

EXHIBIT A

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17 BE IN, INC., a New York corporation

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 SAN JOSE DIVISION

21 **BE IN, INC., a New York corporation,**
22 **Plaintiff,**

23 **v.**

24 **GOOGLE, INC., a California corporation,**
25 **YOUTUBE, LLC, a Delaware limited liability**
26 **company, and GOOGLE UK LTD., a private**
27 **limited company registered in England and**
28 **Whales,**

Defendants.

CASE NO. 5:12-CV-03373-LHK

**SECOND AMENDED COMPLAINT FOR
COPYRIGHT INFRINGEMENT,
MISAPPROPRIATION OF TRADE
SECRETS, BREACH OF IMPLIED
CONTRACT AND BREACH OF
CONTRACT**

DEMAND FOR JURY TRIAL

1 Plaintiff BE IN, INC. (“Be In” or “Plaintiff”), by and through its counsel of record, for its
2 Second Amended Complaint against Defendants Google Inc. (“Google”), YouTube LLC
3 (“YouTube”), and Google UK Ltd. (“Google UK”) hereby alleges as follows:

4 **I. NATURE OF ACTION**

5 1. Plaintiff, Be In, brings this action to halt the brazen and continued copying, use, and
6 misappropriation of its valuable trade secrets and intellectual property rights. Be In is the creator and
7 developer of CamUp, an award-winning social entertainment consumption platform that allows a
8 group of friends to simultaneously watch, listen, chat and collaborate around shared videos, music,
9 and other media in a real-time, trusted environment. Since 2007, Be In has devoted extensive time,
10 resources and ingenuity to creating the unique design, technology and infrastructure for its platform,
11 as well as proprietary strategies for integrating that platform into established content, social and
12 media platforms.

13 2. In May, 2011, approximately two months after Be In publicly unveiled CamUp at
14 South By Southwest (“SXSW”) in Austin, Texas—the same industry-leading interactive technology
15 conference that, in 2007, was instrumental in the launch of Twitter—Be In met with a high-level
16 Google executive to discuss Be In’s vision and strategy for how the CamUp platform could transform
17 Google’s business with respect to social media, advertising and analytics. After insisting on a non-
18 disclosure agreement, and being assured that Be In was protected from any unauthorized use of its
19 confidential, proprietary business strategies or platform, Be In disclosed to Google during the
20 meeting, in detail, its strategy for, among other things, using CamUp’s platform to implement a social
21 entertainment strategy for YouTube and other Google products, and thus to create community and
22 social context around Google’s vast, anonymous user base. CamUp’s proprietary strategy and
23 business plans promised a new and ingenuous opportunity for Google to compete, as it had been
24 unsuccessfully attempting to do, with Facebook in the arena of social media and analytics.

25 3. Google responded enthusiastically to CamUp and Be In’s social entertainment
26 integration strategy, and asked Be In to provide even more information, in writing, following the
27 meeting. The next day, Be In emailed Google a summary of its proprietary social integration
28 strategy. After Be In shared its strategic roadmap, Google abruptly terminated all communications

1 with Be In, refusing to respond to e-mails seeking to arrange follow-up steps discussed during their
2 meeting.

3 4. In June, 2011, approximately one and a half months after Plaintiff’s disclosure,
4 Google launched Google+, its latest and largest attempt to launch a viable social network to rival
5 Facebook. As part of Google+, Google launched “Hangouts”—an integrated social entertainment
6 consumption platform that bears striking similarity to CamUp. Indeed, Hangouts is virtually identical
7 to CamUp. It allows groups of friends from within the Google+ social network to “hangout” together
8 in a familiar online room, simultaneously watching, listening, chatting and collaborating around
9 shared media and video. Before Google launched Hangouts, no company other than CamUp had
10 created this type of social entertainment consumption platform.

11 5. The creative design of Hangouts is strikingly similar to CamUp’s unique design
12 elements in every respect—design, layout, look and feel, arrangement of elements, format, tag lines,
13 and color scheme—leaving no doubt that Google slavishly copied the CamUp platform in a hurried
14 attempt to bolster its new social network, Google+. Hangouts is reportedly, by far, the most popular
15 feature of Google+ today, and business journalists have written repeatedly about the critical
16 importance of Hangouts to driving and sustaining the success of Google+.

17 6. Google not only copied Be In’s unique entertainment consumption platform—the only
18 platform of its kind in existence at the time—Defendants also implemented, and are continuing to
19 implement on a step-by-step basis, each of the proprietary business strategies Be In disclosed to
20 Google in confidence in May, 2011. Among other things, Defendants utilized Be In’s social
21 entertainment integration strategy, first integrating Hangouts (and with it, Google’s fledgling social
22 network, Google+) with YouTube via Be In’s social plug in strategy, and then progressing to
23 integrate Hangouts with Google Docs, and later, third-party apps—thus building a critical social
24 consumption platform around Google’s previously asynchronous products—precisely the strategy
25 that was disclosed and detailed by Be In in confidential communications with Google. Upon
26 information and belief, Defendants intend to continue to utilize this and other confidential,
27 proprietary business and marketing strategies developed by Be In in connection with its platform,
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1 CamUp, for the benefit of Google and Hangouts, Google's competing social entertainment
2 consumption platform.

3 7. In view of Defendants' misappropriation of Plaintiff's trade secrets, infringement of
4 Plaintiff's copyrights in CamUp, and the other wrongful conduct set forth herein, Plaintiff is entitled
5 to preliminary and permanent injunctive relief, enhanced damages and attorney's fees.

6 **II. PARTIES**

7 8. Be In, Inc. is a corporation organized and existing under the laws of the State of New
8 York with its principal place of business in New York City, New York.

9 9. Google, Inc. is a corporation organized and existing under the laws of the State of
10 Delaware with its principal place of business in Mountain View, California.

11 10. YouTube, LLC is a Delaware limited liability company with its principal place of
12 business in San Bruno, California. Upon information and belief, YouTube, LLC is a subsidiary of
13 Google, Inc. whose members are citizens of Delaware and/or California.

14 11. Upon information and belief, Google UK Ltd. is a company incorporated in England
15 and Wales, and is a wholly-owned subsidiary of Google, Inc. Upon information and belief, Google
16 UK Ltd. provides marketing, sales, and development services to Google and its other subsidiaries.

17 **III. JURISDICTION AND VENUE**

18 12. This Court has exclusive subject matter jurisdiction over Plaintiff's claims under the
19 Copyright Act pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a) and (b).

20 13. This Court also has supplemental jurisdiction over Plaintiff's state law claims under
21 28 U.S.C. § 1367, because they are so related to the federal claims that they form part of the same
22 case or controversy and derive from a common nucleus of operative facts.

23 14. This Court also has jurisdiction to hear this matter pursuant to 28 U.S.C. § 1332 by
24 virtue of the diversity of the parties, and because the amount in controversy exceeds \$75,000.00.

25 15. This Court has personal jurisdiction over Defendants because Defendants' principal
26 places of business are in this District, or, upon information and belief, Defendants transact, operate,
27 and solicit business in this District. Additionally, Defendants purposefully directed their activities at
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1 the forum, thereby invoking the benefits and protections of its laws; the claims arise out of or relate to
2 Defendant's forum-related activities; and the exercise of jurisdiction is reasonable.

3 16. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c)(3) because Google
4 UK is, upon information and belief, an alien defendant and can be sued in any District, Google and
5 YouTube's principal place of business is Mountain View, California, located within this judicial
6 district, and each of these Defendants are residents of the State of California. Venue is also proper in
7 this District under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the
8 claims occurred in this District.

9 **IV. INTRADISTRICT ASSIGNMENT**

10 17. Pursuant to Civil L.R. 3-2(c), this action should be assigned to the San Jose district
11 because this action arises in Santa Clara County. *See also* Civil L.R. 3-2(e).

12 **V. GENERAL ALLEGATIONS**

13 **The Development Of CamUp**

14 18. In 2007, Be In co-founders Elio D'Anna, Joseph D'Anna and Elia D'Anna
15 conceptualized an online platform that would facilitate real-time, simultaneous social entertainment
16 consumption: an online space that would bring multiple friends together in an interactive, but also
17 familiar, environment centered around musical collaboration and media sharing—a platform they
18 believed could transform how people engage with one another and experience the Internet.

19 19. In the years that followed, Be In would invest countless hours and substantial
20 resources and ingenuity in bringing this innovative concept to life. In 2008 and 2009 alone, Be In
21 invested several hundred thousand dollars in developing and refining its co-founders' vision of an
22 online platform that would combine music collaboration, shared entertainment consumption and
23 social interaction in an intimate online setting.

