

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2004-003948

05/17/2004

HONORABLE ROBERT L. GOTTSFIELD

CLERK OF THE COURT
M. Johnson
Deputy

FILED: 05/18/2004

JOHN P DALY

LYDIA A JONES

v.

C D M NETWORKS INC

JAMES BURR SHIELDS II

RICHARD BRULL
1925 CENTURY PARK EAST
SUITE 2350
LOS ANGELES CA 90067
GARY JAY KAUFMAN
1925 CENTURY PARK EAST
SUITE 2350
LOS ANGELES CA 90067
ALTERNATIVE DISPUTE
RESOLUTION - CCC

MINUTE ENTRY

Prior to the commencement of argument plaintiff's exhibits 1-7 are marked for identification.

9:38 a.m. This is the time of oral argument. Counsel Lydia A. Jones is present on behalf of plaintiff. Counsel James Burr Shields and Gary J. Kaufman are present on behalf of defendant. All are present in person.

Court Reporter Scott Coniam is present.

After extended argument,

IT IS ORDERED taking the matter under advisement.

On stipulation the parties agree to the following trial date and deadlines.

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IT IS ORDERED setting this case for a **jury trial on February 16, 2005 at 9:30 a.m.**

Estimated length of trial: 3 days.

THIS IS A FIRM TRIAL SETTING. A MOTION TO CONTINUE BASED ON LACK OF PREPARATION WILL NOT BE GRANTED.

1. Discovery shall be completed on or before **December 16, 2004**.
2. Final Supplemental Disclosure statements shall be completed on or before **November 16, 2004**.
3. A final pre-trial conference is set for **February 11, 2005 at 9:30 a.m.**
4. A joint pretrial statement in accordance with Rule 16(d), Arizona Rules of Civil Procedure, shall be due at the time of the pre-trial conference.
5. Jury Instructions are to be provided at the pre-trial conference.
6. All Motions in Limine shall be filed 30 actual days (Sun.-Sat.) before the trial date. Responses shall be filed 10 actual days from receipt of motions. No replies allowed. All Motions in Limine shall be heard on **February 11, 2005 at 9:30 a.m.** (30 min.).
7. At the pre-trial conference, counsel shall provide the Court with copies of any deposition transcripts to be read to the jury. The offering party should highlight the portions to be read. The other side should highlight Rule 106 additions. Any objections for the Court to rule on should be clearly marked in the margin.
8. In the ordinary case, counsel may assume the jury will be picked and opening statements will take place in the morning. Witnesses will then be called on the first day. Trial days are normally 9:30 a.m. to 12:30 p.m., and 1:30 p.m. to 4:45 p.m., four days a week (Monday - Thursday).
9. At the pre-trial conference, counsel shall be prepared to discuss:
 - (a) time limits in voir dire, opening statements, examination of witnesses and closing statements.
 - (b) stipulation as to the foundation and authenticity of exhibits.
 - (c) preliminary jury instructions.

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10. Counsel shall make arrangements with the Clerk of the Court for marking exhibits 5 days prior to trial date.

11. One day's jury fees will be assessed unless the Court is notified of settlement before 2:00 p.m. on the judicial day before trial.

IT IS FURTHER ORDERED that the parties shall conduct a settlement conference on or before **November 1, 2004** with the Alternative Dispute Resolution section of the Superior Court with a Judge Pro Tem.

11:00 a.m. Matter concludes.

LATER:

On stipulation of counsel,

Plaintiff's exhibits 1-7 are received in evidence.

LATER:

After further review of the decision in Pooley, both Eastwood cases, Michaels, Ali, Uhlaender, Shoen, and the pleadings and argument,

IT IS ORDERED granting plaintiff a preliminary injunction, on the same terms as the initial TRO entered March 2, 2004, for the duration of the litigation and until a determination by a trier of fact, or any other final disposition at this trial stage. In the court's view plaintiff, as a sports celebrity, has a right of publicity (Counts One and Two of Complaint) as well as a right to prevent false designations under the Lanham Act (15 U.S.C. §1116) (Count Three); that a prima facie case has been made that defendant has appropriated plaintiff's identity, image and likeness, without the consent of plaintiff for use by defendant for its advantage in a commercial setting which plaintiff has sufficiently shown to the court has a probability of irreparable resulting injury; that plaintiff has further demonstrated a prima facie case that defendant has used false designations and misleading representations of the name, image and identity of plaintiff in ways likely to cause confusion, mistake or deception as to plaintiff's endorsement, sponsorships, affiliation or approval of defendant's commercial products (even if plaintiff's friends and associates, as distinct from the general public believe he does not endorse defendant's products); that in connection with both legal theories or grounds, there is a probability, in the court's view, of irreparable injury (unauthorized used of pictures of a celebrity with a unique celebrity status on a porn site to publicize and obtain users of the site and to demonstrate celebrity's approval of the site and its products creates irreparable harm which can not be adequately compensated by money damages); that such irreparable injury has been sufficiently demonstrated even though plaintiff has withdrawn his diminution in value to reputation and/or sponsorship claim; there was no unreasonable delay in seeking the TRO; there is a likelihood of plaintiff's success on the

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merits on each legal theory; the balance of hardships favors plaintiff and public policy supports this preliminary injunction at this stage of the proceeding.

IT IS FURTHER ORDERED and assuming the same is not moot in view of the above ruling, that defendant's motion for sanctions pursuant to A.R.S. §12-349 will be argued to the court on **June 18, 2004 at 10:30 a.m. (30 min.)** which is a telephonic hearing with the parties to call the court at 602-506-3132 on said date and time. If one side intends to appear in person the other side should be notified.

The court has made these rulings realizing, as pointed out by defendant, that plaintiff has not brought claims for breach of contract, invasion of privacy (except for alleged appropriation of right of publicity for commercial purposes), defamation or breach of copyright. The court believes that the plaintiff has stated a sufficient basis for preliminary injunctive relief on the remaining allegations set forth in his complaint including the alleged devaluation of plaintiff's right of publicity, which is not limited to the causes of action for which plaintiff has not sought relief and notwithstanding the withdrawal of a claim of loss of reputation and sponsorship value.