## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF VIRGINIA NORFOLK DIVISION

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I/P ENGINE, INC.,

Plaintiff,

v.

Civil Action No. 2:11-cv-512

AOL, INC. et al.,

Defendants.

## I/P ENGINE, INC.'S RESPONSE TO DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S REPLY IN SUPPORT OF MOTION TO SHOW CAUSE

Plaintiff I/P Engine, Inc. ("I/P Engine"), by counsel, for its Response to Defendants' Motion to Strike Plaintiff's Reply in Support of Motion to Show Cause, states as follows.

I/P Engine filed its Motion to Shorten Defendants' Time to Respond to its Motion to Show Cause in an effort to obtain a prompt resolution of Defendants' failure to comply with this Court's order to produce documents. In so moving, I/P Engine offered to waive a written reply and requested a prompt hearing. I/P Engine's offer was proposed to hasten a hearing date on the Motion to Show Cause and to permit I/P Engine to reply to Defendants' response in open Court. Because Defendants had failed to produce any additional documents and as the Court had not scheduled a hearing by the reply brief deadline, I/P Engine had no opportunity to reply in open Court. Accordingly, it filed its written reply. Defendants have suffered no prejudice by the filing of the reply, nor have they articulated any. Since this Court issued its order to the parties to produce all relevant documents, I/P Engine has spent significant resources urging Defendants to do what this Court ordered them to do: produce all documents relevant to whether New AdWords is more than a colorable variation of Old AdWords.

After I/P Engine's filing of its Motion to Show Cause, Google produced over 9,000 pages of documents and additional source code relevant to whether New AdWords is more than a colorable variation of Old AdWords. This fact alone justifies I/P Engine's efforts to compel Defendants to do what this Court ordered them to do.

Even more, as of this writing, I/P Engine remains unsure whether Defendants have produced all relevant documents. I/P Engine served its expert reports on September 25 potentially without a complete document production. What has been confirmed thus far through Google's limited productions is that New AdWords is substantially the same system as Old AdWords.

WHEREFORE, Plaintiff I/P Engine respectfully moves this Court to deny the Defendants' Motion to Strike and grant all just and necessary relief.

Dated: September 27, 2013

I/P ENGINE, INC.

By: /s/ Donald C. Schultz Of Counsel

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## **CERTIFICATE OF SERVICE**

I certify that on this 27th day of September 2013 I electronically filed the foregoing with

the Clerk of Court using the CM/ECF system, which will send notification to the following:

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