

UNITED STATES DISTRICT COURT  
 FOR THE EASTERN DISTRICT OF TEXAS  
 MARSHALL DIVISION

FPX, LLC d/b/a FIREPOND,	§	
	§	
	§	Civil Action No. 2:09-cv-00142-TJW
Individually and on Behalf of All Others	§	
Similarly Situated,	§	
	§	
Plaintiff,	§	CLASS ACTION COMPLAINT
	§	
v.	§	
	§	
GOOGLE, INC., YOUTUBE, LLC, AOL,	§	JURY TRIAL REQUESTED
LLC, TURNER BROADCASTING	§	
SYSTEM, INC., MYSPACE, INC. AND	§	
IAC/INTERACTIVECORP,	§	
	§	
Defendants.	§	

**DEFENDANTS’ REPLY TO MOTION TO STRIKE**

Defendants respectfully submit this Reply as follows:

**I. ARGUMENT AND AUTHORITIES**

**A. THE FENSTER DECLARATION-PARAGRAPH NO. 2.**

Defendants’ objections to Paragraph No. 2 and Exhibit A of the Fenster Declaration remain unrebutted. The statements are vague, conclusory, and speculative. Burger King Corp. v. Lumbermens Mut. Cas. Co., 410 F. Supp.2d 1249, 1255 (S.D. Fla. 2005). Plaintiff’s Response only offers additional unsupported, vague and conclusory statements that the Fenster Declaration does “in fact reflect Google’s trademark policy.” (Resp. at 1). The Response also claims, without explanation or specific reference, that Defendants’ own declaration offered by Kerry Barker further authenticates “this policy.” (Id., citing Declaration of Kerry Barker, “generally”). To the contrary, the Barker Declaration does not support Mr. Fenster’s statements. In fact, the Fenster Declaration simply attaches random documents from Google’s production

without any explanation. Thus, Plaintiff's continued failure to specify what it means by "Google's current trademark policy" and its vague reliance on Defendants' Barker Declaration further illustrates the defects in the Fenster Declaration. Therefore, Defendants ask the Court to strike Paragraph No. 2 and Exhibit A of the Fenster Declaration.

**B. THE FENSTER DECLARATION-PARAGRAPH NOS. 5 & 6.**

Defendants' objections to Paragraph Nos. 5 and 6 and Exhibits C and D of the Fenster Declaration remain unrebutted. The statements constitute inadmissible hearsay and are vague, ambiguous, speculative, and conclusory. Fed. R. Evid. 810(c); Burger King, 410 F. Supp.2d at 1255. The fact that the Meyer Declaration is now offered as the person "who actually performed the searches at issue" further demonstrates the defective nature of the Fenster Declaration. Consequently, Defendants ask the Court to strike Paragraph Nos. 5 and 6 and Exhibits C and D of the Fenster Declaration.

**II. PRAYER**

Defendants respectfully request that their Motion to Strike be granted, and for such further relief to which they are entitled.

Respectfully submitted,

/s/ Charles L. Babcock

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ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2010, I electronically submitted the foregoing document with the clerk of the court for the U.S. District Court, Eastern District of Texas, using the electronic case files system of the court. The electronic case files system sent a “Notice of Electronic Filing” to individuals who have consented in writing to accept this Notice as service of this document by electronic means. All other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by first class mail today, November 15, 2010.

/s/ Charles L. Babcock  
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Charles L. Babcock