

THE AFFILIATE MANAGER'S GUIDE TO COMPLIANCE

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Introduction

► We welcome your feedback, so please, feel free to share your case studies, words of wisdom, and sage advice by emailing us at Support@TheSearchMonitor.com, with the subject 'Affiliate Guide'. We will incorporate new ideas into a follow-up guide.

The following information was prepared to assist Affiliate Managers with crafting, enforcing, and managing an effective compliance strategy. We were inspired to write this guide because Affiliate Managers are often faced with the balancing act of producing revenue from the affiliate channel while not being viewed as a negative contributor.

The affiliate channel often comes under fire because of the activities of a few overly ambitious and perhaps nefarious affiliates engaged in practices that put other aspects of your company at risk. These risks include things like:

- Misrepresenting your Brand
- Cannibalizing Sales
- Breaking Legal Regulations
- Violating Competitor's Trademarks
- False advertising

There are many ways to protect the vibrancy of the affiliate channel and it all starts with a tight compliance strategy that is well documented and well communicated to your affiliates. You need a compliance strategy to do 3 things: (1) protect you from the bad guys—bad affiliates who can damage your brand, reputation, and revenue sources; (2) prop-up your brand through strong alliances with a few good guy affiliates; and (3) balance the needs of your brand while still giving your affiliates the freedoms and financial incentives to get up and go to work for you every day.

You will achieve affiliate manager nirvana when the affiliate channel is coordinated with the goals of the broader corporation while at the same time bringing in meaningful revenue. In this guide, you will find a series of articles to assist you in this quest which address a variety of topics including:

- Strategies for Brand Protection using Super Affiliates
- Affiliate agreement necessary restrictions
- Media Options & Channel Conflict
- Search Team vs Affiliate Team: Revenue Wars
- Trademark Law & Your Risks
- Guide to Search Engine Trademark Policies
- Is Your Affiliate Brand Bidding on Purpose?
- Handling URL Hijackers
- Methods Used to Evade Detection
- Steps to Take Against Violators

Strategies for Brand Protection Using Super Affiliates

Techniques to lower your CPCs and improve your ROI using an army of affiliates on paid search

Using paid search for brand advertising can be costly and very competitive, however, you can think about using your affiliates to help you win in the market. To determine if leveraging your affiliates is right for you, evaluate the competitive landscape on your brand terms. If any of the below statements are true for you then it might be a good strategy to empower a small group of your affiliates:

- There are more than three advertisers sponsoring your brand terms or phrases on paid search.
- You are not always in the top ranking position in sponsored results on your brand terms or phrases.
- Your ROI is lower than you would like on your brand terms.
- Your CPC is higher than you would like on your brand terms.

The way this strategy works is by setting up a small group of special affiliates to advertise on your branded terms under the structure of a very carefully crafted affiliate policy. Essentially you are creating a partnership between you and your affiliates. The ultimate goal of this strategy is to push your ads to the top of the page and to chase your competitors out of the market. The end result of this strategy should be less competition on your branded terms and lower CPCs.

To set up this strategy you will need to create a specific affiliate policy for this, pick the right affiliates, and monitor the results.

Creating your policy:

You will either need to add clearly defined rules that empower a handful of special affiliates (usually 2 – 4 affiliates) by amending your existing affiliate policy or creating special deal terms just for these affiliates.

Here are some of the rules that you will want to consider putting in place:

- ✓ **Display URL rules.** *Don't* allow your special affiliates to use your top-level domain as the display URL. For this strategy to work, you want your affiliates to each have separate URLs so that multiple affiliate ads will display in the sponsored listings simultaneously.
- ✓ **Ad copy restrictions.** *Do* define ad copy restrictions and perhaps even supply the ad copy so that your special affiliate team will not be showing ads that contradict yours or other affiliate ads. This includes offers and claims. For example, you cannot have multiple affiliates claiming to be the “official” web site.
- ✓ **Ranking restrictions.** *Don't* allow your special affiliates to outrank you on your brand terms. You want to maintain the highest position and you are using your special affiliates to prop you up. Therefore the affiliates will need to watch their CPC and page position.
- ✓ **Keyword restrictions.** *Do* allow your special affiliates to advertise on your brand terms. Do not allow your regular affiliates to advertise on your brand terms.
- ✓ **Landing page links.** *Do* require that all of your special affiliates have their own unique landing pages which link to you. You may want to consider building these landing pages for them and/or supplying the appropriate content.

Picking your special affiliates:

Identifying the group of special affiliates who you will bring into the fold as your partner is very important. You should select reputable affiliates or preferably an agency that specializes in CPA marketing. You should carefully screen the marketing practices of your selected affiliates to ensure that they have integrity and adhere to high standards in their marketing practices. This is both an up-front task and an ongoing maintenance task. Replace any special affiliate who is not following your rules if they don't respond to a warning notice with a quick response to rectify any missteps.

Informing all of your affiliates about the do's and don'ts:

If you add to your existing policy the new rules for your special affiliates, you must still inform your regular affiliates about any changes to your affiliate policy that impact them so that they do not interfere with your plans and goals.

Monitoring and reporting the results:

For this strategy to be successful, you will need strong special affiliates and all of your affiliates including your regular ones to comply with your rules. Your regular affiliates and your spe-

cial affiliates cannot be allowed to break your rules or you run the risk that their activities will interfere with your plan. Carefully monitor search results pages, preferably with automated software that can provide reports to you on both your special and regular affiliate activities. It is also a proactive idea to consider providing your special affiliates with access to your monitoring reports so that they can be fully aware of any "accidental" missteps on their part and make quick corrections. Also as always with paid search, you will need to carefully monitor the competitive landscape. It is best to create reporting specifically on your rank, CPC, and ROI on your branded terms with a before and after look so that you can tell if the plan has had an impact.

