

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-cv-61803-BLOOM/Valle

ABS-CBN CORPORATION, *et al.*,

Plaintiffs,

vs.

MOVIEONLINE.IO, *et al.*,

Defendants.

/

**ORDER GRANTING PLAINTIFFS' EX PARTE APPLICATION FOR
ENTRY OF TEMPORARY RESTRAINING ORDER AND
SETTING HEARING ON MOTION FOR PRELIMINARY INJUNCTION**

THIS CAUSE is before the Court upon Plaintiffs' *Ex Parte* Application for Entry of Temporary Restraining Order and Preliminary Injunction (the "Application for Temporary Restraining Order"), ECF No. [5], dated September 19, 2017. The Court has carefully considered the Application for Temporary Restraining Order, the record in this case, and the applicable law, and is otherwise fully advised.

By the instant Application, Plaintiffs, ABS-CBN Corporation, ABS-CBN Film Productions, Inc., d/b/a Star Cinema, and ABS-CBN International ("Plaintiffs") move, *ex parte*, pursuant to 15 U.S.C. § 1116, 17 U.S.C. § 502(a), Federal Rule of Civil Procedure 65, and The All Writs Act, 28 U.S.C. § 1651(a), for entry of a temporary restraining order against Defendants,¹ and upon expiration of the temporary restraining order, a preliminary injunction against Defendants, for alleged violations of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a), and the Copyright Act, 17 U.S.C. § 101 *et seq.* Because Plaintiffs have satisfied the requirements

¹ Defendants are the Individuals, Partnerships, and Unincorporated Associations identified on Schedule "A" hereto (collectively "Defendants").

Case No. 17-cv-61803-BLOOM/Valle

for the issuance of a temporary restraining order, the Court grants Plaintiffs' Application for Temporary Restraining Order.

I. FACTUAL BACKGROUND²

Plaintiff ABS-CBN International is the registered owner of the following trademarks registered on the Principal Register of the United States Patent and Trademark Office (collectively, the "ABS-CBN Registered Marks"):

<u>Trademark</u>	<u>Registration Number</u>	<u>Registration Date</u>	<u>Class/Services</u>
ABS-CBN	2,334,131	March 28, 2000	IC 036 – telephone calling card services IC 038 – Television broadcasting services via satellite and cable
TFC	3,733,072	Jan. 5, 2010	IC 038 – Television broadcasting services via satellite and cable IC 041 – Production and programming of television shows, entertainment and a variety of programming distributed over television, satellite and via a global computer network

See Declaration of Elisha J. Lawrence, ECF No. [5-1] at 5; ECF No. [1-2] (containing Certificates of Registrations for the ABS-CBN Registered Marks at issue). ABS-CBN Registered Marks are used in connection with the creation and distribution of quality entertainment content in the categories identified above. See Declaration of Elisha J. Lawrence, ECF No. [5-1] at 4-5.

² The factual background is taken from Plaintiffs' Complaint, ECF No. [1], Plaintiffs' Application for Temporary Restraining Order, ECF No. [5], and supporting evidentiary submissions. Plaintiffs filed declarations and exhibits annexed thereto in support of their Application for Temporary Restraining Order. The declarations are available in the docket at the following entries: Declaration of Elisha J. Lawrence, ECF No. [5-1], and Declaration of Christine Ann Daley, ECF No. [5-2].

Case No. 17-cv-61803-BLOOM/Valle

Plaintiff ABS-CBN International is further the owner of all rights in and to the following common law trademark (the “ABS-CBN Common Law Mark”):



See Declaration of Elisha J. Lawrence, ECF No. [5-1] at 6. The ABS-CBN Common Law Mark is used in connection with the creation and distribution of quality entertainment content. *See* Declaration of Elisha J. Lawrence, ECF No. [5-1] at 6. Together, the ABS-CBN Registered Marks and the ABS-CBN Common Law Mark are referred to as the “ABS-CBN Marks.” Plaintiffs ABS-CBN Corporation, ABS-CBN Film Productions, Inc., and ABS-CBN International share exclusive rights in and to the ABS-CBN Marks. Moreover, ABS-CBN Corporation, ABS-CBN Film Productions, Inc., and ABS-CBN International are all licensed to use and enforce the ABS-CBN Marks. *See* Declaration of Elisha J. Lawrence, ECF No. [5-1] at 6.

