

EXHIBIT B

1 COOLEY LLP
JOHN S. KYLE (CA 199196)
2 jkyle@cooley.com
4401 Eastgate Mall
3 San Diego, California 92121
Telephone: (858) 550-6000
4 Facsimile: (858) 550-6420

5 FRANK V. PIETRANTONIO (pro hac vice)
fpietrantonio@cooley.com
6 CHRISTOPHER C. CAMPBELL (pro hac vice)
ccampbell@cooley.com
7 One Freedom Square
11951 Freedom Drive
8 Reston, VA 20190-5656
Telephone: (703) 456-8000
9 Facsimile: (703) 456-8100

10 Attorneys for Defendants
MILLENNIAL MEDIA, INC.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

16 STREETSPLACE, INC.,
17 Plaintiff,
18 v.
19 GOOGLE INC.; ADMOB, INC.; APPLE
INC.; QUATTRO WIRELESS, INC.; NOKIA
20 CORPORATION; NOKIA INC.; NAVTEQ
CORPORATION; MILLENNIAL MEDIA,
21 INC.; JUMPTAP, INC.; and DOES 1 through
20,
22 Defendants.

Case No. 3:10-CV-01757-LAB-WMC
**MILLENNIAL MEDIA'S SUR-REPLY
BRIEF TO STREETSPLACE'S REPLY
IN SUPPORT OF MOTION TO
DISQUALIFY COUNSEL**
Date: TBD
Time: TBD
Courtroom: 9, 2nd Floor
Judge: Hon. Larry Alan Burns

1 **I. INTRODUCTION**

2 Millennial Media respectfully provides this sur-reply in response to Streetspace’s Reply to
3 Disqualify Counsel for Millennial Media.

4 **II. STREETSPACE CONTINUES TO CONFUSE THE LAW AND FACTS**

5 The fact that Mr. Campbell and Cooley LLP never represented Streetspace is
6 uncontroverted. Realizing that it cannot demonstrate that Mr. Campbell or Cooley ever
7 represented Streetspace or possessed confidential information of Streetspace, Streetspace now
8 tries a new tact, citing cases even further afield, namely *Flatt v. Superior Court*, 9 Cal. 4th 275
9 (1994). *Flatt*, unlike *H.F. Ahmanson & Co. v. Salomon Bros., Inc.*, 229 Cal. App. 3d 1445
10 (1991), is not even a case involving “successive representation.” Instead, *Flatt* involves
11 “simultaneous” representations of adverse clients. *Id.* at 284 (“Both the interest implicated and
12 the governing test are different, however, where an attorney’s potentially conflicting
13 representations are *simultaneous*.”¹ (emphasis in original).)

14 In *Flatt*, attorney Flatt disengaged plaintiff Daniel after an initial consultation because a
15 subsequent “conflicts check” showed that Flatt’s firm was then *simultaneously* representing in an
16 unrelated matter the party adverse to Daniel. *Flatt*, 9 Cal. 4th at 280. The *Flatt* Court
17 “*assum[ed]* that the circumstances [of the initial consultation] . . . were sufficient to make Daniel
18 a client of Flatt” and so the representation of the adverse party by Flatt’s firm was deemed
19 “simultaneous.” *Id.* at 281 (emphasis in original). *Flatt* then contrasted the “substantial
20 relationship” test in cases of “*successive* representation of clients” to the “more stringent”
21 standard applicable for “*simultaneous*” representations. *Id.* at 283-84 (emphasis in original).

22 _____
23 ¹ Even the Virginia cases cited by Streetspace are inapplicable. Reply at 2, n.2. The leading case
24 cited by Streetspace, *Sunbeam Products, Inc. v. Hamilton Beach Brands, Inc.*, 727 F. Supp. 2d
25 469 (E.D. Va. 2010) is a case involving “successive representation.” There, the firm-switching
26 attorney, Chen, represented at his prior firm the accused infringer in patent prosecution matters.
27 In that prior engagement, Chen analyzed prior art for the patent application he drafted covering
28 the accused product, and he performed non-infringement analysis of the accused product. *Id.* at
475. Then, in the subsequent infringement litigation, the patent owner, who was represented by
Chen’s new firm, used the patents Chen drafted previously as evidence in the claim construction
process. In disqualifying Chen’s new firm, the court stated, “[i]n the successive representation
context, the rules guard against the possibility of impropriety by prohibiting the kind of scenarios
that would enable impropriety most easily to occur.” *Id.* at 476.

