

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Palm Beach Division

STEVEN A. SILVERS, an individual,
Plaintiff,

CASE NO. 05-80387-CIV-RYSKAMP
Magistrate Judge Vitunac

v.

GOOGLE INC., a Delaware corporation,
Defendant.

FILED BY _____
2006 JAN 20 PM 12:19
U.S. DISTRICT COURT
S.D. OF FLA. - VTS

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.

SILVER'S MOTION TO REQUIRE STELOR TO COMPLY WITH RULE 5

Plaintiff, Steven A. Silvers ("Silvers"), requests that this Court order Stelor Productions, LLC, to comply with Rule 5, Fed. R. Civ. P., and require Stelor to properly serve its pleadings on Silvers' counsel.

Stelor has repeatedly filed motions and memoranda, including pleadings to which Silvers must respond, and failed to serve same on Silvers' counsel at all; in other instances, Stelor has not served pleadings on Silvers in the manner reflected in its certificate of service. This results in Silvers receiving pleadings after the date for Silvers to respond has passed. While Stelor's

NON-COMPLIANCE OF S.D. Fla. L.R. 5.1A1, 5.1A5, 5.1A4

PA
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improper service has been a problem since it became a party in this case, two recent examples reflect this pattern.

Silvers recently filed a motion to dismiss Stelor's amended cross-claim. Stelor's opposing memorandum was filed on December 23, 2005¹. Stelor's filing certifies service by electronic and regular mail on that date, as reflected in Exhibit "B." Yet, Silvers' counsel did not receive the pleading electronically or by regular mail. By the time we learned Stelor's opposition had been filed, the date for Silvers to file a reply had passed. Had we not checked PACER, we would not even have known of Stelor's filing. This, of course, requires Silvers to seek an otherwise unnecessary extension to file the reply, etc.

Adding to this, when Silvers sought an extension to file his already overdue reply, Stelor responded by filing a notice of non-objection to the extension (but claiming it had effected service properly).² In this pleading dated January 6, 2006, Stelor again certified that it effected service electronically. Exhibit "C." Again, Stelor failed to serve the pleading in this manner. We received it by mail on January 10, 2006.

This is a pattern. Previously, Stelor's counsel agreed, when we complained about the problem, to stop it. *See* letter dated September 22, 2005, attached as Exhibit "D." Unfortunately, the problem has continued. Silvers therefore needs the Court's assistance to ensure his counsel receives Stelor's pleadings on a timely basis.

WHEREFORE, Silvers requests the Court enter an order in the form attached as Exhibit "E."


¹ As reflected in the case docket sheet, copy of excerpt attached as Exhibit "A."

² Stelor claims, without providing them, that it has "records" indicating it mailed the non-opposition, but offers no records to show the alleged service. And Stelor offers no excuse for the omitted electronic service.

Respectfully submitted,

Adam T. Rabin (FL Bar #985635)
DIMOND KAPLAN & ROTHSTEIN, P.A.
525 South Flagler Drive, Suite 200
West Palm Beach, FL 33401
Telephone: (561) 671-2110

KOZYAK TROPIN & THROCKMORTON, P.A.
Counsel for Defendant
2525 Ponce de Leon, 9th Floor
Coral Gables, Florida 33134
Telephone: (305) 372-1800

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

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished
by U.S. mail on this 13th day of January, 2006 upon:

Jan Douglas Atlas
Adorno & Yoss, LLP
350 East Las Olas Blvd., Suite 1700
Fort Lauderdale, FL 33301-4217
E-mail: jatlas@adorno.com

Andrew P. Bridges
Winston & Strawn, LLP
101 California Street, Suite 3900
San Francisco, CA 94111
E-mail: abridges@winston.com

Kevin C. Kaplan, Daniel F. Blonsky and
David Zack
Burlington Weil Schwiep Kaplan & Blonsky, PA
2699 S. Bayshore Drive, Penthouse A
Miami, FL 33133
E-mail: kkaplan@bwskb.com

By: 

EXHIBIT “A”

U.S. District Court

Southern District of Florida (W.Palm Beach)

CIVIL DOCKET FOR CASE #: 05-CV-80387

Silvers v. Google, Inc.