24 20. In 2009, Be In completed the development of the first beta version of its platform,
25 which allowed up to six individuals to simultaneously collaborate in a virtual music studio, around
26 the same shared media, using standard webcams and/or chat—a concept that required extensive
27 technical and creative vision and ingenuity. Be In continued to make improvements to its platform
28 and, in 2010, completed the development of the second and third beta versions, which, among other

1 features, allowed up to 10 people to simultaneously consume and create music, and other media,
2 without compromising the entertainment values or the intimacy of the shared social experience.

3 21. Beginning in 2008, and continuing through 2009 and 2010, Be In developed
4 proprietary strategies for implementing its platform with content partners in unique ways, and for
5 driving value and monetization opportunities to these content providers and CamUp.

6 22. Recognizing the vast stand-alone potential of the social entertainment consumption
7 features of its platform, in late 2010, Be In made the decision to separate its existing platform into
8 two distinct online platforms: GigIn (a virtual music studio) and CamUp (a social entertainment
9 consumption platform).

10 23. As of early 2011, both GigIn and CamUp were non-public platforms accessible only
11 by designated persons through a specific internal domain with a proprietary login.

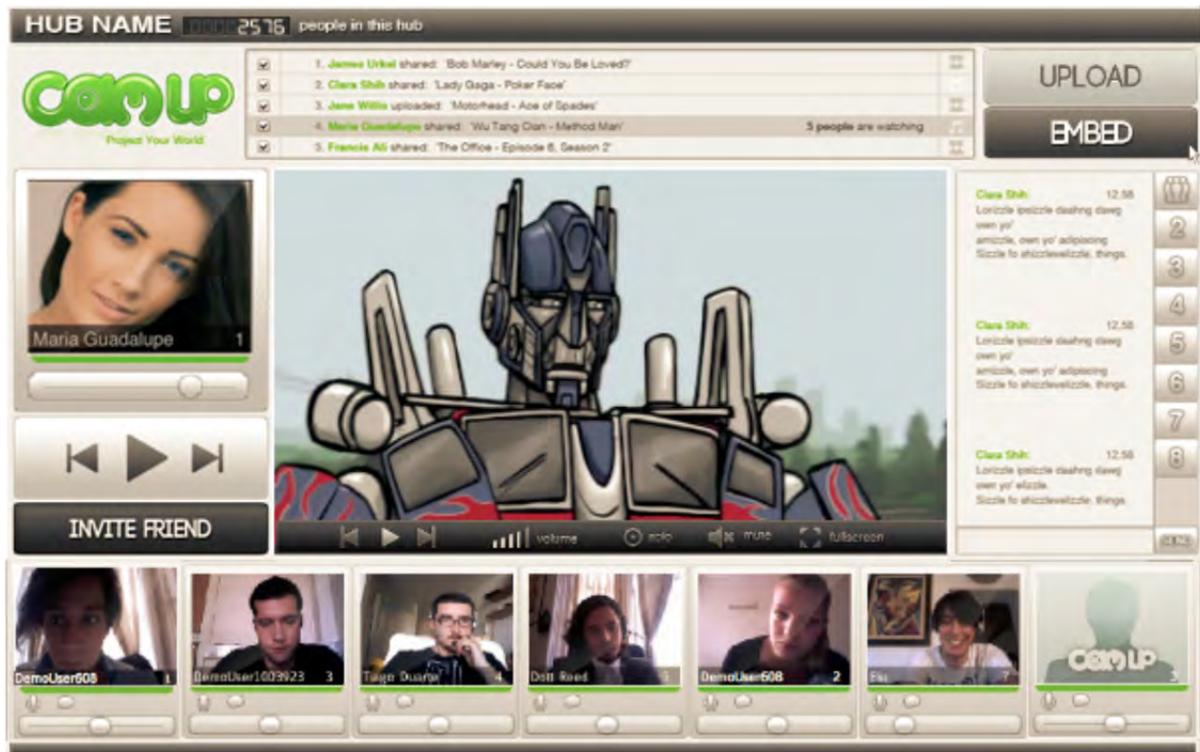
12 **CamUp's Public Release and Unique Expressive Elements**

13 24. In March 2011, Be In publicly unveiled GigIn and CamUp for the first time at SXSW
14 Interactive—an annual interactive media conference held in Austin, Texas that is widely seen in the
15 technology industry as a launching pad for innovative online platforms and applications. SXSW
16 Interactive played a pivotal role in the success and launch of Twitter and FourSquare, for example.

17 25. CamUp was one of a kind and offered something that no company had ever achieved.
18 While other companies had developed video chat services, social media services, or online
19 entertainment consumption platforms in the past, until Be In's public release of CamUp in March
20 2011, no company had developed a platform that combined all of these elements to create a live,
21 familiar environment for shared entertainment consumption and social interaction. And its unique
22 combination of those elements made CamUp an unprecedented mode of consuming shared
23 entertainment and other media online, which the business and technology community reacted to
24 enthusiastically.

25 26. Through individual, expressive elements and its overall creative design, CamUp
26 fosters a sense of trust, familiarity, and community, all without compromising the central
27 entertainment experience. Among the many creative elements that CamUp designed to achieve this
28 unique experience are:

1 27. Each CamUp user has his or her own “room,” which features a large, central frame for
2 viewing shared media (the “Social Player”), and smaller video frames, across the bottom of the page,
3 for everyone gathered in that room. Frames above and to the sides of the Social Player include a text
4 chat window, as well as a shared media playlist, which accommodates music, videos, photos,
5 documents, and other media, and can be added to and modified by anyone inside the room.



18 28. The Social Player is designed to be “center stage,” occupying dominant visual space in
19 each online “room”—a design choice that reflects the primacy of the shared entertainment experience
20 to the CamUp platform. This element of CamUp stands in stark contrast to, for example, video chat
21 services that devote equal space to streaming media and individual video streams.

22 29. At the same time, a number of elements of CamUp were specifically designed to
23 create a sense of intimacy, familiarity and trust built around a “real name” culture—qualities that
24 distinguish CamUp from many video chat services that are characterized by anonymity and/or
25 antisocial or promiscuous cultures. Examples of these elements include:

- 26 (a) The use of “room” as the central social framework for the service, and the
27 ability to name individual rooms— which are prominently displayed at the top
28 of each session—to reflect the personal style and culture of the participants;

- 1 (b) The ability for users to invite friends to hang out in their room from their home
2 pages, mimicking the social experience of inviting a friend over to watch a
3 movie or listen to music;
- 4 (c) A prominent “Invite Friend” button that links to existing social networks or
5 contacts and allows users to invite over a group of trusted friends, as opposed
6 to strangers;
- 7 (d) CamUp’s “real name culture,” where users are encouraged to use real names
8 and photos to create authentic identities on the site;
- 9 (e) The ability to “lock” individual rooms, to keep each social entertainment
10 experience private (rooms are private and invitation-only by default, but can be
11 made public);
- 12 (f) The ability to give specific friends the “keys” to your room, either permanently
13 or only for a specified period of time, allowing increased social access to your
14 closest friends, even when the user is away;
- 15 (g) The “shaded” friend silhouette icon for the empty seats in a CamUp room,
16 which prompts users to expand the social media experience to include
17 additional friends.

18 30. In addition to the elements that create a sense of familiarity and trust, other elements
19 of CamUp enhance the communal (rather than individual) nature of the shared entertainment
20 experience, while enabling sufficient individual control to ensure that the group functions cohesively.

21 For example:

- 22 (a) Icons in the group’s shared playlist show who contributed each piece of media;
- 23 (b) There are options for “shared” control over the playlist and the Social Player—
24 including stop and start capabilities—as well as a “leader mode,” which gives
25 only one user control.
- 26 (c) A group text chat frame on the side of the Social Player creates more
27 opportunities for dialogue and chatter within the group.
- 28

1 31. At the same time, the CamUp design is intended to strike a balance between the
2 communal and individual user experience, giving each user the sense that the shared entertainment—
3 and the conversation among friends—is “around” him or her (i.e. that he or she is central to the
4 entertainment experience and not just a passive consumer of streaming media). For example:

- 5 (a) The viewing user is displayed above the group, in a larger photo, in the upper
6 left of the screen.
- 7 (b) The viewing user is immediately above the “group controls,” conveying a
8 sense that he or she has ownership of, and the ability to control, the group’s
9 shared entertainment experience.
- 10 (c) An individual chat option allows for private text conversations in addition to
11 the group chat, and fosters one-on-one interaction amidst private groups, just
12 as would happen when a small group hangs around in the living room.