1 In stark contrast to *Flatt*, the issue before the Court here involves neither *successive* nor
2 *simultaneous* representations. In situations like these, courts apply a “modified” substantial
3 relationship test. However, even when begrudgingly acknowledging *Adams v. Aerojet-General*,
4 86 Cal. App. 4th 1324 (Cal. Ct. App. 2001) as the controlling law, Streetspace conflates “probable
5 access” with the “modified” substantial relationship test. (Reply at 5-9.) Further, while
6 ostensibly applying *Adams*, Streetspace continues to cite *Elan Transdermal Ltd. v. Cygnus*
7 *Therapeutic Systems*, 809 F. Supp. 1383 (N.D. Cal. 1992). (Reply at 6-7.) But *Elan* too involved
8 a *successive representation* and is inapplicable where the firm-switching attorney “did not
9 personally represent the former client [of his former firm] who now seeks to remove him from the
10 case” *Adams*, 86 Cal. App. 4th at 1340.

11 In the face of three declarations demonstrating exactly the opposite of “probable
12 access”—two of which were from disinterested witnesses—Streetspace continues with its
13 erroneous assertion that “Mr. Campbell is a former intellectual property partner in the
14 Washington, D.C. office of [Hunton] — the *same intellectual property group of the same office*
15 *of the same firm* that prosecuted” the ‘969 patent, and that “Mr. Campbell’s administrative and
16 management duties unquestionably placed him in a position where he would have been exposed to
17 matters relevant to the current dispute.” (Reply at 1 and 8 (emphasis in original).) These
18 unsupported statements notwithstanding, Streetspace wholly failed to rebut the uncontroverted
19 evidence that Mr. Campbell was *not* based in the Hunton’s Washington, D.C. office during Mr.
20 Coddington’s tenure with Hunton, and that he did *not* hold any management functions including
21 in his capacity as a partner on the Hunton intellectual property team. (Doody Decl. ¶¶ 4, 7;
22 Duncan Decl. ¶¶ 4, 7; Campbell Decl. ¶¶ 4-5.) Furthermore, contrary to Mr. Coddington’s
23 declaration, Mr. Campbell was not in the D.C. office “on numerous and regular occasions.” In
24 fact, during the timeframe of Mr. Coddington’s tenure with Hunton, Mr. Campbell estimates that
25 he visited the D.C. office of Hunton perhaps once every 2-3 months. (Campbell Sur-Reply Decl.
26 ¶ 4.)

27 In one last desperate attempt to create a conflict where none exists, Streetspace contends
28 that Mr. Campbell was “one of only 4 or 5 intellectual property partners in electrical cases at

1 Hunton’s Washington, D.C. office.” (Reply at 7 (emphasis in original); Reply at 3 (“As one of
2 only 5 or 6 patent attorney partners in electrical engineering-type cases in Hunton’s Washington,
3 D.C. office . . .”).) To the contrary, Mr. Campbell was not among the 4 or 5 intellectual property
4 partners in electrical cases at Hunton’s Washington, D.C. office. (Campbell Sur-Reply Decl. ¶ 2.)
5 In fact, Mr. Campbell does not even have an electrical engineering degree, but instead has a
6 mechanical engineering degree. (*Id.* ¶ 1.) Further, because he does not have an electrical
7 engineering degree, Mr. Campbell was not one of the attorneys at Hunton “focused on technology
8 matters relating to electronics and telecommunications.” (Campbell Sur-Reply Decl. ¶ 1; *cf.*
9 Coddington Reply Decl. ¶ 6.)

10 **III. MR. CODDINGTON’S DECLARATION CONFIRMS THAT MR. CAMPBELL**
11 **WAS NOT EXPOSED TO CONFIDENTIAL INFORMATION**

12 Supported by declarations from two disinterested witnesses, Millennial Media thoroughly
13 explained that at Hunton, “Mr. Campbell was not in a position with respect to Streetspace to
14 likely have acquired confidential information material to the current representation.” (Opp’n at
15 13.) Mr. Coddington finally conceded, as he must, that “Mr. Campbell did not have a permanent
16 physical office in Washington, DC”. (Dkt. No. 40-1, “Coddington Reply Decl.” ¶ 8)

17 Streetspace’s remaining basis of disqualification consists of two Patent Office opinions
18 and one court filing listing Mr. Campbell’s name with Hunton’s Washington, D.C. mailing
19 address (Coddington Reply Decl. ¶ 9). The listing of a mailing address for service of court and
20 agency documents is quite different from actually working in a particular office. Undoubtedly,
21 the evidentiary weight of the mailing address on the three documents vanishes in light of Mr.
22 Coddington’s own admission that “Mr. Campbell did not have a permanent physical office in
23 Washington, DC.” (Coddington Reply Decl. ¶ 8.) Indeed, the only occasions Mr. Coddington
24 specifically recalls to have met Mr. Campbell in person consist entirely of Mr. Coddington’s one
25 visit to Mr. Campbell at the *McLean, VA* office (*id.* ¶¶ 2-3 (emphasis added)), and “at least one”
26 *interoffice* “Christmas party,” where Mr. Coddington “socialized and discussed various firm
27 matters with Mr. Campbell, Mr. Duncan, and/or Mr. Doody” (*id.* ¶ 5).

