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September 27, 2007

VIA E-FILING & HAND DELIVERY

The Honorable Mary Pat Thynge
Magistrate Judge
United States District Court for the
District of Delaware
844 King Street
Room 4209
Wilmington, DE 19801

RE: *TV Guide Online v. Tribune Media Services*,
C. A. No. 05-CV-725-***

Dear Magistrate Judge Thynge:

We write in response to the letter submitted earlier today by counsel for TMS seeking yet another delay in submission of opening claim construction briefs and motions for summary judgment, which are presently due to be filed tomorrow. TMS's continuing efforts to delay resolution of this action are inappropriate.

Under the Court's Scheduling Order, the parties were required to exchange proposed definitions for the claim terms that they believed would require construction no later than October 16, 2006 -- nearly a year ago. TV Guide fully complied with the Court's Order. TV Guide submitted its proposed constructions and has stuck with them ever since.

TMS's proposed constructions, on the other hand, have been a moving target. After the October 16, 2006 deadline, TMS and its expert changed their proposed constructions on several occasions -- on December 15, 2006 and again on January 18, 2007. Then, after the close of business last Friday, TMS sought to change several of its proposed claim constructions yet again.

Under the Court's Scheduling Order, opening claim construction briefs and summary judgment briefs were originally due to be filed on February 20, 2007 -- more than seven months ago. Since that time, the due date has been pushed off on at least ***seven*** occasions at TMS's request. TMS requested the two most recent extensions because one of its attorneys was at trial.

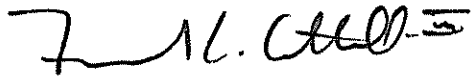
The parties agreed that claim construction briefs and summary judgment motions would finally be filed on September 28, 2007 (tomorrow). Then, just a few days ago, TMS asserted that several of the claim terms for which TMS had previously proposed definitions should be construed according to the "plain and ordinary meaning." That is difficult to understand because TMS's expert premised his opinions (and his deposition testimony) on the specific definitions that he and TMS advanced. He did ***not*** rely on the "plain and ordinary meaning" for those terms.

TV Guide believes -- and is prepared to show -- that TMS's proposed definitions are flatly inconsistent with the intrinsic evidence and the canons of claim construction. It appears that TMS is attempting to avoid having the Court pass judgment on TMS's proposed definitions now and, instead, later seek to introduce testimony at trial from its expert that TMS's previously-advanced definitions are, in fact, the "plain and ordinary meaning." That is improper. TV Guide asked TMS to provide assurance that TMS would not do so. TMS did not respond and, instead, contacted the Court to seek extension of the briefing schedule. Therefore, TMS's suggestion that it is not really changing its proposed constructions yet again -- but rather is simply "agreeing" with TV Guide's proposed constructions -- appears to be insincere.

TMS's requested extension is prejudicial to TV Guide. TMS knows full well that TV Guide's lead counsel will be in Europe attending to other matters next week. Accordingly, TV Guide's briefs are complete and ready to be filed after the months of delay that TMS has already injected into the process. The present situation appears to be yet one more attempt by TMS -- akin to its refusal to consent to having a Magistrate Judge preside over this matter -- to prevent this case from being resolved.

TMS has had nearly a year to "agree" with TV Guide's proposed construction for any limitation that it wished to agree with. If TMS now truly does agree with any of TV Guide's proposed constructions, TMS can easily say so in its opening and responsive briefs. There is no need for further delay.

Respectfully,



Frederick L. Cottrell, III (#2555)

FLC,III/afg

cc: Richard K. Herrmann, Esquire (via hand delivery & e-mail)
Meredith Zinanni, Esquire (via electronic mail)