

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

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| THREE ANGELS BROADCASTING |) | |
| NETWORK, INC, |) | |
| DANNY LEE SHELTON, |) | |
| Plaintiffs, |) | |
| vs. |) | CIVIL ACTION |
| |) | NO. 07-40098-FDS |
| GAILON ARTHUR JOY, |) | |
| ROBERT PICKLE, |) | |
| Defendants. |) | |
| |) | |

Amended Order
September 11, 2008

HILLMAN, M.J.

Nature of the Case

On April 6, 2007, Three Angels Broadcasting Network, Inc. (hereinafter “3ABN”) and Danny Lee Shelton (hereinafter “Shelton”) filed a complaint against Gailon Arthur Joy (hereinafter “Joy”) and Robert Pickle (hereinafter “Pickle”) for trademark infringement, trademark dilution, defamation, and intentional interference with advantageous economic prospective business advantage.

Nature of the Proceeding

By Order of Reference dated July 10, 2008, Defendant Robert Pickle's Motion to Compel Three Angels Broadcasting Network, Inc. To Produce Documents and Things, and His Motion to Compel Danny Lee Shelton To Produce Documents and Things (Docket No. 61), and Plaintiff's Motion for Protective Order (Docket No. 74) have been referred to me for disposition.

Background

On November 29, 2007, Pickle served a request to produce under Federal Rule of Civil Procedure 34(a) on plaintiff 3ABN, which contained 36 requests for production of documents. On December 7, 2007, Pickle served a second request to produce documents on Shelton, which contains 44 requests for production of documents. Pickle contends that plaintiffs have failed to produce any documents responsive to his requests. Instead, plaintiffs have asserted that all of the documents requested by Pickle are irrelevant, confidential or privileged. The plaintiffs have filed an opposition to the motion to compel. In their opposition, plaintiffs contend that they have produced over twelve thousand non-confidential documents responsive to Pickle's requests, and at the time they filed their opposition, were working to produce confidential documents, subject to the Confidentiality and Protective Order, issued by this Court on April 17, 2008. A hearing was held on the motion on July 24, 2008.

Plaintiff has moved this court for a protective order and for judicial intervention into the discovery process. They assign as reasons for the protective order a series of subpoenas ostensibly issued under Fed.R.Civ.P. 45 on six non-parties to this litigation. Several of those subpoena's have resulted in judicial action or motions to quash in the districts in which they were served.

Discussion

Pickle's production requests and Rule 45 subpoenas appears to be overbroad and far-reaching. Many of the requests are prefaced with the word "all" and thus, fail to describe with particularity each document or thing requested. For example, defendant Pickle seeks "all types of phone records or other documents enumerating phone calls made by 3ABN officers from January 1, 2003, onward . . ." He also seeks "all" minutes and other documents

of the 3ABN Board for the entire length of time of 3ABN's existence, and on an ongoing basis." Furthermore, since the parties have not complied with L.R. 37.1 there is no listing of the specific discovery request at issue and their position with respect to it. This failure to comply with L.R. 37.1 results in the referenced regularity of Defendant's complaints and not a request by request breakdown of why information is sought and the argument for its production. Given the broad definitions utilized by Pickle¹, it is apparent that a substantial number of documents which would fall within the subject matter of the requests would be irrelevant to any claims or defenses, and otherwise outside of the scope of discoverable information under Federal Rule of Civil Procedure 26(b)(1). At the same time, it is apparent from the hearing that plaintiffs are taking much too narrow a view as to whether documents or other things in their possession may be relevant to their claims and/or defendants' defenses. The plaintiffs also assert that they are about to serve additional responsive documents on the defendants subject to the Confidentiality Agreement. Plaintiffs should not have to be reminded that it is they who have initiated this action and as part of their claims, they are seeking significant monetary damages from the defendants. Documents which they may deem irrelevant to the specific statements they allege were defamatory may well be relevant to put the statements in context, or relevant on the issue of whether the plaintiffs have actually been damaged by the alleged statements. If the plaintiffs fail to produce documents which are relevant to their claims or potential defenses, then they may be subject to sanctions, including limiting evidence which they may introduce at trial, or limiting the scope of any damages to

¹At the hearing, defendants indicated that they adopted the definitions utilized by the plaintiffs in their discovery requests. However, defendants did not file a motion for protective order for purposes of narrowing the plaintiffs' requests and therefore, this Court did not have the opportunity to address whether those requests were overly broad.

which they could be entitled should they prevail.

The defendants also contend that the plaintiffs' responses are inadequate because they have simply produced volumes of documents without specifying the requests as to which the documents are responsive. The plaintiffs have an obligation to produce the documents as kept in the usual course of business or organize and label them to correspond to the categories of the request. *See* Fed. R. Civ. P. 34(b)(2)(E)(i). From the parties' submissions and the issues raised during the hearing, the Court has doubts as to whether the plaintiffs have fulfilled their obligation under Rule 34(b)(2)(E)(i).

In light of both parties' noncompliance with the applicable discovery rules, I am denying Pickle's motion to compel, without prejudice, and ordering that defendants re-serve their Rule 34 requests for production of documents and things. The defendants shall be limited to 25 requests for each defendant (including subparts) which shall be tailored to comply with this Court's rules governing discoverable information. The defendants shall serve their revised requests on or before September 26, 2008. Any additional Rule 34 requests may be made only with leave of the Court. The plaintiffs shall respond to such requests within thirty (30) days and such responses shall be indexed and indicate which documents respond to which requests.

With respect to Plaintiff's motion for a protective order, I am allowing that motion with respect to the further filing of any subpoenas under Fed.R.Civ.P. 45. Any further subpoenas, by any party to this action must only be issued upon leave of the court. I will note that as recently as this week the defendant's have moved for leave of court to issue subpoenas citing the pending motion for protective order. They are to be commended for exercising an abundance of caution.

All further motions to compel filed with this Court shall comply with both the Federal Rules of Civil Procedure and this Court's Local Rules and, in particular, LR, D.Mass. 37.1.

Conclusion

It is ordered that:

Defendant Robert Pickle's Motion to Compel Three Angels Broadcasting Network, Inc. to Produce Documents and Things and His Motion to Compel Danny Lee Shelton to Produce Documents and Things (Docket No. 61) is denied without prejudice. On or before September 26, 2008 defendants shall serve on the plaintiffs a revised request for production of documents pursuant to Fed. R. Civ. P. 34, in accordance with this Order.

Plaintiff's Motion for Protective Order (Docket No. 74), allowed. No party is to issue subpoenas to any non-party under Fed.R.Civ.P. 45 without leave of the court. In all other respects, the Plaintiff's motion is denied.

/s/ Timothy S. Hillman
TIMOTHY S. HILLMAN
MAGISTRATE JUDGE