Filed: 05/04/05
Assigned to: Judge Kenneth L. Ryskamp
Jury demand: Both
Demand: \$0,000
Nature of Suit: 840
Lead Docket: None
Jurisdiction: Federal Question
Cause: 15:1125 Trademark Infringement (Lanham Act)

STEVEN A. SILVERS, an
individual
plaintiff

Harley Shepard Tropin
FTS 372-3508
305-372-1800
[COR LD NTC]
Kenneth R. Hartmann
FTS 372-3508
305-372-1800
[COR LD NTC]
Gail Ann McQuilkin
FTS 372-3508
305-372-1800
[COR LD NTC]
Kozyak Tropin & Throckmorton
2525 Ponce de Leon Boulevard
Suite 900
Coral Gables, FL 33134-6036
305-372-1800
Adam Rabin
FTS 671-1951
[COR LD NTC]
Dimond Kaplan & Rothstein
525 S Flagler Drive
Suite 200
West Palm Beach, FL 33401
561-671-2110

v.
GOOGLE, INC., a Delaware
corporation
defendant

Jan Douglas Atlas
FTS 766-7800
[COR LD NTC]
Adorno & Yoss

- 12/23/05 58  RESPONSE by Stelor Productions in opposition to [51-1] motion to dismiss amended cross-claim (cj) [Entry date 12/27/05]
- 12/27/05 59  ORDER granting [56-1] motion to extend time to respond to Silvers' motion to dismiss amended crossclaim (Signed by Judge Kenneth L. Ryskamp on 12/27/05) [EOD Date: 1/5/06] (rb) [Entry date 01/05/06]
- 1/5/06 60  MOTION by Steven A. Silvers (Attorney) to extend time file a reply to Stelor's Opposition to motion to dismiss amended cross claim (dj) [Entry date 01/06/06]
- 1/5/06 61  RE-NOTICE of videotaped deposition of Larry Page 1/24/06 at 9:30 (dj) [Entry date 01/06/06]
- 1/6/06 62  NON-OPPOSTION RESPONSE by Stelor Productions to [60-1] motion to extend time file a reply to Stelor's Opposition to motion to dismiss amended cross claim (pa) [Entry date 01/09/06]

Case Flags:
AEV

END OF DOCKET: 9:05cv80387

PACER Service Center			
Transaction Receipt			
01/11/2006 14:07:01			
PACER Login:	kt0009	Client Code:	3339-102
Description:	docket report	Search Criteria:	9:05cv80387
Billable Pages:	11	Cost:	0.88

Cost displayed does not include Image Display Cost, if any.

EXHIBIT “B”

FILED BY SW D.C.
ELECTRONIC
Dec 23 2005
CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. MIAMI

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.

_____ /

**STELOR'S OPPOSITION TO SILVERS'
MOTION TO DISMISS AMENDED CROSS-CLAIM**

Counterdefendant/Crossplaintiff, STELOR PRODUCTIONS, L.L.C., f/k/a STELOR PRODUCTIONS, INC. ("Stelor"), by and through its undersigned attorneys, hereby opposes on the following grounds Steven A. Silvers ("Silvers") Motion to Dismiss Amended Cross-Claim:

I. INTRODUCTION

Silvers wants to prevent this Court from deciding the critical threshold issue in this action of whether the License and Settlement Agreements ("Agreements") between Silvers and Stelor remain in force and effect. If they do, as Stelor contend, then Stelor is and remains the exclusive, world-wide licensee of the "Googles" intellectual property, including the trademarks on which

BURLINGTON • WEIL • SCHWIEP • KAPLAN (&) BLONSKY, P.A.

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T: 305.858.2900 F: 305.858.5261

EMAIL: INFO@BWSKB.COM WWW.BWSKB.COM

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served electronically and via U.S. mail on this 23rd day of December, 2005 upon the following:

Adam T. Rabin, Esq.
DIMOND, KAPLAN &
ROTHSTEIN, P.A.
Trump Plaza
525 S. Flagler Drive, Suite 200
West Palm Beach, Florida 33401
arabin@dkrpa.com

Kenneth R. Hartmann, Esq.
Gail M. McQuilkin, Esq.
KOZYAK TROPIN &
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Jan Douglas Atlas
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Andrew P. Bridges
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San Francisco, California 94111
abridges@winston.com

/s/ Kevin C. Kaplan
Kevin C. Kaplan

EXHIBIT “C”



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 05-80387 CIV RYSKAMP/VITUNIC

STEVEN A. SILVERS, an individual,

Plaintiff,

v.

