and J.D. from Emory Law School, where I was chief justice of the Emory Honor Court.

Synopsis of the complaint:

I. The Defendants' actions were not Commercial Speech

Wisconsin Statutes Section 995.50(2)(b) defines an invasion of privacy to be, "The use, for advertising purposes or for purposes of trade, of the name, portrait or pictures of any living person or, if the person is a minor, of his or her parent or guardian."

The defendants' participation in a pay-for-click search campaign has two components. The first is the process of contracting for the advertising and the second is the advertising itself. The first component, the process of contracting to advertise, is not in and of itself Commercial Speech, not subject to the state's authority to impose limitations and therefore cannot be governed by Wisconsin Statutes Section 995.50(2)(b).

| In *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977), the U.S. Supreme Court held that lawyers had a right to advertise their services under the doctrine of Commercial Speech. Under this doctrine, states did not have the First Amendment constitutional authority to ban lawyer advertising, but the states did have the right to impose reasonable limitations on Commercial Speech to assure that advertising was not misleading or otherwise harmful to the public. The Court considered a specific newspaper advertisement and did not define what is and is not advertising for the purposes of the application of Commercial Speech.

In *Texans Against Censorship, Inc. v. State Bar of Texas*, 888 F. Supp. 1328 (E.D. Tex. 1995), *aff'd*, 100 F.3d 953 (5th Cir. 1996), a U.S. District Court considered the scope of Commercial Speech when considering the constitutionality of restrictions limiting lawyer advertising in the Texas Rules of Professional Conduct. In one particular part of the case, the Court considered whether a newspaper advertisement paid for by a lawyer was Commercial Speech and therefore subject to the state's rules and restrictions. The court concluded on this point that the advertisement did not propose a commercial transaction and because of that, the rules could not apply. The Court stated:

It is not their desire to make money, however, which will bring these newsletters, announcements, or solicitations within the provisions of the amended rules. Instead, it is only when the message conveyed by the communication suggests to the public, or a specific individual, that the lawyer's professional services are available for hire that the communication must meet the requirements of the amended rules. Plaintiff Adler's *Pasadena Citizen* advertisement simply does not contain such a suggestion, and hence it is not covered by the amended rules.

In other words, the state can only impose limitations on the content of the speech. As applied to the instant case, the process of contracting for sponsored links, as opposed to the actual communication, the text of the advertisement, is not subject to the state's authority to impose limitations.

On its face, Wisconsin Statutes Section 995.50(2)(b) prohibits the use of a person's name within an advertisement that is visible to the public, but it cannot reach within the process of contracting for an advertisement. The scope of the statute is limited to the content of the communication. In this case, the defendants do not use the plaintiffs' names within the four corners of any advertisement and the statute is either not applicable or is unconstitutional as the plaintiffs would have it applied.

II. The use of a competitor's name has never been deemed a violation of the Rules of Professional Conduct

The conduct of lawyers is guided by the Rules of Professional Conduct in the state where the lawyer is admitted to practice. Every state has a rule that prohibits advertisements that are false or misleading. Wisconsin Rule SCR 20:7.1 states:

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

- (a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
- (b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law; or
- (c) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or
- (d) contains any paid testimonial about, or paid endorsement of, the lawyer without identifying the fact that payment has been made or, if the testimonial or endorsement is not made by an actual client, without identifying that fact.

Nothing within this rule or opinions that interpret it lead to the belief that the purchase of adwords from a search engine is inappropriate or that there are any restrictions on the specific adwords that may be purchased. In fact, after conducting my own search, no state seems to have included a prohibition of this marketing strategy in its rules of professional conduct and no state appears to have addressed the matter in an ethics opinion.

Yet the instant case is not unique. In 2004, Ben Cowgill purchased adwords that included the name of a competing lawyer. Mr. Cowgill was the chief disciplinary officer for the State of Kentucky. He left that position to open a law practice. As part of his client development strategy, he began a pay-per-click search engine campaign using the name of Peter Ostermiller. Mr. Ostermiller was a lawyer who represented defendants in attorney disciplinary matters and a competitor of Mr. Cowgill in his new practice.

Every indication is that this campaign was ethically compliant. First, it violated no Kentucky rule on its face. Second, as a former chief disciplinary counsel, it seems apparent that Mr. Cowgill would measure the ethical propriety of his decision to go forward with this campaign. Third, reports indicated that Mr. Ostermiller filed an ethics

complaint against Mr. Cowgill, but no charges were brought. Ultimately, Mr. Cowgill ended the campaign, in part because it was not commercially successful.

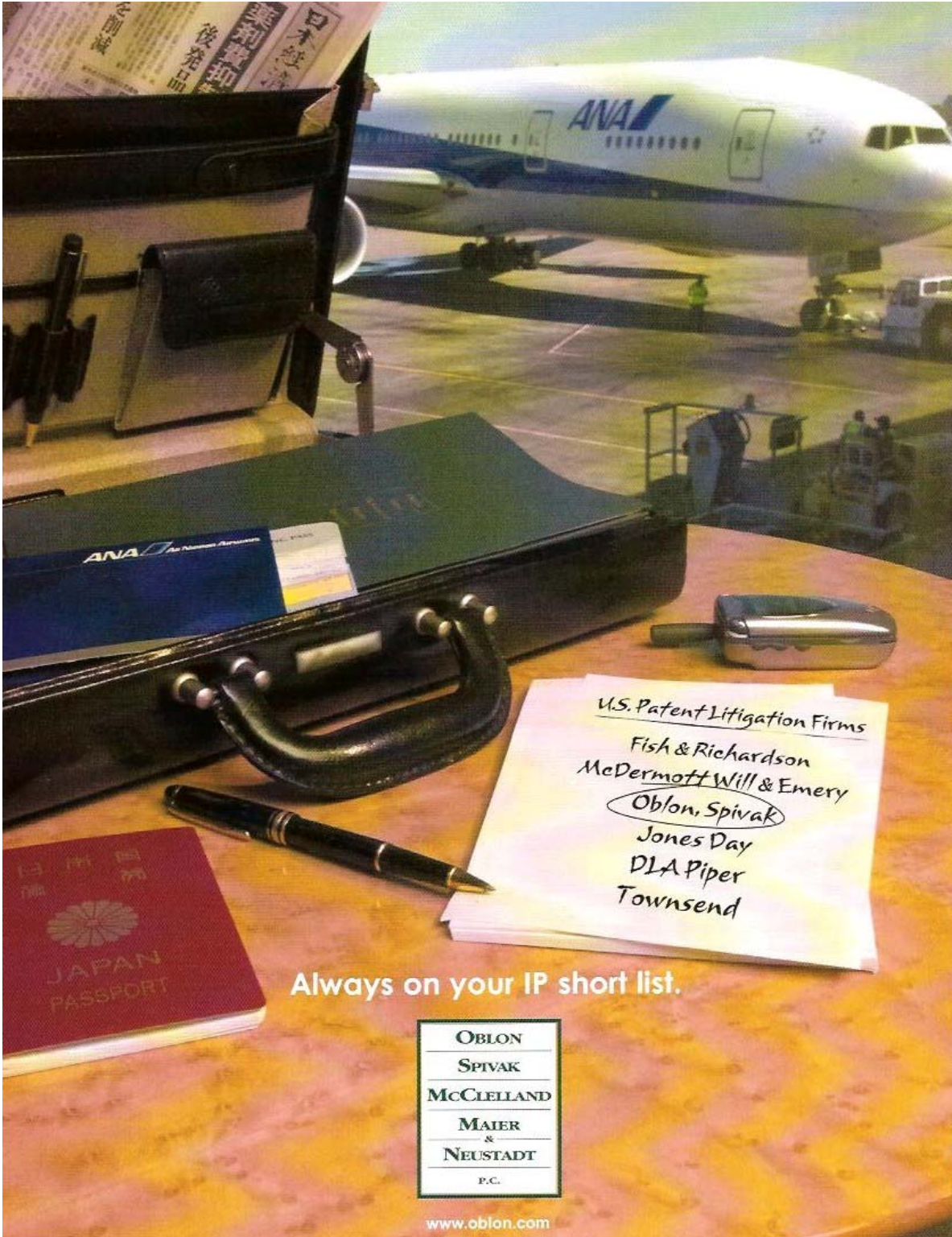
While many people, including Monroe Freedman, a highly regarded expert in legal ethics, condemned Mr. Cowgill's actions, none of them concluded it was an ethics violation. A newspaper article in the Louisville Courier-Journal, by Andrew Wolfson, in July 6, 2004, stated, "Hofstra University law professor Monroe Freedman, a nationally recognized authority on lawyer ethics who has support attorneys' rights to advertise, likened Cowgill's approach to 'putting your name on another lawyer's door. I think it's wrong.'" Notably, Professor Freedman does not conclude it is an ethics violation.

