Exhibit 55
Subject: Item(s) is an unlawful copy of other copyrighted work (paintings, sculptures, etc): customminis79 #

Date: Monday, June 30, 2008 4:45 pm
From: talima.fox@games-workshop.co.uk
To: <talima.fox@games-workshop.co.uk>
Conversation: Item(s) is an unlawful copy of other copyrighted work (paintings, sculptures, etc): customminis79 #

Date: 30-Jun-08 16:45:54 BST
Notice of Claimed Infringement

Dear eBay:

I, the undersigned, state UNDER PENALTY OF PERJURY that:

I am the owner, or an agent authorized to act on behalf of the owner of certain intellectual property rights ("IP Owner");

I have a good faith belief that the listing identified below (by item number) offer items or contains materials that are not authorized by the IP Owner, its agent, or the law, and therefore infringe the IP Owner's rights; and

The information in this notice is accurate.

Please act expeditiously to remove the following listings.

Item Number(s): 280240772142;

List (or representative list) of works infringed:
9044 Item(s) is an unlawful copy of other copyrighted work (paintings, sculptures, etc)

Message to Seller:
Dear Sir, WITHOUT PREJUDICE

This item has come to our attention on the basis that we believe it represents an infringement of Games Workshop Limited's intellectual property rights, specifically the item in question contains material that, notwithstanding implications in the listing to the contrary, is not of Games Workshop origin. For the avoidance of doubt:

* Games Workshop cannot allow unauthorised third parties to derive value for their products from its intellectual property. As you may know, we are obliged as a trademark owner to police our trademarks to retain their distinctiveness and to ensure an appropriate association between the mark and Games Workshop products.

* We do not allow use of our trademarks in the title of an auction that is vending a product that is not of Games Workshop origin. Games Workshop views any trademark within the title of a non-GW product auction as an infringement of its rights. The title of the auction is necessarily the description of what you are selling, not the area for comparative advertisement, the appropriate place for which, we submit, would be the body of the auction.

* Any compatibility statement in the title of an auction could not properly be followed by both an indication that the mark is used as an adjective and not a noun and by a full and complete trademark ownership notice. Further, the equal emphasis
provided by any use of our trademark in the title of an auction may erroneously indicate sponsorship in that respect.

* Any use of our trademarks in the body of an auction or product description (not the title) must be for legitimate comparative or compatibility purposes only and only to the extent permitted by law.

* We also cannot tolerate vendors associating our products with any third party trademarks for the same reason as point 1 above.

* We can confirm that we act against any infringements of our IP as and when we are made aware of the particular case. We do not target any specific individuals and would welcome any information that you may have in relation to any infringements of our intellectual property rights.

To this end, we have requested that eBay remove this listing.

Naturally, we reserve all rights in this matter, including the right to commence formal proceedings without further notice.

Please contact us at james.fletcher@games-workshop.co.uk with any questions you may have.

This email is not intended as legal advice, is not legal advice and does not create any attorney-client relationship. If you deem it necessary, you should seek the advice of a qualified professional lawyer if you intend to rely on any legal material that may be contained in this email.

Yours Faithfully,

Group Legal Department
Games Workshop Group PLC
For and on behalf of Games Workshop Limited

I may be contacted at:
Willow Road, Lenton
Nottingham, Nottinghamshire NG7 2WS
Telephone: 0115 9168000

Truthfully,
Talima_Fox Games Workshop LTD
Exhibit 56
I have reviewed your letter. You do not explain why you question the timeliness of the objections, so there is nothing I can really add. If necessary, we can further discuss the basis for the objections, but the principal problem with the subpoena is that it simply cut and pasted requests previously made to the plaintiff, Games Workshop Limited, and already answered by Games Workshop Limited, and directed them at a different party. At any rate, putting aside the needlessly hostile tone of your letter, the fact is that Games Workshop Retail has not been able to identify any responsive documents.

GW Retail also objected to request 25 because it seeks irrelevant communications. If you would like, we can identify the report from GW Retail to GW Limited about receipt of the subpoena, but it is pointless make-work. Obviously, we are still awaiting your client's privilege log, which has been promised for months, not to mention substantive responses to the outstanding matters raised in our January 13 filing with the court. Please let us know when we can expect receipt.

Jonathan

---

From: Schuh, Lisa [mailto:LSchuh@winston.com]
Sent: Tuesday, January 17, 2012 7:16 PM
To: Moskin, Jonathan; Kaspar, Scott R.
Cc: Golinveaux, Jennifer A.; Donaldson, J. Caleb; Kearney, Tom J.; Mersmann, Eric J.; Chea, Carleen K.
Subject: Correspondence re: Games Workshop v. Chapterhouse Studios

Dear Counsel:

Attached find correspondence from Thomas Kearney regarding Games Workshop v. Chapterhouse Studios. Thank you.

Lisa Schuh on behalf of Thomas Kearney
Legal Secretary
Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5802
T: +1 (415) 591-1000
D: +1 (415) 591-6854
F: +1 (415) 591-1400
Email | www.winston.com

The contents of this message may be privileged and confidential. Therefore, if this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author.

Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under the Internal Revenue Code of 1986, as amended.
Exhibit 57
IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GAMES WORKSHOP LIMITED,

Plaintiff,

-vs-

CHAPTERHOUSE STUDIOS LLC,

Defendant.

No. 10 C 8103
Chicago, Illinois
March 6, 2012
10:30 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MATTHEW F. KENNELLY

APPEARANCES:

For the Plaintiff: FOLEY & LARDNER LLP
BY: MR. JONATHAN E. MOSKIN
90 Park Avenue
New York, NY 10017
212-338-3572

For the Defendant: WINSTON & STRAWN LLP
BY: MR. THOMAS JAMES KEARNEY
Present Telephonically MS. JENNIFER A. GOLINVEAUX
101 California Street
San Francisco, California 94111
415-591-6894

WINSTON & STRAWN LLP
BY: MR. JONATHON RAFFENSPERGER
35 West Wacker Drive
Chicago, Illinois 60601
312-558-7129

Court Reporter: MARY C. KELLY, CSR
Contract Court Reporter
United States District Court
219 South Dearborn Street, Suite 2144-A
Chicago, Illinois 60604
(708) 769-0950
particularly in its early history was not the best at record keeping.

Defendants themselves gave your Honor the last set of motion papers something they found in the Internet archive that in January, 2008, Games Workshop posted a notice to artists please come get your work. We don't have room for it in our archives anymore. That wasn't a copyright question. That's was just a physical space question. They can't save the stuff.

In plain English, all I really meant to say by the hedging is, look, there may be some stray documents here and there. Every case -- this is a bigger case, I confess, than I expected and hoped it would be. We -- I can't -- except for that sort of stray document, there are no -- virtually, every stone has been overturned at least in using practical common sense of where documents might be.

For example, on the e-mails, they have spent -- they know their business. They know that the designers don't work by trading e-mails to each other about creative concepts. They're in a room -- they are all in a room with one or two exceptions. They talk to each other. They sketch on paper. They paint on pads. When works are nearly finished, then they scan them into a computer. But that's not part of the creative process.

We've given them a great deal of documentation on
really hoping and expecting you people will work these things 
out on your own and not have to come back and ask me. If 
somebody does, it's going to be loser pays. 
And I don't care how sick anybody is in the future. 
I'm not talking to anybody over a telephone, okay? So that's 
my answer. 
Anything else? 
MS. GOLINVEAUX: No, your Honor. 
THE COURT: Thanks. Take care. Have a nice day. 
MR. MOSKIN: Thank you. 
(Which were all the proceedings heard.) 
CERTIFICATE 
i certify that the foregoing is a correct transcript from 
the record of proceedings in the above-entitled matter. 
/s/Mary C. Kelly March 27, 2012 
Mary C. Kelly March 27, 2012 
Contract Court Reporter (f)
IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GAMES WORKSHOP LIMITED,

Plaintiff,

Docket No. 10 C 8103

vs.

CHAPTERHOUSE STUDIOS, LLC,
et al.,

Chicago, Illinois
December 19, 2011
10:10 a.m.

