

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

AMERICAN CHEMICAL SOCIETY,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

Case No. 1:04CV02131 RBW

**JOINT MEET AND CONFER STATEMENT**

**I. Statement of the Case**

Plaintiff American Chemical Society (“ACS” or “Plaintiff”) filed its Complaint in this action on December 9, 2004. ACS alleges that Defendant Google Inc. (“Google” or “Defendant”) recently launched a new research tool directed to scientists under the trademark SCHOLAR. ACS alleges that this use infringes ACS’ federally registered SCIFINDER SCHOLAR® trademark and common law SCHOLAR mark, both of which ACS has used for services identical to Google’s services. ACS asserts claims for: (i) federal trademark infringement under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1); (ii) federal trademark infringement, false designation of origin, passing off, and unfair competition under Section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a)(1)(A); and (iii) trademark infringement and unfair competition under District of Columbia common law.

Google filed its First Amended Answer on February 18, 2005. Google denies ACS’ substantive allegations, and asserts the following affirmative defenses: (1) genericness, insofar as the term scholar is generic; (2) descriptiveness, insofar as the term

“scholar,” as used in ACS’ asserted marks, lacks secondary meaning and is merely descriptive of ACS’ goods and services under Section 2(e) of the Lanham Act, 15 U.S.C. § 1052(e); (3) no damages, because Google’s alleged acts against ACS have not damaged ACS in any manner; (4) fair use, because Google uses Scholar in its descriptive sense to describe a search tool that enable users to search scholarly literature; (5) estoppel; and (6) waiver.

## **II. Conference Report**

On May 9, 2005, the parties conferred by phone pursuant to Local Rule 16.3(a) and (c) and Rule 26(f) of the Federal Rules of Civil Procedure. The participants were Roberta Horton representing Plaintiff and Michael Page representing Defendant.

### **1. Dispositive Motions**

This case should be placed on the standard track. The parties do not currently anticipate filing summary judgment motions.

### **2. Amendments**

Defendant has already amended its Answer and does not intend to do so again. All motions to amend the pleadings or to join other parties shall be filed by August 26, 2005.

### **3. Magistrate**

The parties have discussed assignment to a magistrate, but have declined to accept this option.

### **4. Settlement**

The parties believe that it is too early to entertain settlement discussions but are open to such possibility in the future.

**5. ADR**

The parties believe that this case could benefit from alternative dispute resolution. The parties are receptive to beginning mediation within the next few months, after initial discovery.

**6. Deadline Dates for Dispositive Motions**

The parties agree that the deadline for filing any dispositive motions shall be 60 days after the completion of discovery.

**7. Initial Disclosures**

The parties do not stipulate to dispense with Rule 26(a)(1) initial disclosures. The parties will exchange initial disclosures ten days after the Court issues a Scheduling Order in this case.

**8. Discovery**

The parties anticipate written discovery and deposition of both the parties and third parties. The parties plan to enter into a protective order to govern this action. The number of interrogatories and the duration of depositions shall be limited consistent with the Federal Rules of Civil Procedure and the Rules of the U.S. District Court for the District of Columbia. There shall be no limit on the number of requests for production of documents and things. The parties agree that all fact discovery shall be completed by November 30, 2005.

**9. Expert Reports**

The parties agree that the Rule 26(a)(2) exchange of expert reports shall not be modified. The parties shall exchange expert reports by January 16, 2006, and expert discovery shall be completed by February 15, 2006. The parties shall exchange rebuttal expert reports by February 28, 2006.

**10. Class Actions**

Not applicable.

**11. Bifurcation**

The parties agree that bifurcation is not appropriate in this case.

**12. Date of Pre-Trial Conference**

The parties believe that the pre-trial conference should occur 30 days after the disposal of all dispositive motions. If no dispositive motions are filed, the pretrial conference should be scheduled for 30 days from the deadline date for filing dispositive motions.

**13. Trial Date**

All parties believe that the trial date should be set at the pre-trial conference.

**14. Other Matters**

The parties do not currently believe that any other matters need be included in the scheduling order at present.

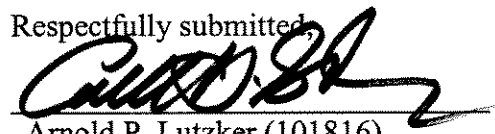
May 10, 2005



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