

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FOX TELEVISION STATIONS, INC., et al.

CIVIL ACTION NO. 1:13-cv-00758 (RMC)

Plaintiffs/Counter-Defendants,

v.

FILMON X, LLC, et al.

Defendants/Counter-Plaintiffs.

**EVIDENTIARY OBJECTIONS TO THE DECLARATIONS OF JOHN C. ULIN AND
JULIE A. SHEPARD IN SUPPORT OF PLAINTIFFS’
RESPONSE TO THE ORDER TO SHOW CAUSE RE CONTEMPT**

Defendant FilmOn X¹ hereby submits these Evidentiary Objections to the Declarations of John C. Ulin [dkt. 57-1] and Julie A. Shepard [dkt. 57] used in support of Plaintiffs’ Response to the Order to Show Cause re Contempt. The Ulin and Shepard declarations purport to attach unauthenticated highly objectionable internet articles published on MultiChannel.com and Variety.com. This Court should disregard the hearsay statements contained in those articles.

**OBJECTIONS TO DECLARATION
OF JULIE SHEPARD**

Ulin Decl. ¶ 2 & Exhibit 1 thereto

FilmOn X’s Objections

--Hearsay. Lack of foundation. Irrelevance

The Variety.com internet article attached as Exhibit 1 to the Ulin declaration constitutes inadmissible hearsay and the declarant lacks foundation and personal knowledge about the

¹ “FilmOn X” or “Defendants” refers collectively herein to defendants FilmOn X LLC, FilmOn.TV Networks, Inc., FilmOn.TV, Inc. and FilmOn.com, Inc.

statements contained therein. “[C]ourts within this Circuit have consistently barred newspaper articles from introduction as evidence due to the fact that they constitute inadmissible hearsay.” *Atkins v. Fischer*, 232 F.R.D. 116, 132 (D.D.C. 2005) (citing to *Metro. Council of NAACP Branches v. Fed. Communications Comm’n*, 46 F.3d 1154, 1165 (D.C.Cir.1995) (“We seriously question whether a New York Times article is admissible evidence of the truthfulness of its contents.”); *United States v. Pollard*, 161 F.Supp.2d 1, 6 (D.D.C.2001) (barring admission of newspaper articles as insufficient proof of a party's claim). Moreover, the article is incomplete, mischaracterizes the facts, and is irrelevant.

Shepard Decl. ¶ 2 & Exhibit 1 thereto

FilmOn X’s Objections

--Hearsay. Lack of foundation. Irrelevance

The MultiChannel.com internet article attached as Exhibit 1 to the Shepard declaration constitutes inadmissible hearsay and the declarant lacks foundation and personal knowledge about the statements contained therein. “[C]ourts within this Circuit have consistently barred newspaper articles from introduction as evidence due to the fact that they constitute inadmissible hearsay.” *Atkins v. Fischer*, 232 F.R.D. 116, 132 (D.D.C. 2005); *see also United States v. Pollard*, 161 F.Supp.2d 1, 6 (D.D.C.2001) (barring admission of newspaper articles as insufficient proof of a party's claim). Moreover, the article is incomplete, mischaracterizes the facts, and is irrelevant.

Shepard Decl. ¶ 2

--Hearsay. Lack of foundation. Lack of personal knowledge. Irrelevance

Ms. Shepard’s mischaracterization of the MultiChannel.com internet article as reporting that “Alki David, FilmOn’s founder, intended to ‘defy’ the preliminary injunction” lacks foundation and constitutes inadmissible hearsay. The article itself does not attribute the word

“defy” to Mr. David. Ms. Shepard (an attorney in this case) is not the author of this article and does not have any personal knowledge about Mr. David’s out-of-court statements.

October 25, 2013

Respectfully submitted,

By: /s/ Ryan G. Baker

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