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8

9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA

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12 HANGINOUT, INC., a Delaware
 corporation,

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Plaintiff,

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vs.

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16 GOOGLE, INC., a Delaware
 corporation,

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Defendant.

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Case No. 3:13-cv-02811-AJB-NLS

**REPLY IN SUPPORT OF PLAINTIFF
 HANGINOUT, INC.'S MOTION FOR
 PRELIMINARY INJUNCTION**

Date: April 25, 2014
 Time: 2:00pm
 Dept: 3B
 The Honorable Anthony J. Battaglia

1 Google's opposition ignores one key fact – it did not use the HANGOUTS
2 mark until May 2013. Before that, Google used GOOGLE+ HANGOUTS. If
3 Plaintiff Hanginout is correct on this date, Google loses, because Google does not
4 deny Hanginout's trademark use and ownership predates May 2013.

5 Even if Google is correct and their date is June 28, 2011 instead, Hanginout
6 still has clear priority with substantial use before even that date. As for likely
7 confusion, importantly “the Ninth Circuit has said it is clear error for a trial court to
8 find no likelihood of confusion when two products with virtually identical marks are
9 in the same market.” *Honor Plastic Indus. v. Lollicup USA*, 462 F. Supp. 2d 1122,
10 1132, 2006 U.S. Dist. LEXIS 83639 *26 (E.D. Cal. 2006) (citing *Lindy Pen v. Bic*
11 *Pen*, 796 F.2d 254, 257 (9th Cir. 1986)). That is the case here. Hanginout's complete
12 loss of control over its trademark to the behemoth Google is the very definition of
13 irreparable injury. In contrast, Google's trumped up “harm” scenario fails to shift the
14 balance of equities. Google always can just change back to “Google+ Hangouts,” as
15 it was before. Thus, an injunction should issue.

16 I. ARGUMENT

17 A. Prior to May 2013 Google Used GOOGLE+ HANGOUTS – If that is 18 True, Google does Not Deny Hanginout has Priority

19 Google pretends there is no difference between the marks GOOGLE+
20 HANGOUTS and HANGOUTS – but they are two different marks. And Google's
21 use prior to May 2013 was not of HANGOUTS, but GOOGLE+ HANGOUTS.

22 For Google to claim a June 2011 first use date for “Hangouts” based on its use
23 of “Google+ Hangouts” requires “tacking.” *One Industries v. Jim O'Neal Dist.*, 578
24 F.3D 1154, 1160-1161 (9th Cir. 2009). The Ninth Circuit has said that even “dci”
25 and “DCI” are too far apart to tack, because tacking is an “exceedingly strict”
26 standard of virtual identity. *Id.* Google does not even try to argue it can tack.

27 Historical records show Google consistently used “Google+ Hangouts” up until
28 2013, when it began preparing for its Hangouts app launch. Wagner Ex. 1. Indeed

1 Google+ Hangouts were only available as a feature of Google+, and when Google
2 used “hangouts” it was to describe its “Google+ Hangouts.” *Id.* Even Google’s
3 myriad news articles from 2011 are not about “HANGOUTS” but are about Google+
4 and GOOGLE+ HANGOUTS. A careful review of Google’s documentary evidence
5 confirms this history – including the Dali Lama video and Google’s ad that was run
6 400 times for ██████████ in late 2012 (which only used “Google+ Hangouts” and
7 the shorthand “G+ Hangouts”). *See, e.g.* Long Exs 3 (at end) & 5.^{1/} The very
8 consistently messaged mark to the consuming public was “Google+ Hangouts.” Not
9 surprisingly, the only mark Google sought a trademark registration before April 2013
10 was GOOGLE+ HANGOUTS. Wagner Ex. 2.

11 Consistent with this, Wikipedia even identifies Google’s
12 first use of HANGOUTS as May 15, 2013. Wagner Ex. 5.
13 Thus, the public recognizes May 15, 2013 as the first use date.



14 There is a simple, logical reason why Google did not just adopt “Hangouts”
15 until 2013. Google ran a trademark search in April 2011. Abrams ¶ 9. The search had
16 to reveal the third party U.S. Reg. No. 3857338 for “Hangouts,” a mark applied for in
17 2008 and registered in 2010 based on a first use date of 2009. Wagner Ex. 3. That
18 registration covered services that eerily mirrored Google’s “Google+ Hangouts”
19 services. Only on April 26, 2013, *the very day that the TTAB granted Hanginout’s*
20 petition to cancel this third party registration, did Google pounce, filing its intent-to-
21 use application for HANGOUTS, hurriedly switching its brand. *Id.* Exs. 2, 7-9.

