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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

HANGINOUT, INC,
 Plaintiff,
 vs.
 GOOGLE INC.,
 Defendant.

CASE NO. 13-CV-2811 AJB NLS
**GOOGLE'S OBJECTIONS TO
 DECLARATION AND EXHIBITS
 SUBMITTED BY PLAINTIFF
 HANGINOUT IN SUPPORT OF ITS
 MOTION FOR PRELIMINARY
 INJUNCTION**

ORAL ARGUMENT REQUESTED
 Date: April 25, 2014
 Time: 4:00 p.m.
 Courtroom 3B
 Judge: Hon. Anthony J. Battaglia

1 Defendant Google Inc. (“Google”) hereby objects to the Declaration of Justin
2 Malone and exhibits thereto filed in support of Plaintiff Hanginout, Inc.’s
3 (“Hanginout”) motion for preliminary injunction as follows:

4 1. Paragraph 6, Exhibit 1: Wayback Machine screen capture.

5 **Objections: Hearsay (FRE 802)**—this document cannot be used to assert the
6 truth of the matter asserted, that Hanginout first adopted the Hanginout mark in
7 November 2008. **Lack of authentication (FRE 901)**—there is no explanation
8 about how this screen capture was made or what it depicts. **Irrelevant (FRE 401,**
9 **402, 403)**—the date Hanginout first adopted the Hanginout mark is irrelevant to the
10 issues in this motion, as the public was not aware of that internal adoption of the
11 mark. “An intent to eventually commercially exploit an idea is not sufficient to
12 confer trademark rights or meet the ‘in commerce’ requirement.” *Schussler v.*
13 *Webster*, Civ. Case No. 07cv2016 IEG, 2008 WL 4350256, at * 4 (S.D. Cal. Sept.
14 22, 2008), *amended and vacated in part on other grounds on reconsideration*; *see*
15 *also Future Domain Corp.*, 1993 WL 270522, at *6. “Trademark rights are not
16 established by goals and dreams.” *Matrix Motor Co v. Toyota Jidosha Kabushiki*
17 *Kaisha*, 290 F. Supp. 2d 1083, 1089 (C.D. Cal. 2003).

18 2. Paragraph 9, Exhibit 2: Screen capture of Facebook promotion.

19 **Objections: Illegible/incomplete document (FRE 1002)**—this document is not
20 legible and appears to be incomplete. **Hearsay (FRE 802)**—this document cannot
21 be used to assert the truth of the matter asserted, that the first day of the video shoot
22 was March 2010. **Irrelevant (FRE 401, 402, 403)**—the first date of Hanginout’s
23 video shoot with Shawne Merriman is irrelevant to the issues in this motion, as the
24 public was not aware of that private shoot. “An intent to eventually commercially
25 exploit an idea is not sufficient to confer trademark rights or meet the ‘in commerce’
26 requirement.” *Schussler v. Webster*, Civ. Case No. 07cv2016 IEG, 2008 WL
27 4350256, at * 4 (S.D. Cal. Sept. 22, 2008), *amended and vacated in part on other*
28 *grounds on reconsideration*; *see also Future Domain Corp.*, 1993 WL 270522, at

1 *6. “Trademark rights are not established by goals and dreams.” *Matrix Motor*
2 *Co v. Toyota Jidosha Kabushiki Kaisha*, 290 F. Supp. 2d 1083, 1089 (C.D. Cal.
3 2003).

4 3. Paragraph 17: “By the end of May 2011, over 200 customers had
5 registered for and used Version 1.0 of the HANGINOUT Q&A platform.
6 Presently there are nearly 8,000 registered customers. **Objection: Lacks**
7 **Foundation (FRE 602)**—there is no explanation of how Mr. Malone has
8 knowledge of these statements and there is no documentary evidence to support
9 them.

10 4. Paragraph 20, Exhibit 9: October 24, 2011 video of Carl DeMaio.
11 **Objection: Irrelevant (FRE 401, 402, 403)**—uses of HANGINOUT after June
12 28, 2011 are irrelevant to the issue of whether Hanginout has enforceable U.S.
13 trademark rights that it can assert against Google.

