

Exhibit 3

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS

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FUNCTION MEDIA, LLC,)
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Plaintiff,)
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vs.) No. 2007-CV-279 (CE)
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GOOGLE, INC. and YAHOO!, INC.,)
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Defendants.)
)

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VOLUME II, Pages {} - {}
ROUGH TRANSCRIPT ONLY

30 (b) (6) Deposition of
MATTHEW PLUMMER

Friday, March 20, 2009

Reported by:
GEORGE SCHUMER, CSR 3326 (03-417854)

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18 Q. And prior to October, 2005, what did
19 publishers use?

20 A. The only publishers that Yahoo worked with
21 outside of Yahoo itself had a direct account management
22 relationship with Yahoo, and had no no management
23 counsel, if you will; no user interface to manage their
24 accounts.

25 They had at best a simple reporting

1 application that they could use to pull reports.

2 Q. And are these the folks we talked about
3 yesterday, where they might call up a representative at
4 Yahoo, who would then input the publisher's information
5 in a Yahoo-facing interface?

6 A. These are the same publishers who would call
7 their account manager at Yahoo, and their account
8 manager would use whatever tools were available to them
9 internally, whether it be a user interface or the
10 submission of a ticket that would be routed to
11 engineering to make appropriate changes.

12 Q. How would ads for these publishers get served?

13 MR. LUMISH: I'm going to just raise the same
14 objections we had before.

15 I think it is perfect for you to understand
16 there were other interfaces and usage, for example, and
17 if you want to ask that I don't have a problem with it.
18 As we talked about yesterday, given the state of your
19 infringement contentions and the discussions the
20 parties have had we don't think it is appropriate to
21 delve into the number of other interfaces that Yahoo
22 has. I don't want to reveal the highly technical,
23 highly confidential details of those given that they
24 are not accused products in the case.

25 I don't know if your question is calling for

1 that. It sounds to me like it is sort of edging up to
2 it. As we talked about before we are going to have
3 some form of motion practice before the are the could
4 on this issue so we should shelf these questions until
5 the court has decided this issue for us.

6 MR. BRANDON: Are you going to direct him not
7 to answer my previous question?

8 MR. LUMISH: Can I hear the question itself,
9 please?

10 (Record read)

11 THE WITNESS: It is sort of hard tore me to
12 gauge from your question how the witness is going to
13 answer.

14 What I don't want the witness to do is to get
15 into the confidential details of these other approaches
16 that we have.

17 So I'm not instructing him on that question as
18 it stands, but I am asking the witness not to get into
19 that level of technical detail.

20 MR. BRANDON: So I told you, Doug, that I do
21 want to know the confidential details, as you call
22 them, of this process, you would instruct the witness
23 not to answer?

24 MR. LUMISH: Only to the extent that I need to
25 do that to bring a motion for protective order. But

1 yes.

2 MR. BRANDON: The last statement I didn't
3 quite understand. I'm just telling you that I want to
4 ask the question.

5 Are you going to prevent the witness from
6 answering as he sits here today?

7 MR. LUMISH: Sufficiently to give me an
8 opportunity to bring a motion for protective order.

9 The reason I say that is -- and it is
10 important and you raised it yesterday -- the proper
11 grounds for instructing not to answer are privileged
12 and my option as a than attorney defending here when
13 you ask these that I think are inappropriate beyond
14 just to be go is to seek a protective order. If I have
15 to suspend the deposition or stop the questioning for
16 that purpose I think I'm entitled to do that.

17 So that's my position. So yes, I would be
18 instructing to give me the opportunity to bring a
19 motion for protective order before the answer was
20 given.

21 And as I said off the record, I don't think it
22 makes sense for you to ask a hundred questions along
23 these lines. I think you and I can understand from
24 each other that my position would be the same on all
25 such questions as it relates to interfaces other than

1 YSM or YPN -- interfaces, as you put it.

2 MR. BRANDON: So it is your position that --
3 assuming the Court disagrees with you, you would rather
4 bring Mr. Plummer back, than go through it today?

5 MR. LUMISH: Yes. If the court tells me I
6 have to put a witness up, then we'll provide you
7 Mr. Plummer or somebody else. And you want his
8 personal deposition on these matters and the court
9 tells me it is something I shouldn't have moved for
10 protective order on of course we'll present the witness
11 back to you.

12 MR. BRANDON: Let me just understand the scope
13 of your instruction, as you have just conveyed it.

14 You do not want me or you will not allow me to
15 get into technical details related to anything other
16 than the on-line Yahoo Search Marketing interface and
17 the on-line Yahoo Publisher Network interface?

18 MR. LUMISH: "Anything" is overly broad
19 because he's talked a lot about the databases and the
20 technologies in the middle and the back-end processing
21 and all that.

22 What I'm saying is to the extent you want now
23 to go on what I consider a publisher expedition to go
24 to other intersurfaces to expand the scope of your
25 claims I think that's inappropriate and other

1 interfaces that I think you have referred to as of
2 yesterday were APT, the telephone interface; API's the
3 advertisers might have and I think there might have
4 been a fourth one. Those are the ones that jump to my
5 mind and I think that exploration is inappropriate
6 given the context of the case.

7 That doesn't mean I'll stop every other
8 technical question you have if it doesn't have the word
9 YSM or YPN" in it.

10 MR. BRANDON: So you won't let me get into the
11 technical details of APT?

12 MR. LUMISH: Correct. Not unless the Court
13 tells me I have to.

14 MR. BRANDON: And you won't let me get into
15 the technical details of API?

16 MR. LUMISH: Correct. Again, I think that's
17 something the Court needs to decide for us.

18 If fourth one was the internal software that
19 Yahoo might use to do some of the functionality that
20 you were asking about yesterday. So not an interface
21 facing out to the public but something internal
22 software used only by internal personnel.

