

Exhibit A

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CLERK OF SUPERIOR COURT
GWINNETT COUNTY, GEORGIA
18-A-10890-1
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IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

Robert J. Allen
CLERK OF SUPERIOR COURT

EDIBLE IP, LLC

Plaintiff,

v.

GOOGLE, INC.,

Defendant.

CIVIL ACTION
FILE NO: 18-A-10890-1

JURY TRIAL DEMANDED

COMPLAINT

Edible IP, LLC (“Edible IP”) owns valuable property rights in the brand name “Edible Arrangements.” Small-business franchisees and others have worked and invested for years to develop the goodwill and reputation associated with that brand, and Georgia law protects that valuable business property. As the owner of that name, Edible IP has the exclusive right to license it to others. And as the owner, it also has the right to prevent others from using the name without permission.

For years, Google stood by while the Edible Arrangements business grew its good will and reputation. But when the name “Edible Arrangements” became sufficiently valuable, Google started to sell that name for its own profit. Today, Google takes that name and Edible IP’s associated goodwill, auctions it off, and

keeps the money. Selling someone else's property for profit without permission is both conversion and theft by taking. Neither law nor equity permits Google's conduct, and Georgia's RICO statute prohibits Google from profiting from its pattern of theft.

This is a simple case: Google cannot take someone else's property—in this case, Edible IP's property—and sell it on the internet. Edible IP asks this Court to (a) order Google to pay damages, including treble damages, and to disgorge the proceeds it has received from selling Edible IP's property, and (b) to enjoin Google's continuing violation of Edible IP's rights.

Parties

1.

Plaintiff Edible IP, LLC is a Connecticut limited liability company whose member is Edible Brands, LLC, a Delaware Company. Edible IP's principal place of business is in Fulton County, Georgia at 980 Hammond Drive, Atlanta, Georgia 30328. Edible IP owns all of the trademarks, trade names, common law intellectual property, and other goodwill associated with the brand "Edible Arrangements." As discussed in more detail below, Edible IP licenses this property to Edible Arrangements LLC and other entities that conduct business using that name.

2.

Defendant Google, Inc. is a Delaware Corporation with its corporate headquarters at 1600 Amphitheatre Parkway, Mountain View, California 94043. Among other things, Google operates an internet search engine and an associated advertising business. Google may be served in Georgia by serving its registered agent Corporation Service Company, 40 Technology Parkway South Suite 300, Norcross, GA 30092.

Jurisdiction and Venue

3.

This Court has subject matter jurisdiction over this action pursuant to Art. 6, § 4, ¶ 1 of the Georgia Constitution.

4.

Venue and personal jurisdiction are proper in this Court because Google's registered agent is in this County.

5.

In addition to its registered agent's location in Gwinnett County, Google advertises, solicits clients, and conducts continuous systematic and routine business in Georgia, including by maintaining an office at 10 10th Street NE, Atlanta, Georgia 30309.

6.

There is no federal court jurisdiction in this case. For purposes of federal diversity jurisdiction, the parties are not diverse because both Google and Edible IP's LLC member are Delaware corporations. Edible IP asserts no federal claims and raises no other federal question that could supply federal court jurisdiction.

Edible Arrangements Is A Successful Business And Has Worked For Years To Create And Protect The Valuable IP Associated With Its Name, Reputation, And Goodwill

7.

Edible IP owns and licenses the various trademarks, trade names, and all other goodwill, including common law intellectual property, associated with the Edible Arrangements business and brand. Edible IP licenses these intellectual property assets to others to support a "brick-and-mortar" franchise system and various websites.

8.

Tariq Farid founded Edible Arrangements in what has become a famous American success story. Mr. Farid emigrated from Pakistan when he twelve years old. Beginning when he was only sixteen, Mr. Farid purchased his first flower shop. Within several years he grew his business to four locations.

9.

Then came his entrepreneurial breakthrough: Mr. Farid developed a unique marketing program of providing floral arrangements made from fresh cut fruit instead of flowers. The fresh fruit is cut and sculpted to look like beautiful floral designs.