It is important to protect your brand and to stay competitive on your branded terms; however, new policies on the SERPs and the growing competition in paid search can make this difficult. Creating a proactive strategy for using your affiliates to leverage and control your branded terms is a great option. Before embarking on this strategy, take great lengths to create a strong affiliate policy, pick the right special affiliates, and create a plan for monitoring and reporting the results. If carefully and correctly created, this plan will yield you more sales at a lower CPC and push your competition out of the ranks. ■

Affiliate Agreement: Restrictions

Best practices for crafting appropriate restrictions in your affiliate agreement

Compliance begins with a well crafted and well thought out affiliate agreement. This is not legal advice, and is intended as business advisement. Many programs have unique issues that require customized agreements. The following are examples of restrictions to aid you in deploying and effective compliance strategy without putting a choke hold on your affiliates:

- ✓ **Direct Linking a.k.a. URL Hijacking.** If you and your affiliates are both advertising in the same places e.g. the same keyword list on Google, Yahoo, or Bing, then you need to prohibit direct linking. This is because direct linked ads will compete with you for placement and ad serving frequency. The exception to this is if you and your affiliates are advertising in different places, then you may want to allow direct linking to give your site exposure provided that you define specifically where this is allowed and any ad copy restrictions that follow.
- ✓ **Competitive Brand Bidding.** You should prohibit competitive brand bidding i.e. the practice of sponsoring paid search ads on a competitor's trademarks in some circumstances:
 - a) If you allow your affiliates to direct link, or
 - b) If your products are confusingly similar to your competitor's products either in look and feel and/or brand name, or
 - c) If your affiliate promotes only your goods & services and not the competitor's on the landing page.
- ✓ **Media / Keyword Restrictions.** You should prohibit your affiliates from directly competing with you on specific media properties and keywords. Exceptions: if you are deploying a strategy with super-affiliates to box in a market or if you cannot get enough reach on your own. The list of restricted terms should include your brand names, typos of brand names, and variations that include '.com' or typos of that. You may also want to include your top performing keywords and/or brand phrases—phrases that contain your brand along with a generic word.
- ✓ **Negative Keywords.** If you are restricting specific keyword terms from paid search advertising, then you should also require that those same terms be negatively matched to prevent the search engine(s) from accidentally auto-matching your affiliate's ad to a restricted keyword.
- ✓ **Rank Restrictions.** If you do allow your affiliates to advertise on your brand name or top performing keywords on paid search, then you may want to enforce rank restrictions on those specific terms so that your ads are on top.
- ✓ **Domains.** You should prohibit your affiliates from registering domains that contain your brand and typos of your brand.
- ✓ **Link Cloaking.** Link cloaking can be used for good or for evasion purposes. If you have the technical know-how, you may consider providing your affiliates with a link cloaking tool so that you can easily decode the affiliate network and ID from cloaked links while still enabling your affiliates the ability to cloak. The restriction needed in your affiliate agreement is to prohibit link cloaking if done through an unauthorized method or if done for the purpose of evading you.
- ✓ **Compliance with Search Engine Rules.** You should require that your affiliates follow the editorial guidelines of each search engine for example (1) the landing page must match the display URL; and (2) no redirects or jump pages that immediately redirect to your website.
- ✓ **Prohibit Evasion.** You should prohibit your affiliates from using evasion tactics to hide the affiliate link when the visits are from either yourself or from search provider editorial bots checking on paid ads.
- ✓ **Violation of Laws, Rules, & Regulations.** If your industry has specific regulations as is the case with certain verticals, you need to require compliance with those regulations. If you allow

email marketing, then you must require compliance with the can spam act. Your affiliates who operate editorial publications must also comply with new rules from the FTC when they are endorsing or recommending your products which require disclosure that the website is a compensated affiliate.

- ✔ **Ad Copy & Landing Page Copy.** You need to prohibit things like: (a) use of your brand in ad copy text or in the display URL if you are prohibiting brand use; (b) false advertising or any claim that shows you OR your competitors in a false or misleading light; (c) promoting old invalid offers past the offer expiration date; (d) using certain words e.g. 'Official' or 'free'; (e) If you want your affiliates to have unique landing pages, then you will need to prohibit them from copying your landing pages. In some cases, you may want to supply the ad copy to control promotions and/or the landing page text in order to control the meta descriptions of organic listings.
- ✔ **Press Releases.** You may want to include a restriction prohibiting press releases.
- ✔ **Fraudulent Commissions.** You will also want to prohibit fraudulent activities like cookie stuffing, link interception, & falsifying orders.
- ✔ **Referral Transparency.** It is important to see the referrer information from affiliate traffic so

that you can evaluate the viability of different marketing techniques. Problems arise when affiliates hide or spoof the referrer which is done either because the affiliate does not trust you or the affiliate is doing something wrong. You should require referrer transparency and prohibit spoofing or removing the referrer.

The above rules need to be applied to the affiliates with whom you have a direct relationship, and any sub-affiliates of your direct affiliates. Be sure that these rules are applicable to the affiliate INCLUDING all websites and businesses owned and operated by the affiliate. It is not uncommon for an affiliate to sign-up to your program using one web site address, then sign up for your competitor's program using another and then brand bid on both of you.

