PUBLICATION

Virtual Shopping Centers? Commercial Real Estate Developers and Their Role in Retail's Newest Online Technology, Virtual Shopping

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Summary: Commercial real estate developers may find business opportunities in virtual shopping technology. This developing technology adds real-world simulation and social interaction to the online shopping experience.

Commercial real estate developers may soon need to consider developing in places other than the real world—they may need to consider the virtual world. Online retail technology is evolving, and the next big trend may be *virtual shopping*—online environments where users can digitally recreate the physical shopping experience of walking, talking and interacting with others.

Imagine going to a store's website and instead of scrolling down a two-dimensional webpage of pictures and links, you are guiding a digital character through a three-dimensional representation of the actual store. Imagine further that the store is filled with other digital characters controlled by actual people from their computers. Imagine talking to these people, or even digitally bumping into them in the aisles. Imagine asking questions to digital salespeople, controlled by real salespeople.

Early forms of virtual shopping technology have been around for at least two years, but they have had little success. Indeed, some commentators claim the technology will never be successful. Others maintain the technology is still developing, and that in five years virtual shopping technology will be significantly improved and ready for the public.

The question, for the purposes of this article, is whether commercial real estate developers—who build actual, physical shopping centers—should concern themselves with virtual shopping technology.

What Is Virtual Shopping?

Social Interaction, Real World Simulation and Positive Feelings

Virtual shopping is the implementation of social interaction and real world simulation into the online shopping experience. The idea, of course, is that people would not only shop more online, they would spend more, if the real shopping experience could be simulated.

In 2006 Apple Computer, Inc. filed a patent for virtual shopping.[1] (As an important side note, whether Apple is actually developing the technology remains a mystery.) In its application, Apple notes, "One drawback of online shopping is that the experience can feel sterile and isolating." With static webpages and a solitary experience, Apple claims online shoppers have less of a tendency to spend as much money as in-store shoppers. On the other hand, according to Apple, if the online experience could simulate things such as window shopping and the presence of other people, the shopper would be encouraged to linger. Apple claims the shopper would feel certain positive feelings created by the simulated experience. These positive feelings would lead to more sales.

It is clear that virtual shopping's success, if any, depends on the successful implementation of social interaction and real world simulation. But the virtual shopping world has yet to see a fully functional implementation of

these two components. Some virtual shopping programs have come close, but as noted below, it is clear the technology still needs improvement before consumers will be able to experience a truly functional virtual shopping experience.

How Far Along Is Virtual Shopping Technology?

Gartner, Inc., an information technology research and analysis firm in Connecticut, tracks virtual shopping through its self-penned analysis tool, the Hype Cycle. This is a tool used to track the "maturity, adoption and business application of specific technologies."[2] The Hype Cycle [3] consists of five stages: Technology Trigger (product launch), Peak of Inflated Expectations (publicity frenzy, some successes but mostly failures), Trough of Disillusionment (expectations not met, press abandon technology), Slope of Enlightenment (some businesses continue to experiment with technology), and Plateau of Productivity (technology stable, general public acceptance).

According to Jackie Fenn, Vice President of Gartner, virtual shopping technology is in the third stage of the Hype Cycle, the Trough of Disillusionment.[4] This is the stage where the technology initially disappoints, and the press stop reporting on it. Many technologies die at this stage,[5] unless they move on to the fourth stage, the Slope of Enlightenment. In this stage, a small number of companies will continue to develop the technology despite its initial disappointment.

Ms. Fenn notes that companies are currently trying to determine how virtual technology could benefit business, and many of them are likely to experiment with the technology for the next few years. Indeed, this may be happening already, given the continuing presence of certain virtual shopping programs (see below, An Example of Virtual Shopping Today). But these programs will need to develop significantly in order to make it to the fifth stage, the Plateau of Productivity. According to Ms. Fenn, such development may occur in the next five years. It is therefore likely that before 2015, the public will finally have the opportunity to embrace fully functioning virtual shopping technologies.

