

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION
at LEXINGTON

Electronically Filed

iLOR, LLC,

Plaintiff,

v.

GOOGLE, INC.,

Defendant.

Civil Action No. 5:07-cv-00109-JMH

DEFENDANT GOOGLE, INC.’S EMERGENCY MOTION FOR (1) EXPEDITED DISCOVERY; (2) EXTENSION OF TIME TO OPPOSE PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION; (3) STAY OF PENDING RESPONSE TIME(S); AND (4) TO CONTINUE DATE FOR THE HEARING ON PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION

On April 17, 2007, Plaintiff iLOR, LLC (“iLOR”) filed the instant action. (Doc. No. 1.)

Four months later, on August 27, 2007, iLOR filed its Amended Complaint (Doc. No. 11), as well as a motion seeking a preliminary injunction (Doc. No. 12; “iLOR’s PI Motion”) against Defendant Google, Inc. (“Google”). Under Local Rules 5.6 and 7.1(c), Google’s response is due on September 14, 2007. However, Google requires certain limited discovery to address allegations made in, and to adequately respond to, iLOR’s PI Motion. Accordingly, Google moves the Court to:

1. Order iLOR to respond to Google’s First Set of Requests for Production of Documents and Things (Nos. 1-17) (Exhibit A) no later than September 21, 2007.

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2. Order iLOR to produce Stephen Mansfield, iLOR's declarant in support of its PI Motion, for deposition by no later than September 28, 2007. (*See Exhibit B, Google's First Notice of Deposition of Stephen Mansfield Pursuant to Rule 30(b)(1).*)
3. Extend the time for Google to respond to iLOR's PI Motion from September 14, 2007, to October 3, 2007.
4. Stay the pending deadlines for Google's response to iLOR's PI Motion.
5. Continue the date for the hearing on iLOR's PI Motion, currently calendared for October 1, 2007, to November 5, 2007, or as soon thereafter as the Court's calendar permits.

Counsel for iLOR has stated generally that iLOR is receptive to reasonable extensions. However, counsel for Google has repeatedly attempted to confer this week with counsel for iLOR regarding the details of such extensions, but Google has received no response. The impending deadline for Google's opposition, and the inability to contact iLOR's counsel by either email or telephone, thus necessitates this Emergency Motion. In support of this Motion, Google states as follows:

1. iLOR filed this case on April 17, 2007. (Doc. No. 1.)
2. iLOR waited 119 days of the prescribed 120-day period to serve its Complaint on Google, waiting until August 21, 2007. (Doc. No. 10.)
3. iLOR filed its Amended Complaint (Doc. No. 11) on August 27, 2007. No new facts are alleged in the Amended Complaint; the only difference between the original Complaint and the Amended Complaint is that the Amended Complaint seeks preliminary injunctive relief.

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4. Google's Answer to iLOR's complaint and Amended Complaint is not due until October 5, 2007. (Doc. No. 15.)

5. iLOR filed its PI Motion on August 27, 2007 (Doc. No. 12-1.), alleging "immediate, irreparable harm." (Doc. No. 12-3 at 32.)

6. The Court has scheduled the hearing on iLOR's PI Motion for October 1, 2007. (Doc. No. 13.)

7. In order to fully and fairly address, and adequately respond to, the numerous factual issues raised by iLOR's PI Motion, Google requires certain limited discovery, including document discovery and the deposition of Steven Mansfield, iLOR's declarant in support of its PI Motion. (See Exhibits A and B.)

8. On August 28, Google's counsel asked iLOR's counsel if iLOR would be receptive to moving the hearing on iLOR's PI Motion to the end of October or early November. Google's counsel also alerted iLOR that Google would seek document production and Mr. Mansfield's deposition in advance of Google's filing of its opposition. (Exhibit D-1¹.)

9. On September 4, iLOR stated it was willing to grant a "reasonable extension," provided Google did not raise delay as a reason for denying iLOR's PI Motion. (*Id.*) Google's counsel immediately responded that it would not use "any extension stipulated to or granted in connection with the PI proceedings as a reason to deny the motion"—i.e., it would not raise any *further*² delay as a basis for denial. (*Id.*)

¹ Portions of D-1 have been redacted to remove settlement-related discussions.

² As noted in ¶ 2, iLOR had by this time already delayed substantially, including by waiting 119 days to serve its original Complaint.

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10. Later on September 4, Google served (by email and mail) its requests for document production and a notice for the deposition of Mr. Mansfield. (Exhibits A-C.) The letter requested document production within two weeks, and that the parties confer on a deposition schedule to occur after the receipt of documents.

11. On September 10, after not hearing from iLOR's counsel, Google's counsel left a voice mail for iLOR's counsel regarding the status of the four issues that are the subject of the present motion. (*See Exhibit D-2.*)

12. On September 11, Google's counsel emailed iLOR's counsel, again seeking iLOR's position with regard to the four scheduling issues, and noting the urgency of resolving them. (Exhibit D-2.) . Google's counsel also again telephoned iLOR's counsel, and was informed by an assistant that iLOR's counsel was away from his desk, but was checking voice mail and email. (Exhibit D-3.)

13. On September 12, after still no response from iLOR's counsel, Google's counsel again called and emailed iLOR's counsel regarding these issues and noted the "prejudice to Google stemming from both its need to obtain this discovery to respond to iLOR's motion and its impending opposition deadline." (Exhibits D-3, D-4, and D-5.)

14. As of the writing of this Motion on the morning of September 13, Google's counsel has still not received any response from iLOR's counsel.

15. Because iLOR's counsel has not responded to the repeated requests to confer about the subject of the present motion, and given the impending September 14 deadline for Google's opposition, Google filed this Emergency Motion.

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16. As demonstrated herein, Google has made more-than-reasonable-efforts to meet and confer with opposing counsel as required by LR 37.1, but no response has been received.

17. The relief requested in this Emergency Motion is necessary for Google to adequately prepare for and defend iLOR's PI Motion.

18. If this Emergency Motion is not granted, Google will be seriously prejudiced in its ability to defend iLOR's PI Motion.

Respectfully submitted,

Dated: September 13, 2007

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Defendant Google, Inc.'s Emergency Motion For (1) Expedited Discovery; (2) Extension of Time to Oppose Plaintiff's Motion for Preliminary Injunction; (3) Stay of Pending Response Time(s); and (4) To Continue Date for the Hearing on Plaintiff's Motion for Preliminary Injunction, as well as a Proposed Order, has been served via email and first class mail on September 13, 2007 on the following counsel of record:

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/s/ James R. Higgins, Jr. _____

ONE OF COUNSEL FOR DEFENDANT
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