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Life, Liberty, and the Pursuit of Customers: Developments on ‘Conquesting’ from the Ninth Circuit

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In a recent decision, the U.S. Court of Appeals for the Ninth Circuit in *Lerner & Rowe PC v. Brown Engstrand & Shely LLC*, 119 F.4th 711 (9th Cir. 2024), addressed the issue of whether purchasing market competitors' search engine keyword terms, known as “conquesting,” constitutes trademark infringement. In particular, the court addressed whether this competitive tactic is likely to confuse or mislead consumers. The crux of the case is whether the purchase of a competitor's search engine keyword terms to appear near the top of consumers' online search, results in fodder for a claim of trademark infringement under the Lanham Act?

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