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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

CRAFTS BY VERONICA,	:	
111 Montrose Street	:	
Newark, NJ 07106-2315	:	Civil Action No.
On Behalf of Itself and All Others	:	
Similarly Situated,	:	
	:	Jury Trial Demanded
Plaintiff,	:	
	:	
v.	:	CLASS ACTION
	:	
	:	
YAHOO!, INC.; OVERTURE SERVICES, INC.,	:	
AND JOHN DOE COMPANIES, INC.,	:	
	:	
Defendants.	:	

CLASS ACTION COMPLAINT

Plaintiff Crafts By Veronica, on behalf of itself and all others similarly situated, files this Class Action Complaint against Yahoo! Inc., Overture Services, Inc., and John Doe Companies, Inc. (hereinafter referred to as "Defendants").

INTRODUCTION AND NATURE OF CASE

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.*, Plaintiff 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 23 to 38 of this Complaint, are referred to herein as “Syndication Fraud.”

5. Accordingly, Plaintiff and the Class were unlawfully charged for services that Defendants did not provide or that Plaintiff and the Class did not agree to pay for.

6. Plaintiff and the Class bring this action for breach of contract, unjust enrichment, civil conspiracy and for violations of the New Jersey Consumer Fraud Act. Plaintiff seeks 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, Crafts By Veronica, is a New Jersey business located at 111 Montrose Street, Newark, New Jersey. At all relevant times, Plaintiff placed ads with Defendants and paid Defendants under their PPC advertising program.

8. 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.

9. Defendant Overture Services, Inc. ("Overture"), a wholly-owned subsidiary of Yahoo!, Inc., is a Delaware corporation with its executive offices, principal place of business, and corporate headquarters at 74 North Pasadena, Pasadena, California 91103.

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

JURISDICTION AND VENUE

11. This Court has personal jurisdiction over Defendants by virtue of the extensive amount of business each Defendant regularly conducts within the State of New Jersey and,

further, because of the specific conduct at issue relating to Plaintiff and the Class. Defendants are amenable to service under the New Jersey long-arm statute and the exercise of jurisdiction does not offend traditional notions of fair play and substantial justice.

12. This Court has subject matter jurisdiction over this suit pursuant to the Class Action Fairness Act.

RELEVANT FACTUAL BACKGROUND

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

14. Defendant Overture, a wholly owned subsidiary of Yahoo, provides technology and systems for showing, tracking, and charging for pay-per-click advertisements.

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

16. Just as traditional advertising costs more in some publications than in others, so too do PPC prices vary. For example, PPC ads generally cost more when they reach users seeking certain products, when they reach users actively engaged in purchasing decisions for such products, and when they reach users from certain demographic groups. Advertisers seek to buy ads from Defendants, at Defendants' high prices, because Defendants purport to offer high-quality sites with high-quality users. Defendants specifically tout the quality of their sites and the third party sites at which Defendants display ads: Defendants describe those third party sites as “popular [and] high-quality,” specifically naming such distinguished partners as Microsoft,

CNN, and the Wall Street Journal. *See* <http://searchmarketing.yahoo.com/rc/srch/srch.php>. Furthermore, Defendants' training materials describe Defendants' advertising as appearing "along with relevant articles [and] product reviews." *See* <http://searchmarketing.yahoo.com/rc/srch/eworkbook.pdf>, page 98.

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

18. Defendants offer advertisers a choice between purchasing "Sponsored Search" advertising at search engines (to reach "search users" who are actively engaged in searching the web), and/or "Content Match" advertising at content sites (showing ads "along with relevant articles, product reviews, and more"). *See* <http://searchmarketing.yahoo.com/rc/srch/srch.php>. Pricing for Sponsored Search is higher, reflecting that ads are more valuable when shown to users who are actively engaged in searching.

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

20. However, instead of safeguarding against such abuse, finding such practices, and diligently putting a stop to them, Defendants have actually engaged in such abuses. In fact, not only have Defendants turned a blind eye to abuse of their PPC advertising system, but

Defendants knowingly have manipulated that system for their own benefit, by increasing the volume of improper advertising displays during financial reporting periods when Defendants were at risk of failing to meet investor expectations.