Plaintiff ABS-CBN Film Productions, Inc. is the owner of the registered copyrights in and to the movies specifically identified in Exhibit 2 to the Complaint, ECF No. [1-2]. *See* Declaration of Elisha J. Lawrence, ECF No. [5-1] at 4. Moreover, Plaintiff ABS-CBN Corporation is the owner of many unregistered copyrights, including but not limited to those specifically identified in paragraph 25 of the Complaint and in Exhibit 4 thereto, ECF Nos. [1-5] through [1-7]. *See* Declaration of Elisha J. Lawrence, ECF No. [5-1] at 4. Collectively, these registered and unregistered copyrighted works are referred to herein as the “Copyrighted Works.” ABS-CBN Corporation, ABS-CBN Film Productions, and ABS-CBN International all

Case No. 17-cv-61803-BLOOM/Valle

share exclusive rights in and to the Copyrighted Works. *See* Declaration of Elisha J. Lawrence, ECF No. [5-1] at 4.

Defendants, through the various fully accessible Internet websites and supporting domains operating under their domain names identified on Schedule “A” hereto (the “Subject Domain Names”) and via certain social media profiles, have advertised, promoted, offered for distribution, distributed and/or publicly performed the Copyrighted Works under what Plaintiffs have determined to be counterfeits, infringements, reproductions, and/or colorable imitations of the ABS-CBN Marks. *See* Declaration of Elisha J. Lawrence, ECF No. [5-1] at 12-15; *see also* Declaration of Christine Ann Daley, ECF No. [5-2] at 2-3; and Exhibits 3, 4, and 5 of the Complaint, ECF Nos. [1-4], [1-5] through [1-7], and [1-8].

Although each Defendant may not copy and infringe each of Plaintiffs’ trademarks for each category of services protected, Plaintiffs have submitted sufficient evidence showing each Defendant has infringed, at least, one or more of the ABS-CBN Marks and the Copyrighted Works at issue. *See* Declaration of Elisha J. Lawrence, ECF No. [5-1] at 12-15, Exhibits 3, 4, and 5 to the Complaint, ECF Nos. [1-4], [1-5] through [1-7], and [1-8]. Defendants are not now, nor have they ever been, authorized or licensed to use, reproduce, or make counterfeits, reproductions, or colorable imitations of the of the ABS-CBN Marks and/or perform or distribute the Copyrighted Works. *See* Declaration of Elisha J. Lawrence, ECF No. [5-1] at 12-15.

Plaintiffs’ representative reviewed and visually inspected the Internet websites operating under the Subject Domain Names or the web page captures of the Subject Domain Names, and determined the distribution services offered by Defendants were not genuine or authorized distribution services of Plaintiffs’ Copyrighted Works. *See* Declaration of Elisha J. Lawrence, ECF No. [5-1] at 13-15.

Case No. 17-cv-61803-BLOOM/Valle

II. LEGAL STANDARD

To obtain a temporary restraining order, a party must demonstrate “(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that the entry of the relief would serve the public interest.” *Schiavo ex. rel Schindler v. Schiavo*, 403 F.3d 1223, 1225-26 (11th Cir. 2005); *see also Levi Strauss & Co. v. Sunrise Int’l. Trading Inc.*, 51 F.3d 982, 985 (11th Cir. 1995) (applying the test to a preliminary injunction in a Lanham Act case). Additionally, a court may only issue a temporary restraining order without notice to the adverse party or its attorney if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition [and] (B) the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b). *Ex parte* temporary restraining orders “should be restricted to serving their underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing and no longer.” *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cty.*, 415 U.S. 423, 439 (1974).

III. ANALYSIS

The declarations Plaintiffs submitted in support of their Application for Temporary Restraining Order support the following conclusions of law:

A. Plaintiffs have a strong probability of proving at trial that consumers are likely to be confused by Defendants’ advertisement, promotion, distribution and public performance of the Copyrighted Works using counterfeits, reproductions, and/or colorable imitations of the

Case No. 17-cv-61803-BLOOM/Valle

ABS-CBN Marks, and that the services Defendants are offering and promoting are unauthorized distribution services using the ABS-CBN Marks;

B. Because of the infringement of the ABS-CBN Marks and Copyrighted Works, Plaintiffs are likely to suffer immediate and irreparable injury if a temporary restraining order is not granted. It clearly appears from the following specific facts, as set forth in Plaintiffs' Complaint, Application for Temporary Restraining Order, and accompanying declarations on file, that immediate and irreparable loss, damage, and injury will result to Plaintiffs and to consumers before Defendants can be heard in opposition unless Plaintiffs' request for *ex parte* relief is granted:

1. Defendants own or control Internet websites, domain names, or businesses which advertise, promote, and/or offer distribution services using counterfeit and infringing trademarks and infringe the Copyrighted Works in violation of Plaintiffs' rights;

2. There is good cause to believe that Defendants will continue to violate Plaintiffs' intellectual property rights and offer more distribution services of copyrighted content under counterfeit and infringing versions of Plaintiffs' trademarks; that consumers are likely to be misled, confused, or disappointed by the quality of these services; and that Plaintiffs may suffer loss of sales for their genuine services and an unnatural erosion of the legitimate marketplace in which they operate; and

3. There is good cause to believe that if Plaintiffs proceed on notice to Defendants of this Application for Temporary Restraining Order, Defendants can easily and quickly transfer the registrations for many of the Subject Domain Names, or modify registration data and content, change hosts, and redirect consumer traffic to other websites, corresponding website URLs, thereby thwarting Plaintiffs' ability to obtain meaningful relief.

Case No. 17-cv-61803-BLOOM/Valle

C. The balance of potential harm to Defendants in restraining their trade in counterfeit and infringing branded services if a temporary restraining order is issued is far outweighed by the potential harm to Plaintiffs, their reputations, and goodwill as a manufacturer and distributor of quality entertainment content if such relief is not issued; and

D. The public interest favors issuance of the temporary restraining order to protect Plaintiffs' trademark and copyright interests and protect the public from being defrauded by the palming off of counterfeit services as Plaintiffs' genuine services.

IV. CONCLUSION

Accordingly, after due consideration, it is **ORDERED AND ADJUDGED** that Plaintiffs' Application for Temporary Restraining Order **ECF No. [5]**, is **GRANTED** as follows:

(1) Each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order are temporarily restrained:

- a. From advertising, promoting, copying, broadcasting, publicly performing, and/or distributing any of the Plaintiffs' content or copyrighted works, including but not limited to those works specifically identified in paragraph 25 of the Complaint, Exhibit 2 to the Complaint, ECF No. [1-3], and/or Exhibit 4 to the Complaint, ECF Nos. [1-5] through [1-7];
- b. From advertising, promoting, offering, distributing, using, and/or causing to be advertised, promoted, offered and/or distributed, any services using the ABS-CBN Marks, or any confusingly similar trademarks, other than those actually offered or distributed by Plaintiffs; and
- c. From secreting, concealing, destroying, selling off, transferring, or otherwise disposing of: (i) any evidence relating to the promotion, advertisement, and/or distribution of services or copyrighted content bearing or under the ABS-CBN Marks, or any confusingly similar trademarks or public performances or distributions of Plaintiffs' Copyrighted Works.

Case No. 17-cv-61803-BLOOM/Valle

(2) Each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order shall immediately discontinue the use of the ABS-CBN Marks or any confusingly similar trademarks, on or in connection with all Internet websites, social media profiles, domain names, or businesses owned and operated, or controlled by them, including the Internet websites operating under the Subject Domain Names;

(3) Each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order shall immediately discontinue the use of the ABS-CBN Marks, or any confusingly similar trademarks within domain name extensions, metatags or other markers within website source code, from use on any webpage (including as the title of any web page), from any advertising links to other websites, from search engines' databases or cache memory, and any other form of use of such terms which is visible to a computer user or serves to direct computer searches to websites registered, owned, or operated by each Defendant, including the Internet websites operating under the Subject Domain Names;

(4) Each Defendant shall not transfer ownership of the Subject Domain Names during the pendency of this Action, or until further Order of the Court;

(5) The domain name Registrars for the Subject Domain Names are directed to transfer to Plaintiffs' counsel, for deposit with this Court, domain name certificates for the Subject Domain Names;

(6) Upon Plaintiffs' request, the privacy protection service for any of the Subject Domain Names for which the registrant uses such privacy protection service to conceal the

Case No. 17-cv-61803-BLOOM/Valle

registrant's identity and contact information are ordered to disclose to Plaintiffs the true identities and contact information of those registrants;