Defendants.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MATTHEW F. KENNELLY

APPEARANCES:

For the Plaintiff: FOLEY & LARDNER, LLP
BY: MR. SCOTT R. KASPAR
321 North Clark Street, Suite 2800
Chicago, Illinois 60610

For the Defendant: WINSTON & STRAWN, LLP
BY: MR. ERIC J. MERSMANN
35 West Wacker Drive
Chicago, Illinois 60601

LAURA M. BRENNAN - Official Court Reporter
219 South Dearborn Street - Room 2102
Chicago, Illinois 60604
(312) 435-5785
their response in?

MR. MERSMANN: Your Honor, I apologize.

THE COURT: Is that maybe Exhibit 6 to your motion?

I see it. So what they say is that after making objections, they say, we have produced documents responsive to this request pursuant to Rule 33(d).

MR. KASPAR: Right, and, your Honor, we produced copies of all the books and publications that have, you know, their publication date and so forth.

THE COURT: Okay, but what you're telling me -- 

So let me go back to the question I asked you then, Mr. Kaspar, in other words. You're telling me that the documents that you have produced completely answer an interrogatory which asks to identify the date on which the work was first offered, first sold and advertised and where.

Are you sure about that?

MR. KASPAR: The information we produced, you know, has certainly the date on which it was first produced.

THE COURT: Let me put it in a different way.

MR. KASPAR: Where it was produced.

THE COURT: So let's say that with regard to that little hammer thing that they were talking about before, that you produced a book and it's got -- you know, it's got a publication date of August of 2008. What that means is that since you have elected the option to produce documents in
response to that interrogatory, and you've produced that
particular document and you've now told me that the response
is complete, you are now -- you've got it hung around your
neck that the date of first publication was August of 2008 in
a way that you're going to have to live with.

Are you comfortable saying that?

MR. KASPAR: With the date of publication, yes.

THE COURT: Okay. So this is what I'm going to say. I
think the defendant is entitled to a complete answer to
interrogatory 16. If a complete answer is provided by your
production of documents, then you tell them in writing, we
have completely answered this by our production of documents,
and then you're stuck with it. If you haven't, then you need
to provide a more complete answer. Again, we're going to come
up with a date for all of this stuff in a minute.

Moving on to the next thing. Information --

I referred to category E as -- excuse me. I'm
looking at the wrong thing. I referred to the last two topics
in the motion as hodgepodge one and hodgepodge two. There was
a whole bunch of stuff kind of mushed together.

So under heading E of the plaintiff's response to the
defendants' motion -- this is the part that covers what I
referred to as hodgepodge one, paragraphs 13 and 14 -- that
the plaintiff is saying we have produced everything that we
have got or have agreed to produce everything that we have
(Which were all the proceedings had in the above-entitled cause on the day and date aforesaid.)

CERTIFICATE

I hereby certify that the foregoing is a true and correct transcript of the above-entitled matter.

/s/ Laura M. Brennan

December 20, 2011

Laura M. Brennan
Official Court Reporter
Northern District of Illinois
Exhibit 59
IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GAMES WORKSHOP LIMITED,

Plaintiff,

v

CHAPTERHOUSE STUDIOS LLC,

Defendant

Docket No. 10 C 8103

Chicago, Illinois

September 1, 2011

9:30 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JEFFREY T. GILBERT

PRESENT:

For the Plaintiff:  JONATHAN E. MOSKIN (By Telephone)
Foley & Lardner LLP
90 Park Avenue
New York, New York 10017

SCOTT R. KASPAR
Foley & Lardner LLP
321 North Clark Street
Suite 2800
Chicago, Illinois 60610

(TRANSCRIBED FROM DIGITAL RECORDING.
PLEASE PROVIDE CORRECT SPEAKER IDENTIFICATION)
PRESENT: (Cont'd)

For Defendant
Chapterhouse: ERIC J. MERSMANN
Winston & Strawn
35 West Wacker Drive
Chicago, Illinois 60601

JENNIFER A. GOLINVEAUX (By Telephone)
THOMAS J. KEARNEY (By Telephone)
JOHN C. DONALDSON (By Telephone)
SHANE WITOV (By Telephone)
Winston & Strawn LLP
101 California Street
Suite 3900
San Francisco, California 94111

(TRANSCRIBED FROM DIGITAL RECORDING.
PLEASE PROVIDE CORRECT SPEAKER IDENTIFICATION)

Court Reporter: Lois A. LaCorte
219 South Dearborn Room 1918
Chicago, Illinois 60604
(312) 435-5558
THE CLERK: 10 C 8103, Games Workshop Limited v
Chapterhouse Studios LLC.

THE COURT: We will do the courtroom first.

MR. KASPAR: Scott Kaspar for Plaintiff Games Workshop.

THE COURT: Good morning, Mr. Kaspar.

MR. MERSMANN: Eric Mersmann for Defendant Chapterhouse.

THE COURT: Good morning, Mr. Mersmann. And who do we have on the phone?

MR. MOSKIN: (By Telephone) This is Jonathan Moskin at Foley & Lardner in New York for Games Workshop.

THE COURT: Okay.

MS. GOLINVEAUX: (By Telephone) Good morning, your Honor, this is Jennifer Golinveaux, Winston & Strawn for Defendant Chapterhouse Studios, and with me on the line are Caleb Donaldson, Tom Kearney and Shane Witnov of Winston & Strawn.

THE COURT: Okay. All right, good morning, everybody. Okay, I'll address myself to the folks in the courtroom, but if the people on the phone want to respond to this, I'm happy to do that too.

You have seen the order. I spent a couple of sessions with your Chicago counterparts, saw the order I issued last week, and I'm wondering whether you have had a chance to talk through those -- talk about those issues and what your perspective -- your respective positions are on that.
I'll look to the plaintiff first, I guess, since this is
your lawsuit, or if somebody else wants to jump in, that's
fine.

Mr. Kaspar is waiting to see if, Mr. Moskin, you want to
take this up or not.

MR. MOSKIN: Well, I have to say, and I apologize for
this because I was out of the office last week, that I want to
pull up -- I discussed with Scott the -- I think I know what
the content of the order is and I'm just pulling it up right
now to be sure that I have that -- one of the things I
believe -- the two things that seem to be issues --

THE COURT: Hold on. Before you begin speaking, why
don't we take a break, why don't you pull up the order.

MR. MOSKIN: Right.

THE COURT: Why don't you look at it. We will wait.

MR. MOSKIN: Right.

(Pause)

THE COURT: And this is all in the context -- remember,
I'm the magistrate judge here, okay?

MR. MOSKIN: Yes.

THE COURT: And this case was referred to me for
settlement. It wasn't referred to me for summary judgment or
for trial. So my context is is it a case that we should sit
down and try and settle and if so, how and in what kind of
context or is it not or are there parts of this that we could
deal with.

But you're in front of Judge Kennelly on the merits for the main case and I suppose it's also been referred to me for some discovery too. So --

MR. MOSKIN: Well, as I understand the scope of your Honor's proposal was that we contemplate some sort of a mock trial for 10 -- each party pick 10 products and you know, we get to pick our 10 best products and defendant, maybe call them the 10 worst products, and I have two general concerns with that, one, because the very heart of a claim for copyright infringement is copying.

At this point we have essentially received, despite the fact that we began the discovery process 5 months ago, we still have received essentially zero information from the defendant. They have offered various excuses why they won't provide us information and now they won't even answer my letters seeking very basic information.

They have claimed as an affirmative defense in the case that they independently created these works. I think the law is very clear, in fact, Judge Kennelly instructed us to take a look at the model jury instructions that he himself had a hand in drafting on copyright infringement, and they make very clear that it's a common understanding in copyright law that originality for purposes of copyright is not a broad objective inquiry, it's essentially a subjective question of whether the
originator, the author, created the works him or herself, or
in the case of a company, by itself without copying from
others.

And as a corollary to that or the flip side of that, so
that, for example, if I sat down and composed, you know, just
started writing "When in disgrace with fortune in men's eyes I
all alone beweep my outcast fate," you might say that, you
know, I had copied Shakespeare, but if I could prove that I
was not looking at his sonnets but that I really came up with
that on my own, that's original to me and I'm entitled to
claim copyright in it, and whether I could show anybody copied
from me rather than Shakespeare is another matter, but just in
terms of owning copyright, it's a closed inquiry into the
state of mind effectively of the copyright creator.

