

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

THE SERBIAN CROWN, VIRGINIA, INC.,)
A Virginia Stock Corporation,)

Plaintiff,)

vs.)
GOOGLE, INC.,)
A Delaware Stock Corporation,)

Defendant.)

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JOHN T. FREY
CLERK, CIRCUIT COURT
FAIRFAX, VA
2014 04673

CL No. _____

COMPLAINT FOR LEGAL AND EQUITABLE RELIEF

COMES NOW your Plaintiff, THE SERBIAN CROWN, VIRGINIA, INC.

(hereinafter, "The Serbian Crown" or "Plaintiff"), by counsel, and hereby moves for entry of a money judgment and for various elements of equitable and injunctive relief as set forth herein, against the Defendant, GOOGLE, INC. (hereinafter "Google" or "Defendant") and as grounds therefor respectfully represents as follows.

Parties, Jurisdiction and Venue

1. At all relevant times herein, Plaintiff THE SERBIAN CROWN, VIRGINIA, INC., was and is a Virginia Stock Corporation, located in Fairfax County, Virginia. At all relevant times herein, The Serbian Crown was a restaurant serving various specialities and a variegated menu, consisting largely of Serbian, Russian and French cuisine and spirits.

2. Upon information and belief, at all relevant times herein, Defendant GOOGLE, INC. was and is a publicly traded Delaware Stock Corporation, with principal offices and/or business location at Mountain View, CA.

3. Plaintiff corporation is in the restaurant business, and starting in 1979, and up until on or about the end of April 2013, was continuously engaged in that business, from leased facilities located at 1141 Walker Road, Great Falls, VA 22066. At all relevant times herein, the President and sole owner of the Plaintiff corporation was, and is, Renato Bertagne.

4. Upon information and belief, Defendant Google, Inc. is a multinational, publicly traded corporation, specializing in internet-related services and products, including, but not limited to: search functions, cloud computing, software, handheld or tablet devices, and online advertising technologies and services.

5. Upon information and belief, a large share of Google's actual cash revenue comes from its Adwords advertising services, where advertising copy or media is placed at the top, bottom, beside, or under lists of various results displayed in response to a particular search query by a user. Upon information and belief, the physical location of the sales and support operations of Defendant, for its advertising and Adwords programs, was and is located in Mountain View, California.

6. Upon information and belief, Google's undertaking to provide pertinent information regarding existing businesses and landmarks, through Google's search engine and Google Maps, and Google Places, on the internet, and in interstate commerce, is part of Google's overall business of selling, among other things, text advertising and media advertising, and promoting Google's other lines of business.

7. In so marketing and selling advertising services, and search-engine based marketing internet technology, and functionality, to commercial interests, Google acted as an informational surrogate and/or agent for various entities and individuals who so

advertise, and those businesses otherwise directly compete with each other in all sorts of markets, including the restaurant market, and those persons and/or entities pay Defendant Google, for that surrogacy and that advertising.

8. Even though Google is not believed to be in the restaurant business, during the relevant periods alleged here, upon information and belief, Google sold advertising to, and acted on behalf of, many restaurant competitors of your Plaintiff, in the Virginia, D.C. and Maryland metropolitan area, and through its' prevalence and market power as an information and search engine provider, Defendant had (and has) the capacity to profoundly affect the playing field for competition between restaurant businesses such as Plaintiff's, and other restaurants, through the sponsored content it furnishes and publishes to the consumer public.

9. Defendant's advertising and other business activities described above, as well as unsolicited publication of information regarding Plaintiff's business, upon information and belief, is attendant to Google's overall business, and is designed to induce members of the consumer and/or commercial public, such as Plaintiff, on an interstate and worldwide basis, to enter into obligations with Google, regarding property and/or services, and/or use its functions and programs; in short, Google publishes directory information, in part, as a lead-in for purposes of selling advertising to those businesses.

10. In setting up, and continuing to maintain and publish, sponsored content purporting to state Plaintiff's business information in its' search engine and map results, Defendant placed a person or entity, program, or algorithm, and/or all of these, in circumstances where Google knew or should have known that the posting of un-

researched, unverified, and/or fictitious or false information, pertaining to something as fundamental as hours and days of operation of a restaurant, would pose a substantial danger of economic harm to a business entity such as your Plaintiff, if reasonable care (and no less than ordinary care) were not exercised in both selecting, engaging, and retaining, as well as supervising, the person and/or entity providing that information, as well as the continued maintenance of that information.

11. At some point unknown to your Plaintiff, and upon information and belief, at some time prior to April 6, 2012, an employee or authorized agent of defendant, or other third party individual or entity with a contractual relationship of some sort (contractual privity) with Google, placed Google-sponsored content in Defendant's Google Maps and Google Places functions, other than in comments boards and user forums, pertaining to your Plaintiff and the restaurant, consisting mainly of a map, the address, telephone number, and the days and hours of operation of the restaurant.

