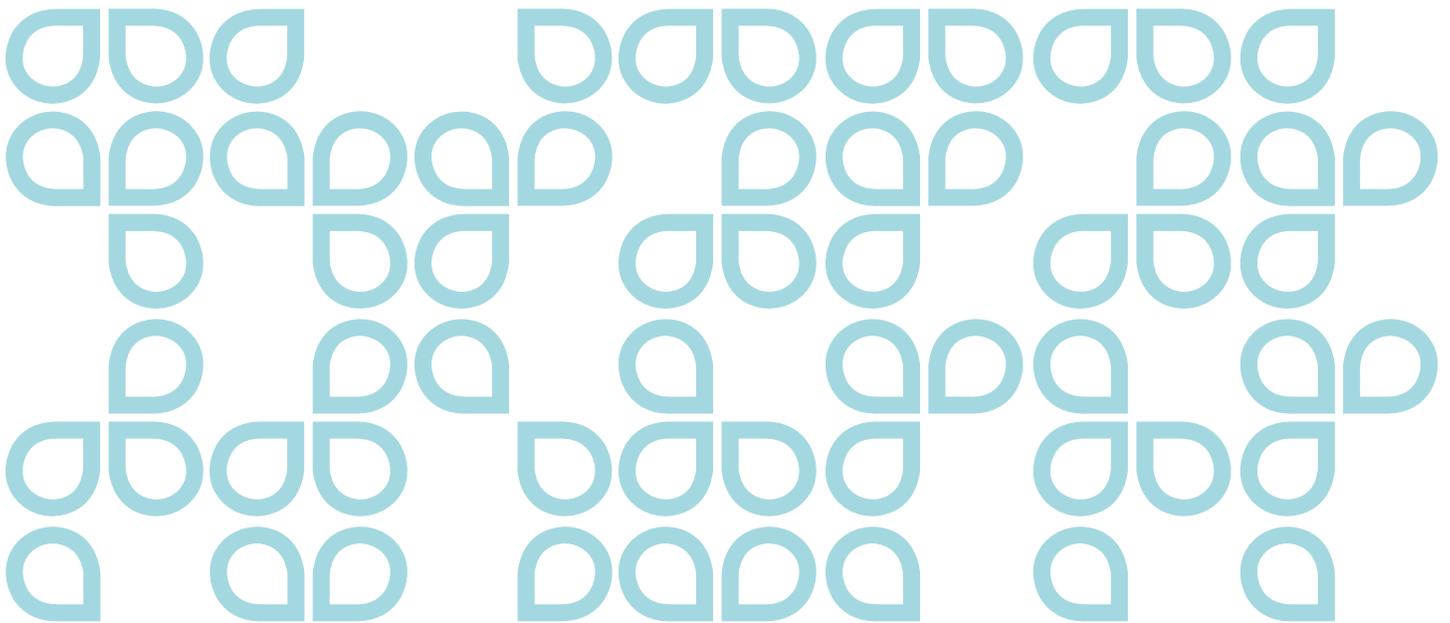




PERFORMANCE **MARKETING** ASSOCIATION



## *What You Need to Know about Trademark + Bidding*

*Created by the PMA Coupons and Deals Council*



## What You Need To Know About Trademark + Bidding

pma

### What is Trademark + Bidding?

Trademark bidding is the act of targeting paid search ads to branded keywords such as an advertiser's brand name or a variation thereof. "Trademark plus" (TM+) uses a brand name plus another keyword. This could be something like the brand name + coupon or brand name + review.

The foundation of Trademark bidding goes back to the beginning of online advertising, and matured into bidding on brand names and keywords on the primary advertising vehicles of today, specifically Google and Facebook. This is the primary domain of the Brand itself, bidding on it's own terms to get traffic. During the growth of online intermediaries such as online travel agencies, online product resellers, and the rise of affiliate marketing, there came more competitors for those keywords and brand names. In the competitive field of affiliate marketing, a cottage industry grew from SEO specialists, comparison shopping engines, and other individuals and companies who had a vested interest in winning traffic - as there was an affiliate commission waiting at the end of the transaction.

### Advantages of using Trademark + Bidding for Advertisers?

- It allows broader coverage in search engines with multiple parties covering more keyword.
- By allowing Trademark +, you defray the cost of paying for your own bids as those Trademark + bidders will be funding their own bids.
- Affiliates are always grateful to get bidding rights, and by definition will be more engaged partners. They often open up discounted or free placements and other benefits to access their site visitors.

## **Disadvantages of using Trademark + Bidding?**

- Ceding control of your brand to a third party
- Altering your known metrics in your own CPC campaigns
- Not installing the proper rules or having your Trademark + partners go rogue and not follow those rules

## **What are the risks of rogue Trademark bidding?**

- If the rules you set are not followed, it will increase the cost of bidding on your own keywords and decrease your own metrics such as a Click through rate (CTR). There is further evidence that your Organic search will also be negatively impacted by rogue Trademark + bidders.
- Loss of brand control - If you have rogue bidders, you can't control when or how they are promoting your product, where their winning clicks are landing, and ultimately how this boils down to conversions.
- The trickle down impact of the loss of brand control mentioned above is that by having rogue trademark plus bidders.