And similarly, the law is clear that the infringer, if
the infringer is, they can try to show independent creation,
that is to say that they looked at -- either they created
things on their own or they relied on third-party sources, but
we have been seeking for five months to find out from the
defendant if it can identify any third-party sources on which
it relied in creating the roughly hundred or so works that we
have identified so far as infringement, and they have given us
nothing. They have produced no documents, they have made some
very broad windy references to things out in the public
domain, but we, if we are to proceed with your Honor's
proposal, the first thing we need, and I think it's fair for
us to have to get this rather quickly, is, you know, would be
the documents and detailed interrogatory answers responding to
our requests, whether there really is any defense to the claim
of infringement in the case.

Moreover, another issue that just conceptually, part of
our claim in this case is, and there is abundant case law that
supports this, that when -- here, if you look at the website
as a whole, a website is a copyrightable work and the entire
website is devoted to selling and offering or depicting -- put
aside the sale issue because for purposes of copyright that's
less relevant -- it's for depicting the infringing items.
They're all collected together in one place and the entire
website is an infringement.

So -- and frankly, I think the law is sufficiently clear
that we could readily win summary judgment on that issue,
whether the website should be taken down even if some end
products could be sold independently as not infringing.

But the first step before we can move forward I think to
any settlement would be, and we would be very eager to do that
if, you know, given the right opportunity, is we need some
responses to discovery and really at this point, and I know
one of the other issues you had teed up is the issue of
whether there was sufficient prejudice that we should be able
to deal with the issue of the protective order, I'll put that
aside for a little later, but we really received no
information that I can share with my client to -- on which to
move forward to assess whether there are any of these products
that we could say are noninfringing.

THE COURT: Well, I mean, I'm sure either Mr. Mersmann
or Ms. Golinveaux want to speak to this, but just a couple
things for the record here.

Number one, before you get to a claim of infringement and
whether it's copied or not, don't you have to preliminarily
show that the products are substantially similar or the works
are substantially similar? So in your Shakespeare sonnet, you
know, if it's a work about the same thing Shakespeare talked
about, but it was a Dave Matthews band lyric, don't you first
have to show substantial similarity before you get to, "and
they copied it from us"?

I know -- I mean, I read the pattern jury instructions at
the Seventh Circuit to look at substantial similarity and
infringement and so forth, and I know that to some extent
there is some blend, but as I understand it, one of the points
the defendant is making is A, the chart you have given them
where you say "This is what we claim is infringed" is wanting,
but B, if you look at least at the works in the status report
where they reproduced in living color two different things,
they're saying "Look at this, Judge, look at this, Jury,
they're not the same."
So you would acknowledge you at least have to show the similarity before you get to "and they copied it," right?

MR. MOSKIN: Well, what you have to show is first access, and they admit they had access to everything.

THE COURT: Right, and I think --

MR. MOSKIN: And -- I'm sorry, I didn't mean to talk over you.

THE COURT: Yes, I thought in one of the papers I saw the defendant went so far as to say "For these purposes I'm not even going to challenge access." Go ahead.

MR. MOSKIN: Right. And you're right that you have to prove substantial similarity, but what that means is not that you have to show that the overall works are similar, you have to simply show copying of protectable elements.

So for example, it's commonplace for courts to say in copyright infringement cases you can't disprove copying by showing how many elements of a work you didn't copy. So as long as they have taken discrete copyrightable elements in a way that is clearly copied, that is sufficient.

But yes, there has to be substantial similarity, but you don't -- it doesn't defeat a showing of substantial similarity to show that there are other additional elements in a work that are not similar.

So I think for every one of these we can show that they have taken identifiable discernible original elements and
transposed them directly into the infringing work.

THE COURT: Okay. Let's say you could do that and you're pretty confident you could do that. But you know, what, I'm putting the cart before the horse here.

Let me just say two more things and then I'll hear from the defendant in terms of this general concept.

One, I think your understanding of why we're here today, Mr. Moskin, is a bit circumscribed. One of the things I discussed in the two sessions I have already had with your people here locally was some type of a, you know, shortened proceeding like you just described, okay? But that wasn't the entirety of what I was trying to get at here.

If you look at my order, what I have said is what I wanted to talk about today is what is necessary to put this case in a posture for a productive settlement conference. And I suppose you're answering that by saying "We want the discovery from the defendant that we have asked for and they have stonewalled us on," and two, what information or documents should be exchanged by the parties before the settlement conference to increase the chances that the settlement conference will be productive. And again, I suppose I hear you say "We want responses to our discovery."

And three, what three pre settlement conference submissions should be required of the parties in terms of letters or materials or other things.
So I'm a little bit broader than what you're talking about here, and that's probably sometimes a problem of the game of telephone with communications being exchanged. But where I'm at is I understand you have served discovery and I understand you're in a litigation here where one party serves discovery and the other party opposes it and we go on and on with that. But another way to do -- another way to get a case resolved is to exchange certain information between the parties that give them a better sense of the parties' positions and then without expenditures of hundreds of thousands of dollars, come in and try and resolve it. So that's kind of why I'm here.

If the parties come before me and say "Judge, we have read the Federal Rules of Civil Procedure and they don't say anything about that stuff, and we're going to zealously represent our client and we want to serve things under Rule 33 and 34 and 36 and we want to come before you under Rule 37 and eventually we want to have a trial," that's fine. And then there is not much for a settlement judge to deal with.

But my goal is to try and shortcut that a little bit. And you know, from what I see, let's say you're right. Let's say that you will be able to show -- I mean, the defendant is not a stranger to the games, this particular game, that Games Workshop puts out, right, he is a fan. Isn't that right, Mr. Mersmann?
MR. MERSMANN: That's correct, your Honor.

THE COURT: Okay. And he makes these allegedly infringing products, I think you said, in his garage?

MR. MERSMANN: That is correct, your Honor.

THE COURT: And so let's say for the sake of argument and only for the sake of argument and not as any finding or anything else that for at least some of your items you're going to be able to show they're substantially similar and you're going to be able to put together whatever circumstantial or even direct evidence in terms of the types of things you're asking for from the defendant of copying, okay? And for others it's going to be a little bit dicier. You're not going to be able to show that they're that similar and you're not going to be able to -- and maybe the defendant is going to be able to articulate from whatever diaries he has or whatever that he came up with the Shakespeare sonnet pretty much on his own and it's going to be a bit of a reach.

But let say you're going to win on some of this stuff after you go through all your discovery. What then? If Games Workshop Limited's goal is to put Chapterhouse Studios out of business, a death knell, cease and desist, go away, die, and pay us whatever you can of our attorneys' fees, then you're right, there is no basis to sit down and settle this case.

However, if you would like to work out some agreement with Chapterhouse Studios, and I haven't yet heard whether
Chapterhouse is willing to do that, short of "We'll go away roll up and die," but that allows both of you to go on and attempt to continue to operate in the areas, the space that you're operating in in some way without one or the other having to give up, in the world I live that's called a settlement, right?

So if there is a way to do that, I would love to help you do that, and if there is information that should be exchanged by the parties that would help you do that, I would like to do that.

I understand that with respect to one of the defendants, here, Paulson, Games Workshop already has had some productive discussions that hopefully will lead toward a settlement and a resolution that will not force Paulson to curl up and die. And if there is a way to do that here, I would like to explore that. I would like to hear from the defendant, though.

MR. MERSMANN: Your Honor, as you said, the primary issue of contention that we see directly before us and that's standing between us and settlement is the question of substantial similarity.

Plaintiff obviously feels that it's -- it would be very easy for them to show that there are clearly copyrightable protectable elements that have been copied, and as we have discussed in the previous two status hearings, we disagree.

So while we think that that is the number one issue that
both sides could use some input on, some guidance in terms of coming together for a settlement, to the extent that plaintiff does want broad discovery leading up to -- leading up to a settlement conference that includes affirmative defenses and the like, then all we would ask that it be mutual, that we get discovery as to their communications about their inspirations on designs and similar requests that we have tendered.

