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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VULCAN GOLF, LLC, JOHN B. SANFILIPPO & SONS, INC., BLITZ REALTY GROUP, INC., and VINCENT E. "BO" JACKSON, Individually And On Behalf Of All Others Similarly Situated,	) Case No. 07 CV 3371
Lead Plaintiff,	) Hon. Blanche M. Manning
v.	) Magistrate Judge Geraldine Soat Brown
GOOGLE INC., OVERSEE.NET, SEDO LLC, DOTSTER, INC., AKA REVENUEDIRECT.COM, INTERNET REIT, INC. d/b/a/ IREIT, INC.; and JOHN DOES 1-X,	) Date: November 29, 2007
Defendants.	)

GOOGLE'S CASE MANAGEMENT STATEMENT

Defendant Google Inc. ("Google") respectfully submits the following Case Management Conference Statement.

A. Status of Case

Plaintiff Vulcan Golf LLC filed its Complaint on June 15, 2007. Google filed a motion to dismiss on August 10, 2007. On August 21, 2007, Judge Charles P. Kocoras granted Plaintiffs leave to amend the complaint, denied without prejudice Defendants pending motions to dismiss, stayed all discovery until resolution of motions to dismiss, and recommended reassigning the case. On September 18, 2007, Plaintiffs filed the First Amended Complaint. This Court held a status conference on September 20, 2007 and continued the stay of discovery until the next status conference, so that the Court could reach a preliminary assessment of the merits before allowing discovery. On October 18, 2007, Google and the other defendants filed their motions to dismiss, which are now fully briefed and pending before the court.

B. Google's Case Management Position

Google's position on discovery is simple. Google does not belong in this action, as demonstrated in its motion to dismiss, and should not be subjected to Plaintiffs' proposed onslaught of discovery in a case from which it will soon be dismissed.

1. Discovery Should Await Determination of Motions to Dismiss

Plaintiffs' factual allegations on all counts concerning Google repeatedly fail to meet the relevant legal standards, providing pure questions of law for the court to resolve prior to the commencement of discovery. For example, Plaintiffs cannot state a claim for direct or contributory trademark infringement (Counts 4 and 10) because they have not alleged Google's actual or constructive knowledge of any infringement. Plaintiffs' vicarious trademark claim (Count 11) fails because they plead to an incorrect legal standard and lack factual allegations, as required, that Google is a "joint tortfeasor." Plaintiffs also plead to an incorrect standard for their dilution claim (Count 6) and do not allege, as required, that each of their marks is famous among the "general consuming public of the United States." Plaintiffs' cybersquatting claim (Count 3) fails because they do not allege that Google owned or operated any of the allegedly infringing domain names. Similarly, Plaintiffs do not allege that Google uses the domain names at issue "on or in connection with any goods or services," as required to state a claim for false designation (Count 5). Plaintiffs' state law claims (Counts 7 and 9) fail for the same reasons as their federal claims.

After wading through Plaintiffs' pleadings, the frailty of their case is clear. Plaintiffs have not sufficiently alleged that Google knew of or should have known of alleged trademark infringement involving domain names owned, operated, or used in connection with goods or commerce by third parties. Nor can they: as set forth in Google's motion to dismiss, Plaintiffs have deliberately *avoided* giving Google any knowledge of their claims, because Google's policy in response to such notice is to immediately disable advertising directed to any allegedly infringing domain. Giving notice to Google would immediately cease the "harm" of which Plaintiffs purport to complain.

Indeed, Plaintiffs themselves candidly state that "[i]t is not the advertisement itself, the content of the advertisements or the source of the advertisements that is illegal." MTD Opp'n at 52. The only activity *by Google* even alleged is that, only until asked not to, Google provides advertisements to websites whose names Plaintiffs dislike but which Google has no role in naming or operating--conduct that has been recognized as lawful in *Lockheed Martin Corp. v. Network Solutions, Inc.*, 985 F. Supp. 949, 957 (C.D. Cal. 1997). The court should not allow Plaintiffs to inflict the tremendous expense of discovery to investigate its claims that Google has engaged in nothing more than lawful conduct.

2. Alternatively, Class Certification Discovery Should Precede Merits Discovery

Moreover, even if the court chooses not to dismiss the counts against Google or to keep in place its stay on all discovery, the court should at a minimum stay merits discovery until it has resolved any motion for class certification.

The law is settled that courts may and often should limit the initial discovery in a putative class action to factual issues that are relevant to the class-certification decision. The notes to the 2003 Amendments to Rule 23(c)(1), addressing class certification, state that courts may allow "controlled discovery" "limited to those aspects relevant to making the certification decision on an informed basis." Notes to 2003 Amendments to Rule 23(c)(1). This court, along with federal courts generally, have therefore frequently limited initial discovery to issues related to class certification. *See, e.g., Lawrence E. Jaffe Pension Plan v. Household Int'l*, No. 02 C 5893, 2004 WL 2108410, *1 (N.D. Ill. Sept. 21, 2004) ("discovery in this matter is bifurcated, with class discovery preceding merits discovery"); *American Nurses' Ass'n v. State of Illinois*, No. 84 C 4451, 1986 WL 10382, *2-*3 (N.D. Ill. Sept. 12, 1986) (ordering bifurcated discovery); *Washington v. Brown & Williamson Tobacco Corp.*, 959 F.2d 1566, 1570-71 (11th Cir. 1992) ("To make early class determination practicable and to best serve the ends of fairness and efficiency, courts may allow classwide discovery on the certification issue and postpone classwide discovery on the merits."); *Manual for Complex Litigation, Fourth* § 21.14, at 256 (2005) ("Courts often bifurcate discovery between certification issues and those related to the

merits of the allegations.").

The Court should limit any initial discovery in this matter, for two reasons: (1) it is extremely unlikely that a class will be certified, because no trademark infringement class has ever been certified, and thus unlikely that classwide merits discovery will ever be necessary; and (2) the merits discovery served by plaintiffs is breathtaking in scope and cost. This case thus falls directly within the comment of the Manual for Complex Litigation that "in cases that are unlikely to continue if not certified, discovery into aspects of the merits unrelated to certification delays the certification decision and can create extraordinary and unnecessary expense and burden." *Id.*

It is extraordinarily unlikely that plaintiffs will be able to persuade this court to certify a class in this case. As far as we have been able to determine, there has *never* been a class of trademark owners certified in any court. This case is particularly unlikely to be the first, because the Court cannot even identify the putative class members "by reference to objective criteria," as Rule 23(a) requires. *Fletcher v. ZLB Behring LLC*, 245 F.R.D. 328, 335 (N.D. Ill. 2006). Plaintiffs have proposed a class of "[a]ny and all individuals and/or entities . . . domiciled within the United States that own or are a licensee of a 'distinctive or valuable mark' that has been infringed, diluted, cybersquatted, typosquatted, and/or otherwise improperly used." Compl., ¶ 289. Instead of objective criteria, this purported definition incorporates "a threshold finding of liability"—requiring the court to determine which marks were used improperly—which makes it inadequate as a matter of law. *Fletcher*, 245 F.R.D. at 335. In addition, even the seemingly "objective" part of the definition cannot be applied in practice. Plaintiffs assert that "all Class Members can be identified in business records maintained by Defendants," *id.* ¶ 293, but provide no explanation as to why Defendants (or anyone else) will have records of all mark holders in the United States or, even if Defendants have such records, how they could determine whether a mark is "distinctive or valuable," much less famous.

Individual questions — meaning questions that a reasonable jury could answer differently for different plaintiffs before of differences in their factual circumstances — would make up the

bulk of any claims here, as with any trademark and dilution case. Each plaintiff would have to prove that it owns a mark, that the mark has the requisite national fame for a dilution claim (which will require individual survey evidence), that the mark is distinctive or that it has achieved secondary meaning, that it is confusingly similar to some alleged infringing mark, and so on. And all of this would have to be done for each of the millions of claimed marks in the United States, because the proof for any particular mark would have no application to any other mark. Evidence of confusion (or non-confusion) between "Vulcan Golf" and an ad for Callaway golf clubs, for example, will tell the trier of fact precisely nothing about confusion between (for example) United Airlines and an ad for hotels. Trademark claims are uniquely individualized, and uniquely unsuited for class treatment. Given the proposed class' slim chance of certification, to the extent the court lifts the stay on discovery, it should do so only to permit class discovery, not merits discovery.

3. Plaintiffs' Proposed Discovery is Breathtaking in Scope and Cost

It is nearly impossible to overstate Plaintiffs' discovery demands. Google is almost certainly the single largest nongovernmental storer of electronic information on earth, and Plaintiffs have demanded that Google produce literally all of it to them. We recognize that this will sound hyperbolic, and thus we attach hereto (as Exhibits A through D) Plaintiffs *initial* discovery demands so that the Court can assess the incredible burden Plaintiffs propose inflicting *before there is even a settled pleading*. We invite the Court to review those demands, and highlight only a few here.

As the Court is no doubt aware, Google is the world's largest search engine, and has catalogued and indexed virtually the entire contents of the Internet. Google's advertising systems (which contribute virtually all of Google's revenue) serve billions of Sponsored Links, placed by millions of separate advertisers, to hundreds of millions of users.

Plaintiffs have demanded that Google (in what they astonishingly describe as "an appropriate and cost-effective means of preservation") simply remove *all* of its computers from service, and replace them with new ones. Ex. A at 18. Alternatively, Plaintiffs suggest that

Google could simply create forensically accurate duplicates of all of its hundreds of thousands of servers. *Id.* This is no narrower in scope than, in a suit against General Motors, asking it to build new factories and turn the old ones over in discovery.

Plaintiffs' document requests are equally mind-boggling. For just a few examples, they seek:

- Every single bit of data related to Google's entire advertising business ("all documents, data, other information, invoices, bills, and/or other accounting documents related to the AdWords or AdSense Programs," *id.* at ¶58);
- All of Google's data concerning traffic to billions of pages on the Internet ("[a]ny and all documents, ommunications, and ESI related to Your actions in monitoring, directing, reporting on, or otherwise evaluating and observing Web Traffic," *id.* ¶ 81);
- Complete mirrored copies of every computer at Google (*id.*, ¶¶102, 103);
- Every bit of Google's accounting information ("a]ll documents, data, and information related to Your, or any other Defendant's income from any advertising and marketing program, including but not limited to the AdWords or AdSense programs," *id.* ¶ 104,);
- Every single piece of Google's crown jewel software code ("[a]ny and all algorithms/formulas/software programs used in connection with Your, and/or any of the Defendants', Search and Ranking programs," Ex. B at ¶ 32); and
- The identities of every one of the millions of individuals and businesses that have ever used Google's AdWords or AdSense programs ("The name and address of each and every participant in the AdWords and AdSense program," *id.* at ¶28).

