

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HAWAII-PACIFIC APPAREL GROUP, :
INC., :

Plaintiff, :

- against - :

CLEVELAND BROWNS FOOTBALL :
Hawaii-Pacific Apparel Group, Inc. and Cleveland Browns Football Company, LLC et al
FOOTBALL LEAGUE PROPERTIES, INC., :

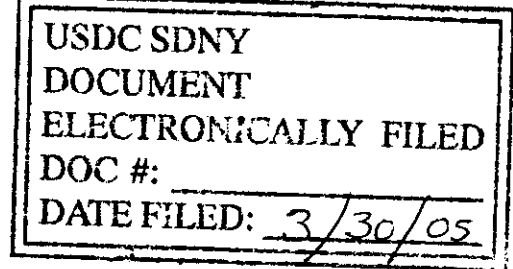
Defendants. :

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ORDER

04 Civ. 7863 (DC)

CHIN, D.J.



Doc. 24

Plaintiff has filed a "First Amended Reply and Counterclaims." By letter dated February 18, 2005, defendants object, arguing that (i) a reply may not contain a counterclaim because Fed. R. Civ. P. 7(a) does not contemplate such a pleading and (ii) plaintiff's counterclaims for copyright infringement are without merit.

The objections are overruled. First, although the "more orderly procedure" would be for plaintiff to seek leave to amend its complaint to add the copyright claims, where a defendant asserts a counterclaim in its answer and the plaintiff has what would be a compulsory counterclaim, "a counterclaim in the plaintiff's reply to the defendant's counterclaim seems entirely appropriate." 5 Charles Alan Wright *et al.*, Federal Practice & Procedure, § 1188, at 39 (3d ed. 2004). Second, defendants' arguments as to the merits of plaintiff's

copyright infringement are premature, and may be raised when the parties move for summary judgment.

SO ORDERED.

Dated: New York, New York
March 30, 2005



DENNY CHIN
United States District Judge

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