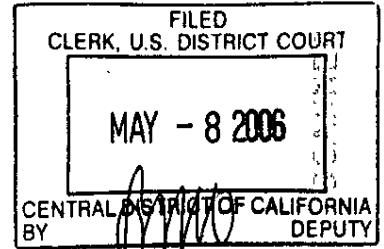
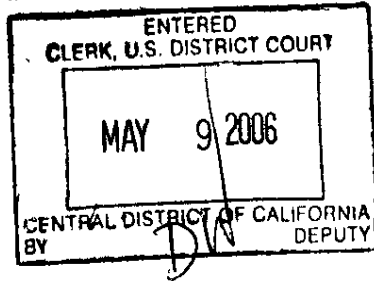


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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

PERFECT 10, Inc.  
Plaintiff,  
v.  
GOOGLE, INC., *et al.*  
Defendants.

CASE NO. CV 04-9484 AHM (SHx) ✓  
consolidated with  
CASE NO. CV 05-4753 AHM (SHx)

**PRELIMINARY INJUNCTION  
ORDER**

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

Having considered all of the pleadings and papers filed in support of and in opposition to the motion of Plaintiff Perfect 10, Inc. ("P10") for preliminary injunction against Defendant Google, Inc., and having previously issued an order granting in part that motion and stating its reasoning, *see Perfect 10, Inc. v. Google, Inc.*, 416 F.Supp.2d 828 (C.D. Cal. 2006) (the "Initial Order"), which Initial Order is incorporated herein by reference,

**THE COURT THEREFORE ORDERS AND DECREES AS FOLLOWS:**

1. Google is preliminarily enjoined from engaging in the infringing conduct described in the Initial Order, pursuant to the procedures set forth below.

161

1     **2. Definitions.**

2  
3     a.     **Thumbnails:** A “thumbnail” is a reduced-sized image stored on and  
4           hosted by Google’s servers that was derived from another image on a  
5           third-party website.

6  
7     b.     **Thumbnail Source URL:** A “Thumbnail Source URL” is the Uniform  
8           Resource Locator (“URL”) that is displayed in the address bar of a  
9           web browser when a user clicks on one of the several thumbnails  
10          displayed by Google as the result of an image search. A Thumbnail  
11          Source URL represents the location of the two-frame webpage  
12          described in detail in the Initial Order. *See Perfect 10*, 416  
13          F.Supp.2d at 833-834. A Thumbnail Source URL will have the  
14          following format: “http://images.google.com/imgres?imgurl=...&  
15          imgrefurl=...&tbnid=...”

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17     c.     **Infringing Thumbnail:** An “infringing” thumbnail is one designated  
18          by P10 under ¶ 4(a).

19  
20     d.     **Contested Thumbnail:** A “contested” thumbnail is a thumbnail  
21          whose designation by P10 as “infringing” Google contests. Google  
22          may contest such a designation under any of the following  
23          circumstances:

24  
25         i.     if Google cannot verify the allegedly infringing thumbnail due  
26               to the fact that the Thumbnail Source URL supplied by P10  
27               under ¶ 4(a)(ii) generates an error message or otherwise does  
28               not accurately identify the Thumbnail Source URL described

in ¶ 2(b); or

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ii. if Google disputes in good faith the accuracy or veracity of any statement or representation P10 made pursuant to ¶ 4(b), such as, but not necessarily limited to, a dispute based on a counternotification from a third party; or

iii. if Google in good faith concludes that the image on the third-party website from which Google derived the thumbnail is not the same as the P10 copyrighted image P10 identified under ¶ 4(a)(i).

3. **Identification by P10 of Its Copyrighted Images.** P10 shall provide to Google in electronic format the images for which P10 owns the copyrights, arranged in folders labeled with the name of each model. P10 may supplement those images not more often than once per month.

4. **Notices of Infringement.** Not more than once per month, P10 may provide to Google a Notice of Infringement that shall include each of the following:

a. for each allegedly infringing thumbnail stored on and served by Google's servers,

i. P10 shall identify by folder and file name each P10 copyrighted image P10 identified pursuant to ¶ 3 that P10 claims is infringed by that particular thumbnail; and

ii. P10 shall identify the Thumbnail Source URL for that particular thumbnail; and

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- b. a sworn certification
  - i. that it (P10) owns the relevant copyright interests—*i.e.*, the rights specified in 17 U.S.C. § 106—for each of the P10 copyrighted images identified under ¶ 4(a)(i) that P10 claims Google is infringing, and
  - ii. that it (P10) has not authorized the creation, display, or distribution of the allegedly infringing images by third-party websites from which Google derived the allegedly infringing thumbnails P10 identified under ¶ 4(a); and
- c. the name of the person authorized to communicate the Notice of Infringement on behalf of P10, as well as a physical or electronic signature of that person.

