

EXHIBIT 3

1 ~~00_2AmComp-001~~
2 **CARL E. PERSON, Plaintiff, Pro Se**
3 325 W. 45th Street - Suite 201
4 New York NY 10036-3803
5 Telephone: (212) 307-4444
6 Facsimile: (212) 307-0247
7 carlpers@ix.netcom.com

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 **ECM FILING**

12 **CARL E. PERSON,**)
13 **Plaintiff,**)
14 **v.**)
15 **GOOGLE INC.,**)
16 **Defendant.**)

11 **CASE NO.: C 06-7297 JF (RS)**

13 **SECOND AMENDED COMPLAINT**

14 **(Jury Demand)**

17 _____)
18
19 **COUNT I**

20 **[Violation of Sherman Act, § 2 - Monopolizing and Combining to Monopolize the**
21 **Search Advertising Market and Submarket for Monetizing the Traffic of**
22 **Community Search Websites]**

23
24 **Plaintiff, an attorney acting pro se, as and for his Second Amended Complaint,**
25 **respectfully alleges:**
26
27
28

Jurisdiction

1
2 1.. This controversy involves § 2 of the Sherman Act (15 U.S.C. § 2); §§ 1,
3 4B, 12 and 16 of the Clayton Act (15 U.S.C. §§ 12; 15b, 22 and 26); and 28 U.S.C. §
4 1337.
5

6 2.. This Court has original jurisdiction over the federal antitrust claims under
7 28 U.S.C. § 1337(a) and 15 U.S.C. § 15(a).
8

Summary

9
10 2A.. This action has two counts (alleging monopolization and attempted
11 monopolization of Search Advertising and website monetizing [using Search Advertising
12 or the alternative of "all Internet advertising"] under § 2 of the Sherman Act, based on
13 Google's 65 acquisitions of related technology businesses, patents, know-how,
14 copyrights, algorithms, competitors and high-traffic community search websites – see
15 Exhibit A and ¶¶ 99-A and 99-B below) to enable Google, with its two alleged U.S.
16 monopolies, to injure and drive competitors out of business and maintain and increase
17 market share for Google's monopolies (i) by anticompetitive AdWords pricing and
18 auction practices, (ii) by allowing some community search websites (including
19 MySpace.com, AOL.com, YouTube.com and other high-volume community search
20 website customers) to monetize their website traffic by sharing in Google's monopolistic
21 AdWords Search Advertising revenues, but denying the same website monetizing
22 opportunity to Plaintiff as to his 10 competing community search websites.
23
24
25
26
27
28

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
26
27
28

Plaintiff

3.. Plaintiff, Carl E. Person ("Person" or the "Plaintiff"), is a website developer, practicing attorney and past candidate for elective office residing in New York, New York, with his offices at 325 W. 45th Street, New York, NY 10036-3803.

4.. Person develops websites and website traffic to (i) create website income through use or sale of Search Advertising directed to website visitors; (ii) create capital values for his 10 Community Search Websites (including myclads.com) under development; (iii) market his candidacy for public office in New York, (iv) obtain clients; (v) market non-commercial, political and information websites to obtain website traffic; and (vi) market his self-published books.

5.. Person is in the business of building and monetizing website traffic for his Community Search Websites (10 under development, featuring visitor-supplied content and a search engine for locating desired content) through planned sale of Search Advertising to advertisers, to appear when website visitors express what they are then seeking through any website or Internet searches they conduct from Person's websites.

6.. In this respect, Person is an actual competitor of Google (in the submarket or market of monetizing the traffic of Community Search Websites). Person's websites include myclads.com (for completion in April, 2007), attydb.com (May, 2007) and latefees.com (May, 2007), ZIPcomplaints.com (June, 2007), MyTelNos.com (June, 2007), e-listparty.org (July, 2007) and others, including lawmail.com, all designed to accommodate the sale and placement of Search Advertising for placement in the right sidebar for website or web searches made from any of Person's websites.

7.. Plaintiff's first website with Google-type (but in-house) advertising is rebate-fraud.com. This website (through its administration panel) will enable Plaintiff to

1 display the same Google-type ads across all of Plaintiff's 85-90 websites (including the
2 numerous subdirectories of Plaintiff's lawmall.com).

3
4 8.. Person has used Search Advertising of approximately 10 search engines
5 including Google's AdWords, Yahoo, MSN and 7Search in Person's above-described
6 marketing activities. From 2003 to September 18, 2006, Person has had 1,417,314 ads
7 presented to Google users in a total of 20 campaigns, and has paid Google a total of
8 \$1,466.67 for a total of 3,533 user clicks at an average cost of \$.42 per click, and a
9 clickthrough rate ranging from a high of 3.09% to a low of zero % according to
10 Plaintiff's records maintained by AdWords.

11
12 9.. Person ran, unsuccessfully, for the office of Attorney General of New
13 York State during 2006. He was unable to get on the ballot. Google's activities in
14 increasing Person's pay-per-click fee from 1 cent to approximately 50 cents per click
15 prevented Person from building an email list of potential voters. This 50 times increase in
16 price to Person of AdWords advertising increased his cost of building a list of 1,000,000
17 permissive email addresses from an affordable \$10,000 to a wholly unaffordable
18 \$500,000, and contributed to Plaintiff's failure to get on the ballot and his failure to
19 obtain any significant percentage of the total vote for Attorney General.
20

21
22 **Defendant**

23 10.. Defendant, Google Inc. ("Google"), is a Delaware corporation
24 incorporated in 2002 with its principal place of business at 1600 Amphitheatre Parkway,
25 Mountain View, California 94043.

26
27 11.. Google is in the business of "maintain[ing] the world's largest online
28 index of web sites and other content, and ... mak[ing] this information freely available to

1 anyone with an Internet connection" through tools for searching the content; and deriving
2 income from these unpaid content search activities by selling keyword targeted
3 advertising for display together with the search results. From inception through 2006,
4 advertising income has produced 99% of Google's revenues. Also, it is in the business of
5 creating, acquiring, building and monetizing Community Search Websites for its own
6 account, and monetizing Community Search Websites owned by a limited number of
7 Google's competitors.

8
9 12.. Upon information and belief, through 2006, more than 95% of Google's
10 sale of Internet advertising comes from Google's AdWords and any other search
11 advertising, and less than 5% comes from Google's AdSense advertising and all other
12 Internet advertising not based on searches, net after deducting "TAC" or Traffic
13 Acquisition Costs.

14
15 13. Google has more information databases of stored information than any
16 competitor, including databases referred to by Google under names or descriptions such
17 as "Internet"; "Website"; "Find on this site"; "Google Free web search"; "Google Free
18 SafeSearch"; "Google Free web search with site search"; "Google Free customizable"
19 searches; Google "Public Service Searches"; Google "Wireless Searches"; "Google
20 Mini" searches; "Google Search Appliance" searches "across virtually all the information
21 in your company"; Google searches triggered by use of any of Google's plug-in
22 compatible desktop or other applications, features or options; and intra-company searches
23 using "Google Enterprise products". Each search of a Google database is the occasion for
24 sale and display of Search Advertising together with display of the search results.
25
26
27
28

1 13A. Google's leadership in number of indexed pages started during 2000 and
2 has steadily increased, up to the present. In a 2/14/04 CNET article, Google co-founder
3 Sergey Brin reportedly said: "Ultimately we want to have all the world's information,
4 whatever medium it is," [source:
5 [http://news.com.com/Google%2C+Yahoo+duel+for+documents/2100-1038_3-
6 5160480.htm](http://news.com.com/Google%2C+Yahoo+duel+for+documents/2100-1038_3-5160480.htm)]
7

8 3 Stages of Internet, an Overview

9 Publishing and Searching for Information

10
11 14.. Starting after the release of the Mosaic web browser in November, 1991,
12 millions of websites were created in the United States and elsewhere publishing
13 information across the vast spectrum of information categories.
14

15 15.. Upon information and belief, Plaintiff was the first lawyer (or among the
16 very first lawyers) in the United States with a website in 1992 (lawmall.com) providing
17 legally oriented information. Contemporaneously, Plaintiff had conducted a search for
18 attorney or lawyer websites and found only one, which provided the attorney's name,
19 address and telephone number, but no significant information about any area of law or
20 any legal problems.
21

22 16.. To organize the growing body of Internet-published information, various
23 search-engine websites got started, providing free search services that enable users to
24 searches for desired text or information and obtain links to the information located by the
25 search engine. Archie (1990) and Gopher (1991) and related Veronica and Jughead
26 programs were the first search engines. WebCrawler, starting in 1994, was Internet's
27 first "crawler-based", "full-text" search engine. Google's founders developed the initial
28

1 Google search engine during 1995-1997, commenced business in September, 1998, and
2 PC Magazine named Google one of its Top 100 Web Sites and Search Engines for 1998.

3 17.. Up to 1996, website publishers (such as AOL.com and prodigy.com) were
4 relying on subscriber fees to support the website, or the website owner (such as Plaintiff)
5 was hoping for customers for the described services or products to cover the costs of the
6 website publishing activities. During 1996, AOL changed its business model and
7 switched from an hourly fee for services to a flat fee of \$9.99 per month.
8

9 18.. As of mid-1998, the main search engines were (in alphabetical order):
10 AltaVista, Excite, HotBot, Infoseek, Lycos and Yahoo! (source: Search Engines for the
11 World Wide Web, by Alfred and Emily Glossbrenner, © 1998 by PeachPit Press,
12 Berkeley, CA). [Google was not even mentioned anywhere in the book.] These search
13 engines were available for free, but they had no workable business model to be profitable.
14

15
16 **Stage 2 - Internet Advertising**

17 19.. The nature of websites is that their own owners are able to place "free"
18 advertising on the websites (banner, display or text ads); and some were able to sell
19 advertising to third-person advertisers for placement on the website. Very few if any
20 websites appeared to be making money with their website operations through selling
21 banner, display or other Non-Search Advertising for placement on the website.
22

23 20.. The transformation of Internet to a money-making potential arrived when
24 search engine GoTo.com. in 1998, started offering paid advertising to be presented
25 together with search results. A substantial controversy over this development apparently
26 caused the originator to back back off, and the concept was pursued, successfully, by
27 others, including Overture.com (which acquired GoTo.com), Yahoo.com (which acquired
28

1 Overture.com but used the Google search engine for yahoo.com up to 1994), and later
2 Google.com (financed by Yahoo's backers, Sequoia Capital). From 1999 to February
3 2004, Google's search engine was used to power Yahoo searches, under license by
4 Google.
5

6 21.. The sale of sponsored ads for display alongside search results became
7 successful and demonstrated how a search engine could offer free search services and
8 become profitable through monetizing its search traffic by the sale of advertising for
9 display with the search results.
10

11 22.. Subsequently, the search engines started selling and placing ads on
12 websites having a perceived or arguable relevance to the advertiser's product, service or
13 advertisement, with a clickthrough rate approximately 1/50th to 1/20th of the rate achieved
14 by successful Search Advertising. The main difference (advertising written to be
15 presented alongside keyword search results, versus advertising displayed to whoever
16 happens to visit a website category) prevented the two types of advertising from being
17 reasonably interchangeable under antitrust caselaw standards for determination of
18 "reasonable interchangeability".
19

20 23.. At all times from 2000 to the present, one or more major search engines
21 (e.g., InKomi, Ask Jeeves, Google, Yahoo) have been licensing other search websites to
22 use their search engine in exchange for a percentage of the Search Advertising displayed
23 by the search engine together with the search results. The search industry is presently
24 capable of joining with Community Search Websites to monetize their website traffic
25 (and Google is doing so with AOL.com, MySpace.com and YouTube.com), but refusing
26 to do so for the Plaintiff and most Community Search Websites.
27
28

1 24.. Internet advertising falls into two main categories: (1) advertising selected
2 by use of the search term(s) and presented together with the search results ("Search
3 Advertising") and (2) any advertising displayed when a person visits a website or any
4 pages within a website ("Non-Search Advertising"), often called display, banner or
5 context advertising.
6

7 25.. Non-Search Advertising was first, starting with banner advertising. Later
8 forms of Non-Search Advertising include pop-up advertising, (possibly) permissive email
9 advertising and RSS website update email feeds, context advertising (such as with
10 Google's AdSense in which advertising is selected for specific websites based on their
11 content).
12

13 26.. Starting in 1998, Search Advertising appeared, in which the search term of
14 a user resulted in Search Advertising if one or more advertisers had previously selected
15 the search term and created one or more ads to be displayed with the search results,
16 assuming the advertiser prevailed in the accompanying auction among competing
17 advertisers for use of the search term.
18

19 27.. Search Advertising grew faster than any other segment of Internet
20 advertising and now accounts for about 50% of all Internet advertising. From inception
21 to the present, Search Advertising has been sold to advertisers only by search engines or
22 their joint-venture partners or licensees, although both Forbes and FIM/MySpace have
23 publicly indicated during the past 6 months that they are going to break into the market
24 (of monetizing their own Community Search Websites with Search Advertisements).
25

26 28.. The sellers of Search Advertisements (including Google and Yahoo) and
27 independent companies have developed and acquired software tools for advertisers to
28

1 determine the efficiency of their search advertising, and the management of potentially
2 tens of thousands of ads and search terms to be used in Search-Advertising campaigns.

