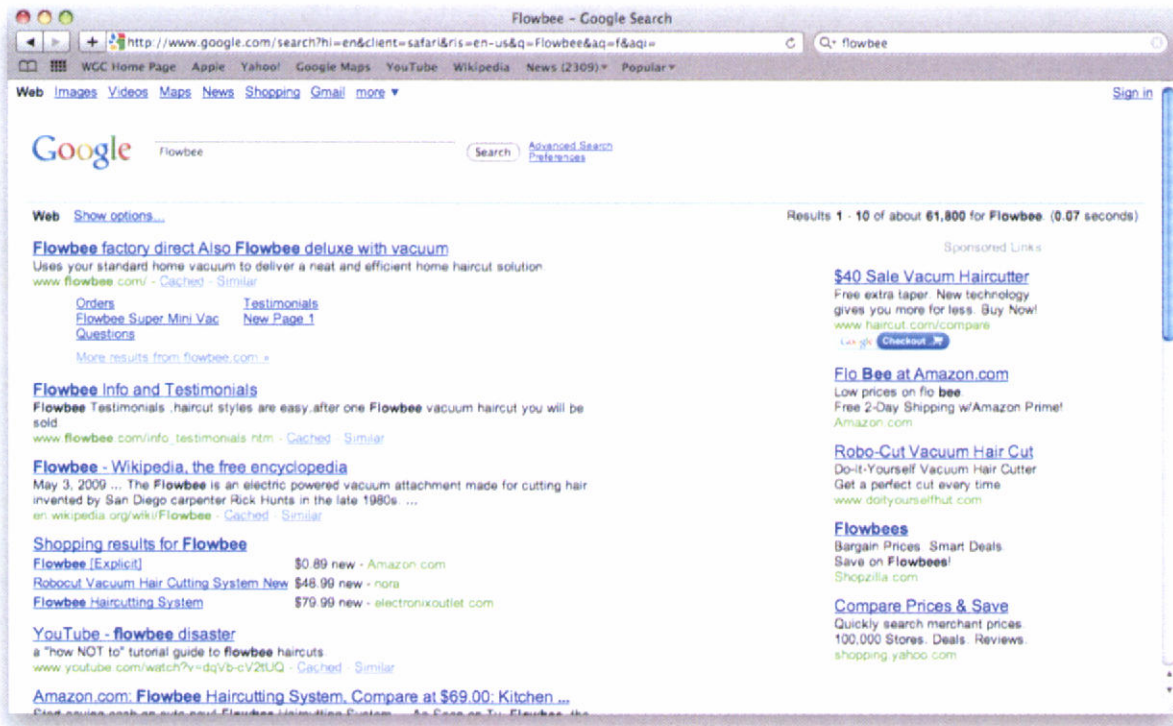


63. As a part of the process of triggering “Sponsored Links,” Google offers its advertisers the ability to purchase as keyword triggers the trademarks and service marks of others, as well as words, phrases, and terms confusingly similar to those trademarks and service marks. Thus, a consumer searching for the Flowbee website using Google’s search engine might be shown a Sponsored Link unrelated to Flowbee that was displayed because a third-party advertiser purchased a Flowbee Mark or terms confusingly similar thereto as a keyword trigger. A statistically significant number of consumers are likely to believe falsely that it was Flowbee who “sponsored” the links that appear above or alongside the PageRank search engine results.

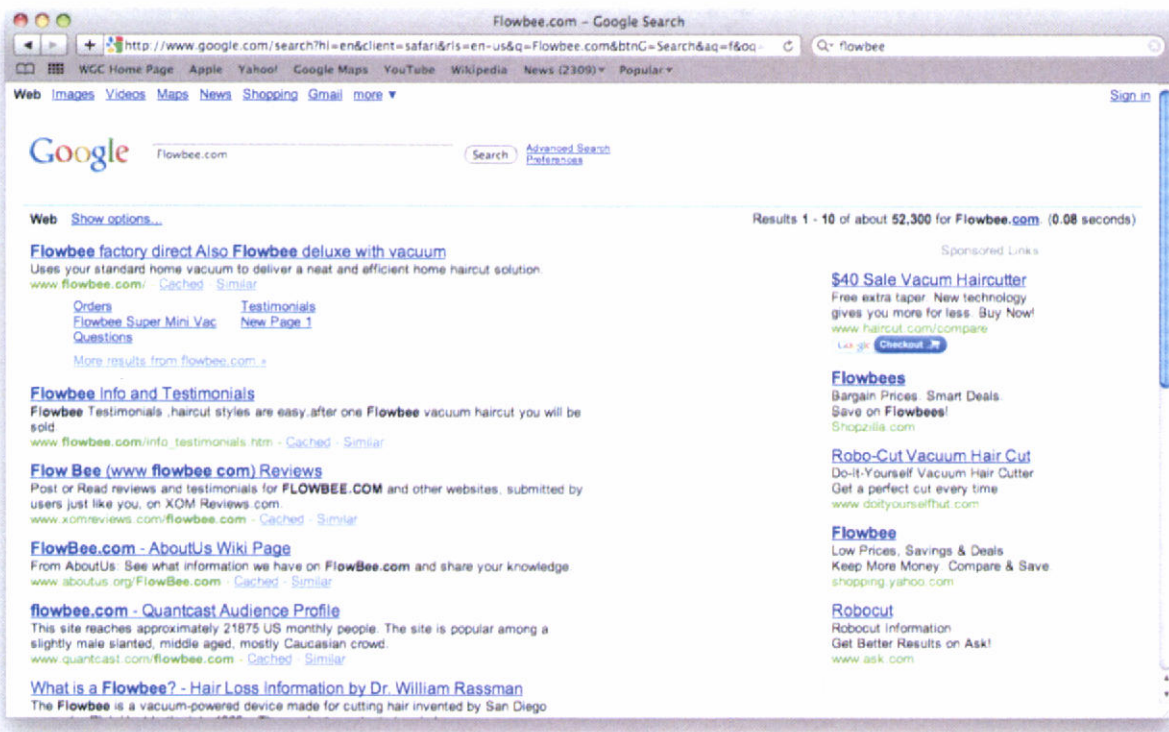
64. On information and belief, a significant portion of the “Sponsored Links” for which Google uses the Flowbee Mark or terms confusingly similar thereto as keyword triggers link Internet users to: (i) websites of vacuum haircutters that compete with Flowbee; (ii) websites that sell vacuum haircutters, not only Flowbee vacuum haircutters, but also a variety of vacuum haircutter retailers that compete with Flowbee; and/or (iii) websites that are entirely unrelated to Flowbee and vacuum haircutters. Flowbee has not sponsored these Sponsored Links or otherwise authorized Google to sell the right to use the Flowbee Mark in commerce to draw web users to these websites. Nevertheless, these unauthorized Sponsored Links appear in close and confusing proximity to the listings generated by Google’s purportedly “natural” system. Many of these unauthorized “Sponsored Links” use the Flowbee Mark in whole or in part within the title and/or text of the Sponsored Link themselves.