28 Although entirely irrelevant to the current motion, Streetspace asserts that “Mr.

1 Coddington reported to Mr. Campbell and Mr. Campbell supervised and critiqued the work
2 product of Mr. Coddington.” (Reply at 3.) Yet, the Reply omits Mr. Coddington’s statement
3 that had Mr. Coddington not left Hunton, “Mr. Campbell would have likely participated in [the
4 evaluation of] (or at least commented on) my performance at the firm” (Coddington Reply
5 Decl. ¶ 4.) In other words, Mr. Coddington admits that Mr. Campbell *never* participated in the
6 evaluation of Mr. Coddington’s performance at Hunton.

7 Mr. Campbell’s testimony that he “collaborated² with Mr. Coddington” at Hunton “in
8 connection with patent infringement litigation involving entirely unrelated technology (hearing
9 aids)” is completely accurate and, in fact, is confirmed by Mr. Coddington. (Campbell Decl. ¶ 7.)
10 Curiously, however, Mr. Coddington’s “possession of a memorandum prepared by Mr.
11 Coddington for Mr. Campbell” (Reply at 1) must refer to the hearing aids litigation unrelated to
12 Streetspace.³ A memorandum prepared by Mr. Coddington for an unrelated third party
13 concerning an unrelated subject matter does not in any way rebut that “Mr. Campbell was not in a
14 position with respect to Streetspace to likely have acquired confidential information material to
15 the current representation.” (Opp’n at 13.) And in fact, Mr. Coddington did not report to Mr.
16 Campbell and Mr. Coddington did not prepare any memorandum for Mr. Campbell on
17 Streetspace matters at Hunton. (Campbell Sur-Reply Decl. ¶¶ 5-6.)

18 **IV. CONCLUSION**

19 In response to Millennial Media’s Opposition, Streetspace failed to come forward in its
20 Reply with any credible evidence that would allow even an inference that Mr. Campbell or
21 Cooley were ever exposed to Streetspace’s confidential information. Millennial Media
22 respectfully requests that the Court deny Streetspace’s motion to disqualify counsel.

23 ² “Collaborated” is the proper characterization, because Mr. Campbell’s involvement in the
24 hearing aid matter was minimal at most. (Campbell Sur-Reply Decl. ¶ 3.) Mr. Campbell brought
25 the hearing aid client to the Hunton firm, but nearly completely entrusted the matter to other
26 Hunton attorneys, because Mr. Campbell had neither the time nor the technical expertise to
27 handle the matter—Mr. Campbell has a B.S. in mechanical engineering. (*Id.* ¶¶ 1, 3.)

28 ³ Mr. Coddington apparently admits that he improperly possesses confidential client information
from the hearing aid client, a client of the Hunton firm. Most ironically, however, Mr.
Coddington is further offering to use this unauthorized confidential client document to justify
accusing Mr. Campbell and Cooley of an ethical foul.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: March 14, 2011

COOLEY LLP

/s/ John S. Kyle

JOHN S. KYLE (CA 199196)
jkyle@cooley.com
4401 Eastgate Mall
San Diego, California 92121
Telephone: (858) 550-6000
Facsimile: (858) 550-6420

FRANK V. PIETRANTONIO
fpietrantonio@cooley.com
CHRISTOPHER C. CAMPBELL
ccampbell@cooley.com
One Freedom Square
11951 Freedom Drive
Reston, VA 20190-5656
Telephone: (703) 456-8000
Facsimile: (703) 456-8100

Attorneys for Defendant
MILLENNIAL MEDIA, INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on March 14, 2011, to all counsel of record who are deemed to have consented to electronic service via the Court’s CM/ECF system per Civil Local Rule 5.4. Any counsel of record who have not consented to electronic service through the Court’s CM/ECF system will be served by electronic mail, first class mail, facsimile and/or overnight delivery.

/s/ John Kyle
John Kyle, Esq.

471988 v3/RE