Kevin O'Keefe, a lawyer and notable blogger, was among those who condemned Mr. Cowgill, as a matter of taste and not ethical impropriety, but noted in a blog post on July 6, 2004 (<http://kevin.lexblog.com/2004/07/articles/law-firm-marketing/lawyer-buys-competitors-name-as-google-adword-other-lawyer-cries-foul/>) that Will Hornsby believed that Mr. Cowgill had apparently not violated any rules. As Mr. O'Keefe put it:

As Will Hornsby, the king of ethics and lawyer marketing on the Internet as far as I am concerned, told the *Courier-Journal* "Ostermiller would have had a hard time proving that Cowgill's link was misleading because most search engine users know that sponsored links are advertising." Hornsby also noted that the sponsored link doesn't affect the search result.

Mr. O'Keefe also states in this blog post that Mr. Cowgill's campaign was simply unsuccessful. He reports that Mr. Cowgill did not receive a single hit on his sponsor link from those who searched for "Ostermiller."

While the Cowgill matter appears to be the only one directly involving a pay-per-click marketing strategy, other law firms have used the names of competitors in their advertisements. For example Oblon Spivak *et al.*, ran the following two ads in *Corporate Counsel* for a number of years.

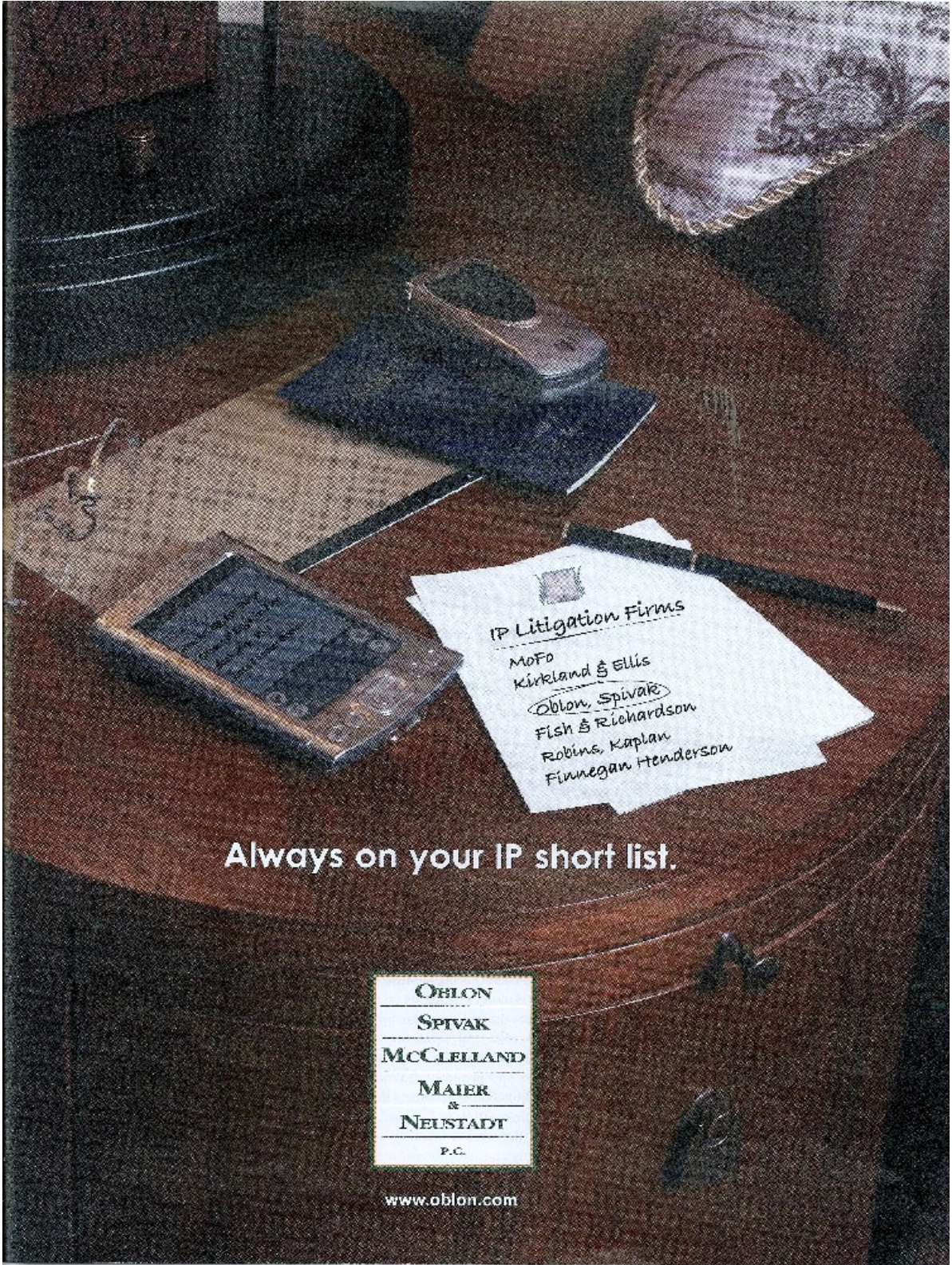


U.S. Patent Litigation Firms
Fish & Richardson
McDermott Will & Emery
Oblon, Spivak
Jones Day
DLA Piper
Townsend

Always on your IP short list.

