

COPY

IN THE COMMON PLEAS COURT OF FRANKLIN COUNTY, OHIO

Google, Inc.,

Plaintiff,

vs.

myTriggers.com, Inc.

Defendant.

Case Number 09 CVH-10-14836

Judge D. Fais

JURY DEMAND ENDORSED HEREON

FILED  
COMMON PLEAS COURT  
FRANKLIN COUNTY, OHIO  
2010 FEB -2 PM 2:45  
CLERK OF COURTS-CV

ANSWER AND COUNTERCLAIM OF  
DEFENDANT MYTRIGGERS.COM, INC.

Now comes Defendant myTriggers.com, Inc. f/k/a myTriggers.com, LLC (“myTriggers”), and for its answer to Plaintiff Google, Inc.’s (“Google”) First Amended Complaint filed herein on January 20, 2010 (“Complaint”), states as follows:

PARTIES

1. myTriggers is a Delaware corporation, with its principal place of business, equipment, and employees in Franklin County, Ohio.
2. Google is a Delaware corporation, with its principal place of business in Mountain View, California.

JURISDICTION AND VENUE

3. This Court has jurisdiction under various sections of the Ohio Revised Code.
4. Venue is proper in this Court in Franklin County, Ohio.
5. Google, by and through its predecessor/affiliate, BFS – Financial, invoked the jurisdiction and venue of the Common Pleas Court of Franklin County, Ohio, by filing suit against myTriggers herein.

6. Google, by and through its predecessor/affiliate, BFS – Financial, caused this Court’s Clerk to serve its summons upon myTriggers only at its place of business at 101 East Town Street, Columbus, Ohio, in Franklin County, Ohio, and service of the summons was perfected on myTriggers at that address.

7. Google then replaced its predecessor/affiliate in this proceeding by substituting its own Complaint for that of its predecessor/affiliate.

8. During all relevant times, myTriggers has had, and continues to have, its principal place of business in Franklin County, Ohio.

9. During all relevant times, myTriggers conducted the activity that Google alleges gave rise to its claim for relief, if any, in Franklin County, Ohio.

10. During all relevant times, myTriggers’ equipment and key employees were, and continue to be, located and employed in Franklin County, Ohio.

11. All of Google’s alleged claims for relief arose in Franklin County, Ohio.

12. During all relevant times myTriggers has had, and continues to have, property, employees, and/or debts owing to myTriggers in Franklin County, Ohio.

13. During all relevant times myTriggers has had a statutory agent located in Franklin County, Ohio, to wit: CSC-Lawyers Incorporating Service (Corporation Service Company), located at 50 West Broad Street, Columbus, Ohio 43215.

**ANSWER TO GOOGLE’S FIRST AMENDED COMPLAINT**

14. myTriggers denies that the documents attached to Google’s Complaint comprise the complete contract, if any, between the parties.

15. myTriggers denies that the documents attached to Google’s Complaint comprise a complete account.

16. myTriggers denies that Google's Complaint sets forth the proper elements for an action on an account.

17. myTriggers denies that it owes Google any amounts as alleged in Google's Complaint, including but not limited to the \$335,634.16, costs, or interest amounts claimed in Google's Complaint.

18. Google breached the terms of the contract(s), if any, and/or agreement(s), if any, between the parties, so any claim(s) thereunder are unenforceable by Google.

19. myTriggers denies each and every other allegation contained in Google's Complaint unless specifically admitted herein to be true.

**FIRST DEFENSE**

20. Google's Complaint fails to state a claim upon which relief may be granted.

**SECOND DEFENSE**

21. The relief sought in Google's Complaint is barred by the legal and/or equitable doctrines of waiver, release, estoppel, and including but not limited to promissory estoppel.

**THIRD DEFENSE**

22. Google's alleged damages were caused by Google's own negligent and/or intentional acts and/or omissions, and/or by the negligent and/or intentional acts and/or omissions of others not under the control of myTriggers.

**FOURTH DEFENSE**

23. The relief sought in Google's Complaint is barred because of a failure of consideration.

**FIFTH DEFENSE**

24. The alleged contract which is the subject of Google's Complaint was not the product of free and understanding negotiation between parties with equal bargaining power, and/or is a contract of adhesion, as a result of which it is unenforceable against myTriggers.

#### **SIXTH DEFENSE**

25. The relief sought in Google's Complaint is barred by reason of Google's violation of Ohio Rev. Code §§ 1331.01 et seq. (the "Valentine Act").

#### **RESERVATION OF RIGHT TO ASSERT ADDITIONAL AFFIRMATIVE AND OTHER DEFENSES, COUNTERCLAIMS, CROSS-CLAIMS, AND THIRD PARTY CLAIMS**

26. myTriggers reserves the right to amend this Answer and these affirmative and other defenses, and to assert Counterclaims additional to those set forth herewith, and to assert Cross-Claims and/or Third Party Claims, if additional information is obtained through discovery.

