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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92057838
Party	Defendant World Wrestling Entertainment, Inc.
Correspondence Address	CHRISTOPHER M VERDINI K&I GATES LLP K&L GATES CENTER, 210 SIXTH AVENUE PITTSBURGH, PA 15222 UNITED STATES USPTO.LitigationDocket@klgates.com, verdini@klgates.com, curtis.krasik@klgates.com
Submission	Opposition/Response to Motion
Filer's Name	Christopher M. Verdini
Filer's e-mail	USPTO.LitigationDocket@klgates.com, christopher.verdini@klgates.com, curtis.krasik@klgates.com
Signature	/Christopher M. Verdini/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ALBERT PATTERSON,)	
)	
Petitioner,)	Cancellation No. 92/057,838
)	
vs.)	Reg. No. 3,871,019
)	
WORLD WRESTLING)	Mark: WWE SUPERSTARS
ENTERTAINMENT, INC.,)	
)	
Registrant.)	
)	

**REGISTRANT’S BRIEF IN OPPOSITION TO
PETITIONER’S MOTION TO VACATE ENTRY OF JUDGMENT**

Registrant World Wrestling Entertainment, Inc. (“Registrant” or “WWE”) files this Brief in Opposition to Petitioner Albert Patterson’s (“Patterson”) Motion to Vacate Entry of Judgment.

I. INTRODUCTION

By his most recent incomprehensible filings, Patterson persists in his charade to prevent WWE from maintaining its valid registration to the mark “WWE Superstars.” Having ignored WWE’s Motion to Dismiss, Patterson now requests the Board “to reopen” his baseless petition to cancel WWE’s WWE SUPERSTARS registration (the “Petition”) after the Board dismissed it. Patterson’s request, however, is utterly baseless as he fails to even mention, let alone satisfy, the stringent burden he must meet to justify his request that the Board vacate its December 4, 2013 Judgment dismissing the Petition (the “Final Judgment”). Instead, Patterson merely provides the Board with a hodgepodge of documents without a word about why the documents supposedly are relevant (they are not) or how they supposedly support his implied request that the Board vacate its Final Judgment (they do not).

Patterson also takes his tactics to a new level by submitting a fabricated document in an

apparent attempt to bolster his underlying Petition. Specifically, Patterson filed an unverified document entitled “Stipulated Order” that purports to show that WWE stipulated to a permanent injunction that would prevent WWE from using, among other things, the words “World Wrestling” or “WW in words or logo form.” *See* Patterson Dec. 18, 2013 Filing at p. 79.¹ It is clear from the pages before the purported “Stipulated Order,” however, that Patterson took a proposed order that was filed against World Wrestling All-Stars, Inc., an entity unrelated to WWE, and substituted WWE’s name. *See id.* at pp. 77-78. To the extent there is any doubt about the falsity of the purported “Stipulated Order,” WWE attaches hereto the hearing transcript and court order that establish WWE was dismissed from that case against World Wrestling All Stars, Inc. in 2003, nearly two years before the fabricated “Stipulated Order.” *See* Ex. 1.

This Board should finally put a stop to Patterson’s continued abuse of the inter partes procedure and deny Patterson’s Motion to Vacate and further order that the Board will not consider any additional filings by Patterson in this proceeding.

II. FACTUAL BACKGROUND

On or around September 9, 2013, Patterson filed a wholly unsupported Petition to Cancel WWE’s WWE SUPERSTARS registration (the “Registration”). As WWE showed in its Motion to Dismiss, Patterson’s Petition: (1) is incurably deficient because it willfully disregards the prior orders of a federal district court and this Board that conclusively establish he cannot prevent WWE from using the term “Superstars” or “WWE Superstars;” (2) violates a binding settlement agreement with WWE in which Patterson agreed that he could not commence any action -- like the filing of the Petition -- to attempt to prevent WWE from using the term “Superstars” or “WWE Superstars;” and (3) fails to state any claim for relief because Patterson did not satisfy the

¹ Because Patterson’s December 18, 2013 filing does not contain consecutive page numbering, the page numbers cited herein refer to the page of the .pdf that is available at ttabvue.uspto.gov.

basic requisites for filing a petition to cancel including, but not limited to, (i) ownership of any marks; (ii) priority; or (iii) damage resulting from WWE's Registration.

Rather than respond to WWE's well-founded Motion to Dismiss, Patterson simply did nothing. As a result, on December 4, 2013, the Board granted WWE's Motion as conceded and dismissed with prejudice Patterson's Petition. On December 18, 2013, Patterson filed (without proof of service), an untitled, one-page document stating that he was "petitioning to reopen" the cancellation action.² Patterson, without explanation, also provided the Board with 143 pages of purported "exhibits," which consisted of irrelevant documentation such as WWE's 2011 Fourth Quarter and Full Year financial results and wholesale copies of sections of the Trademark Manual of Examining Procedure.

In light of Patterson's failure to include an acceptable proof of service with his December 18 filing, the Board ordered Patterson to file a proof of service with the Board on or before March 20, 2014. Instead of filing an acceptable proof of service, Patterson faxed the Board a "Motion to Review" which the Board entered on the docket on March 12. In the "Motion to Review," Patterson asserts, without any factual support, that his Petition is not barred by res judicata or judicial estoppel. Patterson then identifies various "exhibits" that he did not include in his fax to the Board in March and which do not correspond to the "exhibits" from Patterson's December 18 filing.³ Patterson's filings, even construed in a light most favorable to him, utterly fail to establish that he is entitled to an order vacating the Final Judgment.

² The Board construed this filing as a "motion to vacate entry of judgment under Fed. R. Civ. P. 60(b)." See March 5, 2014 Board Order.

³ Patterson did not include an acceptable proof of service in his fax to the Board in March. Instead, Patterson included an Office Depot receipt showing that he mailed something to WWE's attorney of record by Priority Mail. Accordingly, Patterson's filing does not satisfy the proof of service requirements of Trademark Rule 2.119(a) and his Motion to Vacate should be denied. WWE's counsel, however, received by Priority Mail on March 12 Patterson's December 18 filing. Thus, to protect WWE's rights but without waiving Patterson's insufficient proof of service, WWE has filed this Opposition.

III. ARGUMENT

A. Patterson Cannot Satisfy the Rule 60(b) Requirements to Set Aside the Board's Final Judgment

Pursuant to Rule 60(b) of the Federal Rules of Civil Procedure,⁴ the Board may relieve a party from a final judgment only if the party requesting relief shows:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

“Relief from judgment under Fed.R.Civ.P. 60(b) is an extraordinary remedy to be granted in the court’s discretion only in exceptional circumstances.” *Djeredjian v. Kashi Co.*, 21 U.S.P.Q. 2d 1613, 1615 (TTAB 1991). As the TTAB Manual of Procedure instructs, “[w]here a motion for relief from judgment is made without the consent of the adverse party or parties, it must *persuasively* show (preferably by affidavits, declarations, documentary evidence, etc., as may be appropriate) that the relief requested is warranted for one or more of the reasons specified in Fed. R. Civ. P. 60(b).” TTAB Manual of Procedure § 544 (emphasis added).

