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February 22, 2010

**VIA ECF**

The Honorable John R. Tunheim  
United States District Court  
13E U.S. Courthouse, 300 S. Fourth Street  
Minneapolis, MN 55415

Re: Insignia Systems, Inc. v. News America Marketing, In-Store, Inc. , et al.  
No. 04-4213 (JRT/AJB)

Dear Judge Tunheim:

This letter is sent in response to the letter sent by counsel for News America Marketing In-Store, Inc. ("News") on February 19, 2010. Insignia is troubled by this latest effort to delay the trial of a case that has been pending in this court for more than five years.

On September 30 2009, your Honor issued an opinion denying News' motion for summary judgment and granting Insignia's motion for summary judgment. Since that ruling, News has made numerous attempts to delay the trial of this case. In the September 30, 2009 order, the Court granted News 45 days to conduct depositions of three declarants. News requested that be extended to 75 days. The Court granted that request over Insignia's objection. At the conclusion of this discovery, News filed a request for leave to move to reconsider the summary judgment ruling. That request was denied by this Court.

On October 16, 2009, Judge Boylan issued an order setting this case for settlement conference on January 11, 2010. That order was amended on December 1, 2009, advancing the settlement conference to January 4, 2010. News objected to that date, asserting that its corporate representative, a person not identified by name, would be on vacation. In a conference with Judge Boylan's chambers, News represented further that it would not be able to participate at any time later in the month of January or until after the conclusion of another trial of a related antitrust case (*Valassis Communications, Inc. v. News America Marketing, Inc.*, No. 2:06-cv-10240-AJT-VMM) scheduled to begin trial on February 2, 2010 in the Eastern District

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of Michigan, because its lead trial counsel could not participate in a settlement conference while preparing for or engaged in that trial. Accordingly, Judge Boylan set the settlement conference for April 12<sup>th</sup> over Insignia's objection.

*Valassis Communications, Inc. v. News America* settled on January 30, 2010 with News agreeing to pay Valassis \$500 million. On February 1, 2010, Insignia requested that Judge Boylan advance the date of the settlement conference now that the *Valassis* trial no longer presented a conflict for News or its trial counsel. Judge Boylan offered two alternative dates in March for the settlement conference, but News again stated that it was unable to participate due to unspecified conflicts of its counsel.

In its recent letter, News again relies on unspecified conflicts to request not just a postponement of this Court's trial setting, but a delay in holding a status hearing until after the April 12<sup>th</sup> settlement conference. With this request, News is now asking for more than six months delay since this court's summary judgment ruling, before this court should even consider the trial setting. News makes no effort to identify any details regarding the claimed conflict.

Regarding News' *Daubert* motions, News seeks to bar each of Insignia's three expert witnesses. It filed these motions *in limine* contemporaneously with its motion for summary judgment on all of Insignia's claims. The court requested—in an August 5, 2009 email from Ms. McClelland to counsel—that News America withdraw these motions, and that they be re-filed once a trial date is set. Now that a date has been set to brief those motions, News seeks more time and more proceedings to argue them. The motions should be taken up when the motions *in limine* are considered by this court, after the filing of responses on April 5, 2010 and before jury selection on or about April 12, 2010.<sup>1</sup>

Insignia has alleged that News America possesses monopoly power and has been engaging in anticompetitive conduct for years. Insignia has suffered and continues to suffer in the face of News' anticompetitive conduct. It has waited years for its day in court. Further delay would be prejudicial.

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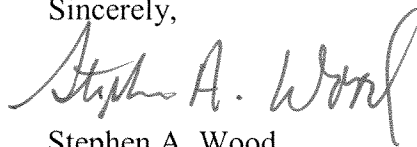
<sup>1</sup> It is disingenuous for News to imply that trial should be postponed in the hope that the case may settle. Since the summary judgment ruling, News has shown no interest in even discussing settlement of this case. Moreover, if history is any guide, in each of the two settlements News reached with other competitors who were suing News for unfair competition, Valassis and FLOORGraphics, the lawsuits were settled only during or on the eve of trial.

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For the foregoing reasons, Insignia requests that News request to delay the start of the trial of this case be denied.

Sincerely,

A handwritten signature in black ink that reads "Stephen A. Wood". The signature is written in a cursive, flowing style.

Stephen A. Wood

cc: Counsel of Record (via ECF)