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14 Attorneys for Plaintiffs

15 UNITED STATES DISTRICT COURT  
 16 NORTHERN DISTRICT OF CALIFORNIA  
 17 SAN JOSE DIVISION

18 CLRB HANSON INDUSTRIES, LLC d/b/a  
 19 INDUSTRIAL PRINTING, and HOWARD  
 20 STERN, on behalf of themselves and all others  
 similarly situated,

21 Plaintiffs,

22 vs.

23 GOOGLE, INC.,

24 Defendant.

Case No. C 05-03649 JW

**SUPPLEMENTAL DECLARATION OF  
 MARC M. SELTZER IN SUPPORT OF  
 PLAINTIFFS' BRIEF IN RESPONSE TO  
 GOOGLE, INC.'S OPENING BRIEF RE  
 THE COURT'S ORDER OF AUGUST 21,  
 2007**

Date: February 25, 2008  
 Time: 9:00 a.m.  
 Place: Courtroom 8  
 Hon. James W. Ware

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 27  
 28 814885v1/010480

**SUPPLEMENTAL DECLARATION OF MARC M. SELTZER IN SUPPORT OF  
 PLAINTIFFS' BRIEF IN RESPONSE TO GOOGLE, INC.'S OPENING BRIEF  
 RE THE COURT'S ORDER OF AUGUST 21, 2007  
 CASE NO. C 05-03649 JW**

1 I, MARC M. SELTZER, declare as follows:

2 1. I am an active member of the State Bar of California, a member in good standing  
3 of the Bar of that Court, a partner in the law firm of Susman Godfrey L.L.P., and one of the  
4 attorneys of record for plaintiffs CLRB Hanson Industries, LLC d/b/a Industrial Printing and  
5 Howard Stern in this action. I make this declaration on personal knowledge and, if called as a  
6 witness, could and would testify competently thereto.

7 2. Attached hereto as Exhibit A is a true and correct copy of page 49 from the  
8 Transcript of Proceedings before the Hon. James Ware on January 22, 2007.

9 3. Attached hereto as Exhibit B is a true and correct copy of pages 37-39 from the  
10 Transcript of Proceedings before the Hon. James Ware on June 21, 2007.

11 4. Attached hereto as Exhibit C are true and correct copies of pages 42 and 67 from  
12 the transcript of the Deposition of Heather Wilburn taken on March 6, 2007.

13 5. Attached hereto as Exhibit D is a true and correct copy of page 62 from the  
14 transcript of the Deposition of Michael Schulman taken on March 7, 2007.

15 6. Attached hereto as Exhibit E are true and correct copies of the pages cited from the  
16 transcript of the Deposition of Howard Stern taken on August 16, 2006.

17 7. Attached hereto as Exhibit F are true and correct copies of the pages cited from the  
18 transcript of the Deposition of CLRB Hanson, by Brett Hanson, taken on August 18, 2006.

19 I declare under penalty of perjury under the laws of the United States of America that the  
20 foregoing is true and correct.

21 Executed this 11th day of February, 2008, at Los Angeles, California.

22  
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/s/ Marc M. Seltzer  
\_\_\_\_\_  
MARC M. SELTZER

**EXHIBIT A**

CLRB V GOOGLE-T

1

UNITED STATES DISTRICT COURT

2

NORTHERN DISTRICT OF CALIFORNIA

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SAN JOSE DIVISION

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CLRB HANSON INDUSTRIES, LLC d/b/a )

INDUSTRIAL PRINTING and HOWARD )

C-05-03649-JW

5

STERN, on behalf of themselves and )

all others similarly situated, )

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PLAINTIFFS, )

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San Jose, CA

vs. )

January 22, 2007

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GOOGLE, INC, )

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DEFENDANT. )

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TRANSCRIPT OF PROCEEDINGS

13

BEFORE THE HONORABLE JAMES WARE

UNITED STATES DISTRICT JUDGE

14

19 over-delivery credit was provided. And --  
CLRB V GOOGLE-T

20 THE COURT: All right. I hesitate to ask this:

21 Anything further?

22 MR. LEVY: well, I just want to do clarify just

23 where we are. They promote the daily budget, and the

24 pausing, as ways to control your costs -- on every given

25 day. This delivery of ads, that's something that Googles to

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0

1 maximize their revenue. But the way they promote it to the

2 advertiser is: You are in charge of your own budget. You

3 are in charge of your own costs. And if you want to be

4 charged -- run your ad one day a month and your budget is

5 \$100; there is no way you should be charged more than \$100.

