

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

BROWNMARK FILMS, LLC,

Plaintiff,

v.

Case No. 2:10-cv-01013-JPS

COMEDY PARTNERS, MTV
NETWORKS, PARAMOUNT
PICTURES CORPORATION, SOUTH
PARK DIGITAL STUDIOS LLC, and
VIACOM INTERNATIONAL INC.,

Defendants.

DEFENDANTS' MOTION TO RECOVER ATTORNEYS' FEES AND COSTS

In accordance with 17 U.S.C. § 505 and Federal Rule of Civil Procedure 54(d), defendants Comedy Partners, MTV Networks, Paramount Home Entertainment Inc., South Park Digital Studios LLC, and Viacom International Inc. (collectively "the South Park Defendants") hereby move to recover their attorneys' fees and costs from plaintiff Brownmark Films, LLC.

This Motion is brought on the following grounds:

(1) the South Park Defendants' fair-use defense was completely successful, resulting in a dismissal with prejudice at the pleading stage;

(2) the South Park Defendants' defense was strong, and Plaintiff's lawsuit was objectively unreasonable, because the parodic nature of the South Park Defendants' use was easily perceived;

(3) Plaintiff's lawsuit was frivolous, as this "classic parody" case (*see Brownmark Films LLC v. Comedy Partners*, 2011 U.S. Dist. LEXIS 72684 at *24 (E.D. Wis. July 6, 2011)) was not

in an unsettled area of law and had little likelihood of success;

(4) Plaintiff's motivation is questionable, as the South Park Defendants repeatedly explained to Plaintiff that the use was a protected fair use, and Plaintiff "filed briefs that wholly ignored the central issue of this litigation, fair use" (*id.*, 2011 U.S. Dist. LEXIS 72684 at *27); and

(5) fee recovery in this case would deter others from bringing frivolous copyright infringement lawsuits based on obvious parodies.

These grounds are set forth fully in the accompanying Memorandum of Law. The South Park Defendants, therefore, respectfully request that this Court enter the Proposed Order submitted with this Motion.

DATED: July 20, 2011

DAVIS WRIGHT TREMAINE LLP
ALONZO WICKERS IV
California State Bar No. 169454
JEFF GLASSER
California State Bar No. 252596

By: /s/ Alonzo Wickers IV
Alonzo Wickers IV

Attorneys for Defendants
COMEDY PARTNERS, MTV NETWORKS,
PARAMOUNT HOME ENTERTAINMENT,
SOUTH PARK DIGITAL STUDIOS LLC, and
VIACOM INTERNATIONAL INC.

DAVIS WRIGHT TREMAINE LLP
865 S. Figueroa St., Suite 2400
Los Angeles, California 90017-2566
(213) 633-6800
Fax: (213) 633-6899

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2011, I caused the foregoing document to be electronically filed with the Clerk of the Court using the ECF system which will make this document available to all counsel of record for viewing and downloading from the ECF system.

Dated: July 20, 2011.

/s/ Alonzo Wickers IV
Alonzo Wickers IV