

Keyword Advertising: Still Need Construction in European Union; Perspective on Interflora vs. Marks and Spencer

Authors : Mohammadbagher Asghariaghamashhadi

Abstract : Internet users normally are automatically linked to an advertisement sponsored by a bidder when Internet users enter any trademarked keyword on a search engine. This advertisement appears beside the search results. Through the process of keyword advertising, advertisers can connect with many Internet users and let them know about their goods and services. This concept has generated heated disagreements among legal scholars, trademark proprietors, advertisers, search engine owners, and consumers. Therefore, use of trademarks in keyword advertising has been one of the most debatable issues in trademark law for several years. This entirely new way of using trademarks over the Internet has provoked a discussion concerning the core concepts of trademark law. In respect to legal issues, European Union (EU) trademark law is mostly governed by the Trademark Directive and the Community Trademark Regulation. Article 5 of the directive and Article 9 of the trademark regulation determine the circumstances in which a trademark owner holds the right to prohibit a third party's use of his/her registered sign. Harmonized EU trademark law proved to be ambiguous on whether using of a trademark is amounted to trademark infringement or not. The case law of the European Court of Justice (ECJ), with reference to this legislation, is mostly unfavorable to trademark owners. This ambivalence was also exhibited by the case law of EU Member States. European keyword advertisers simply could not tell which use of a competitor's trademark was lawful. In recent years, ECJ has continuously expanded the scope and reach of trademark protection in the EU. It is notable that Inconsistencies in the Court's system of infringement criteria clearly come to the fore and this approach has been criticized by analysts who believe that the Court should have adopted a more traditional approach to the analysis of trademark infringement, which was suggested by its Advocate General, in order to arrive at the same conclusion. Regarding case law of keyword advertising within Europe, one of the most disputable cases is Interflora vs. Marks and Spencer, which is still on-going. This study examines and critically analyzes the decisions of the ECJ, the high court of England, and the Court of Appeals of England and address critically keyword advertising issue within European trademark legislation.

Keywords : ECJ, Google, Interflora, keyword advertising, Marks and Spencer, trademark infringement

Conference Title : ICMIP 2016 : International Conference on Managing Intellectual Property

Conference Location : Paris, France

Conference Dates : October 24-25, 2016