

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 05-80387 CIV RYSKAMP/VITUNAC

STEVEN A. SILVERS, an individual,

Plaintiff,

v.

GOOGLE INC., a Delaware corporation,

Defendant.

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GOOGLE INC., a Delaware corporation,

Counterclaimant,

v.

STEVEN A. SILVERS, an individual;  
STELOR PRODUCTIONS, INC., a Delaware  
Corporation; STELOR PRODUCTIONS, LLC, a  
Delaware limited liability company, and  
STEVEN ESRIG, an individual,

STELOR PRODUCTIONS, INC. v. OOGLES N GOOGLES et al

Doc. 287 Att. 30

Counterdefendants.

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**STELOR PRODUCTIONS, LLC'S REPLY IN SUPPORT OF MOTION FOR  
PROTECTIVE ORDER AS TO PRIVILEGED COMMUNICATIONS AND  
OPPOSITION TO GOOGLE, INC.'S CROSS-MOTIONS TO COMPEL PRODUCTION  
OF DOCUMENTS AND PRIVILEGE LOG AND  
FOR COSTS AGAINST STELOR AND ESRIG**

Stelor Productions, LLC hereby submits its reply in support of its motion for a protective order and for reconsideration and its opposition to Google Inc.'s improper cross motions to compel and for sanctions.

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**Exhibit 30**

communications. In *Beneficial Franchise*, the court upheld the joint defense agreement of the defendants despite the fact that there were disputes between them. It further held that settlement discussions between those defendants were also off limits in discovery. *Id.* at 221-22.

Stelor also cites cases in which *the parties* to the common interest are permitted discovery of common interest communications after a dispute arises between them. These cases do not permit a *third party* like Google to intrude on the privilege. See *In Re Benum*, 339 BR 115, 134 (Bankr. D.N.J. 2006) (common interest privilege holder could not waive co-interest holder's rights); *Dexia v. Rogan*, 231 FRD 287, 295 (N.D. Ill. 2005) (holding that non-adverse party entitled to see common interest documents); *Ageloff v. Noranda, Inc.*, 936 F. Supp. 72, 76 (D. R.I. 1996) (holding that common defense cases are designed to keep third parties from obtaining discovery, and that "[i]n contrast, the present dispute involves the original members of the joint defense team"), *Akamai Techs Inc. v. Digital Island, Inc.*, No. C-00-3508, 2002 WL 1285126, at \* 9 (N.D. Cal. May 30 2002) (holding that document shared to facilitate settlement should not be produced). These cases, therefore, do not contradict the cases cited by Stelor in its motion.

**C. Google's Improper Motion to Compel Should be Denied**

Although Stelor has produced in excess of ten thousand pages of documents (in contrast to the **zero** pages of documents Google produced), Google moves to compel additional documents from Google. This Motion to Compel is improper for several reasons. First, it is untimely. Stelor responded to the request for documents on May 30, 2006. Southern District of Florida Local Rule 26.1.H.1. provides that "[a]ll motions related to discovery . . . shall be filed within thirty (30) days of the occurrence of grounds for the motion" The failure to follow this

range. Nevertheless, in response to Google's objection, Stelor has incurred the needless expense of preparing a supplemental privilege log which sets out each communication individually. This log follows the model of the Edell privilege log, which Google indicated was satisfactory, and it clearly supports the claimed privileges. (*See* Opp. at 14.) The updated log is attached at Exhibit B hereto. Stelor also produced, on October 11, 2006, almost one thousand pages of unprivileged correspondence between Stelor and Silvers (and between their lawyers). Stelor believes that these documents fairly fell within its objections to Google's document requests, but Stelor produced them in the interest of limiting the issues to be resolved by the Court..

**D. Google's Motion for Sanctions Should be Denied**

It is inappropriate for Google to bring an improper, untimely and insufficiently supported motion to compel and then to request sanctions. As Google has provided no basis for obtaining sanctions against Stelor, that motion should be denied.

Wherefore, Stelor respectfully requests that its motion for protective order be granted and that Google's improper cross-motions be denied.

Respectfully submitted,

s/David J. Zack - Florida Bar No. 641685

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LLC and STEVEN ESRIG

CERTIFICATE OF SERVICE

I hereby certify that on October 12, 2006, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/  
David J. Zack