

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CLRB HANSON INDUSTRIES, LLC,)	
etc., et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No.
)	05-03639 JW
GOOGLE, INC.,)	
)	
)	
Defendant.)	
_____)	

DEPOSITION OF HOWARD STERN

August 16, 2006

227871



(310) 207.8000 Los Angeles	(916) 922.5777 Sacramento	(818) 702.0202 San Fernando Valley
(949) 955.0400 Orange County	(408) 885.0550 San Jose	(858) 455.5444 San Diego
(415) 433.5777 San Francisco	(951) 686.0606 Inland Empire	(760) 322.2240 Palm Springs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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

Plaintiffs,

v.

Case No.
05-03639 JW

GOOGLE, INC.,

Defendant.

-----x

August 16, 2006

11:19 a.m.

VIDEOTAPED DEPOSITION of HOWARD
STERN, taken by Defendant, pursuant to
notice, held at the offices of Thacher
Proffitt & Wood, 2 World Financial
Center, New York, New York, before
Amy E. Sikora, CRR, CSR, RPR, Certified
Realtime Reporter, Certified Shorthand
Reporter, Registered Professional
Reporter, and Notary Public within and
for the State of New York.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S:

WOLF POPPER LLP

Attorneys for Plaintiffs and the Proposed Class

845 Third Avenue

New York, New York 10022

BY: LESTER L. LEVY, ESQ.

MICHELE F. RAPHAEL, ESQ.

PERKINS COIE LLP

Attorneys for Defendant

180 Townsend Street

San Francisco, CA 94107-1909

BY: DAVID T. BIDERMAN, ESQ.

M. CHRISTOPHER JHANG, ESQ.

ALSO PRESENT:

THOMAS DELVECCHIO, Videographer

1 H. Stern

11:34 2 Q. You're going to follow the
11:34 3 instruction; right?

11:34 4 A. Yes.

11:34 5 Q. All right. Okay. Let's see.
11:34 6 Okay.

11:34 7 And no deposition testimony.
11:34 8 Trial testimony?

11:34 9 A. No.

11:34 10 Q. Okay. And the business that you
11:34 11 were advertising on the Google AdWords
11:34 12 account, what was that business?

11:34 13 A. It was called
11:34 14 homeworksolver.net.

11:35 15 Q. Okay. What's that?

11:35 16 A. It assists people with their
11:35 17 homework problems.

11:35 18 Q. Okay. And that's a business you
11:35 19 run out of your home?

11:35 20 A. A sideline business, yes.

11:35 21 Q. Okay. And anybody else involved
11:35 22 in that business?

11:35 23 A. No.

11:35 24 Q. Okay. And you use the Google
11:35 25 AdWords program to advertise for that; right?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

H. Stern

13:01 A. Yes. That's the percent the
13:01 cost exceeded the daily budget.

13:01 Q. Okay. And these campaigns --
13:01 did the campaign run every day?

13:01 A. No.

13:01 Q. Okay. You had paused your
13:01 campaign; is that correct?

13:01 A. Yes.

13:01 Q. And how often do you pause your
13:01 campaign?

13:01 A. I pause it every day that I have
13:01 it running, and I may keep it paused until I
13:01 restart the campaign.

13:01 Q. And why do you pause the
13:02 campaign?

13:02 A. To prevent the ads from
13:02 appearing.

13:02 Q. And is there any particular
13:02 reason why you pause it on certain days
13:02 versus others?

13:02 A. I pause it on the weekends
13:02 because I don't think people are going to be
13:02 responding, and I'm not available to work on
13:02 these problems on the weekends.

1 H. Stern

13:02 2 Q. Any other times?

13:02 3 A. No.

13:02 4 Q. So typically you just pause it
13:02 5 on the weekends, is that fair to say?

13:02 6 A. Most of the time I pause them on
13:02 7 the weekends. I might pause it, if I'm going
13:02 8 to be out of my home on vacation.

13:02 9 Q. Any other reasons?

13:02 10 A. I can't think of other reasons
13:02 11 right now, but there may be other reasons.

13:02 12 Q. And the amount of the -- that
13:02 13 you reflect as cost, is that taken from the
13:03 14 AdWords program which has an entry that
13:03 15 defines cost?

13:03 16 A. Probably the field that's the
13:03 17 daily cost.

13:03 18 Q. Okay. And have you made any
13:03 19 effort to see whether the cost that appears
13:03 20 on the -- under the entry described as "Cost"
13:03 21 in the AdWords program corresponds to the
13:03 22 charges against your credit card?

13:03 23 A. I've made an attempt, but it's
13:03 24 complicated, because I get billed on a day
13:03 25 that's not the end of the month. So the June

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

H. Stern

A. I don't recall with any certainty that I recall an e-mail confirmation. I mean, I can't say for a fact that I do or not. I know that I get something from my e-mail provider, and I don't want to confuse the two.

In other words, every month I get a statement saying, you know, your ISP is charging you whatever. I don't think I get that from Google. I think it just shows up on my credit card.

Q. Oh, and by the way, just an aside. Have you ever used anyone to help optimize your advertising campaign?

A. No. None whatsoever. No.

Q. And going back to this e-mail, on 9 October 2003, you wrote to Google and said, "I have a \$10-a-day budget, but on 10/8/03 the cost was over 15. I thought the listings would go off line once the budget was reached. What happened?"

Do you see that?

