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Google LLC

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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
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17 GOOGLE LLC, a Delaware limited liability
18 company,

19 Plaintiff,

20 v.

21 KYDIA INC. D/B/A BEYONDMENU, an
Illinois corporation, and DOES 1-20;

22 Defendants.
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Case No.

COMPLAINT FOR:

(1) FEDERAL TRADEMARK
INFRINGEMENT UNDER 15 U.S.C.
§ 1114;

(2) UNFAIR COMPETITION AND
FALSE DESIGNATION OF ORIGIN
UNDER 15 U.S.C. § 1125; AND

(3) BREACH OF CONTRACT

DEMAND FOR JURY TRIAL

1 **NATURE OF THE CASE**

2 This action involves the wrongful conduct of Defendant Kydia Inc. d/b/a BeyondMenu
3 (“Defendant”) in seizing control of Google listings of small business owners by making false and
4 misleading representations about Defendant’s identity and its supposed affiliation with Plaintiff
5 Google LLC (“Plaintiff” or “Google”) in violation of federal and state law. Google brings this action
6 to put an end to Defendant’s wrongful conduct and the ongoing harm Defendant is causing to Google
7 and the small business owners targeted in Defendant’s scheme.

8 **PARTIES**

9 1. Plaintiff is a limited liability company organized under the laws of the State of
10 Delaware with its principal place of business at 1600 Amphitheatre Parkway, Mountain View,
11 California, 94043.

12 2. Defendant is a corporation organized under the laws of the State of Illinois with its
13 principal place of business at 10400 W Higgins Rd, Suite #205, Rosemont, Illinois, 60018.

14 3. Google does not know the true names and capacities of those defendants sued as DOES
15 1-20 (the “Doe Defendants”) and therefore sues them under fictitious names. On information and
16 belief, the Doe Defendants have participated in the scheme at issue in this Complaint, including by
17 directing, aiding, and/or assisting the named Defendant in connection with the wrongful acts alleged
18 herein. Google is unable to identify all such Doe Defendants by name because Defendant has obscured
19 the identity of the specific individuals and entities that have directed or otherwise participated in the
20 scheme. Google will amend this Complaint to allege the true names and capacities of these Doe
21 Defendants when they are ascertained.

22 **JURISDICTION AND VENUE**

23 4. This action arises under the Trademark Act of 1946, as amended, 15 U.S.C. § 1051 *et*
24 *seq.* (the “Lanham Act”) and California breach of contract law.

25 5. This Court has jurisdiction over the subject matter of this action under 15 U.S.C. § 1121
26 and 28 U.S.C. §§ 1331, 1338, and 1367.

27 6. This Court has personal jurisdiction over Defendant because: (i) Defendant consented
28 to the jurisdiction of the federal or state courts of Santa Clara County, California, by agreeing to

1 Google's Terms of Service and the choice of venue provision therein; (ii) Defendant purposely
2 transacts business in California and this District and has caused its services to be advertised, promoted,
3 and offered under the GOOGLE trademark in California and this District; (iii) the causes of action
4 asserted in this Complaint arise in part out of Defendant's contacts with California and this District;
5 and (iv) Defendant has caused injury to Google and other individuals and entities in California and
6 this District.

7 7. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c) because a substantial
8 part of the events or omissions giving rise to the claims occurred in this District, including
9 (i) Defendant's purposeful transaction of business in this District; (ii) its use of the GOOGLE
10 trademark in advertising, promotions, and offers in this District; and (iii) the harm that Defendant
11 caused to Google and other individuals and entities in this District. In addition, Defendant consented
12 to venue in this District by agreeing to Google's Terms of Service and the choice of venue provision
13 therein.

14 **INTRA-DISTRICT ASSIGNMENT**

15 8. Assignment to the San Jose Division would be appropriate given the choice of venue
16 provision in Google's Terms of Service, to which Defendant agreed to be bound.

17 **FACTUAL BACKGROUND**

18 **GOOGLE AND THE GOOGLE TRADEMARK**

19 9. Google is a well-known provider of search engine, advertising, web application, and
20 social networking services. Since its inception, Google has devoted substantial time, effort, and
21 resources to the development and extensive promotion of its goods and services under the GOOGLE
22 trademark. As a result, the GOOGLE mark has acquired significant recognition in the marketplace
23 and has come to embody the substantial and valuable goodwill of Google. To protect the GOOGLE
24 mark for its exclusive use and as notice to the public of its claim of ownership therein, Google owns
25 numerous trademark registrations for the GOOGLE mark and variations thereof, including but not
26 limited to: U.S. Registration Nos. 2,806,075; 2,884,502; 4,058,966; 4,120,012; 4,123,471; 4,168,118;
27 4,202,570; 4,217,894; 4,525,914; 5,324,609; and 5,324,610.

GOOGLE LISTINGS AND GOOGLE MY BUSINESS

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2 **10.** When users run searches on Google’s Search, Maps, or Google+ services, the search
3 results can include business listings that correspond to the search. These Google listings display
4 certain information about a business, including the business’s street address, hours, a link to the
5 business’s website, etc. For several years, Google has offered free services for businesses to manage
6 their listings that appear in Google search results. Google currently offers these services as part of the
7 Google My Business (“GMB”) platform. Among other features, GMB allows a business to access
8 and edit the information that appears in its Google listing, such as updating business hours or street
9 address, adding photos, or—for a restaurant—including links to menu and online ordering
10 information.

11 **11.** To use these free tools, a business creates a GMB account and then either creates a new
12 Google listing for its business or claims an existing listing that has already been generated by Google.
13 To gain control of a Google listing, a person must verify that he or she is the owner or other authorized
14 representative of the business. Following this verification process, the person becomes the account
15 “owner” and may edit that business’s listings, grant access to the account to other users, and use
16 various other GMB tools and features.

DEFENDANT’S BUSINESS AND USE OF THE GOOGLE MARK

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18 **12.** Defendant purports to operate a mobile and online service for food delivery and takeout
19 called “BeyondMenu.” Defendant compiles restaurant menus and posts them on its BeyondMenu-
20 branded mobile app and website. Defendant also integrates its service with online menus displayed
21 on certain restaurants’ websites. Customers access these menus either through the BeyondMenu app
22 or website, or directly from the restaurant’s website through the BeyondMenu integration. Customers
23 can then place and pay for food orders through these online menus, and BeyondMenu purports to
24 convey these orders and payments to restaurants. The BeyondMenu website indicates that this service
25 is available in various metropolitan areas throughout the United States, including locations throughout
26 California.

27 **13.** Google is informed and believes, and based thereon alleges, that Defendant generates
28 revenue by, among other things, charging fees or commissions for orders placed through the

1 BeyondMenu service.

2 **14.** Google is informed and believes, and based thereon alleges, that Defendant also offers
3 various online marketing services to restaurants, including but not limited to purporting to manage,
4 improve, or optimize a restaurant's Google listings.

5 **15.** Google is informed and believes, and based thereon alleges, that Defendant has devised
6 a scheme to obtain more orders, and thus more revenue, by seizing control of restaurants' GMB
7 accounts and editing their listings to channel online and mobile orders through the BeyondMenu
8 service.

9 **16.** Google is informed and believes, and based thereon alleges, that Defendant, by
10 telephone and email, convinces restaurants through false or misleading representations (as described
11 further below) to disclose information that allows Defendant to take control of the restaurants' GMB
12 accounts, and therefore the contents of their Google listings. For restaurants that do not yet have a
13 GMB account, Defendant uses the collected information to create accounts and pass Google's
14 verification process. If a restaurant already has a GMB account, Defendant convinces a restaurant
15 owner or employee to disclose a Google-assigned PIN that allows Defendant to take over the
16 restaurant's GMB account.

17 **17.** Google is informed and believes, and based thereon alleges, that once Defendant
18 obtains control of a GMB account, it edits the restaurant's business listings to direct online orders to
19 BeyondMenu. Specifically, Defendant creates a simple website for the restaurant with an online menu
20 that is integrated with the BeyondMenu service. These websites appear to be auto-generated and
21 nearly identical to one another. Defendant then revises the restaurant's Google listing so that it
22 identifies and links to this auto-generated website—not the restaurant's real website—as the
23 restaurant's "official" website. The purpose of this scheme is to direct online and mobile orders
24 through the BeyondMenu service, thereby generating additional fees or commissions for
25 BeyondMenu. Indeed, several restaurants have complained that BeyondMenu creates these auto-
26 generated websites without the restaurant's authorization, and that the websites are of poor quality,
27 display incorrect information, and divert consumers from the restaurant's real website.

28 **18.** Google is informed and believes, and based thereon alleges, that Defendant's sales

1 agents make unauthorized and misleading use of the GOOGLE mark in their communications with
2 restaurants in order to cause confusion regarding Defendant's true identity and its relationship with
3 Google. Restaurant owners or employees disclose information to Defendant because they are led to
4 mistakenly believe that they are communicating with Google, or with an entity that represents or is
5 affiliated or associated with Google, the GMB service, or other Google services. Specifically, some
6 restaurant owners are led to believe that Defendant is Google and is contacting them to verify
7 information for the restaurant's business listings on Google's platforms. In other instances, Defendant
8 may disclose that it is a third-party but, through false and misleading representations, causes restaurant
9 owners to believe that Defendant is affiliated or associated with Google or its services, or is endorsed
10 or sponsored by Google. In fact, Defendant is not affiliated or associated with Google, or endorsed or
11 sponsored by Google in any way.

12 **DEFENDANT'S VIOLATION OF GOOGLE'S TERMS**

13 **19.** By taking unauthorized control of business owners' Google listings, Defendant also
14 violates Google's Terms of Service for Google My Business. As discussed above, Defendant's
15 scheme often involves causing Google's systems to send a PIN to a business and then convincing
16 someone at the business to disclose the PIN, which Defendant then uses to take control of the
17 business's GBM account and Google listings. Alternatively, Defendant also attempts to obtain control
18 of listings by causing Google's systems to send emails to businesses requesting a transfer of control
19 over the business's Google listings.

20 **20.** When Defendant causes Google's systems to either send a PIN or an email, it must
21 access a series of Google web pages that require it to affirmatively click to agree to Google's Terms
22 of Service for Google My Business. At all relevant times, these Terms of Service have required the
23 person or entity seeking control of a Google listing to confirm that they are in fact authorized to do so:
24 "In addition, you confirm that you are the owner of the entity listed on the page or an authorized agent
25 who is able to bind others on behalf of the entity." ([https://www.google.com/+policy/pages-](https://www.google.com/+policy/pages-services.html)
26 [services.html](https://www.google.com/+policy/pages-services.html)). This provision is mirrored in other Google web pages that specifically explain that
27 "Only business owners or authorized representatives may verify and manage their business
28 information on Google My Business" and further cautions would-be representatives that they may

1 “[n]ever claim a business listing without express consent from the business owner.”

2 **21.** Defendant violated the Terms of Service to which it expressly agreed by seeking and
3 obtaining control of Google listings for businesses when it was not “the owner of the entity listed on
4 the page” and was not the “authorized agent ... on behalf of the entity.”
5 (<https://www.google.com/+policy/pages-services.html>).

6 **22.** Google has received numerous complaints regarding Defendant’s practices.
7 Complaints about Defendant are also evident in Google’s product forums and on websites like
8 sitejabber.com and the Better Business Bureau’s online tracking of consumer complaints.

9 **23.** Google is informed and believes, and based thereon alleges, that when a restaurant
10 requests to retake control of its GMB account and Google listings from Defendant, Defendant often
11 does not comply and instead directs the restaurant to contact Google or otherwise evades or ignores
12 the request.

13 **24.** In these instances, Google must then expend substantial time and resources in
14 responding to complaints from restaurants attempting to regain control of their GMB accounts and
15 Google listings and conducting investigations to determine the identity of the correct persons who
16 should have control over a particular account.

17 **25.** Google is informed and believes, and based thereon alleges, that some restaurant
18 owners targeted by Defendant do not understand how their listings have come under Defendant’s
19 control. As a result, they blame Google for Defendant’s conduct, causing harm to Google, its business,
20 and the GOOGLE mark.

21 **FIRST CAUSE OF ACTION**

22 **FEDERAL TRADEMARK INFRINGEMENT UNDER 15 U.S.C. § 1114(1)**

23 **26.** Google realleges and incorporates herein by this reference paragraphs 1 through 24 of
24 this Complaint as if fully set forth here.

25 **27.** Google owns the inherently distinctive, strong, valid, and registered GOOGLE
26 trademark.

27 **28.** Without Google’s consent, Defendant has used the GOOGLE mark in commerce to
28 advertise and offer Defendant’s services.

1 **29.** Defendant’s actions as described herein have caused and are likely to cause confusion,
2 mistake, and deception as to the affiliation, connection, or association of Defendant with Google, as
3 to the true source of Defendant’s services, and as to the sponsorship or approval of Defendant or
4 Defendant’s services by Google.

5 **30.** Defendant is not affiliated or associated with Google or its services, and Google does
6 not approve or sponsor Defendant or Defendant’s services.

7 **31.** Defendant’s actions are willful and reflect an intent to confuse consumers and profit
8 from the goodwill and consumer recognition associated with Google and the GOOGLE mark.

9 **32.** Defendant intentionally used the GOOGLE mark in commerce in connection with the
10 sale and offering for sale of Defendant’s services, knowing that Google was not the source of such
11 services and that such use was likely to cause confusion, or to cause mistake, or to deceive.