6 And they say they can charge you \$120. There's no way to

**EXHIBIT B**



09:47:09 1 THE COURT: SO THE NEXT DAY, INDEED,  
09:47:17 2 THERE ARE ONLY 6 CLICKS. AND IF ON THE ADDITIONAL  
09:47:24 3 DAY HE HAS 2 ADDITIONAL CLICKS TO HIM AND HE'S  
09:47:29 4 BILLED \$12 AND ON THE SECOND DAY HE'S ONLY BILLED  
09:47:34 5 \$10, HE HAS NOW ONLY SPENT MORE THAN HIS BUDGET BUT  
09:47:38 6 IF THEY ONLY BILL HIM FOR \$6 THAT DAY HE'S UNDER  
09:47:41 7 HIS DAILY BUDGET, THEY ALLOWED EXTRA CLICK THROUGH  
09:47:45 8 ON THE FIRST DAY. ARE YOU FOLLOWING ME?

09:47:47 9 MR. LEVY: I FOLLOW YOU.

09:47:48 10 THE COURT: ALL RIGHT. WOULD THERE BE A  
09:47:50 11 CLAIM AGAINST GOOGLE IF, IF INDEED THAT WERE THE  
09:47:54 12 SITUATION, NAMELY, MORE CLICK THROUGH ON THE FIRST  
09:47:59 13 DAY THAN WAS BUDGETED BUT LESS FOR THE TOTAL OF THE  
02 14 TWO DAYS?

09:48:02 15 MR. LEVY: ARE WE TALKING ABOUT PAUSING  
09:48:04 16 NOW OR ARE WE TALKING ABOUT PAUSING AT ALL?

09:48:07 17 THE COURT: I HAVEN'T INTRODUCED HOW. IT  
09:48:09 18 JUST HAPPENS THAT THOSE ARE THE EXPERIENCES FOR HIS  
09:48:12 19 CLICK THROUGH.

09:48:12 20 MR. LEVY: IF WE'RE NOT TALKING ABOUT  
09:48:15 21 PAUSING, WHICH IS AN INTENTIONAL STATING I DON'T  
09:48:18 22 WANT CLICKS AND TO BE CHARGED THAT DAY, IF WE'RE  
09:48:20 23 JUST TALKING ABOUT EVENING OUT THE FLOW.

09:48:22 24 THE COURT: YES.

09:48:23 25 MR. LEVY: OKAY. WE BELIEVE THAT, THAT



19:48:26 1 YOU SHOULD ONLY BE CHARGED YOUR DAILY BUDGET, WHAT  
19:48:29 2 YOU EXPECT AND WHAT YOU TOLD THEM YOU WANT TO BE  
19:48:31 3 CHARGED. IF THEY GIVE YOU MORE THAN THAT, BECAUSE  
19:48:34 4 THE SYSTEM GIVES THEM MORE THAN THAT, YOU SHOULDN'T  
19:48:37 5 BE CHARGED MORE THAN THAT.

19:48:38 6 THE COURT: NO, NO. ANSWER MY  
19:48:40 7 HYPOTHETICAL. WE HAVE TWO DAYS OF CHARGES. THE  
19:48:43 8 TOTAL ON THE FIRST DAY IS \$12 SO YOU DID GO BEYOND  
19:48:46 9 IT BUT THE TOTAL ON THE SECOND DAY IS ONLY \$6. SO  
19:48:49 10 THE TOTAL FOR THE TWO DAYS, YOU'RE UNDER YOUR, YOUR  
19:48:52 11 DAILY BUDGET IF YOU ADD THE TWO DAYS TOGETHER. YOU  
19:48:55 12 WOULDN'T WANT TO SPEND \$20 FOR THOSE TWO DAYS AND  
19:48:59 13 YOU INDEED YOU ONLY SPENT 18.

19:49:01 14 MR. LEVY: WE'RE TALKING.

19:49:02 15 THE COURT: I'M GIVING YOU THE  
19:49:04 16 HYPOTHETICAL. I WOULD SAY IF YOU GO BEYOND YOUR  
19:49:08 17 DAILY BUDGET, THAT THE AMOUNT THAT YOU TELL GOOGLE  
19:49:10 18 IS THE AMOUNT YOU WANT TO PAY FOR THAT DAY, THAT  
19:49:13 19 YOU SHOULD NOT BE CHARGED FOR THAT AND IF THEY GIVE  
19:49:15 20 YOU MORE, THEY SHOULDN'T CHARGE YOU THAT.

