

EXHIBIT 5

Fassi, Sheri (Secy-Chi-IP/Tech)

From: Finn, Herbert (Shld-Chi-IP/Tech)
Sent: Tuesday, September 08, 2009 5:38 PM
To: 'John Shonkwiler'
Cc: 'P. Andrew Fleming'; Martin J. Murphy (email); Dunning, Jeffrey (Assoc-Chi-IP/Tech)
Subject: Specht/Google
Attachments: Document.pdf

John,

We are writing in furtherance of our efforts to comply with Rule 37 on Plaintiffs failure to produce documents in response to Google's First Set of Document Requests and provide complete and accurate responses to the interrogatories. Below is an exchange of emails between myself and Mr. Murphy wherein he represented that certain documents would be produced and more would be forthcoming. We have not received any tax returns for any of the Plaintiffs or any invoices from The Android's Dungeon. Simply put, we have not received any documents since Mr. Murphy's August 14th email.

Likewise, Plaintiffs' Responses to the Interrogatories are vague and certainly do not provide the information requested. We have previously identified some of the deficiencies in my August 3rd letter, a copy of which is attached. We have been patient as Plaintiffs were busy obtaining new counsel, but are entitled to full and complete production and responses. Accordingly, we reiterate our request that Plaintiffs provide complete responses and document production and to do so by September 11th. Otherwise, we will be left no alternative but to bring this to the Court's attention.

On another matter, we anticipate serving a subpoena on Wendy Murphy. In view of Mrs. Murphy's relationship to counsel (and Mr. Specht), we are reaching out to determine whether you will accept service on her behalf. Should you wish to discuss this further, we remain available.

Herb Finn

Herbert H. Finn
Shareholder
Greenberg Traurig, LLP | 77 West Wacker Drive | Suite 3100 | Chicago, IL 60601
Tel 312.456.8427 | Fax 312.899.0354
finnh@gtlaw.com | www.gtlaw.com



ALBANY • AMSTERDAM • ATLANTA • AUSTIN • BOSTON • CHICAGO • DALLAS • DELAWARE • DENVER • FORT LAUDERDALE • HOUSTON • LAS VEGAS • LONDON* • LOS ANGELES • MIAMI • NEW JERSEY • NEW YORK • ORANGE COUNTY • ORLANDO • PALM BEACH COUNTY • PHILADELPHIA • PHOENIX • SACRAMENTO • SHANGHAI • SILICON VALLEY • TALLAHASSEE • TAMPA • TYSONS CORNER • WASHINGTON, D.C. • WHITE PLAINS • ZURICH
*OPERATES AS GREENBERG TRAUIG MAHER LLP

From: martym@villageinvestments.com [mailto:martym@villageinvestments.com]
Sent: Friday, August 14, 2009 12:31 PM
To: Finn, Herbert (Shld-Chi-IP/Tech)
Subject: Re: Specht/Google

Herb,

I am sure that I don't have to remind you that we have not had a Rule 26 conference and that you are only entitled to limited informal discovery at this point. Nonetheless, I have been trying extremely hard to get as many

11/30/2009

documents as we have to you as quickly and with as little effort on you part as possible. I have the tax returns and Android's Dungeon invoices which I will deliver to you on Monday. I will be meeting with my client on Sunday and Monday to discuss the remaining discovery issues and will contact you regarding them on Monday as well.

Marty

----- Original Message -----

From: FinnH@gtlaw.com
To: martym@villageinvestments.com
Cc: DunningJ@gtlaw.com
Sent: Wednesday, August 12, 2009 6:33 PM
Subject: Specht/Google

Marty,

You are confusing quantity of documents with completeness of production. Let me assure you that we have been through all the documents that Plaintiffs produced and the documents indicated as missing are not in the production. As you obviously did not produce the documents as they were kept in the ordinary course of business, it is possible that a page or two of the production was misunderstood or overlooked. If you believe that we have overlooked a page or two, your identification of the production number(s) is any easy, direct and reasonable solution. In any event, we certainly have not overlooked corporate minutes, financial statements, tax returns, loan documents, marketing plans, projections, budgets, capital expenditures or litigation diligence as those documents are simply not there.

Moreover, Plaintiffs do not get to unilaterally piecemeal production. The documents were due weeks ago and your indication that more may or may not be produced at some indefinite time in the future is nothing more than an improper attempt to avoid a Motion to Compel. These documents exist and must be produced now. As previously indicated, if we do not have them by Friday, we will bring the matter to the Court.

As to Plaintiffs' Motion for Leave, your request as to Google's position on the Motion is late. All discovery Motions, including Plaintiffs' Motion for Leave, are subject to Rule 37, which requires the parties to discuss the discovery issue in a good faith attempt to resolve it prior to the Motion being filed with the Court. As you did not even raise the subject of taking any depositions, let alone the depositions of the individuals identified in Plaintiffs' Motion, the Motion violates Rule 37 and is improperly before the Court. We will certainly raise Plaintiffs' procedural shortcomings to the Court when Google opposes the Motion.

