



Sponsored advertisements generally contain a link that, if clicked, will take the Internet user to the advertiser's own website.

4. Amazon.com – and specifically my department – purchases hundreds of millions of dollars worth of sponsored advertisements as part of its overall advertising strategy.

5. Following communication from an attorney for Sellify LLC in July 2009, I became aware of sponsored advertisements that had been purchased on the Google search engine that displayed the messages “Don’t Buy from Scammers” and “Beware the SCAM Artists” when a user searched for the keywords onequality, onequality.com, and onequlaity.com (the “Cutting Edge Ads”). If users clicked on the links in the Cutting Edge Ads, they would be routed to the amazon.com website.

6. Amazon.com did not purchase the keywords onequality, onequality.com, and onequlaity.com on the Google search engine, nor did it place the Cutting Edge Ads. Indeed, the text of the Cutting Edge Ads – “Don’t Buy from Scammers” and “Beware the SCAM Artists” – was not the type of advertising Amazon.com uses or would use in its sponsored advertising, both because Amazon.com focuses its advertising solely on the positive aspects of Amazon.com's products and because, in our experience in creative testing, advertisements of this sort are ineffective with customers. Prior to the communication from Sellify LLC's counsel, I had never heard of Sellify LLC, onequality, or onequality.com.

7. I am informed that following a May 2009 communication from Sellify LLC's counsel, Amazon.com identified a company called Cutting Edge Designs as the party that purchased the Cutting Edge Ads. I am also informed that in May 2009, Anne Tarpey, an Amazon.com employee with responsibility for enforcing the rules of the Associates Program, notified Cutting Edge Designs – which had an Amazon Associates account – that its activities

violated the Associates Program rules; that it would not be paid for purchases made on Amazon.com by customers clicking on the Cutting Edge Ads (or on any links that sent Internet traffic to Amazon.com directly from search engines such as Google); and that if the activities did not cease Amazon.com would close its Associates account and withhold any accrued advertising fees.

8. In July 2009, after Amazon.com was notified that Cutting Edge Designs had not removed the Cutting Edge Ads, Amazon.com closed Cutting Edge Designs' Associates account and withheld all accrued advertising fees.

9. In addition to the steps above, in July 2009 I personally contacted Ragan Olczak, our Google account representative, by phone and by email, to inform her of the existence of the Cutting Edge Ads. She informed me that she would "alert [Google's] policy team" about the issue. A copy of my email exchange with Ms. Olczak is attached as **Exhibit A**.

10. I am aware – both through my experience in contacting Google when Amazon.com has claimed that its own intellectual property has been infringed on the Google site and from my review of Google's published policies with respect to protecting the rights of trademark holders (a copy of which is attached as **Exhibit B**) – that Google takes the complaints *of trademark owners* seriously, and investigates those complaints. I am not aware of a similar policy with respect to complaints made by parties that are *not* the trademark owners. In this case, Amazon.com's trademarks were *not* at issue – Sellify claims ownership of the mark onequality.com – so I did not know how Google would respond to my communications. However, I did attempt to alert Google to Sellify's complaint that the Cutting Edge Ads infringed on Sellify's trademark.

11. In connection with my role as manager of Amazon.com's sponsored advertising, I was also closely involved with Amazon.com's decision, as of May 1, 2009, to prohibit participants in the Associates Program (in the United States and Canada) from sending users directly to Amazon.com's websites from sponsored advertisements. As of May 1, 2009, an Associate who purchased a keyword to generate an advertisement containing a direct link to the amazon.com website would not be paid a commission if a user clicking on the link made a purchase on the amazon.com website.

12. As of May 1, 2009, Associates were entitled to commissions only on purchases made by customers who came to the amazon.com website from a link on the Associate's own website. Thus, to use a similar example, if an Associate purchased the keyword "telescope" to generate an advertisement with a link to the Associate's own website (perhaps a telescope hobbyists' website called telescopefun.com), the Associate could put a link to the amazon.com website on telescopefun.com and the Associate would receive a commission if an Internet user clicked on that link and made a purchase on the amazon.com website. However, if the same Associate purchased the keyword "telescope" to create an advertisement containing a direct link to the amazon.com website, the Associate would not be paid a commission even if a user clicked on that link and then made a purchase on the amazon.com website.


13. That decision was a result of an extensive study in which we concluded that "redirectors" (that is, third-party individuals who purchase keywords on search engines and direct traffic directly to the Amazon.com website) were driving up Amazon.com's cost of purchasing keywords (which are priced according to demand) and were receiving commissions from Amazon.com for traffic directed to the site, but without delivering corresponding value to

Amazon.com. Essentially, the redirectors were arbitraging Amazon.com's existing advertising opportunities, while not adding value to Amazon.com through their efforts.

\* \* \*

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 30, 2010

A handwritten signature in cursive script, appearing to read "Eric Herrmann", written over a horizontal line.

ERIC HERRMANN