These are just a sample of the 121 separate demands in Plaintiffs' "first" set of demands (not to mention the interrogatories and Rule 30(b)(6) deposition demands, at Exs. C and D). We cannot imagine what could be left for a second set, as Plaintiffs could have saved most of the words in the first set by simply asking Google to produce the entire company.

Discovery such as Plaintiffs demand would be outrageous in any case. It is particularly objectionable in this case, where Plaintiffs are unlikely to survive Google's motion to dismiss,

and equally unlikely to certify a class.[1] If discovery is allowed to proceed in advance of a ruling on the motion to dismiss, that dismissal will be of scant comfort when it comes, after millions of dollars of discovery expense has been incurred. We recognize, of course, that once discovery opens Google and the other Defendants will need to come to this Court to seek protection from Plaintiffs' excessive discovery. But there is no reason that either the Court or the parties should be put to the burden of that process unless Plaintiffs have first survived dismissal and certified a class.

"Drain the pond" discovery techniques are rarely appropriate, particularly when the pond is the Pacific and the underlying claims are at best no more than a raindrop. This Court should leave in place the stay Judge Kocoras ordered until and unless this case proceeds past the pleadings stage, and then should limit discovery to class certification issues pending certification.

Dated: December 4, 2007

Respectfully submitted,

GOOGLE, INC

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[1] As we previously noted, the total gross revenue from all the Vulcan-related domains in their initial complaint was less than $18.00. We expect the total gross income from all domains identified by all four class representatives cannot exceed a few hundred dollars.

CERTIFICATE OF SERVICE

I, Mariah E. Moran, an attorney, certify that I caused copies of the foregoing **Google's Case Management Conference Statement** to be served via the Court's CM/ECF system this 4th day of December, 2007.

/s/ Mariah E. Moran

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July2, 2007

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Re: Vulcan Golf, LLC, v. Google, Inc., Oversee.net, Sedo.com, Dotster, Inc., AKA Revenuedirect.com, Internet Reit, Inc. d/b/a Ireit, Inc., and John Does I – X, 07-CV-3371
Rule 26 Obligations/Request for Preservation of Relevant Information

Dear Counsel:

I am in receipt of your e-mail requesting an extension of time to answer or otherwise plead in the above-referenced matter. Please be advised that we are agreeable to a thirty (30) day extension, until July 31, 2007. In drafting your Motion for Extension of Time, please advise the Court of our agreement in this regard.

Additionally, this letter is intended to address the Parties' obligations under Rules 16 and 26, and to further serve as Plaintiff's formal demand for the preservation of all documents, data, information, and/or other material (electronic and non-electronic) relevant to the claims set forth in Plaintiff's Complaint, pursuant to the applicable federal discovery rules.

As part of the Rule 26(a) disclosures and other discovery in this case, Plaintiff expects to receive all data and documentation necessary and relevant to the claims alleged in Plaintiff's Complaint, including both electronically and non-electronically maintained data and information.

A. OBLIGATIONS UNDER RULE 26:

As you know, Rule 26(a)(1) now includes a category of discoverable material referred to as "electronically stored information." (hereinafter "ESI"). Rule 26(b)(2)(B) sets forth various duties and a two-tiered methodology for addressing requests for electronic discovery. A responding party must:

(1) Identify information available from accessible sources;

(2) Determine whether information from accessible sources will satisfy the discovery request;

(3) Determine whether any "harder to access" sources should be searched;

(4) Identify the nature and content of any source claimed to be "inaccessible"; and,

(5) Provide a cost estimate related to retrieving and reviewing electronic information that is inaccessible to the responding party.

Rule 26(f) requires that parties promptly address the issue of information sources, inaccessible data, and the burden and cost of obtaining information from inaccessible sources that might contain discoverable material. The rule also provides that the discovering party may request the format in which it wishes to receive electronic information. Pursuant to Rule 26(f), please be advised with respect to Plaintiff that:

i. Plaintiff Sources of Electronic Information:

Plaintiff will cooperate with Defendants in producing any and all discoverable electronic information in the format designated by Defendants, native format, or an agreeable and suitable format that is usable by Defendants. Please provide Plaintiff with written confirmation of the preferred electronic format, at your earliest convenience

ii. Plaintiff Requested Format for Information Received

Plaintiff believes that Defendant is in possession of ESI relevant to the claims asserted in the Complaint. Plaintiff requests that all such information be supplied in either:

(1) "native format" with all metadata, or

(2) Another format that retains all metadata and is searchable

If neither of the above is available, Plaintiff requests that Defendant contact Plaintiff to agree upon a suitable form that is reasonably usable and includes all metadata. Further, if the native format of the data is awkward, difficult to produce, or would make it difficult to work with the information, Defendant is requested to confer with Plaintiff to agree upon conversion to another more usable format.

iii. Defendant Identification of ESI

With respect to Defendant, Plaintiff hereby demands that pursuant to Rule 26(f), Defendant immediately identify each and every potential electronic source of information relevant to claims alleged in the complaint, and the specific format in which such information is maintained. Please also identify any electronic sources that you allege are inaccessible, the data contained in the alleged inaccessible source, and the cost/burden of accessing said information. In meeting your obligations to identify data sources and formats, please include, but do not limit, your Rule 26(f) response to the following:

- Data sources in use, including PDAs, laptop computers, home offices, desktop computers, cell phones, e-mail, flash drives and any other electronic device used by Defendant capable of retaining information

- The operating systems, applications, and databases the company uses and has previously used, dates of use, and access to discontinued software; and

- All hardware and software used by Defendant during the relevant time frame set forth in the Complaint and the relevant dates of use.

iv. Rule 26 (f) Conference

Due to the nature of the claims in Plaintiff's Complaint, electronically stored information will undoubtedly comprise a large portion of discovery. Rule 26(a) requires that parties, without awaiting a discovery request, promptly identify and produce ESI, documents and tangible things in a party's possession, custody and control that the party may use to support its claims or defenses. *F.R.C.P Rule 26(a)(1)* Further, Rule 26(f) mandates that the parties confer "to discuss any issues relating to preserving discoverable information" prior to the Rule 16 Scheduling Conference. *F.R.C.P. Rule 26(f).* Further, it is our intention to seek inclusion in the Court's Rule 16 scheduling order "provisions for disclosure or discovery of electronically stored information" and "any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after production." Rules 16(b)(5) and (b)(6). Therefore, it is critically important that at the earliest possible date, we arrange to "meet and confer," pursuant to our obligations

under both Rules 16 and 26. Please be advised that we intend for the Parties, at our Rule 26(f) conference, to among other things :

1. **Identify the nature and extent of potentially relevant electronic evidence.**
2. **Discuss preservation of ESI and tangible documents/evidence and steps required to prevent spoliation.**
3. **Define production scope (e.g., which types of evidence, what computer systems/databases, and geographic locations.**
4. **Discuss and outline scope/timeframe/searching strategies/priority of production of ESI.**
5. **Identify potential problems or special handling requirements that could impact production.**
6. **Discuss and establish production protocol, such as formatting, labeling, and tracking issues to minimize production delays and confusion stemming from problems that typically arise during the course of electronic production.**
7. **Discuss and establish production dispute resolution procedures.**
8. **Discuss and establish key production timeline and milestones.**
9. **Identify what policies and practices govern the retention of electronic records.**
10. **Identify those computers where there is uncertainty as to whether or not they contain relevant electronic evidence, including, but not limited to:**
    a. Type of system
    b. What is the means for determining whether or not they contain evidence?
    c. How soon can the determination be made?
11. **Discuss policies that govern upgrades/disposal/redeployment of computer hardware such as servers/desktop/laptop systems.**
12. **For each system that is believed to contain relevant evidence, discuss and determine how far back does "live" data go.**

13. **Determine and identify whether there are any imminent software upgrades or conversions imminent which might render certain types of data less accessible.**

14. **For each system believe to contain relevant evidence, determine and identify what type of backups/archival copies may exists.**

15. **Determine and identify the key applications of database systems that contain or likely contain relevant evidence, for example:**
    - **a.** E-Mail?
    - **b.** Office Documents?
    - **c.** Custom Applications?
    - **d.** Databases?
    - **e.** Demographic and statistical analysis systems?
    - **f.** Computer access logs?

16. **For each key system, determine and identify the primary software used to support the system, for example:**

    a. **In regard to E-mail (Lotus Notes, Outlook, other):**
       i. What software is used for e-mail server and e-mail client?
       ii. Has a strategy been identified to search/preserve e-mails?
       iii. How many e-mail servers are to be searched?
       iv. Can the strategy be applied to all e-mail or only what is on the mail server now?
       v. What would be required to search mail saved by users to personal folders?
       vi. Will individual user computers and servers be searched?
       vii. What would be required to search all mail backups?
       viii. If users are conducting their own searches, will their process and compliance be identified and verified?

    b. **In regard to Office Documents**
       i. Applicable dates of use;
       ii. Versions used;
       iii. What strategy will be used for searching/extracting relevant records?
       iv. What is the proposed production format?
       v. What media (disk/tape/DVD) will be used for the production?
       vi. How much data is likely to be produced (in units of records, megabytes, or other unit that will give a sense of the overall volume)?

    c. **In regard to Custom Applications:**
       i. What business purpose did the software provide?

ii. Date of use?
iii. Creator(s)
iv. What types of data storage (flat file, database, EDI, proprietary, etc.) were used?
v. What record formats/fields were used in this data?
vi. Is information about encoding/abbreviations used within data available to make sense of the data?
vii. What strategy will be used for searching/extracting relevant records?
viii. What is the proposed production format?
ix. What media (disk/tape/DVD) will be used for the production?
x. How much data is likely to be produced (in units of records, megabytes, or other unit that will give a sense of the overall volume)?

d. In regard to Key Database:

i. What types of databases (Oracle, DB2, IMS, etc.) were used and what version numbers?
ii. What is the primary business purpose(s)?
iii. What type of data does it contain? (Detail, summary, statistical, cumulative or point-in-time?)
iv. Is information available that defines table/row format and relationships needed to determine production/redaction requirements?
v. Is documentation available to define encoding and abbreviations used within the data?
vi. What strategy will be used for searching/extracting relevant records?
vii. What is the proposed production format?
viii. What media (disk/tape/DVD) will be used for the production?
ix. How much data is likely that will give a sense of the overall volume)?

