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2008 JUN 27 PM 1:53

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CENTRAL DIST. OF CALIF.
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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

BY FAX

11
12 TOM LAMBOTTE, individually and
on Behalf of All Others Similarly
13 Situated,

Case No.
CV08-04263 CAS FMOx

14 Plaintiff,

**DEFENDANTS' NOTICE OF
REMOVAL PURSUANT TO
28 U.S.C. § 1453 (Class Action
Fairness Act)**

15 v.

16 IAC/INTERACTIVECORP, a
Delaware Corporation;
17 TICKETMASTER, a Delaware
corporation d/b/a
18 CITYSEARCH.COM;
CITYSEARCH.COM, an entity
19 unknown; and DOES 1 through 20,
inclusive,

20 Defendants.

NOTICE OF REMOVAL

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23
24 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR
25 THE CENTRAL DISTRICT OF CALIFORNIA:

26 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332(d), 1453 and
27 1446, Defendants IAC/InterActiveCorp and Ticketmaster d/b/a Citysearch.com
28 (collectively "Defendants") hereby remove the above-entitled action from the

NTC. OF REMOVAL

FENWICK & WEST LLP
ATTORNEYS AT LAW
SAN FRANCISCO

1 Superior Court of the State of California, County of Los Angeles, to the United
2 States District Court for the Central District of California, and state as follows:

3 1. On May 27, 2008, plaintiff Tom Lambotte filed an action entitled *Tom*
4 *Lambotte, individually and on Behalf of All Others Similarly Situated, v.*
5 *IAC/InterActiveCorp, a Delaware corporation; Ticketmaster, a Delaware*
6 *Corporation, d/b/a Citysearch.com; Citysearch.com, an entity unknown; and Does*
7 *1 through 20*, Case No. BC 391463, in the Superior Court of California, County of
8 Los Angeles.

9 2. Defendants were served with a copy of the Complaint along with a
10 Summons on May 30, 2008. Complete copies of the Complaint and associated
11 papers, as served on Defendants, are attached as **Exhibit A**. Pursuant to 28 U.S.C.
12 § 1446(b), and *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344
13 (1999), this Notice of Removal is timely filed within thirty days of receipt by
14 Defendants, through service or otherwise, of a copy of the initial pleading setting
15 forth the claim for relief upon which the action is based.

16 3. Defendants remove this action pursuant to the Class Action Fairness
17 Act of 2005 (codified at 28 U.S.C. §§ 1332(d), 1453, and 1711-1715), which grants
18 this Court original jurisdiction over any purported class action in which the matter
19 in controversy, including all purported claims of the individual persons falling
20 within the definition of the proposed class, exceeds the sum or value of \$5,000,000
21 in the aggregate, exclusive of interest and costs, and in which any member of a
22 class of plaintiffs is a citizen of a State different from any defendant. 28 U.S.C. §
23 1332(d).

24 4. Class Action Allegation: In Paragraphs 1 and 39 of the Complaint,
25 Plaintiff purports to represent a class defined as:

26 *All persons or entities in the United States who paid*
27 *money for pay-per-click advertising through*
28 *Citysearch.com.*

1 Plaintiff alleges that the number of class members is at least in the thousands.
2 Exhibit A (Compl.), ¶ 43.

3 5. Amount in Controversy: Citysearch.com (“Citysearch”) is a leading
4 online guide for listings of businesses, including restaurants, hotels, and stores, in
5 cities across the country. *See* Declaration of John Cherry in Support of Defendants’
6 Notice of Removal (the “Cherry Decl.”) ¶ 3. Citysearch offers businesses the
7 opportunity to advertise on its website at www.citysearch.com, as well as on its
8 distribution partners’ websites. *Id.* Advertisers can choose from one of two main
9 packages. The “Basic Package” includes a business profile page and enhanced
10 search results listings for a flat monthly fee. *Id.* The “Performance Package”
11 includes the benefits of the Basic Package and other options, but instead of paying a
12 flat monthly fee, the advertiser is charged only when a user clicks on its ad. *Id.*
13 This is known as “pay-per-click” (“PPC”) advertising and is a well known and
14 commonly used online advertising model. *Id.*

15 6. It is commonly known that the PPC advertising model may be
16 susceptible to “invalid clicks,” which are purposeful clicks on advertisements by
17 someone other than a potential customer. Cherry Decl. ¶ 4. The generation of
18 invalid clicks is sometimes referred to as “click fraud.” *Id.* Plaintiff alleges that
19 Defendants improperly charged Plaintiff, and the nationwide class that he purports
20 to represent, for invalid clicks in connection with PPC advertising. Exhibit A
21 (Compl.) ¶ 2.

