

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

CASE NO. 05-80387 CIV RYSKAMP/VITUNAC

STELOR PRODUCTIONS, LLC,
a Delaware limited liability company,

Plaintiff,

v.

GOOGLE INC., a Delaware corporation,

Defendant.

**PLAINTIFF'S REPLY TO DEFENDANT GOOGLE INC.'S RESPONSE TO ORDER
COMPELLING BETTER ANSWERS TO INTERROGATORIES**

Respectful of the Court's November 5, 2008 Omnibus Order denying both parties' recently filed discovery motions, Plaintiff Stelor Productions, LLC ("Stelor") submits this Reply.

Stelor's counsel takes very seriously their obligations as counsel in this matter. And, Stelor's counsel has worked diligently and in good faith with opposing counsel to resolve discovery issues, including those addressed in the motion to compel better answers to interrogatories. But, Stelor's counsel is concerned that the position set forth by opposing counsel in their Response is inaccurate and is an unfair attempt to blame Stelor's counsel for their own failure to address a court deadline. Accordingly, Stelor submits this brief Reply to ensure the Court has a complete and accurate record regarding Stelor's prior motion to compel better answers to interrogatories.

Google's Response neglects to advise the Court of a telephone call that Stelor's counsel, Ms. Swing, made to Google's counsel, Mr. Al-Salam late in the day on October 7th. The point

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of that call was to ensure, given the prior exchange of e-mails, that no confusion existed regarding Stelor's position on the motion. *See* Swing Decl. at ¶3. Accordingly, Ms. Swing advised that Stelor would agree to a motion by Google to extend the time for its response to the motion to compel while Stelor reviewed any supplemental interrogatory responses served by Google. *See id.*

In fact, that was the position Stelor had taken in its e-mail of 10:59AM (PST)/1:59PM (EST) on October 7, 2008. The e-mail stated that Stelor was willing to grant Google "additional time to serve your opposition to the motion to compel." Exhibit A to Swing Decl. The response by Google's counsel was "okay." *Id.* But, Google also omits any reference to that exchange in its Response and does not include that final e-mail as an exhibit.

To be clear, Google obviously knew that Stelor had not formally served a notice of withdrawal. Yet, at no time during the more than 30 day period the motion was pending, did Google itself make any effort to advise the Court of the status of the parties' negotiations, or to request deferral of a decision on the motion. Google failed to do so, moreover, notwithstanding the suggestion of Stelor's counsel by e-mail and telephone that an agreed motion for enlargement of time be filed. As it turned out, Stelor believed the supplemental responses remained problematic, and the motion to compel was renewed.

Finally, upon entry of the Court's Order on October 28, 2008, Kevin Kaplan (counsel for Stelor) spoke directly to Mr. Al-Salam, and offered to file an agreed motion with Google requesting that the Order be vacated. *See* Kaplan Decl. at ¶ 3. Mr. Kaplan invited counsel for Google to prepare a draft, for Stelor's prompt review. Without any further communication between counsel on the issue, however, Google filed its inaccurate and incomplete Response.

Based on this complete record of what occurred, Stelor respectfully suggests no cause for concern exists regarding Plaintiff's counsel's actions. Stelor will continue to work in good faith with Google and its counsel, and assumes Google and its counsel will do the same.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2008, 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 identified on the Mailing Information for Case 9:05-cv-80387-KLR. I also certify that the foregoing Counsel of record currently identified on the Mailing Information list to receive e-mail notices for this case are served via Notices of Electronic Filing generated by CM/ECF. Counsel of record who are not on the Mailing Information list to receive e-mail notices for this case have been served via U.S. Mail.

/s/ Morgan L. Swing