

**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.

**NIGHT BOX  
FILED**

**OCT - 2 2006**

**CLARENCE MADDOX  
CLERK, USDC/SDFL/FTL**

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.

**NOTICE OF FILING DECLARATION OF JOHANNA CALABRIA IN SUPPORT OF  
GOOGLE INC.'S (1) OPPOSITION TO STELOR PRODUCTIONS, LLC'S MOTION FOR  
PROTECTIVE ORDER AND RECONSIDERATION ON THAT BASIS OF SEPTEMBER 11,  
2006 ORDER GRANTING GOOGLE INC.'S MOTION TO COMPEL; (2) CROSS MOTION TO  
COMPEL PRODUCTION OF DOCUMENTS AND PRIVILEGE LOG FROM STELOR AND  
ESRIG; AND (3) MOTION FOR COSTS AGAINST STELOR AND ESRIG**

Defendant and Counterclaimant GOOGLE, INC., by and through undersigned counsel, hereby files the attached Declaration of Johanna Calabria, with exhibits, in Support of Google Inc.'s (1) Opposition To Stelor Productions, LLC's Motion For Protective Order And Reconsideration On That Basis Of September 11, 2006 Order Granting Google Inc.'s Motion To Compel; (2) Cross Motion To

{SNT/213526.0001/N0627628\_1}

CASE NO. 05-80387 CIV RYSKAMP/VITUNAC

Compel Production Of Documents And Privilege Log From Stelor And Esrig; And (3) Motion For Costs  
Against Stelor And Esrig.

Dated: October 2, 2006.

Respectfully submitted,  
*Jan Douglas Atlas* Fla. Bar No. 191582  
for *Samantha Tesser Haimo*

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Florida Bar No. 226246

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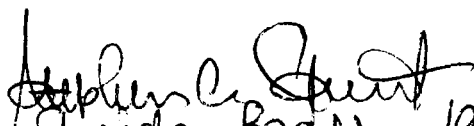
Telephone: (415) 344-7000

Facsimile: (415) 344-7050

CASE NO. 05-80387 CIV RYSKAMP/VITUNAC

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail and mail on this 2nd day of October, 2006 on the addressee(s) listed on the attached service list.

  
for Florida Bar No. 191582  
Samantha Tesser Haimo

CASE NO. 05-80387 CIV RYSKAMP/VITUNAC

**SERVICE LIST**

<p>Kevin C. Kaplan, Esq. <a href="mailto:kkaplan@bwskb.com">kkaplan@bwskb.com</a> <b>BURLINGTON, SCHWIEP, KAPLAN &amp; BLONSKY, P.A.</b> 2699 South Bayshore Drive Miami, FL 33133 Telephone: (305) 858-2900 Facsimile: (305) 858-5261</p>	<p>Steven A. Silvers Suite 202 – PMB 203 8983 Okeechobee Boulevard West Palm Beach, Florida 33411 Tel: 954-4445-6788 Fax: 561-784-9959 E-mail: <a href="mailto:gewrue@hotmail.com">gewrue@hotmail.com</a></p>
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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**

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.

**DECLARATION OF JOHANNA CALABRIA IN SUPPORT OF GOOGLE INC.'S (1) OPPOSITION TO STELOR PRODUCTIONS, LLC'S MOTION FOR PROTECTIVE ORDER AND RECONSIDERATION ON THAT BASIS OF SEPTEMBER 11, 2006 ORDER GRANTING GOOGLE INC.'S MOTION TO COMPEL; (2) CROSS MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND PRIVILEGE LOG FROM STELOR AND ESRIG; AND (3) MOTION FOR COSTS AGAINST STELOR AND ESRIG**

I, Johanna Calabria hereby declare as follows:

1. I am an attorney with Perkins Coie LLP, counsel for Defendant and Counterclaimant Google Inc. ("Google") in this action. I am submitting this declaration in support of Google's Opposition to Stelor Productions, LLC's Motion for Protective

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

Order and Reconsideration on that Basis of September 11, 2006 Order Granting Google Inc.'s Motion to Compel; (2) Cross Motion to Compel Production of Documents and Privilege Log from Stelor and Esrig; and (3) Motion for Costs against Stelor and Esrig. I make this declaration of my personal knowledge unless otherwise indicated.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Complaint for Injunctive, Declaratory, and Other Relief filed October 18, 2004 in an action styled *Stelor Productions, Inc. v. Steven A. Silvers*, Case No. 04-80954-Civ-Hurley (S.D. Fla.) (hereinafter "*Stelor v. Silvers I*"). The exhibits filed therewith have been omitted.

3. Attached hereto as Exhibit 2 is a true and correct copy of an October 5, 2004, letter from Steven A. Silvers to Laurence R. Hefter, Esq., filed as Exhibit 5 to Stelor's Memorandum of Points and Authorities in Support of Plaintiffs' Emergency Motion for Preliminary Injunction, filed by Stelor in *Stelor v. Silvers I*.

4. Attached hereto as Exhibit 3 is a true and correct copy of a November 3, 2004, e-mail from Gail A. McQuilkin to Yano Rubenstein, attached as Exhibit A to Plaintiff's Opposition to Defendant's Motions to Strike "Emergency" Label of Plaintiff's Motion for Preliminary Injunction, to Extend Time to Respond and to Initiate Discovery, filed by Stelor in *Stelor v. Silvers I*.

5. Attached hereto as Exhibit 4 is a true and correct copy a March 1, 2004 letter from Steven A. Silvers to Steve Esrig, attached as Exhibit J to Plaintiff's Request to Reconsider and Vacate the November 4, 2004 Order Denying Emergency Status for Plaintiff's Motion for Preliminary Injunction in Light of New Facts Or, in the Alternative, for a Temporary Restraining Order, filed by Stelor in *Stelor v. Silvers I*.

6. Attached hereto as Exhibit 5 is a true and correct copy of a the Declaration of Steven A. Esrig, attached as Exhibit F to Plaintiff's Reply to Silvers' Memorandum in

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

Opposition to Stelor's Motion for Preliminary Injunction, filed by Stelor in *Stelor v. Silvers I*.

7. Attached hereto as Exhibit 6 is a true and correct copy of Plaintiff's Reply to Silvers' Memorandum in Opposition to Stelor's Motion for Preliminary Injunction, filed by Stelor in *Stelor v. Silvers I*, and Exhibits B and C thereto, which are a July 27, 2003 e-mail from Steven Silvers to Steven Esrig and an April 15, 2004 email from Steven Silvers to Steven Esrig, respectively.

8. Attached hereto as Exhibit 7 is a true and correct copy of a November 12, 2004, letter from Gail A. McQuilkin to Steven A. Esrig.

9. Attached hereto as Exhibit 8 is a true and correct copy of a January 13, 2005, letter from Gail A. McQuilkin to Steven A. Esrig.

10. Attached hereto as Exhibit 9 is a true and correct copy of a Confidential Settlement Agreement between Stelor Productions, Inc. and Steven A. Silvers dated January 28, 2005. This document was entered as Ex. 41 to the deposition of Steven A. Silvers taken July 13, 2006 in this case.

11. Attached hereto as Exhibit 10 is a true and correct copy of an April 27, 2005, letter from Gail A. McQuilkin to Steven A. Esrig.

12. Attached hereto as Exhibit 11 is a true and correct copy of the Verified Complaint filed by Stelor in an action styled *Stelor Productions LLC, f/k/a Stelor Productions, Inc. v. Steven A. Silvers*, Case No. 05-80393-Civ-Hurley (S.D. Fla.).

13. Attached hereto as Exhibit 12 is a true and correct copy of Google, Inc.'s First Set of Document Requests to Stelor Productions, LLC in this case, dated April 5, 2006.

14. Attached hereto as Exhibit 13 is a true and correct copy of Stelor LLC's Response to Google Inc.'s First Set of Document Requests in this case, dated June 2, 2006.

15. Attached hereto as Exhibit 14 is a summary of the Requests for Production and Stelor's responses thereto at issue in Google's cross-motion to compel.

16. Attached hereto as Exhibit 15 is a true and correct copy of a June 30, 2006, letter from Kenneth R. Hartmann to Johanna Calabria, Esq.

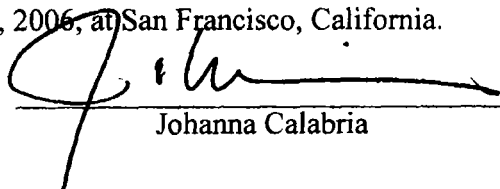
17. Attached hereto as Exhibit 16 is a true and correct copy of the Privilege Log of Edell Documents dated September 22, 2006, prepared by Stelor's counsel in this case.

18. Stelor did not produce a single document responsive to Google's First Requests for Production until August 9, 2006.

19. Stelor continued to produce responsive documents after its 30(b)(6) deposition and even after the close of fact discovery. In fact, Stelor recently produced approximately 700 more pages of responsive documents.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

Executed this 2<sup>nd</sup> day of October, 2006, at San Francisco, California.

  
\_\_\_\_\_  
Johanna Calabria



TO REORDER CALL 954-846-9399



RECYCLED PAPER



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. \_\_\_\_\_-Civ

**04-80954**

(U.S.D.J. \_\_\_\_\_)

STELOR PRODUCTIONS, INC., )

Plaintiff )

v. )

STEVEN A. SILVERS, )

Defendant. )

Civil Action No. \_\_\_\_\_

**NIGHT BOX  
FILED**

**OCT 15 2006**

CLARENCE MABBOX  
CLERK, USDC / SDFL / WPB

**COMPLAINT FOR INJUNCTIVE, DECLARATORY, AND OTHER RELIEF**

Plaintiff, Stelor Productions, Inc. ("Stelor"), by its undersigned attorneys, files this Complaint against Steven A. Silvers ("Silvers" or "Defendant"), and alleges as follows:

**NATURE OF THE CASE**

1. This is a civil action seeking an injunction, a declaratory judgment, and other relief based upon Silvers' breach of two contracts between the parties and Silvers' threats and allegations that Stelor has breached one of the contracts. Defendant Silvers has refused to remedy his breaches, has threatened other breaches, and has thereby caused Stelor significant irreparable and other damage.

**BACKGROUND**

2. In or about 1991, Defendant authored a children's book entitled "Googles and the Planet of Goo." The book made little critical or commercial impact when it entered a marketplace crowded with children's titles from bigger and better financed publishers and more famous authors. Undaunted, Defendant envisioned a program to transform this creation into an expansive, multimedia entertainment and educational

empire. To that end, Defendant engaged the Florida-based Aurora Collection, Inc. That relationship, however, did not bear fruit. Still, Defendant did not abandon the project, but sought another partner to carry forward his vision and achieve his dream. Defendant had many personal and business hurdles to overcome. Significant among them was the increasingly adverse relationship between him and Aurora and other negative aspects of Defendant's background which made Defendant unsuited to serve as figurehead or spokesperson for an enterprise aimed at providing wholesome and enriching entertainment to an audience of impressionable children.

3. Accordingly, when Stelor was formed to develop Defendant's "The Googles" concept into a reality, Stelor's enthusiasm and interest were tempered by legitimate concerns and reservations. Stelor saw potential in the "The Googles" story, trademarks, copyrights, and other intellectual property. Stelor's founders also had confidence in their ability to raise the needed funds and to create a compelling and attractive "Googles" universe that would enlighten, entertain, educate, and develop children by providing them with fascinating and uplifting products, programs, and services. But aware of Aurora's aborted effort, and wary that Defendant's background could jeopardize the "Googles" program, Stelor insisted that any arrangement with Defendant contain safeguards and protections.

4. Thus, when on or around June 1, 2002 Stelor and Defendant entered into a "License, Distribution, and Manufacturing Agreement," and a Consulting Agreement, Stelor bargained for, and obtained, the following promises, commitments, and obligations from Defendant designed to ensure Stelor's ability to develop the "Googles" program free from undue interference by Defendant:

- (a) The License Agreement gives Stelor exclusive rights in the "Googles" products, trademarks, and intellectual property and specifies that those rights are exclusive even as to Defendant.
- (b) The License Agreement gives Stelor an irrevocable power of attorney to apply for, maintain, enforce and defend intellectual property rights, including trademarks, websites, and domain names. Stelor, not Defendant, assumed responsibility for handling all Googles Trademark and other Intellectual Property matters.
- (c) The License Agreement and Consulting Agreement require Defendant to fully cooperate with Stelor, while the Consulting Agreement makes plain that Defendant shall have no power to direct or control the daily activities of Stelor.
- (d) Finally, to protect Stelor from possible public embarrassment, both the License Agreement and Consulting Agreement expressly prohibit Defendant from initiating or maintaining "any relationship or conversation with [Stelor's] current or prospective clients, vendors, any company relationships with the media (press, etc.), without the prior express written request by [Stelor]."

5. Anxious to achieve what he himself has described as his "dream," Defendant agreed to these and other contractual obligations and restrictions. Stelor, believing it had the necessary rights and protections, then threw itself enthusiastically into the task of using its best efforts to develop The Googles concept and intellectual property. To this end, Stelor has spent approximately three million dollars, and its

principals and employees have devoted themselves tirelessly to making Stelor and the "Googles" successful and profitable, both for themselves and for the benefit of Defendant.

6. However, Defendant, having received from Stelor \$186,500, obligations for options for Stelor stock, and health insurance, has not lived up to his part of the bargain. After giving Stelor the exclusive rights to develop and market the "Googles" concept without interference from him, Defendant commenced a campaign to inject and entwine himself into the very fabric of Stelor's business. In breach of his contractual obligation to cooperate fully with Stelor in protecting, preserving, and enforcing the Googles intellectual property rights, Defendant has subverted those efforts, going so far as to unilaterally divert official communications from the United States Patent and Trademark Office ("USPTO") from Stelor's intellectual property counsel to himself. Under the irrevocable power of attorney Defendant bestowed on Stelor under the License Agreement, all such communications from the USPTO must go directly to Stelor, as Stelor, not Defendant, shoulders all responsibility for protecting and enforcing the Googles Intellectual Property.

7. Stelor, in fulfilling its duty to enforce and defend the Googles Intellectual Property, retained counsel to bring actions against Google, Inc. in the USPTO. Defendant wrote to Stelor's counsel and instructed them to act no further on these matters and threatened to obtain his own attorney to handle them despite Defendant's having given Stelor an irrevocable power of attorney to act for and on Defendant's behalf to enforce and defend the Googles Intellectual Property.

8. In breach of his promise not to initiate or maintain any relationship or conversations with prospective clients and vendors, Defendant has held himself out as a Stelor representative at crucial industry trade shows. And despite Stelor's displeasure over that breach of contract, Defendant now threatens to initiate more contacts and conversations with the trade and press, oblivious and totally indifferent to his contractual obligations.

9. Finally, Defendant flouts his duty to cooperate by withholding information vital to Stelor's ability to carry out the business of transforming the basic Googles idea into a thriving and profitable entertainment phenomenon. Stelor has developed and operates a website devoted to the "Googles" characters, offering a variety of services and features geared to delighting children and their parents. At present, the website is the public's window into the Googles' world. Being able to operate and modify this website is among Stelor's most important priorities. To ensure its ability to do so, Stelor must have immediate and unfettered access to the domain names. Despite Stelor's constant urging, Defendant insists on keeping those domain names under lock and key thereby jeopardizing Stelor's substantial investment of time, money, talent, and creative energy.

10. In sum, and as detailed fully below, Defendant is fixated on controlling every aspect of the "Googles" development. Defendant continually and persistently eschews his contractual commitments and obligations, holding key information and documents hostage, interfering with Stelor's daily activities, and endangering Stelor's business prospects with threats to make unauthorized contacts with the media and prospective customers.

11. By itself, Defendant's constant intermeddling, cajoling, and criticism of Stelor's genuine good faith efforts constitute a breach of Defendant's express contractual obligation to "cooperat[e] in every way necessary and desirable to strengthen, establish or maintain the "Googles" intellectual property and related assets." Defendant, however, couples this material breach with a series of past, current, and threatened material breaches, as touched upon above and explained more fully below. And now, in an attempt to divert attention from its own breaches of the contracts, Defendant charges Stelor with having breached its contractual obligations, without any basis in law or in fact.

12. Stelor has embraced enthusiastically its duty to transform the "Googles" story and characters into a thriving entertainment phenomenon. Stelor bargained for, and obtained, the right to do so with Defendant remaining squarely in the background, cooperating fully when called upon, and not placing stumbling blocks in Stelor's path. Stelor has lived up to its obligations, Defendant has not. Having exhausted all reasonable avenues and approaches for resolving its differences with Defendant amicably, Stelor now brings this action for a specific performance of its contracts with Defendant, for a declaratory judgment that Stelor has complied with all of its contractual obligations, and for damages.

**THE PARTIES, JURISDICTION AND VENUE**

13. Stelor is a Delaware corporation having its principal place of business at 14701 Mockingbird Drive, Darnestown, Maryland 20874.

14. Silvers is a resident of Palm Beach County, Florida.

15. This court has subject matter jurisdiction based on diversity of citizenship under 28 U.S.C. § 1332(a). The parties are residents of different states and the matter in controversy exceeds the sum or value of seventy-five thousand dollars (\$75,000), exclusive of interest and costs. This Court also has jurisdiction under the Declaratory Judgment Act, 28 U.S.C. § 2201, because the parties' irreconcilable differences in the interpretation of specific contractual provisions, combined with the Defendant's threats to terminate the License Agreement and to bring suit against Stelor for breach of contract, give Stelor a reasonable apprehension of imminent litigation and have created a justiciable case or controversy between the parties.

16. Stelor's claims arise in whole or in part in the Southern District of Florida. One of the contracts at issue in this action specifically provides that all disputes under the contract are to be resolved by Florida courts and that the parties consent to jurisdiction in this Court. Silvers also resides in this District. Venue is accordingly proper pursuant to 28 U.S.C. § 1391(a).

#### **FACTUAL BACKGROUND UNDERLYING STELOR'S CLAIMS**

17. Stelor was formed in 2002 to commercialize and bring to market various products and services based upon "The Googles," a high-quality, educationally-based concept targeted to children in the 2-10 year age range. "The Googles" concept is designed to entertain and educate young children by presenting them with various social and environmental messages in the context of enjoyable storylines. Stelor operates and maintains its primary website at [www.googles.com](http://www.googles.com).

18. Defendant is the owner of the Googles Intellectual Property. On June 1, 2002, Stelor and Defendant entered into a "License, Distribution, and Manufacturing



Agreement" (see Ex. 1, hereinafter referred to as the "License Agreement") which gave Stelor the sole and exclusive, worldwide license to commercialize the GOOGLES characters (the "Licensed Property") and the GOOGLES trademarks (the "Licensed Trademarks" or the "Googles Trademarks"). Specifically, ¶1A of the License Agreement provides:

LICENSOR hereby grants to LICENSEE for the Term of this Agreement as recited in "Schedule A" hereto, the exclusive (even as to LICENSOR), worldwide, sub licensable right and license to use, reproduce, modify, create derivative works of, manufacture, have manufactured, market, advertise, sell, distribute, display, perform, and otherwise commercialize the Licensed Products and Licensed Properties in the Territory. The license includes a license under any and all intellectual property and interests therein, including by way of explanation, products which deal with the creative characters known as The Googles, anything that contains the letters GOO (in upper or lower case) together with any and all products, which comprise and which will comprise those characters, likenesses, which include Iggie, Oogle, Oggie, Gooroo, Gootian(s), the planet Goo, slides, computer websites, membership lists, clubs, materials, patterns, prototypes, logos, trademarks, service marks, clothing, merchandise, educational products, marketing and promotional data and tools, packaging and advertising, modifications, updates and variations, and all other items associated therewith whether in singular or plural.

With respect to the Licensed Trademarks, ¶1B provides:

LICENSOR hereby grants to LICENSEE for the term of this Agreement as recited in "Schedule A" attached hereto, the exclusive (even as to LICENSOR), worldwide, sub licensable right and license to use the Licensed Trademarks on or in connection with the Licensed Products as well as on packaging, promotional, and advertising material associated therewith.

Significantly, the license has at all times been exclusive even as to the Defendant. (Ex. 1, ¶¶ 1A, 1B.)

19. The Licensed Trademarks include the following trademarks: GOOGLES (Reg. No. 2,087,590); GOOROO (App. No. 76/591,381); IGGLE (App. No. 75/655,710);

OGGLE (App. No. 75/655,709); OOGLE (App. No. 75/655,711); and about eighteen (18) others.

20. Stelor's exclusive license specifically extends to websites and domain names (see Ex. 1, ¶1A), and includes the following domain names: GOOGLES.COM, GOOKIDS.COM, GOOTOYS.COM, PLANETOFGOO.COM, GOOMAIL.NET, THEGOOGLESMAIL.COM, GOOGLESMAIL.COM, GOOGLESFROMGOO.COM, OOGLESFROMGOO.COM, THEGOOGLES.COM, THEGOOGLESFROMGOO.COM and approximately eighty (80) more (hereinafter referred to as the "Googles Domain Names").

21. Under the License Agreement, Defendant granted to Stelor "all right, power and interest to seek, obtain, and maintain all Intellectual Property Rights associated with the Licensed Intellectual Property and Licensed Trademarks, Licensed Copyrights, and other Intellectual Property Rights." (Ex. 1, ¶ 8A.) Defendant also agreed to "assist [Stelor] as may be required to apply for and obtain recordation of and from time to time enforce, maintain, and defend [the Licensed] Intellectual Property Rights." (Id.) Further, Defendant granted Stelor an irrevocable power of attorney to execute and file all documents necessary to secure, enforce, and maintain the rights to the Intellectual Property. (Id.) This power of attorney gives Stelor the exclusive right and duty to file, maintain, and renew all domain name registrations and trademark applications and registrations relating to the Intellectual Property. The License Agreement expressly requires Defendant to cooperate with and assist Stelor in securing and maintaining the rights to the Intellectual Property. (Id.)

22. The irrevocable power of attorney granted to Stelor under Paragraph VIII(A) of the License Agreement, which gives Stelor the exclusive right to "maintain" all Intellectual Property Rights on behalf of the Defendant, specifically gives Stelor the exclusive right to "defend" all actions brought by third parties challenging the Intellectual Property Rights. On November 22, 2004, Google, Inc. brought a cancellation proceeding at the Trademark Trial and Appeal Board ("TTAB") against the Defendant to cancel the Defendant's registration for GOOGLES & Design (Reg. No. 2,087,590). This proceeding is currently pending before the TTAB. An answer to Google, Inc.'s petition for cancellation is due on November 9, 2004.

23. In furtherance of its rights and duties, Stelor has applied for and maintains numerous federal trademarks and service marks listing Silvers Entertainment, Defendant's company, as the owner and has specified that all correspondence between the USPTO and Stelor be mailed to Stelor's duly appointed counsel of record.

24. The License Agreement expressly provides that Stelor "shall have the sole right, in its discretion and at its expense, to take any and all actions against third persons to protect the Intellectual Property Rights licensed in this Agreement." (Ex. 1, ¶11A.) Stelor duly exercised this right on July 6, 2004 when it filed at the TTAB a petition to cancel the trademark registration for GOOGLE (Reg. No. 2,806,075) by Google, Inc., and a Notice of Opposition against Google, Inc.'s application for GOOGLE (Ser. No. 76/314,783). These actions are currently pending before the TTAB. The License Agreement (see ¶ 11B) obligates Defendant to "cooperate in every way necessary and desirable" in any action brought by Stelor to protect the Licensed Intellectual Property Rights.

25. On June 1, 2002, Stelor and Defendant also entered into a Consulting Agreement in which Stelor engaged Defendant as a creative consultant. (See Ex. 2.) The Consulting Agreement expressly requires Defendant, *inter alia*, to “use his best efforts” to perform such services as may be requested by Stelor including “executing all papers and otherwise cooperating in every way necessary and desirable to strengthen, establish, or maintain any intellectual property right granted under this Agreement or the License, Distribution and Manufacturing Agreement.” (Ex. 2, ¶ 3A.) The Consulting Agreement further prohibits and excludes Defendant from attempting to “direct or control the daily activities” of Stelor. (Ex. 2, ¶ 2.)

26. Both the License Agreement and the Consulting Agreement provide that Defendant “shall not initiate or maintain any relationship or conversation with [Stelor’s] current or prospective clients, vendors... the media (press etc.)” unless asked to do so or permitted by Stelor. (Ex. 1, ¶ 8E; Ex. 2, ¶ 2.) In short, through these Agreements, Defendant gives Stelor the opportunity and right to develop the Licensed Property and to exploit and protect the Licensed Trademarks and other Intellectual Property without unwanted participation by or interference from Defendant.

