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## DOES GOOGLE ADWORDS INFRINGE TRADEMARKS?

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### ABSTRACT

A trademark is a word, logo, design, colour, sound, smell, or combination of these, that helps in distinguishing the products of one seller from those of others. For example, the Apple logo, Coca-Cola bottle, or Nokia ringtone. In layman's terms, a trademark is basically a source identifier. In today's technology-driven world, artificial intelligence (AI) has become an inseparable part of our day-to-day lives. Trademark law is concerned with the purchasing process and reputation of the brand among consumers.

The e-commerce industry is exploding, and Google AdWords has become one of the most important marketing platforms for many businesses. Many businesses, spanning from online service providers and shops to those limited to the real market, use Google AdWords as their primary marketing channel for promoting their services. As is well known, AdWords allows brand owners to market their products and services by using a combination of keywords to show their ads whenever the selected terms are searched. The issue of "trademark infringement" arises when one organization bids on AdWords on which another organization has statutory or common law trademark rights, causing internet traffic to be diverted away from the trademark proprietor's webpage.

This study will analyse the concept of trademark laws and the AdWords conundrum surrounding trademark rights. We will also explore the question of whether using Google AdWords constitutes marketing and advertising of the brand or whether it constitutes trademark infringement.

**Keywords:** AdWords, Artificial Intelligence, Internet Traffic, Infringement, Keywords, Marketing.

## **1. INTRODUCTION**

Google has embedded itself into every part of our lives and permeates every facet of modern life. It has become pervasive. Google has become one of the most successful marketing companies in the world as a direct result of people's growing dependency on the internet and the fact that the bulk of our lives now occurs online. Google Ads is an advertising platform developed by Google to assist merchants and business owners in expanding their customer base via the targeted broadcast of adverts to potential customers<sup>1</sup>. When internet users use Google's search engine to do a search, the aforementioned feature allows advertisers to make bids on "keywords" so that brief advertisements, service offers, and product listings may be shown to those users. After then, advertising will appear above the user's organic search results, with the term "Ad" applied to the beginning of such search results to signify that they are advertisements. After the user has finished their search, this will occur. The aforementioned feature enables advertising to reach a wide variety of prospective customers for their product or service<sup>2</sup>.

The growth of the online retail sector has coincided with the rise in popularity of Google AdWords as a primary advertising platform. Companies in one category may operate solely in the digital realm, while those in another may be limited to the brick-and-mortar world. However, despite the diversity in business models, virtually every company today uses some form of online advertising to promote their wares. There has been a rise in the use of online advertising thanks to the prevalence of search engines and their ad networks, the most prominent of which is Google AdWords. The way people think about online advertisements and search engines has changed drastically because of Google AdWords<sup>3</sup>.

## **2. GOOGLE ADWORDS: CONCEPT AND MEANING**

Google has an advertising platform called AdWords that is based on keyword phrases. Advertisers can pay to have their websites displayed as "sponsored links" whenever a user searches for a keyword or phrase related to their business on Google. If you type something like "tennis shoes" into the Google search bar, you'll get a list of sponsored links to the right of the organic results that are all about tennis shoes. Advertising next to search results is appealing

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<sup>1</sup> Tishya Pandey, "Google AdWords Liability for Trademark Infringement" 4 *International Journal of Law Management and Humanities* 320 (2018)

<sup>2</sup> Ashley Tan, "Google Adwords: Trademark Infringer or Trade Liberalizer" 16 *Michigan Telecommunications and Technology Law Review* 475 (2010)

<sup>3</sup> David A Hyman & David J Franklyn, "Trademarks as Search Engine Keywords: Who, What, When?" 92 *Textile & Leather Review* 2121 (2014)

because it allows businesses to reach an interested and qualified audience. Because of its convenient placement, customers can quickly and easily click the ad and proceed with their purchase or research. The "Keyword Tool" is a component of Google AdWords.

Possible advertising campaign keywords are suggested, and related Google data, such as search volume, seasonality, and other metrics, are reported. Use the Keyword Tool's "keyword variations" or "site-related keywords" features to get some ideas for keywords to use in your content. The former works like this: the user types in a keyword, and then the tool provides a list of related ideas. The latter is very similar, except that instead of entering a word, the user inputs a string of characters known as a "URL." Then, Google AdWords crawls the site and compiles a list of relevant search terms. It was with this end in mind that each of these strategies was created. Thus, the Keyword Tool will recommend brand-specific keywords like "Puma Tennis Shoes" and "Prince Tennis Shoes" when an advertiser seeks to buy a broad term like "tennis shoes." So, using Google's Keyword Tool, marketers may purchase search terms associated with either their own or their competitors' products. This has prompted questions about Google's liability for trademark infringement and raised concerns among businesses that want to protect their trademarked interests. Google's practise of making money off of the trademarks of other businesses has sparked debate. AdWords revenue is determined mostly by how often users click on advertisements delivered by the service (the "cost-per-click" or "CPC" model). Contrary to other cost-per-click models, Google does not only rely on ad placement on the price bid by the advertiser for spot<sup>4</sup>.

