Advanced Internet Te	chnologies, Inc. v. Google, Inc.			E	odc.
C	ase 5:05-cv-02579-RMW	Document 20	Filed 10/18/2005	Page 1 of 7	
1 2 3 4 5 6 7	KEKER & VAN NEST, LLP DARALYN J. DURIE - #1698 RYAN M. KENT - #220441 710 Sansome Street San Francisco, CA 94111-170 Telephone: (415) 391-5400 Facsimile: (415) 397-7188 Email: <u>djd@kvn.com; rml</u> Attorneys for Defendant GOOGLE, INC.	4			
8					
9			DISTRICT COURT		
10	NOF		ICT OF CALIFORNIA		
11			E DIVISION		
12	CLICK DEFENSE INC., a Col corporation, Individually and o		Case No. C 05 0257		
13	others similarly situated,		DEFENDANT GO ANSWER TO CLA		
14		Plaintiffs,	COMPLAINT		
15	V.		Date Comp. Filed:	June 24, 2005	
16	GOOGLE, INC., a Delaware c DOES 1 through 100, Inclusive		Trial Date:		
17		Defendants.			
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360259.01	DEFENDA	ANT GOOGLE, INC CASE NO. C	.'S ANSWER TO COMPL 05 02579 RMW	AINT	-
				Dockets.Just	ia.c

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1	Defendant Google, Inc. ("Google") answers plaintiff Click Defense, Inc. ("Click	
2	Defense") Class Action Complaint (the "Complaint") as follows:	
3	SUMMARY OF CLAIMS	
4	1. Google admits that Click Defense originally brought this action styled as a purported	
5	class action and asserted breach of contract, negligence, unjust enrichment, and unfair business	
6	practices claims. Since the Complaint was filed, the Court has dismissed Click Defense's	
7	negligence and unjust enrichment claims. Google has no information or knowledge to admit or	
8	deny the remaining allegations in this paragraph, and on that basis denies those allegations.	
9	THE PARTIES	
10	2. Google has no information or knowledge to admit or deny the allegations in this	
11	paragraph, and on that basis denies those allegations.	
12	3. Admitted.	
13	4. Google has no information or knowledge to admit or deny the allegations in this	
14	paragraph, and on that basis denies those allegations.	
15	5. Google has no information or knowledge to admit or deny the allegations in this	
16	paragraph, and on that basis denies those allegations.	
17	6. Google has no information or knowledge to admit or deny the allegations in this	
18	paragraph, and on that basis denies those allegations.	
19	7. Google has no information or knowledge to admit or deny the allegations in this	
20	paragraph, and on that basis denies those allegations.	
21	JURISDICTION AND VENUE	
22	8. This paragraph states a legal conclusion to which no response is required.	
23	9. This paragraph states a legal conclusion to which no response is required.	
24	CLASS ACTION ALLEGATIONS	
25	10. Google has no information or knowledge to admit or deny the allegations in this	
26	paragraph and on that basis denies those allegations.	
27	11. This paragraph states a legal conclusion to which no response is required. To the	
28	extent that a response is required, Google denies the allegations in this paragraph.	
	1	
	DEFENDANT GOOGLE, INC.'S ANSWER TO COMPLAINT CASE NO. C 05 02579 RMW	

## 1 2

# **SUBSTANTIVE ALLEGATIONS COMMON TO ALL COUNTS 1. Google "AdWords" and "AdSense" Programs**

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12. Paragraph 12 states a legal conclusion to which no response is required.

13. Admitted.

5 14. Google admits that it has offered to its business customers a keyword-triggered
6 advertising program entitled "AdWords" since October 2000, and, except as so admitted, denies
7 the allegations contained in this paragraph.

8 15. Google admits that AdWords advertising customers can bid an amount that they
9 select so that online advertisements that they design will appear, in an order based on Google's
10 proprietary analysis of a variety of factors, on the margin of certain search results. Advertisers
11 generally pay Google based on the number of times these advertisements are clicked. Except as
12 so admitted, Google denies the allegations contained in this paragraph.

13 16. Google admits that its advertisers select keywords that will trigger their
14 advertisements, and, except as so admitted, denies the allegations contained in this paragraph.

15 17. Google admits that advertisers make bids for the keywords that will trigger their
advertisements and, except as so admitted, denies the allegations contained in this paragraph.

17 18. Google admits that it offers an advertising program entitled "AdSense," that under
18 one aspect of this program relevant ads are selected in part based on the particular website's
19 content, and that a portion of the fee paid to Google is paid to the site which displays the ad, and,
20 except as so admitted, denies the allegations contained in this paragraph.

19. Google admits that internet search companies besides Google offer variants on
Google's AdWords program, and, except as so admitted, Google has no information or
knowledge to admit or deny the allegations in this paragraph, and on that basis denies those
allegations.

20. Denied.

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# 27 21. Google has no information or knowledge to admit or deny the allegations in this 28 paragraph regarding "click fraud" because the terms "industry," "ill intent", and "with no

2. "Click Fraud"

intention of doing business with the advertiser" are undefined and ambiguous, and on that basis
denies the allegations contained therein. Further, Google has no information or knowledge to
admit or deny the allegations regarding "click fraud" because "fraud as such is understood at
common law" or "under the pleading requirements of the federal rules" is ambiguous, and on
that basis denies the allegations contained therein. Google has no information or knowledge to
admit or deny the allegations contained therein. Google has no information or knowledge to
admit or deny the allegations regarding the intention of the alleged "perpetrators of click fraud"
and on that basis denies the allegations contained therein.

- 22. Denied.
  - 23. Denied.

24. Google has given and continues to provide credits to advertisers whose ads appear to
have received invalid clicks. Except as so admitted, Google denies the allegations contained in
this paragraph.

