

1 Jeffrey N. Mausner (State Bar No. 122385)
 2 Law Offices of Jeffrey N. Mausner
 3 Warner Center Towers
 4 21800 Oxnard Street, Suite 910
 5 Woodland Hills, California 91367-3640
 6 Email: Jeff@mausnerlaw.com
 7 Telephone: (310) 617-8100, (818) 992-7500
 8 Facsimile: (818) 716-2773

Attorneys for Plaintiff Perfect 10, Inc.

9 UNITED STATES DISTRICT COURT
 10 CENTRAL DISTRICT OF CALIFORNIA

11 PERFECT 10, INC., a California corporation,

12 Plaintiff,

13 v.

14 GOOGLE INC., a corporation,

15 Defendants.

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

Before Judge A. Howard Matz

**PLAINTIFF PERFECT 10, INC.'S
 NOTICE OF MOTION AND MOTION
 FOR PRELIMINARY INJUNCTION
 AGAINST DEFENDANT GOOGLE INC.**

[Filed Separately: Memorandum of Points and Authorities; Declarations of Dr. Norman Zada, Jeffrey N. Mausner, Sheena Chou, Melanie Poblete, Dean Hoffman, C.J. Newton, Margaret Jane Eden, Les Schwartz, Sean Chumura, David O'Connor, Bennett McPhatter; and [Proposed] Order]

Date: April 5, 2010

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 **TO DEFENDANT GOOGLE INC. AND TO ITS ATTORNEYS OF**
2 **RECORD:**

3 **PLEASE TAKE NOTICE** that on April 5, 2010, at 10:00 a.m., or as soon
4 thereafter as the matter may be heard, in Courtroom 14, the Courtroom of the
5 Honorable A. Howard Matz, located at 312 N. Spring Street, Los Angeles,
6 California, Plaintiff Perfect 10, Inc. (“Perfect 10”) will and hereby does move this
7 Court for a preliminary injunction restraining and enjoining Defendant Google Inc.
8 (“Google”) from engaging in continuing acts of copyright infringement and
9 violations of Perfect 10’s rights of publicity. In particular, Perfect 10 seeks an
10 Order in the form of the [Proposed] Order Granting Preliminary Injunction lodged
11 separately herewith, which provides, in relevant part, as follows:

12 During the pendency of this action, Google, any of its
13 subsidiaries, affiliates, successors, officers, directors, employees,
14 agents, representatives, any entities owned or controlled by Google,
15 and any persons acting in active concert or participation with any of
16 them, shall be and are restrained and enjoined during the pendency of
17 this action, from:

18 (A) Copying, reproducing, distributing, publicly displaying,
19 adapting or otherwise infringing, or contributing to the infringement
20 of any copyrighted image owned by Perfect 10 (“Perfect 10
21 Copyrighted Images” or “P10 Images”) which has been or will be
22 identified in notices sent by Perfect 10 to Google.

23 (B) Hosting or linking to any websites that display,
24 distribute, or make available Perfect 10 Copyrighted Images, for
25 which Google has received notice from Perfect 10.

26 (C) Distributing, publicly displaying, publishing, or
27 otherwise providing or making available any combination of
28 passwords and usernames to *perfect10.com*.

1 (D) Hosting or linking to any websites that distribute,
2 publicly display, publish, or otherwise provide or make available any
3 combination of passwords and usernames to *perfect10.com*, for which
4 Google has received notice from Perfect 10.

5 (E) Providing sponsored links to and/or placing Google
6 advertisements on or for infringing websites that display, distribute, or
7 make available Perfect 10 Copyrighted Images, for which Google has
8 received notice from Perfect 10.

9 (F) Powering *rapidshare.com* search engines used to find
10 infringing materials offered by *rapidshare.com*.

11 (G) Providing Perfect 10's DMCA notices containing Perfect
12 10 Copyrighted Images and/or lists of infringing URLs to
13 *chillingeffects.org* for republication on the Internet, and/or providing
14 links in its search results to such Perfect 10 Copyrighted Images or
15 lists of infringing URLs.

16 (H) Violating, or contributing to the violation of, any rights
17 of publicity owned or controlled by Perfect 10, after receiving notice
18 of such violation.

