

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 :
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. :

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DEFENDANTS' MOTION TO DISMISS THE VERIFIED COMPLAINT

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendants "Fenway Sports Group a/k/a FSG f/k/a New England Sports Enterprises LLC" and "New England Sports Enterprises, LLC f/d/b/a Fenway Sports Group f/a/k/a FSG" hereby move for an order dismissing the Verified Complaint with prejudice.

On November 5, 2010, a Motion to Dismiss was filed on behalf of "New England Sports Enterprises LLC d/b/a Fenway Sports Group," among other defendants. (Docket No. 37).¹ In a November 8, 2010 email, counsel for Plaintiff contended that notwithstanding that filing, Fenway Sports Group "appear[s] to technically be in default" and requested information on "when you will file their appearance." To avoid wasteful motion practice, on November 10, 2010, counsel filed additional notices of appearance on behalf of "Fenway Sports Group a/k/a FSG f/k/a New England Sports Enterprises LLC" and "New England Sports Enterprises LLC f/d/b/a Fenway Sports Group." (Docket Nos. 40 & 41.)

Months later, in a letter dated March 21, 2011, counsel for Plaintiff contended that "Fenway Sports Group a/k/a FSG . . . was not part of the motion to dismiss on behalf of NESE (and other defendants), both filed on November 5, 2010" and it is therefore "in default." (March 21, 2011 Letter at 2 (attached hereto as Exhibit A).) Although counsel believes that this filing is unnecessary, it and the accompanying corporate disclosure statements are being filed to hopefully avoid further unnecessary motion practice on purported "default" issues.²

As grounds for this motion, the Defendants refer to the memorandum filed on September 1, 2010 by Defendants Turner Broadcasting System, Inc. and Boston Red Sox Baseball Club Limited Partnership in support of their Motion To Dismiss And For Other Relief (*Steele III* Docket No. 8), and adopt in their entirety the arguments set forth therein.

¹ That motion to dismiss is fully briefed.

² As this Court is aware, counsel for Plaintiff has previously filed motions for entry of purported "default," which motions were denied. See *Steele I*, September 27, 2010 Order at 14 ("Although, in retrospect, the filing of plaintiff's motions [for entry of 'defaults'] was ill-advised and perhaps unnecessary, the court declines to find them so frivolous as to warrant the imposition of sanctions. Plaintiff and his counsel are, however, forewarned that any further motion practice in this regard will be looked upon askance.").

LOCAL RULE 7.1 CERTIFICATION

I, Christopher G. Clark, hereby certify that this filing is made in response to a request by counsel for Plaintiff in the attached letter dated March 21, 2011.

Dated: March 25, 2011

/s/ Christopher G. Clark
Christopher G. Clark

Dated: March 25, 2011
Boston, Massachusetts

Respectfully submitted,

/s/ Matthew J. Matule
Matthew J. Matule (BBO #632075)
Christopher G. Clark (BBO #663455)
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Counsel for Defendants
"Fenway Sports Group a/k/a FSG f/k/a New
England Sports Enterprises LLC" and "New
England Sports Enterprises, LLC f/d/b/a
Fenway Sports Group f/a/k/a FSG"

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 March 25, 2011.

Dated: March 25, 2011

/s/ Christopher G. Clark
Christopher G. Clark

EXHIBIT A

THE HUNT LAW FIRM LLC

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VIA ELECTRONIC AND FIRST CLASS MAIL

March 21, 2011

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 (USDC MA)

Dear Mr. Clark:

I write to address several material inconsistencies in your filings in Steele v. Ricigliano, et al., No. 1:10-cv-11458-NMG ("Steele III"). Unfortunately, the inconsistencies appear to be intentional rather than mistakes. Accordingly, this is also to provide you with the notice and opportunity to correct said filings prior to my seeking Court intervention.

