

Profit vs. Relevance: The Battle Brewing that may topple Fortress Overture

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Over the land, the forces are gathering to unite in a battle against the dark overlord, who through many secret alliances has secured a position high atop Mount Profit. Other pretenders to the throne have tried to scale this perilous peak, but have failed. Today, a deadly clash of ideals and profit motives is being waged and the ultimate victor will redefine the rules by which all must play.

Dungeons and dragons? The Lord of the Rings? No. This battle of good vs. evil is taking place on a virtual plain of battle. And the participants include search engines, lawyers and consumer groups. The simmering confrontation has been a few years in the making, and it appears that the boiling point is not too far away.

Searching for a Better Bottom Line

The cause of conflict comes from a fundamental flaw in the business models of most of the major search portals. They couldn't turn a profit. Month after month of blood red bottom lines have lead to even more blood shed, in the form of layoffs, toppled CEO's and investors demanding more revenue.

The most notable exception to this common crisis has been Overture (formerly GoTo). While other search portals began by offering the most relevant and unbiased search results they could, Overture boldly offered a bid for top placement model. Relevancy was never an issue. Whoever paid the most got top spot. By going where other search portals feared to tread, Overture was one of the few that actually managed to make money.

As, one by one, other search portals tottered closer to bankruptcy or succumbed and bolted their online doors; the owners were approached by Overture with a very seductive offer. Display Overture search results, and take a share of the booty. It was a short-term offer of aid that went right to where it was needed the most, the bottom line. In the case of Go and Excite, Overture results are all they show. In the case of MSN, Yahoo and AltaVista (plus others), Overture results are mixed in with search results coming from their own index. And it's this practice of mixing that leads us to our first clash of morals vs. money.

Listing vs. Ads

As part of their agreements with Overture, Yahoo, AltaVista, MSN, and Lycos feature the top results from Overture displayed along with their own results. These search sites get paid when visitors click through to the advertisers sites. And this has required some creative (some would say misleading) labeling on the part of the partner sites. On Yahoo they're called Sponsor Matches. On Lycos and AltaVista, paid listings are more vaguely termed "Products and Services". MSN also calls the paid listings "Sponsor Sites" on the main page, but features a link named "Top Ten Most Popular Sites for (Your Search Term)". If you follow this link, you first get the paid listings. Only when you scroll down past these will you see the most popular sites from Direct Hit. This is the most blatant example of an attempt to mislead searchers.

Why do search partners deliberately leave the labeling of paid search results so vague? Why have no

search portals called the listings what they are, “Paid Advertising Links”? Because users won’t click on them. We conducted a survey of more than 100 internet users and the results were clear. The overwhelming majority of users who had clicked on paid listings had no idea that they were essentially advertising and that the only reason they were at the top of the search results was because the site owners had outbid the competition. Once they were aware of this fact, most users said they wouldn’t click on these links again. The reasons given varied, from resentment against the big players squeezing out smaller independent sites, to a perception that paid advertising search listings wouldn’t be relevant to their search request.

Overture’s search partners are aware of this overwhelming resentment against paid search listings. Any attempts to be more honest in their labeling of these search results would result in fewer click throughs, which would mean less revenue. Their deal with Overture has a built in incentive to mislead its users.

The People, or at least, Ralph Nader, Speaks

It’s this misleading labeling of paid search results that has prompted the consumer watchdog group Commercial Alert, founded by Ralph Nader, to [file a complaint against many of Overture’s search portal partners](#) with the US Federal Trade Commission. Commercial Alert Executive Director Gary Ruskin said “Search engines have become central in the quest for learning and knowledge in our society. The ability to skew the results in favor of hucksters without telling consumers is a serious problem.” The complaint, filed last summer, is still before the Commission and so far no decision has been made nor further action been taken.

