

Perfect 10 Inc v. Google Inc et al

Doc. 16

1 Russell J. Frackman (State Bar No. 49087)
Jeffrey D. Goldman (State Bar No. 155589)
2 MITCHELL SILBERBERG & KNUPP LLP
11377 West Olympic Boulevard
3 Los Angeles, CA 90064-1683
Telephone: (310) 312-2000; Facsimile: (310) 312-3100

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

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

10 Attorneys for Plaintiff
11 PERFECT 10, INC.

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 PERFECT 10, INC., a California
15 corporation,
16 Plaintiff,
17 vs.
18 GOOGLE INC., a corporation; et al.,
19 Defendants.

) Master File No. CV 04-9484 AHM ✓
(SHx)
) [Consolidated with Case No. CV 05-
) 4753 AHM (SHx)]
)
) PLAINTIFF PERFECT 10, INC.'S
) NOTICE OF APPEAL TO THE
) UNITED STATES COURT OF
) APPEALS FOR THE NINTH
) CIRCUIT RE MAY 9, 2006
) PRELIMINARY INJUNCTION
) ORDER;

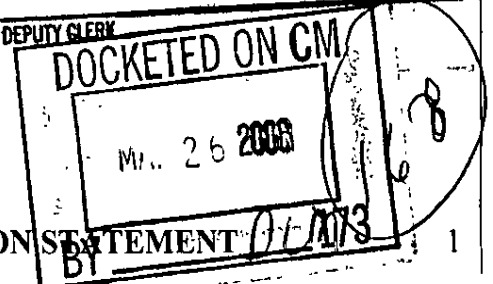
20
21 PERFECT 10, INC., a California
corporation
22
23 Plaintiff,
24 vs.
25 AMAZON.COM, INC., a corporation;
26 A9.COM, INC., a corporation; et al.,
27 Defendants.
28

) REPRESENTATION STATEMENT
)
) PRELIMINARY INJUNCTION
) APPEAL

I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY
FIRST CLASS MAIL, POSTAGE PAID, TO ALL COUNSEL
(OR PARTIES) AT THEIR RESPECTIVE, MOST RECENT, ADDRESS OF
RECORD, IN THIS ACTION, ON THIS DATE

DATED: _____

DEPUTY CLERK



NOTICE OF APPEAL; REPRESENTATION STATEMENT BY 1

Bill _____
Fees Pd _____
Frms Gvn _____
CAD _____
TDO _____
Ntc/Dkt Mild _____
FP Frms Gvn _____

2006 MAY 22 PM 4: 10
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
[Signature]

DEMITTED

FILED

NOTICE OF APPEAL

1
2 Notice is hereby given that Perfect 10, Inc., ("Perfect 10"), plaintiff in the
3 above-referenced case, hereby appeals to the United States Court of Appeals for
4 the Ninth Circuit from the District Court's Preliminary Injunction Order entered
5 in this case on May 9, 2006, a true and correct copy of which is attached hereto
6 as Exhibit 1.

7 As this Preliminary Injunction Order implements the earlier "Order
8 Granting In Part and Denying In Part Perfect 10's Motion for Preliminary
9 Injunction Against Google" entered by the District Court on February 21, 2006,
10 Perfect 10 believes that this present appeal should be consolidated with the
11 earlier filed appeal of the February 21, 2006 Order (Court of Appeals Docket No.
12 06-55406, consolidated with Docket Nos. 06-55425 and 06-55405) and follow
13 the same briefing schedule which was set by the Court in its Order dated May 2,
14 2006, a copy of which is attached as Exhibit 2.

15
16 Dated: May 22, 2006

Respectfully submitted,

17 BERMAN, MAUSNER & RESSER
18 A Law Corporation

19
20 By: Jeffrey N. Mausner
21 Jeffrey N. Mausner
22 Attorneys for Plaintiff Perfect
23 10, Inc.
24
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REPRESENTATION STATEMENT

The undersigned represents Perfect 10, Inc., plaintiff and appellant in this matter, and no other party. Attached is a service list that shows all of the parties to the action below, and identifies their counsel by name, firm, address and telephone number, where appropriate. (F.R.A.P. 12(b); Circuit Rule 3-2(b).)

Dated: May 22, 2006

Respectfully submitted,

BERMAN, MAUSNER & RESSER
A Law Corporation

By: Jeffrey N. Mausner
Jeffrey N. Mausner
Attorneys for Plaintiff Perfect
10, Inc.

