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UNITED STATES DISTRICT COURT
THE DISTRICT OF COLORADO
CIVIL DIVISION

Parsons & Parsons LLP

JUN 2 2002

Civil Action No. 02-WM-0117 (CBS)

THE CONTINUING EPISCOPAL CHURCH, and
THE HOLY EASTERN ORTHODOX CATHOLIC
AND APOSTOLIC CHURCH IN NORTH AMERICA, INC.
Plaintiffs,

v.

MONTGOMERY GRIFFITH
aka MONTGOMERY GRIFFITH-MAIR,
DIRECLYNX INC.,
ANTHONY P. BEGONJA.

Defendants.

OBJECTIONS TO THE MAGISTRATE JUDGE'S PROPOSED
FINDINGS AND RECOMMENDATIONS

Beginning on the bottom of page 11 and continuing onto page 12 of his recommendation Magistrate Judge Schaffer stated that the "Plaintiff's cited documents attributed to the Defendant's web sites which make allegedly disparaging references to Plaintiff CEC "of Colorado Springs and Loveland, USA." He continued, "Plaintiffs argue from these documents that Defendants"intended the Plaintiffs to be injured in Colorado."" He then abruptly summarized without further explanation, "The Court notes again that conclusory allegations will not suffice to establish a prima facie showing of personal jurisdiction."

With all due respect the Plaintiffs object to this abrupt conclusion. The documents which the Plaintiffs cited that are "attributed" to the Defendant Begonja's web site and which

make "allegedly disparaging references" are quoted verbatim from Exhibits filed by the Defendants Begonja and Griffith. For convenience they are copied below:

"Exhibit M filed in the DECLARATION OF THE VERY REV. TONY BEGONJA makes disparaging and diluting reference to the The Continuing Episcopal Church (CEC, Registered Trademark) as "The Continuously Esoteric Church and Coven, Inc., of Colorado Springs, Colorado". This is found in the fourth page of Exhibit M which is entitled "Rogues and "Churches" Best Avoided: Links to Unholy "Church" # 1". Additionally this phrase "The Continuously Esoteric Church and Coven, Inc." is a hyperlink that links to the copyrighted website of the Plaintiff, The Continuing Episcopal Church (CEC, Registered Trademark).

On page 6 subtitled "Info on the Unholy Persons", Defendant Begonja further dilutes and disparages the trademark CEC by stating incorrect facts about its Bishop Colin James. Defendant Begonja notes that the Bishop's "Faiths of origin" include "Astrology" and "Satanism". Additionally, the phrase "The Continuously Esoteric Church and Coven, Inc." is a hyperlink that links again to the copyrighted website of the Plaintiff, The Continuing Episcopal Church (CEC, Registered Trademark).

At the top of page 10 of Exhibit K.5, referred to in the Court in the pleading "Statement of Relevance of and Exhibit "K" of the Plaintiffs", Defendant Griffith dilutes and disparages the trademark CEC as the "vile and sham company he [Bishop James] calls "The Continuing Episcopal Church" or CEC, of Colorado Spring and Loveland, USA".

The Effects Doctrine, first announced by the Supreme Court in *Calder v. Jones*, permitted a California Court to assume jurisdiction when actions, which caused effects in California were performed outside the state. The Ninth Circuit succinctly set forth the requisite elements for a court to assume jurisdiction in relation to trademark and cyberpiracy [see footnote *]:

- 1) intentional actions;
- 2) expressly aimed at the forum state;
- 3) causing harm, the brunt of which is suffered - and which the defendant knows is likely to be suffered - in the forum state.

Looking at the quotations cited above, quoted from Exhibits in the pleadings of the Defendants, there is no question that these statements were intentionally made. These statements did not merely register another's trademark as a domain name. "Something more" exists to demonstrate that the Defendant's intentionally directed their activities toward the forum state. The Defendants expressly named and attacked the trademark of the Plaintiff. The Plaintiff CEC is a church based in Colorado. Their trademark was Diluted by Tarnishment [see footnote **]. Church supporters are largely concentrated in Colorado. There is a strong probability that some supporters and contributors of the Church would be "turned off", rather than "turned on" by the Defendants explanation of CEC - *"The Continuously Esoteric Church and Coven, Inc., of Colorado Springs, Colorado"*.

