

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

| | | |
|----------------|---|-----------------------|
| SPECHT, et al. |) | |
| |) | C.A. No. 09-cv-2572 |
| Plaintiffs, |) | |
| |) | Judge Leinenweber |
| v. |) | |
| |) | Magistrate Judge Cole |
| GOOGLE INC., |) | |
| |) | |
| Defendant. |) | |

**GOOGLE’S MOTION TO EXCLUDE UNDER FEDERAL RULE OF CIVIL
PROCEDURE RULE 37(C)(1) DUE TO PLAINTIFFS’ UNTIMELY DOCUMENT
PRODUCTION AND INTERROGATORY RESPONSES**

Plaintiff Google, Inc. moves to exclude documents and written interrogatory responses from consideration during summary judgment as a sanction for untimely disclosure pursuant to Fed.R.Civ.P. 37(c)(1). In support of its motion, Google states as follows:

1. In this case Plaintiffs’ “use” of its alleged trademarks is a central issue, since it appears Plaintiffs have abandoned their marks, and Google has sought that information through written discovery and document production.

2. After four drafts and a motion to compel, Plaintiffs provided a listing of purported “uses” of their marks in written interrogatory responses.

3. Plaintiffs did not update their interrogatory responses for several months. Then, after the deposition of Plaintiff Erich Specht, Plaintiffs produced new interrogatory responses and thousands of pages of new document production.

4. Google has asked Plaintiffs to identify whether any of the thousands of pages of document production will be relied upon to oppose Google’s pending motion for summary

judgment. Plaintiffs' counsel would not state whether they are or are not planning to rely on these newly produced documents or discovery responses.

5. Google has given Plaintiffs and opportunity to explain why their late production of documents and written discovery would be harmless or substantially justified. Plaintiffs provided no such explanation.

WHEREFORE, Google respectfully requests that the Court exclude from consideration on summary judgment all documents and written discovery untimely produced after the deposition of Erich Specht.

Respectfully submitted,

Dated: September 28, 2010

/s Herbert H. Finn
Herbert H. Finn
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Counsel for Google Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filings to all counsel of record.

Dated: September 28, 2010

/Herbert H. Finn/

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