

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

TITLECRAFT, INC.,

Plaintiff and
Counterclaim Defendant,

No. 10-cv-00758-RHK-JJK

v.

RULE 26(f) REPORT

NATIONAL FOOTBALL LEAGUE and
NFL PROPERTIES, LLC,

Defendants and
Counterclaim Plaintiffs.

Counsel for Plaintiff Titlecraft, Inc. (“Titlecraft”) and counsel for Defendants National Football League (“NFL”) and NFL Properties, LLC (“NFL Properties”) (collectively the “NFL Parties”) participated in the meeting required by Fed. R. Civ. P. 26(f) on July 29, 2010, and prepared the following report.

The pretrial conference in this matter is scheduled for August 17, 2010, at 1:30 p.m., in Courtroom 6A, Warren E. Burger Federal Building, 316 North Robert Street, St. Paul, Minnesota 55101, before United States Magistrate Judge Jeffrey J. Keyes.

A. DESCRIPTION OF CASE

(1) Concise Factual Summary of Plaintiff's Claims

Titlecraft, Inc. creates fantasy football trophies. Defendant has alleged, among other things, that a wooden fantasy football trophy created by Titlecraft infringes on the Lombardy Trophy. Titlecraft contends that there is absolutely no confusion between the

wooden Titlecraft Trophy and the Lombardy Trophy. Titlecraft seeks a declaration that Defendant's claims are without merit and that Titlecraft is not liable to the Defendant for its myriad of alleged causes of action, including among other things, trademark infringement, false designation of origin and false description and trademark dilution.

Defendants attempt to claim a preemptive suit on paper, while the NFL continually threatened litigation via telephone. Defendants further attempt to take one of many comments made by Plaintiff's counsel in correspondence to vilify the Plaintiff. The facts are that Titlecraft's trophies are made of a different material, are of different dimensions/ size, are of a different weight, and have different structural and lexical features. There is no confusion.

(2) *Concise Factual Summary of Defendants' Claims*

NFL football is, and for many years has been, the most popular spectator sport in the United States. Each year the NFL season culminates with the Super Bowl championship. Millions of football fans from all parts of the globe focus on one game and the teams vying for a chance to win the Vince Lombardi Trophy. The NFL has used this original and distinctive sculpture as the coveted Super Bowl award for more than forty years. The NFL owns exclusive intellectual property rights in the trophy, including United States Copyright Registration No. GU 46649, and United States Trademark Registration No. 1,226,261.

In August 2009, the NFL Parties learned that Titlecraft was selling an unauthorized copy of the Vince Lombardi Trophy. On learning of Titlecraft's

unauthorized copy, the NFL Parties promptly contacted Titlecraft, informed it that it was violating the NFL's intellectual property rights and requested that it cease further manufacture or sale of the knockoff.

Titlecraft responded in September 2009 stating that it intended to continue its unlawful conduct. Moreover, rather than deny unlawful conduct, Titlecraft admitted that its trophies were intended to "mimic the Vince Lombardi Trophy Design," but took the untenable position that the knockoffs—which Titlecraft sells as its principal commercial endeavor—are "amusing wooden parod[ies] of the Vince Lombardi Trophy."

On March 11, 2010, Titlecraft preemptively sued the NFL Parties without contacting the NFL Parties before commencing suit. In this preemptive lawsuit Titlecraft asks this Court for a declaratory judgment that it is entitled to sell knockoffs of the NFL's Vince Lombardi Trophy.

The NFL Parties filed a timely answer, denying the allegations of the Complaint and asserting counterclaims for: (Count I) copyright infringement; (Count II) trademark infringement; (Count III) false advertising; (Count IV) trademark dilution under the Lanham Act; and (Counts V to IX) analogous claims under New York and Minnesota state law.

(3) *Statement of Jurisdiction (including statutory citations)*

Plaintiff's action for declaratory judgment is authorized by the Declaratory Judgment Act 28 U.S.C. § 2201 & 2202 and Rule 57 of the Federal Rules of Civil Procedure and by the general legal and equitable powers of this Court brought to determine rights under the Lanham Act, 15 U.S.C. § 1121.

