

EXHIBIT B

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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 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 H. Stern

12:01 2 A. I've gone back to the current
12:01 3 campaign management screen.

12:01 4 Q. Okay. To modify your keywords?

12:01 5 A. Yes.

12:01 6 Q. Okay. And then I show you a
12:01 7 document which is going to be Exhibit 8.

12:01 8 (Exhibit No. 8, Google screen
12:01 9 shot, Google AdWords. Choose A
12:01 10 Currency, marked for identification as
12:01 11 of this date.)

12:02 12 Q. And it's a two-page document.
12:02 13 It says, "Google AdWords. Choose A
12:02 14 Currency."

12:02 15 Do you see that?

12:02 16 A. Yes.

12:02 17 Q. And at the time that you signed
12:02 18 up, was there an option for choosing a
12:02 19 currency; do you recall that?

12:02 20 A. I don't recall that.

12:02 21 Q. Okay. And then the next option
12:02 22 is the daily budget option. Do you see that?

12:02 23 A. Yes.

12:02 24 Q. And there was an option for a
12:02 25 daily budget at the time that you signed up;

1 H. Stern

12:02 2 correct?

12:02 3 A. Yes.

12:02 4 Q. And when you first signed up,
12:02 5 what daily budget did you enter?

12:02 6 A. I believe, \$10.

12:02 7 Q. And how long did you have the
12:02 8 \$10 daily budget, as best as you can recall?

12:02 9 A. Several months, at a minimum. I
12:02 10 know that I increased it to \$15. I can't
12:02 11 recall when that happened.

12:02 12 Q. Okay. And on this particular
12:02 13 exhibit, I'll represent to you that on the
12:03 14 current sign-up program for Google that if
12:03 15 you see the term "the daily budget," there is
12:03 16 a question mark thereafter. There is a link
12:03 17 to a definition of daily budget.

12:03 18 Do you recall looking at any
12:03 19 links or any definitions of daily budgets
12:03 20 when you signed up for the AdWords program?

12:03 21 A. I don't recall that there was an
12:03 22 option like they have here to do that.

12:03 23 Q. Okay. And did you -- did you
12:03 24 look at any definitions to the daily budget,
12:03 25 whether through that option or otherwise,

1 H. Stern

12:03 2 when you signed up for the Google AdWords
12:03 3 program?

12:03 4 A. No, daily budget seemed
12:03 5 self-explanatory. I had no reason to look up
12:03 6 what daily budget meant.

12:03 7 Q. Okay. And other than reading
12:03 8 the information that was displayed to you --
12:03 9 well, backing up. Did you read the
12:03 10 information that described the daily budget
12:03 11 when you signed up?

12:04 12 A. I don't know what you mean by
12:04 13 the information describing -- I don't know
12:04 14 where that would have been located.

12:04 15 Q. There was -- there was a box
12:04 16 that you filled in where you put in the \$10;
12:04 17 right?

12:04 18 A. Yes.

12:04 19 Q. Okay. And there was some -- do
12:04 20 you recall that there was in fact some text
12:04 21 surrounding that box?

12:04 22 A. Nothing other than perhaps daily
12:04 23 budget.

12:04 24 Q. Okay. So as you sit here today,
12:04 25 the only text that you recall that

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H. Stern

surround -- that accompanied the box where
you entered the daily budget was the term
"daily budget"?

A. I can't say for sure if there
was other words or text surrounding it, but I
believe there was a box for daily budget, and
that's about all I can recall.

Q. Okay. And do you recall that
you read any text surrounding the box that
defined the daily budget?

A. I'm sure I read any words that
surround the daily budget. I can't say that
I clicked on any hot links associated with
those words.

Q. Then Exhibit 9 is a two-page
document.

(Exhibit No. 9, Google screen
shot, Google AdWords. Review Your
Selections, marked for identification
as of this date.)

Q. It says on the top, "Google
AdWords. Review Your Selections."

And do you recall that there was
an option when you signed up for the AdWords

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H. Stern

it was negotiable, and a lot of this is legal boilerplate that I didn't see I needed to read.

Q. And did you believe at the time that you were bound by those standard terms and conditions?

A. I believed that by giving my credit card out and accruing charges I would be bound to pay for them, yes. But not that I read each and every one of these terms and am bound to those, because, I said before, I didn't read the terms.

Q. Okay. So whether you read -- whether you read them or not, my question is different. Is it -- my question is, did you believe at the time that you were bound by those standard terms and conditions?

A. I don't recall acknowledging that I did, so I can't say that I was bound by something that I don't recall admitting that I acknowledged.

Q. Okay. And as we sit here today, do you believe that as a member of the AdWords program that you are bound by the

1 H. Stern

12:21 2 standard terms and conditions?

12:21 3 A. If it's necessary to be in the
12:21 4 AdWords program, yes.

12:21 5 Q. And there's -- are you familiar
12:21 6 with a feature of the Google AdWords program
12:21 7 known as "Frequently Asked Questions"?

12:21 8 A. Yeah. I'm familiar with FAQ's.

12:21 9 Q. Okay. Have you ever looked at
12:21 10 the FAQ's?

12:21 11 A. I'm sure I have. I can't recall
12:21 12 which one.

12:21 13 Q. Okay. And how often have you
12:21 14 looked at the FAQ's?

12:21 15 A. I can't say what number. I
12:22 16 can't give a range. I can say that I have
12:22 17 looked at them, but I can't say how often or
12:22 18 which ones.

12:22 19 Q. Have you spent more than five
12:22 20 minutes looking at the FAQ's?

12:22 21 A. Over the course of three years,
12:22 22 I would say that's not unreasonable.

12:22 23 Q. More than an hour?

12:22 24 A. I can't imagine I spent more
12:22 25 than an hour.

1 H. Stern

12:22 2 Q. Somewhere between five minutes
12:22 3 and an hour?

12:22 4 A. I can't say for sure. I mean,
12:22 5 I'm -- I would be guessing if I -- you know,
12:22 6 over the course of three years if somebody
12:22 7 were to have clocked me every time I looked
12:22 8 at it and added it up, it might have gone
12:22 9 over an hour. But my gut feeling is I didn't
12:22 10 spend a huge amount of time looking at each
12:22 11 and every FAQ because there were hundreds and
12:22 12 hundreds of them. So I really don't want to
12:22 13 commit to a time.

12:22 14 Q. Okay. Have you ever printed out
12:22 15 any FAQ's?

12:22 16 A. Not that I recall.

12:23 17 Q. And the times that you have
12:23 18 looked at the FAQ's, what has prompted you to
12:23 19 look at the FAQ's?

12:23 20 A. Maybe a billing question.

