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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

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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

CV06-2737 JFW(RCK)  
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

21  
22  
23 CLASS ACTION COMPLAINT

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

## INTRODUCTION

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

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

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

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

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

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

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

**PARTIES**

7. Plaintiff Draucker Development is a sole proprietorship located in New Cumberland, Pennsylvania. Draucker Development owns and operates the websites [www.lookupbook.com](http://www.lookupbook.com), [www.nbleads.com](http://www.nbleads.com), [www.protected-data.net](http://www.protected-data.net), [www.cac-org.org](http://www.cac-org.org), [salliemae.littlesite.net](http://salliemae.littlesite.net), [usc.littlesite.net](http://usc.littlesite.net), [workathome.littlesite.net](http://workathome.littlesite.net), [www.medicaialarm.com](http://www.medicaialarm.com), [studentloan-info.org](http://studentloan-info.org), [amerivalues.com](http://amerivalues.com), [wimax-reports.com](http://wimax-reports.com), [vitalsenior.com](http://vitalsenior.com), and at all relevant times Plaintiff placed ads with Defendants and paid Defendants under their PPC advertising program.

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

9. Defendant Yahoo! Inc. ("Yahoo") is a Delaware corporation with its executive offices, principal place of business, and corporate headquarters at 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 24. The term "spyware" refers to a broad class of unwanted software  
12 programs installed on users' computers, either without their consent or  
13 without their informed consent, that take actions averse to the users' interests  
14 such as, for example, causing unwanted and annoying pop up ads,  
15 transmitting personal information about the user, and slowing the user's  
16 computer. Many such programs earn revenues by showing advertising,  
17 especially via pop-up ads. Spyware has become a serious problem for  
18 Internet users. It is estimated that spyware infects at least half of all  
19 Internet-connected computers. Further, spyware reportedly is the subject of  
20 more than 20% of all tech support calls to Dell (a leading computer  
21 manufacturer), and reportedly causes more than half of all Windows crashes.

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

27 26. Advertisers want no part of spyware-delivered advertising. Staff of  
28 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](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](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

1 companies, products, and trademarks, for example "Coka-Cola" or "Porshe."  
2 If a user mistypes a domain, the user may end up at a typosquatting site and,  
3 due to Defendants' relationships with such sites, may see Class Members'  
4 ads on such sites. Typosquatting sites are illegal under the  
5 Anti-Cybersquatting Consumer Protection Act ("ACPA"), which prohibits  
6 registration and use of domain names that are "identical or confusingly  
7 similar" to a trademark. 15 U.S.C. § 1125(d)(1)(A)(ii)(II). Nonetheless,  
8 Defendants have established relationships with typosquatting web sites, and  
9 have charged Class Members fees for showing their ads in such web sites.

10 32. Defendants' use of typosquatting violates their contract with  
11 Plaintiffs and the Class, and violates both settled trademark law and the  
12 ACPA.

13 33. Furthermore, Defendants represent to Class Members that their  
14 ads will be shown in "popular, high-quality sites." See  
15 <http://searchmarketing.yahoo.com/rc/srch/srch.php>. A typosquatting site –  
16 which by design users only reach by accident, *i.e.*, by misspelling another  
17 site's address – cannot satisfy this representation. Defendants also  
18 represented to Class Members that their ads will be shown "along with  
19 relevant articles, product reviews, and more," when in fact typosquatting sites  
20 generally lack any such content, instead consisting solely of advertisements.

21 34. Particularly egregious is that Defendants even charge their  
22 advertising customers for ads shown on typosquatting web sites targeting  
23 those customers' own names. Take for example Yahoo's advertising  
24 customer Expedia.com. A user intending to visit the Expedia web site might  
25 mistype it as "expedai.com." At "expedai.com," the user sees a list of ads  
26 provided by Defendants, including an ad for Expedia, along with other  
27 customers of Defendants. If the user clicks the Expedia ad, the user is taken  
28 to the true Expedia site, which is where he or she wanted to go in the first

1 place – without clicking an Expedia ad – and Expedia has to pay Defendants  
2 a PPC fee.