#### **DEFENDANT MYTRIGGER.COM, INC.'S COUNTERCLAIMS AGAINST PLAINTIFF/COUNTERCLAIM DEFENDANT, GOOGLE, INC.**

1. myTriggers brings this counterclaim to recover treble damages and the costs of this suit, including reasonable attorneys' fees, against Google for injuries sustained by myTriggers by reason of Google's violation of Ohio Rev. Code §§ 1331.01 *et seq.* (the "Valentine Act"). As discussed below, myTriggers also brings counterclaims for breach of contract, estoppel and rescission. myTriggers demands a trial by jury.

#### **BACKGROUND FACTS**

##### **Search Advertising**

2. When a user enters a query into a search engine, the search engine returns two types of results: natural results (sometimes referred to as "algorithmic" results) and search advertising results (sometimes referred to as "sponsored" or "paid" results).

3. Natural results are often returned based on an algorithm and are typically displayed on the left and bottom of a search results webpage. Google steadfastly claims that the natural results it displays on its search site are the result of algorithms and are not manipulated.

4. Paid search advertising results are typically the result of an auction based upon bids submitted by advertisers for specific keywords or combinations of keywords. The prevailing bid is typically determined by implementation of a variation of a “second price” auction, where the winner of the auction pays the price of the next highest bid. Unlike natural search results, which are displayed on the left-side of the search results page, paid search results are typically displayed at the right-side of a search results webpage and at the very top of the natural results. Google derives the substantial majority of its \$20 billion annual revenue from its paid search advertising platform known as AdWords. Paid search advertising tends to be priced independently from other forms of Internet advertising for numerous reasons, including the “direct response” nature of search advertising. Search advertisements are displayed as a direct response to a user’s keyword search, which the search platform uses to understand what type of advertisement the user might be interested in seeing.

5. Google is the dominant search engine in the United States. The vast majority of search queries are run on Google’s dominant search platform. As a result, an enormous amount of traffic on the Internet flows from Google’s platform to other websites – including rival search platforms – unless Google takes action to divert such traffic away from other sites. Similarly, the substantial majority of search ads are sold and placed by Google.

6. Although bidding on keywords by way of Google’s general purpose search engine is by far the dominant avenue search advertisers employ in reaching search users, search websites catering to specific users offer an alternative method for reaching a desired audience.

For example, shopping comparison websites, such as those owned and operated by MyTriggers, offer an alternative for search advertisers seeking to target high-value users desiring to purchase items over the Internet.

7. “Vertical” search sites, such as shopping comparison sites, are capable of providing users with highly relevant results because they concentrate on particular areas of commerce, and the visiting audiences choose to visit these sites for specific reasons. Accordingly, vertical search sites represent a key source of potential competition to general purpose search engines like Google. In fact, a Google representative has acknowledged that “it’s likely that the innovations are going to come in these smaller side applications” and that “ultimately [vertical sites] will either be acquired or partnered or in some way we will develop that same type of functionality in a one stop shop.” Vertical search sites currently represent only a nascent threat to Google, but if they develop without anticompetitive interference, vertical search sites individually and collectively threaten to draw users away from Google and to provide alternative search experiences for users and advertisers. As alleged below, Google has ensured through an array of agreements, compacts and conduct that rival vertical search sites (including shopping comparison sites) are eliminated or brought under Google’s control. By disrupting, disintermediating, eliminating or otherwise controlling shopping comparison sites, Google substantially diminishes, and ultimately eliminates, the collective threat from this vertical.

8. Search advertisements are normally sold on a “cost per click” or “CPC” basis whereby advertisers pay the search website each time their ad is clicked by a user of the search website. myTriggers employs a hybrid of this model. In particular, myTriggers allows

advertisements on a CPC basis as well as on a “cost per action” or “CPA” basis. The cost per action model requires payment only when an actual purchase is made.

9. As the New York Times recognized in an article in 2006 featuring myTriggers, cost per action sites represent “a Move to Challenge Pay-Per-Click” models used by Google and others. *See* Exhibit A. At the time MyTriggers was gaining popularity and prominence as an innovative alternative to Google, the innovative CPA approach represented a disruption to Google’s pricing model. In fact, Google was in the process of launching its own CPA alternative as a means to address this looming competitive threat. Rather than addressing these competitive threats through competition on the merits, however, Google abused its dominant position by engaging in conduct, including entering into the unlawful compacts at issue in this lawsuit, to eliminate myTriggers and other vertical search sites with similar pricing models.

