IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BOOTLER, LLC d/b/a FOODBOSS,	
Plaintiff,	
v.	Case No. 1:24-cv-3660
GOOGLE, LLC,	
Defendant.	**JURY TRIAL DEMANDED**

COMPLAINT FOR PATENT INFRINGEMENT AND MONOPOLIZATION

Plaintiff Bootler, LLC d/b/a FoodBoss ("Plaintiff" or "FoodBoss"), by and through its undersigned counsel, files this Complaint for Patent Infringement, Monopolization, and Restraint of Trade ("Complaint") against Defendant Google, LLC ("Defendant" or "Google") and, on information and belief, alleges as follows:

NATURE OF THE ACTION

1. This is a patent infringement action for infringement of U.S. Patent Nos. 10,445,683 (the "'683 patent") and 11,037,090 (the "'090 patent"), continuation of application no. 15/340,432 which is now the '683 patent (collectively, the "Asserted Patents") under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq*.

2. Additionally, this is an action under Section 4 of the Clayton Act for Google's violations of Sections 1 and 2 of the Sherman Act, including for entering into licensing agreements with restaurants and delivery companies to provide its Comparative Restaurant Delivery Search platform to those restaurants and delivery companies at a predatory price and for

1

leveraging its monopoly in general search services to deny FoodBoss potential customers and unfairly preference Google's competing product.

PARTIES

3.   FoodBoss is organized and existing under the laws of the State of Delaware, and has its principal place of business at 351 West Hubbard Street, Suite 708, Chicago, Illinois 60654.

4.   FoodBoss is informed and believes, and on that basis alleges, that Google is a corporation organized under the laws of the State of Delaware, with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043.

5.   Google maintains regular and established places of business in this District, including offices at 320 N. Morgan Street, Suite 600, Chicago, Illinois 60607 and 210 Carpenter Avenue, Chicago, Illinois 60607.

JURISDICTION AND VENUE

6.   This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code and for damages under Section 4 of the Clayton Act, 15 U.S.C. § 15, for Google's violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2.

7.   This Court has jurisdiction over the subject matter of this claim under 28 U.S.C. §§ 1331, 1337, and 1338(a).

8.   Upon information and belief, Google is subject to personal jurisdiction in this Court because Google maintains its principal place of business and therefore resides in this judicial district and is currently doing and has done substantial business in this judicial district, and it is reasonable and fair to subject Google to the jurisdiction in this judicial district. Google

-2-

has committed acts of patent infringement within the United States and more particularly, within this judicial district.

9.   Venue in this judicial district is proper under 28 U.S.C. §§ 1391(b) and (c) and/or 1400(b). Google maintains a regular and established place of business in the state of Illinois and the Northern District of Illinois, specifically, including offices at 320 N. Morgan Street, Suite 600, Chicago, Illinois 60607 and 210 Carpenter Avenue, Chicago, Illinois 60607.

10.   This Court has personal jurisdiction over Google because Google has transacted and is transacting business in the Northern District of Illinois that includes, but is not limited to, doing substantial business, directly or through intermediaries, including regularly soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in the State of Illinois and in this judicial district that practice the subject matter claimed in the Asserted Patents involved in this action.

BACKGROUND FOR PATENT CLAIMS

11.   FoodBoss is the owner, by assignment, of the entire right, title and interest in (a) the '683 patent, entitled METHODS, SYSTEMS AND PROGRAM PRODUCTS FOR AGGREGATING AND PRESENTING SERVICE DATA FROM MULTIPLE SOURCES OVER A NETWORK, which issued on October 15, 2019; and (b) the '090 patent, entitled METHODS, SYSTEMS AND PROGRAM PRODUCTS FOR AGGREGATING AND PRESENTING SERVICE DATA FROM MULTIPLE SOURCES OVER A NETWORK, which issued on June 15, 2021.

12.   The Asserted Patents resulted from the pioneering efforts of FoodBoss in the area of online food and/or beverage delivery services. These efforts resulted in the development of an apparatus, system and method for providing a searchable aggregated data structure for a networked application for aggregating and presenting data from multiple sources related to food and/or beverage delivery and pickup services over a network.

13.   At the time of FoodBoss's pioneering efforts, even though a growing number of food and/or beverage delivery and pickup services were available online, none of them offered delivery and or pickup from the same restaurants and limited the user/consumer to only the restaurant options provided by a particular delivery/pickup service. At that time, there were also significant price discrepancies among order delivery/pickup services (*e.g.*, how much a given order may cost a user/consumer to have the same menu items from the same restaurant delivered/picked up through different delivery/pickup services). (*See*, *e.g.*, '683 patent at 3:25-37.)

14.   While the then-existing solutions provided online food/beverage delivery services, there was no convenient way for a user/consumer to search and compare aggregated restaurants and some or all of their menu items from multiple service sources primarily because (a) data from different delivery services was provided in different respective formats and was not created/stored with the goal of compatibility; and (b) variations in the menu items offered among services made it impossible for a user/consumer to compare two items across delivery services. (*See*, *e.g.*, '683 patent at 3:34-47.)

15.   The '683 patent describes a computer-implemented apparatus, system and method for providing a searchable aggregated data structure for a networked application having a data acquisition and processing module for aggregating and presenting data from multiple sources related to food or beverage delivery services over a network. A true and correct copy of the '683 patent is attached hereto as **Exhibit A** and is incorporated by reference herein. The '683 patent is valid and in force.
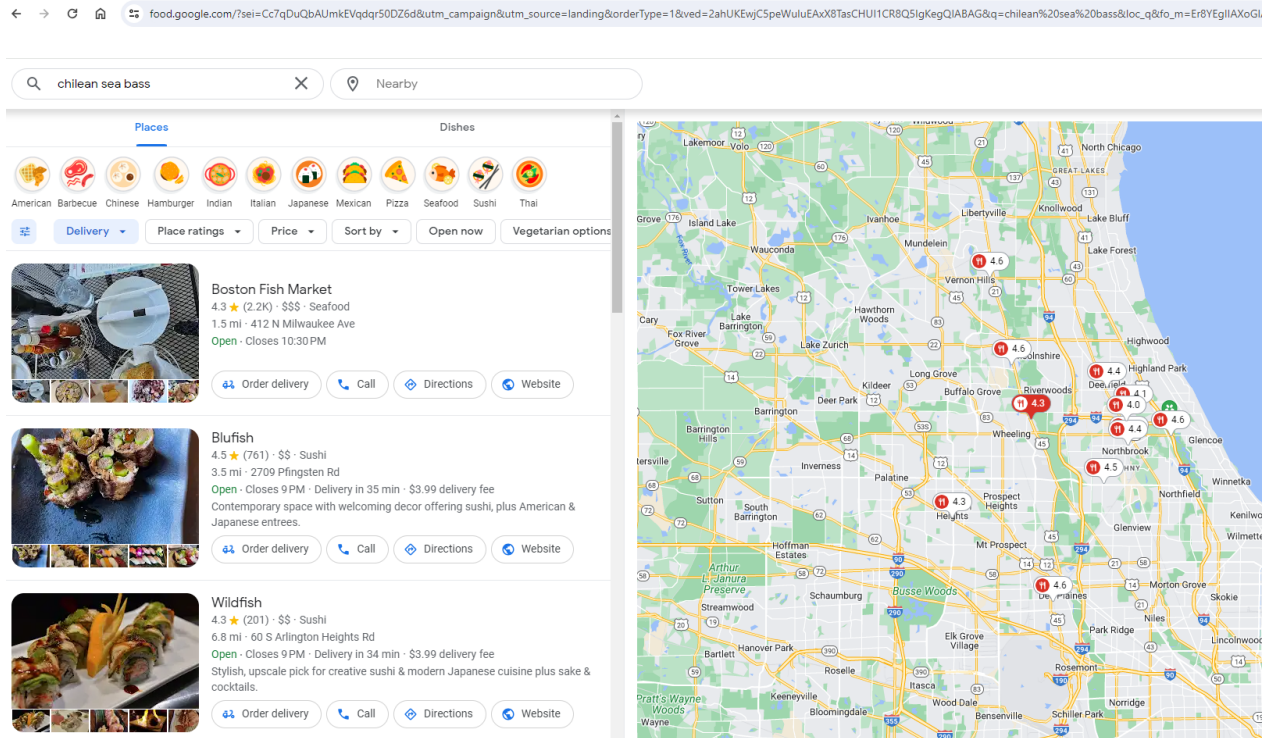
16.   The '090 patent describes a computer-implemented apparatus, system and method for providing a searchable aggregated data structure for a networked application having a data

-4-

acquisition and processing module for aggregating and presenting data from multiple sources related to food or beverage delivery services over a network. A true and correct copy of the '090 patent is attached hereto as **Exhibit B** and is incorporated by reference herein. The '090 patent is valid and in force. **Exhibit B** also includes a Certificate of Correction issued by the U.S. Patent and Trademark Office on April 23, 2024.

17.   Google makes, uses, offers to sell, and/or sells within the United States and/or imports into the United States instrumentalities embodying the inventions claimed in the Asserted Patents, including, but not limited to products and/or services related to searching and/or ordering end-to-end food orders and processing such orders for fulfillment with restaurants and/or delivery services within a network as disclosed and claimed in the Asserted Patents, through Google Food (*i.e.*, https://food.google.com, or Google pages accessible at google.com in response to searches on Google's internet search engine for restaurant and/or food delivery services) and its associated developer pages (the "Accused Products/Services").

18.   Restaurants and/or delivery services are able to feature their menus and services on Google Food at least through the instructions provided by Google Food on its developer pages, found at https://developers.google.com/actions-center/verticals/ordering/e2e/overview and its various sublinks (the "Google Food Developer Site"). The "Overview and Eligibility" page of the Google Food Developer Site is attached as **Exhibit C**.

19.   Google Food allows a consumer to search menus for delivery from its member restaurants in a given location, including by common menu item, and with an "Order Delivery" button, as shown here for "Chilean sea bass" (accessed on March 21, 2024):

-6-

20.   Google Food also groups restaurants by restaurant type, as shown here for

"hamburger" (accessed on March 21, 2024):
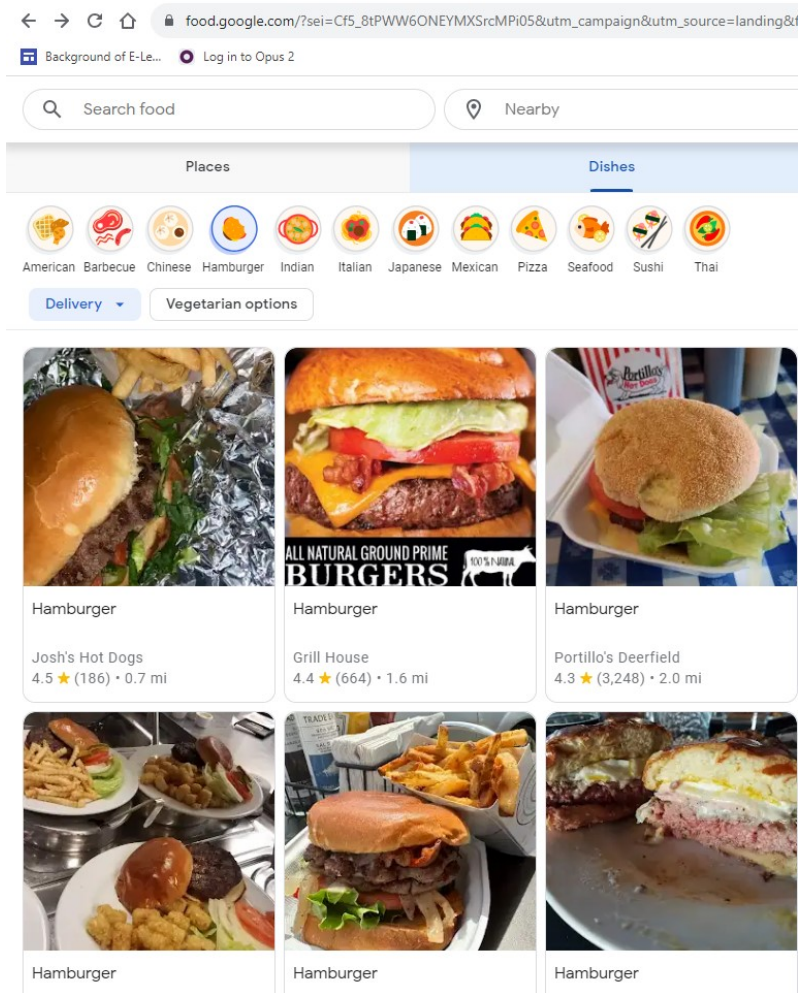
21.   A consumer can access a particular restaurant menu and order delivery directly through Google Food, as shown here for Portillo's in Deerfield, Illinois (accessed on March 21, 2024):
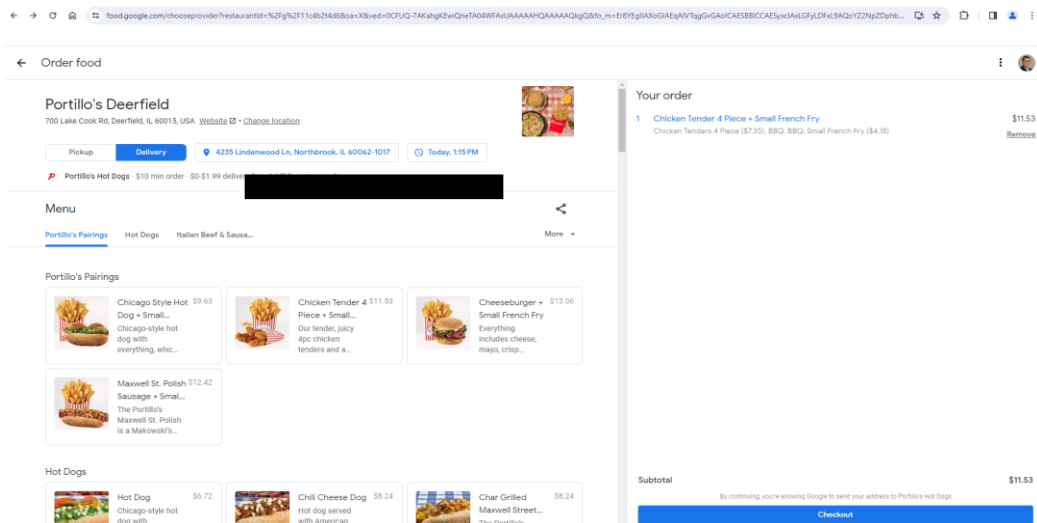
Exemplary Infringement of the '683 Patent

22.   For example, Google's infringement of claim 1 of the '683 patent is evident because Google Food is a "computer-implemented method for providing a searchable aggregated data structure for a networked application." ('683 patent, claim 1, Preamble.)

