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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PERFECT 10, INC., a California corporation,

Plaintiff,

v.

GOOGLE INC., a corporation,

Defendants.

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

Before Judge A. Howard Matz

[PROPOSED] ORDER GRANTING MOTION OF PLAINTIFF PERFECT 10, INC. FOR REVIEW OF, AND OBJECTIONS TO, MAGISTRATE JUDGE HILLMAN'S JUNE 16, 2010 ORDER ON PERFECT 10'S MOTION FOR EVIDENTIARY AND OTHER SANCTIONS AGAINST DEFENDANT GOOGLE INC.

Date: August 16, 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 The Motion of Plaintiff Perfect 10, Inc. (“Perfect 10”) For Review Of, And
2 Objections To, Magistrate Judge Hillman’s June 16, 2010 Order on Perfect 10’s
3 Motion for Evidentiary and Other Sanctions Against Defendant Google Inc. and/or
4 for the Appointment of a Special Master (the “Motion”) came on for hearing in this
5 Court on August 16, 2010 at 10:00 a.m. Having considered Perfect 10’s Motion and
6 supporting papers, the Opposition to the Motion of Defendant Google Inc.
7 (“Google”) and supporting papers, Perfect 10’s Reply and supporting papers, and the
8 pleadings and supporting evidence submitted before Magistrate Judge Hillman in
9 connection with Perfect 10’s Motion for Evidentiary and Other Sanctions Against
10 Defendant Google Inc., and having heard the oral arguments of counsel for the
11 parties, and finding good cause therefor, Perfect 10’s Motion is GRANTED. The
12 Court hereby sustains all of Perfect 10’s objections to Magistrate Judge Hillman’s
13 June 16, 2010 Order, as set forth in Perfect 10’s moving papers, sets aside those
14 portions of Magistrate Judge Hillman’s June 16, 2010 Order to which Perfect 10 has
15 objected, and rules as follows:

16 1) Google has violated this Court’s May 13, 2008 Order concerning
17 Request For Production (“RFP”) No. 196 by failing to produce the “spreadsheet-
18 type” DMCA log required by that order.

19 2) Google has violated Magistrate Judge Hillman’s May 22, 2006 Order
20 concerning RFP Nos. 26 and 27 (as modified) by failing to produce all notices of
21 termination issued by Google as a result of alleged intellectual property
22 violations.

23 3) Google has violated Magistrate Judge Hillman’s May 22, 2006 Order
24 concerning RFP No. 51 by failing to produce all third-party DMCA notices.

25 4) Google has violated its own prior representations that it had already
26 produced documents constituting “all notices received by Google regarding
27 intellectual property violations” and “all underlying notices of infringement” by
28 failing to produce all third-party DMCA notices.

1 5) Google’s failure to comply with this Court’s May 13, 2008 Order and
2 Magistrate Judge Hillman’s May 22, 2006 Order has caused Perfect 10 to suffer
3 prejudice.

4 6) Blogger (*i.e.*, websites with URLs containing the term blogger.com or
5 blogspot.com) has been at issue in this case since at least January 2005, when
6 Perfect 10 filed its First Amended Complaint in this action. Accordingly, Perfect
7 10’s discovery requests concerning notices of termination (RFP Nos. 26 and 27, as
8 modified), third-party DMCA notices (RFP No. 51), and a DMCA log (RFP No. 196)
9 seek documents concerning Blogger. Furthermore, documents related to Blogger
10 were embraced within Magistrate Judge Hillman’s May 22, 2006 Order and this
11 Court’s May 13, 2008 Order.

12 7) Additionally, it is undisputed that Blogger was in this case following
13 Perfect 10’s filing of its Second Amended Complaint in July 2008. Accordingly,
14 under Rule 26(e)(1)(A) of the Federal Rules of Civil Procedure, Google has a
15 continuing duty to supplement its prior production of documents and produce
16 documents concerning Blogger that are now responsive to Perfect 10’s earlier
17 document requests, including (without limitation), RFP Nos. 26 and 27 (as
18 modified), RFP No. 51, and RFP No. 196.

19 8) Google shall produce the DMCA log required by this Court’s May
20 13, 2008 Order – a “spreadsheet-type document summarizing DMCA notices
21 received, the identity of the notifying party and the accused infringer, and the actions
22 (if any) taken in response.” The DMCA log to be produced by Google shall include
23 all information required by this Court’s May 13, 2008 Order for all DMCA notices,
24 including those concerning Blogger.

25 9) Google shall produce all notices of termination issued by Google as a
26 result of alleged intellectual property violations, as required by Magistrate Judge
27 Hillman’s May 22, 2006 Order concerning RFP Nos. 26 and 27 (as modified).
28 The notices of termination to be produced by Google shall include: (i) all notices

1 of termination issued by Google as a result of DMCA notices received both from
2 third parties and from Perfect 10; and (ii) all notices of termination issued by
3 Google concerning Blogger.

4 10) Google shall produce all DMCA notices it has received from third
5 parties, including (without limitation) all DMCA notices concerning Web Search,
6 Image Search, AdSense, AdWords, and Blogger.

7 11) The documents that Google is ordered to produce under the terms of this
8 Order shall be produced within 20 days of the entry of this Order.

9 12) Perfect 10 may file a sur-reply in connection with Google's pending
10 DMCA Summary Judgment Motions within 30 days of Perfect 10's receipt of all
11 documents which Google is ordered to produce pursuant to this Order. The Court
12 shall rule upon the pending DMCA Summary Judgment Motions after Perfect 10 files
13 its sur-reply.

14 13) The Court imposes additional relief as set forth in the [Proposed] Order
15 Granting The Motion Of Plaintiff Perfect 10, Inc. For Evidentiary and Other
16 Sanctions Against Defendant Google Inc. And/Or For The Appointment of a Special
17 Master, filed in this action on November 29, 2009 (Docket No. 617-1).

18 IT IS SO ORDERED.

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20 Dated: _____

21 Honorable A. Howard Matz
22 United States District Judge
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