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**The following article appears in The Birmingham Post's "Ask the Experts" feature on Tuesday 11<sup>th</sup> August 2009**

**Q. When I enter my trade mark into an internet search engine my website is not top of the list but one of my main competitors is. What is going on?**

A. It would appear that the writer's competitor has sponsored one or more AdWords™ or keywords which incorporate the writer's trade mark.

Internet search engines, such as Google™ and Yahoo!™, sell AdWords or keywords which help direct internet traffic to a keyword purchaser's internet site, and it is possible for a person to purchase a keyword which is identical or very similar to a trade mark owned by another.

The search engine companies state that they take allegations of trade mark infringement in keywords seriously and investigate complaints from trade mark owners.

This is a relatively new field of commerce, so there is no established view as to how practices relating to the use of other's trade marks as keywords are to be viewed.

Indeed, the sponsoring of AdWords or keywords comprising or consisting of trade marks and whether or not such acts constitute trade mark infringement or passing off has started to exercise courts around the world.

In the first UK case to address this issue ("Mr Spicy"), the Court found in favour of the search engine insofar as sponsorship of the keyword "Spicy" was held to not be an infringement of a registered trade mark "Mr Spicy".

Whilst the search engines have enjoyed success in some courts, in others, *e.g.* in France ("Voyageurs du Monde") and in the USA ("Playboy", "Rescuecom"), Google™, for one, has not fared so well.

Recently, the German Courts ("Bananabay") have referred a question on AdWord use to the European Court of Justice (ECJ).

Not to be outdone, the UK Court (Inter Flora) recently indicated that it is to make a referral to the ECJ to ask further questions as to the use of trade marks in such keywords.

Businesses across Europe will look with interest to the guidance that the ECJ will provide, which will need to tread a tight path between ensuring that the rights of trade mark owners are protected whilst allowing search engines to continue to make business out of selling advertising.

In this instance, the writer should consult the trade mark policy of the relevant search engine to see if there are steps that the search engine will take to stop the use of his trade mark. The writer should also consider enlisting the help of a qualified trade mark attorney to review the use (both online and real world) made by the competitor to see if there are grounds to complain to the competitor regarding trade mark infringement or passing off.

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