

No. 09-2571

**United States Court Of Appeals
For the First Circuit**

SAMUEL BARTLEY STEELE; BART STEELE PUBLISHING; STEELE RECORDZ

Plaintiffs – Appellants

v.

TURNER BROADCASTING SYSTEM, INC.; TIME WARNER, INC.; JON BONGIOVI, individually and d/b/a Bon Jovi Publishing; RICHARD SAMBORA, individually and d/b/a Aggressive Music; WILLIAM FALCONE, individually and d/b/a Pretty Blue Songs; FOX BROADCASTING CO.; MAJOR LEAGUE BASEBALL PROPERTIES, INC.; MLB PRODUCTIONS, A&E; A&E/AETV; BON JOVI; AEG LIVE, LLC; MARK SHIMMEL MUSIC; VECTOR MANAGEMENT; AGGRESSIVE MUSIC, a/k/a Sony ATV Tunes; BON JOVI PUBLISHING; UNIVERSAL MUSIC PUBLISHING GROUP; UNIVERSAL POLYGRAM INTERNATIONAL PUBLISHING, INC., PRETTY BLUE SONGS; SONY ATV TUNES; KOBALT MUSIC PUBLISHING AMERICA, INC.; BOSTON RED SOX

Defendants – Appellees

THE AMERICAN SOCIETY OF COMPOSERS; FOX TELEVISION STATIONS, INC.; ISLAND RECORDS, a/k/a Island Def Jam Records; BIGGER PICTURE CINEMA CO.,

Defendants

**APPEAL FROM THE U.S. DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

**REPLY BRIEF OF APPELLANTS SAMUEL BARTLEY STEELE; BART STEELE
PUBLISHING; STEELE RECORDZ**

Christopher A.D. Hunt
The Hunt Law Firm LLC
10 Heron Lane
Hopedale, MA 01747
(508) 966-7300

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....4

I. Appellees and Claims Subject to This Appeal.....7

II. MLB Knowingly Submitted False Material Evidence to the District Court: MLB’s Misconduct Requires Immediate Reversal.....8

1. MLB’s False Submission, Whether in Fact or by Presumption, “Substantially Interfered” with Steele’s Ability to Fairly Litigate His case10

2. MLB’s Willful Misconduct: “Substantial Interference” is Presumed11

3. MLB’s False Evidence “Substantially Interfered” with Steele During Discovery.....14

4. MLB’s False Evidence “Substantially Interfered” with Steele at Summary Judgment16

5. MLB Cannot Justify or Negate its Intentional Submission of False Evidence.....18

III. Steele’s Unwavering Liability Theory has Always Been Infringement by Temp-Tracking in Violation of Steele’s Exclusive Rights to Reproduce, Synchronize to Video, and Create Derivative Works19

IV. Infringement Arose during MLB’s Actions in Creating the MLB Audiovisual21

V. MLB Fails to Address Steele’s Claim of Infringement by Reproduction.....22

VI. “Substantial Similarity” is not a “Dispositive Issue,” Therefore the District Court’s Discovery Order was an Abuse of Discretion and Plain Error.....25

VII.	Steele, an Indigent and <i>Pro Se</i> Plaintiff, Tried to Object to the Discovery Order and was Denied the Opportunity to Conduct Meaningful Discovery.....	26
VIII.	The “Images” and “Sounds” of the MLB Audiovisual Must, by Statutory Definition and Case Law, be Compared as a Whole to Steele’s work.....	28
IX.	Steele Maintains His Claim Against Bon Jovi	29
X.	MLB Misstates Synch Rights Standard; Fails to Refute Undisputed Facts	31
XI.	MLB Fails to Rebut that Steele’s Fact Witnesses Were Improperly Disregarded <i>en toto</i> at Summary Judgment.....	32
XII.	MLB Fails to Dispute Substantial Similarity	33
1.	MLB Cannot Dispute Steele’s Factual Evidence	33
2.	MLB’s “Borrowed” Elements are Not Scènes à Faire.....	35
3.	Substantial Similarity Analyzes Borrowed Elements in the Context of Steele’s Song, not MLB’s Audiovisual	36
4.	MLB’s Dissimilarity Arguments are Irrelevant Distractions	37
5.	“Comparing” the MLB Audiovisual to its own Soundtrack is Meaningless.....	38
6.	MLB Drops “Coincidence” Defense; Claims Borrowed Elements “Isolated,” “Insubstantial,” “Fleeting,” and “Incidental”	39
7.	Musicological Similarities Cannot be Divorced From the MLB Audiovisual	40

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGES</u>
<u>A&M Records, Inc. v. Napster, Inc.</u> 239 F.3d 1004 (9 th Cir. 2001).....	22, 25, 32
<u>Aguiar-Carrasquillo v. Agosto-Alicea</u> 445 F.3d 19 (1 st Cir. 2006).....	8, 10, 14, 18
<u>Anderson v. Cryovac, Inc.</u> 862 F.2d 910 (1 st Cir. 1988).....	10
<u>Compton v. Subaru of America</u> 82 F.3d 1513 (10 th Cir. 1996).....	33
<u>Concrete Machinery Co., Inc. v Classic Lawn Ornaments, Inc.</u> 843 F.2d 600 (1 st Cir. 1988).....	39
<u>Coquico, Inc. v. Rodriguez-Miranda</u> 562 F.3d 62 (1 st Cir. 2009).....	17, 35, 36
<u>Hazel-Atlas Glass Co. v. Hartford-Empire Co.</u> 322 U.S. 238 (1944).....	8, 9, 10, 14, 16, 18
<u>Harper & Row v. Nation Enterprises</u> 471 U.S. 539 (1985).....	36
<u>Johnson v. Gordon</u> 409 F.3d 12 (1st Cir. 2005).....	34, 37
<u>Nelson v. Adams</u> 529 U.S. 460 (2000).....	28
<u>Sheldon v. Metro-Goldwyn Pictures Corp.</u> 81 F.2d 49 (2d Cir. 1936).....	37

CASES

PAGES

Situation Mgmt Systems, Inc. v. ASP Consulting, LLC
560 F.3d 53 (1st Cir. 2009).....31

Three Boys Music v. Michael Bolton
212 F.3d 477 (9th Cir. 2000).....17

U.S. v. ASCAP
485 F.Supp. 2d 438 (S.D.N.Y. 2007).....21

Warner Bros, Inc. v. American Broadcasting Co.
720 F.2d 231(2nd Cir. 1983).....37