22 Indeed, Google maintained a list of its trademarks for public notice – 300 or so
23 trademarks – of which “Google+” (the true focus of the media in Long Ex. 1) made
24 the list, but “Hangouts” was not added until 2013. Wagner Exs. 8, 10-11.

25 _____
26 ^{1/} Google’s evidentiary objections (ECF#31) – beyond ignoring hearsay exceptions and
27 misapplying rules – are misplaced on a preliminary injunction, when hearsay and inadmissible
28 evidence may be used. *Johnson v. Couturier*, 572 F.3d 1067, 1083 (9th Cir. 2009). Any issues of
weight to afford the evidence should have been addressed within Google’s 25-page opposition brief.

1 Thus, prior to mid-2013, Google made the very intentional decision to use the
2 composite “Google+ Hangouts” mark, not “Hangouts.” Any stray references to
3 “hangouts” were not source-identifying (as “Google+” was), creating no trademark
4 rights.^{2/} Regardless, Google makes no attempt to show trademark rights in these stray
5 references, instead just pointing to its use of “Google+ Hangouts.” Further, it is
6 debatable even if trademark rights in “Google+ Hangouts” could be created when it is
7 a Google+ feature. *Timelines, Inc. v. Facebook*, 938 F. Supp. 2d 781, 794 (N.D. Ill.
8 2013) (issue of fact if Facebook’s “timelines” feature was a trademark use).

9 Finally there is *Wells Fargo v. Stagecoach*, 685 F.2d 302, 304 n.1 (9th Cir.
10 1982). The case requires “clear and convincing evidence” for a party to claim a use
11 date “contrary” to its trademark application. When Google filed its “Hangouts”
12 application in April 2013, Google swore only a “bona fide intention to use” the
13 “Hanginout” mark in the future (claiming no current use as of that date). Google then
14 launched the Hanginout app a month later. Malone Ex. 25; Leske ¶6. This is
15 consistent with a May 2013 first use, but extremely inconsistent with first use years
16 earlier. Google gives no clear and convincing evidence as *Wells Fargo* requires.

17 In sum, Hanginout is likely to prevail in showing ownership of the
18 HANGINOUT mark before Google’s first use date of May 2013. Google does not
19 even deny that prior to that time, Hanginout had done far more than enough to cement
20 its mark with an appreciable segment of the public. Indeed, its top-ranked iOS app
21 had been viewed over 1 million times (90% repeat visits) from every state in the U.S.
22 (30,000 from California), it enjoyed tens of thousands of users (including high-profile
23 celebrities and politicians), and substantial media attention (including with ESPN).
24 See Mtn. 2-6, 10-15. Thus, Hanginout is likely to show priority of use of the mark.

25
26 ^{2/} Where not used as a source-identifier, no reasonable jury can find a trademark use.
27 *Webceleb, Inc. v. Procter & Gamble Co.*, 2014 U.S. App. LEXIS 2200 *2 (9th Cir. Cal. Feb. 5,
28 2014). “[A]s Professor McCarthy teaches, ‘not every single word, phrase, design or picture that
appears on a label or in an advertisement qualifies as a protectable mark or trade dress.’” *W. Brand
Bobosky v. Adidas AG*, 843 F. Supp. 2d 1134, 1142 (D. Or. 2011).

1 **B. Hanginout is the Prior User Even Assuming a June 28, 2011 Date**

2 Hanginout is still likely to prevail even erroneously using June 28, 2011 as the
3 “date to beat.” Prior use alone establishes common law ownership (penetration
4 affects the boundaries).^{3/} Prior use makes Hanginout’s trademark application likely
5 to issue even if Google challenges it (extending ownership nationwide based on prior
6 use regardless of market penetration). Mtn. 14-15; *Tana v. Dantanna’s*, 611 F.3d
7 767, 780 (11th Cir. 2010) (*citing* 15 U.S.C. § 1057(c) (“a registered mark [] enjoys
8 the unlimited right to use the mark nationwide, and federal registration affords the
9 registrant priority over all future users”).^{4/} In any event, Hanginout also had market
10 penetration with an appreciable segment of consumers to justify a nationwide scope.