23.   The Google Food Developer Site (https://developers.google.com/actions-center/verticals/ordering/e2e/overview) details all the methods and processes by which Google Food acquires food and/or beverage delivery service data, including under the heading "Integration":

-9-

The method embodied by Google Food therefore comprises "acquiring, by a processor, source data from a plurality of delivery service computers associated with a plurality of food or beverage delivery services over a communication network, the acquired source data being in a plurality of formats, where the acquired source data includes, for each one of the plurality of food or beverage delivery services, data representing multiple source menu items provided by multiple restaurants" as required by claim 1 of the '683 patent.

24.   The Google Food Developer Site (https://developers.google.com/actions-center/verticals/ordering/e2e/overview) states: "For your food business to connect with Google's Ordering End-to-End support, you must integrate with Google systems and APIs" (accessed on March 21, 2024):
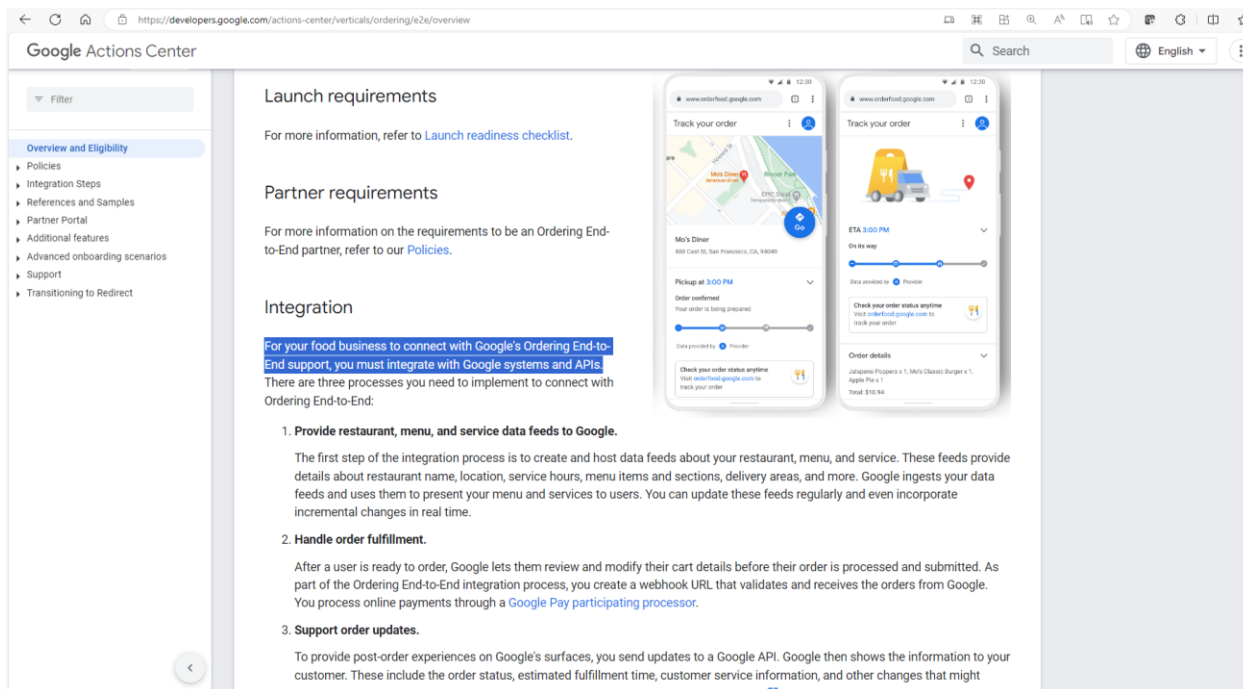
25.   Google Food therefore meets the limitation of claim 1 of the '683 patent of "employing an application programming interface (API) to interface with the plurality of delivery service computers; or scraping data from the plurality of delivery service computers."

26.   The Google Food Developer Site (https://developers.google.com/actions-center/verticals/ordering/e2e/overview) states: "The first step of the integration process is to create and host data feeds about your restaurant, menu, and service. These feeds provide details about restaurant name, location, service hours, menu items and sections, delivery areas, and more. Google ingests your data feeds and uses them to present your menu and services to users. You can update these feeds regularly and even incorporate incremental changes in real time:"

27.   The data ingested by Google is mapped according to a specific data mapping process, as the Google Food Developer Site (https://developers.google.com/actions-center/verticals/ordering/e2e/overview) states: "These feeds use a relational inventory schema to supply Google with up-to-date information about a restaurant, the services it provides, and the items in its menu.":
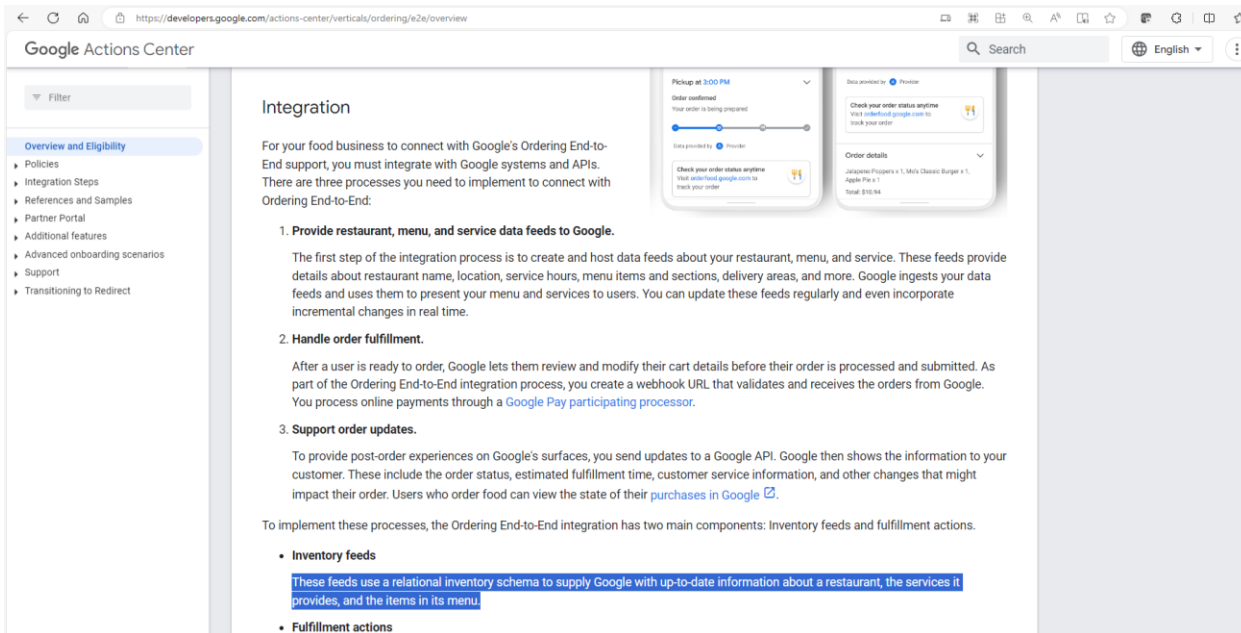
28.   Google Food therefore meets the limitation of claim 1 of the '683 patent of "mapping, by the processor, the acquired source data according to a predetermined data format to provide formatted data, wherein said mapping comprises aliasing fields of the acquired data from formats used by the plurality of delivery service computers to respective fields of the predetermined data format." (*See, e.g.*, https://developers.google.com/actions-center/verticals/ordering/e2e/reference/feeds/relational-inventory-schema.)

29.   The Google Food Developer Site (https://developers.google.com/actions-center/verticals/ordering/e2e/overview) describes linking its data by restaurant, service and menu items: "Inventory feeds are how a user discovers and orders from a desired restaurant. The relational inventory schema defines the structure of your Ordering End-to-End inventory. An Ordering End-to-End inventory feed consists of the following main entities:

Restaurant

Service

Menu"":
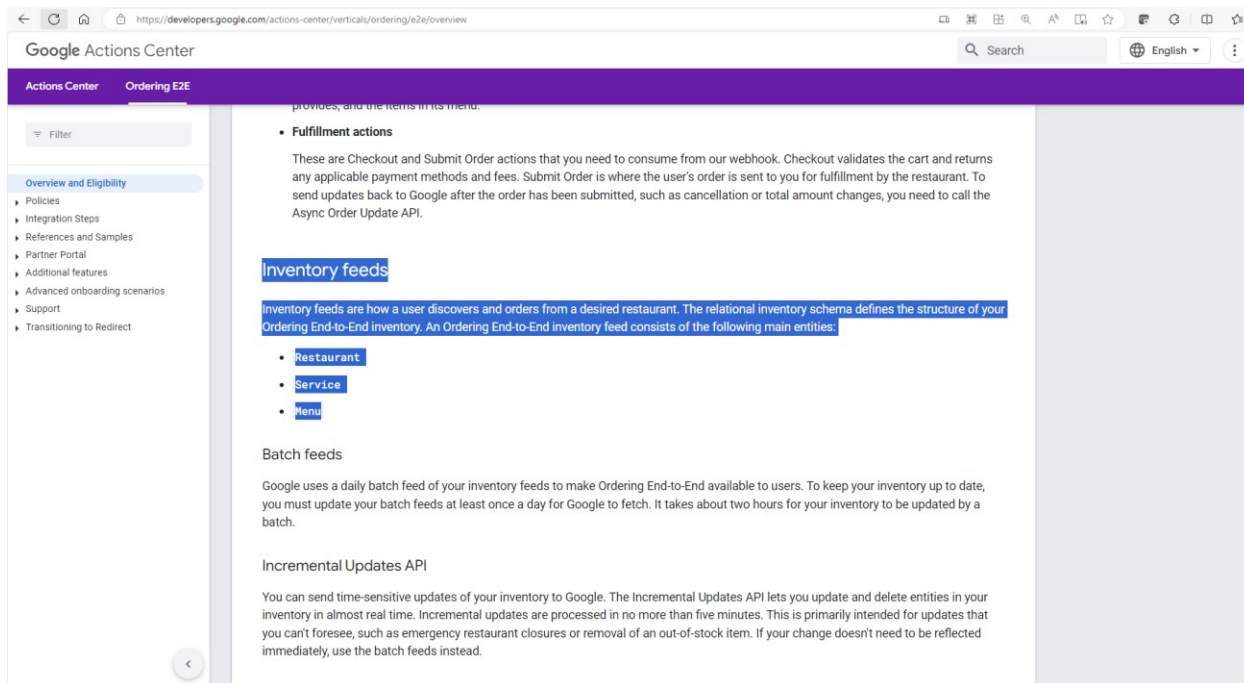
30.   Google Food therefore meets the limitation of claim 1 of the '683 patent of "linking, by the processor, the formatted data to common restaurants based on restaurant identifier data such that at least one food or beverage delivery service is linked to each common restaurant and its source menu items."

31.   Google Food permits "identifying by the processor, common menu items among the source menu items in the formatted data, and, for each identified common menu item, associating the source menu items with a master menu item," as required by claim 1 of the '683 patent, as demonstrated in Paragraphs 19 and 20 hereof above.

32.   As demonstrated above in Paragraphs 19 through 30, the ingested data is combined into a master data set, as required by the limitation of claim 1 of the '683 patent, "combining, by the processor, the linked data and the master menu items into a master data set."

33.   As demonstrated above in Paragraphs 19 through 30, the ingested data is searchable, as required by the limitation of claim 1 of the '683 patent, "importing the master data set and the restaurant identifier data into the searchable aggregated data structure."

34.   As demonstrated above in Paragraphs 19 through 30, the ingested data is searchable, as required by the limitation of claim 1 of the '683 patent, and Google "store[s] the searchable aggregated data structure in a database accessible to the processor."

35.   An exemplary claim chart demonstrating infringement of the claims of the '683 patent is attached as **Exhibit D**.

36.   Upon information and belief, Google has directly infringed, and continues to directly infringe, one or more claims of the '683 patent in the United States, including at least claim 1, literally and/or under the doctrine of equivalents, by making, using, offering for sale,

-13-

selling, and/or importing the Accused Products/Services, that embodies the inventions of and is within the scope of one or more claims of the '683 patent.

