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## AOL does not control "Advertising.com" – U.S. court



The AOL logo is seen on the outside of the building housing the companies corporate headquarters in New York May 28, 2009.

Credit: Reuters/Lucas Jackson/Files  
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By Jonathan Stempel

(Reuters) - A U.S. federal appeals court said on Tuesday AOL Inc([AOL.N](#)) cannot block Advertise.com Inc from using that name on the ground its similarity to its own Advertising.com mark will confuse Internet users.

The U.S. Ninth Circuit of Court in Appeals reversed a lower court ruling in AOL's favor, accepting Advertise.com's argument that the "Advertising.com" mark is generic enough not to warrant protection.

"A mark is not descriptive merely because it conveys some minimal information about a product or service," Judge Betty Fletcher wrote for a unanimous three-judge panel. "If all it describes is the common name of the product or service, it is not protectable as a trademark."

She added the term Advertising.com conveys "only the generic nature" of the services offered and that it is "certainly highly unlikely that consumer surveys or other evidence might ultimately demonstrate that AOL's mark is valid and protectable."

The panel lifted a portion of a preliminary injunction that had prevented Sherman Oaks, California-based Advertise.com from using that name.

It upheld a portion relating to Advertise.com's use of logos found to be confusingly similar to AOL's marks, on the ground that Advertise.com did not appeal on that matter.

Based in New York, AOL has been trying to reshape itself as an online content and advertising company following its December spinoff by Time Warner Inc ([TWX.N](#)).

A spokeswoman, Tricia Primrose, said AOL does not comment on active litigation.

The case is Advertise.com Inc v. AOL Advertising Inc et al, U.S. Ninth Circuit Court of Appeals, Nos. 10-55069 and 10-55071.

(Reporting by Jonathan Stempel in New York; additional reporting by Yinka Adegoke; editing by Andre Grenon)