After an ad has been generated, the advertiser determines the cost-per-click by establishing a budget for how much they are willing to spend whenever a user clicks on the ad. In addition, marketers must set a daily budget, which may be done by dividing the monthly budget by the number of days in the advertising campaign. Whether or not advertising is displayed as a sponsored link in response to a user's search query on Google's search results page is determined by a number of factors known collectively as AdRank. These factors include maximum CPC, "clickthrough rate," and ad copy<sup>5</sup>. For each click on an ad, the advertiser has agreed to pay up to the maximum CPC. The "clickthrough rate" can be calculated by dividing the number of times an ad was shown as a sponsored link by the total number of times it was

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<sup>4</sup> Stefan Bechtold, "Google Adwords and European Trademark Law" (2011) 54 Communications of the ACM 31 (2011)

<sup>5</sup> Ashley Tan, "Google Adwords: Trademark Infringer or Trade Liberalizer" 16 Michigan Telecommunications and Technology Law Review 482 (2010)

shown to users ("Clickthrough Rate"). Due to an increase in the CTR for well-targeted advertisements, the advertisers with the highest CTRs (and, presumably, the most popular commercials) may pay less for their advertisements to display near the top of sponsored links. As a result, Google's strategy doesn't just prioritise the advertisers that bring in the most money for the company but also treats those with greater pockets as fairly as those who create the most hits.

### **3. KEYWORDS USED IN GOOGLE ADS**

The most common strategy used by businesses to build their online presence is a kind of advertising known as keyword advertising on search engines that use keyword research. Users of a search portal will often employ words, phrases, symbols, and even numbers as search strings. These are referred to as keywords.

Example: If a business sells footwear, for instance, its website is optimized so that visitors looking for phrases such as "sneakers," "women's boots," "running shoes," and similar terms are sent to that company's website. There are methods for keyword advertising that enable marketers to obtain specific words or phrases that will direct searchers to their products or services when they are seeking anything relevant to the keyword.

This program makes it possible for an advertiser to make a bid on certain keywords, which are phrases entered by browser users. The advertiser's AdWords account permits the selection of keywords pertinent to the company's brand, products, and services, as well as the industry. After the user has entered the relevant term, the advertiser with the highest bid on the supplied keyword will have his ad shown at the top of the list of available advertisements. AdWords is a pay-per-click advertising program, so Google earns money whenever a user clicks on an advertisement and subsequently visits an advertiser's website<sup>6</sup>.

### **4. ADWORDS AND TRADEMARK LAW INTERSECTION**

If a user enters a query into Google's search engine that includes one or more of the reserved keywords, the advertiser will receive a click-through to their website. AdWords is a service that helps businesses promote their goods and services by showing ads related to specific keyword combinations<sup>7</sup>. Dozens of websites that have high consumer traffic or a prominent

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<sup>6</sup> "Christian Volkmann, "Trademark Use and Liability of Referencing Service in Keyword Advertising – Google AdWords and Trademark Law" 2 *European Journal of Risk Regulation* 452 (2011)

<sup>7</sup> "Tishya Pandey, "Google AdWords Liability for Trademark Infringement" 4 *International Journal of Law Management and Humanities* 320 (2018)"

position in search engine results will feature these ads<sup>8</sup>. The search engine provides a "keyword suggestion tool" through which an entity or brand owner can place bids on various search terms, phrases, and keywords. Bidding on AdWords in which a different entity has statutory or common law trademark rights can constitute trademark infringement if it diverts web traffic away from the owner's web pages. This begs the question: are these entities diluting the value of the brand, product, or service while also diverting attention away from the fact that customers can easily find alternatives to them online?

## 5. ISSUES

Since the owner of a trademark has greater control over the brand, it might cause problems when a third party uses the trademark as a term to connect to its own website and sell its own goods and services. Trademark infringement may occur if a third party uses a word that is already owned by another party<sup>9</sup>. Trademark owners often complain that allowing competitors to use their mark as a keyword in search results is unfair since it provides them with an edge over the trademark owner.

## 6. GOOGLE'S TRADEMARK POLICY AND INDIAN LAWS

### 6.1 GOOGLE'S POLICY CONCERNING TRADEMARK

As part of its Ads policy, Google says it will follow local trademark laws and requires that Google Ads not violate the trademarks of third parties. Google also says that it will follow all trademark laws around the world. If a trademark owner thinks that someone else is using their mark without permission, they can file a complaint with Google. Google looks into these complaints, and if it finds that the concerns are valid, it may limit how the trademark can be used. On the other hand, Google doesn't do much more than look at and track how trademarks are used in the text or URLs of ads. Google's policy is that trademarks can be used as keywords without being looked into or limited in any way.

