

Google's advertising programs and policies violated and continue to violate the Lanham Act and other applicable laws, causing irreparable harm to Ascentive.

3. Instead of ceasing its unlawful conduct in response to complaints by Ascentive, on or about February 27, 2009, Google suddenly and permanently suspended Ascentive's AdWords account, breaching its contract with Ascentive and causing irreparable harm to Ascentive. On or about March 4, 2009, Google also ceased displaying Ascentive's websites in Google's natural search listings.

4. Accordingly, Ascentive requests that the Court preliminarily and permanently enjoin Google from using Ascentive's trademarks and confusingly similar terms in Google's advertising programs, enjoin Google's "suspension" of Ascentive's AdWords account and Google's refusal to include Ascentive's websites in its natural search listings, and grant the other relief requested in Ascentive's prayer for relief, below.

THE PARTIES

5. Ascentive is a limited liability company organized and existing under the laws of Delaware with its principal place of business at 201 Spring Garden Street, Philadelphia, Pennsylvania, 19123.

6. Defendant Google is a Delaware corporation with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California, 94043.

7. Upon information and belief, defendant Google maintains offices at the Collaborative Innovation Center, 4720 Forbes Avenue, Lower Level, Pittsburgh, PA 15213.

8. Upon information and belief, Google advertises, solicits clients, and conducts substantial amounts of business in the Commonwealth of Pennsylvania and within this district.

JURISDICTION AND VENUE

9. This complaint arises in part under the Lanham Act, 15 U.S.C. § 1125 and 15 U.S.C. § 1114.

10. This Court has federal question jurisdiction over these claims pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1338(a) and 1338(b). This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367 because those claims are so closely related to the federal claims brought in this complaint as to form part of the same case or controversy.

11. Google is subject to personal jurisdiction in the Commonwealth of Pennsylvania because, on information and belief, Google regularly and systematically directs electronic activity into Pennsylvania with the manifested intent of engaging in business within this district, including the creation, hosting, and offering of fully interactive websites, advertising, email, and other internet-related services within this district, as well as entry into contracts with residents of this district.

12. Venue is proper in this district under 28 U.S.C. § 1391 (b)(2) because a substantial part of the events or omissions giving rise to Ascentive's claims occurred in this district.

13. Venue is also proper in this district under 28 U.S.C. §§ 1391(b)(1) and (c) because Google is a corporation whose contacts would be sufficient to subject it to personal jurisdiction in this district.

FACTS

A. Ascentive's Intellectual Property and Computer Software Products

14. Ascentive develops and sells computer software products that enhance and protect personal computers, including improving system performance, increasing speed, ensuring privacy, and eliminating the threat of spyware.²

15. Over the past decade, Ascentive has developed a reputation as a leader in the personal computer software industry. Ascentive has marketed more than a dozen computer software products, receiving accolades from media outlets like *The Wall Street Journal*, *Newsweek*, *Forbes*, Tech TV and NBC.

16. Ascentive is the owner of an invention relating to potential counterterrorism technology for which an application for United States Patent has been filed. This application has been accorded "special" status and expedited review by the U.S. Patent and Trademark Office ("U.S.P.T.O."). In addition, Ascentive is the assignee of three additional pending U.S. patent applications, one of which has been allowed by the Patent Examiner and consequently a granted patent is expected within approximately three to four months.

17. Ascentive owns registrations for the following trademarks, which it uses in connection with its computer software products (collectively referred to as "Ascentive's trademarks"):

ASCENTIVE - Reg. No. 3,091,824 (issued May 16, 2006)
FINALLYFAST.COM - Reg. No. 3,533,775 (issued Nov. 18, 2008)
FASTATLAST.COM - Reg. No. 3,580,255 (issued Feb. 24, 2009)
PC SPEEDSCAN - Reg. No. 3,580,254 (issued Feb. 24, 2009)
SPYWARE STRIKER - Reg. No. 3,580,253 (issued Feb. 24, 2009)
PC SCAN & SWEEP - Reg. No. 3,580,252 (issued Feb. 24, 2009)
ACTIVESPEED - Reg. No. 3,580,251 (issued Feb. 24, 2009)

² Spyware is harmful software used to collect information and data from personal computers, which may be downloaded and installed without the computer user's consent.

WEBROCKET - Reg. No. 2,510,313 (issued Nov. 20, 2001)
LIFE AT THE SPEED OF LIGHT - Reg. No. 2,757,848 (issued Sept. 2, 2003)

Ascentive also owns trademark applications for the following trademarks:

FINALLYFAST – App. No. 77681970 (filed Mar. 3, 2009)
FINALLY FAST – App. No. 77681963 (filed Mar. 3, 2009)
RAMROCKET – App. No. 77625345 (filed Dec. 3, 2008)
WINROCKET – App. No. 77625523 (filed Dec. 3, 2008)
GREENLIGHT GUARDIAN – App. No. 77625710 (filed Dec. 3, 2008)
BEAWARE – App. No. 77625343 (filed Dec. 3, 2008)
WATCH-BY-WEB – App. No. 77625848 (filed Dec. 3, 2008)

See Ascentive’s Trademark Registrations and Applications, attached hereto as Exhibit A.