12. At some point prior to April 6, 2012, and continuing thereafter for some time, Defendant's advertising material, as relating to Plaintiff, was materially false because it incorrectly stated the days and hours the restaurant was open for diners, incorrectly stating that the restaurant was closed on Saturdays, Sundays and Mondays; Plaintiff is without knowledge as to how long this state of affairs had been the case, but the restaurant had always been open on Saturdays, Sundays and Mondays, and as with most dining establishments, it relied upon weekend diners for a large share of its business.

13. The publication of this information placed Plaintiff at a material disadvantage with its competitors.

14. In setting up, and continuing to maintain, sponsored content pertaining to Plaintiff's business, Defendant also assumed a duty specifically owed to Plaintiff, to ensure that this information was accurate.

15. As described above, Defendant breached not only the heightened duty of care, which it assumed, by engaging in the activities it did, as described above, but also breached its baseline duty of ordinary care it owed to your plaintiff, in the exercise of its advertising, directory, search and other business functions, all to the Plaintiff's damage and detriment, as described above and below.

16. Due to the behaviors and practices described above, which are ongoing in nature, unless enjoined by this Court, Defendant will continue to engage in untrue and misleading advertising and content practices, as alleged above.

17. The Placement of this false information, whether performed intentionally or not, resulted in reduction of The Serbian Crown's customer traffic, and previously regular or frequent customers stopped visiting the restaurant on weekends, due to the Defendant's misinformation regarding the hours of operation.

18. The misstatement of Plaintiff's open hours was a material fact regarding Plaintiff's business, and was never requested, or authorized by, your Plaintiff, in any sort of way; further, it was readily foreseeable to Defendant, as well as likely, that this incorrect information was likely to materially influence the buying decisions of consumers at-large, for Plaintiff's restaurant goods and services.

19. This misstatement of Plaintiff's business days and hours of operation had a tendency to deceive, and due largely to the massive scale, size and presence of the Defendant on the internet, and in peoples' web-based activity, the misrepresentation of

the operating hours had a foreseeable tendency to deceive a substantial segment of Plaintiff's restaurant consumer base, and it in fact did so, to the detriment of Plaintiff's revenues, as well as business goodwill, all of which had been built up over a period of decades.

20. Defendant, or someone in contractual privity with Defendant, and/or acting at Defendant's behest, placed this false information into interstate commerce, and Plaintiff's restaurant operations, and customers, not only affected interstate commerce, but also involved patrons and diners who would travel in interstate commerce, to come to The Serbian Crown, to dine, from, among other places: the District of Columbia, Maryland, Virginia, and elsewhere.

21. On or about April 6, 2012, upon learning of this false information from a customer who called about the closure, to verify what the customer had read on Defendant's sponsored content, through a series of subsequent contacts and communications, Plaintiff began to make what would end up being a series of unsuccessful efforts at communicating with, as well as persuading, the Defendant, to change this incorrect information about the Serbian Crown Restaurant, all to no relevant or meaningful, much less timely response or reaction from Defendant; as such, even when specifically notified of the deception and falsehood, Defendant failed and/or refused to correct the false information.

22. Eventually, continuing to get no response from Google, Plaintiff engaged the services of an internet marketing consultant to correct the information, without the assistance or participation of Google personnel; however, the damage had been done. In its weakened state, the restaurant was not able to continue to operate with a full staff,

operations suffered, and in April 2013, the restaurant was forced to close, after thirty-four years of operations. In each of those thirty-four years, the restaurant had been open on Saturdays, Sundays and Mondays.

23. Lost revenues, loss of goodwill, and the closing of The Serbian Crown proximately resulted from the Defendant's acts and/or omissions described above.

24. Defendant's acts and omissions, as described above, had, and continue to have, a direct effect on plaintiff's ability to successfully do business, in the restaurant market in which Plaintiff participated.

25. Upon information and belief, as of April 3, 2014, and ongoing thereafter, Defendant's Google Maps and Google Places function now lists Plaintiff as being "Permanently Closed," although Plaintiff has intentions to reopen the restaurant, if possible; this particular false statement about Plaintiff's business, though partially true, insofar as the restaurant has closed, is further likely, and continues to, materially and irreparably erode the remaining goodwill of the restaurant, by importing the notion in consumers that there are no plans, or intent, on Plaintiff's part, to reopen The Serbian Crown, either at the former location, or anywhere else. This representation was likewise not placed or lawfully authorized to be placed in Defendant's sponsored content pertaining to Plaintiff.

26. Due to the behaviors and practices described above, which are ongoing in nature, unless enjoined by this Court, Defendant will continue to engage in untrue and misleading, as well as recklessly incorrect, advertising and content practices, as alleged above.

27. Unless the Defendant is ordered to immediately remove its statement, as of April 3, 2014, on the internet, that Plaintiff restaurant is "permanently closed," Plaintiff will further suffer irreparable damage to its business and business goodwill, for which there is not an adequate remedy at law.

