

A New Code of Conduct for Affiliate Marketing?

Benjamin Edelman

March 31, 2015
Affiliate Management Days

Why affiliate marketing?

- Creativity
- Reach
- Attractive pricing model, risk model
 - “I’m thrilled to pay a x% commission for anyone who can bring in a sale. I can’t lose!”

Affiliate marketing fixes...



8,037

186k

Tweet

Like

made by



Affiliate marketing fixes...

- Low-quality sites
- Invisible banner ads



Affiliate marketing fixes...

- Low-quality sites
- Invisible banner ads
- Click fraud rooms
- Click fraud botnets

Why affiliate marketing?

Current BaT Auction - Ends Wednesday, April 1, 2015 **LIVE NOW!**



Jerry Hathaway's 1972 Citroen SM 5-Speed

This 1972 Citroen SM is offered by marque expert Jerry Hathaway of SM World in Southern California. This is desirable 5-speed manual car with no rust and extensive recent maintenance. It received a professional repaint last year in the car's original Brun Scarebe Metallise.

CURRENT BID: \$35,500

Ends in: 1 day, 7 hours, 1 minute, 39 seconds

March 31, 2015 — German / Race Car | No Comments

1964 Porsche 904/6 Carrera GTS

GET THE BaT DAILY EMAIL

Why affiliate marketing?

- Creativity
- Reach
- Attractive pricing model, risk model

/BUT/

- How to supervise many small affiliates a retailer has never met?
- Many & divergent incentives: merchant, network, affiliate program manager, affiliate

Affiliate earns commission if ...

- User browses the affiliate's web site
- User clicks affiliate's link to merchant /and/
- User makes a purchase

→ Merchant can safely partner with anyone

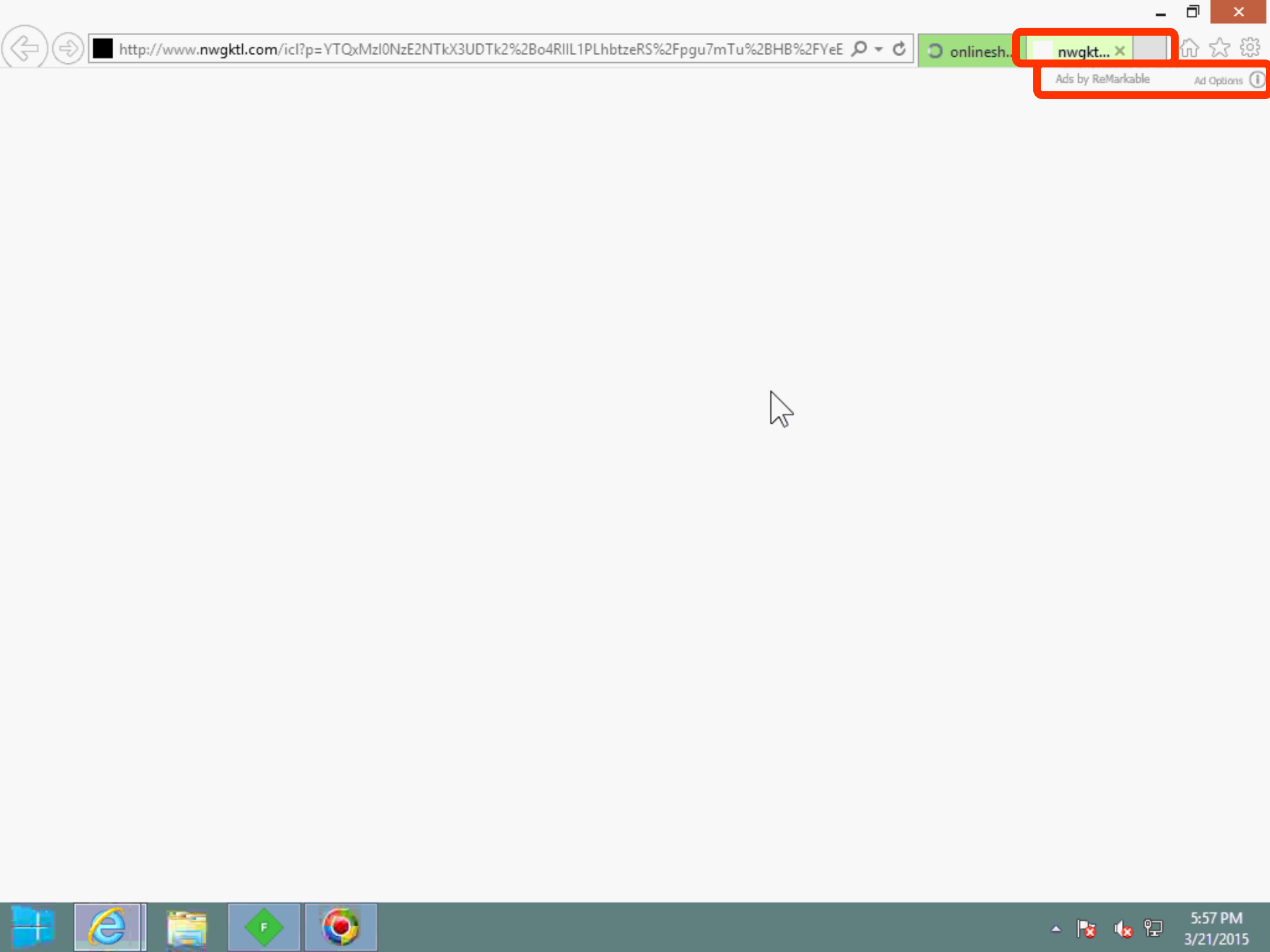
What can go wrong?