14 5. Paragraph 21, Exhibit 10: April 10, 2012 AppAnnie overview of
15 Hanginout Pro Application. **Objection: Hearsay (FRE 802)**—this document
16 cannot be used to assert the truth of the matter asserted, namely what the Hanginout
17 Pro application’s capabilities were. **Irrelevant (FRE 401, 402, 403)**—uses of
18 HANGINOUT after June 28, 2011 are irrelevant to the issue of whether Hanginout
19 has enforceable U.S. trademark rights that it can assert against Google.

20 6. Paragraph 22, Exhibit 11: App Details for Mitchie Brusco’s
21 HANGINOUT App. from July 6, 2012. **Objection: Hearsay (FRE 802)**—this
22 document cannot be used to assert the truth of the matter asserted, namely the
23 purpose and uses of the HANGINOUT app. **Irrelevant (FRE 401, 402, 403)**—
24 uses of HANGINOUT after June 28, 2011 are irrelevant to the issue of whether
25 Hanginout has enforceable U.S. trademark rights that it can assert against Google.

26 7. Paragraph 23, Exhibit 12: July 19, 2012 ESPN article. **Objection:**
27 **Irrelevant (FRE 401, 402, 403)**—uses of HANGINOUT after June 28, 2011 are
28

1 irrelevant to the issue of whether Hanginout has enforceable U.S. trademark rights
2 that it can assert against Google.

3 8. Paragraph 24: “Apple chose to feature the HANGINOUT App.”
4 **Objections: Vague**—no explanation for what “Apple chose to feature” the app
5 means. **Lack of foundation (FRE 602)**—provides no explanation for Mr.
6 Malone’s knowledge of this information, and there is no documentary evidence in
7 support.

8 9. Paragraph 25, Exhibit 13: September 18, 2012 iSnoops
9 “endorsement.” **Objection: Irrelevant (FRE 401, 402, 403)**—uses of
10 HANGINOUT after June 28, 2011 are irrelevant to the issue of whether Hanginout
11 has enforceable U.S. trademark rights that it can assert against Google.

12 10. Paragraph 26, Exhibit 14: “On September 28, 2012, AppAnnie
13 ranked the HANGINOUT Application fourth in the United States and first in
14 Sweden in the featured social-media category.” **Objections: Inaccurate**
15 **description of the document**—the document indicates that the application was
16 ranked in the “new” social media category. **Irrelevant (FRE 401, 402, 403)**—any
17 rankings of HANGINOUT outside of the United States or uses of HANGINOUT
18 after June 28, 2011 are irrelevant to the issue of whether Hanginout has enforceable
19 U.S. trademark rights that it can assert against Google.

20 11. Paragraph 27, Exhibit 15: November 1, 2012 twitter message from
21 Sean Combs. **Objection: Irrelevant (FRE 401, 402, 403)**—uses of
22 HANGINOUT after June 28, 2011 are irrelevant to the issue of whether Hanginout
23 has enforceable U.S. trademark rights that it can assert against Google.

24 12. Paragraph 30, Exhibit 17: Google Analytic report for Hanginout’s
25 Audience Overview between September 15, 2012 and December 23, 2013.
26 **Objection: Irrelevant (FRE 401, 402, 403)**—uses of HANGINOUT after June
27 28, 2011 are irrelevant to the issue of whether Hanginout has enforceable U.S.
28 trademark rights that it can assert against Google.

1 13. Paragraph 31, Exhibit 18: Google Analytic report for Hanginout’s
2 International usage between September 15, 2012 and December 23, 2013.

3 **Objection: Irrelevant (FRE 401, 402, 403)**—any usage of HANGINOUT
4 outside of the United States or after June 28, 2011 is irrelevant to the issue of
5 whether Hanginout has enforceable U.S. trademark rights that it can assert against
6 Google.

7 14. Paragraph 32, Exhibit 19: Google Analytic report for Hanginout’s
8 United States usage between September 15, 2012 and December 23, 2013.

