

EXHIBIT 28

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January 18, 2007

VIA EMAIL & U.S. MAIL

Raymond R. Castello, Esq.
Fish & Richardson P.C.
153 East 53rd Street, 52nd Floor
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Re: Frederico Fellini's "La Dolce Vita"

Dear Mr. Castello:

As you know, we represent Lucas Entertainment, Inc. and its principal Michael Lucas. We write in response to your December 14, 2006 letter. As promised in our December 23, 2006 letter to you, we have investigated the claims asserted in your letter. In sum, we find them to be without merit, as explained below.

Fellini's 1960's foreign language film "La Dolce Vita" (the "Fellini Film"), and our client's candidly pornographic 2006 DVD titled "Michael Lucas' La Dolce Vita, Part 1" and "Michael Lucas' La Dolce Vita, Part 2" (collectively, the "Lucas Films") share almost nothing in common except a portion of their titles and some unprotectable plot elements. We therefore see no basis for any infringement claim. As discussed below, your client has no trademark rights in the words "La Dolce Vita," or has waived, abandoned or otherwise cannot enforce any such rights. As to your apparent copyright infringement claim, even assuming, arguendo that the two motion pictures contain enough similar protectable elements to establish substantial similarity, our client's motion picture would nevertheless be non-infringing, as the only conceivable protectable similarities constitute fair use; because they are used to comment on the Fellini Film and make transformative use of it, they also establish a defense of parody under Campbell v. Acuff-Rose Music, 510 U.S. 569 (1994).

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Trademark Infringement

Although your letter does not outline any specifics whatsoever, you claim that because the title of the Fellini Film shares three words with the Lucas Films, your client has a claim for trademark infringement. Your letter cites no trademark registration, doubtless because individual motion picture titles are not protected by the law of trademarks, as I am sure you are well aware. Even if you were able to show that this widely used phrase ("La Dolce Vita" in Italian, or "Life Is Sweet," or "Life is Good" in English under the doctrine of equivalents) has secondary meaning in relation to DVDs, our client's works bear titles which clearly identify their producer, thus differentiating them from the Fellini Film. And even if the titles were identical, the Supreme Court's decision in Dastar Corp. v. Twentieth Century Fox Film Corp., 39 U.S. 23 (2003), makes clear that there is no claim for violations of trademark law when the true producer of communicative products is clearly identified. See also Antidote International Films, Inc. v. Bloomsbury Publishing plc, -- F.Supp.2d --, 2006 WL 3822484 (S.D.N.Y.)(same). Further, there simply is no likelihood that anyone will be confused between our client's gay pornography and your client's 1960's art film. The products appeal to different consumers, are differently distributed, your client's mark is deemed generic as a title of a film, and our client has used a different mark which itself dispels any conceivable confusion.

It also appears your client may have abandoned any potential claim for trademark infringement, as a quick review of www.imdb.com instantly revealed the existence of at least one other motion picture entitled "La Dolce Vita." Unlike our client's creation, that film does not bear its producer's name, but like our client's, it features pornographic content. That motion picture, like the Fellini Film, was produced in Italy, has been dubbed into other languages, and has been available for many years.¹ The 2002 motion picture "The Sweet Life," the identically titled television show and 1990 Mike Leigh motion picture "Life Is Sweet" and many other films also bear substantially identical titles in English, Italian and other languages. We have little doubt that additional research would reveal many other uses of the expression "La Dolce Vita" in the titles of motion pictures and other works. The existence of these numerous titles and the ready availability of at least one other pornographic motion picture with a title (unlike the Lucas Film) identical to the Fellini Film means that any purported trademark infringement claim by your client is also barred by the single source doctrine by the concepts of waiver, estoppel and abandonment.²

¹ Nevertheless, our client easily obtained DVDs of it in both European and U.S. formats this month. Please let us know if you would like to review a copy.

² The term "La Dolce Vita" is used in many contexts, including as a name for bars and restaurants here in New York and throughout the world. Two existing businesses named "La Dolce Vita" appear in the background in the Lucas Films. Such uses of this well-known and widely used expression do not constitute trademark infringement, and nor does our client's use of it as part of the title of his films.

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Copyright Infringement

Second, your letter alleges a copyright infringement claim, although it neither outlines any basis for such a claim, describes any alleged similarities, nor outlines any common elements. We have reviewed both works, and find no substantial similarity.

We take no issue with the originality of the Fellini Film, and indeed our client views it as a seminal example of European 1960's cinema. Assuming arguendo that your client has a valid chain of title, the only question is whether either or both of the Lucas Films is substantially similar to the Fellini Film. To support a finding of infringement, the Lucas Films would have to embody substantially similar plot, theme, pace, sequence of events, characters and overall "look and feel". However, as none of these aspects show substantial similarity between the two works, there can be no copyright infringement.

First, the plots of the two works are markedly different. The protagonist of our client's work is a twice-published novelist experiencing "writer's block" whose boyfriend ultimately leaves him. The protagonist only appears in about half the scenes, which are all set in modern day New York. In the Fellini Film, the protagonist is a full-time magazine writer who ultimately reconciles with his girlfriend, but who then decides to become a publicity agent. The protagonist appears in all the scenes, which are set in 1960s Rome and various villages around it.

