

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.


\_\_\_\_\_  
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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**APPENDIX OF EXHIBITS SUPPORTING CROSS-DEFENDANT  
STELOR PRODUCTION LLC'S MOTION FOR SUMMARY  
JUDGMENT AGAINST STEVEN SILVERS**

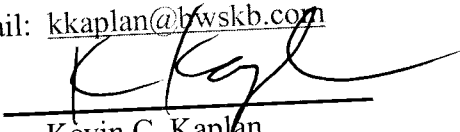
1. License, Distribution and Manufacturing Agreement.
2. Letter from Stelor Productions to Steven Silvers dated June 1, 2002.
3. Confidential Settlement Agreement
4. Declaration of Steven A. Esrig dated May 22, 2005, in Second Prior Action [2PA DE 16].<sup>1</sup>
5. Supplemental Declaration of Steven 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].

<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 \_\_ ]".

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].
12. Letter from Gail McQuilkin to Steven Esrig dated November 12, 2004.
13. Letter from Gail McQuilkin to Steven Esrig dated January 13, 2005.
14. Letter from Gail McQuilkin to Steven Esrig dated April 27, 2005.
15. Letter from Kevin C. Kaplan to Gail McQuilkin dated April 29, 2005.
16. Letter from Gail McQuilkin to Daniel Blonsky dated May 2, 2004.
17. Letter from Kevin Kaplan to Gail McQuilkin dated June 24, 2005.
18. Letter from Kenneth Hartmann to Kevin Kaplan dated July 27, 2005.
19. Composite Exhibit of cancelled checks paid by Stelor to Silvers.
20. Composite Exhibit of letters between Kevin Kaplan to Gail McQuilkin regarding payments from Stelor to Silvers.
21. Brief in Support of Motion to Dismiss Plaintiff's Amended Complaint in case of Stelor Productions v. Oogles N. Google, et al, Case No. 1:05-CV-0354-DFH-TAB in the Southern District of Indiana.
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].
- 26. Order Denying Silvers' Motion to Dismiss Amended Cross-Claim dated February 27, 2005 [DE 71].
- 27. Declaration of Kevin C. Kaplan Supporting Cross-Plaintiff Stelor Production, LLC's Motion for Summary Judgment.

BURLINGTON, SCHWIEP,  
 KAPLAN & BLONSKY, P.A.  
 Attorneys for Stelor Productions, LLC  
 2699 South Bayshore Drive, Penthouse  
 Miami, Florida 33133  
 Tel: 305-858-2900  
 Fax: 305-858-5261  
 Email: [kkaplan@bwskb.com](mailto:kkaplan@bwskb.com)


By:   
 Kevin C. Kaplan  
 Florida Bar No. 933848

**CERTIFICATE OF SERVICE**

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

Steven A. Silvers, <i>pro se</i> Suite 202 – PMB 203 8983 Okeechobee Boulevard West Palm Beach, Florida 33411 Tel: 954-4445-6788 Fax: 561-784-9959 <a href="mailto:gewrue@hotmail.com">gewrue@hotmail.com</a>	Ramsey Al-Salam, Esq. William C. Rava, Esq. PERKINS COIE LLP Suite 4800 1201 Third Avenue Seattle, Washington 98101-3099 <a href="mailto:RAlsalam@perkinscoie.com">RAlsalam@perkinscoie.com</a>
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<p>Jan Douglas Atlas, Esq. ADORNO &amp; YOSS LLP Suite 1700 350 East Las Olas Boulevard Fort Lauderdale, Florida 33301 <a href="mailto:jatlas@adorno.com">jatlas@adorno.com</a></p>	<p>Johanna Calabria, Esq. PERKINS COIE LLP Suite 2400 Four Embarcadero Center San Francisco, CA 94111 E-mail: <a href="mailto:jcalabria@perkinscole.com">jcalabria@perkinscole.com</a></p>
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Kevin C. Kaplan



*[Handwritten initials]*

## LICENSE, DISTRIBUTION AND MANUFACTURING AGREEMENT

This LICENSE, DISTRIBUTION AND MANUFACTURING AGREEMENT between Steven A. Silvers and Stelor Productions, Inc. is effective as of June 1, 2002 and is entered into by and between Steven A. Silvers (LICENSOR), an Individual, whose official address is 3741 NE 163<sup>rd</sup> Street, PMB #325, North Miami Beach, FL 33160 and Stelor Productions, Inc. (LICENSEE), a Delaware corporation with its current offices located at: 14701 Mockingbird Drive, Darnestown, Maryland, 20874.

### WITNESSETH

WHEREAS, LICENSOR is the sole and exclusive owner of the GOOGLES characters identified more fully in "Schedule A" attached hereto (the "Licensed Property");

WHEREAS, LICENSOR is the sole and exclusive owner of the GOOGLES trademarks identified more fully in "Schedule A" attached hereto (the "Licensed Trademarks");

WHEREAS, LICENSOR has the power and authority to grant to LICENSEE the right, privilege and license to use, manufacture, distribute, and sell those types of products that incorporate or are otherwise based on the Licensed Property as identified in "Schedule A" attached hereto (the "Licensed Products") and to use the Licensed Trademarks on or in association with such Licensed Products;

WHEREAS, LICENSEE has or will have the ability to manufacture, have manufactured, have sub-manufactured, distribute and sell or have sold and distributed the Licensed Products in the Licensed Territory more clearly defined in Schedule A (the Territory) and to use the Trademark(s) on or in association with the Licensed Products;

WHEREAS, LICENSEE desires to obtain from LICENSOR an exclusive license to use, manufacture, have manufactured and sell Licensed Products in the Territory and to use the Licensed Trademarks on or in association with the Licensed Products;

WHEREAS, LICENSEE has agreed, pursuant to a letter agreement, to act as a consultant for LICENSOR; and

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, the parties, each intending to be legally bound hereby, do hereby agree as follows:

### I. LICENSE GRANT

A. 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, 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 rights 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 Iggle, Oogle, Oggle, Gooroo, Goolian(s), the planet Goo, slides, computer web site(s), 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

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B. 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 association with the Licensed Products as well as on packaging, promotional, and advertising material associated therewith.

C. LICENSEE shall have the right to sublicense LICENSEE's rights under this Agreement; provided that any and all such sublicenses shall be subject to the terms and conditions of this Agreement.

D. No licenses will be deemed to have been granted by either party to any of its Intellectual Property Rights, except as otherwise expressly provided in this Agreement.

E. LICENSEE agrees to place on all Licensed Products, where practicable, the phrase "created by Steven A. Silvers" or other similar wording.

II. TERM OF THE AGREEMENT

This Agreement and the provisions hereof, except as otherwise provided, shall be in full force and effect commencing on the date of execution by both parties and shall extend for a Term as recited in "Schedule A" attached hereto (the "Term").

III. COMPENSATION

A. In consideration for the licenses granted hereunder, LICENSEE agrees to pay to LICENSOR, during the Term of this Agreement, a royalty in the amount recited in "Schedule A" attached hereto (the "Royalty") based on LICENSEE's Net Sales of Licensed Products. "Net Sales" shall mean the gross revenues on a cash basis (i.e., actually collected by LICENSEE but without counting any gross revenues twice) excluding shipping and handling charges, sales taxes, VAT, and other taxes imposed upon sales less (i) customary trade discounts, (ii) allowances actually shown on the invoice (except cash discounts not deductible in the calculation of Royalty) (iii) bona fide returns, charge backs, refunds or credits (net of all returns actually made or allowed as supported by memoranda actually issued to the customers), (iv) sales of remainder inventory made at less than the total of LICENSEE's actual cost of goods and actual direct selling costs solely for purposes of liquidation or close-out, (v) other uncollectible accounts, (vi) cooperative advertising allowances, (vii) sales commissions paid.

B. The Royalty owed LICENSOR shall be calculated on a quarterly calendar basis on collected funds (the "Royalty Period") and shall be payable no later than thirty (30) days after the termination of the preceding full calendar quarter, i.e., commencing on the first (1st) day of January, April, July and October with the exception of the first and last calendar quarters which may be "short" depending upon the effective date of this Agreement.

C. ~~With each Royalty Payment, LICENSEE shall provide LICENSOR with a written~~ royalty statement in a form acceptable to Licensor. Such royalty statement shall be certified as accurate by a duly authorized officer of Licensee, reciting on a country-by-country basis, the stock number, item, units sold, description, quantity shipped, gross invoice, amount billed to customers less discounts, allowances, returns and reportable sales for each Licensed Product. Such statements shall be furnished to Licensor whether or not any Licensed Products were sold during the Royalty Period. The LICENSEE hereby further agrees to provide the LICENSOR with a list of all of it's sub licensees added during the current royalty period.

D. ~~If LICENSEE sells any Licensed Products to any party affiliated with LICENSEE, or in any way directly or indirectly related to or under the common control with LICENSEE, at a price less than the average weighted price charged to other parties, the Royalty payable to LICENSOR shall be computed on the basis of the averaged weighted price charged to other parties if the Licensed Products are not ultimately resold to unaffiliated third parties.~~

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E. All payments due hereunder shall be made in United States currency drawn on a United States bank, unless otherwise specified between the parties and may offset or be offset from any other payments due to LICENSEE under this or any other agreement between the parties.

F. Late payments shall incur interest at the rate of ONE PERCENT (1%) per month from the date such payments were originally due.

IV. AUDIT

A. LICENSOR shall have the right, at its own expense, to have a nationally recognized certified public accounting firm, upon at least thirty (30) days written notice and no more than twice per calendar year, to inspect during normal business hours, LICENSEE's books and records and all other documents and material in the possession of or under the control of LICENSEE with respect to the subject matter of this Agreement at the place or places where such records are normally retained by LICENSEE.

B. In the event that such inspection reveals an underpayment discrepancy greater than 5% of the amount of Royalty owed LICENSOR from what was actually paid, LICENSEE shall have the opportunity to conduct its own audit. If LICENSEE agrees to the amount, if any, of any discrepancy, LICENSEE shall pay such discrepancy, plus interest, calculated at the rate of ONE AND ONE-HALF PERCENT (1 1/2%) per month. Upon settlement of any underpayment discrepancy, no further audit by LICENSOR shall be requested that year. That period end date shall represent the new period start date for future audits for underpayment discrepancies. In the event that such discrepancy is in excess of TEN THOUSAND UNITED STATES DOLLARS (\$10,000.00), LICENSEE shall also reimburse LICENSOR for the cost of auditing fees in connection therewith.

C. All books and records relative to LICENSEE's obligations hereunder shall be maintained and kept accessible and available to LICENSOR for inspection for at least three (3) years after the expiration of the initial or any subsequent term.

D. In the event that an investigation of LICENSEE's books and records is made, certain confidential and proprietary business information of LICENSEE may necessarily be made available to the person or persons conducting such investigation. It is agreed that such confidential and proprietary business information shall be held in confidence by LICENSOR and shall not be used by LICENSOR or disclosed to any third party for a period of two (2) years from the date of disclosure, or without the prior express written permission of LICENSEE unless required by law, except LICENSOR may not disclose at any time to any third party any such confidential and proprietary business information which are trade secrets of LICENSEE. It is understood and agreed, however, that such information may be used by LICENSOR in any proceeding based on LICENSEE's failure to pay its actual Royalty obligation.

V. WARRANTIES AND OBLIGATIONS

A. LICENSOR represents and warrants that:

(i) the execution, delivery and performance of this Agreement have been duly authorized by all necessary action of LICENSOR and this Agreement is a valid and binding obligation of LICENSOR, enforceable in accordance with its terms;

(ii) the execution, delivery and performance by LICENSOR of this Agreement will not violate or conflict with any applicable U.S. law or regulation, or any order, writ, judgment or decree of any court or governmental authority to which LICENSOR is subject, or result in a violation, breach of, or default under any contract, lease, or other agreement binding on LICENSOR;

(iii) LICENSOR owns the exclusive rights in and to the Licensed Intellectual Property, Licensed Trademarks, Licensed Patents and Licensed Copyrights necessary to effectuate the granting of the Licensing Rights from the LICENSOR to the LICENSEE as contemplated herein.

*[Handwritten initials]*



*Handwritten initials/signature*

(iv) the Licensed Intellectual Property and Licensed Trademarks do not infringe the rights, including without limitation, Intellectual Property Rights, of any third party; and

(v) except as set forth in Schedule B attached hereto, LICENSOR has not received any notice from any third party of any alleged or actual infringement of the Licensed Intellectual Property or Licensed Trademarks and the Licensed Intellectual Property and/or Licensed Trademarks are not the subject, and has not been the subject, of any previous or pending litigation with the exception of the Ganz litigation which has been resolved.

**B. LICENSEE represents and warrants that:**

(i) the execution, delivery and performance of this Agreement have been duly authorized by all necessary action of LICENSEE and this Agreement is a valid and binding obligation of LICENSEE, enforceable in accordance with its terms;

(ii) the execution, delivery and performance by LICENSEE of this Agreement will not violate or conflict with any applicable U.S. law or regulation, or any order, writ, judgment or decree of any court or governmental authority to which LICENSEE is subject, or result in a violation, breach of, or default under any contract, lease, or other agreement binding on LICENSEE; and

(iii) it will use its commercially reasonable efforts to promote, market, sell and distribute the Licensed Products.

**C. Disclaimer of Warranties.** EXCEPT AS EXPRESSLY PROVIDED ABOVE, NEITHER PARTY MAKES ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, REGARDING THIS AGREEMENT AS TO ANY MATTER INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**D.** LICENSEE shall be solely responsible for the manufacture, production, sale and distribution of the Licensed Products or to have such Licensed Products manufactured, produced, sold and distributed, and will bear all related costs associated therewith.

**VI. NOTICES, QUALITY CONTROL, AND SAMPLES**

**A.** The Licensed Products, as well as all promotional, packaging and advertising material relative thereto, shall include all appropriate legal notices.

**B.** The Licensed Products shall be of a high quality which is at least equal to comparable products manufactured and marketed by LICENSEE and in conformity with a standard sample provided by LICENSEE.

**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 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.

**VII. NOTICES AND PAYMENT**

**A.** Any notice required to be given pursuant to this Agreement shall be in writing and delivered personally to the other designated party at the above-stated address or mailed by certified or registered mail, return receipt requested or delivered by a recognized national overnight courier service.

**B.** Either party may change the address to which notice or payment is to be sent by written notice to the other in accordance with the provisions of this paragraph.