Patterson’s December 18 and March 12 filings do not mention any of the reasons specified in Rule 60(b), much less “persuasively show” that such an “extraordinary remedy” is

⁴ 37 C.F.R. § 2.116 provides that the “procedure and practice in inter partes proceedings shall be governed by the Federal Rules of Civil Procedure.”

warranted for one or more of those reasons.⁵ Put simply, Patterson has not even attempted to provide, and could not in any event provide, any factual or legal grounds that would establish that the Board should grant the Motion to Vacate. Thus, his Motion should be denied.

B. The Board Must Deny Patterson’s Motion Because His Petition Is Not Meritorious

In addition to Patterson’s failure to show that any of the conditions for Rule 60(b) relief are present here, the Board also must deny Patterson’s Motion to Vacate because he cannot show that his Petition is meritorious. It is well established that “[a] precondition of relief from a judgment [under Rule 60(b)] is that the movant show that he or she has a meritorious claim or defense.” *See, e.g.,* Moore’s Fed. Prac. § 60.24 (2007) (citing cases); *see also Parker v. Knight*, 2011 WL 6176768 at *1-2 (E.D.N.C. Dec. 12, 2011) (denying Rule 60(b) motion because plaintiff “failed to establish a meritorious claim or defense.”). As WWE established in its Motion to Dismiss and Patterson confirmed through his subsequent filing of irrelevant, unverified and even false “exhibits,” Patterson’s Petition is not meritorious for at least the following reasons.

First, Patterson does not dispute that this Board’s prior order precludes him from arguing that he could be damaged by WWE’s Registration. As the Board expressly found when Patterson tried to cancel WWE’s WWF SUPERSTARS registration:

[A]s a matter of law, . . . [Patterson] can suffer no real damage from defendant’s [WWE] registration of WWF SUPERSTARS. The district court has held each party entitled to use “Superstars.” Defendant’s coupling of the acronym WWF with “Superstars” and registration of the resulting composite with a disclaimer of “Superstars” cannot be the source of damage to plaintiff [Patterson], in view of its pleaded marks.

See Motion to Dismiss, Ex. 5 at 9. The Board’s conclusion holds with equal force here as

⁵ Patterson’s status as a pro se litigant does not excuse him from producing evidence to support his request for relief. *See Williams v. New York City Dept. of Corrections*, 219 F.R.D. 78, 84 (S.D.N.Y. 2003) (“The heavy burden for securing relief from final judgments applies to pro se litigants as well as those represented by counsel.”).

WWE's Registration is for WWE SUPERSTARS and it has disclaimed the term "Superstars."⁶ Thus, Patterson cannot assert facts sufficient to show he has standing to pursue his Petition.

Second, Patterson included in his December 18 filing the 1993 Consent Order that expressly precludes him from attempting to prevent WWE from using the term "Superstars." See Patterson Dec. 18, 2013 Filing at p. 80. Specifically, the 1993 Consent Order expressly states that "[t]his judgment does not preclude any party from using the term 'Superstars.'" *Id.* Thus, Patterson cannot dispute that by judicial decree embodying the parties' intent that WWE's use of "Superstars" in its Registration is *prima facie* authorized. Furthermore, because any party can use the term "Superstars," no party can claim the exclusive right to use the mark SUPERSTARS by itself. WWE properly makes no claim to exclusive use of the word "Superstars" apart from the WWE SUPERSTARS mark. Indeed, as set forth above, the Board previously dismissed Patterson's attempt to cancel WWE's nearly identical WWF SUPERSTARS mark on the basis of the 1993 Consent Order. See Motion to Dismiss, Ex. 5. Under these circumstances, Patterson's Petition is barred by *res judicata* and it would be futile for the Board to allow him to proceed with it. *Chandler v. U.S.*, 31 Fed. Cl. 106, 110 (1994) (denying plaintiff's motion to amend because all of the claims are "either barred by *res judicata* or are otherwise without merit" and "amending the complaint would be futile"); *D-Beam v. Roller Derby Skate Corp.*, 316 Fed. Appx. 966, 968-69 (Fed. Cir. 2008) (holding "district court did not abuse its discretion in denying leave to amend the complaint" because "claims are futile on the grounds of *res judicata*").

Rather than substantively addressing this fatal flaw, Patterson engages in at least sleight

⁶ The difference between the WWE mark at issue in the 1995 Cancellation action and the Registration here does not change the Board's analysis. Just as WWF was an acronym for "World Wrestling Federation" (WWE's prior business name), WWE is the acronym for "World Wrestling Entertainment," which is WWE's current business name.

of hand and at worst deliberate fraud by falsely suggesting that in 2005 he obtained a permanent injunction preventing WWE from using “WW” or “World Wrestling Entertainment” including in connection with term Superstars. *See* Patterson Dec. 18, 2013 Filing at p. 79. The purported “Stipulated Order,” however, was fabricated by taking a proposed order that Patterson filed against World Wrestling All-Stars, Inc., an entity unrelated to WWE, and substituting WWE’s name for World Wrestling All-Stars, Inc. *Compare id.* at pp. 77-78 with p. 79. Indeed, WWE was dismissed from that case in **2003**, nearly two years before Patterson filed the proposed order against World Wrestling All-Stars, Inc. *See* Ex. 1.

Third, Patterson’s December 18 and March 12 filings do not allege sufficient facts that would make the substantive grounds for cancellation “plausible.” Patterson’s statements that “it is clear likelihood of confusion with protestor’s registered marks” (December 18 filing) and his claims are “not barred by res judicata . . . [or] by judicial estoppel” (March 12 filing) are unsupported legal conclusions entitled to no weight. *Ascroft v. Iqbal*, 556 U.S. 662, 678-81 (2009) (dismissing complaint because allegations “amount to nothing more than a ‘formulaic recitation of the elements’” and such legal conclusions “are not entitled to the assumption of truth”). Furthermore, even if Patterson had alleged facts to support these legal conclusions, Patterson’s Petition could not survive WWE’s Motion to Dismiss because WWE’s use and registration of WWE SUPERSTARS cannot be grounds for a likelihood of confusion claim pursuant to the 1993 Consent Order described above.

Finally, Patterson is precluded by contract from attempting to cancel WWE’s WWE SUPERSTARS mark. As set forth more fully in WWE’s Motion to Dismiss, Patterson agreed in a 2007 Settlement Agreement never to file any action relating to WWE’s use of “Superstars” and released any and all claims against WWE relating to its use of, among other marks, WWE

Superstars. *See* Motion to Dismiss, Ex. 6. Accordingly, because the plain terms of the Settlement Agreement preclude Patterson from filing a Petition to Cancel WWE's Registration, Patterson's Petition cannot withstand WWE's Motion to Dismiss.

IV. CONCLUSION

For the foregoing reasons, WWE respectfully requests that the Board deny Patterson's Motion to Vacate and further order that the Board will not consider any additional filings by Patterson in this proceeding.

Respectfully submitted,

/s/ Christopher M. Verdini
Curtis B. Krasik, Esquire
Christopher M. Verdini, Esquire
K&L GATES LLP
K&L Gates Center
210 Sixth Avenue
Pittsburgh, PA 15222
(412) 355-6500 (Telephone)
(412) 355-6501 (Facsimile)

Attorneys for Registrant
World Wrestling Entertainment, Inc.