17. Determine and identify how many computer systems are known to contain relevant evidence, for example:

a. Type of system (e.g.-mainframe, UNIX server, Windows server, AS/400, PC, laptop, Macintosh, PDA, cell phones, USB devices, etc.)
b. Nature of the evidence maintained on the specific system (documents, databases, e-mail, etc.)

18. Determine and identify what protocols should govern production with respect to logistics such as:

a. Tracking status?
b. Medial labeling?
c. Bates numbering?
d. Problem resolution (empty CD's, unreadable media, read errors, etc.)?
e. Provenance information that accompanies media (what user/system/etc.)?

19. **Determine and identify what types of data may require special handling or additional research.**

20. **Discuss special redaction and privilege issues, such as but not limited to:**
    a. Log files identifying information withheld as privileged and the nature of the privilege asserted?
    b. Special protection for trade secret and other intellectual property.
    c. Anonymity considerations for personal information.

B. ESI and DOCUMENTS

ESI is afforded the broadest possible meaning, and for purposes of this litigation, includes (by way of example and not as an exclusive list) potentially relevant information electronically, magnetically, optically, or otherwise stored as:

- Digital communications (e.g., e-mail, voice mail, instant messaging);
- E-Mail Server Stores (e.g., Lotus Domino .NSF or Microsoft Exchange .EDB);
- Word processed documents (e.g., Word or WordPerfect Files and drafts);
- Spreadsheets and tables (e.g., Excel or Lotus 123 worksheets);
- Accounting Application Data (e.g., QuickBooks, Money, Peachtree data);
- Image and Facsimile Files (e.g., .PDF, .TIFF, .JPG, .GIF images);
- Databases (e.g., Access, Oracle, SQL Server data, SAP);
- Contact and Relationship Management Data (e.g., Outlook, ACT!);
- Sound Recordings (e.g., .AVI and .MOV files)
- Presentations (e.g., PowerPoint, Corel Presentations)
- Network Access and Server Activity Logs;
- Video and Animation (e.g., .AVI and .MOV files);
- Calendar and Diary Application Data (e.g., Outlook PST, blog entries);
- Online Access Data (e.g., Temporary Internet Files, History, Cookies);
- Project Management Application Data;
- Computer Aided Design/Drawing Files;
- Active Files; and
- Backup and Archival Files (e.g., Veritas, Zip, .GHO)

ESI resides not only in areas of electronic, magnetic and optical storage media reasonably accessible to you, but also in areas you may deem not reasonably accessible. You are obligated to preserve potentially relevant evidence from both sources of ESI, even if you do not anticipate producing such ESI

Further, for purposes of this litigation the term "DOCUMENT" has the broadest meaning accorded that term by Rule 34 of the Federal Rules of Civil Procedure and Rule 26 of the Federal Rules of Evidence, and includes, but is not limited to, any kind of written or graphic material, however produced or reproduced, of any kind or description,

whether sent or received or neither, including originals, copies, drafts and both sides thereof, and including, but not limited to: papers, reports, books, book accounts, photographs, tangible things, correspondence, reports and recordings of telephone conversations, telephone logs, statements, summaries, opinions, agreements, ledgers, journals records of accounts, checks, summary of accounts, spreadsheets, databases, receipts, balance sheets, income statements, confirmation slips, questionnaires, desk calendars, appointment books, diaries, journals, graphs, test results, blog, charts, data files, log files of computer access and activity, and all of the records kept by electronic, photographic, optical, mechanical, magnetic means and things similar to any of the foregoing, including computer media, regardless of their author.

C. PRESERVATION OF RELEVANT ESI AND DOCUMENTS

In order to ensure that relevant and discoverable information is available for later use, Plaintiff respectfully reminds you and your client of your obligations under the federal rules to preserve all relevant electronic data. *China Ocean Shipping (Group) Co. v. Simone Metals Inc.*, 1999 WL 966443, at *3 (N.D.Ill. Sept. 30, 1999); *Byers v. Illinois State Police*, No. 99 C 8105, 2002 WL 1264004, at *10 (N.D.Ill. June 3, 2002).

Under the federal discovery rules, a potential defendant has an obligation to begin preserving relevant evidence when litigation is reasonably foreseeable. *China Ocean Shipping (Group) Co.*, 1999 WL 96643, at *3; *Cohn v. Taco Bell Corp.*, No. 92 C 5852, 1995 WL 519968, at *5 (N.D.Ill. Aug.30, 1995). As counsel to our clients, we as attorneys have an ethical obligation to inform, advise, and assist our clients with preserving evidence. "When a lawyer who has been retained to handle a matter learns that litigation is probable or has been commenced, the lawyer should inform the client of its duty to preserve potentially relevant documents in the client's custody or control and of the possible consequences of failing to do so." Standard 10, *Preservation of Documents*, ABA Civil Discovery Standards (Aug. 2004). This letter is intended to firmly remind you and your client of your obligations to retain all relevant documents, communication, and electronic information.

Your client may have established data retention/destruction policies, and may currently be following those established schedules and procedures. **These procedures may be destroying important evidence which comprises the claims and defences of the parties; and, even if the destruction protocol has been established prior to when this litigation was reasonably foreseeable, such inadvertant destruction of relevant evidence may give rise to serious sanctions.** *Diersen v. Walker*, No. 00 C 2437, 2003 WL 21317276, at *5 (N.D.Ill. June 6, 2003). Therefore, I urge your client to immediately suspend any activities which result or could result in the destruction of any ESI or Documents until the Rule 26(f) Conference is completed and an agreement is reached between the parties regarding the protection and preservation of relevant ESI and Documents. .

Preservation of all relevant documents, information, and data, will expedite the resolution of this action and simplify the discovery process. Furthermore, a failure to preserve this information may lead to the destruction of data essential to your client's defense. In sum, successful retention of relevant information benefits all parties. I am informing you of these specific intentions now so that your client can take the affirmative steps necessary to preserve this information and prevent its intentional or unintentional destruction.

Plaintiff anticipates the following categories of ESI, documents, data, and information as relevant to the alleged claims, and requests preservation of these, and any other categories of potentially relevant documents:

- **All E-Mail relevant to this litigation**. All electronic mail, electronic correspondence, or electronic peer-to-peer messages (e-mail") shall be produced in electronic form, in an accessible standard format, and on industry-standard computer media along with files included as attachments to such e-mail. Back-up archival copies of e-mail and e-mail attachments shall be restored as necessary to crate a comprehensive collection of e-mail. No modification, alterations, or additions to e-mails (or to the meta-data and attachments associated with such e-mails) from their original states shall be performed. All e-mail should be produced whether:

    - Residing in active files on enterprise servers
    - Stored in active files on local or external hard drives and network shares
    - Nearline e-mail
    - Offline e-mail stored in networked repositories
    - E-mail residing on remote servers
    - E-mail forwarded and carbon copied to third-party systems
    - E-mail threaded behind subsequent exchanges
    - Offline local e-mail stored on removable media (eternal hard drives, thumb drives and memory cards; optical media: CD-R/RW, DVD-R/RW, Floppy Drives and Zip Drives)
    - Archived E-mail
    - Common user "Flubs"
    - Legacy e-mail
    - E-mail saved to other formats (.pdf, .tiff, .txt, .eml, etc.)
    - E-Mail contained in review sets assembled for other litigation/compliance purposes
    - E-Mail retained by vendors or third-parties
    - Print outs to paper
    - Offline e-mail on server back up media (Back up tapes, DLT, AIT, etc.)

  - E-mail in forensically accessible areas of local hard drives (deleted e-mail, internet cache, unallocated clusters)

- Proprietary software used to perform redaction.
- Commercial software used to perform redaction.
- Meta-data used to describe backup and archival media.
- Meta-Data used to identify computer systems relevant to this litigation.
- Meta-Data used to identify computer access relevant to this litigation.
- Complete history, records, and/or files related to Adwords and AdSense Programs
- The name and address of each and every participant in the Adwords and AdSense program
- The domain address of every participating domain in the AdWords and AdSense Programs
- Any and all documents, data, and information pertaining to registration and licensing domain names through the Google Adwords and Adsense Programs
- Any and all documents, data, and information pertaining to domain name research for the Google Adwords and Adsense Programs
- Any and all documents, data, and information pertaining to any and all subsidiaries and parent companies of all Defendants
- Any and all documents, data, and information pertaining to domain tasting and/or domain kiting
- Any and all documents, data, and information pertaining to domain name auction systems
- Any and all documents, data, and information pertaining to methods used to determine domain names
- Any and all documents, data, and information pertaining to typosquatting

- Any and all documents, data, and information pertaining to "Google Domain Park"
- Any and all documents, data, and information pertaining to Google's Semantic Technology
- Any and all documents, data, and information pertaining to Google's domain reporting and portfolio analysis programs
- Any and all documents, data, and information pertaining to Google's categories of revenue generating domain names
- Any and all documents, data, and information pertaining to Google's traffic redirection programs and/or stealth redirection programs
- Any and all documents, data, and information pertaining to proprietary XML feeds
- Any and all documents, data, and information pertaining to the sites www.googlesyndication.com and/or www.appliedsemantics.com
- Any and all documents, data, and information pertaining to Defendants' individual and collective attempts to monitor and review every site for trademark infringement
- Any and all profit sharing agreements between Defendants
- Any and all documents, data, and information pertaining to Defendant Google's online tracking and reporting system
- Any and all documents, data, and information pertaining to Defendant Google's "loyalty" program and/or "Exclusivity" program
- Complete statistics and/or activity reports for all participating domain names
- Any and all documents, data, and information pertaining to domain parking conferences
- Any and all documents, data, and information pertaining to Defendants' usage of the website www.whois.com
- Any and all documents, data, and information pertaining to Google's "intelligent placement" programs

- Any and all documents, data, and information pertaining to usage of infringing "www" domain names, "com" domain names, and/or "http" domain names

- Any and all documents, data, and information pertaining to Google's quality/webmaster guidelines

- Any and all documents, data, and information pertaining to Google's online complaint system

- Any and all documents, data, and information pertaining to the Uniform Domain Name Dispute Resolution Policy

- Any and all documents, data, and information pertaining to "collective reports"

- Any and all documents, data, and information pertaining to Google's "efforts for greater transparency"

- Any and all documents, data, and information pertaining to Google's Placement Performance Reports

- Any and all documents, data, other information, invoices, bills, and/or other accounting documents related to the AdWords or AdSense Programs

- Any and all documents, data, and information evidencing revenue generated from the AdWords and/or AdSense Programs

- Any and all documents, data, and information related to any contracts between any of the named Defendants.

