

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHRISTINE VARAD,)	
)	
Plaintiff,)	
)	C.A. No. 06 CA 11370 MLW
v.)	
)	
REED ELSEVIER INCORPORATED,)	
d/b/a/ Lexis Nexis Corporation,)	
Lexis Nexis Accurint,)	
)	
Defendant.)	

**REPLY TO PLAINTIFF’S OPPOSITION TO MOTION FOR SUBSTITUTION
OF SEISINT, INC. FOR DEFENDANT REED ELSEVIER INC. AND TO
DISMISS THE COMPLAINT AGAINST REED ELSEVIER INC.,
LEAVE TO FILE GRANTED ON NOVEMBER 28, 2006**

Defendant Reed Elsevier Inc. (“Reed”) submits this short reply to address certain points raised in plaintiff Christine Varad’s opposition to Reed’s Motion for Substitution (“Opposition”). The central focus of plaintiff’s complaint is allegedly incorrect information in an Accurint database. Plaintiff’s Opposition fails to refute the controlling facts that (1) neither Accurint nor Lexis Nexis Accurint is a juridical entity—rather, Accurint is a product owned by Seisint, Inc. (Affidavit of John M. Byrne, ¶ 3) and a registered trademark owned by Seisint, Inc. (see United States Patent and Trademark Registration No. 2941345, attached hereto as Exhibit A); (2) Seisint, Inc. is a corporation separate and apart from Reed (Byrne Aff., ¶ 6); and (3) Reed is merely Seisint’s corporate parent—there is no other relationship (Id., ¶ 4). On these settled facts, Seisint is the proper party defendant and Reed must be dismissed.

Fundamentally flawed is plaintiff's contention that Seisint's Director and Senior Corporate Counsel, John Byrne, made "party admissions" on behalf of Reed in his June 20, 2006 letter. Mr. Byrne's letter was written on behalf of **Seisint**, not Reed, as confirmed by his sworn testimony. (Byrne Aff., ¶7). Reed Elsevier Inc. appears nowhere in Mr. Byrne's letter. Rather, the letter repeatedly references only Accurint—the product and trademark owned by Seisint.¹ Plainly, Mr. Byrne was writing on behalf of Seisint.

In any case, Mr. Byrne had no obligation to explain in his June 20, 2006 letter that Seisint owns the Accurint database and trademark. His silence on that point is not an admission that Reed is liable for the allegedly incorrect information in the Accurint database which is the subject of plaintiff's complaint. There is nothing in the statutory language of M.G.L. c. 93A or the case law which supports plaintiff's citation-free assertion that Mr. Byrne was obliged to address Seisint's ownership role of Accurint in response to plaintiff's demand letter which focused on the Accurint database. See generally M.G.L. c. 93A § 9.

Finally, the fact that plaintiff mis-addressed her June 3, 2006 to "Lexis Nexis Accurint" does not change the fact that there is no juridical entity known as "Lexis Nexis Accurint." As explained under oath by Mr. Byrne, "Accurint is a database product owned by Seisint" and "Seisint is a separate legal entity from Reed Elsevier Inc. [and] its unincorporated division LexisNexis." (Byrne Aff., ¶¶ 3, 6).

¹ The fact that the letter appears on LexisNexis letterhead does not change the fact that Accurint is owned by Seisint, a corporation separate and distinct from Reed. The letter was mailed from Seisint's office in Boca Raton, Florida. Byrne Aff., ¶ 7.

CONCLUSION

WHEREFORE, Reed respectfully requests that this court substitute Seisint, Inc. for defendant Reed, with such corresponding changes to the case caption and docket as necessary, and for such further relief as this court deems just and proper.

REED ELSEVIER INC. and
SEISINT, INC.
By their attorneys,

/s/ Kristin M. Cataldo
T. Christopher Donnelly (BBO #129930)
Kristin M. Cataldo (BBO #654033)
Donnelly, Conroy & Gelhaar, LLP
One Beacon Street, 33rd Floor
Boston, Massachusetts 02108
(617) 720-2880

Dated: November 28, 2006

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of November, 2006, I caused a copy of the foregoing to be served on the following by regular mail:

Christine M. Varad
P.O. Box 583
Milton, MA 02186

/s/ Kristin M. Cataldo
Kristin M. Cataldo