37. Upon information and belief, end-users using the Accused Products/Services in accordance with Google's instructions directly infringe the method claims of the '683 patent in the United States, including at least claim 1, and therefore Google indirectly infringes at least claim 1 in violation of 35 U.S.C. § 271.

38. Upon information and belief, the Accused Products/Services as described above also constitute "[a] system for providing an interactive food ordering service accessible by a user computing device," of claim 11 of the '683 patent, and Google, through Google Food described above, meets every limitation of, and directly and indirectly infringes, claim 11 in violation of 35 U.S.C. § 271.

39. Upon information and belief, the Accused Products/Services as described above also constitute "an apparatus for providing a searchable aggregated data structure for a networked application," of claim 14 of the '683 patent, and Google, through Google Food described above, meets every limitation of, and directly and indirectly infringes, claim 14 in violation of 35 U.S.C. § 271.

Exemplary Infringement of the '090 Patent

40. For example, Google's infringement of claim 12 of the '090 patent is evident because Google Food as described above in Paragraphs 19 through 34 is a "system for providing an interactive food or beverage ordering service accessible by a user computing device." ('090 patent, claim 12, Preamble.)

41. The Google Food Developer Site (https://developers.google.com/actions-center/verticals/ordering/e2e/overview) details all the methods and processes by which Google

-14-

Foods acquires food and/or beverage delivery service data, including under the heading "Integration":

The system embodied by Google Foods therefore meets the limitation of claim 12 of the '090 patent that requires "a data acquisition and processing module comprising a processor, memory, and computer-readable instructions stored on a non-transitory medium that are executable by the processor to acquire source data from a plurality of delivery service computers associated with a plurality of food or beverage delivery services and provide a master data set of formatted data, wherein the master data set includes, for each of the plurality of food or beverage delivery services, data representing multiple menu items linked to identification data uniquely identifying sources of the menu items delivered by the plurality of food or beverage delivery services."

42.   The Google Food Developer Site (https://developers.google.com/actions-center/verticals/ordering/e2e/overview) describes a location and manner for food and/or

-15-

beverage delivery services to upload their menus and information, as described above, and therefore meets the limitation: "a website database accessible to the processor and configured to receive updated data from the master data set, the master data set representing the multiple menu items provided by one or more of the plurality of food or beverage delivery services."

43.   As described above, the Google Food Developer Site (https://developers.google.com/actions-center/verticals/ordering/e2e/overview) describes a data acquisition and processing module that includes an API (*i.e.*, an "application programming interface"):
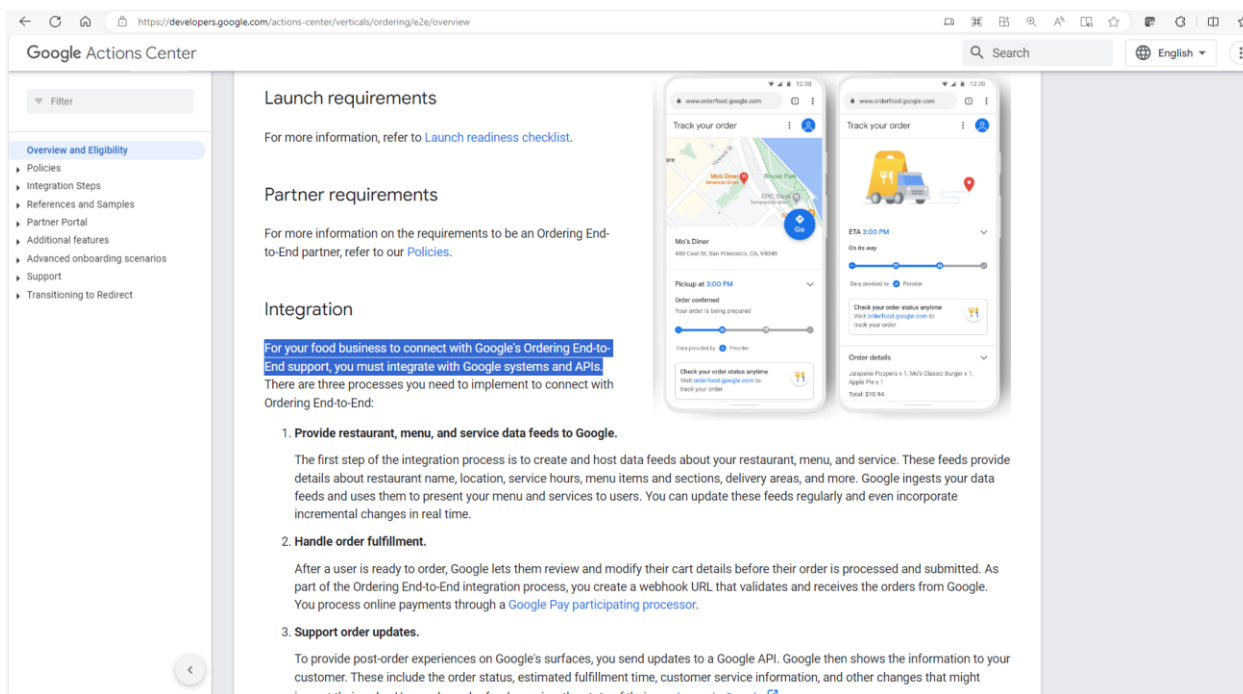
44.   Google therefore meets the limitation of claim 12 of the '090 patent "wherein the data acquisition and processing module further comprises a plurality of modules in the form of a computer-readable instructions stored on a non-transitory medium that are executable by the processor including: an application programming interface configured to interface the data

acquisition and processing module with the plurality of delivery service computers[; or][1] an

extraction module configured to extract the source data from the plurality of delivery service

computers as raw files by scraping data from one or more of the plurality of delivery service

computers."

45.   The Google Food Developer Site (https://developers.google.com/actions-

center/verticals/ordering/e2e/overview) states: "The first step of the integration process is to

create and host data feeds about your restaurant, menu, and service. These feeds provide details

about restaurant name, location, service hours, menu items and sections, delivery areas, and

more. Google ingests your data feeds and uses them to present your menu and services to users.

You can update these feeds regularly and even incorporate incremental changes in real time.":

46.   The data ingested by Google is mapped according to a specific data mapping

process, as the Google Food Developer Site (https://developers.google.com/actions-

---

[1] A semicolon and "or," inadvertently omitted by error of the U.S. Patent and Trademark Office, has been corrected and added to this claim via the Certificate of Correction (*see* **Exhibit B**).

center/verticals/ordering/e2e/overview) states: "These feeds use a relational inventory schema to supply Google with up-to-date information about a restaurant, the services it provides, and the items in its menu.":
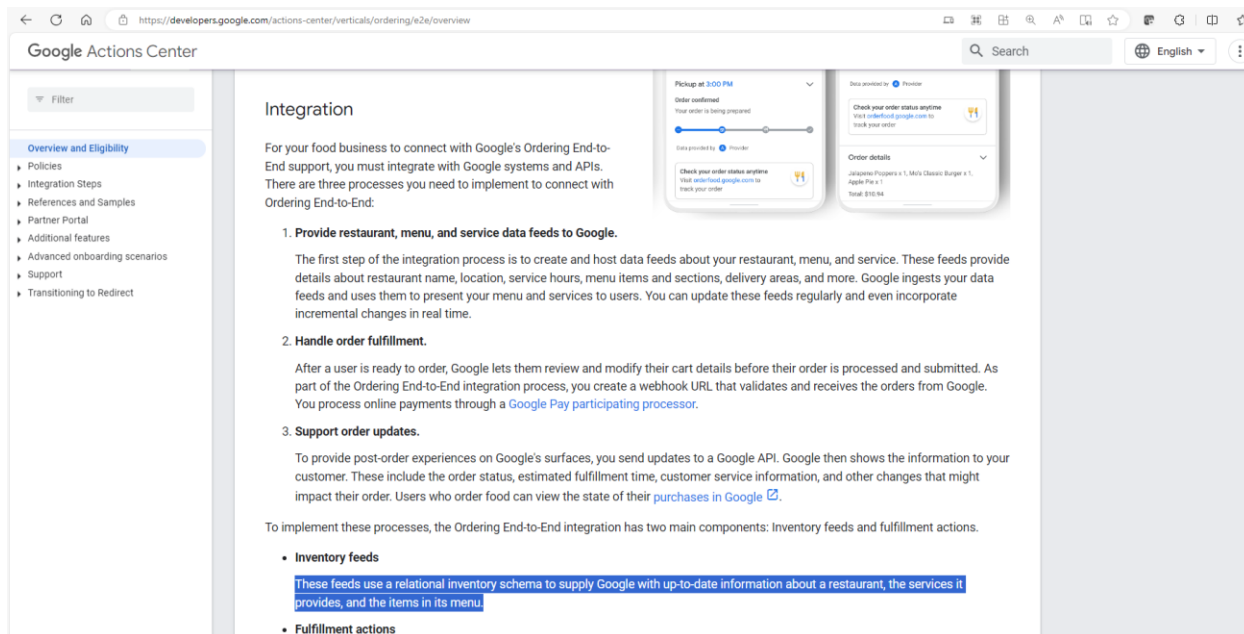
47.   Google Food therefore meets the limitation of claim 12 of the '090 patent of "a mapping module configured to convert the raw files to a standardized format to provide formatted data."

48.   The Google Food Developer Site (https://developers.google.com/actions-center/verticals/ordering/e2e/overview) describes linking its data by restaurant, service and menu items: "Inventory feeds are how a user discovers and orders from a desired restaurant. The relational inventory schema defines the structure of your Ordering End-to-End inventory. An Ordering End-to-End inventory feed consists of the following main entities:

Restaurant

Service

Menu":
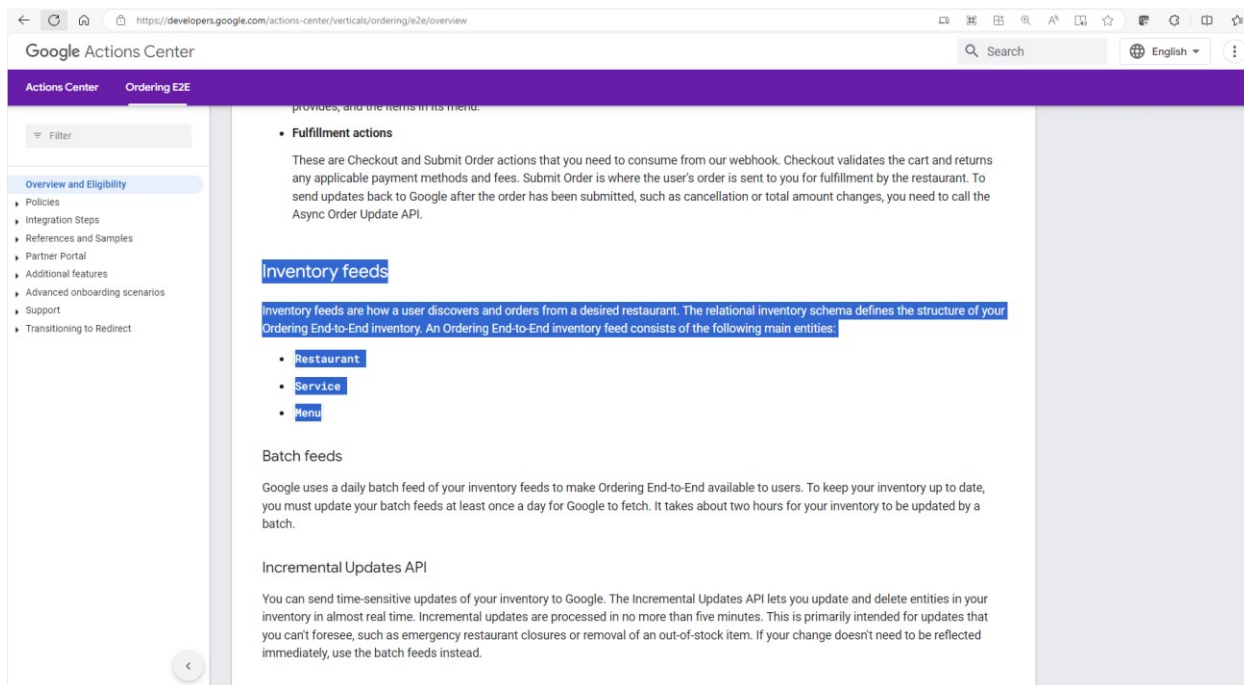
49.   Google Food therefore meets the limitation of claim 12 of the '090 patent by
incorporating "a linking module configured to perform record linkage on the formatted data
according to the identification data that uniquely identifies sources."

50.   Google Food, as described in Paragraphs 19 through 30, meets the limitation of
claim 12 of the '090 patent by incorporating "a menu combining module configured to combine
multiple source menus from linked sources into the master data set." For example, combined
menus can be searched and linked and menus are available viewed on Google Foods as shown in
Paragraphs 19 through 21.

51.   An exemplary chart demonstrating infringement by Google Foods of the claims of
the '090 patent is attached as **Exhibit E**.

52.   Upon information and belief, Google has directly infringed, and continues to
directly infringe, one or more claims of the '090 patent in the United States, including at least
claim 12, literally and/or under the doctrine of equivalents, by making, using, offering for sale,

selling, and/or importing the Accused Products/Services, that embodies the inventions of and is within the scope of one or more claims of the '090 patent.