Worth v. Selchow & Righter Co.
827 F.2d 569 (9th Cir. 1987).....37

STATUTES

PAGES

17 U.S.C. § 101.....14, 19

17 U.S.C. § 106.....21, 23

Lanham Act.....7

M.G.L. c. 93A.....7

RULES

PAGES

Fed.R.Civ.P. 12(b)(6).....7

Fed.R.Civ.P. 26(e)(2)(A).....11

Fed.R.Civ.P. 26(e)(1).....11

Fed.R.Civ.P. 56(e).....32

RULES

PAGES

Fed.R.Civ.P. 60(b)(3).....10

Fed.R.Evid. 701.....32

OTHER AUTHORITIES

3 Nimmer § 13.03[B].....37

I. Appellees and Claims Subject to This Appeal

Appellees' Brief ("MLB Brief") correctly observes that Steele does not appeal the dismissal of his 93A and Lanham Act Claims as to all defendants and that Steele does not appeal the Rule 12(b)(6) dismissal of the copyright claims of Fox Broadcasting Company, Sony ATV/Tunes LLC, Vector 2 LLC, and Universal Music Publishing. MLB Brief at 22, 24; Steele Brief at 13, 15, 32, 35-36.

Steele's Appellate Brief ("Steele's Brief") makes clear he is appealing the district court's dismissal of his copyright claims as a matter of law as to all other Defendant-Appellees named in the caption (collectively hereinafter referred to as "MLB"). Steele Brief at 13-15, 20, 32-82. The undersigned, however, unintentionally omitted from Steele's Brief the above designation of "MLB" as shorthand for all remaining Defendants-Appellees.¹

MLB has not been prejudiced by my omission.² The district court's discovery and summary judgment rulings applied to all defendants equally and this Court's

¹ MLB knew Steele was not limiting his appeal to TBS and Major League Baseball. Shortly after the appeal was docketed, the undersigned and MLB counsel Christopher Clark exchanged friendly e-mails and agreed which parties were properly subject to the appeal.

² Defendants-Appellees are all represented by the same counsel.

appellate review applies legal and procedural standards to the district court's rulings that will bind all defendants equally. MLB concedes that the issue of which appellees are before this Court does not affect this Court's analysis. MLB Brief at 45 n. 25.³

II. MLB Knowingly Submitted False Material Evidence to the District Court: MLB's Misconduct Requires Immediate Reversal

MLB, in its brief, fails to rebut, explain, or, more importantly to correct its submission of the Altered Audiovisual. MLB Brief at 47-49. MLB asserts neither inadvertence, mistake, or excusable neglect. MLB's submission was, therefore, knowing and willful. MLB's position requires immediate reversal, remand, and an order for entry of judgment in Steele's favor in the district court or, at a minimum, reversal, remand, and an order to allow full and true discovery in the district court. Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238 (1944); Aguiar-Carrasquillo v. Agosto-Alicea, 445 F.3d 19 (1st Cir. 2006).

MLB's defends its thrice-submitted false evidence – sworn to as a “true and correct” copy of the MLB Audiovisual – while incongruously attempting to explain

³ MLB's related argument that specific Defendants-Appellees should be dismissed because Steele's Brief did not elucidate liability or appellate theories against each of them individually is baseless. Steele is under no obligation to re-allege his underlying – and unchanged – liability theories or to repeat, laundry list style, his (identical) grounds for appeal as to each Defendant-Appellee.

away the material differences between Altered Audiovisual and the true MLB Audiovisual. MLB Brief at 47-49.⁴ Accordingly, MLB's selection, alteration, and submission of the Altered Audiovisual were deliberate. Hazel-Atlas Glass Co. 322 U.S. at 249-250, n.5 (circuit court had "duty and power" to vacate judgment based in part on willfully submitted false documents and noting that responsible party "never questioned" the documents' falsity).

MLB's defense of its materially-altered evidence before this Court shows MLB's intent to subvert judicial process at the appellate level. Hazel-Atlas Glass Co., 322 U.S. at 246 (litigant submitted false documentary evidence to district court; Supreme Court held that circuit courts have inherent power in equity to address false evidence on appeal, despite opponent's failure to raise issue earlier; "This matter does not concern only private parties. There are issues of great moment to the public in a patent suit... Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public,

⁴ Steele's Brief addressed the Altered Audiovisual in the expectation that MLB would explain or correct the obvious discrepancies between the true MLB Audiovisual and MLB's Altered version. Steele allowed for the possibility that MLB had mistakenly submitted the wrong audiovisual and would correct its "mistake."

institutions in which fraud cannot complacently be tolerated consistently with the good order of society.”).

1. MLB’s False Submission, Whether in Fact or by Presumption, “Substantially Interfered” with Steele’s Ability to Fairly Litigate His case

MLB’s misrepresentations either “substantially interfered” with his ability to fairly litigate his case or, alternatively, “*that [MLB’s] misconduct was knowing or deliberate,*” which, by “presumption or inference,” satisfies the element of “substantial interference.” Aguiar-Carrasquillo 445 F.3d at 28 (discussing Fed.R.Civ.P. 60(b)(3) (emphasis supplied)); Hazel-Atlas Glass Co., 322 U.S. at 247 (intentional deception does not require Supreme Court’s “attempted appraisal” of influence the deception may have exerted on the court; party submitting false evidence “in no position now to dispute its effectiveness” or to “escape the consequences” of its deception); Anderson v. Cryovac, Inc., 862 F.2d 910 (1st Cir. 1988) (“knowing and deliberate” misconduct is presumed to have interfered with other side’s ability “fully and fairly to prepare for, and proceed at, trial”).

Here, Steele need not (but does, below) show “substantial interference,” given MLB’s willful conduct. Id. (“There is no need for us to determine how many angels

danced on the head of that particular pin, however, for what transpired thereafter was unarguably in dereliction of appellee’s duty”).⁵

2. MLB’s Willful Misconduct: “Substantial Interference” is Presumed

The Altered Audiovisual was intended to, among other things, shield its copyright owner of the infringing work from liability. It is difficult to think of a more reprehensible litigation “tactic” in an infringement action: removing the copyright notice from the infringing work, particularly when the notice shows ownership by a non-party.

