



--- Decisions & Litigation ---

Intellectual Property

Washington Post v. TotalNews Order of Dismissal

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

THE WASHINGTON POST COMPANY and it wholly owned subsidiary DIGITAL INK CO., TIME INC. and its wholly-owned subsidiary ENTERTAINMENT WEEKLY, INC., CABLE NEWS NETWORK, INC., TIMES MIRROR COMPANY d/b/a LOS ANGELES TIMES, DOW JONES & COMPANY INC. AND REUTERS NEW MEDIA INC.,
Plaintiffs,

-against-

TOTAL NEWS, INC., DATAPIX INC., GROUPER TECHNOLOGIES INC., ROMAN GODZICH, LARRY PAGNI AND NORMAN BASHKINGY,
Defendants.

97 Civ. 1190 (PKL)

STIPULATION AND ORDER OF SETTLEMENT AND DISMISSAL

WHEREAS this action was commenced by the filing of Plaintiffs' complaint dated February 20, 1997, and

WHEREAS the parties wish to resolve this action without further litigation,

IT IS HEREBY STIPULATED AND AGREED, by and through the undersigned counsel, that:

1. This action is dismissed with prejudice and without costs to any party.
2. The term "Plaintiff's website" as used in this stipulation stipulation and order means either:
 - (a) all pages of any website that is operated by a Plaintiff, or any of a Plaintiff's subsidiaries, successors and assigns (hereinafter referred to as "Plaintiff" or "Plaintiffs ");
 - b) any page of any website, whether or not such website is operated by a Plaintiff, that consists wholly or substantially of a Plaintiff's proprietary content; and

(c) any page of any website that includes, but does not consist wholly or substantially of, a Plaintiff's proprietary content, provided that in any action by a Plaintiff to enforce its rights under this subparagraph, it shall be an affirmative defense that Defendants' conduct does not otherwise infringe or violate Plaintiff's rights under any theory of intellectual property, unfair competition, or other law.

3. Subject to any modification of the terms of this stipulation and order pursuant to paragraph 10 below, Defendants agree permanently not to directly or indirectly cause any Plaintiff's website to appear on a user's computer screen with any material (e.g. Universal Resource Locator (URL), text, graphics, pop-up window, audio, video or other) supplied by or Associated with Defendants or any third party, such as an advertiser, acting in privity with Defendants are under Defendants' direct or indirect control; in particular, Defendants agree permanently to cease the practice of "framing" Plaintiffs' websites as that practice is described in the complaint in this case 4. Plaintiffs agree that Defendants may link from the Totalnews.com website or any other website to any Plaintiff's website, provided that:

(a) Defendants may link to Plaintiffs' websites only via hyperlinks consisting of the names of the linked sites in plain text, which may be highlighted;

(b) Defendants may not use on any website, as hyperlinks or in any other way, any of Plaintiff's proprietary logos or other distinctive graphics, video or audio material, nor may Defendants otherwise link in any manner reasonably likely to: (i) imply affiliation with, endorsement or sponsorship by any Plaintiff; (ii) cause confusion, mistake or deception; (iii) dilute Plaintiffs' marks; or (iv) otherwise violate state or federal law;

(c) Defendants' link must operate in a manner consistent with paragraph 2; and

(d) each Plaintiff's agreement to permit linking by Defendants remains revocable, on 15 business days'notice in accordance with paragraph 14 below, at each Plaintiff's sole discretion. Revocation by any Plaintiff shall not affect any other terms and conditions set forth herein. If Defendant refuse to cease linking upon notice, and any Plaintiff brings an action to enforce its rights under this subparagraph, it shall be an affirmative defense that Defendants' conduct does not otherwise infringe or violate Plaintiff's rights under any theory of any intellectual property, unfair competition or other law.

5. Attached as exhibit A is a list of Plaintiff's web sites that presently are subject to this stipulation and order. Any Plaintiff may supplement this list from time to time by giving notice to Defendants, pursuant to paragraph 14 below, of the URL or other identifying information of any additional Plaintiff's web site. Any additional Plaintiff's website will become subject to this stipulation and order 15 business days after receipt of notice by Defendants' counsel. The provisions of this stipulation and order apply only to the websites listed on Exhibit A and such additional Plaintiff's websites as Plaintiffs may give notice of pursuant to Paragraph 14 below. If there is any conflict between a listing now on or later added to Exhibit A and the substantive terms of this stipulation and order that presently are subject to this stipulation and order. Any Plaintiff may supplement this list from time to time by giving notice to Defendants, pursuant to paragraph 14 below, of the URL or other identifying information of any additional Plaintiff's web site. Any additional Plaintiff's website will become subject to this stipulation and