9 **Objection: Irrelevant (FRE 401, 402, 403)**—uses of HANGINOUT after June
10 28, 2011 is irrelevant to the issue of whether Hanginout has enforceable U.S.
11 trademark rights that it can assert against Google.

12 15. Paragraph 33, Exhibit 20: Google Analytic report for Hanginout’s
13 California usage between September 15, 2012 and December 23, 2013.

14 **Objection: Irrelevant (FRE 401, 402, 403)**—uses of HANGINOUT after June
15 28, 2011 are irrelevant to the issue of whether Hanginout has enforceable U.S.
16 trademark rights that it can assert against Google.

17 16. Paragraph 34: “The Google Analytic Reports confirm that the
18 Hanginout Application was . . . viewed by consumers in 112 countries throughout
19 the world.” **Objection: Irrelevant (FRE 401, 402, 403)**—any views of
20 HANGINOUT outside of the United States or after June 28, 2011 are irrelevant to
21 the issue of whether Hanginout has enforceable U.S. trademark rights that it can
22 assert against Google.

23 17. Paragraph 35: “Since the HANGINOUT platform’s September 12,
24 2012 launch through December 23, 2013, the HANGINOUT Application was
25 viewed 1,047,549 times. Additionally, 87.5 percent of visitors have returned to
26 view the app.” **Objections: Vague**—does not explain what it means to “view”
27 the app or differentiate between the “platform” and the “application.” **Irrelevant**
28 **(FRE 401, 402, 403)**—any views that occurred outside of the United States or after

1 June 28, 2011 are irrelevant to the issue of whether Hanginout has enforceable U.S.
2 trademark rights that it can assert against Google.

3 18. Paragraph 36: “As of December 23, 2013, the HANGINOUT
4 Application was viewed by at least one consumer in 112 countries.” **Objection:**
5 **Irrelevant (FRE 401, 402, 403)**—any views that occurred outside of the United
6 States or after June 28, 2011 are irrelevant to the issue of whether Hanginout has
7 enforceable U.S. trademark rights that it can assert against Google.

8 19. Paragraph 37: Numbers of visits from California consumers.
9 **Objection: Irrelevant (FRE 401, 402, 403)**—any visits after June 28, 2011 are
10 irrelevant to the issue of whether Hanginout has enforceable U.S. trademark rights
11 that it can assert against Google.

12 20. Paragraph 40, Exhibit 23: AppAnnie printout with release and
13 upgrade dates of Google’s Hangouts Application. **Objection: Hearsay (FRE**
14 **802)**—cannot be used to assert the truth of the matter asserted, namely the release
15 and upgrade dates of Google’s Hangouts Application.

16 21. Paragraph 41, Exhibit 24: Screen capture for the top Google search-
17 engine results for What is Google Hangouts. **Objection: Incomplete (FRE**
18 **1002)**—this document appears to be an incomplete version of a Google search
19 results page.

20 22. Paragraph 45, Exhibit 28: Statistics regarding downloads of the
21 Hanginout App, the Hanginout Pro App and the Hanginout with Mitchie Brusco
22 App. **Objection: Irrelevant (FRE 401, 402, 403)**—any downloads that
23 occurred outside of the United States or after June 28, 2011 are irrelevant to the
24 issue of whether Hanginout has enforceable U.S. trademark rights that it can assert
25 against Google.

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DATED: March 21, 2014

Respectfully submitted,

/s/ Margret M. Caruso
Margret M. Caruso
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QUINN EMANUEL URQUHART
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Attorneys for Defendant Google Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2014, I will cause to be filed the foregoing
**GOOGLE’S OBJECTIONS TO DECLARATION AND EXHIBITS
SUBMITTED BY PLAINTIFF HANGINOUT IN SUPPORT OF ITS
MOTION FOR PRELIMINARY INJUNCTION** with the Clerk of the Court
using the CM/ECF system, which will then send a notification of such filing to
counsel for Plaintiff Hanginout, Inc.

QUINN EMANUEL URQUHART &
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By /s/ Margret M. Caruso
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