- Any and all documents, data, and information

- All e-mails related to Plaintiff and/or deceptive domains (as defined in Plaintiff's complaint)

- All documents related to Adwords and/or AdSense practices, procedures, and/or policies

- Any and all software programs related to Adwords and/or AdSense

- All software programs related to Defendant Google search programs

- Any and all communications, documents, and or other information related to any complaints of trademark infringement, dilution, or other such related violations

- All training and educational seminars related to Adwords and/or AdSense

- All consultant reports related to Adwords and/or Ad Sense practices, policies, and/or procedures

- All documents related to administrative, local, state, and/or federal claims made against Defendant related to Adwords, AdSense, and/or trademark or "distinctive and valuable marks" (as defined in Plaintiff's Complaint)

- All statements of potential witnesses or persons interviewed in connection with this case

- Mirrored images as of this date of all hard drives from the computers of all persons involved with Adwords and mirrored images to any servers (including e-mail servers) to which these persons may have had access

- All current back-up tapes (or other media used to back-up) hard drives and servers

- All documents, data, and information related to Adwords and/or AdSense programs

- All documents, data, and information related to Defendant's income from Adwords and/or Adsense

- Any and all communications, documents, data, and/or information related to any actions by Defendant taken to address, mitigate, prevent, and/or stop the participation of deceptive domains in the AdSense for Domains program

- Any and all documents, communications, information, and or data related to the identity of and operations of the Google Network

- Any and all documents, communications, information, and or data related to the marketing and promotion of the Google Network, Google AdWords and Google AdSense programs

- The identify of each and every individual and entity that Defendant Google has made a payment to in connection with the Google AdSense program, the date of payment, method of payment, and amount of payment.

- Every letter, e-mail, electronic message, and or other communication sent by Defendant Google to AdSense participants related to their participation in the Google AdSense program.

- Each and every document, communication, data, and/or information related to Defendant Google's selection of and placement of advertising through its Adwords and AdSense programs

- Any and all communications, data, and other information related to revenue generated through Defendant Google's cost-per-click/pay-per-click advertising programs

- Any and all information related to Defendant Google's policies, procedures, regulations, and guidelines related to and/or governing its cost-per-click/pay-per-click advertising programs

- Any e-mails related to trademark and/or copyright concerns or issues

- Any and all documents, communications, information, and/or data related to Defendant Google's process of approving participation in its marketing and advertising programs

- Any and all insurance agreements that may provide coverage for Defendant in this matter

- Any other documents, data, information, and materials that Defendant either intends to use in defense of Plaintiff's claims, at hearing in this matter, or that Defendant believes may be relevant and/or probative of the claims asserted in Plaintiff's complaint

Again, the above-list is not exhaustive, rather it is exemplary of the type and scope of discoverable information that Plaintiff expects Defendant to produce pursuant to Rule 26 and that Plaintiff will be seeking from Defendant under Rule 34. Plaintiff demands that all such documents be preserved.

D. PRODUCTION PROTOCOL

As a courtesy, and in preparation for our Rule 26(f) Conference, Plaintiff informs you that it will be seeking agreement to the following "Production Protocol," and seeking incorporation of the substantive terms of this agreement in the Rule 16 Scheduling Order:

1. Each individual piece of computer media produced must be clearly labeled with a unique media control or Bates number which is indelibly written on, or affixed to, both the media itself and any enclosure or case produced with the media. This label or marking will be affixed in a place and manner which does not obliterate

any labeling on the original media, and which does not interfere with the ability to examine or use the media.

2. Electronic records and computerized information must be produced in an intelligible format or together with a technical description of the system from which they were derived sufficient to permit rendering the records and information intelligible. This description shall include, but not be limited to:

   a. Except where redaction is required by law or privilege, any record, document or data item which was crated on a computer or computer system must be produced on computer media in the original unredacted form in which it was created and/or maintained. For all such media produced, external labels on the medial shall contain a unique tracking number which can be used to associate the media with appropriate identification for the computer(s) from which the copies of computer files were made, and the full names of the individuals or business units who used the computer so identified. A record shall also be maintained and produced which show how the information on the media was copied, and whether or not it is a complete and forensically accurate copy of the original.

   b. For any electronic records, documents or data items produced, the producing party shall verify that it has modified its document retention policies in a manner that will ensure retention of the original records, documents and data items. These document retention policies shall include, without limitation, policies which automatically delete electronic mail or remove unused files, policies which permit overwriting of computer media for system backup functions, and similar policies.

3. Should the producing party seek to redact any document based on some limitation of discovery (including but not limited to a claim of privilege), the producing party shall supply a list of the documents for which such a limitation of discovery is claimed, indicating:

   a. The claimed grounds for the redaction.

   b. The nature of the redacted material (e.g., "trade secret").

   c. A description of the exact process used for redaction.

4. Should the producing party seek to withhold any document based on some limitation of discovery (including but not limited to a claim of privilege), the producing party shall supply a list of the documents for which such limitation of discovery is claimed, indicating:

   a. The identity of each document's author, writer, sender.

b. The identity of each document's addressee, or person for whom it was intended.

c. The date of creation or transmittal indicated on each document, or an estimate of that date, indicated as such, if no date appears on the document.

d. The general subject matter as described on each document, or if no such description appears, then some other description sufficient to identify the document.

e. The claimed grounds for the limitation of discovery (e.g., "attorney-client privilege")

5. All computer media must be properly packaged to ensure safe shipping and handling. If any piece of media produced is known to have any physical defect, electronic defect, damaged data, or is infected with any virus or other harmful software of any kind, it should be clearly labeled so that appropriate care can be taken during its examination.

6. All computer media, which can be write protected should be write protected before production.

7. All copies of computer files for production will be created in such a way as to preserve the original directory structure and any information about the files that is created and maintained by the operating system and the software used to create and maintain the information. This will include, but is not limited to, dates, times, authorship, and transmittal information.

8. Electronic records and computerized information must be produced with sufficient information to permit identification of the producing agent and business unit responsible for the production. This information shall include, but not be limited to:

a. The name of the corporation of entity that is producing the information, along with information such as country, city, site, and department sufficient to uniquely identify the producing agent.

b. The name or identity of the specific server or computer system from which the backup was produced or information copied.

c. The name or identity of the specific server or computer system upon which the information was originally created, and the name of the individual who created and/or maintained the information.

d. The name or identity of the specific server or computer system upon which the information was maintained during the course of normal business, if different from the system where it was created.

E. SUSPENSION OF ROUTINE DESTRUCTION

You are directed to immediately initiate a litigation hold for potentially relevant ESI, documents and tangible things and to act diligently and in good faith to secure and audit compliance with such litigation hold. You are further directed to immediately identify and modify or suspend features of your information systems and devices that, in routine operation, operate to cause the loss of potentially relevant ESI. Examples of such features and operations include, but are not limited to the following:

- Purging the contents of e-mail repositories by age, capacity and/or other criteria;
- Re-use ("rotation") of back up media containing e-mail
- Hardware and software changes which make ESI inaccessible;
- Replacing back up systems without retaining the means to read older media
- Utilization of wiping software and encryption
- Using data or media wiping, disposal, erasure or encryption utilities and/or devices;
- Overwriting, erasing, destroying, or discarding backup media;
- Re-assigning, re-tasking, re-imaging or disposing of systems, servers, devices and/or media;
- Running antivirus or other programs effecting wholesale metadata alteration;
- Releasing or purging online storage repositories;
- Using metadata stripper utilities;
- Disabling server, packet or local instant messaging logging; and/or,
- Executing drive or file defragmentation or compression programs.
- Selling, giving away or otherwise disposing of systems and media.

F. GUARD AGAINST DELETION

You should anticipate that your officers, employees or others may seek to hide, destroy or alter ESI. You must act to prevent and guard against such actions. Especially where company machines were used for internet access of personal communications, you should anticipate that users may seek to delete or destroy information they regard as personal, confidential or embarrassing, and in so doing, they may also delete or destroy potentially relevant ESI. This concern is not unique to you. It's simply conduct that occurs with such regularity that any custodian of ESI and their counsel must anticipate and guard against its occurrence.

G. PRESERVATION OF BACKUP TAPES

You are directed to preserve complete backup tape sets (including differentials and incrementals) containing e-mail, ESI, and/or any other related documents and data of for all dates during the relevant time frame set forth in the Complaint: 2000 to the present.

H. ACT TO PREVENT SPOILATION

You should take affirmative steps to prevent anyone with access to your data, systems, and archives (whether an employee, agent, officer, director, consultant, contractor, affiliate, or other) from seeking to modify, destroy or hide ESI network or local hard drives and on other media or devices (such as by deleting or overwriting files, using data shredding and overwriting applications, defragmentation, re-imaging, damaging or replacing media, encryption, compression, steganography or the like).

I. SYSTEM SEQUESTRATION OF FORENSICALLY SOUND IMAGING

As an appropriate and cost-effective means of preservation, you should remove from service and securely sequester the systems, media and devices housing potentially relevant ESI related to the claims asserted in Plaintiff's Complaint, including but not limited to the following:

- Data evidencing each and every cost-per-click/pay-per-click advertisement that has been placed on a site containing less than eighty percent content;
- The identity of each and every non-content domain and/or deceptive domain (as defined in Plaintiff's Complaint);
- Every participant in the AdSense for Domains Program;
- Every participant in the AdWords Program;
- All revenue generated from cost-per-click/pay-per-click advertising

In the event you deem it impractical to sequester systems, systems, media and devices, we believe that the breadth of preservation required dictates that forensically sound imaging of the systems, media and devices is expedient and cost effective. As we anticipate the need for forensic examination of one or more of the systems and the presence of relevant evidence in forensically accessible areas of the drives, we demand that you employ forensically sound ESI preservation methods. **Failure to use such methods poses a significant threat of spoliation and data loss.**

"Forensically sound ESI preservation" means duplication of all data stored on the

evidence media while employing a proper chain of custody and using tools and methods that make no changes to the evidence and support authentication of the duplicate as a true and complete bit-for-bit image of the original. The products of forensically sound duplication are called, *inter alia*, "bitstream images" or "clones" of the evidence media. A forensically sound preservation method guards against changes to metadata evidence and preserves all parts of the electronic evidence, including deleted evidence within "unallocated clusters" and "slack space."

