

Your Legal Questions

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Q. My company has its own website and we are trying to increase business through it by purchasing key words which will bring our name up more often when people search the internet. Are there any restrictions on the words we can use?

A. Using words which generally describe or are relevant to your product or service present no difficulty but may not produce a great number of "hits" on your website. Whereas if you can have your site displayed as a sponsored link when other very popular key words are searched this can give you a significant marketing advantage.

However, problems arise where key words are third party trademarks as their owners may claim that your advertising constitutes an infringement of their trademark which they may seek to restrain by seeking an injunction and damages.

The European Court of Justice has held that while use of a key word identical to a trademark to advertise goods and services is potentially an infringement of trademark it will only be so if the advertisement does not enable the average internet user, or only with difficulty, to ascertain whether the goods or services referred to originate from the trademark owner or an undertaking economically connected to it.

The key factor is, therefore, confusion. You can use a competitor's trademark in your advertising providing it does not confuse consumers about where the goods or services they are purchasing come from. If your advertising suggests you have an economic link with the trademark owner or is deliberately vague about the origin of the goods or services concerned, so that the consumer cannot tell whether the advertisement is from your company or the trademark owner, then this is likely to amount to an infringement of trademark.

The court guidance to date has left a number of grey areas and professional advice from a solicitor is essential.

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