I’ve been doing research for my annual review of intellectual property law and have had a great deal of fun learning about all sorts of interesting new developments. Here’s a case that might interest readers who work in commercial organizations with valuable trademarks but that raises unexpected questions about freedom of speech.

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The Google search engine typically uses searchers’ keywords to pop up appropriate paid ads. The “AdWords” system< http://adwords.google.com/> is a phenomenally successful system that charges advertisers only when viewers click on their ads. There are no restrictions in the US on which keywords an advertiser can list in its contract with Google; e.g., a Ford car dealer could select “General Motors,” “Chevrolet,” “Toyota” and so on as keywords to make an ad about its autos appear on the side of the search-results page.

In May 2008, Google decided to allow AdWords users in the UK and Ireland to use the same rules as those in the US.

However, some owners of famous trademarks are not very pleased that searches on their keywords leads to ads on their competitors’ products – or even on sellers of counterfeits.

In December 2004, Le Meridien Hotels of France won a lawsuit against Google France. The International Hotel & Restaurant Association reported, “a Nanterre court in France ruled that Google infringed on the trademarks of Le Meridien by allowing the hotel chain’s rivals to bid on keywords of its name and appear prominently in related search results. Le Meridien had sued Google’s French subsidiary on Oct. 25 after failing to reach an amicable agreement, according to court documents. In a blow to Google’s keyword-bidding engine, the French court ordered the company to stop linking ads to Le Meridien-trademarked terms by Monday or face a daily fine of $194 (150 euros). The company must also cease linking ads related to Le Meridien brands within 72 hours of whenever Le Meridien notifies it of listings in violation, or face a daily fine of 150 euros. Finally, Google must pay all court fees and a fine of $2,592 (2,000 euros).”< http://www.ih-ra.com/html-ihra/ihra30/130_AlerteLe_Mer.htm >

In February 2005, Louis Vuitton won a lawsuit in Paris against Google in which the court ruled (according to Adam Viener in Corante), “that Google’s allowing competitors to run ads triggered by Louis Vuitton’s trademark terms was counterfeiting, unfair competition and misleading advertising. The court has ordered Google to pay Louis Vuitton $250,000 and stop displaying ads for Vuitton’s competitors whenever users type in the company’s name into the search engine.”< http://goyami.corante.com/archives/2005/02/08/louis_vuitton_vs_google.php >

It’s an interesting question, isn’t it? If Vuitton and others win cases making it illegal to post paid ads which point to ads they don’t like, what would stop anyone from suing search engine companies if they didn’t like the search results that included use of their trademarks? Google “Vuitton handbags” and note how many of the top sites are selling “fake” and “replica” versions of the famous stuff.

But wait, there’s more. Suppose Vuitton did not like a news or opinion article that suggested that, say, people who buy $700 Vuitton handbags because of the label should seek psychiatric help: would they use trademark infringement as a basis for demanding that the link to that article be removed from a search engine?

So were you able to find this article through a search engine?

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For a primer on US trademark laws and regulations see Jordan LaVine’s paper (unfortunately stored as a poorly-formatted DOC file)<http://law.lexisnexis.com/webcenters/link.aspx?b=EkIu0cwqiQg=> and my lecture notes from the CJ341 Cyberlaw and Cybercrime course <http://www.mekabay.com/courses/academic/norwich/cj341/lectures/15_trademarks.pdf>

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