

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY

Plaintiff

v.

Civil Action No. 08-11364-GAO

ZACK ANDERSON, RJ RYAN,
ALESSANDRO CHIESA, and the
MASSACHUSETTS INSTITUTE OF
TECHNOLOGY

Defendants

**PLAINTIFF'S REQUEST FOR RULE 16 SCHEDULING CONFERENCE AND
INTERIM DISCOVERY ORDER**

Introduction

Pursuant to Fed. R. Civ. P. 16(a) and Local Rule 16.1, the plaintiff, Massachusetts Bay Transportation Authority ("MBTA") hereby requests (a) a Scheduling Conference for the limited purposes set out below, and (b) the issuance of an Interim Scheduling Order requiring the defendants to comply with the pending discovery, identified in paragraph 3. The MBTA request that this Conference take place at the close of the Hearings set for 11:00 A.M. on Thursday, August 14, 2008.

As grounds for this Request, the MBTA states as follows:

**The Record for the Preliminary Injunction Hearing;
Absence of Testimony from the Defendants**

1. The Temporary Restraining Order ("TRO") currently in place will expire on Tuesday, August 19. The MBTA currently plans to move this Court to convert the TRO to a Preliminary Injunction on or before Tuesday, August 19.

2. Although the MBTA has provided a range of affidavit testimony in this matter, none of the defendants has yet to provide any such testimony. The MBTA believes that discovery from the defendants, including time-limited deposition discovery, will aid in a ruling on the MBTA's anticipated Preliminary Injunction Motion.

The MBTA's Targeted Discovery Requests

3. On Wednesday, August 13, 2008, the MBTA served the following discovery requests on the defendants:

- A Request for Production containing seven (7) Requests (not including sub-parts). A copy of this Request is included as Exhibit 1.
- A Notice of Deposition of Zack Anderson. This deposition is limited to four (4) hours, on Friday, August 15, from 9:00 to 1:00. A copy of this Notice is attached as Exhibit 2.
- A Notice of Deposition of Professor Ron Rivest. This deposition is limited to two (2) hours, on Friday, August 15, from 2:30 to 4:30. A copy of this Notice is attached as Exhibit 3.

4. The MBTA has provided Initial Disclosures (Exhibit 4). Given the parties' disputes over the MIT Undergrads' refusal even to produce the "A" paper they wrote for Professor Rivest's class (the paper that set in motion the events that led to the current state), more detailed conferences on discovery issues would not be productive, in the MBTA's view.

The Relevance of the Discovery to the Preliminary Injunction Issues

What Threat Is Posed

5. The defendants Zack Anderson, RJ Ryan, and Alessandro Chiesa (the "MIT Undergrads") through counsel argue that "the information the original TRO sought to keep confidential has now been publicly disclosed by MBTA." Declaration of Jennifer Granick, ¶5. The MIT Undergrads therefore seek to be released from the TRO.

6. Yet the EFF in its Motion papers admits that "more" information is available. *See* Motion at 5 ("most ... of the significant facts known to the students ... are now public").

7. With its discovery requests, the MBTA seeks to determine what relevant, non-public information exists, and to obtain the "disclosure" element of the "Responsible Disclosure".

8. Indeed, the EFF provided a document to the MBTA on Wednesday August 13, 2008 at 5:52, which the EFF, the MBTA understands, intends to reference during the Thursday August 14 hearing. This document appears to contain a volume of new information concerning MBTA Fare Media security issues.

9. Given the history of delayed and partial disclosure in this matter, the MBTA is entitled to discovery to test and verify the MIT Undergrads' disclosure.

Advocacy of Violations of Law

10. The MIT Undergrads claim that the TRO represents an unlawful prior restraint on their claimed First Amendment rights.

11. The requested discovery, in addition, is targeted toward showing the existence of improper "advocacy of illegal activity", which conduct removes First Amendment protections.

Balancing of Harms

12. The MIT Undergrads did not disclose their Presentation to the MBTA until the morning of the TRO hearing. Yet the Undergrads claim "clean hands," and assert that they "sought to help the MBTA." These arguments are relevant to, among other points, the "balancing of the harms" and "equities" element in a preliminary injunction analysis.

13. The MBTA is entitled to discovery to demonstrate that the MIT Undergrads in fact were not forthcoming about their plans, refused when requested to provide their

Presentation, and otherwise sought to block attempts by the MBTA to determine whether their threatened "get free subway rides for life" was merely a prank, or a significant threat.

Conclusion

Wherefore, the plaintiff, Massachusetts Bay Transportation Authority, respectfully requests (a) a Scheduling Conference after the hearings set for August 14, 2008 at 11:00, and (b) an Interim Scheduling Order requiring the defendants to comply with the pending discovery, identified in paragraph 3.

MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY

By its attorneys,

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Dated: August 13, 2008
Boston, Massachusetts

CERTIFICATE OF SERVICE

I, Ieuan G. Mahony, Attorney for the Massachusetts Bay Transportation Authority in connection with the above-captioned proceeding, hereby certify that on this 13th day of August, 2008, I served the foregoing **Plaintiff's Request For Rule 16 Scheduling Conference and Interim Discovery Order** by e-mail upon the following interested parties:

Party

Counsel

Zack Anderson, RJ Ryan,
and Alessandro Chiesa
(the "MIT Undergrads")

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