10.

In 1999, Mr. Farid opened the first “Edible Arrangements®” store, through which he introduced his unique cut fruit products.

11.

The Edible Arrangements brand and business grew enormously. Two years after opening his first store, Mr. Farid introduced Edible Arrangements franchises. And only three years after launching the first franchise, Entrepreneur Magazine recognized Edible Arrangements in the top 500 franchises in the United States.

12.

By 2006 there were 500 Edible Arrangements franchises, and by 2011 there were a 1,000. Today, there are almost 1,200 Edible Arrangements stores worldwide, with more than 1,100 stores located throughout the United States. In Georgia alone, there are 42 locations. In 2017, there were almost 175,000 Edible Arrangements deliveries in Georgia, and 215,000 Edible Arrangements customers live here.

13.

Edible Arrangements' success has been continuously recognized by the business media. For example, Edible Arrangements ranked 9th on the 2011 Forbes list of top "franchises to start"; was named one of the "Top 100 Internet Retailers" by Internet Retailer magazine; was 38th on Entrepreneur Magazine's 2017 Entrepreneur Franchise 500; and was ranked 3rd on Inc. Magazine's list of top food and beverage companies. Most recently, the Franchise Times ranked Edible Arrangements number 128 in its list of the "Top 200 Franchises."

14.

Today, Edible Arrangements' system-wide revenue exceeds half a billion dollars annually. Edible Arrangements' success is a direct result of its commitment to providing a consistently high-quality and beautifully-designed product that consumers recognize as Edible Arrangements, as well as its marketing and promotion of the famous Edible Arrangements brand. This goodwill is valuable.

15.

Edible IP owns all of the intellectual property associated with the Edible Arrangements brand, including but not limited to, registered trademarks, trade name, and common law intellectual property. While Edible IP has licensed the use of the name "EDIBLE ARRANGEMENTS," it has maintained all of the goodwill

and associated rights in that name. Thus, all of the goodwill and other property rights associated with the Edible Arrangements brand belong to Edible IP.

16.

Edible IP owns the famous trade name, trademark, and service mark “Edible Arrangements” (“EDIBLE ARRANGEMENTS”).

17.

EDIBLE ARRANGEMENTS is a federally registered, incontestable trademark.

18.

Edible IP also owns Georgia statutory and common law rights to the use of the name “EDIBLE ARRANGEMENTS.”

19.

Much of the Edible IP’s goodwill and reputation has been built by the family businesses that make up the majority of Edible Arrangements’ franchise stores. Of the 1,185 stores, 681 are operated by single-unit operators—many of them families for whom their single store represents their life savings and their entire livelihood.

20.

These franchisees often operate their stores by investing their life’s savings in, among other things, building out their stores, signing long-term lease agreements, investing in local promotional and advertising materials, and

sponsoring local events and fundraisers for schools and other charitable groups. In addition, these small businesses and their employees work every day to maintain the quality and reputation associated with the Edible Arrangements brand. They are the face of the brand, and their human interactions with customers and potential customers are the very definition of “goodwill.”

21.

Edible IP’s various licensees also invest in this goodwill by branding each store and its signage with the EDIBLE ARRANGEMENTS name, and including that brand name on all of the trucks and products that are delivered to millions of customers every year.

22.

As a result of this investment, and the years of business conduct, the name “EDIBLE ARRANGEMENTS” has become widely known and represents enormously valuable goodwill and the valuable reputation of the businesses associated with that name.

23.

In addition, because the Edible Arrangements business is a franchise system, its goodwill and reputation are some of its primary assets, which it has designed, cultivated, and preserved with great care. Each Edible Arrangements franchisee

specifically contracts for the right to use the EDIBLE ARRANGEMENTS name and to benefit from its associated goodwill.

24.

Edible IP owns the right to the EDIBLE ARRANGEMENTS name, trademark, and all of its associated goodwill and reputation. And for its part, Edible IP must protect this property for the benefit of its franchisees and their businesses.

25.

