

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 HEARING AND  
ORAL ARGUMENT ON PENDING MOTIONS/ISSUES

Defendants respectfully move that the Court schedule a hearing and oral argument on the pending motions and issues in the case, as follows:

MSJ Based On Lack Of Standing, Document 126

This motion was made on June 26, 2007, based on plaintiff's lack of standing and lack of ownership of the copyrighted work.

Technically, the Court denied the motion in its 3/28/08 Order, but noted that plaintiff had presented a "constantly moving target" (Document 147 at 11), essentially alleging a new fact pattern each time defendants made their summary judgment motion. As a result, the Court directed the parties to brief four specific issues relating to the standing/ownership issues. Document 147 at 11-12. The parties have done so, in Documents 152 and 153.

Perhaps these outstanding issues have been overlooked, as the Court's electronic docket notes that Document 126 is "terminated," but it seems clear that was not the Court's intent. Defendants believe summary judgment continues to be appropriate on

those issues, and in any event it will be virtually impossible for both parties to prepare for trial without rulings on these issues.<sup>1</sup>

MSJ Based On Lack Of Copyrightability, Or As To  
Non-Copyrightable Components, Documents 44 & 125

There appears to be confusion as to defendants' motion for summary judgment based on non-copyrightability, Document 44.

The electronic docket indicates this was "terminated" on 10/07/08, but there was no event on that day.

The Court's March 28, 2008 Order (at 13-14) does technically deny the motion with no analysis as "foreclosed by the court of appeals," but this seems squarely in error as there has never been a ruling in this case by either the court of appeals or this court addressing the copyrightability issues. Therefore defendants moved for reconsideration of this issue (Document 149), and plaintiffs filed their responsive brief (Document 151). This motion is still open, and pending.<sup>2</sup>

Local Rule 7.1 Statement/Certification

No memorandum of law is being submitted with this motion as the motion is straightforward and the requested relief is within the Court's discretion.

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<sup>1</sup> As a technical matter, defendants are moving separately to revive Document 126, as clarified in Documents 147, 152 and 153, so that it will again appear on the Court's tickler system.

<sup>2</sup> Defendants believe that they are entitled to summary judgment as to the entire case as there are no copyrightable elements in plaintiffs' registered design; even if the Court disagrees, it should still determine which if any of the components is copyrightable and grant summary judgment as to any which are not.

The undersigned counsel for defendants certifies that a good faith attempt was made to obtain concurrence in the relief sought, and plaintiffs do not assent.<sup>3</sup>

WHEREFORE, Defendants respectfully move the Court to schedule a hearing and oral argument on the pending motions and issues in the case.

Date: February 18, 2009

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

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

W. E. Whittington (Bar No. 6916)  
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CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2009, 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  
W.E. Whittington

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<sup>3</sup> Apparently the disagreement is merely as to some details in the motion, not in the relief requested. Plaintiffs' counsel has stated "I don't disagree with what I think is your objective, but I can't assent to your motions as drafted."

