

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS


In re)	Chapter 7, No. 07-43128-JBR
GAILON ARTHUR JOY)	
Debtor)	
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GAILON ARTHUR JOY)	Adv. Proceeding No. 07-4173
Plaintiff)	
v.)	
THREE ANGELS BROADCASTING)	
NETWORK, INC.,)	
DANNY LEE SHELTON,)	
JOHN P. PUCCI, ESQ.,)	
GERALD S. DUFFY, ESQ.,)	
FIERST, PUCCI & KANE, LLP,)	
and)	
SIÉGEL BRILL GRUEPNER)	
DUFFY & FOSTER, P.A.)	
Defendants)	

**MOTION TO DISMISS AMENDED COMPLAINT, OR IN THE ALTERNATIVE, TO
TREAT ADVERSARY PROCEEDING AS A CONTESTED MATTER UNDER FEDERAL
RULE OF BANKRUPTCY PROCEDURE 9014**

To the HONORABLE JOEL B. ROSENTHAL, Bankruptcy Judge:

Now come Three Angels Broadcasting Network, Inc. ("3ABN") and Danny Lee Shelton ("Shelton"), defendants in the above-captioned adversary proceeding, and hereby move to dismiss the Plaintiff's Amended Complaint, or in the alternative, seek an Order treating this Adversary Proceeding as a contested matter

10. In January 2007, 3ABN discovered that the Debtor had registered the domain name "save3ABN.com". In March 2007, 3ABN further discovered that the Debtor had registered the domain name "save3ABN.org" and that the website at www.save3ABN.org automatically redirected visitors to the www.save3ABN.com website. Neither of these two websites that the Debtor registered was listed as assets in his bankruptcy schedules. Those websites now point to a similarly named website that the Defendants believe is controlled by the Debtor which contains an archive of the information at "save3ABN.com".

 11. According to 3ABN, the website at www.save3ABN.com contained and now points to another similarly named website that contains information that is antithetical to 3ABN's message, and contains gross misstatements of fact concerning 3ABN's actions and operations, and contains baseless and untrue allegations of criminal conduct by 3ABN, Shelton and persons involved with 3ABN, and also contains disparaging characterizations of 3ABN, its broadcast network and Shelton.

12. The Debtor had also embedded www.save3ABN.com with the metatags "3ABN", "3-ABN", and "Three Angels Broadcasting Network", which are words and phrases used by internet search engines to locate websites that use 3ABN trademarks.

13. In the Civil Action, 3ABN alleges that the save3ABN.com and save3ABN.org domains and websites, as well as the use of the metatags as described above, incorporate 3ABN's trademark that it has used continuously for over 20 years in connection with its ministry, broadcasts and audio and video programming, and as such, infringes on those trademark rights.

Additionally, the Debtor's statements on his website about 3ABN and Shelton are defamatory in nature.

14. The domains save3ABN.com and save3ABN.org now point to the website at "www.save-3ABN.com" (with a hyphen), which the Defendants believe the Debtor controls. The save-3ABN.com website contains the same information that was formerly accessible through save3ABN.com.

15. The Complaint filed in the Civil Action seeks damages for the Debtor's conduct, as well as injunctive relief requiring, among other things, that the Debtor stop infringing on 3ABN's trademarks and using the aforementioned domains and websites.

16. 3ABN and Shelton believe that due to the Debtor's continuing infringement of 3ABN's marks and his continuing defamatory conduct, cause existed pursuant to 11 U.S.C. §362(d)(1), to grant them relief from the automatic stay for the purpose of proceeding with the Civil Litigation to obtain injunctive relief related to the Debtor's continued, postpetition, use of the domains and websites. Accordingly, on November 13, 2007, 3ABN and Shelton filed a Motion in the underlying case seeking relief from the automatic stay, which was allowed on November 21, 2007.

17. On November 15, 2007, the Plaintiff filed the original complaint in this Adversary Proceeding, alleging that certain actions that Defendants might have undertaken subsequent to the Petition Date constituted violations of the automatic stay. On November 20, 2007, 3ABN and Shelton filed a Motion to Dismiss said original complaint, arguing, among other things, that the