The third element of the test requires that the brunt of the harm which is suffered -

and which the Defendant knows is likely to be suffered - is in the forum state. The vengefully distorted copyrighted material, and the trademarks which are diluted by tarnishment, are property of the Plaintiff Church CEC based and centered in Colorado. The footnoted decision Coca-Cola Co. v. Alma-Leo U.S.A., Inc. concluded that "[A] strong probability exists that some patrons of COCA-COLA will be "turned off" rather "turned on" by defendant's so-called "spoof" with resulting loss to plaintiff. ... [P]laintiff's good will and business reputation are likely to suffer in the eyes of those who, believing it responsible for defendant's poster, will refuse to deal with a company which could seek commercial advantage by treating a dangerous drug in such jocular fashion". A paraphrase of this decision is as follows. The distortions made to the copyrighted material, and the dilution to the trademark of the Plaintiff Church, by any objective test is likely to cause diminishment of the trademark in the eyes of the faithful followers and subscribers to the Plaintiff Church. It is a natural consequence of the trademark dilution. It was not intended to injure churches generally, but specifically the Colorado Church, the owner of the trademark. The Plaintiffs object and respectfully submitted that the Magistrate Judge should reconsider his abrupt conclusion regarding "conclusory allegations".

In the SCC Communications v. Anderson decision Judge Walker D. Miller stated that "specific jurisdiction may be exercised if the defendant has purposefully directed its activities toward the forum's residents and the cause of action arises from or relate to those activities". The Plaintiff Church is clearly a resident of Colorado, and the Defendants have clearly directed their activities specifically against that Plaintiff Church. The cause of action is copyright infringement and trademark dilution by tarnishment.

FOOTNOTES

* Panavision Int'l, L.P. v. Toeppen, 141 F.3d 1316, 1321 (9th Cir. 1998).

* * Copy Made From McCarthy on Trademarks

NON-COMPETITIVE GOODS

§ 24.16[1]

§ 24.16 Dilution by Tarnishment

[1] Examples of Tarnishment

The dilution theory has had relatively consistent success when defendant has used plaintiff's mark in an unwholesome or degrading context. The First Circuit has defined dilution by tarnishment in these terms:

A trademark is tarnished when consumer capacity to associate it with the appropriate products or services has been diminished. The threat of tarnishment arises when the goodwill and reputation of a plaintiff's trademark is linked to products which are of shoddy quality or which conjure associations that clash with the associations generated by the owner's lawful use of the mark.¹

Perhaps the best-known example of dilution by tarnishment is the ENJOY COCAINE case.² There, defendant claimed that its sale of posters reading ENJOY COCAINE in a script and color identical to that used by COCA-COLA was only a satirical spoof of COCA-COLA. The court granted a preliminary injunction based on both trademark infringement and dilution, referring to defendant's "predatory intent, however humorous defendant considers it." Emphasizing the damage to COCA-COLA's reputation caused by an unwholesome association with an illegal drug, the court remarked that:

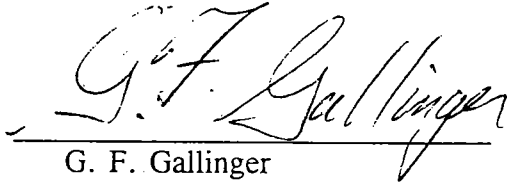
[A] strong probability exists that some patrons of COCA-COLA will be "turned off" rather than "turned on" by defendant's so-called "spoof," with resulting loss to plaintiff. . . . [P]laintiff's good will and business reputation are likely to suffer in the eyes of those who, believing it responsible for defendant's poster, will refuse to deal with a company which could seek commercial advantage by treating a dangerous drug in such jocular fashion.³

¹ *L.L. Bean, Inc. v. Drake Publishers, Inc.*, 811 F.2d 26, 1 USPQ2d 1753 (1st Cir. 1987), cert. denied and appeal dismissed, 483 U.S. 1013, 97 L. Ed. 2d 753. See Restatement (Third) of Unfair Competition § 25, comment g (Tentative Draft No. 2, 1990) ("To prove a case of tarnishment, the prior user must demonstrate that the subsequent use is likely to undermine or damage the positive associations evoked by the mark.")

² *Coca-Cola Co. v. Gemini Rising, Inc.*, 346 F. Supp. 1183, 175 USPQ 56 (E.D.N.Y. 1972).

³ 346 F. Supp. at 1190-1191. See *Coca-Cola Co. v. Alma-Leo U.S.A., Inc.*,

Dated this 20th day of June, 2002.



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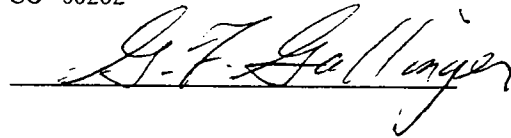
CERTIFICATE OF MAILING

The above BRIEF was mailed by First Class Mail on June 10, 2002 to the Defendants:

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Hot Springs, AR 71901

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Note: Magistrate Judge's Recommendation dated June 12, 2002 was post marked June 13, 2002 & rec'd Monday June 17, 2002.