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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

NETJUMPER, L.L.C.,
a Michigan limited liability corporation,

Case No. 04-70366-CV
Hon. Julian Abele Cook
Magistrate Judge R. Steven Whalen

Plaintiff,

vs.

GOOGLE, INC.,
a California corporation,

Defendant.

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& SCHWARTZ, P.C.
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**PLAINTIFF'S ANSWER TO DEFENDANT'S COUNTER-CLAIM AND
PLAINTIFF'S AFFIRMATIVE DEFENSES TO COUNTER-CLAIM, COUNTS V-XII**

Parties

1. Upon information and belief, admitted.
2. Admitted.

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SOUTHERN DIVISION

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FILED

LAW OFFICES
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Jurisdiction

3. Admitted that the action is brought under the cited statutes.

Venue

4. Admitted.

Facts Common to Counts V-XII

5. Admitted.
6. Admitted.
7. Denied for lack of information.
8. Denied for lack of information.
9. Denied for lack of information.
10. Admitted.
11. Admitted.
12. Admitted.
13. Denied for lack of information.
14. Denied for lack of information.
15. Admitted.
16. Denied for lack of information.
17. Denied for lack of information.
18. Denied.
19. Denied for lack of information.
20. Admitted.

- 21. Denied for lack of information.
- 22. Denied for lack of information.
- 23. Denied for lack of information.
- 24. Admitted that NetJumper owns www.goograb.com, but denied as to remainder of paragraph.

25. Denied.

26. Denied. NetJumper made known to Google its intention to develop a demonstration of its technology under Google's API, and Google was aware of said demonstration. At no point prior to NetJumper's complaint for infringement against it did Google indicate that the Goograb demonstration was outside the terms of its API or in any other way not authorized by Google.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Denied. The alleged use was known to, and approved by Google.

32. Denied. Said terms are no longer on the site.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

37. Denied.

38. Admitted that API's were used but in conformance with the Google license for the API's, but denied that the use was outside the terms of API's, and any use was authorized by Google and its license.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

Count I: Declaratory Relief Regarding Non-Infringement of the '172 Patent

44. The responses to Pars. 1-4 are incorporated herein.

45. Denied.

46. Admitted there is a justiciable controversy.

47. NetJumper requests that Google's request be denied.

Count II: Declaratory Relief Regarding Non-Infringement of the '655 Patent

48. The responses to Pars. 1-4 are incorporated herein.

49. Denied.

50. Admitted that a justiciable controversy exists.

51. NetJumper requests that Google's request be denied.

Count III: Declaratory Relief Regarding Invalidity of the '172 Patent

- 52. The response to Pars. 1-4 are incorporated herein.
- 53. Denied.
- 54. Admitted that a justiciable controversy exists.
- 55. NetJumper requests that Google's request be denied.

Count IV: Declaratory Relief Regarding Invalidity of the '655 Patent

- 56. The response to Pars. 1-4 are incorporated herein.
- 57. Denied.
- 58. Admitted that a justiciable controversy exists.
- 59. NetJumper requests that Google's request be denied.

Count V: Trademark Infringement

- 60. The response to Pars. 1-4 are incorporated herein.
- 61. Denied.
- 62. Denied.
- 63. Denied.
- 64. Denied. There were no sales or profits.
- 65. Denied.
- 66. Denied.

Count VI: False Representation

- 67. The response to Pars. 1-4 are incorporated herein.
- 68. Denied.
- 69. Denied.
- 70. Denied.
- 71. Denied. There were no sales or profits.
- 72. Denied.
- 73. Denied.

Count VII: Federal Trademark Dilution

- 74. The response to Pars. 1-4 are incorporated herein.
- 75. Denied.
- 76. Denied.
- 77. Denied.
- 78. Denied. There were no sales or profits.
- 79. Denied.
- 80. Denied.
- 81. Denied.

Count VIII: State Law Unfair Competition

- 82. The response to Pars. 1-4 are incorporated herein.
- 83. Denied.

84. Denied.

85. Denied.

86. Denied.

87. Denied.

Count IX: Common Law Unfair Competition and Trademark Infringement

88. The response to Pars. 1-4 are incorporated herein.

89. Denied.

90. Denied.

91. Denied.

92. Denied. There were no sales or profits.

93. Denied.

Count X: Violation of Anti-Cybersquatting Consumer Protection Act

94. The response to Pars. 1-4 are incorporated herein.

95. Denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

Count XI: Breach of Contract

- 101. The response to Pars. 1-4 are incorporated herein.
- 102. Denied.
- 103. Denied.
- 104. Denied.
- 105. Denied.
- 106. Denied.

Count XII: Quantum Merit/Unjust Enrichment

- 107. The response to Pars. 1-4 are incorporated herein.
- 108. Denied.
- 109. Denied.
- 110. Denied.

PRAYER FOR RELIEF

- A. That NetJumper be awarded damages, including enhanced damages for willful infringement and attorney fees.
- B. That Google's request be denied.
- C. That Google's request be denied.
- D. That Google's request be denied.
- E. That Google's request be denied.

F. That Google's request is declared moot, as NetJumper no longer has its Goograb demonstration available.

G. That Google's request be denied.

H. That Google's request be denied.

I. That Google's request be denied.

J. That Google's request be denied.

K. That Google's request be denied.

L. That Google's request be denied.

M. That Google's request be denied.

N. That Google's request be denied.

PLAINTIFF'S AFFIRMATIVE DEFENSES TO COUNTER-CLAIM COUNTS V-XII

1. That the counter-claim is moot.
2. That NetJumper's actions were ratified and/or authorized by Google.
3. That the counter-claim fails to state a cause of action.
4. That the counter-claim is barred by estoppel.
5. That the counter-claim is barred in part by preemption.
6. That the counter-claim is barred by doctrine of unclean hands.
7. That the counter-claim is barred by waiver.
8. That there is no likelihood of confusion.
9. That there is no dilution.
10. That Google has suffered no harm.
11. NetJumper reserves the right to add affirmative defenses.

PRAYER FOR RELIEF

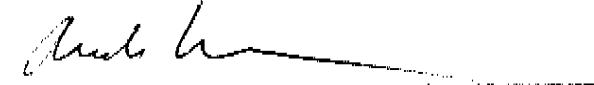
WHEREFORE, NetJumper respectfully asks:

- A. That the Counter-Claim, Counts I-IV, be denied; and
- B. That the Counter-Claim, Counts V-XII be dismissed, be found to be frivolous, and fees and sanctions be awarded to NetJumper pursuant to F.R.C.P. 11, and provisions of the Lanham, and Anti-Cybersquatting Act as appropriate.

Respectfully submitted,

SOMMERS, SCHWARTZ, SILVER & SCHWARTZ, P.C.

By:



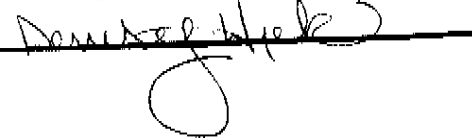
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Dated: April 8, 2004

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on 4/8/04

- By: U.S. Mail FAX
 Hand Delivered Overnight Courier
 Federal Express Other

Signature: 

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