11 As an initial matter, Google is wrong as to Hanginout’s trademark application.
12 Google fails to inform the Court that Hanginout’s first use date was actually an open-
13 ended one of “at least as early as 06/06/2012” (accepted by TMEP § 903.07 and not
14 requiring amendment for an earlier very first use date), keeping open an earlier date
15 and thus not implicating *Wells Fargo*. Wagner Exs. 13-14. Hence, Hanginout’s
16 listed first use date was not June 6, 2012; it was “at least as early as June 6, 2012.”

17 Hanginout is likely to prevail on prior use, even using the June 28, 2011 date.
18 Mtn. 9-10. Under the Lanham Act: “‘use in commerce’ means the bona fide use of a
19 mark in the ordinary course of trade, and not made merely to reserve a right in a
20 mark. For purposes of this chapter, a mark *shall* be deemed to be in use in
21 commerce—(2) on services when it is [a] used or displayed in the sale or advertising

22
23 ^{3/} See *Chance v. Pac-Tel Teletrac*, 242 F.3d 1151, 1156-1157 (9th Cir. Cal. 2001); *Jaro*
24 *Transp. v. Grandy*, 2006 U.S. Dist. LEXIS 62932, 17-25 (N.D. Ohio Sept. 5, 2006); *Archer Daniels*
Midland v. Narula, 2001 U.S. Dist. LEXIS 9715, 33-36 (N.D. Ill. July 10, 2001) (citing McCarthy).

25 ^{4/} Google’s case of *Glow Indus. v. Lopez*, 252 F. Supp. 2d 962 (C.D. Cal. 2002) failed to credit
26 such nationwide presumption of ownership on a preliminary injunction based upon a pending
27 application, since “registration is not guaranteed.” *Id.* at 976. This is a *non sequitor*. The inquiry on
28 a preliminary injunction is the *likelihood* of ultimately prevailing later at trial; thus likelihood (not
“guarantee”) is the relevant inquiry to determine how much weight to afford the presumption. Also,
Roxan v. Fiji Water, 569 F. Supp. 2d 1019 (N.D. Cal. 2008) is irrelevant because it dealt with a
different presumption (concerning secondary meaning) not at issue here.

1 of services and [b] the services are rendered in commerce...” 15 USC §1127.^{5/}

2 Prior to June 28, 2011, Hanginout had already “used or displayed [its mark] in
3 the... advertising of services” extensively on YouTube, Facebook, and Twitter,
4 engaged news outlets that released related articles, and direct marketed hundreds of
5 contacts – all of which advertised the services *with* the HANGINOUT service mark.
6 15 USC §1127; Mtn. 1-4. Also, the services were actually “rendered in commerce,”
7 specifically, of the hundreds advertised to, 200+ registered for and used Version 1.0
8 of the Q&A platform. *Id.* & Mtn. 4. This was part of ongoing activity, as use
9 continued to grow over the coming year, culminating with a very popular app. *Id.*

10 Hanginout actually had 200+ customers registered for and using its services by
11 May 2011. This is unlike the cases cited by Google that included: (i) postcards that
12 did not generate a single use of the services in *Chance v. Pac-Tel*; (ii) Google’s
13 internal use pre-June 2011 that fails the internal-use-only bar of *Rearden v. Rearden*,
14 683 F.3d 1190, 1206 (9th Cir. 2012); and (iii) launch at a single trade show at which
15 the defendant also used its competing mark, as in *Future Domain v. Trantor*. These
16 all involve preparatory activity to compensate for a lack of prior actual consumer use.

17 Hanginout’s prior use goes far beyond an attempt “to reserve a right in a
18 mark.” 15 U.S.C. §1127. This is particularly so, given that even test marketing or
19 demonstration units are sufficient to show a bona fide use in commerce. 1-3 Gilson
20 on Trademarks 3.02 n.59.3-4. As Google admits (Opp. 9:19), a conversion ratio is
21 relevant, and here, of the ~300 YouTube views, it generated 200+ customers by the
22 end of May 2011(Google misreads the usage graph as July 1). Caruso Ex. 3; Malone
23 ¶17. A 65% conversion ratio is amazing (compare 5.7% in *Future Domain*, Opp. 8).

24 As for Hanginout’s market, Google has not disputed that market penetration
25 measured for service marks is drastically different than for marks on goods. Mtn.

26
27 ^{5/} This use standard is congruent with the test for common law ownership. *Chance*, 242 F.3d at
28 1157; 1-3 Gilson on Trademarks 3.02 n.59.3-59.4[8][d].

