

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	Civil Action No.
SAMUEL BARTLEY STEELE,)	08-11727-NMG
BART STEELE PUBLISHING,)	
STEELE RECORDZ,)	
)	
Plaintiffs)	
)	
v.)	
)	
TURNER BROADCASTING)	
SYSTEM, INC,)	
Et al,)	
)	
Defendants.)	
_____)	

**PLAINTIFFS' RULE 55(a) MOTION FOR ENTRY OF DEFAULT AS TO
DEFENDANT MLB ADVANCED MEDIA, L.P FOR FAILURE TO PLEAD OR
OTHERWISE DEFEND**

Plaintiffs Samuel Bartley Steele, Bart Steele Publishing, and Steele Recordz (“Steele”) move this Honorable Court, pursuant to Fed.R.Civ.P. 55(a), for entry of default as to MLB Advanced Media, L.P. (“MLBAM”). As detailed in Steele’s Memorandum in Support of this Motion, filed herewith, MLBAM was properly served on November 17, 2008, but has, to date, failed to appear, plead, or otherwise defend and, accordingly, “the clerk must enter” MLBAM’s default. See Fed.R.Civ.P. 55(a).

WHEREFORE, plaintiffs respectfully request that this Honorable Court allow Plaintiffs' Rule 55(a) Motion for Entry of Default as to Defendant MLB Advanced Media, L.P. for Failure to Plead or Otherwise Defend.

Dated: June 18, 2010

Respectfully submitted,

/s/ Christopher A.D. Hunt
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CERTIFICATE OF SERVICE

I, Christopher A.D. Hunt, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on June 18, 2010.

Dated: June 18, 2010

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

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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SAMUEL BARTLEY STEELE,)	08-11727-NMG
BART STEELE PUBLISHING,)	
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Plaintiffs)	
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v.)	
)	
TURNER BROADCASTING)	
SYSTEM, INC,)	
Et al,)	
)	
Defendants.)	
_____)	

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' RULE 55(a) MOTION FOR
ENTRY OF DEFAULT AS TO DEFENDANT MLB ADVANCED MEDIA, L.P
FOR FAILURE TO PLEAD OR OTHERWISE DEFEND**

Plaintiffs Samuel Bartley Steele, Bart Steele Publishing, and Steele Recordz (“Steele”) move this Honorable Court, pursuant to Fed.R.Civ.P. 55(a), for entry of default as to MLB Advanced Media, L.P. (“MLBAM”). MLBAM was properly served on November 17, 2008, but failed to appear, plead, or otherwise defend and, accordingly, “the clerk must enter”

MLBAM's default. See Fed.R.Civ.P. 55(a).¹

FACTUAL BACKGROUND

I. Steele Sues Major League Baseball Properties, Inc. ("MLB") and MLBAM

Steele filed this lawsuit, *pro se* and proceeding *in forma pauperis*, on October 8, 2008 in the U.S. District Court in Boston against several parties, including MLBAM and Major League Baseball Properties, Inc. ("MLB"), which are two discrete corporate entities. See U.S.D.C. (MA) Docket Sheet, C.A. 08-11727, attached as Exhibit 1. See also Steele Complaint, attached as Exhibit 2.

Steele's Complaint named MLB as "Major League Baseball" and MLBAM as "MLB Productions." See Exhibit 2 at 1. Steele's Process Receipt named MLBAM as "MLB Productions/MLB.com," and was properly served at MLBAM's principle place of business. See United State's Marshals Service Process Receipt and Return, attached as Exhibit 3.

MLB, on the other hand, was *not* successfully served, but later appeared voluntarily.

¹ Although this Court's August 19, 2009 ruling and entry of Judgment allowing certain defendants' motions for summary judgment has been timely appealed to the First Circuit Court of Appeals (09-2571), this Court's August 19, 2009 ruling and Judgment did not apply to MLBAM because, as detailed below, MLBAM failed to appear, failed to move for summary judgment, and this Court's ruling and Judgment excluded MLBAM. This Court, therefore, may consider and rule on this motion. See Standard Oil of Cal. v. United States, 429 U.S. 17, 18 (1976) ("the appellate mandate relates to the record and issues then before the court," addressing Rule 60(b) motion filed during pendency of appeal); Boston Car Co. v. Acura, 971 F.2d 811, 815 (1st Cir. 1992); Puerto Rico v. SS Zoe Colocotroni, 601 F.2d 39, 41 (1st Cir. 1979) (district court directed to review Rule 60(b) motions expeditiously and either deny or issue memorandum stating it is inclined to allow motion, after which movant can seek remand from Court of Appeals so district court can vacate judgment and proceed accordingly). Here, however, there is no judgment against MLBAM to vacate and this is not (and could not be) a Rule 60(b) motion).

Specifically - and also on November 17, 2008 (likely after serving MLBAM) – the same United States Marshal, “Michelle V.,” attempted Service on MLB at their headquarters at 245 Park Avenue, 31st Floor, New York, NY 10167. See MLB Process Receipt and Return, attached as Exhibit 4. In the “Remarks” section of the Process Receipt and Return, the U.S. Marshal stated:

“11-17-08 Michelle V. supervisor of security spoke with someone in the legal dept. of Major League Baseball. Legal dept. refused to let me up to the 31st fl. to serve summons. Legal would not speak with me on the phone or give their names.” See Exhibit 4.

Nonetheless, on December 8, 2008, MLB filed Notices of Appearance (Docket entries 10 and 11), Corporate Disclosure Statement (Docket entry 13), Motion to Dismiss and Memorandum in Support (Docket entries 17 and 18, respectively), and Transmittal Declaration of Scott D. Brown in Support of MLB’s Motion to Dismiss.

Accordingly, MLB appeared voluntarily in this Court, despite actively evading service by having a security guard prevent the U.S. Marshal from serving, calling, or even obtaining a name from MLB. See Exhibit 4.

II. MLBAM, Properly Served, Fails to “Plead or Otherwise Defend”

MLBAM owns, operates, and does business as both MLB Productions and MLB.com (www.mlb.com). See, e.g., MLB.com website pages, attached as Exhibits 5-8.²

² The URL links for Exhibits 5-8 are http://mlb.mlb.com/mlb/official_info/about_mlb_com/, http://mlb.mlb.com/mlb/official_info/about_mlb_com/terms_of_use.jsp, http://mlb.mlb.com/mlb/help/contact_us.jsp, and http://mlb.mlb.com/mlb/video/mlb_productions/feature.jsp?content=overview, respectively.

MLBAM has “owned the MLB.com URL since January 2001.” See Exhibit 9, at 2 (quoting Kristen Ferguson, vice president of marketing for MLBAM). See also Exhibit 5 (“MLB.com Official Info,” directing inquires about MLB.com to MLBAM at the above address); Exhibit 7 (MLB.com “Contact Us” information giving same address); Exhibit 8 (MLB Productions’ website and “About Us” page part of MLB.com and subject to MLB.com’s “Terms of Use,” which are attached as Exhibit 6, and “© 2001-2010 MLB Advanced Media, L.P”).

MLBAM is a Delaware Corporation with its headquarters and principal place of business located at 75 Ninth Avenue, New York, NY 10011. See Exhibit 6 (“MLB.com Terms of Use Agreement” at page 2, section 2 “Notice and Procedure for Making Claims of Copyright Infringement,” listing MLBAM at the above address as “Service Provider” and “Designated Agent to Which Notification Should Be Sent”).

At 3:00 p.m. on November 17, 2008, the United States Marshals Service properly completed service of process on MLBAM at the above address. See Exhibit 3. Proof of service on MLBAM was filed with the district court on December 17, 2008 and entered into the docket on December 22, 2008. See Exhibit 3; see also Exhibit 1, docket entry #35.

MLBAM failed to plead or otherwise defend itself during the year-long pendency of the district court action. See Exhibit 1. Nor did MLBAM attempt a special appearance challenging process or service of process. Id. Accordingly, MLBAM defaulted in the district court and Steele requests that this Honorable Court order the clerk to enter the required default as to MLBAM. See Fed.R.Civ.P. 55(a) (“the clerk must enter default” given

MLBAM's failure "to plead, or otherwise defend" (emphasis supplied)).

III. This Court's August 19, 2009 Judgment did not Dismiss MLBAM

Attached as Exhibit 10 is this Court's Judgment, entered on August 19, 2009, in accordance with the Court's Memorandum and Order of the same day, granting certain defendants' motions for summary judgment ("Judgment"). Attached as Exhibit 11 is this Court's Memorandum and Order allowing certain defendants' motions for summary judgment ("Order").

Neither the Judgment nor the Order dismissed – or even addressed – MLBAM. See Exhibits 10 and 11. The Court's Order and Judgment were logical insofar as they excluded MLBAM, given that MLBAM had not appeared and was not a party to defendants' motion for summary judgment. See Defendants' Motion for Summary Judgment Dismissing the Copyright Claim, attached as Exhibit 12 (the other motion for summary judgment, docket entry 98, was filed solely on behalf of defendant Kobalt Music Publishing America, Inc.).

MLBAM is therefore not a party to Steele's appeal (which appeals only this Court's summary judgment ruling) and default must be entered in *this* Court for failing to appear. See Fed.R.Civ.P. 55(a); see also Standard Oil of Cal, 429 U.S. at 18; Boston Car Co, 971 F.2d at 815; SS Zoe Colocotroni, 601 F.2d at 41, cited above at note 1.

IV. First Circuit Precedent and Judicial Economy Warrant an Expedient Ruling on This Motion³

Steele requests that this Court “review [this motion] expeditiously, within a few days of [its] filing,” given that “any delay in ruling could delay the pending appeal.” See SS Zoe Colocotroni 601 F.2d at 42. If this Court is “unable conscientiously to dispose of [this] motion within a few days of its filing,” this Court may “issue a brief memorandum” stating that this Court “will require a specified number of more days to complete its review and issue an order,” which Steele may present to the First Circuit to “enable [the First Circuit] to act intelligently on extension requests made in the appeal.” Id. Finally, if the party losing this motion appeals, the First Circuit “will entertain a request to consolidate that appeal with the pending appeal from final judgment where feasible.” Id.

V. Timing of This Motion

Steele, *pro se* in the district court proceedings, did not move for entry of default because he was unfamiliar with default options or proceedings and did not notice MLBAM’s failure to appear in the case. See Affidavit of Samuel Bartley Steele (“Steele Affidavit”), attached as Exhibit 13. Moreover, the undersigned, who did not represent Steele in the district court proceedings – other than appearing to file Steele’s Notice of Appeal – did not become aware of MLBAM’s default until six days ago, on June 12, 2010, while reviewing the district court docket and my client’s case file.

³ This is not an emergency motion. The undersigned is fully aware that this is being filed on a Friday afternoon, but represents to the Court that, as a solo practitioner working 12-15 hours a day for the past six days, I filed this when it was completed and not a minute later.

Confounding my review was the fact that several docket entries are inconsistent with actual filings including, for example, docket entries 92 and 93, which indicate a summary judgment motion and supporting memorandum filed on behalf of “Major League Baseball” (i.e., “MLB”) and “MLB Productions” (i.e., “MLBAM”) whereas the actual motion and memorandum papers moved only on behalf of Major League Baseball Properties, Inc., i.e., “MLB.” See Exhibit 1; Exhibit 12. Significantly, docket entry 35 incorrectly states that both MLB and MLBAM were served, when in fact only MLBAM was, though MLB later appeared voluntarily. See Exhibit 1.

More pertinent to the substance of this motion, in further reviewing the docket and file in this case, partially prompted by my June 12, 2010 discovery of MLBAM’s failure to plead or defend, it has become clear that MLBAM’s failure to appear was intentional, part of a coordinated effort among the appearing defendants (including MLB - explaining their otherwise inexplicable voluntary appearance) and MLBAM to improperly conceal and protect MLBAM from this litigation. No doubt Steele’s *pro se* status entered into the equation as well. The undersigned addressed several of defendants’ efforts to hide MLBAM in Steele’s Appellate Brief and Reply, which have been filed in the First Circuit (09-2571) (“Steele’s Appellate Papers”).⁴

For example, the undersigned, in preparing Steele’s Appellate Papers, learned that defendants’ submitted a false and altered version of the so-called “TBS Promo” to *this* Court on three separate occasions in its various motions. See Steele’s Appellate Papers (pointing

⁴ Steele’s appeal has been briefed, but not yet assigned a date for argument.

out that defendants intentionally filed an unpublished draft version of the “TBS Promo” in *his* Court that was materially different from the true “TBS Promo” at issue). Of great significance, the MLBAM Copyright Notice (“© 2007 MLB Advanced Media”) appearing at the end of the true “TBS Promo” had been deleted prior to defendants’ submission of the false TBS Promo to this Court. Id. Defendants’ false audiovisual ends showing the TBS logo rather than the MLBAM copyright notice. Id. See also Exhibit 13.

VI. Defendants’ Misrepresentations and Filings in This Court

Just as disturbing, the undersigned has uncovered in the past six days, after extensive review of both the district court record and Steele’s case file, that defendants made a number of material misrepresentations to Steele during the district court proceedings that severely hampered his ability to fairly litigate his case, unbeknownst to this Court. See Exhibit 13. Defendants also made material misrepresentations and issued unfounded threats to an attorney Steele was seeking to retain pursuant to this Court’s advice, which resulted in that attorney quickly withdrawing his consideration of Steele’s case, further hampering Steele’s efforts by forcing Steele to continue to litigate *pro se*. Id. Defendants’ improper tactics and intentional misrepresentations are more fully detailed in Exhibit 13, Steele’s Affidavit.

Defendants’ abusive, deceptive, and reprehensible tactics were designed to improperly screen MLBAM from this litigation, frustrate Steele’s ability to pursue his claim, and to interfere with Steele’s attempts to obtain counsel. Id.

WHEREFORE, plaintiffs respectfully request that this Honorable Court allow Plaintiffs' Rule 55(a) Motion for Entry of Default as to Defendant MLB Advanced Media, L.P., for Failure to Plead or Otherwise Defend.

Dated: June 18, 2010

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Christopher A.D. Hunt, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on June 18, 2010.

Dated: June 18, 2010

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

EXHIBIT 1

APPEAL, COPYRT

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:08-cv-11727-NMG**

Steele v. Turner Broadcasting System, Inc. et al
Assigned to: Judge Nathaniel M. Gorton
Case in other court: First Circuit, 09-02571
Cause: 17:101 Copyright Infringement

Date Filed: 10/09/2008
Date Terminated: 08/19/2009
Jury Demand: Plaintiff
Nature of Suit: 820 Copyright
Jurisdiction: Federal Question

Plaintiff

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V.

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Defendant

The American Society of Composers
TERMINATED: 12/08/2008

Defendant

Fox Television Networks
*correct legal name Fox Broadcasting
Company
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Island Records
also known as
Island Def Jam Records

Defendant

Aggressive Music
TERMINATED: 04/06/2009
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Sony ATV Tunes
TERMINATED: 04/06/2009

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Universal Music Publishing Group
TERMINATED: 04/06/2009

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TERMINATED: 04/06/2009

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Date Filed	#	Docket Text
10/08/2008	<u>1</u>	COMPLAINT against all defendants, filed by Samuel Bartley Steele. (Attachments: # <u>1</u> civil cover and category sheets)(Gawlik, Cathy) (Entered: 10/09/2008)
10/08/2008	<u>2</u>	MOTION for Leave to Proceed in forma pauperis by Samuel Bartley Steele. (Gawlik, Cathy) (Entered: 10/09/2008)
10/08/2008		ELECTRONIC NOTICE of Case Assignment. Judge Nathaniel M. Gorton assigned to case. If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Sorokin (Gawlik, Cathy) (Entered: 10/09/2008)
10/08/2008	<u>3</u>	EXHIBITs (magazine and CD unable to scan; too voluminous) by Samuel Bartley Steele. (Gawlik, Cathy) (Entered: 10/09/2008)
10/31/2008	<u>4</u>	Judge Nathaniel M. Gorton: ORDER entered granting <u>2</u> Motion for Leave to Proceed in forma pauperis. The Clerk shall issue summons and the United States Marshal shall serve a copy of the summons, complaint, and this order upon defendant(s) as directed by plaintiff with all costs of service to be advanced by the United States. (PSSA, 3) (Entered: 11/03/2008)
11/03/2008		Summons Issued as to MLB Productions, A & E, A & E/AETV, Bon Jovi, AEG Live, Turner Broadcasting System, Inc., Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, The American Society of Composers, Fox Television Networks, Major League Baseball, and mail to plaintiff with Local Rule 4.1 and forms and instructions for service by the United States Marshal. (PSSA, 3) (Entered: 11/03/2008)
11/25/2008		Summons Issued as to Mark Shimmel Music, Vector Management, Island Records, Aggressive Music, Bon Jovi Publishing, Universal Music Publishing Group, Universal Polygram, Pretty Blue Songs, The Bigger Picture Cinema Co.. Mailed to plaintiff with USM 285 forms, US marshal service information letter, and L.R. 4.1. (PSSA, 4) (Entered: 11/25/2008)
12/01/2008	<u>5</u>	SUMMONS Returned Executed Fox Television Networks served on 11/19/2008, answer due 12/9/2008. Fox Legal Counselor decline to accept service because Fox Television Network does not exist. (Duong, Diep) (Entered: 12/02/2008)
12/01/2008	<u>6</u>	SUMMONS Returned Executed. AEG Live served on 11/19/2008, answer due 12/9/2008. (Duong, Diep) (Entered: 12/02/2008)
12/03/2008	<u>7</u>	SUMMONS Returned Executed William Falcone served on 11/18/2008, answer due 12/8/2008. (Duong, Diep) (Entered: 12/04/2008)
12/03/2008	<u>8</u>	SUMMONS Returned Executed Jon Bongiovi served on 11/25/2008, answer due 12/15/2008. (Duong, Diep) (Entered: 12/04/2008)
12/03/2008	<u>9</u>	SUMMONS Returned Executed Bon Jovi served on 11/18/2008, answer due 12/8/2008. (Duong, Diep) (Entered: 12/04/2008)
12/08/2008	<u>10</u>	NOTICE of Appearance by Matthew J. Matule on behalf of MLB

		Productions, A & E, A & E/AETV, Bon Jovi, AEG Live, Vector Management, Aggressive Music, Bon Jovi Publishing, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, Major League Baseball (Matule, Matthew) (Entered: 12/08/2008)
12/08/2008	<u>11</u>	NOTICE of Appearance by Scott D. Brown on behalf of MLB Productions, A & E, A & E/AETV, Bon Jovi, AEG Live, Vector Management, Aggressive Music, Bon Jovi Publishing, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, Major League Baseball (Brown, Scott) (Entered: 12/08/2008)
12/08/2008	<u>12</u>	CORPORATE DISCLOSURE STATEMENT by Time Warner Corporation. (Matule, Matthew) (Entered: 12/08/2008)
12/08/2008	<u>13</u>	CORPORATE DISCLOSURE STATEMENT by MLB Productions, A & E, Major League Baseball. (Matule, Matthew) (Entered: 12/08/2008)
12/08/2008	<u>14</u>	CORPORATE DISCLOSURE STATEMENT by A & E/AETV. (Matule, Matthew) (Entered: 12/08/2008)
12/08/2008	<u>15</u>	CORPORATE DISCLOSURE STATEMENT by AEG Live. (Matule, Matthew) (Entered: 12/08/2008)
12/08/2008	<u>16</u>	CORPORATE DISCLOSURE STATEMENT by Vector Management. (Matule, Matthew) (Entered: 12/08/2008)
12/08/2008	<u>17</u>	MOTION to Dismiss by MLB Productions, A & E, A & E/AETV, Bon Jovi, AEG Live, Vector Management, Aggressive Music, Bon Jovi Publishing, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, Major League Baseball.(Matule, Matthew) (Entered: 12/08/2008)
12/08/2008	<u>18</u>	MEMORANDUM in Support re <u>17</u> MOTION to Dismiss filed by MLB Productions, A & E, A & E/AETV, Bon Jovi, AEG Live, Vector Management, Aggressive Music, Bon Jovi Publishing, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, Major League Baseball. (Matule, Matthew) (Entered: 12/08/2008)
12/08/2008	<u>19</u>	DECLARATION re <u>17</u> MOTION to Dismiss by MLB Productions, A & E, A & E/AETV, Bon Jovi, AEG Live, Vector Management, Aggressive Music, Bon Jovi Publishing, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, Major League Baseball. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11)(Matule, Matthew) (Entered: 12/08/2008)
12/08/2008	<u>20</u>	NOTICE OF MANUAL FILING by MLB Productions, A & E, A & E/AETV, Bon Jovi, AEG Live, Vector Management, Aggressive Music, Bon Jovi Publishing, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, Major League Baseball re <u>19</u> Declaration, (Matule, Matthew) (Entered: 12/08/2008)
12/08/2008	<u>25</u>	NOTICE of Voluntary Dismissal by Samuel Bartley Steele as to defendant American Society of Composers, Authors and Publishers. (Duong, Diep)

