

Exhibit 8

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November 17, 2008

Via E-mail

Re: *Function Media LLC v. Google Inc. and Yahoo!, Inc.*
No. 2-07-CV-279 (E.D. Tex.)

Dear Jeff:

I write regarding Yahoo!'s recent responses to Function Media's first set of interrogatories. I also write to follow-up on FM's request for source code.

With respect to the interrogatories, in nearly every instance, FM believes that Yahoo! has evaded the questions asked and failed to provide responsive information. We ask that you reconsider Yahoo!'s position for the reasons detailed below and supplement your interrogatory responses by December 2, 2008.

Interrogatory No. 1: This interrogatory asked Yahoo! to identify its departments and employees who track technological and business developments relating to its competitors, and then to detail its efforts to gather documents from those individuals. In response, Yahoo! provided an impermissibly narrow response concerning "personnel that tracked ... the developments ... of Function Media" and then proceeded to ignore the request with respect to entities or operations other than Function Media.

Yahoo! has no valid basis for evading this interrogatory. Information regarding Yahoo!'s view of its competitors in the advertising field is highly relevant to damages, as it sheds light on what Yahoo! considers to be the competitive advantages and disadvantages of the infringing features of its products. Moreover, this information is also relevant to

infringement, to the extent it discusses the manner in which Google's products operate and/or distinguishes the manner of operation of Yahoo!'s products from that of its competitors. Please answer the question that was asked.

Interrogatory No. 2: This interrogatory sought information regarding Yahoo!'s contacts with, or discussions about, FM. Yahoo! answered this interrogatory by referencing the search that it performed in response to FM's document requests, noting that it had produced "responsive, non-privileged documents... to the extent such documents were found." Yahoo! then responded that it was "unaware of any Yahoo! personnel that had contact with or documents concerning" FM, Stone, Dean, or the patents-in-suit "prior to the inception of this litigation."

This response is ambiguous and incomplete. First, putting aside for the moment the propriety of answering this interrogatory by invoking Rule 33(d), Yahoo!'s response fails to identify documents by bates number as required by the Federal Rules. Second, the response does not address whether Yahoo! personnel "had contact with" individuals other than FM, Stone, or Dean *concerning* FM, Stone, Dean, or the patents-in-suit. Third, the response is ambiguous as to whether the phrase "Yahoo! personnel" includes both former and current employees. Fourth, the response provides no indication of the scope or reasonableness of Yahoo!'s search for responsive information; this interrogatory is not limited to information obtained from the documents that Yahoo! searched or produced in response to FM's document requests. Fifth, the response inappropriately limits the timeframe to "prior to the inception of this litigation."

Interrogatory No. 3: FM sought via this interrogatory an identification in detail of every contact that Yahoo! has had with sources of alleged Prior Art. In response, Yahoo! states that "[o]ther than with respect to prior art generated by Yahoo! or its predecessors in interest, Yahoo! is unaware of any communications between Yahoo! and any person currently or formerly affiliated with the Prior Art in the context of this litigation and/or the Patents-in-Suit *prior to the inception of this litigation.*" This response is both confusing and improperly narrow. If I am reading it

correctly, Yahoo!'s response provides no information about who Yahoo! contacted to discuss Prior Art, when they were contacted, what was discussed, etc., *after the inception of this litigation.*

Yahoo! has no valid basis for resisting discovery of this information. None of this information is privileged, despite Yahoo!'s assertions to that effect, because third-parties are involved in the communications. Likewise, this interrogatory is not overbroad or unduly burdensome. It is no burden for Yahoo! to identify with specificity its contacts with the sources of Prior Art that Yahoo! has contacted in connection with this litigation.

Interrogatory No. 4: This interrogatory seeks information relating to Yahoo!'s analysis of Google's infringing systems. In response, Yahoo! merely states 1) that it has produced responsive documents "to the extent such documents were found" and 2) that it is "unaware of any Yahoo! analysis concerning Google's AdWords, AdSense, or My Client Center programs and systems *in the context of Function Media or the Patents-in-Suit prior to the inception of this litigation.*" This response is wholly improper. First, even assuming that this interrogatory could be properly answered by invoking Rule 33(d), Yahoo! has failed to identify documents by bates number. Second, Yahoo! has impermissibly confined its response to analyses performed "in the context of Function Media or the Patents-in-Suit." This interrogatory is not limited to the "context of Function Media or the Patents-in-Suit." Third, Yahoo! has again impermissibly limited the timeframe ("prior to the inception of this litigation").