*Handwritten initials/signature*

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VIII. INTELLECTUAL PROPERTY PROTECTION

A. LICENSOR hereby grants LICENSEE 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 any other Intellectual Property Rights granted herein. LICENSOR further agrees to assist LICENSEE as may be required to apply for and obtain recordation of and from time to time enforce, maintain and defend such Intellectual Property Rights. LICENSOR hereby grants LICENSEE an irrevocable power of attorney for the initial and any subsequent terms of this Agreement to act for and on LICENSOR's behalf and instead of LICENSOR, at LICENSEE's expense, to execute and file any such document(s) and to do all other lawfully permitted acts to further the purposes of the foregoing with the same legal force and effect as if executed by LICENSOR.

B. LICENSOR shall retain all rights, title and interest in the Licensed Intellectual Property and Licensed Trademarks and any modifications thereto based solely on such Licensed Intellectual Property. LICENSEE acknowledges LICENSOR's exclusive rights in the Licensed Intellectual Property and, further, acknowledges that the Licensed Intellectual Property and/or the Licensed Trademarks rights are unique and original to LICENSOR and that LICENSOR is the owner thereof. LICENSEE shall not, at any time during or after the effective Term of the Agreement, dispute or contest, directly or indirectly, LICENSOR's exclusive right and title to the Licensed Intellectual Property and/or the Licensed Trademarks(s) or the validity thereof.

C. LICENSEE agrees that its use of the Licensed Intellectual Property and/or the Licensed Trademarks(s) inures to the benefit of LICENSOR and that the LICENSEE shall not acquire any rights in the Licensed Intellectual Property and/or the Licensed Trademarks(s) except for the license granted herein.

D. LICENSOR shall retain all rights, title and interest in and to the Licensed Intellectual Properties. The LICENSOR owns the exclusive rights to the Licensed Intellectual Property. LICENSOR hereby waives and releases LICENSEE from any and all current or future claims or causes of actions by third parties, whether known or unknown, arising out of or relating to such Licensed Intellectual Properties including, but not limited to, any claim that Licensed Products violate, infringe on or misappropriate any of LICENSOR's Intellectual Property Rights.

E. Each party shall execute all papers, testify on all matters, and otherwise cooperate in every way necessary and desirable to effect any of the provisions under this Section (Intellectual Property Protection). The party requesting such shall reimburse the other party for the expenses incurred as a result of such cooperation. The parties agree to take any actions or prepare or execute any documents reasonably requested by the other party. Furthermore, during the term of this agreement, LICENSOR shall not initiate or maintain any relationship or conversations with LICENSEE'S current or prospective clients, vendors, any Company relationships with the media (press etc.) without the prior express written request by LICENSEE.

IX. TERMINATION

A. Right to Terminate on Notice. This Agreement may be terminated by either party upon sixty (60) days written notice to the other party in the event of a breach of a material provision of this Agreement by the other party, provided that, during the sixty (60) days period, the breaching party fails to cure such breach.

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B. LICENSEE shall have the right to terminate this Agreement at any time on thirty (30) days written notice to LICENSOR. In such event, all moneys paid to LICENSOR shall be deemed non-refundable and LICENSEE's obligation to pay any unpaid royalties shall be accelerated and shall become immediately due and payable.

C. Additionally, if, after five years of the initial intellectual property license, there are three consecutive years during which royalty payments to LICENSOR are less than one hundred thousand dollars (\$100,000.00), LICENSOR has the option to cancel this Agreement in accordance with Section IX. TERMINATION, Para. A.

**X. POST TERMINATION RIGHTS**

A. Not less than thirty (30) days prior to the expiration of this Agreement or immediately upon termination thereof, LICENSEE shall provide LICENSOR with a complete schedule of all inventory of Licensed Products then on hand or on order (the "Inventory").

B. Upon expiration or termination of this Agreement, LICENSEE shall be entitled, for an additional period of six (6) months, to continue to sell such Inventory. Such sales shall be made subject to all of the provisions of this Agreement and to an accounting for and the payment of a Royalty thereon. Such accounting and payment shall be due and paid within thirty (30) days of the quarterly calendar cited as the period basis for royalty calculation. LICENSEE shall have the right to continue the use of the name(s) associate with the products and articles that encompass this Agreement for so long as LICENSEE is actively selling its inventory of articles and products. At the conclusion of LICENSEE'S efforts in this regard, LICENSEE agrees to discontinue the use of names, trademarks, signs, advertising and anything else that might make it appear that the LICENSEE is still handling the articles and products of LICENSOR.

C. Upon the expiration or termination of this Agreement, all of the license rights of LICENSEE under this Agreement shall forthwith terminate and immediately revert to LICENSOR and LICENSEE, except as detailed above in Section (B) of the "Post Termination Rights" Section, shall immediately discontinue all use of the Licensed Property and the like, at no cost whatsoever to LICENSOR.

D. Upon termination of this Agreement for any reason whatsoever, LICENSEE agrees to immediately return to LICENSOR all material relating to the Licensed Intellectual Property. Furthermore, upon termination or expiration of this Agreement, LICENSEE agrees to immediately inform all of it's sub licensees regarding the said termination or expiration of this Agreement.

**XI. INFRINGEMENTS**

A. During the Term of this Agreement and any and all option/renewal periods, LICENSEE 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.

B. Upon request by either party to the other, the other party shall execute all papers, testify on all matters, and otherwise cooperate in every way necessary and desirable for the prosecution of any such lawsuit. Each party shall reimburse the other party for the expenses incurred as a result of such cooperation.

**XII. INDEMNITY**

A. LICENSEE agrees to indemnify and hold harmless LICENSOR, its agents, heirs, assigns and representatives, against all costs, expenses and losses (including reasonable attorneys' fees and costs) incurred through claims of third parties against LICENSOR based on product liability but excluding any claims based solely upon the use of the Licensed Intellectual Property or Licensed Trademarks by LICENSEE in accordance with the terms of this Agreement.

*[Handwritten initials]*

B. LICENSOR agrees to indemnify and hold harmless LICENSEE, its officers, directors, agents and employees, against all costs, expenses and losses (including reasonable attorneys' fees and costs) incurred through claims of third parties against LICENSEE based on or arising from (i) any infringement, misappropriation or other related action involving the Licensed Intellectual Property or Licensed Trademarks; or (ii) any breach of LICENSOR's obligations, representations, warranties or duties under this agreement.

C. With respect to any claims falling within the scope of the foregoing indemnifications: (i) each party agrees promptly to notify the other of and keep the other fully advised with respect to such claims and the progress of any suits in which the other party is not participating; (ii) 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; (iii) each party shall have the right to participate, at its sole expense, in any suit instituted against it; and (iv) a party assuming the defense of a claim or suit against the other party shall not settle such claim or suit without the prior written approval of the other party, which approval shall not be unreasonably withheld or delayed.

**XIII. LIMITATION OF LIABILITY**

A. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT (INCLUDING LOSS OF PROFITS, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), NO MATTER WHAT THEORY OF LIABILITY, EVEN IF THE EXCLUSIVE REMEDIES PROVIDED FOR IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR PROBABILITY OF SUCH DAMAGES. THE PROVISIONS OF THIS SECTION "LIMITATION OF LIABILITY" ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN LICENSOR AND LICENSEE AND THE PARTIES HAVE RELIED UPON THE LIMITATIONS SET FORTH HEREIN IN DETERMINING WHETHER TO ENTER INTO THIS AGREEMENT.

B. EACH PARTY'S LIABILITY TO THE OTHER UNDER THIS AGREEMENT FOR CLAIMS RELATING TO THIS AGREEMENT, WHETHER FOR BREACH OF CONTRACT OR IN TORT, SHALL BE LIMITED TO THE AGGREGATE ROYALTY FEES PAID BY LICENSEE TO LICENSOR DURING THE TWELVE MONTH PERIOD PRECEDING THE CLAIM.

**XIV. INSURANCE**

LICENSEE shall, throughout the Term of this Agreement, obtain and maintain at its own cost and expense from a qualified insurance company licensed to do business as required by state and federal law(s), standard Product Liability Insurance naming LICENSOR as an additionally named insured. Such policy shall provide protection against any and all claims, demands and causes of action arising out of any defects or failure to perform, alleged or otherwise, of the Licensed Products or any material used in connection therewith or any use thereof. The amount of coverage shall be as specified in "Schedule A" attached hereto. LICENSEE agrees to furnish LICENSOR a certificate of insurance evidencing same within ninety (90) days after issuance of same, and, in no event, shall LICENSEE manufacture, distribute or sell the Licensed Products prior to receipt by LICENSOR of such evidence of insurance.

**XV. FORCE MAJEURE**

LICENSEE shall not be liable for any failure of performance hereunder due to causes beyond its reasonable control, including but not limited to acts of God, fire, explosion, vandalism, strikes, lockouts, work stoppages, other labor difficulties, supplier failures, storm or other similar catastrophes, any law, order, regulation, direction, action or request of the state, local or federal government or of any government agency, commission, court, bureau, corporation or other instrumentality of any one or more of such governments; or of any civil or military authority, national emergencies, insurrections, riots, or wars.

*[Handwritten initials]*

**XVI. JURISDICTION AND DISPUTES**

A. This Agreement shall be governed in accordance with the laws of the State of Florida without regard to its principles of conflicts of laws.

B. All disputes under this Agreement shall be resolved by the courts of the State of Florida including the United States District Court for Florida and the parties all consent to the jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to it.

**XVII. AGREEMENT BINDING ON SUCCESSORS**

The provisions of the Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their heirs, administrators, successors and assigns.

**XVIII. WAIVER**

No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of this Agreement.

**XIX. SEVERABILITY**

If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

**XX. NO JOINT VENTURE**

Nothing contained herein shall constitute this arrangement to be employment, a joint venture or a partnership.

**XXI. ASSIGNABILITY**

Neither party may assign by any act or operation of law the rights and obligations of this Agreement unless in connection with a transfer of substantially all of the assets of LICENSEE and/or with the consent of LICENSOR, which shall not be unreasonably withheld or delayed. By way of example and not limitation, LICENSEE may freely assign its rights and obligations under this Agreement to Stelor Productions, Inc.

**XXII. INTEGRATION**

This Agreement constitutes the entire understanding of the parties, and ~~revokes and supersedes all~~ prior agreements between the parties, including any option agreements which may have been entered into between the parties, and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents which may be in conflict with said Agreement.

**XXIII. RATIFICATION**

The LICENSOR hereby agrees to the transfer of this License from the LICENSEE (The Aurora Collection, Inc.) to Stelor Productions, Inc. as contemplated by the Asset & Purchase Agreement, dated May 1<sup>st</sup>, 2002, and executed between the above mentioned parties

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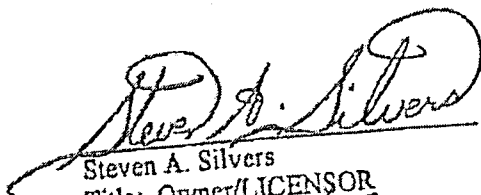
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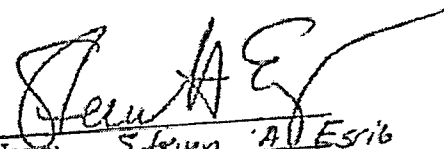
IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have each caused to be affixed hereto its or his/her hand and seal the day indicated.

STEVEN A. SILVERS

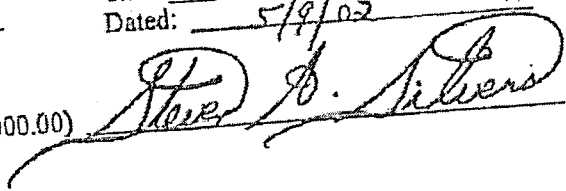
STELOR PRODUCTIONS, INC.

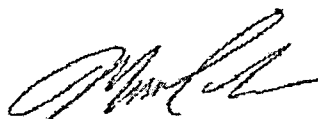


Steven A. Silvers  
Title: Owner/LICENSOR  
Dated: 5/09/02

By:   
Printed Name: Steven A. Escrib  
Title: President  
Dated: 5/9/02

Received Ten Thousand Dollar signing bonus (\$10,000.00)





MICHAEL LUM  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires April 1, 2003

5/9/02



**"SCHEDULE A"**

**LICENSED INTELLECTUAL PROPERTY**

The following Licensed Intellectual Property forms part of this Agreement: A License under any and all intellectual property rights and interests therein, including by way of explanation, products which deal with a creative character known as 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 Iggle, Oogle, Oggle, Gooroo, Gootian(s), the Planet Goo, slides, computer web site(s), 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

**LICENSED TRADEMARKS**

The following Licensed Trademarks form part of this Agreement: (i) "The Googles" (word and design) Trademarks in International Class Code (016) of the U.S.P.T.O. and the co-existent Trademarks Agreement with Ganz, Inc. of Canada in International Class Code (028) of the U.S.P.T.O., which is hereto attached and made a part of this "Schedule A" document, (ii) "Oogle", (iii) "Iggle", (iv) "Oggle", (v) "GooRoo", (vi) "Planet Goo", (vii) "GooMu", (viii) "GooToons", (ix) "GooStuff", (x) "GooKids", (xi) "GooStore" and (xii) any other trademarks, whether registered, pending or future or common law, used in connection with the Licensed Property, including, but not limited to, any trademark incorporating the phrase "Goo" currently in existence.

**LICENSED PRODUCTS**

The following Licensed Products form part of this Agreement: all products which comprise the likenesses, stories, ideas, concepts, or designs of the Licensed Property, including without limitation, stuffed toy figurines, videos, stickers, t-shirts or other clothing items, slides, movies, cartoons, books (comic and otherwise), posters, playing, trading and collector cards, CDs, cassette tapes, DVDs, TV programs, motion pictures, all other forms of communication and publication, programs, computer Web site(s), membership lists and clubs, and any other products.

**DERIVATIVES**

A Derivative as defined in this agreement shall mean a product or service that is utilized by the LICENSEE and developed by a party other than the LICENSOR but is used in conjunction with licensed products, articles and /or services. It can be a product or service produced by the LICENSEE or a third party (inventor, sub licensee etc,) that in its use enhances the value of the Googles Universe but does not have a conflict with an already existing Googles product idea or concept as outlined in this agreement. It may not possess the "Googles" or "GOO" in it's name and would therefore fall under the LICENSOR'S exclusive ownership as defined in the amended agreement but can be used in conjunction with the "Goo" Universe by the LICENSEE.

**TERRITORY**

The following countries shall constitute the Territory: Global/Worldwide rights.

