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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ECM FILING

CARL E. PERSON,)
)
Plaintiff,)
)
v.)
)
GOOGLE INC.,)
)
Defendant.)
)

CASE NO.: C 06-7297 JF (RS)

SECOND AMENDED COMPLAINT

(Jury Demand)

COUNT I

[Violation of Sherman Act, § 2 - Monopolizing and Combining to Monopolize the Search Advertising Market and Submarket for Monetizing the Traffic of Community Search Websites]

Plaintiff, an attorney acting *pro se*, as and for his Second Amended Complaint,
respectfully alleges:

Jurisdiction

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2 1.. This controversy involves § 2 of the Sherman Act (15 U.S.C. § 2); §§ 1,
3 4B, 12 and 16 of the Clayton Act (15 U.S.C. §§ 12, 15b, 22 and 26); and 28 U.S.C. §
4 1337.
5

6 2.. This Court has original jurisdiction over the federal antitrust claims under
7 28 U.S.C. § 1337(a) and 15 U.S.C. § 15(a).
8

Summary

9 2A.. This action has two counts (alleging monopolization and attempted
10 monopolization of Search Advertising and website monetizing [using Search Advertising
11 or the alternative of “all Internet advertising”) under § 2 of the Sherman Act, based on
12 Google’s 65 acquisitions of related technology businesses, patents, know-how,
13 copyrights, algorithms, competitors and high-traffic community search websites – see
14 Exhibit A and ¶¶ 99-A and 99-B below) to enable Google, with its two alleged U.S.
15 monopolies, to injure and drive competitors out of business and maintain and increase
16 market share for Google’s monopolies (i) by anticompetitive AdWords pricing and
17 auction practices, (ii) by allowing some community search websites (including
18 MySpace.com, AOL.com, YouTube.com and other high-volume community search
19 website customers) to monetize their website traffic by sharing in Google’s monopolistic
20 AdWords Search Advertising revenues, but denying the same website monetizing
21 opportunity to Plaintiff as to his 10 competing community search websites.
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2 **Plaintiff**

3 3.. Plaintiff, **Carl E. Person** ("Person" or the "Plaintiff"), is a website
4 developer, practicing attorney and past candidate for elective office residing in New
5 York, New York, with his offices at 325 W. 45th Street, New York, NY 10036-3803.

6 4.. Person develops websites and website traffic to (i) create website income
7 through use or sale of Search Advertising directed to website visitors; (ii) create capital
8 values for his 10 Community Search Websites (including myclads.com) under
9 development; (iii) market his candidacy for public office in New York, (iv) obtain clients;
10 (v) market non-commercial, political and information websites to obtain website traffic;
11 and (vi) market his self-published books.

12 5.. Person is in the business of building and monetizing website traffic for his
13 Community Search Websites (10 under development, featuring visitor-supplied content
14 and a search engine for locating desired content) through planned sale of Search
15 Advertising to advertisers, to appear when website visitors express what they are then
16 seeking through any website or Internet searches they conduct from Person's websites.
17

18 6.. In this respect, Person is an actual competitor of Google (in the submarket
19 or market of monetizing the traffic of Community Search Websites). Person's websites
20 include myclads.com (for completion in April, 2007), attydb.com (May, 2007) and late-
21 fees.com (May, 2007), ZIPcomplaints.com (June, 2007), MyTelNos.com (June, 2007),
22 e-listparty.org (July, 2007) and others, including lawmall.com, all designed to
23 accommodate the sale and placement of Search Advertising for placement in the right
24 sidebar for website or web searches made from any of Person's websites.
25

26 7.. Plaintiff's first website with Google-type (but in-house) advertising is
27 rebate-fraud.com. This website (through its administration panel) will enable Plaintiff to
28

1 display the same Google-type ads across all of Plaintiff's 85-90 websites (including the
2 numerous subdirectories of Plaintiff's lawmall.com).

3 8.. Person has used Search Advertising of approximately 10 search engines
4 including Google's AdWords, Yahoo, MSN and 7Search in Person's above-described
5 marketing activities. From 2003 to September 18, 2006, Person has had 1,417,314 ads
6 presented to Google users in a total of 20 campaigns, and has paid Google a total of
7 \$1,466.67 for a total of 3,533 user clicks at an average cost of \$.42 per click, and a
8 clickthrough rate ranging from a high of 3.09% to a low of zero % according to
9 Plaintiff's records maintained by AdWords.
10

11 9.. Person ran, unsuccessfully, for the office of Attorney General of New
12 York State during 2006. He was unable to get on the ballot. Google's activities in
13 increasing Person's pay-per-click fee from 1 cent to approximately 50 cents per click
14 prevented Person from building an email list of potential voters. This 50 times increase in
15 price to Person of AdWords advertising increased his cost of building a list of 1,000,000
16 permissive email addresses from an affordable \$10,000 to a wholly unaffordable
17 \$500,000, and contributed to Plaintiff's failure to get on the ballot and his failure to
18 obtain any significant percentage of the total vote for Attorney General.
19
20

21
22 **Defendant**

23 10.. Defendant, **Google Inc.** ("Google"), is a Delaware corporation
24 incorporated in 2002 with its principal place of business at 1600 Amphitheatre Parkway,
25 Mountain View, California 94043.
26

27 11.. Google is in the business of "maintain[ing] the world's largest online
28 index of web sites and other content, and ... mak[ing] this information freely available to

1 anyone with an Internet connection” through tools for searching the content; and deriving
2 income from these unpaid content search activities by selling keyword targeted
3 advertising for display together with the search results. From inception through 2006,
4 advertising income has produced 99% of Google's revenues. Also, it is in the business of
5

1 13A.. Google's leadership in number of indexed pages started during 2000 and
2 has steadily increased, up to the present. In a 2/14/04 CNET article, Google co-founder
3 Sergey Brin reportedly said: "Ultimately we want to have all the world's information,
4 whatever medium it is," [source:
5 [http://news.com.com/Google%2C+Yahoo+duel+for+documents/2100-1038_3-
6 5160480.html](http://news.com.com/Google%2C+Yahoo+duel+for+documents/2100-1038_3-5160480.html)]

8 3 Stages of Internet, an Overview

9 Publishing and Searching for Information

10
11 14.. Starting after the release of the Mosaic web browser in November, 1991,
12 millions of websites were created in the United States and elsewhere publishing
13 information across the vast spectrum of information categories.
14