March 28, 2014

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March, 2014, a true and correct copy of the foregoing Registrant's Brief in Opposition to Petitioner's Motion to Vacate Entry of Final Judgment was served, via United States Mail, First Class, postage prepaid, upon the Petitioner at the following address of record:

Albert Patterson
3840 N. Sherman Blvd.
Milwaukee, Wisconsin 53206

/s/ Christopher M. Verdini
Attorney for Registrant

EXHIBIT 1

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WISCONSIN

3 ALBERT PATTERSON d/b/a WORLD WRESTLING
4 ASSOCIATION d/b/a SUPERSTARS OF WRESTLING,
5 INC., and d/b/a W.W.A. SUPERSTARS,

6 Plaintiff,

7 vs.

Civil No. 02-C-240

8 ANDREW MCMANUS, INDIVIDUALLY, WORLD WRESTLING
9 ALL-STARS, INC., WARNER COMMUNICATIONS, INC.,
10 HUGHES ELECTRONICS CORPORATION, DIRECTV, INC.,
11 SPRING COMMUNICATIONS II, LLC, WORLD WRESTLING
12 ENTERTAINMENT, INC., and IMPACT TALENT, INC.,

13 Defendants.

14 TRANSCRIPT OF MOTION HEARING

15 Record made in the above-entitled matter before the
16 Honorable Charles N. Clevert, Judge of said Court, on
17 November 14, 2003, commencing at 11:40 a.m.

18
19 Proceedings recorded by machine shorthand, transcript prepared
20 by computer-aided transcription.

21
22 Christine L. Petrie, RMR
23 United States Court Reporter
24 517 E. Wisconsin Avenue, Rm. 422
25 Milwaukee, WI 53202
(414) 297-1122

A P P E A R A N C E S

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CHARLES DRAKE BOUTWELL, of Boutwell Law Office,
3075 Plum Island Drive, Northbrook, IL 60062, on behalf of
the Plaintiff (appearing by telephone).

SHEPARD A. DAVIS, of Burton & Davis, LLP,
611 North Broadway, Suite 335, Milwaukee, WI 53202, on behalf
of the Defendant World Wrestling Entertainment, Inc.
(appearing in person).

CURTIS B. KRASIK, of Kirkpatrick & Lockhart LLP,
Henry W. Oliver Building, 535 Smithfield Street, Pittsburgh,
PA 15222, on behalf of the Defendant World Wrestling
Entertainment, Inc. (appearing in person).

LINDA E. B. HANSEN, formerly of Patterson, Thuente,
Skaar & Christensen, L.L.C., U.S. Bank Center, Suite 2000,
777 East Wisconsin Avenue, Suite 2000, Milwaukee, WI
53202-5345, on behalf of the Defendants World Wrestling
All-Stars, Inc., DirecTv, Inc., Hughes Electronics
Corporation, Warner Communications, Inc., and Spring
Communications II, LLC (appearing in person).

P R O C E E D I N G S

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THE COURT: Good morning. Be seated, please.

MR. BOUTWELL: Good morning. This is Attorney Boutwell.

THE COURT: This is case number 02-C-230, Albert Patterson versus Andrew McManus, et al. Please state your appearances on the record, starting with the telephonic appearance.

MR. BOUTWELL: This is Attorney Charles Boutwell for plaintiff, Albert Patterson.

MS. HANSEN: Linda Hansen appears for defendants --

THE COURT: You'll have to use your microphone so he can hear you.

MS. HANSEN: Sorry. Linda Hansen.

THE COURT: I think your green button is not pushed.

MS. HANSEN: Oh, sorry. Sorry. Attorney Linda Hansen for World Wrestling All-Stars, Inc., Warner Communications, Inc., Hughes Electronics Corporation, DirecTv, and Spring Communications.

MR. KRASIK: Curt Krasik and Shepard Davis on behalf of World Wrestling Entertainment, Inc.

THE COURT: Good morning. I do ask the parties to speak up so that it will be possible for Mr. Boutwell to hear. Likewise, Mr. Boutwell, I ask you to speak up; and if at any time you cannot hear or we have difficulty communicating with

1 you, it will be necessary for us to or for you to repeat what
2 was said.

3 Pending before the court are several motions. There is a
4 motion to dismiss filed on the 16th of October by World
5 Wrestling Entertainment, Inc. Also there is a motion for
6 default judgment as to Andrew McManus filed by the plaintiff,
7 Albert Patterson. On the 27th of October a motion to compel
8 was filed by Patterson, and on the 27th an additional motion
9 to compel was filed by Patterson.

10 We will begin with the motion of World Wrestling
11 Entertainment seeking dismissal of that entity from this
12 litigation. Briefly stated, Counsel, can you tell me why
13 under the circumstance your motion should be granted?

14 MR. KRASIK: Yes, Your Honor. Would you prefer I
15 stand or sit so I'm closer to the mike?

16 THE COURT: Sit and use the mike as best you can.

17 MR. KRASIK: Okay, thank you, Your Honor. In short,
18 Your Honor, we believe this case in its entirety -- the
19 claims, I should say, in its entirety against WWE should be
20 dismissed because of the pendency of a prior filed duplicative
21 lawsuit that is pending before Chief Judge Randa presently.

22 In April of 2003 Mr. Patterson filed a lawsuit against WWE
23 that is virtually identical to the claims asserted against WWE
24 in this lawsuit. WWE filed a motion to dismiss that lawsuit
25 on the basis of res judicata, similar arguments to those made

1 here. As well WWE filed a motion for sanctions against that
2 lawsuit because, as we explained in the materials attached to
3 our brief, including specifically the motion for -- the brief
4 in support of motion for sanctions, this dispute is the
5 culmination of a ten-year pattern of harassment and abuse by
6 Mr. Patterson against WWE and its business associates.

7 So in brief, Your Honor, the identical claims as asserted
8 against WWE here are being asserted against WWE in the
9 previously-filed lawsuit before Judge Randa; and any relief
10 Mr. Patterson would hope to achieve through this lawsuit could
11 equally be gained in that lawsuit.

12 As an alternative, Your Honor, there seems to be a
13 disconnect between the purpose for which Your Honor granted
14 Mr. Patterson and his counsel leave to bring claims against
15 WWE and the claim, the complaint that was asserted against my
16 client.

17 As I read your order, Your Honor, you granted leave it
18 seemed for the limited purpose to the extent WWE had some
19 connection or affiliation with World Wrestling All-Stars,
20 Andrew McManus or this Eruption pay-per-view that's at issue.
21 However, the complaint that's been filed against my client is
22 a broad-based suit that is identical to the duplicative
23 lawsuit pending before Chief Judge Randa.

24 So to the extent Your Honor is not inclined to dismiss all
25 claims in this action, we in essence would ask that our motion

1 to dismiss be granted except to the extent that WWE has some
2 connection or affiliation with World Wrestling All-Stars or
3 the Eruption pay-per-view, in essence that the claims against
4 WWE are derivative of any claims he has against World
5 Wrestling All-Stars.

6 Otherwise, other than that limited specific factual basis,
7 any claims asserted against WWE in this action are duplicative
8 of the action before Chief Judge Randa and substantively are
9 barred by res judicata as a result of a litigation in 1990
10 between the parties. All of the trademarks, all of the claims
11 that Mr. Patterson asserts here either were asserted or could
12 have been asserted at that time and therefore are barred under
13 the doctrine of res judicata.