13 32. Be In has obtained a copyright registration from the United States Copyright Office
14 for registration of its copyright in the CamUp work and platform. Reg. No. TX-7-567-462.

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1 **Google's First Exposure to CamUp; Critical Acclaim for CamUp Platform**

2 33. When it debuted at SXSW, CamUp was introduced alongside GigIn, with Be In
3 representatives and beta testers giving live, real-time demonstrations of both platforms only meters
4 away from where Google had set up its booth, as reflected in the photograph below.



19 34. During the conference, several Google engineers visited the Be In booth, viewing the
20 demonstrations of both Gig In and CamUp, and discussing the platforms with Be In's representatives.
21 Marissa Mayer, then-Vice President of Consumer Products at Google, also visited Be In's booth,
22 viewed the demonstrations, and specifically congratulated Be In for its innovative CamUp platform.
23 At no point during SXSW did anyone from Google publicly announce or suggest privately to Be In
24 that Google was developing any platform or product similar in any respect to CamUp. And although
25 Google's booth featured demonstrations of several Google products in development, there was no
26 hint of any product relating to social entertainment consumption.

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1 35. Shortly after unveiling CamUp at SXSW, in or about early April, 2011, Be In
2 launched www.camup.com, making its social entertainment consumption platform publicly
3 accessible on the Internet.

4 36. Around the same time, Be In was named a finalist—and among “the most innovative”
5 and “pioneering” start-ups in digital entertainment”—by MIPTV Connected Creativity Ventures in its
6 competition for innovation in connected entertainment.

7 37. In connection with that competition Be In gave a presentation in Cannes, France, that
8 included a live demonstration of CamUp for a panel of industry experts. At least one senior Google
9 and YouTube executive was present at the competition.

10 38. On or about April 6, 2011, Be In won the “Early Stage” award from MIPTV
11 Connected Creativity Ventures for the most innovative start-up of the year.

12 **Be In’s Meeting With Google And Disclosure Of Its Confidential, Proprietary Business and**
13 **Marketing Strategies**

14 39. Less than a month after CamUp was publicly unveiled at SXSW, and shortly after Be
15 In was named the most innovative start-up of the year by MIPTV Connected Creativity Ventures,
16 Bryan Foss, a consultant for Be In, attempted to set up a meeting between representatives from Be In
17 and representatives from Google and YouTube to discuss CamUp. On or about April 27, 2011 and
18 again on May 7, 2011, Mr. Foss reached out to Richard Robinson, a Director employed by Google
19 UK in London, suggesting that Be In’s social entertainment consumption platform would “work well
20 with Google and YouTube.”

21 40. By this time, Be In had devoted substantial time and resources to developing a
22 comprehensive confidential business strategy for maximizing CamUp’s adoption and integration with
23 first party content partners (like Google) and third-party developers through an open API.

24 41. In particular, with respect to YouTube and Google, Be In devised a strategy to
25 transform Google’s (and YouTube’s) massive—but unstructured, and largely anonymous—user base,
26 into an organized social community that would foster shared social experiences around Google’s
27 content products, including, most immediately, YouTube. At the time, despite millions of views
28 daily, YouTube viewers were nameless and faceless and, while they had the opportunity to post

1 comments to videos, they had no ability to interact with one another through an authenticated social
2 network or in a real-time communal setting. Be In recognized that YouTube and Google were
3 missing an opportunity to create a community, cohesiveness and social interaction around the media
4 content YouTube offered, and Be In devised a highly innovative strategy to integrate CamUp with
5 Google so as to seize that opportunity.

6 42. One aspect of this integration strategy was the creation of a social plug in between
7 YouTube and CamUp: a button on the bottom right of the YouTube media window inviting users to
8 “Watch with your friends on CamUp.” By clicking the button, users would be taken seamlessly into
9 CamUp’s trusted social environment, where users could then watch YouTube videos simultaneously
10 with their friends, while chatting about those videos face-to-face in real time. Once YouTube users
11 were fully integrated into the social network, the opportunities for monetization and analytic insights
12 would be endless.

13 43. As Be In disclosed to Google, this strategy gave Google precisely what it had been
14 attempting—unsuccessfully—to develop for years: a social network that would allow it to compete in
15 the arena of social media and to create a social layer around its myriad products. Google had tried,
16 and failed, multiple times to create its own viable social network. Previous attempts to build a
17 network from existing products—like Gmail—had been notorious flops. Be In’s social integration
18 strategy offered Google the promise of creating social engagement and interaction around YouTube’s
19 existing media content and Google’s (and YouTube’s) vast, existing user base. Be In did not disclose
20 its strategy to anyone outside the company prior to meeting with Google.

21 44. On or about May 8, 2011, Mr. Robinson agreed to meet with Joseph D’Anna, CEO
22 and co-founder of Be In, and Nik Moskov, Be In’s Vice President of Business Development. Mr.
23 Robinson advised that Bruce Daisey, then a Director at YouTube, would also attend the meeting. Be
24 In understood that these individuals would be attending the meeting as representatives of—and acting
25 on behalf of—Google and its subsidiary, YouTube.

26 45. In advance of the meeting, on or about May 9, 2011, Mr. Miskov emailed Mr.
27 Robinson indicating that while Be In was “more than happy to come and demo [CamUp] as it
28 publically [sic] exists and talk about what we have achieved so far,” Be In wanted to “dive deeper

1 into our business plan and strategy and to discuss how CamUp can drive tremendous value to giants
2 like YouTube and Google.” Mr. Miskov explained that Be In’s business plans and strategies were
3 “all trade secrets that could be harmful to communicate without any protection.” Accordingly, and,
4 “in order to gauge whether it is appropriate to get into that level of discussion” at their meeting, Mr.
5 Miskov asked Mr. Robinson if he would “agree to signing a Mutual Non-Disclosure Agreement on
6 behalf of Google.” Mr. Miskov attached a draft non-disclosure agreement to his e-mail.

7 46. Be In executives previously had resolved that, should Mr. Robinson refuse to sign a
8 non-disclosure agreement on behalf of Google, they would not discuss any confidential business plan
9 or strategy at their meeting, and, instead, only present their then-public platform.

10 47. On or about the next day, May 10, 2011, Celia Brown, Mr. Robinson’s assistant, sent
11 an electronic form non-disclosure agreement drafted by Google to Mr. Miskov via e-mail. Be In
12 electronically signed that non-disclosure agreement before the meeting with Google (hereinafter the
13 “NDA”).

14 48. Mr. D’Anna and Mr. Miskov met with Mr. Robinson at Google’s offices in London on
15 or about May 12, 2012. During the meeting, Mr. D’Anna and Mr. Miskov, as well as several Be In
16 employees who appeared through CamUp, provided Mr. Robinson a live, real-time demonstration of
17 the platform.

18 49. In addition to demonstrating CamUp, Mr. D’Anna and Mr. Miskov detailed Be In’s
19 proprietary social entertainment integration strategy. Be In’s representatives described, in detail, how
20 CamUp could create game-changing social cohesion and interaction among Google’s and YouTube’s
21 large existing user base. Mr. D’Anna disclosed to Mr. Robinson Be In’s plan to use a social plug in
22 on You Tube—a button that would invite YouTube users to “Watch With Your Friends”—so as to
23 drive YouTube users into a Google/CamUp social platform and away from competing platforms
24 where users could, at that time, share YouTube content, albeit in a non-dynamic environment. Be In
25 even disclosed where, precisely, such a button would appear on YouTube’s interface so as to set it
26 apart from competing platforms.

27 50. Be In also discussed with Mr. Robinson a detailed business strategy that would allow
28 Google to leverage the unique features of CamUp’s platform to create a compelling social framework

1 around the full range of Google’s products, such as Google Docs and Google’s Android mobile
2 platform.

3 51. Be In also revealed, in detail, a highly proprietary and ingenuous analytics and
4 advertising strategy that offered Google the potential to use CamUp’s platform and social integration
5 strategy to access and aggregate deep social and behavioral insights about YouTube visitors and
6 others using Google products—information that would add incalculable value to Google’s core
7 advertising business. It also revealed a unique strategy for delivering branded or sponsored video
8 advertising to users through the CamUp social entertainment consumption platform, a strategy that
9 could not be effectively implemented by Google under its YouTube model at that time.

