UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UMG RECORDINGS, INC., et al., Plaintiffs, vs. GRANDE COMMUNICATIONS NETWORKS LLC, Defendant.	)	No. 1:17-cv-00365-DAE

DEFENDANT GRANDE COMMUNICATIONS NETWORKS LLC'S OPPOSITION TO PLAINTIFFS' MOTION *IN LIMINE* REGARDING DX 44 AND DX 57

Plaintiffs continue to fill the proceedings with ill-founded motions *in limine*. In the latest iteration, Plaintiffs seek to block relevant documents—including their own documents regarding Rightscorp—from the jury's view. *See* ECF No. 428. Plaintiffs offer no legitimate reason to keep these relevant documents from the jury. Moreover, Plaintiffs' motion is directed at the exact same exhibits that Plaintiffs previously sought to exclude in a pre-trial motion *in limine*—a request that the Court denied. *See* ECF No. 347 at 20. The Court should deny Plaintiffs' unauthorized motion for reconsideration.

A. The Court Has Ruled on These Exhibits.

The Court previously ruled on this issue in denying Plaintiffs' second motion *in limine*. *See* ECF No. 347 at 20. In that motion, Plaintiffs specifically asked the Court to exclude the two exhibits at issue here—Exhibits 44 and 57—and anything else that is critical of Rightscorp's business practices. ECF No. 314 at 5 ("Those documents include emails describing the call center script as a 'terrifying extortion script' that is 'breathtaking in its sleaze.'"). In response, Grande

argued that this evidence is highly relevant and it would be prejudicial to Grande's defense if the Court precluded Grande from showing Plaintiffs' internal communications regarding Rightscorp. The Court agreed with Grande and denied Plaintiffs' motion. *See* ECF No. 347 at 20 ("The Court agrees with Defendant and thus, the motion is **DENIED**").

B. The Exhibits are Squarely Relevant to Central Issues.

The evidence that Plaintiffs seek to exclude is highly relevant because it shows that Plaintiffs themselves recognized that Rightscorp was attempting to extort consumers. Plaintiffs' case is founded on the reliability and credibility of Rightscorp and its software, but Rightscorp never sent a single notice on Plaintiffs' behalf—in fact, Plaintiffs affirmatively sought to disassociate themselves from Rightscorp. *See, e.g.*, ECF No. 340-5 (June 2014 Sony emails discussing Rightscorp's efforts to "milk consumers" and wondering "Is there any way to block [Rightscorp] activity if we don't support and don't benefit?").

Now, however, having purchased evidence from Rightscorp, Plaintiffs are holding up Rightscorp as a high-quality operation with an unimpeachable copyright detection system. Plaintiffs want the jury to punish Grande for not taking Rightscorp at its word. It would be extremely prejudicial to Grande's defense if the Court allowed Plaintiffs to make these arguments while precluding Grande from showing that Plaintiffs' internal communications refute their litigation-driven narrative. Plaintiffs cannot affirmatively present Rightscorp's business and system as legitimate while suppressing evidence that shows they know the opposite is true.

These documents show that Plaintiffs knew exactly who they were partnering with in this lawsuit. Moreover, the credibility of Rightscorp and its business practices is a central issue in this case. Because Rightscorp destroyed the evidence allegedly collected from accused infringers on Grande's network, the jury may ultimately have to decide whether to believe Mr. Boswell's and

Mr. Sabec's testimony that Rightscorp had a legitimate factual basis for accusing Grande's subscribers of copyright infringement. How Rightscorp interacted with consumers is a key component of assessing their credibility as Rightscorp's representatives. Plaintiffs cite cases for the proposition that "pejorative terms" can be unduly prejudicial, but those cases relate to an opposing party's use of those terms—not the party's own documents disparaging the party's own evidence. *See, e.g., Luv n' care v. Laurain*, No. 3:16-cv-777, 2021 WL 7907283, at *2 (W.D. La. Mar. 29, 2021); *King v. Univ. Healthcare Sys., L.C.*, No. CIV A 08-1060, 2009 WL 2222700, at *3 (E.D. La. July 24, 2009).

C. The Exhibits are not Hearsay.

Finally, the exhibits at issue are not hearsay for the simple reason that Grande is not offering them for the truth of any matter asserted in them. *See* Fed. R. Evid. 801(c)(2). Exhibit 44 is an email created by Warner's own Howie Singer, described as Warner's "resident antipiracy expert" by Warner's corporate representative. *See* Glass Dep. Tr. 52:24-53:4. Warner produced the file in this litigation from its own records. In the email, Warner's resident antipiracy expert copies text from an online article about Rightscorp and places it in the subject line and body of the email, then emails it to himself.[1] The text of the email merely reflects the information that Warner's Head of Antipiracy was considering about Rightscorp. It doesn't matter whether the statements are true, it only matters that at least one Plaintiff's Head of Antipiracy considered the article and found it important enough to create the document at the time and for it to be kept in his records. The exhibits are not hearsay because Grande is not offering them for a hearsay purpose.

Moreover, the Warner email is a Warner business record under Rule 803(6). Mr. Singer

[1] Exhibit 57 is the article itself, separate from an email. Rightscorp's CEO, Chris Sabec, discussed the article in his 30(b)(6) deposition for Rightscorp.

communicated the information to himself to create a record of it in the course of his work as Warner's antipiracy expert. The email can also be considered Warner's own statement, adopted by Mr. Singer when he emailed it to himself to make a record of it. *See* Fed. R. Evid. 801(2). It is worth noting that Mr. Singer moved from his position in antipiracy at Warner to a consultant in antipiracy at Universal—another Plaintiff in this case. *See* Glass Dep. Tr. 42:3-7. Plaintiffs could have had Mr. Singer come and explain the email to the jury, but they chose not to. In any event, Plaintiffs' hearsay arguments are without merit.

D. Plaintiffs' "trustworthiness" argument lacks any factual basis.

Plaintiffs argue in their motion that the article "lacks trustworthiness," but they offer no evidence in support. ECF No. 428 at 4. Plaintiffs apparently want the Court to draw unfounded conclusions about the article based on misrepresentations about its source. Plaintiffs allege that Boing Boing "is known for its pro-piracy stance," but they do not cite a shred of evidence. *Id.* Plaintiffs argue, without citation to evidence, that Boing Boing is not "an established and reputable newspaper." *Id.* Setting aside the fact that "established and reputable newspaper" is not a legal standard, Plaintiffs ignore the fact that Boing Boing is an award-winning web blog that has been established for more than 30 years.[2] Warner's "resident antipiracy expert" saw fit to create a record of the article, and Plaintiffs' attorneys offer no reason to doubt his judgment. The Court should reject Plaintiffs' groundless factual assertions.

CONCLUSION

The Court has already ordered that the evidence Plaintiff seek to exclude should be allowed at trial. The evidence is squarely relevant to central issues in the case. The Court should re-affirm

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[2] *See* Wikipedia: Boing Boing (https://en.wikipedia.org/wiki/Boing_Boing).

its ruling and deny Plaintiffs' motion *in limine* (ECF No. 428).

Dated: October 25, 2022

By: /s/ *Richard L. Brophy*

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CERTIFICATE OF SERVICE

The undersigned certifies that on October 25, 2022, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system pursuant to Local Rule CV-5(b)(1).

/s/ *Richard L. Brophy*
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