

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. \_\_\_\_\_ -Civ

**04-80954**

(U.S.D.J. \_\_\_\_\_)

STELOR PRODUCTIONS, INC., )

Plaintiff )

v. )

STEVEN A. SILVERS, )

Defendant. )

Civil Action No. \_\_\_\_\_

**NIGHT BOX  
FILED**

**OCT 15 2004**

CLARENCE MADDOX  
CLERK, USDC / SDFL / WPB

**COMPLAINT FOR INJUNCTIVE, DECLARATORY, AND OTHER RELIEF**

Plaintiff, Stelor Productions, Inc. ("Stelor"), by its undersigned attorneys, files this Complaint against Steven A. Silvers ("Silvers" or "Defendant"), and alleges as follows:

**NATURE OF THE CASE**

1. This is a civil action seeking an injunction, a declaratory judgment, and

other relief based upon Silvers' breach of two contracts between the parties and Silvers' threats and allegations that Stelor has breached one of the contracts. Defendant Silvers has refused to remedy his breaches, has threatened other breaches, and has thereby caused Stelor significant irreparable and other damage.

**BACKGROUND**

2. In or about 1991, Defendant authored a children's book entitled "Googles and the Planet of Goo." The book made little critical or commercial impact when it entered a marketplace crowded with children's titles from bigger and better financed publishers and more famous authors. Undaunted, Defendant envisioned a program to transform this creation into an expansive, multimedia entertainment and educational

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empire. To that end, Defendant engaged the Florida-based Aurora Collection, Inc. That relationship, however, did not bear fruit. Still, Defendant did not abandon the project, but sought another partner to carry forward his vision and achieve his dream. Defendant had many personal and business hurdles to overcome. Significant among them was the increasingly adverse relationship between him and Aurora and other negative aspects of Defendant's background which made Defendant unsuited to serve as figurehead or spokesperson for an enterprise aimed at providing wholesome and enriching entertainment to an audience of impressionable children.

3. Accordingly, when Stelor was formed to develop Defendant's "The Googles" concept into a reality, Stelor's enthusiasm and interest were tempered by legitimate concerns and reservations. Stelor saw potential in the "The Googles" story, trademarks, copyrights, and other intellectual property. Stelor's founders also had confidence in their ability to raise the needed funds and to create a compelling and attractive "Googles" universe that would enlighten, entertain, educate, and develop children by providing them with fascinating and uplifting products, programs, and services. But aware of Aurora's aborted effort, and wary that Defendant's background could jeopardize the "Googles" program, Stelor insisted that any arrangement with Defendant contain safeguards and protections.

4. Thus, when on or around June 1, 2002 Stelor and Defendant entered into a "License, Distribution, and Manufacturing Agreement," and a Consulting Agreement, Stelor bargained for, and obtained, the following promises, commitments, and obligations from Defendant designed to ensure Stelor's ability to develop the "Googles" program free from undue interference by Defendant:

- (a) The License Agreement gives Stelor exclusive rights in the “Googles” products, trademarks, and intellectual property and specifies that those rights are exclusive even as to Defendant.
- (b) The License Agreement gives Stelor an irrevocable power of attorney to apply for, maintain, enforce and defend intellectual property rights, including trademarks, websites, and domain names. Stelor, not Defendant, assumed responsibility for handling all Googles Trademark and other Intellectual Property matters.
- (c) The License Agreement and Consulting Agreement require Defendant to fully cooperate with Stelor, while the Consulting Agreement makes plain that Defendant shall have no power to direct or control the daily activities of Stelor.
- (d) Finally, to protect Stelor from possible public embarrassment, both the License Agreement and Consulting Agreement expressly prohibit Defendant from initiating or maintaining “any relationship or conversation with [Stelor’s] current or prospective clients, vendors, any company relationships with the media (press, etc.), without the prior express written request by [Stelor].”

5. Anxious to achieve what he himself has described as his “dream,” Defendant agreed to these and other contractual obligations and restrictions. Stelor, believing it had the necessary rights and protections, then threw itself enthusiastically into the task of using its best efforts to develop The Googles concept and intellectual property. To this end, Stelor has spent approximately three million dollars, and its

principals and employees have devoted themselves tirelessly to making Stelor and the "Googles" successful and profitable, both for themselves and for the benefit of Defendant.

