

Trademarks and the Internet
Trademark Conflicts on Metatags and Keywords
A Latin American Perspective

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I. The scenario in Latin America

Good morning. In closing this session, it is my call to try to recap what has been so clearly and thoroughly analyzed by my esteemed colleagues in the panel to ascertain the impact of what has been discussed in Latin America.

In this region, conflicts which involve unauthorized uses of marks in the virtual world have typically focused on cybersquatting situations or disputes concerning concurrent legitimate interests to secure a domain name. The number of cases notably increased, and the grounds for the decisions can be found in trademark law, unfair competition rules and general principles of law which deal with bad faith, damage to a third party's property and taking unfair advantage of other's property or reputation.

As in the rest of the world, commercial uses of internet have also increased in Latin America. According to Cisco System's 2008 report on the evolution of internet annual global traffic is expected to quintuple from 2008 to 2013. Internet will presumably be four times larger than it is by 2013.

This report notably points out that consumer traffic will increase about 52% per year in Latin America. The traffic growth for the region seems higher than those expected for other areas such as Western Europe (37%), USA (44%) or Japan (41%). Likewise, consumer web browsing will also increase far more per year in Latin America (about 45%) than in Western Europe (25%), USA (21%) or Japan (24%). The figures are consistent with the fact that emerging countries which gained access to internet technologies later than its more developed peers are yet to experience a more dramatic expansion of internet use.

Relevant to the topic we are dealing with today, these figures allow us to foresee that, as commercial traffic and consumer browsing of internet grows in Latin America, conflicts originating in visible and invisible unauthorized use of third parties' trademarks in the virtual world are bound to provide matter for discussion beyond the typical disputes on domain names. Use of trademarks as indexing tools, either to prompt advertising or to secure a more relevant positioning in search results, and sale of counterfeit goods in auction sites emerge as the hot topics even if not quite in the local spotlight as yet.

At least in Argentina, there have been no final court decisions concerning either unauthorized use of a third party's trademark in keyword advertising or liability of the provider of internet auction services.

There have been a few cases brought to court on these issues, where plaintiffs (the trademark owners) sought precautionary measures.

II. Argentine leading case: Organización Veraz v. Open Discovery

As regards keyword advertising, a recent decision (May 28, 2009) from the Federal Court of Appeals in Buenos Aires affirmed a decision from the Federal 1st Instance Court that enjoined use of a third party's registered mark as a keyword to trigger a competitor's advertisement which was displayed as a sponsored link on top of the natural search results when a consumer prompted a search by typing the mark.

This case concerned the mark VERAZ, which is used and bears considerable recognition in Argentina in relation to information services on the financial and credit situation of individuals. The mark is registered and used by Organizacion Veraz, a company affiliated with Equifax, Inc., a US major provider of information services for evaluation of business risk analysis.

It should be pointed out that the mark VERAZ is so strongly associated in local consumers' minds to the financial/credit reports it designates, that it is often used as a synonym for the generic "credit report" or "financial situation report".

Open Discovery S.A., also a provider of credit and personal reports which are identified by the mark GLOBINFO, used the word "veraz" as keyword to prompt an advertising in the form of a sponsored link in response to a user searching for "veraz" or "organización veraz" in Google. The link was displayed on top of the natural results, as shown on the slide.

Organización Veraz filed a petition for interim and precautionary measures, aimed at immediately enjoining use of the mark "veraz" by Open Discovery as a keyword or metatag and at securing evidence concerning the alleged use (by means of requesting information on the keywords paid by Open Discovery in the context of Google AdWords service).

In a brief decision, which is not intended to decide on the merits of the case, but to establish whether there are arguable grounds for the requested interim and precautionary measures to be granted, the first instance court held that:

- on typing the keyword "veraz" the internet user gets access to the defendant's advertisement and to the website www.globinfo.com.ar
- such circumstance constitutes unauthorized use of a third party's mark in the competitor's website HTML program
- such use serves the purpose of directing consumers searching for information on said mark to the competitor's webpages
- such use constitutes use in commerce
- such use may create confusion or be misleading as to the origin of the goods and services and may generate a risk of association between the trademark owner and the party who uses said mark in its website
- the trademark owner should be entitled to preclude unauthorized use of its mark to the purpose of diverting consumers to the benefit of a competitor
- the rules on unfair competition should play a decisive role in light of these circumstances.