**TERM**

This Agreement shall commence on the date executed below by both parties and shall be for a thirty (30) year term. This Agreement shall automatically renew for one additional ten (10) year term on the same terms and conditions provided for herein ("Renewal Term"). Upon expiration of the first Renewal Term of ten (10) years, this Agreement shall automatically renew for a second ten (10) year extended Term on the

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same terms and conditions provided for herein, unless LICENSOR provides written notice of its intention to not to renew this Agreement within one hundred eighty (180) days prior to expiration of the Renewal Term.

ROYALTY RATE

LICENSEE shall pay the following royalty rates: (i) SIX PERCENT (6%) of Net Sales of Licensed Products that are based solely on the Licensed Intellectual Property and (ii) THREE PERCENT (3%) of Net Sales of Licensed Products that are based solely on Derivative Products and (iii) In the case of Sub Licenses royalties will be TEN PERCENT (10%) of Net sales after subtracting licensing costs and royalties paid to third parties only.

PRODUCT LIABILITY INSURANCE

Minimum Product Liability Insurance shall be Two Million U.S. dollars (\$2,000,000.00) combined single limit for each single occurrence for bodily injury and/or for property damage.

5/9/02

Succession

Rights of Survivor

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In the event of the death of Licensor all of the Licensor's rights under this agreement shall go to his heirs, assigns or legal representatives as he has lawfully designated in writing.

Steve A. Silvers  
5/09/02

Steve A. J.  
5/9/02

MICHAEL IUM  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires April 1, 2003

SAS





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June 1, 2002

Mr. Steven Silvers  
3741 N.E. 163<sup>rd</sup> Street  
PMB # 324  
North Miami Beach, FL 33160

Dear Steven:

This letter agreement ("Agreement") will serve to memorialize the terms of the consultancy arrangement between Stelor Productions, Inc. ("Company") and Steven A. Silvers ("Consultant").

1. Engagement of Consultant.

a. Company hereby engages Consultant as an independent contractor to the Company. Consultant's title shall be Executive Creative Consultant. Company is relying on Mr. Silvers to continue his role of "Papa Googles" and continue to offer his creative input to the Company.

b. In consideration for the covenants of Consultant contained herein, Company will pay Consultant the following: (i) a signing bonus of ten thousand dollars (\$10,000) and (ii) a monthly consultancy fee of five thousand five hundred dollars (\$5,500) beginning on June 1, 2002, and continuing each month thereafter for twelve (12) months. Company shall pay Consultant six thousand dollars (\$6,000) monthly for a second 18-month period, beginning June 1, 2003. All payments made to Consultant will not be offset against any royalties paid by the Company to Consultant pursuant to the License, Distribution and Manufacturing Agreement. Company will continue to reimburse The Aurora Collection, Inc. for the existing health plan if available, or if not available, will reimburse consultant \$300 per month during the term of this Agreement. During the term of the Agreement, Company will reimburse The Aurora Collection, Inc. for, if available, the use of a leased company vehicle, with company to reimburse The Aurora Collection, Inc for insurance coverage. Consultant agrees to pay all costs of maintenance and upkeep. Stelor will write an agreement with Consultant granting him options for 1,000 shares of Stelor's stock under Stelor's stock option plan. If the number of options available under the Stelor Productions current plan is increased during the Consultant's service Company will issue an additional one thousand option shares (1,000)

c. It is agreed by company that in the event the Company fails to compensate the Consultant as outlined in this Agreement and in accordance with the terms of this Agreement (including all option periods surrounding same) for two consecutive months and if after thirty (30) days fails to cure alleged breach, then Consultant has the right (option) to terminate this Agreement and among other legal remedies afforded Consultant to seek redress before the Court, the License Agreement shall, likewise immediately terminate. This caveat shall exist only if Consultant is not paid for other than "good Cause" termination as outlined below at section five (5) b of this Agreement.

2. Relationship of Parties. The relationship of Company and Consultant established under this Agreement is of an independent contractor. Nothing in this Agreement shall be construed to give any party the power to direct or control the daily activities of any of the other parties, or to constitute the parties as principal and agent, employer and employee, franchiser and franchisee, partners, joint venturers, co-owners, or otherwise as participants in a joint undertaking. The parties understand and agree that none of the parties grants any other party the power or authority to make or give any agreement, statement, representation, warranty, or other commitment on behalf of any other party, or to enter into any contract or otherwise incur any liability or obligation, express or implied, on behalf of any other party, or to transfer, release, or waive any right, title, or interest of any other party. Furthermore, during the term of

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this agreement, LICENSOR shall not initiate or maintain any relationship or conversations with LICENSEE'S current or prospective clients, vendors, any Company relationships with the media (press etc.) without the prior express written request by LICENSEE.

3. Duties of Consultant. Consultant's duties hereunder are as follows:

a. Consultant shall use his best efforts to perform such services as may be requested by Company from time to time consistent and commensurate with his position as Executive Creative Consultant, including, but not limited to, executing all papers, testifying on all Company related matters 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 (as amended) between Company and Consultant. The Consultant shall make himself available to the Company by way of telephone, fax, email, video conferencing (if deemed necessary) on an as needed basis and during reasonable business hours Monday through Friday. Consultant shall further make himself available, in person, if deemed necessary, to the Company so long as the Consultant is given a minimum of ten (10) days written notice if Consultant is, at the time of said request, residing outside of the Continental United States and three (3) days written notice by the Company if Consultant is residing, at the time of said request, within the Continental United States. In either case, Consultant must maintain a United States address for purposes of receiving correspondence, samples, checks etc. Written notice may also be deemed given if communicated via Consultant's personal email address or a fax number to be provided to the Company. Written notice must be sent via U.S. Mail certified, return receipt requested, or via a nationally recognized mail carrier service with "signature" required. Written notice may also be sent if communicated via Consultant's personal email address or a fax number to be provided to the Company. However, the latter shall not be used for any "official" notice purposes.

b. During the term of this Agreement and for a period of (1) years after the termination or expiration of this Agreement, Consultant shall not, either individually or in conjunction with a third party, engage in any business, trade, or profession as owner, officer, manager, employee, consultant or otherwise if such business competes in any material way with Company's business of developing, creating, selling, manufacturing, distributing, or marketing products, media or materials for children.

c. Consultant shall offer Company a right of first refusal to license, develop, manufacture, market or sell any and all children's characters or other products, ideas, inventions or creations created by Consultant that are not within the scope of this Agreement or the License, Distribution and Manufacturing Agreement (as amended) between Company and Consultant. If Consultant provides Company with any new idea's either relating to The Googles as well as anything entirely new that may not relate to the current universe of characters and /or idea's, that upon submission of such new idea or concept which shall be placed in writing Company shall have one hundred and twenty (120) days to accept and enter into an agreement for said property.

d. Consultant agrees to hold harmless, defend and indemnify Company and its officers, directors, employees, agents and servants from and against any and all claims, damages and expenses, including reasonable legal fees and expenses, of whatever kind and nature directly or indirectly arising out of or on account of or resulting from the Consultant's activities (other than as expressly authorized by Company) including, without limitation, Consultant's failure to comply with his obligations under this Agreement, acts or omissions.

4. Duties of Company.

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a. Company shall reimburse Consultant for all reasonable travel and living expenses that are deemed to be essential to Company's success and are pre-approved by an authorized officer of the Company and incurred as a direct result of Consultant's obligations under this Agreement such as attending tradeshows, board meetings, etc. The Company shall, upon proper documentation having been presented to the Company, or its official/designated representative, within seven (7) days of receipt of same, reimburse Consultant said incurred expenses as approved by Company.

5. Term and Termination.

a. Subject to the provisions for termination as provided herein, this Agreement shall commence upon execution and shall have a term of thirty (30) months.

b. Company may immediately terminate this Agreement upon the occurrence of any of the following: (i) a material breach of any provision of this Agreement by Consultant; (ii) a failure by Consultant, after written notice, to perform such duties required of Consultant as outlined in this agreement; (iii) the initiation of any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding by Consultant, or if any such proceeding is instituted against Consultant; (iv) the conviction of Consultant of any felony crime; (v) any use, sale or possession by Consultant of any illegal drug or controlled substance that is prosecutable under US Federal Laws. Written notice to mean by way of Certified mail, return receipt requested, or by way of a Nationally recognized mail service, Courier service etc.

c. Upon termination or expiration of this Agreement by either party, Consultant shall immediately return to Company all Proprietary Information (as defined below) in Consultant's possession, custody or control in whatever form held (including copies, compilations, summaries, or embodiments thereof relating to Proprietary Information) and provide written certification that all such material has been returned.

d. Company agrees to provide Consultant thirty (30) days Notice, from date of said written notice of termination by the Company, within which to cure any alleged breach it has made against the Consultant identified in paragraph three (3) under "Duties of Consultant".

6. Proprietary Information; Proprietary Rights.

a. In the course of performing his duties under this Agreement, Consultant may obtain information relating to Company and/or its customers, suppliers or other third parties that is of a confidential and proprietary nature ("Proprietary Information"). Such Proprietary Information may include, without limitation, trade secrets, research and development, customer lists, vendor lists, schedule of accounts, plans, programs, inventions, computer software, know-how, inventions, product information, techniques, processes, schematics, data, financial information and sales and marketing plans. Consultant shall, at all times, both during the term of this Agreement and for a period of two (2) years thereafter its termination, keep in trust and confidence all such Proprietary Information, and shall not use such Proprietary Information other than in the course of performing his duties as expressly provided in this Agreement, nor shall Consultant disclose any such Proprietary Information to any person without Company's prior written consent except as required or needed in any legal and/or Court action by Consultant against the Company or any other third party. This pertains to only that information not otherwise gathered from public sources, knowledge already in the public eye or a matter of public record, and/or any other third party other than Consultant.

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b. The Company acknowledges that the Consultant is not being hired as a work for hire but rather is being compensated, pursuant to this Consulting agreement, as a Consultant for the express purpose of advising, recommending, counseling, and otherwise utilizing Consultant's expertise in the decision making process as it pertains to the existing and "further development" of the Google's project only.

c. The services and rights which Company is granting to Consultant hereunder are extraordinary and unique and cannot be replaced or adequately compensated in money damages, and any breach by Consultant of this Agreement will cause irreparable injury to Company. Therefore, Consultant agrees that in the event of a breach of this Agreement, Company, in addition to any other remedies that might be available to it, shall be entitled to bring suit at law or equity for money or other damages. Consultant shall not oppose such relief on the grounds that there is an adequate remedy at law, and such right shall be cumulative and in addition to any other remedies at law or in equity (including monetary damages) which Company may have upon the breach of the obligations of confidentiality hereunder.

7. Limitations of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES) FOR ANY CLAIM BY ANY OTHER PARTY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. Miscellaneous.

This Agreement is a legally binding agreement between Company and Consultant and shall be governed by and construed in accordance with the laws of the State of Florida. This Agreement may be executed in one or more counterparts, each of which shall be an original Agreement, and all of which taken together shall constitute one and the same instrument. This Agreement may not be assigned by consultant without the prior written consent of Company. This Agreement shall not be modified, amended, or in any way altered except by an instrument in writing signed by both Company and Consultant. Each party shall refrain from making or issuing any statements, disclosures, or other communications related to this Agreement, the subject matter of this Agreement, or the services provided hereunder. This Agreement constitutes the entire agreement between Company and Consultant with respect to the subject matter of this Agreement, and supersedes all prior agreements, whether written or oral, with respect to the subject matter contained in this Agreement. Please indicate your acceptance of the terms of this Agreement by signing in the space indicated below.

STEVEN A. SILVERS Date 5/07/02

Stelar Productions, Inc.

By:   
Name: Stan Hrescig Title: President Date 5/9/02

Received Ten Thousand Dollar signing bonus (\$10,000.00)

MICHAEL LUM  
NOTARY PUBLIC STATE OF MARYLAND  
My Commission Expires April 1, 2003

5/9/02



**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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SILVERS 

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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.

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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 *[Signature]*  
SILVERS

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THEREFORE, the Parties hereby agree as follows:

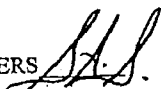
1. Domain Name Administration:

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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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STELOR

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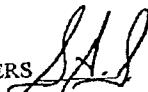
fees and other costs incurred in that litigation from the unsuccessful or non-prevailing party in addition to any other relief to which the prevailing party might be entitled.

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



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 

STELOR \_\_\_\_\_

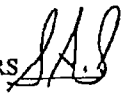


29. Effective Date: The Effective Date of this agreement shall be the date on which all Parties have signed this Agreement.

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

[Signature Page Follows]

SILVERS



10

STELOR \_\_\_\_\_

THE FOREGOING IS AGREED TO BY:

DATED: January \_\_, 2005

Stelor Productions, Inc.

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

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

DATED: January 28<sup>th</sup>, 2005

Steven A. Silvers

By: Steven A. Silvers

APPROVED AS TO FORM AND CONTENT:

DATED: January 28, 2005

Summers Rubinstein, P.C.

By: Yano L. Rubinstein

Yano L. Rubinstein, Esq.

Attorneys for Stelor Productions, Inc.

DATED: January 28, 2005

Kozyak, Tropin & Throckmorton, P.A.

By: Gail McQuilkin

Gail McQuilkin, Esq.

Attorneys for Steven A. Silvers

SILVERS [Signature]



UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 05-80393 CIV HURLEY/HOPKINS

STELOR PRODUCTIONS, L.L.C., a  
Delaware limited liability company,  
f/k/a STELOR PRODUCTIONS, INC.,

Plaintiff,

vs.

STEVEN A. SILVERS, a Florida resident,

Defendant.

FILED  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH, FLORIDA  
OCT 20 2006  
JAH

DECLARATION OF STEVEN A. ESRIG

I, Steven A. Esrig, hereby declare as follows:

1. I am the President and CEO of Stelor Productions, L.L.C. ("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 upon my own personal knowledge and/or on corporate records and documents maintained by Stelor in the ordinary course of business.
2. Pursuant to the License, Distribution and Manufacturing Agreement ("License Agreement") dated June 1, 2002 between the parties, Stelor has an exclusive license in all of the intellectual property associated with the GOOGLES characters. See License Agreement, Verified Complaint ("Cmpl.") Ex. A, at 1 & Schedule A. The term of the License is 30 years, with an option for 10 additional years.
3. Stelor's exclusive license under the License Agreement specifically extends to websites and domain names including: GOOGLES.COM.

JAH  
33/16

### STELOR'S LAUNCH

4. Pursuant to the License Agreement, Plaintiff has developed a proprietary, child-safe website – [www.google.com](http://www.google.com). Already, the google.com website has been enjoying tens of thousands of hits each day, and there are more than 600,000 registered users.

