

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

WILLIAM V. AGUIAR, III,

Plaintiff,

v.

FLOYD WEBB, BARRON SHEPPARD,
WENDY SHEPPARD and ASHIDO KIM
a/k/a CHRISTOPHER HUNTER and
a/k/a BRADFORD DAVIS,

Defendants.

Civil Action No. 07-CA-11673-MLW

AFFIDAVIT OF DAVID A. KLUFT

I, David A. Kluff, of Foley Hoag LLP, 155 Seaport Boulevard, Boston, Massachusetts, do depose and state the following under oath:

1. I am an attorney at the law firm of Foley Hoag LLP, which represents defendant Floyd Webb in connection with the above-captioned matter. I submit this affidavit in connection with Mr. Webb's alternative motions for Default Judgment, Judgment on the Pleadings, and Sanctions.
2. A true and accurate copy of the following documents are attached hereto as exhibits to this affidavit:

Exhibit A: The initial complaint filed in this action on or about September 7, 2007.

Exhibit B: Plaintiff Aguiar's Motion for a Preliminary Injunction, filed on or about September 28, 2007.

Exhibit C: Plaintiff Aguiar's "Ammended Complaint" [sic] in this action, filed on March 24, 2008.

Exhibit D: Plaintiff Aguiar's "Opposition of Declaration of Floyd Webb," filed on or about October 31, 2007.

Exhibit E: The Order of this Court issued February 15, 2008.

- Exhibit F: The Order of this Court issued March 6, 2008.
- Exhibit G: A March 8, 2008 blog entry which I printed from John Creeden III's web site, <http://blackdragonfightingsociety.blogspot.com>, on or about April 1, 2008.
- Exhibit H: A March 7, 2008 blog entry which I printed from John Creeden III's web site, <http://blackdragonfightingsociety.blogspot.com>, on or about April 1, 2008.
- Exhibit I: A March 23, 2008 blog entry which I printed from John Creeden III's web site, <http://blackdragonfightingsociety.blogspot.com>, on or about April 1, 2008.
- Exhibit J: A March 24, 2008 blog entry which I printed from John Creeden III's web site, <http://blackdragonfightingsociety.blogspot.com>, on or about April 1, 2008.
- Exhibit K: A document entitled "Factual Issues," filed by Plaintiff Aguiar in this Court on March 24, 2008.
- Exhibit L: A March 30, 2008 blog entry, including a copy of the letter embedded into the blog entry, which I printed from John Creeden III's web site, <http://blackdragonfightingsociety.blogspot.com>, on or about April 1, 2008.
- Exhibit M: A February 19, 2008 blog entry which I printed from John Creeden III's web site, <http://blackdragonfightingsociety.blogspot.com>, on or about April 1, 2008.
- Exhibit N: A document entitled "Answer, Counterclaim, and Jury Demand" filed by Plaintiff Aguiar on April 7, 2008.

3. On March 6, 2008, I attended a conference for this matter before Judge Wolf. Upon entering the hallway outside the court room, I greeted Plaintiff Aguiar and introduced myself to the gentleman accompanying him. That gentleman introduced himself as only "Ray." Later that afternoon, in chambers, Judge Wolf and my colleague, Julie Ahearn, discussed whether "state of mind" was relevant to a fair use defense in a copyright infringement action.
4. On or about February 11, 2008, I sent a letter that was tangentially related to the current action to the Bristol County Register of Probate Court. I sent a copy of that letter to John P. Francoeur, Esq., Mr. Aguiar's probate attorney. My secretary made a check mark next

to Mr. Francoeur's name on the "CC" line of the copy that was sent to him. The letter attached as part of Exhibit L to this affidavit is the copy sent to Mr. Francouer, not the original letter sent to the Register of Probate.

I declare under penalty of perjury that the foregoing is true and correct. Executed on April 8, 2007 at Boston, Massachusetts.

/s/ David A. Kluff

David A. Kluff

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and a paper copy was sent to those indicated as non registered participants on April 8, 2008.

/s/ David A. Kluff
David A. Kluff