

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

**TOUCHSTREAM TECHNOLOGIES,
INC.,**

Plaintiff,

v.

**CHARTER COMMUNICATIONS,
INC., et al.,**

Defendant.

Case No. 2:23-cv-00059-JRG

JURY TRIAL DEMANDED

**PLAINTIFF TOUCHSTREAM TECHNOLOGIES, INC.'S SUR-REPLY TO DEFENDANT
CHARTER COMMUNICATIONS, INC., ET AL.'S AMENDED
MOTION TO DISMISS FOR IMPROPER VENUE AND FOR FAILURE TO
STATE A CLAIM FOR WILLFUL INFRINGEMENT**

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ARGUMENT	1
A.	Touchstream has met the standard to establish a lack of corporate separateness between CCI, CCO, and the subsidiaries.....	1
1.	Each of Charter’s arguments have been rejected by this Court in Entropic, and Charter has made no attempts to distinguish between the facts in this case and in the Entropic case.	2
2.	Charter’s cited cases are inapposite.....	4
B.	Touchstream has adequately pled pre-suit and post-suit willfulness.....	6
1.	Touchstream requests leave to amend its pre-suit willfulness allegations.	6
2.	Touchstream has adequately alleged post-suit willfulness.....	8
III.	CONCLUSION.....	8

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Biosonix, LLC v. Hydrowave, LLC</i> , 4:16-cv-139, 2016 WL 9229848 (E.D. Tex. Aug. 10, 2016).....	6
<i>Flypsi, Inc. v. Google LLC</i> , 6:22-CV-0031, 2022 WL 3593053 (W.D. Tex. Aug. 22, 2022).....	7
<i>Interactive Toybox, LLC v. Walt Disney Company</i> , 1:17-cv-1137, 2018 WL 5284625 (W.D. Tex. Oct. 24, 2018)	5
<i>IPVX Patent Holdings, Inc. v. Broadvox Holding Company, LLC</i> , 6:11-cv-575, 2012 WL 13012617 (E.D. Tex. Sept. 26, 2023)	4
<i>Medtronic, Inc. v. Teleflex Life Sciences Ltd.</i> , 86 F.4th 902 (Fed. Cir. 2023)	1
<i>Microsoft Corp. v. DataTern, Inc.</i> , 755 F.3d 899 (Fed. Cir. 2014).....	1
<i>Touchstream Technologies Inc. v. Altice USA, Inc., et al.</i> , 23-cv-0060 (E.D. Tex.)	1, 6, 7, 8

Rules

FED. R. CIV. P. 15(a)(2).....	6
-------------------------------	---

I. INTRODUCTION

In their Reply (Dkt. 17) (“Reply”), CCI and CCO “incorporate all arguments and facts as asserted in *Entropic* before the District Court and the Federal Circuit” yet make no attempt to distinguish the facts in this case from the facts in *Entropic*.¹ Moreover, the cases Charter cites in support of its positions are inapplicable here. Charter’s Motion to Dismiss CCI and CCO (Dkt. 82)² should be denied.

Similarly, the Court should deny Charter’s Motion to Dismiss Touchstream’s willful infringement claims. Touchstream has adequately pled both pre- and post-suit willful infringement. In the event the Court finds Touchstream’s willfulness allegations insufficient under the 12(b)(6) standard, Touchstream respectfully requests permission to amend its First Amended Complaint (*Altice*, Dkt. 53). Charter has long been on notice of Touchstream’s additional factual allegations and will suffer no unfair prejudice by way of the proposed amendments.

II. ARGUMENT

A. Touchstream has met the standard to establish a lack of corporate separateness between CCI, CCO, and the subsidiaries.

The facts, as set forth in *Entropic* and in Touchstream’s Opposition (*Altice*, Dkt. 155) (“Opposition”), demonstrate that Charter has failed to establish corporate separateness between CCI, CCO, and its subsidiaries. In their Reply, CCI and CCO fail to establish how the facts in

¹ Touchstream objects to Charter’s attempt to incorporate this extraneous material, and Federal Circuit case law is clear that such incorporation by reference is improper. *Microsoft Corp. v. DataTern, Inc.*, 755 F.3d 899, 910 (Fed. Cir. 2014); *see also Medtronic, Inc. v. Teleflex Life Sciences Ltd.*, 86 F.4th 902, 906–07 (Fed. Cir. 2023).

² As filed in the previously consolidated docket *Touchstream Technologies Inc. v. Altice USA, Inc., et al.*, 23-cv-0060 (E.D. Tex.) (hereinafter “*Altice*”).

this case are different from the facts in *Entropic*. Rather, Charter merely regurgitates its failed arguments to plead a different outcome. As the Court found in *Entropic*, “Charter and its subsidiaries, including SGC, ‘act as a single enterprise’ so the actions of its subsidiaries are properly imputed to Charter.” Opposition, Dkt. 155, Ex. A at 19. Touchstream has thus sufficiently shown that Charter utterly lacks corporate formalities.

1. *Each of Charter’s arguments have been rejected by this Court in Entropic, and Charter has made no attempts to distinguish between the facts in this case and in the Entropic case.*

Charter revives its *Entropic* arguments without providing any reasons for why its previously failed arguments are tenable here. In particular, Charter argues that “CCI’s officers and directors do not participate in the hiring and firing of any employees” (Reply, Dkt. 17 at 4) (alterations omitted), but this Court rejected this same argument *Entropic*, finding that CCI’s “management agreement [] gives Charter the ability to materially control the employees of CC LLC.” Opposition, Dkt. 155, Ex. A at 10. Moreover, even “[i]n the worst case scenario, [and] even if Charter’s officers did not participate in the hiring and firing of any employee, such has no bearing on whether they have the *right* to do so.” *Id.* at 11.

Additionally, Charter contends that “there is nothing improper about CCI, as manager, signing agreements on behalf of SGC (or other managed LLCs) because the SGC LLC Agreement permits” this. Reply, Dkt. 17 at 4. This exact fact supported the Court’s finding that venue was proper in *Entropic*. *See* Opposition, Dkt. 155, Ex. A at 16 (“Charter has signed the lease agreement for SGC . . . The Management Agreement gives it wide latitude to manage virtually every aspect of the Charter business.”).

Charter also minimizes the commonality in officers or directors among the CCI, CCO, and their subsidiaries. Reply, Dkt. 17 at 5. Yet, in *Entropic*, this Court found the fact that “all



Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.