

Jun 16 2005

CLARENCE MADDOX
CLERK U.S. DIST. CT.
S. D. OF FLA. - MIAMIUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 05-80393 CIV HURLEY/HOPKINS

STELOR PRODUCTIONS, L.L.C., a
Delaware limited liability company,
f/k/a STELOR PRODUCTIONS, INC.,

Plaintiff,

vs.

STEVEN A. SILVERS, a Florida resident,

Defendant.

**PLAINTIFF'S MOTION TO EXTEND EMERGENCY TEMPORARY
RESTRAINING ORDER IMPLEMENTING PRELIMINARY INJUNCTION
RECOMMENDED BY MAGISTRATE JUDGE**

Plaintiff Stelor Productions, LLC ("Stelor"), by and through undersigned counsel and pursuant to Rule 65, Fed. R. Civ. P., hereby moves on the following grounds for entry of an order extending the duration of the June 9, 2005 Emergency Temporary Restraining Order Implementing Preliminary Injunction Recommended by Magistrate Judge ("TRO") (DE32):

INTRODUCTION

Plaintiff requests that the duration of the TRO be extended. Paragraph 4 on page 3 of the TRO provides that the Order shall remain in effect "up to and including WEDNESDAY, JUNE 21, 2005 unless a party moves for an extension, or the court specifically orders otherwise." Plaintiff respectfully contends that the same reasons compelling entry of the TRO require its duration to be extended. Defendant confirmed in his response (DE28) to Plaintiff's TRO motion that he will be filing objections to the Magistrate's Report. Accordingly, Plaintiff requests that the extension be granted until Plaintiff has an opportunity to file its response to the objections,

BURLINGTON • WEIL • SCHWIEP • KAPLAN & BLONSKY, P.A.

OFFICE IN THE GROVE PENTHOUSE 2699 SOUTH BAYSHORE DRIVE MIAMI, FLORIDA 33133

T: 305.858.2900 F: 305.858.5261

EMAIL: INFO@BWSKB.COM WWW.BWSKB.COM

and this Court to enter its ruling on the Report. Alternatively, if a specific cut-off date is preferred by the Court, Plaintiff requests that the duration be extended for thirty (30) days.

BASIS FOR THE REQUESTED EXTENSION

The TRO explains the Court's determination that entry of the Order was "necessary to avoid the substantial threat of irreparable injury to Stelor which would otherwise be occasioned from an interruption of its major product launch scheduled during a New York City trade show on June 21, 2005." TRO at 1. Although perhaps not clearly enough explained in Stelor's TRO motion, the New York trade show in fact continues *through June 24, 2005*. See Steven Esrig Declaration (DE16), ¶ 10. If Defendant Silvers were to shut down the googles.com website again before the conclusion of the show on June 24, 2005, that would result in exactly the type of interruption to Stelor's major product launch that the TRO (and the injunction recommended by the Magistrate) were designed to avoid.

In addition, an interruption to the website even after the trade show ends on June 24, 2005 would be disastrous to Stelor's business. The success of Stelor's launch depends not only on its ability to "show" the website at the trade show, but also on its ability to continue to deliver its products and key services – all of which are done through the website – in the days and weeks that follow the initial launch at the trade show. If the website is shut down the same day Stelor starts-up at the trade show, the irreparable harm the TRO seeks to avoid will clearly occur.

Stelor respectfully contends that the Magistrate's Report should be adopted by this Court, but the existing timetable makes it unlikely that such a decision can be made before the June 21st date. In fact, Silvers' objections are not due to be served until Friday, June 17, 2005, just two (2)

business days before the 21st.¹ Plaintiff plans to file its response to Silvers' objections promptly, but given the importance of the issue, Plaintiff will want to take the necessary time to prepare a thorough response. Extending the TRO to allow this procedure to conclude is appropriate under the circumstances, especially where the extension would result in no harm whatsoever to Silvers.

THE REQUESTED EXTENSION

Accordingly, for these reasons and the reasons set forth in the motion for TRO, Stelor respectfully requests that the duration of the TRO be extended. Stelor further suggests that the approach followed by the Court in the decision in *Libby v. Illinois High School Ass'n*, 921 F.2d 96, 98, 99 (7th Cir. 1990) is appropriate, where the TRO was entered to "preserv[e] the status quo . . . until the parties had a chance to respond to the magistrate's report and recommendation . . . and [the Court] could rule on that report." *Id.* at 99. Alternatively, if a specific cut-off date is preferred by the Court, Plaintiff requests that the duration be extended for thirty (30) days.

WHEREFORE, Plaintiff respectfully requests that the TRO be extended.

BURLINGTON, WEIL, SCHWIEP,
KAPLAN & BLONSKY, P.A.
Attorneys for Plaintiff
Office in the Grove, Penthouse A
2699 South Bayshore Drive
Miami, Florida 33133
Tel: 305-858-2900
Fax: 305-858-5261
Email: kkaplan@bwskb.com

By: /s/ Kevin C. Kaplan
Kevin C. Kaplan
Florida Bar No. 933848
David J. Zack
Florida Bar No. 641685

¹ Depending on how the objections are served, Plaintiff may not even receive them until the week of July 20th.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served via Telefax, electronic mail, and U.S. mail on this 16th day of June, 2005 upon the following:

Adam T. Rabin, Esq.
DIMOND, KAPLAN &
ROTHSTEIN, P.A.
Suite 708
200 S.E. First Street
Miami, Florida 33131

Kenneth R. Hartmann, Esq.
Gail M. McQuilkin, Esq.
KOZYAK TROPIN &
THROCKMORTON, P.A.
2525 Ponce de Leon Blvd., 9th Floor
Coral Gables, Florida 33134

/s/ Kevin C. Kaplan
Kevin C. Kaplan

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. 05-80393-Civ-Hurley/Hopkins

STELOR PRODUCTIONS, L.L.C., a
Delaware limited liability company,
f/k/a STELOR PRODUCTIONS, INC.,

Plaintiff,

vs.

STEVEN A. SILVERS, a Florida resident,

Defendant.

**PROPOSED ORDER GRANTING PLAINTIFF'S MOTION TO EXTEND
EMERGENCY TEMPORARY RESTRAINING ORDER**

This matter came before the Court on Plaintiff STELOR PRODUCTIONS, L.L.C., f/k/a STELOR PRODUCTIONS, INC.'s ("Stelor") Motion to Extend Emergency Temporary Restraining Order Implementing Preliminary Injunction Recommended by Magistrate Judge ("TRO") (DE32). Having reviewed the Motion, and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Motion is hereby GRANTED.
2. The TRO shall remain in full force and effect pending this Court's ruling on the June 3, 2005 Report and Recommendation issued by the Magistrate (DE24).

DONE and ORDERED in Chambers at West Palm Beach, Florida, at _____ p.m./a.m.
this _____ day of June 2005.

UNITED STATES DISTRICT JUDGE

cc: United States Magistrate Judge James Hopkins
Kenneth R. Hartmann, Esq.
Kevin C. Kaplan, Esq.
Adam T. Rabin, Esq.