## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No.: 1:09-cv-02014 - (RWR)

JACQUES SERVIN (aka ANDY BICHLBAUM aka HINGO SEMBRA), IGOR VAMOS (aka MIKE BONANNO), SUPPORT AND COMMITMENT, INC., DAVID SIEVERS, MORGAN GOODWIN, SARAH MURPHY, and JOHN and JANE DOES NOS. 1-20,

Defendants.

## PLAINTIFF'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT

Plaintiff, the Chamber of Commerce of the United States of America (the "Chamber"), pursuant to Fed. R. Civ. P. 7(b), respectfully moves the Court for leave to file a Supplemental Brief in Opposition to Defendants' Motion to Dismiss First Amended Complaint. The Chamber seeks leave to file the Supplemental Brief for the purpose of informing the Court of recent actions by the Defendants that are inconsistent with assertions they have made in support of their Motion to Dismiss. The Chamber's proposed Supplemental Brief is attached to this Motion as Exhibit No. 1.

<sup>&</sup>lt;sup>1</sup> The Chamber is seeking leave to file a Supplemental Brief as the most expeditious means of notifying the Court of Defendants' recent actions. If the Court prefers that Defendants' recent conduct be added to the formal pleadings, the Chamber will seek leave to file a Second Amended Complaint pursuant to Fed. R. Civ. P. 15(a)(2).

The grounds for the Chamber's Motion are as follows:

- 1. On October 26, 2009, the Chamber filed a complaint against Defendants for, among other things, trademark infringement and dilution, cyber-piracy, unfair competition, and false advertising. It filed a First Amended Complaint on November 6, 2009. The Chamber's claims are based upon, among other misconduct, Defendants' misappropriation of the Chamber's name and marks to advance the commercial ventures of Defendants Servin and Vamos, who do business as the "Yes Men." *E.g.*, First Am. Compl. ¶¶ 12-16, 22-29, 31-33. The Defendants' unlawful activity included, *inter alia*, impersonating Chamber representatives at a bogus "press conference" held on October 19, 2009, where Defendants falsely attributed positions and statements to the Chamber and its President. As alleged in the First Amended Complaint, Defendants filmed the bogus press conference, that footage was then posted on the internet, and certain of the Defendants used the publicity to promote their latest commercial movie, "The Yes Men Fix The World." *Id.* ¶¶ 26, 28 & 33.
- 2. In its prayer for relief, the Chamber seeks an injunction that, *inter alia*, (a) "[p]rohibits Defendants from publishing or distributing videotape or audiotape of the October 19, 2009 'press conference' on the internet, in commercial theatrical distribution, or otherwise," (b) "[r]equires Defendants to remove from the internet . . . all recordings of the October 19, 2009 'press conference,'" and (c) requires Defendants to deliver to the Chamber all existing copies of video and audio recordings of the October 19, 2009 "press conference."
- 3. On January 5, 2010, Defendants filed a Motion to Dismiss Plaintiff's First

  Amended Complaint. In the Reply Brief that they submitted to the Court on February 19, 2010
  in support of their Motion, Defendants characterized their conduct as being "noncommercial"

political parody" and they denied that their activities were used to promote theatrical-release

movies. Defendants' Reply at 6 & 10.

4. As discussed more fully in the attached Supplemental Brief, on or about July 23, 2010,

Defendants Servin and Vamos released a new, "special edition" of their commercial movie, "The

Yes Men Fix The World," which includes footage of the fraudulent press release at issue in this

case. The footage of the fraudulent "press conference" is being used to solicit money to fund the

Yes Men's activities and to promote sales of their DVDs.

5. Defendants' current activities are inconsistent with assertions they made in briefing on

their Motion to Dismiss and provide an additional reason why Defendants' Motion to Dismiss

should be denied.

WHEREFORE, the Chamber respectfully requests that the Court grant it leave to file the

Supplemental Brief in Opposition to Defendants' Motion to Dismiss First Amended Complaint

that is attached as Exhibit No. 1 to this Motion.

Dated: July 30, 2010

**HUNTON & WILLIAMS, LLP** 

/s/ Michael J. Mueller\_

RICHARD L. WYATT, JR.

(D.C. Bar No. 424775)

MICHAEL J. MUELLER

(D.C. Bar No. 412025)

THOMAS M. HUGHES

(D.C. Bar No. 460134)

WILLIAM E. POTTS, JR.

(D.C. Bar No. 945824)

1900 K Street, NW

Washington, DC 20006

Tel: 202-955-1500

Fax: 202-778-2201

3

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic mail and U.S. Mail postage pre-paid this 30th day of July, 2010 upon:

Robert Corn-Revere, Esq. Davis Wright Tremaine, LLP 1919 Pennsylvania Avenue, N.W., Suite 200 Washington, D.C. 20006

Matthew Zimmerman, Esq. Electronic Frontier Foundation 454 Shotwell Street San Francisco, CA 94110

Counsel for Defendants

By: /s/ Michael J. Mueller