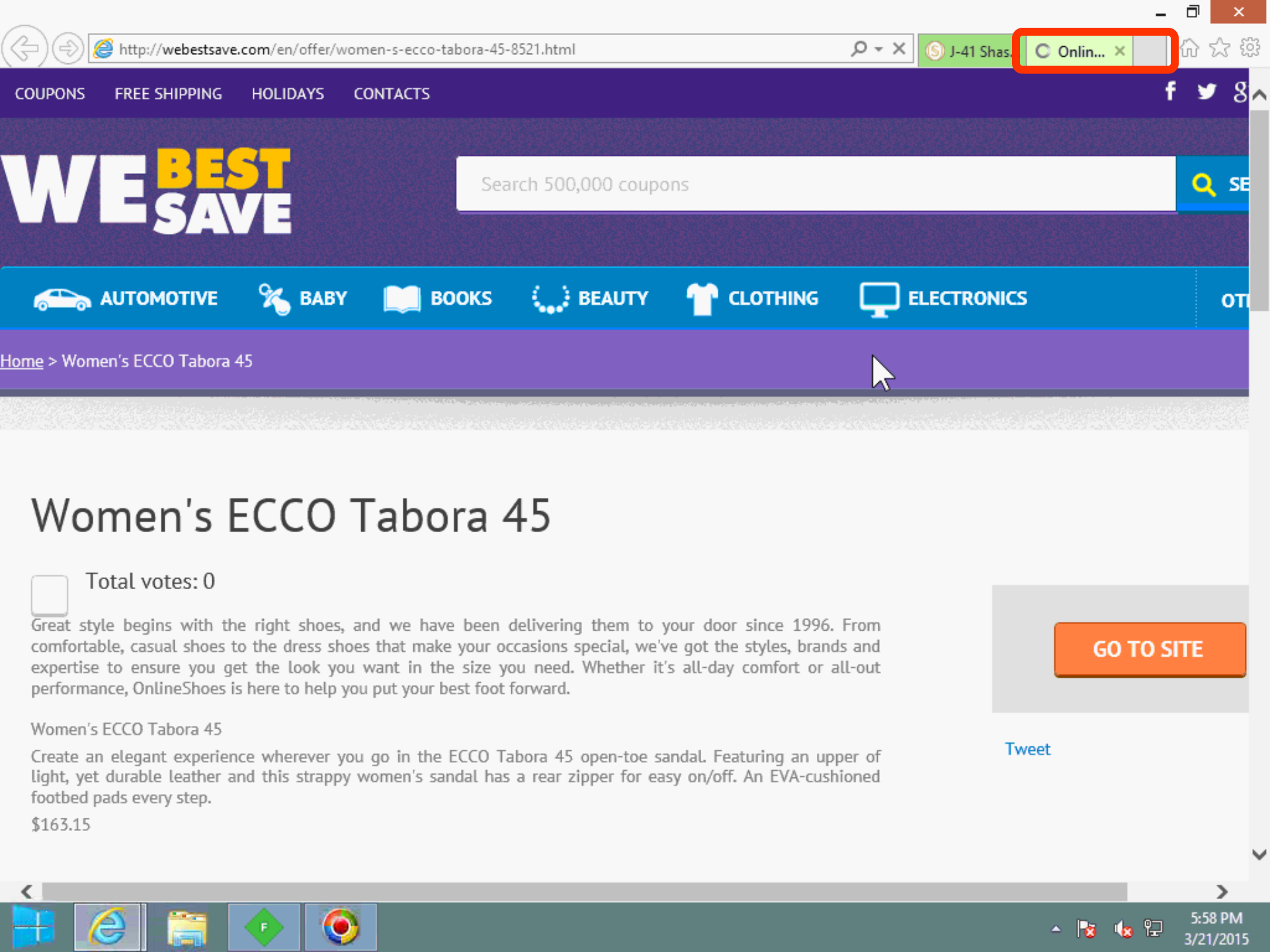
- Complacency
- “Strategic behavior”