As I mentioned, the above considerations were made in the course of preliminary proceedings and therefore do not examine the matter in detail, as it obviously transpires from my recitation of the decision, which might seem a summary but is, actually, a full account of the text of the decision relevant to the keyword advertising issue.

The VERAZ case is the first one on keyword advertising to hit Argentine courts, and it may take considerable time until a decision on the merits is rendered. But in the brief decision on the preliminary proceedings the same topics which have been the subject matter of discussion and of diverging decisions in the US and Europe have been raised.

III. Setting the grounds for the analysis

To determine whether a trademark owner may preclude unauthorized use of its mark as a keyword or metatag calls for analysis on:

- whether use of a sign as a keyword constitutes use of a mark,
- whether such use infringes the trademark owner's exclusive rights, and the grounds on which infringement can be established: confusion, unfair competition
- additionally, if liability extends to the provider of the keyword advertising service and tools, typically the search engines.

As it transpires from these questions, though the keyword advertising practice is relatively new, the debate originated about the unauthorized use of third party's marks as keywords bring us back to a familiar arena and to the very basics and deep core of trademark law: which is the extension of trademark protection? In other words: which are the unauthorized uses the trademark owner has the ability to prevent?

To analyze the trademark conflicts raised in connection with keyword advertising practices from a local or Latin American perspective, and since we lack specific case law to rely upon, we should attempt to get some guidance from the statutory provisions and court decisions which define the extension of the trademark owner rights under various circumstances in the brick and mortar world, though we know a direct analogy is not possible.

III.1. Definition of trademark

In determining whether use as a keyword or metatag can be regarded as use of the mark, I feel we should begin by reviewing the definition of trademark.

Marks are typically defined as signs which distinguish a product or service from other products or services within the same category. According to this definition, the distinctive function of the sign lies in its capacity to identify the product or service in itself (by differentiating it from other goods or services within the same field or category).

Yet, marks are also often defined as signs which distinguish the goods or services of an undertaking from those of another undertaking. In such definition, the focus is on the function of the sign as indicator of the source of origin of the goods.

This distinction is not irrelevant, taking into account the wording used to define a trademark in statutory law bears direct impact on the construction of which are the protected functions of trademarks. And, as it transpires from the judges' reasoning, the scope of trademark protection is inherently linked to the functions of a mark which the law reckons worth of protection.

From a historical perspective, marks emerged as signs to designate the manufacturer of the goods, that is, to identify the origin or source of the goods. Industrial revolution first, globalization of commerce and evolution of consumer's preferences, led to an ever increasing number of alternative presentations or varieties of a same product being offered in the market, in order to better appeal to consumer's needs or expectations. Therefore, products of the same origin and within the same category now bear different marks, each intended for a similar function but featuring allegedly distinct properties. The origin is the same but the marks are different, and consumers usually ignore or do not care about their common source. Or products which bear the same mark are actually manufactured by different parties, though they recognize the same affiliation. Consumers do not care who is the ultimate manufacturer. Thus, while still acknowledged by most as the primary function of trademarks, it appears that the connection between product or service and trademark goes beyond the origin or source.

To the extent the mark is not defined solely as an identifier of source, but its distinctive function is acknowledged, in the sense that there is a bond between trademark and product so that the mark functions as a signal which prompts the image of a definite product or service in the mind of consumer, other roles of the mark, such as the informational or advertising functions, might be recognized as protectible.

Most trademark laws in Latin America define a mark as a sign which identifies a product or service among others in the same category. That is the case of Argentina, Chile, Mexico or the Cartagena Agreement (applicable to Bolivia, Colombia, Ecuador and Peru). Brazil and Uruguay, however, define the mark as a sign which distinguishes the goods or services of an

undertaking from those of another undertaking, thus stressing the notion of mark as identifier of source or origin.

III.2. Definition of trademark use

The term “use” in trademark law has multiple implications.

- **Use to acquire/maintain trademark rights and infringing use**

On one hand, some legal systems require use of the mark as a condition to secure registration. This is not the general rule in Latin America, where rights to the trademark typically derive from registration. Yet, actual use is required in most countries in the region to keep a registration valid, or to renew it.

On the other hand, use (of a third party’s mark) is one of the key elements to establish infringement. If there is no use, there is no infringement.

It has been debated if the word “use” has the same meaning or extension in both contexts (i.e., acquisition or maintenance of rights and infringement), that is, if the standards to determine whether use by the owner is sufficient to meet the requirement to maintain a registration should be the same applicable to establish whether use of a third party’s trademark constitutes infringement.

