

4. This is also a diversity case and this Court has subject-matter jurisdiction over this lawsuit under 28 U.S.C. §1332(a). As required by §1332 (a) and §1332(a)(2), the amount in controversy in this matter exceeds the sum and value of \$75,000.00, exclusive of interests and costs and there is complete diversity between all parties.

5. Venue is proper before this District Court pursuant to 28 U.S.C. §1391 (a)(1). Defendant Woolheater resides in Dallas, Texas and has a current place of residence located at 1406 Alaska Avenue, Dallas, Texas 75216.

Factual Background

6. In support of this Application for Temporary Restraining Order, Preliminary Injunction, and Original Complaint Plaintiff hereby incorporates by reference the Affidavit of Adrian Erickson attached hereto as Exhibit A, the Exhibits attached thereto and Exhibits B-E consisting of public records and statements against interest made by the Defendants as if reprinted herein verbatim.

7. This case involves video footage shot in the State of Kentucky in late July 2005 (hereinafter known as the "Kentucky Clip").

8. The video footage allegedly shows a creature commonly referred to as "Bigfoot" or "Sasquatch" captured with night vision camera equipment as a result of a baited camera stakeout at an undisclosed location in Kentucky.

9. Matt Moneymaker initially owned the rights to the video, and is the owner of BFRO.net (Bigfoot Field Researchers Organization). The Kentucky Clip contains materially wholly original that is copyrightable subject matter under the laws of the United States.

10. On September 13, 2005, all rights, title, and interest in and to the copyright in the Kentucky Clip and ownership rights to all future footage was sold by Matt Moneymaker to Adrian Erickson for a sum of \$20,000. Adrian Erickson is the owner of NEWgrowth Capital Corporation based in British Columbia, Canada. All rights, title, and interest in the Kentucky Clip were subsequently transferred by Adrian Erickson to Plaintiff NEWgrowth Capital Corporation.

11. Defendant Craig Woolheater was briefly associated with the BFRO as a volunteer. In late August 2005, Woolheater was part of a private email list of BFRO volunteers.

12. On September 1, 2005, the BFRO requested that the volunteer researchers on the private email list sign a non-disclosure agreement (the "NDA") before viewing the Kentucky Clip.¹

13. On September 3, 2005, the BFRO requested that the volunteer researchers on the private email list choose one of three options in order to inform the BFRO of their intentions with respect to viewing the video.²

14. In response to the BFRO request for a statement of intentions, Defendant Craig Woolheater responded in an email dated September 3, 2005, that he would intend to honor "Option 1". "Option 1" provided, "You will sign the NDA agreement as is, and FAX or mail it in. More likely than not you will be given an opportunity in the near future to sign an improved, final version which will substitute for this version (which isn't that bad)."³

¹ See Exhibit A-Erickson Affidavit, Attachment labeled Exhibit 1

² See Exhibit A-Erickson Affidavit, Attachment labeled Exhibit 2

³ See Exhibit A-Erickson Affidavit, Attachment labeled Exhibit 3

15. Defendant Craig Woolheater never signed and faxed, or mailed the NDA to BFRO

16. On September 6, 2005, Defendant Craig Woolheater sent an email to BFRO email list members requesting that he be emailed a copy of the Kentucky Clip from other list members.⁴

17. On September 8, 2005, Defendant Craig Woolheater sent an email to BFRO email list members requesting that he be mailed a copy of the Kentucky Clip from someone who had registered so that he could then download the file and begin disseminating it to others.⁵

18. On January 18, 2007, Defendant Craig Woolheater is a director of an organization known as The Texas Bigfoot Research Conservancy as Texas Domestic Non-Profit Corporation. Upon information and belief, Defendant Woolheater intends to compete with the BFRO through Texas Bigfoot Research Conservancy and Cryptomundo.com.⁶

19. Competition among the different "Bigfoot" research organizations necessarily involves monetary donations from private citizens and organizations and therefore it is to Defendant Woolheater's benefit to discredit the competition

20. On the Cryptomundo com website, Defendant Craig Woolheater admits that he wrongfully possesses the Kentucky Clip and has knowingly and willfully directly copied the Kentucky Clip in its entirety, without authorization, in contravention of his promise to honor the NDA, as he states that "I will also share some stills taken from the

⁴ See Exhibit A-Erickson Affidavit, Attachment labeled Exhibit 4

⁵ See Exhibit A-Erickson Affidavit, Attachment labeled Exhibit 5

⁶ See Exhibit B-attached hereto as Exhibit B is a true and correct copy of Certificate of Formation relating to the Texas Bigfoot Research Conservancy.

BFRO video that was shared with me by an unnamed source. This video was shared with the BFRO investigators who signed the non-disclosure agreement supplied by Matt MoneyMaker. I severed ties with the BFRO as an organization at that time and did not personally sign a non-disclosure agreement.”⁷ The still photographs were released on February 6, 2007.

