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8 ROBERT H. SIMYAR

9
10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA

12 Case No. 2:11-cv-00992-KJD-LRL

13 FIRST TIME VIDEOS LLC, a Nevada limited
liability company and ROBERT H. SIMYAR,

14 Plaintiffs,

15 v.

16 SUPERSTAR MEDIA LABS, LLP, an Arizona
limited liability partnership, and REGAN
17 SCOTT FRANKS II, an individual,

18 Defendants.
19

**REPLY IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

20 Plaintiffs First Time Videos LLC and Robert H. Simyar (together, "FTV") hereby submit
21 their reply in support of their motion for a preliminary injunction. Plaintiffs are likely to succeed
22 on the merits of their claims because they have shown, and Defendants do not deny, that they
23 have sold counterfeit DVDs bearing Plaintiffs' trademarks. Moreover, Defendants have filed no
24 opposition to the present motion and have consented to the entry of a preliminary injunction.

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STATEMENT OF ADDITIONAL FACTS

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2 Plaintiffs' counsel, Ms. Nikkya Williams, and a computer forensics expert, Mr. Rusty
3 Sargent, conducted an inspection of Defendants' computer systems and storage media on June 23,
4 2011. (Declaration of Nikkya G. Williams ("Williams Decl.") ¶¶ 1-2.) During the inspection,
5 Defendants produced numerous hard drives, totaling over 8 terabytes (TB) of capacity. (*Id.* ¶ 9.)
6 Defendant Regan Scott Franks ("Mr. Franks") produced a 2 TB drive that he indicated contained
7 everything in Defendants' possession related to FTV. (*Id.* ¶ 3.) Mr. Sargent, the computer
8 forensics expert, discovered other FTV-related images on a 1.5 TB hard drive and 250 GB hard
9 drive connected to Defendants' computer. (*Id.* ¶ 6.) Mr. Franks also produced six (6) backup
10 drives that Defendants indicated contained FTV-related material and five (5) older hard drives
11 that possibly contained FTV-related material. (*Id.* ¶¶ 7-8.) Mr. Franks further produced 54 mini
12 DV tapes that he indicated were FTV-related materials that he had had in his possession from
13 when the parties were originally in business together. (*Id.* ¶ 10.) Mr. Franks also indicated that
14 he printed DVD labels and inserts on demand when he received an order and did not have any
15 inventory of FTV-related packaging materials currently. (*Id.* ¶ 11.)

16 During the inspection, Mr. Franks communicated to Plaintiffs' counsel that he agreed with
17 the temporary restraining order, had complied and would continue to comply with the Court's
18 order, and would not object to the entry of a preliminary injunction. (*Id.* ¶ 12.) At no time did
19 Mr. Franks object to the inspection or deny any of the allegations in the Complaint, motion for
20 temporary restraining order or motion for preliminary injunction.

ARGUMENT

21
22 **I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THEIR TRADEMARK**
23 **COUNTERFEIRING CLAIM.**

24 A plaintiff may establish a *prima facie* claim for trademark infringement by showing that
25 he rightfully owns the marks at issue and that there is a likelihood of confusion among the
26 consuming public from the defendant's use of the mark. *Jockey Club, Inc. v. Jockey Club of Las*
27 *Vegas*, 595 F.2d 1167 (9th Cir. 1979). Here, Plaintiffs own federal registrations for the FTV
28 marks. (Compl. ¶ 21.) As explained more fully in Plaintiffs' motion, Defendants have been

1 selling counterfeit DVDs bearing Plaintiffs' marks. (See Motion for Preliminary Injunction, 9:11-
2 10:11.) During the inspection, Defendants admitted to having FTV-related material from which
3 to make copies and a review of Defendants' hard drives revealed videos bearing the FTV
4 trademarks. (Williams Decl. ¶¶ 3, 6.) Defendants have not denied that they have sold
5 unauthorized copies of FTV's works using the FTV Marks nor have they denied that they sent a
6 counterfeit DVD to Plaintiffs' investigator. Defendants are using the FTV Marks themselves to
7 sell counterfeit products. There is a clear likelihood of confusion between identical marks.
8 Accordingly, Plaintiffs are likely to succeed on the merits of their trademark claims.

9
10 **II. DEFENDANTS HAVE CONSENTED TO THE GRANTING OF THE
PRELIMINARY INJUNCTION.**

11 In addition to the likelihood of success on the merits of their claims, Plaintiffs are entitled
12 to the relief they seek by virtue of the fact that Defendants failed to file any brief in response to
13 Plaintiffs' motion for preliminary injunction. Local Rule 7-2(d) reads in part, "[t]he failure of an
14 opposing party to file points and authorities in response to any motion shall constitute a consent to
15 the granting of the motion." (Emphasis added.) Here, Defendants failed to file a memorandum in
16 opposition to the issuing of a preliminary injunction and have thereby consented to the granting of
17 the requested injunction. Additionally, Defendant Franks indicated to Plaintiffs' counsel that he
18 agreed to the entry of a preliminary injunction. (Williams Decl. ¶ 12.)

19 **CONCLUSION**

20 Plaintiffs have demonstrated that they are likely to succeed on the merits of their claims,
21 are likely to be harmed if the preliminary injunction is not granted, that the balance of equities tips
22 in their favor and that the preliminary injunction is in the public interest. Plaintiffs have met their
23 burden and granting the preliminary injunction is only proper.

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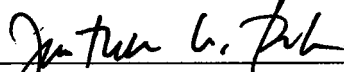
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Based on the foregoing points and authorities, Plaintiffs request that the Court grant a preliminary injunction pending adjudication on the merits.

Dated: this 27th day of June, 2011

Respectfully submitted,

LEWIS AND ROCA LLP

By:  _____

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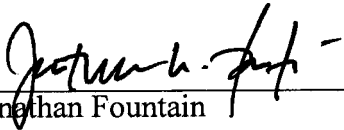
Attorneys for Plaintiffs
FIRST TIME VIDEOS LLC and
ROBERT H. SIMYAR

CERTIFICATE OF SERVICE

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Pursuant to permission obtained from the Court by telephone on June 27, 2011, I hereby certify that on June 27, 2011, I caused an email, with copies of the documents titled **REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION** and **DECLARATION OF NIKKYA G. WILLIAMS** and the exhibits thereto attached, to be sent to Defendant Regan Scott Franks at scottfranks@gmail.com, an email through which I have communicated with Mr. Franks previously. I also caused a copy of the above-referenced documents to be submitted via fax to the Court.

Dated June 27, 2011.


Jonathan Fountain