

## **TRADEMARKS AS KEY WORDS**

A number of internet search engines including, in particular, Google have recently adopted a new policy with regard to the use of third party trademarks as key words.

Advertisers can select key words which, when entered into a search engine, will direct the searcher to the advertiser's website. Typically the advertiser will pay the search engine owner for these re-directed searches. It is normally obvious to the person carrying out the search that the sites selected by using the key word are sponsored sites.

Until recently it was the policy of companies such as Google to try to ensure that an advertiser did not use, as a key word, a registered trademark which was not their own.

That policy has now changed. Some of the owners of search engines will now accept, without any checking, use by advertisers of trademarks, which they do not own, as key words to direct searches to their sites.

This policy change means that a person searching, for example, for a website which sells a particular product will put the product trademark into the search engine and, although the hits presented to the searcher will include sites which sell the trademarked products and/or services that the searcher is seeking, the search engines may also display, typically on the first page of the search, websites under the sponsored sites heading, for the advertiser who is using that trademark as a keyword. In many instances the advertiser will not actually sell the products or services being offered under the trademark being searched. Instead, they will be selling competitive products or services.

This practice has resulted in extensive litigation in the US and some continental jurisdictions, but, so far as we are aware, has not yet resulted in any litigation in the United Kingdom.

Google, for example, operate a complaints procedure. If a trademark owner is aware of an advertiser using one of his trademarks as a key word then Google will, upon receipt of an appropriate complaint, consider the matter and may stop the advertiser using that trademark as a key word. This complaints procedure is only available to owners of registered trademarks.

### ***Recommendations***

1. We recommend that you carry out periodic checks, using search engines, to determine if your company's trademarks are being used by third parties as key words for websites which are nothing to do with your company.
2. We recommend that you consider reserving your trademarks as key words with the search engine owners.

3. If you have not done so already, you should also consider registering all of your important trademarks to enable you to make use of search engine owners' available complaints procedures.

For further information in this matter please contact John Peacock, Sanjay Kapur or Ian Buchan in our Nottingham Office.

The information in this Newsletter was correct at the date of release. More up to date information is available by contacting Eric Potter Clarkson. All comments contained here are of a general nature and full professional advice should be sought on any specific problem.

Please note that all our Newsletters can be found on our website at [www.eric-potter.com](http://www.eric-potter.com).

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