

Aug 29 2005

CLARENCE MADDOX
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S.D. OF FLA. - MIAMIUNITED STATES DISTRICT COURT
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.

**PLAINTIFF'S RESPONSE TO ORDER GRANTING WITHOUT PREJUDICE
DEFENDANT'S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION**

Plaintiff Stelor Productions, LLC ("Stelor"), by and through undersigned counsel, hereby responds as follows to the Court's Order Granting Without Prejudice Defendant's Motion to Dismiss ("Order") (DE # 67):

1. Pursuant to Local Rule 3.9, Stelor filed a Notice of Similar Actions and Request for Transfer and Consolidation ("Notice") on August 23, 2005 (DE # 74). The Notice advised that an action involving common questions of law and fact, and subject matter that is a material part of the present action, is pending as Case No. 05-80387-CIV-RYSKAMP/VITUNIC, bearing the caption *Steven A. Silvers v. Google, Inc.* ("Google Action").

2. The Notice also advised that a sub-member of one of Stelor's members does reside in Florida, a fact Stelor just discovered in the process of tracing back through the layers of members, as required in the Court's Order. Accordingly, diversity jurisdiction does not appear to exist between Stelor and Silvers.

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

3. Rather than dismiss the present action, however, and for the reasons detailed in the Notice, Stelor respectfully requests that its claims be transferred to the Google Action, and restyled a cross claim. Given the common issues involved in the Google Action, the Court in the Google Action has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over the claims raised in the present action.

4. The requested approach, moreover, would avoid the inefficiency and additional duplication resulting from a final dismissal of the present action for lack of jurisdiction, with Stelor then separately filing its same claims as a crossclaim in the Google Action.

5. This district has already made a substantial investment in time in connection with the preliminary injunction proceedings in this action, including the evidentiary hearing held by Magistrate Hopkins and, with extensive briefing by the parties, this Court's subsequent decision adopting in part and rejecting in part the Magistrate's report recommendation. An appeal is also pending before the Eleventh Circuit related to that decision.

6. If the present action were simply dismissed, with Stelor independently refiling the same claims as a crossclaim in the Google Action, then all of the effort and judicial resources invested in connection with those preliminary injunction proceedings would need to be reduplicated in the Google Action, and depending on the outcome, a new appeal filed.

7. An order of transfer and consolidation, restyling Stelor's complaint as a crossclaim in the form attached hereto, would avoid all such reduplication, and enable the pending appeal to proceed.

8. Alternatively, Stelor would request that a final order of dismissal be entered without prejudice to Stelor refiling its claims in another action, including as a crossclaim in the Google Action.

WHEREFORE, as set forth in the Notice, Plaintiff respectfully requests entry of an order transferring and consolidating this action with the Google Action pending as Case No. 05-80387, and restyling the claims and deeming them filed as a crossclaim in the form attached hereto.

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
Email: kkaplan@bwskb.com

By: /s/ Kevin C. Kaplan
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 U.S. mail on this 29th day of August, 2005 upon the following:

Adam T. Rabin, Esq.
DIMOND, KAPLAN &
ROTHSTEIN, P.A.
Suite 708
200 S.E. First Street
Miami, Florida 33131

Kenneth R. Hartmann, Esq.
Gail M. McQuilkin, Esq.
KOZYAK TROPIN &
THROCKMORTON, P.A.
2525 Ponce de Leon Blvd., 9th Floor
Coral Gables, Florida 33134

/s/ Kevin C. Kaplan
Kevin C. Kaplan