

**IN THE WORLD INTELLECTUAL PROPERTY ORGANISATION ARBITRATION AND
MEDIATION CENTRE**

BETWEEN

GOOGLE INC.

Complainant

and

**DMITRI RYTSK
ABN 88 842 732 240**

Respondent

Annexure C

Official Law Firm of the Australian Open

3 November 2006

SENDER TO KEEP
CV2893972
LIFT & REPEAT

Melbourne | Sydney

By Express Post
By Email: one@googlebay.com.au

Our reference
JAF.ABW.1781284

Mr Dmitri Rytsk
16 Jocelyn Street
NORTH CURL CURL NSW 2099

Dear Mr Rytsk

Google Inc. – Potential Trade Mark Opposition and Trade Mark Infringement, Misleading & Deceptive Conduct and Passing Off

We act for Google Inc.

Google Inc. is a public company incorporated in the United States of America and its main business is focused on internet search services. Google Inc. operates web sites at many international domains with the most visited being www.google.com. The Google search engine is widely recognised as the "world's best search engine" because it is fast, accurate and easy to use. Google Inc. also services corporate clients, including advertisers, content publishers and site managers with cost-effective advertising and a wide range of revenue generating search services.

Google Inc. is the registered owner of the following trade marks in Australia for the mark "GOOGLE":

Australian Trade Mark No.	Trade Mark	Class(es)	Priority Date
788234	GOOGLE	9: Computer hardware; computer software including computer software for searching, compiling, indexing and organizing information within individual workstations, personal computers or computer networks; computer software for electronic mail and facilitating workgroup communications over computer networks; computer software for creating indexes of information, web sites or other resources 38: Providing electronic mail and workgroup communication services	16/09/1998

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Australian Trade Mark No.	Trade Mark	Class(es)	Priority Date
		42: Computer services in this class, including on-line personalized information services; information extraction and data mining; providing access to proprietary collections of information; creating indexes of information, web sites and other information sources; providing information concerning a wide range of text, electronic documents, databases, graphics and audiovisual information	
1049124	GOOGLE	16: Books; manuals; notebooks; notepads; pens; greeting cards; stickers; decals; sticky notes 25: Clothing; footwear; headgear 35: Dissemination of advertising for others via the Internet	04/04/2005

(the Google Trade Marks).

It has come to our client's attention that you have applied to register the following trade mark which was advertised for acceptance in the Official Journal of Trade Marks on 19 October 2006:

Australian Trade Mark No.	Trade Mark	Class(es)	Priority Date
1118972	GOOGLEBAY	35: Consumer market information services	16/06/2006

(the GOOGLEBAY Trade Mark).

Our client has instructed us to oppose registration of the GOOGLEBAY Trade Mark on the basis that it is substantially identical with and/or deceptively similar to the Google Trade Marks in relation to the same and/or similar services for which they are registered. Google Inc. is concerned that should the GOOGLEBAY Trade Mark proceed to registration and be used in Australia then this will result in confusion within the marketplace due to the similarity between the GOOGLEBAY Trade Mark and the Google Trade Marks and the services being offered by reference to these marks.

Our client has also become aware that you have registered the domain name www.googlebay.com.au (the **Domain Name**), and that you are using the Domain Name to host a website (the **Website**) which features the GOOGLEBAY Trade Mark and includes a "Search" page that adopts a similar layout to our client's "Google" search engine.

Your use of the Domain Name and the GOOGLEBAY Trade Mark, and the layout of the Website, constitute an unashamed attempt to take advantage of our client's reputation and goodwill, and are aimed at confusing and misleading consumers into thinking that the Website and/or the business run by you share some connection or relationship with our client.

Our client is totally committed to protecting its legal rights which stem from its established reputation, goodwill and trade mark rights.