18. Ascentive’s trademarks are inherently distinctive.

19. Ascentive has run advertisements for its products and services nationwide, and has also invested heavily in international marketing.

20. Ascentive operates a number of websites where its computer software products are advertised, sold, and made available for download, including:

www.ascentive.com
www.finallyfast.com
www.fastatlast.com
www.pcfinallyfast.com
www.scanyourpc.com
www.pcspeedscan.com
www.greenlightguardian.com
www.activespeed.com
www.ramrocket.com
www.winrocket.com
www.beaware.com

21. Ascentive is a Microsoft-certified partner and its websites are listed on Google’s Safe Browsing Diagnostic pages as hosting safe software, not malicious software or “malware,” and having no warnings.

22. In addition to its extensive online advertising, Ascentive develops and airs television advertisements that encourage consumers to search for its software products online by brand name, and to subsequently buy and download these products.

23. For example, Ascentive airs television advertisements for its “FINALLYFAST” software, and Google has estimated that 110,000 Google users search for Ascentive’s “FINALLYFAST” trademark per month. *See* Printouts from <https://adwords.google.com/select/keywordtoolexternal>, attached as Exhibit B.

24. In 2008, Ascentive derived approximately 99 percent of its revenues from online sales from its websites.

B. Ascentive’s Participation in Google’s AdWords Program

25. Google promotes and operates the largest single online advertising business in the world, a business that reaches more than 86 percent of internet users worldwide. *See* Google’s Advertising Information Online, Exhibit C.

26. Google’s “AdWords” advertising program delivers millions of targeted ads to internet users each day.

27. In 2008, Google generated approximately 99 percent of its revenues from its advertising programs, and its revenues were more than \$21 billion.

28. Google sets forth terms governing advertisers’ participation in Google’s AdWords program in its Advertising Program Terms, which are attached as Exhibit D (hereinafter Google’s “Terms and Conditions”).

29. Ascentive began participating in Google’s AdWords program in December 2003, and participated continuously in the program until around February 27, 2009.

30. In 2008, Ascentive paid Google more than \$645,000.00 to participate in Google's AdWords program.

31. The vast majority of internet users searching for Ascentive's products by brand name search for these products at www.google.com, and view the natural search listings and advertisements Google displays in response to their search queries.

32. Even if an internet user attempts to visit Ascentive's websites directly, by typing a website address such as "www.ascentive.com" into the internet browser, the internet user's browser may be designed to display Google results to the internet user instead of taking the person directly to Ascentive's website. Google's willingness to display links to Ascentive's websites in its natural search listings is therefore crucial to internet users' ability to locate Ascentive's websites.

C. Google's Policies Regarding Trademarks

33. When internet users enter search terms at www.google.com, these search terms are treated as "keywords" that trigger the display of certain Google advertisements or "Sponsored Links" along with Google's search results. Customers are directed to the third-party advertisers' websites when they click on these advertisements contained within Google's search results.

34. Google encourages advertisers to use "keywords" to ensure that their advertisements are targeted to a specific group of customers and viewed by those customers.

35. Google explains its use of "keyword advertising" as follows:

This type of advertising uses keywords to trigger ads. Typically, advertisers select a set of keywords related to the product or service they wish to advertise. The ads are then displayed in relevant places based on those keywords. For example, Google matches advertiser-selected keywords to user search terms on Google.com in order to show relevant ads.

Ex. C.

36. Advertisers need not select their own keywords. Google offers a “Keyword Tool” that supplies advertisers with suggested keywords for any word they enter. *See* <http://adwords.google.com/select/KeywordToolExternal>, and Exhibit B.

37. For example, if an advertiser would like to attract customers looking for software to increase computer efficiency, the advertiser might type “FAST PC” into Google’s Keyword Tool. Google will then suggest keywords such as “FINALLY FAST PC,” Incorporating an Ascentive trademark. Ex. B.

38. The advertiser might then decide to select “FINALLYFAST,” an Ascentive trademark, as a keyword instead of a keyword such as “FAST PC.” As only about 1,300 searches are conducted for “FASTPC” per month, as opposed to the 110,000 searches for “FINALLYFAST,” selecting Ascentive’s registered trademark would result in higher profits for Google and the advertiser. Ex. B. The advertiser compensates Google based upon the amount of customer traffic the ads generate.

39. The advertiser also can decide to run an advertisement within the content of its Sponsored Link that uses the same text as Ascentive’s advertisements for its “FinallyFast” software. The advertiser can refer to “FinallyFast” software in the Google Sponsored Link ad text and make the ad appear to direct consumers to the website www.finallyfast.com.