Lastly, it is important to communicate your rules effectively to your affiliates. Remember that your affiliate agreement is written in legalese and some of your affiliates will not read it. To ensure that your restrictions are communicated thoroughly, you may want to also publish an FAQ section, hold training sessions or provide an online video, and/or explain the restrictions via your affiliate newsletter. ■

Media Options & Channel Conflict

A variety of online media channels offer rewards for affiliates as well as potential obstacles for your brand


There are a variety of great places for affiliates to advertise online that produce high click thru rates which include:

- Online Yellow Pages
- PPC Search
- Mobile Search
- Facebook ads

Problems arise for other marketing departments within your organization when your affiliates start bumping into each other and into the efforts of these other departments such as your display ad group, the SEM team, the branding team, and/or your PR department. Consider these conflicts:

Conflicting Offers

Offer conflicts can occur if multiple ads that promote you are running on the same media at the same time each with different promotions. For example, the online yellow pages allows for multiple ads promoting the same advertiser to appear simultaneously. Conversely, search engines like Google, Yahoo, or Bing only allow for 1 advertiser to appear at a time with the same display URL. However, this rule does not fix the issue because it does not prohibit the same advertiser from being promoted repeatedly. For a few examples of these conflicts, check-out (1) www.yellowpages.com and search for 'cable tv' or 'mortgages'; or (2) here are a few ads running at the same time on the search 'vonage deals' on www.google.com:

<p>Vonage Deal: \$25.99/mo 1st Month Free. Limited Time! Free Calls to U.S. & 60+ Countries. Vonage-Promotions.com </p>	<p>Vonage \$9.99 a Month Lowest Price Anywhere On Vonage! Free Adapter \$0 Setup Fee Order Now www.Vonage-Forum.com/sign-up.html</p>
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Similarly, you can run into messaging conflicts that are unique to social media outlets like Facebook where your PR department or social media team is directing the content on your Facebook page, while your SEM team and your affiliates are running ads. When disparate groups are creating content, there is a good chance that the ads vs. the page content may conflict.

Ad Displacement

Ad displacement means another advertiser is appearing in your place.

In paid search and mobile search, only 1 advertiser at a time will be shown with the same display URL. This is why direct linking is a negative practice for you in paid search and mobile search. If the affiliate direct links to your website through a paid ad, then when the affiliate ad is being shown, your ad is not. This effectively hurts your market share, hurts your reach, and wreaks havoc with the ROI computations of your SEM team.

Artificial Auction Competition

A fall-out effect of affiliates and SEM teams cohabiting the same media platforms is auction competition from one another. In the direct linking scenario, since only one of you can show up in the SERP at a time, all direct linking affiliates and your SEM team are bidding against each other for placement. Separately, in the scenario where you may be sponsoring the same keywords, any increase in bids by one of you will start to force the rest of you to increase your cp's to maintain your impression share. Both scenarios create artificial auction inflation diminishing returns for all of you.

Blurred Geographic Boundaries

The problem of blurred geographic boundaries is most troublesome for advertisers with brick and mortar presence in local markets. Issues present themselves in local search predominantly on the online yellow pages such as yellowbook.com, yellowpages.com, and superpages.com. The online yellow pages, while nowhere near the reach of search, is an interesting place to advertise. Consider these stats published in early 2010:

- Local search comprises nearly 12% of all searches on the top 5 search engines
- Local search has outpaced the growth of overall web search, growing by 58% in 2008, compared with 21% growth for overall web search
- Local yellow page sites saw double digit growth in searches last year, with more than a 23% increase
- 75% of searches are for non-branded terms
- 45% made a purchase from a yellow pages search

The problem arises because national results can display above local results—often with conflicting offers and different phone numbers for the national and local divisions. To see a few live examples, try running the following searches on yellowpages.com for the keywords 'Cable TV'

and ‘Mortgages’. Make sure that your affiliates are geo-targeting correctly to match the offers that you provide and the landing page of the ad.

Competition on Your Fan Pages

Competition on your fan pages refers to advertisers targeting your Facebook fans. The conflict here is between your fan page and the ads that appear around it. Facebook allows advertisers to target each other’s fans, you can even mention those fans in the ad copy text via a call-out like ‘Hey xxxxx Fans, come and check out my

widget product’. This is actually a great way for your affiliates to use this conflict to their advantage and to yours. You should consider working with your affiliates to target your competitor’s fans in a tasteful law abiding way.

The key take-away is to monitor all potential media channels in order to manage channel conflicts. Good communication with your affiliates and your internal marketing teams is paramount to ensure that the affiliate channel is optimized without cannibalizing your other marketing efforts. ■

Search Team vs. Affiliate Team: Internal Revenue Wars

Lack of coordination between your search and affiliate marketing efforts can create internal revenue wars

Revenue wars can exist when affiliates get credit for sales that come from search advertising, which otherwise would have been allocated and credited to the search team or managing SEM agency.

Paid search advertising yields excellent benefits when advertisers deploy a search advertising strategy coupled with an affiliate marketing program. Affiliate programs can offer strong results in assisting with brand protection and expanding your keyword reach. However, if not carefully managed, revenue attribution from the affiliate program can ‘steal’ dollars from your search team’s bottom line.

The catalyst is a common tendency to manage affiliate programs and search programs using completely separate and disparate teams

e.g. a search agency who manages your search program and an outsource program manager (OPM) who controls your affiliate program. Each team wants to glean credit for revenue derived from the search channel to propel the metrics that you should and are going to hold them accountable for achieving e.g. ROI or CPA. Depending on your tracking system, credit for the sale will either go to the last cookie dropped, the first cookie dropped, or to each cookie dropped—in which case you will be attributing the same revenue dollars to multiple channels. Flawed conversion metrics are then used by your search team, your affiliate team, and yourself to measure performance of keywords, maximum CPC’s, budget allocation, and overall performance benchmarks that can cause you to fire or keep your agency or affiliate vendor.