19 Within 14 days of the entry by this Court of this Order Granting
20 Preliminary Injunction (the "Order"), Perfect 10 and Google shall
21 meet and confer and attempt to submit a Joint Proposed Order for
22 Compliance With Preliminary Injunction, setting forth the procedures
23 that Google will follow in complying with this Order. If the parties
24 are not able to reach agreement on such a Joint Proposed Order, then
25 within 21 days of the entry by the Court of this Order, Perfect 10 shall
26 submit a Proposed Order for Compliance With Preliminary
27 Injunction, setting forth Perfect 10's proposal for compliance. Perfect
28 10 may also submit a memorandum not to exceed 15 pages in support

1 of its Proposed Order for Compliance With Preliminary Injunction.
2 Within 7 days of Perfect 10's submission, Google may submit its
3 alternative Proposed Order for Compliance With Preliminary
4 Injunction. Google may also submit a memorandum not to exceed 15
5 pages in support of its Proposed Order for Compliance With
6 Preliminary Injunction and in opposition to the provisions of Perfect
7 10's Proposed Order. Within 7 days of Google's submission, Perfect
8 10 may file a Reply, not to exceed 10 pages. The Court will then
9 decide upon the terms of the Order for Compliance With Preliminary
10 Injunction.

11 The specific acts which Perfect 10 seeks to enjoin are set forth in Plaintiff
12 Perfect 10, Inc.'s Memorandum of Points and Authorities In Support of Motion
13 For Preliminary Injunction Against Defendant Google Inc., filed separately
14 herewith under seal. These include, but are not limited to, the following acts of
15 Google:

- 16 1) Storing more than 3,837 full-size Perfect 10 copyrighted images ("P10
17 Images") on Google's own *blogger.com* servers.
- 18 2) Hosting more than 565 websites in its *blogspot.com* program that have
19 infringed more than 11,000 P10 Images.
- 20 3) Placing its AdSense advertising next to tens of thousands of infringing
21 P10 Images, many of which have been repeatedly identified to Google in Perfect
22 10's DMCA notices, in some cases more than eighty times.
- 23 4) Placing its AdSense advertising next to more than 4,000 P10 Images
24 hosted on Google's own *blogspot.com* servers, over which Google has complete
25 control.
- 26 5) Hosting websites which offer links for downloading as many as 26,000
27 full-size P10 Images from massive infringing sites such as *rapidshare.com*,
28 *megaupload.com*, and *depositfiles.com*.

1 6) Powering *rapidshare.com* search engines which search exclusively for
2 links offered by *rapidshare.com*, which are used to download massive quantities of
3 infringing material.

4 7) Providing more than 222 million links to known massive infringers such
5 as *rapidshare.com*, *thepiratebay.org*, and *isohunt.com*, and refusing to take any
6 action against these infringing websites.

7 8) Refusing to take any action against Google advertising affiliates that
8 have collectively infringed more than 180,000 P10 Images.

9 9) Displaying more than 22,000 infringing P10 thumbnails and linking them
10 to websites that infringe, in total, hundreds of thousands of P10 Images.

11 10) Offering thousands of full-size P10 Images to its users via Google's
12 "see full-size image" links and its in-line links.

13 11) Providing passwords for *perfect10.com* in its search results and hosting
14 and linking to websites which provide *perfect10.com* passwords. Such passwords
15 have allowed users to illegally download at least 4,500,000 P10 Images from
16 *perfect10.com*.

17 12) Formatting P10 Images so they can be downloaded on cell phones.

18 13) Sending Perfect 10's DMCA notices containing full-size P10 Images to
19 *chillingeffects.org*, for republication on the Internet, and then providing in-line
20 links to those images in its search results. By doing so, Google knowingly provides
21 access to thousands of infringing images it was supposed to remove.

22 This Motion is made on the grounds that: (i) Perfect 10 has a probability of
23 success on the merits of its copyright infringement and right of publicity claims
24 and Perfect 10 will suffer irreparable harm if the Motion is not granted; and,
25 alternatively (ii) serious questions are raised by this Motion and the balance of
26 hardships tip in favor of Perfect 10.

27 This Motion is based upon this Notice of Motion, the Memorandum of
28 Points and Authorities filed separately herewith under seal, the Declarations of

