

ORIGINAL

Perfect 10 Inc v. Google Inc et al

Doc. 18

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5 Attorneys for Defendant
6 GOOGLE INC.

CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 PERFECT 10, INC., a California
corporation

12 Plaintiff,

13 vs.

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

16 Defendant.

Case No. CV04-9484-AHM (SHx)
[Consolidated with Case No. CV 05
4753 AHM (SHx)]

17 NOTICE OF APPEAL (CROSS-
18 APPEAL) BY DEFENDANT
19 GOOGLE INC. OF MAY 9, 2006
20 PRELIMINARY INJUNCTION
21 ORDER

22 AND COUNTERCLAIM

23 PRELIMINARY INJUNCTION
24 APPEAL

25 PERFECT 10, INC., a California
corporation

26 Plaintiff,

27 vs.

28 AMAZON.COM, INC., a corporation;
A9.COM, INC., a corporation; and
DOES 1 through 10, inclusive,

Defendants.

I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY
FIRST CLASS MAIL, POSTAGE PREPAID, TO ALL COUNSEL
(AND PARTIES) AT THEIR RESPECTIVE, MOST RECENT, ADDRESS OF
RECORD, IN THIS ACTION, ON THIS DATE.
DATED 6-19-06
CR
DEPUTY CLERK

DOCKETED ON CM
JUN 19 2006
BY CR 184

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

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1 Defendant GOOGLE INC. HEREBY GIVES NOTICE THAT it
2 appeals to the United States Court of Appeals for the Ninth Circuit from the
3 PRELIMINARY INJUNCTION ORDER entered May 9, 2006 and attached
4 to this notice as Exhibit 1.

5 Google Inc. and Plaintiff previously noticed the appeal of the Court's
6 earlier and related February 21, 2006 ORDER GRANTING IN PART AND
7 DENYING IN PART PERFECT 10'S MOTION FOR PRELIMINARY
8 INJUNCTION AGAINST GOOGLE. As explained in that Notice of
9 Appeal, Google believed its appeal was premature because the Court had not
10 yet entered the Order to be appealed from. Google believes that the May 9,
11 2006 order is the appealable order and that the Notice of Appeal filed by it
12 on March 22, 2006 should now extend to the May 9, 2006 Order pursuant to
13 Rule 4(a)(2). Nevertheless, Google files this Notice of Appeal from the May
14 9, 2006 order as a matter of caution.

15 The Ninth Circuit, by order dated May 2, 2006 and attached to this
16 notice as Exhibit 2, consolidated the parties' cross appeals and established a
17 unified briefing schedule. Google Inc. joins Plaintiff's request made in its
18 Notice of Appeal that the Ninth Circuit further consolidate the parties'
19 appeals from the Court's February 21, 2006 order with the appeals from the
20 May 9, 2006 order and keep the briefing schedule outlined in its May 2,
21 2006 order.

22 Pursuant to Circuit Rule 3-2, a Representation Statement is attached to
23 this notice as Exhibit 3.

24 Pursuant to Circuit Rule 3-4, a Civil Appeals Docketing Statement
25 accompanies this notice.

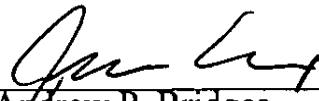
Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5894

1 Dated: June 6, 2006

Respectfully submitted,

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WINSTON & STRAWN LLP

By: 

Andrew P. Bridges
Jennifer A. Golinveaux
Attorneys for Defendant and
Counterclaimant Google Inc.

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CENTRAL DISTRICT OF CALIFORNIA
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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

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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.

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

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

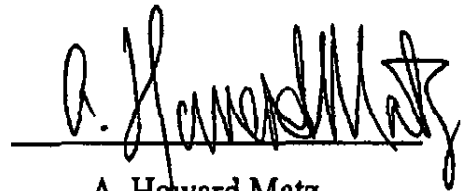
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11. **Modifications.** This Order may be modified by subsequent application of the parties, who also may stipulate to alternative means, such as the development of image recognition technology to accomplish the objectives of this injunction.