15 15.. Upon information and belief, Plaintiff was the first lawyer (or among the
16 very first lawyers) in the United States with a website in 1992 (lawmall.com) providing
17 legally oriented information. Contemporaneously, Plaintiff had conducted a search for
18 attorney or lawyer websites and found only one, which provided the attorney's name,
19 address and telephone number, but no significant information about any area of law or
20 any legal problems.
21

22 16.. To organize the growing body of Internet-published information, various
23 search-engine websites got started, providing free search services that enable users to
24 searches for desired text or information and obtain links to the information located by the
25 search engine. Archie (1990) and Gopher (1991) and related Veronica and Jughead
26 programs were the first search engines. WebCrawler, starting in 1994, was Internet's
27 first "crawler-based", "full-text" search engine. Google's founders developed the initial
28

1 Google search engine during 1995-1997, commenced business in September, 1998, and
2 PC Magazine named Google one of its Top 100 Web Sites and Search Engines for 1998.

3 17.. Up to 1996, website publishers (such as AOL.com and prodigy.com) were
4 relying on subscriber fees to support the website, or the website owner (such as Plaintiff)
5 was hoping for customers for the described services or products to cover the costs of the
6 website publishing activities. During 1996, AOL changed its business model and
7 switched from an hourly fee for services to a flat fee of \$9.99 per month.
8

9 18.. As of mid-1998, the main search engines were (in alphabetical order):
10 AltaVista, Excite, HotBot, Infoseek, Lycos and Yahoo! (source: Search Engines for the
11 World Wide Web, by Alfred and Emily Glossbrenner, © 1998 by PeachPit Press,
12 Berkeley, CA). [Google was not even mentioned anywhere in the book.] These search
13 engines were available for free, but they had no workable business model to be profitable.
14

15 16 **Stage 2 - Internet Advertising**

17 19.. The nature of websites is that their own owners are able to place "free"
18 advertising on the websites (banner, display or text ads); and some were able to sell
19 advertising to third-person advertisers for placement on the website. Very few if any
20 websites appeared to be making money with their website operations through selling
21 banner, display or other Non-Search Advertising for placement on the website.
22

23 20.. The transformation of Internet to a money-making potential arrived when
24 search engine GoTo.com, in 1998, started offering paid advertising to be presented
25 together with search results. A substantial controversy over this development apparently
26 caused the originator to back back off, and the concept was pursued, successfully, by
27 others, including Overture.com (which acquired GoTo.com), Yahoo.com (which acquired
28

1 Overture.com but used the Google search engine for yahoo.com up to 1994), and later
2 Google.com (financed by Yahoo's backers, Sequoia Capital). From 1999 to February
3 2004, Google's search engine was used to power Yahoo searches, under license by
4 Google.
5

6 21.. The sale of sponsored ads for display alongside search results became
7 successful and demonstrated how a search engine could offer free search services and
8 become profitable through monetizing its search traffic by the sale of advertising for
9 display with the search results.
10

11 22.. Subsequently, the search engines started selling and placing ads on
12 websites having a perceived or arguable relevance to the advertiser's product, service or
13 advertisement, with a clickthrough rate approximately 1/50th to 1/20th of the rate achieved
14 by successful Search Advertising. The main difference (advertising written to be
15 presented alongside keyword search results, versus advertising displayed to whoever
16 happens to visit a website category) prevented the two types of advertising from being
17 reasonably interchangeable under antitrust caselaw standards for determination of
18 "reasonable interchangeability".
19

20 23.. At all times from 2000 to the present, one or more major search engines
21 (e.g., Inkom, Ask Jeeves, Google, Yahoo) have been licensing other search websites to
22 use their search engine in exchange for a percentage of the Search Advertising displayed
23 by the search engine together with the search results. The search industry is presently
24 capable of joining with Community Search Websites to monetize their website traffic
25 (and Google is doing so with AOL.com, MySpace.com and YouTube.com), but refusing
26 to do so for the Plaintiff and most Community Search Websites.
27
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1 24.. Internet advertising falls into two main categories: (1) advertising selected
2 by use of the search term(s) and presented together with the search results ("**Search**
3 **Advertising**") and (2) any advertising displayed when a person visits a website or any
4 pages within a website ("**Non-Search Advertising**"), often called display, banner or
5 context advertising.
6

7 25.. Non-Search Advertising was first, starting with banner advertising. Later
8 forms of Non-Search Advertising include pop-up advertising, (possibly) permissive email
9 advertising and RSS website update email feeds, context advertising (such as with
10 Google's AdSense in which advertising is selected for specific websites based on their
11 content).
12

13 26.. Starting in 1998, Search Advertising appeared, in which the search term of
14 a user resulted in Search Advertising if one or more advertisers had previously selected
15 the search term and created one or more ads to be displayed with the search results,
16 assuming the advertiser prevailed in the accompanying auction among competing
17 advertisers for use of the search term.
18

19 27.. Search Advertising grew faster than any other segment of Internet
20 advertising and now accounts for about 50% of all Internet advertising. From inception
21 to the present, Search Advertising has been sold to advertisers only by search engines or
22 their joint-venture partners or licensees, although both Forbes and FIM/MySpace have
23 publicly indicated during the past 6 months that they are going to break into the market
24 (of monetizing their own Community Search Websites with Search Advertisements).
25

26 28.. The sellers of Search Advertisements (including Google and Yahoo) and
27 independent companies have developed and acquired software tools for advertisers to
28

1 determine the efficiency of their search advertising, and the management of potentially
2 tens of thousands of ads and search terms to be used in Search-Advertising campaigns.