at every level of decision-making

- Affiliates
- Affiliate networks
- Affiliate managers

Some examples





Women's ECCO Tabora 45



Total votes: 0

Great style begins with the right shoes, and we have been delivering them to your door since 1996. From comfortable, casual shoes to the dress shoes that make your occasions special, we've got the styles, brands and expertise to ensure you get the look you want in the size you need. Whether it's all-day comfort or all-out performance, OnlineShoes is here to help you put your best foot forward.

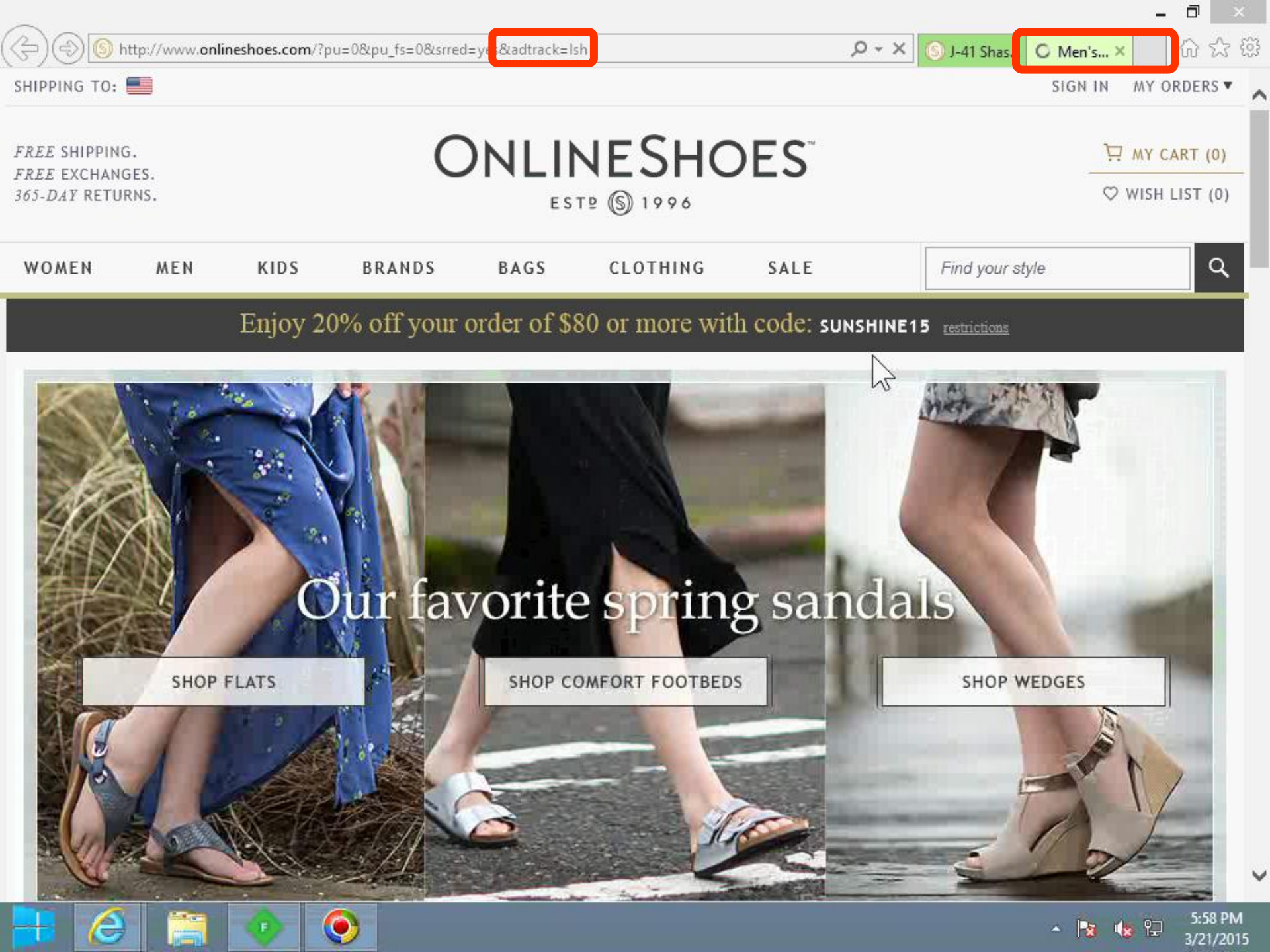
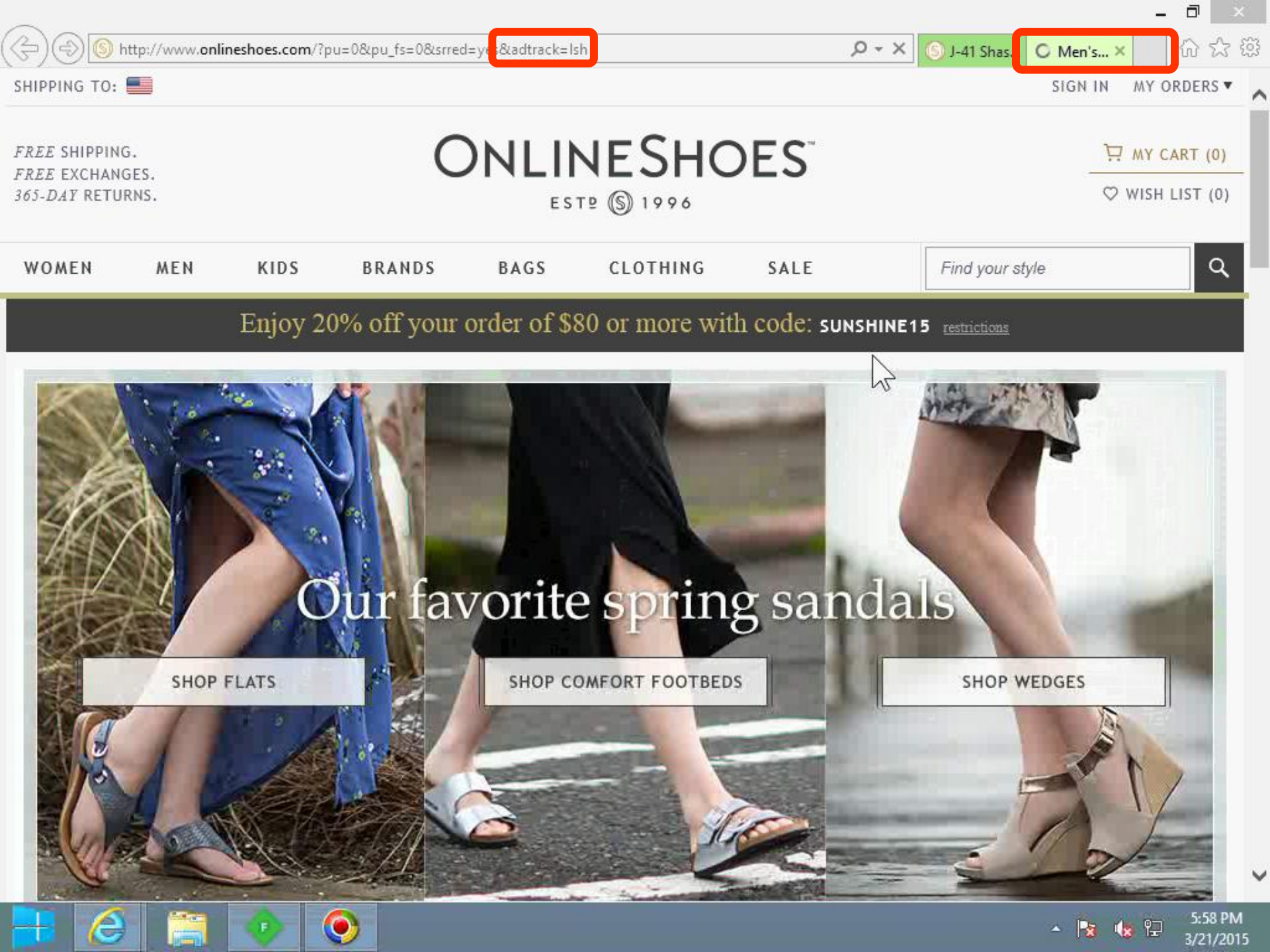
Women's ECCO Tabora 45

Create an elegant experience wherever you go in the ECCO Tabora 45 open-toe sandal. Featuring an upper of light, yet durable leather and this strappy women's sandal has a rear zipper for easy on/off. An EVA-cushioned footbed pads every step.

\$163.15

GO TO SITE

Tweet



POST http://partners.cmptch.com/ca?p=OTgzMjI1ODIzNEZ85i%2Ffq3C%2BHz52KVb7Y2FskpQIwmm7YkP%2FvzPTtpgHoUSKOGct2...

HTTP/1.1 200 OK ...

