

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT FLORIDA

STELOR PRODUCTIONS, INC. (a Delaware Corporation))	
)	CASE NO. 04-80954 - CIV - HURLEY
Plaintiff,)	Magistrate: Judge James M. Hopkins
V.)	
STEVEN A. SILVERS (a resident of Palm Beach County, Florida),)	
Defendant.)	

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PLAINTIFFS' EMERGENCY MOTION FOR PRELIMINARY INJUNCTION**

I. INTRODUCTION

STELOR PRODUCTIONS, INC. v. OOGLES N GOOGLES et al

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Plaintiff brings this Motion for a Preliminary Injunction to enjoin the Defendant from unilateral actions which materially breach his contractual obligations and, if left unchecked, will further undermine and irreparably injure the Plaintiff, its business, and the intellectual property rights which Defendant has licensed and entrusted exclusively to the Plaintiff.

II. STATEMENT OF FACTS

In or about 1991, Defendant Steven A. Silvers ("Defendant" or "Silvers") authored a children's book entitled "Googles and the Planet of Goo." (Declaration of Steven A. Esrig ¶ 3, attached as Ex. 1.) The book made little critical or commercial impact when it

NON-COMPLIANCE OF S.D. Fla. L.R. SILVA

entered the marketplace. (Id.) Undaunted, Defendant envisioned a program to transform this creation into an expansive, multimedia entertainment and educational empire. To that end, Defendant licensed the Florida-based Aurora Collection, Inc. to develop and commercialize the "Googles" concept. (Id. ¶ 4.) That relationship, however, did not bear fruit. (Id.) Still, Defendant did not abandon the project. Defendant had many personal and business hurdles to overcome. Significant among them was the increasingly adverse relationship between him and Aurora and Defendant's criminal background which made Defendant unsuited to serve as figurehead or spokesperson for an enterprise aimed at providing wholesome and enriching entertainment to an audience of impressionable children. (Id. ¶ 5.) Defendant spent seven years in a federal penitentiary for conspiring to possess with intent to distribute cocaine, possession with intent to distribute cocaine, interstate travel in aid of racketeering, and conspiring to defraud the United States. (Id.) See also United States v. Silvers, 90 F.3d 95 (4th Cir. 1996).

Accordingly, when Plaintiff Stelor Productions, Inc. ("Plaintiff" or "Stelor") was formed to develop Defendant's "The Googles" concept into a reality, Stelor's enthusiasm and interest were tempered by legitimate concerns and reservations. (Id. ¶¶ 6, 7.) Stelor saw potential in the "The Googles" story, trademarks, copyrights, and other intellectual property. (Id. ¶ 6.) Stelor's founders also had confidence in their ability to raise the needed funds and to create a compelling and attractive "Googles" universe that would enlighten, entertain, educate, and develop children by providing

them with fascinating and uplifting products, programs, and services. (Id.) But aware of Aurora's aborted effort, and wary that Defendant's background could jeopardize the "Googles" program, Stelor insisted that any arrangement with Defendant contain safeguards and protections. (Id. ¶ 7.)

Thus, when on or around June 1, 2002 Stelor and Defendant entered into a "License, Distribution, and Manufacturing Agreement" (hereinafter "License Agreement") and a Consulting Agreement, Stelor bargained for, and obtained, the following promises, commitments, and obligations from Defendant designed to ensure Stelor's ability to develop the "Googles" program free from undue interference by Defendant:

- (a) The License Agreement gives Stelor exclusive rights in the "Googles" products, trademarks, and intellectual property and specifies that those rights are exclusive even as to Defendant.
- (b) The License Agreement gives Stelor an irrevocable power of attorney to apply for, maintain, enforce and defend intellectual property rights, including trademarks, websites, and domain names. The power of attorney specifically gives Stelor the right "to act for and on [Defendant's] behalf and instead of [Defendant]." Stelor, not Defendant, assumed responsibility for handling all Googles Trademark and other Intellectual Property matters.
- (c) The License Agreement and Consulting Agreement require Defendant to fully cooperate with Stelor, while the Consulting

Agreement makes plain that Defendant shall have no power to direct or control the daily activities of Stelor.