53.   Upon information and belief, end-users using the Accused Products/Services in accordance with Google's instructions directly infringe the method claims of the '090 patent in the United States, including at least claim 1, by using "[a] A computer-implemented method for providing a searchable aggregated data structure for a networked application," that performs all of the limitations of claim 1, as herein described in Paragraphs 19 through 48, and therefore Google has indirectly infringed and continues to indirectly infringe at least claim 1 of the '090 patent in violation of 35 U.S.C. § 271.

54.   Google was aware by at least October 2, 2023 that the Accused Product/Service infringes one or more claims of the Asserted Patents.

55.   Google has marketed and continues to market the Accused Products/Services.

56.   Google's infringement of the Asserted Patents has injured and will continue to injure FoodBoss and FoodBoss is entitled to recover damages adequate to compensate it for such infringement.

57.   As a direct and proximate consequence of the aforesaid infringement, FoodBoss has suffered irreparable harm, and FoodBoss will continue to suffer irreparable harm in the future unless Google is enjoined from further infringing the Asserted Patents.

58.   Google's infringement of the Asserted Patents has injured and will continue to injure FoodBoss unless and until this Court enters an injunction prohibiting further infringement and enjoining Google from further making, using, offering for sale, selling, and/or importing the Accused Products/Services, including, but not limited to, any other of Google's infringing products and services that fall within the scope of any of the claims of the Asserted Patents.

59.   Google's acts of infringement have been knowing and willful and with actual

knowledge of the Asserted Patents and its infringement thereof. Upon information and belief,

Google's continued infringement of the Asserted Patents is willful.

BACKGROUND FOR ANTITRUST CLAIMS

60.   Google is using its monopoly power in the general search market to achieve and

maintain a monopoly in the market for Comparative Restaurant Delivery Search, and it is

practicing predation in the latter market by offering its Platform for free to companies who enter

into a licensing agreement with Google.

61.   Restaurant delivery is big business, with an estimated market size of $435 billion

annually for meal delivery alone. (*See* https://www.statista.com/outlook/emo/online-food-

delivery/meal-delivery/worldwide).

62.   Comparative Restaurant Delivery Search Platforms serve the same function for

restaurant delivery consumers that kayak.com does for travel consumers. By executing searches

on a search engine platform such as Google.com or FoodBoss.com, or their respective mobile

applications, consumers can search for restaurants and available delivery options in a specified

geographic area. Search results include the names of restaurants (often with links that lead to the

restaurant's website), menus, reviews, and options for delivery or pickup via the restaurant's own

online ordering page (powered by first-party services such as ChowNow or Olo) or via third-

party delivery services like UberEats, GrubHub, or DoorDash.

63.   In addition to Google Food, sites and apps like FoodBoss provide consumers with

an estimate of fees and charges for each delivery service option, as well as an estimate of

delivery time, so that restaurant consumers can understand their "all-in" cost for delivery and

how long they will wait for food, before choosing a restaurant direct or delivery service provider.

Consumers then choose the restaurant or third-party delivery service and are either directed to

the restaurant or third-party service's platform to complete the transaction, or in the case of Google's product (and depending on the service chosen), consumers may complete the transaction and order delivery without leaving the Google Food page.

64. Consumers of restaurant delivery services pay a fee to the restaurant or third-party delivery service that is either flat or graduated according to the size of the order. The total fee consists of a delivery fee and other costs and charges that often are not disclosed to the consumer. First-party ordering companies (*e.g.*, Olo and ChowNow) build white label ordering and delivery solutions for restaurants, and charge restaurants either a monthly fee or a commission per order for building these solutions. Restaurants also pay commissions to third-party delivery service platforms (*e.g.*, DoorDash, GrubHub, UberEats) for inclusion of their restaurants in the search results. These commissions drive investment in and improvement of the platform, which inures to the benefit of consumers.[2]

FoodBoss

65. FoodBoss began operating in 2017. Its mission is to empower the restaurant delivery customer to understand their options for delivery and to understand the nature of the fees and charges that third-party delivery services embed into their own fees. FoodBoss was the first search engine dedicated to the restaurant delivery vertical, and likens itself to Kayak in the travel and accommodations verticals. As noted in a 2019 article, "FoodBoss positions itself as taking away the pain of going through multiple delivery sites to try and find the most efficient one for that exact time and place."[3]

---

[2] In addition to first-party and third-party ordering and delivery vendors, "point-of-sale" vendors provide the "back-end" hardware and software functionality to restaurants for orders and payment to occur.

[3] "FoodBoss Aims to Be Kayak of Food Delivery" (Mar. 28, 2019), *available at* https://foodondemand.com/03282019/foodboss-aims-to-be-kayak-of-food-delivery/

66.   When a customer engages FoodBoss's website or mobile application, they enter

an address that returns a number of available delivery options within a certain radius. Customers

can refine the search results by filtering for cart size, cuisine, rating, price, and preferred delivery

service, as shown by the screenshot below (accessed May 3, 2024):
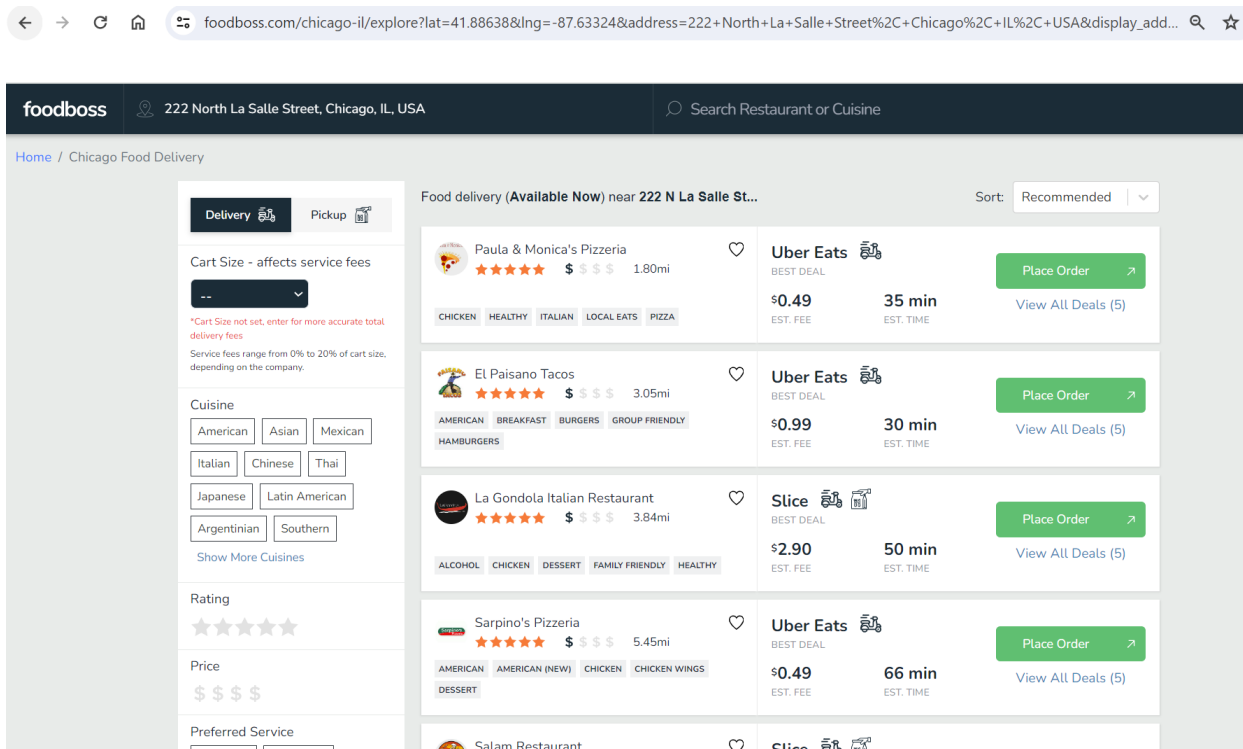
67.   As illustrated below, entering the estimated cart size engages FoodBoss's fee

breakdown function. For many delivery service options, FoodBoss separates the amount of the

delivery fee and the amount of the administrative or other fees charged by that service provider,

as shown below (accessed May 3, 2024):
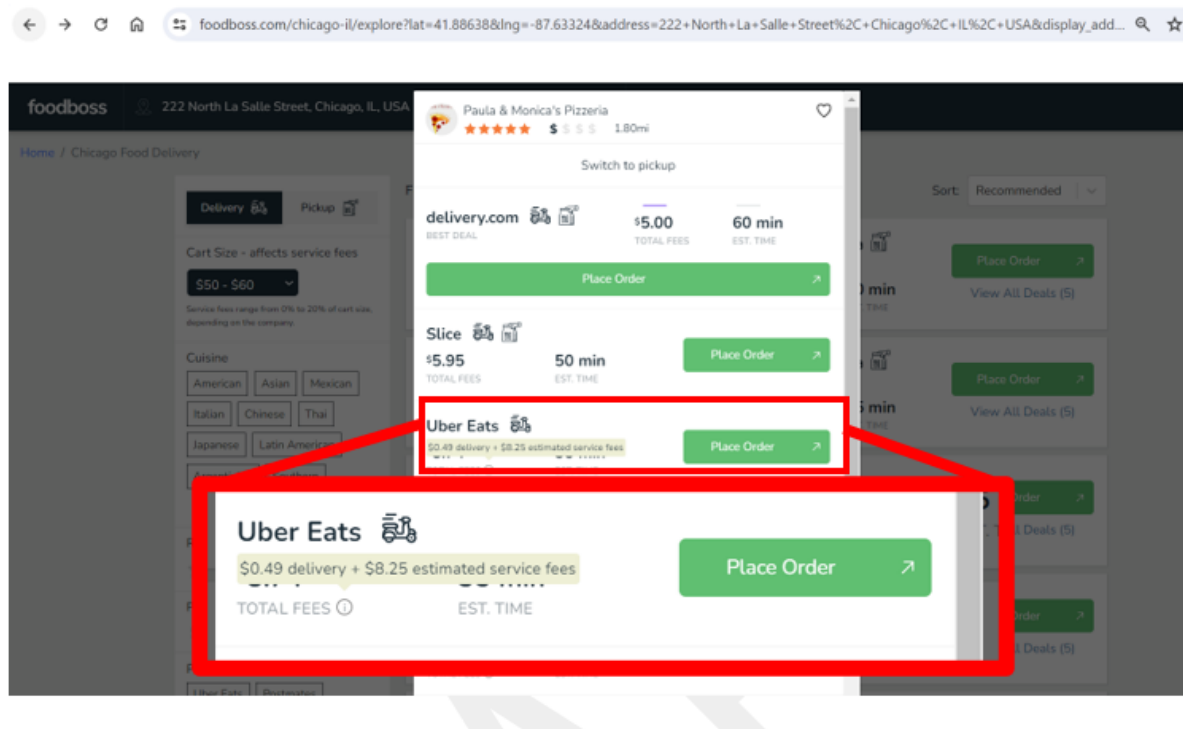
68.   As illustrated by the two screen shots above, users can filter out the results based on cuisine type and other variables. Once they select a particular restaurant, they can filter for fastest delivery time and least expensive delivery fees (including service charges, surge pricing, and taxes), to find the best deal for them.

69.   Once a delivery service is chosen, the customer is automatically directed to the selected delivery service's website (*e.g.*, UberEats.com) to complete the transaction.

Order with Google

70.   Google's Google Food service is accessed through Google's website Google.com. Google Food enjoyed immediate success because of Google's dominance in the market for general search; as *Forbes* magazine put it at the time: "Google also has a burgeoning Food, Beverage and Restaurants vertical. Although many of the company's integrations may be subtle because of our habitual use of Google products, its presence is becoming quite ubiquitous in the restaurant space."

-24-

71.   In May 2015, Google launched a program called *Place Actions* that allowed customers searching on Google to place food orders from a restaurant's "Google Knowledge Panel." When customers clicked to order, they were directed off-site to an external ordering site.

