

Will the Online Safety Act help reduce Google ad spoofing in insurance?

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What is search engine advert spoofing?

When in an accident, many people use search engines to locate insurer contact details. Search engine advert spoofing is a process whereby claims management companies and lead generators pay for prominent search engine adverts for common searches such as "<Insurance Company> claims number". Customers may confuse these adverts with insurer claims notification information, especially as they may be stressed following an accident. Unscrupulous companies may also insinuate an association with an insurance company which does not exist.

The claims management companies then often organise a range of services, bypassing the services of their insurer, for example: vehicle recovery, vehicle storage and providing credit hire vehicles which customers may think are courtesy cars (which can be a benefit of their insurance policy and would therefore otherwise effectively be free at the point of use) at inflated cost.

The individual may lose significant sums and not be reimbursed by their insurer. For example, if they sign a contract, they may be liable for hire car, recovery, storage and repairs if the claim against the other driver or third-party insurers fails - exposing them to significant financial harm. In some instances, their personal data is also used for fraudulent activities.

The practice has also led to spurious personal injury claims. Policyholders, confused about who they are talking to, may be encouraged to obtain medical reports for injuries that they do not have or undertake rehabilitative treatment which they do not need. If their claim is not successful these are costs that they could be liable for, which may not have been made clear to them.

Insureds may also be encouraged to sign Damage Based Agreements (DBAs) without understanding the implications. DBAs are agreements in which a claimant agrees for a proportion of their damages to be retained by the firm representing them in a claim but may not be required where the individual concerned already benefits from legal expenses cover.

Is search engine advert spoofing illegal?

Search engine ad spoofing is not necessarily illegal in the absence of misrepresentation or fraud. It is also important to stress that there are many legitimate claims management companies, whose reputations can be damaged by those acting with questionable motives.

In the recent case of *Parker v Skyfire Insurance Company Ltd* [2024] EWHC 1060 (KB) (*Parker v Skyfire*) a policyholder, Mr Parker, had attempted to notify his insurers of an accident by Googling their name and ringing the first number in the list of search results. In fact, he ended up calling a claims management company called Spectra. Spectra then sent him some documents, which he signed. Mr Parker sought to recover his losses arising out of the accident, including credit hire charges and other storage and recovery fees incurred under agreements he made with Spectra. Skyfire, Mr Parker's insurer, settled all other aspects of his claim but objected to the claim for credit hire charges.

Skyfire suspected that Spectra had made a misrepresentation in its discussions with Mr Parker. Skyfire considered that the agreement would be voidable for misrepresentation and that if Mr Parker were to avoid it then he would not have liability to pay the credit hire charges and would not therefore have suffered any loss.

However, in order to advance a case Skyfire needed recordings of the conversations between Mr Parker and Spectra. In the absence of this information, it could not know for certain whether any misrepresentation had actually been made. It applied for non-party disclosure. Non-party disclosure applications often involve some speculation; the relevant legal test in this case being whether Skyfire had done enough to show that call recordings 'may well' support its case and that the disclosure was 'necessary' in order to dispose fairly of the claim or to save costs. If there was no real prospect that the disclosure could make any difference to the outcome of the claim, then it would not be 'necessary' to the fair disposal of the claim.

Skyfire's application was not successful on the basis that the disclosure would serve no useful purpose, since the hire agreement had been a contract for services which had been fully performed and which could not therefore be rescinded. It was therefore not necessary for the fair disposal of the claim. Skyfire's appeal was not successful.

In Parker v Skyfire Mrs Justice Dias said in her judgment dated 3 May 2024:

"Moreover, misrepresentation aside, it is not clear to me that paying Google to ensure that a company appears at the top of a particular list of search results necessarily involves anything illegal. I was informed by Mr Nicol that only FCA regulated companies may appear in such ads. It is, in any event, a practice which it is difficult for insurers to challenge in the context of Road Traffic Act proceedings. The only question as between the parties to such proceedings is whether the claimant has suffered the losses alleged. In the context of credit hire charges that depends on the enforceability of the contract. But if the contract is tainted by misrepresentation, the question of avoidance is one which arises solely between the claimant and the credit hire company..."

If the adverts are clearly fraudulently impersonating an insurance company's claims department, then the practice is illegal. Nevertheless, it is difficult for insurers, who are not parties to contracts arising from such practices, to challenge such contracts in Road Traffic Act proceedings.

Frederick Noble raises some interesting points regarding the vagueness of some of these adverts and the potential for insurers to leverage their registered trademarks to prevent their display.

Will the Online Safety Act help reduce Google ad spoofing?

The Online Safety Act 2023 (the Act) received Royal Assent on 26 October 2023. The Act imposes a duty to protect against fraudulent advertising. It also does many other things and focuses on protecting children from harmful content and limiting illegal online content and activity. The Act appoints Ofcom as online safety regulator to oversee compliance. The duties in the Act apply to services with links to the UK regardless of where in the world they are based. However, its provisions in relation to fraudulent advertising are not yet in force as guidance from Ofcom is awaited.

Part 3 of the Act sets out 'duties of care', which apply to both regulated user-to-user and search services, including to protect against fraudulent advertising. Ofcom is to prepare a code of practice setting out recommended measures to comply with the fraudulent advertising duties (the Code). The duties to prevent paid-for fraudulent and scam adverts from appearing start to apply from when the first Code on the topic is published. This is not expected to be until 2026.

The Act includes new provisions which require online service providers to prevent and remove paid-for fraudulent and scam advertising. The largest regulated user-to-user services and regulated search services will need to put in place proportionate systems and processes to:

- Prevent individuals from encountering fraudulent adverts.
- Minimise the length of time for which fraudulent adverts are present.
- Swiftly take fraudulent adverts down where the service has been alerted to or become aware of them.

Adverts are fraudulent if they are paid for, and breach specified provisions of financial services or anti-fraud legislation. For example, carrying on regulated activity under the Financial Services and Markets Act 2000 without authorisation or an exemption, or committing fraud by false representation under the Fraud Act 2006.

The government has stated that the Code could require services to scan for scam adverts, identity check advertisers and verify that they are authorised by the Financial Conduct Authority.

If search engines fail to comply with duties under the Act, Ofcom will be able to block their services in the United Kingdom and issue heavy fines of up to £18 million or 10% of annual turnover.

What does this mean for insurers?

87% of adult internet users report having encountered a scam or fraud online and 25% of these people have lost money as a result.

Although the relevant provisions in the Act are not yet in force, paid advertising relating to motor insurance claims has already improved. Those involved in outright fraudulent behaviour are not as prominent as they once were. Some search engines have introduced stricter policies governing advertisements on their platforms. Nevertheless, it remains an important issue. Once Part 3 of the Act is implemented, the situation is likely to improve further with Ofcom being given significant teeth.

The dominant actors in paid for motor insurance claims advertising are now less likely to act in ways which are as obviously fraudulent, compared to a few years ago. Some tend to only just be within the boundaries of acceptability. The Act is unlikely to stop these entities, although it will at least ensure that their activities are more closely monitored. Further, *Parker v Skyfire* demonstrates some of the difficulties insurers will continue to face in attempting to obtain correspondence and call recordings between claims management companies and insureds, which could show that misrepresentations have been made.

In any event, from a purely commercial perspective if nothing else, insurers may want to keep a close eye on how unscrupulous organisations are deploying the practice of ad-spoofing.

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