
Copyright and Trademark Owner Obtains Biting Injunctive Relief

Versah LLC, et al. v. UL Amin Indus., et al., (E.D. Mich. Dec. 9, 2020)

By: Lisa Holubar & Nick Wheeler |December 18, 2020

The Eastern District of Michigan granted a preliminary injunction against dental instrument supplier UL Amins Industries and Hammad Ashiq (“Defendants”) for allegedly selling counterfeit dental bur kits that infringe plaintiffs’, Versah LLC’s (“Versah”) and Huwais IP holding’s (“Huwais”), copyrights and trademarks.¹ The court decided the Plaintiffs were able to demonstrate a likelihood of success on the merits of their copyright and trademark claims (but not their trade dress claim), irreparable harm absent an injunction, and that the public interest would be served by an injunction. The court also granted an asset restraining order preventing Defendants from accessing any assets in the PayPal account associated with the infringing activity, as well as expedited discovery to determine if any additional PayPal accounts were linked to the infringing activity.

Huwais is the owner, and Versah the exclusive licensee, of the “DENSAH” trademark, two registered copyrights, and the claimed trade dress for a dental bur kit, which are a set medical tools which help dentists prepare bones for the insertion of dental implants during oral surgery. Plaintiffs asserted claims of copyright and trademark infringement, state and federal unfair competition, and an unfair competition claim based on its trade dress against the Defendants along with a motion seeking injunctive relief. Versah alleged Defendants sold and offered to sell “copycat and counterfeit products” which were “low quality” products that posed health risks to customers, used Plaintiffs’ copyrighted images, and that these products caused brand confusion.

A preliminary injunction hearing was held, but Defendants neither attended nor otherwise opposed the motion. In addressing the four factors of a preliminary injunction request, the court first noted that it was undisputed the Plaintiffs owned copyrights related to instructions for using the bur kit and the bur kit’s silhouette. Further, the evidence showed that the Defendants copied verbatim whole sentences from Plaintiffs’ work, and only changing the font, thus showing a likelihood to succeed on the copyright claims. The trademark and general unfair competition claims were likely to succeed based on the Defendants’ continued unauthorized use of the mark and an email indicating actual confusion had occurred. The court did not find a likelihood to succeed on the trade dress claims because Plaintiffs failed to identify with particularity the discrete elements of their trade dress, and did not provide any evidence the packaging was distinctive, nonfunctional, or confusing similar.

Next, the court noted that in the Sixth Circuit, when a plaintiff makes a strong showing of likelihood of confusion, irreparable harm follows as a matter of course. It further held that Plaintiffs presented “ample” evidence of irreparable harm, including that Defendants’ products were unsafe and confusion had already occurred. The court also found that any harm to the Defendants would be limited since they were not being forced to cease all business operations, merely made to stop selling the products at issue. The court found that an injunction served the public’s interest as well, especially in light of the evidence that the Defendants’ products included manufacturing defects that could cause harm to the public’s health and safety. In weighing all four factors, the court found a preliminary injunction was warranted. Finally, the court found sufficient evidence existed to grant an asset restraining order and expedited discovery into additional PayPal accounts associated with the infringement.

¹ *Versah, LLC, & Huwais IP Holding LLC, v. UL Amin Indus., & Hammad Ashiq.*, No. 220CV12657TGBRWSW, 2020 WL 7241053, at *1 (E.D. Mich. Dec. 9, 2020).