12:23 21 Q. And is that -- when you say
12:23 22 "Maybe," you know in fact that you have
12:23 23 because of a billing question, or that's just
12:23 24 a guess?

12:23 25 A. Well, I changed my credit card

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H. Stern

so I probably wanted to know how to do that
and a frequently asked question would be "How
do you change your credit card." That would
be a good example of why I would look at an
FAQ.

Q. Have you ever looked at the
FAQ's to gain additional information about
daily budgets?

A. I can't recall doing that.

Q. Do you recall looking at any
FAQ's that pertained to the daily budget?

A. I recall getting an e-mail from
Google describing the daily budget. And that
may have prompted me to look at an FAQ, but I
can't say for sure if I looked at one before
I got the e-mail.

Q. Okay. And do you know, in fact,
whether you did look at an FAQ relating to
the daily budget after you received the
e-mail from Google?

A. I think I might have. I can't
say for certain that I did. May I say
something?

Q. Sure.

1 H. Stern

12:24 2 A. When you say "FAQ," would a
12:24 3 hyperlink question mark be considered an FAQ?

12:24 4 Q. I'm referring to the documents
12:24 5 that are specifically known as FAQ's. Have
12:25 6 you -- okay.

12:25 7 A. Okay.

12:25 8 Q. Have you looked at the hyperlink
12:25 9 question mark?

12:25 10 A. Yes.

12:25 11 Q. Okay. And when did you do that?

12:25 12 A. A few days ago when I noticed
12:25 13 it.

12:25 14 Q. Okay. And -- the hyperlink
12:25 15 question mark relating to the daily budget;
12:25 16 correct?

12:25 17 A. Yes.

12:25 18 Q. And as we sit here today, other
12:25 19 than a few days ago looking at the hyperlink
12:25 20 question mark relating to the daily budget,
12:25 21 and other than the e-mails, any other
12:25 22 recollection of looking at information
12:25 23 provided by Google pertaining to the daily
12:25 24 budget?

12:26 25 A. I don't recall.

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H. Stern

MR. BIDERMAN: This would be a good time for me to take five minutes.

THE VIDEOGRAPHER: The time is 12:30 p.m. We're off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 12:43 p.m. We're back on the record.

BY MR. BIDERMAN:

Q. I'm going to show you a document which we're going to mark as next in order, which is Exhibit 14. It's entitled "Google AdWords Daily Budget." A one-page document.

(Exhibit No. 14, Google screen shot, Google AdWords Daily Budget, marked for identification as of this date.)

Q. Take a look at that document.

A. Okay. Okay.

Q. And do you recall that that's, in fact, the text that you saw a couple of days ago when you hit the hyperlink on the question mark?

A. It seems similar, yes.

Q. Okay. And that -- that text

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states that "On a single day the AdWords system may deliver up to 20 percent more ads than your daily budget calls for."

Do you see that statement?

A. Yes, I do.

Q. Okay. And you saw that statement at the time that you looked at it a few days ago?

A. I believe this is similar, yes.

Q. Okay. And prior to that time, did you have an understanding one way or the other about what -- how a daily budget worked?

A. When I signed up, this was not something I saw, so I only knew a daily budget when I signed up based on just seeing the words "daily budget."

Q. Okay. And when you signed up -- okay. And other than this Exhibit 14 and the e-mails that you've received from Google and whatever text appeared in the box where you entered the daily budget, have you received any other information, you, yourself, read any other information describing how a daily

1 H. Stern

12:43 2 budget works?

12:43 3 A. Nothing, other than what you
12:43 4 just said.

12:43 5 Q. Okay. And so you never read any
12:43 6 FAQ's concerning a daily budget?

12:43 7 A. I don't recall reading them.

12:44 8 Q. Okay. And then I'll show you a
12:44 9 document that is -- is a printout of the
12:44 10 FAQ's that were available at the time that
12:44 11 you signed up. Represent to you. It's a
12:44 12 document that's entitled "Basics
12:44 13 4-14-03.html." Bates No. GOOG-HN-20823
12:44 14 through 21335.

12:44 15 (Stern Exhibit No. 15, document
12:44 16 entitled: Basics 4-14-03.html, bearing
12:44 17 Bates No.~GOOG-HN-20823 through
12:44 18 GOOG-HN-21335, marked for
12:44 19 identification as of this date.)

12:44 20 A. Page?

12:44 21 Q. Good question. It should be
12:45 22 20888. That's the page I'm referring to.
12:45 23 I'm sorry, it's the second document in these
12:45 24 attachments. I didn't realize when I marked
12:45 25 these --

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A. I have 20888.

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Q. Okay. Good. And do you see

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that there's -- that page states, question

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No. 1, "What is a daily budget?"

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Do you see that?

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A. Yes.

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Q. And question No. 2 is, "Why did

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I receive more clicks than my daily budget on

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a particular day?"

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Do you see that?

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A. Yes.

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Q. And do you see the text that

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states, the second sentence of the first

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paragraph, "To account for this and maximize

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the potential for your advertising, Google

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may allow up to 20 percent more clicks in one

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day than your daily budget specifies."

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Do you see that?

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A. Yes.

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Q. And as you look at this text,

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sir, do you have any recollection of reading

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this text prior to today?

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A. I believe something like this

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was similar in e-mails that I received from

1 H. Stern

12:46 2 AdWords.

12:46 3 Q. Okay. And prior to receiving
12:46 4 the e-mails from AdWords, did you -- did you
12:46 5 review this text prior to that time?

12:46 6 A. No, I never saw this prior to
12:46 7 that.

12:46 8 Q. And as we sit here today, do you
12:46 9 understand, in fact, that the way the AdWords
12:46 10 program works, that Google may allow up to
12:46 11 20 percent more clicks in one day than your
12:46 12 daily budget specifies?

12:47 13 A. It seems to be in the FAQ's.

12:47 14 Q. Okay. And if you take a look at
12:47 15 the term -- take a look at Exhibit 13, sir.

12:47 16 A. Oh, 13?

12:47 17 Q. Yes. That's the one that's
12:47 18 previously been marked. If you look at the
12:47 19 introduction there, the first paragraph under
12:47 20 the heading, do you see the statement that
12:47 21 says, "This agreement between you and Google,
12:47 22 Inc., consists of these AdWords standard
12:47 23 terms and conditions and the Google AdWords
12:47 24 program Frequently Asked Questions."

12:47 25 Do you see that?

1 H. Stern

12:47 2 A. Yes.

12:47 3 Q. And, sir, is it your

12:47 4 understanding that your agreement with Google

12:47 5 contemplates that the daily budget may

12:47 6 deliver -- I'm sorry, that Google may deliver

12:47 7 up to 20 percent more clicks in one day than

12:48 8 your daily budget specifies?

