

### Google's Keyword Policy To Expand Despite New Legal Challenges

May 29, 2009

This month, a Texas-based software company filed the first class action lawsuit that claimed that the sale of keywords by internet search engines is trademark infringement. The claim is that Google and other companies that use its technology allow competitors to bid on search terms through Google's AdWords program. The suit seeks to certify a class of Texas-based individuals or companies that own registered trademarks that were sold by Google as keywords from May 11, 2005 through the present.

The suit was filed about a month after the U.S. Court of Appeals for the Second Circuit issued an opinion in *Rescuecom Corp. v. Google Inc.* In *Rescuecom*, the plaintiff sued Google for trademark infringement and other claims, alleging that Google recommended and sold its trademarks as keywords to plaintiff's competitors. The plaintiff also alleged that customers who searched for its web site on Google were misdirected to its competitors' web sites in a manner that would mislead them to believe the sites were affiliated with Rescuecom. The Second Circuit vacated the district court's dismissal of the complaint, holding that Rescuecom sufficiently pled an "actionable" trademark violation by Google.

Despite the *Rescuecom* ruling, Google announced this month that it will expand its AdWords policy, allowing competitors to bid on trademarks in over 190 countries. It also announced that it will allow businesses to use trademarked terms in an advertisement's text in certain circumstances without the trademark owner's permission. Google adopted its AdWords policy in the U.S. and Canada in 2004, and expanded it to include the U.K. and Ireland in 2008. Google is not extending the policy at this time to the majority of European Union (EU) member states, where it has met strong resistance.

For more information on protecting trademarks in the United States or abroad, or for a copy of either case referenced, please contact our team of Miller Canfield trademark attorneys, or

Kristen I. Spano  
(313) 496-7562  
spano@millercanfield.com

Catherine T. Dobrowitsky  
(313) 496-8429  
dobrowitsky@millercanfield.com