

Porn Titan Flynt Defeats Bro's Bid To Block Rival Store

By Allison Grande

Law360, New York (April 06, 2011, 8:15 PM ET) -- An Ohio federal judge on Wednesday rejected Jimmy Flynt's bid to block his older brother, porn mogul Larry Flynt, from using the Hustler name on his new rival Cincinnati store while the siblings resolve a trademark fight.

After hearing oral arguments, Judge William O. Bertelsman denied a Jan. 30 motion filed by Jimmy Flynt and his company Hustler Cincinnati Inc. seeking a temporary restraining order and preliminary injunction enjoining Larry Flynt and his L.F.P. IP LLC entity from using the Hustler mark in connection with a second and competing Hustler retail store recently opened in downtown Cincinnati.

Judge Bertelsman handed down the ruling — which allows both brothers to use the Hustler mark at their rival stores — during a motion hearing, and a formal order explaining his reasoning is forthcoming, according to a docket entry Wednesday.

Larry Flynt initiated the action in December 2009, seeking an injunction blocking his brother from using any Hustler marks.

Jimmy Flynt's company had orally obtained permission in 2000 to use Hustler marks at the Cincinnati store in exchange for a fixed royalty of \$8,400 per month, but in September 2009, Larry Flynt's company issued a warning to Hustler Cincinnati that it had stopped paying the monthly sums, an amended complaint filed in November said.

Jimmy Flynt's Hustler Cincinnati failed to cure the alleged default, the complaint states, and in November 2009, L.F.P. IP sent a cease-and-desist order, which was ignored.

Hustler Cincinnati owes more than \$134,000 in royalties, according to the suit, which seeks treble damages.

The defendant filed counterclaims in November, claiming that his company had the “implicit right” to use the Hustler marks at the Cincinnati store prior to the dispute over royalties.

In his March 30 injunctive relief motion, Jimmy Flynt argued that the court should bar his brother from using the Hustler mark in connection with his new store — which was slated to open March 31 just blocks away from Jimmy's 11-year-old Hustler store — in order to maintain the status quo while the parties resolve the trademark dispute.

“Larry's actions are akin to Jimmy creating a second/competing Hustler magazine or opening a second Hustler Hollywood store down the street from the Hustler Hollywood store on Sunset Blvd.,” the motion said. “Unlike Larry, Jimmy has respect for this court and the litigation process and has not made efforts to open new and/or competing business ventures under the Hustler name pending resolution of the claims and issues herein.”

Jimmy Flynt added that his brother's new store had already caused confusion among consumers in downtown Cincinnati that threatened to harm his existing business, and that “there would be no Hustler retail without Jimmy,” who was allegedly the “first and senior user of the Hustler mark in retail services.”

Trademark Dispute

MEDIA (CONTINUED)

Larry Flynt and his company responded to the allegations Tuesday, calling the defendant's injunctive relief request “procedurally improper, factually meritless and a waste of this court's time.”

Specifically, the response alleged that there was no immediate or irreparable harm because Jimmy Flynt knew of the existence of his brother's Cincinnati store for at least eight months without moving for injunctive relief, and that HH-Cincinnati — an entity owned by no-party Theresa Flynt — and not anyone named in the current litigation was the sole owner of the new Hustler store.

This most recent request is merely an attempt to “suddenly accelerate” the litigation of trademark issues before the resolution of Jimmy's theory that he is entitled to use the disputed marks because he maintains a joint partnership with his brother, a claim that the court has elected to tackle before resolving any trademark issues, the response added.

Larry Flynt and his company are represented by Mark A. Vander Laan, Amanda P. Lenhart, Joshua A. Lorentz and Robert M. Zimmerman of Dinsmore & Shohl LLP.

Jimmy Flynt and his business are represented by Robert W. Hojnoski, Carrie A. Masters and Shea W. Conley of Reminger Co. LPA.

The case is L.F.P IP LLC et al. v. Hustler Cincinnati Inc. et al., case number 1:09-cv-00913, in the U.S. District Court for the Southern District of Ohio.

--Additional reporting by Pete Brush. Editing by Chris Giganti.

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