3 29.. Search Advertising, having a specific maximum number of characters in
4 any ad, is fast and easy to create, and enables advertisers to get online (after an ad
5 approval process) immediately or within a day or so, depending on the seller, with
6 advertising budgets that can be as low as \$1 to \$5 per month, in contrast to Non-Search
7 Advertising that is generally more costly, requires more time and personal involvement to
8 create and get on line, and is substantially less cost effective as Search Advertising.
9

10 30.. Upon information and belief, when a Search Advertiser is offered an
11 opportunity to add Non-Search Advertising to his/her Search Advertising purchase (such
12 as adding AdSense-type advertising to an AdWords-type purchase), the advertiser refuses
13 the offer more than 80% of the time, because of the inherent differences between the two
14 advertising media. They are not reasonably interchangeable, and this is understood or
15 reinforced by the substantially lower efficiency of Non-Search Advertising.
16

17 31.. Upon information and belief, Search Advertising is approximately 50 to
18 100 times more effective than Non-Search Advertising, produces more than 20 times the
19 revenue for Google; and the two categories are not interchangeable for advertising
20 customers of Google or its competitors.
21

22 32.. Upon information and belief, a statistically relevant (projectible) survey
23 can establish that among Search-Advertising advertisers, Search Advertising is not
24 reasonably interchangeable with any form of Non-Search Advertising for a large variety
25 of reasons, including:
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A.. Customer perception derived from the press that Google has won the search battle and that Google's emphasis on Search Advertising (accounting for 95% of Google's revenues) is superior to Non-Search Advertising; for example, the 3/27/07 *International Herald Tribune* article stating "Yahoo, ...has fallen a distant second behind Google in Internet search and search-related advertising"; also, use of the word "Google" or "Googling" to refer to an Internet search, generically or by actual use of google.com; 50,040,000 hits searching for "Googling" and 20,500 hits searching for "Yahooing" on 4/15/07 (99.50% for "Googling"; and 0.0041% for "Yahooing")

1 J.. A search advertiser can generally withdraw all scheduled advertising at
2 any time without notice and without penalty;

3 K.. A Search advertiser does not need any graphics artist or programmer to get
4 started;

5 L.. Payments are simplified by use of credit cards to ensure payment and
6 credit;

7 M.. Measurement of efficiency of most types of Non-Search Advertising is
8 substantially less possible than with Search Advertising;

9 N.. The risk of advertiser's loss as to Search Advertising is absorbed to a
10 greater extent by the seller of the advertising than with Non-Search Advertising;

11 O.. Selection of advertising targets is more under the advertiser's control with
12 (keyword) Search Advertising than with Non-Search Advertising, which is important to
13 the advertiser because he/she knows more about his/her product or service than the seller
14 of advertising or the seller's automated program;

15 P.. Search Advertising is largely automated and immediate, whereas Non-
16 Search Advertising generally is labor intensive and delayed, involving a substantial
17 amount of discussions, negotiations and contractual commitments.

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22 **Stage 3 - Monetizing Website Traffic**

23 33.. Search engines had an inherent advantage over other websites. Search
24 engines had users looking for all types of information, so that searches using the leading
25 search engines created greater opportunities for advertisers than trying to place
26 advertising directly on specialized websites. This created vast amounts of income for
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1 search engines which collected and indexed the content provided to the public for free by
2 millions of website publishers, including Plaintiff.

3 34.. In an effort to placate web publishers (who were not getting paid for their
4 content) while the search engines had found a lucrative Search Advertising market for
5 themselves, Google and other search engines started encouraging Search Advertisers to
6 also place context or display ads on websites having revenue-sharing agreements with the
7 search engine to receive a portion of the tiny advertising revenues per ad (in comparison
8 to the substantial revenue per ad for Search Advertising (which revenues were not split
9 by the search engines – other than with other Internet search websites).

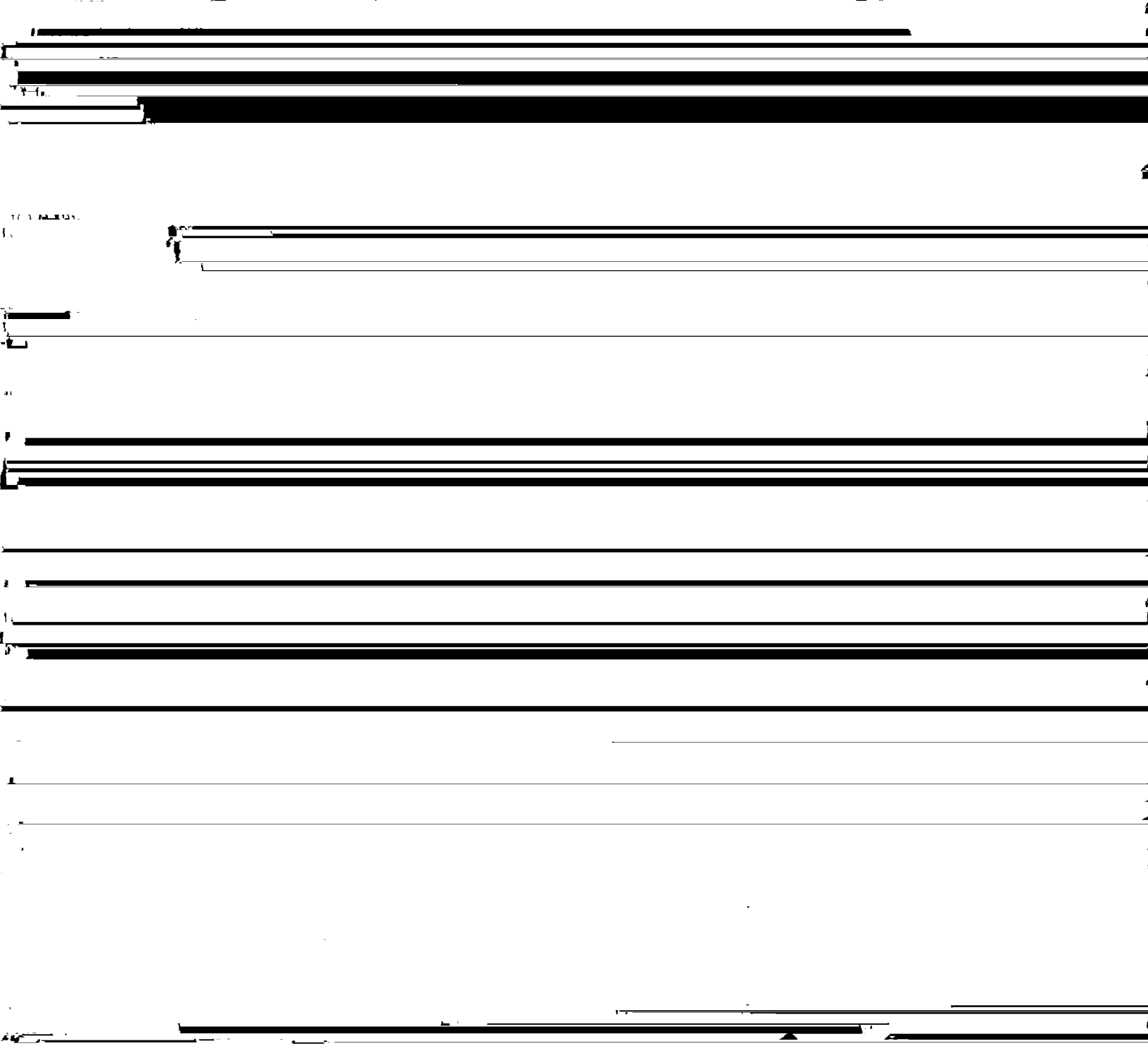
10 34A.. In some of its AdSense agreements with website publishers, Google
11 according to its initial registration statement has paid more than 100% of the AdSense
12 income to the website, in what amounts to an agreement by Google to share its related
13 Search Advertising income with the website without publicly revealing that Google is
14 helping any websites monetize their traffic by splitting Google's Search Advertising
15 income.

