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10
11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 PERFECT 10, INC., a California
14 corporation,

15 Plaintiff,

16 vs.

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

18 Defendants.

CASE NO. CV 04-9484 AHM (SHx)
[Consolidated with Case No. CV 05-
4753 AHM (SHx)]

**REBUTTAL DECLARATION OF
SHANTAL RANDS POOVALA IN
SUPPORT OF DEFENDANT
GOOGLE'S MOTIONS FOR
SUMMARY JUDGMENT RE:
GOOGLE'S ENTITLEMENT TO
SAFE HARBOR UNDER 17 U.S.C.
§ 512**

19 AND COUNTERCLAIM

Hon. A. Howard Matz

20 PERFECT 10, INC., a California
21 corporation,

22 Plaintiff,

23 vs.

24 AMAZON.COM, INC., a corporation;
A9.COM, INC., a corporation; and
25 DOES 1 through 100, inclusive,

26 Defendants.

Date: None (taken under submission)
Time: None Set
Ctrm: 14

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

PUBLIC REDACTED

1 I, Shantal Rands Poovala, declare as follows:

2 1. I am the head of the Consumer Products Legal Support group at
3 Defendant Google Inc. ("Google"). I have personal knowledge of the matters set
4 forth herein and if called and sworn as a witness, I could and would competently
5 testify thereto.

6 **Google's Processing of P10's January 21, 2005 DMCA Notice to Amazon**

7 2. In 2004 and 2005, Amazon sent Google several DMCA notices that it
8 received from Perfect 10 ("P10"), which were included as Exhibits L12, L30, L32,
9 L34 and L46 to my June 29, 2009 Declaration. Google expeditiously processed all of
10 the Amazon notices to the fullest extent possible in light of the various defects they
11 contained. Google's processing of these notices is described more fully at paragraphs
12 75-85 of my June 29, 2009 Declaration.

13 3. I have reviewed Exhibit 19 to the Declaration of Norman Zada filed
14 with P10's July 5, 2009 Motion for Summary Judgment and Summary Adjudication
15 re: Copyright Infringement against Defendant Google. Exhibit 19 to that Declaration
16 is a DMCA notice that P10 claims to have sent to Amazon on January 21, 2005
17 (hereinafter the "Amazon Notice"). Google has no record of having received the
18 Amazon Notice from either Amazon or P10. Google first learned of this notice only
19 after receiving and reviewing P10's recently-filed motion for summary judgment.
20 Attached as Exhibit A is a true and correct copy of the January 21, 2005 notice P10
21 claims to have sent to Amazon.

22 4. The Amazon Notice is in the same format as the other Group B Notices
23 described in paragraphs 41-47 and 82-85 of my June 29, 2009 Declaration, and
24 suffers from the same types defects as the other Group B Notices.

25 5. After confirming that Amazon had received the January 21, 2005 notice
26 from P10, my team expeditiously processed it, following the procedures described in
27 paragraphs 5-39 and 82-85 of my June 29, 2009 Declaration. Many of the URLs in

51320/3090498.15128
90490.1

1 that notice were either not live on the internet, or were duplicative of other P10
2 notices and had already been processed and prevented from appearing in Google's
3 search results. Nevertheless, our team completed processing of the Amazon Notice
4 within two weeks after we first learned of its existence.

5 6. Attached as Exhibit B (FILED UNDER SEAL) is a true and correct
6 copy of my spreadsheet reflecting the processing of the Amazon Notice (and other
7 P10 notices). The content and format of this spreadsheet is similar to the other
8 spreadsheets I keep regarding the processing of P10's notices, which were attached to
9 my June 29, 2009 Declaration as Exhibits FF, GG, HH and II. Specifically, [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 7. The URLs that ultimately were prevented from appearing in Web and
26 Image Search results in response to P10's notices (including the Amazon Notice) are
27

1 tracked in my various spreadsheets and the [REDACTED] files maintained by the
2 engineering team.

