

Court of Appeals Docket No. 10-56316

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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U.S. COURT OF APPEALS

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PERFECT 10, INC.,

Plaintiff-Appellant

vs.

GOOGLE INC.,

Defendant-Appellee.

On Appeal From The United States District Court, Central District Of
California, Hon. A. Howard Matz, USDC No. CV 04-9484 AHM (SHx)

**NOTIFICATION OF FILING UNDER SEAL
OF PLAINTIFF-APPELLANT PERFECT 10, INC.'S
REPLY BRIEF AND FURTHER EXERPTS OF RECORD**

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Attorneys for Plaintiff-Appellant Perfect 10, Inc.

Plaintiff-Appellant Perfect 10, Inc. hereby notifies the Court, pursuant to Circuit Rule 27-13, that it is necessary to seal Perfect 10's Reply Brief and Further Excerpts of Record pursuant to a Protective Order entered by the District Court below. A copy of the Protective Order entered by the District Court is attached hereto as Exhibit 1.

Dated: January 19, 2011

Respectfully submitted,

LAW OFFICES OF JEFFREY N. MAUSNER

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David N. Schultz
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FILED
CLERK, U.S. DISTRICT COURT
DEC 27 2005
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

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20 Attorneys for Plaintiff
21 PERFECT 10, INC.
22 (Additional counsel on second page)

23 UNITED STATES DISTRICT COURT
24 CENTRAL DISTRICT OF CALIFORNIA

25 PERFECT 10, INC., a California
26 corporation,

27 Plaintiff,

28 vs.

GOOGLE INC., a corporation; and
DOES 1 through 100, inclusive,

Defendant.

GOOGLE INC., a corporation,

Counterclaimant,

vs.

PERFECT 10, INC., a California
corporation,

Counter-defendant.

Case No. CV04-9484-NM-(CWx)

AHM (SAx)

~~STIPULATION AND~~
~~PROPOSED~~ PROTECTIVE
~~ORDER~~ ORDER

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DEC 29 2005
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1 ~~All parties to this action hereby stipulate to, and request that the Court enter the~~
2 ~~following Protective Order.~~

3 Good cause appearing:

4 IT IS HEREBY ORDERED that this Protective Order pursuant to Rule 26(c) of
5 the Federal Rules of Civil Procedure be, and is hereby, entered.

6 1. This Protective Order ("Order") shall be applicable to and govern all
7 depositions, documents produced in response to requests for production of documents,
8 answers to interrogatories, responses to requests for admission, and all other discovery
9 taken pursuant to the Federal Rules of Civil Procedure, or furnished informally by
10 agreement between the parties, as well as testimony adduced at trial and other
11 information hereafter furnished, directly or indirectly, by or on behalf of any party or
12 nonparty in connection with this action which that party or nonparty in good faith
13 believes comprise or reflect proprietary information used by it in, or pertaining to, its
14 business, which is not generally known and which the party would normally not
15 reveal to third parties or would cause third parties to maintain in confidence,
16 including, without limitation, trade secrets, financial data, contracts and agreements,
17 current and future business plans, and marketing documents.¹ The term "document"
18 as used in this Order, shall have the broadest meaning permissible under the Federal
19 Rules of Civil Procedure and shall include, without limitation, all "writings,"
20 "recordings" and photographs" as defined in Rule 1001 of the Federal Rules of
21 Evidence, and any information stored in or through any computer system or other
22 electronic or optical data storage device.

23 2. Material designated as "Confidential" or "Highly Confidential" pursuant
24 to this Order ("Confidential or Highly Confidential Material") shall be used by any
25 recipients solely for the purpose of conducting this litigation, and not for any other
26 purpose whatsoever, and such information shall not be disclosed to anyone except as

27
28 ¹ This Protective Order does not apply to hearings before the Magistrate Judge or
hearings or trial before the District Court. The parties, any party in interest, and/or the
witnesses, can move the Court to seal any court proceeding for reasons consistent with
this Protective Order.

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1 provided herein. No expert or consultant shall review or gain access to Confidential
2 or Highly Confidential Material unless he or she has executed the Notification of
3 Protective Order and Undertaking (attached as Exhibit A).

4 **Confidential Designation of Material**

5 3. Any information or materials produced by any party or nonparty as part
6 of discovery in this action may be designated "Confidential" by such party or nonparty
7 pursuant to Paragraph 4 of this Order.

8 4. The designation of information or material as "Confidential" for purposes
9 of this Order shall be made in the following manner by the party or nonparty seeking
10 protection:

11 (a) In the case of documents, exhibits, briefs, memoranda,
12 interrogatory responses, responses to requests for admission, or other materials (apart
13 from depositions or other pretrial or trial testimony): by affixing a plainly visible
14 confidentiality designation legend to: (i) the cover page of such document stating
15 either "Confidential" or "This Document Contains Material Designated as
16 Confidential Pursuant to the Protective Order Entered in this Case"; and (ii) each page
17 containing any confidential information or material; or (iii) physically on the outside
18 of any media for storing electronic documents, at the time such documents are
19 produced or such information is disclosed, or as soon thereafter as the party or
20 nonparty seeking protection becomes aware of the confidential nature of the
21 information or material disclosed and sought to be protected hereunder.

22 (b) In the case of depositions or other pretrial or trial testimony: (i) by
23 a statement on the record, by counsel, during such deposition or other pretrial or trial
24 proceeding that the entire transcript or a portion thereof shall be designated hereunder;
25 or (ii) by written notice of such designation sent by counsel to all parties within ten
26 (10) days after the delivery to counsel of the transcript of the deposition. At or before
27 a deposition, the deponent or his counsel, or any other counsel of record, acting in
28 good faith, may invoke the provisions of this Order in a timely manner, giving

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1 adequate warning to counsel for the party or nonparty that testimony about to be given
2 is deemed protected under this Order. The parties may modify this procedure for any
3 particular deposition or proceeding through agreement on the record at such
4 deposition or proceeding or otherwise by written stipulation, without approval of the
5 Court. If any document or information designated under this Order is used during the
6 course of a deposition, that portion of the deposition record reflecting such
7 confidential information shall be sealed and stamped accordingly, and access thereto
8 shall be limited pursuant to the other terms of this Order.

9 (c) A party or nonparty furnishing documents and things to another
10 party shall have the option to require that all or batches of documents and things be
11 treated as confidential during inspection and to make its designations of particular
12 documents and things at the time copies of documents and things are produced or
13 furnished.

14 5. Information or material designated as "Confidential" under this Order, or
15 copies or extracts therefrom and compilations thereof, may be disclosed, described,
16 characterized, or otherwise communicated or made available in whole or in part only
17 to the following persons:

18 (a) Outside counsel of record in this litigation and staff and supporting
19 personnel of such attorneys, such as paralegals, secretaries, stenographic and clerical
20 employees and contractors, and outside copying, imaging and presentation services (if
21 used), who are working on this litigation under the direction of such attorneys and to
22 whom it is necessary that the materials be disclosed for purposes of this litigation;

23 (b) In-house counsel for the parties herein who are necessary for the
24 furtherance of this litigation and in-house paralegal;

25 (c) One officer of each of the parties;

26 (d) Subject to Paragraphs 6 and 8 herein, persons who are expressly
27 retained or sought to be retained by a party as consultants or testifying experts, such as
28 accountants, statisticians, economists, industry or technical experts; provided that the

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1 disclosure of "Confidential" material to any persons under this subparagraph shall
2 only be to the extent necessary to perform their work on this litigation.