21. As a result of these abuses, PPC advertising programs recently have drawn sharp public criticism. Defendants, as well as Internet search engine giant Google Inc. and others, have unlawfully inflated their PPC advertising revenues by charging for clicks that were caused by click fraud, which, as described above, entails third parties faking clicks on the ads. Several click fraud-based lawsuits have been filed against Defendants, Google and others. *See, e.g., Lane's Gifts et al. v. Yahoo! Inc., et al.*, Ark. CV-2005-52-1; *Click Defense Inc. v. Google, Inc., et al.*, Cal. C05-02579. On March 8, 2006, Google announced that it had entered into a \$90 million settlement of one such suit. *See* <http://googleblog.blogspot.com/2006/03/update-lanes-gifts-v-google.html>.

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

SPYWARE

23. 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.

24. 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.

25. Advertisers want no part of spyware-delivered advertising. Staff of the U.S. Federal Trade Commission ("FTC") and New York Attorney General's office have repeatedly instructed advertisers to be wary of spyware-delivered advertising. Furthermore, advertisers recognize spyware for the scourge that it is, and they therefore seek to keep their ads out of spyware.

26. Defendants' "Yahoo! Publisher Network Policies" specifically state that Yahoo's Syndication Partners must not place ads into pop-ups or pop-unders (advertising methods widely associated with spyware), thereby effectively representing that Defendants will not allow their advertising customers' ads to be shown in such undesirable ways. *See* https://publisher.yahoo.com/legal/prog_policy.php. Moreover, by promoting their "Sponsored Search" advertising product – *i.e.*, advertising targeted to users who are specifically and actually conducting searches, as opposed to users whose computers happen to be infected with spyware – Defendants are by necessary implication representing to their advertising customers that their ads will not appear in spyware. That representation is made also by omission; when Defendants tell Class Members where their ads will appear, Defendants fail to mention spyware. *See*

<http://searchmarketing.yahoo.com/rc/srch/srch.php> (listing nineteen different places Class Members' ads may appear, without mentioning any risk of ads appearing in spyware). *See also* http://searchmarketing.yahoo.com/legal/atc_srch.php (Defendants' 17,787 word contract, stating that ads may appear in "third party Web sites, content, applications and/or e-mails," but again making no mention of ads appearing in spyware).

27. In contravention of their contractual obligations, Defendants have in fact caused Class Members' ads to appear in spyware software programs. In 2005 and 2006, New York Attorney General's office investigations of Spyware operators Intermix and Direct Revenue revealed that Defendants have placed Class Members' ads into spyware provided by those companies. Other investigations have uncovered numerous other instances of Defendants placing Class Members' ads into notorious and well-known spyware.

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

29. By placing Class Members' ads into illegal platforms such as spyware programs, Defendants wrongfully collect high search engine advertising fees for ads that are actually shown in contexts that are worth far less, if anything. It is well known that spyware advertising is much cheaper than search engine advertising. *See* <http://www.metricsdirect.com/whatwedo/youradvertisingbudget.aspx> (reporting prices of \$0.03 or lower for spyware-delivered advertising – an order of magnitude lower than Defendants'

prices). But when Defendants and their Syndication Partners place Class Members' ads into spyware, they continue to charge Class Members full price for these ads, and pocketing the difference between the high fees Class Members pay and the low cost of providing spyware-delivered advertising.

TYPOSQUATTING

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

31. Defendants' use of typosquatting violates their contract with Plaintiff and the Class, and violates both settled trademark law and the ACPA.

32. Furthermore, Defendants represent to Class Members that their ads will be shown in "popular, high-quality sites." See <http://searchmarketing.yahoo.com/rc/srch/srch.php>. A typosquatting site – which by design users only reach by accident, *i.e.*, by misspelling another site's address – cannot satisfy this representation. Defendants also represented to Class Members that their ads will be shown "along with relevant articles, product reviews, and more," when in

fact typosquatting sites generally lack any such content, instead consisting solely of advertisements.

