

1 Paul R. Kiesel, Esq. (119854)
kiesel@kbla.com
2 Patrick DeBlase, Esq. (167138)
deblase@kbla.com
3 KIESEL, BOUCHER & LARSON, LLP
8648 Wilshire Boulevard
4 Beverly Hills, California 90211
Telephone: (310) 854-4444
5 Facsimile: (310) 854-0812

6 Attorneys for Plaintiffs And The Class
(Additional Counsel On Signature Page)

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 DRAUCKER DEVELOPMENT and
TRUE COMMUNICATION, INC. }
12 d/b/a METRODATE.COM, On Behalf
of Itself and All Others Similarly
13 Situated,

14 Plaintiffs,

15 v.

16 YAHOO!, INC.; OVERTURE
17 SERVICES, INC., AND JOHN DOE
COMPANIES, INC. 1 - 100,
18 Inclusive,

19 Defendants.
20

FILED
2006 MAY -4 PM 1:51
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

21
22
23
24
25
26
27
28
CV06-2737 JFW(ROK)
CASE NUMBER:

CLASS ACTION COMPLAINT FOR:

1. BREACH OF CONTRACT
2. CIVIL CONSPIRACY
3. VIOLATIONS OF BUS. & PROF. CODE § 17200, *et seq.*

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiffs Draucker Development and True Communication, Inc., d/b/a Metrodate.com, individually and as Class Representative on Behalf of All Similarly Situated Persons, bring this action against Defendants Yahoo! Inc., Overture Services, Inc., and John Doe Companies, Inc. 1 - 100, Inclusive, (hereinafter referred to as "Defendants").

1 **INTRODUCTION**

2 1. Defendants own and operate Internet search engines and web
3 sites containing news content, in an effort to attract visitors to their web sites.
4 Defendants' business depends on the sale of online advertising, and to that
5 end Defendants sell a product known as pay per click ("PPC") advertising.

6 2. PPC advertising works as follows: Defendants place
7 advertisements on web sites that Internet users can click on in order to be
8 taken to the advertiser's web site. Defendants' advertising customers, *i.e.*,
9 Plaintiffs and the Class (defined below), pay Defendants a set fee – as little
10 as \$0.10, or as much as several dollars or more – each time an Internet user
11 clicks on the customer's advertisement.

12 3. Defendants charged its advertising customers for PPC advertising
13 even though Defendants knew that a substantial percentage of click revenue
14 resulted from PPC advertisements shown improperly, including in ways that
15 contravene Defendants' contracts with its advertising customers.

16 4. For example, in spite of Defendants' promise and duty not to place
17 ads in pernicious spyware programs, Defendants have done just that, and
18 have charged their advertising customers for every click made on spyware
19 pop-up ads. Defendants have also represented that advertisements would be
20 "highly targeted" when, in fact, Defendants entered into syndication
21 agreements with companies that show random ads that are the opposite of
22 "highly targeted." Defendants have further represented that advertisements
23 would appear in "high quality" substantive sites when, in fact, Defendants and
24 their Syndication Partners (defined below) placed such advertisements in a
25 variety of low-quality sites without bona fide content. These unlawful
26 practices, which are described in further detail at paragraphs 24 to 39 of this
27 Complaint, are referred to herein as "Syndication Fraud."

28 5. Accordingly, Plaintiffs and the Class were unlawfully charged for

1 services that Defendants did not provide or that Plaintiffs and the Class did
2 not agree to pay for.

3 6. Plaintiffs assert claims individually and/or collectively for violations
4 of common law breach of contract, unjust enrichment, civil conspiracy and for
5 statutory violations under the Unfair Competition Law ("UCL" or "Section
6 17200"), Business and Professions Code §§ 17200 *et seq.* Plaintiffs seek
7 actual and/or compensatory damages; restitution; equitable relief, costs and
8 expenses of litigation, including attorneys' fees; and all additional and further
9 relief that may be available.

11 PARTIES

12 7. Plaintiff Draucker Development is a sole proprietorship located in
13 New Cumberland, Pennsylvania. Draucker Development owns and operates
14 the websites www.lookupbook.com, www.nbleads.com,
15 www.protected-data.net, www.cac-org.org, salliemae.littlesite.net,
16 usc.littlesite.net, workathome.littlesite.net, www.medicaialarm.com,
17 studentloan-info.org, amerivalues.com, wimax-reports.com, vitalsenior.com,
18 and at all relevant times Plaintiff placed ads with Defendants and paid
19 Defendants under their PPC advertising program.

20 8. Plaintiff True Communication, Inc., d/b/a Metrodate.com
21 ("Metrodate") is a corporation organized and existing under the laws of the
22 Commonwealth of Pennsylvania, with its principal place of business in Willow
23 Grove, Pennsylvania. Plaintiff owns and operates the Metrodate.com Internet
24 website, and at all relevant times Plaintiff placed ads with Defendants and
25 paid Defendants under their PPC advertising program.

26 9. Defendant Yahoo! Inc. ("Yahoo") is a Delaware corporation with its
27 executive offices, principal place of business, and corporate headquarters at
28 701 First Avenue, Sunnyvale California 94089.