6. However, Defendant, having received from Stelor \$186,500, obligations for options for Stelor stock, and health insurance, has not lived up to his part of the bargain. After giving Stelor the exclusive rights to develop and market the "Googles" concept without interference from him, Defendant commenced a campaign to inject and entwine himself into the very fabric of Stelor's business. In breach of his contractual obligation to cooperate fully with Stelor in protecting, preserving, and enforcing the Googles intellectual property rights, Defendant has subverted those efforts, going so far as to unilaterally divert official communications from the United States Patent and Trademark Office ("USPTO") from Stelor's intellectual property counsel to himself. Under the irrevocable power of attorney Defendant bestowed on Stelor under the License Agreement, all such communications from the USPTO must go directly to Stelor, as Stelor, not Defendant, shoulders all responsibility for protecting and enforcing the Googles Intellectual Property.

7. Stelor, in fulfilling its duty to enforce and defend the Googles Intellectual Property, retained counsel to bring actions against Google, Inc. in the USPTO. Defendant wrote to Stelor's counsel and instructed them to act no further on these matters and threatened to obtain his own attorney to handle them despite Defendant's having given Stelor an irrevocable power of attorney to act for and on Defendant's behalf to enforce and defend the Googles Intellectual Property.

promotional and advertising material associated therewith.” And, lastly, Paragraph (VIII)(A) obligates Stelor to obtain, maintain, enforce, and defend the licensed intellectual property rights. Despite Defendant's claims to the contrary, Stelor has complied with its obligations under the License Agreement and the Consulting Agreement, and has further invested substantial sums of money to promote and protect the Googles Intellectual Property.

#### **DEFENDANT'S WRONGFUL ACTS**

28. In breach of the License Agreement and/or the Consulting Agreement, Defendant has engaged in a pattern and practice of interfering with Stelor's business operations in violation of his express duty to cooperate, in violation of his duty to refrain from interfering with the daily activities of Stelor, and in violation of the irrevocable power of attorney Defendant granted to Stelor. This pattern of interference includes, but is not limited to, the following:

- (a) Defendant has unilaterally, without authorization from Stelor, instructed the USPTO to send all correspondence for each application and registration for the Googles Trademarks to “Steven A. Silvers / Silvers Entertainment Group, Inc. / 8983 Okeechobee Blvd., Ste 202, PMB 203 / West Palm Beach, FL 33411” instead of Stelor's duly appointed attorneys. This clearly violates Stelor's sole right, power, and duty to deal with the USPTO regarding the registration and maintenance of all the Googles Trademarks. Defendant's actions are not authorized under his limited role as a creative consultant and violate the parties' agreements.

- (b) Defendant has repeatedly refused to provide Stelor with access to the Googles Domain Names by locking these Domain Names with the domain name registrar and by refusing to disclose to Stelor the passwords for these Domain Names. By not giving Stelor immediate, full and unfettered access to the Domain Names, Defendant is in material breach of the License Agreement and the Consulting Agreement which forbid him from interfering with, "direct[ing]", or "control[ling]" the daily activities of Stelor, and which require Defendant to assist Stelor and cooperate "in every way necessary" in connection with Stelor's maintenance of the Googles Intellectual Property. Defendant has also made it abundantly clear in correspondence to Stelor's counsel that he has "absolutely no intentions" of turning over to Stelor the passwords for any of the Googles Domain Names, and that the only way he will turn over these passwords is "when a judge orders [him] to do so."
- (c) Defendant has repeatedly threatened to communicate with the press without requesting prior authorization from Stelor.
- (d) In breach of the License Agreement which expressly gives Stelor the exclusive right to take legal action against third parties infringing the Googles Intellectual Property, on October 5, 2004, Defendant improperly sent a letter to Stelor's counsel purporting to instruct Stelor's counsel to take no further action in the two proceedings (the cancellation and opposition) before the TTAB instituted by

Stelor against Google, Inc. That law firm currently represents Stelor in these proceedings against Google, Inc.

- (e) In breach of the License Agreement which expressly gives Stelor the exclusive right to defend all actions brought by third parties challenging the Googles Intellectual Property Rights, Defendant has purported to instruct Stelor's counsel to take no action in the proceeding brought by Google, Inc. at the TTAB to cancel the registration for GOOGLES & Design (Reg. No. 2,087,590), and has indicated to Stelor that he intends to defend the cancellation proceeding himself, although the License Agreement gives Stelor the sole right to do so.