65. For example, the screenshot below is a true and accurate shot of Google's website, which shows the results from an Internet search for "flowbee," which is the same as the Flowbee Mark "Flowbee" (U.S. Reg. Nos. 1489925), in the Internet search context because Google searches are not case sensitive.



Although Google includes its "natural" search results on this search results page, the page also contains "Sponsored Links" to varying competitors' websites next to the objective search results. Flowbee operates none of these Sponsored Links. The word "Flowbees" appears in the title of one of the Sponsored Links, although it is confusingly similar to the Flowbee Mark "Flowbee" and the website linked to that Sponsored Link is not a Flowbee website. The confusingly similar "Flo Bee" appears in the title of another of the Sponsored Links, even though the website linked to that "Sponsored Link" is not affiliated with Flowbee.

66. Another example is shown in the screenshot below, which is a true and accurate screen shot of Google's website:

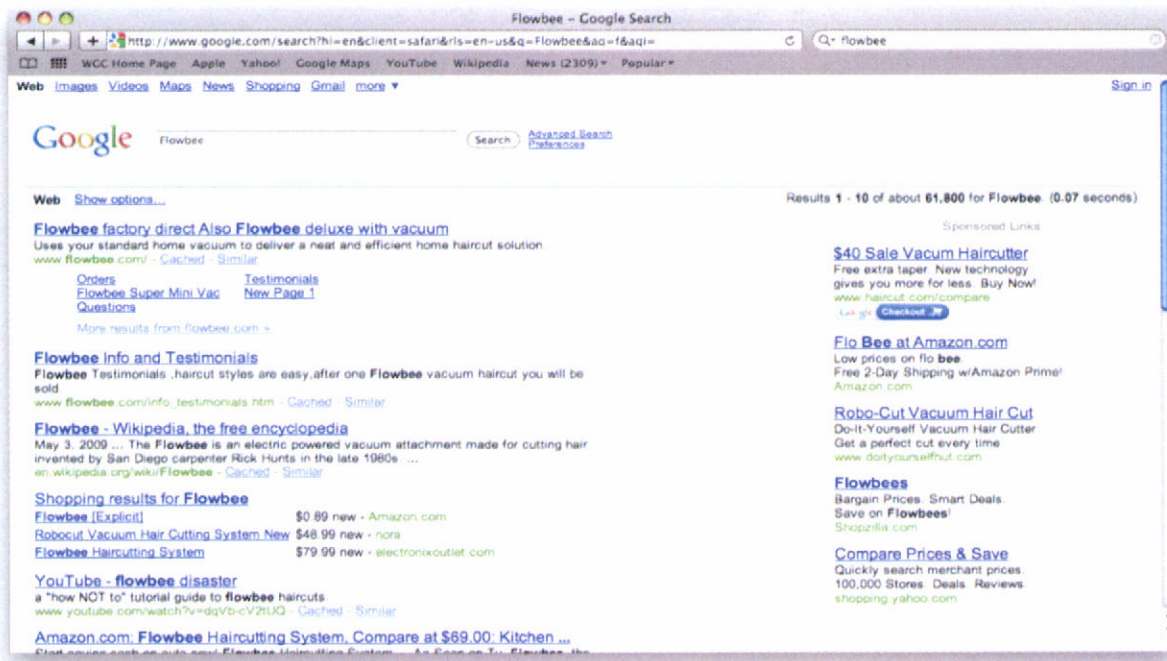


This screenshot shows the results page that appeared when a web user performed an Internet search for the Flowbee website "flowbee.com," which contains the Flowbee mark (U.S. Reg. No. 1489925) because domain names, URLs, and Internet searches are not case sensitive. As with the previous example, in addition to Google's purportedly "natural" PageRank-generated results, Google also lists "Sponsored Links" to various websites in close proximity to the "natural" search results, both above them and immediately to their right. The Flowbee Mark or terms confusingly similar thereto appear in the title or text of these Sponsored Links even though the websites linked to those Sponsored Links are not Flowbee websites. Nevertheless, Google publishes titles for these Sponsored Links that make use of the Flowbee Mark "Flowbee" (U.S. Reg. No.

1489925) and is confusingly similar to the Flowbee Mark "Flowbee. Flowbee has not sponsored any of the unauthorized Sponsored Links that appear above or otherwise authorized Google to sell the right to use the Flowbee Mark in commerce to draw web users to these websites.

67. On information and belief, the use of the mark, "flowbee" and "flowbee.com," such as shown above, is also confusing to consumers because, in many instances, consumers will enter the exact web address of Flowbee's website, www.flowbee.com, or some variant of Flowbee's web address into Google's search engine expecting to receive the link for Flowbee's website. Due to Google's sale of the Flowbee Mark to third parties as keywords, such consumers could be redirected to competitors of Flowbee even though they originally intended to go to flowbee.com. Accordingly, Google aids third parties in "hijacking" consumers who use the Google search engine to navigate the World Wide Web. This interferes with Flowbee's sale and business.