12:48 9 A. That's what the FAQ's state.

12:48 10 Q. Okay. And is it your

12:48 11 understanding that that is your agreement

12:48 12 with Google as part of the AdWords program?

12:48 13 A. I would say if I agreed to these

12:48 14 terms and conditions, yes.

12:48 15 Q. And -- and do you believe that

12:48 16 Google has ever charged you for an amount in

12:48 17 excess of --

12:48 18 MR. BIDERMAN: Withdraw that

12:48 19 question.

12:49 20 Q. Let me -- do you believe that

12:49 21 Google has ever charged you in excess of

12:49 22 120 percent of your daily budget for

12:49 23 advertising for one day?

12:49 24 A. Yes.

12:49 25 Q. Okay. And what made you reach

1 H. Stern

12:49 2 that conclusion?

12:49 3 A. I ran a report that showed me my
12:49 4 daily budget and the amount I was charged for
12:49 5 that day. And I found many instances where
12:49 6 it was well in excess of 120 percent.

12:49 7 Q. Okay. And did you provide a
12:49 8 copy of that report to your counsel?

12:49 9 A. It was a spreadsheet.

12:49 10 Q. Yes.

12:49 11 A. Yes.

12:49 12 Q. Okay. And I'll show you a
12:50 13 document -- and the spreadsheet that was run,
12:50 14 was it one that you did on Excel?

12:50 15 A. It was saved in Excel from an
12:50 16 AdWords report.

12:50 17 Q. Okay. And do you -- is that
12:50 18 spreadsheet still part of your AdWords
12:50 19 profile, if you know?

12:50 20 A. I don't know what you mean by my
12:51 21 profile.

12:51 22 Q. Is it still -- is it still
12:51 23 resident on your AdWords program?

12:51 24 A. I didn't purposely save it, I
12:51 25 just ran it and looked at it. I don't think

1 H. Stern

13:01 2 A. Yes. That's the percent the
13:01 3 cost exceeded the daily budget.

13:01 4 Q. Okay. And these campaigns --
13:01 5 did the campaign run every day?

13:01 6 A. No.

13:01 7 Q. Okay. You had paused your
13:01 8 campaign; is that correct?

13:01 9 A. Yes.

13:01 10 Q. And how often do you pause your
13:01 11 campaign?

13:01 12 A. I pause it every day that I have
13:01 13 it running, and I may keep it paused until I
13:01 14 restart the campaign.

13:01 15 Q. And why do you pause the
13:02 16 campaign?

13:02 17 A. To prevent the ads from
13:02 18 appearing.

13:02 19 Q. And is there any particular
13:02 20 reason why you pause it on certain days
13:02 21 versus others?

13:02 22 A. I pause it on the weekends
13:02 23 because I don't think people are going to be
13:02 24 responding, and I'm not available to work on
13:02 25 these problems on the weekends.

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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 H. Stern

13:03 2 billing, as an example, may not refer to all
13:03 3 charges in June. It may refer to some in May
13:03 4 and some in June. So I really have never
13:03 5 reconciled it to the penny.

13:03 6 Q. Okay. And the times that
13:03 7 you've -- when you have attempted to try to
13:03 8 reconcile the cost that appears on the credit
13:03 9 card versus the cost that -- I'm sorry, the
13:04 10 charges that appear on the credit card --

13:04 11 MR. BIDERMAN: Let me withdraw
13:04 12 the question.

13:04 13 Q. The times that you've attempted
13:04 14 to reconcile the charges that appear on the
13:04 15 credit card against the information that's
13:04 16 described as "Cost" on the AdWords program,
13:04 17 how have you done so?

13:04 18 A. I try to come up with a month's
13:04 19 worth of costs and link it to a charge of the
13:04 20 same amount.

13:04 21 Q. Okay. And have you been able to
13:04 22 do that?

13:04 23 (Telephone interruption.)

13:05 24 A. I don't recall if I was able to
13:05 25 do it exactly, to get an exact

1 H. Stern

13:05 2 reconciliation.

13:05 3 Q. Did you do that on a computer or
13:05 4 by hand?

13:05 5 A. Oh, on a computer.

13:05 6 Q. Did you do it on a computer or
13:05 7 by hand?

13:05 8 A. On a computer.

13:05 9 Q. Okay. And have you saved the
13:05 10 calculations that you've done on that
13:05 11 computer?

13:05 12 A. No.

13:05 13 Q. And have you saved the credit
13:05 14 card charges?

13:05 15 A. Not my statements.

13:05 16 Q. And how many times have you
13:05 17 tried to do that kind of reconciliation?

13:05 18 A. At least once. I don't think I
13:05 19 tried it more than once or twice.

13:06 20 Q. Okay. And on any of the days
13:06 21 entered here, did you change the daily budget
13:06 22 during the course of the day?

13:06 23 A. I don't recall.

13:06 24 Q. And, for example, on 8/19,
13:06 25 2004 -- sometime between --

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MR. BIDERMAN: Withdraw that

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question.

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Q. Were you running ads on --

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referring back to Exhibit 18, were you

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running ads on days during this time period,

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other than the days that are reflected on

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this document?

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A. Yes.

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Q. And why are those days not

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listed here?

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A. Because they were neither over

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budget or 20 percent over budget.

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Q. Okay. And do you have a record

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of the days that you were paused?

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A. Not explicitly.

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Q. When you say "Not explicitly,"

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what do you mean?

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A. I have days that I know I ran,

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so the days that were not the days that I ran

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were the days that I was paused.

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Q. Okay. And the days that you ran

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appear in the AdWords profile?

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A. They appear in the report, the

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entire report.

1 H. Stern

13:07 2 Q. Okay. So just backing up, I
13:07 3 take it there's a larger document from which
13:07 4 this one, Exhibit 18, was generated, a larger
13:07 5 report?

13:07 6 A. Yes.

13:07 7 Q. Okay. And where is that report?

13:07 8 A. On the spreadsheet.

13:07 9 Q. Okay. And is that the
13:07 10 spreadsheet that you gave to counsel?

13:07 11 A. Yes.

13:07 12 Q. Okay. I must have misunderstood
13:07 13 you. And then how was this Exhibit 18
13:08 14 prepared from the spreadsheet that you gave
13:08 15 to counsel?

13:08 16 A. It was an extract of only those
13:08 17 days that were either over budget or
13:08 18 20 percent over budget.

13:08 19 Q. Okay. And did you -- did you
13:08 20 yourself do the extract?

13:08 21 A. Yes.