27. The License Agreement imposes only three affirmative obligations upon Stelor. Paragraph (V)(B)(iii) of the License Agreement requires Stelor to “use its commercially reasonable efforts to promote, market, sell and distribute the Licensed Products.” Paragraph (VI)(C) of the License Agreement provides that, “Prior to the commencement of manufacture and sale of the Licensed Products, [Stelor] shall submit to [Defendant] for his input, at no cost to [Defendant], a reasonable number of samples of all Licensed Products which [Stelor] intends to manufacture and sell and of all

promotional and advertising material associated therewith." And, lastly, Paragraph (VIII)(A) obligates Stelor to obtain, maintain, enforce, and defend the licensed intellectual property rights. Despite Defendant's claims to the contrary, Stelor has complied with its obligations under the License Agreement and the Consulting Agreement, and has further invested substantial sums of money to promote and protect the Googles Intellectual Property.

#### **DEFENDANT'S WRONGFUL ACTS**

28. In breach of the License Agreement and/or the Consulting Agreement, Defendant has engaged in a pattern and practice of interfering with Stelor's business operations in violation of his express duty to cooperate, in violation of his duty to refrain from interfering with the daily activities of Stelor, and in violation of the irrevocable power of attorney Defendant granted to Stelor. This pattern of interference includes, but is not limited to, the following:

- (a) Defendant has unilaterally, without authorization from Stelor, instructed the USPTO to send all correspondence for each application and registration for the Googles Trademarks to "Steven A. Silvers / Silvers Entertainment Group, Inc. / 8983 Okeechobee Blvd., Ste 202, PMB 203 / West Palm Beach, FL 33411" instead of Stelor's duly appointed attorneys. This clearly violates Stelor's sole right, power, and duty to deal with the USPTO regarding the registration and maintenance of all the Googles Trademarks. Defendant's actions are not authorized under his limited role as a creative consultant and violate the parties' agreements.

- (b) Defendant has repeatedly refused to provide Stelor with access to the Googles Domain Names by locking these Domain Names with the domain name registrar and by refusing to disclose to Stelor the passwords for these Domain Names. By not giving Stelor immediate, full and unfettered access to the Domain Names, Defendant is in material breach of the License Agreement and the Consulting Agreement which forbid him from interfering with, "direct[ing]", or "control[ling]" the daily activities of Stelor, and which require Defendant to assist Stelor and cooperate "in every way necessary" in connection with Stelor's maintenance of the Googles Intellectual Property. Defendant has also made it abundantly clear in correspondence to Stelor's counsel that he has "absolutely no intentions" of turning over to Stelor the passwords for any of the Googles Domain Names, and that the only way he will turn over these passwords is "when a judge orders [him] to do so."
- (c) Defendant has repeatedly threatened to communicate with the press without requesting prior authorization from Stelor.
- (d) In breach of the License Agreement which expressly gives Stelor the exclusive right to take legal action against third parties infringing the Googles Intellectual Property, on October 5, 2004, Defendant improperly sent a letter to Stelor's counsel purporting to instruct Stelor's counsel to take no further action in the two proceedings (the cancellation and opposition) before the TTAB instituted by

Stelor against Google, Inc. That law firm currently represents Stelor in these proceedings against Google, Inc.

- (e) In breach of the License Agreement which expressly gives Stelor the exclusive right to defend all actions brought by third parties challenging the Googles Intellectual Property Rights, Defendant has purported to instruct Stelor's counsel to take no action in the proceeding brought by Google, Inc. at the TTAB to cancel the registration for GOOGLES & Design (Reg. No. 2,087,590), and has indicated to Stelor that he intends to defend the cancellation proceeding himself, although the License Agreement gives Stelor the sole right to do so.

29. Each of the above actions, by itself, constitutes a material breach of the Licensing Agreement and/or the Consulting Agreement. Taken together, they establish a pattern and practice of undermining Stelor's legitimate business interests and have prevented Stelor from receiving the full benefits of its rights under these agreements.

30. In an attempt to divert attention from its own breaches of the Licensing Agreement and the Consulting Agreement, Defendant has charged Stelor with breaching various provisions of these agreements, without any basis in law or in fact. Defendant has also threatened to take legal action if Stelor does not remedy its alleged breaches.

#### INJURY TO STELOR

31. By ordering the USPTO to send communications directly to Defendant rather than to Stelor, Defendant has improperly interfered with and impaired Stelor's

ability to obtain and maintain the commercially valuable Googles Trademarks and is preventing Stelor from complying with its obligations to do so. In the event Defendant fails to inform Stelor of required actions to maintain the applications and registrations for the Googles Trademarks, these applications and registrations will lapse and the rights to the Googles Trademarks could be irrevocably lost, causing Stelor irreparable injury.

32. By keeping the passwords for the Googles Domain Names under lock and key and preventing Stelor from accessing these Domain Names, Defendant is improperly interfering with Stelor's ability to conduct its day-to-day business operations that depend on having full and unfettered access to the Domain Names.

33. By denying Stelor free and unfettered access to the googles.com domain name and other Googles Domain Names, and ordering the USPTO to direct all correspondence to Defendant himself rather than to Stelor's appointed counsel, Defendant is improperly interfering with Stelor's ability to fully perform its obligations under the License Agreement to promote, market, sell, and distribute the Googles Intellectual Property. (Ex. 1, ¶ 5B.)

34. By improperly instructing Stelor's counsel to take no further action in the cancellation and opposition proceedings Stelor has lawfully instituted against Google, Inc., and by Defendant's continued interference with Stelor's business, Defendant has forced Stelor to incur needless legal fees and expend the time and attention of management to deal with impulsive, counterproductive actions which Defendant has no right or authority to take, and which interfere with Stelor's exclusive rights under its Agreement with Defendant. Furthermore, Defendant is interfering with and attempting



to prevent Stelor from complying with its obligations to enforce the Intellectual Property rights.

35. By improperly instructing Stelor's counsel to take no action in the cancellation proceeding Google, Inc. has instituted to cancel the GOOGLES & Design registration, and indicating to Stelor that Defendant will defend the action himself, Defendant has improperly interfered with Stelor's rights and ability to maintain and defend the Googles Intellectual Property Rights. Defendant has expressed that he is "not in any position" to retain counsel and will likely defend this action pro se. Any unilateral actions or submissions by Defendant could undermine or conflict with Stelor's rights, efforts, and ability to defend the Googles Intellectual Property Rights, may result in the impairment or loss of these rights, and would irreparably harm Stelor.

36. By wrongfully accusing Stelor of having breached its contractual obligations and threatening to take legal action against Stelor, Defendant has forced Stelor to incur needless legal fees and expend the time and attention of management to deal with charges that have absolutely no basis in law or in fact.

37. As a direct and proximate result of the actions of Defendant as alleged in this Complaint, Stelor has been irreparably injured and has suffered monetary damages in an amount to be proven at trial, but in excess of \$75,000.

38. Stelor has no adequate remedy at law.

**FIRST CLAIM FOR RELIEF**  
**BREACH OF CONTRACT UNDER FLORIDA STATE AND COMMON LAW**

39. Stelor repeats and realleges the allegations set forth in paragraphs 1 through 38 hereof.

40. Defendant's material breaches of the License Agreement and the Consulting Agreement have caused, continue to cause, and will cause Stelor irreparable injury.

41. Defendant's material breaches of the License Agreement and the Consulting Agreement constitute a breach of contract under Florida state and common law and have caused damages in an amount not yet determined.

**SECOND CLAIM FOR RELIEF  
DECLARATORY JUDGMENT UNDER THE  
DECLARATORY JUDGMENT ACT, 28 U.S.C. § 2201**

42. Stelor repeats and realleges the allegations set forth in paragraphs 1 through 41 hereof.

43. Defendant's baseless charges that Stelor has breached its contractual obligations under the License Agreement, and Defendant's reliance on these alleged breaches to ignore his own contractual obligations, have given rise to irreconcilable differences in the interpretation of specific contractual provisions under the License Agreement.

44. Defendant's threats to commence litigation and his refusal to comply with his contractual obligations without a court order, have created in Stelor a reasonable apprehension of imminent suit and given rise to a justiciable case or controversy between the parties.

45. Without the court's declaration of Stelor's rights under the License Agreement, and without the court's declaration that Stelor has at all times complied with its obligations under the License Agreement, Defendant will continue to refuse to honor its contractual obligations and thereby continue to cause irreparable injury to Stelor and the Licensed Intellectual Property.

**PRAYER FOR RELIEF**

WHEREFORE, Stelor prays that this Court enter judgment in its favor on each and every claim for relief set forth above and award it relief including, but not limited to, the following:

A. A temporary restraining order and a preliminary and permanent injunction requiring Defendant to instruct the USPTO to send all communications regarding the Googles Trademarks to Stelor's duly appointed counsel:

prior to 1/15/05	Laurence R. Hefter Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P. 1300 I Street NW Washington DC 20005
after 1/15/05	901 New York Avenue Washington DC 20001

B. A temporary restraining order and a preliminary and permanent injunction enjoining Defendant from taking any action in the pending cancellation proceeding Google, Inc. has brought against Defendant to cancel the registration for GOOGLES & Design (Reg. No. 2,087,590).

C. An Order (i) prohibiting Defendant from communicating with the USPTO regarding the Googles Trademarks in the future; (ii) requiring Defendant to disclose to

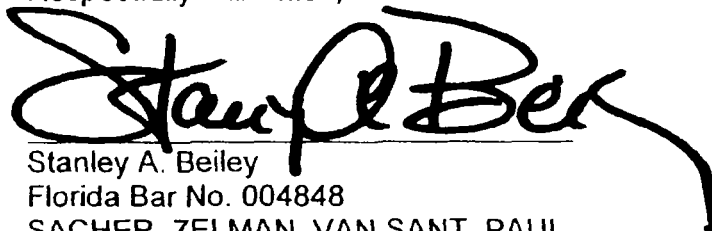
Stelor the passwords to all the Googles Domain Names, and an Order prohibiting Defendant from changing the passwords to the Googles Domain Names in the future; and (iii) prohibiting Defendant from communicating with any of Stelor's current or prospective clients, vendors, the media, or the press.

D. A Declaratory Judgment that Stelor has complied with its contractual obligations under the Licensing Agreement, and a Declaratory Judgment confirming that Stelor has the exclusive right to bring and defend actions relating to the Googles Intellectual Property Rights.

E. Plaintiff further prays for a Judgment against Defendant in the amount of Stelor's damages plus its reasonable costs, disbursements, and attorneys' fees to the extent permitted by law; and such other relief as the Court may deem appropriate.

Dated:

Respectfully submitted,



Stanley A. Bailey  
Florida Bar No. 004848  
SACHER, ZELMAN, VAN SANT, PAUL,  
BEILEY, HARTMAN, ROLNICK &  
WALDMAN P.A.  
1401 Brickell Avenue, Suite 700  
Miami, FL 33131  
Tel: 305-371-8797  
Fax: 305-374-2605

Of Counsel:

Laurence R. Hefter  
FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.  
1300 I Street, N.W.  
Washington, D.C. 20005-3315  
(202) 408-4000

Attorneys for Plaintiff,  
STELOR PRODUCTIONS, INC.

TO REORDER CALL 954-846-9399



RECYCLED PAPER



IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT FLORIDA

STELOR PRODUCTIONS, INC.  
(a Delaware Corporation)

Plaintiff,

V.

STEVEN A. SILVERS  
(a resident of Palm Beach County, Florida),

Defendant.

CASE NO. 04-80954 - CIV - HURLEY

Magistrate: Judge James M. Hopkins

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
PLAINTIFFS' EMERGENCY MOTION FOR PRELIMINARY INJUNCTION**

**I. INTRODUCTION**

Plaintiff brings this Motion for a Preliminary Injunction to enjoin the Defendant from unilateral actions which materially breach his contractual obligations and, if left unchecked, will further undermine and irreparably injure the Plaintiff, its business, and the intellectual property rights which Defendant has licensed and entrusted exclusively to the Plaintiff.

**II. STATEMENT OF FACTS**

In or about 1991, Defendant Steven A. Silvers ("Defendant" or "Silvers") authored a children's book entitled "Googles and the Planet of Goo." (Declaration of Steven A. Esrig ¶ 3, attached as Ex. 1.) The book made little critical or commercial impact when it

~~NON-COMPLIANCE OF S.D. Fla. L.R.~~ SILVERS

# **Exhibit 5**

Laurence R. Hefter, esq.  
Attorney at Law  
Finnegan Henderson Farabow Garrett & Dunner, LLP  
1300 I Street, NW  
Washington, D.C. 20005-3315

October 5, 2004

Re: Silvers Response To Your September 15, 2004 Letter

Dear Larry:

Allow me to apologize for not getting back to you sooner. However, as you very well know we sustained back-to-back hurricanes here in West Palm Beach and while I was fortunate to escape minimal damage with Frances, I wasn't as lucky with Jeanne.

Nevertheless, I would like to respond to your letter as follows:

1. The Stelor Option shares were supposed to have been provided to me at a reasonable time after the signing of the original Agreements with Stelor. Not some 25 plus months later. Stelor has given me one excuse after another for not complying with its obligations under our current agreements. For instance: In Silvers Consulting Agreement executed on May 9, 2002 it states at [page 1, section 1 b.] "Stelor will write an agreement with Consultant granting him options for 1,000 shares of Stelor's stock under Stelor's stock option plan". This agreement was supposed to have been executed within a reasonable period of time. Not 27 months into the 30-month Consulting Agreement. I would say 27 months is rather unreasonable.
2. Moving right along. The Consulting Agreement also states, and we've been over this more than once, that "Company (Stelor) will continue to reimburse the Aurora Collection, Inc. for the existing health plan if available, or if not available, will reimburse consultant \$300.00 per month during the term of this Agreement". The Agreement doesn't state that Stelor will reimburse Aurora a specific amount of money toward the premium of the existing health insurance agreement. Since Aurora has had and continues to have, in place, an existing health plan, which has been the same exact "health plan" I've had since day one, then what ever the premium is for the said health plan should be entirely borne by Stelor. It's not my fault nor should I be penalized as such, that the health plan has increased its premiums over the course of the Consulting Agreement. The Consulting Agreement makes no mention whatsoever that I am to be responsible for any increases over and above what Stelor started out paying. My position has never wavered from day one on this issue. Aurora continues to have in place a health care plan that they have



maintained for me since June 2, 2002. Stelor was suppose to reimburse Aurora as called for by the Consulting Agreement each and every month for 30 consecutive months whatever the premium was that Aurora was being billed. That is what "continue to reimburse" means. I've incurred several thousands of dollars in contributory premiums that I should not have been required to pay. This is a breach of the agreement as far as I'm concerned. I've informed Stelor about this on numerous occasions and they've never agreed to remedy the situation. Your response to this issue is "unacceptable".

3. As to domain name reimbursements. I have submitted to you a bill for the past two months of expenses that I've incurred to renew domain names in the months of August and September. I've informed you that in October and November there would be another some 26 plus names that are due to be auto renewed by me. I would prefer to submit to you every two months rather than every quarter my domain name invoices if you don't mind. I would expect payment to be made within (7) days from receipt of said invoice(s). I don't believe this request to be unreasonable.
4. With regard to the last quarter royalty statement. I informed you in my last correspondence that the Royalty Statement for the period ending on June 30, 2004 was in error. I explained to you exactly what needed to be corrected. I informed you that the statement reads at the very top for the quarter April 1, 2004 through June 30, 2004. However, where the months are supposed to be listed and broken down as to sales, etc., it states the wrong months. The royalty statement was in error and needs to be corrected and resubmitted to me as I have informed Stelor on no less than (3) occasions already. Also, you have mentioned that for the 2<sup>nd</sup> quarter (April, May, & June) that there were no new sub-licensees. However, I would argue that I-Tunes was a new sub licensee that was added during this quarter since the Googles' music was being sold and downloaded during this period. They were not properly listed in this Royalty Statement nor was there any revenue listed for this period as well for this company.
5. I informed you in my last correspondence that Stelor has once again failed to comply with the mandates set forth in our existing Licensing Agreement (LA) as it pertains to "Notices, Quality Control, and Samples". They did so when they failed to comply by going to the Licensing Show in June of this past year without properly following the requirements of the LA and they did so once again by not having complied with Section VI C, when they began selling music downloads and music CD's through I-Tunes. Both of these examples are specific and undeniable breaches of the LA, which are inexcusable. Just another example of how Stelor has continued to disrespect the Licensor/Licensee relationship by doing what it chooses when it chooses and not following the LA as called for. I will, for the record once again quote from the LA: At VI. C.: "Prior to the commencement of manufacture and sale of the Licensed Products, Licensee shall submit to Licensor for his input, at no

cost to the Licensor, a reasonable number of samples of "ALL" Licensed Products which Licensee intends to manufacture and sell and of "ALL" promotional and advertising material associated therewith". As we both very well know, this has NEVER been adhered to nor complied with by Stelor. They failed to do so with the advertisements placed in the Licensing Show in 2003 and 2004. They failed to provide me with samples of their premium handout bags before the 2004 Licensing Show. They failed to provide me with other promotional pieces, which depicted my name in as small of print as could be seen by the naked eye on several promotional pieces that I would have certainly called to their attention had I had the benefit of seeing copies of the said advertisements prior to printing. I saw nothing and I was NEVER sent anything for my "input". Then, once again when it came time for executing an agreement with I-Tunes I was not provided, as required by the LA, any samples of the finished music CD's for my "input". There have been other instances of advertising and promotional pieces that I've never seen until after the fact. All of which are in violation of the LA. With all due respect, Larry, your response to this issue in your September 15, 2004 letter is unacceptable. An omission of wrong doing by Stelor would have been a far better approach to responding to this issue than how you chose to do so. Stelor had the duty, obligation and legal responsibility to adhere to this caveat from day one, not some 27 plus months into our Agreement with a statement from you that this will not happen again.

6. You have wrongfully informed me and once again have obviously been misinformed by Stelor into believing that what they have told you was true as it pertained to them not having any domain names listed in Steven Esrig's name. I informed you, by raising my voice, at the meeting in New York, if you recall, that Mr. Esrig was not being candid with his remarks to everyone about NOT having any Googles or Googles related domain names listed in his name. He categorically informed everyone that I was lying and that he had NO domain names that were listed in his name. That meeting has long passed and you would have thought by now that the changes would have been made so that Mr. Esrig's remarks could have remained consistent with the truth. However, I am sorry to inform you that nothing could be further from the truth. If you go to: [www.new.net](http://www.new.net) and then type in the search bar the domain names listed below, you will quickly see who was not being truthful and why I am furious to this day as to what I've had to deal with all of this time and you wonder why I reacted the way I did during the NY meeting. I have records and copies of all of this from back during the NY meeting and copies once again several months later to prove that they were never changed. Here are some of the names registered to Steven Esrig as "Owner": 1). Googles.kids, 2). Googles.club, 3). Googles.shop, 4). Googles.game, 5). Googles.chat, 6). Googles.family, to name a few. I am sure there are others, perhaps many others. The point being is that you have misrepresented to me the truth as I know it and as you will soon

know it to be. Remember you must first go to: [www.new.net](http://www.new.net). Once there you must then type in the search bar the names as I've noted and you will see for yourself that Steven A. Esrig is listed as the "Owner" of all of these names and underneath his name is his e-mail address, plus the company's address and phone number. All of these names were created on October 10, 2003 and due to be renewed in seven more days. I rest my case on this issue, which is another indication that Mr. Esrig has once again seriously violated the breath and width of our LA and once again disrespected the Licensor/Licensee relationship.

7. I don't see the necessity of delving into the other unresolved matters at this time. There are enough unresolved matters listed above to deal with without having to discuss any more at this time, as far as I'm concerned.
8. As to the issue of the domain name password. I've informed Stelor on numerous occasions as did my previous counsel, Larry Stumpf, that I have absolutely no intentions of turning over to Stelor the passwords of any of the Googles' and Googles' related domain names. I stated my reasons in many e-mails, and official letters of correspondences to Stelor and to Stelor's counsel over the last 18 plus months. I've made myself perfectly clear on this sensitive issue. I sent to Stelor's IT executive several months ago my response to his inquiry that you had forwarded to me. I've never heard back from anyone. I was willing to work with Stelor to accomplish their urgent needs as communicated to me via an e-mail that was forwarded to me by Stelor and I promptly responded and never heard another word. I guess it must not have been all that urgent. I've maintained the domain name renewals without losing a single name for lack of an untimely filing. Something Stelor cannot boast about. They cost me to lose several very important domain names that were mine and they failed to timely renew them and as a direct result of Stelor's failure to do so, I lost them forever. Once again, no excuse. Stelor had them in their possession and they chose not to renew them without even giving me the courtesy of letting me know so that I could have chosen to do so on my own and at my own expense. I never got so much as an apology for this screw up on Stelor's behalf. I do not wish for you to bring up this password issue again unless you determine that you wish to settle the matter in court because that is the only way that I'm going to turn the passwords over to Stelor is when a judge orders me to do so.
9. I have received the Marty Jeffrey video. I will be returning it to you under separate cover. I enjoyed Marty's presentation and his impressive background. However, at this time I must respectfully decline his offer to conduct a video interview of me for reasons I shall further explain below. However, I wish to thank Marty for his introduction letter and I wish him all the luck in the world with his new position at Stelor.
10. As to you asking me to "strongly" consider an arrangement to sell my rights in the Googles IP to Stelor at this time, I must, for many obvious reasons respectfully decline. Furthermore, I don't believe that Stelor could afford to pay me what I would ask them for. And to be quite frank

with you, after having read the recent documents that were sent to me from Bill Borchard's office on Friday of this past week, I would seriously doubt that I would entertain selling my rights to Stelor after reading about how much harm they have now caused me and will continue to cause me as a direct result of their actions and the actions of their trusted trademark counsel at the time, which now seems to have caused me "irreparable" harm.

In closing, I must inform you that I am terribly disappointed with all that has transpired these past several months. Especially after having read and reread the documents submitted to me by Bill this past week. They were disconcerting to say the least.

Now I find myself in a legal battle with one of the most powerful corporations in perhaps the world as a direct result of Stelor's counsel's ineptness, and Stelor's inability to have listened to me prior to going forward with their litigation plans against Google.com.

I was NEVER informed about any legal action being planned against Google.com. As a matter of fact Mr. Esrig told me just the opposite all along. I was informed that to sue Google.com would prove to be a disaster and that Stelor was planning to try and negotiate with them. I was further told and so informed by Bill Borchard during our NY meeting, where you, too, were present, that there were several telephone conversations that proved favorable and that Google was waiting to hear back from Stelor as to what they were looking for. Bill had informed everyone at the meeting that the conversations were favorable and things were looking up for a meeting with Google to work things out. Next thing I learn is Stelor sued Google.com without me, as the Licensor, ever being consulted nor asked about my opinion and to add insult to injury Stelor made the huge blunder of placing its name as the Party Plaintiff instead of mine, very well knowing or they should have been properly advised by Bill and perhaps you as well, that Stelor has NO standing to bring any such action against Google because Stelor does not possess any ownership rights to any of the Googles IP rights.

So I now find myself having to defend against the search engine giant in a "Cancellation" proceeding, directly against me, in the USPTO Administrative Court to defend against the very real possibility that I may wind up losing my Googles' trademark and my Googles' name when all is said and done. All of this due to Stelor's actions, not mine.

Furthermore, it certainly now is more apparent than ever that Stelor and Silvers now have severe "conflict of interest" issues. Bill is defending Stelor in two separate proceedings that Stelor cannot, in my personal and professional opinion prevail. They lack standing and as such the court will most likely dismiss the

proceedings against Google.com. Hopefully "without prejudice" and not "with prejudice".

I, on the other hand, am not in any position to retain counsel to defend myself against Google so I will be forced to go it alone and defend myself the best I can. Since I may very well find myself in a legal riff with Stelor in the very near future therein lies further conflicts of interest issues should Bill or someone he may recommend look to defend me against Google.com. It seems like a real mess to me and one that is only going to unravel more and more as the weeks unfold and things begin to get really sticky with discovery issues and depositions, etc.

I'm sorry it has all come down to this and even more sorry that it looks like neither myself nor Stelor is going to realize our dreams to have made something Goo come from my Googles' creation for all of us.