10 52. Another key component of the CamUp business plan disclosed to Mr. Robinson
11 involved opening up the CamUp platform to third party developers, who could offer a diverse array
12 of applications, or “apps,” and games, and vastly expand the platform’s functionality and reach—
13 making the social media consumption platform a hub of innovation and attracting users.

14 53. Be In detailed each of these elements of its strategic business plan during its meeting
15 with Mr. Robinson and, one day after their meeting, Mr. Miskov, on behalf of Be In, provided Mr.
16 Robinson, via e-mail, with an 8-page, single-spaced summary overview of some of the key aspects of
17 Be In’s strategic business plan marked as “Confidential.”

18 54. Be In disclosed its proprietary strategic business plan to Mr. Robinson on the mutual
19 understanding and express condition that, if Google utilized any aspect of that plan for its benefit, it
20 would be licensing CamUp from Be In for a one-time, lifetime per-user licensing fee, and that Be In
21 would further participate in advertising and sponsorship revenues generated through the CamUp
22 platform and Be In’s strategy.

23 55. Mr. Robinson was enthusiastic about CamUp and the strategic business plan devised
24 by Be In. He asked for additional information, asked to retain materials Be In created during the
25 meeting, and indicated that he would put Be In in touch with someone from YouTube. Mr. Robinson
26 made no mention of any existing projects or projects in the development stage at Google that were
27 similar in any way to CamUp.

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1 56. Following the meeting, Mr. Miskov informed Mr. Foss in an email that Be In's
2 meeting with Google went extremely well, and that the "next steps" included a meeting with
3 YouTube in the UK. In that e-mail, Mr. Miskov advised that he felt the "NDA was a good call," and
4 he was happy Be In was "covered" in their conversations with Google.

5 57. Mr. Miskov reached out to Mr. Robinson, via email, on multiple occasions following
6 their meeting. Defendants, however, abruptly cut off all communication with Be In and failed to
7 respond to Plaintiff's repeated emails.

8 58. In the weeks immediately following Be In's meeting with Google, CamUp
9 experienced unusual, new traffic to its website, www.camup.com, from within the United Kingdom,
10 the areas of Palo Alto and Mountainview, California, where Google is headquartered, and Seattle,
11 Washington, where Google engineers allegedly developed Hangouts. These new visits accounted for
12 a dramatic spike in traffic to CamUp, and the visits to CamUp from these locations were for a
13 substantially longer duration than the average CamUp visit.

14 59. Upon information and belief, in the weeks immediately following Be In's meeting
15 with Google, Defendants and/or their employees, agents, and/or other individuals acting on their
16 behalf repeatedly accessed the CamUp website for the purpose of copying the CamUp platform
17 without permission, including the unique creative and expressive elements that were the hallmark of
18 CamUp.

19 60. This conduct was in direct violation of CamUp's "Terms of Service," which
20 Defendants agreed to when they used and/or visited the CamUp website. At all relevant times,
21 CamUp's Terms of Service prohibited users and visitors from, *inter alia*, copying, reproducing,
22 exploiting or distributing the content of the CamUp website without consent, and from using the
23 website in "any way that is unlawful or fraudulent, or has any unlawful or fraudulent purpose or
24 effect."

25 61. Upon information and belief, following Plaintiff's meeting with Google in May, 2011,
26 Defendants and/or their employees, agents, and/or other individuals acting on their behalf used and/or
27 visited the CamUp website for the purpose of, or with the result of, copying individual expressive
28 elements and the overall design of CamUp to create a competing social entertainment consumption

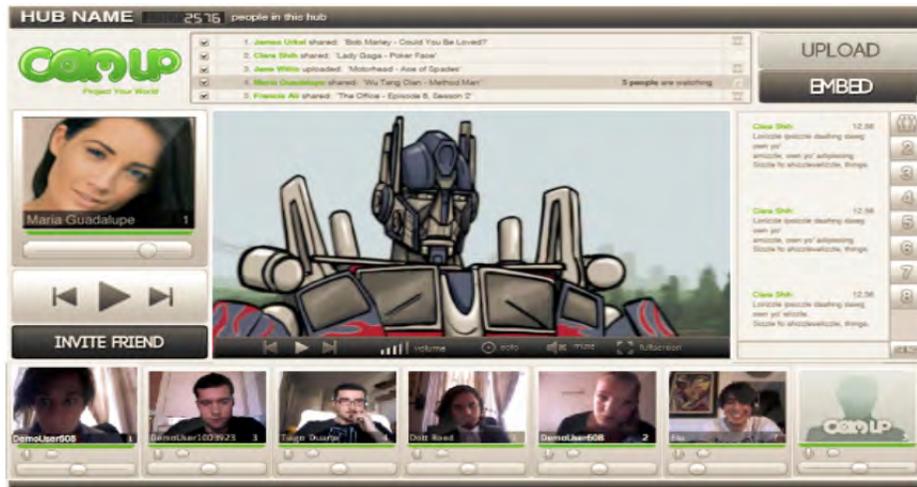
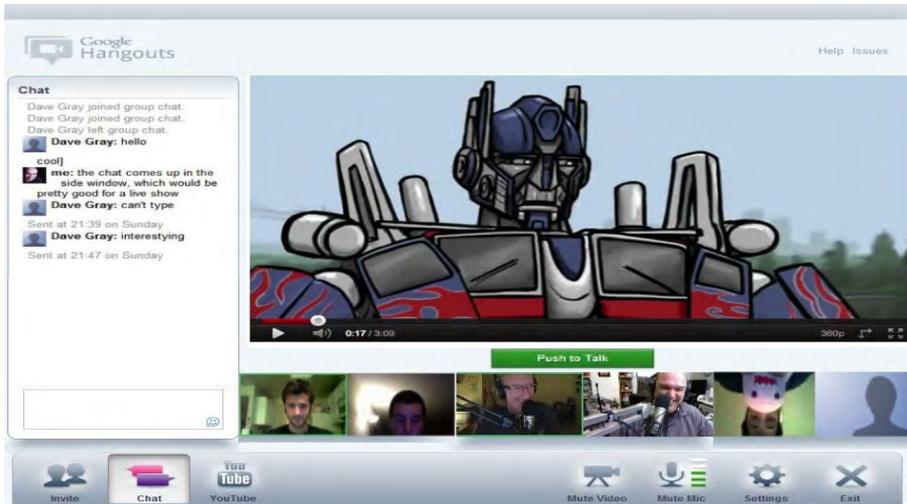
1 platform, Hangouts, and for the purpose of, or with the result of, furthering Defendants’
2 misappropriation of Plaintiff’s confidential, proprietary information.

3 **Google Launches Hangouts, A Blatant Copy of CamUp**

4 62. Less than two months after Be In’s meeting with Google in London, on or about June
5 28, 2011, Google launched an invitation only field test for Google+, its most recent, and ambitious,
6 attempt to create a social network that could bring social functionality and context to its vast user
7 base—and compete with rival Facebook that had surpassed Google as the number one destination on
8 the Internet in 2010. On or about September 20, 2011, Google+ was made accessible to anyone 18
9 years of age or older.

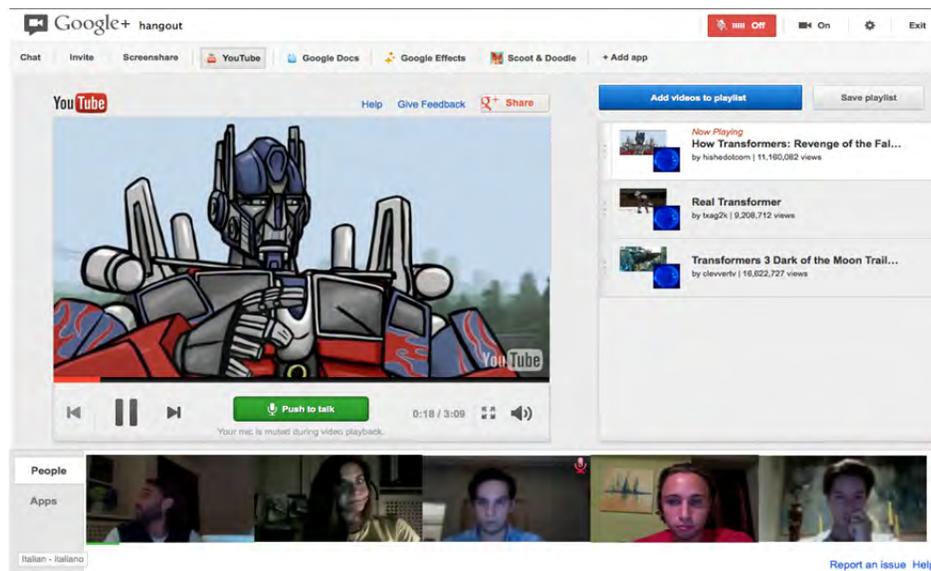
10 63. Within Google+, Google launched Hangouts, a social entertainment consumption
11 platform virtually identical to CamUp, that encouraged users to “hangout” with up to nine friends in a
12 trusted video environment, simultaneously viewing media while, at the same time, chatting and
13 collaborating around a central, shared entertainment experience. The creative and expressive
14 elements of Hangouts at the time of launch were strikingly similar to CamUp:

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64. The design of Hangouts was virtually indistinguishable from CamUp's. Like CamUp, Hangouts featured a large, central frame, for viewing shared media, and up to ten smaller video frames, organized in a single row across the bottom of the page, for everyone participating in the "hangout." Frames above and to the sides of the central media frame included a text chat window, and, upon information and belief, as shown below, in later versions of Hangouts, a playlist, which, like the shared playlist in CamUp, could be modified and contributed to by all participants.