Under Georgia law, the “good will and reputation of a business is as much an asset as its physical properties.” *Kay Jewelry Co. v. Kapiloff*, 204 Ga. 209, 215 (1948).

26.

Similarly, under Georgia law, “the trade name of a partnership is a part of its good will and is an asset of the firm. . . . The firm name is a firm asset subject to sale as any other firm property. It is inseparable from the good will of the firm....” *Richter v. Richter*, 202 Ga. 554, 556–57 (1947).

27.

Edible IP’s property rights include the right to control the use of the name “EDIBLE ARRANGEMENTS.” Edible IP is solely entitled to license the use of that name for profit, and indeed it does license the use of that name to its various

franchisees and affiliates. Edible IP has the corresponding right to exclude others from using the name for commercial advantage without permission.

28.

Like other businesses, Edible Arrangements' goodwill and reputation generates business for each brick-and-mortar franchise and its internet-based retail because consumers in the market for the relevant products and services seek out "Edible Arrangements" by name. Edible Arrangements and its franchisees market locally, nationally, and globally. The franchisees rely heavily on consumers seeking out their location by name.

29.

In today's economy, this goodwill and reputation are manifested when consumers enter the EDIBLE ARRANGEMENTS name in an internet search engine. The decades of successful business, the massive marketing investments, and the careful cultivation of the goodwill and reputation of the business imbues the name with meaning and drives these searches.

Google Appropriates Edible IP's Goodwill And Other Property Rights By Selling The Name "EDIBLE ARRANGEMENTS" For Profit

30.

Google is the world's most famous and widely used internet search engine. It accounts for more than 70% of all of the world's internet searches done on

desktops or laptop computers, and for more than 80% of internet searches done on mobile devices. See <https://www.netmarketshare.com/search-engine-market-share>.

Google Searches

31.

According to Google, its search engine contains a series of Google-developed “ranking systems” that “sort through the hundreds of billions of webpages in [its] Search index to give you useful and relevant results in a fraction of a second. These ranking systems are made up of a series of algorithms that analyze what it is you are looking for and what information to return to you.” See <https://www.google.com/search/howsearchworks/algorithms/>.

32.

According to Google, for each search query, its system analyzes the actual words in the query and a variety of other information regarding the query to determine what Google believes the searcher is seeking. Google then analyses “hundreds of different factors to try to surface the best information the web can offer” and to provide the “best results.” *Id.* These results from Google’s search algorithm are often called “organic” results.

33.

Despite this purported effort, Google in fact subordinates these “organic” search results. Instead of showing what Google claims is the “best information the

web can offer,” Google manipulates its results page to show paid advertising to drive Google’s profit, as described in part below.

Google Sells Valuable “Search Keywords” for Profit

34.

In order to monetize its search engine, Google subordinates its “organic” search results and allows merchants and others to purchase “keywords” that will trigger advertisements on the search results page when Google users search for the keyword term.

35.

Google’s sale of keyword advertising generates billions of dollars in revenue for Google. Indeed, on information and belief, Google’s 2016 advertising revenue accounted for \$63.79 billion (as compared to about \$70 million in 2001).

36.

Google sells these “keywords” to advertisers through a modified auction. Google provides lists of potential “keywords” to advertisers. Advertisers then bid by identifying the maximum amount they are willing to pay for that keyword, as reflected in the following keyword bid input window from Google’s advertising website:

Review and Save

Set your bid based on your goals

On the first page of search results \$0.04

Use ad group default bid \$0.01

Set a manual bid \$1.7

CANCEL SAVE

37.

The price that Google charges for its keyword advertising depends upon the value of the keyword as a search query. In certain contexts, Google charges more for search queries that have associated goodwill.

38.

Google markets its keyword program and suggests keywords to advertisers to maximize its profit.

39.

Google designs its advertising policies to maximize the Google users' response to these advertisements. For example, Google monitors the content and placement of the ads to maximize Google's profit. It places the ads in a more

attractive location on the results page than its “organic” results in an effort to drive consumer behavior and get those consumers to click on the ad rather than Google’s “organic” results.

40.