### **Google’s Advertising Dominance is Solidified through a Series of Unlawful Agreements and Anticompetitive Acts**

10. In order to participate in Google’s dominant keyword auctions, Google claims that search advertisers must agree to a standard form contract, which Google attached to its complaint. This AdWords agreement permits advertisers to bid on keywords and, in return, Google selects winning bids through a process that is mostly unknown to the bidder. In fact, Google’s CEO, Eric Schmidt, has admitted that “people do not understand how the auctions really work.” Google employs a variety of exclusionary acts that ensure that rivals cannot divert traffic to their own competing search websites, particularly if the effect of such diversion is substantially to compete against Google’s dominant platform. Among these acts is Google’s use of its opaque “quality score” that enables Google to exclude rivals (other than a select group of hand-picked rivals for which, on information and belief, Google maintains separate agreements).

11. The outcome of an AdWords auction is not solely the result of the highest bid but rather is heavily influenced by Google with limited information provided to the advertiser. Google's "quality" scoring establishes a minimum pricing threshold that differs across advertisers. The criteria for determining quality score apparently includes "Landing Page Quality," which is under Google's exclusive control. Google provides "Landing Page and Site Quality Guidelines" to advertisers, but ultimately Google determines how many ads to place on its search-results pages, which ads to place and in which order to place them. As a result, the advertiser with the highest bid does not always get the best slots on the page and, in many cases, that advertiser's ads are not shown at all. Many commentators have coined Google's advertising system a "Black Box" due to its lack of transparency.

12. Not all competing websites to Google are subject to its exclusionary "quality scoring." Rather, on information and belief, Google enters into agreements with a number of search websites, including rival shopping comparison sites, that allow these sites to participate in AdWords keyword auctions without being subject to the same "quality" scoring Google applies to other search rivals, including myTriggers. On information and belief, Google has entered into these favorable agreements with Shopping.com, shopzilla.com, PriceGrabber.com, bizrate.com, NexTag.com, Ask.com, Aol.com and other so-called "search partners." Google, however, does not publicly disclose which sites are its "search partners," and the precise terms of the agreements are also kept secret.

13. On information and belief, Google's agreements with "search partners" also serve to eliminate those "partners" from providing advertisers with alternatives to Google's dominant AdWords platform. For example, on information and belief, some agreements with "search partners" provide for search advertising exclusivity that expressly prevents those search

companies from offering search advertising other than that from Google's dominant AdWords advertising platform. Moreover, on information and belief, many of Google's "search partners" have agreements to serve search ads applying the same quality scoring as Google. As a result, these horizontal agreements with competitors serve to maintain Google's dominance and eliminate competitive alternatives from the market.

14. Finally, on information and belief, in addition to its agreements with its "search partners," Google has entered separate agreements with other websites to place those websites on a "whitelist." On information and belief, if a company is on Google's "whitelist," neither Google nor its "search partners" will eliminate the company from the market.

15. On information and belief, the "whitelist" is manually maintained. Google, however, does not publicly disclose the entities on the "whitelist," nor does Google publicly acknowledge the existence of the "whitelist." On information and belief, Google has entered into agreements with multiple shopping comparison sites to put those sites on its "whitelist."

16. If a shopping comparison site that is excluded from the market as a result of Google's unlawful compact is not manually placed on this secret "whitelist," then the site is forever blacklisted by Google and its "search partners."

17. Through Google's exclusionary conduct and its unlawful compacts and agreements, it has raised barriers to entry in the search advertising market. In particular, by denying search traffic to numerous competitors such as myTriggers, while sustaining traffic to other sites through its unlawful agreements, Google has directed traffic in a manner that denies rivals the ability to grow unfettered from exclusionary acts by Google and its network of partners. Google's exclusionary conduct and its unlawful agreements ensure that winners and

losers are decided in a manner that maintains Google's dominance in the search advertising market and harms competition by limiting options available to advertisers.

18. The agreements described above create a combination between Google and other persons having as their primary purpose the monopolization of search advertising. This combination is unlawful pursuant to Sec. 1331.01 *et seq.* of the Ohio Revised Code.

### **The History of MyTriggers**

19. myTriggers was founded in 2005 by Glenn S. Meyers, who led an initial investment of millions of dollars to set up the company and to initiate operations. Prior to founding myTriggers, Mr. Meyers was the founder and CEO of RareMedium Group, a web development and web incubator firm, which created some of the first websites for companies such as Amazon, MTV, Nickelodeon, Viacom, Goldman Sachs and others. Due to the expertise of Mr. Meyers in Internet businesses, myTriggers attracted significant investors and the company's success enabled it quickly to build a staff of over twenty employees. myTriggers' workforce included some of the leading engineers in the shopping comparison search vertical. Indeed, many employees of myTriggers defected from NexTag.com, a rival shopping comparison site that, on information and belief, enjoys a special relationship with Google through a "search partner" agreement.

