

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF NEW YORK

NEW SENSATIONS, INC.)
21345 Lassen St.)
Chatsworth, CA 91311)
)
Plaintiff,)
)
v.)
)
DOES 1 – 52)
)
Defendants.)

Civil Action No. 12-cv-1168-AKH

RESPONSE TO LETTER OF JOHN DOE 37 [Document 10]

On or about May 9, 2012, John Doe 37 submitted a letter requesting to be allowed (i) an extension (presumably to consult an attorney or research the matter), and (ii) to proceed anonymously.

Plaintiff does not object to the extension and John Doe’s request to proceed anonymously.

Further, John Doe 37 notes that the person who controls an IP address is not necessarily the person who committed the actual infringement, and cites to a statement from this attorney that “Plaintiff’s counsel estimated that 30% of the names turned over by the ISPs are not those of individuals who actually downloaded or shared copyrighted material. Counsel stated that the true offender is often the ‘teenaged son ... or the boyfriend if it’s a lady’”.

Plaintiff agrees that the IP address disclosed by the ISP does not always identify the person who committed the infringement because other people may have access to the router. However, the IP address is the only trace that the copyright infringers leave, and thus Plaintiff has no other way of pursuing the alleged infringers.

John Doe then refers to a Report and Recommendation of Magistrate Judge Gary R. Brown in the Eastern District of New York, which recommended that separate actions be filed “so as to avoid unfair outcomes, improper joinder and waste of judicial resources, and to ensure the proper payment of filing fees.”

Magistrate Brown considered particular circumstances, and cites to the Plaintiff’s abusive litigation practices such as not accepting any defenses presented by John Does and using an aggressive call center.

“... so as to avoid unfair outcomes ...”

Counsel for Plaintiff in the present case is independent, and personally answers all telephone calls and emails from John Does and their attorneys. Plaintiff’s counsel does not request telephone numbers for the John Does, and *never* initiates contact with John Does by telephone. Counsel of Plaintiff reviews each case in detail when contacted by a John Doe or his attorney, and dismisses John Does who present credible defenses or mitigating circumstances.

It also appears that the filings reviewed by Magistrate Judge Brown had technical flaws. The complaint in the present case is accompanied by a Technology Declaration that explains how the underlying data was generated and by whom.

“so as to avoid ... improper joinder ...”

Plaintiff’s complaint meets the standards set forth and accepted by the Southern District for New York. It is understood that, as the case progresses, John Does need to be named individually.

“so as to avoid ... waste of judicial resources...”

It preserves judicial resources to keep the John Does joined until they are named individually, because it requires the Court to create only one file instead of multiple ones.

“... to ensure the proper payment of filing fees.”

The proper filing fees will be paid in these cases as eventually John Does need to be named individually, and the complaints must be filed separately.

Respectfully submitted this 26th day of May, 2012.

By: /s/ Mike Meier

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ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on 26 May 2012, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system.

I do not have any contact information for Doe Number 37, and request the Clerk to submit a copy of this filing to Doe Number 37.

By: /s/ Mike Meier
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