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Proposed Class*

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,

vs.

GOOGLE, INC.,

Defendant.

CASE NO: C05-03649 JW

**DECLARATION OF HOWARD STERN
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PARTIAL SUMMARY JUDGMENT**

DECLARATION OF HOWARD STERN

Doc. 154581

1 I, Howard Stern, hereby declare:

2 1. I am one of the plaintiffs in the above action. I submit this Declaration in support
3 of Plaintiffs' Motion for Partial Summary Judgment.

4 2. In October, 2003, I signed up for the Google AdWords Program. What enticed
5 me to the program and what I relied on was the fact that Google represented that I would control
6 my costs by setting a daily budget and per click charges, and there was no minimum charge.

7 3. Google also represents that the participant in the AdWords Program can pause its
8 ads and not accrue any charges while its ads are paused. I found that feature extremely beneficial
9 and generally paused my AdWords campaign often in order to control advertising costs and
10 demand for my services.

11 4. When I enrolled in the AdWords Program, I gave the information required, such
12 as, the name of the ad campaign, email address, billing information, daily budget (which I set at
13 \$10) and costs per click. I was not directed to, nor did I, review any of the numerous FAQs
14 (frequently asked questions) that you can access online if you wanted to. I do not recall that I had
15 to accept the FAQs prior to joining the AdWords Program and Google has not produced any
16 evidence to the contrary.

17 5. Google states that the: "Ad system ensures you never pay more than your daily
18 budget multiplied by the number of days in a month your campaign was active. See Exhibit A
19 hereto. In contrast to the way Google promotes AdWords (as a program that gives me complete
20 control over my charges), I have been often charged by Google amounts greater than my daily
21 budget. I have also been charged by Google amounts in excess of the amount of my daily budget
22 times the number of days that my campaign was active during the course of a month.

23 6. For example, my AdWords campaign ran for 4 days in the month of September
24 2005. During that time my daily budget was set at \$10. Google should have charged me at most,
25 \$40. In fact, it charged me over 8% more (\$43.25). In December 2005 my AdWords campaign
26 ran for 2 days and my daily budget was \$10. I should have been charged \$20 by Google. In fact,
27 it charged me over 6% more (\$21.28). See Exhibit B.

28

1 7. While these overcharges may seem small, when you consider the hundreds of
2 thousands of AdWords advertisers, the monthly bills to each and all those with daily budgets
3 much higher than mine, the amount of monies Google receives from these overcharges becomes
4 very significant.

5 8. When I complained about my overcharges to Google, I was told by Google that it
6 indeed bills more than a daily budget on any given day (up to 120% of the daily budget,) and that
7 Google will charge me up to 30 or 31 times my daily budget in a monthly bill. Thus, if my daily
8 budget is \$10, Google states it is free to charge me up to \$12 a day, as long as it doesn't charge
9 me more than \$300 or \$310 in a month. However, that is contrary to how Google advertised and
10 promoted their AdWords Program. If, I had an active campaign for 10 days during a monthly
11 period, I expect to be charged at most, \$100, not \$120, which Google now states it is free to
12 charge me.

13 9. Delivery of ads over and above my daily budget, is not beneficial to me because
14 there is a limit to the amount of responses I can handle. The overdelivery just adds to my costs.

15 10. Google's promotion of its AdWords Program and its billing practices are
16 deceptive and misleading.

17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct. This declaration is executed in Middletown, New Jersey on this
19 26 day of September, 2006.



HOWARD STERN