FindWhat Finds Overtures Claims Over the Top

Competitor FindWhat.com is launching another significant challenge to Overture and their exclusive status as a profitable search service. Much of Overture’s current success has come through their amazing success in signing partners to display their pay for placement listings. Currently, by bidding enough to secure one of the top 3 positions in Overture, your listing will appear on a number of sites, exposing your listing to well over 80% of Internet users. The future success of Overture is directly dependant on their ability to keep this extended network of partners in place. One of the tools that have allowed them to do this is the patent they have been awarded protecting their bid management system.

[FindWhat has said that Overture misled the patent office](#) and did not file the paperwork within the proper timeframe. As a result, it is seeking a declaration in US District Court that Overture's patent is invalid and unenforceable.

Currently, because of the patent in question, FindWhat has to pay Overture a license fee in order to manage its bids. "In December 2001, Overture offered a license for the patent on terms that FindWhat.com believes are economically and structurally oppressive," FindWhat.com said in a statement.

If FindWhat is successful in overturning Overture’s patents, that system becomes available not only to Overture competitors like FindWhat, but also to Overture’s current search partners, giving them an easier path to establish their own pay for placement programs. It makes more economic sense to claim the entire revenue from paid listing on their site, rather than share it with Overture. Yahoo has already announced that their working on their own system and their current partnership with Overture is temporary.

Single Point Vulnerability

On January 23, 2002, [Overture's site was down for several hours](#) because of server problems. As soon as the site disappeared, so did any paid listings on partner sites. Paid placement traffic came to a standstill for thousands of sites. For the vast majority of those sites, it was just a little hiccup in their online marketing, but for those who have gambled heavily and exclusively on Overture's ability to bring traffic, it meant a drastic decrease in sales.

Server problems can and do happen to everyone. The biggest sites on the Net are down occasionally. While this isn't a weakness unique to Overture, it does point out the need for a balanced search engine marketing program that promotes visibility through all engines.

My Word against Your Word

The final attack against Overture may be the most significant one. San Antonio based diet firm Mark Nutritional filed suit in U.S. District Court in San Antonio, and seeks at least \$10 million in compensatory damages and \$100 million in punitive damages from each of four paid placement engines, including Overture, Kanoodle, FindWhat and AltaVista, for what it termed a "willful attempt to mislead users" for their own financial gain.

Mark Nutritionals manufactures a line of diet products under the label "Body Solutions". Advertisers, including Mark Nutritionals competitors, were able to bid for keyword phrases on the engines that included these words. "When I type in the words 'Body Solutions' on these search engine sites, they direct me to sites where would-be imitators of our system sell their products," said Body Solutions chief executive Harry Siskind. "These Internet companies are using our Body Solutions name, which took years to bring into the public consciousness, to misdirect people to companies that are violating our trademark rights."

Search listings on Overture for "body solutions" resulted in four listings ahead of Body Solutions own link, including pages where the competitor's product is compared to Body Solutions. "When we found out what the search engines are doing, all of the members of the Body Solutions family were outraged," Siskind said. "We felt that we had no choice but to turn to the courts."

When asked for their response, Overture's spokesperson said they had not been served with the suit yet, and declined any comment.

In early 1999, a similar confrontation occurred between cosmetics manufacturer Estee Lauder and Excite.com. Excite sold search engine listing for two trademarked terms, "Estee Lauder" and "Origins" to a competitor without the company's consent. The case was eventually settled out of court.

This case stakes a new battleground on a slippery slope where it will be difficult for courts to draw a line. In the case of paid placements, how can you ensure that every single trademarked term is protected against competitive "one-up-manship". Thousands of common words are trademarked. Does this mean that word "Apple" is off limits to everyone because it's trademarked? Or does it just mean that Apple's direct competitors can't bid for it?

Again, the unique properties of online marketing are going to severely test the judicial system and any precepts we may have of what's ethical and what's not in advertising.

United We Stand, Divided We Fall

The question is, will Overture be able to withstand the multiple attacks now being launched at it? To me, the key in Overture's survival lies in their ability to keep their search partner network together. As long as they do, they offer advertisers a total exposure solution that is very difficult to say no too. And, ultimately, money and greed will decide this, rather than ethics and what's right for Internet users.

Thus it is, thus it ever has been.

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