

ORIGINAL

Perfect 10 Inc v. Google Inc et al

Doc. 16

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

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

SCANNED

Attorneys For Defendant and Counterclaimant
GOOGLE INC.

LODGED
MAY 16 2006
m m 1:07
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FILED
CLERK, U.S. DISTRICT COURT
MAY 19 2006
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

PERFECT 10, INC., a California corporation,

Plaintiff,

vs.

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

Defendant.

Case No. CV 04-9484 AHM (SHx)

~~PROPOSED~~ ORDER REGARDING
GOOGLE INC.'s MOTION TO
COMPEL PRODUCTION OF
DOCUMENTS AND RESPONSES
TO INTERROGATORIES

AND COUNTERCLAIM

PERFECT 10, INC., a California corporation,

Plaintiff,

vs.

AMAZON.COM, INC., a corporation;
and DOES 1 through 10, inclusive,

Defendants.

DOCKETED ON CM
MAY 22 2006
BY *AB* 046

164

[PROPOSED] ORDER REGARDING GOOGLE INC.'s MOTION TO COMPEL PRODUCTION
OF DOCUMENTS AND RESPONSES TO INTERROGATORIES

SCANNED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTORY STATEMENT

Google Inc. and Perfect 10, Inc. submit this proposed order regarding Google Inc.'s Motion to Compel Production of Documents and Responses to Interrogatories. Although the parties have attempted to agree on all provisions of this order, they have been unable to agree as to what the Court ordered with respect to four requests: Interrogatories Nos. 3 and 5 and Document Request Nos. 42 and 44. Accordingly, for these four requests, the parties have set forth below their respective understanding of what the Court ordered and respectfully request that the Court clarify its ruling as to these requests.

PROPOSED ORDER

Having considered the parties' Joint Stipulation regarding Google Inc.'s Motion to Compel Production of Documents and Responses to Interrogatories ("Joint Stipulation") and argument of counsel on February 22, 2006, IT IS HEREBY ORDERED AS FOLLOWS:

I. MANNER OF PRODUCTION

The Court orders the parties to continue meeting and conferring so that production of documents can be in the most useful and accessible manner. The Court otherwise defers ruling on Google's motion to compel Plaintiff to indicate which documents respond to each request at this time.

II. SPECIFIC DOCUMENT REQUESTS AND INTERROGATORIES IN DISPUTE

A. Information Regarding Alleged Copyrights and Trademarks (Interrogatory No. 2; Document Request Nos. 2, 34-35, 37)

Interrogatory No. 2: In addition to its current response to this interrogatory, Plaintiff shall produce a complete electronic version of its Web site on disk and a copy of all volumes of its magazines such that it has provided Google all images in which it

SCANNED

1 claims to own copyrights. These documents shall be produced by April 15, 2006.
2 Plaintiff shall also assist Google in identifying which images in the magazines do not
3 appear on the Web site. The Court otherwise defers ruling on the remainder of the
4 request at this time.

5 Document Request No. 2: Google is to determine what documents are publicly
6 available. The Court otherwise defers ruling on the request at this time.

7 Document Request No. 34: The motion to compel is granted. The Court orders
8 Plaintiff to produce the following: All non-privileged and non-work product
9 documents concerning trademark research, investigations, and searches relating to the
10 marks PERFECT 10 and PERFECT 10.COM. Plaintiff's production shall include all
11 responsive documents from the time of the formation of Perfect 10. These documents
12 shall be produced by April 15, 2006.

13 Document Request No. 35: The motion to compel is granted. The Court orders
14 Plaintiff to produce the following: All documents concerning Plaintiff's applications
15 to register the marks PERFECT 10 and PERFECT10.COM with any government
16 agency; any certificates of registration issued as a result thereof; and any efforts to
17 secure registration without time limitation. Plaintiff's production shall include all non-
18 privileged and non-work product responsive documents, including communications
19 concerning applications. These documents shall be produced by April 15, 2006.

20 Document Request No. 37: The motion to compel is granted and Plaintiff's
21 objections are overruled. The Court orders Plaintiff to produce the following: All
22 surveys, studies, or other documents relating to market (or prospective market)
23 reaction to or attitude towards the marks PERFECT 10 and PERFECT10.COM,
24 including without limitation, any customer identification with, or reference to Plaintiff
25 or Plaintiff's services. These documents shall be produced by April 15, 2006.

26
27
28

SCANNED

B. Information Regarding Alleged Copyright and Trademark Infringements by Google in this Action (Interrogatory Nos. 3, 5, Document Request Nos. 10-19, 26, 55-56)

Having been unable to agree as to precisely what the Court ordered regarding Interrogatory Nos. 3 and 5, the parties set forth below their respective interpretations of the Court's order. These interrogatories request that Perfect 10 identify all copyright and trademark infringements for which it claims Google is liable. For the Court's convenience, the full transcript of the February 21-22 discovery hearings is attached hereto as Exhibit A.

