

Emfluence: Empowering Trademark Owners to Battle Online Infringement

By Dianne M. Smith-Misemer

The omnipresence of the Internet has turned cyberspace into a veritable hunting ground for trademark infringers who are becoming increasingly sophisticated and harder to detect. But Kansas City-based Emfluence, a Hovey Williams client since 2006, turns the hunter into the hunted, putting brand owners on the offensive with a trademark and keyword monitoring service that can smoke out even the cleverest and most evasive infringers.

Competitors literally can steal your business leads right out from under you, redirecting customers trying to find your business and diverting sales that should have been yours. Sadly for trademark owners, this brand thievery is relatively easy. The thieves simply fool search engines into releasing coveted top rankings by embedding your trademark into the META tags on their web pages and voilà—your potential customers wind up at a competitor’s website. Not only can this weaken the source-identifying value of your trademark, thereby impairing its effectiveness; it can damage your company’s reputation and diminish its revenue stream.

Additionally, unrestrained infringement leaves a trademark owner susceptible to challenges for mark abandonment and equitable defenses like acquiescence and waiver. Studies have shown that the monetary value of a trademark is directly related to its strength, and a trademark’s strength, in turn, bears a direct relationship to the vigor of the trademark owner in enforcing and protecting its trademark rights. So policing and protecting your trademark has real financial consequences for your business.

Currently, there are no laws that prohibit keyword advertising as such. Competitors can purchase a trademark as part of keyword advertising without any liability, unless the trademark owner actually can establish a “likelihood of confusion,” which is the standard in any trademark infringement case. Still, if you are not aware of the trademark thief, it doesn’t matter that you could prove likelihood of confusion. The revenue just keeps leaking out, like motor oil under an old jalopy. In addition, online advertising costs may soar when a trademark owner has to engage in bidding wars for their own brands as keywords.

If website traffic is being diverted and business is being stolen, then a trademark owner needs to know how and by whom. With that information in hand, a trademark owner can take steps to regain control of its trademark on the Internet and recapture real revenue that it may be losing.

Though it may have been a decent tool at one time, relying on a search engine alone, such as Google®, to locate online infringers probably isn’t good enough today. With searches sometimes yielding tens of thousands of hits, it’s no wonder why trademark policing today feels more like a game of Whac-a-Mole®—as soon as one infringer is knocked down, another pops up. Plus, today’s sophisticated tactics of evasion make detection a hit-or-miss proposition at best.

Launched just last year, Emfluence’s trademark and keyword monitoring service uses enhanced tools designed to find savvy

infringers who use evasive techniques like dayparting and geo-targeting keyword advertising. For example, dayparting allows infringers and legitimate advertisers alike to schedule advertising by specifying certain hours or days of the week. An infringer in New York can purchase a California company's trademark during off-peak Pacific Coast time hours to avoid detection. Similarly, infringers can use geo-targeting to direct their keyword ads to specific locations and languages. Geo-targeting enables infringers to carve out trademark owner's geographic territory by IP address, so a Kansas company that runs a routine infringement search may never see that its biggest competitor is using its trademark in keyword advertising everywhere but Kansas. Or, a Chinese infringer can purchase an English trademark in Chinese so that no English-language search would ever turn up the infringement. There are so many ways an infringer can hide that even the most vigilant trademark owner may find traditional online searching insufficient today.

Emfluence's trademark and keyword monitoring service searches for infringers randomly, both by time and geography. That makes it harder for trademark thieves to evade detection and easier for trademark owners to identify, and hence, put the kibosh on infringement. Todd Sandoval, Vice President of Digital Strategy for Emfluence, warns infringers, "Eventually, we will find you."

Emfluence has different levels of monitoring services, depending on a client's budget and the amount and type of reporting desired. Sandoval explains that although there are other companies that track online infringers, Emfluence adds a human element that technology cannot replace. Emfluence professionals review search reports and determine how serious the infringement may be. This makes the information more valuable and effective for the customer to protect and enforce its trademark. Sandoval says the information gathered by Emfluence's service can serve as powerful evidence in infringement cases and is valuable tool in tracking repeat infringers.

For more information about Emfluence and its services, visit Emfluence at <http://www.emfluence.com>.

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