

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IO GROUP, INC.,

Plaintiff,

v.

ANTELOPE MEDIA, LLC,

Defendant

No. C-08-4050 MMC

ORDER DISCHARGING ORDER TO SHOW CAUSE; STRIKING LETTERS FILED BY HERRMANN AND PALICKI; GRANTING PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT; DENYING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION; AFFORDING PLAINTIFF LEAVE TO SUPPLEMENT MISCELLANEOUS ADMINISTRATIVE REQUEST; CONTINUING CASE MANAGEMENT CONFERENCE; VACATING JANUARY 16, 2009 HEARING

Before the Court is plaintiff IO Group, Inc.'s response, filed December 5, 2008, to the Court's November 18, 2008 order to show cause why the instant action should not be dismissed for lack of personal jurisdiction over defendant Antelope Media, Inc. ("Antelope"). Antelope has not filed a reply to plaintiff's response. Also before the Court are plaintiff's "Motion for Leave to File First Amended Complaint," "Motion for Preliminary Injunction," and "Miscellaneous Administrative Request Pursuant to Local Rule 7-11 for Leave to Take Discovery Prior to Rule 26 Conference," each of which was filed December 5, 2008. Antelope has not filed a response to plaintiff's motions or request. Having read

1 and considered the above-described filings, the Court finds the matters suitable for decision
2 on the papers submitted, VACATES the hearing scheduled for January 16, 2009 on
3 plaintiff's motions, and rules as follows:

4 1. Plaintiff has offered evidence sufficient to demonstrate Antelope is an Arizona
5 corporation. (See Sperlein Decl., filed December 5, 2008, ¶ 2, Ex. A.) "A corporation may
6 appear in federal court only through licensed counsel." See United States v. High Country
7 Broadcasting Co., 3 F.3d 1244, 1245 (9th Cir. 1993). Consequently, the two letters signed
8 by M. Herrmann ("Herrmann") and T. Palicki ("Palicki") and filed by the Clerk of the Court
9 on October 23, 2008 and January 5, 2009, respectively, are hereby STRICKEN, for the
10 reason that neither Herrmann nor Palicki is an attorney and, accordingly, neither can make
11 an appearance on behalf of Antelope. In particular, neither Herrmann nor Palicki can
12 assert defenses on behalf of Antelope.¹

13 2. The order to show cause is hereby DISCHARGED, for the reason that Antelope
14 has not filed a response to the complaint, and, accordingly, has not raised a defense of lack
15 of personal jurisdiction.

16 3. Plaintiff's motion for leave to file a First Amended Complaint ("FAC") is hereby
17 granted, for the reason that Antelope, the sole defendant, has not filed a response to the
18 initial complaint. See Fed. R. Civ. P. 15(a). Plaintiff shall file its FAC within ten days of the
19 date of this order.

20 4. To the extent plaintiff's motion for a preliminary injunction is directed at Sunrise
21 Media, Ltd. ("Sunrise"), Herrmann, and Palicki, the motion is hereby DENIED, for the
22 reason that Sunrise, Herrmann, and Palicki are not, at the present time, parties to the

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26 ¹The Honorable Patricia V. Trumbull, to whom the above-titled action was previously
27 assigned, overruled plaintiff's objection to the letter filed October 23, 2008, for the reason
28 plaintiff, at that time, had not shown Antelope was a corporation as opposed to a
partnership. Such ruling was without prejudice to plaintiff's offering evidence that Antelope
was, in fact, a corporation. As noted, plaintiff has now offered such evidence.

1 instant action.² See Fed. R. Civ. P. 65(a)(1) (“The court may issue a preliminary injunction
2 only on notice to the adverse party.”). Such denial is without prejudice to plaintiff’s
3 renouncing the motion as to Sunrise, Herrmann, and/or Palicki, after plaintiff has filed the
4 FAC and has effectuated service of process on such parties or party. To the extent
5 plaintiff’s motion for a preliminary injunction is directed at Antelope, the motion is hereby
6 DENIED, for the reason that Antelope was “dissolved” on September 16, 2008, (see
7 Sperllein Decl. Ex. A), and divested itself, on various dates in 2008, of its ownership interest
8 in the websites on which, according to plaintiff, defendant engaged in infringing activities,
9 (see id. ¶¶ 4-6; Exs. B, C). Under such circumstances, plaintiff has made “no showing of
10 any real or immediate threat that [] plaintiff will be wronged again” by Antelope. See City of
11 Los Angeles v. Lyons, 461 U.S. 95, 110 (1983) (setting forth standard for issuance of
12 preliminary injunction); see also Ariz. Rev. Stat. § 10-1405 (providing dissolved corporation
13 “shall not carry on any business except that business appropriate to wind up and liquidate
14 its business and affairs”).

15 5. By its Miscellaneous Administrative Request, plaintiff seeks leave to serve
16 certain subpoenas on third parties. In its proposed order granting said request, plaintiff
17 seeks leave to serve subpoenas that are “substantially in the same form as the example
18 attached to plaintiff’s Miscellaneous Administrative Request [] as Exhibit A.” (See
19 “[Proposed] Order for Leave to Take Early Discovery”.) Plaintiff has not, however,
20 attached an exhibit to its Miscellaneous Administrative Request, nor otherwise submitted
21 the example. Accordingly, plaintiff is hereby afforded leave to supplement its
22 Miscellaneous Administrative Request by filing, no later than ten days from the date of this
23 order, the above-referenced Exhibit A.

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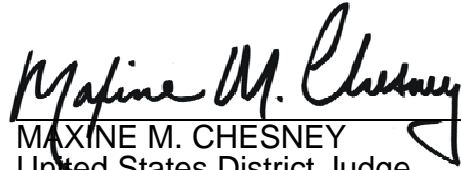
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27 ²In its proposed FAC, plaintiff seeks to add claims against Sunrise, Herrmann, and
28 Palicki.

1 6. The Case Management Conference is hereby CONTINUED from January 30,
2 2009 to March 20, 2009, at 10:30 a.m.. A Joint Case Management Conference shall be
3 filed no later than March 13, 2009.

4 **IT IS SO ORDERED.**

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6 Dated: January 12, 2009


MAXINE M. CHESNEY
United States District Judge

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