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P.C.

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IP Litigation Firms

- MoFo
- Kirkland & Ellis
- Oblon, Spivak
- Fish & Richardson
- Robins, Kaplan
- Finnegan Henderson

Always on your IP short list.

OHLON
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 &
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While many states, including Wisconsin, define misleading advertisements to include a comparison of the services of one lawyer to those of another lawyer's unless the comparison is factually substantiated, this rule has not been applied to incidences where one lawyer or law firm merely indicates that another lawyer or law firm is a competitor.

Lawyers are guided by their Rules of Professional Conduct and all rules applicable to the actions of Cannon & Dunphy, S.C., William M. Cannon, and Patrick O. Dunphy indicate that their conduct was in full compliance with the Wisconsin Rules of Professional Conduct in this matter.

III. The purchase of key words from search engines does not mislead the viewers

A 2005 study by Pew Internet survey reports on data collected in 2003 and early 2004. The study finds that at that time, only 18 percent of search engine users could always tell when search engine results were paid or sponsored and that search engine users wanted search engines to be clear about when search results are sponsored. The confusion about sponsored links may have been the result of deception used by some advertisers who structure links to be the same as or similar to the subject of the search. For example, at one time a legal matching company poached the name of a legal aid agency and had sponsored links that were under the name of the legal aid agency. No indication would lead viewers to the belief the link was to a private referral service instead of a legal aid agency. In contrast, in no way did the defendants in the instant case lead any viewer to believe they were the plaintiffs' law firm.

In the more than six years since the data was collected for the Pew study, the leading search engines have shaded the area of the placement and label paid ads as sponsored links. They are positioned at the top of the search or on the right side of the search results page. In response to the concerns expressed in the Pew research, search engines have taken steps to avoid confusion.

Here, the defendants' sponsored links were in a shaded area separate from the organic search results, were labeled as "sponsored links," and always identified the defendants' law firm and only the defendants' law firm. The link generally appeared with other sponsors who participated in the search engine pay-for-click programs. Under these circumstances, it is not reasonable to conclude that the defendants' use of the adwords and participation in a search engine's pay-for-click program could lead people to believe they would link to anyone other than the defendants' law firm. The actions of the defendants neither mislead search engine users nor used the names of the plaintiffs in any advertisements.

IV. Search engines provide viewers with links to related sites as part of their organic searches

These days, search engines include links to sites other than the precise site being searched for. Bing presents a section titled “Related Searches” in a column to the left of the traditional organic search. The first one or two of these searches resides in a position higher on the page than the first result of the organic search.

Google now includes “Pages similar to ...” at the bottom of the first page of the organic search results, typically after 10 to 12 results. These results include competing enterprises. For example, a search for "Hertz" results in related links to “budget,” “avis” and “enterprise.” These are not paid links. These are a feature of the organic search, seemingly to assist viewers in their efforts to find a service or product. Furthermore, this “pages similar to ...” feature in no way prevents those who are trying to find the specific information about the subject of their search from doing so. That information is clearly present and distinguishable. Below are some examples of recent searches:

Google also has an enhanced feature of “related searches” that viewers may click to find other providers of the services or products they are seeking.

[Pages similar to www.habush.com](#)

[warshafsky](#) - Warshafsky Law Firm attorneys provide comprehensive ... - [warshafsky.com](#)

[Domnitz & Skemp](#) - Contact the Milwaukee personal injury attorneys ... - [domnitzlaw.com](#)

[Hupy.com](#) - If you want to get the maximum amount of money in the ... - [hupy.com](#)

[Cannon & Dunphy](#) - Practicing firm includes personal injury, ... - [cannon-dunphy.com](#)

Google also often has a "Something different" function in the left margin that may include the names of competitors. For example, a search for "Hertz" turns up links to searches for "alamo," "avis," "thrifty," "national," and "enterprise." Clicking on "avis" for example, then connects to a search for "avis," which includes links to its own competitors, including, e.g. "hertz" under "Something different" along the left margin. At the bottom of the first page, it also includes (a) "Pages similar to [www.avis.com](#)" with direct links to four competitors' websites including "Hertz" and (b) "Searches related to **avis**" [bold original] with links to other searches including five car rental competitors.

This also applies to law firms. A Google search for "Skadden Arps," a well-known corporate law firm, yields the following "Something different" option in the left margin, the names of five similarly prominent law firm competitors:

Something different

jones day

fried frank

cleary gottlieb

gibson dunn

davis polk

The first screen of this Google search shows this in the left margin:

The image shows a Google search interface for the query "skadden arps". The search results are displayed on the right, and a left-hand navigation menu is visible on the left side of the page.

Google skadden arps Search

About 302,000 results (0.17 seconds) [Advanced search](#)

Everything
More

Show search tools

Something different
jones day
fried frank
cleary gottlieb
gibson dunn
davis polk

Skadden ☆
Skadden Named One of the "Fearsome Foursome" Litigation Firms and One of Two * Securities ... Click here for **Skadden** commentary on the Dodd-Frank Act. ...
[www.skadden.com/](#) - Cached - Similar

Attorneys	Washington, DC
Offices	Support staff home
New York	Practices
London	Hong Kong

Attorneys - Skadden Arps ☆
A · B · C · D · E · F · G · H · I · J · K · L · M · N · O · P · Q · R · S · T · U · V · W · X · Y · Z
Last Name: First Name: Position: ...
[www.skadden.com/index.cfm?contentID=3](#) - Cached - Similar

Skadden Arps, Slate, Meagher & Flom - Wikipedia, the free ... ☆
Skadden, Arps, Slate, Meagher & Flom LLP and Affiliates (often shortened to **Skadden Arps**, Skadden, or SASM&F), founded in 1948, is a prominent law firm ...
[en.wikipedia.org/wiki/Skadden,_Arps,_Slate,_Meagher_%26_Flom](#) - Cached

Skadden Arps « Above the Law: A Legal Tabloid - News, Gossip, and ... ☆
In today's spotlight is the indomitable **Skadden Arps**. Skadden hiring partner If you listed your employment as "Slave" at **Skadden Arps**, for example, ...
[abovethelaw.com/skadden-arps/](#) - Cached

Skadden Arps - Company Profile | LinkedIn ☆
Skadden, Arps is an international law firm that is considered one of the most prestigious in the world, consistently ranking in the top five of Vault's...
[www.linkedin.com/companies/skadden-arps](#) - Cached - Similar

Skadden, Arps, Slate, Meagher & Flom LLP - Law Firm Skadden, Arps ... ☆
Browse the **Skadden, Arps, Slate, Meagher & Flom LLP** law firm overview by Martindale-

Scrolling down to the bottom of the first page of Google, there are (1) "Pages similar to www.skadden.com," which link to searches for four more of Skadden Arps' competitors, and (2) "Searches related to "skadden arps," which show links to five of Skadden Arps' competitors (and one to "skadden arps salary"). There is some overlap with these firms, e.g. the "Davis Polk" law firm shows up both as a related search and "Something different."