23 MR. BRANDON: You won't let me get into that,
24 either?

25 MR. LUMISH: Right. I think that's

1 inappropriate.

2 MR. BRANDON: Let's take a break and go to
3 lunch.

4 THE VIDEOGRAPHER: Going off the record, the
5 time is 12:40.

6 END MORNING SESSION

7 (Lunch recess, 12:40-1:30 p.m.)

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13 Q. What interface do Sponsored Search publishers
14 use?

15 A. There is no self-serve interface for
16 publishers who participate or use our Sponsored Search
17 technology to monetize their traffic. There may be
18 something that facilitates report downloads and report
19 generation but nothing to match what we would call
20 their accounts.

21 MR. BRANDON: And the process by which these
22 accounts are handled, and/or any interface that is
23 used, whether by Yahoo personnel, or these publishers
24 directly -- I'm not allowed to get into today.

25 Is that correct, Doug?

1 MR. LUMISH: I'm sorry; say it again, please
2 or read it back to me.

3 (Record read)

4 MR. LUMISH: We're not going to get into the
5 confidential details or the different techniques for
6 serving ads beyond YPN and YSM, and the other accused
7 technologies in your infringement contentions; I think
8 that's fair.

9 MR. BRANDON: Q. Other than internal research
10 and development, have there been other ways that Yahoo
11 has brought about changes to Yahoo Search Marketing or
12 Yahoo Publisher Network?

13 A. I would assume primarily by way of acquisition
14 or partnership with third-party technology companies.

15 Q. Let's start with acquisitions. We have
16 already talked about the Overture acquisition -- which
17 I believe occurred in 2003?

18 A. Correct.

19 Q. What other acquisitions have brought about
20 changes to Search Marketing and publisher network?

21 A. I'm going to be very confident that I will not
22 be able to speak to all of the acquisitions. The one
23 that comes to mind would be a company called "where on
24 earth" that I believe was based in the UK and provides
25 functionality for not specifically geotargeting but

1 Q. Same response for bulk management
2 capabilities?

3 A. Correct.

4 Q. Same response for extra behavior of reporting?

5 A. Yes.

6 Q. Did you say number of campaigns and limits are
7 the same, or different?

8 A. The number of campaigns an advertiser might
9 have in their account is an example of how we would
10 enforce limits.

11 Q. With respect to advertisers who don't use this
12 on line interface, Doug, are you going to instruct the
13 witness not to answer questions with respect to these
14 advertisers?

15 MR. LUMISH: I told you before what my
16 position was. I think re-stating it is just going to
17 add confusion. But to the extent you are going to try
18 to get into proprietary technical details about
19 interfaces, or about technologies not included in your
20 infringement contentions, then yes.

21 MR. BRANDON: I would like to know how the
22 interfaces are different; how the ad service is
23 different; how any delivery is different; how any
24 processing is different.

25 Are those the type of areas you are going to

1 prevent me from getting into?

2 MR. LUMISH: Yes, sufficiently to give me time
3 to bring a protective order motion.

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17 Q. Mr. Plummer, what is the right media ad
18 server?

19 A. Right media was a company Yahoo acquired in
20 2008, I believe. Possibly 2007; may have been that
21 long now.

22 Right media is an ad exchange, and they would
23 have their own set of technology and they would have an
24 ad server just like any other ad network.

25 MR. LUMISH: I think technical details about

1 that server and its functionality fall within our
2 dispute.

3 MR. BRANDON: Q. What capability, if any, the
4 YSM on line interface or YPN on line interface acquire,
5 if you will, as a result of the acquisition of right
6 media?

7 A. None that I'm aware of.

8 Q. What did Yahoo acquire when it acquired right
9 media?

10 MR. LUMISH: Same objection. Beyond the scope
11 of his designation.

12 THE WITNESS: Yes, I cannot say what they --
13 besides technology and business, I cannot speculate
14 beyond that.

15 MR. BRANDON: Q. When did you say Yahoo
16 acquired this?

17 A. I'm guessing, to be honest. I believe it was
18 2007.

19 MR. LUMISH: Don't guess. It is late in the
20 day; it is more inviting to guess but it is not what
21 you are here for.

22 MR. BRANDON: I would like to explore this
23 further and I take it you are going to instruct the
24 witness not to answer here as well.

25 MR. LUMISH: You are welcome to ask him

1 questions about any technologies that fall within your
2 infringement contentions. To the extent you are asking
3 about technology separate from that, then yes I think
4 it falls within our dispute.

5 MR. BRANDON: Notwithstanding the fact that it
6 was acquired after our infringement contentions were
7 served?

8 MR. LUMISH: Yes.

9 MR. BRANDON: Q. What is Blue Lithium?

10 A. Blue Lithium is a technology provider in the
11 on line ad space.

12 Q. A competitor of Yahoo?

13 A. A Yahoo acquisition.

14 Q. So Yahoo has acquired Blue Lithium?

15 A. Correct.

16 Q. With the acquisition of Blue Lithium, what did
17 Yahoo acquire?

18 A. I don't know.

19 Q. When did Yahoo acquire Blue Lithium?

20 MR. LUMISH: Same objection. Beyond the
21 scope.

22 THE WITNESS: I don't know.

23 MR. BRANDON: Q. No idea?

24 A. No.

25 Q. Does Yahoo allow advertisers to create image,

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CERTIFICATE OF REPORTER

I, George Schumer, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing matter was by me duly sworn to tell the truth, the whole truth and nothing but the truth in the within-entitled cause;

That said proceeding was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

That before completion of the deposition, review of the transcript was not requested.

In witness whereof, I have subscribed my name.

DATED: _____

George Schumer, CSR 3326