THE COURT: Why has the plaintiff -- why is their inspiration on designs relevant? I understand why it's relevant for the defendant because you have to show that you didn't just copy what they did, but why is their inspiration on something that they have a copyright or a common law copyright on relevant?

MR. MERSMANN: And that's to get to this issue of protectable elements. If it is a question of, you know, our song lyric that's similar to their Shakespeare sonnet that is similar to their sonnet that is similar to a Shakespeare sonnet, if we have evidence that they did in fact copy their Shakespeare sonnet from Shakespeare, then that's just not a protectable element and they shouldn't be asserting that in the substantially similar analysis. That shouldn't be one of the elements that the court should look at.

And there are, given the degree to which the phrase "influence" or what the artist or designer has been influenced by has been relied upon in this case by plaintiffs in
asserting my client's copying, it's -- the same question goes
back to them.

We believe that many of the elements that they claim are
the look and feel of their products that are the common
threads that run throughout their world are derived from other
creative works, other works in the public domain, and so they
shouldn't be, that they shouldn't be analyzed for their
substantial similarity. So that's really the core of the
relevance there as to communications with their designers
saying what they were inspired by.

And the second issue as to individual designers, as we
spoke about previously, is that we actually don't even have
the information from them on the artists responsible for the
individual pieces of art that they're alleging we copied.
They're giving us lists of contributing artists to an entire
book or entire product line, and that's relevant to simple
ownership of the copyright, as we discussed previously.

MS. GOLINVEAUX: Your Honor, this is Jennifer
Golinveaux, if I could just add one thing.

THE COURT: Yes.

MS. GOLINVEAUX: I heard opposing counsel mention in
terms of what discovery would be useful for a settlement
conference, he mentioned discovery on independent creation.
Defendant has supplemented an interrogatory relevant to
independent creation and provided detailed information as
specific example. So if there are other categories of
discovery that plaintiff truly thinks would be useful in
evaluating settlement, we are certainly happy to consider
producing those in short order before our conference, but I
think your Honor put his finger on it, which is if the goal
here is at this point to get Chapterhouse Studios to walk away
from this business wholesale, then I'm just not sure a
settlement conference will be useful and we might be best
proceeding with a summary judgment motion, as burdensome as
that might be given the number of products.

But if clarity regarding whether and which of these
products are actually similar in any way to plaintiff's
products would be useful in evaluating settlement, then I
think a settlement conference could be productive here.

So I guess what I'm asking is if there are other
categories of documents that plaintiff thinks would be useful
in evaluating that issue, we would like to know what those
are.

THE COURT: Mr. Moskin, first, I blanked when you were
talking about this first category of documents. What was
that?

MR. MOSKIN: I think -- I'm not sure -- you blanked on
something that I referred to?

THE COURT: Well, Ms. Golinveaux was saying -- I'm
probably murdering that name.
MS. GOLINVEAUX: Your Honor, that's exactly right, actually.

THE COURT: Okay. -- was saying that you had said there would be certain documents that would be helpful to you in evaluating settlement. What are those documents, whether settlement would make sense?

MR. MOSKIN: Right. What I would like is -- I think your Honor has seen the detailed essentially preliminary claim chart that we prepared, and if what Ms. Golinveaux described as a detailed interrogatory answer, I don't want to get into a war of words on here, if she will stipulate that those are the only sources of independent creation they can identify, then we can move forward and frankly, you know, they basically have no defense of independent creation.

If she will say on the record that there is no more information they can provide on independent creation, then that really -- that's fine with me, but they really haven't provided any kind of detail, and I think what we would like is -- I mean, my client spent dozens of hours with me putting together that claim chart and they have given us slapdash answers.

Again, I think they should give us a corresponding answer for each one of the products if they can identify any actual third-party works on which they relied. I also think that since he says -- I think they should give us the mockups or
working drawings that show how they created these things and his correspondence then with the third-party designers. This goes to the confidentiality issue.

Your Honor left open the question of whether we were prejudiced by our inability to discuss with our client these matters. I can't -- it's not just a matter of whether we want to sue some third-party. I can't -- clearly, he has got designers all over the country and all over the world. The only way they can work together in creating these designs is by exchanging e-mails. These are all visual, so there have to be documents, there have to be e-mails and we should have those.

Mr. Villacci, the principal of Chapterhouse, was interviewed publicly and we can provide the court a transcript of his interview in which he said that the way the third-party, at least some of the third-party designers make these things is they get contacted by customers who want specific types of products that they see in the Games Workshop overall body or the Games Workshop universe of literature. They request of these third-parties that they make copies and then the third-party designers, you know, work together with Chapterhouse to create these things and then Chapterhouse is permitted to continue selling them itself.

So I think we should have all of the correspondence between -- and we have been asking for it for four months
now -- between Mr. Villacci or Chapterhouse and his
independent designers, and we should have a detailed -- either
detailed interrogatory responses matching our claims chart or
an admission that, you know, if they can go on the record and
say that their interrogatory answer now is all they can tell
us, then that's fine. It makes my job much easier. But
again, I can't -- at this point I can't even advise the
client, you know, for example, some of these independent
designers may very well be former Games Workshop employees,
but if I can't tell my client their names, you know, and that
would be very relevant to know what access they had internally
to all these detailed works.

THE COURT: Yes, but your client, just on that one
point, your client could give you a list of everybody who, you
know, current and former employees and you could check them
against the list of designers that you get under protective
order.

I'll tell you something, I think there are too many
lawyers here. I like lawyers. I am and was a lawyer, and I
was a lawyer in a small firm and I was a lawyer in a big firm,
but let's, let's assume, Mr. Moskin, you can prove exactly
what you just said. Just again, for purpose of assumption
that communications with the designers are as what -- you will
prove in a court of law or in a summary judgment motion
through the expenditure of lots of money exactly what you have
shown that customers called the designers, they said "I saw this Games Workshop character. I would like you to design one," they do design one, and you're going to be able to, you know, show it's substantially similar and there is access and copying and whatever you're going to need to show for purposes of winning on that particular figure or that particular thing, okay?

And maybe there is a bunch of them like that. And -- but -- and I'll add in also I would bet with 97 or however many works we are talking about here that defendant is going to win some too.

So defendant is going to get some ruling someplace from Judge Kennelly if this goes all the way through that you don't have any protectable interest in certain of your works. You know, there may be some figures, there may be some other things if you get into a battle on this, that lo and behold Chapterhouse, which has a profitable business on this, there is going to be a ruling on the record public in federal district court in Chicago that you don't have rights to certain things that you're now asserting rights in.

So let's assume that all that goes down. But with respect to the things that you win on, what do you want? Do you want Chapterhouse to cease and desist production of those items, period? Would you be satisfied if Chapterhouse owned by a fan paid you a royalty of some, or your client a royalty
of some amount in order to do that or some other type of
relief that you could negotiate with them now? Or is the only
way Chapterhouse is satisfied here is it proves its case, it
wins, and it puts Chapterhouse out of business. I'm sorry, I
said Chapterhouse, I think I meant Games Workshop.

MR. MOSKIN: Well, I don't think -- I hope there is no
issue here of Games Workshop being put out of business.

THE COURT: No, no, no.

MR. MOSKIN: Frankly, I'm not looking -- Games Workshop
is not looking to be punitive either, although concededly,
we're in a posture where, you know, we're not very friendly,
and I don't mean to -- I think it came up in the last hearing,
you know, this is just a fan site, but you know, it's not
really. I don't think it's any more a fan site than if fans
of Walt Disney decided that they loved the Disney characters
so much that they could start create their own Mickey Mouse
products and so on because there is this untapped need. You
know, if it's an infringement, it exceeds what fans are
permitted to do.

THE COURT: Okay. But let -- excuse me, let me
interrupt you. I'm sorry, I'm being rude.

MR. MOSKIN: Okay.

