PERFORMANCE MARKETING ASSOCIATION

What You Need to Know about Trademark + Bidding

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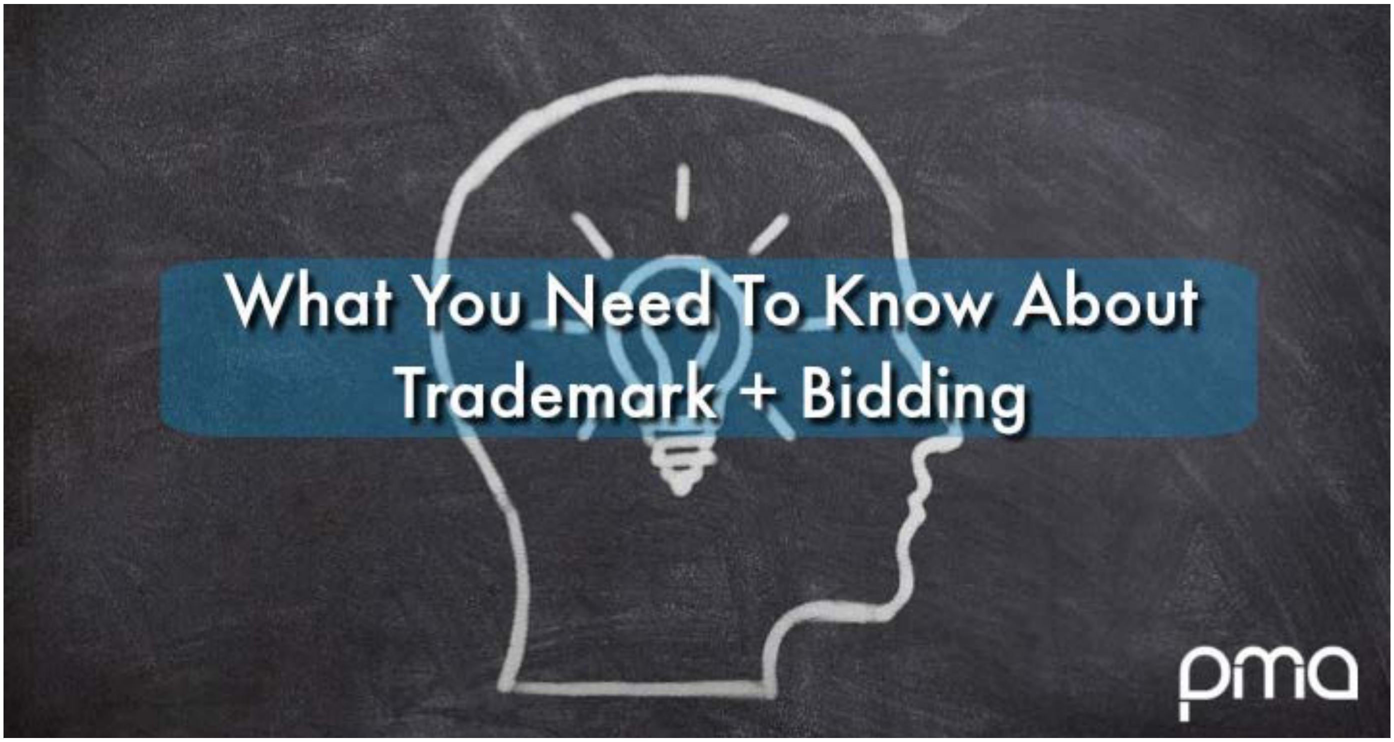

What is Trademark + Bidding?

Trademark bidding (also known as "Brand 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 TM+ 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 its 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.

Benefits of using TM+ Bidding for Advertisers

- It allows broader coverage in search engines with multiple parties covering more keywords.

- By allowing TM+ bidding, you defray the cost of paying for your own bids as those TM+ bidders will be funding their own bids.

- Affiliates are always grateful to get bidding rights and, by definition, will be more engaged partners. In many instances, Affiliates are open to providing benefits (i.e. discounted media exposure, reduced commission fees, etc.) to Advertisers who allow access to their site visitors.

- Enabling TM+ for your Affiliate partners can be an effective and efficient way to grow your brand's SOV within search results.

- If you give exclusive rights, the affiliate partner with the rights can be an additional monitor of who else is bidding and may alert you if other affiliates are violating the policy.

Common Advertiser Concerns + Solutions

- Ceding control of your brand to a third party

    Solution: Consider testing with a well-known Affiliate for a limited-time campaign and then measure results to see the value the Affiliate generated. Advertisers can request weekly reporting to monitor performance closely during the test, so they feel more comfortable about how the campaign is performing throughout.

