

C.A. NO. 09-2350

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

AARON C. BORING and CHRISTINE BORING, husband and wife,
Appellants,

v.

GOOGLE, INC., Appellee.

Appeal from Western District of Pennsylvania
2:08-cv-00694

MOTION FOR LEAVE TO FILE ADDENDUM ATTACHED TO REPLY BRIEF

Gregg R. Zegarelli, Esq.
PA I.D. #52717
mailroom.grz@zegarelli.com
412.765.0401

Dennis M. Moskal, Esq.
PA I.D. #80106
mailroom.dmm@zegarelli.com
412.765.0405

Z E G A R E L L I
Technology & Entrepreneurial
Ventures Law Group, P.C.
Allegheny Building, 12th Floor
Pittsburgh, PA 15219-1616
v.412.765.0400
f.412.765.0531

MOTION FOR LEAVE TO FILE ADDENDUM ATTACHED TO REPLY BRIEF

NOW COME Appellants Aaron and Christine Boring ("Borings"), through its undersigned counsel, and file this Motion for Leave to File Addendum Attached to Reply Brief, stating as follows:

1. On October 8, 2009, the Borings filed their Reply Brief.
2. The Reply Brief contains an addendum, a "**Privacy Distinction Table**," which is a table of case synopses. The Privacy Distinction Table is the original authorship of the signatories to the Reply Brief, created specifically as part of the argument in the Reply Brief, and it is expressly incorporated into the Reply Brief at Page 8.
3. The Privacy Distinction Table is not part of the pre-existing record below, such as would be designated for the Appendix pursuant to Fed. R. Civ. P. 30.
4. The Privacy Distinction Table is textual subject-matter that was created for the convenience of this Court and its staff as part of the argument in the Reply Brief, and it could have been included within the body of the text of the Reply Brief by preceding the signatures of counsel for the Borings.
5. The Privacy Distinction Table text was included within the Borings' word count certification, and the Certification expressly states such inclusion.

6. On October 21, 2009, the Clerk of this Court issued an administrative order indicating that the Privacy Distinction Table, in the form of an addendum, must be filed with leave of this Court. It appears from the Order, that the stated legal basis is **"The reply brief does not comply with the following Court requirements: Form of Appendix - The following aspect(s) of the appendix is/are noncompliant:..."**

7. The undersigned were not able to find legal authority for the proposition that the Addendum is not proper as filed. Accordingly, it is hereby averred that the filing is proper as made.

8. Subject to the averment in paragraph 7, the undersigned regrets not having included the Privacy Distinction Table within the text of the argument, prior to the signature of counsel, which would have apparently eliminated the issue; it was thought that the separate inclusion as an addendum would provide for easier access during reconciliation by this Court. The undersigned apologizes for any inconvenience.

9. The Borings request that this Court, and/or the Clerk of this Court by administrative action, permit the inclusion of the Privacy Distinction Table as an addendum to the Reply Brief, as filed with the Reply Brief, either by vacating the administrative order or by granting leave.

10. It is the understanding of the undersigned from the briefing staff of the Third Circuit that: a) the Order regards only the Addendum and not the Reply Brief; b) that the compliance request is internal policy and that there is no express rule or authority; c) this Court requires a statement of the nature of the Addendum, as set forth above; and d) no proposed order, additional submissions, exhibits hereto, or other action is required. The request for action is complete with this filing.

WHEREFORE, the Borings respectfully move this Court, and/or the Clerk of this Court by administrative action, either a) to vacate the non-compliance order; or b) to grant leave to file the addendum and directing the Clerk of Courts to accept Addendum A, Privacy Distinction Table, as deemed to be filed with and part of the filing of the Reply Brief currently of record.

Respectfully submitted,

Date: October 21, 2009

/s/Gregg R. Zegarelli/
Gregg R. Zegarelli
PA I.D. #52717
mailroom.grz@zegarelli.com
412.765.0401

/s/Dennis M. Moskal
Dennis M. Moskal, Esq.
PA I.D. #80106
mailroom.dmm@zegarelli.com
412.765.0405

Counsel for Appellants
Aaron and Christine Boring

Z E G A R E L L I
Technology & Entrepreneurial
Ventures Law Group, P.C.
Allegheny Building, 12th Floor
Pittsburgh, PA 15219-1616
412.765.0400

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **MO-
TION FOR LEAVE TO FILE ADDENDUM ATTACHED TO REPLY BRIEF** was filed elec-
tronically with the Court on the 21st day of October, 2009, and notice of
this filing will also be sent to all counsel of record by operation of the
Court's electronic filing system, including the following counsel of re-
cord for Appellee:

Brian P. Fagan, Esq.
Keevican Weiss Bauerle & Hirsch LLC
11th Floor Federated Investors Tower
1001 Liberty Avenue, Pittsburgh, PA 15222, USA
bfagan@kwbhlaw.com

Tonia Ouellette Klausner, Esq.
Wilson Sonsini Goodrich & Rosati PC
1301 Avenue of the Americas, New York, New York 10019, USA
tklausner@wsgr.com

Date: October 21, 2009

/s/Gregg R. Zegarelli/
Gregg R. Zegarelli
PA I.D. #52717
mailroom.grz@zegarelli.com
412.765.0401

/s/Dennis M. Moskal/
Dennis M. Moskal, Esq.
PA I.D. #80106
mailroom.dmm@zegarelli.com
412.765.0405

Counsel for Appellants
Aaron and Christine Boring

Z E G A R E L L I
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