Be advised that a conventional copy, backup or "Ghosting" of a hard drive does not produce a forensically sound image because it only captures active, unlocked data files and fails to preserve forensically significant data existing in, e.g., unallocated clusters and slack space.

Each forensically sound image should be labeled to identify the date of acquisition, the person or entity acquiring the image and the system and medium from which it was obtained. Each such image should be preserved without alteration.

J. PRESERVATION IN NATIVE FORM

All ESI data will be sought in the form or forms in which it is ordinarily maintained (i.e., native format). Accordingly, you should preserve ESI in such native forms, and you should not employ methods to preserve ESI that remove or degrade the ability to search the ESI by electronic means or that make it difficult or burdensome to access or use the information.

You should additionally refrain from actions that shift ESI from reasonably accessible media and forms to less accessible media and forms if the effect of such actions is to make such ESI not reasonably accessible.

K. METADATA

You should further anticipate the need to disclose and produce system and application metadata and act to preserve it. System metadata is information describing the history and characteristics of other ESI. This information is typically associated with tracking or managing an electronic file and often includes data reflecting a file's name, size, custodian, location and dates of creation and last modification or access. Application metadata is information automatically included or embedded in electronic files, but which may not be apparent to a user including deleted content, draft language, commentary, collaboration and distribution data and dates of creation and printing. For electro9nic mail, metadata includes all header routing data and Base 64 encoded attachment data, in addition to the To, From, Subject, Received Date, CC and BCC fields.

As you know, Metadata may be overwritten or corrupted by careless handling or improper preservation, including by moving, copying or examining the contents of

files. You must take all possible action to avoid such spoliation, damage, and/or destruction of metadata.

L. SERVERS

With respect to servers used to manage e-mail (e.g., Microsoft Exchange, Lotus Domino) and network storage (often called a "network share"), the complete contents of each user's network share and e-mail account should be preserved. There are several ways to preserve the contents of a server. If you are uncertain whether the preservation method you plan to employ is one that we will accept as sufficient, please immediately contact the undersigned.

M. HOME SYSTEMS, LAPTOPS, ONLINE ACCOUNTS and OTHER ESI VENUES

Though we expect that you will act swiftly to preserve data on office workstations and servers, you should also determine if any home or portable systems or devices may contain potentially relevant data. To the extent that you have sent or received potentially relevant e-mails or created or reviewed potentially relevant documents away from the office, you must preserve the contents of systems, devices and media used for these purposes (including not only potentially relevant data from portable and home computers, but also from portable thumb drives, CD-R/DVD-R disks and the user's PDA, smart phone, voice mailbox or other forms of ESI storage.). Similarly, if you used online or browser-based e-mail accounts or services (such as Gmail, AOL, Yahoo Mail, etc.) to send or receive potentially relevant messages and attachments, the contents of these account mailboxes (including Sent, Deleted and Archived Message folders) should be preserved.

N. ANCILLARY PRESERVATION

You must preserve documents and other tangible items that may be required to access interpret or search potentially relevant ESI, including logs, control sheets, specifications, indices, naming protocols, file lists network diagrams, flow charts, instruction sheets data entry forms, abbreviation keys, user ID and password rosters and the like.

You must preserve passwords, keys and other authenticators required to access encrypted files or run applications, along with the installation disks, user manuals and license keys for applications required to access the ESI.

You must preserve cabling, drivers and hardware, other than a standard 3.5" floppy disk drive or standard CD or DVD optical disk drive, if needed to access or interpret media on which ESI is stored. This includes tape drives, bar code readers, Zip drives and other legacy or proprietary devices.

O. PAPER PRESERVATION OF ESI IS INADEQUATE

As hard copies do not preserve electronic searchability or metadata, they are not an adequate substitute for, or cumulative of electronically stored versions. If information exists in both electronic and paper forms, you should preserve *both* forms.

P. AGENTS, ATTORNEYS, and THIRD PARTIES

Your preservation obligation extends beyond ESI in your care, possession or custody and includes ESI in custody of others that is subject to your direction and control. Accordingly, you must notify any current or former agent, attorney, employee, custodian and contractor in possession of potentially relevant ESI to preserve such ESI to the full extent of your obligation to do so, and you must take reasonable steps to secure their compliance.

Q. PRESERVATION PROTOCOLS

We are desirous of working with you to agree upon an acceptable protocol for forensically sound preservation and can supply a suitable protocol if you will furnish an inventory and description of the systems and media to be preserved. Alternatively, if you promptly disclose the preservation protocol you intend to employ, perhaps we can identify any points of disagreement and resolve them. A successful and compliant ESI preservation effort requires expertise. If you do not currently have such expertise at your disposal, we urge you to engage the services of an expert in electronic evidence and computer forensics. As we have already indicated, we wish to have both our experts present at our Rule 26(f) Conference to work cooperatively to secure an appropriate electronic preservation and discovery plan that is acceptable to the parties and the Court.

R. DO NOT DELAY PRESERVATION

We have indicated our desire to schedule the Rule 26(f) conference and prepare a draft Rule 16 order, at your earliest convenience. **Do not defer preservation steps pending such discussions, as critically important ESI may be lost or corrupted as a consequence of delay.** Should your failure to preserve potentially relevant evidence result in the corruption, loss or delay in production of evidence to which we are entitled, such a failure would constitute spoliation of evidence, and we will not hesitate to seek sanctions.

S. IDENTIFICATION OF CUSTODIANS

Be advised that for each custodian of ESI or tangible documents that may be relevant to this litigation, Plaintiff seeks the name, last known address, position, dates of employment, association (contractor, employee, director, third party, etc.), description of ESI or tangible documents in custodian's possession, relevant dates, and media in which

the ESI or tangible document is stored. Provide each custodian with written notice of the litigation hold and directives regarding the preservation protocol.

T. CONFIRMATION COMPLIANCE

Confirm by **July 12, 2007,** that you have taken the steps outlined in this letter to preserve ESI and tangible documents potentially relevant to this action. Further, please provide written confirmation of that all relevant current and former employees, affiliates, contractors, associates, and other individual(s) and/or entities have been advised of the litigation hold and the protocol for preservation of ESI and tangible documents potentially relevant to this action. Please provide us with the name of each individual and/or entity that was so advised and the date of notice. If you have not undertaken the steps outlined above, or have taken other actions, please describe what you have done to preserve potentially relevant evidence.

U. DATES FOR RULE 26(f) CONFERENCE

Be advised that we are available to for the Rule 26(f) conference on any of the following dates July 9th, 10th, 13th, 19th, 20th, 23rd, 30th or August 1st, 2nd, 13th or 14th. We propose holding the meeting at our office in Geneva, Illinois. We anticipate the conference taking at least four (4) hours, however we suggest reserving the entire day to discuss the numerous issues set forth herein. Please advise at your earliest convenience as to your availability. We believe that our meeting would be most productive if both parties had their respective IT experts in attendance at the Rule 26(f) conference. We further demand that you bring individual(s) who possess sufficient knowledge of your ESI systems, hardware, software, media, data retention and destruction policies, and the other various categories of ESI and discovery issues set forth herein, to meaningfully address ESI discovery issues and participate in the process of reaching an agreement regarding discovery/ESI production and preservation protocols.

We look forward to hearing from you regarding the scheduling of the Rule 26(f) conference.

Very truly yours,

Robert M Foote, Esq.

B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VULCAN GOLF, LLC, Individually And On Behalf Of All Others Similarly Situated,	§	Civil Action No. 07 CV 3371
Lead Plaintiff,	§	Judge Kocoras
v.	§	Magistrate Judge Brown
GOOGLE INC ., OVERSEE.NET, SEDO LLC, DOTSTER, INC., AKA REVENUEDIRECT.COM INTERNET REIT, INC. d/b/a IREIT, INC.; and JOHN DOES I-X,	§	
Defendants.	§	

PLAINTIFF'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS TO DEFENDANT, GOOGLE, INC.

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff, **Vulcan Golf, LLC** ("Plaintiff"), hereby requests that Defendant, GOOGLE, INC. (hereinafter "Defendant"), respond to the following Production Request under oath and within 30 days after service. Production may be made at the following address:

Foote, Meyers, Mielke & Flowers, LLC.
28 North First St., Suite 2
Geneva, Illinois 60134

This Request for Production of Documents shall be deemed continuing to the time of hearing and/or trial. For each Production Request that Defendant refuses to answer on the grounds of privilege, state the specific nature of the privilege claimed with appropriate citation to the relationship or information claimed to be privileged and the reason for the privilege.

Instructions for Producing Documents and Answering Production Requests

1. Pursuant to applicable federal rules, you are required, in responding to this request, to obtain and furnish all information available to you and any of your representatives, employees, agents, brokers, servants, or attorneys, and to obtain and furnish all information that is in your possession or under your control, or in the possession or under the control of any of your representatives, employees, agents, servants or attorneys.

2. Each request which seeks information relating in any way to communications, to, from, or within a business and/or corporate entity, is hereby designated to demand, and should be construed to include, all communications by and between representatives, employees, agents, brokers and/or servants of the business and/or corporate entity.

3. Each request should be responded to separately. However, a document which is a response to more than one request may, if the relevant portion is marked or indexed, be produced and referred to in a later response, by its designated mark or index identifier.

4. All documents produced shall be segregated and identified by the paragraphs to which they are primarily responsive. Where required by a particular paragraph of this Request, documents produced shall be further segregated and identified as indicated in this paragraph. For any documents that are stored or maintained in files in the normal course of business, such documents shall be produced in such files, or in such a manner as to preserve and identify the file from which such documents were taken.

5. If you object to part of any request, please furnish documents responsive to the remainder of the request.

6. Each request refers to all documents that are either known by the Defendant to exist or that can be located or discovered by reasonably diligent efforts by the Defendant.

7. The documents produced in response to this request shall include all attachments and enclosures.

8. The documents requested for production include those in the possession, custody, or control of Defendant, its agents, representatives, or attorneys.

9. References to the singular include the plural.

10. The use of any tense of any verb shall be considered also to include within its meaning all other tenses of the verb so used.

