



Harmeet K. Dhillon
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Via FedEx & Email

John W. Ferrie
Legal Director
YouTube, LLC
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Legal Support
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Re: Live Action v. YouTube, LLC
Demand Letter and Evidence Preservation Notice

Dr. Mr. Ferrie:

Our firm represents Live Action, a pro-life advocacy organization, in connection with its dispute with YouTube, LLC (“YouTube”), arising from YouTube’s purposeful failure to deliver advertisements placed by Live Action, despite these ads being nominally approved by YouTube. As set forth below, YouTube’s conduct is in breach of its agreement with Live Action, violates California law, and must be immediately corrected. Please direct all further correspondence regarding this dispute to our office.

RELEVANT BACKGROUND

Founded in 2003, Live Action is a pro-life, non-profit organization with a long-standing, highly regarded reputation for pro-life educational outreach and advocacy. Live Action’s advocacy efforts include publishing pro-life literature and videos for the purpose of exposing the negative impact abortion has on its victims and the surrounding community.

Live Action’s pro-life video campaigns have been enormously successful, garnering hundreds of millions of views on YouTube. In December 2018, however, YouTube began artificially suppressing Live Action’s videos on its platform, after a writer from Future Tense, April Glaser, requested that YouTube modify the search results associated with the word “abortion,” because she disagreed with the content of the resulting pro-life videos. Remarkably, YouTube granted her request, and modified the search results, artificially forcing Live Action’s “Abortion Procedures” video series from one the top search results to well below 150th. Ms.

Glaser's account of these events was later published by Slate, and remains accessible online at the following url: <https://slate.com/technology/2018/12/youtube-search-abortion-results-pro-life.html>.

YouTube's speech-suppressing tactics have since grown to include effectively barring Live Action from placing video advertisements on YouTube. Beginning in May 2019, Live Action began noticing a substantial delay and other complications in YouTube's approval and delivery of Live Action's video ads. Over the course of several weeks, Live Action placed multiple ad orders with YouTube, via the Google Ads platform, for pro-life video campaigns. While some of these ad flights, including "My Body My Choice" and "Life Begins," were approved by YouTube, they were done so with a "limited" status, meaning that some potential targets may not be served with the advertisement. Other Live Action video ads were disapproved by YouTube altogether, for reasons that appear suspect and pretextual, including because at least one video, "Personhood," was deemed to be "unavailable," despite being submitted in the same fashion as other videos.

Despite these obstacles, Live Action diligently sought and secured approval for over a dozen pro-life video ad campaigns; yet, YouTube has still refused to deliver on several of the ads. To date, YouTube has not provided any rational, non-pretextual excuse for the failed deliveries. For example, one YouTube representative conjectured that additional audience targeting metrics were required. However, Live Action's recent ad placements with YouTube utilizing the exact same metrics, and resulting in successful deliveries, reveal this excuse to be meritless. Similarly, Live Action has attempted raising and lowering the target charge-per-mille ("CPM"), based on the advice of the YouTube support team, to no avail. Simply put, there is no logical explanation known or made known to Live Action, leaving the distinct, un rebutted impression that YouTube has refused to deliver the ad services simply because it disagrees with Live Action's purpose and the content and viewpoint of its pro-life messages.

As of the date of this letter, the following ads have been approved by YouTube, but have had no deliveries:

- Ads 1_June 2019
- Ads 2_June 2019
- Ads 3_June 2019
- Ads 5_June 2019
- Ads 6_June 2019
- Ads 7_June 2019
- Ads 8_June 2019
- Ads 9_June 2019
- YT 1 – WWDFIA
- YT 2 – AWSO (Prolife Audience)
- YT 2 – AWSO (Remarketing)
- YT 2 – AWSO (Boomers, 55+)
- YT 2 – AWSO (Mushy Middle)
- Disabilities – Ad 1
- YT 2 – Disabilities – (Prolife Audience)
- YT 2 – Disabilities – (Mushy Middle)
- YT 2 – Disabilities (Boomers, 55+)

As set forth below, YouTube's ongoing efforts to suppress Live Action's pro-life speech violate not only its agreement with Live Action, but California law.

YOUTUBE'S LEGAL LIABILITY

YouTube's unlawful conduct gives rise to several causes of action including, but not limited to, the following: (1) breach of contract and/or quasi contract; (2) violations of the California Unruh Act, Civ. Code § 51(b); and (3) unfair competition in violation of Bus. & Prof. Code § 17200. Monetary damages and injunctive relief are available pursuant to these causes of action, and will be sought in court if this matter cannot be promptly resolved.

Live Action and YouTube entered into an advertising agreement, whereby Live Action agreed to pay YouTube (through the Google Ads platform) in exchange for delivery of video ads on YouTube. In reliance on YouTube's promises, Live Action generated video ad content, and satisfied all of YouTube's various conditions and terms of service posted on its website and on affiliated websites, which satisfaction YouTube has acknowledged by approving the ads. Nevertheless, YouTube failed to deliver the promised advertisements. As a result of this failure to perform, Live Action has suffered monetary losses, including the expense and effort required to generate ad content, and has effectively been banned from an important quasi-public speech forum on a pivotal issue of public interest: abortion. Accordingly, YouTube is in breach of its agreement and promises to YouTube, and is liable for the same.