A. Yes, I do.

Q. And then the response came on

↑
14:41
14:41
14:42
14:42
14:42
14:42
14:42
14:42
14:42
14:42
14:42
14:42
14:42
14:42
14:42
14:42
14:42
14:42
14:42
14:42
14:42
14:42
14:42
14:42
14:42
14:42

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

H. Stern

10 October 2003. And you were told by Google that, among other things, that "As traffic is never constant from day to day, it is possible that you may accrue charges above or below your set limit."

Do you see that?

A. Yes.

Q. And that "Our system makes sure that in a given billing period, you are never charged more than the number of days in that month multiplied by your daily budget. That amount equals your monthly budget."

Do you see that?

A. Yes.

Q. "For clicks accrued over your daily budget, you will see an overdelivery credit on the billing summary page under 'My Account' tab. This credit will appear at the end of your billing period."

Is that correct?

A. I see that, yes.

Q. And your best recollection is, you've looked on the billing summary page under the "My Account" tab and have not seen

1 H. Stern

14:42 2 overdelivery credits?

14:42 3 A. Yes.

14:42 4 Q. And after you were told by

14:43 5 Google that you could accrues charges above

14:43 6 or below your set limit, you continued to use

14:43 7 the Google program; correct?

14:43 8 A. Yes, I continued to use it.

14:43 9 It's being used possibly today, yes.

14:43 10 Q. Okay. And it is correct to say

14:43 11 that you understood, certainly as of

14:43 12 10 October 2003, that you could accrue

14:43 13 charges above or below your set limit?

14:43 14 A. I never thought that I would be

14:43 15 billed for them. Accruing and being charged

14:43 16 for them are two different things. I saw

14:43 17 that I was accruing charges over my daily

14:43 18 budget. I never thought that I would be

14:43 19 billed for those, especially since I never

14:43 20 received any overdelivery credits. I was

14:43 21 both accruing and being charged for more than

14:43 22 my daily budgets every single -- many times.

14:44 23 Q. Okay. And then, with respect to

14:44 24 the -- and, in fact, on October 21, which was

14:44 25 11 days after you received this

1 H. Stern

14:47 2 Q. There's -- if you go to the
14:47 3 second page under that tab 2 at the bottom,
14:47 4 where you wrote to Google on Wednesday,
14:47 5 October 22, 2003. Do you see that down at
14:48 6 the bottom?

14:48 7 A. Yes, I do.

14:48 8 Q. And you state that, "My
14:48 9 understanding of a daily budget is very
14:48 10 simple. Daily costs not to exceed \$10. I
14:48 11 don't expect to pay more on some days to
14:48 12 compensate for days that it costs less than
14:48 13 \$10. I'm not trying to meet a monthly
14:48 14 target, rather, a daily target," et cetera.

14:48 15 Do you see that?

14:48 16 A. Yes, I do.

14:48 17 Q. Okay. And then -- I want to
14:48 18 make sure I've got this in chronological
14:48 19 order. Then on 10/22/03, I believe, you're
14:48 20 going to have to help me sort this out,
14:48 21 somebody wrote, "Hello Howard. Bradley."

14:48 22 Do you see that?

14:48 23 A. Yeah, yeah, I see that, yes.

14:48 24 Q. Now, is that a response to -- do
14:48 25 you understand that to be a response to your

1 H. Stern

14:48 2 e-mail or is that one that prompted your
14:48 3 e-mail, if you look at it?

14:49 4 A. I'd like to -- I'd like to think
14:49 5 it's a response, but I can't say for sure.
14:49 6 Because he's disagreeing with my -- with the
14:49 7 billing system, and that's what I'd just done
14:49 8 in my e-mail. I wouldn't have, you know,
14:49 9 written him something after he's told me I
14:49 10 disagree with it.

14:49 11 Q. Okay. Fair enough. So in other
14:49 12 words -- okay. And he states, he, Bradley,
14:49 13 states in the middle of this e-mail, "In
14:49 14 general, we try to keep your daily cost
14:49 15 fluctuation to no more than 20 percent above
14:49 16 your daily budget."

14:49 17 Do you see that reference?

14:49 18 A. Wait, wait. What page are you
14:49 19 on?

14:49 20 Q. Pardon me.

14:49 21 A. Are you on the first page?

14:49 22 Q. No. I'm on page 3 of 12.

14:49 23 A. Oh, okay. Yeah, I see that.

14:50 24 Right.

14:50 25 Q. "We try to keep your daily costs

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF NEW YORK)

:SS

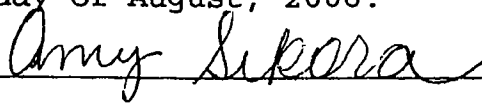
COUNTY OF NEW YORK)

I, AMY E. SIKORA, CRR, CSR, RPR, a
Certified Realtime Reporter, Certified
Shorthand Reporter, Registered Professional
Reporter and Notary Public within and for the
State of New York, do hereby certify that the
foregoing deposition of HOWARD STERN was taken
before me on the 16th day of August, 2006;

That the said witness was duly
sworn before the commencement of the testimony;
that the said testimony was taken
stenographically by me and then transcribed.

I further certify that I am not
related by blood or marriage to any of the
parties to this action nor interested directly
or indirectly in the matter in controversy; nor
am I in the employ of any of the counsel in
this action.

IN WITNESS WHEREOF, I have hereunto
set my hand this 26th day of August, 2006.



AMY E. SIKORA