

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



ORIGINAL

In the Matter of)
)
)

1-800 CONTACTS, INC.,)
a corporation,)

Respondent)
)
)
_____)

DOCKET NO. 9372

NON-PARTY GOOGLE INC.'S MOTION FOR *IN CAMERA* TREATMENT

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INTRODUCTION

Pursuant to Rule 3.45 of the Federal Trade Commission’s Rules of Practice, non-party Google Inc. (“Google”) respectfully moves this Court for *in camera* treatment of 243 competitively-sensitive, confidential documents, datasets, or portions of deposition transcripts (“Confidential Materials”).¹ Google complied with its discovery obligations as a non-party, producing documents and data identified as potential trial exhibits, among many others, in response to three subpoenas *duces tecum* (“subpoenas”) and two civil investigative demands (“CIDs”). Complaint Counsel and 1-800 Contacts, Inc. (“1-800 Contacts”) notified Google that they intend to introduce 147 and 248 trial exhibits containing Google materials, respectively, including datasets with millions of observations, two complete deposition transcripts, and internal Google documents. Neither party intends to oppose Google’s motion.

Google closely reviewed every proposed trial exhibit identified by the parties. Google limits its request for *in camera* treatment to only those documents (or portions of documents) or data that contain competitively-sensitive, nonpublic information. For the convenience of the Court, Google separated the Confidential Materials into seven groups, identified in Exhibit A.

These materials contain confidential and competitively-sensitive business records and trade secrets. If they were to become part of the public record, Google would be significantly harmed in its ability to compete in online advertising and online search. Many of the materials provide valuable insights into Google’s proprietary algorithms, processes and systems that form the heart of Google’s offerings. Moreover, many of the exhibits reveal confidential information about Google’s customers and users. Disclosure of that material would significantly harm Google’s customers’ ability to compete and could reveal sensitive information about user habits.

¹ 198 of the Confidential Materials are datasets produced from Google databases.

Google requests indefinite *in camera* treatment of all of the materials listed in Exhibit A.² In support of this motion, Google provides the Declaration of Adam Juda (“Juda Decl.”), attached as Exhibit B, and the Declaration of Munesh Mahtani (“Mahtani Decl.”) attached as Exhibit C. Exhibit D contains copies the Confidential Materials.

GOVERNING STANDARDS

In camera treatment is appropriate where “public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment[.]” 16 C.F.R. §3.45(b).³ An applicant meets this standard by showing that the information in question is secret and material to the applicant’s business. *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980). The Court considers:

“(1) the extent to which the information is known outside of the applicant’s business; (2) the extent to which the information is known by employees and others involved in the applicant’s business; (3) the extent of measures taken by the applicant to guard the secrecy of the information; (4) the value of the information to the applicant and its competitors; (5) the amount of effort or money expended by the applicant in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.” *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 138, *6 (Sept. 19, 2000).

“The likely loss of business advantages is a good example of a ‘clearly defined, serious injury.’” *In re Dura Lube Corp.*, 1999 FTC LEXIS 255, *7 (Dec. 23, 1999).

Indefinite *in camera* treatment is appropriate where “the need for confidentiality of the material is not likely to decrease over time,” including when the materials reveal trade secrets. *Dura Lube*, 1999 FTC LEXIS, at *7-8 (quoting *In re E.I. DuPont de Nemours & Co.*, 1990 FTC LEXIS 134, *2 (April 25, 1990)). The *DuPont* court granted indefinite treatment where the

² To the extent indefinite treatment is not granted for any exhibit, Google respectfully requests that the period of *in camera* treatment be no less than 10 years.

³ “Sensitive personal information” is also entitled to *in camera* treatment. §3.45(b).

exhibits at issue “possess[ed] a uniqueness that [] extended their competitive sensitivity far in excess” of the typical *in camera* period. 1990 FTC LEXIS at *5.

As a policy matter, “[t]here can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible.” *In re H.P. Hood & Sons, Inc.*, 1961 FTC LEXIS 368, *4-5 (1961). Non-party documents, in particular, are treated with “special solicitude.” *In re Kaiser Alum. & Chem. Corp.*, 103 F.T.C. 500, 500 (1984) (noting that *in camera* treatment for non-party materials “encourages cooperation with future adjudicative discovery requests”).

ARGUMENT

I. THE DISCLOSURE OF THE MATERIALS IDENTIFIED ON EXHIBIT A WOULD CAUSE SERIOUS INJURY TO GOOGLE, ITS CUSTOMERS, AND ITS USERS AND SHOULD BE ACCORDED INDEFINITE *IN CAMERA* TREATMENT

Each of the groups of Confidential Materials contains information that, if publicly exposed, would cause significant harm to Google, its customers, and/or its users. Google marked all of the Confidential Materials “confidential” when they were produced to the parties to prevent public disclosure. Moreover, as explained in detail in the accompanying declarations, the need for confidentiality of each group of materials is not likely to decrease overtime and should be protected indefinitely. Juda Decl.¶2; Mahtani Decl.¶3.

A. Group 1

Group 1 consists of millions of lines of internal Google data that are not publicly available. Juda Decl.¶9. Many of the datasets contain granular and sensitive information about AdWords customers’ accounts and advertising campaigns including click-through rates, conversions, bids, budgets, account changes, and more. Juda Decl.¶4. Many datasets are de-

aggregated to show the exact dates of events. Juda Decl.¶5. Several datasets contain information about Google users' search queries and search habits. Juda Decl.¶6.

In the course of Google's business, it aggregates customer and user data. The data Google collects is intertwined with Google's optimization of its algorithms and its ability to provide data-driven insights to customers. Juda Decl.¶7-8. Disclosure of this data will diminish the value of Google's algorithms by providing rivals with detailed insights into the data inputs of the algorithms. Disclosure will also diminish Google's ability to provide targeted insights to particular advertisers.

Google does not widely share the data it collects because doing so would (a) provide its competitors with insights into Google's proprietary algorithms and other systems related to Google services, and (b) make customers and users less likely to trust Google with their data. Disclosure of the data in this proceeding would severely undermine customers' and users' confidence in Google's ability to protect their data.

The customer data contained in Group 1 also provide a tremendous amount of granular detail about customers' bidding strategies. Juda Decl.¶4-5. Disclosure would increase bidding transparency and undermine competition in the markets in which these customers compete.

These data constitute trade secrets that form part of the secret formulas underlying the algorithms that power Google's various products (e.g. organic search and AdWords) and Google's advertising offerings (e.g. targeting). The customer data also provides granular details about Google's customers' bids, which may constitute trade secrets for Google's customers. Google therefore requests indefinite *in camera* treatment for these data as "the need for confidentiality of the material is not likely to decrease over time." *Dura Lube*, 1999 FTC LEXIS, at *8.

B. Group 2

Group 2 contains documents related to studies Google conducted to optimize the formatting of search engine results pages (“SERPs”). These documents are not publicly available. Juda Decl.¶10.

Search providers try to optimize user experience by providing the most relevant results in response to a user query in the most user-friendly interface. Generally, search providers monetize their services by offering advertising. [REDACTED]

[REDACTED] Juda Decl.¶12. The analyses behind Google’s SERP design are competitively sensitive. Juda Decl.¶11.

Public disclosure of these analyses would provide search competitors with insights into an aspect of Google’s search offering and would diminish competition in the search space. These documents constitute trade secrets as they reveal part of the formula that Google used to develop its competitive search engine service. Juda Decl.¶13. Google regularly optimizes SERPs to provide better user experiences. Juda Decl.¶13. Google therefore requests indefinite *in camera* treatment for these documents.

C. Group 3

The Group 3 documents contain confidential information regarding the design and results of user experiments Google conducted when creating its AdWords trademark policies, processes and systems. Juda Decl.¶14. Group 3 also includes internal documents related to the formulation and implementation of the trademark policies informed by the experiments. Juda

Decl.¶15. Google has not publicly disclosed the information contained in these documents. Juda Decl.¶14-15.

The policies, processes and systems used by advertisers to protect third-party intellectual property are aspects of competition among online advertising platforms. Platforms must develop policies, processes and systems to respond to trademark owner complaints and to defend against lawsuits by trademark owners. These policies, processes and systems therefore constitute important aspects of competition. Juda Decl.¶16-17. Sharing Google’s internal experiments and analyses with competitors could provide competitors with valuable information on how to design their own platforms. Moreover, disclosure could expose Google to litigation risks.

These documents contain trade secrets that reveal confidential information related to the secret formulas that make up Google’s AdWords product. Juda Decl.¶16. AdWords consists of a series of algorithms, including algorithms and other processes that implement the trademark policies that Google created based on, among other things, consumer experiments. Google regularly analyzes the efficacy of its policies, processes and systems. Juda Decl.¶18. Google therefore requests indefinite *in camera* treatment for these documents.

D. Group 4

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

algorithms and processes that are not available to the public as well as his opinion, as a representative of Google, about how the algorithms and processes would function in various circumstances. Juda Decl.¶20. This detailed information provides competitively sensitive information that would cause harm to Google if made publicly available. Specifically, Google's competitors could attempt to replicate Google algorithms if they received the confidential information contained in the transcript.

Portions of Mr. Juda's testimony constitute trade secrets as they provide confidential information about Google algorithms that are central to Google's search advertising offerings. Juda Decl.¶21. Mr. Juda also provided personal information in his testimony. Juda Decl.¶21. Google therefore requests indefinite *in camera* treatment for these transcript portions.

2. Gavin Charlston's Testimony

Gavin Charlston provided testimony regarding the formulation and implementation of AdWords' trademark policies, processes and systems, as well as testimony regarding confidential settlement agreements. Mr. Charlston's testimony included descriptions of Google's reasons for designing its trademark policies, processes and systems in the way that it did. Juda Decl.¶22. As discussed above, such information could be used by Google's rivals in designing their own platforms and/or could be used against Google in litigation. Mr. Charlston's testimony about confidential settlement agreements included non-public information about the terms of the settlement agreements. Juda Decl.¶22. [REDACTED]

[REDACTED]

[REDACTED] Juda Decl.¶22.

Portions of Mr. Charlston's testimony constitute trade secrets because they provide information (a) about the design and functioning of secret formulas that underlie AdWords and

(b) [REDACTED]
[REDACTED] Google therefore requests indefinite *in camera* treatment for these transcript portions.

F. Group 6

Group 6 consists of internal communications analyzing questions raised by 1-800 Contacts regarding AdWords. These communications are not public and have not been widely disseminated within Google. Juda Decl. ¶23 & 27. The documents contain competitively sensitive information about Google's internal analyses and processes related to customer AdWords accounts. Juda Decl. ¶24. Several of the documents also contain confidential data from Google's proprietary databases revealing [REDACTED] bids and bidding strategies. Juda Decl. ¶25-26. Disclosure of these documents would diminish competitive advantages for both Google and its customers, [REDACTED]

[REDACTED]

These documents contain trade secrets related to Google's implementation of its trademark policies and other AdWords functions. Moreover, several of these documents reveal data that are inputs into Google's secret formulas that underlie AdWords algorithms and Google's data-driven offerings to advertisers. For [REDACTED] some Group 6 documents contain information revealing their bidding strategies. Google therefore requests indefinite *in camera* treatment for these documents.

G. Group 7

Group 7 consists of a single internal document about AdWords quality score, drafted to provide employees with instructions on customer-facing communications. The document has not been made public. Juda Decl. ¶28. Disclosure of the document could provide nonpublic

information to Google's rivals regarding the details of Google's quality score system and Google processes for responding to customer issues. Juda Decl.¶28. This document was also part of the sealed joint appendix in *Rosetta Stone Ltd. v. Google, Inc.*, 676 F.3d 144 (4th Cir. 2012). Juda Decl.¶29.

This document contains trade secrets related to the functioning of some of the algorithms that make up AdWords. Google therefore requests indefinite *in camera* treatment for this document.

CONCLUSION

For the foregoing reasons, and the reasons set out in the accompanying Declarations of Adam Juda and Munesh Mahtani, Google respectfully requests that this Court grant indefinite *in camera* treatment for the Confidential Materials.

Dated: March 27, 2017

Respectfully submitted,

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Empire Vision Center - Lens123- Visionworks - Related KWDs.xlsx	GOOG-LENSE- 00000006	GOOG-LENSE- 00000006
Empire Vision Center - Lens123- Visionworks - Negative KWDs All.xlsx	GOOG-LENSE- 00000007	GOOG-LENSE- 00000007
Empire Vision Center - Lens123- Visionworks - Related Negative KWDs.xlsx	GOOG-LENSE- 00000008	GOOG-LENSE- 00000008
Empire Vision Center - Lens123- Visionworks - Change History.xlsx	GOOG-LENSE- 00000009	GOOG-LENSE- 00000009
Lens.com KWDs All.xlsx	GOOG-LENSE- 00000010	GOOG-LENSE- 00000010
Lens.com - Negative KWDs All.xlsx	GOOG-LENSE- 00000011	GOOG-LENSE- 00000011
Lens.com - Related Negative KWDs.xlsx	GOOG-LENSE- 00000012	GOOG-LENSE- 00000012
Lens.com - Change History.xlsx	GOOG-LENSE- 00000013	GOOG-LENSE- 00000013
Contact Lens King - KWDs All.xlsx	GOOG-LENSE- 00000014	GOOG-LENSE- 00000014
Contact Lens King - Negative KWDs All.xlsx	GOOG-LENSE- 00000015	GOOG-LENSE- 00000015
Contact Lens King - Related Negative KWDs.xlsx	GOOG-LENSE- 00000016	GOOG-LENSE- 00000016
Contact Lens King - Change History.xlsx	GOOG-LENSE- 00000017	GOOG-LENSE- 00000017

Lens for Less - KWDs All.xlsx	GOOG-LENSE-00000018	GOOG-LENSE-00000018
Lens for Less - Related KWDs.xlsx	GOOG-LENSE-00000019	GOOG-LENSE-00000019
Lens for Less - Negative KWDs All.xlsx	GOOG-LENSE-00000020	GOOG-LENSE-00000020
Lens for Less - Negative Related KWDs.xlsx	GOOG-LENSE-00000021	GOOG-LENSE-00000021
Lens for Less - Change History.xlsx	GOOG-LENSE-00000022	GOOG-LENSE-00000022
Lensfast LLC - KWDs All.xlsx	GOOG-LENSE-00000023	GOOG-LENSE-00000023
Lensfast LLC - Related KWDs.xlsx	GOOG-LENSE-00000024	GOOG-LENSE-00000024
Lensfast LLC - Negative KWDs All.xlsx	GOOG-LENSE-00000025	GOOG-LENSE-00000025
Lensfast LLC - Related Negative KWDs.xlsx	GOOG-LENSE-00000026	GOOG-LENSE-00000026
Lensfast KWD-related changes.xlsx	GOOG-LENSE-00000027	GOOG-LENSE-00000027
Memorial Eye - KWDs All.xlsx	GOOG-LENSE-00000028	GOOG-LENSE-00000028
Memorial Eye - Negative KWDs All.xlsx	GOOG-LENSE-00000029	GOOG-LENSE-00000029
Memorial Eye - Related Negative KWDs.xlsx	GOOG-LENSE-00000030	GOOG-LENSE-00000030
Memorial Eye - Change History.xlsx	GOOG-LENSE-00000031	GOOG-LENSE-00000031
Standard Optical Company - KWDs All.xlsx	GOOG-LENSE-00000032	GOOG-LENSE-00000032

Standard Optical Company - Negative KWDs All.xlsx	GOOG-LENSE- 00000033	GOOG-LENSE- 00000033
Standard Optical Company - Related Negative KWDs.xlsx	GOOG-LENSE- 00000034	GOOG-LENSE- 00000034
Standard Optical Company - Change History.xlsx	GOOG-LENSE- 00000035	GOOG-LENSE- 00000035
Web Eye Care - KWDs All.xlsx	GOOG-LENSE- 00000036	GOOG-LENSE- 00000036
Web Eye Care - Negative KWDs All.xlsx	GOOG-LENSE- 00000037	GOOG-LENSE- 00000037
Web Eye Care - Related Negative KWDs.xlsx	GOOG-LENSE- 00000038	GOOG-LENSE- 00000038
Web Eye Care - Change History.xlsx	GOOG-LENSE- 00000039	GOOG-LENSE- 00000039
EZContactsUSA - KWDs All.xlsx	GOOG-LENSE- 00000040	GOOG-LENSE- 00000040
Lensworld.com - KWDs All.xlsx	GOOG-LENSE- 00000041	GOOG-LENSE- 00000041
Lensworld.com - Negative KWDs All.xlsx	GOOG-LENSE- 00000042	GOOG-LENSE- 00000042
Oakwood Eye Clinic - KWDs All.xlsx	GOOG-LENSE- 00000043	GOOG-LENSE- 00000043
Oakwood Eye Clinic - Negative KWDs All.xlsx	GOOG-LENSE- 00000044	GOOG-LENSE- 00000044
Replacemycontacts - KWDs All.xlsx	GOOG-LENSE- 00000045	GOOG-LENSE- 00000045
Replacemycontacts.com - Related KWDs.xlsx	GOOG-LENSE- 00000046	GOOG-LENSE- 00000046

Replacemycontacts - Negative KWDs All.xlsx	GOOG-LENSE-00000047	GOOG-LENSE-00000047
Replacemycontacts.com - History Change.xlsx	GOOG-LENSE-00000048	GOOG-LENSE-00000048
Coastal Contacts - KWDs All.xlsx	GOOG-LENSE-00000049	GOOG-LENSE-00000049
Coastal Contacts - Related KWDs.xlsx	GOOG-LENSE-00000050	GOOG-LENSE-00000050
Coastal Contacts - Negative KWDs All.xlsx	GOOG-LENSE-00000051	GOOG-LENSE-00000051
Coastal Contacts - Negative KWDs.xlsx	GOOG-LENSE-00000052	GOOG-LENSE-00000052
Coastal Contacts - Change History.xlsx	GOOG-LENSE-00000053	GOOG-LENSE-00000053
AC Lens - KWDs All.xlsx	GOOG-LENSE-00000054	GOOG-LENSE-00000054
AC Lens - Related KWDs.xlsx	GOOG-LENSE-00000055	GOOG-LENSE-00000055
AC Lens - Negative KWDs All.xlsx	GOOG-LENSE-00000056	GOOG-LENSE-00000056
AC Lens - Related Negative KWDs.xlsx	GOOG-LENSE-00000057	GOOG-LENSE-00000057
AC Lens - Change History.xlsx	GOOG-LENSE-00000058	GOOG-LENSE-00000058
Walgreens All KWDs.xlsx	GOOG-LENSE-00000059	GOOG-LENSE-00000059
Walgreens - Related KWDs.xlsx	GOOG-LENSE-00000060	GOOG-LENSE-00000060
Walgreens - Negative KWDs All.xlsx	GOOG-LENSE-00000061	GOOG-LENSE-00000061

Walgreens - Related Negative KWDs.xlsx	GOOG-LENSE-00000062	GOOG-LENSE-00000062
Walgreens - KWD Change History.xlsx	GOOG-LENSE-00000063	GOOG-LENSE-00000063
Query Data.xlsx	GOOG-LENSE-00000064	GOOG-LENSE-00000064
Lenses Keyword Data for FTC.xlsx.xlsx	GOOG-LENSE-00000861	GOOG-LENSE-00000861
Lenses_Keyword_Data_for_FTC_2007-2010.csv - Query & CPC Data.csv.csv	GOOG-LENSE-00000862	GOOG-LENSE-00000862
Lenses_Keyword_Data_for_FTC_2011.csv -Sara Report 2011.csv.csv	GOOG-LENSE-00000863	GOOG-LENSE-00000863
Lenses Keyword Data for FTC - Apr 2016.xlsx	GOOG-LENSE-00001023	GOOG-LENSE-00001023
FTC5Conv.csv	GOOG-LENSE-00001024	GOOG-LENSE-00001024
FTC2Exact.csv	GOOG-LENSE-00001025	GOOG-LENSE-00001025
FTC4Metrics.csv	GOOG-LENSE-00001026	GOOG-LENSE-00001026
FTC1Phrase.csv	GOOG-LENSE-00001027	GOOG-LENSE-00001027
USA queries-1800contacts.xlsx	GOOG-LENSE-00001028	GOOG-LENSE-00001028
FTC5.csv	GOOG-LENSE-00001029	GOOG-LENSE-00001029
FTC2Broad.csv	GOOG-LENSE-00001030	GOOG-LENSE-00001030

FTC4CurrQualityScore.csv	GOOG-LENSE-00001031	GOOG-LENSE-00001031
FTC4ConvMetrics.csv	GOOG-LENSE-00001032	GOOG-LENSE-00001032
FTC1Broad.csv	GOOG-LENSE-00001033	GOOG-LENSE-00001033
FTC1Exact.csv	GOOG-LENSE-00001034	GOOG-LENSE-00001034
FTC2Phrase.csv	GOOG-LENSE-00001035	GOOG-LENSE-00001035
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change_history 844-104-1090 post 3.12.csv	GOOG-LENSE-00001037	GOOG-LENSE-00001037
change_history 985-629-1350 pre 3.12.csv	GOOG-LENSE-00001038	GOOG-LENSE-00001038
change_history 985-629-1350 post 3.12.csv	GOOG-LENSE-00001039	GOOG-LENSE-00001039
change_history 868-971-1134 post 3.12.csv	GOOG-LENSE-00001040	GOOG-LENSE-00001040
change_history 482-714-6688 post 3.12.csv	GOOG-LENSE-00001041	GOOG-LENSE-00001041
change_history 482-714-6688 pre 3.12.csv	GOOG-LENSE-00001042	GOOG-LENSE-00001042
change_history 994-531-4790 pre 3.12.csv	GOOG-LENSE-00001043	GOOG-LENSE-00001043
change_history 994-531-4790 post 3.12.csv	GOOG-LENSE-00001044	GOOG-LENSE-00001044
change_history 312-890-9723 pre 3.12.csv	GOOG-LENSE-00001045	GOOG-LENSE-00001045

change_history 312-890-9723 post 3.12.csv	GOOG-LENSE-00001046	GOOG-LENSE-00001046
change_history 872-654-6179 post 3.12.csv	GOOG-LENSE-00001047	GOOG-LENSE-00001047
change_history 872-654-6179 pre 3.12.csv	GOOG-LENSE-00001048	GOOG-LENSE-00001048
change_history 658-691-0778 post 3.12.csv	GOOG-LENSE-00001049	GOOG-LENSE-00001049
change_history 658-691-0778 pre 3.12.csv	GOOG-LENSE-00001050	GOOG-LENSE-00001050
change_history 628-736-6984 pre 3.12.csv	GOOG-LENSE-00001051	GOOG-LENSE-00001051
change_history 628-736-6984 post 3.12.csv	GOOG-LENSE-00001052	GOOG-LENSE-00001052
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change_history 601-647-7780 post 3.12.csv	GOOG-LENSE-00001057	GOOG-LENSE-00001057
change_history 526-042-8653 post 3.12.csv	GOOG-LENSE-00001058	GOOG-LENSE-00001058
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change_history 397-934-5268 post 3.12.csv	GOOG-LENSE-00001060	GOOG-LENSE-00001060

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change_history 463-691-1429 pre 3.12.csv	GOOG-LENSE-00001062	GOOG-LENSE-00001062
change_history 641-633-9718 post 3.12.csv	GOOG-LENSE-00001063	GOOG-LENSE-00001063
change_history 287-574-3937 pre 3.12.csv	GOOG-LENSE-00001064	GOOG-LENSE-00001064
change_history 287-574-3937 post 3.12.csv	GOOG-LENSE-00001065	GOOG-LENSE-00001065
change_history 450-083-9329 post 3.12.csv	GOOG-LENSE-00001066	GOOG-LENSE-00001066
change_history 450-083-9329 pre 3.12.csv	GOOG-LENSE-00001067	GOOG-LENSE-00001067
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change_history 387-809-6582 post 3.12.csv	GOOG-LENSE-00001069	GOOG-LENSE-00001069
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change_history 894-070-0992 pre 3.12.csv	GOOG-LENSE-00001071	GOOG-LENSE-00001071
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change_history 367-770-4588 pre 3.12.csv	GOOG-LENSE-00001073	GOOG-LENSE-00001073
change_history 367-770-4588 post 3.12.csv	GOOG-LENSE-00001074	GOOG-LENSE-00001074
change_history 780-148-2580 pre 3.12.csv	GOOG-LENSE-00001075	GOOG-LENSE-00001075

change_history 780-148-2580 post 3.12.csv	GOOG-LENSE-00001076	GOOG-LENSE-00001076
change_history 541-595-9836 post 3.12.csv	GOOG-LENSE-00001077	GOOG-LENSE-00001077
change_history 356-529-4816 post 3.12.csv	GOOG-LENSE-00001078	GOOG-LENSE-00001078
change_history 416-056-3122 post 3.12.csv	GOOG-LENSE-00001079	GOOG-LENSE-00001079
change_history 762-301-1781 post 3.12.csv	GOOG-LENSE-00001080	GOOG-LENSE-00001080
change_history 272-816-2622 post 3.12.csv	GOOG-LENSE-00001081	GOOG-LENSE-00001081
change_history 975-377-9959 post 3.12.csv	GOOG-LENSE-00001082	GOOG-LENSE-00001082
change_history 711-960-5233 post 3.12.csv	GOOG-LENSE-00001083	GOOG-LENSE-00001083
change_history 711-960-5233 pre 3.12.csv	GOOG-LENSE-00001084	GOOG-LENSE-00001084
change_history 547-858-4984 pre 3.12.csv	GOOG-LENSE-00001085	GOOG-LENSE-00001085
change_history 547-858-4984 post 3.12.csv	GOOG-LENSE-00001086	GOOG-LENSE-00001086
change_history 676-330-7678 post 3.12.csv	GOOG-LENSE-00001087	GOOG-LENSE-00001087
change_history 676-330-7678 pre 3.12.csv	GOOG-LENSE-00001088	GOOG-LENSE-00001088
change_history 465-962-1681 pre 3.12.csv	GOOG-LENSE-00001089	GOOG-LENSE-00001089
change_history 465-962-1681 post 3.12.csv	GOOG-LENSE-00001090	GOOG-LENSE-00001090

change_history 926-404-1675 post 3.12.csv	GOOG-LENSE-00001091	GOOG-LENSE-00001091
change_history 926-404-1675 pre 3.12.csv	GOOG-LENSE-00001092	GOOG-LENSE-00001092
change_history 747-736-3758 pre 3.12.csv	GOOG-LENSE-00001093	GOOG-LENSE-00001093
change_history 747-736-3758 post 3.12.csv	GOOG-LENSE-00001094	GOOG-LENSE-00001094
change_history 338-792-8756 post 3.12.csv	GOOG-LENSE-00001095	GOOG-LENSE-00001095
change_history 338-792-8756 pre 3.12.csv	GOOG-LENSE-00001096	GOOG-LENSE-00001096
change_history 730-304-9404 pre 3.12.csv	GOOG-LENSE-00001097	GOOG-LENSE-00001097
change_history 730-304-9404 post 3.12.csv	GOOG-LENSE-00001098	GOOG-LENSE-00001098
change_history 859-886-9040 pre 3.12.csv	GOOG-LENSE-00001099	GOOG-LENSE-00001099
change_history 859-886-9040 post 3.12.csv	GOOG-LENSE-00001100	GOOG-LENSE-00001100
change_history 573-606-7167 post 3.12.csv	GOOG-LENSE-00001101	GOOG-LENSE-00001101
change_history 635-583-3623 pre 3.12.csv	GOOG-LENSE-00001102	GOOG-LENSE-00001102
change_history 635-583-3623 post 3.12.csv	GOOG-LENSE-00001103	GOOG-LENSE-00001103
QualityScore_LargerSet_A.csv	GOOG-LENSE-00001104	GOOG-LENSE-00001104
Metrics_LargerSet_A.csv	GOOG-LENSE-00001105	GOOG-LENSE-00001105

QualityScore_LargerSet_B.csv	GOOG-LENSE-00001106	GOOG-LENSE-00001106
ics_LargerSet_A.csv	GOOG-LENSE-00001107	GOOG-LENSE-00001107
Metrics_LargerSet_B.csv	GOOG-LENSE-00001108	GOOG-LENSE-00001108
ics_LargerSet_B.csv	GOOG-LENSE-00001109	GOOG-LENSE-00001109
FTCMetrics_LargerSet_E.csv	GOOG-LENSE-00001110	GOOG-LENSE-00001110
FTC4ConvMetrics_LargerSet_C.csv	GOOG-LENSE-00001111	GOOG-LENSE-00001111
FTCMetrics_LargerSet_D.csv	GOOG-LENSE-00001112	GOOG-LENSE-00001112
FTC4CurrQualityScore_LargerSet_E.csv	GOOG-LENSE-00001113	GOOG-LENSE-00001113
FTC4ConvMetrics_LargerSet_E.csv	GOOG-LENSE-00001114	GOOG-LENSE-00001114
FTC4CurrQualityScore_LargerSet_C.csv	GOOG-LENSE-00001115	GOOG-LENSE-00001115
FTCMetrics_LargerSet_C.csv	GOOG-LENSE-00001116	GOOG-LENSE-00001116
FTC4ConvMetrics_LargerSet_D.csv	GOOG-LENSE-00001117	GOOG-LENSE-00001117
FTC4CurrQualityScore_LargerSet_D.csv	GOOG-LENSE-00001118	GOOG-LENSE-00001118
GOOG-LENSE-00001189 - CONFIDENTIAL -FTC Docket 9372.csv	GOOG-LENSE-00001189	GOOG-LENSE-00001189

GOOG-LENSE-00001190 - CONFIDENTIAL –FTC Docket 9372.csv	GOOG-LENSE- 00001190	GOOG-LENSE- 00001190
GOOG-LENSE-00001191 - CONFIDENTIAL –FTC Docket 9372.csv	GOOG-LENSE- 00001191	GOOG-LENSE- 00001191
GOOG-LENSE-00001192 - CONFIDENTIAL –FTC Docket 9372.csv	GOOG-LENSE- 00001192	GOOG-LENSE- 00001192
GOOG-LENSE-00001193 - CONFIDENTIAL –FTC Docket 9372.csv	GOOG-LENSE- 00001193	GOOG-LENSE- 00001193
change_history 101-155- 6460 pre 3.12.csv	GOOG-LENSE- 00005736	GOOG-LENSE- 00005736
change_history 807-414- 9949 post 3.12.csv	GOOG-LENSE- 00005737	GOOG-LENSE- 00005737
change_history 989-130- 8749 pre 3.12.csv	GOOG-LENSE- 00005738	GOOG-LENSE- 00005738
change_history 728-705- 0050 pre 3.12.csv	GOOG-LENSE- 00005739	GOOG-LENSE- 00005739
change_history 343-911- 6682 pre 3.12.csv	GOOG-LENSE- 00005740	GOOG-LENSE- 00005740
change_history 835-397- 9900 pre 3.12.csv	GOOG-LENSE- 00005741	GOOG-LENSE- 00005741
change_history 409-511- 2250 pre 3.12.csv	GOOG-LENSE- 00005742	GOOG-LENSE- 00005742
change_history 785-303- 1882 post 3.12.csv	GOOG-LENSE- 00005743	GOOG-LENSE- 00005743
change_history 635-583- 3623 pre 3.12.csv	GOOG-LENSE- 00005744	GOOG-LENSE- 00005744

change_history 513-350-0860 pre 3.12.csv	GOOG-LENSE-00005745	GOOG-LENSE-00005745
change_history 246-874-3810 pre 3.12.csv	GOOG-LENSE-00005746	GOOG-LENSE-00005746
change_history 741-507-2349 pre 3.12.csv	GOOG-LENSE-00005747	GOOG-LENSE-00005747
change_history 930-488-3476 post 3.12.csv	GOOG-LENSE-00005748	GOOG-LENSE-00005748
change_history 952-324-4943 3.12.csv	GOOG-LENSE-00005749	GOOG-LENSE-00005749
change_history 989-130-8749 post 3.12.csv	GOOG-LENSE-00005750	GOOG-LENSE-00005750
change_history 930-488-3476 pre 3.12.csv	GOOG-LENSE-00005751	GOOG-LENSE-00005751
change_history 785-303-1882 pre 3.12.csv	GOOG-LENSE-00005752	GOOG-LENSE-00005752
change_history 367-770-4588.csv	GOOG-LENSE-00005753	GOOG-LENSE-00005753
change_history 894-070-0992 post 3.12.csv	GOOG-LENSE-00005754	GOOG-LENSE-00005754
change_history 287-574-3937 post 3.12.csv	GOOG-LENSE-00005755	GOOG-LENSE-00005755
change_history 694-447-2879 pre 3.12.csv	GOOG-LENSE-00005756	GOOG-LENSE-00005756
change_history 287-574-3937 pre 3.12.csv	GOOG-LENSE-00005757	GOOG-LENSE-00005757
change_history 635-583-3623 post 3.12.csv	GOOG-LENSE-00005758	GOOG-LENSE-00005758
change_history 741-507-2349 post 3.12.csv	GOOG-LENSE-00005759	GOOG-LENSE-00005759

change_history 894-070-0992 pre 3.12.csv	GOOG-LENSE-00005760	GOOG-LENSE-00005760
change_history 750-987-8839 pre 3.12.csv	GOOG-LENSE-00005761	GOOG-LENSE-00005761
change_history 807-414-9949 pre 3.12.csv	GOOG-LENSE-00005762	GOOG-LENSE-00005762
change_history 119-968-4660 pre 3.12.csv	GOOG-LENSE-00005763	GOOG-LENSE-00005763
change_history 115-538-4233 pre 3.12.csv	GOOG-LENSE-00005764	GOOG-LENSE-00005764
change_history 996-978-0140 pre 3.12.csv	GOOG-LENSE-00005765	GOOG-LENSE-00005765

II. GROUP 2

Document Title/Description	Beginning Bates No.	Ending Bates No.
Eye Tracking Study Search Pages	GOOG-LENSE-00004885	GOOG-LENSE-00004963
Introduction re Eye Tracking Study	GOOG-LENSE-00004964	GOOG-LENSE-00004964
Field Studies Preview 1. Appetizers from EPCOT study of October 23-27, 2006 2. Amuse bouche Field studies of October 1-23, 2006 Daniel M. Russell SQ Leads, Nov 14, 2006	GOOG-LENSE-00005653	GOOG-LENSE-00005687
EPCOT Study Report: What do Users See about Google Ads? Fiona Lee & Daniel M. Russell Presented: AdMetrics Meeting, March 15, 2007	GOOG-LENSE-00005688	GOOG-LENSE-00005735



III. GROUP 3

Document Title/Description	Beginning Bates No.	Ending Bates No.
Email from Prashant Fuloria to Rose Hagan, Michael Mayzel, Alana@Google.com, et al. re: PR Draft-Trademark FAQ/key msgs	GOOG-LENSE-00000935	GOOG-LENSE-00000938
Email to Prashant Fuloria to Maria Stone, Rose Hagan, Nikhil Bhatla re: Preliminary results from user experiment #2	GOOG-LENSE-00000943	GOOG-LENSE-00000944
Google Keyword Survey	GOOG-LENSE-00000948	GOOG-LENSE-00000963
E-mail from Prashant Fuloria to tish@google.com and others re Trademark policy transition - update #2 (2/25)	GOOG-LENSE-00000870	GOOG-LENSE-00000871
Email from Ramsey Homsany to rose@google.com, bismarck@google.com re: Trademark Presentation w/Attach: Trademark Policy.PPT	GOOG-LENSE-00000872	GOOG-LENSE-00000882

E-mail from Michael Mayzel to kraneteam@google.com; Sheryl Sandberg; Cindy McCaffrey re Updated Trademark PR FAQ/key msgs	GOOG-LENSE-00000901	GOOG-LENSE-00000905
Email from Bismarck Lepe to ad-sales@google.com and Rose Hagan re: TM Update: Legal/Policy Email Sent	GOOG-LENSE-00000906	GOOG-LENSE-00000906
Domestic Trademark Policy Change Transition Plan Discussion Prashant Fuloria February 23, 2004	GOOG-LENSE-00000910	GOOG-LENSE-00000914
Trademark Policy Discussion Impact on Advertiser ROI and Google Revenue	GOOG-LENSE-00000915	GOOG-LENSE-00000921
New Trademark Policy & Process Document March 29, 2004	GOOG-LENSE-00000922	GOOG-LENSE-00000924
Trademark Policy Discussion Impact on Advertiser ROI and Google Revenue	GOOG-LENSE-00000925	GOOG-LENSE-00000931
E-mail from Rose Hagan to Prashant Fuloria and cc Maria Stone re Trademarks - usability study discussion	GOOG-LENSE-00000933	GOOG-LENSE-00000934

