

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

I/P ENGINE, INC.

Plaintiff,

v.

AOL, INC., *et al.*,

Defendants.

Civil Action No. 2:11-cv-512

**DECLARATION OF DAVE NELSON IN SUPPORT OF DEFENDANTS' OPPOSITION
TO PLAINTIFF'S MOTION FOR JUDGMENT UNDER RULE 52(B) AND A NEW
TRIAL UNDER RULE 59 ON LACHES**

I, Dave Nelson, declare as follows:

1. I am an attorney in the firm of Quinn Emanuel Urquhart & Sullivan, LLP and am counsel for Defendants in the above-captioned case. I provide this declaration upon personal knowledge and, if called upon as a witness, would testify competently as to the matters recited herein.

2. At 5:46 p.m. on October 31, 2012, Defendants' counsel emailed Plaintiff's counsel seeking information on, *inter alia*, what royalty base Plaintiff planned to argue to the jury in closing arguments, given the Court's laches ruling of that morning. A true and correct copy of this email is attached hereto at Exhibit A. Plaintiff's counsel made no response to this email.

3. At 8:36 p.m. on October 31, 2012, Defendants' counsel sent Plaintiff's counsel a follow-up email on the same subject. A true and correct copy of this follow-up email is attached hereto as Exhibit B. Plaintiff's counsel made no response to this follow-up email.

4. On the morning of November 1, 2012, Plaintiff's counsel argued to the Court at the charge conference that the laches defense should only apply to Google, not the other

Defendants. I responded that such case law was inapplicable given that Google was indemnifying all Defendants and thus any damages against any Defendant would come out of Google's pocket. Initially, the Court adopted Plaintiff's argument and ruled that only Google could benefit from laches. In the wake of the Court's ruling, Defendants' counsel searched for and located case law showing that laches should apply to all Defendants, particularly given that all Defendants were being indemnified by Google. As soon as Defendants' counsel located this case law, we immediately presented it (by hand) to both the Court and Plaintiff's counsel.

5. Attached as Exhibit C is a true and correct copy of Plaintiff's First Supp. Responses and Objections to Gannett Co., Inc.'s First Set of Interrogatories, dated September 4, 2012.


6. Attached as Exhibit D is a true and correct copy of Plaintiff's First Supp. Responses and Objections to Target Corp.'s First Set of Interrogatories, dated September 4, 2012.

7. Attached as Exhibit E is a true and correct copy of Plaintiff's First Supp. Responses and Objections to IAC Search & Media, Inc.'s First Set of Interrogatories, dated September 4, 2012.

8. In chambers conference, Plaintiff's counsel had objected to the introduction of nearly all the deposition testimony of Mark Blais, Lycos' Rule 30(b)(6) representative, on the theory that Mr. Blais lacked personal knowledge about his areas of testimony.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: January 25, 2013



Dave Nelson

DATED: January 25, 2013

/s/ Stephen E. Noona

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CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2013, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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