EXHIBIT F

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA SAN JOSE DIVISION

CLRB HANSON IND etc., et al.,	USTRIES, LLC,)		
	Plaintiffs,)		
)	•	
v.)	Case No.	
)	05-03639	JW
GOOGLE, INC.,)		
)		
)		
	Defendant.)		
)		

DEPOSITION OF HOWARD STERN

August 16, 2006

227871



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2	UNITED STATES DISTRICT COURT
3	NORTHERN DISTRICT OF CALIFORNIA SAN JOSE DIVISION
4	CLRB HANSON INDUSTRIES, LLC d/b/a
5	INDUSTRIAL PRINTING, and HOWARD STERN, on behalf of themselves and
6	all others similarly situated,
7	Plaintiffs,
8	V. Case No. 05-03639 JW
9	GOOGLE, INC.,
10	Defendant.
11	August 16, 2006
12	11:19 a.m.
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14	VIDEOTAPED DEPOSITION of HOWARD
15	STERN, taken by Defendant, pursuant to
16	notice, held at the offices of Thacher
17	Proffitt & Wood, 2 World Financial
18	Center, New York, New York, before
19	Amy E. Sikora, CRR, CSR, RPR, Certified
20	Realtime Reporter, Certified Shorthand
21	Reporter, Registered Professional
22	Reporter, and Notary Public within and
23	for the State of New York.
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2	ΑP	PEARANCES:
3	WOLF	POPPER LLP
4	Atto	rneys for Plaintiffs and the Proposed Class
5		845 Third Avenue
6		New York, New York 10022
7	BY:	LESTER L. LEVY, ESQ.
8		MICHELE F. RAPHAEL, ESQ.
9	PERK	INS COIE LLP
10	Atto	rneys for Defendant
11		180 Townsend Street
12		San Francisco, CA 94107-1909
13	BY:	DAVID T. BIDERMAN, ESQ.
14		M. CHRISTOPHER JHANG, ESQ.
15		
16		
L7	ALSO	PRESENT:
18	THOM	AS DELVECCHIO, Videographer
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	. 1	H. Stern
14:25	2	about a month ago. And that was about 380
L4:25	3	days. And I assumed I ran it a few more days
14:25	4	since then. So it just gives me a ballpark
14:25	5	idea of just how many days my campaign was
14:25	6	actively running.
L4:25	7	Q. You mean, how many days it was
14:25	8	unpaused?
L4:25	9	A. Unpaused, yes, exactly.
14:25	10	Q. Okay. And do you know, in fact,
L4:25	11	whether you were charged the amounts that are
14:25	12	specified under the "Cost" column in this
₋ 4:26	13	document?
.4:26	14	A. Not for a fact. But as I said
.4:26	15	before, when I tried to reconcile my monthly
.4:26	16	charges with these, they seemed to be in
.4:26	17	line. But I'm not going to say they agreed
.4:26	18	exactly. And I also can't say how far they
.4:26	19	disagreed.
.4:26	20	Q. Okay. And, again, just I'm
.4:26	21	not sure I got a clear answer. Is it your
.4:26	22	best recollection
.4:26	23	MR. BIDERMAN: Thanks, Barbara.
.4:26	24	Q that you have never received
.4:26	25	any overdelivery credits?
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H. Stern

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

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- A. Because I never run my ads everyday. So this really doesn't apply to my situation.
- Q. And what made you believe that you would -- that the days that your campaign was paused would not be included in that calculation?
- A. Well, for the simple reason that this is -- this AdWords is put forward as something that gives me complete control over my charges, so I thought -- thought it was reasonable to assume, if I'm not running my ads, why would I be charged for days that I'm turning them off.
- Q. Okay. And did you -- have you ever seen any documentation that stated, documentation from Google, that stated that the days where your campaign was paused would

