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12 Attorneys for Plaintiff

13  
14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA  
16

17 PERFECT 10, a California corporation,  
18 Plaintiff,

19 v.

20 GOOGLE, INC., a corporation; and  
DOES 1 through 100, inclusive,  
21 Defendants.  
22

CASE NO. CV 04-09484 AHM (SHx)

**DECLARATION OF DAVE  
MOREAU IN SUPPORT OF  
MOTION OF PLAINTIFF  
PERFECT 10, INC. FOR  
PRELIMINARY INJUNCTION**

Date: September 19, 2005  
Time: 10:00 a.m.  
Ctrm: The Honorable A. Howard  
Matz

1 I, Dave Moreau, hereby declare as follows:

2 1. I am the Chief Executive Officer of FoneStarz Media Limited  
3 (“FoneStarz”), a company incorporated in the United Kingdom and having its  
4 principal place of business at 2 Clare Hall, Parson’s Green, St Ives, Cambs, PE27  
5 4WY. I make this declaration in support of plaintiff Perfect 10, Inc’s (“Perfect 10”)  **6 Motion for Preliminary Injunction. I have direct and personal knowledge of the  
7 facts set forth herein and if called as a witness, could and would competently  
8 testify thereto.**

9 2. FoneStarz manages collections of digital content (including, but not  
10 limited to still images, videos, audio and digital music and text services) on a  
11 number of platforms including (without limitation) mobile phone networks. These  
12 platforms include some of the largest mobile phone carriers in the world, including  
13 Vodafone, T-Mobile, Telefonica and AT&T/Cingular.

14 3. In early 2005, FoneStarz entered into a worldwide, exclusive license  
15 agreement (“Agreement”) with Perfect 10 for the sale and distribution of Perfect  
16 10 copyrighted images and video (“Perfect 10 images”) for use on mobile phones.

17 4. Pursuant to the Agreement, Perfect 10 images were first made  
18 available on mobile phone networks via FoneStarz in February, 2005. Since that  
19 time they have accounted for an average of approximately 6,000 image sales per  
20 month on mobile phone networks in the United Kingdom. FoneStarz intends to  
21 expand its distribution of Perfect 10 images to mobile phone customers in other  
22 territories, including the United States.

23 5. The reduced sized Perfect 10 images distributed by FoneStarz are  
24 reduced in dimension and file-size to fit the colour screens of mobile phones. They  
25 can be extremely small, such as the 96 x 94 pixel image which I have pasted below  
26 as an exhibit:

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6. I have recently learned that reduced-sized Perfect 10 images are being made available through Google Image Search, for free. I have further learned that Google promotes the downloading of reduced-size images it displays onto mobile phones and formats those images so that they fit on mobile phone screens, as described on Google's website in a section entitled "Google Mobile." Beside offering the same images for downloading onto cell phones as Perfect 10, the size and clarity of the Perfect 10 images offered by Google is similar to the size and clarity offered by FoneStarz.

7. Obviously if consumers can, without paying for them, download the same images onto their mobile phones that FoneStarz offers under our Agreement with Perfect 10, consumers are unlikely to purchase such images from us. As well as losing sales because of the unauthorized images offered by Google, this also degrades the exclusive nature of our commercial relationship with Perfect 10.

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

Executed this 27<sup>th</sup> day of July 2005 at St Ives, Cambridgeshire, United Kingdom.

  
\_\_\_\_\_  
Dave Moreau