The Steele III filings in question pertain to (1) defendant Fenway Sports Group a/k/a FSG f/k/a New England Sports Enterprises LLC ("Fenway Sports Group a/k/a FSG") and (2) defendant New England Sports Enterprises, LLC f/d/b/a Fenway Sports Group f/a/k/a FSG ("NESE").¹

NESE

The Steele III Complaint names NESE as "New England Sports Enterprises LLC f/d/b/a Fenway Sports Group f/a/k/a FSG." On November 5, 2010, however, you appeared for "New England Sports Enterprises, LLC d/b/a Fenway Sports Group," a party not identified as such in Steele's Complaint.

While Steele identified NESE as *formerly* doing business as Fenway Sports Group, your appearance states that NESE is *presently* doing business as Fenway Sports Group. Your appearance did not claim misnomer. On November 10, 2010, you filed a second appearance on behalf of

¹ While this letter concerns Steele III, the issues raised herein are also common to Steele v. Boston Red Sox, et al. No. 10-03418 (Mass. Superior Court) ("Steele IV"), in which Fenway Sports Group a/k/a FSG and NESE are also defendants. Specifically, your Steele IV filings on behalf of those two defendants contain the same misrepresentations as in your Steele III filings. I addressed your Steele IV filings in my March 13, 2011 letter to Mr. Matule (copy attached).

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NESE explicitly asserting that "Fenway Sports Group is a d/b/a of New England Sports Enterprises LLC."

Fenway Sports Group a/k/a FSG

The Steele III Complaint names Fenway Sports Group a/k/a FSG as "Fenway Sports Group a/k/a FSG f/k/a New England Sports Enterprises LLC." Steele's Complaint, in other words, asserts that Fenway Sports Group a/k/a FSG *is currently* known as FSG and *was formerly* known as NESE.

However, you failed to file an appearance on behalf of Fenway Sports Group a/k/a FSG and it was not part of the motion to dismiss on behalf of NESE (and other defendants), both filed on November 5, 2010. On November 10, 2010, in response to an e-mail from me indicating that Fenway Sports Group a/k/a FSG appeared to be in default, you entered an appearance for "Fenway Sports Group a/k/a FSG f/k/a New England Sports Enterprises LLC."²

Beyond its appearance, Fenway Sports Group a/k/a FSG has failed to substantively respond to Steele's Complaint and, accordingly, remains in default.

Two Defendants; Once Response

Steele specifically named, listed, and served *two* distinct defendants in Steele III (and Steele IV): Fenway Sports Group a/k/a FSG and NESE. Steele's Complaints clearly distinguish them by describing their former and present relationships to each other: Steele identifies NESE as *formerly* doing business as Fenway Sports Group a/k/a FSG and Fenway Sports Group a/k/a FSG as being *formerly* known as NESE. Steele identifies "Fenway Sports Group" as also known as "FSG."

Simply put, Steele unmistakably named Fenway Sports Group a/k/a FSG and NESE as *two* defendants, each *formerly* known as the other. Your filings, on the other hand, state that NESE is one and the same as Fenway Sports Group a/k/a FSG. By stating that NESE is *currently* doing business as Fenway Sports Group, and by failing to respond to Steele's complaints separately on behalf of Fenway Sports Group a/k/a FSG, you are representing that Fenway Sports Group a/k/a FSG either does not exist or is no more than NESE's current business name.

² The appearance - confusingly - also purported to be on behalf of NESE, for whom you had already appeared on November 5, 2010.

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Without notice, good cause, or permission - without even a claim of misnomer - you are attempting to alter the identities and status of two defendants in both Steele III and IV, contrary to their unambiguous identification in Steele's Complaints.

Your unilaterally adopted nomenclature seeks to improperly remove a named, served, and active defendant, Fenway Sports Group a/k/a FSG, from the case by stating it is the same entity as NESE. Furthering this impression, Fenway Sports Group a/k/a FSG has failed to respond to Steele's Complaints, apparently under the assumption that your misidentification of NESE in its filings has removed Fenway Sports Group a/k/a FSG from the case and relieved it from its burden to respond to Steele's Complaint.

Fenway Sports Group a/k/a FSG, however, has neither sought nor received permission to ignore Steele's complaint.