Exception: If a trademark infringement complaint is made, Google will do a limited investigation in countries that are part of the European Union and the European Free Trade Association to see if a keyword and an ad with a trademark make it hard to tell where the advertised goods or services come from. This is an exception to the rule that Google usually

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<sup>8</sup> Ibid

<sup>9</sup> "Ranjan Narula & Deeksha Singh, "Google Ads program under scrutiny by the Delhi High Court", Lexology, available at: <https://www.lexology.com/library/detail.aspx?g=2e5c946a-180b-4521-b76c-05f27bd9eb31> (last visited on February 22, 2023)

doesn't look into complaints about trademark infringement. If Google thinks that putting together a keyword and an ad makes for a bad user experience, it will limit how often people can do that<sup>10</sup>.

## 6.2 INDIAN LEGAL FRAMEWORK

Infringement of a registered trademark is defined by Section 29 of the Indian Trademarks Act, which states that this type of violation occurs when a person who is not the registered owner of the trademark uses, in the course of trade, a mark that is identical or deceptively similar to the registered trademark in relation to the goods or services for which the trademark is registered<sup>11</sup>.

## 7. OUTLOOK OF COURTS

### *Consim Info Pvt. Ltd. v. Google India Pvt. Ltd. & Ors.*<sup>12</sup>

In the case of Consim Info Pvt. Ltd., trademark infringement through keyword advertising was examined for the first time in India. The Appellant, a well-known provider of online marriage services, has registered a number of trademarks, including Bharatmatrimony, Tamilmatrimony, and others. As a result, the Appellant requested that the Respondents be prohibited from using these registered trademarks or variants as online search keywords. The Respondents asserted that their use of the Applicant's trademark was not "in the ordinary course of business," but rather in conformity with acceptable business and industrial practices. Ultimately, the court determined that the registered marks of the appellant were descriptive of the services they offered. Neither the advertiser nor the search engine was required to pay.

### **Upcurve Business Services Pvt Ltd vs. Easy Trip Planners Private Limited & Ors.**<sup>13</sup>

A travel firm known as the Plaintiff filed a complaint against Easy Trip Planners Private Limited and happyfares.in for utilizing the registered trademark "UdChalo" (which means "Let's Fly") to attract customers to their websites through the Google Ads Program. The Delhi High Court granted an order prohibiting Defendant Number 1 from using Plaintiff's mark as a keyword. • The court agreed that Defendant Number 2 was in a rival company, travel services, and that using the phrase "UdChalo" to advertise its business would be a trademark

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<sup>10</sup> Stefan Bechtold, "Google Adwords and European Trademark Law" (2011) 54 Communications of the ACM 31 (2011)

<sup>11</sup> The Trademarks Act 1999 (Act 47 of 1999), s. 29

<sup>12</sup> C.S.No.832 of 2009

<sup>13</sup> CS(COMM) 155/2022

infringement. Regarding whether or not this would be a breach of the law and whether or not using a trademark as a keyword would be a violation of the law, the Court determined that the matter would be regarded as if it had been heard before and would be heard anew.

## **7. CONCLUSION**

Google Adwords is one of the tools that help businesses choose the right keywords and target them. There is no denying the fact that paid search has revolutionised the advertising industry online, opening up a truly global marketplace that has the potential to speed up the process of trade liberalisation. As a result, it is essential to strike a balance between the interests of protecting businesses from unfair competition and ensuring the free flow of information while analysing the question of whether or not the practise of Google AdWords of selling trademarked terms as keywords would constitute "trademark use" under trademark law. This is because it is important to protect businesses from unfair competition. This is precisely why we have trademark law, and it deserves protection<sup>14</sup>. As bidding on someone else's trademark would be a violation of that person's statutory and common law rights, it's obvious that the Indian Court has taken a stand for trademark owner protection on the Google search engine by preventing unauthorized users from doing so. In the future, Indian courts can adopt a restricted interpretation to maintain a fair playing field between competing businesses and to keep pace with the various interpretations of the "trademark usage" criteria that have been established in other legal systems. An overly broad definition of "trademark usage" could provide trademark holders with an unfair advantage, constraining consumer choice and hampering economic growth<sup>15</sup>.

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<sup>14</sup> "Tishya Pandey, "Google AdWords Liability for Trademark Infringement" 4 International Journal of Law Management and Humanities" 323 (2018)"

<sup>15</sup> "Stefan Bechtold, "Google Adwords and European Trademark Law" (2011) 54 Communications of the ACM 32 (2011)