THE COURT: I'm interrupting you. First, you're right,
I said what does Games Workshop want from Chapterhouse, not
the opposite.
Two, I just had a Disney case, okay, and Disney came in and said exactly what you wanted. "This person is trading off our names, trading off our products. We want an injunction against them doing this and if they do it again, then we want a default judgment entered against this person," okay. That was clear to me. They were not willing to settle for anything less, I could not settle the case for anything less other than scaling back the injunction, and the case was settled with the defendant consenting to an injunction and a cease and desist and an agreement if they did it again, there was a default judgment, okay?

Chapterhouse is not willing to do that here, and so if that's what you want, I can terminate my settlement referral, okay? However, if there is something short of that that you would want -- what I'm trying to do is assume you win and you can win or assume you get information on certain of these products. Is there a resolution here with Chapterhouse that you're willing to explore?

Because what you're asking for, you know, what both sides have said in their status report, what both sides have said here is "We want lots of discovery and we want to have a summary judgment proceeding in front of Judge Kennelly with respect to all or most of 97 products," right? Is that right, Mr. Kaspar?

MR. MOSKIN: Mr. Kaspar -- this is Mr. Moskin in New
THE COURT: I'm looking at Kaspar here.

MR. MOSKIN: Okay.

THE COURT: But that's what you want, Mr. Mersmann, you want, you want to have a summary judgment proceeding on all these things to show that they're not substantially similar?

MR. MERSMANN: That was the way we had intended to proceed before we were referred for settlement.

THE COURT: You still may.

MR. MERSMANN: That's correct.

MS. GOLINVEAUX: Your Honor, I'm sorry, could I just add one point there?

One of the reasons we think an early summary judgment motion is really necessary is because it would limit the discovery we would need to seek from plaintiff on ownership and on protectability, on inspiration, because if we knock out 50 works, let's say, out of 96, then that's 50 works we don't have to seek all this discovery on whereas if we don't knock out those works early on, then we are going to have to serve our client by seeking ownership discovery and the sources they relied upon for each of those -- for each of the works in the case.

THE COURT: Yes, I know, but a couple of things. One, summary judgment is hard to get. Two, staged discovery sometimes makes sense and sometimes doesn't, and so nobody has
yet decided that your proposal that you put all substantial
similarity discussion on hold while you litigate this summary
judgment motion, nobody has yet agreed to that. And a judge
could look at this and say "Look, the chances of you
succeeding on everything are slim and none," and yes, it could
cut down on the cost of expense but it may not.

And so a judge could say "You know what? A pox on all
your houses. Go ahead, everybody produce everything. I'm not
going to stage discovery, and if, as, and when you think you
got a good summary judgment motion, bring it on. And you
know, I'll deal with it, I'll deal with it at that time."

I think that the plaintiff has said that you know, some
of the discovery that they're seeking is necessary in order to
defend against some of what defendant will be raising in
anticipation on this summary judgment motion. And I frankly
think that the -- you know, the reason that Judge Kennelly
candidly sent it down to me probably is because he would like
to avoid having to deal with this type of summary judgment
motion if he could at all help it. But if he can't, you know,
that's fine.

And that's why I'm trying to force some discussion of
what happens at the end of the day. I mean, does -- isn't
there a risk that Games Workshop will be adjudicated not to
have certain of the rights that it thinks it has or you think
that's a very, very, very minimal risk?
MR. MOSKIN: I take it you're addressing that to the plaintiff's side.

THE COURT: Yes.

MR. MOSKIN: And just to say a couple things here, of course, there is some risk and I want -- you know, just to be clear, I think that -- I do think that there are, conceptually there are ways to try to settle this case, and just as we are very close to settling the case, I would say, within nanometers of settling the case with Paulson, who has done something, you know, does similar -- there is a similar business model to Chapterhouse but much smaller, he is only selling 10 products or something, not over a hundred products, you know and he is -- conceptually what we have agreed to do, you know, is that he has agreed to stop selling some and make changes to others.

And you know, that's -- you know, we're not trying to be punitive to people that, you know, if we can work with them. And you know, I -- it's just much harder to get to that juncture with Chapterhouse partly because of the very -- well, I have to say partly, and this may be the lawyers' fault, that this case has been handled in a way that it has generated a lot of unnecessary heat. Maybe I'm somewhat guilty of that myself, but I can tell you that the way Chapterhouse started this case was by seeking leave to file what I thought was a frivolous motion to dismiss that the judge wouldn't let them
file, that it cost us a lot of time and money to make clear
why it was not an appropriate motion. We then had efforts to,
to make at least some minimal advances in discovery and
Chapterhouse has, as I said, completely stonewalled us. They
won't even answer my letters.

The -- I thought we had resolved one issue in a meet and
confer in June and they then proceeded to make what I thought
was a, you know, completely inappropriate motion to compel.
It's been -- there has been a lot of unnecessary hostility
between counsel, but conceptually it's quite possible that,
more difficult and maybe that is a little naive, but at least
conceptually it's possible to work out a settlement where
Chapterhouse would agree to change, make enough changes in its
product and just continue selling some of them, that the
parties could move on.

But a license is not likely. I would say that's a
non-starter for reasons I could explain, but it's not -- and
also just to say, you know, we are trying to figure out, we
have a deadline to amend our complaint. We have in the
interrogatory responses, in that claim chart we didn't include
all 105 products that we had originally thought were
infringing because on closer inspection, you know, some of
them -- you know, we would probably be satisfied not to pursue
a claim. There are some additional products that Chapterhouse
has just launched that we would need to amend the complaint,
but you know, I don't dispute the fact there are some, if
these products are viewed individually, there may be some that
Games Workshop would, on which it would lose, but I do think
it bears noting that Chapterhouse on its website
prominently -- not prominently, but it does, after it was sued
it added a statement admitting that Games Workshop owns
copyright in all of these things and Mr. Mersmann is raising a
non-issue when he says there is some question as to copyright
ownership or authorship because these are all made by
employees of Games Workshop, as we have told them repeatedly.

As a matter of copyright law, Games Workshop therefore
owns all the copyright under U.K. law. There is just no issue
there. So again, you know, there may be some risk we'll lose
on some of these things, and that's, of course, an incentive
to settle, but you know, if there is some opportunity to
settle based on changes in Chapterhouse's business model, then
that's something worth discussing.

MS. GOLINVEAUX: Your Honor, may I respond briefly?

THE COURT: Yes.

MS. GOLINVEAUX: You know, I'm actually heartened by
what I have heard from plaintiff's counsel because it sounds
like conceptually that it's possible to reach a settlement,
which I hadn't heard before and that's encouraging. I don't
think that defendant is adverse to producing the
correspondence for the designers that he is talking about if
they really feel like that's a sticking point for them to be able to evaluate settlement. But we would want the categories that Mr. Mersmann identified earlier, which is the author information and the sources that they have relied upon in advance of settlement also.

And then I think one kind of broader category, which is plaintiff hasn't produced a single e-mail to date in the case. They have claimed that they have e-mails showing confusion, which will be relevant on the trademark claim, for example, but we haven't received a single e-mail from them. So we would want the e-mails, particularly if we're producing correspondence to designers, we would want the e-mails in advance of the settlement conference also so we have everything on the table.

MR. MOSKIN: The e-mails, there are two e-mails I think that I should have this week. As far as the authorship information, they have all the authorship information and the -- this is just -- again, Chapterhouse, the defendant, concedes on its website that Games Workshop owns all of the copyrights in all of these works, so again, they're just -- they're just putting us to needless burden. If there are specific issues they want to raise where they think that some work was not original, that's fine, we're happy to answer those questions, but just to say we have to -- this is, you know, you have to understand, this business is not or the War
Hammer universe is not perhaps quite as vast as the Disney universe, but it would be like saying to Disney, "You have to identify every creative step in all of your works before we can move the case forward," particularly here where they admit that we own copyright in everything, that doesn't really make sense, and so far that's all I can tell they're looking for, is just to make us work needlessly.

If they have specific questions about specific works, you know, what was your inspiration, that's fine, and we are happy to answer that, but they haven't attempted to do that, they have just said, you know, "Go reproduce for us 40 years or 30 years of creative inspiration, you know, for everything."

And that's, you know, a Sisyphean task.

THE COURT: Ms. Golinveaux, if he is correct that on the website or for purposes of the litigation you concede authorship or ownership, I can't remember the way he phrased it, but why do you need this information?

