

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

EASTERN DISTRICT OF ARKANSAS

LLC 842 3

JAMES W. WOODSON, CLERK  
By

PLAINTIFF

DEP. CLERK

MICHAEL GALSTER

VS.

NO. 4-03-CV-01013

KELLY DUDA

DEFENDANT

**PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

Comes now the plaintiff, by and through his attorney Joseph W. Woodson, Jr., and states the following in support of his motion for preliminary injunction.

1. "Any court having jurisdiction of a civil action arising under this title may...grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright." 17 U.S.C. §502(a).
2. Here, the Plaintiff has filed a complaint alleging copyright infringement; specifically, violation of 17 U.S.C. §106A. Therefore, temporary injunctive relief is appropriate should this Court find it warranted.
3. A district court balances four factors when deciding a motion for a preliminary injunction: (1) the likelihood of the movant's success on the merits; (2) the threat of irreparable harm to the movant in the absence of relief; (3) the balance between that harm and the harm that the relief would cause to the other litigants; and (4) the public interest. Watkins Inc. v. Lewis 346 F.3d 841, 844 (8<sup>th</sup> Cir. 2003) *citing* Dataphase Sys., Inc. v. CL Sys., Inc., 640 F.2d 109, 114 (8<sup>th</sup> Cir. 1981). A preliminary injunction is an extraordinary remedy, Calvin Klein Cosmetics Corp. v. Lenox Labs, Inc. 815 F.2d 500, 503 (8<sup>th</sup> Cir. 1987), and the burden of establishing the propriety of an injunction is on the movant, Geoff v. Harper, 60 F.3d 518, 520 (8<sup>th</sup> Cir. 1995).

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4. The likelihood of plaintiff's success on the merits is substantial. The primary focus at trial will be on the issue of authorship and ownership under Title 17. If the plaintiff is the author and owner of the documentary film "Factor Eight," then he is entitled to be free from copyright infringement under Title 17. On this point, the plaintiff has substantial evidence. First, the plaintiff and his accountant have both testified under oath that the plaintiff is the author and owner of the film (See Attached Affidavits, Exhibits A & B). Second, the following witnesses will testify that the plaintiff, not the defendant, is the author and owner of the film in question: Joella Smith (Accounts Payable, Galster's Orthopedic Lab); Donna Weaver (Office Manager, Galster's Orthopedic Lab); Christopher Case (production assistant to the film); Daniel Broening (Graphic Artist, production assistant to the film); Kate Terrell (research assistant to the film); and, Renee Williams (witness, dated the defendant).

5. The threat of irreparable harm to the plaintiff in the absence of relief is unquestionable. As stated in paragraph 10 of the Original Complaint (Exhibit C), this film is the sole cinematic production of the plaintiff and any public display will bring irreparable harm to the plaintiff because the film, in its current form, is a distortion and modification of the plaintiff's original work in contravention of 17 U.S.C. §106A(a)(3)(A). The plaintiff has testified under oath to the following: "I have received a copy of this form of the film from a concerned documentarian and I have reviewed its content. Ninety five percent of the film is made up of the interviews I paid for during our association. The rest is recent footage of Mr. Duda, himself, planted throughout the film. My original editing has been completely fragmented. This version Mr. Duda has compiled without my permission misrepresents my original intent and primary purpose and will be detrimental to the cause for which I originally began the film. If it is shown at this or any other festival, it will be irreparably tainted due to Mr. Duda's illegal and unethical

influence over the project.” (Exhibit A, p.3.). The plaintiff will also testify that once a film is publicly displayed, there is never an opportunity, as far as the film industry is concerned, to go back and “re-work” the film. Thus, the plaintiff will only have one opportunity to publicly release the work in the form intended by him. If the film is released in its current form, irreparable harm will have been done.

7. The harm to the plaintiff in the absence of relief outweighs any possible harm to the defendant. This film was started in 1998, over five years ago. Except for the scheduled showing on or about January 14, 2004, neither the plaintiff nor the defendant have placed the film for public display at any other time. There are no pending deadlines or contractual obligations to meet with regard to this film. Unlike an on-going business concern, there are no day-to-day operations involved with this film. There are no persons who will be put out of work. There are no persons who are relying upon the defendant or the film to provide goods or services. This is simply a case of the defendant “shopping” this film around in the hopes that it will generate commercial interest. The worst possible outcome for the defendant, if the plaintiff is unsuccessful on the merits, is that he will be delayed a few months in publicly displaying this film. To that end, the plaintiff will testify that there are numerous film festivals in the U.S. throughout the year that the defendant will be able to place this film with, should the defendant prevail. On the other hand, if the plaintiff prevails, his work product and artistic creation will be forever soiled due to the defendants distortion and modification. Therefore, the harm to the plaintiff greatly outweighs any possible harm to the defendant.

8. The public interest in this film is non-existent. Only the litigants have an interest in this film. There is no public detriment or harm that can occur with respect to this Court granting a preliminary injunction. Unlike a dispute that involves utility services or election

results, this case does not touch the public. The public will be unaffected by the granting of an injunction; therefore, the public interest is not a bar to this Court granting a preliminary injunction until a trial on the merits is held.

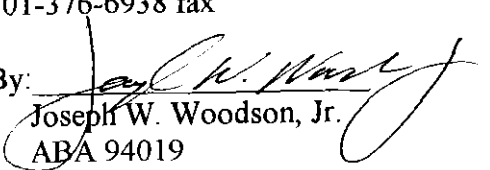
9. The plaintiff has a substantial likelihood of success on the merits because there is overwhelming evidence that he is the author and owner of the documentary film "Factor Eight." The threat of irreparable harm to the plaintiff greatly outweighs any possible harm to the defendant because the defendant will only suffer a short delay in displaying the film if he prevails; whereas, the plaintiff will never be able to "undo" the distortion and modification of his work if it is shown to the public in its current form. Finally, the public interest will not be affected in any manner, should this Court grant a preliminary injunction.

WHEREFORE, PREMISES CONSIDERED, Plaintiff moves this Court to grant an expedited hearing and preliminary injunction against the Defendant to prevent the showing of the documentary film "Factor Eight" at any public forum, including the scheduled showing at the Slam Dance Film Festival in Park City, Utah on or about January 14, 2004, until such time as the parties may have a trial on the merits.

Respectfully Submitted,

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By:

  
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ABA 94019

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing motion and brief were served this 24<sup>th</sup> day of December, 2003 on the Defendant at 500 East 6<sup>th</sup> Street, Apartment 6, Little Rock, Arkansas 72202 via first class mail, certified mail return receipt requested, and via authorized process server pursuant to the Rule 4 of the Arkansas Rules of Civil Procedure.



Joseph W. Woodson, Jr.

UNITED STATE DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS

*Exhibits Attached  
to Original  
Document in  
Courts's Case File*