

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

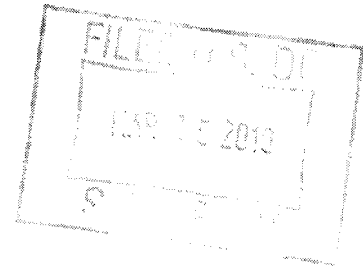
TRADECOMET.COM LLC,
Plaintiff

v.

GOOGLE INC.,
Defendant

CIVIL ACTION NO. 09-cv-1400(SHS)

Notice of Appeal



Notice is hereby given that Tradecomet.com LLC, Plaintiff, in the above-named case, hereby appeals to the United States Court of Appeals for the Second Circuit from the Court's Opinion and Order entered in this action on the 5th day of March 2010 (Dkt No. 38), and the Clerk's Final Judgment entered in this action on the 12th day of March (Dkt No. 39), granting Defendant's Motion to Dismiss based on lack of subject matter jurisdiction and improper venue.

Respectfully Submitted,

Charles F. Rufe
Jonathan Kanter
Joseph J. Bial
Daniel J. Howley
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APPEAL, CLOSED, ECF

**U.S. District Court
United States District Court for the Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:09-cv-01400-SHS**

TradeComet.Com LLC v. Google, Inc.
Assigned to: Judge Sidney H. Stein
Cause: 15:2 Antitrust Litigation

Date Filed: 02/17/2009
Date Terminated: 03/12/2010
Jury Demand: Plaintiff
Nature of Suit: 410 Anti-Trust
Jurisdiction: Federal Question

Plaintiff

TradeComet.Com LLC

represented by **Joseph J Bial**
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V.

Defendant

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Date Filed	#	Docket Text
02/17/2009	<u>1</u>	COMPLAINT against Google, Inc. (Filing Fee \$ 350.00, Receipt Number 679502) Document filed by TradeComet.Com LLC.(ama) (Entered: 02/19/2009)
02/17/2009		SUMMONS ISSUED as to Google, Inc. (ama) (Entered: 02/19/2009)
02/17/2009		Magistrate Judge Kevin Nathaniel Fox is so designated. (ama) (Entered: 02/19/2009)
02/17/2009		Case Designated ECF. (ama) (Entered: 02/19/2009)
02/17/2009	<u>2</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by TradeComet.Com LLC.(ama) (Entered: 02/19/2009)
02/20/2009	<u>3</u>	NOTICE OF APPEARANCE by Daniel Joseph Howley, Jr on behalf of TradeComet.Com LLC (Howley, Daniel) (Entered: 02/20/2009)
02/20/2009	<u>4</u>	NOTICE OF APPEARANCE by Joseph J Bial on behalf of TradeComet.Com LLC (Bial, Joseph) (Entered: 02/20/2009)
02/23/2009	<u>5</u>	SUMMONS RETURNED EXECUTED Summons and Complaint served. Google, Inc. served on 2/18/2009, answer due 3/10/2009. Service was accepted by Chad Maticc, Clerk, NY State Secretary of State. Document filed by TradeComet.Com LLC, (Howley, Daniel) (Entered: 02/23/2009)
02/26/2009	<u>6</u>	NOTICE OF APPEARANCE by Sara Beth Ciarelli on behalf of Google, Inc. (Ciarelli, Sara) (Entered: 02/26/2009)
02/26/2009	<u>7</u>	NOTICE OF APPEARANCE by Jonathan M. Jacobson on behalf of Google, Inc. (Jacobson, Jonathan) (Entered: 02/26/2009)
02/26/2009	<u>8</u>	NOTICE OF CHANGE OF ADDRESS by Sara Beth Ciarelli on behalf of Google, Inc.. New Address: Wilson Sonsini Goodrich & Rosati, 1301 Avenue of the Americas, 40th Floor, New York, New York, 10019, 212-497-7759. (Ciarelli, Sara) (Entered: 02/26/2009)
02/26/2009	<u>9</u>	NOTICE OF CHANGE OF ADDRESS by Jonathan M. Jacobson on behalf of Google, Inc.. New Address: Wilson Sonsini Goodrich & Rosati, 1301 Avenue of the Americas, 40th Floor, New York, New York, 10019, 212-497-7758. (Jacobson, Jonathan) (Entered: 02/26/2009)
02/27/2009	<u>10</u>	NOTICE OF APPEARANCE by Chul Pak on behalf of Google, Inc. (Pak, Chul) (Entered: 02/27/2009)
02/27/2009	<u>11</u>	NOTICE OF CASE REASSIGNMENT to Judge Sidney H. Stein. Judge Naomi Reice Buchwald is no longer assigned to the case due to a Judge's Recusal.