20. myTriggers operates comparison shopping sites, including [www.myTriggers.com](http://www.myTriggers.com), [www.comparisonsearches.com](http://www.comparisonsearches.com) and [www.ShopBIG.com](http://www.ShopBIG.com) (collectively, the "myTriggers' Sites"). Shopping comparison sites are vertical search sites that allow users to shop and compare prices and products offered for sale. After a user runs a search on the myTriggers' Sites, different products are displayed along with a range of prices from the merchants that sell the product. When a product is clicked, participating merchants have a link to their site displayed along with

their asking price for the item. The myTriggers' Sites appeal to users because they provide a quick and effective means to shop for products and to find the lowest offering price.

21. Unlike some other shopping comparison sites, myTriggers implemented innovative search technologies, such as its user-selected "persistent searches" that would alert users by email, text message or RSS feed when results that met the users' preferences were found. Persistent searches enabled a user to enter his or her search query only once and have MyTriggers.com provide the services of running continuing searches while the user is offline. Persistent search results are delivered only at the direct request of a user.

22. Moreover, myTriggers monetized many of its search results in a method that provided what it regarded as a superior user experience to Google's method of charging search advertisers each time a user clicks on an ad. If widely adopted, this method of monetizing search sites threatened to undermine Google's revenue model and, ultimately, its dominance in paid search results. The potential disruptive effect of cost per action was well recognized. In fact, in late 2006, the New York Times ran an article featuring myTriggers entitled "As Ad Costs Rise, a Move to Challenge Pay-Per-Click." *See* Attachment A. Indeed, one prominent advertiser stated that as more companies implemented myTriggers' model, Google's business model would "become extinct." In fact, Google soon launched a "beta" version of a "pay-per-action" advertising product in 2007 and eventually launched an optimizer that allowed bidding based on cost per action.

23. Due to the critical nature of scale to the search advertising market, myTriggers recognized that attracting users was vital to its success. As a result, myTriggers invested heavily on creating brand awareness and generating user traffic. Like most e-commerce businesses, search advertising was a significant component of the marketing of the myTriggers' Sites.

24. myTriggers began using AdWords in November of 2005. Although myTriggers also used Yahoo! and Microsoft's advertising platforms, Google's dominance in search advertising meant that the majority of myTriggers' search advertising budget was used on Google. myTriggers invested heavily on developing keyword databases to be used on AdWords, spending hundreds of thousands of dollars.

25. In June 2006, myTriggers raised additional financing of several millions of dollars by selling additional shares of the company. In June 2007, myTriggers raised several millions more.

26. During this time, myTriggers' relationship with Google was profitable for both parties. Indeed, Google increased myTriggers' monthly credit limit multiple times – eventually the credit line from Google reached over \$250,000 per month. Google told myTriggers that the accounts were in good standing on multiple occasions.

27. In January of 2008, Google agreed to maximize myTriggers' keyword deployment. In February 2008, Google agreed to work to help optimize myTriggers' keyword campaigns. In March 2008, myTriggers finalized a lease on a new facility in Columbus, Ohio with larger datacenters to house its growing business.

28. On or about March 4, 2008, however, Google drastically raised the minimum bids for myTriggers' keyword bids. The minimum bids that myTriggers was required to make in order to run an ad on Google (or on the sites of Google's "search partners") rose between 1,000% and 10,000%. As a result, myTriggers had a steep decline in traffic to its sites.

29. myTriggers immediately contacted Google to find out the reason behind the drastic price increases. However, Google was unhelpful and did not provide any meaningful information for days.

30. Finally, Google informed myTriggers that its sites had poor “quality scores.” As the traffic to the myTriggers’ Sites continued to plummet, Google remained unresponsive and provided no solution on how to improve the “quality score.”

31. On or about March 26, 2008, representatives of myTriggers participated in a conference call with representatives from Google to discuss the dramatic price increase. The Google representatives suggested improvements in general terms but did not provide any specific advice on how to improve the sites’ “quality score.”

32. As a result of the meeting, it became clear that myTriggers could no longer place search ads with Google or its “search partners” because it could not obtain competitive minimum bids. Due to Google’s dominance, rival search sites such as Yahoo! and Microsoft could not save myTriggers.

33. Soon thereafter, myTriggers was forced to fire nearly all of its Ohio staff in addition to employees in other locations. Google’s dominance, extended and amplified through its unlawful agreements, allowed it to eliminate traffic to the myTriggers’ Sites and left myTriggers with no choice other than to exit in near entirety from the search advertising market.

34. Over its history, Google has sought to develop and acquire numerous vertical search websites. Perhaps one of the least successful is Google’s development of “Froogle,” a shopping comparison site owned by Google that commentators have characterized variously as “inept,” “not a screaming success” and “the weakest of the group.”

