

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 09-cv-00636-REB-KLM

VIDEO PROFESSOR, INC. a Colorado corporation,

Plaintiff,

v.

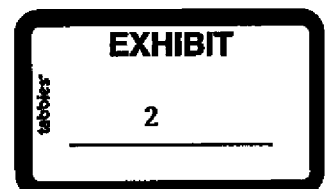
AMAZON.COM, INC., a Delaware corporation,

Defendant.

AFFIDAVIT OF JOHN W. SCHERER

The Affiant, being of lawful age and duly sworn upon his oath, states and deposes as follows:

1. My name is John W. Scherer. I am CEO of Video Professor, Inc. ("VPI").
2. VPI has been in the business of developing, marketing, and distributing for sale to retailers and the general public computer learning products including video tapes and CD-ROMs for over 20 years.
3. VPI has continuously used the name VIDEO PROFESSOR in connection with the marketing and promotion of its business and products since at least as early as April 1987.
4. Since 1987, VPI has invested over \$300 million in advertising, marketing and promoting the VIDEO PROFESSOR brand and designated products, including the running of television advertisements and infomercials throughout the United States, and



advertisement and marketing through the Internet via its Web site located at "videoprofessor.com" and other forms of Internet advertising.

5. VPI has focused its business on direct sales to consumers, and millions of VPI's VIDEO PROFESSOR-branded products have been distributed and are used worldwide.

6. The VIDEO PROFESSOR mark, as used in connection with VPI's business and the sale of its products, is world-famous, inherently distinctive, and as a result of VPI's extensive use, advertising and promotional efforts as described above, the VIDEO PROFESSOR mark is well-known and is recognized by customers around the world as signifying and representing VPI's business and high quality products.

7. On August 29, 1989, VPI was duly issued United States Trademark Registration Number 1566793 for the trademark words "VIDEO PROFESSOR" used in connection with a design, and on January 2, 1990, United States Trademark Registration Number 1574578 for the trademark words "VIDEO PROFESSOR."

8. As a result of the advertising and expenditures previously described, VPI has established considerable goodwill in the VIDEO PROFESSOR trademark, which is an invaluable asset of substantial and inestimable worth to VPI.

9. Video Professor has a long-established presence as an Internet retailer. Currently, VPI uses, among others, the domain name "videoprofessor.com" as a link to its Web site. Through its Web site, VPI provides important information to its customers and potential customers regarding VPI's products, as well as an interactive means by which its customers and potential customers may order its products online.

10. VPI's Web site advertising and sales are a significant portion of its business. Over the past three years, VPI's online sales represented over 45% of its sales totaling in excess of \$175 million.

11. In mid-2008, VPI became aware that Amazon was using the Video Professor mark in keyword advertising in order to divert Internet traffic searching for VPI's trademark "Video Professor," to Amazon's own Web site. VPI never intended to allow Amazon to use its marks in keyword advertizing, which was not a reality of e-commerce in 2003 when VPI signed the Vendor Manual, and only became possible in 2004 when first offered by Google. Attached as **Exhibit 2-A** is a screen shot from Wikipedia which supports VPI's belief that third-party trademark keyword advertising was not yet offered in 2003, and so was not and could not have been contemplated by VPI or Amazon at the time they contracted.

12. Because the main reason for VPI contracting with Amazon was to *increase* VPI sales and profits, it made no sense to continue the Amazon relationship upon learning of Amazon's keyword advertising scheme whereby Amazon was diverting potential VPI customers from VPI's Web site to Amazon's Web site which results in a *decrease* in VPI sales.

13. Amazon's keyword advertising scheme was particularly disadvantageous because the VPI sales price for its sales to Amazon was significantly lower than its sales price for sales to direct purchasers.

14. When a consumer conducted an Internet search for the terms "Video Professor," an Amazon sponsored link ad would appear at the top of the search results.

If the consumer clicked on the Amazon ad, he would be taken to the Amazon landing page shown in **Exhibit 2-B**.

