

EXHIBIT F

ORIGINAL

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
14:25 2
14:25 3
14:25 4
14:25 5
14:25 6
14:25 7
14:25 8
14:25 9
14:25 10
14:25 11
14:25 12
14:26 13
14:26 14
14:26 15
14:26 16
14:26 17
14:26 18
14:26 19
14:26 20
14:26 21
14:26 22
14:26 23
14:26 24
14:26 25

H. Stern

about a month ago. And that was about 380 days. And I assumed I ran it a few more days since then. So it just gives me a ballpark idea of just how many days my campaign was actively running.

Q. You mean, how many days it was unpaused?

A. Unpaused, yes, exactly.

Q. Okay. And do you know, in fact, whether you were charged the amounts that are specified under the "Cost" column in this document?

A. Not for a fact. But as I said before, when I tried to reconcile my monthly charges with these, they seemed to be in line. But I'm not going to say they agreed exactly. And I also can't say how far they disagreed.

Q. Okay. And, again, just -- I'm not sure I got a clear answer. Is it your best recollection --

MR. BIDERMAN: Thanks, Barbara.

Q. -- that you have never received any overdelivery credits?

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. No. I was under the assumption that it was related to the number of days your ad is active, and that each day you wouldn't be charged more than your daily budget.

Q. Okay.

A. Because I never run my ads everyday. So this really doesn't apply to my situation.

Q. And what made you believe that you would -- that the days that your campaign was paused would not be included in that calculation?

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

Q. Okay. And did you -- have you ever seen any documentation that stated, documentation from Google, that stated that the days where your campaign was paused would

1
14:32 2
14:32 3
14:32 4
14:32 5
14:32 6
14:32 7
14:32 8
14:32 9
14:32 10
14:32 11
14:32 12
14:32 13
14:32 14
14:32 15
14:32 16
14:32 17
14:33 18
14:33 19
14:33 20
14:33 21
14:33 22
14:33 23
14:33 24
14:33 25

H. Stern

not be factored into that calculation?

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

Q. And that's in a document -- and that's a document that is part of --

MR. BIDERMAN: Withdraw that question.

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

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

Q. And other than that, the

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

16:23 2 Exhibit 19. Look at page 26.

16:24 3 A. Okay.

16:24 4 Q. It states in the middle of the
16:24 5 page, "If you'd like your campaign to run
16:24 6 only during certain hours, you may pause it
16:24 7 during the hours that you do not want it to
16:24 8 show and resume it when you want it to run
16:24 9 again."

16:24 10 Do you see that?

16:24 11 A. Yeah, I see that now.

16:24 12 Q. Okay. Did you see it at the
16:24 13 time?

16:24 14 A. No, I don't recall seeing it at
16:24 15 the time.

16:24 16 Q. Okay. The next line, "You can
16:24 17 pause your ad at any time. You won't accrue
16:24 18 charges while your ads are paused, and they
16:24 19 will remain paused until you resume them."

16:24 20 Was that your understanding of
.6:24 21 your agreement with Google?

.6:24 22 A. Yes. When you activate the
.6:24 23 program, you unpause it and then, naturally,
.6:24 24 if you want to stop being charged you pause
.6:24 25 it.

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

Q. Okay. Was it your understanding that Google would charge you while your ad was paused?

A. No, I never thought that I'd be charged when my ad was paused.

Q. If you had a budget of \$10 and you ran that ad one day during a 30-day period, what would you expect to be charged from Google?

A. No more than \$10.

Q. Okay. And what if they charged you \$11, would that be a violation of your agreement with Google?

A. I believe so.

Q. And what if they charged you \$12?

A. Anything over \$10 would be a violation.

Q. And why is that?

A. Because anything over \$10 is more than my budget of \$10, daily budget of \$10.

Q. And there was no way for Google to credit you to underbill you for subsequent

1
16:27 2
16:27 3
16:27 4
16:27 5
16:27 6
16:27 7
16:27 8
16:27 9
16:27 10
16:27 11
16:27 12
16:27 13
.6:27 14
.6:27 15
.6:27 16
.6:27 17
.6:27 18
.6:27 19
.6:28 20
.6:28 21
.6:28 22
.6:28 23
.6:28 24
.6:28 25

H. Stern

A. Yes.

Q. Is that an incentive for you to sign up for AdWords?

A. Right. It's a good reason, right.

Q. And then it goes on to say, "This is the same no matter how you choose to pay for your advertising."

Do you see that?

A. Yes.

Q. Okay. So why did you switch to Google from Yahoo?

A. Because Yahoo had a monthly minimum that I needed to pay, whether or not I even ran the ads.

Q. And Google?

A. They had no minimum.

Q. And, in fact, they told you they had no minimum; correct?

A. Right.

MR. BIDERMAN: Objection.

Assumes facts not in evidence.

MR. LEVY: Do you want to change the tape now?