

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.
_____ /**STELOR PRODUCTIONS, LLC AND STEVEN ESRIG'S OPPOSITION TO GOOGLE
INC.'S MOTION FOR LEAVE TO FILE TWO SEPARATE MOTIONS FOR
SUMMARY JUDGMENT**

Stelor Productions, LLC and Steven Esrig, by and through undersigned counsel, hereby submits their opposition to Google Inc.'s Motion for Leave to File Two Separate Motions for Summary Judgment (the "motion"):

Google's motion should be denied because it has not shown good cause for the need to file two separate summary judgment motions. Google requests leave to file a summary judgment

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on the issue of “the invalidity of Steven Silvers’ Googles trademark registration” and a second summary judgment motion “as to monetary relief.” Google’s motion should be denied because the Court’s bifurcation Order limits the scope to Phase I of the litigation to issues related to Silver’s ownership of the mark. Because damages and other relief are excluded from Phase I of the litigation, Google’s motion for leave to file a separate summary judgment motion on the issue of monetary relief should be denied.

The Southern District of Florida Local Rules, Rule 7.1.C.2 provides that the “practice of filing multiple motions for partial summary judgment shall be prohibited, absent prior permission from the Court.” Google does not show good cause for their need to file multiple summary judgment motions.

Google filed a motion to bifurcate these proceedings. Google’s motion requested that the case be bifurcated into “separate validity/priority and **liability/relief**” phases. (D.E. 23 at 15) (emphasis added.) The Court granted that Motion on February 6, 2006. (D.E. 68.) As noted in the Order, Google moved to bifurcate both discovery and trial “to allow the court to first consider the extent and scope of rights, if any held by Silvers.” (*Id.* at 5.) The Court’s Order discussed several areas that Google requested to be determined in Phase I of the litigation. These were, “the purported assignment of trademark rights from GCW to Silvers,” whether or not Silvers could “show that either he or [Google’s Childrens Workshop] continuously use Google’s trademarks,” and the cross-claim between Silvers and Stelor. (*Id.* at 5 and 6.) In granting Google’s Motion, the Court explicitly excluded the issue of damages from Phase I, “[i]n this case, the question of ownership involves different factual and legal determinations, compared to the infringement **damages** issues.” *Id.* at 8 (emphasis supplied.) The Court also ruled that there

be no prejudice to the parties due to bifurcation because “the preliminary issue of ownership is relatively less complicated (and should require a shorter discovery period) than the infringement and **damages** issues.” *Id.* at 11 (emphasis added.) On September 11, 2006 the Court entered its Order denying Silvers’ Motion for Protective Order. (D.E. 119.) In that Order the Court stated “the Bifurcation Order ruled that Phase I litigation will determine ownership of the trademarks.” *Id.*

Having succeeded in bifurcating the litigation and to limit discovery and the trial in Phase I to ownership of the trademarks (with “liability/relief” to be considered in Phase II), (D.E. 23 at 15), Google attempts to change position and attempts to bring an improper summary judgment motion as to “monetary relief.” This attempt by Google contradicts its own motion to bifurcate and violates the Court’s bifurcation Order.

Google’s attempt to raise monetary relief in Phase I of the litigation is clearly inappropriate. Stelor has prepared its case and conducted discovery based on the issues properly raised in Phase I. Given the Bifurcation Order, Stelor has not had the opportunity to take discovery on the monetary relief issue Google seeks to raise now. Permitting Google to change position, ignore the Court’s Orders and file a summary judgment motion as to relief will prejudice Stelor, Steven Esrig and Steven Silvers greatly and should not be permitted.

Google’s summary judgment motion as to “monetary relief” is at odds with Google’s motion to bifurcate, the Bifurcation Order that Google requested, and Google’s counsel’s representations as to the issues on Phase I. Furthermore, Google will have

ample opportunity to raise the Phase I issues in the twenty pages provided by the Local Rule. Google's motion should, therefore, be denied.

WHEREFORE, Stelor respectfully requests that this Court deny Google's Motion to File Separate Summary Judgment Motions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2006, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/David J. Zack

SERVICE LIST

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