

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: 3/01/12

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ROBERT SCOTT,

Plaintiff,

NOTICE OF MOTION FOR

-against-

SUMMARY JUDGEMENT

UNDER FED. R. CIV. P.

WORLDSTARHIPHOP, INC.,

RULE 56 (a)

BERKELEY COLLEGE,

10 Civ. 9538 (PKC) (RLE)

Defendants.
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PLEASE TAKE NOTICE, that upon the annexed affirmation of Robert Scott, sworn to on the 29th day of February, 2012, and the pleadings herein, Plaintiff will move this Court, before P. Kevin Castel, District Judge, for an order pursuant to Rule 56 (a) of the Fed. R. Civ. P. for Summary Judgment against the Defendant WorldStarHipHop, Inc., upon the ground that the Defendant WorldStarHipHop, Inc. is not entitled to the limitations on liability of the Digital Millennium Copyright Act ("DMCA") because it failed to designate an agent to receive notifications of claimed infringement within the United States Copyright Office pursuant to 17 U.S.C. §512 (c) (2).

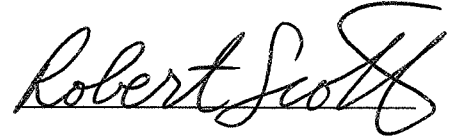
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I declare under penalty of perjury that the following is true and correct.

Dated: New York, NY

February 29, 2012



Robert Scott, *Pro se*

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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ROBERT SCOTT,

Plaintiff,

AFFIRMATION IN SUPPORT

-against-

OF

SUMMARY JUDGEMENT

WORLDSTARHIPHOP, INC.,

BERKELEY COLLEGE,

10 Civ. 9538 (PKC) (RLE)

Defendants.

-----*

I, ROBERT SCOTT, **affirm under penalty of perjury that:**

1. I, Robert Scott, am the *Pro se* Plaintiff, in the above entitled action, and respectfully submit this affirmation in support of my motion for Summary Judgment against the Defendant, WorldStarHipHop, Inc., pursuant to Fed. R. Civ. P. Rule 56 (a) dated February 29, 2012.
2. I have personal knowledge of the facts which bear on this motion because I am the *Pro se* Plaintiff within this action and commenced said action against the Defendant, WorldStarHipHop, Inc., for violation of the 1976 Copyright Act, 17 U.S.C. §101 et. seq. and N.Y. Civil Rights Law §51.
3. Plaintiff Amended Complaint before this Court alleged that the Defendant, WorldStarHipHop, Inc., “disregarded the statutory requirement of the Digital Millennium Copyright Act... and continued to publish the work on its website at

www.worldstarhiphop.com in violation of the Plaintiff, Robert Scott, exclusive rights pursuant to 17 U.S.C. §106.” See, Docket#26, Am Compl. ¶¶38, 56.

4. In accordance with the Digital Millennium Copyright Act (“DMCA”), the limitations on liability established by 17 U.S.C. § 512 apply only to service providers who has designated an agent to receive notifications of claimed infringement described in paragraph (3) of 17 U.S.C. §512, “...by providing to the Copyright Office, **substantially the following information: (A) the name, address, phone number, and electronic mail address of the agent. (B) other contact information which the Register of Copyrights may deem appropriate. The Register of Copyrights shall maintain a current directory of agents available to the public inspection, including through the internet, and may require payment of a fee by the service providers to cover the costs of maintaining the directory.**” See, 17 U.S.C. §512 (c) (3).
5. Defendant, WorldStarHipHop, Inc., Reply Memorandum of Law and the United States Copyright Directory of Service Provider Agents for Notifications of Claims of Infringement, Service Provider Agents List pursuant to 17 U.S.C. §512 (c) (3) establishes a material undisputed fact that the Defendant, WorldStarHipHop, Inc., disregarded the statutory requirement of the DMCA to limit its liability as a service provider to the Plaintiff cause of action for violation of the 1976 Copyright Act when it continued to publish the Plaintiff work from December 4, 2010 to December 16, 2010. See, Docket#26, Am. Compl. Exhibit A, United States Copyright Office, Registration Number PA 1-727-922; Docket#26, Am. Compl. ¶38; Docket#62, Reply Affirmation in Opposition; But See, Docket#63, Granick Reply Memorandum of Law ¶11.

6. Defendant, WorldStarHipHop, Inc., affirmed within its letter to the Court that it only disable access to the Plaintiff work on January 7, 2011 “once it obtained an explanation from the Plaintiff explaining how he was both pictured in the video and also the copyright owner of it.” thirty-three (33) days after Plaintiff registered the work with the United States Copyright Right Office,; Notwithstanding, the DMCA not requiring said procedure as a basis to disable access to infringing copyrighted work once a notification of claimed infringement has been filed. See, 17 U.S.C. §512 (c) (3); But See, Docket#47, ENDORSED LETTER from Granick ¶19.
7. Defendant, WorldStarHipHop, Inc., assertion within its Reply Memorandum of Law contest that this court should disregard the United States Copyright Directory of Service Provider Agents for Notifications of Claims of Infringement, Service Provider Agents List pursuant to 17 U.S.C. §512 (c) (3) as proof that Defendant, WorldStarHipHop, Inc., did not lawfully designate a registered agent with the United States Copyright Office to establish limitations on liability under the DMCA. This assertion by the Defendant, WorldStarHipHop, Inc., constitute a *implied admission* that it acted outside the scope of the DMCA safe harbor law when it continued to publish the Plaintiff work until January 7, 2011. See, Docket#63, Reply Memorandum of Law ¶13.
8. The United States Copyright Directory of Service Provider Agents for Notifications of Claims of Infringement, Service Provider Agents List pursuant to 17 U.S.C. §512 (c) (3) constitute relevant evidence admissible against the Defendant, WorldStarHipHop, Inc., because it is a federal statute under Fed. R. Evid. Rule 402.
9. Defendant, WorldStarHipHop, Inc., doesn’t have on file at the United States Copyright Office an Interim Designation of Agent to Receive Notification of Claimed

Infringement as required by 17 U.S.C. §512 (c) (3). See, United States Copyright Directory of Service Provider Agents for Notifications of Claims of Infringement, Service Provider Agents List.

10. The case law cited by the Defendant, WorldStarHipHop, Inc., and the Defendants pleadings within those causes of action, satisfied the statutory requirement of 17 U.S.C. §512 (c) (3) by designated an agent to receive notifications of claimed infringement with the United States Copyright Office to establish the limitations on liability provided by the DMCA safe harbor provision; contra to the Defendant, WorldStarHipHop, Inc., position in this case

In view of the foregoing, it is respectfully submitted that the motion for Summary Judgment should be granted as a matter of law pursuant to Fed. R. Civ. P. Rule 56 (c).

I declare under penalty of perjury that the following is true and correct.

Dated: New York, NY
February 29, 2012



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----*

ROBERT SCOTT,

Plaintiff,

AFFIRMATION OF SERVICE

v.

WORLDSTARHIPHOP, INC.,

10-Cv-9538 (PKC) (RLE)

BERKELEY COLLEGE,

Defendants.

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I, Robert Scott, declare under Penalty of perjury that I have served a copy of the attached Notice of Summary Judgment and Affirmation in Support of Summary Judgment upon the Defendant, WorldStarHipHop, Inc., General Counsel Jennifer S. Granick, Esq., 350 Townsend Street, Ste. 612, San Francisco, CA 94107 and Granick@worldstarhiphop.com by facsimile transmission and electronic mail.

Dated: New York, NY

February 29, 2012



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