11. All documents called for by this request or related to this request, for which you make a claim to a privilege or statutory authority as a ground for non production, shall be listed chronologically as follows:

a. The place, date and manner of recording or otherwise preparing the document;

b. The name and title of the sender;

c. The identity of each person or persons (other than stenographic or clerical assistants) participating in the preparation of the document;

d. The identity and title with Defendant, if any, or the person or persons supplying Agency's attorneys with the information requested above;

e. The identity of each person to whom the contents of the document have summarization, the dates of said communication, and the employer and title of said person at the time of said communication;

f. Type of document;

g. Subject matter (without revealing the relevant information for which privilege or statutory authority is claimed); and

h. Factual and legal basis for claim, privilege or specific statutory or regulatory authority which provides the claimed ground for non-production including the identity of the holder of the privilege.

12. Each request to produce a document or documents shall be deemed to call for the production of the original document or documents to the extent that they are in, or subject to, directly or indirectly, the control of the party to whom this request is addressed. In addition, each request should be considered as including a request for separate production of all copies and, to the extent applicable, preliminary drafts of documents that differ in any respect from the original or final draft or from each other (e.g., by reason of differences in form or content or by reason of handwritten notes or comments having been added to one copy of a document but not on the original or other copies thereof).

13. All documents produced in response to this request shall be produced notwithstanding the fact that portions thereof may contain information not requested.

14. If any documents requested herein have been lost or destroyed, the documents so lost or destroyed shall be identified by author, date and subject matter.

15. Where exact information cannot be furnished, estimated information is to be supplied to the extent possible. Where estimation is used, it should be so indicated, and an explanation should be given as to the basis on which the estimate was made and the reason exact information cannot be furnished.

16. With respect to any document requested which was once in Defendant's possession, custody or control, but is no longer, please indicate the date the document ceased to be in the Defendant's possession, custody or control, the manner in which it is ceased, and the name and address of its present custodian.

17. Unless otherwise indicated, each request is to be construed as encompassing all documents which pertain to the stated subject matter and to events which transpired during all relevant times herein up to the present.

Production Protocol-ESI

18. Each individual piece of computer media produced must be clearly labeled with a unique media control or Bates number which is indelibly written on, or affixed to, both the media itself and any enclosure or case produced with the media. This label or marking will be affixed in a place and manner which does not obliterate any labeling on the original media, and which does not interfere with the ability to examine or use the media.

19. Electronic records and computerized information must be produced in an intelligible format or together with a technical description of the system from which they were derived sufficient to permit rendering the records and information intelligible. This description shall include, but not be limited to:

a. Except where redaction is required by law or privilege, any record, document or data item which was crated on a computer or computer system must be produced on computer media in the original unredacted form in which it was created and/or maintained. For all such media produced, external labels on the medial shall contain a unique tracking number which can be used to associate the media with appropriate identification for the computer(s) from which the copies of computer files were made, and the full names of the individuals or business units who used the computer so identified. A record shall also be maintained and produced which show how the information on the media was copied, and whether or not it is a complete and forensically accurate copy of the original.

b. For any electronic records, documents or data items produced, the producing party shall verify that it has modified its document retention policies in a manner that will ensure retention of the original records, documents and data items. These document retention policies shall include, without limitation, policies which automatically delete electronic mail or remove unused files, policies which permit overwriting of computer media for system backup functions, and similar policies.

20. Should the producing party seek to redact any document based on some limitation of discovery (including but not limited to a claim of privilege), the producing party shall supply a list of the documents for which such a limitation of discovery is claimed, indicating:

a. The claimed grounds for the redaction.

b. The nature of the redacted material (e.g., "trade secret").

c. A description of the exact process used for redaction.

21. Should the producing party seek to withhold any document based on some limitation of discovery (including but not limited to a claim of privilege), the producing party shall supply a list of the documents for which such limitation of discovery is claimed, indicating:

a. The identity of each document's author, writer, sender.

b. The identity of each document's addressee, or person for whom it was intended.

c. The date of creation or transmittal indicated on each document, or an estimate of that date, indicated as such, if no date appears on the document.

d. The general subject matter as described on each document, or if no such description appears, then some other description sufficient to identify the document.

e. The claimed grounds for the limitation of discovery (e.g., "attorney-client privilege")

22. All ESI must be produced in either:

a. "native format" with all metadata, or

b. Another format that retains all metadata and is searchable

If neither of the above is available, Plaintiff requests that Defendant contact Plaintiff to agree upon a suitable form that is reasonably usable and includes all metadata. Further, if the native format of the data is awkward, difficult to produce, or would make it difficult to work

with the information, Defendant is requested to confer with Plaintiff to agree upon conversion to another more usable format.

23. all computer media must be properly packaged to ensure safe shipping and handling. If any piece of media produced is known to have any physical defect, electronic defect, damaged data, or is infected with any virus or other harmful software of any kind, it should be clearly labeled so that appropriate care can be taken during its examination.

24. All computer media, which can be write protected should be write protected before production.

25. All copies of computer files for production will be created in such a way as to preserve the original directory structure and any information about the files that is created and maintained by the operating system and the software used to create and maintain the information. This will include, but is not limited to, dates, times, authorship, and transmittal information.

26. Electronic records and computerized information must be produced with sufficient information to permit identification of the producing agent and business unit responsible for the production. This information shall include, but not be limited to:

a. The name of the corporation of entity that is producing the information, along with information such as country, city, site, and department sufficient to uniquely identify the producing agent.

b. The name or identity of the specific server or computer system from which the backup was produced or information copied.

c. The name or identity of the specific server or computer system upon which the information was originally created, and the name of the individual who created and/or maintained the information.

d. The name or identity of the specific server or computer system upon which the information was maintained during the course of normal business, if different from the system where it was created.

27. Production can be accomplished by mailing the documents within the rule time to:

Robert M. Foote, Esq.
Foote, Meyers, Mielke & Flowers, LLC
28 North First Street, Suite 2
Geneva, Illinois 60134.

Definitions

The following words and terms shall be afforded the following definitions for purposes of these Production Requests:

1. "**During the relevant time period,**" as used in these Production Requests, shall mean the period commencing with January 2002 through the present.

2. "**Document,**" as used in these Production Requests has the broadest meaning accorded that term by Rule 34 of the Federal Rules of Civil Procedure and Rule 26 of the Federal Rules of Evidence, and includes, but is not limited to, any kind of written or graphic material, however produced or reproduced, of any kind or description, whether sent or received or neither, including originals, copies, drafts and both sides thereof, and including, but not limited to: any papers, reports, binder, cover note, certificate, letter, correspondence, record, table, chart, analysis, graph, schedule, report, test, study memorandum, note, list, diary, log, calendar, telex, message (including, but not limited to, inter-office and intra-office communications), questionnaire, bill, purchase order, blogs, charts, data files, log files of computer access activity, shipping order, contract, memorandum of contract, agreement, assignment, license, certificate, permit, ledger, ledger entry, book of account, check, order, invoice, receipt, statement, financial data, acknowledgement, computer or data processing card, computer or data processing disk, computer- generated matter, photograph, photographic negative, phonograph recording, transcript or log of an such recording, projection, videotape, film, microfiche, and all other data compilations from which information can be obtained or translated, reports and/or summaries of

investigations, drafts and revisions of drafts of any documents and original preliminary notes or sketches, and all of the records kept by electronic, photographic, optical, mechanical, magnetic means and things similar to any of the foregoing, including computer media, regardless of their author, no matter how produced or maintained, in you actual or constructive possession, custody or control, or the existence of which you have knowledge, and whether prepared, published or released by you or by any other person. If a document has been prepared in several copies, or additional copies have been made, or copies are not identical (or which by reason of subsequent modification of a copy by the addition of notations or other modifications, are no longer identical), each non-identical copy as a separate document.

3. **"Electronically Stored Information"** ("ESI"), as used in these Production Requests, shall be afforded the broadest possible meaning, and includes (by way of example and not as an exclusive list) potentially relevant information electronically, magnetically, optically, or otherwise stored as:

a. Digital communications (e.g., e-mail, voice mail, instant messaging);

b. E-Mail Server Stores (e.g., Lotus Domino .NSF or Microsoft Exchange .EDB);

c. Word processed documents (e.g., Word or WordPerfect Files and drafts);

d. Spreadsheets and tables (e.g., Excel or Lotus 123 worksheets);

e. Accounting Application Data (e.g., QuickBooks, Money, Peachtree data);

f. Image and Facsimile Files (e.g., .PDF, .TIFF, .JPG, .GIF images);

g. Databases (e.g., Access, Oracle, SQL Server data, SAP);

h. Contact and Relationship Management Data (e.g., Outlook, ACT!);

i. Sound Recordings (e.g., .AVI and .MOV files)

j. Presentations (e.g., PowerPoint, Corel Presentations)

k. Network Access and Server Activity Logs;

l. Video and Animation (e.g., .AVI and .MOV files);

m. Calendar and Diary Application Data (e.g., Outlook PST, blog entries);

n. Online Access Data (e.g., Temporary Internet Files, History, Cookies);

o. Project Management Application Data;

p. Computer Aided Design/Drawing Files;

q. Active Files; and

r. Backup and Archival Files (e.g., Veritas, Zip, .GHO)

ESI resides not only in areas of electronic, magnetic and optical storage media reasonably accessible to you, but also in areas you may deem not reasonably accessible.

4. "**Occurrence" or "alleged occurrence,**" as used in these Production Requests, shall mean the facts alleging liability to any of the Defendants named in Plaintiff's Complaint.

5. "**You," "your" and "yourself**" refer to the party to whom the following Production Requests are addressed, and its agents, representatives, officers, directors, affiliates, predecessors and successors in interest, parents, divisions, subsidiaries, area and regional offices, and employees including persons or entities outside of the United States.

6. **"Person" and/or "individual**" means any natural persons, firms, proprietorships, associations, partnerships, corporations and every other type of organization or entity.

7. "**Defendant" and/or "Defendants**" means the Defendant to whom these Production Requests are addressed, or when referred to in the plural any or all Defendants named in Plaintiff's Complaint, including their agents, directors, employees, subsidiaries, affiliates, assignees, predecessors and successors in interest, parents, divisions, subsidiaries, area and regional offices, and employees including persons or entities outside of the United States.

