

# *Analysis on Internet Medical Advertising with the Case of Baidu Medical Service Promotion*

Yu Yang<sup>1</sup>, Shangcheng Chi<sup>2,\*</sup>

<sup>1</sup>Beijing Union University, Beijing, China

<sup>2</sup>Law Enforcement Unit, Beijing Administration for Market Regulation, Beijing, China

\*Corresponding author

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**Abstract:** The controversies over Baidu Bid Ranking and the nature of Baidu promotion have lasted for a long time. This paper applies deconstruction method to examine the nature of Internet advertising with “Baidu medical service promotion” as the studying subject. With the principle of link jump division on the internet we are able to clarify boundaries between different internet advertising and separate it into single traditional advertising. Based on these analyses, this study put forward principles and suggestions for the regulation of internet advertising.

## 1. Introduction

The *Zexi Wei* event in May 2016 aroused heated discussion on “*Baidu* health promotion” and the nature of which was concerned again: Is the information merely a kind of retrieval service or actually advertising? On 4 July 2016 the State Administration for Industry and Commerce issued Interim Measures for Management of Internet Advertising (hereinafter “the Measures”), which clearly stipulates: Paid-search for goods or services is advertising.

*Baidu* Corporation has a monopoly in China's Internet search industries. *Baidu* online marketing revenue was 64 billion 37 million RMB in 2015, accounting for 96.45 per cent of the company's annual income. *Putian* investors have consistently poured a large sum of money on *Baidu* health promotion. Through *Baidu* promotion (formerly *Baidu* Pay per Click, PPC), enterprises can register and submit a certain number of keywords after purchasing the service. Hence the enterprise's promotional information will appear on the top position in the corresponding search results, enabling the potential customers who have real interests on products or service of the enterprise to get direct understanding of its information, and to conclude a deal more easily. There are controversies about *Baidu* promotion from the very beginning. According to statistics of *Wei Zhu*, a Chinese scholar, only two of more than ninety cases relating to *Baidu* promotion were identified as advertising by China's judicial system. It has been stipulated in Article 39 of the Guide on the Trial of Cases Involving Online Intellectual Property Rights (hereinafter “the Guide”) issued by Beijing High Court in April 2016: PPC service provided by the search engine service should belong to the information retrieval service. During the period from the ‘Guide’ by the high court of Beijing in April to the ‘Measures’ by the State Administration for Industry and Commerce in July, the “*Zexi*

Wei event” had played a role in the reversion of the nature of *Baidu* promotion.

## 2. Reasons for the Nature of the Internet Medical Advertising Being Difficult to Characterize

The developing of Advertising on Internet is a process of gradual integration and deformation. Different forms of Internet advertising are coexisting rather than simple relationships of iterating or alternating. The difficulty to characterize the nature of Internet medical advertising mainly concentrated on Internet paid search. The major reasons lie in the follow aspects:

### 2.1 The Boundary of the Concept of Advertising Becomes Vague

Advertising is a paid-for business communication activity through the mass media, with a purpose to persuade. During the period from 1982 when the Interim Regulations on Control of Advertisement was promulgated to 2015 when the Advertisement Law was amended, legislators thought the concept of advertisement was self-evident and had quite distinct boundaries with non-advertising. In fact, before 1890, the definition of advertising widely accepted by western society was news about goods and services. This shows that “quite distinct boundaries” has a periodic characteristic.

The emergence of Internet paid search has brought impacts on this “quite distinct boundaries” feature and the boundary of the concept of advertising becomes vague. Without a uniform definition, each party would explain the concept from different levels of legal principle.

### 2.2 It Would Be Unfair to Impose Existing Regulations.

Stemming from realistic considerations, the judicial system identified *Baidu* (medical) promotion as Internet information service. If *Baidu* health promotion were identified as advertising with the current Advertising Law, *Baidu* Inc would have to bear the responsibility of these medical advertising. But obviously these responsibilities do not match rights as far as rationality is concerned. It would not achieve self-consistent in the basic legal logic. Although the “Measures” identifies paid search is advertising, it also limits the extent of liability, so that the liability of Internet service companies would be greatly reduced.

## 3. The Research Method of Analyzing Problems

As a new existence form of Internet advertising, paid promotion is a deep integration of Internet and advertising. It’s necessary to do the opposite to analyze this phenomenon. With the method of deconstruction, Internet medical advertising can be decomposed and restored to “Internet + medical advertising”. Both “Internet” and “medical advertising” should be analyzed, but the most important is “+” which means how these two integrate into innovation.

