




### Not such a cheap shop window: IP problems arising from Internet Advertising

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#### Abstract

Advertising is a key aspect of commercial activity and within the UK advertising industry Internet advertising is in the ascendancy<sup>1</sup>. In my view, advertising is, arguably, more important to UK business than ever, as:

- (i) the 'traditional' advertising model of advertising *expenditure* being necessary in order to attract custom still applies for many offline and online businesses;
- (ii) in addition, for many online businesses (including the mighty ), advertising *revenue* is a key element of their business model, and;
- (iii) for both online and offline businesses there are, increasingly, more ways of advertising – including the various modes of Internet advertising.

This paper will focus on identifying UK IP issues that can and do occur in relation to Internet advertisements. Although the main focus of the paper will be a critical discussion of the IP implications of certain Internet advertising activities, an introduction to the relevant terminology and a brief summary of the potential benefits of advertising *via* the Internet for UK businesses will also be provided. Topics that will be covered include:

- A critical examination of how so-called parody spec spots may be treated under the CDPA 1988 and Trade Marks Act 1994;
- An analysis of how blogs are being used as commercial advertising tools, together with possible implications under the law of confidence and the CDPA 1988;
- The potential implications of Internet advertising for the registration, infringement and revocation of trade marks under the Trade Marks Act 1994 (including attendant jurisdictional issues), together with recommendations for reform, and;
- Guidance on how offline and online businesses can use IP law in order to defend their interests *vis-à-vis* malicious third-party Internet advertising.

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<sup>1</sup> The UK Advertising Association has confirmed that the fastest-growing advertising medium is the Internet. For example, the most recent Internet Advertising (IAB)/PricewaterhouseCoopers adspend study shows a 62% increase in revenues from online adverts in the first half of 2005, as compared to the first half of 2004.