

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SAMUEL BARTLEY STEELE)	Civil Action
Plaintiff)	No. 10-11458
)	
v.)	
)	
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)	

PLAINTIFF’S OPPOSITION TO DEFENDANTS ANTHONY RICIGLIANO, DONATO MUSIC SERVICES, INC., BRETT LANGEFELS AND CRAIG BARRY’S MOTION TO DISMISS THE VERIFIED COMPLAINT OR, ALTERNATIVELY, REQUEST FOR LEAVE TO CONDUCT JURISDICTIONAL DISCOVERY

Plaintiff Samuel Bartley Steele (“Steele”) hereby respectfully opposes Defendants Anthony Ricigliano, Donato Music Services, Inc., Brett Langefels and Craig Barry’s (the “Rule 12(b)(2) Defendants”) Motion to Dismiss the Verified Complaint (“Defendants’ Rule 12(b)(2) Motion”).

Steele's instant Opposition to Defendants' Motion ("Steele's Opposition") addresses Defendants' Rule 12(b)(2) Motion.¹

I. **This Court has Jurisdiction Over The Rule 12(b)(2) Defendants Because Each was Properly Served With Process Through Their Designated Agent in Massachusetts**

Defendants' Rule 12(b)(2) Motion is based, in its entirety, on the assumption that the Rule 12(b)(2) Defendants were not properly served with process in this jurisdiction and that, therefore, the Court must proceed directly to the "minimum contacts" test pursuant to International Shoe and its progeny. See Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). While Steele's allegations meet the "minimum contacts" test, it is unnecessary because each of the Rule 12(b)(2) Defendants was properly served with process in Massachusetts, through "an agent authorized by appointment or by law to receive service of process" pursuant to Fed.R.Civ.P. 4(e)(2)(C).

The Supreme Court's 1990 decision in Burnham v. Superior Court of California, reaffirmed longstanding Constitutional Due Process and common law principles in holding that in-state service is a basis for personal jurisdiction. See Burnham v. Superior Court of California, 495 U.S. 604, 615 (1990) ("We do not know of a single state or federal statute, or a single judicial decision resting upon state law, that has abandoned in-state service as a basis of jurisdiction. Many recent cases reaffirm it.").

¹ Insofar as the Rule 12(b)(2) Defendants join in and adopt co-defendants Turner Broadcasting System, Inc. and Boston Red Sox Baseball Club Limited Partnership's September 1, 2010 Motion to Dismiss and for Other Relief (Docket No. 7) pursuant to Rule 12(b)(6) ("Defendants' 12(b)(6) Motion"), Steele similarly opposes the Rule 12(b)(2) Defendants' motion under Rule 12(b)(6) by adopting his September 20, 2010 Opposition to Defendants' 12(b)(6) Motion (Docket No. 16).

Justice Scalia's opinion (joined in whole or part by Justices Rehnquist, Kennedy, and White), delivered with the Court's unanimous judgment, outlined the Court's early due process requirements of in-state service (or voluntary appearance) for personal jurisdiction, see Pennoyer v. Neff, 95 U.S. 714, 732 (1878), and the changes brought about by International Shoe in 1945, and its progeny, which suggested that a defendant's "litigation-related 'minimum contacts' may take the place of physical presence as the basis for jurisdiction[.]" See Burnham, 495 U.S. 604 at 618.²

Justice Scalia summarized the "minimum contacts" alternative basis for jurisdiction as follows:

The short of the matter is that jurisdiction based on physical presence alone constitutes due process because it is one of the continuing traditions of our legal system that define the due process standard of "traditional notions of fair play and substantial justice." That standard was developed by *analogy* to "physical presence," and it would be perverse to say it could now be turned against that touchstone of jurisdiction.

See Burnham, 495 U.S. 604 at 619 (emphasis original).

Rule 4(e)(2) "specifically authorizes personal service of the summons and complaint upon individual physically present within a judicial district of the United States, and such personal service comports with the requirements of due process for the assertion of personal jurisdiction." See Kadic v. Karadzic, 70 F.3d 232, 246-247 (2d Cir. 1996) ("alternate means of service" by State Department

² All nine justices agreed with the basic and longstanding principle that the Due Process Requirements of the Fourteenth Amendment allow jurisdiction over a non-resident properly served with process in the forum state. See Burnham, 495 U.S. 604.

security detail, on defendant who earlier evaded service, comported with due process, citing generally, Burnham, above, 495 U.S. 604).

In the First Circuit, a non-resident defendant who authorizes a resident agent to accept service of process is subject to the state's jurisdiction. See Holloway v. Wright & Morrissey, Inc., 739 F.2d 695, 697 (1st Cir. 1984) (non-resident corporation authorized its agent to receive service of process in forum state, and thereby consented to state's jurisdiction in actions within the scope of the agent's authority). See also Blair v. Worcester, 522 F.3d 105, 110 (1st Cir. 2008) ("Rule 4(e)(2) of the Federal Rules permit the plaintiff to effect service by delivering a copy of [the summons and complaint] to an agent authorized by appointment or by law to receive service of process. Fed.R.Civ.P. 4(e)(2)(C)") (internal quotations omitted).

The Blair Court further noted:

This action was brought in the federal district court located in Massachusetts, and service was attempted in Massachusetts; therefore, the plaintiffs were also permitted to serve the defendants in accordance with Massachusetts state law. Fed.R.Civ.P. 4(e)(2)(C). Massachusetts likewise allows a plaintiff to effect service "upon individual by... delivering a copy of the summons and of the complaint to an agent authorized by appointment or by statute to receive service of process. Mass.R.Civ.P.4(d)(1).