[Skadden, Arps, Slate, Meagher & Flom LLP - Law Firm Skadden, Arps ...](#) ☆

Browse the **Skadden, Arps, Slate, Meagher & Flom LLP** law firm overview by Martindale-Hubbell. The **Skadden, Arps, Slate, Meagher & Flom LLP** law firm overview ...
www.martindale.com/Skadden-Arps.../law-firm-124454.htm - Cached - Similar

[Skadden Offers 'Sidebar' Deferrals to Incoming Associates](#) ☆

Mar 16, 2009 ... **Skadden, Arps, Slate, Meagher & Flom** is now extending its "Sidebar" program to include its incoming associate class. According to a memo by ...
www.law.com › Career Center Home › Salary Information - Cached - Similar

[Law360 : Skadden Arps : Lawsuit Filings, Litigation, Settlements ...](#) ☆

Read Firm News and Legal Industry Developments for **Skadden Arps**.
www.law360.com/company_articles/3749 - Cached - Similar

[Craig Joins Skadden, Arps - NYTimes.com](#) ☆

Jan 27, 2010 ... President Obama's first White House counsel has joined one of Washington's top law firms.
thecaucus.blogs.nytimes.com/2010/.../craig-joins-skadden-arps/ - Cached - Similar

[Skadden, Arps, Slate, Meagher & Flom, L.L.P.: Private Company ...](#) ☆

Get **Skadden, Arps, Slate, Meagher & Flom, LLP** company research & investing information. Find executive management and the latest company developments.
investing.businessweek.com/research/stocks/snapshot/snapshot.asp?... - Cached

[Pages similar to \[www.skadden.com\]\(http://www.skadden.com\)](#)

[Sidley](#) - International business law firm with offices in Chicago, Dallas, ... - sidley.com
[Weil.com](#) - The world's most sophisticated clients count on Weil Gotshal to ... - weil.com
[About S&C](#) - International (Paris, London, Frankfurt, Australia, Tokyo, ... - sullcrom.com
[Shearman and Sterling](#) - International firm: corporate, litigation, ... - shearman.com

Searches related to **skadden arps**

skadden arps salary	davis polk
sullivan & cromwell	weil gotshal
kirkland ellis	white & case
latham & watkins	shearman & sterling

That is:

[Pages similar to **www.skadden.com**](#)

[Sidley](#) - International business law firm with offices in Chicago, Dallas, ... - [sidley.com](#)

[Weil.com](#) - The world's most sophisticated clients count on Weil Gotshal to ... - [weil.com](#)

[About S&C](#) - International (Paris, London, Frankfurt, Australia, Tokyo, ... - [sullcrom.com](#)

[Shearman and Sterling](#) - International firm: corporate, litigation, ... - [shearman.com](#)

Searches related to **skadden arps**

[skadden arps salary](#) [davis polk](#)

[sullivan & cromwell](#) [weil gotshal](#)

[kirkland ellis](#) [white & case](#)

[latham & watkins](#) [shearman & sterling](#)

Similar results are shown when conducting searches related to the Habush law firm, including, at the bottom of the first page, links to four of HHR's competitors, including Cannon & Dunphy.

[Pages similar to **www.habush.com**](#)

[warshafsky](#) - Warshafsky Law Firm attorneys provide comprehensive ... - [wa](#)

[Domnitz & Skemp](#) - Contact the Milwaukee personal injury attorneys ... - [doi](#)

[Hupy.com](#) - If you want to get the maximum amount of money in the ... - [hup](#)

[Cannon & Dunphy](#) - Practicing firm includes personal injury, ... - [cannon-dun](#)

The first page of the Google search follows:



habush law firm

Instant is on

About 4,840 results (0.21 seconds)

[Advanced search](#)

Everything

Images

Videos

More

All results

Visited pages

Not yet visited

More search tools

[Milwaukee Personal Injury Lawyer, Wisconsin Personal Injury ...](#) ☆ - 3

visits - Sep 24

Milwaukee personal injury lawyers, **Habush Habush & Rottier**, handle a wide ... SEO provided by the Search Engine Optimization firm The Search Engine Guys. [www.habush.com/](#) - Cached - Similar

Attorneys	Practice areas
Habush Habush & Rottier S.C., Office ...	Charitable funds
Contact	Firm overview
Medical Malpractice Cases	News & events

[More results from habush.com »](#)

Sponsored links

[Phillips Law Offices](#)

Stephen D. Phillips Top Rated Personal Injury Atty by Awo.com [www.phillipslawoffices.com](#)
161 N. Clark Street, Suite 4925, Chicago, IL

[See your ad here »](#)

[Our Wisconsin Personal Injury Attorneys, Habush Habush & Rottier S.C.](#)

☆
Habush Habush & Rottier, S.C. has more National Board of Trial Advocacy certified trial lawyers than any other law firm in the United States. ... [www.habush.com/attorneys/](#) - Cached - Similar

[Habush Habush and Rottier S.C. - Law Firm in Madison, Wisconsin ...](#)

☆
Aug 3, 2010 ... **Habush Habush** and Rottier SC is a law firm in Madison, Wisconsin focusing on various areas of law. Contact this law firm in Madison, ... [www.lawyers.com/.../Habush-Habush-and-Rottier-S.C.-1794173-f.html](#) - Cached

[Habush Habush and Rottier S.C. - Law Firm in Waukesha, Wisconsin ...](#)

☆
Aug 3, 2010 ... **Habush Habush** and Rottier SC is a law firm in Waukesha, Wisconsin focusing on various areas of law. Contact this law firm in Waukesha, ... [www.lawyers.com/.../Habush-Habush-and-Rottier-S.C.-1806470-f.html](#) - Cached

[Show more results from www.lawyers.com](#)

[Our Firm, Green Bay Personal Injury Attorneys | Habush Habush ...](#) ☆

The law firm of **Habush Habush & Rottier** SC, Green Bay personal injury attorneys, was founded in 1930 by Jesse **Habush** with a focus on helping people who have ... [www.greenbaypersonalinjuryattorney.com/our_green_bay_personal_injury_attorney_firm.aspx](#) - Cached - Similar

[Habush Habush & Rottier S.C. - Law Firm Habush Habush & Rottier ...](#)

☆
Browse the **Habush Habush & Rottier** SC law firm overview by Martindale-Hubbell. The **Habush Habush & Rottier** SC law firm overview page contains articles peer ... [www.martindale.com/Habush-Habush.../law-firm-1429433.htm](#) - Cached - Similar