14 So in a brief statement, Your Honor, those are the
15 principal bases we're seeking dismissal of this action.

16 THE COURT: Mr. Boutwell, I note that you responded
17 in writing to WWE's motion to dismiss and that your submission
18 is rather lengthy and refers to a number of things that appear
19 in the suit which was brought before Judge Curran,
20 particularly matters that refer to the word "superstars."

21 In addition, it appears that you have sued WWE with
22 respect to matters that are touched upon in the suit before
23 Judge Randa. I believe that case --

24 MR. KRASIK: I could give Your Honor the cite.

25 THE COURT: I'm trying to get the right docket here.

1 Yes, what is the docket on that case?

2 MR. KRASIK: I believe it's 03-C-0374.

3 THE COURT: Yes, 03-C-374. Yet, Mr. Boutwell, in
4 looking at your submission, for the most part you merely
5 suggest that if this court finds that your action is
6 duplicative, your action against WWE in this court is
7 duplicative of that action pending before Judge Randa, that
8 the suits be consolidated.

9 Can you, Mr. Boutwell, tell me how, if at all, the lawsuit
10 here deals with matters that are not before Judge Randa or
11 otherwise subject to being included in the action before
12 Judge Randa?

13 MR. BOUTWELL: All right. First of all --

14 THE COURT: One second, please. You're not coming
15 through clearly.

16 MR. BOUTWELL: All right. Is this better?

17 THE COURT: Only slightly and let me -- Can you hear
18 me now?

19 MR. BOUTWELL: I can hear you now.

20 THE COURT: Okay. And this is not a commercial.

21 MR. BOUTWELL: First of all, the action in this
22 litigation was filed first by --

23 THE COURT: Let me stop you. Let me stop you there,
24 Mr. Boutwell. Mr. Boutwell.

25 (Mr. Boutwell continues to talk as the court tries to stop

1 him. It is inaudible to the reporter.)

2 MR. BOUTWELL: -- the actions are not the same. We
3 are in the case at bar filing suit against a number of
4 defendants using World Wrestling All-Stars trying to take
5 Mr. Patterson's mark WWA, and we did not include the WWE
6 because we didn't think they were involved in this. As it
7 later came forth, it appeared that they had some involvement
8 in trying to market these videos; but the case at bar is with
9 respect to the broadcast of these Las Vegas entertainment
10 events on pay-per-view and then selling the videos to this.

11 This is World Wrestling All-Stars. These are totally
12 different defendants except it appears now that the WWE may
13 have some connection with these defendants.

14 THE COURT: Okay. Let me stop you, Mr. Boutwell.

15 MR. BOUTWELL: We had to bring them in --

16 THE COURT: Mr. Boutwell.

17 (Mr. Boutwell continues to talk as the court tries to stop
18 him. It is inaudible to the court reporter.)

19 MR. BOUTWELL: -- the litigations can be
20 consolidated because the actions before Judge Randa involve
21 something different. They involve World Wrestling
22 Entertainment trying to use Mr. Patterson's mark "World
23 Wrestling Association." They are trying to build into that
24 but for different reasons, so I think the use of the marks are
25 substantially different. That's why we didn't bring them as a

1 part of the original -- we didn't bring them together --

2 THE COURT: Mr. Boutwell, can you hear me?

3 MR. BOUTWELL: Yes.

4 THE COURT: I would like for you to tell me -- well,
5 let me go over. Let me start again. You mentioned that the
6 lawsuit pending in this court was filed first and that is one
7 reason why it is not duplicative of the matters before
8 Judge Randa. However, the complaint bringing in WWE clearly
9 was filed after the complaint pending before Judge Randa;
10 correct?

11 MR. BOUTWELL: Correct.

12 THE COURT: And so with respect to WWE, your
13 suggestion that the suit here was filed first is not accurate.
14 There is no relation back. There is no relation back.

15 MR. BOUTWELL: You are correct there.

16 THE COURT: I'm sorry?

17 MR. BOUTWELL: You are correct. They were not
18 amended in until after the suit with Judge Randa.

19 THE COURT: Now, I note in looking at your third
20 amended complaint that there are multiple references to
21 superstar and superstars of wrestling; correct?

22 MR. BOUTWELL: Correct.

23 THE COURT: Your complaint as against WWE embraces
24 allegations involving superstars; is that true?

25 MR. BOUTWELL: It's the use of superstars in

1 conjunction with its other marks, World Wrestling Association.

2 THE COURT: And that -- and the litigation concerning
3 superstars which was before Judge Curran was resolved by
4 stipulation?

5 MR. BOUTWELL: That's correct. That did not involve
6 the World Wrestling Association mark. It only involved the
7 superstars of wrestling mark, and I think that order is
8 clearly set out. If you have any questions about it, I will
9 try to explain it.

10 THE COURT: Can you tell me why WW -- I should say
11 the allegations as against WWE which you brought after filing
12 the suit now before Judge Randa cannot and should not be
13 raised in the litigation before Judge Randa in case number
14 03-374?

15 MR. BOUTWELL: All right. We believe that the reason
16 that it should not be brought in that litigation is because
17 it's the use of terms in conjunction with superstars.
18 Mr. Patterson claims that he owns the mark World Wrestling
19 Association superstars and superstars of wrestling.

20 It's in conjunction with the World Wrestling Association
21 and that is -- that usage in this litigation it's brought up
22 with World Wrestling All-Stars by the defendant McManus and
23 then so it seems that based on the evidence we have, and we
24 haven't had discovery, that the WWE is now involved in trying
25 to market using World Wrestling All-Stars which didn't --

1 THE COURT: Mr. Boutwell. Mr. Boutwell.

2 (Judge indicates to the court reporter to stop reporting.
3 Mr. Boutwell is speaking and the court is trying to stop him.
4 Portions of Mr. Boutwell are inaudible.)

5 MR. BOUTWELL: -- all-stars or superstars like the
6 defendants McManus, et al., are trying to use that's going to
7 be in this litigation --

8 THE COURT: Mr. Boutwell.

9 MR. BOUTWELL: -- by everybody that's involved in the
10 production and marketing of that, that use of the trade name,
11 trademark, and that's not an allegation before Judge Randa.
12 This tape, the videotape, is not before Judge Randa nor should
13 it be because it's --

14 (Mr. Boutwell's telephone connection has been disconnected
15 by the court.)

16 THE COURT: We'll have to call him back. I couldn't
17 get through and I couldn't understand. This is not going to
18 work.

19 (The court has the clerk redial the telephone connection
20 with Mr. Boutwell as the other parties wait in the courtroom.)

21 THE COURT: Mr. Boutwell, can you hear us now?

22 MR. BOUTWELL: Yes, I can. Can you hear me?

23 THE COURT: Yes. You are coming through clearly.

24 MR. BOUTWELL: Okay.

25 THE COURT: Most of what you said was very muddled

1 and it will be necessary for us to --

2 Are you having some interference on that end?

3 MR. BOUTWELL: I was just putting some money in. It
4 wouldn't go through until I put money in on this end.

5 THE COURT: Are you able to determine the number of
6 that telephone?

7 MR. BOUTWELL: The number, yeah, is 312-641-9263.

8 THE COURT: 312-641-92 --

9 MR. BOUTWELL: -- 63.

10 THE COURT: Do we need to call you back so that it
11 won't be necessary for you to constantly pump the phone with
12 money?

