

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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SAMUEL BARTLEY STEELE, :
:
Plaintiff, : Civil Action
v. : No. 10-11458-NMG
:
ANTHONY RICIGLIANO, BOB BOWMAN, BOSTON : **LEAVE TO FILE**
RED SOX BASEBALL CLUB LIMITED : **GRANTED ON**
PARTNERSHIP, BRETT LANGEFELS, CRAIG BARRY, : **JANUARY 26, 2011**
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. :
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**REPLY MEMORANDUM OF LAW IN FURTHER
SUPPORT OF DEFENDANTS' MOTION TO DISMISS THE VERIFIED COMPLAINT**

Defendants joining in this Reply Memorandum have moved to dismiss the
Verified Complaint (*Steele III* Docket No. 37), citing in support the memorandum previously
filed by Defendants Turner Broadcasting System, Inc. and the Boston Red Sox Baseball Club

Limited Partnership in support of their Motion To Dismiss And For Other Relief.¹ (*Steele III* Docket No. 8, the "Initial Brief.")²

In his Opposition herein (*Steele III* Docket No. 51), Steele submits a series of letters representing correspondence his lawyer initiated with defendants' counsel (the "Letters"). According to Steele, the Letters demonstrate "fraud on the Court" in *Steele I*, which allegedly "prevents preclusive effect" of *Steele I* in *Steele III*. (See Opposition at 2.) Steele also argues that, in the Letters, the defendants allegedly conceded "knowingly submitting false and spoliated evidence to this Court" in *Steele I*. (*Id.*) The Letters further allegedly document "[d]efendants' concession of removal of the MLBAM copyright notice" from the Audiovisual.³ (*Id.* at 3.)

¹ These Defendants are: Bob Bowman; New England Sports Enterprises LLC d/b/a Fenway Sports Group; Jack Rovner; James Rourke (misidentified in the Verified Complaint as "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.; Mark Shimmel, individually and d/b/a Mark Shimmel Music; Mike Dee; Richard Sambora, individually and d/b/a Aggressive Music; Sam Kennedy; Thomas C. Werner; Time Warner Inc.; Turner Sports, Inc.; Turner Studios, Inc.; Vector Management LLC; and William Falcone, individually and d/b/a Pretty Blue Songs (collectively, the "Defendants").

While Steele asserts that all Defendants have adopted the arguments supporting the Initial Brief "[w]ith the exception of Defendant Fenway Sports Group a/k/a FSG f/k/a New England Sports Enterprises LLC" (Opposition at 1), in fact, Fenway Sports Group is simply a d/b/a of Defendant New England Sports Enterprises LLC. (See *Steele III* Docket Nos. 43-45.)

² For convenience of reference, the instant action is referred to as *Steele III*. In *Steele I*, Civil Action No. 08-11727, this Court dismissed all claims on defendants' motions. See *Steele v. Turner Broad. Sys., Inc.*, 607 F. Supp. 2d 258, 263, 265 (D. Mass. 2009) (decision granting in part defendants' motion to dismiss); 646 F. Supp. 2d 185, 190-94 (D. Mass. 2009) (decision granting defendants' motion for summary judgment). *Steele II* is the lawsuit pending in this Court before Judge Woodlock, Civil Action No. 10-11218-DPW. *Steele IV* is a lawsuit filed in Massachusetts state court. *Steele v. Boston Red Sox Baseball Club Ltd. P'ship.*, No. 10-3418-E (Mass. Super. Ct. filed Aug. 26, 2010). All four of those lawsuits arise out of the same common nucleus of operative facts and concern alleged wrongdoing related to Steele's songs.

³ The Audiovisual was referred to in *Steele I* as the "Turner Promo" or the "TBS Promo." See *Steele I*, 607 F. Supp. 2d at 261; *Steele I*, 646 F. Supp. 2d at 186.

Irresponsible Allegations of Improper Conduct

Steele's submission of the Letters does nothing to advance his position. To the contrary, the Opposition actually constitutes strong additional support for the imposition of sanctions against Steele and his attorney, as requested in the Initial Brief, for the following reasons, among others:

- It is a complete misrepresentation for Steele to argue that, in the Letters, defendants conceded that they had "knowingly submit[ted] false and spoliated evidence to this Court" in *Steele I*. (See Opposition at 2.) This misrepresentation is readily evident from (i) Steele's failure to quote from the Letters, and (ii) the plain language of the Letters themselves.
- It is a complete misrepresentation for Steele to argue that in the Letters the defendants conceded "removal of the MLBAM Copyright Notice." (See *id.* at 3.) As but one example, in an October 20, 2010 letter (attached to the Opposition as Exhibit A), counsel for Steele simply acknowledged that the version of the Audiovisual submitted by defendants in *Steele I* "obviously . . . did not contain the MLBAM copyright notice, so there was nothing to remove."

