

1 UNITED STATES DISTRICT CIRCUIT
2 SOUTHERN DISTRICT OF FLORIDA

3 CASE NO. 05-80387 CIV RYSKAMP/VITUNIC
4

5 STEVEN A. SILVERS, an individual,
6 Plaintiff,

7 v.

8 GOOGLE INC., a Delaware corporation,
9 Defendant.

ORIGINAL

10 _____
11 GOOGLE INC., a Delaware corporation,
12 Counterclaimant,

13 v.

14 STEVEN A. SILVERS, an individual;
15 STELOR PRODUCTIONS, INC., a Delaware
16 Corporation; STELOR PRODUCTIONS, LLC, a
17 Delaware limited liability company,
18 Counterdefendants.
19 _____
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21 DEPOSITION OF STEVEN SILVERS
22 VOLUME II

23 Tuesday, October 10, 2006
24 1:00 p.m. - 8:00 p.m.
25 2699 South Bayshore Drive
Miami, Florida 33133

Reported By:
Thomas R. Neumann
Notary Public, State of Florida
Network Reporting Corporation
Phone: 888.358.8188
305.358.8188

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1 MR. COOPER: Whatever your understanding
2 is based upon your communication with your
3 attorney don't answer.

4 THE WITNESS: I guess I have to say the
5 document speaks for itself, and go on the
6 record as such.

7 BY MR. KAPLAN:

8 Q Well, turn to the second page of the
9 settlement agreement if you would.

10 A Okay.

11 Q I have the license agreement right here in
12 my hand if you want to refer to it, just ask me,
13 okay.

14 Paragraph 3 says, "License distribution
15 and Manufacturing Agreement. Silvers withdraws
16 his notice of termination of the license agreement
17 and reaffirms his obligation under the license
18 agreement." Right? That's what it says, correct?

19 A Yes.

20 Q And the effect of that provision as you
21 understood it was to reinstate the license, right?

22 MR. COOPER: I'm going to object on
23 attorney-client privilege. If you can answer
24 that without disclosing your communications
25 with your attorney as to your understanding

1 then you can go ahead and do that.

2 THE WITNESS: Yes. I'm not -- would you
3 repeat the question again.

4 BY MR. KAPLAN:

5 Q Yes, sure. The purpose of that provision
6 as you understood it was to reinstate the license,
7 right?

8 MR. COOPER: If your understanding of this
9 agreement could be answered other than apart
10 from your communications with your attorneys as
11 to the intention of this agreement you can
12 answer the question, otherwise don't answer it
13 on the basis of attorney-client privilege.

14 THE WITNESS: Yes. I have to not answer
15 on the basis of attorney-client privilege.

16 BY MR. KAPLAN:

17 Q Until you signed this agreement your
18 position was the license agreement was terminated,
19 correct?

20 A Yes.

21 Q Once you signed this agreement your
22 position was the license was in effect, correct?

23 A The license was reinstated, I believe,
24 that is correct, right.

25 Q And every single provision of the license

1 except as it might have been modified by this
2 settlement agreement was in full force and effect,
3 correct?

4 A I believe so.

5 Q You expressly reaffirm your obligations
6 under the license agreement, right?

7 A I believe so.

8 Q What does reaffirm mean to you?

9 A Establish, you know, put back in the same
10 place as before.

11 Q Like never terminated, right?

12 A I know there was some discussions between
13 me and the counsel that I can't discuss, okay. It
14 had to do with notices --

15 MR. COOPER: Excuse me, stop there. Don't
16 discuss what it even had to do with.

17 BY MR. KAPLAN:

18 Q Look at paragraph 3, it says, "Silver
19 withdraws his notice of termination of the license
20 agreement." Was there any condition as you
21 understood it to the withdrawal of that notice of
22 termination?

23 MR. COOPER: If you have an understanding
24 separate and apart from your communication with
25 your attorneys answer the question, otherwise

1 don't answer on the basis of attorney-client
2 privilege.

3 THE WITNESS: I guess I don't have any
4 separate opinion.

5 BY MR. KAPLAN:

6 Q Does the agreement, the settlement
7 agreement as you read it, impose any condition on
8 your withdrawing the notice of termination in
9 paragraph 3?

10 MR. COOPER: Same objection, same
11 instructions.

12 THE WITNESS: Attorney-client.

13 BY MR. KAPLAN:

14 Q No, no, no, sir. You are sitting here
15 now. Read this provision, "Silver withdraws his
16 notice of termination of license agreement." As you
17 understand that provision sitting here today does it
18 condition in any way your withdrawal of that notice?

