

Sealux settles over trademarks dispute

Sealux has settled out of court with McComb Developments for infringements of its trademarks, for a symbolic amount on 22 May.

McComb agreed to pay £1 for the use of 'meta tags' of the Sealux, Transeal and Trimlux brand names. Meta tags are used by Internet search engines such as Google to identify and order pages when key words are entered.

Despite McComb being a rival supplier to Sealux, Sealux md Gerard Robinson discovered that if Sealux trademarks were entered into a Google or Kompass search an enquiry could be directed to McComb's website. It was brought to his attention that at least one instance of lost business occurred due to the infringements.

When confronted, McComb immediately withdrew the meta tags and agreed to settle for the amount of £1 in damages to close the matter.

The unauthorised use of meta



Robinson: moral victory on meta tags

Tags is actionable under The Trade Marks Act 1994. Damages are awarded in accordance with the amount of lost business relating to the infringement – a task that is notoriously difficult, and expensive, to prove.

Robinson said: 'When we challenged McComb Developments on listing Sealux trademarks under its company profile in Google and Kompass, they expressed surprise, apologised and claimed "in fact" not to have diverted any of our enquirers to their website.'

'Contrary to this "fact", we were forwarded correspondence sent by McComb Developments to one such diverted Sealux / Trimlux enquirer called Simon who requested a price for Sealux. Claims made by McComb Developments in emails to Simon attempted to undermine the integrity of Sealux, Trimlux and Sealux Limited through a series of misleading and derogatory comments, innuendo and ill informed opinions strategically motivated to change the enquirer's mind in favour of Teleseal.

'After we reacquainted McComb Developments with the reality of their facts, they paid damages and gave undertakings in line with our proposals.'

Barry McComb of McComb Developments said: 'The trademarks were used by mistake and the links were removed straight away. I hope that the matter can finally be laid to rest.'

Technology

Abusing trademarks online

JOHN COLLINS

Recent media coverage of intellectual property disputes online has turned the attention back on to the phenomenon of cybersquatting, whereby speculators register an internet address in the hope of selling it to the highest bidder.

But registering your company's domain name in the relevant markets is not all you need to do to protect your intellectual property online. The recent experience of one Irish company that has been attempting to expand into the UK market suggests that securing your domain name is only the start of the battle.

Earlier this year, Sealux, a small Irish manufacturing firm that has developed a patented seal for showers and bathrooms, discovered that one of its competitors, McComb Developments, was including Sealux trademarks on its website.

The trademarks were included in "metatags" - part of a website's code that is invisible to internet surfers but that is read by search engines to garner information about a website. The same text was also included in McComb's listing in the Kompass business directory.

Sealux was subsequently informed by a third party that when they contacted McComb to purchase Sealux products, they were encouraged to buy a competing product.

Gerry Robinson, founder and managing director, felt that a costly and lengthy legal process would be required to prove that

his company had suffered a loss as a result of McComb's actions. McComb offered to remove the tags immediately when confronted with the evidence. As a result, Robinson decided to settle out of court for the nominal sum of £1.

Philip Nolan, an IT lawyer with Mason Hayes Curran, says that even if a company has not registered its brands as trademarks, there is a legal concept of an unregistered trademark, so a firm may be able to take action against someone who is using its trademark in this way.

He also suggests that companies like Sealux, which are expanding into European markets, should consider the protection provided by a community trademark. This enables a trademark to be registered once, but if it is infringed the holder can seek redress in any EU member state.

However, no sooner had Robinson had his case highlighted in trade publication *TileUK* than another competitor was found to be trying to divert web users looking for Sealux products. This time, the competitor used Google's AdWords to purchase keywords that are Sealux brands.

When the names Sealux and Trimlux (both registered trademarks in the UK) were searched for on the Google UK site, a sponsored link appeared on the right-hand side of the page entitled "Shower-Seal Kit-Buy Online". Clicking on this brought users to the homepage of Byretech, an online trader that is one of Sealux's competitors. Robinson feels aggrieved that

Google does not do more to protect the rights of trademark holders. "I have no doubt this is happening worldwide and they [Google] know about it," he says. "All they have to exercise is due care by checking the trademark isn't assigned to someone else."

A Google spokesman says the company has attempted to put automatic filters in place that would check keywords against trademarks databases. However, this is dependent on the quality and availability of such databases, which vary significantly in European countries.

As a result, an automated system has not been put in place to prevent traders from buying advertisements that are triggered by their competitors trademarks.

However, he says Google is happy to remove any offending advertisement when contacted by trademark holders. "As stated in our terms and conditions, the advertisers themselves are responsible for the keywords and ad contents that they choose to use," Google said in a statement.

"Accordingly, we encourage trademark owners to resolve their disputes directly with the advertisers, particularly because the advertisers may have similar advertisements on other sites. Google itself has a robust policy in place for dealing with trademark issues.

"To avoid trademark misuse, trademark owners can register their trademark name with Google. This will enable Google's AdWords programme to prevent a trademark name appearing without appropriate permission."



Last month Google lost a high-profile case taken by luxury goods maker Louis Vuitton over the use of its trademarks in Google AdWords campaigns. On appeal, Google was ordered to pay €300,000 in damages and €75,000 in legal costs and is banned from using Louis Vuitton's trademarks in advertising on its websites that are accessible from France.

European courts seem to be taking a stronger stance with Google and other online content providers than their US counterparts. In the US, Google has yet to lose a case over the use of a competitor's brand name by one of its advertisers. But in a high-profile case brought by insurance company Geico, the judge found that while a search for a trademarked term could be used to trigger the appearance of an advertisement from a competitor, the advertisement could not feature the

trademarked term in their body text. This has resulted in Google having two policies regarding the use of trademarks in advertising - one for US trademarks and one for trademarks protected outside US jurisdiction.

Nolan suggests the use of trademarks on websites is not a cut-and-dry matter. "If a trademark is being used in the source code of a web page purely for the purpose of diverting business away from the trademark owner, then the affected party probably has a very strong case" says Nolan. "But comparative advertising is also legitimate use - for example, if you want to say another product costs €5 and yours is only €3.

"It's an evolving area of trademark law as new uses of trademarks on the internet emerge, and ultimately it is going to be, down to the courts to decide what's fair use."