

Change to Google AdWords programme comes under fire

Google's liberalisation of its AdWords programme in Europe, allowing advertisers to include third-party trademark terms in advert text, has been "strongly criticised" by trademark owners.

In the aftermath of the Court of Justice of the European Union ruling that Google was not liable for infringement in the case of trademark use as keywords, the search engine giant moved to changed its European AdWords programme to permit the acquisition of third-party trademarks as AdWords, and to allow some advertisers to utilise third-party trademarks in advertisement text without the brand holder's permission.

European brands association AIM criticised the change, pointing out that "Google has chosen not to speak with brand owners to find a solution that would protect all interests", and predicting that consumers will be duped by

sponsored ads into buying counterfeit goods.

Alongside the policy change, Google announced a notice and takedown procedure for the system, which states:

"Trademark owners or their authorised agents will be able to complain about the selection of their trademark by a third party if they feel that it leads to a specific ad text which confuses users about the origin of the advertised goods and services. Google will then conduct a limited investigation and if we find that the ad text does confuse users as to the origin of the advertised goods and services, we will remove the ad. However, we will not prevent use of trademarks as keywords in the affected regions."

When asked about the complaints procedure one day after the change, James Pond, product counsel of Google, would not be drawn on exactly how decisions would be made,

but noted: "We have a team in Ireland who have a set procedure to follow and will consider the complaint. We then let you know whether we agree or not."

The changes align the European system with that in place in the United States. Considering the US experience, trademark attorney Owen Smigelski, senior counsel at Sunrider International, says that Google's response time upon receiving a complaint has been unpredictable: "Google can be quick in removing some ads, but it does not do so for all occurrences, and other times it is a month or more before I receive follow up."

However, Lee J Eulgen, partner at Neal, Gerber & Eisenberg LLP, suggests that while "it seems that every trademark policy announcement by Google is met with a visceral reaction by some in the intellectual property bar on both sides of the pond", brand owners should welcome the decision to align the US and European policies.

For more on the new AdWords policy, see page 33.

Competition winner

This summer, *World Trademark Review* ran a promotion which saw those individuals taking out a free trial subscription before July 16 2010 entered into a prize draw to win an Apple iPad.

WTR is pleased to announce that the winner is **Magdalena Fredlund**, partner at Albihns.Zacco AB in Sweden.



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