3 29.. Search Advertising, having a specific maximum number of characters in
4 any ad, is fast and easy to create, and enables advertisers to get online (after an ad
5 approval process) immediately or within a day or so, depending on the seller, with

6 advertising budgets that can be as low as \$1 to \$5 per month, in contrast to Non-Search
7 Advertising that is generally more costly, requires more time and personal involvement to

8 create and get on line, and is substantially less cost effective as Search Advertising.
9

10 30.. Upon information and belief, when a Search Advertiser is offered an
11 opportunity to add Non-Search Advertising to his/her Search Advertising purchase (such
12 as adding AdSense-type advertising to an AdWords-type purchase), the advertiser refuses
13 the offer more than 80% of the time, because of the inherent differences between the two
14 advertising media. They are not reasonably interchangeable, and this is understood or
15 reinforced by the substantially lower efficiency of Non-Search Advertising.
16

17 31.. Upon information and belief, Search Advertising is approximately 50 to
18 100 times more effective than Non-Search Advertising, produces more than 20 times the
19 revenue for Google; and the two categories are not interchangeable for advertising
20 customers of Google or its competitors.
21

22 32.. Upon information and belief, a statistically relevant (projectible) survey
23 can establish that among Search-Advertising advertisers, Search Advertising is not
24 reasonably interchangeable with any form of Non-Search Advertising for a large variety
25 of reasons, including:
26
27
28

1 A.. Customer perception derived from the press that Google has won the
2 search battle and that Google's emphasis on Search Advertising (accounting for 95% of
3 Google's revenues) is superior to Non-Search Advertising; for example, the 3/27/07
4 *International Herald Tribune* article stating "Yahoo, ...has fallen a distant second behind
5 Google in Internet search and search-related advertising"; also, use of the word "Google"
6 or "Googling" to refer to an Internet search, generically or by actual use of google.com;
7 50,040,000 hits searching for "Googling" and 20,500 hits searching for "Yahooing" on
8 4/15/07 (99.59% for "Googling"; and 0.0041% for "Yahooing").
9

10 B.. 3 Google searches on April 15, 2007 show 8 hits for the search term
11 "Yahoo is King" or "Yahoo! is King"; 9 his for "MSN is King"; and 676 for "Google is
12 King", almost 100 times more hits than the Yahoo or MSN search;
13

14 C.. 50% of Internet purchases are made after a keyword search to determine
15 where to make the purchase;
16

17 D.. Web searchers as a group obtain more relevant information from Search
18 Advertising than any type of Non-Search Advertising;

19 E.. Search Advertising is less expensive;

20 F.. Search Advertising is more efficient;

21 G.. Search Advertising has superior tools to measure and manage the results;

22 H.. Search Advertising has superior tools to manage the ads and keywords
23 involved in substantial advertising campaigns;
24

25 L. A search advertiser can start with a monthly budget as low as
26 approximately \$5.00, but contracts to display banner ads generally involve commitments
27 of several hundred dollars or more;
28

1 J.. A search advertiser can generally withdraw all scheduled advertising at
2 any time without notice and without penalty;

3 K.. A Search advertiser does not need any graphics artist or programmer to get
4 started;

5 L.. Payments are simplified by use of credit cards to ensure payment and
6 credit;

7
8 M.. Measurement of efficiency of most types of Non-Search Advertising is
9 substantially less possible than with Search Advertising.

10 N.. The risk of advertiser's loss as to Search Advertising is absorbed to a
11 greater extent by the seller of the advertising than with Non-Search Advertising;

12
13 O.. Selection of advertising targets is more under the advertiser's control with
14 (keyword) Search Advertising than with Non-Search Advertising, which is important to
15 the advertiser because he/she knows more about his/her product or service than the seller
16 of advertising or the seller's automated program;

17 P.. Search Advertising is largely automated and immediate, whereas Non-
18 Search Advertising generally is labor intensive and delayed, involving a substantial
19 amount of discussions, negotiations and contractual commitments.
20

21
22 **Stage 3 - Monetizing Website Traffic**

23 33.. Search engines had an inherent advantage over other websites. Search
24 engines had users looking for all types of information, so that searches using the leading
25 search engines created greater opportunities for advertisers than trying to place
26 advertising directly on specialized websites. This created vast amounts of income for
27
28

1 search engines which collected and indexed the content provided to the public for free by
2 millions of website publishers, including Plaintiff.

3 34.. In an effort to placate web publishers (who were not getting paid for their
4 content) while the search engines had found a lucrative Search Advertising market for
5 themselves, Google and other search engines started encouraging Search Advertisers to
6 also place context or display ads on websites having revenue-sharing agreements with the
7 search engine to receive a portion of the tiny advertising revenues per ad (in comparison
8 to the substantial revenue per ad for Search Advertising (which revenues were not split
9 by the search engines – other than with other Internet search websites).

10
11
12 34A.. In some of its AdSense agreements with website publishers, Google
13 according to its initial registration statement has paid more than 100% of the AdSense
14 income to the website, in what amounts to an agreement by Google to share its related
15 Search Advertising income with the website without publicly revealing that Google is
16 helping any websites monetize their traffic by splitting Google's Search Advertising
17 income.
18

19 35.. Until Google's deal with AOL (12/05), MySpace (8/06) and YouTube
20 (11/06), search engines kept their Search Advertising monetizing activities to the search
21 traffic (search engine users) of the search engine and its licensee competitors, and website
22 publishers were restricted to the tiny per-ad revenues produced by context or Non-Search
23 Advertising.
24

25 36.. As a result of Google's 3 transactions described in the preceding
26 paragraph (and Google's history of licensing competing Internet search websites and
27 Google's splitting of Search Advertising income with some publisher websites), it
28

1 became clear that Google was in a position to use its Search Advertising facility (and
2 monopoly) to monetize anyone's website, and that Google chose to do so with search
3 competitor AOL.com, Community Search Website YouTube.com (which Google
4 purchased to be able to own and monetize the website without any joint venture
5 agreement other than an incentive payment promised to the sellers of YouTube); and
6 Community Search Website MySpace.com (which Google licensed to have Search
7 Advertising displayed to MySpace visitors when searching for MySpace or web content
8 wherein MySpace is guaranteed \$900 million in revenues for 3.5 years and Google
9 apparently keeps the remainder).
10

11
12 37.. These 3 transactions by Google involving the display of Google Search
13 Advertising on third-party websites (or a website being purchased by Google for such
14 purpose) is the start of the 3rd stage of Internet – the use of Search Advertising to
15 compensate web publishers for their efforts through monetizing their website traffic.
16

17 38.. The monetizing of website traffic using highly profitable Search
18 Advertising is a new, emerging market, and most suitable (*i.e.*, most profitable) for large
19 "community" websites growing through user-created content such as YouTube.com and
20 MySpace.com, as well as eBay.com, amazon.com, wikipedia.org, craigslist.com – any
21 website having a vast range of user-created information being added to it – with a website
22 search engine to locate information therein (or from the web at large).
23

24 39.. Various website owners have recognized this market, including the
25 Plaintiff, Google (through its 3 transactions described above), MySpace.com's C.E.O.
26 (see ¶ 40 below). Using Search Advertising to monetize the traffic of a third-party
27 website is fundamentally different from all other means of monetizing website traffic
28

1 because Search Advertising is the most profitable (as seen by Google's own revenues
2 from 2000 to the present) and context, banner, display, pop-up and other types of
3 advertising to monetize are too labor intensive and so less profitable that they constitute
4 no significant competition to monetizing by Search Advertising.
5

6 Case 5:06-cv-07297-JF Document 47-4 Filed 04/30/2007 Page 16 of 70

7 40. News Corp.'s President and C.E.O., Peter Chernin, is reported by a
8 1/24/07 Forbes.com cover story entitled "Murdoch 2.0" as saying that News Corp. will
9 try to conduct the next YouTube on its own, via an in-house R&D group, then quoting
10 Chernin: "I think we should be striving to create as many businesses ourselves as we can
11 [for purposes of monetizing the website traffic with Search Advertising]". Also, News
12 Corp. is a competitor of Google, having lost the YouTube acquisition to Google because
13 Google had the stock price and cash hoard to pay more for YouTube than News Corp.
14 could afford.
15
16

17 **Definitions**

18 41. The following terms shall have the meaning set forth below, or in a
19 paragraph to which reference is made:

20 A. "AdSense" - Google's version of context or banner advertising in which
21 advertisers pay to have their banner, pop-up, display or other ads displayed to visitors at
22 websites selected by the seller or advertiser as having website material and visitors
23 relevant to the ads. AdSense also enables Google with high-traffic websites to pay the
24 website more than Google receives from the AdSense advertising, which amounts to
25 partial monetizing of the website with Search Advertising income. Upon information and
26
27
28

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
26
27
28

belief, Google has a 25% to 30% cost of sales for its AdSense net income (after deducting Traffic Acquisition Costs).

A-1.. On 12/15/06, CNNMoney.com (David Kirkpatrick, *Fortune* senior editor) in an article entitled "Can Yahoo catch Google?" stated that keyword-targeted advertising [e.g., AdWords] gets a 10% or 20% clickthrough rate whereas conventional banner ads (not keyword based [e.g., AdSense]) have a clickthrough rate not exceeding 1%. Also, the article states that "Today Google overwhelmingly dominates the search business."

Case 5:06-cv-07297-JF Document 47-4 Filed 04/30/2007 Page 17 of 70

1 B.. "AdWords" – Google's Search advertising system enabling advertisers to
2 hold back their ads until potential customers were seeking information through a search,
3 with the advertiser's ad being delivered to together with the search results; this enabled
4 advertisers for the first time to reach potential customers at the precise moment of their
5 demonstrated interest, which makes this type of ad much more cost effective than other
6 types of advertising (including newspaper and internet context, banner or display
7 advertising).

8
9 C.. "Community Search Websites" – refers to websites (such as
10 youtube.com, myspace.com, craigslist.com, eBay.com, monster.com, wikipedia.org and
11 approximately 10 websites being created by Plaintiff [starting with myclads.com and
12 attydb.com] for which users create and/or provide the website's content on an ongoing
13 basis, the website provides a search facility for visitors to find web pages or other
14 material of interest to them on the visited website, or other Internet websites; the owner
15 of the website provides the structure for website growth and regulation but creates a
16 miniscule percentage of the website's content; and the websites are often referred to as
17 communities or social websites with user-created content.

18
19 D.. "Essential Facility" – Google's system for selling and placing Search
20 Advertising on Community Search Websites to monetize the website traffic. Google's
21 website monetizing system is so efficient and profitable that (with an 8% cost of sales
22 during 2006) that no competing system based on any competing search engine is
23 reasonably interchangeable with Google's system, and the advertisers will pay about
24 twice as much per click for use of a specific keyword than they will pay per click to
25 competing companies such as Yahoo and MSN. This means that Google monetizes
26
27
28

1 website traffic at about twice the rate as its nearest Search Advertising competitor and
2 many times more than the top context or display ad competitor, DoubleClick, which
3 Google acquired during April, 2007.

4
5 D-1.. Search Advertising sold by lesser competitors of Google cannot become
6 reasonably interchangeable with Google by lowering their prices because their inventory
7 of searches is substantially less (requiring the website to return to Google to obtain the
8 benefits of the larger inventory and the temporary use of the lesser competitor exhausts
9 part of the Search Advertising market available more efficiently through Google).
10 Google's competitors do not effectively compete. They merely sell an incremental
11 expansion of the website's monetizing program, primarily to unsophisticated website
12 owners who are unaware of the differences between Google and its Search Advertising
13 competitors.
14

15 E.. "Google Competitors" – Google competes with Yahoo Search
16 Marketing, MSN Ad Center, 7Search and other search engines offering search
17 advertising, but the competition is ineffective and Google has a monopoly in the Search
18 Market and Website Monetizing Submarket, making Google's AdWords business an
19 Essential Facility, both as to advertisers seeking to advertise on Internet for website
20 visitors (in competition with Google) through Search Advertising (including Plaintiff)
21 and as to all Community Search Website owners attempting or potentially attempting to
22 create Community Search Websites and increase and monetize the traffic on their
23 websites in competition with Google (including Plaintiff).
24

25
26 F.. "Non-Search Advertising" – any Internet advertising that is not Search
27 Advertising, such as banner, space, context or pop-up advertising.
28

- 1 G.. "Relevant Market" - defined in ¶ 45 below.
- 2 H.. "Relevant Submarket" - defined in ¶ 45 below.
- 3 I.. "Search Advertising" - website advertising that is triggered by a website
- 4 or Internet search, with the advertisement (and any others) displayed alongside the search
- 5 results. Such advertising could be purchased on a pay-per-click ("PPC"), cost-per-
- 6 thousand ("CPM") or other basis.

Case 5:06-cv-07297-JF Document 47-4 Filed 04/30/2007 Page 20 of 70

8 **Relevant Period**

9 42.. The relevant period ("Relevant Period") for the antitrust claims alleged
10 herein is the 4-year period preceding the filing of this complaint (during June, 2006) as to
11 all claims under the Sherman Act, 15 U.S.C.A. § 2.

13 **The Relevant Market and Submarkets Defined**

14 43.. For purposes of this action, the alleged geographic market is the United
15 States.

16 44.. The alleged service market at issue in this action is Search Advertising
17 (as defined in ¶ 41-1 above), and the submarket of monetizing the traffic of
18 Community Search Websites through use of Search Advertising. Alternatively, if the
19 market turns out to be "all Internet advertising" and not "Search Advertising", the
20 submarket becomes the market for monetizing the traffic of Community Search
21 Websites through the use of Internet Advertising. Upon information and belief,
22 Google dominates such alternative market.

23 45.. Upon information and belief, Google has a monopoly in the United States
24 geographic market of Search Advertising (the "Relevant Market") and the Relevant
25 Submarket of monetizing the traffic of Community Search Websites through the use of
26
27
28

1 Search Advertising or, alternatively, Internet advertising (the "Relevant Submarket" or
2 Relevant Alternative Market).