MLB, in deleting the copyright notice image, also cut off the TBS logo fadeout, an organ “slide-down” synchronized to the TBS logo fadeout, the final drum “hit,” and other accompanying sounds (bottles clinking) from the *true* MLB Audiovisual – strong evidence that these material elements in the final seconds were deleted *in toto*, prior to court submission.⁶ See App-511, compared with actual MLB Audiovisual viewable at link at Steele Brief at 18, and below:

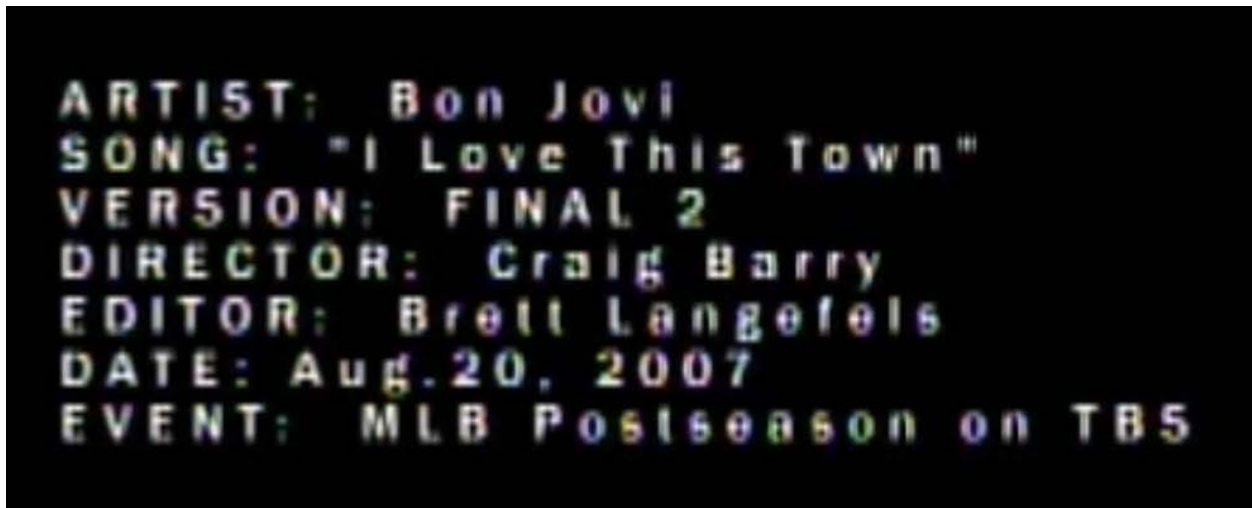
⁵ MLB “neither amended nor supplemented [its] representations at any time. This was an outright breach.” *Id.* (citing Fed.R.Civ.P. 26(e)(2)(A)- now Rule 26(e)(1)).

⁶ In other words, it wasn’t a prior version to which the copyright notice was later added: The true MLB Audiovisual ends after the TBS logo/copyright notice/organ slide/last drum hit; deleting these additional elements caused the Altered Audiovisual to have an abrupt ending, unlike the true MLB Audiovisual, consistent with deletion.

http://mlb.mlb.com/media/player/mp_tpl_3_1.jsp?wid=595113&w=/2007/open/commercial/082707_tbs_bonjovi_ps_promo_400.wmv&pid=gen_video&vid=1&mid=200708272173402&cid=mlb&fid=gen_video400&v=2

MLB explicitly (and mockingly) denies that the Altered Audiovisual arose from an earlier working draft – labeling such drafts “phantoms.” MLB Brief at 23 n.14.

MLB is contradicted by its own evidence: the Altered Audiovisual reveals itself as an earlier “phantom” draft or an earlier draft that MLB selected and edited prior to filing in the district court. See beginning credits at App-511 (“VERSION: FINAL 2”), below:



The true MLB Audiovisual’s opening credits (viewable at above link) have no version name or number, or date. Steele Brief at 18.

After deleting the copyright notice (and other material elements), MLB sought to cover its tracks by adding 12 seconds to the beginning of the Altered Audiovisual.

The extra 12 seconds made the Altered Audiovisual longer than the true MLB Audiovisual – even with the last few seconds deleted, obscuring MLB’s deletion.⁷

Consistent with the above efforts to conceal MLBAM’s copyright ownership and its role in the creation and promotion of the MLB Audiovisual, MLB also claimed - falsely – that the MLB Audiovisual was first “released” by TBS on August 31, 2007. App-46. The MLB Audiovisual was actually released on August 27, 2007, and by MLBAM, not TBS.⁸

MLB references the MLB Audiovisual in its papers as the “TBS Promo,” even though MLBAM – not TBS – owns its copyright, first broadcast it, and, as owner of the baseball images and Bon Jovi’s website operator and promoter, App-817, co-produced it.⁹

⁷ The 12 seconds may have existed in the “Final 2” version or they may have been added. Regardless, the 12 seconds do not appear in the true MLB Audiovisual and, by selecting to submit a draft version containing the 12 seconds or by editing a draft version to add the 12 seconds, MLB’s sought to conceal its deletion of the final seconds.

⁸ See App-330, online version viewable here (with link to video dated August 27, 2007):
http://mlb.mlb.com/news/press_releases/press_release.jsp?ymd=20070827&content_id=2173003&vkey=pr_mlb&fext=.jsp&c_id=mlb

⁹ TBS, in fact, never aired the MLB Audiovisual, but only brief “interstitials,” shorter derivatives of the MLB Audiovisual. App-328.

MLB's "knowing or deliberate" submission of false evidence to the district court, as well as its defense of its misconduct in this Court, satisfies a "presumption or inference" of "substantial interference" with Steele's ability to fairly litigate his claim.

Aguiar-Carrasquillo 445 F.3d at 28; Hazel-Atlas Glass Co., 322 U.S. at 247

3. MLB's False Evidence "Substantially Interfered" with Steele During Discovery

Even if this Court finds MLB's misconduct unintentional, MLB's misconduct nonetheless "substantially interfered" with Steele's ability to fairly litigate during discovery and, accordingly, warrants reversal.

MLB initially submitted the Altered Audiovisual on December 8, 2008. App. 46 n.3. Nearly four months later, the district court issued its discovery order, stating that the MLB Audiovisual was "produced" by TBS, and that it "feature[d] a song" by Bon Jovi. App. 377. Unsurprisingly, the district court made no reference to MLBAM or otherwise indicated awareness of any issues as to the genesis, production, or ownership of the MLB Audiovisual. App-375-387.

MLBAM's copyright ownership of the MLB Audiovisual necessarily includes ownership of its constituent Soundtrack, including the 2:38:90 of Bon Jovi-performed music. 17 U.S.C. §101. MLB's false mantra in the district court and here – that the

MLB Audiovisual incorporated a “Bon Jovi song” – misleadingly labeled the Soundtrack and perpetuated MLB’s concealment of MLBAM’s role.