72.   In 2019, Google partnered with first-party online ordering platforms Olo and ChowNow to offer consumers restaurant direct food ordering. Additionally, Google partnered with DoorDash and Postmates (now UberEats) to offer third-party delivery service to consumers. Since then, Google has expanded its delivery services advertising to include over 50 delivery service partners.[4]

73.   Through its partnership with Olo, Google's food ordering is closely integrated into Google's general search engine results page ("SERP"), and customers can order from a restaurant without ever leaving Google's SERP. When a customer searches for food options on google.com by address, they are presented with a number of options embedded into Google's map functionality "Places", which appears under any paid search advertisements but "above-the-fold"—*i.e.*, above all other search results on the SERP:

---

[4] https://support.google.com/business/answer/10918858?hl=en&ref_topic=11496932#zippy=%2 Creview-available-third-party-providers

74.	Clicking on a restaurant name opens a sidebar in which consumers can view the restaurant's menu, hours, location, prices, reviews, and other information. The consumer can choose whether to have the food delivered:

75.   If the consumer chooses "delivery," they are presented with a number of third-party delivery service provider options, with estimated fee and wait times:

76.   Depending on the option chosen, the consumer can complete the order on Google's Places page (as shown above) or be directed to the website of one of the listed delivery services to complete the order (as shown below after selecting "DoorDash"):
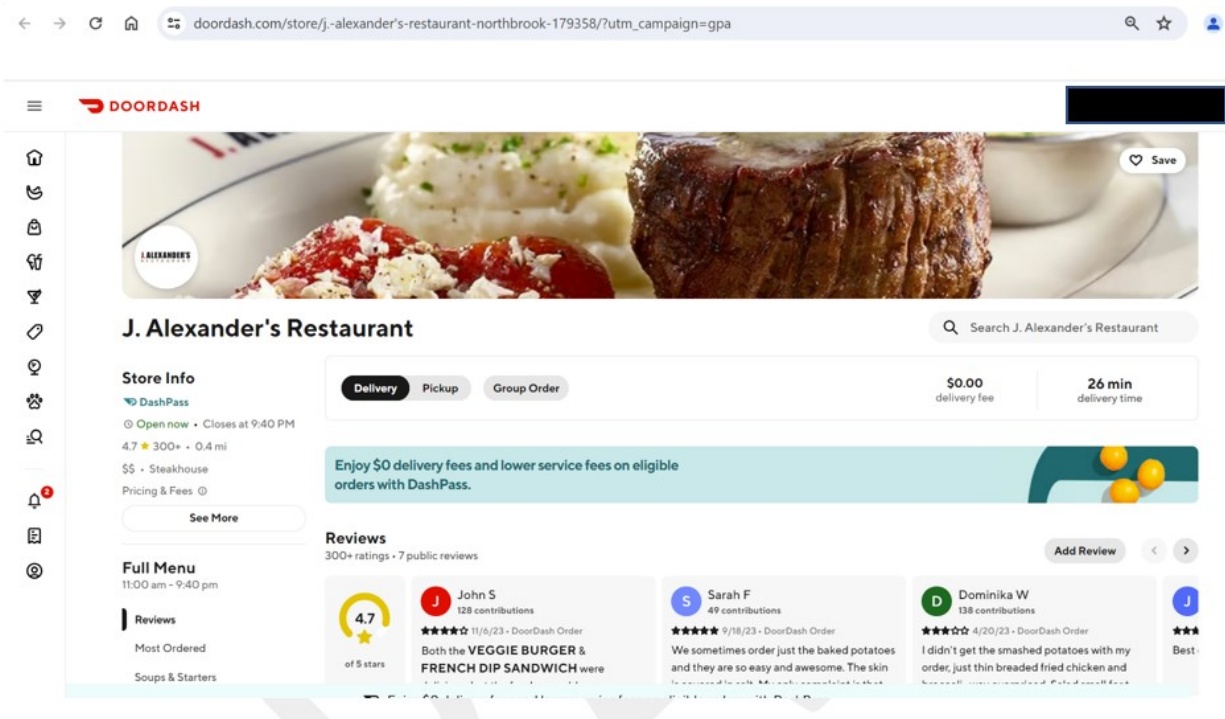
77.   The availability of delivery services depends on whether the delivery service has an established partner relationship with the restaurant.

78.   Restaurants are granted inclusion as an option in Google Food by entering into a licensing agreement with Google at no charge and creating a free business profile.

79.   Google Food and FoodBoss are two of only a few services in the United States that allow consumers to directly compare the prices for various third-party delivery services in one SERP. On information and belief, other than Google Food and FoodBoss, only the app FoodScout purports to compare restaurant delivery prices directly.

80.   Yelp.com allows consumers to search for restaurants by address and to view menus and other information about the restaurants returned in the search results, but on

-28-

information and belief, Yelp has contracted with GrubHub to be its exclusive delivery partner, so searches on Yelp.com do not return a choice of third-party delivery options—only GrubHub.

81.   Yahoo.com allows consumers to search for restaurants by address and to view menus and other information about the restaurants returned in the search results, but on information and belief, it passes consumers to Yelp.com when they seek delivery from the restaurant results returned.

82.   Bing.com allows consumers to search for restaurants by address and to view menus and other information about the restaurants returned in the search results, but on information and belief, it passes consumers to the restaurant proprietor or its designee for delivery fulfillment. When Bing does list available third-party delivery services, it simply refers the consumer to the services' websites without comparing their offerings.
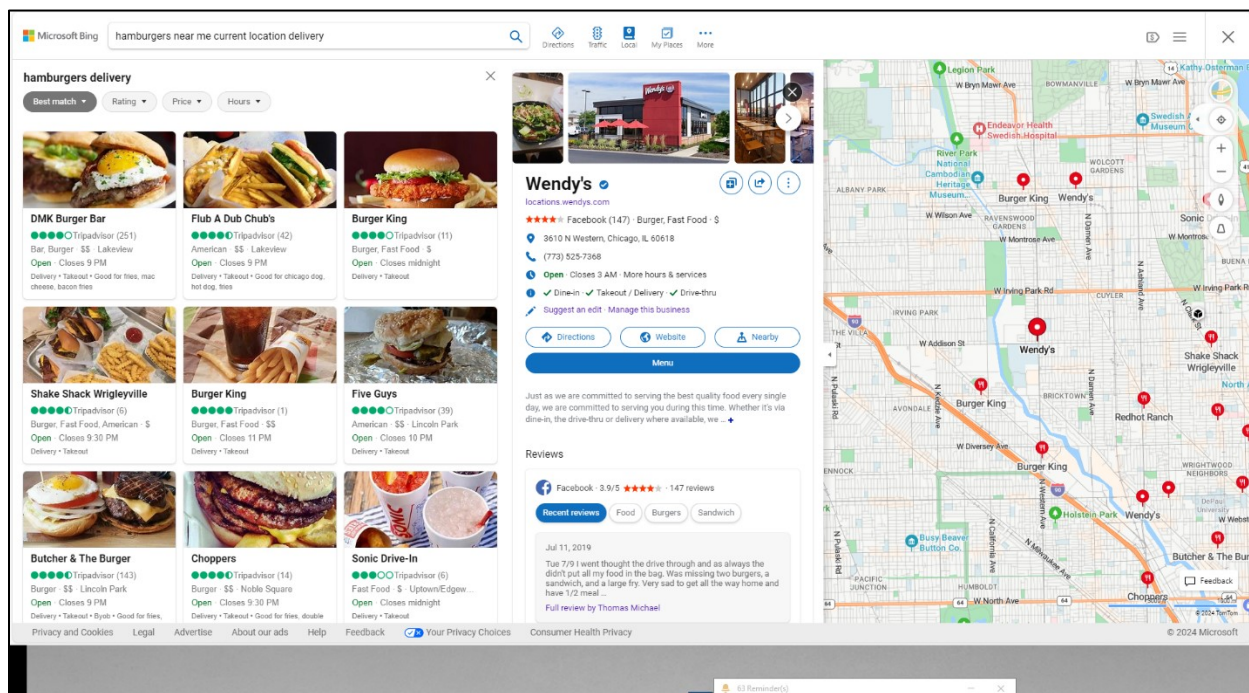
83.   Services such as TripAdvisor and OpenTable allow consumers to view reviews menus, and to make reservations, but they do not provide or advertise delivery. At one time, Meal.Me was a competitor to FoodBoss and Google for Comparative Restaurant Delivery

Search, but Meal.Me has exited the consumer-facing market and has transitioned to the B2B

market of providing an Application Programming Interface ("API") to companies and third-party

delivery services that enables them to access restaurant menus and send orders directly to

restaurants.

Relevant Product Markets

84.   General search services in the United States constitute a relevant antitrust product

market. General search services allow consumers to find information by entering keywords into a

general search engine such as Google, Microsoft's Bing, or Yahoo. Consumers use general

search services to perform various types of searches, including commercial searches seeking to

make a purchase. Other search tools and platforms are not reasonable substitutes. Books, social

media platforms, and specialized search providers like Amazon or Yelp do not offer the same

breadth of information or convenience. Few consumers would find alternative sources a suitable

substitute for general search services. A general search service monopolist would be able to

maintain quality below the level that would prevail in a competitive market; for example, by

aggressively exploiting consumer data or offering fewer protections to consumer data and

privacy.

85.   Comparative Restaurant Delivery Search constitutes another relevant antitrust

product market. Using a specific search tool such as Google Food (accessed through google.com

or food.google.com) or FoodBoss, consumers run specific searches to identify restaurants

meeting various search criteria and options for having food delivered to them from their choice

of restaurant. Available delivery services—along with their associated fees and delivery

charges—are presented to the consumer in the SERP generated by the comparative advertising

search engine. The consumer then evaluates the relative costs for delivery and chooses the

VP/#66316113.1

service they wish to engage. It is a unique service that shepherds the consumer through the stages of the meal delivery process, from the search for a restaurant to delivery at the consumer's door.

86.   Other search tools and platforms are not reasonable substitutes for Comparative Restaurant Delivery Search. Entering search terms into each delivery provider's website will return delivery options for only that delivery provider's services, and may not return a result for a particular restaurant at all, because delivery services have relationships with only the specific restaurants that authorize them to deliver their food. Finding a restaurant in a particular location and visiting that restaurant's individual website for delivery options permits no easy comparison between various restaurants and delivery options. The convenience of comparing delivery options for several available restaurants in one SERP is a superior alternative for consumers than entering restaurant names or addresses in each delivery service provider's or restaurant's website individually, a time-consuming and tedious exercise.

87.   Like consumers in the general search market, consumers of restaurant delivery do not pay to *search* for delivery options—in a competitive world without the predatory pricing in which Google is engaged, the first- or third-party restaurant delivery service providers pay commissions for inclusion in the SERP of platforms such as Google or FoodBoss. A hypothetical monopolist that is the only current and future supplier of Comparative Restaurant Delivery Search could impose a significant and non-transitory increase in price ("SSNIP") to restaurants, POS companies and delivery services for inclusion in the comparative restaurant delivery SERP without losing enough customers to make the SSNIP unprofitable, and could maintain quality below the level that would prevail in a competitive market.

-32-

Relevant Geographic Market

88.   The relevant geographic market is the United States. The FoodBoss website and application are available in almost 100 metropolitan areas across the United States and would be available in more but for Google's exclusionary behavior. FoodBoss is not available outside the United States.

89.   By information and belief, Google's Food function is available nationwide. Furthermore, as alleged by the United States in *United States v. Google*, 1:20-cv-03010, Complaint ¶ 91: "Google offers users in the United States a local domain website with search results optimized based on the user's location in the United States. General search services available in other countries are not reasonable substitutes for general search services offered in the United States. Google analyzes search market shares by country, including the United States;" and ¶ 107: "Google offers advertisers the ability to target and deliver ads based on the location of consumers in the United States, and Google search is customized for particular countries. Google also separately tracks revenue for the United States."

Market Participants and Shares

90.   Google possesses monopoly market power in the general search services market. As of September of 2020, as alleged in the First Amended Complaint in *United States v. Google*, 1:20-cv-03010, Document 94, Google controlled a 94 percent market share of general search services accessed via tablets and mobile phones, and 82 percent of the market for general search services accessed via a desktop or laptop computer.

-32-

Mobile Search Engine U.S. Market Share
including tablet and mobile
(September 2020)
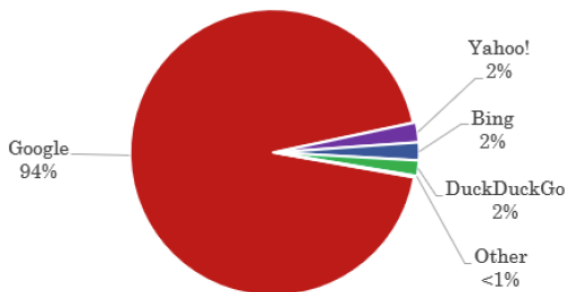
Computer Search Engine U.S. Market Share
including desktop and laptop
(September 2020)
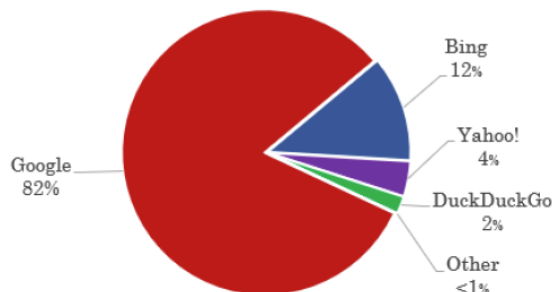
91.   According to Gs.statcounter.com/search-engine-market-share/all/north-america,

as of February 2024, there are only six providers of general search services in the United States:

Google, Bing, Yahoo!, DuckDuckGo, YANDEX, and AOL, and Google dominates the search

market with an 88.35 percent market share. Its closest competitor is Microsoft's Bing, with 7.46

percent of the market. Yahoo! has less than three percent, DuckDuckGo less than two percent,

and YANDEX and AOL less than one percent each.

92.   Google also possesses market power in the Comparative Restaurant Delivery

Search market. Ninety percent of guests research restaurants online before eating.[5] A May 2023

census-balanced survey of more than 2,200 U.S. consumers revealed that 62 percent of restaurant

customers use Google to search for a restaurant. In 2023, technology firm SpotOn integrated

Order with Google into its platform. New restaurants to the Google platform receive an average

of 57 orders per month across the Google platforms; of these, 80 percent are from new

customers.[6]

---

[5] https://get.grubhub.com/blog/google-business-for-restaurants/
[6] https://www.zuppler.com/google-ordering

-33-

Barriers to Entry

93.   The network effects of a multi-party platform create high barriers to enter the markets for general search and for Comparative Restaurant Delivery Search services.

94.   Search engines require enormous amounts of capital to build. They require the development of highly complex technology, access to effective distribution, and growth to an adequate scale. When built, network effects create a high barrier to entry for challengers and a protective "moat" for the incumbent—the more a search engine is used, the more sites it indexes and the more ads it can sell. This in turn increases its value to users, who see more, and more relevant, search results. Google's entrenched monopoly in general search services throws up an extremely high barrier to any challengers for general search services and makes it prohibitively difficult to win significant market share, as evidenced by the failure of Microsoft's Bing to climb above eight percent U.S. market share in its 15 years of existence.