References to this discussion can be found in court decisions. In general, the criteria is not to assimilate the concept of use in both situations, so that actions which are not deemed use sufficient to meet the requirements to keep the registration in force may nevertheless provide grounds for infringement when the sign is used by an unauthorized third party.

- **Use in commerce**

As regards when use of a mark constitutes use in commerce, it may be said that the usual interpretation is a broad one, as equivalent to use of the mark in the course of trade, that is, in the context of a commercial activity with a view to gain, as opposite to a private use.

On occasion, use in commerce has been termed as the contrary to private uses, while in other cases the distinction was made among uses of the mark in the context of commercial competition (in labeling, advertising or comparing one’s products) vis-à-vis uses in literary, artistic or purely informational contexts.

- **Use “as a mark”**

The question as to whether a mark is being used “as such” has also been raised in the context of local trademark conflicts, though it has possibly received not the same deep analysis than in the US or Europe.

In any event, the reply to this question will essentially depend on the definition of mark. And so, it brings us back to square one since as I previously noted, there is no strict coincidence in the concept of mark.

Thus, if the mark is defined by its function as identifier of source, then it is obvious that even if used in commerce, there would be no use of a mark “as such” unless if used to designate or promote the goods or services of the party using said mark. Therefore, use of a mark in a parody, in comparative advertising, or as a metatag or keyword would not qualify as use of said sign “as a mark” since the advertiser uses its own marks in relation to its goods or services, and the latter marks are those which denote the source or origin. When the mark is used as a metatag

or keyword, it functions as a tool to classify and rank information information and not to indicate origin or affiliation.

However, it can be contended that when a mark is selected as a keyword it is so because of its capacity to identify a specific product or service, notably one the general or a more specific public is familiar with. In this scenario, consumers will directly type the mark they are interested in, rather than a generic designation for the product. Under this circumstances, adoption of another's mark as a keyword or metatag may not be simply ruled out as non-trademark use. Even if the keyword does not operate as identifier of source, it has been adopted because of its capacity to distinguish a precise product or service.

As previously commented, the statutory definition of trademark in many countries of the region does not focus in the function of identifying source (unlike the definition of trademark in the US or the European Directive). Even if in most rulings there is reference to such function as an essential one of the marks, signs which do not operate as identifiers of origin have nevertheless been deemed as fulfilling a trademark role.

In this regard, courts have followed a consumer-perception oriented criteria when holding that even if a sign may be intended to serve aesthetic or advertising purposes, if the public identifies the product because of such sign, the latter functions as a mark even if the goods bear a mark of their own to indicate origin. That has been the rationale underlying decisions concerning use of a mark on t-shirts and caps for promotional purposes, as well as in relation to the use of distinctive designs on casual footwear.

I draw attention to these cases, albeit unrelated to keyword advertising, to illustrate that local courts do not stick to the definition of mark only as identifier of source. As a consequence, other functions of the mark, such as the informational, or the advertising role, are not devoid of protection.

In summary as far as determining use, courts have adopted a broad interpretation and it is expected that such criteria will be applied to the keyword advertising scenario, thus acknowledging use of another's mark in such context as trademark use. Whether such use without the owner's authorization is permissible or not would depend on other factors.

Notably, considerations on confusion, bad faith, free-riding or damage to the reputation are generally those which tip the balance in determining infringement, rather than definitions on what amounts to commercial use or if the mark is used as a mark or not.

III.3. Determination of trademark infringement

There is no controversy that unauthorized use of a mark by a third party to identify its own goods or services constitutes infringement if such goods are identical or similar to those covered by the trademark, or if the third party misrepresents its own goods or services as originating from, sponsored or endorsed by the trademark owner. Deception and confusion have been reckoned as the reasons underlying the prohibition to use another's mark in the traditional sense.

The keyword advertising scheme, however, does not usually fit this model. As extensively commented in this panel, when used as a keyword, the trademark does not designate the advertiser's own goods or services and does not typically suggest any sponsorship or association with the trademark owner. Keywords may be visible in the text of the sponsored link or not: in either case, they serve to the purpose of indexing or ranking information on the advertiser, to improve its visibility in the ever increasing world wide web.

Therefore, the question is whether a trademark owner may be entitled to prevent such uses or not, and which are the grounds to decide either way.

On the outset, it should be mentioned that the trademark laws in Argentina and Brazil define trademark rights as property rights. Although other statutes in the region does not follow this model, the notion of trademarks as property rights is not repelled in Latin America, contrary to what is a dominant trend in US doctrine.