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SERVICE LIST FOR REPRESENTATION STATEMENT

Defendants/appellees:

- 1. Google Inc.
- 2. Amazon.com Inc. and A9.com Inc.

Counsel for defendants and appellees Google Inc.:

Andrew P. Bridges
 Jennifer A. Golinveaux
 Winston & Strawn LLP
 101 California Street, Suite 3900
 San Francisco, CA. 94111-5894
 Telephone: (415) 591-1000; Facsimile: (415) 591-1400

Counsel for defendants Amazon.com and A9.com:

Mark T. Jansen
 Anthony J. Malutta
 Townsend and Townsend and Crew LLP
 Two Embarcadero Center, Eighth Floor
 San Francisco, CA 94111-3834
 Telephone: 415-576-0200; Facsimile: 415-576-0300

Plaintiff and appellant:

Perfect 10, Inc.

Counsel for plaintiff and appellant Perfect 10:

Russell J. Frackman
 Jeffrey D. Goldman
 MITCHELL SILBERBERG & KNUPP LLP
 11377 West Olympic Boulevard
 Los Angeles, CA 90064-1683
 Telephone: (310) 312-2000; Facsimile: (310) 312-3100

Daniel J. Cooper
 PERFECT 10, INC.
 72 Beverly Park Dr.
 Beverly Hills, California 90210
 Telephone: (310) 205-9817; Facsimile: (310) 205-9638

Jeffrey N. Mausner
 BERMAN, MAUSNER & RESSER
 11601 Wilshire Boulevard, Suite 600
 Los Angeles, California 90025-1742
 Telephone: (310) 473-3333; Facsimile: (310) 473-8303
 E-mail: JeffMausner@bmrlaw.com

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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=...”

16
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

1
2 ii. if Google disputes in good faith the accuracy or veracity of
3 any statement or representation P10 made pursuant to ¶ 4(b),
4 such as, but not necessarily limited to, a dispute based on a
5 counternotification from a third party; or

6
7 iii. if Google in good faith concludes that the image on the third-
8 party website from which Google derived the thumbnail is not
9 the same as the P10 copyrighted image P10 identified under
10 ¶ 4(a)(i).

11
12 3. **Identification by P10 of Its Copyrighted Images.** P10 shall provide to
13 Google in electronic format the images for which P10 owns the copyrights,
14 arranged in folders labeled with the name of each model. P10 may
15 supplement those images not more often than once per month.

16
17 4. **Notices of Infringement.** Not more than once per month, P10 may provide
18 to Google a Notice of Infringement that shall include each of the following:

19
20 a. for each allegedly infringing thumbnail stored on and served by
21 Google's servers,

22
23 i. P10 shall identify by folder and file name each P10
24 copyrighted image P10 identified pursuant to ¶ 3 that P10
25 claims is infringed by that particular thumbnail; and

26
27 ii. P10 shall identify the Thumbnail Source URL for that
28 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

1 webpages, cease serving AdSense advertisements on third-party
2 websites from which Google derived each thumbnail identified under
3 ¶ 4(a) that Google has not contested pursuant to ¶¶ 2(d) and 7
4

5 6. **Report of Compliance.** Within fifteen business days of its receipt of each
6 monthly Notice of Infringement, Google shall provide to P10 and file with
7 the Court a Report of Compliance that sets forth the steps Google has taken
8 to comply with the take-down procedures described in ¶ 5.
9

10 7. **Report of Contested Thumbnails.** Within fifteen business days of its
11 receipt of each monthly Notice of Infringement, Google shall notify P10 of
12 those thumbnails it has contested pursuant to ¶ 2(d). This notification shall
13 be sent separately from the Report of Compliance described in ¶ 6, and it
14 shall identify each contested thumbnail, as well as the grounds upon which
15 Google contests that thumbnail.
16

17 8. **Challenges by P10 to Thumbnails Contested by Google.** P10 may
18 challenge Google's contesting of any thumbnail, under the following
19 procedures:
20

21 a. For each challenge to a contested thumbnail identified in a Report of
22 Contested Thumbnails, P10 must provide Google with evidence
23 sufficient to show that Google lacked a good faith factual basis to
24 contest that thumbnail. This evidence shall be provided by not later
25 than ten business days after P10's receipt of that Report of Contested
26 Thumbnails.
27
28

- 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.

