## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF VIRGINIA NORFOLK DIVISION

I/P ENGINE, INC.,		)	
v.	Plaintiff,	)	Civil Action No. 2:11-cv-512
AOL, INC. et al.,		)	
	Defendants.	)	

## I/P ENGINE, INC.'S RESPONSE TO DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO SHOW CAUSE

Plaintiff I/P Engine, Inc. ("I/P Engine"), by counsel, for its Response to Defendants' Motion to Strike Plaintiff's Reply in Support of Motion to Show Cause, states as follows.

I/P Engine filed its Motion to Shorten Defendants' Time to Respond to its Motion to Show Cause in an effort to obtain a prompt resolution of Defendants' failure to comply with this Court's order to produce documents. In so moving, I/P Engine offered to waive a written reply and requested a prompt hearing. I/P Engine's offer was proposed to hasten a hearing date on the Motion to Show Cause and to permit I/P Engine to reply to Defendants' response in open Court. Because Defendants had failed to produce any additional documents and as the Court had not scheduled a hearing by the reply brief deadline, I/P Engine had no opportunity to reply in open Court. Accordingly, it filed its written reply. Defendants have suffered no prejudice by the filing of the reply, nor have they articulated any.

Since this Court issued its order to the parties to produce all relevant documents, I/P

Engine has spent significant resources urging Defendants to do what this Court ordered them to

do: produce all documents relevant to whether New AdWords is more than a colorable variation

of Old AdWords.

After I/P Engine's filing of its Motion to Show Cause, Google produced over 9,000 pages

of documents and additional source code relevant to whether New AdWords is more than a

colorable variation of Old AdWords. This fact alone justifies I/P Engine's efforts to compel

Defendants to do what this Court ordered them to do.

Even more, as of this writing, I/P Engine remains unsure whether Defendants have

produced all relevant documents. I/P Engine served its expert reports on September 25

potentially without a complete document production. What has been confirmed thus far through

Google's limited productions is that New AdWords is substantially the same system as Old

AdWords.

WHEREFORE, Plaintiff I/P Engine respectfully moves this Court to deny the

Defendants' Motion to Strike and grant all just and necessary relief.

Dated: September 27, 2013

I/P ENGINE, INC.

By:\_\_\_\_

/s/ Donald C. Schultz

Of Counsel

Donald C. Schultz, VSB No. 30531

W. Ryan Snow, VSB No. 47423

CRENSHAW, WARE & MARTIN, P.L.C.

150 West Main Street, Suite 1500

Norfolk, Virginia 23510

Telephone: (757) 623-3000

Facsimile: (757) 623-5735

dschultz@cwm-law.com

wrsnow@cwm-law.com

2

Jeffrey K. Sherwood, VSB No. 19222 Kenneth W. Brothers (admitted pro hac vice) Frank C. Cimino, Jr. (admitted pro hac vice) Dawn Rudenko Albert (admitted pro hac vice) Charles J. Monterio, Jr. (admitted pro hac vice) Jonathan Falkler (admitted pro hac vice) DICKSTEIN SHAPIRO LLP 1825 Eye Street, NW Washington, DC 20006

Telephone: (202) 420-2200 Facsimile: (202) 420-2201 *Counsel for I/P Engine, Inc.* 

## **CERTIFICATE OF SERVICE**

I certify that on this 27th day of September 2013 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification to the following:

Stephen Edward Noona Kaufman & Canoles, P.C. 150 W Main St, Suite 2100 Norfolk, VA 23510 senoona@kaufcan.com

David Perlson
Quinn Emanuel Urquhart & Sullivan LLP
50 California Street, 22nd Floor San Francisco, CA 94111
<a href="mailto:davidbilsker@quinnemanuel.com">davidbilsker@quinnemanuel.com</a>
davidperlson@quinnemanuel.com

Robert L. Burns Finnegan, Henderson, Farabow, Garrett & Dunner, LLP Two Freedom Square 11955 Freedom Drive Reston, VA 20190 robert.burns@finnegan.com

Cortney S. Alexander Finnegan, Henderson, Farabow, Garrett & Dunner, LLP 3500 SunTrust Plaza 303 Peachtree Street, NE Atlanta, GA 94111 cortney.alexander@finnegan.com

/s/ Donald C. Schultz