

(B) ADWORDS? - COMPETITION AND IPR LAW IMPLICATIONS OF GOOGLE'S SEARCH/ADVERTISING PLATFORM

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*The perfect search engine would be like the mind of God.*¹

Sergey Brin

For a company with “Don’t be evil” for a motto, Google Inc. is accused of evildoing surprisingly often. Perhaps some things, like anti-trust concerns, come attached to a market share of over 70%.² Google faces endless litigation all over the world, over allegations of unfair competition and trademark infringement. At the eye of this legal storm is the money – spinning advertisement service, Google Adwords. The aspect most relevant to this discussion is that Google sells ‘keywords’ to advertisers which correspond to commonly used search-terms. When a search term is entered, the advertisements of those advertisers who have been allotted its constituent keywords are displayed as ‘Sponsored Links’ to the right of or below the organic results, ranked by a combination of the amount bid per click and the quality of the website.³ Even apart from Adwords, search engines – and particularly market dominator Google - have immense power to make or break businesses based on their search rankings.⁴

These factors raise a number of concerns straddling the realms of competition law and intellectual property law, which courts have struggled

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1 C. Ferguson, *What’s Next for Google*, Tech. Rev., 38 (1st of January, 2005), available at <http://www.technologyreview.com/web/14065/> (Last visited on 20th May, 2012).

2 E. Clemons & N. Madhani, *Regulation of Digital Businesses with Natural Monopolies or Third-Party Payment Business Models: Antitrust Lessons from the Analysis of Google*, 27(3), *Journal of Management Information Systems*, 43, 71 (2011).

3 How AdWords Works, available at <http://support.google.com/adwords/bin/answer.py?hl=en&answer=2497976&topic=1713894&ctx=topic> (Last visited on 20th May, 2012).

4 J. Grimmelman, *Some Skepticism About Search Neutrality* in *The Next Digital Decade: Essays on the Future of the Internet*, 435, 436 (B.Szoka et al, eds., 2010).

to adjudicate the world over, producing a mass of rather convoluted decisions that apply a statutorily circumscribed set of principles to reach unpredictably varied outcomes through reasoning that is all too often mere rationalization.

This essay shall attempt a comparative analysis of the judicial response to this issue in the United States of America, the European Union and India, and finally analyze the merits of the judicial response thus far.

I. Why is Google a (B)AdWord for IPR Owners?

The furor over Adwords revolves around its implications for trademark owners' rights. The advertisers select of keywords to trigger advertisements with suggestions from Google based on the popularity and the number of clicks received by the word or phrase. These suggestions also include trademarked terms in some regions of the world.⁵ Therefore, Google *suggests* trademarked keywords to its clients, *sells* trademarked keywords to them, uses the trademarked terms to trigger the advertisements and profits by this. Hence the allegations that Google infringes trademark. Several suits for trademark infringement or contributory infringement or ancillary infringement have been brought against Google in jurisdictions the world over, apart from anti-trust complaints. However, Google places responsibility on the advertisers for the lawful use of AdWords.⁶ Trademark disputes over AdWords have been extremely difficult for the judiciary to handle because of several reasons.

The primary reason being the difficulty in deciding whether existing legal regimes governing trademarks ever intended to cover or can logically be extrapolated to cover the kind of use of trademarks made by Google. Moreover the implications of the borderless cyberspace means legal responses to the IP and antitrust implication of AdWords are unevenly progressive, making judicial responses varied and convoluted.⁷ This is the

5 Adwords Policy On Trademarks In Ads - Scope Of Investigation, *available at* <http://support.google.com/adwordspolicy/bin/answer.py?hl=en&answer=144298> ((Last visited on 20th May, 2012).

6 What is Google's AdWords and AdSense trademark policy?, *available at* support.google.com/adwordspolicy/bin/answer.py?hl=en&answer=6118 (Last visited on 20th May, 2012).

7 A. Tan, *Google Adwords: Trademark Infringer Or Trade Liberalizer?*, 16 Mich. Telecomm. Tech L.Rev., 473, 474 (2010).

reason for Google implementing different policies in different countries, with respect to the freedom of advertisers to choose trademarked words or phrases as keywords.