3 **Google's 2001-2002 DMCA Processing**

4 8. I understand that Perfect 10 contends that Google did not suppress links
5 to infringing material pursuant to the DMCA prior to March of 2002. This is
6 incorrect. Google did indeed have a policy for processing DMCA-compliant notices
7 of infringement prior to March of 2002. Google suppressed links to infringing
8 material in response to DMCA-compliant notices at all times relevant to this lawsuit.

9 9. I also understand Perfect 10 contends that it submitted several DMCA
10 notices to Google in 2001. I have searched for these notices in Google's files and
11 have not been able to locate them. Assuming that one or more of these notices was
12 indeed sent to Google, it appears that they were not sent to the correct location or
13 addressee at Google.

14 **Google's Processing of the Group C Notices**

15 10. As explained in my June 29, 2009 Declaration, the majority of the files
16 on the DVDs and hard drive that accompanied P10's Group C Notices were image
17 files with no extractable text that Google could cut and paste. Even many of the
18 supposed screen shots accompanying those notices were .png image files with no
19 extractable text. Thus, my team had to manually type the URLs from those screen
20 shots, assuming an intelligible URL could be discerned from them.

21 11. As for the PDF files that were also included on the DVDs and hard
22 drive that accompanied P10's Group C Notices, they were similarly time-consuming
23 to review and process. Even though text from the PDF files could be copied and
24 pasted, these files often included many pages with no discernable infringing
25 material, and pages with multiple URLs displayed. For example, these PDF files
26 often contained many pages of Google search results and other pages with no
27 potentially infringing images on them. Thus, my team had to scroll through those

1 pages to try to locate discernable URLs associated with potentially infringing
2 material. Because most of the PDF files had more than one URL on each page, the
3 removals team was required to repeat this procedure multiple times for each page of
4 P10's lengthy PDFs.

5 **P10's "URL Extraction" Claims**

6 12. I have reviewed the two "URL extraction" methods described in the
7 August 7, 2009 Declaration of Norman Zada. Neither method would have
8 appreciably increased the speed with which Google could process P10's Group C
9 Notices, as compared with the procedures Google employed. Initially, as described
10 above, a majority of the files on the hard drive and DVDs that accompanied P10's
11 Group C Notices were image files that had no URLs associated with them, and thus
12 could not be processed with either of the methods Norman Zada describes.
13 Additionally, because the PDF files sent by P10 contained many pages with no
14 potentially infringing material, and with multiple URLs or other links on most pages,
15 neither of P10's proposed methods would have simplified the review process.

16 13. The first method of "URL extraction" that Norman Zada describes is
17 "creating links from URLs in the document" using Adobe Acrobat 6.0. Zada Dec. ¶
18 9. His declaration describes copying and pasting one URL at a time from the PDF
19 files – the same way that my team extracted URLs for the PDF files in processing the
20 Group C Notices. *Id.*, Ex. 2, p. 8. Even if it were possible to extract more than one
21 URL or link at a time from the PDF files accompanying P10's Group C Notices, this
22 would slow Google's processing down rather than speed it up, as most of the PDF
23 files contain hundreds or thousands of links to admittedly non-infringing URLs that
24 would have to be reviewed individually and discarded.

25 14. As for the second method, Norman Zada describes Adobe's "bookmark"
26 feature as a claimed means for Google to more rapidly identify URLs on the hard
27 drive and DVDs that accompanied P10's Group C Notices. However, this feature

1 also would not have eased the burden associated with processing the Group C
2 Notices. First, many of the PDF files accompanying P10's Group C Notices did not
3 have any bookmarks at all. This was true of the July 2, 2007 notice, for example.
4 Second, even when there were bookmarks, many did not contain any URLs or other
5 identifiable locations of infringing material. Third, P10 never stated in the Group C
6 Notices that it was *only* complaining about the infringing material located at the
7 URLs it had listed as bookmarks in certain of the PDF files. Thus, Google could not
8 rely on the URLs in the bookmarks to locate and review material claimed to be
9 infringing by P10—Google had to review all of the files manually, one by one.
10 Finally, my team could not copy and paste even the URLs that appeared as
11 bookmarks in these PDF files, because the text of the bookmarks was not extractable
12 and thus could not be cut and pasted.

