

**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

**GOOGLE'S MOTION *IN LIMINE* NO. NINE: MOTION TO PRECLUDE ARGUMENT
THAT GOOGLE HINDERED FUNCTION MEDIA OR ITS EXPERT FROM TESTING
OR ANALYZING THE ACCUSED PRODUCTS**

Argument

In late August 2009, Plaintiff Function Media, LLC asked Google for permission for its experts to place dummy advertisements using the AdWords product, and to have those dummy advertisements display on a fake website by using the AdSense product. Google initially denied Plaintiff's request because the use of AdWords proposed by Plaintiff would have violated Google's Terms of Service. After some back and forth between counsel, Google and Plaintiff eventually came to an agreement which was amenable to both parties. (See Ex. A.) Under the agreement, Function Media's expert could place dummy ads so long as (1) Function Media agreed to pay if its dummy ads were clicked through by other users, and (2) Function Media also agreed to host advertisements using the AdSense product on a real website, rather than a dummy website. Google agreed not to assert that this agreed-upon use violated its Terms of Service, and Plaintiff agreed that this arrangement was sufficient for its expert to carry out his or her testing.

Because Function Media agreed to this arrangement without objection, Google hereby moves the Court for an order, *in limine*, precluding Plaintiff from arguing during trial that Google in any way hindered Function Media or its expert from performing tests on or analysis of Google's accused products.

Dated: October 2, 2009

Respectfully submitted,
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By: /s/ Amy H. Candido

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Counsel for Defendant and Counter-Claimant
GOOGLE INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on October 2, 2009 to counsel of record via ECF/PACER.

/s/ Billie D. Salinas

Billie D. Salinas