16 35.. Until Google's deal with AOL (12/05), MySpace (8/06) and YouTube
17 (11/06), search engines kept their Search Advertising monetizing activities to the search
18 traffic (search engine users) of the search engine and its licensee competitors, and website
19 publishers were restricted to the tiny per-ad revenues produced by context or Non-Search
20 Advertising.

21 36.. As a result of Google's 3 transactions described in the preceding
22 paragraph (and Google's history of licensing competing Internet search websites and
23 Google's splitting of Search Advertising income with some publisher websites), it
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1 became clear that Google was in a position to use its Search Advertising facility (and
2 monopoly) to monetize anyone's website, and that Google chose to do so with search
3 competitor AOL.com, Community Search Website YouTube.com (which Google
4 purchased to be able to own and monetize the website without any joint venture
5

to the extent of YouTube) and



1 because Search Advertising is the most profitable (as seen by Google's own revenues
2 from 2000 to the present) and context, banner, display, pop-up and other types of
3 advertising to monetize are too labor intensive and so less profitable that they constitute
4 no significant competition to monetizing by Search Advertising.
5

6 40.. News Corp.'s President and C.E.O., Peter Chernin, is reported by a
7 1/24/07 Forbes.com cover story entitled "Murdoch 2.0" as saying that News Corp. will
8 try to concoct the next YouTube on its own, via an in-house R&D group, then quoting
9 Chernin: "I think we should be striving to create as many businesses ourselves as we can
10 [for purposes of monetizing the website traffic with Search Advertising]". Also, News
11 Corp. is a competitor of Google, having lost the YouTube acquisition to Google because
12 Google had the stock price and cash hoard to pay more for YouTube than News Corp.
13 could afford.
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17 Definitions

18 41.. The following terms shall have the meaning set forth below, or in a
19 paragraph to which reference is made:

20 A.. "AdSense" – Google's version of context or banner advertising in which
21 advertisers pay to have their banner, pop-up, display or other ads displayed to visitors at
22 websites selected by the seller or advertiser as having website material and visitors
23 relevant to the ads. AdSense also enables Google with high-traffic websites to pay the
24 website more than Google receives from the AdSense advertising, which amounts to
25 partial monetizing of the website with Search Advertising income. Upon information and
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1 belief, Google has a 25% to 30% cost of sales for its AdSense net income (after
2 deducting Traffic Acquisition Costs).

3 A-1.. On 12/15/06, CNNMoney.com (David Kirkpatrick, *Fortune* senior editor)
4 in an article entitled "Can Yahoo catch Google?" stated that keyword-targeted advertising
5 [e.g., AdWords] gets a 10% or 20% clickthrough rate whereas conventional banner ads
6 [not keyword based [e.g., AdSense]] have a clickthrough rate not exceeding 1%. Also,
7 the article states that "Today Google overwhelmingly dominates the search business."
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1 B.. **“AdWords”** – Google’s Search advertising system enabling advertisers to
2 hold back their ads until potential customers were seeking information through a search,
3 with the advertiser’s ad being delivered to together with the search results; this enabled
4 advertisers for the first time to reach potential customers at the precise moment of their
5 demonstrated interest, which makes this type of ad much more cost effective than other
6 types of advertising (including newspaper and internet context, banner or display
7 advertising).
8

9 C.. **“Community Search Websites”** – refers to websites (such as
10 youtube.com, myspace.com, craigslist.com, eBay.com, monster.com, wikipedia.org and
11 approximately 10 websites being created by Plaintiff [starting with myclads.com and
12 attydb.com] for which users create and/or provide the website’s content on an ongoing
13 basis, the website provides a search facility for visitors to find web pages or other
14 material of interest to them on the visited website, or other Internet websites; the owner
15 of the website provides the structure for website growth and regulation but creates a
16 miniscule percentage of the website’s content; and the websites are often referred to as
17 communities or social websites with user-created content.
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20 D.. **“Essential Facility”** – Google’s system for selling and placing Search
21 Advertising on Community Search Websites to monetize the website traffic. Google’s
22 website monetizing system is so efficient and profitable that (with an 8% cost of sales
23 during 2006) that no competing system based on any competing search engine is
24 reasonably interchangeable with Google’s system, and the advertisers will pay about
25 twice as much per click for use of a specific keyword than they will pay per click to
26 competing companies such as Yahoo and MSN. This means that Google monetizes
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1 website traffic at about twice the rate as its nearest Search Advertising competitor and
2 many times more than the top context or display ad competitor, DoubleClick, which
3 Google acquired during April, 2007.

4
5 D-1.. Search Advertising sold by lesser competitors of Google cannot become
6 reasonably interchangeable with Google by lowering their prices because their inventory
7 of searches is substantially less (requiring the website to return to Google to obtain the
8 benefits of the larger inventory and the temporary use of the lesser competitor exhausts
9 part of the Search Advertising market available more efficiently through Google).

