

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

**FUNCTION MEDIA, L.L.C.**

**Plaintiff,**

**vs.**

**GOOGLE INC. AND YAHOO!, INC.**

**Defendants.**

§  
§  
§  
§  
§  
§  
§  
§

**Civil Action No. 2007-CV-279**

**JURY TRIAL DEMANDED**

**PLAINTIFF’S RESPONSE TO 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**

Google’s ninth motion in limine seeks to preclude argument that Google hindered Function Media or its experts from testing or analyzing the Accused Products. Function Media agrees that it will not affirmatively complain that Google withheld sufficient access to the Accused Products or otherwise hindered Function Media’s ability to test the products—with one caveat. If Google opens the door by asserting, for example, that Function Media did not test various functionalities of the Accused Products or did not utilize more than one website and/or a website “owned by other than the Seller,” *see, e.g.*, ‘025 Patent Claim 1, Function Media obviously should be permitted to rebut as unfounded any such allegation on the basis of the parties’ agreement to limit the testing. Just as Function Media should not be permitted to use the parties’ agreement against Google, Google should not be permitted to use the parties’ agreement against Function Media.

Respectfully submitted,

/s/ Joseph S. Grinstein

---

Max L. Tribble, Jr.  
State Bar No. 20213950  
Email: [mtribble@susmangodfrey.com](mailto:mtribble@susmangodfrey.com)  
SUSMAN GODFREY LLP  
1000 Louisiana, Suite 5100  
Houston, Texas, 77002  
Telephone: (713) 651-9366  
Facsimile: (713) 654-6666

*Lead Attorney for Plaintiff*

OF COUNSEL:

Joseph S. Grinstein  
State Bar No. 24002188  
Aimée Robert  
State Bar No. 24046729  
SUSMAN GODFREY L.L.P.  
1000 Louisiana Street, Suite 5100  
Houston, Texas 77002-5096  
Telephone: (713) 651-9366  
Fax: (713) 654-6666  
[jgrinstein@susmangodfrey.com](mailto:jgrinstein@susmangodfrey.com)  
[arobert@susmangodfrey.com](mailto:arobert@susmangodfrey.com)

Jeremy Brandon  
State Bar No. 24040563  
SUSMAN GODFREY L.L.P.  
Suite 5100  
901 Main Street  
Dallas, Texas 75202-3775  
Telephone: (214) 754-1900  
Fax: (214) 754-1933  
[jbrandon@susmangodfrey.com](mailto:jbrandon@susmangodfrey.com)

Justin A. Nelson  
State Bar No. 24034766  
SUSMAN GODFREY L.L.P.  
Suite 3800  
1201 Third Avenue  
Seattle, Washington 98101-3000  
Telephone: (206) 516-3880  
Fax: (206) 516-3883

jnelson@susmangodfrey.com

Robert Christopher Bunt  
State Bar No. 00787165  
Charles Ainsworth  
PARKER, BUNT & AINSWORTH, P.C.  
100 East Ferguson, Suite 1114  
Tyler, TX 75702  
Telephone: (903) 531-3535  
Fax: (903) 533-9687  
[rbunt@pbatyler.com](mailto:rbunt@pbatyler.com)  
[charley@pbatyler.com](mailto:charley@pbatyler.com)

S. Calvin Capshaw  
State Bar No. 037839000  
Elizabeth L. DeRieux  
State Bar No. 05770585  
D. Jeffrey Rambin  
CAPSHAW DERIEUX, LLP  
Energy Centre  
1127 Judson Road, Suite 220  
P.O. Box 3999 (75606-3999)  
Longview, TX 75601-5157  
Telephone: (903) 236-9800  
Fax: (903) 236-8787  
[ccapshaw@capshawlaw.com](mailto:ccapshaw@capshawlaw.com)  
[ederieux@capshawlaw.com](mailto:ederieux@capshawlaw.com)  
[jrambin@capshawlaw.com](mailto:jrambin@capshawlaw.com)

Otis Carroll  
State Bar No. 03895700  
Collin Maloney  
State Bar No. 00794219  
IRELAND, CARROLL & KELLEY, P.C.  
6101 S. Broadway, Suite 500  
Tyler, Texas 75703  
Telephone: (903) 561-1600  
Fax: (903) 581-1071  
[otiscarroll@icklaw.com](mailto:otiscarroll@icklaw.com)  
[cmaloney@icklaw.com](mailto:cmaloney@icklaw.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on November 3, 2009, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Eastern District of Texas, using the electronic filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means:

/s/ Jeremy J. Brandon

\_\_\_\_\_  
Jeremy J. Brandon