

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

CASE NO. 05-80387 CIV RYSKAMP/VITUNAC

STEVEN A. SILVERS, an individual,

Plaintiff,

v.

GOOGLE INC., a Delaware corporation,

Defendant.

GOOGLE INC., a Delaware corporation,

Counterclaimant,

v.

STEVEN A. SILVERS, an individual;
STELOR PRODUCTIONS, INC., a
Delaware corporation; STELOR PRODUCTIONS, LLC,
a business entity of unknown form; and
STEVEN ESRIG, an individual,

Counterdefendants.

**REPLY IN SUPPORT OF GOOGLE INC.'S MOTION FOR LEAVE TO FILE TWO (2)
SEPARATE MOTIONS FOR SUMMARY JUDGMENT**

Prior to filing its motions for summary judgment as to the invalidity of the "Googles" registration and as to monetary relief, Defendant Google Inc. ("Google") moved for leave to file two separate motions, pursuant to S.D. Fla. Local Rule 7.1(C)(2). Google filed two summary

judgment motions because the subject matters of the motions are unrelated, and therefore more logically presented as two separate motions.¹

On October 16, 2006, Stelor Productions, LLC and Steven Esrig (collectively, "Stelor") opposed Google's motion. Stelor's opposition argues that the Court's February 6, 2006 Bifurcation Order limits the issues to be tried in Phase I, and therefore, Stelor has not had an opportunity to take discovery on whether it is entitled to any monetary relief. For that reason, Stelor argues, the second of Google's motions, which relates to monetary relief, is premature. Stelor's opposition is not persuasive.

First, Stelor's arguments go to the ripeness and/or underlying merit of the motion for summary judgment on monetary relief, not the purposes of Local Rule 7.1(C)(2). Google is simply seeking leave to file two motions, as opposed to one, with a few more pages than otherwise allowed. This motion is not the proper forum for addressing whether or not Stelor has had a sufficient opportunity for discovery, or the merits of the underlying motion.

Second, for the reasons set forth in the motion, the timing is appropriate. Plaintiffs need no discovery on the issues raised by the motion. Because plaintiffs have not alleged that Google has adopted or used Google in "bad faith," and cannot identify any lost sales or harm arising from actual confusion, the issue of monetary relief is simply an issue of law. Further, resolving the issue now is appropriate because: (1) it is dispositive of whether the plaintiffs (i.e., Silvers and Stelor) are entitled to a jury trial in their claims against Google; and (2) addressing the issue now may enhance the chances of settlement.

Again, this motion is not the forum to discuss the merits of the motion on monetary relief – that should be addressed in connection with the underlying motion. Accordingly, Google's request for leave to file two separate summary judgment motions should be granted.

¹ Google's memoranda in support of its motions for summary judgment were a combined total of 29 pages in length.

DATED: October 23, 2006.
Fort Lauderdale, FL

Respectfully submitted,

By: /s/Samantha Tesser Haimo

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 23, 2006, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Samantha Tesser Haimo
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