Fenway Sports Group a/k/a FSG's Willful Default and Your Attempted Concealment Thereof

Fenway Sports Group a/k/a FSG's failure to respond to the Steele III and IV Complaints, in conjunction with NESE's unilateral name change claiming it *is*, in effect, Fenway Sports Group a/k/a FSG, appears an attempt to surreptitiously remove defendant Fenway Sports Group a/k/a FSG from Steele III and IV through extra-judicial means.

Significantly, your tactics here mirror those you employed in Steele I, in which defendants MLB Advanced Media, L.P. and Vector Management defaulted and concealed their defaults by having other entities appear in their stead. Here, you seek to have NESE - as re-defined by you - appear on behalf of NESE *and* Fenway Sports Group a/k/a FSG.

Exhibit A

Each of your memoranda in support of defendants' motions to dismiss Steele III and IV attach, as "Exhibit A," a chart purporting to list all of the defendants in each case. Numerically, each chart matches Steele's Complaints, i.e., listing a total of 26 defendants in Steele III and 18 in Steele IV.

If each chart accurately reflected your own substantive filings - which assert that Fenway Sports Group a/k/a FSG exists only as a d/b/a of NESE - they would come up one defendant short, i.e., 25 in Steele III (instead of 26) and 17 in Steele IV (instead of 18). To get around this you simply list one defendant twice. Steele did not sue, name, or serve "Major League Baseball Productions" because, based on your own filings in Steele I, it is a d/b/a of defendant Major League

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Baseball Properties, Inc. ("MLBP"), which is how it is listed in Steele's Complaints. Nor have you appeared for any such entity apart from MLBP.

Nonetheless, each chart lists "Major League Baseball Productions" as a *separate* defendant from MLBP, thereby adding one name to each list, giving them numerical congruity with Steele's Complaints. Not insignificantly, the charts list defendants alphabetically - with the sole exception of non-defendant "Major League Baseball Productions."

The numerical parity issue "solved," your charts also conceal your attempts to improperly remove Fenway Sports Group a/k/a FSG from the case. Rather than omitting Fenway Sports Group a/k/a FSG - or listing it *with* NESE as a single defendant, either of which would accurately reflect your substantive filings - you omit NESE and list Fenway Sports Group a/k/a FSG individually.

It is worth noting that the two charts - one each for Steele III and IV - are far from identical, differing in format, layout, and number of columns, among other things (e.g., party nomenclature, center versus left-justified, titled versus untitled, numbered versus unnumbered rows, and some parties are listed as "disputed" in one chart but not the other).

In other words, the exhibits were independently created for each motion in each case, as opposed to being created once and then copied and attached to both motions. This is significant because - despite their differences - the exhibits contain identical misrepresentations: listing Major League Baseball Productions as a defendant (out of alphabetical order), omitting NESE, and listing Fenway Sports Group a/k/a FSG. Each of these representations is directly contradicted by your own substantive filings. That two otherwise different charts in two separate cases contain identical "misstatements" - which happen to conceal Fenway Sports Group a/k/a FSG's default in each case - strongly indicates intent to deceive rather than inadvertence.

The Record

In closing, the Steele III Court record contains misrepresentations in several of your filings, as detailed above. In addition, I note that the misrepresentations extend to filings ostensibly on behalf of Fenway Sports Group a/k/a FSG, including its appearance and corporate disclosure statement. The similarity of irregular and misrepresentative filings - however tedious to uncover - establish your acts as intentional, and are consistent with your prior furtive and willful defaults in Steele I.

I will allow one week - until March 28, 2008 - for you to voluntarily take appropriate steps to correct the record. I expect all filings to be corrected so as to reflect reality and be consistent with each other and with Steele's Complaint. This includes, but is not limited to, filing accurate

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appearances and, in particular, accurate corporate disclosure statements on behalf of Fenway Sports Group a/k/a FSG and NESE.

Failing that, I will seek the Court's intervention.

Thank you for your attention to this matter.