## 4. Deconstruction and Analysis of “Baidu Medical Promotion”

### 4.1 Baidu Medical Promotion is Internet Advertising

Technology has made the majority of our communication immediate, leaving us with less time to make judgments on the relevance, reliability and truthfulness of the messages we encounter. [8]The nature of *Baidu* medical promotion may easily lead to cognitive ambiguity. (1) Healthcare industry has a nature of social commonweal, which is already a certain mindset. The same person probably has different alertness while consuming and seeking medical treatment. (2) Medical healthcare sector is an industry of serious asymmetric information. This situation is aggravated by many

fragmented medical information on the Internet. (3) Baidu medical promotion appears when web users are searching for information. These preconditions make the identifiability of *Baidu* medical promotion as advertising greatly reduced, but they cannot change its advertising nature.

In terms of characteristics of advertising, *Baidu* medical promotion has distinct repeatability and purpose of dissemination and no dispute in the matter of payment. However, it happens only when keywords that have been set are retrieved, and Internet advertisers have right to decide them. Keywords are different from traditional advertising content in order to adapt to the technical characteristics of the Internet, but they have no differences in nature. Through the selection of key words, enterprises who have paid for it can achieve controls on the content of *Baidu* promotion; therefore *Baidu* medical promotion accords with advertising characteristics, and it is a new type of Internet advertising.

## **4.2 Impacts of Internet on Advertising**

When ads came across the Internet, it had undergone tremendous transformations as other net industries. The feature that Internet provides nonlinear information enables an Internet advertisement to embed with other Internet advertisements or information seamlessly. Internet advertising has undergone deep changes in following aspects:

### **4.2.1 Media Resources for Advertisement Releasing Are Unlimitedly Abundant.**

The spaces for advertising on the Internet are unlimited. The layout no longer limits the amount of advertising information; besides, spaces for releasing are tremendous, for instance, an internet celebrity's influence in today's self-media era can easily exceed that of a traditional media.

### **4.2.2 Boundaries of Advertising Become Blurred.**

Due to internet's transcendence of time and space, the boundaries of network advertising become ambiguous. As the browsers click the mouse from one advertisement to another, or from advertisement information to other information, the switching process becomes very vague.

The creativity of traditional advertising generally includes two parts: attracting attention and stimulating the desire to buy. Due to the fuzzy boundaries, advertising intentions can be achieved by multiple advertising that embed seamlessly on internet. For instance, advertising on *Baidu* promotion may be as concise as possible only to complete the attention, while stimulating the desire to buy can be completed on other independent websites switched by links. The boundaries of advertising and other network information become blurred, so that the pattern of immersion marketing can be seen everywhere online.

### **4.2.3 The Vertical Chain Structure is Broken.**

Because the pattern of traditional advertisement has been expanded by Internet, the vertical chain structure is broken, and the division of labor is refined. New participants join in the traditional advertisement industry chain. Just as article thirteenth of the Measures specifies: Internet advertising can be released pertinently by purchasing various advertising modes in a programmed way-through information integration, data analysis and other services provided by the demand side platform, media platform and advertising information exchange platform.

The safe harbor principle to solve the network infringement is introduced, making the mode of "assuming absolute responsibilities simultaneously" broken. For example, the presenter is not necessarily the advertisement publisher; the media platform operator, the advertisement information exchange platform operator and the media party platform member will assume the responsibilities

passively and so on. These are all new breakthroughs in the operating mode of advertisement.

#### 4.2.4 Advertising Becomes More Accurate and Personalized.

With Internet technology and big data, the network can provide different advertising content to each viewer individually and precisely, so that the effectiveness of advertising is greatly improved.

#### 4.3 The Destruction and Restoration of “Baidu Medical Promotion” - a Case Study of “the Zexi Wei Event”

When *Zexi Wei* searched treatment method of synovial sarcoma by *Baidu* search engine, the immune therapy of the Second Hospital of Armed Police listed on the top of search results. This is not the natural ranking of search engine but a paid search result by *Putian* investors who contracted a department of the Second Hospital of Armed Police. This is a typical medical paid promotion.

The advertising publisher on this site is not *Baidu* but the biological treatment center of the Second Hospital of Armed Police. During the browsing process in the website by *Wei*, the relevant information and expert consulting services are all served for marketing. *Wei* was hardly aware of being immersed in a large marketing environment; thus his judgment was weakened inevitably.

### 5. Regulation Principles and Recommendations for Internet Advertising

#### 5.1 Regulation Principles for Internet Advertising

Although big changes have taken place in Internet advertising which integrated with memes of internet in the aspects of business patterns, release forms and advertising contents, etc., the principle of advertising remains unchanged. The regulation should also focus on this feature.

##### 5.1.1 The Principle of Credit Supervision

Credit regulation is the basic principle for market administration determined by the Central Committee of the Communist Party of China and the State Council. Its application in administration field is particularly urgent. Because the advertising administration system in China basing on media regulation is only liberalized progressively from a monopoly system, it has a strong color of control policies. The releasing amount and speed of Internet advertising determine that it is an impossible task to use traditional methods to supervise Internet advertising.

