

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

BID FOR POSITION, LLC,

Plaintiff,

v.

**AOL, LLC, GOOGLE, INC.,
MICROSOFT CORP., and MIVA, INC.,**

Defendants.

CASE NO. 2:07-cv-582 JBF/TEM

**PLAINTIFF’S BRIEF IN OPPOSITION TO GOOGLE, INC.’S MOTION
FOR ORDER SUSTAINING OBJECTIONS TO DESIGNATION OF DANA TODD AS A
TECHNICAL ADVISOR UNDER THE PROTECTIVE ORDER**

Plaintiff Bid For Position, LLC (“Bid For”), by counsel and pursuant to Local Rule 7(F)(1), states as follows for its opposition to the motion of Google, Inc. (“Google”) for an Order Sustaining Objections to the Designation of Dana Todd as a Technical Advisor Under the Protective Order:

By its motion, Google seeks to prevent Bid For from disclosing any confidential documents to Dana Todd, one of Bid For’s technical advisors. The sole basis for Google’s motion is its contention that some of the documents it has produced contain information that it believes would be harmful in the hands of Ms. Todd.

Specifically, the reason Google seeks to deny Ms. Todd access to Google’s confidential documents is its contention that the manner in which Google determines the ranking of ads is highly confidential, and could cause competitive harm to Google if disclosed. According to Google, anyone “with access to this information could use it to manipulate the AdWords system” (Google Brief at 9). Because Ms. Todd is in the Search Engine Optimization (“SEM”) business, Google argues, if Ms. Todd were made privy to the manner in which Google ranks ads,

there is purportedly a “serious risk” she would intentionally or unintentionally disclose this information. (Google Brief at 10-12.)¹

Google’s motion is fatally flawed for two reasons. *First*, the mere fact that some documents are alleged to be harmful if in the hands of Ms. Todd is not a valid basis to deny Ms. Todd access to all of the documents produced by Google. Furthermore, pursuant to paragraph 15 of the Protective Order, Google has the burden of identifying the specific objectionable documents. Here, the only objectionable documents identified by Google are the documents that disclose the factors Google uses to determine Ad Rank. These documents are just a small subset of the total volume of documents produced by Google.

Second, as to those documents about which Google is concerned – the documents that disclose the factors Google uses to determine Ad Rank – Bid For has stipulated that it will not provide Ms. Todd with any such documents. Specifically, Bid For has agreed that it will not disclose to Ms. Todd “any documents that show, in whole or in part, how Google calculates (1) Quality Score, (2) Ad Rank or (3) cost per click, including documents that show, in whole or in part, the factors Google uses to determine Quality Score, Ad Rank and cost per click.” (Ex. A hereto.) Because Bid For has stipulated that it will not provide Ms. Todd with those documents upon which Google’s motion is based, there can be no valid basis to deny Ms. Todd access to the remaining confidential documents produced by Google.

For these reasons, Google’s motion should be denied.

¹ Bid For strongly disagrees with Google’s contention that Ms. Todd is “intimately involved with search engine optimization services.” (Google Brief at 5.) As explained in the letter attached as Ex. 14 to Google’s motion, though Ms. Todd’s company provides SEM services, Ms. Todd does not personally perform SEM services for clients. However, because Bid For has agreed not to provide Ms. Todd with any documents disclosing the factors Google uses to determine Ad Rank, there is no need to debate this point.

Dated: May 28, 2008

Respectfully submitted,

BID FOR POSITION, LLC

By Counsel

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2008, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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