

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

S. VICTOR WHITMILL,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 4:11-cv-752
v.	)	
	)	
WARNER BROS. ENTERTAINMENT INC.,	)	
	)	
Defendant.	)	

**[PROPOSED] ORDER GRANTING PLAINTIFFS’  
MOTION FOR PRELIMINARY INJUNCTION**

This matter came before the Court at a hearing on the Motion of Plaintiff S. Victor Whitmill for a Preliminary Injunction. Having heard the arguments of counsel, and having carefully reviewed the memoranda and all of the files, records, testimony of witnesses and proceedings, the Court hereby makes the following Findings of Fact and Conclusions of Law, which constitute the grounds for granting the Motion:

**FINDINGS OF FACT**

1. Plaintiff S. Victor Whitmill is an award-winning visual artist who works in various mediums, including the creation, design, and application of tattoo art to bodies. He is a citizen of the State of Missouri and lives in a small town in the south-central portion of the state.

2. On February 10, 2003, while living in Las Vegas, Nevada, Mr. Whitmill created and applied an original and distinctive tattoo to the upper left side of the face of the former, world heavyweight champion boxer Michael Gerard “Mike” Tyson (the “Original Tattoo”). True and accurate photographs of Mr. Whitmill in the process of tattooing the Original Tattoo onto Mr. Tyson and of Mr. Tyson viewing the tattoo immediately after it was completed by Mr. Whitmill are attached to this Order as Exhibits 1 and 2.

3. Mr. Whitmill, doing business at the time as Paradox-Studio of Dermagraphics, is the sole creator, author, and owner of all rights, including copyright, in the Original Tattoo, which is original and fixed in a tangible medium of expression.

4. On the day Mr. Whitmill created the Original Tattoo, Mr. Tyson signed a release form acknowledging “that all artwork, sketches and drawings related to [his] tattoo and any photographs of [his] tattoo are property of Paradox-Studio of Dermagraphics.” (A true and accurate copy of the Feb. 10, 2003 Tattoo Release, redacted in accordance with the Court’s rules, is attached as Exhibit 3.)

5. Defendant Warner Bros. Entertainment Inc. (“Warner Bros.”) is a Delaware corporation with its principal place of business at 4000 Warner Boulevard, Burbank, California. Warner Bros. is engaged in the production, acquisition and distribution of motion pictures for theatrical exhibition, home entertainment and other forms of distribution throughout the United States, including the State of Missouri.

6. Mr. Whitmill recently learned that Warner Bros. is planning to release a motion picture later this Spring entitled THE HANGOVER 2 (the “Movie”).

7. The Movie features a virtually exact reproduction of the Original Tattoo (the “Pirated Tattoo”), which appears on the upper left side of the face of the Stu Price character in the Movie, played by actor Ed Helms.

8. The Pirated Tattoo is a recurring device and plays an important role in the plot of the Movie.

9. The Pirated Tattoo is prominently featured in the marketing and promotional materials for the Movie as demonstrated by a current movie poster (the “Movie Poster”) that defendants are using to advertise the Movie. A true and correct copy of the Movie Poster is attached as Exhibit 6.

15 At all relevant times, Warner Bros. has had access to the Original Tattoo.

16 There is substantial similarity between the copyrightable expression in the Original Tattoo and the Pirated Tattoo.

17 Mr. Whitmill has never been asked for permission for, and has never consented to, the use, reproduction, or creation of a derivative work based on his Original Tattoo, including the Pirated Tattoo. Nor has he ever been asked or agreed to the public display and distribution of a motion picture containing the Pirated Tattoo, or to the use of any of his other exclusive rights in the Original Tattoo under the Copyright Act.

18 Warner Bros. has already infringed Mr. Whitmill's copyright through its unauthorized copying, distribution and public display of the Pirated Tattoo in advertising and promotion for the Movie and by making an unauthorized derivative work—namely, the Pirated Tattoo—that is based upon and copies virtually all of the copyrightable subject matter of the Original Tattoo.

10. As a direct and proximate result of defendant's wrongful acts, defendant has been and will continue to be unjustly enriched, and Mr. Whitmill has suffered and will continue to suffer damages in an amount not yet fully determined.

### **CONCLUSIONS OF LAW**

1. This Court has subject-matter jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338(a), this being an action arising under the Copyright Laws of the United States, Title 17, United States Code, particularly, Title 17 U.S.C. § 101 *et. seq.*

2. This Court has personal jurisdiction over Defendant.

3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b), as Defendant does business in this District.

4. Plaintiff is likely to succeed on the merits of his claim against Defendant in that its conduct in copying Plaintiff's original copyrighted work and producing and distributing derivative

copies thereof constitutes infringement of Plaintiff's exclusive rights as a copyright owner under 17 U.S.C. §§ 106 and 106A.

5. These wrongful acts of defendant have caused irreparable injury to Plaintiff, and unless this Court restrains defendant from further use of the Pirated Tattoo, Mr. Plaintiff will continue to suffer irreparable injury for which he has no adequate remedy at law.

6. If not enjoined, Defendant will continue to infringe Plaintiff's copyright by using the Pirated Tattoo to advertise, market, and promote the Movie; by releasing the Movie and otherwise distributing or licensing others to distribute the Movie in various formats and distribution channels; and, by distributing or licensing derivative works that include the Pirated Tattoo.

7. The harm or potential harm to Plaintiff in not granting the relief requested outweighs any harm or potential harm to Defendant in the Court granting such relief.

8. The public interest favors the issuance of the relief requested by Plaintiff.

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiffs' Motion for Preliminary Injunction is **GRANTED**.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendant Warner Bros. Entertainment, Inc and its principals, officers, agents, servants, employees, attorneys, partners, representatives, distributors, licensees, divisions, affiliates, firms, parent corporation(s) or subsidiaries, and all others under its control or in active concert or participation with any of them be enjoined and restrained during the pendency of this litigation from directly or indirectly:

1. Copying, distributing, publicly displaying, or otherwise infringing Plaintiff's copyright in his Original Tattoo, either in defendant's soon-to-be-released motion picture **THE HANGOVER 2** or otherwise

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant shall file with this Court and serve upon Plaintiff within thirty (30) days following the date of this Order, a written report, under oath, setting forth in detail the manner and form in which Defendant has complied with this injunction.

**IT IS FURTHER ORDERED** that Plaintiff, pursuant to Federal Rule of Civil Procedure 65(c), shall post an injunction bond, in cash or written by a corporate surety in the sum of \$\_\_\_\_\_, for payment of such costs and damages as may be incurred by the Defendant in the event that it is found that Defendant have been wrongfully enjoined or restrained. Such bond is to be filed with the Clerk of this Court no later than \_\_:00 p.m., on \_\_\_\_\_, 2011.

This Order shall remain in force and effect unless modified by further order of the Court. Failure to comply with any part of this Order may result in sanctions.

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UNITED STATES DISTRICT COURT JUDGE

Dated:\_\_\_\_\_