19:49:17 21 IT'S LIKE, AS I SAID.

19:49:19 22 THE COURT: YOU STILL HAVEN'T ANSWERED MY  
19:49:21 23 HYPOTHETICAL. I'M TALKING TWO DAYS WHERE YOU ARE  
19:49:23 24 CHARGED \$18. WOULD THERE BE A CHARGE OR A  
19:49:26 25 COMPLAINT AGAINST GOOGLE THAT IT HAS DONE SOMETHING

09:49:28 1 UNFAIR IF YOU SAY THAT I HAVE A \$20 BUDGET FOR  
09:49:32 2 TWO DAYS. THE FIRST DAY THEY GIVE YOU 12, YOU ONLY  
09:49:34 3 WANTED 10. THE SECOND DAY YOU ONLY GET 6. YOU  
09:49:38 4 REALLY ONLY WANTED TO GET 10 THAT SAME DAY AND  
09:49:40 5 SPEND \$20 BUT YOU ONLY GET 6 AND THEY BILL YOU FOR  
09:49:43 6 THE, FOR THE 12 FOR THE FIRST DAY AND SECOND FOR  
09:49:46 7 THE SECOND. THEY HAVE ADDED 20 PERCENT IN THE  
09:49:48 8 FIRST DAY THAT YOU DIDN'T WANT AND YOU DIDN'T GET  
09:49:51 9 THERE ON THE SECOND DAY, YOU ARE BILLED \$18, IS  
09:49:55 10 THERE A BREACH OF CONTRACT OR SOMETHING UNFAIR  
09:49:57 11 ABOUT THAT?

09:49:57 12 MR. LEVY: I WOULD SAY YES. YOU WOULD  
09:49:59 13 SAY NO BECAUSE YOU LOOK AT IT AS AN AVERAGE BUDGET  
09:50:02 14 AND I'M LOOKING AT IT AS A DAILY BUDGET AND IF YOU  
09:50:04 15 GO BEYOND THE BUDGET THE DAY YOU SET YOU SHOULD NOT  
09:50:07 16 BE CHARGED FOR IT. I KNOW YOU'RE LOOKING AT IT AS  
09:50:10 17 AN AVERAGE.

09:50:11 18 THE COURT: SO YOUR ARGUMENT OR COMPLAINT  
09:50:13 19 IS THAT ONCE THE DAILY BUDGET IS SET, NO MATTER  
09:50:16 20 WHAT IS SET IN THE ABOUT 20 PERCENT OVERAGE, THAT  
09:50:20 21 SHOULD NEVER BE EXCEEDED ON A GIVEN DATE, THAT THEY  
09:50:23 22 SHOULD NOT -- THAT IT'S UNFAIR TO ALLOW THIS  
09:50:25 23 OVERAGE UNDER ANY CIRCUMSTANCES?

09:50:27 24 MR. LEVY: NOT UNFAIR BUT YOU SHOULDN'T  
09:50:30 25 CHARGE FOR IT.

**EXHIBIT C**

CONFIDENTIAL  
PURSUANT TO PROTECTIVE ORDER

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

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COPY  
CONFIDENTIAL

CLRB HANSON INDUSTRIES, LLC )

d/b/a INDUSTRIAL PRINTING, et )

al., )

Plaintiffs, )

vs. )

No. C 05-03649 JW

GOOGLE, INC., )

Defendant. )

CONFIDENTIAL TESTIMONY - PURSUANT TO PROTECTIVE ORDER

DEPOSITION OF HEATHER WILBURN

TUESDAY, MARCH 6, 2007

PAGES 1 - 82

CONFIDENTIAL  
PURSUANT TO PROTECTIVE ORDER

42

1 BY MS. RAPHAEL:

2 Q Okay.

3 Will Google allow an advertiser's ad to accrue  
4 charges up to 120 percent above its daily budget on any  
5 given day?

