

"Keyword Stuffing" Can Lead To Unintended Legal Consequences

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Keyword stuffing is the practice of loading a web site with hidden keywords or "metatags" to increase the site's ranking in search engine results. While the practice may have been effective in the past, it will most likely harm a site's ranking since most search engines have modified their analysis of keywords in search results. Additionally, if the keywords happen to be someone else's trademarks or service marks, keyword stuffing can lead to claims like trademark infringement, unfair competition and false advertising.

A federal court in California recently analyzed keyword stuffing by a New York-based web site to determine whether the web site operators could be sued in the state of California. The company, Image Rent A Car, Inc., employed the practice of keyword stuffing by repeatedly adding the term "California" to its hidden text on its site www.bandago.net. "Bandago" is a service mark used by the California-based plaintiff, Digby Adler Group, LLC, since 2003. Both companies provide van rental services in the United States. The keyword stuffing alone was not sufficient to confer jurisdiction over the company. The court concluded, however, that, if true, plaintiff's allegations that defendant used its site to directly compete with plaintiff were enough to confer jurisdiction in California. Whether or not Digby Adler will prevail on its claims against Image Rent A Car remains to be seen. Nevertheless, the New York company has to defend itself in California.

Before employing keyword stuffing as part of a marketing strategy, the legal consequences of doing so must be considered. Using another's trademark or service mark as a keyword without permission is ill advised, could constitute trademark infringement and result in other claims. As demonstrated by the Digby Adler case, jurisdictional ramifications should also not be overlooked.

For more information about legislation or litigation involving technology, intellectual property protection of information technology assets or any other Information Technology law issue, contact your Miller Canfield attorney.