Google's Proposed Order re Interrogatory No. 3: Plaintiff shall continue producing completed versions of the five spreadsheets attached as Exhibits 1 through 5 of the Joint Stipulation regarding Google's Motion to Compel Production of Documents and Responses to Interrogatories and Web page printouts associated with the spreadsheets. The presumptive deadline for these documents is April 15, 2006. The Court otherwise defers ruling on Google's motion concerning the interrogatory at this time.

Google's Proposed Order re Interrogatory No. 5: Plaintiff shall continue producing completed versions of the five spreadsheets attached as Exhibits 1 through 5 of the Joint Stipulation regarding Google's Motion to Compel Production of Documents and Responses to Interrogatories and Web page printouts associated with the spreadsheets. The presumptive deadline for these documents is April 15, 2006. The Court otherwise defers ruling on Google's motion concerning this interrogatory at this time.

Google's Explanation of its Version: Although the Court deferred ruling regarding these requests to identify infringements, the Court specifically ordered Perfect 10 to continue producing spreadsheets and associated Web printouts that it had *already agreed to produce*. Google's proposed language regarding

SCANNED

1 Interrogatory Nos. 3 and 5 set forth above is based on its understanding that the
 2 Court ordered Plaintiff to proceed with producing both the spreadsheets and
 3 Web page printouts associated with the spreadsheets as Perfect 10 described in
 4 its portion of the Joint Stipulation. Perfect 10 stated, for example, that "a
 5 reasonable approach is to provide finished versions of spreadsheets illustrated by
 6 Exhibits 2, 4, and 5. . . . Along with each Exhibit will be the infringements
 7 detailed in each spreadsheet, organized by model or by infringing website.
 8 Trademark infringements will be listed to the fullest extent possible. . . . " Joint
 9 Stipulation re: Google's Motion to Compel, p. 36-37. Google understands that
 10 the Court ordered Perfect 10 to continue producing the spreadsheets/charts as
 11 described in the Joint Stipulation. See 2/22/06 Hearing Transcript, pp. 62-63
 12 (MS. LEE: They have started these charts, charts 1 through 5, and they have
 13 already agreed to produce printouts associated with those charts. THE COURT:
 14 Yes, they should proceed with that. . . . Continue producing the logs that are being
 15 produced.) Perfect 10 now asserts, however that the Court only meant to order it
 16 to produce printouts associated with the charts/spreadsheets and not the
 17 spreadsheets. This interpretation, however, is belied by Perfect 10's counsel's
 18 own statements at the hearing. Id. at p. 63 (MR. MAUSNER: And as far as the
 19 logs, I don't think we can have an April 15 cutoff date on the logs. I mean, we
 20 have produced some, and we'll continue to produce it, but that's going to be an
 21 ongoing process that's going to last for a while. THE COURT: Well, we'll set an
 22 artificial deadline of April 15th and see where we are then.)

23
 24 Plaintiff's Proposed Order regarding Interrogatories Nos. 3 and 5: Plaintiff shall
 25 continue producing printouts of infringements by Google of which it becomes aware
 26 in the future. The Court otherwise defers ruling on Google's motion concerning the

SCANNED

1 interrogatories at this time.

2
3 **Perfect 10's Explanation of its Version:**

4 **Perfect 10 did voluntarily create and produce charts (aka logs/aka**
5 **spreadsheets, hereafter referred to as "Charts") of infringements by Google,**
6 **which Perfect 10 attached as exhibits to the parties' Joint Stipulation re Motion**
7 **to Compel. Perfect 10 also produced printouts of the actual infringements it had**
8 **earlier located associated with these Charts. However, the way Google's**
9 **proposed order on interrogatories 3 and 5 reads, Perfect 10 would be under an**
10 **order compelling it to continue creating and completing such Charts. It is not**
11 **believed the Court would order a party to perform work for the opposing side,**
12 **especially of this magnitude. To the extent that Perfect 10 does voluntarily**
13 **continue to create and complete similar Charts, it will voluntarily produce the**
14 **same to Google, but Perfect 10 should not be under an order to do so. This is**
15 **clearly a mega mega undertaking, and Perfect 10 should not be required to**
16 **perform this work, which Google can do as easily as Perfect 10. Perfect 10**
17 **continues to provide Google with print-outs of the infringements, from which**
18 **Google can construct exactly the same charts that it wants the Court to order**
19 **Perfect 10 to do. The order should simply be to continue to produce infringing**
20 **print-outs which Perfect 10 discovers, and if Perfect 10 voluntarily decides to**
21 **continue to make the Charts, it will also voluntarily provide copies to Google.**
22 **Google's proposed order is simply an attempt to overburden Perfect 10 with this**
23 **work, while Perfect 10 is involved in the appeal of the preliminary injunction**
24 **order and other matters. Furthermore, the presumptive deadline of April 15**
25 **that Google wants is totally unrealistic.**

26
27
28

SCANNED

1 Document Request No. 10: The motion to compel is granted. The Court orders
 2 Plaintiff to produce the following: All non-privileged and non-work product
 3 documents concerning violations of 17 U.S.C. § 106(1) that Plaintiff claims or
 4 believes Google has committed directly. These documents shall be produced by April
 5 15, 2006. Documents that Perfect 10 becomes aware of in the future shall be
 6 produced when Perfect 10 becomes aware of them.