3 (e) Subject to Paragraph 8 herein, any other persons who are
4 designated to receive material designated "Confidential" by order of this Court after
5 notice to the parties, or by written stipulation of the parties.

6 (f) Subject to Paragraph 7 and Paragraph 8 herein, any person who
7 gives testimony in deposition or trial in this action.

8 (g) The Court and Court personnel.

9 (h) Subject to Paragraph 8, court reporters, interpreters and
10 videographers employed in connection with this action.

11 (i) The parties retain the right to apply to the Court for an order
12 restricting certain individuals from access to certain information. To accomplish this,
13 counsel for a party wishing to restrict access to information shall produce the
14 information (i.e. document) to all counsel for which there is no objection, with a
15 request that the information not be disseminated to other individuals involved in this
16 litigation pending further order of the Court. The moving party shall, thereafter,
17 within (7) seven days, file the information under seal with the Magistrate Judge and
18 identify the person (by name and title) who the moving party objects to seeing the
19 information and why the moving party believes the information should not be received
20 by this person(s). If the Court is inclined to grant the order, it will notify the
21 aggrieved party and invite ^(and/or oral argument) briefing before issuing an order.

22 6. For the purposes of this Order, a consultant shall be restricted to a person
23 who is retained or employed as a bona fide consultant or expert for purposes of this
24 litigation, whether full or part time, by or at the direction of counsel for a party, and
25 who is not retained by, employed by, or otherwise affiliated with any party to this
26 action. The name, business address, curriculum vitae ("CV") and affiliation of each
27 such consultant or testifying expert must be disclosed to the producing party at least
28 five (5) court days prior to such person's review of material designated under this

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1 Order. The CV shall contain a list of all present employers/clients as well as all past
2 employers/clients for the 36 months preceding the date of employment in this case.
3 During that five-day period, counsel for the designating party shall have the
4 opportunity to oppose the proposed disclosure. Any party opposing disclosure shall
5 within such five (5) day period provide the other party with a written objection, setting
6 forth in reasonable detail the specific grounds for such opposition. If no written
7 objection is received by 5:00 p.m., Pacific time, on the fifth day following the date of
8 disclosure of the identity of the proposed consultant or testifying expert, then the party
9 seeking to disclose may do so and failure to object shall constitute waiver of the
10 specific objection. However, after the five-day period has expired without objection,
11 a party may still move the Magistrate Judge to allow it to object to an expert if it can
12 show: a) there is new, material information relating to the expert, which was not
13 available to the moving party within the five-day objection period; and b) had the
14 moving party been aware of the information at the time, the moving party would have
15 objected to the expert. In the event that an objection is received, the objecting party
16 shall, within two (2) court days send to the other party by facsimile or next business
17 day delivery its portion of a joint stipulation, modeled on the procedure used by this
18 District, to be furnished the court in connection with any motion regarding the
19 objection. Within three (3) court days of receipt of such portion of the joint
20 stipulation, the party seeking to disclose shall send its portion of a joint stipulation to
21 the objecting party by facsimile or next business day delivery. Within two (2) court
22 days of receipt of both portions of the joint stipulation, the objecting party shall file
23 the joint stipulation, with the Court and both parties shall seek a hearing at the Court's
24 earliest convenience. In the event such resolution by the Court is necessary, the
25 material at issue shall not be disclosed to the consultant or testifying expert pending
26 resolution of the issue by the Court.

27 7. Each person set forth in Paragraph 5 to be examined as a witness, may be
28 so examined at trial or during a deposition concerning any information or material

1 designated under this Order, which that person had lawfully received or authored prior
2 to and apart from this action. During examination, any such witness may be shown
3 information or material designated under this Order by a party which appears on its
4 face or from other documents or testimony to have been received or authored by that
5 witness from, or communicated to that witness by, that same party provided that the
6 examining party makes a reasonable effort to obtain the compliance of the witness
7 with Paragraph 8.

8 8. Each person set forth in Paragraph 5 who is not (i) outside counsel to a
9 party to this litigation, or staff directly employed by such outside counsel; or (ii) the
10 Court or Court personnel to whom material designated under this Order is to be
11 disclosed, shall, prior to receiving such material, be furnished with a copy of this
12 Order, a copy of the Court's Notification of Protective Order and Undertaking, which
13 the person shall read and sign (Attached as Exhibit A). Counsel for the party seeking
14 to disclose material designated under this Order to any such person pursuant to this
15 paragraph shall be responsible for permanently retaining the executed originals of all
16 such Notifications.

17 9. All Confidential or Highly Confidential Material shall be securely
18 maintained in a manner intended to preserve confidentiality. Access to such material
19 shall be permitted only to those designated persons set forth in Paragraph 5 above as
20 persons properly having access thereto. The recipient of any material designated
21 under this Order shall use its best efforts, but at no time less than reasonable efforts
22 under the circumstances, to maintain the confidentiality of such information.

23 10. Nothing contained in this Order shall affect the right of any party to make
24 any objection, claim any privilege, or otherwise contest any request for production of
25 documents, interrogatory, request for admission, subpoena, or question at a deposition
26 or to seek further relief or protective order from the Court as permitted by the Federal
27 Rules of Civil Procedure. Nothing in this Order shall constitute an admission or
28 waiver of any claim or defense by any party.

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1 11. In the event that counsel for any party determines to file or submit to this
2 Court any information or material designated Confidential pursuant to this Order
3 ("Confidential Information"), or any papers containing or making reference to such
4 information (the "Filing Party"), those materials shall be filed under seal. in sealed
5 envelopes on which shall be endorsed the caption of this action and a statement
6 substantially in the following form:

7 **CONFIDENTIAL**

8 This envelope contains documents that are subject to an
9 order governing discovery and the use of confidential
10 discovery material entered by the Court in this action.

11 The envelope shall not be opened or the contents thereof
12 displayed or revealed except by Order of the Court.

13 Violation hereof may be regarded as contempt of the
14 Court.

15 Subject to the Court's convenience and needs, documents filed under seal shall
16 be kept under seal by the Clerk until further Order of the Court.

17 12. Any documents and information produced by nonparties, pursuant to
18 subpoena or otherwise may be designated pursuant to the terms of this Order by any
19 party or nonparty.

20 13. A party shall not be obligated to challenge the propriety of material
21 designated under this Order at the time the designation is made and failure to do so
22 shall not preclude a subsequent challenge thereto. In the event that any party to this
23 litigation disagrees at any state of these proceedings with such designation, such party
24 shall provide to the designating person or entity a letter detailing its objection to the
25 designation. The designating person or entity shall respond by letter within three (3)
26 court days to such letter. If not resolved, the objecting party may file a motion
27 objecting to the designation. In any such motion, the burden of proving that
28 information has been properly designated under this Order is on the person or entity

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1 making such designation.