13 MR. BOUTWELL: Well, I hope not. I just cashed ten
14 dollars worth so let's see if it works.

15 THE COURT: All right. If you get to the end of the
16 paid time, of your paid time, let us know and we will try to
17 get you back on the line.

18 MR. BOUTWELL: Okay.

19 THE COURT: Let me go back a bit and point out some
20 things that I've gleaned from my review of the records in this
21 case. First, your response to the motion to dismiss does not
22 clearly address the issues that were raised by WWE. Moreover,
23 your complaint in this case was filed after the action which
24 is now pending before Judge Randa as case number 03-C-374.
25 When I say the complaint, I'm referring to the third amended

1 complaint.

2 The third amended complaint names a new party, WWE, which
3 was at the time of filing the third amended complaint a party
4 to case number 03-C-374. The third amended complaint makes a
5 number of allegations against the defendants and therefore
6 appears to cover WWE with regard to matters that involve
7 superstars and all-stars and thereby covered by an even
8 earlier lawsuit which was before Judge Thomas Curran here in
9 the Eastern District of Wisconsin. That lawsuit went to trial
10 and was ultimately settled by stipulation and closed.

11 It is unclear from what you've said in your response to
12 the motion to dismiss and from what I could glean from the
13 somewhat muddled remarks today due to the bad connection on
14 the phone why you should be allowed to proceed against WWE
15 here in my court as opposed to going forward against WWE in
16 the case before Judge Randa, if at all.

17 Can you briefly distinguish this lawsuit from any other
18 action that you've brought concerning the words "all-stars,"
19 "superstars" and "WWE"?

20 MR. BOUTWELL: All right. All-stars does not come
21 into play in the action before Judge Randa. The use of World
22 Wrestling All-Stars has been by McManus and that was used and
23 then it converts into WWA which we think is a conflict with
24 Mr. Patterson's mark World Wrestling Association.

25 The term "superstars" alone before Judge Curran -- either

1 side was allowed to use the term "superstars." The issue is
2 how they used the term, is it in conjunction with another
3 person's marks. And we object to the use of World Wrestling
4 Association superstars because that is infringing on
5 Mr. Patterson's marks.

6 If the word "superstar" just appeared alone, not in
7 connection with World Wrestling, that would cause no problem;
8 but the use of World Wrestling all-star superstars or WWA
9 superstars conflicts with Mr. Patterson's mark. Again,
10 all-stars does not come into play before Judge Randa. World
11 Wrestling Entertainment doesn't come into play in the case at
12 bar because WWE is before Judge Randa.

13 We're challenging World Wrestling Entertainment and then
14 when they might use WWE superstars, we would be challenging
15 that as being confusing with Mr. Patterson's mark WWA
16 superstars but not the use of the term "superstars" alone.
17 But the way they are using it we think is in violation of
18 Mr. Patterson's mark. But again that litigation is in front
19 of Judge Randa as compared to the use of this mark on these
20 videotapes and in the pay-per-view production in the case at
21 bar.

22 THE COURT: Is it your intention in this case to
23 restrict your claim against WWE to matters related to the
24 videotape?

25 MR. BOUTWELL: Yes.

1 THE COURT: If that is so, why shouldn't you be
2 required to recraft your complaint to state that with
3 particularity --

4 MR. BOUTWELL: Okay --

5 THE COURT: -- in light of your references throughout
6 the complaint to things that were done allegedly by defendants
7 without specifying whether or not WWE is one of the defendants
8 with regard to some of the allegations that go beyond
9 references to the videotape?

10 MR. BOUTWELL: Okay, yes, that's fine. I'll be happy
11 to do that.

12 THE COURT: And with respect to the videotape, what
13 is it you're claiming WWE did or did not do?

14 MR. BOUTWELL: It appears that they were marketing
15 this videotape. We don't know if they did anything more with
16 respect to the videotape. Their form contract was used. I
17 don't know what that means without discovery, but curiously on
18 the contract between Spring Communications and Impact Talent
19 at the bottom this appears to be the WWE or WWF format for a
20 base contract.

21 Whether or not they just pulled this off somewhere or
22 whether they were more closely connected with WWE for the
23 contract purposes we don't know, but we did see them marketing
24 the videotape and so that was why we thought they were
25 involved and they might have been involved in the actual

1 production of the pay-per-view event as well.

2 So but on discovery we would have to know the extent of
3 that involvement. We do know that they used WWE wrestlers,
4 wrestlers that frequently appear on the WWE shows, but again
5 that might have an innocent explanation or not. We don't have
6 discovery yet.

7 THE COURT: You're talking about shows. Are you
8 restricting that reference to matters contained in the
9 videotape?

10 MR. BOUTWELL: Yes.

11 THE COURT: What period of time in your view is
12 covered by your claim against WWE?

13 MR. BOUTWELL: All right. It would be -- and I have
14 forgotten the exact date of the first pay-per-view event, but
15 from the first pay-per-view event alleged in the complaint
16 going forward and the marketing. So we're concerned with the
17 pay-per-view events alleged and any videos or, you know,
18 reproductions of those so that's our concern here. It's these
19 pay-per-view events and there was more than one. There were
20 two or three shows.

21 THE COURT: I would like to turn back to the movant
22 to inquire whether or not the comments of Mr. Boutwell
23 clarifying the nature of his claim against WWE should in your
24 view be set forth in a separate, quote, more definite
25 statement, unquote, or alternatively in a fourth amended

1 complaint? Should you not be dismissed?

2 MR. KRASIK: Your Honor, if my remark can go slightly
3 outside Your Honor's questions, respond to a couple of things
4 Mr. Boutwell said?

5 THE COURT: Mr. Boutwell, can you hear clearly?

6 MR. BOUTWELL: Yes, I can.

7 THE COURT: All right, go ahead.

8 MR. KRASIK: As I now understand what Mr. Boutwell
9 has said and what he says these claims are about, I would
10 respond by saying there is absolutely nothing in the world
11 precluding Mr. Boutwell's ability to assert those claims in
12 the lawsuit before Chief Judge Randa.

13 He has asserted rights to various marks. The same marks
14 are at issue here that are at issue before Chief Judge Randa.
15 He hasn't said how WWE supposedly used those marks, at least
16 not in his pleading and he hasn't done that here and he hasn't
17 done that before Chief Judge Randa and he can because of the
18 imprecision of his pleading at this point include any conduct
19 within that. And so the allegations regarding these
20 videotapes are equally embraced by the complaint before Judge
21 Randa, the first filed complaint before Judge Randa as this
22 complaint here.

23 So I guess our initial position would be but for interests
24 of judicial economy and all the prudential considerations the
25 Seventh Circuit has set forth, particularly in this

1 Serlin v. Arthur Andersen case, any claims against WWE should
2 go forward in the first filed case before Chief Judge Randa.
3 To the extent that Your Honor is inclined not to dismiss the
4 claims against WWE in their entirety and allow the case before
5 Chief Judge Randa to proceed, our position is that any claims
6 with respect to the video relate to the trademarks that he has
7 alleged.

