

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Vadim Mikhlyn, Inga Mikhlyn, and
ABC All Consulting, Inc.

Plaintiffs

-against-

Ana Bove, Polina Dolginov
Anna Bove Company, LLC, Anna
Bove Collections, Inc.
and Anna Bove Embroidery Supplies, Inc.

Defendants.

08 CV. 03367 (CPS)

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR A
PRELIMINARY INJUNCTION**

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PRELIMINARY STATEMENT

Plaintiffs are the victims of a vicious economic and personal war being waged against them. Sadly, the main aggressor is plaintiffs' own cousin and former business partner, defendant Ana Bove.

After purporting to resign from the family's web-based business, Ana, with the assistance of defendant Polina Dolginov, surreptitiously and unlawfully seized control of the business' two main web sites.

Worse, Ana is redirecting all of the business' customers to new web sites she recently set up, and is using her new web sites to engage in character assassination against the Mikhlyn's, falsely portraying them as counterfeiters and usurpers and herself as the sole rightful owner of the business.

The evidence shows that irreparable damage is not just imminent but ongoing. Without prompt court intervention, plaintiffs' ownership rights in the business and their reputations will be destroyed.

FACTS

In 2004, plaintiffs Vadim and Inga Mikhlyn, Vadim's cousin, defendant Ana Bove, and Ana's friend, defendant Polina Dolginov, agreed to become partners in a web-based business selling embroidery designs. The partnership's business operated principally through two web sites, ABC-Cross-Stitch-Patterns.Com

and ABC-Embroidery-Designs.Com. (the "ABC Sites"), which Ana and Polina set up in Israel, where they lived. Polina was the registered owner of the ABC Sites. Declaration of Vadim Mikhlyn, dated August 18, 2008 ("Vadim Decl.") ¶¶ 4-8; Declaration of Inga Mikhlyn, dated August 18, 2008 ("Inga Decl.") ¶ 2.¹

The four partners agreed that going forward the business would be centered in and managed from the United States. Inga and Vadim incorporated plaintiff ABC All Consulting, Inc. ("ABC Inc.") in New York State to be used as the business vehicle for the new partnership. Inga and Vadim each received 100 shares of ABC Inc. No other shares were issued or authorized. Vadim is the sole director and President of ABC Inc. and Inga is Secretary. Vadim Decl. ¶¶ 8-9; Inga Decl. ¶ 2.

By October of 2005, almost all of the income of the partnership flowed through ABC Inc.'s bank account, for which only Plaintiffs Inga and Vadim had signing authority. When they drew compensation, Inga and Vadim wrote checks to themselves from the company bank account. Inga and Vadim also wrote checks to Ana and Polina although Ana and Polina could and sometimes did take money for themselves directly from the company's Pay Pal account. At no time, however, did Ana (or Polina) pay Vadim

¹ Several of the exhibits to the Vadim Mikhlyn Declaration are Russian language documents accompanied by English translations. Accompanying each such exhibit is a copy of a "Translation Certificate" from a professional translator who provided the English translations of the Russian Language documents.

or Inga, or control payments to them. Vadim Decl. ¶¶ 10-12; Inga Decl. ¶ 2.

No one partner was the employer or boss of any other. Each partner had a principal area of responsibility and worked cooperatively with the other partners. Vadim Decl. ¶ 13; Inga Decl. ¶ 2.

The partnership succeeded and grew dramatically, and established a very favorable reputation and loyal following. The partnership spent over \$41,000 in the last four years on advertising, and sales tripled between 2004 and 2008. The business has more than 250,000 registered users in its database, and its positive reputation is reflected in numerous comments on internet forums. Vadim Decl. ¶ 15; Inga Decl. ¶ 2.

In June 2004, the partnership expanded the business to include the sale of embroidery supplies in addition to designs. In connection with this new line of business, the partnership filed for and obtained the trademark "ThreaDelight," registering all four partners as joint owners of the mark. Embroidery supplies represented about 70% of the partnership's gross income when this dispute erupted. Vadim Decl. ¶ 16-18; Inga Decl. ¶ 2.

"ABC" was used for the web site names because common series like "ABC" (or "AAA" or "123") are often employed by internet users in search engine queries and, therefore, the use of such a common series was likely to steer potential customers to the

sites. As the business obtained a higher profile and greater recognition, the partners thought it would be better to have a more distinctive trade name but, at the same time, one that would have an association and connection with the established and popular "ABC" name. Vadim Decl. ¶¶ 19-21; Inga Decl. ¶ 2.

