

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

FUNCTION MEDIA, L.L.C.,

v.

GOOGLE, INC. AND YAHOO!, INC.

Civil Case No. 2:07-cv-279 (CE)

JURY TRIAL DEMANDED

**REPLY TO FUNCTION MEDIA'S RESPONSE TO NOTICE OF SUPPLEMENTAL
AUTHORITY FOR GOOGLE'S MOTION FOR A PROTECTIVE ORDER**

Function Media's Response to Google's Notice of Supplemental Authority is procedurally improper and misleading in substance. Under the guise of a "response," Function Media has attempted to re-argue their position. As the Court has not requested additional briefing, further argument on the merits of the Motion is improper and should be ignored.

Moreover, Function Media's tardy arguments are without merit. The fact that this Court granted a motion for a protective order to preclude a deposition of a top-level executive, indeed one of the same witnesses for which Plaintiff seeks to compel a deposition, cannot support Function Media's opposition to a similar protective order here. Function Media does not dispute that the *PA Advisors LLC v. Google Inc.* opinion shows that even where a top-level executive has personal knowledge, the party seeking the deposition must first try to obtain information by less burdensome means. Function Media cannot show it has exhausted less burdensome means. Indeed, all it has done is to ask corporate witnesses to opine on printed statements by others that the witnesses have never seen before and it has never served a Rule 30(b)(6) notice on the subject matter it seeks. Likewise, Function Media's other material misrepresentations of the evidence of record, this time made without reference to the record at all, have no merit for the reasons Google explained in its Motion and Reply.

For the reasons given therein and during the Court's August 25, 2009 hearing, Google's Motion for a Protective Order to Preclude Depositions of Three Top-Level Executives should be granted.

Dated: August 31, 2009

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on August 31, 2009 to counsel of record in the manner agreed by the parties, via electronic mail.

/s/ Carl G. Anderson _____

Carl Anderson