

ORIGINAL

Winston & Strawn LLP
333 South Grand Avenue
Los Angeles, CA 90071-1543

1 Andrew P. Bridges (SBN: 122761)
Jennifer A. Golinveaux (SBN: 203056)
2 Matthew A. Scherb (SBN: 237461)
WINSTON & STRAWN LLP
3 101 California Street
San Francisco, CA 94111-5894
4 Telephone: 415-591-1000
Facsimile: 415-591-1400
5 Email: abridges@winston.com
jgolinveaux@@winston.com
6 mscherb@winston.com

7 Debra J. Albin-Riley (SBN: 112602)
WINSTON & STRAWN LLP
8 333 South Grand Avenue
Los Angeles, CA 90071-1543
9 Telephone: 213-615-1700
Facsimile: 213-615-1750
10 Email: driley@winston.com

11 Attorneys for Defendant
MICROSOFT CORPORATION

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **LOS ANGELES DIVISION**

15 PERFECT 10, INC.

16 Plaintiff,

17 vs.

18 MICROSOFT CORPORATION and
19 DOES 1 through 10, inclusive,

20 Defendant.

Case No. CV 07-5156 AHM (SHx)

MICROSOFT CORPORATION'S
ANSWER TO COMPLAINT

DEMAND FOR JURY TRIAL

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FILED

21
22 Microsoft Corporation ("Microsoft") responds to the Amended Complaint as
23 follows:

24 1. Microsoft admits the allegations of paragraph 1 of the Amended
25 Complaint.

26 2. Microsoft admits that venue is proper in this Court pursuant to 28 U.S.C.
27 §§ 1391(b)(1), 1391(c), and 1400(a). Microsoft denies the remaining allegations of
28 paragraph 2 of the Amended Complaint.

1 3. Microsoft denies the allegations of paragraph 3 of the Amended
2 Complaint.

3 4. Microsoft lacks information to admit or deny the allegations of paragraph
4 4 of the Amended Complaint and therefore denies the allegations.

5 5. Microsoft admits the allegations of paragraph 5 of the Amended
6 Complaint.

7 6. Microsoft denies any allegations of paragraph 6 of the Amended
8 Complaint that require a response.

9 7. Microsoft denies the allegations of paragraph 7 of the Amended
10 Complaint.

11 8. Microsoft denies the allegations of paragraph 8 of the Amended
12 Complaint.

13 9. Microsoft lacks information to admit or deny the first sentence of
14 paragraph 9 of the Amended Complaint. Microsoft denies the remaining allegations
15 of paragraph 9.

16 10. Microsoft lacks information to admit or deny the allegations of paragraph
17 10 of the Amended Complaint and therefore denies the allegations.

18 11. Microsoft lacks information to admit or deny the allegations of paragraph
19 11 of the Amended Complaint and therefore denies the allegations.

20 12. Microsoft lacks information to admit or deny the allegations of paragraph
21 12 of the Amended Complaint and therefore denies the allegations.

22 13. Microsoft lacks information to admit or deny the allegations of paragraph
23 13 of the Amended Complaint and therefore denies the allegations.

24 14. Microsoft denies the final sentence of paragraph 14 of the Amended
25 Complaint. Microsoft lacks information to admit or deny the remaining allegations of
26 paragraph 14 of the Amended Complaint and therefore denies the allegations.

27 15. Microsoft denies the final sentence of paragraph 15 of the Amended
28 Complaint. Microsoft lacks information to admit or deny the remaining allegations of

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1 the first sentence of paragraph 15 of the Amended Complaint and therefore denies the
2 allegations.

3 16. Microsoft admits the first sentence of paragraph 16 of the Amended
4 Complaint. Microsoft denies the remaining allegations of paragraph 16.

5 17. Microsoft denies the allegations of paragraph 17 of the Amended
6 Complaint.

7 18. Microsoft denies the allegations of paragraph 18 of the Amended
8 Complaint.

9 19. Microsoft denies the first sentence of paragraph 19 of the Amended
10 Complaint. The remaining allegations of paragraph 19 are unintelligible in their
11 context, and Microsoft accordingly denies those allegations.