The extent to which the district court relied upon MLB’s Altered Audiovisual and false characterizations in excluding “access” and “creation” from discovery is unknown. Likely the district court believed – based on MLB’s misrepresentations and the Altered Audiovisual – that TBS alone “produced” the MLB Audiovisual and that Bon Jovi produced and “owned” the “copyright” to the Soundtrack, mislabeled the “Bon Jovi Song.”

The district court, under this false impression, disallowed discovery on “creation” and “access,” otherwise crucial issue normally subject to extensive discovery in copyright cases, and which would have revealed the true roles of the parties in this case (as well as revealing MLB’s false submissions and statements in the district court, rather than on appeal).

Steele’s detailed descriptions in his district court filings of defendants’ concerted actions in creating – and then concealing the origin and purpose of – the MLB Audiovisual would also have had an impact on the district court (which all but ignored Steele’s allegations in this regard) had it been aware of MLBAM’s true role in creating (and owning) the MLB Audiovisual.

The district court's discovery order was based, in part, on MLB's false evidentiary submissions and misrepresentations and, therefore, was tainted, along with the rest of the district court proceedings. Hazel-Atlas Glass Co., 322 U.S. at 246-247.

4. MLB's False Evidence "Substantially Interfered" with Steele at Summary Judgment

If this Court finds that MLB unintentionally submitted the Altered Audiovisual and that MLB's Altered Audiovisual (and misrepresentations) did not substantially interfere with Steele at the discovery stage, MLB's misconduct nonetheless substantially interfered with Steele's ability to fairly oppose summary judgment.

In its summary judgment opinion, the district court stated it had "carefully... viewed both the *original* [MLB Audiovisual] and [Steele's version with the soundtrack replaced]." App. 773 (emphasis supplied). The district court did not, in fact, view the *original* MLB Audiovisual because it was not in evidence. Steele Brief at 39; MLB Brief at 47-49.

Accordingly, the district court relied on the Altered Audiovisual as "true and correct" at summary judgment. App. 773. The district court, in fact, it had unknowingly relied on an edited draft that was materially different from the true MLB Audiovisual. Id.

The district court reasonably – but mistakenly – assumed MLB submitted a “true and correct” copy at summary judgment. The district court’s failure to notice the Altered Audiovisual’s extra length (2:46 vs. 2:38:90), different opening credits, and sudden ending substantially interfered with Steele at summary judgment.¹⁰

MLB’s argument that Steele suffered no harm because “both” versions – neither “true and correct” – of the MLB Audiovisual were before the district court is absurd: First, by acknowledging there were two “versions” before the district court, MLB necessarily admits that it failed to submit a “true and correct” copy (there can be only one “true and correct” version, and it was never before the district court or this Court). Second, the prejudice to Steele arising from the district court having before it two very different versions of the allegedly infringing work – neither being “true and correct” – is hardly “difficult to understand.” MLB Brief at 48. The district court should have had one – and only one – “true and correct” version of the MLB Audiovisual, and it should have come from MLB (who claimed – and maintain – that they provided it), not Steele.

¹⁰ Duration, as a linear “dimension,” is a protectable element. Coquico Inc., v. Rodriguez-Miranda, 562 F.3d 62, 69 (1st Cir. 2009). Similarly, a “fade” ending, as part of an original arrangement, merits copyright protection. Three Boys Music v. Michael Bolton, 212 F.3d 477, 482 (9th Cir. 2000).

Even though the extent to which the district court relied upon MLB's false evidence – and misleading statements – cannot be known with certainty, certitude is not required in the context of willful submission of false evidence. Aguiar-Carrasquillo, 445 F.3d at 28; Hazel-Atlas Glass Co., 322 U.S. at 246-247.

5. MLB Cannot Justify or Negate its Intentional Submission of False Evidence

MLB defends its misconduct, arguing lack of relevance, waiver, lack of harm, and failure to conduct discovery. MLB Brief at 47-49. MLB's arguments stem from the brazen assumption that this Court will countenance MLB's willful misconduct unless Steele can show diligence, objection, and specific harm from MLB's misconduct. Id. No law supports MLB's position. Id.

The law contradicts MLB's arguments.

First, where false evidence is willfully submitted, as here, prejudice is presumed and need not be shown. Aguiar-Carrasquillo, 445 F.3d at 28.

Second, MLB cannot submit deceptive evidence – intentionally concealing and obscuring material facts – in lower court proceedings and then claim on appeal that Steele's objections are waived because the false submission is a *fait accompli*. Hazel-Atlas Glass Co., 322 U.S. 238, 246 (“[s]urely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The

public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud”).

Third, MLB’s claims that its edits to the Audiovisual appear “before” and “after” the Audiovisual are simply false: an Audiovisual – whether altered or true version – is a single work. 17 U.S.C. § 101. MLB cannot disclaim its willful alterations by labeling them “before” and “after.”

The credits in the opening 12 seconds and the deleted MLBAM © notice/TBS logo frames/organ slide/final drum hit/bottles in the missing final seconds make clear that these sections appear at the beginning (not “before”) and end (not “after”) of the MLB Audiovisual. The duration, presentation, and selection, as well as “overall arrangement” are integral elements of a work and cannot be disregarded at the whim of the infringer for the expediency of litigation. Steele Brief at 55.

III. Steele’s Unwavering Liability Theory has Always Been Infringement by Temp-Tracking in Violation of Steele’s Exclusive Rights to Reproduce, Synchronize to Video, and Create Derivative Works

Steele has pleaded and argued consistently that MLB used Steele’s Song as a “temp track” during the creation of the MLB Audiovisual. App-27, 31-32, 151, 156, 158, 307-308, 591, 594, 785, 787, 792, 796. MLB’s unauthorized and secret use of

Steele's Song as a temp track involved MLB reproducing and synchronizing his Song, and creating derivative works therefrom. Id.

Steele's complaint describes how MLB used his Song as a temp-track: "[MLB] synchronized video images to [Steele's Song]... [MLB] 'could easily change [the Steele Song] into the [MLB Promo] by simply copying and dragging or cutting and pasting' his Song 'just as we do with word processing programs,' which is a 'violation of [Steele's] 'synch rights.'" App-31.

Steele's Opposition to Summary Judgment argued that "temp tracking constitutes unlawful reproduction, synchronization or 'sync,' and derivation." App-591 (emphasis supplied).

In August 2007 – the same month the MLB Audiovisual was released – Warner Bros. Pictures settled a temp-track lawsuit relating to its movie, "300," stating it "acknowledges and regrets that a number of the music cues for the [soundtrack] of '300' were... derived from music composed by... Elliot Goldenthal for... 'Titus.' Warner Bros... is pleased to have amicably resolved this matter." App-595.