An Example of Virtual Shopping Today

Currently three virtual shopping programs have attracted the most attention. They are MyMall (www.themall.tv), Virtual E Shopping (www.virtualeshopping.com), and Kinset (www.kinset.com). Let's focus on the third, Kinset, because it is the best example of a simulated shopping center.

Kinset is a virtual shopping program that is designed to simulate an outdoor shopping center. At present, the Kinset shopping center has around eight stores, three of which were added while this article was being written. Only one of the stores is a recognizable brand—Brookstone. The other stores include, for example, a generically named book store, electronics store, and toy store whose products are linked to Amazon.com.

Once in the Kinset shopping center, the user moves through the digital environment using the computer's arrow keys and mouse, navigating around the common areas of the digital shopping center and finally into one of its stores, which are relatively impressive 3D recreations. Inside Brookstone, for example, the shelves and design give the feel of any Brookstone store, complete with its typical quirky collection of gadgets, miscellany and massage chairs. If the user walks up to one of the products, information about the product will appear on the left side of the screen. The user then has the option to add the product to the shopping cart, just as with any other Internet transaction.

Kinset is, however, missing one very important thing—the social interaction component. In Kinset's current form, the user is completely alone in the digital shopping center. It's almost as if the stores have just opened and the user is the first person there. In some stores, such as 'lectro Town, Kinset's electronics and home

entertainment store, there appear to be cardboard-like cutouts of salespeople. But they do not move or speak, even though Kinset's website claims that users "can chat with store clerks." The Kinset website also claims that users can "shop with friends." Presumably, this would be an implementation of the social interaction component, but if that is the case, it is not readily apparent.

There are other problems with Kinset, including slow download speed, mediocre graphics, and required software downloads, but the company appears to be actively improving its product. For example, Kinset claims to have a Flash version in development, which would eliminate the need to download special software. This and other improvements would significantly enhance the usability of Kinset and better position virtual shopping technology in general.

Overall, Kinset has done an impressive job of simulating the real world shopping experience. With continued improvement, it will likely be a frontrunner in fully functional virtual shopping technology.

Why Should Real Estate Developers Be Concerned with Virtual Shopping?

So far, virtual shopping technology has developed in the form of generic, fictional online malls or shopping centers. The companies that are behind the technology are typically software companies or general entrepreneurs, not commercial real estate developers. Nowhere in the world, presumably, is there a shopping center that resembles the one in the Kinset program described above, and therefore no commercial real estate developer was likely involved in its development.

But virtual shopping technology could potentially be tailored to specific, existing shopping centers. The benefits of such an application could include greater marketing potential, ease of customer access, local delivery options, and additional lease income for landlords. Indeed, such specific applications have already taken place to a limited extent.

In 2006 in San Jose, California, the company NearbyNow Inc. debuted a search and concierge service which offers users the ability to access local retail information by cellular phone or by the Internet.[6] The particular application in San Jose consists of up-to-date information specific to a local shopping center. Information regarding the shopping center's entire inventory—consisting of around 700,000 items—is available to shoppers in real time. The company also offers a broader service on its website (www.nearbynow.com) whereby users may search for product availability by region, all across the country, and the company will call stores in that region and determine where the product is in stock.

In 2008 in Durham, North Carolina, web developers created a virtual shopping mall consisting of retailers specific to Durham (www.virtualedurham.com). The site was based off of the already existing software created by Virtual E Shopping, but its digital space was leased to local retailers instead of national brands. Although the mall still does not actually represent an existing building, its digital retailers are tailored to the region and therefore accessible to the people local to Durham. The same company, Virtual E Shopping, has apparently been creating several malls like this one in Durham all across the country.[7]

The California concierge service and the Durham virtual mall represent attempts to localize the virtual shopping experience.[8] Such localized applications will likely continue to develop along with virtual shopping technology and provide a number of opportunities for otherwise unexpecting parties—such as commercial real estate developers. It is therefore not unlikely that commercial real estate developers will find various new opportunities through virtual shopping in the future.

