

## Online Advertisers Beware

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A lawsuit was filed in federal court earlier this month by an online advertising agency alleging a prevalent, yet seldom litigated form of e-commerce fraud, referred to in the industry as “click fraud.” Click fraud causes online advertisers to overpay for their ads in two main ways. First, the cost of placing an advertisement on a particular website is largely based on the amount of users who visit that website each day (the amount of “web traffic.”). The higher the web traffic on a particular website, the more they are able to charge to place an advertisement because there are more potential consumers. Second, rather than paying a flat-fee to place an advertisement on a website, other contracts may require that the advertiser pay a nominal amount each time their advertisement is clicked on. Clearly, it would be problematic for an advertiser to be paying for clicks even though those clicks are being generated by fraudulent users, or “bots.”

In the lawsuit, Congoo (a.k.a. Adiant), an online news and networking company, is alleging fraud with regard to a one-year advertising contract it signed with Sell It Social, who operates an e-commerce website known as Rebel Circus. Congoo agreed to pay \$300,000 in fees to advertise on Rebel Circus based on the purported volume of web traffic on the website. Further analysis conducted by Congoo revealed, however, that a substantial amount of the web traffic on Rebel Circus is generated by “click farms,” or bots, which are programed to visit specific websites and create the illusion that several more human users are visiting the website than there actually are. According to the Complaint, Congoo suspected a high presence of artificially generated web traffic based on two different analyses. First, an empty advertisement placed on Rebel Circus, containing no content whatsoever, was still being clicked on several times by purported users. Second, the purchase rate stemming from clicks from Congoo’s advertisement on Rebel Circus was much lower than the statistical average, therefore evidencing the presence of bots, which obviously would not be purchasing anything. Congoo is seeking to rescind its

contract with Sell It Social as a result of the suspected high amount of fraudulent web traffic.

While obtaining evidence of click fraud can be difficult, it is not impossible, and online advertisers should take steps to minimize their risk of being taken advantage of. First, advertisers can simply conduct online research to learn whether a website they are considering placing an ad on is known to have a high presence of bots or fraudulent users that inflate web traffic figures. Additionally, there is software available which gathers data from websites and advertisements and uses that information to monitor for signs of click fraud. For example, if an advertisement on Website A is generally clicked on by only 0.25% of visitors, but Advertiser X's advertisement is clicked on by 2.5% of visitors, ten-times the statistical average, would likely be indicative of click fraud. One more way an online advertiser can protect themselves is to always include language in the advertising contract which provides for relief in the event click fraud is detected.