

AFFIDAVIT OF LUKE SAMPLE

I, Luke Sample, being duly sworn, attest as follows:

1. I am a resident of Cape Girardeau, Missouri and above the age of 18. I am a defendant in a lawsuit, filed by a number of motion picture studios and pending in federal court in New York, asserting claims for copyright infringement and unfair competition. I have personal knowledge of the facts set forth in this affidavit.

2. Around June 2003, my business partner Brandon Drury and I began operating a website business that offered customers assistance in locating and downloading films, television shows, music, and software off of the Internet. We operated this business until 2005, when we shut it down after we were named as defendants in the lawsuit mentioned above. We operated this business through websites located at the following URLs: <www.thedownloadplace.com>, <www.easydownloadcenter.com>, <www.directdownloader.com>, and <www.themp3place.com>. We nominally operated these businesses through two companies Drury and I owned, Internet Billers LLC and LSDB Enterprises.

3. We operated all of these websites according to the same basic model. The business was one where, for a fee, we would provide customers with one of the popular file-sharing programs through which they could download copies of films, music, software, and photos from the Internet.

4. We designed our websites and described our services in a way that we believed potential customers would find appealing. For example, we added

cover art from motion pictures and “drop down” menus listing films. We also offered step-by-step instructions on how to use the software, which we called “Download Manager,” and how to “burn” onto blank DVDs copies of the films, television shows, and other files these customers had downloaded. The description of our business that appears in the lawsuit is accurate, and the pages from our websites that are attached to the lawsuit are accurate copies of what the websites looked like at that time.

5. Customers who signed up for the download service we offered had to pay a “membership” fee. They could pay either \$29.95 for a one-year membership or \$39.95 for a “lifetime” membership. We estimate that we signed up more than 30,000 customers during the period we operated this business.

6. In addition to offering a “help” page, we also offered our customers on-line support, that is, they would send us email requests for assistance. Either Brandon, myself, or one of our employees would respond. We received requests for assistance in helping our customers find, download, play, or burn copies of films or television programs they had located on the Internet.

7. Also, for an additional \$14.95, our customers could purchase another software package called “Pro Movie Pack.” Films or television shows that are widely available over the Internet typically are pirated copies that others have “uploaded” after copying them off of DVDs. Such unauthorized copies quite often are made in different file formats. The purpose of this extra software package we sold was to allow our customers who were looking to download such pirated copies

to view these copies regardless of the file format used by the person who created and uploaded the copy.

8. The design of our websites was basically intended to capture two types of customers. First, we wanted to give our site the “look and feel” of a website that was an authorized source of film, television, music, and software downloads. Presumably there are Internet users out there who are not aware, for example, that films that are still playing in movie theaters are not typically available for download from the Internet. The statements on our website to the effect that the service we were offering was legal were intended to reassure such customers. Second, for those other Internet users who are aware that downloading these files is not legal, we wanted to offer (for a fee) a simpler way to find and download those files, along with our assistance if they needed it. The type of file-sharing software that we were supplying was available for free elsewhere, but we believed that we provided additional value that would induce these Internet users to subscribe to our service.

9. During the time we were operating this business, there were many, many other websites offering the identical service. In order to be successful, we needed to find ways to get customers to visit our websites and, hopefully, purchase memberships. In the terminology used by Internet businesses, we needed to find a way to “drive traffic” to our downloading websites.

10. A common method for getting traffic to your website—perhaps the most common method for this type of Internet business—is to advertise on the

Google search engine using the Google “AdWords” program. With this service, a business owner can have “sponsored link” advertisements for its website appear on the right side of the Google search engine page, in response to particular search terms a Google user might enter. Specifically, from the perspective of an Internet business owner, the AdWords program works this way. You go to the Google website and set up an AdWords account. To do this you must supply certain identifying information, and you also must provide a credit card number. You supply text for the advertisement along with the URL (or website address) that you want to appear on the advertisement, so that if and when the advertisement is “clicked,” the Google user is taken to your website. To get the sponsored link to appear, you provide Google with a list of search terms or “keywords” that, when entered by a Google user, will prompt your advertisement to appear. Since you are competing with other Internet businesses for placement of your advertisement, you need to make a bid on how much you are willing to pay Google each time a Google user who searches a particular term clicks on your sponsored link. In effect, Google auctions off search terms or keywords to the highest bidder among Internet businesses who want their “sponsored links” to appear in front of Google users who enter those keywords into the Google search engine.

