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8

9   UNITED STATES DISTRICT COURT

                CENTRAL DISTRICT OF CALIFORNIA
10

11 PERFECT 10, INC., a California | Master Case No.: 04-9484 AHM (SHx)
   corporation,
12 |
                                           | REPLY DECLARATION OF DR.
13   Plaintiff, | NORMAN ZADA IN SUPPORT OF
                                           | PERFECT 10'S MOTION FOR
14   v. | ORDER GRANTING LEAVE TO FILE
                                           | SECOND AMENDED COMPLAINT
15 GOOGLE INC., a corporation; and |
   DOES 1 through 100, inclusive, | [REPLY BRIEF IN SUPPORT OF
16 | MOTION FOR ORDER GRANTING
                                           | LEAVE TO FILE SECOND
17   Defendants. | AMENDED COMPLAINT;
                                           | REPLY DECLARATION OF JEFFREY
18 _____ | N. MAUSNER IN SUPPORT
                                           | THEREOF; AND
19 AND CONSOLIDATED CASE | DECLARATION OF IRINA
                                           | VORONINA, SUBMITTED
20 | CONCURRENTLY HEREWITH]

21   Date: July 14, 2008
                                             Time: 10:00 a.m.
22   Place: Courtroom 14, Courtroom of the
                                             Honorable A. Howard Matz
23
                                             Discovery Cut-Off Date: None Set
24   Pretrial Conference Date: None Set
                                             Trial Date: None Set
25

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        Reply Declaration of Dr. Norman Zada in Support of Motion of Plaintiff Perfect 10, Inc. for Order Granting
                             Leave to File Second Amended Complaint

I, Norman Zada, declare as follows:

1.   I am the President of Plaintiff Perfect 10, Inc. ("Perfect 10"). I have been very involved in the prosecution of this case and am very familiar with all aspects of it. All of the matters stated in this declaration are of my own personal knowledge, except where otherwise stated, and if called as a witness, I could and would testify competently thereto. I make this declaration in support of Perfect 10's Reply Brief for its motion for leave to file a Second Amended Complaint.

2.   All of the documents attached as exhibits to this declaration are true and correct copies of documents that I printed or saved – either by downloading the documents from the Internet using Adobe 6.0 Professional and then printing them, or by archiving copies of my computer screen using the program "snagit," converting them to Adobe, and then printing the documents. All of the exhibits attached to this declaration contain the correct date the document was viewed and saved/printed, and the Uniform Resource Locator (URL) address of the webpage that was viewed and saved/printed.

3.   To the best of my recollection, I discovered that there were a few full-size Perfect 10 images on blogger.com in approximately June of 2006. At that time, Perfect 10 had already filed its opening appeal brief in front of the Ninth Circuit. While I may have seen the terms "blogger" and "blogspot" here and there on a few documents among tens of thousands prior to June of 2006, I did not understand their significance at that time. I did not discover that Google was storing large numbers of full-size Perfect 10 images on its servers until mid to late 2007.

4.   As part of Perfect 10's document production to Google, Perfect 10 made available tens of thousands of pages of Google and Yahoo search results that Perfect 10 printed out in 2002 and 2003 for a different case. Many of those searches were printed out by Perfect 10 employees other than myself. I have only

- 1 -

clicked on a small fraction of the search results in that other case. I do not believe that I ever clicked on either of the two results that Google mentions, j_cuttheshit.blogspot.com and page3girls.blogspot.com, prior to seeing those URLs mentioned in Google's Opposition papers. Attached as Exhibit 24 are pages that I printed out on July 1, 2008 from those websites. For the website j_cuttheshit.blogspot.com, I was able to go back to August of 2002 (the date on the Google printout) and verify that there were no images of models of any kind on that website, let alone Perfect 10 images. I also looked at each and every archive on that website for the year 2002, and found no images of models on any of those archives, let alone Perfect 10 images. The current version of the website has no images at all. I have included the first two pages of the website from August of 2002 to demonstrate what that website looked like. Page 3 of Exhibit 24 shows what the website page3girls.blogspot.com currently looks like. As may be seen, there is almost nothing on that website and no images. I clicked on the available links and found no images, let alone Perfect 10 copyrighted images. Since Google hosted those websites, if there ever were Perfect 10 images on such sites, Google should have them. Google has not, however, produced any such alleged infringing images. As can be seen from Exhibit 24, there is no way that I could know that Google was storing full-size Perfect 10 images on its servers from the search results that Google cites, even if I had clicked on those search results.

5. Google refers to an image on page 7 of Exhibit A to Rachel Herrick's declaration from the website orions-outpost.blogspot.com as an "allegedly infringing image." That image is not a Perfect 10 copyrighted image, and does not even appear to be an image of Caroline Stark. Attached as Exhibit 25 are the images of Caroline Stark from Perfect 10's website. As can be seen from Exhibit 25, the image referred to by Google is not a Perfect 10 image of Caroline Stark.

1   6.   When Perfect 10 sent its February 7, 2005 DMCA notice to Google, I

2 thought that the website hotelceline.blogspot.com, which Google refers to in its

3 opposition papers, was just another third party website of no special significance.

4   7.   Perfect 10 learned very well how to do a compliant DMCA notice

5 from the *Perfect 10 v. CCBill* case.

6   8.   A number of Perfect 10 models have assigned to Perfect 10 their

7 rights of publicity, primarily in the hope that Perfect 10 would be able to limit the

8 damage they have sustained from their likenesses and names being continually

9 misappropriated and being wrongly associated with sexually explicit acts. Perfect

10 10 also paid them for the assignment of rights.

