

22-01-00731

NO. \_\_\_\_\_

**THE STATE OF TEXAS**  
**Plaintiff,**

v.

**GOOGLE LLC**  
**Defendant.**

§  
§ Montgomery County - 457th Judicial District Court

**IN THE DISTRICT COURT**

\_\_\_\_\_  
**JUDICIAL DISTRICT**

§  
§  
§  
§  
§

**MONTGOMERY COUNTY, TEXAS**

**PLAINTIFF'S ORIGINAL PETITION**

Plaintiff, the STATE OF TEXAS (“State”), acting by and through the Attorney General KEN PAXTON and on behalf of the public interest, files this petition complaining of Defendant, GOOGLE LLC (“Google”). In this action, the State alleges that Google engaged in false, misleading, and deceptive acts and practices in violation of § 17.46 of the Texas Deceptive Trade Practices—Consumer Protection Act (“DTPA”), Tex. Bus. & Com. Code §§ 17.41–17.63. In support hereof, the State will respectfully show the Court the following:

**NATURE OF THE CASE**

Google hired media companies, including iHeartMedia, to record and broadcast advertisements in the Dallas-Fort Worth (“DFW”) and Houston, Texas markets, promoting the Pixel 4, a smartphone sold by Google. Google provided a script for the Pixel 4 advertisements and demanded that the radio personalities recording the advertisements give a first-hand endorsement of the product. Google knew that the Pixel 4 was not yet on the market and so the radio personalities could not provide an honest endorsement. iHeartMedia recognized Google’s script as misleading, conveyed its concern over the deceptive nature of the advertisements to Google, and sought to have Google provide Pixel 4 phones to the radio personalities recording the advertisements. Google, however, refused to cooperate with the ameliorative efforts suggested by

iHeartMedia to prevent the advertisements from being deceptive. Instead, Google demanded the recording and broadcast of the advertisements using Google's scripted and deceptive wording.

### **DISCOVERY CONTROL PLAN**

1. Plaintiff intends to conduct discovery under Level 3 pursuant to Texas Rule of Civil Procedure 190.4. This case is not subject to the restrictions of expedited discovery under Texas Rule of Civil Procedure 169 because the potential relief sought by the State in this action includes a claim for nonmonetary injunctive relief and claims for monetary relief including penalties, consumer redress, and attorneys' fees in excess of \$1,000,000.

### **DEFENDANT**

2. Defendant, Google LLC is a Delaware limited liability company with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043. Google may be served through its registered agent at the following address: Corporation Service Company, d/b/a CSC – Lawyers Incorporating Service Company, 211 E. 7<sup>th</sup> Street, Suite 620, Austin, TX 78701-3218.

### **JURISDICTION AND VENUE**

3. This enforcement action is brought by Attorney General Ken Paxton, through his Consumer Protection Division, in the name of the STATE OF TEXAS and in the public interest pursuant to the authority granted by § 17.47 of the DTPA upon the grounds that the Defendant has engaged in false, deceptive, and misleading acts practices in the course of trade and commerce as defined in, and declared unlawful by, § 17.46(a) and (b) of the DTPA.

4. In enforcement suits filed pursuant to § 17.47 of the DTPA, the Attorney General is authorized to seek, *inter alia*, civil penalties and redress for consumers and injunctive relief.

5. Venue of this suit lies in Montgomery County, Texas under § 17.47(b) of the DTPA, because transactions made part of this suit occurred in Montgomery County, Texas, and Google and has engaged in trade and commerce in Montgomery County, Texas.

#### **PUBLIC INTEREST**

6. Plaintiff has reason to believe that Defendant has engaged in and will continue to engage in the unlawful practices set forth in this petition.

7. Therefore, the Consumer Protection Division of the Office of the Attorney General of Texas believes and is of the opinion that these proceedings are in the public interest.

#### **TRADE AND COMMERCE**

8. At all times described below, Defendant and its agents has engaged in conduct which constitutes "trade" and "commerce" defined in § 17.45(6) of the DTPA as follows:

“Trade” and “commerce” mean the advertising, offering for sale, sale, lease, or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this state.”

#### **ACTS OF AGENTS**

9. Whenever in this Petition it is alleged that Defendant did any act, it is meant that the named Defendant performed or participated in the act, or the named Defendant’s officers, agents, partners, trustees, or employees performed or participated in the act on behalf of and under the authority of the Defendant.