PX.dispEngineVer = 5;

PX.displayURL = 'http://www.nwgk1.com/icl?p=YTE3ODI0ODM1NzR4%2BNLdXGn%2BDExOPxHcJi1ojVqqWfU00i67%2FaJqMrL...';

PX.executionStatus = "rad-complete";

if(typeof FAInit == 'function') setTimeout("FAInit()", 500); else setTimeout(PX.init, 500);

adware control code

GET http://www.nwgk1.com/icl?p=YTQxMzI0NzE2NTkX3UDTk2%2Bo4RIIL1PLhbtzeRS%2Fpgu7mTu%2BHB%2FYeEuW6q28%2B8NmTO...

HTTP/1.1 302 Found

Location: http://webestsave.com/en/offer/women-s-ecco-tabora-45-8521.html?rdr=1 ...

GET http://webestsave.com/en/offer/women-s-ecco-tabora-45-8521.html HTTP/1.1

HTTP/1.1 200 OK ...

[22kb of HTML] ←

concealment of redirect code through decoy page

<script>

setTimeout(function() {

 window.location.href = 'http://track.flexlinks.com/a.ashx?foid=1065646.425603&fot=9999&foc=1';},2000);

</script>

concealment of redirect through delay

GET http://track.flexlinks.com/a.ashx?foid=1065646.425603&fot=9999&foc=1 HTTP/1.1 ...

Referer: http://webestsave.com/en/offer/women-s-ecco-tabora-45-8521.html

referer faking

HTTP/1.1 302 Found ...

Location: http://linksynergy.onlineshoes.com/fs-bin/click?id=PPkX79/c*b0&offerid=204420.10000743&type=3&subi...

GET http://linksynergy.onlineshoes.com/fs-bin/click?id=PPkX79/c*b0&offerid=204420.10000743&type=3&subid=1065...

Referer: http://webestsave.com/en/offer/women-s-ecco-tabora-45-8521.html

referer faking

HTTP/1.1 301 Moved Permanently ...

Location: http://www.onlineshoes.com/ls.asp?siteID=PPkX79_c.b0-JIyy7nZjot0a_RqPwQ.aLg&url=http%3A%2F%2Fwww...

“New Flash Player” bundler

→ ReMarkable adware (Revizer)

→ Webestsave

→ Flexoffers

→ LinkShare

→ Onlineshoes.com

Violations

- “Lead stealing”
 - claiming commission on organic traffic
 - merchant otherwise receives this traffic for free
- Undisclosed adware
 - full-screen popup covering merchant site
 - sneaky installation
- Forced clicks
- Lack of labeling and uninstall instructions required by FTC precedent
- Deceptive installation; counterfeit “Flash”

Mary
Kay

Favorite

Mary Kay Coupon Codes

\$18 Average Savings

Always free to use



78 People Used Today

Gifts Under \$25

Details: Find Gifts for Under \$25

Get Deal



50% Success • Add a Comment



Case 3:15-cv-00825-L Document 1 Filed 03/13/15 Page 1 of 19 PageID 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MARY KAY INC.,

Plaintiff,

v.

RETAILMENOT, INC.,

Defendant.

CIVIL ACTION NO. _____

JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE COURT:

Plaintiff Mary Kay Inc. files this Original Complaint against Defendant RetailMeNot, Inc., and would respectfully show:

PARTIES

1. Plaintiff Mary Kay Inc. ("Mary Kay") is a Delaware corporation, licensed to do business in the State of Texas. Mary Kay maintains its principal place of business at 16251 Dallas Parkway, Addison, Texas 75001.

2. Defendant RetailMeNot, Inc. ("RMN") is a Delaware corporation with a principal place of business at 301 Congress Avenue, Suite 700, Austin, Texas. RMN's registered agent is Louis J. Agnese III, 301 Congress Avenue, Suite 700, Austin, Texas 78701.

Mary Kay Promo Codes, 2 Coupons 2015 - RetailMeNot

www.retailmenot.com › Beauty › Mary Kay ▾

Discounts average \$18 off with a Mary Kay promo code or coupon. 2 Mary Kay coupons now on RetailMeNot.

Mary Kay Coupons: Use Promo Codes or a Coupon Code ...

www.retailmenot.com › Beauty ▾

Save with Mary Kay coupons, coupon codes and promo codes for great discounts in March 2015.

Images for mary kay coupons

Report images



More images for mary kay coupons

Need a Mary Kay Promotion Code? Yes, worked March 2015!

www.promotioncode.org/MaryKay ▾

Using Mary Kay Promotion Codes: Mary Kay offers discounts and special offers through both text links and banners as well as coupon and promotion codes.

