

**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.

**PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED
RESPONSE *NUNC PRO TUNC***

Plaintiff Video Professor, Inc. ("Plaintiff"), by and through its counsel, hereby moves for leave to file the attached amended Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment ("Response") *nunc pro tunc*, and states:

Pursuant to D.C.COLO.LCivR 7.1(A), counsel for Plaintiff conferred with counsel for Defendant by email on November 23, 2009. Counsel for Defendant takes no position with respect to the amended response, with the exception of the addition of the previously-omitted Exhibit 11, and any revisions related thereto, to which he objects. **See Exhibit A.**

1. On October 27, 2009, Defendant filed its Motion for Summary Judgment and served it by the CM/ECF system.
2. Plaintiff's brief was due on or before Thursday, November 19, 2009.

3. On November 18, 2009, Plaintiff moved for an extension of time within which to file its Response.

4. On November 19, 2009, anticipating the Court would deny its motion for an extension of time as being untimely filed, Plaintiff timely filed its Response.

5. In the response, Plaintiff referenced an exhibit on multiple occasions; however, it inadvertently omitted the exhibit. Defendant objects to the inclusion of the exhibit and any amendments related thereto, and specifically those contained in footnote 16.

6. Plaintiff also omitted certain "pinpoint" citations, and the response contained certain typographical and stylistic oversights.

7. The amended response, attached hereto as **Exhibit B**, if accepted, would correct the foregoing. It will also aid the Defendant in formulating its reply memorandum, and, thereafter, will assist the Court in ruling on the Motion for Summary Judgment.

8. The amendments to the Response are not substantive, and may be easily observed by reference to **Exhibit C** hereto, which is a "delta view" of the two documents.

9. The instant motion is not presented for dilatory or other improper motives.

10. Defendant will not be prejudiced by the amendments, and, in fact, will be materially aided.

11. A proposed order is submitted herewith.

WHEREFORE, Plaintiff respectfully requests that the Court grant the instant motion and accept, *nunc pro tunc*, the amended response attached as **Exhibit B**.

Respectfully submitted this 23th day of November, 2009.

FAIRFIELD AND WOODS, P.C.

s/ Gregory C. Smith

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd 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, Esq.
General Counsel
Video Professor, Inc.
jrobertson@videoprofessor.com

s/Julie Boling
Julie Boling