## SPECIFIC FACTUAL ALLEGATIONS

### **Google hired iHeartMedia to record and broadcast deceptive advertisements promoting the Pixel 4 smartphone.**

10. Google is a global technology company which, in addition to offering a myriad of internet-based services, also sells products, including smartphones, smart-TV devices, speakers and Wi-Fi routers. In late-October 2019 Google began marketing and selling a smartphone known as the Pixel 4, the latest incarnation in Google's line of Pixel smartphones. According to Google, Pixel 4 featured a technology called "Night Sight Mode" which resulted in improved color and lighting for photographs taken in low-light conditions and an enhanced "Google Assistant."

11. iHeartMedia is the single largest owner of radio stations in the United States, with over eight hundred and fifty (850) full-power AM and FM radio stations throughout the country, and seventy-two (72) stations in Texas, alone. iHeartMedia's radio network is known as "iHeartRadio." iHeartMedia employs on-air radio personalities ("iHeartRadio Personalities") who often record advertisements for broadcasting in their respective local markets.

12. Through Google's media buying agent, Google hired iHeartMedia in October 2019 to have its iHeartRadio Personalities, including iHeartRadio Personalities in the DFW and Houston markets, record advertisements for the Pixel 4 and then to broadcast the advertisements on its iHeartMedia radio stations in those markets.

### **Google scripted and then maintained creative control over the Pixel 4 advertisements recorded by and then aired on iHeartMedia.**

13. As is customary in the advertising industry, Google retained creative control of the "ad-reads" and the ability to reject a recording and demand a re-recording if the iHeart Radio Personality did not record a specific advertisement to Google's exacting standards.

14. Google controlled nearly every aspect of the tone, style and content of the ad-read including the speed of the speaker's voice, whether a "musical bed" should be played in the background, and the wording used.

15. Google provided a script for the iHeartRadio Personalities to read during the recording of the advertisements. The script reflected a first-person account of using the Pixel 4. Based verbatim or nearly identically on Google's script, iHeartRadio Personalities touted the Pixel 4's advanced features in various social settings and how the Pixel 4 had personally and meaningfully impacted the iHeartRadio Personality.

16. Google's typical script read as follows:

The only thing I love more than taking the perfect photo? Taking the perfect photo at night.

With Google Pixel 4 both are a cinch.

It's my favorite phone camera out there, especially in low light, thanks to Night Sight Mode.

I've been taking studio-like photos of everything...my son's football game... a meteor shower... a rare spotted owl that landed in my backyard. Pics or it didn't happen, am I right?

Pixel 4 is more than just great pics. It's also great at helping me get stuff done, thanks to the new voice activated Google Assistant that can handle multiple tasks at once.

I can read up on the latest health fads, ask for directions to the nearest goat yoga class (yes, that's a thing), and text the location to mom hands-free ...

17. Any deviation from Google's scripted material had to be approved by Google or its agent. On October 22, 2019, an iHeartMedia employee sent an email to Google's media buying agent requesting permission to have iHeartRadio Personalities "customize certain parts of the

script pending what's relevant to their personal lives (i.e. if they have kids, involved in certain activities/hobbies, etc.).” This slight alteration was approved by Google’s media buying agent.<sup>1</sup>

18. This customization allowed by Google was conveyed by iHeartMedia to its iHeartRadio Personalities in Houston with the caveat that Google is “very strict on saying the script exact.”<sup>2</sup>

**iHeartMedia requested sample Pixel 4s for the iHeartRadio Personalities to use in order to authenticate Google’s requested endorsements; Google refused.**

19. In the days leading up to the release of the Pixel 4 and the corresponding ad-campaign, iHeartMedia, expressed to Google the violative nature of the advertisements as Google required them to be recorded and conveyed the pushback iHeartMedia was receiving from some markets regarding the personal endorsement of a product that had never been seen, touched, or used by the endorser. In an effort to ameliorate this issue, iHeartMedia requested that Google provide sample Pixel 4s for its iHeartRadio Personalities to use. On October 22, 2019, an iHeartMedia employee wrote to Google’s media buying agent:

I know this has been something that we have brought up numerous times, but it’s something that we really need to get to our voicing talent, especially if we want them to use their own first person tense when voicing ... We ... cannot require talent to use “I” in voiced spots when they have not physically used the product (this could become an issue with FCC regulations). .... For this reason, we may receive spots from stations that adjust the tense slightly to remove the personalization of “I.” ... We understand that timeliness would likely not happen prior to launch as that’s only a few days away, but are we able to secure Pixel 4 devices for our voicing talent?<sup>3</sup>

20. Google was aware of the need to provide sample product to endorsers in order to allow the iHeartRadio personalities to honestly endorse the phones. Nevertheless, Google ignored

---

<sup>1</sup> Email from PHD Media to iHeartMedia, Dated October 22, 2019.