35. Nonetheless Google gives preferential treatment in its natural search results to these low quality results from its own vertical searches sites. Google has recently modified its dominant search platform to incorporate various vertical search results into the results for its general search engine. Google calls this change “Universal Search,” and apparently intends for it

to counter the inroads made by vertical search websites. Accordingly, Google's search site now returns results not only from its natural search results from the Internet, but also results of searches of its various vertical search websites such as shopping comparison results, finance information and others. A Google representative has announced that it is company "policy" to favor its own verticals in Google's search results.

36. Apparently as part of this anticompetitive policy and in furtherance of its broader anticompetitive course of conduct, Google penalized myTriggers on numerous occasions in Google's dominant natural search results. Most recently, Google penalized myTriggers on or about December 9, 2009, in the middle of the holiday season – a time when the myTriggers' Sites were expected to make the most revenue per visit. As a result, traffic on the myTriggers' Sites dropped significantly and revenue to myTriggers likewise dropped.

37. myTriggers injuries flow from Google's anticompetitive agreements, compacts and other conduct that has resulted in the elimination of many vertical search sites, including shopping comparison sites like myTriggers. This conduct has increased prices to search advertisers, decreased quality and innovation, maintained monopoly and eliminated scores of nascent competitive threats.

### **RELEVANT MARKET**

38. The relevant market in this case is the provision of advertising as a result of online search queries in the United States.

39. Both federal antitrust agencies (the Federal Trade Commission and the Department of Justice) have recognized the search advertising market as a relevant market for antitrust purposes during prior investigations of Google's conduct. These federal agency conclusions on the relevant market were not reached lightly. Both determinations resulted from

separate lengthy investigations, involving, among other things, the production of millions of pages of Google's internal documents that were reviewed by teams of government lawyers and economists.

40. Search advertising is not interchangeable with other forms of advertising because of the unique characteristics of search advertising. As a Google Vice President has stated: "The old way of advertising had no direct interaction with the audience. But now the audience can click. So suddenly advertising is not a sales pitch. It's a response to an expression of intent. This form of advertising is narrowcast, personalized. It has very different properties than the old."

41. Likewise, after its investigation, the Federal Trade Commission recognized that "search engines provide a unique opportunity for advertisers to reach potential customers" and that the "sale of search advertising does not operate as a significant constraint on the prices or quality of other online advertising." In other words, the cross-elasticity of demand between search advertising and other forms of non-search advertising (including all other forms of Internet advertising), does not support the inclusion of such other forms of advertising in the same relevant market as search advertising.

42. Similarly, the Department of Justice stated that "[i]nformative, relevant search advertisements provide a uniquely efficient and increasingly important means for advertisers to reach potential consumers." The Department of Justice concluded that "Internet search advertising" is a "relevant antitrust market" and that Google had a share of over "70 percent" of the market.

43. Search advertisers view search advertising as a distinct market and generally have distinct budgets allocated for search advertising.

44. Search advertising platforms also consider the search advertising market to be a distinct market. When evaluating whether to change or upgrade their platforms, search platforms do not consider whether an advertiser will switch to a different form of advertising. Rather, search platforms confine their decision to whether advertisers will switch to a rival search advertising platform.

45. Search advertising platforms tend to be localized by country due to differences in language and geography and other country-specific factors. Many search advertisers therefore set their advertising campaigns on the basis of country. Industry analysts also view the United States as a separate geographic market for search advertising. Due to the unique characteristics of search advertising, a monopolist of search advertising in the United States could increase profits through a small but significant non-transitory increase in price.

46. As a result of its unlawful compacts, Google is the dominant player in the search advertising market, with a share of at least 70% and has exercised its monopoly power to raise prices and eliminate nascent competitors from the market. Yahoo! and Microsoft are Google's main competitors, but with much smaller market shares are unable to supply companies like myTriggers with a sufficient amount of traffic to maintain competitiveness. Specialized "vertical" search sites also represent nascent or potential competitors and collectively have very small market shares.

**FIRST COUNTERCLAIM**  
**Valentine Act, Ohio Rev. Code §§ 1331.01 *et seq.***

47. myTriggers re-alleges all of the allegations contained in the other paragraphs of this pleading as if fully rewritten herein.

48. Google realizes that its dominance in search advertising may be threatened by other search websites, including vertical search sites such as myTriggers, if users may turn to such sites to satisfy their search queries.

49. Google has targeted certain shopping comparison websites through its agreements, compacts and other conduct, as alleged above, in order to ensure that Google can continue to exert control over search advertising.