3 46.. Upon information and belief, Google has more than a 70% share of the
4 dollar amount of the Search Advertising market, which percentage is steadily increasing.
5

6 47.. Upon information and belief, Google has more than a 80% share of the
7 dollar amount of revenue obtained from monetizing the traffic of Community Search
8 Websites using Search Advertising or more than a 67% share of the dollar amount of
9 revenue obtained from monetizing the traffic of Community Search Websites using any
10 type of Internet Advertising, and the markets and submarkets dominated by Google are
11 Essential Facilities with access so such facilities needed by the Plaintiff to be able to
12 compete effectively with Google for the monetizing of traffic of Community Search
13 Websites.
14 Websites.

15
16 **Monopolization of the Relevant Market**

17 48.. Google has a monopoly in the Relevant Markets and Submarkets,
18 including the power to control prices and the power to exclude competitors from such
19 markets, and is exercising such power unlawfully.
20

21
22 **Facts Supporting Allegation of Google's
23 Monopoly including a \$25 Billion Dollar Barrier to Entry**

24 49.. The following facts are barriers to entry facing Google competitors in the
25 relevant markets and submarket, and support Plaintiff's allegation of Google's monopoly:

26 A.. Google has acquired about 65 technology companies from 2001 to the
27 present (a list and description of such acquisitions is set forth in Exhibit A hereto – and
28

1 see ¶¶ 49-A and 49-B below for a list of the most significant acquisitions which enabled
2 Google to acquire and combine to obtain its present monopolies in the relevant markets
3 and submarket), at a cost of about \$7-\$8 billion in cash and stock, to enable Google to
4 increase its share of Internet searches and of the Relevant Market and Relevant
5 Submarket without growth from within, for the purpose of depriving competitors in the
6 respective markets of market share and drive them out of business.
7

Case 5:06-cv-07297-JF Document 47-4 Filed 04/30/2007 Page 22 of 70

8 B.. The more recent acquisitions have been made after Google has become a
9 monopoly, with Google's monopolistic profits and with highly-priced stock (reflecting
10 Google's monopoly) that enables Google to make its acquisitions at a lower equity cost
11 when using stock, and being able to outbid Google's competitors such as Fox and
12 Microsoft.
13

14 C.. The acquisition of the largest company in Internet display advertising,
15 including an auction system for Internet display advertising, is a strong indication that
16 Search advertising is a different market from Non-Search advertising, a market so
17 different that Google was not in it to any appreciable extent before the April, 2007
18 DoubleClick acquisition.
19

20 D.. From 2001 to the present, Google has acquired users for Google's search
21 engine by licensing use of its search engine to various competitors of Google including:
22 Yahoo (ending in 2/04), AOL-Time Warner, Earthlink and FIM which agreements have
23 enabled Google to dominate the relevant geographic and service or service/product
24 market and submarkets defined above.
25
26
27
28

1 E.. Google has a technical team with its secret know-how that enables Google
2 to increase its market share in the Relevant Market over the only two present significant
3 competitors (Yahoo and Microsoft/MSN Ad Center - "MSN").
4

5 F.. Microsoft/MSN's dedicated effort, huge cash reserves and other resources,
6 up to this moment, have not been able to purchase or develop any team capable of
7 effectively competing with Google's search-engine business and related AdWords
8 keyword-targeted Internet advertising business. Until May 2006, Microsoft/MSN
9 partnered with Yahoo, but in May 2006 MSN began offering its own keyword-targeted
10 Internet advertising, and upon information and belief the cost of Yahoo, MSN or any
11 other company trying to become competitive with Google (from the standpoint of being
12 able to monetize website traffic within a competitive dollar amount or value) is about
13 \$50,000,000,000. based on Google's revenues, acquisitions, physical structure, software,
14 personnel, top management ownership, commanding industry lead, and monopolistic
15 position, among other factors.
16
17

18 G.. Yahoo until recently was a licensee of Google's search engine and has
19 now switched to licensing an inferior engine (created years earlier by Inkomit), which
20 means that Yahoo will not be able to compete with Google unless it solves the problem
21 faced by Microsoft (of creating a team able to compete with Google's team, and to be
22 able to commit the necessary funds, amounting to about \$25 billion).
23

24 H.. Google has the fastest search engine of all competing search engines with
25 indexes, algorithms, software and systems (including technology acquired through some
26 of the 65 Google acquisitions) to deliver the search results (and accompanying AdWords
27
28

1 ads) substantially faster than any other search website can locate and display its search
2 results;

3 I.. Google has about 50% of all internet searches conducted at more than 60
4 search sites [source: <http://searchenginewatch.com/reports/article.php/2156451>];

5
6 J.. Google has the world's largest and most comprehensive collection of
7 information online - 8.1 billion pages, compared to Microsoft's 5.0 billion pages, Yahoo's
8 estimated 4.2 billion pages and Ask Jeeves' or Ask's 2.5 billion pages [Source:
9 <http://blog.searchenginewatch.com/blog/041111-084221>]. Plaintiff's 6/16/06 Yahoo
10 search for "movie cameras" found 26,200,000 pages, whereas Plaintiff's 6/16/06 Google
11 search using the same phrase found 86,800,000 pages or more than 3 times as many
12 pages;

13
14 K.. Overture created the keyword-targeted Internet advertising market but lost
15 its initial domination of the market to Google, because of superiority of Google's
16 databases and software development, acquisitions of technology and other factors;

17
18 L.. Through fiscal year 2006, Google's income has been derived mainly (at
19 least 95% upon information and belief) from its AdWords business and is more than
20 71% (2004) and more than 75% (2005) of all income obtained from keyword-targeted
21 Internet advertising of all competitors (based on the figures set forth in the next 2
22 paragraphs); upon information and belief, in 2006 Google an even higher percentage of
23 overall keyword-targeted income than it obtained in 2005, and that the percentages of
24 Yahoo and MSN are undergoing substantial declines. The reason is that AdWords is
25 substantially more profitable for advertisers and easier and less time-consuming to use
26

27
28

1 than the PPC advertising of MSN and Yahoo (which are distant seconds and not
2 reasonably interchangeable for keyword advertisers including Plaintiff);

3 M.. Google's revenues from sale of keyword-targeted Internet advertising
4 amounted to \$3.189 billion during 2004, \$6.139 billion during 2005 and more than \$10
5 billion during 2006 (without adjustment for the small percentage of income derived from
6 Google's CPM (cost per 1,000 impressions) sales of AdSense advertising), in comparison
7 to Yahoo's sale of keyword-targeted Internet advertising amounting to an estimated \$1.3
8 billion during 2004 and an estimated \$1.97 billion during 2005. [Estimate assumed 50%
9 of Yahoo's total sales excluding "traffic acquisition cost" or "TAC".]
10

11
12 N. Prior to and during 2004-2005, Microsoft/MSN had no independent
13 revenues from keyword-targeted Internet advertising, so that a substantial part of
14 Microsoft/MSN's revenues are included in Yahoo's revenues.

15 O.. Google's capitalization during late 2005 was \$126.7 billion (\$428/share)
16 in comparison to Yahoo's capitalization of \$59.7 billion (\$42/share), making Google
17 more than twice as valuable as Yahoo, and during 2006 the capitalization difference grew
18 substantially, enabling Google to make acquisitions more readily than any of its
19 competitors (e.g., YouTube and DoubleClick).
20

21 P.. Google states in its S-1 Registration Statement filed April 29, 2004 that
22 Google is the largest of the companies in that market; and that the only other company
23 known to Google is Yahoo (with its purchased Overture search business);
24

25 Q.. The only company publicly stating that it is going to try to challenge
26 Google (and not even mentioning Yahoo) is one of the largest monopolists, Microsoft,
27
28

1 showing that there is a need for huge amounts of capital to challenge Google with only 2
2 challengers for control of Internet.

3 R.. Google states in its S-1 Registration Statement that it has a variety of
4 intellectual properties upon which its AdWords technology is based, including patents,
5 trademarks, copyrights, know-how, backed by numerous secrecy agreements; this also
6 includes the know-how in finding, indexing and storing web pages and using hundreds of
7 thousands of servers to speed up information processing and distribution by simultaneous
8 use of many interconnected computers for a single search. See Exhibit A hereto for a list
9 of Google's acquisitions of technology firms, patents and other technology from 2001 to
10 the present. Google did not develop its business from within, but built it over 6 years with
11 about 65 acquisitions.
12

13
14 S.. Yahoo attempted to compete with eBay recently and found that it could
15 not, and gave up its eBay-type Internet activities, suggesting that Yahoo will not be able
16 to continue its competition with Google.
17

18 T.. Google admits that it has not advertised its AdWords service to any
19 significant extent, and was able to build this monopoly by reason of its existing search
20 business (which itself is perhaps the most effective advertising medium in the world);

21 U.. eBay, a major competitor or potential competitor in other product/service
22 markets, is one of Google's top customers for AdWords advertising services;
23

24 V.. Google is practicing price discrimination that makes some purchasers
25 (such as the Plaintiff) pay up to 100 times more per click than other purchasers (large
26 companies) because of the lack of any alternative market; Google is to increase its per-
27 click price for Plaintiff and a million other small-business AdWords customers 2, 10, 25,
28

1 50 even 100 times the price per click Google is charging its most-favored customers. But
2 the profitability to an advertiser is in the click, and it is unreasonable, unconscionable and
3 anticompetitive for Google (and its monopolies) to charge small business advertisers 2,
4 10, 25, 50 or 100 times the price per click when their expectations for profit is
5 substantially less than the profit being obtained by the high-volume advertiser from one
6 click for the same keyword.
7

Case 5:06-cv-07297-JF Document 47-4 Filed 04/30/2007 Page 27 of 70

8 W. Online advertising is causing U.S. daily newspapers to lose advertising
9 revenue and threatening traditional U.S. daily newspapers with extinction ["Online
10 Publishing Insider", 6/8/06]; newspapers are attempting to re-create themselves as online
11 newspapers; and in the UK, online advertising revenues already exceed newspaper
12 advertising revenues [Source: <http://news.stepforth.com/2006-news/May31-06.html>].
13
14

15 **Additional Facts (from New York Times Article of 6/8/06):**

16 X. Building a computing center in The Dalles, Oregon as big as two football
17 fields, with twin cooling plants protruding four stories into the sky which, according to
18 *The New York Times*, is Google's "weapon in its quest to dominate the next generation of
19 Internet computing"
20

21 Y. Such new plant "heralds a substantial expansion of a worldwide
22 computing network handling billions of search queries a day and a growing repertory of
23 other Internet services"
24

25 Z. The new plant "is the backdrop for a multibillion-dollar face-off among
26 Google, Microsoft and Yahoo that will determine dominance in the online world in the
27 years ahead"
28

1 AA. Microsoft and Yahoo have announced that they are building big
2 data centers upstream in Wenatchee and Quincy, Wash., 130 miles to the north. But it is a
3 race in which they are playing catch-up. Google remains far ahead in the global data-
4 center race, and the scale of its complex here is evidence of its extraordinary ambition
5

6 BB. Even before the Oregon center comes online ... "Google has
7 constructed the biggest computer in the world, and it's a hidden asset,"
8

9 CC. Microsoft stunned analysts after first quarter 2006 when it
10 announced that it would spend an unanticipated \$2 billion next year, much of it in an
11 effort to catch up with Google.

12 DD. Google is known to the world as a search engine, but in many ways
13 it is foremost an effort to build a network of supercomputers, using the latest academic
14 research, that can process more data — faster and cheaper — than its rivals.

15 EE. "Google wants to raise the barriers to entry by competitors by
16 making the baseline service very expensive,"
17

18 FF. In March 2001, when the company was serving about 70 million
19 Web pages daily, it had 8,000 computers.... By 2003 the number had grown to 100,000.

20 GG. Today ... [t]he best guess is that Google now has more than
21 450,000 servers spread over at least 25 locations around the world.

22 HH. Microsoft's Internet computing effort is currently based on 200,000
23 servers, and the company expects that number to grow to 800,000 by 2011 under its most
24 aggressive forecast, according to a company document.
25

26 II. Yet it is the way in which Google has built its globally distributed network
27 that illustrates the daunting task of its competitors in catching up.
28

1 JJ. [S]aid Milo Medin, a computer networking expert ... I know of no other
2 carrier or enterprise that distributes applications on top of their computing resource as
3 effectively as Google."
4

5 **Willful Acquisition, Maintenance, or Use of the**
6 **Market Power by Anticompetitive or Exclusionary**
7 **Means or for Anticompetitive or Exclusionary Purposes**

Case 5:06-cv-07297-JF Document 47-4 Filed 04/30/2007 Page 29 of 70

8 **Willful Acquisition and Maintenance**

9 50.. Google willfully acquired its monopoly of the Relevant Markets and
10 submarket partially through in-house growth but mainly through a series of mergers and
11 acquisitions (from 2001 to the present -- see Exhibit A hereto) in a combined cash and
12 stock purchase price of about \$7-\$8 billion, with purchases acquiring patents, largest
13 competitors in new fields, and immediately usable technology to enable Google to
14 increase its share of Internet searches and to increase Google's Search advertising
15 revenues and other revenues.
16

17 51.. Google has learned that its monopoly enables it to turn website traffic into
18 money far more efficiently than any other search engine (such as Yahoo or MSN) or
19 other company (such as DoubleClick), and by the end of 2006 has changed its business
20 and description of its business to reflect ability to monetize website traffic substantially
21 more efficiently than anyone else. Whereas DoubleClick monetized traffic for other
22 website owners, Google does not allow website owners to use Google's Search
23 Advertising to monetize website traffic, and indeed Google has acquired the leading
24 website traffic monetizing company to reduce competition in the field of monetizing
25 website traffic.
26
27
28

1 **Use of the Market Power by Anticompetitive or Exclusionary**
2 **Means or for Anticompetitive or Exclusionary Purposes**

3 52.. Google is in a position similar to someone owning the patents and know-
4 how to extract oil two times more profitably than any competitor, and refusing to let
5 owners of oil reserves enter into joint ventures or leasing agreements with Google to
6 exploit the reserves, with Google instead requiring the reserve owners to sell their wells
7 to Google (at a higher price than available from any lesser competitor), with Google
8 keeping the difference, and adding to its monopolistic profits and market share.
9

10 53.. Until a competitor is able to offer monetizing services with reasonable
11 interchangeability with what Google has put together in its 65-company acquisition
12 monopoly, Google is going to pick off the best websites (having the higher traffic, such
13 as MySpace.com and YouTube.com) and monetize them for Google's profit, and the
14 other high-traffic websites will not be able to obtain this monetizing value and will see
15 the asset wasting until Google finally makes an offer, slightly or even significantly higher
16 than MSN or other competitor.
17

18 54.. Plaintiff made a request of Google on February 12, 2007 (Exhibit B
19 hereto) to permit Plaintiff to use Google's monetizing services for Plaintiff's websites on
20 terms comparable to the terms given by Google to MySpace.com's owner, but got no
21 reply.
22

23 55.. Google has a two-way monopoly that it is exploiting with Plaintiff and
24 other website-owner advertisers getting caught in a whipsaw: the monopolistic charge by
25 Google to build Plaintiff's website traffic, followed by the inability to use Google and its
26 monopolistic monetizing system (also based on Search advertising) to obtain the built up
27
28

1 value from this high-cost website traffic. Google reserves the latter for itself, as an
2 anticompetitive practice.