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65. Participants could watch videos together, and, in later versions, view images and documents and work on projects together, as in CamUp. The two platforms also shared a very similar invitation process whereby a user could invite his or her friends from within the platform’s community.

66. The frames for each of these features in Hangouts were in similar proportions to those in CamUp. The large, central frame for viewing shared media, for example, occupied dominant visual space, elevating the shared entertainment experience over one on one communication. The chat frame was smaller, more vertically rectangular, and to the side of the central frame, and the webcam frames were much smaller, and immediately adjacent to one another under the central frame. In both platforms, the company logos were positioned in the top left corner. The button icon designs were large and bulky. The “free seat” icon—the icon for an available seat in the session for another participant to join—was identical, a dark grey silhouette against a light gray background. Even the grey and white color scheme of CamUp was duplicated in Hangouts.

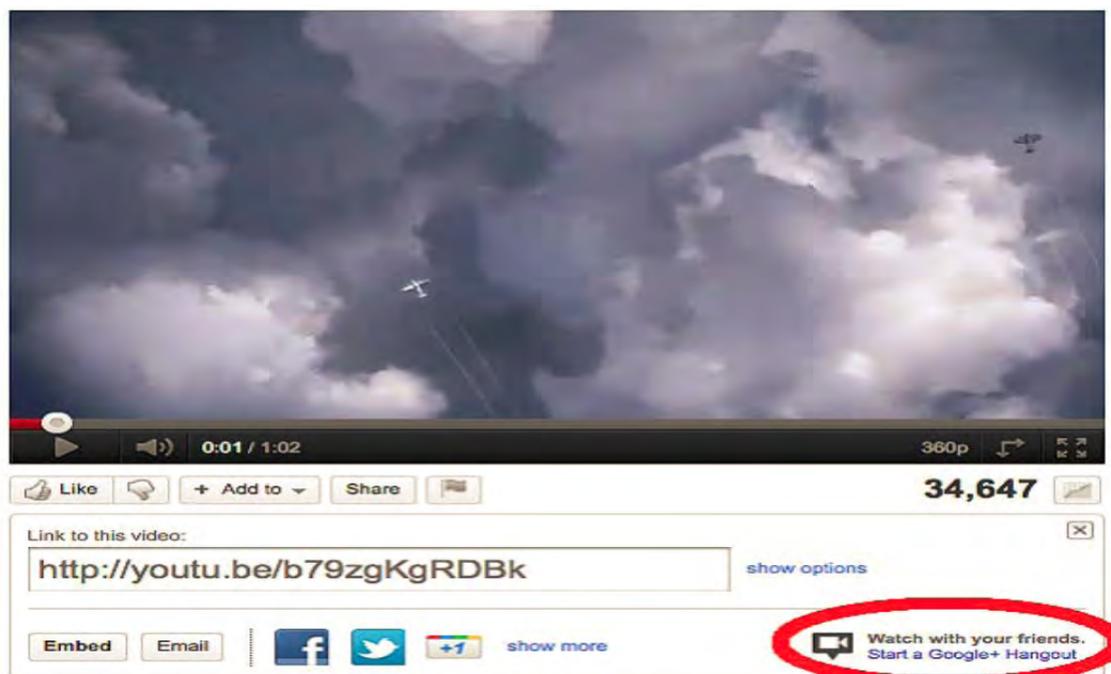
67. Remarkably, Google claimed publicly that it took its engineers *less than one day* to create Hangouts—the feature of Google+ that industry critics credit with the success of the new social network. Indeed, despite Hangouts’ obvious and substantial creative similarity to CamUp, the technical execution suggested Hangouts was the product of a hurried process. For example, unlike CamUp, in order to use Hangouts users were required to download and install a Hangouts plugin on their computer.

1 68. Following its launch, Google touted Hangouts as far more than just a video-chat
2 service: “We use video-conferencing as an important element of it, but the whole serendipitous, run
3 across a hangout, jump in, people flowing in and out. To me that’s the essence of hangouts. The
4 video is just one important element of it but it’s a whole different construct.”

5 69. Media reports hail Hangouts as the “key component of Google+,” “Google’s sharpest
6 edge over Facebook’s current product,” the new social network’s “killer feature.” A leading
7 technology industry media outlet said that “nailing an intimate experience that supports two or more
8 people in a video conference is no small feat, but Google knocked it out of the park with Hangouts. . .
9 . It’s more than just one-on-one chat though, which is why Hangouts are so magical.”

10 **Google Integrates Hangouts Into YouTube Using Be In’s Proprietary Strategies**

11 70. One month later, on or about August 18, 2011, Google integrated Hangouts (and, thus,
12 Google+) into YouTube, using the precise mechanism and strategy devised by Be In and disclosed to
13 Google during the May, 2011 meeting. When a YouTube user clicked the “Share” button under any
14 YouTube video, an icon appeared inviting the user to “Watch with your friends. Start a Google+
15 Hangout”—the precise language and concept Be In disclosed confidentially to Google. Clicking the
16 button initiated an instant Hangouts media-sharing session.



1 71. Upon information and belief, Defendants have since altered the appearance of the
2 button, to remove the exact language disclosed by Be In to Google in May, 2011.

3 72. Critically—and as Be In had forecasted to Google—by misappropriating Be In’s
4 social entertainment integration strategy and integrating Hangouts into YouTube, Google for the first
5 time gained traction with a social network, by drawing the YouTube user base into Google+ and a
6 shared viewing experience.

7 73. Industry commentators noted the genius behind Google’s integration of Hangouts into
8 YouTube (the very strategy Be In had disclosed to Google), as a way to attract users to its social
9 platform. The day after the “Watch with your friends” button was added, one industry watcher
10 explained that “To provide a real alternative to Facebook, [Google] will need to get so-called regular
11 users hooked on the service as well. Hooking into YouTube and providing video chat functionality
12 that wasn’t previously available—and isn’t available on competitors like Facebook—is one way to do
13 so.”

14 74. Thereafter, Google continued to rollout the precise strategy Be In had shared with
15 Google in confidence, along with additional unique design elements created by Be In in CamUp. On
16 or about September 20, 2011, Google announced the launch of an On Air feature within Hangouts
17 allowing for public broadcasts that anyone can tune into, with the capability to record the broadcasts.
18 The same day, Google announced “Extras,” a feature that allows users to collaborate on documents in
19 Google Docs, share a sketchpad, share their screens with other users, and name their Hangouts.
20 Google also announced the release of a Hangouts Application Programming Interface (“API”)
21 allowing developers to create applications or “apps” to run on the Hangouts platform. Later versions
22 also allowed for virtual avatars, and designating a room as public or private.

23 75. On or about June 14, 2012, YouTube announced the YouTube application for
24 Hangouts that allows for video playlists that can be modified by any participant.

25 76. Since the Hangouts launch, Google has pursued collaborations with a number of
26 education-oriented partners and has marketed Hangouts as a tool for students and educators, another
27 strategy disclosed by Be In to Google in confidence. Google has also facilitated the development of
28 commercial “channels” through a combination of YouTube and Hangouts functionality.

1 82. Defendants have acquired, disclosed, and/or used or intend to use Plaintiff's trade
2 secrets through improper means.