8 This is a trademark infringement action, an unfair
9 competition action, according to the plaintiff's pleading, so
10 these relationships he's talking about are amorphous and
11 undefined and have no legal significance separate from the
12 trademarks. Our position as we set forth in our motion to
13 dismiss is that any claims with respect to these trademarks
14 are barred by res judicata either because they were the
15 subject of the 1990 action or they could have been brought in
16 the 1990 action but were not -- were therefore barred.

17 THE COURT: Am I correct in understanding that before
18 Judge Randa you have a pending motion to dismiss on this
19 issue?

20 MR. KRASIK: Yes, we do, Your Honor.

21 THE COURT: All right. Mr. Boutwell, I note one of
22 your comments in response to WWE's motion to dismiss was that
23 the cases be consolidated. In that comment it appears to me
24 that you are suggesting that you have no opposition to
25 pursuing your claims against WWE in the matter before

1 Judge Randa. Am I correct in understanding that to be your
2 position?

3 MR. BOUTWELL: Well, either forum would be -- I mean
4 I prefer that because we've gone so far on the serving
5 everybody on the pay-per-view, these tapes, that proceed in
6 this forum before you; but as a last resort -- I mean in my
7 view I would prefer that the case remain before you with
8 respect to the pay-per-view events.

9 THE COURT: Why so?

10 MR. BOUTWELL: Well --

11 THE COURT: Why have the issue split as it relates to
12 trademark concerns of the plaintiff?

13 MR. BOUTWELL: Well, I guess the bottom line is
14 either forum is fine. I mean my remark there is that with
15 respect to WWA it could be consolidated because I have no
16 reason to, you know, prefer one forum over the other.

17 THE COURT: Well, given the fact that you brought the
18 action before Judge Randa as against WWE prior to bringing WWE
19 into this case, and in light of the ongoing pendency of that
20 matter and presentation of the issues raised here in the
21 pending motion to dismiss before Judge Randa, I am going to
22 grant the motion to dismiss WWE from this case without
23 prejudice and I am doing so with the understanding that WWE
24 would consent to your raising the issues that are cited in
25 your third amended complaint in the matter before Judge Randa,

1 should he grant you leave to file a further amended complaint.

2 It's my understanding that WWE would likely embrace its
3 reasons for dismissal in any -- with respect to any further
4 filings in Judge Randa's court, but that's in my view not
5 particularly problematic.

6 MR. BOUTWELL: Okay.

7 THE COURT: And so as I see it WWE should be out of
8 this case. Dismissal as against WWE would not be with
9 prejudice. It would be without prejudice and of course it
10 would be subject to your being granted leave to proceed on the
11 claims you raised here in the proceeding before Judge Randa in
12 03-374.

13 When I say proceed on those claims, I'm not saying that
14 you should be able to reach the merits of those claims, but
15 rather those claims can be asserted and then disposed of on
16 whatever basis is appropriate in the proceeding before Judge
17 Randa. That would greatly simplify the matters that have been
18 presented and allow this case to proceed as may be warranted.
19 As to whether or not there is still overlap between the two
20 cases, I can't say at this stage.

21 MR. KRASIK: Your Honor, may I ask one question for
22 clarification?

23 THE COURT: Yes.

24 MR. KRASIK: In your dismissal without prejudice, do
25 you mean -- I'm asking whether that means that he can assert

1 these issues in the lawsuit before Chief Judge Randa, however
2 he cannot reassert them in this proceeding?

3 THE COURT: He cannot reassert those issues in this
4 litigation, but I can't control what Judge Randa does and I
5 can only say that I'm dismissing without prejudice so that if
6 the stipulation for amendment of the complaint for Judge Randa
7 and incorporation and application for your arguments -- Let
8 me restate this.

9 As I understand it, upon dismissal of WWE from this
10 litigation, based on your arguments it would appear that you
11 would -- you're agreeing that Mr. Patterson should be allowed
12 to assert his claims against WWE in case number 03-374 subject
13 of course to any motions that you have filed or will file with
14 respect to the claims that are now pending here.

15 MR. KRASIK: That's accurate, Your Honor, and thank
16 you for the clarification.

17 THE COURT: All right. With that having been said,
18 is there more that needs to be done with regard to your client
19 in this litigation?

20 MR. KRASIK: Well, Your Honor, I think unfortunately
21 there is a little bit and that is that we've been forced to
22 incur not insignificant costs in opposing an ill-conceived and
23 truly regrettable motion to compel discovery, and this was a
24 motion to compel that was filed without the slightest
25 consultation with us regarding Mr. Patterson's issues.

1 It was lacking in the certification required under both
2 local civil rule 37.1 and Federal Rule of Civil Procedure 37
3 and it is substantively frivolous and without any merit. And
4 under rule 37 and the presumptive rule that the loser of a
5 motion to compel pays the reasonable expenses of the opposing
6 party, we must ask that Mr. Patterson and counsel, if
7 appropriate, be ordered to pay our attorneys fees necessitated
8 in responding to that specious motion.

9 THE COURT: Mr. Boutwell, I do note that there is no
10 statement by you that there was consultation with WWE
11 regarding compliance with your discovery requests before your
12 motion to compel was filed. Am I missing something?

13 MR. BOUTWELL: No, you are correct. The reason is
14 there was nothing there. They hadn't filed anything.

15 THE COURT: I'm not sure I understand you when you
16 say "there was nothing there."

17 MR. BOUTWELL: Well, they hadn't responded to the
18 motion.

19 THE COURT: But our local rules require clearly that
20 there be consultation or, put differently, that you see what
21 the deal is, that you make sure that the other side has not
22 inadvertently failed to comply or has no legitimate basis for
23 failing to provide discovery. So what you're telling me is
24 merely because you did not have the responses to discovery
25 that you wanted, you filed the motion without consultation and

1 without taking the necessary steps to comply with the local
2 rules that are applicable. Is that correct?

3 MR. BOUTWELL: I did not consult. That's correct.

4 THE COURT: That being so, the request for relief on
5 your motion must be denied for failure to comply with the
6 local rule. It follows that the respondent is entitled to
7 compensation for the expense of addressing your motion. The
8 respondent should therefore submit to the court an itemized
9 statement of costs. If there is no objection to those costs
10 within ten business days, those costs will be allowed. If
11 there is an objection to the reasonableness of those costs,
12 the court will consider such reasons as may have merit.

13 Can you briefly tell me approximately how much time you
14 spent on the motion to compel? Just so that we have some
15 general idea of what the costs may be.

16 MR. KRASIK: I apologize, Your Honor. I did not get
17 those figures before coming here today. I could submit a
18 letter Monday morning, if that's agreeable to Your Honor,
19 setting forth in broad terms the amount of time before a more
20 detailed statement of costs is provided.

21 THE COURT: Why don't you do this instead. You
22 should submit a proposed order as well as an itemized
23 statement. I would assume you have a billing system that
24 would allow you to pull that information up pretty quickly?

25 MR. KRASIK: Yes, sir, Your Honor.

1 THE COURT: And of course a copy of your itemized
2 statement and the proposed order should be submitted to
3 Mr. Boutwell for review as to form.

4 MR. KRASIK: Of course, Your Honor, and just as a
5 matter of procedure, so the record is clear, you are
6 maintaining jurisdiction over WWE for this limited purpose?

7 THE COURT: Jurisdiction is maintained for the
8 limited purpose of addressing sanctions for failure to comply
9 with the local rules.