6. Nothing in this stipulation and order restrict Defendants from linking to any website page that (a) does not include any of a Plaintiff's proprietary content and (b) is part of any website not owned or operated by a Plaintiff, provided that Defendants may not link to any page of any website in any way that purposefully or overtly encourages users, once at a non-Plaintiff's site, to link to any Plaintiff's website in a manner forbidden by paragraph 2 above. As an illustrative example, not intended to describe the full scope of this subparagraph, it would be a violation of this subparagraph for Defendants to state on their website that a Plaintiff's website could be reached with two clicks -- the first click taking the user to a third-party website, and the second click taking the user, via a hyperlink supplied by the third party, to a Plaintiff's website that would then be seen through Defendants' frame. As a second illustrative example, not intended to describe the full scope of this paragraph, it would not be a violation of this stipulation and order if

Defendants simply provided a hypertext link, using frames technology, to a website page other than a Plaintiff's website, from which the user on her own is able to, and does, link to a Plaintiff's website in a manner permitted by law.

7. On the day that this stipulation and order is signed on behalf of the parties, the parties shall issue a joint statement in the form annexed as Exhibit B, which the parties agree accurately reflects their respective views about this settlement as attributed to them therein.

8.

(a) Each Defendant releases and; forever discharges each and every one of the Plaintiffs, including any and all of their subsidiaries, successor's, assigns, directors, officers, associates, ployees and agents, past and present, of and from any and all claims, demands, liabilities, obligations, costs, expenses and damages whatsoever, of every kind and nature, known or unknown and whether or not discoverable that said Defendant now has, ever has had or may ever have against any or al1of the Plaintiffs through the date af execution of this stipulation and order that is related directly or indirectly to the subject matter of this litigation.

(b) Each Plaintiff, on behalf of itself and its subsidiaries, successors and assigns, releases and forever discharges each and every defendant, including defendants' subsidiaries, successors, assigns, directors, officers, associates, employees and agents, past and present, of and from any and all claims, demands, liabilities, obligations, costs, expenses and damages whatsoever, of every kind and nature, known or unknown and whether or not discoverable that said Plaintiff now has, ever has had or may ever have against any or all of the Defendants through the date of execution of this stipulation and order that is related directly or indirectly to the subject matter of this litigation.

(c) Each party releasing claims herein agrees that he or it will not bring, commence, maintain, prosecute or affirmatively instigate, directly or indirectly, any legal or administrative proceeding against any party released by such releasing party, based upon any act or omission claims for which are released in this stipulation and order.

9. Each party represents and warrants that it has full power and authority to execute (individually and through counsel), deliver and perform as required by this stipulation and order; that prior to the date of execution of this stipulation and order, all actions of the party necessary

For execution, delivery and performance of this stipulation and order by the party have been duly taken; and that this stipulation and order has been duly authorized and executed by or on behalf of the party, is the legal, valid and binding obligation of the party, is enforceable as to the party in accordance with its terms, and will be honored perpetually from the date of execution, whether or not endorsed by the Court.

10. This stipulation and order supersedes any previous arrangements or understandings, whether written or oral, and contains the entire agreement of the parties with respect to the subject matter hereof. Nothing in this stipulation and order shall prohibit the parties from negotiating any further agreement(s), including, but not limited to, agreement(s) by any Plaintiff to permit use of its intellectual property on terms broader than authorized in this stipulation and order. This stipulation, and order may be modified only by a writing, of even or subsequent date hereto, that is signed by or on behalf of all parties as to whom the modification will apply.

11. No waiver by any of the parties of any default shall operate as a waiver of that default or any other default, or of the same default on a future occasion, by any party.

12. This stipulation and order shall be binding upon and shall inure to the benefit of the parties, their subsidiaries, successors and assigns. All references herein to "Defendants" shall be construed to apply to each and every Defendant, individually and collectively.

13. In the event that any term or provision of this stipulation and order shall be stricken or invalidated by a court of competent jurisdiction, such provision shall be ineffective to the extent of such violation without invalidating any other provision hereof.

14. Any notice to be given to Defendants pursuant to this stipulation and order shall be given in writing through either of the undersigned defense counsel, by certified mail. Such notice may be given by any Plaintiff or by any Plaintiff's counsel. Defense counsel shall give notice to the undersigned Plaintiffs' counsel of any change of address, within 30 days of such change, by certified mail.

15. This stipulation is entered into by the parties in compromise of disputed claims. Neither the execution of this stipulation and the releases and dismissals provided for herein, nor any other act or agreement in furtherance of this stipulation, shall be construed in any way as an admission of wrongdoing or liability on the part of any party hereto.

16. This Court shall retain jurisdiction over this matter for purposes of enforcing this stipulation and order. All parties expressly consent to this Court's personal jurisdiction for purposes of any action seeking enforcement or modification of this order. Any dispute over the terms of this order that requires reference to state law shall be governed by the law of New York.

17. No conduct authorized under this stipulation and order may be deemed a violation of the rights of any party hereto.



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