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7 Attorneys for Plaintiff Perfect 10, Inc.

8  
 9 UNITED STATES DISTRICT COURT  
 10 CENTRAL DISTRICT OF CALIFORNIA

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

14 Plaintiff,

15 v.

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

18 Defendant.

Case No. CV 04-9484 AHM (SHx)

Consolidated with Case No. CV 05-4753  
 AHM (SHx)

**DECLARATION OF DEAN HOFFMAN**

**BEFORE JUDGE A. HOWARD MATZ**

Date: August 17, 2009

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

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 20 AND CONSOLIDATED CASE.  
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1 I, Dean Hoffman, declare as follows:

2 1. I am the owner of D.H. Trading Systems LLC and president  
3 of Hoffman Asset Management, Inc. I was formerly the president of  
4 Strategic Trading Systems, Inc. (“Strategic Trading”). Strategic Trading  
5 was in the business of selling software that assisted in the trading of  
6 commodity futures. I submit this declaration in connection with Perfect  
7 10’s lawsuit against Google. All of the matters stated herein are of my  
8 own personal knowledge, except where otherwise stated, and if called as a  
9 witness, I could and would testify competently thereto.

10 2. The software sold by Strategic Trading was copyrighted.  
11 There were websites that copied the software and offered it for download  
12 on the Internet, without Strategic Trading’s permission. Most of these  
13 websites charged for the download, and of course Strategic Trading did  
14 not receive any of this money. Google’s search engine provided, and still  
15 provides, links to the websites offering the infringing downloads of our  
16 software.

17 3. Starting in about 2005, I sent DMCA notice and take-down  
18 letters to Google, to get Google to remove the links to these websites  
19 offering Strategic Trading’s software without permission. I sent  
20 approximately ten such notice and take-down letters to Google.

21 4. At first, for a couple of the notices, it appeared that Google  
22 may have taken down some of the offending links. However, Google sent  
23 my notice and take-down letters to a website called Chillingeffects.org.  
24 Chillingeffects.org published some of my notice and take-down letters on  
25 the Internet. Google then included links in its search results to my take-  
26 down notices on the Chillingeffects.org website. My take-down notices  
27 stated the URLs of the infringing websites, so people could find where  
28 they could download the infringing software just as easily through Google

1 and Chillingeffects.org. I realized that the posting of my take-down  
2 notices on Chillingeffects.org could draw as much or more attention to the  
3 infringing links than simply having the links on Google's search results. I  
4 contacted one of the heads of Chillingeffects.org and told her they were  
5 just republishing those infringing links, but she refused to remove my  
6 take-down notices.

7         5.       Nevertheless, I continued to send take-down notices to  
8 Google, hoping that either Google or Chillingeffects.org would realize  
9 what they were doing, and stop publishing my notices. However, it soon  
10 became clear to me that Google was not even removing the infringing  
11 links I put in my take-down notices. I kept checking back and performing  
12 searches on Google to see if they were removing the links I gave notice  
13 of, and those links were still in the search results after my notices.

14         6.       When I continued to send notices, Google wrote back to me  
15 on a couple of occasions, saying that they wanted the notices in electronic  
16 format when I faxed them, or saying they wanted the notices in fax format  
17 when I emailed them. I thought Google was just giving me the run-  
18 around, but I sent the notices again in whatever format they asked me for.  
19 Nevertheless, Google did not remove the infringing links, after the first  
20 couple of notices.

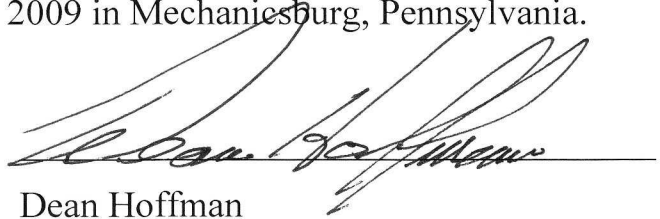
21         7.       At that point I gave up, because I realized that Google was  
22 not going to remove the infringing links, and any take-down notice would  
23 just be re-published by Google on Chilling Effects, so I was just wasting  
24 my time. I realized that Google did not want to take down the infringing  
25 links. I believe that Google punishes copyright owners for sending take-  
26 down notices by republishing the links on Chillingeffects.org, for anyone  
27 who would dare to submit a take-down notice to Google. I think Google  
28 operates punitively toward copyright owners. They have no intent to

1 cooperate with copyright owners, because they merely re-publish the  
2 infringing links on Chillingeffects.org, even in those few cases where they  
3 actually do remove some infringing links.

4 8. My experience is that Google made some attempt to take  
5 down links from the first couple of notices, but sent the notices to  
6 Chillingeffects.org to let the copyright owner know that it wasn't going to  
7 do them any good to send take-down notices. After the first couple of  
8 notices, when I had the nerve to send some more, Google just didn't do  
9 anything at all to remove the infringing links.

10 9. Strategic Trading had to stop offering new software for sale,  
11 because we were unable to control infringement on the Internet. In other  
12 words, we were driven out of this line of business because of Google's  
13 refusal to remove infringing links from its search results and sending my  
14 take-down notices to Chillingeffects.org for publication on the Internet.

15 I declare under penalty of perjury under the laws of the United States of  
16 America that the foregoing is true and correct to the best of my knowledge.  
17 Executed this 29<sup>th</sup> day of May, 2009 in Mechanicsburg, Pennsylvania.

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19   
20 Dean Hoffman