6 MR. BIDERMAN: Objection; vague.

7 THE WITNESS: Could you restate that?

8 BY MS. RAPHAEL:

9 Q Sure.

10 Will Google overdeliver an ad to up to  
11 20 percent above a daily budget on any given day?

12 A Potentially deliver.

13 Q "Yes" or "no"? That's the question.

14 A Potentially deliver.

15 Q Correct, that's the question. Is the answer  
16 "yes" or "no"?

17 MR. BIDERMAN: Objection; vague. The answer  
18 to what? Let's get a question.

19 MS. RAPHAEL: Can you repeat the question?

20 (Record read as follows:

21 "Q Will Google overdeliver  
22 an ad to up to 20 percent above a  
23 daily budget on any given day?")

24 THE WITNESS: Potentially, yes.

25

CONFIDENTIAL  
PURSUANT TO PROTECTIVE ORDER

67

1 THE WITNESS: Due to web fluctuations, it is  
2 possible to accrue clicks, charges beyond 20 -- up to  
3 20 percent beyond that daily budget limit.

4 But at the end of the month, when we charge,  
5 we see if there is anything beyond. Anything being  
6 charges beyond daily budget times the number of days in  
7 the month will be given back as an overdelivery credit.

8 BY MS. RAPHAEL:

9 Q Does that accrual apply to any given day in  
10 the billing cycle?

11 MR. BIDERMAN: Objection; vague.

12 THE WITNESS: Accrual being any time the ad is  
13 active.

14 BY MS. RAPHAEL:

15 Q Okay.

16 How does the Google AdWords system account for  
17 days that an ad is paused when you look back at the end  
18 of the month?

19 A How do we account for it?

20 Q Correct.

21 MR. BIDERMAN: Objection; vague.

22 THE WITNESS: Whatever the number of days are  
23 in that month, multiplied by whatever the daily budget  
24 was during that time frame, is the amount that we're  
25 assuming the advertiser wanted to spend during that time

**EXHIBIT D**

M. SCHULMAN

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

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CLRB HANSON INDUSTRIES, )  
LLC d/b/a INDUSTRIAL )  
PRINTING, and HOWARD )  
STERN, on behalf of )  
themselves and all others )  
similarly situation, )

Case No. C05-03649 JW

Plaintiffs, )

vs. )

GOOGLE, INC., )  
Defendants. )

DEPOSITION OF MICHAEL SCHULMAN  
WEDNESDAY, MARCH 7, 2007

REPORTED BY: SANDRA LEHANE, CSR 7372



CONFIDENTIAL  
PURSUANT TO PROTECTIVE ORDER

62

1 longer." What's your understanding of what's meant by  
2 "hang on to it any longer"?

3 A. So if for, you know, the reasons that we  
4 talked about earlier, on -- let's say on the first  
5 day, by chance they served \$104.50 because of this  
6 time delay or some other issue. We won't charge them  
7 for that 4.50. What we will do is keep it in what I  
8 like to call limbo. And in that -- if, say, on the  
9 next day, they only served \$90 due to traffic patterns  
10 or other things like that, then that \$4.50 is then  
11 used to fill in that gap. So if, for some reason,  
12 which is, you know, very rare -- overdelivery itself  
13 is a very small amount of our delivery, or of our  
14 revenue, you know, at the end the delivery period that  
15 limbo at the end of the month or end of the delivery  
16 period is automatically considered overdelivery  
17 because it is now -- delivery period has ended and  
18 anything in limbo has to be overdelivery.

19 Q. Overdelivery cannot be carried on to the next  
20 delivery period?

21 A. No.

22 Q. I thought you had said earlier in the day a  
23 delivery period -- there was no end to a delivery  
24 period. Did I get that wrong?

25 A. So there is a set date, you know. Sometimes

# **EXHIBIT E**

ORIGINAL

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CLRB HANSON INDUSTRIES, LLC, )  
etc., et al., )

Plaintiffs, )

v. )

GOOGLE, INC., )

Defendant. )

Case No.  
05-03639 JW

DEPOSITION OF HOWARD STERN

August 16, 2006

227871

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Court Reporters

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(760) 322.2240 Palm Springs

1 H. Stern

14:34 2 spreadsheet is showing.

14:34 3 Q. Right. And you believe you were  
14:34 4 overcharged because you were charged more  
14:34 5 than 120 percent of your daily budget;  
14:34 6 correct?

14:34 7 A. Partially correct. I was  
14:34 8 charged over my daily budget, which is often  
14:34 9 not over 20 percent, but over the budget. So  
14:34 10 I definitely was charged both over my budget  
14:35 11 and 20 percent over my budget.