13 **Google's Processing of AdSense DMCA Notices**

14 **15.** Google has a policy and procedure for processing DMCA notices
15 directed toward AdSense, published at http://www.google.com/adsense_dmca.html.
16 Attached as Exhibit C is a true and correct copy of Google's published DMCA
17 policy for AdSense. Google's procedure for processing DMCA notices regarding
18 AdSense is described at paragraph 38 of my June 29, 2009 Declaration. Google has
19 responded expeditiously to DMCA notices directed toward AdSense since the
20 service was launched in 2003.

21 **16.** A copy of the current AdSense DMCA tracking spreadsheet was
22 attached to my June 29, 2009 Declaration as Ex. II. It is my understanding that this
23 spreadsheet was collected and produced to P10 in mid-2008. This spreadsheet
24 includes AdSense DMCA processing records for the period from [REDACTED] through
25 [REDACTED]. Google has earlier spreadsheets reflecting processing of AdSense
26 DMCA notices dating back to [REDACTED], which I am informed were produced to P10
27 during discovery. Further, Ex. LL to my June 29, 2009 Declaration contains

1 additional spreadsheets which reflect Google's special processing of P10's DMCA
2 notices for AdSense during [REDACTED]. As can be seen from a review of
3 Exhibits II and LL, together they contain approximately [REDACTED] URLs pertaining to
4 AdSense account holders that were processed in response to P10's notices.

5 **Google's Processing of Blogger DMCA Notices**

6 17. As discussed at paragraphs 31-35 of my June 29, 2009 Declaration,
7 Google removes infringing images and other material posted by Blogger users when
8 provided with a DMCA notice identifying such material. When Google takes down
9 a post URL, an automated process also takes down all images which are displayed at
10 that post URL, even though those images are hosted on different (image) URLs.
11 This is why it is important that complainants like P10 follow Google's published
12 DMCA guidelines for Blogger notices by submitting post URLs. Images hosted on
13 Google servers are uploaded by users of Google's blogger.com or blogspot.com
14 products. It should be noted that these are effectively the same product that have
15 different domain names.

16 **Google's Processing of DMCA Notices Submitted by Dean Hoffman, C.J.**

17 **Newton, Jane Eden and Les Schwartz**

18 18. I have reviewed the May 29, 2009 declaration of Dean Hoffman, filed
19 by P10 on August 9, 2009. Mr. Hoffman claims that he has sent Google
20 "approximately ten" DMCA notices since 2005. I have reviewed Google's processing
21 records and located nine notices from Mr. Hoffman that Google received between
22 July 2005 and November 2006. Google processed these notices consistent with
23 Google's DMCA policies and procedures for Web Search, and prevented [REDACTED]
24 [REDACTED] URLs from appearing in Google's search results in response to these notices.

25 19. I have reviewed the May 28, 2009 declaration of C. J. Newton, filed by
26 P10 on August 9, 2009. Mr. Newton claims that he sent Google over 100 DMCA
27 notices. I have reviewed Google's processing records and located at least 77 notices

1 from C. J. Newton that Google received. Google processed these notices consistent
2 with Google's DMCA policies and procedures for Web Search, and prevented more
3 than [REDACTED] URLs from appearing in Google's search results in response to these notices.
4 I have also reviewed the one DMCA notice that Mr. Newton attached to his
5 declaration. We do not have a record of having received this notice. I have
6 compared the contents of the allegedly infringed webpages with the allegedly
7 infringing webpages referenced in that notice, and I saw no similar or identical
8 portions of text that might be indicative of alleged copyright infringement of Mr.
9 Newton's article.