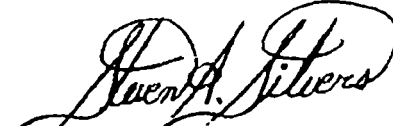
My plans are to confer with new counsel on a consulting basis only in order to further explore what my options are at this time. I will soon thereafter get back with both you and Bill to inform you as to what I plan to do in order to properly protect what little that is left for me to protect.

I assume that September's consulting fees and health insurance premium was already sent out. If not, please let me know what Stelor's position is going to be in this regard for September's obligations? Thank you!

No hard feelings, Larry, but in my opinion, things have gotten totally out of control. Accordingly, I can't afford to stand by on the sidelines and run the very real risk of losing all that I've worked so very hard to achieve for my family and loved ones.

Like I stated above, I will be back in touch with you within a week or so, once I've had the opportunity to confer with some legal advisors that I'm planning to begin a dialogue with shortly.

Respectfully submitted by,



Steven A. Silvers

Mailed Certified, Return Receipt Requested  
Receipt Number: 7004 0550 0000 5867 9024

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CASE NO. 04-80954-CIV-HURLEY/HOPKINS

PLAINTIFF'S OPPOSITION TO DEFENDANT'S  
MOTIONS TO STRIKE "EMERGENCY" LABEL OF  
PLAINTIFF'S MOTION FOR PRELIMINARY  
INJUNCTION, TO EXTEND TIME TO RESPOND,  
AND TO INITIATE DISCOVERY

# Exhibit A

---

**From:** "Yano Rubinstein" <yano@sumrub.com>  
**To:** <sesrig@stelorproductions.com>  
**Date:** Thu, Nov 4, 2004 10:47 AM  
**Subject:** FW: Steven Silvers

-----Original Message-----

**From:** GAIL A MCQUILKIN [mailto:gam@kttlaw.com]  
**Sent:** Wednesday, November 03, 2004 7:18 PM  
**To:** yano@sumrub.com  
**Subject:** Steven Silvers

Mr. Rubinstein -

This firm represents Mr. Steven Silvers. We learned today that you filed an action against Google, Inc. challenging the Google.com domain name, and represented in that proceeding that you are counsel for Mr. Silvers. Our client did not retain you, did not authorize this action, and had no knowledge of this action until he received these documents today.

On behalf of Mr. Silvers we demand that you immediately dismiss this action against Google, and advise Google that this action was not authorized by Mr. Silvers. And, I suggest strongly that you call me in response to my voice mail message as soon as possible to explain why you filed this action without the knowledge or consent of our client.

Gail A. McQuilkin  
Kozyak Tropin & Throckmorton

---

**CC:** <larry.hefter@finnegan.com>





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CASE NO. 04-80954-CIV-HURLEY/HOPKINS

PLAINTIFF'S REQUEST TO RECONSIDER  
AND VACATE THE NOVEMBER 4, 2004  
ORDER DENYING EMERGENCY STATUS  
FOR PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION  
IN LIGHT OF NEW FACTS OR, IN THE  
ALTERNATIVE, FOR A  
TEMPORARY RESTRAINING ORDER

# Exhibit J

**Stelor Productions, Inc.**  
**Attn: Steve Esrig, President/CEO & Stelor Board of Directors**  
**14701 Mockingbird Drive**  
**Darnestown, Maryland 20874**

**March 1, 2004**

**Re: Formal Notice & Request For Action & Written Dispositions**

**Dear Steve:**

**I would like to preface this letter by informing you that I would not be a responsible Licensor if I didn't choose to address, at this time, the issues you are about to read. Kindly review them in an unbiased manner. Thank you!**

**This letter shall serve as a formal notice to Stelor, in accordance with our existing Licensing Agreement, regarding certain issues that have yet to be resolved to my satisfaction.**

**I know that you and I have spoken several times on the issues that I'm about to formally address, however, as I have recently placed in writing to you via an e-mail that was addressed to Julie on Wednesday, February 25, 2004, I had explained therein that I would be sending Stelor a formal notice outlining the issues that I believe are still in need of resolving so that we may move forward in a non-adversarial manner.**

**IRRELEVANT MATERIAL REDACTED**

6) Last but not least, I want to spend a little time on my concerns regarding the issues of the pending Google.com and other similar potentially infringing parties surrounding the Googles' IP. First of all I want to make myself perfectly clear so that there are no misunderstandings. I have heard you repeat to me on more than one occasion about my having granted Stelcor the "exclusive" power of attorney as it appears in our existing Licensing Agreement. I've read and reread this clause and while I fully acknowledge that this is the case, I do not subscribe to your theory or what your lawyers are supposedly informing you, as you've recently indicated to me, that in the event of any litigation on behalf of protecting the Googles' IP that such causes of action shall be brought on behalf of Stelcor and not me at all. If you read the agreement properly you will note that I am the Googles' IP owner. And while Stelcor may have the power of attorney or in essence the exclusive right to sign my name to legal papers had I was personally present, nevertheless, that right only exists as it pertains to signing "MY" name and not Stelcor's. Thus, any and all causes of action regarding the infringement of or the protection of the Googles' IP shall be brought in my name and only my name and anything to the contrary will ultimately wind both of us in a serious adversarial hole. You have the right to insure, as the Licensor, that your rights are properly protected and as such you have the right to bring, if you so choose, legal action against any and all potential infringers or violators against the Googles' IP. However, any and all such causes of action shall be brought in my name as the owner of the IP and since there is NO mention in any of our Agreements that speaks to the issue of settlement from such violators and/or infringers, (which was most likely an oversight on both of our parts) we will have to, as I now see it, go back to the drawing board and eke out a fair and equitable arrangement that we can both live with regarding dispersment of any and all compensation whether monetary or otherwise, should a settlement, compromise, an award or arbitration/mediation take place that results in a favorable outcome for me as the Licensor from any litigation(s) that are now evident and for which we must now vigorously pursue. You have recently apprised me of your dilemma regarding pursuing such litigations and the sending of cease and desist letters and/or initiating any WIPO/UDRP proceedings against existing offenders that I have brought to your attention such as: Google.com, Google.org, and those that you have brought to my attention such as: Zoogles, Booble, etc. And I'm sure that as time goes by there will be others we'll need to go after. However, you have also made it equally clear to me that at this time Stelcor is not in any position to champion an attack against any of these infringers, esp. that of Google.com due to the financial hardship this could potentially cost Stelcor. While I can certainly appreciate Stelcor's position in this regard, as the Licensor you must equally appreciate my position in trying to maintain a sense of balance between your needs and those of the Googles' trademark(s) and all those who have seen fit to infringe upon my IP rights. I can not afford to stand by and wait much longer as to whether or not Stelcor is going to opt to go after most importantly the Google.com search engine and the Google.org entities. I informed you on several occasions, both verbally and via e-mails, about the legal position of "laches", the ultimate

filing and unreasonable delay "legal defenses" that are likely to be raised by the defendants that we will have to overcome. The more time that goes by the weaker our position becomes in this regard. It would be patently unfair for me to stand by and wait until Stelcor is in a better financial position to litigate these matters only to learn that I may have lost the opportunities to do so based upon unreasonable delays. I told you that I strongly disagree with the advice you have informed me that your counsel has given you regarding the filing of a WIPO/UDRP proceeding against the Google.com giant and the other immediate infringer Google.org. I explained to you about the issue of "confusion" in the market place. About the fact that I don't believe we have any strong trademark infringement case against Google.com, but clearly we could make a case based upon confusion, especially as it pertains to the Internet. I have urged you many times to try and seek an audience with Google's executives so that we can advise them of our position and we could perhaps learn more about theirs. Then we'd have a much better understanding as to how we should proceed against them. You have chosen to seek interest from MicroSoft and Yahoo and while I believe this may be a sound strategy, I also believe these are long shots at best. Much better to go directly to the horse's mouth and seek an audience NOW with Google.com and see how receptive or non-receptive they may be in wanting to cut a deal with us. I doubt seriously if MicroSoft or Yahoo will act swiftly in cutting us a deal, regardless of their interest levels. Approaching Google.com NOW is the only way I see for us to nip this in the butt once and for all. Either they agree to play ball with us or we will seek redress before the federal courts and they in turn will know we mean business one way or the other. So here is my proposal on this matter. As it now stands Google seemingly has pushed their IPO release for sometime in mid-September and that is still very speculative. The trade show for us is rapidly approaching in June, only a few short months away. I am formally requesting a disposition as to whether or not Stelcor is prepared to move forward against both the Google.com search engine and the Google.org, at the very least, rather than the filing of either a WIPO/UDRP and/or a simultaneously filed cease and desist letter within the next (30) thirty-days from the receipt of this letter or give me, in writing, Stelcor's position as to why they are not prepared to do so and what course of action you are planning to execute to properly protect the Googles' trademark and its intellectual property rights on behalf of the Licensor? Just so you know, I am fully prepared to go this alone if need be based upon the strategy I outlined to you when we last met. I am fully confident that I can properly prepare and subsequently file a motion in federal court to at least start the ball rolling against both of these infringers and then eventually seek competent counsel to further champion the cause to seek redress before the courts. As a responsible Licensor, if I don't take this position I could run the risk of losing my opportunity to bring a cause of action in a timely fashion to protect my Googles' IP rights. I'm certain that no court in the land would rule otherwise. Not having proper funding to pursue these matters is not going to be a viable position for you to take when push comes to shove. I have been preaching to Stelcor this issue and my position for quite some time now. I also know that doing so, on Stelcor's behalf, shall require a strong financial commitment that you may not be in a position to timely execute. But like I stated above, this is not a defense that I

can unfortunately accept. We must strike timely while the iron is hot. Waiting too much longer could prove a disaster for all parties concerned. I will expect to hear from you or your counsel, in writing, within the reasonable timeframe granted and set forth above.

IRRELEVANT MATERIAL REDACTED

**IRRELEVANT MATERIAL REDACTED**

Respectfully submitted by,



Steven A. Silver

**P.S. I'm still waiting to speak with Henry, as you indicated to me we would speak via a conference call on two separate occasions last week. What happened?**

**P.S.S. Thanks for sending my December 2003 Consulting Fee Check, I received it on February 27, 2004 along with my 1099 for year ending December 2003.**

**SENT VIA FEDEX ON March 1, 2004 USING AIRBILL  
TRACKING NUMBER: 842190092158**



RECYCLED PAPER



TO REORDER CALL 954-846-9399



**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

2007 10 23 55

STELOR PRODUCTIONS, INC.,  
(a Delaware Corporation)

CASE NO. 04-80954-CIV-HURLEY

Magistrate: Judge James M. Hopkins

Plaintiff

v.

STEVEN A. SILVERS,  
(a resident of Palm Beach County, Florida).

Defendant.

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**PLAINTIFF'S REPLY TO SILVERS' MEMORANDUM IN  
OPPOSITION TO STELOR'S MOTION FOR PRELIMINARY INJUNCTION**

**I. INTRODUCTION**

Plaintiff, Stelor Productions, Inc. ("Stelor"), by and through undersigned counsel, hereby replies to Defendant's, Steven A. Silvers' ("Silvers"), Memorandum in Opposition to Stelor's Motion for Preliminary Injunction:

Stelor merely seeks to conduct its business free from interference by Silvers. That is exactly what Silvers licensed Stelor to do, pursuant to the License, Distribution and Manufacturing Agreement ("License Agreement") entered into by the parties in 2002.

Contrary to Defendant's assertions, an order granting Stelor's request for an injunction is needed to protect Stelor's rights under that License Agreement, by prohibiting Silvers from interfering with the foundation of Stelor's business, the Licensed "GOOGLES" Intellectual Property. As the evidence demonstrates, Stelor has been, and in the absence of injunctive relief will continue to be, irreparably harmed.

**II. BRIEF STATEMENT OF FACTS**

Notwithstanding Defendant's overstatement of his role in bringing the Googles from Goo to market, the fact remains that Stelor is truly responsible for the progress Mr. Silvers' original concept has made over the past two years. Silvers lacked the resources, drive, and credibility to turn the concept into a commercially successful reality. One of the key reasons Defendant was unable to commercialize his property on his own was his felony conviction for cocaine

# **EXHIBIT F**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

STELOR PRODUCTIONS, INC.,	)	
(a Delaware Corporation)	)	
	)	CASE NO. 04-80954-CIV-HURLEY
Plaintiff	)	
	)	Magistrate: Judge James M. Hopkins
v.	)	
	)	
STEVEN A. SILVERS,	)	
(a resident of Palm Beach County, Florida).	)	
	)	
Defendant.	)	

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**DECLARATION OF STEVEN A. ESRIG**

I, Steven A. Esrig, hereby submit my declaration in support of Plaintiff’s Reply to Defendant’s Response to Stelor’s Motion for Preliminary Injunction, and declare as follows:

**REPLY TO DEFENDANT’S RESPONSE TO  
PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION**

1. I am the President and CEO of Stelor Productions, Inc. (“Stelor”). I have been employed by Stelor since its inception, and I have held my current position for more than two years. The facts stated herein are based on my own personal knowledge.

2. Throughout my relationship with Defendant, Mr. Steven A. Silvers (“Defendant or “Silvers”), he has been in constant financial hardship. Mr. Silvers has implored me time and time again to pursue Google Inc. in a legal action to end his financial hardship. Furthermore, Mr. Silvers has beseeched me to provide false verification of employment for the purpose of securing a loan, apparently due to his lack of credit and financial resources. To the best of my knowledge and belief, Mr. Silvers has no current income.

Accordingly, he is “judgment proof” in that he would be financially incapable of satisfying any order for damages.

3. Silvers interference with Stelor’s business has resulted in the forestalling of the development of the Googles from Goo concept. Due to such interference, the operations of Stelor, a company with a projected valuation of over \$700 million, have come to little more than a crawl. If prevented from continued interference, Stelor will be able to begin to immediately engage in negotiating licensing deals worth millions of dollars. Stelor has paid Mr. Silvers approximately \$190,000 for his consulting services relative to the GOOGLES IP. As Mr. Silvers has thus far failed to provide any consulting services whatsoever, he has further damaged Stelor by accepting payment for such unearned services. Stelor, as a start-up company, can ill-afford such financial loss without recompense.

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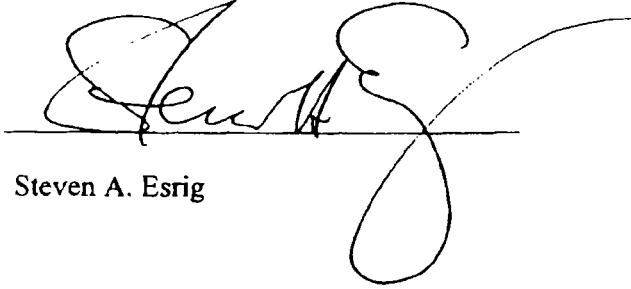
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I declare under penalty of perjury under the laws of the State of Florida that the foregoing is true and correct to the best of my knowledge, information and belief.

A handwritten signature in black ink, appearing to read "Steven A. Esrig", is written over a horizontal line. The signature is stylized and cursive, with a large loop at the end that extends downwards and to the right.

Steven A. Esrig

TO REORDER CALL 954-846-9399



RECYCLED PAPER



**IN THE UNITED STATES DISTRICT COURT  
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2007 10 2:55

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trafficking, defrauding the U.S. Government, and subsequent incarceration. Defendant's past criminal record and incarceration was a key factor in Plaintiff entering into the subject License Agreement. Both Plaintiff and Defendant correctly believed that Defendant's criminal past would make him an unsuitable figurehead for commercializing Children's products and services aimed at preschool and grades K-5.

This dispute centers on the License Agreement. Although Defendant now contends that he only granted Stelor a "non-exclusive right to maintain and defend the GOOGLES IP," the plain language of the License Agreement dictates that Stelor's right is, at a minimum, exclusive. *See Silvers' Memorandum in Opposition to Stelor's Motion for Preliminary Injunction ("Opposition")*, p. 2. Article VIII(A) begins by stating that "LICENSOR hereby grants LICENSEE all right, power and interest..." and ends by stating that Stelor may "...act for and on LICENSOR'S behalf and *instead of* LICENSOR...." *See Opposition, Exhibit "A," License Agreement, Article VIII(A) emphasis added.* The plain language of Article VIII represents the clear intention of both parties: that Stelor would have an exclusive right to protect and defend the GOOGLES IP.

As the court is aware, there are a number of ongoing legal battles between Stelor and Google Inc. being fought in both the United States Patent and Trademark Office ("USPTO") and the National Arbitration Forum ("NAF"). Contrary to Silvers' assertions in his response to the pending motion, the License Agreement has everything to do with him cooperating in the pending disputes with Google Inc. A potential dispute with Google Inc. was predicted by both Silvers and Stelor when they entered into the License Agreement, and they were prepared for such a dispute. In fact, Silvers entered into an agreement with the Ganz partnership in 2001<sup>1</sup> wherein he inserted a handwritten amendment to the agreement in which Ganz disclaimed any cause of action against Silvers relative to "the legal action to be pursued by Silvers, *et. al.* against the search engine known as www.google.com." *See Exhibit "A," The Ganz Agreement, Article 3 subsection 3.1.* It is apparent that Silvers had foreseen the coming dispute with Google Inc. for

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<sup>1</sup> Silvers and Ganz were engaged in a dispute as a result of their conflicting trademark registrations. The parties to that agreement (the Ganz Agreement) covenanted to co-exist and drew clear delineations as far as the types, and design, of products that could be developed and marketed by either party. The rights and obligations in the Ganz agreement are subsumed in the License Agreement.



some time, and perhaps even more revealing is that the “et. al.” referred to in the amendment is Steven A. Esrig and the soon to be formed Stelor Productions, Inc.

Also indicative of Silvers’ desire to engage in legal actions against Google Inc. relative to his trademark registration are the countless emails and letters sent by him to Stelor before, during, and after Stelor’s inception.<sup>2</sup> In those emails Defendant prods Stelor to “sue these bastards now” (July 27, 2003) and “bring them [Google Inc.] down or better yet put the fear of God in them” only after railing against Google’s founders stating “I hate looking at the cover of Time Mag with those two yuppies gloating like the[y] are” (April 15, 2004). *See* Exhibit “B,” two emails from Silvers to Steve Esrig, CEO of Stelor Productions, Inc. (Due to their length, the relevant portion of each email has been highlighted for the court.) It was clear to Stelor that Silvers not only foresaw, but eagerly anticipated, litigation with Google Inc. As a result, the License Agreement requires that Silvers “cooperat[e] in every way necessary and desirable to strengthen, establish or maintain the “Googles” intellectual property and related assets.” *See* License Agreement, Article VIII(E). This provision directly relates to anticipated litigation between Stelor and Google Inc, or any other infringer, and requires Silvers to cooperate with Stelor. Defendant’s emails indicate he has always, until recently, been willing to cooperate with any dispute with Google, Inc. Silvers’ conduct to date, relative to the disputes with Google Inc., has been anything but desirable and in fact has prejudiced Stelor’s ability to protect the GOOGLES IP.

### **III. THE PROPER STANDARD FOR PRELIMINARY INJUNCTION**

Stelor requests injunctive relief in order to maintain the status quo during the pendency of this action. To this end, Stelor requests that Silvers be ordered to cease interfering with the actions now pending in the USPTO and the NAF. Silvers’ attempt to characterize the injunction as seeking mandatory relief is inaccurate. Stelor asks the court to prohibit Silvers from taking action, and not to force Silvers to take any affirmative actions. *See* Plaintiff’s Emergency Motion for Preliminary Injunction, pp. 2-3.

Although Clause “E” of Plaintiff’s motion does request that the court order Silvers to immediately and fully cooperate with Stelor, Silvers’ opposition acknowledges his obligation

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<sup>2</sup> Stelor is in possession of in excess of 100 emails and letters wherein Silvers, at a minimum, discusses litigation against Google Inc., and in some cases all-out demands that Stelor take immediate legal action.

and confirms his willingness to do so. Specifically, Defendant states “Silvers has always been prepared to provide Stelor with any evidence it requests and remains willing to do so, subject to the qualification that he must protect his interests as to Stelor, with whom Silvers is adverse.” *See* Opposition, p. 5, footnote 3.

The issue, therefore, is Silvers’ continued interference with the foundation of Stelor’s business. Unless immediately enjoined, that interference threatens irreparable harm to Stelor. Accordingly, the injunction should be issued if, as done here, Plaintiff establishes four elements: (1) substantial likelihood of success on the merits; (2) irreparable harm if injunctive relief is denied; (3) that the threatened injury to the plaintiff outweighs whatever damage the injunction may cause to the defendant; and (4) that the injunction, if issued, would not be adverse to the public interest. *See McDonald’s Corp. v. Robertson*, 147 F.3d 1301, 1306 & n.2 (11<sup>th</sup> Cir. 1998) (rejecting defendant’s attempt to characterize as mandatory an injunction merely seeking to maintain the status quo); *Davidoff & Cie, S.A. v. PLD Int’l Corp.*, 263 F.3d 1297, 1300 (11<sup>th</sup> Cir. 2001);

Even if a higher standard attaches, and it should not, Stelor meets the test. The arguments set forth in the original motion, as well as those below, establish a “clear showing” that Stelor is entitled to the requested relief, *and* that serious damage will result if the preliminary injunction is not granted.

#### **IV. ARGUMENT**

Stelor has clearly established the four elements for injunctive relief. Stelor has a substantial likelihood of success on the merits, as Silvers’ conduct is entirely inconsistent with the express terms of the License Agreement. The damage to Stelor’s business – already occurring and threatened to continue – will be irreparable, unless Silvers’ conduct is immediately enjoined. The threatened injury to Stelor, moreover, greatly outweighs any alleged damage to Silvers from an injunction, which in all likelihood would benefit him and would merely require him to refrain from conduct prohibited by the License Agreement in any event. With respect to the fourth element, Defendant does not dispute that a Preliminary Injunction under the circumstances would not be a disservice to the public interest.

Nor can Defendant properly rely on a limitation of liability clause contained in the License Agreement and a misplaced argument regarding the monetary requirements of diversity

jurisdiction. The value of the requested injunction to Stelor clearly satisfies the amount in controversy requirement.

**A. Stelor Has a Substantial Likelihood of Success on Its Breach of Contract Claim**

In order to succeed on a breach of contract claim Stelor must prove that (1) a contract existed, (2) the contract was breached, and (3) damages resulted. *See Berk v. Lazard Freres & Co., LLC*, 175 F.3d 913, 914 (11<sup>th</sup> Cir. 1999). Since Stelor's claims are based on a breach of the License Agreement and Silvers' concedes that such an agreement is currently valid and operational, Stelor need only respond to Silvers' contentions with respect to breach and damages.

***1. Pursuant to the License Agreement, Stelor has the Right to Defend the GOOGLES Intellectual Property, on Behalf of and Instead of Silvers.***

In his opposition, Defendant avoids addressing the numerous ways in which he has interfered with Stelor's exclusive right to defend the GOOGLES IP by, in a manner of speaking, skipping the procedural history and heading straight for the present status of the dispute. For example, pursuant to its rights under the License Agreement, Stelor secured counsel in order to file a Uniform Domain-name Resolution Policy ("UDRP") action in the NAF on behalf of Defendant. As "inexplicable" as Defendant may find such an action to be, Stelor was simply exercising its rights under the license agreement to "act for and instead of" Defendant in protecting the GOOGLES IP. Due to Defendant's raucous interjections and objections related to filing any action in his name, the action was commenced in Stelor's name only. *See Exhibit "C," UDRP Commencement.*

Defendant further demonstrated his intent to interfere with the GOOGLES IP, when in his Notice of Withdrawal of Complaint, filed in the NAF, Defendant represented, through counsel, that he "does not dispute Google Inc.'s right to use the domain name Google.com...." *See Exhibit "D," Notice of Withdrawal of Complaint, p. 1.* Such a position, which directly contradicts two years of correspondence from Defendant stating the opposite, would irreparably harm Stelor's Intellectual Property rights in the Googles IP. Furthermore, Defendant represented through counsel that he is currently negotiating with, and will continue to negotiate with, Google Inc., despite the License Agreement. *See Exhibit "E," Letter from Gail McQuilkin to Yano Rubinstein dated November 16, 2004, p.2.*

Defendant argues that Google Inc.'s attempt at canceling the GOOGLES trademark is an attack on Defendant's ownership and not the manner in which the mark is used. Whether or not this is an accurate characterization is not at issue, but what is determinative is the fact that Article VIII(A) of the License Agreement grants Stelor the right to "enforce, maintain and defend" the GOOGLES IP. *See* Opposition, Exhibit "A," License Agreement Article VIII(A).