15. The landing page was entitled at the top, "Amazon.com: Video Professor." Further, in at least two other places on the top portion of the landing page, Amazon prominently used the Video Professor trademark; one through the use of orange colored text on a white background, and the other as the search query term on Amazon's internal search function. When presented with the landing page, VPI believes that a reasonable consumer would mistakenly believe that they were being presented with VPI products, when, in fact, Amazon was instead hawking directly competing non-VPI products by trading off the strength of the VPI mark. While it is true VPI products were presented on subsequent pages of the landing page results, they were "below the fold" and out of immediate sight.


16. Upon discovery of Amazon's conduct, VPI promptly terminated the Agreement in July, 2008, which, under the terms of the Vendor Manual, became effective on September 18, 2008. **Exhibit 2-C** is a copy of the VPI's termination letter to Amazon

17. Thereafter, when Amazon's keyword advertising and "bait and switch" scheme continued, VPI issued the two cease and desist demands in February and March, 2009, shown in **Exhibits 2-D** and **2-E**.

18. Amazon ignored the two demands and continued to use VPI's marks in keyword and bait and switch advertising. In fact, the practice continued in July, 2009, as shown by **Exhibit 2-F**.

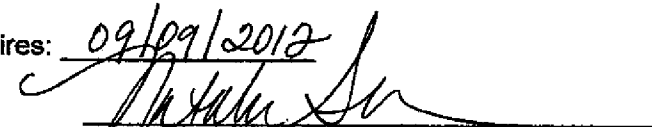
19. Following VPI's termination of the Vendor Manual agreement, Amazon apparently continued to issue purchase orders ("PO's") to VPI. The VPI employees who received and filled the PO's were unaware of the termination of the Amazon relationship and associated trademark dispute, and simply filled the orders. Due in part to the extremely low volume of the units ordered under Amazon's post-termination PO's, VPI management was absolutely unaware of Amazon's post-termination PO's.

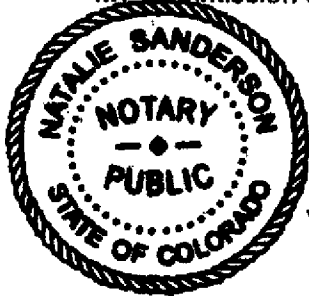
Further affiant sayeth naught.


John W. Scherer

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing Affidavit was subscribed and sworn to before me this 1st day of June 2010, by John W. Scherer.

My Commission expires: 09/09/2012

Notary Public



Jefferson County

AdWords

From Wikipedia, the free encyclopedia

AdWords is Google's flagship advertising product and main source of revenue. Google's total advertising revenues were USD\$21 billion in 2008^[1]. AdWords offers pay-per-click (PPC) advertising, and site-targeted advertising for both text and banner ads. The AdWords program includes local, national, and international distribution. Google's text advertisements are short, consisting of one title line and two content text lines. Image ads can be one of several different Interactive Advertising Bureau (IAB) standard sizes.

Sales and Support for Google's AdWords division is based in Ann Arbor, Michigan^[2], the company's third-largest US facility behind its Mountain View, California, headquarters and New York City office.^[3] Engineering for AdWords is based in Mountain View, California.

Contents

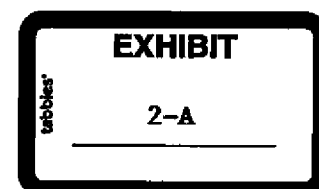
- 1 Pay-Per-Click advertisements (PPC)
- 2 Placement targeted advertisements (formerly Site-Targeted Advertisements)
- 3 AdWords distribution
- 4 AdWords account management
- 5 Click-to-Call
- 6 History
- 7 Legal context
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- 9 Policy and restrictions
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Pay-Per-Click advertisements (PPC)

Advertisers specify the words that should trigger their ads and the maximum amount they will pay per click. When a user searches Google's search engine on www.google.com or the relevant local/national google server (e.g. www.google.co.uk for The United Kingdom), ads (also known as creatives by Google) for relevant words are shown as "sponsored links" on the right side of the screen, and sometimes above the main search results.