1 10. Defendant Overture Services, Inc. ("Overture"), a wholly-owned
2 subsidiary of Yahoo!, Inc., is a Delaware corporation with its executive offices,
3 principal place of business, and corporate headquarters at 74 North
4 Pasadena, Pasadena, California 91103, which is within this District.

5 11. The John Doe Company defendants are partners/affiliates or other
6 third party companies with which Defendants Yahoo! or Overture have or had
7 fee-sharing agreements concerning pay-per-click advertising revenues and
8 charges. Plaintiffs reasonably believe that discovery of Defendants Yahoo!
9 and Overture will reveal the precise identities of the John Doe company
10 defendants, after which Plaintiffs will amend the complaint to specifically
11 identify such defendants. The John Doe Company defendants are referred to
12 herein as "Syndication Partners."

13
14 **JURISDICTION AND VENUE**

15 12. This case is subject to original jurisdiction in this Court pursuant to
16 the Class Action Fairness Act of 2005.

17 13. Venue is proper in the Central District of California pursuant to 28
18 U.S.C. § 1391 because this District is the district in which one of the
19 defendants resides and a district in which a substantial part of the events or
20 omissions giving rise to the claim occurred.

21
22 **RELEVANT FACTUAL BACKGROUND**

23 14. Defendant Yahoo is one of the largest search engines on the
24 Internet. Its business consists of operating a number of web sites and
25 showing ads on those web sites, as well as providing ads to be shown by its
26 various partners. Yahoo's revenues in 2005 were \$5.3 billion.

27 15. Defendant Overture, a wholly owned subsidiary of Yahoo,
28 provides technology and systems for showing, tracking, and charging for

1 pay-per-click advertisements.

2 16. Defendants charge their advertising customers every time an
3 Internet user clicks on an advertiser's ad – a business model known as
4 "pay-per-click" ("PPC") advertising. This approach differs from traditional
5 advertising in magazines and newspapers, where publications charge a
6 one-time fee for ad space.

7 17. Just as traditional advertising costs more in some publications
8 than in others, so too do PPC prices vary. For example, PPC ads generally
9 cost more when they reach users seeking certain products, when they reach
10 users actively engaged in purchasing decisions for such products, and when
11 they reach users from certain demographic groups. Advertisers seek to buy
12 ads from Defendants, at Defendants' high prices, because Defendants
13 purport to offer high-quality sites with high-quality users. Defendants
14 specifically tout the quality of their sites and the third party sites at which
15 Defendants display ads: Defendants describe those third party sites as
16 "popular [and] high-quality," specifically naming such distinguished partners
17 as Microsoft, CNN, and the Wall Street Journal. See
18 <http://searchmarketing.yahoo.com/rc/srch/srch.php>. Furthermore,
19 Defendants' training materials describe Defendants' advertising as appearing
20 "along with relevant articles [and] product reviews." See
21 <http://searchmarketing.yahoo.com/rc/srch/eworkbook.pdf>, page 98.

22 18. Defendants represent to their advertising customers that their ads
23 are only shown to users who have shown interest in corresponding products
24 or services (e.g., by conducting a related search). Defendants promise that
25 advertisers' ads will be "highly targeted" to such users. See
26 <http://searchmarketing.yahoo.com/rc/srch/srch.php>.

27 19. Defendants offer advertisers a choice between purchasing "Sponsored
28 Search" advertising at search engines (to reach "search users" who are

1 actively engaged in searching the web), and/or “Content Match” advertising at
2 content sites (showing ads “along with relevant articles, product reviews, and
3 more”). See <http://searchmarketing.yahoo.com/rc/srch/srch.php>. Pricing for
4 Sponsored Search is higher, reflecting that ads are more valuable when
5 shown to users who are actively engaged in searching.

6 20. PPC advertising systems easily lend themselves to abuse. For
7 example, an advertiser’s competitors could easily click on that advertiser’s ad
8 hundreds of times for the sole purpose of increasing that advertiser’s PPC ad
9 costs. This is a practice known as “click fraud.” As another example, and as
10 alleged in further detail below, Defendants pay their Syndication Partners to
11 show advertisers’ ads in contexts that the advertisers never agreed to or
12 contracted to pay for.

13 21. However, instead of safeguarding against such abuse, finding
14 such practices, and diligently putting a stop to them, Defendants have actually
15 engaged in such abuses. In fact, not only have Defendants turned a blind eye
16 to abuse of their PPC advertising system, but Defendants knowingly have
17 manipulated that system for their own benefit, by increasing the volume of
18 improper advertising displays during financial reporting periods when
19 Defendants were at risk of failing to meet investor expectations.

20 22. As a result of these abuses, PPC advertising programs recently
21 have drawn sharp public criticism. Defendants, as well as Internet search
22 engine giant Google Inc. and others, have unlawfully inflated their PPC
23 advertising revenues by charging for clicks that were caused by click fraud,
24 which, as described above, entails third parties faking clicks on the ads.
25 Several click fraud-based lawsuits have been filed against Defendants,
26 Google and others. See, e.g., *Lane’s Gifts et al. v. Yahoo! Inc, et al.*, Ark.
27 CV-2005-52-1; *Click Defense Inc. v. Google, Inc. et al.*, Cal. C05-02579. On
28 March 8, 2006, Google announced that it had entered into a \$90 million

1 settlement of one such suit. See
2 <http://googleblog.blogspot.com/2006/03/update-lanes-gifts-v-google.html>.