The theme of the works is also different. The Fellini Film contrasts Rome's majestic architecture and history with the vapid behavior of its then-current occupants. It repeatedly portrays how members of the media influence the events about which they are supposed to report, just by their presence. It thus points out the impact observation has upon those being observed. In contrast, the Lucas Films are designed to portray exciting sexual content. To the extent the Lucas Films also comment on weightier topics, it contains clear advice about the damaging impact that expectations of fidelity can have on a failing relationship, and points out that sexual freedom and expression can be a source of inspiration for art and literature. The contrast in themes could not be more pronounced.

Next, the pace of the works is completely different. The Fellini Film is deliberately meandering, as it follows aimless young adults wandering in and around Rome in the 1960s and before. In our client's works, the pace is dictated by relatively brief spoken scenes between portrayals of sexual activity, which interrupt the narrative.

Next, it is possible to say that both works portray certain events, but only if those events are described at a very broad level of generality, and the similarities end there. Both feature a writer taking a nighttime walk with a visiting actress, but there is absolutely nothing protectable about such an incident, which occurs in countless other motion pictures, novels and

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short stories. Both feature the characters entering a fountain, but such an event also occurs frequently in motion pictures, often as an explicit reference to the famous scene in the Fellini Film of Anita Ekberg walking in the Trevi Fountain. Just recently, that scene was recreated in the Trevi Fountain itself in the 2005 motion picture "Elsa and Fred." The scene was referenced in "The Lizzie McGuire Movie" and many other films, and has been recreated in countless other fountains and settings around the world. Moreover, the setting, dialog and characters in this one brief scene in "Michael Lucas' La Dolce Vita, Part 2" are completely different to the equivalent scene in the Fellini Film. Even if our client had faithfully recreated this scene word for word, this element constitutes such a small portion of the Lucas Films that the other different elements predominate over it.

Finally, your letter markedly does not allege that there is any similarity between the characters in the Fellini Film and the Lucas Films, and there would be no truth to such a claim. Virtually every character in the Lucas Films is gay and enthusiastically participates in homosexual sexual activity. In contrast, in the Fellini Film, almost no-one is gay, except for some extravagantly effeminate characters who appear for split seconds at a dinner and at a party at the end of the film. Even those characters appear to be covert about their sexuality, venturing nothing more than one shy request to dance with each other. Nor is the character of Sylvia in the Fellini Film, an impetuous Swede with the attention span and awareness of a young child, similar the character of Nicole Hunter in "Michael Lucas' La Dolce Vita Part 2," who is sympathetically portrayed as a thoughtful and somewhat sad actress who is acutely aware of her intended husband's dalliances with other men. While both women are beautiful, so are virtually all leading motion picture actresses.

Not only are all these factors different, but the "look and feel" of the two works are different too. One is a classic black and white 1960s cult film shot on location. The other is a color studio production shot on high definition digital camera. We therefore see no basis for any infringement claim.

Fair Use, Parody and First Amendment Defenses

We do not admit similarities, much less substantial similarity: but under the law, even if you could specify similarities between the works, demonstrate that those similarities were protectable and that they predominate over the more substantial differences between these two works, our client is entitled to quote from your client's work, as doing so constitutes fair use under 17 U.S.C. § 107, and to transform and/or parody that work directly. As the Second Circuit made clear in Blanch v. Koons, 2006 U.S. App. LEXIS 26786 (2d Cir. 2006), where the purpose and character of the use is transformative, that factor is the most important and supports the defense of fair use. And as the Supreme Court made clear in Campbell v. Acuff-Rose Music, 510 U.S. 569 (1994), the more the Lucas Films are interpreted to be explicitly referencing and

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commenting upon the Fellini Film, the greater the First Amendment protection they enjoy. Finally, as the Eleventh Circuit made clear in Suntrust v. Houghton Mifflin Co., 252 F. 3d 1165 (11th Cir. 2001), it is legal to create “an encapsulation .. that exploits ... copyrighted characters, story lines, and settings as the palette for a new story,” even using “the very same ... plot.” Subsequent authors may transform and reinterpret fictional characters and retell fictional events. Even if there were substantial similarity between these two works, our client would still prevail by reason of his First Amendment right to create new works.

Conclusion

While our client disagrees with many of the ethics and morals pointed by the Fellini Film, he admires it as the work of a fine filmmaker. However, much as Fellini had the right to examine and comment on the influence of state rights in his motion picture, “Ginger and Fred,” our client has a right to re-examine and reinterpret the ethics expressed in Fellini’s film. The two films express a morality that is markedly different: at the end of the Lucas Films, Michael Lucas’ character decides to abandon journalism in favor or a return to novel writing. Tragically, at the end of the Fellini Film, Marcello Mastroianni’s character abandons the pursuit of art to pursue a career as a publicist charging clients to publish inaccurate stories about them. Perhaps your client would like to squelch our client’s particular form of expression, but the First Amendment gives viewers the right to see all points of view represented. Your client cannot use the trademark or copyright laws to prevent that.

This letter is written without prejudice to our client’s rights, remedies, defenses at law and in equity, all of which are hereby expressly reserved.

Very truly yours,


Toby M.J. Butterfield