

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

CASE NO. 97-3924-CIV-SIMONTON (by consent)

JERRY GREENBERG, individually,

Plaintiff,

vs.

NATIONAL GEOGRAPHIC
SOCIETY, a District of Columbia
corporation, NATIONAL GEOGRAPHIC
ENTERPRISES, INC., a corporation,
and MINDSCAPE, INC., a
California corporation,

Defendants.

**PLAINTIFF'S MEMORANDUM IN OPPOSITION
TO SUPPLEMENTAL AUTHORITY FILED BY DEFENDANTS**

Plaintiff, JERRY GREENBERG, submits this memorandum in opposition to Defendants' Notice of Filing Supplemental Authority in Support of Their Judgment as a Matter of Law.

On December 12, 2003, the defendants filed a copy of an opinion in Douglas Faulkner, et al. v. National Geographic Society, et al., Case No. 97 Civ. 9361, in the Southern District of New York. In the opinion, Judge Lewis Kaplan generally granted the defendants' motions for summary judgment as to copyright issues. In their notice, the defendants state that the Kaplan opinion "is further evidence that counsel for Defendants correctly understood the import of Tasini and that Defendants' reliance upon the advice received was reasonable." To the contrary, the opinion provides no evidence that is relevant to this case.

First, Greenberg provided to the jury substantial evidence as to facts existing long before the Supreme Court's Tasini decision from which the jury could have concluded that a reliance by the Society on legal opinions was misplaced. Second, notwithstanding what the Supreme Court said in Tasini, the Eleventh Circuit's opinion became the law of this case, and it still is. The defendants' reliance on the advice received, therefore, was not reasonable because it was directly contrary to controlling law. That is particularly true in view of the order entered by Judge Lenard on February 19, 2002 in which she expressly rejected a contention by the defendants that Tasini should trump the Eleventh Circuit's Greenberg decision. Judge Lenard's order is also part of the law of this case. Neither the opinions of their lawyers, nor the opinion of Judge Kaplan, affects the law by which the defendants were bound.

STEEL HECTOR & DAVIS LLP
Counsel for Plaintiff
200 South Biscayne Blvd.
Suite 4000
Miami, Florida 33131-2398
Telephone (305) 577-7000
Telecopy (305) 577-7001


Norman Davis FBN 475335

Certificate of Service

I hereby certify that a copy of the foregoing memorandum was served by facsimile and mail on Jennifer G. Altman, Esq., Boies, Schiller & Flexner LLP, 2800 Bank of America Tower, 100 Southeast Second Street, Miami, FL 33131; and by mail on Robert G. Sugarman, Esq., Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York NY 10153 this 20th day of February, 2004.


Norman Davis