Legal Implications of Virtual Shopping Centers for Real Estate Developers

Should a commercial real estate developer decide to enter into the virtual shopping world, the developer will confront areas of law with which developers are likely unfamiliar. There would be general intellectual property issues regarding any novel software application that may be created. Additionally, if software will be used by consumers, then developers will need to create often complicated, and legally sensitive, end-user license agreements. There is also a substantial likelihood for trademark and copyright infringement issues in any simulated environment that imitates the real world.[9]

In addition, retail landlords will need to familiarize themselves with virtual leases. These leases would generally mirror real-world leases, except for certain language regarding Internet-related issues. For example, rent may be based on the number of click throughs into the tenant's store, much like typical online advertising arrangements.

Perhaps one of the greater concerns is the extended liability which virtual shopping centers would likely create. This is the first true issue regarding virtual environments that has been litigated. In *Bragg v. Linden Research, Inc.*,[10] a Pennsylvania district court held that the creators of the virtual world program Second Life, based out of San Francisco, California, had sufficient contacts with the State of Pennsylvania to be subject to its court's jurisdiction because of extensive marketing efforts aimed at the far-reaching Internet public.[11] Virtual shopping retailers, like the creators of Second Life, will certainly want to market the use of their programs across the Internet. Therefore, anyone interested in conducting business in virtual worlds should be prepared to be hauled into court virtually anywhere.

Conclusion

As virtual shopping technology advances, businesses involved in retail will likely find new opportunities. Commercial real estate developers should be no exception. Of course, everything depends on the public's acceptance of fully functioning virtual shopping technology. In five years, virtual shopping technology should be ready for the test.

1. U.S. Patent App. 20080091553 (filed September 29, 2006).

2. *Understanding Hype Cycles*, http://www.gartner.com/pages/story.php.id.8795.s.8.jsp (last visited February 23, 2009).

3. http*://www.gartner.com/pages/story.php.id.8795.s.8.jsp.*

4. Q&A: Jackie Fenn, Gartner VP and Fellow, on Public Virtual Worlds and the Hype Cycle, Virtual Worlds News, http://www.virtualworldsnews.com/2008/08/qa-jackie-fenn.html (last visited February 23, 2009).

5. Indeed, there are those that believe virtual shopping is dead already. *Virtual Malls Try Again to Sell Things in* 3D, Los Angeles Times, December 8, 2008, http://latimesblogs.latimes.com/technology/2008/12/virtual-shoppin.html ("It's been more than a year since a slew of marketers pulled out of Second Life and pundits worried that the 3D virtual world had jumped the shark.") (citing Alana Semuels, *Virtual Marketers Have Second Thoughts About Second Life - Firms Find that Avatars Created by Participants in the Online Society Aren't Avid Shoppers*, Los Angeles Times, July 14, 2007, http://articles.latimes.com/2007/jul/14/business/fi-secondlife14).

6. Beth Mattson-Teig, *Malls Add Virtual Shopping*, Retail Traffic Magazine, October 2007, at 112.

7. Alana Semuels, *Hate Crowds? Shop in a Virtual Mall*, Los Angeles Times, December 8, 2008, http://latimesblogs.latimes.com/shopping_blog/2008/12/hate-crowds-sho.html.

8. Monica Chen, *Business Buzz: Virtual Mall Provides Break from Crowds*, The (Durham, NC) Herald-Sun, August 2, 2008.

9. Maria K. Nelson & Anna E. Raimer, *A "Second Life" for Trademarks: Virtual Worlds Raise New Concerns for Protection of Intellectual Property Rights*, E-Commerce Law Report, February 2008.

10. 487 F. Supp. 2d 593 (E.D. Penn. 2007).

11. *Id*. at 598–601.