[Habush, Habush & Rottier claims cyber hijacking by rival - JSOnline](#) ☆ -

Sep 19

Nov 19, 2009 ... **Habush, Habush & Rottier**, one of the state's oldest and largest law firms specializing in personal injury cases, has had many publicized ... [www.jsonline.com › News › Milwaukee County](#) - Cached - Similar

[Wisconsin Personal Injury Lawyers, Attorneys, Accident Attorneys ...](#) ☆ -

Sep 19

As one of Wisconsin's oldest and largest personal injury law firms, **Habush Habush & Rottier**, S.C. has the experience and resources necessary to handle a ... [www.wipersonalinjuryattorneys.com/](#) - Cached

[Habush v Cannon Complaint](#) ☆ - Sep 19

Sep 15, 2010 ... shareholder and the president of the law firm **Habush Habush & Rottier** S.C. Mr. ... **Habush & Rottier**, the Law Firm and these individuals have ... [www.scribd.com › Business & Law › Technology](#) - Cached

[Laura Habush Law Offices \(Habush Laura Law Offices Of ...](#) ☆

Jun 15, 2010 ... Laura **Habush Law** Offices company profile in Milwaukee, WI. Our free company profile report for Laura **Habush Law** Offices includes business ... [www.manta.com/c/mtwfpd3/laura-habush-law-offices](#) - Cached

[Pages similar to www.habush.com](#)

[warshafsky](#) - Warshafsky Law Firm attorneys provide comprehensive ... - [warshafsky.com](#)
[Domnitz & Skemp](#) - Contact the Milwaukee personal injury attorneys ... - [domnitzlaw.com](#)
[Hupy.com](#) - If you want to get the maximum amount of money in the ... - [hupy.com](#)
[Cannon & Dunphy](#) - Practicing firm includes personal injury, ... - [cannon-dunphy.com](#)



1 2 3 4 5 6 7 8 9 10 [Next](#)

[View customizations](#) [Search Help](#) [Give us feedback](#)

[Google Home](#) [Advertising Programs](#) [Business Solutions](#) [Privacy](#) [About Google](#)

Notably, in the right margin, another law firm has purchased a sponsored link for this "Habush law firm" search:

Sponsored links

[Phillips Law Offices](#)

Stephen D. Phillips Top Rated
Personal Injury Atty by Awo.com

www.phillipslawoffices.com

161 N. Clark Street, Suite 4925,
Chicago, IL

We find similar results with a wide range of HHR-related search terms. For example, conducting a Google search for the word "habush" turns up the following results, including direct links to competing firms' websites under "Pages similar to www.habush.com"

[Pages similar to www.habush.com](#)

[warshafsky](#) - Warshafsky Law Firm attorneys provide comprehensive ... - warshafsky.com

[Domnitz & Skemp](#) - Contact the Milwaukee personal injury attorneys ... - domnitzlaw.com

[Hupy.com](#) - If you want to get the maximum amount of money in the ... - hupy.com

[Cannon & Dunphy](#) - Practicing firm includes personal injury, ... - cannon-dunphy.com



habush

Search

Instant is on

About 118,000 results (0.18 seconds)

Advanced search

- Everything
- Images
- Videos
- Maps
- News
- More

- Any time
- Past 3 days
- All results
- Visited pages
- Not yet visited
- More search tools

[Milwaukee Personal Injury Lawyer, Wisconsin Personal Injury...](#) - 3 visits - Sep 24

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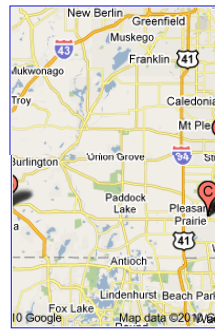
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[Wisconsin Personal Injury Lawyers Blog: Habush v. Cannon - Part VIII](#) ☆

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The new "Google Instant" feature automatically conducts a search for every letter you type in the search box. A search for "Habush attorneys" yields the following. Every new letter conducts a different automatic search, changing the sponsored links at the top and right margin. The following screen shots show how each letter creates a new search and Sponsored links:

The screenshot shows a Google search interface. The search bar contains the text "habush a" and "hd habush". Below the search bar, a dropdown menu displays suggestions: "habush and habush", "habush appleton", and "habush a". The search results indicate "About 116,000 results (0.13 seconds)". The left sidebar includes navigation options: "Everything", "Images", "Videos", "More", and "Show search tools". The main content area features several search results:

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Cannon Dunphy Appendix for Motion to Dismiss **Habush Habush Rottier** ...

Appendix filed with Motion to Dismiss December 26, 2009 filed by Cannon & Dunphy, Bill Cannon, and Pat Dunphy through lawyer J. Ric Gas of Gas Weber Mullins ...
www.scribd.com/.../Cannon-Dunphy-Appendix-for-Motion-to-Dismiss-Habush-Habush-Rottier-Milwaukee-Wisconsin-lawsuit - Cached

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www.superpages.com/.../Habush-Habush-Rottier-SC-L0095425477.htm - Cached

Cell Phone Coverage Map in Ewa Beach, HI - Page 1 of 1 ...

It's a good thing that Apple signed a deal with AT&T and it has great I cannot get my phone to connect while I'm in **Habush** in Ewa Beach area. ...
www.cellreception.com/coverage/hi/ewa-beach/page1.html - Cached

Cell Phone Coverage Map in Aiea, HI 96701 - Page 9 of 10 ...

However, friends and family who also have T-Mobile in Ewa Beach says that the reception there is kind of bad, especially around the area near **Habush**. AT&T ...
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Cannon Dunphy Motion to Dismiss **Habush Habush Rottier Milwaukee** ... - Sep 19

EFF: att complaint amended 62 reads To the Extent that Designating the Keywords "**Habush**" and "**Rottier**" Is a "Use," It is Incidental and is Excepted ...
www.scribd.com/.../Cannon-Dunphy-Motion-to-Dismiss-Habush-Habush-Rottier-Milwaukee-Wisconsin-Lawsuit - Cached

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www.tgdaily.com/.../44769-lawyers-slug-it-out-over-google-adwords - Cached

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Craig A. Christensen, cchristensen@habush.com. Iris Christenson, iris@christensonalexlaw.com ... William Nelson, william.nelson24@worldnet.att.net ...
www.law.wisc.edu/about/contact.php?iDeptID=42 - Cached

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Association Of Trial Lawyers Of America Political Action Committee ... ☆
Jul 28, 2010 ... 77546, Law Office of Marie E. Collins/Atto, \$5000, P, 12/22/2005 53202,
Habush Habush & Rottier S.C./Attom, \$3800, P, 11/27/2006 ...
www.campaignmoney.com/.../association_of_trial_lawyers_of_america_political_action_committee_atla_pac.asp?... - Cached - Similar

American Association For Justice Political Action Committee (Aaj ... ☆
Richmond, TX 77469, Law Office of R. Gary Stephens/Atto, \$5000, P, 02/23/2008 ... 53202,
Habush Habush & Rottier, S.C./Attom, \$3800, P, 01/07/2008 ...
www.campaignmoney.com/.../american-association-for-justice-political-action-committee-aaj-pac.asp?... - Cached - Similar

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MADISON, Wisconsin (WI) Political Contributions by Individuals ... ☆
James Jansen (**Habush** Law Firm/Attorney), (Zip code: 53718) \$1000 to TAMMY Teresa Welch (Michael Best and Friedrich LLP/Atto), (Zip code: 53705) \$500 to ...
www.city-data.com/elec2/.../elec-MADISON-WI-02-part2.html - Cached - Similar

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www.manta.com/c/mthdw28/jodi-l-habush-attorney - Cached

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Search Bar: habush law firm (with a dropdown menu showing "habush law firm" and "habush I")

Search Results:

- Phillips Law Offices: www.phillipslawoffices.com Stephen D. Phillips Top Rated Personal Injury Atty by Awo.com Show map of 161 N. Clark Street, Suite 4925, Chicago, IL 60601-3296
- Personal Injury Law Firms: www.InjuryHelpLineLawyer.com/Injury Accident or Injury Calls ONLY! Experienced Accident Injury Lawyers
- Attorney: schneiderchasl.com Need an experienced lawyer? 2 locations for your convenience.
- Milwaukee Personal Injury Lawyer, Wisconsin Personal Injury...: 3 visits - Sep 24 Milwaukee personal injury lawyers, Habush Habush & Rottier, handle a wide ... SEO provided by the Search Engine Optimization firm The Search Engine Guys. www.habush.com/ - Cached - Similar

Attorneys	Practice areas
Habush Habush & Rottier S.C., Office ...	Charitable funds
Contact	Firm overview
Medical Malpractice Cases	News & events
- Our Wisconsin Personal Injury Attorneys, Habush Habush & Rottier S.C.: Habush Habush & Rottier, S.C. has more National Board of Trial Advocacy certified trial lawyers than any other law firm in the United States. ... www.habush.com/attorneys/ - Cached - Similar
- Habush Habush and Rottier S.C. - Law Firm in Madison, Wisconsin...: Aug 3, 2010 ... Habush Habush and Rottier SC is a law firm in Madison, Wisconsin focusing ...

Sponsored Links (Right Margin):

- Maryland Business Lawyer: You need an expert in business law. 15+ years experience. Call today. www.tlynchlaw.com
- Sager Legal Advisors LLP: We are there when you need us for all your legal needs www.sagerllp.com
- San Diego Injury Lawyers: Since 1981, Aggressive, Top Results MD on staff. Call For Free consult www.JanMulligan.com
- Patent Litigation?: Partial Contingent cases OK! Patent Applications from \$1000 www.patentcolorado.com
- Ahwatukee/Phoenix Divorce: 480 940 3636 Free Consultation michaelshew.com
- Illinois Criminal Defense: Charged With A Crime? Get Help With Your Case Now! Cook & Dupage ScarpinoLaw.com Chicago, IL
- Law Firms: Law Firms Big changes to wealth

Conducting a geography-based search "Habush Green Bay" shows numerous firms seemingly having purchased "Habush"-related terms as well.

The screenshot shows a search engine interface with the query "habush green bay" entered. The search results include:

- A search bar with "habush green bay" and a "Search" button.
- A notification: "About 3,450 results (0.45 seconds)".
- A result for "Green Bay Lawyers" with a red arrow pointing to the text "Providing Detailed Profiles Of Attorneys In Green Bay. Search".
- A result for "Milwaukee Personal Injury Lawyer, Wisconsin Personal Injury ..." with a red arrow pointing to the text "Milwaukee personal injury lawyers, Habush Habush & Rottier, handle a wide variety of personal injury cases such as motor vehicle accidents, ...".
- A map showing the location of "Habush Habush & Rottier Sc: Vopal" at "408 S Monroe Ave, Green Bay, WI 54301" with a red arrow pointing to the address.
- A result for "Green Bay Injury Lawyer Office Location, Habush Habush & Rottier ..." with a red arrow pointing to the text "The location of Habush Habush & Rottier's Green Bay injury lawyer office."
- A sidebar on the right with sponsored links for "Pitsch Law Offices, LLC", "Green Bay Defense Lawyer", "Ask a Lawyer Online Now", and "We Get Results".

In other words, search engines are beginning to provide their users with much the same information and options that are provided by those who participate in pay-for-click campaigns and buy adwords. There is no distinction between the actions of the leading search engines, including Google and Bing, and the actions of the defendants here. If the defendants are in violation of Wisconsin Statute Section 955.50 for invasion of privacy because of the inappropriate use of the plaintiffs' names, then these search engines are also in violation of those actions, many, many times over.

However, none of them are. They are merely providing viewers with options to meet their legal needs.

V. Buying space in proximity to other lawyers in online marketing models is common

In addition to search engine pay-for-click campaigns, lawyers now participate in marketing programs that enable their advertising to appear when other lawyers are searched. For example, AVVO.com provides a rating and information about individual lawyers across the country. When a viewer searches a specific lawyer, the viewer will sometimes not only see the profile of the searched lawyer, but also information about other lawyers in the same geographic area and field of practice, i.e., competitors. This additional information may be directly paid for by individual lawyers or it may be the result of a placed Google ad search.

Lawyers.com, a subsidiary of Martindale-Hubbell, offers a lawyer search feature that includes information about the lawyer being search, as well as a box on the right of the page that includes a list of “related attorneys” complete with links to those lawyers’ Lawyers.com site and a Google map, pin-pointing the office locations of the “related attorneys.”

These efforts are far from unique to the legal profession. They are the contemporary way of marketing products and services. Billboards advertise one gas station on one side of the road and another on the other. Magazines include an ad for one car on one page and another on the next. Pharmacies place their generic medications next to the brand names. House brand jeans are on a rack next to the name brand jeans. Food companies pay grocers to stock their products in advantageous positions and sometimes do the stocking themselves.

Pay-per-click key word campaigns are just one facet of this landscape and the legal profession is involved in a range of competitive efforts online. These efforts are not unreasonable and they are not violations of the statute protecting rights to privacy.

Here, Avvo.com searches for "robert habush," "daniel rottier," "william cannon," and "patrick dunphy" show information regarding competing personal injury lawyers in the right margin.

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Robert L. Habush

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Paul J. Sceptur
Avvo Rating: 10.0

Overview

Practice Areas



- 50% Personal Injury
- 25% Defective / Dangerous Products
- 25% Medical Malpractice

Contact Information

Habush Habush & Rottier, SC
U.S. Bank Building
777 E. Wisconsin Avenue, Suite 2300
Milwaukee, WI 53202
414-271-•••• [show](#)
[View map](#)

[E-mail this lawyer](#)
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Résumé

Licenses

50 years since Robert L. Habush was first licensed to practice law in WI.
[See license details](#)

✓ We have not found any instances of professional misconduct for this lawyer.

Education

School	Major	Degree	Graduated
University of Wisconsin Law School	Law	JD - Juris Doctor	1961
University of Wisconsin, Madison		BA - Bachelor of Arts	

Awards

Award Name	Granting Organization	Date
Certification, Civil Trial Advocate	National Board of Trial Advocacy	
Champion of Justice Award	American Association of Justice	

[See all 4 awards](#)

Associations

Position	Association Name	Duration
President	American Association for Justice	1985-1987
Board of Directors	American Association for Justice	1983-1986

[See all 13 association entries](#)

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Daniel A. Rottier

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Client Ratings
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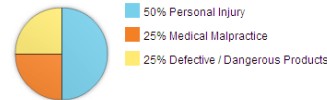
Experience: ●●●●●
 Industry Recognition: ●●●●●
 Professional Conduct: ●●●●●

No professional misconduct found.

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Overview

Practice Areas



Contact Information

Habush Habush & Rottier, SC
 150 E. Gilman St., Suite 2000
 Madison, WI 53703
 608-255-**** show
[View map](#)

References

Client Reviews

How would you rate this lawyer?
 If you're a current or former client, share your thoughts (anonymously, if you prefer). Would you recommend this lawyer to other clients?

Endorsements



Endorse a fellow lawyer, get more visits to your profile
 In addition to providing a simple way to express your gratitude to fellow lawyers, any time you add an endorsement to a peer's profile, a link to your profile will appear on it.

Résumé

Licenses

34 years since Daniel A. Rottier was first licensed to practice law in WI.
[See license details](#)
 We have not found any instances of professional misconduct for this lawyer.

Education

School	Major	Degree	Graduated
University of Wisconsin Law School	Law	JD - Juris Doctor	1976
University of Wisconsin, Madison		BA - Bachelor of Arts	1973

Awards

Award Name	Granting Organization	Date
Best Lawyers in America	Best Lawyers in America	2009
Super Lawyer Top 10 & Top 50	Law & Politics Magazine	2009

[See all 7 awards](#)

Associations

Position	Association Name	Duration
Board of Governors Member	American Association for Justice	
Member	American Bar Association	

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 Client Reviews (9) ★★★★★

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- Dane County Lawyers
- Dane County Medical Malpractice Lawyers
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- Madison Lawyers
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Overview

Practice Areas



- 20% Car / Auto Accident
- 20% Medical Malpractice
- 20% Litigation
- 20% Defective / Dangerous Products
- 20% Trucking Accident

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Avvo Rating: 10.0


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Patrick O. Dunphy



Avvo Rating 8.9

Excellent


Client Ratings
Not yet reviewed
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No professional misconduct found.

Experience: ●●●●●
Industry Recognition: ●●●●●
Professional Conduct: ●●●●●

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Superb

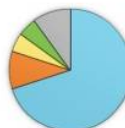
Client Rating
★★★★★

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Overview


Practice Areas



- 70% Personal Injury
34 years
- 10% Medical Malpractice
26 years
- 5% Wrongful Death
- 5% Trucking Accident

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VI. The participation of Habush Habush & Rottier in YellowPages.com created the same result that the plaintiffs complain about

From March 2009 to March 2010, a search of the defendant law firm, Cannon & Dunphy, on YellowPages.com, as well as many other law firm names, resulted in a prominent display of the firm name Habush Habush & Rottier, S.C., with a logo, address, telephone number, link to the firm's web site and link to more information. All of this was contained at the top of a blue-shaded box labeled, "Category-Related Advertisers." The information for Habush Habush & Rottier, S.C. was of equal height to the organic listing for Cannon & Dunphy, but consumed more vertical space and included an attention-getting logo.

Below, you see that Yellow Pages searches for "william cannon" and "patrick dunphy" show a link to Habush Habush & Rottier in the right margin, among other lawyers.

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William Cannon in Milwaukee, WI [Map Milwaukee Results](#)

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All

Brookfield (1)

Milwaukee (1)

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Local

SEARCH WITHIN THESE RESULTS

SEE YOUR BUSINESS HERE!

1 - 2 of 2 businesses **SORT BY:** Standard Distance A-Z

Cannon William

595 N Barker Rd
Brookfield, WI 53045 [Map](#)
(262) 796-3700

[More Info](#)

[Email & Share](#) | [Map It](#) | [Get Directions](#) | [Search Nearby](#) | [Save This Listing](#) | [Save a Note](#)

Drew, William Ryan - O'Neil, Cannon, Ho

111 E Wisconsin Ave Suite 1400
Milwaukee, WI 53202 [Map](#)
(414) 276-5000


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(866) 319-6133
[More Info](#) | [Web Site](#)

[Michael S. Winter Attorney At Law](#)

735 W Wisconsin Ave
Milwaukee, WI 53233
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FIND: William Cannon **LOCATION:** Milwaukee, WI Q FIND

Business Name or Category City, State, ZIP Code or Longitude/Latitude

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Local Yellow Pages

Home > Milwaukee > Name Search - William Cannon
William Cannon in Milwaukee, WI Map Milwaukee Results

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Milwaukee Listings Only

NARROW By City

All

Brookfield (1)

Milwaukee (1)

EXPAND OR NARROW RESULTS

Local 1 2 3 4

SEARCH WITHIN THESE RESULTS Q FIND

SEE YOUR BUSINESS HERE!
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Cannon William
 595 N Banker St
 Brookfield, WI 53005
 (262) 796-3700

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Draw William Ryan - O'Neil Cannon Ho
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William A. Cannon (www.Pronto.com)
 Find William A. Cannon at Great Prices.

Workers' Comp Attorneys
 8300 W. Bluemound Rd.
 Milwaukee, WI 53213
 The Injured Worker's Law Firm. Gillick, Wicht, Gillick & Graf.

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 726 W Wisconsin Ave
 Milwaukee, WI 53233
 (414) 224-0914
[More Info](#) | [Web Site](#)
- Action Law Offices**

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 Milwaukee, WI 53226
 (414) 456-1111
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- Samster Korkei & Sofran SC**

 1110 Old World Third St Suite 405
 Milwaukee, WI 53203
 (414) 224-0400
[More Info](#) | [Web Site](#)
- Carson Law Office**

 15350 W National Ave
 New Berlin, WI 53151
 (262) 860-4932
[More Info](#) | [Web Site](#)
- Jacobson Schirinsky and Hoock**

 750 N Milwaukee St Ste 315
 Milwaukee, WI 53202
 (414) 223-4444
[More Info](#) | [Web Site](#)
- Popov Law Office LLC**

 229 E Wisconsin Ave
 Milwaukee, WI 53202
 (414) 277-7002
[More Info](#) | [Web Site](#)
- Galena Houtel R**
 Galena Houtel R Esq
 2525 N Mayfair Rd
 Milwaukee, WI 53226
 (262) 797-4238
[More Info](#) | [Web Site](#)
- Graber Law Offices LLC**

