

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

MARKHAM CONCEPTS, INC., SUSAN GARRETSON, and LORRAINE MARKHAM, individually and in her capacity as Trustee of the Bill and Lorraine Markham Exemption Trust and the Lorraine Markham Family Trust,

Plaintiffs,

v.

HASBRO, INC., REUBEN KLAMER, DAWN LINKLETTER GRIFFIN, SHARON LINKLETTER, MICHAEL LINKLETTER, LAURA LINKLETTER RICH, DENNIS LINKLETTER, THOMAS FEIMAN, in his capacity as co-trustee of the Irvin S. and Ida Mae Atkins Family Trust, ROBERT MILLER, in his capacity as co-trustee of the Irvin S. and Ida Mae Atkins Family Trust, and MAX CANDIOTTY, in his capacity as co-trustee of the Irvin S. and Ida Mae Atkins Family Trust.

Defendants.

Case No. 1:15-cv-419-S-PAS

REUBEN KLAMER,

Counterclaim Plaintiff,

v.

MARKHAM CONCEPTS, INC., SUSAN GARRETSON and LORRAINE MARKHAM,

Counterclaim-Defendants.

**DEFENDANT AND COUNTERCLAIM PLAINTIFF REUBEN KLAMER'S  
OPPOSITION TO PLAINTIFFS' SUPPLEMENTAL MOTION TO PRECLUDE  
UNTIMELY CONTENTIONS AND MOTION TO STRIKE KLAMER'S  
SUPPLEMENTAL DISCOVERY RESPONSES**

Defendant and Counterclaim Plaintiff Reuben Klamer (“Klamer”) respectfully submits this Opposition to the Supplemental Motion to Preclude Untimely Contentions and Motion to Strike Klamer’s Supplemental Discovery Responses (the “Supplemental Motion”) (ECF No. 142), brought by the Plaintiffs Markham Concepts, Inc., Lorraine Markham, and Susan Garretson (the “Markham Parties”).

On November 2, 2017, the Markham Parties filed a Motion to Preclude Hasbro’s Untimely Contentions and Motion to Strike Hasbro’s Supplemental Discovery Responses (the “Hasbro Motion”), and on November 6, they filed the Supplemental Motion against Klamer. In the Supplemental Motion, the Markham Parties argued that “[f]or substantially the same reasons as outlined in the Hasbro Motion (which is hereby incorporated by reference), Klamer and all Defendants should be precluded from asserting that the Game of Life was a work-for-hire for Bill Markham by his employees, and all corresponding discovery responses should be struck.”

As such, Klamer joins in the Opposition to Plaintiffs’ Motion to Preclude Hasbro’s Untimely Contentions and Motion to Strike Hasbro’s Supplemental Discovery Responses filed by Defendant Hasbro, Inc. on November 9 (the “Hasbro Opposition”) (ECF No. 155), and hereby incorporates it by reference. To the extent that the reasoning of the Hasbro Opposition applies to Klamer, he hereby adopts it as his own.

In the Supplemental Motion, the Markham Parties argue that “Klamer’s supplementation to assert the New Theory [that the Markham Parties are precluded from terminating under 17 U.S.C. § 304(c) because *The Game of LIFE* (the “Game”) was a work made for hire by Markham’s employees for the benefit of Markham] is even more egregious than Hasbro’s already-untimely supplementation. Klamer asserted the theory even later than Hasbro did, and more crucially, *had access to all the key witnesses and facts as early as 2015.*” Supplemental Motion at 3 (italics in original). However, this argument misses the mark for the same reasons asserted by Hasbro in their Opposition: “Fundamentally, Hasbro’s [and Klamer’s] supplementation was not directed toward a new legal theory by *Hasbro* [or Klamer]. Rather, it was in response to an undisclosed theory of *the Markham Parties* that Hasbro [and Klamer] had

only recently deduced through [their] own diligence.” Hasbro Opposition at 9. Indeed, when Hasbro or Klamer had access to Grace Chambers or Leonard Israel is irrelevant. Rather, the timeliness of Defendants’ supplementations should be evaluated using the date it became apparent that the Markham Parties intended to claim the work of Chambers and Israel as Markham’s own as the starting point. By this metric, Hasbro and Klamer’s supplementations are timely. *See* Hasbro Opposition at 5–10.

For his part, Klamer also sought to obtain the Markham Parties’ basis for their claim that Markham authored any portion of the Game. *See, e.g.*, Klamer’s Interrogatory No. 1 (“State all facts that support YOUR contention that BILL MARKHAM is the sole author, creator, designer, developer, inventor, author and owner of the GAME and all of its intellectual property, as alleged in Paragraph 80(a) of the COMPLAINT. “); No. 5 (“State all facts that support YOUR contention that LORRAINE MARKHAM, together with any one of the Markham statutory heirs, has the authority to terminate all copyright grants or transfers related to the GAME, including both the October 20, 1959 Assignment Agreement and the July 9, 1989 Settlement Agreement, as alleged in Paragraph 80(c) of the COMPLAINT.”). Just like Hasbro, Klamer also received responses that failed to disclose a basis for the claim that Markham authored the Game, but instead unhelpfully referred to various pleading and documents. *See* Declaration of Erica Van Loon (“Van Loon Decl.”), Ex. A at 8–9, 12–13 (the Markham Parties’ Initial Answers and Objections to Klamer’s First Set of Interrogatories); Ex. B at 9–10, 15 (Supplemental Answers).

Moreover, both the Hasbro Motion and the Supplemental Motion utterly ignore Klamer’s Answer and Counterclaims to the Third Amended Complaint (“Klamer’s Answer”) (ECF No. 136), which were filed on October 27, 2017—timely filed two weeks after the Markham Parties’ filed their Third Amended Complaint. In paragraph 53 of the Counterclaims, Mr. Klamer specifically sought a declaration that (in the alternative), “the Game was a work made for hire by Bill Markham’s employees, and Counterclaim Defendants therefore had no statutory right to termination.” Even further, the Markham Parties ignored the representations of Klamer’s counsel during the court conference that took place on November 2, 2017, wherein

counsel discussed the presence of that declaration request, and that Klamer added it in response to the testimony elicited by the Markham Parties at the depositions of Grace Chambers and Leonard Israel. *See* Van Loon Decl. at ¶ 4. Despite having been thereby placed on notice, both the original Hasbro Motion (filed later that same day) and the Supplemental Motion (filed four days later) ignored this argument entirely.

Klamer's disclosure in his supplemental interrogatory responses that he intends to argue that the Markham Parties cannot terminate because the Game may have been a work made for hire by Markham's employees—and, for that matter, in his Answer and Counterclaims to the Third Amended Complaint—was timely and does not prejudice the Markham Parties in any fashion. For the reasons set forth above, as well as the reasons elucidated by Hasbro in the Hasbro Opposition, Klamer respectfully requests that the Court deny the Markham Parties' Supplemental Motion.

Respectfully submitted,

REUBEN KLAMER

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