<sup>2</sup> Email from iHeartMedia to iHeartRadio Personalities Dated October 22, 2019.

<sup>3</sup> Email from iHeartMedia to PHD Media, dated October 22, 2019.

iHeartMedia's warning, opting instead to move forward with the ad-campaign to coincide with the launch of the Pixel 4. As explained by Google's agent:

Just heard back from [Google] in regards to sending Pixels to your talent. Unfortunately, this is not feasible for [Google] at this time as the product is not on shelves yet. It would take over a week to ship all of these phones out resulting in a loss of airtime.<sup>4</sup>

21. Following Google's refusal, eight (8) iHeartRadio Personalities, each on different radio stations in the DFW and Houston markets, recorded advertisements for the Pixel 4. The advertisements aired Two Thousand Four Hundred and Five (2,405) times between October 28, 2019, and December 2, 2019.

22. The iHeartRadio Personalities used first-person language identical or substantially similar to that in the script described in Paragraph 16.

23. Moreover, some of the iHeartRadio Personalities personalized the advertisements describing how they had used or currently use the Pixel 4. For example, one iHeartRadio Personality in Dallas described how he uses the Pixel 4 to take photographs of his "little dog Baxter," his "nieces and nephews" and all his "friends acting crazy." Another in Houston elaborated on how the Google Assistant helps him "ask for directions to the nearest club or concert venue and text the location to my third ex-wife."

24. At the time the advertisements were recorded, the iHeartRadio Personalities did not own or regularly use Pixel 4 smartphones; had not taken photographs at night with the Pixel 4 and had not used the Pixel 4's features for the variety of personal, social, and familial events that the advertisements represented. The Pixel 4 was not released until October 24, 2019. iHeartMedia began recording the Pixel 4 advertisements the week of October 21, 2019.

---

<sup>4</sup> Email from PHD Media to iHeartMedia, dated October 23, 2019.

**Google's pattern of requiring personal endorsements and refusing to provide sample product continues.**

25. The iHeartMedia ad-campaign for the Pixel 4 in Texas markets ended in December 2019. In late-January 2020, Google again hired iHeartMedia to record and air advertisements promoting the Pixel 4 in five (5) non-Texas markets across the United States. iHeartMedia again reached out to Google and requested sample Pixel 4 smartphones. Google again refused to provide sample Pixel 4s. After Google's refusal, iHeartMedia then offered to buy Pixel 4s from Google. Finally, Google relented, sending iHeartMedia five (5) used Pixel 4s. This continued pattern of behavior demonstrates the blatant disregard Google possesses for true and accurate advertising in the marketing and sale of its products.

**VIOLATIONS OF THE DTPA**

26. Plaintiff incorporates and adopts by reference the allegations contained in each and every preceding paragraph of this petition.

27. Defendant, as alleged above and detailed below, has in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in § 17.46(a) and (b) of the DTPA, including but not limited to:

- a. Causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services, in violation of DTPA § 17.46(b)(2); or
- b. causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another (§ 17.46(b)(3));
- c. representing that goods or services have sponsorship, approval, characteristics, or benefits which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which the person does not (§ 17.46(b)(5));



- d. representing that the goods or services are of a particular standard, quality, or grade, if they are of another (§ 17.46(b)(7));
- e. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed, by failing to adequately disclose that the paid endorsers of the Pixel 4 did not own or possess the Pixel 4 and did not use it in the manner represented in advertisements in violation of DTPA § 17.46(b)(24).

28. Defendant, in addition to and as alleged above, in the course and conduct of trade and commerce, has directly or indirectly engaged in false, misleading, and deceptive acts and practices declared to be unlawful by the DTPA by:

- a. Drafting, paying for, and/or causing to be broadcast advertisements that do not reflect the honest opinions, beliefs or experience of the endorser;<sup>5</sup>
- b. Drafting, paying for, and/or causing to be broadcast advertisements that convey express representations, made by an endorser, that would be deceptive if made directly by the Defendant;
- c. Drafting, paying for, and/or causing to be broadcast advertisements that distort the endorser's experience with a product;

---

<sup>5</sup> See DTPA § 17.46(c)(1) which states, "It is the intent of the legislature that in construing Subsection (a) of this section in suits brought under Section 17.47 of this subchapter the courts to the extent possible will be guided by Subsection (b) of this section and the interpretations given by the Federal Trade Commission and federal courts to Section 5(a)(1) of the Federal Trade Commission Act."

- d. Drafting, paying for, and/or causing to be broadcast advertisements which use a celebrity when it does not have reason to believe that the celebrity endorser subscribes to the views presented;
- e. Drafting, paying for, and/or causing to be broadcast advertisements that represent that an endorser uses the endorsed product, when the endorser is not a bona fide user of the product.