		(Entered: 12/10/2008)
12/09/2008	<u>21</u>	NOTICE of Appearance by Matthew J. Matule on behalf of Fox Television Networks (Matule, Matthew) (Entered: 12/09/2008)
12/09/2008	<u>22</u>	NOTICE of Appearance by Scott D. Brown on behalf of Fox Television Networks (Brown, Scott) (Entered: 12/09/2008)
12/09/2008	<u>23</u>	CORPORATE DISCLOSURE STATEMENT by Fox Television Networks. (Matule, Matthew) (Entered: 12/09/2008)
12/09/2008	<u>24</u>	MOTION to Dismiss by Fox Television Networks.(Matule, Matthew) (Entered: 12/09/2008)
12/12/2008	<u>26</u>	NOTICE of Appearance by Matthew J. Matule on behalf of Sony ATV Tunes (Matule, Matthew) (Entered: 12/12/2008)
12/12/2008	<u>27</u>	NOTICE of Appearance by Scott D. Brown on behalf of Sony ATV Tunes (Brown, Scott) (Entered: 12/12/2008)
12/12/2008	<u>28</u>	CORPORATE DISCLOSURE STATEMENT by Sony ATV Tunes. (Matule, Matthew) (Entered: 12/12/2008)
12/12/2008	<u>29</u>	MOTION to Dismiss by Sony ATV Tunes.(Matule, Matthew) (Entered: 12/12/2008)
12/15/2008	<u>30</u>	NOTICE of Appearance by Matthew J. Matule on behalf of Turner Broadcasting System, Inc. (Matule, Matthew) (Entered: 12/15/2008)
12/15/2008	<u>31</u>	NOTICE of Appearance by Scott D. Brown on behalf of Turner Broadcasting System, Inc. (Brown, Scott) (Entered: 12/15/2008)
12/15/2008	<u>32</u>	CORPORATE DISCLOSURE STATEMENT by Turner Broadcasting System, Inc.. (Matule, Matthew) (Entered: 12/15/2008)
12/15/2008	<u>33</u>	MOTION to Dismiss by Turner Broadcasting System, Inc..(Matule, Matthew) (Entered: 12/15/2008)
12/15/2008	<u>34</u>	MOTION for Leave to Appear Pro Hac Vice for admission of Kenneth A. Plevan and Clifford M. Sloan by MLB Productions, A & E, A & E/AETV, Bon Jovi, Sony ATV Tunes, AEG Live, Turner Broadcasting System, Inc., Vector Management, Aggressive Music, Bon Jovi Publishing, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, Fox Television Networks, Major League Baseball. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Matule, Matthew) (Entered: 12/15/2008)
12/16/2008		Filing fee/payment: \$ 100.00, receipt number BST07736 for <u>34</u> MOTION for Leave to Appear Pro Hac Vice for admission of Kenneth A. Plevan and Clifford M. Sloan (Russo, Patricia) (Entered: 12/16/2008)
12/16/2008		Judge Nathaniel M. Gorton: Electronic ORDER entered granting <u>34</u> Motion for Leave to Appear Pro Hac Vice; Added Kenneth A. Plevan and Clifford M. Sloan for MLB Productions, A & E, A & E/AETV, Bon Jovi, Sony ATV Tunes, AEG Live, Turner Broadcasting System, Inc., Vector Management, Aggressive Music, Bon Jovi Publishing, Pretty Blue Songs, Time Warner

		Corporation, Jon Bongiovi, Richard Sambora, William Falcone, Fox Television Networks and Major League Baseball. Attorneys admitted Pro Hac Vice must register for electronic filing. To register go to the Court website at www.mad.uscourts.gov. Select Forms and then scroll down to CM/ECF Forms. (Duong, Diep) (Entered: 12/16/2008)
12/17/2008	<u>35</u>	SUMMONS Returned Executed MLB Productions, A & E served on 11/17/2008, answer due 12/8/2008; A & E/AETV served on 11/17/2008, answer due 12/8/2008; Time Warner Corporation served on 11/17/2008, answer due 12/8/2008; Richard Sambora served on 11/17/2008, answer due 12/8/2008; Major League Baseball served on 11/17/2008, answer due 12/8/2008. (Duong, Diep) (Entered: 12/22/2008)
12/17/2008	<u>36</u>	SUMMONS Returned Executed Turner Broadcasting System, Inc. served on 12/9/2008, answer due 12/29/2008; Vector Management served on 12/8/2008, answer due 12/29/2008; Aggressive Music served on 12/8/2008, answer due 12/29/2008; Bon Jovi Publishing served on 12/8/2008, answer due 12/29/2008; Pretty Blue Songs served on 12/11/2008, answer due 12/31/2008. (Duong, Diep) (Entered: 12/22/2008)
12/22/2008	<u>37</u>	STIPULATION <i>And [Proposed] Order Regarding The Plaintiff's Responses To The Defendants' Motions To Dismiss</i> by MLB Productions, A & E, A & E/AETV, Bon Jovi, Sony ATV Tunes, AEG Live, Samuel Bartley Steele, Turner Broadcasting System, Inc., Vector Management, Aggressive Music, Bon Jovi Publishing, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, Fox Television Networks, Major League Baseball. (Matule, Matthew) (Entered: 12/22/2008)
01/14/2009	<u>39</u>	MOTION for Extension of Time to January 30, 2009 to File Respond to Defendants' Motion to Dismiss by Samuel Bartley Steele. (Duong, Diep) (Entered: 01/15/2009)
01/15/2009	<u>38</u>	<i>Defendants' Response</i> by MLB Productions, A & E, A & E/AETV, Bon Jovi, Sony ATV Tunes, AEG Live, Turner Broadcasting System, Inc., Vector Management, Aggressive Music, Bon Jovi Publishing, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, Fox Television Networks, Major League Baseball <i>To <u>39</u> Plaintiffs' Motion To Extend Time To Respond To Defendants' Motion To Dismiss.</i> (Matule, Matthew) (Entered: 01/15/2009)
01/15/2009		Judge Nathaniel M. Gorton: Electronic ORDER entered granting <u>39</u> Motion for Extension of Time to File Response/Reply re <u>24</u> MOTION to Dismiss, <u>17</u> MOTION to Dismiss, <u>29</u> MOTION to Dismiss, <u>33</u> MOTION to Dismiss Responses due by 1/30/2009 (Nicewicz, Craig) (Entered: 01/15/2009)
01/28/2009	<u>40</u>	SUMMONS Returned Executed The Bigger Picture Cinema Co. served on 1/21/2009, answer due 2/10/2009. Universal Music Publishing Group and Universal Polygram were referred to CT Corporation for service but CT Corp have no business by these names. (Duong, Diep) (Entered: 01/28/2009)
01/30/2009	<u>41</u>	AMENDED COMPLAINT against all defendants filed by Samuel Bartley Steele along with a copy of MP3 file "I Love This Team Town" (Duong, Diep) (Entered: 02/02/2009)

01/30/2009	<u>42</u>	Opposition re <u>17</u> MOTION to Dismiss, <u>29</u> MOTION to Dismiss, <u>33</u> MOTION to Dismiss, <u>24</u> MOTION to Dismiss filed by Samuel Bartley Steele. (Duong, Diep) (Entered: 02/02/2009)
02/10/2009	<u>43</u>	Summons Returned Unexecuted by Samuel Bartley Steele as to Island Records. After several attempts, USM unable to locate the defendant. (Duong, Diep) (Entered: 02/10/2009)
02/12/2009	<u>44</u>	AFFIDAVIT OF SERVICE Executed by Samuel Bartley Steele re defendants Island Records, Universal Polygram an Universal Music Publishing Group. (Duong, Diep) (Entered: 02/12/2009)
02/18/2009	<u>45</u>	NOTICE of Appearance by Matthew J. Matule on behalf of The Bigger Picture Cinema Co. (Matule, Matthew) (Entered: 02/18/2009)
02/18/2009	<u>46</u>	NOTICE of Appearance by Scott D. Brown on behalf of The Bigger Picture Cinema Co. (Brown, Scott) (Entered: 02/18/2009)
02/18/2009	<u>47</u>	CORPORATE DISCLOSURE STATEMENT by The Bigger Picture Cinema Co.. (Matule, Matthew) (Entered: 02/18/2009)
02/18/2009	<u>48</u>	MOTION to Dismiss <u>41</u> Amended Complaint by Bon Jovi, Turner Broadcasting System, Inc., Aggressive Music, Bon Jovi Publishing, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, MLB Productions A&E, Major League Baseball.(Matule, Matthew) (Entered: 02/18/2009)
02/18/2009	<u>49</u>	MEMORANDUM in Support re <u>48</u> MOTION to Dismiss <i>The Amended Complaint</i> filed by Bon Jovi, Turner Broadcasting System, Inc., Aggressive Music, Bon Jovi Publishing, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, MLB Productions A&E, Major League Baseball (Attachments: # <u>1</u> Exhibit A)(Matule, Matthew) (Entered: 02/18/2009)
02/18/2009	<u>50</u>	DECLARATION re <u>48</u> MOTION to Dismiss <i>The Amended Complaint</i> by Bon Jovi, Turner Broadcasting System, Inc., Aggressive Music, Bon Jovi Publishing, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, MLB Productions A&E, Major League Baseball. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10)(Matule, Matthew) (Entered: 02/18/2009)
02/18/2009	<u>51</u>	NOTICE OF MANUAL FILING by Bon Jovi, Turner Broadcasting System, Inc., Aggressive Music, Bon Jovi Publishing, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone re <u>50</u> Declaration, (Matule, Matthew) (Entered: 02/18/2009)
02/18/2009	<u>52</u>	MOTION to Dismiss <i>The Amended Complaint</i> by A & E/AETV, Sony ATV Tunes, AEG Live, Vector Management, The Bigger Picture Cinema Co., Fox Television Networks.(Matule, Matthew) (Entered: 02/18/2009)
02/18/2009	<u>53</u>	MEMORANDUM in Support re <u>52</u> MOTION to Dismiss <i>The Amended Complaint</i> filed by A & E/AETV, Sony ATV Tunes, AEG Live, Vector Management, The Bigger Picture Cinema Co., Fox Television Networks.

		(Matule, Matthew) (Entered: 02/18/2009)
02/18/2009	<u>55</u>	SUMMONS Returned Executed Mark Shimmel Music served on 12/24/2008, answer due 1/13/2009. (Duong, Diep) (Entered: 02/19/2009)
02/19/2009	<u>54</u>	NOTICE of Scheduling Conference Scheduling Conference set for 3/31/2009 03:30 PM in Courtroom 4 before Judge Nathaniel M. Gorton. (Nicewicz, Craig) (Entered: 02/19/2009)
02/20/2009	<u>56</u>	NOTICE of Appearance by Matthew J. Matule on behalf of Mark Shimmel Music (Matule, Matthew) (Entered: 02/20/2009)
02/20/2009	<u>57</u>	NOTICE of Appearance by Scott D. Brown on behalf of Mark Shimmel Music (Brown, Scott) (Entered: 02/20/2009)
02/20/2009	<u>58</u>	MOTION to Dismiss <i>The Amended Complaint</i> by Mark Shimmel Music. (Matule, Matthew) (Entered: 02/20/2009)
02/25/2009	<u>59</u>	SUMMONS Returned Executed Kobalt Music Group served on 2/19/2009, answer due 3/11/2009. (Duong, Diep) (Entered: 02/25/2009)
03/04/2009	<u>60</u>	SUMMONS Returned Executed Boston Red Sox served on 3/3/2009, answer due 3/23/2009; Universal Music Publishing Group served on 2/19/2009, answer due 3/11/2009; Universal Polygram served on 2/20/2009, answer due 3/12/2009. (Duong, Diep) (Entered: 03/05/2009)
03/04/2009	<u>61</u>	Opposition re <u>58</u> MOTION to Dismiss <i>The Amended Complaint</i> , <u>48</u> MOTION to Dismiss <i>The Amended Complaint</i> , <u>52</u> MOTION to Dismiss <i>The Amended Complaint</i> filed by Samuel Bartley Steele. (Attachments: # <u>1</u> Exhibit)(Duong, Diep) (Entered: 03/05/2009)
03/11/2009	<u>62</u>	NOTICE of Appearance by Daniel J. Cloherty on behalf of Kobalt Music Group (Cloherty, Daniel) (Entered: 03/11/2009)
03/11/2009	<u>63</u>	NOTICE of Appearance by Amy B. Auth on behalf of Kobalt Music Group (Auth, Amy) (Entered: 03/11/2009)
03/11/2009	<u>64</u>	MOTION to Dismiss <i>the Amended Complaint</i> by Kobalt Music Group.(Auth, Amy) (Entered: 03/11/2009)
03/11/2009	<u>65</u>	MEMORANDUM in Support re <u>64</u> MOTION to Dismiss <i>the Amended Complaint</i> filed by Kobalt Music Group. (Auth, Amy) (Entered: 03/11/2009)
03/11/2009	<u>66</u>	CORPORATE DISCLOSURE STATEMENT by Kobalt Music Group. (Auth, Amy) (Entered: 03/11/2009)
03/11/2009	<u>67</u>	NOTICE of Appearance by Matthew J. Matule on behalf of Universal Music Publishing Group, Universal Polygram (Matule, Matthew) (Entered: 03/11/2009)
03/11/2009	<u>68</u>	NOTICE of Appearance by Scott D. Brown on behalf of Universal Music Publishing Group, Universal Polygram (Brown, Scott) (Entered: 03/11/2009)
03/11/2009	<u>69</u>	CORPORATE DISCLOSURE STATEMENT by Universal Music Publishing Group. (Matule, Matthew) (Entered: 03/11/2009)

03/11/2009	<u>70</u>	CORPORATE DISCLOSURE STATEMENT by Universal Polygram. (Matule, Matthew) (Entered: 03/11/2009)
03/11/2009	<u>71</u>	MOTION to Dismiss <i>The Amended Complaint</i> by Universal Music Publishing Group, Universal Polygram.(Matule, Matthew) (Entered: 03/11/2009)
03/11/2009	<u>72</u>	NOTICE of Appearance by David A. Bunis on behalf of Kobalt Music Group (Bunis, David) (Entered: 03/11/2009)
03/12/2009	<u>73</u>	NOTICE of Appearance by Matthew J. Matule on behalf of Boston Red Sox (Matule, Matthew) (Entered: 03/12/2009)
03/12/2009	<u>74</u>	NOTICE of Appearance by Scott D. Brown on behalf of Boston Red Sox (Brown, Scott) (Entered: 03/12/2009)
03/12/2009	<u>75</u>	CORPORATE DISCLOSURE STATEMENT by Boston Red Sox. (Matule, Matthew) (Entered: 03/12/2009)
03/12/2009	<u>76</u>	MOTION to Dismiss <i>The Amended Complaint</i> by Boston Red Sox.(Matule, Matthew) (Entered: 03/12/2009)
03/16/2009	<u>77</u>	MOTION for Leave to File <i>Reply Memorandum In Further Support Of Defendants' Motions To Dismiss The Amended Complaint (UNOPPOSED)</i> by MLB Productions, A & E, A & E/AETV, Bon Jovi, Sony ATV Tunes, AEG Live, Boston Red Sox, Turner Broadcasting System, Inc., Mark Shimmel Music, Vector Management, Aggressive Music, Bon Jovi Publishing, Universal Music Publishing Group, Universal Polygram, Pretty Blue Songs, Time Warner Corporation, The Bigger Picture Cinema Co., Jon Bongiovi, Richard Sambora, William Falcone, Fox Television Networks, Major League Baseball. (Attachments: # <u>1</u> Exhibit A)(Matule, Matthew) (Entered: 03/16/2009)
03/23/2009	<u>78</u>	MOTION for Leave to Appear Pro Hac Vice for admission of Kenneth A. Plevan and Clifford M. Sloan Filing fee \$ 100, receipt number 0101000000002348251. by Boston Red Sox, Mark Shimmel Music, Universal Music Publishing Group, Universal Polygram, The Bigger Picture Cinema Co.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Matule, Matthew) (Entered: 03/23/2009)
03/24/2009		Judge Nathaniel M. Gorton: Electronic ORDER entered granting <u>78</u> Motion for Leave to Appear Pro Hac Vice; Added Clifford M. Sloan and Kenneth A. Plevan for Boston Red Sox, Mark Shimmel Music, Universal Music Publishing Group, Universal Polygram and The Bigger Picture Cinema Co. Attorneys admitted Pro Hac Vice must register for electronic filing. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form. (Duong, Diep) (Entered: 03/24/2009)
03/24/2009	<u>79</u>	JOINT SUBMISSION pursuant to Local Rule 16.1 <i>And Fed. R. Civ. P. 26(f)</i> by MLB Productions, A & E, A & E/AETV, Bon Jovi, Sony ATV Tunes, AEG Live, Samuel Bartley Steele, Kobalt Music Publishing America, Inc., Boston Red Sox, Turner Broadcasting System, Inc., Mark Shimmel Music,

		Vector Management, Aggressive Music, Bon Jovi Publishing, Universal Music Publishing Group, Universal Polygram, Pretty Blue Songs, Time Warner Corporation, The Bigger Picture Cinema Co., Jon Bongiovi, Richard Sambora, William Falcone, Fox Television Networks, Major League Baseball.(Matule, Matthew) (Entered: 03/24/2009)
03/25/2009	<u>80</u>	CERTIFICATION pursuant to Local Rule 16.1 by Kobalt Music Publishing America, Inc.(Auth, Amy) (Entered: 03/25/2009)
03/25/2009	<u>81</u>	MOTION for Leave to File <i>Reply Memorandum (UNOPPOSED)</i> by A & E/AETV, Sony ATV Tunes, AEG Live, Vector Management, Universal Music Publishing Group, Universal Polygram, The Bigger Picture Cinema Co., Fox Television Networks. (Attachments: # <u>1</u> Exhibit A)(Brown, Scott) (Entered: 03/25/2009)
03/27/2009	<u>82</u>	Summons Returned Unexecuted by Samuel Bartley Steele as to Island Records. (Duong, Diep) (Entered: 03/30/2009)
03/30/2009	<u>83</u>	CERTIFICATION pursuant to Local Rule 16.1 (D)(3) by MLB Productions, A & E, A & E/AETV, Bon Jovi, Sony ATV Tunes, AEG Live, Boston Red Sox, Turner Broadcasting System, Inc., Mark Shimmel Music, Vector Management, Aggressive Music, Bon Jovi Publishing, Universal Music Publishing Group, Universal Polygram, Pretty Blue Songs, Time Warner Corporation, The Bigger Picture Cinema Co., Jon Bongiovi, Richard Sambora, William Falcone, Fox Television Networks, Major League Baseball.(Matule, Matthew) (Entered: 03/30/2009)
03/31/2009		Electronic Clerk's Notes for proceedings held before Judge Nathaniel M. Gorton: Scheduling Conference held on 3/31/2009. (Court Reporter: dahlstrom.) (Nicewicz, Craig) (Entered: 04/01/2009)
03/31/2009		Electronic Clerk's Notes for proceedings held before Judge Nathaniel M. Gorton: Scheduling Conference held on 3/31/2009. (Court Reporter: Dahlstrom.)(Attorneys present: Various) (Nicewicz, Craig) (Entered: 04/15/2009)
04/01/2009	<u>84</u>	NOTICE of Voluntary Dismissal as to defendant The Bigger Picture Cinema Company by Samuel Bartley Steele (Duong, Diep) (Entered: 04/02/2009)
04/03/2009	<u>85</u>	Judge Nathaniel M. Gorton: ORDER entered. MEMORANDUM & ORDER "In accordance with the foregoing, this Court rules as follows: 1) Defendants' motions to dismiss (Docket Nos. <u>17</u> , <u>24</u> , <u>29</u> and <u>33</u>), all of which were filed before the plaintiffs amended their complaint, are DENIED as MOOT; 2) The motion of the Non-Implicated Defendants to dismiss (Docket No. <u>52</u>) is, with respect to defendants Fox Broadcasting Company, Sony ATV Tunes LLC and Vector 2 LLC, ALLOWED but is otherwise DENIED; 3) the motions to dismiss of defendant Mark Shimmel Music (Docket No. <u>58</u>) and defendant Kobalt Music Publishing America (Docket No. <u>64</u>) are DENIED; 4) the motion of defendants Universal Music Publishing and Universal Polygram International Publishing to dismiss (Docket No. <u>71</u>) is, with respect to defendant Universal Music Publishing, ALLOWED but is otherwise DENIED; 5) The defendants motions to dismiss (Docket Nos. <u>48</u> and <u>76</u>) are DENIED and 6) limited discovery will proceed as follows: a) all discovery

		relevant to the issue of substantial similarity will be completed on or before May 31, 2009; b) dispositive motions with respect to substantial similarity will be filed on or before June 26, 2009, and oppositions will be filed on or before July 17, 2009; c) a hearing on any pending dispositive motion will be held on Wednesday, August 12, 2009, at 3:30 PM ." Copy mailed to plaintiff (Duong, Diep) (Entered: 04/06/2009)
04/06/2009		Set/Reset Deadlines: Discovery to be completed by 5/31/2009, Dispositive Motions due by 6/26/2009. Oppositions due by 7/17/2009, Motion Hearing set for 8/12/2009 03:30 PM in Courtroom 4 before Judge Nathaniel M. Gorton. (Duong, Diep) (Entered: 04/06/2009)
04/09/2009	<u>86</u>	Transcript of Hearing on Motions to Dismiss held on March 31, 2009, before Judge Gorton. Court Reporter: Cheryl Dahlstrom at 617/951-4555. The Transcript may be purchased through the Court Reporter, viewed at the public terminal, or viewed through PACER after it is released. Redaction Request due 4/27/2009. Redacted Transcript Deadline set for 5/7/2009. Release of Transcript Restriction set for 7/6/2009. (Scalfani, Deborah) (Entered: 04/09/2009)
04/09/2009	<u>87</u>	NOTICE is hereby given that an official transcript of a proceeding has been filed by the court reporter in the above-captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, a copy of which is attached to this entry.. (Scalfani, Deborah) (Entered: 04/09/2009)
04/17/2009	<u>88</u>	ANSWER to <u>41</u> Amended Complaint <i>And Affirmative Defenses</i> by MLB Productions, A & E, A & E/AETV, Bon Jovi, AEG Live, Boston Red Sox, Turner Broadcasting System, Inc., Mark Shimmel Music, Aggressive Music, Bon Jovi Publishing, Universal Polygram, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, Major League Baseball.(Matule, Matthew) (Entered: 04/17/2009)
04/20/2009	<u>89</u>	ANSWER to <u>41</u> Amended Complaint by Kobalt Music Publishing America, Inc..(Cloherty, Daniel) (Entered: 04/20/2009)
05/13/2009		Judge Nathaniel M. Gorton: Electronic ORDER entered granting <u>77</u> , <u>81</u> Motion for Leave to File; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include - Leave to file granted on (date of order)- in the caption of the document. (Duong, Diep) (Entered: 05/13/2009)
05/18/2009	<u>90</u>	REPLY to Response to <u>48</u> MOTION to Dismiss <i>The Amended Complaint</i> filed by MLB Productions, A & E, A & E/AETV, Bon Jovi, Sony ATV Tunes, AEG Live, Boston Red Sox, Turner Broadcasting System, Inc., Mark Shimmel Music, Vector Management, Aggressive Music, Bon Jovi Publishing, Universal Music Publishing Group, Universal Polygram, Pretty Blue Songs, Time Warner Corporation, The Bigger Picture Cinema Co., Jon Bongiovi, Richard Sambora, William Falcone, Fox Television Networks, Major League Baseball. (Matule, Matthew) (Entered: 05/18/2009)
05/18/2009	<u>91</u>	REPLY to Response to <u>71</u> MOTION to Dismiss <i>The Amended Complaint</i> , <u>52</u> MOTION to Dismiss <i>The Amended Complaint</i> filed by A & E/AETV, Sony