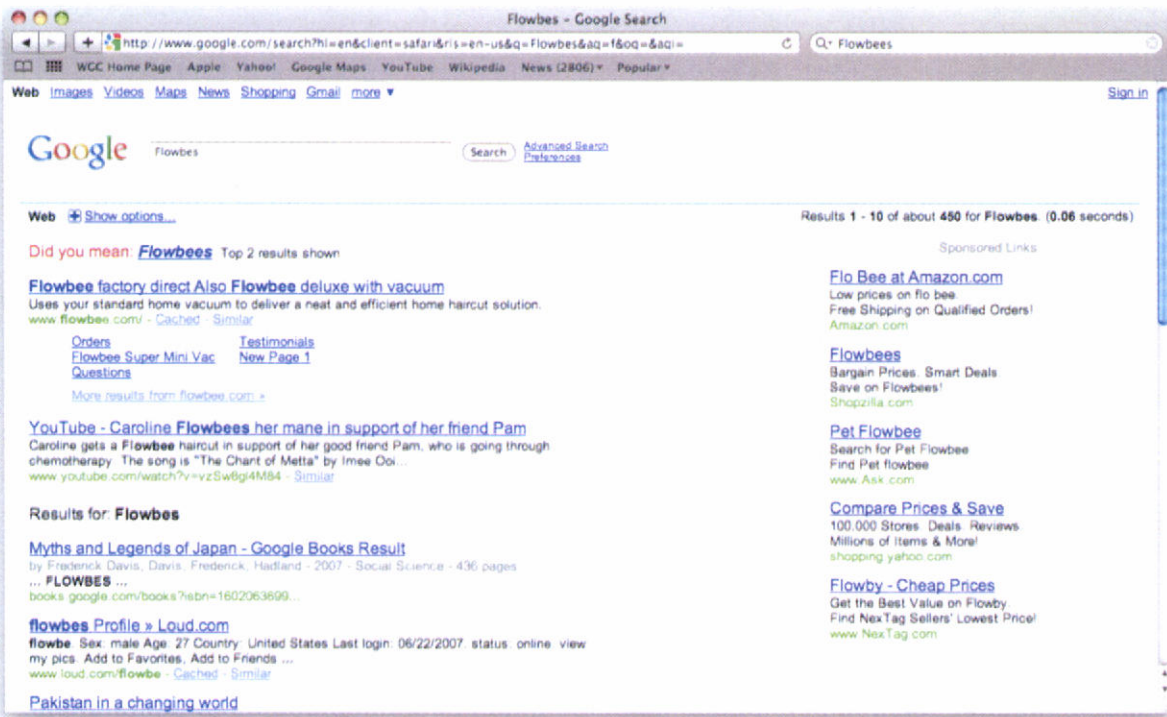
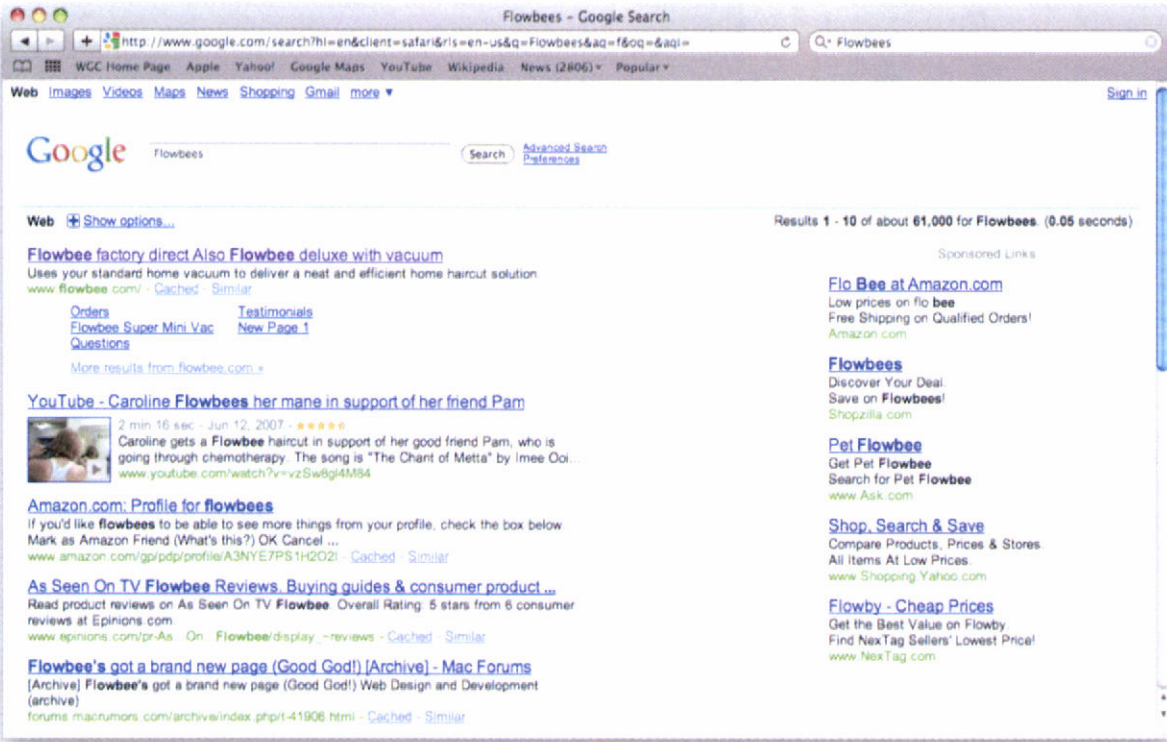
68. On information and belief, a significant portion of the "Sponsored Links" for which Google uses the Flowbee Mark or terms confusingly similar thereto as keyword triggers do not even provide consumers with the opportunity to purchase products offered by Flowbee. For example, below is a true and accurate screen shot of Google search results for "Flowbee," which is the same as the Flowbee Mark.



When the phrase “Flowbee” was entered into Google’s search engine, Google provided Sponsored Links in response that include Flowbee’s competitor Robo-Cut, which appears to consumers as a possible Flowbee affiliate. This Sponsored Links selection does not allow a consumer to purchase a Flowbee product from www.flowbee.com.

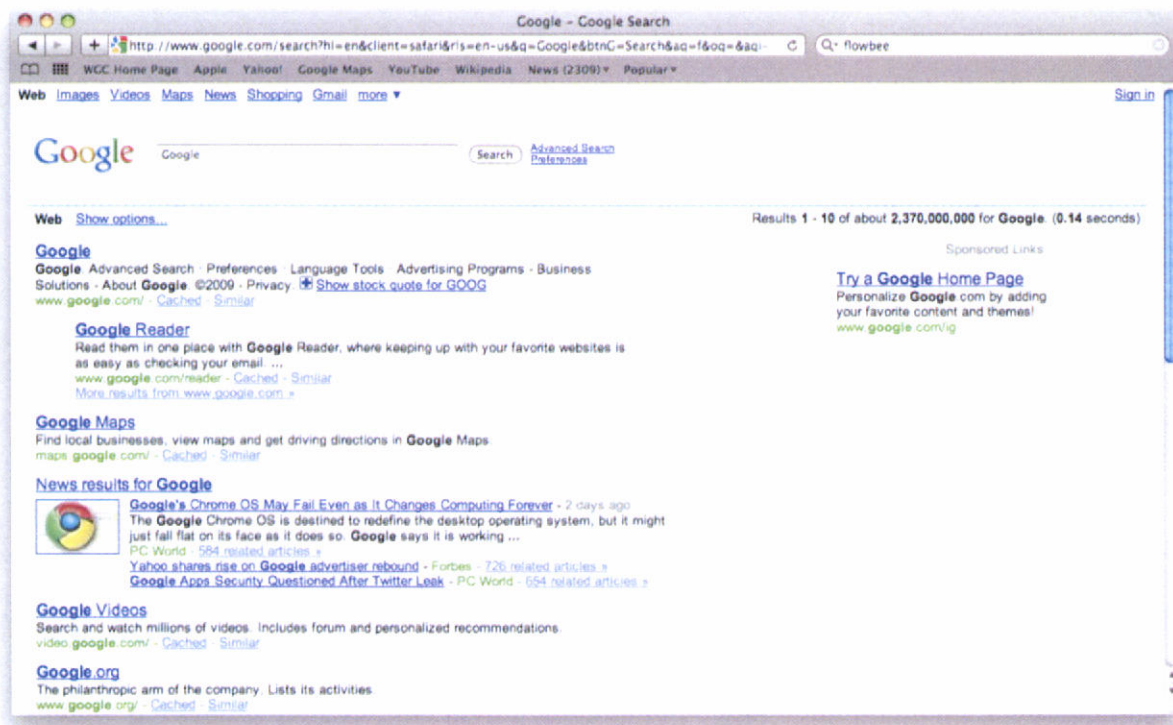
69. On information and belief, Google also posts Sponsored Links to websites that similarly do not offer consumers the opportunity to purchase services or products from Flowbee but nevertheless use the Flowbee Mark or phrases confusingly similar thereto in the text or title of the Sponsored Links.

