

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

GREAT CLIPS, INC.,)
)
Plaintiff,)
)
v.) CIVIL ACTION
) NO. 08-cv-10959-DPW
)
HAIR CUTTERY OF GREATER)
BOSTON, L.L.C. and)
GREAT CUTS, INC.,)
)
Defendants.)

MEMORANDUM AND ORDER
February 18, 2009

Plaintiff Great Clips, Inc. ("Great Clips") brings this complaint against defendants Hair Cuttery of Greater Boston, L.L.C. ("Hair Cuttery") and Great Cuts, Inc. ("Great Cuts"),¹ seeking a declaratory judgment that defendants are barred under the terms of a settlement agreement from challenging Great Clips's use of the mark "Great Clips" in any market, including New England. Defendants have counterclaimed for trademark infringement and related causes of action. The parties have filed cross-motions for summary judgment as to whether the settlement agreement in fact bars defendants from challenging plaintiff's use of the mark "Great Clips."² I will grant summary

¹Although the case was initially docketed under the name *Great Clips, Inc. v. Ratner Companies, L.C.*, 08-cv-10959-DPW, Great Clips amended its original complaint to replace Ratner Companies, L.C. with the defendants named above.

² Defendants' motion is for partial summary judgment because a favorable ruling on the interpretation of the settlement agreement would not fully resolve defendants' counterclaims for

judgment to Great Clips.

I. BACKGROUND

A. *The Parties*

Plaintiff Great Clips is a Minnesota corporation that owns and operates hair salons throughout the United States and Canada. In 1985, the United States Patent and Trademark Office ("PTO") granted Great Clips's registration of the mark "Great Clips" in connection with "hair cutting and styling services." Defendant Great Cuts is a Massachusetts corporation. Defendant Hair Cuttery is a Virginia corporation that owns and operates hair salons in Massachusetts.

B. *The Settlement Agreement*

In December 1989, Great Clips entered into a settlement agreement ("Settlement Agreement") with Dalan Corporation ("Dalan") to resolve a trademark dispute before the PTO. The dispute initially arose when Dalan applied to register the mark "Great Cuts" in connection with hair care services and products. Great Clips filed a notice of opposition to Dalan's application, and Dalan subsequently brought a counterclaim against Great Clips seeking cancellation of the "Great Clips" mark.

Under the Settlement Agreement, the parties agreed to withdraw with prejudice both Great Clips's notice of opposition

trademark infringement and related causes of action. By contrast, plaintiff's motion for summary judgment seeks full resolution of the case in its favor.

and Dalan's counterclaim. (Settlement at ¶ 1.) Great Clips agreed it would "not object to the registration of the mark Great Cuts by Dalan," and Dalan likewise agreed it would "not object to the registration of the mark Greatclips by Greatclips, Inc." (*Id.* at ¶¶ 2-3.)

The parties further agreed:

4. Each party releases the other from any and all claims that arise or may arise from the application and registration of its own respective mark(s) mentioned in this agreement. . . .

6. Greatclips is using the phrase 'GREATCLIPS FOR HAIR' in connection with providing its products and services, and Dalan therefore agrees not to use the phrase 'GREAT CUTS FOR HAIR' in connection with providing its products and services. Notwithstanding the above, Dalan may use the phrase it claims to have been using for several years, namely 'GREAT CUTS - FOR GREAT LOOKING HAIR AT A REALLY GREAT PRICE,' or any other similar phrase.

7. Dalan agrees that if Greatclips, Inc. becomes aware of a use of the mark GREAT CUTS that is unauthorized by Dalan, Greatclips may pursue enforcement of its rights against such use and/or notify Dalan, and Dalan may give consideration to objecting to such use. Greatclips agrees to give the same consideration to any notification given it by Dalan concerning a use of the mark GREATCLIPS that is unauthorized by Greatclips.

(*Id.* at ¶¶ 4-7.)

The Settlement Agreement by its terms bound not only the parties themselves but also their successors and assigns. (*Id.* at ¶ 9.) According to defendants, Great Cuts is now the owner of

the "Great Cuts" trademark as the result of a merger with Dalan. Defendants also contend that Hair Cuttery has obtained certain rights and interests to the "Great Cuts" mark through a licensing arrangement with Great Cuts. For purposes of summary judgment, defendants do not dispute that as successors-in-interest to Dalan they are bound by the terms of the Settlement Agreement.