- Altering your known metrics in your own CPC campaigns.

    Solution: Advertisers can pre-approve a list of keywords that Affiliates are able to bid on. Anything outside of that list is off limits and still controlled by the advertiser. After a campaign, the advertiser can review key metrics such as CVR to see if it makes more sense to continue these campaigns with Affiliates or take back control of those keywords.

- Not installing the proper rules or having your TM+ partners go rogue and not follow those rules.

    Solution: Selecting the correct Affiliates to TM+ bid for your program is key. Before launching a campaign, setting up parameters around bid caps, positioning, and campaign duration should be discussed to minimize future issues. It is imperative not to set up any rules that you cannot monitor and enforce.

- Risks of rogue TM+ bidding include creating spend inefficiencies and loss of Brand control.

    Solution:

    1. Creating spend inefficiencies - 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 a Click Through Rate (CTR). There is further evidence that your Organic search will also be negatively impacted by rogue TM+ bidders.

    2. 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.

Why are some Advertisers allowing it and others not?

TM+ bidding to many brands is simply an unknown and many brands don't understand the landscape and ramifications thereof. Thus, they either allow trademark bidding or don't enforce their policy, out of lack of education. Others will allow TM+ 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;

- If done without guidelines, it can raise their effective bid cost 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 TM+ bidding when a Brands' terms are hijacked?

Brand term hijacking is when an affiliate uses an Advertiser's name, display URL, and/or keywords to direct PPC traffic to a competitor.

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 Advertiser rely on key metrics of the cost of branded keywords bid on, click through rates, and the affiliate metrics of sales and conversions. All 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 - Secondarily, more participants bidding on a keyword drive the algorithm to raise the bid price, costing the Brand Trademark owner more money in bids.

What are best practices for Advertisers in setting rules for TM+ bidding?

1. State in your public terms and conditions that you do not allow TM+ bidding. Then, select one or two trusted Affiliates to work with. This will ensure there is a strategy behind the practice and will make it easier to monitor profitability and incrementality.
2. Set strict rules on exactly what you want the TM+ bidder to do (allowed keywords, prohibited keywords, goals for the campaign, consequences for not following).

3. Choose Affiliates who can prove through references and case studies that they are a trusted resource to grant these rights to.

4. 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.

5. Give Affiliates the resources necessary to be successful, such as your promotional calendar, assets and collateral.

6. Utilize resources built into your affiliate tracking network or platform such as compliance monitoring and commission attribution.

7. Ensure compliance with all your Affiliates by engaging a search monitoring solution.

8. Work closely with your Paid Search team so they can help monitor compliance and advise on what terms they would like Affiliates to be bidding.

What are the rules?

The Federal Trade Commission (FTC) in the United States has provided guidelines and regulations concerning online advertising, but its specific stance on trademark rules in online advertising may vary depending on the context. The FTC's primary focus is on protecting consumers from deceptive and unfair practices in advertising, including those that involve trademarks. Here are a few general principles the FTC emphasizes:

1. Deceptive Advertising: The FTC prohibits deceptive advertising practices, including those that involve trademarks. If an advertiser uses a trademark in a way that misleads or deceives consumers, it may be considered deceptive. For example, if an advertisement implies an affiliation or endorsement with a trademark owner that does not exist, it could be seen as deceptive.

2. Clear and Conspicuous Disclosure: The FTC emphasizes the importance of clear and conspicuous disclosure in online advertising. If the use of a trademark in an advertisement could mislead consumers about the nature of the relationship between the advertiser and the trademark owner, it may be necessary to disclose any material connection or lack thereof to avoid deception.

3. Endorsements and Testimonials: The FTC has specific guidelines regarding endorsements and testimonials in online advertising. If an advertisement uses a trademark in connection with an endorsement or testimonial, the advertiser must ensure that the relationship between the endorser and the trademark owner is disclosed clearly and prominently.

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."

It's important to note that the FTC's guidelines and regulations evolve over time to address new advertising practices and technologies. For the most up-to-date and comprehensive information on the FTC's stance on trademark rules in online advertising, it is advisable to consult the FTC's official website and review its specific guidelines and enforcement actions related to online advertising and trademark use.

US brands and right holders must navigate the evolving landscape of liability on a global level, considering the practices and approaches in different jurisdictions to protect their interests and minimize liability risks.

In Summary

A well-managed TM+ Bidding strategy can add incremental exposure, sales and efficiencies to your Advertiser 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 several resources in the PMA that can assist you in this effort.

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Updated by: PMA Publisher Recruitment Council 2023, chaired by *Lauren Isbrandtsen*

For more information on the PMA, our resources, or membership, please visit www.thepma.org.