See Id.

Here, each of the Rule 12(b)(2) Defendants (and several others) authorized their counsel, Skadden Arps Slate Meagher and Flom LLP, One Beacon St., Boston, MA 02108 ("Skadden"), as their Massachusetts agent specifically "to accept service of process of Steele III" on their behalf. See October 21, 2010 letter to Christopher A.D. Hunt, attached as Exhibit 1 ("Skadden Letter"). The Skadden Letter, in fact, not only authorized Skadden to accept service of process on behalf of Rule 12(b)(2) Defendants, but further asked Steele to "instruct the Marshals to seize further efforts to

serve” the Rule 12(b)(2) Defendants and “to forward to[Skadden’s] attention the summonses for each of [the Rule 12(b)(2) Defendants].” See Exhibit 1.

Following Skadden's instructions, the undersigned requested the return of all unserved summonses from the US Marshals Service. See October 22, 2010 letter to U.S. Marshals Service and October 22, 2010 letter to Skadden, both attached as Exhibit 2.³

On November 5, 2010 the undersigned served two of the Rule 12(b)(2) Defendants (among others), Craig Barry and Brett Langfels, by delivering copies of the summonses and complaint to their resident authorized agent for service of process, Skadden. See November 5, 2010 letter to Christopher G. Clark, attached as Exhibit 3. On November 15, 2010 the undersigned similarly served Skadden on behalf of the remaining Rule 12(b)(2) Defendants, Anthony Ricigliano and Donato Music Services. See Exhibit 4.

The Rule 12(b)(2) Defendants may not now ignore or contradict their own personal, individual, and explicit authority for in-state service of process and, accordingly, their submission to this Court's jurisdiction, for the purposes of the instant motion. Asserting such diametrically opposed positions for the expediency of litigation amounts to tactical gamesmanship and should not be tolerated.

³ Skadden's stated reason was to lessen the burden on the Marshal's Office. See Exhibit 1. However, their request, made only after the Marshal's had initiated service - it was, in fact, prompted by Skadden being notified of service on one or more of their clients - resulted in confusion and delay as the Boston Marshal's Office sought to contact various Marshal's Offices in several states and request that they cease their service efforts and return the summonses to Boston.

Accordingly, the Rule 12(b)(2) Defendants were properly served with process, through their authorized agent, in the Commonwealth of Massachusetts and are subject to the jurisdiction of this Court. See Burnham, 495 U.S. 604 at 619; Holloway, 739 F.2d at 697; Kadic, 70 F.3d at 246-247; Blair 522 F.3d at 110; Fed.R.Civ.P. 4(e)(2)(C); Exhibits 1-4.

II. Defendants Ricigliano and Donato Affirmatively Waived Any Personal Jurisdiction Defense

Even if the Rule 12(b)(2) Defendants had not authorized Skadden as their in-state agent for service of process (which they did) and been served through their resident agent for service of process (which they were), Defendants Ricigliano and Donato nonetheless have submitted voluntarily to this Court's jurisdiction.

This Court has discretion to determine a defendants' waiver of jurisdiction. See Lechoslaw v. Bank of America, N.A., 618 F. 3d 49, 55 (1st Cir. 2010). A defendant raising a Rule 12(b)(2) jurisdictional challenge must do so in his "first defensive move." See Glater v. Eli Lilly & Co., 712 F.2d 735, 738 (1st Cir. 1983); See also Pila v. G.R. Leasing & Rental Corp., 551 F.2d 941, 943 (1st Cir. 1977) (failure to initially raise Rule 12 defense is a "fundamental and incurable matter").

Any Rule 12 defense that may be waived pursuant to Rule 12(h)(1), including personal jurisdiction, may be waived expressly or implicitly through a party's conduct. See Manchester Knitted Fashions, Inc. v. Amalgamated Cotton, 967 F.2d 688, 691-693 (1st Cir. 1992) (noting that "[t]he Supreme Court has held that both venue and personal jurisdiction are personal privileges which may be waived," and discussing cases involving implied waiver through a party's participation in the litigation) (citations omitted); see also Marcial Ucin, S.A. v. SS Galicia, 723 F.2d 994, 997 (1st Cir. 1983) (absent a motion or responsive pleading, a party's conduct can nonetheless constitute

waiver of jurisdictional defense); Cactus Pipe & Supply v. M/V Montmartre, 756 F.2d 1103, 1108 (5th Cir.1985) (“[a]n appearance may also arise by implication from a defendant's seeking, taking or agreeing to some step or proceeding in the cause beneficial to himself”). See also Jones v. Sheehan, Young, & Culp, P.C., 82 F.3d 1334, 1340-41 (5th Cir. 1996) (“[i]n determining whether conduct is sufficient to be considered a general appearance, the focus is on affirmative action that impliedly recognizes the court's jurisdiction over the parties.”).

As to Rule 12 defenses generally, Rule 12(h)(1) “imposes a higher sanction with respect to the failure to raise the specific defense[] of lack of personal jurisdiction.” See Myers v. American Dental Ass'n, 695 F.2d 716, 720 (3rd Cir. 1983) (Rule 12(h) “reflects a strong policy against tardily raising defenses that go not to the merits of the case but to the legal adequacy of...[plaintiff's] choice of forum for the action”).