For instance, if there is alleged infringement of trademark by or through Google AdWords in the United States, Canada, United Kingdom or in Ireland, the Google will only investigate infringing use of trademarks in the text of the advertisement displayed and not in the keywords that trigger the display of the advertisement. However in other countries of the European Union, in response to a complaint, Google will undertake a limited investigation concerning whether a keyword (in combination with particular ad text) causes confusion about the origin of the advertised goods and services.⁸

A brief comparison of the American and European judicial response to AdWords and the tentative Indian position will bring out the divergence in views, as well as highlight that developed legal systems are no better equipped than developing legal systems in this respect.

II. The American Judicial Response

The Lanham Act, which is the primary federal trademark statute in the USA, does not lend itself to the cyber advertising scenario very well.⁹ However, there are two powerful doctrines applied to decide upon search engine liability under Section 32 of the Act— trademark use and initial interest confusion.¹⁰ Federal courts have struggled with the scope and meaning of both.¹¹ The former investigates whether it is a “use in commerce”. The ambiguity exists because, unlike traditional infringing uses of trademark, Google’s use is invisible to consumers, though it profits from the sale of keywords. Therefore some courts have considered the keyword sale transaction separate from the consumer’s purchase of the advertised goods or services and have found that AdWords’s use of the trademark is

8 *AdWords Trademark Policy, available at* <http://support.google.com/adwordspolicy/bin/answer.py?hl=en&answer=6118>

9 R.N. Eng, *A Likelihood of Infringement – the Purchase and Sale of Trademarks as AdWords*, 18 Alb. L.J. Sci. & Tech., 493, 530 (2008).

10 Greg Lastowka, *Google's Law*, 73 Brook. L. Rev.1327, 1384 (2008).

11 A. Tan, *Google Adwords: Trademark Infringer Or Trade Liberalizer?*, 16 Mich. Telecomm. Tech L.Rev., 473, 484 (2010).

not a "use in commerce".¹² But other courts, such as the Court of Appeals in the Second Circuit in *Rescuecom Corp. v. Google Inc.* have taken the view that it does qualify as a "use in commerce" on the reasoning that the sale to advertisers is not an internal, non-commercial use.¹³ However, there is neither clarity nor uniformity on why the sale qualifies as commercial use of the trademark.¹⁴

The 'initial interest confusion' doctrine is a variant of the 'likelihood of confusion' doctrine suggested as apposite to infringement analysis in the internet advertisement context by McCarthy¹⁵ and accepted by the Ninth Circuit in *Brookfield Communications v. West Coast Entertainment Corp.*, thought the reasoning in this decision has been widely criticised.¹⁶ Initial interest confusion focuses on consumer confusion over what is sought, not bought.¹⁷ It investigates whether consumers looking for the trademarked product get diverted from the correct link to the trademark owner's website, not causing infringement but amounting to unfair advantage taken of the trademark's goodwill by the search engine.¹⁸ After *Brookfield Communications* and *Planned Parenthood Federation of America, Inc. v. Bucci*¹⁹, appellate courts outside the Second Circuit (where the doctrine of trademark use is dominant²⁰) have adopted the initial interest confusion test and extended it to make a probability of confusion sufficient for liability.²¹

12 *Merck & Co. v. MediPlan Health Consulting Inc.*, 425 F. Supp. 2d.402 (S.D.N.Y. 2006).

13 *Rescuecom Corp. v. Google, Inc.*, 456 F. Supp. 2d 393 (N.D.N.Y. 2006).

14 A. Tan, *Google Adwords: Trademark Infringer Or Trade Liberalizer?*, 16 Mich. Telecomm. Tech L.Rev., 473, 482 (2010).

15 4 McCarthy, *Trademarks and Unfair Competition*, 25-136 (4th edn., 2000).

16 *Brookfield Communications v. West Coast Entertainment Corp* 174 F.3d 1036 (9th Cir. 1999).

17 A. Tan, *Google Adwords: Trademark Infringer Or Trade Liberalizer?*, 16 Mich. Telecomm. Tech L.Rev., 473, 483 (2010).

18 Greg Lastowka, *Google's Law*, 73 Brook. L. Rev., 1327, 1391-94 (2008).

19 *Planned Parenthood Federation of America, Inc. v. Bucci* 354 F.3d. 1020 (9th Cir., 2004).

