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ELEVENTH CIRCUIT HOLDS COMPETITIVE KEYWORD BIDDING NOT TRADEMARK INFRINGEMENT

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The Eleventh Circuit's recent opinion in *Deltona Transformer Corp. v. NOCO Co., No. 24-13590, 2026 WL 2236806* (11th Cir. Aug. 4, 2026) substantially limited liability exposure for sellers on the e-commerce platform, Amazon, who competitively bid on keywords that substantially resemble or match rival sellers' existing marks. The issue was a matter of first impression in the Eleventh Circuit.

Amazon offers its online sellers a digital auction-house in which sellers compete for higher-priority positions in search queries through placing bids on individual keywords. Higher bids secure earlier positions in search results for user queries that contain those particular keywords. In *Deltona Transformer Corp*, the Eleventh Circuit joined its sister circuits and concluded that keyword bidding, even excessive and competitive keyword bidding—in which a bidder seeks to undercut a competitor by bidding on search terms that encompass the competitor's product—does not constitute trademark infringement under the Lanham Act or Florida common law.

Plaintiff-Appellee, Deltona Transformer Corporation ("Deltona") maintained the mark "Battery Tender" which Deltona alleged were infringed upon by NOCO Company ("NOCO") in violation of, inter alia, the Lanham Act and Florida common law. The Eleventh Circuit considered whether the trial court erred in denying Appellant NOCO Company's ("NOCO") motion for judgment as a matter of law (JMOL) and motion for new trial (MNT) on the issue of trademark infringement under the Lanham Act and Florida Common Law.

Deltona asserted that NOCO "engag[ed] in a broad[], systemic attack on the Battery Tender brand across multiple channels," including "excessively bidding on Deltona's marks as "keywords" and using them to trigger NOCO's ads in Amazon search results." Id. Deltona claimed that NOCO "pa[id] Amazon to display NOCO's ads when a consumer searched for "battery tender" or similar terms."

While the Eleventh Circuit agreed that "ads driven by keyword bidding might distract consumers," the Court distinguished between "overwhelm[ing] [consumers with] the presence of alterative products" and deliberately confusing consumers into mistaking NOCO's product for Daytona's, which would be infringing conduct.

The Eleventh Circuit likened aggressive keyword bidding to conduct that occurs "behind the scenes" of Amazon's internal algorithms and has no impact on the user experience beyond which ads they see and which ads they do not. As long as the ad, the Court reasoned, did not contain the infringing mark directly, the customers were not likely to be confused. From the customer's perspective, the situation "would be akin to the one he would confront if he walked into a corner store looking for Coke and encountered Pepsi next to it on the shelf."

Nevertheless, the Court found that NOCO committed trademark infringement on other grounds, including by using the term "battery tender" (Deltona's mark) directly in its own advertisements, including in the advertisements' text and product descriptions. This, along with NOCO's repeated representations of its own products as "battery tenders" in communications with customers and marketing firms, "supported the conclusion that, from the top down, NOCO actively tried to sow confusion about what a battery tender is" and provided sufficient evidence "to support the jury's determination that NOCO infringed Deltona's marks."

E-commerce professionals should stay up to date on the latest legal developments in their rapidly evolving industry. Berger Singerman's Dispute Resolution Team regularly advises clients on trademark infringement and other intellectual property matters.

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