

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE**

House of Bryant Publications, L.L.C.,)	
)	
Plaintiff,)	Case No. 3:09-0502
)	
v.)	Judge Trauger
)	Magistrate Judge Knowles
A&E Television Networks,)	
)	JURY DEMAND
Defendant.)	
)	

INITIAL CASE MANAGEMENT ORDER

I. **Jurisdiction.** This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331, 1338(a) and § 1367. While AETN denies that it has purposefully availed itself of the jurisdiction of this Court by transacting business in this District and State with respect to the song and television program at issue in the Complaint, it does not challenge personal jurisdiction over the actions and claims in this Court against AETN, or that the case arises under the Copyright Act.

II. **Brief Theories of the Parties**

A. Plaintiff

Plaintiff is the exclusive administrator of a musical composition entitled “Rocky Top.” Defendant has used “Rocky Top” in an audiovisual work without license from plaintiff. This use is copyright infringement, and neither “fair use” nor any other defense absolves defendant of liability. Furthermore, plaintiff will show this use was willful infringement.

B. Defendant

AETN owns the rights in the true-life documentary television series *City Confidential*, each episode of which documents particular cities across the United

States and mysteries based upon true events which occurred in those cities. One such documentary episode focused on the city of Knoxville, Tennessee and came to be titled “Phantom Hitman” (“the Program”). Among the topics in the Program was a 1994 attempted contract killing in Knoxville, Tennessee. The Program has been filed with the Court. The Program in its entirety lasts approximately forty-eight minutes, with a University of Tennessee-Knoxville stadium scene appearing approximately three minutes and forty seconds into the episode. AETN admits that during a brief sequence, and as part of the actual noise occurring within the stadium, the University of Tennessee Marching Band can be heard playing an instrumental version of the musical composition “Rocky Top” for a total of approximately twelve seconds, six seconds of which there is narration. AETN denies that a synchronization license or other copyright license was required for the composition “Rocky Top” in connection with the Program on the basis that the use made in the Program was a “fair use” under Section 107 of the Copyright Act. AETN denies that it has infringed the copyright in the musical composition entitled “Rocky Top,” denies any willful infringement occurred, and further denies that Plaintiff is entitled to any damages or other relief.

III. **Issues Resolved:** Jurisdiction and venue. The Court denied AETN’s motion to dismiss on “fair use” grounds, but has in no way rejected “fair use” as a defense to Plaintiff’s claims.

IV. **Issues Still in Dispute:** Liability, damages, fair use, standing.

V. **Initial Disclosures:** Parties shall exchange initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) within 30 days after the initial case management conference.

VI. Discovery:

Local Rule 33.01(b) is expanded to allow 40 interrogatories, including sub-parts. No motions concerning discovery are to be filed until after the parties have conferred in good faith and, unable to resolve their differences, have scheduled and participated in a conference telephone call with Judge Trauger.

The parties shall complete all written discovery and depose all fact witnesses on or before August 13, 2010. All written discovery, with the exception of requests for admission, should be submitted in sufficient time so that responses thereto shall be served and received on or before thirty (30) days prior to such discovery cutoff.

VII. Motions to Amend:

The parties shall file all Motions to Amend on or before May 14, 2010.

VIII. Disclosure and Depositions of Experts.

Plaintiff shall identify and disclose all expert witnesses and expert reports on or before July 23, 2010. Defendant may take the deposition of such expert(s) on or before September 1, 2010. Defendant shall identify and disclose all expert witnesses and reporters on or before October 1, 2010. Plaintiff may take the deposition of such expert(s) on or before November 15, 2010. Rebuttal reports shall be submitted on or before December 7, 2010. Depositions related to rebuttal reports shall be completed by January 15, 2011.

IX. Joint Mediation Report:

The parties shall submit a joint mediation report on or before December 7, 2009. If the case has not been resolved, the parties shall submit a second joint mediation report on or before December 15, 2010.

X. Dispositive Motions:

No motion for partial summary judgment shall be filed except upon leave of court. Any party wishing to file such a motion shall first file a separate motion that gives the justification for filing a partial summary judgment motion in terms of overall economy of time and expense for the parties, counsel and the court.

The parties shall file all dispositive motions on or before February 1, 2011. Responses to dispositive motions shall be filed within twenty-five (25) days after service. Optional replies shall be filed within fifteen (15) days after the service of the response.

XI. Electronic Discovery: The parties intend to reach agreement on how to conduct electronic discovery, but there have been no discussions. The parties do not intend that the default standard contained in Administrative Order No. 174 should apply to this case.

XII. Estimated Trial Time:

The parties expect the trial to last approximately 4 days.

It is so ORDERED.

Aleta A. Trauger
U.S. District Judge

APPROVED FOR ENTRY:

/s/ Richard S. Busch

Richard S. Busch (TN BPR No. 014594)
Thomas J. Motzny (TN BPR No. 027737)
KING & BALLOW
311 Union Street, Suite 1100
Nashville, TN 37201
(615) 259-3456 (tel)
(615) 248-2860 (fax)
Attorneys for Plaintiff

/s/ Robb S. Harvey

Robb S. Harvey (Tenn. BPR No. 011519)
Heather J. Hubbard (Tenn. BPR No.
023699)
WALLER LANSDEN DORTCH &
DAVIS, LLP
511 Union Street, Suite 2700
Nashville, TN 37219
(615) 244-6380 (tel)
(615) 244-6804 (fax)
Attorneys for Defendant