5. **Take-down Procedures.** Following its receipt of each monthly Notice of Infringement and within the applicable period identified below, Google shall:

- a. within ten business days, cease displaying and permanently remove from those of its servers that provide thumbnails to the public all infringing thumbnails identified under ¶ 4(a) that Google has not contested pursuant to ¶¶ 2(d) and 7; and
- b. within ten business days, and consistent with its stated policy described in the Initial Order at 416 F.Supp.2d at 846 as to

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webpages, cease serving AdSense advertisements on third-party websites from which Google derived each thumbnail identified under ¶ 4(a) that Google has not contested pursuant to ¶¶ 2(d) and 7.

6. **Report of Compliance.** Within fifteen business days of its receipt of each monthly Notice of Infringement, Google shall provide to P10 and file with the Court a Report of Compliance that sets forth the steps Google has taken to comply with the take-down procedures described in ¶ 5.

7. **Report of Contested Thumbnails.** Within fifteen business days of its receipt of each monthly Notice of Infringement, Google shall notify P10 of those thumbnails it has contested pursuant to ¶ 2(d). This notification shall be sent separately from the Report of Compliance described in ¶ 6, and it shall identify each contested thumbnail, as well as the grounds upon which Google contests that thumbnail.

8. **Challenges by P10 to Thumbnails Contested by Google.** P10 may challenge Google's contesting of any thumbnail, under the following procedures:

a. For each challenge to a contested thumbnail identified in a Report of Contested Thumbnails, P10 must provide Google with evidence sufficient to show that Google lacked a good faith factual basis to contest that thumbnail. This evidence shall be provided by not later than ten business days after P10's receipt of that Report of Contested Thumbnails.

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- 1           b.     i.     If within five business days after its receipt of such a challenge
- 2                             Google has not implemented the take-down procedures set
- 3                             forth in ¶ 5, P10 may seek an order compelling compliance.
- 4
- 5                     ii.    If the Court is thereupon required to determine whether the
- 6                             allegedly infringing thumbnail must be taken down, the
- 7                             prevailing party will be entitled to recover all its reasonable
- 8                             attorneys' fees and costs associated with the proceeding.
- 9

10   9.    **Notification System.** Without limiting the parties' respective obligations  
 11           set forth elsewhere in this Order, P10 and Google shall cooperate in good  
 12           faith to implement a notification system, which will make it as expeditious  
 13           and efficient as is reasonably feasible for P10 to provide Notices of  
 14           Infringement to Google and for Google to receive those notices. If such a  
 15           system is consensually implemented, P10 may provide Google with  
 16           information regarding allegedly infringing thumbnails at any time;  
 17           however, Google shall not be required to act on those allegedly infringing  
 18           thumbnails more often than once per month. This paragraph shall be  
 19           construed consistent with Google's representation that it is willing to  
 20           "develop[] a special secure interface that would allow P10 to do Google  
 21           Image Searches, simply check boxes for [the] thumbnail[s for which P10]  
 22           claims to own [the copyrights], and click on a web page button which  
 23           would automatically submit them to Google for processing." See Google's  
 24           Response to Plaintiff's Brief Re Form of Preliminary Injunction at 6 n. 4.

25

26   10.   **Format of Notifications and Reports.** Notices of Infringement, Reports  
 27           of Compliance, Reports of Contested Thumbnails, and all other  
 28           communications made pursuant to this Order shall be provided in a format

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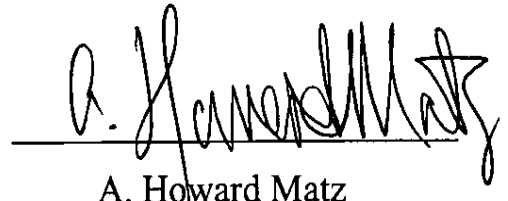
that will facilitate compliance with this injunction. The parties shall supplement all court filings resulting from this Order with an electronic copy placed in the Court's courtesy box.

11. **Modifications.** This Order may be modified by subsequent application of the parties, who also may stipulate to alternative means, such as the development of image recognition technology to accomplish the objectives of this injunction.

12. **Bond.** This injunction shall take effect upon P10 filing a cashier's check in the amount of \$100,000 and serving Google with notice that it has done so.

IT IS SO ORDERED.

DATE: May 8, 2006



A. Howard Matz  
United States District Judge