

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

KEYEN FARRELL)	CASE NO. _____
)	
Plaintiff,)	
)	
vs.)	COMPLAINT
)	
JEREMY SCHOEMAKER)	
)	
Defendant.)	

COMES NOW the Plaintiff, Keyen Farrell (“Farrell”), and for his Complaint against Jeremy Schoemaker (“Schoemaker”) states and alleges as follows:

PARTIES

1. Schoemaker is a resident of Lancaster County, Nebraska and is the President of ShoeMoney Media Group, Inc.
2. Farrell is a resident of the State of New York.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332 because the action is between citizens of different states and the amount in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs.
4. Venue is proper in this district because Schoemaker resides within Lancaster County.

FACTUAL ALLEGATIONS

5. When internet users enter search terms in www.google.com, Google’s search engine displays advertisements of various entities that may be of interest to the internet user. In conjunction with this, Google sells contextual advertising through a program called “AdWords.” “AdWords” allows advertisers to bid for their advertising hyperlink to appear above or next to Google search results when internet users enter specific search terms in a Google search.

6. Farrell has been employed by Google, Inc. ("Google") in New York, New York since September 17, 2007. At all material times hereto, Farrell has been employed as an Account Coordinator at Google.

7. An "AdWords" advertising hyperlink contains the text of an advertisement. These are known as sponsored links. If an internet user is interested, the user can click on the hyperlink, which takes the internet user to the advertiser's website.

8. On or about January 22, 2009, Farrell opened a Google "AdWords" account with the financial sponsorship of his father, John J. Farrell, and under the name John J. Farrell, for the purpose of advertising the website, www.myincentivewebsite.com.

9. Farrell created his list of thousands of keywords to be included in his Adwords account by searching www.google.com/sponsoredlinks using generic terms such as "internet marketing". The sponsored links generated by this search were transferred to an Excel spreadsheet and the visible URLs were then refined as a group of keywords through use of generic Excel filters and various concatenation formulas. These same filters and concatenation formulas were also used to create thousands of corresponding Ad Groups and advertisements. Each grouping of keywords and advertisements is known as an Ad Group. Using this automated process, it was possible to mass-produce thousands of small, tightly themed Ad Groups, each of which contained a small number of keywords.

10. This list of thousands of keywords, Ad Groups, and advertisements was contained on a large excel spreadsheet prepared by Farrell and commonly known as a bulksheet. This bulksheet was uploaded to the AdWords system using AdWords Editor, a free desktop software Google provides to advertisers to enable bulk changes to their AdWords account. Once the entire campaign was uploaded via AdWords Editor, AdWords Editor was used to duplicate the campaign to allow for various campaign-level settings. By duplicating the campaigns, every Ad Group contained in the campaign was automatically duplicated by AdWords Editor. This resulted in

several thousand duplicate Ad Groups. In most cases, AdWords Editor created 4 duplicate Ad Groups from each original Ad Group.

11. Google has an internal review policy that it does not allow advertisers to use a registered trademark in the text of sponsored links. When a keyword is submitted for an “AdWords” account, it is Google’s responsibility to determine whether the keyword is a registered trademark in order to prevent the trademark from appearing in the text of the advertisement.

12. Farrell relied upon this internal review policy at Google in setting up his “AdWords” account. Without Farrell’s knowledge, Google’s internal review process failed to prevent the term “shoemoney” from appearing in the text of some of the advertisements associated with the “AdWords” account Farrell opened on January 22, 2009.

13. Farrell used an advertising technique offered by Google known as Dynamic Keyword Insertion advertising. In this type of advertising, the keyword in the AdWords account is inserted into the advertisement whenever someone searches on it. When an advertisement with Dynamic Keyword Insertion is created, a special headline for the advertisement is created. Then the Google system automatically inserts the keyword in your account into the headline of the advertisement when it is searched. Farrell did not create a static advertisement that explicitly contained the term “shoemoney”; instead the term was inserted dynamically and without Farrell’s knowledge. Farrell merely provided the syntax of the advertisement headline that would allow the keyword to be inserted into the advertisement if and only if the Google system deemed the keyword untrademarked.

14. At no time did Farrell intend to infringe upon the ShoeMoney trademark in any way.

15. Farrell first learned of the ShoeMoney mark on or about March 31, 2009 when counsel for Schoemaker and ShoeMoney Media Group sent Farrell a cease and desist letter. A true and correct copy of this letter is attached hereto and incorporated herein as Exhibit A.

16. On March 31, 2009, in response to the cease and desist letter, Farrell informed ShoeMoney’s counsel that the term “shoemoney” appeared in the advertisement because it was a

keyword insertion advertisement. A true and accurate copy of that email is attached hereto and marked as Exhibit B.

17. As a result, on that same day, Farrell voluntarily changed the “AdWords” account registered to John J. Farrell so that the term “shoemoney” was no longer associated with that account. In addition, Farrell complied with the request made by Schoemaker and ShoeMoney Media Group to provide information relating to his “AdWords” account at Google.

18. Despite Farrell’s swift and thorough response to these requests, on or about April 2, 2009, counsel for Schoemaker and ShoeMoney Media Group sent Farrell a letter demanding that he provide a written apology to Schoemaker and ShoeMoney Media Group and pay ShoeMoney Media Group \$10,000 by the end of business on April 6, 2009. A true and correct copy of this letter is attached hereto and incorporated herein as Exhibit C.

19. Farrell did not take any action to circumvent federal law and/or the Google policy to allow the SHOEMONEY mark to appear in the text of the sponsored links of the “AdWords” account. Farrell has consistently informed counsel for Schoemaker and ShoeMoney Media Group that Google’s internal review process failed to prevent the term “shoemoney” from appearing in the text of the advertisements associated with the “AdWords” account without Farrell’s involvement whatsoever.

