

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.  
\_\_\_\_\_

FILED BY            D.C.  
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**CROSS-CLAIM PLAINTIFF STELOR PRODUCTIONS, LLC'S  
REQUEST FOR JUDICIAL NOTICE**

Cross-Claim Plaintiff STELOR PRODUCTIONS, L.L.C. ("Stelor"), by and through undersigned counsel and pursuant to Ruled 201, Fed. R. Evid., respectfully requests that this Court take judicial notice of certain declarations, pleadings, orders, and other papers filed and contained in the record in Case No. 05-80393-CIV-HURLEY, styled *Stelor Productions, LLC v. Steven A. Silvers* ("Second Prior Action"):

Stelor initially brought the claims against Silvers in a case before Judge Hurley. That case was subsequently dismissed without prejudice for lack of diversity jurisdiction, and the claims were filed in the present action in the form of Stelor's Cross-Claim against Silvers.

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A substantial factual record was developed during a preliminary injunction proceeding in the earlier action. The record includes declarations from the parties on the relevant issues, and certain orders from the Court that Stelor believes to be relevant to the issues raised by the present summary judgment motion.

In order to avoid needless duplication of those materials, and burdening the Court files with what would be essentially duplicate papers, Stelor respectfully requests that the Court take judicial notice of the referenced papers already existing in the record in the Second Prior Action. The materials can be evaluated by this Court, and given whatever weight this Court believes appropriate, as if they were simply filed in this action.

Judicial notice under these circumstances is appropriate. *See Cash Inn of Dade, Inc. v. Metropolitan Dade County*, 938 F.2d 1239, 1243 (11<sup>th</sup> Cir. 1991) (district court may take judicial notice of records within its files relating to the particular case before it or other related cases); *Aloe Crème Labs, Inc. v. Francine Co.*, 425 F.2d 1295, 1296 (Former 5<sup>th</sup> Cir. 1970).

File-stamped copies of the portions of the record of which judicial notice is requested are included in the Appendix of Exhibits Supporting Stelor Production, LLC's Motion for Summary Judgment Against Silvers, filed herewith, as follows listed by Tab Number in the Appendix: <sup>1</sup>

4. Declaration of Steven A. Esrig dated May 22, 2005, in Second Prior Action [2PA DE 16].<sup>2</sup>
5. Supplemental Declaration of Steven A. Esrig dated July 1, 2005, in Second Prior Action [2PA DE 53].
6. Second Supplemental Declaration of Steven A. Esrig dated July 18, 2005, in Second Prior Action [2PA DE 63].

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<sup>1</sup>Record Cites to the prior action between Stelor and Silvers, Case No. 05-80393-CIV-HURLEY the ("Second Prior Action") are in the form "[2PA DE\_\_ ]".

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7. Declaration of Kevin C. Kaplan dated May 22, 2005, in Second Prior Action [2PA DE 17].
8. Supplemental Declaration of Kevin C. Kaplan dated July 1, 2005, in Second Prior Action [2PA DC 58].
9. Declaration of Steven A. Silvers dated May 20, 2005, in Second Prior Action [2PA DE 11].
10. Declaration of Gail M. McQuilkin dated June 17, 2005, in Second Prior Action [2PA DE 43].
11. Declaration of Paul Worsham dated June 17, 2005, in Second Prior Action [2PA DE 40].
22. Report and Recommendation Concerning Plaintiff's Motion for Preliminary Injunction dated June 3, 2006, in the Second Prior Action [2PA DE 24].
23. Emergency Temporary Restraining Order Implementing Preliminary Injunction Recommended by Magistrate Judge, dated June 9, 2005, in the Second Prior Action [2PA DE 32].
24. Order Extending Temporary Restraining Order, dated June 22, 2005 in the Second Prior Action [2PA DE 49].
25. Order Rejecting in Part and Approving in Part Magistrate's Report and Recommendation on Plaintiff's Motion for Preliminary Injunction, dated July 5, 2005, in the Second Prior Action [2PA DE 52].

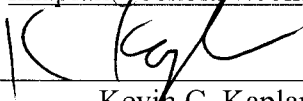
Stelor also requests that the Court take judicial notice of a file-stamped copy of a motion to dismiss filed in a pending trademark infringement action brought by Stelor in the Southern District of Indiana, attached as Exhibit 21 to the Appendix.

Respectfully submitted,

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By:   
Kevin C. Kaplan  
Florida Bar No. 933848  
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**CERTIFICATE OF SERVICE**

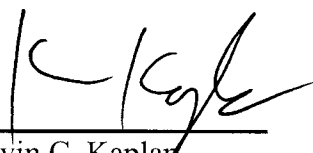
12<sup>th</sup> I HEREBY CERTIFY that a true copy of the foregoing was served via U.S. Mail on this day of October, 2006 upon the following:

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