In 2008, Great Clips entered into franchise agreements to open several hair salons in Massachusetts and New Hampshire, with plans to use the "Great Clips" mark in connection with their business operations. After learning of these plans, an agent for defendant Hair Cuttery placed telephone calls to the Chief Executive Officer and Chairman of Great Clips, informing him that defendants intended to take legal action against Great Clips to protect their rights to the "Great Cuts" mark in the New England market. Great Clips thereafter filed for a declaratory judgment that, based on the terms of the Settlement Agreement, its use of the "Great Clips" mark in New England did not infringe any enforceable trademark rights held by defendants. Defendants counterclaimed for trademark infringement and several related causes of action.

II. SUBJECT MATTER JURISDICTION

Although neither party has directly addressed the issue, it is my duty to inquire *sua sponte* into this court's subject matter jurisdiction. *In re Recticel Foam Corp.*, 859 F.2d 1000, 1002 (1st Cir. 1988). In a declaratory judgment action, jurisdiction is determined by reference to the underlying coercive claim that the declaratory defendant *would* have brought in a suit to enforce its rights.³ *See American Airlines, Inc. v. Cardoza-Rodriguez*, 133 F.3d 111, 115 n.1 (1st Cir. 1998) ("Federal courts have regularly taken original jurisdiction over declaratory judgment suits in which, if the declaratory judgment defendant brought a coercive action to enforce its rights, that suit would necessarily present a federal question.") (quoting *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 19 (1983)). In this case, the underlying controversy implicated by the declaratory judgment action is whether defendants would be able to enforce their trademark rights in the "Great Cuts" mark in an infringement suit against Great Clips for its expansion into New England. This is, of course, precisely what defendants are attempting to do in their counterclaims in this case.⁴

³ It is well-settled that the Declaratory Judgment Act does not itself furnish a basis for federal subject matter jurisdiction. *See Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671-74 (1950).

⁴ Having filed trademark infringement counterclaims, defendants plainly demonstrate the underlying federal question

Consequently, although Great Clips's complaint seeks a declaration of its rights pursuant to the Settlement Agreement - ostensibly a question of contract law - I conclude the declaratory judgment action "arises under" federal trademark law for purposes of establishing federal subject matter jurisdiction.

III. STANDARD OF REVIEW

A court must grant summary judgment where there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). A "genuine" factual issue is one that "may reasonably be resolved in favor of either party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). A fact is "material" when it "carries with it the potential to affect the outcome of the suit under the applicable law." *Nereida-Gonzalez v. Tirado-Delgado*, 990 F.2d 701, 703 (1st Cir. 1993). In deciding cross-motions for summary judgment, courts must consider each motion separately, drawing reasonable inferences against each movant in turn. *Reich v. John Alden Life Ins. Co.*, 126 F.3d 1, 6 (1st Cir. 1997).

IV. DISCUSSION

A. *Legal Standard*

The only issue presented on these cross-motions for summary judgment is the proper interpretation of the Settlement Agreement

and the "actual controversy" required of an action under the Declaratory Judgment Act. See 28 U.S.C. § 2201; see also *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007).

between Great Clips and Dalan. Disputes regarding the meaning of settlement agreements are generally resolved according to state contract law. See *Negron Gaztambide v. Hernandez Torres*, 145 F.3d 410, 415 (1st Cir. 1998) (per curiam). In this case, both parties have proceeded on the assumption that Massachusetts contract law controls, and - after due recognition of federal choice of law principles⁵ - I see no reason to challenge that conclusion.

Under Massachusetts law, contract interpretation questions are ordinarily questions of law for a court. See *Nadherny v. Roseland Prop. Co., Inc.*, 390 F.3d 44, 48 (1st Cir. 2004). If a contract is unambiguous, the court should decide its proper interpretation and enforce the contract according to its terms. See *Alison H. v. Byard*, 163 F.3d 2, 6 (1st Cir. 1998). Contractual language is considered ambiguous "only if it is susceptible of more than one meaning and reasonably intelligent

