

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 09-cv-00636-REB-KLM

VIDEO PROFESSOR, INC. a Colorado corporation,

Plaintiff,

v.

AMAZON.COM, INC., a Delaware corporation,

Defendant.

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**PLAINTIFF'S FIRST MOTION FOR EXTENSION OF TIME  
TO RESPOND TO DEFENDANT'S SUMMARY JUDGMENT MOTION**

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Plaintiff, by and through its counsel, hereby moves the Court pursuant to Fed.R.Civ.P. 6(b) for a two business-day extension of time, to and including November 23, 2009, for Plaintiff to respond to Defendant's First Motion for Summary Judgment, and as grounds for this Motion, Plaintiff states:

Pursuant to D.C.COLO.LCivR 7.1(A), counsel for Plaintiff conferred with counsel for Defendant by telephone on November 18, 2009. Counsel for Defendant opposes the motion based on his belief that Plaintiff's brief in response was due Monday, November 16, 2009, and that Plaintiff's brief is already late. Plaintiff believes opposing counsel misinterprets the relevant rules of the Court.

1. On October 27, 2009, Defendant filed its Motion for Summary Judgment and served it by the CM/ECF system.

2. D.C.COLO.LCivR 7.1(C) provides that a party has 20 days to file its response to a motion. Plaintiff believes that Fed.R.Civ.P. 6(d) and 5(b)(2)(E) provide for an additional 3 days when the motion is served by electronic means, as here.

3. Assuming Plaintiff correctly interprets the relevant rules, Plaintiff's brief is due Thursday, November 19, 2009.

4. Defendant's motion for summary judgment involves a number of issues regarding trademark infringement in the context of the Internet, more than one of first impression in this Circuit, and argues in favor of the application of nominative fair use in defense of Plaintiff's claims.

5. Plaintiffs are having some difficulty addressing the many issues raised within the Court's allotted 20-page limit and request the additional time to present cogently its position to the Court.

6. It is undersigned counsel's impression that if his interpretation of the rules is correct and that this motion is indeed timely, opposing counsel has no objection to the motion.

7. This motion is not served for purposes of delay.

8. A proposed Order is submitted herewith.

WHEREFORE, Plaintiffs respectfully request that the Court grant Plaintiff's request for extension of time, to and including November 23, 2009, within which to file its response to Defendant's Motion for Summary Judgment.

Respectfully submitted this 18<sup>th</sup> day of November 2009.

FAIRFIELD AND WOODS, P.C.

*s/ Gregory C. Smith*

Gregory C. Smith

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ATTORNEYS FOR PLAINTIFF

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 18<sup>th</sup> day of November 2009, a true and correct copy of the foregoing was sent via CM/ECF as follows:

Marc C. Levy, Esq.  
Faegre & Benson LLP  
1700 Lincoln Street, Suite 3200  
Denver, Colorado 80203  
Email: mlevy@faegre.com

I further certify in accordance with D.C.COLO.LCivR 6.1(E) that a copy of this motion was served on the moving attorney's clients by electronic mail addressed as follows:

Jean Robertson, Es  
General Counsel  
Video Professor, Inc.  
jrobertson@videoprofessor.com

*s/ Dana Ackerman*

Dana Ackerman