

**quinn emanuel trial lawyers | los angeles**

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June 24, 2009

**VIA ELECTRONIC MAIL**

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Dear Jeremy and Max:

As an initial matter, I would like to introduce our firm and myself, and say that we are looking forward to working with you productively on this matter.

I write regarding Jeremy's e-mail of June 15, 2009 and to follow up on Jason's letter to Jeremy of June 12, 2009.

Google believes there are no outstanding issues for a trial counsel meet and confer with two exceptions: (1) Function Media's (FM's) demand for deposition dates for Ms. Wojcicki and Mr. Page, and (2) FM's overbroad demand for "litigation documents from every ads-related case." As Google has explained before, these demands are without merit. Please let us know whether FM will drop them. Otherwise, pursuant to the Court's practice, we will arrange a meet and confer between trial counsel on these two issues alone and that meet and confer will not serve as a basis for any motion to compel as to the other issues below. Please note that Gil Gillam, our local counsel, is in trial this week. We, therefore, will need to schedule a meet and confer the week of July 29, 2009.

With respect to the other points raised in your letter:

**Re: Function Media's First 30(b)(6) Deposition Notice**

Google has provided or will provide objections to each of Function Media's three 30(b)(6) deposition notices. Subject to and without waiver of those objections, please confirm the following:

**quinn emanuel urquhart oliver & hedges, llp**SAN FRANCISCO | 50 California Street, 22nd Floor, San Francisco, California 94111 | TEL (415) 875-6600 FAX (415) 875-6800  
NEW YORK | 51 Madison Avenue, 22nd Floor, New York, New York 10010 | TEL (212) 849-7000 FAX (212) 849-7400

SILICON VALLEY | 555 Twin Dolphin Drive, Suite 560, Redwood Shores, California 94065 | TEL (650) 801-5000 FAX (650) 801-5300

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On March 3, 4 and 5, 2009, Google provided Messrs. Jason Miller and Richard Holden, respectively, to testify on non-objectionable issues raised by Topics 1 and 2 of FM's First 30(b)(6) notice. Since the completion of those depositions, through correspondence and meet and confer, Google has repeatedly asked FM to confirm in writing with specificity what FM contends to be areas of incomplete testimony in Messrs. Miller and Holden's depositions (most recently in Jason's letter of June 12, 2009). As Google has repeatedly stated, to the extent FM is willing to identify in writing with specificity non-objectionable areas of incomplete testimony, Google is willing to identify and prepare appropriate witnesses. To date, FM has only provided a qualified description of outstanding issues in Jeremy's May 27, 2009 e-mail to Jason.

Accordingly, Google again requests that FM confirm that Jeremy's May 27, 2009 email is a complete list of areas FM contends require additional 30(b)(6) testimony with respect to Topics 1 and 2, as Google does not intend to produce witnesses twice. Subject to that condition, Google is willing to provide the following accommodations.

- Mr. Paul Feng is available for deposition July 1, 2009 at 9 am at the offices of Fish & Richardson P.C., 500 Arguello St. Suite 500, Redwood City, CA 94063. Mr. Feng will be prepared to testify on non-duplicative, non-objectionable issues raised by Topics 1 and 2 of FM's First 30(b)(6) notice with respect to Google's AdSense for Mobile services as has been specified in the May 27 correspondence. Additional materials pertaining to AdSense for Mobile were located and are being processed for production. We believe that an additional e-mail search from Mr. Feng is unnecessary because he authored many of the materials we located.
- Mr. Brian Axe is available for deposition July 24, 2009 at 9 am at the offices of Fish & Richardson P.C., 500 Arguello St. Suite 500, Redwood City, CA 94063. Mr. Axe will be prepared to testify on non-duplicative, non-objectionable issues raised by Topics 1 and 2 of FM's First 30(b)(6) notice.
- Mr. Jeff Dean is available for deposition July 28, 2009 at 9 am at the offices of Fish & Richardson P.C., 500 Arguello St. Suite 500, Redwood City, CA 94063. Mr. Dean will be prepared to testify on non-duplicative, non-objectionable issues raised by Topic 2 of FM's First 30(b)(6) notice.