MS. GOLINVEAUX: Thank you, your Honor. I think what plaintiff's counsel is referring to is simply a disclaimer that Chapterhouse runs at the bottom of its website that says certain trademarks, and I think it lists out the product names and copyrights are claimed by plaintiff and it certainly is not an admission as to ownership or scope of protectability.

You know, I think what -- and I think plaintiff's counsel also said that we have already been given author information.
We have not. And that could be highly relevant to the case because if the claims were not created by employees in the scope of their employment, plaintiff has already served discovery responses saying that there are no chain of title documents in their possession, you know, and these would be documents like assignments from third-party designers.

So all we're asking for is the author of each of the claimed works, not the entire universe of plaintiff's work, but the works that they're claiming in that chart that he refers to. And that's critical to knowing whether or not they even own the works that they're asserting. We feel we have not admitted or conceded ownership.

MR. MOSKIN: The author of each work is Games Workshop as a matter of law. End of story. And if there are specific questions they have about any specific works, they can ask them, but as a matter of law, Games Workshop is the owner of every single work. That's why there is no chain of title issue because they're all written and created by employees within the scope of their employment and again --

MS. GOLINVEAUX: And, your Honor, that's exactly what we need to test.

THE COURT: Mr. Moskin, why should they take your word for that?

MR. MOSKIN: Well, they can -- again, they don't have to take my word for it. If they have questions about specific
works, that's fine. But my client has said in an
interrogatory answer that that's the truth. If they have a
basis to challenge that, then they can challenge it. But they
have no basis to challenge it.

THE COURT: You know what? I don't have enough
information here to make discovery rulings as specific as what
we're talking about here. The referral is for settlement and
I think it's for settlement related discovery.

So you know, Judge Kennelly and I would probably have to
decide if there are motions filed what is settlement related
discovery and what's not. I will say that I think both --
just from what I'm seeing now, and this is not binding, but
what I'm hearing, both parties would need to explain -- on the
one hand, plaintiff would need to explain better why simply
answering an interrogatory insulates the plaintiff from
production of information that either could support the answer
to interrogatory or could be used by a defendant to
cross-examine and show that an interrogatory answer is
incomplete or not completely correct or not fully in keeping
with the documents or so forth.

So I would need to know a little bit better why an answer
to an interrogatory that says we own this and these all were
created by Games Workshop employees in and of itself would
insulate discovery. By the same token, the defendant would
have to show a little bit more than I have seen now, it seems
to me, why truncated discovery so that a pretty complicated summary judgment motion process could be instituted which could delay this 2010 case by months or even more than that should be countenanced as opposed to proceeding with all types of discovery that would ready the case for trial if the defendant is wrong that summary judgment is not going to completely resolve this case or substantially narrow it, similar to I think the motion to dismiss practice.

I mean, I don't know any defendant and I never represented a defendant that didn't say to me at some point, "Look, can't we get this resolved quicker? Can't we just get a ruling on this? Can't we just get this done? Why do I have to respond to all of this stuff?"

And sometimes the answer to that is it's tough, but we can't. You know, you're in a lawsuit and you know, the other side is making arguments and a judge is going to decide which way to go and you know, one thing that settlement does is allow the parties rather than the court and the lawyers to control the outcome and that's why in our courthouse only 1.5 percent of the cases actually go to trial. Most of them get resolved before then, some on dispositive motions.

But just common sense tells me that with 97 works, you know, if you knock out 30 on summary judgment, does that justify staying discovery so you can go through all this stuff? And there is probably still discovery that has to be
had on, even with respect to the works that are subject to the
summary judgment.

But I'm speaking off-the-cuff here, and I want both sides
to appreciate that I'm speaking off-the-cuff and not totally
informed about the particular discovery issues that are going
to be raised and the context, and I or Judge Kennelly would
look at those very carefully before making any decision that
was controlling here.

Just in this conference, though, when you know -- I mean,
I appreciate what Mr. Moskin is saying that he as counsel to
Games Workshop is frustrated by his dealings with defendant's
counsel. And I am sure defendant's counsel is frustrated by
dealings with plaintiff's counsel. But in this exchange here
when Mr., when Ms. Golinveaux says she is encouraged by
certain things she has heard, you know, that's one of the good
things about parties sitting down and talking.

I'm not talking about a discovery request or an answer
date, or anything like that, but talking, because you learn
certain things. Chapterhouse learned that a license is a
non-starter. I'm not sure whether or not Chapterhouse knew
that before or not.

On the other hand, you know, I have heard Chapterhouse
say that it's encouraged that maybe there can be a settlement
here. But I'm not going to wrestle you all to the ground.
That's not my job, okay, that's really not my job. I think it
would be a shame for both sides here, one side is paying their
lawyers, one side is doing it for free, but it seems to me
both sides have risk in the litigation and it can be an
extremely expensive litigation.

And I'm very willing to sit down, even preliminarily, in
person, I think, rather than a phone call, to try and work out
either a discovery plan that gives both sides the information
they need to evaluate settlement or a preliminary settlement
discussion that brings people in to talk about things.

I mean, I will tell you I had a trademark case last, a
couple weeks ago, maybe a month ago now, that was very -- it
was also a zero sum game, it was very hotly fought. The
principals came in, the settlement discussion for hours was
very hot, but in sitting with both parties I learned that the
principals really had a lot of animosity against each other
because of some prelitigation telephone calls that were had
and things that were said on those calls.

And one of the principals took it upon himself to say to
the other principal, "I'm sorry. I'm sorry about how I
reacted when we had a phone call. I'm sorry for saying that I
was going to bury you, that I was going to put you out of
business, that this was going to cost you too much and you
could not fight us. And I have respect for your business,
your plan, your model and I would like to try and resolve
this." The case got resolved.
So strange things happen when people sit down together
and good things happen when people sit down together to try
and resolve something as opposed to talking motion to dismiss
and all the rest. But I can't force anybody to do that, and
I'm certainly not going to do that here.

And I don't think I have actually any motions in front of
me right now, do I? I saw a motion in front of Judge Kennelly
to extend the time to amend pleadings because in part you
didn't have access to be able to talk to your client about the
stuff that was produced on a highly confidential basis.

Are there any motions in front of me?

MS. GOLINVEAUX: Your Honor, defendant is prepared to
file a motion to compel soon, but we had wanted to wait for
today's call to try to figure out how that might work in the
context of a settlement conference and whether it made sense
to hold off. But clarity as to whom we should file that in
front of or if you think it would be useful to do the sit down
that you were talking about on discovery, we would certainly
be open to that as an alternative.

MR. MOSKIN: May I ask opposing counsel what would be
the subject of the motion to compel? She refused to respond
to me in e-mails or my letters. Maybe in open court you will
say what it is you think you're missing. I have told you that
we're, for example on the, these couple e-mails that you will
have them shortly. There is not a need to make a motion to
compel. I previously explained that in a letter and asked if there is anything else they needed and they haven't -- they have refused to tell me if there is anything else, so I'm very curious to know, maybe you will say so in open court, what it is you think you need because I will say on, you know -- I'm not aware of any motions that are pending now by Games Workshop because it's not just a matter that we haven't received -- I can't share this information about the creators, these independent creators with my clients, but in five months we have received zero, absolutely zero other information except document requests and in 28 years of practice, honestly, I have never had a case where I have had such complete, total utter and complete lack of cooperation from another side.

So you know, I will also say that just yesterday because they refused to even tell us what documents they have or produce any documents, I served a limited 30(b)(6) deposition notice to take the deposition of somebody at Chapterhouse just so we can identify what documents they do have so we know what they're withholding from us.

And instead of saying -- I got an angry response saying they want to just put this off indefinitely. I said in reaction to that, well, then let's pick a date within a few days of that, but -- you know, discovery is set to close at the end of October. I have served discovery five months ago
and have learned zero in this case. My client is as much in
the dark if there are any defenses or how close we are to
winning or losing because we have gotten no, absolutely zero
cooperation from the defendant.

So I'm really -- I would -- yes, I'm sorry.

