

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No. CV 04-9484-AHM (SHx) Date August 10, 2010

Title Perfect 10, Inc. v. Google Inc.

Present: The Honorable Stephen J. Hillman

Sandra L. Butler

CS 8-9-10

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Jeffrey Mausner  
David Schultz

Margaret Caruso

**Proceedings:** (IN CHAMBERS- TELEPHONIC)

For the reasons set forth below, defendant's Motion to Quash the Subpoenas Directed to Shantal Rands Poovala and for a Protective Order (the "Motion") is DENIED.

Defendant Google Inc. has moved to quash the deposition and document subpoenas served on its employee Shantal Rands Poovala by plaintiff Perfect 10, Inc. and for a protective order regarding the same. Plaintiff is seeking information relevant to issues regarding its copyright infringement claim against defendant, including whether defendant has expeditiously processed DMCA notices and suitably terminated repeat infringers. (See Joint Stipulation 3:14-15, June 23, 2010). Though plaintiff deposed Ms. Poovala on November 19, 2008, the deposition lasted for less than three hours and was only in her capacity as one of several individuals designated by defendant in response to a Rule 30(b)(6) deposition notice served by plaintiff. (See *id.* at 3:2-4). Plaintiff now seeks to depose Ms. Poovala in her individual capacity. (See *id.* at 3:4-5).

"A party seeking to prevent a deposition carries a heavy burden to show why discovery should be denied." *Google v. American Blind & Wallpaper Factory, Inc.*, 2006 WL 2578277, at \*3 n.3 (N.D. Cal., Sept. 6, 2006) (granting motion to compel the deposition of Larry Page, Google's co-founder and president). "It is very unusual for a court to prohibit the taking of a deposition altogether and absent extraordinary circumstances, such an order would likely be in error." *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979).

A party may request the production of documents in connection with a deposition

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subpoena. See Fed. R. Civ. P. 45(a)(2). Further, a subpoena may seek documents in the subpoenaed party's "possession, custody, or control." Wiwa v. Royal Dutch Petroleum Co., 392 F.3d 812, 821 (5th Cir. 2004). However, the Court may quash or modify a subpoena that "subjects a person to undue burden." See Fed. R. Civ. P. 45(c)(3)(A)(iv)

The Court may issue a protective order only after the moving party proves the order is necessary "to protect a party or person from annoyance, embarrassment, oppression, or unique burden or expense." Blankenship v. Hearst Corp., 519 F.2d 418, 429 (9th Cir. 1975); Fed. R. Civ. P. 26(c).

Following the August 9, 2010 telephonic oral argument on the Motion, the Court finds that defendant has failed to meet its burden for the deposition notice and document subpoena served on Ms. Poovala to be quashed and for a protective order to be issued. The previous Rule 30(b)(6) deposition of Ms. Poovala does not preclude a deposition of her in an individual capacity. See Fed. R. Civ. P. 30(b)(6). In addition, plaintiff may conduct up to 10 depositions, lasting 7 hours each, without leave of the Court. See Fed. R. Civ. P. 30(a)(2)(A)(I), 30(d)(1). Moreover the recent Order denying plaintiff the opportunity to depose Dr. Schmidt weighs in favor of permitting the individual deposition of Ms. Poovala.

Further, there appears to be some conflict between the pleadings defendant has submitted and Ms. Poovala's testimony at the Rule 30(b)(6) deposition. In the Poovala Declaration, she discussed specific actions taken by defendant in response to plaintiff's July 2, 2007 DMCA notice, but at her deposition she appeared to have less knowledge about the same topic.

Notwithstanding Judge Matz' recent important case rulings, no stay of discovery has been sought, and plaintiff is permitted to prepare its case as it sees fit.

Finally, the documents plaintiff seeks in connection with Ms. Poovala's deposition appear to be relevant to the subject matter of this action and reasonably calculated to lead to the discovery of admissible evidence.

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The Motion therefore DENIED.

It is so ORDERED.

cc: Judge Matz  
Magistrate Judge Hillman  
Parties of Record

Initials of Preparer

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