Herb Finn

Herbert H. Finn
Shareholder
Greenberg Traurig, LLP | 77 West Wacker Drive | Suite 3100 | Chicago, IL 60601
Tel 312.456.8427 | Fax 312.899.0354
finnh@gtlaw.com | www.gtlaw.com



ALBANY • AMSTERDAM • ATLANTA • AUSTIN • BOSTON • CHICAGO • DALLAS • DELAWARE • DENVER • FORT LAUDERDALE • HOUSTON • LAS VEGAS • LONDON* • LOS ANGELES • MIAMI • NEW JERSEY • NEW YORK • ORANGE COUNTY • ORLANDO • PALM BEACH COUNTY • PHILADELPHIA • PHOENIX • SACRAMENTO • SHANGHAI • SILICON VALLEY • TALLAHASSEE • TAMPA • TYSONS CORNER • WASHINGTON, D.C. • WHITE PLAINS • ZURICH
*OPERATES AS GREENBERG TRAUIG MAHER LLP

From: martym@villageinvestments.com [<mailto:martym@villageinvestments.com>]
Sent: Wednesday, August 12, 2009 4:34 PM
To: Finn, Herbert (Shld-Chi-IP/Tech)
Subject: Re: Specht/Google

Herb,

11/30/2009

I have provided you with close to 4,000 documents. The accusations made in your email clearly demonstrate that you have not reviewed all of the documents. I am still attempting to locate additional documents which we intend to produce.

I will also need to know if you will be objecting to my motion, set for 8/18/09, to take the depositions of Larry Page, Andy Rubin, Nick Sears, Chris White and Rich Miner.

Marty

----- Original Message -----

From: FinnH@gtlaw.com
To: martym@villageinvestments.com
Cc: harrisr@gtlaw.com ; DunningJ@gtlaw.com
Sent: Wednesday, August 12, 2009 1:10 PM
Subject: Specht/Google

Marty,

This is in furtherance of our letter of August 3rd (a copy of which is attached) and Plaintiffs' production of documents yesterday. We understand that yesterday's production is intended to complete Plaintiffs' production in response to the outstanding discovery.

However, Plaintiffs have yet to respond to our August 3rd letter and the documents that Plaintiffs have produced do not address the issues raised in that letter. Plaintiffs have not sufficiently supplemented their interrogatory responses or produced documents from which the information may be obtained. For example, Plaintiffs have not produced any financial information for each of the Plaintiffs or otherwise addressed the sales and revenue generated by product or month and year by each Plaintiff. There is no indication of when any particular entity was a customer. There is no documentation supporting, such as invoices, purchase orders, postage charges, etc., the allegations of advertising, co-location space, direct mailing in 2002, etc. Similarly, there is absolutely no documentation relating to the purported development or sending out of direct mailing materials in 2007. Indeed, there is little, if any, documentation relating to The Android's Dungeon acting as business -- i.e. issuing invoices, receiving payments, maintaining bank accounts, having suppliers, paying taxes, etc. -- despite purportedly having over a hundred thousand dollars of revenue over the past four years.

Also, we note from the production that a number of requested documents have not been produced, including:

- * documents relating to Plaintiffs' purported continued development and future release of products. (Request Nos. 1, 4, 5);
- * documents relating to the allegation that Plaintiffs' software has been used in commerce by customers to transact tens of millions of dollars in e-commerce. (Request Nos. 2 and 3);
- * documents relating to any due diligence performed prior to initiating the lawsuit (Request No. 13);
- * documents relating to any promotion expenditures (Request No. 17);
- * documents relating to estimates, projections, forecasts, budgets, marketing plans, strategic plans, research and development and/or capital expenditures relating to the production, sale, license or distribution of any of Plaintiffs' products and/or services offered under the ANDROID DATA mark. (Request No. 21); and
- * corporate records, board meeting minutes, financial statements, tax returns, loan documentation for Plaintiffs and Mrs. Specht (Request Nos. 23-30).

Either confirm that these documents do not exist or produce them immediately.

Similarly, we note that buried in the production was a document characterized as "corrective assignment" that was being submitted just last week to the United States Patent and Trademark Office by Plaintiffs. While the screen shot evidencing the submission was produced (Bates Nos. 12562-12563), the actual document(s) being recorded were not. Please immediately produce those documents.

If Plaintiffs do not substantively respond to our August 3rd letter, appropriately supplement their interrogatory

responses and produce all remaining documents by Friday, August 14th, we will bring this matter to the Court's attention towards obtaining the information and documents.

Herb Finn

Herbert H. Finn
Shareholder
Greenberg Traurig, LLP | 77 West Wacker Drive | Suite 3100 | Chicago, IL 60601
Tel 312.456.8427 | Fax 312.899.0354
finnh@gtlaw.com | www.gtlaw.com



ALBANY · AMSTERDAM · ATLANTA · AUSTIN · BOSTON · CHICAGO · DALLAS · DELAWARE · DENVER · FORT LAUDERDALE · HOUSTON · LAS VEGAS · LONDON* · LOS ANGELES · MIAMI · NEW JERSEY · NEW YORK · ORANGE COUNTY · ORLANDO · PALM BEACH COUNTY · PHILADELPHIA · PHOENIX · SACRAMENTO · SHANGHAI · SILICON VALLEY · TALLAHASSEE · TAMPA · TYSONS CORNER · WASHINGTON, D.C. · WHITE PLAINS · ZURICH
*OPERATES AS GREENBERG TRAURIG MAHER LLP

Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. To reply to our email administrator directly, please send an email to postmaster@gtlaw.com.