		ATV Tunes, AEG Live, Vector Management, Universal Music Publishing Group, Universal Polygram, The Bigger Picture Cinema Co., Fox Television Networks. (Matule, Matthew) (Entered: 05/18/2009)
06/10/2009	<u>92</u>	MOTION for Summary Judgment <i>Dismissing The Copyright Infringement Claim</i> by MLB Productions, A & E, A & E/AETV, AEG Live, Boston Red Sox, Turner Broadcasting System, Inc., Mark Shimmel Music, Aggressive Music, Bon Jovi Publishing, Universal Polygram, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, Major League Baseball.(Matule, Matthew) (Entered: 06/10/2009)
06/10/2009	<u>93</u>	MEMORANDUM in Support re <u>92</u> MOTION for Summary Judgment <i>Dismissing The Copyright Infringement Claim</i> filed by MLB Productions, A & E, A & E/AETV, AEG Live, Boston Red Sox, Turner Broadcasting System, Inc., Mark Shimmel Music, Aggressive Music, Bon Jovi Publishing, Universal Polygram, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, Major League Baseball. (Matule, Matthew) (Entered: 06/10/2009)
06/10/2009	<u>94</u>	DECLARATION re <u>92</u> MOTION for Summary Judgment <i>Dismissing The Copyright Infringement Claim</i> by MLB Productions, A & E, A & E/AETV, AEG Live, Boston Red Sox, Turner Broadcasting System, Inc., Mark Shimmel Music, Aggressive Music, Bon Jovi Publishing, Universal Polygram, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, Major League Baseball. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6, # <u>7</u> Exhibit 7, # <u>8</u> Exhibit 8, # <u>9</u> Exhibit 9, # <u>10</u> Exhibit 10, # <u>11</u> Exhibit 11, # <u>12</u> Exhibit 12)(Brown, Scott) (Entered: 06/10/2009)
06/10/2009	<u>95</u>	NOTICE OF MANUAL FILING by MLB Productions, A & E, A & E/AETV, AEG Live, Boston Red Sox, Turner Broadcasting System, Inc., Mark Shimmel Music, Bon Jovi Publishing, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, Major League Baseball re <u>92</u> MOTION for Summary Judgment <i>Dismissing The Copyright Infringement Claim</i> , <u>94</u> Declaration, (Matule, Matthew). Modified on 6/15/2009: 2 CD and 1 DVD Rec'd (Duong, Diep). (Entered: 06/10/2009)
06/10/2009	<u>96</u>	Statement of Material Facts L.R. 56.1 re <u>92</u> MOTION for Summary Judgment <i>Dismissing The Copyright Infringement Claim</i> filed by A & E/AETV, AEG Live, Boston Red Sox, Turner Broadcasting System, Inc., Mark Shimmel Music, Aggressive Music, Bon Jovi Publishing, Universal Polygram, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, Major League Baseball. (Matule, Matthew) (Entered: 06/10/2009)
06/22/2009	<u>97</u>	MOTION To Reschedule August 12, 2009 Hearing On Dispositive Motions On Substantial Similarity Issue by MLB Productions, A & E, A & E/AETV, AEG Live, Boston Red Sox, Turner Broadcasting System, Inc., Mark Shimmel Music, Aggressive Music, Bon Jovi Publishing, Universal Polygram, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, Major League Baseball.(Matule, Matthew) (Entered: 06/22/2009)

06/26/2009	<u>98</u>	MOTION for Summary Judgment by Kobalt Music Publishing America, Inc.. (Auth, Amy) (Entered: 06/26/2009)
06/26/2009	<u>99</u>	MEMORANDUM in Support re <u>98</u> MOTION for Summary Judgment filed by Kobalt Music Publishing America, Inc.. (Auth, Amy) (Entered: 06/26/2009)
06/26/2009	<u>100</u>	Statement of Material Facts L.R. 56.1 re <u>98</u> MOTION for Summary Judgment filed by Kobalt Music Publishing America, Inc.. (Auth, Amy) (Entered: 06/26/2009)
07/17/2009	<u>101</u>	MEMORANDUM in Opposition re <u>92</u> MOTION for Summary Judgment <i>Dismissing The Copyright Infringement Claim</i> , <u>98</u> MOTION for Summary Judgment filed by Samuel Bartley Steele. (Attachments: # <u>1</u> Exhibit A1, # <u>2</u> Exhibit A2, # <u>3</u> Exhibit A3, # <u>4</u> Exhibit B1, # <u>5</u> Exhibit B2, # <u>6</u> Exhibit B3-6, # <u>7</u> Exhibit C1-9, # <u>8</u> Exhibit D1-6, # <u>9</u> Exhibit E, # <u>10</u> Exhibit F1-3)(Duong, Diep) (Entered: 07/21/2009)
07/29/2009	<u>102</u>	MOTION for Leave to File <i>Reply Memorandum Of Law In Further Support Of Their Motion For Summary Judgment Dismissing The Copyright Infringement Claim</i> by MLB Productions, A & E, A & E/AETV, AEG Live, Boston Red Sox, Turner Broadcasting System, Inc., Mark Shimmel Music, Aggressive Music, Bon Jovi Publishing, Universal Polygram, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, Major League Baseball. (Attachments: # <u>1</u> Exhibit A)(Matule, Matthew) (Entered: 07/29/2009)
07/30/2009		Judge Nathaniel M. Gorton: Electronic ORDER entered granting <u>97</u> Motion to continue. (Nicewicz, Craig) (Entered: 07/30/2009)
07/30/2009		ELECTRONIC NOTICE of Hearing on Motion <u>98</u> MOTION for Summary Judgment, <u>92</u> MOTION for Summary Judgment <i>Dismissing The Copyright Infringement Claim</i> : Motion Hearing reset for 9/10/2009 03:30 PM in Courtroom 4 before Judge Nathaniel M. Gorton. (Nicewicz, Craig) (Entered: 07/30/2009)
07/30/2009		Judge Nathaniel M. Gorton: Electronic ORDER entered granting <u>102</u> Motion for Leave to File; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include - Leave to file granted on (date of order)- in the caption of the document. (Nicewicz, Craig) (Entered: 07/30/2009)
07/30/2009	<u>103</u>	REPLY to Response to <u>92</u> MOTION for Summary Judgment <i>Dismissing The Copyright Infringement Claim</i> filed by MLB Productions, A & E, A & E/AETV, AEG Live, Boston Red Sox, Turner Broadcasting System, Inc., Mark Shimmel Music, Aggressive Music, Bon Jovi Publishing, Universal Polygram, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, Major League Baseball. (Attachments: # <u>1</u> Exhibit A)(Matule, Matthew) (Entered: 07/30/2009)
08/19/2009	<u>104</u>	Judge Nathaniel M. Gorton: ORDER entered. MEMORANDUM AND ORDER "In accordance with the foregoing, the defendants motions for

		summary judgment (Docket Nos. <u>92</u> and <u>98</u>) are ALLOWED." (Duong, Diep) (Entered: 08/20/2009)
08/19/2009	<u>105</u>	Judge Nathaniel M. Gorton: ORDER entered. JUDGMENT in favor of defendants against plaintiff(Duong, Diep) (Entered: 08/20/2009)
08/20/2009		DOCKET Nos. <u>104</u> and <u>105</u> sent to Plaintiff (Duong, Diep) (Entered: 08/20/2009)
08/28/2009	<u>106</u>	MOTION for Reconsideration re <u>104</u> Memorandum & ORDER by Samuel Bartley Steele. (Attachments: # <u>1</u> Brief)(Duong, Diep) (Entered: 08/31/2009)
09/02/2009	<u>107</u>	MEMORANDUM in Opposition re <u>106</u> MOTION for Reconsideration re <u>104</u> Memorandum & ORDER filed by MLB Productions, A & E, A & E/AETV, AEG Live, Boston Red Sox, Turner Broadcasting System, Inc., Mark Shimmel Music, Aggressive Music, Bon Jovi Publishing, Universal Polygram, Pretty Blue Songs, Time Warner Corporation, Jon Bongiovi, Richard Sambora, William Falcone, Major League Baseball. (Attachments: # <u>1</u> Exhibit A)(Matule, Matthew) (Entered: 09/02/2009)
09/03/2009	<u>108</u>	Opposition re <u>106</u> MOTION for Reconsideration re <u>104</u> Memorandum & ORDER filed by Kobalt Music Publishing America, Inc.. (Auth, Amy) (Entered: 09/03/2009)
09/15/2009	<u>109</u>	AFFIDAVIT of Steele by Samuel Bartley Steele. (Duong, Diep) (Entered: 09/16/2009)
10/13/2009	<u>110</u>	Judge Nathaniel M. Gorton: ORDER entered. MEMORANDUM AND ORDER "In accordance with the foregoing, the plaintiff's motion for reconsideration (Docket No. <u>106</u>) is DENIED." Copy mailed to plaintiff (Duong, Diep) (Entered: 10/13/2009)
11/06/2009	<u>111</u>	NOTICE of Appearance by Christopher A.D. Hunt on behalf of Samuel Bartley Steele (Hunt, Christopher) (Entered: 11/06/2009)
11/06/2009	<u>112</u>	NOTICE OF APPEAL as to <u>85</u> <u>104</u> <u>110</u> by Samuel Bartley Steele NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov/clerks/transcript.htm MUST be completed and submitted to the Court of Appeals. Appeal Record due by 11/27/2009. (Hunt, Christopher) (Entered: 11/06/2009)
11/06/2009	<u>113</u>	MOTION for Leave to Appeal in forma pauperis by Samuel Bartley Steele. (Hunt, Christopher) (Duong, Diep). (Entered: 11/06/2009)
11/06/2009	<u>114</u>	TRANSCRIPT ORDER FORM by Samuel Bartley Steele (Hunt, Christopher) (Entered: 11/06/2009)
11/12/2009	<u>115</u>	AFFIDAVIT of Samuel Bartley Steele in Support re <u>113</u> MOTION for Leave to Appeal in forma pauperis (Duong, Diep) (Entered: 11/12/2009)
11/12/2009		Judge Nathaniel M. Gorton: Electronic ORDER entered granting <u>113</u> Motion for Leave to Appeal in forma pauperis (Duong, Diep) (Entered: 11/12/2009)
11/17/2009	<u>116</u>	Certified and Transmitted Abbreviated Electronic Record on Appeal to US

		Court of Appeals re <u>112</u> Notice of Appeal, (Ramos, Jeanette) (Entered: 11/17/2009)
11/17/2009		USCA Case Number 09-2571 for <u>112</u> Notice of Appeal, filed by Samuel Bartley Steele. (Ramos, Jeanette) (Entered: 11/17/2009)
04/22/2010	<u>117</u>	Supplemental Record on Appeal transmitted to US Court of Appeals re <u>112</u> Notice of Appeal, Documents included: #95 & Exhibits G plus (9) CD's (Ramos, Jeanette) (Entered: 04/22/2010)

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EXHIBIT 2

08 CA 11727 NMG

1. NAME AND ADDRESS OF PLAINTIFFS: Samuel Bartley Steele, known as Bart Steele, and Bart Steele Publishing's address is 80 Park Street, Chelsea Massachusetts 02150. Mr. Steele is a singer, songwriter, music publisher and music producer who performs with his bands, The Chelsea City Council and The Bart Steele Band, throughout New England. Steele's music, including the song at issue in this case, can be heard at: www.myspace.com/chelseacitycouncil. Mr. Steele also works as a bartender to assist with paying his expenses and supporting his daughter.
2. NAME AND ADDRESS OF DEFENDANTS: The primary defendants in this case are Turner Broadcasting System, Inc. ("TBS") and Time Warner Corporation. Both TBS and Time Warner do business in all 50 states and all over the world. Time Warner's address is One Time Warner Center, New York, New York 10019. TBS's address is One CNN Center, Atlanta, Georgia 30303.
3. Other defendants include Jon Bongiovi, Richard Sambora, William Falcone, The American Society of Composers, Authors and Publishers ("ASCAP") Fox Television Networks, Major League Baseball / MLB Productions, A&E / AETV, Bon Jovi, AEG Live, Mark Shimmel Music, Vector Management, Island Records / Island Def Jam Records, Aggressive Music / Sony ATV Tunes, Bon Jovi Publishing, Universal Music Publishing Group, Universal Polygram, Pretty Blue Songs, and The Bigger Picture Cinema Co, as well as the owners of every ballpark that the ad at issue was played in, and all of Time Warner's Networks that played the ad in more than 74 countries around the world promoting defendants MLB and Bon Jovi. This list of defendants may grow, since it does not yet include parties responsible for playing the ad on the internet.
4. For addresses of the defendants listed in paragraphs 2 and 3, please see Exhibit A.
5. JURISDICTION: This case involves copyright and trademark infringement, and is therefore subject to the federal question jurisdiction of this federal court under 28 U.S.C. Section 1331 and the Copyright Act, 17 U.S.C Section 101 et seq. and the Lanham Act.
6. ALLEGATIONS: In September of 2004, Plaintiff Bart Steele wrote a love song for his beloved Red Sox and a baseball playoff anthem fans could sing along with. He titled his song "(Man I Really) Love this Team", also known as "Man I Love this Team." The song was originally released in early October 2004, by the Bart Steele Band and Steele's other band, The Gyromatics. Steele, his bandmates, and friends performed the song outside Fenway Park for the next month handing out thousands of cd's and lyrics sheets. Red Sox fans got to know the song very well. There were sing alongs at the two most popular Red Sox bars outside Fenway Park (The Cask n' Flagon and Boston Beer Works both played the song regularly). Bart's roommate, who still works inside Fenway Park to this day, handed out copies to Red Sox executives inside the park. Bart stood outside the executive's entrance to Fenway Park on Brookline Ave. handing copies to anyone wearing a suit. A friend of Bart's had conversations with a member of the Red Sox organization, who asked her to send the song to him. She emailed it to him at rrouke@redsox.com in late October 2004. Bart and bandmate, Peter Bellomo, were

invited to play the song live on Channel 7 and Channel 5 and did so on October 26, 2004. An acoustic version of the song was also played on New England's number one Sports radio station, WEEI / 850 AM-Boston, a Fox Sports Radio Network affiliate. The song was also available for free download on many websites, including www.gyromatics.com, www.kohit.com, and, most importantly, www.fenwaynation.com. The fenwaynation site averaged 180,000 "hits" per day in October 2004. The song was also posted at www.mvn.com, (the largest independent sports website in the country), www.phoenix.com, and www.mikehallal.com.

7. Bart sent cds with lyric sheets to Johnny Damon, Bronson Arroyo, team captain Jason Varitek, Kevin "Cowboy Up" Millar, Jerry Remy (Red Sox NESN announcer), Team owner John Henry, & GM Theo Epstein. Bart also emailed the MP3 and links to where the song was available for free download to the general mailboxes of both the Red Sox and MLB.
8. Defendant Jon Bongiovi was in Boston to campaign for John Kerry in late October /early November 2004. He stayed at a hotel a few blocks away from Fenway Park, where Bart and bandmates were performing Bart's song. Thus it is entirely possible that Mr. Bongiovi heard Bart's song, or received a cd copy of it, in 2004.
9. When he sent the song to MLB, he sent them lyric sheets entitled 'I Really Love This Team'. In early November 2004 and throughout the following months, Bart began revising the song and working a marketing concept that would adapt the song for use in any town. Lyrics for this derivative version, entitled "Man I Really Love This Town." are included in on the CD-R attached as Exhibit I (no.5). For example, the words "Yawkey Way" could be replaced by the name of the street outside the ballpark in any town. Bart also shared with MLB his idea that a "country" song would be more marketable for MLB both nationally and internationally. It is important to note that as Bart was working on his derivative version for any team/town he sent defendants derivative lyrics rhyming 'round' with 'town' (and eventually copyrighted these derivative lyrics, as well as the original lyrics, at the Library of Congress in June 2006). He told MLB that he was working on this new version for any team or any town and was replacing the Boston specific lyrics with lyrics for each team and each town.
10. The song was played on the Bobby Bucket radio show in 2005. and in October 2005, Bart played the song on live TV (Chelsea Cable Channel 3) for a hurricane Katrina relief fundraiser. Ironically, this is the performance Bart referenced in his application to become a member of ASCAP. [ASCAP requires prospective members to reference one public performance of a particular original song as part of its application process.] Bart even registered both versions of his song--"Man I Really Love This Team" and "Man I Really Love This Town"-- at ASCAP with himself as both writer and publisher. A copy of the ASCAP title code registration, number 433133272, is attached as Exhibit B. As will be explained below, this registration did nothing to protect Bart's rights.

11. In December 2005, Bart posted the song at his website www.myspace.com/thebartsteeleband
12. Many people began telling Bart that they had his song on their ipods and computers at work and knew of others who had Bart's song as well, but did not know who Bart was. As the number of (uncompensated) downloads grew, Bart realized his song had "made it" and decided to copyright his baseball playoff anthem. He submitted his song to the Library of Congress and received copyright certificate PAu3-052-330, dated June 30 2006. This copyright includes the derivative lyrics Bart told MLB he was working on, which rhyme "round" with "town." To transform Bart's song into an ad, defendants took this rhyme and made it the central focus of the Bon Jovi advertisement's choral refrain, and added in their commercial message: "Let the world keep spinning *round* / This is where it all goes down (one of TBS's silly ad messages) / That's why I love this *town*." For an analysis of some of the other similarities between Bart's song and the Bon Jovi ad, please see [Exhibit C](#), which was prepared by a friend of Bart's who is currently studying for a PhD in Musicology. Moreover, careful review of the visual images in the original ad reveals that they are mostly Red Sox and Boston images—just as in Bart's song. For example, the moment Bart sings "Word is out on *Yawkey Way*, the ad shows a shot of a *Yawkey Way street* sign as Bon Jovi sings "When I'm walkin' down the *street*."
13. At the same time Bart was finishing his derivative version of his baseball playoff anthem, Bart applied for membership to ASCAP, the American Society of Composers Authors and Publishers. Bart was attempting to protect himself against further uncompensated uses of his work, relying upon ASCAP's reputation as protectors of musician's rights and their many statements regarding their systems for collecting royalties and distributing royalties to their rightful owners. Bart became a member of ASCAP, with the same rights as any other member such as defendant Bon Jovi, in June 2006. As noted above, Bart's application for ASCAP membership included reference to the song at issue, noting that he was both writer and publisher of the song. ASCAP therefore had notice of Bart's song as far back as June 2006, well before Bon Jovi registered his advertisement/song with ASCAP in June 2007.
14. In July 2006, defendants TBS, FOX and MLB announced a seven-year deal in which, for the first time ever, the MLB playoffs would air on cable television rather than free broadcast television networks. Following the 2006 World Series, TBS contacted Bon Jovi through one of its musical consultants, Mark Shimmcl. Mr. Shimmcl specializes in connecting his corporate clients with the highest level musical talent when they need a jingle or music to use in advertising. (For his profile see the following webpage) <http://www.impnw.com/profiles/markshimmcl/> Mr. Shimmcl's very involvement in this case shows that "I Love This Town" was done as an advertisement for TBS being the new home of the MLB playoffs. When Bart contacted Mr. Shimmcl by telephonic asking about the matter and how Bon Jovi got his song, Mr. Shimmcl told him, "talk to Turner."

15. TBS and MLB got their video footage in Edmonton, Alberta (Canada) for the ad that would be released on August 31, 2007 and run through the duration of the 2007 baseball playoffs. On July 31, 2007, baseball's DVD distribution partner, A&E, helped with the recording and production of Bon Jovi's DVD "Lost Highway-the Live Concert." Thus, all defendants were engaged in a mutually-beneficial cross-promotion based entirely upon Bart's song and marketing concept. In fact, Bon Jovi's world tour started the day after the 2007 World Series started—promoted one of the most expensive ad campaigns in history [Time Warner provided \$386 million to help promote its networks being the new home of MLB. Furthermore, both MLB and TBS acknowledge that this was the first time MLB worked on an ad campaign with one of its networks. TBS has also acknowledged that it was the first time it aired market-specific content. That is, they produced ads with lyrics specific to each team, just as Bart had proposed. TBS "Creative Director" Craig Barry has also acknowledged in the press that Bon Jovi's role in the ad campaign was to "deliver our [TBS's] message" about TBS being the new home of the playoffs. Bon Jovi's ad soundtrack delivers this message: "No matter where you're from, tonight you're from right here", "You make feel at home somehow", "that's why I love this town". "that's why I keep comin' 'round, etc. This clearly shows that TBS wrote part or all of the unauthorized derivative version of Bart's song, most likely through a method called "temp tracking."
16. Temp tracking involves using one song as a kind of working draft (sometimes called the "reference track") for the creation of (in this case) an audio visual work such as a television advertisement. Simply put, the director takes a song he likes (Bart's song), puts some video images that fit with it, and proposes the rough cut to the client. Sometimes they use that rough cut, and sometimes they decide to hire an established star to perform and / or change the music. It is important to note that the video images in the final MLB/TBS promo track some of Bart's song lyrics too well for coincidence. When Bart first saw the ad, then watched it with his song playing simultaneously, he realized that the striking similarities between the lyrics, music and video images indicated that the Bon Jovi soundtrack was written and recorded to fit with the visual images originally suggested and selected by "cues" from Bart's song. This was a classic case of "temp tracking", as described in the following article:
<http://www.amprnow.com/news-infringement.html>
17. Baseball's DVD distribution partner, A&E did the artwork for Bon Jovi's "Lost Highway" cd itself. The cd was released in the United States June 19, 2007. Later that year, in November, the DVD was released. This clearly shows how the corporate entities aided Bon Jovi in getting the song/ad and cd itself out, using Bart's work for a huge cross-promotion of their interests, without paying Bart or giving him any credit. In other words, A&E (MLB's distribution partner) was clearly involved before the June 19, 2007 release date of the cd.

18. On October 4, 2007, Bart received the first of many phone calls and email messages from friends "congratulating" him on selling his baseball anthem, and asking him how much he got paid for the TBS/MLB advertisement they were seeing on television. After seeing the ad and hearing its unauthorized derivative version of his song being sung by Bon Jovi, Bart was shocked and devastated, because he had never gotten a response to any of his communication with defendants, nor received any payment for use of his song. Nor had Bart granted synchronization rights or permission to create derivative versions of his song. It is especially offensive to Bart that his song was exploited for commercial purposes, more so than any song in the history of this country.
19. After conferring about this matter with the Volunteer Lawyers for the Arts and the FBI, Bart contacted ASCAP. After hearing his story, ASCAP employees Greg Potter and Robert Cheatham encouraged Bart to send them all of his musicology and "temp track" evidence and suggested he formally request that ASCAP freeze payment of royalties on the Bon Jovi ad soundtrack. Bart sent a letter dated January 23, 2008 requesting ASCAP look into conflicts and freeze royalties. In February, Bart sent ASCAP a video of the ad with his own song substituted for the Bon Jovi soundtrack, to show how well the visual images track Bart's song lyrics. ASCAP repeatedly assured Bart that they would make a decision on his claim within 4 weeks.
20. After several inquiries into the status of his claim, Bart received a conference phone call from ASCAP on April 21, 2008. In that phone conversation, ASCAP employees Robert Cheatham and Andrew Rodriguez told Bart and his girlfriend Carly, who was listening on speakerphone, that they found it "very hard to believe that this (the Bon Jovi song) was independent creation on their (defendants') part with the whole baseball thing and video." When Bart thanked them, and told them he was so depressed over this that he was at the point of jumping off a bridge, they told him would be "more depressed to know how much this type of thing happens [in the music/ advertising business], because that's what we deal with here in the repertory department." When Bart asked if ASCAP was going to freeze the royalties, Cheatham and Rodriguez replied that they were going to send out a "discrepancy letter that same day". Bart then asked if that meant he should proceed with sending defendants the cease and desist letter he had drafted. Cheatham and Rodriguez specifically told Bart not to send a cease and desist letter because that would "scare away" the defendants. They told Bart that ASCAP wanted to "get the parties together" to resolve the matter, and that sending a cease and desist letter to protect his rights would interfere with any attempts to resolve the matter informally. ASCAP employees Cheatham and Rodriguez told Bart that he had "handled this matter perfectly up to this date". Bart thanked them and told him that he looked forward to receiving the letter confirming the conversation, which ASCAP told him to expect via email later the same day.
21. Four days later, Bart received another phone call from ASCAP. In that conversation, ASCAP employee, Robert Cheatham asked Bart to put in writing the publishing/writing

percentages he was claiming for his song and to email it to them immediately. The next day Bart received the discrepancy email/letter that was sent to all parties. The discrepancy email/letter is attached as Exhibit D. The letter/email was also sent to the three artists that claimed to write the song (Jon Bongiovi, Richard Sambora, and William Falcone). It was also sent to their respective publishing companies.

22. A few days later, Bart received a promising email from Universal Publishing indicating that they had received the discrepancy letter/email and would be “working to resolve this matter with you” and would be “working on Mr. Bongiovi’s behalf”. ASCAP also subsequently announced that the guest speakers at the ASCAP Expo in Los Angeles would be John Bongiovi and Richie Sambora. ASCAP knew that Bart had been planning to attend this event since October 2007. On April 9, 2008, everything was looking positive when Bart flew out to L.A. for the expo, hoping he and Bon Jovi could shake hands and laugh about how they were both used by corporate America. Bart even learned all their new songs from ‘Lost Highway’ on mandolin and guitar in case he could join them on tour when this all worked out. The day after the discrepancy letter was sent out, Bon Jovi cancelled their 2 August concerts at Fenway Park, and Richie Sambora was arrested for drunk driving and facing jail time. Given the enormity of the problem facing all parties and the human toll it was already taking upon Bart, Sambora and others, Bart was willing to attempt to resolve the matter informally. Shaking hands and agreeing to work out a deal where Bon Jovi gave Bart some kind of credit or career help seemed the only reasonable way to proceed—no one, even the large corporate defendants and a band as big as Bon Jovi could calculate the infringement damages involved. Bart had realized that TBS’ conduct was willful infringement: they said or did something to give Bon Jovi the idea that they had the rights to use Bart’s song. Why would Bon Jovi, arguably the biggest rock band in the world, steal a song from an unknown artist like Bart? Answer: They wouldn’t. They would, instead, insist upon assurances that any song presented to them had been “cleared” and was ok to use. But no one at TBS ever cleared the rights to Bart’s song. *And thus began the snowballing screwup that brings us to court today.*
23. Things changed when Bart arrived in Los Angeles for the ASCAP “I Create Music” Expo on April 10, 2008. After registering at the Expo, Bart spoke with ASCAP employee John Baird. Baird told Bart that Bon Jovi’s publicist had warned ASCAP to “keep Bart away” from Bon Jovi. Over the lunch break, Bart received an email messages from attorneys for John Bongiovi and Richard Sambora (obviously sent to arrive while Bart was travelling). The messages threatened Bart not to pursue this any further, in stark contrast to ASCAP’s stated desire to bring the parties together and help resolve the matter. Frustrated and upset that the lawyers were obstructing resolution, Bart decided not to attend even the staged interview with Bongiovi and Sambora scheduled for that afternoon. Instead, Bart toured the Expo’s exhibits, where he again ran into ASCAP employee John Baird. Baird told Bart that he had received an email message ASCAP circulated among its employees involved with the Expo, which stated that ASCAP

expected Bart to attend the Expo and that he might cause trouble for the Bon Jovi interview. Mr. Baird then asked Bart to wait a moment while he went and spoke to someone. When he returned, Baird told Bart that he had just spoken to “Bon Jovi’s people” and that he told them Bart “was cool and was not going to cause trouble, he’s not even going to the interview.” In response to Bart’s question as to why ASCAP did not freeze the royalties, Baird stated, “Bon Jovi is our biggest fish.” Baird also told Bart that he had heard about his case and it was clear to him that the party Bart “should be going after was Turner.” Baird then suggested that Bart take a few minutes to write a note to Bon Jovi, which he would pass to “Bon Jovi’s people” for Bart while they were all at the Expo. Bart then wrote the note attached as Exhibit E.

24. At the Expo later that day, Bart spoke to a representative of ASCAP’s legal department, Ellen Meltzer-Zahn. Ms. Zahn told Bart that it was very strange that ASCAP had not frozen royalties in his case, as it was their standard procedure to freeze royalties when they sent out a letter like the one Bart had received. She refused to assist in connecting Bart with Mr. Bongiovi. However, she did pass on the handwritten note (Exhibit E) Bart had written seeking to end the matter with a handshake immediately.
25. Having made no progress on resolving the matter at the ASCAP Expo, Bart returned to Boston. He then complied with ASCAP’s (rather strange) request in the March 25, 2008 ASCAP discrepancy letter that he submit documentation substantiating his claim. This request was strange in light of the fact that Bart had been submitting documentation to ASCAP for several months, and ASCAP had acknowledged receipt of that documentation and told Bart several times that they had everything they needed regarding his claim. Nevertheless, on April 20, 2008, Bart sent ASCAP a letter resubmitting all the documentation he had sent ASCAP over the previous months. A copy of that letter is attached as Exhibit E. ASCAP also told Bart that any correspondence he sent regarding this matter should be cc’d to ASCAP. To date, Bart has received no reply to the final April 20 submission, nor any other communication from ASCAP. It is also interesting to note that the March 25 discrepancy letter sent by ASCAP asked *all parties—including* Jon Bongiovi and Richard Sambora—to submit documentation of their claims to have written the song. No one has ever sent Bart copies of any information submitted by anyone else claiming rights in the song, or even let him know whether ASCAP received such information. Bart has also called ASCAP several times since submitting the April 20 letter, with no response.
26. Tired of being given the run around by everyone (including the agency claiming to support his interests, ASCAP), Bart went public with his story in both print and television media. Boston Magazine published the article, “*Ballad of a Mud Fan*,” in its June 2008 edition. Channel 5 aired a companion piece in late June. Both these entities could clearly hear that the Bon Jovi ad was a generic version of Bart’s baseball anthem. A copy of the magazine is attached as Exhibit G. (See page 80.)

27. On September 29, 2008, Bart sent a cease and desist letter to defendant TBS, demanding a response within 48 hours. A copy of that letter is attached as Exhibit H. No response has been received as of the date of this complaint.
28. Copyright Infringement: Bart contends that defendants have violated the rights protected by the copyright laws, particularly the right to make derivative works and control commercial exploitation of his work. Without court intervention and action, a dangerous precedent will have been set here: Bart's baseball playoff anthem was changed into an ad for MLB/TBS, and the record-buying public is unknowingly purchasing an ad for MLB/TBS with every "Lost Highway" album. The corporate entities helped get this ad out on Bon Jovi's album. The more popular the song becomes, the more effective the ad. The best advertisement is the one that no one knows is an advertisement at all.
29. "Temp Tracking:" In making the ad which so closely tracks Bart's lyrics, defendants synchronized video images to Bart's song without his permission. Bart can show that with music production computer tools available, defendants could easily change Bart's song into the Bon Jovi ad by simply copying and dragging or cutting and pasting parts of the music just as we do with word processing programs. This violation of Bart's "synch rights" is technically copyright infringement but of course almost impossible to prove, since once the temp track has been used and changed enough, the original temp track is discarded. This practice is rampant in both music production and the advertising business. The court should acknowledge and stop this practice. To easily hear the temp track evidence, please review Exhibit I, a CD-R containing both Bart's original song in MP3 format and the MLB/TBS Bon Jovi video with Bart's song substituted in as soundtrack. The ad with its Bon Jovi soundtrack can currently be seen and heard on the internet as well as on television. since TBS is using it again to promote its broadcast of the 2008 baseball playoff games. Google: 'Bon Jovi MLB promo ad' to see the youtube of the original advertisement. (Or. for your convenience, Bart has included the youtube link to the original MLB/TBS promo advertisement on the CD-R Ex. 1- #5) Be careful not to confuse it with the brand new MLB/TBS/Bon Jovi commercial in which they got the new video footage from the MLB sponsored Bon Jovi free concert in Central Park. Bon Jovi was promoting the kick off of the all-star game weekend in New York for MLB. MLB, which put up the money for the show, and TBS got their new video footage.
30. Palming Off / Lanham Act violation: Defendants changed Bart's song into an ad without permission, and gave the song to a bigger, more marketable star to further their own ends, giving Bon Jovi (tacit or explicit) permission to claim they wrote it without giving credit to the true "ghostwriters"—Bart Steele and TBS. These actions constitute palming off Bart's work as the work of another—Bon Jovi—in violation of the Lanham Act. Many people (including, notably, a friend of one of the owners of the Boston Red Sox) have told Bart that they heard the Bon Jovi ad and thought it was Bart's song, which they remembered hearing as far back as 2004.

31. **RELIEF REQUESTED:** Bart is requesting damages as authorized by the copyright law. As intent will be easy to prove, we are seeking the statutorily authorized amount of \$100,000 per cd sold. Just under 4 million cds have been sold to date. This totals almost \$400 billion. This total does not include even digital sales royalties, or a portion of concert profits. Bon Jovi's "Lost Highway" tour was the highest-grossing tour on the planet this year. The tour was supported and promoted by AEG Live and Bon Jovi's "I Love this Town Contest." (In exchange for the chance to win concert tickets, fans sent in videos to be played while Bon Jovi performed the ad song during the concert in their town.) Nor does this total include any portion of past royalties paid on the song. Using the copyright law's measure of damages points out how the law has failed to keep up with current developments in the music business. It is almost impossible to calculate the number of performances of the unauthorized work, and any attempt to figure damages based on the identifiable performances—in ballparks, on television, and in movie theaters in this country and around the world—leads to an incomprehensibly large number. A "quantum meruit" measure of damages for the value of what defendants got from Bart is also hard to calculate given the enormity of the publication involved. The ad defendants put together from Bart's song and marketing concept became, by any measure, the most expensive and successful ad in sports history.
32. Because it has been so difficult to calculate the extent of the violations of his rights and to prove and enforce those rights, Bart intends to give 99% of this recovery to musicians' rights organizations, including ASCAP and the Copyright Office itself, to help protect the rights of songwriters and publishers, and to bring public awareness to the injustice of "temp tracking"—a method of stealing songs that current law does not adequately protect. As Bart's saga shows, the current state of the law allows ASCAP and the Copyright Office to turn a blind eye to the very wrongs they are supposed to guard against: copying, changing and using songs without the permission of the author. "Temp tracking" has become standard industry practice, but it is still copyright infringement. The reason this lawsuit is so large and that temp tracking has become such a common practice is that the Copyright laws have not caught up to the digital age. Who decides when a temp track has been changed just enough that the new song can avoid liability under the copyright law? If it came from the temp track, it is a derivative work—even if the original author was not there to hear it or authorize its use or grant synch rights. Because it is now too easy to copy and change songs with the click of a computer mouse, corporations routinely exploit the work of independent artists without compensating them, discouraging creation and advancement of the arts, and frustrating the purpose of copyright laws. Under current law, the superior resources of organizations like defendants MLB, TBS and large publishers enable them to absorb all the smaller players, achieving monopoly control over whatever art they wish to exploit. An article written in August 2004 by Ted Turner, the founder of defendant TBS, sums up the issue nicely.

Mr. Turner states, "In the media...big corporations play a vital role, but so do small, emerging ones...They are independent thinkers. They know they can't compete by imitating the big guys—they have to innovate, so they're less obsessed with earnings than they are with ideas. ...When the independent businesses are gone, where will the new ideas come from? ...This is a fight about freedom...the freedom of citizens to get news, information and entertainment from a wide variety of sources, at least some of which are truly independent and not run by people facing the pressure of quarterly earnings reports." Bart clearly realizes that he is the independent thinker, who wrote a love song to his favorite baseball team and home town. He wanted to get the crowd to get up off their seats, singing along together, for the love of their team and town. What happened instead was that everyone except Bart got paid. Unless independent thinkers are protected in the courts, as Ted Turner says, nothing less than freedom is lost.

33. Bart thanks the Court and staff for their time and attention.

EXHIBIT 3

U.S. Department of Justice
United States Marshals Service

PROCESS RECEIPT AND RETURN

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

PLAINTIFF		COURT CASE NUMBER	
Samuel Bartley Steele		08-CA-11727-NMG	
DEFENDANT		TYPE OF PROCESS	
MLB Productions / MLB.com		Summons / Complaint	
SERVE ➔	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN		
	MLB Productions / MLB.com (Major League Baseball Productions)		
AT	ADDRESS (Street or RFD, Apartment No., City, State and Zip Code)		
	75 9th Ave, N.Y., N.Y., 10011		
SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW		Number of process to be served with this Form - 285	1:08-cv-11727-NMG
Samuel Bartley Steele c/o Bart Steele Publishing 80 Park St. Chelsea, Ma. 02150		Number of parties to be served in this case	12
		Check for service on U.S.A.	2008 NOV 10 A 11:20

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE: (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available for Service).

Signature of Attorney or other Originator requesting service on behalf of	PLAINTIFF DEFENDANT	TELEPHONE NUMBER	DATE
<i>[Signature]</i>		508-737-5235	11/09/08

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

Acknowledge receipt for the total number of process indicated (Sign only first USM 285 - 1 more than one USM 285 is attached)	Total Process	District of Origin	District to Serve	Signature of Authorized USMS Deputy or Clerk	Date
	1	No. 39	No. 54	<i>[Signature]</i>	11/10/08

I hereby certify and return that I have personally served, I have legal evidence of service, I have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.

I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above. (See remarks below.)

Name and title of the individual served (if not shown above)	<input checked="" type="checkbox"/> A person of suitable age and discretion then residing in the defendant's usual place of abode. Date of Service Time am 11-17-08 3:00 pm Signature of U.S. Marshal or Deputy <i>[Signature]</i> # 1930
Address (complete only if different than shown above)	
John Lehr, Office Operations Manager	

Service Fee	Total Mileage Charges (including endeavors)	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal or	Amount of Refund

REMARKS: Fwd USMS SB/04 (P)

AO 440 (Rev. 04/08) Civil Summons

UNITED STATES DISTRICT COURT

for the

District of Massachusetts

<u>SAMUEL BARTLEY STEELE</u>)	
Plaintiff)	
v.)	Civil Action No. 08-11727-NMG
<u>TURNER BROADCASTING SYSTEM, INC., et al.</u>)	
Defendant)	

Summons in a Civil Action

To: *(Defendant's name and address)*

MLB PRODUCTIONS, A & E
 75 9th Ave.
 N.Y., N.Y. 10011

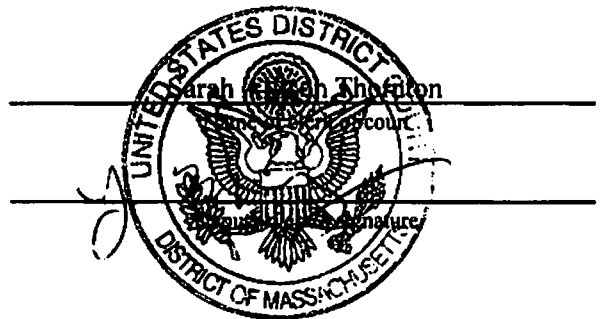
A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, whose name and address are:

Samuel Bartley Steele
 c/o Bart Steele Publishing
 80 Park St.
 Chelsea, Ma. 02150

If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 11/03/2008



(Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3).)

EXHIBIT 4

U.S. Department of Justice
United States Marshals Service

PROCESS RECEIPT AND RETURN

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

PLAINTIFF	FILED Samuel Bartley Steele	COURT CASE NUMBER	09-CA-11727-NMG
DEFENDANT	Major League Baseball	TYPE OF PROCESS	Summons/Complaint
SERVE	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN		
AT	Major League Baseball District Court District of Massachusetts 245 Park Ave. 31 st Floor N.Y., N.Y 10167		

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW	Number of process to be served with this Form - 285	1:08-cv-11727-NMG
Samuel Bartley Steele c/c Bart Steele Publishing 80 Park St. Chelsea, Ma. 02150	Number of parties to be served in this case	12
	Check for service on U.S.A	2008 NOV 10 AM 11:20

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):

Signature of Attorney or other Originator requesting service on behalf of:	PLAINTIFF DEFENDANT	TELEPHONE NUMBER	DATE
<i>[Signature]</i>		508-737-5235	11/09/08

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated (Sign only first USM 285 if more than one USM 285 is submitted)	Total Process	District of Origin	District to Serve	Signature of Authorized USMS Deputy or Clerk	Date
	1	No. 39	No. 54	<i>[Signature]</i>	11/10/08

I hereby certify and return that I have personally served, I have legal evidence of service, I have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown in the address inserted below

I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above. See remarks below

Name and title of individual served (if not shown above)	A person of suitable age and discretion then residing in the defendant's usual place of abode	
Address (complete only if different than shown above)	Date of Service	Time
	11-10-08	pm
	Signature of U.S. Marshal or Deputy <i>[Signature]</i> #02130	

Service Fee	Total Mileage Charges (including endeavors)	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to US Marshal or	Amount of Refund

REMARKS: Fwd USMS SD/NY (P)
I tried to locate the supervisor of security office with someone in the legal dept at major league baseball so let me up to the 31st fl to serve summ. legal would not speak with me on phone or give their num.

AO 440 (Rev. 04/08) Civil Summons

UNITED STATES DISTRICT COURT

for the

District of Massachusetts

<u>SAMUEL BARTLEY STEELE</u>)	
Plaintiff)	
v.)	Civil Action No. 08-11727-NMG
<u>TURNER BROADCASTING SYSTEM, INC., et al.</u>)	
Defendant)	

Summons in a Civil Action

To: (Defendant's name and address)

MAJOR LEAGUE BASEBALL
 245 Park Ave. 31st Fl.
 N.Y., N.Y. 10167

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, whose name and address are:

Samuel Bartley Steele
 c/o Bart Steele Publishing
 80 Park St
 Chelsea, Ma. 02150

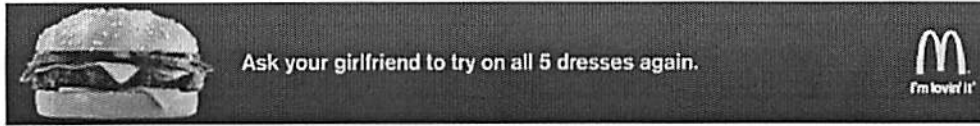
If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 11/03/2008



(Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3).)

