Complaint Counsel’s Compilation of Materials for Oral Argument Before the Commission
June 26, 2018

In the Matter of 1-800 Contacts, Inc.
Docket No. 9372
An Example of Infringement
“process in a nutshell . . . remove competitors”

Our Trademark keyword management process in a nutshell:

- Search terms are tested and monitored. Actions are taken as necessary against all violators.
- Jordan monitors our top keywords twice a week and sends a report with suggestions each time. Jordan’s findings report is sent to legal for review.

(2) Enforce trademark policy to remove competitors which in turn drives down how much we pay per click.
Trademarked Keywords

- Keep competitors & affiliates off
- Low competition = low cost
- Example: 1800-contacts
**Paid Search**

*Bid Management – Trademarks*

- Keep competitors & affiliates off
- Low competition = low cost

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<thead>
<tr>
<th>Metric</th>
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<tbody>
<tr>
<td>Clicks</td>
<td>60%</td>
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<tr>
<td>Searches</td>
<td>54%</td>
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<tr>
<td>CTR</td>
<td>4%</td>
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<tr>
<td>Orders</td>
<td>38%</td>
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**Affiliate Policing**
- Daily monitoring by BrandVerity
- Bi-weekly reports & notifications to affiliates (Jordan)

**Competitor Policing**
- Weekly report with screenshots to legal
- Support to legal in litigation efforts

**Big Orders, Little Cost**
- About 75% of all paid search orders come through our trademark terms
- TM CPCs are under $0.30.
2007: Vision Direct

As we discussed during the December 12, 2007 telephone conversation between Jonathan Jacobson and me, antitrust counsel for Vision Direct and Drugstore.com, and Richard Liebeskind, antitrust counsel to 1-800 Contacts, Inc., and you, as IP counsel to 1-800 Contacts, Inc., Vision Direct continue to have serious concerns regarding the enforceability of the Agreement, particularly as it relates to the implementation of negative key words.

Separate and apart from Vision Direct’s position regarding the interpretation of the contract, set forth in Ms. Caditz’s November 5, 2007 letter—that is, that the Agreement does not contemplate the implementation of negative key words—Vision Direct believes that any agreement between the parties with regard to the implementation of negative key words creates an unacceptable risk of violating of Section 1 of the Sherman Act. Any such agreement would appear to represent a restraint unrelated to the terms of the Agreement, and one that depresses the price of key words to search companies such as Google, Yahoo! and Microsoft.
CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2018, I filed the foregoing documents electronically using the FTC’s E-Filing System, which will send notification of such filing to:

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Dated: June 19, 2018  
By:  /s/ Daniel J. Matheson  
Attorney
CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

June 19, 2018

By: /s/ Daniel J. Matheson
Attorney