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Google's Ad Change May Raise Revenue, Exposure To Lawsuits

BY PETE BARLAS

INVESTOR'S BUSINESS DAILY

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Google ([GOOG](#)) could be in for a revenue boon or a legal bust by loosening its requirements on the use of product trademarks in search ads.

The search king last week revealed the change in a posting on its official blog. Observers say the move could boost its ad revenue. But they point out that Google has already faced trademark-related legal issues, and the new policy might open the door to more.

In the search ad game, advertisers bid for pay-per-click keywords — say, 2 cents per click for "dog grooming" — and the advertiser that pays the most generally gets the best placement. (Relevancy is another factor.)

A Downtrend

Google, which makes almost all its revenue on ads, is seeing slower growth

% revenue growth vs. year-earlier quarter



All along, advertiser X could bid on keyword Y, even if Y were a trademark of an X rival. But X could not include Y's name in its ad. With the change, slated to take effect June 15, X can include Y in its ad if it is indeed selling Y and doesn't infringe on any trademark.

"Certainly it's very fair to say that this is going to generate more revenue for Google," said Danielle Leitch, executive vice president of client strategy for MoreVisibility. The search marketing firm helps companies advertise online.

"They are relaxing the rule," Leitch said. "They are opening a door."

Google will now, for example, let advertisers use trademarks such as "**Nike**," ([NKE](#)) "Adidas" or "Nike Air Max" in the text of their ads — but only so long as they are selling those products. Google began accepting those ads for review on May 15.

The change will help level the playing field between small and large retailers, Leitch says.

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"There is an official Nike (online) store and an official Adidas store," she said, "but there are also tons of e-commerce affiliates and stores that sell those same brands that can now use 'Nike' or 'Nike Air Max' in their ad copy instead of just saying 'running shoes' or 'looking for running shoes, buy them here.' "

Google makes nearly all of its revenue from its search ads. Its fast growth was driven in large part by advertisers' outbidding each other for the best placement with the most desired keywords.

Cost Per Click Falls 14%

Last quarter, though, the average amount Google advertisers pay for ads — the cost per click — fell by 14% compared with a year earlier as bidding for ad keywords and phrases slowed, says Youssef Squali, an analyst at Jefferies & Co.

Loosening its trademark rules is aimed at re-stimulating the bidding for keywords, Squali says.

"This (business) model has a tremendous number of levers that they can pull to affect revenues and growth," he said. "It should only help increase prices."

He, too, says the trademark policy change will level the playing field.

The company needs to make changes to better cope with the economy, Sandeep Aggarwal, an analyst at Collins Stewart, wrote in a report released last week.

"There are no signs of improvement in search spend" this quarter, he wrote. Small and midsize businesses are slowing their search ad spending.

Google is adjusting its trademark policy in the U.S. "to improve ad quality and user experience" while "reducing the number of overly generic ads that appear across our networks in the U.S.," Dan Friedman, a member of Google's search ad team, wrote in a company blog posting on Thursday.

But the policy change could open the door to more lawsuits from unhappy trademark owners, says David Kelly, chairman of the trademark practice group for Finnegan, Henderson, Farabow, Garrett & Dunner, a Washington, D.C., law firm.

"Some trademark owners don't like the fact that Google is selling trademarks and making money on them," Kelly said.

More Descriptive Ad Copy

Leitch, however, favors the change because she says it will let retailers, resellers and others post more descriptive ads.

"If I'm a retailer that sells cases for BlackBerry phones, before (the change) I could just say I sell phone cases. Now I can say I sell cases for the BlackBerry," she said.

Google hopes to boost interest and keyword bidding among advertisers, Leitch says.

"They are trying to make it so that it makes more sense to the user in terms of what (advertisers) are actually offering or selling," she said.

Google says ads must not infringe on company trademarks.

That is, "The advertiser's site must sell (or clearly facilitate the sale of) the goods and services corresponding to a trademark term," Google says on its AdWords help Web page, where it answers the question: What is Google's U.S. trademark policy?

Google says it is "willing to perform a limited investigation of reasonable complaints about the use of trademarks in ads."

But the company also says it is "not in a position to arbitrate trademark disputes between the advertisers and trademark owners."

How much policing Google will do is still a question, Leitch says.

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"For somebody who is not selling Nike shoes and uses 'Nike' in the ad copy, the question still is how quickly is Google going to be able to find it and pull it down?" she said.

Google has had disagreements with companies over trademark matters.

Just last week, FPX, a software company better known as Firepond, accused Google and other search ad sellers of trademark infringement in a class-action lawsuit it filed in a Texas district court.

Firepond objected to a rival company using the phrase "product configurator" in a Google ad. Firepond sells a product known as "product configurator" software.

In a separate case last month, the 2nd U.S. Circuit Court of Appeals ruled that a trademark infringement suit filed by a New York-based computer services company against Google should not have been dismissed by a District Court three years earlier.

The suit, filed by Rescuecom in 2004, accused Google of allowing rivals' ads to appear when users searched for "Rescuecom" on Google's site.

A similar and better-known suit filed by insurance giant Geico was dismissed in 2004.

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