20 Greg Lastowka, *Google's Law*, 73 Brook. L. Rev., 1327, 1387 (2008).

21 *See also*, *Promatek Industries Ltd v. Equitrac Corp.*, 300 F.3d 808 (7th Cir. 2002); *People for the Ethical Treatment of Animals v. Doughney*, 263 F.3d 359 (4th Cir. 2001); *Google, Inc. v. American Blind and Wallpaper Factory, Inc.*, No. 03-cv-05340 JF (RS) (N.D. Cal. Apr. 18, 2007).

III. The European Judicial Response

In the European Union, the European Trademark Directive was brought into force and every member state had to amend its national laws so as to harmonize them with the Directives. The European Court of Justice therefore has the authoritative word on interpretation of national trademark laws *vis-à-vis* the European Trademark Directive. Article 5(1) of Trademark Directive II authorizes the owner of the Trademark to prevent all unauthorized parties from using any sign in the course of trade, which is identical to his/her trademark, in relation to the services or goods in connection with which the mark is registered. If the likeness is not exact in respect of either the sign or the goods or services it is employed to mark, as per Article 5(1)(b), the likelihood of confusion to the public must be proven.

Article 5(2) of the same Directive states that Member States of the European Community may allow trademark holders to prevent third parties from using any mark which is identical with or similar to his/her trademark with respect to goods or services which are *not* similar to those for which the trademark is registered as well, where the trademark is reputed in that member state so as to cause unfair advantage to accrue to the unauthorized user in a manner that is detrimental to the distinctive character of the trademark. Both these articles require proof of the mark's use "in the course of trade". In *Arsenal FC v. Matthew Reed*²², the ECJ held that use would be in the course of trade when it "takes place in the context of commercial activity with a view to economic advantage and not as a private matter."²³ When Trademark owners brought suits seeking to hold Google liable for its use of their trademarks in its sponsored search processes and results, national courts in Europe, which are the courts of first instance, arrived at contradictory conclusions about the interpretation of the Trademark Directives. French courts tended to hold that Google AdWords' use of trademarked terms as keywords violated EU trademark law while English courts British courts tended towards the view that the use of trademarked AdWords' uses was not infringing.²⁴

22 *Arsenal Football Club plc v. Matthew Reed* [2002] ECR I-10273.

23 *Id.*

24 *See generally*, Brokate, W.Brian & Winsor, Christina L.: "When, Where, How and Who: Anti-Counterfeiting Enforcement in the Wake of eBay and the Struggling Economy", 655 at 667-668 available at [http://www.gibney.com/uploads/news.188\[1\].pdf](http://www.gibney.com/uploads/news.188[1].pdf).

The ECJ finally dealt with the issue in *Google v. Louis Vuitton*²⁵ ruling. The ECJ decided issues raised by three different cases which had come before the French Cour de Cassation (Supreme Court) in which the responsibility of Google and the advertisers was in question for using trademarks on AdWords. The ECJ noted that keywords performed the function of triggering the display of advertising links to websites on which goods and services are offered for sale which are identical to the ones that the trademarks in question were attached to. The ECJ used a three pronged approach to arrive at its conclusion. The first point of enquiry was whether there was a use that may be termed ‘in the course of trade’.

The Grand Chamber concluded that while the Search Engine Operator was indeed operating in the course of trade when it enabled AdWords clients to select keywords which were identical to trademarks and then used the chosen keywords in its processes to trigger the display of the advertisement on the basis of the search query, this could not be termed the same as *use* in the course of trade. Google was not using the trademarked signs in its own commercial communication. The second point was to see whether the use is in relation to goods or services. The ECJ held that the use of a sign identical to a trademark by an advertiser even as a keyword would count as use in relation to goods or services within the meaning of Article Article 5(1)(a) of the Directive. The third point of enquiry is whether there was any adverse impact of the use on the functions of the trademark. In this case there were two relevant functions – the origin identification function and the advertising function. The Grand Chamber held that while it was very possible that in particular cases AdWords services could infringe trademark by adversely affecting the origin identification function of the trademark, it was for the national courts to determine whether in fact infringement had taken place depending on the facts of each case. Therefore the ECJ declined to hold Google liable for trademark infringement for AdWords’ keywords system.

