

1 (In open court.)

2 THE CLERK: 16 C 23, American Bridal and Prom Industry
3 vs. Does 1 through 100.

4 MR. HOLMES: Good morning, your Honor. Rich Holmes
5 for the plaintiffs.

6 THE COURT: How are you?

7 MR. HOLMES: Good, Judge. Thank you.

8 THE COURT: Have you seen what's been docketed?
9 There's one Docket Entry, which is 49, which was a letter from
10 one of the -- from an Asian defendant. And then there was also
11 additional documents that were filed including an individual
12 from Ireland.

13 MR. HOLMES: Yes. We've seen those, your Honor.

14 With respect to the individual from Asia, that letter
15 referenced two Paypal accounts that had been restrained. I
16 reached out to my contact at Paypal, and she informed me that
17 that individual was not -- those accounts for that individual
18 were being restrained in a different case. So that individual
19 is not a defendant in this case.

20 THE COURT: What about the individual from Ireland?

21 MR. HOLMES: I've been in contact with that
22 individual, and his domain is included in one of the notices of
23 dismissal that we recently filed within the last few days.

24 THE COURT: What was the good faith basis for naming
25 that person as a defendant?

1 MR. HOLMES: There were -- in reviewing his domain,
2 there were images on that domain that were protected by one of
3 the copy -- well, there were images on that domain that were
4 owned by the plaintiffs, and I have brought in a hard copy of
5 that exhibit if your Honor would like to review it.

6 THE COURT: Then why did you dismiss him?

7 MR. HOLMES: In talking to that individual, it allowed
8 us to have an opportunity to discuss the nature of his business
9 and the fact that some of the images, at least according to his
10 representations, were received from suppliers.

11 So in our view, being able to have that conversation,
12 it appeared that there was no intentional infringement as we
13 are claiming that there is with respect to other defendants.

14 THE COURT: You know, an *ex parte* proceeding is an
15 extraordinary remedy. It happens routinely, but it's still
16 extraordinary nonetheless. And the Court deals with this type
17 of matter, certainly these types of injunctions all the time.

18 What's unusual is for a case of this scope, I believe
19 at least at one point over 3,343 defendants, and then to have a
20 barrage of phone calls and letters from a variety of defendants
21 saying that they should not have been named and then a series
22 of voluntary dismissals, wholesale dismissals of many, many
23 defendants. And this is what my concern is.

24 When you file the case, especially, especially an *ex*
25 *parte* proceeding, there has to be a due diligence inquiry

1 consistent with Rule 11. I'm not convinced that that occurred
2 in this case. I'm not saying that there was a violation. I'm
3 just saying I'm not convinced.

4 So I'm going to deny the TR0, and I'm going to deny
5 without prejudice the motion for preliminary injunction. And
6 I'm going to give you an opportunity to go through each and
7 every one of the defendants and to ensure that there's a good
8 faith basis consistent with Rule 11 for naming them.

9 And if you want to refile your motion, I'll be happy
10 to address it then. At that time I'm going to go through every
11 single defendant with you, and you're going to have to give me
12 a good faith basis for every one.

13 And I'm going to need to have live testimony.
14 Someone's going to have to take the stand subject to the
15 penalties of perjury and discuss for me the process that the
16 parties went through to include defendants and to entitle them
17 to an *ex parte* relief.

18 Hang on. I'm almost done. I'm almost done. If I'm
19 not convinced that the refiled motion is -- was filed
20 consistent with Rule 11, then I'm going to have an order to
21 show cause, okay? If, after going through the process, you
22 want to voluntarily dismiss the case or you want to change the
23 scope of the case, that's up to you.

24 But I'm going to give you an opportunity, denying the
25 motions today. I'm going to set the case for status. In

1 between now and the next court date, I expect either a
2 stipulation of dismissal or another motion that you think can
3 withstand that process, okay?

4 MR. HOLMES: Understood.

5 What I was going to suggest, your Honor, is that --
6 that individual who has assisted with the review of these
7 domains and identified as plaintiff's expert witness who has
8 submitted declarations in support of the original TRO is
9 present in court today should your Honor want to take that
10 opportunity to discuss some of the due diligence that was
11 conducted prior to the initiation of this.

12 THE COURT: Counsel, I'm doing this for your benefit.
13 Because if this was filed in violation of Rule 11, you're the
14 one who's going to have to deal with it. And it's the part of
15 my job I hate the most.

16 But I've had occasions unfortunately where attorneys
17 filed something and they didn't take upon themselves, as
18 individual advocates, officers of the Court, to comply with the
19 requirements of Rule 11.

20 And I've had to incarcerate people. I've had to issue
21 fines in excess of \$100,000, and I hate that. But that's part
22 of my job, and I do it because I have to.

23 I don't think you want me to do an inquiry of your
24 expert until you have an opportunity to check it yourself,
25 okay? So that's to your benefit.

1 So how long do you need to go through your complaint
2 and do a due diligence for Rule 11 so that when I do my
3 inquiry, that we're not going to have any issues? Because I
4 really don't want any issues, okay?

5 But right now, the red flags are all over this file,
6 okay? And the scope of this case is pretty broad, and it's not
7 appropriate for an *ex parte* proceeding. How long do you need?

8 MR. HOLMES: Two weeks should be sufficient, your
9 Honor.

10 THE COURT: Okay. Gloria, give me a date two weeks
11 out.

12 THE CLERK: Wednesday, February 24. Judge, did you
13 want to set it for a particular time?

14 THE COURT: Do we have anything at the 10:30 call?

15 THE CLERK: No, Judge.

16 THE COURT: Let's put it at the 10:30 call. Is that a
17 good date for you, Counsel, first of all?

18 MR. HOLMES: Going back, I know I said two weeks from
19 now. Would it be permissible for your Honor to have four
20 weeks?

21 THE COURT: Yeah.

22 MR. HOLMES: Okay.

23 THE COURT: As much time as you need. Because I want
24 to make sure it's done right. I don't want any issues is what
25 I'm trying to tell you.

1 Gloria, give me a date four weeks out.

2 THE CLERK: Wednesday, March 16th at 10:00 a.m.

3 THE COURT: Is that good for you, Counsel?

4 MR. HOLMES: Yes, it is, your Honor.

5 THE COURT: Okay, great. Anything else I need to
6 address today?

7 MR. HOLMES: No.

8 THE COURT: Okay, great. Thank you, Counsel.

9 MR. HOLMES: Thank you, Judge.

10 (Concluded at 10:18 a.m.)

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12 C E R T I F I C A T E

13 I certify that the foregoing is a correct transcript of the
14 record of proceedings in the above-entitled matter.

15

16 /s/ LISA H. BREITER
17 LISA H. BREITER, CSR, RMR, CRR
18 Official Court Reporter

February 26, 2016

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