

1 Andrew D. Skale (SBN 211096)
askale@mintz.com
2 Justin S. Nahama (SBN 281087)
jsnahama@mintz.com
3 MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO P.C.
3580 Carmel Mountain Road, Suite 300
4 San Diego, CA 92130
Telephone: (858) 314-1500
5 Facsimile: (858) 314-1501
6 Attorneys for Plaintiff
HANGINOUT, INC.
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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 HANGINOUT, INC., a Delaware
corporation,

12 Plaintiff,

13 vs.

14 GOOGLE, INC., a Delaware
corporation,

15 Defendant.
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Case No. '13CV2811 JAH NLS

COMPLAINT FOR:

- 1) **TRADEMARK INFRINGEMENT;**
- 2) **FEDERAL UNFAIR
COMPETITION; AND**
- 3) **STATUTORY AND COMMON
LAW UNFAIR COMPETITION**

[JURY DEMANDED]

18 Hanginout, Inc. (“Hanginout” or “Plaintiff”) brings this suit for trademark
19 infringement, federal unfair competition, and common law unfair competition against
20 Google, Inc. (“Google” or “Defendant”) and alleges as follows:

21 **THE PARTIES**

22 1. Hanginout is a Delaware corporation with its principal place of business
23 at 2712 Jefferson Street, Carlsbad, CA 92008.

24 2. Upon information and belief, Google is a Delaware corporation with its
25 principal place of business at 1600 Amphitheatre Parkway, Mountain View, CA
26 94043.
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1 10. Hanginout was formally founded in 2011, but developed its products at
2 least as early as approximately 2009.

3 11. Hanginout developed an interactive video-response platform with real-
4 time analytic solutions under the brand HANGINOUT. The platform analyzes
5 website demographics, usage, and audience interests. The platform enable users to
6 more effective develop, promote, and sell their brands by engaging, educating, and
7 entertaining their customers.

8 12. The HANGINOUT application is a novel social-media application that
9 gives users the ability to easily build and publish personal video profiles
10 complimented with a video publishing tool to create mobile video content.

11 13. Utilizing the HANGINOUT application, a user can explore, find and
12 follow interesting people, celebrities and personalities, ask them questions and
13 receive instant personal video responses.

14 14. The HANGINOUT application also gives users the unique ability to
15 field questions from anyone in the application, record and publish responses, and
16 share them from anywhere at any time.

17 **Federal Trademark Applications for Hanginout**

18 15. Given the importance of the brand HANGINOUT, Hanginout filed for
19 U.S. trademark applications on July 12, 2012.

20 16. The U.S. Patent and Trademark Office assigned Hanginout Application
21 Serial No. 85674801 (attached hereto as **EXHIBIT A**) for the HANGINOUT word
22 mark and Application Serial No. 85674799 (attached hereto as **EXHIBIT B**) for the
23 HANGINOUT design mark (collectively HANGINOUT marks).

24 17. The pending trademark applications for the HANGINOUT marks covers
25 the following goods and services: “Computer application software for mobile devices
26 for sharing information, photos, audio and video content in the field of
27 telecommunications and social networking services” in International Class (“IC”) 009
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1 and “Telecommunications services, namely, providing online and telecommunication
2 facilities for real-time and on-demand interaction between and among users of
3 computers, mobile and handheld computers, and wired and wireless communication
4 devices; audio, text and video broadcasting services over the Internet or other
5 communications networks, namely, electronically transmitting audio clips, text and
6 video clips; electronic messaging services enabling individuals to send and receive
7 messages via email, instant messaging or a website on the Internet in the field of
8 general interest; providing online forums for communication on topics of general
9 interest; providing an online forum for users to share information, photos, audio and
10 video content to engage in social networking” in IC 038.

11 **Google Launches Google Hangouts**

12 18. On information on belief, on May 15, 2013, Google officially launched
13 its new messaging platform titled “Hangouts.”

14 19. On information and belief, Google’s “Hangouts” is a social-media based
15 video-chat service that enables both one-on-one and group chats. Hangouts can be
16 accessed through the Gmail or Google+ websites, or through mobile applications
17 available for Android and iOS.

18 20. On April 26, 2013, Google filed an application to register the mark
19 “Hangouts,” Application Serial No. 85916316.

20 21. Google’s “Hangouts” mark is nearly identical to Hanginout’s
21 HANGINOUT mark in both appearance and sound.

22 22. On information and belief, mirroring Hanginout’s products, Google’s
23 “Hangouts” trademark application sought to cover nearly identical mobile-video
24 based communication products including:

- 25 a. “Downloadable software for publishing and sharing digital media and
26 information via global computer and communication network; instant
27 messaging software; communications software for electronically
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1 exchanging voice, data, video and graphics accessible via computer,
2 mobile, wireless, and telecommunication networks; computer software
3 for processing images, graphics, audio, video, and text; computer
4 software development tools; computer software for use in developing
5 computer programs; video and audio conferencing software” (IC 009);

6 b. “Telecommunications services, namely, electronic transmission of data
7 and digital messaging via global computer and communication
8 networks; providing online forums, chat rooms and electronic bulletin
9 boards for transmission of messages among users in the field of general
10 interest; digital multimedia broadcasting services over the Internet,
11 namely, posting, displaying, and electronically transmitting data, audio
12 and video; providing access to computer databases in the fields of
13 general interest; instant messaging services; voice over ip (VOIP)
14 services; video and audio conferencing services conducted via the web,
15 telephone, and mobile devices; communications by computer terminals;
16 local and long distance telephone services; mobile telephone
17 communication services” (IC 038)