29. Each of the above actions, by itself, constitutes a material breach of the Licensing Agreement and/or the Consulting Agreement. Taken together, they establish a pattern and practice of undermining Stelor's legitimate business interests and have prevented Stelor from receiving the full benefits of its rights under these agreements.

30. In an attempt to divert attention from its own breaches of the Licensing Agreement and the Consulting Agreement, Defendant has charged Stelor with breaching various provisions of these agreements, without any basis in law or in fact. Defendant has also threatened to take legal action if Stelor does not remedy its alleged breaches.

#### **INJURY TO STELOR**

31. By ordering the USPTO to send communications directly to Defendant rather than to Stelor, Defendant has improperly interfered with and impaired Stelor's


Stelor the passwords to all the Googles Domain Names, and an Order prohibiting Defendant from changing the passwords to the Googles Domain Names in the future; and (iii) prohibiting Defendant from communicating with any of Stelor's current or prospective clients, vendors, the media, or the press.

D. A Declaratory Judgment that Stelor has complied with its contractual obligations under the Licensing Agreement, and a Declaratory Judgment confirming that Stelor has the exclusive right to bring and defend actions relating to the Googles Intellectual Property Rights.

E. Plaintiff further prays for a Judgment against Defendant in the amount of Stelor's damages plus its reasonable costs, disbursements, and attorneys' fees to the extent permitted by law; and such other relief as the Court may deem appropriate.

Dated:

Respectfully submitted,



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STELOR PRODUCTIONS, INC.



# **EXHIBIT 1**

## LICENSE, DISTRIBUTION AND MANUFACTURING AGREEMENT

This LICENSE, DISTRIBUTION AND MANUFACTURING AGREEMENT between Steven A. Silvers and Stelcor Productions, Inc. is effective as of June 1, 2002 and is entered into by and between Steven A. Silvers (LICENSOR), an Individual, whose official address is 3741 NE 163<sup>rd</sup> Street, PMB #325, North Miami Beach, FL 33160 and Stelcor Productions, Inc. (LICENSEE), a Delaware corporation with its current offices located at: 14701 Mockingbird Drive, Darnestown, Maryland, 20874.

### WITNESSETH

WHEREAS, LICENSOR is the sole and exclusive owner of the GOOGLES characters identified more fully in "Schedule A" attached hereto (the "Licensed Property");

WHEREAS, LICENSOR is the sole and exclusive owner of the GOOGLES trademarks identified more fully in "Schedule A" attached hereto (the "Licensed Trademarks");

WHEREAS, LICENSOR has the power and authority to grant to LICENSEE the right, privilege and license to use, manufacture, distribute, and sell those types of products that incorporate or are otherwise based on the Licensed Property as identified in "Schedule A" attached hereto (the "Licensed Products") and to use the Licensed Trademarks on or in association with such Licensed Products;

WHEREAS, LICENSEE has or will have the ability to manufacture, have manufactured, have sub-manufactured, distribute and sell or have sold and distributed the Licensed Products in the Licensed Territory more clearly defined in Schedule A (the Territory) and to use the Trademark(s) on or in association with the Licensed Products;

WHEREAS, LICENSEE desires to obtain from LICENSOR an exclusive license to use, manufacture, have manufactured and sell Licensed Products in the Territory and to use the Licensed Trademarks on or in association with the Licensed Products;

WHEREAS, LICENSEE has agreed, pursuant to a letter agreement, to act as a consultant for LICENSOR; and

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, the parties, each intending to be legally bound hereby, do hereby agree as follows:

### I. LICENSE GRANT

A LICENSOR hereby grants to LICENSEE, for the Term of this Agreement as recited in "Schedule A" attached hereto, the exclusive (even as to LICENSOR), worldwide, sub licensable right and license to use, reproduce, modify, create derivative works of, manufacture, have manufactured, market, advertise, sell, distribute, display, perform, and otherwise commercialize the Licensed Products and Licensed Properties in the Territory. The license includes a license under any and all intellectual property rights and interests therein, including by way of explanation, products which deal with the creative characters known as The Googles, anything that contains the letters GOO (in upper or lower case) together with any and all products, which comprise and which will comprise those characters, likenesses, which include Iggle, Oogle, Oggle, Gooroo, Gootian(s), the planet Goo, slides, computer web site(s), membership lists, clubs, materials, patterns, prototypes, logos, trademarks, service marks, clothing, merchandise, educational products, marketing and promotional data and tools, packaging and advertising, modifications, updates and variations, and all other items associated therewith whether in singular or plural