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• Tom J. Ferber

Pryor Cashman Partner Tom Ferber Speaks With MTV News About Jordan Scott/Stephenie Meyer Litigation Over "Twilight"

Pryor Cashman Senior Intellectual Property Litigator Tom Ferber was interviewed by MTV News on August 21, 2009 in connection with Jordan Scott's copyright infringement litigation against *Twilight* author Stephenie Meyer.

The article, entitled "Jordan Scott Reveals Why She's Suing Stephenie Meyer," discusses Scott's claim that 2008's *Breaking Dawn*, the fourth book in the *Twilight* author's series, plagiarizes from Scott's 2006 novel, *The Nocturne*.

Ferber told MTV News that, based on his reading of the lawsuit, it's unclear if Scott has a rock-solid argument. "You could have a lot more similarities than those alleged in the complaint and still have no infringement unless it was the product of copying," said Ferber, who has practiced copyright law for 27 years and agreed to review the complaint at MTV News' request.

"There must be copying, and it must be of protectable elements," Ferber said, pointing to a trio of allegedly similar scenes mentioned in the suit: weddings, consummation of the marriages on a beach and then pregnancies. Without the benefit of having read both books, Ferber said his reading of the complaint makes it seem as if the scenes fall under a copyright term called *scenes a faire*, which refers to elements in a work that one would logically expect to come from a certain topic or theme.

"Talking about a lot of flowers, or a beautiful dress, or sex after a wedding ... those are *scenes a faire*, of course you would consummate after the wedding. I don't know what's special about the beach, that's kind of a romantic place. The three examples listed as similarities strike me as unremarkable. ... I would expect more context and discussion of key characters and plots."

Ferber also said that one of the key questions, should the case go before a judge is if *The Nocturne* — which was available on a handful of online book stores and on Scott's Web site — was widely disseminated, and did it reach a threshold where you could assume Meyer could reasonably have had access to it? "If there's not enough availability to get past that threshold, then all the similarity in the world would not get you a copyright case, unless there's proof of verbatim copying," he said.

To read the article, please [click here](#).