10 MR. KRASIK: Thank you, Your Honor.

11 THE COURT: Is there anything more?

12 MR. KRASIK: No, Your Honor. Thank you.

13 THE COURT: Well, enjoy the rest of your afternoon in
14 Milwaukee.

15 MR. KRASIK: Thank you very much.

16 THE COURT: We turn next to Ms. Hansen. I note there
17 is a motion for default judgment as against Andrew McManus and
18 opposition to that request.

19 Mr. Boutwell, I would like to inquire of you why you're of
20 the view that Mr. McManus has been served properly in this
21 action and therefore you're entitled to default judgment?

22 MR. BOUTWELL: In my discussions with the process
23 server, the process server indicated that Jay Sendyk said that
24 he was both the agent for Impact Talent and that he could also
25 accept service of process on behalf of Andrew McManus.

1 THE COURT: Do you have an affidavit from your
2 process server to that effect?

3 MR. BOUTWELL: I believe I attached the affidavit I
4 have to the motion.

5 THE COURT: That's -- I don't think it says -- let me
6 see. The silence is because I'm looking for my files to find
7 the right set of papers. I find the papers before and after
8 that one but I can't find that one. I have 58 and 59.

9 I'm having someone check to see if they can find that
10 document.

11 MS. HANSEN: Your Honor, I have a copy that came with
12 the motion of the affidavit of service if that would --

13 THE COURT: May I see that for a moment, please?

14 MS. HANSEN: Sure. Thank you.

15 THE COURT: It has arrived.

16 Off the record for a second.

17 (A conversation was held off the record.)

18 THE COURT: Mr. Boutwell, do you have your documents
19 handy?

20 MR. BOUTWELL: No, I don't, but I kind of recall what
21 was said on that. I remember the process server saying they
22 gave it to Jay Sendyk and that, you know, he indicated he had
23 authority to accept on behalf of McManus.

24 THE COURT: Well, there's no statement that Sendyk
25 made that assertion to your process server.

1 MR. BOUTWELL: Okay, anyway that was my recollection.

2 THE COURT: We have a typed statement that says
3 served personally upon the defendant, place where served,
4 532 Colorado Avenue, Santa Monica, California, by serving
5 Attorney Jay Sendyk, dash, authorized to accept.

6 MR. BOUTWELL: That's what I inferred from that, that
7 he was authorized to accept on behalf of McManus.

8 THE COURT: But you do not have a statement that
9 Mr. Yassine, the process server, personally talked with Sendyk
10 or that Sendyk stated directly to the process server he is
11 indeed authorized to accept process on behalf of Mr. McManus;
12 correct?

13 MR. BOUTWELL: I don't have that. I can -- If we
14 can push this back, I can call him and see what he's willing
15 to say on that.

16 THE COURT: Well, you certainly received the motion
17 and you also received the declaration of Mr. McManus, which
18 was filed in this matter; correct?

19 MR. BOUTWELL: I just received the declaration of
20 McManus where Sendyk indicated he did not say that. I got
21 that a couple of days ago.

22 THE COURT: Now, in light of that, is there any
23 reason to disbelieve what was said?

24 MR. BOUTWELL: Well, I would like the opportunity to
25 talk to the process server and see what he recalls, if

1 anything.

2 THE COURT: You have not taken the opportunity to do
3 that?

4 MR. BOUTWELL: I have talked with him but in light
5 of -- I haven't had the opportunity to talk with him since I
6 received Sendyk's response, which I just got I think it was
7 yesterday or the day before.

8 THE COURT: All right. How quickly do you think
9 you'll be able to make that determination and get the
10 response?

11 MR. BOUTWELL: I can call them today or probably I
12 would say in ten days just because it's out in California.

13 THE COURT: All right. Ms. Hansen, under the
14 circumstance is there any reason why the court should not give
15 Mr. Boutwell a chance to address the contention that
16 Mr. Sendyk is not an authorized agent on behalf of Mr. McManus
17 and thereby unable to accept service?

18 MS. HANSEN: Your Honor, my understanding is that in
19 order for service to have been proper, Mr. Sendyk had to have
20 been given authority by Andrew McManus to accept service.

21 THE COURT: Yes.

22 MS. HANSEN: And whether or not Mr. Sendyk said to
23 somebody I am or I am not authorized isn't sufficient. And so
24 I'm not certain that even an affidavit from Housne Yassine, or
25 however I'm butchering that name, said, yes, Jay Sendyk said

1 this, we have Mr. Sendyk's affidavit that he wasn't authorized
2 and he didn't accept service. And unless Mr. Boutwell can get
3 an affidavit from Mr. Sendyk that says, oh, I was lying when I
4 signed the first affidavit, I don't think that an affidavit
5 from Mr. Yassine is, in fact, sufficient to overcome this.

6 THE COURT: Well, it in and of itself would not be
7 sufficient, but it certainly would provide some additional
8 support for the plaintiff's contention that service was
9 proper. But of course I do need to ask Mr. Boutwell whether
10 it is his intention to offer anything other than a statement
11 by Mr. Yassine regarding his exchange with or alleged exchange
12 with Mr. Sendyk?

13 MR. BOUTWELL: Other than the connections that I've
14 mentioned in the brief, we would have nothing more available
15 to offer.

16 THE COURT: If that's so, then how, if at all, do you
17 believe you can overcome the affidavit of Mr. Sendyk that he
18 is not authorized to accept service?

19 MR. BOUTWELL: Well, I would not have evidence to --
20 other than what I have mentioned, the connection, the fact
21 that McManus owns the corporations that Sendyk represents and
22 so forth. He is the attorney for McManus's wholly-owned
23 corporations.

24 THE COURT: That doesn't mean that he is the personal
25 attorney or personal representative of Mr. McManus; does it?

1 MR. BOUTWELL: No. It's just circumstantial.

2 THE COURT: That being so, I'm going to deny your
3 request for default judgment as against Mr. McManus. You're
4 not entitled to default judgment in light of the affidavit on
5 file and the statement that Mr. Sendyk is not authorized to
6 accept service for Mr. McManus, who is an Australian citizen.
7 Do you see any way around that?

8 MR. BOUTWELL: Well, I presented the evidence I have
9 so . . .

10 THE COURT: So you would agree that under the
11 circumstance your motion for default judgment should be denied
12 or alternatively do you request -- do you seek to withdraw
13 that motion?

14 MR. BOUTWELL: I'll withdraw the motion.

15 THE COURT: All right, the motion is withdrawn.

16 I see, oh, there's -- I see nothing else before the court
17 at this time; is that correct?

18 MR. BOUTWELL: Well, I don't know if -- There was a
19 motion to compel against the other defendants. I don't know
20 if --

21 THE COURT: Oh, there was. Yes.

22 MR. BOUTWELL: On this one I did have conversation
23 with Ms. Hansen. I'm not sure if I put them in the motion
24 itself.

25 THE COURT: Do you wish to be heard further

1 concerning that request?

2 MR. BOUTWELL: Only that Ms. Hansen did explain that
3 she's had some difficulties with her personal situation and
4 her personal law firm situation, and she's indicated that she
5 would be coming forth with a response. One of the purposes of
6 the motion to compel was simply to move this along, and I did
7 say in view of her situation, and this occurred after filing
8 the motion, that we -- you know, that I would agree to an
9 extension.

