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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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

Plaintiffs,

v.

GOOGLE INC.,

Defendants.

CASE NO. C 05-03649 JW

GOOGLE INC.'S APPENDIX OF
DISCOVERY REQUESTS IN SUPPORT
OF ITS MOTION FOR AN
ACCOUNTING OF PLAINTIFFS'
APPARENT DESTRUCTION OF
RELEVANT DOCUMENTS AND
MOTION TO COMPEL FURTHER
RESPONSES TO INTERROGATORIES
(L.R. 37-2)

Date: January 6, 2009

Time: 9:00 a.m.

Place: Courtroom 5

Judge: Honorable Patricia V. Trumbull

1 **APPENDIX OF DISCOVERY REQUESTS (L.R. 37-2)**

2 Pursuant to Civil Local Rule 37-2, Google Inc. ("Google") sets forth below (i) the
3 interrogatories for which it is moving to compel further responses, (ii) Plaintiffs' written
4 objections and responses thereto, and (iii) Google's contention as to why it is entitled to further
5 responses.¹

6 Google is not moving to compel further responses to its document requests because
7 Plaintiffs have confirmed that they are not withholding any documents on the basis of their
8 objections and that they have produced all responsive documents found after conducting
9 reasonable searches. Rather, Google is moving for an accounting of Plaintiffs' apparent
10 destruction of relevant documents. Accordingly, Civil Local Rule 37-2 does not apply to that
11 portion of the Motion, and no purpose would be served by reiterating here each of the document
12 requests and each of Plaintiffs' responses. Moreover, true and correct copies of the document
13 requests and responses are attached to the accompanying Declaration of Sang (Alvin) Lee as
14 Exhibits A-D.

15 **GOOGLE'S FIRST SET OF INTERROGATORIES:**

16 **INTERROGATORY NO. 2:**

17 State the amount of monetary damages YOU claim that YOU sustained as a result of any
18 conduct and/or omission of GOOGLE.

19 **RESPONSE TO INTERROGATORY NO. 2 (CLRB HANSON AND STERN):**

20 Plaintiff objects to this Interrogatory on the grounds that it seeks information that is
21 already on the record, has already been produced, or is already available to Google. It is
22 burdensome and oppressive to require Plaintiff to duplicate effort to respond to this question.

23 Subject to general and specific objections, Plaintiff states that the amount of monetary
24 damages it sustained are the amounts that Google charged Plaintiff over its daily budget.

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26 _____
27 ¹ Where Plaintiffs had identical responses, only one response is included. The only difference in
28 Plaintiffs' responses is the use of pronouns identifying the Plaintiffs. Where a response relates to
a specific Plaintiff that Plaintiff is so identified.

1 Google's records contain Plaintiff's daily budget and the amount in excess of the daily budget
2 Google charged it.

3 **GOOGLE IS ENTITLED TO THE REQUESTED DISCOVERY:**

4 Google is entitled to discovery from Plaintiffs that relates directly to their alleged
5 damages. This request relates only to the named Plaintiffs and not to their putative class,
6 therefore Plaintiffs have the necessary material to provide complete responses. *See* Fed. R. Civ.
7 P. 26(b)(1). The discovery requested is proportional to the importance of this information to the
8 case and Google's need for the information to prepare its damages case and analysis, is not
9 unreasonably cumulative or duplicative, and cannot be found from a source other than Plaintiffs.
10 *See* Fed. R. Civ. P. 26(b)(2). Moreover, Plaintiffs have confirmed that they are not withholding
11 any information on the basis of any objection.

12 Plaintiffs' responses are inadequate. They have failed to quantify their damages and have
13 only provided generic responses.

14 **INTERROGATORY NO. 3:**

15 Describe in detail how YOU calculated the amount of pecuniary damages YOU claim
16 that YOU sustained as a result of any conduct and/or omission of GOOGLE.