The ordering of the paid-for listings depends on other advertisers' bids (PPC) and the "quality score" of all ads shown for a given search. The quality score is calculated by historical click-through rates, relevance of an advertiser's ad text and keywords, an advertiser's account history, and other relevance factors as determined by Google. The quality score is also used by Google to set the minimum bids for an advertiser's keywords.^[4] The minimum bid takes into consideration the quality of the landing page as well, which includes the relevancy and originality of content, navigability, and transparency into the nature of the business.^[5] Though Google has released a list of full guidelines for sites,^[6] the precise formula and meaning of relevance and its definition is in part secret to Google and the parameters used can change dynamically.

The auction mechanism that determines the order of the ads is a generalized second-price auction.^{[7][8]} This is claimed to have the property that the participants *do not necessarily* fare best when they truthfully reveal any private information asked for by the auction mechanism (in this case, the value of the keyword to them, in the form of a "truthful" bid).



Placement targeted advertisements (formerly Site-Targeted Advertisements)

In 2003 Google introduced site-targeted advertising. Using the AdWords control panel, advertisers can enter keywords, domain names, topics, and demographic targeting preferences, and Google places the ads on what they see as relevant sites within their content network. If domain names are targeted, Google also provides a list of related sites for placement. Advertisers may bid on a cost per impression (CPI) or cost per click (CPC) basis for site targeting.^[9]

With placement targeting, it is possible for an ad to take up the entire ad block rather than have the ad block split into 2 to 4 ads, resulting in higher visibility for the advertiser.

The minimum cost-per-thousand impressions bid for placement targeted campaigns is 25 cents. There is no minimum CPC bid, however.

AdWords distribution

All AdWords ads are eligible to be shown on www.google.com. Advertisers also have the option of enabling their ads to show on Google's partner networks. The "search network" includes AOL search, Ask.com, and Netscape. Like www.google.com, these search engines show AdWords ads in response to user searches.

The "content network" shows AdWords ads on sites that are not search engines. These content network sites are those that use AdSense, the other side of the Google advertising model. AdSense is used by website owners who wish to make money by displaying ads on their websites. Click through rates on the content network are typically much lower than those on the search network and are therefore ignored when calculating an advertiser's quality score. It has been reported that using both AdSense and AdWords may cause a website to pay Google a commission when the website advertises itself.^[10]

Google automatically determines the subject of pages and displays relevant ads based on the advertisers' keyword lists. AdSense publishers may select channels to help direct Google's ad placements on their pages, to better track performance of their ad units. There are many different types of ads you can run across Google's network, including text ads, image ads (banner ads), local business ads, mobile text ads, and in-page video ads.

Google AdWords' main competitors are Yahoo! Search Marketing and Microsoft adCenter.

AdWords account management

To help clients with the complexity of building and managing AdWords accounts search engine marketing agencies and consultants offer account management as a business service. This has allowed organizations without advertising expertise to reach a global, online audience. Google has started the Google Advertising Professionals program to certify agencies and consultants who have met specific qualifications and passed an exam.^[11] Google also provides account management software, called AdWords Editor.

Another useful feature is the My Client Centre available to Google Professionals (even if not yet passed the exam or budget parameters) whereby a Google professional has access and a dashboard summary of several accounts and can move between those accounts without logging in to each account.

The Google Adwords Keyword Tool provides a list of related keywords for a specific website or keyword.^[12]

Recently, numerous complaints have been filed with the San Jose Better Business Bureau (BBB)^[13] regarding treatment small businesses have received from Google Adwords customer service. As a result, the company now has a B- rating with the San Jose BBB.

Click-to-Call

Google Click-to-Call was a service provided by Google which allows users to call advertisers from Google search results pages. Users enter their phone number, Google calls them back and connects to the advertiser. Calling charges are paid by Google. It was discontinued in 2007.^[14] For some time similar click-to-call functionality was available for results in Google Maps. In the Froyo release of Google's operating system, in certain advertisements, there is a very similar functionality, where a user can easily call an advertiser.