United States District Court

FOR THE
NORTHERN DISTRICT OF CALIFORNIA

FILED
2019 JUN 24



10 7. Digital Point Solutions was a member of the Affiliate Program. In 2006,
11 Digital Point Solutions received approximately \$10,500,000 in compensation from the
12 eBay Affiliate Program in the United States. Between January and June 2007, Digital
13 Point Solutions earned more than \$5,000,000 in compensation from the eBay Affiliate
14 Program in the United States. As of approximately June 2007, Digital Point Solutions was
15 the number-one producing account in the Affiliate Program. In other words, based on data

19 18. It was part of the scheme and artifice that, through various means, the
20 defendant disseminated on a large number of web pages computer code that, when those
21 web pages were viewed by a computer user, was designed to cause that user's computer to
22 make a request to eBay's home page merely for the purpose of prompting eBay's servers
23 to serve up a cookie, which would then be "stuffed" onto the user's computer. These
24 cookies contained information that identified an Affiliate ID of Digital Point Solutions. In
25 such situations, the human user never actually clicked on an eBay advertisement or link on
26 Hogan's affiliate websites.

Affiliate earns commission if ...

- ~~• User requests affiliate web site~~
 - ~~• User clicks affiliate's link to merchant /and/~~
 - User makes a purchase
- ~~→ Merchant can safely partner with anyone?~~

What can go wrong?

- Complacency
- “Strategic behavior”
at every level of decision-making
- Affiliates
- Affiliate networks
- Affiliate managers

You are an affiliate network...

...deciding how hard to look ...

- What happens if you find problems?
- How will this affect your revenue?
 - Merchant payments based on affiliate commission
- How will this shape your standing in the marketplace?
 - How will merchants respond if they find problems?

CJ Advertiser Service Agreement

To the fullest extent permissible pursuant to applicable law, CJ disclaims all warranties implied, including ... that CJ's security methods will be sufficient ... The entire risk as to satisfactory quality, performance [and] accuracy ... is with you. CJ is, under no circumstances, responsible for the practices, acts or omissions of any advertiser or publisher.

...

This Agreement contains the entire understanding and agreement of the parties. ...

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

SETTLEMENT RECOVERY CENTER,
LLC, individually and on behalf of others
similarly situated,

Plaintiff,

v.

VALUECLICK, INC., a Delaware
corporation, its wholly owned subsidiary
COMMISSION JUNCTION, INC., and
its wholly-owned subsidiary BE FREE,

Defendant(s).

CASE NO. CV-07-02638 FMC (CTx)

(Assigned to the Honorable Florence-
Marie Cooper, Courtroom 750)

**NOTICE OF MOTION AND MOTION
TO DISMISS CLASS ACTION
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT**

[[Proposed] Order Granting Defendants'

1. Plaintiff's claims arise from a written contract – the Advertiser Service Agreement – that defines the relationship between Commission Junction and Internet advertisers like Plaintiff. (Cplt. ¶ 61). According to Plaintiff, “[e]very member of the proposed Class is a party to the Agreement.” (*Id.* ¶ 67).

2. Each of Plaintiff's claims are barred by the express terms of the Agreement, which releases Commission Junction from liability for precisely the claims that Plaintiff is making here. Courts repeatedly have dismissed claims – like those asserted by Plaintiff here – that are based on the violation of an alleged duty that is expressly disclaimed in a voluntary agreement between the parties. *See, e.g., Graphic Arts Sys. v. Scitex Am. Corp.*, No. CV 92-6997-WMB, 1993 U.S. Dist. LEXIS 21052, at *26 (C.D. Cal. May 26, 1993) (dismissing plaintiff's claims for breach of contract, negligence, intentional interference and breach of the implied covenant of good faith and fair dealing on a motion to dismiss under Fed. R. Civ. P. 12(b)(6) as “barred by the express language of the contracts which disclaims all warranties and limits remedies”).

What can go wrong?

- Complacency
- “Strategic behavior”
at every level of decision-making
- Affiliates
- **Affiliate networks**
- Affiliate managers

You are an affiliate manager...

...deciding how hard to look ...

- What happens if you find problems?
- What will your boss say?
- How will this affect your compensation?
- How will this shape your professional standing?

“Bob is a genius! He found a way to cut marketing expense \$1m without losing sales.”

-or-

“I hired Bob to expand the affiliate program, but instead he shrunk it by 20%.”

Compensating an affiliate manager

“Bob’s salary: \$60k plus 10% of year-over-year affiliate program growth.”

- Set realistic goals.
- Reward genuine advances.
- What if Bob finds fraud in *last year’s* activity?
 - Accept and *welcome* savings.

