

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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AMERICAN BRIDAL AND PROM)	Docket No. 16 C 00023
INDUSTRY ASSOCIATION, INC.,)	
ALLURE BRIDALS, INC., ALYCE)	
DESIGNS, INC., JOVANI FASHION,)	
LTD., LA FEMME BOUTIQUE, INC.,)	
MON CHERI BRIDALS, LLC, MORI)	
LEE, LLC, NEXT CENTURY)	
PRODUCTIONS, INC. d/b/a SYDNEY'S)	
CLOSET, and PROMGIRL, LLC,)	
)	
Plaintiffs,)	Chicago, Illinois
)	March 16, 2016
v.)	10:20 a.m.
)	
SHEN CHEN, et al.,)	
)	
Defendants.)	

TRANSCRIPT OF PROCEEDINGS - Preliminary Injunction Hearing
BEFORE THE HONORABLE JOHN ROBERT BLAKEY

APPEARANCES:

For the Plaintiffs: MR. RICHARD J. HOLMES
818 Water Wheel Court
Charlotte, NC 28209

Court Reporter: LISA H. BREITER, CSR, RMR, CRR
Official Court Reporter
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1 (In open court.)

2 THE CLERK: 16 C 23, American Bridal vs. The
3 Partnerships.

4 (Court and clerk conferring.)

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

7 THE COURT: How are you, sir?

8 MR. HOLMES: Good. Thank you.

9 THE COURT: We're here on your motion for preliminary
10 injunction. I have the materials that you submitted.

11 Do you have any additional exhibits, evidence,
12 testimony or argument?

13 MR. HOLMES: We believe the declarations and exhibits
14 speak for themselves, your Honor.

15 THE COURT: Okay. What's the basis for personal
16 jurisdiction over I believe in excess of 3,000 potential
17 defendants; is that correct?

18 MR. HOLMES: Personal jurisdiction exists, your Honor,
19 by virtue of each one of the defendant domains offering for
20 sale a counterfeit product that either infringes upon the
21 trademarks of the plaintiffs or the copyrighted images of the
22 plaintiffs.

23 That act, the offer for sale of a counterfeit product,
24 is a tortious act. And by virtue of that offer for sale, you
25 then are subjected to the Illinois long-arm statute that

1 confers personal jurisdiction on those defendants.

2 A case that discussed this issue specifically in this
3 jurisdiction was *Monster Energy Company v. Chen Wensheng*.
4 That's case No. 15 C V 4166, and the opinion and judgment is
5 Docket No. 105.

6 From that decision, the Court held, "An offer to sell
7 a counterfeit product by displaying photos and inviting
8 potential purchasers to place an order through an internet
9 store constitutes tortious activity in Illinois sufficient to
10 establish personal jurisdiction."

11 The Court went on to say that, "Defendants need not
12 complete a sale to imbue Illinois courts with personal
13 jurisdiction."

14 THE COURT: Do you have anything other than that for a
15 basis of personal jurisdiction?

16 MR. HOLMES: We think that's the leading court case in
17 this jurisdiction, your Honor.

18 THE COURT: That's a no, right? That's the only
19 support you have for it?

20 MR. HOLMES: That and the other support cited in the
21 memorandum of law in support of both the preliminary injunction
22 and the *ex parte* motion for temporary restraining order.

23 THE COURT: All right. So let me give you a
24 hypothetical based on the more than 3,000 potential defendants
25 in this case.

1 If I was operating a business in England and simply
2 put my wares for sale, whether they're infringing or not,
3 whether it was copyright or trademark or not, and simply put it
4 on the internet, would that be sufficient minimum contacts
5 because a person could access that website from Illinois?

6 MR. HOLMES: Well, I think the phrase that's important
7 to that hypothetical scenario, your Honor, is a potential
8 consumer accessing, having access to a website. And our
9 position is not -- is that is not that simply having access to
10 a website confers personal jurisdiction. It's the offering for
11 sale of a counterfeit product in conjunction with --

12 THE COURT: Listen to my question and my hypothetical.
13 I have a website which can be accessed, and on the website, I
14 offer things for sale.

15 Is that sufficient in your view to establish personal
16 jurisdiction over my business in London?

17 MR. HOLMES: If that website is using the plaintiff's
18 trademarks or copyrighted images and makes it clear that they
19 have the ability to ship globally --

20 THE COURT: All right. You've changed my
21 hypothetical. Let me do that. I will take payments by eBay or
22 Paypal and I can mail it to anywhere in the world.

23 Is that enough now to have personal jurisdiction over
24 my website in London?

25 MR. HOLMES: Under the *Monster Energy* case and other

1 opinions of this courts, yes, it is.

2 THE COURT: With no other facts or other defendant
3 connections to here in Illinois?

4 MR. HOLMES: That's correct.

5 THE COURT: Okay. All right. The motion's going to
6 be denied. I'm going to issue a written order to that effect.

7 Gloria, give me a status date 30 days out.

8 THE CLERK: April 14th at 9:45.

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

10 MR. HOLMES: It is, your Honor.

11 At this point we're kind of at an odd situation in
12 this case in that no other defendants have appeared. There's
13 no other real relief that the plaintiffs can seek other than a
14 default judgment.

15 THE COURT: In order to get a default judgment, you're
16 going to have to get proper service and establish jurisdiction.
17 So in order for you to get a default judgment, you're going to
18 have to actually establish jurisdiction and show a basis of
19 jurisdiction. So what you do next is going to be up to you.
20 But I'm going to issue a written order.

21 All right. We're set for status on April 14th at
22 9:45. Thank you, Counsel.

23 MR. HOLMES: Thank you, Judge.

24 (Concluded at 10:26 a.m.)

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C E R T I F I C A T E

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

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

March 21, 2016