Thus, in response to internet searches, Google’s advertising program controls what consumers see, and it seeks (often successfully) to drive what consumers do. Because of its position as the world’s dominant internet search engine, this advertising program exerts enormous influence over businesses. It can have a destructive effect when consumers seek out a business by name by entering that name in a Google search.

**Google Auctions Off Edible Arrangements’ Intellectual Property
For Its Own Profit**

41.

As part of its keyword program, Google sells non-proprietary search queries, like “shoes,” “mother’s day gift,” or “mesothelioma.”

42.

But Google also sells the name “EDIBLE ARRANGEMENTS” to unlicensed third parties. Google has no right to sell, and the third parties have no right to buy from Google, the goodwill associated with that name.

43.

Google has never contracted with Edible IP for any right to use the name “Edible Arrangements,” nor has Google ever obtained any other license to use the name. Edible IP has not otherwise given Google permission to sell the name for profit.

44.

The value of the term “EDIBLE ARRANGEMENTS” as a search query or keyword is derived entirely from the goodwill created by the Edible Arrangements business and is owned by Edible IP. Indeed, for years Google searches for “Edible Arrangements” merely provided “organic” results related to the Edible Arrangements business. Google did not sell the name in earnest until approximately 2011, when “Edible Arrangements” had established sufficient goodwill and a broad enough reputation to make it an attractive target for Google.

45.

When Google sells the term “EDIBLE ARRANGEMENTS” to a third party, that party gets the benefit of Edible IP’s goodwill. Google appropriates that goodwill and the proceeds from the sale for itself. Edible IP receives nothing for this use of its property.

46.

Google has no right to sell the name “EDIBLE ARRANGEMENTS,” nor to profit from its sale of the goodwill associated with that name. Nonetheless, Google does in fact accept payment and profits based on its sale of the “EDIBLE ARRANGEMENTS” name.

Edible IP’s Prior Litigation Against Google

47.

Edible IP has been involved in cases against Google in the past as part of its support for the rights of its licensees, including, *e.g.* Edible International LLC.

48.

The claims brought in this case are separate and distinct from any prior claims brought against Google by Edible IP or any Edible IP licensee. For example:

- The claims in this case have nothing to do with any direct relationship between Google and Edible IP. Instead, the claims in this case relate only to Google’s conduct with respect to unlicensed third parties to whom Google sells Edible IP’s property.
- Edible IP has never entered into any contract with Google of any kind. Edible IP is not a customer of Google’s, nor an advertiser on Google, and it does not otherwise participate in Google’s advertising program

at all. No entity that participates as a customer or advertiser in any Google program has the right to contract on behalf of Edible IP or waive any of Edible IP's rights.

- Edible IP does not assert any federal trademark infringement or federal dilution claims, nor seek any other relief for any consumer confusion. To the extent those other claims exist and Edible IP chooses to pursue them along with a licensee, they will be arbitrated or litigated separately. Here, Edible IP merely seeks to protect its property rights through an injunction and by forcing Google to pay damages from unlawfully selling Edible IP's goodwill and other property, including (*inter alia*) disgorgement of the money Google received from the unlawful conduct.

COUNT ONE – THEFT OF PERSONAL PROPERTY
(Pursuant to O.C.G.A. § 51-10-6)

49.

Edible IP incorporates and re-alleges the above paragraphs 1 through 48 as if fully alleged here.

50.

O.C.G.A. § 51-10-6 provides that, “[a]ny owner of personal property shall be authorized to bring a civil action to recover damages from any person who

willfully damages the owner's personal property or who commits a theft as defined in Article 1 of Chapter 8 of Title 16 involving the owner's personal property."

51.

Edible IP owns the trade name "Edible Arrangements" and the good will and reputation associated with that name and thus is exclusively entitled to all of the rights and incidents of such ownership. These rights include, among other things, (a) the exclusive right to control, sell, or license the use of that name, goodwill, or reputation, and the corollary right to prevent others from using the name without a license; and (b) the exclusive right to any and all of the proceeds that are derived from the sale or license of that name, good will, or reputation.

52.