 100 E Wisconsin Ave
 Milwaukee, WI 53202
 (414) 276-6666
[More Info](#) | [Web Site](#)
- Burr Law Office LLC**

 Burr Law Office LLC Esq
 910 Elm Grove Rd
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Standard | Distance | Phone Number

FIND:

Patrick Dunphy

Business Name or Category

LOCATION:

Milwaukee, WI

City, State, ZIP Code or Neighborhood

FIND

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Local Yellow Pages

Home > Milwaukee > Name Search - Patrick Dunphy

Patrick Dunphy in Milwaukee, WI



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- Business & Commercial Insurance (1)

Patrick G Quick Atty

777 E Wisconsin Ave # 2000
Milwaukee, WI 53202

(414) 297-5678

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Milwaukee, WI 53233
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More Info | Web Site

Standard | Distance | Phone Number

FIND:

Patrick Dunphy

LOCATION:

Milwaukee, WI

FIND

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Business Name or Category City, State, ZIP Code or Neighborhood

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Patrick Dunphy in Milwaukee, WI



Map Milwaukee Results

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NARROW By Category

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Accountants-Certified Public (5)
Accounting Services (1)
Attorneys (29)
Auto Insurance (6)
Business & Commercial Insurance (1)
Cabinets (1)
Computer Graphics (1)
Concrete Contractors (1)
Controls & Regulators-Control Panels (1)
Crematories (1)
Dentists (1)
Die Castings (1)
Embroidery Design Punching (1)
Engines-Diesel-Fuel Injection Parts & Service (1)
Exercising Equipment-Service & Repair (1)
Farms (1)
Financial Planners (1)
Fine Art Artists (1)
Funeral Directors (1)
Gift Shops (1)
Homeowners Insurance (2)
Insurance (5)
Investments (1)
Italian Restaurants (1)
Legal Service Plans (4)
Litigation & Tort Attorneys (1)
Magicians (1)
Meat Markets (1)
No Internet Heading Assigned (20)
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Patrick Milne

400 N Broadway Fl 7 Milwaukee, WI 53202
(414) 291-9339

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Patrick Brennan Law Office

1110 N Old World 3rd St Milwaukee, WI 53203
(414) 763-4200

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Patrick T Earle Attorney

322 W State St Milwaukee, WI 53203
(414) 272-0080

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Patrick A Koszuta

3275 S Howell Ave Milwaukee, WI 53207
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Patrick Curran Enterprise

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Patrick E Prudlow Handy P

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Samster Konkil & Safran SC



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Jacobson Schriinsky and Houck



759 N Milwaukee St Ste 316 Milwaukee, WI 53202 (414) 223-4444

Pecora Law Office LLC



229 E Wisconsin Ave Milwaukee, WI 53202 (414) 277-7002

Galang Manuel R

Galang Manuel R Logo 2525 N Mayfair Rd Milwaukee, WI 53226 (262) 797-9238

Gruber Law Offices LLC



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Regardless of the way in which the plaintiffs secured this placement, the visual impact is nearly identical to, but in fact *more* prominent than, the visual display by the defendants when information about that firm appeared on Google as a result of their pay-per-click key word campaign.

From the viewer's point-of-view, the plaintiffs have created the same outcome that they complain about the defendants doing. Whether that outcome is the result of the use of keywords in a pay-per-click campaign or another benefit, the result is the same.

VII. Google's terms of service inform viewers about advertisements

Term 1.1 of the Google Terms of Service states in relevant part, "Your use of Google's products, software and web sites (referred to collectively as the 'Services' in this document and excluding any services provided to you by Google under separate written agreement) is subject to the terms of a legal agreement between you and Google..."

Term 17.1 states, "Some of the Services are supported by advertising revenue and may display advertisements and promotions. These advertisements may be targeted to the content of information stored on the Services, queries made through the Services or other information."

Term 17.3 states, "In consideration for Google granting you access to and use of the Services, you agree that Google may place such advertising on the Services."

It is disingenuous to know that Google has declared the right to place advertising on its pages and then complain about an advertiser who does just what Google has declared it has the right to do. A complaint about the sale and purchase of names, which are only key words and do not appear in the advertisement itself, has no merit in an effort to protect someone against an invasion of privacy when the plaintiffs have the ability to determine the terms and conditions and then willingly otherwise abide by them.

VIII. Plaintiffs have no right or interest in a search engine's organic search

An organic search is not performed as a service to the entities that are being searched and appear as a result of the search. The organic search results are collected to provide assistance to those who conduct the searches and seek the information the searches provide. No one who is being searched has a right to come up in the search at all, let alone in any order. This decision belongs entirely to the search engine. The fact is that businesses employ search engine optimization techniques in order to appear at or near the top of a list when their name or a similar name is being searched. Although well accepted in the marketing of law firms and all other services and products, search engine optimization is nothing more than seeking to capitalize on the results of the search

engines by providing what their algorithms seem to seek. In this respect, search engines are not like the Yellow Pages. They are not directories that enable people to find their customers.

The fact that a search engine search for “habush” tends to result in a list of links to the law firm Habush Habush & Rottier is no accident. It is calculated by that firm, which appears to include search engine optimization techniques. Nevertheless, this is not a right and neither the firm nor its individual namesakes have any right to complain that anything else on the search page interferes with a viewer’s ability to reach the law firm. There is no basis for complaining that a sponsored link interferes with the ability of someone to find the firm because of the sponsored link’s primacy over the links of the organic search results because the search engine owes the firm found in the organic results no obligation. If a search engine chose to do so, it could show only “related searches” or “pages similar to...” and no links to the sought out information. As a business model for search engines that would make no sense, but no search engine has an obligation to any entity that is the subject of a search.

Ironically, but perhaps not coincidentally, Habush Habush & Rottier appears on the first page of the organic search for Cannon & Dunphy because of the lawsuit brought by Habush Habush & Rottier. Links to the lawsuit are the seventh and eighth links on the first page. Perhaps the plaintiffs have cleverly found a way to invade the search of their competitor’s listing without the expense of purchasing key words to do so.

Conclusion

For the reasons set out in this report, it is my opinion that the defendants have embarked on a reasonable marketing strategy that is consistent with methods of locating services through search engines in ways that are emerging and being incorporated into the design of search engines models and ways that have the same impact as the strategies used by the plaintiffs.

I believe that the actions taken by the defendants are in no way an invasion of privacy or a violation of Wisconsin Statute Section 995.50 and are in fact consistent with their First Amendment rights under the doctrine of Commercial Speech. It is also my opinion that the plaintiffs should have been knowledgeable about the terms of use of Google, that those terms alert plaintiffs that Google has the right to employ an advertising structure in which the defendants participated and, finally, that plaintiffs have no rights to the results of organic searches and cannot suffer harm when a search engine imposes any limitations on those searches or their placements.