THE COURT: I would be interested too, Ms. Golinveaux,
but I would also say just for everybody's edification we
should all remember that under our local rules here, and I
think corresponding Rule 37, no motion to compel can be filed
without a Meet and Confer that goes through the details of the
motion.

So I would, I would hope that before any motion to compel
was filed, there was a substantive discussion by counsel for
the parties about the motion and efforts to resolve it because
it would really be a waste of time to file a motion to compel
that doesn't include a Rule 37.2 statement under our local
rule, which then could be denied simply on that basis alone.

MS. GOLINVEAUX: Thank you, your Honor. Understood. I
have got to respond to a couple of things, which is
plaintiff's counsel, it seems to me, is trying to create the
impression that defendant hasn't produced documents in the
case and that's not accurate. Defendant has produced
thousands of pages, has produced documents about financial
information, documents about the number of each of the
products sold, has produced advertising materials.
What neither side has produced yet is e-mail discovery because that takes more time to go through, although apparently plaintiff only has two responsive e-mails, maybe it won't take them quite as long.

With respect to the motion that I mentioned, back on July 29th we sent plaintiff's counsel a 6-page letter detailing what we need that we haven't gotten, because they have refused to provide any discovery on ownership or protectability either on the trademark side or the copyright side, and frankly, I think it's about 90 percent of our request they just say "No, we aren't going to give this to you."

And we got a letter in response, but it didn't address our concerns and we told them that and for a little over four weeks now, we have repeatedly asked plaintiff's counsel for time to talk on the phone to walk through it and he has flat out refused to get on the phone with us and he says he does not intend to get on the phone with us.

The last e-mail said "I will think about whether I will talk with you on the phone." That was about 10 days ago. So we have held off from that July 29th letter that we initially sent specifically to try to develop a Meet and Confer process and see if there are some ways we can narrow this so that we didn't have to burden the court with these issues, but if we have -- we have to get this information.
MR. MOSKIN: Your Honor, this is Mr. Moskin. I just cannot believe Ms. Golinveaux has the temerity to say what she just said. It is completely misleading, if not flat out dishonest. I responded to their July 29 letter in detail and asked them repeatedly if there is any further -- if there were any further questions they had, which I would be happy to discuss on a telephone call if they would first just tell me what issues they have.

They won't answer my e-mail. They say they produced documents. They produced a disc that is unreadable. I told them that it's unreadable. They refused to either give me a new disc or tell me even what's on the disc. I asked them innumerable times just tell me what's on the disc. The only thing I can read on the disc are some public pages from the website and yet this disc has also been designated, as far as I can tell, in bad faith as attorneys' eyes only under the protective order.

I don't know what's on it. I have received not a single document that I can read or share with my client in this case. And I think it's just -- I think, Ms. Golinveaux, really, you owe me and perhaps the court an apology for what you have just said.

But they have filed motions to compel in this case without meeting and conferring, without containing the Rule 37.2, local Rule 37.2 statement that they have met and
conferred. So I also responded -- I have sent them repeated letters asking, detailing what we're missing and they refuse to respond to my letters.

So again, I just, I find it absolutely remarkable that Ms. Golinveaux can say what she just said to the court with a straight face. And this is part of the problem why it's difficult to discuss settlement in the case because again, I can also tell you, I adverted to this earlier, and again, in 28 years I really have never encountered anything like this, that I had a Meet and Confer, telephone call with, I think it was Mr. Kearney in defendant counsel's office. We, I thought, had resolved all of the issues. They then refused to comply with the agreement that we worked out in that call and filed a motion again without ever talking about me again.

The judge, Judge Kennelly instructed the parties to meet and confer on a joint status report at the end of June. We sent them a draft joint status report, asked for comment, got no comments. We proceeded nonetheless to have a Meet and Confer with us and they said "No, we're not going to give you any comments on discovery because we want to move for summary judgment instead."

So the times I have had meetings, had telephone calls with them they have behaved, in all honesty, and I hate to say this, but with utter bad faith, and that's why I have insisted that they respond to -- respond to -- tell me what they need
or what they want, have an agenda for a call before we have
further calls where they can pull similar stunts. And again,
I don't usually speak this way about opposing counsel, but
your Honor really must understand the level of frustration
here.

I stand by my position. We have received absolutely zero
information from them in discovery.

THE COURT: Well, I'm going to cut this off here now,
okay? I'm going to say a couple things and then we will call
this hearing to a close, or a few things and we will call this
hearing to a close.

Number one, you're talking about your 28 years of
practice. I have been on the bench I think for 14 months now
and you all win. You win the award for, out of hundreds of
cases I have had, you know, big complicated cases and little
cases, you all win the award for the most contentious at least
presentation of discovery dispute and lack of cooperation in
discovery, from what I can see, to date.

So I'll give you that sense of where this case stands and
probably where, why Judge Kennelly was sending it down here to
see if we could get it resolved. But you win that award here
among, you know, lots of multi party cases and contentious
police shooting cases and commercial cases and all the rest.

Two, I'm sure you can appreciate because I also practiced
for 28 years before I got on the bench and I don't know how
many years you have practiced -- Ms. Golinveaux, you can put
that of record too if you want, but I knew when I was
practicing that nobody wins in front of the court with this
kind of stuff, okay, because it's very, very hard for the
court, particularly orally, to be able to assess who really is
being tremendously obstreperous, dishonest, in bad faith, and
just totally blowing through professional obligations and who
is not in a food fight like I'm seeing here. It's really,
really difficult for the court to see.

And it always frustrated me, and I didn't get involved in
a lot of these, but I saw a lot of them and I was in some of
them. It always frustrated me because it was very difficult
for me to be able to let the court know that I was really
proceeding in a very legitimate way and the other side was
completely facetious, off the mark, and it's really hard.

Now, it's possible with, you know, very precise motions
attaching letters and e-mails and discovery requests and
responses and then talking about the law that needs to be
dealt with in the context on the merits and why one side or
the other has failed to produce and is stonewalling something,
why that is both objectionable and sanctionable behavior in
certain circumstances.

And if you have a judge who is willing to go through all
of the tedious process to look at that, at the end of that
process it's possible for the court to determine who is right
and who is wrong, who is bad and who is good, who should be sanctioned and who shouldn't. But it's tough, okay? So right now I'm hearing everything you all are saying and the aspersions that you're talking about, but I honestly can't assess with the information I have now who is right or who is wrong. Both sides to me look bad, I'll tell you that right now, because it's -- you're costing a lot of money and not getting anywhere.

Number two, I will continue, because I am an optimistic person, I will continue to think about what would make sense in terms of trying to move this case forward in settlement, and from reviewing the file and thinking about it a little more.

I'll note for the record that I really do not think either side read my order and came prepared today to talk constructively about how we could move to resolve the case. And that's frustrating to me because, you know, I think both sides came prepared to talk about what the other side was not doing and why you needed discovery and so forth, but you know, as evidenced by the fact that Mr. Moskin, who is participating by phone, he had to pull up my order on the screen before he could even respond to it, it means to me that although I'm thinking about how to resolve this case, the parties are not thinking hard enough about what to do and what they can do to resolve the case.
So I urge you to do that. I will continue to do it. In terms of the discovery motion practice, I think the safest thing probably is to file that in front of Judge Kennelly, because his referral order is not crystal clear as to what comes to me and what comes to him. I looked at the referral order and it talks about discovery related to settlement discussions, and on some level all discovery is related to settlement discussions because it informs both parties as to what is, what's going to be helpful to get a case settled.

So I think he and I will decide once the motion is filed and I'll, you know, I don't know where you should file it, Chapterhouse folks, but he and I will decide who should take it up and so forth. But I think it will be -- it will ill serve the party filing it if you can't comply with our local rules because both he and I come out of the same school of trying to get that done.

But hearing what I hear, you know, I'm not optimistic, but you got to comply with the rule or I guess in fairness the rule also says you have to state in detail when you have tried to comply and why you haven't and then the first threshold question on the motion will be did somebody comply with it and there will be a satellite proceeding on that.