The conduct described above and carried out by you constitutes:

1. an infringement of the Google Trade Marks in breach of s120 of the *Trade Marks Act 1995 (Cth)* by using the Google Trade Marks (or any of them) and/or marks which are substantially identical to or deceptively similar with the Google Trade Marks (or any of them) in relation to the same and/or similar goods;
2. passing off our client's reputation and goodwill at common law by using the Domain Name, the GOOGLEBAY Trade Mark and by adopting the layout of the Website's "Search" page;
3. misleading and deceptive conduct in breach of section 42 of the *Fair Trading Act 1987 (NSW)* (the FTA). Your conduct has misled or deceived, and/or is likely to mislead or deceive consumers into thinking that the Website and any services you provide by reference to the GOOGLEBAY Trade Mark are associated with our client, and/or that the business operated by you is marketed, promoted and/or advertised by our client, or with its approval or consent; and
4. the making of false representations that you have a sponsorship or approval or association with our client that you do not have in breach of section 44 of the FTA.

In light of the above information, our client has instructed us to demand that you comply with the following by **4pm on Friday 10 November 2006**:

1. That you immediately file a Notice of Withdrawal with respect to the GOOGLEBAY Trade Mark. We have attached the completed Notice of Withdrawal Form and demand that you sign and file this form with IP Australia and provide a copy of this correspondence to Middletons confirming that the GOOGLEBAY Trade Mark has been withdrawn;
2. That you provide the following written undertaking:

I, Dmitri Rysk, whether by myself, my employees, servants, agents or otherwise will immediately cease and forever refrain from using any marks which are substantially identical with and/or deceptively to the mark "GOOGLE" and/or any other marks which are registered to Google Inc. I will also refrain from filing any trade mark applications with IP Australia for any marks which are substantially identical with and/or deceptively to the mark "GOOGLE" and/or any other marks which are registered to Google Inc; and
3. That you immediately assign ownership of the Domain Name to our client.

The written undertakings in item 2 above can be provided by executing the enclosed document.

If you do not comply with our client's demands within the time specified then we are instructed to file a Notice of Opposition with respect to the GOOGLEBAY Trade Mark. In addition, we will

obtain our client's instructions regarding issuing proceedings in the Federal Court of Australia seeking, inter alia, interlocutory and permanent injunctions restraining your wrongful conduct.

Our client reserves its rights in relation to the recovery of damages suffered or recovery of profits made by you as a result of your wrongful conduct.

Yours faithfully

A handwritten signature in black ink that reads "Middletons".

per Tony Watson
Partner

encl

GOOGLE INC.
DMITRI RYTSK
UNDERTAKINGS

I, DMITRI RYTSK of 16 Jocelyn Street in North Curl Curl in the State of New South Wales undertake that:

I, whether by myself, my employees, servants, agents or otherwise will cease and forever refrain from using any marks which are substantially identical with and/or deceptively to the mark "GOOGLE" and/or any other marks which are registered to Google Inc. I will also refrain from filing any trade mark applications with IP Australia for any marks which are substantially identical with and/or deceptively to the mark "GOOGLE" and/or any other marks which are registered to Google Inc.

Date: 2006

Signed by DMITRI RYTSK)
in the presence of:)

.....
Signature

.....
Signature of witness

.....
Name of witness
(please print)

Notice of Withdrawal of an Application, Notice or Request

Regulation 21.9
Revised 11/00

Trade Mark No

In the name of ACN/ ARBN

Details of party withdrawing the application, notice or request

Name ACN/ ARBN

Address
 State Postcode

Address for Service in Australia (if same as 'Address' please print 'as above')
State Postcode

Telephone No Facsimile No Your Reference

Notice is given under Regulation 21.9 of withdrawal of my/our

Application Notice Request

which was originally filed on

Details of application, notice or request to be withdrawn (Please see information overleaf)

This form must be signed

Signature Name (please print) Date

Person notifying withdrawal Legal Representative Patent Attorney or Trade Mark Agent Person permanently employed by, and only by, the person notifying withdrawal

(Please note: This notice must be signed by or on behalf of the person/s who signed the original application, notice or request, or by their successor/s in title)

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