COUNT I

(Negligence and Negligent Supervision to Google, Inc.
under Virginia common law)

28. Paragraphs 1 through 27 are hereby incorporated and restated herein.

COUNT II

(False Advertising with Exceptional Circumstances to Google, Inc.,
under the Lanham Act, 15 U.S.C. § 1125(a)(1)(B))

29. Paragraphs 1 through 27 above are hereby incorporated and restated herein.

30. On or about June 12, 2012, in response to correspondence received from Plaintiff pertaining to the above-described state of affairs, Google sent Plaintiff a letter stating that Plaintiff could avoid such circumstances in the future, by "claiming his listing," which process involves, upon information and belief, the claiming party, as a condition of being able to submit corrected information, must enter into, and agree to, a "user agreement" with Google, which among other things, purports to authorize Google a non-exclusive license to use, as well as modify, all information submitted by the user.

31. Upon information and belief, Google has set up a set of commercial circumstances where the only effective method an entity or business person can correct erroneous, or even intentionally erroneous sponsored content of Google, is to "agree" to,

among other things, Google's non-exclusive license, as well as other overreaching terms and conditions in its user agreement.

32. This state of affairs, and practice, as promulgated by the Defendant, set up an effective scheme where businesses, including Plaintiff, are effectively coerced or forced into entering into a user agreement, and/or engage and pay an internet marketing consultant (as plaintiff did) in order to attempt save their businesses from the bad effects of false information placed in Defendant's sponsored content, through forcing the business into a user agreement, or even an advertising contract, with the Defendant, as a result of the business's desire to simply to correct false information developed by, and influenced by, the Defendant.

33. As described above, in the period following Plaintiff's informing Google agents of the falsity of this information, and until the information regarding the hours was remedied, the continued perpetuation of that false information, by Defendant, was intentional in nature.

34. In addition, in the alternative to so many of the above allegations as state that Google's placement and perpetuation of the false and/or misleading information herein was negligent and/or without intent, factual circumstances also exist to support the proposition that the placement of this information, and/or maintenance thereof, by Defendant, at some point in time, even before Plaintiff communicated the falsehoods to Google, was and/or is of an intentional, and/or published in bad faith, as almost every other similar provider of internet commercial search-related advertising and services, who listed days and hours for Plaintiff, during the restaurant's same periods of active

operations, managed to list, in a substantially correct manner, the hours and days of The Serbian Crown restaurant's serving hours.

35. To the above extent, even the most basic or superficial research or verification (even by a computer program) comparing the information listed by Defendant, with that listed by other search providers and advertisers with similar directories and services on the internet, would have revealed that Google's information was materially inconsistent with information placed by other such providers, and that Google's information was the "outlier."

Prayer for Relief

WHEREFORE, your Plaintiff respectfully requests that this Honorable Court enter an Order providing for the following relief:

(a) a money judgment against Defendant, equal to three times the aggregate amount of all loss of revenue, and loss of goodwill occasioned by Defendant's acts and omissions described above, in the nature of compensatory and statutory damages, in the amount of one million dollars (\$1,000,000.00), or such other amount as is appropriate, subject to proof and evidence at trial and/or evidentiary hearing herein;

(b) A temporary restraining order, to continue in force until a day to be set for hearing on an motion or application for a temporary injunction, or until further order of this Court, restraining Defendant from publishing or disseminating false or misleading information as to Plaintiff and others;

(c) A permanent injunction enjoining Defendant from publication of similarly false and/or misleading advertisements;

(d) A permanent injunction enjoining Defendant from publishing, or continuing to perpetuate, false and/or unverified or insufficiently unauthenticated content and information, pertaining to your Plaintiff, and other businesses, in its Google Maps and Google Places functions or programs;

(e) A permanent injunction enjoining Defendant to provide a readily accessible method for businesses such as Plaintiff, and Plaintiff to opt out, or cause Defendant to correct or delete false and deceiving sponsored information, without being forced to agree to the terms of Defendant's "user agreement"; and

(e) An award of its reasonable attorney's fees and costs associated with the prosecution of this action; and

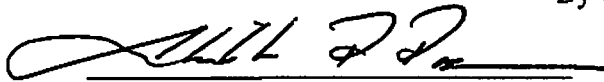
(f) Such other and further relief as is appropriate to the premises of law, equity and the facts of this case.

Jury Demand

Your Plaintiff hereby demands trial by jury as to all claims and issues of fact so triable herein.

Respectfully submitted,

THE SERBIAN CROWN, VIRGINIA, INC.
By Counsel



Christopher R. Rau (VSB No. 34135)
Attorney for Plaintiff
Law Offices of Christopher R. Rau
6711 Lee Highway, Suite 220
Arlington, VA 22205-1940
(703) 536-1660 – Telephone
crrau@aol.com – E-Mail

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