

Nos. 01-2648/2725

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**

MAR 11 2002

LEONARD GREEN, Clerk

THE TAUBMAN COMPANY, )

Plaintiff-Appellee, )

v. )

WEBFEATS, a Texas Company and HENRY )  
MISHKOFF, an individual, )

Defendants-Appellants. )

ORDER

Before: KENNEDY, BOGGS, and DAUGHTREY, Circuit Judges.

The defendants in this trademark infringement case appeal district court orders granting the plaintiff's motions for a preliminary injunction and to amend the preliminary injunction. The preliminary injunction was entered on October 11, 2001, and is the subject of the defendants' appeal in Case No. 01-2648. The amended preliminary injunction was entered on December 7, 2001, and is the subject of the defendants' appeal in Case No. 01-2725. The cases have been consolidated for briefing and submission on the merits. The defendants now move to stay the December 7 amended injunction and to expedite their appeals. The plaintiff has filed a response in opposition. The defendants have filed a reply. The district court has denied a similar request for a stay.

The factors to be considered by this court in determining whether a stay pending appeal should issue are: 1) whether the applicant has demonstrated a likelihood of success on the merits; 2) whether the applicant will be irreparably injured absent a stay; 3) whether issuance of the stay will substantially injure the other interested parties; and 4) where the public interest lies. *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991). These are the same four factors the district court should consider in deciding whether to grant or deny

a preliminary injunction. *Rock and Roll Hall of Fame and Museum, Inc. v. Gentile Productions*, 134 F.3d 749, 753 (6th Cir. 1998).

The defendants' appeal in Case No. 01-2725 raises issues of first impression in this circuit concerning the "Internet phenomenon known as 'cybergripping.'" *Lucent Technologies, Inc. v. LucentSucks.com*, 95 F.Supp.2d 528, 535 n.9 (E.D. Va. 2000). There is case law which appears to support the defendants' arguments on appeal. See *Westchester Media v. PRL USA Holdings, Inc.*, 214 F.3d 658, 674-675 (5th Cir. 2000); *Better Business Bureau of Metropolitan Houston, Inc. v. Medical Directors, Inc.*, 681 F.2d 397, 404-405 (5th Cir. 1982); *Ford Motor Co. v. 2600 Enterprises*, 177 F.Supp.2d 661, 664-665 (E.D. Mich. 2001); *Bihari v. Gross*, 119 F.Supp.2d 309, 318 (S.D. N.Y. 2000); *Northland Ins. Companies v. Blaylock*, 115 F.Supp.2d 1108, 1117-1122 (D. Minn. 2000); *Bally Total Fitness Holding Corp. v. Faber*, 29 F.Supp.2d 1161, 1163-1167 (C.D. Cal. 1998). In view of this circumstance, and having weighed the injuries to the parties that will result from granting or denying a stay, we conclude that a stay is warranted.

The defendants' motion to stay the amended injunction on appeal in Case No. 01-2725 and to expedite these appeals is **GRANTED**.

ENTERED BY ORDER OF THE COURT

  
Clerk