70. On information and belief, it is relatively easy to find Sponsored Links triggered by keywords confusingly similar to Flowbee. For example, below are true and accurate screenshots of Google search results for “Flowbees” and “Flowbes,” which are confusingly similar to the Flowbee Mark “Flowbee” (U.S. Reg. No. 1489925).

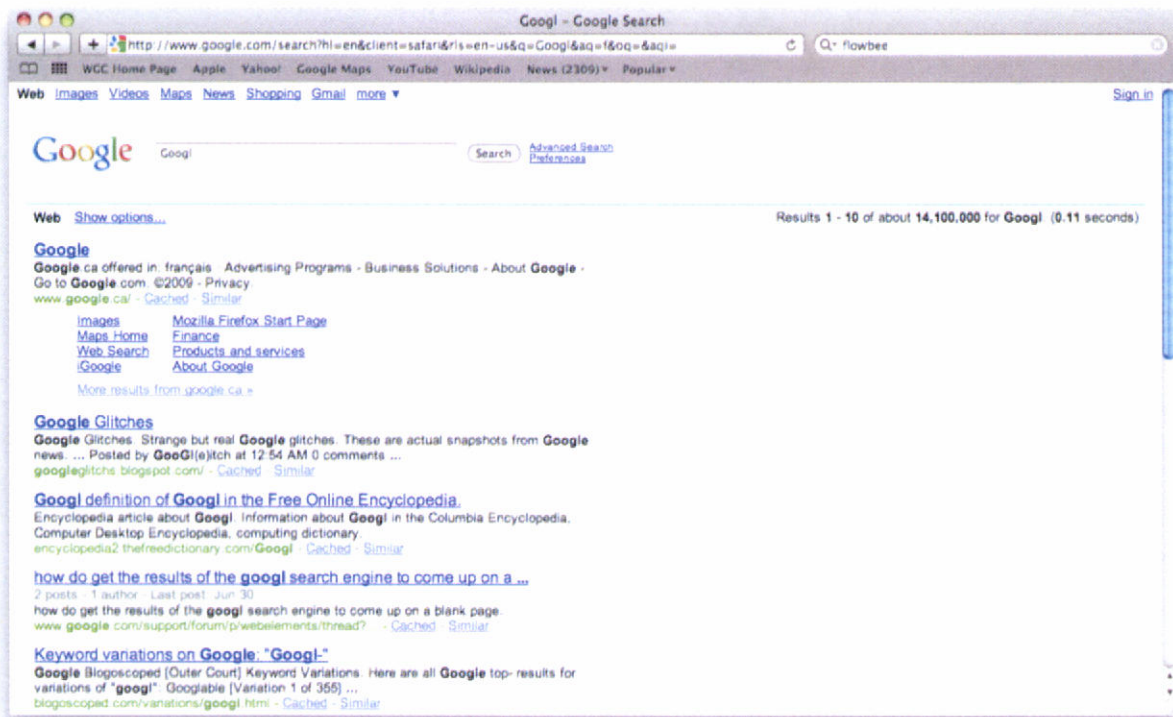


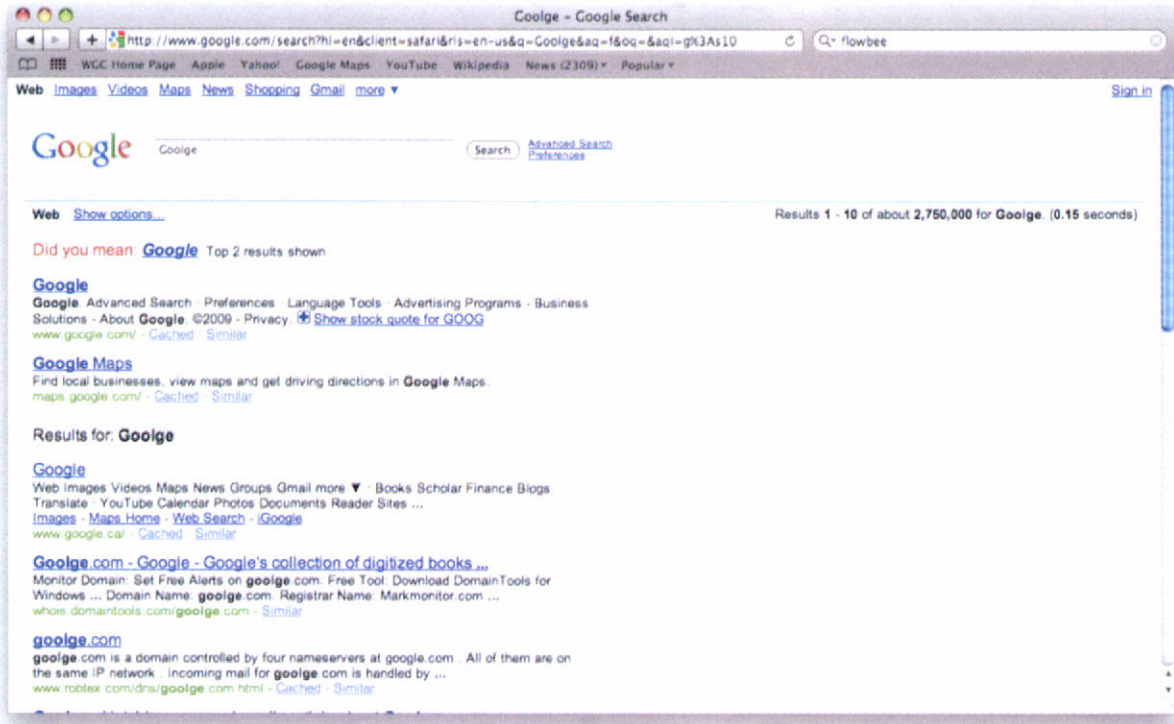
71. In each case, Google displays at least one Sponsored Link with a title or text incorporating these confusingly similar terms.

72. By contrast, Google apparently has a different policy with respect to its own trademarks. On information and belief, at least until very recently, Google prevented at least one of its own trademarks from being used as a keyword trigger. Below is a true and accurate screenshot of a Google search for “Google” taken earlier this year. Note that, unlike the Google searches for “Flowbee” and “flowbee.com,” the results for this search contain one Sponsored Link that is sponsored only by Google itself. On information and belief, to the extent that Google allows Sponsored Links to appear as a result of searches for the word “google,” these Sponsored Links appear to be limited to links that will take the user to one of Google’s websites.



73. Moreover, on information and belief, it is difficult to find a Sponsored Link based on a keyword that is some derivative, misspelling, or other confusingly similar variant of the mark "Google" (or "google" because internet searches are generally not case sensitive). Below are true and accurate screen shots of the results of two Google searches for terms that are confusingly similar to "google." Neither of the searches depicted below revealed any Sponsored Link using a keyword confusingly similar to that Google mark.





Thus, on information and belief, Google allows the use of the Flowbee Mark and terms confusingly similar thereto as keywords in its search engine-based advertising program, although that program is flexible enough to prevent many, if not all, such uses.

74. Further, Google actively encourages advertisers to use trademarks, service marks, and terms confusingly similar thereto as keyword triggers. When a would-be advertiser selects a keyword trigger for its advertising program, Google's AdWords program will find "related keywords" to whatever word or term the advertiser enters.

