

STATE OF MAINE
YORK, ss

SUPERIOR COURT
CIVIL ACTION

2015 OCT 05 11 11 AM
YORK, ME

Docket No. _____

Orphideum e.V.,
Plaintiff

v.

Jeff Volk d/b/a MACROmedia Publishing,
Defendant

**PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING
ORDER**

NOW COMES the plaintiff, Orphideum e.V., by and through its counsel, Boynton, Waldron, Doleac, Woodman, & Scott, P.A., and respectfully submits this Motion for Temporary Restraining Order, stating in support thereof as follows:

1. The plaintiff previously filed a Complaint and a Motion for a Preliminary Injunction with the Court on October 5, 2015.
2. In the previously filed pleadings, the plaintiff made clear that plaintiff hired the defendant to collect audio-visual and photographic material at a Conference on Cymatics held in the fall of 2014 in Germany.
3. Since that time, the defendant has unlawfully refused to make copies of the material he collected available to the plaintiff.
4. Under the terms of its contract with the defendant, the plaintiff has the right to review and approve or disapprove any use the defendant makes of the material he collected at the Congress.
5. The Court has not issued Orders of Notice for service on the defendant, and a hearing on the Motion for Preliminary Injunction has not been scheduled.

11/4/2015 Motion denied. Plaintiff's motion fails to satisfy the requirements for a TRO. For example, a TRO may only be granted if it "clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant." Rule 65(a). See also *Banner* the *Trust* ... *Smith & Harris* ... *2002 ME 140* ...

entire findings. Robert D. ...

6. The plaintiff incorporates by reference its Motion for Preliminary Injunction and the attached Affidavit and other exhibits.
7. The plaintiff has obtained information that the defendant will be giving a presentation at a conference on cymatics on November 5-8, 2015. See Excerpts from <http://www.cymaticconference.com/>, advertising the Conference, attached as Exhibit A.
8. There is an imminent danger of irreparable harm to the plaintiff. Specifically, if the defendant makes unauthorized use of the Congress material at the conference, such use will be unauthorized and in disregard of Orphideum's right of prior review and approval.
9. It appears that the defendant is already making unauthorized use of the material. The defendant has released a trailer for a new video he has produced and that he intends to show at the conference. The trailer includes footage of an interview that appears to have been taken at the Congress last fall. The trailer can be viewed here: <http://www.cymaticconference.com/presenter-videos/> and on Youtube here: <https://www.youtube.com/watch?v=emRFqGLX1NE>.
10. Once this public disclosure of the Congress material is made, the effect of that disclosure will be impossible to reverse, and the damages difficult to quantify.
11. A copy of the Complaint, the Motion for Preliminary Injunction, this Motion for Temporary Restraining Order, and the Proposed Order on the Motion for TRO have been forwarded to Attorney Terry Fralich, Counsel for the defendant. Plaintiff's counsel has requested that Defense counsel accept service of process on behalf of the defendant.
12. In light of the time sensitive nature of this claim, the plaintiff requests that the Court grant this Motion immediately and without a hearing.

13. If the Court requires a hearing on the matter, the plaintiff requests that a hearing be scheduled as soon as possible. Plaintiff's counsel will ensure that the defendant is informed of the date and time of the hearing.

WHEREFORE, the plaintiff prays that this Honorable Court:

- A. Grant this Motion for Temporary Restraining Order;
- B. Order that the Defendant be prohibited from making any use of the material that he or his agents collected at the First World Cymatics Congress in Germany in the fall of 2014 at the Cymatics conference in Atlanta, Georgia on November 5-8, 2015; and
- C. Grant such other relief as equity and justice require.

Respectfully submitted,

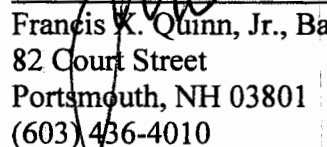
Orphideum e.V.

By its attorneys,

Boynton, Waldron, Doleac,
Woodman & Scott, P.A.

Dated: October 28, 2015

By:



Francis K. Quinn, Jr., Bar # 6855
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Certificate of Service

I hereby certify that a copy of the foregoing document has been forwarded, via email, to Terry Fralich, Esquire, counsel for the defendant.



Francis K. Quinn, Jr.

CV-15-210

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