

Internet Marketing – A Trap for the Unwary?

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Understand the Risks

Marketing your hotel on the internet is a very cost effective way to attract guests and realize revenue, but it is not without its own set of unique legal considerations.

Domain Names – Be Sure You're Buying What You Need

In the 21st century, just as the location of a property continues to be key to its success, registration of an effective domain name ("URL") has become a critical component of a hotel's marketing strategy. During the acquisition of a hotel, buyers often neglect to investigate the availability of the desired domain name. Typically, this need arises when the buyer intends to change the name of the hotel, or the seller's current URL includes multiple properties, potentially leaving the individual hotel being purchased without its own URL. The buyer usually assumes that it can get whatever domain it needs once the hotel has been acquired. Often, this is simply not the case.

Top level domains include *.com*, *.net*, and *.org*, with *.com* being the most widely used. Failing to obtain the desired URL in each of the top level domains can detrimentally affect the marketing for your hotel, thus diminishing its long-term value.

Buyers should require a seller to disclose all material information about intangible assets including trademarks, telephone numbers, and of course, the Web site and any and all URLs. The agreement should require that the seller assign all URLs to the buyer at closing and agree to sign any further documents as are necessary to authorize the registration company to transfer the registrations to the buyer.

If a desired URL is not registered to the seller, then during the due diligence period the buyer should explore the availability of the URLs that it thinks are needed to realize optimal Internet exposure and effectiveness. The buyer should do this for the URLs on each of the top level domains.

Your Hotel Web Site – Do You Own the Content?

Whenever an unrelated third party creates intellectual property for a client (graphics materials, software applications, Web sites, etc.), the law presumes that the contractor owns the intellectual property that is fruit of its labor, and that the client has the right to use the contractor's work product. This is in contrast to the fruits of labor

created by employees, in which case the law presumes that the employer owns the work product. Not to worry, the hotel client can easily protect its needs.

Any Web site or graphics development agreement should set forth specific provisions granting ownership of the design and the images to the Web site owner hotel client. More generally, the agreement should state that the contractor performs all services as "work for hire." This has the legal effect of creating ownership in the work product the contractor creates on behalf of the hotel client.

The hotel's need to perfect the ownership is important for a number of reasons: first, if the design firm owns the design it has the right to use the design for other clients, even if the other clients are your competitors; second, if the designer goes out of business you want to be sure you have access to and ownership of the design and related code so that the hotel will not be forced to incur the expense of recreating the design; and finally, if the hotel wishes to change design vendors or webmasters, if the hotel has a master copy of the code for its Web site, then the hotel can fairly easily shift its account to another design vendor or webmaster.

Franchise Disputes May Result in Blocking All Internet Bookings

Franchisees may delude themselves into thinking that the franchisor is taking care of their every Internet reservation need. However, should a real dispute arise between the franchisor and the franchisee, the franchisee must be aware that refusing to adhere to each and every franchisor mandate, including refusing to pay royalties, may result in ALL Internet bookings being cut off. This includes Internet bookings originating through third party sites. The franchisee could unknowingly put its entire business in jeopardy!

Online marketing is rapidly and continuously evolving, opening new opportunities as well as pitfalls. Understanding the online environment and developing astute strategies, coupled with pointed and effective agreements can make all the difference in the success or failure of an Internet marketing strategy.

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