

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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| Christopher Roller,<br><br>Plaintiff,<br><br>v.<br><br>David Copperfield's Disappearing, Inc.,<br><br>Defendant. | Case No.: 07-CV-1182 (JNE/JJG)<br><br><b>DEFENDANT'S MEMORANDUM OF<br/>LAW IN SUPPORT OF ITS<br/>MOTION FOR RULE 11 SANCTIONS</b> |
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**INTRODUCTION**

This is the second lawsuit in as many years instituted by Plaintiff against David Copperfield's Disappearing, Inc. ("Copperfield") for alleged usurpation of Plaintiff's "godly powers." This time, Plaintiff has taken the novel position that he has obtained a United States patent on his "godly powers," and that Copperfield is infringing upon his patent rights.

Among other flaws in Plaintiff's legal theory, Plaintiff has never been awarded a patent. As has been explained in detail in Copperfield's Motion to Dismiss, this is fatal to Plaintiff's claim. More importantly, for purposes of this motion, Plaintiff's insistence on pressing his claim is sanctionable under Rule 11 of the Federal Rules of Civil Procedure. Copperfield urges this Court to stop the seemingly endless harassment of Copperfield (and other innocent targets of Plaintiff's litigiousness) by imposing both monetary sanctions against Plaintiff and by requiring him to seek clearance from the Chief Judge before filing any more actions in this Court.

## **FACTUAL BACKGROUND**

### **A. The Parties.**

David Copperfield's Disappearing, Inc. ("Copperfield") is a Nevada corporation that brings the magic of world-famous magician David Copperfield to the stage and television screen.

Plaintiff is a *pro se* individual residing in Burnsville, Minnesota.<sup>1</sup> (Complaint p. 2).

### **B. Plaintiff's History of Litigiousness.**

On or about June 1, 2005, Plaintiff commenced an action in this Court against Copperfield, alleging that Mr. Copperfield had "been using my godly powers to perform his magic" and that this usurpation of godly powers constituted a labor dispute under Minnesota Statute § 179.06. *See Roller v. David Copperfield's Disappearing, Inc.*, 05-

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<sup>1</sup> Copperfield respectfully urges the Court to visit Plaintiff's website, [www.mytrumanshow.com](http://www.mytrumanshow.com), to which the Plaintiff has referred the Court in his Complaint. Therein Plaintiff makes or has made the following claims:

- Plaintiff is running for President of the United States in 2008 with Bill Gates as his running mate.
- Plaintiff claims he is Jesus Christ.
- Plaintiff claims he is God.
- Plaintiff claims that Katie Couric and Celine Dion are his wives and are going to have his children.
- Plaintiff claims there is a movie coming out soon about his life that stars Tom Hanks.
- Plaintiff claims he has killed all of his enemies.
- Plaintiff claims he will father 1,000,000 babies.
- Plaintiff has supernatural powers.

(Affidavit of André J. LaMere ("LaMere Aff.") Exhibit A).

CV-0446 (JRT/FLN) (D. Minn. 2005). This Court, per the Honorable Franklin L. Noel, granted Copperfield's motion to dismiss in a Report and Recommendation dated October 13, 2005. Plaintiff appealed the dismissal to the district court judge, who affirmed the dismissal on January 20, 2006. (Order dated Jan. 20, 2006). Plaintiff then appealed to the U.S. Court of Appeals for the Eighth Circuit, which summarily dismissed his appeal without the benefit of briefing or oral argument by order dated May 25, 2006. (U.S. App. Ct. (8th Cir.) J. dated May 25, 2006).

The previous lawsuit against Copperfield is by no means Plaintiff's only other foray into this Court. Over the past several years, Plaintiff has burdened this Court with the following actions of which Defendant is aware:

- *Christopher Roller v. Central Intelligence Agency* (07-01298) (Plaintiff sued CIA claiming it has ruined his life by failing to inform others that he is god);
- *Christopher Roller v. Angel Productions, Inc.* (07-01297) (Plaintiff sued magician Criss Angel for stealing Plaintiff's godly powers);
- *Christopher Roller v. The James Randi Educational Foundation, Inc.* (07-01296 & 06-04702) (Plaintiff sued magician James Randi for infringing on his patent for godly powers);
- *Christopher Roller v. Department of Veterans Affairs Minneapolis Medical Center* (06-00529) (Plaintiff sued Veterans Affairs for \$1 billion for calling him mentally ill and for aiding and abetting the mafia in damaging Plaintiff's ability to perform his job as President of the United States);
- *Christopher Roller v. George Bush Administration et al.* (05-2177) (Plaintiff sued President Bush and others for conspiracy against a godly entity and conspiracy to plan the attacks of September 11, 2001); and
- *Christopher Roller v. Bossa Entertainment Corp. and Magician David Blaine* (05-01112) (Plaintiff sued magician David Blaine for usurpation of godly powers).