1 10:22-11:1. Google primarily relies on cases not involving services. *See* Oppo. 10-
2 11 (*Glow* and *Optimal Pets*). Google’s only service mark case, *Credit One*, is
3 inapposite – it involved brick-and-mortar financial services; the plaintiff there had no
4 offices in the markets for which it sought protection. Here the services are computer-
5 based communication services. These services naturally and seasonably span the
6 entire U.S., as its website and downloadable app made natural. Mtn. 5-6, 13-14.

7 Attaining “Google status” is not necessary to penetrate a market. The
8 penetration shown in Hanginout’s moving papers is enough to establish market
9 penetration no matter what outer date is used for measurement. Mtn. 2-6, 13-14.
10 Thus, Hanginout is likely to prevail even using the earlier June 28, 2011 date.

11 **C. Google’s Use of the “Hangouts” Mark is Likely to Confuse**

12 Google claims virtually identical marks for services in the same general market
13 are not likely to be confused. Yet Hanginout’s services appear to the unassuming
14 consumer simply a break-out of the more robust services of Google’s “Hangouts”
15 services. Building on its moving papers, Hanginout offers this rebuttal:

16 *Strength of the Mark:* Google does not argue HANGINOUT is anything less
17 than suggestive; this favors Hanginout. Also, as to Hanginout’s acquired strength,
18 Google uses the wrong test – strength *now* matters, not when the junior use started.
19 Oppo. 13:13/28; *Old Grantian v. William Grant & Sons*, 361 F.2d 1018, 1023 (CCPA
20 1966). The past 3 years shows Hanginout has acquired additional strength. Mtn. 2-6.

21 *Proximity of the Goods/Services:* Google concedes (by silence) the services
22 are complimentary and to the same consumers. Oppo. pp. 13-16. That is enough;
23 “related goods (or services) are those which would be reasonably thought by the
24 buying public to come from the same source if sold under the same mark.” *Rearden*
25 *LLC v. Rearden Commerce, Inc.*, 683 F.3d 1190, 1212-1213 (9th Cir. 2012). “The
26 Ninth Circuit defines ‘relatedness’ broadly, typically requiring only that the parties
27 participate in the same general industry.” *Sutter Home Winery, Inc. v. Madrona*
28 *Vineyards, L.P.*, 2005 U.S. Dist. LEXIS 4581 (N.D. Cal. Mar. 23, 2005) (*citing*

1 *Dreamwerks Prod. Group v. SKG Studio*, 142 F.3d 1127, 1131 (9th Cir. Cal. 1998))
2 (Dreamworks’ movies and the senior user Dreamworks’ sci-fi merchandise related).
3 Indeed the parties’ trademark applications list nearly identical Class 9 and 38
4 services. FAC Ex. A; Malone Ex. 25. Plus, Google’s “on air” feature is promoted as
5 part of its Hangouts mark (Abrams Ex. 1), and Google admits its Q&A platform has a
6 jump-to feature (like Hanginout’s). Oppo. 16:7-10. The services are related.^{6/}

7 *Similarity of the Marks*: This is easy – HANGINOUT and HANGOUTS are
8 virtually identical. Mtn. 17-18. That Google also uses its famous “Google” mark as
9 a separate mark “below” “near” or in “close proximity” (Oppo. 16:28-17:3) with
10 “Hangouts” only heightens confusion. *Glow Indus. v. Lopez*, 252 F. Supp. 2d 962,
11 995 (C.D. Cal. 2002); *W. E. Bassett Co. v. Revlon, Inc.*, 435 F.2d 656, 662 (2d Cir.
12 1970). Any use of the marks in a design format does not change this. *New York City*
13 *Triathlon v. NYC Triathlon*, 704 F. Supp. 2d 305, 333-334 (S.D.N.Y. 2010).

14 *Actual Confusion*: Google only switched to “Hangouts” recently in May 2013.
15 At this early preliminary injunction stage, this factor could never *favor* Google.
16 *Network Automation v. Advanced Sys.*, 638 F.3d 1137, 1151 (9th Cir. 2011).

17 *Channels*: The marketing channels are not “neutral.” There are a relatively
18 few number of App Store apps (compared to billions of internet pages), and Apple
19 prescreens them all. Wagner Exs. 15-16. Google is everywhere Hanginout could go,
20 and since at least one major channel already overlaps, this cuts against Google.

21 *Consumer Care*: Apps on Apple’s App Store have been pre-screened (with no
22 viruses). *Id.* Apple has taken the care so the consumer need not. Consumers of
23 ordinary care will see the two apps here as “full” and “lite” versions of each other.

