

EXHIBIT 13

Echtman, Elyse D.

From: Singer, David R. [DSinger@jenner.com]
Sent: Sunday, May 27, 2012 11:10 PM
To: Echtman, Elyse D.
Cc: Stone, Richard L.; Gallegos, Amy M.; Thomas, Andrew J.; Bicks, Peter A.
Subject: Re: Dish v. ABC, et al. (SDNY)
Attachments: image001.gif

Dear Elyse,

As stated in my letter of May 25, Fox will not agree to stay its lawsuit against Dish in the Central District of California or take its motion for expedited discovery off calendar. The fact that Dish hastily filed a declaratory relief action in New York on the same day that Fox filed its complaint and motion for expedited discovery does not divest the California District Court of jurisdiction over Fox's complaint and pending motion, irrespective of which filing has the earlier time stamp. See, e.g., *Cedars Sinai Med. Ctr. v. Shalala*, 125 F.2d 765, 769 (9th Cir. 1997) (under the "first to file rule," when cases involving the same parties and issues have been filed in two different districts, the second district court has discretion to transfer, stay, or dismiss the second case in the interest of efficiency and judicial economy") (emphasis added); *Shizzle Pop LLC v. Wham-O, Inc.*, No. CV 10-3491, 2010 WL 3063066<tel:3063066>, *2 (C.D. Cal. Aug. 2, 2010) (same); *Heartland Payment Sys., Inc. v. Verifone Israel Ltd.*, , No. C 10-0654<tel:10-0654>, 2010 WL 1662478<tel:1662478>, *2 (N.D. Cal. Apr. 22, 2010) ("[T]he first-to-file rule is applied by the court hearing the second suit, not the first.") (citing *Alltrade, Inc. v. Uniweld Products, Inc.*, 946 F.2d 622 (9th Cir. 1991)). This is especially the case given that - as Dish essentially admits in its New York complaint - Dish's declaratory judgment action was filed solely to pre-empt the copyright infringement lawsuit that it knew was imminent. Moreover, Fox's California copyright infringement and breach of contract action is much broader in substantive scope than Dish's declaratory judgment action, which is narrowly directed to a single feature of Dish's infringing service. On these facts, Dish should dismiss or stay the New York action while the California action proceeds.

In our ex parte application and request for expedited discovery, we purposefully proposed that Dish have until Wednesday<x-apple-data-detectors://6> to file an opposition out of consideration for the holiday weekend. Your May 25 letter did not mention Fox's ex parte application and it is not clear from your correspondence whether Dish is even interested in discussing Fox's request for expedited discovery to aid its preliminary injunction motion. If you are amenable to providing expedited discovery and wish to discuss the scope and/or timing of the discovery, we can be available for a call on Tuesday. By then, we will also be able to discuss the parties' possible motion practice in the SDNY.

Given that you raised this issue on Friday afternoon<x-apple-data-detectors://8>, neither Fox nor its counsel are prepared to have a meaningful discussion about Dish's anticipated motion. We are working on a more detailed outline of the law and facts in support of Fox's position, as required by Judge Swain's procedures, which we will send to you.

Regards,

David

On May 27, 2012, at 7:54 PM, "Echtman, Elyse D."
<echtman@orrick.com<mailto:echtman@orrick.com>> wrote:

Dear David,

We are disappointed that we still have not received the courtesy of a response concerning whether Fox intends to proceed with its Order to Show Cause that was submitted to Judge King on the eve of the holiday weekend, or whether Fox will voluntarily agree to hold that Order to Show Cause in abeyance. We remain ready to meet and confer by telephone, and propose that we speak tomorrow, May 28, 2012, at 2 p.m. eastern / 11 a.m. pacific tomorrow. Please let us know whether you will join us for a call at that time.