Please confirm that FM has identified all areas of purportedly incomplete testimony in Messrs. Miller and Holden's depositions, and if so, please confirm the above-referenced dates for additional 30(b)(6) deposition testimony from Google.

- Regarding Topic 3 of FM's First 30(b)(6) notice, our understanding, based on Jeremy's email dated May 27, is that FM does not presently intend pursue a 30(b)(6) deposition on this topic. If you have changed your position, please let us know immediately.

- Regarding Topic 4 of FM's First 30(b)(6) notice, our understanding per Jeremy's June 8, 2009 e-mail to Jason is that FM's third 30(b)(6) notice replaces Topic 4 in the First 30(b)(6) Notice. Please let us know if you disagree.

In light of the lack of the above, we do not believe that motion practice is warranted at this time regarding FM's first 30(b)(6) notice.

### **Re: Function Media's Second 30(b)(6) Deposition Notice**

As noted in Jason's June 12, 2009 letter, and as discussed in conferences with Justin Nelson on May 21 and June 10, Google objects to many of the additional 34 topics identified in that second notice. Notwithstanding FM's failure to address the concerns Google has articulated and without waiver of Google's objections, we are willing to identify corporate designees on certain topics. However, in light of FM's unwillingness to respond to Google's reasonable request for necessary clarification of Topics 32 and 34 – most recently addressed in Jason's letter – Google cannot identify witnesses for those topics at this time.

Separately, the parties have agreed that Google will share with FM a list of licenses beyond the numerous ads-related licenses and acquisitions which Google has previously agreed to produce, but at present Google will only identify 30(b)(6) deposition witnesses to testify regarding the ads-related licenses and acquisitions that Google has produced to date. Google remains open to the identification of additional licenses and acquisitions for production and will offer witnesses to testify regarding those, if appropriate. Google intends to offer these witnesses once, one for licenses and one for acquisitions as noted below. We have offered dates for those witnesses but understand that the scope of the production must be resolved before we can proceed with those depositions so that the witness can be prepared accordingly.

Subject to these reservations, please note the following accommodations:

- Mr. Todd Curtiss is available for deposition July 10, 2009 at 9 am at the offices of Fish & Richardson P.C., 500 Arguello St. Suite 500, Redwood City, CA 94063. Mr. Curtiss will be prepared to testify on non-duplicative, non-objectionable issues raised by Topics 1-13 of FM's second 30(b)(6) notice. We may supplement his testimony as necessary with the product-specific witnesses, but do not yet know whether this will be necessary.
- Ms. Mireya Bravomolo is available for deposition July 10, 2009 at 9 am at the offices of Fish & Richardson P.C., 500 Arguello St. Suite 500, Redwood City, CA 94063. Ms. Bravomolo will be prepared to testify on non-duplicative, non-objectionable issues raised by Topics 14-17, 20-23, 31 and 33 of FM's second 30(b)(6) notice.
- Mr. Johnny Chen is available for deposition July 21, 2009 at 9 am at the offices of Fish & Richardson P.C., 500 Arguello St. Suite 500, Redwood City, CA 94063. Mr. Chen will

be prepared to testify on non-duplicative, non-objectionable issues raised by Topics 24-29 of FM's second 30(b)(6) notice. His testimony on topics 25, 26 and 30 will be limited to ads-related licenses and acquisitions.

- Mr. Amin Zoufonoun is available for deposition July 24, 2009 at 9 am at the offices of Quinn Emanuel, 50 California Street 22nd Floor, San Francisco, California 94111. Mr. Zoufonoun will be prepared to testify on non-duplicative, non-objectionable issues raised by Topic 30 of FM's second 30(b)(6) notice.

Please confirm the above-referenced dates for additional 30(b)(6) deposition testimony from Google. In light of the lack of controversy over the depositions noted above, we do not believe that motion practice is necessary.

### **Re: Function Media's Third 30(b)(6) Deposition Notice**

Google has provided or will provide objections to each of Function Media's three 30(b)(6) deposition notices. Subject to and without waiver of those objections, please confirm the following:

- Ms. Leslie Altherr is available for deposition September 1, 2009 at 9 am at the offices of Quinn Emanuel, 50 California Street, 22nd Floor, San Francisco, California 94111. Ms. Altherr will be prepared to testify on non-objectionable issues raised by Topics 1-3 of FM's third 30(b)(6) notice. She will also be prepared to testify regarding Topic 4 of the first 30(b)(6) notice.