Simply put, trademark law does not allow a trademark owner to prohibit *all* uses of the sign by other parties. The contours of protection accorded are spelt out in the European TMD. The Court held that the kind of use that Google made of the trademarked signs did not fall within the protection of the law, therefore Google could not be directly held liable for

25 *Google France v Louis Vuitton* [2010] OJ C 134/2.

infringement. However, if the advertiser caused the likelihood of confusion in the minds of consumers to arise either with respect to the origin of the goods (or services) or the existence of an economic link between them and the trademark owner, they would be liable for infringement and in such a case, the possibility of secondary liability for Google was not precluded. The ECJ had to consider whether the European E-Commerce Directive of 2000 shielded Google (as an “information society service provider”) from liability for third party infringement. It referred the matter back to the French courts, only holding that this shall depend on whether AdWords is a fully automated system as Google claimed or whether Google played any active role at all in selecting and ordering advertisements.

Ultimately, the ECJ did not answer the question of Google’s liability in clear cut terms. Instead the framework it has laid out for decision-making by national courts in this regards is, perhaps inevitably, extremely fact-specific, thus creating abundant space for continued divergence among the stances of different European legal systems.²⁶

The treatment of search engine liability for competitive keyword advertising is significantly different in the European Union and in the United States. The conceptual bases for liability are obviously different in both jurisdictions. But a gradual convergence is very evident in decisions on either side of the Atlantic. For instance, Kulk argues that the reasoning employed by the ECJ in the *Louis Vuitton* decision, wherein the ECJ considered the confusion caused in the mind of the consumer at the time of viewing the advertisement, could be demonstrative of the crossing-over of the initial interest confusion doctrine to European trademark jurisprudence.²⁷ Nevertheless, in terms of real implications as things stand today, USA, a search engine operator in the USA could most likely be held liable for direct infringement, probably by employing the touchstone of confusion in the minds of the consumers.

26 See also, Stefan Kulk, Search Engines Searching for Trouble? Comparing Search Engine Operator Responsibility for Competitive Keyword Advertising Under EU and US Trademark Law at 67 (July 1, 2011). Available at SSRN: <http://ssrn.com/abstract=1911038> or <http://dx.doi.org/10.2139/ssrn.1911038>

27 Stefan Kulk, Search Engines Searching for Trouble? Comparing Search Engine Operator Responsibility for Competitive Keyword Advertising Under EU and US Trademark Law at 67 (July 1, 2011). Available at SSRN: <http://ssrn.com/abstract=1911038> or <http://dx.doi.org/10.2139/ssrn.1911038>

On the other hand, in the European Union, a search engine operator's responsibility for competitive keyword advertising will, in light of the ECJ's decision in the *Louis Vuitton* case, likely be under different national laws affixing secondary liability for infringement by the advertiser. This difference is significant because secondary liability in the EU trademark context will be based upon the the form and basis of national general liability and unfair competition rules as opposed to in the USA where federal trademark law itself provides for secondary liability rules. Evidently, the legal systems even in the West are very much in flux in the area of IP and search engine liability. This makes it all the more important that developing nations do not wholesale import principles from either side of the Atlantic without due consideration of the broader implications for trademark law in the country consequent to any such choice.

IV. Work in Progress: The Indian Judicial Response

The High Court of Judicature in Madras grappled with the IPR implications of AdWords in a trademark infringement suit, *Consim Info Pvt. Ltd. v. Google India Pvt. Ltd.*²⁸ It was alleged that Google committed contributory or ancillary infringement of several trademarks of the plaintiff by displaying the advertisements of competitors (defendants 2 to 4) when consumers searched for the plaintiff's trademark. After an exhaustive discussion of case-law, the judge applied the standards for infringement under Section 29 of the Trademarks Act, 2002, hinging upon the scope of "use" as defined in Sections 2(2)(b) and (c), concluding that Google was not liable.

Primarily, the trademarks were found to be descriptive and not substitutable, hence neither the competitors nor Google could have used a substitute. Google therefore fell within the ambit of the exception under Section 29(8) which allows advertisements rendered in conformity with honest commercial practice and the defence of 'honest practices under commercial matters' under Section 30. It was found that in addition to the absence of use leading to infringement, Google lacked intention for contributory infringement.²⁹ The Court however warned that the descriptive nature of the trademarks in this case dictated this result and that the selling of fanciful trademarked words as keywords would likely lead to

28 *Consim Info Pvt. Ltd. v. Google India Pvt. Ltd.* 2010 Indlaw MAD 2449.

29 *Consim Info Pvt. Ltd. v. Google India Pvt. Ltd.* 2010 Indlaw MAD 2449, ¶ 137.

liability for the search engine.³⁰ The Madras High Court did not apply the initial interest confusion test, though it discussed the doctrine's evolution.

