

**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 LEAVE TO FILE OVERSIZE BRIEF IN SUPPORT  
OF ITS MOTION FOR ATTORNEY’S FEES AND SANCTIONS**

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Defendant Google Inc. (“Google”), by and through its undersigned counsel, respectfully moves this Court pursuant to LR7.1 for leave to file an oversize brief, not to exceed twenty-three (23) pages, in support of its motion for attorney’s fees and sanctions under 15 U.S.C. §1117(a) and 28 U.S.C. §1927 (“Motion”). 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). Though the Court had issued these orders earlier, they were not entered on the docket until March 11, 2011.

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 detailed in Google's Memorandum in Support of Its Motion for Attorney's Fees and Sanctions.

4. In order to fully address the scope of Plaintiffs' and their attorneys' misconduct and the factual and legal issues which the Court must consider in order to determine the appropriate sanctions and remedies for that conduct, Google requires in excess of the fifteen (15) pages permitted under LR7.1. Google believes that it can fully address all of the necessary facts and issues in a brief which does not exceed twenty-three (23) pages.

5. Google consents to Plaintiffs being permitted to likewise file a brief of up to twenty-three (23) pages in response to Google's Motion.

6. Google has consulted Plaintiffs to inquire whether Plaintiffs oppose this motion. Plaintiffs oppose this motion on the grounds that the underlying motion for attorney's fees is purportedly untimely. Plaintiffs are wrong.

7. Under Fed.R.Civ.P. 54(d)(2)(B), motions for an award of attorney's fees and related nontaxable expenses must be filed no later than 14 days after the entry of judgment, "[u]nless a statute or court order provides otherwise." That requirement does not apply, however, to a motion for sanctions under the Federal Rules and/or 28 U.S.C. §1927. Fed.R.Civ.P. 54(d)(2)(E). Rule 54 is not jurisdictional, and the Court has the discretion to extend the time for bringing a motion under Rule 54(d)(2). *Crue v. Aiken*, 370 F.3d 668, 681 (7th Cir. 2004).

8. Under Fed.R.Civ.P. 58, a judgment is not effective until it is set forth on a separate document **and entered** on the district court civil docket. *Am. Nat'l Bank and Trust Co.*

*of Chicago v. Secretary of Housing and Urban Dev.*, 946 F.2d 1286, 1288 (7th Cir. 1991).

Judgments are effective for purposes of motions brought under Rule 54(d) only when they are entered in the court's docket, not when they are signed by the Court. As the Seventh Circuit has stated:

Ogborn confuses the date that the district court filed its judgment with the date that it entered judgment. The date in the lefthand column of the district court's docket sheet provides the filing date—here September 22—whereas the bracketed date at the end of the entry provides the entry date—here September 25, as reflected by the notation "[e]ntry date 9/25/00." **[T]he entry date controls** [under Rule 54(d)].

*Ogborn v. United Food and Comm'l Workers Union, Local No. 881*, 305 F.3d 763, 769-70 (7th Cir. 2002). (emphasis added) *See also U.S. v. Fiorelli*, 337 F.3d 282, 287 (3rd Cir. 2003) ("Rules 58 and 79 make clear that 'entry' is the formal act of adding the judgment or order to the clerk's docket and that the date of entry must be memorialized by a separate notation. Thus, although an order may be signed by the district court, received by the clerk, and entered in the docket on different days, the entry date controls.") (citing *Ogborn*).

9. Here, both the Court's docket and the ECF notices themselves clearly state that the Minute Order of Entry No. 310 and the Judgment of Entry No. 311 were entered on the docket on "3/11/2011." For purposes of determining the deadlines for filing a bill of costs and motion for attorney's fees under Rule 54(d)(2), the entry date of March 11, 2011, rather than the issuance date of February 24, 2011, controls. *Ogborn*, 305 F.3d at 769-70. Thus, under Local Rule 54.1, Google's bill of costs is due within thirty days after March 11, 2011, or by April 11, 2011, and under Rule 54(d)(2)(B), Google's motion seeking an award of attorney's fees is due within 14 days after March 11, 2011, or by March 25, 2011.

WHEREFORE, Google respectfully requests that this Court grant it leave to file its timely-filed oversize brief, not to exceed twenty-three (23) pages, in support of its motion for sanctions and attorney's fees under 15 U.S.C. §1117(a) and 28 U.S.C. §1927.

Respectfully submitted,

Dated: March 22, 2011

/s Herbert H. Finn

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