

ORIGINAL

Complaint Counsel's ~~Compilation of Materials for Oral~~
Argument Before the Commission
June 26, 2018

**In the Matter of 1-800 Contacts, Inc.
Docket No. 9372**



An Example of Infringement

The screenshot shows a Google search for "1800contacts" in a Windows Internet Explorer browser. The search results page displays several organic and sponsored links. The organic results include:

- 1800CONTACTS.com**: www.1800contacts.com Need contact lenses? Buy in just 5 minutes. We deliver. You save.
- Discount Contact Lenses**: www.ShipMyContacts.com Save Up To 70% On Contact Lenses Get Fast Service And Free Shipping!
- Contact Lenses at 1-800 CONTACTS | World's Largest Contact Lens Store®**: 1-800 CONTACTS - The world's largest contact lens store®. Over 20 million name brand contacts in stock, including Acuvue, Focus, Soflens, Proclear, ... www.1800contacts.com/ - 61k - [Cached](#) - [Similar pages](#)
 - [How to Order](#)
 - [Acuvue](#)
 - [Acuvue Rebates](#)
 - [Full Product List](#)
 - [Bausch & Lomb](#)
 - [Color Lenses](#)
 - [Toric Lenses](#)
 - [Special Offers](#)
- 1800Contacts Discount Coupon**: 1800Contacts is one of the largest online contact lens store. 1800Contacts is dedicated to providing you with a simple, hassle-free way to replace your ... www.samilan.com/lenses/ - 5k - [Cached](#) - [Similar pages](#)
- Technology & Marketing Law Blog: 1-800 Contacts Sues LensWorld for ...**: Jan 8, 2008 ... It's none other than 1-800 Contacts, the online retailer with a lousy trademark and a love-hate relationship towards keyword advertising ... blog.encygoldman.org/archives/2008/01/1800_contacts_s_1.htm - 23k - [Cached](#) - [Similar pages](#)
- 1-800 Contacts v. WhenU | Electronic Frontier Foundation**: In October 2002, online contact lens distributor 1-800 Contacts, Inc. sued internet "adware" ...

On the right side of the page, there are two columns of sponsored links:

- 1-877-LENS-347 Contacts**: Save 70% or more on your Contacts! We'll beat all 1800 and web prices www.LensDiscounters.com
- Contact Lenses Direct**: Low price guarantee. Try us & save. Fast, cheap & reliable. Free ship. www.OptiContacts.com
- Direct Contact Lenses**: Up To 70% Discount and \$100 Rebates Over 550 Ships Free. 1-800 LENSFAST www.ContactLens.com

The browser window title is "1800contacts - Google Search - Windows Internet Explorer". The address bar shows the search URL. The search bar contains "1800contacts" and the search button is visible. The page footer shows "Done" and "Internet" with a 100% zoom level.

An Example of Infringement

1800contacts - Google Search - Windows Internet Explorer

http://www.google.com/search?hl=en&q=1800contacts&aq=f&oeq=

File Edit View Favorites Tools Help

1800contacts - Google Search

Web Images Maps News Shopping Gmail more

Google 1800contacts Search Advanced Search Preferences

Web Results 1 - 10 of about 394,000 for 1800contacts (0.09 seconds)

1800CONTACTS.com www.1800contacts.com Need contact lenses? Buy in just 5 minutes. We deliver. You save.

Discount Contact Lenses www.ShipMyContacts.com Save Up To 70% On Contact Lenses. Get Fast Service And Free Shipping!

Contact Lenses at **1-800 CONTACTS** | World's Largest Contact Lens Store®
1-800 CONTACTS - The world's largest contact lens store®. Over 20 million name brand.

Sponsored Links

1-877-LENS-347 Contacts
Save 70% or more on your Contacts!
We'll beat all 1800 and web prices
www.LensDiscounters.com

Contact Lenses Direct

1-877-LENS-347 Contacts
Save 70% or more on your Contacts!
We'll beat all 1800 and web prices.
www.LensDiscounters.com



“process in a nutshell . . . remove competitors”

From: Bryce Craven <"/o=1800contacts/ou=first administrative group/cn=recipients/cn=bcraven">
To: Jessica Faulkner <jfaulkner@1800contacts.com>

From: Bryce Craven

Our Trademark keyword management process in a nutshell:
(1) Ensure top ad placement by giving each TM keyword a high CPC

Our Trademark keyword management process in a nutshell:

reports are sent via email and are automated. Action is taken as necessary against affiliates.
• Jordan monitors our top keywords twice a week and sends Bryce a report with screenshots each time. Jordan's Friday report is sent to legal by Bryce.

