



Google Adwords Program Triggers "Actionable" Trademark Infringement Claim

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If you own a trademark, you may prevent Google from selling your name and directing web traffic to your competitors' websites.

Google has been sued by a number of companies for trademark infringement. Google Adwords, an Internet advertising program, allows a competitor to buy ads linked to searches for a competing company (such as your own) and then directs web traffic to the purchasing competitor's website.

A federal court recently ruled that Google's sale of a company's trademark for use in its Adwords program may constitute an "actionable" trademark infringement claim. Rescuecom sued Google for trademark infringement, false designation of origin and trademark dilution for allowing Rescuecom's competitors to purchase Rescuecom's trademark as a keyword in Google's Adwords program.

Rescuecom, which offers on-site computer services and sales, claims that Google suggested its trademark to Rescuecom's competitors as a keyword, causing the searcher "to believe mistakenly that a competitor's advertisement and web link is sponsored by, endorsed by, approved by or affiliated with Rescuecom." The Second Circuit Court of Appeals stated that Google was indeed recommending and selling Rescuecom's trademark to Google's advertisers.

Part of Google's business model is premised upon allowing people to purchase other people's trademarks and, until now, there has been relatively little or no case law on this point.

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PRACTICE AREAS

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If you believe Google Adwords program is unfairly directing web traffic to your competitor's websites – by using your trademark as a keyword – you should contact Google and formally request that it refrain from selling your trademark and unjustly allowing your competitors to divert business away from your site, using your company's name and goodwill.

Rescuecom Corp. v Google Inc., 562 F.3d 123 (2nd Cir 2009).