17 **RESPONSE TO INTERROGATORY NO. 3 (CLRB HANSON AND STERN):**

18 See response to Interrogatory No. 2.

19 **GOOGLE IS ENTITLED TO THE REQUESTED DISCOVERY:**

20 Google is entitled to discovery from Plaintiffs that relates directly to their alleged
21 damages. This request relates only to the named Plaintiffs and not to their putative class,
22 therefore Plaintiffs have the necessary material to provide complete responses. *See* Fed. R. Civ.
23 P. 26(b)(1). The discovery requested is proportional to the importance of this information to the
24 case and Google's need for the information to prepare its damages case and analysis, is not
25 unreasonably cumulative or duplicative, and cannot be found from a source other than Plaintiffs.
26 *See* Fed. R. Civ. P. 26(b)(2). Moreover, Plaintiffs have confirmed that they are not withholding
27 any information on the basis of any objection.

1 Plaintiffs' responses are inadequate. Plaintiffs only reference their responses to
2 Interrogatory No. 2 in which they failed to quantify their damages and only provided generic
3 responses.

4 **INTERROGATORY NO. 5:**

5 Identify the date on which YOU first realized that it is GOOGLE's policy that, on any
6 single day, the AdWords system may deliver up to 20% more ads that YOUR daily budget calls
7 for to help make up for other days in which your daily budget is not reached.

8 **RESPONSE TO INTERROGATORY NO. 5 (CLRB HANSON):**

9 Plaintiff objects to this Interrogatory on the grounds that it is overbroad, vague and
10 ambiguous. Plaintiff objects to this Interrogatory on the grounds that it seeks information that is
11 already on the record, has already been produced, or is already available to Google.

12 See response to Interrogatory No. 4 above. In addition, subject to the general and
13 specific objections, Plaintiff at various times from the 2nd quarter of 2004 to the 2nd quarter of
14 2005, sought a satisfactory explanation from Google as to the overcharges. At times Plaintiff
15 was told that it would be credited for overdelivery. When Plaintiff realized that Google was not
16 going to credit it for overdelivery, it sought legal assistance and commenced a lawsuit in August
17 2005.

18 **RESPONSE TO INTERROGATORY NO. 5 (STERN):**

19 Plaintiff objects to this Interrogatory on the grounds that it is overbroad, vague and
20 ambiguous. Plaintiff objects to this Interrogatory on the grounds that it seeks information that is
21 already on the record, has already been produced, or is already available to Google.

22 Subject to the general and specific objections, Plaintiff responds as follows: On October
23 22, 2003, Google sent Plaintiff stating: "As traffic is never constant from day to day, it is
24 possible that you may accrue charges above or below your set limit. In general, we try to keep
25 your daily cost fluctuation to no more than 20% above your daily budget" However, in
26 response to Mr. Stern's request that same day that the bill be "rework[ed] . . . to reflect a \$10/day
27 max, not some sort of average that approximates \$10/day," Goggle stated: "We will make sure
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1 that in a given billing period, you are not overcharged.” Google also stated on November 20,
2 2003: “When your ad accrues more clicks in a day than your daily budget allows, you are
3 automatically given overdelivery credits for the excess amount.”

4 **GOOGLE IS ENTITLED TO THE REQUESTED DISCOVERY:**

5 Google is entitled to discovery from Plaintiffs that relates directly to their alleged
6 damages. The information requested goes directly to Google's waiver defense and mitigation of
7 any alleged damages after Plaintiffs were informed that Google may deliver up to 20% more ads
8 than their daily budget called for. *See* Fed. R. Civ. P. 26(b)(1). The discovery goes directly to
9 the issues of this case. The discovery requested is proportional to the importance of this
10 information to the case and Google's need for the information to prepare its damages case and
11 analysis, is not unreasonably cumulative or duplicative, and cannot be found from a source other
12 than Plaintiffs. *See* Fed. R. Civ. P. 26(b)(2). Moreover, Plaintiffs have confirmed that they are
13 not withholding any information on the basis of any objection.

