

EXHIBIT 3

1 Q. And there would be content on that web page;
2 correct?

3 A. That is correct.

4 Q. And one of the things I would see would be an
5 advertisement that Yahoo has made available; correct?

6 A. An advertisement that Yahoo has delivered to
7 you; correct.

8 Q. How is APT for Yahoo different than, say,
9 Yahoo Publisher Network on line?

10 MR. LUMISH: Let me just interrupt you here.

11 The witness isn't here to talk about APT; it
12 is not an accused product. Our objections were pretty
13 clear on that. I've let you get some basic information
14 about it, but if you want to delve into the technical
15 details; the confidential material of it, I'm not going
16 to permit that.

17 You'll have to bring a motion for protective
18 order, if that's required. He's here, designated,
19 prepared, ready to go on YSM; YPN -- everything you put
20 in your infringement allegations. And that's it.

21 MR. BRANDON: He just testified, Mr. Lumish,
22 that APT for Yahoo was not issued until the second
23 quarter of 2008, which is after our infringement
24 contentions were served, as you know. He's here in his
25 personal capacity, as well as his corporate capacity,

1 for Yahoo. I believe I'm entitled to explore this
2 product with him.

3 I'm asking: Are you instructing him not to
4 answer?

5 MR. LUMISH: I will, sufficiently to give you
6 time to suspend the deposition. We can even suspend
7 the deposition and bring a motion, or you can ask about
8 other things, and we'll understand that I have
9 instructed him; he can't answer questions about
10 technical details of that product, because we'll bring
11 a protective order, because we think it is out of
12 bounds.

13 MR. BRANDON: What is your basis for believing
14 that APT for Yahoo is out of bounds, given that this is
15 what the witness does at the present time?

16 MR. LUMISH: It doesn't matter what he does.
17 He's also extremely knowledgeable about what you have
18 accused of infringement, and that's not APT. So he's
19 here to talk about this case; materials relevant to
20 this case. APT is not one of those. So that's my
21 basis.

22 MR. BRANDON: Are you instructing him not to
23 answer any further questions on APT for Yahoo?

24 MR. LUMISH: I'll have to hear what the
25 questions are; he's answered a number already. If it

1 is basic and foundational: what does he do; what is
2 his position with the company -- I don't have a problem
3 with that.

4 If you want to get into technical details of
5 APT -- which are extremely confidential to the company,
6 and not at issue in this lawsuit -- then yes, I will
7 block it, subject to a motion for protective order,
8 sufficient for a motion to permit me time to bring that
9 motion.

10 MR. BRANDON: I do want to get into the
11 technical details of APT for Yahoo, but obviously we'll
12 respect your instruction.

13 MR. LUMISH: So we can meet and confer; we can
14 just bring a motion. We can take that up off line.

15 MR. BRANDON: And I would just say for the
16 record, again, as I'm sure you know, that these sorts
17 of objections I don't believe are proper in the Eastern
18 District, and there's opinions out there where
19 witnesses are not supposed to be instructed not to
20 answer, except on privilege grounds.

21 MR. LUMISH: That's true, that I can't
22 instruct him not to answer except on privilege grounds.
23 Except I can suspend the deposition to bring a motion
24 for protective order. There is a ton of law on that.

25 If you prefer to go that route, we can do it.

1 I think that's not the way to proceed. You've got the
2 witness here; you might as well take his deposition on
3 the matters that are clearly in play.

4 If you want me to suspend the deposition to
5 bring a protective order, that is what I'm entitled to
6 do. I would rather not, but if you force me into that
7 boat, I'll do it.

8 MR. BRANDON: I do not want you to suspend the
9 deposition on the topics that I noticed for today.

10 MR. LUMISH: So the instructions are on that
11 ground. Maybe I misunderstand the Eastern District of
12 Texas rule, but what I understand the rule to be on
13 scope is that I can't instruct him not to answer
14 because it is beyond the scope. I can bring the motion
15 for a protective order. We have already talked about
16 that.

17 I'm just trying to note for the record when I
18 think it is beyond the scope, so it is clear when he is
19 or is not our corporate representative on any specific
20 question on that. Other than APT, I don't think
21 there's anything privileged on that; there is anything
22 you can explore. On the finances he won't know; he
23 won't be our corporate rep on that.

24 MR. BRANDON: I don't understand why you won't
25 let me explore APT. He's here; he knows all about it;

1 he's the product manager for it. We've got a
2 protective order in place in this case. He's just
3 testified that it deals with serving advertisements to
4 end users by the web sites.

5 I don't understand why you are not letting him
6 testify about it.

7 MR. LUMISH: He's not prepared to testify
8 about it; it is not in the case. And I'm not going to
9 let you go on a fishing expedition about other
10 technologies.

11 MR. BRANDON: When you say he's not prepared
12 to testify about it, he's the product manager for it.

13 MR. LUMISH: That's true. That's what his
14 testimony is, I believe, anyway.

15 MR. BRANDON: So when you say he's not
16 prepared, you mean you haven't met with him to talk
17 about it?

18 MR. LUMISH: That's correct. And I don't know
19 what your questions are. The ultimate issue is it is
20 not a product in the suit, and I think at that point it
21 just becomes a fishing expedition.

22 We're not going to do it unless the Court
23 tells us we have to.

24 MR. BRANDON: Q. Mr. Plummer, how long have
25 you been in this position as product manager for APT

1 protective order on, of course we'll present the
2 witness back to you.

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

5 You do not want me, or you will not allow me,
6 to get into technical details related to anything other
7 than the on-line Yahoo Search Marketing interface, and
8 the on-line Yahoo Publisher Network interface?

9 MR. LUMISH: "Anything" is overly broad,
10 because he's talked a lot about the databases and the
11 technologies in the middle, and the back-end processing
12 and all that.

13 What I'm saying is to the extent you want now
14 to go on what I believe to be a fishing expedition
15 about other interfaces, to try and expand the scope of
16 your claims -- I think that's inappropriate. And other
17 interfaces that you have referred to -- at least as of
18 yesterday -- were APT; the telephone interface; API's
19 the advertisers might have -- and I think there might
20 have been a fourth one, but those are the ones that
21 jump to my mind. And I think that exploration is
22 inappropriate given the context of the case.

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