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## eleanor m. lackman and skyler terrebonne published in *law360*

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Eleanor M. Lackman and Skyler Terrebonne authored the article, "9th Circ.'s High Bar May Limit Keyword Confusion TM Claims," published by *Law360* on November 26, 2024.

*From the article...*

"While different facts could lead to a different outcome, these cases indicate that it will be nearly impossible for a plaintiff to establish a likelihood of confusion based solely on the act of bidding on a competitor's keyword... Significantly, neither the Ninth Circuit nor the Second Circuit cases address a context where a competitor's name — or other trademark — actually appears in the text of an advertisement generated as the result of a search. Such circumstances may pose a different question, both regarding whether such use constitutes a use in commerce and whether it is likely to cause consumer confusion. As such, companies should proceed with caution when using competitor's trademarks in their ads, regardless of whether or not the purveyors of such ads engage in keyword advertising or conquering."

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### attorneys

Eleanor M. Lackman  
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### practice areas

intellectual property  
trademarks & brands