

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

THE OHIO STATE UNIVERSITY	:	
	:	
Plaintiff,	:	
	:	Case No. 2:10-CV-00890
v.	:	
	:	Judge Watson
	:	
MAPLE STREET PRESS, LLC	:	Magistrate Judge Preston Deavers
	:	
Defendant.	:	

AFFIDAVIT OF RICHARD VAN BRIMMER IN SUPPORT OF PLAINTIFF THE OHIO STATE UNIVERSITY'S MOTION FOR PRELIMINARY INJUNCTION

STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

The undersigned, being first duly sworn, submits this Affidavit in support of the Motion of Plaintiff The Ohio State University ("Ohio State") for a Temporary Restraining Order:

1. I am the Director of Trademark and Licensing for The Ohio State University, a position which I have held since 1999. Prior to that, I was the Assistant Director of Trademark and Licensing for The Ohio State University, a position which I held since 1990. In all, I have been involved in The Ohio State University's trademark and licensing programs for more than 20 years. Prior to that, I was an Assistant Sports Information Director for The Ohio State University, a position which I held from 1985 to 1990. In that position I was involved with the production of the Ohio State football, basketball and other sports programs, as well as media guides/yearbooks.

2. As a licensing administrator, I have served as a two-time elected president of the Association of Collegiate Licensing Administrators, and am a current member of the Board of

directors of the International Licensing Industry Merchandisers Association, the only collegiate representative to the Board in the organizations' 25-year history.

3. I have reviewed and am familiar with the records of The Ohio State University, which include records from the University's Archives and Athletics Departments. These records are maintained in the ordinary course of business.

4. Attached hereto as Exhibit A are representative examples of Ohio State football programs dating from 1902 through the present day. Ohio State has continuously published football gameday programs for more than one hundred years, and during the 1990's, Ohio State's official football gameday program was called "Buckeye Battle Cry".

5. As the Director of Trademark and Licensing, I am familiar with Ohio State's longstanding use of the term "Buckeye" or "Buckeyes" to refer to Ohio State students, alumni, band and athletics. The term "Buckeye" is particularly associated with both Ohio State athletics and the Ohio State marching band, also known as "The Pride of the Buckeyes". Ohio State's athletic teams have been known as "Buckeyes" since at least as early as 1920. The school fight song since 1919 has been "Buckeye Battle Cry", and "Brutus Buckeye" was adopted as the official Ohio State mascot in 1965. Attached hereto as Exhibit B is an Ohio State football program from 1906 which lists as one of the Ohio State "Yells and Songs" a cheer called "The Chant", which was "O-Hi, Buckeye, O.S.U.". The terms "Buckeye" and "Buckeyes", and depictions of buckeye leaves, have long been identified exclusively with Ohio State, and have been used extensively on not only athletic uniforms and band uniforms, but also on licensed merchandise. Attached as Exhibit C is a copy of the sheet music for "Buckeye Battle Cry" along with the 1919 copyright registration (now expired) that was assigned to Ohio State.

6. As the Director of Trademarks and Licensing, I am also familiar with statistics relating to The Ohio State University's trademarks and service marks. I am familiar with the statistic that each year more than 600,000 patrons attend OSU football games at the Ohio Stadium. All games are sold out and attendance always exceeds 102,000. Ohio State Buckeye home games are televised on all ESPN channels and on ABC, and many are nationally televised as well to millions of viewers. These television viewers from all over the world are exposed to Ohio State's trademarks, including Buckeyes and Block O with Buckeye Leaves, and others, and associate these marks exclusively with Ohio State. This widespread promotion has made Ohio State's trademarks enormously valuable assets to Ohio State, as evidenced (in part) by the significant revenue generated through licensing.

7. Ohio State has had a licensing program for more than thirty (30) years, and it has become the most profitable collegiate licensing program in the United States. In the past five (5) years alone, it has generated royalties of more than \$35 million. The past success of Ohio State's academic and athletic programs has resulted in extensive exposure of Ohio State's trademarks to a national audience and has created a large demand for products and services bearing Ohio State's trademarks throughout the United States. Ohio State currently has approximately 500 active authorized licensees for products using the Ohio State trademarks on all types of products. Ohio State also licenses the sale of DVDs of important and memorable Ohio State athletic contests, which are a significant source of royalty income. Ohio State licenses numerous print publications devoted to Ohio State football, its players and coaches, and licenses a wide array of paper products, including calendars, posters, puzzles, wrapping paper and gift boxes. Photographs of a representative sample of these items are attached hereto as Exhibit D.

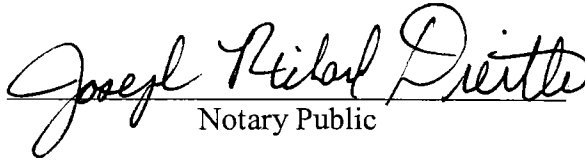
8. As part of my responsibilities, I constantly look for infringing uses of Ohio State trademarks and work with our lawyers to identify and stop such infringements. The Defendants are not licensed by Ohio State for any products or services. I have reviewed the publication “Buckeye Battle Cry” and note that both visually, and with respect to its content, it is virtually identical to the appearance and content of the Ohio State official gameday program, and of other licensed Ohio State products.

Further Affiant Sayeth Naught.



Richard Van Brimmer
Director of Trademarks and Licensing
The Ohio State University

SUBSCRIBED and SWORN to before me this 15th day of October, 2010.



Notary Public

JOSEPH RICHARD DREITLER, ATTORNEY AT LAW
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

My Commission expires: _____