50. The above mentioned agreements, compacts and other conduct constitute anticompetitive restrictions on trade or commerce, a conspiracy against trade and an illegal refusal to trade as a result of a blacklist promulgated by a foreign corporate entity. The effect of Google's unlawful compact has been, among other things, to increase and to stabilize prices to advertisers and to prevent competition in the search advertising market. The above mentioned agreements, compacts and other conduct are therefore unlawful and in violation of the Valentine Act, Ohio Rev. Code §§ 1331.01 *et seq.*

51. As a direct and proximate result of the acts and practices alleged above, myTriggers' business has suffered actual injury and damages, and will continue to suffer ongoing injury and damages, in an amount in excess of Twenty Five Thousand Dollars (\$25,000.00), which amount myTriggers shall prove at the trial of this matter.

**SECOND COUNTERCLAIM**  
**Breach of Contract**

52. myTriggers re-alleges all of the allegations contained in the other paragraphs of this pleading as if fully rewritten herein.

53. In addition, and/or in the alternative, to the other claims and/or defenses set forth herein, and upon information and belief, myTriggers brings its second, third and fourth counterclaim under Ohio law.

54. In addition, and/or in the alternative, to the other claims and/or defenses set forth herein, and upon information and belief, Google breached the terms of the written and/or oral and/or implied contract(s), if any, between the parties.

55. Upon information and belief, as a direct and proximate result of the acts and practices alleged above, myTriggers' business has suffered actual injury and damages, and will continue to suffer ongoing injury and damages, in an amount in excess of Twenty Five Thousand Dollars (\$25,000.00), which amount myTriggers shall prove at the trial of this matter.

**THIRD COUNTERCLAIM**  
**Estoppel**

56. myTriggers re-alleges all of the allegations contained in the other paragraphs of this pleading as if fully rewritten herein.

57. In addition, and/or in the alternative, to the other claims and/or defenses set forth herein, and upon information and belief, Google through its course of dealings with myTriggers, and/or through its inducement of myTriggers, and/or by its representations to myTriggers, and/or by its assurances to myTriggers, did cause myTriggers to enter into a contract, and/or into performing under a contract, and/or purchasing goods and/or services from Google, so that Google and/or its and other related business operations could generate profits, and/or good will, for Google and/or its and other related business operations.

58. Upon information and belief, Google knew and/or intended that myTriggers would, and did, rely upon said course of conduct, inducements, representations, and/or assurances, and would, and did, materially, reasonably, and justifiably rely upon said course of conduct, inducements, representations, and/or assurances.

59. Upon information and belief, myTriggers justifiably relied to its detriment upon Google's representations, by undertaking and/or refraining from undertaking, actions in pursuit of its business.

60. Upon information and belief, Google has failed to fulfill its obligations as represented to myTriggers.

61. Upon information and belief, Google did then unilaterally and wrongfully deviate from what it had represented to myTriggers would be its ongoing obligations.

62. Upon information and belief, there was, and is, no just cause or excuse for Google's wrongful acts in such deviation, all of which necessarily caused damage to myTriggers.

63. Upon information and belief, myTriggers has been damaged as a result of Google's failure to fulfill its obligations to myTriggers and its detrimental reliance.

64. Upon information and belief, Google is estopped to deny its obligations to myTriggers.

65. Upon information and belief, as a direct and proximate result of the acts and practices alleged above, myTriggers' business has suffered actual injury and damages, and will continue to suffer ongoing injury and damages, in an amount in excess of Twenty Five Thousand Dollars (\$25,000.00), which amount myTriggers shall prove at the trial of this matter.

#### **FOURTH COUNTERCLAIM**

##### **Rescission**

66. myTriggers re-alleges all of the allegations contained in the other paragraphs of this pleading as if fully rewritten herein.

67. In addition, and/or in the alternative, to the other claims and/or defenses set forth herein, and upon information and belief, myTriggers had an understanding of the contract(s), if

any, much different than what Google represented was its understanding at the time the contract(s), if any, was entered into.

68. Upon information and belief, Google has failed to provide the services or pricing structure that myTriggers was led to believe Google would provide.

69. Upon information and belief, myTriggers' mistaken understanding of the terms of the contract(s), if any, with Google was the mistake of a material and essential term of the contract(s), if any, that was adverse to myTriggers.

70. Upon information and belief, Google had reason to know of the mistaken understanding, and did nothing to correct its mistaken understanding.

71. Upon information and belief, the contract(s), if any, between the parties should be rescinded, and the parties put back into the position they were in prior to entering into the contract(s), and myTriggers requests same.

72. Upon information and belief, as a direct and proximate result of the acts and practices alleged above, myTriggers' business has suffered actual injury and damages, and will continue to suffer ongoing injury and damages, in an amount in excess of Twenty Five Thousand Dollars (\$25,000.00), which amount myTriggers shall prove at the trial of this matter.