12 20. Microsoft denies the allegations of paragraph 20 of the Amended
13 Complaint.

14 21. Microsoft denies the allegations of paragraph 21 of the Amended
15 Complaint.

16 22. Microsoft denies the allegations of paragraph 22 of the Amended
17 Complaint.

18 23. Microsoft denies the allegations of paragraph 23 of the Amended
19 Complaint.

20 24. Microsoft denies the allegations of paragraph 24 of the Amended
21 Complaint.

22 25. Microsoft denies the allegations of paragraph 25 of the Amended
23 Complaint.

24 26. Microsoft denies the allegations of paragraph 26 of the Amended
25 Complaint.

26 27. Microsoft denies the allegations of paragraph 27 of the Amended
27 Complaint.

28 28. Microsoft denies the allegations of paragraph 28 of the Amended

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1 Complaint.

2 **FIRST CLAIM FOR RELIEF**

3 29. Microsoft incorporates here by reference its responses to paragraphs 1
4 through 28 above.

5 30. Microsoft denies the allegations of paragraph 30 of the Amended
6 Complaint.

7 31. Microsoft lacks information to admit or deny the allegations of paragraph
8 31 of the Amended Complaint and therefore denies the allegations.

9 32. Microsoft denies the allegations of paragraph 32 of the Amended
10 Complaint.

11 33. Microsoft denies the allegations of paragraph 33 of the Amended
12 Complaint.

13 34. Microsoft denies the allegations of paragraph 34 of the Amended
14 Complaint.

15 35. Microsoft denies the allegations of paragraph 35 of the Amended
16 Complaint.

17 36. Microsoft denies the allegations of paragraph 36 of the Amended
18 Complaint.

19 37. Microsoft denies the allegations of paragraph 37 of the Amended
20 Complaint.

21 38. Microsoft denies the allegations of paragraph 38 of the Amended
22 Complaint.

23 39. Microsoft denies the allegations of paragraph 39 of the Amended
24 Complaint.

25 40. Microsoft denies the allegations of paragraph 40 of the Amended
26 Complaint.

27 41. Microsoft denies the allegations of paragraph 41 of the Amended
28 Complaint.

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1 42. Microsoft denies the allegations of paragraph 42 of the Amended
2 Complaint.

3 43. Microsoft denies the allegations of paragraph 43 of the Amended
4 Complaint.

5 SECOND CLAIM FOR RELIEF

6 44. Microsoft incorporates here by reference its responses to paragraphs 1
7 through 28 above.

8 45. Microsoft lacks information to admit or deny the allegations of paragraph
9 45 of the Amended Complaint and therefore denies the allegations.

10 46. Microsoft denies the allegations of paragraph 46 of the Amended
11 Complaint.

12 47. Microsoft lacks information to admit or deny the allegations of paragraph
13 47 of the Amended Complaint and therefore denies the allegations.

14 48. Microsoft lacks information to admit or deny the allegations of paragraph
15 48 of the Amended Complaint and therefore denies the allegations.

16 49. Microsoft lacks information to admit or deny the allegations of paragraph
17 49 of the Amended Complaint and therefore denies the allegations.

18 50. Microsoft denies the allegations of paragraph 50 of the Amended
19 Complaint.

20 51. Microsoft denies the allegations of paragraph 51 of the Amended
21 Complaint.

22 52. Microsoft denies the allegations of paragraph 52 of the Amended
23 Complaint.

24 53. Microsoft denies the allegations of paragraph 53 of the Amended
25 Complaint.

26 54. Microsoft denies the allegations of paragraph 54 of the Amended
27 Complaint.

28 55. Microsoft denies the allegations of paragraph 55 of the Amended

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1 Complaint.

2 56. Microsoft denies the allegations of paragraph 56 of the Amended
3 Complaint.

4 57. Microsoft denies the allegations of paragraph 57 of the Amended
5 Complaint.

6 **DEFENSES**

7 Microsoft asserts the following defenses, without regard to whether they are
8 "affirmative" defenses or matters as to which the plaintiff has the burden of proof.