75. At least until very recently, Google suggested trademarks as keywords even when generic terms were submitted into the Adwords' Keyword search tool. When "vacuum haircutter" was searched in the Google Adwords program, trademarked names appeared, including Flowbee and Robo-Cut Corp., as a potential keyword that advertisers could buy. Google's Adwords program would illegally

promote and sell trademarked names. This illustrates Google's illegal promotion and potential sale of trademarked words and terms to advertisers.

76. On information and belief, Google's specific use of the Flowbee Mark as keyword triggers in its advertising program allows Google and its advertisers to benefit financially from and trade off Flowbee's goodwill and reputation without incurring the expense that Flowbee had incurred in building up its popularity, name recognition, and brand loyalty. Through these practices, Google intentionally traffics in the infringement and dilution of the Flowbee Mark, falsely represents or confusingly suggests to consumers a connection to Flowbee that does not exist, and unfairly competes with Flowbee. These practices cause consumer confusion, erode the distinctiveness of the Flowbee Mark, and cause Flowbee to lose, in part, control over the commercial use of the Flowbee Mark by placing such control in the hands of Google and its advertisers.

77. On information and belief, Google's advertising programs also allow confusing uses of the Flowbee Mark in the text of the Sponsored Link advertisements that Google publishes on its search results page and in other Google advertising on the Internet, although Google has the technical capability to prevent many, if not all, such uses if Google wanted to do so.

78. On information and belief, Google's advertisers have used Google's programming to create "Sponsored Links" and other advertisements that either use terms that are confusingly similar to the Flowbee Mark or are formatted in ways that are likely to cause confusion with Flowbee and/or with the Flowbee Mark. Because of the constantly changing nature of Google's website though, Flowbee requires discovery to ascertain the extent and nature of such confusing advertisements.

79. On information and belief, Google may also have other advertising programs, including but not limited to Google's "AdSense" program, which similarly make commercial use of the Flowbee Mark or terms confusingly similar thereto in order to trigger advertisements on third parties' websites throughout the Internet. On information and belief, in at least some of these instances, the title and/or text of these advertisements also make use of the Flowbee Mark or terms confusingly similar thereto.

80. In sum, Google's unreasonably ineffective trademark policy constitutes, in practice, use in commerce of the registered and common law trademarks of companies, including Flowbee, with full knowledge that consumers are likely to be confused and lured away from the websites that they intended to visit, and with the goal of financially benefiting Google to the detriment of Flowbee and other trademark and service mark owners.

Consumer Confusion and Harm to Flowbee

81. On information and belief, Google charges advertisers a fee every time a web user clicks on a keyword-triggered "Sponsored Link."

82. On information and belief, many web users who enter the Flowbee Mark into Google's search engine and who then view a Sponsored Link containing a third-party advertisement will follow the Sponsored Link to a third-party website in the belief that the website is owned by or affiliated with Flowbee.

83. Upon information and belief, many web users who are presented with such Sponsored Links to third-party advertiser websites are not aware that the third-party advertiser may have no affiliation with Flowbee and/or may not be an authorized provider of Flowbee products. Google's misappropriation of the Flowbee Mark as keyword triggers and its use of terms confusingly similar to the Flowbee Mark in the

Sponsored Links text are therefore likely to cause confusion in the marketplace for vacuum haircutters and related products. This confusion is particularly likely because the third-party advertiser's Sponsored Links often appear in the same context as links to the genuine Flowbee website.

84. Even if web users realize that a given website is not affiliated with Flowbee, once they reach it, the damage to Flowbee has already been done. A statistically significant percentage of such consumers are likely either to stay at the third-party advertiser's website or to discontinue their search for Flowbee websites. Web users may also associate the quality of the goods and products offered on the third-party advertiser's website with those offered by Flowbee, and if dissatisfied with such goods, may decide to avoid Flowbee goods in the future.

85. Although the above examples are illustrative of the problems created by Google, they by no means describe the entire multitude of ways in which Google's uses of the Flowbee Mark is likely to confuse consumers. Because of the fluid nature of the way Google's programming uses the Flowbee Mark and displays advertising based on the mark, Google either is misleading or will mislead consumers in innumerable different ways. Accordingly, it is impossible for Flowbee to cure this problem merely by pursuing remedies against Google's advertisers alone.

86. Among other things, the following facts and circumstances support the conclusion that Google's use in commerce of the Flowbee Mark is likely to cause consumer confusion:

- A. The Flowbee Mark has acquired exceptionally strong secondary meaning over the course of the quarter century.
- B. Google uses the actual Flowbee Mark or terms confusingly similar thereto as keyword triggers and in advertisement text.

- C. Third-party advertisers on whose behalf Google uses the Flowbee Mark or terms confusingly similar thereto generally sell products closely related to the products provided by Flowbee, and in many cases are in direct competition with Flowbee.
- D. Google and its third-party advertisers use the same marketing channels or parallel marketing channels as Flowbee -- namely, the World Wide Web, and in particular, the context of internet searching.
- E. On information and belief, purchasers are likely to exercise a minimal degree of care in the context of Internet searching generally and in choosing vacuum haircutters online in particular.
- F. On information and belief, consumers have actually been confused as a result of Google's conduct.
- G. Google began using the Flowbee Mark or terms very similar to the mark after they were registered and after they became famous and distinctive.
- H. On information and belief, Google used the Flowbee Mark with full knowledge of Flowbee's rights in the Flowbee Mark. In fact, on information and belief, it is Google's specific intent to use the Flowbee Mark as set forth in this complaint to profit from consumer's association of the Flowbee Mark and Flowbee's brand and reputation.

87. On information and belief, many of the third parties to whom Google sells or offers the right or ability to use the Flowbee Mark or terms confusingly similar thereto, or on whose behalf Google uses such marks or terms, do not use such marks or terms to identify or describe Flowbee, its products, or companies affiliated with it.

I.
FIRST CLAIM FOR RELIEF:

FEDERAL TRADEMARK/SERVICE MARK INFRINGEMENT
Lanham Act, 15 U.S.C. §§ 1114(1), 1125(a)

88. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

89. The Flowbee Mark is a valid, federally registered trademark and service mark entitled to protection under the Lanham Act. Flowbee Int'l is the registered owner of the Flowbee Mark. Flowbee L.P. is the exclusive licensee of the Flowbee Mark and has a commercial interest in the Flowbee Mark.

90. Google has used the Flowbee Mark in commerce in a number of ways as part of its search engine-based, keyword-triggered advertising programs, including (but not limited to) the following: (i) by allowing and/or encouraging third-party advertisers to bid on the Flowbee Mark, or terms confusingly similar thereto, and pay Google to use such mark or terms similar to trigger the display of Sponsored Link advertisements that link to third-party advertisers' websites, which are displayed above or alongside purportedly "natural" search engine results; (ii) by causing such Sponsored Link advertisements to appear when web users have specifically attempted to find or access Flowbee's website, with the express purpose of causing web users to visit websites other than those affiliated with Flowbee; (iii) by including the Flowbee Mark in Google's proprietary directories of terms that trigger Sponsored Link advertisements; (iv) by causing Sponsored Link advertisements to appear in close proximity to the Flowbee Mark and links to legitimate Flowbee related websites; and (v) by causing the Flowbee Mark or terms confusingly similar to the Flowbee Mark to appear in the text or title of advertisements which Google calls "Sponsored Links."