Email from Kulpreet Rana to Jacob Jacoby and Rose Hagan re: another test..." w/Attach: Trademark Study 2.doc	GOOG-LENSE-00000939	GOOG-LENSE-00000942
Email from Prashant Fuloria to Sheryl Sandberg, Tim Armstrong, Salar Kamangar re: Trademark user experiment results and timing of policy changes	GOOG-LENSE-00001017	GOOG-LENSE-00001017
Email from Prashant Fuloria to Salar Kamangar re: Preliminary results from user experiment #2 w/Attach: Trademark Experiment #2 Data Rev 1 Mar 10 2004.xls	GOOG-LENSE-00001018	GOOG-LENSE-00001020
Email from Prashant Fuloria to Salar Kamangar re: Trademark policy transition - update #3 (3/2)	GOOG-LENSE-00001021	GOOG-LENSE-00001022
Trademark Experiment (redacted); Trademark Experiments 2 and 4	GOOG-LENSE-00003745	GOOG-LENSE-00003752
Trademark Experiments 2 and 4 (redacted)	GOOG-LENSE-00003810	GOOG-LENSE-00003814
Trademark Study - Level of confusion comparison Experiment 2 and 3	GOOG-LENSE-00004047	GOOG-LENSE-00004048
Trademark Experiment (redacted); Trademark Experiments 2 and 4	GOOG-LENSE-00004231	GOOG-LENSE-00004237

IV. GROUP 4

Document Title/Description	Beginning Bates No.	Ending Bates No.
	GOOG-LENSE-00000864	GOOG-LENSE-00000869
	GOOG-LENSE-00005766	GOOG-LENSE-00005873

V. GROUP 5

Document Title/Description	Deposition Sections
Deposition Transcript of Adam Juda (PARTIAL)	7:1-2; 17:7-20:2; 24:18-21; 25:12-26:23; 31:16-38:2; 38:24-39:11; 40:5-18; 41:12-20; 42:20-43:7; 43:16-48:10; 48:16-54:3; 55:1-66:11; 67:2-69:3; 73:1-15; 75:12-76:9; 76:21-79:24; 80:13-83:13; 83:19-95:17; 104:13-18; 108:20-109:14; 110:5-112:6; 112:16-113:12; 113:23-114:15; 114:22-116:3; 116:21-117:6; 118:8-17; 119:13-123:16; 124:19-130:7; 132:4-137:5; 137:23-140:11; 142:10-143:13; 144:2-160:14; 163:20-168:10; 170:12-173:15; 174:8-11; 174:19-175:16; 176:13-181:13; 182:17-183:2; 188:7-192:19; 196:6-197:24; 198:12-200:13; 205:1-206:22; 207:14-217:16; 218:25-226:12; 227:12-229:4; 229:16-230:5
Deposition Transcript of Gavin Charlston (PARTIAL)	21:6-33:22; 34:23-45:4; 54:3-56:7; 56:15-62:1; 65:13-18; 66:13-78:8; 78:20-119:1; 119:17-18; 120:5-123:25; 126:7-129:17; 131:4-18; 132:18-134:16; 135:17-136:10; 138:16-141:11; 141:22-143:6; 145:7-158:19; 162:13-170:21; 173:14-176:20; 180:24-182:14; 183:21-184:21; 187:19-189:8; 190:10-191:20; 192:13-205:13; 206:11-209:3

VI. GROUP 6

Document Title/Description	Beginning Bates No.	Ending Bates No.
E-mail from Adrian Barajas to Baiju Hindocha and cc to mohitbagga@google.com; Natalia Bohm re Trademark Keywords Quality Score (PARTIAL)	GOOG-LENSE-00000065	GOOG-LENSE-00000066
E-mail from Baiju Hindocha to Natalie Bohm and cc to Mohit Bagga and BCC to po5@google.com re Trademark Keywords Quality Score (PARTIAL)	GOOG-LENSE-00000083	GOOG-LENSE-00000083
E-mail from Baiju Hindocha to Natlia Bohm and cc Mohit Bagga and Bcc PO5@google.com re Negative Keyword Matching (PARTIAL)	GOOG-LENSE-00000127	GOOG-LENSE-00000127
E-mail from Baiju Hindocha to Natalia Bohm re Avg. CPC Increase (PARTIAL)	GOOG-LENSE-00000262	GOOG-LENSE-00000262
1-800 Contacts Trademark Terms CPC Rise - May 2014	GOOG-LENSE-00000266	GOOG-LENSE-00000266
E-mail from Natalia Bohm to Baiju Hindocha re Avg. CPC Increase (PARTIAL)	GOOG-LENSE-00000282	GOOG-LENSE-00000283

E-mail from Baiju Hindocha to Natalia Bohm and cc Mohit Bagga re Trademark Keywords Quality Score (PARTIAL)	GOOG-LENSE-00000288	GOOG-LENSE-00000288
E-mail from Baiju Hindocha to Natalia Bohm cc Mohit Bagga re Negative Keyword Matching (PARTIAL)	GOOG-LENSE-00000318	GOOG-LENSE-00000318
E-mail from Baiju Hindocha to Natalia Bohm re Avg, CPC Increase (PARTIAL)	GOOG-LENSE-00000320	GOOG-LENSE-00000321
Email from Google AdWords Trademark Team to Paige Rossetti re: [#199698076] Trademark Protection	GOOG-LENSE-00000471	GOOG-LENSE-00000472
Email from "paige" <paige.r@google.com> to ads-trademarks@google.com re [C#199657382] Trademark Protection (PARTIAL)	GOOG-LENSE-00000648	GOOG-LENSE-00000648
E-mail from sandra.s@google.com to ads-trademarks@google.com re [#43650922] Trademark question: 1800Contacts	GOOG-LENSE-00000856	GOOG-LENSE-00000858

<p>Email from Google AdWords Trademark Team to Fiona Sortor re: [#43650922] Trademark question</p>	<p>GOOG-LENSE-00000859</p>	<p>GOOG-LENSE-00000860</p>
<p>Email from Natalia Bohm to Mohit Bagga re Clinic Interaction in category: Adelphi Tracking Category - Brand & Performance - Troubleshooting (Fix/Explain) - Search - Ad Serving & Quality - Ad Serving - Performance/Traffic Fluctuation - CPC Fluctuation</p>	<p>GOOG-LENSE-00001185</p>	<p>GOOG-LENSE-00001186</p>
<p>Re: Clinic interaction in category: Adelphi Tracking Category - Brand& Performance - Troubleshooting (Fix/Explain) - Search - Ad Serving & Quality - Ad Serving - Performance/Traffic Fluctuation - CPC Fluctuation</p>	<p>GOOG-LENSE-00001187</p>	<p>GOOG-LENSE-00001188</p>

VII. GROUP 7

Document Title/Description	Beginning Bates No.	Ending Bates No.
Ads Quality Communication Document Search (Draft)	GOOG-LENSE-00004081	GOOG-LENSE-00004089

DATED: _____

D. Michael Chappell
Chief Administrative Law Judge

I. GROUP 1

Document Title/Description	Beginning Bates No.	Ending Bates No.
1-800 Contacts - KWDs All.xlsx	GOOG-LENSE-00000001	GOOG-LENSE-00000001
1-800 Contacts - Related KWDs.xlsx	GOOG-LENSE-00000002	GOOG-LENSE-00000002
1-800 Contacts - Negative KWDs All.xlsx	GOOG-LENSE-00000003	GOOG-LENSE-00000003
1-800 Contacts Inc - Change History.xlsx	GOOG-LENSE-00000004	GOOG-LENSE-00000004
Empire Vision Center _ Lens123_ Visionworks - KWDs All.xlsx	GOOG-LENSE-00000005	GOOG-LENSE-00000005
Empire Vision Center - Lens123- Visionworks - Related KWDs.xlsx	GOOG-LENSE-00000006	GOOG-LENSE-00000006
Empire Vision Center - Lens123- Visionworks - Negative KWDs All.xlsx	GOOG-LENSE-00000007	GOOG-LENSE-00000007
Empire Vision Center - Lens123- Visionworks - Related Negative KWDs.xlsx	GOOG-LENSE-00000008	GOOG-LENSE-00000008
Empire Vision Center - Lens123- Visionworks - Change History.xlsx	GOOG-LENSE-00000009	GOOG-LENSE-00000009
Lens.com KWDs All.xlsx	GOOG-LENSE-00000010	GOOG-LENSE-00000010
Lens.com - Negative KWDs All.xlsx	GOOG-LENSE-00000011	GOOG-LENSE-00000011

Lens.com - Related Negative KWDs.xlsx	GOOG-LENSE-00000012	GOOG-LENSE-00000012
Lens.com - Change History.xlsx	GOOG-LENSE-00000013	GOOG-LENSE-00000013
Contact Lens King - KWDs All.xlsx	GOOG-LENSE-00000014	GOOG-LENSE-00000014
Contact Lens King - Negative KWDs All.xlsx	GOOG-LENSE-00000015	GOOG-LENSE-00000015
Contact Lens King - Related Negative KWDs.xlsx	GOOG-LENSE-00000016	GOOG-LENSE-00000016
Contact Lens King - Change History.xlsx	GOOG-LENSE-00000017	GOOG-LENSE-00000017
Lens for Less - KWDs All.xlsx	GOOG-LENSE-00000018	GOOG-LENSE-00000018
Lens for Less - Related KWDs.xlsx	GOOG-LENSE-00000019	GOOG-LENSE-00000019
Lens for Less - Negative KWDs All.xlsx	GOOG-LENSE-00000020	GOOG-LENSE-00000020
Lens for Less - Negative Related KWDs.xlsx	GOOG-LENSE-00000021	GOOG-LENSE-00000021
Lens for Less - Change History.xlsx	GOOG-LENSE-00000022	GOOG-LENSE-00000022
Lensfast LLC - KWDs All.xlsx	GOOG-LENSE-00000023	GOOG-LENSE-00000023
Lensfast LLC - Related KWDs.xlsx	GOOG-LENSE-00000024	GOOG-LENSE-00000024
Lensfast LLC - Negative KWDs All.xlsx	GOOG-LENSE-00000025	GOOG-LENSE-00000025

Lensfast LLC - Related Negative KWDs.xlsx	GOOG-LENSE-00000026	GOOG-LENSE-00000026
Lensfast KWD-related changes.xlsx	GOOG-LENSE-00000027	GOOG-LENSE-00000027
Memorial Eye - KWDs All.xlsx	GOOG-LENSE-00000028	GOOG-LENSE-00000028
Memorial Eye - Negative KWDs All.xlsx	GOOG-LENSE-00000029	GOOG-LENSE-00000029
Memorial Eye - Related Negative KWDs.xlsx	GOOG-LENSE-00000030	GOOG-LENSE-00000030
Memorial Eye - Change History.xlsx	GOOG-LENSE-00000031	GOOG-LENSE-00000031
Standard Optical Company - KWDs All.xlsx	GOOG-LENSE-00000032	GOOG-LENSE-00000032
Standard Optical Company - Negative KWDs All.xlsx	GOOG-LENSE-00000033	GOOG-LENSE-00000033
Standard Optical Company - Related Negative KWDs.xlsx	GOOG-LENSE-00000034	GOOG-LENSE-00000034
Standard Optical Company - Change History.xlsx	GOOG-LENSE-00000035	GOOG-LENSE-00000035
Web Eye Care - KWDs All.xlsx	GOOG-LENSE-00000036	GOOG-LENSE-00000036
Web Eye Care - Negative KWDs All.xlsx	GOOG-LENSE-00000037	GOOG-LENSE-00000037
Web Eye Care - Related Negative KWDs.xlsx	GOOG-LENSE-00000038	GOOG-LENSE-00000038
Web Eye Care - Change History.xlsx	GOOG-LENSE-00000039	GOOG-LENSE-00000039

EZContactsUSA - KWDs All.xlsx	GOOG-LENSE-00000040	GOOG-LENSE-00000040
Lensworld.com - KWDs All.xlsx	GOOG-LENSE-00000041	GOOG-LENSE-00000041
Lensworld.com - Negative KWDs All.xlsx	GOOG-LENSE-00000042	GOOG-LENSE-00000042
Oakwood Eye Clinic - KWDs All.xlsx	GOOG-LENSE-00000043	GOOG-LENSE-00000043
Oakwood Eye Clinic - Negative KWDs All.xlsx	GOOG-LENSE-00000044	GOOG-LENSE-00000044
Replacemycontacts - KWDs All.xlsx	GOOG-LENSE-00000045	GOOG-LENSE-00000045
Replacemycontacts.com - Related KWDs.xlsx	GOOG-LENSE-00000046	GOOG-LENSE-00000046
Replacemycontacts - Negative KWDs All.xlsx	GOOG-LENSE-00000047	GOOG-LENSE-00000047
Replacemycontacts.com - History Change.xlsx	GOOG-LENSE-00000048	GOOG-LENSE-00000048
Coastal Contacts - KWDs All.xlsx	GOOG-LENSE-00000049	GOOG-LENSE-00000049
Coastal Contacts - Related KWDs.xlsx	GOOG-LENSE-00000050	GOOG-LENSE-00000050
Coastal Contacts - Negative KWDs All.xlsx	GOOG-LENSE-00000051	GOOG-LENSE-00000051
Coastal Contacts - Negative KWDs.xlsx	GOOG-LENSE-00000052	GOOG-LENSE-00000052
Coastal Contacts - Change History.xlsx	GOOG-LENSE-00000053	GOOG-LENSE-00000053
AC Lens - KWDs All.xlsx	GOOG-LENSE-00000054	GOOG-LENSE-00000054

AC Lens - Related KWDs.xlsx	GOOG-LENSE-00000055	GOOG-LENSE-00000055
AC Lens - Negative KWDs All.xlsx	GOOG-LENSE-00000056	GOOG-LENSE-00000056
AC Lens - Related Negative KWDs.xlsx	GOOG-LENSE-00000057	GOOG-LENSE-00000057
AC Lens - Change History.xlsx	GOOG-LENSE-00000058	GOOG-LENSE-00000058
Walgreens All KWDs.xlsx	GOOG-LENSE-00000059	GOOG-LENSE-00000059
Walgreens - Related KWDs.xlsx	GOOG-LENSE-00000060	GOOG-LENSE-00000060
Walgreens - Negative KWDs All.xlsx	GOOG-LENSE-00000061	GOOG-LENSE-00000061
Walgreens - Related Negative KWDs.xlsx	GOOG-LENSE-00000062	GOOG-LENSE-00000062
Walgreens - KWD Change History.xlsx	GOOG-LENSE-00000063	GOOG-LENSE-00000063
Query Data.xlsx	GOOG-LENSE-00000064	GOOG-LENSE-00000064
Lenses Keyword Data for FTC.xlsx.xlsx	GOOG-LENSE-00000861	GOOG-LENSE-00000861
Lenses_Keyword_Data_for_FTC_2007-2010.csv - Query & CPC Data.csv.csv	GOOG-LENSE-00000862	GOOG-LENSE-00000862
Lenses_Keyword_Data_for_FTC_2011.csv -Sara Report 2011.csv.csv	GOOG-LENSE-00000863	GOOG-LENSE-00000863
Lenses Keyword Data for FTC - Apr 2016.xlsx	GOOG-LENSE-00001023	GOOG-LENSE-00001023

FTC5Conv.csv	GOOG-LENSE-00001024	GOOG-LENSE-00001024
FTC2Exact.csv	GOOG-LENSE-00001025	GOOG-LENSE-00001025
FTC4Metrics.csv	GOOG-LENSE-00001026	GOOG-LENSE-00001026
FTC1Phrase.csv	GOOG-LENSE-00001027	GOOG-LENSE-00001027
USA queries-1800contacts.xlsx	GOOG-LENSE-00001028	GOOG-LENSE-00001028
FTC5.csv	GOOG-LENSE-00001029	GOOG-LENSE-00001029
FTC2Broad.csv	GOOG-LENSE-00001030	GOOG-LENSE-00001030
FTC4CurrQualityScore.csv	GOOG-LENSE-00001031	GOOG-LENSE-00001031
FTC4ConvMetrics.csv	GOOG-LENSE-00001032	GOOG-LENSE-00001032
FTC1Broad.csv	GOOG-LENSE-00001033	GOOG-LENSE-00001033
FTC1Exact.csv	GOOG-LENSE-00001034	GOOG-LENSE-00001034
FTC2Phrase.csv	GOOG-LENSE-00001035	GOOG-LENSE-00001035
change_history 844-104-1090 pre 3.12.csv	GOOG-LENSE-00001036	GOOG-LENSE-00001036
change_history 844-104-1090 post 3.12.csv	GOOG-LENSE-00001037	GOOG-LENSE-00001037
change_history 985-629-1350 pre 3.12.csv	GOOG-LENSE-00001038	GOOG-LENSE-00001038

change_history 985-629-1350 post 3.12.csv	GOOG-LENSE-00001039	GOOG-LENSE-00001039
change_history 868-971-1134 post 3.12.csv	GOOG-LENSE-00001040	GOOG-LENSE-00001040
change_history 482-714-6688 post 3.12.csv	GOOG-LENSE-00001041	GOOG-LENSE-00001041
change_history 482-714-6688 pre 3.12.csv	GOOG-LENSE-00001042	GOOG-LENSE-00001042
change_history 994-531-4790 pre 3.12.csv	GOOG-LENSE-00001043	GOOG-LENSE-00001043
change_history 994-531-4790 post 3.12.csv	GOOG-LENSE-00001044	GOOG-LENSE-00001044
change_history 312-890-9723 pre 3.12.csv	GOOG-LENSE-00001045	GOOG-LENSE-00001045
change_history 312-890-9723 post 3.12.csv	GOOG-LENSE-00001046	GOOG-LENSE-00001046
change_history 872-654-6179 post 3.12.csv	GOOG-LENSE-00001047	GOOG-LENSE-00001047
change_history 872-654-6179 pre 3.12.csv	GOOG-LENSE-00001048	GOOG-LENSE-00001048
change_history 658-691-0778 post 3.12.csv	GOOG-LENSE-00001049	GOOG-LENSE-00001049
change_history 658-691-0778 pre 3.12.csv	GOOG-LENSE-00001050	GOOG-LENSE-00001050
change_history 628-736-6984 pre 3.12.csv	GOOG-LENSE-00001051	GOOG-LENSE-00001051
change_history 628-736-6984 post 3.12.csv	GOOG-LENSE-00001052	GOOG-LENSE-00001052
change_history 803-624-9876 pre 3.12.csv	GOOG-LENSE-00001053	GOOG-LENSE-00001053

change_history 803-624-9876 post 3.12.csv	GOOG-LENSE-00001054	GOOG-LENSE-00001054
change_history 867-676-7328 post 3.12.csv	GOOG-LENSE-00001055	GOOG-LENSE-00001055
change_history 601-647-7780 pre 3.12.csv	GOOG-LENSE-00001056	GOOG-LENSE-00001056
change_history 601-647-7780 post 3.12.csv	GOOG-LENSE-00001057	GOOG-LENSE-00001057
change_history 526-042-8653 post 3.12.csv	GOOG-LENSE-00001058	GOOG-LENSE-00001058
change_history 397-934-5268 pre 3.12.csv	GOOG-LENSE-00001059	GOOG-LENSE-00001059
change_history 397-934-5268 post 3.12.csv	GOOG-LENSE-00001060	GOOG-LENSE-00001060
change_history 463-691-1429 post 3.12.csv	GOOG-LENSE-00001061	GOOG-LENSE-00001061
change_history 463-691-1429 pre 3.12.csv	GOOG-LENSE-00001062	GOOG-LENSE-00001062
change_history 641-633-9718 post 3.12.csv	GOOG-LENSE-00001063	GOOG-LENSE-00001063
change_history 287-574-3937 pre 3.12.csv	GOOG-LENSE-00001064	GOOG-LENSE-00001064
change_history 287-574-3937 post 3.12.csv	GOOG-LENSE-00001065	GOOG-LENSE-00001065
change_history 450-083-9329 post 3.12.csv	GOOG-LENSE-00001066	GOOG-LENSE-00001066
change_history 450-083-9329 pre 3.12.csv	GOOG-LENSE-00001067	GOOG-LENSE-00001067
change_history 387-809-6582 pre 3.12.csv	GOOG-LENSE-00001068	GOOG-LENSE-00001068

change_history 387-809-6582 post 3.12.csv	GOOG-LENSE-00001069	GOOG-LENSE-00001069
change_history 135-491-1720 post 3.12.csv	GOOG-LENSE-00001070	GOOG-LENSE-00001070
change_history 894-070-0992 pre 3.12.csv	GOOG-LENSE-00001071	GOOG-LENSE-00001071
change_history 894-070-0992 post 3.12.csv	GOOG-LENSE-00001072	GOOG-LENSE-00001072
change_history 367-770-4588 pre 3.12.csv	GOOG-LENSE-00001073	GOOG-LENSE-00001073
change_history 367-770-4588 post 3.12.csv	GOOG-LENSE-00001074	GOOG-LENSE-00001074
change_history 780-148-2580 pre 3.12.csv	GOOG-LENSE-00001075	GOOG-LENSE-00001075
change_history 780-148-2580 post 3.12.csv	GOOG-LENSE-00001076	GOOG-LENSE-00001076
change_history 541-595-9836 post 3.12.csv	GOOG-LENSE-00001077	GOOG-LENSE-00001077
change_history 356-529-4816 post 3.12.csv	GOOG-LENSE-00001078	GOOG-LENSE-00001078
change_history 416-056-3122 post 3.12.csv	GOOG-LENSE-00001079	GOOG-LENSE-00001079
change_history 762-301-1781 post 3.12.csv	GOOG-LENSE-00001080	GOOG-LENSE-00001080
change_history 272-816-2622 post 3.12.csv	GOOG-LENSE-00001081	GOOG-LENSE-00001081
change_history 975-377-9959 post 3.12.csv	GOOG-LENSE-00001082	GOOG-LENSE-00001082
change_history 711-960-5233 post 3.12.csv	GOOG-LENSE-00001083	GOOG-LENSE-00001083

change_history 711-960-5233 pre 3.12.csv	GOOG-LENSE-00001084	GOOG-LENSE-00001084
change_history 547-858-4984 pre 3.12.csv	GOOG-LENSE-00001085	GOOG-LENSE-00001085
change_history 547-858-4984 post 3.12.csv	GOOG-LENSE-00001086	GOOG-LENSE-00001086
change_history 676-330-7678 post 3.12.csv	GOOG-LENSE-00001087	GOOG-LENSE-00001087
change_history 676-330-7678 pre 3.12.csv	GOOG-LENSE-00001088	GOOG-LENSE-00001088
change_history 465-962-1681 pre 3.12.csv	GOOG-LENSE-00001089	GOOG-LENSE-00001089
change_history 465-962-1681 post 3.12.csv	GOOG-LENSE-00001090	GOOG-LENSE-00001090
change_history 926-404-1675 post 3.12.csv	GOOG-LENSE-00001091	GOOG-LENSE-00001091
change_history 926-404-1675 pre 3.12.csv	GOOG-LENSE-00001092	GOOG-LENSE-00001092
change_history 747-736-3758 pre 3.12.csv	GOOG-LENSE-00001093	GOOG-LENSE-00001093
change_history 747-736-3758 post 3.12.csv	GOOG-LENSE-00001094	GOOG-LENSE-00001094
change_history 338-792-8756 post 3.12.csv	GOOG-LENSE-00001095	GOOG-LENSE-00001095
change_history 338-792-8756 pre 3.12.csv	GOOG-LENSE-00001096	GOOG-LENSE-00001096
change_history 730-304-9404 pre 3.12.csv	GOOG-LENSE-00001097	GOOG-LENSE-00001097
change_history 730-304-9404 post 3.12.csv	GOOG-LENSE-00001098	GOOG-LENSE-00001098

change_history 859-886-9040 pre 3.12.csv	GOOG-LENSE-00001099	GOOG-LENSE-00001099
change_history 859-886-9040 post 3.12.csv	GOOG-LENSE-00001100	GOOG-LENSE-00001100
change_history 573-606-7167 post 3.12.csv	GOOG-LENSE-00001101	GOOG-LENSE-00001101
change_history 635-583-3623 pre 3.12.csv	GOOG-LENSE-00001102	GOOG-LENSE-00001102
change_history 635-583-3623 post 3.12.csv	GOOG-LENSE-00001103	GOOG-LENSE-00001103
QualityScore_LargerSet_A.csv	GOOG-LENSE-00001104	GOOG-LENSE-00001104
Metrics_LargerSet_A.csv	GOOG-LENSE-00001105	GOOG-LENSE-00001105
QualityScore_LargerSet_B.csv	GOOG-LENSE-00001106	GOOG-LENSE-00001106
ics_LargerSet_A.csv	GOOG-LENSE-00001107	GOOG-LENSE-00001107
Metrics_LargerSet_B.csv	GOOG-LENSE-00001108	GOOG-LENSE-00001108
ics_LargerSet_B.csv	GOOG-LENSE-00001109	GOOG-LENSE-00001109
FTCMetrics_LargerSet_E.csv	GOOG-LENSE-00001110	GOOG-LENSE-00001110
FTC4ConvMetrics_LargerSet_C.csv	GOOG-LENSE-00001111	GOOG-LENSE-00001111
FTCMetrics_LargerSet_D.csv	GOOG-LENSE-00001112	GOOG-LENSE-00001112
FTC4CurrQualityScore_LargerSet_E.csv	GOOG-LENSE-00001113	GOOG-LENSE-00001113

FTC4ConvMetrics_LargerSet_E.csv	GOOG-LENSE-00001114	GOOG-LENSE-00001114
FTC4CurrQualityScore_LargerSet_C.csv	GOOG-LENSE-00001115	GOOG-LENSE-00001115
FTCMetrics_LargerSet_C.csv	GOOG-LENSE-00001116	GOOG-LENSE-00001116
FTC4ConvMetrics_LargerSet_D.csv	GOOG-LENSE-00001117	GOOG-LENSE-00001117
FTC4CurrQualityScore_LargerSet_D.csv	GOOG-LENSE-00001118	GOOG-LENSE-00001118
GOOG-LENSE-00001189 - CONFIDENTIAL -FTC Docket 9372.csv	GOOG-LENSE-00001189	GOOG-LENSE-00001189
GOOG-LENSE-00001190 - CONFIDENTIAL -FTC Docket 9372.csv	GOOG-LENSE-00001190	GOOG-LENSE-00001190
GOOG-LENSE-00001191 - CONFIDENTIAL -FTC Docket 9372.csv	GOOG-LENSE-00001191	GOOG-LENSE-00001191
GOOG-LENSE-00001192 - CONFIDENTIAL -FTC Docket 9372.csv	GOOG-LENSE-00001192	GOOG-LENSE-00001192
GOOG-LENSE-00001193 - CONFIDENTIAL -FTC Docket 9372.csv	GOOG-LENSE-00001193	GOOG-LENSE-00001193
change_history 101-155-6460 pre 3.12.csv	GOOG-LENSE-00005736	GOOG-LENSE-00005736
change_history 807-414-9949 post 3.12.csv	GOOG-LENSE-00005737	GOOG-LENSE-00005737
change_history 989-130-8749 pre 3.12.csv	GOOG-LENSE-00005738	GOOG-LENSE-00005738

change_history 728-705-0050 pre 3.12.csv	GOOG-LENSE-00005739	GOOG-LENSE-00005739
change_history 343-911-6682 pre 3.12.csv	GOOG-LENSE-00005740	GOOG-LENSE-00005740
change_history 835-397-9900 pre 3.12.csv	GOOG-LENSE-00005741	GOOG-LENSE-00005741
change_history 409-511-2250 pre 3.12.csv	GOOG-LENSE-00005742	GOOG-LENSE-00005742
change_history 785-303-1882 post 3.12.csv	GOOG-LENSE-00005743	GOOG-LENSE-00005743
change_history 635-583-3623 pre 3.12.csv	GOOG-LENSE-00005744	GOOG-LENSE-00005744
change_history 513-350-0860 pre 3.12.csv	GOOG-LENSE-00005745	GOOG-LENSE-00005745
change_history 246-874-3810 pre 3.12.csv	GOOG-LENSE-00005746	GOOG-LENSE-00005746
change_history 741-507-2349 pre 3.12.csv	GOOG-LENSE-00005747	GOOG-LENSE-00005747
change_history 930-488-3476 post 3.12.csv	GOOG-LENSE-00005748	GOOG-LENSE-00005748
change_history 952-324-4943 3.12.csv	GOOG-LENSE-00005749	GOOG-LENSE-00005749
change_history 989-130-8749 post 3.12.csv	GOOG-LENSE-00005750	GOOG-LENSE-00005750
change_history 930-488-3476 pre 3.12.csv	GOOG-LENSE-00005751	GOOG-LENSE-00005751
change_history 785-303-1882 pre 3.12.csv	GOOG-LENSE-00005752	GOOG-LENSE-00005752
change_history 367-770-4588.csv	GOOG-LENSE-00005753	GOOG-LENSE-00005753

change_history 894-070-0992 post 3.12.csv	GOOG-LENSE-00005754	GOOG-LENSE-00005754
change_history 287-574-3937 post 3.12.csv	GOOG-LENSE-00005755	GOOG-LENSE-00005755
change_history 694-447-2879 pre 3.12.csv	GOOG-LENSE-00005756	GOOG-LENSE-00005756
change_history 287-574-3937 pre 3.12.csv	GOOG-LENSE-00005757	GOOG-LENSE-00005757
change_history 635-583-3623 post 3.12.csv	GOOG-LENSE-00005758	GOOG-LENSE-00005758
change_history 741-507-2349 post 3.12.csv	GOOG-LENSE-00005759	GOOG-LENSE-00005759
change_history 894-070-0992 pre 3.12.csv	GOOG-LENSE-00005760	GOOG-LENSE-00005760
change_history 750-987-8839 pre 3.12.csv	GOOG-LENSE-00005761	GOOG-LENSE-00005761
change_history 807-414-9949 pre 3.12.csv	GOOG-LENSE-00005762	GOOG-LENSE-00005762
change_history 119-968-4660 pre 3.12.csv	GOOG-LENSE-00005763	GOOG-LENSE-00005763
change_history 115-538-4233 pre 3.12.csv	GOOG-LENSE-00005764	GOOG-LENSE-00005764
change_history 996-978-0140 pre 3.12.csv	GOOG-LENSE-00005765	GOOG-LENSE-00005765

II. GROUP 2

Document Title/Description	Beginning Bates No.	Ending Bates No.
Eye Tracking Study Search Pages	GOOG-LENSE-00004885	GOOG-LENSE-00004963
Introduction re Eye Tracking Study	GOOG-LENSE-00004964	GOOG-LENSE-00004964
Field Studies Preview 1. Appetizers from EPCOT study of October 23-27, 2006 2. Amuse bouche Field studies of October 1-23, 2006 Daniel M. Russell SQ Leads, Nov 14, 2006	GOOG-LENSE-00005653	GOOG-LENSE-00005687
EPCOT Study Report: What do Users See about Google Ads? Fiona Lee & Daniel M. Russell Presented: AdMetrics Meeting, March 15, 2007	GOOG-LENSE-00005688	GOOG-LENSE-00005735



III. GROUP 3

Document Title/Description	Beginning Bates No.	Ending Bates No.
Email from Prashant Fuloria to Rose Hagan, Michael Mayzel, Alana@Google.com, et al. re: PR Draft-Trademark FAQ/key msgs	GOOG-LENSE-00000935	GOOG-LENSE-00000938
Email to Prashant Fuloria to Maria Stone, Rose Hagan, Nikhil Bhatla re: Preliminary results from user experiment #2	GOOG-LENSE-00000943	GOOG-LENSE-00000944
Google Keyword Survey	GOOG-LENSE-00000948	GOOG-LENSE-00000963
E-mail from Prashant Fuloria to tish@google.com and others re Trademark policy transition - update #2 (2/25)	GOOG-LENSE-00000870	GOOG-LENSE-00000871
Email from Ramsey Homsany to rose@google.com, bismarck@google.com re: Trademark Presentation w/Attach: Trademark Policy.PPT	GOOG-LENSE-00000872	GOOG-LENSE-00000882

E-mail from Michael Mayzel to kraneteam@google.com; Sheryl Sandberg; Cindy McCaffrey re Updated Trademark PR FAQ/key msgs	GOOG-LENSE-00000901	GOOG-LENSE-00000905
Email from Bismarck Lepe to ad-sales@google.com and Rose Hagan re: TM Update: Legal/Policy Email Sent	GOOG-LENSE-00000906	GOOG-LENSE-00000906
Domestic Trademark Policy Change Transition Plan Discussion Prashant Fuloria February 23, 2004	GOOG-LENSE-00000910	GOOG-LENSE-00000914
Trademark Policy Discussion Impact on Advertiser ROI and Google Revenue	GOOG-LENSE-00000915	GOOG-LENSE-00000921
New Trademark Policy & Process Document March 29, 2004	GOOG-LENSE-00000922	GOOG-LENSE-00000924
Trademark Policy Discussion Impact on Advertiser ROI and Google Revenue	GOOG-LENSE-00000925	GOOG-LENSE-00000931
E-mail from Rose Hagan to Prashant Fuloria and cc Maria Stone re Trademarks - usability study discussion	GOOG-LENSE-00000933	GOOG-LENSE-00000934

Email from Kulpreet Rana to Jacob Jacoby and Rose Hagan re: another test..." w/Attach: Trademark Study 2.doc	GOOG-LENSE-00000939	GOOG-LENSE-00000942
Email from Prashant Fuloria to Sheryl Sandberg, Tim Armstrong, Salar Kamangar re: Trademark user experiment results and timing of policy changes	GOOG-LENSE-00001017	GOOG-LENSE-00001017
Email from Prashant Fuloria to Salar Kamangar re: Preliminary results from user experiment #2 w/Attach: Trademark Experiment #2 Data Rev 1 Mar 10 2004.xls	GOOG-LENSE-00001018	GOOG-LENSE-00001020
Email from Prashant Fuloria to Salar Kamangar re: Trademark policy transition - update #3 (3/2)	GOOG-LENSE-00001021	GOOG-LENSE-00001022
Trademark Experiment (redacted); Trademark Experiments 2 and 4	GOOG-LENSE-00003745	GOOG-LENSE-00003752
Trademark Experiments 2 and 4 (redacted)	GOOG-LENSE-00003810	GOOG-LENSE-00003814
Trademark Study - Level of confusion comparison Experiment 2 and 3	GOOG-LENSE-00004047	GOOG-LENSE-00004048
Trademark Experiment (redacted); Trademark Experiments 2 and 4	GOOG-LENSE-00004231	GOOG-LENSE-00004237

IV. GROUP 4

Document Title/Description	Beginning Bates No.	Ending Bates No.
	GOOG-LENSE-00000864	GOOG-LENSE-00000869
	GOOG-LENSE-00005766	GOOG-LENSE-00005873

V. GROUP 5

Document Title/Description	Deposition Sections
Deposition Transcript of Adam Juda (PARTIAL)	7:1-2; 17:7-20:2; 24:18-21; 25:12-26:23; 31:16-38:2; 38:24-39:11; 40:5-18; 41:12-20; 42:20-43:7; 43:16-48:10; 48:16-54:3; 55:1-66:11; 67:2-69:3; 73:1-15; 75:12-76:9; 76:21-79:24; 80:13-83:13; 83:19-95:17; 104:13-18; 108:20-109:14; 110:5-112:6; 112:16-113:12; 113:23-114:15; 114:22-116:3; 116:21-117:6; 118:8-17; 119:13-123:16; 124:19-130:7; 132:4-137:5; 137:23-140:11; 142:10-143:13; 144:2-160:14; 163:20-168:10; 170:12-173:15; 174:8-11; 174:19-175:16; 176:13-181:13; 182:17-183:2; 188:7-192:19; 196:6-197:24; 198:12-200:13; 205:1-206:22; 207:14-217:16; 218:25-226:12; 227:12-229:4; 229:16-230:5
Deposition Transcript of Gavin Charlston (PARTIAL)	21:6-33:22; 34:23-45:4; 54:3-56:7; 56:15-62:1; 65:13-18; 66:13-78:8; 78:20-119:1; 119:17-18; 120:5-123:25; 126:7-129:17; 131:4-18; 132:18-134:16; 135:17-136:10; 138:16-141:11; 141:22-143:6; 145:7-158:19; 162:13-170:21; 173:14-176:20; 180:24-182:14; 183:21-184:21; 187:19-189:8; 190:10-191:20; 192:13-205:13; 206:11-209:3

VI. GROUP 6

Document Title/Description	Beginning Bates No.	Ending Bates No.
E-mail from Adrian Barajas to Baiju Hindocha and cc to mohitbagga@google.com; Natalia Bohm re Trademark Keywords Quality Score (PARTIAL)	GOOG-LENSE-00000065	GOOG-LENSE-00000066
E-mail from Baiju Hindocha to Natalie Bohm and cc to Mohit Bagga and BCC to po5@google.com re Trademark Keywords Quality Score (PARTIAL)	GOOG-LENSE-00000083	GOOG-LENSE-00000083
E-mail from Baiju Hindocha to Natlia Bohm and cc Mohit Bagga and Bcc PO5@google.com re Negative Keyword Matching (PARTIAL)	GOOG-LENSE-00000127	GOOG-LENSE-00000127
E-mail from Baiju Hindocha to Natalia Bohm re Avg. CPC Increase (PARTIAL)	GOOG-LENSE-00000262	GOOG-LENSE-00000262
1-800 Contacts Trademark Terms CPC Rise - May 2014	GOOG-LENSE-00000266	GOOG-LENSE-00000266
E-mail from Natalia Bohm to Baiju Hindocha re Avg. CPC Increase (PARTIAL)	GOOG-LENSE-00000282	GOOG-LENSE-00000283

E-mail from Baiju Hindocha to Natalia Bohm and cc Mohit Bagga re Trademark Keywords Quality Score (PARTIAL)	GOOG-LENSE-00000288	GOOG-LENSE-00000288
E-mail from Baiju Hindocha to Natalia Bohm cc Mohit Bagga re Negative Keyword Matching (PARTIAL)	GOOG-LENSE-00000318	GOOG-LENSE-00000318
E-mail from Baiju Hindocha to Natalia Bohm re Avg, CPC Increase (PARTIAL)	GOOG-LENSE-00000320	GOOG-LENSE-00000321
Email from Google AdWords Trademark Team to Paige Rossetti re: [#199698076] Trademark Protection	GOOG-LENSE-00000471	GOOG-LENSE-00000472
Email from "paige" <paige.r@google.com> to ads-trademarks@google.com re [C#199657382] Trademark Protection (PARTIAL)	GOOG-LENSE-00000648	GOOG-LENSE-00000648
E-mail from sandra.s@google.com to ads-trademarks@google.com re [#43650922] Trademark question: 1800Contacts	GOOG-LENSE-00000856	GOOG-LENSE-00000858

Email from Google AdWords Trademark Team to Fiona Sortor re: [#43650922] Trademark question	GOOG-LENSE-00000859	GOOG-LENSE-00000860
Email from Natalia Bohm to Mohit Bagga re Clinic Interaction in category: Adelphi Tracking Category - Brand & Performance - Troubleshooting (Fix/Explain) - Search - Ad Serving & Quality - Ad Serving - Performance/Traffic Fluctuation - CPC Fluctuation	GOOG-LENSE-00001185	GOOG-LENSE-00001186
Re: Clinic interaction in category: Adelphi Tracking Category - Brand& Performance - Troubleshooting (Fix/Explain) - Search - Ad Serving & Quality - Ad Serving - Performance/Traffic Fluctuation - CPC Fluctuation	GOOG-LENSE-00001187	GOOG-LENSE-00001188

VII. GROUP 7

Document Title/Description	Beginning Bates No.	Ending Bates No.
Ads Quality Communication Document Search (Draft)	GOOG-LENSE-00004081	GOOG-LENSE-00004089

EXHIBIT B

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)
)

1-800 CONTACTS, INC.,)
a corporation,)

Respondent)
)
)
)
)

DOCKET NO. 9372

**DECLARATION OF ADAM JUDA IN SUPPORT OF
NON-PARTY GOOGLE INC.’S MOTION FOR *IN CAMERA* TREATMENT**

I, Adam Juda, declare as follows:

1. I am a Director of Product Management at Google Inc. (“Google”). I have personal knowledge of the facts set forth in this declaration and if called as a witness I could and would testify competently to such facts.
2. I am familiar with the documents and data Google produced in the above-captioned matter in response to two civil investigative demands (“CIDs”) and one subpoena *duces tecum* (“subpoena”) issued by the Federal Trade Commission, and two subpoenas issued by 1-800 Contacts, Inc. I am familiar with the transcripts of my deposition and that of Gavin Charlston. Given my position at Google, I am familiar with the type of information contained in the materials at issue and their competitive significance to Google. I am also familiar with the measures Google takes to protect the confidentiality of these materials. I submit that the public disclosure of the Group 1 through Group 3 and Group 5 through Group 7 materials listed on Exhibit A of Google’s Motion for *In Camera* Treatment (“Exhibit A”) discussed below would cause serious injury to Google, Google’s customers, and Google’s users. I also submit that the confidentiality of these materials is not likely to diminish overtime.

