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VIA EMAIL

August 18, 2008

Jeremy J. Brandon, Esq.
Susman Godfrey L.L.P.
901 Main Street, Suite 5100
Dallas, TX 75202-3775

Re: Google Inc. adv. Function Media, L.L.C.
United States District Court - Eastern District of Texas Marshall Div.
Civil Case No. 2:07-cv-279 (CE)



ATLANTA

AUSTIN

BOSTON

DALLAS

DELAWARE

MUNICH

NEW YORK

SAN DIEGO

SILICON VALLEY

TWIN CITIES

WASHINGTON, DC

Dear Jeremy:

I write in response to your email of August 5, 2008, and further to our call on August 6, regarding the “narrow search” and source code issues. Furthermore, regarding your email of August 13, we remain open to meet and confer, but hope that further discussions will be more productive going forward based on the following.

As an initial matter, Google has made a good faith effort to locate, collect, and produce potentially responsive materials in this lawsuit. While the numerous letters, e-mail communications, and telephone conversations on the subject of Google’s document collection and production efforts are far too numerous to recount in detail here, I do think a few items are worth noting. First, we wrote to you as early as January 4, 2008 and requested that Function Media provide Google with a list of documents which Function Media expected to be included as part of the disclosures required by the Court and further asked that Function Media identify the specific claims by number from each of the patents-in-suit that Function Media asserted are infringed by Google so that Google would be able to better and more promptly search for relevant documents for possible production in this case. Second, when we did not hear back from you regarding which claims Function Media would be asserting, we formulated a set of search plans – and a list of the searches we prepared were set forth in my letter of April 28, 2008. Third, we understand that Function Media is not complaining about the broader search conducted by Google (which was more fully explained in my April 28, 2008, May 20, 2008, and July 31, 2008 letters – and how could Function Media complain when Google has produced approximately 4 million pages of documents and has incurred a substantial expense in doing so?). Thus, we understand the present issues which we need to reach closure on to be limited to the issue of “narrow” searches and source code. Each is addressed in turn below.

On the issue of “narrow” searches, I noted in my May 20, 2008 letter that Google simply could not agree to search the email or materials from thousands of Google employees to see if anyone in the company knew *anything* about your clients. We

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understand that you are now no longer requesting that Google perform such a search. As we have also previously informed you, Google has already searched the places it has identified thus far as having a reasonable nexus to the suit or Ms. Stone and Mr. Dean. As we have also previously explained, Google has endeavored to identify custodians based on their roles at the company and the reasonable nexus between those roles and the issues raised by this lawsuit. Google conducted searches of the custodians' data (which includes email and other documents) across nearly one half a terabyte of data in order to hone in on the responsive, non-privileged materials that we have produced or will produce in any supplemental production(s). That list of terms is reflected our April 28, 2008 correspondence. In addition, Google identified potentially responsive materials in the relevant product data locations independent from the key custodians. Google also produced the communications associated with Ms. Stone and/or Virtual Cities located in Google's account tracking systems. And, as I mentioned during our August 6 call, when it became apparent that Ms. Stone was using multiple aliases with her Google accounts dating back to 2004, based on Function Media's production, Google, without a request from Function Media, unilaterally performed an additional search for those aliases across its account tracking system and the individuals associated with these accounts to ensure that prior collection efforts were complete. Additional materials were found and produced in Google's July 30, 2008 production, which I have identified to you. Finally, Google already produced responsive product pages listing the lead team members for those products in its May 30, 2008 production. These are Google's "organization charts" for the products at issue in this case. Google's key custodians are derived from those product pages, and not all of those listed are likely to have information relevant to this case. If, after reviewing Google's product pages and other documents from Google's production, Function Media identifies additional people that it regards to be potential custodians of relevant information based on those documents, Google is open to discussing additional searches of data belonging to these people. In such event, we would like to discuss a cost sharing arrangement with Function Media since Google has already incurred substantial expenses for its production to date.

That said, and without prejudice to Google's position that any additional searches are unnecessary, Google also used the list of terms below to search data available on its internal network by Google employees across the company:

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“Michael Dean”	“6,829,587”
“Mike Dean”	“587 patent”
“Michael A. Dean”	“954820”
“Lucinda Stone”	“954,820”
“Virtual Cities”	“193465”
“Virtualcities.com”	“193,465”
“O.N.S., Inc.”	“2005 0044009”
“6446045”	“20050044009”
“6,446,045”	“2002 0178093”
“045 patent”	“20020178093”
“6829587”	

In that regard, other than information that has already been produced and post-suit privileged communications, no additional responsive information was located that pertains to this case, though we will produce a few files turned up in the search, which Google believes are irrelevant. In sum, Google believes that its efforts to date more than satisfy its discovery obligations. We hope you will agree and we can move on from this topic.

Finally, on the issue of source code, and as we have already discussed a few times, including on our call on August 6, Google disagrees that all of its source code relating to every aspect of the accused products is necessary to resolve Function Media’s infringement contentions and believe that Google’s P.R. 3-4(a) production from May 30, 2008 is sufficient to show the structure, form, and operation of the accused products. Notwithstanding this P.R. 3-4(a) production or Google’s position that source code is not necessary, Google has, in the spirit of compromise, also made source code pertaining to the alleged infringing features of the accused products available for your inspection in our Dallas office. It is premature for Function Media to complain about Google’s source code production before even taking the time to review the source code that Google has made available for inspection. (And of course, in addition to this source code, there are an additional 4 million pages of materials Google has produced, which also pertain to the accused products.)

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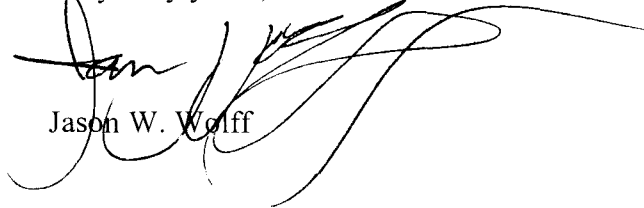
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I am available to speak this week by telephone if you would like. Juanita is out all week.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jason W. Wolff", with a long, sweeping flourish extending to the right.

Jason W. Wolff