

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

----- x
SAMUEL BARTLEY STEELE, :
:
Plaintiff, : Civil Action
v. : No. 10-11458-NMG
:
ANTHONY RICIGLIANO, BOB BOWMAN, BOSTON :
RED SOX BASEBALL CLUB LIMITED :
PARTNERSHIP, BRETT LANGEFELS, CRAIG BARRY, :
DONATO MUSIC SERVICES, INC., FENWAY SPORTS :
GROUP a/k/a FSG f/k/a New England Sports Enterprises :
LLC, JACK ROVNER, JAY ROURKE, JOHN :
BONGIOVI, individually and d/b/a Bon Jovi Publishing, :
JOHN W. HENRY, LAWRENCE LUCCHINO, MAJOR :
LEAGUE BASEBALL ADVANCED MEDIA, L.P., :
MAJOR LEAGUE BASEBALL PROPERTIES, INC., :
a/k/a and/or d/b/a Major League Baseball Productions, :
MARK SHIMMEL individually and d/b/a Mark Shimmel :
Music, MIKE DEE, NEW ENGLAND SPORTS :
ENTERPRISES LLC f/d/b/a Fenway Sports Group f/a/k/a :
FSG, RICHARD SAMBORA individually and d/b/a :
Aggressive Music, SAM KENNEDY, THOMAS C. :
WERNER, TIME WARNER INC., TURNER :
BROADCASTING SYSTEM, INC., TURNER SPORTS, :
INC., TURNER STUDIOS, INC., VECTOR :
MANAGEMENT LLC f/k/a and/or a/k/a and/or successor :
in interest to Vector Management, WILLIAM FALCON :
individually and d/b/a Pretty Blue Songs, :
Defendants. :
----- x

DECLARATION OF ANTHONY RICIGLIANO

I, ANTHONY RICIGLIANO, pursuant to 28 U.S.C. § 1746, declare and state as follows:

1. I am President of Donato Music Services, Inc. ("Donato"). During my tenure in this position, I have prepared musical analyses and assisted in the preparation of court cases for numerous law firms, and I have testified on behalf of recording companies, music publishers, recording artists, composers, motion picture companies, and advertising agencies in a variety of musical copyright disputes.

2. My credentials are set forth at length in a report dated May 12, 2009 (the "Ricigliano Report"), which I understand was filed with this Court in the related lawsuit *Steele v. Turner Broadcasting*, No. 08-11727-NMG (D. Mass.) ("*Steele I*") as Exhibit 12 to the Declaration of Scott D. Brown in Support of Defendants' Motion for Summary Judgment Dismissing the Copyright Infringement Claim. (See Docket No. 94.)

Steele's Allegations Against Me Personally And My Company

3. On August 26, 2010, I was contacted by lawyers from Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden") and furnished with a copy of the Verified Complaint in this lawsuit, dated August 25, 2010 ("Complaint").

4. Based upon my review of this Complaint, it is my understanding that Plaintiff Samuel Bartley Steele ("Steele"), by his attorney Christopher A.D. Hunt, has made the following allegations regarding me personally and Donato:

- Complaint ¶ 187: "On information and belief, defendants involved in the production stage of the MLB Audiovisual include, but are not limited to, defendants Ricigliano . . . [and] Donato"
- Complaint ¶ 193: "Defendant Ricigliano, a well-known musical scientist by training, involved in the historical and scientific study of music, on information and belief, 'cleared,' as defined above, the MLB Audiovisual prior to its release, to help defendants conceal infringement of the Steele Team Song sound recording for commercial purposes."
- Complaint ¶ 194: "Ricigliano's process of 'clearing' the MLB Audiovisual, on information and belief, involved repeated reproduction, transmission, or other unauthorized use of the Steele Team Song sound recording as Ricigliano advised his clients -- the other production defendants -- how to edit the MLB Audiovisual to prevent detection of defendants' infringement of the Steele Team Song sound recording."
- Complaint ¶ 195: "On information and belief, defendant Donato similarly 'cleared,' as defined above, the MLB Audiovisual prior to its release, reproducing the Steele Team Song during the process."

- Complaint ¶ 207: "Ricigliano reproduced the Steele Team Song sound recording without Steele's authorization, directly infringing Steele's exclusive rights under 17 U.S.C. § 114."
- Complaint ¶ 212: "Defendant Donato reproduced the Steele Team Song sound recording without Steele's authorization, directly infringing Steele's exclusive rights under 17 U.S.C. § 114."
- Complaint ¶ 239: "Defendant Ricigliano had the right and ability to direct and control persons who directly reproduced the Steele Team Song sound recording without Steele's authorization and thereby vicariously infringed Steele's exclusive rights under 17 U.S.C. § 114."
- Complaint ¶ 243: "Defendant Donato had the right and ability to direct and control persons who directly reproduced the Steele Team Song sound recording without Steele's authorization and thereby vicariously infringed Steele's exclusive rights under 17 U.S.C. § 114."