13:08 22 Q. And, again, you did this
13:08 23 approximately a month ago?

13:08 24 A. Yes.

13:08 25 Q. And how long did it take for you

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H. Stern

to do that?

A. A minute.

Q. Okay.

MR. BIDERMAN: Off the record.

(Discussion off the record.)

Q. And this arrow here that's entered on Exhibit 18 next to 12/14, 2003 --

A. Yes.

Q. -- is that your handwriting?

A. Yes.

Q. What does that signify?

A. That's the worst overcharging by AdWords on a daily basis.

Q. Okay. And the 97 and 36, I take it those are totals; is that correct?

A. Right. There were 97 days that I was over budget, charged over my budget, and 36 days that I was charged 20 percent over my budget.

Q. Okay. And based on your understanding of the terms and conditions of the AdWords program, do you agree, sir, that if you were charged up to 120 percent of your daily budget for a given day that that is not

1 H. Stern

13:11 2 A. No.

13:11 3 Q. Okay. And the larger

13:11 4 spreadsheet that you have, I take it that

13:11 5 would reflect all of the days that you were

13:11 6 running ads during the time period from

13:11 7 October 2003 through February 23, 2006; is

13:11 8 that correct?

13:11 9 A. That was every day that showed

13:11 10 up, yes.

13:11 11 Q. Okay. And are you continuing to

13:11 12 run advertisements on the Google search

13:11 13 engine?

13:11 14 A. Very rarely.

13:12 15 Q. And are you familiar with the

13:12 16 term "overdelivery credits"?

13:12 17 A. Somewhat.

13:12 18 Q. Okay. What's your understanding

13:12 19 of the term "overdelivery credits"?

13:12 20 A. If you were charged more than

13:12 21 you were supposed to, you'd get a credit

13:12 22 back.

13:12 23 Q. Okay. And have you -- in

13:12 24 preparing this Exhibit 18, have you made any

13:12 25 effort to try to look at any overdelivery

1 H. Stern

14:29 2 Yeah, I see that.

14:29 3 Q. And do you see the second

14:29 4 sentence -- well, do you see it states,

14:29 5 "Though it sometimes -- "Though it may

14:29 6 sometimes appear that your daily budget is

14:29 7 being exceeded, that usually isn't the case.

14:29 8 Here's why: Our system works to deliver

14:29 9 enough ads to fully satisfy your daily budget

14:30 10 over the course of each month. That is your

14:30 11 daily budget times the total number of days

14:30 12 in the month. Because page views fluctuate

14:30 13 from day to day, we may overdeliver ads at a

14:30 14 given day to make up for potential shortfalls

14:30 15 in the month. For instance, if you budget

14:30 16 U.S. \$100 per day in a 30-day month you may

14:30 17 receive more than U.S. \$100 in clicks on a

14:30 18 given day, but the maximum you would pay is

14:30 19 U.S. \$3,000 for that month."

14:30 20 Do you see that?

14:30 21 A. Yes, I do.

14:30 22 Q. And is it your understanding

14:30 23 that the maximum amount per month that Google

14:30 24 agrees to charge is the number of days per

14:30 25 month times the daily budget for that month?

1 H. Stern

14:30 2 A. No. I was under the assumption
14:30 3 that it was related to the number of days
14:31 4 your ad is active, and that each day you
14:31 5 wouldn't be charged more than your daily
14:31 6 budget.

14:31 7 Q. Okay.

14:31 8 A. Because I never run my ads
14:31 9 everyday. So this really doesn't apply to my
14:31 10 situation.

14:31 11 Q. And what made you believe that
14:31 12 you would -- that the days that your campaign
14:31 13 was paused would not be included in that
14:31 14 calculation?

14:31 15 A. Well, for the simple reason that
14:31 16 this is -- this AdWords is put forward as
14:31 17 something that gives me complete control over
14:31 18 my charges, so I thought -- thought it was
14:31 19 reasonable to assume, if I'm not running my
14:31 20 ads, why would I be charged for days that I'm
14:31 21 turning them off.

14:31 22 Q. Okay. And did you -- have you
14:31 23 ever seen any documentation that stated,
14:32 24 documentation from Google, that stated that
14:32 25 the days where your campaign was paused would

1 H. Stern

14:32 2 not be factored into that calculation?

14:32 3 A. As a matter of fact, I was shown
14:32 4 a screen shot by one of the attorneys that
14:32 5 specifically said you're only charged for the
14:32 6 days your ad is active.

14:32 7 Q. And that's in a document -- and
14:32 8 that's a document that is part of --

14:32 9 MR. BIDERMAN: Withdraw that
14:32 10 question.

14:32 11 Q. Other than having seen that
14:32 12 document from your attorneys, have you seen
14:32 13 any other documents that you believe state
14:32 14 that the days that your campaign is paused do
14:32 15 not figure into that calculation?

14:32 16 A. I would say that it's -- I don't
14:32 17 know the best word's implicit in the way this
14:33 18 is billed, you're billed day by day. If you
14:33 19 don't have it on, you're not billed. That
14:33 20 makes me think that if I'm not billed, it's
14:33 21 not added in in any way, so it would not be
14:33 22 included in the monthly calculation. It's
14:33 23 literary just a day that I'm not using the
14:33 24 service and I'm not charged for it.

14:33 25 Q. And other than that, the

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H. Stern

implicit statement, can you cite any other documentation, other than the document that you cited, that causes you to believe that the calculation does not include days that your campaign is paused?

A. I don't recall any others.

Q. And do you know, sir, whether you have been charged more than the daily budget times the number of days that your campaign was unpaused over the course of a month?

A. I don't think I did that specific calculation.

Q. Okay. Have you ever run that calculation?

A. I just said, I don't think I did that specific --

Q. Okay. And as you sit here today, do you know whether, in fact, you were ever charged in excess of that amount?

A. Well, day by day I believe I was overcharged.

Q. Okay.

A. Because that's what this

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

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H. Stern

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here today, whether you have been charged in

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excess of that amount?

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A. I don't know.

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Q. And is there any reason you have

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not run such a calculation?

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A. I was concentrating mainly on

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the daily budget. So I didn't do any other

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calculation. What struck me as being

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something that shouldn't have occurred was

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the fact that on 97 days I was charged more

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than I thought I was going to be charged. I

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wasn't interested in multiplying it by the

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number of days active.

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On a day-by-day calculation,

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which is the way I view this charging to

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occur, I was charged more than my daily

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budget. I wasn't calculating things on a

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monthly basis. This whole thing was

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presented as a daily budget, and a daily

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calculation is what was important.

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Q. And have you ever received any

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assistance from anyone in terms of learning

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how to use the AdWords program?

