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Filing date: **04/06/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91203541
Party	Plaintiff Andre D. Rossouw
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Submission	Motion to Amend Pleading/Amended Pleading
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Signature	/9047/
Date	04/06/2012
Attachments	Motion to ammend to answer.pdf (10 pages)(735472 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application No. 85358119
Mark: GOOGLE+

Andre Rossouw (Plaintiff))	
)	
vs.)	MOTION FOR LEAVE TO AMEND
)	Opposition No.91203541
Google Incorporated (Defendant))	

**MOTION FOR LEAVE TO AMEND TO
RESPONSE TO GOOGLE INC. MOTION TO DISMISS**

Being it that it now that upon further examination of Defendants “Motion To Dismiss” further investigation by Plaintiff has revealed deliberate misleading statements by Defendant that could play a role in the Board's determination of ruling. Being it so due to the intricate composition of Defendant's motion certain claims and statements of said Motion to Dismiss evaded Plaintiff's attention due to the complex arranged elements of said Motion To Dismiss and took more research to explore and consider the merits thereof. In particular Defendant's statements to their claim to “social networking” and marks they have used for the particular industry of social networking concerning the DATES of said marks introduced by defendant in the Motion To Dismiss. Plaintiff hereby would move

to dispute those particular claims and would like to amend evidence thereof to Plaintiff's ANSWER to Motion To Dismiss to PRECEDE any ruling by the Board. Plaintiff also needed time to re-visit cases introduced by Defendant in their defense allegedly allowing their Trademark Application "preference" over Plaintiff's Registered Trademark. Plaintiff realizes that this motion may be barred by the timing rule however pleads that this information was NOT known to Plaintiff at the time of filing the answer to Motion To Dismiss and therefore could not amend this newly discovered information to Plaintiff's answer to Motion To Dismiss.

Plaintiff asserts that deliberate misleading statements was charged by Defendant and could be part of the deciding factors of the Board deciding on the Merits of the Motion To Dismiss.

Specifically:

(1) How Defendant is trying to mislead by stating that: "Specifically, marks like GOOGLE LATITUDE, GOOGLE BUZZ and GOOGLE WAVE have already been used by Google in connection with Google's social networking related services" The word "ALREADY" Plaintiff must assert as meaning BEFORE "Googabox" was used or Registered as a federal trademark in social networking services and obviously a FALSE claim (EXHIBIT 1,2,3) Plaintiff's mark Googabox was filed for application **Aug 31 2007 and was rewarded registration Dec 2nd 2008** way before Defendant's claims of aforesaid marks "already" been used for social networking. The dates for these marks introduced and launched are as follows:

Google Wave: Launched July 22nd 2009 and filed for Trademark Application Jun19th 2009 (EXHIBIT 1) Abandoned around Aug 4th 2010

Google Buzz: Launched Feb 11th 2010 No record of filing for application for Trademark (EXHIBIT 2) Abandoned round Feb 1st 2012

Google Latitude: Launched Feb 4th 2009 and filed for Trademark Application Sept 25th 2009 (EXHIBIT 3) Still in use.

Clearly the claim of "already" been used for social networking by Defendant seems false and deliberate

misleading claim of the facts.

(2)(i) The Defendant states cases previously addressed to by the Board or Courts and the first case being *Google Inc. v. Pivot Design*, however in particular that case was argued as Pivot Design Inc. was using or intended to use the mark "Blogle" as a "SEARCH ENGINE" as well, and Defendant having OWNED the Registered mark "Google" was well within argument seeing the SAME classes was the problem and the two marks had the same syllables and although only a part of the mark "Google" appeared in the mark "Blogle" and being it Pivot Design Inc. also used or intended to use the mark as a "search engine" gave sufficient merits for Defendant to oppose the mark "Blogle" as using a PART of Defendants mark in DIRECT CLASS competition to Defendant was clearly OPPOSABLE as it would make sense to the public that Defendant is most likely the one to use a name such as "Blogle" for "Blogs" being "Blog" combined with "Google" clearly = "Blogle" The mark "Google" however in comparison with "Googabox" would have been closer to "Google Box" instead if indeed was owned by Defendant at the time of the 'Googabox" application for Registration, and further Plaintiff pleads there is NO and never WAS a social network owned by Defendant called "Google Box" or "Google Plus" at the time of Plaintiff's mark Registration, and further,