The bottom line is that time and time again Stelor has stepped in to protect Defendant's GOOGLES IP only to be rebuked and threatened for engaging in precisely the activities envisioned by the License Agreement.

Defendant's reliance on Article XII(C)(iii) is likewise misplaced. This section *may* give each party the right to "participate in" a suit filed against it, but "participate in" is a far cry from what Defendant construes this passage to permit. What is more pertinent to this dispute is the preceding section which states that, "each party shall have the right to assume, at its sole expense, the defense of a claim or suit made or filed against the *other* party." *See* Opposition, Exhibit "A", License Agreement, Article XII(C)(ii), *emphasis added*. Stelor has exercised its absolute right to assume the defense of Defendant. As a result, Defendant is left with at most, a right to cooperate with Stelor in such defense, but does not have the power to interfere in the manner he has so far.

Also troublesome are Defendant's mischaracterizations of deposition testimony provided by Stelor's CEO, Steven A. Esrig. Defendant quotes testimony out of context, twisting Mr. Esrig's words, in order to minimize the effect he has had on the various disputes. The simple fact is that Defendant was up in arms about Stelor's retention of counsel to defend the GOOGLES IP on his behalf, and it was at Defendant's behest that such representation did not commence.

Finally Defendant argues that he has the right to request that all correspondence from the USPTO with respect to trademarks filed in his name be directed to his address. Stelor has an express power of attorney, granted to it in the License Agreement, to maintain the GOOGLES IP which necessarily requires corresponding with the USPTO. Defendant's accusation that Stelor was negligent in maintaining trademarks is particularly disingenuous considering the fact that Defendant has been holding the login and password for the googles.com domain name hostage since the beginning of the relationship between the parties.

Defendant's interference with Stelor's contractual right to step in and defend the GOOGLES IP places the subject intellectual property at risk, posing a grave threat to Stelor's ability to continue its efforts in bringing this concept to market. Defendant's opposition does nothing to provide a basis for his assertion that his actions have not interfered with Stelor's ability to conduct business and protect the GOOGLES IP.

**B. If Permitted to Continue on his Present Course of Conduct, Defendant will Irreparably Harm Stelor**

Contrary to Defendant's assertion, the harm he has caused, and will continue to cause, cannot be redressed monetarily. Silvers has engaged in an intentional campaign to interfere with, disrupt, and damage Stelor – both in conducting litigation fundamental to its business and, more generally, in developing the fan-base and financial foundation crucial to making the Googles from Goo into a commercially viable enterprise. By (1) instigating the misdirection of correspondence from the USPTO to himself, (2) refusing to permit Stelor to secure counsel to represent Defendant's interests in the TTAB and NAF, and (3) refusing to cooperate with Stelor in such proceedings, Defendant exposes Stelor to liability and to loss of revenues which are not only impossible to calculate due to their enormity, but even if they were calculable Defendant could never satisfy any such judgment were it entered against him. *See* Exhibit "F," Declaration of Steven A. Esrig, para. 2.

Notwithstanding Defendant's selective quoting of Mr. Esrig's deposition testimony, and his complete disregard of the other evidence, the fact is that Defendant's conduct poses a risk to the entire Stelor operation. Silvers' interference prevents Stelor from (1) resolving its disputes with Google Inc., (2) updating and maintaining both googles.com and its licensed trademarks, and (3) acquiring the fan-base and financial foundation to further develop the Googles from Goo into a commercially viable enterprise.

Under these circumstances, immediate injunctive relief is required and justified to prevent the irreparable harm caused by Defendant's continued actions. *See McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1310 (11<sup>th</sup> Cir. 1998) (threat of lost profits and damage to reputation, where no realistic way to determine damages, constitutes irreparable harm); *U.S. v. Bowman*, 341 F.3d 1228, 1237 (11<sup>th</sup> Cir. 2003) (potential harm to business from loss of goodwill and inability to sell its products constitutes irreparable harm); *Florida Businessmen for Free Enterprise v. City of Hollywood*, 648 F.2d 956, 958 & n.2 (11<sup>th</sup> Cir. 1981) ("A substantial loss of business may

amount to irreparable injury if the amount of lost profits is difficult or impossible to calculate”);<sup>3</sup> *Ferrero v. Associated Materials, Inc.*, 923 F.2d 1441, 1449 (11<sup>th</sup> Cir. 1991) (damage to a business resulting from “the loss of customers and goodwill is an ‘irreparable’ injury”).

**C. The Injury to Stelor Outweighs Any Harm an Injunction May Cause Defendant**

As discussed above, Silvers’ interference has jeopardized Stelor’s entire business, creating real and immediate obstacles preventing Stelor from bringing the Googles concept to market. Defendant’s conclusory statements that an injunction will harm him more than denial of an injunction would harm Stelor are simply untrue. The requested injunction will serve to facilitate the realization of Defendant’s and Stelor’s aspirations for the Googles concept. The injunction, therefore, will actually *benefit* Defendant, as he stands to profit from the success of the Googles concept vis-à-vis royalties due him under the License Agreement – a portion of the agreement with which Defendant surely has no qualm. Nor can Defendant legitimately claim he would be harmed by an injunction barring him from conduct that is improper in any event under the License Agreement. The balance regarding this element clearly weighs in Stelor’s favor. *See Ferrero*, 923 F.2d 1449 (rejecting a similarly “specious” argument by a defendant, given the threatened irreparable injury of immeasurable loss of business).

**D. Silvers Cannot Legitimately Claim There Has Been Any Delay.**

Defendant argues that a preliminary injunction is inappropriate here because of Stelor’s alleged delay in requesting such relief. This argument is entirely misplaced.

Stelor has endured a contentious relationship with Defendant over the course of the past two years all the while hoping to reach an amicable solution to their problems. Only recently, the schism between Stelor and Defendant reached a point where resolution of the issues appeared impossible. Perhaps not coincidentally, Silvers’ attempts to interfere with and disrupt the business of Stelor spiked, as did the resulting problems of Stelor’s imminent and irreparable injury. Accordingly, Stelor filed the instant action. There was no delay, but rather a bona fide attempt by Stelor to resolve its issues with Defendant until Defendant’s ongoing and intentional misconduct made that impossible.

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<sup>3</sup> *See Bonner v. City of Pritchard*, 661 F.2d 1206, 1209 (11<sup>th</sup> Cir. 1981), adopting as binding authority all decisions issued by the Former Fifth Circuit prior to October 1, 1981.

Under these circumstances, Silvers cannot legitimately invoke any alleged delay as a defense to the required injunction. Indeed, as the Court explained in *Dow Jones & Co., Inc. v. Kaye*, 90 F. Supp. 2d 1347, 1361 (S.D. Fla. 2000) (Jordan, J.), *app. dismissed as moot and for lack of jurisdiction*, 256 F.3d 1251 (11<sup>th</sup> Cir. 2001), unless an alleged delay in filing suit shifts the balance of the equities in a defendant's favor, which occurs primarily in the Lanham Act context, the delay will not prevent issuance of an injunction. For exactly that reason, Judge Jordan distinguished the Second Circuit case on which Defendant primarily relies, *Citibank, N.A. v. Citytrust*, 756 F.2d 273 (2d Cir. 1985). The *Citibank* case has no application here either.

As the controlling Eleventh Circuit cases confirm, delay is no bar to a required injunction, especially where – as here – the Defendant's conduct has been intentional. See *Kason Indus., Inc. v. Component Hardware Group, Inc.*, 120 F.3d 1199 (11<sup>th</sup> Cir. 1997) (alleged nine year delay in bringing trademark infringement action no bar to injunction). Silvers, moreover, has no conceivable argument that Stelor in any way acquiesced in his misconduct, which would be a necessary showing for the delay to matter. See *SunAmerica Corp. v. Sun Life Assur. Co.*, 77 F.3d 1325, 1334-35 (11<sup>th</sup> Cir. 1996). Nor for that matter can Silvers claim (let alone show) he suffered any harm as a result of an alleged delay. See *Ocean Garden, Inc. v. Maktrade Co., Inc.*, 953 F.2d 500, 508-09 (9<sup>th</sup> Cir. 1991).

Defendant's argument is entirely unfounded – legally and factually. Defendant cannot legitimately argue delay to avoid entry of the requested injunction.

**E. The Limitation of Liability Clause in the License Agreement Is No Bar to Recovery**

The limitation of liability clause in the License Agreement does not defeat subject matter jurisdiction.<sup>4</sup> In evaluating the amount in controversy requirement in an action for injunctive relief, the issue is the value of the benefit flowing to the plaintiff from the requested injunction. See *Morrison v. Allstate Indemnity Co.*, 228 F.3d 1255, 1268 (11<sup>th</sup> Cir. 2000); see *Occidental Chem. Corp. v. Bullard*, 995 F.2d 1046, 1047-48 (11<sup>th</sup> Cir. 1993). “In other words, the value of the requested injunctive relief is the monetary value of the benefit that would flow to the plaintiff

---

<sup>4</sup> The limitation of liability provision is likely unenforceable in any event, as Defendant's misconduct has entirely frustrated the purpose of that provision. Fla. Stat. 672.719 (limitation of remedies unenforceable “where circumstances cause an exclusive or limited remedy to fail of its essential purpose”); see *Typographical Serv., Inc. v. Itek Corp.*, 721 F.2d 1317, 1320 (11<sup>th</sup> Cir. 1983).

if the injunction were granted.” *Morrison*, 228 F.3d at 1268. That is a liberal standard, moreover, to be measured from the Plaintiff’s perspective. *Id.*

The facts clearly establish that the benefits flowing to Stelor from the injunction – the termination of Silvers’ interference and the development of Stelor’s business – will substantially exceed \$75,000. See Exhibit “F,” Esrig Decl. para 3. Defendant’s desperate attempt to escape jurisdiction and liability under this section of the License Agreement is entirely without merit.

**V. Conclusion**

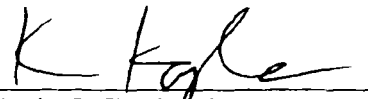
For all the reasons stated above, and those contained in the underlying motion, Stelor’s injunction should be granted.

Respectfully submitted,

Burlington, Weil, Schwiep,  
Kaplan & Blonsky, P.A.  
Attorneys for Plaintiff,  
STELOR PRODUCTIONS, INC.  
Office in the Grove  
Penthouse  
2699 South Bayshore Drive  
Miami, Florida 33133  
Tel: (305) 858-2900  
Fax: (305) 858-5261

Of Counsel:

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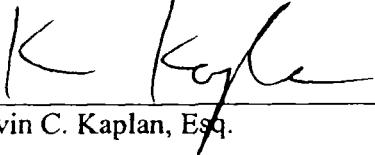
By:   
Kevin C. Kaplan, Esq.  
Florida Bar No. 933848



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing, PLAINTIFF'S REPLY TO SILVERS' MEMORANDUM IN OPPOSITION TO STELOR'S MOTION FOR PRELIMINARY INJUNCTION, was served this 27 day of December, 2004, via Hand Delivery on:

Gail M. McQuilkin, Esq.  
Kozyak, Tropin & Throckmorton, P.A.  
2525 Ponce de Leon, 9<sup>th</sup> Floor  
Coral Gables, Florida 33134  
Telephone: (305) 372-1800  
Facsimile: (305) 372.3508

  
\_\_\_\_\_  
Kevin C. Kaplan, Esq.

# **EXHIBIT B**

Sun, Dec 12, 2004 2:07 AM

**Subject: More Trademark Updates****Date:** Sunday, July 27, 2003 3:08 PM**From:** Steven Silvers <gewrue@hotmail.com>**To:** <sesrig@stelorproductions.com>

Steve, here is some more trademark news. It seems that someone, who, I have no idea, is challenging Google.com in several class codes that they have applied for. It could be Ganz in the 028 category but there are other class codes that seem to be in the challenge or opposition stage. The USPTO send Google, Inc. a letter on March 28 of 2003 called "An office action suspending further action on the application". I don't know what this is all about? They have not been issued any trademark as of yet, as best as I can determine in any of the class codes they have filed for. Ira should get on this and find out who it is that is challenging them and what the current status is of things. We will, undoubtedly, have to join in and oppose as well if it is not already too late for us to do so. Esp., in both 028 and 016 categories unless Ganz is behind all of this and that would not surprise me but with the legal contract we have that they would not seek to sue them, we need to step to the plate with what we now have in the way of a "co-existent" relationship with Ganz that is binding and etched in stone. There is also more trouble brewing. Google.com and it's parent company Google, Inc. decided to get cute and they trademarked "GoogleStore" and it's in ICC 035 for online shopping cart, and electronic retailing, etc. They are planning to sell everything you can think of through this store with their branding "Google.com" brand name. Including, books, like Amazon.com, plush toys, etc. We need to sue these bastards NOW! We can no longer afford to wait on this. We've already lost out on the Googles bakery item trademark as it was approved and issued on August 6, 2002, only a few months after we jumped into bed together (June of 2002). This was a fuck up on Malen and Haily's behalf which falls on Aurora but Haily will state that they were not paid by Aurora and tough shit. So who winds up eating that, Stelor and Silvers. Not GOO! This was a real f\_\_k up. Now we can't market cookies or cakes or anything to do with Googles or Googles related pastry items for birthdays, etc. I envisioned having Googles' cookies with each of the characters like the famous "animal cracker" if you recall. Now that is all down the tubes. Some more information. Some one is attempting to register "Googles" (just like our name), in class codes 09, 016, and 035, 036 and 042, and it's not Ganz or Google.com or Google, Inc. It's some guy named Jeffrey Epstein, in St. Thomas (one of the Virgin Islands), it was filed on May 13, 2003. One of the areas he is attempted to file in is magnetically encoded debit cards, computer software for use by merchants that may be downloaded from a global computer network, smart cards and other monetary instruments utilizing the computer and magnetic encoding devices. In otherwords, someone is stealing our idea for using the credit card idea I had and discussed with you for children to have their own prepaid credit calling card and Google's allowance credit cards. REMEMBER? WE need to nip this in the butt NOW and oppose it vigorously. I also learned from my research that Google, Inc. YES! The search engine boys in CA., have opted to start an entire new offshoot of their search engine and they have coined it as: "Proogle". It's going to be another compture service entity. This could have been applied for in case they anticipated any challenges that could wipe them out with their current name "Google.com" and this is a relatively new filing in Nov. of 2002 and it's still pending registration. This name is very similar in sound to Oogle, Googles, and of course Zoogle. If you take the "F" away from the name you have our name "Oogle" and this is something we need to discuss with Ira to see if we should also challenge this pending registration so that these Google boys know we are breathing right down their backs every step of the way. We need to pressure them while we can and not wait until the time to oppose has been concluded like

we did with or shall I say like Aurora did with the loss of the baked goods trademark to someone who got smart and snuck in on us. It's easy for Ira to say to us, like he did, it's no biggie, we can just buy them out. That's bullshit and you know it. Something like that could be cost prohibited. The time to challenge these sorts of actions is during the opposition phase not afterwards. I already informed you about "Oogles N' Googles" and I'm glad I found that one in time for Ira to challenge for if I had missed that, and with Ira never having mentioned it to us, we could have lost that one, too and we'd really be in a mess. Another new one popped up just recently called: GoogleGear! I can't tell if this was approved for registration or not. Ira can do some research and find out because these boys are seeking registration in ICC 09 (computer software and accessories, etc., computer games, video games, and more). This needs to be challenged, I believe, as well. That is unless they were granted a registration already. And Google, Inc., (Google.com boys), on May 31, 2002, applied for a trademark for the word "Google" in ICC 035 (adwords, which is dissemination of advertising for others via the internet. I don't know if this has been granted registration yet or not. And there was a newcomer to the growing list of people who want to capitalize on this "Googlemania" craze and they are calling themselves: "Shoggles". They applied on May 8, 2003 for a registered trademark in ICC 009, for shower and bathing goggles for children to wear while bathing or showering so the soap doesn't burn their eyes. Great idea! Something we would have eventually gotten to as well. Take away the "Sh" in Shoggles and you get "Oggles". Sound familiar? So this has been the extent of my extensive research for Stelor and Silvers related to trademark issues and there is much to talk about and act upon as you can clearly denote. I'll await hearing from you on all of this at your earliest convenienc. Thanks Steven

---

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SUN, Dec 12, 2004 3:30 AM

**Subject: Another Sleepless Night!**  
**Date:** Thursday, April 15, 2004 7:22 PM  
**From:** Steven Silvers <gewrue@hotmail.com>  
**To:** <sesrig@stelorproductions.com>

Hi Steve: I had another sleepless night just thinking of the potential of what we now have in the palm of our hands. We are at the center of making history in more ways than one. I hate looking at the cover of Time Mag with those two yuppies gloating like the are. I only wish that soon we'll have a shot at bringing them down or better yet putting the fear of God in them. If what the lawyers are telling you is in fact 100% accurate and I have no reason to believe differently as I've preached that all along from back in the Aurora days when I begged Mike to launch a Googles.com search engine and free e-mail for kids and you know the rest of the story. Anyway, I can't impress upon you enough the import of timing this to coincide with the upcoming Licensing Show. If you can muster a PR firm by then to break the news just before the show, say a day or two before and we get the media blitz from CNN to AP and Reuters, etc., and the world now knows about us and that we are going to be launching our very own child safe kids friendly search engine called Googles.com the shit is going to hit the fan so fast and the financial world will be in an uproar like you won't believe. Then our booth will be swamped by the media and everyone wanting to know who we are and how it is that we came to be. With the characters there and the bags and the music and the credibility factor dating back to 1996 and before Google ever existed, there will be a lot of media frenzy, all to our advantage. So I'm only hoping and praying that we don't lose this opp and that we go for it like we mean it and that's all I have to say for now. I trust you received my e-mail to you and the Board as you had asked of me. Please send my check as promised and let's wrap up the transfers from your GoDaddy account to mine ASAP so that we can put all this behind us as well. Let me know when you want to handle this and let's just do it. PG

---

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# **EXHIBIT C**



**NATIONAL**  
**ARBITRATION**  
**FORUM**

**COMPLAINT NOTIFICATION INSTRUCTIONS**

**Forum Case Number FA0411000360710**

1. **Notification.** You are hereby notified that an administrative proceeding has been commenced against you pursuant to the Uniform Domain Name Dispute Resolution Policy, adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on October 24, 1999 (Policy) (<http://www.icann.org/udrp/udrp-policy-24oct99.htm>). It concerns domain name(s) that are currently registered and being used by you. The Policy is incorporated by reference into your Registration Agreement with the Registrar(s) of your domain name(s). When you registered your domain name(s) you also agreed to submit to and participate in a mandatory administrative proceeding in the event that a third party (Complainant) submits a Complaint to an ICANN-approved dispute resolution service provider (<http://www.icann.org/udrp/approved-providers.htm>) concerning a domain name registered and being used by you.
2. **Date Complaint Received.** The Complaint was submitted by **Stelor Productions, Inc.** and was received on **11/8/2004** by the National Arbitration Forum (Forum). A copy of the Complaint accompanies this notification.
3. **Formal Requirements Compliance Review.** In accordance with Paragraph 4(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (Rules) (<http://www.icann.org/udrp/udrp-rules-24oct99.htm>) and Paragraph 4 of the Forum's Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (Supplemental Rules) (<http://www.arb-forum.com/domains/domain-rules.html>) the Forum has verified that the Complaint satisfies the formal requirements of the Policy, Rules, and Supplemental Rules. Payment in the required amount to the Forum has been made by the Complainant.
4. **Commencement of Administrative Proceeding.** In accordance with Rules, Paragraph 4(c), the formal date of the commencement of the administrative proceeding is **11/19/2004**.
5. **Deadlines.** Within 20 days from the commencement date, the Forum must receive, a Response and all exhibits according to the requirements that are described in The Rules, Paragraph 5 and the Supplemental Rules. You must also serve these on the Complainant. Your Response and exhibits must be received by the Forum by **12/9/2004**. In the event the Complainant elects to have the dispute heard before a single-member Administrative

Panel, and you elect to proceed with a three-member Administrative Panel, this is also the date by which you must make the required additional payment.

6. **Default.** If your Response and/or required payment are not received by the above date, you will be considered in default. We will still appoint an Administrative Panel to review the facts of the dispute and to decide the case. The Administrative Panel will not be required to consider a late-filed Response, but will have the discretion to decide whether to do so and, as provided for by Rules, Paragraph 14, may draw such inferences from your default as it considers appropriate. There are other consequences of a default, including no obligation on our part to consider any designations you have made concerning the appointment of the Administrative Panel or to observe any guidelines you have provided concerning case-related communications.
7. **Administrative Panel.** The dispute between you and the Complainant will be decided by an Administrative Panel consisting of either one or three impartial and independent decision makers who will be appointed by the Forum. The Complainant in this administrative proceeding has elected an Administrative Panel consisting of:  
[ ] A Single Member [ X ] Three Members See below:

**A Single Member Panel.** If the Complainant has selected the single-member option as indicated above, then the appointment of that Panelist will be made by the Forum from our published list of Panelists (<http://www.arb-forum.com/domains/UDRP/rules.asp>). We will appoint a Panelist within 5 calendar days of when your Response was received or the date your Response was due. The fees for this administrative proceeding have been paid in their entirety by the Complainant.

Despite the Complainant's election of a Single-Member Panel, you can still choose to have the case decided by an Administrative Panel consisting of three members. If you choose this option, you will be required to pay half of the applicable fees for the Administrative Proceeding. The payment must be made at the time you submit your Response. Failure to submit the required payment at that time may, along with other considerations, may be taken as grounds for proceeding with a Single-Member Panel.

If you choose a three-member Administrative Panel and make the required payment when you submit your timely Response, you should indicate the names and contact details of three persons in your Response. These three persons can be selected from our published list or that of any other ICANN-accredited dispute resolution service provider <http://www.icann.org/udrp/approved-providers.htm>. We will try to appoint one of the three persons you have recommended to the Administrative Panel. If we are unsuccessful, we shall make an appropriate appointment from our published list. If you choose a three-member Administrative Panel, but do not provide us with the names and contact details of any candidates, we shall make the appointment from our published list.

Please note that if you choose a three-member Administrative Panel, the Complainant will also be requested to provide the names of three candidates who can be taken from our published list or that of any other ICANN-accredited dispute resolution service provider.



We will try to appoint one of these three persons to the Administrative Panel. If we are unsuccessful, we shall make an appropriate appointment from our published list. If the Complainant does not provide us with the names of its candidates, we shall make the appointment from our published list. Both you and the Complainant will be contacted concerning the procedures for the appointment of the Presiding Panelist (i.e., the third Panelist).

**Three-Member Administrative Panel.** If the Complainant has selected the three-member Administrative Panel option as indicated above, then the Complainant has provided us with the names and contact details of three candidates to serve on the three-member Administrative Panel. We will try to appoint one of these three candidates. If we are unsuccessful, we shall make the appointment from our published list of Panelists.

You are kindly requested to provide the names and contact details of three persons in your Response. These three persons can be taken from our published list or that of any other ICANN-accredited dispute resolution service provider (<http://www.icann.org/udrp/approved-providers.htm>). We will try to appoint one of the three persons you have recommended to serve on the Administrative Panel. If we are unsuccessful, we shall make an appropriate appointment from our published list. If you do not provide us with the names and contact details of any candidates, we shall make the appointment from our published list. Please note that the fees for the administrative proceeding have been paid in their entirety by the Complainant. Both you and the Complainant will be contacted concerning the procedures for the appointment of the Presiding Panelist (i.e., the third Panelist).

8. **Communications.** Your Response must be communicated to us according to the requirements of Rules, Paragraph 5(b) and Supplemental Rules, Paragraph 5 (i.e., one copy online or by e-mail and hard copy by fax or three or five sets of hard copies by mail). All case-related filings or submissions to the Forum after the submission of your Response must be made according to Supplemental Rules, Paragraph 7. In your Response you must indicate where and how you would like us to send case-related communications to you. Please provide only a single postal address, fax number, and e-mail address for you and, if applicable, your authorized representative for the dispute, otherwise we will use our discretion as to which contact details we will use.

All communications that are required to be made to the Complainant under the Rules and Supplemental Rules, including your Response, should be made according to the contact details and method(s) specified in the Complaint.