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A. Nothing more than I figured out

1 H. Stern

14:37 2 from the web site itself.

14:37 3 Q. Okay. And have -- did you ever
14:37 4 look at any tutorials for the AdWords
14:37 5 program?

14:37 6 A. I may have looked at them, but I
14:37 7 don't think I spent a lot of time with it. I
14:37 8 thought I had figured out essentially by
14:37 9 myself. There was nothing really that I
14:37 10 needed to do. And the tutorials were often
14:37 11 for sophisticated -- things like multiple
14:37 12 campaigns, maybe different languages. None
14:37 13 of that applied in my case.

14:37 14 Q. I'm going to show you some other
14:37 15 documents which, hopefully, for convenience
14:37 16 we've tabbed. What I'll do is I'll mark the
14:38 17 entire set of documents as next in order,
14:38 18 which would be Exhibit 20. And the documents
14:38 19 consist of copies of e-mails behind tabs
14:38 20 numbered 1, 2, 3, 4, 5, and 6.

14:38 21 (Stern Exhibit No. 20, copies of
14:38 22 e-mails, marked for identification as
14:38 23 of this date.)

14:39 24 A. Okay.

14:39 25 Q. If you look under those tabs,

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H. Stern

you'll see correspondence dated October -- at
the -- it's a little -- it's a little
counterintuitive to read, because it's a
series of e-mail trails. But the top e-mail
is dated 10 October 2003, and appears to be a
response to an e-mail that you sent on
9 October 2003. Do you see that?

A. Yes, I do.

Q. Okay. And on 9 October 2003 you
wrote to Google; correct?

A. Yes.

Q. And how'd you know who to write
to at Google?

A. I'm sure there was something, a
help contact desk, something along those
lines. Maybe on the monthly bill there was a
hot link if you had any questions. I can't
recall exactly, but I'm sure I sent it to the
correct e-mail address.

Q. Okay. And when you say on the
monthly bill, do you -- other than your
billing summaries that are available for your
viewing on the web site, do you receive a
monthly bill from Google, monthly basis?

1 H. Stern

14:40 2 A. I don't recall with any
14:40 3 certainty that I recall an e-mail
14:40 4 confirmation. I mean, I can't say for a fact
14:40 5 that I do or not. I know that I get
14:40 6 something from my e-mail provider, and I
14:40 7 don't want to confuse the two.

14:41 8 In other words, every month I
14:41 9 get a statement saying, you know, your ISP is
14:41 10 charging you whatever. I don't think I get
14:41 11 that from Google. I think it just shows up
14:41 12 on my credit card.

14:41 13 Q. Oh, and by the way, just an
14:41 14 aside. Have you ever used anyone to help
14:41 15 optimize your advertising campaign?

14:41 16 A. No. None whatsoever. No.

14:41 17 Q. And going back to this e-mail,
14:41 18 on 9 October 2003, you wrote to Google and
14:41 19 said, "I have a \$10-a-day budget, but on
14:41 20 10/8/03 the cost was over 15. I thought the
14:41 21 listings would go off line once the budget
14:41 22 was reached. What happened?"

14:41 23 Do you see that?

14:41 24 A. Yes, I do.

14:41 25 Q. And then the response came on

1 H. Stern
14:41 2 10 October 2003. And you were told by Google
14:41 3 that, among other things, that "As traffic is
14:42 4 never constant from day to day, it is
14:42 5 possible that you may accrue charges above or
14:42 6 below your set limit."

14:42 7 Do you see that?

14:42 8 A. Yes.

14:42 9 Q. And that "Our system makes sure
14:42 10 that in a given billing period, you are never
14:42 11 charged more than the number of days in that
14:42 12 month multiplied by your daily budget. That
14:42 13 amount equals your monthly budget."

14:42 14 Do you see that?

14:42 15 A. Yes.

14:42 16 Q. "For clicks accrued over your
14:42 17 daily budget, you will see an overdelivery
14:42 18 credit on the billing summary page under 'My
14:42 19 Account' tab. This credit will appear at the
14:42 20 end of your billing period."

14:42 21 Is that correct?

14:42 22 A. I see that, yes.

14:42 23 Q. And your best recollection is,
14:42 24 you've looked on the billing summary page
14:42 25 under the "My Account" tab and have not seen

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H. Stern

overdelivery credits?

A. Yes.

Q. And after you were told by

Google that you could accrues charges above

or below your set limit, you continued to use

the Google program; correct?

A. Yes, I continued to use it.

It's being used possibly today, yes.

Q. Okay. And it is correct to say

that you understood, certainly as of

10 October 2003, that you could accrue

charges above or below your set limit?

A. I never thought that I would be

billed for them. Accruing and being charged

for them are two different things. I saw

that I was accruing charges over my daily

budget. I never thought that I would be

billed for those, especially since I never

received any overdelivery credits. I was

both accruing and being charged for more than

my daily budgets every single -- many times.

Q. Okay. And then, with respect to

the -- and, in fact, on October 21, which was

11 days after you received this

1 H. Stern

15:08 2 a real person.

15:08 3 Q. And when you're saying -- now,
15:08 4 did you -- now, are you saying that you gave
15:08 5 up communicating because you didn't like the
15:08 6 response or -- is that what you're saying?

15:08 7 A. It's not that I didn't like it,
15:08 8 it was just the same response over and over
15:08 9 and over again. I wasn't getting to what I
15:08 10 thought the problem was. All I was getting
15:08 11 was a rehashing of what I had seen in
15:09 12 previous e-mails. I wasn't getting anybody
15:09 13 who was literally saying any more than what
15:09 14 was in the FAQ's. That's all I was getting,
15:09 15 was just a regurgitation of the FAQ's.

15:09 16 Q. Okay. And it's your -- we'll go
15:09 17 through it, okay.

15:09 18 And then, again, you, on
15:09 19 October -- going to page 2 of 12.

15:09 20 A. Okay.

15:09 21 Q. On October 22nd, 2003, Bradley,
15:09 22 fictitious or --

15:10 23 A. Let's give him the benefit of
15:10 24 the doubt.

15:10 25 Q. Okay. No, seriously, is there

1 H. Stern

15:10 2 any doubt in your mind that there's somebody
15:10 3 named Bradley on the Google AdWords team?

15:10 4 A. No, the only doubt I have is
15:10 5 that he probably is told not to spend more
15:10 6 than five seconds responding to every single
15:10 7 e-mail he gets or they're never going to get
15:10 8 done with the day.