3 83. Defendants' misappropriation of Plaintiffs' trade secrets has damaged Plaintiff and/or
4 unjustly enriched Defendants in an amount not yet ascertained, but which will be determined
5 according to proof, including by depriving Plaintiff of participation in revenues and profits
6 Defendants have earned through such misappropriation and by depriving Plaintiff of revenues,
7 partnerships, customers and profits that it otherwise would have earned. See Cal. Civ. Code. §
8 3426.3.

9 84. Upon information and belief, Defendants' misappropriation of Plaintiff's trade secrets
10 was willful and malicious and, accordingly, Plaintiff is entitled to exemplary damages, and to recover
11 its reasonable attorney's fees and costs. See Cal. Civ. Code §§ 3426.3, 3426.4.

12 85. Defendants' actions have caused and will continue to cause irreparable injury to
13 Plaintiff unless enjoined by this court. Plaintiff has no adequate remedy at law. Accordingly,
14 Plaintiff is also entitled to injunctive relief pursuant to California Civil Code sections 3426.2.

15 **SECOND CAUSE OF ACTION**

16 **Copyright Infringement (Copyright Act, 17 U.S.C. §§ 101 *et seq.*)**

17 **Against Google, Inc. and YouTube**

18 86. Plaintiff realleges, and incorporates by reference, each and every allegation set forth in
19 paragraphs 1 through 78, inclusive.

20 87. Plaintiff is the owner of all right, title and interest in the original media platform
21 CamUp. Be In has obtained a copyright registration from the United States Copyright Office for
22 registration of its copyright in the CamUp work and platform. Reg. No. TX-7-567-462. A true and
23 correct copy of the certificate of registration is attached hereto as Exhibit A.

24 88. Google and YouTube had access to Plaintiff's copyrighted work, through mutual
25 participation and communications with Plaintiff at various technology conferences and as a result of
26 Plaintiff's meeting with Google in May, 2011. In addition, upon information and belief, Defendants
27 accessed Plaintiff's work by using and/or visiting www.camup.com.

28

1 would utilize those confidential strategies only if, and when, they licensed the CamUp platform from
2 Be In, thereby compensating Be In for the value of those proprietary business strategies.

3 96. Defendants voluntarily accepted the disclosure of Plaintiff’s proprietary business
4 strategies, knew, or should have known, the conditions on which those confidential business
5 strategies were disclosed, and knew the reasonable value of those confidential business strategies.

6 97. In breach of that mutual understanding, Defendants have actually used, and upon
7 information and belief intend to continue to use, confidential and proprietary business and marketing
8 strategies developed by Be In in connection with its social entertainment platform, CamUp, for the
9 benefit of Defendants. Defendants have not licensed CamUp.

10 98. By reason of Defendants’ actions, Plaintiff has sustained and will continue to sustain
11 substantial injury, loss, and damage in an amount not yet ascertained, but which will be determined
12 according to proof.

13 **FOURTH CAUSE OF ACTION**

14 **Breach of Contract**

15 **Against All Defendants**

16 99. Plaintiff realleges, and incorporates by reference, each and every allegation set forth in
17 paragraphs 1 through 78, inclusive.

18 100. The home page of www.camup.com includes a link to CamUp’s “Terms of Service.”
19 At all relevant times, the Terms of Service posted on CamUp’s website stated, under the heading
20 “Your Acceptance,” the following: “By using and/or visiting this Website (collectively, including all
21 content and functionality available through the CamUp.com domain name, the “CamUp Website”, or
22 “Website”), you signify your agreement to these Terms of Use, [and] CamUp’s Privacy Policy. . .”
23 and “If you do not agree to any of these Terms of Use, or the CamUp Privacy Policy, you must
24 discontinue use of the CamUp Website immediately.”

25 101. At all relevant times, the Terms of Service restricted and conditioned use of CamUp as
26 follows:

27 *The content on the CamUp Website, except all User Submissions (as defined below),*
28 *including without limitation, the text, software, scripts, graphics, photos, sounds, music,*
videos, interactive features and the like (“Content”) and the trademarks, service marks and

1 logos contained therein (“Marks”), are owned by or licensed to CamUp, subject to copyright
2 and other intellectual property rights under the law. *Content on the Website* is provided to
3 you AS IS *for your information and personal use only and may not be downloaded, copied,*
4 *reproduced, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise*
5 *exploited for any other purposes whatsoever without the prior written consent of the*
6 *respective owners.* CamUp reserves all rights not expressly granted in and to the Website and
7 the Content.

8 102. At all relevant times, the Terms of Service also provided, *inter alia*, that by using
9 and/or visiting the CamUp Website, “[y]ou agree”: “not to distribute in any medium any part of the
10 CamUp Website without CamUp’s prior written authorization”; “to not engage in the use, copying, or
11 distribution of any of the Content other than expressly permitted herein, including any use, copying,
12 or distribution of User Submissions of third parties obtained through the Website for any commercial
13 purpose” and that “[y]ou may not use” the Website in “any way that is unlawful or fraudulent, or has
14 any unlawful or fraudulent purpose or effect.”

15 103. Upon information and belief, following Plaintiff’s meeting with Google in May, 2011,
16 Defendants and/or their employees, agents, and/or other individuals acting on their behalf used and/or
17 visited the CamUp website for the purpose of, or with the result of, copying, downloading,
18 reproducing, distributing or exploiting portions of the CamUp Website and Content (as defined in the
19 Terms of Service) for commercial purposes and without authorization from CamUp, to develop and
20 launch Hangouts.

21 104. Defendants’ conduct was for commercial purposes and was not authorized, and it
22 therefore breached CamUp’s Terms of Service.

23 105. By reason of Defendants’ actions, Plaintiff has sustained and will continue to sustain
24 substantial injury, loss, and damage in an amount not yet ascertained, but which will be determined
25 according to proof.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff respectfully requests that this Court grant judgment against
28 Defendants on the counts detailed above and issue the following relief:

1. Preliminary injunction prohibiting Defendants and any other persons or entities acting in
concert with Defendants from disclosing, exploiting or utilizing Plaintiff’s confidential, strategic

1 business and marketing plans disclosed to Google in May, 2011, including, but not limited to,
2 Plaintiff's social integration product and marketing strategy;

3 2. Permanent injunction prohibiting Defendants and any other persons or entities acting in
4 concert with Defendants from disclosing, exploiting or utilizing Plaintiff's confidential, strategic
5 business and marketing plans disclosed to Google in May, 2011, including, but not limited to,
6 Plaintiff's social integration product and marketing strategy;

7 3. Preliminary injunction prohibiting Defendants and any other persons or entities acting in
8 concert with Defendants from engaging in future acts of infringement, contributory infringement
9 and/or induced infringement of Plaintiff's copyrights in it is CamUp platform, including by
10 prohibiting Google from offering or utilizing its Hangouts platform;

11 4. Permanent injunction prohibiting Defendants and any other persons or entities acting in
12 concert with Defendants from engaging in future acts of infringement, contributory infringement
13 and/or induced infringement of Plaintiff's copyrights in it is CamUp platform, including by
14 prohibiting Google from offering or utilizing its Hangouts platform;

15 5. An accounting of any and all profits of Defendants attributable to its wrongful acts;

16 6. Monetary damages adequate to compensate Plaintiff for Defendants' acts of trade secret
17 misappropriation, copyright infringement, breach of implied contract, breach of contract, breach of
18 confidence and unfair competition, including actual and exemplary damages and lost profits, in an
19 amount greater than \$75,000.00;

20 7. Plaintiff's attorney's fees;

21 8. Plaintiff's costs of suit herein incurred;

22 9. Pre-judgment and post-judgment interest; and

23 10. Such other and further relief, including all available monetary and equitable relief, as the
24 case may require and this Court deems just and proper.

25 **DEMAND FOR JURY TRIAL**

26 Plaintiff Be In, Inc. hereby demands a trial by jury of all issues so triable pursuant to Rule 38
27 of the Federal Rules of Civil Procedure.

28

EXHIBIT B

Townsend, Katie

From: Townsend, Katie
Sent: Tuesday, April 30, 2013 9:27 PM
To: 'Bal, Colleen'
Cc: Graves, Charles Tait; Barsky, Wayne; Maute, Jeana Bisnar; Beringer, S. Ashlie
Subject: RE: Be In v. Google, Inc. - Proposed Second Amended Complaint

Colleen: For obvious reasons, Plaintiff cannot agree to a stipulation that ties the time within which defendants have to respond to the Second Amended Complaint to the date when "all defendants" have been served with it (and also gives defendants an additional three weeks to respond) when Plaintiff does not know what the practical effect of that stipulation will be (because you refuse to tell us what parties, if any, other than Google, Inc. you will be accepting service on behalf of). This language was proposed by you, for the first time, this morning, and we think it is a substantial overreach. We will proceed by way of a motion for leave to file an amended complaint.