### 4 **“PARKING” AND BULK REGISTRATION SITES**

5 35. Defendants have also caused Class Members’ ads to appear  
6 within “parking” and other bulk registration sites. These sites appear if users  
7 incorrectly guess, mis-remember or otherwise mistype a domain name.  
8 Defendants show Class Members’ ads on such “untargeted” sites, and charge  
9 Class Members accordingly. But Class Members did not contract to buy  
10 advertising at such sites. As discussed in the preceding section, Defendants  
11 represented that Class Members’ ads would be shown in “popular,  
12 high-quality sites” and “with relevant articles, product reviews, and more” –  
13 not second-rate content-less sites users only reached because they guessed  
14 or misspelled a domain name.

### 16 **SPONSORED SEARCH VERSUS CONTENT MATCH ADVERTISING**

17 36. Defendants offer Class Members a choice between purchasing  
18 “Sponsored Search” advertising at search engines (to reach “search users”  
19 who are actively engaged in searching the web), and/or “Content Match”  
20 advertising at content sites (showing ads “along with relevant articles, product  
21 reviews, and more”). See <http://searchmarketing.yahoo.com/rc/srch/srch.php>.  
22 Pricing for Sponsored Search is higher, reflecting that ads are more valuable  
23 when shown to users who are actively engaged in searching. But even when  
24 Class Members choose to purchase only Sponsored Search advertising,  
25 Defendants place Class Members’ ads into contexts that are more properly  
26 described as Content Match because these contexts do not reach users  
27 already actively engaged in web searches. Class Members are therefore  
28 forced to pay the high Sponsored Search prices even when they receive less

1 valuable Content Match advertising placements.

2  
3 **RESULTING HARMS**

4 37. Defendants' contract provides that their advertisements are "highly  
5 targeted." See <http://searchmarketing.yahoo.com/rc/srch/srch.php>. This  
6 means that Defendants are only to show Class Members' ads when the ads  
7 are actually relevant to users' interests, as revealed through users' search  
8 terms or web browsing. Contrary to Defendants' contractual obligations,  
9 Defendants' relationships with spyware vendors and others have caused  
10 Class Members' ads to appear without any targeting whatever, as described  
11 above. Defendants know that ads are often displayed without any targeting at  
12 all. In these circumstances, advertisers pay for untargeted traffic that is worth  
13 far less than Defendants charge, and far less than Class Members agreed to  
14 pay under the misportrayal that traffic would all be targeted.

15 38. Class Members pay Defendants a premium price for the  
16 high-quality advertising placements Defendants promise to provide. Instead,  
17 Defendants place ads within spyware programs, squatting sites, and other  
18 sites maintained by their Syndication Partners where market-advertising  
19 prices are far less. See  
20 <http://www.metricsdirect.com/whatwedo/youradvertisingbudget.aspx>  
21 (reporting prices of \$0.03 or lower for spyware-delivered advertising).  
22 Defendants and its partners pocket the difference, causing Class Members to  
23 incur un-bargained for payments to Defendants.

24 39. The Syndication Fraud practices outlined above have caused  
25 Plaintiffs and the Class harm that is separate and distinct from the harm  
26 caused by click fraud. None of the complaints in the click fraud suits against  
27 Defendants has alleged any harm caused by Syndication Fraud.

28 ///

1 **CLASS ALLEGATIONS**

2 40. Plaintiffs bring this action on their behalf and on behalf of all other  
3 members of the Class ("Class"), defined as:

4 All persons (including companies) who contracted with  
5 one or more Defendants for PPC advertising at any time  
6 in the six (6) years preceding the filing of this Class  
Action Complaint.

7 41. There are thousands of class members geographically dispersed  
8 throughout California and the country. Therefore, individual joinder of all  
9 members of the Class would be impracticable.