7 Document Request No. 11: The motion to compel is granted. Plaintiff shall
 8 produce the following: All non-privileged and non-work product documents
 9 concerning violations of 17 U.S.C. § 106(2) that Plaintiff claims or believes Google
 10 has committed directly, which Perfect 10 currently is aware of. These documents
 11 shall be produced by April 15, 2006. Documents that Perfect 10 becomes aware of in
 12 the future shall be produced when Perfect 10 becomes aware of them.

13 Document Request No. 12: The motion to compel is granted. Plaintiff shall
 14 produce the following: All non-privileged and non-work product documents
 15 concerning violations of 17 U.S.C. § 106(3) that Plaintiff claims or believes Google
 16 has committed directly, which Perfect 10 currently is aware of. These documents
 17 shall be produced by April 15, 2006. Documents that Perfect 10 becomes aware of in
 18 the future shall be produced when Perfect 10 becomes aware of them.

19 Document Request No. 13: The motion to compel is granted. Plaintiff shall
 20 produce the following: All non-privileged and non-work product documents
 21 concerning violations of 17 U.S.C. § 106(4) that Plaintiff claims or believes Google
 22 has committed directly, which Perfect 10 currently is aware of. These documents
 23 shall be produced by April 15, 2006. Documents that Perfect 10 becomes aware of in
 24 the future shall be produced when Perfect 10 becomes aware of them.

25 Document Request No. 14: The motion to compel is granted. Plaintiff shall
 26 produce the following: All non-privileged and non-work product documents

SCANNED

1 concerning violations of 17 U.S.C. § 106(5) that Plaintiff claims or believes Google
2 has committed directly, which Perfect 10 currently is aware of. These documents
3 shall be produced by April 15, 2006. Documents that Perfect 10 becomes aware of in
4 the future shall be produced when Perfect 10 becomes aware of them.

5 Document Request No. 15: The motion to compel is granted. Plaintiff shall
6 produce the following: All non-privileged and non-work product documents
7 concerning violations of 17 U.S.C. § 106(1) that Plaintiff claims or believes Google is
8 vicariously liable for or constitute contributory infringement by Google, which Perfect
9 10 currently is aware of. These documents shall be produced by April 15, 2006.
10 Documents that Perfect 10 becomes aware of in the future shall be produced when
11 Perfect 10 becomes aware of them.

12 Document Request No. 16: The motion to compel is granted. Plaintiff shall
13 produce the following: All non-privileged and non-work product documents
14 concerning violations of 17 U.S.C. § 106(2) that Plaintiff claims or believes Google is
15 vicariously liable for or constitute contributory infringement by Google, which Perfect
16 10 currently is aware of. These documents shall be produced by April 15, 2006.
17 Documents that Perfect 10 becomes aware of in the future shall be produced when
18 Perfect 10 becomes aware of them.

19 Document Request No. 17: The motion to compel is granted. Plaintiff shall
20 produce the following: All non-privileged and non-work product documents
21 concerning violations of 17 U.S.C. § 106(3) that Plaintiff claims or believes Google is
22 vicariously liable for or constitute contributory infringement by Google, which Perfect
23 10 currently is aware of. These documents shall be produced by April 15, 2006.
24 Documents that Perfect 10 becomes aware of in the future shall be produced when
25 Perfect 10 becomes aware of them.

26 Document Request No. 18: The motion to compel is granted. Plaintiff shall

STAMPED

1 produce the following: All non-privileged and non-work product documents
 2 concerning violations of 17 U.S.C. § 106(4) that Plaintiff claims or believes Google is
 3 vicariously liable for or constitute contributory infringement by Google, which Perfect
 4 10 currently is aware of. These documents shall be produced by April 15, 2006.
 5 Documents that Perfect 10 becomes aware of in the future shall be produced when
 6 Perfect 10 becomes aware of them.

7 Document Request No. 19: The motion to compel is granted. Plaintiff shall
 8 produce the following: All non-privileged and non-work product documents
 9 concerning violations of 17 U.S.C. § 106(5) that Plaintiff claims or believes Google is
 10 vicariously liable for or constitute contributory infringement by Google, which Perfect
 11 10 currently is aware of. These documents shall be produced by April 15, 2006.
 12 Documents that Perfect 10 becomes aware of in the future shall be produced when
 13 Perfect 10 becomes aware of them.

