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Trademark case: Lerner & Rowe PC v. Brown Engstrand & Shely LLC, USA

Thomas Long (Wolters Kluwer Legal & Regulatory US) · Monday, December 23rd, 2024

Evidence that the defending firm's ads confused consumers was "de minimis," and online shoppers were savvy enough to distinguish between ads and organic search results.

The sophisticated nature of online consumers, the lack of evidence of actual confusion, and other factors weighed against finding that there was a likelihood of confusion from a personal injury law firm's purchase of a rival firm's mark, "Lerner & Rowe," as a Google Ads keyword, the U.S. Court of Appeals in San Francisco has held. Therefore, the appellate court affirmed a district court's grant of summary judgment in favor of the defending firm—which did business as The Accident Law Group—on Lerner & Rowe's trademark infringement claims. Confusion was unlikely even though Lerner & Rowe's mark was strong. Another factor weighing against a likelihood of confusion was the appearance and labeling of the advertisements at issue, along with the surrounding context on the Google search results screen, which identified them as ads clearly enough that they would not "lure reasonably prudent online shoppers into unwittingly clicking on them in search of Lerner & Rowe's website." Although the likelihood of confusion was ordinarily a fact-intensive issue, this was one of the rare instances in which the mark owner's case was so weak that summary judgment was appropriate, in the Ninth Circuit's view (Lerner & Rowe PC v. Brown Engstrand & Shely LLC, No. 23-16060 (9th Cir. Oct. 22, 2024)).

Case date: 22 October 2024
Case number: No. 23-16060
Court: United States Court of Appeals, Ninth Circuit

A full summary of this case has been published on Kluwer IP Law

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