

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

_____)	
AMERICAN NEEDLE, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 04-CV-7806
)	
)	Judge Jorge L. Alonso
NEW ORLEANS LOUISIANA SAINTS, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

STATUS REPORT FOR REASSIGNED CASE

Pursuant to the Court’s Order, plaintiff American Needle, Inc. (“Plaintiff”), defendants NFL Properties, Inc., the National Football League, those of the NFL member clubs named as defendants (“collectively, the NFL Defendants”), and Reebok International Ltd. (“Reebok”) (collectively with the NFL Defendants, “Defendants”) file this Status Report.

Nature of the Case

A. Identify the attorneys of record for each party.

The attorneys of record are identified in the signature blocks below.

B. State the basis for federal jurisdiction.

Plaintiff brings this antitrust action pursuant to the Sherman Act, 15 U.S.C. § 1, *et seq.*

This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331(b).

C. Briefly describe the nature of the claims asserted in the complaint and the counterclaims and/or third-party claims.

This is an antitrust case.

American Needle, a distributor of headwear, is a former licensee of defendant NFL Properties, Inc., the NFL Defendants’ licensing affiliate. Pursuant to those licenses, until 2001

American Needle produced headwear bearing the marks and logos of the NFL and its member clubs. American Needle alleges that Defendants violated the Sherman Act when, in 2001, the NFL Defendants agreed to grant to Reebok the exclusive right to use the NFL Defendants' marks and logos on headwear. Plaintiff challenges that licensing agreement under Section 1 of the Sherman Act, which prohibits agreements that unreasonably restrain trade, and Section 2 of the Sherman Act, which prohibits the unlawful acquisition or maintenance of a monopoly.

D. Describe the relief sought by the plaintiff(s).

Plaintiff seeks treble damages and injunctive relief.

E. List the names of any parties who have not yet been served.

There are no parties who have not yet been served.

Discovery and Pending Motions

A. Briefly describe all pending motions, including the date the motion was filed and the briefing schedule. State whether any of the pending motions have been mooted, no longer require a ruling for any other reason, or have been ruled upon yet still have a "pending" status on the docket.

There are no pending motions.

B. Briefly describe all discovery that the parties have conducted, any discovery that remains, any discovery schedules that have been set, and whether the parties anticipate that they will complete discovery according to the current deadlines.

Discovery is closed except for the parties' duties to supplement and the exchange of privilege logs. Discovery included voluminous document productions, ten depositions of percipient witnesses, and six depositions of expert witnesses.

C. Briefly summarize all substantive rulings issued in the case.

There have been five substantive rulings issued in this case.

Defendants moved to dismiss Plaintiff's complaint for failure to state a claim. Judge Moran granted Defendants' motion as to Count IV of the complaint, which sought to condemn

the challenged exclusive license as a “per se” violation of the antitrust laws. Judge Moran denied Defendants’ motion as to the remaining counts. Dkt. No. 23.

The second substantive ruling addressed the NFL Defendants’ contention that Section 1 of the Sherman Act, which applies only to agreements among separate entities, did not apply to their collective licensing of marks and logos. Judge Moran held that in marketing their intellectual property, the NFL Defendants function as a single entity, thus barring Plaintiff’s remaining claims. Dkt. Nos. 107, 126. The United States Court of Appeals for the Seventh Circuit affirmed. *Am. Needle, Inc. v. Nat’l Football League*, 538 F.3d 736 (7th Cir. 2008). The United States Supreme Court reversed and remanded the case. *Am. Needle, Inc. v. Nat’l Football League*, 560 U.S. 183 (2010).

The three remaining substantive rulings were issued by Judge Coleman on the parties’ respective motions for summary judgment, all of which were denied. Dkt. No. 339.

The Court denied Plaintiff’s motion for partial summary judgment of liability premised upon an abbreviated “quick look” Rule of Reason analysis.

The Court denied Defendants’ summary judgment motion premised on the argument that Plaintiff had failed to provide evidence of a relevant product market in which to assess the competitive effects of the challenged headwear license. The Court denied Defendants’ summary judgment motion premised on the argument that American Needle could not prove a causal link between the challenged Reebok headwear license and any damages that Plaintiff allegedly suffered. The Court implicitly rejected Defendants’ additional argument that American Needle had waived its claims by signing a release.

Trial

A. *State whether there has been a jury demand.*

Plaintiff has requested a jury trial.