21. On February 9, 2007, Defendant Craig Woolheater posted the Kentucky Clip on a website called Cryptomundo.com. The website is available on the internet to the general public, worldwide, without limitation and is owned by Defendant Cryptomundo LLC.⁸ Therefore, the Kentucky Clip has been released without authorization, and is currently being displayed, to the general public without the consent of its owner NEWgrowth Capital Corporation. The Kentucky Clip released by Defendant Woolheater and Defendant Cryptomundo LLC. is low resolution and not as clear as the original footage.⁹

22. Defendants Woolheater and Cryptomundo LLC knowingly and willfully disseminated the Kentucky Footage and misappropriated Plaintiff’s trade secrets and product as he states “To my knowledge, this footage has not been shared anywhere else publicly before now.”¹⁰

⁷ See Exhibit C-attached hereto as Exhibit C is a true and correct copy of the Cryptomundo.com screen shots containing statements made by Defendant Woolheater and still photographs taken from the Kentucky Clip.

⁸ See Exhibit D-attached hereto as Exhibit C is the Cryptomundo.com website information relating to Cryptomundo LLC and the California Secretary of State public information relating to Cryptomundo LLC.

⁹ See Exhibit E-attached hereto as Exhibit E is a true and correct copy of the Cryptomundo.com screen shots containing statements made by Defendant Woolheater and the Kentucky Clip.

¹⁰ See Exhibit A-Erickson Affidavit, Attachment labeled Exhibit 7

23. The Kentucky Clip and still photographs posted from the Kentucky Clip all reflect the date and time the footage was created and by whom the footage was created, BFRO.net.¹¹

24. Additional footage was shot after initial Kentucky Clip made the subject of this lawsuit and is also owned by NEWgrowth (hereinafter the "Kentucky Catalog"). The Kentucky Catalog remains non-public. The site of the investigation remains non-public. The releasing of the pirated portion of the Kentucky Catalog known as the Kentucky Clip to the general public without permission not only constitutes an unauthorized reproduction by the Defendants, but substantially impairs the value of the Kentucky Clip and/or the Kentucky Catalog to NEWgrowth Capital.

25. Upon information and belief, Defendant Craig Woolheater is aware that additional footage exists and seeks to discredit the Kentucky Catalog by releasing the pirated clip on February 9, 2007.

26. Defendants continue to reproduce, distribute, promote, and offer unauthorized copies of the Kentucky Clip on the Crytomundo.com website.

27. Defendants invite discussions regarding the clip from message boards on the website. Upon information and belief, Defendants' use of the message boards prior to the release of the Kentucky Catalog to the public via a motion picture in production at this time seeks to discredit and disrupt the entire project.

28. A natural, probable and foreseeable result of Defendants' wrongful conduct has deprived and will continue to deprive Plaintiff of (a) the benefits of being the first to reveal the Kentucky Clip to the general public, (b) the benefits of promoting and selling

¹¹ See Exhibits C and E.

the motion picture currently in production based on the Kentucky Catalog, and (c) goodwill with present and prospective customers interested in the Kentucky Catalog.

29 A further natural, probable, a foreseeable result of Defendants' wrongful conduct is the disclosure of both location and identity of the individuals involved in the project

Motion for Temporary Restraining Order

30. Plaintiff incorporates paragraphs number 1-29 above by reference as if reprinted verbatim herein below.

31. Plaintiff will suffer immediate and irreparable injury if Defendants are not immediately restrained from the unauthorized duplication, copying, and distribution, for which Plaintiff has no adequate remedy at law. *Ingram v. Ault*, 50 F.3d. 898, 900 (11th Cir. 1995). The plaintiff will suffer injuries such as loss of sales and loss of goodwill and these injuries are irreparable because Plaintiff is unable to ascertain an exact measure of damages and there is no adequate remedy at law because Plaintiff cannot be compensated by damages alone and Defendants may continue to infringe on Plaintiff's copyrights in the future and continue to benefit therefrom

32. There is substantial likelihood that Plaintiff will prevail on the merits. *Ingram*, 50 F.3d at 900. Plaintiff is the owner of the copyrightable Kentucky Clip Plaintiff is the owner of the copyrightable Kentucky Catalog. Defendant Craig Woolheater knew that the Kentucky Clip was not to be released to the general public. Defendant Craig Woolheater promised that he would abide by the NDA Defendant Cryptomundo, LLC knows that its website is displaying an unauthorized copy of the

Kentucky Clip without authorization as evidenced by the statements made by Defendant Craig Woolheater on the website.

33. The threatened harm to Plaintiff outweighs the harm, if any, that a temporary restraining order would inflict on Defendants. Defendants are wrongfully using Plaintiff's copyrighted material for Defendants' own benefit. Defendants are obtaining an unfair advantage over the Plaintiff and disclosing confidential information owned by the Plaintiff. Including the process by which the clip was obtained, the location of the shoot, and the identities of those involved. Plaintiff has suffered both economic damage and damage to its reputation and this outweighs any financial damage Defendants may suffer due to this injunction.