The partners quickly realized that "ABC" was Ana's initials. The partners decided to use the trade name and mark "Anna Bove Collections," adding an "n" to "Anna" because they thought it was the more common spelling in their market and therefore more appealing and "normal" sounding to customers. Vadim Decl. ¶ 22; Inga Decl. ¶ 2.

The partnership then registered two new domain names, "AnnaBoveCollections.com" and "AnnaBoveCollection.Com," and began to advertise and promote the business and its products under the name "Anna Bove Collections." Vadim is the registered owner of the "Anna Bove" domain names. "Anna Bove Collections" was also registered as the d/b/a name for ABC Inc. Despite the adoption of the new name "Anna Bove Collections," the partnership kept the two "ABC" web sites open because of their popularity and, at least until recently, they were the main source of partnership business. Vadim Decl. ¶¶ 23-24; Inga Decl. ¶ 2.

In June of 2007, Polina decided to leave the partnership and start a new business unrelated to embroidery. The partners

agreed on a buyout amount for Polina, \$30,000, and a payment schedule of \$1,000 per month. As part of the buyout deal, Polina agreed to transfer control of the ABC Sites to Vadim. The buyout agreement and the payments to Polina are documented. Vadim Decl. ¶¶ 25-27; Inga Decl. ¶ 2.

Ana, who had been living in Israel, moved into Vadim and Inga's home in March 2006 and, except for occasional trips abroad, lived there until April 2008 of this year. Beginning in 2006, Inga, Vadim and their children began to notice that Ana was using illegal drugs. She was asked to stop but she did not. Vadim Decl. ¶¶ 29-33; Inga Decl. ¶ 2.

Ana's physical appearance and behavior changed dramatically as a result, the Mikhlyns believe, of Ana's drug use. Ana lost a lot of weight and became very thin. She also was prone to periods of rage and paranoia that frightened everyone in the house. She also became less productive and involved in the business. Vadim Decl. ¶ 32; Inga Decl. ¶ 2.

In February of 2008, Ana was warned that if she did not stop abusing drugs, she would have to leave the Mikhlyns' house. In late March of 2008, Ana abruptly announced that she was quitting the partnership to start her own line of embroidery monogramming, which would not be competitive with the partnership business. As compensation for her share of the

partnership, Ana demanded 50% of all gross design sales in perpetuity. Vadim Decl. ¶ 34; Inga Decl. ¶ 2.

Ana's demand was exorbitant and unrealistic, although Vadim and Inga never disputed that Ana was entitled to compensation for her share of the business. Vadim and Inga suggested to Ana that they go to a third party to mediate the terms of Ana's departure but she refused. Vadim Decl. ¶ 35; Inga Decl. ¶ 2.

On the night of March 31, 2008, Vadim discovered that Ana changed the password on the partnership's eBay account. Vadim had to call customer service to restore it. Ana's actions disrupted service to customers for a whole day. Ana also registered a new domain name, Anabove.com, on March 31. On April 1, the Mikhlyns asked Ana to move out of their house. Vadim Decl. ¶¶ 37-39; Inga Decl. ¶ 2.

In May, Ana registered another domain name, AnnaBoveEmbroidery.com, and also created two New York business entities, defendants Anna Above Company, LLC and Anna Bove Collections, Inc. The later is exactly the same as the "d/b/a" name the partnership had registered with the state in June 2005. In July Ana created one more New York corporation, Anna Bove Embroidery Supplies, Inc. Vadim Decl. ¶ 41; Inga ¶ 2.

On May 14, the Mikhlyns received a "cease and desist" letter from an attorney, Alexey Bakman, on behalf of Ana, demanding, basically, the cessation of all activities of the

business, payment to Ana of "at least one million dollars (\$1,000,000)," and an accounting of ABC Inc. Vadim Decl. ¶ 42; Inga ¶ 2.

On June 27, the Mikhlyns received notice that Ana commenced arbitration against "Domains By Proxy, Inc.," seeking control of the ABC sites. Domains By Proxy, Inc. is essentially a web site privacy service that works by substituting itself as the registered domain name owner for its client, the true owner, to protect the client from spammers, hackers and other intruders. Vadim used Domains By Proxy, Inc. for all of the partnership's websites and, thus, Ana was not at that time able to "look behind" Domains By Proxy, Inc. to discover the true owner(s) of the ABC Sites. Vadim Decl. ¶¶ 27, 44; Inga ¶ 2.

