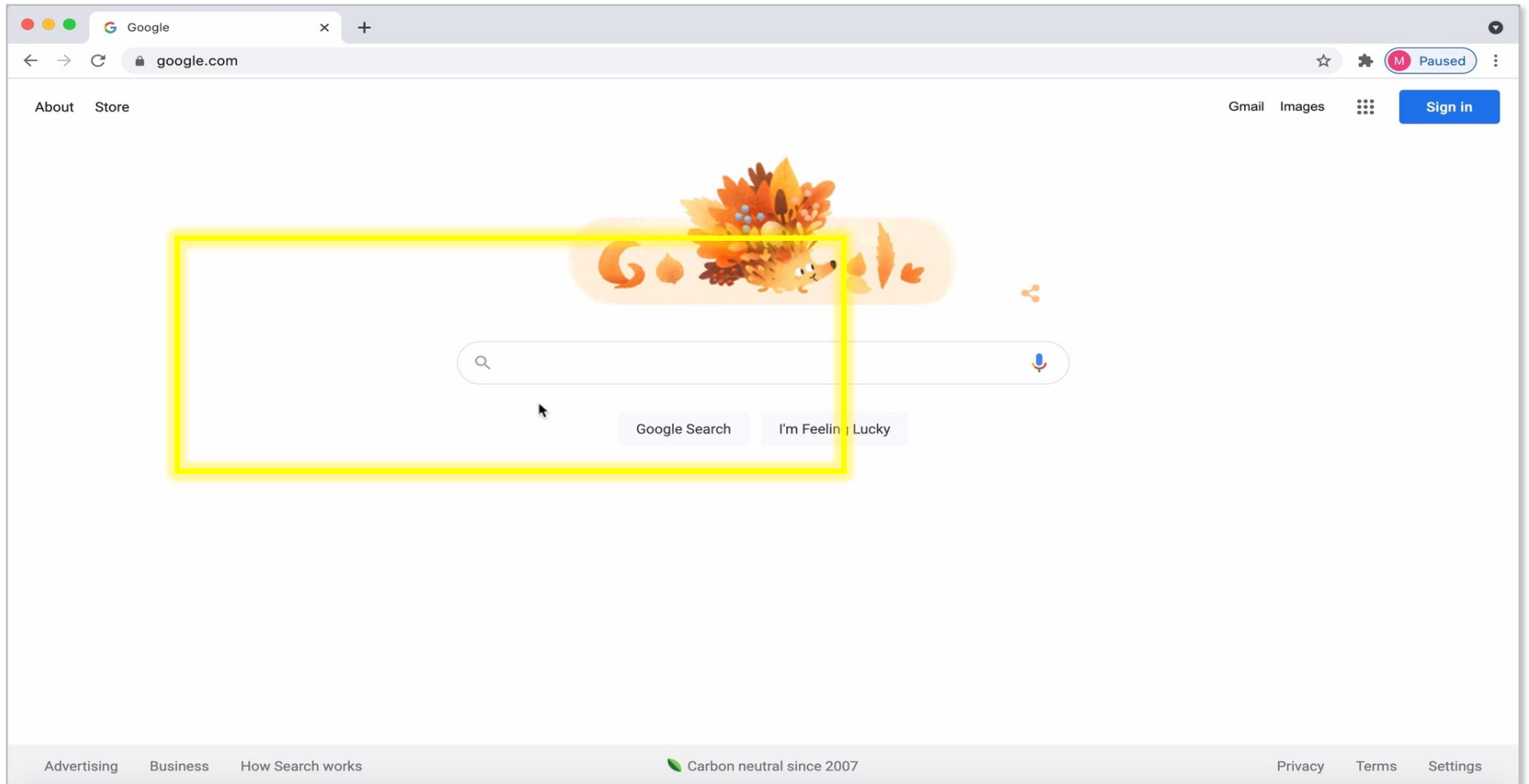


Ethics In Advertising

Chris Schwegmann – Lynn Pinker Hurst & Schwegmann

April 21, 2023

Competitive Keyword Advertising



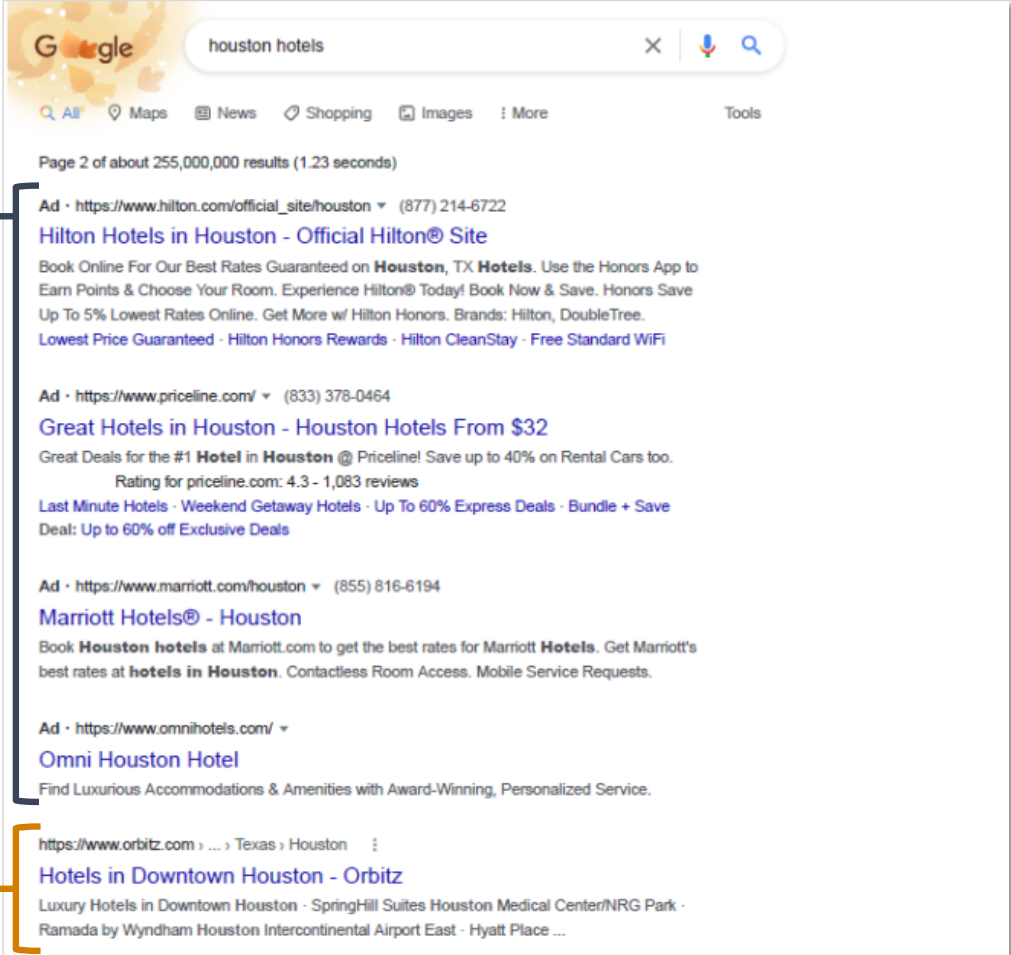
The Difference Between SEM v. SEO

Search Engine Marketing

A marketing strategy used to place business ads/website links at the top of search engine results pages.

Search Engine Optimization (SEO)

SEO has the same goal as SEM. Businesses “optimize” webpages so their weblinks have a great chance of appearing when certain words are searched. Search engines do not charge advertisers for clicks on natural search result links.



The screenshot shows a Google search for "houston hotels" on page 2. The search results are dominated by paid advertisements. The first ad is from Hilton, followed by Priceline, Marriott, and Omni Hotels. Below the ads, there are organic search results, with the first one being "Hotels in Downtown Houston - Orbitz".