34. Issuance of a temporary restraining order is in the public interest because it would protect those involved in the Kentucky Catalog project, which remains ongoing, from unwanted invasions onto their properties, encourages further scientific research by promoting and enforcing confidentiality which protect the integrity of such projects, prevents the dissemination of misinformation to the public, discourages unfair competition, and dissuades other unauthorized copying and dissemination of trade secrets by internet websites or individuals, a legal problem which has substantially increased in recent years.

35. Plaintiff is willing to post a bond in the amount the court deems appropriate.

36. The Court should enter this temporary restraining order without notice to the Defendants because Plaintiff will suffer immediate and irreparable injury, loss, or damage. Specifically, due to the ease of which downloads can be accomplished on the internet. Plaintiff believes that a substantial risk of giving notice to the Defendants is that

the Defendants will instruct its web-users of the possibility of the Kentucky Clip being removed from its website leading to a substantial increase in viewing and potential downloading of the clip. Once the clip is downloaded by other users, Plaintiff has no adequate remedy to prevent its further dissemination over the world wide web. Additionally, there are no less drastic means to protect Plaintiff's continuing interests.

37. Plaintiff asks the Court to set the request for a preliminary injunction for hearing at the earliest possible time.

38. For these reasons, Plaintiff asks the Court to issue a temporary restraining order preventing Defendants from copying, duplicating, selling, offering for sale, distributing, or continuing to display or disseminate the original copyrighted works of Plaintiff.

Application for Temporary and Permanent Injunction

39. Plaintiff incorporates paragraphs number 1-38 above by reference as if reprinted verbatim herein below

40. The purpose of a temporary injunction is to preserve the status quo of the litigation's subject matter pending trial on the merits. A temporary injunction requires "(1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury if the injunction is not issued; (3) that the threatened injury to [plaintiff] outweighs any damage the injunction might cause to [defendant], and (4) that the injunction will not disserve the public interest"¹²

41. The purpose of the preliminary injunction is to preserve the status quo pending either a permanent injunction or a trial on the merits.¹³

¹² *DSC Comm. Corp. v DGI Tex, Inc.*, 81 F.3d 597, 600 (5th Cir 1996).

¹³ *University of Tex. V. Camenisch*, 451 U.S. 390, 395, 101 S.Ct. 1830, 1834 (1981).

42. The status quo is the last, actual, peaceable, noncontested status that preceded the controversy.¹⁴

43. Plaintiff is entitled to a temporary injunction pursuant to Federal Rule of Civil Procedure 65. Specifically, Plaintiff requests a temporary and final injunction preventing Defendants from copying, duplicating, selling, offering for sale, distributing, or continuing to display or disseminate the original copyrighted works and trade secrets of Plaintiff.

PLAINTIFF'S ORIGINAL COMPLAINT FOR DAMAGES

Count I. Misappropriation of Trade Secrets

44. Plaintiff incorporates paragraphs number 1-43 above by reference as if reprinted verbatim herein below.

45. Defendant Misappropriated the Trade Secrets maintained by Plaintiff.

46. The Kentucky Clip and emails content constitute trade secrets maintained by Plaintiff.

47. Defendants used and disclosed the trade secret after Defendant learned of the secret from a third person and Defendant was "on notice" that the third party disclosed the secret in breach of a duty to Plaintiff not to disclose the secret.¹⁵

48. Plaintiff has suffered actual damages as a proximate result of Defendant Woolheater's conduct.

49. Additionally, Plaintiff has suffered exemplary damages as Defendant Woolheater's conduct was knowing, intentional, and with malice towards the rights of Plaintiff.

¹⁴ *LaRouche v. Kezer*, 20 F.3d 68, 74 n.7 (2d Cir. 1994).

¹⁵ *See, Metallurgical Indus. V. Fourtek, Inc.*, 790 F 2d 1195, 1204 (5th Cir. 1986).

Count II. Unfair Competition By Misappropriation

50. Plaintiff incorporates paragraphs number 1-49 above by reference as if reprinted verbatim herein below.

51. Plaintiff created the Kentucky Clip through extensive time, labor, skill, and money.

52. The Defendants are using the Kentucky Clip in competition with the Plaintiff.

53. The Defendants are getting a free ride as they were not burdened with the expenses incurred by Plaintiff in the acquisition of the Kentucky Clip.

54. Plaintiff has suffered damages as a proximate result of the Defendants unfair practices.

Prayer

For these reasons, Plaintiff requests that Defendant Craig Woolheater be cited to appear and answer herein, and that judgment be entered against Defendant Craig Woolheater and in favor of Plaintiff for:

1. Damages caused by Defendants misappropriation of trade secrets,
2. Exemplary damages as a result of Defendant's malicious conduct;
3. Pre-judgment interest at the maximum rate allowable by law;
4. Post-judgment interest at the maximum rate allowable by law;
5. Attorney's fees;
6. Costs of court;
7. Such other and further relief, both general and specific, at law and in equity, to which the Plaintiff may be justly entitled.

In addition, the Plaintiff respectfully requests that the Court enter an order preventing Defendants from copying, duplicating, selling, offering for sale, distributing, or continuing to display or disseminate the trade secrets of Plaintiff.

Respectfully submitted,

Hulse ♦ Stucki, PLLC

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