

FILED

2006 SEP 14 PM 3:35

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY RM DEPUTY

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9 Attorneys for Defendant The Board of Trustees
10 of the California State University

11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA

BY FAX

13 MARKETING INFORMATION
14 MASTERS, INC., a California
15 corporation,

16 Plaintiff,

17 v.

18 THE BOARD OF TRUSTEES OF THE
19 CALIFORNIA STATE UNIVERSITY,
20 WHICH IS THE STATE OF
21 CALIFORNIA ACTING IN ITS
22 HIGHER EDUCATION CAPACITY
(erroneously sued herein as THE
23 BOARD OF TRUSTEES OF THE
24 CALIFORNIA STATE UNIVERSITY
25 SYSTEM, A PUBLIC ENTITY
26 ACTING THROUGH ITS
27 SUBDIVISION SAN DIEGO STATE
28 UNIVERSITY); and ROBERT A.
RAUCH, an individual,

Defendants.

CASE NO. 06CV1682 JAH/JMA

NOTICE OF MOTION TO DISMISS
BROUGHT BY THE BOARD OF
TRUSTEES OF THE CALIFORNIA
STATE UNIVERSITY PURSUANT
TO FRCP 12(b)(1) AND 12(b)(6)

FILED CONCURRENTLY WITH
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION
OF JONATHAN S. PINK

ACTION FILED: August 18, 2006

Hearing Date: November 16, 2006
Time: ~~10:30~~ 3:00 P.M.
Dept: 11

TO PLAINTIFF MARKETING INFORMATION MASTERS, INC. ("MIM"),
AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on November 16, 2006 at ^{3:00 P.M.}~~10:30 a.m.~~ or as soon
thereafter as counsel may be heard in the courtroom of the Hon. John A. Houston, of
the United States District Court for the Southern District of California located at 880

ORIGINAL

LEWIS BRISBOIS BISGAARD & SMITH LLP

650 TOWN CENTER DRIVE, SUITE 1400
COSTA MESA, CALIFORNIA 92626-1925
TELEPHONE (714) 545-9200


OR

1 Front Street, San Diego, California, Courtroom 11, defendant THE BOARD OF
 2 TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY (the "Trustees") will
 3 move the Court for an order dismissing the entire complaint for lack of subject matter
 4 jurisdiction pursuant to Federal Rules of Civil Procedure Rule 12(b). Additionally,
 5 the Trustees will move for dismissal of MIM's complaint because such claims are
 6 precluded by the Eleventh Amendment of the United States Constitution, and thus
 7 must be dismissed pursuant to Federal Rules of Civil Procedure Rule 12(b)(6).
 8 Finally, the Trustees will move for dismissal of MIM's state law claims because such
 9 claims are preempted by the Copyright Act, and as such must be dismissed pursuant
 10 to Federal Rules of Civil Procedure, Rule 12(b)(6).

11 This motion is based on this notice, the concurrently served memorandum of
 12 points and authorities, the Declaration of Jonathan Pink attached thereto, the records
 13 on file in this action. The motion is made following a telephone conference of
 14 counsel which took place on September 1, 2006, and a subsequent letter to counsel
 15 regarding the same dated September 11, 2006.

16 DATED: September 14, 2006 Respectfully submitted,

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 18 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
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22
 23 By 
 24 Jonathan Pink
 25 Member of Lewis Brisbois Bisgaard & Smith LLP
 26 Attorneys for Defendant Board of Trustees of
 27 the California State University
 28

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CERTIFICATE OF SERVICE

Trustees adv. Marketing Information Masters, Inc.
USDC Southern, Case #06CV 1682 JAH/JMA (Our 24363.xx)

I hereby certify that a copy of the foregoing motion was this date served upon all counsel of record by placing a copy of the same in the United States mail, postage prepaid, and sent to their last known address as follows:

Gregory P. Goonan, Esq.
The Affinity Law Group APC
600 West Broadway, Suite 400
San Diego, CA 92101

Attorney for Plaintiff **MARKETING INFORMATION MASTERS, INC.**

Phone: 619.702.4335
Fax: 619.243-0088

Executed on September 14, 2006, at Costa Mesa, California.


CAROLYN JEREYES

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