

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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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, :  
  
Defendants. :  
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**DEFENDANT MAJOR LEAGUE BASEBALL  
PROPERTIES, INC.'S OPPOSITION TO PLAINTIFFS' RULE 55(A)  
MOTION FOR ENTRY OF DEFAULT AGAINST MLB ADVANCED MEDIA, L.P.**

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Dated: June 30, 2010

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Defendant Major League Baseball Properties, Inc. ("MLB Properties") respectfully submits this memorandum of law in opposition to Plaintiffs' Rule 55(a) Motion For Entry Of Default As To Defendant MLB Advanced Media, L.P. For Failure To Plead Or Otherwise Defend (Docket No. 118) (cited as "Steele Brief at \_\_\_").<sup>1</sup>

### **PRELIMINARY STATEMENT**

Well after this Court entered final judgment in favor of all defendants, and indeed after Steele's appeal to the First Circuit Court of Appeals was fully briefed, Steele filed the instant motion seeking entry of default against third-party MLB Advanced Media, L.P. ("MLB Advanced Media"), an entity that is not -- and never was -- a party to this proceeding.

Steele principally argues that one of the summonses he drafted (and that was served by the Marshals on Steele's behalf) addressed to "MLB Productions/MLB.com" somehow made MLB Advanced Media a party defendant to this lawsuit. Steele's argument is totally without merit given that, as shown below, "MLB Productions" is a division of MLB Properties, the party that responded to the service of that subpoena by appearing as a defendant in this lawsuit. Given that: (a) the summonses Steele wrote do not refer to "Advanced Media," (b) neither of Steele's complaints list MLB Advanced Media as a defendant, (c) none of the pleadings or filings in the case include MLB Advanced Media as a party, (d) the Court's docket does not identify MLB Advanced Media as a party, and (e) the caption of the case does not do so either; Steele's motion should be denied.

Steele has only himself to blame for any alleged ambiguity in the identity of the defendants herein. See, e.g., United States v. Feher, Civ. A. No. 04-10504-RWZ, 2004 WL 1664011, at \*1 (D. Mass. July 26, 2004) (denying motion for entry of default judgment in light

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<sup>1</sup> As with prior filings herein, Plaintiffs will be collectively referred to as "Steele."

of "significant ambiguity as to whether proper service was in fact effected"). MLB Properties, moreover, appeared in this lawsuit and joined in the defense.

Certainly, any failure of an alleged defendant to appear is an issue that Steele should have raised before his claims were dismissed on the merits. Steele cannot now avoid this Court's April 3, 2009 and August 19, 2009 dispositive motion Orders dismissing all of Steele's claims against all defendants in this case. Those dispositive rulings on the merits make clear that Steele's pleadings do not assert legally cognizable claims against any defendant -- or any possible future defendant. As such, Steele is precluded from recovering against any defendant regardless of any purported technical "default."

Finally, Steele's motion should be denied (and sanctions imposed) for counsel's failure to comply with Local Rule 7.1, in that Steele's counsel did not confer with defendants' counsel prior to filing this motion, nor does Steele's motion contain the mandatory certification pursuant to Local Rule 7.1. There is simply no excuse for Steele's counsel to have ignored Local Rule 7.1(A)(2).

### **FACTUAL AND PROCEDURAL BACKGROUND**

MLB Properties respectfully directs the Court's attention to the April 3, 2009 and August 19, 2009 Orders (Docket Nos. 85 and 104) for a more detailed statement of the general factual background herein.

Steele's initial Complaint, dated October 8, 2008, named as one of the defendants "Major League Baseball/MLB Productions." (Complaint ¶ 2 (Docket No. 1); Steele Brief Ex. 2 ¶ 2.) By virtue of the backslash, Steele presumably intended to indicate one defendant. Steele nevertheless filled out summons forms for the Marshals for "MLB Productions/MLB.com" and "Major League Baseball." (Steele Brief Exs. 3 & 4.) One of those summonses was subsequently served successfully by the Marshals. (Id.)

On December 8, 2008, MLB Properties filed an appearance in this lawsuit.

"Major League Baseball Productions" ("Productions") is a division of MLB Properties.