Google
houston hotels

All Maps News Shopping Images More Tools

Page 2 of about 255,000,000 results (1.23 seconds)

Ad · https://www.hilton.com/official_site/houston (877) 214-6722
Hilton Hotels in Houston - Official Hilton® Site
Book Online For Our Best Rates Guaranteed on **Houston, TX Hotels**. Use the Honors App to Earn Points & Choose Your Room. Experience Hilton® Today! Book Now & Save. Honors Save Up To 5% Lowest Rates Online. Get More w/ Hilton Honors. Brands: Hilton, DoubleTree.
Lowest Price Guaranteed · Hilton Honors Rewards · Hilton CleanStay · Free Standard WiFi

Ad · <https://www.priceline.com/> (833) 378-0464
Great Hotels in Houston - Houston Hotels From \$32
Great Deals for the #1 **Hotel in Houston** @ Priceline! Save up to 40% on Rental Cars too.
Rating for priceline.com: 4.3 - 1,083 reviews
Last Minute Hotels · Weekend Getaway Hotels · Up To 60% Express Deals · Bundle + Save Deal: Up to 60% off Exclusive Deals

Ad · <https://www.marriott.com/houston> (855) 816-6194
Marriott Hotels® - Houston
Book **Houston hotels** at Marriott.com to get the best rates for Marriott **Hotels**. Get Marriott's best rates at **hotels in Houston**. Contactless Room Access. Mobile Service Requests.

Ad · <https://www.omnihotels.com/>
Omni Houston Hotel
Find Luxurious Accommodations & Amenities with Award-Winning, Personalized Service.

<https://www.orbitz.com> › ... › Texas › Houston ›
Hotels in Downtown Houston - Orbitz
Luxury Hotels in Downtown Houston · SpringHill Suites Houston Medical Center/NRG Park · Ramada by Wyndham Houston Intercontinental Airport East · Hyatt Place ...

Competitive Keyword Advertising Common in Other Industries

The screenshot shows a Google search for "marriott texarkana". The search results page displays three advertisements, each enclosed in a dashed border. The first advertisement is for Marriott Hotels | Texarkana, featuring the Marriott logo and text about booking at Marriott.com. The second advertisement is for Courtyard By Marriott Texarkana | 5001 N Cowhorn Creek Loop, featuring the Reservations.com logo and text about exclusive rates. The third advertisement is for Hilton Garden Inn Hotel in Texarkana, Texas, featuring the Hilton logo and text about the hotel's amenities.

marriott texarkana - Google Search

google.com/search?q=marriott+texarkana&rlz=1C1OKWM_enUS887US887&oq=marriott+texarkana&aqs=chrome..69i57j0i512j46i175i199i512j0i22i3

Google

marriott texarkana

All Maps News Images Shopping More Tools

About 208,000 results (0.88 seconds)

Ad · <https://www.marriott.com/>

Marriott Hotels | Texarkana

Book at **Marriott.com** for the best prices. Guaranteed. Mobile Check-In. Travel with Peace of Mind. 30 Hotel Brands. Mobile Key. Best Rate Guarantee. Contactless Room Access. Mobile Service Requests. Download the App. Discover Book Be Rewarded. Flexible Cancellation.

Marriott Bonvoy®
Become a Marriott Bonvoy® member.
It's free to join.

Specials & Packages
Get our special offers & packages
only available at Marriott.com.

MARRIOTT

Ad · <https://www.reservations.com/hotel/texarkana>

Courtyard By Marriott Texarkana | 5001 N Cowhorn Creek Loop

Call Our 24/7 Call Center For Exclusive Rates. Save Big With Your Booking Today. Reserve Today The Courtyard **Marriott** Hotel In **Texarkana** Texas - Book Now & Save.