Katie Townsend

GIBSON DUNN

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333 South Grand Avenue, Los Angeles, CA 90071-3197
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KTownsend@gibsondunn.com • www.gibsondunn.com

From: Bal, Colleen [mailto:cbal@wsgr.com]
Sent: Tuesday, April 30, 2013 8:44 PM
To: Townsend, Katie
Cc: Graves, Charles Tait; Barsky, Wayne; Maute, Jeana Bisnar; Beringer, S. Ashlie
Subject: RE: Be In v. Google, Inc. - Proposed Second Amended Complaint

Katie,

As we stated in our prior email, we are willing to stipulate in conjunction with agreement on the extension. Please provide your agreement to that proposal. We are not willing to put off to a later day discussions regarding the terms of an extension or extensions.

Colleen

WILSON SONSINI GOODRICH & ROSATI, P.C.
1 Market Street
Spear Tower, Suite 3300
San Francisco, CA 94105
650.320.3708

From: Townsend, Katie [mailto:KTownsend@gibsondunn.com]
Sent: Tuesday, April 30, 2013 8:08 PM

To: Bal, Colleen
Cc: Graves, Charles Tait; Barsky, Wayne; Maute, Jeana Bisnar; Beringer, S. Ashlie
Subject: RE: Be In v. Google, Inc. - Proposed Second Amended Complaint

Colleen: Since it is getting late in the day, we think it makes sense for the parties to get a stipulation agreed to and on file that does not address extensions of time for any party, and for us to address the service/briefing schedule issue separately. Plaintiff is not opposed to giving defendants an extension of time to respond to the Second Amended Complaint. However, it appears that there are issues that the parties need to discuss further with respect to that point. Accordingly, attached is a draft stipulation which makes no reference to any extensions of time, but does include the revisions you proposed which I indicated earlier plaintiff is not opposed to. Let us know if you are amenable to this approach/this stipulation.

Katie Townsend

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From: Bal, Colleen [<mailto:cbal@wsgr.com>]
Sent: Tuesday, April 30, 2013 7:33 PM
To: Townsend, Katie
Cc: Graves, Charles Tait; Barsky, Wayne; Maute, Jeana Bisnar; Beringer, S. Ashlie
Subject: RE: Be In v. Google, Inc. - Proposed Second Amended Complaint

Katie,

For the second time in 2 days you have changed your position on the terms of the proposed stipulation, this time with respect to a claimed "assumption" that you admittedly never told us about. We remain open to the stipulation as we proposed: that all named Defendants as well as Plaintiff have extra time, and that the named Defendants' response dates run concurrently. We believe that the Court would prefer a concurrent response schedule.

At this point, it is obviously too late to try to reach any agreement regarding service on Google UK.

Finally, as we stated previously, Google Inc. will of course abide by its discovery obligations. While you appear to suggest otherwise, there is no basis for that suggestion.

Colleen

WILSON SONSINI GOODRICH & ROSATI, P.C.
1 Market Street
Spear Tower, Suite 3300
San Francisco, CA 94105
650.320.3708

From: Townsend, Katie [<mailto:KTownsend@gibsondunn.com>]
Sent: Tuesday, April 30, 2013 5:28 PM
To: Bal, Colleen
Cc: Graves, Charles Tait; Barsky, Wayne; Maute, Jeana Bisnar; Beringer, S. Ashlie
Subject: RE: Be In v. Google, Inc. - Proposed Second Amended Complaint

Colleen:

We have reviewed your proposed changes to the draft stipulation and are fine with them, with one exception: that each Defendant's deadline to "answer, move, or otherwise respond to the Second Amended Complaint" will be "calculated as of the date when service is effectuated upon all defendants named in the Second Amended Complaint." We had assumed that you would be accepting service on behalf of all defendants named in the SAC. We still assume, at a minimum, that you will be accepting service for Google, Inc., who we do not think should get the benefit of any delay that would result if Plaintiff is required to effect personal service on YouTube, LLC or Google UK. If it is your position that you will not accept service for YouTube, LLC and/or Google UK, both of which are Google, Inc. subsidiaries, please let us know, as we would limit our agreement accordingly (i.e. our agreement to extend Defendants' deadline to respond to the Second Amended Complaint will extend only to Google, Inc. if that is the only party for whom you will accept service). Once you let us know which parties you will accept service for, we will circulate a revised version of the stipulation. Alternatively, we can take the agreement with respect to timing out of the stipulation and address it separately after the parties have had an opportunity to work through that issue.

With respect to your points 2 and 3, below, Plaintiff has not altered its original proposal, which related to the inclusion of specific defendants in the SAC, was intended to facilitate discovery (and ensure that Be In would not be prejudiced by not including those defendants), and was not intended to alter any substantive rights that Plaintiff has (including its right to seek to amend to add those defendants in the future if necessary). Because Plaintiff is adding Google UK as a defendant, it will not be naming Mr. Robinson as a defendant at this time (without prejudice to its right to amend to name him as a defendant in the future). We note, however, that Google and Mr. Robinson have ongoing preservation and discovery obligations relating to Mr. Robinson's involvement in the factual events addressed in the pleadings, which are in no way altered by Plaintiff's decision not to name Mr. Robinson as a defendant in its Second Amended Complaint

Finally, while Be In is unwilling to forfeit its substantive rights as to Google UK, it remains willing to remove Google UK from the proposed Second Amended Complaint upon Google Inc.'s stated agreement that it will treat Google UK as within the scope of its discovery obligations. Because Google, Inc. has an obligation to produce all relevant data in its possession, custody and/or control, including data in the possession of foreign subsidiaries, like Google UK, we do not believe that this proposal asks Defendants to incur any obligations that they do not already have. However, to the extent Google, Inc. is unwilling to confirm its intent to collect materials from Google UK, as appears to be the case, Plaintiff will proceed with including Google UK as a party in its proposed Second Amended Complaint.

Katie Townsend

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From: Bal, Colleen [<mailto:cbal@wsgr.com>]
Sent: Tuesday, April 30, 2013 10:33 AM
To: Townsend, Katie

Cc: Graves, Charles Tait; Barsky, Wayne; Maute, Jeana Bisnar; Beringer, S. Ashlie

Subject: RE: Be In v. Google, Inc. - Proposed Second Amended Complaint

Katie, here is Defendants' response to the email you sent yesterday:

1. We will agree to the filing of the amended complaint subject to Defendants' reservation of all rights, defenses and objections. The agreement will not affect any Defendant's right to move to dismiss the proposed second amended complaint on any ground. Nor will it constitute a waiver of any defense, objection or argument, including but not limited to lack of subject matter jurisdiction, lack of personal jurisdiction, failure to state a claim, improper venue, insufficiency of process, failure of service of process, lack of Rule 11 basis, or impropriety of naming any party to the case. We will also agree to the mutual deadline extensions, i.e., that Defendants shall have 21 extra days to respond to the complaint, from the deadline calculated under the applicable rules (counting from the date when service is effectuated upon all Defendants) and that Plaintiff will have 10 extra days to respond to any motion to dismiss. Please prepare for our review a stipulation reflecting all of these terms.
2. As we noted in our original response to your discovery proposal, Mr. Robinson would agree "to respond to requests for production of documents and to a request for a deposition as if he were a named defendant in the case, on the conditions that (1) the deposition be at a location of his choice (which would be the San Francisco Bay Area or London, depending on his schedule), and (2) Be In (and any related parties) must agree that it will not now nor at any time in the future name him as a defendant in this or any related action." Pursuant to the email you sent yesterday, Plaintiff has now changed its proposal in a material way: Plaintiff now seeks to retain a unilateral right to name Mr. Robinson as a defendant at any time in the future. In other words, the "agreement" that you propose is illusory. Although Plaintiff now complains that agreeing not to name Mr. Robinson would constitute a "waive[r] of substantive claims," that was in fact Plaintiff's own, original proposal. In any event, Mr. Robinson cannot and will not agree to your new proposal.
3. With respect to Google UK, you also previously offered not to name it as a defendant in the action if Google UK agreed to provide certain discovery. Please clarify whether, even if we reach an agreement that you will not name Google UK as a defendant, you would claim the same unilateral right as you are now claiming with respect to Mr. Robinson, to name Google UK as a defendant in the future.