5. The website was originally developed by Silvers in 1997, and has been in operation for nearly eight years. I began working on the development of the project in 2001 as a consultant, and have been involved ever since. Stelor has continued to develop the property and to run the website since its formation and execution of the License Agreement in 2002. In addition to devoting all of my waking hours to the Project, and the continued work of Stelor's staff, more than \$4 million dollars has been invested by Stelor in the Project's development.

6. As the culmination of these efforts, Stelor is set to launch in four weeks a major development in the website and its products. Stelor's entire business hinges on the success of the upcoming launch. This is the culmination of the more than \$4 million dollars and four years of development efforts in which Stelor has invested. All of Stelor's resources have been committed to the launch, and unless the launch proceeds, Stelor's business will likely be destroyed. We are out of business if the website is not immediately reactivated.

7. The launch is of a new interactive feature for the website, called Gootopia. The key aspect of the website is Stelor's successful development of a proprietary security system for the Internet. If children are going to interact with each other and the world, it has to be in an environment that is safe. It has to be virtually impenetrable and yet accessible (to children). Stelor programmers have successfully created a proprietary way of doing this and it is to be the center piece of the upcoming launch of the new interactive feature, called Gootopia, on its existing website.

8. All of Stelor's products are designed for use on this website. The format will allow maximum contact between children and the characters. Web casts, broadcasts, live shows, and narrow casts have been created to reach children worldwide. Show formats involve interactivities like huge web based scavenger hunts, multi-person gaming, and free advice from renowned experts for kids. The site will take them to hundreds of other safe locations approved by their guardians. The site also features safe chat, email, and original music.

9. Although Gootopia is a new development, the critical component of the launch is the existing site--googles.com. Stelor's exclusive access to that site is the heart of its business and the License Agreement. Given the thousands of daily hits on our googles.com site, the fundamental concept is to build from the success of the existing website, inviting its regular visitors to try the new, safe features of Gootopia. Stelor's launch cannot successfully proceed without the foundation of the googles.com website, the ongoing traffic that site enjoys, and the more than 600,000 registered users to date.

10. Stelor's efforts to promote this launch have reached a critical point. In addition to the millions of dollars and years of development already invested, Stelor has recently spent almost \$200,000 in one vital pre-launch activity alone. Stelor is a Platinum Exhibitor with the Licensing Show in New York City, June 21-24, 2005. Stelor's immediate neighbors include: Disney, Nickelodeon, and DreamWorks Entertainment. Hours have gone into the preparation of the booth (design panels included) and 14 people have been trained to interact with the thousands of industry leaders attending. Live Google Characters will be in the parade and attending the show. Stelor has engaged a number of the top PR firms in the US to maximize our exposure. And one of the most recognized IP representatives has been engaged to bring us in touch with only the top licensees.

**THE IRREPARABLE HARM SILVERS HAS CAUSED**

11. Silvers' conduct following commencement of this action, however, has brought the development of Stelor's business to a screeching halt. Incredibly, Silvers shut down the googles.com website. He has redirected the site and taken Plaintiff's proprietary intellectual property. Stelor no longer has access to our site, and our site is no longer in operation.

12. Silvers has redirected our website to point to a meaningless advertising page. When a user goes to the website now, a screen appears stating "Coming Soon!" followed by a block of unrelated advertising. A true and correct copy of the page is attached as Exhibit "A" hereto.

13. The number of hits on the website has dropped to zero! The over 600,000 people who had successfully registered are no longer available. The 1,800 new names Stelor had gathered from an initial Gootopia Tour Demo (in just 8 days) are gone as well. We are unable to even tell them where we have gone, as we always emphasize the Googles not Stelor Productions on the site. Stelor simply cannot proceed with its launch without access to this website.

14. Silvers' extreme, wrongful actions threaten the very viability of Stelor's business. Silvers has essentially put Stelor out of business. Without our website content, Stelor cannot display its product and meet with potential licensees. We cannot demonstrate our product to our users and their customers. We cannot launch and protect pending expansions to our 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, we can do nothing.

15. 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.

16. Unless Stelor immediately regains access to the website and can proceed with its launch without further interference, its business will likely be destroyed and it will suffer indeterminate and immeasurable losses. Besides destroying our existing business, the unique opportunity available to Stelor just weeks ago will be entirely lost, along with the incalculable business that would have flowed from that opportunity.

17. In short, Stelor has invested all of its available resources into this effort and the approaching launch. It lacks the financial ability to stay afloat unless the launch proceeds now. Absent immediate action, Stelor's entire investment of over \$4 million and the incalculable revenues from the launch will be lost.

18. Nor is there any conceivable reason for Mr. Silvers' actions, other than his apparent desire to pursue a lawsuit against Google, Inc. himself. Google, Inc. is attempting to move into the children's market, infringing the rights of the senior googles.com mark and domain name. Pursuant to the Settlement Agreement and License Agreement, the exclusive right to bring an infringement action against Google, Inc. belongs to Stelor, although Silvers is obligated to cooperate and would enjoy a handsome percentage of any recovery. License



Agreement ¶ VIII(A); Settlement Agreement ¶¶ 2, 18 & 19. Paragraph 18 of the Settlement Agreement, moreover, specifically authorizes and requires injunctive relief, should either party attempt independently to proceed against Google, Inc. Incredibly, that is exactly what Silvers has done, filing his own lawsuit against Google, Inc. just days after his unlawful termination of Stelor's license. The Google, Inc. action is pending in this district under Case No. 05-80387-CIV-RYSKAMP/VITUNAC.

19. Silvers is fully aware of Stelor's launch, and has continued to express his approval of Stelor's project. On April 12, 2005 – just days before Mr. Silvers' purported termination letter – his counsel advised that Silvers “really is very happy with the project and excited about the launch and upcoming show. He knows the success of the project is the result of the work and investment made by everyone over there.” Email from Gail McQuilkin, attached hereto as Ex. “B”. In fact, if Stelor's launch is successful, Silvers stands to benefit substantially based on his continuing financial interest in the business.

20. Importantly, Silvers also understands the irreparable harm he can cause by purporting to terminate the Agreements and seize the related property before the Court can decide the issues. Indeed, Silvers previously wrote “to assure Stelor, with the exception of a material breach by Stelor *and ruled as such by a court of competent jurisdiction (as required by our existing agreements* at which time all rights shall revert back to me . . . , that at such time *and only at such time* shall I then determine what would be in the best interest of my Intellectual Property . . . . This shall once and for all alleviate any fear or concern by [Stelor] that I would do something to intentionally harm ‘my dream’.” A true and correct copy of Silvers' November 5, 2003 Official Notice is attached hereto as Exhibit “C” (emphasis added); the quoted section is on page 4, and is marked in the margin.

21. Silvers, however, has intentionally set out to cause the very harm he promised he would never cause.

**SILVERS NEVER PROVIDED THE REQUIRED NOTICE OF TERMINATION  
OR OPPORTUNITY TO CURE UNDER THE LICENSE AGREEMENT**

22. As this Court is aware, the parties have a history of disputes regarding the License Agreement, which required Stelor to file a prior lawsuit before this Court on or about October 18, 2004. While that lawsuit was pending, Defendant Silvers purported to terminate the License Agreement by letter dated January 13, 2005. Cmpl. Ex. C. Importantly, at the time, Defendant Silvers himself recognized that, under the License Agreement, he was required to provide 60 days notice of termination and an opportunity to cure, before termination could become effective. The parties' rights and the procedural requirements for termination are specifically set forth in Paragraph IX of the License Agreement, which provides: "**Right to Terminate on Notice.** This Agreement may be terminated by either party upon *sixty (60) days written notice* to either party in the event of a material provision of this Agreement by the other party, provided that, during the *sixty (60) day period*, the breaching party fails to cure such breach." Cmpl. Ex. A (emphasis added). Thus, prior to sending his January termination letter, Mr. Silvers' counsel sent a letter in or about November 12, 2004 detailing the alleged breaches. Cmpl. Ex. C.

23. That dispute, however, was entirely resolved by the parties, pursuant to the Confidential Settlement Agreement executed on January 28, 2005 ("Settlement Agreement"), which has been filed under seal in this action. In connection with that Settlement Agreement, the parties filed a stipulation of dismissal with prejudice in the prior lawsuit, and that lawsuit was accordingly dismissed with prejudice. *See* Stipulation of Dismissal and Order, attached hereto as Exhibit "D".

24. Among other provisions in the Settlement Agreement, it provides in paragraph 3 that: “Silvers withdraws his notice of termination of the License Agreement, and reaffirms his obligations under the License Agreement.” In addition, paragraph 24 of the Settlement Agreement confirms that the License Agreement remains in full force and effect, and is not superseded by the Settlement Agreement.

25. Critically, therefore, the Termination provision contained in Paragraph IX of the License Agreement continues to apply. That provision could not be more clear: it expressly and explicitly requires *60 DAYS NOTICE IN WRITING* and an opportunity to cure, before the License Agreement can be terminated.

26. Defendant Silvers failed to provide any advance notice, let alone the required 60 days’ written notice, of the alleged termination or any opportunity to cure. Instead, he purported to terminate the License Agreement by letter dated April 27, 2005 (“Termination Letter”), effective immediately. Cmpl. Ex. C. Silvers provided no opportunity to cure. In fact, Silvers rejected Stelor’s tender of payments – including an advance payment for May – and no payments were late in any event. *See* Cmpl. Exs. D & E. Indeed, as the Verified Complaint and Emergency Motion filed by Stelor describe, Silvers instantaneously engaged in a course of conduct to seize control of the intellectual property granted exclusively to Stelor under the License Agreement.

27. Silvers’ purpose can be nothing other than to destroy Stelor’s business, and avoid having to share an anticipated recovery from Google, Inc.

**THE CLAIMED BREACHES ARE TOTALLY UNFOUNDED**

28. In fact, the five alleged breaches referenced in the Termination Letter are entirely unfounded and pretextual in any event, and were not even 60 days old as of the date of the April

27<sup>th</sup> Letter. The reality is that Stelor has devoted tremendous effort to ensure its compliance with the Agreements, but Silvers – not Stelor – has consistently and repeatedly failed to perform the express conditions precedent to Stelor’s performance. If any party had a basis for termination, it was Stelor!

a. For example, Silvers claims Stelor failed to provide unit interests in Stelor LLC under Paragraph 9 of the Settlement Agreement. That requirement addressed a pending change in Stelor’s corporate structure from a Delaware corporation to a Delaware limited liability company. The conversion, however, was not even completed until March 15, 2005! Stelor is still preparing, but has not completed the LLC Membership Unit Certificates, the Membership Unit Restricted Stock Agreements and the Membership Unit Option Agreements. We have not issued these documents to any shareholder or option holder. Section 9 does not include a time frame for compliance, but Stelor expected and intended to provide Mr. Silvers an LLC Option Agreement as soon as and at the same time as those documents were provided to all other option holders. Silvers’ suggestion that he was unaware of, and never consented to, Stelor’s conversion to a limited liability company is incredible. He specifically acknowledged the change in Paragraph 9 of the Settlement Agreement. His counsel, indeed, remarked during her visit to Stelor’s offices in February of 2005 that the change was an excellent idea! (Also, no owner of any membership interest in Stelor resides in Florida. Mr. Silvers has options, but no membership interest.)

b. Similarly, Silvers claims Stelor failed to pay monthly installments on royalty advances under paragraph 10(a) of the Settlement Agreement. That

provision requires a \$5,000 payment on the first of each month beginning February 1, 2005. Silvers neglects to mention that the payments have been made and accepted by Silvers for February and March. In fact, those payments were not delivered until April 14, 2005, because Silvers failed to satisfy the express conditions precedent to Stelor's performance under the Settlement Agreement. Of course, Silvers readily accepted those payments. Our counsel's cover letter forwarding the checks on April 14 is attached as Exhibit "E" hereto, along with Silvers' counsel's acknowledgment of having received and accepted the checks as Exhibit "F". With respect to the April payment, as Silvers' counsel also confirmed, it was actually paid in *early* April, but Silvers required it to be re-cut, made out to Silvers Entertainment rather than himself! A true and correct copy of the exchange of emails between Stelor and Ms. McQuilkin is attached hereto as Exhibit "G". Silvers then rejected the re-cut April payment when it was tendered on April 29, 2005, along with the May 2005 payment. *See* Cmpl. Exs. D & E.

c. With respect to the allegation that Stelor failed to pay the amount required by Silvers to maintain his insurance coverage, those payments were made along with the royalty advances as described above. In addition, Silvers has only himself to blame for any claimed delay related to those payments: paragraph 10(b) of the Settlement Agreement requires Stelor to pay only "that amount required by Silvers to maintain his insurance coverage through the Aurora Collection, Inc. (or other insurance or medical provider of Silvers' choosing), . . . not [to] exceed \$1,000 per month." Paragraph 10(c), moreover, makes clear that "Such reimbursements will be provided to Silvers within 15 days of Stelor

receiving evidence of paid premiums.” Stelor has repeatedly requested that basic and readily obtainable information from Silvers. To date, however, Silvers has failed and refused to provide the required “evidence of paid premiums”. Accordingly, Stelor is not obligated to make any such payment to Silvers, even though Stelor has previously gone ahead in good faith and done so.

d. Silvers next claims that Stelor failed to cooperate in an audit of books and records of Stelor under paragraph 14. Again, Silvers provided no required notice or opportunity to cure. In fact, Silvers’ counsel advised in early April that they would defer the audit. Silvers did not renew his request for the audit until his counsel sent an email dated April 22, 2005 – ***5 DAYS BEFORE THE TERMINATION LETTER!*** A true and correct copy of the email is attached hereto as Exhibit “H”. The email, moreover, advises that the “auditor is preparing a letter that will outline the documents and records he will need available at Stelor to do the audit.” It then asks for “a date in the next two weeks”. Silvers, however, never provided the auditors’ letter and refused to give Stelor two weeks to provide a date. Instead, apparently having tried to set Stelor up, his Termination Letter was sent 5 business days’ later.

e. In addition, Silvers obviously failed to provide the required notice for his claim that Stelor has failed to provide samples of Licensed Products that are being offered for sale. Silvers’ counsel, however, herself reviewed those samples when she visited Stelor’s offices in Maryland in February of 2005. In fact, she took samples back with her. We made those samples available yet again to Silvers, when our counsel advised Silvers’ counsel by email dated April 26,

2005 – a day before the termination letter – that the samples were in his office and available for review by Silvers’ counsel. Silvers’ counsel responded that “I cannot get into this with you right now. I assure you I will get back to you and Stelor by Friday.” A true and correct copy of those emails is attached hereto as Exhibit “F”<sup>1</sup>. That response, apparently, was totally disingenuous. Silvers’ counsel “got back to” us that Friday by sending the Termination Letter.

f. Finally, to the extent Silvers’ claims it failed to provide accurate royalty information, again the required notice was obviously not provided. In addition, Stelor has prepared a royalty report to Silvers for the first quarter of 2005. The report was completed at the end of April, and was included in the letter to Silvers’ counsel dated April 29, 2005. Cmpl. Ex. D. Additionally, to the extent Silvers claims that Stelor’s prior written statement regarding royalties was inaccurate, Stelor has advised Silvers’ counsel that it was only just made aware that an on-line shop at CafePress.com was carrying Googles merchandise, without Stelor’s authorization or knowledge. We were previously unaware of the existence of this shop, and suspect that it was established by someone outside of Stelor using our company information. After further analysis, we discovered the shop was established in September of 2002 and had sold one (1) coffee cup in December, 2002, for \$10.99. On March 31, 2005, we purchased two (2) of each item from the shop to review the quality of the merchandise. These items – again – are with our counsel and were made available to Silvers’ counsel for review, as

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<sup>1</sup> Certain of the emails with Silvers’ counsel have been redacted, since at the time the parties were working jointly to initiate litigation against Google, Inc. Their communications in that regard are privileged and confidential.