⁵Because jurisdiction in this case is based on the presence of a federal question, the choice of law for interpreting the Settlement Agreement depends on federal conflict of law principles. See *Edelmann v. Chase Manhattan Bank, N.A.*, 861 F.2d 1291, 1294 (1st Cir. 1988). To determine those principles, federal courts often look to the Restatement, see *id.* at 1295, which provides that the laws of the jurisdiction with the most significant relationship to the contract should govern its interpretation. See Restatement (Second) of Conflict of Laws § 188(1) (1971). In this case, the Settlement Agreement was prompted by a dispute over the trademark registration application of Dalan, a Massachusetts corporation seeking to protect its use of the "Great Cuts" mark for its business operations. I therefore find that Massachusetts is the state with the most significant relationship to the contract.

persons would differ as to which meaning is the proper one." *Dasey v. Anderson*, 304 F.3d 148, 158 (1st Cir. 2002) (quoting *Citation Ins. Co. v. Gomez*, 426 Mass. 379, 381 (1998)). If a contract is ambiguous, the meaning of the ambiguous language is often, but not always, a question of fact for resolution by a jury. *Nadherny*, 390 F.3d at 48. The court may, however, enter judgment if despite the ambiguity in language, no reasonable person could interpret the contract as one party does. *Id.* at 48-49.

In resolving a contract dispute, a court may look to dictionaries for assistance in determining the "usual and ordinary sense" of contested language. *Fed. Ins. Co. v. Raytheon Co.*, 426 F.3d 491, 498-99 (1st Cir. 2005). The meaning of a contract cannot, however, be understood merely by "isolating words and interpreting them as though they stood alone." *McAdams v. Mass. Mut. Life Ins. Co.*, 391 F.3d 287, 298 (1st Cir. 2004) (quoting *Starr v. Fordham*, 420 Mass. 178, 190 (1995)). This is because "[c]ontract interpretation under Massachusetts law depends heavily on context . . . [and] [t]hus, agreements should be construed with reference to the situation of the parties when they made it and to the objects sought to be accomplished." *Id.* at 299 (internal quotation omitted). See also *Fishman v. LaSalle Nat'l Bank*, 247 F.3d 300, 302 (1st Cir. 2001) ("Common sense is as much a part of contract interpretation as is the dictionary or

the arsenal of canons."). In other words, contract provisions should "be read as elements in a practical working document and not as a crossword puzzle." *Nadherny*, 390 F.3d at 49 (internal quotation omitted). A court may look to other provisions of a contract to cast light on the meaning of disputed language, and should attempt to construe these provisions together "to find a coherent whole." *Id.*

B. The Settlement Agreement's Release of Claims

The resolution of the dispute before me hinges on the proper interpretation of the release in ¶ 4 of the Settlement Agreement: "Each party releases the other from any and all claims that arise or may arise from the application and registration of its own respective mark(s) mentioned in this agreement." (Settlement at ¶ 4.) Great Clips argues this language fully released each party from any future infringement claims by the other party resulting from either party's use of its own mark. Defendants, on the other hand, argue the scope of the release was more limited, addressed only to the parties' then-present dispute before the PTO - i.e., Great Clips's opposition to Dalan's registration application and Dalan's corresponding counterclaim.

Paragraph 4, read literally, might appear to support defendants' interpretation. The provision purports to release the parties from claims that "arise from the application and registration of" their respective marks. It is well-established

under trademark law that registration does not itself create a party's underlying rights in a trademark. See *Volkswagenwerk Aktiengesellschaft v. Wheeler*, 814 F.2d 812, 815-16 (1st Cir. 1987). Although registration of a trademark triggers certain procedural rights and evidentiary benefits, see 15 U.S.C. § 1115, the right to exclusive use of a particular name or symbol is "essentially a common law property right" that accrues from the party's actual prior usage of the mark. *Volkswagenwerk*, 814 F.2d at 816. It might appear, therefore, that defendants' infringement claim against Great Clips would not be subject to the terms of the release, because defendants' right to bring that claim did not "arise from" the earlier application and registration of the "Great Cuts" mark with the PTO.