10 Google's competitors do not effectively compete. They merely sell an incremental
11 expansion of the website's monetizing program, primarily to unsophisticated website
12 owners who are unaware of the differences between Google and its Search Advertising
13 competitors.
14

15 E.. **"Google Competitors"** – Google competes with Yahoo Search
16 Marketing, MSN Ad Center, 7Search and other search engines offering search
17 advertising, but the competition is ineffective and Google has a monopoly in the Search
18 Market and Website Monetizing Submarket, making Google's AdWords business an
19 Essential Facility, both as to advertisers seeking to advertise on Internet for website
20 visitors (in competition with Google) through Search Advertising (including Plaintiff)
21 and as to all Community Search Website owners attempting or potentially attempting to
22 create Community Search Websites and increase and monetize the traffic on their
23 websites in competition with Google (including Plaintiff).
24

25
26 F.. **"Non-Search Advertising"** – any Internet advertising that is not Search
27 Advertising, such as banner, space, context or pop-up advertising.
28

1 G.. "Relevant Market" - defined in ¶ 45 below.

2 H.. "Relevant Submarket" - defined in ¶ 45 below.

3 I.. "Search Advertising" – website advertising that is triggered by a website
4 or Internet search, with the advertisement (and any others) displayed alongside the search
5 results. Such advertising could be purchased on a pay-per-click ("PPC"), cost-per-
6 thousand ("CPM") or other basis.
7

8 Relevant Period

9 42.. The relevant period ("Relevant Period") for the antitrust claims alleged
10 herein is the 4-year period preceding the filing of this complaint (during June, 2006) as to
11 all claims under the Sherman Act, 15 U.S.C.A. § 2.
12

13 The Relevant Market and Submarkets Defined

14 43.. For purposes of this action, the alleged geographic market is the United
15 States.
16

17 44.. The alleged service market at issue in this action is **Search Advertising**
18 (as defined in ¶ 41-I above), and the **submarket of monetizing the traffic of**
19 **Community Search Websites through use of Search Advertising.** Alternatively, if the
20 market turns out to be "all Internet advertising" and not "Search Advertising", the
21 submarket becomes the **market for monetizing the traffic of Community Search**
22 **Websites through the use of Internet Advertising.** Upon information and belief,
23 Google dominates such alternative market.
24
25

1 Search Advertising or, alternatively, Internet advertising (the “**Relevant Submarket**” or
2 **Relevant Alternative Market**).

3 46.. Upon information and belief, Google has more than a 70% share of the
4 dollar amount of the Search Advertising market, which percentage is steadily increasing.

5 47.. Upon information and belief, Google has more than a 80% share of the
6 dollar amount of revenue obtained from monetizing the traffic of Community Search
7 Websites using Search Advertising or more than a 67% share of the dollar amount of
8 revenue obtained from monetizing the traffic of Community Search Websites using any
9 type of Internet Advertising, and the markets and submarkets dominated by Google are
10 Essential Facilities with access so such facilities needed by the Plaintiff to be able to
11 compete effectively with Google for the monetizing of traffic of Community Search
12 Websites.
13
14

15 **Monopolization of the Relevant Market**

16 48.. Google has a monopoly in the Relevant Markets and Submarkets,
17 including the power to control prices and the power to exclude competitors from such
18 markets, and is exercising such power unlawfully.
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20

21 **Facts Supporting Allegation of Google’s** 22 **Monopoly including a \$25 Billion Dollar Barrier to Entry**

23 49.. The following facts are barriers to entry facing Google competitors in the
24 relevant markets and submarket, and support Plaintiff’s allegation of Google’s monopoly:
25

26 A.. Google has acquired about 65 technology companies from 2001 to the
27 present (a list and description of such acquisitions is set forth in **Exhibit A** hereto – and
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1 see ¶¶ 49-A and 49-B below for a list of the most significant acquisitions which enabled
2 Google to acquire and combine to obtain its present monopolies in the relevant markets
3 and submarket), at a cost of about \$7-\$8 billion in cash and stock, to enable Google to
4 increase its share of Internet searches and of the Relevant Market and Relevant
5 Submarket without growth from within, for the purpose of depriving competitors in the
6 respective markets of market share and drive them out of business.
7

8 B.. The more recent acquisitions have been made after Google has become a
9 monopoly, with Google's monopolistic profits and with highly-priced stock (reflecting
10 Google's monopoly) that enables Google to make its acquisitions at a lower equity cost
11 when using stock, and being able to outbid Google's competitors such as Fox and
12 Microsoft.
13

14 C.. The acquisition of the largest company in Internet display advertising,
15 including an auction system for Internet display advertising, is a strong indication that
16 Search advertising is a different market from Non-Search advertising, a market so
17 different that Google was not in it to any appreciable extent before the April, 2007
18 DoubleClick acquisition.
19

20 D.. From 2001 to the present. Google has acquired users for Google's search

1 E.. Google has a technical team with its secret know-how that enables Google
2 to increase its market share in the Relevant Market over the only two present significant
3 competitors (Yahoo and Microsoft/MSN Ad Center – “MSN”).
4

5 F.. Microsoft/MSN’s dedicated effort, huge cash reserves and other resources,
6 up to this moment, have not been able to purchase or develop any team capable of
7 effectively competing with Google’s search-engine business and related AdWords
8 keyword-targeted Internet advertising business. Until May 2006, Microsoft/MSN
9 partnered with Yahoo, but in May 2006 MSN began offering its own keyword-targeted
10 Internet advertising, and upon information and belief the cost of Yahoo, MSN or any
11 other company trying to become competitive with Google (from the standpoint of being
12 able to monetize website traffic within a competitive dollar amount or value) is about
13 \$50,000,000,000. based on Google’s revenues, acquisitions, physical structure, software,
14 personnel, top management ownership, commanding industry lead, and monopolistic
15 position, among other factors.
16
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18 G.. Yahoo until recently was a licensee of Google’s search engine and has
19 now switched to licensing an inferior engine (created years earlier by Inkomi), which
20 means that Yahoo will not be able to compete with Google unless it solves the problem
21 faced by Microsoft (of creating a team able to compete with Google’s team, and to be
22 able to commit the necessary funds, amounting to about \$25 billion).
23

24 H.. Google has the fastest search engine of all competing search engines with
25 indexes, algorithms, software and systems (including technology acquired through some
26 of the 65 Google acquisitions) to deliver the search results (and accompanying AdWords
27
28

1 ads) substantially faster than any other search website can locate and display its search
2 results;

3 I.. Google has about 50% of all internet searches conducted at more than 60
4 search sites [source: <http://searchenginewatch.com/reports/article.php/2156451>];

