Keys To Drafting Internet Advertising Agreements

Ever since the Internet came of age in the mid 1990s, advertising deals have become extremely common. As we all know, companies advertise on the Internet through the usage of banners and through search engines such as Yahoo and Google in an effort to drive users to their websites. This article will analyze the key provisions usually found in Internet Advertising Agreements and will hopefully provide drafters of these agreements with guidance before they commence the difficult drafting process. For purposes of this article, the company purchasing the advertising shall be referred to as "purchaser" and the seller of the advertising shall be referred to as "advertiser."

1. Definitions

The first paragraph of an Internet advertising agreement should set forth the definitions of the key terms that the agreement will refer to frequently. Since the agreement will likely use the term "click-through", this term should be defined, and is usually described as a "user presence on the advertising purchaser's website that originated through the advertiser's promotional advertisements or promotions as part of this Agreement."

2. Term

This paragraph should recite that the agreement will commence upon the effective date and shall last for a specified amount of time.

3. Positioning

This paragraph should clarify how the advertising banners will be positioned on the advertiser's website. This provision may simply refer to a positioning schedule attached as an exhibit. On the other hand, if the parties decided not to agree on a specific positioning schedule, the agreement might simply recite that the advertiser has sole discretion to control the positioning so long as it uses its reasonable best efforts to position the banners in such a way as to drive traffic to the purchaser's website. The drafter for the advertiser may also recite that the advertiser shall not be liable for any claims relating to usage statistics.

4. Click-throughs

Before a drafter of an advertising agreement can go to work, she must know whether her client will be paying per banner ad or per click-through. One "click-through" means that a user has clicked on the banner or the link to the purchaser's website. If the agreement is for a certain amount of click-throughs per month, this provision of the agreement must clearly describe the commitments promised by the advertiser. Let's say that the advertiser is promising 1,000 click-throughs per month. The agreement could thus read "Advertiser shall deliver no less than 1,000 click-throughs per month, and purchaser shall pay to advertiser the monthly amounts according to the payment schedule set forth in exhibit A."

This "click-through" provision may also want to address what happens if the advertiser cannot make good on these click-through commitments. For instance, it may recite that "if advertiser misses any monthly target, advertiser shall "make good" the difference within two months. If advertiser does not make good the click-through difference within two months (60 days), purchaser may suspend that portion of its monthly payments that represent the percentage of click-throughs missed by advertiser until advertiser delivers such make goods."

5. Exclusivity

If the deal points include an exclusivity provision, the agreement must reflect this intention. The agreement should be drafted to recite something to the effect of "no competitor of purchaser shall be permitted to place or purchase from advertiser, banner or promotional advertising as defined in Exhibit B, and advertiser agrees to use reasonable efforts to prevent third parties that are entitled to place ads on advertiser's site from placing any banner or promotional ads of purchaser's competitors."

These are the most important provisions of an Internet Advertising Agreement. Other provisions covering Cancellation and Termination Limitation of Advertiser's Liability, Indemnification, and Advertiser's Right to Reject Advertising may also be included. In all, it is critical for the drafter of the agreement to know the deal points backwards and forwards and to carefully draft the agreement accordingly.

About the Author

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