On August 25, 2010 Steele filed the instant Complaint (Docket No. 1). The next day, August 26, 2010, Skadden sent Defendant Ricigliano a copy of Steele's Complaint; four days later, on August 30, 2010, Ricigliano signed the “Declaration of Anthony Ricigliano” (“Ricigliano Declaration”) pursuant to 28 U.S.C. § 1746 (Docket No. 9). See Ricigliano Declaration, attached as Exhibit 5. Two days after that, on September 1, 2010, Ricigliano's counsel, Skadden, filed the Ricigliano Declaration – Skadden attorney Christopher G. Clark signed its certificate of service - simultaneously with, and in support of, Defendants’ 12(b)(6) Motion (Docket No. 7) and Memorandum in Support thereof (Docket No. 8).

Defendant Ricigliano’s Declaration is self-evidently an attempted rebuttal of Steele’s specific and substantive allegations as to Ricigliano and Ricigliano’s company, Donato Music Service, Inc.

(“Donato”), in which he quotes no less than eight paragraphs from Steele’s complaint. See Exhibit 5, at 2-3. Ricigliano’s Declaration asserts no jurisdictional facts or defenses. See Id.

Defendant Ricigliano’s preparation, signing, and filing (through counsel) of his Declaration - in support of Defendants’ 12(b)(6) Motion - was an affirmative request of this to Court consider the Declaration in determining Defendants’ 12(b)(6). See Id; see also Memorandum in Support of Defendants’ 12(b)(6) Motion at 13-14; Defendants’ September 24, 2010 [Proposed] Reply at 5 (Doc. 17-1) (“[Steele’s] Opposition nowhere even addresses Mr. Ricigliano’s adamant denials”).

The filing of Ricigliano’s Declaration in support of a 12(b)(6) motion was Defendants Ricigliano and Donato’s “first defensive move,” and because neither the Declaration nor Rule 12(b)(6) Motion filed therewith asserted a personal jurisdiction defense, that defense was waived.⁴ See Glater, above, 712 F.2d at 738.

Defendants Ricigliano and Donato's early and active participation in the litigation, including requesting affirmative relief, without timely asserting a personal jurisdiction defense, constituted an waiver of such a defense, whether express or implied. See Manchester Knitted Fashions, above, 967 F.2d at 692-693 (12(b) defense may "be waived by submission [in a cause] through conduct"), citing Neirbo Co. v. Bethlehem Corp., 308 U.S. 165, 168 (1939) (personal jurisdiction, "(b)eing a privilege, [] may be lost. It may be lost by failure to assert it seasonably, by formal submission in a cause, or by submission through conduct"); See also Farm Credit Bank of Baltimore v. Ferrera-

⁴Nominally filed on behalf of the two so-called “Moving Defendants,” Defendants’ 12(b)(6) Motion (and accompanying Ricigliano Declaration) nonetheless seeks dismissal of Steele’s complaint in its entirety, including as to Ricigliano and Donato.

Goitia, 316 F.3d 62, 68 (1st Cir. 2003) (implied waiver can form a valid basis for personal jurisdiction).

In sum, Defendant Ricigliano and Donato's tactical decision to immediately file their Declaration upon notice of Steele's lawsuit - in support of their co-defendants' efforts to dismiss the case entirely - waived any later jurisdictional challenge. Ricigliano and Donato sought swift affirmative relief by preparing, signing, and filing the Declaration - through their counsel and Massachusetts agent for service of process, and in support of Defendants' Rule 12(b)(6) Motion - one week after Steele filed his Complaint. Ricigliano and Donato, however, failed - fatally - to include a jurisdictional challenge. Ricigliano and Donato appeared, participated, and defended themselves in this litigation over two months before attempting to assert the instant personal jurisdiction defense. Such conduct constitutes a clear waiver. See, e.g., Manchester Knitted Fashions, 967 F.2d at 692.

III. Steele Alleges Sufficient Facts to Warrant Jurisdiction over the Rule 12(b)(2) Defendants

Even if this Court finds there was not proper service of each of the Rule 12(b)(2) Defendants in Massachusetts, and that Defendants Ricigliano and Donato did not waive their personal jurisdiction defense, Steele alleges abundant facts to warrant personal jurisdiction.

Steele is entitled to "adduce evidence of specific facts" warranting jurisdiction, "including evidence outside the complaint." See Berklee v. MIE, Inc., 2010 WL 3070150 at *2, (D.Mass 2010) (Tauro, J.) (specific jurisdiction over non-resident corporation and individual defendants warranted despite only contacts with Massachusetts being defendants' taking alleged infringing information from a website located in Massachusetts, defendants' later transmission of the infringing

material back into Massachusetts, and likelihood of these actions to cause tortious injury in Massachusetts).

In Berklee, Justice Tauro described the First Circuit's "tripartite test for the ascertainment of specific jurisdiction:" (1) that the underlying claim arises out of, or is related to, defendants' forum-state activities; (2) that defendants' contacts show a purposeful availment of the privilege of conducting activities in the state, making foreseeable defendants' involuntary presence before the state's courts, and (3) that the exercise of jurisdiction is reasonable in light of certain *Gestalt* factors. See Id.⁵

In analyzing plaintiff's evidence pursuant under the tripartite test, the Court "will accept those specific facts affirmatively alleged by the plaintiffs as true (whether or not disputed) and construe them in light most congenial to the plaintiff's jurisdictional claim." See Id. (internal quotations and citation omitted). "The Court will also add to the mix facts put forward by the defendants, to the extent they are uncontradicted." See Id. (internal quotations and citation omitted) (emphasis supplied).