12 **33.** The actions of Defendant described above constitute trademark infringement in
13 violation of 15 U.S.C. § 1114(1).

14 **34.** Google has been, and will continue to be, damaged and irreparably harmed by the
15 actions of Defendant, which will continue unless Defendant is enjoined by this Court. Google has no
16 adequate remedy at law in that the amount of harm to Google’s business and reputation and the
17 diminution of the goodwill of the GOOGLE mark are difficult to ascertain with specificity. Google is
18 therefore entitled to injunctive relief pursuant to 15 U.S.C. § 1116.

19 **35.** Google is thus entitled to damages in an amount to be determined at trial and to any
20 profits made by Defendant in connection with its infringing activities.

21 **36.** Defendant’s infringement of the registered GOOGLE mark is deliberate, willful,
22 fraudulent, and without extenuating circumstances, and constitutes a knowing use of Google’s
23 trademark. Defendant’s infringement is thus an “exceptional case” within the meaning of section
24 35(a) of the Lanham Act, 15 U.S.C. § 1117(a). Google is therefore entitled to recover three times the
25 amount of its actual damages and the attorneys’ fees and costs incurred in this action, as well as
26 prejudgment interest.

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SECOND CAUSE OF ACTION

**FEDERAL UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN
UNDER 15 U.S.C. § 1125(a)**

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37. Google realleges and incorporates herein by this reference paragraphs 1 through 35 of this Complaint as if fully set forth here.

38. Google owns the inherently distinctive, strong, valid, and registered GOOGLE trademark, as well as common law rights in the GOOGLE mark.

39. Without Google’s consent, Defendant has marketed and sold in commerce services under the GOOGLE mark.

40. Defendant’s actions as described herein have caused and are likely to cause confusion, mistake, and deception among ordinary consumers as to the affiliation, connection, or association of Defendant with Google, as to the true source of Defendant’s services, and as to the sponsorship or approval of Defendant or Defendant’s services by Google.

41. Defendant’s actions constitute unfair competition and false designation of origin in violation of 15 U.S.C. § 1125(a)(1).

42. Google has been, and will continue to be, damaged and irreparably harmed by the actions of Defendant, which will continue unless Defendant is enjoined by this Court. Google has no adequate remedy at law in that the amount of harm to Google’s business and reputation and the diminution of the goodwill of Google’s trademarks are difficult to ascertain with specificity. Google is therefore entitled to injunctive relief pursuant to 15 U.S.C. § 1116.

43. Defendant’s unfair competition and false designation of origin are deliberate, willful, fraudulent, and without extenuating circumstances. Defendant’s conduct is thus an “exceptional case” within the meaning of section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a). Google is therefore entitled to recover three times the amount of its actual damages and the attorneys’ fees and costs incurred in this action, as well as prejudgment interest.

THIRD CAUSE OF ACTION

BREACH OF CONTRACT

44. Google realleges and incorporates herein by this reference paragraphs 1 through 43 of

- 1 **B.** That Defendant files, within ten (10) days from entry of an injunction, a declaration
2 with this Court signed under penalty of perjury certifying the manner in which
3 Defendant has complied with the terms of the injunction;
- 4 **C.** That Defendant is adjudged to have violated 15 U.S.C. § 1114(1) by infringing the
5 GOOGLE mark;
- 6 **D.** That Defendant is adjudged to have violated 15 U.S.C. § 1125(a) for unfairly
7 competing against Google and by using a false designation of origin for Defendant’s
8 services;
- 9 **E.** That Defendant is adjudged to have breached Google’s Terms of Service;
- 10 **F.** That Google be awarded damages in an amount sufficient to compensate it for damage
11 caused by Defendant’s acts;
- 12 **G.** That this Court order an accounting of Defendant’s profits pursuant to Defendant’s
13 unlawful activities and award all of said profits to Google;
- 14 **H.** That Google be awarded three times Defendant’s profits and three times Google’s
15 damages suffered as a result of Defendant’s willful, intentional, and deliberate acts in
16 violation of the Lanham Act;
- 17 **I.** That Google be awarded its attorneys’ fees and costs in this action under 15 U.S.C.
18 § 1117 as a result of Defendant’s Lanham Act violations and for violation of Google’s
19 Terms of Service;
- 20 **J.** That Google be granted prejudgment and post judgment interest; and
- 21 **K.** That Google be granted such further relief as the Court may deem just and equitable.

22 **DEMAND FOR JURY TRIAL**

23 Pursuant to Federal Rule of Civil Procedure 38, Google hereby respectfully demands a trial by
24 jury of all issues triable of right by a jury.

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1 Dated: May 22, 2018

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