Great Clips argues that the word "application" in ¶ 4 should be construed to mean "use," rather than to refer to Dalan's application for trademark registration. Under this reading, the release would extend to any infringement claim that arose from the "use" of either the "Great Clips" mark or the "Great Cuts" mark. In ordinary usage, the word "application" can mean either "an act of putting to use" or a "request, petition." See *Webster's Ninth New Collegiate Dictionary* 97 (1987). Although Great Clips has cited a handful of federal trademark opinions that have used the word "application" as a synonym for "use" - see, e.g., *Hasbro, Inc. v. MGA Entm't, Inc.*, 497 F. Supp. 2d 337,

338 (D.R.I. 2007) - this is not the most common usage of the word in a trademark context. The Lanham Act, for example, consistently uses the word "application" to refer to an application for trademark registration. See, e.g., 15 U.S.C. § 1051(a)(2).⁶ By contrast, the Lanham Act employs the word "use" to refer to the general use of a trademark. See, e.g., 15 U.S.C. § 1051(a)(1) ("a trademark used in commerce").⁷

Other language in the Settlement Agreement might also be read to suggest that the most natural reading of the term "application" in ¶ 4 is as a reference to Dalan's application for trademark registration. For one thing, ¶ 4 appears to group "application and registration" together as related concepts. Cf. *Gen. Healthcare Ltd. v. Qashat*, 364 F.3d 332, 338 (1st Cir. 2004) ("[C]ounsel conducted a thorough trademark search, investigating both applications and registrations at the United States Patent

⁶ A different section of the Lanham Act cited by Great Clips does not, as Great Clips claims, use "apply" as a general synonym for "use," but rather in the sense of "to affix." See 15 U.S.C. § 1114(1)(b) (discussing the liability of a person who shall "reproduce, counterfeit, copy, or colorably imitate a registered mark and *apply* such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisements"). The same is true for the similarly-worded Massachusetts statute also cited by Great Clips. See Mass. Gen. Laws ch. 110H, § 12(ii).

⁷ Defendants have also cited a lengthy string of trademark cases using the word "application" to mean an application for trademark registration. See, e.g., *Boston Duck Tours, LP v. Super Duck Tours, LLC*, 531 F.3d 1, 21 (1st Cir. 2008). A search of trademark case law reveals dozens more examples.

and Trademark Office.”). Furthermore, the introductory paragraphs to the Settlement Agreement observe that Dalan “has applied to register” its mark and later refer to “Dalan’s application Serial No. 514,966.” (Settlement at p. 1.) Elsewhere, when the Settlement Agreement discusses the general use of a mark, on the other hand, it uses the word “use.” (*Id.* at ¶¶ 6-7.) In short, the literal language of the release provision may not, standing alone, permit interpretation of the word “application” in ¶ 4 to refer to the general use of a trademark.

Determining the literal meaning of the release provision is not, however, the end of the interpretive process. *Cf. Great W. Cas. Co. v. Mayorga*, 342 F.3d 816, 818 (7th Cir. 2003) (rejecting an unreasonable contract interpretation even where a particular passage “provide[d] literal support” for it).⁸ Under Massachusetts law, it is “centrally important that the [contract] reading makes sense - that is, it carries out what one might imagine to be a plausible objective of parties so situated.” *Fishman*, 247 F.3d at 302; *see also Nat’l Tax Inst., Inc. v.*

⁸ In *Great W. Cas. Co. v. Mayorga*, Judge Posner provided a striking hypothetical to explain why adhering to the strict literal interpretation of a contractual agreement is the “way madness lies.” 342 F.3d 816, 818 (7th Cir. 2003). “Suppose you order a *Cosmopolitan* in a bar,” he wrote, “and the bartender gives you a copy of the woman’s magazine and insists that you pay for it; can he appeal to literal meaning to defeat your contention that it is not what you agreed to?” *Id.*

Topnotch at Stowe Resort and Spa, 388 F.3d 15, 19 (1st Cir. 2004) (“Agreements, especially commercial arrangements, are designed to make sense. If one reading produces a plausible result for which parties might be expected to bargain, that reading has a strong presumption in its favor as against another reading producing an unlikely result.”). I find that woodenly reading the release provision according to its literal terms - and thereby limiting it to disputes concerning application and registration but not use - would be inconsistent with several other provisions of the contract and would ultimately not make sense in light of the apparent objectives of the Settlement Agreement as a whole.