This is worth noting inasmuch as the line between authorized and unauthorized uses of a third party's trademark seems to be drawn differently among those who criticize and those who endorse the definition of trademarks as property.

In this sense, the opinion held, particularly among many US scholars, is that such definition leads to an expansion of trademark rights which is foreign to the foundations of trademark law, the latter aimed primarily (and even exclusively, for some authors) at preventing confusion, deception or mistake, more precisely as to the origin or sponsorship of the goods or services. In this line of thinking, there is no reason to expand trademark protection beyond the need to prevent such confusion. From this perspective, allowing the trademark owner to prevent unauthorized uses of its mark which do not cause confusion (though they may take advantage from the trademark reputation or may damage such reputation or entail dilution of the mark) would represent an unnatural expansion of trademark rights which might adversely affect competition in the market.

In Latin America, however, the trend has been not to exclusively determine infringement on the basis of the likelihood of confusion. Of course, confusion is a critical factor in establishing infringement, but even if no confusion is likely to occur, unauthorized use of another's mark is found infringing if it can be established that the offender acted on bad faith or took advantage of or damaged the reputation or distinctiveness of the mark.

This conclusion can be drawn from court decisions dealing with situations of non-typical infringement as well as from statutory provisions which define the extension of trademark owner's rights.

In this regard, we may mention that in Brazil, the Cartagena Agreement and Mexico, the trademark laws include a set of exceptions, namely, unauthorized uses of the mark the owner cannot prevent. In Chile and Argentina, no such exceptions are foreseen in the law.

In Argentina, in particular, the law broadly establishes as a general rule that the owner of the mark is entitled to exclusive use thereof (a wording which is shared by other trademark laws in the region), and further provides that unauthorized use of the mark would constitute infringement. It does not elaborate on further conditions to define infringing use. Such a wide rule might be interpreted in the sense that the exclusive rights of the trademark owner would only be limited by the principles of specialty and exhaustion. Yet, courts have helped in reasonably constructing the statutory provisions, a task which has been done on a case-by-case, thus contextual, basis.

In general, either in statutory law or as the result of judicial interpretation, unauthorized use of another's mark is deemed non-infringing if the mark is used:

- by a retailer or distributor,
- to indicate purpose or compatibility, such as in the case of accessories, spare parts,
- in the context of literary or artistic work or to the purpose of inform or comment,
- as an ordinary word, in its ordinary meaning, and, in particular, if used to indicate geographical origin, nature, quality, quantity, value or other features of the goods and services,
- as the user's own individual name (this exception also including use of a party's own trade or company name in Mexico),
- in comparative advertising.

Yet, certain conditions apply for these uses to be non-infringing. Most notably, the courts or the laws point out that use of another's mark should be in good faith and should not:

- misrepresent association of any kind between the user and the trademark owner (endorsement, sponsorship, affiliation, quality control, or other),
- take unfair advantage of the reputation or distinctiveness of the mark,
- damage the reputation or distinctiveness of the mark.

IV. Does use of a trademarked key amount to infringement?

Let us examine if these rules may cast some light in solving trademark-type disputes involving uses of marks as keywords, where the mark is used as an indexing tool, to guide the user who navigates the web to information relevant to the user's query.

By applying the above rules, use of another's mark as a metatag or keyword to trigger advertising appears not to be in itself an infringing practice. There would be many situations in which such use would be lawful, that is, those which fit in the already mentioned categories:

- by the retailer, distributor, licensee of goods or services bearing the keyed mark, to guide traffic to the sites where legitimate products are offered,
- by the manufacturer or retailer of spare parts, components, compatibles,
- by the providers of installation, repair or maintenance services,
- by the operators of comparison sites, to direct users to information on the features of the products or services bearing the keyed mark.

In the brick and mortar world, these would be permitted uses of another's trademark, subject to good faith considerations. If such visible uses are legitimate, their use as invisible markers in the virtual world seem not to call for a different treatment. The inclusion of another's mark in a metatag or its selection as a keyword in the mentioned contexts would not be infringing, to the extent neither the text of the link nor the contents of the landing page:

- suggest an association with, sponsorship or endorsement from the trademark owner which does not exist, or
- take unfair advantage of the reputation of the third party's mark, for example, by making exaggerated display of it,
- damage the reputation or distinctiveness of the mark, for example by using the mark in a style different than that adopted by the owner, or by using it as a generic, or by making false statements in comparisons or informational context.

A closer look at these situations shows that the basis for potential infringement would not lie on the unauthorized use of the mark as an invisible tag, but on the manner the mark is actually displayed in the page or link. Use of the keyword itself, at least in these situations appears to be legally neutral.

Having analyzed these situations, a reply is yet pending as to the scenario which presents the greater difficulty, which is the use of a trademark by a competitor who has no other relationship with the trademark owner than that of manufacturing of similar goods or rendering or similar services.

In trying to approach this issue, we should point out that decisions on trademark infringement, in particular in non-typical infringement cases, often combine trademark law principles with rules of unfair competition. In general, the decisions do not draw a clear distinction between actions which constitute trademark infringement and those which amount to unfair competition.

Moreover, the distinction between what constitutes fair and unfair practices in competition is far from having been defined. A review of court decisions does not quite help to precise the differences when it comes to situations where a party takes advantage of another's position or reputation in the market and there are no other elements involved such as fraud or deception. In

general, taking advantage of another's reputation or position in the market has been deemed unfair in itself, without considerable elaboration on the reasons. The court decisions use to refer to the notion of "taking unfair advantage".

However, except for the comparative advertising scenario, there has been no much analysis on the use of a third party's mark by a competitor in a context where the likelihood of confusion or the potential for mistake or deception is not evident.

Use of another's mark in comparative advertising is now generally permitted, if certain conditions are met, in particular,

- that the comparison concerns homologous goods or services,
- that assertions are truthful,
- that relevant features of said goods or services are compared,
- that the advertising does not disparage the competitor's mark.

Some doctrine has made some analogy between comparative advertising and use of a competitor's mark as key to either attract public to a site (metatag) or trigger advertising to be posted along natural results of a search (keyword advertising). In both situations, the competitor's mark is not used to designate the user's own goods or services but as a means to draw consumer's attention to alternative options. The reasons which validate comparative advertising are therefore invoked to also legitimate metatagging or keyword advertising. Yet, the situations notably and evidently differ, because the metatagging and keyword advertising contexts do not typically involve any comparison. Moreover, those who point out at the analogy fail to consider the situation from the perspective of the conditions to be met for comparative advertising to be lawful.

In light of the foregoing, to determine whether use of a competitor's mark as a magnet to attract traffic in internet would be regarded as permissible or not according to existing law and current trends in case law, we may identify different scenarios:

IV.1. Use of the competitor's mark as a metatag or to obtain a more prominent position in natural search results

Regardless of the fact that the third party's mark is visible on the link or is the hidden key which functions to index the information, such use would constitute infringement on the grounds that, to improve visibility in the web, the competitor takes advantage of the reputation of another's mark (as the latter is the one consumers would be more interested in, and, thus, more likely to query about when navigating) and such action is unfair since it is likely to create confusion inasmuch as the user searching the web for information related to the trademark typed on the query box would assume that all natural results are relevant to his query or that there is some association between the displayed links and the mark he is searching for. Although internet users know that not all results bear the same relevance to the query, there is a general assumption that those appearing in the first positions are those more closely related to the searched term. When the searched term is a trademark, if a link to a competitor's mark appears prominently among the first results, association or confusion cannot be ruled out.

IV.2. Use of a competitor's mark as keyword to trigger advertising

As sponsored advertisements are displayed in a different format and placed independently from natural search results, and web users are familiar with such layout, it is not clear that use of a trademarked key by a competitor could lead to confusion by suggesting association between the trademark owner and the advertiser. If the third party's mark is visible in the text of the link, however, such association might occasionally occur. Therefore, risk of confusion cannot be disregarded when the mark is visible on the sponsored link.

What if it is not visible? As commented, internet users are familiar with the manner in which the information is displayed and unlikely to be confused about the relationship of such sponsored link and the mark they are searching for or its owner. Consequently, despite what the Federal Court held in its brief and preliminary decision in the Veraz case I mentioned at the beginning of this presentation, confusion seems not be the right basis to establish infringement in this situation.

The truth is that internet users who search for a mark and are presented with sponsored links related to alternative marks would believe that such advertisements contain information about products or services either homologous or related to those bearing the mark the web user has been interested in. The user would most possibly not mistake the sponsored links as originating in the owner of the mark he has been searching and is likely to believe those links provide alternative options to what he is searching. Consequently, hidden use of another's mark to cause advertising to appear in the course of a search serves the party who paid for the keyword as a means to attract clients.

