

FILED Page 1 of 7 D.C.  
 ELECTRONIC  
**Sep 6 2006**  
 CLARENCE MADDOX  
 CLERK U.S. DIST. CT.  
 S. D. OF FLA. - MIAMI

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  
 Delaware limited liability company, and  
 STEVEN ESRIG, an individual,

Counterdefendants.

---

**NOTICE OF FILING EXPERT REPORT OF JAMES FITZSIMMONS**

Stelor Productions, LLC hereby gives notice of filing the expert

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: INFO@BSKBLAW.COM WWW.BSKBLAW.COM

Report of James F. Fitzsimmons with his curriculum vitae.

Respectfully submitted,

BURLINGTON, SCHWIEP, KAPLAN &  
BLONSKY, P.A.  
Counsel for STELOR PRODUCTIONS,  
LLC and STEVEN ESRIG  
Office in the Grove, Penthouse A  
2699 South Bayshore Drive  
Miami, Florida 33133  
Tel: 305-858-2900  
Fax: 305-858-5261  
Email: [kkaplan@bskblaw.com](mailto:kkaplan@bskblaw.com)

By: /s/ Kevin C. Kaplan  
Kevin C. Kaplan  
Florida Bar No. 933848  
David J. Zack  
Florida Bar No. 641685

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served via email and U.S. Mail on this 6<sup>th</sup> day of September, 2006 upon the following:

Steven A. Silvers, *pro se*  
Suite 202 – PMB 203  
8983 Okeechobee Boulevard  
West Palm Beach, Florida 33411  
Tel: 954-4445-6788  
Fax: 561-784-9959  
[gewrue@hotmail.com](mailto:gewrue@hotmail.com)

Ramsey Al-Salam, Esq.  
William C. Rava, Esq.  
PERKINS COIE LLP  
Suite 4800  
1201 Third Avenue  
Seattle, Washington 98101-3099  
[RAlsalam@perkinscoie.com](mailto:RAlsalam@perkinscoie.com)

Jan Douglas Atlas, Esq.  
ADORNO & YOSS LLP  
Suite 1700  
350 East Las Olas Boulevard  
Fort Lauderdale, Florida 33301  
[jatlas@adorno.com](mailto:jatlas@adorno.com)

Johanna Calabria, Esq.  
PERKINS COIE LLP  
Suite 2400  
Four Embarcadero Center  
San Francisco, CA 94111  
E-mail:  
[jcalabria@perkinscoie.com](mailto:jcalabria@perkinscoie.com)

/s/ David J. Zack  
Kevin C. Kaplan  
David J. Zack

**BUDD LARNER**

A PROFESSIONAL CORPORATION  
COUNSELLORS AT LAW

150 JOHN F. KENNEDY PARKWAY  
SHORT HILLS, NJ 07078-2703  
973.379.4800  
FAX 973.379.7734  
www.buddlerner.com

August 2, 2006

**Via Telecopier (305-858-5261)  
And First Class Mail**

Kevin C. Kaplan, Esq.  
Burlington, Schwiep, Kaplan & Blonsky, PA  
2699 S. Bayshore Drive, Penthouse  
Miami, Florida 33133

**Re: Silvers v. Google, Inc.  
Case No. 05-80387**

Dear Mr. Kaplan:

In connection with the above-referenced case, your client, Stelor Productions, Inc., has engaged me to provide it with an expert legal opinion solely on the issue of whether a corporation formed pursuant to the laws of the State of the New Jersey has the ability to assign its assets to a third party after it has filed a certificate of dissolution with the State of New Jersey. Please accept this letter as my opinion in connection with this engagement.

**I. Qualification.** As I have previously informed you, I am an experienced attorney practicing law in the State of New Jersey specializing in general corporate matters. For your convenience my professional CV is attached to this letter as Exhibit "A".

**II. Scope of Opinion.** The opinions provided for in this letter are limited as to the specific legal issue identified above and to the current status of New Jersey law.<sup>1</sup> I have not verified or interpreted any factual circumstance surrounding or pertaining to the above-referenced lawsuit. This letter is for the express purposes stated herein and may not be used for any other purpose.

**III. Conclusions:** Pursuant to the New Jersey Business Corporation Act, the filing of a Certificate of Dissolution with the State of New Jersey does not immediately terminate the existence of a corporation. Specifically, N.J.S.A. §14A:12-9(1) provides as follows:

*"Except as a court may otherwise direct, a dissolved corporation shall continue its corporate existence but shall carry on no business except for the purpose of winding up its affairs by*

<sup>1</sup> The New Jersey statute which is relevant for purposes of the opinion provided in this letter is N.J.S.A. §14A:12-9. This statute has not been amended since the time The Googles Children's Workshop, Inc. filed its certificate of dissolution with the State of New Jersey.