(7) Upon entry of this Order, Plaintiffs shall provide a copy of the Order by e-mail to the registrar of record for each of the Subject Domain Names. Upon receipt of the Order, the registrar of record of each for the Subject Domain Names shall immediately lock each of the Subject Domain Names; shall notify each registrant of record of the Order; and shall provide notice of the locking of the domain name to the registrant of record. After providing such notice to the registrars so the domain names may be locked, Plaintiffs shall also provide notice and a copy of this Order to the registrant for each Subject Domain Name via e-mail to the e-mail address provided as part of the domain registration data for each of the Subject Domain Names identified in the Application for Temporary Restraining Order. If an e-mail address was not provided as part of the domain registration data for a Subject Domain Name, Plaintiffs shall provide notice and a copy of this Order to the operators of the Internet websites via an onsite e-mail address and/or online contact form provided on the Internet websites operating under such Subject Domain Names. **Forty-eight (48) hours after e-mailing this Order to the registrars of record and the registrants**, Plaintiffs shall provide a copy of this Order to the registrars and the registries for the Subject Domain Names for the purposes described in Paragraph 8, below;

(8) The domain name registrars for the Subject Domain Names shall immediately assist in changing the registrar of record for the Subject Domain Names, to a holding account with a registrar of Plaintiffs' choosing (the "New Registrar"), excepting any such domain names which such registrars have been notified in writing by Plaintiffs have been or will be dismissed from this action, or as to which Plaintiffs have withdrawn their request to immediately transfer such domain names. To the extent the registrars do not assist in changing the registrars of record

Case No. 17-cv-61803-BLOOM/Valle

for the domains under their respective control within **one (1) business day** of receipt of this Order, the top-level domain (TLD) registries for the Subject Domain Names, or their administrators, including backend registry operators or administrators, within **five (5) business days** of receipt of this Order, shall change, or assist in changing, the registrar of record for the Subject Domain Names to a holding account with the New Registrar, excepting any such domain names which such registries have been notified in writing by Plaintiffs have been or will be dismissed from this action, or as to which Plaintiffs have withdrawn its request to immediately transfer such domain names. Upon the change of the registrar of record for the Subject Domain Names, the New Registrar will maintain access to the Subject Domain Names in trust for the Court during the pendency of this action. Additionally, the New Registrar shall immediately institute a temporary 302 domain name redirection which will automatically redirect any visitor to the Subject Domain Names to the following Uniform Resource Locator (“URL”) <http://servingnotice.com/B4YKI1/index.html> whereon copies of the Complaint, this Order, and all other documents on file in this action are displayed. Alternatively, the New Registrar may update the Domain Name System (“DNS”) data it maintains for the Subject Domain Names, which link the domain names to the IP addresses where their associated websites are hosted, to NS1.MEDIATEMPLE.NET and NS2.MEDIATEMPLE.NET, which will cause the domain names to resolve to the website where copies of the Complaint, this Order, and all other documents on file in this action are displayed. After the New Registrar has effected this change, the Subject Domain Names shall be placed on lock status, preventing the modification or deletion of the domains by the New Registrar or Defendants;

(9) Each Defendant shall preserve copies of all computer files relating to the use of any of the Subject Domain Names and shall take all steps necessary to retrieve computer files

Case No. 17-cv-61803-BLOOM/Valle

relating to the use of the Subject Domain Names that may have been deleted before the entry of this Order;

(10) This Order shall remain in effect until the ruling on Plaintiffs' Motion for Preliminary Injunction, or until such further dates as set by the Court or stipulated to by the parties;

(11) This Order shall apply to the Subject Domain Names, associated websites, and any other domain names, websites, and corresponding websites' URLs properly brought to the Court's attention and verified by sworn affidavit that such new domain names are being used by Defendants for the purpose of counterfeiting the ABS-CBN Marks, infringing the Copyrighted Works, or unfairly competing with Plaintiffs on the World Wide Web;

(12) As a matter of law, this Order shall no longer apply to any Defendant or associated domain name dismissed from this action, or as to which Plaintiffs have withdrawn their request for a temporary restraining order;

(13) Pursuant to 15 U.S.C. § 1116(d)(5)(D) and Federal Rule of Civil Procedure 65(c), Plaintiffs shall post a bond in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00), as payment of damages to which Defendants may be entitled for a wrongful injunction or restraint, during the pendency of this action, or until further Order of the Court. In the Court's discretion, the bond may be subject to increase should an application be made in the interest of justice;

