

**UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT**

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SAMUEL BARTLEY STEELE, :  
BART STEELE PUBLISHING, and :  
STEELE RECORDZ, :  
  
Plaintiffs-Appellants, : No. 09-2571  
v. :  
  
TURNER BROADCASTING :  
SYSTEM, INC. et al., :  
  
Defendants-Appellees. :  
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**APPELLEES' RESPONSE TO  
APPELLANTS' MOTION FOR SANCTIONS**

Appellees respectfully submit this response to Appellants Samuel Bartley Steele and his unincorporated business entities' (collectively "Steele") Motion for Sanctions dated September 15, 2010.

**INTRODUCTION**

Steele's motion is the latest iteration in a series of increasingly desperate attempts by Steele and his counsel to resuscitate a lawsuit that the District Court dismissed on the merits more than one year ago. In this latest filing -- Steele's fifth filing after the completion of merits briefing -- Steele burdens this Court with a 20-page motion for sanctions and another 700 pages of exhibits in

the form of post-judgment District Court filings and correspondence.<sup>1</sup> Steele's motion requests sanctions relating to conduct that allegedly occurred in the District Court -- not this Court -- and attempts to camouflage that fact with dozens of unsubstantiated accusations and hyperbolic speculation against Appellees and their counsel.<sup>2</sup> As demonstrated herein, Steele's motion is entirely without merit and should be denied.

At the center of Steele's motion for sanctions against all Appellees and their counsel are two allegations: (1) that an exhibit submitted in the District Court,

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<sup>1</sup> Steele and his counsel also have been busy filing multiple post-judgment motions in the District Court, as well as needlessly consuming the resources of other state and federal courts by commencing three additional lawsuits relating to Steele's song. See Steele v. Bongiovi, No. 10-11218-DPW (D. Mass. filed July 20, 2010) (Woodlock, J.) ("Steele II"); Steele v. Ricigliano, No. 10-11458-NMG (D. Mass. filed Aug. 25, 2010) (Gorton, J.) ("Steele III"); Steele v. Boston Red Sox Baseball Club Limited Partnership, No. 10-3418-E (Mass. Super. Ct. filed Aug. 26, 2010) ("Steele IV"). In the instant motion, Steele and his counsel acknowledge that at least one of those new proceedings (Steele III) is "obviously related" to this case. (See Motion at 16 n.12.)

<sup>2</sup> (E.g., Motion at 4 ("[T]his Court has the duty to sanction Defendants and Skadden for their brazen, calculated, and unrepentant fraud, bad faith, and misconduct 'throughout the course of the litigation'"); id. at 6 (representing that "undersigned counsel . . . has uncovered irrefutable evidence of large-scale fraud and bad faith misconduct by Defendants and Skadden"); id. at 8 ("Skadden's failure to take corrective action as to the altered MLB Audiovisual is a perpetuation of the fraud" and "Skadden further advanced their fraud with two subtle misrepresentations -- and one blatant one -- to the District Court . . ."); id. at 16 ("Skadden's actions . . . were of such calculated, repelling and cowardly bad faith that Steele -- no longer with even a remote expectation of good faith from Skadden -- was finally forced to seek this Court's intervention").)

the TBS Promo, was allegedly "altered" and (2) that the District Court should enter a default against two entities (MLB Advanced Media, L.P. ("MLBAM") and "Vector Management").

As to the purported "alteration" issue, Steele has had an opportunity to raise and argue those assertions in his merits briefs. Steele should not be permitted to submit what amounts to a third merits brief on this issue. As to the "defaults" issue, three days ago, the District Court issued a comprehensive 17-page Memorandum & Decision, a copy of which is attached hereto as Exhibit A ("September 27, 2010 Order"), denying as "futile" both of Steele's motions for entry of default. In that Order, the District Court specifically admonished Steele and his counsel:

Although, in retrospect, the filing of plaintiff's motions was ill-advised and perhaps unnecessary, the Court declines to find them so frivolous as to warrant the imposition of sanctions. Plaintiff and his counsel are, however, forewarned that any further motion practice in this regard will be looked upon askance.

Id. at 16. Steele has had his day in court on those default motions -- he lost -- and the District Court has deemed those post-judgment motions to be "ill advised." Id.

Finally, the extraordinary relief Steele seeks through this motion is unprecedented and unsupported by any legal authority. Accordingly, this Court should deny Steele's motion.