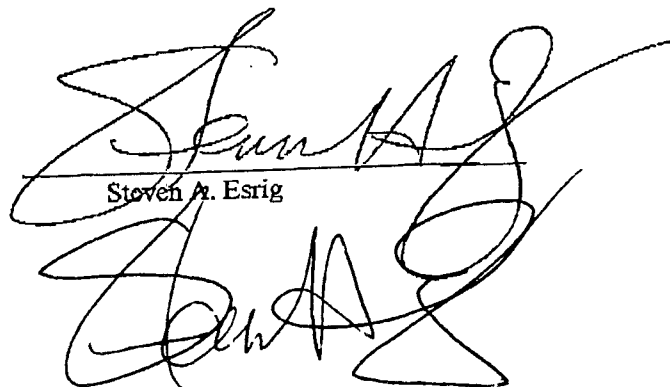
referenced in the April 26<sup>th</sup> email. Ex. G. Stelor has received no revenue from this outlet; accordingly, no royalty payments would be due in any event.

g. Silvers claims – for the first time in his Declaration and Opposition served on Friday, May 20, 2005 – that Stelor did not have required insurance in place until after his termination. That is false. True and correct copies of Stelor’s certificates of insurance for the periods July 1, 2004 to July 1, 2005, and thereafter, are attached as Exhibit “J” hereto.

h. Finally, to the extent Silvers raises various allegations related to a Letter Agreement dated June 1, 2002, that Agreement expired by its own terms on or about November 30, 2004 (after the stated term of 30 months)! Par. 5(a), Cmpl. Ex. B.

29. Nevertheless, notwithstanding the clear notice provisions in the License Agreement, and the total lack of factual foundation for the claimed defaults, Silvers sent the Termination Letter and has engaged in a course of conduct designed to steal all the GOOGLES intellectual property, as well as Stelor’s own proprietary material to which Silvers has no right under any circumstances.

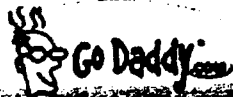
I declare under penalties of perjury that the foregoing is true and correct. Dated this 22<sup>nd</sup> day of May, 2005.

  
Steven A. Esrig





Coming Soon!




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**Kevin C. Kaplan**

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**From:** GAIL A MCQUILKIN [GAM@kttlaw.com]  
**Sent:** Tuesday, April 12, 2005 4:35 PM  
**To:** Kevin C. Kaplan  
**Subject:** follow up

Kevin -

I appreciate our conversation today. As you requested here is an update  
be kept extremely confidential and I am leaving out names for that purpose.

5/21/2005

Finally, you know how important I feel it is for us to stay aligned. This is easily accomplished if your client will just comply with the settlement, especially the financial part. I don't make threats or posture, my time is too expensive to waste on that. I communicate only what I must when I must to protect my clients interests. I agree that this has gotten silly, and I am sure the board would rather focus its discussions on the upcoming launch and trade show than obsessing over these rather small advances to my client. I have spent considerable time getting my client to focus on what your client has and will accomplish rather than what they have not done, although his list in that regard is long. He really is very happy with the project and excited about the launch and upcoming show. He knows the success of the project is the result of the work and investment made by everyone over there. But, he needs to feel he is being treated fairly, and frankly it doesn't take much by your client to instill that in him.

Gail A. McQuilkin, Esq.  
Kozyak Tropin & Throckmorton, PA  
2525 Ponce de Leon  
Coral Gables, FL 33134  
(305) 372-1800 office  
(305) 372-3508 fax  
[gam@kttlaw.com](mailto:gam@kttlaw.com)

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

**November 5, 2003**

**Re: Official Notice**

**Dear Steve and Stelor Board Members:**

**Pursuant to our recent conversation on Saturday, November 1, 2003, and my promise to you, prior to embarking upon any adversarial course of action, that I would give you and the Stelor Board the courtesy of laying out to you the material breaches of our existing agreements that I am now alleging and for which are in need of your immediate attention.**

**Additionally, I am seeking clarification of certain portions of our existing agreements that need to be addressed immediately as well.**

**After meeting with you several weeks ago, it is my understanding that Stelor has taken a position that I have a duty to provide Stelor with the password interests/rights to my "public" domain names surrounding the Googles' Intellectual Property, especially that of www.googles.com.**

**It is also my understanding that you have "verbally" informed me that until this matter is properly resolved that I shall receive no further compensation as required by the existing Consulting and Licensing Agreements executed between Stelor and myself dated May 9, 2002.**

**As I recall, your exact words to me when we last met, was that I've been "officially cut off" from any further compensation and that your hands were tied regarding this matter. You even mentioned that the Board was adamant about you giving me a check for my August Consulting Fees and that as a result of your doing so, you lost your signature powers to write any more checks to me or anyone else thereafter.**

**Contrary to what you or the Board may be thinking at this time, I would like to find a common ground, if at all possible, to swiftly resolve**

**these and other matters surrounding my existing agreements with Stelor, both fairly and expeditiously.**

**Accordingly, my legal position is as follows:**

- 1). Stelor shall agree to immediately provide me with my September and October consulting fees, currently in arrears and as called for by the Consulting Agreement with Stelor. Stelor shall continue to make timely payments to me, as called for, through the remainder of the Consulting Agreement period, barring any bona fide future breaches that Stelor may hereafter allege and for which have been deemed "material" in scope and ruled as such by a court of competent jurisdiction as called for in the Consulting Agreement,**
- 2). Stelor shall agree to continue to pay, as required, my insurance premiums through the remainder of the Consulting Agreement with the same caveat as noted at [letter #1 above];**
- 3). Stelor shall agree to provide me with all required "Royalty Statements" as noted in my Licensing Agreement, regardless of whether or not there are royalties due and owed to me as the Agreement clearly sets forth. Since I've yet to receive any such statements, it is advised that "all" past statements be properly provided to Mr. Silvers as mandated within the next 30 days. This, as you are well aware, can be construed as a material breach by me according to the existing Licensing Agreement with Stelor,**
- 4). Stelor shall agree to immediately reimburse me for the total funds that I've allocated for registration fees and renewal registration fees of the Googles.com and related Googles' domain names, since the execution of the Agreements and as required by Stelor to perfect. I have, on numerous occasions, requested that these fees to be reimbursed to me, both verbally and in e-mail format and I've yet to receive any such reimbursements for said fees due and owed to me. This figure is now pushing \$2,000.00 to date (all of which can be substantiated via invoice data).**

5). Stelor shall agree to immediately update the [Google.com](http://www.google.com) web site noting me as the "creator of the [Google from Goo](http://www.google.com)" as it once appeared and without explanation has since been removed and as of this writing is still not listed anywhere on the [Google.com](http://www.google.com) web site. I believe this caveat is also clearly outlined in our existing Licensing Agreement that is currently in place between me and Stelor.

6). Stelor shall agree to immediately transfer the 19 domain names that were agreed upon to be transferred to me upon the execution of the Asset Purchase Agreement between Stelor and Aurora and as of this date still remain under Stelor Productions' control. These names, as you are fully aware, belong to me with Stelor being listed as the Administrative and Technical contacts and I listed as the Registrant and Billing contact. I have repeatedly requested, in e-mail format and verbally to you on many occasions that Stelor needed to transfer these (19) domain name to my "Godaddy" domain hosting account.

I have also informed you, personally, that certain domain names have been left to expire without my ever having the benefit of knowing which ones Stelor had arbitrarily allowed to expire and how I recently found out they are no longer available to be renewed due to some other individual(s) having already renewed them. This was done without my ever having knowledge of any of this or my being made privy to any of this. An explanation on this matter is seriously warranted.

7). I have recently found out that Stelor has registered the names [www.goopets.com](http://www.goopets.com) and [www.goopetz.com](http://www.goopetz.com). The exact dates of these registrations are: created on July 9, 2003 (less than 4 months ago) and they were registered through [GoDaddy.com](http://www.godaddy.com), and the Registrant is noted as: Steven A. Esrig. This is another material breach of the Agreement because it calls for ALL domain names, including any that have the "Goo" or "Google" prefix to be registered in my name, NOT Stelor's and I am to be listed as the Registrant, NOT STELOR or you. You knew this to be true and yet you or someone in your organization with your blessings registered these domain names, because they had to be paid for with your credit card or Stelor's credit card, very well knowing



**this to be in violation of our existing agreements. No excuses on this one. We're talking only a few months ago. I'm terribly disappointed in this move. You talk about a trust factor. What shall I say about this? I have the printed copies of the Registration Forms that I took off the Internet if you care to review them.**

**These are the initial main issues that we need to immediately resolve so that the Googles' project can continue on its course of, hopeful, success for all parties concerned.**

**I am likewise further informing Stelor as follows:**

**1). You and the Board have expressed a concern that I may attempt, now or perhaps at some point in the future, to exercise my authority, given the fact that I currently control the Googles.com and other Googles' related domain names that I own. Authority that may include the shutting down of the Googles.com web site.**

**2). I am willing, assuming that we can amicably resolve the aforementioned issues, to assure Stelor, with the exception of a material breach by Stelor and ruled as such by a court of competent jurisdiction (as required in our existing agreements) at which time all rights shall revert back to me as called for in our existing agreements, that at such time and only at such time shall I then determine what would be in the best interest of my Intellectual Property and the rights associated with same. Having said this, I am willing to have this caveat reduced to writing and added as an addendum to his existing agreements. This shall once and for all alleviate any fear or concern by you or the Board that I would do something to intentionally harm "my dream".**

**Further listed below are clarifications regarding the existing agreements executed between myself and Stelor. They are noted as follows:**

**1). I would like a clarification as to the clause noted at [page 2, number 3.c.] of my Consulting Agreement, regarding a "right of first refusal".... It appears that this clause is in conflict with the one just above it at [page 2, number 3.b.]. These two clauses are in direct conflict with one another. On one hand it stipulates that I can not engage in any business if such business competes in any material way**

MAY 20 2006 09:25

with Stelor's ongoing business dealings surrounding the Googles' project as it relates to children. However, in the second clause it gives the rights to make available to Stelor, on a "right of first refusal" basis other projects that I may create or develop by myself or with other third parties or that I may acquire or joint venture with other third parties, which shall be presented to Stelor and within 120 days Stelor shall either accept or reject such other projects presented by me. However, the agreement doesn't clarify what rights Silvers may have in the event that Stelor shall decline to participate in any of the Intellectual Properties presented to Stelor for which it chooses to reject or decline nor does it stipulate in the event that Stelor decides to accept, under what terms and conditions and how long Stelor may have to develop and bring to market such other Intellectual Properties presented to them by me. These two clauses are at best ambiguous; thus in need of clarification.

I shall be seeking the following clarification. In the event that I bring to Stelor a project that I have either developed or joint ventured with another party, or that I shall represent on behalf of another party, and within 120 days of such formal presentation, Stelor is unable to fund, market, develop and bring to market said project within a reasonable period of time thereafter, not to exceed six (6) months from time of introduction to complete the contractual phase of the project with certain performance caveats then Stelor shall agree that I shall have the right to take the project elsewhere without owing Stelor any further obligation. This goes for any and all projects whether they are related to preschool children or older children.

2). I would further like a clarification as to the clause in my Consulting Agreement noted at: [Number 2. Relationship of Parties....wherein it stipulates that "during the term of this agreement, Licensor shall not initiate or maintain any relationship or conversations with Licensee's current or prospective clients, vendors, any company relationships with the media (press etc.) without prior express written request by Licensee"]. I maintain that I have previously had both business and personal relationships with several of Stelor's current clients and vendors, prior to the execution of both the existing

Consulting and Licensing Agreements with Stelor. These relationships should not be part and partial to this clause or at best, should I choose to communicate with any of these relationships on a personal basis whether in person or via other current means of communication that I shall not be prevented from doing so. It is hard to conceive that such a "gag order" would be enforceable given the circumstances of this issue. All I'm requesting is a clarification of this clause so that I may continue to maintain my personal relationships with those individuals that could be construed as current vendors or clients of Stelor without further fearing retaliation by Stelor for my doing so. This seems ludicrous, at best, especially in view of the fact that I have been granted, by Stelor, the title of "Executive Creative Consultant" according to the existing Consulting Agreement and as such I am being granted the ability to offer my creative input to the Stelor and thus I should not be prevented from having conversations with those directly and/or indirectly involved with the creative process in bringing to market the successful launching of the "Googles from Goo" intellectual property. It should be duly noted that this caveat is also listed in Mr. Silvers Licensing Agreement at: [page 5, at VIII E]. I shall agree that my conversations with such entities covered by this clause be strictly related to personal and unrelated Googles business unless otherwise authorized.

4). I would also like a further clarification as to the clause in my existing Licensing Agreement noted at: [page 7, Indemnity clause, at letter C.], wherein it clearly stipulates that I shall have the express right, in the event that Stelor shall decline to pursue upon notice by me, to properly protect and defend against other such third parties or entities, any trademark, patent, or any other intellectual property rights afforded me in order to protect my intellectual property known as the Googles from such other violators. It seems clear that according to this clause that I shall have the right, at my "sole expense to defend if necessary, or file suit if desired, made by or filed against another party...." Thus, should I inform Stelor of a concern that I may have surrounding the proper protection of his intellectual property rights, and should Stelor decline to institute such proceedings against such third party or parties, then I, at my sole expense, shall have the right to defend and pursue such claims and/or suits.

