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Attorneys for Plaintiff GOOGLE INC.

IN THE UNITED STATES DISTRICT COURT,
 DISTRICT OF UTAH, CENTRAL DIVISION

GOOGLE INC., a Delaware corporation,

Plaintiff,

v.

PACIFIC WEBWORKS, INC., a Nevada
 corporation, and DOES 1-50,

Defendants.

Case No. 2:09-cv-1068

***EX PARTE APPLICATION FOR LEAVE
 TO TAKE IMMEDIATE DISCOVERY***

Judge Bruce S. Jenkins

Google Inc. (“Google”), through its undersigned counsel, pursuant to Federal Rule of Civil Procedure 26(d), the Declarations of Joseph Bajin, Craig Buschmann, and Cory Louie, and the authorities cited in the supporting memorandum of law, hereby applies to this Court for an Order granting it leave to take discovery prior to the Rule 26(f) conference.

In support thereof, Google represents as follows:

1. As alleged in the Complaint, Defendants use Google’s famous name and trademarks to defraud consumers with a “work-from-home” scheme (“Google Money-Making

Opportunity”). The scheme takes the form of thousands of different websites promising consumers that they can make substantial amounts of money working at home. These “Affiliate Sites” lead consumers to credit card processing sites, where the consumer submits credit or debit card information to pay a “shipping and handling” or other nominal fee to receive the information or materials purportedly necessary to take advantage of the work-from-home opportunity. Consumers receive nothing of value and then are typically surprised to find their credit or debit card accounts charged significant recurring fees.

2. Over the last few months, Google has identified far more than 1,000 Affiliate Sites running Google “work-from-home” scams. The overwhelming majority of these sites mask their true ownership, but the evidence gathered to date strongly suggests that the other entities involved in the scam work together and/or with Defendant Pacific WebWorks, Inc. (“PWW”).

3. The discovery Google seeks on an accelerated basis is limited in scope and will serve two related evidentiary purposes – to enable Google to identify the Doe Defendants and file a motion for preliminary injunction. It will also cement PWW’s obligation to preserve relevant evidence and notify key third parties to preserve such evidence, as well.

4. With respect to PWW, Google seeks to serve requests for production to PWW and its subsidiary, Intellipay, and to depose under Rule 30(b)(6) their persons most knowledgeable on a limited number of topics related to the liability of PWW and those working with PWW, both on fifteen (15) days’ notice. Google’s primary purpose in conducting early expedited discovery directed to PWW is to confirm the full scope of PWW’s involvement, and obtain evidence about others it is involved with, for the preliminary injunction motion.

5. Google also seeks an order allowing it to serve Rule 45 subpoenas to specific

categories of entities likely to possess information identifying those behind the scheme. The subpoenas will be limited to the following categories of entities and information:

- (a) Three domain name registrars, GoDaddy, Enom and NameCheap, and related proxy registration services, Domains By Proxy, WhoIs Privacy Protection Inc. and NameCheap dba WhoIsGuard. Domain name registrars are where entities and individuals can register a domain name – the language version of the numeric Internet Protocol (“IP”) Address where a website can be found – and proxy registrars provide privacy services that mask who owns a domain name.¹ The immediate discovery Google seeks is limited to records sufficient to identify who owns the domain names associated with websites used in the Google Money-Making Opportunities.²
- (b) Three A-record hosts, Icon Developments, Consonus and XMission. A-record hosts own the IP Addresses for the domain names of the scam sites. Consumers’ computers are directed to scam sites via records containing these IP Addresses. The immediate discovery Google seeks is limited to records identifying customers for which these entities are “hosting” the IP Addresses for websites offering Google Money-Making Opportunities.
- (c) Four telephone service providers, Accessline Communications, Network Enhanced Telecom, Paetec Communications and Qwest. The immediate discovery Google seeks is limited to records sufficient to identify who owns the phone numbers used by the sites offering Google Money-Making Opportunities.
- (d) Two CPA Networks, registered to Hydra LLC and Intermark Media. CPA Networks act as middlemen between Affiliate Sites and credit card processing sites, referring consumers to the latter via links on the former and using what are believed to be cost-per-action or cost-per-acquisition (CPA) incentive models in which payment is made or received upon a triggering event (*e.g.*, a sale or clicking on a link). The immediate discovery Google seeks is limited to records sufficient to identify who operates the Affiliate Sites and credit card processing sites involved in a Google Money-Making Opportunity that generate revenue with and for the CPA Networks.
- (e) Four entities that appear to host credit card processing sites used in connection with Google Money-Making Opportunities, Bloosky, Crush, PolarisNet and

