

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF OHIO, EASTERN DISTRICT

DAVID ALLISON DBA CHEAT CODE  
CENTRAL,

Plaintiff,

v.

JEREMY N. WISE, and  
WISE BUY NOW, LLC,

Case No. 2:08-cv-00157

Judge Watson

Magistrate Judge Abel

Defendants.

DEFENDANTS' MOTION FOR LEAVE TO FILE SUR-REPLY

Defendants Jeremy N. Wise and Wise Buy Now, LLC ("Defendants"), by and through their counsel of record, respectfully move the Court for leave to file a sur-reply to Plaintiff's Reply to Defendants' Response to Plaintiff's Motion for Sanctions (Doc. #49). A memorandum in support of this motion is attached hereto and a proposed order granting this motion will be e-mailed to Judge Watson and Magistrate Judge Abel's chambers for their review and signature.

Respectfully submitted,

/s/ Sabrina Haurin  
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MEMORANDUM IN SUPPORT

Defendants Jeremy N. Wise and Wise Buy Now, LLC (“Defendants”), by and through their counsel of record, respectfully move the Court for leave to file a sur-reply to Plaintiff’s Reply to Defendants’ Response to Plaintiff’s Motion for Sanctions (Doc. #49) (hereinafter, “Reply”), substantially in the form attached hereto as “Exhibit A.”

In his Reply, Plaintiff David Allison raises new arguments and issues of fact that he did not address in his original motion for sanctions including, but not limited to, the following:

1. Plaintiff denies knowledge of the twelve (12) invalidity witnesses, without verification in his sworn affidavit, but does not deny that he copied their cheats and/or hints. Plaintiff’s lack of knowledge argument is an illusory tactic; the evidence will show that Plaintiff routinely has, in the past and currently, taken content from third-party sites such as [www.gamewinners.com](http://www.gamewinners.com), placed it on his own site, and thereafter claimed sole authorship of such content.
2. Plaintiff states that the two (2) witness statements produced previously by Defendants relate to .004 percent of his 12,000 allegedly copyrighted cheat codes. However, he has failed to identify what portion of those 12,000 cheat codes are alleged to be infringed by Defendant.
3. Plaintiff misleads the Court by stating that these two (2) witnesses account for the only invalidity evidence against him. Plaintiff fails to mention evidence produced by Defendants during discovery regarding numerous persons complaining of Plaintiff copying strategy guides without permission. Additionally, Plaintiff ignores the evidence produced by Defendants wherein authorship for the cheats and/or hints have been attributed to parties other than Plaintiff.

4. Plaintiff has now reversed his earlier representation to the Court and to Defendants that he will rely on twelve (12) examples for his infringement contentions. He now states that he will rely on a “substantial similarity analysis” which he has yet to disclose.

5. Plaintiff now withdraws his argument that Thomas Carroll should be excluded as a witness due to a confidentiality provision in a settlement agreement and argues that he should be excluded based on an alleged delay in Defendant identifying him. However, Mr. Carroll was added to Defendants’ witness list only after being identified in discovery by Plaintiff. Plaintiff sued Mr. Carroll and alleged Mr. Carroll caused the same damages Plaintiff alleges Defendants caused in this litigation.

Defendants respectfully move the Court for leave to file a sur-reply to Plaintiff’s Reply in order to reply to the foregoing issues. This motion and requested relief is brought in good faith to fully present all arguments to the Court and is not brought for the purpose of delay. Additionally, in accordance with Rule 7.3(b) of the Local Rules of the United States District Court for the Southern District of Ohio, Defendants have consulted with Plaintiff’s counsel regarding the filing of this motion.

Moreover, by limiting the attached proposed Sur-Reply to the issues therein, Defendants do not concede any fact or issue raised in Plaintiff’s Reply, but rely on their earlier briefing in Defendants’ Response in Opposition to Plaintiff’s Motion for Sanctions. Therefore, Defendants

respectfully request the Court grant this motion for leave to file the attached Sur-Reply.

Respectfully submitted,

/s/ Sabrina Haurin  
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CERTIFICATE OF SERVICE

I hereby certify that, on October 5, 2009, I electronically filed the foregoing Motion for Leave to File Sur-Reply with the Clerk of Court using the Court's CM/ECF system, which will send notification of such filing to counsel for Plaintiff in this action.

s/ Sabrina Haurin  
Sabrina Haurin (0079321)