To begin with, a purely literal interpretation of the phrase “arise from the application and registration” provides an awkward fit with the remaining language of ¶ 4. See *Fishman*, 247 F.3d at 302. The provision refers to the “release[] . . . from any and all claims that arise or may arise from the application and registration of” the parties’ respective marks. (Settlement at ¶ 4). As discussed above, the act of applying for and registering a trademark merely provides a party with certain procedural rights and evidentiary benefits; it does not provide any underlying rights to the mark itself. This raises the question as to what “claims,” if any, would fall within the literal scope of the release in ¶ 4. It is, after all, a basic rule of contract construction that “[a] reading rendering contract

language meaningless is to be avoided." *Cohen v. Steve's Franchise Co. Inc.*, 927 F.2d 26, 29 (1st Cir. 1991) (citing *Shea v. Bay State Gas Co.*, 383 Mass. 218, 224-25 (1981)).

To read the release in ¶ 4 as merely referring, in decidedly awkward language, to the parties' resolution of their existing dispute before the PTO is problematic in several respects. First, it would render ¶ 4 superfluous in light of the preceding three paragraphs. See *Computer Sys. of Am., Inc. v. Western Reserve Life Assurance Co.*, 19 Mass. App. Ct. 430, 437 (1985) (applying the canon of construction that "every word and phrase of a contract should, if possible, be given meaning, and that none should be treated as surplusage if any other construction is rationally possible."). Paragraph 1 already indicates that the parties will withdraw Great Clips's notice of opposition and Dalan's counterclaim before the PTO. Paragraphs 2 and 3 indicate, respectively, that Great Clips "shall not object to the registration of the mark Great Cuts by Dalan," and Dalan "shall not object to the registration of the mark Greatclips by Greatclips, Inc." It is unclear what ¶ 4 accomplishes that is not already accomplished in much clearer language by the earlier provisions. Furthermore, ¶ 4 expressly refers to claims that "may arise" in the future. If the provision were intended to apply only to the parties' objections to the registration of each other's marks, neither party would need further protection from

claims subsequently arising from the "application and registration" of those same marks.

At the hearing in this matter, defendants' counsel posited an interpretation of ¶ 4 that gives it a role beyond that of ¶¶ 2-3. Under this reading, each party would remain free to bring an infringement claim against the other for use of its respective mark, but would be barred from bringing an action alleging the other party had, for example, fraudulently acquired registration of its mark. According to defendants' counsel, the fraud claim *would* be subject to the release in ¶ 4, because it would "arise from application and registration" of the mark, but it *would not* fall within the coverage of ¶¶ 2-3, because those provisions dealt only with each parties' existing registration objections before the PTO. I find this a strained reading designed to impose an unreasonably narrow scope on the release provision. It is unclear what commercially rational reason the parties would have for releasing one another from such a limited specific category of future claims while leaving the crux of their fundamental trademark conflict wholly unresolved.

Furthermore, ¶¶ 6 and 7 of the Settlement Agreement appear to contemplate that the parties had generally released one another from potential infringement claims arising from the use of their respective marks. In ¶ 6, the parties identify a particular use of the "Great Cuts" mark - the phrase "GREAT CUTS

FOR HAIR" - that Dalan would not be permitted to use because of its similarity to a phrase already in use by Great Clips. If, as defendants argue, Great Clips had intended to preserve the right to challenge Dalan for any infringing use of the "Great Cuts" mark, it is unclear why a provision addressing this particular use of the mark would be necessary. Paragraph 6 is therefore most reasonably interpreted as a "carve out" from ¶ 4, which released all *other* infringement claims arising from Dalan's use of the "Great Cuts" mark.⁹

Even more significantly, in ¶ 7, each party specifically preserves the right to "pursue enforcement of its rights" against unaffiliated third parties who use the *other party's* mark without authorization. In other words, Great Clips preserved the right to bring an infringement action against "a use of the mark GREAT CUTS that is unauthorized by Dalan" (and vice-versa). There is no reasonable way to interpret this provision other than as evidence that the parties understood the Settlement Agreement to

⁹ Later in ¶ 6, Great Clips and Dalan agree that Dalan may continue to use the phrase "GREAT CUTS - FOR GREAT LOOKING HAIR AT A REALLY GREAT PRICE." At the hearing in this matter, defendants' counsel argued that if ¶ 4 were intended to be a general release of all future infringement claims, this provision would be unnecessary. However, as the provision begins with the phrase "[n]otwithstanding the above," it is clearly intended only to clarify that the prohibition on Dalan's use of the phrase "GREAT CUTS FOR HAIR" should not be read broadly to include other similar-sounding phrases.

release each of them from infringement actions brought against *each other* for use of their respective marks. Otherwise, it would make little sense for the parties to clarify expressly that they had *not* surrendered the right to bring infringement actions for use of the *other party's mark* by a *third party*.