Assessing the seriousness of
these factors

What Does Carmen Electra, Cyber-Terrorism and Meg Whitman Have In Common? eBay!

by **digitalpoint** on Aug 2nd 2010 at 10:41 am (23658 Views)

35 Comments 

I haven't said much about it to date about the dealings between myself and eBay, because well... I didn't see a point. But now with people's imaginations running wild about what did (and didn't) happen, I suppose I'll talk about it. The story itself is far more interesting than you would think possible within an affiliate program.

When I asked them why they would knowingly allow affiliates to violate their terms of service, they were very good at avoiding answering my actual question. Finally after pestering them with the same question for weeks, they broke down and informed me that their terms of service (and even the entire affiliate program to some degree) was a bit of a facade. It allowed eBay to do things they wanted to do (like spam search engines, deploy in countries where they had no actual presence, etc.), while also giving them a way to wash their hands of any wrong-doing when any of their large partners (like Google) would question them about it (like why there are so many spam sites directing people to eBay). They could simply say, "It's our affiliates, and they are violating the terms of service we set forth." To me, I suppose it sort of made sense and I stopped questioning them about it. BTW, one of the times this was explained to me was at PubCon in Las Vegas, **while** an eBay employee was going around to each public access computer with a USB dongle he developed that would automatically install something that would redirect any user to eBay when they tried to access Yahoo Auctions.

This was also the time that my affiliate revenue from eBay broke over \$1M in a single month, which is significant because now I had to make good on the "promise" that I never thought I would have to follow through on. My eBay contact called me immediately after I broke \$1M in a month and said, "Okay, you broke \$1M... buy me a car." Sadly, I'm a man of my word and I did try to buy them a car... unfortunately the car they wanted was backordered everywhere, so instead of buying them an actual car I told them I would give them the money needed for the car and they could go find one themselves. It wasn't extortion or anything since I was the one that offered, but it sure felt like it to me in the end. That was a promise I made that ultimately cost me \$50,000.

On top of that, I was coerced into buying my eBay contact a plasma TV, a really nice laptop (while I had a crappy TV and crappy laptop of my own... hah), etc. I kept asking if this was "normal", and was only told, "Yes, all the affiliates buy their contacts stuff like this."

The authors examine online affiliate marketing programs in which merchants oversee thousands of affiliates they have never met. Some merchants hire outside specialists to set and enforce policies for affiliates, whereas other merchants ask their marketing staff to perform these functions. For clear violations of applicable rules, the authors find that outside specialists are the most effective at excluding the responsible affiliates, which can be interpreted as a benefit of specialization. However, in-house staff are more successful at identifying and excluding affiliates whose practices are viewed as "borderline" (albeit still contrary to merchants' interests), forgoing the efficiencies of specialization in favor of the better incentives of a company's staff. The authors consider the implications for marketing of online affiliate programs and for online marketing more generally.

Keywords: affiliate marketing, fraud, marketing management, incentives, outsourcing

Online Supplement: <http://dx.doi.org/10.1509/jmr.13.0472>

Risk, Information, and Incentives in Online Affiliate Marketing

For decades—perhaps centuries—marketers have bemoaned the effectiveness of their advertising campaigns. When paying for advertising up front and receiving benefits later, advertisers are vulnerable to low-performing or nonperforming ad placements. Against this backdrop, affiliate marketing seems to offer a refreshing change: in this performance-based approach to online marketing, advertisers pay only when a sale occurs. With robust online tracking that can attribute sales to affiliates, advertisers often perceive an unprecedented reduction in risk. *The Economist* (2005) captured advertisers' excitement for the apparent alignment of incentives, calling affiliate marketing "the holy grail of online advertising."

As it turns out, however, affiliate marketing is neither as easy nor as safe as proponents initially anticipated. Most

advertisers struggle to find reliable affiliates that deliver new customers in desired quantities, in exchange for reasonable compensation. Meanwhile, despite the promised alignment of incentives, bad affiliates can exploit shortcomings in tracking and attribution to claim commissions they have not fairly earned. Informed by these problems, affiliate marketing raises long-standing questions of judgment, partnership, and incentives reminiscent of decades of media-buying.

This article offers two contributions. We begin by presenting affiliate marketing in a general sense; we explore its institutions and participants as well as key risks uncovered to date. Then, we explore advertisers' efforts to address those risks. Specifically, we evaluate advertisers' management structures by measuring relative prevalence of affiliate fraud. By examining the common methods of affiliate program management, we identify the vulnerabilities best addressed by outsourcing marketing management to external specialists versus the problems better handled by keeping management decisions in-house. We find that outside specialists are most effective at enforcing clear rules, whereas in-house staff are better at preventing practices viewed as "borderline" under industry norms.