EXHIBIT 5



LOW-BROW MEMPHIS | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100

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MLB.com Press Releases

- Bobby Grich to Appear at All-Star Game Charity 5k & Fun Run
 - Galarraga named AL Player of the Week
 - Konami announces MLB Power Pros Touch 2010 App
 - Free Weekend of Live Baseball via MLB.TV on iPhone, iPod Touch & iPad
 - Bloomberg, MLB.com launch analytics product
- All MLB.com Press Releases >

Press Contact

Matthew Gould
VP, Corporate Communications
Major League Baseball Advanced Media
75 Ninth Avenue
New York, NY 10011
Tel: 212-485-8959 | Fax: 212-485-3546

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EXHIBIT 6



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 - Refund Policies for Certain Subscription Services
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- ACCEPTANCE OF TERMS OF USE
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1. INTRODUCTION; GENERAL; OWNERSHIP; PROHIBITIONS

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You must not use the MLBAM Properties or Community Features (defined below) to: (i) transmit, store, embed or otherwise make available any information or material that infringes any right of MLBAM or any third party, however denominated, including, without limitation, copyright, trademark, patent, rights of privacy or publicity or any other proprietary right; (ii) transmit, store or otherwise make available material which disrupts this Website or the other MLBAM Properties' infrastructure, or otherwise adversely affects, restricts or inhibits any other user from using and enjoying this Website or the other MLBAM Properties; (iii) transmit, store or otherwise make available material which is false, threatening, abusive, libelous, defamatory, obscene, vulgar, demeaning, offensive, pornographic, profane, sexually explicit, indecent, inappropriate, constitutes hate speech, or which adversely affects MLBAM business or is otherwise objectionable in MLBAM's sole discretion; (iv) transmit, store or otherwise make available material which constitutes or encourages conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any local, state, national or international law; (v) transmit, store or otherwise make available a virus, trojan horse, worm, time bomb, spyware, bot or other harmful or deleterious programming routine; (vi) transmit, store or otherwise make available material which contains any information, software or other material of a commercial nature; (vii) transmit, store or otherwise make available material which contains advertising, promotions, "junk mail," "spam," "pyramid schemes," "chain letters" or solicitation of any kind; (viii) transmit, store or otherwise make available material which constitutes or contains false or misleading indications of origin or statements of fact; (ix) exploit, harm, personally attack (personal attacks include, but are not limited to, defamatory, sexual and/or sexually implicit remarks) or impersonate players, management, employees of baseball, or any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity; (x) use or attempt to use another's information, account, password, service or system except as expressly permitted; (xi) solicit, collect, transmit, store or otherwise make available private information of any third party including, without limitation, telephone numbers, addresses, last names, email addresses, Social Security numbers, or credit card numbers; (xii) use automated scripts to collect information from or otherwise interact with this Website or the other MLBAM Properties; and (xiii) transmit, store or otherwise make available material which is irrelevant to the subject matter of any Community Features (defined below).

Third party text, photo, graphic, audio and/or video material, including that provided by Associated Press ("AP") (collectively, the "Third Party Materials"), contained on or incorporated in the MLBAM Properties shall not be published, broadcast, rewritten for broadcast or publication or redistributed directly or indirectly in any medium. Neither these Third Party Materials nor any portion thereof may be stored in a computer except for personal and non-commercial use. No third party provider, including without limitation AP, will be held liable in any way to any Website user or to any third party or to any other person who may receive information in the Third Party Materials or to any other person whatsoever, for any delays, inaccuracies, errors or omissions therefrom or in the transmission or delivery of all or any part thereof or for any damages arising from any of the foregoing or occasioned thereby.

2. NOTICE AND PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT INFRINGEMENT

Pursuant to the Digital Millennium Copyright Act, Title 17, United States Code, Section 512(c)(2) ("DMCA"), MLBAM has designated to the U.S. Copyright Office an agent to receive notifications of claimed copyright infringement relating to this Website or the other MLBAM Properties (the "Designated Agent"). All such notifications relating to this Website or the other MLBAM Properties must be a written communication and must include the following information:

- A. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- B. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.
- C. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit MLBAM to locate the material.
- D. Information reasonably sufficient to permit MLBAM to contact the complaining party, such as an address, telephone number, and/or electronic mail address.
- E. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.
- F. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Claims of infringement which include the above required information must be submitted via postal mail, fax or e-mail to MLBAM's Designated Agent as follows:

- Service Provider: MLB Advanced Media, L.P.
- Full Address of Designated Agent to Which Notification Should Be Sent:

MLB Advanced Media, L.P.
Copyright Agent
75 Ninth Avenue
New York, NY 10011
United States of America
Telephone Number of Designated Agent: (212) 652-1690
Facsimile Number of Designated Agent: (212) 485-8111
E-mail Address of Designated Agent: legal@website.mlb.com

3. COMMUNITY FEATURES

The MLBAM Properties may offer opportunities for you to transmit messages, information, ideas, opinions, images, audio, video, creative works or other information or material (collectively, the "Submitted Content") in connection with various features including, but not limited to, profiles, forums, bulletin boards, wiki, vanity email, auctions, contests, games, blogs, audio and/or video submissions, message boards, Q&A features and chat features (collectively, the "Community Features"). You are solely responsible for your Submitted Content and must use the Community Features in a responsible manner. The MLBAM Properties may also offer opportunities for you to transmit messages, information, ideas, opinions, images, audio, video, creative works or other information or material via third party social networking websites ("Third Party Social Networking Features") by means of applications or widgets appearing on or embedded within this Website. Any use of Third Party Social Networking Features on this Website is subject to the then current terms of use of the applicable third party website and not this Agreement.

In order to participate in Community Features and/or certain other MLBAM Properties, you may be asked to register an account by providing certain personal information such as your name and/or email address. The [Privacy Policy](#) of this Website explains how such information may be collected and used. In consideration of your use of the applicable MLBAM Properties, you agree (i) to provide accurate, current and complete information about yourself as may be prompted by any registration forms ("Registration Data"), (ii) to maintain the security of your password and identification; (iii) to maintain and promptly update Registration Data and any other information you provide to MLBAM, and to keep it accurate, current and complete; (iv) not to sell, transfer or assign your account; and (v) to be fully responsible for all use of your account and for any actions that take place using your account.

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You are solely responsible for your interactions with other users of the MLBAM Properties. You may use various features (e.g., the "Report Violation" feature in the Options menu button within a Discussion string on our Message Boards or the "Report any abuse or spam" hotlink within a blog or comment section within MLBlogs) of certain Community Features to report violators. We reserve the right, but have no obligation, to monitor disputes between you and other users.

By transmitting your Submitted Content via the Community Features, you grant, and represent and warrant that you have the right to grant, to MLBAM a worldwide, perpetual, royalty-free, non-exclusive, sub-licensable and irrevocable right and license to use, reproduce, prepare derivative works based upon, distribute, perform, sell and display your Submitted Content for any purpose throughout the universe, in whole or in part, in any form, media or technology known or hereafter developed.

4. SPECIAL TERMS AND CONDITIONS APPLICABLE TO SALES OF PRODUCTS AND SERVICES; CUSTOMER SERVICE CONTACT INFORMATION

The MLB.com Shop allows you to order products supplied by independent merchandise Vendors. MLB.com Auctions allows you to purchase merchandise through an auction process. Products purchased via the MLB.com Shop and MLB.com Auctions are collectively referred to herein as "Merchandise." From the Ticketing sections of certain MLBAM Properties, you can, among other things, purchase tickets for MLB games supplied by MLB and/or the applicable MLB Club(s) ("Tickets"). Via certain MLBAM Properties, you can subscribe to or download audio, video and audiovisual content, fantasy and other games and other products and services (collectively, "Services"). In addition, you can buy MLBAM products and services from locations other than this Website or the other MLBAM Properties (e.g., via third party storefronts, including, without limitation, wireless carriers, online music and/or video download and streaming sites, video game console services, third party websites, etc.) (collectively, "Third Party Sales Locations").

ALL PURCHASES ARE SUBJECT TO PRODUCT AVAILABILITY. MLBAM EXPRESSLY DISCLAIMS ANY RESPONSIBILITY OR LIABILITY FOR ANY DAMAGE, LOSS OR INJURY ARISING OUT OF: THE ACTIVITIES OF ANY VENDOR, THE MERCHANDISE OFFERED BY THE VENDORS, ANY LOSS OR INJURY RESULTING FROM YOUR ACCESS OR INABILITY TO ACCESS THE MLBAM PROPERTIES, ANY THIRD PARTY SALES LOCATIONS OR ANY PRODUCT OR SERVICE THEREIN, OR ANY LOSS OR INJURY ARISING OUT OF YOUR PURCHASE OR USE OF ANY PRODUCTS, MERCHANDISE, TICKETS OR SERVICES.

The Services and all other products offered via the MLBAM Properties are provided for your private, non-commercial use, and you may not distribute, modify, translate, rebroadcast, transmit, perform or create derivative works of them.

A. Price Modifications; Merchandise and Services Availability

MLBAM reserves the right to modify the price of any Merchandise, Tickets, Services or any other products offered via the MLBAM Properties. MLBAM is not responsible for any error in copy or images relating to Merchandise, Tickets, Services or any other products offered via the MLBAM Properties. Any auction or offer to sell any Merchandise, Tickets, Services or any other products offered via the MLBAM Properties, may be discontinued at any time in MLBAM's sole discretion.

With respect to Merchandise offered and/or sold via the MLB.com Shop, we cannot confirm the price or availability of an item until you order; however, we do NOT charge your credit card until after your order has entered the shipping process (with the exception of any special order or customized/personalized products, which will be billed immediately after the order is received). Despite our best efforts, a small number of the items in the MLB.com Shop or in our printed catalogs may be mispriced. If we discover a mispricing, we will do one of the following:

- If an item's correct price is lower than our stated price, we will charge the lower amount and ship you the item.
- If an item's correct price is higher than our stated price, we will, at our discretion, either contact you for instructions before shipping or cancel your order and notify you of such cancellation.

The Services and any other applicable products offered via the MLBAM Properties are subject to transmission limitations of the Internet and, as applicable, wireless carriers, including, but not limited to, video and/or audio dropouts, rebuffering or loss of connection.

B. Required Notices of Certificates of Authenticity

With respect to the sale of certain Merchandise through MLB.com Auctions to residents of the State of California, the following notice is provided pursuant to California Civil Code, Title 1.1A, Autographed Sports Memorabilia, Cal Civil Code § 1739.7 (2001):
SALE OF AUTOGRAPHED SPORTS MEMORABILIA: AS REQUIRED BY LAW, A DEALER WHO SELLS TO A CONSUMER ANY SPORTS MEMORABILIA DESCRIBED AS BEING AUTOGRAPHED MUST PROVIDE A WRITTEN CERTIFICATE OF AUTHENTICITY AT THE TIME OF SALE. THIS DEALER MAY BE SURETY BONDED OR OTHERWISE INSURED TO ENSURE THE AUTHENTICITY OF ANY COLLECTIBLE SOLD BY THIS DEALER.

With respect to the sale of certain Merchandise on this Website, the following notice is provided pursuant to New York Arts and Cultural Affairs Law, Title V-1, Sale of Autographed Sports Collectibles, NY CLS Art & Cult Affr § 60.04 (2006):
SALE OF AUTOGRAPHED SPORTS MEMORABILIA: AS REQUIRED BY LAW A DEALER WHO SELLS TO A CONSUMER ANY SPORTS MEMORABILIA DESCRIBED AS BEING PERSONALLY AUTOGRAPHED FOR TWENTY-FIVE DOLLARS OR MORE MUST PROVIDE A WRITTEN CERTIFICATE OF AUTHENTICITY AT THE TIME OF SALE.

The certificates of authenticity referenced above will be provided in the form of a certificate of authenticity or as a unique hologram affixed to the item itself. Each hologram bears a unique tamper-proof identification number that upon entry in MLB's database will provide the name of the signer and the date the item was signed. Each item and its unique identification number is processed and posted on the official program pages, which are accessible through the MLB.com Shop.

C. Customer Service

Should you have any questions about the purchase of Merchandise via the MLBAM Properties, please call MLB.com Shop Customer Service at 888-MLB-SHOP (888-652-7467) within the U.S., or e-mail customerservice@website.mlb.com.

Should you have any questions about the purchase of Services via the MLBAM Properties, please call 866-800-1275 within the U.S. and 512-434-1542 outside the U.S., or e-mail subscriptions@website.mlb.com.

Should you have any questions about the purchase of downloadable mobile or wireless products via the mobile MLBAM Properties, please e-mail mobilecs@mlb.com.

D. Purchasing; Price; Payment

In order to purchase Merchandise, Tickets, Services or any other products via the MLBAM Properties or via Third Party Sales Locations, you may be required to provide complete and accurate personal information, including, without limitation, your name, address, telephone number, e-mail address, credit card information and shipping address. The Privacy Policy of this Website explains how such information collected via the MLBAM Properties may be collected and used by MLBAM. With respect to Third Party Sales Locations, the privacy policy of any such Third Party Sales Location applies to the collection and use of your personal information by the operators and/or owners of such Third Party Sales Location. Your ability to purchase Merchandise, Tickets, Services and/or any other products offered via the MLBAM Properties is subject to limits established by your credit card issuer. You must notify MLBAM immediately of any change in your credit card information, including any change to your home address. MLBAM may bill your credit card at the time the Services, Merchandise, Tickets or any other products offered via the MLBAM Properties are ordered or shipped, and the appropriate MLB Club or Vendor may bill your credit card at the time your Tickets are ordered or shipped. You must pay all amounts accrued in your account, including sales tax and shipping and handling charges, when due. MLBAM may in its sole discretion decline service to or terminate any account. Neither MLBAM, nor any other MLB Entity (defined in Section 9 below), nor any Vendor or any operator of any Third Party Sales Location is responsible, and must not be held liable, for any breaches in transaction security by any third party.

By purchasing any Merchandise, Tickets, Services or any other products offered via the MLBAM Properties, you acknowledge and agree that your credit card is being charged by the payment processor of MLBAM or its Vendor, the operator of such product or service. For purposes of this Agreement, such payment processor will be referred to as a "Vendor."

By utilizing a credit or debit card for purchase of any Services or any other applicable products offered via the MLBAM Properties, you authorize MLBAM to charge such card on the periodic basis as specified (e.g., once per month for monthly Services) in the amount described on the applicable Service or Services' purchase path(s).

E. Sales Tax

For certain purchases of Merchandise, Services or Tickets made via the MLBAM and/or Vendor-operated MLBAM Properties, MLBAM is required to collect sales tax. The amount of tax charged and whether any sales tax will be collected on a given purchase depends on a number of factors including whether the seller is subject to tax in a given jurisdiction. The purchaser is responsible for any applicable transaction taxes not collected by MLBAM. The amount of sales tax, if any, will be shown either prior to the completion of any purchase or reflected in the confirmation of your purchase sent to the email address you provided.

F. Billing and Automatic Renewal Policies for Certain Subscription Services

For certain Services billed on a monthly basis (e.g., MLB.TV Premium Monthly and MLB.TV Monthly subscription Services), the term begins when you purchase and ends on October 31 of that year, with monthly billing during each month of March-October at the then prevailing monthly rate. Your subscription will automatically renew annually approximately March 1 each year at the previous year's regular full monthly price, unless you signified otherwise in accordance with the applicable instructions. In the event MLBAM discontinues or significantly alters a Service that you have purchased with monthly automatic renewal, MLBAM shall notify you via the email address provided at purchase of such cancellation and may provide information about similar or new Services available via the MLBAM Properties. To cancel your monthly subscription or the annual automatic renewal feature, send an e-mail to subscriptions@website.mlb.com or call MLB.com Customer Service at 866-800-1275 within the US, and 512-434-1542 outside the US. Cancellation will become effective as of the next monthly billing cycle following receipt.

For Services billed on a yearly basis (e.g., MLB.TV Premium Yearly, MLB.TV Yearly and MLB.com AI Bat with Gamoday Audio Yearly subscription Services), the term begins when you purchase and ends on the last day of February of the next year, with one-time billing immediately following your purchase. Your subscription will automatically renew annually approximately March 1 each year at the previous year's regular full yearly price, unless (1) you signified otherwise in accordance with the applicable instructions or (2) MLBAM

discontinues or significantly alters the Service prior to the start of the applicable subscription Service renewal period. In the event MLBAM discontinues or significantly alters a Service that you have purchased with annual automatic renewal, MLBAM shall notify you via the email address provided at purchase of such cancellation and may provide information about similar or new Services available via the MLBAM Properties. To cancel the annual automatic renewal feature, send an e-mail to subscriptions@website.mlb.com or call MLB.com Customer Service toll free within the U.S. at 866-800-1275, and 512-434-1542 outside the US.

G Refund Policies for Certain Subscription Services

In order to provide the highest customer satisfaction possible, MLBAM will refund the purchase price paid for an MLB TV, MLB.com At Bat with Gameday Audio subscription offered via this Website if a refund request is made to the e-mail address or telephone number(s) provided immediately above and below within five (5) days of your subscription purchase date.

Of course, should you wish to cancel your subscription at any time, you may contact MLB.com Customer Support toll free within the U.S. at (866) 800-1275, and 512-434-1542 outside the US or via e-mail at subscriptions@website.mlb.com. If such cancellation occurs on any date following the fifth (5th) day after your purchase date, then your cancellation will be effective as follows:

- Yearly subscription: Cancellation of each yearly term after (and not including) the term of the year during which you cancel. NOTE: Each yearly term concludes on February 28 of each subsequent year.
- Monthly subscription: Cancellation of every 30-day period after (and not including) the 30-day period during which you cancel.

In no event will MLBAM provide pro-rated refunds.

By accepting this Agreement, you agree that MLBAM may notify you about changes to prices and/or Services by sending an e-mail message to your e-mail address on file with MLBAM and by publishing such notices from time to time on the informational page(s) of the MLBAM Properties applicable to the Services. It is your responsibility to notify MLBAM of any change in your e-mail address by logging in to the applicable MLBAM Property and using the online account management tool. If your email service includes functionality or software that catalogues your emails in an automated manner, it is your responsibility to ensure that those emails we send to you reach your inbox, either by routinely monitoring your bulk, junk and/or spam e-mail folders or by adding us to your address book or safe senders list.

Programming, pricing, terms and conditions of Services and other products offered via the MLBAM Properties are subject to availability and change. Certain Services offered via this Website and/or other MLBAM Properties may be governed by an end user license agreement or similar agreement with different terms and conditions than are contained in this Agreement, including different refund policies. Please refer to the terms and conditions of such Services and/or MLBAM Properties to determine the policies applicable for such other MLBAM Properties. In the event of any conflict between this Agreement and the terms and conditions provided for any such Service or MLBAM Property, the terms and conditions of the applicable Service or MLBAM Property will govern.

H Access to Services and Blackout Restrictions

Subscription activation for Services and other products offered via the MLBAM Properties, and subsequent ability to access Services and other products offered via the MLBAM Properties, may be subject to approval of your valid major credit card and verification of other information that you submit or is otherwise obtained by MLBAM (e.g., your IP address). Scheduled games may be cancelled or substituted when necessary.

Blackout restrictions apply to Services which allow you to watch video of live games depending on the date of the game, your location and local, national and international broadcast exclusivities. Specifically:

Regular Season Local Live Blackout: All live games offered via MLB TV subscription Services, MLB.com At Bat Services and certain other subscription Services are subject to local blackouts. Such live games will be blacked out in each applicable Club's home television territory (except for certain home television territories for which MLBAM may offer in-market subscription Services). If a game is blacked out in an area, it is not available for live game viewing.

In addition, note:

- These blackout restrictions apply regardless of whether a Club is home or away and regardless of whether or not a game is televised in a Club's home television territory.
- All live Toronto Blue Jays games are blacked out throughout the entire country of Canada.
- Additional Clubs may also be subject to blackout in parts of Canada based on their region.
- All live games will be blacked out in the U.S. territories of Guam and the U.S. Virgin Islands during the MLB regular season.

To find out which Club's live games are blacked out of the area where you will be watching a game due to these local blackout restrictions, [click here](#).

Regular Season Weekend National Live Blackout: Due to MLB exclusivities, live games occurring each Saturday with a scheduled start time after 1:10 PM ET or before 7:05 PM ET and each Sunday with a scheduled start time after 5:00 PM ET, will be blacked out in the United States (including the territories of Guam and the U.S. Virgin Islands). In addition, in the event of extraordinary circumstances that produce a programming conflict, the above blackout windows may be subject to change. Live Audio of such games is available as part of any MLB TV subscription Service, as part of the MLB.com At Bat with Gameday Audio subscription Service and may be available as part of certain other of our subscription Services, including MLB.com At Bat.

Regular Season Play-In Game: Due to Major League Baseball exclusivities, any play-in game to determine the final team(s) to reach the MLB Postseason, i.e. a 163rd game, will be blacked out in the United States (including the territories of Guam and the U.S. Virgin Islands). Live Audio of such games is available as part of any MLB TV subscription Service, as part of the MLB.com At Bat with Gameday Audio subscription Service and may be available as part of certain other of our subscription Services, including MLB.com At Bat.

Postseason Live Blackout: Due to MLB exclusivities, during the MLB Postseason, all live games available via MLB TV subscription Services, MLB.com At Bat subscription Services and certain other subscription Services (but excluding Postseason TV) will be blacked out in the United States (including the territories of Guam and the U.S. Virgin Islands) and Canada. Live Audio of MLB Postseason games is available as part of any MLB TV subscription Service, as part of the MLB.com At Bat with Gameday Audio subscription Service and may be available as part of certain other subscription Services, including MLB.com At Bat.

Postseason TV: Subscribers to the Postseason TV subscription Service, available only during the MLB

Postseason, will be able to view live alternative video feeds (excluding the broadcast feed) from MLB Postseason games without blackout restrictions.

