

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

| | | |
|---------------------------------|---|---------------|
| GIBSON GUITAR CORP. |) | |
| |) | |
| v. |) | No. 3-08-0279 |
| |) | |
| WAL-MART STORES INC.; TARGET |) | |
| CORPORATION; KMART |) | |
| CORPORATION; SEARS, ROEBUCK & |) | |
| CO.; AMAZON.COM, INC.; |) | |
| GAMESTOP CORP.; TOYS-R-US, |) | |
| INC.; HARMONIX MUSIC SYSTEMS, |) | |
| INC.; MTV; and ELECTRONIC ARTS, |) | |
| INC. |) | |

ORDER

Pursuant to the order entered May 1, 2008 (Docket Entry No. 45), counsel for the parties called the Court on May 12, 2008, at which time the following matters were addressed:

1. The plaintiff agrees that Viacom International Inc. is the proper defendant and should be substituted for defendant MTV.

Therefore, the Clerk is directed to terminate MTV (listed on the docket as MTV Networks) as a defendant in this action and to substitute therefor Viacom International Inc., which is represented by the same counsel previously listed for MTV.

2. With the agreement of the plaintiff, the defendants' motion to reinstate Rule 26(d) stay of discovery (Docket Entry No. 34) is GRANTED to the extent that discovery shall be held in abeyance until the rulings on the motion filed by the Retailer defendants¹ to dismiss or to stay in favor of the first-filed action in the Central District of California, and the motion of the Viacom

¹ The "Retailer defendants" are defendants Wal-Mart Stores Inc., Target Corporation, Kmart Corporation, Sears, Roebuck & Co., Amazon.com, Inc., GameStop Corp., and Toys-R-Us, Inc.

defendants² to dismiss amended complaint, except to the extent that the plaintiff needs any discovery to respond to the motions.³

The portion of the motion (Docket Entry No. 34) seeking to continue initial case management conference was GRANTED by the May 1, 2008, order.

3. Consideration of consolidation of the case of Gibson Guitar Corp. v. Harmonix Music Systems, Inc., 3-08-0294, into this case shall be deferred until after the resolution of the above listed motions.

4. The initial case management conference will be rescheduled, as appropriate, after the resolution of the pending motions (Docket Entry Nos. 37, 49, and 53). Entry of a case management order will be deferred until then.

5. The plaintiff shall have until May 21, 2008, to file a response to the motion of the Retailer defendants to dismiss or to stay (Docket Entry No. 37), and the motion of the Viacom defendants to dismiss (Docket Entry No. 49). Any reply, if necessary, shall be filed by June 4, 2008.

6. The plaintiff shall have until June 4, 2008, to file a response to the defendants' motion for a stay pending reexamination of the patent in suit (Docket Entry No. 53). The defendant shall have until June 18, 2008, to file a reply, if necessary.

7. Counsel for the parties shall notify the office of the Magistrate Judge no later than July 24, 2008, whether the United States Patent and Trademark Office (USPTO) has agreed to reexamine Patent No. 5,990,405, upon request filed on April 24, 2008.

The Clerk is directed to forward the file in this case to the Honorable Thomas A. Wiseman, Jr. for his consideration of the motion of the Retailer defendants to dismiss or, in the alternative to stay and accompanying filings (Docket Entry Nos. 37-42), the motion of the Viacom defendants to

² The "Viacom defendants" are defendants Harmonix Music Systems, Inc., Viacom International Inc., and Electronic Arts, Inc.

³ Plaintiff's counsel advised that he thought it was unlikely he would need any discovery to respond to the motions. In the event that the plaintiff does need any discovery, counsel shall schedule a telephone conference call with the Court to address any such request.

dismiss and accompanying filings (Docket Entry Nos. 49-51), the responses to be filed by May 21, 2008, and any replies to be filed by June 4, 2008, along with the motions for hearing on both motions (Docket Entry Nos. 44 and 52), to which the plaintiff has no objection.

It is so ORDERED.



JULIET GRIFFIN
United States Magistrate Judge