

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

|                        |   |                                     |
|------------------------|---|-------------------------------------|
| MARKET AMERICA, INC.   | : |                                     |
|                        | : | Civil Action No.: 1:09-cv-00494-GMS |
| Plaintiff,             | : |                                     |
|                        | : |                                     |
| v.                     | : |                                     |
|                        | : |                                     |
| GOOGLE INC. and        | : |                                     |
| LTECH CONSULTING, LLC, | : | <b>JURY TRIAL DEMANDED</b>          |
|                        | : |                                     |
| Defendants.            | : |                                     |

**LTECH CONSULTING, LLC’S JOINDER IN THE REPLY BRIEF  
FILED BY DEFENDANT GOOGLE INC. AND  
LTECH’S REPLY MEMORANDUM IN SUPPORT OF ITS  
MOTION TO DISMISS COUNTS I, II AND III OF THE AMENDED COMPLAINT**

Defendant LTech Consulting, LLC (LTech), by and through its undersigned counsel, hereby joins in the Reply Brief filed by defendant Google Inc. (Google) in support of its motion to dismiss Counts I, II and III of the Amended Complaint (Google’s Reply) and submits this Reply Memorandum in support of LTech’s motion to dismiss Counts I, II and III of the Amended Complaint.

**REPLY MEMORANDUM**

Although LTech joins in the entirety of Google’s Reply and relies upon the argument set forth therein, LTech submits this short Reply Memorandum to highlight certain facts specific to LTech.

First, the Amended Complaint alleges that when Market America announced “the Soon-to-Be Implemented Search Capabilities” (Am. Compl., page 7) to a crowd of more than 20,000 people, a Google representative was “accompanied by an LTech representative onstage.” *Id.*, ¶23. Just as it is not plausible to infer that Google would risk litigation or its reputation and knowingly expose itself to public embarrassment by stating that a GSA solution would meet

Market America's expectations when it knew all along that this was untrue (Google's Reply at 1-2, 7), it is not plausible to infer that LTech would risk litigation or its reputation if it knew that the technology would not work as hoped.

Second, with respect to Market America's rescission claim, the amended complaint alleges that "the Defendants have not been able to provide goods or services which fulfilled the requirements of performing queries on between 30 million products and 90 million products in sub one-second time frames." Am. Compl., ¶59 (emphasis added). The Services Agreement between Market America and LTech contains no such requirement or guarantee. Indeed, the only reference to search speed appears on page 2 of the Statement of Work, and that reference is in the context of a statement of the "goal" that LTech hoped to achieve after working in concert with Market America's technology and business teams:

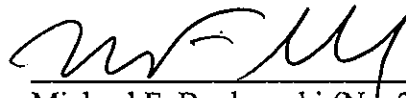
The MarketAmerica Next Generation Search and Merchandising Solution ("NextGen") will be designed and developed by LTech, in concert with MarketAmerica's technology and business teams. The goal of NextGen is to provide a fast, comprehensive, and user-friendly search and merchandising experience for MarketAmerica's customers and administrators. The solution will leverage the speed and power of the Google Search Appliance (GSA) platform to deliver relevant search results in a variety of formats and zones to empower MarketAmerica users with up-to-date and on-target product information. The GSA will generally serve search responses in sub one-second time frame[s].

Statement of Work (attached to Services Agreement) at 2 (emphasis added).

Because Market America has not identified any provision of the Services Agreement by which LTech guaranteed that a GSA search solution would search up to 90 million documents in sub one-second time frames, the rescission claim against LTech fails.

WHEREFORE, LTech respectfully requests that the Court consider this Joinder and Reply Memorandum in support of LTech's motion to dismiss Counts I, II and III of the amended complaint, and grant the motion to dismiss.

**COLE, SCHOTZ, MEISEL,  
FORMAN & LEONARD, P.A.**



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