

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

STELOR PRODUCTIONS, LLC.,	)	
	)	
Plaintiff/Counter-Defendant,	)	
	)	
v.	)	Case No. 1:05-cv-0354-DFH-TAB
	)	
OOGLES N GOOGLES FRANCHISING, LLC,	)	
et. al.	)	
	)	
Defendants/Counter-Plaintiffs and .	)	
Third Party Plaintiff	)	
	)	
*****	)	
	)	
OOGLES N GOOGLES FRANCHISING, LLC,	)	
	)	
v.	)	
	)	
STELOR PRODUCTIONS, LLC.,	)	
	)	
Counter-Defendant, and	)	
	)	
STEVEN A. ESRIG,	)	
	)	
Third Party Defendant.	)	

**MOTION TO AMEND THE CASE MANAGEMENT SCHEDULE**

Plaintiff/Counter-Defendant, Stelor Productions, LLC, by counsel, hereby moves for an order amending the case management schedule. In support of its motion, the Plaintiff/Counter-Defendant states the following:

1. On March 5, 2008, this Court granted Defendants’ motion for leave to file a counterclaim and on March 7, 2008, the Defendants filed their counterclaim.
2. On March 11, 2008, this Court granted Plaintiff’s motion to have Robert Merz admitted *pro hac vice*. On March 20, 2008, this Court granted Plaintiff’s motion for leave to file

second amended complaint to add additional parties, which names fifty-three (53) new Defendants in this litigation.

**THE RECENT ADDITION OF THREE PRINCIPAL PARTIES**

3. Plaintiff/Counter-Defendant subsequently discovered three additional entities operating under the name “Oogles N Googles.”

4. On August 15, 2008, both Plaintiff/Counter-Defendant and Defendants/Counter-Plaintiffs moved the Court to amend their respective complaints.

5. Plaintiff/Counter-Defendant added the three previously undiscovered entities, Oogles N Googles Branding, LLC, Mendell Enterprises, LLC and Bernier, LLC. All of these entities operate under the actual or assumed name “Oogles N Googles.” Two of these companies are owned by the Defendants, Danya and Kevin Mendell, principals of Defendant, Oogles N Googles Franchising, LLC.

6. Plaintiff/Counter-Defendant reasonably requires additional time to conduct additional discovery in order to investigate these entities and determine what connection these new entities have to the previously named Defendants.

7. Defendants/Counter-Plaintiffs added Steven A. Esrig, President, Chief Executive Officer and Chairman of the Board of Plaintiff/Counter-Defendant Stelor Productions, LLC.

8. With the addition of Steven A. Esrig, Plaintiff/Counter-Defendant will need additional time to adequately analyze the validity of the Defendants’ amended counterclaim. Such an analysis will require additional discovery and an additional expert or experts to address the issues raised in the counterclaim.

**ABUSIVE AND UNDULY BURDENSOME DISCOVERY**

9. The Defendants/Counter-Plaintiffs have engaged in an abusive and overly burdensome discovery process that has thoroughly overloaded counsel for Plaintiff/Counter-Defendant.

10. The Defendants/Counter-Plaintiffs' abusive process is outlined in Plaintiff/Counter-Defendant's motion for protective order. Said motion has been drafted but pursuant to Seventh Circuit case law and practice and with the hope of making the November 4, 2008 discovery hearing manageable, the Plaintiff/Counter-Defendant is preparing an exhibit outlining and organizing the Plaintiff/Counter-Defendant's objections. Said motion will be on file with the Court on or before October 22, 2008.

11. The abusive and overly burdensome discovery practice of the Defendants/Counter-Plaintiffs has greatly prejudiced Plaintiff/Counter-Defendant, Stelor Productions.

12. As a result, Robert Merz, counsel for the Plaintiff/Counter-Defendant, will be withdrawing his appearance in this matter. Mr. Merz will be replaced by new outside counsel. Hoover Hull LLP will remain as local counsel.

**NECESSITY FOR ADDITIONAL AND EXPANDED DISCOVERY**

13. The Plaintiff/Counter-Defendant is presently restricted to twenty five (25) interrogatories and twenty-five (25) production requests to each Defendant. At present, the Plaintiff/Counter-Defendant has exhausted the discovery permitted by the Court as to the principal Defendants in this case, Kevin and Danya Mendell, Oogles N Googles Franchising, LLC, and needs to engage newly added principal Defendants Oogles N Googles Branding, LLC and Mendell Enterprises, LLC.

14. Plaintiff/Counter-Defendant needs additional interrogatories and production requests as to the principal Defendants in this case, Kevin and Danya Mendell, Oogles N Googles Franchising, LLC, Oogles N Googles Branding, LLC and Mendell Enterprises, LLC. Since Plaintiff/Counter-Defendant served its initial interrogatories and production requests the Plaintiff has significantly expanded their business adding franchisees, partnerships and product offerings.

#### **HEARING ON THIS MOTION**

15. This motion is directly related to the discovery hearing scheduled for November 4, 2008 as well Plaintiff/Counter-Defendant's motion for protective order which will be on file by October 22, 2008.

16. The Plaintiff/Counter-Defendant requests that this motion be heard on November 4, 2008, contemporaneous with the discovery hearing set for the same date.

#### **CONCLUSION**

17. Both Plaintiff/Counter-Defendant, Stelor Productions, LLC, and Third Party Defendant, Steven Esrig, will be greatly prejudiced if the present case management plan is not amended and extended in its entirety.

18. Attached hereto is a proposed amended case management plan, which extends the deadlines in the current Case Management Plan by seven (7) months and requests a presumptive trial date in October 2009. In addition, the attached proposed Amended Case Management Plan allows for the additional discovery necessary to fully investigate the principal Defendants.

WHEREFORE, Plaintiff/Counter-Defendant, Stelor Productions, LLC, by counsel, respectfully requests that this Court hear this motion during the hearing currently scheduled for November 4, 2008, and at that time enter an order amending the case management schedule per

the amended case management plan attached hereto as Exhibit 1, in addition to granting all other relief just and proper.

Respectfully submitted,

*s/Michael A. Dorelli*

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John David Hoover, Attorney No. 7945-49  
Michael A. Dorelli, Attorney No. 20862-49  
HOOVER HULL LLP  
111 Monument Circle, Ste. 4400  
P.O. Box 44989  
Indianapolis, IN 46244-0989  
Phone: (317) 822-4400  
Fax: (317) 822-0234  
E-mail: [jdhoover@hooverhull.com](mailto:jdhoover@hooverhull.com)

Attorneys for Plaintiff/Counter-Defendant

Of counsel:

Robert Merz  
Stelor Productions, LLC  
19110 Montgomery Village Avenue, #320,  
Montgomery Village, MD 20886  
Tel: (301) 963-0000  
Fax: (301) 740-7552  
Email: [b.merz@stelorporations.com](mailto:b.merz@stelorporations.com)

Attorney for Plaintiff/Counter-Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on October 21, 2008, a copy of the foregoing was filed electronically, and that notice of this filing will be sent to the following party by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Stephen L. Vaughan  
[Steve@IPLawIndiana.com](mailto:Steve@IPLawIndiana.com)

*s/ Michael A. Dorelli*  
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