18 c. “Entertainment services, namely, providing temporary use of non-
19 downloadable interactive multiplayer and single player games played via
20 global computer and communication networks” (IC 041);

21 d. “Providing temporary use of on-line non-downloadable software for
22 publishing and sharing digital media and information via global
23 computer and communication networks; Providing temporary use of on-
24 line non-downloadable software development tools; Providing
25 temporary use of on-line non-downloadable software for use as an
26 application programming interface (API); Providing a web hosting
27 platform for others for organizing and conducting meetings, social
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1 events and interactive text, audio, and video discussions; Providing an
2 on-line network environment that features technology that enables users
3 to share data; computer software consulting; application service provider
4 (ASP) services featuring computer software for transmission of text,
5 data, images, audio, and video by wireless communication networks and
6 the Internet; application service provider (ASP) services featuring
7 computer software for electronic messaging and wireless digital
8 messaging” (IC 042).

9 23. On July 30, 2013, the U.S. Patent and Trademark Office suspended
10 Google’s Hangout application because of the HANGINOUT mark. The suspension
11 notice is attached hereto as **EXHIBIT C**.

12 24. The suspension notice concluded that if the HANGINOUT mark
13 registers, Google may be prevented from receiving a trademark registration for
14 “Hangouts” based on likelihood of confusion with the HANGINOUT mark.

15 25. Google continues to aggressively market its Hangouts product.

16 26. Hanginout is informed and believes, and based thereon alleges, that
17 Google has advertised Google’s Hangouts to replicate Hanginout’s products’
18 capabilities. For example, Google has described its product capabilities as:

- 19 a. “Bring your conversations to life with photos, email, and video calls for
20 free.”
 - 21 b. “Turn any Hangout into a live video call with up to 10 friends or simply
22 search for a contact to start a voice call from your computer.”
 - 23 c. “Hangouts work the same everywhere- computers, Android, and Apple
24 devices – so nobody gets left out.”
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1 **THIRD CAUSE OF ACTION**
2 **STATUTORY (Cal. B&P 17200 *et seq.*) AND COMMON LAW UNFAIR**
3 **COMPETITION**

4 41. Hanginout incorporates by reference all other paragraphs contained in
5 this Complaint.

6 42. Google has committed acts of unfair competition, including the practices
7 and conduct referred to in this Complaint. These actions constitute unlawful, unfair
8 or fraudulent business acts or practices, and/or unfair, deceptive, untrue or misleading
9 business practices. The actions were done in connection with sales or advertising.

10 43. As a direct and proximate result of Google's wrongful acts, Hanginout
11 has suffered and continues to suffer substantial pecuniary losses and irreparable
12 injury to its business reputation and goodwill. As such, Hanginout's remedy at law is
13 not adequate to compensate for injuries inflicted by Google. Accordingly, Hanginout
14 is entitled to temporary, preliminary and permanent injunctive relief.

15 44. By reason of such wrongful acts, Hanginout is and was, and will be in
16 the future, deprived of, among other damages, the profits and benefits of business
17 relationships, agreements, and transactions with various third parties and/or
18 prospective business relationship. Google has wrongfully obtained profit and
19 benefits instead of Hanginout. Hanginout is entitled to compensatory damages and
20 disgorgement of Google's said profits, in an amount to be proven at trial.

21 45. Such acts, as alleged above, were done with malice, oppression and/or
22 fraud, thus entitling Hanginout to exemplary and punitive damages.

23 WHEREFORE, Plaintiff demands the following relief for each cause of action
24 unless otherwise noted:

- 25 1. A judgment in favor of Hanginout and against Google on all counts;
26 2. A preliminary and permanent injunction from trademark infringement
27 and unfair business practices by Google;

- 1 3. Damages in an amount to be determined at trial;
- 2 4. Google's unjust enrichment and/or disgorgement of Google's profits;
- 3 5. Trebling of damages for willful infringement and unfair competition;
- 4 5. Exemplary and punitive damages (except as to relief for Cal. B&P
- 5 17200 *et seq.*);
- 6 6. Pre-judgment interest at the legally allowable rate on all amounts owed;
- 7 8. Costs and expenses;
- 8 9 Attorney's fees and other fees under, among others, 15 U.S.C. § 1117(a)
- 9 *et seq.* as an exceptional case;
- 10 10. Restitution; and
- 11 11. Such other and further relief as this Court may deem just and proper.

12 Dated: November 26, 2013

MINTZ LEVIN COHN FERRIS GLOVSKY
AND POPEO PC

14
15 By /s/Andrew S. Skale, Esq.
16 Andrew D. Skale
17 Justin S. Nahama

18 Attorneys for Plaintiff
19 HANGINOUT, INC.
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as to all issues that are so triable.

Dated: November 26, 2013

MINTZ LEVIN COHN FERRIS GLOVSKY
AND POPEO PC

By /s/Andrew S. Skale, Esq.
Andrew D. Skale
Justin S. Nahama

Attorneys for Plaintiff
HANGINOUT, INC.

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