This Court has jurisdiction over the federal claims asserted in this action under 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 and 1338. This Court has supplemental jurisdiction over all other claims asserted herein under 28 U.S.C. § 1367(a). The matter in controversy exceeds the value of \$75,000, exclusive of interest and costs. Titlecraft and the NFL Parties each consent to the personal jurisdiction of this Court. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400.

(4) Summary of Factual Stipulations or Agreements

None at this time.

(5) Statement of whether jury trial has been timely demanded by any party

A jury trial has been demanded by both Titlecraft and the NFL Parties on all issues so triable.

(6) If the parties would like the case resolved under the Rules of Procedure for Expedited Trials of the United States District Court, District of Minnesota, a statement of the parties' agreement.

None at this time.

DISCOVERY DEADLINES AND LIMITS

1. All pre-discovery disclosures required by Rule 26(a)(1) shall be completed on or before August 13, 2010.

2. All motions which seek to amend the pleadings or to add parties must be filed and served on or before September 30, 2010.

3. Fact discovery shall be commenced in time to be completed on or before February 28, 2011.

4. No more than a total of 10 interrogatories, counted in accordance with Rule 33(a), shall be served by each party. No more than 25 document requests and no more than 25 requests for admissions shall be served by each party.

5. No more than 5 factual depositions, excluding expert witness depositions, shall be taken by each party.

6. Non-dispositive motions and supporting documents, including those which relate to fact discovery, shall be filed and served on or before April 29, 2011.

7. Each party may call up to 2 expert witnesses. Disclosure of the identity of expert witnesses under Rule 26(a)(2)(A) and the full disclosures required by Rule 26(a)(2)(B), accompanied by the written report prepared and signed by the expert witness, shall be made as follows:

a. Identities by the party asserting the claim that is the subject of the expert opinion on or before February 28, 2011.

Reports by the party asserting the claim that is the subject of the expert opinion on or before March 31, 2011.

b. Identities by the party responding to the claim that is the subject of the expert opinion on or before March 31, 2011.

Reports by the party responding to the claim that is the subject of the expert opinion on or before April 29, 2011.

8. Each party may take one deposition per expert. Expert discovery, including depositions, shall be completed by May 20, 2011. All non-dispositive motions and

supporting documents which relate to expert discovery shall be filed and served on or before May 20, 2011.

C. PROTECTIVE ORDER

The parties believe that a Protective Order is necessary. The parties will jointly submit a proposed Protective Order to the Court prior to the date on which the first discovery responses in this action are due to be served upon the propounding party.

D. INSURANCE CARRIERS/INDEMNITORS

Statement by Plaintiff/Counterclaim Defendant Titlecraft regarding insurance: Insurance coverage is not implicated by the claims asserted by Plaintiff in this matter. .

Statement by Defendant/Counterclaim Plaintiff NFL Parties: Insurance coverage is not implicated by the claims asserted by Plaintiff in this matter.

E. DISPOSITIVE MOTION SCHEDULE

The parties recommend that dispositive motions be filed and served on or before June 24, 2011. (*This dispositive motion deadline will be for the filing, serving and hearing of the motion.*)

F. TRIAL-READY DATE

The parties agree that the case will be ready for bench/jury trial on or after August 1, 2011; the expected length of trial is 5 days.

G. SETTLEMENT

The parties believe that a settlement conference is appropriate and should be scheduled by the Court before June 24, 2011.

H. TRIAL BY MAGISTRATE JUDGE

The parties have/have not agreed to consent to jurisdiction by the Magistrate Judge pursuant to Title 28, United States Code, Section 636(c).

Dated: August 6, 2010

Respectfully submitted,

s/ Justin L. Seurer

Justin L. Seurer, #336154
Seurer Law, LLC
11901 James Road
Minnetonka, MN 55343
(612) 455-6669

Attorney for Plaintiff Titlecraft, Inc.

s/ Daniel J. Connolly

Daniel J. Connolly, #197427
Timothy J. Cruz #0386626
FAEGRE & BENSON
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402
(612) 766-7000

Bruce P. Keller
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, New York 10022

*Attorneys for Defendants and
Counterclaim Plaintiffs National
Football League and NFL
Properties LLC*