



VIA ELECTRONIC FILING

The Honorable Katherine Polk Failla
United States District Court for the Southern District of New York
Thurgood Marshall Courthouse
40 Foley Square, Room 618
New York, NY 10007

Re: *Dinosaur Financial Investment Group LLC et al. v. CUSIP Global Services, et al.*, Case No. 22 Civ 1860-KPF

Dear Judge Failla:

Plaintiffs Dinosaur Financial Group LLC and Swiss Life Investment Management Holding AG request a pre-motion conference on their motion for partial summary judgment under Federal Rule of Civil Procedure 56(a) and this Court's Individual Rule of Practice in Civil Cases 4(a). Plaintiffs seek a declaration as a matter of law that the nine-digit numbers that are CUSIP identifiers are not copyrightable and American Bankers Association ("ABA") copyright # TX 6-146-660 grants no copyright in CUSIP identifiers themselves. The motion is not on consent of all parties.

The questions presented on the proposed motion are dispositive of the liability issues in this case. Without the protection of a copyright, Defendants have no lawful means to stop financial institutions from using CUSIP identifiers. If Defendants cannot lawfully preclude a financial institution from using CUSIP identifiers, they cannot require financial institutions to enter a license and pay a fee to use the CUSIP identifiers. To the extent that they have entered into agreements with such requirements, they have violated the antitrust laws by restraining trade in the use of CUSIP identifiers.

The undisputed facts material to the motion are: 1) the ABA's copyright; 2) the structure of the nine-digit numbers that are CUSIP identifiers (<https://www.cusip.com/identifiers.html#/CUSIP>); and 3) the use of a CUSIP identifier for financial instruments by financial institutions in the normal course of their businesses (*id.*). The ABA's copyright sets forth a claim in a "compilation of database material," which consists of "up to 60 different data elements relating to over 26 million financial instruments" (<https://www.cusip.com/index.html>). A single

one of those sixty data elements is the CUSIP identifier at issue in this litigation (*id.*). All CUSIP identifiers in existence today have been generated by a system of 50-year-old rules requiring the first six numbers to identify the unique name of the issuer, the next two numbers to identify the type of instrument (equity or debt), and the last number to represent a mathematical formula checking the accuracy of the previous eight characters.

The law is as clear as the facts. The certificate claims a copyright in a compilation of data. Section 101 of the Copyright Act (Title 17 of the United States Code) defines a “compilation” as “a work formed by the collection and assembling of preexisting materials or of data that are selected, coordinated, or arranged in such a way that the resulting work *as a whole* constitutes an original work of authorship.” (Emphasis added.) Section 103 of that Act expressly states that a copyright in a compilation “extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material.” As the Supreme Court ruled in *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340 (1991):

A factual compilation is eligible for copyright if it features an original selection or arrangement of facts, but the copyright is limited to the particular selection or arrangement. In no event may copyright extend to the facts themselves.

Id. at 350-51.

Thus, the copyright claimed via certificate # TX 6-146-660 protects only the compilation as a whole, in no way extending to the individual data items (the CUSIP identifiers) in the compilation.

Moreover, there is nothing original or creative in the CUSIP identifiers that would justify copyright protection. In a case markedly similar to this one, Justice Alito—then a judge on the Third Circuit Court of Appeals—held in an 11-2 *en banc* decision that numbers generated by a numbering system that required a rigid, unchanging structure were not original or creative and were therefore not copyrightable. *See Southco, Inc. v. Kanebridge Corp.*, 390 F.3d 276 (3d Cir. 2004) (*en banc*).

The same is true here. The CUSIP identifiers are generated using a convention established more than 50 years ago that strictly determines the format of the CUSIP identifier and each character within it. The CUSIP identifiers are not copyrightable and have not been copyrighted.

Finally, the Copyright Office would not have issued the registration to the ABA had it claimed that the CUSIP identifiers standing alone are subject to copyright protection. This is because the Copyright Office procedures provide that “individual

numbers, letters, sounds, and short phrases consisting of such elements are not copyrightable, because they do not contain sufficient creative authorship.” Compendium of the U.S. Copyright Office Practices, Ch. 300 at 29 (1/28/2021 3d ed.).

Accordingly, the court should schedule a pre-motion conference to permit Plaintiffs to proceed with their motion for partial summary judgment.

Respectfully submitted,



Leiv Blad
Jeffrey Blumenfeld
COMPETITION LAW PARTNERS PLLC
1101 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone: (202) 742-4300

Robert N. Kaplan
Gregory K. Arenson
KAPLAN FOX & KILSHEIMER LLP
850 Third Ave.
New York, NY 10022
Telephone: (212) 687-1980

David Nimmer
Joseph Mantegani
IRELL & MANELLA LLP
1800 Avenue of the Stars
Suite 900
Los Angeles, CA 90067
Telephone: (310) 277-1010

cc: Eric J. Stock, Gibson Dunn
David Kiernan, Jones Day
Seth Greenstein, Constantine Cannon