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OPINION OF ADVOCATE GENERAL  
JÄÄSKINEN  
delivered on 24 March 2011 (1)

**Case C-323/09**

**Interflora Inc**  
**Interflora British Unit**  
**v**  
**Marks & Spencer plc**  
**Flowers Direct Online Limited**

(Reference for a preliminary ruling from the High Court of Justice of England and Wales, Chancery Division (United Kingdom))

(Trade marks – Keyword advertising corresponding to the trade mark of a competitor of the advertiser – Trade marks with a reputation – Blurring – Tarnishment – Free-riding – Directive 89/104 – Article 5(2) – Regulation No 40/94 – Article 9(1)(c))

## **I – Introduction**

1. This case represents the latest preliminary reference in the chain of cases relating to keyword advertising on an internet search engine.

2. The parties in the national proceedings offer a delivery service of flowers. The applicant companies in the national proceedings (hereinafter jointly referred to as 'Interflora') claim that the defendant, Marks & Spencer, (2) is infringing the INTERFLORA trademark, (3) in essence by having bought various strings of signs corresponding to or resembling that trade mark as keywords in the AdWords advertising service offered by Google.

3. The four preliminary questions can be divided into two groups.

4. The first group of questions concerns the rights conferred to all trade marks. The relevant provisions are set out in Article 5(1) of the First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (4) and the corresponding provision in Article 9(1)(a) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark. (5) For this group of questions, the replies can be found in the judgments given in 2010 in *Google France and Google*, (6) followed by *BergSpechte, eis.de* and *Portakabin*. (7) These cases related to the 'use' by competitors, in