Steele's counsel's position is baseless and misleading. He repeatedly sends correspondence to defendants' counsel, demands an immediate response, then attempts to use the response as purported "evidence" to support Steele's arguments by distorting its substance. This

conduct -- similar to his incessant submission of meritless motions and complaints -- is abusive and should not be countenanced.⁴

Claim Preclusion

Steele's Opposition and the Letters strongly support the application of the doctrine of claim preclusion to *Steele III*, and the dismissal of this lawsuit in its entirety with prejudice. Steele submitted the exact same four letters in support of a "Motion For Sanctions" he filed in the First Circuit in connection with his appeal from the dismissal of *Steele I*. (A copy of the "Motion For Sanctions" is filed herein at *Steele III* Docket No. 14, Exhibit A.)⁵ In that "Motion for Sanctions," Steele argues, as he does again in this Court, that Defendants allegedly filed "spoliated evidence, [namely] a materially-altered version of the primary infringing work at issue in this case (the 'MLB Audiovisual')." (*Id.* at 7.) In addition, the purported reason given by Steele for the correspondence submitted as Exhibit A was to address the central issue in *Steele II*. In sum, Steele and his counsel have now accused defendants (and their counsel), without any support, of fraud on the Court in each of the three federal court lawsuits filed in connection with the alleged copying of the Steele Song -- and in the First Circuit.

Issue Preclusion

Steele's argument that the purported fraud on this Court in *Steele I*, allegedly documented in the Letters, "deprives [*Steele I*] of preclusive effect" (*see* Opposition at 3), has

⁴ Another recent example of this conduct is in Steele's reply papers submitted in support of his motions for entry of default in *Steele I*. (*See Steele I* Docket Nos. 124 and 133.) Those default motions were denied by this Court (*Steele I* Docket No. 136), and Steele has appealed that ruling to the First Circuit (No. 10-2173).

⁵ The First Circuit denied that Motion for Sanctions. (*See* Appeal No. 09-2571, Order dated November 9, 2010.)

already been considered and rejected by this Court in *Steele I*. In moving for entry of default against MLB Advanced Media, L.P., Steele argued, among other things, as follows:

For example, the undersigned, in preparing Steele's Appellate Papers, learned that defendants' [sic] 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 out that defendants intentionally filed an unpublished draft version of the "TBS Promo" in *his* [sic] 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.

(*See* Memorandum In Support Of Plaintiffs' Rule 55(a) Motion For Entry Of Default Judgment As To Defendant MLB Advanced Media, L.P. (*Steele I* Docket No. 119).) In denying the motion, this Court observed that while "Steele alleges that the Defendants . . . have made a number of misrepresentations to the Court," "Steele does not, however, explain how his allegations have any bearing on the Court's decision with respect to these motions and offers no evidence of bad faith on the part of the Defendants." (*Steele I* Memorandum & Order dated September 27, 2010, at 14 (Docket No. 136).) That rejection of Steele's so-called "fraud" argument constitutes issue preclusion here too. (*See id.* at 13 (discussing issue preclusion standards).)

Conclusion

This Court has previously given Steele the benefit of the doubt, characterizing his post-judgment conduct in *Steele I* to be "ill-advised and perhaps unnecessary" but not "so frivolous as to warrant the imposition of sanctions." (*Id.* at 16.) Steele and his counsel, however, continue to ignore this Court's admonition, and continue to abuse the judicial process and harass the Defendants and this Court with multiple lawsuits and submissions that are without merit; among other things, this conduct has resulted in significant cost and fees for Defendants. It is

respectfully submitted that this Court should grant all of the relief requested in the Initial Brief, including dismissing *Steele III*, imposing sanctions on Steele and Hunt, and enjoining any further lawsuits related to the Steele songs without obtaining prior Court approval.

Dated: January 27, 2011
Boston, Massachusetts

Respectfully submitted,

Of Counsel:

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Kennedy, Thomas C. Werner, Time Warner
Inc., Turner Sports, Inc., Turner Studios, Inc.,
Vector Management LLC, and William
Falcone, individually and d/b/a Pretty Blue
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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 January 27, 2011.

Dated: January 27, 2011

/s/ Christopher G. Clark
Christopher G. Clark