(ii) The Defendant also cites a case "*Google Inc. v. Nikolaus Gubernator OPP 91171014*" and pertaining to the mark "CHMOOGLE". Here Plaintiff again will point to the obvious where ONE letter of the mark "Google" has been replaced with three letters on the front "CHM" and the obvious mark simply created with a "slur" mimicking the mark "Google" and the purpose of the mark could be seen as "obvious" in its purpose to "mimic" the mark Google. Plaintiff's mark is a simply NOT obvious as the bulk of the Defendants mark is quite clearly ABSCENT from the Plaintiffs mark, to the point of the Plaintiffs mark can not be confused with the "Google" mark, especially the fact that the Defendant has not had a social network with ANY part of their name at the time Plaintiff's mark got Registered, other than "ORKUT" and Plaintiff already showed that "Google Wave" Google Latitude" Google Buzz" was created AFTER the Plaintiffs mark "Googabox" was Registered as a social network, and at the time was not involved in any classes of Defendant's mark. Here however the Plaintiff re-iterates that the

mark “Google Plus” changes the concept being used as a social network, direct in competition to Plaintiff and that the Defendant is attempting to use their “famous” mark “Google” to undermine the validity of the Plaintiff's Registered mark by suggesting that THEIR NEWLY composed mark “Google Plus” should take PREFERENCE over the Plaintiff's mark “Googabox” and be allowed to Register due to their “infamous” mark “Google” and asserting that they see NO COMPARISON between the marks “Google Plus” and “Googabox”. How do they come to this conclusion? To put it in perspective, the Defendant is suggesting that the Plaintiff's mark should simply go away and be regarded as nothing seeing they have decided to file a mark using their “infamous mark” for the same class as well and the fact that that their mark resembles the Plaintiff's mark in sound should be disregarded and THEY should get preference to the class because of their infamous mark GOOGLE. The issue of WHY the Plaintiff feels that Registration of the “Google Plus” mark would harm Plaintiff's mark, has already been covered and the fact that the Defendant disagrees that the two marks because of the added on “plus” symbol sounds alike is absurd.

(iii) A thought to ponder is it would seem Defendant CHANGES their choice for a social network mark constantly or “test” marks or use as many marks as they want for the same product Social Networking, NOT showing ANY regard for other marks already in use and to the point that NO trademark could ever be safe from the Defendant if indeed they are allowed to simply add any word to their unique mark for such purpose. It MUST also be noted that most ALL marks named by defendant contains their FULL infamous mark “Google” and not “Goo”, “Goog” or 'Googa” etc.

(iv) Defendant also states that Plaintiff “repeatedly attempts to improperly dissect and compare the two marks” (Page 11 Motion to dismiss) and yet they THEMSELVES state that Plaintiff's Mark comprises a “dominant portion of Google’s infamous and earlier “GOOGLE mark” (dissecting) and thus must have the believe only THEY have the right to “dissect “Portions” of THEIR mark and apply to other marks as THEY wish (page 11 Motion to dismiss) This clearly demonstrates that Defendant's false belief is

that they also own “Portions” of their mark to any point as demonstrated by their “Table of marks” (p3, Motion To Dismiss)

(vii) Plaintiff’s Table of Mark Cases ruled in favor of Defendant in comparison to Plaintiff’s mark.

BLOGLE	GOOGLE
CHMOOGLE	GOOGLE
GOOGLEYFACES	GOOGLE
GOOGABOX	GOOGLE

Pls note that “Goo-ga-box” is not “Goo-gle-box” and that being so can not be confused with “Goo-gle” as well as the fact that there was no social network in operation or Registered now or at the time of Plaintiffs Registration except “ORKUT”. There should be a line drawn when it comes to “dissecting” marks to claim uniqueness, however do not let us forget that the specific “classes” also plays a major role in the equation. Even The SAME marks can be used for different classes by different entities unless a mark is too unique and then the total uniqueness or a significant part of that uniqueness should be present in the mark trying to register to warrant a refusal. “Google” is absent in Plaintiffs mark and Defendant had NOT had a social network with the uniqueness of their mark “Google”.

(viii) Defendant should NOT be allowed to “dissect” their mark at any point they want for the cause of claiming uniqueness, and SHOULD NOT be allowed to add onto their mark for a any class if it means damaging another mark already in use for that class yet they assert this to be “trademark rights”(p4.

Motion to dismiss) and if by rights, WHY then do they feel the need to apply to Register the mark “Google Plus” in the FIRST PLACE? Plaintiff undeviating simply referred to the practice of assumed “trademark rights” in this instance as an attempt to “monopolize”

In fact how far would Defendant be allowed to go in claiming “uniqueness” for their mark? Should they be allowed to have claim to the words or garble “GO” “OGL” “GOOG” even if these were used in classes BEFORE them that they are not Registered or operational in? If this Defendant is so allowed OTHERS would follow and soon we will run out of words to use as trademarks. Defendant themselves

are claiming in the “Motion to Dismiss” that “Google Plus and “Googabox” do not sound alike, yet are trying to show with their “Table” that “Googabox” somehow resembles “Google” and for that matter are contradicting themselves saying Plaintiff cant have it both ways yet THEY seem to adhere to the practice.

Plaintiff hereby respectfully asks the BOARD to STRIKE defendant's requested action from the BOARD to “dismiss” based on issues raised above and specifically Defendant's attempt to mislead.