		(ama) (Entered: 03/02/2009)
02/27/2009	<u>13</u>	MOTION for Jonathan S. Kanter to Appear Pro Hac Vice. Document filed by TradeComet.Com LLC.(dle) (Entered: 03/05/2009)
03/03/2009	<u>12</u>	STIPULATION AND ORDER For the reasons set forth in this order, Plaintiff and defendant agree that, Google will have until April 7, 2009, to respond to the complaint (a 28-day extension of time). (Signed by Judge Sidney H. Stein on 3/3/09) (mme) (Entered: 03/05/2009)
03/05/2009	<u>14</u>	MOTION for Charles F. Rule to Appear Pro Hac Vice. Document filed by TradeComet.Com LLC.(dle) (Entered: 03/05/2009)
03/09/2009	<u>18</u>	MOTION for Susan A. Creighton to Appear Pro Hac Vice. Document filed by Google, Inc.(dle) (Entered: 03/11/2009)
03/10/2009	<u>15</u>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Google, Inc..(Jacobson, Jonathan) (Entered: 03/10/2009)
03/10/2009	<u>16</u>	ORDER FOR ADMISSION PRO HAC VICE ON WRITTEN MOTION, granting <u>13</u> Motion for Jonathan S. Kanter to Appear Pro Hac Vice FOR TradeComet.com LLC. (Signed by Judge Sidney H. Stein on 3/9/09) (cd) (Entered: 03/10/2009)
03/10/2009		Transmission to Attorney Admissions Clerk. Transmitted re: <u>16</u> Order on Motion to Appear Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (cd) (Entered: 03/10/2009)
03/10/2009	<u>17</u>	ORDER FOR ADMISSION PRO HAC VICE ON WRITTEN MOTION granting <u>14</u> Motion for Charles F. Rule to Appear Pro Hac Vice for TradeComet.com LLC. (Signed by Judge Sidney H. Stein on 3/9/09) (cd) (Entered: 03/10/2009)
03/10/2009		Transmission to Attorney Admissions Clerk. Transmitted re: <u>17</u> Order on Motion to Appear Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (cd) (Entered: 03/10/2009)
03/12/2009		CASHIERS OFFICE-REMARK-on <u>14</u> Motion to Appear Pro Hac Vice, <u>13</u> Motion to Appear Pro Hac Vice in the amount of \$50.00, paid on 02/27/2009, Receipt Number 6800461(d) (Entered: 03/12/2009)
03/13/2009	<u>19</u>	ORDER GRANTING MOTION FOR ADMISSION PRO HAC VICE OF SUSAN A. CREIGHTON: granting <u>18</u> Motion for Susan A. Creighton to Appear Pro Hac Vice. (Signed by Judge Sidney H. Stein on 3/13/2009) (jfe) (Entered: 03/13/2009)
03/13/2009		Transmission to Attorney Admissions Clerk. Transmitted re: <u>19</u> Order on Motion to Appear Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (jfe) (Entered: 03/13/2009)
03/17/2009	<u>20</u>	ORDER: IT IS HEREBY ORDERED that (1) Any document demands plaintiff serves on defendant shall be returnable within 10 days; 2. Defendant shall move to dismiss the complaint for improper venue or lack of jurisdiction based on improper venue on or before March 31, 2009; 3. Plaintiff's opposition to the

