

Priority
Send
Enter
Closed
JS-5/JS-6
JS-2/JS-3
Scan Only

Doc. 12

Perfect 10 Inc v. Google Inc et al

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 05-4753 AHM (SHx) consolidated with CV 04-9484 AHM (SHx) ✓ Date February 21, 2006

Title PERFECT 10, INC. v. AMAZON, INC., et al. consolidated with PERFECT 10, INC. v. GOOGLE, INC.

ENTERED
CLERK, U.S. DISTRICT COURT
FEB 22 2006
CENTRAL DISTRICT OF CALIFORNIA
BY [Signature] DEPUTY

Present: The Honorable A. Howard Matz

Stephen Montes N/A
Deputy Clerk Court Reporter / Recorder Tape No.

Attorneys Present for Plaintiffs: No Appearance
Attorneys Present for Defendants: No Appearance

Proceedings: In Chambers

Plaintiff Perfect 10, Inc. ("P10") filed separate suits against Google, Inc. and against Amazon.com, Inc. and its search website subsidiary, A9.com, Inc. (collectively, "Amazon"), alleging copyright and trademark infringement, as well as other various related claims. The suits were consolidated. P10 moved for a preliminary injunction against both Defendants, solely on the basis of its copyright claims.

Because Amazon licenses from Google much of the technology whose use by Amazon P10 challenges, the Court first addressed P10's motion against Google. See Order Granting In Part And Denying In Part Perfect 10's Motion For Preliminary Injunction Against Google, Feb. 17, 2006 ("Google Order").¹ This Order must be read in light of that earlier analysis.

P10's arguments in support of its motion against Amazon are largely the same as those made in support of its motion against Google. It is unnecessary to address them separately in light of two key factual distinctions between Amazon and Google.

First, Amazon does not create, store, or serve either full-size or thumbnail copies of P10's copyrighted images.² Amazon's image search engine merely in-line links to the

¹CV 04-9484 AHM (SHx), Docket No 119.

THIS CONSTITUTES NOTICE OF ENTRY AS REQUIRED BY FRCP, RULE 77(d).

²It is undisputed that Amazon's search engine, A9, operates in the following manner: "A9 submits search queries received from Users to Google without editing Google sends those results back to A9 in XML format." Leblang Decl. ¶ 16. "A9 then retransmits the search results . . . it receives

120

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 05-4753 AHM (SHx) consolidated with
CV 04-9484 AHM (SHx)

Date February , 2006

Title PERFECT 10, INC. v. AMAZON, INC., *et al.* consolidated with
PERFECT 10, INC. v. GOOGLE, INC.

FILED

thumbnails stored on Google’s servers. Thus, it is Google that serves directly to the user the thumbnails appearing on A9.com. Amazon, like Google, merely in-line links to full-size images stored on and served by third-party websites. Accordingly, under the “server test” described in the Google Order, which the Court applies here, it is not likely that Amazon will be held liable for direct infringement.

Second, Amazon does not have advertising programs such as Google’s AdSense. Because Amazon does not share advertising revenue with infringing third-party sites, its contribution to those sites, if any, is significantly less than Google’s. Moreover, Amazon’s right and ability to control the infringing conduct of third-party websites is substantially weaker than Google’s. Given the unlikelihood that Google will be found vicariously or contributorily liable, P10’s secondary infringement claims against Amazon are even more likely to fail.

Because P10 has failed to establish a likelihood of success on the merits of its copyright claims, the Court DENIES P10’s motion for preliminary injunction against Amazon.³

Initials of Preparer

from Google directly to the User, without deleting any of the results provided by Google or adding any additional results.” *Id.* ¶ 17. “Image search results are returned by Google Image Server directly to the User as ‘thumbnail’ images. These images are not transferred through the A9.com Server.” *Id.* ¶ 19. “No copy of the thumbnail images is made by A9. Indeed, A9 never even transmits a copy of the images, as only URLs referencing Google’s Image Server are provided.” *Id.* ¶ 24. “No image is ever stored on an A9 server pursuant to a User’s search request.” *Id.* ¶ 28. In other words, Amazon in-line links to Google’s thumbnails.

³Docket No. 6.