

# World Trademark Report

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## Google's motion to dismiss AdSense complaint rejected

In *Vulcan Golf LLC v Google Inc*, the US District Court for the Northern District of Illinois has denied the defendants' motion to dismiss the plaintiffs' trademark infringement and cybersquatting claims.

The claims arose from the activities of [Google Inc](#) and its co-defendants related to Google's [AdSense](#) program, which provides a way to generate advertising revenue from residual traffic associated with inactive or 'parked' domain names. [Vulcan Golf LLC](#) and its co-plaintiffs brought suit against Google for allegedly engaging in a scheme to exploit mistyped URLs (eg, 'wwwvulgolf.com', with no period between 'www' and 'vulcan', and 'volcangolf.com') for advertising revenue.

Google and its co-defendants were not accused of registering such sites themselves. Instead, the plaintiffs claimed that Google's co-defendants (including [Oversee.net](#), [Sedo](#) and [Dotster](#)) licensed the allegedly confusing domain names from the actual registrants and subsequently contracted with Google to place related advertising links on those sites. Every time a user clicks on one of the advertising links, the 'parking company' and/or domain name owner receives a small 'click-through' or 'pay-per-click' fee. Google receives revenue from selling the advertising links on the 'parked' domain names. The plaintiffs alleged that the defendants received "billions of dollars in ill-gotten advertising and marketing revenue" on the back of the deceptive domain names.

In reviewing a motion to dismiss, the court accepts the allegations in the complaint as true, viewing all facts and reasonable inferences in the light most favourable to the plaintiffs. To survive a motion to dismiss:

- the plaintiffs need only describe the claims in sufficient detail to provide fair notice to the defendants of what the claims are and the grounds upon which they rest; and
- the complaint need only suggest that the plaintiffs have a right to relief above a mere speculative level.

Based on this standard, the district court refused to dismiss the plaintiffs' claims under the [Anti-cybersquatting Consumer Protection Act](#). Notably, the court found that the allegations sufficiently fell under the act's prohibition of "trafficking in" domain names. Specifically, the complaint alleged that the parking company defendants aggregated numerous domain names from individual domain registrants and contracted with advertising services to license and monetize those domain names. In addition, the plaintiffs claimed that Google:

- paid registrants or parking companies to use the purportedly deceptive domain names;
- provided domain name performance reporting;
- participated in the 'tasting' of domain names;

- used semantics technology to analyze the meaning of domain names;
- selected revenue maximizing advertising; and
- controlled such advertising.

According to the court, these allegations and others were sufficient to suggest that the defendants trafficked in domain names. Further, the court was not persuaded that Google's online complaint system and procedures alone negated the bad-faith element, as the complaint alleged that such system was "illusory" and "misled" the public into believing that the defendants did not support the purported deceptive domain name scheme.

The district court also refused to dismiss the plaintiffs' trademark infringement claims, finding that the allegations in the complaint were sufficient to suggest that Google and its co-defendants used the plaintiffs' marks in commerce in connection with the sale, offering for sale, distribution or advertising of goods and services, as required by the [Lanham Act](#). Further, the court indicated that the likelihood of confusion analysis is factual in nature and not appropriate for analysis at this early stage on a motion to dismiss.

The refusal to dismiss the plaintiffs' claims is bad news for Google, whose core profit generator is based on advertising revenues, including those obtained through parked domains.

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