15:10 9 I mean, a lot of this is cut and
15:10 10 paste. It's not somebody sat down and wrote
15:10 11 from their own words. You know, having read
15:10 12 my, you know, responses exactly what my issue
15:10 13 was. A lot of it was just bounce this back.
15:10 14 It's related and it's in our FAQ's and that
15:10 15 was the end of it. That's -- after a few
15:10 16 e-mails, the sense of what I was going to be
15:10 17 getting, and that seems to be all I've
15:10 18 gotten.

15:10 19 Q. Okay. And did it ever occur to
15:10 20 you that the reason that you were being told
15:10 21 this was because, in fact, you were going to
15:10 22 be charged, that is, that you were going to
15:10 23 be charged, that is, you were going to be
15:10 24 billed and paid up to 120 percent of your
15:11 25 daily budget on a given day?

1 H. Stern

15:11 2 A. Well, no. These FAQ's are
15:11 3 inconsistent. One section says one thing and
15:11 4 it's contradicted by the next section. All I
15:11 5 was getting was the next section in the
15:11 6 e-mails. I was never getting the part that
15:11 7 was agreeing with my point. I was always
15:11 8 getting the part that disagreed with me
15:11 9 point. So I was sticking with the part that
15:11 10 I thought was correct, not what they told me
15:11 11 was correct.

15:11 12 Q. And in addition to telling you
15:11 13 what they thought was correct, Google was
15:11 14 also charging you in the way that they
15:11 15 thought was correct; correct?

15:11 16 A. Yes.

15:11 17 Q. And that was in excess of your
15:11 18 daily budget on a number of days; correct?

15:11 19 A. Yes, definitely.

15:12 20 Q. And then, again, when Bradley
15:12 21 wrote back to you, again, on 10/22/03, he
15:12 22 said, second sentence, "However, it is nearly
15:12 23 impossible to predict user behavior,
15:12 24 therefore, though, try to stay within your
15:12 25 budget as much as possible. There may be

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H. Stern

you have a daily budget that you're not going to have exceeded in one paragraph, and then in another paragraph they talk about a monthly budget, which has nothing to do with a daily budget. And they seem to be billing you on their monthly billing interpretation, when I'm looking at the daily budget interpretation, which is what I key in on.

Q. What you personally key in on?

A. What I believe is the whole point of this AdWords program is that it's a daily type of complete-control advertising scheme, where you have very fine control over your charges down to the daily level, and that's what they present as -- as the main feature of their program. And yet they, on the back end at the end of the month, they sort of throw that out and just charge you monthly.

Q. Okay. And you will agree that after your correspondence in November 20th, 2003, which is the last document we talked about, you understood that, notwithstanding what you believed to be the case, Google

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H. Stern

believed that it could charge up to
120 percent of your daily budget?

A. They said they can deliver. I
don't think they say they can charge.

Q. Okay. But then, in addition to
what they said, you have what they did;
right?

A. Well, right. I mean, that's
history.

Q. That's right. And that's
history that was available to you on a daily
basis, correct, on your billing summary?

A. Right. Every month I could see
what they charged me, if that's what you
mean. I could look at it on a daily basis.
I can look at it any time I want.

Q. Right. And it's updated more
than monthly; correct?

A. Well, the monthly charges
aren't, but the daily charges come in a day
or so late, but probably, yes.

Q. So every day you had access
to --

A. I could see what they were

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H. Stern

15:38 2 delivering. I don't know that they're going
15:38 3 to be -- unless they changed their policy,
15:38 4 I'm not sure if they're going to charge me
15:38 5 for that, but I could see what was delivered.

15:38 6 Q. And then at the end of the
15:38 7 month --

15:38 8 A. At the end of the month it
15:38 9 realized as a charge.

15:38 10 Q. Okay. So by the end of the
15:38 11 month you knew that you could be charged in
15:38 12 excess of that amount; correct?

15:38 13 A. I saw that, but I didn't agree
15:38 14 with it. But I saw that.

15:38 15 Q. Right. And so you saw that --
15:38 16 for example, you saw that at the end of
15:38 17 November 2003; correct?

15:39 18 A. I believe, yes. They charged me
15:39 19 more than I felt was what they were supposed
15:39 20 to charge me.

15:39 21 Q. And you continued to use the
15:39 22 Google site; correct?

15:39 23 A. With modifications to my use of
15:39 24 it.

15:39 25 Q. And those modifications were

1 H. Stern

15:39 2 what?

15:39 3 A. Well, at the very least, I would
15:39 4 not assume that the daily budget would kick
15:39 5 in, that I would have to manually shut off my
15:39 6 campaign to stay within the daily budget,
15:39 7 even though it -- even though the program
15:39 8 seemed to do that automatically for you, I
15:39 9 found out that it doesn't do that, but I
15:39 10 could do it myself.

15:39 11 Q. So did you -- okay. And then
15:39 12 you also saw that in December of 2003 you
15:39 13 were overcharged; correct? You believe you
15:39 14 were overcharged; correct?

15:39 15 A. I believe every month that
15:39 16 includes an item here I was overcharged.

15:40 17 Q. Okay. That would be
15:40 18 December 2003?

15:40 19 A. That's included, right, yes.

15:40 20 Q. And you continued to use the
15:40 21 Google system; correct?

15:40 22 A. Yes.

15:40 23 Q. And then January 2004 you
15:40 24 believe you were overcharged; correct?

15:40 25 A. January 2004.

1 H. Stern

15:45 2 Google?

15:45 3 A. No, I haven't.

15:45 4 Q. And with respect to your belief
15:45 5 that you were overcharged, other than your
15:45 6 lawyers, who else have you talked to about
15:45 7 this belief?

15:45 8 A. I believe I mentioned it to my
15:45 9 wife.

15:45 10 Q. Anybody else?

15:45 11 A. I can't say with certainty who I
15:45 12 mentioned this to. You know, in the three or
15:45 13 so years that this has been bothering me, you
15:45 14 know, I know for a fact I mentioned it to my
15:45 15 wife. Maybe my parents. That's about all I
15:46 16 can say with any specificity.

15:47 17 Q. Let me show you a set of
15:47 18 documents which are marked or will be marked
15:47 19 as our next exhibit in order, which is 21.

15:47 20 (Stern Exhibit No. 21, current
15:47 21 version of FAQ's relating to AdWords,
15:47 22 marked for identification as of this
15:47 23 date.)

15:48 24 Q. I'll represent to you that this
15:48 25 is the current version as of, I guess,

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H. Stern

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yesterday of the FAQ's relating to AdWords,

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and just reference you to a couple of things.

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One is, if you turn to page 8 -- I'm sorry,

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page 134 of 489.

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A. 134. Okay.

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Q. In the middle of that, there's a

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question that says, "Why do I need to

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reaccept the AdWords terms and conditions?"