		motion is due on or before April 15, 2009; and 4. Defendant's reply to its motion is due on or before April 22, 2009. So Ordered (Signed by Judge Sidney H. Stein on 3/17/09) (js) (Entered: 03/18/2009)
03/19/2009		CASHIERS OFFICE REMARK on 18 Motion to Appear Pro Hac Vice in the amount of \$25.00; paid on 03/09/2009, Receipt Number 680700. (jd) (Entered: 03/19/2009)
03/31/2009	<u>21</u>	MOTION to Dismiss <i>Based on Lack of Subject Matter Jurisdiction and Improper Venue</i> . Document filed by Google, Inc..(Jacobson, Jonathan) (Entered: 03/31/2009)
03/31/2009	<u>22</u>	MEMORANDUM OF LAW in Support re: <u>21</u> MOTION to Dismiss <i>Based on Lack of Subject Matter Jurisdiction and Improper Venue</i> .. Document filed by Google, Inc.: (Jacobson, Jonathan) (Entered: 03/31/2009)
03/31/2009	<u>23</u>	DECLARATION of Heather Wilburn in Support re: <u>21</u> MOTION to Dismiss <i>Based on Lack of Subject Matter Jurisdiction and Improper Venue</i> .. Document filed by Google, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Exhibit L)(Jacobson, Jonathan) (Entered: 03/31/2009)
03/31/2009	<u>24</u>	CERTIFICATE OF SERVICE of Defendant Google Inc.'s Notice of Motion, Memorandum of Law In Support of Its Motion to Dismiss Based on Lack of Subject Matter Jurisdiction and Improper Venue and Declaration of Heather Wilburn in Support of Motion to Dismiss with exhibits served on Charles F. Rule, Joseph Bial, Jonathan Kanter and Daniel Howley on March 31, 2009. Service was made by Electronic Mail. Document filed by Google, Inc.. (Jacobson, Jonathan) (Entered: 03/31/2009)
04/15/2009	<u>25</u>	MEMORANDUM OF LAW in Opposition re: <u>21</u> MOTION to Dismiss <i>Based on Lack of Subject Matter Jurisdiction and Improper Venue</i> .. Document filed by TradeComet.Com LLC. (Attachments: # <u>1</u> Certificate of Service)(Bial, Joseph) (Entered: 04/15/2009)
04/15/2009	<u>26</u>	DECLARATION of Daniel J. Howley in Opposition re: <u>21</u> MOTION to Dismiss <i>Based on Lack of Subject Matter Jurisdiction and Improper Venue</i> .. Document filed by TradeComet.Com LLC. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12)(Howley, Daniel) (Entered: 04/15/2009)
04/22/2009	<u>27</u>	REPLY MEMORANDUM OF LAW in Support re: <u>21</u> MOTION to Dismiss <i>Based on Lack of Subject Matter Jurisdiction and Improper Venue</i> .. Document filed by Google, Inc. (Jacobson, Jonathan) (Entered: 04/22/2009)
04/22/2009	<u>28</u>	DECLARATION of Sara Ciarelli Walsh in Support re: <u>21</u> MOTION to Dismiss <i>Based on Lack of Subject Matter Jurisdiction and Improper Venue</i> .. Document filed by Google, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H) (Jacobson, Jonathan) (Entered: 04/22/2009)
		MEMORANDUM OF LAW in Opposition re:

04/22/2009	<u>29</u>	CERTIFICATE OF SERVICE of Reply Memorandum of Law In Support Of Defendant Google Inc.'s Motion to Dismiss and Declaration Of Sara Ciarelli Walsh In Support Of Defendant's Motion To Dismiss served on Charles F. Rule, Joseph J. Bial, Jonathan Kanter, Daniel Howley on April 22, 2009. Service was made by Electronic mail. Document filed by Google, Inc.. (Jacobson, Jonathan) (Entered: 04/22/2009)
04/24/2009	<u>30</u>	MOTION to Strike Document No. <u>28</u> / Exhibits D, E, F, G and H of the Declaration of Sara Ciarelli Walsh. Document filed by TradeComet.Com LLC. (Bial, Joseph) (Entered: 04/24/2009)
04/24/2009	<u>31</u>	MEMORANDUM OF LAW in Support re: <u>30</u> MOTION to Strike Document No. <u>28</u> / Exhibits D, E, F, G and H of the Declaration of Sara Ciarelli Walsh.. Document filed by TradeComet.Com LLC. (Attachments: # <u>1</u> Certificate of Service)(Bial, Joseph) (Entered: 04/24/2009)
04/27/2009	<u>32</u>	MEMORANDUM OF LAW in Opposition re: <u>30</u> MOTION to Strike Document No. <u>28</u> / Exhibits D, E, F, G and H of the Declaration of Sara Ciarelli Walsh. Google Inc.'s MEMORANDUM OF LAW in Opposition to TradeComet,com LLC's Motion to Strike Exhibits D,E,F,G,and H of the Walsh Declaration. Document filed by Google, Inc.. (Jacobson, Jonathan) (Entered: 04/27/2009)
04/27/2009	<u>33</u>	CERTIFICATE OF SERVICE. Document filed by Google, Inc.. (Jacobson, Jonathan) (Entered: 04/27/2009)
04/28/2009	<u>34</u>	REPLY MEMORANDUM OF LAW in Support re: <u>30</u> MOTION to Strike Document No. <u>28</u> / Exhibits D, E, F, G and H of the Declaration of Sara Ciarelli Walsh.. Document filed by TradeComet.Com LLC. (Attachments: # <u>1</u> Certificate of Service)(Bial, Joseph) (Entered: 04/28/2009)
08/05/2009	<u>35</u>	NOTICE OF CHANGE OF ADDRESS by Daniel Joseph Howley, Jr on behalf of TradeComet.Com LLC. New Address: Cadwalader Wickersham & Taft LLP, 700 Sixth Street, N.W., Washington, DC, USA 20001, (202) 862-2200. (Howley, Daniel) (Entered: 08/05/2009)
08/05/2009	<u>36</u>	NOTICE OF CHANGE OF ADDRESS by Joseph J Bial on behalf of TradeComet.Com LLC. New Address: Cadwalader Wickersham & Taft, 700 Sixth Street, N.W., Washington, DC, USA 20001, (202) 862-2200. (Bial, Joseph) (Entered: 08/05/2009)
08/06/2009	<u>37</u>	NOTICE OF CHANGE OF ADDRESS by Charles F. Rule on behalf of TradeComet.Com LLC. New Address: Cadwalader Wickersham & Taft, 700 Sixth Street, N.W., Washington, DC, USA 20001, (202) 862-2200. (Rule, Charles) (Entered: 08/06/2009)
03/05/2010	<u>38</u>	OPINION & ORDER re: #98627 <u>30</u> MOTION to Strike Document No. <u>28</u> Exhibits D, E, F, G and H of the Declaration of Sara Ciarelli Walsh filed by TradeComet.Com LLC, <u>21</u> MOTION to Dismiss Based on Lack of Subject Matter Jurisdiction and Improper Venue filed by Google, Inc. Google has demonstrated that the August 2006 Agreement provides the forum selection clause at issue in this action, that the clause was reasonably communicated to TradeComet, that the clause is mandatory, and that TradeComet's antitrust

