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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CLRB Hanson Industries, LLC d/b/a Industrial Printing, et al.,

NO. C 05-03649 JW

Plaintiffs,

v.

Google Inc.,

Defendant.

ORDER FOLLOWING HEARING ON PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT AND DEFENDANT’S MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, FOR SUMMARY ADJUDICATION

On January 22, 2007, the Court conducted a hearing on Plaintiffs’ Motion for Partial Summary Judgment and Defendant’s Motion for Summary Judgment. (See Docket Item Nos. 80, 85.) During the hearing, Defendant’s counsel referred to the declaration of Michael Schulman (“Schulman”), a Google engineer, as evidence of how Google’s AdWords system compensates for fluctuations in Internet traffic over a period of time.¹ Plaintiffs’ counsel indicated that they had not have an opportunity to take Schulman’s deposition, or the deposition of any other Google employee with knowledge of how the AdWords system delivers advertisements.

Presently, there is insufficient evidence describing how the AdWords system accounts for fluctuations in Internet traffic and offsets prior shortfalls in advertising hits. For instance, there is

¹ In his declaration, Schulman states, *inter alia*, “Recognizing that the daily budget is an advertiser’s target, as opposed to its maximum, daily advertising spending, the AdWords system was designed to average out natural fluctuations in daily charges by permitting accrual of charges up to 120% of the daily budget in a day if it is necessary to offset prior shortfalls within that monthly billing period.” (Declaration of Michael Schulman ¶ 9, Docket Item No. 88.)

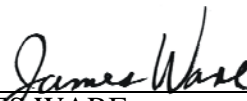
United States District Court
For the Northern District of California

1 insufficient evidence in the record establishing that overdelivery by up to 120 percent will actually
2 occur on the first day that an advertising campaign is commenced.

3 Accordingly, Defendant is ORDERED to deliver Michael Schulman for deposition by
4 Plaintiffs. Plaintiffs shall also be permitted to depose one to two additional Google employees with
5 knowledge of how the AdWords system compensates for fluctuations in Internet traffic. The
6 depositions will occur within thirty days of this Order. The Court continues the hearing on
7 Plaintiffs' Motion for Partial Summary Judgment and Defendant's Motion for Summary Judgment
8 to **April 2, 2007 at 9 AM**. The parties will comply with the Local Rules for supplemental briefing,
9 if any.

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Dated: February 8, 2007



JAMES WARE
United States District Judge

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THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

- Christopher M. Jhang cjhang@perkinscoie.com
- David T. Biderman dbiderman@perkinscoie.com
- Judith B. Gitterman gittj@perkinscoie.com
- Lester L Levy llevy@wolfpopper.com
- Lisa Delehunt ldelehunt@perkinscoie.com
- Michele Fried Raphael mraphael@wolfpopper.com
- Ryan M. Hagan rhagan@alexanderlaw.com
- William M. Audet waudet@alexanderlaw.com

Dated: February 8, 2007

Richard W. Wieking, Clerk

By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy