

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

CATHEDRAL ART METAL CO.	:	
	:	
v.	:	C.A. No. 06-465S
	:	
GIFTCO, INC., et al.	:	

**REPORT AND RECOMMENDATION**

Lincoln D. Almond, United States Magistrate Judge

Pending before me are the Motions to Dismiss the Third Amended Complaint filed by Defendants David Bagley, John Breslin and Johnny Johnson. (Document Nos. 105, 107, 108). Plaintiff filed objections. (Document Nos. 110, 113). In their respective Motions, these individual Defendants argue that Plaintiff did not plead sufficient facts in the Third Amended Complaint to state a plausible entitlement to relief against them personally for direct and/or contributory copyright or trademark infringement. Defendants Breslin and Johnson also argue that this Court lacks personal jurisdiction over them. A hearing was held on January 7, 2010. This matter has been referred to me for preliminary review, findings and recommended disposition. See 28 U.S.C. § 636(b)(1)(B); LR Cv 72(a).

Following the hearing, I issued an Order granting Plaintiff leave to file a supplemental brief concerning Defendants Breslin and Johnson's contacts with this District which Plaintiff's counsel indicated were only recently uncovered and supported his claims of general and/or specific personal jurisdiction as to these Defendants. (Document No. 124). Plaintiff filed its supplemental brief on January 23, 2010 and Defendants replied on January 29, 2010. (Document Nos. 129, 130). On February 12, 2010, however, Plaintiff filed a Motion to Amend the Complaint and a proposed Fourth

Amended Complaint which pleads more factual specificity as to the individual Defendants. (Document No. 134). The Motion to Amend was referred to me for determination (28 U.S.C. § 636(b)(1)(A); LR Cv 72), and I have issued a Memorandum and Order GRANTING the Motion to Amend. Accordingly, the arguments presented by Defendants in connection with the pending Motions to Dismiss the Third Amended Complaint are now moot since the operative pleading is now the Fourth Amended Complaint.

### **Conclusion**

For the reasons discussed above, I recommend that Defendants' Motions to Dismiss Plaintiff's Third Amended Complaint be DENIED as moot. (Document Nos. 105, 107, 108). Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of the Court within fourteen (14) days of its receipt. See Fed. R. Civ. P. 72(b); LR Cv 72. Failure to file specific objections in a timely manner constitutes waiver of the right to review by the District Court and the right to appeal the District Court's decision. See United States v. Valencia-Copete, 792 F.2d 4, 6 (1<sup>st</sup> Cir. 1986); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603, 605 (1<sup>st</sup> Cir. 1980).

/s/ Lincoln D. Almond  
LINCOLN D. ALMOND  
United States Magistrate Judge  
March 12, 2010