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		claims are subject to it. TradeComet has not shown that enforcement of the clause would be unconscionable. Accordingly, Google's motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(3) is granted. The Court also denies TradeComet's motion to strike Exhibits D through H of the Walsh Declaration. SO ORDERED. (Signed by Judge Sidney H. Stein on 3/5/2010) (tvg) Modified on 3/8/2010 (ajc). (Entered: 03/05/2010)
03/12/2010	39	CLERK'S JUDGMENT That for the reasons stated in the Court's Opinion and Order dated March 5, 2010, Google's motion to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(3) is granted, and TradeComet's motion to strike Exhibits D through H of the Walsh Declaration is denied. (Signed by J. Michael McMahon, clerk on 3/12/10) (Attachments: # 1 notice of right to appeal)(ml) (Entered: 03/12/2010)
03/15/2010	40	NOTICE OF APPEAL from 39 Clerk's Judgment, 38 Memorandum & Opinion,. Document filed by TradeComet.Com LLC. Filing fee \$ 455.00, receipt number E 896979. (nd) (Entered: 03/16/2010)
03/16/2010		Transmission of Notice of Appeal to the District Judge re: 40 Notice of Appeal. (nd) (Entered: 03/16/2010)
03/16/2010		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 40 Notice of Appeal. (nd) (Entered: 03/16/2010)
03/16/2010		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for 6 Notice of Appearance filed by Google, Inc., 36 Notice of Change of Address filed by TradeComet.Com LLC, 39 Clerk's Judgment, 7 Notice of Appearance filed by Google, Inc., 31 Memorandum of Law in Support of Motion, filed by TradeComet.Com LLC, 11 Notice of Case Assignment/Reassignment, 17 Order on Motion to Appear Pro Hac Vice, 9 Notice of Change of Address filed by Google, Inc., 27 Reply Memorandum of Law in Support of Motion filed by Google, Inc., 15 Rule 7.1 Corporate Disclosure Statement filed by Google, Inc., 18 MOTION for Susan A. Creighton to Appear Pro Hac Vice. filed by Google, Inc., 4 Notice of Appearance filed by TradeComet.Com LLC, 1 Complaint filed by TradeComet.Com LLC, 40 Notice of Appeal filed by TradeComet.Com LLC, 19 Order on Motion to Appear Pro Hac Vice, 37 Notice of Change of Address filed by TradeComet.Com LLC, 34 Reply Memorandum of Law in Support of Motion, filed by TradeComet.Com LLC, 26 Declaration in Opposition to Motion, filed by TradeComet.Com LLC, 25 Memorandum of Law in Opposition to Motion filed by TradeComet.Com LLC, 24 Certificate of Service Other, filed by Google, Inc., 3 Notice of Appearance filed by TradeComet.Com LLC, 20 Order, Set Deadlines/ Hearings, 5 Summons Returned Executed filed by TradeComet.Com LLC, 14 MOTION for Charles F. Rule to Appear Pro Hac Vice. filed by TradeComet.Com LLC, 32 Memorandum of Law in Opposition to Motion, filed by Google, Inc., 38 Memorandum & Opinion,, 29 Certificate of Service Other, filed by Google, Inc., 2 Rule 7.1 Corporate Disclosure Statement filed by TradeComet.Com LLC, 30 MOTION to Strike Document No. 28 Exhibits D, E, F, G and H of the Declaration of Sara Ciarelli Walsh. filed by TradeComet.Com LLC, 33 Certificate of Service Other filed by Google, Inc., 21 MOTION to Dismiss Based on Lack of Subject Matter Jurisdiction and Improper Venue. filed by Google, Inc., 13 MOTION for

Jonathan S. Kanter to Appear Pro Hac Vice. filed by TradeComet.Com LLC, 22 Memorandum of Law in Support of Motion filed by Google, Inc., 10 Notice of Appearance filed by Google, Inc., 35 Notice of Change of Address filed by TradeComet.Com LLC, 23 Declaration in Support of Motion, filed by Google, Inc., 12 Stipulation and Order, Set Deadlines, 8 Notice of Change of Address filed by Google, Inc., 28 Declaration in Support of Motion, filed by Google, Inc., 16 Order on Motion to Appear Pro Hac Vice were transmitted to the U.S. Court of Appeals. (nd) (Entered: 03/16/2010)

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03/16/2010 10:39:31			
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Billable Pages:	5	Cost:	0.40

Jonathan S. Kanter to Appear Pro Hac Vice. filed by TradeComet.Com LLC, 22 Memorandum of Law in Support of Motion filed by Google, Inc., 10 Notice of Appearance filed by Google, Inc., 35 Notice of Change of Address filed by TradeComet.Com LLC, 23 Declaration in Support of Motion, filed by Google, Inc., 12 Stipulation and Order, Set Deadlines, 8 Notice of Change of Address filed by Google, Inc., 28 Declaration in Support of Motion, filed by Google, Inc., 16 Order on Motion to Appear Pro Hac Vice were transmitted to the U.S. Court of Appeals. (nd) (Entered: 03/16/2010)

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03/16/2010 10:39:31			
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