GROUP 1 MATERIALS

3. The materials identified in Group 1 on Exhibit A consist of millions of lines of data that Google produced in response to CIDs and subpoenas in this matter. The datasets

included in Group 1 fall into two categories: Google customer (i.e. advertiser) data and Google search query data.

4. The Group 1 datasets that contain customer data provide extremely granular information about customer accounts and bidding strategies/metrics, including:
 - a. Customer identification numbers;
 - b. A list of keywords the customer bid on, including the keyword match type (broad, phrase, or exact);
 - c. The campaign and ad group in which the keywords are registered;
 - d. The maximum cost-per-click bid by the customer;
 - e. The impressions, clicks, click-through rates, and cost-per-clicks for each keyword in a customer's account;
 - f. Conversion metrics;
 - g. Keyword position on a results page;
 - h. Negative keywords that the customer registered;
 - i. Detailed information on all changes made on an account (including new/revised bids, changed budgets, and new keywords and negative keywords).
5. Much of the data described in paragraph 4 is de-aggregated to show the exact date on which an event occurred.
6. The Group 1 datasets that contain Google search data provide counts of certain search queries conducted by Google's users. The data also provide counts of words that co-occur with certain keywords in user queries.
7. Google's business is based on its proprietary algorithms. Google data collected from users and customers are used as inputs to refine and optimize the algorithms to provide better results for users and customers.
8. The data are also essential to Google's ability to provide data-driven insights to customers. For example, Google helps advertisers target certain searches with specific ads. Google's insights are based on its analysis of the data it collects from users and customers.
9. The data in Group 1 are not publicly available and Google does not disseminate the data widely within Google.

GROUP 2 MATERIALS

10. The materials identified in Group 2 on Exhibit A consist of four internal, confidential documents related to studies Google conducted to optimize the formatting of its search engine results pages (SERPs).
11. These documents provide insights into the design of Google's experiments and the results of those experiments. The information underlying Google's formatting decisions is competitively sensitive.

12. SERP formatting impacts every aspect of Google's search business. [REDACTED]

13. The studies that underlie Google's SERP formatting choices are therefore part of the formula that Google uses to develop its online search product. Google is regularly optimizing SERPs to provide better user experiences.

GROUP 3 MATERIALS

14. The materials identified in Group 3 on Exhibit A include internal documents related to the design and results of experiments conducted by Google. These experiments were conducted to test various trademark policies for Google's AdWords product. [REDACTED]

15. Also included in the Group 3 materials are internal documents related to the formulation and implementation of trademark policies, processes, and systems based, in part, on the results of Google's experiments.

16. Google's trademark policies and the processes and systems used to implement those policies directly affect the functioning of Google's AdWords product, including underlying algorithms. The reasoning behind Google's trademark policies, processes, and systems are therefore part of the formulas that make up Google's proprietary algorithms.

17. The reasoning behind and design of Google's trademark policies, processes, and systems are important aspects of competition with online advertising competitors.

18. Google regularly analyzes the efficacy of its policies, processes, and systems..

GROUP 5 MATERIALS

19. The materials identified in Group 5 on Exhibit A consist of two transcripts from depositions of Google employees in this matter. In each deposition, the parties used non-public, confidential Google documents as deposition exhibits.

20. The first transcript is from my deposition. The deposition took place on December 13, 2016. My testimony included confidential and competitively-sensitive information. I provided detailed descriptions of Google's algorithms and other processes related to

AdWords. I also provided information on how AdWords algorithms and processes would respond in various circumstances in response to the parties' questions.

21. The portions of my testimony listed in Exhibit A contain trade secrets about AdWords algorithms and processes that are critical to Google's business. I also revealed personal information in my testimony (like my home address).
22. The second transcript is from the deposition of Gavin Charlston, in-house trademark counsel at Google. The deposition took place on December 16, 2016. Mr. Charlston's testimony included confidential and competitively-sensitive information. Mr. Charlston testified as to the reasoning behind Google's trademark policies, processes, and systems, including the results of various user studies. Mr. Charlston also testified about the terms of certain confidential settlement agreements to which Google is a party. [REDACTED]

GROUP 6 MATERIALS

23. The materials identified in Group 6 of Exhibit A consist of internal communications (and attachments to those communications) related to Google's responses to questions about AdWords raised by 1-800 Contacts.
24. The internal communications reveal insights from Google employees regarding the functioning of certain aspects of AdWords systems and analyses regarding the performance of 1-800 Contacts' advertising campaigns.
25. Certain communications also contain confidential data about the bids and bidding strategies of two competitors to 1-800 Contacts, [REDACTED]. As discussed, the data Google collects from customers are inputs into Google's algorithms and inform analyses Google uses to provide data-driven insights to its customers.
26. The [REDACTED] data contained in the documents reveal confidential information about the bidding strategies of those customers.
27. These communications are not public and are not widely circulated within Google.

GROUP 7 MATERIALS

28. Group 7 of Exhibit A consists of a single internal document discussing quality score on AdWords. Quality Score relates to various AdWords algorithms that determine whether to show an ad on a particular SERP and the position of each ad on the SERP. The document is marked "internal" and was prepared as an instructive document for Google employees.

29. This document was part of the sealed joint appendix in *Rosetta Stone Ltd. v. Google Inc.*, 676 F.3d 144 (4th Cir. 2012).

I declare under the penalty of perjury that the foregoing is true and correct. Executed this 27th day of March, 2017 in New York, NY.

Adam Juda

EXHIBIT C

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of)
)

1-800 CONTACTS, INC.,)
a corporation,)

Respondent)
)
)
)

DOCKET NO. 9372

**DECLARATION OF MUNESH MAHTANI IN SUPPORT OF
NON-PARTY GOOGLE INC.’S MOTION FOR *IN CAMERA* TREATMENT**

I, Munesh Mahtani, declare as follows:

1. I am Senior Competition Counsel at Google UK Ltd. (“Google”). I have personal knowledge of the facts set forth in this declaration and if called as a witness I could and would testify competently to such facts.
2. I reviewed and am familiar with the Group 4 materials listed on Exhibit A of Google’s Motion for *In Camera* Treatment. Google produced the document Bates-stamped GOOG-LENSE-00000864-GOOG-LENSE-00000869 in response to a civil investigative demand issued by the Federal Trade Commission. Google produced the document Bates-stamped GOOG-LENSE-00005766-GOOG-LENSE-00005873 in response to a subpoena *duces tecum* (“subpoena”) issued by 1-800 Contacts, Inc. (“1-800 Contacts”).
3. Given my position at Google, I am familiar with the type of information contained in the materials at issue and their significance to Google. I am also familiar with the measures Google takes to protect the confidentiality of these materials. I submit that the public disclosure of the Group 4 materials discussed below would cause serious injury to Google. I also submit that the confidentiality of these materials may not diminish overtime.

GROUP 4 MATERIALS

[REDACTED]

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 25th day of March, 2017 in London, United Kingdom.

Munesh Mahtani

EXHIBIT D

DOCUMENTS CONTAINING *IN CAMERA* MATERIAL

John D. Harkrider, Esq.
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Attorney for Google Inc.

GROUP 1

CERTIFICATE

I hereby certify that on March 27, 2017, I filed copies of the datasets listed in Group 1 of Exhibit A of Google Inc.'s Motion for *In Camera* Treatment on CDs with:

Donald S. Clark
Secretary
Federal Trade Commission
400 Seventh Street SW, Suite 5610
Washington, DC 20024

Dated: March 27, 2017

/s/ John D. Harkrider

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Attorney for Google Inc.

Group 1 data sets withheld in their entirety.

GROUP 2

Group 2 documents withheld in their entirety.

GROUP 3

Group 3 documents withheld in their entirety.

GROUP 4

Group 4 documents withheld in their entirety.

GROUP 5

In the Matter of:

1-800 Contacts

December 13, 2016
Adam Juda - Confidential

Condensed Transcript with Word Index



For The Record, Inc.
(301) 870-8025 - www.ftrinc.net - (800) 921-5555

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23 ALSO PRESENT:	23
24 Sarah Walsh, Esq., Google, Senior Competition Counselor	24
25	25

5

1 ADAM JUDA, called as a witness, having been
 2 first duly sworn by a Notary Public of the State of
 3 New York, was examined and testified as follows:
 4 MS. SLAIMAN: My name is Charlotte Slaiman.
 5 I'm here on behalf of the Federal Trade Commission,
 6 also behalf on the FTC with Josh Gray. And the witness
 7 is being represented by counsel today.
 8 Would you like to introduce yourselves?
 9 MR. HARKRIDER: Sure. This is John Harkrider
 10 from Axinn, Veltrop & Harkrider, representing Google.
 11 MS. WALSH: Sarah Walsh, senior competition
 12 counsel, Google, Inc.
 13 MR. BERGERSEN: Alexander Bergersen from Axinn,
 14 Veltrop & Harkrider, representing Google.
 15 MS. STEPHENS: I'm Jessica Stephens. I'm also
 16 at Google as a paralegal.
 17 MR. GATES: And Sean Gates for 1-800 Contacts.
 18 EXAMINATION BY
 19 MS. SLAIMAN:
 20 **Q. So, Mr. Juda, before we begin, I just want to**
 21 **go over a few procedural issues. As you can see, we're**
 22 **making a record of today's hearing. So please provide**
 23 **verbal answers to my questions. Please avoid nodding,**
 24 **gestures, because they can't be recorded.**
 25 **And to keep the record clear, let's try to**

6

1 **avoid talking over each other. So please wait for me**
 2 **to finish my question before answering, and I'll wait**
 3 **for your to finish your answer before asking the next**
 4 **question.**
 5 **If you don't understand my question, or if the**
 6 **question is not clear, please let me know so I can**
 7 **clarify it. I want to make sure that we are on the**
 8 **same page when we're talking today.**
 9 **And we're scheduled to take some breaks today.**
 10 **If you need to take a break at any time, just let me**
 11 **know.**
 12 **The one thing I ask is, if there's a question**
 13 **pending, please answer the question before we take a**
 14 **break.**
 15 **Is that all right?**
 16 A. Sounds good.
 17 **Q. Great.**
 18 MS. SLAIMAN: Oh, so I want to introduce a
 19 document for the record. We don't have a CX number on
 20 it. So if you could add that.
 21 MR. GRAY: Let's do it on a break.
 22 **Q. Can you please state your name and address for**
 23 **the record.**
 24 A. Home address?
 25 **Q. Sure.**

7

3 [REDACTED]
 4 **Q. Do you understand that you're under oath today?**
 5 A. I do.
 6 **Q. And is there any reason that you could not**
 7 **testify truthfully today?**
 8 A. None comes to mind.
 9 **Q. So how long have you worked at Google?**
 10 A. I've been working at Google for a little over
 11 nine years. I started the day after Labor Day in 2007.
 12 **Q. And what's your title? And just give a brief**
 13 **description of what you do there.**
 14 A. At the moment, I'm a director of product
 15 management at Google. As of late, my responsibilities
 16 are overseeing individually contributing product
 17 managers who work on the ads quality system within
 18 search ads, as well as product managers who work under
 19 our syndicated search ads business.
 20 MR. HARKRIDER: Before you ask another
 21 question --
 22 MS. SLAIMAN: Yes.
 23 MR. HARKRIDER: -- just as a matter of
 24 housekeeping, is the entire transcript designated as
 25 confidential? And can we do so?
 MR. GRAY: Under the -- yeah, I think, under

8

1 the scheduling order, the transcript is confidential.
 2 MR. HARKRIDER: Right. So if we can just have
 3 an expressed designation as such. Great.
 4 MS. SLAIMAN: Thank you.
 5 **Q. So what are your responsibilities for the**
 6 **AdWords platform?**
 7 A. They vary quite a bit, ranging from, as a
 8 people manager, ensuring that the product managers are
 9 doing a good job working with engineers and other
 10 stakeholders to make a variety of improvements to, sort
 11 of, the back end or other features of AdWords for the
 12 syndicated search ad system --
 13 (Reporter clarification.)
 14 A. Search ad system.
 15 And then other responsibilities of mine include
 16 reviewing launch proposals to the search ads system,
 17 and ensuring that they are of sufficient quality such
 18 that I can give them permission to actually execute
 19 those changes on the ads system itself.
 20 **Q. What's a launch proposal?**
 21 A. A launch proposal is a request by a particular
 22 team responsible for a particular product feature to
 23 make some sort of change or enhancement to the feature
 24 to try and improve some objective that the team may
 25 have as part of their responsibilities.

<p style="text-align: right;">9</p> <p>1 Q. So can you give us some examples of features of 2 AdWords that might be changed through a launch 3 proposal? 4 A. Sure. One example could be that we have a 5 system which tries to predict click-through rates. And 6 this team is constantly trying to improve that system's 7 ability to predict the likelihood that a user would 8 click on an ad. 9 They do so by building large-scale distributed 10 machine learning systems, and they're constantly making 11 tweaks to said system to try and improve its prediction 12 accuracy. 13 So a launch proposal would be something from 14 the team of the form, "We would like to make this 15 change to our prediction system. Here are a variety of 16 metrics which we think could improve the system's 17 prediction accuracy. May we please have permission to 18 make the change." 19 Then, subject to convincing me or one of my 20 peers who are an approver, they can receive permission, 21 after a little bit of back-and-forth to make sure that 22 everyone's on the same page regarding what the change 23 is and does. Then they're allowed to actually execute 24 the change on the system. 25 Q. What's your role in that process?</p>	<p style="text-align: right;">11</p> <p>1 advertisers, as well as maintain and generate policies 2 for how sales can ultimately self-serve the kind of 3 data that they would want to share. 4 Off the top of my head, that's what immediately 5 comes to mind as included responsibilities. I suspect 6 there's more that aren't coming to mind. 7 Q. If you think of something later, you can let us 8 know. 9 A. Okay. 10 Q. So that process through which your team helps 11 the sales team communicate with or decide what they can 12 share with advertisers, can you tell us a little bit 13 more about that? 14 A. Sure. Sales oftentimes finds it easier to make 15 compelling pitches to help advertisers optimize their 16 campaigns; if it's a company with some additional data, 17 oftentimes, to help inform the advertiser about the 18 potential upside in accepting those kinds of changes. 19 So these can be modifications like the 20 salesperson may want to encourage an advertiser to 21 start advertising in a new geographic region that, 22 previously, the advertiser wasn't advertising in. 23 A potential piece of data that the salesperson 24 may want to present to that advertiser is query growth 25 trends within that geographic area. Perhaps the</p>
<p style="text-align: right;">10</p> <p>1 A. Usually, when I'm an approver of the changes, 2 my role is basically a check and balance to ensure that 3 the intentions of the team are actually being 4 fulfilled, as well as ensure that if there's some 5 miscellaneous nuance that the team has potentially 6 missed, I can potentially serve as a slightly more 7 independent party in the review process to try and poke 8 a little bit to ensure that the launch is as robust as 9 we would like it to be. 10 Q. And what are some other responsibilities that 11 you have for the AdWords platform? 12 A. I sit on a variety of one-off working groups. 13 Examples of those would include the House Ads Review 14 Committee. That's a group of people who make a point 15 of looking at ads that point to Google destinations 16 that flow through our system, and ensuring that they're 17 following a variety of our internal policies, in 18 addition to external policies that exist for them. 19 I also sit on a data sharing committee, 20 internally, as the product representative. In that 21 forum, we receive a variety of requests from people 22 within the sales organization to share data on the 23 advertising system with their clients. And that 24 committee both establishes the rules for what we 25 consider permissible or impermissible to be shared with</p>	<p style="text-align: right;">12</p> <p>1 salesperson is concerned that the advertiser thinks the 2 geographic area isn't interesting in size to be 3 advertised to. So the salesperson may wish to 4 communicate things of the form, there are X-percent 5 query volume currently in this region. It's growing by 6 Y percent. Y is a very large number. Therefore, it 7 would really be in your economic interest to start 8 advertising your product within that geographic region. 9 That is data that is not readily available 10 within some of our external tools. Oftentimes, it can 11 take a lot of manual effort to tease out some of these 12 trends. And so sales would like to simply communicate 13 things to the clients. 14 However, we're very sensitive about ensuring 15 that sales isn't sharing data that is either 16 financially sensitive -- because we need to be 17 concerned, as a publicly traded company, that we're not 18 accidentally revealing financially material data -- as 19 well as wanting to make sure, if sales wants to share 20 aggregate behavior of what other advertisers are doing, 21 that the salespeople aren't sharing data that would 22 actually allow one advertiser to get interesting, 23 unique insight into what one of their potential 24 competitors is doing. 25 So as this committee establishes various rules</p>

13

1 around benchmarking and how one should construct a
 2 benchmark in order to ensure that specific advertiser
 3 data of a competitor isn't --
 4 (Reporter clarification.)
 5 A. In order to ensure that specific advertiser
 6 data of a competitor isn't being accidentally leaked to
 7 the salesperson's client themselves, as well as to
 8 provide some high-level guidelines for when you can
 9 share data at a high level, country level, or some
 10 other unit of analysis.
 11 **Q. Can you give us an example of some of the types**
 12 **of data that you would not be willing to share?**
 13 A. So we're very sensitive about revenue-oriented
 14 metrics. That can include just outright total spends
 15 that advertisers are spending within a geographic area.
 16 So as an example, we report to the streets
 17 breakdowns, at least in the United States -- I believe
 18 also in the United Kingdom -- regarding total revenue.
 19 So we wouldn't want, right before an earnings call, for
 20 a salesperson to be disclosing to an advertiser, this
 21 is how much money was generated in revenue within the
 22 United Kingdom, because that would be, potentially,
 23 over-sharing, from our perspective.
 24 Other data that we're even more sensitive about
 25 sharing is conversion data. Oftentimes advertisers are

14

1 interested in questions like, "What is the conversion
 2 rate of my competitors on these keywords, and how does
 3 that compare to my own conversion rates."
 4 The advertiser is asking for these kinds of
 5 things, I think, from their perspective, just to get a
 6 flavor for whether they're being, like, as efficient as
 7 others, or do their landing pages potentially need room
 8 for improvement.
 9 However, we have some very strong policies
 10 against sharing conversion data, just because it's very
 11 noisy data, to begin with, because it's
 12 advertiser-provided. And so conversions can mean
 13 different things to different people.
 14 But also, it potentially provides interesting
 15 insights into the efficacy of our business that we're
 16 not necessarily eager to disclose publicly, either.
 17 **Q. What about a competitor's negative keywords?**
 18 **Is that something that Google would be willing to share**
 19 **through the sales staff?**
 20 A. No. That would not be compliant with our
 21 policies.
 22 In general, we -- as a high-level rule, we sort
 23 of tell sales folks that if, in order to glean the
 24 information, they would need to look inside competitor
 25 accounts, that would be a reason for it not to be

15

1 compliant, in and of itself.
 2 We also have a variety of internal checks and
 3 balances to also make it difficult for sales to
 4 actually be able to do that, even if they tried.
 5 So that would include both positive keywords,
 6 where an advertiser is actively targeting, as well as
 7 negative keywords, where a particular advertiser
 8 is actively looking to avoid particular queries.
 9 **Q. Does Google try to figure out what users want**
 10 **from the search engine results page?**
 11 A. I'm sorry. Can you repeat the question?
 12 **Q. Does Google try to figure out what users want**
 13 **from the search engine results page?**
 14 A. That's a complicated question because,
 15 ultimately, peeking into the minds of an individual
 16 user is pretty difficult.
 17 I would say our ambitions are more to try and
 18 identify, oftentimes on a retroactive basis, which ads
 19 or which contents we think a user would enjoy. So a
 20 lot of that is prediction-based, and oftentimes, trying
 21 to operate on a very aggregated level, rather than, you
 22 know, trying to know definitively what's inside a
 23 user's mind, which sometimes may not even be terribly
 24 clear to themselves.
 25 **Q. What value proposition does AdWords seek to**

16

1 **offer to advertisers?**
 2 A. So there are multiple value propositions to the
 3 ad system, when it comes to the search results page.
 4 One value proposition is that advertisements give
 5 advertisers a lot more control over the message that's
 6 presented to users.
 7 Organic search results are determined entirely
 8 in-house by Google. Whereas, when it comes to the
 9 creative copy that's generated, most of that content is
 10 provided by the advertiser themselves.
 11 So oftentimes, the message that the organic
 12 search results are providing is a different message
 13 than what an advertiser themselves may want to
 14 communicate to the end user. So Ads provides a lot
 15 more creative control to the advertiser.
 16 Another major value proposition is that Ads, at
 17 times, can allow advertisers to get their message out
 18 at all. Whereas, potentially, organic search results,
 19 for a variety of reasons, may choose not to provide a
 20 particular advertiser within its organic results, or
 21 may choose to rank a particular advertiser relatively
 22 low, perhaps on a, you know, second, third, or fourth
 23 page of search results.
 24 Whereas, with the advertising system, such an
 25 advertiser has an opportunity, subject to their quality

17

1 and/or bid being sufficiently high, to communicate
 2 their message in a very prominent location within the
 3 search engine result page, which likely can drive a lot
 4 more awareness of that business, and potentially a lot
 5 more sales, than what the organic results would be able
 6 to provide on their own.

[REDACTED]

19

[REDACTED]

18

[REDACTED]

20

[REDACTED]

3 **Q. What value does AdWords offer for small**
 4 **businesses?**
 5 A. So many of the values that AdWords offers small
 6 businesses are probably similar to what we offer large
 7 businesses. Just the extent of the magnitude may vary.
 8 So before I was mentioning that organic results
 9 may list a particular advertiser relatively low on a
 10 search results page. And this may be because, you
 11 know, organic results aren't strictly a popularity
 12 contest, but I suspect, if there's very large brands
 13 that are very well-established and very well-known,
 14 most users are probably well met by organic results
 15 listing those larger --
 16 (Reporter clarification.)
 17 A. Most users are probably well-satisfied by
 18 having these large brands listed first within the
 19 organic search results.
 20 Therefore, in order for a small business to
 21 actually be able to really be featured prominently in
 22 front of a user, and that user giving that small
 23 business a healthy amount of attention, the advertising
 24 system can oftentimes be a very efficient way for the
 25 small business to get their message in front of a user,

21

1 where that message may not be nearly as prominent, at
2 least within the product that is Google.com, if the
3 advertiser were to rely solely on trying to optimize
4 their landing page to get a high ranking within the
5 organic results.

6 And, in effect, because advertisements take
7 both advertiser bids and creative copy into control, in
8 addition to our quality signals, it gives the small
9 advertiser, and really, any advertiser, a lot more
10 control over whether their message can appear, relative
11 to the functionality that organic results provide.

12 **Q. So you said it may be more efficient for small
13 businesses. Can you explain a little bit more about
14 that?**

15 A. Sure. So within the advertising system, the
16 amount of control that an advertiser has to communicate
17 their message is much more direct. Subject to that
18 small advertiser's ads being of sufficient quality,
19 there exists some cost-per-click bid that would enable
20 that advertiser to appear on the first page of the
21 search results, the top slot of the search results, or
22 potentially, even in the first position within the top
23 slot above the search results.

24 In contrast, it's much less clear how much
25 effort, or even if there's any effort, that the

22

1 advertiser could take for improving the quality of
2 their organic page that could ultimately result in that
3 advertiser appearing on the organic results or above.

4 We certainly provide guidelines to advertisers
5 on what we think good landing pages exist. But,
6 ultimately, there aren't nearly the set of assurances
7 on the organic side of the house as we have available
8 on the ads side of the house, such that, you know, if
9 an advertiser really wants to be in that first
10 position, it's much more readily doable on -- on the
11 ads side than it is on the organic side.

12 **Q. Does Google have a minimum spend for
13 advertisers on AdWords?**

14 A. Nothing that I would consider material. We do
15 charge at least one penny per click. So that sort of
16 creates a natural lower bound on how much needs to be
17 spent.

18 But beyond the fact that we charge no less than
19 a penny per click, an advertiser can spend as much or
20 as little as they want.

21 **Q. Could an advertiser start advertising on Google
22 with just a \$1,000 budget?**

23 A. Absolutely.

24 **Q. Is AdWords useful for advertisers who are only
25 looking for a small subset of the population?**

23

1 A. It can be. A lot of that likely varies on the
2 characteristics of the population of interest to the
3 advertiser and whether those attributes can be readily
4 targeted by the advertising system.

5 **Q. What if it was contact lens wearers?**

6 A. So for something like contact lens wearers, the
7 high-level targeting question would likely be, to what
8 extent does the advertiser believe that users are
9 conducting searches on Google.com, which would signal
10 that they either wear contact lenses or interested in
11 contact lenses.

12 For that particular example, I suspect such
13 keywords readily exist.

14 **Q. What value does AdWords seek to provide to its
15 users?**

16 A. What value does?

17 **Q. Does AdWords seek to provide to its users?**

18 A. So at a high level, Google's mission is to
19 organize the world's information and make it
20 universally accessible and useful.

21 Within the ads group, we feel we abide by that
22 same mission. There's potentially just a slight
23 wrinkle where the information that we're providing to
24 users has a more commercial skew to it.

25 So from our perspective, what ads can provide

24

1 as a user benefit is providing interesting, relevant,
2 useful, commercial information to help better inform a
3 user on whatever their various tasks may be, where we
4 think we can be especially helpful when the inherent
5 task of a user is commercial in nature.

6 **Q. And what types of information does AdWords
7 provide to users who have a commercial intent?**

8 A. So everything there revolves around the ad unit
9 itself. So the kinds of information that we can
10 provide in ads ranges anywhere from the actual message
11 that an advertiser wants to communicate via their
12 creative copy.

13 When advertisers have locations that are in
14 close geographic proximity to the user, we can provide
15 annotations on the ads which say where the location of
16 that business is located and how far away that business
17 is from the user, which could be useful information.

18 [REDACTED]

22 Over the years, we've introduced the ability
23 not only to visit to the advertiser's website, but also
24 to call the advertiser, which we believe users and
25 advertisers both really enjoy when a particular

25

1 purchase is especially complicated in nature.
 2 So if one think about purchasing insurance,
 3 there's a lot of questions that need to be asked and
 4 answered. That can be somewhat onerous of an
 5 experience if you're on your smartphone, having to type
 6 in all those things.
 7 So by enabling users and advertisers to talk on
 8 the phone to complete that purchase, rather than do so
 9 online, we think that's an instance of tremendous user
 10 value for helping users who are interested in
 11 purchasing insurance.

[REDACTED]

26

[REDACTED]

24 **Q. I'm handing you a document that has been marked**
 25 **Juda 1.**

27

1 MR. GRAY: Actually, we can mark it CX 1195,
 2 for the record, to avoid confusion.
 3 (Whereupon, an off-the-record discussion was
 4 held.)
 5 (Juda Exhibit 1, Subpoena, marked for
 6 identification.)
 7 **Q. Please turn to the page that is marked 1. It**
 8 **is not the first page but the page that's marked 1.**
 9 **I'm going to ask you, in this section, about**
 10 **Topics Nos. 1, 10, 11, and 12.**
 11 A. Okay.
 12 **Q. Are you prepared to testify about these three**
 13 **topics?**
 14 A. So I'm looking through these one by one.
 15 **Q. Of course.**
 16 A. 1, yes.
 17 **Q. Four topics. Excuse me.**
 18 A. So after 1 you had mentioned 10?
 19 **Q. 10, 11 and 12.**
 20 A. Yes on 10.
 21 To the best my ability on 11.
 22 And yes on 12.
 23 **Q. Do you want to explain a little bit more about**
 24 **No. 11?**
 25 A. So I guess some of the caveats that come to

28

1 mind on No. 11 is that I only joined Google in 2007.
 2 So the comprehensiveness of my knowledge in the 2004 to
 3 2007 range may be limited, relative to 2007 onwards.
 4 In addition, the term "reserve prices" can mean
 5 different things to different people and is kind of a
 6 fuzzy subject matter in the context of the AdWords
 7 system. So I'll likely be asking some clarifying
 8 questions on that front.
 9 **Q. That's fine.**
 10 A. I think those were the first two things that
 11 came to mind on 11.
 12 **Q. Is the information you're going to provide**
 13 **today on these topics based on information that you**
 14 **know as a result of your ordinary business work?**
 15 A. Yes.
 16 **Q. So what is the AdWords platform?**
 17 A. Can -- can you be more specific?
 18 **Q. It's a big question.**
 19 **How does it work?**
 20 A. So at a very high level, advertisers submit,
 21 usually, keywords to us. Keywords are an expression by
 22 the advertiser which corresponds to a variety of
 23 searches that users might conduct on Google.com.
 24 And advertisers also provide to us a variety of
 25 additional inputs, ranging from their maximum

29

1 willingness to pay per click, to, potentially, roughly,
 2 how much money they wish not to exceed in total spends
 3 on a given day, to which geographic areas they wish to
 4 target, et cetera, et cetera.

5 Once the advertising system has all of those
 6 inputs, eventually, a user shows up on Google.com and
 7 conducts a search.

8 This system will then take that query as an
 9 input and attempt to match it to advertiser-provided
 10 keywords in order to source an initial set of ads,
 11 those being the ones that advertisers would like to
 12 appear on a search results page.

13 We then enter sort of the next high-level
 14 phase, which is Google determining which ads Google
 15 wishes to show on the search results page by doing
 16 things ranging from establishing quality scores for the
 17 ads, which are ultimately inputs into the ranking of
 18 ads where each ad receives a score.

19 Ultimately, we then establish an ordering of
 20 ads on the page, as well as what kinds of annotations
 21 those ads will receive, as well as computing, via the
 22 auction system, how much the advertiser will actually
 23 pay if a user clicks on the ads.

24 And then, at that point, the user chooses to
 25 click on an ad, at which point the system will record

30

1 that there is an accrual of cost and send the user off
 2 to the landing page.

3 Else, the user doesn't click on an ad, and in
 4 the moment, basically, nothing happens. And then,
 5 after that, a bunch of information gets recorded and
 6 ultimately processed by a variety of systems to try and
 7 do an ever-better job the next time a user shows up and
 8 conducts a search.

9 **Q. So one step in that process you mentioned is**
 10 **determining the order of the ads?**

11 A. Yes.

12 **Q. I'd like to ask a little bit more about that.**

13 **Can you describe how Google determines the rank**
 14 **of the ads on the search engine results page?**

15 A. Sure. So there's multiple steps.

16 The first step is computing a variety of
 17 quality predictions of the ad. This system, at the
 18 moment, has what I would consider sort of three primary
 19 quality signals. The first is a prediction of
 20 click-through rate. I briefly mentioned that system
 21 earlier as something that we're constantly improving.

22 But that system, at a high level, has
 23 historical records of ads that were shown to users, and
 24 then identifies the subset of those ads that received
 25 clicks.

31

1 The system then, at a high level, performs a
 2 variety of regression analyses on those inputs, trying
 3 to identify patterns of what users saw and what users
 4 clicked.

5 That system then looks at the current ad and
 6 the general state of the current auction instance. And
 7 given the variety of things that it knows in the
 8 auction moment, and then, based on its historical
 9 observations, will try and produce a score which is the
 10 likelihood that a user will click on the ad.

11 So that would be the first of, I guess, three
 12 signals.

13 **Q. So can I pause you there and ask --**

14 A. Please.

15 **Q. -- a follow-up question.**

[REDACTED]

32

[REDACTED]

33

[REDACTED]

35

[REDACTED]

34

[REDACTED]

36

[REDACTED]

41

1 that's relatively recently -- you know, when we're
2 talking about 2004 to present -- is the -- the
3 influence of ad extensions.