Please confirm this date for the deposition responsive to FM's third 30(b)(6) deposition notice. In light of the lack of controversy over the deposition noted above, we do not believe that motion practice is necessary.

### **Re: Function Media's Requests for Personal Depositions**

With regard to Google's employee witnesses you have informally requested in their personal capacity, we have identified additional dates since Jason's June 12, 2009 letter. Please note the following accommodations:

- Ms. Angela Lai is available for deposition July 10, 2009 at 9 am at the offices of Fish & Richardson P.C., 500 Arguello St. Suite 500, Redwood City, CA 94063.
- Mr. Bhavesh Mehta is available for deposition July 17, 2009 at 9 am at the offices of Fish & Richardson P.C., 500 Arguello St. Suite 500, Redwood City, CA 94063.

- Mr. Tom Hutchinson is available for deposition August 25, 2009 at 9 am at the offices of Fish & Richardson P.C., 500 Arguello St. Suite 500, Redwood City, CA 94063.
- Mr. Sridhar Ramaswamy is available for deposition August 27, 2009 at 9 am at the offices of Fish & Richardson P.C., 500 Arguello St. Suite 500, Redwood City, CA 94063.

We would also like to offer the following dates for the following third party prior art witnesses requested in Jeremy's email of June 18:

- Mr. Roy Fielding, July 7, Fish & Richardson P.C., 12390 El Camino Real, San Diego, CA 92130.
- Mr. Drew Schulz, July 14, Fish & Richardson P.C., 500 Arguello St. Suite 500, Redwood City, CA 94063.
- Ms. Sandi Maters, July 31 at a location Function Media may arrange in Costa Mesa, CA.
- Mr. Chris Evans, August 20 at a location Function Media may arrange in Raleigh, NC.
- Mr. Tom Shields, August 28, Fish & Richardson P.C., 500 Arguello St. Suite 500, Redwood City, CA 94063.
- Ms. Robbin Zeff Warner, August 18, 19 or 20, U.S. Embassy in Brussels (Function Media to arrange).

Mr. Russ Seligman expects to be available the second or third week in August, and this deposition would be at Fish & Richardson P.C.'s office in Redwood City. We have not yet been able to confirm dates for Ms. Jeanette MacNeille or Mr. Eli Rousso, but Mr. Rousso has indicated that he is dealing with a family medical emergency and should be able to confirm his availability soon.

Your letter also refers to FM's request to take personal depositions of Ms. Wojcicki and Mr. Page. As Google has repeatedly stated, most recently in Jason's June 12, 2009 letter, Google objects to this request. You have not articulated a reason why either apex witness is uniquely in possession of relevant information that cannot be obtained through less obtrusive means.

### **Re: Production of Documents From All Other Cases**

Your request that Google produce "litigation documents from every ads-related case" is plainly overbroad. In order to avoid motion practice on this issue, Google has agreed to produce certain documents from the *Overture* litigation, and will do so shortly. Also, earlier in this litigation,

Google produced certain documents from the *Hyperphase* case and additional materials will also be produced shortly. There is, however, no basis for your demand that Google produce *all* discovery responses, depositions, expert reports, pleadings, exhibits and hearing transcripts from *all* other “ads-related” cases. If you have authority for such a broad request, we will consider it. At this juncture, however, if plaintiff stands by its demand as currently framed, we are prepared to conduct a trial counsel-level meet and confer on this issue. Please let us know your position at your earliest convenience.

### **Re: Documents Concerning Acquisitions**

Google does not object to producing final deal documents for ad-related acquisitions, subject to the protective order and any third party confidentiality and notice requirements concerning non-public information. To the extent that the deal documents do not reflect the value of the intellectual property acquired, we will produce documents sufficient to identify such figures if they exist. If upon review of these documents, you feel that you do not have information sufficient for your purposes, we will be glad to revisit the issue. (Google will not create new documents for production, such as charts or tables, as appears to be contemplated by your request.) In light of the lack of controversy over these documents, we do not believe that motion practice is necessary.

