

1 Ira P. Rothken (SBN #160029)
2 THE ROTHKEN LAW FIRM
3 1050 Northgate Dr., Suite 520
4 San Rafael, CA 94903
5 Telephone: (415) 924-4250
6 Facsimile: (415) 924-2905

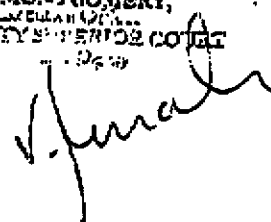
7 John Warner (SB# 46123)
8 LAW OFFICES OF JOHN WARNER
9 21 Tamal Vista Blvd., Suite 196
10 Corte Madera, CA 94925
11 Telephone: (415) 924-2640
12 Facsimile: (415) 927-0608

13 Attorney for: Plaintiff Harriett M. Judnick, on behalf of
14 the General Public of the State of California

FILED

12/27/09

JOHN P. MONTGOMERY,
CLERK OF THE SUPERIOR COURT
COUNTY OF MARIN



15 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 IN AND FOR THE COUNTY OF MARIN

17 HARRIETT M. JUDNICK, on behalf of the
18 General Public of the State of California,

19 Plaintiff,

20 vs.

21 DOUBLECLICK, INC., a foreign corporation;
22 and DOES 1-200, inclusive,

23 Defendants.

24 Case No. *W* 000421
25) COMPLAINT FOR INJUNCTIVE RELIEF
26) (Unfair, Deceptive, And Unlawful Business
27) Practices/Privacy, False And Misleading
28) Advertising)
29) [B&PC §§17200 et seq.; B&PC §§17500 et
30) seq.]

UNLIMITED JURISDICTION

BY FAX

31 COMES NOW Plaintiff HARRIETT M. JUDNICK, on behalf of the General Public of the
32 State of California, by and through her undersigned counsel, and for her Complaint For Injunctive
33 Relief in this action, states and allege as follows:

34 PRELIMINARY ALLEGATIONS

35 1. This complaint is brought by Plaintiff HARRIETT M. JUDNICK, on behalf of the
36 General Public of the State of California, to enjoin Defendants, and each of them,
37 including Doubleclick, Inc., the Internet's largest advertising company, from
38 unlawful, misleading, and deceptive business practices on the Internet that violate the

COURT REPORTERS

1 privacy rights of Plaintiff and the General Public. Defendants use sophisticated
2 computer technology to identify Internet users, track and record their Internet use and
3 the Internet Web Sites they visit, and obtain a plethora of highly confidential and
4 personal information about them without their consent, including, without limitation,
5 their names, addresses, ages, shopping patterns and histories, credit card information,
6 bank account information, sexual orientation and preferences, and other private
7 information. Defendants' mislead and have misled the General Public into a false
8 sense of privacy and security regarding their Internet use, while deceptively
9 acquiring, storing and selling millions of Internet users' most private and personal
10 information for profit. Defendants fail and have failed to provide adequate safeguards
11 for "inadvertent" disclosure of private information (or a mistaken mouse click) and
12 provide no means for members of the General Public to destroy all such data
13 collected by Defendants after such inadvertent disclosure is made. Defendants
14 practices threaten the privacy interests of Internet users, including users in California,
15 are unlawful, are offensive, deceptive and against public policy, and should be
16 enjoined.

17 2. Plaintiff HARETT M. JUDNICK is an individual residing, at all times relevant
18 herein, in the County of Marin, State of California. Plaintiff brings this action as a
19 representative of the General Public.

20 3. Defendant DOUBLECLICK, INC. (hereinafter "Doubleclick") is, on information and
21 belief, at all times relevant herein, a foreign corporation doing business in Marin
22 County, State of California, and throughout the State of California.

23 4. The true names and capacities, whether individual, corporate or otherwise, of DOES
24 1-200, are at this time unknown to Plaintiff, who therefore sues said Defendants by
25 such fictitious names and will ask leave of the Court to amend this Complaint to
26 reflect their true names and capacities when the same are ascertained. On information
27 and belief each of the said Doe Defendants is responsible in some manner for the
28 events, acts and injuries described below and caused damage, and are likely to cause

1 damage, to Plaintiff and the General Public as alleged.

2 5. On information and belief, at all times mentioned herein, each and every Defendant,
3 including DOE defendants, was the owner, agent, principal, employee, employer,
4 master, servant, partner, franchiser, franchisee, or joint venturer of each of his or her
5 co-Defendants, and in doing the actions described below was acting within the scope
6 of his or her authority in such ownership, agency, employment, service, partnership,
7 franchise and joint venture and with the permission and consent of each co-
8 Defendant. Each of said Doe Defendants is, therefore, liable under the law, including
9 but not limited to, under the doctrines of respondeat superior and the law of agency,
10 to Plaintiff for the acts, omissions and injuries inflicted upon and likely to be inflicted
11 upon Plaintiff and the General Public, as described herein.