3 23. Unfortunately for Plaintiffs and the Class here, click fraud is not
4 the only unlawful means by which they have been and continue to be
5 unlawfully overcharged by Defendants. Set forth below is a description of
6 Defendants' unlawful Syndication Fraud practices. Syndication Fraud
7 comprises separate and distinct unlawful practices distinguishable from click
8 fraud, which is the subject of other litigation but not this litigation.

9

10

SPYWARE

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

24. The term "spyware" refers to a broad class of unwanted software programs installed on users' computers, either without their consent or without their informed consent, that take actions averse to the users' interests such as, for example, causing unwanted and annoying pop up ads, transmitting personal information about the user, and slowing the user's computer. Many such programs earn revenues by showing advertising, especially via pop-up ads. Spyware has become a serious problem for Internet users. It is estimated that spyware infects at least half of all Internet-connected computers. Further, spyware reportedly is the subject of more than 20% of all tech support calls to Dell (a leading computer manufacturer), and reportedly causes more than half of all Windows crashes.

25. Installing spyware on users' computers without users' consent entails committing trespass to chattels as well as computer tampering. Installing spyware on users' computers without informed consent also violates state consumer protection statutes, and constitutes false advertising and other deceptive business practices.

26. Advertisers want no part of spyware-delivered advertising. Staff of the U.S. Federal Trade Commission ("FTC") and New York Attorney

1 General's office have repeatedly instructed advertisers to be wary of
2 spyware-delivered advertising. Furthermore, advertisers recognize spyware
3 for the scourge that it is, and they therefore seek to keep their ads out of
4 spyware.

5 27. Defendants' "Yahoo! Publisher Network Policies" specifically
6 provide that Yahoo's Syndication Partners must not place ads into pop-ups or
7 pop-unders (advertising methods widely associated with spyware), thereby
8 effectively representing that Defendants will not allow their advertising
9 customers' ads to be shown in such undesirable ways. *See*
10 https://publisher.yahoo.com/legal/prog_policy.php. Moreover, by promoting
11 their "Sponsored Search" advertising product – *i.e.*, advertising targeted to
12 users who are specifically and actually conducting searches, as opposed to
13 users whose computers happen to be infected with spyware – Defendants are
14 by necessary implication representing to their advertising customers that their
15 ads will **not** appear in spyware. That representation is made also by
16 omission; when Defendants tell Class Members where their ads will appear,
17 Defendants fail to mention spyware. *See*
18 <http://searchmarketing.yahoo.com/rc/srch/srch.php> (listing nineteen different
19 places Class Members' ads may appear, without mentioning any risk of ads
20 appearing in spyware). *See also*
21 http://searchmarketing.yahoo.com/legal/atc_srch.php (Defendants' 17,787
22 word contract, stating that ads may appear in "third party Web sites, content,
23 applications and/or e-mails," but again making no mention of ads appearing in
24 spyware).

25 28. In contravention of their contractual obligations, Defendants have
26 in fact caused Class Members' ads to appear in spyware software programs.
27 In 2005 and 2006, New York Attorney General's office investigations of
28 Spyware operators Intermix and Direct Revenue revealed that Defendants

1 have placed Class Members' ads into spyware provided by those companies.
2 Other investigations have uncovered numerous other instances of Defendants
3 placing Class Members' ads into notorious and well-known spyware.

4 29. Not only does Defendants' use of spyware violate their contract
5 with Plaintiffs and the Class, it is also illegal. Defendants' use of spyware has
6 caused Class Members' ads to appear in spyware-delivered windows without
7 the labeling and disclosures required by applicable regulations. In 2002, the
8 FTC issued instructions for search engine advertising. In violation of those
9 rules, Defendants have established relationships with spyware vendors that
10 lack such labeling, causing Class Members' ads to be shown in violation of
11 specific FTC instructions.

12 30. By placing Class Members' ads into illegal platforms such as
13 spyware programs, Defendants wrongfully collect high search engine
14 advertising fees for ads that are actually shown in contexts that are worth far
15 less, if anything. It is well known that spyware advertising is much cheaper
16 than search engine advertising. See
17 <http://www.metricsdirect.com/whatwedo/youradvertisingbudget.aspx>
18 (reporting prices of \$0.03 or lower for spyware-delivered advertising – an
19 order of magnitude lower than Defendants' prices). But when Defendants and
20 their Syndication Partners place Class Members' ads into spyware, they
21 continue to charge Class Members full price for these ads, and pocketing the
22 difference between the high fees Class Members pay and the low cost of
23 providing spyware-delivered advertising.

24 25 TYPOSQUATTING

26 31. Defendants also caused Class Members' ads to appear within
27 "typosquatting" web sites. Typosquatters register domain names, or web
28 addresses, that are identical or confusingly similar to the names of well-known