(14) **A court hearing is set before this Court in the United States Courthouse located at 400 North Miami Avenue, Miami, Florida 33128, Courtroom 10-2, on Tuesday, October 3, 2017, at 1:15 p.m., at which time Defendants or any other affected persons may**

Case No. 17-cv-61803-BLOOM/Valle

challenge the appropriateness of this Order and move to dissolve the same and at which time the Court will hear argument on Plaintiffs' requested preliminary injunction;

(15) Plaintiffs shall serve copies of the Complaint, the Application for Temporary Restraining Order, and this Order on each Defendant by e-mail as described above and by posting copies of the Complaint, Application for Temporary Restraining Order, and this Order, and all other pleadings and documents filed in this action on the website located at <http://servingnotice.com/B4YKII/index.html>³ within forty-eight (48) hours of control of the Subject Domain Names being changed to the Court via the New Registrar's holding account, and such notice so given shall be deemed good and sufficient service thereof. Plaintiffs shall continue to provide notice of these proceedings and copies of the documents on file in this matter to Defendants by regularly updating the website located at <http://servingnotice.com/B4YKII/index.html> or by other means reasonably calculated to give notice which is permitted by the Court.

(16) **Any response or opposition** to Plaintiffs' Motion for Preliminary Injunction must be filed and served on Plaintiffs' counsel forty-eight (48) hours prior to the hearing set for **Tuesday, October 3, 2017, at 1:15 p.m.**, and filed with the Court, along with Proof of Service. Plaintiffs shall file any **Reply Memorandum** twenty-four (24) hours prior to the hearing set for **Tuesday, October 3, 2017, at 1:15 p.m.** The above dates may be revised upon stipulation by all parties and approval of this Court. **Defendants are hereby on notice that failure to appear at the hearing may result in the imposition of a preliminary injunction against them pursuant**

³ In this Circuit, Rule 65, has been interpreted to require that a party have notice of the motion and hearing; perfecting service on a defendant is not a prerequisite to the entry of a preliminary injunction order. *See Corrigan Dispatch Co. v. Casa Guzman, S.A.*, 569 F.2d 300, 302 (5th Cir. 1978); *Diamond Crystal Brands, Inc. v. Wallace*, 531 F. Supp. 2d 1366, 1370-71 (N.D. Ga. 2008).

Case No. 17-cv-61803-BLOOM/Valle

to 15 U.S.C. § 1116(d), 17 U.S.C. § 502(a), The All Writs Act, 28 U.S.C. § 1651(a), Federal Rule of Civil Procedure 65, and this Court's inherent authority.

(17) The Clerk is directed to **UNSEAL** all docket entries in this case.

DONE AND ORDERED in Miami, Florida, this 19th day of September, 2017.

A handwritten signature in black ink, appearing to be 'JB' with a long horizontal stroke extending to the right.

BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:

Counsel of Record

Case No. 17-cv-61803-BLOOM/Valle

SCHEDULE "A"
DEFENDANTS BY NUMBER AND SUBJECT DOMAIN NAME

Def. No.	Subject Domain Name
1	movieonline.io
2	1movies.tv
3	gomovies.es
4	123movieshd.us
5	4k-movie.us
6	desitvflix.net
7	globalpinoymovies.com
8	icefilms.ws
9	jhonagemini.com
10	lambinganph.info
11	mrkdrama.com
12	newasiantv.me
13	onlinefullmovie.me
14	pariwiki.net
15	pinoychannel.live
16	pinoychannel.mobi
17	pinoyfullmovies.net
18	pinoyhdtorrent.com
19	pinoylibangandito.pw
20	pinoymoviepedia.ch
21	pinoysharetv.com
22	pinoytambayanhd.com
23	pinoyteleseryerewind.info
24	philnewsnetwork.com
25	pinoytvrewind.info
26	pinoytater.com
27	subenglike.com
28	tambayantv.org
29	teleseryi.com
30	thepinoy1tv.com
31	thepinoychannel.com
32	tvbwiki.com
33	tvnaa.com

Case No. 17-cv-61803-BLOOM/Valle

Def. No.	Subject Domain Name
34	urpinoytv.com
35	vikiteleserye.com
36	viralsocialnetwork.com
37	watchpinoymoviesonline.com
38	pinoysteleserye.xyz
39	pinoytambayan.world
40	lambingan.lol
41	123movies.film
42	putlockerm.live
43	yonip.zone
43	yonipzone.rocks