The MLB Audiovisual: Copied and Derived From, Focused on, Transmitted to, Economically Impacting, and Causing Injury in Massachusetts

In 2007, Defendants Boston Red Sox, MLBAM, FSG, TBS, and others staged - and financially benefitted from - a substantial promotion involving Massachusetts, including the MLB

⁵ Specifically: (1) the defendant's burden in appearing in court; (2) the forum state's interest in hearing the suit; (3) the plaintiff's convenience and interest in effective relief; (4) the judicial system's interest in effective resolution; and (5) the shared interests among states in promoting substantive social policies. See Id. at *3.

Audiovisual, to market the TBS broadcast of the 2007 MLB American League Division Series, which featured the Boston Red Sox and Los Angeles Angels of Anaheim.

Defendants' entire endeavor – including the MLB Audiovisual - arose from the work of a Massachusetts resident; said work was created and promoted in, and distributed from, Massachusetts. Defendants' MLB Audiovisual, derived from Steele's Massachusetts work, was directed primarily at Massachusetts baseball consumers. Specifically, the MLB Audiovisual features a prominent plurality of Boston Red Sox baseball images – including Fenway Park, Yawkey Way, Red Sox players, and fans - which are central to the work's narration and theme.⁶

The widespread and repeated broadcast and distribution of the Boston-centric MLB Audiovisual during the promotion of the 2007 MLB post-season series between the Red Sox and Angels unquestionably impacted the citizens and economy of Massachusetts. See Bond Leather Co., Inc. v. Q.T. Shoe Mfg. Co., Inc., 764 F.2d 928, 933 (1st Cir. 1985) (to justify jurisdiction, defendant must “fairly be said to have participated in the economic life of Massachusetts” (quotation omitted)).

For example, Boston Red Sox baseball commands a significant television market share in Massachusetts. In 2009, for instance, the Red Sox ranked seventh in the league with 2,409,080

⁶ See Chronology Study & Review, submitted in support of Steele's Opposition to Summary Judgment of July 17, 2009 (No. 08-11727-NMG) (D. Mass) (Docket No. 101-5).

viewing households.⁷ Nearly three million fans attended Red Sox games at Fenway Park in 2007, the year the MLB Audiovisual was broadcast.⁸

Attendance at Fenway Park for Games one and two of the 2007 AL Division series was 37,597 and 37,706, respectively, both sold-out nights. Television viewership for the above series was approximately as follows: Game 1, 5.5 million; Game 2, 6.4 million; Game 3, 4.2 million.⁹

Defendants' creation, marketing, and transmission of the MLB Audiovisual - a work derived from a Massachusetts author and targeted to Massachusetts residents - were an avilment of, had an impact on the economic life of, and injured a citizen of Massachusetts. See Berklee, 2010 WL 3070150 at *3 (“alleged infringing information was taken from...Massachusetts, the infringing material was later transmitted back into Massachusetts, and these actions were almost certain to cause tortious injury in Massachusetts”).

As to the Rule 12(b)(2) Defendants, each is involved in the business of digital multimedia advertising campaigns that are national - and sometimes, as with the MLB Audiovisual, international - in scope. The 12(b)(2) Defendants have years of experience in, and deep knowledge of, the broad scope and far-reach of such campaigns, including the 2007 "MLB on TBS" campaigns, which

⁷ Barlow, Nate. "Moneyball," July 21, 2009. Deep Into Sports, <http://www.deepintosports.com/2009/07/21/mlb-baseball-television-market-shars-tv-households-nielsen-dma-payroll/#more-1611>

⁸ "Boston Red Sox Attendance Data," 2010. Baseball-Almanac.com, <http://www.baseball-almanac.com/teams/rsoxatte.shtml>.

⁹ TBS television ratings for 2007 MLB American League Division Series. http://en.wikipedia.org/wiki/Ratings_for_Major_League_Baseball_on_TBS_broadcasts#Division_Series_2

featured the MLB Audiovisual. This particular marketing campaign in 2007 - anchored by the MLB Audiovisual - was rooted in and prominently featured, and targeted, Massachusetts.

Accordingly, each rule 12(b)(2) Defendant would reasonably have known that unlawful reproduction of a Boston-derived sound recording in the preproduction or production of a Boston-centric digital multimedia advertising campaign, marketed and distributed in Massachusetts, and injuring a Massachusetts resident, would subject them to personal jurisdiction in Massachusetts. In sum, there is no question that each and every infringer involved in the MLB Audiovisual could reasonably be expected to be haled into Massachusetts to defend against a copyright infringement lawsuit arising from their infringement. See World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980) ("defendant's conduct and connection with the forum state [must be] such that he should reasonably anticipate being haled into court there").

As to the individual Rule 12(b)(2) Defendants, Steele specifically alleges the following affirmative facts:

Defendants Ricigliano and Donato:

Defendants Ricigliano and Donato do "commercial applications," including the "clearing" of audiovisual commercials, for advertising and corporate clients that utilize "temp tracks" - songs used without the copyright owners' permission as "guides" in creating and editing soundtracks to audiovisual commercials. See Steele Complaint, ¶¶ 110, 113 (and exhibits thereto). Defendant Ricigliano's work in this regard includes advising clients on how to use temp tracks while minimizing exposure to copyright infringement claims. See Id. ¶ 113 (and exhibit thereto)

(specifically advising clients to use more than one temp track where possible in order to make "the final track more defensible" against copyright infringement claims).

