

Perfect 10, Inc v. Google Inc et al

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION  
CIVIL MINUTES--GENERAL

SCANNED

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

Date: December 27, 2005

Title Perfect 10, Inc. v. Google Inc., et al.,

DOCKETED ON CM  
DEC 28 2005  
BY *[Signature]* 046

DOCKET ENTRY

PRESENT:

Hon. STEPHEN J. HILLMAN, MAGISTRATE JUDGE

SANDRA BUTLER  
Deputy Clerk

05- 51  
Tape Number

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

Jeffrey Mauser  
Daniel Cooper

Andrew Bridges  
Anthony Malutta

**PROCEEDINGS: GOOGLE'S MOTION FOR ENTRY OF PROTECTIVE ORDER**

Following oral argument on December 21, 2005, the court now rules on Google's Motion for Entry of Protective Order. Defendant Amazon has joined in defendant Google's Motion papers, and in oral argument, though Amazon has not filed Motion papers of its own.

The court has carefully considered the strenuous arguments of Google and Amazon that their proposed Protective Order be entered. The defendants' Proposed Order would restrict in house counsel for Perfect 10 (Mr. Cooper) as well as Perfect 10's CEO (Dr. Zada) from access to certain anticipated discovery which defendants deem confidential and/or highly confidential. Defendants note that Perfect 10 is vigorously and ably represented by outside counsel (Mr. Mausner and other attorneys), and argue that access to some highly sensitive, proprietary and potentially embarrassing material should reasonably be restricted to outside counsel.

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Defendants are fearful that access to certain anticipated discovery on the part of Dr. Zada and Mr. Cooper, even pursuant to Protective Order, would insufficiently protect defendants' interests. The defendants fear that Dr. Zada (in particular) has evidenced such a degree of public animus towards defendants, and a desire to publically embarrass defendants, that defendants have no confidence that Dr. Zada or his in-house attorney (Mr. Cooper) would abide by a Protective Order which permits them access to certain sensitive/proprietary discovery which defendants anticipate producing in this litigation.

Perfect 10 counters that it is not a "competitor" of defendants in any business sense (Perfect 10 is not in the search engine business, as are defendants); that Dr. Zada has an untarnished record of abiding by Protective Orders previously entered in other litigation (including Protective orders issued by this court); and that Dr. Zada has unique need for access to all discovery because of his daily personal involvement with the technical aspects of this litigation, consistent with his level of involvement in similar types of Perfect 10 intellectual property litigation. Dr. Zada asserts that he has never violated (nor been accused of violating) any Protective Order restricting his dissemination of highly confidential discovery.

The voluminous Motion papers contain ample documents suggesting that Dr. Zada might have motive to disparage and "expose" what he and Perfect 10 consider to be the illegal conduct of defendants' businesses. Nevertheless, in many other lawsuits there is a potential motive to embarrass opposing parties. But is there is reasonable likelihood that Dr. Zada and/or Mr. Cooper will flaunt the strict terms of a Protective Order which permits them access to sensitive and potentially embarrassing material, and thereby expose themselves to severe fines or even Contempt charges? On this record, this court cannot make such a finding.

Accordingly, the court enters plaintiff's Proposed Protective Order. Although the court does not make light of defendants' serious concerns, the court concludes that defendants simply have not shown that it is reasonably likely that Dr. Zada and/or Mr. Cooper would not abide by a Protective Order. Nor have defendants shown that their Proposed Protective Order would not unnecessarily restrict Dr. Zada's actual daily involvement in the litigation.

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Notwithstanding the court's conclusion, the court will reluctantly permit defendants to revisit the issue on a very limited basis, when and if there are business and technological "trade secrets" about to be disclosed, which secrets defendants believe are currently so commercially sensitive that partial reconsideration of the Protective Order is justified. If and when such an occasion arises, defendants may request expedited oral argument without Motion papers. It is fully expected that Perfect 10 will fairly consider defendants' position as to one or more specific requests of defendants, and Perfect 10 should not assume that this court will refuse to modify the Protective Order it now enters. While the court has been solicitous of Perfect 10's asserted needs in this litigation, the court may well modify the Protective Order on an item by item basis, even if it modestly restricts Dr. Zada's and/or Mr. Cooper's access to some material.

cc: Judge Matz  
Judge Hillman  
Parties of Record

  
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