14:35 12 Q. Right. Okay. Now, first, going  
14:35 13 back to this. With respect to -- okay.  
14:35 14 Putting that aside, do you know -- and  
14:35 15 perhaps let me just ask the question again.

14:35 16 Do you know, as we sit here  
14:35 17 today, whether, in fact, you have been  
14:35 18 charged in excess of the amount of the daily  
14:35 19 budget times the number of days that your  
14:35 20 campaign was unpaused during the course of a  
14:35 21 month?

14:35 22 A. I don't remember doing that  
14:35 23 specific calculation.

14:35 24 Q. And whether you've done the  
14:35 25 calculation or not, do you know, as we sit

1 H. Stern

14:35 2 here today, whether you have been charged in  
14:35 3 excess of that amount?

14:35 4 A. I don't know.

14:36 5 Q. And is there any reason you have  
14:36 6 not run such a calculation?

14:36 7 A. I was concentrating mainly on  
14:36 8 the daily budget. So I didn't do any other  
14:36 9 calculation. What struck me as being  
14:36 10 something that shouldn't have occurred was  
14:36 11 the fact that on 97 days I was charged more  
14:36 12 than I thought I was going to be charged. I  
14:36 13 wasn't interested in multiplying it by the  
14:36 14 number of days active.

14:36 15 On a day-by-day calculation,  
14:36 16 which is the way I view this charging to  
14:36 17 occur, I was charged more than my daily  
14:36 18 budget. I wasn't calculating things on a  
14:36 19 monthly basis. This whole thing was  
14:36 20 presented as a daily budget, and a daily  
14:36 21 calculation is what was important.

14:36 22 Q. And have you ever received any  
14:36 23 assistance from anyone in terms of learning  
14:37 24 how to use the AdWords program?

14:37 25 A. Nothing more than I figured out

1 H. Stern

15:06 2 daily budget specifies."

15:06 3 Do you see that?

15:06 4 A. Yes.

15:06 5 Q. And your understanding, that's

15:06 6 part of the FAQ's; correct?

15:06 7 A. Along with part one, "What is a

15:06 8 daily budget."

15:06 9 Q. Right.

15:06 10 A. Yes.

15:06 11 Q. And you understand that the

15:06 12 FAQ's are part of the terms and conditions of

15:06 13 your relationship with Google; correct?

15:06 14 A. Yes. They're part of the

15:06 15 agreement.

15:06 16 Q. And is it your position that,

15:06 17 notwithstanding that language, if Google

15:06 18 delivers and charges you for \$11 worth of

15:06 19 advertising on a day in which you have a

15:07 20 daily budget of 10, that even though that is

15:07 21 less than 120 percent of your daily budget,

15:07 22 it is your position today that Google has

15:07 23 violated the terms and conditions of its

15:07 24 relationship with you?

15:07 25 A. Yes. For two reasons. One is,

1 H. Stern

15:18 2 credits. But apparently I might have  
15:18 3 received some overdelivery credits. But  
15:18 4 whatever they were, they obviously weren't  
15:18 5 what I thought they would be.

15:18 6 Q. And then -- and is it your  
15:18 7 position that after this correspondence that  
15:18 8 occurred on November -- culminating in the  
15:18 9 e-mail that's the top of Exhibit 3,  
15:18 10 November 20, 2003, is it your position that  
15:18 11 after that correspondence you continued to  
15:18 12 believe that your agreement with Google was  
15:18 13 that Google would never charge you on a daily  
15:19 14 basis more than your daily budget?

15:19 15 A. Yes. I still believe it as I'm  
.5:19 16 sitting here today, and it's still in the  
.5:19 17 FAQ's that every day should have a daily  
.5:19 18 budget that wouldn't be exceeded.

.5:20 19 MR. BIDERMAN: Why don't we take  
.5:20 20 a five-minute break. I'll talk to  
.5:20 21 Chris, we'll see where we are.

.5:20 22 THE VIDEOGRAPHER: The time is  
.5:20 23 3:23 p.m. We're off the record.

.5:20 24 (Recess taken.)

.5:35 25 THE VIDEOGRAPHER: The time is

1 H. Stern

15:35 2 3:38 p.m. We're back on the record.

15:35 3 BY MR. BIDERMAN:

15:35 4 Q. Just so I have a clear record,  
15:35 5 can you tell me every document -- oops. What  
15:35 6 am I doing wrong?

15:35 7 THE VIDEOGRAPHER: Your  
15:35 8 microphone.