MAY 20 2006 01:26

It has been brought to my attention that Stelor does not share the same legal view in this regard. Thus the need for a clarification of this issue as well. I shall agree that should I decide to bring suit against any third party or other entity that may become or shall threaten the existence of the Googles' intellectual property and all of its surrounding rights, that I will timely inform the Board of my intentions and in the event Stelor is not able nor interested in pursuing such litigation, then Stelor shall waive all rights to same and shall have no further obligation to fund such litigation. However, in the event that Stelor shall inform me of it's intentions to move forward with such litigation within a reasonable period of time, then I shall respect Stelor's position and either try and work something mutually agreeable between all parties concerned or in the event there is a favorable judgment and outcome of such litigation then Silvers shall agree to provide Stelor, after all reasonable expenses have been allocated, a participation, to be shared with all of it's shareholders, of 20% of my net proceeds of any such litigation.

5). I would like an updated clarification as to the status of the pending trademark filings and applications that have or should have been perfected on my behalf and I am further seeking copies of all such filings for my records and for which I believe I am entitled to with an understanding by Stelor that any and all future filings should be copied and immediately forwarded to me for my review and input.

As the Licensor of the Googles from Goo intellectual property, I believe that I am entitled to copies of any and all legal documents executed on my behalf by Stelor in a timely fashion. To date, I've received no such copies.

6). According to my existing Consulting Agreement, Stelor has agreed to provide me with health insurance coverage during the term of my Agreement. The clause reads at [page 1 of said Consulting Agreement, at number 1.b.] that: "Company 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." I am questioning why, if the "existing health plan is still being made available by Aurora" that I have had to pay an

assessed increase of \$144.00 each month when it clearly stipulates in the agreement that Stelor shall reimburse the Aurora Collection for the existing health plan if available during the term of this agreement? Why have I had to allocate each month for the past eleven (11) months now, the sum of \$144.00 when clearly I shouldn't have had to do so? I am seeking reimbursement of all such funds that I've laid out and for which I clearly should not have had to do so and for the remainder of the Agreement that Stelor will take care of the full coverage as called for by the Agreement.

7). Last on this clarification list is the issue of "Reversionary Rights". I have brought to your attention on many occasions, supported by documentation and as clearly noted in our existing Agreements and those executed between Stelor and Aurora the highly sensitive issue of reversionary rights, when and if there is a "material" breach found in my favor by a court of competent jurisdiction and as clearly outlined in our Licensing Agreement. However, the issue here is that Stelor has seen fit to grant this right to both myself and Aurora. Thus, clearly creating a conflict. Please note that my Licensing Agreement was executed on May 9, 2002. In this Agreement Stelor granted me "Reversionary Rights" noted therein at: [page 6, at X. Post Termination Rights, letter C.] wherein it states: "Upon the expiration or "termination" of this Agreement, "all the license rights of Licensee under this Agreement shall forthwith terminate and immediately revert to Licensor and Licensee, except as detailed above in Section (B) of the "Post Termination Rights" Section, shall immediately discontinue all use of the Licensed Property and the like, at no cost whatsoever to Licensor."

Of course this reversionary right only goes into effect if and when a material breach is alleged by me and such is ruled in my favor by a court of competent jurisdiction as the existing Agreement mandates.

However, in an Agreement signed and executed between Stelor and Aurora dated just 14 days after I executed my Licensing Agreement with Stelor, the exact date is May 23, 2002, Stelor proceeded to grant

**Stelor the same "Reversionary Rights" which was otherwise unlawful to do so.**

**Please note the clause at: [page 6, of the Stelor/Aurora Asset Purchase Agreement, at number 11. Reversionary Rights, wherein it reads as follows: "In the event that Buyer (Stelor) is unwilling or unable to fulfill its financial obligations to Steven A. Silvers under the terms of any of Sellers' (Aurora) agreements with Silvers that are assumed by Buyer as a result of this transaction, Buyer will give written notice to Seller. If the breach is not cured or waived by Silvers within a reasonable period of time after receiving written notification by Silvers and Seller thereafter assumes such liability to Silvers, all rights assigned herein by Seller to Buyer shall revert back to Seller without obligation by Seller to Buyer. Buyer shall execute such documents as are necessary to affect the intent of this clause concerning reversionary rights without unreasonable delay."**

**Accordingly, it seems patently confirmed that these two agreements are in clear conflict with one another and it is my stern position that in the event of an alleged breach between myself and Stelor; for which I should prevail, that my "reversionary rights" clearly supercede those granted to Aurora by Stelor.**

**I hereby seek clarification as to why these "Reversionary Rights" were granted to Aurora when, in fact, they were granted to me fourteen (14) days prior to the execution of any Agreement with Aurora?**

**In closing, I would like to reiterate the fact that I prefer not to assert any adversarial position at this time with Stelor. I only desire what I am entitled to according to the mandates outlined in our Agreements. Nothing more and nothing less. If after reading and reviewing this letter with your Corporate Counsel, they choose not to advise you to do the right thing as called for and as I've clearly outlined in this lengthy letter, then I am fully prepared to seek a formal breach against Stelor for the many violations I've cited above and we will let the chips fall where they fall. This is not to be taken as any threat. I'm tired of all of this anxiety that I've had to endure all of these months and it's time to**

**put an end to it once and for all.**

**I would also state that once you take the "visionary" out of the "vision" you are doomed to fail.**

**I assure you, if you place me in an "active" role, that I am fully prepared to execute come the first of the year, and place me in charge of the creative process of the project, allowing me to do what I do best, and working with all those you have thus far entrusted, except me, with the creative process and the creative delivery of the project, within (6) months time you will see miracles unfold. I can guarantee this! If you choose to continue to exclude me from the creative process, as has been the case these past 17 months, then the consequences will fall on your shoulders not mine. Either way, I'm fully prepared to act. I hope and trust you choose the former chartered course of action.**

**In Stelor's response to this letter kindly be specific as to addressing each and every clause as requested by me so that we can have a clear understanding as to Stelor's position regarding the issues outlined above.**

**Should you care to contact me to discuss this matter further I can be reach at: 954-445-6788, otherwise I shall expect your reply within the next 10 days as I'm leaving to go out of the country on November 15, and I won't be returning until December 25, 2003.**

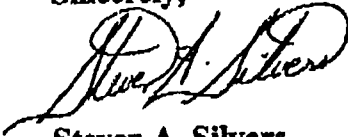
**In the event that I don't have your response within the next 10 days as requested, then my options will be limited and I shall proceed accordingly.**

MAY 20 2005 01:28

**Also, please take notice that my new mailing address has once again changed and you should direct all future correspondence to me at:**

**Steven A. Silvers  
8983 Okeechobee Blvd.  
Suite #202, PMB 203  
West Palm Beach, FL 33411-1826**

**Sincerely,**

A handwritten signature in cursive script that reads "Steven A. Silvers". The signature is written in black ink and is positioned above the printed name.

**Steven A. Silvers**

**\*This document is being sent in accordance with our Agreement requirements dated May 9, 2002 by way of FedEx (Tracking Number: 842190092180.)**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-80954-CIV-HURLEY

STELOR PRODUCTIONS, INC.,  
plaintiff,

vs.

STEVEN A. SILVERS,  
defendant.

**CLOSED CASE**

05 FEB 17 PM 3:09  
CLERK OF DISTRICT COURT  
S.D. OF FLORIDA

ORDER OF FINAL DISMISSAL WITHOUT PREJUDICE AND CLOSE-OUT


THIS CAUSE is before the court upon the parties' joint stipulation for dismissal without prejudice filed February 8, 2005. Having considered the stipulation, it is hereby

**ORDERED AND ADJUDGED:**

1. This case is **DISMISSED WITHOUT PREJUDICE**, with each side to bear its own costs and attorneys' fees.

2. There being nothing further for the court to resolve, it is further ordered that the Clerk of the Court shall enter the case as **CLOSED** and terminate all pending motions as **MOOT**.

**DONE** and **SIGNED** in Chambers at West Palm Beach, Florida this 17<sup>th</sup> day of February, 2005.

  
Daniel T. K. Hurley  
United States District Judge

Copies furnished:  
Adam T. Rabin, Esq.  
Kenneth R. Hartmann, Esq.  
Yano Rubinstein, Esq.

50  


FILED by MC D.C.  
ELECTRONIC  
  
Feb 8 2005  
  
CLARENCE MADDOX  
CLERK U.S. DIST. CT.  
S.D. OF FLA. - MIAMI

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

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.


**JOINT STIPULATION FOR DISMISSAL,  
WITHOUT PREJUDICE, OF ALL CLAIMS**

Plaintiff, Stelor Productions, Inc. and Defendant Steven A. Silvers, hereby jointly stipulate, pursuant to Fed.R.Civ.P.41(a)(1), to the dismissal, without prejudice, of all claims asserted by each party against the other party in this action.

Respectfully submitted,

Adam T. Rabin  
DIMOND KAPLAN & ROTHSTEIN, PA  
200 S.E. First Street, Suite 708  
Miami, FL 33131  
T: 305-374-1920  
Co-Counsel for Defendant

  
Kenneth R. Hartmann (FBN: 664286)  
Gail A. McQuilkin (FBN: 969338)  
KOZYAK TROPIN & THROCKMORTON, PA  
2525 Ponce de Leon, 9<sup>th</sup> Floor  
Coral Gables, Florida 33134  
T: 305-372-1800 / F: 305-372-3508  
Counsel for Defendant

  
Yano L. Rubinstein, Esq.  
SUMMERS RUBINSTEIN  
580 California Street, 16<sup>th</sup> Floor  
San Francisco, California 94104  
Counsel for Plaintiff

3339/101/249255.1



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: KAPLAN@BWSKB.COM WWW.BWSKB.COM

April 14, 2005

VIA HAND-DELIVERY

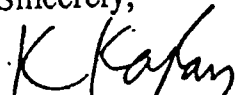
Gail A. McQuilkin, Esq.  
Kozyak Tropin & Throckmorton, P.A.  
2525 Ponce de Leon Blvd.  
9<sup>th</sup> Floor  
Coral Gables, Florida 33134

Re: Stelor Productions, Inc. v. Silvers,  
Case No. 04-80954-CIV-HURLEY/HOPKINS

Dear Gail:

Attached please find the three Stelor checks.

Sincerely,

  
Kevin C. Kaplan

KCK:mjp  
Enclosure

2621

STELOR PRODUCTIONS, INC.  
PO BOX 8000  
GAITHERSBURG, MD 20883

CITIBANK, F.S.B.  
WASHINGTON, DC 20036-0987  
7-23 6-520

03/07/05

\$ 2,000.00

TWO THOUSAND AND 00/100 \*\*\*\*\* DOLLARS

PAY TO THE ORDER OF Kozyak Tropin & Throckmorton Trust Account

Kozyak Tropin & Throckmorton, PA  
2525 Ponce de Leon  
Coral Gables, FL 33134

MEMO TRUST ACCOUNT- Royalty/insurance advanc

⑆00262⑆ ⑆052002⑆166⑆

⑆17577⑆05⑆

STELOR PRODUCTIONS, INC.  
Kozyak Tropin & Throckmorton Trust Account  
02/28/05 Bill #roy

2621  
2,000.00

03/07/05

0907112-04

STELOR PRODUCTIONS, INC.  
PO BOX 8000  
GAITHERSBURG, MD 20883

262

CITIBANK, F.S.B.  
WASHINGTON, DC 20036-0967  
7210-520

PAY TO THE  
ORDER OF

Kozyak Tropin & Throckmorton Trust Account  
Three Hundred Eighteen and 00/100\*\*\*\*\*

03/07/05

Kozyak Tropin & Throckmorton, PA  
2525 Ponce de Leon  
Coral Gables, FL 33134

\$ 318.00

DOLLARS

MEMO

TRUST ACCOUNT Domain name registrations

⑈002623⑈ ⑈052002166⑈

⑈17597405⑈

STELOR PRODUCTIONS, INC.

Kozyak Tropin & Throckmorton Trust Account  
02/28/05 Bill #DOMAIN

03/07/05

2623  
318.00

000071204

Security Features Included:  Details on back

000971/12-04

STELOR PRODUCTIONS, INC.  
PO BOX 8007  
CATHERSBURG MD 20883

CITIBANK  
WASHINGTON  
03/07/05

2622

PAY TO THE ORDER OF Kozyak Tropin & Throckmorton Trust Account

Four Thousand and 00/100 \*\*\*\*\* DOLLARS

\$ 4,000.00

Kozyak Tropin & Throckmorton, PA  
2525 Ponce de Leon  
Coral Gables, FL 33134

MEMO TRUST ACCOUNT Insurance Reimbursement

175921841

Security Features include:  Details on Back

STELOR PRODUCTIONS, INC.  
Kozyak Tropin & Throckmorton Trust Account  
02/28/05

03/07/05

2622

4,000.00

Citibank Checkin TRUST ACCOUNT Insurance Reimbursemen 4,000.00



**Kevin C. Kaplan**

---

**From:** GAIL A MCQUILKIN [gam@kttlaw.com]  
**Sent:** Sunday, April 17, 2005 4:38 PM  
**To:** Kevin C. Kaplan  
**Subject:** Re: Inc

Kevin -

Got the checks.

Gail A. McQuilkin, Esq.  
Kozyak Tropin & Throckmorton, PA  
2525 Ponce de Leon  
Coral Gables, FL 33134  
(305) 372-1800 office  
(305) 372-3508 fax  
gam@kttlaw.com  
>>> "kevin kaplan" <kkaplan@bwskb.com> 04/17/05 4:00 PM >>>  
Gail,

I've left you a bunch of messages but haven't heard back. Please confirm you received the checks, and let me know when you're available for a call tomorrow. Steve has some issues to discuss. By the way, for efficiency of our ongoing communications, I have no problem with Steve talking to you directly and authorize you to talk to him directly even if I am unavailable.

Kevin

\*\*\*\*\*

Kevin C. Kaplan, Esq.  
Burlington, Weil, Schwiep,  
Kaplan & Blonsky, PA  
2699 S. Bayshore Drive, Penthouse  
Miami, Florida 33133  
Tel: (305) 858-2900  
Fax: (305) 858-5261  
kkaplan@bwskb.com

\*\*\*\*\*

CONFIDENTIALITY NOTE: This electronic message transmission contains information from the law firm of Burlington, Weil, Schwiep, Kaplan & Blonsky, PA, which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

Sent wirelessly via BlackBerry from T-Mobile.