2 **Highly Confidential Designation of Materials**

3 14. The parties may further designate certain material or testimony of a
4 highly confidential and/or proprietary nature as "Highly Confidential," in the manner
5 for confidential designation set forth in Paragraph 4 herein. The "Highly
6 Confidential" designation may be challenged in the manner set forth in Paragraph 13
7 herein. Materials designated "Highly Confidential" ("Highly Confidential Material")
8 shall be subject to the following protections, which are in addition to those protections
9 applicable to documents designated "Confidential" under this Order. Highly
10 Confidential Material may be accessed, copied, or held by only (i) counsel of record
11 and necessary support staff working under the lawyers' supervision; (ii) outside
12 consultants and experts, not affiliated with or employed by any party, who have
13 signed the attached Notification of Protective Order and Undertaking and who qualify
14 for access to the materials in the manner set forth in Paragraph 6 herein; and (iii) one
15 officer of each of the parties who shall also sign the attached Notification of Protective
16 Order and Undertaking, but shall not be disclosed to any other officer, director or
17 employee of a party, unless otherwise agreed or ordered. Designation of material as
18 Highly Confidential shall be severely restricted only to those materials for which there
19 is a legitimate reason to restrict access. The designating party shall have the burden of
20 establishing that there is a legitimate reason for designating materials as Highly
21 Confidential.

22 15. The parties may also designate certain electronic data as "Highly
23 Confidential Electronic Data" in the manner for confidential designation set forth in
24 Paragraph 4 herein, in which case the following protections shall apply, which are in
25 addition to the protections set forth for Confidential and Highly Confidential Material
26 above. Each of Winston & Strawn LLP; Berman, Mausner & Resser; Mitchell
27 Silberberg and Knupp LLP; and Dan Cooper, Esq., shall designate one of its attorneys
28 to function as the Custodian of any Highly Confidential Electronic Data produced to

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1 the firm under this Order. Each Custodian shall execute a statement to be provided to
2 opposing counsel upon execution, confirming that he or she will maintain any Highly
3 Confidential Electronic Data produced to his or her firm in compliance with all the
4 terms of this Order.

5 16. Except as hereinafter provided, the copies of Highly Confidential
6 Electronic Data will not be duplicated or furnished to others. The Custodians will
7 ensure that Highly Confidential Electronic Data will be protected from dissemination,
8 including by the following means:

9 (a) At each location, any Highly Confidential Electronic Data will be
10 kept in a secure location when not being actively accessed.

11 (b) At each location, counsel for the receiving parties and consultants
12 and experts who have signed the Notification of Protective Order will maintain a log
13 of those counsel of record, support personnel working under their direct supervision,
14 one officer of the party, and experts or consultants who have accessed Highly
15 Confidential Electronic Data. The log entries will include the date and time of any
16 such access. Before gaining access for the first time to Highly Confidential Electronic
17 Data, such person otherwise qualifying under Paragraph 14 will review this Order and
18 attest to having read and understood it, which also will be recorded on the log. In the
19 event of a dispute involving any alleged violation of this Order, counsel may obtain
20 immediate copies of the logs from each location by written notice to the opposing
21 Custodian.

22 (c) Except as needed for use in depositions, court filings under seal, or
23 trial, no copies of Highly Confidential Electronic Data, or work product containing
24 portions of such data, shall be taken from the offices of counsel of record or
25 consultants and experts who have signed the Notification of Protective Order and
26 Undertaking, and no computer that contains any of the Highly Confidential Electronic
27 Data or portions of the data shall be connected to a computer network of any sort
28 while it contains the Highly Confidential Electronic Data or portions of such data.

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1 (d) In the event that a Custodian becomes aware of any breach of the
2 provisions of this Order, he or she shall promptly alert opposing counsel of any such
3 breach.

4 17. Other than for purposes of this Action, subject to the restrictions of this
5 Order, those permitted access to Highly Confidential Material or Highly Confidential
6 Electronic Data under this Order shall not disclose contents of such material to any
7 other persons at any time and shall never use any information gained from access to or
8 review of such materials for any purpose or reasons other than for the purposes of this
9 action.

10 18. Upon the conclusion of the Action, the Highly Confidential Material or
11 Highly Confidential Electronic Data shall be either returned or disposed of as set forth
12 in Paragraph 27 herein and counsel of record shall gather all such material and destroy
13 and certify as destroyed such materials, except that one archival copy of each party's
14 Highly Confidential Material or Highly Confidential Electronic Data may be securely
15 retained by counsel maintaining such material.

16 **Other Provisions**

17 19. Nothing in this Order shall preclude any party to the lawsuit or its
18 counsel: (a) from showing a document designated under this Order to an individual
19 who either prepared or reviewed the document prior to the filing of this action; or (b)
20 from disclosing or using, in any manner or for any purpose, any information or
21 documents from the party's own files which the party itself has designated under this
22 Order.

23 20. Nothing in this Order shall prevent disclosure beyond the terms of this
24 Order if the party designating material consents in writing to such disclosure, or if a
25 court orders such disclosure. A party requested to disclose material designated under
26 this Order to a nonparty pursuant to a validly served subpoena civil investigative
27 demand, discovery procedure permitted under the Federal Rules of Civil Procedure or
28 other formal discovery request shall object to its production to the extent permitted by

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1 applicable law and notify the requesting nonparty of the existence of this Order and
2 that the material requested by the nonparty has been designated under this Order, and
3 shall further give notice of such request, by facsimile and next business day delivery,
4 upon the party which designated the material as soon as is reasonably possible, but in
5 all instances sufficiently prior to the date on which such confidential material is to be
6 produced to the nonparty. Once such notice is given, the designating party shall take
7 all steps it believes are necessary to protect the Confidential materials and the non-
8 designating party is not required to take any further action.

9 21. If a party inadvertently fails to designate material and/or information,
10 when producing or otherwise disclosing such material and/or information, it shall not
11 be deemed a waiver in whole or in part of a party's claim of confidentiality, either as
12 to the specific information disclosed or as to any other information relating thereto or
13 on the same or related subject matter. As soon as the receiving party has knowledge
14 of the inadvertent production, the information must be treated as if it had been
15 designated under this Protective Order, and the receiving party must endeavor in good
16 faith to obtain all copies of the document which it distributed or disclosed to persons
17 not authorized to access such information by Paragraphs 5 or 14 above, as well as any
18 copies made by such persons. The costs of doing so shall be paid by the designating
19 party.

20 22. All counsel for the parties who have access to information or material
21 designated under this Order acknowledge they are bound by this Order and submit to
22 the jurisdiction of this Court for purposes of enforcing this Order.

23 23. Entering into, agreeing to, and/or producing or receiving information or
24 material designated under this Order, or otherwise complying with the terms of this
25 Order shall not:

26 (a) operate as an admission by any party that any particular
27 information or material designated under this Order contains or reflects trade secrets,
28 proprietary or commercially sensitive information or any other type of confidential

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1 information;

2 (b) operate as an admission by any party that the restrictions and
3 procedures set forth herein constitute or do not constitute adequate protection for any
4 particular information designated under this Order;

5 (c) prejudice in any way the rights of any party to object to the
6 production of documents they consider not subject to discovery;

7 (d) prejudice in any way the rights of any party to object to the
8 authenticity or admissibility into evidence of any document, testimony or other
9 evidence subject to this Order;

10 (e) prejudice in any way the rights of any party to seek a determination
11 by the Court whether any information or material should be subject to the terms of this
12 Order;

13 (f) prejudice in any way the rights of any party to petition the Court
14 for a further protective order relating to any purportedly confidential information;

15 (g) prevent the parties to this Order from agreeing in writing or on the
16 record during a deposition or hearing in this action to alter or waive the provisions or
17 protections provided for herein with respect to any particular information or material
18 with written or on the record consent of the party disclosing such information.