Copperfield is also informed and believes that Plaintiff has commenced other actions in other state and federal courts throughout the country, including a recent

paternity lawsuit filed in state court in Nevada against singer Celine Dion, whose son Plaintiff claims to have fathered. (LaMere Aff. ¶ 2). Ms. Dion has been forced to obtain an order for protection against Plaintiff. (*Id.*)

**C. Plaintiff Applies for a Patent that Has Not Been Granted.**

At some point during the previous litigation against Copperfield, Plaintiff filed a patent application with the United States Patent and Trademark Office (“U.S. PTO”) seeking patent protection for his “godly powers.” (Complaint p. 1; LaMere Aff. Ex. B).<sup>2</sup> Plaintiff refers to this application as an issued patent. (Complaint p. 1). However, as is clear by examination of the document itself, as well as by performing a cursory search of the U.S. PTO website, Plaintiff does not hold a patent – on “godly powers” or on anything else. (LaMere Aff. Exs. B and C). Rather, Plaintiff’s patent application was published in the normal course on or about February 15, 2007. (LaMere Aff. Ex. D).

Copperfield’s counsel has called to Plaintiff’s attention the fact that his published application does not, in fact, constitute a patent by letter dated March 19, 2007. (LaMere Aff. Ex. E). Plaintiff responded via e-mail claiming that he has a valid patent and directing Defendant to “[p]ay up.” Plaintiff signed his e-mail, “Chris Roller aka God.” (LaMere Aff. Ex. F). Furthermore, Plaintiff has made clear that he intends to continue to abuse the judicial process. In an e-mail dated April 9, 2007, Plaintiff stated that he is

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<sup>2</sup> Because Plaintiff has expressly made reference to the application, although it was not physically attached to his Complaint, it is a part of the record for purposes of both Copperfield’s Rule 12(b)(6) motion and this motion. *See Parnes v. Gateway 2000, Inc.*, 122 F.3d 539, 546 n.9 (8th Cir. 1997) (court’s examination of prospectus attached to motion to dismiss and relied upon by plaintiff did not convert motion into one for summary judgment).

considering a class action against all magicians and inquired as to whether Defendant's counsel wants to represent "all other infringers." (LaMere Aff. Ex. G).

**ARGUMENT**  
**PLAINTIFF'S CONDUCT MERITS SANCTIONS.**

**A. Plaintiff Has Violated Rule 11 by Filing a Complaint Utterly Lacking in Factual or Legal Basis.**

Federal Rule of Civil Procedure 11 provides that by presenting a "pleading, written motion, or other paper, an attorney *or unrepresented party* is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, ... the allegations and other factual contentions have evidentiary support..." FED. R. CIV. P. 11(b)(3) (emphasis added). Sanctions can be initiated either by this motion or the court's own inherent power. FED. R. CIV. P. 11(c)(1)(A and B).

The duty to perform a reasonable factual inquiry under Rule 11 "is not a one time obligation ... the Plaintiff is impressed with the continuing responsibility to review and reevaluate his pleadings" so that if he later learns his factual allegations do not have evidentiary support, he is to withdraw the complaint. *Runfola & Assocs. v. Spectrum Reporting II*, 88 F.3d 368, 374 (6th Cir. 1996); *see also Woodfork By and Through Houston v. Gavin*, 105 F.R.D. 100, 104 (N.D. Miss. 1985); *Cruz v. Savage*, 896 F.2d 626, 630 (1st Cir. 1990).

