Companies Object to Google Policy on Trademarks

By MIGUEL HELFT
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SAN FRANCISCO — When Audrey Spangenberg idly typed “FirePond,” the name of her small software company, into Google this year, she was not happy with what she saw.

Her company's site came up as the top search listing. But just above it, Google showed the ads of competitors that had paid Google to display their marketing messages whenever someone searched for FirePond, a registered trademark.

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On Monday, FPX filed a class-action suit against Google in federal court in Texas, saying that Google had infringed on its trademark and challenging Google's policies on behalf of all trademark owners in the state. Legal experts said it was the first class-action suit against Google over the issue.

But Google's acceptance of such competitive uses of trademarks has irked many other companies, including the likes of American Airlines and Geico, which have filed suits against Google and settled them. Many brand owners say the practice abuses their brands, confuses customers and increases their cost of doing business.

None of this, apparently, is giving Google much reason to reconsider. This month, it expanded to more than 190 new countries its policy of allowing anyone to buy someone else's trademark as a trigger for an ad. And late Thursday it announced that it would allow limited use of trademarks in the text of some search ads, even if the trademark owner objects.

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policy change, Godiva would no longer be able to prevent such ads from appearing.

“I think that there will be trademark owners that do not like this policy,” said Terri Chen, senior trademark counsel at Google. “But trademark law allows for that. It is a pretty well-established principle in the offline world and in the online world.”

Ms. Chen also said that the new policy brings Google in line with Microsoft and Yahoo, which allow similar uses of trademarks in the text of ads.

Yahoo and Microsoft generally do not allow the more controversial practice of using trademarks as triggers for a competitor’s ads.

The legal issues around such uses of trademarks may seem arcane. But analysts say selling ads linked to trademarks is a big business for Google, which gets the bulk of its revenue from search advertising that it sells through an auction system.

Google's new policy, which will become effective in the United States next month, is likely to raise the prices that advertisers pay the company to appear on searches for trademarks, said Bryan Wiener, the chief executive of 360i, a digital marketing agency.

“There is no question that it is going to increase Google’s revenue,” Mr. Wiener said. He said that companies that offer products or services, like computer makers or hotel chains, may not like the new policy because it will force them to place higher bids to advertise on searches for their own brand names. But retailers, distributors and reviewers will welcome it because it will allow them to show ads that talk about specific products.

But if the policy change could bring in more money, a legal setback in one of the cases involving the use of trademarks to activate ads could be a serious blow to Google’s business.

Legal experts said FPX faces long odds in convincing a court that it has the right to represent all trademark owners in Texas. Trademark cases do not lend themselves to class action because they tend to hinge on whether the use of someone’s trademark confuses people.

“I think that’s going to be an issue in deciding whether to certify the class,” said Mark Janis, a professor at the University of Iowa College of Law. But Professor Janis said the case could lead to copycat lawsuits in other states.

Some experts said Google could face a more immediate challenge from a case filed by Rescuecom, a computer repair company, in 2005. A federal appeals court reinstated the case recently, reversing a dismissal by a district court.

Advertisers who complain about Google’s policies say they are not only upset that competitors show up in searches for their names. They also resent that as a result, they often feel compelled to pay Google more so their own ads appear ahead of their competitors'.

“I know of several companies spending millions of dollars a year in payments to Google to make sure that their company is the very first sponsored link” on searches for their own names, said Terrence Ross, a partner at Gibson Dunn, who represented American Airlines in its suit against Google. “It certainly smacks of a protection racket.”

But defenders of Google’s practice say it is good for consumers. People who are shopping for a new camera, for example, will benefit from seeing an ad for a competing, and perhaps cheaper, product that they might not have known about.

Google declined to comment on the FPX case, but said it would defend itself.

Ms. Spangenberg said she filed her suit in hopes of forcing Google to reverse its policy.

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