



February 19, 2010

ELECTRONICALLY FILED

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

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

Dear Judge Tunheim:

Yesterday, the parties received a Notice of Assignment of Cases for Trial notifying them that this case must be "ready for trial" on April 12, 2010. For the reasons discussed below, defendant News America Marketing In-Store, Inc. ("News America") believes this case is not actually ready for trial.

First, as you may recall, this case is scheduled for an all-day settlement conference with Magistrate Judge Boylan on April 12. We believe the trial readiness date – and the various deadlines it triggers – will be counterproductive to the parties' settlement efforts and approach.

Second, the new notice does not take into account a briefing schedule or time for ruling on News America's *Daubert* motions that were withdrawn at the Court's request. As you may recall, News America filed three *Daubert* motions to exclude the opinions of plaintiff's expert witnesses, Paula Payton, Thomas Overstreet, and Steve Frenda (Dkt. Nos. 478-482, 483-487, and 488-492) at the same time the parties moved for summary judgment. At the request of the Court, News America's *Daubert* motions were withdrawn without prejudice and were expected to be refiled sometime after the summary judgment motions were decided and in accordance with a briefing schedule to be set by the Court. (Dkt. No. 575).

News America's *Daubert* motions expose serious deficiencies with Insignia's case and, in particular, its damages claim. The Court's September 30, 2009 summary judgment order recognized "the potential challenges that Insignia faces in demonstrating the credibility of its damages assessment, as well as its claims about [News America's] market power, in light of [News America's] challenges to Insignia's ACV calculations." (Dkt. No. 584, p. 43). A ruling on these and other important issues raised by the *Daubert* motions could dramatically limit the

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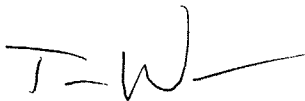
scope of this case and substantially streamline and ultimately shorten the trial. As such, News America understood that it would be given an opportunity to have these motions re-filed and set for hearing well in advance of the pretrial deadlines set forth in the trial readiness notice. Given the importance of these motions to the viability of Insignia's antitrust claims, News America intends to request an evidentiary hearing on these motions.

Finally, both I and News America's other lead trial counsel have trials in other matters in April and May 2010.

For the foregoing reasons, News America respectfully requests that the Court set a scheduling conference following the April 12 settlement conference, if the case is not then resolved, to discuss a briefing schedule and hearing date for the *Daubert* motions as well as a trial readiness date that will provide the Court with sufficient time to consider the motions and for the parties (and counsel) to avoid pre-existing conflicts.

We appreciate your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'T-W' followed by a horizontal line.

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cc: Counsel of Record (via CM/ECF notice)