**Kevin C. Kaplan**

---

**From:** GAIL A MCQUILKIN [GAM@kttl.com]  
**Sent:** Friday, April 08, 2005 10:44 AM  
**To:** Kevin C. Kaplan  
**Subject:** silvers

Kevin -

Can you please resolve these pending issues -

**Settlement Agreement:**

1. Check for reimbursement of health insurance payments
2. Checks for Feb, March and April advance against royalties for health insurance
3. Reimbursement for domain name renewal costs
4. Options
5. All checks are to be made out to Silvers Entertainment Group. The check we received for April was made out to Steven Silvers. Why do we have to keep telling Stelor this?

**License Agreement:**

1. Royalty statements are due for the 3d and 4th quarter of 2004, and first quarter of 2005.
2. We need to see the Products Liability Insurance has Silvers names as an insured.
3. We need to see all promotional materials Stelor intends to use.
4. Stelor is suppose to place on all materials the phrase "created by Steven A. Silvers." Stelor persists on placing those words in tiny font and using the phrase "based on a concept created by" rather than "created by" as required. We went though this once before and Stelor agreed to change it, but still they keep doing it.
5. There are still issues relating to the list of trademarks and domain names, but I will address those with Larry Hefter.

Let me know about all this.

Gail.

5/21/2005

Gail A. McQuilkin, Esq.  
Kozyak Tropin & Throckmorton, PA  
2525 Ponce de Leon  
Coral Gables, FL 33134  
(305) 372-1800 office  
(305) 372-3508 fax  
[gam@kttlaw.com](mailto:gam@kttlaw.com)

Fri, May 20, 2005 12:11 PM

**Subject: Re: Silvers royalty advance check**  
**Date: Saturday, April 9, 2005 2:42 PM**  
**From: GAIL A MCQUILKIN <gam@kttlaw.com>**  
**To: <julle@stelorproductions.com>**

Not a problem at all. Let me know about the health insurance. Going forward the simplest way to do this is to combine the 5k and 1k amounts into one 6k check. In case you do not know this, these payments are an advance against future royalties. Make sure you are booking these correctly and keeping track of the amounts so that when royalties begin to be paid by Stelor they are offset by these amounts. Thanks for your help.

Gail A. McQuilkin, Esq.  
Kozyak Tropin & Throckmorton, PA  
2525 Ponce de Leon  
Coral Gables, FL 33134  
(305) 372-1800 office  
(305) 372-3508 fax  
gam@kttlaw.com  
>>> "Julie" <julie@stelorproductions.com> 04/09/05 10:17 AM >>>  
Gail,

I just got your email at home. I had already left the office for the day yesterday when you sent your email- I can have the check there on Tuesday morning - will that be alright? I'll ask Steve about the health insurance.

Thanks for understanding! You have a great weekend yourself!

Regards,

Julie

----- Original Message -----  
From: "Gail A. McQuilkin, Esq." <gam@kttlaw.com>  
To: "Julie DePue" <julie@stelorproductions.com>  
Sent: Friday, April 08, 2005 6:15 PM  
Subject: Re: Silvers royalty advance check

No problem, stuff happens. You can send it for Monday delivery. There should also be a check for \$1000 to cover his health care premiums. Ask Steve if you can send that too. Thanks. Have a good weekend.

-----Original Message-----  
From: "Julie DePue" <julie@stelorproductions.com>  
Date: Fri, 08 Apr 2005 17:48:42  
To: <gamcquilkin@tmo.blackberry.net>  
Subject: Silvers royalty advance check

Dear Gail,

Steve just told me about the error on Silvers check I am so sorry! Its completely my fault I have been sort of put back into the accountants chair rather abruptly and just went a little too fast through my tasks.

Id be happy to cut another check and send it Fed Ex Saturday delivery if you want. Please let me know as soon as you can, and where youd like it sent.

Sorry for the trouble,

Julie DePue

**Stelox Productions**

Gail A. McQuilkin, Esq.  
Kozyak Tropin & Throckmorton  
2525 Ponce de Leon, 9th Floor  
Coral Gables, FL 33134  
(305)372-1800 office  
(305)372-3508 fax  
gam@kttlaw.com

Stelor Productions  
 Transactions by Vendor  
 January through December 2005

05/20/05

Type	Date	Num	Memo	Clr	Amount
Kozyak Tropin & Throckmorton, PA					
Bill Pmt -Check	03/07/05	2621	TRUSTACCOUNT- Royalty/insurance advance	*	2,000.00
Bill Pmt -Check	03/07/05	2622	TRUSTACCOUNT Insurance Reimbursement	*	4,000.00
Bill Pmt -Check	03/07/05	2623	TRUSTACCOUNT Domain name registrations	*	318.00
Silvers Entertainment Group					
Check	02/11/05	2555	VOID: Advances Against Future Royalties-Feb05	✓	0.00
Bill Pmt -Check	02/28/05	2587	VOID: consulting	✓	0.00
Bill Pmt -Check	03/08/05	2624	Advance against Royalty, Feb 05	✓	5,000.00
Bill Pmt -Check	03/08/05	2625	Advance against Royalty, Mar 05	✓	5,000.00
Check	04/08/05	2711	Advance Against Royalties	*	5,000.00
Bill Pmt -Check	04/28/05	2751	Advance Against Royalty April 05		5,000.00
Bill Pmt -Check	04/28/05	2752	Advance Against Royalty May 05		5,000.00
Bill Pmt -Check	04/28/05	2753	Royalty/insurance advance, Apr '05		1,000.00
Bill Pmt -Check	04/28/05	2755	Royalty/insurance advance May '05		1,000.00
Steven A. Silvers					
Check	02/01/05	2527	VOID: Advances Against Future Royalties	✓	0.00
Bill Pmt -Check	04/04/05	2685	VOID: Advances against future royalties	✓	0.00
					<u>33,318.00</u>



**Kevin C. Kaplan**

---

**From:** GAIL A MCQUILKIN [GAM@kttlaw.com]  
**Sent:** Friday, April 22, 2005 1:35 PM  
**To:** Kevin C. Kaplan  
**Subject:** audit

Kevin -

The auditor is preparing a letter that will outline the documents and records he will need available at Stelor to do the audit. He needs to schedule the date for his visit. Please give me a date in the next two weeks, other than April 28th and 29th which are not good for him, for the visit. Thanks.

Gail.

Gail A. McQuilkin, Esq.  
Kozyak Tropin & Throckmorton, PA  
2525 Ponce de Leon  
Coral Gables, FL 33134  
(305) 372-1800 office  
(305) 372-3508 fax  
[gam@kttlaw.com](mailto:gam@kttlaw.com)

4/29/2005





**Kevin C. Kaplan**

---

**From:** GAIL A MCQUILKIN [gam@kttlaw.com]  
**Sent:** Tuesday, April 26, 2005 8:20 PM  
**To:** Kevin C. Kaplan  
**Subject:** Re: Stelor/Silvers/Inc

Kevin -

I cannot get into this with you right now. I assure you I will get back to you and Stelor by Friday.

Gail A. McQuilkin, Esq.  
Kozyak Tropin & Throckmorton, PA  
2525 Ponce de Leon  
Coral Gables, FL 33134  
(305) 372-1800 office  
(305) 372-3508 fax  
gam@kttlaw.com  
>>> "Kevin C. Kaplan" <kkaplan@bwskb.com> 04/26/05 12:35 PM >>>  
Gail,

As we discussed, we were impressed and pleased when we received your recent email

As I have advised you, the Stelor information is in my office, and we have been attempting to set up a time for you to review it.

\*\*\*\*\*

Kevin C. Kaplan, Esq.  
Burlington, Weil, Schwiep,  
Kaplan & Blonsky, PA  
2699 S. Bayshore Drive, Penthouse  
Miami, Florida 33133  
Tel: (305) 858-2900  
Fax: (305) 858-5261  
kkaplan@bwskb.com

\*\*\*\*\*

CONFIDENTIALITY NOTE: This electronic message transmission contains information from the law firm of Burlington, Weil, Schwiep, Kaplan & Blonsky, PA, which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, please immediately delete this e-mail and be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.



NOV-17-2004(WED) 16:45 GUILD INSURANCE BROKERS (FAX)204 728 1515 P. 002/002

AVIVA INSURANCE COMPANY OF CANADA

CERTIFICATE OF INSURANCE

This is to certify that the following policies have been issued by the Insuring Company and are in full force and effect as of the date of this certificate and in favour of Named Insured:

Team Tools Ltd. and Ultra Media Inc. et al  
 PO Box 20162  
 Brandon MB R7A 6Y8

If the insurance provided under the said policy(s) is altered, cancelled or changed in a manner as to affect this certificate of insurance the Insuring Company hereby agrees to give fifteen (15) days written notice of such alteration, change or cancellation to:

Steven A. Silvers & Stelor Productions, Inc.  
 14701 Mockingbird Drive  
 Darnestown, MD 20874  
 Attention: Julie DePue or Marty Jeffery

Policy Number	Policy Term	Kind of Insurance or Operations Covered	Limits of Liability or Amount Insured
CMP81108401	July 1, 2004 to July 1, 2005	Commercial General Liability	\$2,000,000 Each occurrence limit \$2,000,000 Products-Completed Operations Hazard Aggregate Limit

Note: Steven A. Silvers and Stelor Productions, Inc. is hereby added as additional insured but only with respect to the vicarious liability of the Named Insured.


Canadian Currency Clause Applies

This document is furnished as a matter of courtesy and only as information of the fact that Policies have been concurrently prepared. It is not a contract, confers no right upon any person and imposes no liability on the insuring company.

AVIVA Insurance Company of Canada

November 17, 2004  
Dated

900 - 201 Portage Avenue  
Winnipeg, Manitoba R3B 3K6

  
 Authorized Representative  
 Guild Insurance Brokers Inc.  
 800 / 800 \* J EGT0 #

<b>ACORD. CERTIFICATE OF LIABILITY INSURANCE</b>		CERT # <b>ST210-1</b>	DATE (MM/DD/YYYY) <b>04/28/05</b>
<b>PRODUCER</b> The Insurance Exchange, Inc. 751 Rockville Pike, #1A Rockville MD 20852 Phone: 301-279-5500 Fax: 301-424-2829		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
<b>INSURED</b> Stalof Productions Greg Langford 14701 Mockingbird Drive Darnestown MD 20874		<b>INSURERS AFFORDING COVERAGE</b>	<b>NAIC #</b>
		INSURER A: <i>Metford Fire Insurance Co.</i>	
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

POLICY LTR	INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
					EACH OCCURRENCE	AGGREGATE
A	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	425BAZWB494	04/25/05	04/25/06	\$2,000,000	\$300,000
A	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	425BAZWB494	04/25/05	04/25/06	\$1,000,000	\$
	<input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				\$	\$
A	<input type="checkbox"/> EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10,000	425BAMW494	04/25/05	04/25/06	\$1,000,000	\$
	<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If Yes, Specify Under SPECIAL PROVISIONS BELOW OTHER				\$	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
 Certificate holder is additional insured as respects operations by the insured.

<b>CERTIFICATE HOLDER</b>  Steven A. Silvers RM 203 9983 Okeechobee Blvd., Ste 202 West Palm Beach FL 33411	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Mark E. Silvers</i>
----------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

ACORD 25 (2001/08)

© ACORD CORPORATION 1988

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

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

CASE NO. 05-80393-CIV-HURLEY  
Magistrate Hopkins

Plaintiff,

v.

STEVEN A. SILVERS, a Florida resident,

Defendant,

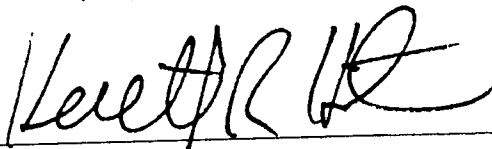
FILED  
MAY 20 2005  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MAGISTRATE HOPKINS

**NOTICE OF FILING DECLARATION OF STEVEN A. SILVERS**

Defendant, Steven Silvers, hereby gives notice of filing the Declaration of Steven A. Silvers in support of his Memorandum in Opposition to Plaintiff's Motion for Preliminary Injunction dated May 20, 2005.

Respectfully submitted,

DIMOND, KAPLAN & ROTHSTEIN, P.A.    KOZYAK TROPIN & THROCKMORTON, P.A.  
Co-Counsel for Defendant            Counsel for Defendant  
200 S.E. First Street, Suite 708        2525 Ponce de Leon, 9<sup>th</sup> Floor  
Miami, FL 33131                            Coral Gables, Florida 33134  
Telephone: (305) 374-1920                Telephone: (305) 372-1800  
Adam T. Rabin, Esq.

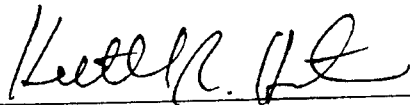
By:   
Kenneth R. Hartmann  
Florida Bar No: 664286  
Gail M. McQuilkin  
Florida Bar No. 969338

3339/101/253510.1

11/PCB

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was hand-delivered this 20<sup>th</sup> day of May, 2005, to: Kevin C. Kaplan, Esq., Daniel F. Blonsky, Esq. and David Zack, Esq., Burlington, Weil, Schwiep, Kaplan & Blonsky, P.A., Counsel for Plaintiff, Office in the Grove, Penthouse A, 2699 South Bayshore Drive, Miami, FL 33133.

By:   
Kenneth R. Hartmann

3339/101/253510.1





UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 05-80393 CIV HURLEY/HOPKINS

STELOR PRODUCTIONS, L.L.C., a  
Delaware limited liability company,  
f/k/a STELOR PRODUCTIONS, INC.,

Plaintiff,

vs.

STEVEN A. SILVERS, a Florida resident,

Defendant.

**NIGHT BOX  
FILED**

JUL 01 2005

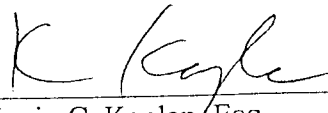
CLARENCE MADDOX  
CLERK, USDC / SDFL / ETL

NOTICE OF FILING SUPPLEMENTAL DECLARATION OF STEVEN A. ESRIG

PLEASE TAKE NOTICE that Plaintiff, by and through undersigned counsel, hereby files  
the Supplemental Declaration of Steven A. Esrig.