B. State whether a trial date has been set; if not, provide the date by which the parties anticipate being ready for trial.

There is no trial date, and no pretrial schedule. Judge Coleman had set trial for October 28, 2015, but had not set any pretrial deadlines. The trial date was stricken in connection with the reassignment of the case to this Court. Dkt. Nos. 357, 361.

The parties anticipate being ready for trial on October 28, 2015.

The Defendants respectfully submit that the next step in the case should be briefing and resolution of the parties' motions challenging the sufficiency of the proposed expert witnesses under the standard set by the Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Defendants anticipate filing two *Daubert* motions, one seeking to bar testimony from Plaintiff's proffered liability expert (an economist) and the other seeking to bar testimony from Plaintiff's proffered damages expert (an accountant).

Because the Court's ruling on the *Daubert* motions may have a significant impact on the pre-trial procedure—including motions *in limine*, deposition and exhibit designations, the proposed pretrial order, and the final pretrial conference as well as the parties' strategies for trial itself—Defendants suggest that the Court consider reserving setting a trial schedule until the *Daubert* motions have been resolved. Plaintiff disagrees. Plaintiff also anticipates filing *Daubert* motions, but believes that *Daubert* motions should be considered as part of an overall scheduling agreement or order.

C. State whether a final pretrial order has been filed; if not, state whether there is a deadline for filing such an order.

No final pretrial order has been filed; nor is there a deadline for filing such an order.

D. Estimate the length of trial.

Judge Coleman had reserved three weeks for trial.

Settlement and Referrals

- A. *State whether any settlement discussions have occurred and the status of any settlement discussions. (Do not provide the particulars of any demands or offers that have been made.)*

The parties have participated in settlement discussions mediated by Magistrate Judge Rowland; those discussions have recently resumed. They also participated in court-ordered mediation before the Seventh Circuit while the case was pending before that court.

- B. *State whether the parties request a settlement conference at this time before this court or the Magistrate Judge.*

The parties are engaged in settlement discussions before Magistrate Judge Rowland.

- C. *State whether counsel have informed their respective clients about the possibility of proceeding before the assigned Magistrate Judge for all purposes, including trial and entry of final judgment, and whether the parties unanimously consent to that procedure. (Do not report whether individual parties have so consented.) The court strongly encourages parties to consent to the jurisdiction of the Magistrate Judge.*

Counsel have informed their respective clients about the possibility of proceeding before the assigned Magistrate Judge for all purposes, including trial and entry of final judgment. The parties do not unanimously consent to that procedure.

February 5, 2015

/s/ Jeffrey M. Carey
Jeffrey M. Carey
1275 Busch Parkway
Buffalo Grove, Illinois 60089
(847) 215-0011, ext. 332
jcarey@amer-needle.com

Counsel for American Needle, Inc.

Respectfully submitted,

/s/ Derek Ludwin
Gregg H. Levy (*pro hac vice*)
Derek Ludwin (*pro hac vice*)
Leah E. Pogoriler (*pro hac vice*)
Ross A. Demain (*pro hac vice*)
John S. Playforth (*pro hac vice*)
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001
(202) 662-6000/fax (202) 662-6291
glevy@cov.com/dludwin@cov.com/
lpogoriler@cov.com/rdemain@cov.com/
jplayforth@cov.com

Richard Del Giudice
Dean C. Kalant
GOZDECKI, DEL GIUDICE, AMERICUS &
FARKAS LLP
One East Wacker, Suite 1700
Chicago, IL 60601
(312) 782-5010/fax (312) 782-4324
r.delgiudice@gozdel.com/d.kalant@gozdel.com

Counsel for the NFL Defendants

/s/ Timothy B. Hardwicke
Timothy B. Hardwicke
GOODSMITH GREGG & UNRUH LLP
150 S. Wacker Drive, Suite 3150
Chicago, IL 60606
(312) 322-1981/fax (312) 322-0056
thardwicke@ggulaw.com

Michael J. Nelson
LATHAM & WAKTINS LLP
330 N. Wabash Ave., Ste. 2800
Chicago, IL 60610
(312) 876-7700/fax (312) 993-9767
michael.nelson@lw.com

Counsel for Reebok International Ltd.

CERTIFICATE OF SERVICE

I, Derek Ludwin, an attorney, do hereby certify that I caused a copy of the foregoing to be electronically filed with the Court and served on all parties on February 5, 2015 using the Court's electronic case filing system.

By: /s/ Derek Ludwin
Derek Ludwin