3 56. Google's practice of exploiting its monopoly in Search Advertising for
4 website owners building their website traffic would be less devastating and injurious to
5 competition if Google allowed these same customers to participate in the monetizing of
6 their high-cost traffic using Google's Search Advertising monopoly.
7

8 57. Instead, Google is fixing auction prices for the auctions of key words and
9 forcing Plaintiff and other advertisers to pay 50 to 100 times more per click than Google
10 is charging eBay and other major advertisers, whose clickthrough rates are higher
11 because their products and names are well established, and the products and services are
12 often totally different and not comparable as to landing pages and advertisements.
13

14 58. On March 24, 2006, the Plaintiff observed that in 33 randomly selected
15 keywords chosen by Plaintiff for their probable lack of demand (problem-3,
16 circumstantial-0, circumstances-1, create-1, expensive-2, expansive-4, silent-2,
17 miraculous-1, busybody-1, glowing-7, water-19, welcome-4, tomorrow-0, today-0,
18 history-8, matters-2, purpose-8, major-1, tip-2, pronapt-2, general-1, adjective-1, small-
19 Q, smell-1, slice-2, eached-2, pertinent-0, zero-1, mustach-1, second-0, seconds-6, mars-
20 8or9 and Issue-2), eBay had its ad displayed for 13 (40%) of such 33 comparatively
21 unwanted keywords (see bold-type words above); 7 had no ads at all (see the underlined
22 words above; eBay used only 2 forms of ad: (i) "Whatever you're looking for you can get
23 it on eBay." [apparently selected when the keyword was assessed by AdWords to be an
24 adjective]; and (ii) "Looking for "Matters"? Find exactly what you want today."
25 [apparently selected when the keyword was assessed by AdWords to be a noun]:
26
27
28

1 59.. It is an anticompetitive practice to tell advertisers such as the Plaintiff that
2 his landing page and advertising copy can be improved to bring Plaintiff's clickthrough
3 rate up to the level of eBay, and thereby bring Plaintiff's cost per click down to the low
4 price of eBay. This is impossible. Plaintiff's use of the same key word as eBay (for
5 selling Plaintiff's candidacy or Plaintiff's book) does not mean that the Plaintiff's offer
6 and landing page could ever be competitive, no matter how hard Plaintiff tried. Google's
7 pricing with this stated premise is false, misleading and anticompetitive, and injurious to
8 competition because it forces higher costs upon new, different and less established
9 businesses making it impossible for many of them to survive, thereby depriving the
10 public of new and improved products and services, and competition, ultimately, to lower
11 prices.
12

14 60.. Google has a practice of cutting off the number of displayed ads at
15 different numbers for different auctions, for the sole purpose of preventing the lowest
16 bidder to be able to benefit from the promised lowest price of 1-cent per click (when
17 there are no bidders whose ads are not displayed). This practice is anticompetitive and of
18 no business value other than to deprive bidders of Google's promised lowest price per
19 click (of \$.01) for the last advertiser.
20

21 61.. Google has a practice of blocking use of lower-value keywords and
22 repeatedly told Plaintiff that hundreds of these words were not available for Person to
23 use, but at the same time Google was allowing eBay to use a high percentage of these
24 low-demand words. Google is using its monopoly power to withhold keywords from the
25 market for the purpose of forcing advertisers (including Plaintiff) to pay more per click
26 than would otherwise be paid if the lower-value keywords were made available to
27
28

1 advertisers. This is an anticompetitive practice driving up the price of advertising and the
2 price of products and services to consumers, and is of no benefit to Google other than to
3 obtain monopolistic profits from Plaintiff and other small advertisers who in many cases
4 need to compete with lower-priced keywords to keep their advertising expenses low.
5

6 62. Google's secret practice of looking at the clickthrough rate and adjusting
7 the advertiser's bid price to enable Google to make as much money per displayed ad from
8 Plaintiff as it makes from eBay, but falsely telling advertisers that this fixing of bid prices
9 by Google resulted from an analysis of the advertiser's advertising copy and landing page
10 is an anticompetitive practice that prevents advertisers from understanding how the
11 pricing is really taking place; Google's offered carrot is false, misleading and
12 anticompetitive: that improving the landing page and advertising copy may allow the
13 advertiser to get the lower rate. Advertisers selling elephants will not get the same click
14 through rate as municipal zoos or petting farms offering an opportunity for children to see
15 elephants, or the sale of books about elephants. Changing the advertising copy and
16 landing page has nothing to do with the basic difference in the markets for selling live
17 elephants; viewing live elephants; and purchasing books about elephants.
18
19

20 63. Google's alleged reason charging Plaintiff as much as 50 times or more
21 than the per-click price being paid by eBay for displaying eBay ads together with the
22 same search results and the Plaintiff's ad, to create a more satisfying experience for the
23 website user, is not true because Google does not prohibit such less satisfying ads.
24 Instead, Google lets all of them run at 50 times the price, unless the advertiser drops out
25 of the auction.
26
27

28 **Plaintiff's Rejected Efforts to Use Low-Value Keywords; and**

1 eBay's Use of 2 Forms of Ad for All of eBay's AdWords Advertising

2 64. On or about April 5, 2006, the Plaintiff attempted to use approximately 50
3 keywords relating to competition, distribution, pricing, advertising, fees and allowances
4 to obtain traffic for the Plaintiff's Robinson-Patman Act website, at
5 www.lawmall.com/rpa247c. Google stated that most of Plaintiff's selected keywords
6 (almost all not being in any significant demand by other advertisers) were unavailable to
7 the Plaintiff or were taken away from the Plaintiff within hours or days after the
8 advertising commenced. The Plaintiff went through this routine with different sets of
9 keywords at least 10 other times with the same results.
10

11
12 65. On or about April 9, 2006, the Plaintiff attempted to use the names of each
13 of the approximately 80 statewide candidates and office titles, political parties, and
14 election issues in support of his candidacy for New York Attorney General. Google
15 stated that most of Plaintiff's selected keywords (almost all not being in any significant
16 demand by other advertisers) were unavailable to the Plaintiff or were taken away from
17 the Plaintiff within hours or days after the advertising commenced.
18

19 66. In contrast to the 13 keywords used by eBay (see ¶ 58 above), the
20 Plaintiff's keywords in the two preceding subparagraphs were chosen for their high
21 degree of relevance (when appropriately limited by AdWords to users having a New
22 York email server), whereas eBay's 13 keywords were selected by Plaintiff as keywords
23 that were very unlikely to have any demand; and eBay's use of them was with one of two
24 form ads: one for nouns and the other for adjectives.
25

26 67. Plaintiff's purpose of finding unwanted words was to avoid having to enter
27 into an auction with anyone for keywords. Plaintiff was willing to use almost any
28

1 keywords as long as the Plaintiff could obtain their use for the minimum stated Google
2 fee of 5 cents (later 1 cent) per click.

3 68.. For Plaintiff to create an email list of 1,000,000 email addresses in 100
4 days (at the rate of \$.01 per click), for example, he could obtain 10,000 names per day by
5 having 1,000,000 ads displayed, and 1% of the searchers (also called "users") clicking on
6 the Plaintiff's ad and accepting Plaintiff's offer of a free PDF copy of one of Plaintiff's
7 three books. At the end of 100 days, the Plaintiff would have his desired list of 1,000,000
8 New York State email addresses. The cost of \$10,000 for such list would have to be
9 adjusted upward by the number of persons dropping off of Plaintiff's list (and requiring
10 replacement) and the percentage of clickthroughs who wind up not subscribing to
11 Plaintiff's list. One million ads in a single day by the Plaintiff is not impossible or
12 impractical. Google serves up an estimated 1,500,000,000 (1.5 billion) ads each day, and
13 plaintiff would be participating in only 1/1500 or .00067 of such ads, as to keywords not
14 in any demand by other advertisers (other than eBay, possibly). Persons who clicked on
15 Plaintiff's website would subscribe to Plaintiff's email list without any human assistance.
16
17
18

19 69.. The Plaintiff's AdWords strategy as candidate for New York Attorney
20 General was and remains to use the low-demand keywords, where the Plaintiff would be
21 the only, or one of no more than, say, 10 advertisers, and be willing to (and desirous) of
22 obtaining the last position in the displayed ads, as long as the Plaintiff's ad was the
23 lowest bid and entitled to the \$.01 per-click price. It makes no difference to the Plaintiff
24 whether it takes 1,000,000 or 10,000,000 impressions to obtain 1,000 clickthroughs.
25 From Google's standpoint, if anyone believes the keywords in question are more valuable
26 to them than the \$.01 bid by Plaintiff, they will bid up the auction price and make it
27
28

1 impossible for the Plaintiff to obtain use of it through the auction process, and require the
2 Plaintiff to find a replacement keyword. The Plaintiff envisioned that he would be using
3 many hundreds of keywords simultaneously. It should be noted that eBay appears to be
4 using perhaps 100,000 keywords simultaneously (based upon Plaintiff's determination
5 that eBay was using 40% of keywords not in demand by other advertisers).

Case 5:06-cv-07297-JF Document 47-4 Filed 04/30/2007 Page 36 of 70

7 70.. Plaintiff found out that Google's stated minimum fee in its auction pricing
8 system does not apply when only one person seeks to use a given keyword. Instead of
9 letting the Plaintiff use the unwanted keyword for 5 cents (or 1 cent) per click, Google
10 stated that the Plaintiff could not use the word at all, and forced the Plaintiff back into an
11 auction with major corporations for the use of keywords of interest to them, with the
12 resulting 5 to 100 times the cost per click that Google forces Plaintiff and other small
13 businesses to pay. This is an anticompetitive activity by Google.

15 71.. Google has taken various keywords off its AdWords auction market even
16 if Plaintiff and other small advertisers were willing and able to pay the unconscionable
17 per-click rates of 100 times \$.01, further support for Plaintiff's allegations that Google is
18 manipulating the market and auction prices for keywords, as part of Google's plan to
19 drive small advertisers out of its keyword market and give discriminatory prices to major
20 advertisers. All of this is for the purpose of Google to increase the market share and
21 profits for Google and major advertisers at the expense of (i) Google's competitors
22 (Yahoo and Microsoft), (ii) the major advertisers' competitors (including Plaintiff and
23 other small advertisers), in what amounts to an unlawful combination and conspiracy
24 among Google and its major advertisers to fix AdWords auction prices in favor of major
25
26
27
28

1 corporate advertisers; and (iii) to make it difficult for anyone but favored advertisers to
2 use AdWords to jumpstart traffic to newly-created websites.

3 72.. This practice of pulling perfectly good English words off of the keywords
4 market to require the Plaintiff and other small businesses to bid for the keywords wanted
5 by the large corporate, high-volume AdWords advertisers is another predatory,
6 Case 5:06-cv-07297-JF Document 47-4 Filed 04/30/2007 Page 37 of 70
7 anticompetitive practice by Google, and misuse of its monopoly of the market for
8 keyword-targeted Internet advertising.

9
10 **Google's AdWords Is an Essential Facility**

11 73.. Google has two primary businesses: (i) selling AdWords advertising to
12 advertisers; and (ii) using its AdWords system to convert the traffic of selected websites
13 into money (in amounts established by Google's AdWords auctions), through licensing
14 the right to place Google AdWords advertising on websites owned by others (such as
15 MySpace.com) or by developing and purchasing websites (such as YOUTube) and
16 converting traffic at its own websites into money by running AdWords ads on these
17 Google websites.