Such use of a temp track violates the copyright owner's exclusive rights to reproduce their work and is well known among musicologists as violating the temp track owner's copyrights. See Id., ¶¶ 114-116.

Defendants Ricigliano and Donato "cleared" the MLB Audiovisual which process involved "repeated reproduction, transmission, or other unauthorized use of the Steele Team Song sound recording as Ricigliano advised his clients... how to edit the MLB Audiovisual to prevent detection of defendants' infringement of the Steele Team Song sound recording." See Id., ¶ 187, 193, 194, 195, 207, 212. Defendant Ricigliano further had the right and ability to direct and control persons who directly reproduced the Steele Team Song sound recording without Steele's authorization, vicariously infringing Steele's exclusive rights under 17 U.S.C. §114. See Id., ¶ 239.

In sum, Steele's Complaint alleges that Defendants Ricigliano and Donato worked with other defendants in "clearing" the infringing work, which work necessarily included infringing reproduction of the Steele Song Sound Recording.¹⁰ Here, similar to the Berklee "relatedness" analysis, Steele's Sound Recording originated in and was reproduced from Massachusetts-based CDs, websites, and e-mail addresses; Ricigliano and Donato reproduced the Steele Team Song sound recording, which was then transformed into the resulting Boston-centric MLB Audiovisual and

¹⁰ Defendants' Rule 12(b)(2) Motion fails to address these allegations and, in any event, the Court will only "add to the mix facts put forward by the defendants to the extent they are uncontradicted." See Berklee, above, 2010 WL 3070150 at *2.

transmitted worldwide, including Massachusetts, where it caused tortious injury to Steele in Massachusetts. See Berklee, above, 2010 WL 3070150 at *3 ("it is well-established that the relatedness prong is satisfied when, as is asserted here, the alleged wrong arises out of the publication of a website continuously available to Massachusetts residents and causing tortious injury in Massachusetts") (internal quotation and citations omitted).¹¹

That Ricigliano and Donato's harmful activities occurred outside Massachusetts does not inoculate them against jurisdiction. See Berklee, above, 2010 WL 3070150. See also New England College v. Drew University, 2009 WL 395753 at *2 (D.N.H. 2009) (under the "effects" theory of jurisdiction, "a court may properly assert jurisdiction where a defendant has committed an act outside of the forum state that was intended to and does in fact cause injury within the forum"); quoting Calder v. Jones, 465 U.S. 783, 788, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984); and Northern Laminate Sales, Inc. v. Davis, 403 F.3d 14, 25 (1st Cir. 2005) ("a defendant need not be physically present in the forum state to cause injury (and thus 'activity' for jurisdictional purposes) in the forum state").

Ricigliano and Donato's clearance of the MLB Audiovisual and concomitant reproduction of the Steele Team Song sound recording was also an avilment of the privilege of doing business in Massachusetts: "The threshold of purposeful avilment is lower when the case involves torts that

¹¹ To the extent Ricigliano's Declaration attempts to set forth evidence in in his defense, nothing in his Declaration addresses any jurisdictional facts. See Exhibit 5. Indeed, Ricigliano's Declaration is an attempted defense on the merits only, underscoring his waiver of a personal jurisdiction defense.

create causes of action in a forum state (even torts caused by acts done elsewhere) because the defendant's purpose may be said to be the targeting of the forum state and its residents.” See Berklee, 2010 WL 3070150 at *3. (quotations omitted). Ricigliano and Donato's actions, knowingly undertaken as part of a secretive process exploiting and infringing Steele's sound recording as a temp track in creating the Boston-centric MLB Audiovisual “targeted [Steele] by [copying] content... from [him] without permission.” See Id. Defendants later “transmitted [the “cleared” MLB Audiovisual] via [their] websites back into Massachusetts. These allegations indicate that Defendants could foresee being haled into court in Massachusetts in an action like this one.” See Id.

Further availing himself of the privileges of Massachusetts commerce, Ricigliano maintains routine contact with the Commonwealth through commercial distribution and broadcasts, since as forensic musicologist he “routinely analyzes hundreds of commercials per year in his professional capacity.” See Defendants' Motion for Summary Judgment, Steele v. TBS (08-11727) (D.Mass), at 15 (Docket No. 93). In addition, Ricigliano and Donato's clientele, whom he advises on musicological matters, include Boston law firms, including, of course Skadden. See Brown Decl., Ex. 12 to Defendants' Motion for Summary Judgment, Steele v. TBS (08-11727) (D.Mass) (Doc. 94-13). Given Ricigliano and Donato's multitude of connections to Massachusetts, “this court need not give much consideration to [Ricigliano and Donato's] burden of appearing in court in Massachusetts since [Ricigliano and Donato], through [their] alleged tortious conduct, knowingly assumed the risk of being required to do so.” See Berklee, 2010 WL 3070150 at *3.

As to the *Gestalt* factors and reasonableness, as quoted by Justice Tauro: "Truly, it would be wholly unfair to allow Defendants to cause such harm in the Commonwealth of Massachusetts, while allowing them to avoid litigation in this Commonwealth, arising from this very same harm." See Id. at 4 (internal quotation and citation omitted).