5. I categorically deny each and every one of these allegations as baseless, frivolous, and patently untrue.

6. As this Court knows, I had a professional role in *Steele I*, having been retained as an expert for defendants, and I submitted the Ricigliano Report therein in support of defendants' position on substantial similarity.

7. My first contact with any aspect of this dispute was on or around October 28, 2008. At this time I was contacted by counsel for one of the members of the band Bon Jovi. At counsel's request, I conducted an analysis and prepared a report comparing two songs: Bon Jovi's "I Love This Town" and Steele's "Man I Really Love This Team." My conclusion was that there is no basis for finding these two songs substantially similar.

8. Prior to October 2008, I had never heard of, nor was I in any way familiar with, Steele or his song "Man I Really Love This Team."

9. Later, I was contacted by attorneys at Skadden who advised me that they were representing the majority of the defendants in *Steele I*. The Skadden attorneys asked me to

expand my original analysis and revise my report to take into account allegations Steele had made in his court filings. This resulted in the aforementioned Ricigliano Report.

10. To the best of my recollection, and based on a search of my records, neither I nor Donato have ever performed any work whatsoever for Turner Broadcasting System, Inc. or Major League Baseball Properties, Inc., or any of the affiliates of these two entities. I certainly did not have any involvement whatsoever with the development, production, and/or clearance of the "MLB Audiovisual" (the term used by Steele in his Verified Complaint), nor did Donato.

11. Neither did I or Donato unlawfully reproduce the Steele Team Song (as defined by Steele in his Complaint), nor did we have the right or ability to control any other person alleged to have done so. As I have stated, my only contact with Steele's song was in or after October 2008, when I examined it in furtherance of my work as a retained expert in *Steele I*.

12. To the best of my knowledge, I have never met any of the named individual Defendants in this lawsuit (although I am of course familiar with the work of the band Bon Jovi).

Steele's Inaccurate Media Quotations

13. In addition to the allegations above, Steele also quotes two media articles in which I was quoted. Steele's characterization of these articles and quotes are inaccurate, misleading, and taken out of context.

14. In paragraph 110 of the Complaint, Steele alleges:

According to the 'Temp Talk: Copyright Issues and Legal Liabilities' article, some musicologists, like defendant MLB's expert in the related case of Steele v. TBS, et al., No. 08-11727 (D. Mass[sic]), defendant Ricigliano, do 'commercial applications,' that is, 'clearing' an audiovisual commercial by opining on whether the 'final' soundtrack infringes the copyrighted musical composition- the temp track - to which the commercial's video was cut. See Exhibit 2.

This discussion of "clearing" is based on information attributed to *another source* in the cited article, *not me*; and this section of the article *does not refer to me at all*, but rather the source is speaking about his opinion of one type of work that *some* musicologists do *in general*. Steele's description of this article is highly misleading.

15. In paragraph 113 of the Complaint, Steele alleges:

According to the 'Temp Talk: Copyright Issues and Legal Liabilities' article, Ricigliano advises his temp track-using clients on how to defend against copyright claims, for example advising his clients to use more than one temp track where possible: 'There is a big difference between one and five temp tracks . . . [More than one piece] of music makes the final track more defensible,' and recommended that circulation of temp tracks be limited. See Exhibit 2 (brackets original)."

This section of the cited article makes absolutely no reference to me "advis[ing] . . . temp-track using clients" about anything, let alone how to defend against copyright claims. Steele's description of the article's contents is a gross mischaracterization.

16. In paragraph 111 of the Complaint, Steele alleges:

In a January 1, 2003 online article in "[sic] boards' magazine called 'Music Houses Look to Agencies for Refrain,' defendant Ricigliano is quoted as saying '[temp track copyright infringement] is a much bigger problem than most people know.' See <http://www.boardsmag.com/articles/magazine/20030101/temp.html>, attached as Exhibit 6."

While this article does discuss temp-tracks in the context of advertising, my original quote references "[copyright infringement]" not "[temp track copyright infringement]," as the exhibit clearly evidences.

Conclusion

17. Although I have testified in excess of 20 times, and have provided expert reports for court cases for over 30 years, I have never once previously been personally sued in connection with any of my reports, testimony, or professional work.

18. I take being sued here personally as a very serious matter. I am particularly offended at being falsely accused in a "verified" Complaint at having allegedly helped "conceal" copyright infringement. (Complaint ¶ 193.) Regardless of the outcome, whenever anyone Googles me or Donato in the future, reference to these baseless allegations will no doubt appear.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Scarsdale, New York on August 30, 2010.


Anthony Ricigliano

CERTIFICATE OF SERVICE

I 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 September 1, 2010


