

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
IN NASHVILLE**

TAYLOR SWIFT,

Plaintiff

v.

MALCOLM MATTHEWS, et al.,

Defendants

Civil Action No. 3:09-0442

Judge Wiseman

Magistrate Judge Griffin

FILED UNDER SEAL

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S
MOTION TO EXTEND TIME PERIOD AND SUPPLEMENT LOCATIONS
IDENTIFIED IN PRELIMINARY INJUNCTION AND
ORDER OF SEIZURE OF COUNTERFEIT GOODS**

In accordance with Local Rule 7.01(a), Plaintiff Taylor Swift ("Plaintiff"), by and through her undersigned counsel, respectfully requests that the Court extend the time period and supplement locations identified in the Preliminary Injunction and Order of Seizure of Counterfeit Goods entered by this Court on June 17, 2009 (Document 33; "Preliminary Injunction and Seizure Order") to encompass additional dates and venues for Plaintiff's "Fearless" Tour.

INTRODUCTION

Plaintiff files the present motion in accordance with the Order of this Court dated August 27, 2009 (Document 52). That Order required Plaintiff to advise the Court, by October 5, 2009, of whether Plaintiff's Tour will be extended, and if so, file a motion to extend the time period in the Preliminary Injunction and Seizure Order and to extend the deadline to file an amended

complaint. In its Motion to Extend Deadline for Filing Amended Complaint (Document 56), Plaintiff notified the Court that the Tour will be extended until June 2010 (and requested that the Court extend the deadline for Plaintiff's filing of an amended complaint). Accordingly, Plaintiff respectfully requests that the Court supplement the Preliminary Injunction and Seizure Order to encompass additional dates and venues for Plaintiff's 2009 "Fearless" Tour.

PROCEDURAL HISTORY

The present action came before this Court on May 18, 2009, when Plaintiff filed a Verified Complaint, seeking relief for trademark infringement and trademark dilution, in violation of the Trademark (Lanham) Act, 15 U.S.C. § 1051 *et seq.*, use of counterfeit marks, in violation of the Trademark Counterfeiting Act of 1984, 15 U.S.C. § 1116(d), common law unfair competition, violation of Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.*, and violation of the Tennessee Personal Rights Protection Act of 1984, Tenn. Code Ann. § 47-25-1101 *et seq.* Plaintiff also applied to the Court for a Temporary Restraining Order and Order of Seizure of Counterfeit Goods, restraining Defendants' infringement of Plaintiff's trademarks TAYLOR SWIFT, TAYLOR SWIFT (Stylized) and FEARLESS ("Plaintiff's Trademarks"), Defendants' use of counterfeits of Plaintiff's Trademarks, Defendants' use of Plaintiff's name and likeness, and Defendants' violation of Plaintiff's personal rights, and for an order of seizure of goods bearing counterfeits of Plaintiff's Trademarks and distributed, offered for sale or sold at and near Plaintiff's "Fearless" Tour concert locations.

On May 19, 2009, the Court entered a Temporary Restraining Order and Order of Seizure of Counterfeit Goods ("TRO") (Document 12), enjoining and restraining Defendants from: (a) manufacturing, distributing, offering to distribute, offering for sale, or selling any merchandise and products that bear marks, words and/or names identical or confusingly similar to, or are

counterfeits of, Plaintiff's Trademarks ("Counterfeit Goods"); (b) representing by any method that Counterfeit Goods are sponsored, manufactured or licensed by Plaintiff; and (c) otherwise taking any action likely to cause confusion, mistake or deception as to the origin of Counterfeit Goods.

The TRO required that Plaintiff post a bond, in the amount of \$10,000.00, "for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully restrained, pending the hearing and determination of the continuation of this Order." Plaintiff posted the required bond with the Court on May 19, 2009.

The Court extended the TRO on May 28, 2009 (Document 17), pending a hearing on Plaintiff's Motion for Preliminary Injunction and Application for Order of Seizure of Counterfeit Goods. The Court held the hearing on that Motion, and granted Plaintiff's request for relief, on June 17, 2009, issuing the Preliminary Injunction and Seizure Order. As required by Section 1116(d)(4)(B)(v) of Title 15 of the United States Code, the Preliminary Injunction and Seizure Order identifies the places of location of the Counterfeit Goods (Document 33, Ex. B) and states that:

It appears to this Court that Defendants have been, are and will be present on the premises or within a five-mile radius of the venues where Plaintiff will perform during her concert tour in 2009 ("Plaintiff's 2009 Tour"), including each of the venues identified in Exhibit B hereto ("Venues"), for the purpose of manufacturing, distributing, offering for sale, and selling merchandise and products that bear marks, words and/or names identical or confusingly similar to, or are counterfeits of, Plaintiff's Trademarks, without authorization from Plaintiff ("Counterfeit Goods").

By its terms, the Order "shall remain in full force and effect until such time as the Court conducts a final hearing in this case, unless otherwise expressly ordered in writing by this Court."