13 25. Google has no information or knowledge to admit or deny the allegations in this
14 paragraph, because the phrase "closed-end Google universe of internet links" is undefined and
15 ambiguous, and on that basis denies those allegations.

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#### 3. The Pervasiveness of Click Fraud

17 26. Google has no information or knowledge to admit or deny the allegations in this
18 paragraph, because the term "rampant problem" is undefined and because "some analysts" is
19 vague and ambiguous, and on that basis denies those allegations.

20 27. Google admits that Mr. Reyes made the statement in quotes, and except as so21 admitted, denies the allegations in this paragraph.

22 28. Google has no information or knowledge to admit or deny the allegations in this
23 paragraph, because the term "downplayed" and the phrase "a meeting with analysts in February"

- 24 is vague and ambiguous, and on that basis denies those allegations.
- 26 29. De

## 4. Google's Failure to Disclose the Pervasiveness of Click Fraud

- 29. Denied.
- 27 30. Denied.
- 28 31. Denied.

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1	32. Denied.
2	33. Denied.
3	34. Denied.
4	5. Google's Agreement with the Class
5	35. Denied.
6	36. Google admits that the "AdWords Program Terms" provides that advertisers "shall
7	be charged based on actual clicks ", and, except as so admitted, denies the allegations
8	contained in this paragraph.
9	37. Denied.
10	38. Google admits that the "AdWords Program Terms" provides that the agreement is to
11	be "governed by California law," and, except as so admitted, denies the allegations contained in
12	this paragraph.
13	FACTUAL BACKGROUND
14	39. Google admits that on or around January 21, 2005, Click Defense entered into a
15	written contract with Google for the placement of a pay-per-click advertisement to be displayed
16	as a sponsored link and that Click Defense successfully bid \$3 for the display of that ad, and
17	except as so admitted, denies the allegations contained in this paragraph.
18	40. Google has no information or knowledge to admit or deny the allegations in this
19	paragraph, because the term "click fraud" is vague and ambiguous, and on that basis denies those
20	allegations.
21	FIRST CAUSE OF ACTION
22	(BREACH OF CONTRACT)
23	41. This paragraph does not require a response.
24	42. Google admits that the "AdWords Program Terms" provides that advertisers "shall
25	be charged based on actual clicks ", and, except as so admitted, denies the allegations
26	contained in this paragraph.
27	43. This paragraph states a legal conclusion to which no response is required.
28	44. Denied.
	4 DEFENDANT GOOGLE, INC.'S ANSWER TO COMPLAINT

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1	45. Denied.
2	FOURTH CAUSE OF ACTION
3	(UNFAIR BUSINESS PRACTICES) (BUSINESS & PROFESSIONS CODE 17200, ET SEQ.)
4	53. This paragraph does not require a response.
5	54. Google admits that the "AdWords Program Terms" provides that the agreement is to
6	be "governed by California law." Google admits that, among other things, the California
7	Business & Professions Code § 17200 provides that "unfair competition shall mean and include
8	any unlawful, unfair or fraudulent business act or practice."
9	55. Denied.
0	56. Denied.
1	57. Denied.
12	58. Denied.
.3	AFFIRMATIVE DEFENSES
.4	FIRST AFFIRMATIVE DEFENSE
5	FAILURE TO STATE A CLAIM
.6	The Complaint and each claim set forth therein fail to state a claim upon which relief can
l7	be granted.
.8	SECOND AFFIRMATIVE DEFENSE
.9	WAIVER
20	Assuming without conceding that the Complaint states a claim, the claims of wrongdoing
21	in the Complaint have been waived by the plaintiff and the putative plaintiff class in whole or in
22	part and are, to that extent, barred.
23	THIRD AFFIRMATIVE DEFENSE
24 25	STATUTE OF LIMITATIONS
	Assuming without conceding that the Complaint states a claim, plaintiff and the putative
26 27	plaintiff class's claims are barred, in whole or in part, by the four-year statute of limitations
27 28	applicable to breach of a written contract and unfair competition claims.
	5
	DEFENDANT GOOGLE, INC.'S ANSWER TO COMPLAINT

1					
2	FOURTH AFFIRMATIVE DEFENSE				
3	FAILURE TO MITIGATE				
4	Assuming without conceding that the Complaint states a claim, plaintiff and the putative				
5	plaintiff class have failed to mitigate its damages, if any.				
6	FIFTH AFFIRMATIVE DEFENSE				
7	LACHES				
8	Assuming without conceding that the Complaint states a claim, plaintiff and the putative				
9	plaintiff class's claims are barred by the doctrine of laches.				
10	SIXTH AFFIRMATIVE DEFENSE				
11	UNCLEAN HANDS				
12	Assuming without conceding that the Complaint states a claim, plaintiff and the putative				
13	plaintiff class's claims are barred, in whole or in part, by the doctrine of unclean hands.				
14	PRAYER FOR RELIEF				
15	WHEREFORE, Google prays for judgment as follows:				
16	(a) That Plaintiff takes nothing by its Complaint and the Court dismiss the Complaint				
17	with prejudice;				
18	(b) That the Court award Google reasonable attorneys' fees under 35 U.S.C. § 285;				
19	(c) That the Court award Google all costs and expenses it incurs in this action;				
20	(d) That the Court award Google such other and further relief that it deems just and				
21	proper.				
22					
23	Dated: October 18, 2005 KEKER & VAN NEST, LLP				
24					
25	By: /s/ Ryan M. Kent				
26	RYAN M. KENT				
27	Attorneys for Defendant GOOGLE, INC.				
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	DEFENDANT GOOGLE, INC.'S ANSWER TO COMPLAINT CASE NO. C 05 02579 RMW				

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