9. **Fees.** Payment of the required fee for a three-member Administrative Panel, an extension request or the submission of additional documents, must be submitted with your Response. Payment methods and other relevant details about fees can be found in Paragraph 6, 7 and 16 of the Supplemental Rules.
10. **The Administrative Proceeding.** If this case is to be decided by a single-member Administrative Panel, we shall appoint the Administrative Panel within five (5) calendar

days of when your Response was received or the date your Response was due. If the case is to be decided by a three-member Administrative Panel, we shall send to you and to the Complainant a list of five (5) candidates for the Presiding Panelist. You will each be offered the opportunity to strike two from that list. We shall make the appointment of the Presiding Panelist and take into consideration the preferences indicated by you and the Complainant.

The Administrative Panel will have 14 days from the date of its appointment to issue a decision in the case. Under normal circumstances, we will forward the decision to you, the Complainant, the concerned Registrar(s) and ICANN within three calendar days of receiving it from the Administrative Panel. The Registrar(s) will notify all parties concerned of the date that the decision will be implemented if the Registrar(s) does not receive notification and the required documentation from you in accordance with Paragraph 4(k) of the Policy. We will then post the decision on a publicly accessible web site, unless we have been directed not to by the Administrative Panel.

11. **Case Coordinators.** The Forum has appointed a Case Coordinator to be in charge of administering your case. Please note that, while the Case Coordinator is available to answer questions relating to such matters as filing requirements and to help you to understand the Policy, Rules and Supplemental Rules, the Coordinator cannot provide you with any legal advice or make any representations on your behalf.

Case Coordinator: Alexandra L Rosenbaum Johnson

Regular Mailing Address: National Arbitration Forum  
P.O. Box 50191  
Minneapolis, MN 55405 USA

Fed-Ex Mailing Address: National Arbitration Forum  
500 Rosedale Towers  
1700 West Highway 36  
Roseville, MN 55113 USA

Telephone: (800) 474-2371  
Fax No.: (651) 604-6778  
E-Mail Address: arosenbaum@arb-forum.com

12. **Additional Information.** Additional information about the ICANN administrative procedure is available at <http://www.icann.org> and about the National Arbitration Forum at <http://www.arbitration-forum.com>. Online Response filing is available at [www.arbitration-forum.com](http://www.arbitration-forum.com).

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LAW OFFICES  
KOZYAK TROPIN & THROCKMORTON, P.A.  
2525 PONCE DE LEON - 8TH FLOOR  
CORAL GABLES, FLORIDA 33134-6037

TELEPHONE (305) 372-1800  
TELECOPIER (305) 372-3808

Via Federal Express  
AWB#7927-7747-7745

November 12, 2004

Steven A. Barig  
Stelcor Productions, Inc.  
14701 Mockingbird Drive  
Darnestown, Maryland 20874

Re: Silvers/Stelcor License Agreement

Dear Mr. Barig:

We represent Steven Silvers, Licensor under that License, Distribution and Manufacturing Agreement dated June 1, 2002 ("Agreement"). Pursuant to paragraph IX-A of the Agreement, this serves as notice that Stelcor has breached the Agreement and that Mr. Silvers will exercise his right to terminate the Agreement unless Stelcor cures the following breaches within 60 days:

- a. Failure to pay royalties under paragraph III (A);
- b. Failure to provide a written certified royalty statement under paragraph III (C);
- c. Failure to provide a list of all sub licenses under paragraph III (C);
- d. Failure to use commercially reasonable efforts to promote, market, sell and distribute the Licensed Products under paragraph V (B)(iii);
- e. Failure to accommodate Licensor's request to audit the books and records of Stelcor made under paragraph IV (A) and (C);
- f. Failure to provide samples of all Licensed Products you intend to manufacture and sell, and all promotional and advertising materials associated with those products under paragraph VI (C);
- g. Failure to include appropriate legal notices with the Licensed Products under paragraph VI(A);
- h. Failure to maintain the requisite level of quality for the Licensed Products under paragraph VI (B);

Page 2

i. Failure to maintain Licensor's Intellectual Property Rights, namely failure to maintain the domain names *googlegame.com*, *googlegames.com*, and *googlegame.com*, under paragraph VIII;

j. Failure to register Licensor's Intellectual Property Rights in the name of Licensor, and instead registering copyrights and trademarks in Stolor's name;

k. Failure to oppose trademark applications for the name *Googles*, and the domain name registration *googles.org*, and otherwise protect the Licensed Intellectual Property; and

l. Unlawful use of the limited power of attorney granted under the Agreement, namely retaining counsel for Mr. Silvers without his knowledge or consent, filing an action in the name of Mr. Silvers to dispute Google, Inc.'s right to use the domain name *google.com*, and filing an answer in the name of Mr. Silvers in Cancellation Proceeding 92043737.

This also serves as notice under the Letter Agreement dated June 1, 2002, that Stolor has breached the Letter Agreement by its:

- a. Failure to pay Mr. Silvers consultancy fees and expenses;
- b. Failure to provide Mr. Silvers with an agreement granting him stock options for 1,000 shares of Stolor's stock;
- c. Making unauthorized statements and representations on behalf of Mr. Silvers; and
- d. Attempting to transfer, release and waive Mr. Silvers right, title, and interest in his intellectual property.

Pursuant to paragraph 1 of the Letter Agreement, Mr. Silvers will exercise his right to terminate the License, Distribution and Manufacturing Agreement unless Stolor cures these breaches within 30 days.

Very truly yours,

  
Gail A. McQuilkin

c: Steven A. Silvers  
Laurence Hester

2/28/02.1



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TO REORDER CALL 954-846-9399

LAW OFFICES  
KOZYAK TROPIN & THROCKMORTON, P.A.  
2525 PONCE DE LEON - 9TH FLOOR  
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GAIL A. MCQUILKIN  
DIRECT DIAL (305) 377-0056  
gamt@ktilew.com

TELEPHONE (305) 372-1800  
TELECOPIER (305) 372-3500

Via Federal Express  
AWB# 7914-4506-9106

January 13, 2005

Steven A. Esrig  
Stelor Productions, Inc.  
14701 Mockingbird Drive  
Darnestown, Maryland 20874

Re: *Silvers/Stelor License Agreement*

Dear Mr. Esrig:

As you know we represent Steven Silvers, Licensor under the License, Distribution and Manufacturing Agreement dated June 1, 2002 ("License Agreement"), and party to the Letter Agreement dated June 1, 2002 ("Letter Agreement"). On November 12, 2004 we served notice on Stelor that it was in breach of several material provisions of both the License Agreement and Letter Agreement, a copy of which is attached.

Pursuant to paragraph 1(c) of the Letter Agreement, and paragraph IX-A of the License Agreement, this serves as notice that Mr. Silvers is exercising his option to terminate the License Agreement for Stelor's failure to cure its breach of the Letter Agreement within thirty (30) days, and breach of the License Agreement within sixty (60) days.

Pursuant to paragraph X of the License Agreement, Stelor must immediately provide Mr. Silvers with a complete schedule of all inventory of Licensed Products on hand or on order. Stelor has six (6) months to continue to sell this inventory in accordance with the License Agreement. So long as Stelor is actively selling its inventory of Licensed Products, it may continue the use of the Licensed Intellectual Property associated with the inventory for this period. Outside the scope of its efforts to sell its inventory of Licensed Products, Stelor must immediately cease use of the Licensed Intellectual Property, including names, trademarks, signs, advertising and anything else that might make it appear that it is still handling the articles and products of Mr. Silver. Further, Stelor must return to Mr. Silvers all material relating to the Licensed Intellectual Property and inform its sub-licensees of the termination of the License Agreement.

Because the License Agreement is terminated, Stelor may not proceed to represent the interests of Mr. Silvers in TTAB Opposition Proceeding No. 91161251, TTAB Cancellation Proceeding No. 92043496, the domain dispute against Google pending before the National

Steven A. Esrig  
Page 2

Arbitration Forum, or participate in TTAB Cancellation Proceeding No. 92043737. And, because the License Agreement is terminated, the action pending in federal district court is now moot. Thus, we will file the appropriate notices in these proceedings.

Our client regrets that this relationship did not work out, and would like very much to keep the relationship amicable throughout the six month inventory sell-off period.

Sincerely,



Gail A. McQuilkin

c: Steven A. Silvers  
Laurence Hefter  
Yano A. Rubinstein  
William Borchard

212567.1





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TO REORDER CALL 954-846-9399

**CONFIDENTIAL SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is made and entered into by Stelor Productions, Inc. ("Stelor") and Steven A. Silvers ("Silvers"). Stelor and Silvers are collectively referred to herein as "the Parties."

WHEREAS, Stelor brought a complaint in the United States District Court for the Southern District of Florida (Case No. 04-80954-CTV-HURLEY) against Silvers alleging breach of, (1) the License, Distribution and Manufacturing Agreement; and (2) the Letter Agreement;

WHEREAS, Silvers brought a counter-complaint against Stelor alleging breach of, (1) the License, Distribution and Manufacturing Agreement; and (2) the Letter Agreement;

WHEREAS, Silvers on January 13, 2005 sent a notice of termination of the Licensing, Distribution and Manufacturing Agreement to Stelor;

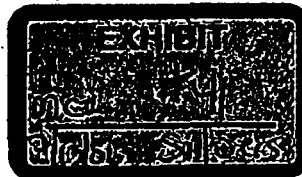
WHEREAS, Stelor has invested substantial time, effort, and money in developing a business involving the GOOGLES IP and fully intends to continue developing and commercializing such business, including sub-licensing some or all of the GOOGLES IP;

WHEREAS, the Parties intend that full performance by each Party of its obligations under this agreement cures the breaches alleged against each by the other Party, and

WHEREAS, the Parties wish to resolve all of the foregoing disputes to their mutual satisfaction.

//

//



SILVERS 

STELOR \_\_\_\_\_

THEREFORE, the Parties hereby agree as follows:

1. Domain Name Administration:

- a. Silvers shall give Stelor, as the administrative contact for the GOOGLES IP domain names, the right to control the DNS records and make changes to the administrative contact information for all GOOGLES IP domain names, and shall advise the domain name registrar known as godaddy.com to this effect. Silvers will provide proof that Stelor has such rights no later than February 15, 2005. Silvers shall cooperate with any other request from Stelor regarding necessary administrative issues relating to the domain names, and all communications by Silvers, relating to domain names, shall be through Kozyak Tropin and Throckmorton ("KTT").
- b. KTT will create and control a domain name renewal database to ensure timely renewal of domain names owned by Silvers, and will communicate with Stelor's counsel regarding any deadlines or other administrative issues.

2. Pending and Future Actions Relating to the GOOGLES IP: Silvers will cooperate with Stelor and Stelor's counsel in all respects in pending and future trademark and domain name dispute proceedings filed by Stelor, including but without limitation, providing any and all documents and other evidence needed to support Stelor's position.

3. The License, Distribution and Manufacturing Agreement: Silvers withdraws his notice of termination of the License Agreement, and reaffirms his obligations under

SILVERS 

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the License Agreement.

4. Post-Settlement Communications: Silvers shall communicate with Stelor solely through KTT.
5. USPTO Correspondent of Record: Silvers shall change the correspondent on all GOOGLES IP trademark applications and registrations to the name of Stelor's counsel no later than February 15, 2005, and shall not change the correspondent in the future as long as the Licensing, Manufacturing and Distribution Agreement is in effect. Stelor's counsel shall copy KTT with all correspondence to and from the USPTO.
6. Sale or Assignment of the GOOGLES IP: KTT and Stelor's counsel shall include each other in any and all negotiations and discussions with Google Inc. that relate to resolving the pending trademark and domain name disputes or the sale or assignment of the GOOGLES IP.
7. Domain Name Renewal Expenses: Stelor agrees to reimburse Silvers for documented expenses incurred to date in renewing GOOGLES IP domain names. Future GOOGLES IP domain name renewal expenses will be reimbursed by Stelor. All requests for reimbursement will be submitted by KTT to Stelor, and all payments by Stelor will be sent to Silvers through KTT.
8. Options Acknowledgement: Stelor agrees that it will confirm in writing that no additional options have been granted that would obligate it to provide such options under the now expired Letter Agreement.
9. LLC Acknowledgement: The Parties acknowledge that Stelor Inc., a Delaware "C" Corporation, is in the process of converting to a Delaware LLC. Any options granted

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to Silvers from the Stelor Inc. "C" Corporation will be converted to a like amount of unit interests under the LLC.

10. Royalty Advances:

- a. For as long as the Licensing, Distribution and Manufacturing Agreement is in effect, Stelor shall advance Silvers \$60,000 a year against future royalties. The advance will be made in equal monthly installments payable on the first of each month beginning February 1, 2005.
- b. For as long as the Licensing, Distribution and Manufacturing Agreement is in effect, Stelor will provide Silvers with an additional monthly advance on expected future royalties equivalent to that amount required by Silvers to maintain his insurance coverage through the Aurora Collection, Inc. (or other insurance or medical provider of Silvers' choosing), as long as such coverage is offered. Such advance will not exceed \$1,000 per month.
- c. Stelor will reimburse Silvers for insurance premiums through the expiration of the "Letter Agreement," not to exceed \$4,000. Such reimbursements will be provided to Silvers within 15 days of Stelor receiving evidence of paid premiums.

11. Recoupment and Termination of Royalty Advances: Royalties advanced under this Agreement will be recaptured by Stelor once royalty payments exceed the amount specified in paragraph 8. <sup>to G</sup> Such deductions will not exceed 20% of any given royalty payment.

12. Royalty Statements: Stelor shall confirm in writing that no royalty payments are outstanding, and thus no royalty statements are due.

SILVERS 

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- 13. Trademark Registrations: Stelor shall provide to Silvers through KTT proof that all applications and registrations for trademarks and domain names with the "GOO" prefix or identified as Googles IP in the License Agreement filed by or on behalf of Stelor show Silvers as the owner.
- 14. Audit: Stelor shall cooperate in the audit of the books and records of Stelor by Aronson and Company onsite at Stelor Productions as per section IV of the Licensing, Distribution and Manufacturing Agreement. Any information obtained by the auditor will be restricted to KTT, on an "attorneys' eyes only" basis and the identity of any licensee, sub-licensee, vendor, or any other third-party shall remain confidential.
- 15. Licensed Products Samples: Stelor shall provide Silvers through KTT samples of any Licensed Product that is being offered for sale.
- 16. USPTO Correspondence: Stelor's counsel shall keep KTT advised as to the status of any pending or future trademark or domain name disputes filed by Stelor against Google Inc. by copying KTT on all pleadings and correspondence, and by giving notice to KTT of any other trademark or domain name disputes filed against Google Inc.
- 17. Reservation of Jurisdiction: The Parties agree to submit to the exclusive continuing jurisdiction of the United States District Court, Southern District of Florida, for enforcement of all provisions of this Agreement. In the event that a dispute arises concerning the obligations of any Party under this Agreement, the Parties agree to submit any such dispute to this court for resolution. The successful or prevailing party (as determined by the Court) shall be entitled to recover its reasonable attorneys'

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fees and other costs incurred in that litigation from the unsuccessful or non-prevailing party in addition to any other relief to which the prevailing party might be entitled.

18. Injunctive Relief: The Parties hereby agree that there is no adequate remedy of law in the event that either party negotiates or settles the disputes with Google Inc. without the other party. In the event that either party attempts to negotiate with Google Inc. without the other party's participation, that shall be a breach of this Agreement, and such breach will create irreparable harm, and that injunctive relief will be necessary to maintain the rights of the non-breaching party. Accordingly, each party agrees to such injunctive relief.

19. Joint Settlement Negotiations with Google Inc.:

- a. In view of the current existence of litigation and proceedings in the TTAB, jointly referred to as "Litigation", the parties recognize the need to resolve this Litigation reasonably such that Stelor can continue to develop and promote its business.
- b. Due to the present status of development of Stelor's business, any event that causes Stelor to delay offering its web-based service to the public will cause severe injury to Stelor. Silvers therefore agrees that, in the event of a settlement with Google Inc., he will not object to Stelor's continued use of the googles.com domain to transition to a new domain name. The length of time of such transition will be at Stelor's sole discretion.
- c. In the event of a monetary, stock, or similar settlement with Google Inc., Such sale will include a complete sale or assignment of the GOOGLES IP, The proceeds from that settlement shall be divided as follows:

SILVERS 

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Silvers shall receive 70% of the first \$30 million; 50% of the next \$20 million; 30% of the next \$30 million; 20% of the next \$20 million; 10% of the next \$20 million and 5% of any amount over \$120 million, with the remainder in each case going to Stelor. Silver's total share of the proceeds shall not exceed \$50 Million in any event.

- d. Nothing in this provision creates an affirmative action by either party to enter any settlement with Google Inc., or to sell or assign the GOOGLES IP to Google Inc. Silvers understands and agrees that he cannot sell or assign the GOOGLES IP to Google Inc. without obtaining Stelor's written approval. Both parties agree that they will negotiate in good faith.

20. Confidentiality and Disposition of this Action:

- a. The settlement shall not be provided to the court unless necessary to enforce rights, and then under seal. A Joint Stipulated motion to withdraw actions shall be filed no later than Friday, January 28, 2005. The fact that a settlement has been reached and all terms and obligations shall be confidential except to the extent necessary to advise Google Inc. that the parties have resolved all differences.
- b. The complaint and counterclaim shall be dismissed without prejudice.

21. Exclusive Authority/No Assignment:

- a. Stelor and Silvers represent and warrant that no other person or entity has or had any interest in the Claims, demands, obligations, or causes of action

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released as part of this Agreement, that they have the sole right and exclusive authority to execute this Agreement and receive the considerations specified herein, and that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the Claims, demands, obligations, or causes of action released as part of this Agreement.

- b. The signatories to this Agreement each warrant that they have the power to bind the person or entity on whose behalf they signed, and will hold harmless any party to this Agreement for any attorney fees, costs, expenses, or damages incurred or paid as a result of finding that such person or entity lacks such authority, or does not have sole right to the Claims that are the subject of this Agreement, or that any such Claim has been assigned.

22. Voluntary Agreement: Stelor and Silvers each represent that the Agreement is freely and voluntarily entered into, with the independent advice of each party's attorneys and they have not been induced to execute this Agreement by reason of the disclosure or non-disclosure of any fact or representation not set forth in this Agreement.

23. Non-disparagement: Each Party, on behalf of itself, its officers, directors, attorneys, agents, and employees, agrees not to make or publish, either orally or in writing, any disparaging statements concerning the other Party or its current and former officers, directors, attorneys, agents, shareholders, or employees.

24. Entire Agreement: This Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous contracts, agreements, promises

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and understandings, with the exception of the License, Distribution and Manufacturing Agreement as well as the Letter Agreement previously entered into by the parties. This Agreement may not be altered, modified or otherwise changed in any respect except by writing, duly executed by Stelor and Silvers. No representations, circumstances or conditions existing before the Agreement shall be used in any way by any party to the Agreement to modify the Agreement.

25. Joint Preparation: Stelor and Silvers declare that they have read this Agreement, and know and understand its contents, and they each comprehend and agree to all its terms, conditions, and meanings and their significance; all signatories and their counsel have cooperated in the drafting and preparation of this Agreement, and this Agreement therefore shall not be construed against any signatory. The Agreement shall not be construed against any of them based upon any claim of unequal sophistication or bargaining power.

26. Governing Law: This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the laws of the State of Florida.

27. Duplicate Originals: This Agreement may be executed in duplicate originals, each of which is equally admissible in evidence in an action to enforce this Agreement, and each original shall fully bind each party who has executed it.

28. Facsimile Signatures: The signatures required for the execution of this Agreement may be transmitted by facsimile, and any such signature shall be deemed a duplicate original, and may be admitted in evidence and shall fully bind the party and person making such signature.

SILVERS 

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29. Effective Date: The Effective Date of this agreement shall be the date on which all Parties have signed this Agreement.

30. Each Party Agrees to operate in good faith as to the terms of this agreement

[Signature Page Follows]

SILVERS 

- 10 -

STELOR \_\_\_\_\_

THE FOREGOING IS AGREED TO BY:

DATED: January \_\_, 2005 Stelor Productions, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

DATED: January 28, 2005 Steven A. Silvers

By: 

APPROVED AS TO FORM AND CONTENT:

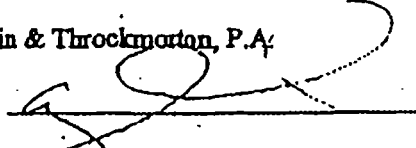
DATED: January \_\_, 2005 Summers Rubinstein, P.C.

By: \_\_\_\_\_

Yano L. Rubinstein, Esq.

Attorneys for Stelor Productions, Inc.

DATED: January 28, 2005 Kozyak, Tropin & Throckmorton, P.A.

By: 

Gail McQuillin, Esq.

Attorneys for Steven A. Silvers

SILVERS 

**CONFIDENTIAL SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is made and entered into by Stelor Productions, Inc. ("Stelor") and Steven A. Silvers ("Silvers"). Stelor and Silvers are collectively referred to herein as "the Parties."

WHEREAS, Stelor brought a complaint in the United States District Court for the Southern District of Florida (Case No. 04-80954-CIV-HURLEY) against Silvers alleging breach of, (1) the License, Distribution and Manufacturing Agreement; and (2) the Letter Agreement;

WHEREAS, Silvers brought a counter-complaint against Stelor alleging breach of, (1) the License, Distribution and Manufacturing Agreement; and (2) the Letter Agreement;

WHEREAS, Silvers on January 13, 2005 sent a notice of termination of the Licensing, Distribution and Manufacturing Agreement to Stelor;

WHEREAS, Stelor has invested substantial time, effort, and money in developing a business involving the GOOGLES IP and fully intends to continue developing and commercializing such business, including sub-licensing some or all of the GOOGLES IP;

WHEREAS, the Parties intend that full performance by each Party of its obligations under this agreement cures the breaches alleged against each by the other Party, and

WHEREAS, the Parties wish to resolve all of the foregoing disputes to their mutual satisfaction.

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THEREFORE, the Parties hereby agree as follows:

1. Domain Name Administration:

- a. Silvers shall give Stelor, as the administrative contact for the GOOGLES IP domain names, the right to control the DNS records and make changes to the administrative contact information for all GOOGLES IP domain names, and shall advise the domain name registrar known as godaddy.com to this effect. Silvers will provide proof that Stelor has such rights no later than February 15, 2005. Silvers shall cooperate with any other request from Stelor regarding necessary administrative issues relating to the domain names, and all communications by Silvers, relating to domain names, shall be through Kozyak Tropin and Throckmorton ("KTT").
- b. KTT will create and control a domain name renewal database to ensure timely renewal of domain names owned by Silvers, and will communicate with Stelor's counsel regarding any deadlines or other administrative issues.

2. Pending and Future Actions Relating to the GOOGLES IP: Silvers will cooperate with Stelor and Stelor's counsel in all respects in pending and future trademark and domain name dispute proceedings filed by Stelor, including but without limitation, providing any and all documents and other evidence needed to support Stelor's position.

3. The License, Distribution and Manufacturing Agreement: Silvers withdraws his  
[ notice of termination of the License Agreement, and reaffirms his obligations under

SILVERS \_\_\_\_\_

STELOR 

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4. Post-Settlement Communications: Silvers shall communicate with Stelor solely through KTT.
5. USPTO Correspondent of Record: Silvers shall change the correspondent on all GOOGLES IP trademark applications and registrations to the name of Stelor's counsel no later than February 15, 2005, and shall not change the correspondent in the future as long as the Licensing, Manufacturing and Distribution Agreement is in effect. Stelor's counsel shall copy KTT with all correspondence to and from the USPTO
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8. Options Acknowledgement: Stelor agrees that it will confirm in writing that no additional options have been granted that would obligate it to provide such options under the now expired Letter Agreement.
9. LLC Acknowledgement: The Parties acknowledge that Stelor Inc., a Delaware "C" Corporation, is in the process of converting to a Delaware LLC. Any options granted

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STELOR 

to Silvers from the Stelor Inc. "C" Corporation will be converted to a like amount of unit interests under the LLC.

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specified in paragraph <sup>10</sup> ~~10~~ Such deductions will not exceed 20% of any given royalty payment.

12. Royalty Statements: Stelor shall confirm in writing that no royalty payments are outstanding, and thus no royalty statements are due.

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fees and other costs incurred in that litigation from the unsuccessful or non-prevailing party in addition to any other relief to which the prevailing party might be entitled.

18. Injunctive Relief: The Parties hereby agree that there is no adequate remedy of law in the event that either party negotiates or settles the disputes with Google Inc. without the other party. In the event that either party attempts to negotiate with Google Inc. without the other party's participation, that shall be a breach of this Agreement, and such breach will create irreparable harm, and that injunctive relief will be necessary to maintain the rights of the non-breaching party. Accordingly, each party agrees to such injunctive relief.

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- a. In view of the current existence of litigation and proceedings in the TTAB, jointly referred to as "Litigation", the parties recognize the need to resolve this Litigation reasonably such that Stelor can continue to develop and promote its business.
- b. Due to the present status of development of Stelor's business, any event that causes Stelor to delay offering its web-based service to the public will cause severe injury to Stelor. Silvers therefore agrees that, in the event of a settlement with Google Inc., he will not object to Stelor's continued use of the googles.com domain to transition to a new domain name. The length of time of such transition will be at Stelor's sole discretion.
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SILVERS \_\_\_\_\_

STELOR 

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- d. Nothing in this provision creates an affirmative action by either party to enter any settlement with Google Inc., or to sell or assign the GOOGLES IP to Google Inc. Silvers understands and agrees that he cannot sell or assign the GOOGLES IP to Google Inc. without obtaining Stelor's written approval. Both parties agree that they will negotiate in good faith.

**20. Confidentiality and Disposition of this Action:**

- a. The settlement shall not be provided to the court unless necessary to enforce rights, and then under seal. A Joint Stipulated motion to withdraw actions shall be filed no later than Friday, January 28, 2005. The fact that a settlement has been reached and all terms and obligations shall be confidential except to the extent necessary to advise Google Inc. that the parties have resolved all differences.
- b. The complaint and counterclaim shall be dismissed without prejudice.

**21. Exclusive Authority/No Assignment:**

- a. Stelor and Silvers represent and warrant that no other person or entity has or had any interest in the Claims, demands, obligations, or causes of action

SILVERS \_\_\_\_\_

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STELOR 

released as part of this Agreement, that they have the sole right and exclusive authority to execute this Agreement and receive the considerations specified herein, and that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the Claims, demands, obligations, or causes of action released as part of this Agreement.

- b. The signatories to this Agreement each warrant that they have the power to bind the person or entity on whose behalf they signed, and will hold harmless any party to this Agreement for any attorney fees, costs, expenses, or damages incurred or paid as a result of finding that such person or entity lacks such authority, or does not have sole right to the Claims that are the subject of this Agreement, or that any such Claim has been assigned.

22. Voluntary Agreement: Stelor and Silvers each represent that the Agreement is freely and voluntarily entered into, with the independent advice of each party's attorneys and they have not been induced to execute this Agreement by reason of the disclosure or non-disclosure of any fact or representation not set forth in this Agreement.

23. Non-disparagement: Each Party, on behalf of itself, its officers, directors, attorneys, agents, and employees, agrees not to make or publish, either orally or in writing, any disparaging statements concerning the other Party or its current and former officers, directors, attorneys, agents, shareholders, or employees.

24. Entire Agreement: This Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous contracts, agreements, promises

SILVERS \_\_\_\_\_

STELOR 

and understandings, with the exception of the License, Distribution and Manufacturing Agreement as well as the Letter Agreement previously entered into by the parties. This Agreement may not be altered, modified or otherwise changed in any respect except by writing, duly executed by Stelor and Silvers. No representations, circumstances or conditions existing before the Agreement shall be used in any way by any party to the Agreement to modify the Agreement.

25. Joint Preparation: Stelor and Silvers declare that they have read this Agreement, and know and understand its contents, and they each comprehend and agree to all its terms, conditions, and meanings and their significance; all signatories and their counsel have cooperated in the drafting and preparation of this Agreement, and this Agreement therefore shall not be construed against any signatory. The Agreement shall not be construed against any of them based upon any claim of unequal sophistication or bargaining power.

26. Governing Law: This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the laws of the State of Florida.

27. Duplicate Originals: This Agreement may be executed in duplicate originals, each of which is equally admissible in evidence in an action to enforce this Agreement, and each original shall fully bind each party who has executed it.

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SILVERS \_\_\_\_\_

STELOR \_\_\_\_\_



29. Effective Date: The Effective Date of this agreement shall be the date on which all Parties have signed this Agreement.

30. Each Party Agrees to operate in good faith as to the terms of this agreement.

[Signature Page Follows]

SILVERS \_\_\_\_\_

STELOR \_\_\_\_\_ 

THE FOREGOING IS AGREED TO BY:

DATED: January 28, 2005

Stelor Productions, Inc.

By: Steven A Esqig  
Its: President / CEO

DATED: January \_\_, 2005

Steven A. Silvers

By: \_\_\_\_\_

APPROVED AS TO FORM AND CONTENT:

DATED: January 28, 2005

Summers Rubinstein, P.C.

By: [Signature]

Yano L. Rubinstein, Esq.

Attorneys for Stelor Productions, Inc.

DATED: January \_\_, 2005

Kozyak, Tropin & Throckmorton, P.A.

By: \_\_\_\_\_

Gail McQuilkin, Esq.

Attorneys for Steven A. Silvers

SILVERS \_\_\_\_\_

STELOR [Signature]

TO REORDER CALL 954-846-9399



RECYCLED PAPER





LAW OFFICES  
KOZYAK TROPIN & THROCKMORTON, P.A.  
2525 PONCE DE LEON - 9TH FLOOR  
CORAL GABLES, FLORIDA 33134-6037

GAIL A. MCQUILKIN  
DIRECT DIAL (305) 377-0666  
gamm@ktlaw.com

TELEPHONE (305) 372-1800  
TELECOPIER (305) 372-3508

Via Federal Express  
AWB# 7929-0844-8480

April 27, 2005

Steven A. Esrig  
Stelor Productions, Inc.  
14701 Mockingbird Drive  
Darnestown, Maryland 20874

Re: Silvers/Stelor License Agreement

Dear Mr. Esrig:

On November 12, 2004, we served notice on Stelor that it was in breach of several material provisions of both the License Agreement and Letter Agreement, a copy of which is attached. Because Stelor did not cure those breaches, on January 13, 2005 we served on Stelor a notice of termination of the License Agreement, a copy of which is attached.

On January 28, 2005, Stelor and Silvers entered into a Settlement Agreement in which Silvers agreed to withdraw his notice of termination provided Stelor perform its obligations under the Settlement Agreement. Stelor, however, has:

- failed to provide Silvers with unit interests in Stelor LLC under paragraph 9;
- failed to pay Silvers monthly installments on royalty advances on the first of every month under paragraph 10 (a);
- failed to pay on April 1, 2005 the monthly advance on royalties required by Silver to maintain his insurance coverage through the Aurora Collection under paragraph 10 (b);
- failed to cooperate in the audit of the books and records of Stelor under paragraph 14; and
- failed to provide Silvers samples of Licensed Products that are being offered for sale under paragraph 15.

Furthermore, although Stelor has provided a written statement that it is not offering any

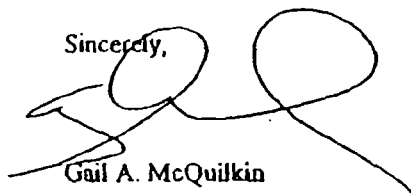
Page 2

Furthermore, although Stelor has provided a written statement that it is not offering any products for sale, and no royalties due, that statement has proven to be false.

Stelor continues to be in breach of the License Agreement as outlined in our letter of November 12, 2004. This is to provide notice to you that due to Stelor's failure to perform its obligations under the Settlement Agreement, and failure to cure the breaches under the License Agreement, Silvers is reinstating his notice of termination of the License Agreement effective immediately.

Pursuant to paragraph X of the License Agreement, Stelor must immediately provide Silvers with a complete schedule of all inventory of Licensed Products on hand or on order. Stelor has six (6) months to continue to sell this Inventory, if any, in accordance with the License Agreement. So long as Stelor is actively selling its inventory of Licensed Products, it may continue the use of the Licensed Intellectual Property associated with the inventory for this period. Outside the scope of its efforts to sell its inventory of Licensed Products, Stelor must immediately cease use of the Licensed Intellectual Property, including names, trademarks, signs, advertising, web site, and anything else that might make it appear that it is still handling the articles and products relating to the Googles IP. Further, Stelor must return to Silvers all material relating to the Licensed Intellectual Property and inform its sub-licensees and those selling Googles related merchandise of the termination of the License Agreement.

Because the License Agreement is now terminated, Stelor may not represent Silvers' interest in any legal proceeding or action.

Sincerely,  
  
Gail A. McQuilkin

c: Steven A. Silvers  
Laureace Hefter  
Kevin Kaplan

231919.1

TO REORDER CALL 954-846-9399



RECYCLED PAPER



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO.

STELOR PRODUCTIONS, L.L.C., a  
Delaware corporation, f/k/a STELOR  
PRODUCTIONS, INC.,

05 - 80393

Plaintiff,

vs.

CIV-HURLEY

STEVEN A. SILVERS, a Florida resident,

Defendant.

VERIFIED COMPLAINT

Plaintiff STELOR PRODUCTIONS, L.L.C., f/k/a STELOR PRODUCTIONS, INC. ("Stelor"), by and through its undersigned attorneys, hereby files this Complaint against Defendant STEVEN A. SILVERS ("Silvers") and alleges as follows:

1. This is a civil action seeking an injunction, a declaratory judgment, and other relief based upon Silvers' breach of a settlement agreement between the parties, his failure to honor another agreement between the parties, and the harm and threatened harm engendered by his actions.

Parties, Jurisdiction and Venue

2. Stelor is a limited liability company organized and existing under the laws of the State of Delaware, and having its principal place of business in Darnestown, Maryland. Stelor converted from a corporation to a limited liability company effective on or about March 14, 2005.

3. Silvers is a resident of Palm Beach County, Florida and is sui juris.

BURLINGTON • WEIL • 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@BWSKB.COM WWW.BWSKB.COM

WC

4. This Court has subject matter jurisdiction based on diversity of citizenship pursuant to 28 U.S.C. § 1332(a). The parties are residents of different states and the matter in controversy exceeds the sum or value of seventy-five thousand dollars (\$75,000), exclusive of interest and costs. This Court also has jurisdiction under the Declaratory Judgment Act, 28 U.S.C. § 2201, because the parties' irreconcilable differences in the interpretation of specific contractual provisions, combined with Silvers' threats and breaches have created a justiciable case or controversy between the parties.

5. Stelor's claims arise in whole or in part in the Southern District of Florida. The contracts at issue in this action specifically provide that all disputes are to be resolved by this Court and that the parties consent to jurisdiction in this Court. Silvers also resides in this District. Venue is accordingly proper pursuant to 28 U.S.C. § 1391(a).

#### **Factual Allegations**

6. In 1991, Silvers published a children's edutainment book entitled *Googles and the Planet of Goo* about four loveable alien creatures called "Googles". That book displayed the trademark GOOGLES & Design on the outside back cover. Silvers registered copyrights in that book and additional related works from 1991 through 1994. In 1995, Silvers applied for a design patent on a tennis shoe having the GOOGLES & Design trademark displayed in at least four places on it (and that patent was subsequently issued September 1, 1998). On August 2, 1996, a company controlled by Silvers, The Googles Children's Workshop, Inc., filed an application for federal registration in the United States Patent and Trademark Office ("USPTO") of GOOGLES & Design as a trademark for "children's books" claiming use since June 1994. That application matured into Registration No. 2,087,590 issued August 12, 1997.

7. On July 18, 1997, Silvers registered the domain name googles.com and, on or about that date, started using GOOGLES as a service mark on his website for pre-school and young children (the GOOGLES & Design Trademark, Copyrights, Domain Name, and Patent will be collectively referred to as "GOOGLES IP"). As a natural expansion of the GOOGLES children's book and website, there have been sales of children's merchandise related to the Googles characters, namely, GOOGLES stickers, plush toys and music CDs, and distribution of GOOGLES children's T-shirts.

8. Despite these efforts to preserve, expand and promote the GOOGLES IP, Silvers' venture made little impact in a marketplace crowded with children's materials from bigger and better financed providers. In an effort to successfully capitalize on the GOOGLES IP, Silvers sought partners to carry forward his vision. An initial effort between Silvers and Aurora Collection, Inc. ("Aurora") failed and Silvers thereafter sought another partner. Silvers was in no position to move forward alone, as he had many personal and business hurdles to overcome. Significant among them were a lack of capital, a lack of connections, a lack of experience, a lack of access to financing, an increasingly adverse relationship with Aurora, and negative aspects of Silvers' background that made him unsuited to serve as figurehead or spokesman for an enterprise aimed at providing wholesome and enriching entertainment to an audience of impressionable children.

9. Accordingly, when Stelor was formed to develop Silvers' concept into a reality, Stelor's enthusiasm and interest were tempered by legitimate concerns and reservations. Stelor saw potential in the GOOGLES IP and Stelor's founders also had confidence in their ability to raise the needed funds and to create a compelling and attractive "Googles" universe that would

enlighten, entertain, educate, and develop children by providing them with fascinating and uplifting products, programs and services. But aware of Aurora's aborted effort, and wary that Silvers' background could jeopardize the "Googles" program, Stelor insisted that any arrangement with Silvers contain safeguards and protections.

10. Thus, when on or around June 1, 2002, Stelor and Silvers entered into a "License, Distribution and Manufacturing Agreement" ("License Agreement") and a Consulting Agreement (true and correct copies of which are attached hereto as Exhibits "A" and "B", respectively), Stelor bargained for, and obtained, promises, commitments and obligations from Silvers designed to ensure Stelor's ability to develop the "Googles" program free from undue interference by Silvers. The License Agreement gives Stelor the sole and exclusive worldwide license to commercialize the Googles characters and the GOOGLES IP. Among the pertinent provisions of the License Agreement and the Consulting Agreement are the following:

(a) The License Agreement gives Stelor exclusive rights in the "Googles" products, trademarks and intellectual property and specifies that those rights are exclusive even as to Silvers (Ex. "A" at ¶¶ IA, IB).

(b) The License Agreement gives Stelor an irrevocable power of attorney to apply for, maintain, enforce and defend intellectual property rights, including trademarks, websites and domain names. Stelor, not Silvers, assumed responsibility for handling all Googles trademark and other intellectual property matters (Ex. "A" at ¶ VIIIA).

(c) The License Agreement and the Consulting Agreement require Silvers to fully cooperate with Stelor, while the Consulting Agreement makes plain that Silvers shall have no power to direct or control the daily activities of Stelor (Ex. "A" at ¶ VIIIE; Ex. "B" at ¶ 3).

(d) Finally, to protect Stelor from possible public embarrassment, both the License Agreement and the Consulting Agreement expressly prohibit Silvers from initiating or maintaining “any relationship or conversation with [Stelor’s] current or prospective clients, vendors, any company relationships with the media (press, etc.), without the prior express written request by [Stelor].”

11. Silvers freely agreed to these and other contractual obligations and restrictions. Stelor, believing it had the necessary rights and protections, then threw itself enthusiastically into the task of using its best efforts to develop The Googles concept and intellectual property. To this end, Stelor has spent millions of dollars, and its principals and employees have devoted themselves tirelessly to making Stelor and the “Googles” successful and profitable, both for themselves and for the benefit of Silvers.

12. Notwithstanding his contractual agreements, Silvers displayed an unwillingness to abide by his obligations and commenced a campaign to inject and entwine himself into the very fabric of Stelor’s business. He subverted Stelor’s intellectual property rights by diverting communications from the USPTO from Stelor to himself. He interfered with litigation undertaken by Stelor against third parties. He held himself out as a Stelor representative at crucial industry trade shows. He threatened to communicate directly with the trade and press concerning the GOOGLES IP. He withheld information vital to Stelor’s ability to carry out the business of transforming the basic Googles idea into a thriving and profitable business and denied it access to Googles domain names. All of these actions were in violation of the License Agreement.



13. As a result of Silvers' actions, Stelor was left with no choice other than to file a complaint against him for injunctive, declaratory and other relief related to his breaches. The Complaint was filed on or about October 18, 2004 and the cause was styled Stelor Productions, Inc. v. Steven A. Silvers, Case No. 04-80954-Civ-Hurley, United States District Court for the Southern District of Florida ("the prior litigation"). The Complaint sought injunctive relief requiring Silvers to notify the USPTO that it was to communicate with Stelor, to provide Stelor with access to the Googles domain names, to refrain from communicating with the media and vendors concerning the GOOGLES IP, and to refrain from interfering in litigation undertaken by Stelor, as well as a declaration that Stelor was in compliance with the Licensing Agreement. Silvers subsequently filed a counterclaim asserting that Stelor was in breach and he purported to terminate the License Agreement.

14. On or about January 28, 2005, Stelor and Silvers entered into a Confidential Settlement Agreement ("Settlement Agreement") resolving the prior litigation. A true and correct copy of the Settlement Agreement is being filed with the Court separately under seal, in accordance with its terms.

15. Among other things, the Settlement Agreement vindicated the positions taken by Stelor in the prior litigation. The Settlement Agreement gives Stelor the right to control the domain names, requires Silvers to cooperate in all respects in pending and future trademark and domain name dispute proceedings filed by Stelor, withdraws Silvers' purported termination of the License Agreement and reaffirms his obligations under it, and makes Stelor's counsel the sole correspondent with the USPTO. The Settlement Agreement also required the dismissal of the prior litigation, with a reservation of exclusive continuing jurisdiction with the United States

District Court for the Southern District of Florida to enforce its terms, with the prevailing party in any enforcement action recovering reasonable attorneys' fees and costs. Silvers was paid valuable consideration for entering into the Settlement Agreement.

16. On February 8, 2005, Stelor and Silvers filed a Joint Stipulation of Dismissal without Prejudice of the prior litigation. The stipulation was granted by Order dated February 17, 2005 and the prior litigation was administratively closed.

17. Unfortunately, soon thereafter, Silvers once again proved himself unwilling to abide by the terms of his contractual undertakings. He repeatedly failed to cooperate in pending and future trademark and domain name dispute proceedings. He repeatedly failed to provide evidence of paid insurance premiums. And, most importantly, he schemed to undo Stelor's business activities and steal its work.

18. As he did in the prior litigation when he purported to terminate the License Agreement, only to withdraw the notice of termination and reaffirm his obligations under the License Agreement, Silvers has once again purported to terminate the License Agreement. By letter dated April 27, 2005, counsel for Silvers wrote to Steven Esrig of Stelor reinstating the notice of termination of the License Agreement based on five invalid grounds. A true and correct copy of the April 27 letter is attached hereto as Exhibit "C".

19. Counsel for Stelor responded by letter dated April 29, 2005, in which Stelor refuted each of the specious grounds cited by Silvers, offered to cure any conceivable breaches, and demanded withdrawal of the notice of termination, confirmation that Silvers would abide by the terms of the License Agreement and the Settlement Agreement, and written assurance that Silvers will make no efforts to interfere in any manner with the business of Stelor. Specifically,

Stelor demonstrated that it has met its obligation to offer unit interests to Silvers, it has paid or attempted to pay all royalty advances that Silvers could possibly claim, it has cooperated in the audit of the books and records, it has offered to make samples of licensed products available, and it has provided a royalty statement showing that no royalties are owed. A true and correct copy of the April 29 letter is attached hereto as Exhibit "D".

20. On May 2, 2005, Silvers' counsel dispatched a letter refusing to comply with the reasonable demands made by Stelor. Indeed, the letter, in stating that Silvers "intends to go in a different direction to develop his characters and intellectual property", essentially conceded that Silvers is planning immediate actions that are prohibited by the License Agreement and the Settlement Agreement and violative of Stelor's rights under those agreements, notwithstanding the fact that the License Agreement requires 60 days notice and an opportunity to cure prior to termination. See Ex. "A" at ¶ IX. A true and correct copy of the May 2 letter (which bears the erroneous year "2004" rather than "2005", as correctly reflected in the facsimile transmission information) is attached hereto as Exhibit "E".

21. Silvers began acting on the threat made in his counsel's letter before the letter was dispatched, even though his notice of termination, even if valid, is not effective until June 26, 2005. On April 28, 2005, Stelor learned from godaddy.com, a domain name registrar, that Silvers had violated the License Agreement and the Settlement Agreement by changing 78 different Googles domain names from Stelor's control to Silvers' control and improperly excluded Stelor from being the administrative contact with the domain name registrar. Due to Silvers' actions in violation of the agreements, Stelor is currently unable to reassert control over the domain names that it has licensed.

22. Moreover, Silvers hijacked the entirety of the content of the website located at www.google.com and developed, produced and operated by Stelor at great expense. Stelor received notice of this conduct on May 3, 2005 from Verio, Inc., a web hosting firm, which informed that another customer (obviously Silvers) had requested to add google.com to their account, at which point Stelor learned that the website had been deactivated and brought down. Having taken this action in express violation of the agreements, Silvers has taken from Stelor content in which it has made a seven-figure investment, and has taken from Stelor the ability to control intellectual property that it has licensed and that it has created.

23. In doing so, Silvers has essentially put Stelor out of business. Without its website content, Stelor cannot display its product and meet with potential licensees. It cannot demonstrate its product to its users and their customers. It cannot launch and protect pending expansions to its brand. Advertisements that have been placed promoting the website for an upcoming trade show have been rendered useless and, as a result, Stelor's reputation has been damaged and it has lost industry goodwill. Moreover, its ability to prepare and submit materials for that trade show has been compromised. Yesterday, Stelor was actively advancing the business on all fronts. Today, it can do nothing.

24. Furthermore, Stelor developed the content and exclusively operated the website devoted to the "Googles" characters, offering a variety of services and features geared to delighting children and their parents. The website is the public's window into the Googles' world. Being able to operate and modify this website is among Stelor's most important priorities. Yesterday, the website was filled with intellectual property and content created by Stelor. Today, as a result of Silvers' dishonesty and maliciousness, the intellectual property has

been taken from Stelor's control and the website has been destroyed, replaced with a message created by Silvers, presumably. A true and correct copy of the current website content established after Silvers hijacked the site is attached hereto as Exhibit "F". Without immediate entry of an injunction, the harm to Stelor will be irreparable.

25. All conditions precedent to the commencement of this action have either occurred, been waived or been excused.

26. Stelor has retained undersigned counsel to prosecute this action and is obligated to them for reasonable attorney's fees and costs in connection therewith.

**COUNT ONE**  
**(Breach of Contract)**

27. Stelor re-alleges and incorporates by reference the allegations of paragraphs 1 through 26, inclusive, as though fully set forth herein.

28. Silvers' actions set forth above constitute material breaches of the Licensing Agreement and the Settlement Agreement.

29. As a result of Silvers' actions, Stelor has been damaged.

30. Silvers' breaches have caused irreparable injury to Stelor.

31. Stelor has no adequate remedy at law.

32. Furthermore, if Silvers is free to ignore the terms of the License Agreement and the Settlement Agreement, nothing prevents him from negotiating directly with Google, Inc. and Stelor is in reasonable fear that Silvers either has already done so or will do so if not enjoined. The Settlement Agreement expressly provides that any attempt to negotiate with Google, Inc. without Stelor's participation constitutes a breach of the Settlement Agreement that creates irreparable harm and for which injunctive relief will be necessary to maintain the rights of the

non-breaching party. Both Stelor and Silvers agreed to the issuance of injunctive relief to prevent such a breach.

**COUNT TWO**  
**(Declaratory Judgment)**

33. Stelor re-alleges and incorporates by reference the allegations of paragraphs 1 through 26, inclusive, as though fully set forth herein.

34. This is a claim for declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. § 2201.

35. By virtue of his notice of termination (Exhibit "C"), Silvers has taken the position that Stelor has breached the Settlement Agreement and that the License Agreement is terminated. As detailed above, Silvers has also taken actions in violation of his obligations and undertakings pursuant to the License Agreement and the Settlement Agreement, in apparent reliance upon his purported termination of the License Agreement.

36. Stelor believes that the Settlement Agreement and the License Agreement are valid and effective contractual commitments that continue to bind the parties. Stelor further contends that Silvers' prior actions, his current actions and his threatened future conduct both violate the terms of the Settlement Agreement and the License Agreement and threaten the business of Stelor. Stelor additionally has ongoing financial obligations under the Settlement Agreement that it is prepared to meet, but which are not required if the License Agreement has been terminated.

37. Accordingly, Stelor is in doubt about its rights and Silvers' rights under the License Agreement and the Settlement Agreement.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff STELOR PRODUCTIONS, L.L.C. prays that this Court issue and award the following relief:

(a) a preliminary and permanent injunction enjoining Defendant STEVEN A. SILVERS from taking any action in violation of or contrary to the terms of the Licensing Agreement or the Settlement Agreement and affirmatively requiring him to restore the domain names and website to Stelor's control;

(b) a declaratory judgment declaring that Stelor has complied with its obligations under the Licensing Agreement and the Settlement Agreement and that those agreements remain in full force and effect;

(c) a judgment awarding Stelor its reasonable attorneys' fees and costs; and

(d) a judgment awarding Stelor such other relief as may be deemed just and proper.

**VERIFICATION**

This sworn verification is made under penalty of perjury under 28 U.S.C. § 1746. I, STEVEN A. ESRIG, Chief Executive Officer and President of STELOR PRODUCTIONS, L.L.C., declare under penalty of perjury under the law of the United States and Florida that I executed the foregoing Verified Complaint and that the factual allegations contained therein are true and correct.

By: SEE ATTACHED  
Steven A. Esrig  
Chief Executive Officer/President  
Stelor Productions, L.L.C.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff STELOR PRODUCTIONS, L.L.C. prays that this Court issue and award the following relief:

(a) a preliminary and permanent injunction enjoining Defendant STEVEN A. SILVERS from taking any action in violation of or contrary to the terms of the Licensing Agreement or the Settlement Agreement and affirmatively requiring him to restore the domain names and website to Stelor's control;

(b) a declaratory judgment declaring that Stelor has complied with its obligations under the Licensing Agreement and the Settlement Agreement and that those agreements remain in full force and effect;

(c) a judgment awarding Stelor its reasonable attorneys' fees and costs; and

(d) a judgment awarding Stelor such other relief as may be deemed just and proper.

**VERIFICATION**

This sworn verification is made under penalty of perjury under 28 U.S.C. § 1746. I, STEVEN A. ESRIG, Chief Executive Officer and President of STELOR PRODUCTIONS, L.L.C., declare under penalty of perjury under the law of the United States and Florida that I executed the foregoing Verified Complaint and that the factual allegations contained therein are true and correct.

By: 

Steven A. Esrig  
Chief Executive Officer/President  
Stelor Productions, L.L.C.



Dated this 4<sup>th</sup> day of May 2005.

Respectfully submitted,

BURLINGTON, WEIL, SCHWIEP,  
KAPLAN & BLONSKY, P.A.

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By: 

Kevin C. Kaplan  
Florida Bar No. 933848  
Daniel F. Blonsky  
Florida Bar No. 972169  
David J. Zack  
Florida Bar No. 641685

TO REORDER CALL 954.346-9399



RECYCLED PAPER



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
PALM BEACH DIVISION**

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

STEVEN A. SILVERS, an individual,

Plaintiff,

vs.

GOOGLE INC., a Delaware corporation,

Defendant.

GOOGLE INC., a Delaware corporation,

Counterclaimant,

vs.

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.

**GOOGLE INC.'S FIRST SET OF DOCUMENT REQUESTS**

**TO STELOR PRODUCTIONS, LLC**

Pursuant to Federal Rules of Civil Procedure 26 and 34, Defendant and Counterclaimant Google Inc. requests that you produce for inspection and copying the documents and things listed below on May 10, 2006 at the offices of Adorno & Yoss LLP, 2525 Ponce de Leon Boulevard, Suite 400, Miami, Florida 33134 or at another location mutually agreed upon by both parties.

For the purpose of this request for production of documents and things, the following definitions and instructions shall apply.

**INSTRUCTIONS**

1. If you contend that any information, document, or thing otherwise called for by any request is excluded from production or discovery, answer so much of the discovery request as is not subject to the claimed objection and, for each document or thing:
  - a. State whether the item shall not be produced because:
    - 1) It is claimed to be privileged; or
    - 2) It once existed but can no longer be located; or
    - 3) It has been lost; or
    - 4) It has been destroyed; and
  - b. If, under a claim of privilege, any documents or things are not produced, you must state for each document:
    - 1) the type and title of the document or thing; and
    - 2) the general subject matter of the content of the document or description of the thing; and
    - 3) the date of its creation and/or revision; and
    - 4) the identity of the document's author(s), addressee(s), and recipient(s); and
    - 5) the nature of the privilege being claimed; and
    - 6) in detail, all facts upon which you base your claim of privilege.
2. In producing these documents and things, you are requested to identify and produce for inspection and copying not only those documents and things in your custody, but all documents and things in the custody of your attorneys, consultants, agents, other representatives, and other persons or entities subject to your control.

3. You are to produce the original and all copies of each requested document and thing, as well as the file in which they are kept, including all copies which bear any additional file stamps, marginal notes, or other additional markings or writings that do not appear on the original.
4. Complete production is to be made on the date and at the time indicated above. The inspection and copying will begin at that time and will continue from day to day thereafter until completed.
5. You have a duty to supplement your responses from now until the time of hearing or trial, as provided by Federal Rule of Civil Procedure 26(e).

#### **DEFINITIONS**

1. The terms "you" or "your" refer to counterdefendant Stelor Productions, LLC and includes any persons or entities controlled by or acting on behalf of you, including without limitation Steven Esrig, Stelor Productions, Inc., and all past and present licensees, agents, attorneys, predecessors, subsidiaries, parent companies, or affiliated companies and their agents, officers, directors, employees, representatives and attorneys.
2. The term "Google" refers to Defendant and Counterclaimant Google Inc. as well as its officers, directors, employees, and authorized representatives.
3. The term "crossclaim" refers to the crossclaim filed by Stelor Productions, LLC against Steven Silvers in this action on September 9, 2005.
4. The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34 and its interpretation by the courts, including originals, copies, drafts or other productions of any written, graphic or otherwise recorded matter, however produced or reproduced, whether inscribed by hand, by computer or by mechanical, electronic, or photographic means.

5. The term "concerning" means relating to, referring to, describing, reflecting, evidencing or constituting.
6. The terms "all" and "each" shall be construed to include all and each.
7. The term "and" shall be construed to include "or" and vice versa and shall be the logical equivalent of "and/or."
8. The term "amended complaint" refers to the first amended complaint filed in this action.
9. The use of the singular form of any word also includes the plural and vice versa.
10. The term MARKS refers to the GOOGLES and GOOGLES AND DESIGN marks as well as any other marks incorporating the letter string "GOOGLES."

**DOCUMENTS AND THINGS REQUESTED**

1. All documents referring to, relating to, evidencing, or reflecting the fact or your belief that, as of March 25, 2003 (or at any time between January 1 and March 25, 2003) The Googles Children's Workshop, Inc. was located at P.O. Box 60210, Potomac, Maryland 20859.
2. All documents referring to, relating to, evidencing, or reflecting the fact or your belief that, as of March 25, 2003 (or at any time between January 1 and March 25, 2003) The Googles Children's Workshop, Inc. was doing business at P.O. Box 60210, Potomac, Maryland 20859.
3. All documents concerning communications referring to, relating to, evidencing, or reflecting the fact or your belief that, as of March 25, 2003 (or at any time between January 1 and March 25, 2003) The Googles Children's Workshop, Inc. was doing business at P.O. Box 60210, Potomac, Maryland 20859.
4. All documents referring to, relating to, evidencing, or reflecting the fact or your belief that, as of March 25, 2003 (or at any time between January 1 and March 25, 2003) The Googles Children's Workshop, Inc. was doing business.

5. All documents referring to, relating to, evidencing, or reflecting the fact or your belief that, as of March 25, 2003 (or at any time between January 1 and March 25, 2003) The Googles Children's Workshop, Inc. was the owner of Registration No. 2,087,590 dated August 12, 1997, as shown by the records in the United States Patent and Trademark Office.
6. All documents concerning The Googles Children's Workshop, Inc.
7. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning The Googles Children's Workshop, Inc.
8. All documents concerning Steven A. Silvers or Silvers Entertainment Group, Inc.
9. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning Steven A. Silvers or Silvers Entertainment Group, Inc.
10. All documents constituting or comprising your company charters; operating or management agreements; by-laws; investor agreements; qualifications to do business; incorporations or registrations; annual reports or returns required by law; other business filings required by law; board, management committee, or executive committee minutes relating to the conduct of your business; and statements of officers.
11. All documents concerning your management, operations, transactions, revenues, and assets related to the GOOGLES brand or mark, your business dealings with Steven A. Silvers or Silvers Entertainment Group, Inc., or your commercialization of intellectual property related to the GOOGLES brand or mark.
12. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications with Michael Silvers concerning the MARKS, The Googles Children's Workshop, Inc. or any allegations contained in the amended complaint or counterclaims.
13. All documents concerning the dissolution of The Googles Children's Workshop, Inc..

14. Your complete tax and accounting books and full corporate earnings reports for each year of your existence, including assets, revenues, costs, and profits reported to national or state tax authorities.
15. Documents sufficient to identify all of your directors, officers, and employees and their most recent available addresses and telephone numbers.
16. All documents concerning The Googles Children's Workshop, Inc. not requested in the specific requests above.
17. All documents concerning trademark research, investigations, and searches relating to the MARKS.
18. All documents concerning applications to register the MARKS with the United States Patent and Trademark Office, any registrations issued as a result thereof, and any efforts to secure or maintain registrations or to secure "incontestable" status.
19. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning applications to register the MARKS, any registrations of them, or any efforts to secure or maintain registrations or to secure "incontestable" status.
20. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications between you and anyone else regarding the MARKS, or products or services bearing or otherwise associated with the MARKS, in connection with declarations filed with the United States Patent and Trademark Office.
21. All documents concerning the MARKS filed or sent on behalf of you to the United States Patent and Trademark Office.
22. All documents filed or sent on behalf of Steven A. Silvers or The Googles Children's Workshop, Inc. to the United States Patent and Trademark Office.



23. All documents referring or relating to, evidencing, or reflecting the fact or your belief that, as of March 25, 2003 (or at any time between January 1 and March 25, 2003) the mark described in Registration No. 2,087,590 dated August 12, 1997 in the United States Patent and Trademark Office was still in use by The Googles Children's Workshop or by a licensee of The Googles Children's Workshop on or in connection with the goods identified in the Certificate of Registration.
24. All documents referring or relating to, evidencing, or reflecting the fact or your belief that, as of March 25, 2003 (or at any time between January 1 and March 25, 2003) the mark described in Registration No. 2,087,590 dated August 12, 1997 in the United States Patent and Trademark Office had been in continuous use for more than five (5) years from June 1996, subsequent to the date of the registration, through to March 25, 2003, on or in connection with the goods identified in the Certificate of Registration.
25. All documents referring or relating to, reflecting, evidencing, constituting, or comprising your personal knowledge, information, belief, inquiries, and investigations regarding the facts alleged in declarations filed with the United States Patent and Trademark Office regarding Registration No. 2,087,590 dated August 12, 1997 and its underlying application; Application Serial No. 76/591,386 dated May 7, 2004; and Application Serial No. 78/420,234 dated May 17, 2004.
26. All documents constituting or comprising drafts of declarations, or drafts of portions of declarations for filing with the United States Patent and Trademark Office regarding Registration No. 2,087,590 dated August 12, 1997 and its underlying application; Application Serial No. 76/591,386 dated May 7, 2004; and Application Serial No. 78/420,234 dated May 17, 2004.

27. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications between you and anyone else regarding the facts alleged in the declarations filed with the United States Patent and Trademark Office regarding Registration No. 2,087,590 dated August 12, 1997 and its underlying application; Application Serial No. 76/591,386 dated May 7, 2004; and Application Serial No. 78/420,234 dated May 17, 2004.
28. All documents concerning Steven A. Silvers's or your intent to use the mark GOOGLES EDUTAINMENT at the time the declaration executed by Ira C. Edell regarding application serial no. 76/591,386 was filed with the United States Patent and Trademark Office.
29. All documents referring or relating to, evidencing, reflecting, constituting, or comprising your knowledge of the intent of any person, company or licensee to use the mark GOOGLES EDUTAINMENT at the time the declaration executed by Ira C. Edell regarding application serial no. 76/591,386 was filed with the United States Patent and Trademark Office.
30. All documents referring or relating to, reflecting, evidencing, constituting, or comprising your knowledge, information, belief, inquiries, and investigations regarding the facts alleged in the declaration executed by Ira C. Edell filed with the United States Patent and Trademark Office regarding application serial no. 76/591,386.
31. All documents concerning Steven A. Silvers's or your intent to use the mark GOOGLES at the time the declaration executed by Laurence Hefter regarding application serial no. 78/420,234 was filed with the United States Patent and Trademark Office.
32. All documents referring or relating to, evidencing, reflecting, constituting, or comprising your knowledge of the intent of any person, company or licensee to use the mark GOOGLES at the time the declaration executed by Laurence Hefter regarding application serial no. 78/420,234 was filed with the United States Patent and Trademark Office.

33. All documents referring or relating to, reflecting, evidencing, constituting, or comprising your knowledge, information, belief, inquiries, and investigations regarding the facts alleged in the declaration executed by Laurence Hefter filed with the United States Patent and Trademark Office regarding application serial no. 78/420,234.
34. All documents evidencing the appointment of Ira C. Edell or other attorneys with the firm of Edell, Shapiro & Finnan, LLC, as the attorneys to file a declaration and to transact all business in connection with Registration No. 2,087,590 and Application Serial No. 76/591,386 in the United States Patent and Trademark Office.
35. All documents concerning communications constituting or evidencing the appointment of Ira C. Edell or other attorneys with the firm of Edell, Shapiro & Finnan, LLC, as the attorneys to file a declaration and to transact all business in connection with Registration No. 2,087,590 and Application Serial No. 76/591,386 in the United States Patent and Trademark Office.
36. All documents evidencing the appointment of Laurence Hefter or other attorneys with the firm of Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P. as the attorneys to file a declaration and to transact all business in connection with Application Serial No. 78/420,234.
37. All documents concerning communications constituting or evidencing the appointment of Laurence Hefter or other attorneys with the firm of Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P. as the attorneys to file a declaration and to transact all business in connection with Application Serial No. 78/420,234.
38. All documents concerning communications with any attorney for Steven A. Silvers, The Googles Children's Workshop, or Silvers Entertainment Group, Inc.
39. All documents in your possession, custody, or control that have at any time been in the possession, custody, or control of attorneys for Steven A. Silvers, The Googles Children's Workshop, or Silvers Entertainment Group, Inc.

40. All documents concerning any domain name registrations you filed or your efforts to secure domain names incorporating the letter string GOOGLE or GOO.
41. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning any domain name registrations you filed or your efforts to secure domain names incorporating the letter string GOOGLE or GOO.
42. All documents concerning the conceptualization, design, creation, launch, publication, or modification of Web sites designed for you, established by you, or used in connection with the MARKS.
43. All documents concerning the conceptualization, design, creation, launch, publication, or modification of Web sites designed for or established by Steven A. Silvers, The Googles Children's Workshop, or Silvers Entertainment Group, Inc.
44. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning Web sites designed for you, established by you, or used in connection with the MARKS.
45. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning Web sites designed for or established by Steven A. Silvers, The Googles Children's Workshop, or Silvers Entertainment Group, Inc.
46. All documents concerning the Web sites stelor.com and stelorproductions.com or plans to develop the Web sites.
47. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning the development of the Web sites stelor.com and stelorproductions.com or plans to develop the Web sites.
48. All documents concerning the Web site googles.com or plans to develop the Web site.

49. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning the development of the Web site googles.com or plans to develop the Web site.
50. All documents concerning a Googles Web site or plans to develop a Googles Web site.
51. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning a Googles Web site or plans to develop a Googles Web site.
52. All documents concerning a Gootopia Web site or plans to develop a Gootopia Web site.
53. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning a Gootopia Web site or plans to develop a Gootopia Web site.
54. All financial statements showing expenditures on advertising and marketing activities concerning the MARKS or products or services bearing or otherwise associated with the MARKS.
55. All documents concerning advertising, marketing, and promotion of the MARKS or any products or services bearing or otherwise associated with the MARKS.
56. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning advertising, marketing, and promotion of the MARKS or any products or services bearing or otherwise associated with the MARKS.
57. All documents concerning the manufacture, distribution, sale, or offer of sale of any service or product bearing or otherwise associated with the MARKS.
58. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning the manufacture, distribution, or sale of any service or product bearing or otherwise associated with the MARKS.

59. All documents concerning assignments or licenses of the MARKS or other agreements concerning the MARKS, including all documents concerning the decision to enter into the assignments, licenses, or agreements.
60. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning assignments or licenses of the MARKS or other agreements concerning the MARKS.
61. All documents concerning the License, Distribution, and Manufacturing Agreement dated June 1, 2002 between you and Steven A. Silvers.
62. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning the License, Distribution, and Manufacturing Agreement dated June 1, 2002 between you and Steven A. Silvers.
63. All documents evidencing your use of the MARKS in connection with the conduct of business operations.
64. All documents evidencing use of the MARKS by any other person or entity in connection with the conduct of business operations, including but not limited to Steven A. Silvers; Stelor Productions, Inc; Stelor Productions, LLC; The Googles Children's Workshop, Inc.; Silvers Entertainment Group, Inc.; The Aurora Collection, Inc.; and Goo Investments LLC.
65. All documents referring or relating to, evidencing, reflecting, constituting, or comprising business plans concerning the MARKS or products or services bearing or otherwise associated with the MARKS, including but not limited to the business plans of Steven A. Silvers; Stelor Productions, Inc.; Stelor Productions, LLC; The Googles Children's Workshop, Inc.; Silvers Entertainment Group, Inc.; The Aurora Collection, Inc.; and Goo Investments LLC.

66. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning business plans concerning the MARKS or products or services bearing or otherwise associated with the MARKS, including but not limited to the business plans of Steven A. Silvers; Silvers Entertainment Group, Inc.; Stelor Productions, Inc.; Stelor Productions, LLC; The Googles Children's Workshop, Inc.; The Aurora Collection, Inc.; and Goo Investments LLC.
67. Documents sufficient to show your revenues, costs, and profits related to use and license of the MARKS by product or service, including by SKU (stock keeping unit).
68. All documents concerning projection of sales, revenue, or profits for any products or services bearing or otherwise associated with the MARKS.
69. All documents that refer directly or indirectly to Google Inc. and that discuss, reflect, evidence, or concern the rights you claim in this dispute.
70. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning Google Inc. and that discuss, reflect, evidence, or concern the rights you claim in this dispute
71. All documents concerning communications between you and Google Inc.
72. Documents sufficient to identify the names, all known addresses, and all known telephone numbers of actual or potential investors in Stelor Productions, Inc.; Stelor Productions, LLC; The Googles Children's Workshop, Inc.; The Aurora Collection, Inc.; Goo Investments LLC; or other businesses that have developed, marketed or delivered products or services that bear or are otherwise associated with the MARKS.
73. All documents concerning actual, proposed, or potential investors in, or an actual or potential investment in, the MARKS, products or services that bear or are otherwise associated with the MARKS, or businesses associated with the MARKS, including but not limited to

business plans, valuation of intellectual property assets, valuation of potential litigation, or valuation of potential settlement of litigation.

74. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning actual, proposed, or potential investors in, or an actual or potential investment in, the MARKS, products or services that bear or are otherwise associated with the MARKS, or businesses associated with the MARKS, including but not limited to communications concerning business plans, valuation of intellectual property assets, valuation of potential litigation, or valuation of potential settlement of litigation.
75. All documents concerning an actual, proposed, or potential investment in you or any entity that has or had a direct or indirect ownership interest in you, including but not limited to documents concerning promotions or offers of investment.
76. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning an actual, proposed, or potential investment in you or any entity that has or had a direct or indirect ownership interest in you, including but not limited to communications concerning promotions or offers of investment.
77. All documents concerning an actual, proposed, or potential investment in Stelor Productions, Inc. or any entity that has or had a direct or indirect ownership interest in Stelor Productions, Inc., including but not limited to documents concerning promotions or offers of investment.
78. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning an actual, proposed, or potential investment in Stelor Productions, Inc. or any entity that has or had a direct or indirect ownership interest in Stelor Productions, Inc., including but not limited to communications concerning promotions or offers of investment.




79. All documents concerning financial interests of any person or entity in any domain name disputes, trademark opposition or cancellation proceedings, or litigation to which Google Inc. is or has been a party.
80. All documents concerning financial transactions between you and any party claiming an interest in the MARKS or any party to domain name disputes, trademark opposition or cancellation proceedings, or litigation to which Google Inc. is or has been a party.
81. All documents concerning the business experience, business background, reputation, and criminal background (if any) of Steven A. Silvers, Steven Esrig, or of other officers or management personnel of The Googles Children's Workshop, Inc.; Silvers Entertainment Group, Inc.; Stelor Productions, Inc.; Stelor Productions, LLC; or The Aurora Collection.
82. All documents concerning your plans to develop or enforce rights in the MARKS.
83. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning your plans to develop or enforce rights in the MARKS.
84. All documents concerning communications to persons or entities other than Google in which you have made allegations (against any person or entity) of trademark infringement of the MARKS.
85. All documents filed in court or served in litigation to which you, Stelor Productions, Inc.; Steven Esrig; The Googles Children's Workshop, Inc.; Silvers Entertainment Group, Inc. or Steven A. Silvers is a party that concerns or may affect the rights to the MARKS or to enforce the MARKS.
86. All documents concerning litigation between you and Steven A. Silvers, Silvers Entertainment Group, Inc. or The Googles Children's Workshop, Inc., including but not limited to all documents filed with a court or served in litigation.

87. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning litigation between you and Steven A. Silvers, Silvers Entertainment Group, Inc. or The Googles Children's Workshop, Inc.
88. All documents concerning communications between you and Steven A. Silvers, Silvers Entertainment Group, Inc. or The Googles Children's Workshop, Inc. (or their attorneys or representatives).
89. All documents concerning The Aurora Collection.
90. All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications with The Aurora Collection.
91. All documents reflecting or evidencing the fact alleged in paragraph 10 of the crossclaim that despite "efforts to preserve, expand and promote the GOOGLES IP, Silvers' venture made little impact in a marketplace crowded with children's materials from bigger and better financed providers."
92. All documents reflecting or evidencing the fact alleged in paragraph 10 of the crossclaim that "[a]n initial effort between Silvers and Aurora Collection, Inc. failed."
93. All documents reflecting or evidencing the fact alleged in paragraph 10 of the crossclaim that "Silvers was in no position to move forward alone, as he had many personal and business hurdles to overcome," including all documents reflecting or evidencing "a lack of capital, a lack of connections, a lack of experience, a lack of access to financing, an increasingly adverse relationship with Aurora, and negative aspects of Silvers' background that made him unsuited to serve as figurehead or spokesman for an enterprise aimed at providing wholesome and enriching entertainment to an audience of impressionable children."
94. All documents reflecting or evidencing the fact alleged in paragraph 11 of the crossclaim that "Stelor was formed to develop Silvers' concept into a reality."

95. All documents reflecting or evidencing the fact alleged in paragraph 13 of the crossclaim that "Stelor has spent millions of dollars, and its principals and employees have devoted themselves tirelessly to making Stelor and the 'Googles' successful and profitable, both for themselves and for the benefit of Silvers."
96. All documents reflecting or evidencing the fact alleged in paragraph 14 of the crossclaim that Silvers "held himself out as a Stelor representative at crucial industry trade shows."
97. All documents reflecting or evidencing the fact alleged in paragraph 14 of the crossclaim that Silvers "threatened to communicate directly with the trade and press concerning the GOOGLES IP."
98. All documents reflecting or evidencing the fact alleged in paragraph 14 of the crossclaim that Silvers "withheld information vital to Stelor's ability to carry out the business of transforming the basic Googles ideas into a thriving and profitable business and denied it access to Googles domain names."
99. All documents reflecting or evidencing the fact alleged in paragraph 14 of the crossclaim that Silvers "subverted Stelor's intellectual property rights by diverting communications from the USPTO from Stelor to himself."
100. All documents reflecting or evidencing the fact alleged in paragraph 14 of the crossclaim that Silvers "interfered with litigation undertaken by Stelor against third parties."
101. All documents reflecting or evidencing the fact alleged in paragraph 19 of the crossclaim that Silvers failed to cooperate in pending and future trademark and domain name dispute proceedings, failed to provide evidence of paid insurance premiums, and "schemed to undo Stelor's business activities and steal its work."
102. All documents concerning the location, possession, and maintenance of the other documents requested in this set of document requests.

Dated: April 5, 2006



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Andrew P. Bridges  
Jennifer Golinveaux  
WINSTON & STRAWN LLP  
101 California Street, Suite 3900  
San Francisco, California 94111  
Phone: (415) 591-1000  
Fax: (415) 591-1400  
Attorneys for Defendant and  
Counterclaimant GOOGLE INC.

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**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Winston & Strawn LLP, 101 California Street, San Francisco, CA 94111-5894. On April 5, 2006, I served the within documents:

**GOOGLE'S FIRST SET OF DOCUMENT REQUESTS TO STELOR PRODUCTIONS, LLC**

I sent such document from facsimile machine 415-591-1400. I certify that said transmission was completed and that all pages were received and that a report was generated by facsimile machine 415-591-1400 which confirms said transmission and receipt. I, thereafter, mailed a copy to the interested party(ies) in this action by placing a true copy thereof enclosed in sealed envelop(s) addressed to the parties listed below.

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, addressed as set forth below.

by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

by sending it via Overnight mail.

Harley S. Tropin  
Kenneth R. Hartmann  
Gail A. McQuilkin  
Kozyak Tropin & Throckmorton, P.A.  
2525 Ponce de Leon, 9th Floor  
Miami, Florida 33134  
Fax: 305-372-3508

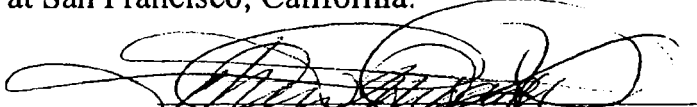
Kevin C. Kaplan  
David J. Zack  
Burlington, Weil, Schwiep, Kaplan &  
Blonsky, P.A.  
2699 South Bayshore Drive, Penthouse  
Miami, Florida 33133  
Fax: 305-858-5261

Adam T. Rabin  
Dimond Kaplan & Rothstein, P.A.  
525 S. Flagler Drive, Trump Plaza -  
Suite 200  
West Palm Beach, Florida 33401  
Fax: 561-671-1951

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than on day after the date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made.

Executed on April 5, 2006, at San Francisco, California.

  
Theresa Inyang-Lozada



TO REORDER CALL 954-846-9399



RECYCLED PAPER







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.

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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.

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**STELOR LLC'S RESPONSE TO GOOGLE INC.'S  
FIRST SET OF DOCUMENT REQUESTS**

Counterdefendant, STELOR PRODUCTIONS, LLC, f/k/a STELOR PRODUCTIONS, INC. ("Stelor"), by and through its undersigned attorneys, hereby responds as follows to Google Inc's First Set of Document Requests:

1. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

**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

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Stelor further objects in that the request mischaracterizes its "belief." Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

2. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Stelor further objects in that the request mischaracterizes its "belief." Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

3. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Stelor further objects in that the request mischaracterizes its "belief." Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

4. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Stelor further objects in that the request mischaracterizes its "belief." Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

5. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Stelor further objects in that the request mischaracterizes its "belief." Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

6. Stelor objects to this request as overbroad and unduly burdensome, insofar as it requests "all" documents "concerning" the Googles Children's Workshop. In addition, the request seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

7. Stelor objects to this request as overbroad and unduly burdensome. In addition, the request seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

8. Stelor objects to this request as vague and ambiguous, overbroad and unduly burdensome, insofar as it seeks without qualification all documents "concerning" Plaintiff or Silvers Entertainment Group, Inc. Additionally, the request seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

9. Stelor objects to this request as vague and ambiguous, overbroad and unduly burdensome, insofar as it seeks without qualification all documents "relating to, etc." "communications concerning" Plaintiff or Silvers Entertainment Group, Inc. Additionally, the request seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

10. Stelor objects to this request as vague and ambiguous, overbroad and unduly burdensome. For example, it seeks without limitation "committee minutes" and "statements of officers." That information is also confidential and proprietary. Additionally, the request seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Subject to these objections, Stelor will produce all responsive, non-privileged documents in its custody or control, to the extent they are publicly available.

11. Stelor objects to this request as vague and ambiguous, overbroad and unduly burdensome. It seeks without limitation all documents related to essentially every aspect of Stelor's business. That information is also confidential and proprietary. Additionally, the request seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence.

12. Stelor objects to this request as vague and ambiguous, overbroad and unduly burdensome. It seeks without limitation all documents "related to, etc." every allegation in the amended complaint and counterclaims. Requiring a party to relate documents to specific allegations also intrudes on the work product doctrine. Additionally, the request seeks

information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence.

13. Stelor will produce all responsive, non-privileged documents in its custody or control.

14. Stelor objects to this request as because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence.

15. Stelor objects to this request as because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence.

16. Stelor objects to this request as vague and ambiguous, overbroad and unduly burdensome. It seeks without limitation all documents "not requested." Additionally, the request seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

17. Stelor objects to this request as because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. In addition, Stelor objects to the request to the extent it seeks information protected by the attorney-client privilege. Subject to these objections, Stelor will produce all responsive, non-privileged documents in its custody or control.

18. Stelor objects to the request to the extent it seeks information protected by the attorney-client privilege. Subject to these objections, Stelor will produce all responsive, non-privileged documents in its custody or control.

19. Stelor objects to the request to the extent it seeks information protected by the attorney-client privilege. Subject to these objections, Stelor will produce all responsive, non-privileged documents in its custody or control.

20. Stelor objects to this request as vague and ambiguous, overbroad and unduly burdensome. As worded, it is confusing and Stelor does not understand it sufficiently to respond. Additionally, the request appears to seek information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

21. Stelor objects to this request as vague and ambiguous, overbroad and unduly burdensome. It seeks, without limitation, "all" documents "concerning the MARKS"; and it is ambiguous as to whether the phrase "filed or sent" refers to the documents requested or "the MARKS". Additionally, the request seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

22. Stelor will produce all responsive, non-privileged documents in its custody or control.

23. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Stelor further objects in that the request mischaracterizes its "belief." Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

24. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Stelor further objects in that the request mischaracterizes its "belief." Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

25. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Stelor further objects in that the request mischaracterizes its "belief." Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

26. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark

no. 2,087,590 is incontestable. Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

27. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

28. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

29. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

30. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.



31. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

32. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

33. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

34. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

35. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to

admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

36. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

37. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

38. Stelor objects to this request as overbroad, insofar as it seeks documents without any limitation as to subject matter. Stelor further objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, is attorney-client privileged, and work-product. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

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information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

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42. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence.

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61. Stelor objects to this request as overbroad, insofar as it seeks documents without qualification "concerning" the "agreement". Stelor further objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

62. Stelor objects to this request as overbroad, insofar as it seeks documents without qualification "relating to, etc." "communications" "concerning" the "agreement". Stelor further objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

63. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

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65. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

66. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

67. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

68. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

69. Stelor objects to this request as overbroad insofar as it asks for documents referring "directly or indirectly" to Google Inc. Subject to that objection, Stelor will produce all responsive, non-privileged documents in its custody or control.

70. Stelor objects to this request as overbroad insofar as it asks for documents referring "directly or indirectly" to Google Inc. Subject to that objection, Stelor will produce all responsive, non-privileged documents in its custody or control.

71. Stelor objects to this request as overbroad insofar as it asks for documents "concerning" "communications" with Google Inc., without qualification as to subject matter. Subject to that objection, Stelor will produce all responsive, non-privileged documents in its custody or control related to issues in this dispute.

72. Stelor objects to this request as seeking information that is confidential and proprietary. Additionally, the request seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence.

73. Stelor objects to this request as overbroad, insofar as it refers to "potential" investment. Stelor also objects to this request as seeking information that is confidential and proprietary. Additionally, the request seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence.

74. Stelor objects to this request as overbroad, insofar as it refers to "potential" investment. Stelor objects to this request as seeking information that is confidential and proprietary. Additionally, the request seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence.

75. Stelor objects to this request as overbroad, insofar as it refers to "potential" investment. Stelor objects to this request as seeking information that is confidential and proprietary. Additionally, the request seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence.

76. Stelor objects to this request as overbroad, insofar as it refers to "potential" investment. Stelor objects to this request as seeking information that is confidential and



proprietary. Additionally, the request seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence.

77. Stelor objects to this request as overbroad, insofar as it refers to "potential" investment. Stelor objects to this request as seeking information that is confidential and proprietary. Additionally, the request seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence.

78. Stelor objects to this request as overbroad, insofar as it refers to "potential" investment. Stelor objects to this request as seeking information that is confidential and proprietary. Additionally, the request seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence.

79. Stelor objects to this request as seeking information that is confidential and proprietary. Additionally, the request seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Notwithstanding this objection, Stelor has no responsive documents.

80. Stelor objects to this request as overbroad, insofar as it refers without limitation to "financial transactions". Stelor also objects to this request as seeking information that is confidential and proprietary. Additionally, the request seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence.

81. Stelor objects to this request as overbroad, insofar as it requests "all documents" regarding "experience" and "background". Additionally, the request seeks information that is

not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence.

82. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

83. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

84. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

85. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. In addition, this information is publicly available to Google.

86. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged and work product. Pursuant to 15 U.S.C. §

1115, trademark no. 2,087,590 is incontestable. In addition, this information is publicly available to Google.

87. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged and work product. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

88. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged and work product. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

89. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged and work product. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

90. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

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100. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence.

101. Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence.

102. Stelor objects to this request as overbroad, because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence.

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  
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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 U.S. mail on this

2d day of June, 2006 upon the following:

Adam T. Rabin, Esq.  
DIMOND, KAPLAN &  
ROTHSTEIN, P.A.  
Trump Plaza  
525 S. Flagler Drive, Suite 200  
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Andrew P. Bridges  
WINSTON & STRAWN LLP  
101 California Street, Suite 3900  
San Francisco, California 94111

/s/ Kevin C. Kaplan  
Kevin C. Kaplan



**EXHIBIT 14**

**A. Requests Concerning Google (RFPs 69-71).**

**RFP No. 69**

All documents that refer directly or indirectly to Google Inc. and that discuss, reflect, evidence, or concern the rights you claim in this dispute.

**Stelor's Response**

Stelor objects to this request as overbroad insofar as it asks for documents referring "directly or indirectly" to Google Inc. Subject to that objection, Stelor will produce all responsive, non-privileged documents in its custody or control.

**RFP No. 70**

All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning Google Inc. and that discuss, reflect, evidence, or concern the rights you claim in this dispute

**Stelor's Response**

Stelor objects to this request as overbroad insofar as it asks for documents referring "directly or indirectly" to Google Inc. Subject to that objection, Stelor will produce all responsive, non-privileged documents in its custody or control.

**RFP No. 71**

All documents concerning communications between you and Google Inc.

**Stelor's Response**

Stelor objects to this request as overbroad insofar as it asks for documents "concerning" "communications" with Google Inc., without qualification as to subject matter. Subject to that objection, Stelor will produce all responsive, non-privileged documents in its custody or control related to issues in this dispute.

**B. Requests Concerning Silvers' Alleged Interference With Stelor's Alleged Efforts to Promote the MARKS (RFPs 82, 83, 85, 86).**

**RFP No. 82**

All documents concerning your plans to develop or enforce rights in the MARKS.



**Stelor's Response**

Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

**RFP No. 83**

All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning your plans to develop or enforce rights in the MARKS.

**Stelor's Response**

Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

**RFP No. 85**

All documents filed in court or served in litigation to which you, Stelor Productions, Inc.; Steven Esrig; The GOOGLES Children's Workshop, Inc.; Silvers Entertainment Group, Inc. or Steven A. Silvers is a party that concerns or may affect the rights to the MARKS or to enforce the MARKS.

**Stelor's Response**

Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 11.15, trademark no. 2,087,590 is incontestable. In addition, this information is publicly available to Google.

**RFP No. 86**

All documents concerning litigation between you and Steven A. Silvers, Silvers Entertainment Group, Inc. or The GOOGLES Children's Workshop, Inc., including but not limited to all documents filed with a court or served in litigation.

**Stelor's Response**

Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged and work product. Pursuant

to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. In addition, this information is publicly available to Google.

**RFP No. 87**

All documents concerning litigation between you and Steven A. Silvers, Silvers Entertainment Group, Inc. or The GOOGLES Children's Workshop, Inc., including but not limited to all documents filed with a court or served in litigation.

**Stelor's Response**

Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged and work product. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

**RFP No. 88**

All documents concerning communications between you and Steven A. Silvers, Silvers Entertainment Group, Inc. or The GOOGLES Children's Workshop, Inc. (or their attorneys or representatives).

**Stelor's Response**

Stelor objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged and work product. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

**C. Communications Between Silvers or Silvers' Prior Counsel and Stelor (RFPs 38, 39, 61, 62 and RFPs 85, 86 [above]).**

**RFP No. 38**

All documents concerning communications with any attorney for Steven A. Silvers, The GOOGLES Children's Workshop, or Silvers Entertainment Group, Inc.

**Stelor's Response**

Stelor objects to this request as overbroad, insofar as it seeks documents without any limitation as to subject matter. Stelor further objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, is attorney-client privileged, and work-product. Pursuant to 15 U.S.C. § 1115, trademark

no. 2,087,590 is incontestable. Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

**RFP No. 39**

All documents in your possession, custody, or control that have at any time been in the possession, custody, or control of attorneys for Steven A. Silvers, The GOOGLES Children's Workshop, or Silvers Entertainment Group, Inc.

**Stelor's Response**

Stelor objects to this request as overbroad, insofar as it seeks documents without any limitation as to subject matter. Stelor further objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable. Subject to these objections, Stelor will produce any responsive, non-privileged documents in its custody or control.

**RFP No. 61**

All documents concerning the License, Distribution, and Manufacturing Agreement dated June 1, 2002 between you and Steven A. Silvers.

**Stelor's Response**

Stelor objects to this request as overbroad, insofar as it seeks documents without qualification "concerning" the "agreement". Stelor further objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, is not likely to lead to admissible evidence, and .is attorney-client privileged. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.

**RFP No. 62**

All documents referring or relating to, evidencing, reflecting, constituting, or comprising communications concerning the License, Distribution, and Manufacturing Agreement dated June 1, 2002 between you and Steven A. Silvers.

**Stelor's Response**

Stelor objects to this request as overbroad, insofar as it seeks documents without qualification "relating to, etc." "communications" "concerning" the "agreement". Stelor further objects to this request because it seeks information that is not relevant to the issue raised by Google of ownership rights in the trademarks, and

is not likely to lead to admissible evidence. Pursuant to 15 U.S.C. § 1115, trademark no. 2,087,590 is incontestable.



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June 30, 2006

Johanna Calabria, Esq.  
Perkins Coie, LLP  
180 Townsend Street  
3<sup>rd</sup> Floor  
San Francisco, CA 94107

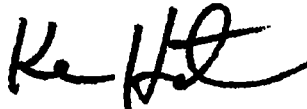
Re: Silvers/Google, Inc. - Discovery

Dear Johanna:

As we discussed on Thursday, June 29, 2006, Mr. Silvers is amenable to producing documents relating to his license with Aurora, including communications and development of Silvers' IP.

As to Stelor, we have some materials relating to Stelor's use of the mark, and can provide those. The "communications" between Stelor and Silvers, however, are voluminous. Can you specify the subjects you believe are within the Phase One discovery, so that Silvers can determine what is responsive?

Very truly yours,



Kenneth R. Hartmann

KRH/lmm

cc: Gail McQuilkin, Esq.  
Steve Silvers

3339/102/266791.1

TO REORDER CALL 954-846-9399



RECYCLED PAPER



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.

**PRIVILEGE LOG OF EDELL DOCUMENTS**

DESCRIPTION	PRIVILEGE(S) ASSERTED
Email to S. Esrig from I. Edell re: Stelor's intellectual property rights, 11/05/05	Attorney - Client
Chart analyzing Stelor and other parties' intellectual property	Attorney-Client
Email to F. Hildebrand; S. Esrig from I. Edell, 02/06/03 re: Stelor trademarks	Attorney - Client
Draft Recordation Cover Sheet	Attorney - Client
Chart analyzing Silvers and other parties' intellectual property	Attorney - Client

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

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EMAIL: INFO@BSKBLAW.COM WWW.BSKBLAW.COM



DESCRIPTION	PRIVILEGE(S) ASSERTED
Analysis of another party's trademark information	Attorney - Client / Work Product
Email to S. Esrig from I. Edell re: subjects of representatoin, 02/03/03	Attorney - Client
Email to S. Esrig from I. Edell re: fees, 12/07/02	Attorney - Client
Email to S. Esrig from I. Edell re: review of files, 12/31/02	Attorney - Client
Email to I. Edell from S. Esrig re: review of files, 11/01/02	Attorney - Client
Email to M. Shepard from I. Edell re: fees, 11/18/03	Attorney - Client
Email to S. Esrig from I. Edell re: trademark information, 10/25/02	Attorney - Client
Trademark information re: other party's claimed mark	Attorney - Client / Work-Product
Trademark information re: other party's claimed mark	Attorney - Client
Chart re: potential registrations in foreign countries	Attorney - Client
Email from F. Hildebrand to I. Edell re: foreign registrations	Attorney - Client
Draft letter re: enforcement of trademark rights, 02/12/04	Attorney - Client / Work-Product
Trademark information re: other party's claimed mark	Attorney - Client / Work-Product
Information about another party's claimed marks	Attorney - Client / Work-Product
Memo re: conversation with Brian Redding, counsel for Oogles n Googles	Attorney - Client / Work-Product
Trademark search information re: other party's claimed mark	Attorney - Client / Work-Product
Information re: TTAB proceedings involving other parties	Attorney - Client / Work-Product
TTAB pleadings involving other parties	Attorney - Client / Work-Product
Email to S. Esrig from I. Edell re: Oogles n Googles, 10/17/03	Attorney - Client / Work-Product
Email to I. Edell from J. DePue re: Oogles n Googles, 05/09/04	Attorney - Client / Work-Product
Draft TTAB Pleadings	Attorney - Client / Work-Product
Notes re: TTAB deadlines	Attorney - Client / Work-Product
Information re: TTAB proceedings	Attorney - Client / Work-Product
Email to J. DePue from I. Edell re: Oogles n Googles, 05/10/04	Attorney - Client / Work-Product

DESCRIPTION	PRIVILEGE(S) ASSERTED
Letter to S. Esrig from I. Edell re: trademark issues, 11/12/03	Attorney - Client / Work-Product
Email from S. Esrig to I. Edell re: domain name issues	Attorney - Client / Work-Product
Email from S. Esrig to I. Edell re: trademark issues, 02/09/04	Attorney - Client / Work-Product
Email from S. Esrig to I. Edell re: trademark issues, 02/09/04	Attorney - Client / Work-Product
Email from R. Rothstein to S. Esrig re: trademark issues, 02/03/04	Attorney - Client / Work-Product
Email to I. Edell from J. DePue re: trademark issues, 02/04/04	Attorney - Client / Work-Product
Email to I. Edell from S. Esrig re: trademark issues, 02/10/04	Attorney - Client / Work-Product
Email to I. Edell from S. Esrig re: trademark issues, 02/10/04	Attorney - Client / Work-Product
Memo from Silvers to S. Esrig & Board Members re: enforcement of trademark rights, 01/24/04	Attorney - Client / Work-Product
Memo from Silvers to S. Esrig re: enforcement of trademark rights, 01/26/04	Attorney - Client / Work-Product
Opinion Letter	Attorney - Client / Work-Product
Opinion Letter	Attorney - Client / Work-Product
Email from I. Edell to J. DePue re: trademark issues, 3/24/04	Attorney - Client / Work-Product
Emails between I. Edell and J. DePue re: litigation issues, 05/09/04	Attorney - Client / Work-Product
Email to I. Edell from J. DePue re: trademark issues, 03/15/04	Attorney - Client / Work-Product
Email to S. Esrig from S. Silvers re: protection of trademark rights, 01/19/04	Attorney - Client / Work-Product
Analysis of potential legal actions	Attorney - Client / Work-Product
Trademark information re: other party	Attorney - Client / Work-Product
Email to S. Esrig from I. Edell re: trademark issues, 02/11/04	Attorney - Client / Work-Product
Email to S. Esrig, I. Edell, J. Tiano & H. Epstein from M. Shepard re: trademark protection, 01/22/04	Attorney - Client / Work-Product
Letter to S. Esrig from S. Silvers re: trademark protection, 02/09/04	Attorney - Client / Work-Product
Email to S. Esrig from I. Edell re: subpoena, 09/15/05	Attorney - Client / Work-Product
Email to I. Edell from M. Shepard re: intellectual property rights, 11/07/03	Attorney - Client / Work-Product
Email from M. Shepard to I. Edell re: agreements, 9/17/03	Attorney - Client

DESCRIPTION	PRIVILEGE(S) ASSERTED
Information re: trademark Application	Attorney - Client
Information re: various trademarks	Attorney - Client / Work-Product
Memo to client re: trademark issues following 7/23/03 call	Attorney - Client / Work-Product
Draft letter to client re trademark issues, 11/12/03	Attorney-Client / Work-Product
Email from I. Edell to F. Hildebrand re: trademark issues, 6/13/03	Attorney-Client / Work-Product
Information re: various trademarks	Attorney - Client / Work-Product
Information re: various trademarks	Attorney - Client / Work-Product
Information re: Googles trademarks	Attorney - Client
Memo from I. Edell to client re: trademark issues, 7/30/03	Attorney - Client / Work-Product
Email from I. Edell to F. Hildebrand, re Oogles n Googles, 8/21/03	Attorney - Client / Work-Product
Email to I. Edell from J. DePue re trademark issues, 03/25/04	Attorney - Client / Work-Product
Email to F. Hildebrand from I. Edell re: trademark issues, 03/20/03	Attorney - Client
Email to I. Edell from J. DePue re: trademark issues, 03/25/04	Attorney - Client
Email to S. Esrig from I. Edell re: trademark issues, 07/30/03	Attorney - Client
Email to J. DePue from I. Edell re: trademark issues, 03/25/04	Attorney - Client
Email to F. Hildebrand from I. Edell re: trademark issues, 07/30/02	Attorney - Client / Work-Product
Email from I. Edell to S. Esrig re: trademarks, 11/04/02	Attorney - Client
Information re: other trademarks	Attorney - Client / Work-Product
Information re: other trademarks	Attorney - Client / Work-Product
Information re: other trademarks	Attorney - Client / Work-Product
Trademark information	Attorney - Client
Information re: other trademarks	Attorney - Client
Email from I. Edell to M. Shepard re trademark issues, 10/21/03	Attorney - Client / Work-Product
Email from M. Shepard to I. Edell re: trademark issues, 11/7/03	Attorney - Client / Work-Product
Email from I. Edell to F. Hildebrand re: trademarks, 7/16/03	Attorney-Client
Email from F. Hildebrand to I. Edell re trademarks, 07/28/03	Attorney - Client
Email to F. Hildebrand from I. Edell, 06/13/03	Attorney - Client
Email from Silvers to Esrig re: protection of	Attorney - Client / Work-Product

DESCRIPTION	PRIVILEGE(S) ASSERTED
trademarks, 7/14/03	
Draft letter to client re: fees, 3/31/04	Attorney - Client
Draft letter from I. Edell to M. Leffers at Reznick, Fedder re: representation of Stelor, 6/8/04	Attorney - Client / Work-Product
Draft letter from I. Edell to Reznick, Fedder re: representation of Stelor, 4/4/03	Attorney - Client / Work-Product
Email from I. Edell to S. Esrig re: representation, 12/7/02	Attorney-Client
Draft Letter to client re: representation, 5/28/04	Attorney - Client
Memo re: Stelor files	Attorney - Client
Draft letter to client re: files, 6/4/04	Attorney - Client
Letter from I. Edell to S. Esrig re: representation, 5/28/04	Attorney - Client
Information re: other trademarks	Attorney - Client / Work-Product
Draft billing invoice, 10/31/03	Attorney - Client / Work-Product
Letter from S. Esrig to I. Edell re: representation, undated	Attorney - Client / Work-Product
Draft Notice to TTAB	Attorney - Client
Draft Notice to TTAB	Attorney - Client
Draft Notice to Commissioner for Patents	Attorney - Client

Respectfully submitted,

**BURLINGTON, SCHWIEP, KAPLAN &  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served via Electronic and U.S. Mail on this 22<sup>nd</sup> day of September, 2006 upon the following:

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By: /s/ Kevin C. Kaplan  
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