

## **USE OF GOOGLE ADWORDS AND TRADE MARK INFRINGEMENT**

### **DECISION OF THE EUROPEAN COURT OF JUSTICE**

#### **Background**

Google's Adwords system allows advertisers to pay for keywords which, when a user enters them into Google's search engine, will bring up the advertiser's website.

Many advertisers use the trade marks and brand names of others as Adwords. In this case, *Google France, Google Inc v Louis Vuitton Malletier*, the advertiser paid for Adwords which were the trade marks of Louis Vuitton to trigger its advertisement for counterfeit Louis Vuitton goods.

Louis Vuitton claimed that the use of its trade marks as Adwords constituted trade mark infringement. The case was referred to the European Court of Justice.

#### **The Court's Decision**

In September 2009 the Advocate General (who advises the Court on what its decision should be) gave his opinion that the use of Adwords did not constitute trade mark infringement. However the European Court of Justice held, on 22 March 2010, that the proprietor of a trade mark is entitled to prohibit an advertiser from advertising on the basis of keywords which are identical to the proprietor's trade marks and for goods or services which are identical to those for which the trade mark is registered where the advertisement does not enable the internet user to ascertain whether the goods or services being advertised originate from the trade mark owner (or someone connected to it) or a third party.

The Court also ruled that an internet reference service provider (e.g. Google) will not be held to have infringed the trade mark in such circumstances but that it may incur liability if, having obtained knowledge of the unlawful nature of the advertisers activities it fails to act quickly to remove or to disable access to the data concerned.

This decision has been long awaited with a number of cases in the UK and elsewhere in Europe being effectively put on hold pending the decision of the ECJ in this case.

It is now clear that the use of other person's trade marks under the Google Adwords system to try to attract customers for the same or similar goods and services will constitute trade mark infringement unless the proprietor of the trade mark agrees to such use.