

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

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I/P ENGINE, INC.,)	
)	
	Plaintiff,)	
	v.)	Civ. Action No. 2:11-cv-512
)	
AOL, INC. et al.,)	
)	
	Defendants.)	
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**PLAINTIFF I/P ENGINE, INC.’S
MEMORANDUM IN SUPPORT OF ITS MOTION FOR LEAVE TO FILE
SUPPLEMENTAL MEMORANDUM OF NEW ADDITIONAL FACTS JUSTIFYING
ITS MOTION FOR DEFENDANTS TO SHOW CAUSE UNDER RULE 37
FOR NONCOMPLIANCE WITH AUGUST 13, 2013 ORDER**

Plaintiff I/P Engine, Inc. (“I/P Engine”), by counsel, for its Memorandum in Support of its Motion for Leave to File its *Supplemental Memorandum of New Additional Facts Justifying Its Motion for Defendants to Show Cause under Rule 37 for Noncompliance with August 13, 2013 Order*, states as follows:

Background and Argument

By Memorandum Opinion and Order dated August 13, 2013, this Court ordered the parties to produce, no later than August 25, 2013, “*any documents relevant* for determining whether New AdWords is no more than a colorable variation of the adjudicated product.” D.I. 963, p. 8 (emphasis added).

On August 30, 2013, five days after the production deadline, I/P Engine filed a Motion for Defendants to Show Cause under Rule 37 for Noncompliance with the August 13, 2013

Order. *See* D.I. 978. The basis for the motion was a substantial lack of documents produced by the Defendants as of the deadline ordered by the Court.

After briefing closed on the Motion to Show Cause, new additional evidence came to light during the deposition of Mr. Bartholomew Furrow, a Google employee. In sum, Mr. Furrow's testimony revealed that Google (1) deleted relevant electronic records, (2) purposefully avoided producing relevant launch documents, (3) withheld relevant English-language descriptions of the changes to its source code, (4) withheld relevant "launch cal" documents, and (5) withheld 140 pages of source code until well after this Court's deadline for production.

I/P Engine had no way of knowing the extent of this lack of production until the deposition of Mr. Furrow. All of it bears directly on I/P Engine's Motion to Show Cause, which remains pending. There is no explanation for the pattern of behavior other than gamesmanship.

WHEREFORE, plaintiff I/P Engine, Inc., by counsel, respectfully requests that this Court grant I/P Engine leave to file its *Supplemental Memorandum of New Additional Facts Justifying Its Motion for Defendants to Show Cause under Rule 37 for Noncompliance with August 13, 2013 Order*.

I/P ENGINE, INC.

Dated: October 7, 2013

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CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2013, the foregoing was served via the Court's

CM/ECF system on the following:

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