

## Abuse of Copyright and Trademarked Material Guidance

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### 1 Introduction

All ITSPA members own copyrighted content and trademarks – registered or otherwise. Sadly, the internet is often no respecter of intellectual property and there are those that will steal your IP and use it for their own purposes without compunction.

This document is a pragmatic, non-lawyerly guide of how to deal with those that do.

### 2 Google Adwords

The use of your brand name by competitors to improve the search result listing for their own products and services is considered by some to be questionable, but is currently not automatically illegal in the UK if the brand name does not appear in the ad text. As a trade organisation we do not take a formal position on this other than our Code of Conduct requiring all members to comply with relevant regulation and legislation including that relating to intellectual property.

Adword campaigns are often outsourced to specialists who do not necessarily tell their clients the tactics they are using. So if you find that your brand is being used in this way, often a polite call or email to the company carrying it out will stop it. If that is ineffective, you might have a legal claim if there is a possibility of consumers being confused, so you may wish to take professional advice.

### 3 Price Comparison Adverts

While it is not lawful to use your trademark branding or the words you use on your website without your consent, e.g. your logo in a price comparison advert, competitors can use your name in plain type to promote a competing service.

It's worth noting that a comparative advert is only permitted if:

- it is not misleading;
- it compares products meeting the same needs or intended for the same purpose;
- it objectively compares one or more material, relevant, verifiable and representative features of those products, which may include price;
- it does not create confusion between the advertiser's and a competitor's goods, services or trade marks;
- it does not discredit or denigrate the competitor's trade marks;
- for products with designation of origin, it relates in each case to products with the same designation;
- it does not take unfair advantage of the reputation of the competitor's trade mark; and
- it does not present products as imitations or replicas of products bearing a protected trade mark or trade name.

Finally, any comparisons between competitors must be qualified and substantiated too (i.e. advertisers need evidence proving the basis of the comparison). This is advertising law rather than IP law.

#### **4 Use of copyright material**

Many companies will simply copy whole sections of your web site and pass it off as their own. This is, of course, unlawful but it is also quite routine. If you care for your brand you need to act against such sites quickly, not least because it can also be a precursor to a phishing attack.

As with Adwords, it's often not your competitor itself that's at fault, it's the company they use to design their site, so the first approach is simply to inform the website owner in writing and ask for it to be removed. Give them 7 days and point out that if they do not remove the material you will be entitled to seek a court injunction together with damages and costs.

You need to show them the exact content to be removed and proof of your ownership. Use screenshots and website links to the relevant pages of their site and your own.

If that fails, the next step is to contact the host of the web site. It's not always known by them that as the host of the protected content, they themselves become liable for the infringement of copyright once they have been notified of it.

Generally, this results in a very fast removal of the content and often the site is totally taken down by the host if there is no quick action by their client.

In order to best protect your website content, you should designate all copy with ©2016 [brand name]. You should also have language in your website terms of use stipulating you own all intellectual property rights in the site and that any use of the site and content is a breach of copyright and any other intellectual property rights in the site.

Here's the relevant legislation:

The Copyright, Designs and Patents Act 1988.

[http://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/462194/Copyright\\_Designs\\_and\\_Patents\\_Act\\_1988.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/462194/Copyright_Designs_and_Patents_Act_1988.pdf)

The Electronic Commerce (EC Directive) Regulations 2002, Regulation 19, Hosting.

<http://www.legislation.gov.uk/ukxi/2002/2013/contents/made>

## **5 How to find stolen content**

By far the easiest and most effective method of finding out whether your copy has been stolen is to use a dedicated online tool such as Copyscape.

## **6 How to find where to send your complaint**

The infringing sites' own 'Contact Us' page is the place to start. So email the owners of the site directly. If no contact details are provided, then using a Whois service freely available on the web can often provide relevant contact details. If a physical address can be found, then sending a letter to this address may have a greater chance of being taken seriously by the site owner.

If this fails to elicit a helpful response or elicits no response at all, then you need to find the host for the site. To do this, open up Command Prompt in Windows - or Terminal on MAC - and Ping the offending sites' domain name. The Ping results will return the IP Address of the Host. You can then use that IP Address on one of the many IP Address LookUp sites freely available on the web. Those results should reveal the 'abuse' email contact for the site being contacted.

## **7 When it fails**

The actions above will almost always lead to a satisfactory conclusion, mostly because of the possible penalties applied to website hosts, but occasionally all your attempts to deal with copyright issues fail. At that point you will need to consider more formal legal action. For this there is no short cut but to get professional advice.

## **8 About Osborne Clarke LLP**

Osborne Clarke an international legal practice and our goal is simple: to help our clients and our people succeed in tomorrow's world.

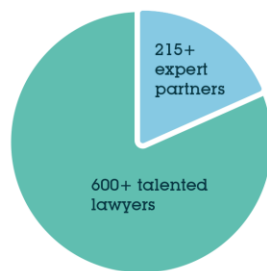
OC's structure and approach ensures we're experts in the sectors our clients work in and we understand the issues they face. We believe that the more we understand the big picture, the more we can provide positive and insightful solutions across the spectrum of advisory, litigation and transactional services.

Our IP team advises clients on the protection, exploitation and enforcement of their intellectual property, from clearing and protecting new brands to disputes concerning the misuse of client's trade marks, copyright and other IP.

OC facts and figures:

# 1,350

employees  
and counting



# 11

countries

- Belgium:** Brussels
- France:** Paris
- Germany:** Berlin, Cologne, Hamburg, Munich
- Hong Kong**
- India:** Mumbai\*
- Italy:** Milan, Brescia, Padua, Rome
- The Netherlands:** Amsterdam
- Singapore**
- Spain:** Barcelona, Madrid
- UK:** London, Bristol, Thames Valley
- USA:** San Francisco, Silicon Valley, New York



\*Relationship firm