

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FOTOBOM MEDIA, INC.
27702 Crown Valley Pkwy, D4 #283
Ladera Ranch, CA 92694,

Plaintiff,

v.

GOOGLE LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043,

Defendant.

Case No. 1:22-cv-00712

AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

INTRODUCTION

1. In October 2020, the U.S. Department of Justice filed a Section 2 case against Google alleging that Google has taken steps to thwart competition from “apps that link to general search engines, such as smart keyboards” because such apps are a competitive threat to Google’s general search monopoly. *United States v. Google LLC*, 20-cv-03010, ECF No. 1, ¶ 44 (D.D.C. Oct. 20, 2020). Fotobom Media, Inc. distributes a “smart keyboard” app. Fotobom is a direct victim of the conduct described in DOJ’s complaint.

2. Fotobom developed and began distributing its smart keyboard app for mobile devices in 2015. Now called “Keyboard+,” Fotobom’s smart keyboard offers more functionality than traditional mobile keyboards that consumers use to type on their phones.

3. Among other features, Keyboard+ brings the power of a search engine directly to the user’s fingertips. Keyboard+ offers users its own search results: it directs users to content (for example, links to buy movie tickets) precisely at the time that content will be useful to them

(for example, when texting a friend to arrange a time to go see a movie) based on keywords in the user's typing. Keyboard+ is also a "search access point." A mobile user can run a search in the keyboard using a general search engine without needing to leave an app or open a browser. Keyboard+ displays its own links alongside the search engine's results, so the user can compare results and pick the most relevant content. The result for users is maximal choice and efficiency.

4. Fotobom also partners with carriers and phone manufacturers to incorporate this search functionality into messaging apps — including a six-year long ongoing relationship with Verizon to incorporate search functionality into the Verizon Messages app, which is installed on more than 100 million phones in the United States. When incorporated into messaging apps, Fotobom's search software displays search results to users based on the content of the messages being sent and received, and regardless of the specific mobile keyboard that is being used. The ability to provide search results to users based on the content of their messages makes mobile messaging an important search access point.

5. Fotobom generates revenue much like a search provider: by offering content providers the opportunity to bid on "keywords" to display their content to users. Content providers then pay an additional fee if a mobile user clicks through the content (such as a suggested website or user app) that Keyboard+ displays.

6. Defendant Google LLC took notice of Fotobom's innovative product. At Google's invitation, Fotobom met with Google multiple times between 2016 and 2018. Soon after the first meeting in 2016, Google launched its own smart keyboard, Gboard. Later, in 2018, Google met with Fotobom again and suggested it was looking to acquire a company in the keyboard and messaging space. Google told Fotobom that "it's not a matter of if we work together, it's a matter of when," and that, accordingly, Fotobom should share with Google as

much as possible about its smart keyboard and company strategy. A few months after its meeting with Fotobom, Google acquired another keyboard app created by a company named Tenor, which allows users to search a “GIF” library directly from the keyboard.

7. Following Google’s decision not to partner with or acquire Fotobom, Google began to interfere with Fotobom’s distribution of Keyboard+.

8. For example, Fotobom reached an agreement in principle with América Móvil — one of the world’s largest wireless carriers — to preload Keyboard+ as the default keyboard app on millions of Android devices. América Móvil told Fotobom that it wanted to preload Keyboard+ as the default keyboard app “on as many phones as possible.” América Móvil and Fotobom expended significant time and effort on this relationship. But when Google discovered that América Móvil was planning to preload Fotobom’s keyboard, Google threatened América Móvil that it would be violating its agreement to preload Google’s own smart keyboard app — Gboard — as the default on América Móvil devices, and that Google would penalize América Móvil by withholding potentially several hundred million dollars in payments. Following that threat, América Móvil told Fotobom that it could not preload Keyboard+ as the default keyboard app on any of its Android devices.

9. Google has similarly threatened other carriers and original equipment manufacturers (“OEMs”) that wanted to preload Keyboard+ on their devices.