Defendants Langefels and Barry:

Mr. Langefels is a Senior Editor at Defendant Turner Studios and the "editorial arm to the VP of Creative for Turner Sports," that is, Defendant Craig Barry. See Langefels Profile, attached as Exhibit 6. See Complaint at ¶¶ 13, 14. Defendant Langefels personally edited the infringing MLB Audiovisual while working with and at the direction of the "Creative Director" for Defendant Turner Sports in charge of producing the infringing MLB Audiovisual, i.e., Defendant Barry. See Exhibit 6. See also Complaint ¶¶ 139-149, 176, 177, 182, 183-185, 187-188, 202, 210, 212. See also Michael Paoletta, "Making the Brand: Designated Hit," September 15, 2007, Billboard.com.¹²

Barry and Langefels' direct and intimate involvement in the development and creation of the Boston-centric MLB Audiovisual using Steele's Boston-derived sound recording as a temp track are sufficient grounds to subject them to this Court's jurisdiction. See *Marks v. Polaroid Corp.*, 237 F.2d 428, 435 (1st Cir.1956) (employee may be subject to personal jurisdiction based on the infringing acts of their employer if he is a "moving, active, conscious force behind the

¹²http://books.google.com/books?id=2w4EAAAAMBAJ&pg=PA22&lpg=PA22&dq=%22craig+barry%22+%22i+love+this+town%22&source=bl&ots=3JmRjsi1iC&sig=5uBlgZBn1p8-9l-25lZ8uIphEk8&hl=en&ei=sHzlTN-rGYL6lwe-9ODBCw&sa=X&oi=book_result&ct=result&resnum=3&ved=0CBkQ6AEwAg#v=onepage&q=%22craig%20barry%22%20%22i%20love%20this%20town%22&f=false).

infringement”). In short, it is difficult to think of two individual Defendants - director and editor - more directly involved in the production of the infringing MLB Audiovisual than Barry and Langefels as "moving, active, conscious force[s] behind the infringement" and, therefore, most likely to have reproduced the Steele Team sound recording as alleged in Steele’s Complaint. See Berklee, 2010 WL 3070150 at *4. Accordingly, and under the principles of Berklee, above, 2010 WL 3070150, Defendants Barry and Langefels are the weakest candidates for a personal jurisdiction defense and, frankly, Skadden’s choice to so move on their behalf is bizarre.¹³

IV. Alternatively, Steele Alleges Facts Warranting Limited Jurisdictional Discovery

In the First Circuit, "A district court generally retains broad discretion in determining whether to grant jurisdictional discovery." See Blair, above, 522 F.3d at 110 (internal quotations and citation omitted). As a general matter, "the threshold showing that a plaintiff must present to the district court to merit limited discovery is relatively low." See Id. at 111 ("a party should be allowed to conduct jurisdictional discovery when its position is not frivolous") (citation omitted). First Circuit jurisprudence "favors permitting the litigants the opportunity to flesh out the record" as to jurisdiction where plaintiff can "demonstrate the existence of a plausible factual disagreement or ambiguity." See Id. (citation omitted).

¹³ One is left only to speculate that Skadden hopes this Court will, as the saying goes, “split the baby,” by allowing the motion as to Ricigliano and Donato (the “real” movants) and denying it as to Barry and Langefels (the “throw away” movants). Steele has faith in this Court’s ability to assess each Rule 12(b)(2) Defendant purported grounds on their individual merits (if any).

Here, the Court is faced with four defendants asserting personal jurisdiction defenses, despite each having specifically authorized a Massachusetts agent - their counsel, no less, responsible for the instant motion - to accept service of process on their behalf and such service having been properly effected without challenge thereto (and any such challenge is now waived). As to defendants Ricigliano and Donato, in addition to having been served through their duly authorized Massachusetts agent for service of process, they further submitted to this Court's jurisdiction when they filed their September 1, 2010 Ricigliano Declaration. Beyond their proper service of process and waiver of jurisdictional defenses, Defendants Ricigliano and Donato assisted their co-defendants in "clearing" the MLB Audiovisual, or any of several derivatives and/or draft versions thereof, which process necessarily involved reproducing the Steele Team Song sound recording, subjecting them to this Court's jurisdiction as outlined above.

Finally, as to defendants Langefels and Barry, not only were they served through their duly authorized Massachusetts agent for service of process, but their "hands on" involvement in the production of the MLB Audiovisual provides some of the strongest connections to Massachusetts of all the Defendants. The MLB Audiovisual was copied and derived from the work of a Massachusetts resident, focused heavily on the Boston Red Sox (including video footage of not only the Red Sox, but also of Boston street scenes, obviously filmed in Massachusetts), and unquestionably caused tortious harm to a Massachusetts resident while also otherwise impacting the economic life of Massachusetts. See Berklee, above, 2010 WL 3070150.

Accordingly, this Court unquestionably has jurisdiction over each and every Rule 12(b)(2) Defendant. Nonetheless, if there is any question whatsoever as to this Court's jurisdiction, Steele

has easily met the "relatively low" threshold required for jurisdictional discovery. See Blair, above, 522 F.3d at 110. In the event, Steele respectfully requests leave to conduct limited jurisdictional discovery as to any Defendant over whom this Court may question its jurisdiction.

WHEREFORE, plaintiff Samuel Bartley Steele requests that the Rule 12(b)(2) Defendants Motion be denied or, in the alternative, that Steele be allowed jurisdictional discovery as and to the extent this Honorable Court deems appropriate..