11   9.   Attached as Exhibit 26 are three examples of Google's sale of the

12 names of Perfect 10 models and actresses like Angelina Jolie as keywords. I

13 obtained page 1 of Exhibit 26 by doing a Google AdWords search on "Amber

14 Smith," who has assigned to Perfect 10 her rights of publicity. Page 1 shows that

15 Google is charging approximately 36 cents a click for its AdWords advertisers to

16 use the term "Amber Smith" as a search keyword. My understanding is that

17 Google advertisers who are paying to use "Amber Smith" as a keyword, will be

18 charged 36 cents whenever anyone clicks on their ads, which may appear on

19 google.com or in Google Groups or potentially any of Google's other programs, as

20 a result of a search on "Amber Smith." Page 2 of Exhibit 26 shows that Google is

21 charging 81 cents for its advertisers to use the keyword "ariagiovanni." Aria

22 Giovanni assigned her rights of publicity to Perfect 10 as well, in an attempt to

23 stop the massive theft of her name and likeness. Page 3 of Exhibit 26 shows that

24 Google is charging a fee per click for its advertisers to use, as keywords, celebrity

25 names ranging from Drew Barrymore and Angelina Jolie, to Paris Hilton and Brad

26 Pitt.

27   10.   On many occasions, when I have done a Google search on a Perfect

28 10 model name for which Perfect 10 has been assigned rights of publicity, I have

Reply Declaration of Dr. Norman Zada in Support of Motion of Plaintiff Perfect 10, Inc. for Order Granting Leave
to File Second Amended Complaint

been led to pages with Google ads and no images of that model. In many cases, the material on these Google ad pages defame that model, while Google earns income. Exhibit 27 is one such example. It is a copy of a web page from a website celebrities.same.ru, presumably located in Russia, which contains Monika Zsibrita's name in the URL of that particular web page. Google ads appear prominently on the web page, surrounding text about Monika Zsibrita which is basically made up. There are no authorized DVDs available of Monika Zsibrita and she never shot for Playboy.

11. Irina Voronina is a successful working model and actress who recently appeared in the movie "Reno 911," and is the current St. Pauli Girl. She has assigned rights of publicity to Perfect 10. Page 1 of Exhibit 28 contains an example of Google's misuse of Ms. Voronina's rights of publicity, for Google's own commercial gain. The image is not copyrighted by Perfect 10. Page 2 of Exhibit 28 provides another example of an image which is not copyrighted by Perfect 10 surrounded by Google ads, for another actress/model who has assigned rights of publicity to Perfect 10. In both cases, I have verified that the larger image is located on Google's blogger.com servers. In page 1 of Exhibit 28, there are Google ads near the top of the page. Google has effectively surrounded the larger image, which is stored on Google servers, with ads, made a thumbnail from that larger image, placed that thumbnail in Google image search results, and then linked that thumbnail back to the larger image with the ads. Google has done the exact same thing for the example on page 2 of Exhibit 28. I have verified that Google is currently surrounding likenesses of many of the celebrities shown on the right side of page 2 with Google ads as well. Those celebrities include singer Alicia Keys, supermodel Alessandra Ambrosio, Alicia Silverstone, and Alyssa Milano.

12. Exhibit 29 contains two examples where Google has placed the name of a model who has assigned to Perfect 10 her rights of publicity, next to an

- 4 -

explicit image which is not of that model. The net result is that Google falsely

suggests that the Perfect 10 model is engaged in explicit sexual acts. Page 1 of

Exhibit 29 is a set of Google thumbnail results for an image search on Irina

Voronina. On the second row, to the left of center, there is an image of Irina

Voronina, allegedly from the website escortsex.cz, falsely implying that Irina is an

escort who engages in sex. To the right of that, there is an image of a blond model

engaged in oral sex. That model looks like Irina, but it is not Irina. However,

Google has placed the name "Irina Voronina" under that image. Irina Voronina

has submitted a declaration in support of Perfect 10 which explains the degree to

which her career and reputation have been damaged by Google and by other search

engines. Page 2 of Exhibit 29 also contains image search results for Irina

Voronina. On the second row, second from the left, there is a thumbnail from the

Google hosted website, college-girls-on-spring-break.blogspot.com, which falsely

suggests that Irina Voronina is engaging in oral sex with another female. The faces

are cut off. Google has wrongly placed the name Irina Voronina under that image,

even though neither of the models involved in the explicit sexual act is Ms.

Voronina.

   13. By selecting both the images it displays and the text next to those

images, as well as the order and number of links in its web search results, Google

is acting as an information content provider. An image does not appear in Google

Image Search results unless Google determines that it should appear. Each

webpage of Google Image Search results is a webpage of images determined solely

by Google. For at least the last few years, Google has arranged its search results to

drastically favor its advertising affiliates. Google determines which images to

display and whether or not to intermix sexually explicit images of someone else

with images of the actual Perfect 10 model. Google has recently expanded its

Image Search results so as to display hundreds of infringing images in response to

searches on Perfect 10 model names. Other search engines offer far fewer adult

and supermodel images in their search results, and not surprisingly, receive substantially less traffic and revenue.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on July 6, 2008, at Los Angeles County, California.

Norman Zada, Ph.D.

Reply Declaration of Dr. Norman Zada in Support of Motion of Plaintiff Perfect 10, Inc. for Order Granting Leave