

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP
 Margret M. Caruso (Bar No. 243473)
 2 margretcaruso@quinnemanuel.com
 Cheryl A. Galvin (Bar No. 252262)
 3 cherylgalvin@quinnemanuel.com
 555 Twin Dolphin Dr., 5th Floor
 4 Redwood Shores, California 94065
 Telephone: (650) 801-5000
 5 Facsimile: (650) 801-5100
 Attorneys for Google Inc.

7 UNITED STATES DISTRICT COURT
 8 SOUTHERN DISTRICT OF CALIFORNIA

10 HANGINOUT, INC., a Delaware
 11 corporation,

12 Plaintiff,

13 vs.

14 GOOGLE, INC., a Delaware
 15 corporation,

16 Defendants.

CASE NO. 3:13-CV-02811-AJB-NLS

**GOOGLE INC.'S ANSWER AND
 AFFIRMATIVE DEFENSES TO
 PLAINTIFF HANGINOUT, INC.'S
 FIRST AMENDED COMPLAINT
 AND DEMAND FOR JURY TRIAL**

1 Defendant Google Inc. (“Google”), through its counsel, answers the First
2 Amended Complaint (“Complaint”) of Plaintiff Hanginout, Inc., (“Hanginout”) as
3 set forth below. Unless specifically admitted, Google denies each of the allegations
4 of Hanginout’s Complaint.

5 **THE PARTIES**

6 1. Google lacks knowledge or information sufficient to form a belief as to
7 the truth or falsity of the allegations in Paragraph 1 and therefore denies those
8 allegations.

9 2. Google admits that it is a corporation organized and existing under the
10 laws of the State of Delaware with its principal place of business located at 1600
11 Amphitheatre Parkway, Mountain View, California 94043.

12 3. Google lacks knowledge or information sufficient to form a belief as to
13 the truth or falsity of the allegations in Paragraph 3 and therefore denies those
14 allegations.

15 **JURISDICTION AND VENUE**

16 4. Google admits that Hanginout is attempting to assert claims under the
17 Lanham Act, 15 U.S.C. §§ 1051, et seq., and that the Court has federal question
18 jurisdiction over such claims. Google admits that the Court has supplemental
19 jurisdiction over the remaining California state law claims.

20 5. Google admits that Hanginout is attempting to assert claims under the
21 Lanham Act, 15 U.S.C. § 1051, et seq., and that the Court has jurisdiction over such
22 claims.

23 6. Google admits that the court has supplemental jurisdiction over
24 Hanginout’s California state law claims.

25 7. Google admits that Google conducts business in California and that it
26 has its principal place of business in California. Google denies the remaining
27 allegations in Paragraph 7.

28

1 sufficient to form a belief as to the rest of the allegations in Paragraph 24 and
2 therefore denies those allegations.

3 **Google Launches Google Hangouts**

4 25. Google admits that on June 28, 2011, Google's official blog contained
5 an announcement for the Google+ project, including an announcement of Google's
6 new messaging platform, "Hangouts," and a "Field Test" of Google+. Google
7 denies the remaining allegations in Paragraph 25.

8 26. Google denies that Google officially launched its "Hangouts"
9 messaging platform on May 15, 2013, and denies that it first used the HANGOUTS
10 mark on May 15, 2013. Google avers that it officially launched the "Hangouts"
11 platform on June 28, 2011 and that its first public use date of the HANGOUTS mark
12 is June 28, 2011.

13 27. Google lacks knowledge or information sufficient to form a belief as to
14 the truth or falsity of the number of viewers and downloads of the HANGINOUT
15 app and therefore denies those allegations. Google denies the remaining allegations
16 in Paragraph 27.

17 28. Google admits that Hangouts is a video-conferencing and instant
18 messaging service that enables both one-on-one and group chats. Google admits the
19 allegations of the second sentence of Paragraph 28, but denies the implication that
20 those are the only means of accessing Hangouts. Google denies the remaining
21 allegations in Paragraph 28.

22 29. Google admits that on April 26, 2013 it filed an application to register
23 the mark HANGOUTS, which was assigned Serial No. 85916316.

24 30. Google admits that the word HANGINOUT has some similarity in
25 appearance, sound, and meaning to the word HANGOUTS. Google denies that the
26 two marks are nearly identical and denies the implication that the parties' marks
27 appear the same in the marketplace.

28

1 31. Google admits that the quoted words in Paragraph 31 can be found on
2 Google’s trademark application for HANGOUTS. Google denies the remaining
3 allegations in Paragraph 31.