Upon receipt of the arbitration petition, Domains By Proxy, Inc. cancelled Vadim's privacy agreement allowing Ana to discover, apparently, that Polina remained as the registered owner of the two ABC domain names. It seems that after taking all other steps necessary to assume control of the ABC domains pursuant to Polina's buy-out agreement in 2007, Vadim forgot to substitute himself as the registered owner of record. Armed with the knowledge of Polina's status as registered owner of the ABC sites, Ana quickly filed an amended arbitration petition naming Polina as the Respondent. Vadim Decl. ¶ 45; Inga ¶ 2.

The second arbitration petition was quickly withdrawn by Ana after, apparently, Ana struck a deal with Polina to allow Ana assume control of the ABC sites. Ana or Polina promptly changed the e-mail addresses and passwords for the ABC Sites and transferred the sites to Polina's account with the domain registrar and web hosting company, GoDaddy.com. Vadim Decl. ¶ 46; Inga ¶ 2.

Since taking control of the ABC sites, defendants have been "re-directing" all would-be visitors to Ana's new sites and using the new sites to disparage the Mikhlyns. For example, Ana's new website describes the Mikhlyns as her:

ex staff who attempted to grasp the sites and business, and it has been under their full control for several months. If any other web sites will appear, offering my designs (e.g. designs like those ones listed on this site) WITHOUT carrying my name AND being listed as an official dealer on this site, it would mean that they don't have any rights to distribute those designs. At this moment the only other company that has a license for selling designs that were created by Anna Bove is The Sewphisticated Stitcher, Inc.

In an email Ana circulated to ABC's customers, Ana alleges that plaintiffs attempted to "take illegal control of [her] websites and businesses" and are distributing her designs "illegally." Ana's patently false claims that she owns everything including "ABC All Consulting, Inc." have caused

significant confusion among ABC customers. Vadim Decl. ¶ 47; Inga ¶ 2.

As reflected in guestbook entries on her new web sites, Ana has persuaded a growing number of ABC/Anna Bove customers that the Mikhlyns are "bad guys" who tried to steal Ana's business. Vadim Decl. ¶ 52; Inga ¶ 2.

ARGUMENT

Preliminary injunctive relief is appropriate when plaintiffs establish (1) the likelihood of irreparable injury in the absence of an injunction, and (2) either (a) likelihood of their success on the merits or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation plus a balance of hardships tipping decidedly in plaintiffs' favor. See TCPIP Holding Co., Inc. v. Haar Communications, Inc., 244 F.3d 88, 92 (2d Cir. 2001).

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

Because the likelihood of plaintiffs' success on many of their claims turns on the parties' respective rights in the embroidery design business at the heart of this case, we address that central issue first.

A. Plaintiffs Are Partners in the Embroidery Business

Where there is no written agreement, the question of whether a partnership exists - and whether a person is a member of the partnership - depends upon the presence or absence of the

traditional indicia of a partnership, including (1) sharing of profits, (2) sharing of losses (3) ownership of partnership assets (4) joint management and control (5) joint liability to creditors (6) intention of the parties (7) compensation (8) contribution of capital, and (9) loans to the organization. Brodsky v Stadlen, 526 N.Y.S.2d 478, 479 (2d Dept 1988); see also Kosower v Gutowitz, 2001 U.S. Dist. LEXIS 19111 (S.D.N.Y. Nov. 21, 2001). No one factor is determinative. Brodsky at 479.

All relevant factors for which there is evidence point to a partnership between the parties. No evidence supports Ana's story of being a sole proprietor and employer of Vadim and Inga.

1. Profits, Losses, and Compensation

From the beginning this was a profit-sharing enterprise for all of the participants. Almost all of the money flowing into and out of the business passed through the bank account of ABC Inc., over which Vadim and Inga had exclusive signing authority. When Vadim and Inga drew money from the business, they wrote themselves checks from the ABC Inc. bank account (and often paid Ina and Polina). Vadim Decl. ¶¶ 8-12. Conversely, there is not a shred of evidence that Ana paid, or controlled payment, to the Mikhlyns.

2. Ownership, Management and Control

The business was managed cooperatively, with no partner acting like the boss of any other. The trademark for the embroidery supply part of the business, ThreadDelight, is registered jointly in the name of all four partners. At least until recently, embroidery supplies represented 70% of the partnership business. Vadim Decl. ¶¶ 13, 16-18.