5
6 J.. Google has the world's largest and most comprehensive collection of
7 information online - 8.1 billion pages, compared to Microsoft's 5.0 billion pages, Yahoo's
8 estimated 4.2 billion pages and Ask Jeeves' or Ask's 2.5 billion pages [Source:
9 <http://blog.searchenginewatch.com/blog/041111-084221>]. Plaintiff's 6/16/06 Yahoo
10 search for "movie cameras" found 26,200,000 pages, whereas Plaintiff's 6/16/06 Google
11 search using the same phrase found 86,800,000 pages or more than 3 times as many
12 pages;
13

14 K.. Overture created the keyword-targeted Internet advertising market but lost
15 its initial domination of the market to Google, because of superiority of Google's
16 databases and software development, acquisitions of technology and other factors;
17

18 L.. Through fiscal year 2006, Google's income has been derived mainly (at
19 least 95%, upon information and belief) from its AdWords business and is more than
20 71% (2004) and more than 75% (2005) of all income obtained from keyword-targeted

21 Internet advertising of all competitors based on the figures set forth in the next 2

1 than the PPC advertising of MSN and Yahoo (which are distant seconds and not
2 reasonably interchangeable for keyword advertisers including Plaintiff);

3 M.. Google's revenues from sale of keyword-targeted Internet advertising
4 amounted to \$3.189 billion during 2004, \$6.139 billion during 2005 and more than \$10
5 billion during 2006 (without adjustment for the small percentage of income derived from
6 Google's CPM (cost per 1,000 impressions) sales of AdSense advertising), in comparison
7 to Yahoo's sale of keyword-targeted Internet advertising amounting to an estimated \$1.3
8 billion during 2004 and an estimated \$1.97 billion during 2005. [Estimate assumed 50%
9 of Yahoo's total sales excluding "traffic acquisition cost" or "TAC".]
10

11 N. Prior to and during 2004-2005, Microsoft/MSN had no independent
12 revenues from keyword-targeted Internet advertising, so that a substantial part of
13 Microsoft/MSN's revenues are included in Yahoo's revenues.
14

15 O.. Google's capitalization during late 2005 was \$126.7 billion (\$428/share)
16 in comparison to Yahoo's capitalization, of \$59.7 billion (\$42/share), making Google
17 more than twice as valuable as Yahoo, and during 2006 the capitalization difference grew
18 substantially, enabling Google to make acquisitions more readily than any of its
19 competitors (e.g., YouTube and DoubleClick).
20

21 P.. Google states in its S-1 Registration Statement filed April 29, 2004 that
22 Google is the largest of the companies in that market; and that the only other company
23 known to Google is Yahoo (with its purchased Overture search business);
24

25 Q.. The only company publicly stating that it is going to try to challenge
26 Google (and not even mentioning Yahoo) is one of the largest monopolists, Microsoft,
27
28

1 showing that there is a need for huge amounts of capital to challenge Google with only 2
2 challengers for control of Internet.

3 R.. Google states in its S-1 Registration Statement that it has a variety of
4 intellectual properties upon which its AdWords technology is based, including patents,
5 trademarks, copyrights, know-how, backed by numerous secrecy agreements; this also
6 includes the know-how in finding, indexing and storing web pages and using hundreds of
7 thousands of servers to speed up information processing and distribution by simultaneous
8 use of many interconnected computers for a single search. See **Exhibit A** hereto for a list
9 of Google's acquisitions of technology firms, patents and other technology from 2001 to
10 the present. Google did not develop its business from within, but built it over 6 years with
11 about 65 acquisitions.
12

14 S.. Yahoo attempted to compete with eBay recently and found that it could
15 not, and gave up its eBay-type Internet activities, suggesting that Yahoo will not be able
16 to continue its competition with Google.
17

18 T.. Google admits that it has not advertised its AdWords service to any
19 significant extent, and was able to build this monopoly by reason of its existing search
20 business (which itself is perhaps the most effective advertising medium in the world);

21 U.. eBay, a major competitor or potential competitor in other product/service
22 markets, is one of Google's top customers for AdWords advertising services;
23

24 V.. Google is practicing price discrimination that makes some purchasers
25 (such as the Plaintiff) pay up to 100 times more per click than other purchasers (large
26 companies) because of the lack of any alternative market; Google is to increase its per-
27 click price for Plaintiff and a million other small-business AdWords customers 2, 10, 25,
28

1 50 even 100 times the price per click Google is charging its most-favored customers. But
2 the profitability to an advertiser is in the click, and it is unreasonable, unconscionable and
3 anticompetitive for Google (and its monopolies) to charge small business advertisers 2,
4 10, 25, 50 or 100 times the price per click when their expectations for profit is
5 substantially less than the profit being obtained by the high-volume advertiser from one
6 click for the same keyword.
7

8 W. Online advertising is causing U.S. daily newspapers to lose advertising
9 revenue and threatening traditional U.S. daily newspapers with extinction ["Online
10 Publishing Insider", 6/8/06]; newspapers are attempting to re-create themselves as online
11 newspapers; and in the UK, online advertising revenues already exceed newspaper
12 advertising revenues [Source: <http://news.stepforth.com/2006-news/May31-06.html>].
13
14

15 **Additional Facts (from New York Times Article of 6/8/06):**

16 X. Building a computing center in The Dalles, Oregon as big as two football
17 fields, with twin cooling plants protruding four stories into the sky which, according to
18 *The New York Times*, is Google's "weapon in its quest to dominate the next generation of
19 Internet computing"
20

21 Y. Such new plant "heralds a substantial expansion of a worldwide
22 computing network handling billions of search queries a day and a growing repertory of
23 other Internet services"
24

25 Z. The new plant "is the backdrop for a multibillion-dollar face-off among
26 Google, Microsoft and Yahoo that will determine dominance in the online world in the
27 years ahead"
28

1 AA. Microsoft and Yahoo have announced that they are building big
2 data centers upstream in Wenatchee and Quincy, Wash., 130 miles to the north. But it is a
3 race in which they are playing catch-up. Google remains far ahead in the global data-
4 center race, and the scale of its complex here is evidence of its extraordinary ambition
5

6 BB. Even before the Oregon center comes online "Google has
7 constructed the biggest computer in the world, and it's a hidden asset,"

8 CC. Microsoft stunned analysts after first quarter 2006 when it
9 announced that it would spend an unanticipated \$2 billion next year, much of it in an
10 effort to catch up with Google.
11

12 DD. Google is known to the world as a search engine, but in many ways
13 it is foremost an effort to build a network of supercomputers, using the latest academic
14 research, that can process more data — faster and cheaper — than its rivals.