40. The Google ad may actually direct customers to a website operated by the advertiser, such as www.finallyfastagain.com. Once the customer arrives at the website as a result of the misleading Google ad for “FinallyFast” software, the customer is prompted to buy and download software labeled as “FinallyFast” software, although that software is completely unlike the software developed and sold by Ascentive.

41. Advertisers' use of keywords is unlimited, and Google not only permits, but *encourages* advertisers to select proprietary and registered trademarks as keyword-triggers.

42. Google's use of keywords ensures that Ascentive's competitors can appropriate Ascentive's trademarks to advertise computer software products similar to the products sold by Ascentive and can direct their advertisements to consumers seeking Ascentive's products.

43. Even if the owner of a proprietary trademark, such as Ascentive, contacts Google with a trademark complaint, Google will not curtail advertisers' use of keywords.

44. Google's policy regarding keywords is in bold font on its website:

Please note that we will not disable keywords in response to a trademark complaint.

Ex. C.

45. Google, however, is able to disable keywords if it chooses, and in fact, has previously disallowed advertisers from using proprietary trademarks as keywords.

46. Google policy does not commit to preventing trademark infringement. Google explains that its willingness to "perform a limited investigation of reasonable complaints" exists only "as a courtesy." Ex. C.

47. Google's policy puts the onus on the trademark owner to identify and complain about each infringing use, but even the most vigilant owner of a mark cannot detect all infringing uses online. *Id.*

48. Google's advertising programs not only fail to prevent advertisers from posting advertisements that are likely to cause customer confusion and trademark infringement; instead, Google's programs actually encourage customer confusion and trademark infringement.

D. Ascentive's Trademark Complaints to Google

49. Google's trademark policies state that Google is willing to "investigate" the use of a company's trademarks in ad text and take action to remove trademarks from ad text. Ex. C.

50. Google's Terms and Conditions incorporate Google's Trademark Policies. *See* Ex. C, Ex. D.

51. In its efforts to protect its trademarks online, Ascentive contacted Google repeatedly regarding the misuse of its trademarks in Google's AdWords program. Many of these communications occurred in late 2008 and early 2009. *See* Emails between Ascentive representatives and Google, attached as Exhibit E.

52. For example, on January 30, 2009, Ascentive contacted Google regarding an advertiser displaying the website address "ascentive.updatespc.com" in its Google ad text, indicating to internet users that the link would take the user to the website address or "URL" "ascentive.updatespc.com." Ex. E.

53. This advertisement was triggered by the search keyword "ASCENTIVE".

54. Google refused to take action regarding the ad, stating "we do not investigate URLs as part of our complaint procedure. This is because the use of a URL does not necessarily constitute trademark use, particularly in the case of post-domain paths or subdomains." Ex. E.

55. On March 2, 2009, Ascentive contacted Google regarding an advertisement purporting to offer "Finally Fast" software, the same "Free Trial" offered by Ascentive, and the same "Finally Fast" software "Seen on TV." In the complaint, Ascentive noted its trademark registration for "FINALLYFAST.COM". The ad text stated:

Finally Fast – Seen on TV
Fix Annoying PC Errors Quickly!
Get a Fact Pc in 3 min – Free Trial
www.FinallyFastAgain.com

Ex. E. *See also* Printouts regarding FinallyFastAgain.com Google ad, attached as Ex. F.

56. This Google advertisement was triggered by the keywords “FINALLYFAST.COM” and “FINALLYFAST” through Google’s advertising program. Ex. F. The website FinallyFastAgain.com offered customers software labeled as “FinallyFast” software, and prompted customers to download the software; however, the software was not affiliated in any way with Ascentive.

57. Google also refused to take action regarding this ad, stating: “As previously noted, we will not be able to investigate ‘finally fast’ at this time because this mark differs too greatly from your actual trademark.” Ex. E.

58. Google’s conduct willfully violates its own policies regarding trademarks. Ex. C.

59. For example, although Ascentive submitted a complaint to Google regarding its “FinallyFast.com” and “PC Speedscan” registered trademarks, and Google agreed to remove Ascentive’s trademarks from Google ad text, Google is still running deceptive ads that include “Finally Fast Com” and “PC Speedscan” in the ad text. *See* Ex. E and June, 2009 Google Printouts attached as Exhibit H.

E. Google’s Permanent “Suspension” of Ascentive’s AdWords Account and Refusal to List Ascentive’s Websites in Its Natural Search Listings

60. On or about February 27, 2009, Google suddenly and without identifying any reason suspended Ascentive’s AdWords accounts and refused to run any advertisements paid for by Ascentive.

61. In addition to permanently suspending Ascentive’s AdWords account, on or about March 4, 2009, Google ceased including Ascentive’s websites in Google’s natural search listings.