33. Particularly egregious is that Defendants even charge their advertising customers for ads shown on typosquatting web sites targeting those customers' own names. Take for example Yahoo's advertising customer Expedia.com. A user intending to visit the Expedia web site might mistype it as "expedai.com." At "expedai.com," the user sees a list of ads provided by Defendants, including an ad for Expedia, along with other customers of Defendants. If the user clicks the Expedia ad, the user is taken to the true Expedia site, which is where he or she wanted to go in the first place – without clicking an Expedia ad – and Expedia has to pay Defendants a PPC fee.

"PARKING" AND BULK REGISTRATION SITES

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

SPONSORED SEARCH VERSUS CONTENT MATCH ADVERTISING

35. Defendants offer Class Members a choice between purchasing "Sponsored Search" advertising at search engines (to reach "search users" who are actively engaged in searching the web), and/or "Content Match" advertising at content sites (showing ads "along

with relevant articles, product reviews, and more”). *See* <http://searchmarketing.yahoo.com/rc/srch/srch.php>. Pricing for Sponsored Search is higher, reflecting that ads are more valuable when shown to users who are actively engaged in searching. But even when Class Members choose to purchase only Sponsored Search advertising, Defendants place Class Members’ ads into contexts that are more properly described as Content Match because these contexts do not reach users already actively engaged in web searches. Class Members are therefore forced to pay the high Sponsored Search prices even when they receive less valuable Content Match advertising placements.

RESULTING HARMS

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

37. Class Members pay Defendants a premium price for the high-quality advertising placements Defendants promise to provide. Instead, Defendants place ads within spyware programs, squatting sites, and other sites maintained by their Syndication Partners where market-advertising prices are far less. *See* <http://www.metricsdirect.com/whatwedo/youradvertisingbudget.aspx> (reporting prices of \$0.03

or lower for spyware-delivered advertising). Defendants and its partners pocket the difference, causing Class Members to incur un-bargained for payments to Defendants.

38. The Syndication Fraud practices outlined above have caused Plaintiff and the Class harm that is separate and apart from the harm caused by click fraud. None of the complaints in the click fraud suits against Defendants has alleged any harm caused by Syndication Fraud.

CLASS ALLEGATIONS

39. Plaintiff brings this action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following plaintiff Class:

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

40. The Class is so numerous that joinder of all members thereof is impracticable. Thousands of persons and entities located throughout New Jersey and the United States purchased pay-per-click advertising from Defendants.

41. Plaintiff's claims are typical of the claims of the members of the Class because plaintiff and all Class members were damaged by the same wrongful conduct of the Defendants and their co-conspirator Syndication Partners as alleged in this Complaint.

42. Plaintiff will fairly and adequately protect the interests of the Class. The interests of Plaintiff are coincidental with, and not antagonistic to, those of other members of the Class. In addition, Plaintiff is represented by counsel who are experienced and competent in the prosecution of complex class action litigation.

43. There are questions of law and fact common to the members of the Class, and those common questions predominate over any questions that may affect only individual

members of the Class, because Defendants have acted on grounds generally applicable to the entire Class. Among the predominant questions of law and fact common to the Class are:

(a) Whether Defendants breached their contracts with their online advertising customers by placing their ads on web sites Defendants promised not to employ;

(b) Whether Defendants breached their promise to place their customers' ads in a targeted manner;

(c) Whether Defendants conspired with their Syndication Partners to artificially inflate their PPC revenues at the Class's expense;

(d) The appropriate compensatory remedy for Defendants' Syndication Fraud practices; and

(e) Whether Defendants should be enjoined from continuing their Syndication Fraud practices.

44. Class action treatment is superior to the alternatives, if any, for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly-situated persons and entities to prosecute their common claims in a single forum simultaneously, efficiently and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of relatively small claims by many class members who could not afford individually to litigate an antitrust claim such as that asserted herein. There are no difficulties likely to be encountered in the management of this class action that would preclude its maintenance as a class action and no superior alternative exists for the fair and efficient adjudication of this controversy on behalf of plaintiff and the members of the Class.