GOOGLE INC., a Delaware corporation,

Defendant.

Received
JAN 10 2006

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.

**STELOR PRODUCTIONS, L.L.C.'S NON-OPPOSITION TO
STEVEN SILVERS' MOTION FOR ENLARGEMENT OF TIME**

Stelor Productions, L.L.C. ("Stelor") hereby files its non-opposition to
Steven Silvers' Motion for Enlargement of Time to file a reply in support of his
Motion to Dismiss Stelor's amended crossclaims.

BURLINGTON • WEIL • SCHWIEP • KAPLAN & BLONSKY, P.A.

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EMAIL: INFO@BWSKB.COM WWW.BWSKB.COM

Stelor does not oppose Silvers' Motion for Enlargement of Time. Stelor, however, takes issue with Silvers' representation that Stelor has in the past failed to serve it with pleadings. Furthermore, Stelor's records indicate that it did serve Silvers by mail with its opposition to his Motion to Dismiss.

Respectfully submitted,

BURLINGTON, WEIL, 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
E-mail: kkaplan@bwskb.com
E-mail: dzack@bwskb.com

By: /s/ David J. Zack
Kevin C. Kaplan
Florida Bar No. 933848
David J. Zack
Florida Bar No. 641685

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served via e-mail and U.S. Mail on this 6th day of January, 2006 upon the following:

Adam T. Rabin, Esq.
DIMOND, KAPLAN &
ROTHSTEIN, P.A.
Trump Plaza
525 S. Flagler Drive, Suite 200
West Palm Beach, Florida 33401
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Kenneth R. Hartmann, Esq.
Gail M. McQuilkin, Esq.
KOZYAK TROPIN &
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jatlas@adorno.com

Andrew P. Bridges
WINSTON & STRAWN LLP
101 California Street, Suite 3900
San Francisco, California 94111
abridges@winston.com

/s/ David J. Zack
David J. Zack

EXHIBIT “D”

KOZYAK • TROPIN
THROCKMORTON
ATTORNEYS AT LAW

Kenneth R. Hartmann, Esq.
krh@kttlaw.com | 305.377.0657

September 22, 2005

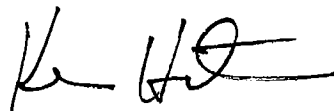
Kevin C. Kaplan, Esq.
Burlington, Weil, Schwiep,
Kaplan & Blonsky, P.A..
2699 South Bayshore Drive
Penthouse
Miami, FL 33133

Re: Silver/Stelor Litigation

Dear Kevin:

This is to confirm our agreement that, upon either party's electronically filing a pleading with any court, service on the other party will also be electronically, in addition to regular mail. Thanks for your cooperation on this.

Very truly yours,



Kenneth R. Hartmann

KRH/lmm
cc: Gail McQuilkin, Esq.

3339/101/257813.1

EXHIBIT “E”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Palm Beach DIVISION

STEVEN A. SILVERS, an individual,

CASE NO. 05-80387-CIV
(Ryskamp/Vitunac)

Plaintiffs,

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.

**ORDER GRANTING PLAINTIFF'S
MOTION TO REQUIRE STELOR TO COMPLY WITH RULE 5**

THIS CAUSE came before the Court on Plaintiff, Steven A. Silvers' Motion to Require Stelor Productions, LLC to Comply with Rule 5, Fed. R. Civ. P. Having reviewed the pleadings, and duly advised in the premises, it is **ORDERED and ADJUDGED** that:

1. Silvers' motion is **GRANTED**.
2. Stelor shall comply with the requirements of Rule 5 in filing any motions, memoranda, briefs or pleadings in this case.

3. Any pleading filed by Stelor using electronic means shall be served on Silvers by electronic means. Stelor shall take reasonable steps to verify such service is complete.

DONE and ORDERED in chambers at West Palm Beach, Florida, this ___ day of _____, 2006.

UNITED STATES DISTRICT COURT JUDGE

Conformed copies to:

Kenneth R. Hartmann, Esq.
Gail McQuilkin, Esq.
Adam Rabin, Esq.
Kevin Kaplan, Esq.
Jan Douglas Atlas, Esq.
Andrew P. Bridges, Esq.

3339/102/261502.1 (word.doc)