Any of the following scenarios can cause revenue allocation problems:

- ✓ Affiliate marketers sponsor prohibited or restricted keyword terms. When the affiliate advertises on these restricted terms, channel conflict arises.
- ✓ Affiliate marketers are direct linking to you. This means the affiliate is using your display URL in the ad so that the ad appears to be yours; however, it originates from your affiliate and not your search team. In this scenario, there is a CPC war since only one advertiser at a time can use the same display URL. Your search team and your affiliate team are battling to appear in the search results.
- ✓ Consumers click on multiple ads before making a purchase. Consumers do not always buy on the first click. This means that it is possible, and likely, that a consumer will run multiple searches and click on multiple ads before finally making a purchase. If during the shopping and researching phase, the consumer clicks on your search team's ad, and also clicks on your affiliate team's ad, and the credit for the sale is given to the affiliate team, then there will be negative repercussions to your search team's metrics, analysis, and decision making or vice versa.

Both the affiliate and search teams are vying to be credited for the ultimate sale. To maintain a healthy working relationship between these two channels, so that you ultimately benefit, you could consider deploying the following practices:

- 1 **Affiliate Rules:** Create affiliate marketing rules so that the affiliate program enhances your search program, and does not detract from it. For example: Prohibit cookie stuffing, Prohibit direct linking (unless you do not have a search campaign), and on top terms and even brand terms, make sure affiliates have an even playing field with the search team. Meaning, give your affiliates the opportunity to succeed so that they do not need to resort to underhanded tactics.

- 2 **Monitoring:** Monitor your affiliates to ensure that the rules are adhered to, for example, watch for cookie stuffing across advertisers, and watch that all rules are being adhered to which will ultimately curtail channel conflict.

- 3 **Sales Attribution:** Attribute sales among both teams so that it is not all or nothing. Consider tracking sales so that you can watch the entire shopping path of a consumer over time, this will give you a greater understanding of the contribution between your search and affiliate teams.

- 4 **Common Management:** If you can do it, you ought to consider common management for both channels, so that one agency or one group is responsible for both the paid and affiliate channels. It is also wise to consider bringing SEO into this fold as well. A single source vendor who can handle all three components and operate the program in harmony will yield better results in the long run. In this scenario, the management is credited for both the search and affiliate successes, and therefore, has every reason to ensure that the playing field is balanced.

- 5 **Transparency in Tracking or External Monitoring:** If you are going to manage SEM and affiliate separately, then you ought to consider some transparency in tracking and/or external monitoring so that your SEM agency has a way to see which keywords have a strong affiliate presence. This will give the SEM agency a clearer picture when evaluating performance and in decision making. Otherwise, your agency will have a blind spot which puts the agency at a disadvantage.

Ultimately, channel wars between your search and affiliate stunt your ability to maximize the search channel. You may be over or under spending, good search terms may appear less viable, or you may wind up firing your agency or your affiliate team for metrics that they cannot control. ■

Trademark Law & Your Risks

Understanding trademark law and how affiliates can create risks for you

Trademarks exist to make it easier and faster for consumers to determine the origin of a good or service. Trademarks are usually words or symbols (think Nike swoosh), but can also be shapes and colors if those uniquely identify the source of a good like the hourglass shape of an old time Coke bottle. Trademarks protect the consumer by ensuring that it is very clear which company is providing the good or service – this helps the consumer make clear purchasing choices regarding things like expected quality. The law also protects the company who holds the trademark against rivals seeking to mimic its goods or services – making it so that the rival can't create a shoe for example called 'Nikeee'.

You can get sued if you use another company's trademark. You will lose if the trademark owner can show that you fail the following tests: (1) you used the mark in commerce e.g. in connection with a sale; (2) the use is confusing to typical consumers e.g. a performance athletic shoe branded as 'Nike' vs. 'Nikeee'; and (3) you don't have a defense. In both Europe and the USA, if you can show that you didn't use the mark in commerce and/or it wasn't a confusing use, then you will have a great defense. In the USA, there is another defense called the Doctrine of Fair Use. Under this doctrine the following trademark uses are allowed: (1) comparative advertising like "my Adidas stuff is better than the other guy's Nike stuff because...", (2) nominative use meaning just to show the origin of the goods e.g. this computer that I am selling on eBay is an 'Apple' is ok to do; and (3) descriptive use which is to describe something else that is unrelated using the trademark e.g. I like Apples (and not intended to mean the brand 'Apple').

Big questions arise as to the first test—Is Sponsoring a Trademark Keyword a Use in Commerce?

The majority of court decisions in the USA, UK, and Europe have determined that sponsoring a keyword is a use in commerce by the advertiser BUT not by the search engine. This is why Google has a very relaxed policy and allows for trademark bidding, and a somewhat relaxed policy regarding ad copy use. With that said, merely having your ad appear in a SERP does not mean that you will be in trouble. It also has to confuse a consumer and that is where most defendants have the best chance to prevail.

Damages for violating trademark law include:

- 1. Permanent Injunction.** An injunction prohibits the infringer from using the infringing mark or any other mark that similar. This is the most common damage type awarded.
- 2. Monetary Damages.** Money to compensate the trademark holder for lost business. To receive this remedy, the trademark holder must prove lost profits along with a gain in profits by the infringer. This is less commonly awarded as it requires proof of loss coupled with financial gain by the defendant. Although in the case of affiliates and the trackable medium of paid search, it will not be hard to show a loss for your competitor and a gain for you.
- 3. Attorney's Fees.** The court has the discretion to award the trademark owner its attorney's fees for bringing the action. This type of damage is less typical.