20. On April 7, 2009, ShoeMoney Media Group, Inc. filed suit against Keyen Farrell and John Farrell alleging that the Farrells infringed on its trademark, violated certain Nebraska statutes, and they tortiously interfered with its business (“Action”). The Farrells have categorically denied such allegations.

21. After filing the Action, Schoemaker admitted in a statement made on his website that he lacked knowledge about how the alleged display of his unauthorized trademark occurred. Nevertheless, Schoemaker published the false and defamatory statement that Farrell “bypassed” Google’s procedures in an effort to infringe on his trademark. A true and correct copy of this statement is attached hereto and incorporated herein as Exhibit D.

22. Schoemaker made false and defamatory statements in his communication with Denny Sullivan ("Sullivan") who operates the website, *searchengineland.com*, when he told Sullivan that Farrell is a "corrupt employee". Sullivan stated:

"Talking with Schoemaker, he stressed that he assumes Google itself had no knowledge of Farrell's actions, nor is he filing suit against Google itself.

'Our goal in this is not for financial gain but to defend our trademark that we have spent many years building trust with. People [commenting on] the TechCrunch story talk like Google is going to write me a big check, but that is just silly. This is not going to be a cash flow positive thing for us I am pretty sure. And I do not honestly think nor do we have any evidence that Google was involved or had knowledge of this corrupt employee.'" (Quoting Schoemaker).

A true and correct copy of this statement is attached hereto and incorporated herein as Exhibit E.

23. Farrell has been subjected to public scorn and ridicule as a result of Schoemaker's public comments.

24. In May 2009, Google released the following statement regarding the lawsuit brought by Schoemaker and ShoeMoney Media Group against Farrell and John J. Farrell to Sullivan's website, *Search Engine Land*.

"The privacy and security of our users and advertisers' account information is a top priority for us, and our internal policies prohibit any use of non-public advertiser data for personal gain. *After a thorough investigation, we found no indication that any employee purposefully tampered with or circumvented any of those policies, processes or procedures, including our trademark filtering process.* Due to an unrelated human error, however, some ads with the "Shoemoney" trademark in the text were unintentionally allowed to run. The error has since been corrected, and the ads ran only for a short time." (Emphasis added.)

The author of the website comment also stated:

"Talking with the company a bit further, it stressed that the human error was on the part of another AdWords employee, *not Keyen Farrell*, who is the defendant in the case [Jeremy "ShoeMoney" Schoemaker](#) has filed involving the use of his trademarks in AdWords copy." (Emphasis added.)

A true and correct copy of this statement and comment are attached hereto and incorporated herein as Exhibit F.

25. Google has since affirmed that the statement made on Sullivan's website is true.

26. On or about May 21, 2009, counsel for Farrell and John J. Farrell sent a letter to counsel for ShoeMoney Media Group, Inc. advising them of Google's statement set forth in Exhibit E. Consistent with Google's statement, and in attempt to avoid further damage to Farrell's reputation, ShoeMoney was requested to acknowledge that the trademark terms were displayed in the "AdWords" account through no fault of Farrell and John J. Farrell, dismiss the Action and take corrective action. A true and correct copy of this letter is attached hereto and incorporated herein as Exhibit F.

27. Neither ShoeMoney or Schoemaker has responded to that letter, nor have they acknowledged that the trademark terms were displayed in the "AdWords" account through no fault of Farrell and John J. Farrell.

COUNT I
DEFAMATION

28. Farrell incorporates by reference paragraphs 1-27 of the Complaint as if set forth fully herein.

29. Schoemaker has made false and defamatory statements concerning Keyen Farrell, including but not limited to the statements that Farrell "bypassed" Google's procedures in an effort to infringe on his trademark and that Farrell is a "corrupt employee." See Exhibits D and E.

30. Schoemaker published false and defamatory statements concerning Farrell to third parties including publication on the Internet.

31. Schoemaker has made false statements concerning Farrell that are defamatory per se because the defamatory statements impute an unfitness to perform the duties of his employment at Google and/or the defamatory statements prejudice Farrell in his profession or trade.

32. Schoemaker was grossly negligent or willful in making the defamatory statements concerning Farrell.

33. At this time Farrell has suffered general damages as a result of Schoemaker's defamatory statements.

COUNT II
TORTIOUS INTERFERENCE WITH A BUSINESS RELATIONSHIP

34. Farrell incorporates by reference paragraphs 1-26 of the Complaint as if set forth fully herein.

35. Farrell has a valid business relationship with Google by virtue of the fact that he has been employed at Google since September 17, 2007.

36. Schoemaker knew that Farrell was an employee of Google, and thus he knew that the valid business relationship existed between Farrell and Google.

37. Schoemaker interfered with Farrell's valid business relationship with Google when he falsely stated that Farrell "bypassed" Google's procedures in order to infringe on his trademark and that Farrell is a "corrupt employee." See Exhibits D and E.

38. Schoemaker intentionally interfered with Farrell's valid business relationship with Google because his statements were made with the purpose of interfering or with knowledge that interference was substantially certain to occur and/or were made with intent to have Farrell terminated by Google.

39. Schoemaker's interference with Farrell's valid business relationship with Google was unjustified.

39. Schoemaker's interference with Farrell's valid business relationship with Google proximately caused damage to Farrell.

WHEREFORE, Farrell prays for judgment against Schoemaker in an amount to be established at trial along with all other relief this Court deems just.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury to be held in Omaha, Nebraska.

DATED June 8, 2009.

KEYEN FARRELL, Plaintiff

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