8. "**Identify**" means when used in reference to:

A. A ***document***, to state separately:

1. Its description (e.g. letter, report, memorandum, etc.);

2. Its date;

3. Its subject matter;

4. Its format (electronic, paper, etc.);

5. Its accessibility, or lack thereof;

6. The identity of each author or signer; and

7. Its present location and the identity of its custodian.

B. **An *oral* statement, communication, conference or conversation**,

to state separately:

1. Its date and the place where it occurred;

2. Its substance;

3. The identity of each person participating in the communication or conversation;

4. The identity of all notes, memoranda or other documents memorializing, referring to or relating to the subject matter of the statement;

5. Whether there is any recording or electronic storage of the oral statement, communication, conference or conversation, and, if so:

6. The format in which it is stored;

7. The location in which it is stored;

8. Its accessibility; and

9. The identity of its custodian.

C. A *natural person or persons,* to state separately:

1. The full name of each such person;

2. His or her present, or last known business address and his or her present or last known residential address; and

3. The employer of the person at the time to which the interrogatory answer is directed and the person's title or position at that time;

D. **An *organization or entity* other than a natural person** (e.g., a company, corporation, firm, association, or partnership), to state separately:

1. The full name and type of organization or entity;

2. The date and state of organization or incorporation;

3. The address of each of its principal places of business; and

4. The nature of the business conducted.

9. **"Communication"** shall mean any transmission of information, the information transmitted, and any process by which information is transmitted, and shall include written communications and oral communications, electronic and non-electronic communications. 11.

10. **"Relating to"** means consisting of, referring to, describing, discussing, constituting, evidencing, containing, reflecting, mentioning, concerning, pertaining to, citing, summarizing, analyzing or bearing any logical or factual connection with the matter discussed.

11. "**Claim**" means a demand or assertion, whether oral or written, formal or informal, by any person for monetary payment, the undertaking of action, or the cessation of action.

12. **"Consulted"** or "**contracted**" means any form of communication, e.g., oral statements, telephonic conversations or other mechanical communications or any other type of communication including written letters or documents.

13. **"Plaintiff"** means VULCAN GOLF and/or any other individuals who have acted on its behalf.

14. **"Management" or "manage"** includes any act of directing, conducting, administering, controlling or handling an identified function or duty.

15. **"Any"** shall also mean "all" and vice versa.

16. **"And"** shall mean **"or"** and "or" shall mean "and" as necessary to call for the broadest possible answer.

17. The **"Class"** shall mean the putative Class Set forth in Plaintiff's Complaint, defined as:

> **Any and all individuals and/or entities (excluding governmental entities, Defendants, and Defendants' parents, predecessors, subsidiaries, affiliates, agents and Defendants' co-conspirators) domiciled within the United States that own or are a licensee of a "distinctive or valuable mark" that has been infringed, diluted, cybersquatted, typosquatted, and/or otherwise improperly used by one or more of the Defendants, as part of the Illegal Infringement Scheme alleged herein, during the period January 2002 through the present.**

18. **Address Bar:** as used in these Production Requests, means the text box used to enter a website's address in a web browser. On the web browser Internet Explorer it is identified by the word "Address." The address bar allows Internet users to manually type in and specify the web sites they wish to visit on the Internet. It is also known as the location bar in Netscape.

19. Click: as used in these Production Requests, means: the action of an Internet user in selecting ("clicking on") displayed Internet advertising.

20. **Click-Through-Rate (CTR):** as used in these Production Requests, means: the ratio of The number of clicks a particular advertisement receives on a website to the total number of viewers of that website.

21. **Click-Through-Revenue**: as used in these Production Requests, means: revenue generated by Clicks on "pay-per-click/cost-per-click" advertisements.

22. **Cost-Per-Click Advertising (or "Pay-Per-Click"):** as used in these Production Requests, means: the electronic online advertising method whereby search engines and automated Internet services, such as Defendant Google, provide online/Internet advertising listings on a per-bid, pay per click, basis. The advertiser only pays when its advertisement link is clicked on by an Internet user. Therefore, under a "cost-per-click/pay-per-click" advertising solution, Defendants only generate revenue when an Internet user actually "clicks" on one or more of the advertising links appearing on a domain.

23. **Cost-Per-Impression:** as used in these Production Requests, means: the electronic online advertising method whereby search engines and automated Internet services, such as Defendant Google, provide online/Internet advertising listings on a pay per display basis wherein the advertiser pays the search engine each time its advertisement is displayed on one of the search engine's participating websites.

24. **Country Code TLDs ("ccTLDs"):** as used in these Production Requests, means: a top level domain identifying domain names for a given country. Country codes are designated by a two letter code identifying the country.

25. **Cybersquatting:** as used in these Production Requests, means: the practice of registering, licensing using, and monetizing domain names – usually based on prominent Distinctive and Valuable Marks or corporate names – before the legitimate holders of same have had an opportunity to register the domain names for themselves and/or registering Deceptive Domains, and then using said domains for commercial profit and gain.

26. **Deceptive Domains:** as used in these Production Requests, means: a parked domain that is used for advertising purposes, and is identical to or confusingly similar to a famous mark.

27. **Distinctive and Valuable Marks:** as used in these Production Requests, means: venerable, valuable, distinctive, famous, registered trademarks, trade names, logos, famous names, and other such distinctive/valuable marks.

28. **Domain Forwarding:** as used in these Production Requests, means: redirecting requests to reach one Internet address on the Internet to a different Internet address.

29. **Domain Kiting:** as used in these Production Requests, means: the practice of domain Registrants registering a domain name, returning that domain name within five (5) days to the original domain registrar for a full refund, and then reregistering that same domain name to avoid paying for the registration fee.

30. **Domain Monetization:** as used in these Production Requests, means: the practice of using domain names for commercial gain by generating revenue from the placement of advertisements and marketing on domains.

31. **Domain Name Parking Aggregator:** as used in these Production Requests, means: a domain Parking Company that aggregates numerous domain names from individual domain name registrants and then contracts with Google to license and monetize those domain names.

32. **Domain Names:** as used in these Production Requests, means: a domain name is made up of two components: a top level domain and a secondary level domain. The top level domain is the suffix of the domain name such as .com, .net. org. The secondary level domain is

the remainder of the address, and can consist of letters, numbers, and some typographical symbols. Certain symbols, such as ampersands (&), cannot be used in a domain name.

33. **Domain Name System ("DNS"):** as used in these Production Requests, means: the system used to translate alphanumeric domain names into Internet Protocol numbers.

34. **Domain Registrars:** as used in these Production Requests, means: an organization such as Network Solutions, that has control over the granting of domains within top level domains. Persons that want to own a domain name on the Internet must register a unique domain name with a domain registrar.

35. **Domain Registration:** as used in these Production Requests, means: the act of registering a domain name. A domain name can only be registered by one entity and domain names are registered on a first-come first-served basis.

36. **Domain Tasters:** as used in these Production Requests, means: persons involved in the practice of domain tasting.

37. **Domain Tasting:** as used in these Production Requests, means: the practice of domain registrants registering a domain name to assess its profitability by redirecting it through Defendant Google, and returning that domain name within five (5) days to the original domain registrar for a full refund if the domain name proves unprofitable.

38. **E-Commerce:** as used in these Production Requests, means: commerce that is transacted electronically, such as over the Internet.

39. **Generic TLDs ("gTLDs"):** as used in these Production Requests, means: the top-level domain name of an Internet address that gives it a generic identification associated with a domain class, such as .com (commercial), .net (Internet service providers), .org (non-profit

organizations), .gov (government), .mil (military), .edu (educational institutions), and .int (international treaties or databases).

40. **Google Network:** as used in these Production Requests means: (1) the advertisers participating in the Google AdWords Program, (2) the Parking Company Defendants, (3) the third party domain owners and aggregators that participate in Google's AdSense for Domains Network, (4) Google AdSense for Content Partners, and (5) Google AdSense for Search Partners.

41. **Google Adsense for Domains Program:** as used in these Production Requests, means the technology, systems, and processes that Google developed, formulated, controls and uses to operate the displaying of Google advertisements on the domain names in Google Adsense for Domains Network.

42. **Google Adsense for Domains Network**: as used in these Production Requests means the millions of domain names using the Google AdSense for Domains Program which Google controls and manages via direct contracts with domain owners such as Defendant Ireit, and contracts with the Parking Company Defendants (who aggregate domain portfolios, and in some cases, also own large portfolios of domain names).

43. **HyperText Markup Language ("HTML"):** as used in these Production Requests means "*Hypertext Markup Language*," a language used in the creation of web pages which denotes text as headings, paragraphs, lists, describe the appearance and semantics of a document, and can include embedded scripting language code and affect the behavior of web browsers and other HTML processors. Generally, HTML is used herein in its most general sense and refers to the type of markup language used in creating a web page.

44. **Internet:** As used in these Production Requests, means: The international network of interconnected computers and computer networks. It is networking infrastructure or medium that connects computers globally.

45. **Internet Corporation for Assigned Names and Numbers (ICANN):** as used in these Production Requests, means: the internationally organized, non-profit corporation responsible for coordinating the management of the technical elements of the Domain Name System to ensure universal resolvability so that all users of the Internet can find all valid addresses.

46. **Internet Protocol ("IP") numbers:** as used in these Production Requests, means: a unique number consisting of four (4) numbers, each between 0 and 255, separated by periods, used to uniquely identify a computer on the Internet.

47. **Masked Redirection/Framed Forwarding/Stealth:** as used in these Production Requests, means: when an Internet user attempts to access a website by typing the domain into a Web browser, the user will be redirected to a different Web address without authorization or permission and the URL in a Web browser's address bar remains the one that was typed in when the visitor is being redirected. That way, the actual destination address is concealed from the user who only sees the domain name the user typed in.

48. **Non-Content Advertising:** as used in these Production Requests, means: an Internet webpage consisting solely of Internet advertising links and lacking any substantive content.

49. **Normal Domain Redirection:** as used in these Production Requests, means: when an Internet user attempts to access a website by typing the domain into a Web browser, the user will be redirected to a different Web address without authorization or permission.

50. **Parked Domains:** as used in these Production Requests, means: a registered domain which is being redirected and monetized through the Google AdSense for Domains Program and/or the Parking Company Defendants, and is part of the Google AdSense for Domains Network.

51. **Parking Companies:** as used in these Production Requests, means: a domain company that aggregates numerous domain names from individual domain name registrants and then contracts with Google to license and monetize those domain names.

52. **Pay-Per-Click (or Cost-Per-Click):** as used in these Production Requests, means: the electronic online advertising method whereby search engines and automated Internet services, such as Defendant Google, provide online/Internet advertising listings on a per-bid, pay per click, basis.

53. **Search Engine:** as used in these Production Requests, means: a program that searches web pages for specified keywords and returns a list of web pages where the keywords were found.

