



Court of Justice of the European Union

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Press and Information

Judgment in Joined Cases C-236/08 to C-238/08
Google France and Google Inc. et al. v Louis Vuitton Malletier et al.

Google has not infringed trade mark law by allowing advertisers to purchase keywords corresponding to their competitors' trade marks

Advertisers themselves, however, cannot, by using such keywords, arrange for Google to display ads which do not allow internet users easily to establish from which undertaking the goods or services covered by the ad in question originate

Community law on trade marks¹ entitles proprietors of trade marks, subject to certain conditions, to prohibit third parties from using signs which are identical with, or similar to, their trade marks for goods or services equivalent to those for which those trade marks are registered.

Google operates an internet search engine. When an internet user performs a search on the basis of one or more key words, the search engine will display the sites which appear best to correspond to those key words, in decreasing order of relevance. These are referred to as the 'natural' results of the search.

In addition, Google offers a paid referencing service called 'AdWords'. That service enables any economic operator, by means of the reservation of one or more keywords, to obtain the placing – in the event of a correspondence between one or more of those words and that/those entered as a request in the search engine by an internet user – of an advertising link to its site, accompanied by a commercial message. That advertising link appears under the heading 'sponsored links', which is displayed either on the right-hand side of the screen, to the right of the natural results, or on the upper part of the screen, above those results.

Vuitton, which is the proprietor of the Community trade mark 'Vuitton' and of the French national trade marks 'Louis Vuitton' and 'LV', Viaticum, which is the proprietor of the French trade marks 'Bourse des Vols', 'Bourse des Voyages' and 'BDV', and Mr Thonet, the proprietor of the French trade mark 'Eurochallenges', became aware that the entry, by internet users, of terms constituting those trade marks into Google's search engine triggered the display, under the heading 'sponsored links', of links to sites offering imitation versions of Vuitton's products and to sites of competitors of Viaticum and of the Centre national de recherche en relations humaines respectively. They therefore brought separate sets of proceedings against Google for declarations that it had infringed their trade marks.

The Cour de cassation (French Court of Cassation), ruling as a court of final instance in the sets of proceedings which the trade mark proprietors have brought against Google, has referred questions to the Court of Justice on whether it is lawful to use, as keywords in the context of an internet referencing service, signs which correspond to trade marks, where consent has not been given by the proprietors of those trade marks.

The use, in an internet referencing service, of keywords corresponding to other persons' trade marks

¹ First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1) and Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

The Court notes that, by purchasing the referencing service and selecting, as a keyword, a sign corresponding to another person's trade mark, with the purpose of offering internet users an alternative to the goods or services of that proprietor, an advertiser uses that sign in relation to its goods or services. That is not the case, however, where a referencing service provider permits advertisers to select, as keywords, signs identical with trade marks, stores those signs and displays its clients' ads on the basis of those keywords.

The Court states that the use, by a third party, of a sign which is identical with, or similar to, the proprietor's trade mark implies, at the very least, that that third party uses the sign in its own commercial communication. A referencing service provider, however, allows its clients, namely the advertisers, to use signs which are identical with, or similar to, trade marks, but does not itself use those signs.

If a trade mark has been used as a keyword, the proprietor of that trade mark cannot, therefore, rely, as against Google, on the exclusive right which it derives from its mark. By contrast, it can invoke that right against those advertisers which, by means of a keyword corresponding to its mark, arrange for Google to display ads which make it impossible, or possible only with difficulty, for average internet users to establish from what undertaking the goods or services covered by the ad originate.

In such a situation – which is characterised by the fact that the ad in question appears immediately after the trade mark has been entered as a search term by the internet user concerned and is displayed at a point when the trade mark, in its capacity as a search term, is also displayed on the screen – the internet user may err as to the origin of the goods or services in question. The function of the trade mark, which is to guarantee to consumers the origin of goods or services (the trade mark's 'function of indicating origin'), is thus adversely affected.

It is for the national court to assess, on a case-by-case basis, whether the facts of the dispute before it point to an adverse effect, or a risk thereof, on the function of indicating origin.

With regard to the use, by internet advertisers, of a sign corresponding to another person's trade mark as a keyword for purposes of the display of advertising messages, the Court also takes the view that that use is liable to have certain repercussions on the advertising use of that mark by its proprietor and on the latter's commercial strategy. Those repercussions of third parties' use of a sign identical with the trade mark do not of themselves, however, constitute an adverse effect on the 'advertising function' of the trade mark.

The liability of the referencing service provider

The Court has also been asked to rule on the liability of an operator such as Google in respect of the data of its clients which it stores on its server.

Questions of liability are governed by national law. European Union law, however, lays down restrictions on liability in favour of information society intermediary service providers².

With regard to the question whether an internet referencing service, such as 'AdWords', is an information society service consisting in the storage of information supplied by advertisers and whether, on that ground, the liability of the referencing service provider may be limited, the Court rules that it is for the referring court to examine whether the role played by that service provider is neutral, in the sense that its conduct is merely technical, automatic and passive, pointing to a lack of knowledge of, or control over, the data which it stores.

If it proves to be the case that it has not played an active role, that service provider cannot be held liable for the data which it has stored at the request of an advertiser, unless, having obtained

² Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ 2000 L 178, p. 1).

knowledge of the unlawful nature of those data or of that advertiser's activities, it failed to act expeditiously to remove or to disable access to the data concerned.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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