12 6. Acts, omissions and events constituting the unfair competition and unlawful,
13 misleading, fraudulent and unfair business practices described herein occurred in,
14 continue to occur in, and will, unless enjoined, be likely to occur in, the County of
15 Marin, State of California, as well as throughout the State of California, the United
16 States.

17 7. As a direct and proximate result of the acts and omissions of Defendants, and each of
18 them, described herein, Plaintiff and the General Public have been misled and are
19 likely to be misled; and the privacy rights of Plaintiff and the General Public have
20 been violated and are likely to be violated, unless Defendants, and each of them, are
21 enjoined from said acts and omissions.

22 FIRST CAUSE OF ACTION

23 (Unfair And Unlawful Business Practices)

24 [Business & Professions Code §§ 17200 et seq.]

25
26 8. Plaintiff incorporates into this cause of action the allegations contained in each and
27 every preceding paragraph of this Complaint as if the same were set out at length
28 herein.

- 1 9. On information and belief, defendant Doubleclick is the largest Internet advertiser
2 operating on the World Wide Web. Doubleclick offers advertising and advertising
3 services in California, including, without limitation, what it calls the "DoubleClick
4 Network," a collection of some of the most heavily trafficked Internet Web Sites, that
5 includes, by way of example, such famous Web Sites as Alta Vista, Macromedia,
6 Dilbert and many more. Doubleclick's advertising services include, without
7 limitation, the providing of "banner advertising" of the sort commonly seen on
8 commercial Internet Web Sites.
- 9 10. Doubleclick provides Internet advertising services, including a technology that tracks
10 an Internet user's computer and web browser, on more than 11,500 Internet web sites
11 many of which are located on servers located in California. It does this through the
12 use of what is called a "cookie." A "cookie" is a file that is created and stored on a
13 user's computer and "communicates" with an Internet user's web browser when the
14 user visits an Internet Web Site.
- 15 11. Doubleclick also operates an Internet Web Site with a Uniform Resource Locator
16 ("URL" or "Internet address") of <http://www.doubleclick.com>. Doubleclick owns the
17 registered Internet domain name "doubleclick.com"
- 18 12. Doubleclick, on information and belief, has thousands of advertisers in the State of
19 California and has placed in excess of one million "cookies" on the Computers of
20 Internet users in the General Public of the State of California.
- 21 13. Defendants, and each of them, use "cookies" that create and assign unique
22 identification numbers to each Internet user, allowing them to track an Internet user's
23 visits to participating web sites that are Defendants' clients, and allowing them to
24 track and record Internet Users' response to banner advertising on web sites.
- 25 14. On or about June, 1999, Doubleclick acquired Abacus Direct Corporation
26 ("Abacus"), a direct-marketing services company that maintains a huge database of
27 names, addresses, telephone numbers, retail purchasing habits and other personal
28 information of millions of consumers. On information and belief, Abacus' database,

1 now owned by Doubleclick, contains such personal identifying information for ninety
2 per cent (90%) of American households.

3 15. On information and belief, since on or about June, 1999, and at least since on or about
4 November 23, 1999, when Doubleclick completed its merger with Abacus, and
5 continuing through the present, Doubleclick, the Doe Defendants herein, and each of
6 them, have used, and continue to use, their "cookie" technology, along with the
7 Abacus database and information provided by participating Web Site operators and
8 owners, to identify Internet Web Site visitors, and obtain and use personal
9 information about them.

10 16. When an Internet user visits a participating Web Site, a uniquely identified "cookie"
11 is placed in his or her computer. Then, when that user visits a Web Site that has
12 information about the user's identity (such as a Web Site that the user has registered
13 with, or purchased goods from), the user's identity is linked with the identifying
14 "cookie." Defendants, and each of them, through using the Abacus database, are then
15 able to obtain a potentially vast amount of personal information about the user. In
16 addition, the Internet user's buying habits, responses to advertising and the web sites
17 he or she visits are tracked and recorded.

18 17. The General Public, including plaintiff herein, frequently use the Internet in the
19 privacy of their own home, and in the pursuit of their personal interests, as well as for
20 the purpose of making purchases of personal items and services. Plaintiffs and the
21 General Public frequently use their telephone to connect to the Internet. Use of the
22 Internet by the General Public frequently includes the visiting of "sensitive web sites"
23 including, for example, legal sexually oriented Internet Web Sites, and the purchase
24 of legal sexually oriented products and services. Other "sensitive" web sites visited
25 by the members of the General Public include law related sites, political sites, book
26 sites, videotape/DVD sites, and online banking and brokerage sites. The nature of
27 private Internet use by the General Public gives rise to a reasonable expectation of
28 privacy as to the Internet Web Sites they visit and products they purchase.

1 18. The information obtained by Defendants, and each of them, regarding Internet users
2 who visit participating Web Sites, includes and may include, without limitation,
3 Internet users' names, addresses, telephone numbers, buying habits and history, a
4 history of the web sites visited by the Internet user, credit card numbers and
5 information, bank account information, and personal tastes, interests, preferences and
6 proclivities, including, without limitation, the Internet user's sexual orientation,
7 practices and preferences, book choices, and DVD's purchased.

8 19. Prior to its merger with Abacus, and for approximately four years prior to said
9 merger, defendant Doubleclick, the Doe defendants herein, and each of them, assured
10 the General Public, including plaintiff herein, through public statements on their
11 Internet Web Site and elsewhere, that Doubleclick did not collect personal and
12 identifying information about Internet users who visited client or participating web
13 sites, or who "clicked" on Doubleclick-provided Internet banner advertising.

14 20. Based upon Defendants', and each of their, representations that they were not
15 collecting or obtaining personal and identifying information about Internet users,
16 Plaintiff, and the General Public, has, and has had, a reasonable expectation of
17 privacy in their Internet use, including, without limitation, their consumer use of the
18 Internet, their responding to (or "clicking" on) Defendants' banner advertising, and
19 their purchases made on the Internet.

20 21. Since on or about June, 1999, and continuing through the present, Defendants, and
21 each of them, have gathered, and continue to gather, personal identifying information
22 about Internet users, as described herein, including information of a highly private,
23 confidential, sensitive and personal nature. On information and belief, Defendants,
24 and each of them, have also disclosed, and are continuing to disclose and otherwise
25 utilize, through e-mail, the web, and other means, such information to other
26 businesses and third parties, for profit.

27 22. Defendants fail and have failed to provide adequate safeguards for "inadvertent"
28 disclosure of private information (or a mistaken mouse click) and provide no means

1 for members of the General Public to destroy all such data collected by Defendants
2 after such inadvertent disclosure is made. Indeed, Defendants, inconsistent with their
3 representations that Internet users' privacy is of "paramount importance", have failed
4 to provide any mechanism for members of the General Public to "ring the bell"
5 once the Internet user learns that they mistakenly clicked on a button or a web site
6 banner ad that "linked up" their name and address and related intimate private
7 information with Defendant's cookie(s).

8 23. The acts and omissions of Defendants, and each of them, and the acts and omissions
9 likely to occur, if not enjoined, as described herein, are serious invasions of the
10 privacy of plaintiff and the General Public of a nature that is highly offensive to a
11 reasonable person.

12 24. Defendants and each of them have not taken reasonable or adequate steps, since
13 beginning the practice of collecting Internet users' private and personally identifying
14 information, to inform plaintiff herein and the General Public that Defendants, and
15 each of them, are acquiring, using, storing and disclosing such private, confidential
16 and personally identifying information.

17 25. Defendants and each of them have not taken reasonable or adequate steps, since
18 beginning the practice of collecting Internet users' private and personally identifying
19 information, to inform plaintiff herein and the General Public of any ability or means
20 to prevent Defendants, and each of them, from acquiring, using, storing and
21 disclosing such private, confidential, sensitive and personally identifying information
22 and have not provided adequate safeguards for plaintiff and the General Public to
23 destroy such information at the Internet user's discretion.

24 26. The means, if any, to prevent Defendants, and each of them, from acquiring, using,
25 storing and disclosing private, confidential and personally identifying information, is
26 beyond the technical knowledge, ability and expertise of most Internet users,
27 including the General Public, and is difficult, if not impossible, for many members of
28 the General Public to implement.

- 1 27. Said private, identifying and confidential information has been obtained, and
2 continues to be obtained by Defendants, and each of them, without disclosure to the
3 General Public, and without the express consent and authorization of members of the
4 affected members of the General Public.
- 5 28. On information and belief, the acts and omissions of Defendants, and each of them,
6 described herein, constitute past and continuing violations of Plaintiff's and the
7 General Public's right to privacy, under Article I, Section 1 of the California
8 Constitution, the common law right of privacy in California, the Constitution of the
9 United States, and the laws and statutes of the State of California and the United
10 States, and are therefore an unlawful, misleading, fraudulent and unfair business
11 practice under Business & Professions Code §§17200 et seq.
- 12 29. On information and belief, the information obtained, stored, used and unlawfully
13 disclosed by Defendants, and each of them, includes and is likely to include, unless
14 enjoined, records of the sale and rental of video cassettes and equivalent, and personal
15 information related thereto, by members of the General Public, in violation of Civil
16 Code §1799.3, and is therefore an unlawful, misleading, fraudulent and unfair
17 business practice under Business & Professions Code §§17200 et seq.
- 18 30. On information and belief, the acts and omissions of Defendants, and each of them,
19 includes, and is likely to include, unless enjoined, violations of other laws and
20 statutes of the State of California, and the United States, including but not limited to
21 false and misleading advertising (Business & Professions Code §§17500 et seq.),
22 California "anti-spam" e-mail statute, and electronic eavesdropping (Penal Code
23 §§630 et seq.), and is therefore an unlawful, misleading, fraudulent and unfair
24 business practice under Business & Professions Code §§17200 et seq.
- 25 31. The acts and omissions of Defendants, and each of them, are likely to continue and to
26 harm plaintiff and the General Public unless enjoined by this Court.

