

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

T-PEG, INC and)
TIMBERPEG EAST, INC.,)
Plaintiffs,)
)
vs.) No. 03-CV-462-M
)
VERMONT TIMBER WORKS, INC.,)
and DOUGLAS FRIANT,)
Defendants.)

DEFENDANTS' MOTION FOR LEAVE TO FILE
ADDITIONAL CITATIONS SUPPORTING
THEIR MOTION FOR SUMMARY JUDGMENT BASED ON
PLAINTIFFS' LACK OF STANDING

Defendants, Vermont Timber Works, Inc. and Douglas Friant, respectfully move the Court for leave to bring the following two citations to the Court's attention, which have direct bearing on their pending Motion For Summary Judgment Based On Plaintiffs' Lack Of Standing (Document 166). Counsel discovered these cases while updating his research on the case and believes they will be useful to the Court.

The two citations are:

Silvers v. Sony Pictures Entertainment, Inc., 402 F. 3d 881 (9th Cir. 2005) (en banc), holding that a mere assignee of an accrued cause of action for copyright infringement, but who does not have a direct legal or beneficial interest in the copyright itself, lacks standing to sue under 17 U.S.C. §106. This case is significant not only because it was decided at the circuit level but because it was decided *en banc*, with nine of eleven active judges concurring.

Auscape International v. National Geographic Society, 409 F. Supp. 2d 235, 239 at fn 16 (S.D.N.Y. 2004), holding that a licensing agent of the copyright owner which "neither owns the copyrights nor holds an exclusive license" lacks standing to sue.

Like the plaintiffs in Silvers and Auscape, the plaintiff TEI here was neither the owner or exclusive licensee, nor is the copyright registration in its name.

Like the plaintiffs in Silvers and Auscape, the plaintiff T-Peg here was neither the owner of exclusive licensee. Although the copyright registration is in its name, the undisputed evidence demonstrates that it did not author the work and thus cannot be the owner, despite the registration.

No memorandum of law is filed with this motion as the relief is within the Court's discretion.

The undersigned certifies that he has conferred with opposing counsel and plaintiffs do not assent to the relief requested.

Date: November 5, 2007

VERMONT TIMBER WORKS, INC.
and DOUGLAS FRIANT,
Defendants,

/s/ W. E. Whittington
W.E. Whittington

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CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2007, I served the foregoing pleading on the following counsel of record, by causing it to be filed electronically via the CM/ECF filing system or mailed by first-class United States Mail, postage pre-paid, or in such other manner as may be indicated:

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/s/ W. E. Whittington
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