

Google Dodges Suit Over Advertising Pricing Discounts

By **Dan Rivoli**

Law360, New York (August 10, 2011) -- A California federal judge on Wednesday dismissed a putative class action accusing Google Inc. of unfair competition and breaking its agreement with AdWords-enrolled advertisers over pricing discounts, ruling the plaintiff had failed to adequately support his claims.

U.S. District Judge Jeremy Fogel said attorney Rick Woods, the advertiser who filed the suit, failed to sufficiently allege facts to support his breach of contract, good faith and fair dealing, and state competition and advertising law claims, but granted him leave to amend his complaint.

AdWords is one of two advertising products, along with AdSense, that Google offers. Under AdWords, advertisers pay Google each time someone clicks on an ad that appears in Google's search results. With AdSense, third-parties give space to Google ads in exchange for a cut of the click fee.

The suit accused Google of failing to offer pricing discounts described in AdWords' online help center to enrolled advertisers.

"[Woods] claims that the agreement incorporates language from the AdWords Help Center that allegedly contains promises by Google," Judge Fogel said. "The complaint fails to explain adequately why this language should be deemed to be incorporated into the agreement."

The pricing discount relates to so-called invalid clicks. According to the complaint, Google's AdWords Help Center includes details of a smart price feature that gives discounts for invalid clicks that fail to turn into a "business result." Woods alleged that AdWords advertisers do not receive this discount on sites from AdSense publishers that have entered into secret agreements with Google.

"Even if the court were to conclude that the language in the AdWords Help Center with respect to smart pricing discounts were incorporated into the agreement, the complaint does not allege adequately that Google undertook on an obligation to apply the discount in a particular way to all advertisers," Judge Fogel said.

For Woods' breach of good faith and fair dealing claim, Judge Fogel said that Woods never showed that Google promised advertisers that it would not enter into additional agreements with third-party publishers.

An attorney for Woods declined to comment. An attorney for Google was not immediately available for comment.

Google is represented by Edward D. Johnson, Donald M. Falk, John M. Neukom and Hamsa M. Murthy of Mayer Brown LLP.

Woods is represented by Ramzi Abadou, Stacey M. Kaplan, Erik D. Peterson, Joseph H. Meltzer, Sean M. Handler, Peter H. LeVan Jr., Naumon A. Amjed and Ryan T. Degnan of Kessler Topaz Meltzer & Check LLP, and Jeffrey J. Angelovich and Brad E. Seidel of Nix Patterson & Roach LLP.

The case is Rick Woods v. Google Inc., case number 5:11-cv-01263, in the U.S. District Court for the Northern District of California.

--Editing by Andrew Park.

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