History

The original idea was invented by Bill Gross from Idealab who, in turn, borrowed it from yellow pages. Google wanted to buy the idea but the deal would not close.^[citation needed] Google did not want to give up and launched AdWords in 2000.^[15] AdWords followed Bill Gross' model to a significant extent. In the course of legal action Google and Idealab settled the dispute.

At first AdWords advertisers would pay a monthly amount, and Google would then set up and manage their campaign. To accommodate small businesses and those who wanted to manage their own campaigns, Google soon introduced the AdWords self-service portal. Starting in 2005 Google provided a campaign management service called Jumpstart^[16] to assist advertisers in setting up their campaigns. However, this service is no longer available, so companies needing assistance must hire a third-party service provider.

In 2005, Google launched the Google Advertising Professional (GAP) Program to certify individuals and companies who completed AdWords training and passed an exam. Due to the complexity of AdWords and the amount of money at stake, some advertisers hire a consultant to manage their campaigns.

In 2008, Google launched the Google Online Marketing Challenge (<http://www.google.com/onlinechallenge/>), an in-class academic exercise for tertiary students. Over 8,000 students from 47 countries participated in the 2008 Challenge and over 10,000 students from 58 countries took part in 2009. The Challenge runs annually, roughly from January to June. Registration is at the instructor rather than student level.

In 2009, Google revised the AdWords interface, introduced Local Business Ads for Google Maps and Video Ads.

Legal context

AdWords has generated lawsuits in the area of trademark law (see *Google, Inc. v. Am. Blind & Wallpaper Factory and Rescuecom Corp. v. Google, Inc.*), fraud (see *Goddard v. Google, Inc.*), and click fraud. In 2006, Google settled a click fraud lawsuit for US\$90 million.^[17]

Overture Services, Inc. sued Google for patent infringement in April 2002 in relation to the AdWords service. Following Yahoo!'s acquisition of Overture, the suit was settled in 2004 with Google agreeing to issue 2.7 million shares of common stock to Yahoo! in exchange for a perpetual license under the patent.^[18]

Technology

The AdWords system was initially implemented on top of the MySQL database engine. After the system had been launched, management decided to use a commercial database (Oracle) instead. The system became much slower, so eventually it was returned to MySQL [1]. The interface has also been revamped to offer better work flow with additional new features, such as, Spreadsheet Editing, Search Query Reports, and better conversion metrics.

Policy and restrictions

As of April 2008 Google AdWords no longer allows for the display URL to deviate from that of the destination URL. Prior to its introduction, Google paid advertisements could feature different landing page URLs to that of what was being displayed on the search network. Google expounds that the policy change stems from both user and advertiser feedback. The concern prompting the restriction change is believed to be the premise on which users clicked advertisements. Users were in some cases, being misled and further targeted by AdWords advertisers.^[19]

Google has other restrictions, for example the advertising of a book by Aaron Greenspan called *Authoritas: One Student's Harvard Admissions and the Founding of the Facebook Era*, was restricted from advertising on AdWords because it contained the word Facebook in it. Google's rationale was that it was prohibited from advertising a book which used a trademarked name in its title.^[20]

Allowed keywords

Google has also come under fire for allowing AdWords advertisers to bid on trademarked keywords. In 2004, Google started allowing advertisers to bid on a wide variety of search terms in the US and Canada, including the trademarks of their competitors^[21] and in May 2008 expanded this policy to the UK and Ireland. Advertisers are restricted from using other companies' trademarks in their advertisement text if the trademark has been registered with Advertising Legal Support team. Google does, however, require certification to run regulated keywords, such as those related to pharmaceuticals keywords, and some keywords, such as those related to hacking, are not allowed at all. These restrictions may vary by location.^[22] From June 2007, Google banned AdWords adverts for student essay writing services, the move was welcomed by universities.^[23]