19 24. This Order shall not be construed to apply to any information that: (a) is
20 available to the public other than through a breach of this Order or other duty of
21 confidentiality; (b) a receiving party can demonstrate was already known to the party
22 at the time of disclosure and was not subject to conditions of confidentiality; or (c) a
23 receiving party can demonstrate was developed by that party independently of any
24 disclosure by a designating party or nonparty.

25 25. In the event that information in the possession or control of a person or
26 entity involves the confidentiality rights of a non-party or its disclosure would violate
27 a protective order issued in another action, the party with possession or control of the
28 information will promptly attempt to obtain the consent of the non-party to disclose

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1 the information under this Order. If the consent of the non-party is refused or
2 otherwise cannot be obtained, the party will promptly thereafter notify the party
3 seeking discovery by the written response due date for such discovery of: (a) the
4 existence and description (to the extent disclosable) of the information without
5 producing such information and; (b) the identity of the nonparty (provided, however,
6 that such disclosure of the identity of the non-party does not violate any
7 confidentiality obligations). The party seeking discovery may then make further
8 application to the non-party or seek an order to compel discovery.

9 26. Within sixty (60) days after the final termination of litigation between the
10 parties (including appeals), all material designated under this Order and all copies
11 thereof (including summaries and excerpts) shall be either returned to the party that
12 produced it or destroyed and a certification of destruction supplied to the producing
13 party; provided, however, that for each party, counsel who is entitled access to such
14 designated material pursuant to this Order may retain one complete and unredacted set
15 of its work product that contains designated material as well as pleadings and papers
16 filed with the Court or served on the other party solely for reference in the event of,
17 and only in the event of, further proceedings or litigation between the parties, a
18 dispute over such counsel's performance, or a dispute over the use or dissemination of
19 material designated under this Order. Such retained copy of pleadings and papers
20 shall be maintained in a file accessible only by properly authorized counsel under the
21 provisions of, and bound by, this Order. This Order shall survive the final termination
22 of this litigation with respect to any such retained confidential material and the Court

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1 shall retain jurisdiction to resolve any dispute concerning the use of information
2 disclosed hereunder.

3 Dated: March __, 2005

Respectfully submitted,
WINSTON & STRAWN LLP

By: _____
Andrew P. Bridges
Attorneys for Defendant and
Counterclaimant Google Inc.

8 Dated: March __, 2005

MITCHELL SILBERBERG & KNUPP LLP

By: _____
Russell J. Frackman
Attorneys for Plaintiff and Counter-
defendant Perfect 10, Inc.

13 Dated: March __, 2005

BERMAN, MAUSNER & RESSER

By: _____
Jeffrey N. Mausner
Attorneys for Plaintiff and Counter-
defendant Perfect 10, Inc.

18 Dated: March __, 2005


PERFECT 10, INC.

By: _____
Daniel J. Cooper
Attorney for Plaintiff and Counter-
defendant Perfect 10, Inc.

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ORDER

IT IS SO ORDERED, this 27th day of December, 2005.



Hon. Carla Woehrle,
United States Magistrate Judge

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Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5894

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PERFECT 10, INC., a California corporation,

Plaintiff,

vs.

GOOGLE INC., a corporation; and
DOES 1 through 100, inclusive,

Defendant.

Case No. CV04-9484 ^{AHM (SHX)} NM (CW*)

**NOTIFICATION OF PROTECTIVE
ORDER GOVERNING
INFORMATION IN THIS CASE
AND UNDERTAKING**

GOOGLE INC., a corporation,

Counterclaimant,

vs.

PERFECT 10, INC., a California corporation,

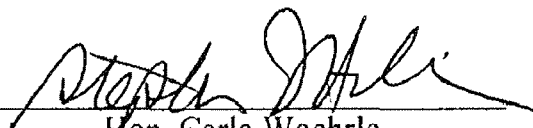
Counter-defendant.

FILED
CLERK
U.S. DISTRICT COURT
LOS ANGELES

1 The United States District Court in Los Angeles has issued a protective order in
2 this case, which limits the dissemination of Confidential and Highly Confidential
3 information produced in discovery. You are now subject to this order and are
4 prohibited by court order from communicating any Confidential or Highly
5 Confidential information you obtained through discovery in this case to any persons
6 other than those specified in the protective order. If you intentionally disseminate this
7 information in violation of this Court's order, you could be subject to sanctions, which
8 could include fines and, in an extreme case, incarceration for contempt of court.

9 If for any reason you believe you should not be subject to this order or would
10 like to request an order from the Court exempting you from this order, you should
11 request a hearing before this Court and obtain a ruling before you disseminate any of
12 the information. You can request a hearing by telling any of the attorneys in this case
13 that you want to be heard. The attorney will then arrange for the Court to hold a
14 hearing. If you prefer, you can instead call the Court's clerk and request a hearing
15 date.

16 BY ORDER OF THE COURT.

17
18 
19 Mon. Carla Woehrle
United States Magistrate Judge

20
21
22 I declare under penalty of perjury that I have read the Protective Order issued in
23 this case and that I agree to abide by and be bound by its terms.

24 Executed this _____ day of _____, 2005 in

25 _____

26
27 Print Name _____

Signature _____

28

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San Francisco, CA 94111-5894

**PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the county of Los Angeles, State of California.

I am over the age of 18 and am not a party to the within action; my business address is: 21800 Oxnard Street, Suite 910, Woodland Hills, California 91367

On January 19, 2011, I served the foregoing document(s) described as follows:

**NOTIFICATION OF FILING UNDER SEAL OF PLAINTIFF-APPELLANT
PERFECT 10, INC.'S OPENING BRIEF AND EXERPTS OF RECORD**

on the interested parties in this action by sending a copy by Federal Express to:

**Michael Zeller
Quinn Emanuel
865 S. Figueroa St. 10th Floor
Los Angeles, California 90017**

**Charles Verhoeven
Margret Caruso
Quinn Emanuel
555 Twin Dolphin Drive, Suite 560
Redwood Shores, California 94065**

FEDERAL EXPRESS: I transmitted by Federal Express such documents to the offices of the addressees for overnight delivery, with fees billable to sender.

FEDERAL: I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on January 19, 2011 at Los Angeles, California.

BY: 
Brittany Rosen

Court of Appeals Docket No. 10-56316

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

RECEIVED
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JAN 20 2011

FILED _____
DOCKETED _____
DATE _____ INITIAL _____

PERFECT 10, INC.,

Plaintiff-Appellant

vs.

GOOGLE INC.,

Defendant-Appellee.

On Appeal From The United States District Court, Central District Of
California, Hon. A. Howard Matz, USDC No. CV 04-9484 AHM (SHx)

**NOTIFICATION OF FILING UNDER SEAL
OF PLAINTIFF-APPELLANT PERFECT 10, INC.'S
REPLY BRIEF AND FURTHER EXERPTS OF RECORD**

Jeffrey N. Mausner (California Bar No. 122385)
David N. Schultz (California Bar No. 123094)
Law Offices of Jeffrey N. Mausner
21800 Oxnard Street, Suite 910
Woodland Hills, California 91367
Telephone: (818) 992-7500; (310) 617-8100
Facsimile: (818) 716-2773

Attorneys for Plaintiff-Appellant Perfect 10, Inc.

