

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED
U.S. DISTRICT COURT
MIDDLE DIST. OF LA

2004 DEC -2 P 3: 58

CASINO CITY, INC.

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CIVIL ACTION

SIGN BY DEPUTY CLERK

VERSUS

NO. 04-557-B-M3

UNITED STATES DEPARTMENT
OF JUSTICE

STATUS REPORT OF THE PARTIES

A. JURISDICTION

What is the basis for the jurisdiction of the Court?

Answer:

This Court has original jurisdiction over this action pursuant to 28 USC, Section 1331, as this action involves a federal question.

B. BRIEF EXPLANATION OF THE CASE

1. Plaintiff claims:

Answer:

Plaintiff Casino City, Inc. seeks a declaration as to its rights to engage in lawful commercial speech.

2. Defendant claims:

Answer:

Defendant denies that plaintiff's right to engage in lawful commercial speech is at issue. Defendant has filed a motion to dismiss the grounds of standing and ripeness and failure to state a claim.

C. PENDING MOTIONS

Answer:

Defendant has filed a motion to dismiss. See above.

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INITIALS	DOCKET#
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D. ISSUES

Answer:

The Plaintiff contends that the Defendant, as the enforcement authority, has threatened to enforce content-based prohibitions with severe criminal penalties in a manner that is contrary to the protections afforded to commercial speech under the First Amendment to the U.S. Constitution. See *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980).

Defendant contends that plaintiff lacks standing due to its failure to allege facts establishing a credible threat of prosecution, or an intent to engage in the conduct prohibited by the challenged statutory application. Defendant further contends that the challenged application is constitutional because it applies only to the advertisement of illegal activity, and independently, because it satisfies the requirements of the test for evaluating non-misleading commercial speech advertising legal activity.

E. DAMAGES

Answer:

N/A

F. SERVICE

Answer:

N/A

G. DISCOVERY

1. Have the initial disclosures required under FRCP 26(a)(1) been completed?
 YES NO

A. Do any parties object to initial disclosures?
 YES NO

2. Briefly describe any discovery that has been completed or is in progress:

Answer:

No discovery has been served at this time.

3. Please describe any protective orders or other limitations on discovery that may be required/sought during the course of discovery.

Answer:

None known at this time. However, the parties reserve their right to state appropriate objections and/or to seek appropriate protective orders.

4. Discovery from experts:

Identify the subject matter(s) as to which expert testimony will be offered:

By plaintiff(s):

Answer:

Unaware of scope of testimony to be offered by experts at this time. It is anticipated, however, that such testimony may concern control of and access to the internet and whether governmental restriction is more extensive than necessary to serve a purported interest.

By defendant(s):

Answer:

None known at this time.

Both parties reserve the right to retain experts concerning subject matters not identified herein.

H. PROPOSED SCHEDULING ORDER

NOTE: Due to the pending Motion to Dismiss, counsel for Plaintiff has advised counsel for Defendant that it is willing to refrain from discovery for two (2) months from the date the Defendant files a Reply to the Plaintiff's Response to the Motion to Dismiss. Plaintiff does not agree to an indefinite delay of discovery due to the harm and burden that it will cause to the Plaintiff.

The deadline for a Reply has been set by the parties for December 3, 2004. Thus, under the Plaintiff's proposal the parties may propound discovery as of February 3, 2005. Rule 26 disclosures would be due at the end of the two (2) month delay, which is February 3, 2005. Plaintiff does not believe that good cause exists to allow for any additional delay in the start of the discovery process.

Defendant believes that the Court should have the opportunity to decide Defendant's Motion to Dismiss prior to commencement of discovery, and believes discovery should commence 30 days after the Court issues its ruling if the Court does not dismiss this action in full. This date could precede or follow Plaintiff's proposed deadline depending upon the timing of the Court's ruling. Rule 26 disclosures would also be due 30 days after such a ruling under Defendant's proposal.

The parties largely agree on the spacing of the various deadlines but differ as to whether the schedule should be commenced by the filing of Defendant's Reply (Plaintiff's proposal) or the Court's ruling on Defendant's Motion to Dismiss if the Court does not dismiss the action in full (Defendant's proposal).

1. Recommended deadlines for amending the complaint, or adding new parties, claims, counterclaims or cross claims: April 28, 2005

2. Recommended deadlines for completion of fact discovery:
 - A. Exchanging initial disclosures required by FRCP 26(a)(1):
February 3, 2005 (plaintiff's proposal)
30 days following the Court's decision on defendant's motion to dismiss if the Court does not dismiss the case in full (defendant's proposal)

 - B. Filing all discovery motions and completing all discovery except experts:
August 15, 2005 (plaintiff's proposal)
180 days following the commencement of discovery and submission of initial disclosures (defendant's proposal)

3. Disclosure of identities and resumes of expert witnesses (if appropriate, you may suggest different dates for disclosure of experts in different subject matters):

Plaintiff(s): July 30, 2005 (plaintiff's proposal)
15 days prior to the close of fact discovery (defendant's proposal)

Defendant(s): August 30, 2005 (plaintiff's proposal)
30 days following plaintiff's disclosure (defendant's proposal)

4. Exchange of expert reports:

Plaintiff(s): September 15, 2005 (plaintiff's proposal)
45 days following plaintiff's identification of experts (defendant's proposal)

Defendant(s): September 30, 2005 (plaintiff's proposal)
30 days after submission of plaintiff's expert report (defendant's proposal)

5. Completion of discovery from experts: December 30, 2005 (plaintiff's proposal)

60 days after submission of defendant's expert report (defendant's proposal)

6. Filing dispositive motions: February 15, 2006 (plaintiff's proposal)

75 days after the close of expert discovery (defendant's proposal)

I. TRIAL

1. Has a demand for trial by jury been made?

YES NO

2. Estimate the number of days that trial will require

Answer:

Three (3) day bench trial.

J. OTHER MATTERS

Are there any specific problems the parties wish to address at the scheduling conference?

YES NO

1. If the answer is *yes*, please explain:

2. If the answer is *no*, do the parties want the court to cancel the scheduling conference and to enter a scheduling order based on the deadlines set out in this report? CHECK "NO" IF YOU HAVE NOT SUBMITTED PROPOSED DEADLINES.

YES NO

K. ALTERNATIVE DISPUTE RESOLUTION ("ADR")

1. Several ADR techniques are available through the court and may be helpful in your case. These include early neutral evaluation, mediation, and summary jury trial. Do the parties wish to engage in alternative dispute resolution proceedings?

YES NO

L. SETTLEMENT

1. Please set forth what efforts, if any, the parties have made to settle this case.

Answer:

Parties have conferred and do not believe settlement is feasible in this matter.

2. Do the parties wish to have a settlement conference?

YES NO

December 2nd, 2004.

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