Problems can arise for you if your affiliate is brand bidding on a competitor's trademark.

You run into a risk if the affiliate is representing themselves through their ad copy text as either being you e.g. through direct linking, or acting on your behalf e.g. you are the only advertiser promoted on the landing page.

The important test in your defense, remember, is likelihood to confuse a consumer. Using a competitor’s trademark in the display URL, we believe, is the most confusing to a consumer,

however, no court rulings have occurred on this type of use. You can defend yourself with the fair use defenses for example if your affiliate is brand bidding on a competitor’s trademark to promote you and is offering a comparative analysis on its landing page, then you have a reasonable defense.

Here is our view as to how far your affiliates can go before they will get you into serious trouble:

Use of Your Competitor’s Trademark	Risk Level			
	Low	Medium	High	Highest
Keyword Use Only	Low			
Keyword Use, coupled with ad copy	Low	Medium		
Keyword Use, coupled with display URL use	Low	Medium	High	
Keyword Use, coupled with ad copy & display URL	Low	Medium	High	Highest
Ad copy only	Low	Medium		
Ad copy and display URL	Low	Medium	High	Highest
Display URL only	Low	Medium	High	

Guide to Search Engine Trademark Policies

Each search engine maintains a unique trademark policy

When it comes to trademarks, there are three types of uses that brand owners need to watch out for on paid search:

1. Keyword sponsors. This is when an unauthorized affiliate sponsors your brand as a keyword so that the affiliate’s ads appear when a user conducts a search for your name or products.

2. Ad copy use. This is when an unauthorized affiliate uses your brand within ad copy text.

3. Display URL use. This is when an unauthorized affiliate uses your brand as part of its display URL.

The Search Engine Policies

Google has the most relaxed trademark policy, and it is effective worldwide. Yahoo and Bing you will see are slightly more restrictive, but still fairly easy to avoid.

Search Engine	Keyword Sponsors	Ad Copy Use
Google	Allowed	Allowed, but will respond to complaints if the advertiser is not an authorized reseller or the use is not 'fair use'.
Yahoo	Allowed in paid search, if the landing page contains the brand. Never allowed in local search.	Allowed, but will respond to complaints if the ad appears when the brand is searched and the use is not an authorized reseller or the use is not 'fair use'.
Bing	Allowed for affiliates, resellers, informational sites, and generic uses	Allowed for affiliates, resellers, informational sites, and generic uses

Do Search Engines Police Trademark Use?

Not really. If you have notified each engine of your trademark, then you can expect the following:

- **Google:** When the ad is first created, Google will sometimes hold your ad up in editorial if it contains a trademark in the ad copy, but not for simply bidding on a trademark keyword. However, as long as the use appears to be reasonable you will get a pass. Nothing further will be investigated unless you proactively complain. To notify Google, you must first have a legitimate violation to complain about and file the appropriate form found here: https://services.google.com/inquiry/aw_tm-complaint
- **Yahoo and Bing:** Each will use an editorial person or bot to verify that the mark appears on the landing page if you are sponsoring a term that contains a trademark. Nothing further will be investigated unless you proactively complain.
 - Notify Yahoo of your trademark here: trademarkconcern-ysm@yahoo-inc.com
 - Notify Bing of your trademark here: https://support.msn.com/eform.aspx?productKey=trademark&page=support_home_options_form_byemail&ct=eformts

Do the search engine policies allow affiliates to engage in unauthorized use?

The short answer is no. Just because a search engine allows the practice, does not mean that the law agrees with them. The key is not to rely on the policy of the search engine but instead to rely on the law of the land in which you engage in business.

What should you do?

Require that your affiliates follow your guidelines if they intend to advertise on a competitor's brand or to use a competitor's brand while promoting yours. Define the rules in your affiliate agreement and include a clause to shift any liability to the affiliate in the event of a lawsuit e.g. an indemnification provision. Track your affiliate's activities by monitoring your competitor's trademarks. Take action to get the affiliate to stop if you discover an issue. ■

Is Your Affiliate Brand Bidding on Purpose?

Is your affiliate brand bidding or did match type cause the ad to appear on your trademark?

It can be really hard to tell if an affiliate is brand bidding on purpose or by accident. This gray area occurs because an ad can appear in a SERP due to match type or a 'feature' called auto-matching.

Match Type

Match type is a designation assigned by the advertiser when creating the ad—in this case the advertiser is your affiliate. There are three match types available:

1. **Exact Match/Standard:** the ad appears only if the user requests the exact keyword in the search query.
2. **Phrase:** the ad appears if the user searches for a keyword that contains the sponsored phrase.
3. **Broad/Advanced:** the ad appears if any of the sponsored terms appear anywhere in the search query or similar words appear in the search query e.g. college vs. university
4. **Negative Match:** the ad will not appear if specific terms designated by the advertiser are present in the search query.

Auto-Matching

Auto-matching is a feature provided by both Google and Yahoo which allows the search engine to automatically select new keywords for you without the advertiser's advance permission. The new keywords are selected from various places including the ad copy text, display URLs, landing page and/or common typos and related terms. In other words, Google and Yahoo, by way of the auto-matching feature, can show ads on keywords that your affiliate did not intend to sponsor.

Circumstantial Evidence

Unfortunately, a searcher cannot control the match type trigger for paid ads. This is controlled completely by the search engine. Therefore, conducting a search yourself to see who is bidding does not give you the entire picture as any ad that you see has been selected for you through a search engine algorithm. Therefore, you must look for other circumstantial evidence to validate whether or not brand bidding has intentionally occurred.