Very truly yours,



Christopher A.D. Hunt

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

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VIA ELECTRONIC AND FIRST CLASS MAIL

March 13, 2011

Matthew J. Matule, Esq.
Skadden Arps Slate Meagher & Flom LLP
One Beacon Street
Boston, MA 02108-3194

Re: Steele v. Boston Red Sox, et al. No. 10-03418 (Mass. Superior Court)

Dear Mr. Matule:

I write to address confusion created by your filings in this case, particularly pertaining to the purported "18 defendants" on whose behalf your motion to dismiss was ostensibly filed. First, you have, it seems, attempted to merge two defendants into one, leaving one of the two in default. Second, it appears you are trying to conceal the defaulting defendant by, among other things, referencing "18 defendants" in Defendants' Memorandum in Support of its Motion to Dismiss when, in fact, only 17 defendants have appeared and moved for dismissal.

1. Fenway Sports Group a/k/a FSG f/k/a New England Sports Enterprises, LLC

As you know, Steele's Complaint named, and copies of the Complaint and summonses were served upon, among others, two distinct entities: (1) Fenway Sports Group a/k/a FSG f/k/a New England Sports Enterprises, LLC ("Fenway Sports Group a/k/a FSG") and (2) New England Sports Enterprises, LLC f/d/b/a Fenway Sports Group f/a/k/a FSG ("NESE").

However, only one of the two - NESE - has appeared and moved to dismiss. Fenway Sports Group a/k/a FSG has neither appeared nor moved to dismiss and, accordingly, appears to be in default.

Despite the failure of Fenway Sports Group a/k/a FSG (or any similarly named entity) to appear or respond, you filed a corporate disclosure statement on behalf of an entity you call "Defendant Fenway Sports Group," which states it "is a d/b/a of New England Sports Enterprises LLC." You state that this is "reflected in" a seven year-old Boston City Clerk document attached to its corporate disclosure form. Apart from its corporate disclosure form, "Fenway Sports Group" filed no appearance, motion, or other papers. See SJC Rule 1:21(b)(ii) (corporate disclosure must be filed with the party's "first appearance, pleading, petition, motion, response or other request. A copy of the statement must also be filed with each contested motion.")

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In addition, the corporate disclosure form's assertion that "Fenway Sports Group... *is* a d/b/a of [NESE]" is inconsistent with - and does not respond to - Steele's Complaint, which states that Fenway Sports Group a/k/a FSG *was* formerly known as NESE but is *now* known as "FSG." The corporate disclosure statement, in fact, fails to mention "FSG" at all.

My client's intentions are crystal clear and he has sued and served the entity that (1) operates or has operated as "Fenway Sports Group" *and/or* "FSG," the "sports marketing agency" established by Red Sox owners in March 2004, which (2) represents itself as "Fenway Sports Group (FSG)" on its website, <http://fenwaysportsgroup.com/> (at the "About Us" tab), and (3) which is located at 82 Brookline Avenue, Boston, Massachusetts 02215 (at the "Contact Us" tab), where it was properly served with process.

The above website nowhere references NESE. My client sued and served NESE *in addition* to Fenway Sports Group a/k/a FSG.

It appears that you are representing to the Court that defendant Fenway Sports Group a/k/a FSG was and is nothing more than a d/b/a of defendant NESE, i.e., that they were and are one and the same defendant. However, the manner in which NESE has attempted to appear and defend for both itself *and* defendant Fenway Sports Group a/k/a FSG has been - and remains - confusing and vague, and, by all appearances, intentionally so.

First, the properly served defendant Fenway Sports Group a/k/a FSG's failed to respond to the summons and complaint. Second, your appearances and motion papers unilaterally altered Steele's Complaint's specific nomenclature for both NESE *and* Fenway Sports Group a/k/a FSG, but without explicitly asserting misnomer or, as you have in the past, "misidentification," as to either defendant. Third, you filed a corporate disclosure form for a "Fenway Sports Group" in a vacuum, given that no such entity has appeared or otherwise responded to Steele's Complaint.

