

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
ENTERED

MAY 16 2003

Michael N. Milby, Clerk of Court

HARRY T. KEANE, Jr.,  
  
                                Plaintiff,  
  
v.  
  
FOX TELEVISION STATIONS, INC.,  
KRIV FOX 26 (HOUSTON, TX),  
SIMON FULLER, individually  
and d/b/a, a/k/a 19TV,  
FREEMANTLE MEDIA OF NORTH  
AMERICA, INC., and SIMON  
COWELL,  
  
                                Defendants.

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CIVIL ACTION NO. H-03-1642

**ORDER**

Pending before the court is Plaintiff's ex parte Application and Motion for Temporary Restraining Order (Docket Entry No. 3). Plaintiff is seeking, among many other things, to have this court immediately and permanently enjoin defendants from using the name "American Idol." Plaintiff claims to own intellectual property rights in the name "American Idol" as well as in the television show entitled "American Idol." Plaintiff alleges that he presented an idea for a television show to defendant, Simon Fuller, and that defendants are now exploiting that idea as the television show entitled "American Idol" without plaintiff's permission. Plaintiff

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also alleges that his ideas have been used in the television show "Pop Idol," which has aired in England. Collectively, the television programs plaintiff identifies in his complaint as embodying his ideas will be referred to herein as the "Shows."

Plaintiff alleges that defendants' performance and broadcast of the Shows constitute violations of the copyright laws of the United States. Plaintiff has failed, however, to demonstrate that he owns the copyright in any work performed or displayed on the Shows. Nor has plaintiff shown that he owns a copyright in the Shows themselves. Plaintiff seems to be alleging that he owns the copyright in the "idea" underlying the shows, but it is well established that one cannot copyright an idea. 17 U.S.C. § 102(b) ("[i]n no case does copyright protection for an original work of authorship extend to an idea . . ."). Copyright protection extends only to those original works of authorship that are "fixed in any tangible medium or expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated." 17 U.S.C. § 102(a). Plaintiff has not alleged any facts to show that a copyrightable work of his has been reproduced, distributed, performed, or displayed by defendants on the Shows or otherwise.

Plaintiff has attached to his complaint a number of writings and drawings, but has not alleged any facts from which the court can conclude that those writings or drawings have been reproduced,

distributed, or displayed by defendants. Plaintiff has also attached to his Original Complaint an application for copyright registration (Docket Entry No. 1, Exhibit 3), which describes the work for which registration is sought as an idea for a national television competition. It does not appear, however, that the Copyright Office granted a registration in connection with this application. This is not surprising since, as explained above, copyright registration does not extend to ideas. Plaintiff also has attached to his complaint two issued copyright registrations (Docket Entry No. 1, Exhibits 4 and 4-a), which describe the work sought to be registered as a "drama/musical play." Plaintiff did not, however, attach a copy of the drama/musical play for which the negotiations issued. It is therefore impossible for the court to determine whether an infringement of those copyrights has occurred. Moreover, plaintiff has failed to allege any facts from which the court could conclude that defendants have infringed plaintiff's copyright in the registered works. There is no allegation that defendants performed the drama/musical play in which plaintiff owns a copyright. In short, plaintiff has failed to allege facts demonstrating a violation of any of his rights under 17 U.S.C. § 106. Plaintiff's copyright infringement claims therefore appear to lack merit.

Plaintiff also alleges that defendants have infringed his trademark in the name "American Idol." Plaintiff has not provided

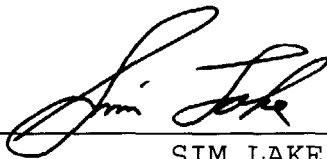
the court with any evidence that plaintiff has obtained a federal or state trademark registration for that name. Plaintiff has not provided a registration number or any other indicia of state or federal registration for that name. Nor has plaintiff alleged that he has used the name "American Idol" in connection with any good, service, or show of his own. Plaintiff has also failed to demonstrate that he was ever publicly associated with the name "American Idol." It does not appear that plaintiff owns any trademark rights in the name "American Idol." Plaintiff has also failed to allege facts from which the court could conclude that defendants' use of the name "American Idol" would cause consumer confusion. Plaintiff also does not allege that the name "American Idol" was famous before defendants began using it. Plaintiff's trademark infringement and federal and state unfair competition claims therefore appear to lack merit.

Plaintiff has also failed to demonstrate that not enjoining defendants would result in irreparable injury. Plaintiff has presented no evidence or argument from which the court could conclude that an award of damages would be insufficient to compensate plaintiff if he were to prevail.

For all of these reasons, Plaintiff's ex parte Application and Motion for Temporary Restraining Order (Docket Entry No. 3) is **DENIED**, and plaintiff's request for temporary and preliminary injunctive relief is **DENIED**.

The court notes that plaintiff's claims appear to be both legally and factually unsound. Plaintiff has not supported his request for injunctive relief with any meaningful legal argument. To ensure that this is not simply an instance of vexatious litigation, plaintiff's counsel is **ORDERED** to file, within 20 days from the entry of this Order, an affidavit detailing all of the legal and factual research they performed prior to filing this lawsuit, and demonstrating how they otherwise complied with Federal Rule of Civil Procedure 11.

**SIGNED** at Houston, Texas, on this 16<sup>th</sup> day of May, 2003.

  
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SIM LAKE  
UNITED STATES DISTRICT JUDGE