Here are various checks to look for:

- 1 **Your Brand is the Keyword.** Look to see if there are any instances where the affiliate's ads appear on your brand name by itself in a keyword search, including typos, and variations with and without the ".com" extension. If you find instances of this your confidence level should go up regarding phrases that contain your brand plus non-branded terms. If the affiliate is bidding your brand by itself, it is logical to gain confidence in the affiliate's intention is to bid on your brand included as part of a phrase.
- 2 **Your Brand Appears in redirects & landing URLs.** Often which landing page to show the consumer is determined by tags in the redirects and on the ultimate landing page. You will need to review all URLs that lead to the landing page including the display URL, the destination URL, all redirects and the final landing page URL. If your web site URL or your brand name by itself appears in the URL, then your confidence level should be very high that the affiliate is bidding on your brand terms.

3 Look for Keyword Tagging. Affiliates often embed either the keyword or the category of the keyword (e.g. ad group) into a tracking parameter in the URL string to track the source of the traffic. Keyword tracking parameters can either be dynamic—inserted by the search engine using a variable—or fixed—inserted by the affiliate at the time of ad creation e.g. the Google Analytics tag ‘term=’. Variable tags for example include: (a) Yahoo uses the tag ‘OVKEY’ to show the sponsored term, and ‘OVRAW’ to show the query; and (b) Google uses the tag {keyword} to show the sponsored keyword (not the search query) that triggered the ad.

4 Look for bold text in the ad. Text appears in bold in the ad when that same text is included in both the search phrase and the ad. Therefore, you could look for the non-brand part of the search term. If there is ad text that matches the non-brand portion of the search phrase and it is not in bold, then the affiliate was broad matching on your brand.

5 Look for your brand in ad copy. If your brand is included in the ad copy, you should feel very confident that the affiliate intended to appear on your brand name.

6 Monitor the phrase without your brand. Lop your brand off of the phrase and see if the affiliate shows up with the same ad copy on the non-branded version. If the answer is no, then you can be sure the brand was the intended target. If the answer is yes, then you will need to do more to make a determination as it is possible the affiliate brand bids and also bids generically.

Determining the likelihood of the affiliate’s intention to brand bid is essential in effectively managing your brand. Broad, phrase, and auto-matching can gray this process but if an affiliate’s actions are researched and conditionally determined by the various methods set for the above, then you will save yourself from omitting a good affiliate marketer from your affiliate program or proven a bad affiliate marketer. ■

Handling URL Hijackers a.k.a. Direct Linkers

Learn how URL hijacking affects your bottom line

Most affiliate managers and brand owners agree that they are not fond of the practice where affiliate marketers direct link from a search campaign to the advertiser’s web site. This practice of direct linking, also known as URL hijacking, is very common though frowned upon. Handling URL hijackers can be difficult, it is best to understand their methods and tricks along with their impact on your bottom line before tackling them.

What is direct linking?

Direct linking occurs when an affiliate uses your web site address as its display URL in search ads. Often, affiliates will re-use your ad copy in their ads, trying to appear to be you. The structure of the search ad looks like this:



How does direct linking impact your bottom line?

Google, Bing, and Yahoo only allow one advertiser at a time to show the same display URL. That means when your affiliate's ad is being served, then your ad is not. Direct linking has the following consequences:

- **Increased CPCs** by competing directly with you to be served by the SERPs.
- **Lower impression volume** when they steal traffic from you by being served over you.
- **Attribution mistakes** where the affiliate perhaps is credited for sales that were actually driven by the efforts of your SEM team or agency.

So how do you determine the impact of URL hijackers?

1 Measure the percent of time your ads are served vs. your affiliate's ads.

To do this, you will need to crawl the search results pages along with destination URLs several times daily, from the vantage point of different geo-locations. You will need to record who the affiliate was that appeared in the results—you or was it your affiliate. It is best to watch this activity over the course of at least one week. The goal is to determine the frequency in which your ads are served vs. the affiliate's ad being served. You can take the ad serving percentages and extrapolate these on-top of your keyword data to run scenarios to quantify misappropriated commissions, attribution mistakes, and what your ROI might have been had your ads been displayed and not those of your affiliates.

2 Impression share analysis

Another way to determine if you are being impacted is to monitor for impression share anomalies within your own campaign. Google Adwords provides impression share information by campaign. You can run a daily "campaign performance" report in your Adwords account, and download it into Excel. Then create a line chart of the impression share field by date.

Determine your mean or average impression share, and then look for dips in the line chart where it dips below your average. You will need to also review your account history and other market changes. If everything else appears normal, then you probably have a problem with an affiliate who is stealing your impressions by direct linking.

3 Measure sales

If you can get your hands on your sales data for each affiliate and marry it to the traffic source—in this case keywords and search engines—then you can quantify the impact on sales due to attribution mistakes. You will need to be able to access the following information: (1) traffic sources by affiliate with the ability to identify the search engine and keyword, (2) traffic path by affiliate to determine if in-bound traffic is coming to you direct from redirect links or if it is arriving from an affiliate owned and operated web site; and (3) your own campaign data to compare the affiliate's keyword source against your own campaign list. Next, you will calculate the clicks and sales generated by direct linking affiliates. Then, you will compare those clicks and sales to the clicks and sales you received from the same sources. Finally, you will need to run simulations to determine had you received those clicks and sales, what would your ROI have been taking into account the cost for the click and the value of each sale.

