

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 05-80387-CIV (Ryskamp/Vitunac)

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 business entity of unknown form; and STEVEN ESRIG, an individual,

Counter-Defendants.

FILED  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
JUL 28 2006  
WEST PALM BEACH, FLORIDA

**DEFENDANT/COUNTERCLAIMANT GOOGLE INC.'S OPPOSITION  
TO SILVERS' MOTION TO COMPEL PRIVILEGE LOG**

Defendant/Counterclaimant Google Inc. ("Google") hereby responds to the Motion to Compel a Privilege Log (the "Motion") filed by Plaintiff/Cross-Defendant Steven A. Silvers ("Silvers"). Silvers' Motion should be denied because there are no privileged documents subject to a motion to compel, a fact acknowledged by Silvers' counsel prior to the filing of this Motion.

Under the local rules of the Southern District of Florida, a party must prepare a privilege log for all documents and oral communications withheld on the basis of a claim of privilege or

PA  
103

Case No. 05-80387-CIV (Ryskamp/Vitunac)

work product protection except "written and oral communications between a party and its counsel after commencement of the action and work product material created after commencement of the action." Local Rule 26.1(G)(3)(c). Google has no responsive documents and no oral communications which fall outside the exception in Local Rule 26.1(G)(3)(c).

Google anticipates that its Phase I trial exhibits will be primarily, if not entirely comprised of discovery provided by Silvers and the other Counterdefendants in this case. However, Google is under no obligation at the present time to disclose its mental impressions as to which of those exhibits supports its case. This position is consistent with Google's response to Silvers' Request for Production No. 1—seeking all documents in support of Google's allegations that Silvers has no ownership rights in his trademark—that such a request calls for privileged attorney evaluation and mental impressions regarding Google's "support" for the issues in the first phase of litigation in this case. *See Silvers' Motion, Ex. A.* Google will disclose its trial exhibits at the appropriate time in accordance with the Federal Rules and the Rules of this Court.

Silvers' Motion comes as a surprise. During a June 30, 2006, meet and confer on the subject of the privilege log, the parties agreed that privileged documents or communications generated after the date the lawsuit was filed need not be logged. Google indicated that it was unaware of any privileged documents in its possession outside of this exception, and would confirm this fact. Without any further communication or attempted communication on the subject, Silvers filed this Motion.

### **CONCLUSION**

Wherefore Defendant/Counterclaimant Google Inc. respectfully requests that this Court deny Silvers' Motion to Compel, together with such other and further relief as this Court deems just and proper.

Case No. 05-80387-CIV (Ryskamp/Vitunac)

Respectfully submitted,

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Attorneys for Defendant/Counterclaimant  
Google Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email and mail on the addressee(s) listed on the attached schedule on this 24<sup>th</sup> day of July, 2006.

  
Samantha Tesser Haimo

**SERVICE LIST**

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