(Declaration of Ethan Orlinsky ¶ 3 (cited as "Orlinsky Decl. ¶ \_\_\_").<sup>2</sup> The Productions division of MLB Properties is a full-service video and audio production business. (Id.) The appearance by MLB Properties was noted on the record as follows: "Major League Baseball Properties, Inc. (misidentified in the Complaint as 'Major League Baseball/MLB Productions')." (Docket Nos. 10, 11, & 13.) Steele made no filing with the Court in response to the December 8, 2008 corporate disclosure statement.

On January 30, 2009, Steele filed an Amended Complaint. (Docket No. 41.) The caption of the Amended Complaint named "Major League Properties, Inc." as a defendant. (Id. at 1, emphasis added.) In paragraph 14 of the Amended Complaint, Steele alleged "Defendant Major League Properties, Inc. (MLB) is a company located at Linthicum, Maryland. They are the parent of MLB Advanced Media and MLB.com." (Id. ¶ 14.) In their Answer dated April 17, 2009, defendants denied the allegations in this paragraph of the Amended Complaint. (Docket No. 88 ¶ 14.)

Following several rounds of dispositive motion practice, this Court dismissed all of Steele's claims against all defendants. (Docket Nos. 85 (granting in part the defendants' motion to dismiss the Amended Complaint) & 104 (granting the defendants' motion for summary judgment on the only remaining claim).) On August 19, 2009, the Court entered final judgment "in favor of defendants." (Docket No. 105.) Thereafter, this case was closed.

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<sup>2</sup> Indeed, publicly available Secretary of State documents demonstrate that MLB Properties has assumed the "Productions" name. (Declaration of Christopher G. Clark ¶ 2 & Exs. A & B.) Specifically, on January 29, 1979, an entity then-named Major League Baseball Promotion Corporation filed an assumed name form stating that it would be doing business under the name "Major League Baseball Productions." (Id. ¶ 2 & Ex. A.) Major League Baseball Promotion Corporation subsequently changed its name to MLB Properties. (Id. ¶ 2 & Ex. B.)

On November 6, 2009, Steele filed a notice of appeal to the U.S. Court of Appeals for the First Circuit. (Docket No. 112.) That appeal is fully briefed and is awaiting further action from the First Circuit. Then, on June 18, 2010 -- more than 7 months since the First Circuit proceeding commenced -- Steele, through his attorney, filed the instant motion seeking entry of default against non-party MLB Advanced Media.

**ARGUMENT**

**STEELE'S MOTION SHOULD BE DENIED**

Because MLB Advanced Media is not (and has never been) a party to this proceeding, Rule 55(a) of the Federal Rules of Civil Procedure does not apply to it. Rule 55(a) provides that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a) (emphasis added). MLB Advanced Media was never served with process in this lawsuit, was not named as a defendant in Steele's original Complaint or his Amended Complaint, and was never identified on the docket. Steele's motion, moreover, comes far too late, given that all of his claims have already been dismissed on the merits.

**A. MLB Productions And MLB Advanced Media Are Separate Legal Entities**

Non-party MLB Advanced Media, L.P. is a Delaware limited partnership owned by MLB Media Holdings, L.P. and MLB Advanced Media, Inc. (Orlinsky Decl. ¶ 4.) MLB Advanced Media, L.P., MLB Media Holdings, L.P., and MLB Advanced Media, Inc. do not own, and are not owned by, Defendant MLB Properties. (Id. ¶ 5.)

Defendant MLB Properties is a New York corporation owned by Major League Baseball Enterprises, Inc. (Id. ¶ 2.) Major League Baseball Productions is its division, with video and audio production capabilities. (Id. ¶ 3.) MLB Advanced Media, by contrast is

responsible for MLB.com and other Internet and "online" activities of MLB baseball clubs and other Major League Baseball entities. (Id. ¶ 5.)

Thus, it is clear that (1) MLB Properties and MLB Advanced Media are separate and distinct legal entities, (2) MLB Properties and MLB Advanced Media do not own one another, and (3) MLB Properties does business under the name "Major League Baseball Productions" -- not MLB Advanced Media as Steele erroneously asserts (Steele Brief at 2-4).