#### **PRAYER**

**WHEREFORE**, myTriggers prays that this honorable Court dismiss Google's First Amended Complaint with prejudice, that myTriggers be awarded its costs, and have such other, further or different relief as the case may require and the Court deems just and proper under the circumstances.

**WHEREFORE**, as to myTriggers's Counterclaims against Google, myTriggers prays for the following relief:

**A. FIRST COUNTERCLAIM**

1. That judgment be entered for myTriggers against Google for three times the amount of damages sustained by myTriggers as allowed by law, together with the costs of this action, including reasonable attorneys' fees, pursuant to Ohio Rev. Code § 1331.08.
2. That myTriggers be awarded pre-judgment and post-judgment interest from, and after, the date of service of this Answer and Counterclaim to the extent provided by law;
3. That equitable relief be issued in the form of an injunction prohibiting the ongoing exclusionary conduct, and unreasonable agreements entered into, by Google;

**B. SECOND COUNTERCLAIM**

1. That judgment be entered for myTriggers against Google in an amount which is uncertain at this time, and which will be timely supplemented prior to trial, but which is in excess of Twenty Five Thousand Dollars (\$25,000.00), together with the costs of this action;

**C. THIRD COUNTERCLAIM**

1. That judgment be entered for myTriggers against Google in an amount which is uncertain at this time, and which will be timely supplemented prior to trial, but

which is in excess of Twenty Five Thousand Dollars (\$25,000.00), together with the costs of this action;

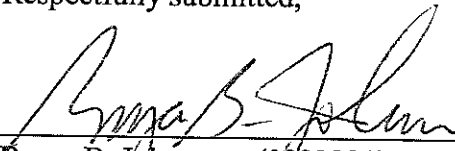
**D. FOURTH COUNTERCLAIM**

1. That judgment be entered for myTriggers rescinding the contract(s), if any, with Google, and judgment for myTriggers against Google in an amount in excess of Twenty Five Thousand Dollars (\$25,000.00), which amount myTriggers shall prove at the trial of this matter


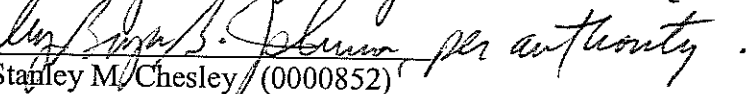
**E. AS TO ALL COUNTERCLAIMS**

1. That myTriggers have such other, further or different relief as the case may require and the Court deems just and proper under the circumstances.

Respectfully submitted,



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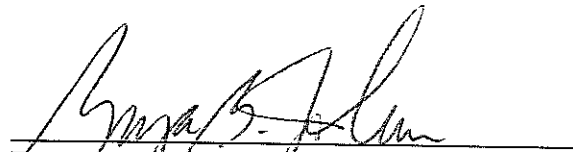
To be signed upon admission Pro Hac Vice  
Charles F. Rule (Pending admission *Pro Hac Vice*)  
Jonathan Kanter (Pending admission *Pro Hac Vice*)  
Joseph J. Bial (Pending admission *Pro Hac Vice*)  
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*Appearance to be entered as Co-Counsel for  
Defendant/Counterclaimant myTriggers.com, Inc.  
upon admission Pro Hac Vice*

**JURY DEMAND**

Defendant/Counterclaimant myTriggers.com, Inc. demands a trial by jury of those issues raised in Google's Complaint and Defendant/Counterclaimant's Answer and Counterclaim that are so triable.



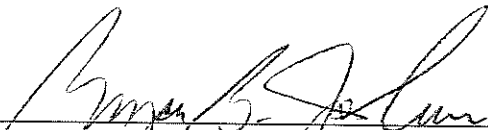
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Joseph J. Bial (Pending admission *Pro Hac Vice*)  
Daniel J. Howley (Pending admission *Pro Hac  
Vice*)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleadings was served upon the following parties or their legal counsel by ordinary U.S. mail, postage prepaid, on this 2<sup>nd</sup> day of

February, 2010:

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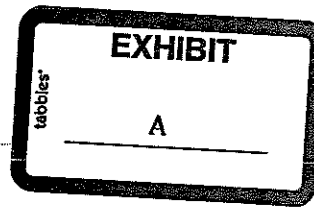
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December 4, 2006

E-COMMERCE REPORT

## As Ad Costs Rise, a Move to Challenge Pay-Per-Click

By BOB TEDESCHI

When the comparison shopping sites Shopping.com, Shopzilla and PriceGrabber sold for a combined total of more than \$1.7 billion last year, the BlackBerrys of Silicon Valley were suddenly abuzz.

How about social-networking shopping search? Photo-based shopping search? Wiki-shopping search?

This year entrepreneurs created sites in each of these categories, while avoiding the turf occupied by the old school. Now, though, new businesses like Jellyfish.com, TheFind.com and MyTriggers.com, among others, have taken direct aim at Shopzilla and Shopping.com, the two most popular sites for finding goods online.