22 7. The Complaint does not specify an amount of damages. However, the
23 amount in controversy—that is, the amount in dispute by reason of the Plaintiff
24 class’s allegations—may be determined from other sources. Plaintiff’s attorneys,
25 Kabateck Brown Kellner LLP, brought similar class actions for click fraud entitled
26 *Checkmate Strategic Group v. Yahoo!, Inc.*, Case No. CV-05-4588 CAS (C.D.
27 Cal.); and *Advanced Internet Technologies v. Google, Inc.*, Case No. C 05 02579
28 (N.D. Cal.). *See* Declaration of Evan Bennett in Support of Defendants’ Notice of

1 Removal (“Bennett Decl.”) ¶ 2.

2 In paragraph 27 of the First Amended Complaint in the *Yahoo!* action,
3 Plaintiff, through its attorneys, alleged that “some analysts believe that as many as
4 30% of clicks are fraudulent.” Bennett Decl., Ex. A. In a critique of a settlement of
5 another click fraud case brought against Google, Plaintiff, through its attorneys,
6 stated:

7 “Industry analysts believe a conservative 10-to-20 percent of all on line
8 advertising is fraudulent. In the past four years, Google has earned over \$15
9 billion in advertising income; thus, more than 1.5 billion is potentially at
10 stake.”

11 Bennett Decl., Ex B.

12 8. In this action, Plaintiff seeks, among other things, restitution of all
13 money Defendants allegedly wrongfully obtained from the class under California’s
14 Unfair Competition Law, Business & Professions Code § 17200. The statute of
15 limitations under that statute is four years. Cal. Bus. & Prof. Code § 17208.
16 Citysearch.com’s revenue from PPC advertising since May 2004 (four years before
17 the filing of the Complaint) exceeds \$50 million. Cherry Decl. ¶ 5. Thus, based
18 upon Plaintiff’s lawyers’ asserted frequency of invalid clicks in PPC advertising in
19 other purported “click fraud” class actions, the amount claimed by Plaintiff and in
20 controversy in this action exceeds \$5,000,000, exclusive of interest and costs. In
21 addition, Plaintiff seeks an award of attorneys’ fees under California’s Unfair
22 Competition Law, which further increases the amount of controversy. *See Brady v.*
23 *Mercedes-Benz*, 243 F. Supp. 2d 1004, 1010-11 (N.D. Cal. 2002) (amount in
24 controversy includes reasonable estimate of plaintiff’s attorneys’ fees).

25 9. Minimum Diversity: Plaintiff alleges that he is a citizen of California.
26 *See* Exhibit A (Compl.) ¶ 4. Defendant IAC/InterActiveCorp is a corporation
27 organized under the laws of Delaware with its principal place of business in New
28 York, New York. *See* Exhibit A (Compl.) ¶ 5; Cherry Decl. ¶ 2. Accordingly,

1 minimum diversity is satisfied pursuant to 28 U.S.C. § 1332(d)(2)(A).

2 10. Defendants have complied with all conditions precedent to removal.

3 11. Promptly upon filing this Notice of Removal with this Court,
4 Defendants shall provide written notice to Plaintiff (through his counsel) and to the
5 Los Angeles County Superior Court, as required under 28 U.S.C. § 1446(d). A
6 copy of said notice is attached as **Exhibit B**.

7 WHEREFORE, this action is properly removed to this Court pursuant to 28
8 U.S.C. §§ 1332(d), 1453 and 1446.

9
10 Dated June 27th, 2008

FENWICK & WEST LLP

11
12 By: Laurence Pulgram
13 Laurence Pulgram

14 Attorneys for Defendants
15 IAC/INTERACTIVECORP and
16 TICKETMASTER d/b/a
17 CITYSEARCH.COM
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