For these reasons, I conclude that a primary objective of the parties to the Settlement Agreement was to release one another from future infringement actions for use of their respective marks. It is true that trademark infringement claims do not literally "arise from the application and registration of" a particular trademark.¹⁰ Nonetheless, I find that no reasonable person interpreting the Settlement Agreement as "a coherent whole" could interpret ¶ 4 as anything other than a broad release of all claims in connection with the parties' respective use of the "Great Clips" and "Great Cuts" trademarks.

C. Policy Against the Release of Unknown Claims

Defendants raise the additional argument that any release

¹⁰ I note that Great Clips has not raised the argument that this wording in ¶ 4 represents a "mutual mistake" of law by the parties to the Settlement Agreement on the issue of whether trademark infringement claims do in fact "arise from the application and registration of" a trademark. Massachusetts contract law permits reformation of a contract where one party presents clear and convincing evidence that "the language of a written instrument does not reflect the true intent of both parties." *Berezin v. Regency Sav. Bank*, 234 F.3d 68, 72 (1st Cir. 2000) (quoting *Polaroid Corp. v. Travelers Indemnity Co.*, 414 Mass. 747, 756 (1993)). In any case, I find that reading the Settlement Agreement as a whole, ¶ 4 is susceptible to only one reasonable meaning, and that is therefore how I will construe it.

for future infringement of intellectual property rights should be void as against public policy. In support, they rely on *FASA Corp. v. Playmates Toys, Inc.*, 892 F. Supp. 1061 (N.D. Ill. 1995). In *FASA*, a toy designer's agent visited a distributor to discuss several potential toy designs. Upon arrival, the agent was presented by the distributor with, and signed, an untitled document that purported to "waive any and all claims of any kind whatsoever, past, present or future, known or unknown against [the distributor]." *Id.* at 1064. When the toy designer later brought a copyright and trademark infringement suit against the distributor for its use of a design discussed at the agent's visit, the court held that as a matter of public policy "a purported waiver of future, unknown intellectual property claims is unenforceable." *Id.* at 1066 n.4.

In other settings, however, courts have recognized the validity of settlement agreements that surrender the right to bring trademark infringement claims based on the future use of a particular mark. In *Brennan's Inc. v. Dickie Brennan & Co. Inc.*, 376 F.3d 356 (5th Cir. 2004), for example, the Fifth Circuit addressed the effect of a settlement agreement that read: "Each of the parties agrees that it will not assert any of its 'marks' . . . against the other party with respect to said other party's use of the surname Brennan or Brennan's or the 'marks,' if such use is permitted by and is in accordance with this Agreement."

Id. at 370. The Fifth Circuit implicitly affirmed the validity of this type of agreement by noting that the parties had surrendered their respective rights to bring a trademark infringement suit for any uses of their marks permitted under the contract, even if those uses would otherwise have been grounds for an infringement action. *See id.*

I find that the Settlement Agreement in the case before me is more akin to the agreement in *Brennan's* than to the waiver in *FASA*. In *FASA*, the court emphasized that the potential claims released in the agent's waiver were not only future claims but were "unknown" -- indeed, they were all but unknowable -- claims. In this case, both parties to the Settlement Agreement were fully aware of the existence of each other's marks and of each party's use of its own mark in connection with hair salon services. That is, of course, precisely what led to the parties' dispute before the PTO and what ultimately led to the Settlement Agreement itself. Although it is apparently true that Great Clips was not yet operating in the New England market at the time of the Settlement Agreement, I find that both parties were sufficiently aware of the nature of the infringement claims from which they were releasing the other party that the Settlement Agreement, which contains no geographic limitation, did not constitute the waiver of "unknown" or unknowable claims.

V. CONCLUSION

Giving the only sensible reading that could plausibly provide the result for which the parties plainly bargained, I GRANT summary judgment to Great Clips as to the meaning of the Settlement Agreement, and accordingly also GRANT Great Clips summary judgment against defendants' counterclaims for trademark infringement.

/s/ Douglas P. Woodlock

DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE