

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 1:09-CV-00636-REB-KLM

VIDEO PROFESSOR, INC.

Plaintiff,

v.

AMAZON.COM, INC.

Defendant.

**UNOPPOSED MOTION FOR EXTENSION OF TIME TO COMPLY WITH
LOCAL CIVIL RULE 54.3**

On Friday, May 7, 2010, defendant Amazon.com, Inc. ("Amazon") intends to file a motion to declare this case exceptional under 15 U.S.C. § 1117 and award Amazon its reasonable attorney fees. Because Amazon's claim for attorney fees is contingent on the Court's finding that the case is exceptional under 15 U.S.C. § 1117, in this unopposed motion, Amazon requests in the interest of economy to be granted leave for an extension of time to submit a detailed description of services rendered, accompanying affidavits and summary of qualifications in support of its attorney fees motion, all as provided by Local Civil Rule 54.3, until 14 days after the date of the Court's ruling on Amazon's motion to declare this case exceptional.

A proposed order is submitted with this motion in accordance with Local Civil Rule 7.1(F).

CERTIFICATE OF CONSULTATION

1. Pursuant to Local Civil Rule 7.1(A), undersigned counsel for Amazon met and conferred with counsel for plaintiff Video Professor, Inc. (“VPI”) regarding the subject matter of this Motion. VPI does not oppose the relief requested herein.

GROUND FOR MOTION

2. On April 21, 2010, the Court issued an Order granting Amazon’s Motion for Summary Judgment in this case, and directing the Clerk to enter judgment as a matter of law in favor of Amazon on each of VPI’s eight claims for relief. [#74]. On April 23, 2010, the Clerk entered judgment in favor of Amazon. [#75].

3. Pursuant to Federal Rule of Civil Procedure 54, Amazon must file its Bill of Costs, as well as any motion for attorneys’ fees, within 14 days of entry of judgment, which falls on May 7, 2010. Accordingly, Amazon intends to file, on Friday, May 7, 2010, a motion to declare this case exceptional pursuant to 15 U.S.C. § 1117 and award Amazon its reasonable attorney fees.

4. Rule 54(d)(2)(B) states that unless a statute or a court order provides otherwise, any motion for attorneys’ fees must: (i) be filed no later than 14 days after the entry of judgment; (ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award; (iii) state the amount sought or provide a fair estimate of it; and (iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

5. Amazon’s motion for attorneys’ fees will comply with the requirements of Rule 54—Amazon’s motion will specify the statute entitling Amazon to the award of

attorney fees, provide a fair estimate of the amount sought and be filed within 14 days from entry of judgment.

6. However, in addition to the requirements of Rule 54, Local Civil Rule 54.3 imposes additional requirements on a party seeking recovery of attorney fees:

- A. **Motion Supported by Affidavit.** Unless otherwise ordered by the court, a motion for attorney fees shall be supported by one or more affidavits.
- B. **Content of Motion.** A motion shall include the following for each person for whom fees are claimed:
 - 1. a detailed description of the services rendered, the amount of time spent, the hourly rate, and the total amount claimed; and
 - 2. a summary of relevant qualifications and experience.

D.C.COLO.LCivR 54.3.

7. Because Amazon's fee claim is contingent on the Court finding that this is an exceptional case under 15 U.S.C. § 1117, in the interest of judicial economy, Amazon respectfully requests that the Court permit Amazon to fulfill the additional requirements of Local Civil Rule 54.3 within 14 days after the Court rules on its motion to declare this case exceptional pursuant to 15 U.S.C. § 1117.

8. Amazon's motion is timely, and complies with this Court's Civil Practice Standard I.G.2, which requires motions for extensions of time to be filed at least 3 business days prior to the date on which Amazon will file its motion to declare case exceptional and for reasonable attorney fees.

9. Amazon's request is supported by good cause. See REB Civ. Practice Standard I.G.1. The Lanham Act provides authorizes a prevailing party to recover its reasonable attorneys fees in "exceptional cases." 15 U.S.C. § 1117. Thus, while

Amazon is the prevailing party, a finding that this case is exceptional is required before Amazon can recover its attorney fees.

10. Rule 54 authorizes the Court to “decide issues of liability for fees before receiving submissions on the value of services.” Fed. R. Civ. P. 54(d)(2)(C). Because Amazon’s claim for attorney fees depends on the Court’s determination that this case is exceptional, the most efficient manner of resolving Amazon’s motion for attorney fees is to adopt the procedure contemplated by Rule 54(d)(2)(C) and determine issue of liability for fees (*i.e.* whether the case is “exceptional”) prior to turning to the issue of the appropriate amount of the award.

11. In addition, fulfilling the requirements of Local Civil Rule 54.3 will require the disclosure of Amazon’s attorney fee billings, including descriptions of work performed, that is sensitive to Amazon and will require redaction of privileged information. If the Court determines that this case is not exceptional, the disclosure of such information (and the effort to prepare the necessary redactions) would have been unnecessary. The proposed extension of time until 14 days after the Court rules on Amazon’s motion to declare the case exceptional will enable Amazon to disclose this information only if necessary; that is, only if the Court determines that the case is exceptional.

12. Accordingly, good cause supports Amazon’s request for an extension of time. Deferring submissions on the amount and reasonableness of attorney fees incurred by Amazon until after a determination that this case is exceptional is the most

efficient method, for both the Court and the parties, of resolving Amazon's request for attorney fees.

CONCLUSION

For the foregoing reasons, Amazon requests that the Court extend the deadline for Amazon to comply with the requirements of Local Civil Rule 54.3 until 14 days after the Court rules on Amazon's motion to declare this case exceptional pursuant to 15 U.S.C. § 1117. Pursuant to Local Civil Rule 7.1(F), a proposed form of order is attached hereto.

Respectfully submitted this 4th day of May, 2010.

s/ Jared B. Briant

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CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on May 4, 2010, I electronically filed the foregoing **UNOPPOSED MOTION FOR EXTENSION OF TIME TO COMPLY WITH LOCAL CIVIL RULE 54.3** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following persons at the given email addresses:

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/s/ Jared B. Briant
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