Respectfully submitted,

BURLINGTON, WEIL, SCHWIEP,  
KAPLAN & BLONSKY, P.A.  
Attorneys for Plaintiff  
Office in the Grove, Penthouse A  
2699 South Bayshore Drive  
Miami, Florida 33133  
Tel: 305-858-2900  
Fax: 305-858-5261

By:   
Kevin C. Kaplan, Esq.  
Florida Bar No. 933848  
David J. Zack, Esq.  
Florida Bar No. 641685

**NOT DOCKETED**

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

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true copy of the foregoing is being served by U.S. Mail this 1<sup>st</sup> day of July, 2005, upon Gail A. McQuilkin, Esq. and Kenneth Hartmann, Esq., Kozyak Tropin & Throckmorton, P.A., counsel for Defendant, 2525 Ponce de Leon, 9<sup>th</sup> Floor, Miami, Florida 33134 and Adam T. Rabin, Esq., Dimond Kaplan & Rothstein, P.A., Trump Plaza, 525 S. Flagler Drive, Suite 200, West Palm Beach, Florida 33401.



---

Kevin C. Kaplan  
David J. Zack

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 05-80393 CIV HURLEY/HOPKINS

STELOR PRODUCTIONS, L.L.C., a  
Delaware limited liability company,  
f/k/a STELOR PRODUCTIONS, INC.,

Plaintiff,

vs.

STEVEN A. SILVERS, a Florida resident,

Defendant.

---

**SUPPLEMENTAL DECLARATION OF STEVEN A. ESRIG**

I, Steven A. Esrig, hereby declare as follows:

1. As set forth in my initial declaration, I am the President and CEO of Stelor Productions, L.L.C. ("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 upon my own personal knowledge and/or on corporate records and documents maintained by Stelor in the ordinary course of business.

**ROYALTY ISSUES**

2. I have reviewed the late-filed declarations of Ms. McQuilkin and Mr. Worsham. I wholeheartedly reaffirm the testimony in my initial declaration. Mr. Silvers' attempt to discredit me is entirely unfounded, as I explain below.

3. As a threshold matter, I want to emphasize that although Stelor has just begun to earn some small revenues, Stelor has already paid Silvers hundreds of thousands of dollars in consulting fees and advances against future (but unearned) royalties.

4. The suggestion that Stelor has failed to disclose revenues is wrong. The certification I signed as Stelor's CEO on March 8, 2005 accurately stated that "no royalty payments from Stelor to Mr. Silvers are owed or outstanding as of December 31, 2004." As set forth below, the statement also accurately explained that Stelor offered no products for sale except the music available on itunes. A true and correct copy of the statement is attached as Exhibit A hereto.

5. Silvers claims in his declaration that we failed to account for a purchase an unnamed "associate" of his allegedly made of the googles music on itunes on August 31, 2004. The so-called download confirmation (exhibit D to his declaration) shows that the "associate" downloaded the entire One Goo World album. It is priced at \$12.96, which is the retail price from Apple. In fact, Stelor did account for that sale. As we have advised Mr. Silvers, our very first statement for itunes downloads was dated February 25, 2005. A true and correct copy of that statement is attached hereto as Exhibit B. That statement covers the period beginning June 2004, and reports cumulative revenues on a monthly basis. The listing for August of 2004 closed on August 28<sup>th</sup>, but a download of the entire One GooWorld album is listed for September of 2004. It shows a price of \$6.50, which is the wholesale price. The revenues from this sale were included in the royalty statement that Stelor provided to Silvers on April 29, 2005 (exhibit 12 to my initial declaration), which was timely provided pursuant to ¶ III(B) of the License Agreement, within 30 days of the expiration of the first quarter of 2005.

#### CAFEPRESS

6. The newly filed declaration from Paul Worsham presents an inaccurate fragment of a story of an adversarial relationship that Stelor ended in the fall of 2002. In fact, as Mr. Worsham apparently admits at the conclusion of his declaration (¶ 12), he had no contact

whatsoever with me, Stelor or the purported Googles store at Cafepress “[a]fter the October-November 2002 timeframe.” Indeed, all of the alleged events referenced in the declaration occurred before then, more than two and a half years ago.

7. The reason for the abrupt end of all contact was because I terminated any relationship with Mr. Worsham by letter dated October 3, 2002. Stelor had been attempting to work with Mr. Worsham, who had presented a comprehensive plan for the development of Stelor’s entire intellectual technology infrastructure. During 2002, I had ongoing contact with Mr. Worsham as he attempted to develop this plan. By the fall of 2002, though, I and other members of Stelor’s board believed Mr. Worsham to be unreliable and untrustworthy, and refused to have any further dealings with him of any type. As my letter details, many of the problems with Mr. Worsham resulted from his close relationship and apparent friendship with Silvers. Thus, rather than taking direction from me, Mr. Worsham continually initiated unauthorized work at Silvers’ direction, as Silvers continued to try and meddle with Stelor’s business. Cafepress was one example. In the midst of the ongoing IT work, Mr. Worsham at one point advised me that *he* had set up an online store at Cafepress, and wanted to sell googles merchandise through it, as his email to me of September 12, 2002 confirms. I did not recall this, until I searched through our files after reviewing his declaration. Stelor, however, was not at all interested in having such a store, and especially not interested in working with Mr. Worsham at that point. In fact, we had received an email on September 30, 2002 advising of fraudulent activity with the Cafepress account. Accordingly, I advised Mr. Worsham to take no action whatsoever on Stelor’s behalf, including maintaining any Cafepress account for googles. A true and correct copy of my October 3, 2002 letter to Mr. Worsham, and the September 12 and 30, 2002 emails, are attached as Composite Exhibit C hereto.

8. Apparently, Mr. Worsham did not follow the instruction, and proceeded without authorization to maintain the Cafepress account. As I testified in my initial declaration, until recently I remained unaware that the account had in fact been maintained, or that googles products were being sold, notwithstanding our express instructions to Mr. Worsham not to maintain the account. To the extent Mr. Worsham's declaration fails to explain why he had no further contact with me or Stelor after the Fall of 2002, and how he failed to comply with my explicit instructions that he take no action, that declaration – and not mine – is clearly misleading. Also incredibly suspicious is the fact that Mr. Worsham – using a business card listing himself as B.J. Worsham – came to Stelor's booth at the recent trade show, misrepresenting himself as a potential licensee, and using that ruse to obtain proprietary Stelor information that obviously should not have been given to him. A copy of his business card is also included in Composite Exhibit C hereto.

9. The entire Cafepress.com issue, moreover, is a sidelight at best. The information that Stelor recently obtained from Cafepress after learning about the site, confirms that the only completed order as of April 2005, was of a single coffee mug priced at \$10.99, allegedly generating a commission of \$2.00, no share of which was ever remitted to Stelor. The statement we obtained from CafePress in April of 2005 is attached hereto as Exhibit D. Indeed, other than orders from 2002, that apparently never went through, the only other orders then pending were for the various samples I ordered.

**STELOR HAS OFFERED TO PROVIDE ALL AVAILABLE SAMPLES**

10. I reiterate that after Silvers' counsel came to our offices in February of 2005 and reviewed all available samples and promotional materials, we again offered Silvers an opportunity to inspect those materials at our counsel's office in Florida. In fact, the materials we

offered to provide included samples and promotional materials documenting the entire history of Stelor's development.

11. Silvers' counsel instead sent the April 27, 2005 termination letter, and refused to come see the materials.

12. Silvers also attempts to distort the requirements relating to samples under the Agreements. Paragraph VI(C) of the License Agreement provides as follows:

Prior to the commencement of manufacture and sale of the Licensed Products, LICENSEE shall submit to LICENSOR for his input, at not cost to LICENSOR, a reasonable number of samples of Licensed Products which LICENSEE intends to manufacture and sell and of all promotional and advertising material associated therewith.

Silvers claims the provision is designed to ensure he can exercise quality control over the products Stelor markets. Objection at 11. The provision, however, gives him no such right. It merely permits him to provide "input". Silvers has no right to approve, disapprove, or require changes to any of the products. Nor is Stelor required to accept any input Silvers may have.

13. Silvers' counsel herself confirmed that, remarking in a revealing March 23, 2005 email (a true and correct copy of which is attached as Exhibit E hereto) as follows:

According to the license agreement Stelor is to provide these to Silvers for his "input." *There is nothing in the agreement that says Stelor has to listen or do anything with his input but this keeps Silvers happy. Silvers will communicate his "input" only to me.*

(Emphasis added). As this candid email confirms, there is no substance whatsoever to the provision allowing Silvers to provide "input". Silvers' counsel just wanted to keep her client appeased, advising that *only* she would listen to any "input" Silvers might have, and not even bother to communicate it to Stelor! This admission confirms that the requirement is essentially immaterial



14. As Silvers knows full well, moreover, the only “product” Stelor is presently selling is its music on itunes. (As Silvers confirms, the cafepress “store” has been shut down). Accordingly, the “samples” shown to Silvers’ counsel in February are not products that are being sold, but are promotional materials and designs that Stelor has developed. Silvers’ counsel similarly recognized this in her March 23, 2005 email, when she asked for copies of “any ads going out . . . for Silvers to preview.” This material does not even fall within the definition of samples to be submitted to Silvers.

#### **STELOR PROVIDED AN OPTION LETTER**

15. Silvers claims that Stelor has failed to comply with the now-expired Consulting Agreement by failing to provide Silvers with an option agreement. Stelor, however, sent Silvers a formal Option Letter dated December 10, 2004, advising that the Board of Directors of Stelor had approved a grant to Silvers of 1000 options at \$10.00 per share. The Letter asked Silvers to execute the letter and return it to Stelor to confirm his agreement with those terms and acceptance of the option. The Letter, along with the federal express proof of delivery, confirming that Mr. Silvers himself signed for the package, is attached hereto as Exhibit F.

16. Stelor has repeatedly reminded Silvers about this Letter and asked him to provide an executed copy, including in our Counsel’s letter of April 29, 2005. (Exhibit D to our Complaint). Silvers and his counsel have refused even to respond to this issue, choosing instead to try and preserve a totally unfounded claim.

#### **THE IMPORTANCE OF THE NOTICE AND CURE PROVISION**

17. I also want to emphasize the importance of the express notice and cure provision included in ¶ IX of the License Agreement.

18. The parties entered into a complicated, long-term relationship (a 30 year term,

automatically renewed for 10 years) pursuant to the License Agreement. *See* “Schedule A” to License Agreement. There are numerous obligations owed by each of the parties to the other, and an obvious risk exists that the parties will, at certain stages of the relationship, disagree about whether the requirements of the Agreements were met. The notice provision, therefore, imposes a clear obligation on a party believing that a breach has occurred to provide written notice detailing the alleged breach and allowing a 60 day period for it to be cured. The cure period also enables a party to seek judicial intervention in the interim, if a disagreement appears insoluble. This notice procedure is clearly required to ensure that the Licensor (the Licensee can terminate for any reason on 30 days’ notice, ¶ IX(B)) cannot trump up a breach, and terminate the license at will whenever it suits him – which is exactly what Silvers has done. The provision is obviously designed to protect Stelor, as the licensee, and ensure that the value of the multiple years and many millions of dollars it invests in developing the property under the Agreement is not jeopardized, at least before Stelor has an opportunity to cure an alleged breach.

**SILVERS HAS REJECTED STELOR’S ONGOING EFFORTS  
TO PERFORM UNDER THE AGREEMENTS**

19. Indeed, notwithstanding the unfounded termination of the Agreements, Stelor has since offered and attempted repeatedly to continue performing under the Agreements.

20. Thus, our counsel sent an initial letter dated April 29, 2005 (Exhibit D to the Complaint).

21. Silvers’ counsel rejected Stelor’s efforts, advising that “Mr. Silvers has terminated the License and intends to go in a different direction . . . .” (Exhibit E to the Complaint).

22. Once we received the Court’s June 9, 2005 Order, and knew that we could proceed with the show, our counsel advised Mr. Silvers’ counsel that they could review the

promotional materials for the show at our counsel's offices. A true and correct copy of that June 17, 2005 letter is attached hereto as Exhibit G.

23. Mr. Silvers' counsel refused to come look, demanding that the materials be forwarded to her. A true and correct copy of her June 17, 2005 letter is attached hereto as Exhibit H.

24. Notwithstanding our concern about providing information to Mr. Silvers, given his admitted non-compliance with the Agreements, our counsel nevertheless forwarded the materials to Mr. Silvers counsel by letter dated June 21, 2005, a true and correct copy of which is attached as Exhibit I hereto. We received no "input" back from Mr. Silvers. That letter also delivered additional checks to Mr. Silvers, and again offered to allow Mr. Silvers to proceed with an audit immediately, proposing June 27, 2005 as a date.

25. Mr. Silvers counsel responded by letter dated June 21, 2005 (but not delivered until June 22, 2005), refusing to accept any performance by Stelor, while simultaneously purporting to complain about the defects and timing of Stelor's ongoing efforts to perform. A true and correct copy of that letter is attached as Exhibit J hereto.

26. Nevertheless, we continued to attempt to comply with the Agreements, providing extensive information by letter dated June 24, 2005 regarding the numerous administrative actions Stelor has pursued with respect to the Googles intellectual property, and addressing each of the purported issues under the Agreements. We specifically requested that Silvers' counsel advise us what alleged breaches "you contend remain uncured", emphasizing that "Stelor is unaware of and disputes that any breaches exist[], but Stelor will continue to make every reasonable effort to ensure that all obligations under the Agreements are discharged." A true and correct copy of this June 24<sup>th</sup> letter is attached hereto as Exhibit K.

27. The terse response from Silvers' counsel was that "[u]nless a jury finds otherwise, the License Agreement is terminated." This June 27, 2005 letter is attached hereto as Exhibit L.

28. With respect to her suggestion that she would hold the royalty checks in her office, we advised her that the checks belonged to her client, and should be forwarded to him immediately. Our counsel's June 30, 2005 letter is attached hereto as Exhibit M.

29. Stelor has made every effort to continue to comply with the Agreements. All of our efforts, however, have been rejected by Silvers, notwithstanding his wrongful termination of the Agreements.

**THE CRITICAL IMPORTANCE TO STELOR OF  
THE WWW.GOOGLES.COM INTERNET ADDRESS**

30. I also want to emphasize again the critical importance to Stelor of the www.google.com internet address.

31. Stelor has the exclusive right to control, use and protect the valuable Google's intellectual property. The google.com domain name (and the corresponding www.google.com internet address) is a critical component of that property, and the foundation of the business Stelor has spent three years and \$4 million developing.

32. The general business plan of Stelor is to "launch" the new content and technology it has developed for its website, and thereby expand the base of users for the website and attract licensees and additional investors for the business. The launch successfully commenced at the trade show in New York held by the Licensing Industry Merchandisers' Association (LIMA) during the week of June 21, 2005. Stelor is now using the momentum from that show to continue to implement this plan during the weeks and months to come. Interest from potential licensees and promoters is at an unprecedented height, as are the prospects for the ongoing