4 32. Google admits that its Hangouts app is available at the iTunes store.
5 Google lacks knowledge or information sufficient to form a belief as to the truth or
6 falsity of the remaining allegations in the first sentence of Paragraph 32 and
7 therefore denies those allegations. Google denies the remaining allegations in
8 Paragraph 32.

9 33. Google admits that on July 30, 2013, the U.S. Patent and Trademark
10 Office sent an office action to Google giving notice that it was suspending Google’s
11 HANGOUTS application because of the HANGINOUT applications. Google
12 admits that a copy of the office action is attached as EXHIBIT C.

13 34. Google admits that the office action stated that if the HANGINOUT
14 marks register, HANGOUTS may be refused registration because of a possible
15 likelihood of confusion between the marks. Google denies the remaining allegations
16 of Paragraph 34.

17 35. Google admits and avers that on or around September 12, 2013 it
18 introduced the Live Q&A app for its Hangouts On Air product. Google denies the
19 remaining allegations of Paragraph 35.

20 36. Google admits that it markets its Hangouts products. Google denies the
21 remaining allegations of Paragraph 36.

22 37. Google admits and avers that it has described the product capabilities of
23 Hangouts to include:

- 24 a. “Bring your conversations to life with photos, emoji, and even
25 group video calls for free.”
- 26 b. “Turn any Hangout into a live video call with up to 10 friends or
27 simply search for a contact to start a voice call from your
28 computer.”

1 c. “Hangouts works on computers, Android and Apple devices, so
2 you can connect with everyone, and no one gets left out.”

3 Google denies the remaining allegations of Paragraph 37.

4 **FIRST CAUSE OF ACTION**

5 **TRADEMARK INFRINGEMENT**

6 **(15 U.S.C. § 1125 *et seq.*)**

7 38. Google incorporates by reference its responses in each and every
8 paragraph of this Answer with the same force and effect as if fully set forth herein.

9 39. Google lacks knowledge or information sufficient to form a belief as to
10 the truth or falsity of the allegations in Paragraph 39, and therefore denies those
11 allegations.

12 40. Google lacks knowledge or information sufficient to form a belief as to
13 the truth or falsity of the allegations in Paragraph 40, and therefore denies those
14 allegations.

15 41. Google lacks knowledge or information sufficient to form a belief as to
16 the truth or falsity of the allegations in the first sentence of Paragraph 41, and
17 therefore denies those allegations. Google denies that its HANGOUTS mark was
18 ever infringing and denies that HANGINOUT had market penetration before Google
19 first used HANGOUTS.

20 42. Google admits that the word HANGOUTS has some similarity in
21 appearance, sound, and meaning to the word HANGINOUT. Google admits that
22 HANGOUTS and HANGINOUT have the same order of “hang” and “out.” Google
23 denies the remaining allegations of Paragraph 42 and denies the implication that the
24 parties’ marks appear the same in the marketplace.

25 43. Google denies the allegations in Paragraph 43.

26 44. Google denies the allegations in Paragraph 44.

27 45. Google denies the allegations in Paragraph 45.

28 46. Google denies the allegations in Paragraph 46.

- 1 47. Google denies the allegations in Paragraph 47.
- 2 48. Google denies the allegations in Paragraph 48.
- 3 49. Google denies the allegations in Paragraph 49.
- 4 50. Google denies the allegations in Paragraph 50.

5 **SECOND CAUSE OF ACTION**

6 **FEDERAL UNFAIR COMPETITION**

7 **(15 U.S.C. § 1125 *et seq.*)**

8 51. Google incorporates by reference its responses in each and every
9 paragraph of this Answer with the same force and effect as if fully set forth herein.

- 10 52. Google denies the allegations in Paragraph 52.
- 11 53. Google denies the allegations in Paragraph 53.
- 12 54. Google denies the allegations in Paragraph 54.

13 **THIRD CAUSE OF ACTION**

14 **STATUTORY (Cal. B&P 17200 *et seq.*) AND COMMON LAW UNFAIR
15 COMPETITION**

16 55. Google incorporates by reference its responses in each and every
17 paragraph of this Answer with the same force and effect as if fully set forth herein.

- 18 56. Google denies the allegations in Paragraph 56.
- 19 57. Google denies the allegations in Paragraph 57.
- 20 58. Google denies the allegations in Paragraph 58.
- 21 59. Google denies the allegations in Paragraph 59.
- 22 60. Google denies the allegations in Paragraph 60.

