

Google Ads – it's all in the small print

- Argos Limited claims for trade mark infringement against an unrelated US business with the same name
- Held that the defendant's use of ARGOS in the domain name argos.com and via Google Ads did not amount to trade mark infringement

What's it about?

Argos Limited, the well-known retailer in the UK, registered argos.co.uk in 1996. Argos Systems (ASI) had registered argos.com a few years earlier in 1992. ASI produces CAD systems and has no customers outside the Americas.

Between 2012 and 2014, ASI was signed up to Google Ads, with the effect that any visitors to argos.com from outside the Americas would see Google Ads. The ads which appeared on the website were based on the keyword ARGOS. Argos Limited claimed that ASI's use of ARGOS in its domain name and on its website (via Google Ads) amounted to trade mark infringement.

The court dismissed Argos' claim for trade mark infringement on the basis that Argos Limited had consented to ASI's use of ARGOS on its website and ASI had not targeted consumers in the UK.

Why does it matter?

On the issue of consent, a key factor in the court's decision was the Google Ads terms, to which Argos Limited had also signed up. Amongst other things, these terms contained a consent from Argos Limited to the display of Argos ads on Google's partner websites, which included ASI's website.

On the issue of whether ASI's website targeted the UK, the court confirmed that the test is objective rather than subjective. In this case, the average consumer realised their mistake almost immediately and stayed on argos.com for less than 10 seconds. As a result, Argos Limited was not able to show that ASI was targeting consumers in the UK by displaying Argos ads on its website.

More generally, this case highlights the difficulties faced by businesses when enforcing their rights in the age of the Internet, and the value of having a ".com" domain.

Now what?

When signing up to Google Ads and other online advertisers, we recommend reviewing the terms and conditions in detail to ensure that trade marks (and other IP rights) are fully protected.

Despite the ruling in this case, the court emphasised that signing up to Google Ads does not amount to giving third parties blanket consent for any and all uses of a trade mark. ASI was successful because it had a pre-existing right to use ARGOS in its domain name and its use of ARGOS via Google Ads was lawful because Argos Limited had consented to that use.

[Argos Limited v Argos Systems Inc \[2017\] EWHC 231 \(Ch\)](#)

For further information on this or any other IP related matter please contact [Kina Sinclair](#) on 0161 934 6283.