

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

ERICH SPECHT, et al.,)	
)	Civil Action No. 09-cv-2572
Plaintiffs,)	
v.)	Judge Leinenweber
)	
GOOGLE, INC., et al.,)	Magistrate Judge Cole
)	
Defendants.)	

DEFENDANTS GOOGLE INC.'S, ANDROID, INC.'S, ANDREW RUBIN'S, NICKOLAS SEARS', RICHARD MINER'S AND CHRISTOPHER WHITE'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

Defendants GOOGLE INC. (“Google”), its wholly-owned subsidiary ANDROID, INC., and its employees (current or former) ANDREW RUBIN, NICKOLAS SEARS, RICHARD MINER, and CHRISTOPHER WHITE, hereby move the Court to dismiss the First Amended Complaint (“FAC”) filed by Plaintiffs ERICH SPECHT (“Specht”), d/b/a ANDROID DATA CORPORATION (“ADC”), and THE ANDROID’S DUNGEON INCORPORATED (“ADI”) (collectively “Plaintiffs”), pursuant to Fed.R.Civ.P. 12(b)(1), 12(b)(2), 12(b)(3) and 12(b)(6). The causes of action against Google and the Google Affiliates¹ are subject to dismissal on multiple grounds, as set forth in more detail in the accompanying Memorandum of Law being filed herewith. In support of this Motion to Dismiss, Google and the Google Affiliates state as follows:

1. On June 4, 2009, Plaintiffs filed their FAC (Dkt. No. 38) in which they allege that Defendants collectively infringe Plaintiffs’ ANDROID DATA mark under 15 U.S.C. §1114 (Federal Trademark Infringement), and that Defendants’ activities also violate 15 U.S.C. §1125(a) (Federal Unfair Competition) and 815 ILCS 510/2 (Illinois Deceptive Trade Practices).

¹ “Google Affiliates” refers, collectively, to Google’s wholly-owned subsidiary Android, Inc., and its current or former employees Rubin, Sears, Miner and White.

2. Contrary to the fundamental pleading requirements of Fed.R.Civ.P 8(a) (“Rule 8(a)”), Plaintiffs’ FAC merely lumps the fifty-two named Defendants together into a single conglomeration without separately detailing the allegedly wrongful conduct of each individual Defendant. Plaintiffs’ conclusory allegations of wrongdoing do not satisfy the pleading requirements of Rule 8(a), as explained in *Ashcroft v. Iqbal*, 556 U.S. ___, 129 S.Ct. 1937 (2009).

3. Further, Plaintiffs’ claims of purported trademark counterfeiting and violation of the Illinois Deceptive Trade Practices Act (“DTPA”) are equally deficient as they do not adequately plead each of the required elements of those causes of action.

4. Plaintiffs have also failed to demonstrate that this Court has personal jurisdiction over any of the Google Affiliates. Android, Inc. does not engage in any commercial activity, let alone carry on business in this Judicial District. Further, the individual defendants do not reside in Illinois and do not maintain even minimum contacts with Illinois.

5. Furthermore, venue is not proper in this District under 28 U.S.C. §1391(b)(1), because not all of the named defendants reside in Illinois, or under §1391(b)(2), because Plaintiffs have not pled that a “substantial part of the events or omissions giving rise” to their claims occurred in this Judicial District.

6. Additionally, Plaintiffs Specht and ADC have failed to establish that they have any standing in this matter by failing to plead that either of them has any interest in the alleged ANDROID DATA trademark or will be damaged by the alleged infringement.

7. Alternatively, if the Court for some reason decides against dismissing the FAC in its entirety, Defendants request that Court order Plaintiffs to amend the FAC to provide a more definite statement of Plaintiffs’ claims which complies with Rule 8(a)(2).

8. A proposed Order is attached as Exhibit 1 hereto.

WHEREFORE, Google and the Google Affiliates respectfully request that the Court dismiss Plaintiffs' First Amended Complaint in its entirety, with prejudice.

Respectfully submitted,

Dated: June 22, 2009

/s Herbert H. Finn

Herbert H. Finn (ARDC #6205685)

Richard D. Harris (ARDC #1137913)

Jeffrey P. Dunning (ARDC #6273364)

GREENBERG TRAURIG, LLP

77 West Wacker Drive, Suite 3100

Chicago, IL 60601

(312) 456-8400

COUNSEL FOR GOOGLE INC., ANDROID,
INC., ANDREW RUBIN, NICKOLAS SEARS,
RICHARD MINER AND CHRISTOPHER WHITE