

Steve Vaughan

From: Steve Vaughan [steve@iplawindiana.com]
Sent: Friday, May 23, 2008 9:51 AM
To: 'Bob Merz'
Cc: 'jdhoover@hooverhull.com'
Subject: RE: Stelor's answers to interrogatories and document production

Bob- I am generally amenable to agreed extensions of time, but I have some concerns about agreeing to an extension for a couple of reasons. The first reason is that Kevin Kaplan took the position that the defendants named in the original complaint and in the first amended complaint waived all objections on the grounds that prior defense counsel did not timely respond to the written discovery. Unless I agree to an extension, I could now take that position with respect to the pending discovery to Stelor. Secondly, I will be filing motions for summary judgments on all claims and the deadline we agreed to in the amended case management plans we each filed was October 1, 2008. That means I will need to complete any out of state depositions by the end of August in order to have time to prepare the briefs. In Stelor's case against Google, Inc., Kevin Kaplan stated that Stelor produced over 10,000 pages of documents (see Docket Entry 134 in that case). I am expecting to receive a similar quantity of documents from Stelor in this case, because one of the pending requests for production is for the documents that Stelor has produced in the Google, Inc. case. Obviously, it is going take some time to read and absorb the documents prior to taking any out of state depositions that may be necessary for the summary judgments.

Also, it appears that there was disagreement between Stelor and Google, Inc. over the production of a large number of e-mails and other correspondence between Stelor/Esrig and Silvers which Kevin Kaplan claimed was privileged. (see Docket Entry 134, Exhibit B). Those e-mails are responsive to pending requests for production in this case. Judge Ryskamp (the district court judge in the Google, Inc. case) did not rule one way or the other on the privilege claims because of the bifurcation of the case into two stages, but I see very little probability that the Court here will agree with Stelor's claims of privilege. Unless you take a different approach than Kevin Kaplan did with respect to those e-mails and other correspondence, I expect that I will have to file a motion to compel to get those documents and I do not want to subject the client to the expense of out-of-state depositions until I have those documents in hand. Before I respond to your request for agreement for extension of time, can you let me know if you are going to take the same position as Kevin Kaplan did with respect to the documents listed in the privilege log that is Exhibit B to Docket Entry 134 in Stelor's case against Google, Inc? Although it would be unorthodox, I suppose I could go ahead with a motion to compel before I receive Stelor's responses to the requests to produce to expedite the process of getting those documents in time to take depositions and prepare summary judgment briefs before the October 1 deadline, if you tell me you are going to make the same claims of privilege as Kevin Kaplan. If you are not going to make those same claims of privilege, I will be more inclined to an agreed extension of time.

Also, before I respond your request for my agreement to an extension of time, can you assure me that answers to interrogatories, written response to the requests for production, and actual documents will be produced in thirty (30) days from the date of the last deadline, i.e., by June 16 (June 15 is a Sunday) with no further extensions? If Mr. Esrig is having health issues and he is the only person with the information to respond to the written discovery, I can foresee another request for additional time. If I do not get answers and documents until the middle of July, then it will already be too late to schedule and take depositions in August if I have to file a motion to compel to get the e-mails and correspondence between Stelor/Esrig and Silvers, because of the response and reply times permitted by the rules and the time it will take the Court to rule on the motion to compel. If I do not get answers and documents until mid-July, that means the October 1 deadline we agreed to for summary judgments is already unrealistic and I do not want to be put in the position of having to ask for more time to file motions for summary judgment. If Stelor can provide answers and documents by June 16, then the October 1 summary judgment deadline should not pose a problem.

Also, you had indicated when we discussed my client's e-mails that you expected you would send documents to me, as opposed to making documents available to me for inspection in Maryland as Stelor keeps them in the ordinary course of business. Can you confirm that you still plan to mail or ship to me the documents and "things" (e.g. samples of allegedly trademarked goods) responsive to the requests for production? If so, I am much more inclined to agree to the request for extension because of the time and cost it will save of not having to travel to

Exhibit 32

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Maryland.

Finally, can you give me some sense of the quantity of documents you expect Stelor will produce in response to the First Request for Production? As I pointed out earlier, my expectation is that Stelor has in excess of 10,000 pages of responsive documents based on Kevin Kaplan's statements as to the quantity produced to Google, Inc. If Stelor's plan is to object to all of the requests and send only a few documents, I am less inclined to agree to the extension so as to preserve the position that Stelor has waived its objections if/when it becomes necessary to file a motion to compel with respect to the Esrig/Silvers e-mail correspondence that Kevin Kaplan contended was privileged in the Google, Inc. case.

The bottom line for me is to get interrogatory answers and responsive documents and things as soon and as economically as possible so that I can get any needed depositions scheduled in time to timely file motions for summary judgment. To that end, please let me know:

1. If you are going to make the same privilege objections to production of correspondence between Stelor/Esrig and Silvers that Kevin Kaplan made in the Google, Inc. case
2. If you can assure me that interrogatory answers, written responses to the First Request for Production, and actual documents will be served by June 16, 2008 with no further extensions
3. If you are going to mail or ship responsive documents (and things) to me, as opposed to making them available for inspection in Maryland, and
4. The approximate number of documents you expect Stelor will produce in response to the pending requests for production

My speculation is that Mr. Esrig wishes to make a run at settling this case before spending the time it will take to respond to the written discovery. If that is the case, I would not totally rule out the possibility of settlement; however, my thought would be that Stelor's expectations with respect to a settlement should be extremely modest if Stelor wants to try to resolve this case before responding to the written discovery. I would also add that I would expect that any agreed settlement would have to result in Oogles n Googles having full rights and title to its name and trademark, and would include the withdrawal of Stelor's opposition to the application to register the Oogles n Googles trademark. I do not expect that any kind of ongoing licensing fee or continuing royalty will be either workable or acceptable.

I look forward to hearing from you.

Steve

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From: Bob Merz [<mailto:b.merz@stelorproductions.com>]

10/23/2008

Sent: Wednesday, May 21, 2008 9:33 AM
To: Steve Vaughan
Subject: Re: Stelor's answers to interrogatories and document production

Steve,

I am fine with the protective order, please file it at your earliest convenience. I need additional time for our discovery responses. Steve Esrig has been in and out of back surgeries over the past month and highly medicated. He is the source of most of the information you seek and has been unavailable until recently. I would appreciate more time to complete my responses. Please let me know if you would be amenable. I should have a settlement proposal for you by the end of the week.

Thanks,
Bob Merz

On another note, I have an approved

On May 20, 2008, at 12:03 PM, Steve Vaughan wrote:

Bob- Stelor's answers to the interrogatories and responses to the Oogles n Googles First Interrogatories and First Request for Production served March 14, 2008, were due this past Friday, May 16, 2008. The mailman has come and gone today (Tuesday), and I have not yet received Stelor's written discovery responses. I ask that you please let me know if Stelor's answers to interrogatories, responses to requests for production, and document production were served Friday.

Also, I would appreciate it if you would give the revised Stipulation and Protective Order that I sent you on April 16 your preferred attention so that we can get that on file. I assume you may be getting near a point where you would like to give my clients' documents to your expert(s) and I would like to get the Protective Order filed before that occurs.

Thank you in advance,
Steve

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