Plaintiff filed a claim for patent infringement without having a patent. Even assuming, *arguendo*, that Plaintiff could claim that when he filed his complaint, he reasonably (albeit mistakenly) believed that he was awarded a patent on his "godly

powers” by the U.S. Patent and Trademark Office, it was made clear to him by counsel for Defendant that he did not, in fact, have a patent. This is not a matter of legal interpretation or argument on which reasonable minds could differ; it is a matter of fact. Publication of a patent application is simply not the same as being awarded a patent by the U.S. PTO. Publication of applications is done automatically as a matter of course. 35 U.S.C. § 122(b)(1). Issuance of a patent occurs after examination and determination that the applicant meets specified statutory criteria.

To reach Rule 11’s goal to deter frivolous litigation, it must “deter litigants from insisting upon a position after it is no longer tenable.” *Bergeron v. Northwest Pub’ns Inc.*, 165 F.R.D. 518, 521 (D. Minn. 1996). Plaintiff’s position was never tenable, but whatever goodwill he may be afforded as a *pro se* party (albeit a frequent one) has been exhausted. He has been apprised that his legal position is unsupported and untenable. Sanctions are warranted and are the only likely deterrent from future frivolous litigation.

**B. Plaintiff’s *Pro Se* Status Does Not Insulate Him from Monetary Sanctions for Filing Frivolous and Vexatious Lawsuits.**

Monetary sanctions are an appropriate remedy for violations of Rule 11, including an award of reasonable attorneys’ fees and costs. *See* Fed. R. Civ. P. 11(c)(2). Although courts give *pro se* litigants some leeway in construing their pleadings, Plaintiff’s *pro se* status does not protect him from the imposition of sanctions under Rule 11. The rule expressly provides that an unrepresented party may be sanctioned. Fed. R. Civ. P. 11. In addition, many federal courts have imposed sanctions for frivolous claims made by unrepresented parties, including those proceeding *in forma pauperis*. *See, e.g., Harlow v.*

*Bergson*, 893 F.2d 187 (8th Cir. 1990) (awarding double costs and fees on appeal against *pro se* litigant on notice that claims were frivolous); *Calesnick v. Redev. Auth. of Philadelphia*, 696 F. Supp. 1053 (E.D. Pa. 1988) (*pro se* litigants whose claims were barred by res judicata were justifiably sanctioned under Rule 11, where judge had met with parties and explained Rule 11 to litigants), *aff'd* 875 F.2d 309 (3rd Cir. 1989), *cert. denied* 493 U.S. 893 (1989).

Given Plaintiff's sophistication in navigating the legal system, the Court's filing mechanisms, and the U.S. Patent and Trademark Office, it is not unreasonable to hold him accountable for his meritless filings. It is clear from Plaintiff's history of litigation in this and other courts that merely dismissing his claims outright will not deter him from suing Copperfield or anyone else again. Imposition of monetary sanctions is warranted to deter future baseless actions.

**C. Plaintiff Should Be Barred from Filing Further Suits in this Court Without Prior Approval.**

In addition to monetary sanctions, Copperfield respectfully requests that Plaintiff be restrained from continuing his campaign of filing frivolous suit after frivolous suit. One way some courts have chosen to remedy the "frequent filer" problem is to require pre-approval of a complaint by the Chief Judge or head clerk before a lawsuit is permitted to proceed. The clerk or judge can screen out patently meritless lawsuits. *See, e.g.,* MINN. GEN. R. PRAC. 9.01(b) (permitting Minnesota state district court to impose preconditions on filing of new claims, motions or requests for relief).

Given the large volume of litigation initiated by Plaintiff in this and other courts, it would be an appropriate sanction to order Plaintiff to obtain approval from the Chief Judge prior to filing any more complaints in this Court.

**CONCLUSION**

Plaintiff has filed and continued to prosecute an obviously baseless claim. This is not the first time he has done so, nor will it be the last unless and until this Court intervenes. Defendant respectfully requests that the Court award sanctions consisting of an award of reasonable attorneys' fees and costs incurred in defending this lawsuit, as well as an order precluding Plaintiff from commencing further litigation in this Court without prior approval.

Dated: April 9, 2007

**MASLON EDELMAN BORMAN & BRAND, LLP**

By: s/ André J. LaMere  
Dawn C. Van Tassel (#297525)  
André J. LaMere (#321205)  
3300 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, Minnesota 55402  
Phone: 612.672.8375  
Fax: 612.642.8375

**ATTORNEYS FOR DEFENDANT**