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A. Okay.

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Q. And it states there, "As a part

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of our ongoing effort to improve the Google

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AdWords program for new advertisers and

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users, we may periodically update the AdWords

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terms and conditions. All AdWords

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advertisers are required to accept these new

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terms and conditions in order to advertise

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with the AdWords program."

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Do you see that reference?

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A. Yes.

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Q. Does that refresh your

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recollection that on certain occasions you

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have been asked to accept new terms and

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conditions in order to continue to advertise

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with the AdWords program?

1 H. Stern

15:49 2 A. Yes, that's what I believe

15:49 3 happens all the time. Yes.

15:49 4 Q. And on any of those occasions --

15:49 5 and you, in fact, have accepted the new terms

15:49 6 and conditions; correct?

15:49 7 A. By the fact that I've logged on

15:50 8 to AdWords recently, I guess, yes.

15:50 9 Q. And clicked some kind of

15:50 10 acceptance; correct?

15:50 11 A. Of -- of the terms and

15:50 12 conditions, not accepting them all. There

15:50 13 are parts that I accept and other parts that

15:50 14 I disagree with that are contradictory to

15:50 15 what I've accepted.

15:50 16 Q. And how did you tell Google, at

15:50 17 the time that you did that acceptance, that

15:50 18 you were only accepting part of them?

15:50 19 A. It's a take-it-or-leave-it

15:50 20 acceptance. So I don't know the legality of

15:50 21 what happens when you accept things that are

15:50 22 internally inconsistent. That's what you're

15:50 23 going to fight out -- fight about. But I

15:50 24 accepted the collective terms by clicking on

15:50 25 it.

1 H. Stern

15:50 2 Q. Okay. Is it fair to say that
15:50 3 you believed that some of those terms were
15:51 4 wrong and were not part of your agreement
15:51 5 with Google?

15:51 6 A. I agreed -- I believe that they
15:51 7 were wrong. They were part of the agreement,
15:51 8 but they were contradictory to other terms.
15:51 9 So it's not that I disagreed with them -- I
15:51 10 disagreed with them. I didn't disagree that
15:51 11 they were part of the terms.

15:51 12 Q. Okay. And what terms -- what
15:51 13 terms do you think are contradictory to the
15:51 14 other terms?

15:51 15 A. There are terms that clearly
15:51 16 specify that you have a daily budget which
15:51 17 you're not going to have exceeded. That
15:51 18 contradicts the next paragraph which talks
15:51 19 about a monthly budget, which isn't related
15:51 20 to a daily budget.

15:51 21 Q. Okay.

15:51 22 A. So it's contradictory.

15:51 23 Q. So which terms were you
15:51 24 accepting when you clicked "I Accept"?

15:51 25 A. I was accepting, I suppose, all

1 H. Stern

16:15 2 budget for some days, closed quote?

16:15 3 A. They say that, but they also
16:15 4 tell me that they're not going to charge me
16:15 5 more than my daily budget. So, you know, I
16:15 6 mean, they say one thing and then they say
16:15 7 something different. You know, they're
16:15 8 telling me two things, you know, which are in
16:15 9 contradiction to each other.

16:16 10 MR. BIDERMAN: Can you read that
16:16 11 question back again or the answer back.

16:16 12 (Record read.)

16:16 13 Q. And have you seen --

16:16 14 MR. BIDERMAN: Withdraw the
16:16 15 question.

16:17 16 Q. And do you see anything in this
16:17 17 language, which is Exhibit -- which is the
16:17 18 paragraph on page 49 to Exhibit 19 which
16:17 19 says, "Why am I being charged more than my
16:17 20 daily budget on some days?"

16:17 21 Do you see anything in that
16:17 22 paragraph that limits its application to
16:17 23 those advertisers who advertise 30 days in a
16:17 24 30-day month?

16:17 25 A. Well, the example is built

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H. Stern

2 around somebody that seems to be running it
3 30 days out of the month.

4 Q. And, therefore, you believe that
5 this applies only to those who run 30 days in
6 a month?

7 A. It may apply, but I think I also
8 said that there are also people that may run
9 it 30 days in a month where this is more than
10 they actually should be paying.

11 Q. And, again, going back to the
12 times that you --

13 MR. BIDERMAN: Withdraw the
14 question.

15 Q. Okay. Going back to the times
16 that you reaccepted the AdWords terms and
17 conditions as part of your agreement to
18 continue to use the Google system, did you
19 understand that you're agreeing to accept all
20 of the FAQ's or just some of the FAQ's?

21 MR. LEVY: Can I hear the
22 question back.

23 (Record read.)

24 A. I suppose I accepted the ones
25 that I thought applied to me.

1 H. Stern

16:20 2 Q. And in doing so, with respect to
16:20 3 the FAQ that's -- that we've been talking
16:20 4 about that appears on page 49 which states,
16:20 5 "Why am I being charged more than my daily
16:20 6 budget on some day," did you believe that you
16:20 7 were accepting that or not accepting that?

16:20 8 A. I -- well, let me think about
16:20 9 what I'm going to say, because I just want to
16:20 10 make sure I say it the correct way. I
16:20 11 believe that if I had a choice I was either
16:20 12 accepting all or nothing. I accepted all of
16:20 13 them, but this did not apply to me. So I
16:20 14 don't know if I'm -- can you accept something
16:21 15 that doesn't apply to you.

16:21 16 Q. Did you communicate to Google in
16:21 17 any way or attempt to communicate to Google
16:21 18 in any way that you were accepting all those
16:21 19 terms and conditions, except that you
16:21 20 believed that the term -- I'm sorry, that the
16:21 21 FAQ that appears under the question, "Why am
16:21 22 I being charged more than my daily budget on
16:21 23 some day?" didn't apply to you?

16:21 24 A. No. I never specifically
16:21 25 pointed out. You know, there is a huge stack

1 H. Stern
2 of FAQ's, and I'm sure most of them don't
16:21 3 apply to me either. I didn't just cherrypick
16:21 4 the ones that I thought were applying to me
16:21 5 and telling them that these didn't. So I
16:21 6 didn't specify which ones I was agreeing to
16:21 7 or not agreeing to.

16:21 8 Q. Let me just look at my outline
16:22 9 before we let you go.

16:22 10 MR. BIDERMAN: I don't think I
16:22 11 have any other questions. I'm
16:22 12 concluded.

16:22 13 MR. LEVY: Okay. I have a few
16:22 14 questions.

16:22 15 EXAMINATION

16:22 16 BY MR. LEVY:

16:22 17 Q. Mr. Stern, it's your position, I
16:22 18 understand, that from the inception Google
16:22 19 was overcharging your account; is that
16:22 20 correct?