23 **PRAYER FOR RELIEF**

24 Google denies that Hanginout is entitled to any relief from Google.

25 **FURTHER ANSWER AND AFFIRMATIVE DEFENSES**

26 By way of further Answer and affirmative defenses, Google denies that it is
27 liable to Plaintiff on any of the claims alleged and denies that Plaintiff is entitled to
28

1 damages, treble or punitive damages, equitable relief, attorney's fees, costs, pre-
2 judgment interest or to any relief whatsoever from Google, and states as follows:

3 **FIRST AFFIRMATIVE DEFENSE**

4 **(FAILURE TO STATE A CLAIM)**

5 61. The Complaint, on one or more counts set forth therein, fails to state a
6 claim upon which relief can be granted.

7 **SECOND AFFIRMATIVE DEFENSE**

8 **(LACK OF OWNERSHIP OF VALID TRADEMARK RIGHTS)**

9 62. Plaintiff's claims fail because Plaintiff does not own valid rights in the
10 alleged trademarks.

11 **THIRD AFFIRMATIVE DEFENSE**

12 **(LACK OF SENIOR TRADEMARK RIGHTS)**

13 63. Plaintiff's claims fail because Plaintiff does not have trademark rights
14 in HANGINOUT that are senior to Google's trademark rights in HANGOUTS.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 **(NON-INFRINGEMENT)**

17 Google has not infringed any applicable trademarks under federal or state law.

18 **FIFTH AFFIRMATIVE DEFENSE**

19 **(INNOCENT INFRINGEMENT)**

20 64. The claims made in the Complaint are barred, in whole or in part,
21 because any infringement, if any, was innocent.

22 **SIXTH AFFIRMATIVE DEFENSE**

23 **(NO WILLFUL CONDUCT)**

24 65. Plaintiff's claims for enhanced damages and an award of fees and costs
25 against Google have no basis in fact or law and should be denied.

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

SEVENTH AFFIRMATIVE DEFENSE

(NO DAMAGE)

66. Without admitting that the Complaint states a claim, there has been no damage in any amount, manner or at all by reason of any act alleged against Google in the Complaint, and the relief prayed for in the Complaint therefore cannot be granted.

EIGHTH AFFIRMATIVE DEFENSE

(LACK OF IRREPARABLE HARM)

67. Plaintiff’s claims for injunctive relief are barred because Plaintiff cannot show that it will suffer any irreparable harm from Google’s actions.

NINTH AFFIRMATIVE DEFENSE

(ADEQUACY OF REMEDY AT LAW)

68. The alleged injury or damages suffered by Plaintiff, if any, would be adequately compensated by damages. Accordingly, Plaintiff has a complete and adequate remedy at law and is not entitled to seek equitable relief.

TENTH AFFIRMATIVE DEFENSE

(FAILURE TO MITIGATE)

69. The claims made in the Complaint are barred, in whole or in part, because of a failure to mitigate damages, if such damages exist.

ELEVENTH AFFIRMATIVE DEFENSE

(DUPLICATIVE CLAIMS)

70. Without admitting that the Complaint states a claim, any remedies are limited to the extent that there is sought an overlapping or duplicative recovery pursuant to the various claims for any alleged single wrong.

TWELFTH AFFIRMATIVE DEFENSE

(WAIVER, ACQUIESCENCE, ESTOPPEL)

71. Each of the purported claims set forth in this Complaint is barred by the doctrines of waiver, acquiescence, and estoppel.

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

THIRTEENTH AFFIRMATIVE DEFENSE

(LACHES)

72. Plaintiff’s claims are barred in whole or in part by laches, in that Plaintiff has unreasonably delayed to enforce its rights, if any, despite its full awareness of Google’s actions.

FOURTEENTH AFFIRMATIVE DEFENSE

(UNCLEAN HANDS)

73. Plaintiff’s claims are barred in whole or in part by the doctrine of unclean hands.

ADDITIONAL DEFENSES

74. Google reserves the right to assert additional defenses.

JURY DEMAND

A jury trial is demanded on all issues so triable.

WHEREFORE, Google prays for judgment as follows:

- 1. That Hanginout takes nothing by way of its Complaint;
- 2. That the Complaint, and each and every purported claim for relief therein, be dismissed with prejudice;
- 3. That Google be awarded its costs of suit incurred herein, including attorneys’ fees and expenses; and
- 4. For such other and further relief as the Court deems just and proper.

DATED: June 25, 2014

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By */s/ Margret M. Caruso*

Margret M. Caruso
Attorneys for Google Inc.