

KRAMER EXHIBIT E

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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CARL E. PERSON,		:	
		:	
	Plaintiff,	:	
		:	06 CV 4683 (RPP) (AJP)
-against-		:	
		:	
GOOGLE INC.,		:	
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	Defendant.	:	
		:	
-----X			

**MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS UNDER F.R.CIV.P. 12(b)(6) and 12(b)(3) AND IN
SUPPORT OF PLAINTIFF'S CROSS-MOTION FOR LEAVE TO AMEND
AND ALTERNATIVE CROSS-MOTION TO TRANSFER TO CALIFORNIA**

Dated: New York, New York
August 2, 2006

**Carl E. Person (CP 7637)
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more than other (the favored) advertisers to be able to win the bid or obtain the same position other advertisers are getting without any change in their bid.

An auction is inherently fraudulent when the person conducting the auction is manipulating the bids as Google is doing (especially without published standards), when its manipulation is designed to make small advertisers pay as much per 100 impressions as major advertisers who obtain a high clickthrough rate for 100 impressions. Failure to tell bidders that Google's "per click pricing" system is really a "cost per impression" system with great risks of overcharges for the small advertiser – is nothing but another "per click" fraud scandal, and cries out for resolution under the New York General Business Law, §§ 349-350.

VII. PLAINTIFF'S CROSS MOTION FOR LEAVE TO AMEND THE COMPLAINT SHOULD BE GRANTED

I seek to amend the complaint in two respects:

1.. To add ¶ 95A, to make it clear that Google's activities are taking away market share from Yahoo and MSN, as follows:

95A.. Google's anticompetitive activities as alleged are specifically intended to increase Google's income, profits and of the keyword-targeted internet advertising market, and to deprive competitors Yahoo, MSN and any others of income, profits and market share.

2.. To add ¶ 146, to make it clear that the plaintiff and many of the AdWords advertisers are consumers, as follows:

146A.. Plaintiff is a consumer as to his candidacy and part-time book selling activities and, upon information and belief, many hundreds of thousands of AdWords advertisers during the past 3 years are also consumers in their Google advertising activities, including consumers who are

(i) candidates for public office, (ii) offering unwanted personal goods for resale and/or (ii) retired or self employed persons, acting part-time, offering goods or services to supplement their income.

Under Rule 15(a), F.R.Civ.P. leave to amend should be freely granted. The urgency of my candidacy and outstanding motion for a preliminary injunction compels me to make this amendment request as a cross motion rather than to file an amended complaint as of right and make it virtually impossible for my injunction motion to be heard before November 7, 2006.

VIII.. PLAINTIFF'S ALTERNATIVE CROSS-MOTION TO TRANSFER THIS TO THE NORTHERN DISTRICT OF CALIFORNIA SHOULD BE GRANTED, IF THE COURT WOULD OTHERWISE GRANT GOOGLE'S VENUE MOTION

If the Court otherwise would grant Google's venue motion to dismiss, it is respectfully requested that the Court transfer this action without dismissal to the Northern District of California, Santa Clara Division, under 28 U.S.C. §§ 1404(a) and/or 1406(a), in the interests of justice.

IX. CONCLUSION

For the reasons set forth above, it is respectfully requested that my cross motion for leave to amend my complaint be granted, and that defendant's motion to dismiss under Rules 12(b)(3) and 12(b)(6) be denied.

Dated: New York, New York
August 2, 2006

Respectfully submitted,



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