Kevin C. Kaplan, Esq.  
August 2, 2006  
Page 2

BUDD LARNER  
A PROFESSIONAL CORPORATION

- i. *collecting its assets;*
- ii. *conveying for cash or upon deferred payments, with or without security, such of its assets as are not to be distributed in kind to its shareholders;*
- iii. *paying, satisfying and discharging debts and other liabilities; and*
- iv. *doing all other acts required to liquidate its business and affairs.*

Moreover, N.J.S.A. §14A:12-9(2) expressly provides that:

*“Subject to the provisions of subsection 14A:12-9(1), and except as otherwise provided by court order, the corporation, its officers, directors and shareholders shall continue to function in the same manner as if dissolution had not occurred. In particular, and without limiting the generality of the foregoing,*

- (a) the directors of the corporation shall not be deemed to be trustees of the assets and shall be held to no greater standard of conduct that that prescribed in section 14A:6-14;*
- (b) title to the corporation's assets shall remain in the corporation until transferred by it in the corporate name;*
- (c) . . .*
- (d) . . .*
- (e) the corporation may sue and be sued in its corporate name and process may issue by and against the corporation in the same manner as if dissolution had not occurred;*
- (f) . . .”*

Under the above statute, the dissolution of a corporation does not deprive it of all vitality.<sup>2</sup> A corporation which has already dissolved and has filed a certificate of dissolution with the State of New Jersey is permitted to continue to function in the same manner as if dissolution had not occurred, subject to the limitations set forth in N.J.S.A. §14A:12-9(1). Specifically, N.J.S.A. §14A:12-9(2) provides that the corporation's assets shall remain in the name of the corporation after the filing of the corporation's certificate of dissolution until the time that such assets are duly transferred by the corporation. It would not be unusual, for example, for a corporation to identify assets following dissolution that it was not aware of at the time of dissolution. Typical examples would include refunds from government agencies, vendors or customers or other items of unclaimed property. The corporation is still deemed to be the owner of such assets, and will be entitled to transfer such assets, even though it has already filed a Certificate of Dissolution pursuant to the laws of the State of New Jersey.

---

<sup>2</sup> See, Pachman, Stuart L, New Jersey Statutes, Title 14A Corporations, Commentaries and Annotations, Note 3 of the Commentary to N.J.S.A. §14A:12 (2006 Edition).

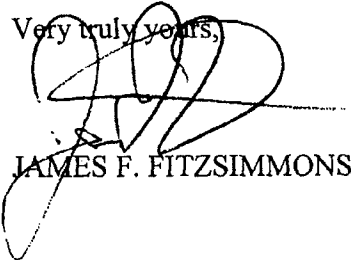
Kevin C. Kaplan, Esq.  
August 2, 2006  
Page 3

BUDD LARNER  
A PROFESSIONAL CORPORATION

The persons who are the directors of the corporation at the time of dissolution retain title to any undistributed assets of the corporation. The directors may not carry on any corporate business of the dissolved corporation but they may take steps in winding up its affairs and do retain the power to discharge corporate debts.<sup>3</sup> Case law also suggests that an officer of a dissolved corporation may transfer assets of the dissolved corporation subject to the approval of the directors of the corporation (not unlike a pre-dissolution transfer of assets outside of the ordinary course of business which would require approval of the directors of the corporation).

Therefore, based upon my review of current New Jersey law and in my opinion as an experienced attorney practicing law in the State of New Jersey specializing in general corporate matters, a New Jersey corporation has the ability, after filing a certificate of dissolution with the State of New Jersey, to assign its assets to its shareholders or to a third party. This opinion is subject to further modification based upon development of the facts in this case.

Please contact me at your convenience if you have any further questions or concerns regarding this matter.

Very truly yours,  
  
JAMES F. FITZSIMMONS

606796

---

<sup>3</sup> See *Id.*

Professional CV of James F. Fitzsimmons, Esq.

James Fitzsimmons is a shareholder in the corporate and business law department whose practice focuses on advising emerging growth companies; forming corporations, limited liability companies, partnerships and joint ventures; advising on venture capital financing, mergers and acquisitions, divestitures and workouts; and developing, licensing and transferring intellectual property rights in the e-commerce, computer (software and hardware) and biotechnology industries.

James is a member of the New Jersey Technology Council and Technology New Jersey, as well as the New Jersey Bar Association, Corporate and Business Law Section, American Bar Association, Business Law Section, Cyberspace Law Committee and the Essex County Bar Association, Computer Law Section.

**BAR ADMISSIONS:**

New Jersey, Pennsylvania and the United States District Court for the District of New Jersey

**EDUCATION:**

Law School: The Dickinson School of Law of the Pennsylvania State University (J.D. 1993)

Honors/Activities:

- The Woolsack Society
- Order of the Barristers
- Editor-in Chief, *Dickinson Journal of Environmental Law & Policy*
- Member, Irving R. Kauffman Memorial Securities Law Moot Court Team

Undergraduate: St. Lawrence University (B.A. 1990, cum laude)

**PROFESSIONAL PROFILE:**

- Law Clerk to the Hon. Richard Newman J.A.D. (1993-1994)
- Pupil, Justice William J. Brennan, Jr. Inn of Court (1995-1997)
- Co-Author, Trustee, *Executor and Fiduciary Liability for Environmental Contamination in New Jersey*, 21 Seton Hall Leg. J. 347 (1997)
- Author, *Regulatory Obligations Under New Jersey's Environmental Cleanup Responsibility Act: Are They Preempted?*, 2 Dick. J. Env'tl. L & Pol. 89 (1992)
- Named to "40 Under 40," New Jersey Law Journal, August 26, 2002
- Chair, Corporate Law Committee, Essex County Bar Association (2004-2005)