10 42. Common questions of law or fact exist as to all members of the  
11 Class. These questions predominate over the questions affecting only  
12 individual class members. These common legal or factual questions include:

- 13 (a) Whether Defendants breached their contracts with their  
14 online advertising customers by placing their ads on web  
15 sites and into spyware programs Defendants promised not  
to employ;
- 16 (b) Whether Defendants breached their promise to place their  
17 customers' ads in a targeted manner;
- 18 (c) Whether Defendants conspired with their Syndication  
19 Partners to artificially inflate their PPC revenues at the  
Class's expense;
- 20 (d) The appropriate compensatory remedy for Defendants'  
Syndication Fraud practices; and
- 21 (e) Whether Defendants should be enjoined from continuing  
22 their Syndication Fraud practices.

23 43. Plaintiffs' claims are typical of the claims of the Class, in that  
24 Plaintiffs overpaid for Defendants' PPC services. Plaintiffs are no different in  
25 any relevant respect from any other Class Member, and the relief sought is  
26 common to the Class.

27 44. Plaintiffs are adequate representatives of the Class because their  
28 interests do not conflict with the interests of the Class Members they seek to

1 represent, and they have retained counsel competent and experienced in  
2 conducting complex class action litigation. Plaintiffs and their counsel will  
3 adequately protect the interests of the Class.

4 45. A class action is superior to other available means for the fair and  
5 efficient adjudication of this dispute. The damages suffered by each  
6 individual Class Member likely will be relatively small, especially given the  
7 burden and expense of individual prosecution of the complex litigation  
8 necessitated by Defendants' conduct. Thus, it would be virtually impossible  
9 for the Class Members individually to effectively redress the wrongs done to  
10 them. Moreover, even if the Class Members could afford individual actions, it  
11 would still not be preferable to classwide litigation. Individualized actions  
12 present the potential for inconsistent or contradictory judgments. By contrast,  
13 a class action presents far fewer management difficulties and provides the  
14 benefits of single adjudication, economies of scale, and comprehensive  
15 supervision by a single court.

16 46. In the alternative, the Class may be certified because Defendants  
17 have acted or refused to act on grounds generally applicable to the Class,  
18 thereby making appropriate preliminary and final equitable relief with respect  
19 to the Class as a whole.

## 20 21 COUNT I

### 22 (Breach of Contract)

23 47. Plaintiffs hereby incorporate by reference the foregoing  
24 allegations.

25 48. Defendants imposed on Plaintiffs and every other Class Member a  
26 contract that governs their PPC advertising relationship. The PPC contracts  
27 were drafted by Defendants and are uniform as to every one of Defendants'  
28 advertising customers.

1       49. Defendants' PPC contracts provided, among other things:  
2 "Sponsored Search delivers highly targeted customer leads to your business  
3 by allowing you to control placement within sponsored search results across  
4 the Web." They promised advertisers as follows: "List your business in  
5 sponsored search results across the Web." They also provided: "Content  
6 Match, a Sponsored Search feature, extends your reach beyond sponsored  
7 results by displaying your listings alongside relevant articles, product reviews  
8 and more."

9       50. In breach of their PPC contracts, Defendants placed Class  
10 Members' ads into, and charged Class Members for, a variety of contexts and  
11 circumstances not specified by the contracts, including spyware,  
12 typosquatting, parking and bulk registration sites.

13       51. Moreover, Defendants' PPC contracts included the term, implied  
14 at law in all contracts, requiring the parties to exercise "good faith and fair  
15 dealing" in the exercise of all contractual duties related to the performance of  
16 the contract.

17       52. Defendants breached their contracts with Plaintiffs and the Class  
18 by not limiting the placement of advertisements to "targeted," "high quality"  
19 web sites, and otherwise by the Syndication Fraud practices alleged herein. It  
20 was within the control of Defendants to determine what sites were  
21 appropriate. Defendants breached their contractual duty of good faith and fair  
22 dealing by collecting revenues for placements they knew, or reasonably  
23 should have known, were illegal as well as violative of their contracts with  
24 advertisers. Accordingly, Plaintiffs and the Class are entitled to be  
25 reimbursed for all charges billed or collected for clicks that were not  
26 chargeable under the contract.