4 So previously I mentioned that when we're
5 presenting ads to users, it may not be exclusively the
6 advertiser's headline and description within the
7 creative copy, but it can also include information like
8 the ability to make a phone call if you're on a mobile
9 device, or the location of the business itself, or a
10 star rating of, sort of, how many stars the advertiser
11 receives on review forums.

[REDACTED]

21 So at that point, we then have the bid, the
22 quality signals, and the influence of ad formats. And
23 we throw that all into a functional form, which spits
24 out a signal scale or number. And that signal number
25 is usually what's referred to externally, in concept,

42

1 as ad rank.

2 And for a particular auction, at a particular
3 position, we have the ad ranks computed for all of the
4 ads, and we basically ask them two questions.

5 Question No. 1, which ad has the highest ad
6 rank.

7 And then, Question No. 2, is the actual ad rank
8 score greater than zero.

9 And if the answer to both of those questions is
10 yes, then that particular advertiser is going to
11 receive that particular position.

12 If it turns out that there are no ads that have
13 an ad rank greater than zero, then no ads are shown for
14 that particular position.

15 Once we have that position completed, we then
16 go to the next, sort of, potential ad position on the
17 page, and then just repeat the process all over again,
18 where, at various points in time, we've also been
19 mindful of the ad that we've already shown on the page.

[REDACTED]

43

[REDACTED]

8 **Q. How does AdWords determine ad rank when a query
9 includes a descriptive brand name, like 1-800 Contacts
10 or Toys"R"Us?**

11 A. At a high level, the process isn't terribly
12 different from what I just described. There's still a
13 user search. We're still going to match that user
14 search to keywords. We're still going to score
15 everything.

[REDACTED]

44

[REDACTED]

45

[REDACTED]

47

[REDACTED]

46

[REDACTED]

48

[REDACTED]

11 MS. SLAIMAN: Okay. Let's take a break. Thank
12 you.
13 (Recess.)
14 MS. SLAIMAN: Can we go back on the record,
15 please.

[REDACTED]

49

[REDACTED]

51

[REDACTED]

50

[REDACTED]

52

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4 **Q. That's fine.**
5 **How is the cost per click that Google gets paid**
6 **for each ad determined?**
7 A. So we've been chatting about ad rank and how
8 it's a component of the quality signals, the influence
9 of extensions, and bids. And we had previously
10 mentioned that for a particular position, we're
11 choosing the ad with the highest ad rank.
12 If there were other advertisers competing in
13 the auction, there was inevitably a second-highest ad
14 rank among the set of people competing for a particular
15 position.
16 And what we do is we compute, for the
17 advertiser who received the impression, effectively,
18 what could they have hypothetically submitted as a
19 lower bid to still have the highest ad rank among
20 everyone participating.
21 And then that hypothetical smallest amount that
22 the person who received the impression could have bid
23 to still have won the auction then becomes the cost per
24 click the advertiser will incur if someone clicks on
25 their ad.

[REDACTED]

57

[REDACTED]

59

[REDACTED]

58

[REDACTED]

60

[REDACTED]

61

[REDACTED]

63

[REDACTED]

62

[REDACTED]

64

[REDACTED]

65

[REDACTED]

67

1

Q. Great.

[REDACTED]

66

[REDACTED]

68

12 Q. We're handing you a document that has been
 13 previously marked CX 1124.
 14 Please take a moment to review the document,
 15 and let me know when you're ready to discuss it.
 16 A. (Document review.)
 17 To help me just parse this -- I'm having some
 18 difficulty comparing the timestamps to know which email
 19 was actually sent first versus second. Basically, I'm
 20 trying to figure out if I should be reading this top
 21 down or bottom up. Maybe I'll just do both.
 22 Q. So it may be different time zones.
 23 A. Yeah. Okay. I'll do my best.
 24 (Document review.)
 25 Okay. I think I'm ready.

[REDACTED]

4 **Q. Okay. Can you confirm that your testimony on**
 5 **these topics was based on your personal knowledge;**
 6 **you're not just repeating something that someone told**
 7 **you in preparation for this deposition?**

8 MR. GATES: Objection. Compound.

9 MR. HARKRIDER: And objection, to the extent it
 10 calls for attorney communications.

11 But otherwise, you can answer the question.

12 A. I never have seen this particular investigation
 13 before, so none of my responses could have come from
 14 beforehand.

15 **Q. Sorry. Let me be more clear.**

16 **Is the information you've provided on these**
 17 **topics based on information you know as a result of**
 18 **your ordinary business work?**

19 MR. GATES: Objection, compound, and vague and
 20 ambiguous.

21 A. What's covered by these topics?

22 **Q. Topics 1, 10, 11, and 12.**

23 A. Okay. So can you --

24 **Q. The testimony that you've given since -- since**
 25 **I asked the same question earlier --**

1 functionality within AdWords is via keywords.

2 So advertisers can submit snippets of text
 3 which can further be annotated in various ways to
 4 represent a set or class of queries on which the ad
 5 would be eligible to appear.

6 **Q. What are the other methods?**

7 A. Some of the more recent tools and functionality
 8 that we provide include things like dynamic search ads,
 9 where, rather than an advertiser providing keywords to
 10 the system, instead, the advertiser input takes the
 11 form of a landing page or set of landing pages. And
 12 then Google will try to infer which queries would be of
 13 interest from the advertiser, based on the content of
 14 the landing page.

15 Another approach that comes to mind is a
 16 product referred to as AdWords Express. And that
 17 particular product not only will ask the advertiser for
 18 a landing page, but may also ask for high-level
 19 attributes of the advertiser.

20 So, for example, might extract from the
 21 advertiser that they're a plumber. And then, based on
 22 knowledge that the advertiser is a plumber, it then is
 23 able to try and infer a set of queries that a system
 24 believes would be relevant for that advertiser, given
 25 the, sort of, vertical classification of that business.

1 MR. GATES: Same objection.

2 **Q. -- has it all been based on information you**
 3 **know as a result of your ordinary business work?**

4 MR. GATES: Same objection.

5 A. I believe so, yes.

6 **Q. Thank you.**

7 **Now I'm going to ask about Topic 13. You can**
 8 **refer back to Exhibit 1195.**

9 A. Okay.

10 **Q. Are you prepared to talk about Topic 13?**

11 A. I am.

12 **Q. Is the information you're going to provide on**
 13 **that topic based on information you know as a result of**
 14 **your ordinary business work?**

15 A. It is.

16 **Q. How do advertisers tell Google when they want**
 17 **their advertisements to appear?**

18 A. Can you please clarify "when"?

19 **Q. When?**

20 A. Like, literally, clock time, or something else?

21 **Q. Right. Sorry.**

22 **In response to which queries.**

23 A. Advertisers have available to them multiple
 24 tools for expressing the queries in which they want to
 25 advertise. The -- I think the oldest such

1 **Q. So let's go back to keywords. Are there also**
 2 **negative keywords?**

3 A. The system has both keywords and negative
 4 keywords, yes.

5 **Q. What's a negative keyword?**

6 A. A negative keyword is an expression by the
 7 advertiser to explicitly not have their ads appear on a
 8 set of search terms or search queries.

9 **Q. In practice, what are negative keywords for?**

10 A. Can you rephrase the question, please?

11 **Q. How do you recommend that advertisers use**
 12 **negative keywords?**

13 A. So depending on what particular technique
 14 advertisers are employing for targeting search terms,
 15 the particular means they have chosen may result in
 16 their ads appearing on search terms that are deriving
 17 in a worse case scenario, like negative profit for the
 18 advertiser, and aren't effectively using the
 19 advertiser's budget.

20 In instances where an advertiser would believe
 21 that they have no reasonable response to derive
 22 positive value from that search term, one way to
 23 prevent advertising on that search term in the future
 24 would be to include a negative keyword to block out
 25 that source of traffic.

73

[REDACTED]

16 **Q. Are there different match types that are**
 17 **available for advertisers to use with their keywords?**

18 A. There are.

19 **Q. What are the match types available?**

20 A. So there are three to four main match types
 21 available for keywords, depending on how one counts.
 22 There is an exact match, which is an expression by the
 23 advertiser to only have those corresponding ads appear
 24 on search terms that are, roughly speaking, near
 25 equivalent to the exact keyword itself.

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1 There are phrase keywords, which corresponds to
 2 queries for which that phrase keyword, roughly
 3 speaking, is a substring of the search.

4 (Reporter clarification.)

5 A. Phrase keywords which correspond to queries
 6 where the phrase keyword is, roughly, a substring of
 7 the search term.

8 And then there are broad keywords, which
 9 correspond to any query that the system deems to be
 10 relevant to -- to the search term.

11 **Q. Can you just define, briefly, "substring of the**
 12 **query"?**

13 A. Sure. So that would imply that the keyword is
 14 contained inside of the search term. So, for example,
 15 if -- if someone were to have the phrase keyword
 16 "flowers," that would phrase match a search term for,
 17 "I would like to buy flowers for Mother's Day," because
 18 "flowers" is contained inside of the search term.

19 **Q. I'm sorry. You were going to speak about broad**
 20 **match?**

21 A. Yes. So broad match, in general, matches all
 22 relevant searches that correspond to the broad keyword.
 23 Then there's a one-off variant that's certainly
 24 internally referred to as broad match modifier -- I
 25 forget if that's also the external nomenclature or

75

1 not -- where the advertiser is basically declaring that
 2 they wish those keywords to match all relevant
 3 searches, with an additional restriction that any word
 4 inside of that broad match modifier keyword that has a
 5 plus sign inside of it must also be contained inside
 6 the search term.

7 **Q. Is broad match modifier a new option?**

8 A. It's newer than the others.

9 **Q. When was it -- when did it become available?**

10 A. I don't know the precise date. I want to say
 11 it was two to five years ago.

[REDACTED]

76

[REDACTED]

10 **Q. How does broad match determine where to show**
 11 **the ads in response to which queries to show the ads?**

12 A. So -- so broad match doesn't do that. It's
 13 the, sort of, ad rank formula in the auction process
 14 that determines ultimately what impressions will be
 15 shown.

16 Broad match employs, though, a variety of
 17 techniques for identifying whether a keyword and a
 18 query may be relevant to each other.

19 **Q. How does broad match determine whether a query**
 20 **and a keyword may be relevant to each other?**

[REDACTED]

77

[REDACTED]

79

[REDACTED]

25

Q. Do match types also apply to negative keywords?

78

[REDACTED]

80

1 A. I believe they do, but not in an identical way.
2 **Q. We're handing you a document that has been**
3 **previously marked CX 1123. Please take as long as you**
4 **need to review the document, and let me know when**
5 **you're ready.**
6 A. (Document review.)
7 Okay.
8 **Q. So looking at Page 1 of CX 1123, that's CX**
9 **1123-001. This email is from Natalia to Kevin. Let's**
10 **start with the first paragraph.**
11 **Is that how you would describe exact match**
12 **negative?**

81

[REDACTED]

83

[REDACTED]

14 MS. SLAIMAN: Okay. Let's take a break.
15 MR. HARKRIDER: Sure.
16 (Recess.)
17 MS. SLAIMAN: Let's go back on the record,
18 please.

[REDACTED]

82

[REDACTED]

84

[REDACTED]

85

[REDACTED]

87

[REDACTED]

86

[REDACTED]

88

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

93

[REDACTED]

95

[REDACTED]

18 MS. SLAIMAN: That's great. Thank you very
 19 much. I'd like to reserve the rest of my time for
 20 after Mr. Gate's questions.
 21 MR. HARKRIDER: Sean, so it's, like, four to
 22 12. We can break for lunch.
 23 MR. GATES: Let's break for lunch.
 24 (Recess.)
 25 (RX 115, AdWords Help Document, marked for

94

[REDACTED]

96

1 identification.)
 2 (RX 116, AdWords Help Document, marked for
 3 identification.)
 4 (RX 117, AdWords Help Document, marked for
 5 identification.)
 6 (RX 118, AdWords Help Document, marked for
 7 identification.)
 8 (RX 119, Keywords to the Wise, Cultivating
 9 Demand with Keyword Strategy, marked for
 10 identification.)
 11 (RX 120, AdWords Help Document, marked for
 12 identification.)
 13 MR. GATES: Let's go on the record.
 14 EXAMINATION BY
 15 MR. GATES:
 16 **Q. Mr. Juda, my name is Sean Gates. I represent**
 17 **1-800 Contacts in this matter.**
 18 **First off, I just want to ask you a few**
 19 **questions about your preparation for --**
 20 MR. GRAY: I just want to get a stipulation on
 21 the record before you start.
 22 MR. GATES: Go ahead.
 23 MS. SLAIMAN: I'd like to stipulate that
 24 complaint counsel joins in all objections made by third
 25 party counsel today. Thank you.

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1 BY MR. GATES:
 2 **Q. So, Mr. Juda, before this deposition, did you**
 3 **meet with Federal Trade Commission attorneys?**
 4 A. Yes.
 5 **Q. When was that?**
 6 A. Last week.
 7 **Q. Last week. How long did you spend with them?**
 8 A. 45 minutes to an hour.
 9 **Q. Which attorneys did you meet with?**
 10 A. At least one who's present today.
 11 **Q. Who is that?**
 12 A. I forget your name. I apologize.
 13 **Q. Is it Ms. Slaiman?**
 14 A. Yes.
 15 **Q. And did she rehearse with you the questions**
 16 **that she would be asking you during your deposition?**
 17 A. I'm not sure.
 18 **Q. Did she ask you questions during that**
 19 **preparation time?**
 20 A. Yes.
 21 **Q. Were there questions that she asked you similar**
 22 **to the ones that you were asked today during your**
 23 **deposition?**
 24 A. Some of them, I believe, were.
 25 **Q. And when she asked you the questions during**

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1 **your preparation time, did you discuss how you would**
 2 **answer those questions with her?**
 3 A. Less discussion and more answering questions.
 4 **Q. So you gave her the answers that you would**
 5 **anticipate giving during your deposition?**
 6 A. Yes.
 7 **Q. Were there questions that she asked that you**
 8 **recall now that she did not ask during your deposition;**
 9 **asked them during the prep time but not here?**
 10 MR. HARKRIDER: Object to form.
 11 A. I don't recall.
 12 **Q. Did she show you any documents? Did you go**
 13 **over any documents with her during your prep time?**
 14 A. I don't recall seeing anything.
 15 **Q. And where was that -- where did you have this**
 16 **session?**
 17 A. This was at Google, the New York office.
 18 **Q. Okay. And let me just -- I want to go over**
 19 **some of the areas that Ms. Slaiman went over, just to**
 20 **kind of broaden things out, if you would.**
 21 **So she asked you a number of questions about**
 22 **keyword types. Do you remember those?**
 23 A. Yeah.
 24 **Q. So I'm going to give just a set of documents**
 25 **that have been marked RX 115 through 120.**

99

1 **And I apologize that I don't have copies of**
 2 **everything, so, John, if you just look over his**
 3 **shoulder, perhaps.**
 4 **So first off, Google has on its website**
 5 **something called AdWords Help; is that right?**
 6 A. Yes.
 7 **Q. And AdWords Help is information that Google**
 8 **puts together to help advertisers understand how to use**
 9 **AdWords?**
 10 A. How -- thematically, that's what it's
 11 attempting to do.
 12 **Q. And on AdWords Help, you define a number of the**
 13 **terms, in fact, some of the terms that we've discussed**
 14 **today?**
 15 MR. HARKRIDER: Object to form.
 16 A. Sounds right.
 17 **Q. So if you look at RX 115, that is an AdWords**
 18 **Help page talking about broad match. Do you see that?**
 19 A. I have the document in front of me.
 20 **Q. Okay. And is the information that Google put**
 21 **on it AdWords Help about broad match accurate?**
 22 A. I'm not sure. I would have to read it first.
 23 **Q. Is it your understanding that Google is**
 24 **attempting to put out accurate information about its**
 25 **AdWords program on its AdWords Help pages?**

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1 A. The answer to that question is complicated.
 2 The -- the information that we provide in the AdWords
 3 Help center is meant to try and provide conceptually
 4 useful information for advertisers. It's not
 5 necessarily a technically accurate description of every
 6 single nut and bolt within a system.
 7 **Q. Is it fair to say, though, that broad match for**
 8 **a keyword will -- means that the keyword will match**
 9 **queries that include synonyms, singular of plural**
 10 **forms, misspelling, stemmings, related searches, and**
 11 **other relevant variations?**
 12 MS. SLAIMAN: Objection. Form.
 13 A. Yes.
 14 **Q. And that type of matching is a semantic type**
 15 **matching; is that correct?**
 16 A. It includes semantic matching, yes.
 17 **Q. It has syntactic matching in it, as well; that**
 18 **would be things like the misspellings, right?**
 19 MS. SLAIMAN: Objection. Leading. Objection.
 20 Form.
 21 A. That is correct.
 22 **Q. And what is semantic matching?**
 23 A. Semantic matching attempts to identify objects
 24 or concepts that a keyword or query are trying to refer
 25 to. And then, when there is commonality behind those

101

1 underlying objects or concepts to which keywords or
 2 queries refer, we would deem a semantic match between a
 3 query and keyword when there's overlap in those
 4 concepts.
 5 **Q. And what is a syntactic match?**
 6 A. A syntactic match is usually what we refer to
 7 as -- more of a, like, less sophisticated way of
 8 identifying two terms as being similar.
 9 So, for example, a misspelling or just swapping
 10 two letters between each other then, all of a sudden,
 11 makes them identical. And it's more of an algorithmic
 12 misspellings or adding I-N-G onto a word, where there's
 13 no real deep insight into the concepts, but rather, you
 14 can tell just by overlapping of words that these things
 15 probably represent the same thing, is usually what we
 16 think of as a more syntactic match.
 17 **Q. So if you turn to RX 116.**
 18 A. Okay. I have that in front of me.
 19 **Q. And that is the Google AdWords Help page**
 20 **discussing the using of phrase match; is that right?**
 21 A. It looks that way to me.
 22 **Q. And this is Google's information for**
 23 **advertisers on how a phrase match works?**
 24 A. With the caveats that I previously mentioned
 25 around the technical accuracy of the help center, yes.

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1 **Q. But this is the information that Google**
 2 **provides to advertisers so that they can understand how**
 3 **phrase match works?**
 4 A. Yes.
 5 **Q. And so phrase match then gives some examples.**
 6 **If the keywords were a phrase such as "tennis shoes,"**
 7 **that -- would that ad, then, if it were on a phrase**
 8 **match, show up in any query that had the phrase "tennis**
 9 **shoes," even if it's combined with other words?**
 10 MR. HARKRIDER: Object to form.
 11 A. That is -- that is correct.
 12 **Q. And so you see here on RX 116 an example of**
 13 **that. The ad, then, would not show up if the phrase --**
 14 **the words in the phrase were not matched in the same**
 15 **order, right?**
 16 A. For phrase keywords; that is correct.
 17 **Q. So earlier you said that under phrase match,**
 18 **the -- if the keyword matched to a query, a substring**
 19 **in this query, then it would be a match, right?**
 20 MS. SLAIMAN: Objection. Mischaracterizes the
 21 witness's testimony.
 22 A. I believe that's what I communicated before, at
 23 least in concept.
 24 **Q. Right. So, in other words, the substring is**
 25 **just the -- whatever the phrase is, and if that phrase**

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1 **is somewhere in the query, that would be a matching**
 2 **substring, and therefore, there would be a match?**
 3 A. Yeah.
 4 MS. SLAIMAN: Same objection.
 5 A. I think, with just the clarifying comment that
 6 the phrase here would need to preserve the word
 7 ordering and be sort of a contiguous block of words.
 8 **Q. Turn to RX 117.**
 9 **RX 117 is information that Google puts on its**
 10 **AdWords Help page to help advertisers understand how to**
 11 **use exact match; is that right?**
 12 A. That appears to be what I'm seeing.
 13 **Q. And exact match is a syntactic match?**
 14 A. Yes.
 15 **Q. And phrase match is a syntactic match, as well;**
 16 **is that right?**
 17 A. I would consider it syntactic, as well.
 18 **Q. One of the terms that we've been using during**
 19 **this deposition is "click-through rate."**
 20 A. Yes.
 21 **Q. Is the definition of click-through rate the**
 22 **number of clicks on a particular ad divided by the**
 23 **number of impressions in that ad?**
 24 A. That is a form, then, which click-through rate
 25 could be calculated, yes.

104

1 **Q. And impression is the number of times -- well,**
 2 **an impression is any time that an ad appears on a**
 3 **search engine results page?**
 4 A. When -- when an ad appears on a search engine
 5 result page, that is considered an impression, and it
 6 increases the impression count.
 7 **Q. So let's say an ad shows up on 100 search**
 8 **engine result pages. That would be 100 impressions?**
 9 A. Yes.
 10 **Q. And if users clicked on that ad 50 times, you'd**
 11 **have a 50 percent click-through rate?**
 12 A. Yes.
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 **Q. RX 118.**
 20 A. Okay.
 21 **Q. Okay. RX 118 is information that Google**
 22 **provides to its advertisers about negative keywords?**
 23 A. That's what it appears to be to me.
 24 **Q. And it provides to advertisers a definition of**
 25 **a negative keyword?**

105

1 A. That appears to be the case.
 2 **Q. RX 119.**
 3 A. Okay.
 4 **Q. RX 119 is a document entitled "Keywords to the**
 5 **Wise," which is part of a Google's best practices.**
 6 **This document is information that Google**
 7 **provides to its advertisers to help them understand how**
 8 **keywords work and the best practices in using them; is**
 9 **that correct?**
 10 A. I'm not sure. I would have to look through the
 11 document first.
 12 **Q. Please do.**
 13 A. So I'm personally less familiar with this
 14 document, but it appears to be as you described.
 15 **Q. And that is, information that Google provides**
 16 **to its advertisers describing the use of keywords and**
 17 **also best practices in how to use them?**
 18 A. That appears to be what the description is
 19 saying. Without seeing the content, it's hard for me
 20 to speak to how excellent these best practices may be,
 21 in practice.
 22 **Q. Google does provide -- try to provide**
 23 **information to its advertisers regarding best practices**
 24 **in using the AdWords advertising program?**
 25 MS. SLAIMAN: Objection. Form.

106

1 A. We do.
 2 **Q. And you recognize this document as one of the**
 3 **documents that is part of that information that Google**
 4 **provides to its advertisers about best practices?**
 5 A. I don't recognize this document, but based on
 6 just how it looks and reads, it seems like it's trying
 7 to be so.
 8 **Q. Now, you said earlier, there was certain**
 9 **information that Google would not provide to**
 10 **advertisers about other advertisers.**
 11 **Do you remember you were talking about that?**
 12 A. Yes.
 13 **Q. So does Google provide to advertisers the**
 14 **keywords used by their competitors?**
 15 A. We do not.
 16 **Q. So if an advertiser wanted to know whether or**
 17 **not a competitor were using a particular keyword, is**
 18 **there a way that they could discover that information?**
 19 A. There's -- not with certainty, no.
 20 **Q. What would they -- what could they do to have**
 21 **some insight into whether or not it's used, without**
 22 **certainty?**
 23 A. So one option an advertiser could employ is to
 24 conduct a search on Google.com and see what kinds of
 25 advertisements appear. What keywords the advertisers

107

1 who do appear were actually using is unknown, because
 2 broad match may be resulting in an advertiser
 3 appearing using a keyword other than the search term.
 4 So there's no certainty, sort of, what an
 5 advertiser did to appear there, but that could be one
 6 way in which an advertiser could try to form an opinion
 7 about how an advertiser's trying to target that query.
 8 **Q. So, in other words, if I want to know whether**
 9 **or not a competitor is using a particular keyword, I**
 10 **could do a search on Google.com, using that keyword,**
 11 **and see which advertisements come up?**
 12 A. So you wouldn't be able to know, in doing that,
 13 whether those advertisers were using that search term
 14 as a keyword.
 15 Rather, all you could infer is that the
 16 advertiser specified some form of targeting which
 17 resulted in the advertisements eventually appearing.
 18 **Q. And there's no way for an advertiser, then,**
 19 **absent some kind of subpoena to Google, something like**
 20 **that, to know for sure that a competitor is using a**
 21 **particular keyword?**
 22 A. No process immediately comes to mind that would
 23 help an advertiser know for sure what keywords a
 24 competitor is using.
 25 **Q. Look at RX 120.**

108

1 A. I'm not immediately finding 120.
 2 **Q. All right. RX 120 is another AdWords Help**
 3 **page, and this is information that Google provides to**
 4 **its advertisers regarding ad rank; is that right?**
 5 A. It appears to be so.
 6 **Q. Just look at the second sentence under the**
 7 **title "Ad Rank."**
 8 **It says, "Ad rank is calculated using your bid**
 9 **amount, the components of quality score (expected**
 10 **click-through rate, ad relevance and landing page**
 11 **experience) and the expected impact of extensions and**
 12 **other ad formats."**
 13 **Do you see that?**
 14 A. I do see that.
 15 **Q. Is that an accurate definition of how ad rank**
 16 **is calculated?**
 17 A. Conceptually, yes. Technically, no.
 18 **Q. Is that an accurate description of the**
 19 **components on which ad rank is calculated?**
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

109

111

[REDACTED]

[REDACTED]

15 Q. So advertisers, if they go into their AdWords
16 account, have a quality score associated with their
17 keywords; is that true?

18 A. They do.

19 Q. That quality score is not necessarily the
20 quality score that is used or equal to that used during
21 the auction, particular auction?

22 A. That is correct.

23 Q. Now, are there components of ad rank that
24 Google includes because they want to ensure that users
25 have a good experience on Google?

110

112

1 MS. SLAIMAN: Objection. Form.
2 A. Can you repeat the question, please?
3 (Whereupon, the referred-to question was read
4 back by the reporter.)

[REDACTED]

[REDACTED]

7 Q. Now, you include in the ad rank the landing
8 page experience, right?

9 A. We do.

10 Q. And that landing page experience itself is a
11 combination of several components?

12 A. It is.

13 Q. One of which is whether or not there is
14 relevant and original content on the landing page?

15 MS. SLAIMAN: Objection. Form.

[REDACTED]

113

[REDACTED]

13 MR. GATES: Let me mark this as RX 121.
14 (RX 121, General Guidelines, marked for
15 identification.)

16 **Q. So RX 121 is a document entitled "General
17 Guidelines" dated March 28, 2016.**

18 **It's a lengthy document, but if you could just
19 take a quick look at, perhaps, the first few pages, and
20 tell me whether or not this is a guide given to
21 evaluators hired by Google to evaluate landing pages.**

22 **A. (Document review.)**

[REDACTED]

115

[REDACTED]

114

[REDACTED]

16 **Q. Going back to the landing page experience, one
17 of the other factors in that measurement is whether or
18 not the landing page is easy to navigate; is that
19 correct?**

20 **A. I believe that's something that's included in
21 the external documentation, yes.**

[REDACTED]

116

[REDACTED]

4 MR. GATES: Let's mark this as RX 122.
5 (RX 122, Understanding Landing Page Experience,
6 marked for identification.)

7 **Q. Mr. Juda, do you recognize RX 122 as
8 information that Google provides on its AdWords Help
9 pages about the landing page experience factor in an
10 advertiser's quality score?**

11 **A. I don't recognize the document, but that
12 certainly appears to be what the document is about.**

13 **Q. And do you see that one of the – the second
14 factor listed in the middle of the page is whether or
15 not the site promotes transparency and fosters
16 trustworthiness?**

17 **A. I do see that section.**

18 **Q. Is it your understanding that that is something
19 that is considered when determining the ad rank?**

20 **MS. SLAIMAN: Objection. Foundation.**

[REDACTED]

117

119

[REDACTED]

7 Q. Now, if someone has clicked on an ad, they're
8 directed to the landing page, right?

9 A. Most clicks, yes.

10 Q. Well, the landing page for that ad would be
11 what is evaluated by Google for the landing page
12 experience?

13 MS. SLAIMAN: Objection. Form.

14 A. So not all advertisements on Google.com these
15 days direct to website landing pages.

16 For example, we have a call-only format where
17 interactions with the ad exclusively brings up a dialer
18 to call the advertiser.

19 Q. Someone -- putting aside whether they called
20 one of those examples, vast majority of clicks on an ad
21 go to an ad landing page. True?

22 MR. HARKRIDER: Object to the form.

23 MS. SLAIMAN: Objection.

24 A. Not sure about the ratio right now.

25 Q. If someone's clicked on an ad, gone to an ad

1 amount of what we usually refer to internally as click
2 costs associated with the ad.

3 Q. And when the user goes to the landing page,
4 then why -- that's after the click was done, right?

5 A. Clicks occur before users were taken to landing
6 pages.

7 Q. So the quality of the landing page doesn't have
8 any effect on whether or not that particular user
9 clicked that ad, because they haven't seen it yet.

10 MS. SLAIMAN: Objection to form.

11 MR. HARKRIDER: Object to form.

12 Q. Right?

[REDACTED]

118

120

1 landing page, at that point, Google has been -- is
2 going to be paid for that click; is that right?

3 MS. SLAIMAN: Objection. Form.

4 A. To a first order, we're going to try and accrue
5 a click cost.

6 Q. You're going to charge the advertiser for the
7 click?

[REDACTED]

18 Q. But at the point that a user clicks on an ad,
19 that is the point in time that Google accrues the --
20 would accrue the cost --

21 MS. SLAIMAN: Objection --

22 Q. -- or would accrue the receivable, actually,
23 not the cost?

24 MS. SLAIMAN: Objection. Form.

25 A. That would be when we would increment the total

[REDACTED]

121

[REDACTED]

123

[REDACTED]

17 Q. In designing the -- the ad rank process, the
18 algorithm that determines the ad rank, one of the
19 things that you have done is required a minimum quality
20 score, right?

21 MS. SLAIMAN: Objection. Form.
22 A. Can you define "minimum quality score"? I --

23 Q. No. Minimum ad rank. Is that right?

24 MS. SLAIMAN: Same objection.
25 A. So an ad rank has to be not negative in order

122

[REDACTED]

124

1 to be eligible to receive an impression.
2 Q. If -- if a particular advertiser has a low
3 quality score, ad auction quality score -- well, how do
4 you have a -- how do you have a negative ad rank?
5 Let's put it that way. Let's start there.

6 How do you have a negative ad rank?

7 MR. HARKRIDER: Object to form.
8 A. So the function that computes ad rank has both
9 positive and negative terms contained inside of it, and
10 so it is possible for the magnitude of the negative
11 terms to exceed the magnitude of the positive terms
12 such that the overall score is negative.

13 Q. So which terms can become negative?

14 A. So there are -- so terms in which -- in front
15 of which there are minus signs can include some
16 constants, and then also some terms that contain some
17 of our quality signals inside of it.

18 Q. Which quality signals?

[REDACTED]

125

[REDACTED]

127

[REDACTED]

126

[REDACTED]

128

[REDACTED]

133

[REDACTED]

135

[REDACTED]

134

[REDACTED]

136

[REDACTED]

137

[REDACTED]

6 MR. HARKRIDER: Sean, we've been going over --
7 a smidgen over an hour. Whenever you reach --

8 MS. SLAIMAN: Why don't we go ahead and take a
9 break.

10 MR. HARKRIDER: All right.

11 (Recess.)

12 MR. GATES:

13 **Q. So, Mr. Juda, is it fair to say that an**
14 **advertiser's cost per click for a particular keyword**
15 **can vary, auction to auction?**

16 A. The cost per click can vary from auction to
17 auction.

18 **Q. And whether or not the addition of an**
19 **additional bidder into a particular auction has an**
20 **affect on an advertiser's cost per click depends on a**
21 **whole range of factors; is that true?**

22 MS. SLAIMAN: Objection. Form.

[REDACTED]

139

[REDACTED]

138

[REDACTED]

140

[REDACTED]

12 **Q. Advertisers have what's called a budget for**
13 **their page search campaigns; is that right?**

14 A. There is a field in the AdWords tool referred
15 to as a budget associated with campaigns.

16 **Q. What is a campaign?**

17 A. A campaign is an organizational feature for an
18 AdWords account. So keywords and bids and ad copy all
19 get grouped into what are known as ad groups. And then
20 campaigns are collections of ad groups where a lot of
21 an advertiser's targeting controls, such as geographic
22 targeting, usually reside at the campaign level of this
23 organizational hierarchy.

24 **Q. And the budget is for the -- at the campaign**
25 **level?**

141

143

1 A. Most budgets are specified at the campaign
2 level, but they can be specified elsewhere, as well.

3 **Q. So most budgets, and they're specified at the
4 campaign level, which means that it's the budget for
5 one or more ad groups?**

6 MS. SLAIMAN: Objection. Form.

7 A. For the ad groups contained inside of that
8 campaign, all of those ad groups, when accruing click
9 costs, would be drawing down against that common budget
10 of the campaign.

11 **Q. Advertisers' budgets are set on a daily basis?**

12 MS. SLAIMAN: Objection. Form.

13 A. The budget is specified by an advertiser, in
14 most instances, as a per-day budget.

15 However, advertisers have the ability to modify
16 that budget at will. So the unit of the budget is
17 usually labeled as per day, but it could be being
18 changed multiple times a day, depending on what the
19 advertiser chooses to do.

20 **Q. But the default is per day?**

21 MS. SLAIMAN: Objection. Form.

22 A. The input is usually specified as a per-day
23 budget.

24 **Q. What happens when an advertiser gets enough
25 clicks on their ads that they exceed their budget?**

[REDACTED]

14 **Q. Now, you were asked some questions about if
15 there were agreements on negative keywords between
16 competitors, how would that affect Google's revenues.**

17 **Do you remember those questions?**

18 A. At a high level, yes.

19 **Q. And whether or not it would -- I think the
20 questions were being phrased in something along the
21 lines of "all things equal"?**

22 A. That is my recollection, as well.

23 **Q. Now, whether or not an advertiser's use of a
24 negative keyword affects Google's revenues will depend
25 on a whole number of factors, won't it?**

142

144

1 MS. SLAIMAN: Objection. Foundation.

2 A. So it varies as a function of the magnitude to
3 which the budget has been met or exceeded.

4 **Q. So -- well, put it this way.**

5 **Is there a point at which, based on an
6 advertiser's budget, Google stops serving the
7 advertiser's ads, even though the ad -- its keywords
8 are matching with relevant queries?**

9 MS. SLAIMAN: Objection. Form.

[REDACTED]

1 A. There are a number of factors at play.

[REDACTED]

145

[REDACTED]

147

[REDACTED]

146

[REDACTED]

148

[REDACTED]

149

[REDACTED]

151

[REDACTED]

150

[REDACTED]

152

[REDACTED]

153

[REDACTED]

155

[REDACTED]

154

[REDACTED]

156

[REDACTED]

157

[REDACTED]

159

[REDACTED]

158

[REDACTED]

160

[REDACTED]

15
16
17
18
19
20
21
22
23
24
25

Q. All right. Let's look at RX 123.
So RX 123 is a Google search engine result page. I just want to ask you a quick question about it, which is, you had earlier discussed extensions, ad extensions. Is there an example of an ad extension on this search engine result page?
A. There appear to be multiple.
Q. Okay. Where are those? Because I'm a visual guy, and I need a --
A. Totally fair.
Q. -- show these to the judge.

161

163

1 A. So looking at the second ad for
 2 VisionDirect.com, I see the line for a 4.6 star
 3 rating --
 4 **Q. Yes.**
 5 A. -- for VisionDirect.com. That's an example of
 6 an ad extension. I believe it's referred to as a
 7 seller ratings extension.
 8 I believe, looking at this, as well, I see the
 9 bottom two lines of that second ad where various
 10 components are separated by little dot delimiters. I
 11 believe those are also ad extensions.
 12 **Q. So where it says "Use 25 percent off coupon,
 13 Air Optix contacts, Dailies contacts," those are
 14 extensions?**
 15 A. I believe those are also extensions in this
 16 case.
 17 Looking at the first ad, there is an indented
 18 unit of a 2x2 grid of almost, like, little mini ad
 19 copies. That's an extension. Site links, I believe,
 20 is the name for that.
 21 Also within this first ad, I see an excellent
 22 shopping experience-Google trusted stores. That's
 23 another ad extension.
 24 Also within that first ad, we see the similar
 25 period delimited formatting, "100 percent money back

1 So that ad label denotes that each one of those ads is
 2 an ad.
 3 MR. GATES: Let's mark this as RX 124.
 4 (RX 124, Google Quality Score Document, marked
 5 for identification.)
 6 **Q. RX 124 is a document that was produced to us by
 7 Google, and it has at the top something that
 8 says, "About quality score."**
 9 So I'm just going -- first, do you recognize
 10 this as an internal Google document explaining things
 11 such as quality scores and quality score functions or
 12 formulas?
 13 A. I don't immediately recognize this document.
 14 **Q. Does this look like a document -- or do you
 15 have documents in similar type of format as this, that
 16 talk about quality scores?**
 17 A. No document formatted quite like this comes to
 18 mind. But we certainly have documentation that talks
 19 about quality score, both internally and externally.