Plaintiff-Appellant Perfect 10, Inc. hereby notifies the Court, pursuant to Circuit Rule 27-13, that it is necessary to seal Perfect 10's Reply Brief and Further Excerpts of Record pursuant to a Protective Order entered by the District Court below. A copy of the Protective Order entered by the District Court is attached hereto as Exhibit 1.

Dated: January 19, 2011

Respectfully submitted,

LAW OFFICES OF JEFFREY N. MAUSNER

By: Jeffrey N. Mausner
Jeffrey N. Mausner
David N. Schultz
Attorneys for Plaintiff-Appellant
Perfect 10, Inc.

1 WINSTON & STRAWN LLP
2 Andrew P. Bridges (SBN: 122761)
3 Michael S. Brophy (SBN: 197940)
4 Jennifer A. Golinveaux (SBN: 203056)
5 101 California Street, Suite 3900
6 San Francisco, CA 94111-5894
7 Telephone: (415) 591-1000
8 Facsimile: (415) 591-1400
9 E-mail: abridges@winston.com, mbrophy@winston.com,
10 jgolinveaux@winston.com

FILED
CLERK, U.S. DISTRICT COURT
DEC 27 2005
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

11 Attorneys For Defendant and Counterclaimant
12 GOOGLE INC.

13 MITCHELL SILBERBERG & KNUPP LLP
14 Russell J. Frackman (State Bar No. 49087)
15 Jeffrey D. Goldman (State Bar No. 155589)
16 11377 West Olympic Boulevard
17 Los Angeles, CA 90064-1683
18 Telephone: (310) 312-2000
19 Facsimile: (310) 312-3100

Priority
Send
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Scan Only

20 Attorneys for Plaintiff
21 PERFECT 10, INC.
22 (Additional counsel on second page)

23 UNITED STATES DISTRICT COURT
24 CENTRAL DISTRICT OF CALIFORNIA

25 PERFECT 10, INC., a California
26 corporation,

27 Plaintiff,

28 vs.

GOOGLE INC., a corporation; and
DOES 1 through 100, inclusive,

Defendant.

GOOGLE INC., a corporation,

Counterclaimant,

vs.

PERFECT 10, INC., a California
corporation,

Counter-defendant.

Case No. CV04-9484-NM-(GWx)

AHM (SAx)

~~STIPULATION AND~~
~~PROPOSED~~ PROTECTIVE
~~ORDER~~ ORDER

DOCKETED ON CM
DEC 29 2005
BY DW 026

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SCANNED

1 BERMAN, MAUSNER & RESSER
Jeffrey N. Mausner (State Bar No. 122385)
2 11601 Wilshire Boulevard, Suite 600
Los Angeles, California 90025-1742
3 Telephone: (310) 473-3333
Facsimile: (310) 473-8303
4

5 PERFECT 10, INC.
Daniel J. Cooper (State Bar No. 198460)
72 Beverly Park Dr.
6 Beverly Hills, California 90210
Telephone: (310) 205-9817
7 Facsimile: (310) 205-9638

8 Attorneys for Plaintiff
PERFECT 10, INC.
9

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CONFIDENTIAL

1 ~~All parties to this action hereby stipulate to, and request that the Court enter the~~
2 ~~following Protective Order.~~

3 Good cause appearing:

4 IT IS HEREBY ORDERED that this Protective Order pursuant to Rule 26(c) of
5 the Federal Rules of Civil Procedure be, and is hereby, entered.

6 1. This Protective Order ("Order") shall be applicable to and govern all
7 depositions, documents produced in response to requests for production of documents,
8 answers to interrogatories, responses to requests for admission, and all other discovery
9 taken pursuant to the Federal Rules of Civil Procedure, or furnished informally by
10 agreement between the parties, as well as testimony adduced at trial and other
11 information hereafter furnished, directly or indirectly, by or on behalf of any party or
12 nonparty in connection with this action which that party or nonparty in good faith
13 believes comprise or reflect proprietary information used by it in, or pertaining to, its
14 business, which is not generally known and which the party would normally not
15 reveal to third parties or would cause third parties to maintain in confidence,
16 including, without limitation, trade secrets, financial data, contracts and agreements,
17 current and future business plans, and marketing documents.¹ The term "document"
18 as used in this Order, shall have the broadest meaning permissible under the Federal
19 Rules of Civil Procedure and shall include, without limitation, all "writings,"
20 "recordings" and photographs" as defined in Rule 1001 of the Federal Rules of
21 Evidence, and any information stored in or through any computer system or other
22 electronic or optical data storage device.

23 2. Material designated as "Confidential" or "Highly Confidential" pursuant
24 to this Order ("Confidential or Highly Confidential Material") shall be used by any
25 recipients solely for the purpose of conducting this litigation, and not for any other
26 purpose whatsoever, and such information shall not be disclosed to anyone except as

27
28 ¹ This Protective Order does not apply to hearings before the Magistrate Judge or
hearings or trial before the District Court. The parties, any party in interest, and/or the
witnesses, can move the Court to seal any court proceeding for reasons consistent with
this Protective Order.

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1 provided herein. No expert or consultant shall review or gain access to Confidential
2 or Highly Confidential Material unless he or she has executed the Notification of
3 Protective Order and Undertaking (attached as Exhibit A).

4 **Confidential Designation of Material**

5 3. Any information or materials produced by any party or nonparty as part
6 of discovery in this action may be designated "Confidential" by such party or nonparty
7 pursuant to Paragraph 4 of this Order.

8 4. The designation of information or material as "Confidential" for purposes
9 of this Order shall be made in the following manner by the party or nonparty seeking
10 protection:

11 (a) In the case of documents, exhibits, briefs, memoranda,
12 interrogatory responses, responses to requests for admission, or other materials (apart
13 from depositions or other pretrial or trial testimony): by affixing a plainly visible
14 confidentiality designation legend to: (i) the cover page of such document stating
15 either "Confidential" or "This Document Contains Material Designated as
16 Confidential Pursuant to the Protective Order Entered in this Case"; and (ii) each page
17 containing any confidential information or material; or (iii) physically on the outside
18 of any media for storing electronic documents, at the time such documents are
19 produced or such information is disclosed, or as soon thereafter as the party or
20 nonparty seeking protection becomes aware of the confidential nature of the
21 information or material disclosed and sought to be protected hereunder.

22 (b) In the case of depositions or other pretrial or trial testimony: (i) by
23 a statement on the record, by counsel, during such deposition or other pretrial or trial
24 proceeding that the entire transcript or a portion thereof shall be designated hereunder;
25 or (ii) by written notice of such designation sent by counsel to all parties within ten
26 (10) days after the delivery to counsel of the transcript of the deposition. At or before
27 a deposition, the deponent or his counsel, or any other counsel of record, acting in
28 good faith, may invoke the provisions of this Order in a timely manner, giving

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1 adequate warning to counsel for the party or nonparty that testimony about to be given
2 is deemed protected under this Order. The parties may modify this procedure for any
3 particular deposition or proceeding through agreement on the record at such
4 deposition or proceeding or otherwise by written stipulation, without approval of the
5 Court. If any document or information designated under this Order is used during the
6 course of a deposition, that portion of the deposition record reflecting such
7 confidential information shall be sealed and stamped accordingly, and access thereto
8 shall be limited pursuant to the other terms of this Order.