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

SCANNED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
MAY 02 2006
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

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,

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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

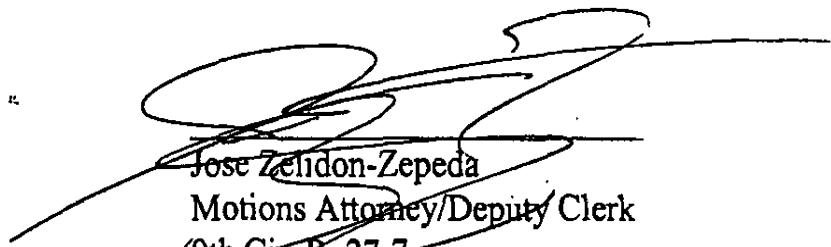
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06-55405, 06-55406, 06-55425

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 Zeldon-Zepeda
Motions Attorney/Deputy Clerk
9th Cir. R. 27.7
General Orders/Appendix A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SCANNED

PERFECT 10, INC.,
Appellant and Cross-Appellee,
v.
GOOGLE INC.,
Appellee and Cross-Appellant.

No. _____
D.C. Case No. CV 04-9484 AHM (SHx) (C.D.
Cal. Los Angeles)


REPRESENTATION STATEMENT BY GOOGLE INC.

The undersigned represents GOOGLE INC., Defendant and Counterclaimant in the court below and Appellant and Cross-Appellee in this appeal, 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, telephone number, facsimile number, and email address. This statement is made pursuant to Fed. R. App. P. 12(b) and Circuit Rule 3-2(b).

Dated: June 6, 2006

Respectfully submitted,

WINSTON & STRAWN LLP

By: 
Andrew P. Bridges
Jennifer A. Golinveaux
Attorneys for Appellee and Cross-Appellant Google Inc.

SERVICE LIST

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dan@perfect10.com

PROOF OF SERVICE

SCANNED

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Winston & Strawn LLP, 333 South Grand Avenue, 38th Floor, Los Angeles, California 90071-1543. On June 7, 2006, I served the within document(s):

**NOTICE OF APPEAL (CROSS-APPEAL) BY DEFENDANT GOOGLE INC. OF MAY 9, 2006 PRELIMINARY INJUNCTION ORDER
PRELIMINARY INJUNCTION APPEAL**

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set on the attached service list.

SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than on day after the date of deposit for mailing an affidavit.

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.

Executed on June 7, 2006, at Los Angeles, California.

Rebecca L. Willis

Rebecca L. Willis

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2 Embarcadero Center, 8th Floor
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Form 6. Civil Appeals Docketing Statement

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U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

ORIGINAL

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

PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY.