(2) Enforce trademark policy to remove competitors which in turn drives down how much we pay per click.

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1-800F_00048850
CX0935-001

CX0935-001



Trademarked Keywords

- Keep competitors & affiliates off
- Low competition = low cost
- Example: 1800-contacts

Search
November

1 800 CONTACTS

CX0051-002

nt:

Long Tail	Trademarked Keywords
ated hoo) CAC target CAC x CR le: <i>buy air online</i>	<ul style="list-style-type: none">• Keep competitors & affiliates off• Low competition = low cost• Example: 1800-contacts

CONTACTS

1-800F_00040023-003

CX0051-004



Paid Search

Bid Management –

Trademarks

- Keep competitors & affiliates off
- Low competition = low cost

Metric	YoY
Clicks	60%
Searches	54%
CTR	4%
Orders	38%

Affiliate Policing

- Daily monitoring by BrandVerity
- Bi-weekly reports & notifications to affiliates (Jordan)

Competitor Policing

- Weekly report with screenshots to legal
- Support to legal in litigation efforts

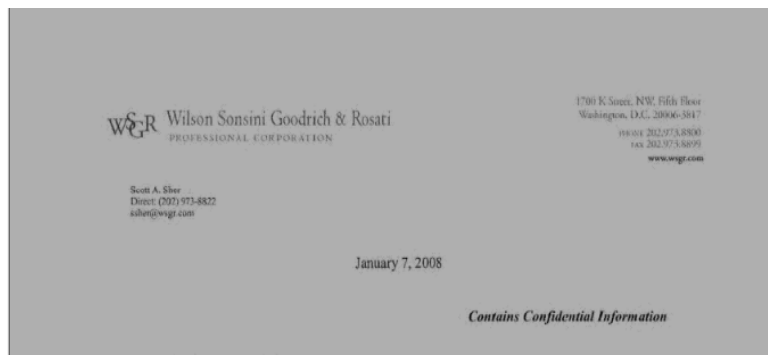
Big Orders, Little Cost

- About 75% of all paid search orders come through our trademark terms
- TM CPCs are under \$0.30.

CX0051-007



2007: Vision Direct



As we discussed during the December 12, 2007 telephone conversation between Jonathan Jacobson and me, antitrust counsel for Vision Direct and Drugstore.com, and Richard Liebeskind, antitrust counsel to 1-800 Contacts, Inc., and you, as IP counsel to 1-800 Contacts, Inc., Vision Direct continue to have serious concerns regarding the enforceability of the Agreement, particularly as it relates to the implementation of negative key words.

Separate and apart from Vision Direct's position regarding the interpretation of the contract, set forth in Ms. Caditz's November 5, 2007 letter—that is, that the Agreement does not contemplate the implementation of negative key words—Vision Direct believes that any agreement between the parties with regard to the implementation of negative key words creates an unacceptable risk of violating of Section 1 of the Sherman Act. Any such agreement would appear to represent a restraint unrelated to the terms of the Agreement, and one that depresses the price of key words to search companies such as Google, Yahoo! and Microsoft.

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AUSTIN NEW YORK PALM BEACH SAN DIEGO SAN FRANCISCO SEATTLE SINGAPORE WASHINGTON, D.C.

1-800F_00046010

CX0141-001

CX0141 (S. Sher to B. Pratt)

CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2018, I filed the foregoing documents electronically using the FTC's E-Filing System, which will send notification of such filing to:

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Federal Trade Commission
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Washington, D.C. 20580
ElectronicFilings @ftc.gov

I also certify that I delivered via electronic mail a copy of the foregoing documents to:

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Counsel for Respondent 1-800 Contacts, Inc.

Dated: June 19, 2018

By: /s/ Daniel J. Matheson
Attorney

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

June 19, 2018

By: /s/ Daniel J. Matheson
Attorney