91. Google's unauthorized and intentional use of the Flowbee Mark or terms confusingly similar thereto in connection with its search engine-based advertising programs infringes on Plaintiffs' rights in the federally registered mark and is likely to cause confusion, mistake, or deception as to the source of the services offered by Google and its advertisers. Such use is also likely to cause confusion as to whether Flowbee is

sponsoring, has authorized, or is somehow affiliated with Google's sale of the Flowbee Mark or terms confusingly similar thereto, or with the products or services offered through the Sponsored Links that Google intentionally posts above or alongside purportedly objective "natural" results from Internet searches for the Flowbee Mark.

92. Consumers are likely to be initially confused into believing that clicking on Google's keyword-triggered Sponsored Links will lead to a Flowbee website or to information about Flowbee or its products.

93. Even after accessing the websites associated with keyword-triggered "results," consumers are likely to be confused into believing that those websites and the information they contain are associated with, sponsored by, operated by, or otherwise formally affiliated with or supported by Flowbee when that is not the case. Google's unauthorized and intentional use of the registered Flowbee Mark and terms confusingly similar thereto in connection with its search engine-based advertising programs constitutes trademark infringement for which Flowbee Int'l seeks relief under Sections 32(1) and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114(1), 1125(a) and for which Flowbee L.P. seeks relief under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

94. Google's infringement of the Flowbee Mark is willful and reflects Google's intent to exploit the goodwill and strong brand recognition associated with the Flowbee Mark.

95. Google's infringement has damaged Flowbee in an amount to be determined at trial. For example and without limitation, Google has been unjustly enriched through its unlawful and unauthorized sales of the Flowbee Mark.

96. Google's infringement has caused and, unless restrained by this Court, will continue to cause Flowbee irreparable injury.

97. Plaintiffs have no adequate remedy at law for Google's infringement.

II.

SECOND CLAIM FOR RELIEF:

CONTRIBUTORY FEDERAL TRADEMARK/SERVICE MARK INFRINGEMENT Lanham Act, 15 U.S.C. §§ 1114 and 1125(a)

98. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

99. With full knowledge of Plaintiffs' rights in the Flowbee Mark, Google has sold to third-party advertisers the "rights" to use the Flowbee Mark or terms confusingly similar thereto as a part of Google's search engine-based advertising programs. In this context, the third-party advertisers' use of the Flowbee Mark or terms confusingly similar thereto is likely to cause confusion among consumers, and constitutes infringement of Plaintiffs' rights in the Flowbee Mark.

100. In particular, the use of the Flowbee Mark or terms confusingly similar thereto in Google's search engine in order to trigger the display of Sponsored Links that link to the websites of third-party advertisers above or alongside purportedly "natural" results likely deceive or cause confusion among web users as to whether Flowbee is the source of (or is sponsoring or affiliated with) the products offered on the third-party advertisers' websites.

101. Alternatively, the use of the Flowbee Mark or terms confusingly similar thereto within the title and text of Sponsored Link advertisements by third-party advertisers is likely to deceive or cause confusion among web users as to whether Flowbee is the source of (or is sponsoring or affiliated with) the products and services offered on the third-party advertisers' websites.

102. Through its sale of the Flowbee Mark and terms confusingly similar thereto third-party advertisers and its encouragement of the sale of keywords that either incorporate the Flowbee Mark or terms confusingly similar thereto, Google induces such third-party advertisers to infringe the on Flowbee Mark and/or provides such third-party advertisers with aid and material contribution to the third-party advertisers' infringement of the Flowbee Mark in violation of Flowbee Int'l's rights under Sections 32(1) and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114(1), 1125(a) and Flowbee L.P.'s rights under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

103. Google is therefore contributorily liable for the infringing use of the Flowbee Mark by the third-party advertisers who use the Flowbee Mark to trigger the display of links to their websites.

104. Google's contributory infringement is willful and reflects Google's intent to exploit the good will and strong brand recognition associated with the Flowbee Mark.

105. Plaintiffs have been damaged by Google's contributory infringement in an amount to be determined at trial. For example and without limitation, Google has been unjustly enriched through its unlawful and unauthorized sales of the Flowbee Mark.

106. Flowbee has been, and absent injunctive relief will continue to be, irreparably harmed by Google's actions.

107. Flowbee has no adequate remedy at law for the foregoing wrongful conduct.

III.
THIRD CLAIM FOR RELIEF:

VICARIOUS TRADEMARK/SERVICE MARK INFRINGEMENT
Lanham Act, 15 U.S.C. §§ 1114 and 1125(a)

108. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

109. Google has the ability to control the use of the Flowbee Mark or terms confusingly similar to the Flowbee Mark in its search engine-based advertising programs.

110. Third-party advertisers' use of the Flowbee Mark or terms confusingly similar thereto as keyword triggers in Google's search engine-based advertising program is likely to cause confusion among consumers, and constitutes infringement of Plaintiffs' rights in the Flowbee Mark.

111. Third-party advertisers' use of the Flowbee Mark or terms confusingly similar thereto in the title or text of Sponsored Link advertisements is likely to cause confusion among consumers, and constitutes infringement of Plaintiffs' rights in the Flowbee Mark.

112. Google receives a direct financial benefit from the third-party advertisers' unauthorized use of the Flowbee Mark or terms confusingly similar thereto.

113. Google is therefore vicariously liable for the infringing use of the Flowbee Mark by third-party advertisers, for which Flowbee Int'l seeks relief under Sections 32(1) and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114(1), 1125(a) and for which Flowbee L.P. seeks relief under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

114. Flowbee has been damaged by Google's vicarious infringement in an amount to be determined at trial. For example and without limitation, Google has been unjustly enriched through its unlawful and unauthorized sales of the Flowbee Mark.

115. Flowbee has been, and absent injunctive relief will continue to be, irreparably harmed by Google's actions.

116. Flowbee has no adequate remedy at law for the foregoing wrongful conduct.

IV.
FOURTH CLAIM FOR RELIEF:

FALSE REPRESENTATION UNDER THE LANHAM ACT
Lanham Act, 15 U.S.C. §§ 1125(a)

117. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

118. Google's use of the Flowbee Mark or terms confusingly similar thereto as keyword triggers in its search engine-based advertising programs conveys the misleading commercial impression to the public that the third-party advertisers listed as Sponsored Links above or alongside purportedly "natural" results, or their products, are approved, endorsed, or sponsored by Flowbee, or are otherwise affiliated with or supported by Flowbee.

119. Google's use of the Flowbee Mark or terms confusingly similar thereto in the title or text of Sponsored Link advertisements conveys the misleading commercial impression to the public that the third-party advertisers listed as Sponsored Links are approved, endorsed or sponsored by Flowbee, or are otherwise affiliated with or supported by Flowbee.

