Duff on Hospitality Law

Time to Reconsider Those Keyword Restrictions

By Greg Duff on 6.15.12 | Posted in Brands and Trademarks

By now, nearly every revenue manager, electronic distribution manager and sales and marketing manager is familiar with the significance of keywords and the need for brand owners to manage third parties' use of keywords in search-based Internet marketing. Every negotiation of an online distribution agreement (whether direct-to-consumer, wholesale or otherwise) should include careful consideration about reasonable restrictions or conditions a hotelier will place on a distributor's use of keywords.

As technology continues to evolve and to disrupt many traditional travel sales, marketing and distribution channels (Tnooz alone seems to report on new search-based tools weekly), owners and operators must reconsider their historical (and by now standard) approaches to critical contract provisions that address how and to what extent a distributor may use the hoteliers' trademarks, trade names, logos and other intellectual property, including use as keywords. The recent and much publicized launch of Promoted Hotels by Google served as an important reminder of this fact.

Promoted Hotels is Google's new search-based marketing tool that allows hoteliers, OTAs and anyone else interested in securing a preferred booking position over other channels to bid for the right to be the primary (and sometimes, sole) booking option in ads that appear at the top of the Google Hotel Finder search results. As you might expect, nearly all of the searches that I ran for hotels in various locations across the U.S. featured ads and links placed by OTAs and not the featured properties themselves. Does any of this sound familiar?

The legality of this new use by OTAs and other third parties of hotels' trademarks, trade names and possibly other valuable intellectual property (and Google's facilitation of such use) continues to be the subject of much debate (even following the recent Fourth Circuit Court of Appeals decision in *Rosetta Stone Ltd. v. Google Inc.*). Nevertheless, Google's introduction of yet another travel related search tool (or should I say, marketing tool) underscores my point that hoteliers should reconsider their traditional approaches to keywords and limiting their use by other companies. For example, rather than simply seeking to limit a distributor's use of trademarks and trade names as "keywords," hoteliers should consider including references to the use of trademarks and trade names as "Ad Words," (Google parlance) "Promoted Hotels" (Hotel Finder parlance) or the terminology used by any other Internet based search tool. Other issues to consider—should limitations extend beyond the use of keywords in traditional paid

search advertising to include attempts to influence organic search results? Should hoteliers consider limiting a distributor's use of trademarks and trade names to influence information displayed in response to a user's map views? Should hoteliers prevent a distributor's use of the hotelier's trademarks and trade names in connection with travel aggregators that then predominantly feature the distributor over the hotelier? Should limits apply regardless of the platform involved – mobile, device, desktop, decoder ring? We believe the answer to each of these questions is a resounding yes. Any well designed keyword usage policy and contract provision must now consider each of these potential uses of trademarks, trade names and other intellectual property.

In sum, any hotelier that wishes to successfully manage its online presence must keep abreast of the rapidly changing use of technology in the travel and hospitality industries and to consider how those changes may affect their standard approaches to protecting brand assets.

Questions or comments? Please let me know. I look forward to hearing from you.

Tags: Ad Words, distribution, Google, Hotel Finder, Internet marketing, keyword restrictions, OTAs, Promoted Hotels, Rosetta Stone Ltd. v. Google Inc., Tnooz, trademarks, usage policy