[Rooms & Rates](#) · [Amenities](#) · [Location & Map](#) · [Overview & Photos](#) · [Guest Reviews](#)

RESERVATIONS.COM

Ad · <https://www.hilton.com> > ... > USA > Texas > Texarkana

Hilton Garden Inn Hotel in Texarkana, Texas

The **Hilton** Garden Inn **Texarkana** hotel boasts 25000 sq. ft. of meeting space, luxurious hotel rooms, complimentary WiFi, and an onsite bar and restaurant.

[Rooms and suites](#) · [Location](#) · [Gallery](#)

Hilton

Competitive Keyword Advertising Common in Other Industries

Ad · <https://www.marriott.com/> ▼

Marriott Hotels | Texarkana

Book at **Marriott.com** for the best prices. Guaranteed. Mobile Check-In. Travel with Peace of Mind. 30 Hotel Brands. Mobile Key. Best Rate Guarantee. Contactless Room Access. Mobile Service Requests. Download the App. Discover Book Be Rewarded. Flexible Cancellation.

Marriott Bonvoy®

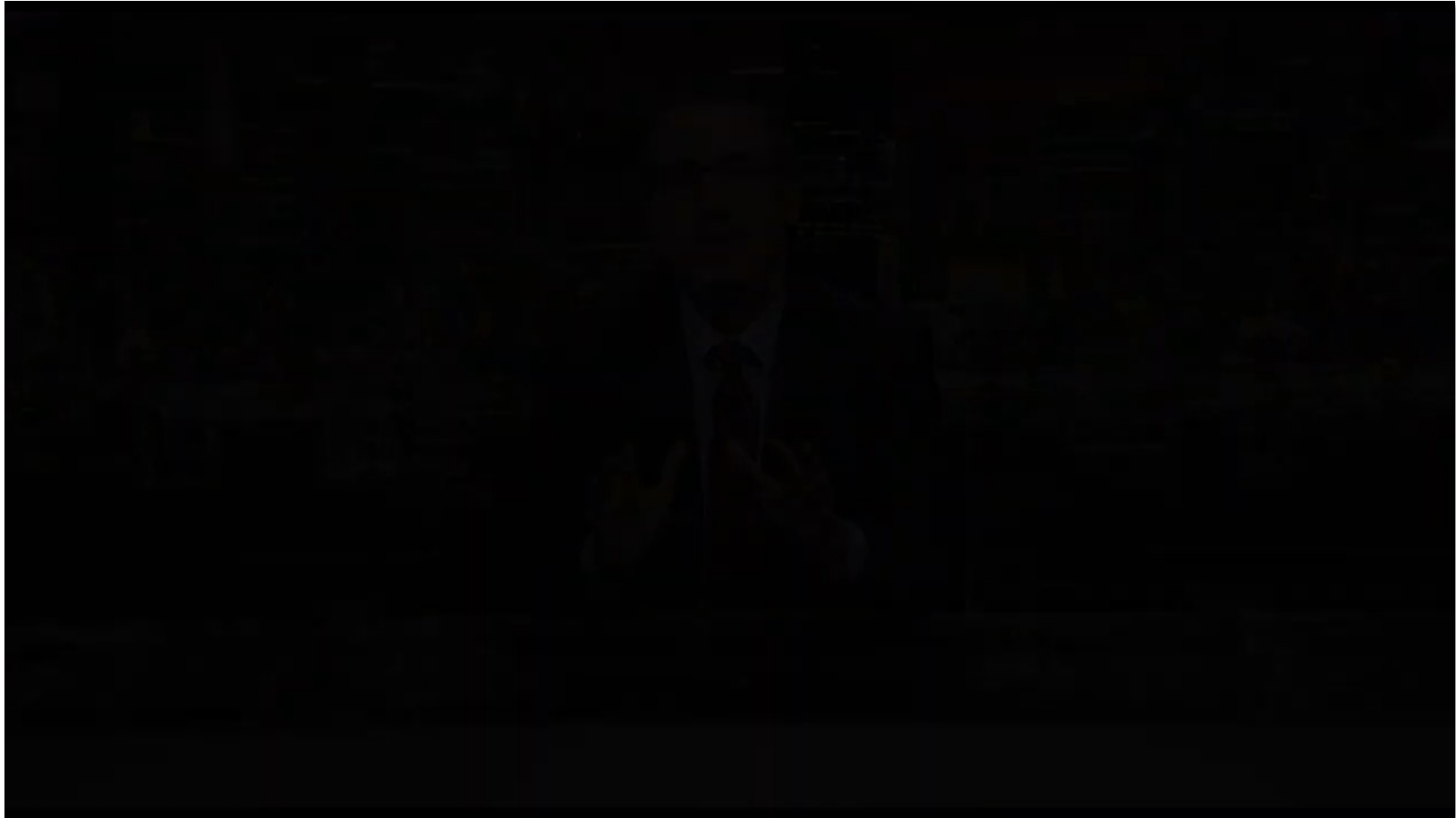
Become a Marriott Bonvoy® member.
It's free to join.