International Live Blackout. Live games available via an MLB TV subscription Service or our other subscription Services (including the Postseason TV subscription Service) may also be subject to blackout in certain International territories. To determine which International territories have current blackout restrictions, [click here](#).

Blackouts Applicable to the Postseason TV Subscription Service. Subscribers of the Postseason TV subscription Service will be able to view fixed live camera angle video feeds of each MLB Postseason game

For these Services, you must submit your email address provided by either your Internet Service Provider or place of work. For example, clicking on a live MLB TV link will perform and trigger a number of checks to make sure that you are located outside of the applicable blackout territory. Due to the foregoing blackout restrictions, you may be required to log in to each webcast (both for free and subscription fee webcasts) with a valid major credit card for address verification. In such a case, a temporary \$1.00 authorization hold will be placed on your credit card, which will subsequently expire. You will not incur a charge for this authorization hold. **IF YOU CIRCUMVENT, OR ATTEMPT TO CIRCUMVENT, ANY BLACKOUT RESTRICTION OR OTHER USE RESTRICTION: YOUR SUBSCRIPTION WILL BE SUBJECT TO IMMEDIATE TERMINATION AND A CHARGE OF ONE HUNDRED DOLLARS (\$100.00) FOR EARLY TERMINATION; YOU MAY BE SUBJECT TO LEGAL ACTION; AND MLBAM RESERVES THE RIGHT TO REPORT SUCH MISCONDUCT TO APPROPRIATE LAW ENFORCEMENT AUTHORITIES.**

SHARING OF PASSWORDS TO ANY SERVICE, PRODUCT OR THE MLBAM PROPERTIES IS STRICTLY FORBIDDEN. IN ADDITION TO THE RIGHTS AND REMEDIES AVAILABLE TO MLBAM AS SET FORTH IN THE PREVIOUS PARAGRAPH, MLBAM RESERVES THE RIGHT TO CHARGE USERS THE FULL SUBSCRIPTION FEE FOR EACH INDIVIDUAL WITH WHOM THE USER HAS SHARED HIS/HER PASSWORD.

5. VOTES; CONTESTS; SWEEPSTAKES

This Website and other MLBAM Properties may offer you opportunities to vote in connection with certain events including the All-Star Game and also to enter contests and sweepstakes. By participating in any such event, you signify your agreement to all special terms set forth on this Website and/or the other applicable MLBAM Properties applicable to the event as well as the terms of this Agreement.

6. LINKING

This Website and the other MLBAM Properties may contain links and pointers to other World Wide Web sites and resources, including, without limitation, Third Party Sales Locations and Third Party Social Networking Features. Links to and from this Website and/or MLBAM Properties from or to Third Party Sales Locations, Third Party Social Networking Features and other websites or locations maintained by third parties, do not constitute an endorsement by MLBAM or any other MLB Entity of any such third party website or content. MLBAM is not responsible for the availability of those third party resources or their contents. You should direct any concerns regarding any external link to the website administrator or Webmaster of the applicable third-party website or location.

7. DISCLAIMER OF WARRANTIES

- A. USE OF THIS WEBSITE, ALL OTHER MLBAM PROPERTIES AND THE PRODUCTS, MERCHANDISE, TICKETS AND SERVICES, INCLUDED HEREIN AND THEREIN, ARE AT YOUR EXCLUSIVE RISK, AND THE RISK OF INJURY FROM THE FOREGOING RESTS EXCLUSIVELY WITH YOU.
- B. EXCEPT FOR ANY WARRANTIES THAT MAY BE EXPRESSLY PROVIDED BY MLBAM AND/OR THE APPLICABLE VENDOR, THIS WEBSITE, THE OTHER MLBAM PROPERTIES, AND ALL MATERIALS CONTAINED OR DISTRIBUTED HEREIN AND THEREIN, INCLUDING, BUT NOT LIMITED TO, ALL PRODUCTS, MERCHANDISE, TICKETS AND SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY WARRANTIES OF TITLE OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- C. MLBAM DOES NOT WARRANT THAT: (1) THIS WEBSITE, THE OTHER MLBAM PROPERTIES OR ANY PRODUCTS OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; (2) DEFECTS OR ERRORS IN THIS WEBSITE, THE OTHER MLBAM PROPERTIES, THE PRODUCTS, MERCHANDISE OR SERVICES WILL BE CORRECTED; (3) THIS WEBSITE, THE OTHER MLBAM PROPERTIES, THE PRODUCTS, MERCHANDISE OR SERVICES WILL BE FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS; OR (4) ANY INFORMATION CONTAINED IN THIS WEBSITE, THE OTHER MLBAM PROPERTIES, THE PRODUCTS, MERCHANDISE OR SERVICES WILL BE ACCURATE OR RELIABLE.

8. LIMITATIONS ON LIABILITY

- A. NOTWITHSTANDING ANY TERM IN THIS AGREEMENT, OTHER APPLICABLE TERMS AND CONDITIONS OF THE MLBAM PROPERTIES OR ANY ACT OR FAILURE TO ACT BY MLBAM OR ITS VENDORS, YOU ARE EXCLUSIVELY LIABLE FOR ANY AND ALL SUBMITTED CONTENT YOU TRANSMIT VIA THE COMMUNITY FEATURES OF THIS WEBSITE.
- B. IN NO EVENT SHALL MLBAM BE LIABLE FOR ANY BREACH IN TRANSACTION SECURITY CAUSED BY A THIRD PARTY ARISING OUT OF OR RELATING TO ANY ATTEMPT TO PURCHASE PRODUCTS, MERCHANDISE, TICKETS OR SERVICES.
- C. IN NO EVENT SHALL MLBAM, ANY OTHER MLB ENTITY OR ANY VENDOR BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO USE OF OR INABILITY TO USE THIS WEBSITE OR OTHER MLBAM PROPERTIES INCLUDING, BUT NOT LIMITED TO, ANY TRANSACTION FOR PRODUCTS, MERCHANDISE, TICKETS OR SERVICES. THIS LIMITATION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF MLBAM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, THE LIABILITY OF MLBAM IN SUCH JURISDICTIONS SHALL BE LIMITED TO THE EXTENT PERMITTED BY LAW. THE MAXIMUM LIABILITY OF MLBAM, ANY OTHER MLB ENTITY OR ANY VENDOR FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS WEBSITE, THE MERCHANDISE, THE SERVICES OR THE OTHER MLBAM PROPERTIES IS \$50.

D. IN NO EVENT SHALL MLBAM OR ANY OTHER MLB ENTITY BE LIABLE FOR ANY FAILURE, INTERRUPTION OR ERROR WITH RESPECT TO ANY ASPECT OF THIS WEBSITE OR THE OTHER MLBAM PROPERTIES, INCLUDING THE AVAILABILITY OF ANY FEATURE OR FUNCTIONALITY.

9. INDEMNIFICATION

You hereby agree to indemnify and hold the MLB Entities harmless from all claims, liabilities, damages and expenses (including attorneys' fees and expenses) arising out of or relating to: (A) your use of this Website, the other MLBAM Properties, the products, Merchandise, Tickets and/or Services purchased via this Website or the other MLBAM Properties; or (B) any alleged breach of this Agreement by you. For purposes of this Agreement, the "MLB Entities" shall mean MLBAM, the Office of the Commissioner of Baseball, its Bureaus, Committees, Subcommittees and Councils, Major League Baseball Enterprises, Inc., Major League Baseball Properties, Inc., Tickets.com, Inc., SportsOnEarth, LLC, the Major League Baseball Clubs, and each of their subsidiaries or affiliated entities, any entity which, now or in the future, controls, is controlled by, or is under common control with the Major League Baseball Clubs or the Office of the Commissioner of Baseball, and the directors, officers, employees and agents of the above entities.

10. TERMINATION

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11. CHOICE OF LAW; JURISDICTION; ATTORNEYS' FEES

This Agreement will be governed by the laws of the State of New York applicable to contracts entered into and performed exclusively in that State. Any court of competent jurisdiction sitting within New York County, New York will be the exclusive jurisdiction and venue for any dispute arising out of or relating to this Agreement. You hereby waive any argument that any such court does not have jurisdiction over you or such dispute or that venue in any such court is not appropriate or convenient. MLBAM will be entitled to recover its court costs and reasonable attorneys' fees and expenses incurred in successfully proving any breach of any term of this Agreement.

12. MISCELLANEOUS

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13. ACCEPTANCE OF TERMS OF USE

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LAST UPDATED: FEBRUARY 23, 2010

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EXHIBIT 7



LOGO-EN ID: 04/04/10 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 | 101 | 102 | 103 | 104 | 105 | 106 | 107 | 108 | 109 | 110 | 111 | 112 | 113 | 114 | 115 | 116 | 117 | 118 | 119 | 120 | 121 | 122 | 123 | 124 | 125 | 126 | 127 | 128 | 129 | 130 | 131 | 132 | 133 | 134 | 135 | 136 | 137 | 138 | 139 | 140 | 141 | 142 | 143 | 144 | 145 | 146 | 147 | 148 | 149 | 150 | 151 | 152 | 153 | 154 | 155 | 156 | 157 | 158 | 159 | 160 | 161 | 162 | 163 | 164 | 165 | 166 | 167 | 168 | 169 | 170 | 171 | 172 | 173 | 174 | 175 | 176 | 177 | 178 | 179 | 180 | 181 | 182 | 183 | 184 | 185 | 186 | 187 | 188 | 189 | 190 | 191 | 192 | 193 | 194 | 195 | 196 | 197 | 198 | 199 | 200 | 201 | 202 | 203 | 204 | 205 | 206 | 207 | 208 | 209 | 210 | 211 | 212 | 213 | 214 | 215 | 216 | 217 | 218 | 219 | 220 | 221 | 222 | 223 | 224 | 225 | 226 | 227 | 228 | 229 | 230 | 231 | 232 | 233 | 234 | 235 | 236 | 237 | 238 | 239 | 240 | 241 | 242 | 243 | 244 | 245 | 246 | 247 | 248 | 249 | 250 | 251 | 252 | 253 | 254 | 255 | 256 | 257 | 258 | 259 | 260 | 261 | 262 | 263 | 264 | 265 | 266 | 267 | 268 | 269 | 270 | 271 | 272 | 273 | 274 | 275 | 276 | 277 | 278 | 279 | 280 | 281 | 282 | 283 | 284 | 285 | 286 | 287 | 288 | 289 | 290 | 291 | 292 | 293 | 294 | 295 | 296 | 297 | 298 | 299 | 300 | 301 | 302 | 303 | 304 | 305 | 306 | 307 | 308 | 309 | 310 | 311 | 312 | 313 | 314 | 315 | 316 | 317 | 318 | 319 | 320 | 321 | 322 | 323 | 324 | 325 | 326 | 327 | 328 | 329 | 330 | 331 | 332 | 333 | 334 | 335 | 336 | 337 | 338 | 339 | 340 | 341 | 342 | 343 | 344 | 345 | 346 | 347 | 348 | 349 | 350 | 351 | 352 | 353 | 354 | 355 | 356 | 357 | 358 | 359 | 360 | 361 | 362 | 363 | 364 | 365 | 366 | 367 | 368 | 369 | 370 | 371 | 372 | 373 | 374 | 375 | 376 | 377 | 378 | 379 | 380 | 381 | 382 | 383 | 384 | 385 | 386 | 387 | 388 | 389 | 390 | 391 | 392 | 393 | 394 | 395 | 396 | 397 | 398 | 399 | 400 | 401 | 402 | 403 | 404 | 405 | 406 | 407 | 408 | 409 | 410 | 411 | 412 | 413 | 414 | 415 | 416 | 417 | 418 | 419 | 420 | 421 | 422 | 423 | 424 | 425 | 426 | 427 | 428 | 429 | 430 | 431 | 432 | 433 | 434 | 435 | 436 | 437 | 438 | 439 | 440 | 441 | 442 | 443 | 444 | 445 | 446 | 447 | 448 | 449 | 450 | 451 | 452 | 453 | 454 | 455 | 456 | 457 | 458 | 459 | 460 | 461 | 462 | 463 | 464 | 465 | 466 | 467 | 468 | 469 | 470 | 471 | 472 | 473 | 474 | 475 | 476 | 477 | 478 | 479 | 480 | 481 | 482 | 483 | 484 | 485 | 486 | 487 | 488 | 489 | 490 | 491 | 492 | 493 | 494 | 495 | 496 | 497 | 498 | 499 | 500 | 501 | 502 | 503 | 504 | 505 | 506 | 507 | 508 | 509 | 510 | 511 | 512 | 513 | 514 | 515 | 516 | 517 | 518 | 519 | 520 | 521 | 522 | 523 | 524 | 525 | 526 | 527 | 528 | 529 | 530 | 531 | 532 | 533 | 534 | 535 | 536 | 537 | 538 | 539 | 540 | 541 | 542 | 543 | 544 | 545 | 546 | 547 | 548 | 549 | 550 | 551 | 552 | 553 | 554 | 555 | 556 | 557 | 558 | 559 | 560 | 561 | 562 | 563 | 564 | 565 | 566 | 567 | 568 | 569 | 570 | 571 | 572 | 573 | 574 | 575 | 576 | 577 | 578 | 579 | 580 | 581 | 582 | 583 | 584 | 585 | 586 | 587 | 588 | 589 | 590 | 591 | 592 | 593 | 594 | 595 | 596 | 597 | 598 | 599 | 600 | 601 | 602 | 603 | 604 | 605 | 606 | 607 | 608 | 609 | 610 | 611 | 612 | 613 | 614 | 615 | 616 | 617 | 618 | 619 | 620 | 621 | 622 | 623 | 624 | 625 | 626 | 627 | 628 | 629 | 630 | 631 | 632 | 633 | 634 | 635 | 636 | 637 | 638 | 639 | 640 | 641 | 642 | 643 | 644 | 645 | 646 | 647 | 648 | 649 | 650 | 651 | 652 | 653 | 654 | 655 | 656 | 657 | 658 | 659 | 660 | 661 | 662 | 663 | 664 | 665 | 666 | 667 | 668 | 669 | 670 | 671 | 672 | 673 | 674 | 675 | 676 | 677 | 678 | 679 | 680 | 681 | 682 | 683 | 684 | 685 | 686 | 687 | 688 | 689 | 690 | 691 | 692 | 693 | 694 | 695 | 696 | 697 | 698 | 699 | 700 | 701 | 702 | 703 | 704 | 705 | 706 | 707 | 708 | 709 | 710 | 711 | 712 | 713 | 714 | 715 | 716 | 717 | 718 | 719 | 720 | 721 | 722 | 723 | 724 | 725 | 726 | 727 | 728 | 729 | 730 | 731 | 732 | 733 | 734 | 735 | 736 | 737 | 738 | 739 | 740 | 741 | 742 | 743 | 744 | 745 | 746 | 747 | 748 | 749 | 750 | 751 | 752 | 753 | 754 | 755 | 756 | 757 | 758 | 759 | 760 | 761 | 762 | 763 | 764 | 765 | 766 | 767 | 768 | 769 | 770 | 771 | 772 | 773 | 774 | 775 | 776 | 777 | 778 | 779 | 780 | 781 | 782 | 783 | 784 | 785 | 786 | 787 | 788 | 789 | 790 | 791 | 792 | 793 | 794 | 795 | 796 | 797 | 798 | 799 | 800 | 801 | 802 | 803 | 804 | 805 | 806 | 807 | 808 | 809 | 810 | 811 | 812 | 813 | 814 | 815 | 816 | 817 | 818 | 819 | 820 | 821 | 822 | 823 | 824 | 825 | 826 | 827 | 828 | 829 | 830 | 831 | 832 | 833 | 834 | 835 | 836 | 837 | 838 | 839 | 840 | 841 | 842 | 843 | 844 | 845 | 846 | 847 | 848 | 849 | 850 | 851 | 852 | 853 | 854 | 855 | 856 | 857 | 858 | 859 | 860 | 861 | 862 | 863 | 864 | 865 | 866 | 867 | 868 | 869 | 870 | 871 | 872 | 873 | 874 | 875 | 876 | 877 | 878 | 879 | 880 | 881 | 882 | 883 | 884 | 885 | 886 | 887 | 888 | 889 | 890 | 891 | 892 | 893 | 894 | 895 | 896 | 897 | 898 | 899 | 900 | 901 | 902 | 903 | 904 | 905 | 906 | 907 | 908 | 909 | 910 | 911 | 912 | 913 | 914 | 915 | 916 | 917 | 918 | 919 | 920 | 921 | 922 | 923 | 924 | 925 | 926 | 927 | 928 | 929 | 930 | 931 | 932 | 933 | 934 | 935 | 936 | 937 | 938 | 939 | 940 | 941 | 942 | 943 | 944 | 945 | 946 | 947 | 948 | 949 | 950 | 951 | 952 | 953 | 954 | 955 | 956 | 957 | 958 | 959 | 960 | 961 | 962 | 963 | 964 | 965 | 966 | 967 | 968 | 969 | 970 | 971 | 972 | 973 | 974 | 975 | 976 | 977 | 978 | 979 | 980 | 981 | 982 | 983 | 984 | 985 | 986 | 987 | 988 | 989 | 990 | 991 | 992 | 993 | 994 | 995 | 996 | 997 | 998 | 999 | 1000

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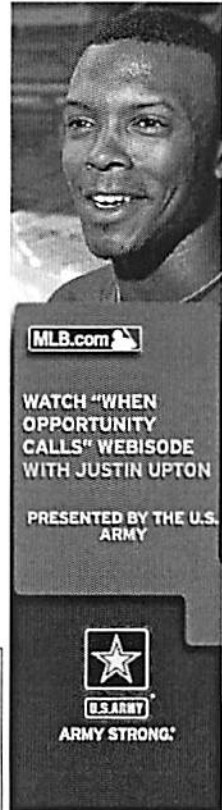


EXHIBIT 8



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About Us

Major League Baseball Productions is the award-winning television and video production division of Major League Baseball.

With unparalleled access to the game and its players, Major League Baseball Productions produces original programming for growing audiences worldwide through its network specials, exclusive DVDs, commercials and other specialty programming. Major League Baseball Productions is also the producer of the longest running sports anthology series in American television broadcast history, "This Week in Baseball."

The Major League Baseball Productions Library currently houses more than 100,000 hours of material. Our earliest footage dates back 100 years, as we get to see Hall of Fame pitcher Christy Mathewson pitch for his NY Giants, wearing "World Champions" stitched on the front of his jersey. We also see Mathewson joined by his teammates as they take part in a procession of automobiles driving across the playing field, to ultimately raise a championship banner. In addition to this gem, these 80,000 volumes encompass 90 World Series, 40 All-Star Games, 57 No-Hitters, 13 members of the 500 Home Run Club hitting their 500th Home Run, Henry Aaron's record breaking 715th Home Run, as well as historic moments like Lou Gehrig's farewell speech, footage of Babe Ruth during his famous called shot at-bat, Carl Hubbell striking out 5 future Hall of Famers in the 1934 All-Star Game, and Branch Rickey talking about making Jackie Robinson the first African American to play in the Major Leagues in the modern era. In a more modern approach, we have accumulated unparalleled hours of inside access with some of the biggest players in the game today, like Albert Pujols, Alex Rodriguez, and Joe Mauer.

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EXHIBIT 9



CASE STUDY



Major League Baseball Advanced Media (MLBAM)

The .tv Domain Name is Compelling For All Of MLBAM's Live Broadcast TV Services



Where it all comes together.™



CASE STUDY

Major League Baseball Advanced Media (MLBAM)

SOLUTION SUMMARY

In launching a unique TV service to baseball fans, MLB's interactive media and Internet company, MLB Advanced Media (MLBAM), needed an appropriate brand name and URL—it selected MLB.tv. Having seen over 800,000 fans subscribe to the MLB.tv broadcasts, MLBAM is assured of its success.

Industry

- Media

Challenges

- Creating a powerful brand name with an intuitive URL
- Finding a reliable, trustworthy registry for domain name resolution services

Solution

- VeriSign® Naming Services, operator of the .tv Domain Name Registry

Results

- The .tv domain name helps subscribers easily understand its focus on the delivery of live TV.
- VeriSign has consistently demonstrated its ability to deliver robust domain name resolution.
- MLBAM has created a strong brand with .tv—over 800,000 fans subscribe to MLB.tv broadcasts.

Since 1903, U.S. baseball's National League and the American League have had a joint organizational structure known as Major League Baseball (MLB). MLB effectively operates as a single entity, and as such it constitutes one of the predominant professional sports leagues in North America. The winning spirit of MLB teams makes fans keen to know everything they can about the game and players. MLB's interactive media and Internet company, MLB Advanced Media's (MLBAM) effective use of its Web sites to enable access to a wide array of communication services has been very successful at meeting this need.

Kristen Ferguson, vice president of marketing for MLBAM, described the organization's domain name strategy: "We're very focused on the MLB brand name, and we've owned the MLB.com URL since January 2001. Over time, our domain name strategy has become more formalized—we are big fans of always using the brand name as the destination URL whenever possible. For example, for each baseball team, we've purchased the appropriate domain name such as "nationals.com" for the Washington Nationals team. We believe in owning the URLs that fans are most likely to turn to first. To date, we have about 2,250 domain names in our portfolio."

+ Naming a Unique Service

In 2003, MLBAM was about to launch a unique video service—one which enables fans to watch live games online—and it needed an appropriate brand name and URL. "We wanted to select something that would reinforce the MLB branding but would also convey the interactive and innovative side of this new service," recalled Ferguson. "We were after a name that was short and sweet—the fewer letters you have to type in a Web address, the higher the accuracy of getting to the correct destination. We also wanted a name that fans would instantly recognize."

The Branding team brainstormed and researched different naming renditions—such as MLB.com/xxxx—emerging with MLB.tv as the clear favorite. "The general public is becoming more aware of Internet TV broadcasting and so the .tv domain is broadly known," noted Ferguson. "We knew that the MLB.tv domain name was available, it was a perfect fit for all our criteria, and it worked well as both a brand name and URL."