15 EE. "Google wants to raise the barriers to entry by competitors by
16 making the baseline service very expensive,"
17

18 FF. In March 2001, when the company was serving about 70 million
19 Web pages daily, it had 8,000 computers.... By 2003 the number had grown to 100,000.

20 GG. Today ... [t]he best guess is that Google now has more than
21 450,000 servers spread over at least 25 locations around the world.

22 HH. Microsoft's Internet computing effort is currently based on 200,000
23 servers, and the company expects that number to grow to 800,000 by 2011 under its most
24 aggressive forecast, according to a company document.
25

26 II. Yet it is the way in which Google has built its globally distributed network
27 that illustrates the daunting task of its competitors in catching up.
28

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JJ. [S]aid Milo Medin, a computer networking expert ... I know of no other carrier or enterprise that distributes applications on top of their computing resource as effectively as Google."

Willful Acquisition, Maintenance, or Use of the Market Power by Anticompetitive or Exclusionary Means or for Anticompetitive or Exclusionary Purposes

Willful Acquisition and Maintenance

50.. Google willfully acquired its monopoly of the Relevant Markets and submarket partially through in-house growth but mainly through a series of mergers and

1 **Use of the Market Power by Anticompetitive or Exclusionary**
2 **Means or for Anticompetitive or Exclusionary Purposes**

3 52.. Google is in a position similar to someone owning the patents and know-
4 how to extract oil two times more profitably than any competitor, and refusing to let
5 owners of oil reserves enter into joint ventures or leasing agreements with Google to
6 exploit the reserves, with Google instead requiring the reserve owners to sell their wells
7 to Google (at a higher price than available from any lesser competitor), with Google
8 keeping the difference, and adding to its monopolistic profits and market share.
9

10 53.. Until a competitor is able to offer monetizing services with reasonable
11 interchangeability with what Google has put together in its 65-company acquisition
12 monopoly, Google is going to pick off the best websites (having the higher traffic, such
13 as MySpace.com and YouTube.com) and monetize them for Google's profit, and the
14 other high-traffic websites will not be able to obtain this monetizing value and will see
15 the asset wasting until Google finally makes an offer, slightly or even significantly higher
16 than MSN or other competitor.
17

18 54.. Plaintiff made a request of Google on February 12, 2007 (**Exhibit B**
19 hereto) to permit Plaintiff to use Google's monetizing services for Plaintiff's websites on
20 terms comparable to the terms given by Google to MySpace.com's owner, but got no
21 reply.
22

23 55.. Google has a two-way monopoly that it is exploiting with Plaintiff and
24 other website-owner advertisers getting caught in a whipsaw: the monopolistic charge by
25 Google to build Plaintiff's website traffic, followed by the inability to use Google and its
26 monopolistic monetizing system (also based on Search advertising) to obtain the built up
27
28

1 value from this high-cost website traffic. Google reserves the latter for itself, as an
2 anticompetitive practice.

3 56.. Google's practice of exploiting its monopoly in Search Advertising for
4 website owners building their website traffic would be less devastating and injurious to
5 competition if Google allowed these same customers to participate in the monetizing of
6 their high-cost traffic using Google's Search Advertising monopoly.
7

8 57.. Instead, Google is fixing auction prices for the auctions of key words and
9 forcing Plaintiff and other advertisers to pay 50 to 100 times more per click than Google
10 is charging eBay and other major advertisers, whose clickthrough rates are higher
11 because their products and names are well established, and the products and services are
12 often totally different and not comparable as to landing pages and advertisements.
13

14 58.. On March 24, 2006, the Plaintiff observed that in 33 randomly selected
15 keywords chosen by Plaintiff for their probable lack of demand (**problem-3,**
16 circumstantial-0, circumstances-1, create-1, expensive-2, expansive-4, silent-2,
17

independent-1, husband-1, glowing-7, water-10, welcome-4, tomorrow-0, today-0

1 59.. It is an anticompetitive practice to tell advertisers such as the Plaintiff that
2 his landing page and advertising copy can be improved to bring Plaintiff's clickthrough
3 rate up to the level of eBay, and thereby bring Plaintiff's cost per click down to the low
4 price of eBay. This is impossible. Plaintiff's use of the same key word as eBay (for
5 selling Plaintiff's candidacy or Plaintiff's book) does not mean that the Plaintiff's offer
6 and landing page could ever be competitive, no matter how hard Plaintiff tried. Google's
7 pricing with this stated premise is false, misleading and anticompetitive, and injurious to
8 competition because it forces higher costs upon new, different and less established
9 businesses making it impossible for many of them to survive, thereby depriving the
10 public of new and improved products and services, and competition, ultimately, to lower
11 prices.
12

14 60.. Google has a practice of cutting off the number of displayed ads at
15 different numbers for different auctions, for the sole purpose of preventing the lowest
16 bidder to be able to benefit from the promised lowest price of 1-cent per click (when
17 there are no bidders whose ads are not displayed). This practice is anticompetitive and of
18 no business value other than to deprive bidders of Google's promised lowest price per
19 click (of \$.01) for the last advertiser.
20

21 61.. Google has a practice of blocking use of lower-value keywords and
22 repeatedly told Plaintiff that hundreds of these words were not available for Person to
23 use, but at the same time Google was allowing eBay to use a high percentage of these
24 low-demand words. Google is using its monopoly power to withhold keywords from the
25 market for the purpose of forcing advertisers (including Plaintiff) to pay more per click
26 than would otherwise be paid if the lower-value keywords were made available to
27
28

1 advertisers. This is an anticompetitive practice driving up the price of advertising and the
2 price of products and services to consumers, and is of no benefit to Google other than to
3 obtain monopolistic profits from Plaintiff and other small advertisers who in many cases
4 need to compete with lower-priced keywords to keep their advertising expenses low.
5