162

164

1 guarantee, avoid multiple doctor visits, one click
 2 reordering," which, again, would be the call-out
 3 extension format that we saw in that other ad.
 4 And then also within this first ad, we see, for
 5 lens.com, a phone number, 1 (800) 536-7266, which would
 6 be another instance of an ad extension.
 7 Other things which come into play from ad
 8 formatting, but depending on whose lingo you use
 9 internally -- they would see they either are or aren't
 10 extensions -- would be that for both the first ad and
 11 the third ad, we see, like, multiple blocks of text
 12 that are separated by a dash.
 13 So, for example lens.com, "official site-all
 14 major brands in stock," I believe that may be an
 15 instance of one of our new formats called enhanced text
 16 ads, where we ask advertisers to specify multiple
 17 headlines rather than just one.
 18 Which would be in contrast to the second ad,
 19 where you just see a single snippet of text in the
 20 title.
 21 **Q. Okay. Great. Thank you.**
 22 **And the -- how can you tell that those first
 23 three entries are ads?**
 24 A. So all three of those entries, beside the URL
 25 of the advertisements has a rectangle that says "Ad."



165

[REDACTED]

167

[REDACTED]

166

[REDACTED]

168

[REDACTED]

11 **Q. Great.**
 12 **For -- if an advertiser is bidding on keywords,**
 13 **is there a minimum bid that Google requires for that**
 14 **advertiser's bids to be considered?**
 15 **A. For a particular auction?**
 16 **Q. For a particular auction.**
 17 **A. So it wouldn't be a dynamic variable, but as**
 18 **discussed before, ads are only eligible to receive an**
 19 **impression in practice if their ad rank is greater than**
 20 **zero.**
 21 **So therefore, if they're submitting a bid which**
 22 **would result in the overall ad rank of the ad to be**
 23 **negative, then the impression wouldn't show. So that**
 24 **establishes some implicit minimum bid amount that would**
 25 **be necessitated, given the current quality of the ad,**

169

171

1 for that auction, in order for the ad to receive an
2 impression.

3 **Q. Okay. So the minimum bid, then, is on an -- an**
4 **auction-by-auction basis?**

5 A. In effect, yes, and it varies, depending on
6 what the nature of the quality of the ad is in that
7 particular auction instance.

8 **Q. And the minimum bid, then, is also -- differs**
9 **from advertiser to advertiser?**

10 A. Yes.

11 **Q. So each advertiser may have a different minimum**
12 **bid?**

13 A. If -- if their quality is different.

14 **Q. So the lower the quality, the higher the**
15 **minimum bid; is that a fair generalization?**

16 A. The lower the quality, the higher the bid would
17 need to be in order for the overall rank of the ad to
18 be positive.

19 **Q. All right.**

20 MR. GATES: So let's go ahead and mark this as
21 RX 125.

22 (RX 125, Ads Quality Communication Search,
23 marked for identification.)

24 **Q. All right. So RX 125 is another document that**
25 **was produced by Google. It is last updated, I think,**



170

172

1 in 2006.

2 **Are you familiar with this document at all?**

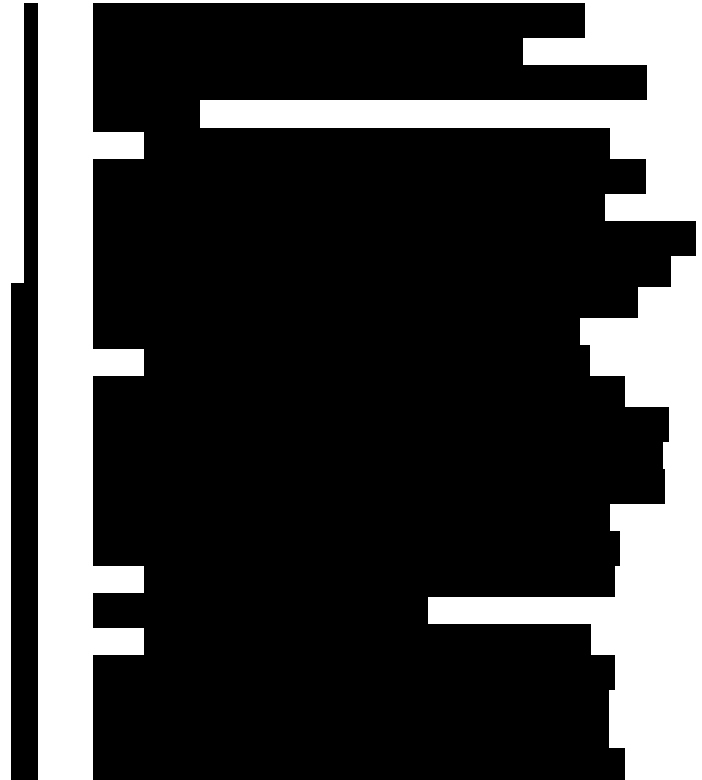
3 A. I -- I am not, and based on the first page --
4 oh, I do see a reference to 2006. Okay. But this was
5 before my time at Google.

6 **Q. Okay. Let me just -- if you look at the third**
7 **page, at the bottom.**

8 A. Would you mind citing a page number just to
9 make --

10 **Q. Yeah, 4084.**

11 A. 4084. Okay.



173

[REDACTED]

16 MR. GATES: Thank you. Why don't we go ahead
17 and take a break.

18 (Recess.)

19 MR. GATES: Okay. We're back on the record.

20 **Q. So, Mr. Juda, we've been spending a lot of time**
21 **talking about page search ads.**

22 **Google also provides what are called organic**
23 **links or organic results?**

24 A. Yes.

25 **Q. What are those?**

174

1 A. So those would be the results that, so to
2 speak, always appear in response to users' search, and
3 are results that our search quality team generates in
4 response to user queries.

5 **Q. Is Google trying to determine what are the most**
6 **relevant organic results for any given search query?**
7 **Is that kind of the goal?**

[REDACTED]

12 **Q. What did you say Google's mission was? You**
13 **said it earlier. To organize --**

14 A. To organize the world's information and make it
15 universally accessible and useful.

16 **Q. And when somebody does a search query, what is**
17 **useful to them would be relevant results?**

18 MS. SLAIMAN: Objection. Form.

[REDACTED]

175

[REDACTED]

17 **Q. Have you seen any studies or had any**
18 **discussions with people at Google that try to determine**
19 **what the users' expectations are when they look at a**
20 **results page?**

21 MR. HARKRIDER: Object to form.

22 A. I'm not sure I've seen a study phrased as
23 generally as that.

24 **Q. So this is a question for John.**

25 MR. GATES: Is he designated for Topic 2?

176

1 MR. HARKRIDER: 1, 2, 3, 4, 10, 11, 12, 13, 14.
2 Is that right?

3 MR. BERGERSEN: Yeah.

4 MR. HARKRIDER: Yes.

5 MR. GATES: What did you say again? 1, 2, 3,

6 4...

7 MR. HARKRIDER: 1, 2, 3, 4, and then 10 through
8 14.

9 MR. GATES: Okay.

10 **Q. So, Mr. Juda, do you have an understanding of**
11 **the expectations of Google users when viewing a search**
12 **engine and results page?**

[REDACTED]

177

[REDACTED]

179

[REDACTED]

178

[REDACTED]

180

[REDACTED]

181

[REDACTED]

14 MR. GATES: Let's mark this as -- I'm going to
15 give what's been marked as RX 126.

16 (RX 126, AdWords Help Document, marked for
17 identification.)

18 **Q. RX 126 is from the AdWords Help page, and it
19 discusses how Google search results differ from ads.**

20 **And this is information you actually provide to
21 advertisers about how their ads will appear, right?**

22 A. That appears to be what the document is
23 describing.

24 **Q. And what it shows is that the ads appear at the
25 top of the search engine result page, and then organic**

182

1 **results appear below them?**

2 MS. SLAIMAN: Objection. Form.

3 A. That appears to be the graphic representation
4 here, but it -- if it's implying that ads will always
5 appear above organic results, that would be an
6 incorrect implication.

7 **Q. But when ads appear, you have what are called
8 top ads, and those appear at the top of the page,
9 right?**

10 A. When ads appear, they may appear above the
11 results, or they may appear below the results. We have
12 instances where the only ads on the page are, in fact,
13 only bottom ads, and there are no top ads.

14 **Q. And that's because you have a minimum quality
15 score for ads that go at the top of the page?**

16 MS. SLAIMAN: Objection. Form.

[REDACTED]

183

[REDACTED]

3 **Q. And it used to be the case that on the Google
4 search engine result page you had ads on the right-hand
5 column, right?**

6 MS. SLAIMAN: Objection to form.

7 A. There was a period of time where, on desktop
8 devices, there could be ads, on occasion, that would
9 appear on the right-hand side of organic search
10 results, provided that the language was a left-to-right
11 user language. In a location like Israel, where the
12 language moves in the other direction, the ads would
13 then appear on the left-hand side.

14 **Q. In the United States, for users using English,
15 it would appear on the right-hand side?**

16 A. That is correct.

17 **Q. When did Google stop putting ads in the
18 right-hand column?**

19 A. For desktop devices, I believe that change was
20 made one to three years ago now. Relatively recently.

21 MR. GATES: Let's mark this as 127.

22 (RX 127, Printout from Google Inside Search,
23 marked for identification.)

24 **Q. Okay. So I'm providing you what's been marked
25 as RX 127, which is a printout from Google Inside**

184

1 **Search, and I'll represent to you it's a historical
2 search engine results page.**

3 **And you recognize this as being historical
4 search engine results -- or historical printout from
5 Google Inside Search, right?**

6 MS. SLAIMAN: Objection to form.

7 A. Certainly, when I first viewed the document,
8 seeing the graphic, it looks very dated, in terms of
9 how the search results page looks today.

10 **Q. And what this depicts if the graphic, on the
11 first page of RX 127, is that there are ads in the
12 right-hand column marked by the number five, right?**

13 MS. SLAIMAN: Objection to form.

14 A. Yes, that appears to be the case.

15 **Q. And that was the case until a couple years ago,
16 at least?**

17 MS. SLAIMAN: Objection. Form.

18 A. I believe, a few years ago, it was, indeed,
19 possible for there to be right-hand side ads on desktop
20 devices.

21 **Q. Do you know why it was that Google provided
22 these graphics showing where ads would show up in a
23 search engine results page?**

24 A. I'm not sure what the motivation was behind
25 this particular documentation.

185

1 **Q. Do you know whether or not RX 127 is accurate?**
 2 MR. HARKRIDER: Object to form.
 3 A. So we've already discussed that there's no
 4 longer right-hand side ads. So, by definition, at
 5 least some components of it are no longer accurate.
 6 **Q. Was it accurate -- was it accurate for some**
 7 **period of time in the past?**
 8 A. I -- I would have to read the document's
 9 entirety to know whether it was accurate, in total, at
 10 some point in the past.
 11 **Q. So the depiction that there were right-hand**
 12 **ads, was there ever a point -- let me ask you this.**
 13 **I'll change the question.**
 14 **Was there ever a point in time, in your**
 15 **knowledge, where Google only provided ads on the**
 16 **right-hand column and not in the top position?**
 17 A. I don't recall a time where the only place that
 18 ads could appear would be the right-hand side.
 19 **Q. Now, earlier, when we looked at a search engine**
 20 **results page, you said that you could recognize the ads**
 21 **because there was a little block that had the word "Ad"**
 22 **in it.**
 23 **Do you remember that?**
 24 MS. SLAIMAN: Objection --
 25 A. I do remember that.

186

1 MS. SLAIMAN: -- mischaracterizes witness
 2 testimony.
 3 **Q. And do you know when Google started using the**
 4 **little block with the word "Ad" in it to mark an ad?**
 5 A. I believe, around the same time frame where
 6 Google no longer was showing right-hand side ads. So I
 7 want to say, again, within the past three years.
 8 **Q. So Google has used various means, over the**
 9 **course of the years, to mark the fact that a result is**
 10 **an ad; is that right?**
 11 A. The labeling of ads has changed over time.
 12 MR. GATES: Let's mark that as 128.
 13 (RX 128, Graphic, marked for identification.)
 14 **Q. Okay. So RX 128 is a graphic which at least**
 15 **purports to show different Google ads, over time, and**
 16 **how they were labeled.**
 17 **So starting at the bottom of the graphic, you**
 18 **see the one that's marked 2016, and it has an ad for**
 19 **2017 Italy tours?**
 20 A. I see that ad.
 21 **Q. Okay. And is that an accurate depiction of how**
 22 **ads are labeled as of today, in 2016?**
 23 A. This appears pretty visually similar to how ads
 24 might appear on Google.com today.
 25 **Q. And was there a period of time where that**

187

1 **little ad block that was used to denote ads was kind of**
 2 **an orange color?**
 3 A. I don't immediately recall an orange background
 4 color for ads.
 5 **Q. No. The -- the little Ad label.**
 6 A. Ah. There was a time where the Ad batch
 7 coloring, rather than being green, was more of a
 8 yellow-ish, gold-ish hue.
 9 **Q. Okay. So you look at the second entry, second**
 10 **to the bottom entry in this graphic, where it has an ad**
 11 **for cheaper van insurance.**
 12 **Do you see that?**
 13 A. I do see that.
 14 **Q. And it has the little Ad icon in kind of an**
 15 **orange-ish hue?**
 16 A. Certainly, something that isn't green.
 17 **Q. Certainly, something that's not green.**
 18 **To your recollection, is that an accurate**
 19 **depiction of the way in which Google labeled its ads at**
 20 **some period of time prior to 2016?**
 21 A. I -- I can't recall, necessarily, like, the
 22 precise hues and intensity of the colors, but that
 23 certainly seems closer to how things once were,
 24 relative to the ad label today.
 25 **Q. And do you know what period of time that little**

188

1 **orange-ish Ad block was used?**
 2 A. I want to say, for a couple of years, colors
 3 were used in sort of a general, like, yellow, gold,
 4 orange kind of color spectrum.
 5 **Q. Do you know why the color was changed from kind**
 6 **of this orange to a green?**
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

189

[REDACTED]

191

[REDACTED]

190

[REDACTED]

192

[REDACTED]

20 MR. GRAY: When you reach a break, can we have
21 a brief conference outside the presence of the witness?
22 MR. GATES: Sure. I'm happy to do it now.
23 (Recess.)
24 MR. GATES:
25 Q. So, Mr. Juda, then you see the

1 **third-to-the-bottom entry on this RX 128?**

2 A. Labeled, "50 Percent Off Any JustFab Shoe"?

3 **Q. Okay. And you see that the advertising -- the**
4 **little ad label is a little bit larger than it is in**
5 **the entry below?**

6 A. That does appear to be the case.

7 **Q. Is it your -- do you recognize the**
8 **third-from-the-bottom entry as being a format that**
9 **Google had labeled its ads during a certain period of**
10 **time?**

11 MS. SLAIMAN: Objection. Foundation.

12 A. I believe I recall that label unit used to be a
13 little bit wider.

14 **Q. And you saw that label yourself, right?**

15 A. I don't intimately recall the queries that I
16 was conducting back in 2013 and what those looked like.

17 **Q. Yeah, but during the course of your time at**
18 **Google, you do queries, you look at search results, and**
19 **you look at paid ads, right?**

20 MR. HARKRIDER: Object to form. Out of scope.

21 A. I certainly suspect that back in 2013, I was
22 conducting queries on Google.com where ads appeared.

23 **Q. And so you had personal knowledge of what the**
24 **ads looked like in 2013, correct?**

25 MR. HARKRIDER: Object to the form. Out of

1 organic search results, if one were to, sort of, draw
2 an imaginary rectangle around the entirety of all those
3 top ads, and then would you fill in that rectangle with
4 a background color, you wouldn't give any line weight
5 to that rectangle. And that was, roughly speaking, how
6 we used to sort of, like, at least, color in ads, in
7 addition to an ads label, usually in the top right
8 corner of that box.

9 **Q. And when you say that you didn't give any line**
10 **weight, you mean that there was no border to that**
11 **rectangle?**

12 A. Correct. My recollection is that that
13 rectangle didn't have, like, a black line surrounding
14 the entirety of the unit.

15 **Q. Over the course of your time at Google, or even**
16 **beforehand, when you looked at paid search ads**
17 **appearing on a Google search, did the background color**
18 **vary or change over the course of time?**

19 MS. SLAIMAN: Objection. Foundation.

20 MR. HARKRIDER: Object.

21 MS. SLAIMAN: Objection. Out of scope.

22 A. My recollection is that the color of that
23 background did change, over time.

24 **Q. And currently today, there is no background**
25 **color for that block of ads at the top of the page,**

1 scope.

2 A. So, again, I'm not sure I immediately recall
3 what the 2013 look of the ads were, but I probably was
4 exposed to them back in the day.

5 **Q. So the third entry here, you recognize as at**
6 **least used at some period of time by Google to label**
7 **its ads?**

8 MR. HARKRIDER: Object to form. Out of scope.

9 A. That certainly looks like a label which
10 plausibly could have been shown a few years ago.

11 **Q. And the fourth-from-the-bottom entry also**
12 **labeled in 2013 as -- it looks as though there's a**
13 **background color to the ad.**

14 A. I agree that does appear to be the case in this
15 presentation.

16 **Q. Was there a period of time -- do you recall a**
17 **period of time at Google when a background color was**
18 **used to label ads?**

19 MS. SLAIMAN: Objection. Form. Out of scope.

20 A. So I -- I do recall that prior to there being
21 individual ad annotations, the entirety of the top unit
22 would have a background color associated with it.

23 **Q. When you say "the entirety of the top unit,"**
24 **what unit are you talking about?**

25 A. All of the ads that are appearing above the

1 **right?**

2 A. That is correct.

3 **Q. Do you know why that background color was**
4 **removed?**

5 MR. HARKRIDER: Object to form. Out of scope.

[REDACTED]

197

[REDACTED]

25

Q. So when somebody has an AdWords account and

199

[REDACTED]

198

1 they put -- they have ads that appear on Google search
 2 results pages, those ads will also appear on other
 3 search partners of Google, right?
 4 MS. SLAIMAN: Objection. Form.
 5 A. If an advertiser, in their campaign settings,
 6 has opted both into Google advertising, as well as
 7 participating on a Search Partner Network, then there
 8 is an opportunity for those ads to appear both on
 9 Search Partner sites, as well as on Google.com.
 10 **Q. So, for example, is Ask.com one of Google's**
 11 **search partners?**

[REDACTED]

200

[REDACTED]

14 **Q. Are you familiar with Google Trends?**
 15 A. I never worked on the Google Trends Team, but
 16 I've certainly used the product as a just ordinary
 17 user.
 18 **Q. And Google Trends is something that's provided**
 19 **to advertisers to help them with their AdWords**
 20 **campaigns?**
 21 A. Not exclusively so. Google Trends is a product
 22 that any user can access by going to trends.Google.com.
 23 So there isn't any prerequisite of a commercial
 24 relationship with Google in order to have access to
 25 that data.

201

1 **Q. And what does Google Trends show?**

2 MR. HARKRIDER: Objection. Out of scope.

3 A. My recollection is that Google Trends shows a
4 lot of data. The stuff that I've used it before, as an
5 individual consumer, is to receive graphical
6 representations of indexed query volume, over time, for
7 a specified search.

8 MR. GATES: So let's mark this as RX 130.

9 (RX 130, Printout from Google Trends Page,
10 marked for identification.)

11 **Q. I'm showing you what's been marked as RX 130,
12 and do you recognize that as a printout from a Google
13 Trends page?**

14 A. I -- I can certainly imagine it being so.

15 **Q. And what you can do on Google Trends is input a
16 term and -- what did you say -- it would give the
17 historical volume of searches on that term; is that
18 right?**

19 A. It -- an indexed representation of historical
20 search volume.

21 **Q. And that representation, then, is this graph
22 that's in the middle of the first page of RX 130 for
23 the term 1-800 Contacts?**

24 MR. HARKRIDER: Objection. Out of scope.

25 A. That appears to be the case.

202

1 **Q. And on the second page, it shows the -- the top
2 of the page shows the geographies in which that search
3 term was used?**

4 MR. HARKRIDER: Objection. Out of scope.

5 A. I'm not sure if that's what's being represented
6 or not.

7 MR. GATES: Let me just mark this as 131.

8 (RX 131, Printout from Google Trends Page,
9 marked for identification.)

10 **Q. So RX 131 is another printout of a Google
11 Trends page -- oh, I'm sorry -- for the search term
12 "search query 1-800 Contacts cheaper competitor."**

13 **Do you see that?**

14 A. I do see that.

15 **Q. And in the interest over time, it says, "Hm,
16 your search doesn't have enough data to show here."
17 What does that indicate to you?**

18 MR. HARKRIDER: Objection. Out of scope.

19 A. So I'm not completely sure what it means, "Your
20 search doesn't have enough data."

21 Presumably, it implies that there is some
22 threshold that this product has where it would like to
23 see that threshold exceeded prior to portraying indexed
24 information to users. And whatever that threshold may
25 be is not being exceeded by this particular query.

203

1 **Q. Okay. So, in other words, there weren't enough
2 searches on this search term for -- to exceed the
3 minimum threshold for this Google Trends data?**

4 MR. HARKRIDER: Objection. Out of scope.

5 A. There isn't enough -- I presume there wasn't
6 enough data for the team to decide to show it. I don't
7 know what being below that threshold might imply or
8 mean.

9 **Q. So, Mr. Juda, are you familiar with any kind of
10 eye-tracking studies done at Google in order to
11 determine what users, Google users, look at when they
12 look at a search engine's results page?**

13 A. At a very high level, yes.

14 **Q. Were you involved in any of those?**

15 A. I was not.

16 **Q. Do you -- are you familiar that external
17 companies have done similar types of studies?**

18 A. I believe, at a high level, I know others have
19 conducted studies. I've never looked into those
20 studies much.

21 **Q. Let me just show you one, and we'll see if
22 you're familiar with it.**

23 MR. GATES: So 132.

24 (RX Plaintiff 132, Eye Tracking Report, marked
25 for identification.)

204

1 **Q. So RX 132 is a publication that was produced to
2 us from Google, and it was acting -- it says it was
3 prepared by Enquiro.**

4 **Do you see that?**

5 A. I see something that says "Prepared by Gord
6 Hotchkiss at Enquiro."

7 **Q. And released by Enquiro?**

8 A. I see that, as well.

9 **Q. Is Enquiro a company that Google has purchased
10 studies from?**

11 A. I do not know.

12 **Q. You don't know?**

13 **Have you ever seen studies from Enquiro?**

14 A. Nothing comes to mind.

15 MR. GATES: All right. Well, in that case,
16 what I'm going to do is reserve the remainder of my
17 time, and why don't we take a break.

18 MR. HARKRIDER: Okay.

19 (Recess.)

20 MS. SLAIMAN: Let's go back on the record,
21 please.

22 FURTHER EXAMINATION BY

23 MS. SLAIMAN:

24 **Q. Mr. Juda, does Google ever show ads that are
25 not at all relevant to a user's search?**

209

[REDACTED]

211

[REDACTED]

210

[REDACTED]

212

[REDACTED]

213

[REDACTED]

215

[REDACTED]

214

[REDACTED]

216

[REDACTED]

217

219

[REDACTED]

[REDACTED]

17 **Q. Can you tell us, very briefly, about your**
18 **education prior to coming to Google?**

19 A. Sure. I'll work backwards. Tell me when you
20 want me to stop.

21 So my -- my final degree was a PhD from a
22 program jointly sponsored between the Harvard Business
23 School and Harvard School of Engineering Applied
24 Sciences. The program at the time was called
25 Information Technology and Management. But I believe

218

220

1 the program has long since been disbanded.

2 So that PhD was acquired in 2007.

3 In 2005, during my time at Harvard, I picked up
4 a master's of science in computer science.

5 In 2001, I obtained a bachelor's of science in
6 engineering at Princeton in civil engineering. And
7 also at Princeton, I acquired a certificate of
8 proficiency -- which is effectively Princeton's
9 terminology for a minor -- in computer science.

10 **Q. Great.**

11 MS. SLAIMAN: Let's just take a short break,
12 and I think we're nearly finished.

13 THE WITNESS: Okay. Sounds great.

14 (Recess.)

15 MS. SLAIMAN: Okay. Let's go back on the
16 record, please.

17 BY MS. SLAIMAN:

18 **Q. Was there a time when the expected**
19 **click-through rate signal -- before the expected**
20 **click-through rate signal was in place?**

21 A. By definition, yes. I mean, so it hasn't been
22 around for all time.

23 **Q. Was there a time when Google had a different**
24 **kind of system?**

[REDACTED]

[REDACTED]

221

[REDACTED]

223

[REDACTED]

222

[REDACTED]

224

[REDACTED]

225

[REDACTED]

227

1 So making untruthful statements regarding,
 2 like, what's going to happen to the user or what the
 3 content of a landing page may be.
 4 **Q. So Google has a definition of misleading that**
 5 **provides -- to who the people --**
 6 A. So I believe, within our help center, if one
 7 were to look up our advertising policies, there are
 8 rules prohibiting misleading content. So that was what
 9 I had in mind during that discussion.
 10 **Q. So ad copy is reviewed by actual people before**
 11 **it is approved?**

[REDACTED]

226

[REDACTED]

228

[REDACTED]

13 **Q. Okay. Ms. Slaiman asked you some questions**
 14 **about Google's efforts to exclude misleading ads. Do**
 15 **you remember that?**
 16 A. Yes.
 17 **Q. So, first off, what definition of "misleading"**
 18 **were you using when answering her question?**
 19 A. So the rough definition of "misleading" that I
 20 had in mind, or at least what was in my mind as I was
 21 answering those questions, is that the ads review team
 22 has some documented, sort of, rules around misleading
 23 ads not being permissible. So I was thinking about
 24 things that were, in my mind, consistent with those
 25 kinds of policies.

229

231

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 MR. GATES: Okay. No further questions.

6 MR. HARKRIDER: Can we take, like, a

7 couple-minute break? I may actually have, like, four

8 questions to ask, just to clean up some things and get

9 some things on the record.

10 MR. GRAY: I have one question that I might

11 like to ask.

12 MR. HARKRIDER: You can do that now. If you

13 want do that now.

14 EXAMINATION BY

15 MR. GRAY:

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 **comprehensive than producing the code itself?**

2 A. I do.

3 MR. HARKRIDER: That's all I have.

4 (Time Noted: 5:18 p.m.)

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232

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 MR. GRAY: Take a break?

7 MR. HARKRIDER: Yes.

8 (Recess.)

9 MR. HARKRIDER: Back on the record.

10 EXAMINATION BY

11 MR. HARKRIDER:

12 **Q. Mr. Juda, you were asked a series of questions**

13 **today about how various algorithms at Google work. Do**

14 **you recall that?**

15 A. I do.

16 **Q. As you sit here today, were you and are you**

17 **willing and able to answer any and all questions**

18 **regarding how those algorithms discussed today work?**

19 A. To the best my ability, yes.

20 **Q. During the deposition, have you refused to**

21 **answer any questions about how these various algorithms**

22 **work?**

23 A. No.

24 **Q. Do you believe that your answers as to how an**

25 **algorithm works would be more useful and more**

1 CERTIFICATION OF REPORTER

2

3 NO.: 141-0200

4 CASE TITLE: FTC V. 1-800 CONTACTS

5 DEPOSITION DATE: December 13, 2016

6

7 I HEREBY CERTIFY that the transcript contained

8 herein is a full and accurate transcript of the notes

9 taken by me at the hearing on the above cause before

10 the FEDERAL TRADE COMMISSION to the best of my

11 knowledge and belief.

12

13 DATED: 12/13/2016

14

15

16

17 ANITA TROMBETTA, RPR, CRR

18

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233

1 CERTIFICATE OF DEPONENT
 2
 3 I hereby certify that I have read and
 4 examined the foregoing transcript, and the same is a
 5 true and accurate record of the testimony given by me.
 6 Any additions or corrections that I feel are
 7 necessary, I will attach on a separate sheet of paper
 8 to the original transcript.
 9

10 _____
 11 ADAM JUDA
 12 I Hereby Certify That the Individual
 13 Representing Himself/Herself to Be the Above-Named
 14 Individual, Appeared Before Me This _____ Day of
 15 _____, 2016, and Executed the Above Certificate
 16 in My Presence.
 17

18 _____
 19 NOTARY PUBLIC IN AND FOR
 20
 21 _____
 22 MY COMMISSION EXPIRES:
 23 _____
 24
 25

234

1 WITNESS: ADAM JUDA
 2 DATE: December 13, 2016
 3 CASE: FTC V. 1-800 CONTACTS
 4 Please note any errors and the corrections thereof on
 5 this errata sheet. The rules require a reason for any
 6 change or correction. It may be general, such as "to
 7 correct stenographic error," or "to clarify the
 8 record," or "to conform with the facts."
 9

10 PAGES LINE CORRECTION REASON FOR CHANGE
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In the Matter of:

1-800 Contacts

December 16, 2016

Gavin Charlston, Esq. - Confidential

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1 UNITED STATES OF AMERICA
2 BEFORE THE FEDERAL TRADE COMMISSION
3 IN THE MATTER OF)
4) Docket No. 9372
5 1-800 CONTACTS,)
6 A CORPORATION)
7 _____)
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12 **CONFIDENTIAL**
13
14 DEPOSITION OF
15 GAVIN CHARLSTON, ESQ.
16 FRIDAY, DECEMBER 16, 2016
17
18 REPORTER: KIMBERLY E. D'URSO, RPR, CSR NO. 11372
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<p>1 EXHIBITS FOR REFERENCE (cont'd)</p> <p>2 EXHIBIT DESCRIPTION PAGE</p> <p>3 (All previously marked)</p> <p>4 CX0470- Domestic Trademark Policy Change</p> <p>5 Transition Plan Discussion</p> <p>6 CX0471- Email dated 4/13/04</p> <p>7 CX0472- Email dated 3/11/04</p> <p>8 CX0575- Email dated 9/17/07</p> <p>9 CX0789- Email dated 4/9/04</p> <p>10 CX1135- Email dated 2/25/04</p> <p>11 CX1136- Email dated 3/3/04</p> <p>12 CX1139- Materials used to perform test</p> <p>13 CX1143- Email dated 3/26/04</p> <p>14 CX1145- Email dated 4/9/04</p> <p>15 CX1148- AdWords U S Trademark Policy Development</p> <p>16 Timeline</p> <p>17 CX1149- FTA/EU Document</p> <p>18 CX1152- Email dated 9/26/07</p> <p>19 CX1176- "Exhibit 30" Document</p> <p>20 CX1195- Subpoena</p> <p>21 CX1197- Google Advertising Policy Review</p> <p>22 CX1203- Trademark Experiment</p> <p>23 QUESTIONS INSTRUCTED NOT TO ANSWER</p> <p>24 PAGE LINE</p> <p>25 (NONE)</p> <p>--oOo--</p>	<p>1 entered as a CX, so I don't think we need to do it</p> <p>2 again -- but a copy of the subpoena for today's</p> <p>3 deposition.</p> <p>4 And is it your understanding that this subpoena</p> <p>5 is what we call a 33(a) or (c)(1) subpoena, which is a</p> <p>6 similar to a 30(b)(6) in federal practice? And is it</p> <p>7 your understanding that you're here to testify to</p> <p>8 specifications 5, 6, 7, 8, and 9 in the subpoena that I</p> <p>9 handed to you?</p> <p>10 Hang on.</p> <p>11 Did I hand you the wrong document? Yeah. I</p> <p>12 apologize. I'll get that to you at the next break.</p> <p>13 A. Okay.</p> <p>14 Q. We can enter it into the record then as well.</p> <p>15 Mr. Charlston, what's your educational background before</p> <p>16 you began work?</p> <p>17 A. I attended UC Santa Barbara for undergrad, and</p> <p>18 UC Hastings for law school.</p> <p>19 Q. And when did you graduate from UC Hastings Law</p> <p>20 School?</p> <p>21 A. 2007.</p> <p>22 Q. And where did you work after graduating from UC</p> <p>23 Hastings Law School?</p> <p>24 A. I was an associate attorney at Cooley, LLC, in</p> <p>25 San Francisco.</p>
<p>1 BE IT REMEMBERED, that set on Friday, the 16th</p> <p>2 day of December, 2016, commencing at the hour of</p> <p>3 8:56 a m. thereof, at the Google, Inc., 345 Spear Street,</p> <p>4 San Francisco, California, before me, Kimberly E. D'Urso,</p> <p>5 a Certified Shorthand Reporter of the State of</p> <p>6 California, there personally appeared</p> <p>7 GAVIN CHARLSTON, ESQ.,</p> <p>8 having been called as a witness by the Federal</p> <p>9 Trade Commission, who, having been sworn by me to tell</p> <p>10 the truth, the whole truth, and nothing but the truth,</p> <p>11 was thereupon examined and testified as hereinafter set</p> <p>12 forth:</p> <p>13 --oOo--</p> <p>14</p> <p>15 EXAMINATION</p> <p>16 BY MR. GRAY:</p> <p>17 Q. Please state your full name for the record.</p> <p>18 A. Gavin Charlston.</p> <p>19 Q. And do you live in San Francisco?</p> <p>20 A. I live in Marin County.</p> <p>21 Q. And where do you work?</p> <p>22 A. I work at Google, Inc.</p> <p>23 Q. And are you an attorney?</p> <p>24 A. Yes.</p> <p>25 Q. I'm handing you -- this has been previously</p>	<p>1 Q. What areas of law did you practice at Cooley,</p> <p>2 LLC, in San Francisco?</p> <p>3 A. General litigation, and then I began to</p> <p>4 specialize in trademark, copyright and advertising.</p> <p>5 Q. Had you studied trademarks in law school?</p> <p>6 A. I took a general survey course, yes.</p> <p>7 Q. And what kinds of trademark matters did you</p> <p>8 work on at Cooley, LLC?</p> <p>9 A. LLP. Sorry.</p> <p>10 I handled trademark prosecution and portfolio</p> <p>11 management, trademark enforcement matters, as well as</p> <p>12 trademark litigation matters.</p> <p>13 Q. And when did you leave Cooley?</p> <p>14 A. I left Cooley in June of 2012.</p> <p>15 Q. And where did you begin working after Cooley?</p> <p>16 A. I began with Google.</p> <p>17 Q. In June 2012?</p> <p>18 A. It was July 2012, after a short break.</p> <p>19 Q. What was your title when you were hired at</p> <p>20 Google in 2012?</p> <p>21 A. I was associate trademark counsel.</p> <p>22 Q. Has your title changed?</p> <p>23 A. Yes. I am now just trademark counsel.</p> <p>24 Q. Do you have particular responsibility for</p> <p>25 certain products at Google?</p>

9	<p>1 A. Yes.</p> <p>2 Q. What products are you responsible for?</p> <p>3 A. I handle the Android portfolio. I handle</p> <p>4 what's known as our Next Billion Users products. And I</p> <p>5 handle our advertising products.</p> <p>6 Q. And what services or products fall within</p> <p>7 advertising products?</p> <p>8 A. Within our advertising products, we have Google</p> <p>9 AdWords. We have Google AdSense. We have Google</p> <p>10 Analytics. There are a number of other services that</p> <p>11 fall within the umbrella, but those are some of the</p> <p>12 largest ones.</p> <p>13 Q. Focusing just on the AdWords product, how many</p> <p>14 attorneys are responsible for trademark policy on the</p> <p>15 AdWords service?</p> <p>16 A. I handle all of the trademark policy work, and</p> <p>17 then another member of my team handles matters related</p> <p>18 to counterfeit policy for AdWords.</p> <p>19 Q. And what is the name of other person on your</p> <p>20 team?</p> <p>21 A. Her name is Annabelle DanielVarda.</p> <p>22 Q. Does Ms. Varda report to you?</p> <p>23 A. No.</p> <p>24 Q. Do you have other attorneys who report to you?</p> <p>25 A. No.</p>	11
10	<p>1 Q. And to whom do you report?</p> <p>2 A. I report to Terri Chen, T-e-r-r-i.</p> <p>3 Q. And what is Ms. Chen's title?</p> <p>4 A. She is the director of trademarks for Google.</p> <p>5 Q. And do you know who Ms. Chen reports to?</p> <p>6 A. Yes.</p> <p>7 Q. Who?</p> <p>8 A. She reports to Stacey Wexler. W-e-x-l-e-r. I</p> <p>9 don't know what her title is.</p> <p>10 Q. And since you joined Google in 2012, could you</p> <p>11 just give us a sense of the kinds of trademark issues</p> <p>12 that you've worked on with respect to the AdWords</p> <p>13 product?</p> <p>14 A. Sure. With respect to AdWords, I counsel the</p> <p>15 products on the application of our trademark policies to</p> <p>16 various efforts that they're engaged in, as far as ad</p> <p>17 formats. I also provide guidance when it comes to</p> <p>18 complaints we receive from trademark owners seeking to</p> <p>19 restrict the use of trademarks in ad text under our</p> <p>20 policy. I also have a role advising on litigation that</p> <p>21 may be related to our AdWords trademark policies.</p> <p>22 Q. In your role as an attorney that provides</p> <p>23 guidance to trademark owners, do you frequently speak to</p> <p>24 customers directly?</p> <p>25 A. Well, trademark owners may not always be</p>	12
9	<p>1 customers. Some of our advertisers are also trademark</p> <p>2 owners who have complaints on file with them, but some</p> <p>3 are not. I occasionally will correspond with trademark</p> <p>4 owners, to the extent they have questions about our</p> <p>5 trademark policies.</p> <p>6 Q. Do you support the customer service</p> <p>7 representatives in answering questions about the policy?</p> <p>8 A. We have what we call an AdWords trademark</p> <p>9 operations team that handles the trademark complaints we</p> <p>10 receive under the policy. And so I provide -- I'm the</p> <p>11 escalation path to that team for difficult or</p> <p>12 complicated complaints.</p> <p>13 I also do occasionally work with the sales</p> <p>14 team, to the extent they have received complaints from</p> <p>15 their customers related to the trademark policy.</p> <p>16 Q. And how many members are part of the trademark</p> <p>17 operations team?</p> <p>18 A. It's approximately 15 to 20.</p> <p>19 Q. And are those 15 to 20 persons responsible for</p> <p>20 trademark concerns for U.S. customers?</p> <p>21 A. The team is split across the U.S. and Ireland,</p> <p>22 and they handle complaints that come in globally, as</p> <p>23 well as escalations that will come in from advertisers</p> <p>24 globally.</p> <p>25 Q. And are you the first point of contact if the</p>	11
10	<p>1 team feels that it needs to escalate an issue to an</p> <p>2 attorney?</p> <p>3 A. To the extent it relates to the AdWords</p> <p>4 trademark policy, yes.</p> <p>5 Q. Do you have other points of contact with the</p> <p>6 people who support AdWords, other people you interact</p> <p>7 with on a regular basis who work on AdWords?</p> <p>8 A. I work as well with the product managers and</p> <p>9 engineers who are responsible for developing the AdWords</p> <p>10 product and implementing the policies for the product,</p> <p>11 yes.</p> <p>12 Q. And how frequently do you speak with them in</p> <p>13 that capacity?</p> <p>14 A. At least once a week.</p> <p>15 Q. And you talked about a series of different</p> <p>16 roles. About how much of your time do you think is</p> <p>17 dedicated to AdWords, as far as your other areas of</p> <p>18 responsibility?</p> <p>19 A. It probably consumes about 60 percent of my</p> <p>20 workload.</p> <p>21 Q. 60?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Does Google have tools that it uses to</p> <p>24 monitor or manage the use of trademarks on AdWords?</p> <p>25 A. We do have systems that are in place that help</p>	12

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1 to effectuate our AdWords trademark policy, which allows
2 for the restriction of the use of trademarks within ad
3 text, yes.

