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Amazon. com patents cast giant shadow over affiliates

March 20, 2000

By: Omar Perez

Amazon. com chief executive officer Jeff Bezos didn't attend last week's AffiliateForce 2000 conference in Miami Beach, as planned. Bezos had signed up for the meeting, but backed out because, a company spokeswoman said, "he's about to become a father and needs his calendar open."

But it's possible Bezos wouldn't have received a very warm welcome from some of the Internet companies at the conference. That's because Amazon. com has recently received two patents for affiliate programs, a move that has stirred up Internet retailers who fear that the U. S. Patent Office is flipping the whole infrastructure of e-commerce upside down. With the patents, the Internet retail giant can now sue companies that use similar affiliate programs.

Affiliate programs, an e-commerce customer referral system, allow e-stores to track sales made by a link from another Web site, later paying a percentage of total sales to the operators of the other Web site.

Many affiliate programs use a one-click system, a basic sales generator for thousands of e-commerce companies. In particular, U. S. Patent No. 5,960,411 gives Amazon the rights to the "One Click feature," a method of placing an order "in response to a single action, wherein the single action is clicking a button."

"If this gets enforced, it's going to be difficult to do proactive business without paying Amazon," says Mike Freeman, manager of Internet marketing for the Life Extension Foundation, a Fort Lauderdale organization that sells health products. Freeman says 15 percent to 20 percent of Life Extension's sales, which totaled \$5 million last year, come through its affiliate program, which is composed of about 600 other Web sites.

"The Amazon. com patent seems to be extremely broad," adds Kathleen Beasley, president of Musicimports. com, a Miami-based retailer of hard-to-find albums. "The broadness of the patent appears to be equivalent to the Ford Motor Co. patenting the automobile and not simply a mechanism in the combustion engine." Affiliates compose about 20 percent of her company's sales.

Like hundreds of their peers, Freeman and Beasley wonder whether Amazon will widely enforce its right to the technology or will turn a blind eye to others who use it.

So far, Amazon has only targeted its main competitor, Barnesandnoble. com. In a recent suit, Amazon. com claimed the company infringed on its "one-click" technology. In the midst of the last holiday season, a judge forced Barnes & Noble to stop using a one-click system at its Internet sales until the case goes to trial.

This is not the only patent worrying Internet entrepreneurs. Other prominent e-commerce controversies include the "name-your-price" concept by Priceline. com. Priceline, which claims to have a patent on the system by which the buyer determines a price on the Internet, sued Microsoft subsidiary Expedia for allowing users to name their own price for hotel

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rooms. That case is still pending before the U. S. District Court in Hartford, Conn.

John Christopher, a patent attorney in Fort Lauderdale with Gunster Yoakley Valdes-Fauli & Stewart, agrees that Amazon "cast a big net with the patent."

"Patents have many purposes," he adds. "Companies use them to show that they are protecting their market, or for bragging rights, or a lot of other reasons. People are saying now that Amazon is bad, bad, bad. [But] they haven't done anything yet. They could either try to quash everyone, or sit back and do nothing."

Some representatives of Internet companies defend Amazon. John Buchenhorner, a former patent attorney with Gunster Yoakley and now director of the intellectual property division of Silicon Valley-based Internet portal AltaVista, is downplaying the impact of the Amazon claim.

"There is a belief that these patents block progress," he says. "That's not the case at all. Patents have resulted in innovations. If it were not for that, everyone would be a 'me too' company."

One factor that may prevent Amazon.com from upholding its patent against rival companies is the possibility that it would tarnish its reputation, casting itself as the next Microsoft Corp.

"It would create a backlash against Amazon," says Christian Asbeck, vice president of business development for Add-a-Shop.com, a Miami company that allows Web site owners to open online stores.

Meanwhile, some Internet companies are not too worried over whether the company's patent holds any ground in court.

Lou Romano, president and owner of Quickmusic.com, a Miami-based music retailer whose 10,000 affiliates account for about 50 percent of the company's revenue, says that since every affiliate program is different, only a few would exactly match those of Amazon.com.

"I'm not dismissing [the patent]," he said, "but I'm not going to lose sleep over it."

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