



Software Freedom
Law Center

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AUG 16 2010

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August 16, 2010

BY FACSIMILE

Honorable Shira A. Scheindlin, U.S.D.J.
United States District Court
Southern District of New York
500 Pearl Street, Room 1620
New York, New York 10007
Fax: (212) 805-7920

Opposition briefs to Plaintiffs' joinder motion are due by September 20, 2010. Plaintiffs' reply brief is due by October 4, 2010. Defendant CMA's proposal to attach various conditions to the briefing schedule is hereby denied by the Court in its entirety.

Re: **Software Freedom Conservancy, Inc. et al. v. Best Buy Co., Inc., et al.**
1:09-cv-10155-SAS

SO ORDERED.

Date: Aug 16, 2010
[Signature]
Shira A. Scheindlin
USDS

Dear Judge Scheindlin:

On August 9, plaintiffs in this action filed a motion to join two parties to this matter as successors in interest of Defendant Westinghouse Digital Electronics, LLC ("Predecessor WDE"): (i) Credit Managers Association of California, d/b/a Credit Management Association ("CMA"); and, (ii) Westinghouse Digital, LLC ("Successor WD"). At your request, Plaintiffs have communicated with counsel for both parties and arrived at the following briefing schedule for the motion: (i) opposition briefs by CMA and Successor WD due by September 20; and, (ii) reply brief by plaintiffs due by October 4.

Please note that CMA has only tentatively agreed to this schedule, subject to certain conditions. Those conditions are set forth in the email message from CMA's counsel, Mr. Daniel B. Denny of Gibson Dunn, attached hereto for reference. Plaintiffs have not accepted any of CMA's conditions, but suggest that the court adopt the proposed schedule regardless.

Respectfully submitted,

[Signature: Daniel Ravicher]

Daniel B. Ravicher

attachment

----- Original Message -----

Subject: FW: Software Freedom Conservancy, Inc. v. Best Buy Co., Inc. et al., 09-cv-10155
Date: Fri, 13 Aug 2010 14:05:17 -0700
From: Denny, Daniel B. <DDenny@gibsondunn.com>
To: Daniel B. Ravicher <ravicher@softwarefreedom.org>
CC: Newman, Samuel A. <SNewman@gibsondunn.com>

Dan,

We confirm the briefing schedule you propose, September 20 for opposition and October 4 for reply, subject to the following.

Before we spend money of the assignment estate on this litigation, would you consider stipulating with CMA as to the allowance of SFC's claim in a liquidated amount? It is my understanding that the court has entered default judgment against WDE, and CMA is willing to stipulate to SFC's claim against WDE so that SFC may participate in the liquidation of the assignment estate as a creditor of WDE.

Regarding the transfer of property from WDE to CMA, CMA has only acted as assignee for the benefit of WDE's creditors pursuant to a General Assignment. CMA, as a trustee of the property, subsequently sold certain assets to Golden Star n/k/a Westinghouse Digital, LLC and is now in the process of administering the estate for the benefit of all creditors. Your assertion that CMA is a "successor in interest" of WDE has no foundation in the law or facts. If SFC wishes to assert its claim against WDE with the assignment estate, which CMA is administering, then submitting to the claims process is SFC's appropriate avenue for relief.

If SFC intends to proceed under the theory that CMA is a successor, we reserve our right to deliver notice of a Rule 11 motion, and in that event we would request additional time to respond to the joinder motion, if necessary, to avoid having to unnecessarily spend money in the interim. I would like to discuss the matter further with you. Please let me know if you think it makes sense to have a conversation. Thank you.

Daniel B. Denny
GIBSON DUNN