4 **Q. And could you describe the tools that Google
5 uses for monitoring and managing trademark? And if I
6 may, it may make sense to list the tools that you're
7 aware of and then we can discuss -- just keep the record
8 straight -- discuss them individually, once you've
9 listed the ones that you know about?**

10 A. Sure. So the primary tools that are of
11 relevance here, one is known as Beaker. And this is the
12 system in which -- we call them the "trademark rules"
13 that are created as the result of complaints that we
14 receive from trademark owners are maintained. That
15 database contains both the trademark terms in question,
16 the countries where the mark is subject to protection,
17 the industry in which the trademark is protected, and
18 then in certain instances, restrictions as to specific
19 advertisers the complaint should apply to or specific
20 advertisers the complaint should not be applied to.

21 The next system is known as Bunsen. And this
22 is effectively the system -- it does a number of things;
23 but for purposes of trademark, it takes the Beaker rules
24 and applies them to the advertising inventory, to make
25 sure that the rules are being applied and that the ads

14

1 are being labeled in accordance with the rules.

2 **Q. What do you mean by "advertising inventory" in
3 that context?**

4 A. I'm referring to the ad keywords and creatives
5 that are being submitted by advertisers for service
6 within AdWords.

7 **Q. Are you aware of any other tools that relate to
8 trademarks on AdWords?**

9 A. The other primary tool that we use is known as
10 Barn Owl. And this is a system that is used to
11 implement what we refer to internally as the reseller
12 and informational sites policy. It's a system that
13 reviews ad creatives and keywords that have been labeled
14 under our trademark policy and determines whether the
15 ad, keyword, and landing page comply with our reseller
16 and informational sites policy.

17 **Q. Are there other tools that come to mind that
18 relate to trademarks and AdWords?**

19 A. There are some general tools that are used,
20 from an operational standpoint, to maintain
21 correspondence and keep track of correspondence that we
22 receive from trademark owners, but these are the primary
23 tools that are used in implementing the trademark
24 policy.

25 **Q. Do you know the history of when each of these**

15

1 **three tools was developed and went into use at Google?**

2 A. I only know that Barn Owl was launched in 2009.
3 I don't know the timing or history for the other tools.

4 **Q. So Barn Owl related to the 2009 policy change
5 that permitted some fair use of the trademarks?**

6 A. It allowed for the use of trademarks and ad
7 text by resellers' informational sites, yes.

8 **Q. And any sense of the time frame for when Google
9 started using Beaker?**

10 A. I don't.

11 **Q. Or when it developed Beaker?**

12 A. I don't.

13 **Q. It was in use when you arrived at the company?**

14 A. Yes, that's correct.

15 **Q. And the same answers with respect to Bunsen?**

16 A. To clarify, it was in use when I began
17 counseling the ads products, which was in 2013.

18 **Q. Before 2013, do you know whether it was in use?**

19 A. I don't; but I believe it was in use at that
20 time.

21 **Q. Okay. What is Google's current policy, in the
22 United States, concerning the use of trademarks as
23 keywords by AdWords advertisers?**

24 A. Our policy doesn't allow for the restriction of
25 any keyword, based on the fact that there are trademarks

16

1 in the United States.

2 **Q. And what do you mean by restrictions, in that
3 context?**

4 A. I'm referring to the fact that we will serve an
5 ad on any particular keyword, regardless of whether that
6 keyword happens to be a trademark.

7 **Q. What is Google's current policy concerning the
8 use of trademarks in the text of search advertisements
9 in the United States?**

10 A. We currently will restrict the use of trademark
11 in ad text, reactively, in response to a complaint
12 received from a trademark owner reflecting that they own
13 rights in a term, in connection with a particular goods
14 and services in the United States, subject to the
15 reseller and informational site exception that I
16 mentioned earlier. Under that exception, we will allow
17 a trademark to appear in ad text where the ad and
18 landing page indicate that the advertiser is a reseller,
19 is providing compatible goods or services, or is
20 providing information about the trademark products or
21 services.

22 **Q. Could you provide an example of the types of
23 use of trademarks in ad text that would be forbidden
24 under the current policy?**

25 A. Under the current policy we would not permit

17	<p>1 one shoe manufacturer, for example, to reference a</p> <p>2 competitor's brand in their ad text.</p> <p>3 Q. And does that depend on one of the shoe</p> <p>4 manufacturers notifying Google that it didn't want that</p> <p>5 to happen?</p> <p>6 A. That's correct. The trademark owner could</p> <p>7 notify us either that they didn't want their trademarks</p> <p>8 to appear in any ad, or they can contact us and ask that</p> <p>9 the trademark not appear only in ads by specific</p> <p>10 advertisers.</p> <p>11 Q. So it could be described as an opt-in system?</p> <p>12 A. We call it reactive.</p> <p>13 Q. Reactive.</p> <p>14 Does Google have any other current policies</p> <p>15 relating to the use of trademarks on AdWords?</p> <p>16 A. We have a counterfeit goods policy as well. We</p> <p>17 have zero tolerance for counterfeits in our ads</p> <p>18 products. I don't counsel directly on that policy, but</p> <p>19 it is -- technically, it's trademark-related as well.</p> <p>20 Q. Has Google's trademark policy differed in the</p> <p>21 past from the way it is today?</p> <p>22 A. And we're talking in the United States?</p> <p>23 Q. In the United States.</p> <p>24 A. Yes, it has changed over time.</p> <p>25 Q. Are you aware of the major changes to Google's</p>	19	<p>1 from being used as keywords to trigger ads. In 2004, we</p> <p>2 ceased that practice under our policy and, instead, would</p> <p>3 only allow trademarks to restrict their -- trademark</p> <p>4 owners to restrict their terms from appearing in the text</p> <p>5 of an ad.</p> <p>6 Q. What -- could you explain in more detail the</p> <p>7 policy that was in place prior to the 2004 change?</p> <p>8 A. Yes. Prior to 2004, in response to a complaint</p> <p>9 from a trademark owner, we would restrict ads from</p> <p>10 appearing on that trademark owner's trademark.</p> <p>11 Q. I'm handing you an exhibit that was previously</p> <p>12 marked CX1148.</p> <p>13 MR. HARKRIDER: So at this stage, can we just</p> <p>14 make sure that we mark the entire transcript as</p> <p>15 confidential, under the protective order.</p> <p>16 THE REPORTER: Yes.</p> <p>17 BY MR. GRAY:</p> <p>18 Q. Mr. Charlston, are you familiar with CX1148?</p> <p>19 A. I am, yes.</p> <p>20 Q. And could you explain what CX1148 states about</p> <p>21 the history of Google's AdWords trademark policy?</p> <p>22 A. It reflects that, prior to 2004 -- prior to</p> <p>23 April 2004, we permitted trademark owners to restrict</p> <p>24 the use of their trademark, both with an ad text and as</p> <p>25 a keyword, once they had established that they owned the</p>
18	<p>1 trademark policy since the introduction of AdWords --</p> <p>2 A. Yes.</p> <p>3 MR. GATES: Lacks foundation.</p> <p>4 BY MR. GRAY:</p> <p>5 Q. Have there been major changes to Google's</p> <p>6 trademark policy since the introduction of AdWords?</p> <p>7 MR. GATES: Lacks foundation.</p> <p>8 THE WITNESS: There have been changes to the</p> <p>9 policy over time, yes.</p> <p>10 BY MR. GRAY:</p> <p>11 Q. What are the significant changes to the AdWords</p> <p>12 policy -- well, what was the most recent significant</p> <p>13 change to the AdWords policy compared to the policy</p> <p>14 that's in place today?</p> <p>15 MR. GATES: Object to the form.</p> <p>16 THE WITNESS: Well, the most recent change to</p> <p>17 the policy would have been the launch of the reseller</p> <p>18 and informational site policy, in 2009, that we were</p> <p>19 discussing.</p> <p>20 BY MR. GRAY:</p> <p>21 Q. And what was a prior change to the AdWords</p> <p>22 policy that preceded the 2019 change?</p> <p>23 MR. GATES: Object to form.</p> <p>24 THE WITNESS: In 2004, we -- prior to 2004, we</p> <p>25 had allowed trademark owners to restrict their trademarks</p>	20	<p>1 protectable rights to that trademark in the United</p> <p>2 States.</p> <p>3 Beginning in April 2004, we no longer</p> <p>4 restricted the use of trademarks as keywords, but we</p> <p>5 would continue to allow trademark owners to restrict the</p> <p>6 use of their trademark with an ad text.</p> <p>7 And then beginning in June of 2009, we created</p> <p>8 what is referred to internally as the "reseller and</p> <p>9 informational site exception," which allows a trademark</p> <p>10 to appear in ad text, even if we have a complaint on</p> <p>11 file where the advertiser is reselling the trademarked</p> <p>12 goods or service, selling compatible goods or service,</p> <p>13 as well as components or replacement parts, or is</p> <p>14 providing information about the trademark goods or</p> <p>15 services.</p> <p>16 Q. And, Mr. Charlston, who authored CX1148?</p> <p>17 A. I prepared this document.</p> <p>18 Q. And is this document consistent with the</p> <p>19 testimony that you gave earlier on about your</p> <p>20 understanding of the history of Google's policies, since</p> <p>21 before 2004?</p> <p>22 A. Yes.</p> <p>23 Q. It's an accurate representation of your</p> <p>24 understanding of the history of Google's trademark</p> <p>25 policies since 2004?</p>

1 A. Yes. That's correct.
2 Q. I'm handing you a document previously marked
3 CX1197. Please review the entire document. But it
4 might save some time -- I'm only going to ask about the
5 slide that appears on page 6 of CX1197. This document

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

23 BY MR. GRAY:

24 Q. And I'm handing you a document previously
25 marked as CX1139. Please take a minute to familiarize

[REDACTED]

1 yourself with CX1139. Let me know when you're ready to
2 discuss the document, please.

3 A. I'm ready.

4 Q. Do you recognize CX1139?

5 A. I do not.

6 Q. Looking at CX1139, can you tell whether these
7 are the materials that were used to perform the tests
8 discussed in the previous document?

9 MR. GATES: Lacks foundation.

10 THE WITNESS: I cannot.

11 BY MR. GRAY:

12 Q. Okay. Just to be clear, you have not seen that
13 document before today?

14 A. Not that I can recall.

15 Q. I'm handing you another document, CX1143.
16 Please take a minute to review CX1143.

17 A. I'm ready.

18 Q. Are you familiar with this document,
19 Mr. Charlston?

20 A. Yes.

21 Q. Can you describe for the record what your
22 understanding of this document is, please?

[REDACTED]

[REDACTED]

37

[REDACTED]

39

[REDACTED]

38

[REDACTED]

40

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

45

5 [REDACTED]
6 MR. GRAY: We've been going an hour. Do you
7 want to take a break?

8 THE WITNESS: That would be great.
9 (Break taken.)

10 BY MR. GRAY:

11 **Q. Mr. Charlston, I'm handing you a document**
12 **previously marked as CX471. Please take a minute to**
13 **familiarize yourself with the document.**

14 A. I'm ready.

15 **Q. Have you seen this document before?**

16 A. Yes.

17 **Q. For the record, could you explain what this**
18 **document is?**

19 MR. GATES: Lacks foundation.

20 THE WITNESS: It's an e-mail chain that begins
21 at the very bottom with an e-mail from
22 ad-trademarks@google.com, that appears to have been sent
23 out to notify parties who had put trademark complaints on
24 file with us, that we were no longer going to be
25 restricting the use of those trademarks as keywords.
This is in response to the 2004 policy change.

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1 An individual by the name of Howard Metzenberg appears to
2 have responded to that message to lodge a complaint about
3 the policy change. And Rose Hagan, the trademark lawyer
4 at Google at the time, responds to Mr. Metzenberg on
5 April 13th.

6 **Q. Do you know who Mr. Metzenberg is?**

7 A. I do not.

8 **Q. If I could focus your attention, please, on the**
9 **middle paragraph of Ms. Hagan's e-mail on the first page**
10 **of this document. She wrote, "We gave careful thought**
11 **and analysis to our trademark complaint procedure. We**
12 **came to the conclusion that Internet users are not**
13 **likely to be confused by seeing advertisements on a**
14 **page. If there is any confusion, we believe it is**
15 **likely to be caused by something in the text of those**
16 **ads, not by their existence. Therefore, we concluded**
17 **that the focus on keywords was the wrong focus and that**
18 **the policy should instead concentrate on ad text."**

19 **Did I read that correctly --**

20 A. Yes.

21 **Q. -- Mr. Charlston?**

22 **Do you understand what she means by "the focus**
23 **on keywords was the wrong focus" in that paragraph?**

24 MR. GATES: Lacks foundation. Calls for
25 speculation.

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1 THE WITNESS: Given the timing of this e-mail
2 that is being sent in response to our notice of the
3 keyword policy change, it appears to be referring to the
4 fact that our policy of restricting the use of trademarks
5 as keywords was the quote, "wrong focus," closed quote.
6 BY MR. GRAY:

7 **Q. Why would it have been the wrong focus?**

8 MR. GATES: Lacks foundation. Form.

9 THE WITNESS: It would have been the wrong
10 focus because it was not serving to reduce trademark
11 confusion and it also wasn't beneficial to users. As
12 Rose notes, "Users understand that they're seeing" -- or
13 "They're not likely to confuse by seeing ads on a page.
14 They understand that those are ads." And they will,
15 under the policy change, be afforded with more
16 information and choice as to the products or services
17 they may be searching for.

18 **Q. And is confusion, to the extent hat it exists,**
19 **likely to be caused only by the text of the ads?**

20 MR. GATES: Object. Lacks foundation. Object
21 on form.

22 THE WITNESS: Confusion can be caused by
23 different things, including potentially the text of an
24 ad. But it's our position that mere bidding on a
25 trademark as a keyword is not likely to give rise to

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1 consumer confusion.

2 BY MR. GRAY:

3 **Q. As reflected in Ms. Hagan's e-mail message**
4 **here, was it Google's policy to focus on ad text to**
5 **prevent the possibility of user confusion?**

6 MR. GATES: Object; vague as to time. And also
7 lacks foundation.

8 THE WITNESS: As the contents of the e-mail
9 note, the decision was made that restricting use of
10 trademarks and ad text was determined to be the best way
11 to help reduce the potential for confusion, rather than
12 restricting the use of trademarks as keywords.

13 BY MR. GRAY:

14 **Q. And is it Google's policy today that the**
15 **appropriate way to prevent user confusion is to focus on**
16 **the use of trademarks and ad text?**

17 A. Our policy today is to restrict the use of
18 trademarks and ad text in certain circumstances, again
19 striking the balance between giving users relevant
20 information and the rights of trademark owners in the
21 interests of advertisers. We have, of course, continued
22 to adjust the policy as operational systems have
23 allowed, such as the change to the reseller policy -- or
24 the implementation of the reseller policy in 2009, which
25 now does allow some referential use of trademarks and ad

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1 text, which we also don't believe is likely to create
2 confusion.

3 **Q. Based on the 12 years of experience since**
4 **Ms. Hagan wrote this e-mail, does Google still believe**
5 **that the decision to focus on ad text is the appropriate**
6 **decision for preventing user confusion?**

7 MR. GATES: Object to form. Lacks foundation.
8 THE WITNESS: Yes. And we certainly believe
9 that restricting trademarks as keywords was not the way
10 to achieve that goal.
11 BY MR. GRAY:

12 **Q. In your capacity as current trademark counsel,**
13 **are you aware of any substantial evidence that the**
14 **decision to focus on ad text rather than keywords was**
15 **incorrect or inappropriate?**

16 MR. HARKRIDER: Object to the extent it calls
17 for a legal conclusion or requires the disclosure of
18 privileged information or attorney work product.
19 THE WITNESS: No.
20 BY MR. GRAY:

21 **Q. I'm handing you an exhibit previously marked as**
22 **CX1149. Please take a minute to familiarize yourself**
23 **with it.**

24 A. I'm ready.
25 **Q. Do you recognize CX1149?**

50

1 A. Yes.
2 **Q. For the record, could you explain, what is**
3 **CX1149?**

4 A. It's a document that contains the various
5 iterations of our AdWords trademark policy that have
6 existed between March 25th of 2015 and October 11th of
7 2010.
8 **Q. Does it include the AdWords trademark policies**
9 **for all parts of the world?**

10 A. Yes. This policy applies globally.
11 **Q. Is this document a document we can use as an**
12 **authoritative statement of Google's public statement of**
13 **its trademark policy on AdWords for the period you**
14 **described?**

15 MR. HARKRIDER: Object to the form.
16 MR. GRAY: I'll reword the question.
17 BY MR. GRAY:

18 **Q. Is this a complete statement of Google's public**
19 **or published trademark policies, with respect to**
20 **AdWords, between October 11th, 2010, and March 25, 2015,**
21 **if you know?**

22 MR. HARKRIDER: Object to form.
23 MR. GATES: Object to form as well.
24 THE WITNESS: Yes.
25 BY MR. GRAY:

51

1 **Q. So it would be appropriate for us to rely on**
2 **the contents of this document as the statement that**
3 **Google made to its advertisers about its trademark**
4 **policies in that period?**

5 MR. HARKRIDER: Object to form.
6 MR. GATES: Object to form.
7 THE WITNESS: That's correct. As far as the
8 overall statement of the policy is concerned, there may
9 be related pages that were kept in the help center, or in
10 the help center now, that provide additional guidance or
11 direction; but all of them are based on the contents of
12 the policy, which is encapsulated in this document for
13 these relevant dates.
14 BY MR. GRAY:

15 **Q. Thank you.**
16 A. Uh-huh.
17 **Q. I'm going to -- I'm going to hand you the**
18 **document that we started out with. And it turns out it**
19 **actually was the document I meant to hand out.**
20 **So we don't need to enter this in the record;**
21 **but this is CX1195, and it was put into the record at**
22 **the beginning of the first half of this 30(b)(6)**
23 **deposition on Tuesday.**
24 **And if you could please just read page 1 and**
25 **page 3 -- or page 1 and page 2, it lists the deposition**

52

1 **topics.**
2 A. I'm ready.
3 **Q. Were you prepared today to discuss**
4 **specifications 5 -- numbered 5, 6, 7, 8, and 9, as**
5 **listed in this subpoena?**

6 A. Yes.
7 **Q. Is your testimony on those specifications based**
8 **on personal knowledge from your work at Google?**

9 A. Yes, in part.
10 **Q. What part is based on information other than**
11 **personal knowledge from your work at Google?**

12 A. Some of the information may be based on
13 documents that I reviewed, and then became my personal
14 knowledge.
15 **Q. Did you have conversations with other employees**
16 **at Google to collect information that would be**
17 **responsive to these specifications without --**
18 **MR. HARKRIDER: Object.**
19 BY MR. GRAY:

20 **Q. -- without communications -- without discussing**
21 **communications with other counsel, non-attorneys? Did**
22 **you discuss it with any business people --**
23 A. No.
24 **Q. -- in preparation for today's --**
25 **So the content of your testimony today is based**

13 (Pages 49 to 52)

1 on information that you know from personal knowledge,
 2 from your work at Google, or from information that you
 3 learned from documents that you reviewed in the record?
 4 A. That's correct.
 5 **Q. Does Google have a public position that it**
 6 **wants its advertisers to work out trademark disputes**
 7 **amongst themselves?**
 8 MR. HARKRIDER: Object to form.
 9 THE WITNESS: We do advise complainants and
 10 advertisers in some instances that we're not in a
 11 position to arbitrate disputes. Our policies are
 12 intended to created some bright-line rules for use of our
 13 platform. And to the extent they have disputes with one
 14 another, it is best for them to take them up with each
 15 other directly.
 16 BY MR. GRAY:
 17 **Q. And where is that policy expressed? Where do**
 18 **your advertising customers see it?**
 19 A. They may see it in response to communications
 20 they send to the trademark operations team.
 21 **Q. Is it stated on the AdWords portion of any blog**
 22 **or website?**
 23 A. I can't recall offhand. It may be.
 24 **Q. With the usual caveat that I don't want to --**
 25 **you to disclose any privileged communications, what is**

[REDACTED]

1 your understanding of Google's non-privileged reasons
 2 for this policy, if there are any?
 [REDACTED]

[REDACTED]
 8 **Q. And just for clarity and so the record is**
 9 **complete, what's your understanding of what a negative**
 10 **keyword is in this context?**
 11 A. A negative keyword is a term that can be added
 12 to an advertiser's keyword list so that a trademark will
 13 not appear -- or excuse me -- an ad will not appear in
 14 response to that term being used as a keyword.
 [REDACTED]

57

[REDACTED]

59

[REDACTED]

58

[REDACTED]

60

[REDACTED]

61

[REDACTED]

63

1 you guys by your last names.
 2 MR. GRAY: Mr. Gray and Ms. Slaiman.
 3 THE WITNESS: Yes. Mr. Gray and Ms. Slaiman.
 4 Thank you.
 5 BY MR. GATES:
 6 **Q. And during that 30-minute meeting with them,**
 7 **did they rehearse with you the questions they would ask**
 8 **you?**
 9 A. No.
 10 **Q. What did you talk about?**
 11 A. We generally discussed the issues of the case.
 12 **Q. Which topics did you cover?**
 13 A. I believe we talked generally about the
 14 policies and my understanding of the policies. It was
 15 fairly high-level.
 16 **Q. Did FTC counsel -- you said you discussed the**
 17 **issues of the case. Did they explain to you their view**
 18 **of their complaint?**
 19 A. No.
 20 **Q. And when you say you talked to them about the**
 21 **policies, you're talking about the Google trademark**
 22 **policies?**
 23 A. Yes. The AdWords trademark policies.
 24 **Q. Now, you joined Google in 2012?**
 25 A. That's correct.

62

1 [REDACTED]
 2 MR. GRAY: Thank you. I want to reserve the
 3 rest of my time.
 4 MR. GATES: Why don't we take a break, like
 5 five or ten minutes.
 6 (Break taken.)
 7 EXAMINATION
 8 BY MR. GATES:
 9 **Q. So, Mr. Charlston, I'm Sean Gates. I represent**
 10 **1-800 Contacts.**
 11 **Prior to this deposition, who did you meet with**
 12 **in order to prepare for this deposition?**
 13 A. To prepare for the deposition, I met with my
 14 counsel and other members of Google's legal team.
 15 **Q. So if I remember correctly, you did not meet**
 16 **with any Google business people in preparation for this**
 17 **deposition?**
 18 A. To specifically prepare for this deposition,
 19 no.
 20 **Q. Did you meet with anyone from the Federal Trade**
 21 **Commission prior to this deposition?**
 22 A. I had a 30-minute meeting yesterday with the
 23 FTC folks here, yes.
 24 **Q. And by the "FTC folks here," who do you mean?**
 25 A. Referring to -- I feel like I should addressing

64

1 **Q. You were not involved personally with the**
 2 **decision to make the 2004 change to Google's trademark**
 3 **policy; correct?**
 4 A. I was not personally involved, that's correct.
 5 **Q. And with regard to the reasons why that**
 6 **trademark policy was changed in 2004, you learned that**
 7 **from reading documents?**
 8 A. I've learned it from reviewing documents. I've
 9 also learned it just from my day-to-day work here. I
 10 still have to defend our policy when it comes to the use
 11 of trademarks as keywords, including in litigation
 12 matters. So I'm familiar with the background from those
 13 efforts as well.
 14 **Q. So the policy that you're defending now is**
 15 **different than the policy was in 2004; correct?**
 16 MR. HARKRIDER: Object to form.
 17 THE WITNESS: The policy itself is different
 18 than it was prior to the policy change in 2004, but we
 19 still may, time to time, defend challenges relating to
 20 the use of trademarks as keywords.
 21 BY MR. GATES:
 22 **Q. And -- okay. So you've been practicing**
 23 **trademark law for how long?**
 24 A. I began practicing trademark law in 2008, so
 25 just over eight years.

1 **Q. How many trademark litigations have you been**
2 **involved in?**

3 MR. HARKRIDER: Object to form.
4 THE WITNESS: I can't recall offhand.

5 BY MR. GATES:

6 **Q. More than 20?**

7 A. Between my time at Google and my time in
8 private practice, probably between 10 and 20.

9 MR. GRAY: If this is good pause, we're going
10 to stipulate that we join any objection entered by
11 Google's counsel.

12 BY MR. GATES:

[REDACTED]

19 **Q. Were those litigated -- I mean, were they**
20 **complaints filed in those cases?**

21 A. Yes.

22 **Q. Can you remember the names of the cases?**

23 A. There was a case in Texas State Court called
24 Greenberg Smoked Turkeys versus Google and other
25 parties. There was a case filed in New York by an

[REDACTED]

1 attorney named Rahul Manchanda versus Google, Yahoo, and
2 Microsoft.

3 **Q. Okay. As a defendant?**

4 A. Were named as defendants.

5 **Q. I understand.**

6 A. There were also cases pending internationally.

7 **Q. In which jurisdictions?**

8 A. We have a case pending in Ireland right now,
9 Ryanair versus Google.

10 **Q. Any others you recall?**

11 A. In terms of litigation we are defending, that's
12 everything I can recall offhand. But there may be more.

[REDACTED]

[REDACTED]

69

[REDACTED]

71

[REDACTED]

70

[REDACTED]

72

[REDACTED]

73

[REDACTED]

75

[REDACTED]

74

[REDACTED]

76

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9 BY MR. GATES:

10 **Q. The other cases that you referred to, have any**

11 **of them -- any of the other ones been resolved yet?**

12 MR. HARKRIDER: Same objections.

13 THE WITNESS: The Manchanda case was dismissed

14 with prejudice, I believe. The Ryanair case is still

15 pending.

16 MR. GATES: Let me mark the next exhibit as

17 RX134.

18 (Exhibit Number RX134 was marked.)

19 BY MR. GATES:

[REDACTED]

[REDACTED]

81

[REDACTED]

83

[REDACTED]

82

[REDACTED]

84

[REDACTED]

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[REDACTED]

87

[REDACTED]

86

[REDACTED]

88

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

93

[REDACTED]

95

[REDACTED]

94

[REDACTED]

96

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

101

[REDACTED]

103

[REDACTED]

102

[REDACTED]

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[REDACTED]

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[REDACTED]

107

[REDACTED]

106

[REDACTED]

108

[REDACTED]

109

[REDACTED]

111

[REDACTED]

110

[REDACTED]

112

[REDACTED]

113

[REDACTED]

115

[REDACTED]

114

[REDACTED]

116

[REDACTED]

117

[REDACTED]

119

1 [REDACTED]

2 BY MR. GATES:

3 **Q. Are you aware that Google AdWords ads are --**

4 **show up on search partners' websites?**

5 MR. HARKRIDER: Objection. Out of the scope.

6 THE WITNESS: I am aware that AdWords ads may

7 appear on third-party websites in response to search

8 queries, yes.

9 BY MR. GATES:

10 **Q. Has Google conducted any experiments to**

11 **determine whether or not its decision to allow companies**

12 **to bid on trademark keywords would result in confusion,**

13 **given the format that the ads are presented on your**

14 **search partners' websites?**

15 MR. HARKRIDER: Objection. Out of the scope.

16 Objection to form and foundation.

17 [REDACTED]

18 [REDACTED]

19 BY MR. GATES:

20 **Q. You are aware that search partners -- Google**

21 **search partners label ads differently than Google does?**

22 MR. HARKRIDER: Objection. Out of the scope.

23 MR. GRAY: Foundation.

24 THE WITNESS: I am aware of the fact that ads

25 may be presented differently on search partner websites

118

[REDACTED]

120

1 than they appear on the google.com site.

2 MR. GATES: We'll mark this one as 138.

3 (Exhibit Number RX138 was marked.)

4 BY MR. GATES:

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

121

[REDACTED]

123

[REDACTED]

122

[REDACTED]

124

1 MR. GATES: Let's mark this as RX139.
 2 (Exhibit Number RX139 was marked.)
 3 BY MR. GATES:
 4 **Q. So RX139 is a document entitled "AdWords**
 5 **Trademark Policy Updates. Reseller and information Site**
 6 **Policies." Do you recognize this as a document**
 7 **regarding information that was provided by Google to its**
 8 **users with regard to the 2009 trademark policy change?**
 9 MR. GRAY: Form.
 10 THE WITNESS: Based on the document standing
 11 alone, I can't vouch for the fact that it was actually
 12 provided to anyone; but I can state that it does appear
 13 to be an accurate statement of the policy change and the
 14 information that we would have provided to users in
 15 connection with the policy change.
 16 **Q. In 2009?**
 17 A. In 2009, yes.
 18 **Q. Now, in the 2009 policy change, it was decided**
 19 **that resellers could use trademark terms -- or other's**
 20 **trademark in their ad copy?**
 21 MR. GRAY: Mischaracterizes prior testimony.
 22 Objection to form.
 23 MR. HARKRIDER: Out of scope.
 24 THE WITNESS: The policy allows advertisers to
 25 reference a trademark in their ad text if their

125

127

1 corresponding landing page sells or facilitates the sale
2 of the goods or services that correspond to the
3 trademark, provides information about the trademark
4 products or services, or offers compatible replacement
5 parts and the like.

6 BY MR. GATES:

7 **Q. But the policy does not allow competitors of**
8 **the trademark holder to use the trademark term in their**
9 **ad copy; is that correct?**

10 MR. GRAY: Form.

11 THE WITNESS: It's correct that under the
12 policy, we do not allow advertisers to reference a
13 third-party trademark for competitive purposes, yes.

14 BY MR. GATES:

15 **Q. So -- and that's the policy today; is that**
16 **correct?**

17 A. That's correct.

18 **Q. So if a competitor to 1-800 Contacts wanted to**
19 **have an ad copy that said something along the lines of**
20 **"Buy from lens.com; we're cheaper than 1-800 Contacts,"**
21 **that would not be permitted under Google's ad policy?**

22 MR. GRAY: Objection to form.

23 THE WITNESS: Presuming that 1-800 Contacts has
24 put a trademark complaint on file with us and we've
25 validated its rights, that is correct.

[REDACTED]

126

128

1 BY MR. GATES:

2 **Q. So Google's ad policy -- AdWords policy, as of**
3 **2009 to now, precludes competitive advertising to a**
4 **certain degree?**

5 MR. HARKRIDER: Object to form.

6 MR. GRAY: Mischaracterizes prior testimony.

[REDACTED]

[REDACTED]

[REDACTED]

18 BY MR. GATES:
19 Q. Did Google make any public statements that it
20 may be subject to litigation due to the change in its
21 policy in 2004?
22 A. I can't recall offhand.
23 MR. GATES: Mark this as RX140.
24 (Exhibit Number RX140 was marked.)
25 BY MR. GATES:

1 A. Yes.
2 Q. Do you know why it was that Google made that
3 public statement?

[REDACTED]

19 BY MR. GATES:
20 Q. And you said that Google has been sued for
21 allowing others to use a trademark holder's trademark as
22 a keyword; right?
23 A. Yes.
24 Q. And one of those cases was brought by American
25 Airlines; is that right?

1 Q. So RX140 is a Securities and Exchange
2 Commission form, S1, from Google, Inc., filed with the
3 Securities and Exchange Commission on April 29th, 2004.
4 Okay. If you go to the second to the last page
5 of the document, which is labeled page 10.
6 A. Do --
7 Q. Okay. We'll switch.
8 MR. GATES: Can you put another label on that?
9 (Reporter changes exhibit labels.)
10 BY MR. GATES:
11 Q. Look on the last page of RX140. It's labeled
12 page 10. Look at the bottom paragraph there, the
13 paragraph that starts "In order to provide users with
14 more useful ads, we have reasonably revised our
15 trademark policy in the U.S. and Canada." Do you see
16 that?
17 A. Yes.
18 Q. And it then describes, "The policy -- "Under
19 our new policy, we no longer disable ads due to
20 selection by our advertisers of trademarks as keyword
21 triggers for the ads." Do you see that?
22 A. I do.
23 Q. "As a result," it continues, "of this change in
24 policy, we may be subject to more trademark infringement
25 lawsuits." Do you see that?

1 A. Yes.
2 Q. And you said that Google has never been found
3 liable for trademark infringement in any of those cases;
4 right?
5 A. That's correct.
6 Q. And Google has settled some of those cases?
7 MR. HARKRIDER: Object to form.
8 MR. GRAY: Form.
9 BY MR. GATES:
10 Q. Is that your understanding?
11 A. Yes.
12 Q. Google settled with American Airlines, did it
13 not?
14 A. Yes.
15 Q. Are you familiar with the settlement with
16 American Airlines?
17 A. Generally, yes.