27 WHEREFORE, Plaintiff prays as set forth below.

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SECOND CAUSE OF ACTION

(False And Misleading Advertising)

[Business & Professions Code §§17500 et seq.]

32. Plaintiff incorporates into this cause of action the allegations contained in paragraph 1-7 and 9-29 of this Complaint as if the same were set out at length herein.

33. Defendants, and each of them, by their past conduct, as described above, of assuring the General Public that no personal and identifying information regarding Internet users was being or would be collected and used by Defendants, and each of them, have engaged in false and misleading advertising, in violation of Business & Professions Code §§17500 et seq.

34. Defendants, and each of them, continue to falsely mislead the General Public, through deceptive and misleading statements published on their Internet Web Site at <http://www.doubleclick.com>. Said statement tend to deceive, and are likely to deceive, the public into falsely believing that Defendants, and each of them, are not collecting personal or identifying information about Internet users. Said false and misleading statements include, without limitation, representations by Doubleclick that it is committed to the privacy of Internet users and gives said privacy interests "paramount importance." Said misleading statements also include, without limitation, information and statements tending to indicate that personally identifying information about Internet users is not obtained. Only through reading in depth and at length, to a degree that the General Public is not likely to do, is it possible to ascertain from the published information on Doubleclick's Web Site that in fact such personally identifying information can, and is being, obtained by Defendants, and each of them.

35. Defendants, and each of them, require members of the General Public to take affirmative steps to "opt out" of having personal and identifying information collected about them, rather than obtaining permission from members of the General Public before collecting such information; even though the reasonable expectations of members of the General Public, based upon past statements of Defendants, and each

1 of them, as well as currently published information on the Doubleclick Web Site, is
2 that such personal and identifying information will not be obtained without prior
3 consent.

4 36. The aforementioned conduct of Defendants and each of them constitutes false and
5 misleading advertising in violation of Business & Professions Codes §§17500 et seq.
6 Said conduct is likely to continue to deceive and mislead the General Public unless
7 enjoined by this Court.

8 WHEREFORE, Plaintiff prays as set forth below.

9 PRAYER FOR RELIEF

10 Plaintiff HARRIET JUDNICK, on behalf of herself and the General Public, prays for
11 judgment against Defendants, and each of them, as follows:

- 12 1. For a permanent injunction, as follows:
 - 13 a. Enjoining Defendants, and each of them, from using any technology
14 for the purpose of personally identifying Internet users or Web Site
15 visitors, including "cookies," on the Internet, without obtaining the
16 prior express written consent of the Internet user;
 - 17 b. Requiring Defendants, and each of them, to provide an easy
18 mechanism to allow Internet users to destroy mistakenly gathered
19 private information and/or mistakenly created cookies and/or
20 mistakenly created links between cookies and private identifying
21 information;
 - 22 c. Requiring Defendants, and each of them, to destroy all records of
23 personally identifying information obtained about Internet users,
24 without such users' express written prior consent, in their possession or
25 control;
 - 26 d. Requiring Defendants, and each of them, to prominently announce in
27 advertising in newspapers of general circulation throughout the State
28 of California, and on their Internet Web Sites and participating Web

1 Sites and Web Sites using their advertising services, that they have
2 obtained personally identifying information regarding Internet users
3 without such users' express consent; that henceforth such information
4 will not be acquired without the express written consent of affected
5 Internet users; and that any Internet user may obtain a copy of all such
6 information obtained regarding him or herself, without charge, upon
7 written verified request;

8 e. Enjoining Defendants, and each of them, from using improperly
9 obtained e-mail addresses to send commercial e-mail advertisements to
10 Internet users located in California;

11 f. Equitable relief according to proof including, but not limited to,
12 corrective advertising on the Internet and in California Newspapers;

13 2. Costs of suit herein.

14 3. Attorney's fees pursuant to law and a Private Attorney General basis,
15 including, but not limited to, CCP §1021.5.

16 4. Such other and further relief as the Court deems just and proper.
17

18 DATED: January 26, 2000

THE ROTHKEN LAW FIRM

20
21 By: 

Ira P. Rothken, Esq.
Attorney for Plaintiff
HARRIETT M. JUDNICK, on behalf of the
General Public of the State of California