120. Each of these misleading uses of the Flowbee Mark constitutes a false designation of origin and false description and representation, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §§ 1125(a).

121. Google's false representations are willful and reflect Google's intent to exploit the goodwill and strong brand recognition associated with the Flowbee Mark.

122. Google's false representations have damaged Flowbee in an amount to be determined at trial.

123. Flowbee has been, and absent injunctive relief will continue to be, irreparably harmed by Google's actions.

124. Flowbee has no adequate remedy at law for Google's false representations.

V.
FIFTH CLAIM FOR RELIEF:

FEDERAL TRADEMARK DILUTION
Lanham Act 15 U.S.C. §§ 1125(c)

125. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

126. The Flowbee Mark is famous within the meaning of the Trademark Dilution Revision Act of 2006. In particular, the following factors support the conclusion that the Flowbee Mark is famous:

- A. As alleged above, Flowbee has advertised the Flowbee Mark on a nationwide basis in a broad cross-section of prominent media for several decades;
- B. The Flowbee Mark has received massive publicity by both Flowbee and third parties;

- C. Flowbee has earned millions of dollars in gross profits on a nationwide basis in connection with the products that it has offered under the Flowbee Mark;
- D. The Flowbee Mark has achieved a high level of actual recognition among the consuming public;
- E. As alleged above, Flowbee has obtained federal trademark registrations for its Flowbee Mark; and
- F. Google's use of the Flowbee Mark or terms confusingly similar thereto as keyword triggers in its search engine-based advertising programs has lessened and will continue to lessen the capacity of Flowbee is famous and distinctive Flowbee Mark to distinguish Flowbee products from those of others, and has diluted the distinctive quality of the famous and nationally recognized Flowbee Mark.

127. Google's use of the Flowbee Mark or terms confusingly similar thereto in the title of text of Sponsored Link advertisements has lessened and will continue to lessen the capacity of Flowbee's famous and distinctive Flowbee Mark to distinguish Flowbee products from those of others, and has diluted the distinctive quality of Flowbee's famous and nationally recognized Flowbee Mark.

128. Google's conduct as alleged above is likely to cause blurring to and of the Flowbee Mark and impair the distinctiveness of the Flowbee Mark. Consumers are likely to associate Google's uses of the Flowbee Mark or terms confusingly similar thereto with the Flowbee Mark to the Flowbee Mark itself. In particular, on information and belief, the following factors make dilution by blurring likely:

- A. Google is making use of the Flowbee Mark itself or words or phrases confusingly similar to the Flowbee Mark;
- B. The Flowbee Mark has acquired tremendous distinctiveness recognition through Flowbee's promotion and use of the Flowbee Mark in commerce since 1987;
- C. The Flowbee Mark has become famous and achieved a high level of recognition among the consuming public;

- D. Flowbee's commercial use of the Flowbee Mark is substantially exclusive to Flowbee and its agents and licensees;
- E. On information and belief, Google's advertisers intend to create an association between Google's uses of the Flowbee Mark or terms confusingly similar thereto and the Flowbee Mark itself; and
- F. On information and belief, many consumers actually associate Google's uses of the Flowbee Mark or terms confusingly similar thereto with the Flowbee Mark.

129. Google's conduct as alleged above is also likely to cause tarnishment among the Flowbee Mark that harms the reputation of the Flowbee Mark because of the similarity between Google's uses of the Flowbee Mark or terms confusingly similar thereto and the Flowbee Mark itself. In particular, many of the Sponsored Links that Google posts because consumers enter the Flowbee Mark or terms confusingly similar thereto into Google's search engine, or that make use of the Flowbee Mark or terms confusingly similar thereto in the title or text of such Sponsored Links lead consumers to websites that offer lower quality services than Flowbee offers or other products that are misleading or distasteful.

130. On information and belief, Google has derived and continues to derive substantial revenue and profits from the past and ongoing dilution of the Flowbee Mark as a result of its unauthorized uses of the Flowbee Mark and terms confusingly similar thereto.

131. Google's use of the Flowbee Mark constitutes dilution in violation of Section 43(c) of the Lanham Act 15 U.S.C. §§ 1125(c).

132. Google's dilution of the Flowbee Mark has caused Plaintiffs damage in the amount to be determined at trial. For example and without limitation, Google has been unjustly enriched through its unlawful and unauthorized sales of the Flowbee Mark.

133. Flowbee has been, and absent injunctive relief will continue to be, irreparably harmed by Google's actions.

134. Flowbee has no adequate remedy at law for Google's dilution of the Flowbee Mark.

VI.

SIXTH CLAIM FOR RELIEF:

TRADEMARK INFRINGEMENT UNDER TEXAS LAW

135. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

136. Flowbee has common law rights to the Flowbee Mark in Texas by virtue of the marks' eligibility for protection and Flowbee's status as senior user of the mark.

137. Google's acts as described above constitute common law infringement of the famous Flowbee Mark, resulting in irreparable injury to Flowbee. Google is also liable for contributory common law infringement and vicarious common law infringement of the Flowbee Mark.

138. Google's infringement has damaged Flowbee in an amount to be determined at trial. For example and without limitation, Google has been unjustly enriched through its unlawful and unauthorized sales of the Flowbee Mark.

139. Google's infringement has caused and, unless restrained by this Court, will continue to cause Flowbee irreparable injury.

140. Flowbee has no adequate remedy at law for Google's infringement of its common law trademark rights.

VII.
SEVENTH CLAIM FOR RELIEF:

TRADEMARK DILUTION UNDER TEXAS LAW
TEX. BUS & COM CODE § 16.29

141. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

142. Flowbee has common law rights under Texas law to the Flowbee Mark.

143. Google's acts as described above constitute dilution and dilute the distinctive quality of the famous Flowbee Mark, resulting in damage to Flowbee, to its business reputation, to the uniqueness and individuality of the Flowbee Mark, and to the substantial business and goodwill symbolized by the Flowbee Mark in violation of Texas's Anti-Dilution Statute, TEX BUS & COM CODE § 16.29.

144. Flowbee has no adequate remedy at law for Google's dilution of its common law trademark rights.

VIII.
EIGHTH CLAIM FOR RELIEF:

UNFAIR COMPETITION UNDER TEXAS LAW

145. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

146. Unfair competition requires a plaintiff to show (1) an illegal act and (2) that the act interfered with the plaintiff's ability to conduct its business. *Taylor Publishing Co. v. Jostens*, 216 F.3d 465, 486 (5th Cir. 2000); *DP Wagner Manuf. v. Prop Patch Sys.*, 434 F. Supp.2d 445, 462 (S.D. Tex. 2006); *Keane v. Fox Television Stations*, 297 F. Supp.2d 921, 938 (S.D. Tex. 2004); *Minka Lighting v. Craftmade Int'l*, 2002 WL 31495990, *2 (N.D. Tex. Nov. 4, 2002).

147. Google's acts as described above violate Texas's unfair competition law. Google's conduct is illegal and/or tortuous and has interfered and continue to interfere with Flowbee's ability to conduct its business.