In September 2012, a Division Bench of the Madras High Court refused to disturb the order passed by Justice Ramasubramaniam. They found that while Consim Info satisfied the burden of proving a *prima facie* case for interim injunction and the balance of convenience, the question of irreparable injury could only effectively be evaluated at trial. They took note of the undertaking given by Google before the single judge that it would continue to adhere to its policy of not allowing infringing use by advertisers by using the trademarked phrases in the title and text of the advertisement. Though the Division Bench was of the view that Consim Info was entitled to an injunction, they felt that *status quo* should be maintained till the disposal of the suit with the *caveat* that the undertaking given by Google and that Google should ensure that Consim Info is given the benefit of their trademark policy.³¹

However, Trademark violations are not the most sinister allegations against Google. Antitrust complaints paint Google as more than just an infringer.

V. Bullying Competition Through (B)AdWords

Google is not only the dominant internet search engine, it has also forayed into other markets with new offerings such as Google Maps, Google Places, Google+, Google Analytics etc. It is therefore in competition with the very businesses that it indexes in its organic search results and often, in its sponsored results. Since consumers of search results pay neither for the advertisements nor the search results, Adwords is a third party payer business model where ad-space prices depend on value to the competing advertisers and not the consumer.³² In this position of immense power, it is unsurprising that trademark owners complain of that their exclusive rights to appropriate economic returns from trademark are undermined by Google through its anti-competitive sale of keywords and

30 Consim Info Pvt. Ltd. v. Google India Pvt. Ltd. 2010 Indlaw MAD 2449, ¶ 200.

31 O.S.A. No.s 406 & 407 /2010. Available at <https://docs.google.com/file/d/0Bxi2TzVXul5ZeXNINnFDb1MtSUE/edit?pli=1>.

32 E. Clemons & N. Madhani, *Regulation of Digital Businesses with Natural Monopolies or Third-Party Payment Business Models: Antitrust Lessons from the Analysis of Google*, 27(3), *Journal of Management Information Systems*, 43, 71 (2011).

that advertisers indulge in unfair competition by taking advantage of the consumer's interest in their trademark.

There are also allegations Google promotes its own services at the cost of unbiased search results, hurting competitors. Allegations fly both ways – one, that Google services get more links, prime placement and perks such as images³³ and the other, that Google's competitors are unceremoniously ousted or demoted in the rankings.³⁴ That there is anti-trust danger posed by Google's strategies, both in seeking to maximize its advertising profits at the cost of IP owners' rights (not just through AdWords but also other ventures such as Google Books) and in leveraging its market dominance in search to gain market share in its other ventures, is borne out by the increasing willingness of regulatory authorities to investigate such complaints. The European Competition Commission,³⁵ the Federal Trade Commission³⁶ in the USA and the Competition Commission of India³⁷ are investigating antitrust allegations into Google's allegedly anti-competitive practices, involving AdWords and its organic search results. Apart from the difficulty of proving any anticompetitive intentions in the context of an algorithm based search engine except where manual interventions manifest such intention and action, antitrust law as such is well equipped with a well defined focus on consumer-centric analytical toolkit of concepts.³⁸ AdWords does not challenge the conceptions in

33 B. Edelman & B. Lockwood, *Measuring Bias in 'Organic' Web Search* (January 19, 2011) available at <http://www.benedelman.org/searchbias/> (Last visited on 20th May, 2012).

34 B. Edelman, *Bias In Search Results? Diagnosis and Response*, 7 Indian J. L. & Tech., 16, 22 (2011).

35 *FTC Hires Outside Lawyer to Steer Google Probe*, The Economic Times, (27th April, 2012) available at <http://economictimes.indiatimes.com/tech/internet/ftc-hires-outside-lawyer-to-steer-google-probe/articleshow/12892235.cms> (Last visited on 20th May, 2012).

36 *No Hurry With Google Anti Trust Decision: EU Competition Commissioner*, The Economic Times (4th May 2012), available at http://articles.economictimes.indiatimes.com/2012-05-04/news/31572785_1_joaquin-almunia-eu-competition-commissioner-search-results (Last visited on 20th May, 2012).

37 *CCI Orders Probe Into Google's AdWords Programme*, The Economic Times, available at http://articles.economictimes.indiatimes.com/2012-05-06/news/31597590_1_google-s-adwords-google-spokesperson-bharatmatrimony (Last visited on 20th May, 2012).

