

The Honorable Marsha J. Pechman

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ZANGO, INC. f/k/a/ 180SOLUTIONS,
INC., a Washington corporation, a/k/a/
METRICSDIRECT,

Plaintiff,

v.

MAINSTREAM ADVERTISING, a
California corporation,

Defendant.

No. C07-507 MJP

ANSWER, AFFIRMATIVE
DEFENSES, AND
COUNTERCLAIMS

For its Answer to Plaintiff's Complaint, Defendant Mainstream Advertising ("Mainstream") states, alleges, and responds as follows:

I. PARTIES

1. Admit.

2. Admit.

II. JURISDICTION AND VENUE

3. Deny.

4. Deny.

5. Deny.

III. FACTUAL BACKGROUND

1
2 6. Deny.
3 7. Admit.
4 8. Admit contract was signed, but deny any services were provided under
5 the MetricsDirect Insertion Order.
6

7 9. Deny. The primary contract between the parties is the December 15,
8 2004, Mainstream Advertising Contract attached hereto as Exhibit A.

9 10. Deny. The subject matter being sued upon relates to the Mainstream
10 Advertising Contract which mandates arbitration in Los Angeles County, California.

11 11. Admit the contract speaks for itself, but deny the effect of the provision
12 on this case.

13 12. Deny.

14 13. Deny.

15 14. Deny.

16 15. Deny.

17 16. Deny.

18
19 **IV. CAUSES OF ACTION**

20 **First Cause of Action: Breach of Contract/Claim**
21 **For Money Due**

22 17. Deny.

23 18. Deny.

24 19. Deny.

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Second Cause of Action: Unjust Enrichment

1 20. Deny.

2 21. Deny.

3 **V. PRAYER FOR RELIEF**

4 Defendant Mainstream Advertising denies the Prayer for Relief in its entirety.

5 **VI. AFFIRMATIVE DEFENSES**

6 1. Plaintiff has failed to state a claim upon which relief may be granted.

7 2. Plaintiff has breached its contract with Defendant Mainstream.

8 3. Plaintiff comes before the court with unclean hands.

9 4. There is a lack of jurisdiction over the subject matter. This matter
10 should be subject to arbitration in Los Angeles County, California.

11 5. There is a lack of jurisdiction over the corporation.

12 6. Plaintiff has stated an improper venue.

13 7. There is insufficiency of process.

14 8. There is insufficiency of service of process.

15 9. Plaintiff fraudulently used illegal installs to trigger searches which were
16 not executed by human users.

17 10. There is no consideration, Plaintiff failed to provide any services under
18 its contract, nor invoice for any amounts due.

19 11. Plaintiff alleges a contract under which no services were provided, to
20 try and utilize an improper forum. The Insertion Order does not supersede the
21 Mainstream Advertising Contract and no services were provided under the
22 MetricsDirect Insertion Order. Plaintiff seeks damages, though entitled to none,
23 which could only arise under the Mainstream Advertising Agreement which
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1 mandates arbitration in Los Angeles County, California.

2 **VII. COUNTERCLAIMS**

3 **A. FACTS**

4 1. Defendant Mainstream Advertising realleges its admissions and
5 statements herein.

6 2. Mainstream Advertising and MetricsDirect entered the Mainstream
7 Advertising Contract on December 15, 2004 (the "MA Contract").

8 3. The MA Contract governs the terms and conditions of the "Mainstream
9 Web Search Affiliate Program" which provides a search box or content related link
10 to Affiliates web sites.

11 4. To the extent that Plaintiff's claims, though unsupported by law or fact,
12 relate to the subject matter under the MA Contract, all matters should be subject to
13 the Governing Law and Arbitration provision in Paragraph 5 of the MA Contract
14 which mandates all claims be heard in arbitration in Los Angeles County, California.

15 5. Mainstream is not making the MA Contract the subject matter of its
16 counterclaims, as it will pursue its remedy for MetricsDirect's breaches of the MA
17 Contract and damages arising out of the MA Contract through the arbitration clause
18 in California. Mainstream is not waiving its right to enforce Paragraph 5 of the MA
19 Contract.

20 6. Plaintiff has never provided any services under the MetricsDirect
21 Insertion Order. MetricsDirect services, if any were provided, arise out of seeking
22 compensation for creating leads by utilizing "click fraud." MetricsDirect generated
23 leads by sending web traffic to a PPC tracking link and then enabled wrongful
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1 charges to advertisers, without a human user making a click on any PPC ad.

2 7. The utilization of click fraud is a breach of contract, and a tort which
3 caused damages to Mainstream Advertising, including the loss of clients and
4 advertisers.

5
6 **B. LEGAL CLAIMS**

7 **1. Breach of Contract**

8 1.1 Defendant realleges and incorporates paragraphs 1-7 of these
9 counterclaims as though fully set forth herein.

10 1.2 Plaintiff has failed to provide any satisfactory services or
11 invoices under the MetricsDirect Contract. Those services which were
12 provided caused damages in an amount to be proven at trial.

13
14 **2. Tortious Interference with a Business Expectancy**

15 2.1 Defendant realleges and incorporates paragraphs 1-7 of these
16 counterclaims as though fully set forth herein.

17 2.2 Plaintiff had a duty of care to refrain from utilizing Mainstream
18 Advertising's client lists as targets of its click fraud tactics. The breach of this
19 duty caused Mainstream damages in an amount to be proven at trial.

20
21 **DEFENDANT'S PRAYER FOR RELIEF**

22 Wherefore, Defendant Mainstream Advertising, Inc, requests judgment in its
23 favor against plaintiff as follows:

- 24 1. For damages in an amount to be proven, plus interest;
25 2. Contractual and statutory attorneys' fees and costs;
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3. For such other and further relief as this Court deems just and equitable; and

4. For clarification of which issues should be heard in arbitration in California versus which issues arise, if any, out of the MetricsDirect Contract.

DATED this 22nd day of May, 2007.

Ferring & DeLue LLP

By /s Daniel D. DeLue
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CERTIFICATE OF SERVICE

I, LYNN MAGNUSON, hereby certify and declare under penalty of perjury under the laws of the State of Washington, that a true and accurate copy of the foregoing pleading was electronically filed with the Clerk of the Court for the United States District Court, Western District of Washington at Seattle, using the CM/ECF system which will send notification of such filing to the following:

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1 **Daniel P. Harris**

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3
4 DATED this 22nd day of May, 2007.

5 *Ferring & DeLue LLP*

6
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