## ARGUMENT

### **I. THE SO-CALLED "ALTERATION" ALLEGATIONS HAVE BEEN FULLY ADDRESSED IN THE MERITS BRIEFING**

Steele has already had two opportunities to present this Court with legal arguments -- and he has taken full advantage of that opportunity by filing more than 120 pages of briefing. Indeed, Steele expressly addressed the so-called "alteration" of the TBS Promo several times in his merits briefing. (See Appellants' Opening Brief at 18-19; Appellants' Reply Brief at 8-9, 12-13.) Appellees, moreover, have addressed Steele's contentions in Appellees' brief to this Court. (See Appellees Brief at 47-49.)

Steele thus already has had ample opportunity to present his "alteration" argument to this Court. Indeed, Steele's multiple post-brief filings in this Court represent an apparent effort to evade the orderly procedure for adjudicating appeals set forth in the Federal Rules of Appellate Procedure and the rules of this Court, and should not be countenanced.<sup>3</sup>

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<sup>3</sup> Steele also commenced a second lawsuit predicated on the alleged "alteration" of the TBS Promo. In Steele II, Steele names as defendants several of the Appellees herein and their counsel, and asserts a claim for the alleged "[u]nauthorized and intentional removal of copyright management information" under the Digital Millennium Copyright Act. (See Motion at 8 n.3.)

**II. THE ALLEGATIONS CONCERNING  
PURPORTED "DEFAULTS" HAVE BEEN  
REJECTED BY THE DISTRICT COURT**

The majority of Steele's motion for sanctions concerns two post-judgment motions he filed in the District Court seeking entry of default as to MLBAM and "Vector Management," and the related motions for Rule 11 sanctions filed by several Appellees. (See Motion at 10-16.) Steele filed "courtesy copies" of those District Court papers with this Court, and again attached his moving papers and the opposition briefs of certain Appellees as exhibits to the instant motion for sanctions. (See id. Exhibits 1-6, 10-11.) Those collateral filings far exceed the record and merits briefs pertinent to this appeal.

On September 27, 2010, the District Court entered a post-judgment order denying both of Steele's motions for entry of default. See September 27, 2010 Order at 17. Specifically, the District Court reasoned that entry of default "would be futile" because it "would subsequently be set aside for good cause." Id. at 9. First, the District Court reasoned that the allegations in Steele's complaints were "insufficient to state a claim upon which relief can be granted" because there are no "substantive allegations" against MLBAM and there is "no mention" of Vector Management. Id. at 10-12. Second, the District Court reasoned that, in light of its August 19, 2009 summary judgment ruling that there was no substantial similarity between the Steele Song and the Bon Jovi Song or TBS Promo, "even if

Steele were allowed to proceed against Vector Management and MLBAM, issue preclusion (or collateral estoppel) would bar Steele from re-litigating the issue of substantial similarity." Id. at 13. As such, the District Court concluded that "Steele does not have a legal basis for recovery against Vector Management or MLBAM and entry of default would be futile." Id. at 13-14.<sup>4</sup>

In its September 27, 2010 Order, the District Court also denied the motions for Rule 11 sanctions against Steele and his counsel, observing that although Plaintiff Steele's motions are not "so frivolous as to warrant the imposition of sanctions," "in retrospect, the filing of plaintiff's motions was ill-advised and perhaps unnecessary." Id. at 16. The District Court further stated that "Plaintiff and his counsel are, however, forewarned that any further motion practice in this regard will be looked upon askance." Id. The District Court's

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<sup>4</sup> The District Court also suggested, but did not address in light of the two other grounds justifying dismissal, that "Steele's claims against Vector Management and MLBAM may also be precluded under the doctrine of res judicata." Id. at 14 n.1. The District Court further rejected Steele's "unavailing" fraud-on-the-court theory, reasoning that any purported "misconduct and fraud of defense counsel" cannot compensate for the complete absence of substantive, factual allegations against Vector Management. Id. at 12-13. Indeed, the Court chided Steele for not "explain[ing] how his allegations have any bearing on the [District] Court's decision with respect to these motions and offer[ing] no evidence of bad faith on the part of the Defendants." Id. at 14. Appellees respectfully submit that, here again, Steele and his counsel have failed to submit any evidence or grounds to support their fantastical accusations and ever-more elaborate conspiracy theories.

