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Shield brand from ad tricks

Did you know that search engine advertising programs, like Google AdWords, have triggered the widespread practice of companies buying the use of their competitors' trademarks to advertise their own services?

This means when someone searches for your company on the Internet, they may see a "Sponsored Link" belonging to your competition to the right of the search results. In a market where Google earned more than \$23 billion in AdWords revenue last year, this is big news for businesses that invest hard-earned dollars in building a brand.

Let's say a hypothetical business, which we will call XYZ Consulting, learned that its competitor, Acme Consultants, was obtaining many new customers from the Internet. This prompts XYZ Consulting to start its own Internet advertising campaign. It enrolls in an advertising program such as Google AdWords, and purchases its own brand name as a keyword. In addition, it buys the keyword of its competitor, "Acme Consultants." By buying the "Acme Consultants" keyword, XYZ Consulting's advertisement will appear whenever someone searches for "Acme Consultants."

Taking this further, XYZ Consulting might also have its webmaster include the mark "Acme Consultants" as a metatag, also known as hidden text in the code behind XYZ Consulting's website. Doing so would increase the chance that XYZ Consulting's website is included in the results when a Google user searches the term "Acme Consultants."

Other hijacking scenarios are equally alarming. XYZ Consulting might decide to include the name "Acme Consultants" in the text of its advertisement itself, as opposed to keeping it hidden. For example, XYZ Consulting's ad might read, "Call us! We are less expensive than Acme Consultants!"

These practices affect all kinds of businesses – from home maintenance companies to manufacturers to software firms. Having a competitor leverage your goodwill, hard work and reputation creates an intense desire to seek justice.

Keep in mind, though, that despite the deceptive nature of these practices, some of them are perfectly legal – they violate no trademark or other intellectual property law. Companies owning very valuable brands such as Louis Vuitton, GEICO, Rosetta Stone and 1-800-Contacts, have sued Google to prevent it from selling their trademarks as keywords. In most of these cases, Google ultimately prevailed. Trademark owners have had the most success when challenging ads in which their trademarks are visible to the public.

While there is no sure way to avoid falling victim to these practices, there are steps you can take to help protect your brand:

- Register your company's key brands with the United States Patent and Trademark Office. Once the mark registers, you will have broader trademark rights and a claim for greater monetary damages if your mark is infringed. It also tends to be easier to get a search engine, such as Google, to help prevent infringement of your mark if it is registered. This frequently overlooked legal step goes a long way in protecting your brand on a national basis, not just in your local area.
- Review the search engines' trademark policies. In certain cases, such as if your trademark appears in the text of someone else's advertisement, you may be able to get the search engine to cooperate in stopping the trademark infringement.
- Monitor your brands to determine if there is infringement. You should review your brands in search engines on a weekly basis and enter it in the free Google Alerts service so you will be notified by email when your company's name appears on the Web.
- Take action as soon as you discover infringement. Start by contacting the offending company and request that they cease using your company's name in their advertising. If they refuse, seek legal counsel from a qualified intellectual property attorney. But don't delay: If you are slow to respond and allow the infringer to build up the mark, you could be accused of laches (similar to statute of limitations), which may hurt your chances of obtaining relief. Once your trademark rights are diluted, it will be more difficult to defend them later.