Steele's claims have been steadfast and MLB's attempts to characterize them as "revised" or "new" fall flat in the face of the district court record. MLB Brief at 23 n.14.

IV. Infringement Arose during MLB's Actions in Creating the MLB Audiovisual

MLB misstates the issue: "At its core, Steele's appeal turns on the resolution of a single question: Is the Steele Song infringed by the [MLB Audiovisual]?" MLB Brief at 20.

The copyright statute prohibits actions infringing upon the "exclusive rights" of the copyright owner, i.e., "to reproduce... to prepare derivative works... to distribute... to perform... to display." 17 U.S.C. § 106.¹¹ Copyright law prohibits the action of creating an infringing work. Id. The infringing work is evidence of infringing action; it is not infringement in and of itself. Id.

An example of this principle is the defense of "independent creation." If one creates a work that is identical to another's, there is no infringement so long as both works were independently created.

¹¹ Significantly, MLB fails to address or cite the copyright statute in its Brief, even though "it is axiomatic that statutory interpretation starts with the language of the statute itself, and we read a statute applying the ordinary, contemporary, common meaning of the words used... [if] the language of the statute is clear and does not contradict a clearly expressed legislative intent, our inquiry is complete and the language controls." See U.S. v. ASCAP, 485 F.Supp. 2d 438 (S.D.N.Y. 2007).

Steele's consistent argument throughout this litigation is that MLB infringed his exclusive rights – reproduction, synchronization, and derivation - through temp tracking – during the creation of the MLB Audiovisual. See Section III, above.

MLB quotes Steele's Brief: "The only additional question... is whether MLB created an audiovisual incorporating Steele's Song." MLB Brief at 50 (emphasis MLB's).

The key words are "*created*" and "*an audiovisual.*" Steele has never alleged that MLB used Steele's Song in the final MLB Audiovisual. Steele all along claimed that MLB used his Song as a temp track (by definition, in "an audiovisual" – i.e., a working draft version – and not "the" audiovisual, the final version), thereby illegally reproducing and synchronizing Steele's Song during the creation of the infringing derivative MLB Audiovisual. See Section III, above.

V. MLB Fails to Address Steele's Claim of Infringement by Reproduction

Steele's claim of infringement by exact reproduction (i.e., digital computer reproduction) is neither new nor novel; it is, in fact, no different than Time Warner's own allegations when enforcing its copyright in a musical work.¹²

¹² In 2001 Time Warner's Music Group successfully sued the music file-sharing site Napster for contributory infringement arising from the copying of digital music files from one computer to another. A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004

MLB brushes off Steele’s infringement by digital reproduction argument – to which Steele’s Brief devotes twenty-one pages – in a footnote: “Steele’s brief may at times suggest that copyright infringement arose solely from ... creation of [a]...phantom ‘working copy’... [Steele attempts] to revise his allegations (yet again).” MLB Brief at 23 n.14.¹³

First, Steele’s temp tracking claim remained constant throughout the district court proceedings, as described in Section III, above. MLB’s argument that Steele is “revising” his allegations (“yet again”) vaporizes before the district court record.

Second, MLB’s argument that Steele’s reproduction claim is “not properly before this Court” because the “no other work is before this Court as an allegedly infringing work” is contrary to the plain language of the copyright statute. 17 U.S.C. § 106. As explained in Section IV, above, it is not the “work” – a noun – that defines infringement; rather, the acts of reproducing, synchronizing, and creating derivative works define infringement.

Nonetheless, despite MLB’s denials and “phantom” cry, an earlier “draft version” is before this Court – from MLB: the Altered Audiovisual. Given that MLB

(9th Cir. 2001) (downloading and uploading a song infringes copyright owner’s right to reproduce).

¹³ The twenty-one pages are in Steele’s Brief at 20-53, 74-82.

can produce different versions, the real issue is why MLB failed to submit the true MLB Audiovisual. Since MLB can produce earlier drafts, why deny they exist?¹⁴

Additional drafts copies are not “before this Court” because the district court forbade Steele from discovering them. App-394. The district court entered the narrow discovery order as a result of, at least in part, MLB’s incorrect insistence that “substantial similarity” was the only issue.

MLB (1) pushed for a limited substantial similarity-only analysis, leading the district court to limit discovery thereto and (2) knowingly submitted a misleadingly altered draft audiovisual, the origin of which Steele was forbidden to discover – due to MLB’s successful “substantial similarity” pitch.

Now, on appeal, MLB (1) claims working drafts don’t exist – even while it (2) defends its own draft as “true and accurate.”

Third, MLB’s failure to address the copyright statute’s clear language head-on represents another effort to steer this Court away from the real issue: whether sufficient evidence of infringement to reach a jury was “properly before” the district court, to which the answer is unequivocally “yes.” MLB sticks its head in the sand

¹⁴ MLB has never argued it did not use Steele’s Song as a temp track.

because it cannot challenge Steele’s statistical, empirical, and testimonial evidence of reproduction, synchronization, and derivation.

Fourth, MLB states that “access and copying” are “irrelevant” because “no amount of access or copying of the Steele Song” can be infringement without also showing “substantial similarity.” MLB Brief at 29-30, n.16. This misstatement of law is directly contradicted by the unambiguous language of the copyright statute, legislative history, and controlling case law. Steele Brief at 20-53, 74-82.¹⁵

Reproduction by digital means doesn’t require a “substantial similarity” analyses, but rather a “probative similarity” analyses, because, analogous to “sampling” cases, the digital copy is identical to the original and therefore once copying as a factual matter is established, *so is liability*. A&M Records, Inc., 239 F.3d 1004 (downloading music violates reproduction rights).

VI. “Substantial Similarity” is not a “Dispositive Issue,” Therefore the District Court’s Discovery Order was an Abuse of Discretion and Plain Error

Substantial similarity is not required to prove exact reproduction – duplication – or synchronization and, therefore, MLB’s elaborate defense of the discovery order on that basis is without merit. MLB Brief at 54-55.

¹⁵ MLB’s assertion that “no amount” of “copying” can constitute infringement is, on its face, absurd.

VII. Steele, an Indigent and *Pro Se* Plaintiff, Tried to Object to the Discovery Order and was Denied the Opportunity to Conduct Meaningful Discovery

The district court made clear that it expected Steele to “produce” evidence of substantial similarity, in the form of expert reports, despite Steele’s requests for broader discovery.

