

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

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

GOOGLE INC.’S MOTION FOR ATTORNEY’S FEES AND SANCTIONS

Defendant Google Inc. (“Google”), by and through its undersigned counsel, respectfully moves this Court pursuant 15 U.S.C. § 1117(a) and 28 U.S.C. § 1927 for sanctions and attorney’s fees under. In support of this motion, Google states as follows:

1. On March 11, 2011, the Court entered its final judgment on the docket, granting judgment in favor of Google on all counts of Plaintiffs’ Second Amended Complaint and Counts I and III of Google’s Counterclaim, and dismissing the remaining counts of Google’s Counterclaim without prejudice (Dkt. No. 311).

2. Under the Lanham Act, the Court may award attorney’s fees to the prevailing party “in exceptional cases.” 15 U.S.C. §1117(a). Further, under 28 U.S.C. §1927, the Court may require an attorney who “multiplies the proceedings in any case unreasonably and vexatiously . . . to satisfy personally the excess costs, expenses and attorney’s fees reasonably incurred because of such conduct.”

3. This case has been marred throughout by repeated examples of unreasonable, vexatious, and bad faith conduct by Plaintiffs and their attorneys, for no other purpose than to delay and multiply these proceedings in the hopes of extracting a settlement out of Google. As

Google details in its accompanying Memorandum, Plaintiffs' misconduct and gamesmanship in this litigation have included the following tactics:

- (a) Moving for a temporary restraining order and preliminary injunction, despite admittedly having no legal basis for either, only to later withdraw them both;
- (b) Demanding early depositions of Google employees, including Google's founders and co-chairmen, Larry Page and Sergey Brin, even though neither Mr. Page or Mr. Brin were involved in Google's selection or adoption of its Android trademark;
- (c) Attempting to add individual former and current Google employees as Defendants in this action;
- (d) Retaining additional contingency counsel for the sole purpose of driving up the costs of litigation;
- (e) Refusing to handle even the simplest negotiations in good faith, such as the entry of a protective order;
- (f) Attempting to hide their lack of documents supporting Plaintiffs' claims of continuous use by producing hundreds of thousands of pages of irrelevant documents;
- (g) Refusing to provide timely and complete responses to Google's written discovery;
- (h) Withholding documents until after all depositions were completed and fact discovery was set to close;
- (i) Pursuing various irrelevant third party depositions and subpoenas;
- (j) Attempting to extend the close of discovery for no other purpose but to forestall Google's motion for summary judgment;
- (i) Attempting to add Defendants (both new and formerly dismissed) on the eve of the close of discovery in order to stall Google's motion for summary judgment; and
- (j) Attempting, without basis, to disqualify Judge Leinenweber in order to stall Google's motion for summary judgment.

4. The conduct set forth above, and as detailed more thoroughly in the accompanying Memorandum, was knowingly pursued by Plaintiffs and their counsel for no other

purpose than to drive up Google's costs of litigation, in the hopes of obtaining unwarranted nuisance value settlements.

WHEREFORE, Google respectfully requests that this Court (a) find this case exceptional pursuant to 15 U.S.C. § 1117(a) and award Google its reasonable attorney's fees and nontaxable costs, and (b) find that Plaintiffs' counsel's conduct throughout this litigation has been vexatious and unreasonable, and that such conduct unreasonably multiplied proceedings in violation of 28 U.S.C. § 1927, and as a sanction for vexatious conduct find counsel jointly and severally liable with Plaintiffs for Google's reasonable attorney's fees and nontaxable costs.

Respectfully submitted,

Dated: March 22, 2011

/s Herbert H. Finn

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