

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE BASKETBALL MARKETING	:	CIVIL ACTION
COMPANY, INC. d/b/a AND 1,	:	
BMS PLAYERS, INC.	:	
	:	
v.	:	NO. 04-1733
	:	
FX DIGITAL MEDIA, INC.	:	
COLUMBUS WOODRUFF	:	
TIM GITTENS a/k/a HEADACHE	:	

MEMORANDUM AND ORDER

Juan R. Sánchez, J.

June 5, 2006

Attorneys for Tim Gittens, the defendant who prevailed in this trademark infringement action, ask this Court to assess \$112,115 in attorneys' fees and \$3,352.66 in costs. Because I agree with Basketball Marketing Company (And 1) regarding some of the specifics of the billing, I will award \$95,018.66 in attorneys' fees and the full amount of costs.

Gittens as the prevailing party is entitled to attorneys' fees pursuant to 15 U.S.C. § 1117(a).¹ A calculation of attorneys' fees begins with the "lodestar," the product of the appropriate billing rates for the attorneys involved multiplied by the number of hours those attorneys reasonably expended on the action. *Interfaith Community Org. v. Honeywell Int'l, Inc.*, 426 F.3d 694, 703 (3d Cir. 2005) (citing *Blum v. Stenson*, 465 U.S. 886, 888 (1984)). A party seeking attorneys' fees bears the burden of showing its requested hourly rates and the hours it claims are reasonable. *Rode v. Dellarciprete*,

¹This Court's Order of March 10, 2006 explained the exceptional circumstances I found to warrant an order of attorney's fees to Defendant Gittens as the prevailing party.

892 F.2d 1177, 1183 (3d Cir. 1990).

Gittens's attorneys, all part of the Jacobs Law Group, PC, have submitted hourly billing records, affidavits as to prevailing rates in the area and affidavits regarding their individual skill levels, satisfying the requirements of *Hensley v. Eckerhart*, 461 U.S. 424 (1983). And I has objected to details of the billing records with the specificity required. *Rode*, 892 F.2d at 1183. In reviewing a fee application, a district court must conduct "a thorough and searching analysis." *Evans v. Port Auth. of N.Y. & N.J.*, 273 F.3d 346, 362 (3d Cir. 2001).

Gittens has a second case in which the Jacobs Law Group also represents him. Six lawyers worked on this case, Gittens's trademark defense, at various times from 2004 to 2006.² I find the rates charged by the Jacobs Law Group lawyers generally reasonable and the work assigned to the various attorneys also reasonable, for instance the least expensive attorney conducted most of the research and correspondence. In conducting my own analysis of the billing records, I find sixteen instances in which I will deny the fees as unreasonable in whole or in part. Many may stem from difficulties with the firm's billing system, but the burden is on the Jacobs firm to present reasonable fees.

The denied fees are: September 1, 2004, Matthew I. Cohen, Esq., \$140.00 for thirty minutes

²In 2004, Neal A. Jacobs, Esq., billed three hours and thirty minutes at \$350 an hour in 2004; Kevon A. Glickman, Esq., billed sixteen hours and eighteen minutes at \$315 an hour; Matthew I. Cohen, Esq., billed twenty-four hours and twelve minutes at \$280 an hour; Paul C. Quinn, Esq., billed ten hours and thirty minutes at \$285 an hour; and, Joshua Gelman, Esq., billed thirty-three hours and eighteen minutes at \$195 an hour. The 2005 billing was Glickman, one hour and six minutes at \$325 an hour; Cohen, twenty-nine hours and forty-five minutes at \$295 an hour; Quinn 203 hours and nine minutes at \$285 an hour; Gene M. Linkmeyer, Esq., forty-five hours and twenty-seven minutes at \$285 an hour; and, Gelman, twenty-one hours and fifty-seven minutes at \$195 an hour. In 2006, Cohen billed three hours and eighteen minutes at \$310 an hour, Linkmeyer billed eleven hours and fifty-seven minutes at \$285 an hour and Gelman billed four hours at \$210 an hour.

to review and edit an answer which was filed the day before; September 22, 23 and October 13, 2004, half of the time billed, or \$1,628.00, by Joshua A. Gelman, Esq., Cohen, and Kevon A. Glickman, Esq. preparing for a settlement conference and attending a settlement conference which took place with Judge Ludwig in Gittens's second case; half the time billed on January 3, 2005, or \$855.00, by Paul C. Quinn, Esq., to respond to interrogatories in both cases; the time Quinn billed, or \$855.00, to read depositions and conduct other business in the other case on February 24, 2005; the time Quinn spent, or \$2,636.00, on April 20, 27 and 28, 2005 preparing for and attending depositions of two people who were not witnesses in this case; four hours of the time, or \$1,140.00, Quinn billed on June 22, 2005 for a deposition of Gittens which lasted half an hour; three hours, or \$855.00, of time Quinn billed for a conference on June 27, 2005, which is not reflected in other records; the fifty-one minutes Gelman billed, or \$165.00, on July 20, 2005 to prepare for mediation with a magistrate judge; and \$1,425 Quinn billed on July 21, 2005 to attend a settlement conference in the second case.

I find unreasonable Quinn's billing records regarding the bench trial held in this case. On August 1, 2005, Quinn billed \$1,710 for six hours for telephone conferences and an e-mail communication, which I find unreasonable, in preparation for a bench trial which was not scheduled until a settlement conference was held on September 9, 2005. Also unreasonable are Quinn's billing of \$1,140 for four hours on August 2, 2005 drafting a trial memo and four and a half hours, or \$1,282, on August 4, 2005 for trial preparation. From September 20, 2005 to September 29, 2005, Quinn and Cohen billed a total of \$4,193 for twenty-one and a half hours of work in preparation for a trial which had been held a week earlier on September 14, 2005. Because I find reasonable the twenty-four hours Quinn, Cohen and Gelman billed in trial preparation posted pre-trial I will

disallow the twenty-one and a half hours posted post-trial. Also unreasonable are Quinn's bill for \$570 on September 27, 2005 to research, draft and file a motion to compel which was neither filed nor relevant after trial. Quinn's unreasonably erratic billing also includes \$1,995.00 for seven hours on September 28 and 29, 2005 for research, file review and trial preparation two weeks after trial. The final unreasonable bill is Quinn's on October 13, 2005 for \$926.00 for three hours and fifteen minutes of conversation with a magistrate judge and the client; again, the time was post-trial in this case. The total of disallowed fees is \$20,489. The result is \$91,666.00 in fees and \$3,352.66 in costs for a total of \$95,018.66 Plaintiff And 1 owes Defendant Gittens under 15 U.S.C. § 1117(a). An appropriate order follows.

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ORDER

AND NOW, this 5th day of June, 2006, Defendant Tim Gittens's Motion for Attorneys' Fees and Costs (Document 42) is GRANTED IN PART and DENIED IN PART. It is ORDERED that Plaintiff Basketball Marketing (And 1) reimburse Defendant Gittens \$91,666 in attorneys' fees and \$3,352.66 in costs.

BY THE COURT:

\s\ Juan R.Sánchez

Juan R. Sánchez, J.