URL Hijackers will be a key cause of friction between your affiliate team and the SEM team. If you cannot get a hijacker to remove its ad after you have sent them written notice and/or kicked them out of your program, then you are facing an additional step as the ad is now likely pointing to either a dead landing page or to a landing page hosted by your affiliate network. Your next step is to contact the search engine. The search engine will remove ads that are pointing to dead pages or pointing to landing pages that don't match the display url of the ad—which will be the case if your ad shows your domain as the display URL but lands traffic on a page hosted by your affiliate network. ■

Crafty Affiliate Tactics to Evade Detection

Tactic One: Link Cloaking

Technique used to both shorten long affiliate URLs and to add your brand to the URL

Link cloaking is a method used to make a long affiliate URL link into a shorter and prettier one. The affiliate will take an affiliate link that is long, messy looking, and contains no merchant references and then shorten it so that the URL contains a merchant reference, e.g. `http://affiliate-name.hop.affiliateprogram.com` becomes `http://affiliate.com/merchant.php`.

Affiliates Practice Link Cloaking for a Number of Reasons:

- **It's a consumer-friendly practice.** A URL that contains the merchant's name makes it more comfortable for consumers to click on the link.
- **To hide the affiliate's identity.** Cloaked links can hide unsavory search marketing tactics and keywords since your referrer logs will show the shortened URL and not the affiliate link.
- **To protect against commission hijacking.** Some affiliates worry that spyware running on a consumer's machine will replace their affiliate ID with the ID of another affiliate, thus hijacking their commissions.
- **To boost quality score.** Google doesn't seem to like affiliates very much which is very apparent in the low quality scores of many affiliate ads. Think about a landing page with nothing but ads and affiliate links that take the consumer from an AdWords listing to a landing page and then immediately through an affiliate link. Cloaking the affiliate link is a method used to beef up the quality score in this scenario.
- **Tracking.** It is easier for the affiliate to track clicks and visitors when using its own URL.

Cloaking Creates Compliance Roadblocks

When affiliates cloak their URLs a problem can arise for merchants who are trying to keep tabs on where and how their affiliates are advertising. Cloaking makes it harder to determine the source of the traffic, and to view the affiliate's ID in the URL string.

So what do you do?

There are a couple of things you can do to gain better insight when cloaking is deployed.

- 1 You can provide your own cloaking software to your affiliates, allowing you to easily identify a cloaked URL and match it to the actual affiliate URL stored in your database.
- 2 Another method is to request that your engineering team grab the affiliate ID when the consumer is passed to your website from an affiliate ad, and include the affiliate ID in the landing page URL. Then you can track these links through your analytics package.

If you notice that your affiliates are cloaking their URLs, it's best to reach out and to find out why. Then work with your affiliates to help solve their problems while at the same time being able to readily track and monitor what they are doing. If you don't have a policy in place regarding link cloaking, you may consider appending your affiliate policy with explicit rules about what is and is not acceptable.

Tactic Two: Browser Checks

Technique to evade detection by routing clicks through different redirect URLs

The concept is that the affiliate runs all traffic through an initial URL before showing its affiliate link. The traffic is checked to determine if the traffic is from a potential buyer or if the traffic is from you, your affiliate network, or a bot possibly checking up on them. There are two common methods used to evade detection:

Avoiding Specific Referrers or Geo's

The affiliate checks the referrer, the url of the website the user visited before clicking on the affiliate's ad, and then either accepts or avoids these referrers. If the referrer matches the affiliate's list of "accepted" referrer URLs, then the affiliate will direct the user's visit through its affiliate link. If the referrer is empty (e.g. you typed the destination url directly into your browser) and/or doesn't match the "accepted" referrers then the affiliate will not direct your traffic through its affiliate link, and instead will send it directly to the merchant's landing page. Thus, it evades detection by preventing you from seeing its affiliate link.

Additionally, the affiliate may avoid specific geographies e.g. your location. They can do this by setting the targeting options of their ads to avoid your location OR the affiliate can check your IP and avoid you by doing a geo-look-up of your IP.

Exploiting the User's Browser History

This technique involves exploiting the user's browser history to see what sites the visitor frequents. All browsers expose browser history information to provide the user with navigational features like changing the color of visited links from blue to purple. The affiliate exploits these features and checks the user's brows-

ing history. The history is used to determine whether to direct the visitor through its affiliate link or not. Users who appear to be a bot, i.e. have no browser or have ever visited a web analytics website, an affiliate monitoring/tracking program, the brand's official website, and/or an affiliate network website, will be evaded. There are several known hacks that affiliates use to do this including the CSS history hack which enables visibility on visited links, or exploiting web caching by measuring the time required to access a particular resource and deducing that it's either in the users cache or not.

Steps to Outsmart an Affiliate Evader

If you are checking for affiliates by hand, then you ought to consider following these steps in order to pass the affiliate's check-points:

- 1 Clear your browsing history and your cache before searching for an affiliate's ad so that you have a clean browser.
- 2 Create a spoofed user cache and history by going to a few random well known sites before searching.
- 3 Do not click through links from your analytics program or from your monitoring program. You should copy the questionable links and paste them into the clean browser, or find the actual live ad in the search results and click on it (usually these are direct linkers, so you will technically be clicking on yourself which is not considered click fraud).
- 4 Use a tool to capture the redirects like HTTP Watch for Firefox or IE or Live Headers for Firefox which will be able to capture the affiliate link for you.
- 5 You can also check for cookie stuffing during this test. Since you are using a clean

browser, check to see if you have any cookies. Open the section of the browser where you can review your cookies and see what was dropped. If there are cookies for other merchants, you have a cookie stuffer using your brand as a pretext to do the stuffing.

Tactics like hacking the consumer's browser history are an effective way for these bad affiliates

to avoid detection. These same affiliates also do things like spoofing referrers and probably are committing other violations as well such as cookie stuffing. There is a good chance that you are not the only one being exploited, so even if you can't find the affiliate link, reporting your findings to your affiliate network will help. ■

Steps to Take Against Affiliate Violators

Learn methods to take action against violators and get their ads removed from search engines.

