

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

SINCLAIR BROADCAST GROUP, INC.

v.

COLOUR BASIS, LLC

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Civil No. CCB-14-2614

**MEMORANDUM**

Sinclair Broadcast Group, Inc. (“SBG”) has brought this declaratory judgment action against Colour Basis, LLC (“CB”) and Christi Schreiber (collectively, “the defendants” or “counterclaimants”), requesting, *inter alia*, that the court find that SBG has not infringed CB’s copyright. CB and Schreiber have brought counterclaims against SBG, Scott Livingston, and Samantha Dinges (collectively, “the counter-defendants”), alleging copyright infringement, circumvention of copyright protection systems, fraudulent inducement, and unfair competition. Now pending before the court are the counter-defendants’ motion for summary judgment, and the defendants’ motion for leave to file a surreply. Oral argument was heard on June 21, 2016. For the reasons that follow, the counter-defendants’ motion for summary judgment will be granted in part and denied in part, and the defendants’ motion to file a surreply will be denied as moot.<sup>1</sup>

**BACKGROUND**

CB is a three-person media appearance consulting company based in Fort Worth, Texas, which provides image consultation services to on-air television personalities. (First Am. Countercl. ¶¶ 1, 3, ECF No. 47.) Schreiber is CB’s president and chief executive officer (“CEO”). (*Id.* ¶ 12.) SBG is a television company with its principal place of business in

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<sup>1</sup> The court also will grant the defendants’ unopposed motion to seal, (ECF No. 60), in accordance with the stipulated confidentiality order signed by Judge J. Mark Coulson on April 3, 2015, (ECF No. 28).

Maryland that owns and operates, programs, or provides sales services to over 150 television stations in over seventy markets. (Second Am. Compl. ¶ 1, ECF No. 42.) David Smith is SBG's president and CEO. (Mot. Summ. J. Ex. 4, Livingston Dep. ("Summ. J. Livingston Dep.") 115:1-3, ECF No. 53-7.) Livingston became SBG's Vice President of News in March 2012. (Second Am. Compl. ¶ 9.)

Many of the facts in this case are undisputed. In 2011, CB, through Schreiber, began providing consulting services to on-air personalities at several television stations that are direct or indirect subsidiaries of SBG. (Second Am. Compl. ¶ 8; First Am. Countercl. ¶ 11.) In 2012, Schreiber contacted Livingston, and they began discussing the possibility of a group deal between SBG and CB. (Mot. Summ. J. Exs. 10 & 11, ECF Nos. 53-11 & 53-12; Opp'n Mot. Summ. J. Ex. K, ECF No. 58-11.) They also agreed that CB would create a "Style Guide" to establish standards and expectations for SBG's on-air talent. (Second Am. Compl. ¶ 13; Mot. Summ. J. Ex. 2, Schreiber Dep. ("Summ. J. Schreiber Dep.") 179:5-180:6, ECF No. 53-5.) Schreiber followed up about the group deal—without firm numbers—with emails in August and October 2012, (Mot. Summ. J. Exs. 12 & 13, ECF Nos. 53-13 & 53-14; Opp'n Mot. Summ. J. Exs. L & M, ECF Nos. 58-12 & 58-13), to which Livingston never responded, (Summ. J. Schreiber Dep. 167:18-168:4, 178:20-179:4). In January 2013, Schreiber gave a presentation about on-air appearance issues at a conference in Maryland for news directors employed by SBG subsidiaries. (Second Am. Compl. ¶¶ 15-16; Opp'n Mot. Summ. J. Ex. N, ECF No. 58-14.) Soon after the conference, Livingston told Schreiber that SBG would not be able to consider a group deal before the summer and, until then, the company would continue to work with CB on an as-needed basis. (Mot. Summ. J. Ex. 15, ECF No. 53-16; Summ. J. Schreiber Dep. 203:3-204:7.)

In March 2013, Schreiber proposed a \$25,000 price tag for the Style Guide, which she

said would include 400 printed copies and 400 PDF licenses, and additional copies could be purchased on an as-needed basis. (Mot. Summ. J. Ex. 22, ECF No. 53-23; Opp'n Mot. Summ. J. Ex. S, ECF No. 58-19.) Livingston countered that he was looking to spend \$12,000 to \$15,000, and proposed that CB cut costs by providing a PDF-only version. (Mot. Summ. J. Ex. 23, ECF No. 53-24; Opp'n Mot. Summ. J. Ex. T, ECF No. 58-20.) Schreiber responded that she was willing to drop the price on the Style Guide because she was "not looking at the book as a big money maker, it's the relationship, future contract and being seen in each station that appeals to me," and noted that she would not be willing to offer a lower price if she "did not see the potential in future business with [SBG] and especially [its] interest in doing a multiple year deal." (Mot. Summ. J. Ex. 25, ECF No. 53-26; Opp'n Mot. Summ. J. Ex. U, ECF No. 58-21.) Importantly for this motion, the parties dispute the content of a telephone conversation between Livingston and Schreiber that occurred sometime at the end of March or the beginning of April 2013. According to Livingston, he explained to Schreiber that SBG would pay a flat fee for the Style Guide, to which it would have full rights without conditions. (Summ. J. Livingston Dep. 234:4-235:2.) In contrast, Schreiber claims to have clarified that any copies of a PDF-only Style Guide would have to be printed through her, and she was amenable to SBG's reduced price proposal only because of their future relationship and group deal. (Summ. J. Schreiber Dep. 222:13-224:15.) More specifically, the defendants allege in their counterclaims that the parties agreed that \$15,000 would cover 400 PDF Style Guides, with extra copies requiring the payment of additional license fees, and that the Style Guide would be used as part of a multi-year consulting deal. (First Am. Countercl. ¶ 17.) On April 1, 2013, Livingston left Schreiber a voicemail requesting numbers for a group deal, which, he cautioned, was "no guarantee[]" because it would have to be approved within SBG. (Mot. Summ. J. Ex. 27, ECF No. 53-28;

