

Sep 7 2005

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

STEVEN A. S ILVERS, an individual,

CASE NO. 05-80387-CIV

Plaintiffs,

(Ryskamp/Vitunac)

v.

GOOGLES INC., a Delaware corporation,

Defendant.

GOOGLES 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' ANSWER AND AFFIRMATIVE DEFENSES TO COUNTERCLAIM

Plaintiff/Counterdefendant, Steven A. Silvers ("Silvers"), responds to the allegations of
Googles Inc.'s counterclaim and, as to each corresponding paragraph states as follows:

1. Silvers admits suing Google Inc. ("Google"), but lacks knowledge sufficient to respond to the remaining allegations and therefore denies same.
2. Denied as to Silvers. Without knowledge as to the remaining allegations and therefore deny same.

3. Admit that Google operates an Internet search engine. Without knowledge as to the remaining allegations and therefore deny same.

4. Admit.

5. Without knowledge and therefore deny.

6. Without knowledge and therefore deny.

7. Without knowledge and therefore deny.

8. Admit Silvers has rights in the mark GOOGLES, and GOOGLES and Design, among other marks, and that his book speaks for itself; deny the remaining allegations.

9. Admit that Stelor Productions, Inc. obtained a license to use certain of Silvers' intellectual property in 2002; deny the remaining allegations.

10. Admit Silvers sued Stelor and that his pleadings in that case speak for themselves; deny the remaining allegations.

11. Admit the filing of this action; deny the remaining allegations.

12. Admit that Google seeks relief in this action, but denies that Google is entitled to such relief, and deny the remaining allegations.

13. Admit that Google operates a website located at google.com, and that it operates a search engine; deny the remaining allegations.

14. Deny.

15. Admit Exhibit "A" speaks for itself; deny the remaining allegations.

16. Admit Exhibit "B" speaks for itself; deny the remaining allegations.

17. Admit Exhibit "C" speaks for itself; deny the remaining allegations.

18. Admit Exhibit "D" speaks for itself; deny the remaining allegations.

19. Without knowledge and therefore deny.

20. Without knowledge and therefore deny.
21. Admit.
22. Admit.
23. Deny.
24. Admit that Exhibit "G" speaks for itself; deny the remaining allegations.
25. Deny.
26. Admit.
27. Admit Silvers executed an assignment from Googles Children's Workshop to Silvers, and that Exhibit "H" speaks for itself. Deny the remaining allegations.
28. Admit.
29. Admit Silvers tried to contact Larry Page concerning the GOOGLES and GOOGLE trademarks. Deny the remaining allegations.
30. Admit Exhibit "I" speaks for itself; without knowledge and therefore deny the remaining allegations.
31. Without knowledge and therefore deny.
32. Without knowledge and therefore deny.
33. Deny.
34. Without knowledge and therefore deny.
35. Without knowledge and therefore deny.
36. Deny.
37. Without knowledge and therefore deny.
38. Admit the PTO records speak for themselves; deny the remaining allegations.
39. Without knowledge and therefore deny.

40. Deny.

41. Without knowledge and therefore deny.

42. Without knowledge and therefore deny.

43. Deny.

44. Deny.

45. Deny.

46. Admit Exhibit "J" speaks for itself; deny allegations as to Silvers. Without knowledge and therefore deny the remaining allegations.

47. Admit Exhibit "K" speaks for itself. Without knowledge and therefore deny the remaining allegations.

48. Without knowledge and therefore deny.

49. Without knowledge and therefore deny.

50. Without knowledge and therefore deny.

51. Without knowledge and therefore deny.

52. Without knowledge and therefore deny.

53. Without knowledge and therefore deny.

54. Deny as to Silvers. Without knowledge and therefore deny the remaining allegations.

55. Without knowledge and therefore deny.

56. Deny.

57. Without knowledge and therefore deny.

58. Silvers restates and incorporates his responses to paragraphs 1 through 57 above.

59. Admit to the controversy. Deny the remaining allegations.

60. Deny.

61. Deny.
62. Deny.
63. Deny.
64. Deny.
65. Deny.
66. Deny.
67. Deny.
68. Deny.
69. Admit a controversy exists. Deny the remaining allegations.
70. Silvers restates and incorporates his responses to paragraphs 1 through 69 above.
71. Deny.
72. Deny.
73. Deny.
74. Deny.
75. Deny.
76. Deny.
77. Silvers restates and incorporates his responses to paragraphs 1 through 76 above.
78. Deny.
79. Deny.
80. Deny.
81. Deny.
82. Silvers restates and incorporates his responses to paragraphs 1 through 81 above.
83. Deny.

84. Deny.

85. Deny.

86. Deny.

87. Deny.

88. Deny.

89. Deny.

90. Deny.

91. Deny.

92. Silvers denies all allegations contained in the Counterclaim that are not specifically admitted.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Counterplaintiff lacks standing to bring the claims contained in the Counterclaim against Silvers.

Second Affirmative Defense

Counterplaintiff's claims against Silver are barred by the doctrine of waiver and estoppel.

Third Affirmative Defense

Counterplaintiff's claims against Silvers are barred by the doctrine of laches.

Fourth Affirmative Defense

Counterplaintiff's claims against Silvers are barred by the doctrine of unclean hands.

Fifth Affirmative Defense

Counterplaintiff's claims are barred because its trademark registration for the mark Google was obtained fraudulently and therefore must be canceled.

Sixth Affirmative Defense

Count II of the counterclaim fails to state a cause of action as to Silvers.

Seventh Affirmative Defense

Counterplaintiff's claims against Silvers, or some of them, are barred by acquiescence and/or the applicable statute of limitations.

Eighth Affirmative Defense

Counterplaintiff's claims against Silvers, or some of them, are barred in that the conduct complained of is not that of Silvers and was not authorized by Silvers.

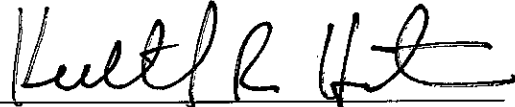
WHEREFORE, Silvers requests that judgment be entered in his favor on the counterclaim.

Respectfully submitted,

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By: _____



Kenneth R. Hartmann
Florida Bar No. 664286
Gail A. McQuilkin
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail on this 7th day of September, 2005 upon: Jan Douglas Atlas, Esq., Adorno & Yoss, LLP, 350 East Las Olas Blvd., Suite 1700, Fort Lauderdale, FL 33301-4217; Andrew P. Bridges, Esq., Winston & Strawn, LLP, 101 California Street, Suite 3900, San Francisco, CA 94111; and Kevin C. Kaplan, Esq., Daniel F. Blonsky, Esq. and David Zack, Esq., Burlington, Weil, Schwiep, Kaplan & Blonsky, P.A., Counsel for Plaintiff, Office in the Grove, Penthouse A, 2699 South Bayshore Drive, Miami, FL 33133.

By: 
Kenneth R. Hartmann

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