See also

- AdSense
- List of Google tools and services
- Click fraud
- Search engine marketing
- Central ad server
- Performance-based advertising
- Search analytics

References

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14. ^ <http://googlesystem.blogspot.com/2007/07/google-discontinues-click-to-call-and.html>
15. ^ Google Milestones
16. ^ What is Jumpstart?
17. ^ Associated Press (2006-03-08). "Google settles advertising suit for \$90 million". MSNBC. <http://www.msnbc.msn.com/id/11734026/>.
18. ^ Google, Yahoo bury the legal hatchet, Stefanie Olsen, CNET News.com, August 9, 2004
19. ^ What do I need to know about the updated Display URL policy? - Google Help Centre
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External links

- Google AdWords
- Google AdWords: Keyword Tool

Retrieved from "<http://en.wikipedia.org/wiki/AdWords>"

Categories: [Google services](#) | [Pay per click search engines](#) | [Companies based in Ann Arbor, Michigan](#)

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video professor

Department

Any Department

[Software \(95\)](#)[Books \(1,086\)](#)[DVD \(414\)](#)[VHS \(419\)](#)[Video On Demand \(205\)](#)[Everything Else \(35\)](#)[Video Games \(35\)](#)[+ See All 15 Departments](#)

Shipping Option (What's this?)

Any Shipping Option

[Prime Eligible \(1,154\)](#)[Free Super Saver Shipping \(1,154\)](#)

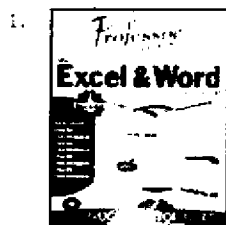
Listmania!

Microsoft Office 2007: A list
by Amazon.com Software
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technologies: A list by Ted
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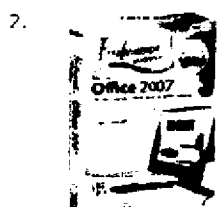
"video professor"

Related Searches: video professor ebay, video professor excel, video professor vista.

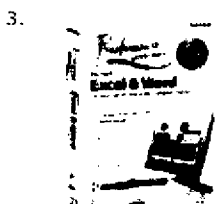
Select Results from All Departments

[Choose a Department](#) to enable sorting**Professor Teaches Excel & Word by Individual Software (CD-ROM - May 16, 2005) (Windows 2000 / 98 / Me / XP)**

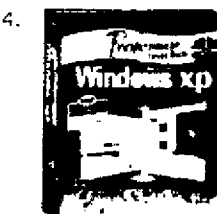
2 Used & new from \$17.99

Usually ships from ~~\$40.00~~ ~~\$17.99~~ weeksEligible for **FREE** Super Saver Shipping.[See all 95 items](#)**Professor Teaches Office 2007 by Individual Software (CD-ROM - Dec 5, 2006) (Windows 2000 / XP)**

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5.

Professor Teaches Windows Vista by Individual Software (CD-ROM - Nov 7, 2006) (Windows 2000 /

EXHIBIT

tables

2-B

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XP)

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☆☆☆☆ (4)

Software: See all 95 items

6.



Professor Teaches Office 2003 by Individual Software (CD-ROM - Jul 1, 2005) (**Windows 2000 / 98 / XP**)

9 Used & new from \$6.50

Get it by **Monday, Mar 23** if you order in the next **21 hours** and choose one-day shipping.

Eligible for **FREE** Super Saver Shipping.

Software: See all 95 items

7.



Learn Internet Tools by Video Professor (CD-ROM - Jan 28, 2004) (**Windows 95 / 98 / Me / XP**)

3 Used & new from \$22.77

Get it by **Monday, Mar 23** if you order in the next **23 hours** and choose one-day shipping.

Eligible for **FREE** Super Saver Shipping.

Software: See all 95 items

8.