10 **20.** I have reviewed the July 28, 2009 declaration of Les Schwartz and
11 Exhibit N to the Declaration of Jeffrey Mausner, filed by P10 on August 9, 2009. I
12 have reviewed Google's processing records and confirmed that Google processed all
13 nine DMCA notices from Les Schwartz that were attached to the Mausner
14 Declaration. Google processed these notices consistent with Google's DMCA
15 policies and procedures for Web Search, and prevented at least [REDACTED] URLs from
16 appearing in Google's search results in response to these notices. Google also
17 removed at least three Google Groups posts in response to these notices. I was able
18 to locate communications between Mr. Schwartz and basic AdWords support, but
19 those communications were not notices of copyright infringement under the DMCA.
20 I have also reviewed Exhibit 5 to Mr. Schwartz's declaration, which he describes as a
21 print-out of a Google Groups web page selling pirated copies of his DecisionBar
22 software. I visited that Google Groups webpage by typing the URL listed on the
23 print-out into a web browser, and confirmed that Mr. Schwartz's DecisionBar
24 software was not available for purchase on that webpage. The Google Groups
25 webpage only mentions the DecisionBar software by name, and provides links to
26 another webpage associated with an entity called Forex Club. I clicked on the Forex
27

1 Club link as well, and confirmed that the DecisionBar software also was not available
2 for purchase on that Forex Club webpage.

3 21. I have reviewed the August 4, 2009 declaration of Jane Eden, filed by
4 P10 on August 9, 2009. Ms. Eden claims to have sent Google approximately 70
5 DMCA notices between February 2008 to the present. I have reviewed Google's
6 processing records and located 62 notices that Google received from Jane Eden
7 between February 2008 and July 2009. Google processed these notices consistent
8 with Google's DMCA policies and procedures for Web Search, and prevented ■
9 URLs from appearing in Google's search results in response to these notices. Google
10 does not have any record of Ms. Eden complaining that Google did not adequately
11 process her DMCA notices. Rather, Google's records indicate that Ms. Eden was
12 happy with Google's processing. Attached as Exhibit D is a true and correct copy of
13 an email communication from Ms. Eden on this issue.

14 **Communications from Perfect 10**

15 22. Attached as Exhibit E is a true and correct copy of an email from Norm
16 Zada at Perfect 10 to Google dated December 23, 2005.

17 **Google's Product-Specific DMCA Policies**

18 23. Google has separate teams of employees that process the DMCA notices
19 for many of its products and services. Google has informed complainants, via its
20 public DMCA policy pages, of the specific teams to contact and information to
21 provide for claims of infringement pertaining to Google's various products and
22 services other than Web Search since 2005. Google provides this information to
23 expedite its handling of DMCA notices and to ensure that copyright owners are
24 provided with examples of the different types of information Google needs to locate
25 and remove allegedly infringing material for each of its various products and
26 services. Whenever Google is able to determine that a DMCA notice has been sent to
27 the wrong team of employees or complains of infringement accessible through more

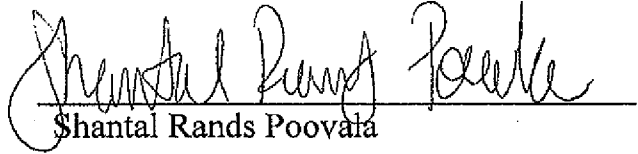
1 than one Google product or service, Google will forward the notice to the appropriate
2 team or teams for processing.

3 **24.** Google Groups is another Google service with its own DMCA policy
4 and procedure. Attached as Exhibit F is a true and correct copy of Google's DMCA
5 policy for Google Groups. To the best of my knowledge Perfect 10 has never sent
6 Google a DMCA notice directed to Google Groups. Google does, however, have a
7 repeat infringer policy for Google Groups and tracks the processing of DMCA
8 notices directed at Google Groups.

9 **25.** Google acquired the online-marketing company DoubleClick in March
10 2008. DoubleClick maintains a separate digital advertising platform that places
11 advertisements on web pages and in other digital content for its marketing clients.
12 Advertisements served by DoubleClick URLs are not associated with Google's
13 AdSense program. To the best of my knowledge, Google has not received a DMCA
14 notice directed to DoubleClick.

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1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct. Executed September 4, 2009 at
3 Mountain View, California.

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5 Shantal Rands Poovala

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