

Profits and Pitfalls of Online Marketing

A Legal Desk Reference for Travel Executives

The Internet will likely be the most significant distribution channel for revenue growth for hotels and hotel companies over the next five to 10 years. With as much as 50 percent of all hotel bookings expected to be made online by 2009, the channel gives hospitality professionals an immense opportunity to leverage the Internet for increased brand awareness and highly profitable revenue contribution.

Most hospitality professionals are familiar with the online tactics that can propel the growth of the e-business channel for their hotel or brand. These include proactive revenue management across digital channels, strategic search engine marketing, state-of-the-art Web site design and reliable online analytics and tracking. These matters were discussed in detail in the initial report in this series, De-Mystifying Distribution.

Understanding a tactical approach to online marketing is critical, but the fluidity of the Internet makes it imperative for hotel professionals also to understand the wide range of legal issues that arise within the online hospitality space. Although important legal matters should always be handled by attorneys, hospitality professionals can more ably and proactively avert legal problems simply by being aware of online opportunities, best practices and risks to ensure they are protecting and maximizing their online position.

The Internet provides a new and burgeoning playing field for legal competition in hospitality. Yet when permissible competition crosses the line of legal propriety, hotel professionals should identify and address those transgressions in order to protect their assets, revenues and brands.

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Illegal or improper online activities by others can cost hotels revenue, profit margin, brand value and goodwill. Hoteliers themselves also should avoid running afoul of the formal laws and informal rules of online marketing. Missteps can be costly in the short- and the long-term.

Daily decisions about the online space, including what photos to post on a hotel Web site, what to name a new package or promotion, whether to bid on a competitor's brand as a paid search keyword, and how to write the title of a new e-mail blast, should be made by business people who are mindful of the areas where trademark, privacy, contract and other branches of law might come into play. Even if the business people ultimately are not the arbiters of these kinds of disputes, they can make good routine business decisions to help avert matters that ultimately might fall into the hands of their lawyers.

The report mentioned here presents the broadest range of legal issues that might arise in the context of marketing and selling travel on the Internet. It is not intended to present an exhaustive list of all possible legal topics, nor is it intended to present highly legalistic discussions of each issue raised. It is meant to flag the potential issues, share brief discussion on whether and how the law might resolve certain issues, and provide practical business advice for travel professionals who make online marketing and sales decisions every day. As with De-Mystifying Distribution, this paper "demystifies" the legal issues for hospitality professionals. In the evolving online business and legal climate it is wise, at a minimum, to be asking the right questions, and this paper provides some clear and practical answers.

While the report is a comprehensive guide to legal issues for online marketing, the authors offer a short set of guidelines which is excerpted from the guide to direct online marketers in their efforts. When in doubt, the reader is encouraged to seek legal counsel.

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by Mike Heilbronner, Sue Heilbronner, Cindy Estis Green

Trademark Clearance: Before creating and publicizing a new name for a hotel, hotel group or program (e.g., the name of a kids camp program at a group of hotels), hire counsel to "clear" the name and evaluate the potential risk of infringing an existing mark.

Federal Registration: Although it does not create a defense to a trademark infringement claim, federal registration of trademarks provides several important benefits.

Notice: Be sure to take appropriate steps to notify the public of your intellectual property rights by using the proper symbol (TM, SM, ® or ©) in published online and offline materials.

Copyright Registration: Register copyrights in important new Web site content when material design changes occur.

Copyright Education: The ease of cutting and pasting content and imagery is a tempting way to save time, but it creates significant risk of liability for copyright infringement. Hoteliers should inform employees and vendors that procuring content from other sources without permission is unacceptable and often illegal.

Create and Publish a Thorough Privacy Policy: Post a legally compliant privacy policy on your Web site. Then, designate and empower one or more staff people to ensure it is enforced.

Domain Name Defense: To avoid cybersquatting and related problems, register a domain for a new brand or program before disclosing the new initiative publicly (or possibly, even inside your organization). Proactively defend your brand online by registering domains that are similar or related to your own domain.

Keep Your Eye on PPC Behavior: Be sure you know who might be bidding on or using your trademarks in PPC advertising. If possible and practical, seek recourse for improper behavior by the search engine. If not, consider legal or non-legal recourse against the parties using your marks in this arena.

Watch Online Travel Blogs and Review Sites: Stay aware of the "buzz" on these sites related to your property. If you can, respond to false reviews on a given site. If you can learn from truthful reviews and improve your property or customer service, treat these channels as free focus groups.

Solidify your Rights with Models: If you or your vendor feature recognizable people in photographs used for commercial purposes, secure model releases to protect your ongoing rights for all commercial purposes.

Monitor Compliance of Your Vendors' IP Practices: Be sure that your vendors are clearing rights to any photos or other intellectual property used in the work they create or conduct on your behalf. You share potential liability.

Advise Site Users on Limitations: If you have a press page where you house photos and logos that others can download or use to promote your property on their sites, include strict usage guidelines covering such materials.

Solidify your Rights with Vendors: Be sure that all photographers, Web designers and other non-employees who create copyrighted material on your behalf assign the rights to that material to you in a clear, written assignment agreement.

Be Proactive: Legal advice costs money and time. However, in the intellectual property arena, it can be invaluable to garner the advice of a good attorney before undertaking business initiatives that have IP implications. Generally, obtaining legal advice early saves money and may reduce liability risk and exposure. Being proactive also helps businesses make decisions early that save money, human resources and time.