

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

FUNCTION MEDIA, L.L.C.

§

vs.

§

CASE NO. 2:07-CV-279-CE

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GOOGLE, INC. AND
YAHOO!, INC.

§

§

§

ORDER

Before the Court is Defendant, Yahoo!'s Motion (#20) to Dismiss and Strike Function Media's Willfulness Claims, or in the Alternative for a More Definite Statement. For the reasons stated below, the undersigned denies the Motion to Dismiss and the Motion for a More Definite Statement.

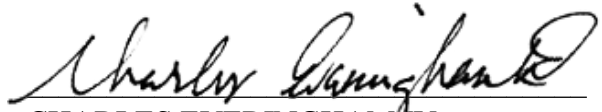
In *FotoMedia v. AOL*, the defendants asked this Court to heighten the pleading standards for willful infringement and indirect infringement claims in light of *Bell Atlantic v. Twombly*. See *FotoMedia Technologies, LLC v. AOL, LLC*, 2008 WL 4135906 (E.D. Tex. 2008), *Bell Atl. Corp. v. Twombly*, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2008). The Defendants in this case are asking the Court to impose similar, heightened standards.¹ In *FotoMedia*, this Court rejected that request in light of a recent Federal Circuit decision. *FotoMedia*, 2008 WL 4135906, *McZeal v. Sprint Nextel Corp.*, 501 F.3d 1354, 1357 n.4 (Fed. Cir. 2007). For the same reasons as discussed in *FotoMedia*, the Court denies Defendants' Motion.

Regarding the claim that the Plaintiff has not properly plead willful infringement because it is premised on future conduct, the Court feels that the appropriate time to address such issue is

¹The Defendants in the present case, however, ask the court to dismiss only willfulness claims.

after both sides have utilized the appropriate discovery vehicles mandated by the Local Patent Rules and conducted under the Federal Rules of Civil Procedure. As such, the motion to dismiss on those grounds is denied.

SIGNED this 18th day of September, 2008.



CHARLES EVERINGHAM IV
UNITED STATES MAGISTRATE JUDGE