14 Document Request No. 26: The motion to compel is granted. Plaintiff shall
 15 produce the following: All non-privileged and non-work product documents
 16 concerning each of the underlying trademark infringements that Plaintiff claims or
 17 believes Google is vicariously liable for or constitute contributory infringement by
 18 Google, which Perfect 10 currently is aware of. These documents shall be produced
 19 by April 15, 2006. Documents that Perfect 10 becomes aware of in the future shall be
 20 produced when Perfect 10 becomes aware of them.

21 Document Request No. 55: The motion to compel is granted. Plaintiff shall
 22 produce the following: Documents sufficient to identify each person or entity Plaintiff
 23 claims or believes to infringe its copyrights claimed in this action, which Perfect 10
 24 currently is aware of. These documents shall be produced by April 15, 2006.
 25 Documents that Perfect 10 becomes aware of in the future shall be produced when
 26 Perfect 10 becomes aware of them.

SCANNED

1 Document Request No. 56: The motion to compel is granted. Plaintiff shall
2 produce the following: Documents sufficient to identify each person or entity Plaintiff
3 claims or believes to infringe its trademarks claimed in this action, which Perfect 10
4 currently is aware of. These documents shall be produced by April 15, 2006.
5 Documents that Perfect 10 becomes aware of in the future shall be produced when
6 Perfect 10 becomes aware of them.

7 **C. Plaintiff's Alleged Publicity Rights (Document Request Nos. 42-46, 50-
8 53, 57)**

9 **The parties have set forth their respective understandings of the Court's**
10 **rulings on Document Request No. 42 below. Document Request No. 42 seeks "all**
11 **documents concerning the publicity rights claimed by [Perfect 10] in this action,**
12 **including, but not limited to, all licenses, releases, or assignments and all**
13 **communications relating to such licenses, releases, or assignments."**

14 Google's Proposed Order re Document Request No. 42: Plaintiff shall provide
15 contact information for fifteen persons of Google's choice whose publicity rights
16 Plaintiff asserts in this action as of March 15, 2006. Any personal information of
17 models is subject to a highly confidential designation. The motion to compel on the
18 remainder of the request is granted with respect to these persons as follows: All non-
19 privileged and non-work product documents concerning the publicity rights claimed
20 by Plaintiff in this action, including, but not limited to, all licenses, releases, or
21 assignments and all communications relating to such licenses, releases or assignments.
22 These documents shall be produced by April 15, 2006.

24 **Google's Explanation of its Version: At the motion to compel hearing,**
25 **Perfect 10 proposed cutting down the number of models for which it is asserting**
26 **rights of publicity in this case in order to limit discovery. Google's proposed**

SCANNED

1 language simply states the Court's order that Perfect 10 provide information
 2 regarding fifteen persons of Google's choice whose publicity rights Perfect 10
 3 continues to assert in this action as of March 15, 2006. *See* 2/22/06 Hearing
 4 Transcript, pp. 86-87 (MR. BRIDGES: And, Your Honor, could Perfect 10 have
 5 a deadline for expressly dropping the claims of, let's say, March 15th that they
 6 will expressly drop whatever claims of models and that any other models that are
 7 in, we get to pick 15? THE COURT: I don't know if I have the authority to
 8 make that order. What I can order is that if they have not dropped certain
 9 models by March 15th, that Google can come back and press for the remaining
 10 contact information. MR. BRIDGES: If we could put it on this basis, I'd
 11 appreciate it, that whatever models remain in the case by March 15th, we will
 12 identify 15 that are still in the case, and those 15 we will go with... THE
 13 COURT: That's fair enough. That's fair enough.)

14
 15 To date, Perfect 10 has refused to formally dismiss any claims regarding
 16 rights of publicity in this case. Perfect 10's counsel merely sent a letter to
 17 Google's counsel identifying nine persons for which it would continue to assert
 18 rights of publicity (*see* 3/15/06 letter attached hereto as Exhibit B), but has
 19 refused to sign a stipulation of dismissal. Perfect 10 believes the Court's order
 20 should now be modified to provide that Perfect 10 should only be required to
 21 provide information on the nine specified persons identified in this letter. Google
 22 believes the order should simply reflect the Court's ruling at the hearing,
 23 especially in light of Plaintiff's attempt to improperly limit discovery regarding
 24 rights of publicity without dismissing any right of publicity claims.

25 ~~Plaintiff's Proposed~~ Order re Document Request No. 42: Perfect 10 shall
 26

1 produce all non-privileged and non-work product documents concerning the publicity
2 rights claimed by Plaintiff in this action as of ~~March 15~~ ^{June 8}, 2006, including, but not
3 limited to, all licenses, releases, or assignments and all communications relating to
4 such licenses, releases or assignments. Any personal information of models in those
5 documents is subject to a highly confidential designation. These documents shall be
6 produced by ~~April 15~~ ^{June 12}, 2006.

