

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

H-D Michigan, LLC & Harley-Davidson,)	
Motor Company Group, LLC d/b/a/)	
Harley-Davidson Motor Company,)	
)	
Plaintiff,)	Docket no. 2:09-cv-378-GZS
)	
v.)	
)	
Pat Hannon d/b/a Big Daddy's Barbeque,)	
)	
Defendant.)	
)	

ORDER ON PLAINTIFFS' APPLICATION FOR AWARD OF ATTORNEY'S FEES

Before the Court is Plaintiff's Application for Award of Attorney's Fees and Litigation Expenses (Docket # 15). The Motion was filed following the docketing of the Amended Judgment (Docket # 13), which allowed for Plaintiffs to be awarded attorney's fees pursuant to 15 U.S.C. § 1117(a). By its terms, this statute requires the Court to find the case to be "exceptional" in order to justify an award of "reasonable attorney fees to the prevailing party." 15 U.S.C. § 1117(a). Under First Circuit precedent, such a finding can be made only if the "totality of the circumstances" shows that "the infringer's actions were "malicious, fraudulent, deliberate or willful.'" Venture Tape Corp. v. McGills Glass Warehouse, 540 F.3d 56, 64 (1st Cir. 2008) (*quoting* Tamko Roofing Prods. v. Ideal Roofing Co., 282 F.3d 23, 30 (1st Cir. 2002)). The pending application provides no basis to make such a finding. If counsel believes the totality of the circumstances makes this action a qualifying exceptional case, they are free to re-file their application with supporting facts and precedent. However, given the absence of such a record to support the pending motion, the Court DENIES WITHOUT PREJUDICE Plaintiff's Application (Docket # 15).

SO ORDERED.

/s/ George Z. Singal

United States District Judge

Dated this 25th day of January, 2010.

Plaintiff

HD MICHIGAN LLC

represented by **ADAM S. TAYLOR**
TAYLOR, MCCORMACK &
FRAME, LLC
4 MILK STREET
SUITE 103
PORTLAND, ME 04101
207-828-2005
Email: ataylor@tmfattorneys.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

DAVID M. KELLY
FINNEGAN, HENDERSON,
FARABOW, GARRETT &
DUNNER LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001
(202) 408-4000
Email: david.kelly@finnegan.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JONATHAN M. GELCHINSKY
FINNEGAN, HENDERSON,
FARABOW, GARRETT &
DUNNER LLP
55 CAMBRIDGE PARKWAY
CAMBRIDGE, MA 02142
(617) 452-1600
Email: jon.gelchinsky@finnegan.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

KATHRYN K. ROWEN
TAYLOR, MCCORMACK &
FRAME, LLC
4 MILK STREET
SUITE 103
PORTLAND, ME 04101
207-828-2005
Email:
KRowen@TMFAttorneys.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

**HARLEY DAVIDSON MOTOR
COMPANY GROUP LLC**

doing business as

**HARLEY DAVIDSON MOTOR
COMPANY**

represented by **ADAM S. TAYLOR**

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

DAVID M. KELLY

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

JONATHAN M. GELCHINSKY

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

KATHRYN K. ROWEN

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

V.

Defaulted Party

PAT HANNON

doing business as

BIG DADDY'S BARBECUE