Specials & Packages

Get our special offers & packages
only available at Marriott.com.

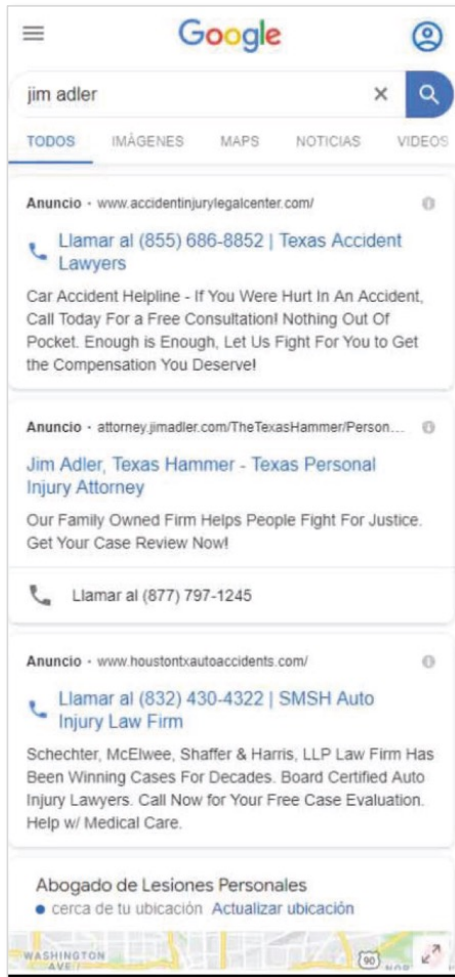


Last Week Tonight: Jim Adler



<https://www.youtube.com/watch?v=hoFSIGwflGg>

Competitive Keyword Advertising Common for Attorneys



Anuncio - www.accidentinjurylegalcenter.com/

Llamar al (855) 686-8852 | Texas Accident Lawyers

Car Accident Helpline - If You Were Hurt In An Accident, Call Today For a Free Consultation! Nothing Out Of Pocket. Enough is Enough, Let Us Fight For You to Get the Compensation You Deserve!

Anuncio - attorney.jimadler.com/TheTexasHammer/Person...

Jim Adler, Texas Hammer - Texas Personal Injury Attorney

Our Family Owned Firm Helps People Fight For Justice. Get Your Case Review Now!

Anuncio - www.houstonxautoaccidents.com/

Llamar al (832) 430-4322 | SMSH Auto Injury Law Firm

Schechter, McElwee, Shaffer & Harris, LLP Law Firm Has Been Winning Cases For Decades. Board Certified Auto Injury Lawyers. Call Now for Your Free Case Evaluation. Help w/ Medical Care.

These Ads Are Ubiquitous In the Personal Injury Industry

9:43

google.com

Ad · www.benabbott.com/truck-wreck-lawyers

Call (972) 270-2222 | Ben Abbott Truck Wreck Lawyer

Ben Abbott & Associates - Truck Wreck Injury Now To Get Help Today. Free Consultations 2 Let An Accident Wreck Your Life! We'll Come Years of Experience. No Fees Unless We Win

Ad · www.accidentinjurylegalcenter.com/

Call (855) 686-8852 | Accident In

Let Us Fight on Your Behalf. Get the Most

Ad · www.smslawfirm.com/

Call (214) 960-4416 | SSMH A Firm

Schechter, McElwee, Shaffer & Harris Have Been Winning Cases For Decades. Free Reviews. Call Now for Your Free Case Evaluation. Help w/ Rental Car. Help w/ Medical Care.

Ad · dfw.reyeslaw.com/Injury-Lawyer

TX Best Personal Injury Lawyer | Proof: See Our Client Reviews | ReyesLaw.com

Your Options Today. Get Compensation For

Ad · www.smslawfirm.com/

Call (214) 960-4416 | SSMH Accident Law Firm

Schechter, McElwee, Shaffer & Harris, LLP Law Firm Has Been Winning Cases For Decades. Read Our 5-Star Reviews. Call Now for Your Free Case Evaluation. Free Consultation. Help w/ Rental Car. Help w/ Medical Care.

Texas Disciplinary Rule 7.01(f)

Texas
DISCIPLINARY
RULES OF
PROFESSIONAL
CONDUCT

Rule 7.01. Communications Concerning a Lawyer's Services

...

(f) A lawyer may state or imply that the lawyer practices in a partnership or other business entity only when that is accurate.

| 2022

Texas Disciplinary Rule 7.02(a)

Texas
DISCIPLINARY
RULES OF
PROFESSIONAL
CONDUCT

Rule 7.02. Advertisements

...

(a) An advertisement of legal services shall publish the name of a lawyer who is responsible for the content of the advertisement and identify the lawyer's primary practice location.

| 2022

Texas Disciplinary Rule 8.04(a)(3)

Texas
DISCIPLINARY
RULES OF
PROFESSIONAL
CONDUCT

Rule 8.04. Misconduct

...

(a) A lawyer shall not:

...

(3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

Texas Ethics Opinion 661

THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 661
July 2016

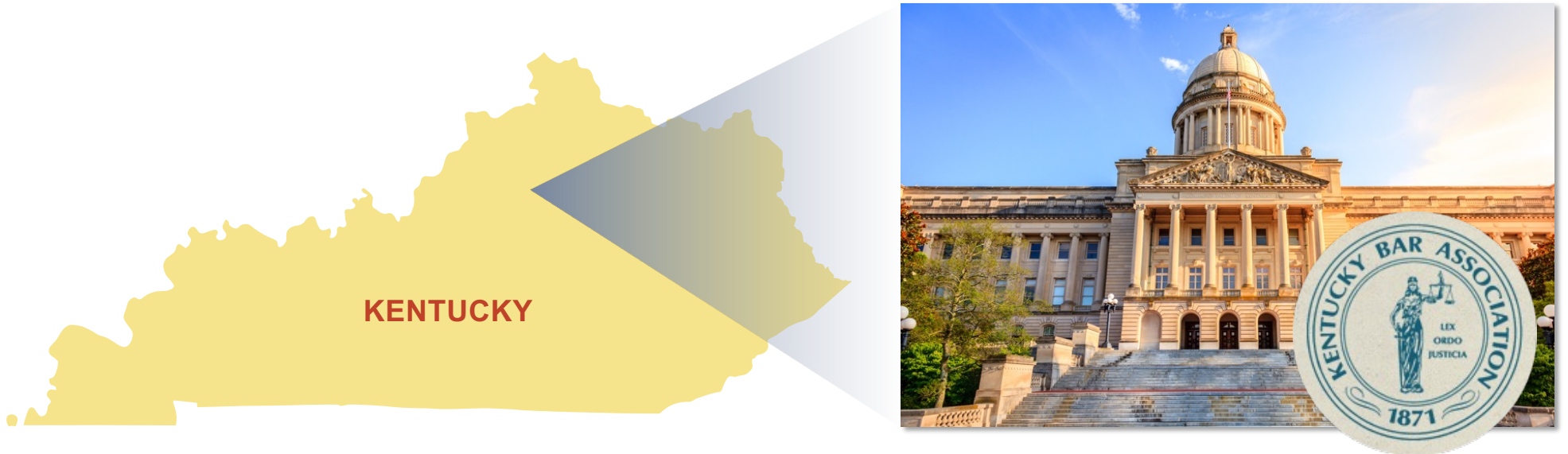
Lawyer A and Lawyer B are partners, shareholders, or associates of each other. Moreover, since a person familiar enough with the internet to use a search engine to seek a lawyer should be aware that there are advertisements presented on web pages showing search results, it appears highly unlikely that a reasonable person using an internet search engine would be misled into thinking that every search result indicates that a lawyer shown in the list of search results has some type of relationship with the lawyer whose name was used in the search. Compare *Habush v. Cannon*, 828

...

misrepresentation.” In the opinion of the Committee, given the general use by all sorts of businesses of names of competing businesses as keywords in search-engine advertising, such use by Texas lawyers in their advertising is neither dishonest nor fraudulent nor deceitful and does not involve misrepresentation. Thus such use of a competitor’s name in internet search-engine

Mixed Results in Other States – Kentucky

The Kentucky Advertising Commission took no action



Kentucky Advertising Commission
An agency of the Kentucky Supreme Court
and Bar Association

Mixed Results in Other States – North Carolina



“It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Rule 8.04(c). Dishonest conduct includes conduct that shows a lack of fairness or straightforwardness. . . . The intentional purchase of the recognition associated with one lawyer’s name to direct consumers to a competing lawyer’s website is neither fair nor straightforward. Therefore, it is a violation of Rule 8.4(c) for a lawyer to select another lawyer’s name to be used in his own keyword advertising.”

Mixed Results in Other States – South Carolina



South Carolina Supreme Court held conduct violated Rule 7.2(d):

“[A]ny communication made pursuant to Rule 7, RPC, shall include the name and office address of at least one lawyer responsible for its content.”

South Carolina Supreme Court then publicly reprimanded lawyers for violating the Lawyer’s Oath:

“[B]y taking [the] Lawyer’s Oath, lawyer[s] pledge to opposing parties and their counsel fairness, integrity, and civility in all written communications and to employ only such means consistent with trust, honor, and principles of professionalism.”

Mixed Results in Other States – Florida



“Another example of impermissible conduct is use of another lawyer or law firm name as an Internet search term that triggers a display of an advertisement that does not clearly indicate the advertisement is for a lawyer or law firm that is not the lawyer or law firm used as the search term The triggered advertisement would not be misleading if the first text displayed is the name of the advertising lawyer or law firm

Texas Ethics Opinion 661 . . . Not the End of the Story

THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 661
July 2016

QUESTION PRESENTED

Does a lawyer violate the name of a competing lawyer or service offered by a major search

STATEMENT OF FACTS

Recognizing that many engines, Lawyer A uses various name appears on the first page engine to seek a lawyer. One search-based advertising types of businesses.

These search-based phrases ("keywords") that of someone using that key specific keywords; the same

Lawyer B is a competing to Lawyer A's. Lawyer A and Lawyer B have representation in any case.