14 Plaintiffs' responses are inadequate. Google has asked Plaintiffs to state the date on
15 which they first became aware of the 120% Rule. Rather than provide a date, Plaintiffs gave
16 non-responsive answers that referenced various communications they had with Google about
17 billing issues.

18 **INTERROGATORY NO. 7:**

19 Identify with specificity the pecuniary damage(s) YOU claim YOU suffered as a result of
20 GOOGLE delivering clicks in excess of 100% of YOUR AdWords daily budget.

21 **RESPONSE TO INTERROGATORY NO. 7 (CLRB HANSON AND STERN):**

22 Plaintiff objects to this Interrogatory on the grounds that it seeks information that is
23 already on the record, has already been produced, or is already available to Google. It is
24 burdensome and oppressive to require Plaintiff to duplicate effort to respond to this question.

25 Subject to the general and specific objections, Plaintiff states that the amount of
26 pecuniary damages he suffered are the amounts that Google charged Plaintiff over his daily
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1 budget, together with interest. Goggle's records contain Plaintiff's daily budget and the amount
2 in excess of the daily budget Google charged him.

3 **GOOGLE IS ENTITLED TO THE REQUESTED DISCOVERY:**

4 Google is entitled to discovery from Plaintiffs that relates directly to their alleged
5 damages. *See* Fed. R. Civ. P. 26(b)(1). The discovery requested is proportional to the
6 importance of this information to the case and Google's need for the information to prepare its
7 damages case and analysis, is not unreasonably cumulative or duplicative, and cannot be found
8 from a source other than Plaintiffs. *See* Fed. R. Civ. P. 26(b)(2). Moreover, Plaintiffs have
9 confirmed that they are not withholding any information on the basis of any objection.

10 Plaintiffs have provided inadequate responses. Instead of "[i]dentify[ing] with
11 specificity" their damages relating to clicks in excess of 100% of their daily budget Plaintiffs
12 have provided only general statements and have not quantified their damages.

13 **INTERROGATORY NO. 18:**

14 For each AdWords ad campaign which YOU created, edited, or managed on behalf of
15 any PERSONS other than CLRB Hanson, LLC, identify the ad campaign, the related account
16 name, the account number under which the campaign was created, the identity of the PERSON
17 on whose behalf it was created, and the PERSON who paid for the campaign.

18 **RESPONSE TO INTERROGATORY NO. 18 (CLRB HANSON):**

19 Plaintiff objects to this Interrogatory on the grounds that it is overbroad, vague,
20 ambiguous, not reasonably calculated to lead to admissible evidence. It is unduly burdensome,
21 seeks information that is already on the record, has already been produced, or is already available
22 to Google.

23 Subject to the general and specific objections, Plaintiff states that Brett Hanson created,
24 edited, or managed AdWords campaigns as a consultant for SECOA Inc. and Hanson Industries.

25 **GOOGLE IS ENTITLED TO THE REQUESTED DISCOVERY:**

26 Google is entitled to discovery from CLRB Hanson that relates directly to Plaintiffs'
27 alleged damages. The information requested goes directly to Google's waiver defense and
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1 mitigation of any alleged damages after Plaintiffs were informed that Google may deliver up to
2 20% more ads than their daily budget called for. *See* Fed. R. Civ. P. 26(b)(1). The discovery
3 requested is proportional to the importance of this information to the case and Google's need for
4 the information to prepare its damages case and analysis, is not unreasonably cumulative or
5 duplicative, and cannot be found from a source other than Plaintiff. *See* Fed. R. Civ. P. 26(b)(2).
6 Moreover, Plaintiff has confirmed that it is not withholding any information on the basis of any
7 objection.

8 Plaintiff has provided an inadequate response. While Plaintiff provided a response as to
9 the entities he consulted, he has failed to identify the specific ad campaigns as requested.

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