

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-61002-CIV-DIMITROULEAS/SNOW

ABS-CBN INTERNATIONAL CORPORATION, *et al.*,

Plaintiffs,

vs.

FREEPINOYCHANNEL.COM, *et al.*,

Defendants.

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**ORDER GRANTING *EX PARTE* APPLICATION FOR ENTRY OF
TEMPORARY RESTRAINING ORDER**

THIS CAUSE came before the Court on Plaintiffs' *Ex Parte* Application for Entry of Temporary Restraining Order and Preliminary Injunction (the "Application") [DE6]. The Court has carefully reviewed the Application and the record and is otherwise fully advised in the premises.

By the instant Application, Plaintiffs, ABS-CBN Corporation, ABS-CBN Film Productions, Inc. d/b/a Star Cinema, and ABS-CBN International Corporation ("ABS-CBN" or "Plaintiffs"), move *ex parte*, for entry of a temporary restraining order against Defendants, the Individuals, Partnerships and Unincorporated Associations identified on Schedule "A" hereto and Does 1-100 (collectively, "Defendants") pursuant to 15 U.S.C. § 1116, 17 U.S.C. § 502(a) Fed. R. Civ. P. 65, and The All Writs Act, 28 U.S.C. § 1651(a).

For reasons set forth herein, Plaintiffs' *Ex Parte* Application for Temporary Restraining Order [DE6] is **GRANTED**.

I. Factual Background¹

Plaintiffs promote, distribute, advertise, offer to sell, and sell in interstate commerce, including within this district, quality television and movie broadcasting services under multiple federally registered trademarks. (See Declaration of Elisha J. Lawrence in Support of Plaintiffs' Application for Temporary Restraining Order ["Lawrence Decl."] ¶ 5.) Plaintiff ABS-CBN Corporation is the owner of the registered copyrights in and to the TV shows identified in Exhibit 2 to the Complaint and Plaintiff ABS-CBN Film Productions, Inc. is the owner of the registered copyrights in and to the movies identified in Exhibit 2 to the Complaint [DE 1-3]. (See Lawrence Decl. ¶ 4.) Moreover, Plaintiff ABS-CBN Corporation is the owner of the unregistered copyrights in and to the movies and TV shows identified in Exhibits 3 and 4 of the Complaint [DE 1-4 and DE 1-5] (collectively, the "Copyrighted Works"). (See Lawrence Decl. ¶ 4.) ABS-CBN Corporation, ABS-CBN International Corporation, and ABS-CBN Film Productions, Inc. all share exclusive rights in and to the ABS-CBN Copyrighted Works. (See Lawrence Decl. ¶ 4.)

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

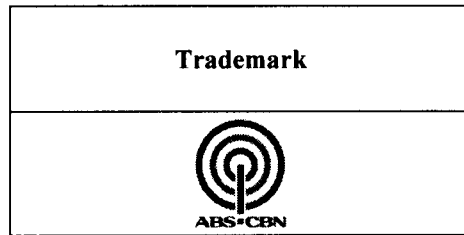
Trademark	Registration Number	Registration Date	Class / Services
ABS-CBN	2,334,131	March 28, 2000	IC 038 – television broadcasting services via satellite and cable.
THE FILIPINO CHANNEL	1,994,383	Aug. 20, 1996	IC 038 – Cable television broadcast. IC 041 – television show production and programming.

¹ The factual background is taken from Plaintiffs' Complaint, *Ex Parte* Application for Temporary Restraining Order, and supporting Declarations submitted by Plaintiffs.

TFC	3,733,072	Jan. 5, 2010	IC 038 – Cable television broadcast. IC 041 – television show production and programming.
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The ABS-CBN Marks are used in connection high quality services in the categories identified above. (See Lawrence Decl. ¶ 5; see also United States Trademark Registrations of the ABS-CBN Registered Marks at issue attached as Exhibit 1 to the Complaint, DE 1-2.)

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



(See Lawrence Decl. ¶ 6.) The ABS-CBN Common Law Trademark is used in connection with high quality services, including broadcasting distribution services. (See Lawrence Decl. ¶ 6.) Together, the ABS-CBN Registered Marks and the ABS-CBN Common Law Mark are referred to herein as the “ABS-CBN Marks.” ABS-CBN Corporation and ABS-CBN Film Productions, Inc. share exclusive rights in and to the ABS-CBN Marks with ABS-CBN International Corporation. Moreover, ABS-CBN Corporation and ABS-CBN Film Productions, Inc. are licensed to use and enforce the ABS-CBN Marks. (See Lawrence Decl. ¶ 6.)

Defendants, through the fully interactive Internet websites operating under the domain names identified on Schedule “A” hereto (the “Subject Domain Names”) have advertised, promoted, offered for distribution, distributed or performed the Copyrighted Works under counterfeits, infringements, reproductions, or colorable imitations of the ABS-CBN Marks. (See

Lawrence Decl. ¶¶ 12-15; Declaration of Stephen M. Gaffigan in Support of Plaintiffs' Application for Temporary Restraining Order ¶ 2.)