54. **Second Level Domains ("SLDs"):** as used in these Production Requests, means: the portion of the Uniform Resource Locator that identifies the specific and unique administrative owner associated with an Internet Protocol number. For example, in: www.whatis.com, "whatis" is the second level domain.

55. **Semantic Technology:** as used in these Production Requests, means: technology that analyzes text input by a user to assess the probable intent of the user.

56. **Top Level Domains ("TLDs"):** as used in these Production Requests, means: the portion of the Uniform Resource Locator that refers to the suffix attached to the domain name. For example, in www.whatis.com, ".com" is the Top Level Domain.

57. **Trademark Cyberpiracy:** as used in these Production Requests, means: synonymous with Cybersquatting.

58. **Typosquatting:** as used in these Production Requests, means: a form of cybersquatting, aimed at registering domain names similar to prominent trade names, trademarks, or corporate names, in order to capture and lure Internet traffic from misspelled or mistyped trade names, trademarks, or corporate names in the domain.

59. **Undeveloped Site/Domain:** as used in these Production Requests means a site that does not contain any content.

60. **Uniform Resource Locator ("URL"):** as used in these Production Requests, means: the unique address for a file that is accessible on the Internet. A web site is accessed on the Internet by providing that web site's URL to the Internet browser.

61. **Web Browser:** as used in these Production Requests, means: the software that allows a user to locate, view, and access websites on the World Wide Web (Ex: Microsoft Internet Explorer)

62. **Website ("site"):** as used in these Production Requests, means: a location on the World Wide Web.

63. **Web Traffic:** as used in these Production Requests (used synonymously with Internet traffic) to mean: the flow of data and users around the Internet and web.

64. **World Wide Web ("Web"):** As used in these Production Requests, means: a collection of online documents stored on servers around the world, that are connected to the Internet. The web is one of the ways that information is shared over the Internet.

REQUESTS

1. All documents that You identified in responses to or relied upon in preparing your responses to Plaintiff's First Set of Interrogatories.

2. All documents that You, and/or any other Defendant, intends to introduce or rely upon at any hearing, trial, or other proceeding related to this matter or that may be used to refresh the recollections of witnesses at depositions or trial.

3. All documents, ESI, communications and/or other data supporting any defenses or affirmative defenses raised by You, or any of the Defendants.

4. All documents, ESI, communications and/or other referring or relating to any problems, acts, or omissions on the part of any of the Defendants, its employees or agents that allegedly resulted in infringement/dilution of distinctive and valuable marks, cybersquatting, cyberpiracy, typosquatting, and/or any other action forming the basis of the claims set forth in Class Plaintiff's Complaint.

5. All documents, ESI, communications and/or other referring and/or relating to any communication that Class Plaintiff had with any of the Defendants, their employees or agents regarding internet advertising, marketing, cybersquatting, typosquatting, traffic hijacking, distinctive and valuable mark infringement/dilution, fraud, or diversion of business.

6. All documents, ESI, communications and/or other to and/or from any other person, organization, or association regarding typosquatting, cybersquatting, distinctive and valuable mark infringement/dilution, fraud, traffic hijacking, and/or any other allegations raised in Class Plaintiff's Complaint.

7. All documents provided by You, and/or any other Defendant, to the United States Department of Justice and/or any other governmental entity related to claims of typosquatting, cybersquatting, distinctive and valuable mark infringement/dilution, fraud, traffic hijacking, and/or any other allegations raised in Class Plaintiff's Complaint.

8. All documents identifying the nature of Your operations, Your physical locations, and Your organizational structure, including but not limited to, parent companies, subsidiaries, management structure, department heads, directors, and all others who have any responsibility for supervisory activities.

9. All organizational charts, personnel charts, descriptions, lists, tables, flow charts or other similar documents in Your possession that show the identities, titles or responsibilities of each person responsible in any manner for the design of software and programs, selection of software and programs, maintenance and use of software/programs, promulgation of policies and procedures, oversight and/or enforcement of any programs for domain registration, domain tasting, domain licensing, search and ranking, and/or internet advertising and marketing programs.

10. Any and all internal operating procedures, standard operating procedures, written directives, intranet, internet, and/or website materials related to domain registration, domain tasting, domain licensing, the AdWords, AdSense Programs, and/or other internet advertising and marketing programs.

11. All documents, data, and/or ESI containing any statistical data relied that will be relied upon by You, or any of the Defendants.

12. All statements, document, e-mails, electronic recordings, and/or memos relating to witnesses or potential witnesses or persons contacted in connection with this case.

13. All documents relating to the balance sheet reflecting Your assets and liabilities and net worth, including, but not limited to, any 10-K statements and Annual Reports.

14. All documents relating to Your market cap.

15. All documents reflecting Your net income, total revenue, and total liabilities.

16. Any communications and/or documents relating to statements made by any Defendant to the media, newspapers, television reporters or other press regarding this lawsuit.

17. All documents reflecting Defendant's litigation apportionments, reserves, and/or other financial information relevant to litigation and/or settlement of this litigation.

18. Any and all documents associated with, related to, concerning, or involving Defendant's formal or informal document retention and destruction policies.

19. All corporate mission statements.

20. Any documents prepared by an expert, consultant, or other individual/entity related to this legal action or any of the allegations made in Plaintiff's Complaint.

21. All E-Mail related to Google AdSense or AdWords programs, advertising and marketing programs, cost-per-click/pay-per-click, domain registration, domain kiting, domain tasting, deceptive domains, complaints regarding infringement/dilution of distinctive and valuable marks, cybersquatting, typosquatting, traffic hijacking, trademark/distinctive and valuable mark infringements, "Cost-per-click/Pay-per-click" advertising, Licensing Domains, AdSense Program; AdWords Program, any communication, contract, association or otherwise by and between any of the Defendants, and/or is otherwise relevant to this litigation. All electronic mail, electronic correspondence, or electronic peer-to-peer messages (e-mail") shall be produced in electronic form, in an

accessible standard format, and on industry-standard computer media along with files included as attachments to such e-mail. Back-up archival copies of e-mail and e-mail attachments shall be restored as necessary to crate a comprehensive collection of e-mail. No modification, alterations, or additions to e-mails (or to the meta-data and attachments associated with such e-mails) from their original states shall be performed. All e-mail should be produced whether:

a. Residing in active files on enterprise servers

b. Stored in active files on local or external hard drives and network shares

c. Nearline e-mail

d. Offline e-mail stored in networked repositories

e. E-mail residing on remote servers

f. E-mail forwarded and carbon copied to third-party systems

g. E-mail threaded behind subsequent exchanges

h. Offline local e-mail stored on removable media (eternal hard drives, thumb drives and memory cards; optical media: CD-R/RW, DVD-R/RW, Floppy Drives and Zip Drives)

i. Archived E-mail

j. Common user "Flubs"

k. Legacy e-mail

l. E-mail saved to other formats (.pdf, .tiff, .txt, .eml, etc.)

m. E-Mail contained in review sets assembled for other litigation/compliance purposes

n. E-Mail retained by vendors or third-parties

o. Print outs to paper

p. Offline e-mail on server back up media (Back up tapes, DLT, AIT, etc.)

q. E-mail in forensically accessible areas of local hard drives (deleted e-mail, internet cache, unallocated clusters)

22. Proprietary software used to perform redaction.

23. Commercial software used to perform redaction.

24. Meta-data used to describe backup and archival media.

25. Meta-Data used to identify computer systems relevant to this litigation.

26. Meta-Data used to identify computer access relevant to this litigation.

27. Complete history, records, and/or files related to AdWords and AdSense Programs, and to any other advertising and marketing program used by You, or any of the other Defendants.

28. The name and address of each and every participant in the AdWords and AdSense program.

29. The domain address of every participating domain in the AdWords and AdSense Programs.

30. Any and all documents, data, and information pertaining to registration and licensing domains, by You, and/ or any of the Defendants.

31. Any and all documents, data, and information pertaining to domain name research, domain kiting, and/or domain tasting, by You and/or any of the Defendants.

32. Any and all algorithms/formulas/software programs used in connection with Your, and/or any of the Defendants', Search and Ranking programs.

33. Any and all algorithms/formulas/software programs used by You, and/or any of the Defendants, to place advertisements on domains.

34. Any and all algorithms/formulas/software programs used by You, and/or any of the Defendants', to evaluate advertising and domain performance in the AdWords and AdSense Programs.

35. Any and all algorithms/formulas/software programs used by You, and/or any of the Defendants, to track, calculate, monitor or otherwise determine revenue generated from online marketing and advertising programs.

36. Any and all documents, data, and information pertaining to domain name auction systems, algorithms used in identifying and selecting domain names, algorighms/formulas/software programs used to register, reserve, license, or otherwise obtain ownership, control, or license over a domain, by You and/or any of the Defendants.

37. Any and all documents, data, and information pertaining to methods used to understand the meaning of domain names and to determine the optimal advertisements to place on domains, by You and/or any of the Defendants.

38. Any and all documents, data, and information pertaining to "Google Domain Park."

39. Any and all documents, ESI, data, and information pertaining to Google's Semantics Technology used in developing websites, domains, advertising and marketing, and/or search and ranking technologies.

40. Any and all documents, data, and information pertaining to Google's domain reporting and portfolio analysis programs used in connection with the AdSense and/or AdWords programs.

41. Any and all documents, data, and information pertaining to Your, and/or any of the Defendants', traffic redirection programs and/or stealth redirection programs.

42. Any and all documents, data, and information pertaining to the sites www.googlesyndication.com and/or www.appliedsemantics.com.

43. Any and all documents, data, and information pertaining to Your and/or any of Defendants' individual and collective attempts to monitor and review sites for trademark infringement.

44. Any and all profit sharing, revenue sharing, and/or related agreement any of the Defendants.

45. Any and all documents, data, and information pertaining to Defendant Google's "loyalty" program and/or "Exclusivity" program.

46. Complete statistics and/or activity reports for all domains participating in the AdSense program.

47. Any and all documents, data, and information pertaining to domain parking conferences.

48. Any and all documents, data, and information pertaining to Your usage, and/or any Defendant's usage, of the website www.whois.com

49. Any and all documents, data, and information pertaining to Your, and/or any of Defendants', "intelligent placement" programs.

50. Any and all documents, data, and information pertaining to Your, and/or any of Defendants', usage of infringing "www" domain names, "com" domain names, and/or "http" domain names.