So Stated and Submitted this 5th day of March 2012

Submitted By Andre D. Rossouw (Plaintiff)

PROOF OF SERVICE

This is to certify that a copy of this MOTION FOR LEAVE TO AMEND TO RESPONSE TO GOOGLE INC. MOTION TO DISMISS has been served to Defendant via ELECTRONIC MEANS to e-mail address of record: trademarks@fenwick.com

It is Plaintiff's stance that this type of correspondence was AGREED to by Defendant originally and Plaintiff has already communicated with Defendant via this means as is evident in the first filing of the OPPOSITION and Plaintiff will continue to do so unless otherwise instructed by the BOARD.

So stated this 2nd day of APRIL 2012 by Plaintiff for Plaintiff.

Andre D Rossouw (Plaintiff)

Google Wave Launch date Exhibit (1)



Home News Reviews Extra

Mobile Phones TVs & Home Cinema Cameras & Camcorders Computers & Accessories MP3 & Audio Satnav & GPS Gadgets Gaming



Google Wave launch date set

July 22, 2009 11:30 am

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by Ben Sillis Categories: Computers & Accessories News Tags: Google, google wave, Social-Networking, wave, Wiki

[Google Wave](#), the big G's wondrous widget social network mixing IM program that made a splash at its IO conference in May, has had a release date set so Joe Public can get in on the realtime action. Want to know when the invites will be washing up on these fair shores? Keep reading, son.



We've been watching the horizon for a glimpse of the Google Wave tsunami ever since it was unveiled 2 months ago and now we know when us non-developer types will be able to test the service out: 30 September. Come that day, Google will begin pushing out 100,000 Google Wave invites to those who signed up over on the official Google Wave page.

[Google Wave unveiled](#)

**HUMANS
iNVENT**

1. La Chambre des Machin digital and analogue
2. Engineering the world's chicken
3. I hate perfume: Make m England

Google Buzz Launch date Exhibit (2)

The screenshot shows a web browser window displaying the Los Angeles Times website. The address bar shows the URL: <http://latimesblogs.latimes.com/technology/2010/02/google>. The page header includes navigation links for 'Sign In or Sign Up', 'Like 215k', and various service categories like 'Membership Services', 'Place Ad', 'LAT Store', 'Jobs', 'Cars', 'Real Estate', 'Rentals', 'Classifieds', and 'Custom Publishing'. The main header features the 'Los Angeles Times' logo and the 'BUSINESS' section. Below this is a navigation bar with categories: LOCAL, U.S., WORLD, BUSINESS (selected), SPORTS, ENTERTAINMENT, HEALTH, LIVING, TRAVEL, OPINION, DEALS, and a 'Weekly Ad' button. A secondary navigation bar lists sub-categories: MONEY & CO., TECHNOLOGY, PERSONAL FINANCE, SMALL BUSINESS, COMPANY TOWN, JOBS, REAL ESTATE, and CARS. A 'Search' box is located on the right. A sports banner for 'TOMORROW' features 'BULLS vs THUNDER 1PM/ET' and 'HEAT vs CELTICS 3:30PM/ET'. The main article title is 'Technology' with the subtitle 'THE BUSINESS AND CULTURE OF OUR DIGITAL LIVES, FROM THE L.A. TIMES'. The article headline is 'Privacy concerns overshadow Google Buzz launch', dated 'February 11, 2010 | 5:00 pm'. The article text begins: 'Although the social network just launched this week, Google Buzz is already being targeted by users over privacy concerns. When first loading Google Buzz, Gmail users are presented with both a list of followers and a list...'. A 'Recommended on Facebook' sidebar on the right includes a 'Sign Up' button and news items like 'Dick Cheney cancels trip to Canada, saying it's too dangerous' and 'Stanford tops UC Berkeley in world academic rankings; UCLA rises'. The Windows taskbar at the bottom shows the time as 9:45 PM.

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TOMORROW KIA NBA COUNTDOWN 12:30PM/ET
BULLS vs THUNDER 1PM/ET abc
HEAT vs CELTICS 3:30PM/ET abc

Technology

THE BUSINESS AND CULTURE OF OUR DIGITAL LIVES, FROM THE L.A. TIMES

Privacy concerns overshadow Google Buzz launch

February 11, 2010 | 5:00 pm

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Although the social network just launched this week, Google Buzz is already being targeted by users over privacy concerns.

When first loading Google Buzz, Gmail users are presented with both a list of followers and a list

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Google Latitude Launch Date Exhibit(3)

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Google Latitude launches; Social networking meets maps

By Larry Dignan | February 4, 2009, 2:25am PST

Just in case you have ever wanted to know your friends' precise movements—every location, every right turn, every trip to Starbucks—Google has launched Latitude, a new feature for Google Maps that runs on your PC and mobile device. Latitude is more evidence that social networking tools will increasingly be layered on top of existing apps.

The early reviews are good (Techmeme). Google Maps gets social. And more importantly, Google has done the social networking thing on its own terms and from a position of strength (Maps, see Google Mobile blog).

Link Google Maps Latitude up with Twitter and

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