**APPLICATION FOR TEMPORARY INJUNCTION  
AND PERMANENT INJUNCTION**

29. The State believes that Defendant is engaging in, has engaged in, or are about to engage in, acts and practices declared to be unlawful under the DTPA. For example, by continuing to create and broadcast advertisements which contain false endorsements and deceptive information, Defendant is manipulating the marketplace. Customers, who might otherwise make a purchase from one of Google's competitors, are induced through false representations to purchase Google products, instead.

30. Plaintiff believes these proceedings to be in the public interest. Therefore, pursuant to DTPA §17.47(a), Plaintiff requests relief by way of a Temporary Injunction and a Permanent Injunction as set forth in the Prayer.

**WRIT TO ISSUE WITHOUT BOND**

31. The State requests that the Clerk of the Court issue such Writs of Injunction pursuant to any Injunction issued by this Court in conformity with the law, and that same be issued and be effective without the execution and filing of a bond as Plaintiff, the State of Texas, is exempt from such bonds under § 17.47(b) of the Texas Business and Commerce Code.

### **TRIAL BY JURY**

32. The State herein requests a jury trial and tenders the jury fee to the Montgomery County District Clerk's office, pursuant to Rule 216 of the Texas Rules of Civil Procedure and under § 51.604 of the Texas Government Code.

### **CONDITIONS PRECEDENT**

33. All conditions precedent to State's claims for relief have been performed or have occurred.

### **PRAYER**

34. The State prays that Google be cited according to law to appear and answer herein and that after due notice and hearing a temporary injunction be issued, and that upon final hearing a permanent injunction be issued, restraining and enjoining Google, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with Google who receive actual notice of the injunction by personal service or otherwise from engaging in false, misleading, or deceptive acts and practices declared to be unlawful by the DTPA, including but not limited to:

- a. Drafting, paying for, and/or causing to be broadcast advertisements that do not reflect the honest opinions, beliefs or experience of the endorser;
- b. Drafting, paying for, and/or causing to be broadcast advertisements that convey express representations, made by an endorser, that would be deceptive if made directly by Google;
- c. Drafting, paying for, and/or causing to be broadcast advertisements that distort the endorser's experience with a product;

- d. Drafting, paying for, and/or causing to be broadcast advertisements which use a celebrity when it does not have reason to believe that the celebrity endorser subscribes to the views presented;
- e. Making any misrepresentation, expressly or by implication, about the status of any endorser or person providing a review of a product or service;
- f. Drafting, paying for, or causing to be broadcast any advertisement that represents, expressly or by implication, that an endorser used or uses a product or service, when the endorser is not a bona fide user of the product or service;
- g. Causing confusion or misunderstanding as to the source, sponsorship, approval or certification of goods or services; or
- h. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed.

35. Plaintiff further prays that this Court will:

- a. Order Defendant to pay civil penalties not to exceed \$10,000 per violation of the DTPA to the State of Texas;
- b. Order Defendant to pay pre-judgment and post-judgment interest on all money awards as provided by law; and
- c. Grant a Judgment against the Defendant and order the Defendant to pay the State's attorneys' fees and costs of Court, as provided by the laws of the State of Texas, including but not limited to, Tex. Gov't Code § 402.006(c).

36. Plaintiff prays that the State receive such other and further relief to which it is justly entitled.

Respectfully submitted,

KEN PAXTON  
Attorney General of Texas

BRENT WEBSTER  
First Assistant Attorney General

GRANT DORFMAN  
Deputy First Assistant Attorney General

SHAWN E. COWLES  
Deputy Attorney General for Civil Litigation

STEVEN ROBINSON  
Division Chief, Consumer Protection Division

*/s/Taylor M. Hubbard*

---

TAYLOR M. HUBBARD  
Assistant Attorney General  
State Bar No. 24124803  
taylor.hubbard@oag.texas.gov  
Office of the Attorney General of Texas  
Consumer Protection Division  
P. O. Box 12548, MC - 010  
Austin, Texas 78711-2548  
Telephone: 512-936-1308  
Fax: 512-473-8301

RICK BERLIN  
Assistant Attorney General  
State Bar No. 24055161  
rick.berlin@oag.texas.gov  
Office of the Attorney General of Texas  
Consumer Protection Division  
808 Travis Street, Suite 1520  
Houston, Texas 77002  
Telephone: 713-223-5886  
Fax: 713-223-5821

**ATTORNEYS FOR THE STATE OF TEXAS**