Edible IP's property rights in the name "Edible Arrangements" constitute "property" within the meaning of O.C.G.A. § 16-1-3(13). That provision states that "*Property* means anything of value, including but not limited to real estate, tangible and *intangible personal property*, contract rights, services, choses in action, and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, and electric or other power." *Id.* (emphasis added).

53.

Google has committed theft by taking, in violation of O.C.G.A. § 16-8-2. That provision states that “[a] person commits the offense of theft by taking when he unlawfully takes or, being in lawful possession thereof, unlawfully appropriates any property of another with the intention of depriving him of the property, *regardless of the manner in which the property is taken or appropriated.*” *Id.* (emphasis added).

54.

Google unlawfully takes and otherwise appropriates Edible IP’s property by selling that personal property without permission to others and keeping the proceeds for itself. Google intended to, and in fact did, deprive Edible IP of that property because, among other things, Google deprived Edible IP of (a) its rights to exclude others from using its intellectual property without a license, and (b) its rights to the proceeds from any sale or license of that intellectual property.

55.

Google continues to appropriate and sell Edible IP’s personal property and retain the proceeds from these sales. Google therefore continues to commit the criminal offense of theft by taking.

56.

Google must pay damages in an amount to be determined at trial, including prejudgment interest from the date of each unlawful sale until the time of trial.

57.

Google should be enjoined from any future sale of Edible IP's personal property.

COUNT TWO – CONVERSION
(Pursuant to O.C.G.A. § 51-10-1 and Common Law)

58.

Edible IP incorporates and re-alleges the above paragraphs 1 through 57 as if fully alleged here.

59.

Edible IP owns the rights to the “EDIBLE ARRANGEMENTS” name under federal trademark law, state statutory law, and state common law.

60.

Edible IP's rights in the EDIBLE ARRANGEMENTS name and mark are specific intangible property which may be the subject of an action for conversion.

61.

In selling, without authorization, the EDIBLE ARRANGEMENTS name and associated intellectual property, Google has assumed and exercised the right of

ownership over Edible IP's personal property in hostility to Edible IP's rights and converted Edible IP's property to Google's own use.

62.

Google's wrongfully asserted acts of dominion and control deny and are inconsistent with Edible IP's right to exclude others from the use of its personal property.

63.

Google has unlawfully retained the proceeds of its unauthorized disposition of Edible IP's property and used them for Google's own benefit.

64.

As a result of Google's conversion of Edible IP's property, Edible IP is entitled to receive damages in an amount to be determined at trial, including the disgorgement of Google's improper proceeds. This should include prejudgment interest from the time of each conversion until the time of trial.

COUNT THREE – MONEY HAD AND RECEIVED
(Pursuant to Common Law)

65.

Edible IP incorporates and re-alleges the above paragraphs 1 through 64 as if fully alleged here.

66.

Google currently holds a sum of money belonging to Edible IP, the precise

amount of which Edible IP is unable to determine due to Google's secretive business practices.

67.

Google received the money by selling the "Edible Arrangements" name and associated property to others without permission.

68.

Any money Google received is money to which Edible IP is entitled as the owner of the "Edible Arrangements" name and associated intellectual property.

69.

Edible IP has demanded that Google repay the money to which Plaintiff is entitled, including, for example, in a meeting on December 12, 2018. That demand was refused.

70.

Equity and good conscious do not permit Google to retain this money and it must be returned to Edible IP.

COUNT FOUR – CIVIL RICO
(Pursuant to O.C.G.A. § 16-14-4)

71.

Edible IP incorporates and re-alleges the above paragraphs 1 through 57 as if fully alleged here.

72.

For the purpose of this Count Four, Edible IP alleges that Google acted with the knowledge and intent required to violate the criminal statutes identified as racketeering activity below.

73.

Google has violated and continues to violate the Georgia RICO statute by obtaining, directly or indirectly, an interest in or control of personal property, including but not limited to money, through a pattern of racketeering activity and/or by endeavoring to do the same. *See* O.C.G.A. § 16-14-4 (a) (“It shall be unlawful for any person, through a pattern of racketeering activity or proceeds derived therefrom, *to acquire or maintain, directly or indirectly, any interest in or control of* any enterprise, real property, or *personal property of any nature, including money.*”)

The Pattern of Racketeering Activity

74.