[REDACTED]

133

[REDACTED]

135

1 just go back to the American Airlines litigation.
 2 Was it American Airlines' allegation that
 3 Google was liable under trademark law for allowing
 4 companies to bid on American Airlines' trademarks as
 5 keywords?
 6 A. That's consistent with my understanding of at
 7 least one of the allegations in the case, yes.
 8 Q. Now, the Rosetta Stone case, was it the case
 9 that Rosetta Stone alleged that Google was liable under
 10 the trademark laws for allowing others to bid on the
 11 Rosetta Stone trademarks as keywords?
 12 A. I don't specifically know if keywords were at
 13 issue in the Rosetta Stone case.
 14 Q. Are you familiar with the settlement in the
 15 Rosetta Stone case?
 16 A. Very generally.

[REDACTED]

134

[REDACTED]

136

[REDACTED]

11 Q. You said there were other lawsuits that were
 12 brought against Google on the basis that -- well, on the
 13 basis of the use of trademarks as keywords, right?
 14 A. Uh-huh. Yes.
 15 Q. What other cases are you familiar with?
 16 A. After the keyword policy change in 2004, we
 17 discussed the American Airlines matter. There was an
 18 action that was actually a declaratory relief action
 19 brought by Google, I guess a company called American
 20 Blinds and Wallpaper, I believe, or along those lines,
 21 seeking declaratory relief as to the legality of the
 22 practice of allowing advertisers to bid on trademarks as
 23 keywords and also seeking cancellation of American
 24 Blinds' trademarks.
 25 Q. And was there a settlement in that case?

17 MR. HARKRIDER: And out of the scope.
 18 BY MR. GATES:
 19 Q. Google also entered into a settlement of a
 20 trademark litigation brought by Rosetta Stone; is that
 21 correct?
 22 MR. GRAY: Form.
 23 THE WITNESS: Yes, I believe so.
 24 BY MR. GATES:
 25 Q. And before we go to the Rosetta Stone, let me

1 A. Not to my knowledge. I believe the trademarks
2 owned by American Blind were, in fact, invalidated as
3 part of that suit and that it was eventually just a
4 walk-away.

5 **Q. And there was no judicial resolution as to the
6 legality of Google's trademark policy?**

7 A. I don't know offhand if there was or was not.

8 **Q. What other cases are you familiar with along
9 these lines?**

10 A. I'm aware of an action brought by GEICO against
11 Google. That suit went to a bench trial where Google
12 prevailed.

13 **Q. What was the basis for the ruling?**

14 A. I don't specifically know offhand what the
15 basis for the ruling was. I do know that the use of
16 trademarks as keywords was at issue in that case.

17 **Q. Was there any finding that the use of
18 trademarks as keywords was or was not confusing?**

19 A. I don't specifically know the details of the
20 findings.

21 **Q. Was there any settlement in that case?**

22 A. Not to my knowledge.

23 **Q. Any other cases that you're aware of?**

24 A. We've been sued by a handful of parties related
25 to keyword advertising in the last four or five years.

[REDACTED]

1 One was called parts.com, which I think was resolved on
2 a motion to dismiss, in our favor.

3 Another was brought by Home Decor Center, which
4 was resolved in our favor in summary judgment, I
5 believe, in part due to the fact that the Home Decor
6 Center trademark was found not to be protectable.

7 There may be others, but I can't recall them
8 offhand.

9 **Q. Was there any settlement in parts.com or Home
10 Decor?**

11 A. No.

12 **Q. Does Google -- are you aware of any other
13 agreements that Google has that would restrict the
14 ability of an advertiser to bid on trademarks as a
15 keyword?**

[REDACTED]

[REDACTED]

141

[REDACTED]

12 **Q. And you're aware of the various keyword match**
13 **types, right?**

14 MR. GRAY: Form.

15 THE WITNESS: Yes.

16 MR. GRAY: And foundation.

17 THE WITNESS: Yes.

18 BY MR. GATES:

19 **Q. So you're aware of what a broad match is with**
20 **respect to keywords?**

21 A. Yes.

[REDACTED]

142

[REDACTED]

143

[REDACTED]

7 **Q. Okay.**

8 MR. GATES: Why don't I reserve my time for
9 after complaint counsel finishes up.

10 MR. GRAY: I'm ready to start up, but we can
11 take a break. It's up to you.

12 THE WITNESS: A five-minute break would be
13 awesome.

14 (Break taken.)

15 FURTHER EXAMINATION

16 BY MR. GRAY:

17 **Q. Other than the conversation that you had with**
18 **me and Ms. Slaiman yesterday afternoon, have you spoken**
19 **to any FTC staff in connection with this matter?**

20 A. No.

21 **Q. Do you know whether Bing allows competitors,**
22 **the search engine Bing, allows competitors to enter bids**
23 **for trademark keywords?**

24 MR. GATES: Lacks foundation.

25 THE WITNESS: It's my understanding that that

144

1 practice is permitted in the United States on Bing.

2 BY MR. GRAY:

3 **Q. Bing?**

4 A. Yes.

5 **Q. Yahoo, does Yahoo permit competitors to enter**
6 **bids on their rivals' trademarks in the United States**
7 **today?**

8 A. Yes. It's my understanding that that's
9 correct.

10 MR. GATES: Belated objection to form.

11 BY MR. GRAY:

12 **Q. Do you know whether Bing has a fair use policy**
13 **that allows limited use of trademarks in ad text under**
14 **terms that are similar to Google's 2009 policy?**

15 MR. GATES: Lacks foundation. Calls for
16 speculation and form.

17 THE WITNESS: I am aware that Bing has a policy
18 that is similar to our reseller and informational site
19 policy that we put into place in 2009, yes.

20 BY MR. GRAY:

21 **Q. Is it your understanding that Bing permits**
22 **limited use of trademarks if the advertiser is a**
23 **reseller or selling compatible goods?**

24 MR. GATES: Lacks foundation.

25 THE WITNESS: Yes, that's my understanding.

145

1 BY MR. GRAY:
2 Q. Do you know whether Bing adopted that policy in
3 the United States before Google did?
4 MR. GATES: Lacks foundation.
5 THE WITNESS: I do not.
6 BY MR. GRAY:

[REDACTED]

147

[REDACTED]

146

[REDACTED]

148

[REDACTED]

149

[REDACTED]

151

[REDACTED]

150

[REDACTED]

152

[REDACTED]

153

[REDACTED]

155

[REDACTED]

154

[REDACTED]

156

[REDACTED]

161

163

1 legitimate competitors were using Rosetta Stone's
2 trademarks to engage in comparative advertising
3 on AdWords?

4 MR. GATES: Object to form. Lacks foundation.
5 THE WITNESS: I don't know.

6 BY MR. GRAY:

7 Q. You discussed the American Airlines lawsuit?

8 A. Yes.

9 Q. Do you know whether that was filed after the
10 2009 policy change?

11 A. It was not. It was filed before the 2009
12 policy change.

13 MR. GRAY: Can we take a five- or six-minute
14 break?

15 MR. HARKRIDER: Sure.

16 MR. GRAY: Off the record.

17 (Break taken.)

18 BY MR. GRAY:

19 Q. So previously we were discussing the lawsuit
20 that American Airlines filed against Google. Was one of
21 the allegations that American Airlines pursued in that
22 litigation that users were having difficulty
23 distinguishing authorized from unauthorized distributors
24 of American Airlines' tickets?

25 A. I don't know specifically if that was one of

[REDACTED]

162

164

1 the specific allegations.

2 Q. You don't know or no?

3 A. I don't know.

4 Q. You don't know. Would it refresh your
5 recollection that -- if the allegation concerning
6 Travelocity and other online resellers of airline
7 tickets, including American Airlines tickets?

8 A. To be honest, I don't think I've ever actually
9 seen the complaint in that case. I'm just familiar with
10 the terms of the settlement, roughly.

11 Q. Please, if you can find RX134.

12 A. Okay.

[REDACTED]

[REDACTED]

165

[REDACTED]

167

[REDACTED]

166

[REDACTED]

168

[REDACTED]

173

1 trademark keywords in Europe would not -- without --
2 would not alone violate any of Google's European
3 policies?

4 A. That would not violate our trademark policy in
5 Europe, that's correct.

6 Q. Okay. I'm handing you a document previously
7 labeled as CX1152. It is a two-page e-mail chain.
8 Please take a minute to familiarize yourself with
9 CX1152.

10 A. I'm ready.

11 Q. Do you recognize this document?

12 A. I do.

13 Q. Could you describe for the record what this is?

[REDACTED]

175

[REDACTED]

174

[REDACTED]

176

[REDACTED]

21 MR. GRAY: Okay. Can we go off the record for
22 one second?
23 THE REPORTER: Sure.
24 (Off the record.)
25 BY MR. GRAY:

1 **Q. So I'm handing you a document that was produced**
 2 **by 1-800, and that's been designated CX789. And it's an**
 3 **e-mail communication from Dan Doherty to Josh Aston, who**
 4 **was a search -- I can represent to you was a search**
 5 **manager at 1-800 Contacts at the time of the e-mail.**
 6 **And I'll just note for the record that Mr. Harkrider has**
 7 **consented on behalf of Google to allow us to show this**
 8 **to another Google employee.**

9 MR. HARKRIDER: That's correct. Thank you,
 10 Josh.
 11 BY MR. GRAY:

12 **Q. Please take a minute to read the e-mail on the**
 13 **first page.**

14 A. I'm ready.

15 **Q. The first sentence of this e-mail reads, "Our**
 16 **trademark policy team has recently notified your**
 17 **company, 1-800 Contacts, of an upcoming change to policy**
 18 **regarding the uses of trademark terms in AdWords or**
 19 **keyword lists."**

20 **Did I read that correctly?**

21 A. It says, "AdWords' ads or keyword lists," but
 22 otherwise, it's --

23 **Q. Thank you for the correction. "And the change**
 24 **may affect how we handle the trademark complaint your**
 25 **company currently has on file with us."**

1 **attachment, which is at CX789, page 3. And**
 2 **specifically, I'm going to ask about the paragraph**
 3 **that's in the middle of the page that begins**
 4 **"Furthermore." So please take a minute to read that, if**
 5 **you can.**

6 A. Okay.

7 **Q. The paragraph I asked you to read falls under**
 8 **the heading "Trademark Complaint Procedure of Trademark**
 9 **Rights Outside the U.S. and Canada."**

10 **Can you please explain for the record the**
 11 **policy that was in place in 2004, outside the U.S. and**
 12 **Canada, with respect to broad matching, based on what**
 13 **you read in that paragraph?**

14 MR. GATES: Object to form. Lack of
 15 foundation.

16 THE WITNESS: It's my understanding that in any
 17 instances where a policy allowed for the restriction of
 18 trademarks as keywords, so pre April 2004 in the U.S. and
 19 Canada and post April 2004 in the rest of the world,
 20 which scaled back over time, even if we had a trademark
 21 complaint on file for a trademark term, we would still
 22 serve ads if the user's query included the trademark term
 23 and another non-trademark term on which the advertiser
 24 had broad matched.

25 So to provide an example -- and we always use

1 **Is this e-mail from the period of time when**
 2 **Google was changing its trademark policy so that it**
 3 **would no longer respond to customer requests to stop**
 4 **trademark keyword bidding?**

5 MR. GATES: Object to form. Lacks foundation.

6 THE WITNESS: Yes. This e-mail appears to be a
 7 communication that would have been provided to the sales
 8 team to follow up with their clients on the automated
 9 notification they would have received about the policy
 10 change.

11 BY MR. GRAY:

12 **Q. And I understand that this probably is the**
 13 **first time you've seen this today. But based on your**
 14 **reading of the e-mail today, what's your understanding**
 15 **of the purpose of communication from Mr. Doherty to**
 16 **Mr. Aston?**

17 MR. GATES: Lacks foundation. Calls for
 18 speculation. Object to form.

19 THE WITNESS: Typically, these types of
 20 communications would be provided just to ensure that
 21 advertisers fully understand changes to policy and to
 22 open the door for sales teams to have conversations with
 23 their clients, if there are any questions.

24 BY MR. GRAY:

25 **Q. If you could please turn your attention to the**

1 Nike as the example, so I'll use that one here as we do
 2 in the example in the language here. If Nike had put a
 3 complaint on file with us in Europe, so as to no longer
 4 have ads trigger when a user enters Nike as a query based
 5 on an advertiser's use of Nike as a keyword, if a user
 6 had decided -- or an advertiser has decided to broad
 7 match on the word "shoes" and the query consists of Nike
 8 shoes, ads may still appear by third parties, not
 9 withstanding Nike's trademark complaint.

10 BY MR. GRAY:

11 **Q. Do you know the reason why Google pursued this**
 12 **policy in Europe, notwithstanding the more restrictive**
 13 **policy with respect to the use of trademarks as exact**
 14 **match keywords?**

15 MR. HARKRIDER: Object to form. Object on the
 16 grounds that it may require disclosure of privileged
 17 communications, legal opinion and attorney work product.

18 MR. GATES: Join; and add that it lacks
 19 foundation.

20 BY MR. GRAY:

21 **Q. If you can explain a business reason for Google**
 22 **having this policy in place in 2004, please do so. And**
 23 **please don't disclose any privileged information.**



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[REDACTED]

183

1 **Europe?**
2 MR. GATES: Objection. Lacks foundation.
3 Asked and answered. Object to form.
4 THE WITNESS: That's correct.
5 MR. GRAY: All right. No more questions.
6 Thank you.
7 THE WITNESS: Okay.
8 MR. GATES: Let's take a break.
9 (Break taken.)
10 MR. GATES: Mark that as the next in order,
11 whatever that is.
12 (Exhibit Number RX141 was marked.)
13 FURTHER EXAMINATION
14 BY MR. GATES:
15 **Q. Mr. Charlston, I've given you what has been**
16 **marked as Exhibit 140, which is --**
17 THE REPORTER: 141.
18 BY MR. GATES:
19 **Q. 141 --**
20 A. Yeah.

[REDACTED]

182

[REDACTED]

184

[REDACTED]

15 BY MR. GRAY:
16 **Q. The document suggests that the same is true in**
17 **Europe in April 2004; is that correct?**
18 MR. GATES: Object. Lacks foundation.
19 THE WITNESS: It's my understanding that
20 however the keyword restrictions operated in the United
21 States and Canada prior to 2004, they continue to operate
22 in that same fashion internationally post 2004.
23 BY MR. GRAY:
24 **Q. So it's a fair inference that the policy prior**
25 **to 2004 may have been the same in the U.S. as well as**

22 **Q. So internally, will Google, if it receives a**
23 **complaint from a trademark owner, remove ads that have**
24 **ad text and uses the trademark term in a critical,**
25 **negative, or unclear way?**

185

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1 A. There are potentially informational sites that
2 could reference the trademark in the text of the ad and
3 provide information on the ads landing page that may be
4 critical or negative about the trademark owner's
5 products or services or could at least be perceived that
6 way, that would be permitted to run currently.

7 **Q. That would be permitted to run?**

8 A. That's correct.

9 **Q. What about if the ad text uses the trademark in
10 a critical or negative way? Is that a basis that Google
11 uses to remove ads?**

12 MR. GRAY: Foundation.

13 THE WITNESS: That alone would not be a basis
14 upon which to take action against a particular ad. For
15 example, we may have ads relating to class action
16 lawsuits against a particular brand owner, related to
17 particular products or services. And it's possible that
18 the contents of the ad could be perceived as critical or
19 negative. But those ads would be permitted to run, under
20 our reseller and informational type policy, presuming the
21 landing page met the criteria of the policy.

22 BY MR. GATES:

23 **Q. Would the fact that an ad text uses a
24 trademarked term in a critical or negative way be a
25 basis to remove an ad?**

1 A. That's correct.

2 **Q. And, in fact, none of Google's trademark
3 policies impact organic results; is that true?**

4 MR. GRAY: Foundation.

5 THE WITNESS: None of our AdWords' trademark
6 policies impact the survey of Google search results.

7 BY MR. GATES:

8 **Q. In your understanding, has that been true since
9 2004?**

10 A. Yes.

11 **Q. What about pre-2004?**

12 A. Yes.

13 **Q. It was the case pre-2004?**

14 A. It was the case pre-2004.

15 **Q. Okay. So if you could, pull out CX1152, which
16 is one of the e-mails that complaint counsel gave you in
17 an earlier session.**

18 A. Okay.

[REDACTED]

186

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1 A. Not specifically, no.

2 **Q. What about in 2009?**

3 A. I don't know.

4 **Q. Okay. What about anytime during your tenure
5 here?**

6 A. During my tenure and responsibility for the
7 AdWords policy, it would not be.

8 **Q. What if it uses the trademark in an unclear
9 way? Would that be a basis to remove the ad?**

10 A. I don't really know what's meant by "unclear
11 way."

12 **Q. Okay. Going back to the 2004 policy change, I
13 believe that you testified earlier today that the
14 pre-2004 policy, at least as you understood it, was
15 restrictive and limited information that was provided to
16 users?**

17 A. That's correct.

18 **Q. And the policy did not apply to organic
19 results, did it?**

20 A. That's correct.

21 **Q. It only applied to ads?**

22 A. That's correct.

23 **Q. So if somebody did a search on a trademark
24 term, the policy did not affect what organic results
25 showed up in response to that search?**

[REDACTED]

189

191

[REDACTED]

[REDACTED]

9 **Q. Have you heard the term "a syndicated partner**
10 **of Google"?**

11 A. I'm not familiar with what that specifically
12 refers to.

13 **Q. Do you know whether or not the change in policy**
14 **in 2004 applied to any of Google's partners?**

15 A. I can't state with certainty that it would
16 have.

17 **Q. Were there any exceptions to the change made in**
18 **2004 with respect to its application to Google's**
19 **partners?**

20 A. Not to my knowledge.

21 **Q. Is there any restriction on an AdWords'**
22 **advertiser's use of the trademark term "Google" as a**
23 **keyword?**

24 A. Absolutely not.

25 **Q. Yahoo?**

21 BY MR. GATES:

22 **Q. Pick up CX789. I just wanted to be clear on**
23 **this. This was one of the e-mails that complaint**
24 **counsel showed you; correct?**

25 A. Yes.

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1 A. No.

2 **Q. EBay?**

3 A. No.

4 **Q. Bing?**

5 A. No.

6 **Q. Earlier I asked you some questions about the**
7 **settlements in the American Airlines case and other**
8 **cases. Do you remember those questions?**

9 A. Yes.

[REDACTED]

1 **Q. And you had never seen this e-mail prior to**
2 **this deposition; right?**

3 A. That's correct.

4 **Q. Okay. And your answers were based on simply**
5 **your reading this document; is that right?**

6 A. To be clear, I had never seen page 1 of CX789.
7 I may have seen, in a different form, the contents of
8 CX789, pages 2 through 4.

9 **Q. So your answers with respect to the first page,**
10 **which is the cover e-mail to John Aston, those answers**
11 **were based on simply reading the e-mail?**

12 A. That's correct.

[REDACTED]

193

[REDACTED]

195

[REDACTED]

194

[REDACTED]

196

[REDACTED]

197

[REDACTED]

199

[REDACTED]

198

[REDACTED]

200

[REDACTED]

201

[REDACTED]

203

[REDACTED]

202

[REDACTED]

204

[REDACTED]

[REDACTED]

[REDACTED]

14 BY MR. GATES:

15 Q. Okay. Earlier we discussed a number of
16 litigations that Google had been involved with with
17 regard to the use of trademarks as keywords. And I
18 think you said that Google has not been found liable in
19 any of them; right?

20 A. It's my understanding we have not been found
21 liable for the practice of allowing advertisers to bid
22 on trademarks as keywords, that's correct.

23 Q. Are you aware of any judicial decision finding
24 that, as a matter of law, the use of trademarks as
25 keywords is -- does not -- is not a trademark violation?

1 MR. GRAY: Objection. Form and foundation.

2 THE WITNESS: Are we discussing lawsuits
3 against Google or just lawsuits in general?

4 BY MR. GATES:

5 Q. Start with lawsuits against Google.

6 MR. HARKRIDER: Out of scope.

7 THE WITNESS: I can't recall specifically; but
8 there may be decisions to that effect in matters
9 involving Google.

10 BY MR. GATES:

[REDACTED]

[REDACTED]

209

211



Q. Okay. Let me hand you what has been marked as RX142. RX142 is a printout from Google's advertising policies help page regarding trademarks. Do you recognize that?

A. I do, yes.

Q. And is that an accurate description of Google's policy with regard to trademarks as the policy exists today?

A. The document is dated December 6th, indicating it was printed on that date. Based on that, my summary, review of the contents, and the URL at the bottom, this appears to contain our current AdWords trademarks policy.

Q. And I'll give you what has been marked as RX143. RX143 is another printout dated December 6th, 2016, from Google's advertising policies help page, regarding misrepresentations in AdWords. Is that an accurate statement of Google's policy with regard to misrepresentation in paid search advertisements?

A. This appears to be the current AdWords misrepresentation policy, subject to the caveat that I haven't actually checked it live against the website.

Q. Have you seen this document before?

A. I may have, but I don't specifically recall seeing the bottom half of the document.

Q. And there are two e-mails contained in CX575. And the bottom e-mail, the "from" line reads, "Bryce Craven," and the e-mail address is bcraven@1800contacts.com; is that correct?

A. Yes.

Q. And the subject reads, "Trademark protection"; is that correct?

A. Yes.

Q. I can represent to you that Bryce Craven was a search manager at 1-800 Contacts at the time of this e-mail. Does Mr. Craven's message look like it may have been the underlying communication which is summarized in CX1152?

MR. GATES: Objection. Lacks foundation. Calls for speculation and violates our agreement.

But you can answer the question.

(Reporter clarification.)

MR. GRAY: So let's get rid of the "violates" because it was produced by Google.

THE WITNESS: The contents of CX1152, at the bottom of that document on page 1 and the entirety of page 2, are identical to the contents at the top of

210

212

Q. Okay. Are you involved at all in studies regarding whether consumers can distinguish paid search ads from organic links?

MR. HARKRIDER: Objection. Out of scope.

THE WITNESS: No.

BY MR. GATES:

Q. Are you aware or have you seen any kind of eye tracking studies that Google has done with regard to where users look on a search engine results page?

A. No.

MR. GATES: No further questions.

MR. GRAY: Just really quick.

FURTHER EXAMINATION

BY MR. GRAY:

Q. Respondent's counsel, in reference to CX1152, discussed the fact that CX1152 summarizes a communication between someone at 1-800 Contacts and someone at Google, but does not appear to contain the underlying communication, which is summarized in CX1152. Is that correct?

A. Yes.

Q. Okay. I'm handing you a document which has been previously designated as CX575. Please take a minute to familiarize yourself with CX575.

A. I'm ready.

CX575. CX575 includes a message below that that you just mentioned from Bryce Craven, and it appears that Paige, the customer service representative, then forwarded that message with her summary of the question below.

So it does appear that the underlying inquiry that gave rise to Paige's consult to the ads trademark operations team was based on the message received below from Bryce Craven.

Q. And the last two sentences of Mr. Craven's message in the e-mail labeled "Trademark protection" are "I know Google will protect against using trademarks in the ad text, but it also seems that they can protect against others bidding on the term," question mark. "Is that a possibility," question mark. Did I read that correctly?

A. More or less.

Q. Is Mr. Craven, according to your understanding, asking Google if it would institute trademark bidding protection for 1-800 Contacts in this e-mail?

MR. GATES: Object to form. Lacks foundation. He's never seen the document before in his life.

BY MR. GRAY:

Q. Is that a fair reading of the question that Mr. Craven asked of the Google representative?

MR. GATES: Object to form.

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1 THE WITNESS: I think it's fair based on the
2 two questions that you just read, the fact that the
3 request that 1-800 was making, I think that can also be
4 derived from the first sentence of Mr. Craven's e-mail
5 where he inquired as to whether Google had some type of
6 trademark keyword protection offered to particular
7 brands.

8 BY MR. GRAY:

9 **Q. In 2004, how old was search advertising?**

10 MR. GATES: Lacks foundation.

11 BY MR. GRAY:

12 **Q. If you don't know precisely, roughly.**

13 A. Roughly four year -- as far as Google's
14 provision of search advertising in AdWords, I believe it
15 was roughly four years old.

16 BY MR. GRAY:

17 **Q. Is it surprising to you that there would not be
18 a decision directly on point for a technology that was
19 so new in 2004?**

20 MR. GATES: Object to form. Lacks foundation.
21 Calls for expert opinion.

22 THE WITNESS: Given how new the technology was
23 and the fact that the Internet itself was still fairly
24 new to consumers and that search advertising was also
25 fairly new, relatively speaking, that's not surprising.

214

1 BY MR. GRAY:

2 **Q. Based on her role at Google in 2004, was
3 Ms. Hagan fully informed about the basis for the 2004
4 policy change, based on your understanding of her role
5 at Google at that time?**

6 MR. GATES: Lacks foundation. Calls for
7 speculation.

8 MR. GRAY: If the question is not clear, I'll
9 restate it.

10 THE WITNESS: I have to assume that Rose would
11 have been fully versed in all of the factors that went
12 into that decision. Rose is essentially my predecessor
13 in this role. When it comes to counseling or ads
14 products, then I know that I would be fully informed and
15 involved in any such decisions along these lines.

16 BY MR. GRAY:

17 **Q. And is it your understanding that the 2004
18 policy change was a significant responsibility of
19 Ms. Hagan's at that time?**

20 MR. GATES: Lacks foundation. Calls for
21 speculation.

22 THE WITNESS: It certainly would have been a
23 very significant endeavor at that time for Ms. Hagan,
24 yes.

25 BY MR. GRAY:

215

1 **Q. Would Google have designated Ms. Hagan as a
2 30(b)(6) witness in the Rosetta Stone litigation if she
3 were not fully informed about the basis for the 2004
4 policy change?**

5 MR. GATES: Lacks foundation. Calls for
6 speculation.

7 THE WITNESS: I can't speak fully as to why she
8 was designated in Rosetta Stone. I know there was also
9 the 2009 policy change, which Ms. Hagan had counseled on
10 as well.

11 BY MR. GRAY:

12 **Q. Is the fact that she was designated as a
13 30(b)(6) witness indicative of her being well-informed
14 about the basis for Google's trademark policies at that
15 time?**

16 MR. GATES: Lacks foundation. Calls for
17 speculation.

18 THE WITNESS: I would expect so in that just as
19 I am the designee here today to testify about our
20 policies currently, and I'm the most well-versed employee
21 at the company now on these policies that Ms. Hagan,
22 should she have been designated at that time, would have
23 been in that same role.

24 MR. GRAY: No further questions. Thank you for
25 your time.

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1 FURTHER EXAMINATION

2 BY MR. GATES:

3 **Q. I've got a quick question. You are the most
4 well-versed person at Google with regard to policies
5 that Google implemented in 2004 and 2005?**

6 A. I said as to the AdWords trademark policies
7 that we have in place today.

8 **Q. Oh, that you have in place today.**

9 **Okay. Are you the most well-versed person at
10 Google with regard to the trademark experiments
11 conducted in 2004 that we have been discussing?**

12 MR. HARKRIDER: Objection.

13 MS. WALSH: Calls for speculation.

14 MR. HARKRIDER: Objection. Calls for
15 speculation.

16 MR. GATES: Objection. Form.

17 MS. WALSH: How is Gavin supposed to know
18 whether he's the most well-versed person on anything?

19 MR. GATES: He knows he's the most well-versed
20 person on the policies.

21 THE WITNESS: Today.

22 MS. WALSH: Today.

23 THE WITNESS: I don't know how I can answer
24 that question.

25 BY MR. GATES:

217

1 **Q. Are you aware of anyone else at Google who**
2 **would have more information about the experiments**
3 **conducted in 2004 that we've been discussing today?**

4 A. No.

5 **Q. Are you aware of anyone else at Google who**
6 **would have any information about the experiments**
7 **conducted in 2004 that we've been discussing today?**

8 A. Well, there are certain individuals copied on
9 the e-mails relating to the experiments who are still
10 employees or executives at Google. They may have
11 information. Their working knowledge is likely less
12 than mine given the time that has passed and their focus
13 on other things.

14 MR. GATES: No further questions.
15 (3:49 p m., deposition concluded.)

16 --oOo--

17
18 SIGNED UNDER PENALTY OF PERJURY:

19
20 _____
21 GAVIN CHARLSTON

22 _____
23 DATE

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1 I, KIMBERLY E. D'URSO, a Certified Shorthand
2 Reporter of the State of California, duly authorized to
3 administer oaths, do hereby certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth; that
6 any witnesses in the foregoing proceedings, prior to
7 testifying, were duly sworn; that a record of the
8 proceedings was made by me using machine shorthand which
9 was thereafter transcribed under my direction; that the
10 foregoing transcript is a true record of the testimony
11 given.

12 Further, that if the foregoing pertains to
13 the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review of the
15 transcript was not requested.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee of
18 any attorney or party to this action.

19 WITNESS WHEREOF, I have this date subscribed
20 my name.

21 Dated: December 28, 2016

22
23 _____
24 KIMBERLY E. D'URSO, RPR, CSR NO. 11372

GROUP 6

The following Group 6 documents withheld in their entirety:

Document Title/Description	Beginning Bates No.	Ending Bates No.
1-800 Contacts Trademark Terms CPC Rise - May 2014	GOOG-LENSE-00000266	GOOG-LENSE-00000266
Email from Google AdWords Trademark Team to Paige Rossetti re: [#199698076] Trademark Protection	GOOG-LENSE-00000471	GOOG-LENSE-00000472
E-mail from sandra.s@google.com to ads-trademarks@google.com re [#43650922] Trademark question: 1800Contacts	GOOG-LENSE-00000856	GOOG-LENSE-00000858
Email from Google AdWords Trademark Team to Fiona Sortor re: [#43650922] Trademark question	GOOG-LENSE-00000859	GOOG-LENSE-00000860
Email from Natalia Bohm to Mohit Bagga re Clinic Interaction in category: Adelphi Tracking Category - Brand & Performance - Troubleshooting (Fix/Explain) - Search - Ad Serving & Quality - Ad Serving - Performance/Traffic Fluctuation - CPC Fluctuation	GOOG-LENSE-00001185	GOOG-LENSE-00001186

Re: Clinic interaction in category: Adelphi Tracking Category - Brand& Performance - Troubleshooting (Fix/Explain) - Search - Ad Serving & Quality - Ad Serving - Performance/Traffic Fluctuation - CPC Fluctuation	GOOG-LENSE-00001187	GOOG-LENSE-00001188
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From: Adrian Barajas <abarajas@google.com>
To: Baiju Hindocha <bhindocha@google.com>
Sent: Thu, 6 Nov 2014 10:07:27 -0800
Subject: Fwd: Trademark Keywords Quality Score
Cc: mohitbagga@google.com, Natalia Bohm <nbohm@google.com>

----- Forwarded message -----

From: **Adrian Barajas** <abarajas@google.com>
Date: Thu, Nov 6, 2014 at 10:04 AM
Subject: Re: Trademark Keywords Quality Score
To: Brady Roundy <broundy@1800contacts.com>
Cc: Natalia Bohm <nbohm@google.com>, "gyre@google.com" <gyre@google.com>, Kevin Hutchings <KHutchin@1800contacts.com>

Thanks for sending this note over, Brady. We're passing it along to our Account Optimizers as I mentioned and they'll reach out as soon as they've dug into this!

Best,
Adrian

On Wed, Nov 5, 2014 at 3:51 PM, Brady Roundy <broundy@1800contacts.com> wrote:

Hi All,

It was great having you all out here today! Hope you had a great flight back home!

I spoke with Adrian during lunch today, and would like to look at how to improve our Trademark keywords quality scores. We have been monitoring the quality scores of our Trademark terms more frequently lately and have been a little concerned by some of the recent trends where scores are decreasing. Could we get some recommendations for improving our scores from the QS team over at Google?

Thanks,

Brady

--

Adrian Barajas | Account Executive | abarajas@google.com | [650.214.1591](tel:650.214.1591)

--

Adrian Barajas | Account Executive | abarajas@google.com | [650.214.1591](tel:650.214.1591)

From: Baiju Hindocha <bhindocha@google.com>
To: Natalia Bohm <nbohm@google.com>
Received: Thu, 13 Nov 2014 16:15:43 +0530
Subject: Re: Trademark Keywords Quality Score
Cc: Mohit Bagga <mohitbagga@google.com>
Bcc: po5@google.com

----- Forwarded message -----

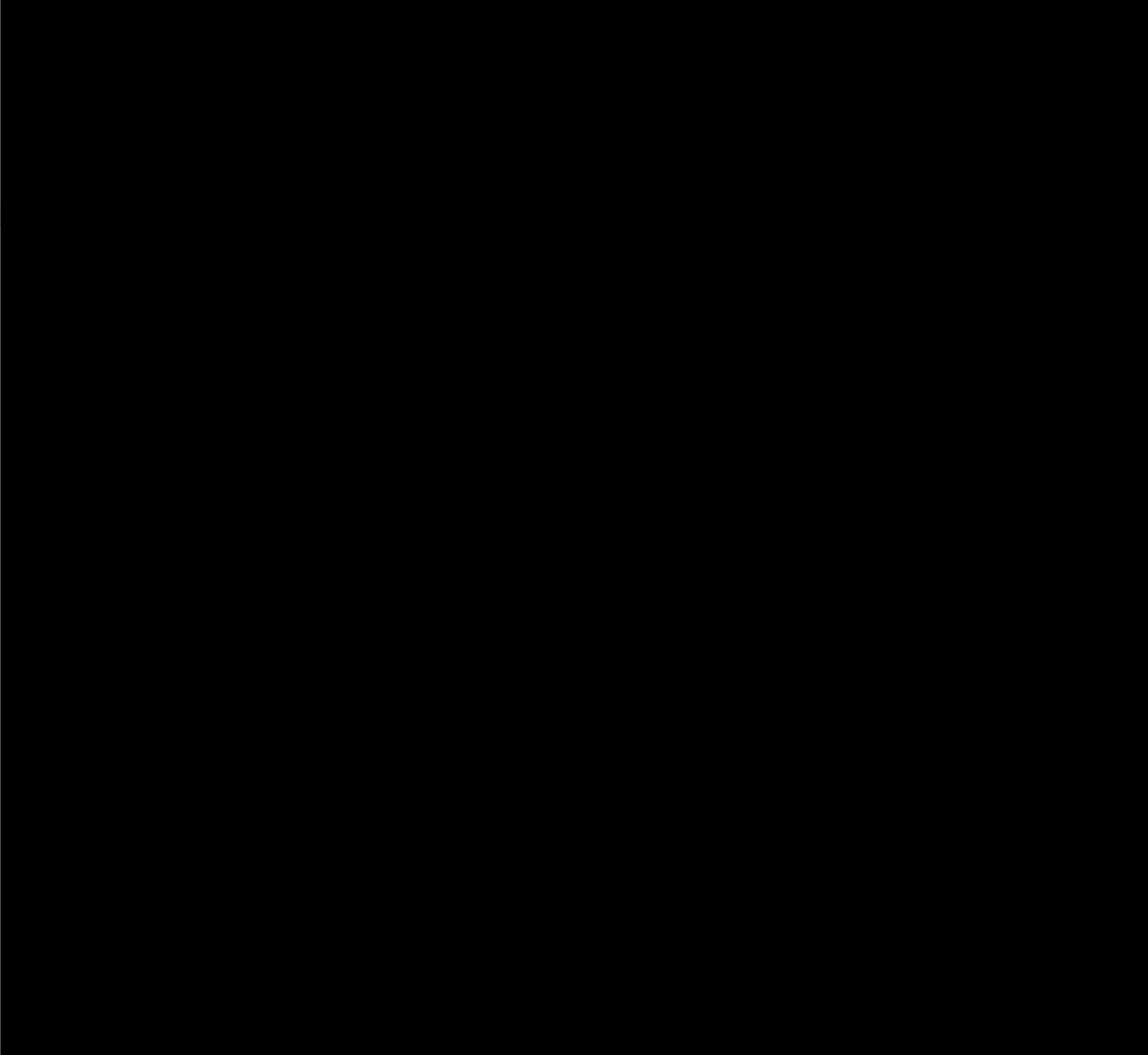
From: **Brady Roundy** <broundy@1800contacts.com>
Date: Wed, Nov 12, 2014 at 10:26 AM
Subject: RE: Trademark Keywords Quality Score
To: Adrian Barajas <abarajas@google.com>

Cc: Natalia Bohm <nbohm@google.com>, Kevin Hutchings <KHutchin@1800contacts.com>

Hi Adrian,

Thanks for the information! I have read that the biggest influencer of Quality Score is CTR in multiple documents, so thank you for sending another confirming article our way.

