

United States District Court
 District of Massachusetts

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SAMUEL BARTLEY STEELE, BART)	
STEELE PUBLISHING and STEELE)	
RECORDZ,)	
Plaintiffs,)	Civil Action No.
)	08-11727-NMG
v.)	
)	
TURNER BROADCASTING SYSTEM,)	
INC., TIME WARNER CORPORATION,)	
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),)	
MAJOR LEAGUE BASEBALL)	
PROPERTIES, A&E TELEVISION)	
NETWORKS, AEG LIVE, MARK SHIMMEL)	
MUSIC, UNIVERSAL POLYGRAM)	
INTERNATIONAL PUBLISHING, THE)	
BIGGER PICTURE CINEMA CO.,)	
BOSTON RED SOX, KOBALT MUSIC)	
PUBLISHING AMERICA, INC. and)	
ISLAND DEF JAM RECORDS)	
Defendants.)	
_____)	

MEMORANDUM & ORDER

GORTON, J.

Pro se plaintiff Samuel Bartley Steele ("Steele") brought suit alleging that a song he wrote about the Boston Red Sox was unlawfully copied and used to create a promotion for baseball. On August 19, 2009, the Court granted summary judgment to defendants after finding no substantial similarity. Steele then filed a motion for reconsideration pursuant to Fed. R. Civ. P.

59. He contends first that he was denied the opportunity to present "crucial evidence" and a "more thorough analysis" in a sur-reply brief or at a hearing. Second, he argues that

the Court did not give full and due consideration to (1) Defendants' infringing combination of music/lyrics and images as an independent 'audiovisual' 'work of authorship'...; (2) Plaintiff's originality of selection, coordination and arrangement of unprotectable elements; (3) Plaintiff's originality of expression; (4) synchronization rights as to mechanically 'reproduce' or 'duplicate' under 17 U.S.C. § 106(1).

Steele's arguments are without merit. Pursuant to Rule 59, a motion to reconsider may be granted "only where the movant shows a manifest error of law or newly discovered evidence," Kansky v. Coca-Cola Bottling Co. of New Eng., 492 F.3d 54, 60 (1st Cir. 2007). The Court construes Steele's allegations that this Court did not adequately consider his claims of copying, originality and synch rights as assertions of some form of judicial error. Steele has not, however, proven any manifest error of law and as such, his arguments fall short. Nor do Steele's remaining contentions demonstrate any "newly discovered evidence." Nothing presented in his memorandum was both "not known ... at the time of the trial [and] ... excusable." D. Federico Co., Inc. v. New Bedford Redevelopment Auth., 723 F.2d 122, 130 (1st Cir. 1983). Instead, Steele's motion is replete with attempts to "advance arguments that could and should have been presented to the district court prior to judgment." Aybar v. Crispín-Reyes, 118 F.3d 10, 16 (1st Cir. 1997) (citations

omitted). Accordingly, it will be denied.

ORDER

In accordance with the foregoing, the plaintiff's motion for reconsideration (Docket No. 106) is **DENIED**.

So ordered.

/s/ Nathaniel M. Gorton
Nathaniel M. Gorton
United States District Judge

Dated October 13, 2009