One of the keywords selected by Lawyer A is the name of Lawyer B. Lawyer A's keyword selection causes Lawyer A's name and a link to his website to be displayed on the search engine's search results page any time an internet user searches for Lawyer B using the search engine. Lawyer A's advertisement will appear to the side of or above the search results in an area for "ads" or "sponsored links." In addition to displaying Lawyer A's name and a link to his website, the ad or sponsored link may contain additional text concerning Lawyer A's advertising services from the search engine and had used his name in the ad or sponsored link section of the search engine's results. Moreover, if Lawyer B's name would also be listed in the search results. Moreover, if Lawyer B's name is listed in the ad or sponsored link section of the search engine's results, the potential client as

“It should be noted that this opinion addresses only whether the use of a competitor’s name in internet search-engine advertising programs violates the Texas Disciplinary Rules of Professional Conduct. Although such use of a competitor’s name as a keyword in advertising programs does not in the opinion of the Committee involve a violation of the Texas Disciplinary Rules, a Texas lawyer’s participation in such an advertising program must comply with the other provisions of the Texas Disciplinary Rules applicable to advertising, in particular Disciplinary Rule 7.04 on advertisements in the public media. Moreover, depending on the circumstances, a Texas lawyer advertising through keywords on internet search engines may be subject to other requirements or prohibitions imposed by federal or state law or by professional ethics rules of other jurisdictions.”

The Fifth Circuit Weighs In . . .



“[A]ssume that [a] person shopping for a car types in a search engine the word TOYOTA and finds on the search results web page a clearly labeled advertisement for VOLKSWAGEN. This occurred because, hypothetically, Volkswagen purchased from the search engine the keyword “Toyota.” If that computer user then ultimately decides to buy a VOLKSWAGEN instead of a TOYOTA, that is not a purchase made by mistake or as a result of confusion. If that ad and link is clearly labeled as an advertisement for VOLKSWAGEN, it is hard to see how the web user and potential car buyer is likely to be confused by the advertising link.”

Jim S. Adler, P.C. v. McNeil Consultants, L.L.C., 10 F.4th 422, 428 (5th Cir. 2021)

Trending Authority . . .



“But Penn Engineering’s theory of advertising as trademark infringement is fundamentally flawed. PennEngineering complains that Peninsula “seeks to *divert customers*” through the advertisements...But diverting customers is a key aspect of competition. **Customer diversion does not provide a cause of action unless the competitor does so in an unlawful manner, such as by passing off its goods as the trademark holder’s in a bait-and-switch scheme.**”

. . .

“Here, there is no dispute that the links are clearly labeled as belonging to Peninsula and there is no likelihood of confusion where the use of trademarks as trigger words is hidden from the consumer. Therefore, the Court will grant summary judgment for Peninsula on the “hidden” keyword conquesting portions of PennEngineering’s trademark infringement claims.”

*Penn Eng’g & Mfg. Corp. v. Peninsula Components, Inc., 2022 WL 3647817, at *4-5 (E.D. Pa. Aug. 24, 2022)*

The Ads Are Clearly Labeled

4:58

google.com

Ad · www.accidentinjurylegalcenter.com/

Call (855) 686-8852

Accident Injury Center

Let Us Fight on Your Behalf. Get the Money You

Ad · www.reyeslaw.com/

Call (855) 968-4496

Reyeslaw.com · Call Attorney Angel

The Reyes Law Firm® Known for taking better care of their clients than any other law firm. 5-star injury attorney Angel Reyes recovered millions of dollars for his clients. 98% Success Rate. Free Consultation.

Ad · www.benabbott.com/

Ben Abbott | DFW Car Wreck
BenAbbott.com

Don't Let An Accident Wreck Your Life. We Will Fight For Injured Victims. We Work For The Compensation You Deserve. Don't Wait Until It's Too Late. Call Now. No Pagas Si No Ganamos. Llamenos Hoy. Give Us A Call Today! No Fees Unless We Win.

Practice Areas

About Us

Free Consultation

BEN ABBOTT 000003

Ad · www.reyeslaw.com/



Call (855) 968-4496

Reyeslaw.com · Call Attorney [Angel Reyes](#) Now

The [Reyes Law Firm®](#) Known for taking better care of their clients than any other law firm. 5-star injury attorney [Angel Reyes](#) recovered millions of dollars for his clients. 98% Success Rate. Free Consultation.

Reasons to Permit Search Term Advertising



What the PI Lawyers Prefer . . .