I think we have done a decent job of getting good CTRs for our TM terms. My concern is not with our current CPCs, but more in understanding how the system determines what is below average, average, and above average. Here are a couple of screen shots from our highest volume TM ad group:



If you look at all 3 of the screen shots, each keyword has conflicting reasons for a QS below 10. The first keyword has the best CTR of the 3 terms, but is listed as average on that item for QS. The second keyword is below average on ad relevance, but still has a very high CTR. The third keyword has the lowest CTR of the three, but is only average on ad relevance. We can work on improving CTR for all of these terms, but some of these terms need help with ad relevance. If we improve our CTR will that improve ad relevance?? By the look of the CTR of these terms, I would say that the ads are pretty relevant to what people are looking for ;)

We are not using QS as a measure of performance, but have been trying to optimize the account with structure, ad copy, negatives, etc. We noticed a drop in QS on our TM terms about the middle of October, followed by an increase in CPCs. The funny thing about our current performance is that our CTR for this ad group has increased each of the last three months, with November being higher than the other months. I feel like the changes we have been making are not accurately being reflected in our QS or CPCs. I would appreciate any insights you have.

Thanks,

Brady

From: Adrian Barajas [mailto:abarajas@google.com]

Sent: Monday, November 10, 2014 12:38 PM

To: Brady Roundy

Cc: Natalia Bohm; Kevin Hutchings

Subject: Re: Trademark Keywords Quality Score

Hi Brady,

We had a discussion with our Account Optimizers to go into the details around the potential for improving the Quality Score for your Trademark campaigns and the truth is that the biggest factor influencing QS is CTR and that's what we should focus on improving. We can't control QS directly and all we can do is provide as much advice and best practices as possible - which we hope we're doing on a continuous basis. With the TM campaigns here, there isn't much to improve. You're using all relevant extensions and I believe we've already discussed how including keywords in the ad copy can help.

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On Thu, Nov 6, 2014 at 10:06 AM, Brady Roundy <broundy@1800contacts.com> wrote:

Thank you!

From: Adrian Barajas [mailto:abarajas@google.com]
Sent: Thursday, November 06, 2014 11:04 AM
To: Brady Roundy
Cc: Natalia Bohm; gyre@google.com; Kevin Hutchings
Subject: Re: Trademark Keywords Quality Score

Thanks for sending this note over, Brady. We're passing it along to our Account Optimizers as I mentioned and they'll reach out as soon as they've dug into this!

Best,

Adrian

On Wed, Nov 5, 2014 at 3:51 PM, Brady Roundy <broundy@1800contacts.com> wrote:

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I spoke with Adrian during lunch today, and would like to look at how to improve our Trademark keywords quality scores. We have been monitoring the quality scores of our Trademark terms more frequently lately and have been a little concerned by some of the recent trends where scores are decreasing. Could we get some recommendations for improving our scores from the QS team over at Google?

Thanks,

Brady

--

Adrian Barajas | Account Executive | abarajas@google.com | [650.214.1591](tel:650.214.1591)

--

Adrian Barajas | Account Executive | abarajas@google.com | [650.214.1591](tel:650.214.1591)

--

Natalia Bohm | Account Manager | Google Inc. | 650-253-3864

--

If you received this communication by mistake, please don't forward it to anyone else (it may contain confidential or privileged information), please erase all copies of it, including all attachments, and please let the sender know it went to the wrong person. Thanks.

From: Baiju Hindocha <bhindocha@google.com>
To: Natalia Bohm <nbohm@google.com>
Received: Thu, 30 Oct 2014 11:29:27 +0530
Subject: Re: Negative Keyword Matching
Cc: Mohit Bagga <mohitbagga@google.com>
Bcc: po5@google.com

----- Forwarded message -----

From: **Kevin Hutchings** <KHutchin@1800contacts.com>
Date: Wed, Oct 29, 2014 at 3:06 PM
Subject: Negative Keyword Matching
To: Natalia Bohm <nbohm@google.com>
Cc: Brady Roundy <broundy@1800contacts.com>, Adrian Barajas <abarajas@google.com>

Hi Natalia,

Thanks for the follow up. I have one more question...☺ Sorry to bombard you with questions lately.

Negative Keywords...will you explain to us again exactly how Google matches negative keywords by different match types? Specifically [Exact] and "Phrase"? We are going through our exact match terms, and continuing with our concerns we had on the phone regarding competitors potentially bidding on our brand/trademark terms, and just wanted to make sure we understood everything correctly.

For example, if say...a competitor had the negative keyword **-[1800 contacts]** in their account, and someone searched the term **1800 contacts discounts**, technically Google would still serve their ad correct? On the other hand, if the negative keyword were -"1800 contacts", Google would not serve their ad. Am I accurate?

Any other examples to help clarify would be great. Thank you so much!!

Kevin Hutchings | Paid Search Analyst

e: khutchin@1800contacts.com

o: [801.316.5623](tel:801.316.5623) | m: [916.412.1091](tel:916.412.1091)

1800contacts®

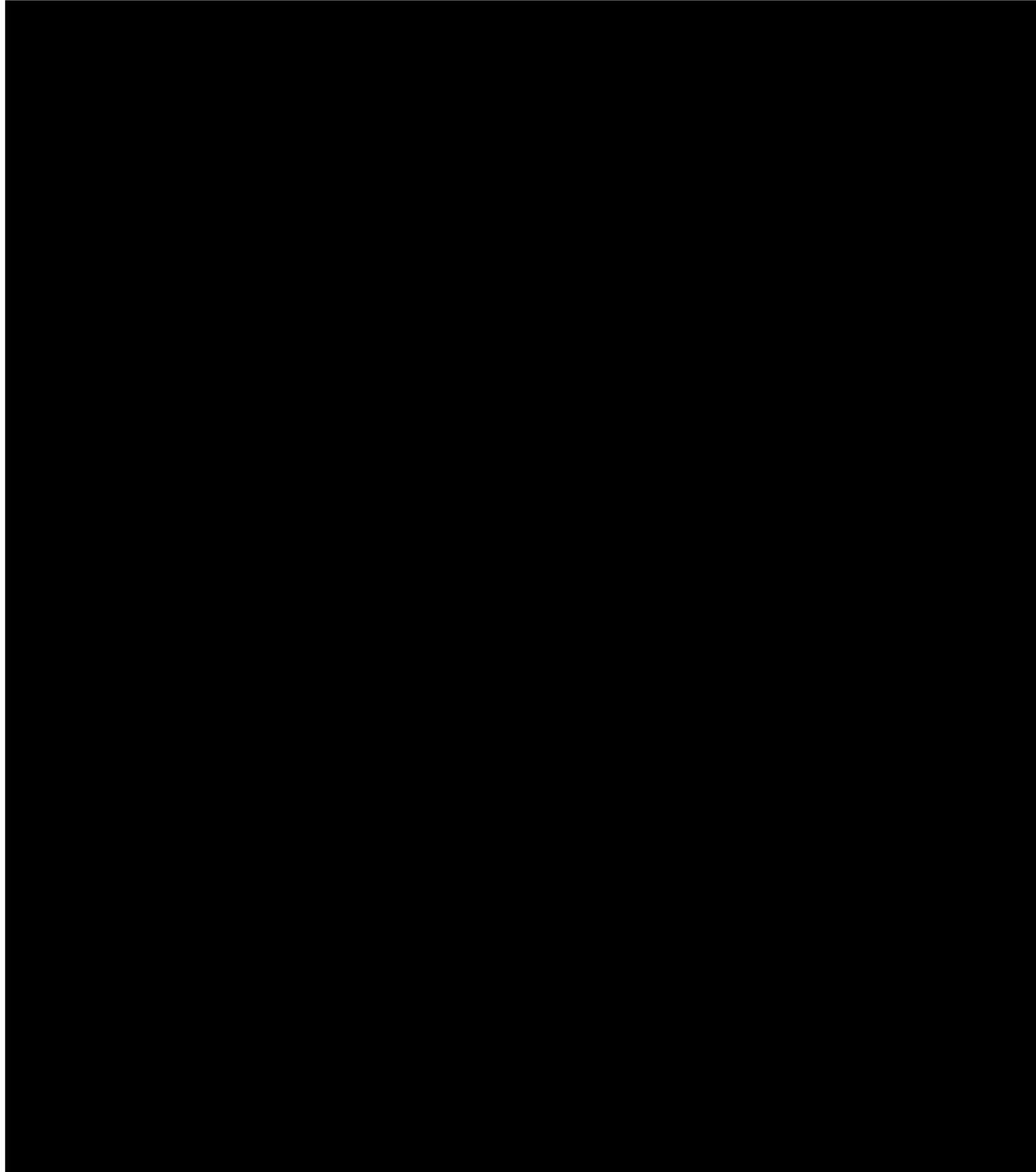
--

Natalia Bohm | Account Manager | Google Inc. | 650-253-3864

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From: Baiju Hindocha <bhindocha@google.com>
To: Natalia Bohm <nbohm@google.com>
Sent: Tue, 13 May 2014 15:28:39 +0530
Subject: Re: Avg. CPC Increase
[1-800 Contacts Trademark Terms CPC Rise - May'14.xlsx](#)



----- Forwarded message -----

From: **Kevin Hutchings** <KHutchin@1800contacts.com>

Date: Mon, May 12, 2014 at 3:23 PM

Subject: Avg. CPC Increase

To: Natalia Bohm <nbohm@google.com>

Cc: Brady Roundy <broundy@1800contacts.com>

Hi Natalia,

Last week we asked you if you had any insight into why we may be seeing a sudden, and dramatic, increase in our CPC's in our .Trademark+ #S002 campaign (trademark coupon/promo terms). Have you, or you team, been able to find anything that could have caused the increase? In some cases we saw CPC's increase from around \$0.20 to over \$1.40. We lowered some of our bids to see if we were bidding too high, and it appears to have lowered CPC's very slightly, and nowhere near where they were.

We would appreciate any thoughts you have on this and how we can get back to where we were on our branded/trademark terms.

Thanks,

Kevin Hutchings | Search Marketing Analyst

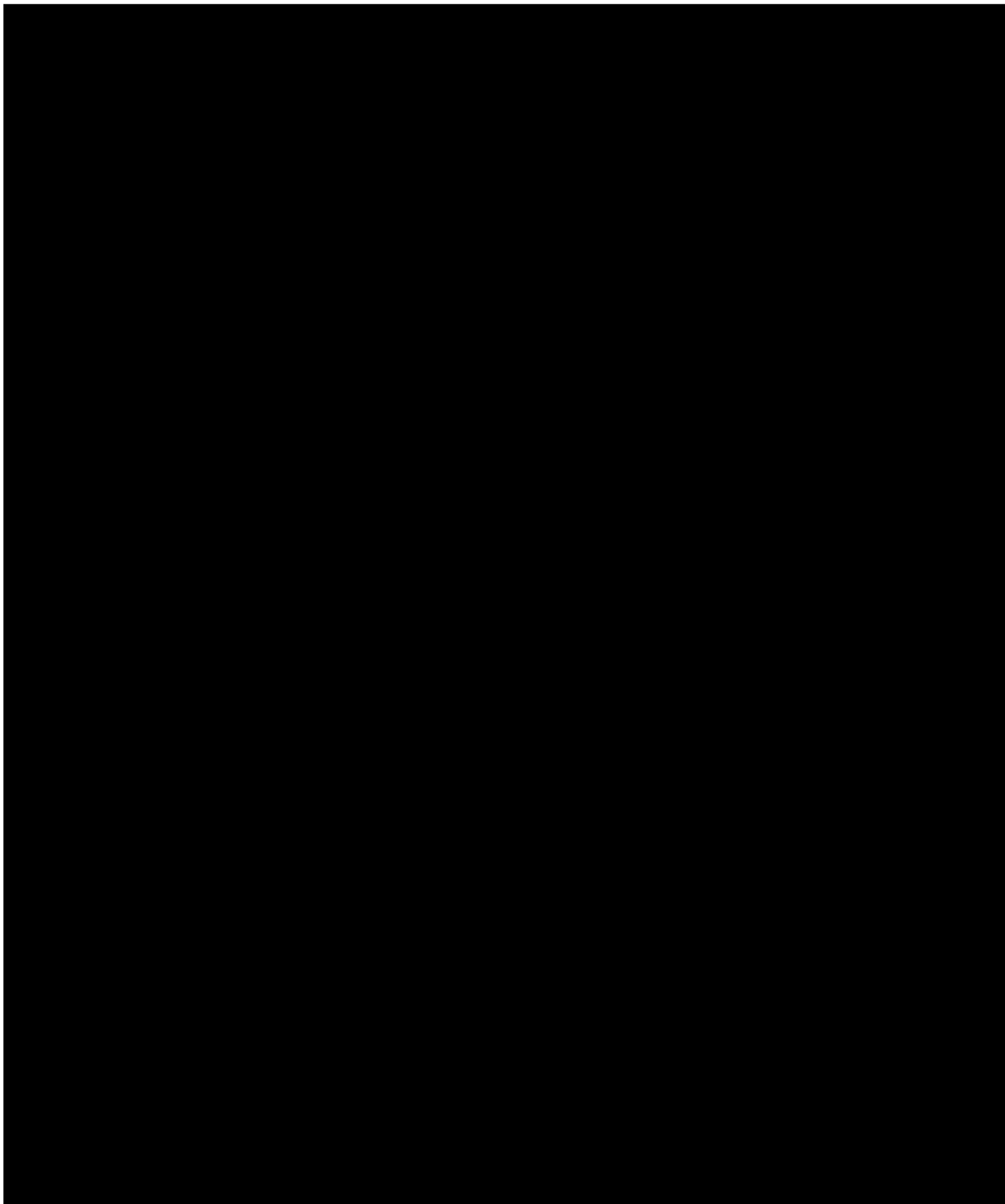
e: khutchin@1800contacts.com

o: [801.316.5623](tel:801.316.5623) | m: [916.412.1091](tel:916.412.1091)



Natalia Bohm | Account Manager | **Google** Inc. | 650-214-1891

From: Natalia Bohm <nbohm@google.com>
To: Baiju Hindocha <bhindocha@google.com>
Received: Wed, 14 May 2014 14:33:19 -0700
Subject: Re: Avg. CPC Increase



----- Forwarded message -----

From: **Kevin Hutchings** <KHutchin@1800contacts.com>

Date: Mon, May 12, 2014 at 3:23 PM

Subject: Avg. CPC Increase

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--

Natalia Bohm | Account Manager | **Google** Inc. | [650-214-1891](tel:650-214-1891)

--

Natalia Bohm | Account Manager | **Google** Inc. | [650-214-1891](tel:650-214-1891)

From: Baiju Hindocha <bhindocha@google.com>
To: Natalia Bohm <nbohm@google.com>
Received: Thu, 13 Nov 2014 16:15:43 +0530
Subject: Re: Trademark Keywords Quality Score
Cc: Mohit Bagga <mohitbagga@google.com>

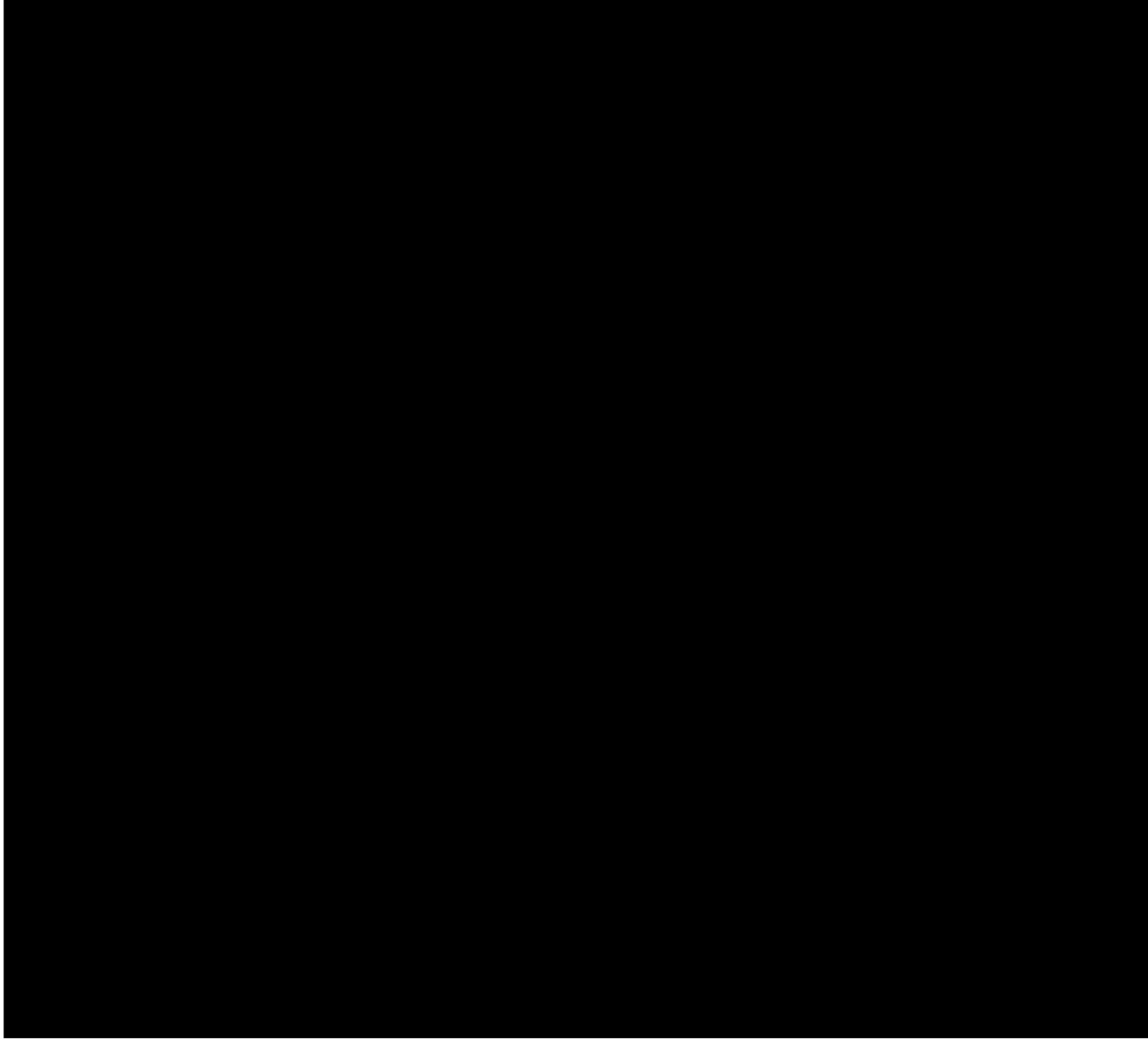
----- Forwarded message -----

From: **Brady Roundy** <broundy@1800contacts.com>
Date: Wed, Nov 12, 2014 at 10:26 AM
Subject: RE: Trademark Keywords Quality Score
To: Adrian Barajas <abarajas@google.com>
Cc: Natalia Bohm <nbohm@google.com>, Kevin Hutchings <KHutchin@1800contacts.com>

Hi Adrian,

Thanks for the information! I have read that the biggest influencer of Quality Score is CTR in multiple documents, so thank you for sending another confirming article our way.

I think we have done a decent job of getting good CTRs for our TM terms. My concern is not with our current CPCs, but more in understanding how the system determines what is below average, average, and above average. Here are a couple of screen shots from our highest volume TM ad group:



If you look at all 3 of the screen shots, each keyword has conflicting reasons for a QS below 10. The first keyword has the best CTR of the 3 terms, but is listed as average on that item for QS. The second keyword is below average on ad relevance, but still has a very high CTR. The third keyword has the lowest CTR of the three, but is only average on ad relevance. We can work on improving CTR for all of these terms, but some of these terms need help with ad relevance. If we improve our CTR will that improve ad relevance?? By the look of the CTR of these terms, I would say that the ads are pretty relevant to what people are looking for ;)

We are not using QS as a measure of performance, but have been trying to optimize the account with structure, ad copy, negatives, etc. We noticed a drop in QS on our TM terms about the middle of October, followed by an increase in CPCs. The funny thing about our current performance is that our CTR for this ad group has increased each of the last three months, with November being higher than the other months. I feel like the changes we have been making are not accurately being reflected in our QS or CPCs. I would appreciate any insights you have.

Thanks,

Brady

From: Adrian Barajas [mailto:abarajas@google.com]

Sent: Monday, November 10, 2014 12:38 PM

To: Brady Roundy

Cc: Natalia Bohm; Kevin Hutchings

Subject: Re: Trademark Keywords Quality Score

Hi Brady,

We had a discussion with our Account Optimizers to go into the details around the potential for improving the Quality Score for your Trademark campaigns and the truth is that the biggest factor influencing QS is CTR and that's what we should focus on improving. We can't control QS directly and all we can do is provide as much advice and best practices as possible - which we hope we're doing on a continuous basis. With the TM campaigns here, there isn't much to improve. You're using all relevant extensions and I believe we've already discussed how including keywords in the ad copy can help.

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Received: Thu, 30 Oct 2014 11:29:27 +0530
Subject: Re: Negative Keyword Matching
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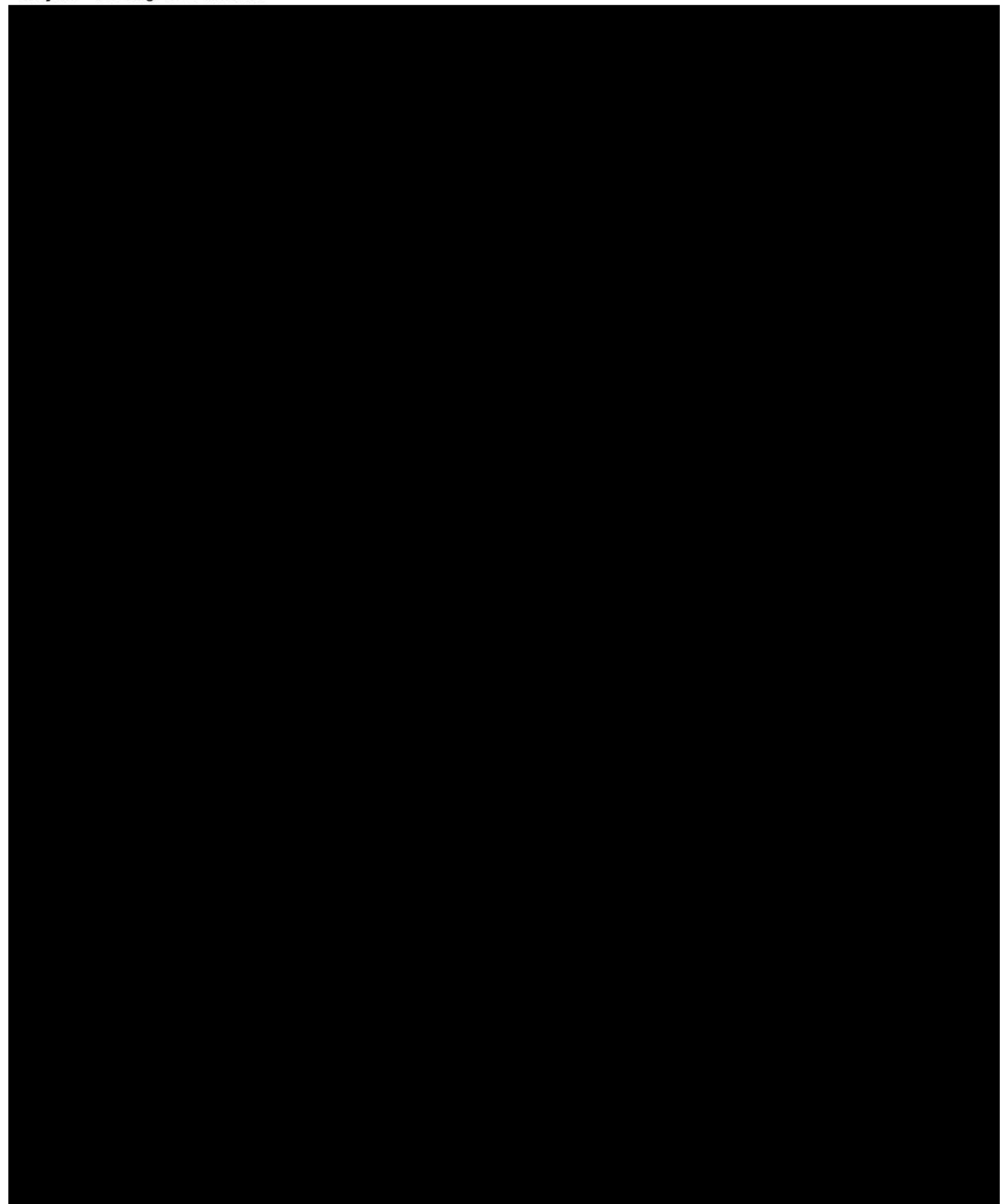
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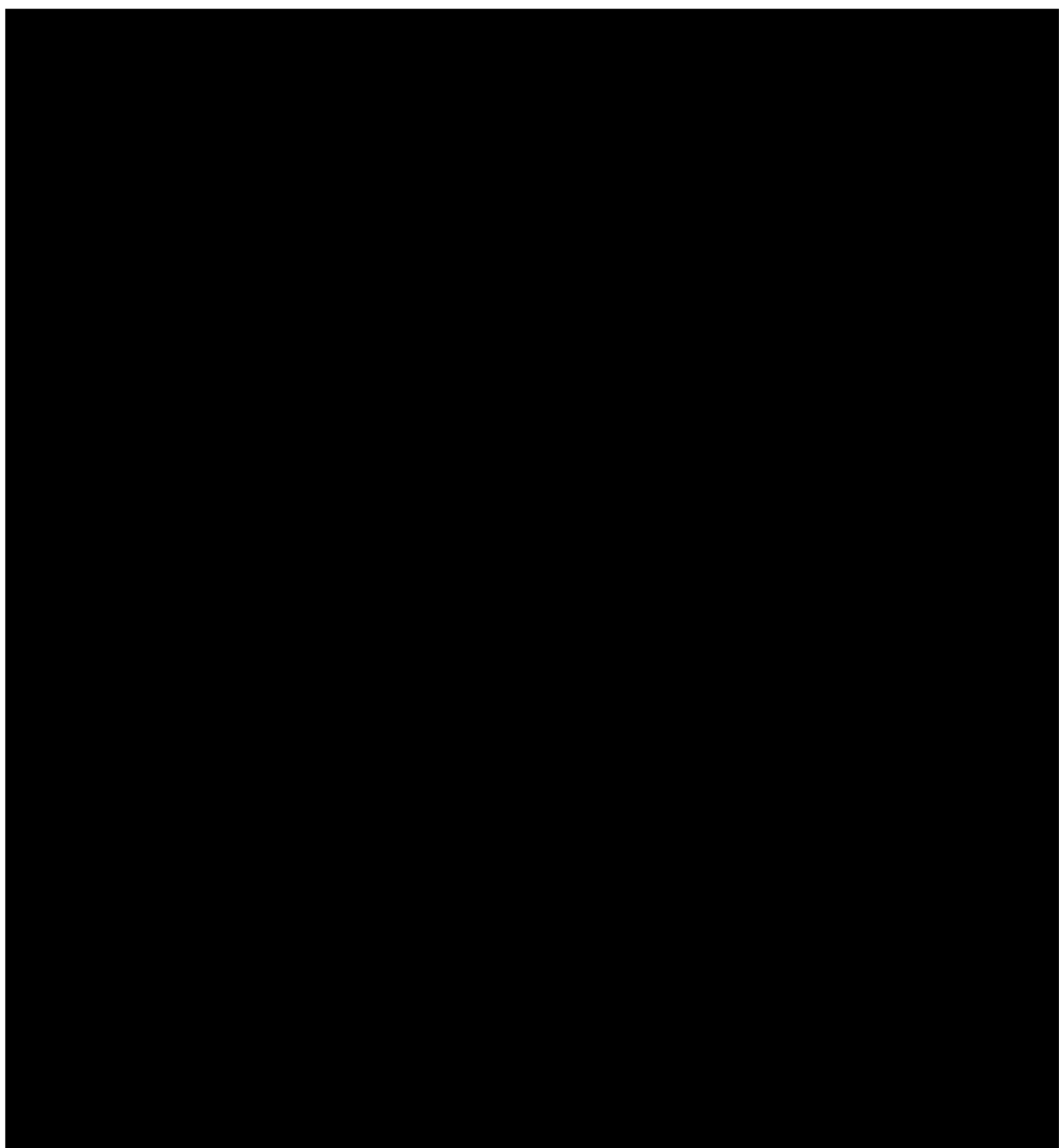
Natalia Bohm | Account Manager | Google Inc. | 650-253-3864

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From: Baiju Hindocha <bhindocha@google.com>
To: Natalia Bohm <nbohm@google.com>
Received: Thu, 15 May 2014 06:35:43 +0530
Subject: Re: Avg. CPC Increase





----- Forwarded message -----

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Date: Mon, May 12, 2014 at 3:23 PM

Subject: Avg. CPC Increase

To: Natalia Bohm <nbohm@google.com>

Cc: Brady Roundy <broundy@1800contacts.com>

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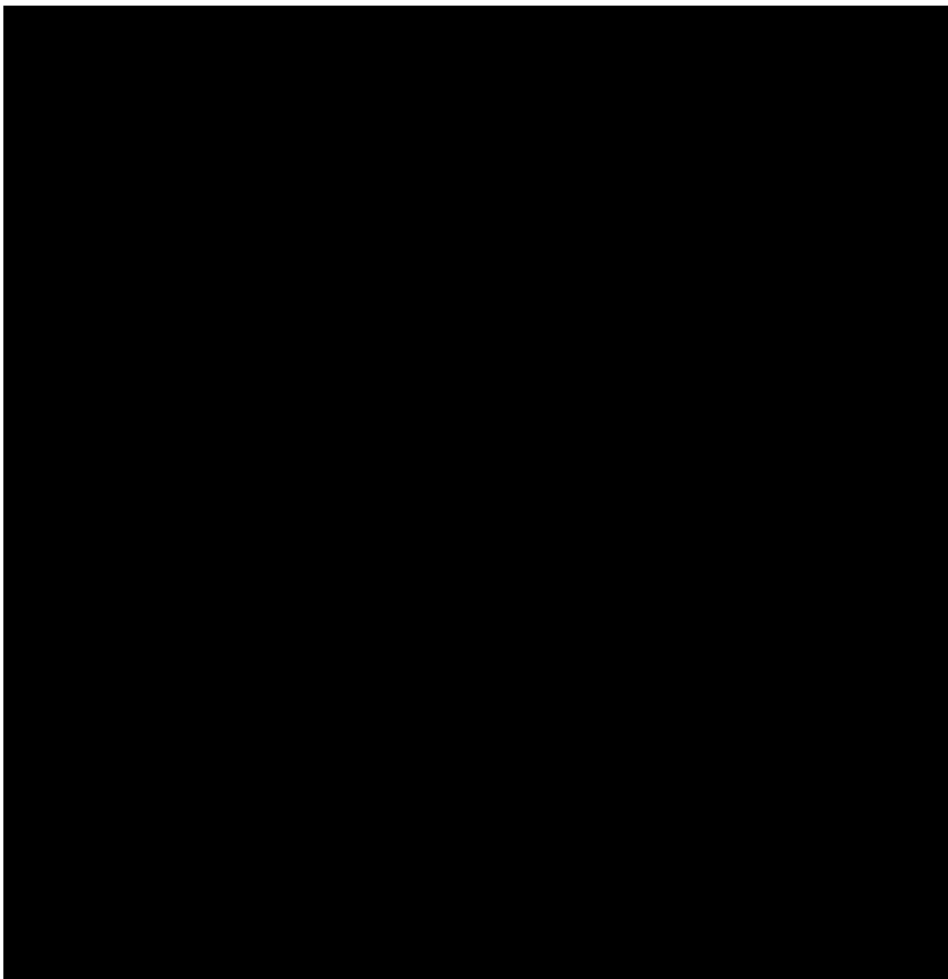
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Natalia Bohm | Account Manager | **Google** Inc. | [650-214-1891](tel:650-214-1891)

--

Natalia Bohm | Account Manager | **Google** Inc. | [650-214-1891](tel:650-214-1891)

Sent: Mon, 17 Sep 2007 23:47:07 -0000
From: "Paige" <paige.r@google.com>
To: ads-trademarks@google.com
Subject: Re: [C#199657382] Trademark Protection



Original Message Follows:

From: "Bryce Craven" <BCraven@1800contacts.com>
Subject: Trademark Protection
Date: Mon, 17 Sep 2007 14:33:11 -0600

Hi Paige,

I'm wondering if Google has some type of trademark keyword protection offered to particular brands. (We've had troubles, as many advertisers do, keeping competing advertisers off our paid listings in Google.)

For example, searches on big brand names such as GEICO, eBay, and McDonalds yield zero competing paid listings. I know Google will

protect against using marks in the ad text, but it also seems that they can protect against others bidding on the term? Is this a possibility?

Thanks for any additional info you have on this.

Thanks Paige.

Bryce Craven

1-800 CONTACTS

D: 801-316-5630

bcraven@1800contacts.com

GROUP 7

Group 7 document withheld in its entirety.

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2017, I filed the foregoing documents electronically using the FTC's E-Filing System, which will send notification of such filings to:

Donald S. Clark
Secretary
Federal Trade Commission
400 Seventh Street SW, Suite 5610
Washington, DC 20024

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., N.W., Rm. H-110
Washington, DC 20580

I also certify that I delivered via electronic mail a copy of the foregoing documents to:

Thomas H. Brock
Barbara Blank
Gustav Chiarello
Kathleen Clair
Joshua B. Gray
Geoffrey Green
Nathaniel Hopkin
Charles A. Loughlin
Daniel Matheson
Charlotte Slaiman
Mark Taylor
Federal Trade Commission
TBrock@ftc.gov
bblank@ftc.gov
gchiarello@ftc.gov
kclair@ftc.gov
jbgray@ftc.gov
ggreen@ftc.gov
nhopkin@ftc.gov
cloughlin@ftc.gov
dmatheson@ftc.gov
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mtaylor@ftc.gov

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Garth T. Vincent
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Justin P. Raphael
Munger, Tolles & Olson LLP
560 Mission Street, 27th Floor
San Francisco, CA 94105
justin.raaphael@mto.com

Counsel for Respondent 1-800 Contacts, Inc.

Dated: March 27, 2017

Respectfully submitted,

By Counsel

 /s/ John D. Harkrider

John D. Harkrider, Esq.

Axinn, Veltrop & Harkrider LLP

114 West 47th Street

New York, NY 10036

Phone: (212) 728-2200

Fax: (212) 728-2201

Email: jharkrider@axinn.com

Attorney For Google Inc.

CERTIFICATE OF ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: March 27, 2017

Respectfully submitted,

By Counsel

/s/ John D. Harkrider

John D. Harkrider, Esq.

Axinn, Veltrop & Harkrider LLP

114 West 47th Street

New York, NY 10036

Phone: (212) 728-2200

Fax: (212) 728-2201

Email: jharkrider@axinn.com

Attorney For Google Inc.

Notice of Electronic Service

I hereby certify that on April 03, 2017, I filed an electronic copy of the foregoing Non-Party Google Inc.'s Motion for In Camera Treatment (PUBLIC), with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on April 03, 2017, I served via E-Service an electronic copy of the foregoing Non-Party Google Inc.'s Motion for In Camera Treatment (PUBLIC), upon:

Thomas H. Brock
Attorney
Federal Trade Commission
TBrock@ftc.gov
Complaint

Barbara Blank
Attorney
Federal Trade Commission
bblank@ftc.gov
Complaint

Gustav Chiarello
Attorney
Federal Trade Commission
gchiarello@ftc.gov
Complaint

Kathleen Clair
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kclair@ftc.gov
Complaint

Joshua B. Gray
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Complaint

Geoffrey Green
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Nathaniel Hopkin
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nhopkin@ftc.gov

Complaint

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Complaint

Daniel Matheson
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Complaint

Charlotte Slaiman
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cslaiman@ftc.gov
Complaint

Mark Taylor
Attorney
Federal Trade Commission
mtaylor@ftc.gov
Complaint

Gregory P. Stone
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gregory.stone@mto.com
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Respondent

Garth T. Vincent
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Justin P. Raphael
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Sean Gates

Charis Lex P.C.
sgates@charislex.com
Respondent

Mika Ikeda
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mikeda@ftc.gov
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Respondent

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Complaint

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Complaint

Alexander Bergersen
Attorney