

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

WILLIAM V. AGUIAR III, an individual

Plaintiff,

v.

FLOYD WEBB, an individual, et. al.

Defendants.

CIVIL ACTION NO.
07-11673-MLW

CASE MANAGEMENT STATEMENT

Defendant Floyd Webb submits this case management statement pursuant to Local Rule 16.1(d).¹ Despite reasonable efforts, Defendant Webb was unable to obtain the cooperation of Plaintiff Aguiar in the preparation of a joint case management statement.

1. Brief Description of the Case and Defenses

Plaintiff William V. Aguiar III initiated this action against documentary filmmaker Floyd Webb to stop Mr. Webb from using certain photographs, graphics and video footage in Mr. Webb's upcoming documentary film which tells the story of the founder of the Black Dragon Fighting Society, Count Juan Raphael Dante, an enigmatic and eccentric martial artist who rose to prominence in Chicago more than forty years ago. Mr. Webb has produced and released two trailers for the film, which are the subject of this action. Mr. Aguiar contends that he owns

¹ Defendants Ashida Kim and Barron and Wendy Sheppard do not join in this case management statement because they contest this Court's jurisdiction and have motions to dismiss for lack of personal jurisdiction pending before the Court.

copyrights in material Mr. Webb used in the film trailers and he seeks injunctive and monetary relief for this alleged infringement.

Mr. Webb denies that any of his work infringes any of Plaintiff's copyrights. Mr. Webb contends that the allegations in Mr. Aguiar's complaint do not specify the materials owned by Plaintiff that Webb has allegedly infringed, and do not specify any work by Mr. Webb that allegedly infringes Plaintiff's copyrights. Mr. Webb further contends that his use of material owned by Mr. Aguiar, if any, is protected by fair use.

Mr. Webb has asserted counterclaims against Mr. Aguiar seeking a declaratory judgment that Webb's use of certain images and logos in the trailer for his upcoming documentary film *The Search for Count Dante* (the "Trailer") and on his website promoting the film, www.thesearchforcountdante.com (the "Website"), does not constitute infringement of any copyrights or trademarks that Plaintiff owns. Mr. Webb also seeks injunctive relief and damages for Plaintiff's misrepresentation of copyright under the Digital Millennium Copyright Act ("DMCA").

2. Factual Issues In Dispute

The parties differ as to the following:

- a) Whether Mr. Aguiar is the owner of the copyrights he asserts in this litigation.
- b) Whether Mr. Webb obtained a license to use certain materials at issue in his documentary.

3. Legal Issues In Dispute

The parties differ as to the following:

- a) Whether Mr. Webb's use of certain images and logos in the Trailer and on the Website constitute infringement of any copyrights that Plaintiff owns.

- b) Whether Mr. Webb's use of material owned by Mr. Aguiar, if any, is protected by fair use.
- c) Whether Mr. Aguiar should be permitted to amend his complaint to add 3 to 1 Studios, LLC as a defendant.
- d) Whether Mr. Aguiar should be ordered to replead his complaint to identify each act of infringement allegedly committed by each defendant.
- e) Whether Mr. Aguiar misrepresented his ownership of copyrights under the DMCA.
- f) Whether either party is entitled to damages.
- g) Whether either party is entitled to injunctive relief.
- h) Whether either party should be awarded fees and costs for the lawsuit.

4. Motion Practice

Pending before the Court are Mr. Aguiar's Motion for Preliminary Injunction and Mr. Aguiar's Motion to Amend the Complaint. Mr. Webb opposes both of these motions. Other motions filed by Mr. Aguiar do not involve Defendant Webb.

Mr. Webb intends to file a motion for summary judgment on the issue of fair use. The motion will require little factual discovery. Mr. Webb proposes the following briefing schedule for his summary judgment motion:

Defendant Webb's brief filed: April 22, 2008

Plaintiff Aguiar's opposition filed: May 6, 2008

Defendant Webb's reply brief filed: May 13, 2008

Summary judgment hearing: May 30, 2008

5. Alternative Dispute Resolution

There have been no ADR efforts to date. No settlement conference has been scheduled at this time.

6. Consent to Magistrate Judge

Defendant Webb consents to trial by magistrate. Mr. Aguiar does not consent.

7. Plan for Discovery

Mr. Webb has agreed to nearly all dates set out in Plaintiff Aguiar's "Plan for Discovery" filed with the Court on December 4, 2007 (Docket #55). Where Mr. Webb does not agree, each party's proposal is indicated. Mr. Webb proposes the following:

- a. The parties exchanged initial disclosures pursuant to Rule 26(a)(1) on December 3, 2007.
- b. Discovery will be needed on the following subjects: (i) plaintiff's and defendant's contentions regarding the alleged infringement(s) at issue; (ii) plaintiff's alleged ownership of the copyright(s) at issue and Mr. Webb's license(s) to use such material; (iii) damages.
- c. Disclosure or discovery of electronically-stored information should be limited as follows, except if otherwise ordered by the court: (1) no party shall be required to engage in forensic recovery of electronic documents; and (2) no party shall be obligated to produce all prior drafts of electronic documents.
- d. The parties have agreed to an order regarding the production of confidential documents, material, or information. Defendant Webb will concurrently file the Protective Order for the Court's approval.
- e. All discovery, including written and deposition discovery, will be completed by September 19, 2008.

- f. The Federal Rules of Civil Procedure and the Local Rules shall apply to limit the number of interrogatories, requests for admission, requests for production of documents, and depositions by each party, as well as the length of each deposition.
- g. At this time, the parties do not foresee the use of expert testimony.

8. Proposed Motion and Trial Schedule.

- a. Mr. Webb proposes that Plaintiff should be allowed until March 15, 2008 and Defendant be allowed until April 15, 2008 to join additional parties and amend the pleadings. According to his Plan for Discovery, Mr. Aguiar proposes that both parties should be allowed until February 4, 2008 to join additional parties and amend the pleadings.
- b. All potentially dispositive motions should be filed by November 21, 2008.
- c. Mr. Webb proposes a final pretrial conference with the court should be held in January 2009. According to his Plan for Discovery, Mr. Aguiar proposes trial be held on January 30, 2009.

- d. Mr. Webb expects this case should be ready for trial by April 2009. According to his Plan for Discovery, Mr. Aguiar expects this case to be ready for trial by July 17, 2009.

By: _____/s/
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