The California Unruh Civil Rights Act provides that “[a]ll persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, or medical condition are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.” Cal. Civ. Code § 51(b); *see also Koebke v. Bernardo Heights Country Club*, 36 Cal.4th 824, 836 (2005). California courts construe this statutory bar against discrimination broadly to include all discrimination based on arbitrary characteristics. *See, e.g., Marina Point v. Wolfson*, 30 Cal.3d 721, 726 (“Whether the exclusionary policy rests on the alleged undesirable propensities of those of a particular race, nationality, occupation, political affiliation, or age, in this context the Unruh Act protects individuals from arbitrary discrimination”).

Live Action merely seeks access to YouTube's ad placement services on the same terms and conditions as YouTube's other advertisers, including those who advocate political positions YouTube finds more agreeable. Regrettably, YouTube's conduct to date suggests that Live Action cannot expect equal treatment on equal terms from YouTube. YouTube's suppression of Live Action's speech and its pro-life videos has now reached the point of effectively banning Live Action from placing ads on YouTube, based solely on Live Action's pro-life ideological stance and advocacy. Such blatant and arbitrary discrimination is not only bad for business and contrary to an open and public debate on matters of public interest—it violates California law, and entitles Live Action to compensatory and injunctive relief.

California Business & Professions Code § 17200 prohibits acts of unfair competition, including any “unlawful, unfair or fraudulent business act or practice.” YouTube's material

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misrepresentations of the requirements of its ad services—which seem to preclude pro-life ads, or ad placements sought by pro-life advocacy groups—and the speech-suppressing, search-manipulative tactics it employs, constitute unlawful acts or practices under California’s unfair competition law, as they are unethical, oppressive, unscrupulous, and violate the laws stated above. Accordingly, Live Action, and the members of the public, are harmed by YouTube’s manipulations and are entitled to injunctive and restitutionary relief afforded to them by California’s unfair competition law.

The above description of claims is meant to illustrate the broad scope of YouTube’s liability. It is not an exhaustive list of all claims that Live Action has against YouTube. Our investigation and research of this matter is ongoing, and we reserve all legal rights on behalf of our client.

DEMAND

Live Action demands that YouTube cease and desist from the above-described unlawful practices, and take immediate steps to ensure adequate and verifiable delivery of the approved ads listed above. YouTube should contact this office as soon as possible to confirm what steps it is taking to rectify the problem, and how delivery of the ads will be verified.

Should YouTube fail to address this issue or contact our office by **August 30, 2019**, Live Action intends to take all necessary next steps to remedy the harm it has suffered and continues to suffer.

EVIDENCE PRESERVATION DEMAND

Litigation is likely to ensue in this matter. Under governing state and federal laws, YouTube has an obligation to maintain copies of documents, including email and call recordings and other documents relevant to this dispute, as well as all other electronically stored information pertaining to Live Action’s requested ad placements on YouTube. We also request that YouTube immediately initiate a litigation hold for potentially relevant ESI, documents, and tangible things and to act diligently and in good faith to secure and audit compliance with such litigation hold.

YouTube is hereby given notice to immediately take all steps necessary to prevent the destruction, loss, concealment, or alteration of any paper, document, or electronically stored information (“ESI”), including browser activity, and other data or information generated by and/or stored on YouTube’s computers and storage media (e.g., hard disks, thumb drives, backup tapes, cloud storage etc.), and e-mail related to this dispute, including, but not limited to the following: (1) Live Action’s ad placement requests; (2) any investigation conducted by YouTube regarding Live Action; (3) any complaints, claims, allegations, grievances, correspondence, or communications regarding Live Action; (4) all documentation and correspondence regarding YouTube’s failure to approve and/or deliver Live Action advertisements; (5) all documentation and correspondence regarding Live Action; and (6) records of all relevant ID names, manuals, tutorials, written instructions, decompression or reconstruction software, and any and all other information and things necessary to access, view; and (if necessary) reconstruct any ESI.

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Adequate preservation of ESI requires more than simply refraining from efforts to destroy or dispose of such evidence. YouTube must also intervene to prevent loss due to routine operations and employ proper techniques to safeguard all such evidence. YouTube should immediately identify and modify or suspend features of its operations, information systems, and devices that, in routine operations, operate to cause the loss of documents, tangible items, or ESI. Examples of such features and operations include, but are not limited to, purging the contents of e-mail repositories by age, capacity, or other criteria; using data or media wiping, disposal, erasure, or encryption utilities or devices; overwriting, erasing, destroying, or discarding back-up media; re-assigning, re-imaging or disposing of systems, servers, devices, or media; running antivirus or other programs that alter metadata; using metadata stripper utilities; and destroying documents or any ESI by age or other criteria.

YouTube's failure to comply with all statutory document and data preservation obligations that now exist may be severe, including monetary sanctions, terminating sanctions, or other sanctions. Please forward a copy of this letter to all persons and entities possessing or controlling potentially relevant evidence. YouTube's obligation to preserve potentially relevant evidence is required by law.

We look forward to your prompt attention to this matter, and request that you contact this office **no later than August 30, 2019** to confirm compliance with the above demands. If you have any questions about the contents of this letter, please contact me or my associate, Gregory R. Michael.

Regards,

A handwritten signature in blue ink that reads "Harmeet K. Dhillon". The signature is fluid and cursive, with the first name being the most prominent.

Harmeet K. Dhillon