

Eleventh Circuit Joins Sister Circuits: Keyword Bidding Alone Is Not Trademark Infringement

August 5, 2026

By Peter A. Chiabotti

Related People

Peter A. Chiabotti

The Eleventh Circuit just drew a bright line in online trademark law. In *Deltona Transformer Corp. v. The NOCO Co.*, No. 24-13590 (11th Cir. Aug. 4, 2026), the court held that purchasing a competitor’s trademark as a search-engine keyword, a common advertising strategy for sellers on online marketplaces and search engines, does not on its own constitute trademark infringement. The reasoning is straightforward: consumers never see the purchased keyword, so it cannot confuse them.

Deltona owns the federally registered mark “Battery Tender” for smart vehicle-battery chargers. NOCO, a competitor, bid on that term as an Amazon keyword and used it in its own ad copy, product descriptions, and customer communications. A jury found infringement on all counts and awarded \$1.3 million in actual damages plus \$5.75 million in punitive damages. The district court separately ordered disgorgement of over \$12 million and issued a permanent injunction.

The Eleventh Circuit affirmed in part and reversed in part. It joined every other circuit to address the issue in holding that keyword bidding alone cannot

infringe a trademark because the consumer never sees the plaintiff's mark, only a competitor's ad. The court drew a useful analogy: encountering a rival product on the shelf beside the one you sought is distraction, not confusion.

But NOCO's other conduct was a different story. Using "Battery Tender" in ad text, product descriptions, and direct customer communications constituted "wheelhouse trademark infringement". Internal messages, including employees joking about being "passive aggressive" with Deltona's mark, supported a finding of willful misconduct.

The court also reversed the false-advertising verdict, holding that Deltona never properly pleaded that claim and NOCO never consented to trying it. And it vacated the \$1.3 million damages award because the jury's lump sum could not be disaggregated from the now-rejected theories. The case returns for a new trial on damages.

Key takeaways for brand owners and competitors:

- **Keyword bidding is lawful.** Purchasing a competitor's mark as a search keyword, without more, does not infringe.
- **But visible use of the mark can create infringement risk.** Placing a competitor's trademark in ad copy or product descriptions, even in fine print, can support infringement.
- **Internal communications of intent, as always, matter.** Emails and chats revealing willful use of a competitor's mark support disgorgement and injunctive relief.
- **Plead precisely.** A generic citation to § 43(a) of the Lanham Act does not put a defendant on notice of a false-advertising theory distinct from unfair competition.