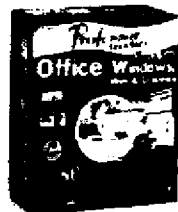
Learn Office Essentials by Video Professor (CD-ROM - Jan 28, 2004) (**Windows 95 / 98 / Me / XP**)

Buy new: ~~\$29.99~~ **\$23.99**

Eligible for **FREE** Super Saver Shipping.

Software: See all 95 items

9.



Professor Teaches Office SuperSet 3 by Individual Software (CD-ROM - May 1, 2005) (**Windows 2000 / 98 / Me / XP**)

12 Used & new from \$7.98

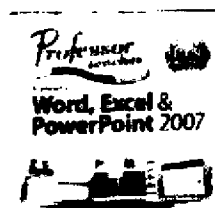
Get it by **Monday, Mar 23** if you order in the next **3 hours** and choose one-day shipping.

Eligible for **FREE** Super Saver Shipping.

Software: See all 95 items

10.

Professor Teaches Word, Excel, & PowerPoint 2007



by Individual Software (**CD-ROM** - Aug 18, 2008)
(**Windows 2000 / Vista / XP**)

Buy new: ~~\$9.99~~ **\$8.99** 4 Used & new from \$7.94

Get it by **Monday, Mar 23** if you order in the next **18 hours** and choose one-day shipping.

Eligible for **FREE** Super Saver Shipping.

★★★★★ (1)

Software: See all 95 items

11.



Learn the Internet by Video Professor (**CD-ROM** - 2005)

4 Used & new from \$9.75

Books: See all 1,086 items

12.

No items available

Learn Windows by Video Professor (**CD-ROM**)

21 Used & new from \$1.99

Software: See all 95 items

13.

**BASIC ALGEBRA
DVD
OVER 25
HOURS**

Basic Algebra Video By College Math Professor ~
Steven Gottlieb (**DVD** - Aug 20, 2006)

1 Used & new from \$50.00

This item has been discontinued by the manufacturer.

DVD: See all 414 items

14.

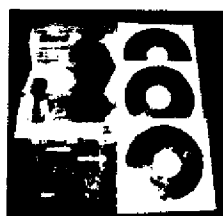
No items available

Video Professor Starter Pack by Video Professor (**CD-ROM** - Jan 28, 2004) (**Windows 95 / 98 / Me / XP**)

1 Used & new from \$29.98

See all 95 items

15.

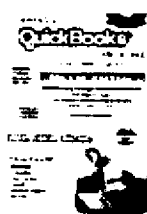


Learn Word Complete 3-CD Set (Video Professor Learn Word, Word 2000, 2002, 2003) by Video Professor (**CD-ROM** - 2005)

5 Used & new from \$8.08

Books: See all 1,086 items

16.



Mastering QuickBooks Made Easy Training Tutorial v. 2008 through 2004 - How to use QuickBooks Video e Book Manual Guide. Even dummies can learn from this ... through Advanced material from Professor Joe by TeachUcomp and Inc. (**CD-ROM** - Jun 16, 2008) - **CD-ROM**

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Software: See all 95 items

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FROM : VIDEO PROFESSOR

FAX NO. : 3032029929

Jul. 21 2008 02:55PM P1



**VIA OVERNIGHT MAIL &
FACSIMILE: (206) 266-7010**

General Counsel
1200 12th Avenue South, Suite 1200
Seattle, WA 98108-1226

Re: Termination of Vendor Manual

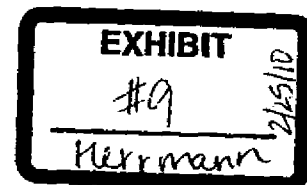
Dear Sir or Madam:

This letter will serve as Video Professor's notice to terminate the terms and conditions of the Amazon.com Vendor Manual, acknowledgement of which was executed on behalf of Video Professor on December 12, 2003. In accordance with the Sections III.1 and III.18 of the Vendor Manual, termination is effective September 19, 2008.

Should you have any questions in this regard, please contact me.

