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Attorneys for Plaintiff Perfect 10, Inc.

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA

11 PERFECT 10, INC., a California
12 corporation,

13 Plaintiff,

14 v.

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

17 Defendants.

18
19 AND CONSOLIDATED CASE

Master Case No.: 04-9484 AHM (SHx)

REPLY DECLARATION OF JEFFREY
N. MAUSNER IN SUPPORT OF
PERFECT 10'S MOTION FOR
ORDER GRANTING LEAVE TO FILE
SECOND AMENDED COMPLAINT

[REPLY BRIEF IN SUPPORT OF
MOTION FOR ORDER GRANTING
LEAVE TO FILE SECOND
AMENDED COMPLAINT;
REPLY DECLARATION OF DR.
NORMAN ZADA IN SUPPORT
THEREOF; AND
DECLARATION OF IRINA
VORONINA, SUBMITTED
CONCURRENTLY HEREWITH]

Date: July 14, 2008
Time: 10:00 a.m.
Place: Courtroom 14, Courtroom of the
Honorable A. Howard Matz

Discovery Cut-Off Date: None Set
Pretrial Conference Date: None Set
Trial Date: None Set

1 I, Jeffrey N. Mausner, declare as follows:

2 1. I am a member of the State Bar of California and admitted to practice
3 before this Court. I am counsel of record for Plaintiff Perfect 10, Inc. (“Perfect
4 10”) in this action. All of the matters stated herein are of my own personal
5 knowledge, except where otherwise stated, and if called as a witness, I could and
6 would testify competently thereto. I make this declaration in support of Perfect
7 10’s Reply Brief for its motion for leave to file a Second Amended Complaint.

8 2. At the time Perfect 10 briefed and argued its motion for preliminary
9 injunction in late 2005, I did not know that Google was storing full-size Perfect 10
10 images on Google servers in connection with its blogger program. To the best of
11 my recollection, I found out that there were a few full-size Perfect 10 images on
12 blogger.com sometime after Perfect 10 submitted its opening brief at the Ninth
13 Circuit in May 2006. I did not become aware that Google was storing thousands of
14 full-size Perfect 10 images on its servers until late 2007. That is when I became
15 aware that Google had misrepresented and concealed this information.

16 3. Attached hereto as Exhibit 30 is a true and correct copy of a portion of
17 Perfect 10’s Corrected First Set of Requests For Admissions to Google, which
18 contains the definition of “GOOGLE.”

19 4. During the conference of counsel in connection with this motion,
20 Google did not raise any argument that Perfect 10’s state law claims were
21 immunized by the Communications Decency Act (CDA) or preempted by the
22 Copyright Act. Google also did not raise any argument that Perfect 10 lacks
23 standing to assert an unfair competition claim based in part upon Google’s
24 unauthorized use of celebrity names and likenesses. Google did not raise these
25 contentions in Ms. Herrick’s April 4, 2008 letter to me, attached as Exhibit 13 to
26 my June 12, 2008 declaration in support of this motion. Google also did not raise
27 these contentions in the oral discussions we had for the conference of counsel.

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5. Attached hereto as Exhibit 31 is an updated Exhibit 7 to the Second Amended Complaint, which contains new registration numbers.

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 7, 2008 at Los Angeles, California.



Jeffrey N. Mausner