9 Plaintiff's Amended Complaint, and each cause of action within it, fails to state
10 a cause of action.

11 This Court lacks subject matter jurisdiction over claims to enforce copyrights
12 for which Plaintiff has not previously obtained, or has not pleaded ownership of,
13 registrations.

14 Plaintiff's claims are barred by the doctrines of fair use.

15 Plaintiff's claims are barred by relevant statutes of limitations.

16 Plaintiff's claims are barred by laches.

17 Plaintiff's claims are barred by its failure to mitigate damages.

18 Plaintiff's claims are barred by contributory negligence.

19 Plaintiff's claims are barred by its failure to join indispensable parties.

20 Plaintiff's claims are barred by the First Amendment to the United States
21 Constitution.

22 Plaintiff's copyright claims are barred, or its remedies limited, by the Online
23 Copyright Infringement Liability Limitation Act, 17 U.S.C. § 512.

24 Plaintiff's claims are barred by estoppel.

25 Plaintiff's claims are barred by consent, waiver, acquiescence, and license.

26 Plaintiff's claims are barred by unclean hands.

27 Plaintiff's remedies are limited by 15 U.S.C. § 1114(2).

28 Plaintiff's claims for statutory damages are barred or limited by the U.S.

1 Constitution.

2 PRAYER FOR RELIEF

3 Microsoft seeks relief as follows:

- 4 a. That the Court enter judgment in favor of Microsoft and against the
- 5 Plaintiff on all causes of action;
- 6 b. That the Court award Microsoft costs of suit, including attorney's fees;
- 7 and
- 8 c. That the Court grant such additional relief as is just and equitable.

9 Dated: November 13, 2007

WINSTON & STRAWN LLP

11 By: 

12 Andrew P. Bridges
 13 Debra J. Albin-Riley
 14 Jennifer Golinveaux
 15 Matthew A. Scherb

16 Attorneys for Defendant Microsoft
 17 Corporation

18 DEMAND FOR JURY TRIAL

19 Microsoft Corporation hereby demands a jury trial for all issues triable by jury.

20 Dated: November 13, 2007

Respectfully submitted,

22 WINSTON & STRAWN LLP

23 By: 

24 Andrew P. Bridges
 25 Debra J. Albin-Riley
 26 Jennifer Golinveaux
 27 Matthew A. Scherb

28 Attorneys for Defendant Microsoft
 Corporation

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 Los Angeles, CA 90071-1543

PROOF OF SERVICE
Perfect 10, Inc. v. Microsoft, Inc.
U.S.D.C. (Central District) # CV07-05156 MMM (MANx)

STATE OF CALIFORNIA }
COUNTY OF LOS ANGELES } ss

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Winston & Strawn LLP, 333 South Grand Avenue, Suite 3800, Los Angeles, CA 90071-1543. On November 13, 2007, I served the within documents:

**MICROSOFT CORPORATION'S ANSWER TO COMPLAINT
DEMAND FOR JURY TRIAL**

on the interested parties in this action by placing true copies thereon enclosed in a sealed envelope addressed as follows:

Jeffrey N. Mausner
Warner Center Towers
21800 Oxnard Street, Suite 910
Woodland Hills, CA 91367
Telephone: 310.617.8100
Fax: 818.716.2773

VIA MAIL: By placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

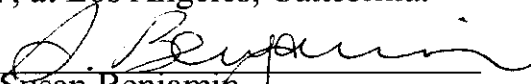
VIA FACSIMILE: On _____, I sent such document(s) from facsimile machine 213-615-1750. I certify that said transmission was completed and that all pages were received and that a report was generated by facsimile machine 213-615-1750 which confirms said transmission and receipt.

VIA OVERNIGHT DELIVERY: By placing the document(s) listed above in a sealed envelope and sent on _____ via Federal Express for overnight delivery to the interested party(ies) in this action.

On _____, I sent such document(s) by electronic mail to the addressees' email addresses indicated above.

I declare that I am employed in the office of a member of the bar of this court whose direction the service was made.

Executed on November 13, 2007, at Los Angeles, California.


Susan Benjamin

Winston & Strawn LLP
333 South Grand Avenue
Los Angeles, CA 90071-1543