If you need to get the violating ads removed from the search results your options are: (1) contact the affiliate directly; (2) contact your affiliate network; and (3) work with the search engine.

First, you need to gather some information:

- 1 Determine the Affiliate's Network and ID.** If you don't have a monitoring vendor and are doing this by hand, then please refer to the article 'Crafty Affiliate Tactics to Evade Detection: Tactic Two' which provides you with a detailed method for obtaining this information.
- 2 Record the Ad Information.** Record the search engine, keyword, date/time, and the ad copy.
- 3 Get the Link Location of the Offending Ad.** The link location is the full destination URL of the ad including any encrypted strings provided by the search engine. You will need this if you are going to report the problem to the search engine. To get the link location, right click on the ad, and click 'copy link location'. Here is what they will look like:

Google	http://www.google.com/url?q=snowboarding&url=/aclk...
Yahoo	http://rds.yahoo.com/_ylt=...
Bing	http://0.r.msn.com/?ld=...

Second, determine if the affiliate is a bad guy.

You should always research the affiliate before communicating with the affiliate or reporting the affiliate to either your network or the search engine. You should determine if the affiliate is a revenue driver for you. See if the affiliate has engaged in the activity in the past or if this is a one-time offense. Check to see how long you have been working with the affiliate. The background on the affiliate will determine your next step. You have the option to simply notify the affiliate and work with the affiliate to help them make a correction, you could take a harder approach and provide notice and a warning, the next step is reducing commission payments, and finally kicking the affiliate out of your program.

Third, report the affiliate to your affiliate network.

If you cannot reach the affiliate direction, you should notify the network of the action you would like to take e.g. reduce commissions or program removal. It is best to take on these violators as soon as possible, as many turn their campaigns on and off daily or by time of day, with seasonality or just to evade detection.

Third, if the ad is still live, report the ad to the search provider.

If the affiliate does not take down the violating ad, you can remove the affiliate from your affiliate program. After you do this, if the ad is still running it will either go to a dead landing page or be redirected to an error page on the affiliate network's server. Either of these is a violation of the search engine's editorial policy. Ads can't point to dead pages and ads can't point to a website that is different than the display URL of the ad. The search engine will need the link location, ad copy, and keyword. If you don't have an assigned rep at the search engine, then you can contact the engine through the general support emails:

- **Google:** http://adwords.google.com/support/aw/bin/request.py?display=form&contact_type=tiaff
- **Yahoo:** login to your account and click the customer support link at the top right of your screen.
- **Bing:** ad-pub@microsoft.com

Affiliates that violate your affiliate program's policy or the engine's policies are usually tricky to catch. Using the steps above, though, will help you identify their affiliate network and affiliate identifier which will provide you with the needed information to get them either pulled from your program or pulled from another network. Affiliate violators brand bidding, using dead links, evading detection, etc. are not only hurting your brand but causing consumer confusion which can lead to you losing your relationship with your consumers. ■

About The Authors

About The Search Monitor®

The Search Monitor, based in Orlando, Florida, was founded by a group of search marketing enthusiasts. In 2003, we were part of the original team that pioneered KeywordMax.com, the first bid management tool to automate keyword bidding based on financial goals like CPA and ROI (now part of Digital River, Inc.). Our commitment is never to stop exploring new ways to automate information, intelligence, and work flow for sophisticated online marketers like you. We are FANATICAL about support—We listen to our customers, we watch as the industry continues to evolve, and we adapt our solutions to best meet the needs of today with a look towards tomorrow.

About Our Services

The Search Monitor provides web based reports compiled by automatically crawling search engine advertising activity daily across top search engines, in multiple languages, worldwide. Reports include: Competitor Monitor—for competitive intelligence on paid & organic results, Trademark Monitor—to monitor brand use; and Affiliate Monitor—to watch affiliates for compliance.

Value Proposition for Affiliate Managers:

- ✔ Ensure affiliates are following the requirements of your affiliate program on search.
- ✔ Automated reports & alerts emailed to you that include violation types, keywords, search engines, ad copy, affiliate network, & affiliate ID.
- ✔ Screenshots of search results & landing pages for proof.
- ✔ Customized reports based on your affiliate program rules & restrictions like: rank, keyword bidding, brand bidding, ad copy, and direct linking rules.
- ✔ Email portal to manage & track compliance communication activity with your affiliates.
- ✔ Easily keep watch on your affiliates, your super-affiliates, and your competitors' affiliates.

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The following writers contributed to the content of this guide under the direction of The Search Monitor, LLC.

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Lori Weiman is CEO of The Search Monitor. Prior to The Search Monitor, Lori co-founded KeywordMax.com (now a division of Digital River, Inc.) which provides campaign optimization software to SEM marketers and agencies. Lori has held executive positions at several early start-ups including Click Forensics, a click fraud detection company, and Food.com, a food publisher. Lori started her career at Time Warner Cable as part of the team responsible for inventing on-demand television. Lori writes the Brandaid column for Search Engine Land (<http://searchengineland.com/library/brand-aid>) and is an industry speaker at events including SES, Affiliate Summit, AffCon, and Search Insider Summit.

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Danielle Oldham is an Account Manager for The Search Monitor where she oversees client services. Prior to The Search Monitor, Danielle worked as a Delivery Manager for AOL in the SEM department which provided advertisers with a full service SEM platform through its subsidiary Advertising.com. Danielle started her career as a Marketing Analyst with a start-up in Denver, CO called PaySimple. Danielle is a graduate of Virginia Tech University, where she studied Public Relations and Professional Writing.

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