

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

**GATEHOUSE MEDIA MASSACHUSETTS I,
INC., DOING BUSINESS AS GATEHOUSE MEDIA NEW
ENGLAND,**

Plaintiff,

Case No. 08-12114-WGY

v.

**THE NEW YORK TIMES CO., DOING BUSINESS
AS BOSTON.COM,**

Defendant.

STATUS REPORT AND JOINT MOTION TO SET [PROPOSED] SCHEDULE

The parties, plaintiff GateHouse Media Massachusetts I, Inc., and defendant The New York Times Co., respectfully submit this report of status and activity since the December 22, 2008 hearing, and jointly propose the schedule below for the further conduct of the case to trial. Since that hearing, the parties have cooperated in substantially completing document discovery, negotiating the conduct of anticipated depositions, and negotiating certain substantive issues, including as to resolution of certain claims and agreement on certain facts. In so doing, and in the interests of justice, economy and efficiency, the parties have agreed on the proposals below.

WHEREFORE, the parties agree and propose as follows:

1. On January 5, 2009, Counsel for the parties have been instructed to appear in Court for a conference at 2:00 p.m.;
2. At the January 5, 2009 conference, the parties anticipate that they will each waive jury trial;

3. The parties jointly request that trial be bifurcated as to liability and damages, with the liability portion tried first, and would discuss the request with the Court at the January 5, 2009 conference;

4. The parties are in negotiations that may resolve certain claims, which could also substantially narrow the factual issues to be tried;

5. The parties are cooperating with respect to agreement on stipulated facts and believe that following discovery such agreement may ultimately be extensive enough to significantly narrow the factual issues that will need to be tried in the case; the stipulation will be filed in accordance with the Court's standard pre-trial order and three (3) days before trial;

6. The parties wish to address with the Court at the January 5, 2009 conference a potential jurisdictional issue regarding plaintiff's copyright claims. Plaintiff has not received certificates of registration as of this date on the subject publications, the applications for which it delivered to the Copyright Office on December 19, 2008, along with deposit materials and fees for expedited response. While courts in numerous circuits have affirmed that a pending application for copyright registration is sufficient in order to proceed with an infringement action under the Copyright Act, the First Circuit has not spoken to the issue and two District Court opinions appear to take opposite views. Defendant takes no position on this issue given the current state of the law. However, because of the potential impact on the efforts and economies involved in this matter should the Court determine otherwise on its own motion, both parties submit that the matter should be addressed pre-trial, and plaintiff intends to seek the Court's guidance at the January 5, 2009 conference. Should the Court wish briefing on the issue following the conference, plaintiff will submit any briefing on January 7, 2009 or at the Court's convenience;

7. The parties have agreed to the following proposed schedule for the conduct of the case and trial of Plaintiff's claims:

January 5, 2009: Status Conference, 2:00 p.m.;

January 16, 2009: Fact discovery will be completed;

January 19, 2009: Expert reports shall be exchanged (rebuttal experts to be offered as necessary at trial);

January 21, 2009: Expert depositions completed; parties shall exchange final proposals for stipulations of fact and witness lists;

January 23, 2009: Stipulations of fact, motions in limine, final pretrial order to be filed;

Trial to begin at the Court's convenience on or after **January 26, 2009**;

Post-trial briefing to be scheduled by the Court upon completion of trial.

SO ORDERED AND SIGNED, this ____ day of December __, 2008

WILLIAM G. YOUNG
UNITED STATES DISTRICT JUDGE

Respectfully submitted,

///

<p>GATEHOUSE MEDIA MASSACHUSETTS I, INC.</p> <p>By its attorneys:</p> <p><u>/s/ Joseph L. Stanganelli</u> Joseph L. Stanganelli (BBO #628958) Carolyn A. Marcotte (BBO #663616) HISCOCK & BARCLAY, LLP 50 Federal Street, 5th Floor Boston, Massachusetts 02110 Telephone: (617) 274-2901 Facsimile: (617) 722-6003</p> <p>and</p> <p>Michael J. Grygiel (<i>pro hac vice</i>) William A. Hurst (<i>pro hac vice</i>) HISCOCK & BARCLAY, LLP 50 Beaver Street Albany, New York 12207 Telephone: (518) 429-4234 Facsimile: (518) 429-4201</p>	<p>NEW YORK TIMES COMPANY</p> <p>By its attorneys:</p> <p><u>/s/ R. David Hosp</u> R. David Hosp (BBO #634091) Mark S. Puzella (BBO #644850) GOODWIN PROCTER LLP Exchange Place Boston, Massachusetts 02109-2881 Telephone: (617) 570-1000 Facsimile: (617) 523-1231</p> <p>and</p> <p>Ira J. Levy (<i>pro hac vice</i>) GOODWIN PROCTER LLP The New York Times Building 620 8th Avenue New York, NY 10018 Telephone: (212) 813-8800 Facsimile: (212) 355-3333</p>
---	--

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Status Report and Joint Motion To Set [Proposed] Schedule filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non registered participants on December 30, 2008.

/s/ Joseph L. Stanganelli
Joseph L. Stanganelli