"This is still a growing category," said Gian Fulgoni, chairman of comScore Networks, which tracks Internet use. According to Mr. Fulgoni, comparison shopping sites added eight million users from October 2005 to October 2006, a 14 percent jump. But the 62 million people who used shopping comparison sites in October represented little more than a third of the nation's online population of 173 million.

Shopping.com, Shopzilla.com and PriceGrabber.com made attractive acquisitions for, respectively, eBay, E. W. Scripps and Experian, partly because all were following Google's pay-per-click advertising model. These shopping sites offer search boxes and product directories, typically presenting items so that when users click on a link, they are in essence clicking on a merchant's ad.

Jellyfish, TheFind and MyTriggers, meanwhile, are taking advantage of what some executives say is increasing discomfort with the pay-per-click model, which has grown more expensive as marketers bid more aggressively for premium space alongside search results. On these new sites, advertisers typically pay only when someone actually buys something or when users view an ad, as will soon be the case with TheFind.

Glenn S. Meyers, chief executive of MyTriggers.com, said this cost-per-action advertising approach also yielded a better user experience, since shoppers were shown products most relevant to them — not simply the items from the highest-paying advertisers.

"We figured we'd just give users what they were searching for," Mr. Meyers said. "What a novel idea."

Mr. Meyers said that on MyTriggers, users who search for an iPod are first given options to narrow their choices within the iPod realm, to include, for instance, only Nano models of a particular color. Then when they search, users are shown the most relevant item from the merchant with the lowest price.

The lowest price listed on MyTriggers for an 8-gigabyte iPod Nano was \$239 on ClubMac.com, not including shipping charges. The top result on Shopping.com was from TigerDirect.com, which charged \$262 including

shipping. On Shopzilla the top result was \$264, including shipping, from Apple's online store.

Mr. Meyers, who earlier founded RareMedium Group, a publicly held Web site developer, said his company earned about \$10 for each paying customer it delivered to an advertiser, plus additional fees if the customer bought more items in the future. He would not disclose sales or traffic statistics, but said more than 10 percent of the people who clicked on a merchant's link subsequently made a purchase.

Each of the new shopping search engines includes a twist on the old search technology. MyTriggers allows users to set up "persistent searches" for certain items, and the site will alert users when it finds a result that meets the users' preferences.

MyTriggers and TheFind.com, which is based in Mountain View, Calif., do not rely mainly on lists of product data from advertisers for their content, the way Jellyfish and many shopping search sites do. Rather, their approach is more akin to Google, in that they scan and index many thousands of commerce sites, and maintain databases of more than 100 million products.

Like MyTriggers, TheFind presents results according to their relevance to the shopper, not how much advertisers pay. TheFind more actively courts female shoppers, said its chief executive, Siva Kumar, with an opening page suggesting searches for everything but high-tech items.

The search results pages on TheFind are highlighted by large images that display in-depth descriptions when a user positions the cursor over the picture. "This is designed to address the needs of a large group of people that shops a lot," Mr. Kumar said. "Women find the current shopping search very difficult to use."

Jellyfish.com, in Madison, Wis., shares at least half of each commission with users, in the form of rebates, and is pioneering a cost-per-action approach that is based on auctions. Merchants who pledge a higher commission to Jellyfish — and, by extension, its users — appear higher in the search results because they are more likely to have the lowest final cost to consumers.

On a search for an 8-gigabyte iPod Nano last week, ClubMac's final price was \$233.60, with shipping, because it included a \$5.50 rebate for Jellyfish customers.

The site's advertisers hope that it will catch on with more consumers. Zoltan Rosenberg, vice president for online marketing of B & H Photo, said he much preferred the pay-per-performance approach because it allowed his company to better predict and control the marketing costs for each sale. Ads on shopping sites that charge per click, he said, have become more expensive.

Mr. Rosenberg said that as more companies implement the pay-per-performance business model, cost-per-click "will become extinct." Jellyfish, he added, "is not getting as much traffic right now, but all new sites are like that."

"It should work out in the long run," he said.

Executives at Shopping.com and Shopzilla said they were not daunted by the new competition. Rob Goldman, who leads the domestic division of Shopping.com, said his company continued to improve its Web site, and recently began testing a service in which customers can pay for their purchases on the site without

clicking away to the retailer.

Notably, advertisers earn a commission on those sales. Mr. Goldman declined to speculate on the possibility of Shopping.com's moving to a commission-based approach, and stressed that the new service was only a test. "It's a great model," he said.

Farhad Mohit, chairman of Shopzilla, did not agree. "I thought cost-per-click would destroy our company, but customers are very accepting of it," he said. "And it allows us to make money."

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