



FTC Ruling Problematic for Brand Owners

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An agreement among competitors to refrain from buying each other's brands as keywords is a common and effective mechanism for settling trademark disputes. An Oct. 30 initial decision by the FTC's chief administrative law judge has ruled this to be anti-competitive. [Read more about the ruling here.](#)

This ruling is problematic for brand owners. While the law is mostly settled that one may purchase another's brand as a keyword (e.g., via the Google AdWords program) as long as the text of the ad and its linked page are not infringing or deceptive, keyword advertising of this sort often crosses the line into actionable trademark infringement. An agreement to refrain from buying another's brand as a keyword shuts off an actual or potential infringement problem. This FTC ruling, and the U.S. government's position, may deprive brand owners of this effective tool. For assistance or additional information, please contact Sheldon Klein or any member of the Gray Plant Mooty Intellectual Property Group.