

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-20427-CIV-WILLIAMS

DISNEY ENTERPRISES, INC., *et al.*,

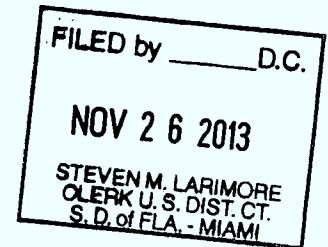
Plaintiffs,

vs.

HOTFILE CORP., *et al.*,

Defendants.

_____ /



OMNIBUS ORDER

THIS MATTER is before the Court upon a pretrial conference held on November 21, 2013, and numerous motions filed by the parties. Upon a careful review of the motions, and pursuant to the discussions held at the conference and the representations made at that time, it is hereby **ORDERED AND ADJUDGED** as follows:

- (1) Defendants' Motion to Strike Plaintiffs' Putative "Rebuttal" Report of Dr. Richard Waterman (DE 217, deemed re-filed by DE 545) is **DENIED**.
- (2) Defendants' Motion in Limine to Exclude Testimony and Opinions of Jennifer V. Yeh (DE 573) is **GRANTED IN PART**. Ms. Yeh may testify as to the authenticity of the documents produced, but she may not opine as to whether files on Hotfile's system were likely infringing or infringement likely occurred.
- (3) Defendants' Motion in Limine to Preclude Use of Pejorative Terms (DE 574) is **GRANTED IN PART**. The parties may not use pejorative terms but may use terms of art.

- (4) Defendants' Motion in Limine to Preclude Testimony, Evidence or Argument Concerning Megaupload (DE 575; DE 592, filed under seal) is **DENIED WITHOUT PREJUDICE** and may be raised if necessary at trial.
- (5) Defendants' Motion to Exclude the Testimony and Opinions of Scott Zebrak (DE 582) is **DENIED**.
- (6) Defendants' Motion in Limine to Preclude Testimony, Evidence, or Argument Concerning Hotfile's Payment or Non-Payment of Taxes (DE 591, filed under seal) is **GRANTED**.
- (7) Defendants' Motion in Limine to Preclude Testimony, Evidence, or Argument Concerning Irrelevant Financial Information Regarding Lemuria Communications Inc. (DE 593, filed under seal) is **GRANTED**.
- (8) Defendants' Motion to Declare Witness Unavailable (DE 640) is **GRANTED**. The parties shall confer and file designations of Professor Boyle's reports, declaration, and deposition testimony in advance of trial.
- (9) The Joint Motion of the Parties to Treat as Re-Filed and Re-Submitted for Decision Plaintiffs' Motion to Strike Portions of Declaration of Professor James Boyle (DE 578) is **GRANTED**.
- (10) Plaintiffs' Motion to Strike Portions of Declarations of Professor James Boyle (DE 423) is **DENIED**.
- (11) Plaintiffs' Motion in Limine to Set Order of Proof (DE 576) is **DENIED**. Plaintiffs shall file a proposed limiting instruction in advance of trial.
- (12) Plaintiffs' Motion in Limine to Preclude Testimony from Previously Undisclosed Third-Party Witnesses (DE 579) is **DENIED**.

(13) Plaintiffs' Motion in Limine to Preclude Defendants from Offering Certain Opinions of Dr. Andrew Cromarty at Trial (DE 580) is **GRANTED IN PART**. Dr. Cromarty may not testify as to Hotfile's control over its system or the amount of the Studios' damages, but he may testify regarding computer technology, such as digital fingerprinting technology, and takedown notice accuracy.

(14) Plaintiffs' Motion in Limine to Preclude Defendants from Offering the Opinions of Dr. Matthew R. Lynde at Trial (DE 581) is **DENIED**.

(15) Plaintiffs' Motion in Limine to Preclude Defendants from Entering into Evidence Deposition Testimony of Rumen Stoyanov and Atanas Vangelov (DE 585, filed under seal) was **WITHDRAWN** by Stipulation of the parties (DE 643, filed under seal). However, the parties reserved the right to enter designated portions of the deposition testimony as necessary at trial.

(16) Warner Bros. Entertainment Inc.'s Motion in Limine to Exclude Evidence of Warner's August 2011 Audits of Its Anti-Piracy System for the Purpose of Showing Warner's Culpability (DE 586, filed under seal) is **DENIED**.

(17) Warner Bros. Entertainment Inc.'s Motion in Limine to Exclude Evidence and Argument Regarding "Perjury" in Connection with Counterclaim (DE 587, filed under seal) is **DENIED WITHOUT PREJUDICE** and may be raised if necessary at trial.

(18) By **December 3, 2013**, the parties shall file any proposed voir dire questions.

(19) By **December 4, 2013**, the parties shall re-file their Joint Submission of Proposed Jury Instructions (DE 636; DE 646, filed under seal) as one set of

proposed jury instructions, designating any differences between the proposals of Plaintiffs and Defendants within each instruction. The proposed jury instructions should be predicated on the Eleventh Circuit pattern instructions. The parties shall also email a Microsoft WORD version of the joint proposed jury instructions to chambers at williams@flsd.uscourts.gov by December 4, 2013.

(20) By December 6, 2013, the parties shall file a document identifying information disclosed in this case that must remain confidential, its location, and the rationale for its confidentiality.

DONE AND ORDERED in chambers at Miami, Florida this 20 day of November, 2013.


KATHLEEN M. WILLIAMS
UNITED STATES DISTRICT JUDGE