SCANNED

Plaintiff's Explanation of its Version:

This will afford Plaintiff an additional opportunity to consider whether it will dismiss certain model's publicity rights with or without prejudice.

8 At the hearing on February 22, 2006, the parties and the Court
9 contemplated cutting down and limiting Perfect 10's claims for right of publicity
10 violations to far fewer models than originally claimed, in order to decrease and
11 streamline discovery. See pages 86-87, February 22, 2006 Transcript where it
12 was contemplated that Perfect 10 would cut the number of models down by
13 March 15, 2006 to an unnamed number slightly in excess of 15, and that Google
14 would pick 15 it would like to take discovery on. However, on March 15, 2006,
15 Perfect 10 wrote to Google voluntarily cutting down the number of models whose
16 rights of publicity Perfect 10 was asserting in this case to 9. (See letter of March
17 15, 2006 attached hereto) Therefore, it simply doesn't make sense for the
18 number of 15 models to appear in the ultimate order. Perfect 10's language
19 regarding an order that Perfect 10 produce documents for the models actually
20 remaining in the case (who's number happens to be nine) makes sense.

21 The letter that Perfect 10's attorney wrote to Google is completely clear
22 that Perfect 10 will not assert rights of publicity in this lawsuit for any models
23 other than the nine named models. The letter states: "In order to reduce the
24 amount of discovery in this case, Perfect 10 will not assert publicity rights for any
25 other models in this lawsuit." Google disingenuously asked Perfect 10 to sign a
26 stipulation and order dismissing rights of publicity claims regarding the other

1 models with prejudice. Perfect 10 would, of course, not do so. The purpose of
2 cutting the number of models down to nine is to allow this case to be litigated
3 with a minimum of discovery, and allow the issues regarding Google's liability
4 for misappropriation of rights of publicity to be decided by the District Court
5 and the Ninth Circuit. Those issues can easily be litigated and determined
6 regarding the nine models who remain in the case. If it is determined that
7 Google is liable for misappropriation of rights of publicity, then another lawsuit
8 may be brought (possibly in state court) for the other models. That is the main
9 reason why Perfect 10 will not enter into a stipulation dismissing those claims
10 with prejudice. But there is no reason for Google to take discovery on the other
11 models at this time. Discovery should be limited to the nine models who remain
12 in the case at this time. If Perfect 10 prevails on its right of publicity claims and
13 then decides to bring a later lawsuit regarding the other models, Google can take
14 discovery regarding the other models at that time.

15 The first part of Google's proposed order, where it states "Plaintiff shall
16 provide contact information for fifteen persons of Google's choice whose
17 publicity rights Plaintiff asserts in this action as of March 15, 2006," is
18 completely incorrect. The Court did not make such an order at the hearing, and
19 this isn't even a part of Google's Document Request No. 42, which reads: "All
20 documents concerning the publicity rights claimed by you in this action,
21 including, but not limited to, all licenses, releases, or assignments and all
22 communications relating to such licenses, releases or assignments." In fact, at
23 the hearing, the Court specifically ordered that "I'm going to require that you
24 contact them through Mr. Mausner's office." (February 22, 2006 transcript,
25 page 70 lines 18-21.)

SCANNED

1 Document Request No. 43: Plaintiff shall identify all lawsuits involving rights
2 of publicity in which it has been a plaintiff or defendant. Plaintiff shall comply with
3 this order by April 15, 2006. The Court otherwise defers ruling on Google's motion
4 concerning this request at this time.

5 **The parties have set forth their respective understandings of the Court's**
6 **rulings on Document Request No. 44 below. Document Request No. 44 seeks "all**
7 **documents concerning the fame or market awareness of each model name or**
8 **likeness in which [Plaintiff] claim[s] rights."**

9 Google's Proposed Order re Document Request No. 44: The motion to compel
10 is granted. Plaintiff shall produce the following: All non-privileged and non-work
11 product documents concerning the fame or market awareness of each model name or
12 likeness in which Plaintiff claims rights. These documents shall be produced by April
13 15, 2006.

14 Google's Explanation of its Version: Google's proposed language is based
15 on its understanding that the Court granted Document Request No. 44 without
16 limitation. See 2/22/06 Hearing Transcript, p. 78 ("The Court: All right. I'll
17 grant 44.") Plaintiff, however, claims that the Court implied a limitation on the
18 documents Plaintiff is required to produce to those relating to models remaining
19 in the case as of March 15, 2006, even though no such limitation was made.
20 Google believes the order should reflect the Court's ruling granting the motion to
21 compel on the request without limitation, particularly since the documents
22 sought are relevant to issues other than rights of publicity, such as Perfect 10's
23 claims that the fame of its models drives users to search on model names in
24 pursuit of images that infringe its copyrights.

