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10 Attorneys for Plaintiff
 BE IN, INC., a New York corporation

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 12 IN THE UNITED STATES DISTRICT COURT
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 14 THE NORTHERN DISTRICT OF CALIFORNIA
 15
 16 SAN JOSE DIVISION

15 BE IN, INC.,) Case No. CV12-03373-LHK
)
 16 Plaintiff,)
)
 17 v.) **[PROPOSED] ORDER DENYING**
) **DEFENDANT'S MOTION TO DISMISS**
) **BE IN'S THIRD AND FOURTH CAUSES**
) **OF ACTION**
 18 GOOGLE, INC., a California corporation,)
 19 RICHARD ROBINSON, and DOES 1 through)
 3, inclusive,) Hearing Date: January 3, 2013
) Hearing Time: 1:30pm
 20 Defendants.) Courtroom: 8, 4th Floor
) Judge: Hon. Lucy H. Koh
)

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 22 On September 4, 2012, Defendant Google Inc. filed a Motion to Dismiss Plaintiff Be In,
 23 Inc.'s third and fourth causes of action pursuant to Rule 12(b)(6) of the Federal Rules of Civil
 24 Procedure. The motion came on regularly for hearing at the above date, time, and place. Joseph
 25 E. Addiego III of Davis Wright Tremaine LLP and William E. Wallace III of Clifford Chance US
 26 LLP appeared on behalf of Plaintiff Be In Inc.. Colleen Bal and Charles Tait Graves of Wilson
 27 Sonsini Goodrich & Rosati appeared on behalf of Defendant Google, Inc.. After considering the
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1 submissions of the parties and argument of counsel and after a hearing on the motion, the Court
2 hereby orders that Defendant's Motion to Dismiss be DENIED.

3 1. Plaintiff alleges the scope of its trade dress, the element of secondary meaning, and
4 the element of likelihood of confusion with sufficient particularity to support a plausible inference
5 of trade dress infringement. Accordingly, Defendant's Motion to Dismiss Plaintiff's Fourth Cause
6 of Action is DENIED.

7 2. Plaintiff satisfied its registration requirement under Section 411(a) of the Copyright
8 Act prior to filing its lawsuit and alleges its copyright infringement claim with sufficient
9 particularity. Accordingly, Defendant's Motion to Dismiss Plaintiff's Third Cause of Action is
10 DENIED.

11 3. Defendant Google, Inc. shall file its answer to Plaintiff Be In Inc.'s First Amended
12 Complaint within fourteen (14) days of the date of the filing of this Order.

13 IT IS SO ORDERED.

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15 DATED:

16 _____
17 THE HONORABLE LUCY H. KOH
18 United States District Court Judge
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