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9 Attorneys for Plaintiff Perfect 10, Inc.

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

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.

19 AND CONSOLIDATED CASE.

Case No. CV 04-9484 AHM (SHx)

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

**DECLARATION OF DEAN HOFFMAN
 SUBMITTED IN OPPOSITION TO
 GOOGLE’S THREE MOTIONS FOR
 SUMMARY JUDGMENT RE DMCA
 SAFE HARBOR FOR ITS WEB AND
 IMAGE SEARCH, BLOGGER
 SERVICE, AND CACHING FEATURE
 (DOCKET NOS. 428, 427, AND 426)**

BEFORE JUDGE A. HOWARD MATZ

Date: October 5, 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

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

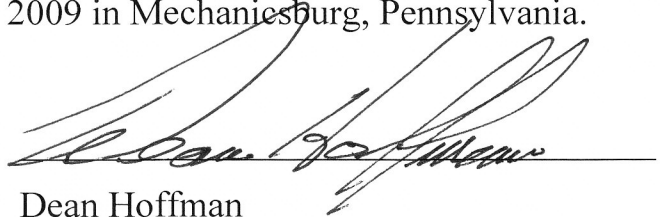
1 cooperate with copyright owners, because they merely re-publish the
2 infringing links on Chillingeffects.org, even in those few cases where they
3 actually do remove some infringing links.

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 29th day of May, 2009 in Mechanicsburg, Pennsylvania.

18
19 
20 Dean Hoffman