

## Google responsible for infringing sponsored link, court rules

In *Metaspinner GmbH v Google Deutschland* (Case 312 O 887/02), the Regional Court of Hamburg has granted an interim injunction prohibiting Google from displaying a sponsored link for the domain name 'preisserver.de' in the result page for a search with the keyword '*Preispiraten*' (meaning 'price pirates').

The dispute arose when the registrant of the domain name 'preisserver.de' placed an advertisement (ie, sponsored link) on Google's page displaying results for a search made with the keyword '*Preispiraten*'. This diverted internet users away from the website hosted under the domain name 'preispiraten.de'. Metaspinner GmbH, the registrant of 'preispiraten.de', considered it an infringement of its German trademark PREISPIRATEN. As Google did not respond to its cease and desist letter, Metaspinner filed a suit with the Regional Court of Hamburg.

The court granted a provisional injunction preventing Google from displaying the 'preisserver.de' sponsored link. The court found that (i) the advertisement was in breach of Metaspinner's trademark and title rights pursuant to Sections 4(1) and 5(3) of the German Trademark Act, and (ii) Metaspinner was entitled to relief pursuant to Sections 14 and 15 of that act.

The decision expands on previous case law regarding liability for metatags (see *Regional Court of Mannheim CR 1998, 306* and *Regional Court of Frankfurt am Main 3-11 O 98/99*). Under this line of authority, courts have found that a trademark owner may request a competitor to cease and desist using a link, even when the competitor had not itself created the link. This is because a competitor is expected to take suitable measures to prevent search engines from establishing a connection with its homepage, for example by means of a metatag. The reasoning is that liability falls not only on the party that infringes a trademark or violates competition rules, but also on any person that takes advantage of the actions of a third party acting contrary to trademark or competition law, if that person had the possibility of preventing the third party's actions (the 'joint wrongdoer' principle).

In the case at hand, the court applied this principle to Google's actions and found it liable for the underlying violation, at least as joint wrongdoer, as it had the opportunity to stop the violation. There is no obligation on the operators of search engines to check the legality of all contents or links. However, if operators have positive knowledge that a keyword infringes a trademark or that a link has not been authorized by the trademark owner, they are no longer acting in good faith. In the present case, Google should have taken immediate action, when it received Metaspinner's cease and desist letter, to remove the information or block access to it.

For a discussion of another decision against Google involving sponsored links, see Google's sponsored links infringe trademarks.

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