+ Comfort Knowing VeriSign is Behind the Scenes

MLBAM registered the new domain name through an independent registrar—a company that processes domain name registrations for Internet end-users, and then sends the necessary address information to a registry. In this case, the registry was operated by VeriSign, because it is the authoritative directory provider for all .com, .net, .cc, and .tv domain names. In turn, VeriSign works with registrants to help expand markets and increase renewals, and is committed to providing clients like MLB with the very best processes to establish and manage a recognized and secure presence on the Internet.



CASE STUDY

"I associate the VeriSign name with security and stability, so the knowledge that it is behind the scenes ensuring the accurate resolution of our domain names makes me feel very comfortable."

Kristen Ferguson
Vice President of Marketing
MLBAM

The .tv Domain Name Registry that VeriSign® Naming Services operates is a large series of databases that instantly translate domain names into IP (Internet protocol) addresses, so that users can easily surf the web using simple domain names versus the complex numeric strings utilized by IP addressing conventions. VeriSign handles this type of translation about 18 billion times a day and has been doing so for eight years (as of 2006) with 100 percent accuracy. Ferguson noted, "I associate the VeriSign name with security and stability, so the knowledge that it is behind the scenes ensuring the accurate resolution of our domain names makes me feel very comfortable."

+ MLB.tv is a Huge Success

It appears that MLB.tv has proven to be an intuitively obvious Web site for baseball fans to turn to for online coverage of games. Ferguson stated, "Visitors to the site don't always realize that they are seeing live action because they are used to seeing recorded video broadcasts on other Internet sites, but slowly it dawns on them that we're streaming the action live and they love it."

While it is too complex to accurately measure the direct return on investment from the .tv domain name, having seen over 800,000 fans subscribe to MLB.tv broadcasts, MLBAM is assured of its success. Ferguson reflected, "In working with some of our partners—other sporting businesses—we're continuing to leverage the success of the .tv domain name. For example, we have set up MiLB.tv for Minor League Baseball, and WCSN.tv for World Champion Sports Network enthusiasts. Consumers obviously understand what TV is, so the use of the .tv domain name is compelling for all of our live broadcast TV services."

Visit us at www.Verisign.com for more information.

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00022928 09-20-06

EXHIBIT 10

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

**SAMUEL BARTLEY STEELE, BART
STEELE PUBLISHING and STEELE RECORDZ**
Plaintiffs

V.

CIVIL ACTION

NO. 08-11727-NMG

**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

JUDGMENT

Nathaniel M. Gorton, D. J.

In accordance with the Court's Memorandum and Order dated August 19, 2009, granting Defendants' motions for summary judgment in the above-entitled action, it is hereby ORDERED:

Judgment for the Defendants.

By the Court,

August 19, 2009

Date

/s/ Craig Nicewicz

Deputy Clerk

EXHIBIT 11

United States District Court
District of Massachusetts

<hr/>)
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.))
<hr/>)

MEMORANDUM & ORDER

GORTON, J.

The plaintiff, acting pro se, brings this case against numerous defendants for alleged copyright infringement. He alleges that a song he wrote about the Boston Red Sox was unlawfully copied and used to create an advertisement promoting Major League Baseball post-season telecasts.

I. Background

A. Factual Background

The plaintiff, Samuel Bartley Steele ("Steele"), along with two "unincorporated business organizations," Steele Publishing Company and Steele Recordz (for convenience, all of the plaintiffs are hereinafter collectively referred to as "Steele" or "plaintiff"), are residents of Chelsea, Massachusetts. Steele is a songwriter and musician who asserts that, in 2004, he wrote a "love anthem" about the Boston Red Sox ("the Red Sox") entitled "Man I Really Love This Team" ("the Steele Song"). Not surprisingly, Steele's song gained popularity around Fenway Park, the Red Sox historic stadium, in the fall of 2004 as the team played toward its first World Series Championship in 86 years.

Steele's claim for copyright infringement arises from an advertisement produced and aired by the defendant Turner Broadcasting System, Inc. ("TBS") during the 2007 Major League Baseball ("MLB") post-season ("the TBS Promo"). The TBS Promo features a song by the popular band Bon Jovi entitled "I Love This Town" ("the Bon Jovi Song") along with baseball video footage. In addition to TBS, Steele's complaint names Bon Jovi front-man John Bongiovi and guitarist Richard Sambora as defendants. Also sued were William Falcone, Time Warner Corporation, Major League Baseball Properties, the Red Sox, A&E Television Networks, AEG Live, Mark Shimmel Music, Universal

Music Publishing ("Universal Music"), Universal Polygram International Publishing, The Bigger Picture Cinema Company, Island Def Jam Records ("Island Records"), Kobalt Music Publishing America, Inc. ("Kobalt"), Fox Broadcasting Company ("Fox"), Sony ATV Tunes LLC ("Sony") and Vector 2 LLC ("Vector").

Steele asserts that the Bon Jovi Song and the TBS Promo infringe his copyright. With respect to the TBS Promo, Steele contends that it was unlawfully derived from his work through a method called "temp tracking." According to Steele, that term refers to the use of a song as a template to create an audiovisual work which, in turn, is used to create a final soundtrack. Steele alleges that much of the visual portion of the TBS Promo is derived from his song and that the Bon Jovi Song was then based upon that Promo, the Steele Song or both.

B. Procedural History

Steele filed his initial complaint alleging copyright infringement and violation of the Lanham Act on October 8, 2008. On January 30, 2009, Steele amended his complaint to add the Red Sox as a defendant and a claim pursuant to the Massachusetts Consumer Protection Act, M.G.L. c. 93A ("Chapter 93A"). The amended complaint did not include a Lanham Act claim or some of the original defendants but, at Steele's urging and in light of his pro se status, this Court considered both complaints together in deciding the defendants' motions to dismiss.

On April 3, 2009, this Court issued a Memorandum and Order dismissing the claims brought under the Lanham Act and Chapter 93A and all claims against the defendants Universal Music, Fox, Sony and Vector. Steele v. Turner Broadcasting Sys., Inc., 607 F. Supp. 2d 258 (D. Mass. 2009). The Court declined to dismiss Steele's copyright infringement claims against the remaining defendants and instead permitted limited discovery to allow Steele to "gather and present evidence of substantial similarity" including expert analysis of his song and the alleged infringing works. Id. at 265. The Court indicated that, following such discovery, it would entertain motions for summary judgment on the issue of substantial similarity.

On June 10, 2009, the remaining defendants, with the exception of Kobalt and Island Records, moved for summary judgment.¹ In support of their motion they included an expert report from musicologist Anthony Ricigliano ("the Ricigliano Report"). Kobalt separately moves for summary judgment incorporating by reference the arguments made by its co-defendants.

On July 17, 2009, Steele opposed the defendants' motions for summary judgment. He also has submitted an (unsigned) report from a musicologist, reports from various other purported

¹ No attorney has appeared on behalf of Island Records and the docket reflects that service was never made on that defendant.

experts, affidavits from "ordinary listeners" who claim to detect similarity between the Steele Song and the alleged infringing works and an affidavit of his own. On July 30, the defendants (with the exception of Kobalt and Island Records and with leave of Court) submitted a reply memorandum. Although a hearing on the motion is scheduled for September 10, 2009, this Court concludes that a decision can be rendered based on the thorough submissions currently before it.

II. Analysis

A. Legal Standard

The role of summary judgment is "to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." Mesnick v. Gen. Elec. Co., 950 F.2d 816, 822 (1st Cir. 1991) (quoting Garside v. Osco Drug, Inc., 895 F.2d 46, 50 (1st Cir. 1990)). The burden is upon the moving party to show, based upon the pleadings, discovery and affidavits, "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

A fact is material if it "might affect the outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). "Factual disputes that are irrelevant or unnecessary will not be counted." Id. A genuine issue of material fact exists where the evidence with respect to the

material fact in dispute "is such that a reasonable jury could return a verdict for the nonmoving party." Id.

Once the moving party has satisfied its burden, the burden shifts to the non-moving party to set forth specific facts showing that there is a genuine, triable issue. Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986). The court must view the entire record in the light most hospitable to the non-moving party and indulge all reasonable inferences in that party's favor. O'Connor v. Steeves, 994 F.2d 905, 907 (1st Cir. 1993). If, after viewing the record in the non-moving party's favor, the court determines that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law, summary judgment is appropriate.

B. Copyright Infringement

To succeed on a claim for copyright infringement, a plaintiff must prove "(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original." Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., Inc., 499 U.S. 340, 361 (1991). As part of the second prong, a plaintiff must prove that the copyrighted and alleged infringing works are "substantially similar." Johnson v. Gordon, 409 F.3d 12, 18 (1st Cir. 2005) (citation and internal quotation marks omitted).

In determining substantial similarity, courts apply the "ordinary observer," or, "in musical milieu, the ordinary

listener test.” Id. (internal quotation marks omitted). A defendant’s work is substantially similar to the copyrighted work only if

an ordinary person of reasonable attentiveness would, upon listening to both, conclude that the defendant unlawfully appropriated the plaintiff’s protectable expression.

Id.

Importantly, for a plaintiff to succeed the substantial similarity must relate to original elements of the copyrighted work. See id. at 18-19 (citing Feist, 499 U.S. at 361). Thus, before examining the similarity between the works,

a court must engage in dissection of the copyrighted work by separating its original, protected expressive elements from those aspects that are not copyrightable.

Id. Accordingly, “an overall impression of similarity may not be enough” if “such an impression flows from similarities as to elements that are not themselves copyrightable.” Id. at 19.

Among the elements that must be dissected out are ideas and concepts which are not protected by copyright law. 17 U.S.C. § 102(b). Nor are common phrases or scene a faire, meaning “stock scenes or elements that necessarily flow from a common idea,” protected. CMM Cable Rep, Inc. v. Ocean Coast Props, Inc., 97 F.3d 1504, 1522 n.25 (1st Cir. 1996) (citation omitted); Johnson, 409 F.3d at 24.

Although ordinarily an issue for the factfinder, substantial similarity (or lack thereof) can be decided by the Court as a

matter of law. See Johnson, 409 F.3d at 18. According to the First Circuit Court of Appeals:

Summary judgment on this issue is appropriate only when a rational factfinder, correctly applying the pertinent legal standards, would be compelled to conclude that no substantial similarity exists between the copyrighted work and the allegedly infringing work.

Id. at 18, 25 (upholding grant of summary judgment based on lack of substantial similarity).

C. Application

The defendants assert that Steele's copyright infringement claim fails as a matter of law because there is no substantial similarity between his song and the alleged infringing works. In considering the issue this Court has reviewed the expert reports and other affidavits submitted by both sides. It has also carefully listened to the Steele Song and the Bon Jovi Song and viewed both the original TBS Promo and the version provided by the plaintiff in which the audio has been replaced with the Steele Song.

1. Musical Similarity

Applying the "ordinary listener" standard this Court detects no musical similarity between the Steele Song and the Bon Jovi Song. The expert analyses by opposing musicologists support that conclusion. The opinion of plaintiff's musicologist is particularly relevant because, on a motion for summary judgment, this Court considers the facts in the light most favorable to the

non-moving party. See id. at 19 (concentrating on the views of plaintiff's chosen expert).

Plaintiff has submitted an unsigned report from musicologist Alexander Stewart ("the Stewart Report") which states, in part:

This case is not strong musicologically: Melody of "hook" has only one note in common (1). Three words in common, but not the most distinctive word, "team." Harmony is commonplace. Both tunes consist primarily of I, IV, and V chords - the most commonly used chords in harmony. Moreover, "Team" [the Steele Song] is a 12-bar blues. One of the most distinctive harmonic figures in "Team," the chromatic chord change (D-D#-E) at the end of the hook, is not found in "Town" [the Bon Jovi Song]. Hook in "Town" begins on the IV chord (progression IV V I); hook of "Team" begins on V (progression V IV I). Bon Jovi song has somewhat irregular structure: 5-bar "B section"; "Team" is regular 4- and 8-bar sections[.]

Not surprisingly, the Ricigliano Report (submitted by the defendants) reaches a similar conclusion, noting that the songs

do not share any significant similarity and are not substantially similar in lyric content, melodic content (pitch series, rhythm or rhythmic patterns, melodic development and structure), or harmonic content

In response to such damaging testimony, Steele asserts that musicologists (including his own expert) are not helpful in this case because they are not qualified to compare the video evidence presented in the form of the TBS Promo. Nevertheless, this Court concludes, based upon the musicologist reports and its own review of the songs, that no reasonable jury applying the correct legal standard could find substantial similarity between the musical elements of the two works.

2. Lyrical Similarity

A comparison of the lyrics in the Steele Song and the Bon Jovi song also reveals no substantial similarity with respect to original elements. Before engaging in comparison, however, the Court must first dissect the lyrical elements of Steele's song that are not copyrightable. In this case, that turns out to be most, if not all, of the similarities.

For example, although both songs use the phrase "I love this . . ." in their title and chorus, common expressions and cliches are not copyrightable. See Johnson, 409 F.3d at 24 (phrase "You're the One for Me" too common to be copyrightable). As defendants point out, online databases reveal nearly 100 songs that use the phrase "I love this . . ." in some form in their title. Although plaintiff argues that none of those songs is about baseball, neither is the Bon Jovi Song.

The phrases "come on" and "here we go" are likewise too trite and common to warrant protection. See id. Another purported similarity, the fact that both songs rhyme "round" with "town," is also commonplace as evinced by the fact that it is found in the popular children's song "The Wheels on the Bus".

When those unprotected elements are filtered out, the Steele Song and Bon Jovi Song display little lyrical similarity, and certainly not the substantial similarity required to prove a claim of copyright infringement. As plaintiff's own musicologist

observes, the songs have “[o]nly three words in common (‘I’ ‘love’ ‘this’).” Moreover, the subject of the Steele Song “is clearly baseball and specifically the Red Sox” while the Bon Jovi song is about a town and “without the video, there would be no connection to baseball.”

In an effort to show lyrical similarity, plaintiff relies on “reports” from Jonathan Yasuda (“the Yasuda Report”), a law student with an undergraduate degree in music, and Mark Ferraguto (“the Ferraguto Report”), a musicology PhD candidate.² Both reports identify purported similarities between the structure and rhyme scheme of the Steele Song and the Bon Jovi Song.

Even assuming those individuals are qualified to render opinions on the subject, their conclusions do not create a genuine issue of material fact concerning substantial similarity. A common rhyme scheme or structure does not qualify as original expression protectable under federal copyright law. See id. at 23 (holding that a particular harmonic progression “is a stereotypical building block of musical composition, [which] lacks originality”). Furthermore, considered as a whole, differences between the two songs (as recognized by plaintiff’s own musicologist) overwhelmingly eclipse any similarity in structure and rhyme scheme. See id. at 18 (noting that “[t]he

²The Ferraguto Report is in the form of an email to the plaintiff.

substantial similarity requirement focuses holistically on the works in question"). Accordingly, even crediting the assertions of plaintiff's experts, no reasonable jury could conclude that the Bon Jovi Song is substantially similar to the original lyrical elements of the Steele Song.

3. The TBS Promo

Much of Steele's argument focuses not on similarity between the Bon Jovi Song and his own work (although he does maintain that the two are substantially similar) but, rather, on the TBS Promo, which features the Bon Jovi song along with baseball video footage and scenes from in and around major league ballparks. Steele asserts that the images in the TBS Promo bear a striking resemblance to the scenes described in his song and that, together with similarities between the two songs, the Promo conclusively demonstrates that his work was unlawfully copied.

According to Steele, his song was used as a template for the creation of the video portion of the TBS Promo. Through a process he calls "temp tracking," the defendants allegedly created the video based on the Steele Song and then replaced the audio with the Bon Jovi Song (which is based on the video, the Steele Song or both).

In an effort to show similarity (and that the TBS Promo was derived from his song) Steele has submitted a version of the TBS Promo in which the audio has been replaced with the Steele Song.

He maintains that in many places the lyrics of his song correspond to the images in the TBS Promo. In particular, Steele notes the following similarities:

- 1) At the exact moment Steele sings "Word is out on Yawkey Way," the TBS Promo shows a Yawkey Way street sign;
- 2) when Steele mentions the Detroit Tigers the TBS Promo shows a Tiger's player rounding the bases;
- 3) when Steele sings "You got to keep believin', gotta stay tough" the Promo shows players "chest butting" and acting tough; and
- 4) when Steele exhorts fans to "Get up off your seats" the Promo shows fans standing and cheering.

Again, before conducting the substantial similarity analysis, the Court must dissect the unprotected elements from Steele's work. Here, the Steele Song's references to Fenway Park and Yawkey Way are classic scene a faire; they are stock scenes that flow from the idea of baseball. CMM Cable Rep, Inc., 97 F.3d at 1522 n.25. Steele does not enjoy a monopoly over the use of those images simply because he references them in a copyrighted song. See id. (doctrine of scene a faire is "concerned with preventing a monopoly on commonplace ideas").

Furthermore, although the Steele Song does appear to match some of the images in the TBS Promo, it is inevitable that a song about baseball will at times correspond with a baseball promotional advertisement. For example, there are over a dozen scenes in the TBS Promo that display a cheering crowd (at either a ballpark or a Bon Jovi concert). Consequently, it is

unsurprising that one of those scenes parallels one of the four points in the Steele Song where he encourages fans to "Get up off your seats."

As the defendants point out, the number of places in which the TBS Promo corresponds to the lyrics of the Bon Jovi Song vastly outnumber any parallels with the Steele Song. More importantly, however, the issue is not whether the video portion of the TBS Promo is more similar to the Bon Jovi Song or the Steele Song but, rather, whether the TBS Promo is substantially similar to the original elements of the Steele Song. Because no reasonable jury could find substantial similarity between the two works, the defendants are entitled to summary judgment.

4. Other Issues

Steele raises a number of other arguments that do not change this Court's conclusion but are, nonetheless, worthy of addressing. First, to the extent that Steele maintains that the defendants stole his "marketing concept" of a baseball song that could be adapted to any team or city, such an idea or concept explicitly is unprotected by federal copyright law. 17 U.S.C. § 102(b) ("In no case does copyright protection for an original work of authorship extend to any idea . . . [or] concept").

Second, Steele's effort to show a genuine issue of material fact by submitting affidavits from assorted "ordinary listeners," although understandable given his pro se status and the relevant

legal standard, is misguided for a number of reasons. First, the "ordinary listeners" upon whom Steele asks the Court to rely are all his personal friends or acquaintances. Second, there is no evidence that those ordinary listeners were "correctly applying the pertinent legal standards." See Johnson, 409 F.3d at 18. Most importantly, those affidavits present inadmissible lay opinion and therefore are not appropriate for consideration. See Fed. R. Civ. P. 56(e)(1) (affidavits must "set out facts that would be admissible in evidence"); Fed. R. Evid. 701 (lay opinion is inadmissible unless it is "helpful" to the factfinder).

Finally, Steele's assertions that the defendants violated his synchronization, or "synch," rights (by allegedly timing the display of images in the TBS Promo to his song) is also unpersuasive. A synch right is the "right to record a copyrighted song in synchronization with [a] film or videotape, and is obtained separately from the right to perform the music." Broad. Music, Inc. v. Columbia Broad. Sys., Inc., 441 U.S. 1, 33 n.23 (1979) (Stevens, J., dissenting). Thus, synch rights are an additional right that a user must acquire when it seeks not only to perform the protected work but also to use it in timed-relation with an audiovisual work. See ABKO Music, Inc. v. Stellar Records, Ind., 96 F.3d 60, 62 n.4 (2d Cir. 1996).

Although Steele has submitted a report from a purported music and film expert that asserts that 96% of the video sequences in the TBS Promo are synchronized to the Steele Song's quarter-note

beat, intervals of time are not original expression protectable under federal copyright law. Accordingly, no reasonable juror could conclude that the TBS Promo violates plaintiff's synch rights.

In sum, because no reasonable juror applying the correct standards could find that the original elements of the Steele Song are substantially similar to the Bon Jovi Song or the TBS Promo, summary judgment will enter in favor of the defendants.

ORDER

In accordance with the foregoing, the defendants' motions for summary judgment (Docket Nos. 92 and 98) are **ALLOWED**.

So ordered.

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

Dated August 19, 2009

EXHIBIT 12

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

----- X
SAMUEL BARTLEY STEELE, :
BART STEELE PUBLISHING, and :
STEELE RECORDZ, :

Plaintiffs, : Civil Action
v. : No. 08-11727-NMG

TURNER BROADCASTING SYSTEM, INC., :
MAJOR LEAGUE PROPERTIES, INC., :
TIME WARNER, INC., ISLAND DEF JAM :
RECORDS, FOX BROADCASTING :
COMPANY, JOHN BONGIOVI, :
INDIVIDUALLY AND D/B/A BON JOVI :
PUBLISHING, RICHARD SAMBORA, :
INDIVIDUALLY AND D/B/A AGGRESSIVE :
MUSIC, WILLIAM FALCON, :
INDIVIDUALLY AND D/B/A PRETTY :
BLUE SONGS, UNIVERSAL-POLYGRAM :
INTERNATIONAL PUBLISHING, INC., :
SONY/ATV TUNES LLC, KOBALT MUSIC :
GROUP, A&E TELEVISION NETWORKS, :
AEG LIVE LLC, VECTOR 2 LLC, BOSTON :
RED SOX, INC., THE BIGGER PICTURE :
CINEMA CO., and MARK SHIMMEL :
MUSIC, :

ORAL ARGUMENT REQUESTED

Defendants. :
----- X

**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
DISMISSING THE COPYRIGHT INFRINGEMENT CLAIM**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Defendants (i) Turner Broadcasting System, Inc., (ii) Major League Baseball Properties, Inc., (iii) Time Warner Inc., (iv) John Bongiovi (individually and d/b/a Bon Jovi Publishing), (v) Richard Sambora (individually and d/b/a Aggressive Music), (vi) William Falcone (individually and d/b/a Pretty Blue Songs), (vii) Mark Shimmel d/b/a Mark Shimmel Music, (viii) A&E Television Networks,

(ix) AEG Live LLC, (x) Boston Red Sox Baseball Club Limited Partnership, and (xi) Universal-Polygram International Publishing, Inc. hereby move for summary judgment on the issue of substantial similarity and an order dismissing plaintiffs' only remaining claim in this lawsuit (copyright infringement) with prejudice.

