Castro v. Entrepreneur Media, Inc. Doc. 27

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

DANIEL R. CASTRO,	)	
Plaintiff,	)	Civil Action No. 10CA695
	)	Hon. Lee Yeakel
v.	)	
	)	
ENTREPRENEUR MEDIA, INC.,	)	
Defendant.	)	
	)	

DEFENDANT ENTREPRENEUR MEDIA, INC.'S COMBINED OPPOSITION TO CASTRO'S MOTION TO FILE SEPARATE RESPONSES AND MOTION TO EXTEND PAGE LENGTH

I. INTRODUCTION

Plaintiff Daniel Castro's ("Castro") Motion to File Separate Responses ("MFSR") is predicated on an unfounded and unsupported belief that Castro is permitted to file a separate response to address each argument in EMI's Partial Motion to Dismiss Under Rule 12(b)(6) ("MTD"). Castro's request to bifurcate his responses is nothing more than a backdoor attempt to burden the court with at least seventy-four pages worth of arguments in response to a straightforward, 15-page 12(b)(6) motion. While EMI would generally not oppose a modest request for an extension of the ten page limit set by this Court for responsive briefs, and indeed, offered to stipulate to 20 pages for Castro's opposition brief, Castro's attempt to saturate this court with voluminous arguments is unwarranted and inappropriate given the straightforward nature of the MTD.

More fundamentally, Castro incorrectly argues that he needs all of those extra pages because "this is not the run of the mill trademark case." MFSR 2. This is, in fact, a run of the mill trademark case, similar to hundreds of trademark cases that have come before it. EMI is not

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the first trademark owner to assert a trademark that is also an English word, and will not be the last. There are no constitutional or antitrust issues involved here; Castro has misconstrued and misapplied those laws in this straightforward trademark dispute he has brought before the Court. Castro also wastes unnecessary pages "educating" the Court on the purpose of the Declaratory Judgment Act and basic trademark law, both areas that the Court is already familiar with and needs no extraordinary briefing from Castro. EMI was able to address Castro's improper claims in a concise manner in a single, 15 page motion. Castro should be able, and required, to do the same.

II. ARGUMENT

A. Bifurcation of Responses is Inappropriate Under the Local Court Rules

Castro claims that "[t]echnically, [he] is entitled to file eight (8) separate responses because EMI has effectively filed eight (8) separate Rule 12(b)(6) motions." MFSR 3. Castro provides no support in the Federal Rules of Civil Procedure or Local Rules for this assertion. Local Rule CV-7(d) states, "If any party opposes ***a*** motion, the respondent shall file ***a*** response… [and t]he response is limited to 10 pages unless otherwise authorized by the Court." (emphasis added). A single motion justifies a single response; there is nothing in the Local Rules that states that a response may address each argument comprising a motion with a separate response. If Castro's perceived technicality were accurate, EMI could have used that same logic to expand upon each argument in the MTD by filing a separate ten-page motion to dismiss for each cause of action. However, EMI recognized that to do so would subvert the purpose and effect of the established page limits and unduly burden the court to the point that bringing even a relatively simple matter to conclusion would become a procedural marathon if this tactic was routinely employed. Instead, EMI filed one concise motion which justifies one concise response under the rules.

B. Castro Is Not Responding to a Motion for Summary Judgment

Castro tries to bolster his bifurcation argument by labeling EMI's MTD as "more akin to a motion for summary judgment because it consists almost entirely of arguments on the merits…." and further argues that this is improper under the "Rule 12(b)(6) standard." MFSR 1-2. This is an inaccurate statement of the law and characterization of the MTD. First, Castro's cited case, *Jones v. Greninger*, in no way supports this argument, as it says nothing about merit arguments being improper in a 12(b)(6) motion. Second, there is nothing improper about explaining the applicable legal standard necessary to state a claim upon which relief can be granted and then demonstrating why Castro did not, and cannot, plead specific facts in his First Amended Complaint ("FAC") sufficient to support those claims, as EMI's MTD did. This approach is entirely consistent with a 12(b)(6) motion to dismiss, which is designed to test the sufficiency of a claim for relief.

Being a straightforward 12(b)(6) motion to dismiss, Castro's response to the MTD need not be a seventy-five page affair. If Castro believes that the FAC pleads specific facts sufficient to support those claims EMI seeks to dismiss, he should be able to reference those facts in a concise response. Indeed, by Castro's own admission, he can "simply identify the paragraph numbers in his complaint where facts supporting each cause of action [can] be found." MFSR 2. Castro can simply identify the paragraph numbers in the FAC where facts supporting each claim can be found in far less than the seventy-four pages he requests.

C. Castro's Request to Extend Page Length Should be Kept to a Reasonable Extension

In conjunction with the MFSR, Castro also filed a Motion to Extend Page Length ("MEPL") for one of his anticipated bifurcated responses, seeking leave to file a <u>thirty-four</u> page response. The requested extension is greatly in excess of what would be considered a "concise

statement of the reasons and opposition to the motion" under LCR CV-7(d). Indeed, the request is made even more inappropriate by the fact that Castro has voluntarily dismissed several of the claims that EMI attacked in its 15-page MTD. Castro now has fewer arguments to make, and should be able to do so in a single opposition brief of no more than 20 pages. Castro also spends over 10 pages in his brief discussing the "purpose of a Declaratory Judgment action," the "purpose and history of the Lanham Act," and how a trademark "gets registered as a trademark." This Court is familiar with all three of these areas so this extensive exposition is unnecessary.

III. CONCLUSION

For the foregoing reasons, EMI respectfully requests that Castro be denied leave to file separate responses to EMI's MTD. Castro should be ordered to re-file a single opposition brief of no more than 20 pages.

Respectfully submitted,

Dated: December 21, 2010

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CERTIFICATE OF SERVICE

I hereby certify the on December 21, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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