**B. MLB Advanced Media Was Never Served With Process In This Case**

Rule 4(a)(1)(B) of the Federal Rules of Civil Procedure requires that the summons "be directed to the defendant." The summonses Steele drafted in his own handwriting were addressed to (1) "MLB Productions/MLB.com" and (2) "Major League Baseball." (Steele Brief Exs. 3 & 4.) Nowhere on either summons does the term "Advanced Media" appear. The word "Productions," however, appears on both summonses -- a clear reference to the "Productions" division of MLB Properties. Thus, the proper MLB party appeared in this lawsuit.<sup>3</sup>

If Steele believed that he did not have the proper MLB defendant before the Court, he could have informed the Court of this issue. Indeed, when Steele had difficulty serving other intended defendants, he filed an Affidavit of Samuel Bartley Steele outlining his alleged "best efforts" to serve those defendants and "resubmit[ed] process and return forms to the marshall for service." (Docket No. 44.) Conspicuously absent from that affidavit is any reference to MLB Advanced Media. (See id.)

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<sup>3</sup> Any attempt by Steele to sue "MLB.com" would fail as a matter of law because "MLB.com" is an Internet domain name, not a legal entity -- a fact Steele acknowledges in his brief. (See Steele Brief at 4 ("the MLB.com URL").)



**C. MLB Advanced Media Is Not Identified As A Defendant In Steele's Original Complaint Or Amended Complaint**

In his original Complaint, Steele listed the "addresses of the defendants" in "Exhibit A." (Docket No. 1.) That Exhibit provides one entry for: "MLB, MLB.com, MLB Productions." (Id.) The Complaint does not name MLB Advanced Media as a defendant and, indeed, does not even mention MLB Advanced Media. (See id.)

In his Amended Complaint, Steele did not name MLB Advanced Media as a defendant, did not include MLB Advanced Media in the caption, and did not assert any allegations of wrongdoing against MLB Advanced Media. (See Docket No. 41.) Indeed, the only reference to MLB Advanced Media is: "Defendant Major League Properties, Inc. (MLB) is a company located at Linthicum, Maryland. They are the parent company of MLB Advanced Media & MLB.COM." (Id. at 2.) The defendants denied this allegation in their Answer (Docket No. 88 at 3), here again putting Steele on notice well before judgment was entered against him that no "Advanced Media" entity was a party.

**D. MLB Advanced Media Is Not Identified As A Party On The Docket**

MLB Advanced Media is not -- and never was -- identified as a party on the docket. (See Steele Brief Ex. 1.) The docket identifies only two "parties" that reference Major League Baseball: (1) "Major League Baseball" and (2) "MLB Productions, A & E." (Id.)

The docket "parties" were identified by the Court clerk based on Steele's original Complaint. Any imprecision or confusion in the identification of the entities is entirely attributable to the convoluted language in that document. If Steele believed the docket failed to adequately identify the defendants he intended to sue, it was Steele's obligation to remedy that perceived inaccuracy. See Feher, No. 04-10504-RWZ, 2004 WL 1664011, at \*1.

Defendants' motion for summary judgment, moreover, was shown on the docket entry as filed on behalf of both "MLB Productions, A & E" and "Major League Baseball." (Docket Entry No. 92.)<sup>4</sup> Accordingly, even if MLB Advanced Media could be viewed as a party to this proceeding based on the docket entries, it would necessarily also be viewed as a party to the dispositive motion the defendants filed (and that the Court granted).<sup>5</sup>

**E. MLB Properties' Corporate Disclosure Statement Put Steele On Notice Regarding The MLB Entity That Appeared**

On December 8, 2008, counsel filed notices of appearance on behalf of "Major League Baseball Properties, Inc. (misidentified in the Complaint as 'Major League Baseball/MLB Productions')." (Docket Nos. 10, 11.) Steele never objected to, or sought clarification of, this statement.

Also on December 8, 2008, a corporate disclosure statement was filed on behalf of Major League Baseball Properties, Inc. (Docket No. 13) that provided the following information:

Major League Baseball Properties, Inc. is wholly owned by Major League Baseball Enterprises, Inc., which is not a publicly traded company. No publicly traded corporation owns 10% or more of the stock of Major League Baseball Properties, Inc.

That corporate disclosure statement, which was served on Steele, contains no reference to MLB Advanced Media. (See id.) Here again, Steele never protested this disclosure.

**F. Steele's Motion Is Futile In Light Of Binding First Circuit Precedent And The Court's Dispositive Motion Rulings**

Steele's Motion is far too little and far too late -- the default issue having been first raised well after the entry of judgment on the merits against him.