¹ Attached as Exhibit 1 to this Application is a Glossary, which further describes the categories of third parties to be subpoenaed.

² One domain name registrar (GoDaddy) also operates an e-mail server in connection with a Google Money-Making Opportunity and thus will also be asked for records identifying those who sent or received business emails related thereto.

VOMedia. These sites are believed to play the same role as Defendant PWW in the Google Money-Making Opportunity, but are masking the identity of the entities that actually own and operate them. The immediate discovery Google seeks is limited to records sufficient to identify the CPA Networks and credit card processing sites involved in a Google Money-Making Opportunity, and any Affiliate Sites for which the credit card processing sites have identifying records.

- (f) Two financial institutions used by the credit card processing sites, Wells Fargo and JPMorganChase. The discovery Google seeks is limited to records sufficient to identify who owns the merchant accounts linked to websites offering Google Money-Making Opportunities.

6. To notify third parties about the scope of their duty to preserve evidence, Google seeks an order permitting it to include requests for documents beyond those listed above, provided that Google shall inform the third parties in a cover letter that they only need to initially produce documents in the above-referenced categories within fifteen (15) days and that the remaining records may be produced at a later, mutually agreed-upon date.

7. Good cause exists to grant Google's *ex parte* application to conduct this limited discovery on an expedited basis because Google has no other means of identifying the Doe Defendants, the discovery is necessary to support Google's motion for preliminary injunction, Google's claims are based on trademark infringement and unfair competition, and evidence in this case is otherwise likely to be destroyed. *See, e.g., Warner Bros. Records Inc. v. Does 1-4*, 2007 U.S. Dist. LEXIS 48829, at *5 (D. Utah July 3, 2007) (good cause for expedited discovery "exists where the evidence sought 'may be consumed or destroyed within the passage of time, thereby disadvantaging one or more parties'") (citation omitted); *Sara Lee Corp. v. Sycamore Family Bakery, Inc.*, 2009 U.S. Dist. LEXIS 52648, at *4 (D. Utah June 22, 2009) (allegations of trademark infringement in complaint provided good cause for expedited discovery to bring a preliminary injunction motion); *AT&T Broadband v. Tech Communs., Inc.*, 381 F.3d 1309, 1319-

20 (11th Cir. 2004) (affirming ex parte seizure order where evidence showed “defendant[], or persons involved in similar activities, ... had concealed evidence or disregarded court orders in the past”) (citation omitted).

WHEREFORE, in view of this application and the memorandum in support of the application filed herewith, Plaintiff applies to this Court for an Order granting Plaintiff leave to take discovery prior to the Rule 26(f) conference.

RESPECTFULLY SUBMITTED this 9th day of December, 2009.

HOLME ROBERTS & OWEN LLP

/s/ George M. Haley
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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of December, 2009, I caused a true and correct copy of the ***Ex Parte Application For Leave To Take Immediate Discovery*** to be served via :

Christian Larsen
President/Registered Agent
Pacific Webworks, Inc.
230 West 400 South
Salt Lake City, UT 84101

U.S. Mail, postage prepaid
 Hand Delivery
 Facsimile
 Overnight courier
 E-Mail and/or CM/ECF

By: /s/ Sherice L. Atterton