Plaintiffs have submitted sufficient evidence showing Defendants have infringed the ABS-CBN Marks and Copyrighted Works at issue. (*See* Lawrence Decl. ¶¶ 12-15.) Defendants are not now, nor have they ever been, authorized or licensed to use, reproduce, or make counterfeits, reproductions, and/or colorable imitations of the ABS-CBN Marks or distribute, reproduce and/or publically perform the Copyrighted Works. (*See* Lawrence Decl. ¶¶ 12, 14-15.) Plaintiffs' representative, Ms. Elisha J. Lawrence, personally examined Defendants' websites operating under the Subject Domain Names offering broadcasting distribution services using the ABS-CBN Marks and determined that neither Defendants nor their websites were authorized by ABS-CBN to reproduce, distribute or publically perform the Copyrighted Works or use the ABS-CBN Marks. (*See* Lawrence Decl. ¶¶ 12, 14-15.)

II. Legal Standard

In order to obtain a temporary restraining order, a party must demonstrate “(1) [there is] 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. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cnty, etc.*, 415 U.S. 423, 439 (1974).

III. Conclusions of Law

The declarations Plaintiffs submitted in support of their *Ex Parte* 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 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. The following specific facts, as set forth in Plaintiffs’ Complaint, Application for Temporary Restraining Order, and accompanying declarations, demonstrate 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 the Internet websites, domain names, or businesses which advertise, promote, and offer broadcasting distribution services using counterfeit and infringing trademarks and infringing 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.

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, thereby thwarting Plaintiffs' ability to obtain meaningful relief.

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 reputation, and goodwill as a manufacturer and distributor of quality services and entertainment content if such relief is not issued.

D. The public interest favors issuance of the temporary restraining order in 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.

Upon review of Plaintiffs' Complaint, *Ex Parte* Application for Temporary Restraining Order, and supporting evidentiary submissions, it is hereby

ORDERED that Plaintiffs' *Ex Parte* Application for Temporary Restraining Order [DE 6] is **GRANTED**, according to the terms set forth below:

TEMPORARY RESTRAINING ORDER

(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 hereby temporarily restrained:

- a. From advertising, promoting, performing, copying, broadcasting, performing, and/or distributing any of the Plaintiffs' content or copyrighted works;
- b. From advertising, promoting, offering, using, or causing to be advertised, promoted, or offered, 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 any evidence relating to the promotion, advertisement or distribution of services bearing or under the ABS-CBN Marks, or any confusingly similar trademarks.

(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, any confusingly similar trademarks, and performances of the ABS-CBN Copyrighted Works, on or in connection with all Internet websites 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 by, 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 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 for each of 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 of 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 submission forms provided on the Internet websites operating under such Subject Domain Names. Forty-eight 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 for the domains under their respective control within one business day of receipt of this Order, the top-level domain (TLD) registries (or their administrators) for the Subject Domain Names, within five 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 their 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/BL4G47/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) Plaintiffs may enter the Subject Domain Names into Google’s Webmaster Tools and cancel any redirection of the domains that have been entered there by Defendants which redirect traffic to the counterfeit operations to a new domain name or website and thereby evade the provisions of this Order;

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

(11) This Order shall remain in effect until the date for the hearing on the Motion for Preliminary Injunction set forth below, or until such further dates as set by the Court or stipulated to by the parties;

(12) This Temporary Restraining Order shall apply to the Subject Domain Names, associated websites, and any other domain names and websites 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 at issue in this action,

performing the ABS-CBN Copyrighted Works, and/or unfairly competing with Plaintiffs on the World Wide Web;

(13) 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;

BOND TO BE POSTED

(14) 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;

PRELIMINARY INJUNCTION


(15) A **hearing** is set before this Court in the United States Courthouse located at 299 East Broward Boulevard, Fort Lauderdale, Florida 33301, Courtroom 205, on **Tuesday, June 16, 2015, at 1:15 p.m.**, at which time Defendants and/or any other affected persons may 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;

(16) Plaintiffs shall serve a copy of the Complaint, the Application for Temporary Restraining Order, and this Order, on each Defendant by e-mail as described above and by posting a copy of the Complaint, the Application for Temporary Restraining Order, this Order, and all other documents on file in this action on the website located at <http://servingnotice.com/BL4G47/index.html> 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/BL4G47/index.html> or by other means reasonably calculated to give notice which is permitted by the Court;

(17) Any response or opposition to Plaintiffs' Motion for Preliminary Injunction must be filed and served on Plaintiffs' counsel by **June 3, 2015**. Plaintiffs shall file any Reply Memorandum on or before **June 10, 2015**. 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 to 15 U.S.C. § 1116(d), 17 U.S.C. § 502(a), Fed. R. Civ. P. 65, and The All Writs Act, 28 U.S.C. § 1651(a), and this Court's inherent authority.

DONE AND ORDERED in Chambers in Fort Lauderdale, Broward County, Florida, this 15th day of May 2015.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies provided to:

Counsel of Record

SCHEDULE "A"
DEFENDANTS BY DEFENDANT NUMBER AND SUBJECT DOMAIN NAME

Defendant Number	Subject Domain Name
1	freepinoychannel.com
2	lambingan.to
3	pinoymovie.to
4	pinoynetwork.to
5	pinoytambayan-replay.com
6	pnoytambayantv.com
7	tambaytayo.com
8	tvnijuan.net
9	phstream.com
10	streampinoy.info
11	tambayanatin.com