10 THE COURT: Are you withdrawing your motion to compel
11 in light of what you have been advised regarding --

12 MR. BOUTWELL: Yes, yes, but I would like Ms. Hansen
13 to clarify when we can get those documents.

14 THE COURT: I do note before she remarks that
15 Ms. Hansen is in a state of legal limbo at this time; and
16 based on what the court understands, her client -- her law
17 firm, her law firm is not operating and that she may be
18 affiliating with another entity and thereafter in a position
19 to represent the defendants against whom you filed a motion to
20 compel and made requests for discovery.

21 The court further notes that under the circumstance there
22 is potential liability that may result from actions that may
23 or may not be taken by Ms. Hansen at this stage of the
24 proceeding, and so what I will do is on the basis of those
25 considerations ask that you, Mr. Boutwell, withdraw your

1 motion to compel and suggest -- with the suggestion that you
2 await information as to the status of Ms. Hansen.

3 If that information is not forthcoming within thirty days,
4 your motion to compel may be renewed. Is there any reason why
5 we should not proceed in that fashion?

6 MR. BOUTWELL: That's fine with me.

7 THE COURT: Very well. And under the circumstance no
8 sanctions are warranted and none will be awarded with respect
9 to the motion filed as docket entry 58 as against Warner
10 Communications, DirecTv, and Spring Communications. Is that
11 satisfactory to you as well, Ms. Hansen?

12 MS. HANSEN: Yes, Your Honor, it is, thank you.

13 THE COURT: Very well. We'll proceed accordingly.
14 Is there anything else?

15 MR. BOUTWELL: I think that's it.

16 THE COURT: Have a good day. Thank you for calling
17 back, Mr. Boutwell. I think we need to avoid any further
18 communications via cell phone.

19 MR. BOUTWELL: Yes, I understand.

20 THE COURT: Thank you. Good-bye.

21 MR. KRASIK: Thank you, Your Honor.

22 MS. HANSEN: Thank you, Your Honor.

23 MR. BOUTWELL: Thank you, Your Honor.

24 (The proceedings concluded at 12:54 p.m.)

25

C E R T I F I C A T E

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I, Christine L. Petrie, Official Court Reporter,
United States District Court, Eastern District of Wisconsin,
do hereby certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

Dated this 25th day of November, 2003.


Christine L. Petrie, RMR
Official Court Reporter

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

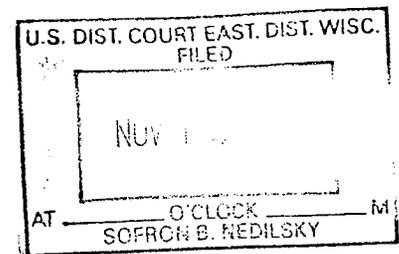
ALBERT PATTERSON,
d/b/a World Wrestling Association,
Superstars of Wrestling, Inc.,

Plaintiff,

v.

Case No. 02-C-0240

ANDREW McMANUS,
WORLD WRESTLING ALL-STARS, INC.,
WARNER COMMUNICATIONS, INC.,
HUGHES ELECTRONICS CORPORATION,
DIRECTV, INC., AND SPRING
COMMUNICATIONS II, LLC.
WORLD WRESTLING ENTERTAINMENT, INC.,
and IMPACT TALENT, INC.



Defendants.

DECISION AND ORDER

GRANTING DEFENDANT WORLD WRESTLING ENTERTAINMENT, INC.'S MOTION TO DISMISS (DOC. # 55), DENYING PLAINTIFF'S MOTION TO COMPEL AGAINST WORLD WRESTLING ENTERTAINMENT, INC. (DOC. # 59), GRANTING WORLD WRESTLING ENTERTAINMENT, INC.'S REQUEST FOR REASONABLE COSTS AND ATTORNEY'S FEES, DEEMING WITHDRAWN PLAINTIFF'S MOTION TO COMPEL AGAINST WARNER COMMUNICATIONS, INC., DIRECTV, INC., AND SPRING COMMUNICATIONS II, LLC (DOC. # 58), AND DENYING PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT AGAINST ANDREW McMANUS (DOC. # 57)

On November 14, 2003, this court conducted a hearing on all pending motions. Attorney Charles D. Boutwell appeared telephonically for the plaintiff, and Attorney Linda E. Hansen appeared for defendants World Wrestling All-Stars, Inc., Warner Communications, Inc., Hughes Electronics Corporation, DirectTV, Inc., and Spring Communications II, LLC. Attorneys Curtis B. Krasik and Shepard A. Davis appeared for defendants World Wrestling Entertainment, Inc. For the reasons set forth on the record,

IT IS ORDERED that defendant World Wrestling Entertainment, Inc.'s motion to dismiss is granted, without prejudice and subject to plaintiff's ability to amend his complaint in *Patterson v. World Wrestling Entertainment, Inc.*, Case No. 03-C-374 (E.D. Wis.).

IT IS ORDERED that plaintiff's motion to compel production of documents against World Wrestling Entertainment, Inc., is denied.

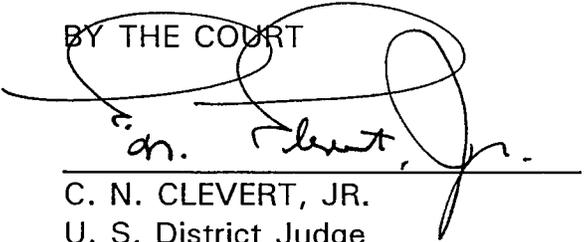
IT IS FURTHER ORDERED that defendant World Wrestling Entertainment, Inc.'s request for reasonable attorney's fees and costs incurred in opposing the motion to compel is granted pursuant to Rule 37(a)(4)(B). Defendant shall submit an itemized bill of costs for the court's review. Plaintiff shall have ten days to file any objection to defendant's submissions. The court retains jurisdiction over World Wrestling Entertainment, Inc., for the purpose of awarding fees and costs.

IT IS FURTHER ORDERED that plaintiff's motion to compel production of documents against Warner Communications, Inc., Hughes Electronics Corporation, DirectTV, Inc., and Spring Communications II, LLC, is deemed withdrawn. If the parties are unable to resolve their dispute within thirty days, the motion may be renewed.

IT IS FURTHER ORDERED that plaintiff's motion for default judgment against Andrew McManus is denied.

Dated at Milwaukee, Wisconsin, this 14th day of November, 2003.

BY THE COURT


C. N. CLEVERT, JR.
U. S. District Judge

This 14th day of Nov, 2003, pursuant to Rule 77(d) Federal Rules of Civil Procedure, copies of this document were mailed by M. Jones to the following parties:

Attorney Charles Drake Boutwell
3075 Plum Island Dr.
Northbrook, IL 60062

Attorney Linda E. Hansen
Patterson Thunte Skaar & Christensen
U. S. Bank Center
777 E. Wisconsin Ave., Suite 2000
Milwaukee, WI 53202-5345

Attorney Curtis B. Krasik
Kirkpatrick & Lockhart
535 Smithfield St.
Pittsburgh, PA 15222

Attorney Shepard A. Davis
Burton & Davis
611 N. Broadway - Ste. 335
Milwaukee, WI 53202