38 J. Grimmelman, *Some Skepticism About Search Neutrality* in *The Next Digital Decade: Essays on the Future of the Internet*, 435, 440 (B. Szoka et al, eds., 2010).

competition law analysis in the way it does in respect of trademark infringement. However, the trademark angle to AdWords is implicated in all of these investigations, making it all the more important.

VI. The Flipside

The dominant ideology of our times is IPR (over)reach, though this is increasingly being challenged, with Google involved in more than one battlefield. As divergent decisions across the world and within legal systems have demonstrated, in the absence of legislative guidance, it is a subjective decision whether Google's use of trademarked keywords is infringement. As a policy decision, this author opines that the positives of the AdWords impact must be acknowledged. The internet marketplace is a great leveler of the ability to capture market-share because visibility does not *have* to be bought and the consumer can easily compare. It has been argued that AdWords is a great competition booster in its current form, allowing trademark keywords.³⁹ It is important to look at the trademark issue with AdWords separately from the other allegations of anti-competitive behavior such as Consom Info's allegation of anticompetitive sale of keywords,⁴⁰ Trade Comet's allegations of unfair competition⁴¹ and the preferential treatment given to Google products such as Google Maps and Google Places.⁴² Seen thus, the threat of IPR over reach subsuming new possibilities for market competition and cyber advertisement spawned by search-engine culture becomes more plausible. Moreover, the Google search results are comparable to a supermarket aisle, where a consumer may go looking for a particular trademark, but is given the choice of comparing several products. The internet enhances this choice greatly, at no cost to the consumer. Denying this opportunity would be to undermine a fundamental goal of trademark law⁴³ – consumer welfare.

39 A. Tan, *Google Adwords: Trademark Infringer Or Trade Liberalizer?*, 16 Mich. Telecomm. Tech L.Rev., 473, 504 (2010).

40 *CCI Orders Probe Into Google's AdWords Programme*, The Economic Times, available at http://articles.economicstimes.indiatimes.com/2012-05-06/news/31597590_1_google-s-adwords-google-spokesperson-bharatmatrimony (Last visited on 20th May, 2012).

41 *TradeComet.Com LLC v. Google, Inc.*, S.D.N.Y Case No 1:2009cv01400 (2009).

42 B.Edelman, *Bias In Search Results? Diagnosis and Response*, 7 Indian J. L. & Tech., 16, 20 (2011).

43 A. Tan, *Google Adwords: Trademark Infringer Or Trade Liberalizer?*, 16 Mich. Telecomm. Tech L.Rev., 473, 484 (2010).

VII. Only Anti-Competitive AdWords Are (B)AdWords

It is submitted that Google AdWords, subject to anti-trust limitations, has immense ability to promote consumer welfare without infringing trademark owners' rights. Although the latter limb is an unsettled judicial conundrum, it is submitted that both tests employed to bring Google within the scope of infringement liability are unconvincing. The basis for the trademark use doctrine in deciding liability of search engines is tenuous and is in reality based on the 'undercurrents of unconscionability'⁴⁴ that operate in courts steeped in attitudes that endorse unlimited and ever-growing economic appropriation rights for IPR owners. In turn, the initial interest confusion doctrine is overly restrictive and is inconsistent with how consumers today actually use search engines.⁴⁵

The goals of trademark law would be justly met if Google were held liable only where there is demonstrable *mala fide* or anti-competitive intention behind its use of trademarks or manipulation of search results. This conclusion is rather anti-climactic, but is preferable to an over-reaction to the idea of Google as some kind of potential internet tyrant. It is submitted that anti-trust law has sufficiently capable analytical tools and disincentives to deal with such eventualities. In fact, it can take care of eventualities much beyond the trademark infringement claims discussed here, including the pricing of AdWords, positioning of search results, privileging of Google services etc. Hence trademark law ought not to be distorted merely to protect disgruntled owners who do not want to have to pay to advertise their trademark.

In the meanwhile, until the *Consimtrial* is finally concluded, trademark law in Indian on this issue will present a hazy picture.

44 See Greg Lastowka, *Google's Law*, 73 Brook. L. Rev., 1327, 1404 (2008).

45 A. Tan, *Google Adwords: Trademark Infringer Or Trade Liberalizer?*, 16 Mich. Telecomm. Tech L.Rev., 473, 483 (2010).