

## Greater Clarity regarding Google AdWords – Implications for Brand Owners and Advertisers Google vs. Louis Vuitton

A recent ruling by the European Court of Justice (23 March 2010) in a case concerning the objections of several parties, most notably Louis Vuitton, to Google's AdWord service has seen an important decision in Google's favour regarding its right to sell brand names as search keywords.

### The AdWord Service

- Allows third parties to purchase keywords from Google which, when entered as search terms, generate a sponsored link to the third party's website.
- Companies are able to purchase rival business names, improving their advertising circulation.
- Counterfeiters have utilised this service to promote and sell their illegal products on the internet.

### Louis Vuitton and Google – Background

- Louis Vuitton commenced action against Google in early 2004 on grounds that selling its trade marks as keywords constituted trade mark infringement.
- Google was found by the Paris District Court to have committed trade mark infringement, misleading advertising and unfair competition and ordered to pay €300,000 in damages.
- The European Court of Justice has now held that Google has not infringed trade mark rights as the trade mark is not used in its own commercial communication. Google is free to sell trade marks as keywords, providing no active role is taken.

### Google's Liability

- Google is only free to sell trade marks as keywords provided that their conduct is 'technical, passive and with lack of knowledge'. Once Google is notified that an advertiser using certain keywords has been selling infringing goods, it must act expeditiously to prevent the infringer from using its AdWord service.
- Google's potential legal liability has increased enormously and it must now be diligent in the policing of its AdWords service.

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### Advertiser's Liability

- The ECJ held that purchasers of keywords will not infringe trade marks as long as the advertisements appearing make it clear that there is no connection between themselves and the brand owner. However, advertisers are potentially liable for trade mark infringement for improperly using sponsored links.

### Practical Implications

- Advertisers are now free to buy keywords identical to trade marks of rivals from Google, provided that consumers are not confused as to the origin of the goods or services.
- Advertisers should state whose products they sell and make it clear that their business is not connected with the brand whose trade mark is being used.
- Where brand owners are aware of sites selling counterfeit goods using keywords they should notify Google, if Google fails to take appropriate action it can be held liable.

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