

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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STUART FRANKEL,

Plaintiff,

v.

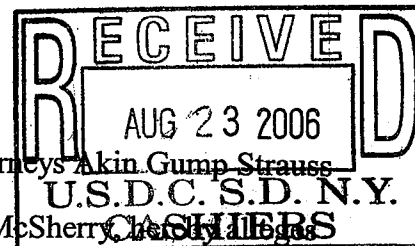
LYONS PARTNERSHIP L.P.,

Defendant.
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JUDGE STANTON

COMPLAINT

Case No. **06 CV 6413**
Jury Trial Demanded



Plaintiff Stuart Frankel ("Dr. Frankel"), by and through his attorneys Akin Gump Strauss Hauer & Feld LLP and Fred von Lohmann, Jason Schultz & Corynne McSherry, et al., for his Complaint against Defendant Lyons Partnership, L.P. ("Lyons"), as follows:

PRELIMINARY STATEMENT

1. This is an action for Declaratory Judgment, arising from unfounded allegations and legal threats Lyons repeatedly made against Dr. Frankel in connection with his noncommercial website parody of the television show, *Barney and Friends*, and its star, Barney, the fictional purple dinosaur. Lyons' allegations and legal threats constitute an interference with Dr. Frankel's First Amendment-protected right to free expression. He therefore seeks a declaration that his parody qualifies as a fair use and does not infringe any protected copyright or trademark interest owned or controlled by Lyons.

PARTIES

2. Plaintiff Stuart Frankel is an individual residing in New York, New York. He maintains a personal website at <<http://www.dustyfeet.com>>.

3. Defendant Lyons Partnership, L.P., is a Texas limited partnership, with its headquarters in Allen, Texas.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 17 U.S.C. §§ 1331 and 1338(a), as this action arises under the copyright and trademark laws of the United States.

5. Lyons has sufficient contacts with this district generally and, in particular, with the events herein alleged, that Lyons is subject to the exercise of jurisdiction of this Court over its person and that venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391.

FACTUAL ALLEGATIONS

6. Dr. Frankel maintains a personal website titled "Stuart Frankel's very small webpage," available at <<http://www.dustyfeet.com>>. Prior to November 2001, his site was also available at <<http://www.asan.com/users/gecko/>>.

7. Dr. Frankel's website serves as his personal homepage where he posts information and content that he finds interesting. Content on the website includes information on building a clavichord, a collection of Javanese culinary recipes by a Javanese musician, and Dr. Frankel's dissertation in the Department of Music at New York University, titled *Phonology, Verse Metrics, And Music*.

8. Dr. Frankel's website is entirely noncommercial in nature.

9. Dr. Frankel's website includes a web page, located at <<http://www.dustyfeet.com/evil/enemy.html>>, that pokes fun at the children's television show, *Barney and Friends*, and specifically at its main character, Barney, a fictional purple dinosaur. See Exhibit 1 This parody humorously suggests that Barney lives a secret "double life," with the character's friendly, public persona serving to conceal the dinosaur's true evil nature. In order to further illustrate this parodical message, the web page includes contrasting images of Barney: one image as the character appears on *Barney and Friends*, and another, entitled "What Barney Looks Like After the Show," featuring the character with horns, sharp teeth, a pentagram, and the number "666" emblazoned on his chest.