Order leaves no room for doubt that Steele's two default motions are entirely without merit.<sup>5</sup>

### **III. THE SPRAWLING RELIEF STEELE SEEKS IS INAPPROPRIATE AND UNSUPPORTED BY LAW**

Through this motion, Steele seeks the following sanctions, among others:

1. "An Order that default judgment be entered against all Defendants which are parties to this appeal," all of which appeared in, vigorously defended, and prevailed in the District Court action (see Motion at 1);
2. "An Order that default judgment be entered against all Defendants in defacto default" against an unspecified number of defendants, "including, but not limited to, [MLBAM] and Vector Management" (id. at 1-2 (emphasis added));
3. "An Order that default judgment be entered against any defendants dismissed prior to the District Court's Summary Judgment [sic] and which participated in Defendants' fraudulent scheme" (id.);

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<sup>5</sup> In the guise of a "Rule 28(j)" letter, Steele filed the District Court's Order in this Court with an accompanying letter. (See September 28, 2010 Letter from Christopher A.D. Hunt.) As a plain reading of the District Court's Order reveals, Steele's characterization of the District Court's Order in his letter to this Court is, at best, incomplete and unhelpful. Steele also asks this Court to impose sanctions on all Appellees and their counsel based on purported "bad faith" negotiations concerning a potential stipulated stay of Steele III -- not this lawsuit (either in this Court or the District Court). (See Motion at 16-19.) Steele, of course, cites no authority for the proposition that inability to agree upon the terms of a negotiated stay is sanctionable, or that, even if it were, this Court would have jurisdiction to impose sanctions relating to conduct in a case not before this Court.

4. "An Order vacating the District Court's Summary Judgment Order" and "[a]n Order vacating all of the District Court's Orders on dispositive motions whether appealed or not" (id.);
5. "An Order for a hearing on assessment of damages" and "[a]n Order awarding costs and attorneys' fees to Steele for all proceedings to date in the District Court (No. 08-11727) and this appeal (No. 09-2571)" (id.); and
6. "An Order disqualifying Skadden from further participation in this or any related cases or matters arising from the underlying transactions and occurrences of this case" (id. at 2).

If those requested sanctions were not enough, Steele and his counsel also request that this Court "hold a hearing in this Court" and take testimony "under oath from the parties and their counsel . . . to better assess the parties' and counsel's credibility." (Id. at 3.)

As an initial matter, in support of his request for these extreme sanctions, Steele fails to cite a single case in which a Court of Appeals imposed similar sanctions. Indeed, Steele cites no authority whatsoever in his 20-page submission in which any motion for sanctions was adjudicated in the Court of Appeals.<sup>6</sup> This absence of legal authority is an independently sufficient basis upon which to deny Steele's motion.

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<sup>6</sup> The four cases that Steele does cite stand for the unremarkable proposition of law that federal district courts have the inherent power, when appropriate, to impose reasonable and appropriate sanctions. None of those cases is factually analogous to the current case.

Moreover, as outlined above, there has been no sanctionable conduct (and Steele and his counsel submit no evidence of any such alleged improper conduct beyond their own speculation). As to the so-called "alteration" issue, the District Court recognized that notwithstanding Steele's allegation that certain defendants purportedly "made a number of misrepresentations to the Court," -- which is, of course, unfounded -- Steele "offers no evidence of bad faith on the part of the Defendants." September 27, 2010 Order at 14. Likewise, as to the "default" issue, the District Court denied both of Steele's motions for entry of default and characterized those motions as "ill-advised." Id. at 13-14. Consequently, there is no factual basis justifying the imposition of sanctions -- of any nature -- and Steele's motion should be denied.

**CONCLUSION**

For the foregoing reasons, Appellants' motion for sanctions should be denied.

Dated: September 30, 2010  
Boston, Massachusetts

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Christopher G. Clark, hereby certify that on September 30, 2010 the foregoing document was electronically filed with the United States Court of Appeals for the First Circuit by using the CM/ECF system. I certify that the following parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system: Christopher A.D. Hunt, The Hunt Law Firm LLC, 10 Heron Lane, Hopedale, Massachusetts 01747, cadhunt@earthlink.net, counsel of record for Plaintiffs-Appellants Samuel Bartley Steele, Bart Steele Publishing, and Steele Recordz.

Dated: September 30, 2010

/s/ Christopher G. Clark  
Christopher G. Clark