24 *Intent*: Google knew of Hanginout in May 2013. *Id.* Ex. 3 (Google suspended

25
26 ^{6/} Google relies solely on the inapposite *Instant Media* case to support its “functionality”
27 arguments. However that case involved the non-distinctive trademark “I’M” for instant messaging.
28 The platforms overlapped only in that they were internet-downloadable programs that had *some*
video capability, and the overall marks were not similar in sight, sound, or meaning. *Instant Media,*
Inc. v. Microsoft Corp., 2007 U.S. Dist. LEXIS 61443 **24-25, 31 (N.D. Cal. Aug. 13, 2007).

1 its “Google+ Hangouts” application pending Hanginout’s cancellation proceedings of
2 “Hangouts”). A giant junior users’ intent measures careless or culpable adoption.
3 *Altira Group v. Philip Morris*, 207 F. Supp. 2d 1193, 1200 (D.Col. 2002). Even so,
4 lack of intent never “favors” non- infringement. 5-5 Gilson on Trademarks §5.09.

5 *Likelihood of Expansion*: The parties *already* overlap services.

6 The *Sleeckraft* factors confirm the obvious. The marks and services are
7 virtually identical. HANGINOUT and HANGOUTS are likely to create confusion.

8 **D. Hanginout is Being Irreparably Harmed Without Injunctive Relief**

9 As a preliminary matter, Google’s argument about delay fails. Google’s pre-
10 May 2013 use of a “Google+ Hangouts” mark required no lawsuit. Not surprising,
11 the USPTO found HANGOUTS likely to be confused with HANGINOUT, but not
12 GOOGLE+ HANGOUTS. Malone Ex. 26; Wagner Ex. 4. This is exactly what
13 Plaintiff is saying – HANGOUTS and GOOGLE+ HANGOUTS are two different
14 marks. Hence, Hanginout sued shortly after the May 2013 launch of the “Hangouts”
15 mark and the September 2013 announcement that a Q&A feature overlapping with
16 Hanginout’s services was available for the app. Mtn. 6-7. Google’s new use of
17 HANGOUTS was pursued promptly by Hanginout via reasonable good faith
18 settlement discussions, including a pre-answer ENE on February 27, 2014. *Ebay,*
19 *Inc. v. Bidder's Edge*, 100 F. Supp. 2d 1058, 1068 (N.D. Cal. 2000) (delay for
20 settlement talks does not rebut irreparable harm); McCarthy on Trademarks § 31:32.

21 Beyond this, Google simply argues that Hanginout’s irreparable injury is
22 “speculative.” Not so. The Ninth Circuit has held that evidence of loss of control
23 over one’s trademark *is* the irreparable injury. Mtn. 23 (citing cases). Indeed, this
24 survives *eBay. Herb Reed Enters., LLC v. Fla. Entm't Mgmt.*, 736 F.3d 1239, 1250
25 (9th Cir. 2013); *see also Cobra Sys., Inc. v. Accuform Mfg., Inc.*, 2014 U.S. Dist.
26 LEXIS 2686 *20 (C.D. Cal. Jan. 9, 2014) (even some evidence of actual confusion
27 was enough to show irreparable injury from loss of control over mark). Google’s
28 own evidence confirms it has budgeted [REDACTED] in 2014 for advertising its

1 recently launched HANGOUTS app, aimed at affecting public perception – this is
2 evidence of loss of control that is serious and irreparable if not stopped. Hanginout
3 simply cannot afford to differentiate itself from Google in the minds of the consumer
4 public during this lawsuit if Google is allowed to continue using such similar mark.

5 **E. Balancing the Equities Favors an Injunction**

6 Google’s argument to balance “hardships” is wrong. Opp. 22:17. The Ninth
7 Circuit and Supreme Court balance *equities*. *Winter v NRDC*, 555 U.S. 7, 20 (2008).^{7/}

8 Merely losing profit from being ordered to stop what has been found likely
9 infringement “merits little equitable consideration.” *Warner Bros. Entm’t v. Global*
10 *Asylum, Inc.*, 2012 U.S. Dist. LEXIS 185695, 66-67 (C.D. Cal. Dec. 10, 2012)
11 (quoting *Cadence Design Sys., Inc. v. Avant! Corp.*, 125 F.3d 824, 830 (9th Cir.
12 1997)); *Grooms v. Legge*, 2009 U.S. Dist. LEXIS 29235, 33-34, 2009 WL 962067
13 (S.D. Cal. Apr. 8, 2009). A knowing infringer’s hardship cannot be inequitable.
14 *Cadence*, 125 F.3d at 829 (60% loss of revenues); *Boldface v. By Lee Tillett*, 940 F.
15 Supp. 2d 1178, 1198 (C.D. Cal. 2013). Also, a strong likelihood of success makes
16 the infringing defendant’s harm “legally irrelevant” and “reversible error for a district
17 court to even consider” under Ninth Circuit precedent, even without willful
18 infringement. *Ebay, Inc. v. Bidder’s Edge*, 100 F. Supp. 2d 1058, 1068-1069 (N.D.
19 Cal. 2000) (citing various IP cases). Harm from being forced to “respect [the]
20 property rights” of the plaintiff cannot defeat such injunction. *Id.*