Whether or not there is an agreement on this issue, Google Inc. will of course produce documents in its custody and control that are relevant, responsive and nonprivileged.

We look forward to your response. Let us know if you have any questions or would like to discuss in person.

Regards,

Colleen

WILSON SONSINI GOODRICH & ROSATI, P.C.
1 Market Street
Spear Tower, Suite 3300
San Francisco, CA 94105
650.320.3708

From: Townsend, Katie [<mailto:KTownsend@gibsondunn.com>]
Sent: Monday, April 29, 2013 2:19 PM
To: Bal, Colleen
Cc: Graves, Charles Tait; Barsky, Wayne; Maute, Jeana Bisnar; Beringer, S. Ashlie
Subject: RE: Be In v. Google, Inc. - Proposed Second Amended Complaint

Thank you, Colleen. We have reviewed Defendants' response, and address each point raised in Defendants' response immediately below:

1. Plaintiff is willing to agree that if Defendants stipulate to the filing of the proposed second amended complaint it will be expressly without prejudice to Defendants' rights or defenses, as set forth in paragraph 1.(a) in Defendants' response, and is willing to agree to an extension of Defendant's deadline to respond to the complaint of 21 days, as set forth in paragraph 1.(b) in Defendants' response. In light of Plaintiff's willingness to agree to a substantial extension of time for Defendants to respond to the SAC, we would also request that, in the event Defendants move to dismiss the SAC, that Defendants would agree to an extension of Plaintiff's time to oppose that motion of ten days (10 days).
2. Plaintiff is willing to agree that if Richard Robinson responds to any requests for production of documents and other written discovery requests as though he were a named defendant located within the U.S., and agrees to respond to any deposition notice/subpoena as though he were a named defendant located within the U.S., Plaintiff will not name him as a defendant in the SAC. In connection with that agreement, Plaintiff is also willing to agree that Robinson's deposition will be at a location of his choice (either in the San Francisco Bay area or in London). Plaintiff has proposed this agreement in good faith, and does not have any present intention to amend again to add Mr. Robinson as an individual defendant in this matter if Defendants agree to this proposal. However, Plaintiff cannot agree to waive any substantive claims it may have against Mr. Robinson either now or in the future. Please advise if Defendants are willing to agree to this proposal as set forth herein (i.e. not conditioned on any waiver of any of Plaintiff's substantive rights). As I believe we indicated during our call, the purpose of this proposal was to facilitate discovery in this matter and ensure that our client would not be procedurally disadvantaged were it to agree not to name Mr. Robinson as an individual defendant. Because Mr. Robinson is currently a defendant in this matter, we view this issue as severable from the issue of whether or not Defendants will ultimately stipulate to the filing of the proposed SAC. Accordingly, Plaintiff would like to (and believes the parties can) reach an agreement as to this issue even if, for example, Defendants refuse to stipulate to the filing of the proposed SAC and, conversely, even if Defendants refuse to agree to this proposal, that does not preclude Defendants (including Mr. Robinson) from stipulating to the filing of the proposed SAC.
3. Finally, as we indicated in our initial discussion and email concerning Plaintiff's proposal, it is our understanding that Google UK is currently, and has been at all relevant times, Mr. Robinson's direct employer. There is nothing even remotely "potentially [] sanctionable" about naming all of the entities that Mr. Robinson was acting on behalf of in his contacts with Be In as defendants in this matter. Indeed, we think it quite reasonable to do so, regardless of whether Google UK was or was not "previously named in the action." Accordingly, Plaintiff remains willing to agree that it will not separately name Google UK in its proposed second amended complaint if Google Inc. agrees that it will treat Google UK as within the scope of its discovery obligations in connection with this matter (for example, that it will respond to any requests for production of documents directed to Google, Inc. by providing responsive material and information from Google UK). If Defendants are unwilling to do so, as

it appears they are, Plaintiff will be required to name Google UK as a separate defendant in this action. As of now, we understand Defendants' response to indicate that (1) no Defendant will stipulate to the filing of a proposed SAC that names Google UK as a separate defendant, and (2) that Google, Inc. refuses to agree to Plaintiff's proposal that it provide discovery from Google UK in this action, so that Plaintiff would not be procedurally disadvantaged were it to agree not to name Google UK as a separate defendant in the SAC. Please confirm that this is the position that Defendants are taking.

We ask that you let us know definitively as soon as possible whether YouTube, LLC or any current defendant is willing to stipulate to the filing of the proposed SAC and whether Defendants are willing to agree to either (or neither) of the two discovery-facilitating proposals made by Plaintiff concerning Google UK and Mr. Robinson. Let us know if you wish to discuss any aspect of this email in more detail.

Thank you.

Katie Townsend

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From: Bal, Colleen [<mailto:cbal@wsgr.com>]
Sent: Friday, April 26, 2013 12:48 PM
To: Townsend, Katie
Cc: Graves, Charles Tait; Barsky, Wayne; Maute, Jeana Bisnar; Beringer, S. Ashlie
Subject: RE: Be In v. Google, Inc. - Proposed Second Amended Complaint

Katie,

Here is Defendants' response to the proposed second amended complaint and your related discovery proposal:

1. Google Inc. and YouTube, LLC will stipulate that Be In is permitted to file the proposed second amendment complaint, but only:
 - a. expressly without prejudice to Defendants' rights or defenses. The stipulation does not affect any Defendant's right to move to dismiss the proposed second amended complaint on any ground. Nor does it constitute a waiver of any defense or objection, including but not limited to defenses for lack of subject matter jurisdiction, lack of personal jurisdiction, failure to state a claim, improper venue, sufficiency of process or service of process; and
 - b. upon Plaintiff's agreement to extend Defendants' deadline to move, answer or otherwise respond to the complaint by 21 days after the deadline calculated under applicable rules.
2. Richard Robinson will agree to respond to requests for production of documents and to a request for a deposition as if he were a named defendant in the case, on the conditions that (1) the deposition be at a location of his choice (which would be the San Francisco Bay Area or London, depending on his schedule), and (2) Be In (and any related parties) must agree that it will not now nor at any time in the future name him as a defendant in this or any related action. The agreement by Be In (and related parties) must be enforceable by injunction, and with the prevailing party to recover its attorney's fees.

3. There is no reasonable basis to name Google UK as a defendant in this action. Google UK was not previously named in the action; it is not apparent from your proposal the basis or claims on which you would seek to add it as a defendant; and we believe adding it as a defendant would potentially be sanctionable. Google UK will not enter any agreement with respect to the proposed second amended complaint or discovery in this action.

Let me know if you have questions or would like to discuss.

Regards,
Colleen

WILSON SONSINI GOODRICH & ROSATI, P.C.
1 Market Street
Spear Tower, Suite 3300
San Francisco, CA 94105
650.320.3708

From: Townsend, Katie [<mailto:KTownsend@gibsondunn.com>]
Sent: Monday, April 22, 2013 9:31 PM
To: Bal, Colleen
Cc: Graves, Charles Tait; Barsky, Wayne; Maute, Jeana Bisnar; Beringer, S. Ashlie
Subject: Be In v. Google, Inc. - Proposed Second Amended Complaint

Colleen: Attached please find Plaintiff Be In's proposed second amended complaint. Please advise us as soon as possible whether defendants will stipulate to permit the filing of it pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, or will require plaintiff to seek leave from the Court.

As discussed in our call this afternoon, this proposed SAC tentatively removes Richard Robinson as an individual defendant, and does not assert claims against the entity that we understand to be (and to have been at all relevant times) his direct employer, Google UK. Plaintiff's willingness to not name Mr. Robinson and Google UK as defendants in this action is conditioned on Google's agreement to provide access to discovery from them as though they were named parties located within the United States. In other words, we are seeking confirmation that Google will search for, and produce, responsive, non-privileged material in Mr. Robinson's and/or Google UK's possession in connection with this litigation, and make Mr. Robinson available for deposition, even if Mr. Robinson and Google UK are not named as defendants. We believe that Judge Koh would require Google to include Google UK and Mr. Robinson within the scope of its discovery obligations in any event, but we want to confirm that Google will not oppose or object to discovery from these sources before Plaintiff foregoes an opportunity to name them as defendants. If you agree to this arrangement, we will not name Mr. Robinson or Google UK as defendants in the SAC. We otherwise would expect to add them to the proposed SAC before submitting it to the Court. If you wish to discuss this issue in any more detail, please let us know. Thank you.

Katie Townsend

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