At the Initial Case Management Conferences held on June 29, 2009 and the Case Management Conference held on August 26, 2009, Plaintiff advised the Court that Plaintiff's 2009 "Fearless" Tour may be extended beyond October 10, 2009, the last day that is identified in the Preliminary Injunction and Seizure Order with respect to the potential dates and locations of Counterfeit Goods. By subsequent Order, dated August 27, 2009 (Document 52), the Court ordered that Plaintiff advise the Court of whether Plaintiff's Tour will be extended, and if so, file a motion to extend the time period in the Preliminary Injunction and Seizure Order and to extend the deadline to file an amended complaint. In its Motion to Extend Deadline for Filing Amended Complaint (Document 56), Plaintiff notified the Court that the Tour will be extended until June 2010 and files the present motion for an order supplementing the Preliminary Injunction and Seizure Order to encompass additional dates and venues for Plaintiff's Tour.

ARGUMENT

Plaintiff's Memorandum In Support of *Ex Parte* Motion for Temporary Injunction, Motion for Preliminary Injunction and Application for Order of Seizure of Counterfeit Goods (Document 4) set forth the statutory authority for the relief requested by Plaintiff:

In the case of a civil action arising under section 1114(1)(a) of this title ... with respect to a violation that consists of using a counterfeit mark in connection with the sale, offering for sale, or distribution of goods or services, the court may, upon *ex parte* application, grant an order under subsection (a) of this section pursuant to this subsection providing for the seizure of goods and counterfeit marks involved in such violation and the means of making such marks, and records documenting the manufacture, sale, or receipt of things involved in such violation.

15 U.S.C. § 1116(d)(1)(A).

Further to this authority, the Court issued the TRO and held the hearing, as required by 15 U.S.C. § 1116(d)(10)(A), to determine whether “the facts supporting findings of fact and conclusions of law necessary to support such order are still in effect.” The Court found that such facts were still in effect and issued the Preliminary Injunction and Seizure Order.

The Preliminary Injunction and Seizure Order identifies the last Venue in Plaintiff’s Tour as “Xcel Energy Center” in St. Paul, Minnesota, where a concert is scheduled for October 10, 2009. Because Plaintiff’s Tour will continue beyond this date, Plaintiff requests that the Court supplement the Preliminary Injunction and Seizure Order to include the new, additional dates and venues for Plaintiff’s Tour, reflected in the accompanying Proposed Order, contemporaneously filed, as Exhibit B to Motion to Extend Time Period and Supplement Locations Identified in Preliminary Injunction and Order of Seizure of Counterfeit Goods (“Motion to Extend Time Period and Supplement Locations”).

Plaintiff relies on the Declaration of Francisco Javier Dominguez in support of her Motion to Extend Time Period and Supplement Locations (contemporaneously filed, as Exhibit A to the motion). Mr. Dominguez attests that the facts supporting findings of fact and conclusions of law necessary to support a continuing seizure order are still in effect. Mr. Dominguez further declares that, based on his experience with the counterfeiting activities during the Plaintiff’s “Fearless” Tour to-date, he expects that counterfeiting activities will continue through the end of the Plaintiff’s Tour.

As more fully explained in the Declaration of Mr. Dominguez, the Preliminary Injunction and Seizure Order has been executed by law enforcement officials at several venues during Plaintiff’s Tour, resulting in the seizure of approximately 400 items of Counterfeit Goods and in the receipt of identifying information from the individuals from whom Counterfeit Goods

were seized. Plaintiff has identified nine additional defendants, each of whom have been served with process and a copy of the Preliminary Injunction and Seizure Order. Plaintiff has filed with the Court the Summons Returned Executed as to these defendants (Documents 57-65) and will file an amended complaint further identifying these individuals and naming them as defendants, at a time and as may be further required by the Court.

In the absence of the Preliminary Injunction and Seizure Order, many law enforcement officials would not extend any cooperation to Plaintiff for her anti-counterfeiting enforcement efforts, and Plaintiff would be unable to stop the sale of Counterfeit Goods or to receive identification of the new Defendants. The current records of the Clerk of this Court reveal that not one of these individuals has responded to the First Amended Complaint within the prescribed time, filed a motion for extension of time to respond, or otherwise entered an appearance in this case.

CONCLUSION

For all of the foregoing reasons, and with further support of Plaintiff's Memorandum in Support of *Ex Parte* Motion for Temporary Injunction, Motion for Preliminary Injunction and Application for Order of Seizure of Counterfeit Goods (Document 4), which Plaintiff hereby incorporates by reference, Plaintiff respectfully moves this Court for an order extending the time period and supplementing locations identified in the Preliminary Injunction and Seizure Order, as set forth in the Proposed Order.

Respectfully submitted,

/s/ Natalya L. Rose

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Taylor Swift

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Memorandum of Law In Support of Plaintiff's Motion to Extend Time Period and Supplement Locations Identified in Preliminary Injunction and Order of Seizure of Counterfeit Goods is being accomplished through delivery by U.S. Mail, this 2nd day of October, 2009, upon the following:

Martin D. Quattlebaum
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/s/ Natalya L. Rose

Natalya L. Rose