



« Back | Print

Satellite Firms in Keyword Clash

Dueling Lawsuits Over Web-Search Terms

By Linda Moss -- Multichannel News, 12/11/2006

In a complicated legal tangle, EchoStar Communications and DirecTV are battling in court over the use of search-engine keywords.

DirecTV has filed three trademark-infringement lawsuits in California against EchoStar's Dish Network retailers over the words they've purchased from search engines to promote their businesses, and then dragged EchoStar into one of those cases.

Direct-broadcast satellite provider DirecTV claimed that EchoStar and some of its retailers are violating its trademark by purchasing rights to keywords that are similar to, or variations of, "DirecTV."

Charlie Ergen's satellite company, in turn, filed its own suit Nov. 6 in New York against rival DirecTV, over the same practice. EchoStar was seeking an injunction against DirecTV last Wednesday, but that hearing has been adjourned to Jan. 22, reportedly so both parties can discuss resolving their differences.

EchoStar Communications' and DirecTV's dueling lawsuits over the purchase of words that steer customers around the World Wide Web delve into one of the hottest areas of trademark-infringement law, several lawyers said last week.

"It's a pretty unsettled area of law," said Paul Llewellyn, a partner in the trademark group of New York law firm Kaye Scholer.

In the past two or three years, there have been a number of lawsuits across the country alleging trademark-infringement regarding search-engine keywords.

"Those cases have come out mixed," with court rulings of both infringement and no infringement, said Carl Butzer, a partner in the intellectual-property section of Jackson Walker, a Dallas law firm. "Ultimately, this is a question that may fall to the Supreme Court to decide."

EchoStar said it purchased more than 1,500 keywords on Google and other Internet search engines.

"The vast majority of these keywords either incorporate the names of its own services, or constitute general terms associated with similar services, such as 'direct' or 'television' or 'TV,'" the EchoStar suit said. "Use of keywords in this manner is a form of comparative advertising."

EchoStar claimed that DirecTV essentially engages in the same activity that it accuses EchoStar of: Namely, using keywords, like "Dish," that are similar to EchoStar's service.

"From a legal perspective, I think this is a very unique scenario because the terms 'DirecTV' and 'Dish' are all very generic phrases that could be used in any number of types of keywords," said Matt Naeger, vice president and general counsel at search-engine marketing firm Impaq.

EchoStar filed its suit against DirecTV after getting a cease-and-desist letter from Rupert Murdoch's company Nov. 3.

In that letter, DirecTV never told EchoStar that it had already filed trademark-infringement suits against several Dish retailers, according to EchoStar associate legal counsel Jeffrey Blum. DirecTV filed a suit Oct. 18 against AllSat and iSatellite; one Oct. 27 against DishPronto; and a third against Defender Security Oct. 25. — all in the U.S. District Court for the Central District of California.

“Only after those complaints were filed did DirecTV write to EchoStar complaining of EchoStar's own use of keywords as search terms,” Blum said.

Now, DirecTV has not only amended its complaint and added EchoStar as a defendant to the AllSat case, it's seeking an injunction against EchoStar, as well, to stop it from using the controversial keywords.

In a prepared statement last week, DirecTV said, “We believe it is a violation of our trademark, and their lawsuit, filed in the Second Circuit, is an obvious case of forum shopping. Our case in L.A. should proceed first because, among other reasons, we filed first.”

« [Back](#) | [Print](#)

© 2008, Reed Business Information, a division of Reed Elsevier Inc. All Rights Reserved.

Advertisement



Multichannel
Online Video Tour
of the NEW Comcast
Downtown Facility
Click Here