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 13 STREETSSPACE, INC.

14 UNITED STATES DISTRICT COURT  
 15 SOUTHERN DISTRICT OF CALIFORNIA

16 STREETSSPACE, INC., a Delaware  
 17 corporation,

18 Plaintiff,

19 vs.

20 GOOGLE INC., a Delaware corporation;  
 21 ADMOB, INC., a Delaware corporation;  
 22 APPLE INC., a California corporation;  
 23 QUATTRO WIRELESS, INC., a Delaware  
 24 corporation; NOKIA CORPORATION, a  
 25 foreign corporation; NOKIA INC., a  
 26 Delaware corporation; NAVTEQ  
 27 CORPORATION, a Delaware corporation;  
 28 MILLENNIAL MEDIA, INC., a Delaware  
 corporation; JUMPTAP, INC., a Delaware  
 corporation; and DOES 1 through 20,  
 inclusive,

Defendants.

CASE NO. 10-CV-01757-LAB-WMC

**OPPOSITION OF PLAINTIFF  
 STREETSSPACE, INC. TO *EX PARTE*  
 MOTION BY MILLENNIAL MEDIA  
 FOR LEAVE TO FILE SUR-REPLY IN  
 OPPOSITION TO STREETSSPACE'S  
 MOTION TO DISQUALIFY COOLEY  
 LLP**

Date:  
 Time:  
 Judge: Hon. Larry A. Burns  
 Ctrm: 9

1 Plaintiff Streetspace, Inc. (“Streetspace”) respectfully opposes the motion by Defendant  
2 Millennial Media, Inc. (“Millennial Media”) for leave to file a sur-reply in opposition to  
3 Streetspace’s motion to disqualify Cooley LLP (“Cooley”).

4 In its March 10, 2011 Minute Order, this Court determined that the pending motion to  
5 disqualify is “suitable for decision without oral argument” and took the matter under submission  
6 on the papers. D.E. No. 44. When, as here, a court has found previously submitted briefing  
7 sufficient to resolve the issues presented, leave to file a sur-reply should be denied. *Sharp*  
8 *Healthcare v. Leavitt*, 2009 U.S. Dist. LEXIS 25566, at \*6, n.1 (S.D. Cal. Mar. 25, 2009); *cf.*  
9 *Portillo v. Khatri*, 2009 U.S. Dist. LEXIS 2808, at \*2-3 (S.D. Cal. Jan. 13, 2009) (finding oral  
10 argument unnecessary and denying request for leave to file a sur-reply).

11 Indeed, neither the Federal Rules of Civil Procedure nor this District’s Civil Local Rules  
12 authorize the filing of sur-replies. *See Johnson v. Wennes*, 2009 U.S. Dist. LEXIS 36992, at \*5-6  
13 (S.D. Cal. Apr. 28, 2009). While a court may in its discretion grant leave to file a sur-reply, it  
14 may not do so absent a showing of good cause. *Johnson v. Wennes*, 2009 U.S. Dist. LEXIS  
15 36992, at \*5-6 (S.D. Cal. Apr. 28, 2009). Importantly, a reply brief that “**merely reiterates and**  
16 **elaborates**” on the grounds for granting the motion to which it is directed does **not** constitute  
17 good cause for allowing a sur-reply. *Textile Secrets Int’l, Inc. v. Ya-Ya Brand Inc.*, 524 F. Supp.  
18 2d 1184, 1203 (C.D. Cal. Oct. 31, 2007). Put differently, when a reply brief “merely add[s]  
19 additional facts to the same arguments” raised in a party’s opening brief, leave to file a sur-reply  
20 should be denied. *Advanced Rotorcraft Tech., Inc. v. L-3 Communications Corp.*, 2007 U.S. Dist.  
21 LEXIS 11986, at \*13 (N.D. Cal. Feb. 6, 2007). *See also, Jewell v. Francis*, 2011 U.S. Dist.  
22 LEXIS 10487, at \*2 (S.D. Cal. Feb. 3, 2011) (denying leave to file sur-reply because “no new  
23 grounds [were] raised in the reply”).

24 Here, Millennial Media contends that Streetspace’s reply adds new facts and argument not  
25 previously raised in its opening brief. There is nothing new in Streetspace’s reply. True,  
26 Streetspace’s reply brief does (1) highlight that Millennial Media ignored in its opposition the  
27 California Supreme Court opinion in *Flatt v. Superior Ct.*, 9 Cal.4<sup>th</sup> 275 (1994); (2) argue that  
28 *Adams v. Aerojet-General Corp.*, 86 Cal.App.4<sup>th</sup> 1324 (2001) and other authorities cited by

1 Millennium Media are unavailing and actually support Streetspace’s position; and (3) add some  
2 additional facts regarding Mr. Campbell’s behavior when he was a partner in Hunton & William’s  
3 Washington, D.C. office, but those facts and arguments were **already raised** in Streetspace’s  
4 opening brief; Streetspace merely elaborated on them in response to Millennium Media’s  
5 opposition. Specifically, Millennium Media contends that Streetspace improperly raised points (1)  
6 and (2) for the first time in its reply, but Streetspace could necessarily have only addressed *Adams*  
7 and Millennium Media’s ignorance of *Flatt* for the first time in its reply because those errors only  
8 appeared for the first time in Millennium Media’s opposition. It is not Streetspace’s fault that  
9 Millennium Media did not adequately address *Flatt* in its opposition, nor that Millennium Media’s  
10 reliance on *Adams* and other cases is misplaced; granting leave to file a sur-reply to correct  
11 deficiencies that could and should have been addressed in an opposition is inappropriate.

12 As for point (3), the Reply Declaration of Trevor Q. Coddington merely expounded on the  
13 numbers of intellectual property partners and associates in Hunton’s Washington, D.C. office, Mr.  
14 Campbell’s filing of briefs out of the Washington, D.C. office, the relationship between Hunton’s  
15 McLean, Virginia and Washington, D.C. offices and the sharing of resources between them—all  
16 of which were raised to refute the assertions in Millennium Media’s opposition that Mr. Campbell  
17 worked solely out of Hunton’s McLean, Virginia office and did not supervise Mr. Coddington’s  
18 work. Without engaging in the “hair-splitting niceties” that courts seek to avoid, Streetspace is  
19 not disparaging the ethics or morals of opposing counsel; rather, Mr. Campbell’s experience and  
20 conduct while a partner at Hunton is simply very much at issue in the motion to disqualify.  
21 Because Streetspace’s reply merely added additional facts and support to the same arguments  
22 made in its moving papers, leave to file a sur-reply should be denied. *Advanced Rotorcraft*, 2007  
23 U.S. Dist. LEXIS 11986, at \*13; *see also Textile Secrets*, 524 F. Supp. 2d at 1203. In fact,  
24 Streetspace believes that no hearing is necessary to resolve this *ex parte* request, lest Millennium  
25 Media seek to use that opportunity to address the underlying merits of the motion.

26 For all these reasons, Millennium Media’s request for leave to file a sur-reply should be  
27 denied.

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Dated: March 15, 2011

SAN DIEGO IP LAW GROUP LLP

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