21 Even if not intentional (it was intentional), any potential harm to Google from
22 having to switch back to “Google+ Hangouts” does not factor into the equities in light
23 of Hanginout’s likely success. In reality, Google spent nearly [REDACTED] building
24 up Google+ with its Google+ Hangouts feature. Indeed, less than a year ago it ran an
25 ad 400 times nationwide for [REDACTED] that advertised only “Google+ Hangouts”
26 (shortened in one screenshot to “G+ Hangouts”). Leske Ex. 5. There is no evidence

27 ^{7/} Using “hardships” instead of “equities” in Hanginout’s brief was a typo, except for page 25.
28

1 that being forced to abandon its recent foray into the non-composite “Hangouts” for
2 its more saturated “Google+ Hangouts” will cause its brand or goodwill any harm.

3 Google’s remaining arguments also fail. Having multiple employees sign
4 conclusory speculation in a declaration does not change this; Google is constantly
5 releasing updates (8 so far, 3 alone since this motion was filed; Wagner Ex. 17),
6 Google can just put the change in with its next update.^{8/} If Google is right – that
7 people know their HANGOUT app is from Google, a mere update that replaces
8 “Hangouts” with “Google+ Hangouts” does not harm Google (or any third parties).

9 Google’s relied upon *Edge Games v. Elec. Arts*, 745 F. Supp. 2d 1101, 1115-
10 18 (N.D. Cal. 2010) case is inapposite, as that case had no likelihood of success on
11 trademark ownership or confusion, and there was an inexcusable 21 months of delay.

12 Finally, if Google’s rationale were right – that a straight comparison of
13 expenditures and man-hours between 2 companies should dictate – small senior users
14 would be barred from obtaining a preliminary injunction against infringing giants.
15 This is not the case (nor equitable). Indeed, Google’s size makes it better able to
16 handle hardships than Hanginout (who is a single-product company). *ClearValue,*
17 *Inc. v. Pearl River Polymers*, 735 F. Supp. 2d 560, 583 (E.D. Tex. 2010); *Novel ID v.*
18 *Hyman Prods.*, 1989 U.S. Dist. LEXIS 12653, at *14 (C.D. Cal. Jan. 27, 1989).

19 Thus, the balance of equities tips strongly in favor of Hanginout.

20 **II. CONCLUSION**

21 Hanginout should join the 60-70% of trademark plaintiffs who successfully
22 obtain preliminary injunctions when sought (even post-*eBay*). Wagner Ex. 18.
23 Google should be enjoined, changing to its prior “Google+ Hangouts.”^{9/}

24
25 ^{8/} Hanginout is open to a short phase-out transition period for Google. *GoTo.com, Inc. v. Walt*
26 *Disney Co.*, 202 F.3d 1199, 1204 (9th Cir. Cal. 2000) (affirming trademark preliminary injunction
against Disney with phase-out) *abrogated on other grounds Winter v. NRDC*, 555 U.S. 7 (2008).

27 ^{9/} Where the junior user is much bigger than the senior user, and a large bond would
28 effectively deny the senior user the benefit of an injunction, a minimal bond is warranted. *Boldface*,
940 F. Supp. 2d at 1200. Google’s single n.4 makes no attempt to prove another amount.

1 Dated: April 4, 2014

MINTZ LEVIN COHN FERRIS GLOVSKY
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CERTIFICATE OF SERVICE

I, the undersigned, certify and declare that I am over the age of 18 years, employed in the County of San Diego, State of California, and am not a party to the above-entitled action.

On April 4, 2014, I filed a copy of the following document:

REPLY IN SUPPORT OF PLAINTIFF HANGINOUT, INC.'S MOTION FOR PRELIMINARY INJUNCTION

by electronically filing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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Executed on April 4, 2014, at San Diego, California. I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

/s/Andrew D. Skale
Andrew D. Skale, Esq.