Regards,

Bettye Harrison
President





February 25, 2009

VIA UPS OVERNIGHT MAIL: 1Z6E569V1390487258

Amazon.com Legal Department
1200 12th Avenue South, Suite 1200
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Re: Video Professor

Dear Sir or Madam:

It has recently come to the attention of Video Professor that you and/or your website are using either the trademarked words "Video Professor" or some variation thereof, in search engine keywords. Driving traffic to your website through the use of Video Professor's trademark(s) may be viewed as confusing to consumers. Our understanding from Google personnel is that Amazon.com trademarks may not be purchased to generate search traffic. Accordingly, Video Professor also strongly protects its intellectual property, and as such demands that you cease and desist from any further use of the trademark word "Video Professor", or any variation thereof in any form.

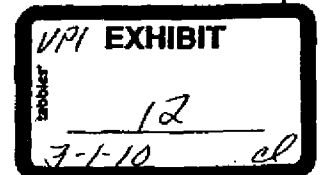
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Sincerely,

Jean Robertson
General Counsel
jrobertson@videoprofessor.com
(303) 232-1244

cc: Google Inc. Advertising Legal Support Team



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Page 2



From: RJ Schubert
To: vendor-central@amazon.com
Date: 3/5/2009 3:38 PM
Subject: Use of Video Professor trademarks

From: RJ Schubert
To: vendorcentral@amazon.com
CC: Lorna Arosteguy
Date: 3/4/2009 2:32 PM
Subject: Use of Video Professor trademarks

To whom it may concern: I am the Legal Contract and Compliance Manager at Video Professor. The trademarked word "Video Professor" is a very valuable brand, for which Video Professor has expended many resources to reach this level of recognition. Amazon.com, and/or its member stores, have been purchasing our trademarked word "Video Professor" for use in various paid search campaigns, on Google, Yahoo and MSN. At this time, there is not an agreement existing between Video Professor and Amazon.com that would permit the use of our trademark term by Amazon.com or its stores. There are many of us at Video Professor trying to work out any issues over Amazon.com (and any stores) use of the term "Video Professor" in any paid search campaign.

While we draft up a proposed short license agreement, we would like Amazon.com to cease any paid search campaign wherein the word "Video Professor" or any derivation thereon, is used. We should have an agreement ready for your review by tomorrow at the latest. We understand the importance of this to Amazon.com and appreciate the ongoing relationship that we have with Amazon.com .

Please reply to me that there is a mutual understanding on ceasing the use of "Video Professor" as a keyword in all paid search campaigns pending agreement by the parties, and if you have any questions, please feel free to call me at (800) 323-8990, ext. 140. We look forward to your consent. Thanks for your help.

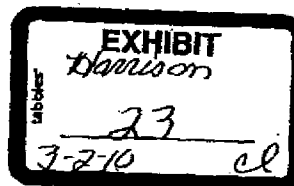
R.J. Schubert
Legal Contracts and Compliance Manager
Video Professor, Inc.
12055 W. 2nd Place
Lakewood, CO 80228
(303) 232-1244, ext. 140
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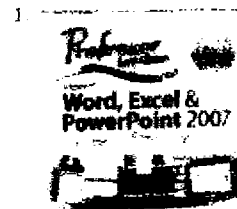
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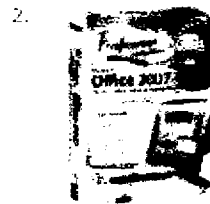


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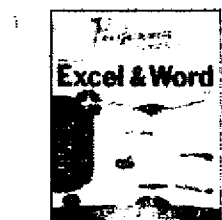


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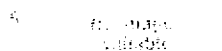
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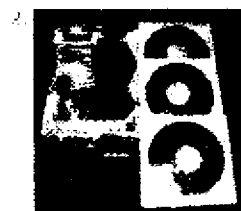
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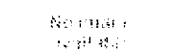
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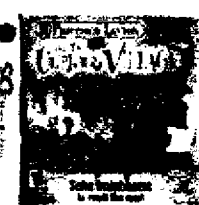


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