Dated: November 19, 2010

Respectfully submitted,
Plaintiff Samuel Bartley Steele,
by his counsel,

/s/Christopher A.D. Hunt
Christopher A.D. Hunt
MA BBO# 634808
THE HUNT LAW FIRM LLC
10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
cadhunt@earthlink.net

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 November 19, 2010.

Dated: November 19, 2010

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

EXHIBIT 1

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

ONE BEACON STREET
BOSTON, MASSACHUSETTS 02108-3194

TEL: (617) 573-4800

FAX: (617) 573-4822

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617-573-4868
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SHANGHAI
SINGAPORE
SYDNEY
TOKYO
TORONTO
VIENNA

October 21, 2010

BY ELECTRONIC MAIL AND FIRST CLASS MAIL

Christopher A.D. Hunt, Esq.
The Hunt Law Firm LLC
10 Heron Lane
Hopedale, Massachusetts 01747

RE: Steele v. Ricigliano, No. 10-cv-11458-NMG (D. Mass.)

Dear Mr. Hunt:

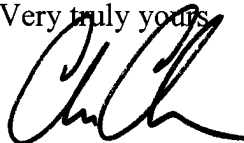
We understand from certain of our clients that the U.S. Marshals are beginning to serve the summons and complaint in Steele v. Ricigliano, No. 10-cv-11458-NMG (D. Mass.) ("Steele III"). To alleviate undue cost or inconvenience to the Marshals, I am writing to inform you that we are authorized to accept service of process of Steele III on behalf of:

1. Anthony Ricigliano;
2. Robert Bowman;
3. Mike Dee;
4. Brett Langefels;
5. Craig Barry;
6. Donato Music Services, Inc.;
7. John Bongiovi, individually and d/b/a/Bon Jovi Publishing;
8. Major League Baseball Advanced Media, L.P.;
9. Major League Baseball Properties, Inc.;
10. Mark Shimmel, individually and d/b/a Mark Shimmel Music;
11. Richard Sambora, individually and d/b/a Aggressive Music;
12. Time Warner, Inc.;
13. Turner Sports, Inc.;
14. Turner Studios, Inc.; and
15. William Falcon, individually and d/b/a Pretty Blue Songs.

Christopher A.D. Hunt, Esq.
October 21, 2010
Page 2

Accordingly, please instruct the Marshals to cease further efforts to serve these individuals or entities, and forward to my attention the summonses for each of the above-referenced individuals and entities.

Very truly yours,

A handwritten signature in black ink, appearing to read 'C.G. Clark', written over the text 'Very truly yours,'.

Christopher G. Clark

EXHIBIT 2

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

VIA FACSIMILE (617) 748-2599

October 22, 2010

ATTN: Nancy
U.S. Marshals Service
John Joseph Moakley Courthouse
1 Courthouse Way, Suite 1-500
Boston, MA 02210

Re: Steele v. Ricigliano, et al., No. 1:10-cv-11458-NMG

Dear Nancy:

As discussed, counsel for defendants has been authorized to accept service of process on behalf of 15 of the defendants in the above-referenced case. Those 15 defendants are listed in the attached letter from Christopher Clark, counsel for those defendants.

Please return to my office all unserved summonses as to only the 15 listed defendants so that I may forward them to counsel for defendants. All other defendants – those not listed on the attached letter - should be served in the usual course by the U.S. Marshals Service.

Thank you again for your ongoing assistance in this matter.

Very truly yours,



Christopher A.D. Hunt

cc: Christopher G. Clark (via e-mail)
Clifford Sloan, Esq. (via e-mail)
Scott D. Brown, Esq. (via e-mail)
Matthew J. Matule, Esq. (via e-mail)
Kenneth A. Plevan, Esq. (via e-mail)

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
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cadhunt@earthlink.net

VIA ELECTRONIC MAIL

October 22, 2010

Christopher G. Clark, Esq.
Skadden Arps Slate Meagher & Flom LLP
One Beacon Street
Boston, MA 02108-3194

Re: Steele v. Ricigliano, et al., No. 1:10-cv-11458-NMG (Steele III)

Dear Mr. Clark:

I have informed the U.S. Marshals Service that your firm is authorized to accept service of process on behalf of the defendants listed in your October 21, 2010 letter and requested that they return any unserved summonses directed to those defendants to my office.

Thank you for your attention to this matter.

Very truly yours,



Christopher A.D. Hunt

cc: Clifford Sloan, Esq. (via e-mail)
Scott D. Brown, Esq. (via e-mail)
Matthew J. Matule, Esq. (via e-mail)
Christopher G. Clark, Esq. (via e-mail)

EXHIBIT 3

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

VIA CERTIFIED MAIL

November 5, 2010

Christopher G. Clark, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
One Beacon Street
Boston, Massachusetts 02108-3194

Re: Service of Summonses and Complaints
Samuel Bartley Steele v. Anthony Ricigliano 1:10 cv-11458-NMG

Dear Chris,

As agreed, enclosed are the summonses and complaints (Steele III 1:10-cv-11458- NMG), returned from the United States Marshal office for service on Skadden as previously authorized, for the following defendants;

1. Craig Barry
2. Brett Langefels
3. Turner Studios, Inc.
4. Turner Sports, Inc.
5. Mike Dee
6. John Bongiovi individually and d/b/a Bon Jovi publishing
7. Richard Sambora individually and d/b/a Aggressive Music
8. Time Warner, Inc.
9. William Falcon individually and d/b/a Pretty Blue Songs

The remaining six (6) summonses are still with the United States Marshal's office and I am waiting to hear if they have been served or will be returned for service on Skadden:

1. Anthony Ricigliano
2. Bob Bowman
3. Donato Music Services, Inc.
4. Major League Baseball Advanced Media, L.P.
5. Major League Baseball Properties, Inc., a/k/a and/or d/b/a Major League Baseball Productions

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopdale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

6. Mark Shimmel individually and d/b/a Mark Shimmel

Thank you for your attention to this matter.

