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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION

10
11 JACKSON BROWNE, an individual,
12 Plaintiff,

13 v.

14 JOHN MCCAIN, an individual; THE
REPUBLICAN NATIONAL
15 COMMITTEE, a non-profit political
organization; THE OHIO
16 REPUBLICAN PARTY; a non-profit
political organization,

17 Defendants.
18

No. CV08-5334 RGK (Ex)

**DEFENDANT OHIO REPUBLICAN
PARTY'S NOTICE OF MOTION TO
DISMISS COMPLAINT PURSUANT
TO FRCP 12(b)(2), (3) & (6); OR
TRANSFER PURSUANT TO 28
U.S.C. §§ 1404(a) & 1406(a)**

Date: December 8, 2008
Time: 9:00 am
Judge: Hon. R. Gary Klausner
Place: Courtroom 850

19 Jackson Browne v. John McCain Doc. 23
20 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

21 **NOTICE IS HEREBY GIVEN** that on December 8, 2008, at 9:00 a.m., or as
22 soon thereafter as the matter can be heard by the above-entitled court, located at 255
23 East Temple Street, Los Angeles, California, defendant Ohio Republican Party
24 ("ORP") will and hereby does move this Court to dismiss the Complaint filed by
25 plaintiff Jackson Browne ("Browne") pursuant of Federal Rules of Civil Procedure,
26 Rule 12(b)(2), (b)(3) and (b)(6), or in the alternative to transfer the action pursuant to
27 28 U.S.C. § 1404(a) or § 1406(a), and to strike the Fourth Cause of Action alleging
28 state law claims under California Code of Civil Procedure § 425.16 (the "Statute").

1 This Motion follows the conference of counsel pursuant to Central District
2 Local Rule 7-3, which took place on October 6, 2008 and is made on the following
3 grounds:

4 1. The Complaint against the ORP is subject to dismissal under Rule
5 12(b)(2) on the grounds that this Court lacks personal jurisdiction over the ORP. The
6 ORP does not have sufficient minimum contacts with the State of California to confer
7 personal jurisdiction and the maintenance of the suit in California offends “traditional
8 notions of fair play and substantial justice.” *Int’l Shoe Co v. Washington*, 326 U.S.
9 310, 316 (1945).

10 2. The Complaint against the ORP is subject to dismissal under Rule
11 12(b)(3) on the grounds that the Central District of California is the improper venue
12 for this action. The ORP is an unincorporated non-profit entity with its principal place
13 of business in Columbus, Ohio. Civil actions arising under federal copyright laws may
14 be brought “in the district in which the defendant or his agent resides or may be
15 found.” 28 U.S.C. § 1400(a). Proper venue for trademark infringement actions lies in
16 the district where a substantial part of the events constituting infringement occurred.
17 *See* 28 U.S.C. § 1391(b)(2). The ORP does not have sufficient minimum contacts
18 with California or the Central District of California to establish personal jurisdiction.
19 Further, the acts constituting the alleged infringement substantially occurred in Ohio.
20 Thus, venue is improper in the Central District. If the Court is not inclined to dismiss
21 the ORP, the ORP request that the Court transfer this action to the United States
22 District Court for the Southern District of Ohio, Eastern Division, pursuant to 28
23 U.S.C. § 1406(a).

24 3. In the alternative, the ORP request that the Court transfer this entire
25 action to the United States District Court for the Southern District of Ohio, Eastern
26 Division, pursuant to 28 U.S.C. § 1404(a) based upon the convenience of the parties,
27 witnesses, and in the interest of justice.

1 4. Browne's First Cause of Action for Copyright Infringement fails to state a
2 claim upon which relief can be granted under Rule 12(b)(6) because it is barred, as a
3 matter of law, by the fair use doctrine.

4 5. Browne's Third Cause of Action for violation of the Lanham Act § 43(a),
5 15 U.S.C. § 1125(a), fails to state a claim upon which relief can be granted under Rule
6 12(b)(6) for the following reasons: (a) the Lanham Act does not apply to political
7 speech; (b) the claim is barred by the First Amendment "artistic relevance" test.

8 6. Browne's Fourth Cause of Action alleging a common law right of
9 publicity claim under California law fails to state a claim under Rule 12(b)(6) and
10 should be stricken under the Statute. The Political Video constitutes political speech
11 in connection with a public issue, the 2008 presidential elections. Because the Fourth
12 Cause of Action falls within the Statute's scope, the plaintiff bears the burden of
13 establishing through competent and admissible evidence a probability of prevailing on
14 the merits of this claim. C.C.P. § 425.16(b)(1). Browne cannot satisfy his burden for
15 the following reasons: (a) the Political Video is not commercial speech and is within a
16 work that contains matters of "public interest; and, (b) the use of Browne's voice is
17 transformative.

18 This motion will be based on this Notice of Motion and Motion, the
19 Memorandum of Points and Authorities, the Declarations of Jason Mauk and John
20 McClelland, the Request for Judicial Notice together with all papers, records and
21 documents on file herein, and on such other evidence as may be presented to the Court
22 on the hearing on this Motion. The ORP respectfully requests that the Court dismiss
23 the ORP based upon the absence of personal jurisdiction and improper venue, dismiss
24 Browne's Complaint with prejudice, or transfer this action to the Southern District of
25 Ohio, Eastern Division.

26 DATED: November 17, 2008

GRUNSKY, EBEBY, FARRAR & HOWELL

27 By 
28 Rebecca Connolly, Attorneys for Defendant
The Ohio Republican Party