148. As a result of Google's conduct, Flowbee has suffered and will continue to suffer damage, including damage to its reputation, because of consumer confusion as to the origin or sponsorship of the products and services advertised through Google's websites. For Example and without limitation, Google has been unjustly enriched through its unlawful and unauthorized sales of the Flowbee Mark.

149. Flowbee has been, and absent injunctive relief will continue to be, irreparably harmed by Google's actions.

150. Flowbee has no adequate remedy at law for Google's unfair competition.

IX.
NINTH CLAIM FOR RELIEF:

MISAPPROPRIATION UNDER TEXAS LAW

151. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

152. Misappropriation (which can be the independent tort underlying a claim for unfair competition) requires a plaintiff to show (1) the creation of plaintiff's product through extensive time, labor, skill, and money; (2) the defendant's use of that product in competition with the plaintiff, thereby gaining a special advantage in that competition because defendant is burdened with little or none of the expense incurred by the plaintiff; and (3) commercial damage to the plaintiff. *HB Turbo v. Turbonetics Eng. & Svcs.*, 2007 WL 1629949, *1 n.1 (Tex. App-Corpus Christi Aug. 23, 2007, rev. denied) (citing *United States Sporting Prods. v. Johnny Stewart Game Calls*, 865 S.W.2d 214, 218

(Tex. App.--Waco 1993, writ denied)). See also *Minka*, 2002 WL 31495990 at *3; *Aldridge v. The Gap*, 866 F. Supp. 312, 313 (N.D. Tex. 1994).

153. Flowbee has created the goodwill, value, secondary meaning, and popularity of the Flowbee Mark through extensive time, labor, skill and money.

154. Google uses the Flowbee Mark in competition with Flowbee, thereby gaining a special advantage and a free ride in that competition with Google is not and has not been burdened with the expenses incurred by Flowbee in developing the goodwill, value, secondary meaning, and popularity of the Flowbee Mark.

155. As a result of Google's conduct, Flowbee has been and will continue to be commercially damaged because of consumer confusion as to the origin or sponsorship of the products advertised through Google's websites. In addition, Google has been unjustly enriched through its unlawful and unauthorized sales of the Flowbee Mark.

156. Flowbee has been, and absent injunctive relief will continue to be, irreparably harmed by Google's actions.

157. Flowbee has no adequate remedy at law for Google's misappropriation of the Flowbee Mark.

X.
TENTH CLAIM FOR RELIEF:

MONEY HAD AND RECEIVED

158. Plaintiffs repeat and reallege each and every allegation in the foregoing paragraphs as if fully set forth herein.

159. "Money had and received" is an equitable cause of action also known as "assumpsit." The elements are: (1) the defendant holds money; and (2) the money belongs to the plaintiff in equity and good conscience. *W.R. Edwards v. Mid-Continent*

Office Distrib., 252 S.W.3d 833, 837 (Tex. App.--Dallas 2008, rev. denied); *Doss v. Homecomings Fin. Network*, 210 S.W.3d 706, 710-11 (Tex. App.--Corpus Christi 2006, pet denied).

160. Flowbee Int'l is the owner of all right and title to the Flowbee Mark. As a result, Flowbee Int'l possesses the exclusive right, *inter alia*, to use, license, sell, and/or authorize the use of the Flowbee Mark. Flowbee L.P. is the exclusive licensee of the Flowbee Mark.

161. Contrary to Flowbee's exclusive rights, Google makes commercial use and sells the right to make commercial use of the Flowbee Mark by allowing and/or encouraging third-party advertisers to bid on the Flowbee Mark, or terms confusingly similar thereto, and to pay Google to use such mark or terms to trigger the display of Sponsored Link advertisements. Google also receives a direct financial benefit from the third-party advertisers' unauthorized use of the Flowbee Mark or terms confusingly similar thereto.

162. As a result of its unlawful and unauthorized conduct, Google has obtained money from its advertisers by undue advantage, and holds money that in equity and good conscience belongs to Flowbee.

163. Flowbee has been, and absent injunctive relief will continue to be, irreparably harmed by Google's actions.

164. Flowbee has no adequate remedy at law for Google's conduct.

PRAYER

WHEREFORE, Plaintiffs pray for judgment in their favor and against Google as follows:

A. Permanently enjoining Google and its officers, directors, partners, agents, subcontractors, servants, employees, representatives, franchisees, licensees, subsidiaries, parents, and related companies or entities, and all others acting in concern or participation with it from:

- directly or indirectly selling or offering for sale the Flowbee Mark or other terms confusingly similar to the Flowbee Mark for use in its search engine-based advertising programs to anyone other than Flowbee or its authorized licensees;
- continuing to post advertisements for particular third parties explicitly because Internet users have run a search on Google's search engine using search terms that are identical or confusingly similar to the Flowbee Mark;
- continuing to post titles or text of paid or keyword-triggered search engine results that falsely communicate to consumers that such links are endorsed, sponsored, or supported by Flowbee or formally affiliated with Flowbee;
- infringing, or causing any other entity to infringe the Flowbee Mark;
- unfairly competing with Plaintiffs in any manner whatsoever; and
- making any use of the Flowbee Mark and/or terms confusingly similar thereto unless specifically authorized by Plaintiffs.

B. Directing an accounting to determine all gains, profits, savings and advantages obtained by Google as a result of its wrongful actions;

C. Awarding restitution to Plaintiffs of all gains, profits, savings and advantages obtained by Google as a result of its wrongful actions;

D. Awarding Plaintiffs all damages caused by Google's wrongful actions;

E. Awarding Plaintiffs treble the amount of its damages, together with the costs of this suit, including reasonable attorneys' fees and expenses and prejudgment interest, pursuant to 15 U.S.C. § 1117 and all other applicable provisions and principles of federal and Texas law;

F. Awarding Plaintiffs an amount sufficient to conduct a corrective advertising campaign to dispel the effects of Google's wrongful conduct and confusing and misleading advertising;

G. Directing Google to post on their websites corrective advertising in a manner and form to be established by the Court;

H. Directing Google to file with this Court and serve on Plaintiffs within thirty (30) days after the service of the injunction, a report in writing, under oath, that describes in detail the manner and form in which Google has complied with the orders of this Court;

I. Awarding Plaintiffs punitive damages in an amount sufficient to deter other and future similar conduct by Google and others; and

J. Granting Plaintiffs such other and further relief as the Court may deem just.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all causes of action triable by jury.

Respectfully submitted,

**David T. Bright
Mikal C. Watts
Christopher V. Goodpastor
Watts Guerra Craft, L.L.P.
Tower II Building
555 North Carancahua, Suite 1400
Corpus Christi, Texas 78478-0801
(361) 887-0500 Telephone
(361) 887-0055 Telecopier**

By:



**David T. Bright
Attorney at Law
State Bar No. 02991490
Federal Bar No. 8628
Mikal C. Watts
Attorney at Law
State Bar No. 20981820
Federal Bar No. 12419
Christopher V. Goodpastor
State Bar No. 00791991
Federal Bar No. 18505**

ATTORNEYS FOR PLAINTIFFS