While our results apply most directly to advertisers considering the management structure of their online marketing programs, our analysis also speaks to the broader literature

- Scraper-based data on merchant management structure
 - bob@shoestore.com
 - shoestore@affiliatenetwork.com
- Crawler-based data on affiliate fraud and controversial practices
 - Adware
 - Cookie-stuffing
 - "Loyalty" plug-ins
 - Typosquatting

What would you expect to find?

*Benjamin Edelman is Associate Professor, Harvard Business School, Harvard University (e-mail: b.edelman@hbs.edu). Wesley Brandi is Chief Executive Officer, iPerium (e-mail: wesley@iperium.com). The authors thank George Baker, Roman Ecker, Francesca Gino, Robert Glazer, Brian Hill, Zhenyu Lai, Ian Lorton, Tyler Moore, Frank Nagle, Dave Naffziger, Steve Tadelis, NOM seminar participants, and two JMR anonymous reviewers for comments and suggestions on earlier drafts of this article.

Findings

	(1) <i>Adware</i>	(2) <i>Cookie Stuffing</i>	(3) <i>Typosquatting</i>	(4) <i>Loyalty Apps</i>
Managed by network	-.375** (.174)	-.278 (.286)	.338*** (.124)	-.00653 (.0523)
Managed by OPM	.115 (.140)	-.574** (.266)	.153 (.102)	.00766 (.0419)
Management unknown	-.200* (.107)	-.191 (.184)	-.224*** (.0790)	-.0514 (.0328)
EPC dummies	Yes	Yes	Yes	Yes
Network dummies	Yes	Yes	Yes	Yes
Category dummies	Yes	Yes	Yes	Yes
Site popularity controls	Yes	Yes	Yes	Yes
Constant	Yes	Yes	Yes	Yes
N	4,523	4,523	4,523	4,523

	(1) <i>Clear Fraud</i>	(2) <i>Clear Fraud</i>	(3) <i>Gray Area</i>	(4) <i>Gray Area</i>
Managed by network	-.321* (.164)	-.245 (.164)	.295*** (.111)	.320*** (.110)
Managed by OPM	-.172 (.135)	.0309 (.137)	.0436 (.0915)	.142 (.0911)
Management unknown	-.295*** (.101)	-.219** (.104)	-.221*** (.0690)	-.238*** (.0703)
EPC dummies		Yes		Yes
Network dummies		Yes		Yes
Category dummies		Yes		Yes
Site popularity controls	Yes	Yes	Yes	Yes
Constant	Yes	Yes	Yes	Yes
N	4,523	4,523	4,523	4,523

Incentives aligned?

For a given fixed amount of merchant sales, a selfish ... wants commissions to go ...

merchant

in-house affiliate manager

“I run an important department”

outsourced affiliate manager

“10% of year-over-year growth”

affiliate network

“30 on 130”

affiliate

So what to do?

Recognize your vulnerabilities

- Network-managed program
 - Think carefully about network's incentives.
 - Set clear guidelines *especially* in the areas that are controversial. Don't assume network's default is in your interest.
- Self-managed program
 - What do the specialists know that you don't?
Come to AM Days! Read forums & news sites.

Supervising affiliates

- Penalties? Litigation?
- Identity verification
 - Name - email - phone number - address - tax ID - IP
 - Need to prevent sequential pseudonymity (reregistering using a new name)
- Pay more slowly, so you have something to hold over rule-breakers.

Delaying Payment to Deter Online Advertising Fraud (2008)
benedelman.org/paymentdelay

Deterring Online Advertising Fraud Through Optimal Payment in Arrears
Financial Cryptography 2009 - SV LNCS

A code of conduct for affiliate networks

- If a network learns about a rogue affiliate...
 - Alert all merchants that are or have been affected
 - Provide refunds to all, not just those who complain
 - Duty of candor
- Install appropriate contractual commitments and remove contractual defenses
- Take seriously the position of responsibility for advertisers' expenditures

A code of conduct for affiliate managers

- Primary duty is to advertiser.
 - Duty of loyalty
 - Duty of candor
- Deemphasize personal incentives. Should affiliate managers always be paid more for spending more?
- For OPMs: Check contract terms

A code of conduct for affiliates

- Full and forthright statement of methods
 - Statements that are literally truthful
 - Statements that avoid deception
- Disclosure of alter egos and common ownership & control
- Anticipate the ambiguities...
precise questions... “adware” versus “any desktop software or browser plugins”

Fixing Affiliate Marketing

Can a merchant

- Supervise thousands of small affiliates the merchant has never met?
- Manage divergent incentives: merchant, network, affiliate program manager, affiliate?

/AND/

- Retain the cost-effectiveness, excitement, flexibility, and passion of affiliate marketing?

benedelman.org

more examples, perpetrators, and infractions