### **Re: Licensing Agreements**

As an initial matter, your position is inconsistent. You request deposition testimony regarding licenses “related to Internet advertising or related to the accused products,” but seek “all Google licensing agreements related to IP.” The second category is obviously much broader, and your letter does not explain why your document production request needs to be broader than your limitation on the scope of the deposition. Your request for licenses involving Messrs. Page and Brin and the Stanford University is similarly overbroad in that it does not identify, let alone limit, the intellectual property being licensed. In any event, Google believes that it has already produced relevant licenses, and if additional responsive non-objectionable licenses are located, they will be produced subject to the protective order and any third party confidentiality and notice requirements concerning non-public information. If you believe that you are entitled to any other license, please explain your position and we will consider it. Again, Google has offered to provide a list of all licenses that might facilitate this discussion and we do not believe that this issue is ripe for motion practice.

### **Re: Patent Applications and Patents**

Google performed a reasonable, good faith and comprehensive search for all responsive and non-objectionable patent applications pertaining to the accused products. The scope of the search was identified in Google's objections to FM's document requests (see Jason's letter dated July 31, 2008, response to topic 21.) If you believe that any responsive document was not produced, as

you stated, please let us know and we will look into it. There is no need to conduct a meet and confer among trial counsel, let alone move to compel, on this issue.

### **Re: Request to Supplement Document Production**

You demand "the files" of nine custodians, which would effectively double Google's production of several million pages. You, however, do not even attempt to limit the scope of the documents being sought. More than a year ago, Google met and conferred with FM on the scope of search and production in connection with your document requests, and you did not indicate that the files of persons identified in your letter were to be searched. Your untimely demand to revise the custodian and search terms lists that were finalized long ago is unreasonable and unduly burdensome.

If you believe there are specific documents yet to be produced, please explain why you are making this request now at this late stage, what types of documents you are seeking and your basis for seeking them. We are glad to work with you on this issue, but need you to be more targeted in your approach before we can respond substantively. Given the unilateral nature of your broad and untimely request, we do not believe that this issue is ripe for trial counsel meet and confer.

Further, Google does not have a separate collection of messages posted to "list-serves." We understand this term to refer to email mailing lists. Accordingly, messages sent through such mailing lists would have been gathered through a search of the email accounts of the recipients who are among the custodians from which Google collected documents. Finally, we are confirming that Google performed a good faith and comprehensive search for materials from pertinent wikis and that responsive, non-objectionable materials were produced. We are happy to discuss this further, but again, neither of these issues is ripe for trial counsel meet and confer or motion practice.

### **Re: Tax Issues**

Google will produce documents sufficient to identify the company's accounting and tax allocation practices. If upon review of these documents you believe that a broader production is necessary, we can revisit this issue.

### **Re: Production of Code**

Beyond your request for source code pertaining to the AdWords Editor, the APIs, and the GXP files, which we are already looking into, your letter does not provide a clear description of what you contend is "missing" from the remainder of the code that Google has produced. Nevertheless, Google is looking into this issue and if we identify any responsive code that has not been produced, we will promptly produce it.

**Re: Supplementation of Interrogatory Responses**

Google will supplement its formal interrogatory responses. There is no need to seek the Court's intervention on this issue.

**Re: User Accounts**

Google has no objection to FM or its expert creating a legitimate user account; we do, however, ask that you identify the user names for each account that is created. It is not possible to create a "test" account on the programs that you reference. We are not sure what you mean by "premium" version of an online account, however, so please clarify this request.

We suggest that you respond to this letter, and then we can set up a telephonic conference for next week if necessary. It does not seem productive to conduct a meet and confer this week without the benefit of your response. With respect to the two isolated issues where we appear to be at an impasse (*i.e.*, depositions of apex witnesses and request for production of all documents from other litigations), please provide your trial counsel's availability for a meet and confer on Thursday or Friday of next week. Once again we look forward to working with you.

Very truly yours,

/s/

Stan Karas

cc. Juanita Brooks