Not Feeling ‘Comphy’ – Bedding Company Sues Amazon Over Search Engine

By Lori Beam In a complaint filed last month, upscale bedding company, The Comphy Co., claims Amazon is violating trademark and other laws by providing search results for inferior third-party bedsheets, including similarly named “Comfy” brand sheets, when consumers search on Google, Bing or Amazon for terms like “comph” and “comphy.” According to the complaint, Comphy repeatedly rejected Amazon’s attempts to persuade Comphy to sell its products on amazon.com. And, despite its refusal, Comphy claims Amazon:

- Pays third-party search engines to direct consumers searching for “Comphy” brand sheets to amazon.com instead of comphy.com.
- Uses its own algorithm on amazon.com to populate a page of search results for third-party products when people type “comphy” in the search bar.
- Provides results that do not make the brand names of other sellers immediately evident, creating customer confusion.

Comphy alleges various forms of trademark infringement, false designation of origin, deceptive trade practices and consumer fraud. It seeks injunctive relief to stop the violations plus three times the amount of damages suffered by Comphy and profits received by Amazon from its unlawful acts. Or, in the alternative to actual damages and profits, the company seeks statutory damages for willful trademark counterfeiting in the amount of $2 million for each and every use of a Comphy trademark. Comphy faces an uphill battle on the claim of trademark infringement because:

- In a similar suit filed in 2015, the Ninth Circuit ruled in favor of Amazon.
- Courts have repeatedly held that the mere use of another party’s trademark as a keyword in Google AdWords (and equivalent services) does not constitute trademark infringement/unfair competition so long as the third party’s trademark is not included in the actual text of the ad that is displayed in response to a search query.
- There is little possibility of consumer confusion about the source or affiliation of nondeceptive ads that clearly identify their source. This is true even when those ads are shown in response to a search incorporating a competitor’s trademark as a search term.

In short, Amazon is probably not losing a lot of sleep over these bedsheets. Lori Beam chairs the firm’s Advertising, Marketing and Promotions practice group. Contact her at lbeam@sb-kc.com or 816-421-4460. *This article is general in nature and does not constitute legal advice. Readers with legal questions should consult with an attorney prior to making any legal decisions.