95.   Comparative Restaurant Delivery Search platforms, such as apps or websites, generate value to their users by connecting restaurants and third-party restaurant delivery services to consumers who are interested in having food delivered to them. Barriers to entry into this market also include the development of highly complex technology, access to effective distribution (including approval by the dominant app platforms), and growth to an adequate scale. Barriers also include significant network effects. Consumers receive greater benefit from platforms that have a large number of restaurants and third-party delivery services signed up to advertise their services on the platform because such platforms provide users the largest variety of restaurants from which to order—increasing the chance the platforms could have a consumer's favored restaurant or cuisine—and allow consumers to compare fees and delivery times across more delivery services simultaneously. Restaurants, first-party ordering and delivery companies, POS companies, and third-party delivery services are likewise incentivized

to advertise their services through the platform with the greatest number of consumers, as doing

so increases the number of potential customers that could order from the restaurants using the

delivery services.

96.   A new competitor in the Comparative Restaurant Delivery Search market would

be at a stark disadvantage until its network catches up to the size of the incumbent competitors'

networks. Even if the new competitor offers innovations to its platform design, a consumer might

not sign up for or use the platform if their favored restaurants are not on it. Similarly, without

consumers signed up to the platform, restaurants and third-party delivery services would not be

incentivized to advertise through the platform.

97.   Google's monopoly over the market for general search reinforces a significant

barrier to new entry into Comparative Restaurant Delivery Search. Internet searches run on

google.com comprise over 88 percent of all searches run by United States consumers.

Consumers are already on Google, and they run their searches for restaurants there as well.

According to a recent survey, up to 62 percent of restaurant searches are run on Google. In short,

consumers for restaurant delivery services are already on Google, and this makes inclusion in

Google's "Google Food" integration a "must have" for delivery providers and restaurants, even

as it diminishes their incentives to strive for inclusion in another restaurant delivery search

platform.

98.   Google reinforces its monopoly and erects further barriers to new entry into

Comparative Restaurant Delivery Search by reserving above-the-fold, top-line placement in its

search SERP for Google Food, in a way deliberately designed to preference its own offering over

-35-

those of others, as shown in Paragraph 73 and reproduced again here:
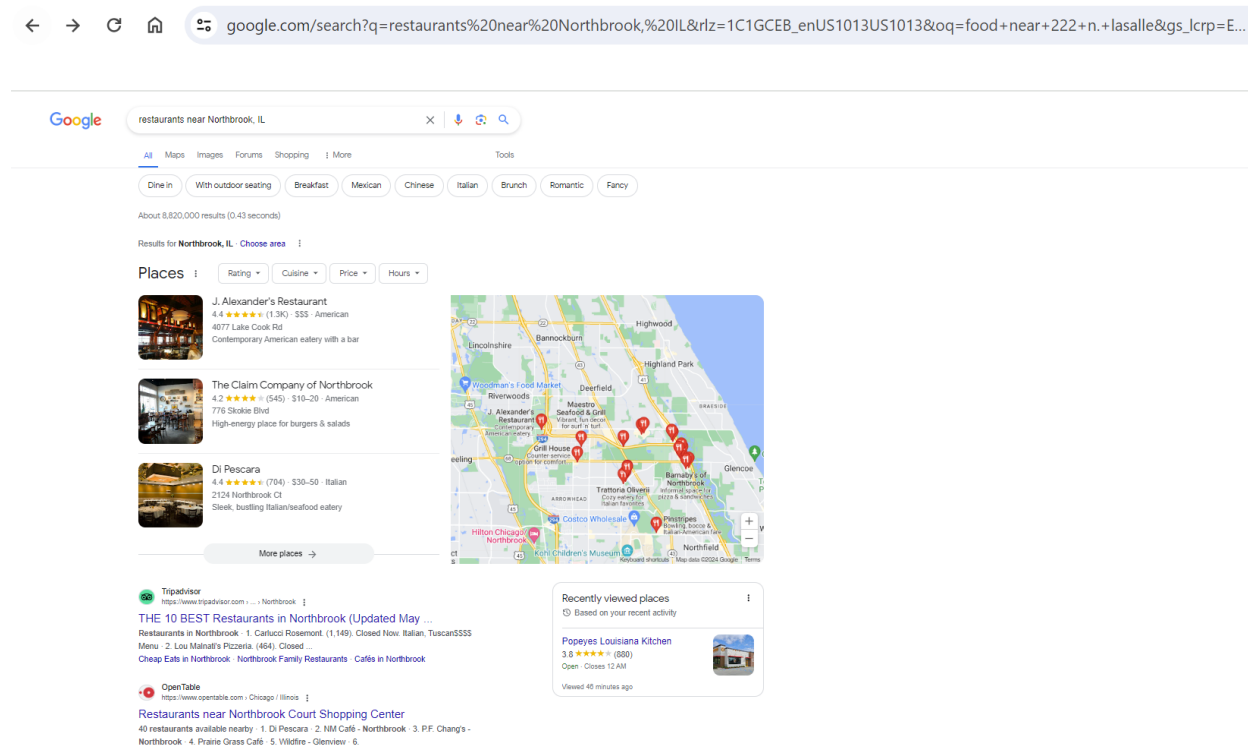
99.   By doing so, Google ensures that consumers running food searches on Google's general search engine are presented with Google's own Google Food offering before they see any other offering. Google's self-preferencing behavior leverages Google's dominance in general search to erect high barriers to any challengers and maintain its dominance in Comparative Restaurant Delivery Search.

100.   The vast amount of user data gathered by Google presents another high barrier to entry into Comparative Restaurant Delivery Search and operates to protect Google's high market share. Google can and does use this data to improve its algorithm to match specific consumers with the types of restaurants they prefer, such as those of a specific cuisine or price range, thereby improving the consumer's experience on the platform. Additionally, with more data, Google could show consumers other information such as which restaurants are popular in a certain area or on a certain day, or better predict how long expected wait times for a delivery

might be. Although such innovations are not anticompetitive in and of themselves, they are made possible by Google's lock on the general search and Comparative Restaurant Delivery Search markets, and further illustrate the high barriers to entry posed to any would-be challengers.

Google's Anticompetitive Conduct

101.   Google has willfully and unlawfully created and maintained a monopoly in the Comparative Restaurant Delivery Search market by pursuing two deliberate strategies. First, by manipulating the algorithms by which searched-for restaurant results are listed and by integrating ordering into its Food search result vertical, Google ensures that consumers who search for restaurant delivery options near an address or for a particular restaurant are shown Google's own comparative restaurant delivery search offering first, which ensures that consumers never have to leave Google to order.

102.   Second, Google charges nothing to POS companies, first- and third-party delivery providers, or restaurants to be included in Google's comparative restaurant delivery search results. As a result of Google's vast reach and overwhelming market share in general search services, POS managers, first- and third-party delivery service providers, and restaurants believe not only that they *must* be included in Google's search results in order to drive significant volume, but that inclusion in Google's offering—for free—drives enough volume such that they do not need to pay for inclusion in any other comparative restaurant delivery service's platform, resulting in a loss of FoodBoss customers. Through this combination of self-preferencing and predatory pricing, Google maintains its monopoly on comparative restaurant delivery search, to the detriment of competitors like FoodBoss and of consumers seeking to compare the costs, delivery times, and quality of delivery options available to them.

103.   The United States House of Representatives has condemned Google's anti-competitive self-preferencing activity generally:

-37-

Although these four corporations [including Google] differ in important ways, studying their business practices has revealed common problems. First, each platform now serves as a gatekeeper over a key channel of distribution. By controlling access to markets, these giants can pick winners and losers throughout our economy. They not only wield tremendous power, but they also abuse it by charging exorbitant fees, imposing oppressive contract terms, and extracting valuable data from the people and businesses that rely on them. Second, each platform uses its gatekeeper position to maintain its market power. By controlling the infrastructure of the digital age, they have surveilled other businesses to identify potential rivals, and have ultimately bought out, copied, or cut off their competitive threats. **And, finally, these firms have abused their role as intermediaries to further entrench and expand their dominance. Whether through self-preferencing, predatory pricing, or exclusionary conduct, the dominant platforms have exploited their power in order to become even more dominant … These firms typically run the marketplace while also competing in it—a position that enables them to write one set of rules for others, while they play by another, or to engage in a form of their own private quasi regulation that is unaccountable to anyone but themselves.[7]**

The House Report further stated:

---

[7] Report entitled *Investigation of Competition in Digital Markets*, *Majority Staff Report and Recommendations*, released on October 6, 2020, by the United States Congress, House of Representatives, Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary ("the House Report"), at 1-2 (emphasis added), *available at* https://www.govinfo.gov/content/pkg/CPRT-117HPRT47832/pdf/CPRT-117HPRT47832.pdf.

Google … engaged in self-preferencing by systematically ranking its own content above third-party content, even when its content was inferior or less relevant for users. Web publishers of content that Google demoted suffered economic losses and had no way of competing on the merits. Over the course of the investigation, numerous third parties also told the Subcommittee that self-preferencing and discriminatory treatment by the dominant platforms forced businesses to lay off employees and divert resources away from developing new products and towards paying a dominant platform for advertisements or other ancillary services. They added that some of the harmful business practices of the platforms discouraged investors from supporting their business and made it challenging to grow and sustain a business even with highly popular products. Without the opportunity to compete fairly, businesses and entrepreneurs are dissuaded from investing and, over the long term, innovation suffers.[8]

104. Rather than act as a neutral gatekeeper, Google modifies its algorithm to prioritize displaying search results linking to Google's products over those of its competitors while pushing the results relating to the competitor's product lower down the list of search results and "below the fold" (*i.e.,* the portion of the results available only if a user scrolls downward) or even to the second page of search results. Consumers using Google's search engine pay closest attention and most often click on the first few links on a Google search result page, rarely scrolling for additional results or clicking through to the second page of results. Displaying rival results "below the fold" deprives that rival the opportunity to compete for potential customers. Google exploited its knowledge of its search engine customers' behavior and monopoly control

---

[8] *Id.* at 322-23.

over the general search market to depress results to FoodBoss's platform and preference results linking customers to Google's platform. A screenshot of a typical Google Food SERP is below, showing the Google Food integrated search result appearing first, above all other results:
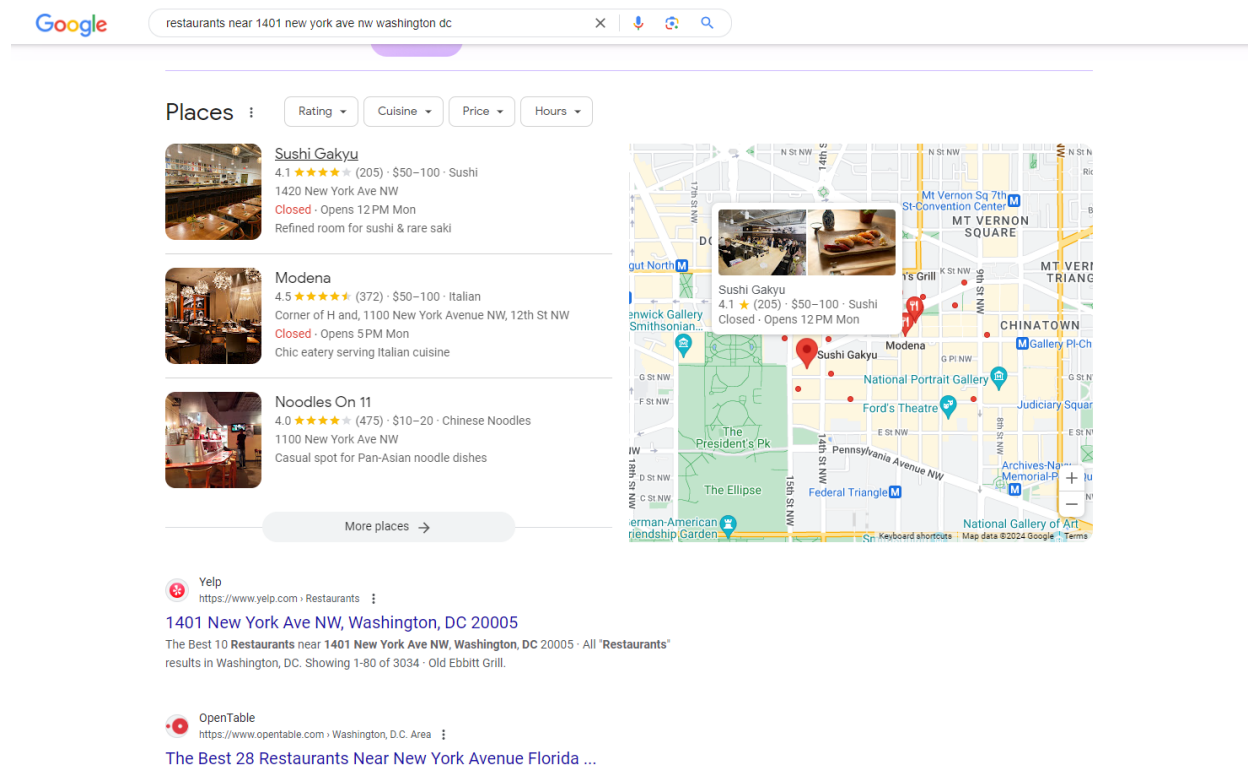
105.   Google also employs predatory pricing to leverage its monopoly in general search and drive its rivals, including FoodBoss, from the Comparative Restaurant Delivery Search market. Competitors in the Comparative Restaurant Delivery Search market face several costs to offer their product to their consumers. The variable costs associated with each transaction occurring over a Comparative Restaurant Delivery Search platform include, among others: (1) labor costs for programmers to develop and update the platform; (2) advertising and labor costs to develop and grow user accounts, including negotiations with first- and third-party delivery providers; (3) salaries to employ a dedicated support staff; and (4) server hosting fees for server space dedicated to Google Food. Upon information and belief, Google incurs all of these costs.