Google engaged in a pattern of racketeering activity consisting of more than two separate and distinct acts of racketeering activity. Google committed this pattern of racketeering activity over several years, and it continues today.

75.

The acts of racketeering activity include, but are not limited to, theft by taking in violation of O.C.G.A. § 16-8-2. Specifically, on more than two occasions, Google committed, attempted to commit, solicited another to commit, or engaged in acts involving theft by taking of Edible IP's property.

76.

As alleged above, Edible IP's rights in the name "Edible Arrangements" constitute property within the meaning of O.C.G.A. § 16-1-3(13). Every time that Google auctioned off the Edible Arrangements name to others without permission, Google unlawfully took and/or appropriated Edible IP's property with the intention of depriving Edible IP of its property rights.

77.

Google began selling Edible IP's property in or around 2011. Google's auctions occurred (and continue to occur) repeatedly, including multiple times per day. Over time they have involved many different buyers, and each involved separate sales contracts.

78.

Google's violations of O.C.G.A. § 16-8-2 constitute racketeering activity pursuant to O.C.G.A. § 16-14-3(5)(A)(xii) and O.C.G.A. § 16-14-3(5)(B).

Google's Acts of Racketeering Activity Are Related

79.

The incidents of racketeering activity committed by Google had, among other things, the same or similar intent, result, victim, and method of commission. Each act of theft was carried out with the same intent to acquire money by illegal means, in the same way, and against the same victim, Edible IP.

80.

The acts of racketeering activity are interrelated by distinguishing characteristics and are not isolated incidents. The acts involve the same or similar methods of commission, the same or similar benefits to Google, and the same or similar injuries to Edible IP.

***Google Violated the Georgia RICO Statute,
Proximately Causing Injury to Edible IP***

81.

Google violated O.C.G.A. § 16-14-4(a) by obtaining, directly or indirectly, an interest in or control of personal property, including but not limited to money, through a pattern of racketeering activity.

82.

Google violated O.C.G.A. § 16-14-4(c) by endeavoring to violate O.C.G.A. § 16-14-4(a).

83.

Google's behavior directly targeted Edible IP as the victim of Google's theft of property. As a result, Edible IP's injuries flow directly from acts that comprise the pattern of racketeering activity.

84.

As the victim of Google's theft, Edible IP has been injured by these violations and is entitled to an injunction prohibiting Google from engaging in the same type of endeavor pursuant to O.C.G.A. § 16-14-6(a)(2).

85.

As the victim of Google's theft, Edible IP has been injured by these violations of O.C.G.A. § 16-14-4 and is entitled to recover three times the actual damages it has sustained pursuant to O.C.G.A. § 16-14-6(c).

86.

In addition to treble damages, Edible IP is also entitled to punitive damages. O.C.G.A. § 16-14-6(c).

87.

Edible IP is also entitled to recover its attorneys' fees in the trial and appellate courts, and its costs of investigation and litigation reasonably incurred. O.C.G.A. § 16-14-6(c).

PRAYER FOR RELIEF

WHEREFORE, Edible IP prays for a judgment in its favor and against Google and for the following relief:

- A. That the Court award damages to Edible IP in an amount to be proven at trial, plus interest, including the value of Edible IP's property, the money that Google improperly received, prejudgment interest, attorneys' fees, expenses of litigation, and costs of suit;
- B. That the Court award Edible IP treble damages pursuant to O.C.G.A. § 16-14-6(c);
- C. That the Court award Edible IP punitive damages pursuant to O.C.G.A. § 16-14-6(c);
- D. That the Court enjoin Google from selling the "Edible Arrangements" name without Edible IP's permission; and
- E. That the Court award such other relief as justice may require.

JURY DEMAND

Edible IP demands a trial by jury on all issues allowed by law.

Respectfully submitted this 21st day of December, 2018.

/s/ Jason J. Carter

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