19 MR. COOPER: Same objection. Don't
20 answer. Don't answer. I'm instructing him not
21 to answer on the basis of attorney-client
22 privilege.

23 MR. KAPLAN: I'm asking for his
24 understanding as he sits here. Understand,
25 whatever he is not answering he ain't

1 testifying about at trial, right.

2 MR. COOPER: Go right ahead.

3 BY MR. KAPLAN:

4 Q Isn't it true, sir, that the withdrawal of
5 the notice of termination was unconditional?

6 MR. COOPER: Objection, document speaks
7 for itself.

8 BY MR. KAPLAN:

9 Q You can answer.

10 A The document speaks for itself.

11 Q If after entering into this license
12 agreement you believed that there was a breach of
13 the settlement agreement, you had an obligation
14 under the notice provision in the license to specify
15 in writing to Stelor what that breach was and give
16 them 60 days to cure it, didn't you?

17 MR. COOPER: Objection to form.

18 THE WITNESS: No, I don't believe so.

19 BY MR. KAPLAN:

20 Q You needed to comply with Article 9 of the
21 license agreement before you could terminate it,
22 didn't you?

23 MR. COOPER: Object to the form.

24 THE WITNESS: I don't believe so.

25

1 BY MR. KAPLAN:

2 Q Where in this agreement, the settlement
3 agreement, does it say Article 9 of the license
4 agreement no longer applies?

5 MR. COOPER: Object to the form,
6 mischaracterizes.

7 THE WITNESS: I don't believe there is
8 anything in the settlement agreement that
9 requires 60 days notice.

10 BY MR. KAPLAN:

11 Q But where in the settlement agreement does
12 it say that Article 9 of the license agreement no
13 longer applies?

14 MR. COOPER: Object to the form. The
15 document speaks for itself.

16 BY MR. KAPLAN:

17 Q Show me.

18 A The document speaks for itself.

19 Q Is it your position that the document --
20 that the settlement agreement relieves you of the
21 obligation in the license agreement to comply with
22 the requirements of paragraph 9 relating to
23 termination yes or no?

24 MR. COOPER: Hang on a second. Don't
25 answer that. Can you read this back, please.

1 (Thereupon, a portion of the record
2 was read by the reporter.)

3 MR. COOPER: I'm going to instruct him not
4 to answer that on the basis of work-product
5 privilege.

6 BY MR. KAPLAN:

7 Q The settlement agreement, when you entered
8 into the settlement agreement you amended some of
9 the terms of the license agreement, right?

10 A I believe so.

11 Q In fact, one of the things that you
12 amended was how the royalties were paid, right?

13 A I'm not sure of that one. Where would I
14 find that? I don't think I did anything with
15 royalties. It had to do with getting a royalty
16 advance.

17 Q There is nothing in the license agreement
18 that requires Stelor to pay royalty advances, is
19 there?

20 A That's correct.

21 Q So that's a provision in the settlement
22 agreement that changes something in the license
23 agreement, right?

24 A Yes.

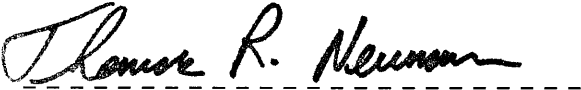
25 Q And you had negotiations with Stelor about

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THE STATE OF FLORIDA)
COUNTY OF MIAMI-DADE)

I, the undersigned authority, certify that the
aforementioned witness personally appeared before me
and was duly sworn.

WITNESS my hand and official
seal this 23rd day of October
2006.



Thomas R. Neumann
Notary Public - State of Florida
My Commission Expires: 3/22/07
My Commission No.: DD187497

C E R T I F I C A T E

THE STATE OF FLORIDA)
COUNTY OF DADE)

I, Thomas R. Neumann, Registered Reporter,
State of Florida at large, do hereby certify that I
was authorized to and did report said deposition in
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transcription of my shorthand notes of said
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I further certify that said deposition was
taken at the time and place hereinabove set forth
and that the taking of said deposition was commenced
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does not apply to any reproduction of the same by
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IN WITNESS WHEREOF, I have hereunto set my hand
this 23rd day of October 2006.



Thomas R. Neumann
Notary Public - State of Florida
My Commission Expires: 3/22/07
My Commission No.: DD187497