

Jul 18 2006

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UNITED 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' MOTION FOR PROTECTIVE ORDER

Plaintiff/Cross-Defendant, Steven A. Silvers ("Silvers"), requests entry of a protective order concerning his upcoming deposition, noticed by Counter-Defendant/Cross-Claimant, Stelor Productions, LLC ("Stelor").

Silvers has been deposed by Google Inc. and now Stelor has noticed Silvers' deposition for July 21, 2006. A copy of Stelor's deposition notice is attached as Exhibit "A." Silvers will appear for Stelor's deposition as noticed, but seeks clarification and/or relief as to the scope of the deposition.

This Court has bifurcated discovery and trial, limiting the issues for determination in Phase I to Silvers' "ownership" of the federal trademark registration for the "Googles" mark.

Then, in the Court's order denying Silvers' motion to dismiss Stelor's cross-claim, the Court stated that "contract issues raised in the cross-claim can be efficiently resolved with the ownership issues during [Phase I]." Order dated February 27, 2006, p. 10.

Stelor's contract issues as asserted in its cross-claim are, with one exception, completely independent of the ownership issues slated for Phase I. Stelor argued as much in opposing bifurcation. The only possible link between Phase I ownership issues and Stelor's contract issues is Stelor's claim for breach of the warranty provision of the now terminated License Agreement between Silvers and Stelor. A jury determination, in Phase I, that Silvers does not own the federal registration for the "Googles" mark may have some bearing of the warranty claim.¹ Yet, Stelor's counsel has advised Silvers will be questioned on all aspects of Stelor's crossclaim. *See* Letter dated July 14, 2006 attached as Exhibit "B."

Silvers does not object to Stelor inquiring at his deposition as to ownership issues; nor does he object to warranty issues being addressed into discovery on Phase I. However, the scope of his deposition in Phase I should not go beyond ownership and warranty issues, into the core of dispute over Silvers' termination of Stelor as licensee. The Silvers/Stelor dispute is far removed from ownership issues to be determined in Phase I.

¹ Pursuant to the License Agreement, Silvers warranted that he owns the Googles mark, among others. License Agreement, ¶V(A)(iii). Of course, he did own the mark at the time of the warranty and still does.

Respectfully submitted,

DIMOND, KAPLAN & ROTHSTEIN, P.A.
525 South Flagler Drive
Trump Plaza, Suite 200
West Palm Beach, FL 33401
Phone: (561) 671-2110
Fax: (561) 671-1951
Adam T. Rabin, Esq.

KOZYAK TROPIN & THROCKMORTON, P.A.
Counsel for Plaintiffs
2525 Ponce de Leon, 9th Floor
Coral Gables, Florida 33134
Telephone: (305) 372-1800

By: 

Kenneth R. Hartmann
Florida Bar No. 664286
Gail A. McQuilkin
Florida Bar No. 969338

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 18th day of July, 2006 upon:

Jan Douglas Atlas, Esq.
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By: 
Kenneth R. Hartmann

3339/102/267227.1 (word.doc)

EXHIBIT “A”

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA



CASE NO. 05-80387 CIV RYSKAMP/VITUNIC

STEVEN A. SILVERS, an individual,

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
Delaware limited liability company,

Counterdefendants.

NOTICE OF TAKING VIDEO TAPED DEPOSITION

PLEASE TAKE NOTICE that the undersigned counsel for Defendant will take the following deposition:

<u>NAME</u>	<u>DATE & TIME</u>	<u>LOCATION</u>
Steven Silvers	July 21, 2006 10:00 a.m.	Burlington, Schwiep, Kaplan & Blonsky, P.A. 2699 South Bayshore Drive Penthouse Miami, Florida 33133

The deposition will be upon oral examination before Network Reporting or another officer authorized by law to take depositions in the State of Florida. The oral examinations will continue from day to day until completed, and are being taken for purposes of discovery, for use at trial, or for such other purposes as are permitted under the Rules of Court.

Case No. 05-80387 CIV RYSKAMP/VITUNIC

RESPECTFULLY SUBMITTED,

BURLINGTON, SCHWIEP,
KAPLAN & BLONSKY, P.A.
Attorneys for Stelor Productions, LLC
2699 South Bayshore Drive, Penthouse
Miami, Florida 33133
Tel: 305-858-2900
Fax: 305-858-5261
Email: kkaplan@bwskb.com

By: /s/ Kevin C. Kaplan
Kevin C. Kaplan
Florida Bar No. 933848

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served via electronic mail and U.S. mail on this 14th day of July, 2006 upon the following:

Adam T. Rabin, Esq.
DIMOND, KAPLAN &
ROTHSTEIN, P.A.
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Case No. 05-80387 CIV RYSKAMP/VITUNIC

Jan Douglas Atlas
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Fort Lauderdale, Florida 33301

/s/ Kevin C. Kaplan
Kevin C. Kaplan

EXHIBIT “B”



BURLINGTON · SCHWIEP · KAPLAN (&) BLONSKY, P.A.

OFFICE IN THE GROVE PENTHOUSE 2699 SOUTH BAYSHORE DRIVE MIAMI, FLORIDA 33133

T: 305.858.2900 F: 305.858.5261

EMAIL: KKAPLAN@BSKBLAW.COM WWWBSKBLAW.COM

July 14, 2006

VIA FACSIMILE & U.S. MAIL

Gail A. McQuilkin, Esq.
Kozyak Tropin & Throckmorton, P.A.
2525 Ponce de Leon Blvd.
9th Floor
Coral Gables, Florida 33134

RE: *Silvers vs. Google*
Case No. 05-80387

Dear Gail:

Attached please find a notice of taking deposition. As we discussed the deposition will include cross examination as a follow-up to Google's Inc.'s questioning of yesterday, as well as a substantial set of questions relating to Stelor's pending crossclaims against Mr. Silvers.

Sincerely,

/s/ Kevin C. Kaplan
Kevin C. Kaplan

KK/mjp
Enclosure
cc: Adarn Rabin, Esq. (via fax)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
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an individual,
Counterdefendants.

ORDER GRANTING SILVERS' MOTION FOR PROTECTIVE ORDER

THIS CAUSE having come on before the Court on Steven Silvers' motion for protective order, and the Court having considered same, it is

ORDERED that said motion for protective order is **GRANTED**.

DONE and ORDERED in Chambers in Palm Beach County, Florida, this ____ day of

_____, 2006.

UNITED STATES DISTRICT COURT JUDGE

Copies furnished to:

All Counsel of Record
3339/102/267228.1