## **Why are some advertisers allowing it and others not?**

Trademark Bidding to many brands is simply an unknown and many brands don't understand the landscape and ramifications thereof. Thus, they allow trademark bidding or don't enforce their policy, out of lack of education. Others will allow Trademark Bidding to one or more trusted entities because those entities do it better than they can do it on their own. It can be an easy way to get broader keyword and brand name coverage across the online advertising landscape.

## **On the flip side, many do not allow it for the obvious reasons that**

- It raises their effective bid for their own trademarks.
- They have no control over their brand trademark.
- They might be paying commissions to a sale they could have won themselves.

## **What specifically is the damage of Trademark bidding when a Brands' terms are hijacked?**

Aside from the obvious issue of losing control of your branding by having your Brand terms hijacked, there is a very real financial cost to other parties bidding on your terms, specifically around:

**Lost traffic** - Brand bidding campaigns by the Brand rely on key metrics of the cost of branded keywords bidded on, click through rates, and the affiliate metrics of sales and conversions. All of these metrics drive a campaign ROI, which is degraded when PPC campaigns are hijacked by third parties breaking the rules of brand bidding.

**Higher bid prices** - Secondly, more participants bidding on a keyword drive the algorithm to raise the bid price, costing the Brand Trademark owner more money in bids.

This BrandVerity article highlights their research.

## **Are there any court cases of note in this area?**

The FTC explained, "Search advertising is uniquely valuable to advertisers because it puts an advertisement in front of a consumer at the precise moment the consumer is signaling her interest or intent by telling the search engine what she is seeking: it is literally the right ad, for the right user, at the right time."

Recent trends according to this ABA article suggest that while no cases have been won by a Brand trying to restrict keyword usage online, more cases are being heard and decided in this area.

## **A Recent Appellate Decision**

The Ninth Circuit recently addressed keyword advertising and trademark infringement in *Multi Time Mach., Inc. v. Amazon.com, Inc.*, 804 F.3d 930 (9th Cir. 2015). In that case, plaintiff sued Amazon for trademark infringement because Amazon's website produced a list of competitors' products when a consumer searched for plaintiff's trademark, even though plaintiff did not sell its trademarked product on Amazon. The district court granted summary judgment for Amazon, and the Ninth Circuit affirmed. The court held that, "[i]n light of the clear labeling Amazon uses on its search results page, no reasonable trier of fact could conclude that Amazon's search results page would likely confuse a reasonably prudent consumer accustomed to shopping online as to the source of the goods being offered." *Multi Time Mach., Inc.*, 804 F.3d at 938.

Google and Rosetta Stone, the education technology company that develops language-learning software, reached a settlement agreement after the Fourth Circuit reversed a summary judgement ruling in favor of Google. *Rosetta Stone Ltd. v. Google, Inc.*, 676 F.3d 144 (4th Cir. 2012). Rosetta Stone's general counsel called the settlement "a significant victory for consumer protection" that "goes a long way toward advancing our goal to strengthen the Rosetta Stone brand and trademarks around the world." See Ronald C. Goodstein et. al., *Using Trademarks As Keywords: Empirical Evidence of Confusion*, 105 *Trademark Rep.* 732, 755 (2015). Though the terms of the settlement are confidential, a Google search for "Rosetta Stone" now only reveals an advertisement for the official Rosetta Stone website.

## **How many advertisers currently allow it?**

While there are currently no general industry figures, we have some individual feedback from select networks below:

- In a global network, 9% of their North American merchants allow publishers to bid on their brand search terms. While desirable for brand web traffic, they've noticed it's unpopular because brands typically do their own search campaigns.
- Another network has a manual check box for merchants to select if they allow Trademark bidding, but there is no verification for this selection. Currently, they have 23 brands that have selected this option but there may be more that allow it for specific relationships.
- Lastly, 22% of merchants on a different network currently allow TM+ bidding.
- These numbers are relatively low, which could be a result of advertisers not being properly informed about the benefits. Other networks, agencies, and sub-affiliate networks who preferred to not be directly quoted have contributed percentages from 10% up to as high as 40%.

## **What are best practices for advertisers in setting rules for <sup>TM</sup>+ bidding?**

- Set strict rules on exactly what you want the Trademark + bidder to do (allowed keywords, prohibited keywords, goals for the campaign, consequences for not following).
- Choose affiliates who can prove through references and case studies that they are a trusted resource to grant these rights to.
- Set a limit to the number of affiliates you grant access to, and make it small to begin with, you can always build out from there.
- Give affiliates the resources necessary to be successful, such as your promotional calendar, assets and collateral.

In summary, a well managed Trademark + Bidding strategy can add incremental exposure and sales to your merchant program. There are third party companies that have the expertise and levers to help maintain full control over this effort, or hiring a direct resource to perform this function in-house can produce positive results. There are a number of resources in the PMA that can assist you in this effort.

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