-40-

106. FoodBoss's own variable costs exceed $1 million per year. However, Google offers its Comparative Restaurant Delivery Search platform *completely free of charge* to both the consumers using the platform and to the restaurants, first- and third-party delivery services, and POS managers advertising their products on the Google Food platform—the only requirements being to enter into a licensing agreement with Google, establish a Business Profile (both also free of charge), and use Google Pay.

107. Restaurants which agreed to a license and created Business Profiles can provide operations details and menus to Google and be included in Google's comparative restaurant delivery search results:
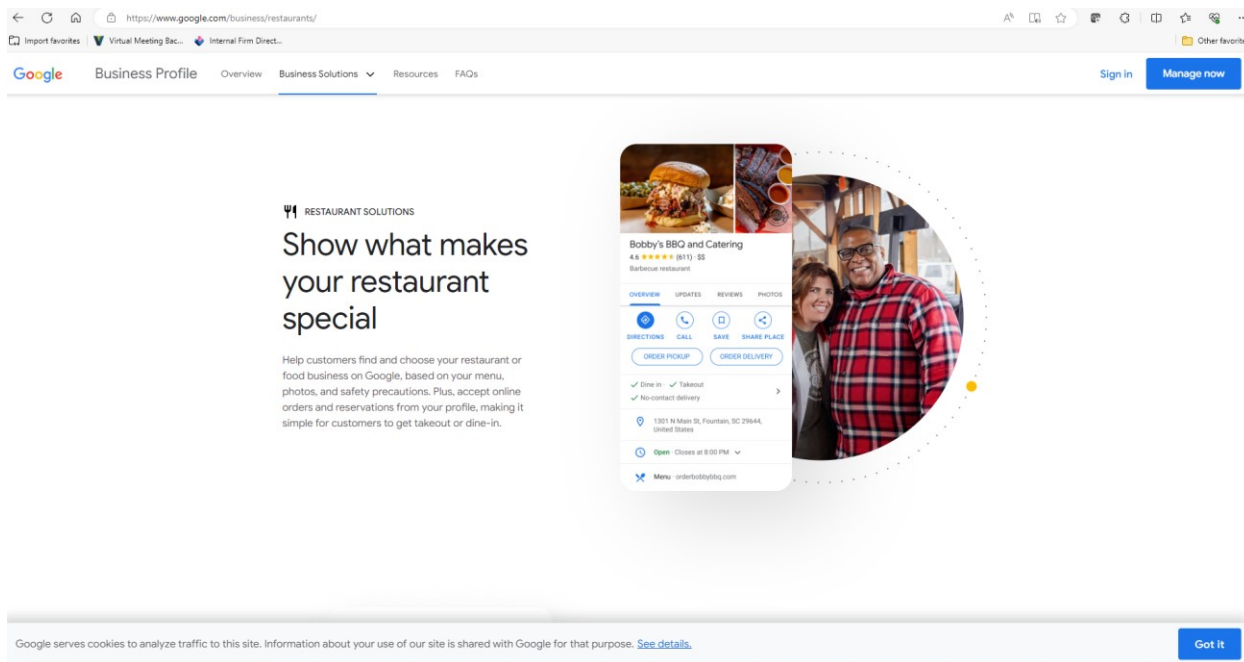
108. By offering its platform to any user or advertiser completely free of charge, Google is *per se* selling its comparative food advertising below its incremental costs to provide its platform, above the zero dollars it earns from any given transaction on its platform. Google's earnings on its Comparative Restaurant Delivery Search platform are necessarily lower than its costs to provide the service.

109.   Google's purpose for offering its platform for free is to cement itself as a monopolist in each of the geographic markets in which its platform is offered by growing the network of consumers and advertisers on the platform and by capturing the associated user data. With these barriers to entry secured, Google holds a nearly unassailable advantage in the Comparative Restaurant Delivery Search market.

110.   Google's competitors in the Comparative Restaurant Delivery Search market cannot afford to compete with Google's predatory prices. A competitor like FoodBoss relies on the revenue it receives from the commissions it charges on restaurant delivery orders to their client restaurants placed by consumers via FoodBoss's platform. FoodBoss could not sustainably offer its platform to both users and restaurants, POS companies, and first- and third-party delivery service providers for free (or at any price below its costs). On the other hand, Google is situated to offer its platform to users and restaurants, POS companies, and first- and third-party delivery service providers for free for as long as it takes to maintain its monopoly because Google can leverage the monopoly profits it extracts from its advertising customers in other markets, such as in the general search advertising market, to subsidize the costs of establishing and maintaining its monopoly in the Comparative Restaurant Delivery Search market.

111.   First-party delivery service providers like ChowNow and Olo, POS companies, and third-party delivery service providers are further incentivized to use Google and only Google as the primary or sole advertising outlet for their client restaurants because Google does not prohibit those companies from charging their clients a commission for traffic driven through google.com. First- and third-party delivery service companies and POS companies thus use a free service in order to charge a commission to their own clients for every sale. This costless revenue stream is available to them only through Google.

112.   In the absence of a free advertising outlet with the vast market reach of Google, reasonable commissions are a value proposition for POS companies' restaurant clients and for first- and third-party delivery providers because inclusion on a comparative restaurant delivery service platform drives incremental revenue to restaurants from consumer orders, and drives incremental delivery fees to delivery service providers that are chosen by consumers. However, Google's provision of its services for free to first- and third-party delivery providers, POS companies and restaurants provides a powerful incentive for these providers to drive their traffic *only* through Google and not through any other outlet for which the company must pay, including FoodBoss, as every transaction by a food consumer concluded through FoodBoss is a transaction *not* concluded through commission-free google.com.

113.   Google's behavior and market dominance in general search presents the dangerous probability that Google can recoup its short-term losses and earn monopoly profits. Since the exit of Meal.me, FoodBoss is one of Google's only remaining competitors, and FoodBoss's position in the market is in decline. FoodBoss cannot compete indefinitely with a free service. Once FoodBoss exits the business, Google can raise its prices and start to charge high commissions to the POS companies, first-party providers like Olo and ChowNow with which it is currently integrated, and to third-party restaurant delivery service providers which obtain customers through Google's platform. Moreover, the high barriers to new entry would insulate Google from any nascent competition: (1) the network effects of the Google platform would discourage users from switching to the competitor's platform; (2) Google's monopoly on general search results will permit it to favor its own platform over that of any competitors, driving potential users away from the competitor; and (3) the emerging competitor would lack the data to improve its users' experiences with its platform.

-43-

Injury to FoodBoss

114.   Google's anticompetitive predatory pricing and self-preferencing scheme is injuring FoodBoss and the Comparative Restaurant Delivery Search market. FoodBoss has been injured by current and potential customers declining to appear on FoodBoss's platform because they can appear for free on Google's platform, despite FoodBoss representing incremental revenue for those customers.

115.   Google entices FoodBoss's customers away from FoodBoss's platform by offering the customers access to Google's wider user base for free. For restaurants and delivery companies, Google's platform is a "must have" because of the vast number of users of Google. Moreover, Google's practice of allowing delivery companies to charge their customers commissions for sales made through google.com incentivizes the delivery companies *not* to drive traffic through FoodBoss, which would only decrease the cost-free profits from orders placed on google.com. Network effects have created a vicious downward cycle—by suppressing the number of delivery companies willing to participate in FoodBoss's platform, the platform has drawn fewer users, which has in turn further depleted the platform's value in the eyes of first- and third-party delivery companies.

116.   In addition, Google's self-preferencing of its own Google Food offering, and its suppression of FoodBoss in the general SERP, have crippled FoodBoss's ability to increase its user base. Consumers simply do not see FoodBoss in the SERP when searching Google for restaurant delivery options—they see Google Food. Consumers only find FoodBoss buried deep in the SERP, or by searching for FoodBoss specifically on Google. As a result, FoodBoss has not been able to grow its user base, further depressing its value to delivery companies and to restaurants as a partner.

-44-

Antitrust Injury

117.   Google has injured and continues to injure competition in the market for Comparative Restaurant Delivery Search by its exclusionary conduct. Google's predatory below-cost pricing enables it to further increase barriers to entry by consolidating the network of potential users and restaurants, POS companies, and first- and third-party delivery service providers under one platform, making new competitors increasingly unattractive despite any new innovations, and continuing to harm FoodBoss's and any new competitor's ability to achieve scale and compete effectively.

118.   Additionally, Google's self-preferencing behavior in the general search market permits it to depress FoodBoss's or any new competitor's ability to grow its user base through discovery via internet search results. Any potential new user looking for a Comparative Restaurant Delivery Search platform on Google is more likely to find Google Food than FoodBoss. Without the pressure of competition from other Comparative Restaurant Delivery Search platforms, Google can and will raise commission rates charged to POS companies, first- and third-party delivery service providers, and other partners to its platform above competitive levels. In addition, it will face no pressure to innovate, which will degrade the overall user experience.

119.   Google's predatory pricing and self-preferencing scheme also injures consumers by reducing consumers' ability to compare delivery pricing, the purpose for which FoodBoss exists. This encourages the proliferation of junk fees. "Junk fees" are mandatory fees which are hidden from consumers until after the consumer has committed to purchasing the product. In food services, common examples of such concealed fees are "service fees," "hospitality fees," "kitchen fees," "equity fees," "economic impact fees," or "temporary inflation fees." Third-party delivery service providers routinely charge their customers junk fees in addition to delivery fees.

120.   Junk fees are condemned but remain ubiquitous. In an analysis of junk fees charged by hotels, the Federal Trade Commission found that the mandatory junk fees likely harmed consumers by "increasing the search costs and cognitive costs of finding and choosing hotel accommodations" and that consumers are forced "either to incur higher total search and cognitive costs or to make an incomplete, less informed decision that may result in a more costly room, or both."[9]

121.   The White House has estimated that, in 2021, food delivery junk fees amounted to more than five billion dollars.[10] It noted that food delivery service junk fees are among the worst of any industry:

> Food delivery apps are notorious for obfuscating delivery and service fees. A recent survey showed one company's hidden fee burden is about 15 percent of transaction volume. This company [Postmates] received 288 million orders in 2021 in the U.S. and had an average sale of about $31. Putting these numbers together, in 2021, this company collected about $1.3 billion from consumers in junk fees. Using the most conservative assumptions, a similar calculation for a competitor—which in the same survey had a hidden fee rate of 7.5 percent—produces $1.5 billion in junk fees.[11]

122.   FoodBoss's platform provides a procompetitive benefit to consumers by revealing to the consumers up front the total estimated delivery and fees associated with their estimated

---

[9] BUREAU OF ECONOMICS, FEDERAL TRADE COMMISSION, *Economic Analysis of Hotel Resort Fees* (2017), at 4, *available at* https://www.ftc.gov/system/files/documents/reports/economic-analysis-hotel-resort-fees/p115503_hotel_resort_fees_economic_issues_paper.pdf.

[10] https://www.whitehouse.gov/cea/written-materials/2024/03/05/the-price-isnt-right-how-junk-fees-cost-consumers-and-undermine-competition/.

[11] https://www.whitehouse.gov/cea/written-materials/2024/03/05/the-price-isnt-right-how-junk-fees-cost-consumers-and-undermine-competition/#_ftnref2:~:text=Food%20delivery%20apps%20are,billion%20in%20junk%20fees.

order size. Consumers benefit from this functionality because their total cost to compare prices between delivery options is reduced by providing the information up front. Without competitive pressure from FoodBoss there is no incentive for Google to reveal to its platform's users the estimated fees they would incur for each transaction. Consumers are injured by paying more for the food that they order and/or needing to spend a longer time comparing between third-party restaurant delivery service providers.

COUNT I – DIRECT INFRINGEMENT OF THE '683 PATENT

123.   FoodBoss incorporates paragraphs 1 through 122 above as if fully recited herein.

124.   Google makes, uses, sells, offers to sell, or imports into the United States Accused Products/Services that directly infringe claims 11, 12, 13 and 14 of the '683 patent under 35 U.S.C. § 271(a).

125.   Google's direct infringement has been and continues to be willful.

COUNT II – INDIRECT INFRINGEMENT OF THE '683 PATENT

126.   FoodBoss incorporates paragraphs 1 through 125 above as if fully recited herein.

127.   Google induces infringement by end users by making, using, offering for sale, selling, and/or importing the Accused Products/Services for end-users with the intent and direction that such end-users use the Accused Products/Services that directly infringe claims 1, 3 and 4 of the '683 patent under 35 U.S.C. § 271(b).

128.   The Accused Products/Services are for use in practicing and constitute a material part of claims 1, 3 and 4 of the '683 patent.

129.   Google offers to sell and/or sells the Accused Products/Services in the United States knowing the same to be especially made or especially adapted for use in an infringement of claims 1, 3 and 4 of the '683 patent, and is not a staple article or commodity of commerce suitable for substantial noninfringing use.