9 (c) A party or nonparty furnishing documents and things to another
10 party shall have the option to require that all or batches of documents and things be
11 treated as confidential during inspection and to make its designations of particular
12 documents and things at the time copies of documents and things are produced or
13 furnished.

14 5. Information or material designated as "Confidential" under this Order, or
15 copies or extracts therefrom and compilations thereof, may be disclosed, described,
16 characterized, or otherwise communicated or made available in whole or in part only
17 to the following persons:

18 (a) Outside counsel of record in this litigation and staff and supporting
19 personnel of such attorneys, such as paralegals, secretaries, stenographic and clerical
20 employees and contractors, and outside copying, imaging and presentation services (if
21 used), who are working on this litigation under the direction of such attorneys and to
22 whom it is necessary that the materials be disclosed for purposes of this litigation;

23 (b) In-house counsel for the parties herein who are necessary for the
24 furtherance of this litigation and in-house paralegal;

25 (c) One officer of each of the parties;

26 (d) Subject to Paragraphs 6 and 8 herein, persons who are expressly
27 retained or sought to be retained by a party as consultants or testifying experts, such as
28 accountants, statisticians, economists, industry or technical experts; provided that the

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1 disclosure of "Confidential" material to any persons under this subparagraph shall
2 only be to the extent necessary to perform their work on this litigation.

3 (e) Subject to Paragraph 8 herein, any other persons who are
4 designated to receive material designated "Confidential" by order of this Court after
5 notice to the parties, or by written stipulation of the parties.

6 (f) Subject to Paragraph 7 and Paragraph 8 herein, any person who
7 gives testimony in deposition or trial in this action.

8 (g) The Court and Court personnel.

9 (h) Subject to Paragraph 8, court reporters, interpreters and
10 videographers employed in connection with this action.

11 (i) The parties retain the right to apply to the Court for an order
12 restricting certain individuals from access to certain information. To accomplish this,
13 counsel for a party wishing to restrict access to information shall produce the
14 information (i.e. document) to all counsel for which there is no objection, with a
15 request that the information not be disseminated to other individuals involved in this
16 litigation pending further order of the Court. The moving party shall, thereafter,
17 within (7) seven days, file the information under seal with the Magistrate Judge and
18 identify the person (by name and title) who the moving party objects to seeing the
19 information and why the moving party believes the information should not be received
20 by this person(s). If the Court is inclined to grant the order, it will notify the
21 aggrieved party and invite ^(and/or oral argument) briefing before issuing an order.

22 6. For the purposes of this Order, a consultant shall be restricted to a person
23 who is retained or employed as a bona fide consultant or expert for purposes of this
24 litigation, whether full or part time, by or at the direction of counsel for a party, and
25 who is not retained by, employed by, or otherwise affiliated with any party to this
26 action. The name, business address, curriculum vitae ("CV") and affiliation of each
27 such consultant or testifying expert must be disclosed to the producing party at least
28 five (5) court days prior to such person's review of material designated under this

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1 Order. The CV shall contain a list of all present employers/clients as well as all past
2 employers/clients for the 36 months preceding the date of employment in this case.
3 During that five-day period, counsel for the designating party shall have the
4 opportunity to oppose the proposed disclosure. Any party opposing disclosure shall
5 within such five (5) day period provide the other party with a written objection, setting
6 forth in reasonable detail the specific grounds for such opposition. If no written
7 objection is received by 5:00 p.m., Pacific time, on the fifth day following the date of
8 disclosure of the identity of the proposed consultant or testifying expert, then the party
9 seeking to disclose may do so and failure to object shall constitute waiver of the
10 specific objection. However, after the five-day period has expired without objection,
11 a party may still move the Magistrate Judge to allow it to object to an expert if it can
12 show: a) there is new, material information relating to the expert, which was not
13 available to the moving party within the five-day objection period; and b) had the
14 moving party been aware of the information at the time, the moving party would have
15 objected to the expert. In the event that an objection is received, the objecting party
16 shall, within two (2) court days send to the other party by facsimile or next business
17 day delivery its portion of a joint stipulation, modeled on the procedure used by this
18 District, to be furnished the court in connection with any motion regarding the
19 objection. Within three (3) court days of receipt of such portion of the joint
20 stipulation, the party seeking to disclose shall send its portion of a joint stipulation to
21 the objecting party by facsimile or next business day delivery. Within two (2) court
22 days of receipt of both portions of the joint stipulation, the objecting party shall file
23 the joint stipulation, with the Court and both parties shall seek a hearing at the Court's
24 earliest convenience. In the event such resolution by the Court is necessary, the
25 material at issue shall not be disclosed to the consultant or testifying expert pending
26 resolution of the issue by the Court.

27 7. Each person set forth in Paragraph 5 to be examined as a witness, may be
28 so examined at trial or during a deposition concerning any information or material

1 designated under this Order, which that person had lawfully received or authored prior
2 to and apart from this action. During examination, any such witness may be shown
3 information or material designated under this Order by a party which appears on its
4 face or from other documents or testimony to have been received or authored by that
5 witness from, or communicated to that witness by, that same party provided that the
6 examining party makes a reasonable effort to obtain the compliance of the witness
7 with Paragraph 8.

8 8. Each person set forth in Paragraph 5 who is not (i) outside counsel to a
9 party to this litigation, or staff directly employed by such outside counsel; or (ii) the
10 Court or Court personnel to whom material designated under this Order is to be
11 disclosed, shall, prior to receiving such material, be furnished with a copy of this
12 Order, a copy of the Court's Notification of Protective Order and Undertaking, which
13 the person shall read and sign (Attached as Exhibit A). Counsel for the party seeking
14 to disclose material designated under this Order to any such person pursuant to this
15 paragraph shall be responsible for permanently retaining the executed originals of all
16 such Notifications.

17 9. All Confidential or Highly Confidential Material shall be securely
18 maintained in a manner intended to preserve confidentiality. Access to such material
19 shall be permitted only to those designated persons set forth in Paragraph 5 above as
20 persons properly having access thereto. The recipient of any material designated
21 under this Order shall use its best efforts, but at no time less than reasonable efforts
22 under the circumstances, to maintain the confidentiality of such information.

23 10. Nothing contained in this Order shall affect the right of any party to make
24 any objection, claim any privilege, or otherwise contest any request for production of
25 documents, interrogatory, request for admission, subpoena, or question at a deposition
26 or to seek further relief or protective order from the Court as permitted by the Federal
27 Rules of Civil Procedure. Nothing in this Order shall constitute an admission or
28 waiver of any claim or defense by any party.

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1 11. In the event that counsel for any party determines to file or submit to this
2 Court any information or material designated Confidential pursuant to this Order
3 ("Confidential Information"), or any papers containing or making reference to such
4 information (the "Filing Party"), those materials shall be filed under seal. in sealed
5 envelopes on which shall be endorsed the caption of this action and a statement
6 substantially in the following form:

7 **CONFIDENTIAL**

8 This envelope contains documents that are subject to an
9 order governing discovery and the use of confidential
10 discovery material entered by the Court in this action.

11 The envelope shall not be opened or the contents thereof
12 displayed or revealed except by Order of the Court.

13 Violation hereof may be regarded as contempt of the
14 Court.

15 Subject to the Court's convenience and needs, documents filed under seal shall
16 be kept under seal by the Clerk until further Order of the Court.