While am loath to jump to conclusions as to your intentions, your conduct in Steele I, particularly your unilateral substitution of an unnamed and unserved entity for a properly named and served defendant in order to conceal the latter's willful default - disturbingly similar to what you seem to be attempting here - my client and I are simply unwilling to give you or your clients the benefit of the doubt. Moreover, there are serious additional inconsistencies in your Court-filed papers, explained below, that lead me to believe you are attempting to conceal and/or remove defendant Fenway Sports Group a/k/a FSG from this litigation through improper means, similar to your illicit removal of MLBAM and Vector Management from Steele I.

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2. Your Reference to the "18 Defendants" in Defendants' Motion Papers is a Deception Designed to Conceal Fenway Sports Group a/k/a FSG's Default; Only 17 Defendants Have Appeared and Moved to Dismiss

Steele sued 18 defendants; they are clearly listed in the caption and body of his Complaint. One of those defendants is Fenway Sports Group a/k/a FSG.

Defendants' Notice of Appearance, Notice of Defendants' Motion to Dismiss, and Defendants' Motion to Dismiss each lists the same 17 defendants, omitting Fenway Sports Group a/k/a FSG. Your semantic merger of two defendants - Fenway Sports Group a/k/a FSG and NESE - into a single "New England Sports Enterprises, LLC d/b/a Fenway Sports Group," a name that appears nowhere in Steele's complaint, seems a clumsy attempt to hide Fenway Sports Group a/k/a FSG behind NESE and conceal Fenway Sports Group a/k/a FSG's de facto default.

Your paper containing defendants' substantive arguments - Defendants' Memorandum in Support of their Motion to Dismiss ("Defendants' Memorandum") - which, for obvious reasons, will receive the most attention from the Court, however, *does not similarly list each of the moving defendants*. Instead Defendants' Memorandum states only that "all defendants" move to dismiss.

To add to the confusion – or deception - Defendants' Memorandum, on pages one and five, references "18 defendants" in the case, despite your Notice of Appearance and Motion to Dismiss being filed on behalf of only 17 defendants. Your references to the "18 defendants" gives the false impression that each of the 18 defendants named in Steele's caption and complaint have appeared and are seeking dismissal when, in fact, one - Fenway Sports Group a/k/a FSG - has yet to do either.

Finally, and appearing to dispel any doubts that you are, once again, engaging in deceptive behavior designed to improperly conceal a party from Steele and the Court, Exhibit A to Defendants' Memorandum - referenced on page 6 thereof - lists 18 entities as defendants in this case, again superficially appearing to conform to the 18 defendants listed in Steele's caption and complaint.

However, a closer look reveals that one of the "defendants" in Exhibit A is "Major League Baseball Productions," which Steele sued as a d/b/a of the already-listed defendant Major League Baseball Properties, Inc. ("MLBP"). Accordingly, one defendant, MLBP, is listed twice while at the same time two defendants, Fenway Sports Group a/k/a FSG and NESE, are merged and listed as one defendant. In this manner you contrive – and present – outward, but false, symmetry between

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Steele's Complaint and your motion papers, each "side" listing 18 "defendants," while in reality one defendant, Fenway Sports Group a/k/a FSG, hides behind NESE and has its counsel plays word games to conceal its willful default.¹

In closing, I allow defendant Fenway Sports Group a/k/a FSG until March 28, 2011 to respond – fully, truthfully, and in accordance with the law – to Steele's Complaint. If Fenway Sports Group a/k/a FSG fails to respond by that date, I will move for entry of default and other relief, including costs and/or sanctions, where warranted.

Thank you for your attention to this matter.

Very truly yours,



Christopher A.D. Hunt

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

¹Significantly adding to the confusion, Exhibit A omits NESE but *does* list Fenway Sports Group a/k/a FSG as a defendant, which is inconsistent with both entities' purported corporate disclosure statements, Defendants' Notice of Appearance, and Defendants' Motion to Dismiss. Exhibit A is, in fact, defendants' only document correctly identifying "Fenway Sports Group a/k/a FSG f/k/a New England Sports Enterprises, Inc." as a defendant.