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## SAIC Promulgates Interim Administrative Measures for Internet Advertising

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On July 4, 2016, the State Administration for Industry and Commerce of the People's Republic of China (“**SAIC**”) promulgated the *Interim Administrative Measures for Internet Advertisements* (the SAIC Order [2016] No. 87) (“**Interim Measures**”) so as to regulate advertising activities on the Internet, which will become effective on September 1, 2016.

The Interim Measures mainly specify the scope and restrictions for Internet advertising, and also set forth the responsibilities and obligations for business operators related to Internet advertising, including those business operators that engage in programmatic advertisement buying. Furthermore, the Interim Measures provide for the jurisdiction and handling of Internet advertising law violations.

### Scope of Internet Advertising

Internet advertising in the Interim Measures refers to commercial advertising whether in the form of text, images, audio, video or other forms through websites, webpages, web applications and other web media for the purpose of marketing goods or services, directly or indirectly, including:

- a. Advertisements for marketing goods or services in the form of text, images, video and others that contain web links;
- b. E-mail advertisements for marketing goods or services;
- c. Paid search advertisements for marketing goods or services;
- d. Advertisements for marketing goods or services that are contained in commercial display materials; where certain information shall be displayed by operators to consumers as required by any laws, rules or regulations, such laws, rules or regulations shall apply;
- e. Other commercial advertisements for marketing goods or services through Internet media.

It is worth noting that the Interim Measures clearly define paid search advertising as a specific type of Internet advertising. The Interim Measures also specify that, in addition to the regulations provided herein, Internet advertising must also conform to the relevant provisions stated in the Advertising Law and other laws and regulations with respect to the content of the advertising, obligations and responsibilities of the operators and tax payment issues.

### **Restrictions Related to Internet Advertising**

The Interim Measures clearly specify a number of restrictions with respect to Internet advertising, including prohibiting Internet advertisements for goods or services that are banned from manufacturing and selling or for which advertising is prohibited by laws and regulations; prohibiting Internet advertisements for prescription drugs and tobacco, and requiring advertisements for certain other goods and services such as health care, drugs, foods formulated for special medical purposes, medical equipment, pesticides, veterinary drugs, and health foods to undergo examination and approval before being released. In addition, the Interim Measures state that the release and publication of advertisements through Internet shall not affect normal use of the network, and pop-up advertisement pages should clearly mark the close button to allow for users to close the page with one click. It is prohibited to force users to click on advertisements by deceptive means, and it is also prohibited to add advertisements or links to advertisements to a user's e-mails without consent. Furthermore, the Interim Measures specify that the Internet advertisements must be in a distinguishable form by being prominently marked as an "advertisement" so that consumers are readily able to identify them as such. The Interim Measures also explicitly require that paid search advertisements must be clearly distinguished from natural search results. According to the previously promulgated *Administrative Provisions on Internet Information Search Services*, Internet information search service providers must also clearly specify the proportional limit for paid search information on webpages.

### **Responsibilities and Obligations Relevant to Business Operators Related to Internet Advertising**

The Interim Measures generally specify the requirements for advertisers, advertising operators and advertising publishers of Internet advertising as below:

- a. Internet advertiser shall be responsible for the authenticity of the advertisement content, the identity of the advertiser, administrative permits, the content cited and other certificates required for release of Internet advertisements must be genuine, legitimate and effective; if the advertiser authorizes Internet advertising operator or Internet advertising publisher to release or revise an advertisement, the advertiser must issue a notice to the corresponding service providers.

- b. Internet advertising publishers and operators shall, in accordance with relevant state regulations, establish an Internet advertising business registration and management system; verify and file the advertisers' information and make updates on a regular basis, verify relevant certificates and check the content of advertisements. Publishers and operators may not to design, produce, act as an agent for or publish advertisements with content failing to conform to the requirements or with incomplete documentation, and are required to employ personnel familiar with the advertising laws to review advertisements or, if permitted, set up a special Internet advertisement review department.

The Interim Measures also set forth the obligations of the advertising demand side platform operators, media platform operators, information exchange platform operators and media platform members. When entering into an Internet advertising contract, platform operators and members shall verify the contract counterparty's personal identification documents, real name, address and valid contact information, and they are required to set up a registration file for recording such information and make updates on a regular basis. Besides these requirements, platform operators and members are required to take technical and management measures against illegal advertisements that they know or should know as by removing, blocking, or breaking links to such advertisements.

In addition, the Interim Measures also list the acts of unfair competition that are prohibited in Internet advertising. The Interim Measures specify that Internet information service providers that do not engage in Internet advertising, but merely provide information services for Internet advertising, are also obligated to crack down on illegal advertisements that are released through the use of the provider's information services and which the provider know or should know.

Finally, the Interim Measures define the jurisdiction of the industrial and commercial administrative departments with respect to implementing administrative penalties for illegal Internet advertising activities, and the powers that the departments may employ to investigate and handle illegal advertisements. The Interim Measures also detail penalty provisions for Internet advertising law violations.

## ● **Important Announcement**

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