

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

FUNCTION MEDIA, L.L.C.,

Plaintiff,

v.

GOOGLE, INC. and YAHOO!, INC.,

Defendants.

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CIVIL ACTION

NO. 2-07CV-279

DECLARATION OF JEFFREY G. HOMRIG IN SUPPORT OF
YAHOO!, INC.'S MOTION FOR A PROTECTIVE ORDER
BARRING DISCOVERY INTO NON-ACCUSED TECHNOLOGY

I, Jeffrey G. Homrig, declare:

1. I am an associate at Weil, Gotshal & Manges, LLP, which is counsel for defendant, Yahoo!, Inc. ("Yahoo"), in this litigation. The facts stated herein are true of my own personal knowledge and, if called as a witness, I could and would testify competently thereto.

2. Attached as Exhibit 1 is a true and correct copy of Plaintiff's P.R. 3-1 Disclosures.

3. Attached as Exhibit 2 is a true and correct copy of redacted excerpts from the Rough Transcript of Matthew Plummer Deposition taken March 19, 2009.

4. Attached as Exhibit 3 is a true and correct copy of redacted excerpts from the Rough Transcript of Matthew Plummer Deposition taken March 20, 2009.

5. Attached as Exhibit 4 is a true and correct copy of Miguel Helft's New York Times article entitled "Yahoo Revels Details of Its New Ad Sales System," dated April 7, 2008.

6. Attached as Exhibit 5 is a true and correct copy of Kevin J. Delaney's Wall Street Journal article entitled "*Yahoo Details Ad System Geared Toward Graphical Display*," dated April 7, 2008.

7. Attached as Exhibit 6 is a true and correct copy of Greg Sterling's article at searchengineland.com (<http://searchengineland.com/yahoo-rolls-out-more-details-about-apexamp-13709>) entitled "Yahoo Rolls Out more Details About APEX/AMP," dated April 7, 2008.

8. Attached as Exhibit 7 is a true and correct copy of an email from Jeremy Brandon dated September 23, 2008.

9. Attached as Exhibit 8 is a true and correct copy of Function Media, L.L.C.'s Notice of First Rule 30(b)(6) Deposition of Yahoo!, Inc.

10. Attached as Exhibit 9 is a true and correct copy of Yahoo!'s Objections and Responses to Function Media, L.L.C.'s Notice of First Rule 30(b)(6) Deposition of Yahoo!, Inc.

11. Attached as Exhibit 10 is a true and correct copy of an email from Jason Wolff dated September 17, 2008 in response to a September 5, 2008 email from Jeremy Brandon.

12. On October 20, 2008 I participated in a teleconference with Jeremy Brandon, counsel of record for Function Media, LLC. During that teleconference, we discussed Function Media's offer to consent a mutual exchange of amended contentions. I asked Mr. Brandon what the substance of the amended invalidity contentions would be. Mr. Brandon said that it was to add newly developed products. I asked what he meant by newly developed products. Mr. Brandon responded that it looked like a new Yahoo! advertising system had been

released, but that it looked like it was not widespread. I informed Mr. Brandon that Yahoo! would object if Function Media moved to amend its infringement contentions to add new products or patents. Mr. Brandon informed me that Function Media had already decided not to pursue amending its infringement contentions to add new products anyway.

DATED: April 1, 2009

WEIL, GOTSHAL & MANGES LLP

/s/ Jeffrey G. Homrig

Jeffrey G. Homrig

Matthew D. Powers

[matthew.powers@weil.com](mailto:matthew.powers@weil.com)

Douglas E. Lumish

[doug.lumish@weil.com](mailto:doug.lumish@weil.com)

Jeffrey G. Homrig

[jeffrey.homrig@weil.com](mailto:jeffrey.homrig@weil.com)

WEIL, GOTSHAL & MANGES LLP

Silicon Valley Office

201 Redwood Shores Pkwy.

Redwood Shores, CA 94065

Tel: 650.802.3000

Fax: 650.802.3100

ATTORNEYS FOR DEFENDANT YAHOO!, INC.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a) on this April 1, 2009. As of this date, all counsel of record has consented to electronic service and are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3)(A).

/s/ Stefani C. Smith  
Stefani C. Smith