During the March 31, 2009 hearing, Steele made several attempts to inform the district court of the discovery he required, stating that he needed discovery “to prove whether or not [specific defendants] were involved in the development of this advertisement... or whether TBS and MLB wrote this ad themselves and gave it to Bon Jovi.” App-410.

Steele argued he needed “discovery to confirm what I already know: A), that this was my song; and B), what [defendants’] involvement was...” and that, without discovery “I won’t be able to find out exactly how much involvement [specific defendants had] and if they wrote the lyrics themselves, the branded commercial lyrics, or if TBS and baseball wrote them themselves.” Id.

Steele again explained his discovery needs:

THE COURT: All right. If I give you 60 days for discovery with respect to proving to me the substantial similarity of these two songs, how will you use that 60 days? What will you give to me that you haven't given me already?

MR. STEELE: I have a couple questions that I made for each of the defendants. First of all --

THE COURT: I'm not asking about questions. I'm asking about discovery that you're going to produce to the Court to convince me that your song and the Bon Jovi song are "substantially similar," to use the language of the copyright laws. App-414.

Steele was trying to explain that he needed discovery on the creation of the MLB Audiovisual, but the district court cut him off, asking instead what discovery Steele was "going to produce" on substantial similarity of the "song[s]."¹⁶ The district court also stated that it was "inclined to... permit [Steele] to have a limited amount of discovery on... the substantial similarity of the composition and the alleged copyright infringing song," App-393-394 (emphasis supplied), and that Steele could "try to come up with an expert, some affidavit, that gives me some[thing] to lean on," App-400.

The written discovery order, issued four days after the hearing, stated: "Steele may offer, by affidavit, expert analysis of his work or the infringing work¹⁷ as deemed necessary and the Court will consider such analysis in making the substantial similarity determination." App-386.

¹⁶ The district court mistakenly referenced only the Steele "song" and Bon Jovi "song," neglecting to mention the MLB Audiovisual.

¹⁷ Presumably the district court meant "works."

Steele attempted to state his case for broader discovery and was shut down.

Based upon the district court's explicit instructions, Steele understood that he had to produce an "expert" report showing substantial similarity. Steele took all reasonable steps required of a *pro se* litigant to object to the narrow scope of discovery. Steele also exercised what he believed was his only discovery option by producing an expert report and exchanging same with MLB.

The preservation of issues for appeal "does not demand the incantation of particular words," but only that the district court be "fairly put on notice as to the substance of the issues." Nelson v. Adams, 529 U.S. 460, 469 (2000). Steele's repeated explanations of the discovery he required put the district court "on notice as to the substance of the issues." Id.

VIII. **The "Images" and "Sounds" of the MLB Audiovisual Must, by Statutory Definition and Case Law, be Compared as a Whole to Steele's work**

MLB makes the specious argument that Steele has "waived" claims of infringement by "musicological elements" of the MLB Audiovisual. Steele asserts the exact opposite: both the images and sounds of the MLB Audiovisual must be compared as a whole, to Steele's work. Steele Brief at 53-74. Steele's nineteen pages

of argument on this point – largely ignored by MLB – do not leave room for MLB’s audacious – but hopeless – argument of implied waiver. *Id.*

IX. Steele Maintains His Claim Against Bon Jovi

Bon Jovi performed the music in the MLB Audiovisual. Beyond that, their specific role in the creation of the MLB Audiovisual is unknown (as are the roles of most of the MLB defendants) because Steele was ordered not to discover facts relating to creation of the MLB Audiovisual.

Steele seeks to narrow the issues here by focusing exclusively on the two 2:38:90-long works – the Steele Song and the MLB Audiovisual – because the district court had difficulty analyzing the MLB Audiovisual *apart from* 4:38-long Bon Jovi song, in large part due to MLB’s false evidence and misrepresentations. Steele Brief at 35-43.

Steele’s position, however, does require dismissal of Bon Jovi insofar as they certainly had a role, be it direct infringement, contributory infringement, or vicarious infringement – that Steele was forbidden from discovering – in creating the MLB Audiovisual.

MLB claims that Steele does not “develop his argument against the Bon Jovi Appellees” and, therefore, his claims are waived. MLB Brief at 26-27.

Steele's theories against MLB, including Bon Jovi, are extremely well-developed, *despite* the discovery ruling. App-24-33.

To the extent Steele did not specifically develop his "contributory infringement" theory, it was the result of the district court's ruling, which forced Steele to focus *not on defendants' roles, but on substantial similarity only*. Steele was expressly forbidden to "develop his argument." App-386.

Nonetheless, MLB wants it both ways: (1) a ruling that the district court's limitation of discovery – and the issue – to substantial similarity was proper, even though the order made it impossible for Steele to "develop his argument" against Bon Jovi; and (2) a ruling that Bon Jovi is dismissed because Steele did not "develop his argument" against Bon Jovi in the district court.¹⁸

Steele seeks reversal and remand in order to "develop his argument" against Bon Jovi in the district court. MLB's argument underscores that Steele was improperly precluded from "fairly present[ing] his claims falling outside the narrow confines of substantial similarity." Steele Brief at 13.

¹⁸ MLB's duplicitous position would lead to manifest injustice: allowing Bon Jovi to use limited discovery to shield its role – to mislead the district court, in fact – while on appeal allowing Steele's inability to learn Bon Jovi's role as grounds for dismissal.

X. MLB Misstates Synch Rights Standard; Fails to Refute Undisputed Facts

MLB disputes none of Steele's facts showing infringement of his synch rights, instead arguing that Steele's Song was not "actually used and [cannot] be heard in the [MLB Audiovisual]." MLB Brief at 50.

No authority supports MLB's interpretation of synchronization rights. That defendants in other cases may have incorporated plaintiffs' music in defendants' final works is not an element of synch rights law, nor was it the bases of any courts' holdings in such cases. Steele Brief at 42-45, 49-53.

First Circuit precedent holds the opposite of MLB's position: liability is upheld "*even under circumstances in which the use of the copyrighted work is of minimal consequence.*" Situation Mgmt Systems, Inc. v. ASP Consulting, LLC, 560 F.3d 53, 59 (1st Cir. 2009) (emphasis supplied). MLB ignores the nature of infringement by temp tracking, that is, covert use of an unauthorized temporary music track as a "reference" that is later replaced with "final" music.

