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● Issue

In June of 2004, leading search engine company Google changed its bidding policy to allow anyone – including direct competitors – to bid on trademarked keywords. As a result of this change, Pepsi, for example, can now bid on the keyword “Coke.” Previously, this practice was barred by Google and search engine powerhouse Overture. Now that keyword bidding has opened up on Google, which represents 56.3% of all US searches,¹ marketers are trying to figure out how best to take advantage of the change and how to protect themselves from any adverse effects.

● Implications

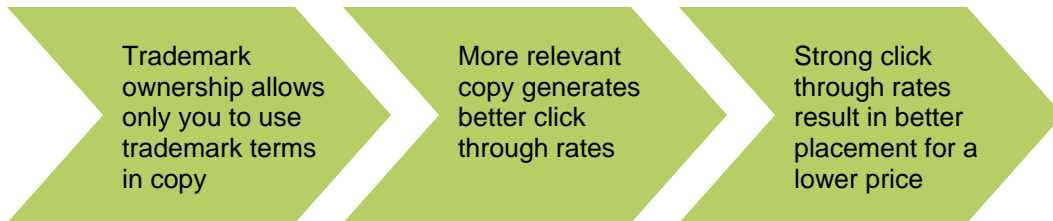
Option to bid on competitors' trademark terms: Google's new policy opens the door for you to bid on the trademarked terms of your competitors. And vice versa. Brand name search terms connote strong purchase intent, making them particularly valuable. Some of these, like “Kleenex” and “U-Haul” have become so tied to a product or service that it's difficult to work around them. With the change in Google's bidding policy, you no longer have to.

Need to police own trademark: Google is no longer policing trademarks in search terms, in creative copy, or on landing pages. This means that any advertiser can use your trademark brand name as he sees fit, **unless you take specific action to protect your trademark.** As a trademark holder, you can submit paperwork to Google to block competitors from using your trademark term in the actual ad copy. A competitor can still bid on your trademarked term as a keyword, but they cannot use the trademarked term in any supporting copy. Google allows advertising in sponsored areas at the top and on the side. The natural results – based on most relevant editorial – are in the middle.

Google ranking not for sale: It's not possible on Google simply to buy the top ranking position. Instead, advertiser positioning is based on an algorithm that multiplies bid price by click-through rate. The ad generating the strongest click-through – usually the most relevant keyword with the most relevant copy – commands the highest position, assuming all bids are equal. Google's own research indicates that ad copy which features the actual keyword a user entered consistently delivers higher click-through rates. This dynamic puts brand owners at a natural advantage on Google.

¹ Nielsen NetRatings MegaView Search Report, March 2005.

Google's Ranking Policy Benefits Trademark Holders



Risk of trademark dilution: Your trademark term could be bid on by a company making unfavorable claims about your product or service. For instance, a law firm may purchase the name of a product in order to alert people that they are pursuing a class action suit against the manufacturer.

You could also find yourself in a situation where affiliates are using your trademark terms to drive users to a comparison page that could potentially generate sales for a competitor. For example, imagine a user searches for “Chase Credit Card.” This user might click through to a page sponsored by an affiliate that compares rates and annual fees of Chase cards with those of its top competitors. Based on those results, this user – who began by searching on “Chase Credit Card” might end up buying a competing product based on intervention by an affiliate marketer.

Legal Ramifications: Trademark suits involving keywords have been launched against large scale search providers such as Google and Overture, not competitors who purchased the terms. Companies seeking to protect their trademarks prefer to attack these providers because it is much more efficient than going after each competitor in turn. However, as suits against search providers hit obstacles, trademark owners are likely to proceed directly against buyers of the trademarked terms.

Recommendations

Purchase your own trademark keywords: Bidding on your trademarked terms allows you to control messaging, including copy and landing pages. In addition, it's important to purchase your own terms in order to differentiate yourself from gray area competitors, like bargain discounters, that might be selling your product or product knock-offs.

Alert Google of your trademarked terms: Avenue A | Razorfish registers all clients' trademarked terms with Google to blacklist competitors from using those terms in their copy. Similarly, if you want certain preferred vendors to be able to use your trademarked terms in their ad copy, it's possible to extend them that privilege through Google.

Don't bid on competitors' keywords: Since there is nothing illegal about buying trademarked keywords on Google, Avenue A | Razorfish is agnostic about the choices its clients make in this arena. However, from a strictly financial standpoint, we have seen little to be encouraged by the effectiveness of buying competitors' trademarked keywords. We specifically looked at this question in connection with a telecommunications client for whom we monitored existing keywords on competitive terms for a month.

The click-through rate was so weak that several of the keywords were automatically disabled by Google.² Further, not one sale resulted from the few clicks that competitive keywords delivered.

Don't let affiliate marketers bid on your trademarked terms: Affiliate marketers often command a premium rate for customer acquisition. Since search is an effective low-cost tool for driving volume, you should not let affiliates drives up the price on customers you can acquire yourself.

Summary

The opening up of trademarked keywords on Google has fueled both opportunism and concern on the part of many marketers. By taking the steps recommended here, we believe that marketers with strong brands can best protect against the dilution of those brands. As far as buying the trademarked keywords of competitors, our experience indicates that this strategy seldom performs, and is probably not worth the legal risk.

About Avenue A | Razorfish

Avenue A | Razorfish (www.avenuea-razorfish.com) is the largest independent interactive agency and an operating unit of aQuantive, Inc. (NASDAQ: AQNT), a digital marketing services and technology company. Avenue A | Razorfish solutions are grounded in deep technology, rigorous analytics and a rich understanding of customer needs, including award-winning media planning and buying, search engine marketing, customer targeting and profiling, world-class creative, design and implementation of web-based systems, and integrated marketing programs. Avenue A | Razorfish operates three regions – East, West and Central – with offices located in major U.S. markets, including New York, Chicago, San Francisco and Seattle. Clients include AstraZeneca, Best Buy, Kraft, Microsoft/MSN, WeightWatchers.com and Wells Fargo.

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² Any keyword that gets less than a 0.5% CTR on Google is removed for low performance as per Google's advertising policy.