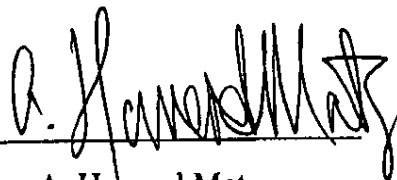
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11. **Modifications.** This Order may be modified by subsequent application of the parties, who also may stipulate to alternative means, such as the development of image recognition technology to accomplish the objectives of this injunction.

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

FILED

MAY 02 2006

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

SCAM

PERFECT 10, INC., a California corporation,

Plaintiff - Appellant,

v.

AMAZON.COM, INC., a corporation;
et al.,

Defendants - Appellees.

No. 06-55405

D.C. No. CV-05-4753-AHM
Central District of California,
Los Angeles

PERFECT 10, INC., a California corporation,

Plaintiff - Appellant/Cross - Appellee,

v.

GOOGLE INC., a corporation,

Defendant - Appellee/Cross - Appellant.

No. 06-55406

D.C. No. CV-04-09484-AHM
Central District of California,
Los Angeles

PERFECT 10, INC., a California corporation,

Plaintiff - Appellee/Cross -

No. 06-55425

D.C. No. CV-04-09484-AHM
Central District of California,

06-55405, 06-55406, 06-55425

<p>Appellant,</p> <p>v.</p> <p>GOOGLE INC., a corporation,</p> <p>Defendant - Appellant/Cross - Appellee.</p>

Los Angeles

ORDER

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These consolidated cases are preliminary injunction appeals.

The parties' stipulated motions to amend the briefing schedules are granted.

The following briefing schedule shall govern appeal no. 06-55405: Perfect 10's opening brief is due not later than June 7, 2006; Amazon.com's answering brief is due August 11, 2006; and the optional reply brief is due September 19, 2006.

The following briefing schedule shall govern cross-appeal nos. 06-55406 and 06-55425: Perfect 10's opening brief is due not later than May 30, 2006. Google's answering/opening brief is due July 11, 2006. Perfect 10's reply/answering brief is due is August 8, 2006. Google's optional reply brief is due August 22, 2006.

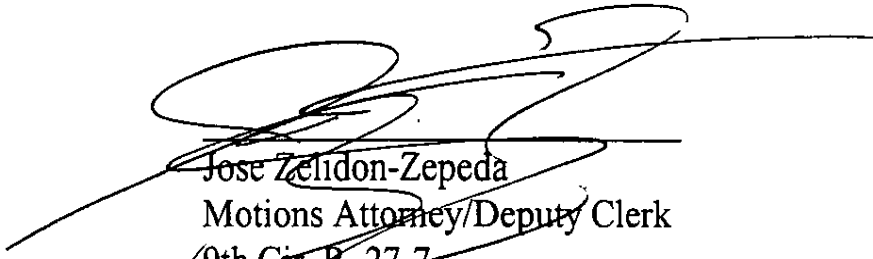
All parties on a side are encouraged to join in a single brief to the greatest extent practicable. See 9th Cir. R. 28-4. If appellant fails to file timely the

06-55405, 06-55406, 06-55425

opening briefs, these appeals will be dismissed automatically by the Clerk for failure to prosecute. *See* 9th Cir. R. 42-1.

These appeals and any motions pending when briefing is completed shall be referred to the next available motions panel for disposition. *See* 9th Cir. R. 3-3(d).

For the Court



Jose Zelidon-Zepeda
Motions Attorney/Deputy Clerk
9th Cir. R. 27-7
General Orders/Appendix A

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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: 11601 Wilshire Blvd., Suite 600, Los Angeles, CA 90025-1742.

On May 22, 2006, I served the foregoing document(s) described as follows:

PLAINTIFF PERFECT 10, INC.'S NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT RE MAY 9, 2006 PRELIMINARY INJUNCTION ORDER; REPRESENTATION STATEMENT

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT CIVIL APPEALS DOCKETING STATEMENT

on the interested party(ies) in this action by placing a true copy thereof enclosed in a sealed envelope addressed to the address(es) as follows:

**Andrew P. Bridges
Jennifer A. Golinveaux
Winston & Strawn LLP
101 California Street, Suite 3900
San Francisco, CA. 94111-5894**

**Mark T. Jansen
Anthony J. Malutta
Townsend and Townsend and Crew LLP
Two Embarcadero Center, Eight Floor
San Francisco, CA 94111-3834**

MAIL: I placed such envelope with fully prepaid postage thereon in the United States mail at Los Angeles, California.

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 **May 22, 2006** at Los Angeles, California

BY: 
Victoria Rapoport

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