The one formal business entity created for partnership operations, ABC Inc., has only two shareholders and officers of record, Vadim and Inga Mikhlyn. The disputed trademark "Anna Bove Collections" is a registered doing-business-as name of ABC, Inc. Vadim is the registered owner of the domain names for the partnership's two "Anna Bove" sites. On this record, plaintiffs could argue that they are not merely Ana's equals but exclusive owners of the business. To their credit, however, the Mikhlyns concede that ABC Inc. was just a vehicle for their partnership with Ana and Polina. Vadim Decl. ¶¶ 9, 23.

There is a total absence of evidence to support Ana's contrary version of events. There is not a single document of any kind evidencing Ana acting as plaintiffs' boss or employer or as the sole proprietor of the embroidery business. There are no tax records, such as W2s treating plaintiffs as Ana's employees. There are no internal communications, such as emails (of which there are many over the years), showing Ana acting

like the boss to plaintiffs. There are no external communications, such as website content or advertising, representing Ana to be the sole proprietor of the business.

B. Plaintiff Vadim has a Contractual Right to Control the ABC Sites

Even if defendants manage to raise a doubt about the exact nature of the parties' respective legal relationships to the business, there is no doubt that Vadim is contractually entitled to control the ABC Sites. In 2007, defendant Polina Dolginov ceded control of the ABC sites to Vadim in exchange for a payment of thirty thousand dollars from ABC Inc. The documentary evidence also shows Ana Bove's contemporaneous knowledge, acquiescence and assistance in turning over control of the ABC sites to Vadim. Vadim Decl. ¶¶ 25-27.

The fortuity that Vadim forgot to substitute himself as registered owner, and defendants' exploitation of that mistake to seize the websites, in no way diminishes Vadim's rights. On this issue, the instant case is almost identical to 1800Postcards, Inc., v. Morel, 153 F. Supp. 359 (S.D.N.Y. 2001). There, the plaintiff contracted to purchase a web site and related trademark from the defendant. After the closing, however, the defendant seller exploited his registered ownership of the website to change the password for the site, thereby preventing plaintiff buyer from controlling it.

Characterizing the plaintiff as the equitable owner of the website, the Court found defendant's interference with the site by virtue of the password change to be "indefensible" and enjoined it. Id. at 364. The conduct of Ana and Polina is equally indefensible. Vadim was contractually entitled to control the ABC sites, and in fact controlled the sites with the passwords Polina provided (and Ana passed on to Vadim). Ana and Polina could not obtain legitimate ownership by their deceitful exploitation of a registration oversight.

C. Plaintiffs Are Likely To Succeed On Their Lanham Act Claim For Trademark Infringement

To succeed on a claim for false designation of origin under 43(a) of the Lanham Act, plaintiffs must prove (1) that their trademark is distinctive, either inherently or through secondary meaning, and (2) that there exists a likelihood of confusion. Time, Inc. v. Petersen Publ. Co., 173 F.3d 113, 117 (2d Cir. N.Y. 1999).

1. The "Anna Bove" Mark is Distinctive

The distinctiveness analysis in this case is simple because the facts are in accord with defendants' admissions, including binding judicial admissions. The accompanying Declaration of Vadim Mikhlyn details the development of the Anna Bove mark's secondary meaning: (a) the business spent over \$41,000 in the last four years on advertising; (b) sales tripled during that

time; (c) the business has more than 250,000 registered users in its database; and (d) a sampling of four years of posts on an internet embroidery forum shows the strength and positive reputation of the "Anna Bove" name in the market. Vadim Decl. ¶ 15.

Defendant Ana Bove cannot argue otherwise because she characterized the "Anna Bove" mark (as well as the web site names "Cross-Stitch-Patterns" and "ABC-Embroidery-Designs") as "well known designations of source of Anna Bove's work" and "famous" marks in her previous arbitration petitions as well as in a "Cease and desist" letter to plaintiffs. See Declaration of Inga, Exhibits A and B. These assertions are likely binding judicial admissions demonstrating the likelihood that the marks have obtained secondary meaning. See Pietrzak v. Mukasey, 260 Fed. Appx. 337, 340 (2d Cir. 2008) (distinct and formal admission made before, during, or even after a proceeding by an attorney acting in his professional capacity binds his client as a judicial admission).