18
19 74.. Google is able to do for itself what no competitor can do without use of
20 the Essential Facility, which is to convert or "monetize" website traffic into its monetary
21 value as established by competition among AdWords advertisers for the placement of
22 keyword-targeted advertising on the website. Google has agreements with various
23 leading websites to enable them to monetize or partially monetize their websites through
24 revenue sharing agreements involving Google's Search Advertising income derived from
25 the publisher's website, but Google refuses to enter into any agreement with the Plaintiff
26 for sharing of Google's Search Advertising revenues.
27
28

1 75.. Many website owners including the Plaintiff are creating new websites
2 and attempting to build traffic at their respective websites to be able to monetize the
3 website traffic in competition with Google, but nobody has been able to build a
4 monetizing system to compete effectively with Google's system. Only two search
5 engines are in the running: (i) Yahoo, which is now running backwards or losing ground
6 at a precarious rate; and (ii) MSN, which has started in competition with Google during
7 the past year with billions of dollars to spend in its announced effort to try to compete
8 with Google, but is now relegated to attempting to resist Google's considerable efforts to
9 take Microsoft's customers away from Microsoft by offering competing products through
10 Google's plug-in compatible system (starting with a free word processing program, and a
11 free spreadsheet program).

12
13
14 76.. There are no other companies or individuals or governments anywhere
15 that have any presently-perceived possibility of catching up to Google and becoming a
16 significant and growing competitor to Google. During the 3rd Quarter of 2006, Yahoo's
17 net earnings dropped 60% while Google's net earnings quadrupled. During Q3 2006,
18 Google's revenues were \$2.69 billion, increased 70% compared to 3Q 2005; whereas
19 Yahoo's revenues were \$1.58 billion, up only 19% from 3Q 2005. Google-owned
20 websites generated \$885,000,000 in revenues during this 3Q 2006. Google's 4Q 2006
21 earnings tripled on a revenue increase of 67% over 4Q 2005. Yahoo's 4Q 2006 net
22 earnings declined 67% from 4Q 2005, mostly attributable to a one-time backdated option
23 charge. See 1/22/07 Forbes.com article "Yahoo!'s Quarter to Forget".

24
25
26 77.. Google is in a position to under pay for (or steal) the work of all website
27 developers for a pittance because Google alone can convert the website hits into their
28

1 competitive market value (as determined by AdWords auctions). Other search engines
2 cannot do this and are not even in a position to acquire high-traffic websites for this
3 purpose because they lack the stock price, cash reserves and huge anticipated market-
4 value cash income to make the purchase (in competition with Google), and could not use
5 their own search engines to make as much money as the acquisitions are worth (at market
6 value) when a company such as Google acquires the website. This explains how a startup
7 organization, YOUTube, with no record of earnings, was acquired by Google during
8 October, 2006 for \$1.65 billion, with a possible \$4 billion more depending on increased
9 hits; and Google's August, 2006 payment of \$900,000,000 to Rupert Murdoch's
10 MySpace.com for the privilege of putting AdWords before MySpace visitors or hits for a
11 3-1/2 year period. Murdoch bought a 100% interest in MySpace for \$580,000,000 during
12 July, 2005, only 13 months earlier, showing that a website is more valuable to Google
13 than to its owner or other sophisticated internet companies because of Google's
14 monopoly power with its Essential Facility and resulting unique ability to "monetize"
15 traffic (i.e., convert website traffic or hits into actual market value in a huge competitive
16 market for keyword-targeted advertising), giving Google more prospective income and
17 stock price to outbid any competitor or other person trying to buy a specific website.

21 78.. On February 11, 2007, the Plaintiff observed no Google ads at the moment
22 of visiting MySpace.com and Google.com but, upon searching the MySpace website for
23 "gardens" (using a search engine "powered by Google"), 8 AdWords "sponsored links"
24 appeared (for Shopping.MSN.com, gardeners.com, superpages.com, eBay.com,
25 move.com, michiganbulb.com, VirtualPlantTags.com and cotswoldheritagetours.co.uk)
26 together with 231,000 MySpace links related to the keyword "gardens", showing how
27
28

1 Google is able to run AdWords ads on sites not owned by Google. At the same time,
2 when searching for "gardens" on Google's search website, 26 AdWords "sponsored
3 links" appeared for the "gardens" keyword together with 99,600,000 garden-related links.
4

5 79. Google's AdSense is different. AdSense ads appear, if at all, at the
6 moment of visitation to the website homepage or other pages of the website. For
7 example, on February 11, 2007, the Plaintiff visited Kinderstart.com and (without
8 conducting any search) saw 3 "Ads by Google", for AreYouASlackerMom.com,
9 TutorTime.com and NYSC.com, together with a Google notice "Advertise on this site"
10 with a link to GoogleSyndication.com. When searching the website for "gardens", no
11 "sponsored links" appeared, only a Google AdSense ad (raftforkids.com, occupying the
12 same space previously occupied by the 3 ads described above), together with 75
13 Kinderstart garden-related links. Google is not running any AdWords ads on
14 Kinderstart.com, only AdSense ads, which are not keyword-targeted ads in response to
15 any search term.
16

17 80. AdWords is an "Essential Facility" because it has not been able to be
18 duplicated, competitively, by Yahoo or MSN, and the cost of even trying to do so is an
19 estimated \$25-\$50 billion dollars (with Google having spent \$7-\$8 billion in acquisitions
20 so far) and having reached in excess of \$10 billion in revenues for 2006. MSN
21 (Microsoft) announced that it was setting aside almost \$2 billion to attempt to compete
22 with Google's AdWords. See ¶¶ 49-A to 49-II above for an analysis of the barriers to
23 entry. Specifically, (i) the Plaintiff competes with Google and Google controls
24 AdWords, an Essential Facility; (ii) the Plaintiff cannot duplicate that facility, nor can
25 anyone else over the past years; (iii) Google has denied Plaintiff reasonable, non-
26
27
28

1 discriminatory use of the Essential Facility for the purchase of keyword-targeted ads by
2 the Plaintiff, at non-discriminatory prices fixed by auction (and not by Google)) and has
3 denied Plaintiff and (upon information and belief) all other website owners (other than
4 AOL and MySpace) any use of the Essential Facility for the website owner to sell and
5 place keyword targeted ads by third-party advertisers on the owner's own website(s) for
6 visitors conducting website or Internet searches from the websites; and (iv) Google could
7 feasibly have granted Plaintiff the use of the Essential Facility for both desired uses on a
8 reasonable, non-discriminatory basis.
9

10 . 81. Unless Google is required to let users use its Essential Facility on equal
11 terms, Google will be depriving Plaintiff and other website owners of the opportunity of
12 building their internet businesses (such as Plaintiff's classified advertising websites,
13 myclads.com and attydb.com, Plaintiff's late-fee avoidance website, now located at
14 lawmall.com/latefees and other websites for creating traffic) and other website-supported
15 interests (such as Plaintiff's efforts to run for and obtain political office).
16

17 82. Not only does Google prevent Plaintiff from bidding for keyword-targeted
18 advertising on a non-discriminatory (and wholly prohibitive basis), Google also prevents
19 Plaintiff and other website owners from selling AdWords to their visitors and makes
20 them settle for letting Google place its low-value, low-income AdSense ads on the
21 website. This means that when Google owns a website, it can and does use its AdWords
22 system to extract huge amounts of money for itself from the traffic created by the
23 website, but when the same website is owned by someone else, such as Kinderstart.com,
24 Google pays a mere fraction of the revenue to Kinderstart.com for placing AdSense ads
25 on Kinderstart.com.
26
27
28

1 83. Google is engaged in two types of exclusion of the Plaintiff and other
2 website owners from use or non-discriminatory use of Google's AdWords Essential
3 Facility. The first is Google's refusal to let Plaintiff and (upon information and belief)
4 about 95% or more of all other PPC advertisers from using AdWords on a non-
5 discriminatory basis. Google is charging most of its AdWords customers prohibitively
6 high prices as alleged above, for the reasons set forth above. Secondly, AdWords is not
7 permitting website owners to turn their website traffic into money at (competitively-
8 created values) through sale and placement of ads on the owners' websites using the
9 AdWords Essential Facility, where the advertising revenues are huge, being based on
10 competition among advertisers for use of highly-specific, targeted keywords. Instead, the
11 website owners have to settle for a small fraction of the market-value amount obtained by
12 Google on its AdWords ads, by having to accept the lower-paying, less-effective, non-
13 targeted AdSense, banner or context ads.
14

15
16 84. Google's purpose in not giving Plaintiff and others reasonable access or
17 any access to its AdWords Essential Facility is to foreclose competition in the business of
18 developing website traffic and monetizing (or converting to market-value revenue) the
19 website traffic for the benefit of the website owner, and to reduce the value of websites to
20 their owners and enable Google to purchase or otherwise acquire them at less than their
21 fair market value in a non-monopolized market.
22

23 85. Because Google's AdWords facility is an Essential Facility, the Plaintiff is
24 entitled to make use of it on reasonable, non-discriminatory terms.
25

26 86. Plaintiff has been denied this access, both as to non-discriminatory
27 purchase (through AdWords auction) and placement of keyword-targeted ads
28

1 displayed with the results of Google searches on websites owned by others, and as to the
2 sale and placement of keyword-targeted AdWords ads on Plaintiff's websites, using the
3 AdWords Essential Facility, with Plaintiff as the seller of the key-word targeted
4 advertising (and recipient of revenue on a reasonable, non-discriminatory basis
5 comparable to the income being received by MySpace.com).

6 Case 5:06-cv-07297-JF Document 47-4 Filed 04/30/2007 Page 43 of 70

7 87.. Google's withholding of both types of use (on reasonable terms) of its
8 Essential Facility is a violation of § 2 of the Sherman Act.

9 88.. News Corp. / Fox Interactive Media (FIM) and its wholly-owned website
10 MySpace.com, and substantially all of the nation's other 2,500 largest corporations,
11 including media companies Time Warner and NBC Universal, which are victims of
12 copyright infringement by Google (upon its acquisition of YouTube), but are intimidated
13 by Google's internet monopoly (the Essential Facility) from bringing infringement
14 lawsuits against Google for fear of losing the possibility of monetizing their website
15 traffic, which because of Google's monopolizing activities now require Google's consent
16 (as was recently given to News Corp.'s FIM/MySpace.com interests); but by agreeing to
17 permit Google to infringe their copyrights, these corporations are giving up the value of
18 their copyrights for the opportunity to obtain monopolist Google's consent to and
19 participating in the monetizing of the huge existing website traffic. This is an
20 anticompetitive consequence of Google's monopolistic activities.
21
22
23
24

25 **PLAINTIFF'S INJURIES AND DAMAGES**

26 89.. By reason of Google's activities as alleged above, the Plaintiff (and each
27 of others similarly situated) has suffered the following antitrust injuries and damages:
28

1
2 **Plaintiff's Antitrust Injuries**

3 A.. Denial of Google's AdWords facility to monetize Plaintiff's 10
4 Community Search Websites (with damages being the loss of money from website
5 traffic; the loss of capital value for the websites; the loss of borrowing power for the
6 websites; the reduction of compound growth effect for the websites; and the loss of
7 market share for Plaintiff in the market of monetizing Community Search Websites; and
8 a decline in Plaintiff's willingness to innovate with additional websites if the ability to
9 adequately monetize their traffic is not available);
10

11 B.. Google's removal of low-priced keywords from the keywords available to
12 Plaintiff, even though most or all of such keywords were available for less than 1-cent per
13 click to ebay (with damages being the inability to obtain website traffic and a permissive
14 email list at Google's stated low price of 1-cent per click; Google had no business
15 justification for holding back such key words other than to force Plaintiff and others into
16 bidding for higher-cost keywords, which was an illegal controlling of the price of
17 keywords);
18

19 C.. Google's requirement that Plaintiff pay up to 50 times or more Plaintiff's
20 desired 1-cent bid, even though ebay was paying less than 1-cent per bid for low-value
21 keywords; and the related requirement by Google that Plaintiff have the same
22 clickthrough rate as ebay to be able to be able to obtain Google's advertised lowest 1-cent
23 per click price; Google had no business justification for its ad quality and landing page
24 requirements because it is not possible for many advertisers to have better advertising
25 copy; the user clicking on an ad does not see the landing page until after the clickthrough
26 takes place; and Google's stated reason to provide a better quality experience for persons
27
28

1 clicking on Google ads rings hollow because as long as the advertisers pays Google the
2 demanded tribute Google will allow the alleged low quality experience to take place.

3 D.. Google's systematic failure to include all advertisers bidding for use of a
4 keyword, by routinely leaving one or more of the lowest bidders (such as the Plaintiff) off
5 the list of bidders whose search advertisements are displayed together with the keyword
6 search results, for the purpose of not having to give the lowest bidder the automatic 1-
7 cent (or previously 5-cent) per click price, when Google's technology allows placement
8 of, and Google does sometimes place, at least 16 pages of ads (at 10 ads per page).
9 (Plaintiff is injured by being denied the opportunity to place his search advertising at
10 Google's lowest per-click price, thereby depriving Plaintiff of a low-cost opportunity to
11 obtain a website visitor, potential client, book purchaser, or an addition to Plaintiff's
12 permissive email mailing list.

13 E.. Google's monetization of selected Community Search Websites (including
14 Google's acquired YouTube.com) through sharing of Google's Search Advertising
15 placed on the websites, while refusing to enter into an agreement with Plaintiff for the
16 sharing of Google's Search Advertising revenues on any of Plaintiff's 10 Community
17 Search Websites, amounting to highly discriminatory website-traffic monetizing practices
18 by Google favoring competitors of Google and Plaintiff. (Plaintiff is injured by being
19 unable to monetize his Community Search Website traffic, with the same consequences
20 as alleged above).