Very truly yours,



Christopher A.D. Hunt

EXHIBIT 4

THE HUNT LAW FIRM LLC

10 Heron Lane
Hopedale, MA 01747
(508) 966-7300
(508) 478-0595 (fax)
cadhunt@earthlink.net

VIA CERTIFIED MAIL

November 15, 2010

Christopher G. Clark, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
One Beacon Street
Boston, Massachusetts 02108-3194

Re: Service of Summonses and Complaints
Samuel Bartley Steele v. Anthony Ricigliano 1:10 cv-11458-NMG

Dear Chris,

Further to my November 5, 2010 letter, enclosed are copies of summonses and complaints (Steele III 1:10-cv-11458- NMG), returned from the United States Marshal office, for service on Skadden as previously authorized, for Anthony Ricigliano and Donato Music Inc.

Thank you for your attention to this matter.

Very truly yours,



Christopher A.D. Hunt

EXHIBIT 5

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



EXHIBIT 6

THE CREATIVE WORLD AT WORK™

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design jobs portfolios member gallery employer directory groups advice my account

Brett Langefels

→ PROFILE

Contact Brett

Share

follow

Last Login: 1 Feb 2010

Sr. Editor Turner Studios

I am the editorial arm to the Sr. VP of Creative for Turner Sports. I help create all the broadcast show opens and On-Air Image Campaigns.

Resume

Film

2009 NBA All-Star Trailer Regal Cinema Release Editor Turner Sports/Drew Watkins

"Climate Refugees" Movie Trailer Writer/Producer/Editor LA Think Tank/Michael Nash

Kevin Rudolf "Let it Rock" 2009 NBA All-Star Saturday Regal Cinema Release Editor/Music Editor Turner Sports/Craig Murray

Television

"Game of Kings" NBA on TNT Editor Turner Sports/Drew Watkins

2009 NBA All-Star Open Editor Turner Sports/Craig Barry

2008 NBA Playoffs Open with Terrence Howard Editor Turner Sports/Drew Watkins

2007 NBA Playoffs Open with Jeremy piven Editor Turner Sports/Craig Barry & Drew Watkins

Commercials

NBA on TNT Image Campaign with Charles Barkley Editor Turner Sports/Drew Watkins

2008 NBA Playoffs on TNT Image Campaign with Terrence Howard Editor Turner Sports/Drew Watkins

Video

BuckCherry "Highway Star" Music Video Editor Turner Sports/Craig Barry

Bon Jovi "I Love This Town" Music video Editor Turner Sports/Craig Barry

Mark Braussard "Must Be The Water" Music Video Editor Turner Sports/Craig Barry

Hinder "Born to be Wild" Music Video Editor Turner Sports/Craig Barry

Education

Oral Roberts University, Tulsa, OK, BS Communications/Film, 1991

Graduated 1991 Cum Laude.

Awards

TWENTY FOURTH ANNUAL SPORTS EMMY AWARDS, Winner-Outstanding Editing, 2002. It was an individual craft Emmy for editing the NBC Salt Lake City Winter Olympics closing piece "Remember the Titans."

TWENTY SEVENTH ANNUAL SPORTS EMMY AWARDS, Nominee-Outstanding Editing, 2005, NBA on TNT Teases and Opens for the 2005 season

TWENTY EIGHTH ANNUAL SPORTS EMMY AWARDS, Winner-Outstanding Editing, 2006. It was an individual craft Emmy for editing the NBA on TNT Teases and Opens for the 2006 season.

TWENTY NINTH ANNUAL SPORTS EMMY AWARDS, WINNER-Outstanding STUDIO SHOW - WEEKLY, 2007, ASSOCIATE PRODUCER

References

Drew Watkins, Current Writer/Producer/Director for most of my projects, 678-637-3609

Peter Siaggis, Past Director of many of my commercials, 404-835-0541

Cindy Anderson, Past Commercial Producer, 404-803-2306

Michael Nash, Writer/Producer/Director for feature film "Climate Refugees" I am Currently Editing., 310-721-1400

Haley Berger Geffen, Current Broadcast Producer for some of my projects, 404-227-2961

Employment Details

Work History: Internet, Film, Music Video, Commercial, Industrial, Television

Job Categories: Production, Editing, Directing, Producing

Are you willing to work unpaid?: Yes

Location

Atlanta, GA

Specialties

Art Direction

Experience

10+ years

Education

Oral Roberts University

Awards

2 Sports Emmys For Editing, 1 Sports Emmy for Producing.

Brett Langefels - Sr. Editor Turner Studios - Atlanta, Georgia

Authorized to work in United States: Yes
Primary Citizenship: United States
Valid Passport: Yes
Prior Job Title(s): Editor, Cameraman, Producer

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