

Affiliate Marketers

The “killer app” requires diligence up-front

Over half of our law firm’s practice involves affiliate marketing. If we are not setting up an affiliate marketing program, we are

involved in claims relating to affiliate misconduct. On the one hand, the riches to be realized by your merchant site through a successful and well managed affiliate marketing program can be vast. The sound of happy affiliates is music to the ears. But is this music really what it seems? Or are some affiliates the modern day “sirens of the web”, singing beautiful melodies as they lure you onto the cliffs of disaster?

It appears that affiliate marketing might just be the killer application of the web. Merchants are paying huge commissions to wily, skilled, energetic, opportunistic entrepreneurs to push their products and services, often with results far beyond expectations. In the offline world, these affiliates are called “independent marketing representatives”. Traditional offline companies pay these trained, commissioned, independent contractors to push their products. An online merchant’s “independent marketing representatives” are affiliate marketers, and unfortunately they are all too often not screened, not trained, and not monitored. Merchants hear the sound of money, but that sweet melody may really be an invitation to visit the island of doom.

The problem is very simple. Some (but not most) affiliates cheat. They might send spam, they might “borrow” creative content from another site to use on a landing page, they might use a competing trademark (or your own!) to generate organic search engine results to a redirect page and then to your site, they might resort to cybersquatting on trademark protected domain names, or they might use false or misleading advertising to lure traffic to your site. But we are not talking about cheating you. No, these affiliates steal from others, enrich themselves on commissions, and then disappear, leaving the merchant as captain of the floundering ship.


The good news is that the solution is not that difficult to implement. First, establish a vetting process in which each affiliate applicant is evaluated and due diligence is performed. Ask yourself what you would do when qualifying a tenant for your rental? Ask for references, conduct online research, and even consider requiring a credit report with each application. What does this do to the high volume, automated processes in



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which hundreds or thousands of affiliates sign up to market for a merchant with virtually no oversight? It kills them.

Make sure each affiliate is fully educated as to the performance expectations and standards of the program. Of course, performance standards are meaningless without a compliance program. Evaluate performance standards’ compliance proactively, enforce compliance (zero tolerance is appropriate for some misconduct), and maintain records to substantiate your diligence. A successful affiliate program will reap great rewards without placing at risk a merchant’s very existence.

The greatest benefit of operating an affiliate program is accessing highly skilled professional marketers using leading edge tactics, strategies and processes in order to receive high quality, converting traffic. Professional marketers know the difference between ethical and unethical conduct, legal and illegal acts, and right and wrong. Lawsuits are filed every day against merchants for affiliate marketer misconduct. Sometimes you win; sometimes you don’t. The cost to engage in litigation is high, and your reputation is at risk. So be proactive, because by the time you realize you have been misled by the “sirens of the web”, your ship is heading for a collision course with the rocky coast, and it may simply be too late to turn around. 

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