21 F.. Forced to pay monopolistic charges to Google for use of Google's
22 monopolizing AdWords Search Advertising system to build website traffic, but denied
23 use of the same facility to monetize the website traffic (and obtain payback for the
24
25
26
27
28

1 developed website traffic at the monopolistic rate enjoyed by Google) after paying
2 Google for building the traffic;

3 G. Deprived of a market to sell successful (high-traffic websites) at the value
4 they represent to Google because the only company that can monetize website traffic at
5 such high rates is Google, so that Google has the ability to outbid any possible purchaser
6 and prevent the development of a market for monetizing websites. In fact, to suppress
7 such market, Google acquired during April, 2007 the number one competitor
8 (DoubleClick.com) in the market of monetizing websites through the substantially
9 inferior system of context or display (or banner) advertising.
10

11
12
13 **Plaintiff's Damages (in addition to damages described in A-G above)**

14 H. Moneys paid to Google by the Plaintiff as an AdWords advertiser
15 (\$1,466.67):

16 I. Moneys paid by the Plaintiff to develop various websites and create
17 website traffic using AdWords and other search services (approximately \$15,000);

18 J. Ongoing loss of the monetary value of website traffic for Plaintiff's 85 to
19 90 websites (\$10,000,000 or more, depending on the success of Plaintiff's 10 Search
20 Websites starting with myclads.com and attydb.com); and

21 K. Loss of the value of an email list of 1,000,000 members that could have
22 been built by Plaintiff under his business plan to use low-demand Google keywords, at a
23 cost of 1 cent per click, but for the illegal activities of Google (estimated at more than
24 \$1,000,000).
25
26
27
28

1 90.. Upon information and belief, the total provable damages suffered by
2 Plaintiff amount to more than \$11,000,000, and will be proven with certainty at the time
3 of trial.
4

5
6 **PRELIMINARY AND PERMANENT INJUNCTION**

Case 5:06-cv-07297-JF Document 47-4 Filed 04/30/2007 Page 47 of 70

7 91.. The activities of the defendant are continuing and threaten to prevent
8 Plaintiff from being elected as the New York Attorney General during the November
9 2010 elections, and any other political offices the Plaintiff may seek between now and
10 2010.
11

12 92.. If the Plaintiff is not able to enjoin Google from its predatory pricing
13 activities, as alleged, the Plaintiff will suffer irreparable injury by not being able to
14 compete for (or win) the election for New York Attorney General or any other offices
15 which the Plaintiff plans to seek.
16

17 93.. Plaintiff is entitled to (i) a preliminary injunction to enjoin Google from its
18 alleged predatory practices during the pendency of this litigation; and (ii) a permanent
19 injunction to enjoin Google from the same predatory practices, as part of the relief in the
20 final judgment in this action. Specifically, without limiting the injunctive relief being
21 sought, Plaintiff seeks an injunction or mandatory injunction.

22 A.. Requiring Google to provide access to Google's AdWords system (the
23 Essential Facility) on reasonable, non-discriminatory terms, as to both the purchase and
24 placement of AdWords keyword-targeted Internet, pay-per-click advertisements, as well
25 as the sale and placement of AdWords keyword-targeted, pay-per-click advertisements
26 on Plaintiff's own websites (in response to Google-powered website and web searches
27
28

1 conducted by visitors from Plaintiff's websites) with Plaintiff receiving a reasonable.
2 non-discriminatory percentage of the revenues derived from such advertising.

3 B. Requiring Google to let Plaintiff and other advertisers pay the lowest
4 available price per click as determined by Google's auction process without any
5 adjustment of the price by Google to reflect "quality", "landing page", clickthrough rate
6 of the advertiser or any other advertisers using the same or similar keyword;
7

8 C. Requiring Google to charge the same price or same position price (either
9 per-click price or price per 1,000 impressions) to all advertisers seeking to use a specific
10 keyword;
11

12 D. Requiring Google to let advertisers use any English words (other than
13 illegal words due to obscenity, copyright, trademark, secrecy or similar laws); and

14 E. Requiring Google to list in its website all words not available to any
15 AdWords advertiser.
16

17
18 **OTHER RELIEF SOUGHT**

19 94. The Plaintiff is entitled to an award of treble damages.

20 95. The Plaintiff is entitled to an award of attorneys' fees.

21 96. Plaintiff is entitled to a judgment as to liability against Google for
22 violation of § 2 of the Sherman Act by reason of the facts alleged in ¶¶ 1 through 93
23 above.
24
25
26
27
28

COUNT II

**[Violation of § 2 of the Sherman Act, 15 U.S.C.A. § 2 – Attempting to Monopolize –
Alternative Allegation to Count I Claims]**

97.. Plaintiff alleges and realleges each of the allegations set forth in ¶¶ 1-96 above, and further alleges, alternatively to Count I above, that Count II is being brought under § 2 of the Sherman Act, 15 U.S.C.A. § 2 for attempted monopolization of the Relevant Markets and Submarket.

Attempted Monopolization by Google (Alternative Allegation)

98.. Alternatively, by its actions as alleged, Google demonstrates that it has a dangerous probability of achieving monopoly power (to control prices and exclude competition) in these alleged service markets in the United States geographic market (defined in ¶ 44 above):

A.. Search Advertising market;

B.. Submarket of monetizing the traffic of Community Search Websites

through use of Search Advertising; and, alternatively, if the market turns out to be "all Internet advertising" and not "Search Advertising"; and

C.. Market for monetizing the traffic of Community Search Websites through the use of Internet Advertising.

99.. Google has a specific intent to control prices in each of the Relevant Markets and Submarket and to destroy competition and unreasonably restrain trade in such markets, evidenced by

1 A.. Google's acquisition of the patents, know-how, software copyrights,
2 management and employees of the following companies listed in Exhibit A hereto that
3 related directly to the improvement of Google's search engine, AdWords, AdSense or
4 marketing thereof: acquisition ## 2 (Outride), 4 (Neotonic), 5 (Applied Semantics), 6
5 (Kahix), 7 (Sprinks), 10 (Baidu), 13 (ZIPDash), 15 (possibly, 15 undisclosed companies
6 or asset acquisitions), 17 (Urchin), 23 (AOL 5% interest), 28 (orion advanced text search
7 algorithm), 30 (Neven), 31 (MySpace monetization agreement), 32 (Jot Spot), 33
8 (YouTube), 35 (Xunlei), 37 Trendalyzer), 38 (DoubleClick), 39 (Performics), 40 possibly
9 some of numerous foreign subsidiaries);
10

11 B.. Google's acquisition of direct competitors in the Internet Advertising
12 Market: 38 (DoubleClick), 23 (AOL 5% interest), 31 (MySpace monetization
13 agreement), 33 (YouTube, competitor in the market for monetizing Community Search
14 Websites; and
15

16 C.. each of the anticompetitive activities alleged in ¶¶ 50-72 above.
17

18
19 100.. Google engaged in predatory or anticompetitive conduct directed to
20 accomplishing the illegal purpose of monopolizing and unreasonably restraining trade in
21 each of the Relevant Markets and Submarket, as follows: the anticompetitive activities
22 alleged in ¶¶ 50-72 above.
23

24 101.. Google has or had a dangerous probability of success in its attempt to
25 monopolize the Relevant Markets and Submarket for the reasons and evidence described
26 in ¶ 99-A through ¶ 99-C above.
27
28

1 102.. Plaintiff suffered causal antitrust injuries by reason of the following
2 anticompetitive activities of Google: as described in ¶¶ 89A through 89-K above.

3 103.. The only two significant challengers to Google's AdWords business are
4 Yahoo and Microsoft/MSN, but neither has a database of search pages, or a number of
5 daily searches, or the dollar amount of advertising revenue or profits to be able to stop
6 Google's growth and ever-increasing power in the relevant market.
7

8 104.. Google is engaging in predatory and anticompetitive activities as alleged
9 in ¶¶ 50-72 and 89-A through 89-K above.

10 105.. The barriers to entry are so high (see ¶¶ 49-A through 49-II above) that
11 there appear to be only two actual or potential competitors (Yahoo and Microsoft/MSN),
12 but without any demonstrated ability to put together a team with the know-how to
13 compete effectively against Google. Google's team consists of Google's founders and
14 controlling shareholders of Google, people who cannot be purchased with Microsoft's
15 billions in unused cash reserves. Nobody has the databases to compete with Google and
16 even if they did they may not have the money to purchase and manage 450,000 servers to
17 be able to produce search results in a fraction of a second.
18

19 106.. Through its activities as alleged, Google is attempting to monopolize the
20 Relevant Markets and Relevant Submarket described in ¶ 98 above, with a dangerous
21 probability of being able to achieve success in monopolization of the alleged markets and
22 submarket, in violation of § 2 of the Sherman Act, 15 U.S.C.A. § 2 and during the
23 relevant period for this litigation actually acquired power over each of such markets.
24

25 107.. Plaintiff has been damaged as a result and is suffering from continuing and
26 irreparable damages as alleged in ¶¶ 89-92 above.
27
28

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
26
27
28

7. Granting the Plaintiff such other and further relief as this Court may
deem just and proper.

Jury Demand

Plaintiff hereby demands a trial by jury of all issues properly triable to a jury

in accordance with Rule 38(b) of the Federal Rules of Civil Procedure
Case 5:06-cv-07297-JF Document 47-4 Filed 04/30/2007 Page 53 of 70

**Dated: New York, New York
April 15, 2007**



**Carl E. Person
Plaintiff, Pro Se
325 W. 45th Street - Suite 201
New York, New York 10036-3803
(212) 307-4444**

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
26
27
28

Exhibit A

(Google's acquisitions from 2001 to 4/13/07)

1.. Beja. 2/01 (Usenet archive database consisting of 500 million messages, including threads and poster email addresses, dating back to 1995)

Case 5:06-cv-07297-JF Document 47-4 Filed 04/30/2007 Page 54 of 70

2.. Outride Inc., 9/01 (a spin-off from Xerox PARC; Google immediately integrated the technology into Google's search engine; in its 9/20/01 press release Google stated:

"Google Acquires Technology Assets of Outride Inc. - Transaction Complements Google's Technology Development To Provide Search Results with Greater Relevance - Google Inc. today announced the company's acquisition of the intellectual property, including patent rights, source code, trademarks, and associated domain names, from Outride Inc., a Redwood City, Calif.-based developer of online information retrieval technologies. ... "This acquisition is another example of Google's commitment to providing the highest quality search service in the world," said Larry Page, Google co-founder and president, Products. "Outride has made significant advances in the field of relevance technology and we believe Google provides the ideal vehicle to continue the development of these technologies." Outride, a spin-off from Xerox Palo Alto Research Center (PARC), was created to apply state-of-the-art model-based relevance technology to the challenge of online information retrieval. Outride's technologies were designed to enhance productivity from end-users by simplifying the ability to find the right information at the right time. * * * With the largest index of websites available on the World Wide Web and the industry's most advanced search technology, Google Inc. delivers the fastest and easiest way to find relevant information on the Internet. (source: <http://www.google.com/press/pressrel/outride.html>)

3.. Pyra Labs / Blogger, 2/03 (a weblogging provider and owner of *Blogger*, with 1 million subscribers at the time of acquisition, subsequently built up by Google to be one of the most-used blogging tools) As stated in a 2/18/03 *Forbes* article:

With its acquisition of Pyra Labs, Web-search juggernaut Google.com apparently sees dollar signs in the business of letting anyone easily publish their comments and thoughts on the Web.

Blogging, as it's often called, has become, in the last year, a trendy Web toy for

1 the stream-of-consciousness set Pyra's Blogger, with more than a million users,
2 allows users to write and publish online almost as quickly as a thought strikes.

3 As yet the only statement from Google has been a few terse sentences. "Blogs are
4 a global self-publishing phenomenon that connect Internet users with dynamic,
5 diverse points of view while also enabling comment and participation. * * *"
6 [source: http://www.forbes.com/2003/02/18/cx_ah_0218google_print.html]

6 4.. Neotonic Software, 4/03 (to bring Google's Customer Relationship Management (or
7 Case 5:06-cv-07297-JF Document 47-4 Filed 04/30/2007 Page 55 of 70
8 "CRM") technology in-house; CRM software with application for customizing

9 homepages, to automate and manage customer followup);

10 5.. Applied Semantics, 4/03, \$102 million (eventually becoming Google AdSense;
11 context-sensitive ad company integrated into Google's AdWords/AdSense to enable
12 Google to compete with Yahoo's Overture). In its 4/23/03 press release "Google
13 Acquires Applied Semantics - New Technologies and Engineering Team
14 Complement Google's Content Targeted Advertising Programs", Google announced:

15
16 that it acquired Applied Semantics, a Santa Monica, Calif.-based producer of
17 software applications for the online advertising, domain name and enterprise
18 information management markets. Applied Semantics' products and engineering
19 team will strengthen Google's search and advertising programs, including its fast-
20 growing content-targeted advertising offering. * * *

21 "Applied Semantics is a proven innovator in semantic text processing and online
22 advertising," said Sergey Brin, Google's co-founder and president of Technology.
23 "This acquisition will enable Google to create new technologies that make online
24 advertising more useful to users, publishers, and advertisers alike."

25 Applied Semantics' products are based on its patented CIRCA technology, which
26 understands, organizes, and extracts knowledge from websites and information
27 repositories in a way that mimics human thought and enables more effective
28 information retrieval. A key application of the CIRCA technology is Applied
Semantics' AdSense product that enables web publishers to understand the key
themes on web pages to deliver highly relevant and targeted advertisements.

6.. Kaitix, 9/03 (company acquired this 3-person personalized search startup company
to develop and launch *Personalized Search*). In its 9/30/03 press release entitled

1 "Google Acquires Kaltix Corp. - New Technologies and Engineering Team
2 Complement Google Search Engine", Google announced:

3
4 ... it acquired Kaltix Corp., a Palo Alto, Calif.-based search technology start-up.
5 * * * "Google and Kaltix share a common commitment to developing innovative
6 search technologies that make finding information faster, easier and more
7 relevant," said Larry Page, co-founder and president of Products at Google.
8 "Kaltix is working on a number of compelling search technologies, and Google is
9 the ideal vehicle for the continued development of these technologies."

