

Tom J. Ferber: Case Descriptions

- *Beverage Marketing USA, Inc. v. South Beach Beverage Co., Inc.*, 2007 WL 1187975, 841 N.Y.S. 2d 217 (N.Y. Sup. 2007) and 2009 WL 146578, ___N.Y.S. 2d___(2d Dept. 2009): Won summary judgment dismissing claims of trade secret misappropriation, breach of fiduciary duty and unfair competition brought by owner of “Arizona Iced Tea” beverages against manufacturer and founder of “SoBe” beverages
- *Beverage Marketing USA, Inc. v. South Beach Beverage Corp.*, 2000 U.S. Dist. LEXIS 16504 (S.D.N.Y. 2000), *aff’d*, 36 Fed. Appx. 12 (2d Cir. 2002): After defeating earlier motion for preliminary injunction, won motion for summary judgment dismissing trade dress, dilution and copyright claims brought by the owner/manufacturer of “Arizona Iced Tea” beverages against the owner/manufacturer of the “SoBe” line of beverages
- *Columbus Rose Ltd. v. New Millennium Press*, 2002 U.S. Dist. LEXIS 9130 (S.D.N.Y. 2002): Won preliminary injunction on behalf of best-selling author David Baldacci preventing publication of an anthology of mystery stories, including one by Mr. Baldacci, with a “big book look” intended to give readers the mistaken impression that the book was Mr. Baldacci’s newest novel
- *Cherry River Music Co. v. Simitar Entertainment*, 38 F. Supp. 2d 310 (S.D.N.Y. 1999): Obtained preliminary injunction and recall order on behalf of music publisher Cherry Lane and World Wrestling Entertainment with respect to the defendant’s CDs of professional wrestlers’ theme music based on defendant’s having failed to properly obtain mechanical licenses, despite expert testimony that defendant’s actions with respect to seeking such licenses were consistent with industry custom
- *Seale v. Gramercy Pictures*, 964 F. Supp. 918 (E.D. Pa. 1997), *aff’d without op.*, 156 F.3d 1225 (3d Cir. 1998) and 949 F. Supp. 331 (E.D. Pa. 1996): Defeated claims of Bobby Seale, former chairman of Black Panther Party, for false light invasion of privacy, right of publicity and Lanham Act violations against producers of motion picture *Panther*, which was fictionalized “docudrama” about early genesis of Black Panther Party in 1960s
- *Morris v. Castle Rock Entertainment*, 246 F. Supp. 2d 290 (S.D.N.Y. 2003): Won dismissal of suit brought by two screenwriters alleging that they were entitled to credit in connection with the movie *The American President* and the television show *The West Wing*. Plaintiffs’ claims included copyright infringement, unfair competition, breach of contract, fraud and conspiracy to defraud
- *Sandoval v. New Line Cinema*, 973 F. Supp. 409 (S.D.N.Y. 1997), *aff’d*, 147 F.3d 215 (2d Cir. 1998): Won dismissal of copyright and privacy claims concerning use of plaintiff’s photographs in scene in the motion picture *Seven*; first case to establish *de minimis* doctrine as a full defense to the unauthorized use of graphic works in motion pictures and television
- *P.C. Films Corp. v. Turner Entertainment Co.*, 954 F. Supp. 711 (S.D.N.Y. 1997), *aff’d*, 138 F.3d 453 (2d Cir.), *cert. denied*, 525 U.S. 1017 (1998): Defeated plaintiff’s claim relating to duration of distribution license of 1961 film *King of Kings*
- *Monster Communications, Inc. v. Turner Broadcasting System*, 935 F. Supp. 490 (S.D.N.Y. 1996): Defeated motion for preliminary injunction brought by proprietors of documentary film, *When We Were Kings* about historic Ali-Foreman championship fight in Zaire, against cable broadcast of Turner film *Muhammad Ali: The Whole Story*, which contained some of plaintiff’s copyrighted film clips
- *Arden v. Columbia Pictures*, 908 F. Supp. 1248 (S.D.N.Y. 1995): Won summary judgment in copyright infringement and related claims brought by novelist against producers of the film *Groundhog Day*

- *Amsinck v. Columbia Pictures*, 862 F. Supp. 1044 (S.D.N.Y. 1994): Won summary judgment dismissing infringement claim concerning use of copyrighted art work as set dressing in film
- *Denker v. Uhry*, 996 F.2d 301 (2d Cir. 1993), *aff'd without op.*, 820 F. Supp. 722 (S.D.N.Y. 1992): Affirmance of summary judgment dismissing copyright infringement claim involving film and play *Driving Miss Daisy*
- *Green v. Lindsey*, 885 F. Supp. 469 (S.D.N.Y. 1992), *aff'd*, 9 F.3d 1537 (2d Cir. 1993), *cert. denied*, 510 U.S. 1202 (1994): Won dismissal of copyright infringement claim against best-selling romance novel
- *Ginger Rogers v. Grimaldi, MGM/UA*, 695 F. Supp. 112 (S.D.N.Y. 1988), *aff'd*, 875 F.2d 994 (2d Cir. 1989): Won dismissal of Lanham Act and publicity claims against Fellini film *Ginger and Fred* on First Amendment grounds; seminal case on Lanham/First Amendment conflict
- *Leifer v. Castle Rock* (N.Y. Supreme Court 1997): Won summary judgment dismissing plaintiff's idea misappropriation, breach of fiduciary duty and contract claims concerning *Seinfeld* episode against producers and writers of show, based on plaintiff's disclosure of idea to one of the writers