For the reasons stated above with respect to Interrogatory No. 1, this information is plainly relevant and discoverable. Yahoo!'s re-writing of this interrogatory (and other interrogatories) is unacceptable and not in keeping with the discovery standards in this District.

Interrogatory No. 5: This interrogatory asks Yahoo! to identify that portion of its revenue base that it contends is outside the reach of the U.S. patent laws, and the basis for this contention. In response, Yahoo! notes that "*at a minimum*, the royalty base in this litigation should not include revenues for any

products or services or features not specifically accused of infringement.” This, again, is an evasive and non-responsive answer.

Contrary to Yahoo!’s assertions, this interrogatory is not premature on the ground that Function Media “has not yet identified sales that should be included as part of the royalty base.” Yahoo! in the course of discovery is going to have to disclose all relevant revenue figures for the Accused Products. Information relating to the geographic locus of those revenues is in Yahoo!’s possession, not FM’s. As such, if Yahoo! is going to assert in this litigation that any portion of its sales is unrelated to the United States, FM has a right to this information so that it can be analyzed and challenged if necessary. Absent a full answer to this interrogatory, FM will move *in limine* to prohibit Yahoo! from arguing at trial that its revenue base is anything but worldwide sales.

Interrogatory No. 6: This is a standard interrogatory asking Yahoo! to identify license agreements related to the Accused Products. In response, Yahoo! indicates that it is still looking for responsive “patent licenses (other than those obtained or provided in settlement of litigation) that are comparable to the hypothetical license at issue in this case” and that it will provide them later if they are located.

Yahoo! has provided a non-response to this interrogatory. Moreover, Yahoo! has limited its search to patent licenses that it believes “are comparable to the hypothetical license at issue in this case.” This is improper. The interrogatory covers “every license agreement to which [Yahoo! is] a party to the extent such license agreement covers patents or any other form of intellectual property and relates to any feature of the Accused Products.” Thus, neither Yahoo!’s search nor Yahoo!’s response should be confined to licenses that Yahoo! subjectively believes are “comparable to the hypothetical license in this case.”

FM first requested that Yahoo! produce information relating to its license agreements on March 7, 2008. These interrogatories have been pending since August 25, 2008. As such, there is no excuse for Yahoo!’s not having identified these licenses by this time. Again, prevailing

discovery standards in this District do not permit parties to defer answering interrogatories until such time as they please. We request that you produce the responsive information immediately.

Interrogatory No. 7: This interrogatory seeks an identification of every patent or patent application held by, assigned to, or licensed to Yahoo! relating to the Accused Products. In response, Yahoo! indicates that its investigation is "ongoing" and that it will identify any responsive patent or published application "if or when" it is located.

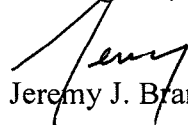
For the reasons stated above with respect to Interrogatory No. 6, this is an unacceptable answer. FM is entitled to Yahoo!'s immediate identification of any and all patents and patent applications that it contends relate to the Accused Products. Whether Yahoo! contends a certain patent or application does or does not relate to the technology in the Accused Products is highly relevant to issues like infringement and validity.

Please let me know if you have any questions. If Yahoo!'s intention with respect to any of the Interrogatories identified above is not to supplement by December 2, 2008, then please provide me with dates in early December on which the lead trial lawyer for Yahoo! and any Yahoo! local counsel will be available to meet and confer by telephone pursuant to Local Rule CV-7(h).

Please also submit a verification for Yahoo!'s original responses and a verification for any supplemental responses.

Finally, as source code has been requested for several months now, please make the requested code available by December 2, 2008, or provide dates in early December on which Yahoo! is available to engage in the required Local Rule CV-7(h) conference.

Best regards,



Jeremy J. Brandon

cc: All Counsel of Record