	. 1	H. Stern
14:32	2	not be factored into that calculation?
14:32	3	A. As a matter of fact, I was shown
14:32	4	a screen shot by one of the attorneys that
L4:32	5	specifically said you're only charged for the
14:32	6	days your ad is active.
14:32	7	Q. And that's in a document and
L4:32	8.	that's a document that is part of
l4:32	9	MR. BIDERMAN: Withdraw that
L4:32	10	question.
L4:32	11	Q. Other than having seen that
14:32	12	document from your attorneys, have you seen
.4:32	13	any other documents that you believe state
.4:32	14	that the days that your campaign is paused do
.4:32	15	not figure into that calculation?
.4:32	16	A. I would say that it's I don't
.4:32	17	know the best word's implicit in the way this
.4:33	18	is billed, you're billed day by day. If you
.4:33	19	don't have it on, you're not billed. That
.4:33	20	makes me think that if I'm not billed, it's
.4:33	21	not added in in any way, so it would not be
.4:33	22	included in the monthly calculation. It's
.4:33	23	literary just a day that I'm not using the
.4:33	24	service and I'm not charged for it.
.4:33	25	Q. And other than that, the
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	1	H. Stern
14:42	2	overdelivery credits?
14:42	3	A. Yes.
14:42	4	Q. And after you were told by
14:43	5	Google that you could accrues charges above
14:43	6	or below your set limit, you continued to use
14:43	7	the Google program; correct?
14:43	8	A. Yes, I continued to use it.
L4:43	9	It's being used possibly today, yes.
L4:43	10	Q Okay. And it is correct to say
L4:43	11	that you understood, certainly as of
14:43	12	10 October 2003, that you could accrue
4:43	13	charges above or below your set limit?
.4:43	14	A. I never thought that I would be
.4:43	15	billed for them. Accruing and being charged
4:43	16	for them are two different things. I saw
.4:43	17	that I was accruing charges over my daily
4:43	18	budget. I never thought that I would be
.4:43	19	billed for those, especially since I never
4:43	20	received any overdelivery credits. I was
4:43	21	both accruing and being charged for more than
4:43	22	my daily budgets every single many times.
4:44	23	Q. Okay. And then, with respect to
4:44	24	the and, in fact, on October 21, which was
4:44	25	11 days after you received this

	. 1	H. Stern
16:23	2	Exhibit 19. Look at page 26.
16:24	3	A. Okay.
16:24	4	Q. It states in the middle of the
16:24	5	page, "If you'd like your campaign to run
16:24	6	only during certain hours, you may pause it
16:24	7	during the hours that you do not want it to
16:24	8	show and resume it when you want it to run
16:24	9	again."
16:24	10	Do you see that?
16:24	11	A. Yeah, I see that now.
16:24	12	Q. Okay. Did you see it at the
16:24	13	time?
16:24	14	A. No, I don't recall seeing it at
L6:24	15	the time.
L6:24	16	Q. Okay. The next line, "You can
L6:24	17	pause your ad at any time. You won't accrue
l6:24	18	charges while your ads are paused, and they
L6:24	19	will remain paused until you resume them."
16:24	20	Was that your understanding of
₋ 6:24	21	your agreement with Google?
.6:24	22	A. Yes. When you activate the
.6:24	23	program, you unpause it and then, naturally,
.6:24	24	if you want to stop being charged you pause
.6:24	25	it.

	. 1	H. Stern
16:24	2	Q. Okay. Was it your understanding
L6:24	3	that Google would charge you while your ad
16:24	4	was paused?
L6:24	5	A. No, I never thought that I'd be
L6:24	6	charged when my ad was paused.
L6:25	7	Q. If you had a budget of \$10 and
L6:25	8	you ran that ad one day during a 30-day
L6:25	9	period, what would you expect to be charged
l6:25	10	from Google?
l6:25	11	A. No more than \$10.
16:25	12	Q. Okay. And what if they charged
-6:25	13	you \$11, would that be a violation of your
.6:25	14	agreement with Google?
.6:25	15	A. I believe so.
.6:25	16	Q. And what if they charged you
.6:25	17	\$12?
.6:25	18	A. Anything over \$10 would be a
.6:25	19	violation.
.6:25	20	Q. And why is that?
.6:25	21	A. Because anything over \$10 is
.6:25	22	more than my budget of \$10, daily budget of
.6:25	23	\$10.
.6:25	24	Q. And there was no way for Google
.6:25	25	to credit you to underbill you for subsequent
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	1	H. Stern
16:27	2	A. Yes.
16:27	3	Q. Is that an incentive for you to
16:27	4	sign up for AdWords?
16:27	5	A. Right. It's a good reason,
16:27	6	right.
L6:27	7	Q. And then it goes on to say,
L6:27	8	"This is the same no matter how you choose to
L6:27	9	pay for your advertising."
16:27	10	Do you see that?
L6:27	11	A. Yes.
L6:27	12	Q. Okay. So why did you switch to
l6:27	13	Google from Yahoo?
.6:27	14	A. Because Yahoo had a monthly
.6:27	15	minimum that I needed to pay, whether or not
.6:27	16	I even ran the ads.
.6:27	17	Q. And Google?
.6:27	18	A. They had no minimum.
.6:27	19	Q. And, in fact, they told you they
.6:28	20	had no minimum; correct?
.6:28	21	A. Right.
.6:28	22	MR. BIDERMAN: Objection.
.6:28	23	Assumes facts not in evidence.
.6:28	24	MR. LEVY: Do you want to change
.6:28	25	the tape now?