TITLE IN FULL: PERFECT 10, INC., Plaintiff and Counter-defendant, v. GOOGLE INC., and DOES 1-100 Defendant and Counterclaimant.	DISTRICT: C.D. Calif. <input checked="" type="checkbox"/> JUDGE: Howard A. Matz <input checked="" type="checkbox"/>	
	DISTRICT COURT NUMBER: CV04-9484 <input checked="" type="checkbox"/>	
	DATE NOTICE OF APPEAL FILED: June 6, 2006 <input checked="" type="checkbox"/>	IS THIS A CROSS-APPEAL? <input checked="" type="checkbox"/> YES
	IF THIS MATTER HAS BEEN BEFORE THIS COURT PREVIOUSLY, PLEASE PROVIDE THE DOCKET NUMBER AND CITATION (IF ANY): The parties cross-appealed an earlier order of the district court and the Ninth Circuit assigned appeal docket numbers 06-55406 and 06-55425.	
BRIEF DESCRIPTION OF ACTION AND RESULT BELOW: The action below is a suit for copyright infringement and related causes of action. The District Court, having earlier granted in part and denied in part Plaintiff's preliminary injunction motion, has now issued a preliminary injunction requiring Defendant to implement measures to avoid allegedly infringing activity. Defendant has already appealed the earlier order and now appeal the preliminary injunction order itself.		
PRINCIPAL ISSUES PROPOSED TO BE RAISED ON APPEAL: Whether the District Court erred in issuing the preliminary injunction; whether the District Court erred in its analysis of alleged direct infringement by Defendant; and whether the District Court erred in its analysis of the fair use doctrine in copyright law as applied to certain aspects of the function of the Google search engine.		
PLEASE IDENTIFY ANY OTHER LEGAL PROCEEDING THAT MAY HAVE A BEARING ON THIS CASE (INCLUDE PENDING DISTRICT COURT POST-JUDGMENT MOTIONS): The parties previously filed cross-appeals from the district court's earlier order granting in part and denying in part Plaintiff's preliminary injunction motion. Those cases have appeal docket numbers 06-55406 and 06-55425. There are two potentially related cases pending before this court: Perfect 10 v. CCBill, appeal docket no. 04-57143 (9th Cir. filed Dec. 21, 2004), and Perfect 10 v. Visa International Service Association, appeal docket no. 04-57207 (9th Cir. filed Dec. 30, 2004)		
DOES THIS APPEAL INVOLVE ANY OF THE FOLLOWING: <input type="checkbox"/> Possibility of settlement <input type="checkbox"/> Likelihood that intervening precedent will control outcome of appeal <input checked="" type="checkbox"/> Likelihood of a motion to expedite or to stay the appeal, or other procedural matters (specify) Consolidation with related appeals. <input type="checkbox"/> Any other information relevant to the inclusion of this case in the Mediation Program <input type="checkbox"/> Possibility parties would stipulate to binding award by Appellate Commissioner in lieu of submission to judges.		

LOWER COURT INFORMATION

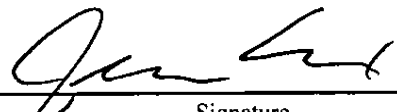
Page 2 of 2

JURISDICTION		DISTRICT COURT DISPOSITION	
FEDERAL	APPELLATE	TYPE OF JUDGMENT / ORDER APPEALED	RELIEF
<input checked="" type="checkbox"/> FEDERAL QUESTION <input type="checkbox"/> DIVERSITY <input type="checkbox"/> OTHER (SPECIFY)	<input type="checkbox"/> FINAL DECISION OF DISTRICT COURT <input checked="" type="checkbox"/> INTERLOCUTORY DECISION APPEALABLE AS OF RIGHT <input type="checkbox"/> INTERLOCUTORY ORDER CERTIFIED BY DISTRICT JUDGE (SPECIFY): <input type="checkbox"/> OTHER (SPECIFY):	<input type="checkbox"/> DEFAULT JUDGMENT <input type="checkbox"/> DISMISSAL / JURISDICTION <input type="checkbox"/> DISMISSAL / MERITS <input type="checkbox"/> SUMMARY JUDGMENT <input type="checkbox"/> JUDGMENT / COURT DECISION <input type="checkbox"/> JUDGMENT / JURY VERDICT <input type="checkbox"/> DECLARATORY JUDGMENT <input type="checkbox"/> JUDGMENT AS A MATTER OF LAW <input checked="" type="checkbox"/> OTHER (SPECIFY): Preliminary Injunction Order	<input type="checkbox"/> DAMAGES: SOUGHT \$ _____ AWARDED \$ _____ <input checked="" type="checkbox"/> INJUNCTIONS: <input checked="" type="checkbox"/> PRELIMINARY <input type="checkbox"/> PERMANENT <input checked="" type="checkbox"/> GRANTED <input checked="" type="checkbox"/> DENIED <input type="checkbox"/> ATTORNEY FEES: SOUGHT \$ _____ AWARDED \$ _____ <input type="checkbox"/> PENDING <input type="checkbox"/> COSTS: \$ _____

CERTIFICATION OF COUNSEL

I CERTIFY THAT:

1. COPIES OF ORDER / JUDGMENT APPEALED FROM ARE ATTACHED.
2. A CURRENT SERVICE LIST OR REPRESENTATION STATEMENT WITH TELEPHONE AND FAX NUMBERS IS ATTACHED (SEE 9TH CIR. RULE 3-2
3. A COPY OF THIS CIVIL APPEALS DOCKETING STATEMENT WAS SERVED IN COMPLIANCE WITH FRAP 25.
4. I UNDERSTAND THAT FAILURE TO COMPLY WITH THESE FILING REQUIREMENTS MAY RESULT IN SANCTIONS, INCLUDING DISMISSAL OF THIS APPEAL.



 Signature

6/6/06
 Date

COUNSEL WHO COMPLETED THIS FORM

NAME: Jennifer A. Golinveaux

FIRM: WINSTON & STRAWN LLP

ADDRESS: 101 California Street, 39th Floor, San Francisco, CA, 94111

E-MAIL: jgolinveaux@winston.com

TELEPHONE: (415) 591-1506

FAX: (415) 591-1400

*** THIS DOCUMENT SHOULD BE FILED IN THE DISTRICT COURT WITH THE NOTICE OF APPEAL*
 * IF FILED LATE, IT SHOULD BE FILED DIRECTLY WITH THE U.S. COURT OF APPEALS***

Effective 7/1/2000

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BY *DN* DEPUTY

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CENTRAL DISTRICT OF CALIFORNIA
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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.

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2. **Definitions.**

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

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

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

- d. **Contested Thumbnail:** A “contested” thumbnail is a thumbnail whose designation by P10 as “infringing” Google contests. Google may contest such a designation under any of the following circumstances:
 - i. if Google cannot verify the allegedly infringing thumbnail due to the fact that the Thumbnail Source URL supplied by P10 under ¶ 4(a)(ii) generates an error message or otherwise does not accurately identify the Thumbnail Source URL described

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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.

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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.

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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.

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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.

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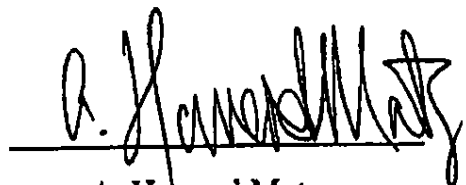
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11. **Modifications.** This Order may be modified by subsequent application of the parties, who also may stipulate to alternative means, such as the development of image recognition technology to accomplish the objectives of this injunction.

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

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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PERFECT 10, INC.,

Appellant and Cross-Appellee,

v.

GOOGLE INC.,

Appellee and Cross-Appellant.

No. _____

D.C. Case No. CV 04-9484 AHM (SHx) (C.D. Cal. Los Angeles)

REPRESENTATION STATEMENT BY GOOGLE INC.

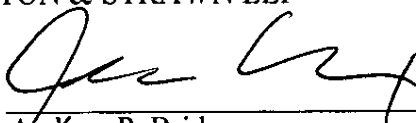
The undersigned represents GOOGLE INC., Defendant and Counterclaimant in the court below and Appellant and Cross-Appellee in this appeal, and no other party. Attached is a Service List that shows all of the parties to the action below, and identifies their counsel by name, firm, address, telephone number, facsimile number, and email address. This statement is made pursuant to Fed. R. App. P. 12(b) and Circuit Rule 3-2(b).

Dated: June 6, 2006

Respectfully submitted,

WINSTON & STRAWN LLP

By:



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SERVICE LIST

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PROOF OF SERVICE

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STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss

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I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Winston & Strawn LLP, 333 South Grand Avenue, 38th Floor, Los Angeles, California 90071-1543. On June 7, 2006, I served the within document(s):

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

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set on the attached service list.

SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than on day after the date of deposit for mailing an affidavit.

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.

Executed on June 7, 2006, at Los Angeles, California.

Rebecca L. Willis

Rebecca L. Willis

Service List

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