

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

AARON GREENSPAN,

Plaintiff,

v.

RANDOM HOUSE, INC., MEZCO, INC.,
BENJAMIN MEZRICH; COLUMBIA
PICTURES INDUSTRIES, INC. a/k/a
COLUMBIA TRISTAR MOTION PICTURE
GROUP,

Defendants.

CIVIL ACTION NO. 1:11-cv-12000-RBC

**MOTION OF RANDOM HOUSE, INC., MEZCO, INC., AND BENJAMIN MEZRICH
TO DISMISS WITH PREJUDICE**

ORAL ARGUMENT REQUESTED

Defendants Random House, Inc., Mezco, Inc., and Benjamin Mezrich (collectively, “Moving Defendants”) hereby respectfully move, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss with prejudice all counts of the Complaint of the plaintiff, Aaron Greenspan (“Greenspan”).

As grounds for this motion, Moving Defendants state that all of Greenspan’s claims in this case constitute an impermissible attempt to punish Moving Defendants for not telling his story. Specifically, Greenspan’s First through Third Claims allege that the book *The Accidental Billionaires* (the “Book”) and the film *The Social Network* (the “Film”) infringe on his own book, *Authoritas*. However, Greenspan identifies no protected expression in his book that was copied in the Book or the Film. Instead, he points to a list of unprotectable facts, ideas, fragmentary words and phrases, and stock scenes, the majority of which are expressed in a

manner that is not even remotely similar to *Authoritas*. Moreover, even if the elements to which Greenspan points were copyrightable, the expression of those elements in the Book and the Film are not substantially similar to that in *Authoritas*, providing an independent basis for dismissal.

Greenspan's defamation claims are similarly flawed. All of the statements in the Book to which Greenspan points are plainly not capable of defamatory meaning and/or non-actionable expressions of opinion. In addition, Greenspan's claims for defamation based on the purported omission from the Book of his role from the founding of Facebook, and the complete omission of any reference to him in the Movie, are unconstitutional attempts to force Moving Defendants to tell his version of the history of the founding of Facebook. Moreover, such defamation by omission claims fail as they are not, and cannot be, "of and concerning" Greenspan.

Finally, Greenspan's Lanham Act claim also fails, for multiple reasons. Greenspan lacks standing to bring such a claim, as he has not suffered, as does not allege facts showing, the kind of commercial injury cognizable under the Lanham Act. He also pleads no facts whatsoever to support his bare allegations of "unfair marketing" of the Book. Greenspan's unfair business claim also rehashes his purported defamation by omission claims, which, as mentioned above, cannot satisfy the requirement that they be "of and concerning" Greenspan.

Accordingly, all counts of Greenspan's Complaint fail to state a claim upon which relief may be granted, and Moving Defendants are entitled to dismissal with prejudice and judgment in their favor on the Complaint in its entirety.

WHEREFORE, Random House, Inc., Mezco, Inc., and Benjamin Mezrich respectfully request that this Court grant their motion to dismiss, and dismiss with prejudice Greenspan's Complaint in its entirety.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(D), Random House, Inc., Mezco, Inc., and Benjamin Mezrich hereby respectfully request oral argument on their motion to dismiss.

Respectfully submitted,

RANDOM HOUSE, INC., MEZCO, INC., and
BENJAMIN MEZRICH

By their attorneys,

/s/ Stephen G. Contopulos
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Dated: January 6, 2012
Boston, Massachusetts

LOCAL RULE 7.1 CERTIFICATE

The undersigned counsel for Random House, Inc., Mezco, Inc., and Benjamin Mezrich hereby certifies that he has conferred with the pro se plaintiff in a good faith effort to resolve or narrow any issues relating to this motion, and plaintiff has indicated that he does not assent to the relief requested in this motion.

/s/ Benjamin M. McGovern
Benjamin M. McGovern

CERTIFICATE OF SERVICE

I, Benjamin M. McGovern, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/Benjamin M. McGovern
Benjamin M. McGovern