THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

INTERVAL LICENSING LLC,

Plaintiff,

v.

AOL, INC., et al,

Defendants.

No. C-10-1385-MJP

DEFENDANT OFFICEMAX INCORPORATED'S JOINDER IN GOOGLE'S MOTION TO DISMISS

Noted on Motion Calendar: November 12, 2010

I. INTRODUCTION AND RELIEF REQUESTED

Defendant OfficeMax Incorporated ("OfficeMax") respectfully joins in Defendants Google Inc. and YouTube, LLC's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted Pursuant to Fed. R. Civ. P. 12(b)(6) ("Google's Motion To Dismiss"). As discussed in Google's Motion to Dismiss, Plaintiff Interval Licensing LLC's ("Interval") claims against all defendants – including OfficeMax – fail to meet the pleading requirements of Fed. R. Civ. P. 8(a)(2) as defined by the Supreme Court in *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009) and *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007). Accordingly, OfficeMax joins Google's motion for dismissal.

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II. LEGAL ARGUMENT

Under the *Iqbal* and *Twombly* standards, a plaintiff may not simply state that the law has been violated, but must also plead sufficient facts to show a plausible claim for relief. To be facially plausible, a claim must plead "*factual content* that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 129 S. Ct. at 1949 (emphasis added). Factual content in a complaint "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)) (alterations in original). Finally, while a court must accept all allegations in a complaint as true, that is not the case with legal conclusions: "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 129 S. Ct. at 1949.

Interval's claims against OfficeMax offer no more than the "threadbare recitals" and "conclusory statements" that the Supreme Court has repeatedly warned are insufficient. Indeed, Interval devotes just two paragraphs of its Complaint to its claims against OfficeMax. A review of those paragraphs – reproduced in their entirety below – demonstrates that Interval has failed to plead specific facts in support of its claims against OfficeMax:

> Defendant OfficeMax has infringed and continues to infringe one or more claims of the '507 patent. OfficeMax is liable for infringing the '507 patent under 35 U.S.C. § 271 by making and using websites, hardware, and software to categorize, compare, and display segments of a body of information as claimed in the patent.
>
> *****
>
> Defendant OfficeMax has infringed and continues to infringe one or more claims of the '682 patent. OfficeMax is liable for infringing the '682 patent under 35 U.S.C. § 271 by making and using websites and associated hardware and software to provide alerts that information is of current interest to a user as claimed in the patent.

Complaint at ¶¶ 27, 52.

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These generic and conclusory paragraphs are devoid of the "factual content" *Twombly* and *Iqbal* require. The claims fail to identify basic information like (a) the products or services offered by OfficeMax that are alleged to infringe on Interval's patents; (b) how OfficeMax's products or services have allegedly infringed the patents-in-suit; or (c) the underlying technology or mechanism of the alleged infringement. By failing to specify these essential facts about OfficeMax and its products or services, Interval has made it impossible for OfficeMax to prepare a defense. Moreover, these facts are required if a Complaint is to perform its central function, i.e., set forth "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 129 S. Ct. at 1949. The pleading requirements of Fed. R. Civ. P. 8 – and the recent Supreme Court authority interpreting these requirements – demand more. Dismissal is proper.

III. CONCLUSION

For the foregoing reasons, and for the reasons discussed in Google's Motion to Dismiss, OfficeMax respectfully joins Google's Motion to Dismiss and requests that the Court dismiss Interval's Complaint for failure to state a claim upon which relief can be granted, including all claims alleged against OfficeMax.

DATED this 20th day of October, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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