It is acknowledged that attracting clients is the very purpose of competition, and that competition is the engine of a healthy economy. The problem is defining the rules of fair play, as already said. And it seems that the criteria to sort out fair and unfair varies in the different jurisdictions. While use of another's mark to identify one's product as a replica of the original (type "x") mark is deemed a fair practice in the USA, it is not so in Europe nor in Argentina. The same dilemma appears to arise in connection with non-visible use of another's mark as a tool to prompt advertising.

It is obvious that the advertiser who causes its link to pop when another's mark is a magnet which would aid the advertiser in routing the attention of potential consumers. The advertisers definitely takes advantage of the reputation or distinctive character of another's mark. But again the same question: is such advantage taken unfair? And yet the same answer: the standards differ in the different jurisdictions.

From what I have summarized previously, in Latin America protection to trademark rights goes far beyond averting risk of confusion. Not only the function of the mark as indicator or source or affiliation is protected but also its informational and advertising functions. Case law has often stressed that third parties, and in particular competitors, should not be allowed to interfere with the trademark owner exclusive rights as concern the advertising and informational functions of its mark. Use of a competitor's mark in the context of keyword advertising, at present, is most likely to be considered infringing, in any or in a combination of grounds, i.e.:

- confusion of some sort (being confusion interpreted as encompassing a broad range of situations)
- taking unfair advantage of the reputation of another's mark: since local courts have acknowledged protection to the advertising functions of the mark in other situations, and since the trademarked key functions as the magnet to attract web browsers, it would be difficult that courts find any legitimate reason to consider such free-riding fair,
- to interfere with the trademark owner's exclusive rights, thus affecting the owner's ability to control the message associated to its mark: this reasoning can be found in many court decisions and also stems from the recognition of the informational and advertising functions of the mark.

IV.3. Liability of keyword advertising service providers

The fact that the service provider gets a revenue from the sale of trademarked keywords would not hold as sufficient ground to consider the practice as taking unfair advantage of the reputation or distinctiveness of a third party's mark, insofar the bidders for such trademarked keywords may have an interest in using such keys and such use may be non-infringing, as

discussed previously. There would be no reason to preclude the provider of the advertising service from charging a fee for placing the sponsored links.

Inasmuch as the keyword advertising practice in itself is not infringing and that it may be held infringing in a specific context, already analyzed, providers of the service could only be held liable if they refuse cooperation to the trademark owner in removing infringing keywords in those situations where the advertiser is not entitled to use it, once the trademark owner has raised the complaint.

Google's Adwords policies do not set out the same procedures for dealing with complaints on unauthorized use of trademarks in sponsored links is not the same in all jurisdictions. In some regions, Google would take action both to investigate the visible use of the mark in the text of the advertisement or link and to disable the non-visible keyword if consisting of a trademark (for example, in most countries of Europe other than the UK). In other countries, Google would only investigate the use of the mark in the ad text or link. The latter is the case for almost all the countries in Latin America, except for Brazil (which is included among the countries, where, at the request of the trademark owner, Google may remove the allegedly offending trademarked key).

Taking into consideration that the trend in local case law suggests that use of a trademarked key by a competitor would be interpreted as infringing either on the grounds of being confusing or unfair free-riding, it would make sense that, as regards the countries for this region, the providers of keyword advertising services foresee the means to take action to disable the trademarked key if a complaint is raised by the trademark owner in relation to the use thereof in a situation which is likely to be held infringement. Such action would not amount to removing the mark from the keyword suggestion list, but would be limited to the allegedly offending use.

V. Conclusion

- Keys and tags are tools which are vital to classifying, indexing and routing information in the web and allow internet users to access relevant data in an easier and faster way.
- Search engines play a vital role in providing and improving the efficiency of the tools to enable web navigation and should be entitled to support such activities from revenues obtained from the sale of advertising space.
- The use of another's trademarks as keys to index information (be them used as metatags or to trigger sponsored advertisements) is not in itself infringing.
- In Latin America, such use would be deemed infringing if it causes confusion as to source or sponsorship, or if it damages the reputation or distinctiveness of the mark, or if it takes advantage of a competitor's mark.
- In Latin America, providers of keyword advertising services should assist trademark owners in removing visible trademarks from the links or the text of the advertisement but also in disabling trademarked keys when a complaint is raised by the trademark owner on the grounds just mentioned.

Buenos Aires, November 2010