

## **Buying Competitor's Names As Keywords Does Not Violate Wisconsin's Privacy Law**

A personal injury law firm can buy search terms using the names of a competing law firm's partners without violating Wisconsin's privacy laws because the use of the names is "non-visible," an appellate court found.

The state's privacy statute includes as an "invasion of privacy" the "use, for advertising purpose or for purposes of trade, of the name, portrait or picture of any living person, without having first obtained" written consent. This form of privacy is sometimes called the right of publicity.

The law firm of Cannon & Dunphy bid on the search terms "Habush" and "Rottier" through Google, Yahoo!, and Bing. As a result, when a search was conducted for the firm Habush Habush & Rottier, an advertisement for Cannon & Dunphy appeared above the organic result. Both law firms specialize in personal injury cases.

Robert Habush and Daniel Rottier sued Cannon & Dunphy under the Wisconsin privacy statute. The trial court granted summary judgment in favor of Cannon & Dunphy. The appellate court affirmed, finding that the "use" of the partners' names as search terms was not an unreasonable use because it was "non-visible" and the statute "does not cover bidding on someone's name as a keyword search term."

In agreeing with the trial court, the appellate court found that the bidding on search terms so that an advertisement appears with the competitor's search results "undeniably takes advantage of the name of the established business and its ability to draw potential customers, but the strategy does not 'use' the name of the business in the same way as putting the name or image of the business in an advertisement or on a product."

The appellate court agreed with the trial court that "locating an advertisement or business near an established competitor to take advantage of the flow of potential customers or clients to the established business is not a practice the legislature intended to prohibit" under the state's privacy statute.

The appellate court also found that, while federal courts in trademark cases have found bidding on keywords is a form of use under the Lanham Act, the issue was "insufficiently developed" to be considered by the court.

*Habush and Rottier v. Cannon & Dunphy*, Wis. Appellate Court No. 2001 AP 1769, issued February 21, 2013.