6 62.. Google's secret practice of looking at the clickthrough rate and adjusting
7 the advertiser's bid price to enable Google to make as much money per displayed ad from
8 Plaintiff as it makes from eBay, but falsely telling advertisers that this fixing of bid prices
9 by Google resulted from an analysis of the advertiser's advertising copy and landing page
10 is an anticompetitive practice that prevents advertisers from understanding how the
11 pricing is really taking place; Google's offered carrot is false, misleading and
12 anticompetitive: that improving the landing page and advertising copy may allow the
13 advertiser to get the lower rate. Advertisers selling elephants will not get the same click
14 through rate as municipal zoos or petting farms offering an opportunity for children to see
15 elephants, or the sale of books about elephants. Changing the advertising copy and
16 landing page has nothing to do with the basic difference in the markets for selling live
17 elephants; viewing live elephants; and purchasing books about elephants.
18
19

20 63.. Google's alleged reason charging Plaintiff as much as 50 times or more
21 than the per-click price being paid by eBay for displaying eBay ads together with the
22 same search results and the Plaintiff's ad, to create a more satisfying experience for the
23 website user, is not true because Google does not prohibit such less satisfying ads.
24 Instead, Google lets all of them run at 50 times the price, unless the advertiser drops out
25 of the auction.
26
27

28 **Plaintiff's Rejected Efforts to Use Low-Value Keywords; and**

1 **eBay's Use of 2 Forms of Ad for All of eBay's AdWords Advertising**

2 64.. On or about April 5, 2006, the Plaintiff attempted to use approximately 50
3 keywords relating to competition, distribution, pricing, advertising, fees and allowances
4 to obtain traffic for the Plaintiff's Robinson-Patman Act website, at
5 www.lawmall.com/rpa2d2e. Google stated that most of Plaintiff's selected keywords
6 (almost all not being in any significant demand by other advertisers) were unavailable to
7 the Plaintiff or were taken away from the Plaintiff within hours or days after the
8 advertising commenced. The Plaintiff went through this routine with different sets of
9 keywords at least 10 other times with the same results.
10

11
12 65.. On or about April 9, 2006, the Plaintiff attempted to use the names of each
13 of the approximately 80 statewide candidates and office titles, political parties, and
14 election issues in support of his candidacy for New York Attorney General. Google
15 stated that most of Plaintiff's selected keywords (almost all not being in any significant
16 demand by other advertisers) were unavailable to the Plaintiff or were taken away from
17 the Plaintiff within hours or days after the advertising commenced.
18

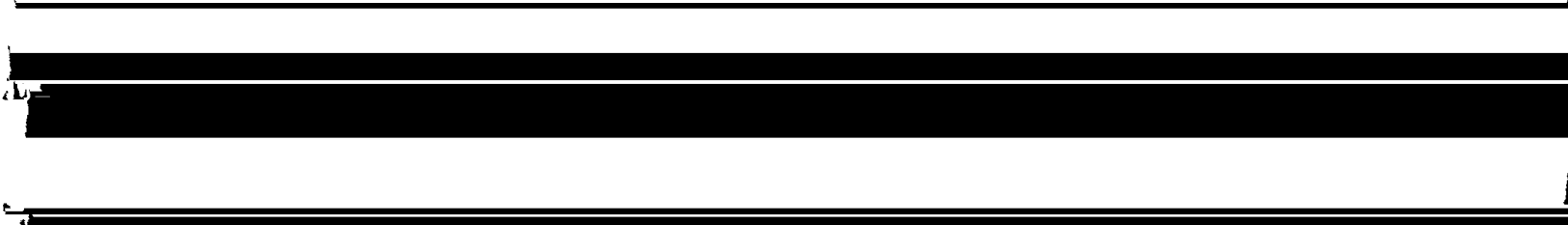
19 66.. In contrast to the 13 keywords used by eBay (see ¶ 58 above), the
20 Plaintiff's keywords in the two preceding subparagraphs were chosen for their high
21 degree of relevance (when appropriately limited by AdWords to users having a New
22 York email server), whereas eBay's 13 keywords were selected by Plaintiff as keywords
23 that were very unlikely to have any demand; and eBay's use of them was with one of two
24 form ads: one for nouns and the other for adjectives.
25

26 67.. Plaintiff's purpose of finding unwanted words was to avoid having to enter
27 into an auction with anyone for keywords. Plaintiff was willing to use almost any
28

1 keywords as long as the Plaintiff could obtain their use for the minimum stated Google
2 fee of 5 cents (later 1 cent) per click.

3
4 68.. For Plaintiff to create an email list of 1,000,000 email addresses in 100
5 days (at the rate of \$.01 per click), for example, he could obtain 10,000 names per day by
6 having 1,000,000 ads displayed, and 1% of the searchers (also called "users") clicking on
7 the Plaintiff's ad and accepting Plaintiff's offer of a free PDF copy of one of Plaintiff's
8 three books. At the end of 100 days, the Plaintiff would have his desired list of 1,000,000

9 New York State email addresses. The cost of \$10,000 for such list would have to be



1 impossible for the Plaintiff to obtain use of it through the auction process, and require the
2 Plaintiff to find a replacement keyword. The Plaintiff envisioned that he would be using
3 many hundreds of keywords simultaneously. It should be noted that eBay appears to be
4 using perhaps 100,000 keywords simultaneously (based upon Plaintiff's determination
5 that eBay was using 40% of keywords not in demand by other advertisers).
6

7 70.. Plaintiff found out that Google's stated minimum fee in its auction pricing
8 system does not apply when only one person seeks to use a given keyword. Instead of
9 letting the Plaintiff use the unwanted keyword for 5 cents (or 1 cent) per click, Google
10 stated that the Plaintiff could not use the word at all, and forced the Plaintiff back into an
11 auction with major corporations for the use of keywords of interest to them, with the
12 resulting 5 to 100 times the cost per click that Google forces Plaintiff and other small
13 businesses to pay. This is an anticompetitive activity by Google.
14

15 71.. Google has taken various keywords off its AdWords auction market even
16 if Plaintiff and other small advertisers were willing and able to pay the unconscionable
17 per-click rates of 100 times \$.01, further support for Plaintiff's allegations that Google is
18 manipulating the market and auction prices for keywords, as part of Google's plan to
19 drive small advertisers out of its keyword market and give discriminatory prices to major
20 advertisers. All of this if for the purpose of Google to increase the market share and
21 profits for Google and major advertisers at the expense of (i) Google's competitors
22

23 (Yahoo and Microsoft) (ii) the major advertisers' competitors (including Plaintiff and