2. Confusion is Certain

The law and the evidence show that confusion is certain. As this Court explained only a few weeks ago:

There is a "'great likelihood of confusion when the infringer uses the exact trademark' as the plaintiff." S & R Corp. v. Jiffy Lube Int'l, Inc., 968 F.2d 371, 375 (3d Cir. 1992) (quoting Opticians Ass'n v. Independent Opticians, 920 F.2d 187, 195 (3d Cir. 1990)). In such cases, "likelihood of

confusion is inevitable." Opticians, 920 F.2d at 195. In fact, "[c]ases where a defendant uses an identical mark on competitive goods hardly ever find their way into the appellate reports. Such cases are 'open and shut.'" Id. (quoting McCarthy, Trademarks and Unfair Competition).

Koon Chun Hing Kee Soy & Sauce Factory, Ltd., v. Kun Fung USA Trading, 2007 U.S. Dist. LEXIS 57224 (E.D.N.Y. Aug. 6, 2007).

In addition, the evidence shows actual, growing confusion among customers. Vadim Decl. ¶¶ 51-52. Indeed, defendants are orchestrating the most insidious kind of confusion. With increasing success, they are convincing customers that plaintiffs are counterfeiters and interlopers.

Defendants' forced rerouting of customers from their intended destination, an ABC site, to defendants' new sites also is likely to cause confusion. See McSpadden v. Caron, 2004 U.S. Dist LEXIS 28673 (W.D.N.Y. September 21, 2004)

3. The similarity Between the Trademark and Ana Bove's Name Does not Give her the Right to Use the Trademark

"Anna Bove Collections" was adopted as a business trademark and trade name by the parties for their partnership business in 2005 and registered as d/b/a for ABC, Inc. Over time, it has developed secondary meaning and substantial value for the partnership. Until her recent coup, defendant never exploited her actual name or the name "Anna Bove" in commerce, except in connection with the partnership.

Under the circumstances, the close similarity between the Anna Bove trademark and Ana Bove's name does not give her the right to use the trademark or prevent plaintiffs from using it. See Tillery V. Leonard & Sciolla, LLP, 437 F. Supp. 2d 312 (E.D. Penn 2006) (former partner's attempt to prohibit the partnership's use of his surname denied where plaintiff never used his name for a product or business except in connection with the partnership); Edmiston v. Jordan, 1999 U.S. Dist. LEXIS 18262 (S.D.N.Y. Nov. 24, 1999) (accord); Suisman, Shapiro, Wool, Brennan, Gray, & Greenberg, P.C. v. Suisman, 2006 U.S. Dist. LEXIS 8075 (D.Conn. Feb. 15, 2006) (law firm named for its founders successfully enjoined founder's descendants from using practically identical name for new firm because the firm name had acquired secondary meaning).

D. Defendants are engaging in Unfair Competition Under the Lanham Act

In order to establish Unfair Competition under the Lanham Act a plaintiff must show that the defendant: (1) made false or misleading factual representations regarding the nature, characteristics, or qualities of defendant's or plaintiff's goods or services; (2) used the false or misleading misrepresentations in commerce; (3) made the misrepresentations in the context of commercial advertising or commercial promotion; and (4) made plaintiff believe that it is likely to

be damaged by the misrepresentations. In order for the challenged conduct to constitute commercial advertising or promotion under the third factor, defendant must have disparaged a service or product in order to promote its own service or product. Towers Financial Corp. v. Dun & Bradstreet, Inc., 803 F. Supp. 820, 823 (S.D.N.Y. 1992).

It is hard to imagine a more compelling case of unfair competition than this. Defendants literally have stolen plaintiffs' business. To solidify their seizure of the business, defendants have portrayed, and continue to portray, plaintiffs' goods and services as unlawful and in violation of defendants' rights. Defendants' wholesale misrepresentations have been and are in the context of commercial advertising, on the internet, and plaintiffs do not merely believe that they will be damaged but already know that they have been damaged.

Even if there is a *bona fide* issue about ownership of the embroidery design business, there is no doubt that defendants' conduct amounts to unfair competition, as well as libel *per se*. Van-Go Transp. Co. v. New York City Bd. of Educ., 971 F. Supp. 90, 98 (E.D.N.Y. 1997) (a statement impugning the plaintiff's business reputation is libel *per se*).

One pillar of defendants' ongoing attack on the Mikhlyns is the assertion that they are unlawfully selling Ana's designs, as if Ana had a protectible interest in the designs. In fact, all

of the designs were obtained from public domain sources. Ana did not design anything, much less obtain protectible rights in the designs such as copyrights.

