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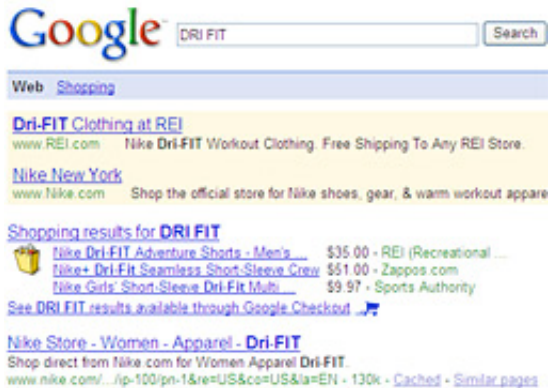
Behind Nike's Lawsuit Lies a Branding Story

Battle With EMS Is Latest Controversy Surrounding Google's Search-Term Bidding Policy

By [Abbey Klaassen](#)

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NEW YORK (AdAge.com) -- There's a fight brewing over the lightweight, wicking apparel technology known as Dri-Fit -- but the battle is about search marketing and the right to bid on trademarked terms.



Google

Dri-Fit is a trademark of Nike, and the athletic giant has sued New Hampshire-based outdoor-sporting-goods retailer Eastern Mountain Sports, which does not sell any Nike clothing, for bidding on the term "Dri-Fit" in Google's advertising system. So when a user clicks on an EMS ad after searching for Dri-Fit, she is driven back to the retailer's website, which displays other versions of wicking technology.

For Google, bidding on competitors' trademarks is allowed -- even if some marketers think it shouldn't be. But the Dri-Fit debate is only the latest in a series of similar complaints. As major marketers funnel more money into the \$9 billion search-advertising category, many are increasingly sour about Google's policy.

Google recently settled a trademark-infringement suit brought on by American Airlines, which was upset that competitors advertised against its trademarked terms. The settlement didn't clarify the rules, but it did allow Google to keep selling ads against marketers' trademarks.

Brand awareness

At the heart of it, the debate over trademarks is part of a bigger branding battle marketers wage online, where billions of dollars are spent on advertising and other forms of marketing to create brand awareness. When a consumer goes online to search on a specific brand, marketers don't want competitors to be able to park in the paid-search listings.

Tom Adams, CEO of Rosetta Stone, likens it to competitors sitting at your doorstep: "Think if you had a shop and competitors were standing outside your store, and the moment someone walks up they say 'Please come with me.'"

Marketers absolutely can co-opt the goodwill generated offline by targeting other brands' search terms, said Rob Murray, president of iProspect, citing Mazda's advertising on Pontiac's search term when the latter ran TV ads urging people to "Google" it.

According to iProspect, the money marketers spend offline to build a brand does indeed affect search performance. A 2007 study found 67% of the online searchers are driven to search by offline channels and that, of those, 39% ultimately make a purchase. (Of course, this year's study showed 45% of marketers still don't integrate offline and online.)

Balancing interests

While Google's policy allows bids to be placed on someone else's trademarked keywords, it does not allow a marketer to use a trademarked term in the ad copy. Google asserts that allowing competitors to bid on branded keywords gives consumers more choice in their search results. "We are trying to balance the interests of trademark owners, advertisers and our users," said a spokeswoman in an e-mail. Yahoo and Microsoft search have stricter regulations and generally don't allow advertisers to bid on competitors' trademarked terms.

"If I'm Geico and driving people to Google's search engine to perform searches and Google's saying we want to give consumer choice, well, in algorithmic [search] everyone expects that [in unpaid or natural search results]," Mr. Murray said. "But when it comes to paid search, the fact Google will benefit from all clicks, it's a slippery slope." In Google's defense, he said, there's lots of aggressive bid management going on and Google can only police it so much.

Mr. Adams is part of a coalition of marketers, the Alliance Against Bait & Click, that includes InterContinental Hotels Group, Starwood Resorts, Northwest Airlines and 1800 Contacts. The group is attempting to stop what they call "scads" -- scam ads that confuse consumers. And while the group's target goes beyond trademark bidding, it does count such tactics as confusing to consumers.

Did you really 'Google' that?

"Somehow in context of search-engine advertising, search engines have gotten idea that if you ask for one thing it's OK to give something else or something in addition," said Harvard professor Benjamin Edelman, a member of the alliance. He likens it to hitting the channel for Fox on a remote control and getting NBC instead.

Of course, who decides what is or isn't acceptable is the big question. Adding another layer of cloudiness is that many trademarked terms have arguably entered the common lexicon. For example, a consumer might say they need a Kleenex, but that doesn't mean they wouldn't take a tissue from Puffs. Or a person may say they Googled something, even when they looked it up on Yahoo.

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