

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

Case No. 2:04-cv-47-FtM-33SPC (LAG)

WHITNEY INFORMATION
NETWORK, INC., a Colorado corporation,
and RUSS WHITNEY, an individual,

Plaintiffs,

v.

XCENTRIC VENTURES, LLC., an
Arizona limited liability company;
BADBUSINESSBUREAU.ORG, an
Arizona limited liability company; and
ED MAGEDSON, an individual,

Defendants.

**PLAINTIFFS' UNOPPOSED MOTION FOR PERMISSION TO CONDUCT THE
CASE MANAGEMENT REPORT MEETING TELEPHONICALLY**

Plaintiffs, WHITNEY INFORMATION NETWORK, INC. and RUSS WHITNEY,
by and through their undersigned counsel, file this, their Unopposed Motion for Permission
to Conduct the Case Management Report Meeting Telephonically, and state:

1. On or about January 22, 2004, Plaintiffs filed their Complaint against
Defendants alleging: I) Federal Trademark Infringement; II) False Designation of Origin,
False Description and False Representation under 15 U.S.C. § 1125(a); III) Common
Law Trademark Infringement; and IV) Defamation per se of Business Reputation.

2. On or about June 28, 2004, Defendants served their Motion to Dismiss
Plaintiffs' Complaint for lack of personal jurisdiction.

3. On September 8, 2004, this Court entered an Order denying Defendants' motion for lack of personal jurisdiction.

4. On September 21, 2004, Defendants filed their Second Motion to Dismiss Complaint for Failure to State a Claim.¹

5. On October 13, 2004, Plaintiffs filed their Motion to Strike Defendants' Second Motion to Dismiss simultaneously with their Motion for Enlargement of Time to File a Response to Defendants' Second Motion to Dismiss pending a ruling by the Court on Plaintiffs' Motion to Strike.

6. On October 15, 2004, this Court granted Plaintiffs' Motion for Enlargement of Time to respond to Defendants' Second Motion to Strike and Plaintiffs' Motion to Strike Defendants' Second Motion to Dismiss remains pending.

7. On or about January 30, 2004, this Court entered an Order requiring the parties' lead counsel to meet in person for a case management conference before the Case Management Report is prepared and filed.

8. However, Plaintiffs' lead counsel is located in Fort Lauderdale, Florida, while Defendants' lead counsel is located in Phoenix, Arizona, with their local counsel located in Miami, Florida, which is approximately one hour away.

9. To avoid any further unnecessary delay in filing the Case Management Report, and to avoid any additional expense, Plaintiffs move this Court to allow the parties to conduct a telephonic conference on a date mutually agreed upon by the parties. Local Rule 3.01(I), M.D.Fla.L.R.

¹ Defendants' second motion to dismiss was erroneously titled Second Motion to Dismiss Complaint for Lack of Personal Jurisdiction, which was later corrected by Defendants' Notice of Errata and filing their corrected Second Motion to Dismiss for Failure to State a Claim with Supporting Memorandum of Law.

10. Neither party will be unfairly prejudiced by allowing a telephonic conference.

11. Plaintiffs' counsel, Christina M. Kitterman, has contacted Defendants' local counsel, Tina M. Talrchyk, and she has no objections to the granting of Plaintiffs' motion.

WHEREFORE, Plaintiffs, WHITNEY INFORMATION NETWORK, INC. and RUSS WHITNEY, respectfully request that this Court enter an Order Granting Plaintiffs' Motion for Permission to Conduct the Case Management Report Meeting Telephonically.

Respectfully submitted,

ROTHSTEIN ROSENFELDT
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By: /s/ Christina M. Kitterman
Scott W. Rothstein, Esq.
FBN: 765880
Christina M. Kitterman, Esq.
FBN: 595381

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by mail, this 18th day of January, 2005, to: Tina M. Talarchyk, Defendants' Trial Counsel, Wachovia Financial Center, Suite 3400, 200 South Biscayne Boulevard, Miami, Florida, 33131-5323, Maria Crimi Speth, Defendants' of counsel, Jaburg & Wilk PC, 3200 North Central Avenue, Suite 2000, Phoenix, Arizona 85012, Jonathan P. Ibsen, 7047 East Greenway Parkway, Suite 140, Scottsdale, Arizona 85254.

ROTHSTEIN ROSENFELDT

By: /s/ Christina M. Kitterman
Scott W. Rothstein, Esq.
Christina M. Kitterman, Esq.

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Defendants.

**ORDER ON PLAINTIFFS' UNOPPOSED MOTION FOR PERMISSION TO
CONDUCT THE CASE MANAGEMENT REPORT MEETING
TELEPHONICALLY**

THIS CAUSE came before the Court on Plaintiffs' Unopposed Motion for Permission to Conduct the Case Management Report Meeting Telephonically, and the Court has carefully considered the Motion and being otherwise fully advised in the premises, it is hereby:

ORDERED and ADJUDGED that Plaintiffs' Unopposed Motion for Permission to Conduct the Case Management Report Meeting Telephonically is hereby **GRANTED**. Plaintiffs and Defendants shall conduct the Case Management Report Meeting telephonically.

DONE AND ORDERED, in Chambers at Fort Myers, Lee County, Florida, this
_____ day of _____, 2005.

U.S. DISTRICT COURT JUDGE

Copies Furnished To:
Christina M. Kitterman, Esq.
Tina M. Talrchyk, Esq.