15:35 9 (Discussion off the record.)

15:35 10 Q. Can you tell me, sir, every  
15:35 11 reason why you believe that Google is  
15:35 12 violating the terms and conditions of its  
15:35 13 agreement with you when it charges more than  
15:35 14 your daily budget?

15:36 15 A. Well, the first is that they  
15:36 16 present themselves as allowing you to set a,  
15:36 17 quote, daily budget. And you would think or  
15:36 18 at least I think, and still think today, that  
15:36 19 that's the most you're going to be charged  
15:36 20 that day. So when I get charged more than  
15:36 21 that I feel it's a violation.

15:36 22 Second is that it seems that  
15:36 23 there are terms in the FAQ's as of today,  
15:36 24 although I can't recall what they were like  
15:36 25 when I signed up, that on the one hand say



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H. Stern

15:36

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you have a daily budget that you're not going

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to have exceeded in one paragraph, and then

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in another paragraph they talk about a

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monthly budget, which has nothing to do with

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a daily budget. And they seem to be billing

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7

you on their monthly billing interpretation,

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8

when I'm looking at the daily budget

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interpretation, which is what I key in on.

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Q. What you personally key in on?

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A. What I believe is the whole

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point of this AdWords program is that it's a

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daily type of complete-control advertising

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scheme, where you have very fine control over

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your charges down to the daily level, and

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that's what they present as -- as the main

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17

feature of their program. And yet they, on

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18

the back end at the end of the month, they

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19

sort of throw that out and just charge you

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20

monthly.

15:37

21

Q. Okay. And you will agree that

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22

after your correspondence in November 20th,

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23

2003, which is the last document we talked

15:37

24

about, you understood that, notwithstanding

15:37

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what you believed to be the case, Google

1

H. Stern

16:27 2 A. Yes.

16:27 3 Q. Is that an incentive for you to  
16:27 4 sign up for AdWords?16:27 5 A. Right. It's a good reason,  
16:27 6 right.16:27 7 Q. And then it goes on to say,  
16:27 8 "This is the same no matter how you choose to  
16:27 9 pay for your advertising."

16:27 10 Do you see that?

16:27 11 A. Yes.

16:27 12 Q. Okay. So why did you switch to  
16:27 13 Google from Yahoo?.6:27 14 A. Because Yahoo had a monthly  
.6:27 15 minimum that I needed to pay, whether or not  
.6:27 16 I even ran the ads.

.6:27 17 Q. And Google?

.6:27 18 A. They had no minimum.

.6:27 19 Q. And, in fact, they told you they  
.6:28 20 had no minimum; correct?

.6:28 21 A. Right.

.6:28 22 MR. BIDERMAN: Objection.

.6:28 23 Assumes facts not in evidence.

.6:28 24 MR. LEVY: Do you want to change  
.6:28 25 the tape now?

**EXHIBIT F**

ORIGINAL

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CLRB HANSON INDUSTRIES, LLC, )  
etc., et al., )

Plaintiffs, )

v. )

GOOGLE, INC., )

Defendant. )

Case No.  
05-03639 JW

CONFIDENTIAL PORTIONS

30 (b) (6) DEPOSITION OF BRETT R. HANSON

August 18, 2006

228010



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(818) 702.0202 San Fernando Valley  
(858) 455.5444 San Diego  
(619) 444.4444 San Diego

1 B. Hanson

0:08 2 an AdWords program, and entered the  
0:08 3 information that was requested of me.

0:08 4 Q. And this is sometime in  
0:08 5 July 2002, as best as you recall?

0:08 6 A. Yes, sir.

0:08 7 Q. And did you review any materials  
0:08 8 on the Google site before you made the  
0:08 9 decision to join the AdWords program?

0:08 10 A. I remember the page -- the  
0:09 11 sign-up page saying it was an easy-to-use  
0:09 12 pay-for-click program. That it was a -- we  
0:09 13 controlled the -- the program from a -- from  
0:09 14 a budget standpoint. We controlled the cost  
0:09 15 per click. We controlled the daily budget.  
0:09 16 And that's what intrigued me to the value  
0:09 17 proposition that Google offered at that time.

0:09 18 Q. And when did you first see the  
0:09 19 page that you just described?

0:09 20 A. I think it's the first page that  
0:09 21 was presented to me.

0:09 22 Q. Okay. As part of the AdWords  
0:09 23 sign-in?

0:09 24 A. Yes, sir.