25
26 ~~Plaintiff's Proposed~~ Order re Document Request No. 44: The motion to compel

1 is granted, as follows: Plaintiff shall produce all non-privileged and non-work product
2 documents concerning the fame or market awareness of each model name or likeness
3 in which Plaintiff claims rights of publicity in this lawsuit as of ~~March 15, 2006~~ ^{June 8, 2006}.

4 These documents shall be produced by ~~April 15, 2006~~ ^{June 2, 2006}.

5 **Plaintiff's Explanation of its Version:**

6 **The Court's order should make sense in light of the issues remaining in the**
7 **case. It is understood that Perfect 10 is now (as of March 15, 2006) only asserting**
8 **violation of publicity rights in connection with 9 models. During the discussion at**
9 **the hearing, it was apparent that it is the publicity rights that these remaining**
10 **models assigned to Perfect 10 which are relevant to Document Request No. 44.**

11 **"Ms. Lee: [Google's attorney]: Your Honor, they have alleged that these models**
12 **have widespread recognition and that Google has willfully violated the rights of**
13 **these models." February 22, 2006 Transcript, page 77, lns. 3-7. Therefore, it**
14 **makes logical sense to have this order limited to the models remaining in the**
15 **lawsuit for whom Perfect 10 is pursuing right of publicity violations. That is the**
16 **entire reason that Perfect 10 agreed to cut down the scope of this case to publicity**
17 **rights of just these nine models. If Google is allowed to take discovery regarding**
18 **other models, there is no reason to do so. The Court regularly limited its orders**
19 **regarding right of publicity claims to only models who remained in the case after**
20 **March 15, 2006.**

21
22
23 **Document Request No. 45: Plaintiff shall make available all photographs in its**
24 **custody or control of models that have appeared in Perfect 10 that also appear in other**
25 **publications. Plaintiff shall produce documents sufficient to make clear the context in**
26 **which the photographs were published. These documents shall be produced by April**

SHANNEE

1 15, 2006. The Court defers ruling on the remainder of Google's motion concerning
2 this request at this time.

3 Document Request No. 46: The motion to compel is granted. Plaintiff shall
4 produce the following: All non-privileged and non-work product documents
5 concerning authorization or permission by Plaintiff for other publications or media,
6 not owned or controlled by Plaintiff, to display names or photographs of persons
7 whose names or photographs have appeared in Plaintiff's magazine or Web sites.
8 These documents shall be produced by April 15, 2006.

9 Document Request No. 50: Plaintiff shall produce all communications with
10 persons whose publicity rights Plaintiff is asserting in this lawsuit as of March 15,
11 2006 that concern or reflect publicity rights. These documents shall be produced by
12 April 15, 2006. The Court defers ruling on the remainder of Google's motion
13 concerning this request at this time.

14 Document Request No. 51: By April 15, 2006, Plaintiff shall identify all
15 lawsuits involving claims of misappropriation of rights of publicity in which it has
16 been a plaintiff or defendant. The Court defers ruling on the remainder of the request
17 at this time.

18 Document Request No. 52: By April 15, 2006, Plaintiff shall identify all
19 lawsuits involving claims of misappropriation of rights of publicity in which it has
20 been a plaintiff or defendant without prejudice to Google's right to return to Court
21 concerning this request. The Court defers ruling on the remainder of the request at
22 this time.

23 Document Request No. 53: Plaintiff shall produce all correspondence with
24 persons or entities claiming ownership of publicity rights of persons whose publicity
25 rights Plaintiff asserts in this lawsuit as of March 15, 2006. These documents shall be
26 produced by April 15, 2006. The Court defers ruling on the remainder of Google's

1 motion concerning this request at this time.

2 Document Request No. 57: The motion to compel is granted. Plaintiff shall
3 produce the following: Documents sufficient to identify each person or entity Plaintiff
4 claims or believes to violate publicity rights claimed by Plaintiff in this action.
5 Documents which Perfect 10 currently has in its possession shall be produced by April
6 15, 2006. As Perfect 10 obtains additional documents (including based upon
7 Google's production of documents and the discovery of additional violations), those
8 documents shall be produced .

SCANNED

9 **D. Information Regarding Persons Whose Publicity Rights Plaintiff**
10 **Claims (Interrogatory No. 1; Document Request No. 54)**

11 Interrogatory No. 1: The motion to compel is granted with respect to all
12 persons whose publicity rights Plaintiff asserts in this lawsuit as of March 15, 2006.
13 This information shall be provided by April 15, 2006. The Court defers ruling on the
14 remainder of Google's motion concerning this request at this time.

15 Document Request No. 54: Plaintiff shall produce all non-privileged and non-
16 work product documents concerning its compliance with 18 U.S.C. § 2257 with
17 respect to all persons whose publicity rights Plaintiff asserts in this lawsuit as of
18 March 15, 2006. These documents shall be designated highly confidential. These
19 documents shall be produced by April 15, 2006. The Court defers ruling on the
20 remainder of Google's motion concerning this request at this time.

21 **E. Information Regarding Persons Who May Have Knowledge**
22 **Regarding the Alleged Facts (Interrogatory Nos. 6-7; Document**
23 **Request No. 63)**

24 Interrogatory No. 6: The Court defers ruling on the interrogatory at this time.

25 Interrogatory No. 7: The Court defers ruling on the interrogatory at this time.

26 Document Request No. 63: Plaintiff shall produce documents sufficient to
27 identify all of its directors, officers, staff, employees, and full-time personnel from

1 2000 to present. These documents shall be produced by April 15, 2006. The Court
2 defers ruling on the remainder of Google's motion concerning this request at this time.

3 **F. Information Regarding Plaintiff's Web Sites (Document Request No. 60)**

4 Document Request No. 60: Plaintiff shall produce documents constituting the
5 current (or, if no longer active, the most recent) version of all Web sites owned or
6 controlled by Plaintiff. These documents shall be produced by April 15, 2006. The
7 Court defers ruling on the remainder of Google's motion concerning this request at
8 this time.

9 **G. Information Regarding Claims Asserted Against Plaintiff of**
10 **Infringement or Allegations of False Infringement (Document Request Nos. 64,**
11 **65)**

12 Document Request No. 64: Plaintiff shall produce the settlement agreement in
13 the case that it stated is relevant to Request No. 64. This document shall be produced
14 by April 15, 2006. The Court defers ruling on the remainder of Google's motion
15 concerning this request at this time.

16 Document Request No. 65: Plaintiff shall produce the settlement agreement in
17 the case that it stated is relevant to Request No. 65. This document shall be produced
18 by April 15, 2006. The Court defers ruling on the remainder of Google's motion
19 concerning this request at this time.

20 **H. Earlier Litigation Involving Plaintiff for Similar Claims (Document**
21 **Request No. 66)**

22 Document Request No. 66: Plaintiff shall produce all complaints for lawsuits in
23 which it has been a plaintiff or defendant involving claims of copyright, trademark,
24 publicity rights, or unfair competition and transcripts of depositions of Dr. Zada in
25 those litigations in its possession, custody, or control. These documents shall be
26 produced by April 15, 2006. The Court defers ruling on the remainder of Google's

SCANNED

1 motion concerning this request at this time.

2 **I. Documents Regarding Google and Communications with Google**
3 **(Document Request Nos. 7, 58-59)**

4 Document Request No. 7: The motion to compel is granted. Plaintiff shall
5 produce the following: All non-privileged and non-work product documents
6 concerning communications between Plaintiff and Google. These documents shall be
7 produced by April 15, 2006.

8 Document Request No. 58: Plaintiff shall produce all non-privileged and non-
9 work product documents in its possession, custody, or control that mention or refer to
10 the claims in this lawsuit against Google or this lawsuit. These documents shall be
11 produced by April 15, 2006. The Court defers ruling on the remainder of Google's
12 motion concerning this request at this time.

13 Document Request No. 59: The Court defers ruling on Google's motion
14 concerning this request at this time.

15 **J. Plaintiff's Damages (Document Request Nos. 33, 38, 71)**

16 Document Request No. 33: Plaintiff shall produce summary financial
17 documents showing its annual expenditures on advertising and marketing activities in
18 the United States concerning the marks PERFECT 10 and PERFECT 10.COM.
19 These documents shall be produced by April 15, 2006. The Court defers ruling on the
20 remainder of Google's motion concerning this request at this time.

21 Document Request No. 38: Plaintiff shall produce summary financial
22 documents showing annual revenues and expenses relating to its use of the marks
23 PERFECT 10 and PERFECT10.COM. These documents shall be produced by April
24 15, 2006. The Court defers ruling on the remainder of Google's motion concerning
25 this request at this time.

26 Document Request No. 71: With respect to financial documents, Plaintiff shall

1 produce annual summary financial documents reflecting any damages or harm it
2 claims to have suffered, or to be likely to suffer, as a result of Google's alleged
3 infringements and violations set forth in its amended complaint in this action. In
4 addition, Perfect 10 shall produce any other non-privileged and non-work product
5 documents that evidence, refer to, or discuss any such damages or harm. Documents
6 which Perfect 10 currently has in its possession shall be produced by April 15, 2006;
7 as Perfect 10 obtains additional documents, those documents shall be produced.

8 **K. Issues Relating to Plaintiff's Efforts to Avoid Harm (Interrogatory**
9 **No. 4; Document Request Nos. 4, 8-9, 32, 39, 41, 70)**

10 Interrogatory No. 4: The Court defers ruling on Google's motion concerning
11 this request at this time.

12 Document Request No. 4: Plaintiff shall produce all complaints in its
13 possession, custody or control in which it has been a plaintiff or defendant involving
14 claims of copyright infringement and transcripts of depositions of Dr. Zada in those
15 litigations in its possession, custody or control. These documents shall be produced
16 by April 15, 2006. The Court defers ruling on the remainder of Google's motion
17 concerning this request at this time.

18 Document Request No. 8: The Court defers ruling on Google's motion
19 concerning this request at this time.

20 Document Request No. 9: The motion to compel is granted. Plaintiff shall
21 produce the following: All DMCA Notifications or claims of infringement that
22 Plaintiff has sent to persons or entities other than Google. Plaintiff's production shall
23 include, without limitation, documents located at its attorneys' offices and any storage
24 facilities for its attorneys. These documents shall be produced by April 15, 2006.

25 Document Request No. 32: The motion to compel is granted. Plaintiff shall
26 produce the following: All non-privileged and non-work product documents

SCANNED

1 concerning efforts by Plaintiff to halt or reduce infringements of its trademarks.
2 These documents shall be produced by April 15, 2006.

3 Document Request No. 39: The Court defers ruling on Google's motion
4 concerning this request at this time.

5 Document Request No. 41: The ruling on this request is the same as on
6 Document Request No. 32.

7 Document Request No. 70: The motion to compel is granted. Plaintiff shall
8 produce the following: All non-privileged and non-work product documents
9 concerning Plaintiff's practices, policies, procedures, intentions, plans, or actions
10 regarding investigation and identification of, or prosecution of, claims against Stolen
11 Content Websites for infringement of Plaintiff's alleged intellectual property. These
12 documents shall be produced by April 15, 2006.

13 **L. Information Regarding Use of Google and Other Search Engines**
14 **(Document Request Nos. 61-62, 67-69)**

15 Document Request No. 61: Plaintiff shall produce all documents concerning use
16 of Google's search engine regarding this lawsuit that are not work product or
17 privileged. These documents shall be produced by April 15, 2006. The Court defers
18 ruling on the remainder of Google's motion concerning this request at this time.

19 Document Request No. 62: The Court defers ruling on Google's motion
20 concerning this request at this time.

21 Document Request No. 67: The Court defers ruling on Google's motion
22 concerning this request at this time.

23 Document Request No. 68: The Court defers ruling on the request at this time.

24 Document Request No. 69: The motion to compel is granted. Plaintiff shall
25 produce the following: All non-privileged and non-work product documents referring
26 to or discussing benefits to Plaintiff of being listed in, or being prominently listed in,

1 search results by Google or any other Internet search engine. These documents shall
2 be produced by April 15, 2006.

3 **M. Document Retention and Maintenance (Document Request Nos. 72-
4 73)**


5 Document Request No. 72: The motion to compel is granted. Plaintiff shall
6 produce the following: All non-privileged and non-work product documents
7 concerning its policies regarding retention, storage, filing and destruction of
8 documents and things. These documents shall be produced by April 15, 2006.

9 Document Request No. 73: The motion to compel is granted. Plaintiff shall
10 produce the following: All non-privileged and non-work product documents
11 concerning indexes, lists or inventories of documents and things maintained by or for
12 Plaintiff. These documents shall be produced by April 15, 2006.

13 **N. Perfect 10's Documents Evidencing Certain Allegations it Made
14 Against Google (Document Request Nos. 20-25, 27-31, 40, 47-49)**

15 Document Request Nos. 20-25, 27-31, 40, 47-49: The Court defers ruling on
16 the organization of these document requests. The Court further orders the parties to
17 continue meeting and conferring so that production of documents can be in the most
18 useful and accessible manner.


19
20
21 Dated: 5-19-06


22 Stephen J. Hillman
United States Magistrate Judge

SCANNED

1 Respectfully submitted,

2 Dated: May 16, 2006



 Andrew P. Bridges
 Jennifer A. Golinveaux
 WINSTON & STRAWN LLP
 Attorneys for Defendant and Counterclaimant
 Google Inc.

SCANNED

6 Approved as to form only:

7 Dated: May _____, 2006

 Jeffrey N. Mausner
 BERMAN, MAUSNER & RESSER
 Attorneys for Plaintiff and Counter-
 defendant Perfect 10, Inc.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

SCANNED

1 Respectfully submitted,

2 Dated: May _____, 2006

Andrew P. Bridges
Jennifer A. Golinveaux
WINSTON & STRAWN LLP
Attorneys for Defendant and Counterclaimant
Google Inc.

6 Approved as to form only:

Jeffrey N. Mausner (D.T.)
Jeffrey N. Mausner
BERMAN, MAUSNER & RESSER
Attorneys for Plaintiff and Counter-
defendant Perfect 10, Inc.

8 Dated: May 15, 2006

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28