The grounds for this motion are set forth in the accompanying memorandum of law.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), defendants respectfully request oral argument on this motion.

LOCAL RULE 7.1 CERTIFICATION

I, Matthew J. Matule, hereby certify that on June 3, 2009 counsel for the defendants conferred with the Plaintiff in a good faith effort to resolve the issues herein but could not obtain his agreement to the specific relief requested in this motion.

Dated: June 10, 2009

/s/ Matthew J. Matule
Matthew J. Matule

Dated: June 10, 2009
Boston, Massachusetts

Respectfully submitted,

/s/ Matthew J. Matule
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League Baseball Properties, Inc., Time Warner
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Jovi Publishing), Richard Sambora
(individually and d/b/a Aggressive Music),
William Falcone (individually and d/b/a Pretty
Blue Songs), Mark Shimmel d/b/a Mark
Shimmel Music, A&E Television Networks,
AEG Live LLC, Boston Red Sox Baseball Club
Limited Partnership, and Universal-Polygram
International Publishing, Inc.

CERTIFICATE OF SERVICE

I, Matthew J. Matule, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on June 10, 2009.

Dated: June 10, 2009

/s/ Matthew J. Matule
Matthew J. Matule

EXHIBIT 13

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SAMUEL BARTLEY STEELE,)	Civil Action No.
BART STEELE PUBLISHING,)	08-11727-NMG
STEELE RECORDZ,)	
)	
Plaintiffs)	
)	
v.)	
)	
TURNER BROADCASTING)	
SYSTEM, INC,)	
Et al,)	
)	
Defendants.)	
)	

AFFIDAVIT OF SAMUEL BARTLEY STEELE

I, Samuel Bartley Steele, state the following under the pains and penalties of perjury:

1. In 2004 through 2006, I repeatedly sent internet "links" to my copyrighted song, "(Man I Really) Love This Team" ("Song") and my ideas for how my song could be used as a national marketing campaign by changing the lyrics to fit with any team and town (not just Boston) to MLB.com at its "Contact Us" link, http://mlb.mlb.com/mlb/help/contact_us.jsp.
2. My purpose in contacting MLB.com was to discuss a joint business venture with Major League Baseball.
3. At no time did I submit anything to TBS.
4. I am not an attorney and prior to this case I had no litigation experience.
5. After becoming aware of Major League Baseball's 2007 audiovisual advertisement featuring a Bon Jovi soundtrack ("MLB Audiovisual") in August 2007, I immediately saw it was a derivative of my Song and attempted to contact various defendants, including, based on publicly available information put out by the defendants, those I believed the parties most responsible for copying my Song, including John Bongiovi,

TBS, TBS musical consultant, Mark Shimmel, Vector Management 's Jack Rovner (Bon Jovi's manager), the Boston Red Sox, Sony, and Universal Music Group.

6. After more than a year of attempting to work out my grievance with these defendants, as well as contacting the American Society of Composers and Publishers ("ASCAP") and being repeatedly ignored or rebuffed by defendants' attorneys, as well as ASCAP, I filed suit, *pro se*, in the U.S. District Court in Boston.
7. I filed *pro se* because I could not find an attorney willing to take my case. I was told by each of the several attorneys I approached that they either had a conflict or that they simply did not want to litigate against such wealthy and powerful defendants and Skadden Arps, on a contingent fee basis. I could not afford to pay an attorney or law firm by the hour.
8. Prior to and during the Court proceedings I was not aware that Major League Baseball Advanced Media, L.P. ("MLBAM") owned and operated MLB.com and also called itself MLB Productions, and that it was not the same thing as Major League Baseball Properties, Inc. ("MLB").
9. Nonetheless, I named and served (or tried to serve) both MLBAM (insofar as I knew MLBAM at the time, as "MLB Productions" and on the service of process papers as "MLB Productions/MLB.com") and MLB. During the litigation, I was lead to believe - through conversations with Skadden, defendants' court filings, and conversations with Skadden attorneys - that Skadden's appearance on behalf of, and defense of MLB, included both MLB and MLBAM. This is further detailed below.
10. Also as detailed below, defendants' representations to me and in the this Court lead me - and this Court, apparently - to believe that the MLB Audiovisual was essentially a TBS, Time Warner, and Bon Jovi creation and that MLBAM played only a minor role, rather than being its producer, owner, and distributor, which I discovered later.
11. I was learning legal procedure as best I could, but often would contact Christopher Clark, a Skadden associate with whom I had developed a rapport, to ask about procedural issues. For the most part, Attorney Clark readily answered my questions, though - as I later learned - many of his answers were misleading or simply incorrect.
12. In addition, the one time I informed Skadden that I might be retaining counsel, they barraged him with threatening letters, misstating facts and - I believe - misstating this Court's order, causing him to abruptly drop me as a potential client. This is explained in detail below.

13. I believe defendants and Skadden misled me (and likely this Court) and obstructed my ability to fairly litigate my case based on the following facts:
- a. MLB incorrectly stated in its court filings that I had “misidentified” MLBAM as MLB, even though they were two separate defendants, each of whom I identified and attempted to serve.
 - b. Initially, this Court's docket sheet correctly listed MLB and MLBAM (as “MLB Productions”), as did defendants' early filings. However, Skadden changed their filings' captions mid-way through the litigation so that it only listed MLB, rendering it inconsistent with the facts as well as the docket. When they changed their filings' captions, they simultaneously stopped inserting their "misidentified as" language in their filings.
 - c. As a *pro se* plaintiff, I trusted that Skadden would not have made such a representation to a federal court unless it was true. Therefore, I did not think to question their "misidentification" language or their changing of their filings' captions.
 - d. I did not know what “default” was or that MLBAM failed to appear in this case.
 - e. Skadden's filings called the MLB Audiovisual “the TBS Promo” for short, which this Court and I adopted in our papers. This shorthand was misleading because TBS's role in creating the MLB Audiovisual was lesser than other defendants', MLBAM in particular – TBS was not even allowed to air the full audiovisual.
 - f. Also, MLBAM claims copyright to the MLB Audiovisual (though deleted its copyright notice from the version of the MLB Audiovisual Skadden filed in this Court) and, as stated in my appeal brief and reply – which MLB has never denied – MLBAM paid for and produced the MLB Audiovisual.
 - g. Skadden submitted false evidence – three times in this Court – in the form of a DVD containing a previously unpublished draft of the MLB Audiovisual that had been edited to remove the MLBAM copyright notice in the last few seconds. I discovered this after the district court proceedings ended and the case was pending in this Court.
 - h. Skadden's unpublished and edited MLB Audiovisual ends on the TBS logo, rather than the MLBAM copyright notice, which furthered the appearance - misleadingly - that it was a TBS – rather than MLBAM - production. This issue is further addressed in my Appellate brief and Reply.

- i. On April 7, 2009, Skadden served me with interrogatories, requests for production of documents, and a deposition notice. Skadden's interrogatories and request for production asserted that my responses were due no later than May 7, 2009. Their deposition notice was for "each person" I was planning to have testify on substantial similarity, and was set for May 12, 2009.
- j. Skadden's deadline to me was - as with their summary judgment "deadline" - once again, incorrect.
- k. This Court in fact had stated twice during the March 3, 2009 hearing that it was inclined to give me "60 days" to "come up with an expert, some affidavit," that I "[hadn't] given [the court] already" to "produce to the Court" on substantial similarity (on pages 13 and 27 of the hearing's transcript).
- l. This Court's April 3, 2009 written order stated that I was allowed to "offer, by affidavit, expert analysis" of the works at issue, which "the Court will consider... in making the substantial similarity determination."
- m. This Court's April 3, 2009 written order gave me until May 31, 2009 - 58 days - to provide an expert report or affidavit.
- n. This Court's April 3, 2009 written order was silent as to depositions. My understanding was that I had to provide a written expert report or affidavit by May 31, 2009.
- o. On May 11, 2009, I informed Skadden Arps that - in accordance with the Court's well-grounded advice to continue to seek counsel - I was consulting with, but had not yet formally retained, an attorney (one of many I approached prior to and during this Court's proceedings), Kevin McCullough, about possibly taking my case.
- p. I authorized Skadden to communicate with Attorney McCullough, but made clear he was not (yet) "my attorney."
- q. On that same day, May 11, 2009, Skadden Attorney Kenneth Plevan sent Attorney McCullough an e-mail stating - incorrectly - that "[w]e have been advised by Samuel Bartley Steele... that you are his counsel." I have this e-mail and others, as well as letters from Plevan discussed below, which I can produce to this Court if required.
- r. Attorney Plevan's May 11, 2009 e-mail further asked Attorney McCullough to contact Plevan immediately, stating incorrectly that I had "defaulted on discovery

requests due last Thursday, and [that I] advised [Skadden] today that [I] will not be producing a witness for the deposition schedule (sic) for tomorrow."

- s. Plevan's e-mail continued: "[g]iven the status of the lawsuit, we request that you promptly file a notice of appearance on behalf of the plaintiffs, if you will in fact be representing them."
- t. The next day, May 12, 2009, Plevan sent Attorney McCullough a letter via e-mail and overnight mail again misrepresenting that I had told them that Attorney McCullough was "Plaintiffs' counsel" and incorrectly stating that my "responses to the request for production and the interrogatories were due on Thursday, May 7."
- u. Plevan's same May 12, 2009 letter informed Attorney McCullough: "In my email yesterday, I asked you to promptly file a notice of appearance, if you were in fact planning to be counsel for Plaintiffs herein. As of now, we have not seen any such notice of appearance."
- v. Finally, Plevan's May 12, 2009 letter stated that defendants "reserved the right" to move for summary judgment "if we do not hear from you promptly" and that they also "reserved the right" to "move to preclude any expert report Plaintiffs may seek to use in opposition to said motion."
- w. The next day, May 13, 2009, Plevan e-mailed defendants' discovery requests to Attorney McCullough, concluding "we look forward to hearing from you as to whether you will be representing Mr. Steele in this lawsuit."
- x. Six days later, on May 19, 2009, Plevan sent another letter to Attorney McCullough via e-mail and overnight mail noting that Attorney McCullough had "failed to file a notice of appearance in the lawsuit on behalf of plaintiffs."
- y. Plevan's May 19, 2009 letter further asserted – incorrectly, at least as far as I understood the plain language of this Court's discovery order - that my discovery responses were "now almost two weeks overdue," that "neither you nor Mr. Steele has offered a date on which the responses would be submitted, or asked defendants to agree to an extension."
- z. Plevan's May 19, 2009 letter stated that this Court had "specifically advised Mr. Steele that whether or not he retained an attorney, he would be 'required to abide by rules of procedure that are sometimes arcane and hard to understand, but nevertheless, you will be required to abide by them,' citing "Transcript at 6."

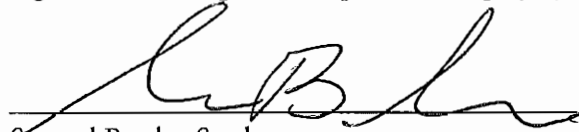
- aa. Plevan's May 19, 2009 letter to Attorney McCullough continued: "Here, we are dealing with a requirement that was and is easy to understand – responses to requests were due on May 7, 2009, and to date plaintiffs have ignored the requests."
- bb. Finally, Plevan's May 19, 2009 letter stated "please consider this defendants final request at clarification. If responses to the written discovery requests at (sic) not received by close of business [that same day], defendants will conclude that plaintiffs will not be relying on any expert analyses on the issue of substantial similarity, and will proceed accordingly."
- cc. On May 19 or 20, 2009, I was disappointed, but not surprised when Attorney McCullough informed me that he had no interest in taking the case.
- dd. Attorney McCullough's abrupt turnabout, suddenly withdrawing any consideration of representing me were, to me, clearly the result of Skadden's numerous and insistent demands and threats to him, which were, based on my understanding of this Court's order, baseless, false, and specifically designed to scare Attorney McCullough from taking my case.
- ee. I was unable to obtain counsel, despite additional efforts, for the remainder of this Court's proceedings.
- ff. In early June 2009 I had a conversation with Attorney Clark in which I asked him if he was aware that MLBAM ran the websites of many non-baseball entertainers, including Bon Jovi's, to which he replied he was not. I jokingly advised Mr. Clark that he should know the clients he's representing a little better. This conversation was part of this Court's record in an affidavit I filed on September 15, 2009 (as docket entry 109). A copy is attached.
- gg. During the same early June 2009 conversation, Attorney Clark failed to inform me that Skadden had not appeared for MLBAM or that MLBAM had not filed an appearance in the case at all.
- hh. Several days later, on June 10, 2009, Skadden suddenly - more than two weeks before the June 26, 2009 deadline - filed its motions for summary judgment on behalf of its clients, including MLB, and submitted their altered and misleading version of the MLB Audiovisual for the third time.
- ii. Surprised by this early filing, I immediately called Attorney Clark and asked him what his early filing meant for my deadline to oppose his summary judgment

motion, which I understood to be July 17, 2009 based on the Court's April 3, 2009 order. Clark told me - falsely, as I later learned - that I had two weeks from their June 10, 2009 filing to file my opposition.

- jj. In that same conversation with Attorney Clark, I informed him that, in addition to opposing their motions, I was planning on filing a summary judgment motion of my own. I asked him how long I had to file my own motion for summary judgment. He informed me - again, falsely, as I later discovered - that I "didn't need to" file my own motion for summary judgment because they had filed theirs, and that I only needed to file my opposition. Unfortunately, I believed him.
- kk. I began scrambling to prepare an opposition under enormous pressure, both because of Skadden's early filing and because I was misled to believe that my opposition was, as a result of Skadden's early filing, now due on June 24, 2009 instead of July 17, 2009, as ordered by this Court.
- ll. I began to work on my opposition immediately, but as June 24, 2009 approached, I knew I would need more time. I contacted Attorney Clark and asked for another week to file my opposition, to which he agreed.
- mm. A week later, with my extended deadline nearly up, I asked Attorney Clark for another one-week extension, to which he agreed.
- nn. Finally, as what I believed was my twice-extended deadline approached, and on the verge of calling Attorney Clark for a third extension, I instead called district court clerk, Diep Duong, who informed me that Clark's representation to me was incorrect and that I actually had until July 17, 2009 to file my opposition.
- oo. I filed my opposition to summary judgment on July 17, 2009. At 1:37 p.m. (based on my phone records) on July 24, 2009 I received a call from Attorney Clark asking for my consent to allow defendants to file a reply brief. I consented. This conversation and resulting events are also detailed in my September 15, 2009 affidavit (as docket entry 109), copy attached.
- pp. In the same July 24, 2009 conversation with Attorney Clark, I asked for similar consent to file a sur-reply. He thanked me for my consent, but stated he did not have authority to give consent to my reciprocal request and promised to check with his clients and get back to me.

- qq. Attorney Clark never got back to me. Instead, five days later, on July 29, 2009, Skadden filed a motion for leave to file a reply, falsely claiming that I had not given consent for them to file their reply.
- rr. The next morning I called district court deputy clerk Nicewicz and left a voicemail stating that MLB “was being dishonest” in their motion for leave, and to please inform the judge that I had, in fact, consented.
- ss. My attached affidavit relates additional details about these events, including how my reliance on Attorney Clark’s statements resulted in a fatal delay to the filing of my sur-reply because I was still waiting to hear from him when the Court allowed MLB’s summary judgment motion on August 19, 2009, three weeks before the scheduled hearing date of September 10, 2009. I had assumed, reasonably, I believe, that I had those three weeks to finish my sur-reply and obtain MLB’s consent or file a motion for leave to file my sur-reply.

Signed under the pains and penalties of perjury this 18 of June, 2010:

A handwritten signature in black ink, appearing to read 'S. Bartley Steele', written over a horizontal line.

Samuel Bartley Steele

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE
2009 SEP 15 P 1:21
DISTRICT COURT
DISTRICT OF MASS.

SAMUEL BARTLEY STEELE,)
BART STEELE PUBLISHING)
STEELE RECORDZ,)
Plaintiffs)
v.)
TURNER BROADCAST SYSTEM,)
et al,)
Defendants.)
_____)

Case No. 08-11727-NMG

AFFIDAVIT OF
SAMUEL BARTLEY STEELE

I, Samuel Bartley Steele, swear that the following statement is true to the best of my knowledge under the penalty of perjury:

1) In early July 2009, after the defense had filed their Motion for Summary Judgment, but before I had filed my Opposition to that Motion, defendants' attorney Chris Clark of Skadden, Arps called me and asked me if I was willing to agree to change the date set for hearing his clients' Motion for Summary Judgment. The Court had set that hearing for August 12, 2009. Attorney Clark wanted my agreement to move the hearing to July or possibly early September. I said that I would probably be busy on tour in September and would gladly agree to any of dates in July that they had proposed, however I was not sure about extending the hearing until September because of scheduling and the fact that I wanted the case to move forward. After that discussion, I reluctantly agreed to file a joint motion asking the Court reset the hearing, and suggesting several alternative dates in July (and some in September).

2) While I was still waiting to learn the outcome of that joint motion to reset the hearing date, I continued to work on my Opposition to defendants' Motion for Summary Judgment. I filed that Opposition on July 17, 2009, the date set by the Court in its April 3 Order. At 1:37pm on Friday, July 24, 2009, I received a friendly phone call from defense attorney Chris Clark in which I was asked for consent to file a Reply brief to my Opposition. I politely said "yes" and did give him my consent and said both sides had been very courteous up to this point, so why stop now?

3) In that same July 24 phone conversation, I politely asked Clark for consent to file a sur-reply brief. Clark thanked me for my courtesy in allowing him to file a reply. He told me that he could not give consent himself to my filing a sur-reply, but would let me know in the next week or two once he had contacted all the defendants. He has yet to call me back.

4) On July 29, 2009, five days after this phone conversation with Clark, defendants filed a Motion for Leave to File Reply claiming I did not give my consent to their filing a reply brief. This was clearly a blatant misrepresentation by defense attorneys to mislead this Court, intended to portray me as unreasonable and uncooperative in the critical weeks before the Court's judgment.

5) The next morning, at approximately 10am, July 30, 2009, I called Deputy Clerk Nicewicz and left him a voicemail saying that the defense was being dishonest (and to please tell the Judge) because I did in fact consent and I had a question as to procedure going forward.

6) Despite defendant's untrue statements in their reply, I waited to hear back from defendants about their consent to my sur-reply. Because I was waiting to hear from them, I was not sure whether I should file a sur-reply, or a motion for leave to file a sur-reply. Defendants' attorneys had been of some assistance on procedure in the past, and I believed it was best to attempt to cooperate with defendants' attorneys on procedural issues. I now see that this belief was misplaced, as those attorneys have twisted my words and actions against me.

7) I felt blindsided by the Court's August 19 ruling, which came well before the re-scheduled hearing date of September 10, 2009. When I received notice of the August 19 ruling, I was still waiting on the defenses' consent to my filing of a sur-reply, and still believing that I could eventually tell the Court about the defenses' misrepresentations at the hearing on that motion which was pushed back a month (against my wishes), to September 10.

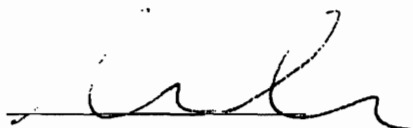
8) I cannot and do not blame this Court for its ruling. The defense, by untruthfully portraying me as an unreasonable Pro Se plaintiff, purposely misled the Court by claiming I did not extend a standard professional legal courtesy like 'consent' to file a motion (which defendants would do whether I consented or not). So I can certainly understand the Court's frustration with me. But the defendants' assertions were intentionally dishonest: I immediately gave consent to their reply, and even agreed to move the hearing date back a month, even though it was not at all convenient for me. The defense never gave reciprocal consent to my sur-reply. Instead, they hung me out to dry and abused the goodwill I had extended to them. Their underhanded scheming and disrespect for me and the Court should not go unnoticed.

9) The defense has misled the Courts in many other ways. Examples: their contradictory statements regarding access to my song, references to baseball in their works (addressed in previous motion) and their repeated attempts to distance Bon Jovi from baseball. I had a polite conversation with Clark in June in which both sides assessed the strengths and weaknesses of their case. In that June conversation, I asked Clark if he knew that MLBAM (Major League Baseball Advanced Media, the copyright owner of the MLB/TBS promo) and FSG (Fenway Sports Group, the Red Sox's non-baseball operations) run the websites of and directly profit from (as well as sell online advertising for) all 30 MLB teams, NASCAR, MLS, Madonna, U2, **Bon Jovi** and many others. Mr. Clark shockingly said he did not know about this relationship. This is publicly available information. In an article dated May 2007, Sports Business Journal states "MLBAM can even take on other clients...and even rock acts like Jon Bon Jovi". I jokingly advised Mr. Clark that he should know the clients he's representing a little better. Yet defendants continue to claim that Bon Jovi has nothing to do with baseball, despite their intimate business relations. Then a month after this conversation, the defendants filed their Reply, which states (at p.2) that defendants do NOT concede access to my song anymore. This clearly

contradicts statements made in the Answer filed by the Red Sox in April.

10. The defendants have demonstrated a pattern of deception and contradiction in an attempt to mislead the Court, and have shown contempt for me, a Pro Se Plaintiff, and the Court in their dishonest procedural maneuvers and misrepresentations.

Respectfully submitted,



Samuel Bartley Steele (Pro Se)

Dated 9/15/09