0:09 25 Q. And had you reviewed any

1  
0:20 2  
0:20 3  
0:20 4  
0:20 5  
0:20 6  
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0:21 11  
0:21 12  
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0:21 14  
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0:21 24  
0:21 25

B. Hanson  
has that button on it.  
MR. BIDERMAN: I'm asking if he  
remembers it.  
MR. LEVY: Okay.  
A. I do not recall a specific  
button.  
Q. And do you otherwise recall in  
some manner signifying that you accepted the  
terms and conditions of the AdWords program?  
A. I do not.  
Q. And in your mind, whether you  
have that recollection or not, did you  
understand that by signing on to the AdWords  
program that you were accepting the terms and  
conditions by which the AdWords program  
operated?  
A. In my mind, I was accepting the  
terms and conditions that controlled my daily  
budget. I controlled my cost per click. I  
could turn off and on my campaign, and I  
would not be charged more than my daily  
budget or my daily cost per click.  
Q. Okay. And did you believe that  
you were accepting anything else?

1

B. Hanson

0:44

2

MR. BIDERMAN: We've been going

0:44

3

about an hour. Do you want to take

0:44

4

like four, five minutes?

0:44

5

MR. LEVY: Sure.

0:44

6

THE VIDEOGRAPHER: The time is

0:44

7

10:44 a.m. We're off the record.

0:44

8

(Recess taken.)

0:55

9

THE VIDEOGRAPHER: The time is

0:55

10

10:55 a.m. We're back on the record.

3:59

11

BY MR. BIDERMAN:

0:55

12

Q. And just one question while

0:55

13

we're getting a document. With respect to

0:55

14

the daily budget, how -- what is your

0:55

15

understanding of how a daily budget works on

0:55

16

the Google AdWords program?

0:55

17

A. That whatever our budget is

0:55

18

we'll not be charged more than that certain

0:55

19

amount.

0:55

20

Q. Okay. And how did you come to

0:55

21

that understanding?

0:55

22

A. That's what was presented to me

0:55

23

by Google.

0:55

24

Q. In what form?

0:55

25

A. The on-line page. The initial





1 B. Hanson

3:43 2 day we were going over budget.

3:43 3 Q. Right. I understand. Is it

3:43 4 fair to say that at some time in the second

3:43 5 quarter of 2004 you came to the understanding

3:43 6 that it was Google's practice under the

3:43 7 AdWords program to charge up to 20 percent

3:43 8 above the specified daily budget amount for a

3:43 9 given day?

3:43 10 A. No, sir. No, sir.

3:44 11 Q. Okay. You did come to that

3:44 12 understanding at some point in time, right?

3:44 13 A. That wasn't the question you

3:44 14 asked me.

3:44 15 Q. Okay. Okay. Have you ever come

3:44 16 to an understanding that Google's policy and

3:44 17 practice under the AdWords program is to

3:44 18 charge up to 120 percent of the daily budget?

3:44 19 A. As recently as -- I've kind of

3:44 20 caved in and gave in that that's how Google's

3:44 21 going to treat their advertisers, is going to

3:44 22 screw them by 20 percent in the last, let's

3:44 23 say, last June, 2005. Because I wasn't

3:44 24 getting anywhere with asking them for, you

3:44 25 know, why is this happening. It didn't

1 B. Hanson

3:45 2 matter what I changed the daily budget to, it

3:45 3 always went over.

3:45 4 Q. Okay. So it's fair to say you

3:45 5 came to that understanding sometime, say,

3:45 6 June 2005?

3:45 7 A. Yes.

3:45 8 Q. And with respect to Exhibits 39

3:45 9 and 38, the communications with Tina, did you

3:45 10 speak to her by phone?

3:45 11 A. I don't know if Google has

3:45 12 phones. No. E-mail.

3:45 13 Q. And have you ever spoken to

3:45 14 anyone at Google by telephone?

3:46 15 A. Recently, I believe, I received

3:46 16 a voicemail. In fact, on Monday, thanking us

3:46 17 for our business from a Matt. I don't know,

3:46 18 Matt something left on my voicemail.

3:46 19 Q. And anything other than that

3:46 20 communication?

3:46 21 A. Not that I can recall.

3:46 22 Q. I thought -- have you ever

3:46 23 spoken to anyone by phone or otherwise at

3:46 24 Google about daily budget issues?

3:46 25 A. I think I -- let me refresh my