

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JERRY GREENBERG, individually,
and IDAZ GREENBERG, individually,

Plaintiffs,

CASE NO. 97-3924
CIV-LENARD
Magistrate Judge Turnoff

vs.

NATIONAL GEOGRAPHIC
SOCIETY, a District of Columbia
corporation, NATIONAL GEOGRAPHIC
ENTERPRISES, INC., a corporation,
and MINDSCAPE, INC., a
California corporation,

Defendants.

**PLAINTIFFS' MEMORANDUM IN RESPONSE TO
DEFENDANTS' MOTION FOR SCHEDULING ORDER**

The plaintiffs, JERRY GREENBERG and IDAZ GREENBERG ("the Greenbergs"), submit this memorandum in response to the defendants' Motion for Scheduling Order, and say:

The Greenbergs agree with the defendants in material respects as to the character of the litigation, but strongly disagree as to the proposed scheduling.

The Character of the Litigation

Counts I and II of the Amended Complaint are traditional copyright infringement claims. Settlement discussions are underway with respect to those claims. The settlement discussions do not require a protracted time period.

The Greenbergs agree that Counts III, IV and V are different in that the alleged infringements embody to a considerable extent an evolving body of law that has been directly addressed by the federal courts in limited circumstances, and the issues presented in those claims have important implications for protection afforded under the Copyright Act. The Greenbergs further agree that liability issues as to those claims can and should be resolved through one or more motions for summary judgment. The Greenbergs do not agree, however, with the defendants' assertion that the claims in Counts III, IV and V present "pure legal issues" and that no discovery is required for the resolution of those issues.¹

Enlarged Time for Response to the Amended Complaint

As noted in the defendants' motion, the Greenbergs at the outset of their case agreed to a very substantial enlargement of time for a response to their complaint. The complaint was filed on December 5, 1997, and shortly thereafter the Greenbergs assented to a deadline of January 30, 1998. The complaint was amended as a matter of right on December 23, 1997, which presented a response deadline of January 12, 1998. The January 30 deadline previously agreed to by the Greenbergs thus provided the defendants with an additional 18 days for preparation of a response to the Amended Complaint.

¹ The Greenbergs do not necessarily agree with facts stated in the motion that are directed -- unnecessarily for the motion -- toward the merits.

The defendants now seek still another 21 days, and as their motion indicates at page 3, they have no intention of "simply answering the complaint" but instead want the additional time to prepare a motion for summary judgment.

In an order dated January 9, 1998, the Court stated that no additional time for a response would be granted. Notwithstanding, the Greenbergs are agreeable to an additional 10 days beyond the existing January 30 deadline for a response by the defendants to the Amended Complaint. The Greenbergs' position presumes that the defendants and the Court will, as a matter of basic fairness, reciprocate in the course of the litigation should the Greenbergs seek additional time for the preparation of memoranda. Counsel for the defendants has indicated a willingness to do so.

The Greenbergs are Entitled to Discovery

The Greenbergs cannot agree to any schedule that deprives them of discovery opportunities with respect to any of the claims in the Amended Complaint. If Counts I and II should be settled early, such a step would, of course, obviate all discovery as to those claims. In such an eventuality, discovery for Counts III, IV and V is not likely to be prolonged.

Conclusion

The Greenbergs are attempting in this circumstance to be conciliatory, but will not surrender fundamental rights as to discovery. The Greenbergs would agree to an additional 10-day enlargement of time in which the defendants can respond to the Amended Complaint. In all other respects, the Greenbergs oppose the defendants' motion.

STEEL HECTOR & DAVIS
Attorneys for Plaintiffs

By Norman Davis

Norman Davis
Fla. Bar No. 475335
David Aronberg
Fla. Bar No. 090565
Suite 4000
First Union Financial Center
Miami, FL 33131-2398
(305) 577-2988

Certificate of Service

I hereby certify that a copy of the foregoing response was served by U.S. mail on Edward Soto, Weil, Gotshal & Manges, LLP, 701 Brickell Avenue Boulevard, Suite 2100, Miami, Florida 33131; and Robert G. Sugarman, Weil, Gotshal & Manges, LLP, 767 Fifth Avenue, New York, New York 10153, this 26th of January, 1998.

Norman Davis
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