27 ///

28 ///

1 **COUNT II**

2 **(Civil Conspiracy)**

3 53. Plaintiffs hereby incorporate by reference the foregoing  
4 allegations.

5 54. Defendants and their Syndication Partners have conspired to  
6 obtain PPC payments from Defendants' advertising customers through the  
7 Syndication Fraud schemes alleged herein.

8 55. The conspiracy perpetrated by Defendants and their Syndication  
9 Partners was designed and implemented in order to maximize PPC ad  
10 revenues at the expense of Defendants' advertising customers.

11 56. As a direct result of Defendants' and their syndication partners'  
12 conspiracy, Plaintiffs and the Class paid more to Defendants for PPC  
13 advertising than they would have absent the conspiracy.

14  
15 **COUNT III**

16 **(Violations of Bus. & Prof. Code § 17200, et seq.)**

17 57. Plaintiffs hereby incorporate by reference the foregoing  
18 allegations.

19 58. Plaintiffs bring this cause of action on behalf of themselves, on  
20 behalf of the Class and on behalf of the common or general interest. Plaintiffs  
21 have suffered injury in fact and lost money as a result of such unfair  
22 competition.

23 59. Defendants have engaged in unfair, unlawful and fraudulent  
24 business practices as set forth above and has been unjustly enriched thereby.

25 60. By engaging in the above-described acts and practices, Defendants  
26 have committed one or more acts of unfair competition within the meaning of  
27 Bus. & Prof. Code §17200, et seq.

28 61. Defendants' acts and practices have and/or are likely to deceive



1 members of the consuming public.

2 62. Defendants' acts and practices are unlawful because they violate  
3 Civ. Code §§1572, 1709, 1710, 1770(a)(5), 1770(a)(7) and 1770(a)(9).  
4 Defendants' acts and practices are also unlawful because they violate Bus. &  
5 Prof. Code §17500, *et seq.* Defendants acted with a reckless disregard of  
6 Plaintiffs' and the Class's rights to fair and accurate billing only for clicks  
7 consistent with contractual representations, after Defendants represented the  
8 PPC service as providing advertising placements in "targeted" and "high  
9 quality" web sites, and after Defendants represented the PPC service as  
10 providing advertising consistent with all laws and regulations. Defendants  
11 have otherwise acted in an unconscionable way by using deception,  
12 unfairness and lack of good faith involving the PPC service. Defendants'  
13 deceptive marketing and sales practices, including affirmative  
14 misrepresentations and omissions, were material and substantial and were  
15 made in the form of common misrepresentations of material facts upon which  
16 persons, including members of the Class, could be expected to rely.

17 63. Plaintiffs, on behalf of themselves, on behalf of the Class and on  
18 behalf of the common or general interest, seek an order of this Court  
19 awarding restitution, disgorgement, injunctive relief and all other relief allowed  
20 under §17200, *et seq.*, plus interest, attorneys' fees and costs pursuant to,  
21 *inter alia*, C.C.P. §1021.5

22 64. Plaintiffs meet the standing requirements of C.C.P. §382 to bring this  
23 cause of action because, among other reasons, the question is one of a  
24 common or general interest, is a question that pertains uniformly to many  
25 persons and/or the parties are numerous and it is impracticable to bring them  
26 all before the Court.

27 ///

28 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs, individually and on behalf of the Class, seek  
3 the following relief:  
4

- 5 (a) Certification of this case as a class action, with Plaintiffs as class  
6 representatives and Plaintiffs' counsel as class counsel;  
7 (b) Compensatory relief, including disgorgement of Defendants'  
8 ill-gotten gains;  
9 (c) A permanent injunction barring Defendants from engaging in the  
10 unlawful practices alleged herein.  
11 (d) Prejudgment interest;  
12 (e) Plaintiffs' reasonable attorneys' fees and costs; and  
13 (f) Such further relief that the Court deems appropriate.

14 **JURY TRIAL DEMAND**

15 Plaintiff demands a trial by jury on all issues so triable.

16 Dated: May 4, 2006

Respectfully submitted,

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18  
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