16:22 21 MR. BIDERMAN: Objection,
16:22 22 leading.

16:22 23 A. Yes. Every day that I saw a
16:22 24 charge more than my budget, I felt I was
16:22 25 being overcharged.

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H. Stern

Q. Why did you stick with Google?

A. They, to the best of my knowledge, were the only game in town. I didn't like the billing that Yahoo imposed, which was a minimum each month. Google certainly, I know, is a huge player in the market, so that's why I used them.

Q. Okay. I show you Exhibit 14.

Is this -- you see Exhibit 14 here in front of you?

A. Okay. Exhibit 14.

Q. Yes. Is that a screen similar to the screen you saw when you signed up?

A. No. I don't think this was similar to anything that I recall.

Q. Okay. Do you remember seeing a screen that talked about a daily budget when you signed up?

A. Everything was couched in terms of a daily budget.

Q. Did you ever see a screen that said "monthly budget" when you signed up?

A. Never.

Q. Okay. Let me show you

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H. Stern

Mr. Biderman that that example did not apply to you?

A. Right.

MR. BIDERMAN: Objection. Form.

Q. Why is that?

A. Because, first of all, I simply don't run my ads 30 days out of the month, so that in and of itself means this isn't some calculation that would apply to me.

Q. Does that example apply to anybody who pauses their ads and doesn't run it 30 days?

A. Could you repeat that, please.

MR. LEVY: Repeat the question.

(Record read.)

MR. BIDERMAN: Objection, vague.

A. I would think, unless you run it 30 days, it would not apply to you.

Q. Okay. And you also stated that even if someone ran it 30 days --

A. Right.

Q. -- that example may not be applicable?

A. Right.

1 H. Stern

16:31 2 Q. Why is that?

16:31 3 A. Here's a good example, a simple
16:31 4 example. Let's say you have a daily budget
16:31 5 of 10. One person consistently hits the \$10
16:31 6 budget, that's going to be 30 times 10.

16:31 7 Another person may go 12 and 8, 12 and 8, 12
16:31 8 and 8. That person would be charged 8 and
16:31 9 then 10 for the two days. That would be \$18
16:31 10 over the course of the month, not \$20. So
16:31 11 even if you do run it 30 days, that
16:31 12 calculation I think overcharges some people.

16:32 13 Q. So who are the people that that
16:32 14 example would apply to?

16:32 15 A. I think only those people that
16:32 16 every single day exceed their budget.

16:32 17 Q. Meet or exceed their budget?

16:32 18 A. Meet or exceed, right.

16:32 19 Q. And does the Q's and A's, to
16:32 20 your recollection, tell you how you would be
16:32 21 charged if you pause your ads?

16:32 22 A. I don't recall exactly if it's
16:32 23 in there. I do remember seeing you're not
16:32 24 going to be charged more than your daily
16:32 25 budget on a given day.

1 H. Stern

16:32 2 Q. And do you remember also seeing
16:32 3 that you will not be charged while your ad is
16:32 4 being paused?

16:32 5 MR. BIDERMAN: Objection.
16:32 6 Leading.

16:32 7 A. Unless it's pointed out to me, I
16:32 8 don't recall exactly where in the FAQ's that
16:33 9 would be.

16:33 10 Q. Look at Exhibit 19, page 26. It
16:33 11 states, "You can pause your ad campaign at
16:33 12 any time. You won't accrue charges while
16:33 13 your ads are paused, and they'll remain
16:33 14 paused until you resume them."

16:33 15 A. Okay, I see that now.

16:33 16 Q. Okay. When you told
16:33 17 Mr. Biderman that Q's and A's were sometimes
16:33 18 inconsistent, was that one of the provisions
16:33 19 that you had in mind?

16:33 20 A. I was mainly thinking --

16:33 21 MR. BIDERMAN: Objection.
16:33 22 Leading. Pardon me. I'm sorry.

16:33 23 A. I was mainly thinking of the
16:33 24 part that said you're not going to be charged
16:33 25 more than your daily budget on a given day,

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H. Stern

which contradicted this monthly calculation.

That's what I had in mind.

Q. Let me show you Exhibit 13.

A. Okay.

Q. Okay. This is a document

Mr. Biderman showed you, "Google AdWords

Standard Terms and Conditions." And I

believe he asked whether you accepted these

terms and conditions.

Do you see any box or area on

this document where you could click on to say

you accepted or you agreed to these terms?

A. Not with what I see in front of

me now.

Q. Do you know whether there was

one on the screen?

A. I don't recall.

Q. Okay. When Mr. Biderman shows

you 500 pages and says, did you agree to all

these terms and conditions, do you remember

there ever being a screen in front of you

saying do you agree to this term, do you

agree to that term, do you agree to this

term, or do you remember something else?

1 H. Stern

16:35 2 A. I believe it was just an all or
16:35 3 nothing.

16:35 4 Q. And do you get to see the all or
16:35 5 nothing? This 500 pages don't appear in one
16:35 6 place, do they?

16:35 7 MR. BIDERMAN: Objection.
16:35 8 Misstates the testimony referring to
16:35 9 500 pages. I don't know how many pages
16:35 10 there are.

16:35 11 MR. LEVY: Well, let's read
16:35 12 them. Okay, this is Exhibit 21 called
16:35 13 "The AdWords Google Dump," and it's 489
16:35 14 pages.

16:35 15 MR. BIDERMAN: All right.

16:35 16 Q. Do you remember seeing these 489
16:36 17 pages on your screen when you --

16:36 18 A. No, I never saw 489 pages on my
16:36 19 screen.

16:36 20 MR. LEVY: I have no further
16:36 21 questions at this time.

16:36 22 MR. BIDERMAN: Let me just look.

16:36 23 EXAMINATION (Cont'd.)

16:37 24 BY MR. BIDERMAN:

16:37 25 Q. With respect to -- pardon me.

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H. Stern

digging through hot links to any degree.

Q. Okay.

MR. BIDERMAN: No further questions.

THE VIDEOGRAPHER: Off the record? The time is 4:41 p.m., Wednesday, August 16th, 2006. This is the end of tape No. 3 and completes the videotape deposition of Mr. Howard Stern. We're off the record.

(Time noted: 4:41 p.m.)

I certify (or declare) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed at _____ on _____.
(Place) (Date)

(Signature of Deponent)

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C E R T I F I C A T E

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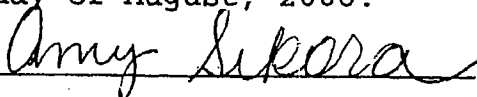
COUNTY OF NEW YORK)

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