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<sup>4</sup> "A&E" is presumably a reference to defendant A&E Television Networks.

<sup>5</sup> Defendants' dispositive motions were filed on behalf of all named defendants except ASCAP (an entity that Steele dismissed) and Island Records (an entity never served).

The Federal Rules of Civil Procedure, moreover, provide that a court "may set aside an entry of default for good cause . . . ." Fed. R. Civ. P. 55(c). The First Circuit has expressed a strong preference for resolving disputes on the merits, not through default judgments. Coon v. Grenier, 867 F.2d 73, 79 (1st Cir. 1989) (reversing district court's denial of motion to remove default judgment, reasoning that "doubts should be resolved in favor of adjudicating contested claims on the merits").

For these reasons, even if the Court were to determine that MLB Advanced Media technically defaulted -- which it should not -- that default would have to be set aside for good cause in any event. First, there is good cause to set aside any technical default because MLB Advanced Media had no notice that Steele intended to name it as a defendant until June 18, 2010, and because MLB Properties filed a notice of appearance and defended the interests of Major League Baseball entities.

Second, Steele's motion for entry of default is futile because a defaulted party is deemed to have admitted only the factual allegations in the operative complaint, not the legal sufficiency of those claims. Bonilla v. Trebol Motors Corp., 150 F.3d 77, 80 (1st Cir. 1998) ("Generally speaking, a default judgment bars the defaulting party from disputing the facts alleged in the complaint, but it preserves for appeal arguments of law made below as to whether the facts as alleged state a claim."); Rodriguez v. Craig, Civ. A. No. 91-10665-RWZ, 1994 WL 561999, at \*2 (D. Mass. Sept. 29, 1994) (dismissing complaint against defaulted defendants and recognizing that "[t]he fact that defaults have issued does not bar such a dismissal" where "the complaint clearly fails to state a claim" as a matter of law).

This Court's April 3, 2009 and August 19, 2009 Orders confirm that Steele's asserted claims are legally insufficient and without merit against any possible defendant.

Accordingly, Steele is not entitled to a default judgment even if a party defendant is deemed to have defaulted.

**G. Steele's Failure To Comply With Local Rule 7.1 Justifies Denying This Motion And Imposing Sanctions**

Another basis upon which the Court should deny this motion is Steele's failure to comply with Local Rule 7.1. See D. Mass. R. 7.1(A)(2) ("No motion shall be filed unless counsel certify that they have conferred and have attempted in good faith to resolve or narrow the issue."); Hasbro, Inc. v. Serafino, 168 F.R.D. 99, 100 (D. Mass. 1996) (denying motion for failure to comply with Local Rule 7.1's mandatory pre-motion meet and confer requirement). Steele did not confer with undersigned counsel prior to filing this motion, nor does Steele's motion contain the mandatory certification pursuant to Local Rule 7.1.

Throughout this proceeding, the Court has given Steele considerable leeway because of his pro se status. Now, however, Steele is represented by an attorney who has appeared in this action (Docket No. 111) and who has signed the motion. There is simply no excuse for an attorney and member of the Bar of this Court to ignore Local Rule 7.1(A)(2). In light of this, the Court should impose sanctions. See, e.g., Converse Inc. v. Reebok Intern. Ltd., 328 F. Supp. 2d 166, 171 (D. Mass. 2004) (imposing \$15,000 in sanctions for failure to comply with Local Rule 7.1 reasoning that "Rule 7.1 is no trifle, and [] the court expects compliance with both the letter and spirit of its requirements").<sup>6</sup> Indeed, sanctions are particularly justified here, where Steele's motion on its face clearly has no merit.

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<sup>6</sup> MLB Properties notes that Steele has raised a number of gratuitous attacks on one or more defendants which are not at all relevant, and accordingly no response is necessary.

**CONCLUSION**

For the foregoing reasons, the Court should deny Steele's motion for entry of default against MLB Advanced Media.

Dated: June 30, 2010  
Boston, Massachusetts

Respectfully submitted,

/s/ Matthew J. Matule  
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**CERTIFICATE OF SERVICE**

I, Christopher G. Clark, 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 30, 2010.

Dated: June 30, 2010

/s/ Christopher G. Clark  
Christopher G. Clark