

Google faces backlash

New research shows some of Australia's top online advertisers support the ACCC's court action against Google, but feel powerless to take action themselves against the search giant.

Google controls around 80% of the Australian search audience, making it a formidable rival for advertisers reliant on driving traffic to their sites through paid and unpaid search.

But a confidential exploratory study, undertaken by the Ehrenberg-Bass Institute of Marketing Science at the University of South Australia, found some of Australia's top 100 search advertisers thought Google and other search engines should be able to do a better job of preventing competitors from buying their trademarks as search terms.

The issue of bidding on competitors' trademarks has been a bone of contention between Google and its clients for years, with significant legal action taken against the search provider in at least the US and Europe. In France, Google was held to have violated trademark, unfair competition and advertising laws by showing advertisements for rivals of Louis Vuitton when users searched for "Vuitton".

In Australia, the ACCC's current federal court action against Google is the furthest such a case has advanced. The ACCC is alleging Google engaged in misleading and deceptive conduct in breach of section 52 of the Trade Practices Act when it allowed the *Trading Post* to bid on some of its competitors' business names.

One of the study's authors, Dr Carl Driesener, said the concerns over misuse of trademarks was something raised by advertisers spontaneously during face-to-face interviews.

"Basically, we asked respondents what problems they had with search, and this was one of the issues raised," Driesener said.

Advertisers expressed annoyance that Google did not allow them to



Greg Roebuck, CEO of big-spending Carsales.com.au, is one of Google's unhappy customers.

proactively protect their trademarks, said Driesener, and only allowed them to make reactive complaints. "They want to be able to log certain words [within the Google paid search system] as trademarks proactively," he said.

Driesener, who couldn't disclose the names of the advertisers in question due to the confidential nature of the study, said none of those who spoke out against Google intended to take legal action themselves or discontinue use of Google's service. "They don't have any choice. What are they going to do? Go somewhere else?"

"We take allegations of trademark infringement very seriously," said Rob Shilkin head of corporate communications & public affairs at Google.

"As soon as a complaint is made, we investigate quickly and can then stop use of that trademark as a keyword or as text in the ad going forward. It's a very simple process that works well."

But Greg Roebuck, CEO of one of Google's biggest spending clients, Carsales.com.au, begs to differ.

"We've complained to them at least

once a month for the last year," said Roebuck. "They fix it, then it comes back."

Searching for "carsales" on Google produces three sponsored results: one for Carsales, the others for CarsGuide and Drive – competitor sites operated by News Digital Media and Fairfax Digital respectively.

Roebuck said he hopes the ACCC succeeds in its court action against Google and admitted he'd considered taking legal action against the search engine on a number of occasions. "I get close every now and then, but we'll wait and see what happens with the ACCC case."

Kim Tunbridge, CEO of legal firm Jungle Management, who has followed the trademark debate around the world, said legal action against Google from private parties was stifled by both cost and time issues and the ambiguity of trademark laws in the search arena. Tunbridge said at least one client had contacted her about trademark infringement on Google but decided to drop the matter.

Mark Chenery