130.   Google contributes to infringement by end users of claims 1, 3 and 4 of the '683 patent under 35 U.S.C. § 271(c).

131.   Google's acts of indirect infringement have been and continue to be willful.

COUNT III – DIRECT INFRINGEMENT OF THE '090 PATENT

132.   FoodBoss incorporates paragraphs 1 through 131 above as if fully recited herein.

133.   Google makes, uses, sells, offers to sell, or imports into the United States Accused Products/Services that directly infringe claims 12, 13, 14 and 15 of the '090 patent under 35 U.S.C. § 271(a).

134.   Google's direct infringement has been and continues to be willful.

COUNT IV – INDIRECT INFRINGEMENT OF THE '090 PATENT

135.   FoodBoss incorporates paragraphs 1 through 134 above as if fully recited herein.

136.   Google induces infringement by end users by making, using, offering for sale, selling, and/or importing the Accused Products/Services for end-users with the intent and direction that such end-users use the Accused Products/Services that directly infringe claims 1, 3 and 5 of the '090 patent under 35 U.S.C. § 271(b).

137.   The Accused Products/Services are for use in practicing and constitute a material part of claims 1, 3 and 5 of the '090 patent.

138.   Google offers to sell and/or sells the Accused Products/Services in the United States knowing the same to be especially made or especially adapted for use in an infringement of claims 1, 3 and 5 of the '090 patent, and is not a staple article or commodity of commerce suitable for substantial noninfringing use.

139.   Google contributes to infringement by end users of claims 1, 3 and 4 of the ''683 patent under 35 U.S.C. § 271(c).

140.   Google's acts of indirect infringement have been and continue to be willful.

COUNT IV – MONOPOLIZATION

141.   FoodBoss incorporates paragraphs 1 through 140 above as if fully recited herein.

142.   Google's actions occur in and affect interstate commerce.

143.   Google's conduct violates Section 2 of the Sherman Act, which makes it unlawful for any person to "monopolize … any part of the trade or commerce among the several States . . . ." 15 U.S.C. § 2.

144.   Google presently has a monopoly in Comparative Restaurant Delivery Search in each of the Relevant Geographic Markets alleged herein. By information and belief, Google has a market share in excess of 62 percent as measured by restaurant delivery customers searching for delivery options on a search platform, and partnerships with a majority of the POS companies and restaurants who advertise their restaurants on a search engine.

145.   Comparative Restaurant Delivery Search is a relevant antitrust market. Google has obtained and maintained monopoly power in that market by freely giving away access to its Comparative Restaurant Delivery Search platform despite the substantial costs and efforts required to create and maintain such a platform. Google's pricing has excluded actual and potential rivals from competing effectively to challenge Google's dominance.

146.   Google has additionally obtained and maintained monopoly power in the Comparative Restaurant Delivery Search market by leveraging its monopoly power in the General Search Services market to deprive its rivals, including FoodBoss, the opportunity to compete for new customers, by depressing search results for rival Comparative Restaurant Delivery Search platforms and promoting its own platform to the top of the list of general search results.

147.   Google's exclusionary conduct has raised its rivals' costs and has foreclosed a substantial share of the Comparative Restaurant Delivery Search market from FoodBoss.

148.   Google will be able to recover its losses by increasing prices and decreasing

quality. Google's monopoly position will be entrenched by, among other things, the network

effects inherent to a two-sided platform and Google's entrenched monopoly in general search

services, which ensures that Google gets "first look" by over 85 percent of the addressable

market.

149.   Google's anticompetitive acts have harmed competition by reducing the quality of

its rivals' platforms, denying its rivals the chance to compete for customers on the merits of their

Comparative Restaurant Delivery Search platform product, and erecting substantial barriers to

entry.

150.   The anticompetitive effects of Google's exclusionary conduct outweigh any

procompetitive benefits in the Comparative Restaurant Delivery Search market, or could be

achieved through less restrictive means.

151.   Google's anticompetitive and exclusionary practices violate Section 2 of the

Sherman Act, 15 U.S.C. § 2.

152.   FoodBoss has been and continues to be damaged by Google's anticompetitive and

exclusionary practices, and that damage has been proximately caused by Google's

anticompetitive and exclusionary practices.

153.   FoodBoss is entitled to compensatory damages and trebled damages, and should

be awarded its attorney fees and costs pursuant to Section 15 of the Clayton Act.

COUNT V – ATTEMPTED MONOPOLIZATION

154.   FoodBoss incorporates paragraphs 1 through 153 above as if fully recited herein.

155.   Google's conduct violates Section 2 of the Sherman Act, which makes it unlawful

for any person to "attempt to monopolize any part of the trade or commerce among the several

States . . . ." 15 U.S.C. § 2.

-50-

156.   Comparative Restaurant Delivery Search is a relevant antitrust market. Google has attempted and is attempting to obtain and maintain monopoly power in that market by freely giving away access to its Comparative Restaurant Delivery Search platform despite the substantial costs and efforts required to create and maintain such a platform.

157.   There is a dangerous probability that Google will be able to recover its losses and earn monopoly profits because, while Google can subsidize its present losses through its monopoly profits generated in its other product markets such as general search and search advertising, its Comparative Restaurant Delivery Search competitors like FoodBoss cannot indefinitely compete with Google at below-cost prices, and will eventually exit the market.

158.   Google will be able to recover its losses by increasing costs and decreasing quality. Google's monopoly position will be entrenched by, among other things, the network effects inherent to a two-sided platform and Google's entrenched monopoly in general search services, which ensures that Google gets "first look" by over 85 percent of the addressable market.

159.   Google has additionally attempted and is attempting to obtain and maintain monopoly power in the Comparative Restaurant Delivery Search market by leveraging its monopoly power in the General Search Services market to deprive its rivals, including FoodBoss, the opportunity to compete for new customers by depressing search results for rival Comparative Restaurant Delivery Search platforms and promoting its own platform to the top of the list of general search results.

160.   Google's exclusionary conduct has raised its rivals' costs and has foreclosed a substantial share of the Comparative Restaurant Delivery Search market.

-51-

161.   Google's anticompetitive acts have harmed competition by reducing the quality of its rivals' platforms, denying its rivals the chance to compete for customers on the merits of their Comparative Restaurant Delivery Search platform product, and erecting substantial barriers to entry.

162.   The anticompetitive effects of Google's exclusionary conduct outweigh any procompetitive benefits in the Comparative Restaurant Delivery Search market, or could be achieved through less restrictive means.

163.   Google's anticompetitive and exclusionary practices violate Section 2 of the Sherman Act, 15 U.S.C. § 2.

164.   FoodBoss has been and continues to be damaged by Google's anticompetitive and exclusionary practices, and that damage has been proximately caused by Google's anticompetitive and exclusionary practices.

165.   FoodBoss is entitled to compensatory damages and trebled damages, and should be awarded its attorney fees and costs pursuant to Section 15 of the Clayton Act.

COUNT VI – MONOPOLY LEVERAGING

166.   FoodBoss incorporates paragraphs 1 through 165 above as if fully recited herein.

167.   Google has monopoly power in the market for general search.

168.   Google has used and continues to use its monopoly over general search to extend its monopoly into the market for Comparative Restaurant Delivery Search.

169.   Among other things, Google self-preferences its food ordering platform "Order with Google," presenting that platform as an integrated part of "Places" and presenting it near the top of the search results for consumers searching for restaurant delivery options, and either not presenting competing platforms or presenting them well "below the fold" or not on the first

-52-

page of results. Thus, Google uses its market power and vast user base in general search to disadvantage competitors in the market for Comparative Restaurant Delivery Search.

170. Google's monopoly in general search reinforces and enables its monopoly in Comparative Restaurant Delivery Search through its provision of free advertising because it creates a strong incentive for restaurants, POS companies, and delivery service partners to advertise only through Google's service, which is free to them.

171. Google's exclusionary conduct has raised its rivals' costs and has foreclosed a substantial share of the Comparative Restaurant Delivery Search market.

172. Google's anticompetitive acts have harmed competition by raising its rivals' costs, reducing the quality of its rivals' platforms, denying its rivals the chance to compete for customers on the merits of their Comparative Restaurant Delivery Search platform product, and erecting substantial barriers to entry.

173. The anticompetitive effects of Google's exclusionary conduct outweigh any procompetitive benefits in the Comparative Restaurant Delivery Search market, or could be achieved through less restrictive means.

174. Google's anticompetitive and exclusionary practices violate Section 2 of the Sherman Act, 15 U.S.C. § 2.

175. FoodBoss has been and continues to be damaged by Google's anticompetitive and exclusionary practices, and that damage has been proximately caused by Google's anticompetitive and exclusionary practices.

176. FoodBoss is entitled to compensatory damages and trebled damages, and should be awarded its attorney fees and costs pursuant to Section 15 of the Clayton Act.

COUNT VII – RESTRAINT OF TRADE

177. FoodBoss incorporates paragraphs 1 through 176 above as if fully recited herein.

-53-

178.   Restaurants that sign up for a free Business Profile and inclusion in Google's Order with Google must enter into a licensing agreement with Google.

179.   The agreement extends placement on Google's Order with Google platform for $0, is predatory, and violates Section 1 of the Sherman Act.

180.   The agreements have harmed competition by reducing the quality of Google's rivals' platforms, denying its rivals the chance to compete for customers on the merits of their Comparative Restaurant Delivery Search platform product, raising Google's rivals' costs, and erecting substantial barriers to entry.

181.   The anticompetitive effects of the agreements outweigh any procompetitive benefits in the Comparative Restaurant Delivery Search market, or could be achieved through less restrictive means.

182.   The agreements violate Section 1 of the Sherman Act, 15 U.S.C. § 1.

183.   FoodBoss has been and continues to be damaged by Google's anticompetitive agreements, and that damage has been proximately caused by the agreements.

184.   FoodBoss is entitled to compensatory damages and trebled damages, and should be awarded its attorney fees and costs pursuant to Section 15 of the Clayton Act.

COUNT VIII – VIOLATION OF ILLINOIS ANTITRUST ACT, 740 ILCS 10/1 *ET SEQ.*

185.   FoodBoss incorporates paragraphs 1 through 184 above as if fully recited herein.

186.   Google's agreements with restaurants unreasonably restrain trade in violation of Section 3(2) of the Illinois Antitrust Act.

187.   Google has used its monopoly power in the market for general internet search to acquire monopoly power over, and for the purpose of excluding competition from, the market for comparative restaurant delivery search in Illinois, in violation of Section 3(3) of the Illinois Antitrust Act.

-54-

188. The anticompetitive effects of the agreements and of Google's conduct outweigh any procompetitive benefits in the Comparative Restaurant Delivery Search market, or could be achieved through less restrictive means.

189. FoodBoss has been and continues to be damaged by Google's anticompetitive agreements and conduct, and that damage has been proximately caused by the agreements and conduct.

190. Google's conduct was willful.

191. Google's exclusionary conduct has raised its rivals' costs and has foreclosed a substantial share of the Comparative Restaurant Delivery Search market.

192. FoodBoss is entitled to compensatory damages and trebled damages, and should be awarded its attorney fees and costs pursuant to Section 7(2) of the Illinois Antitrust Act.

JURY DEMAND

FoodBoss hereby demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, FoodBoss prays that this Court:

(a)   adjudge and decree that Google has infringed, induced others to infringe, and/or contributed to the infringement of the Asserted Patents;

(b)   adjudge and decree that Google's direct and indirect infringement of the Asserted Patents was willful;

(c)   award damages to FoodBoss under 35 U.S.C. § 284 along with interest (including both pre- and post-judgment interest) and costs for Google's infringement of the Asserted Patents;

(d)   find that this case is an exceptional case under 35 U.S.C. § 285 and award all

remedies available thereunder including treble damages under 35 U.S.C. § 284

and FoodBoss's attorney fees;

(e)   preliminarily and permanently enjoin, by reason of the acts of infringement and

pursuant to 35 U.S.C. § 283, Google, its representatives, officers, directors,

agents, servants, employees, and any and all persons in active concert with them,

from directly or indirectly making or causing to be made, offering for sale, selling

or causing to be sold, or using or causing to be used any product or service in

accordance with or embodying any invention(s) set forth and claimed in the

Asserted Patents;

(f)   adjudge and decree that Google violated the Sherman Act;

(g)   award damages to FoodBoss in an amount adequate to compensate FoodBoss for

Google's violations of the Sherman Act;

(h)   award treble damages, costs, and attorneys' fees, pursuant to 15 U.S.C. § 15;

(i)   adjudge and decree that Google willfully violated the Illinois Antitrust Act;

(j)   award damages to FoodBoss in an amount adequate to compensate FoodBoss for

Google's willful violations of the Illinois Antitrust Act;

(k)   award treble damages, costs, and attorneys' fees, pursuant to 740 ILCS 10/7

Section 7(2); and

(l)   award to FoodBoss such other and further relief, at law or in equity, as this Court

or a jury deems just and equitable.

-57-

Dated: May 6, 2024

Respectfully submitted,

BOOTLER, LLC d/b/a FOODBOSS

By: /s/ *Daniel H. Shulman*
      One of Its Attorneys

Daniel H. Shulman
dshulman@vedderprice.com
Sudip K. Mitra
smitra@vedderprice.com
Monica Malek
mmalek@vedderprice.com
Vedder Price P.C.
222 North LaSalle Street
26th Floor
Chicago, Illinois 60601
Tel: (312) 609-7500
Fax: (312) 609-5005

Brian K. McCalmon (*pro hac vice forthcoming)*
bmccalmon@vedderprice.com
Vedder Price P.C.
1401 New York Ave. NW
Suite 500
Washington, DC 20005
Tel: (202) 312-3320
Fax: (202) 312-3322

-57-