11. We started using the Google AdWords program for our downloading business in the summer of 2003. For example, we created a sponsored link advertisement for the <thedownloadplace.com> that read: “Freaky Friday – free. Join now, movies still in theaters, dvd movies, new releases, adult.” We then

entered a series keywords that we wanted to bid on, which when typed into Google would prompt our advertisement to appear, including “Freaky Friday free movie,” and “Freaky Friday free movie download.” As these keywords make clear, we were looking to capture two types of Google users: those who were looking for a legal, authorized source of film downloads, and those who were looking for a good way to find pirated copies of films and television shows

12. At least initially, all of our dealings with Google regarding our AdWords advertising were through automated software Google uses. Among other things, the Google software suggested keywords for us to use. Beginning in April 2004, however, we began communicating with and receiving assistance from individual Google employees on how to structure our AdWords advertising. I contacted Google at that time to complain that while we were paying Google large amounts for sponsored links—more than \$150,000—we were unhappy with the “conversion rate.” That is, we were paying Google each time a Google user clicked on one of our sponsored links, but the frequency with which those users purchased a “membership” at one of our websites was low. At that time we communicated with a Google employee named Katie. She suggested that we use more targeted keywords than we had been using. For example, she suggested combining “free music” and “listen” into “listen to free music.”

13. We acted on Google’s suggestions and revamped our AdWords advertising in the spring of 2004. To implement Katie’s suggestion about targeted keywords, we created a single new campaign to use for all of our sponsored links

geared toward specific movies. Specifically, in this campaign, we created sponsored links referencing the following films: Anchorman, Bourne Supremacy, Catwoman, Fahrenheit 911, Hellboy, I Robot, Kill Bill, Shrek II, and Spiderman 2. The ad text for these links told potential customers that they could get access to “movies still in theaters,” “new releases,” and “DVD.” The keywords associated with these advertisements combined the title of the film with “download” (e.g. “spiderman 2 download”). Later that year, we created another AdWords campaign targeted at television programs and referencing Friends and The Simpsons.

14. In the summer of that year, our monthly spending for Google advertising was in excess of \$20,000. In the fall, apparently due to the amount we were spending, Google assigned employees to be our personal account representatives.

15. Julio Herrera was the first Google representative assigned to our account. In the fall of 2004, I had email communications with him, and also several telephone conversations with him. He expressed familiarity with our business and the content of our websites, as well as the advertisements and keywords we had been bidding on, including advertisements and keywords utilizing the names of specific films. Herrera’s assistance to us included monitoring our credit card limits; in fact, we supplied him with account information for other credit cards, so that, when one card “maxed out,” he could replace it with another so that our AdWords programs could continue.

16. In November 2004, Herrera offered to have Google “optimize” our advertising campaigns. He explained that Google employees would examine our website and suggest new or revised advertising text and new or revised keywords.

17. In December 2004, Google suggested and we agreed to an “optimization” proposal for a campaign for <thedownloadplace.com> that was geared toward music. As part of this, Google suggested that we have sponsored links specifically referencing the recording artists Ryan Cabrera, Usher, Nellie, and several dozen others, and keywords that combined these artists’ names with the word “download.” In January 2005, Google suggested and we agreed to an “optimization” for another campaign for the same website, geared toward downloads of software programs. Among other things, Google proposed that we buy sponsored link advertisements such as:

Microsoft XP Software

Download Unlimited Top Software.

Join Now – See Our Special Offer!

Google proposed, and we agreed to run, similar sponsored links for other popular software programs, none of which we were authorized to distribute, including:

Microsoft Word, Norton Anti-Virus, Photoshop, and Quicken. The keywords associated with these advertisements combined the software titles with the words “free” and “download.”

18. During the period we operated this downloading business, we took in revenues of about \$1.1 million, all of it from selling memberships to these

websites. Of that money, we paid Google more than \$800,000 for the AdWords advertising described above.

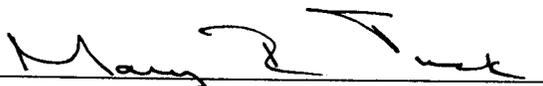
19. A number of the computer users who downloaded our software found our website through our Google advertising. In fact, from special ad-tracking software, we determined that virtually all of our business came from users who found our websites through Google searches.

I do solemnly state on this 22nd day of December 2006, under penalty of perjury under the laws of the United States and the State of Missouri that the foregoing is true and correct to the best of my knowledge, information and belief.



Luke Sample

Sworn to before me this
22nd day of December, 2006



Notary Public

My Commission Expires: 4/11/10

