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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

PERFECT 10, INC., a California corporation,

Plaintiff,

v.

GOOGLE, INC., a corporation,

Defendant.

AND CONSOLIDATED CASE.

Case No. CV04-9484 AHM (SHx)  
Consolidated with Case No. CV 05-4753  
AHM (SHx)

**Before Judge A. Howard Matz**

**[PROPOSED] ORDER GRANTING  
THE MOTION OF PLAINTIFF  
PERFECT 10, INC. FOR  
EVIDENTIARY AND OTHER  
SANCTIONS AGAINST  
DEFENDANT GOOGLE, INC.  
AND/OR FOR THE APPOINTMENT  
OF A SPECIAL MASTER**

Date: December 21, 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 Plaintiff Perfect 10, Inc.'s Motion For Evidentiary and Other Sanctions  
2 Against Defendant Google, Inc. and/or for the Appointment of a Special Master  
3 has been presented to the Court for decision. Having considered the written  
4 arguments of the parties, the supporting evidence, and having heard the oral  
5 arguments of counsel for the parties, and finding good cause therefore, Perfect 10's  
6 Motion is GRANTED. The Court hereby imposes the following sanctions against  
7 Defendant Google, Inc.:

8 1. Google is ineligible for the safe harbor provisions of the Digital  
9 Millennium Copyright Act (the "DMCA") set forth in 17 U.S.C. §512;

10 2. Google's three pending summary judgment motions, filed in this  
11 action on July 2, 2009 (the "Summary Judgment Motions"), are denied;

12 3. Google is hereby ordered to produce the documents which it has  
13 failed to produce, as set forth in Perfect 10's Memorandum of Points and  
14 Authorities, within 10 days of this Order. These documents include the following:  
15 (a) the "spreadsheet-type" DMCA log "summarizing DMCA notices received, the  
16 identity of the notifying party and the accused infringer, and the actions (if any)  
17 taken in response," which Google has failed to produce in violation of this Court's  
18 May 13, 2008 Order and earlier orders of Magistrate Judge Hillman; (b) the  
19 DMCA notices and other documents that Google has failed to produce in violation  
20 of the Court's orders and Google's representations that such documents have been  
21 produced.

22 This Order is made on the grounds that Google has violated Court Orders by  
23 concealing and suppressing documents it was obligated to produce to Perfect 10.  
24 Google's improper conduct has adversely affected Perfect 10's ability to litigate  
25 the case, and prevented Perfect 10 from being able to fully and fairly oppose the  
26 Summary Judgment Motions. Accordingly, this Court grants the Motion and  
27 imposes the sanctions sought by Perfect 10, both under Federal Rule of Civil  
28 Procedure 37 and under this Court's inherent power to impose sanctions in

1 response to abusive litigation practices.

2  
3 **ALTERNATIVE ORDER:**

4 This Court appoints \_\_\_\_\_ as a Special Master to investigate  
5 the issues raised by Perfect 10's Motion for Evidentiary and Other Sanctions  
6 Against Google, and Google's three pending Summary Judgment Motions. The  
7 Special Master is to investigate such issues as: (i) Google's alleged failure to  
8 comply with Court-ordered discovery; (ii) the impact of Google's conduct upon the  
9 Summary Judgment Motions; (iii) whether Google has complied with 17 U.S.C.  
10 §512(i), the repeat infringer provision of the DMCA; and (iv) if Google is  
11 determined to have complied with §512(i), whether Google has appropriately and  
12 timely responded to each of Perfect 10's DMCA notices. The Special Master is to  
13 report back to the Court within two months of this Order. This Order is made  
14 pursuant to Federal Rule of Civil Procedure 53(a)(1)(C).

15 IT IS SO ORDERED.

16  
17 Dated: \_\_\_\_\_

\_\_\_\_\_  
18 Honorable A. Howard Matz  
19 United States District Judge  
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