Opp'n Mot. Summ. J. Ex. CC, ECF No. 58-29.)

On May 2, 2013, CB sent SBG an invoice for the Style Guide. (Mot. Summ. J. Ex. 36, Invoice, ECF No. 53-37.) The invoice description stated that it was for the "SBG Style Guide PDF create appearance policy manual," and the only term listed was that payment was "[d]ue on receipt." (*Id.*) SBG sent a \$15,000 check to CB on May 23, 2013. (*Id.* Ex. 39, ECF No. 53-40.) On June 7, 2013, Schreiber sent Livingston the final Style Guide, (*id.* Ex. 45, ECF No. 53-46), which Livingston circulated to all SBG news directors on June 14, 2013, (*id.* Ex. 46, ECF No. 53-47). The document includes a CB copyright symbol on most pages, and explains that "[t]he SBG Style Guide is [SBG on-camera talent's] reference to the Sinclair Broadcast Group appearance policy as recommended and written by Colour Basis president and CEO, Christi Schreiber." (Mot. Summ. J. Ex. 9, Style Guide 5, ECF No. 53-10; Opp'n Mot. Summ. J. Ex. DD, Style Guide 5, ECF No. 58-30.)

Also in the spring of 2013, Livingston began communicating with Samantha Dinges about working at SBG as an internal image consultant. Dinges is Smith's stepdaughter and, at that time, was a costume designer for a television show, *The Young and the Restless*. According to Livingston, Smith broached the idea in early March, (Summ. J. Livingston Dep. 104:1-108:1, 108:17-22, 114:9-117:17), and on April 1, 2013, Livingston and Dinges met, (Mot. Summ. J. Ex. 20, ECF No. 53-21). After the meeting, at Livingston's request, Dinges reviewed broadcasts of a few SBG television stations and offered feedback on their newscasters' appearances. (*See* Mot. Summ. J. Ex. 35, ECF No. 53-36.) Ultimately, SBG created an internal image consultant position, for which Dinges was hired, and she started work on June 27, 2013. (Mot. Summ. J. Ex. 38, ECF No. 53-39.) Around the same time that Dinges began working at SBG, Livingston called Schreiber to tell her about the new position. (Opp'n Mot. Summ. J. Ex. B, Livingston Dep.

(“Opp’n Livingston Dep.”) 137:7-18, ECF No. 58-2; *id.* Ex. A, Schreiber Dep. (“Opp’n Schreiber Dep.”) 246:13-247:22, ECF No. 58-1.) According to Schreiber, Livingston told her that their relationship would not change, and SBG would continue to use CB’s consulting services. (Opp’n Schreiber Dep. 247:16-19, 248:16-20.) Livingston, in contrast, testified that he told Schreiber that SBG would use her on a case-by-case, station-by-station basis while they fleshed out Dinges’s position. (Opp’n Livingston Dep. 137:15-18.) In an email at the beginning of July introducing Dinges to SBG news directors and general managers, Livingston said that Dinges would be the point person for all image consulting at SBG, including for enforcing the Style Guide’s standards, and that Schreiber would continue to be available to stations on a case-by-case basis.<sup>2</sup> (Mot. Summ. J. Ex. 48, ECF No. 53-49.)

Approximately one year later, on July 2, 2014, the defendants registered the Style Guide with the U.S. Copyright Office. (Def. Answer ¶ 35, ECF No. 46.) Two weeks after the registration, defense counsel sent Smith a letter alleging that SBG was infringing CB’s copyright by using unauthorized copies of the Style Guide and because the Style Guide was only to be used in connection with CB’s consulting services. (Mot. Summ. J. Ex. 52, Counsel Letter 1, ECF No. 53-53.) On August 15, 2014, SBG brought this declaratory judgment action. (Compl., ECF No. 1.) SBG filed an amended complaint on September 7, 2015. (Second Am. Compl.) Count I of its amended complaint requests a declaratory judgment that: (1) SBG has an implied nonexclusive license to use the Style Guide, and its use of the Style Guide has been consistent with that license; (2) SBG owes no license fees to the defendants; (3) SBG has not infringed the defendants’ copyright; (4) the defendants have no right to terminate the implied license; (5) SBG

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<sup>2</sup> The defendants argue that Dinges was not qualified to be SBG’s internal image consultant, and would have been incapable of meeting the position’s obligations without the Style Guide. (*See* First Am. Countercl. ¶ 55.) They have gone to great lengths to make this point, including by introducing testimony and exhibits that, in the court’s opinion, were irrelevant and unwarranted.

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