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Via Facsimile and U.S. Mail

August 30, 2011

Kristen McCallion
FISH & RICHARDSON P.C.
601 Lexington Avenue, 52nd Floor
New York, NY 10022

Re: *Gordon v. DreamWorks Animation SKG, Inc., et al.*
United States District Court, District of Massachusetts Case No. 1:11-CV-10255-JLT

Dear Kristen:

This letter is a further attempt to meet and confer with respect to the Plaintiff's document production in this case. On August 11, 2011 defendants sent your firm a letter requesting that the Plaintiff make his computer hard drives available for forensic imaging, in order to determine the dates of creation of the documents he produced in this litigation. Shortly after receiving this letter, on August 15, 2011, you responded and agreed to "make accessible for forensic data and imaging, the electronic media and files that Mr. Gordon has located after a reasonable and diligent search." Your letter further requested that Defendants return the original of such electronic media to your firm immediately after the forensic examination was conducted and requested that all communications from the forensic examiner be shared with your firm as well.

On August 16, 2011, I sent you a responsive letter, agreeing that Mr. Gordon's original drives and electronic media would be returned immediately upon completion of the imaging process. I informed you that Defendants would not agree to share the communications between counsel and the forensic examiner retained by defendants as such communications are protected by the attorney work product doctrine. However, I did propose that the forensic examiner would provide your firm with a duplicate copy of whatever electronic images were obtained in connection with the forensic imaging process, so that all parties would be working with the same set of data.

I then requested that you let me know if Mr. Gordon would stipulate to allow the imaging process to go forward on the proposed terms. I have not heard a response from you. Instead, at the hearing on August 17, 2011, you informed my co-counsel that Mr. Gordon did not use a computer, and that there were no computer hard drives to be turned over for forensic imaging. On August 18, 2011, defendants followed up with another letter, requesting that you provide further explanation for your statement that Mr. Gordon did not have a computer – especially given the fact that he produced numerous printouts of websites that were accessed and printed out from a computer. Further, your complaint in this action specifically alleged that Mr. Gordon used the computer program, Microsoft Photoshop, to create the graphic images that he claims were infringed. In response, on August 18, 2011 you sent an email saying "we are looking into defendants' inquiries regarding Mr. Gordon's email usage and computer and will get back to you."



I called you last Friday, August 19, 2011 to discuss this issue, and others, but have not received any response. Please let us know by the close of business on September 2, 2011 if Plaintiff will agree to turn over his electronic data for imaging, and whether or not he is claiming that, in spite of his use of email, Photoshop and his production of documents from the internet, he is asserting that he does not have a computer.

As a separate issue, after reviewing Mr. Gordon's production, it has become clear that the overwhelming majority of the documents produced were not from Mr. Gordon's files but, instead, were documents that Fish & Richardson received from the copyright office and that were deposited in connection with Mr. Gordon's previous copyright registrations. While these documents are relevant, they are not actually Mr. Gordon's files. Indeed, the documents that Mr. Gordon selected to be deposited with the Copyright Office are obviously a subset of the documents that Mr. Gordon himself possesses and those documents do not, in fact, constitute the originals of any of the documents that Mr. Gordon created. We request that Mr. Gordon immediately agree to produce his own files (and not just those that exist with the Copyright Office) relating to his Panda Power characters, the "Mighty 3", the "Eden 5", "Zito The Super Samurai Mosquito", the "Five Fists Of Fury," "Super Duck Super Duck" and any characters or stories that existed in 1999, when Mr. Gordon claims he sent a submission to DreamWorks. We further request that Mr. Gordon immediately agree to produce copies of his submissions and/or the materials he purports to have submitted to Michael Eisner, Sharon Eisen, The Walt Disney Company and any other studio or agency up to and including 1999. We further request that Mr. Gordon produce copies of any content that was placed online at any time. Please let me know by the close of business on September 2, 2011 if Mr. Gordon will produce his original drawings, stories, sketches and files.

Additionally, Mr. Gordon claims that Ken Partello worked with him to sketch and create many of the characters at issue in this action. However, aside from the deposit copies from the registration purporting to be Mr. Partello's sketches, no documents from Mr. Gordon's files relating to Mr. Partello's work have been turned over. We request that Mr. Gordon immediately produce all documents relating to his work with Mr. Partello, including all original drawings, sketches and illustrations. Please let me know by the close of business on September 2, 2011 whether or not Mr. Gordon will produce all his documents relating his collaboration and communications with Mr. Partello.

Further, Mr. Gordon has yet to produce any emails. Mr. Gordon clearly corresponded with potential third party witnesses, and participated in drafting third party statements, including one from Mr. Partello. This correspondence is but one example of Mr. Gordon's relevant communications that were likely conducted via email. As discussed in our August 18, 2011 letter, Mr. Gordon has used email consistently in connection with his work, including in connection with his websites, which always included a reference to Mr. Gordon's email accounts. As we previously requested, defendants expect that Mr. Gordon will immediately



search for and produce all potentially relevant emails from each of his email accounts. Please let me know by the close of business on September 2, 2011 if Mr. Gordon will produce his emails that relate to, or discuss in any way, this lawsuit.

Sincerely,


David Grossman
Partner