After the partnership selected public domain designs, they were then "digitized" into downloadable files for sale on the company web sites. Ana did not even perform the digitizing. That process was contracted out and paid for by ABC Inc. Thus, even if the designs themselves are fair game for any of the parties to exploit, defendants have no right to sell the tangible, digitized design files that were created and paid for by ABC, Inc. If defendants want to use any of the public domain design images that are incorporated in plaintiffs' digitized file, they must at a minimum start from scratch and pay for their own digitizing process.

E. Plaintiffs Are Likely To Succeed On Their Conversion Claims

Conversion is the unauthorized assumption and exercise of the right of ownership over goods belonging to another to the exclusion of the owner's rights. State v. Seventh Regiment Fund, Inc., 98 N.Y.2d 249, 259 (2002). A website is a form of property that can be converted. See Astroworks, Inc., Astroexhibit, Inc., 257 F. Supp. 2d 609, 618 (S.D.N.Y. 2003). Defendants have converted the web sites that belong to the partnership or, at a minimum, under Vadim's rightful control pursuant to Polina's buyout agreement.

II. PLAINTIFFS WILL SUFFER IRREPARABLE INJURY IN THE ABSENCE OF AN INJUNCTION

A. Loss of Control of a Business Constitutes Irreparable Injury

It is well established that the loss a party's right to control, participate in and manage a business constitutes irreparable injury. Wisdom Import Sales Co. v. Labatt Brewing Co., 339 F.3d 101, 114-15 (2d Cir. 2003); Int'l Equity Invs., Inc. v. Opportunity Equity Partners, Ltd., 407 F. Supp. 2d 483 (S.D.N.Y. 2005); Street v. Vitti, 685 F. Supp. 379, 384 (S.D.N.Y. 1988). More specifically, "there can be little question that Plaintiff will be irreparably harmed if it is deprived of its right to control its internet site." Stafford v. New York.com Operating Co., 2003 U.S. Dist. LEXIS 18 (S.D.N.Y. January 3, 2003).

B. Irreparable Injury is Presumed as a Result of Lanham Act Violations

It is well established that irreparable injury may be presumed based upon a plaintiff's showing of likelihood of success on a Lanham Act claim. Federal Express Corp. v. Federal Espresso, Inc., 201 F.3d 168, 174 (2d Cir. 2000).; Hasbro, Inc. v. Lanard Toys, Ltd., 858 F.2d 70, 73 (2d Cir. 1988).

C. Harm to Plaintiffs' Goodwill is Irreparable.

Harm to business goodwill and reputation is unquantifiable and thus irreparable. Register.com. Inc., v. Verio, Inc., 56

F.3d 393, 404 (2d Cir. 2004) (irreparable harm through loss of reputation, good will, and business opportunities); MySpace Inc., v. Wallace, 498 F. Supp. 1293, 1305 (C.D. Cal. 2007) (accord).

III. THE BALANCE OF HARDSHIPS TIPS DECIDEDLY IN PLAINTIFFS' FAVOR

Even if the Court finds that there is uncertainty about the parties' rights with respect to the ownership of the trademarks and websites at issue, plaintiffs have, at the very least, created a fair ground for litigation and a balance of hardships tipping decidedly in their favor.

Defendants are engaging in a scorched earth war against plaintiffs and it is working. They have cut plaintiffs off from their principal source of income, poisoned plaintiffs' good will among customers, and worked to phase out the ABC Sites by redirecting all customers to defendants' new websites.

The *status quo ante* can hardly be said to involve significant hardship to defendants. Ana walked away from the partnership, she was not forced out. Plaintiffs have always said that Ana is entitled to a buy out for her share of the business and have attempted to work out her departure through mediation. Furthermore, plaintiffs are not attempting to prohibit Ana's operation of a business similar to that of the partnerships. If the *status quo ante* is not maintained, Ana

will successfully close the door to any remedy the Court or a jury deems appropriate at trial.

CONCLUSION

For the foregoing reasons, the Court should enter a preliminary injunction a) directing that the most recent transfer of the ABC sites be cancelled, and that the web sites be returned to Vadim control for the benefit of the partnership; (b) prohibiting defendants from using or claiming exclusive ownership of the names "Anna Bove Collections" "ABC-Cross-Stitch-Patterns.com" and "ABC-Embroidery-Designs.com" or any misleading variation thereof; (c) prohibiting defendants from using the above name as keywords in search engines to steer customers to their new sites; (d) prohibiting defendants from selling design files that were taken from the ABC sites and/or created and paid for by ABC Inc.; and (e) prohibiting defendants from alleging that plaintiffs' sales of designs from the ABC Sites are unlawful, pending the trial of this action.

Date: August 25, 2008

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