Best regards,

Elyse D. Echtman

From: Echtman, Elyse D.
Sent: Saturday, May 26, 2012 8:07 PM
To: 'Dsinger@jenner.com<mailto:Dsinger@jenner.com>'
Cc: 'rstone@jenner.com<mailto:rstone@jenner.com>';
'agallegos@jenner.com<mailto:agallegos@jenner.com>';
'ajthomas@jenner.com<mailto:ajthomas@jenner.com>'; Bicks, Peter A.
Subject: Dish v. ABC, et al. (SDNY)

Dear David,

Thank you for the response to our letter. Considering that Fox filed Order to Show Cause papers before Judge King in the Central District of California on the eve of the holiday weekend, we would ask again that you extend the courtesy of a telephone call to meet and confer this weekend. Our letter of yesterday's date asked that Fox, at a minimum, agree to hold the California action in abeyance pending resolution of the venue issue before Judge Swain. Your responsive letter does not address that request. We are willing to wait until Tuesday morning to meet and confer by telephone, if you will confirm that you will reach out to Judge King in Los Angeles to have consideration of your Order to Show Cause held in abeyance, and will not otherwise proceed in the California case, until such time as Judge Swain decides venue. If you are not willing to do so, I think that we should both reserve some time this weekend to get on the phone.

We're looking forward to speaking with you or with another member of your team. Please provide a date and time that you will be available for a call. Our schedules are flexible, and we will do our best to work around yours.

Best regards,

Elyse D. Echtman

<image001.gif><<http://www.orrick.com/>>

Elyse D. Echtman

Attorney At Law

ORRICK, HERRINGTON & SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019-6142

tel 212-506-3753
fax 212-506-5151
eechtman@orrick.com<mailto:eechtman@orrick.com>
bio<<http://www.orrick.com/lawyers/Bio.asp?ID=97056>> |
vcard<<http://www.orrick.com/lawyers/AttorneyVCard.asp?ID=97056>>

www.orrick.com<<http://www.orrick.com/>>

From: "Singer, David R." <DSinger@jenner.com<mailto:DSinger@jenner.com>>
Date: May 25, 2012 9:12:16 PM EDT
To: "pbicks@orrick.com<mailto:pbicks@orrick.com>"
<pbicks@orrick.com<mailto:pbicks@orrick.com>>
Cc: "Stone, Richard L." <RStone@jenner.com<mailto:RStone@jenner.com>>, "Gallegos, Amy M."
<AGallegos@jenner.com<mailto:AGallegos@jenner.com>>, "Thomas, Andrew J."
<AJThomas@jenner.com<mailto:AJThomas@jenner.com>>
Subject: Dish v. ABC, et al. (SDNY)
Please see attached letter.

David R. Singer

Jenner & Block LLP
633 West 5th Street
Suite 3600
Los Angeles, CA 90071
Tel (213) 239-2206
Fax (213) 239-2216
DSinger@jenner.com<mailto:DSinger@jenner.com>
www.jenner.com<http://www.jenner.com/>

CONFIDENTIALITY WARNING: This email may contain privileged or confidential information and is for the sole use of the intended recipient(s). Any unauthorized use or disclosure of this communication is prohibited. If you believe that you have received this email in error, please notify the sender immediately and delete it from your system.

=====
IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication, unless expressly stated otherwise, was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matter(s) addressed herein.
=====

NOTICE TO RECIPIENT: THIS E-MAIL IS MEANT FOR ONLY THE INTENDED RECIPIENT OF THE TRANSMISSION, AND MAY BE A COMMUNICATION PRIVILEGED BY LAW. IF YOU RECEIVED THIS E-MAIL IN ERROR, ANY REVIEW, USE, DISSEMINATION, DISTRIBUTION, OR COPYING OF THIS E-MAIL IS STRICTLY PROHIBITED. PLEASE NOTIFY US IMMEDIATELY OF THE ERROR BY RETURN E-MAIL AND PLEASE DELETE THIS MESSAGE FROM YOUR SYSTEM. THANK YOU IN ADVANCE FOR YOUR COOPERATION. For more information about Orrick, please visit <http://www.orrick.com>
=====