- (d) Finally, to protect Stelor from possible public embarrassment, both the License Agreement and Consulting Agreement expressly prohibit Defendant from initiating or maintaining “any relationship or conversation with [Stelor’s] current or prospective clients, vendors, any company relationships with the media (press, etc.), without the prior express written request by [Stelor].”

(Id. ¶ 7; License Agreement at Ex. 2, ¶ VIII; Consulting Agreement at Ex. 3, ¶ 2.)

Stelor, believing it had the necessary rights and protections, then threw itself enthusiastically into the task of using its best efforts to develop The Googles concept and intellectual property. (Ex. 1, ¶ 8.) To this end, Stelor has spent approximately three million dollars, and its principals and employees have devoted themselves tirelessly to making Stelor and the “Googles” successful and profitable, both for themselves and for the benefit of Defendant. (Id.)

However, Defendant, having received from Stelor \$186,500, obligations for options for Stelor stock, and health insurance, has not lived up to his part of the bargain. (Id. ¶ 9.) After giving Stelor the exclusive rights to develop and market the “Googles” concept without interference from him, Defendant commenced a campaign to inject and entwine himself into the very fabric of Stelor’s business. (Id.) In breach of his contractual obligation to cooperate fully with Stelor in protecting, preserving, and

enforcing the Googles intellectual property rights, Defendant has subverted those efforts, going so far as to unilaterally divert official communications from the United States Patent and Trademark Office ("USPTO") from Stelor's intellectual property counsel to himself. (Id. ¶ 11; Ex. 6.) Under the irrevocable power of attorney Defendant bestowed on Stelor under the License Agreement, all such communications from the USPTO must go directly to Stelor, as Stelor has the right "to act for and on [Defendant's] behalf and instead of" Defendant in protecting and enforcing the Googles Intellectual Property. (Ex. 2, ¶ VIII A.)

Stelor, in fulfilling its duty to enforce and defend the Googles Intellectual Property, retained counsel to bring actions against Google, Inc. in the USPTO. (Ex. 1 ¶ 15.) Defendant wrote to Stelor's counsel and instructed them to act no further on these matters and threatened to obtain his own attorney to handle them despite Defendant's having given Stelor an irrevocable power of attorney to act for and on Defendant's behalf to enforce and defend the Googles Intellectual Property. (Id. ¶ 16; Ex. 7)

In breach of his promise not to initiate or maintain any relationship or conversations with prospective clients and vendors, Defendant has held himself out as a Stelor representative at crucial industry trade shows. (Id. ¶ 19.) And despite Stelor's displeasure over that breach of contract, Defendant now threatens to initiate more contacts and conversations with the trade and press, oblivious and totally indifferent to his contractual obligations. (Id.)

Finally, Defendant flouts his duty to cooperate by withholding information vital to

Stelor's ability to carry out the business of transforming the basic "Googles" idea into a thriving and profitable entertainment phenomenon. Stelor has developed and operates a website devoted to the "Googles" characters, offering a variety of services and features geared to delighting children and their parents. (Id. ¶ 13.) At present, the website is the public's window into the Googles' world. Being able to operate and modify this website is among Stelor's most important priorities. (Id.) To ensure its ability to do so, Stelor must have immediate and unfettered access to the domain names. (Id.) Despite Stelor's constant urging, Defendant insists on keeping those domain names under lock and key by refusing to give Stelor the passwords needed to manage the websites, thereby jeopardizing Stelor's substantial investment of time, money, talent, and creative energy. (Id. ¶ 14.)

Also in violation of his obligation to cooperate, Silvers refused to allow Stelor to videotape and interview him to preserve Silvers' "Googles" concepts and dreams in order that it may be used in the future if desirable in connection with promoting the Googles project. (9/14/2004 Letter from Marty Jeffery to Silvers at Ex. 4; 10/5/2004 Letter from Silvers to Laurence Hefter at Ex. 5, ¶ 9.)

In sum, Defendant is fixated on controlling every aspect of the "Googles" development. Defendant continually and persistently eschews his contractual commitments and obligations, holding key information and documents hostage, interfering with Stelor's daily activities, refusing to cooperate and contribute when requested, and endangering Stelor's business prospects with threats to make