17 12. Any documents and information produced by nonparties, pursuant to
18 subpoena or otherwise may be designated pursuant to the terms of this Order by any
19 party or nonparty.

20 13. A party shall not be obligated to challenge the propriety of material
21 designated under this Order at the time the designation is made and failure to do so
22 shall not preclude a subsequent challenge thereto. In the event that any party to this
23 litigation disagrees at any state of these proceedings with such designation, such party
24 shall provide to the designating person or entity a letter detailing its objection to the
25 designation. The designating person or entity shall respond by letter within three (3)
26 court days to such letter. If not resolved, the objecting party may file a motion
27 objecting to the designation. In any such motion, the burden of proving that
28 information has been properly designated under this Order is on the person or entity

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1 making such designation.

2 **Highly Confidential Designation of Materials**

3 14. The parties may further designate certain material or testimony of a
4 highly confidential and/or proprietary nature as "Highly Confidential," in the manner
5 for confidential designation set forth in Paragraph 4 herein. The "Highly
6 Confidential" designation may be challenged in the manner set forth in Paragraph 13
7 herein. Materials designated "Highly Confidential" ("Highly Confidential Material")
8 shall be subject to the following protections, which are in addition to those protections
9 applicable to documents designated "Confidential" under this Order. Highly
10 Confidential Material may be accessed, copied, or held by only (i) counsel of record
11 and necessary support staff working under the lawyers' supervision; (ii) outside
12 consultants and experts, not affiliated with or employed by any party, who have
13 signed the attached Notification of Protective Order and Undertaking and who qualify
14 for access to the materials in the manner set forth in Paragraph 6 herein; and (iii) one
15 officer of each of the parties who shall also sign the attached Notification of Protective
16 Order and Undertaking, but shall not be disclosed to any other officer, director or
17 employee of a party, unless otherwise agreed or ordered. Designation of material as
18 Highly Confidential shall be severely restricted only to those materials for which there
19 is a legitimate reason to restrict access. The designating party shall have the burden of
20 establishing that there is a legitimate reason for designating materials as Highly
21 Confidential.

22 15. The parties may also designate certain electronic data as "Highly
23 Confidential Electronic Data" in the manner for confidential designation set forth in
24 Paragraph 4 herein, in which case the following protections shall apply, which are in
25 addition to the protections set forth for Confidential and Highly Confidential Material
26 above. Each of Winston & Strawn LLP; Berman, Mausner & Resser; Mitchell
27 Silberberg and Knupp LLP; and Dan Cooper, Esq., shall designate one of its attorneys
28 to function as the Custodian of any Highly Confidential Electronic Data produced to

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1 the firm under this Order. Each Custodian shall execute a statement to be provided to
2 opposing counsel upon execution, confirming that he or she will maintain any Highly
3 Confidential Electronic Data produced to his or her firm in compliance with all the
4 terms of this Order.

5 16. Except as hereinafter provided, the copies of Highly Confidential
6 Electronic Data will not be duplicated or furnished to others. The Custodians will
7 ensure that Highly Confidential Electronic Data will be protected from dissemination,
8 including by the following means:

9 (a) At each location, any Highly Confidential Electronic Data will be
10 kept in a secure location when not being actively accessed.

11 (b) At each location, counsel for the receiving parties and consultants
12 and experts who have signed the Notification of Protective Order will maintain a log
13 of those counsel of record, support personnel working under their direct supervision,
14 one officer of the party, and experts or consultants who have accessed Highly
15 Confidential Electronic Data. The log entries will include the date and time of any
16 such access. Before gaining access for the first time to Highly Confidential Electronic
17 Data, such person otherwise qualifying under Paragraph 14 will review this Order and
18 attest to having read and understood it, which also will be recorded on the log. In the
19 event of a dispute involving any alleged violation of this Order, counsel may obtain
20 immediate copies of the logs from each location by written notice to the opposing
21 Custodian.

22 (c) Except as needed for use in depositions, court filings under seal, or
23 trial, no copies of Highly Confidential Electronic Data, or work product containing
24 portions of such data, shall be taken from the offices of counsel of record or
25 consultants and experts who have signed the Notification of Protective Order and
26 Undertaking, and no computer that contains any of the Highly Confidential Electronic
27 Data or portions of the data shall be connected to a computer network of any sort
28 while it contains the Highly Confidential Electronic Data or portions of such data.

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1 (d) In the event that a Custodian becomes aware of any breach of the
2 provisions of this Order, he or she shall promptly alert opposing counsel of any such
3 breach.

4 17. Other than for purposes of this Action, subject to the restrictions of this
5 Order, those permitted access to Highly Confidential Material or Highly Confidential
6 Electronic Data under this Order shall not disclose contents of such material to any
7 other persons at any time and shall never use any information gained from access to or
8 review of such materials for any purpose or reasons other than for the purposes of this
9 action.

10 18. Upon the conclusion of the Action, the Highly Confidential Material or
11 Highly Confidential Electronic Data shall be either returned or disposed of as set forth
12 in Paragraph 27 herein and counsel of record shall gather all such material and destroy
13 and certify as destroyed such materials, except that one archival copy of each party's
14 Highly Confidential Material or Highly Confidential Electronic Data may be securely
15 retained by counsel maintaining such material.

16 **Other Provisions**

17 19. Nothing in this Order shall preclude any party to the lawsuit or its
18 counsel: (a) from showing a document designated under this Order to an individual
19 who either prepared or reviewed the document prior to the filing of this action; or (b)
20 from disclosing or using, in any manner or for any purpose, any information or
21 documents from the party's own files which the party itself has designated under this
22 Order.

23 20. Nothing in this Order shall prevent disclosure beyond the terms of this
24 Order if the party designating material consents in writing to such disclosure, or if a
25 court orders such disclosure. A party requested to disclose material designated under
26 this Order to a nonparty pursuant to a validly served subpoena civil investigative
27 demand, discovery procedure permitted under the Federal Rules of Civil Procedure or
28 other formal discovery request shall object to its production to the extent permitted by

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1 applicable law and notify the requesting nonparty of the existence of this Order and
2 that the material requested by the nonparty has been designated under this Order, and
3 shall further give notice of such request, by facsimile and next business day delivery,
4 upon the party which designated the material as soon as is reasonably possible, but in
5 all instances sufficiently prior to the date on which such confidential material is to be
6 produced to the nonparty. Once such notice is given, the designating party shall take
7 all steps it believes are necessary to protect the Confidential materials and the non-
8 designating party is not required to take any further action.

9 21. If a party inadvertently fails to designate material and/or information,
10 when producing or otherwise disclosing such material and/or information, it shall not
11 be deemed a waiver in whole or in part of a party's claim of confidentiality, either as
12 to the specific information disclosed or as to any other information relating thereto or
13 on the same or related subject matter. As soon as the receiving party has knowledge
14 of the inadvertent production, the information must be treated as if it had been
15 designated under this Protective Order, and the receiving party must endeavor in good
16 faith to obtain all copies of the document which it distributed or disclosed to persons
17 not authorized to access such information by Paragraphs 5 or 14 above, as well as any
18 copies made by such persons. The costs of doing so shall be paid by the designating
19 party.

20 22. All counsel for the parties who have access to information or material
21 designated under this Order acknowledge they are bound by this Order and submit to
22 the jurisdiction of this Court for purposes of enforcing this Order.