Meanwhile, wide spreading of the Internet also makes Internet users attach great importance to their own online credit, which provides a good premise for credit regulation. Strengthening credit regulation, generating public credit by publicity, and prompting each advertising operator self-disciplined, are all the basis of Internet medical advertising regulation.

##### 5.1.2 Principle of Network Regulation by Network

The releasing of Internet advertising has developed into a procedure of programmatic purchase. Advertising information exchange platforms match and push advertising automatically in milliseconds, and this technology progresses and iterates unceasingly. To regulate Internet medical advertising, we must respect and comply with the inherent laws of the internet, and apply the idea of big data, internet technology and resources to manage Internet advertising. It is an inevitable choice that network technology supervises network advertising.

### 5.1.3 The Principle of Role Restoration

The releasing of Internet advertising required complex technology. Moreover, there is a significant reduction in the cost of online collaboration. Thus, the division of Internet advertising business becomes more refined leading to a lengthened industrial chain and increasing number of participants. Therefore, the three roles of traditional advertising can hardly cover the entire Internet advertising participants.

If these participants of Internet advertising were forced to assign to the three roles of the traditional advertising, common characteristics will be hard to conclude from their functions. Hence there is no need to be constrained by the role division of traditional regulation. Internet advertising participants should be restored to what they are to avoid new chaos.

### 5.1.4 The Principle of Link Jump Division on the Internet

The seamless embedding feature of Internet advertising is a very good experience for the audience. But from the perspective of advertising regulation, this seamlessly fitting Internet advertising must be split out; otherwise, the responsibility corpus will never be clear. Each link jumps relevant to advising on the internet must be divided out clearly. The identification of the publisher and decision makers of advertising as well as the clarification of the responsibility corpus is not only the premise of responsibility, but also the basis of Internet advertising regulation.

### 5.1.5 The Principle of Parallel Rights and Liabilities

Among the Internet advertising participants, some have lost control of the content of the advertisement. It will be quite unfair to apply the principle that traditional advertising bear equal responsibility. The difficulty in dividing the responsibilities of participants also was the reason that the court previously mentioned didn't classify *Baidu* promotion as advertising. The above problems could be avoided if we design specific management system according to the principle of parallel rights and liabilities, which means that advertising participants should assume corresponding liabilities according to its rights.

## 5.2 Recommendations for the Regulation of Internet Advertising

Natural persons, legal persons, or other organizations who provide internet advertising push or display service for advertisers or advertising operators, and can also check the advertising content and make decision on advertising releasing, are Internet advertising publishers. This article is the biggest breakthrough point of Measure in the process of legislation which sets free the institutions in the Internet advertising industry chain which cannot bear absolute liabilities such as media platform, operators of advertising information exchange platform, members of the media platform from the reality of legal predicament, hence it can remove institutional obstacles for the further development of Internet advertising.

The actual pattern of Internet advertising: a huge number of advertisers, relatively centralized advertising operators, and media platform providers that cannot control the content to release.

Aiming at this situation and with the characteristics of the Internet, we propose following recommendations for administration.

### 5.2.1 Advertising Marks Should Be More Prominent.

It is the premise of advertising regulation to distinguish between advertising and non-advertising. Internet medical advertising should have identifiability, commercial properties, and sensitivity. That

is, it has significant signs, clear commercial nature for transaction, can be identified by the vast majority of consumers, and holds obvious characteristics of goods or services promotion. However, reducing the identifiability of advertising is the most effective way to enhance the advertising effect. Hence advertisers and publishers have no motivation to improve the identification of the advertising. Therefore, this basic work needs strong external pushes which would impel advertisers to apply internet technology and more advertising recognition means to establish a new order of the Internet advertising industry at a higher level of equilibrium.

### 5.2.2 The Responsibility Corpus of Internet Advertising Should Be Expressed

Clear responsibility and definite corpus are the foundation to establish a good market order. Both the transcendence of time and space of Internet and the characteristics of division of labor in internet advertising industry make the responsibility corpus of the Internet advertising blurred more easily. Hence information of advertisers and other responsible person must be embedded in advertising by mandatory provisions with the prerequisite principle of link jump division. The information usually does not appear to affect the advertising effect, but it can be recalled at any time.

### 5.2.3 Establish Advertising Service and Regulation Centers

The principle of network regulation by network should be implemented. It's the core of Internet advertising regulation to establish network advertising service regulation center. This center will at least achieve the following four core functions: The first is free advertising detection. Advertising operators may have the legality of advertising detected before its releasing. Thus the illegal advertising could be eliminated to the utmost in its creative stage; the second is real-time monitoring by the platform of advertising demand side which is the key node of Internet advertising. Illegal advertising ready for releasing could be monitored here and be intercepted. The third is smooth reporting channels for illegal advertising. Under the power of the internet users, illegal advertisements are nowhere to escape. The fourth is authoritative public summon of illegal advertising. Public credit is an important factor to promote self-discipline of advertising operators.

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