MLB's position violates the core copyright principle, that copying is not allowed. This principle is true whether the copying is for private non-commercial use

– as with Warner Bros. Music suit against Napster in A&M Records, Inc., 239 F.3d 1004 – or when used for commercial gain, as with the MLB Audiovisual.¹⁹

XI. MLB Fails to Rebut that Steele’s Fact Witnesses Were Improperly Disregarded *en toto* at Summary Judgment

The district court made no findings – and MLB can show no facts on appeal – indicating that the affidavits did not comply with the cited rules, Fed.R.Evid. 701 and Fed.R.Civ.P. 56(e). A close read of the affidavits and Rules shows that the affidavits were admissible:

1. Rule 56(e): Each affidavit was (1) based on personal knowledge; (2) set out in admissible form; and (3) showed that the affiant was competent to testify on the matters stated.
2. Rule 701: Each affiant’s opinion, where offered – the affiants’ testimony was not limited to opinions – was (1) rationally based on his or her perception; (2) helpful to the determination of a fact at issue; and (c) not based on scientific, technical, or other specialized knowledge.

Nothing in the record contradicts the above two paragraphs. The district court’s ruling that the affidavits are, collectively, “not appropriate for consideration”

¹⁹ Ironically, MLB would likely regret its position if it were adopted by this Court because it would greatly weaken MLB’s ability to enforce its own copyrights in the future.

without further explanation, was an error of law insofar as it applied incorrect evidentiary standards, and is subject to *de novo* review. Compton v. Subaru of America, 82 F.3d 1513, 1517 (10th Cir. 1996).

As to whether or which affiants were “friends or acquaintances,” App-779-780, the district court was simply wrong in its broad-brush labeling of all affiants as such. Steele was neither friends nor acquaintances with Jonathan Yasuda, Mark Ferraguto, Joel Ellis, or Richard Carapezza when they prepared their affidavits. Steele Brief at 31; App-412, 636-637, 667-668, 679.

More to the point, no rule precludes friends or acquaintances from testifying. MLB’s recourse is found in Fed.R.Evid. 607, allowing it to impeach – but not exclude – witnesses for bias.

That the district court misapplied this standard not at trial, but at summary judgment – where Steele was entitled to all favorable inferences – underscores the magnitude of the district court’s error.

XII. MLB Fails to Dispute Substantial Similarity

1. MLB Cannot Dispute Steele’s Factual Evidence

Steele presented multiple issues of fact on substantial similarity. Steele Brief at 58-59, 61-71. Steele’s Brief, in fact, proves “factual” and “extensive” copying of his

original expression by the MLB Audiovisual. Johnson v. Gordon, 409 F.3d 12, 18-19 (1st Cir. 2005).

- a. Factual Copying: Steele's *unchallenged* Chronology Study & Review shows factual copying. App-645-47, 650-65.
- b. Extensive Copying: Numerous *uncontested* similarities between the Steele Song and MLB Audiovisual show extensive copying, including: identical duration and meter; 96% tempo synchronization; more than 18 derived visuals synched to the tenth-second; musical title phrase and hook; genre and instrumentation; lyric and rhetoric; 'dramatic focal points;' featured team and narrative form; essence, structure and arrangement; matching 1st verse, 1st chorus, 2nd verse, 2nd chorus, bridge, 3rd chorus, fade ending (of a three-verse lyrical narrative). Steele Brief at 58-59, 61-71.
- c. Originality: MLB does not challenge Steele's facts of original expression, including being one in 15 million and one of five out of 15 million to create a country-rock World Series anthem featuring the Boston Red Sox, with a title phrase unknown in baseball lexicon (Steele Brief at 61-64, 71-74); MLB fails to dispute originality in

Steele's 'countless artistic decisions' and 'discretion' in 1) selection, coordination and arrangement; (2) fundamental essence and structure; (3) 'dramatic focal point' and "heart;" (4) dimensions; (5) synchronization; and (6) ending. Steele Brief at 58-69.²⁰

MLB, unable to refute Steele's facts as to each element of substantial similarity, offers studious lists of irrelevant additional facts and makes arguments contradicting established copyright law.

2. MLB's "Borrowed" Elements are Not Scènes à Faire

Unable to rebut actual copying, substantiality, or originality, MLB argues scènes à faire, which excludes as unoriginal expressions "customary [] in the treatment of a given subject matter." Coquico, 562 F.3d at 68.

Steele's 'countless artistic decisions in creating his one-of-a-kind country-rock Song about Red Sox playoff baseball distinctively combined and expressed elements that are hardly 'customary' or 'indispensable' to *any* given subject matter, theme or topic, including a baseball playoff anthem. Steele Brief at 58-69, 71-73.

MLB's incomplete and superficial lyric-visual comparison ignores the vast majority of similarities between the works, such as story; narrative and compositional

²⁰ MLB disputes similarity of title despite their expert's opinion that similarity exists in the works' expressions of musical "lyric title" or "title phrase." App-552, 795.

elements; title, heart, and choral hook; selection, coordination, and arrangement; dimension; music and musical genre. MLB Brief at 41-42.

The district court made the same fundamental error. App-778-79 (“[Steele] maintains that in many places the lyrics of his song correspond to the images in the [MLB Audiovisual]”).

MLB’s *scènes à faire* analysis also ignores context. Coquico, 562 F.3d at (“the court should not lose sight of the forest for the trees; that is, it should take pains not to focus too intently on particular unprotected elements at the expense of a work’s overall protected expression”). Here, as in Coquico, “the defendants exaggerate the impact of the... *scènes à faire* doctrine[.]” Id. At 69.

3. Substantial Similarity Analyzes Borrowed Elements in the Context of Steele’s Song, not MLB’s Audiovisual

MLB asserts “any remaining similarities are inconsequential in the context of the [MLB Audiovisual] as a whole.” MLB Brief at 41.

The law says otherwise: “[T]he [Copyright] Act directs us to examine the amount and substantiality of the portion used in relation to the copyrighted work as a whole.” Harper & Row v. Nation Enterprises, 471 U.S. 539, 564 (1985) (emphasis supplied). “[T]he relevant inquiry is whether a substantial portion of the protectable material in the plaintiff’s work was appropriated—not whether a substantial portion

of defendant's work was derived from plaintiff's work." Worth v. Selchow & Righter Co., 827 F.2d 569, 570 n. 1 (9th Cir. 1987) (emphasis original).

The subject of the "substantial portion" analysis is Steele's Song, not MLB's Audiovisual.

4. MLB's Dissimilarity Arguments are Irrelevant Distractions

MLB offers tides of red herring in lists of differences between Steele's Song and MLB's Audiovisual. MLB, citing no law, claims such differences "reduce[] any purported similarity." MLB Brief at 37, 38-39, 42, 42 n.22, 44.

Learned Hand's axiom stands: "No plagiarist can excuse the wrong by showing how much of his work he did not pirate." Sheldon v. Metro-Goldwyn Pictures Corp., 81 F.2d 49, 56 (2d Cir. 1936).

"Works can be substantially similar despite the presence of disparities." Johnson v. Gordon, 409 F.3d 12, 18 (1st Cir. 2005). "It is entirely immaterial that in many respects plaintiff's and defendant's works are dissimilar if in other respects similarity as to a substantial element of plaintiff's work can be shown." 3 Nimmer § 13.03[B] at 13-38.

MLB cannot "escape infringement by adding original [elements] somewhere along the line." Warner Bros, Inc. v. American Broadcasting Co., 720 F.2d 231, 241

(2nd Cir. 1983) (recognizing substantial similarity despite “numerous differences” in works of linear dimension).

5. “Comparing” the MLB Audiovisual to its own Soundtrack is Meaningless

MLB pretends to believe that “similarities” within the MLB Audiovisual and its own Soundtrack (an illogical and irrelevant comparison— they are part of the same work) preclude the MLB Audiovisual from being substantially similar to the Steele Song. MLB Brief at 38.

Whether the MLB Audiovisual is synchronized to the Bon Jovi Song is wholly irrelevant to Steele’s claim, as recognized by the district court: “[T]he issue is not whether the video portion of the [MLB Audiovisual] is more similar to the Bon Jovi Song or the Steele Song but, rather, whether the [MLB Audiovisual] is substantially similar to the original elements of the Steele Song.” App-779.

Regardless, internal synchronization by MLB is entirely consistent with Steele’s claim. App-27. Steele claims that MLB’s visuals and soundtrack were digitally derived from the Steele Song.²¹ Congruity of visuals and sounds derived from the same source is unremarkable.

²¹ Steele’s complaint alleged Bon Jovi first created the 2:38:90-long soundtrack for the MLB Audiovisual, then made the 4:38-long derivative Bon Jovi Song. App-151. The Bon Jovi Song was released in advance of the MLB Audiovisual, giving MLB the

6. MLB Drops “Coincidence” Defense; Claims Borrowed Elements “Isolated,” “Insubstantial,” “Fleeting,” and “Incidental”

MLB argued in the district court that any similarities between the works were “obviously mere coincidences.” App-471. Now MLB argues the similarities are “isolated and insubstantial” or “fleeting and incidental.” MLB Brief at 41-45.²²

MLB, therefore, concedes “borrowing” from Steele’s Song by no longer claiming the similarities were the result of a series of amazing coincidences.

MLB’s new position strengthens Steele’s claims because synchronization of “fleeting” and “isolated” bursts of expression – to the fractional second, as Steele showed – requires great precision in the editing room. As the works’ visuals and other elements become more fleeting, more exacting editing standards and skill are required to achieve similitude.

chronological alibi being presented here: that the audiovisual soundtrack is a “shortened version of the Bon Jovi Song.” MLB Brief at 38. Contrived release dates do not inoculate MLB against infringement. “[S]uperficial changes...may be viewed as an attempt to disguise an intentional appropriation.” Concrete Machinery Co., Inc. v. Classic Lawn Ornaments, Inc., 843 F.2d 600, 608 (1st Cir. 1988).

²² MLB points to their musicologist Ricigliano, who failed to rebut that 96% of the MLB visuals are synchronized with Steele’s Song, stating only that Steele’s Song was “almost totally not in sync with the visuals.” MLB Brief at 40.

7. Musicological Similarities Cannot be Divorced From the MLB Audiovisual

MLB no longer claims the Bon Jovi soundtrack “has nothing whatsoever to do with baseball.”²³ App-185. MLB does, however, perpetuate its fictional division of the MLB Audiovisual into “sounds” and “images,” stating Steele has waived similarity of musicological “elements,” and claims visual similarity only. MLB Brief at 22-23.

MLB’s argument perpetuates the legal fiction that the MLB Audiovisual contains a “shortened version of the Bon Jovi Song.” MLB Brief at 35-36. MLB intentionally conflates two works: the 4:38 Bon Jovi Song and the 2:38:90 MLB Audiovisual. There is no overlap; they are two entirely discrete works with separate attributes, authors, and copyright ownership.²⁴

Steele waives no “elements” of his claim as to the MLB Audiovisual. Steele Brief at 34-36.

²³ MLB does claim Steele “waived” the “Willie Mays” issue, asserting Steele did not “meaningfully develop” it until his Motion for Reconsideration. MLB Brief at 39 n.20. This is false: Steele twice raised the issue earlier: in opposition to MLB’s motion to dismiss and in Opposition to Summary Judgment. App-638 (“I quote a player Cowboy up Kevin Millar, they quote the Say Hey kid Willie Mays”).

²⁴ MLB referenced the 4:38-long Bon Jovi Song in district court interchangeably with the 2:38:90 Soundtrack. Steele has removed this distraction to facilitate the natural collapse of MLB’s arguments within a proper substantial similarity analysis.

Respectfully submitted, Samuel Bartley Steele,
Steele Recordz, Bart Steele Publishing,
By their counsel,

/s/Christopher A.D. Hunt _____

Christopher A.D. Hunt

MA BBO# 634808

Court of Appeals Bar #61166

THE HUNT LAW FIRM LLC

10 Heron Lane

Hopedale, MA 01747

(508) 966-7300

cadhunt@earthlink.net

Dated: April 15, 2010

CERTIFICATE OF SERVICE

I, Christopher A.D. Hunt, hereby certify that on April 15, 2010, I caused this Reply Brief of Appellants Samuel Bartley Steele, Bart Steele Publishing, and Steele Recordz, filed through the ECF system, to be served electronically by the Notice of Docket Activity upon the ECF filers listed below.

Clifford M. Sloan
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, NW
Washington, DC 20005
csloan@skadden.com

Kenneth A. Plevan
Skadden, Arps, Slate, Meagher & Flom LLP
One Beacon Street
31st Floor
Boston, MA 02108
kplevan@skadden.com

Scott D. Brown
Skadden, Arps, Slate, Meagher & Flom LLP
One Beacon Street
31st Floor
Boston, MA 02108
sbrown@skadden.com

Christopher G. Clark
Skadden, Arps, Slate, Meagher & Flom LLP
One Beacon Street
31st Floor
Boston, MA 02108
sbrown@skadden.com

Matthew J. Matule
Skadden, Arps, Slate, Meagher & Flom LLP
One Beacon Street
31st Floor
Boston, MA 02108
sbrown@skadden.com

Dated: April 15, 2010

/s/ Christopher A.D. Hunt
Christopher A.D. Hunt