

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

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

**PLAINTIFF’S EMERGENCY RENEWED MOTION FOR LEAVE
TO CONDUCT LIMITED DISCOVERY ON AN EXPEDITED SCHEDULE**

Plaintiff S. Victor Whitmill, by his attorneys, pursuant to Rule 26 of the Federal Rules of Civil Procedure and Local Rule 3.01(B), respectfully moves for leave to conduct the limited discovery described below on an expedited basis. In support of this motion, plaintiff states as follows:

1. This is an action for copyright infringement arising out of the unauthorized use of an infringing copy of plaintiff’s original tattoo artwork in defendant’s motion picture, **THE HANGOVER PART II** (the “Movie”).

2. On May 24, 2011, this Court entered an Order (Doc. 41) denying plaintiff’s motion for preliminary injunction and setting a telephonic scheduling conference for the morning of June 17, 2011.

3. The Court found that, “the plaintiff has shown irreparable harm and is in danger of suffering more irreparable harm if this movie is not enjoined . . . [I]f the movie is released, he will continue to lose control [over the image that he created] . . .” (Doc. 46 (Tr. II) at 6:4-12.)

4. The Court stated that “the plaintiff is obviously free to seek a prompt hearing on the permanent injunction request. Although we normally combine those, there is no reason that we have to, and if the plaintiff chooses to do that, or wishes to do that, we can do that, and we can have a prompt hearing with more evidence” (Id. at 9:4-9.)

5. Plaintiff has asked the Court for an earlier scheduling conference and seeks an expedited hearing on his request for permanent injunctive relief. The Court has set a scheduling conference for June 6, 2011. The proposed expedited schedule is intended to provide Plaintiff with an opportunity to seek some measure of meaningful relief related to the irreparable harm Plaintiff continues to suffer.

6. On April 29, 2011, along with his Verified Complaint and the Summons, Plaintiff served Warner Bros. with a motion for leave to conduct limited discovery on an expedited basis and a copy of the proposed, limited expedited discovery requests (the “Discovery Requests”). Doc. 5 (Motion and attached Discovery Requests) & 10 (Cert. of Service).)

7. Promptly after serving Warner Bros., Plaintiff’s counsel began engaging in discussions with Warner Bros. to obtain some of the items at issue in the Discovery Requests. Despite discussions and correspondence regarding the proposed discovery, Plaintiff and Warner Bros. never agreed upon the Discovery Requests and Warner Bros. has never responded to those Discovery Requests.

8. To date, Warner Bros. has allowed Plaintiff to view the Movie at its local counsel’s offices and provided Plaintiff with copies of the shooting script and two promotional agreements.

9. On May 19, 2011, this Court denied Plaintiff’s motion as moot. (Doc. 23.)

10. In addition to the documents and things that Warner Bros. provided prior to the hearing on Plaintiff's motion for preliminary injunction, Plaintiff received copies of the documents attached to the declarations Warner Bros. submitted in opposition to Plaintiff's motion for preliminary injunction and submitted at the hearing.

11. Plaintiff still seeks the discovery included in the Discovery Requests. Among other things, Plaintiff wishes to be sure that Warner Bros. will not introduce new witnesses or evidence that would contradict the witnesses that Warner Bros. put forward at the preliminary injunction hearing. Counsel for both parties have discussed the schedule for discovery in connection with Plaintiff's request to proceed on an expedited hearing on his request for a permanent injunction, but the parties have been unable to agree.

12. Accordingly, Plaintiff:

- a. seeks leave to propound the Discovery Requests attached to this Motion as Exhibit 1 before the time otherwise allowed under the Federal Rules of Civil Procedure, and
- b. requests that April 29, 2011 — the date of service for the original motion (Doc. 5) and Discovery Requests (Doc. 5 Ex. A) (as reflected by Doc. 10 (Cert. of Service)) — be used to determine the service date for the Discovery Requests.

13. The Discovery Requests are limited in scope and relation to issues of Warner Bros. liability for copyright infringement.¹ Much of the discovery involves investigation that Warner Bros. would have done to prepare its answer and opposition to the motion for preliminary injunction.

¹ The Discovery Requests attached as Exhibit 1 are largely identical to the version served back on April 29. They have been modified only to reflect the passage of time, to correct the title of the Movie, and to fill in blanks from the original

14. Thus, Plaintiff asks this Court for an Order requiring Warner Bros. to respond to the Discovery Requests no later than Wednesday, June 8, 2011 (forty days after they were served).

15. This motion is not intended to harass and will not unduly prejudice Warner Bros., which has had the time and resources to adequately prepare responses to these requests. Rather, the motion is intended to promote judicial efficiency and provide an opportunity for timely and meaningful consideration of Plaintiff's request for permanent injunctive relief.

16. A copy of a proposed order granting this motion is submitted and attached to this motion.

WHEREFORE, this Court should enter an Order to allow discovery in the form set forth in the proposed Order submitted herewith and such other and further relief as the Court deems just and proper under the circumstances.

Respectfully submitted,

/s/ Geoffrey G. Gerber

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served via the Court's electronic filing system on this 3rd day of June, 2011 on all counsel of record.

/s/ Geoffrey G. Gerber
Attorney for Plaintiff
S. Victor Whitmill