

Jul 14 2006

CLARENCE MADDOX
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S.D. OF FLA. - MIAMIUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Palm Beach DIVISION

STEVEN A. SILVERS, an individual,

CASE NO. 05-80387-CIV
(Ryskamp/Vitunac)

Plaintiff,

v.

GOOGLE INC., a Delaware corporation,

Defendant.

GOOGLE INC., a Delaware corporation,

Counterclaimant,

v.

STEVEN A. SILVERS, an individual; STELOR
PRODUCTIONS, INC., a Delaware corporation;
STELOR PRODUCTIONS, LLC; a business
Entity of unknown form; and STEVEN ESRIG,
an individual,Counterdefendants.

**SILVERS' MEMORANDUM IN OPPOSITION
TO GOOGLE INC.'S MOTION TO COMPEL PRODUCTION**

Plaintiff/Cross-Defendant, Steven A. Silvers ("Silvers"), hereby responds to the motion to compel production of documents filed by Defendant/Counter-Plaintiff, Google, Inc. ("Google"). Of the three requests Google raises, Silvers has produced all documents responsive to two of the requests. The third request is overbroad and beyond the scope of permissible discovery. Google's motion should therefore be denied.

After persuading this Court to limit discovery and conduct a bifurcated jury trial on two of its defenses, Google propounded a request for production seeking 86 categories of documents

covering a range of subjects far beyond the distinct issues involved in Phase I. Those issues relate to Silvers' ownership of his mark and center on: (i) whether Silvers' abandoned his mark; and/or (ii) whether the assignment of the "Googles" trademark registration to Silvers by his company, Googles Children's Workshop, and subsequent filings with the U.S.P.T.O. served to nullify Silvers' federal registration for the mark.

In response, after working through his initial objections, Silvers produced voluminous documents touching on his use and intent to use the mark, his licensees, his marketing and sales of goods bearing the mark, etc. Indeed, Silvers has, notwithstanding his objections, produced every document in his possession responsive to Request Nos. 54, and 55. But Silvers has drawn the line as to Request No. 79, which is overbroad and far beyond the scope of Phase I discovery.

Request No. 79 seeks all documents concerning "communications" between Silvers and Stelor, his former licensee, and Esrig, and Stelor's principal. While Silvers produced his contracts with Stelor, his email that is arguably responsive to such a broad request does not relate to the subjects at issue in Phase I. Rather, the email between Silvers and Stelor/Esrig focuses on their differences of opinion about Stelor's compliance with Silvers' license and other agreements between Silvers and Stelor. Given the sensitivity of these documents - - which are none of Google's business - - and the implication they have for the trial of Stelor's cross-claim in Phase II, Silvers should not be required to produce these emails to Google. Not every communication between "parties" is automatically discoverable, and this is especially so where the scope of discovery has been purposely limited by the court.

We note that Silvers asked Google to narrow the scope of Request No. 79. Google refused. Ironically, Google now seeks to have the Court dispense with the limits on discovery Google requested.

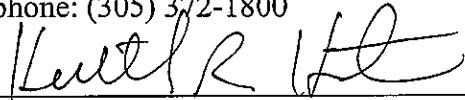
CONCLUSION

The motion to compel should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished
by E-mail and U.S. mail on this 14th day of July, 2006 upon:

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