I don't think one side or the other comes out of this in front of me smelling like a rose. I don't really. A rose is a rose, I could, you know, I don't know if that's Shakespeare
or somebody else, but I got to tell you that from my perspective, the efforts you're putting in here, I think your clients may be -- unless your clients both think you ought to be gladiators here, I would put at least some effort into thinking about creative approaches to information exchange, whether that's through discovery or otherwise, that would inform the parties so that they could sit down and try and resolve all or portions of the case.

Those types of discussions with client and lawyer are really important discussions to have here, I think, because I think the way I look at it, both of you have something to lose in the litigation and, you know, my experience with clients is they would rather control their exposure rather than put it in the hands of some judge or some jury someplace.

But I will say I understand this case a little bit better now, having heard the perspectives of the folks on the phone and I will say that if you all are the ones who are carrying the laboring oar on this stuff, then I want you either here or on the phone for future hearings because you have, it seems to me, you know, things to offer here that I think are helpful to getting down to the nitty-gritty.

MS. GOLINVEAUX: Your Honor, may I ask one follow-up?

THE COURT: Sure.

MS. GOLINVEAUX: You had suggested that perhaps you might be open to doing a sitdown conference on discovery.
Perhaps that would be, if plaintiff's counsel is open to that, perhaps that would be a good way to try to move things forward not only on the discovery issues because it would get us in the same room, but in terms of teeing it up for settlement if that's a possibility.

THE COURT: I'm willing to do that, but I will say that I'm going to need some stuff in writing to do it, whether it's outlined in a motion to compel and a response that then I sit down with you and try and work through or letters to me and a response, which I would also entertain.

And I will put in my order so that nobody has to fall on their sword on this, that I am willing to entertain with respect to the discovery disputes you have a sitdown that first I get a letter from, you know, the complaining side or both of you are complaining and then a response so that I actually have in front of me the issue framed, the documents that we're talking about, the discovery request and response that we are talking about rather than the free form that we have had here, which I have a hard time with.

MR. MOSKIN: If I may, your Honor, and first, I want to apologize and also make clear, I wanted to be sure at the outset, I hope my comments made clear I was well aware not only of the content of your order but more specifically that's in your order, I just wanted to be sure I hadn't forgotten anything; the specific proposal of having, you know, the mock
trial. But I do apologize if I created the appearance, and I also think in fairness to the other side as well, I was away on vacation and then the office was closed on Monday because of the hurricane here. It just has been a very -- I have only had two days essentially to comply with your Honor's prior order.

So you know, for that purpose, you know, I'll accept full responsibility, but it's just -- and I don't want to foreclose further discussion. I do also want to say I think a very easy way, without filing motions, we specifically -- I specifically declined to file a motion in, when I thought there was a reason to do it in earlier July because I thought maybe informal letters would be better, is we can simply submit to the court -- I have two letters to opposing counsel, they have a letter to me and my response. We can simply give those to your Honor without motion practice and have a discussion about what remains on those to be resolved without having the burden -- that would be, give your Honor total maybe 10 pages of documents to read rather than lengthy motions with long arguments and so forth.

And I will also mention I have, in two weeks I will be in Chicago anyway. I'm happy to be in person then although it may be a little unfair to opposing counsel if I happen to be there.

But I would also just make one final request if I could.
I know your Honor seemed to have left open the issue whether
we could show sufficient prejudice beyond the scope of your
Honor's prior ruling to be permitted so I could share even
with just my in-house counsel, not with the client itself, the
information as to these third-party designers and suppliers,
but if we could -- if we could at the very least hold the
final resolution of that until I receive the e-mails that Ms.
Golinveaux I think said she would produce, the correspondence
between Chapterhouse and those third parties so I can at least
have something more substantive to look at and we can then
discuss this a little bit more profitably.

THE COURT: With respect to your, what I'm interpreting
as an oral motion to reconsider the ruling on the motion to
continue the Highly Confidential, I think right now I'm not
prepared to deal with it, all right? I mean, talk about it
and if you want relief from that order, having sat through
what I have sat through now, I think you're going to have to
give me a motion on it, all right, because I don't know
whether this is -- is this the first time you're hearing this,
Mr. Mersmann?

MR. MERSMANN: It's the first time I'm hearing it.

THE COURT: What about you, Ms. Golinveaux?

MS. GOLINVEAUX: Yes, your Honor.

THE COURT: I'm just not going to rule on it. You know,
I mean, I don't know whether they object to it or they don't.
If they don't object to it, then you can agree to it among yourselves without me. If they do object to it, then I need to get a better sense of -- I'm not going to wade into that right here.

In terms of the suggestion to give me letters as opposed to motions, if they frame the issues, I'm fine with that. In terms of the proposal to meet in Chicago in a couple of weeks, my only problem with that is that if you're talking about the week of the 12th, that's the -- I have criminal duty that comes and goes. The 12th and the 19th are weeks that I have criminal duty. However, early in the week it doesn't get as busy as later in the week, and also, if you're willing to come here and meet in my conference room and know that I may have to absent myself for search warrants or arrest warrants or a preliminary hearing or something like that while we're trying to work this through, I'm fine to do it during that time.

I generally don't set -- for that reason I generally don't set settlement conferences during that time, but if we're talking on this basis, I'm happy to do that. But I am -- I'm done for the day right now, okay? I don't want -- what I would like you to do is talk about whether or not you will agree to submit these discovery issues to me and then come in and try and work those through in a, you know, non-motion to compel way. If you are willing to do that, I'm willing to accommodate you and you ought to calling here and
start talking with my judicial assistant at the 312-435-5672
number and --

MS. GOLINVEAUX: Your Honor, I'm actually traveling the
week of the 12th. If it's possible for your schedule and for
opposing counsel for the week of the 19th, I could certainly
be there then.

THE COURT: It is. That's just the second week of my
criminal duty so you will, you know, you will just have to
work within that. But I have some availability then too to
sit down and meet with you as well. And I suppose, though I'm
not -- I really do think in person, and you guys are spending
so much money on this that I probably shouldn't even worry
about this, but an in-person meeting I think where I could
have everybody here is a lot more helpful than doing it on the
phone, it really is.

But I'm willing to do it -- you guys should consult each
other in terms of timing and then I have -- you know, again
because of the criminal duty it's tough, but I have Monday the
19th I could meet with you.

MR. MOSKIN: That week, unfortunately, I have
commitments in New York throughout that week, which is bad,
and it was the week of the 12th I was proposing.

MS. GOLINVEAUX: Unfortunately, I'm traveling the week
of the 12th. We could do the week of the 26th if that works
for the court.
THE COURT: You know what? I'm not going to do this by phone, okay? You know, you guys should talk amongst yourselves about what your proposed time would be, what you would submit to me. I mean, I want enough in advance, I want information enough in advance so that I could understand the nuances of the discovery disputes and what each side's response is.

So for example, if you're just going to give me a letter from one side that says "This is what we want," but I don't have a response to that letter, that's not going to be helpful to me. So you need to structure this in a way that I find out what plaintiff wants and what defendant wants, including this issue potentially about sharing with in-house counsel, and then -- and what the other side's perspective today is on that, not what it was. You know, if you're going to give me letters that were exchanged on July 29th, but in between one or the other parties has said "You know what, I don't have a problem with that," I don't really want to waste my time trying to figure out how I would propose a solution if you're going to come in and tell me it was resolved.

So I want materials that tee up the current discovery disputes that you would like to discuss and would like my help in resolving. I think it would be good to do that without motion practice, without prejudice to either party's right to do it on a motion, and I do want you to consider potentially
creative ways to bring this case to a conclusion.

But I need to go. I need to close out this hearing and move to something else and so I would ask you to confer about potential dates, a potential structure and if you want to talk to me about the structure that you're thinking about, which I guess I would encourage, then you call my chambers, which is 312-435-5672, talk to my judicial assistant, Pat Hagenmaier, Patricia Hagenmaier, we will tee it up, and we'll talk about it.

MS. GOLINVEAUX: Thank you, your Honor.

MR. MOSKIN: Thank you, your Honor.

THE COURT: Okay, hope to see you soon or talk to you soon. Bye.

MR. MOSKIN: Thank you.

* * * * * * *

I certify that the above was transcribed was digital recording to the best of my ability.

/s/ Lois A. LaCorte

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Lois A. LaCorte  Date