Case 5:06-cv-07297-JF Document 47-4 Filed 04/16/2007 Page 56 of 70

10 Kaltix Corp. was formed in June 2003 and focuses on developing personalized
11 and context-sensitive search technologies that make it faster and easier for people
12 to find information on the web.

13
14 7.. Sprinks, 10/03 (acquired to enhance Google's AdWords and AdSense programs). In
15 a 10/24/03 article entitled "Google Acquires Sprinks: Gains Access to Advertiser
16 Base and Ad Placement on About.com and Primedia Online Publications",
17 traffick.com stated [source: [http://www.traffick.com/2003/10/google-acquires-
18 sprinks-gains-access.asp](http://www.traffick.com/2003/10/google-acquires-sprinks-gains-access.asp)]:

19 Sprinks, an innovator in the pay-per-click keyword-targeted ad space, is no more,
20 following an acquisition by category leader Google, Inc.

21 Sprinks ads currently show up on 450 topic-specific About.com Guide Sites as
22 well as 127 magazine-related websites targeting readers of major Primedia
23 publications.

24 As part of the deal, Google has signed a four-year revenue-sharing agreement to
25 show ads on these sites.

26 In the area of so-called contextual pay-per-click ads (ads near relevant content,
27 not triggered by search results), Sprinks had been a recent thorn in the side of the
28 industry leaders, Google, Overture, and Findwhat. Its ContentSprinks offering
gave advertisers superior "channel control" than the often unpredictable
contextual ads shown by its competitors. It's not clear if the acquisition will lead
Google to rethink how it shows some of its contextual ads.

According to Marshall Simmonds, Director of Search for Primedia and
About.com, the two parties have set a 45-day integration schedule to integrate
Sprinks staff into Google and after which Google AdWords ads will begin
showing on Sprinks' former network.

1 As for how the integration might affect Google's approach to contextual
2 advertising, Siramonds says: "It's difficult to speculate. The main thing is that
3 Google will now have access to our large network of topically-relevant sites."

4 8.. Genius Labs, 10/03 (a second weblog provider)

5 9.. Ignite Logic, 4/04 (a company building websites for law firms, adding to Google's

6 Case 5:06-cv-07297-JF Document 47-4 Filed 04/30/2007 Page 57 of 70
7 expertise in distributed computing and extending Google's distributed computing

8 platform)

9 10.. Baidu, 6/04, \$5 million (2.6% ownership in the leading web search firm in China, a
10 competitor of Google; China is the 2nd largest internet market; sold for \$60 million in
11 6/06)

12 11.. Picasa, 7/04 (picture management tools for *Blogger*)

13 12.. Keyhole, 10/04 (to provide the core mapping capabilities in Google Earth)

14 13.. ZipDash, 9-12/04 (to develop and launch Google Ride Finder). A 3/30/05

15 SiliconBeat article in the *Mercury News* discussing Google's secret, non-reported
16 acquisition revealed:
17

18 Zipdash "... tackles highway congestion by providing individuals with real-time,
19 accurate traffic information." Some of the technology is/was intended to allow
20 mobile phone users to get real-time traffic info using the GPS in their phones.

21 UPDATE: A Google spokesman got back to us to confirm both acquisitions,
22 which he said were made because of the companies' "talented engineers and great
23 technology." He declined to comment further.
24

25 14.. Where2 LLC, 9-12/04 (to provide the core mapping capabilities in Google Maps)
26
27
28

1 15.. 9 companies and substantially all of the assets of another 6 companies, during
2 2005, for a combined purchase price of \$131 million (according to Google's 10-K
3 (filing)

4
5 16.. 2Web Technologies, 2004/2005 (spinoff of ITK Software, key part of Google's plan
6 to develop and launch Google Spreadsheets to compete with Microsoft's acquired
7 spreadsheet team)

8
9 17.. Urchin Software Corporation, 3/05, \$30 million (web analytics and statistics
10 technology used to develop and launch Google Analytics). In John Battelle's
11 3/28/05 Searchblog, Battle quoted from Google's press release and commented on
12 the acquisition [source: <http://battellemedia.com/archives/001360.php>]:
13

14 ... [the release stated that Google] "has agreed to acquire Urchin Software
15 Corporation, a San Diego, California based web analytics company.

16 "Urchin is a web site analytics solution used by web site owners and
17 marketers to better understand their users' experiences, optimize
18 content and track marketing performance. Urchin tools are available as
19 a hosted service, a software product and through large web hosting
20 providers. These products are used by thousands of popular sites on the
21 Internet.

22 "Google plans to make these tools available to web site owners and
23 marketers to better enable them to increase their advertising return on
24 investment and make their web sites more effective.

25 "We want to provide web site owners and marketers with the
26 information they need to optimize their users' experience and
27 generate a higher return-on-investment from their advertising
28 spending," said Jonathan Rosenberg, vice president of product
management, Google. "This technology will be a valuable addition to
Google's suite of advertising and publishing products." [end of release]

So this is interesting on a number of levels. Urchin was a third party system that
many used to understand their Google ads, among others. As part of a Google
suite of tools, it will take on a decidedly different cast. More as the word trickles
out. BTW, I was told by the tipster that the price was \$30 million.

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
26
27
28

18.. Dodgeball, 2/05 (a 2-person cell phone social networking software provider for mobile devices)

19.. Current Communications Group, 7/05 (Google together with Goldman Sachs and Hearst Corporation invest \$100 million; an investment in a company which provides broadband services through power lines)

20.. Akwan Information Technologies, 7/05 (part of plan to open an R&D office and expand Google's presence into Latin and South America) (one of 3 companies acquired by Google for \$22.5 million)

21.. Reqwireless, 7/05 (web browser and mobile email software developer for wireless devices, as part of Google's initiative to develop a version of Gmail for the mobile device)) (one of 3 companies acquired by Google for \$22.5 million)

22.. Android Inc., 8/05 (software provider for mobile devices)) (one of 3 companies acquired by Google for \$22.5 million)

23.. Time Warner's AOL division, 12/05, \$1 billion (for 5% stake, in a competitor of Google, which also enabled Google to run its Search Advertising alongside the search results for AOL website visitors; an example of how Google is monetizing the website of a competitor (in which Google purchased a 5% interest) and could monetize Plaintiff's websites if it chose to do so;

1 24.. DMarc Broadcasting, 1/06, \$102 million plus additional maximum of \$1.136
2 billion (creator and operator of an automated platform that lets advertisers more
3 easily schedule, deliver and monitor their ads over radio, and radio broadcasters to
4 automate schedules and advertising spots)

5
6 Case 5:06-cv-07297-JF Document 45 Filed 04/16/2007 Page 60 of 70
7 Measure Map, 2/06 (from Adaptive Path, a product to help with Blog analytics). On

8 his first day at work for Google, the acquired team leader stated:

9 Our goal has been to use the power of web analytics to help bloggers feel that
10 same sense of connection with their audience. Today, as the Measure Map team
11 joins Google, our mission remains the same: to build the best possible user
12 experience so people can understand and appreciate the effect their blogs - their
13 words and ideas - can have. * * *

14 Bringing Measure Map to Google is an exciting validation of the user experience
15 work I've been doing with my partners at Adaptive Path for years. By opening up
16 the app to more bloggers through Google, we hope to help even more people
17 become passionate about their blogs.

18 26.. Writely, 3/06 (company with online word processing program of same name, to
19 enable Google to offer a free application to undermine competitor Microsoft's
20 market share for word processing programs)

21 27.. Sketchup, 3/06 (using a plugin, this program allows one to place 3D models into
22 Google Earth)

23 28.. Orion, an advanced text search algorithm, 4/06 (from inventor Ori Allon, an
24 Israeli-born student at the University of New South Wales in Australia; The
25 advanced text-search algorithm...will make searches much less time-consuming;
26 instead of finding pages on the net that contain keywords, then providing links, the
27 new search engine will provide expanded text extracts which will eradicate the need
28

1 to open every link. Orion has sparked interest from the likes of Google and Yahoo,
2 with Google acquiring the rights to the algorithm)

3
4 29.. GTalkr, 5/06 (web-based, Flash-based IM client focused exclusively on interfacing
5 with Google's GTalk)

6 Case 5:06-cv-07297-JF Document 47-4 Filed 04/30/2007 Page 61 of 70

7 30.. Neven Vlsom, 8/06 (company that specializes in biometric identification, to make it
8 easier for Google's Picasa to organize and search for photos)

9
10 31.. MySpace, 8/06, \$900,000,000 minimum over 3-1/4 years for licensing use of
11 Google's search engine, keyword-targeted AdWords advertising system and
12 advertiser database (the "AdWords Platform") by MySpace and other News
13 Corporation's Fox Interactive Media ("FIM") (competitors of Google); with all
14 revenues from use of the AdWords Platform being paid to FIM until \$900,000,000
15 minimum is received by FIM; the licensing includes, upon information and belief,
16 the non-exclusive licensing of use of various patents owned by Google; an example
17 of Google permitting FIM, a favored customer (and competitor of Google in
18 monetizing website traffic), to use the Essential Facility for the essential purpose of
19 monetizing YouTube's traffic, and dividing the revenues by agreement between
20 Google and competitor FIM

21
22
23 32.. JotSpot, 10/06 (an application Wiki company to offer enterprise social software;
24 product is targeted mainly to small and medium-sized businesses; company was
25 founded by Joe Kraus and Graham Spencer, co-founders of Excite)

1 33.. YouTube, 11/06, \$1.65 billion in stock (online video sharing website, with company
2 retaining its brand), an example of Google using its Essential Facility to monetize
3 YouTube's traffic, but only after it was acquired by Google; upon information and
4 belief, the agreement eliminated \$ billions of copyright infringement liability or
5 potential liability that YouTube.com had to FIM/Murdoch;

6 Case 5:06-cv-07297-JF Document 47-4 Filed 04/30/2007 Page 62 of 70

7
8 34.. Endoxon, 12/06, \$28 million (an Internet and mobile mapping solutions developer)

9
10 35.. Xunlei, a Chinese company, 1/07, non-disclosed price (buys a stake in company, a
11 person-to-person file sharing service);

12 36.. Adscape, 2/07, \$23 million (video game advertising);

13
14 37.. Trendalyzer, 3/07, undisclosed price (data visualization software as a management
15 tool for use with AdWords and by AdWords advertisers, upon information and
16 belief); 3/16/07 blogspot.com stated:

17
18 Google decided to acquire the technology from Gapminder. "Gathering data and
19 creating useful statistics is an arduous job that often goes unrecognized. We hope
20 to provide the resources necessary to bring such work to its deserved wider
21 audience by improving and expanding Trendalyzer and making it freely available
22 to any and all users capable of thinking outside the X and Y axes." says Marissa
23 Mayer.

24
25 38.. DoubleClick, 4/07, \$3.1 billion (the leading online advertising company with annual
26 revenues of 5300 million, enabling its customers to turn website traffic into money
27 through labor intensive online display advertising, but to a much lesser extent than
28 Google is able to do with Google's Search Advertising system with an 8% cost of
sales; with an auction market for online advertising; Google outbid Microsoft;
enables Google to move into online advertising market where Google had no

1 presence; purpose of acquisition is to stifle Microsoft's competition; see 4/14/07 *NY*
2 *Times* article which states "Acquiring DoubleClick expands Google's business far
3 beyond algorithm-driven ad auctions into a relationship-based business with Web
4 publishers and advertisers. Google has been expanding its AdSense network into
5 video and display ads online and is selling ads to a limited degree on television.
6 newspapers and radio."). Google's own lengthy FAQ concerning the acquisition
7 [published at http://216.239.57.110/blog_resources/DC_FAQ.pdf] is compelling
8 evidence supporting Plaintiff's allegation that context advertising is a different
9 market from Search Advertising, as follows:
10
11

12 * * * "We see this acquisition as bringing the worlds of search and display
13 advertising together. ... DoubleClick currently has approximately 1,200
14 employees. [p.1]; ... we will provide additional monetization
15 opportunities and efficiencies to maximize their {AdSense publishers'}
16 revenue. ... The acquisition will give advertisers more targeting and
17 buying options and will provide maximum reach for their target
18 audience.... Working with DoubleClick, we will make online text and
19 display advertising more targeted and relevant for the user and therefore
20 more valuable to the advertiser. ... provide additional revenue potential
21 while letting them focus more on creating and maintaining websites that
22 appeal to users. Upon closing, DoubleClick publishers will then have
23 access to our large base of advertisers. ... When done properly,
24 advertising can be useful and provide relevant information at the precise
25 moment when a user is interested in acquiring a service or product.
26 Working with DoubleClick, we are confident that advertisers and agencies
27 will apply that principle to display advertising across the web to not only
28 benefit advertisers and publishers but also [p.2] to ensure a high quality
and relevant online experience for users. ... DoubleClick has thousands of
clients. There is some overlap with Google's current client base. We
believe this offers synergies for advertisers and publishers to place the
right ad at the right time to the right user, using both text and display
advertising. ... increasing productivity and profitability ... [p.3] Working
with DoubleClick, we will increase the relevance of ads online so that we
maintain a positive user experience while provid[ing] targeted ad
opportunities for advertisers and increased monetization for publishers. ...
The majority of Doubleclick's business is in the United States.... Q. Is
this acquisition a response to the minimal traction Google has made
thus far on brand advertising efforts? A. No, it's an opportunity to

