

## Baker Hostetler

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December 2, 2008

Louis A. Colombo  
direct dial: 216.861.7340  
e-mail: lcolombo@bakerlaw.com**Via Email and Regular Mail**H. Alan Rothenbuecher  
Schottenstein Zox & Dunn, Co., LPA  
US Bank Center at Playhouse Square  
1350 Euclid Avenue  
Suite 1400  
Cleveland, Ohio 44115Re: Craig Reed, et al. v. Freebird Film Productions, Inc., et al.  
U.S.D.C., N.D. Ohio Case No. 1:08-CV-01761

Dear Alan:

I have reviewed your letter of November 21, 2008 and considered your position. I am familiar with the basic discovery ground rules. That said, there is a total disconnect between your discovery and the analysis in your letter, on the one hand, and the issues in this case, on the other hand.

First, our clients have not been involved in the creation, production, distribution or sale of any of the films whose copyrights you accuse them of violating. Hence, we have nothing to answer for or produce with respect to those claims. It would not have been inappropriate for us to say that we therefore have no discovery responses beyond those that establish our right to exploit "Freebird ... The Movie" ("the Movie"). In any event, the bulk of your discovery, which might have been appropriate if our clients had in fact violated any of the copyrights at issue, has nothing to do with the issue of license fees owed with respect to the Movie, the claim you have asserted against other defendants.

Second, as far as your client's royalty or license fee claim is concerned, I presume that you have seen by now all of the relevant agreements that govern that claim and the relationships of the parties. What those arguments reflect is the following:

1. Craig Reed and Freebird Video Productions, Inc. ("Freebird") signed an agreement on July 31, 1995 whereby Freebird agreed to pay Reed 2.5 percent of the net profits it derived from the exploitation of the rights being granted by Reed. (The agreement also provides there is no guarantee that there will be any net profits.)

2. Freebird had entered into an agreement with Cabin Fever Entertainment, Inc. ("Cabin Fever") on January 15, 1995 for the purpose of exploiting certain film it owned or controlled of the band Lynyrd Skynyrd. That agreement provided in Sections 4.1 and 4.5 for certain advances or credits aggregating to the amount of \$140,000 to be paid by or credited to the account of Cabin Fever. Section 4.2 of that agreement provides that whatever royalties are earned under that Section or Section 4.3 are "recoupable" or offset against these prior payments and credits of Cabin Fever. Thus, no additional royalties are owed until, at a minimum, the \$140,000 prepaid/credited amount has been recouped. Furthermore, Section 4.4 of the agreement provides that one half of the Production Costs (as defined in Section 1.10) are also chargeable against royalties earned under Section 4.5. We understand those costs are approximately \$1,000,000.

3. Exhibit A of the Freebird/Cabin Fever agreement sets forth the royalties that are earned by and accrue to Freebird. There is a formula that is to be applied to "net sales of audio-visual devices" **sold by Cabin Fever**. Cabin Fever did not sell any such audio-visual devices, and these provisions of Exhibit A Section 1.01 do not apply.

4. Hallmark Entertainment Distribution Company, predecessor to RHI ("Hallmark"), acquired the assets of Cabin Fever by virtue of a March 2, 1998 Asset Purchase Agreement.

5. Hallmark/RHI did not itself sell audio-visual devices; however, Hallmark/RHI did **license** third parties to manufacture and sell audio-visual devices of the Movie. The Freebird/Cabin Fever agreement specifically provides that the royalty owed to Freebird from such exploitation is 50 percent of Cabin Fever's (or by extension Hallmark/RHI's) **net receipts** from those licenses, less certain deductions. None of those deductions apply.

6. Per the Freebird/CabinFever Agreement, Hallmark/RHI has credited to the account of Freebird 50 percent of its **net receipts** from the exploitation of the audio-visual device. We have hundreds of pages of material that reflect the accounting for these net receipts available for production to all parties. (Those documents reflect that the original \$140,000 paid/credited has not been "recouped," much less any of the approximately \$1,000,000 in production costs.)

7. Freebird, Hallmark/RHI and Hallmark/RHI's licenses are all separately owned, independent companies, each of which has its own interest in being certain that it is being properly compensated by its licensees with respect to the exploitation of the Movie. Your client is not in privity with either of our clients, and does not have a roving commission to file harassing and irrelevant discovery requests to make sure Hallmark/RHI's licenses are properly accounting to it, or indeed to ascertain whether Hallmark/RHI is properly accounting to Freebird. The Freebird/Cabin Fever Agreement provides Freebird with a mechanism for assuring it is being properly compensated, if it has any questions about that.

Notwithstanding the fact your client has no right to information about Hallmark/RHI's **net receipts** and the amounts credited to Freebird, we are producing that information. We are even producing a recap from Hallmark/RHI's licensees of amounts credited to Hallmark/RHI. Your client has no right to (by way of example only) the number of products sold by Hallmark/RHI's licensees each year, the per quarter gross revenue received from sales for the last thirteen years, the name of each customer who purchased a Movie DVD, each warehouse where a

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Movie DVD may have been stored, each format in which the Movie was distributed, each retail outlet where the Movie was sold and the years it was sold there, the "pretax profit" from exploitation of the Movie, the after tax profit from the exploitation of the Movie, other lawsuits or administrative proceedings unrelated to this one, and the like. Many of these requests would be patently harassing even in a legitimate copyright infringement case. The requests have nothing to do with what Freebird may owe your client, or even what Hallmark/RHI owes Freebird.

If you wish to pursue these matters with the Court, I will be more than happy to discuss with Judge Boyko both the lack of any basis for your client's filing of this lawsuit against our clients (which is vividly illustrated by your evasive answers to the discovery we propounded upon your clients) and the obvious effort to harass them through this utterly irrelevant discovery.

Very truly yours,

A handwritten signature in cursive script that reads "Louis A. Colombo".

Louis A. Colombo

cc: Mark E. Avsec, Esq.  
T. Earl LeVere, Esq.  
Brandt W. Gebhardt, Esq.