COUNT I

Breach of Contract

45. Plaintiff hereby incorporates by reference the foregoing allegations.

46. Defendants imposed on Plaintiff and every other Class Member a contract that governs their PPC advertising relationship. The PPC contracts were drafted by Defendants and are uniform as to every one of Defendants' advertising customers.

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

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

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

50. Defendants breached their contracts with Plaintiff and the Class by not limiting the placement of advertisements to "targeted," "high quality" web sites, and otherwise by the Syndication Fraud practices alleged herein. It was within the control of Defendants to determine what sites were appropriate. Defendants breached their contractual duty of good faith and fair dealing by collecting revenues for placements they knew, or reasonably should have known,

were illegal as well as violative of their contracts with advertisers. Accordingly, Plaintiff and the Class are entitled to be reimbursed for all charges billed or collected for clicks that were not chargeable under the contract.

COUNT II

Unjust Enrichment

51. Plaintiff hereby incorporates by reference the foregoing allegations.

52. The fees Plaintiff and the Class paid to Defendants for PPC advertising placed pursuant to the Syndication Fraud practices alleged herein constitute ill-gotten gains improperly received by Defendants. Accordingly, Defendants have been unjustly enriched as a result of their Syndication Fraud practices, and, concomitantly, Plaintiff and the Class have suffered damages.

COUNT III

Civil Conspiracy

53. Plaintiff hereby incorporates by reference the foregoing allegations.

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

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

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

COUNT IV

VIOLATIONS OF THE NJ CONSUMER FRAUD ACT

57. Plaintiff hereby incorporates all facts and allegations set forth above by reference as if fully set forth at length herein.

58. Plaintiff and the other class members are each a "person" as defined by N.J.S.A. 56:8-1(d).

59. Each Defendant is a "person" as defined by N.J.S.A. 56:8-1(d).

60. Plaintiff and the Class purchased PPC advertising services from Defendants and have suffered ascertainable losses as a result of Defendants' breach of good faith and fair dealing, failure to disclose material facts, and other unlawful conduct as detailed herein.

61. Defendants' conduct, as set forth above, violates the CFA, and Defendants' actions surrounding the PPC billing process were and are unconscionable and unfair. Defendants' and their agents/affiliates acted with a reckless disregard of Plaintiff's and the Class's rights to fair and accurate billing only for clicks consistent with contractual representations, after Defendants represented the PPC service as providing advertising placements in "high quality" web sites and after Defendants represented the PPC service as providing advertising consistent with all laws and regulations. Defendants have otherwise acted in an unconscionable way by using deception, unfairness and lack of good faith involving the PPC service. Defendant and its agents acted affirmatively in the improper billing for in violation of the CFA.

62. Defendants knowingly concealed, suppressed, or omitted facts as alleged herein, including placing ads on low quality, untargeted, and/or illegal web sites. Plaintiff and the Class

aver such acts constitute a refusal to perform the contractual duties and obligations repairs in accordance with the contract the warranty promise therein, in violation of the CFA.

63. As a result of Defendants' conduct, Plaintiff and the Class have suffered ascertainable losses and are entitled to the remedies prayed for above and recapitulated in the prayer for relief below.

RELIEF REQUESTED

WHEREFORE, Plaintiff, individually and on behalf of the Class, seeks the following relief:

- (a) Certification of this case as a class action, with Plaintiff as class representative and Plaintiff's counsel as class counsel;
- (b) Compensatory relief, including disgorgement of Defendants' ill-gotten gains;
- (c) A permanent injunction barring Defendants from engaging in the unlawful practices alleged herein.
- (d) Prejudgment interest;
- (e) Plaintiff's reasonable attorneys' fees and costs and;
- (f) Such further relief that the Court deems appropriate.

JURY TRIAL DEMAND

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

Dated: May 1, 2006

Respectfully submitted,

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