Appeal No. 23-13156-F

In the United States Court of Appeals for the Eleventh Circuit

ATHOS OVERSEAS LIMITED CORP.,

Appellant,

v.

YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, LLC,

Appellees.

On Appeal from the United States District Court for the Southern District of Florida Case No. 21-cv-21698-DPG

APPELLANT'S REPLY BRIEF

Omar Ortega Rey Dorta Rosdaisy Rodriguez Dorta & Ortega, PA Attorneys for Appellant 3860 SW 8th Street, PH Coral Gables, Florida 33134 Phone: 305-461-5454 Email: oortega@dortaandortega.com Email: rdorta@dortaandortega.com

R

M

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Anaba, Ariel C. Green (Counsel for Appellees)

Athos Overseas Limited Corp. (Appellant)

Byrd, Dylan (counsel for Appellee)

Cine Estelar, Inc.

Cine Nostalgia, Inc.

Coulter, David T. (counsel for Appellee)

Dorta & Ortega, P.A. (counsel for Appellant)

Dorta, Reinaldo (counsel for Appellant)

Gente de Cine, S.A.

Google LLC (Appellee)

Gorman, Nathalie M. (counsel for Appellees)

Hartman, Catherine R. (counsel for Appellees)

Li, Luis (counsel for Appellees)

Ortega, Omar (counsel for Appellant)

Reed, Jenea M. (counsel for Appellees)

Rodriguez, Rosdaisy (counsel for Appellant)

Shapiro, Jay B. (counsel for Appellees)

Stearn Weaver Miller Weisller Alhadeff & Sitterson, P.A. (counsel for Appellees)

C-1 of 2

Templeton, Trevor (counsel for Appellees)

Top Entertainment Products, Inc.

Top Products Investments, Inc.

Tuttle, Eric (counsel for Appellees)

Vasallo, Carlos

Wakefied, Thomas R. (counsel for Appellees)

Willen, Brian M. (counsel for Appellees)

Wilson Sonsini Goodrich & Rosati (counsel for Appellees)

Yen, Lucy (counsel for Appellees)

Youtube, LLC (Appellee)

Appellant certifies that no publicly held corporation owns 10% or more of its stock.

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE	
DISCLOSURE STATEMENT	C-1
TABLE OF CITATIONS	i
ARGUMENT	1
A. The DMCA requires YouTube to expeditiously remove all content that infringes on the material Athos identified in its DMCA takedown notice and that it locates through its automatic deployment of fingerprinting technology	3
B. The evidence shows YouTube had knowledge that the clips-in-suit displayed infringing material and it was willfully blind to it	16
C. YouTube financially benefits from material infringing on Athos' copyrights and has the right and ability to control that infringing activity.	19
CONCLUSION	22
CERTIFICATE OF COMPLIANCE	23
CERTIFICATE OF SERVICE	24

TABLE OF CITATIONS

Cases

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)	17
Atlantic Recording Corp. v. Spinrilla, LLC, 506 F. Supp. 3d 1294 (S.D. Fla. 2020)	17
Disney Enterprises, Inc. v. Hotfile Corp., No. 11-20427-CIV, 2013 WL 6336283, at *18 (S.D. Fla. Sept. 20, 2013	2, 20
Edmondson v. Velvet Lifestyles, LLC, 43 F.4th 1153 (11th Cir. 2022)	17
Fonovisa, Inc. v. Cherry Auction, Inc.,76 F.3d 259 (9th Cir. 1996)	19, 20
GlobTech Appliances, Inc. v. SEB S.A., 563 U.S. 754 (2011)	18
Latimer v. Roaring Toyz, Inc., 601 F.3d 1224 (11th Cir. 2010)	15
Peter Letterese And Assocs., Inc. v. World Inst. Of Scientology Enterprises, 533 F.3d 1287 (11th Cir. 2008)	15
UMG Recordings, Inc. v. Shelter Cap. Partners LLC, 718 F.3d 1006 (9th Cir. 2013)	11, 19
<u>Viacom Int'l Inc. v. YouTube, Inc.,</u> 676 F. 3d 19 (2d Cir. 2012)	8, 11
Viacom Int'l Inc. v. YouTube, Inc., 718 F. Supp. 2d 514 (S.D.N.Y. 2010)	11
Statutes	

17 U.S.C. §512(c)(1)	1, 4, 8
	17, 20

DOCKET A L A R M



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.