10. In its complaint against Google, DOJ alleges that “[a]s innovation has increased the number of search access points on mobile devices — including smart keyboards and voice assistants — Google has expanded its [agreements with carriers and manufacturers] to close off these avenues to search rivals.” *United States v. Google LLC*, 20-cv-03010, ECF No. 1, ¶ 80. “Google . . . uses its agreements to ensure that new search access points are not available to

competitors. For example, Google developed a smart keyboard — a mobile app that can be used as an alternative for the standard-issued keyboards on smart phones — with the recognition that such keyboards might be ‘the next big search access point.’ Google relies on its preinstallation and default restrictions in its revenue sharing agreements as a ‘strategic defense’ against rival keyboards that might provide a ‘[b]ridge’ to rival general search engines.” *Id.* at ¶ 151; *see also Colorado v. Google*, 1:20-cv-03715, ECF No. 3, ¶¶ 103 *et seq.* (D.D.C. Dec. 17, 2020) (Section 2 case filed by 35 states based in part on Google’s contracts that restrict independent distribution of search access points); European Press Release IP/18/4581, *Antitrust: Commission Fines Google* (July 18, 2018) (fining Google \$5 billion for paying carriers and manufacturers not to preinstall rival search apps), https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4581.

11. Google has similarly paid mobile carriers like AT&T, Verizon, and T-Mobile more than \$100 million to preload Google Messages as the default messaging app on their customers’ mobile phones. Google Messages uses the Rich Communications Services (“RCS”) messaging protocol that is controlled by Google and that Google is attempting to make the standard messaging protocol for all mobile devices. Beginning in 2022, Google Messages will be the default messenger app on each carrier’s Android devices, which will result in the end of popular independent messaging apps like Verizon Messages. Verizon has already begun to discontinue support for Verizon Messages despite the app’s popularity.

12. On July 7, 2021, Attorneys General from 36 states and the District of Columbia filed a separate suit against Google alleging that Google uses its control over Android app distribution to charge a 30 percent supra-competitive commission for paid apps. *See Utah et al. v. Google LLC*, 3:21-cv-05227-JSC, ECF No. 1 (N.D. Cal. July 7, 2021). The States and District allege that Google extracts this supra-competitive commission, in part, by using its “considerable

leverage over mobile device manufacturers and Android app developers.” *Id.* ¶ 7. Google uses Revenue Sharing Agreements (“RSAs”) with carriers and manufacturers as a “carrot” to restrict them from fostering competition in Android app distribution. *See id.* ¶ 20. Google uses other agreements as “sticks” to “require Android device manufacturers to preload Google Play Store on the default home screen, render it undeletable from the device, and ensure that no other preloaded app store has a more prominent placement than the Google Play Store.” *Id.* Google also “has taken the extraordinary step of attempting to buy off Samsung . . . by, among other things, offering incentives for Samsung to turn the Galaxy store into a mere ‘white label’ for the Google Play Store — meaning that Samsung would use the backend services of the Google Play Store, including Google Play Billing, while retaining its Samsung Galaxy Store branding.” *Id.* ¶ 21. The case is related to a private multidistrict litigation currently proceeding before Judge Donato. *See In re Google Play Store Antitrust Litigation*, 3:21-md-02981-JD (N.D. Cal).

13. Google’s conduct interferes with independent efforts to compete in two ways. First, Google enforces tying arrangements. The Android mobile operating system does not contain many of the features or apps necessary for manufacturers to offer a commercially viable Android device. Instead, Google offers “Google Mobile Services,” which is a bundle of Google’s most dominant apps, including Google’s app store (Google Play), the Google Search app, Google Chrome, Google Maps, and YouTube. Google Mobile Services also includes the Application Programming Interfaces (“APIs”) that are necessary for apps to function properly on a device. A carrier or OEM can preload Google’s dominant apps and APIs only if they preload other Google-controlled search access points, including Gboard. Google enforces this tie through the Google Mobile Services licensing agreements (sometimes called “Mobile Application Distribution Agreements”) and restrictive certification requirements. Effectively,

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