23 23. Entering into, agreeing to, and/or producing or receiving information or
24 material designated under this Order, or otherwise complying with the terms of this
25 Order shall not:

26 (a) operate as an admission by any party that any particular
27 information or material designated under this Order contains or reflects trade secrets,
28 proprietary or commercially sensitive information or any other type of confidential

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1 information;

2 (b) operate as an admission by any party that the restrictions and
3 procedures set forth herein constitute or do not constitute adequate protection for any
4 particular information designated under this Order;

5 (c) prejudice in any way the rights of any party to object to the
6 production of documents they consider not subject to discovery;

7 (d) prejudice in any way the rights of any party to object to the
8 authenticity or admissibility into evidence of any document, testimony or other
9 evidence subject to this Order;

10 (e) prejudice in any way the rights of any party to seek a determination
11 by the Court whether any information or material should be subject to the terms of this
12 Order;

13 (f) prejudice in any way the rights of any party to petition the Court
14 for a further protective order relating to any purportedly confidential information;

15 (g) prevent the parties to this Order from agreeing in writing or on the
16 record during a deposition or hearing in this action to alter or waive the provisions or
17 protections provided for herein with respect to any particular information or material
18 with written or on the record consent of the party disclosing such information.

19 24. This Order shall not be construed to apply to any information that: (a) is
20 available to the public other than through a breach of this Order or other duty of
21 confidentiality; (b) a receiving party can demonstrate was already known to the party
22 at the time of disclosure and was not subject to conditions of confidentiality; or (c) a
23 receiving party can demonstrate was developed by that party independently of any
24 disclosure by a designating party or nonparty.

25 25. In the event that information in the possession or control of a person or
26 entity involves the confidentiality rights of a non-party or its disclosure would violate
27 a protective order issued in another action, the party with possession or control of the
28 information will promptly attempt to obtain the consent of the non-party to disclose

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1 the information under this Order. If the consent of the non-party is refused or
2 otherwise cannot be obtained, the party will promptly thereafter notify the party
3 seeking discovery by the written response due date for such discovery of: (a) the
4 existence and description (to the extent disclosable) of the information without
5 producing such information and; (b) the identity of the nonparty (provided, however,
6 that such disclosure of the identity of the non-party does not violate any
7 confidentiality obligations). The party seeking discovery may then make further
8 application to the non-party or seek an order to compel discovery.

9 26. Within sixty (60) days after the final termination of litigation between the
10 parties (including appeals), all material designated under this Order and all copies
11 thereof (including summaries and excerpts) shall be either returned to the party that
12 produced it or destroyed and a certification of destruction supplied to the producing
13 party; provided, however, that for each party, counsel who is entitled access to such
14 designated material pursuant to this Order may retain one complete and unredacted set
15 of its work product that contains designated material as well as pleadings and papers
16 filed with the Court or served on the other party solely for reference in the event of,
17 and only in the event of, further proceedings or litigation between the parties, a
18 dispute over such counsel's performance, or a dispute over the use or dissemination of
19 material designated under this Order. Such retained copy of pleadings and papers
20 shall be maintained in a file accessible only by properly authorized counsel under the
21 provisions of, and bound by, this Order. This Order shall survive the final termination
22 of this litigation with respect to any such retained confidential material and the Court

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SCANNED

1 shall retain jurisdiction to resolve any dispute concerning the use of information
2 disclosed hereunder.

3 Dated: March __, 2005

Respectfully submitted,
WINSTON & STRAWN LLP

By: _____
Andrew P. Bridges
Attorneys for Defendant and
Counterclaimant Google Inc.

8 Dated: March __, 2005

MITCHELL SILBERBERG & KNUPP LLP

By: _____
Russell J. Frackman
Attorneys for Plaintiff and Counter-
defendant Perfect 10, Inc.

13 Dated: March __, 2005

BERMAN, MAUSNER & RESSER

By: _____
Jeffrey N. Mausner
Attorneys for Plaintiff and Counter-
defendant Perfect 10, Inc.

18 Dated: March __, 2005


PERFECT 10, INC.

By: _____
Daniel J. Cooper
Attorney for Plaintiff and Counter-
defendant Perfect 10, Inc.

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101 California Street
San Francisco, CA 94111-5894

ORDER

IT IS SO ORDERED, this 27th day of December, 2005.



Hon. Carla Woehrle,
United States Magistrate Judge

SCANNED

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PERFECT 10, INC., a California corporation,

Plaintiff,

vs.

GOOGLE INC., a corporation; and
DOES 1 through 100, inclusive,

Defendant.

Case No. CV04-9484 ^{AHM (SHX)} NM (CW*)

**NOTIFICATION OF PROTECTIVE
ORDER GOVERNING
INFORMATION IN THIS CASE
AND UNDERTAKING**

GOOGLE INC., a corporation,

Counterclaimant,

vs.

PERFECT 10, INC., a California corporation,

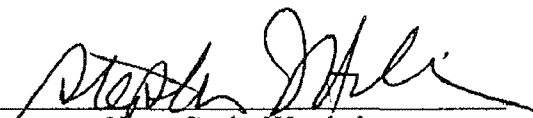
Counter-defendant.

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1 The United States District Court in Los Angeles has issued a protective order in
2 this case, which limits the dissemination of Confidential and Highly Confidential
3 information produced in discovery. You are now subject to this order and are
4 prohibited by court order from communicating any Confidential or Highly
5 Confidential information you obtained through discovery in this case to any persons
6 other than those specified in the protective order. If you intentionally disseminate this
7 information in violation of this Court's order, you could be subject to sanctions, which
8 could include fines and, in an extreme case, incarceration for contempt of court.

9 If for any reason you believe you should not be subject to this order or would
10 like to request an order from the Court exempting you from this order, you should
11 request a hearing before this Court and obtain a ruling before you disseminate any of
12 the information. You can request a hearing by telling any of the attorneys in this case
13 that you want to be heard. The attorney will then arrange for the Court to hold a
14 hearing. If you prefer, you can instead call the Court's clerk and request a hearing
15 date.

16 BY ORDER OF THE COURT.

17
18 
19 Mon. Carla Woehrle
United States Magistrate Judge

20
21
22 I declare under penalty of perjury that I have read the Protective Order issued in
23 this case and that I agree to abide by and be bound by its terms.

24 Executed this _____ day of _____, 2005 in

25 _____

26
27 Print Name _____

Signature _____

28

Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5894

**PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the county of Los Angeles, State of California.

I am over the age of 18 and am not a party to the within action; my business address is: 21800 Oxnard Street, Suite 910, Woodland Hills, California 91367

On January 19, 2011, I served the foregoing document(s) described as follows:

**NOTIFICATION OF FILING UNDER SEAL OF PLAINTIFF-APPELLANT
PERFECT 10, INC.'S OPENING BRIEF AND EXERPTS OF RECORD**

on the interested parties in this action by sending a copy by Federal Express to:

**Michael Zeller
Quinn Emanuel
865 S. Figueroa St. 10th Floor
Los Angeles, California 90017**

**Charles Verhoeven
Margret Caruso
Quinn Emanuel
555 Twin Dolphin Drive, Suite 560
Redwood Shores, California 94065**

FEDERAL EXPRESS: I transmitted by Federal Express such documents to the offices of the addressees for overnight delivery, with fees billable to sender.

FEDERAL: I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on January 19, 2011 at Los Angeles, California.

BY: 
Brittany Rosen