1 combine our business with the complementary capabilities DoubleClick
2 has to offer. Doubleclick and Google will be able to offer a better, more
3 comprehensive experience than either company could offer alone – for
4 advertisers, publishers, and ad agencies. ... This partnership is an obvious
5 opportunity to expand our ads business and have a positive impact on our
6 search users in the process... Q. Given Google's technology expertise,
7 why is it necessary to acquire Doubleclick? A. DoubleClick offers a
8 unique opportunity to acquire capabilities that are complementary to
9 Google's existing business. Q. How does this acquisition broaden
10 Google's market opportunity? A. This acquisition represents a
11 tremendous opportunity for Google to accelerate our display advertising
12 business and to broaden and deepen the inventory available to all [p.4]
13 advertisers. Advertisers will have the data, tools, and reporting they need
14 to grow their search and display advertising spend. In addition, currently
15 unsold publisher inventory will become more readily available and also
16 contribute to growth in advertising revenues. Q. Do you believe this
17 acquisition will stifle competition? A. No, we do not believe this
18 acquisition is anti-competitive, as it promotes a vibrant, healthy market for
19 online advertising. ... We do see the opportunity to monetize more types
20 of inventory as a large opportunity and will address this opportunity
21 through some combination of our existing initiatives and DoubleClick's
22 existing initiatives. Performics is part of DoubleClick, and we are
23 acquiring it as part of the transaction. [p.5]

15 39.. Performics, a company purchased by DoubleClick in May 2004 for \$58-65 million
16 (search engine marketing and affiliate marketing products), acquired by Google
17 when acquiring DoubleClick during 4/07;
18

19 40.. Google's foreign subsidiaries (listed in Google's 2006 Annual Report), some of
20 which (upon information and belief) involve acquisitions by Google of competitors,
21 technology, patents and other assets which any would require expense to offset by
22 any Google competitor in the United States [source:
23 [http://www.searchenginejournal.com/googles-30-us-subsidiaries-googles-
24 international-companies/4481/](http://www.searchenginejournal.com/googles-30-us-subsidiaries-googles-international-companies/4481/)];
25
26

27 Aegino Limited : Ireland
28 @Last Software, Ltd. : United Kingdom

- 1 At Last Software GmbH : Germany
- 2 allPAY GmbH : Germany
- 3 bruNET GmbH : Germany
- 4 bruNET Holding AG : Germany
- 5 bruNET Schweiz GmbH : Switzerland
- 6 Endoxon Ltd. : Switzerland
- 7 Endoxon (India) Private Ltd. : India
- 8 Endoxon Prepress AG : Switzerland
- 9 Endoxon (Deutschland) GmbH : Germany
- 10 Google (Hong Kong) Limited : Hong Kong
- 11 Google Advertising and Marketing Limited : Turkey
- 12 Google Akwan Internet Ltda. : Brazil
- 13 Google Argentina S.R.L. : Argentina
- 14 Google Australia Pty Ltd. : Australia
- 15 Google Belgium NV : Belgium
- 16 Google Bermuda Limited : Bermuda
- 17 Google Bermuda Unlimited : Bermuda
- 18 Google Brasil Internet Ltda. : Brazil
- 19 Google Canada Corporation : Nova Scotia, Canada
- 20 Google Chile Limitada : Chile
- 21 Google Czech Republic s.r.o. : Czech Republic
- 22 Google Denmark ApS : Denmark
- 23 Google Finland OY : Finland
- 24 Google France SarL : France
- 25 Google Information Technology Services Limited Liability Company :
Hungary
- 26 Google Germany GmbH : Germany
- 27 Google India Private Limited : India
- 28 Google International GmbH : Austria
- Google Ireland Holdings : Ireland
- Google Ireland Limited : Ireland
- Google Israel Ltd : Israel
- Google Italy s.r.l. : Italy
- Google Japan Inc. : Japan
- Google Korea, LLC. : Korea
- Google Limited Liability Company - Google OOO : Russia
- Google Mexico S. de R.L. de C.V. : Mexico
- Google Netherlands B.V. : The Netherlands
- Google Netherlands Holdings B.V. : The Netherlands
- Google New Zealand Ltd. : New Zealand
- Google Norway AS : Norway
- Google Payment Ltd. : United Kingdom
- Google Payment Hong Kong Limited : Hong Kong
- Google Payment Singapore Pte. Ltd. : Singapore
- Google Poland Sp. z o.o. : Poland
- Google Singapore Pte. Ltd. : Singapore

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
26
27
28

Google South Africa (Proprietary) Limited : South Africa
Google Spain, S.L. : Spain
Google Sweden AB : Sweden
Google Switzerland GmbH : Switzerland
Google UK Limited : United Kingdom
Neven Vision KK : Japan
Neven Vision Germany GmbH : Germany
Leonberger Holdings B.V. : The Netherlands
Reqwireless Inc. : Ontario, Canada
Skydocks GmbH : Germany

Exhibit B

CARL E. PERSON, ATTORNEY AT LAW

325 W. 45th St. - Suite 201
New York NY 10088-3803
Phone 212-307-4444
Fax 212-307-0247
carper@ix.netcom.com

REGISTERED MAIL RRR

April 15, 2007
Case 5:06-cv-07297-JF Document 47-4 Filed 04/30/2007 Page 67 of 70

Eric Schmidt, Chief Executive Officer
Google, Inc.
1600 Amphitheatre Parkway
Mountain View CA 94043

Dear Mr. Schmidt:

This letter is being sent to you pursuant to (a) § 1782(a)(2) of the California Civil Code and (b) judicial decisions concerning the antitrust "Essential Facilities" doctrine under § 2 of the Sherman Antitrust Act, which require that a demand be made as a condition to pursuing certain claims against Google, Inc. ("Google"). Simultaneously, I am sending a copy of this letter to your attorneys, Messrs. Wilson Sonsini Goodrich & Rosati (David H. Kramer, Esq.).

The first of my two demands, made pursuant to § 1782(a)(2) of the California Civil Code, is that Google, Inc. cease all of the following activities of Google prohibited by § 1770 of the California Civil Code [contained in ¶ 228 of my revised proposed amended complaint – not yet served, in *Person v. Google*]:

(1) Google's intervention in the bidding process to require the Plaintiff [and other disfavored advertisers] to bid amounts determined by Google. Such activity is the "passing off services" [of Google] as those of another [Person]."

(2) Google's intervention in the bidding process to require the Plaintiff [and other disfavored advertisers] to bid amounts determined by Google. Such activity is "misrepresenting the source, sponsorship, approval [and] ... certification of ... services [i.e., Plaintiff's or other advertiser's bid]."

(3) Google's intervention in the bidding process to require the Plaintiff [and other disfavored advertisers] to bid amounts determined by Google. Such activity is "misrepresenting the affiliation, connection, or association with, or certification by, another" as to the relationship between Google as auctioneer and Plaintiff as a bidder.

(5) Google's intervention in the bidding process to require the Plaintiff [and other disfavored advertisers] to bid amounts determined by Google. Such activity is "representing [falsely] that services [i.e., bids by Person or others] have sponsorship, approval [and] characteristics [an amount determined by the Plaintiff and not by Google] which they do not have...."

Eric Schmidt, Chief Executive Officer, February 12, 2007, page 2.

(7) Google's intervention in the bidding process to require the Plaintiff [and other disfavored advertisers] to bid amounts determined by Google. Such activity is falsely "representing that services [i.e., bids by Plaintiff or others]... are of a particular standard, quality, or grade [i.e., made at a price selected by the Plaintiff or others]...."

(9) Google's advertising that AdWords is an auction market is the "Advertising [of] ... [auction] services with intent not to sell them as advertised". Such activity is illegal because of Google's intervention in the bidding process to require the Plaintiff [and other disfavored advertisers] to bid amounts determined by Google.

(10) Google's advertising that AdWords is an auction market for keywords is the "Advertising [of] ... [auction] services with intent not to supply reasonably expectable demand [for keywords], unless the advertisement discloses a limitation of quantity". Such activity is illegal because Google is withholding numerous keywords from the auction market, to force higher winning bids for the keywords allowed to be sold at its auctions.

(13) Google states that it is adjusting keyword prices upwards for some advertisers and downward for other advertisers based on Google's subjective analysis of the quality of the advertiser's advertisement and landing page, in comparison to others. This is the "making [by Google of] false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions" given to some (e.g., eBay) and not to others (such as the Plaintiff, and other disfavored advertisers). This is especially so because Google is comparing the clickthrough rates of dissimilar but competing advertisers (i.e., Plaintiff in running for Attorney General was seeking to use some of the keywords used by eBay to sell books, and misrepresenting to advertisers that they could improve their clickthrough rate in comparison to eBay or equivalent by working on their ad and landing page when in fact this was not necessarily so. Google has been falsely representing to advertisers that they can and should create better landing pages and ads to obtain clickthrough rates of advertisers selling wholly unrelated products and services.

(16) Google's auction results, based on the foregoing, are "representing that the subject of a transaction [i.e., a keyword auction] has been supplied in accordance with a previous representation when it has not." Google's alleged auction market is not an auction market at all. It is a price-fixing market where prices are set by Google, in a variety of ways, without telling advertisers. Google's manipulation of the auction market has resulted in the fixing of prices at artificially high levels and requiring advertisers such as the Plaintiff and other disfavored advertisers to pay per-click prices 50 times more than the click-through price paid at the same moment by advertisers who are offering non-competitive goods and/or services to searchers using a specific keyword.

(17) By reason of Google's manipulation of its auction market, Google has been falsely "representing that the consumer will receive a rebate, discount, or other economic benefit" by participating in Google's keyword auctions, under Google's terms and conditions, including the making of changes to the advertiser's ads and landing pages. Google has no way of knowing if the advertiser's present ads are as good as they can be, for the type of product or service being offered, and Google forces most of its advertisers, including the Plaintiff [and other disfavored advertisers], to keep making changes to the ads to achieve a non-obtainable result (of making the market for live elephants as large as the market for books on elephants).

(18) By not explaining how an advertiser can bargain with Google for lower rates (in the way that eBay is obtaining, upon information and belief, a price of about one-half a cent per click, 50% lower than Google's lowest advertised price per click), Google is "misrepresenting the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction with a consumer." Google is representing there is no authority on the part of any Google employee to negotiate lower terms for advertisers when in fact there is, but this is not made known to the vast majority of AdWords advertisers.

Eric Schmidt, Chief Executive Officer, February 12, 2007, page 2.

(19) By requiring the Plaintiff [and other disfavored advertisers] to commence their lawsuits against Google in Santa Clara County, California as a condition to using Google's AdWords, Google has "insert[ed] an unconscionable provision in the contract." Also, by subjecting advertisers to making ad and landing-page changes to obtain, possibly, lower per-click rates, when Google is comparing ads and landing-page performances of wholly different types of businesses (such as sale of live elephants v. sale of books on elephants), Google has "insert[ed] an unconscionable provision in the contract." Google is fully aware that a seller of live elephants cannot sell as many elephants as a book seller can sell books on elephants, and as a result that the efforts to change ads and landing pages put many advertisers, including the Plaintiff [and other disfavored advertisers], through needless and useless expense chasing an objective (the same clickthrough rate for different types of business wanting to use the same keyword) that Google knows cannot be obtained.

(20) Through Google's intervention in the bidding process to require the Plaintiff [and other disfavored advertisers] to bid amounts determined by Google, Google is "advertising that a product is being offered at a specific price plus a specific percentage of that price unless (1) the total price is set forth in the advertisement...." This is so because Google is advertising that an AdWords advertiser with the best landing page and ad will be able to obtain the lowest per-click price for a given keyword. Yes, this is not true because the best ad and landing page for the sale of live elephants will not be able to outsell the best ad and landing page for a book on elephants.

As my second demand [drawn from ¶ 248 of my proposed amended complaint], I hereby demand that Google provide me with reasonable, non-discriminatory use of Google's search engine and related AdWords advertising system (collectively, the "Essential Facility") for the purchase of keyword targeted ads by me, at non-discriminatory prices fixed by auction (and not by Google) as well as the use of the Essential Facility (including Google's advertiser database) by me, as an owner of various active websites (and additional websites under active development), to sell and place keyword-targeted ads by third-party advertisers on my websites for visitors conducting website or Internet searches from my websites. I want to have the same type of AdWords "sponsored-link" advertising appear on my website as Google is placing on www.myspace.com and on www.google.com, with the revenues paid to me on terms comparable to the terms provided in Google's agreement with the owners of MySpace.com. Also, I demand that Google license me to use the same patents Google licensed to the owners of MySpace.com on no less favorable terms.

Very truly yours,



Carl E. Person

cc:

David H. Kramer, Esq.
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto CA 94304-9300

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
26
27
28

CARL E. PERSON, Plaintiff, *Pro Se*
325 W. 45th Street - Suite 201
New York NY 10036-3803
Telephone: (212) 307-4444
Facsimile: (212) 307-0247
carlpers@ix.netcom.com

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case 5:06-cv-07297-JF Document 47-4 Filed 04/30/2007 Page 70 of 70

CARL E. PERSON,)	CASE NO.: C 06-7297 JF (RS)
)	
Plaintiff,)	CERTIFICATE OF SERVICE
)	VIA MAIL AND EMAIL
v.)	
)	
GOOGLE INC.,)	
)	
Defendant.)	

I, Carl E. Person, declare:

I am the plaintiff in this action and fully familiar with the facts stated herein, and make this declaration to certify that on April 15, 2007, I served by U.S. Postal Express for postal express delivery on

David H. Kramer, Esq.
Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto CA 94304-1050

addressed as per above and to David H. Kramer, Esq. by email as to the following document: 2nd Amended Complaint dated April 15, 2007.

Executed under the penalty of perjury.

Dated: April 15, 2007


Carl E. Person