

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

3BA INTERNATIONAL LLC,

Plaintiff,

v.

KEVIN LUBAHN, et al.,

Defendants.

CASE NO. C10-829RAJ

PRELIMINARY INJUNCTION

I. INTRODUCTION

On May 20, 2010, this court entered a temporary restraining order (“TRO”) against Defendants Kevin Lubahn and Kevin Ellis, and ordered Defendants to show cause why the court should not convert the TRO to a preliminary injunction. (Dkt. # 15). Plaintiff 3BA International LLC (“3BA”) has provided evidence that both Defendants were served with the TRO. Nonetheless, no Defendant has entered an appearance in this matter, no Defendant has submitted anything to this court, and no Defendant appeared at today’s hearing to address the show-cause order.

The sole indication that Defendants have any interest in this action is that David Blutcher, who purports to be an Illinois attorney representing Defendants, sent an e-mail to counsel for 3BA yesterday at approximately 7:00 p.m. requesting that today’s hearing be postponed. 3BA’s counsel provided the court with a copy of the e-mail at today’s

1 hearing.¹ The court confirmed that neither Mr. Blutcher nor any other person has
2 appeared in this action on Defendants behalf. The court accordingly declined to postpone
3 today's hearing.

4 3BA filed supplemental briefing and evidence yesterday. The supplemental
5 evidence demonstrates that Mr. Lubahn claimed ownership of 3BA intellectual property
6 in a May 25 hearing before a King County Superior Court Judge, and apparently
7 contested whether the TRO bound him.² It demonstrates that Mr. Lubahn continues to
8 assert ownership of 3BA's tangible property as well, including a 3BA vehicle and a 3BA
9 laptop. It demonstrates that 3BA indeed owns the vehicle, along with two computers and
10 two Blackberry mobile devices issued to Mr. Ellis and Mr. Lubahn. Finally, through the
11 declaration of a computer forensics specialist, 3BA establishes that while Mr. Lubahn
12 was still employed by 3BA, he created undisclosed settings on 3BA's e-mail service that
13 caused e-mails sent to other 3BA officials to be surreptitiously routed to him as an
14 additional recipient.

15 The additional evidence only strengthens the factual findings the court made in
16 entering the TRO. Accordingly, the court reiterates those factual findings, as
17 supplemented above. The TRO, whose factual findings and legal conclusions the court
18 incorporates into this order by reference, will convert to a preliminary injunction.

19 3BA requests that the preliminary injunction include two modifications to the
20 terms of the TRO. First, it asks that the court expand a prohibition on solicitation or
21 contact with known or potential 3BA investors or franchisees to include any 3BA
22 "business contact." The court declines to do so because 3BA offers no definition of
23 "business contact." Without such a definition, the term could apply to any person or

24
25 ¹ The court has directed the clerk to file the e-mail on the docket.

26 ² These allegations, if proven, could place Mr. Lubahn in contempt of court. 3BA has not moved
27 for contempt, and given that the evidence regarding Mr. Lubahn's statements in King County
28 Superior Court comes in the form of hearsay statements of 3BA's counsel, the court declines to
consider contempt sanctions at this time.

1 entity that has done business with 3BA, and nothing in the record supports so sweeping a
2 prohibition.

3 Second, 3BA requests that the court order Defendants to return the vehicle, two
4 laptop computers, and two Blackberry devices to 3BA. The court will grant that request,
5 as 3BA has provided sufficient evidence that it owns this property, and Defendants have
6 provided no evidence to the contrary. As to the laptops and mobile devices, however,
7 3BA may not modify the data on these devices without further order of the court. 3BA
8 may, however, perform a forensic evaluation of the laptops and mobile devices to
9 determine their contents and preserve them. If it preserves the data, it may move the
10 court for an order allowing it to return the laptops and Blackberry devices to business use.

11 Finally, as there is no suggestion that the \$5000 bond that 3BA posted in
12 connection with the TRO is inadequate, the court will issue the preliminary injunction
13 without additional bond.

14 **II. PRELIMINARY INJUNCTION**

15 Effective upon service of this order, and continuing until the entry of judgment in
16 this matter or an order of the court, Defendants Kevin Lubahn and Kevin Ellis, including
17 any persons or corporate entities under their control, are enjoined from the following acts:

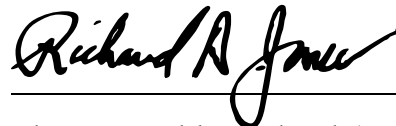
- 18 1) Soliciting or contacting (or assisting others in soliciting or contacting) any
19 known or potential 3BA investor or franchisee for direct or indirect support for
20 Defendants' competing basketball enterprise;
- 21 2) Using, divulging, disclosing, or transmitting for any purpose any document or
22 record acquired from 3BA;
- 23 3) Using any graphic or symbol that is identical to or confusingly similar to the
24 trademarks 3BA acquired in the asset purchase agreement;
- 25 4) Claiming an ownership interest in 3BA intellectual property, documents, or
26 business plans; and

1 5) Accessing or attempting to access 3BA's password-protected electronic mail
2 systems or internet website.

3 In addition, Defendants Lubahn and Ellis must, within one week of service of this
4 order, return the laptop computers and Blackberry devices that 3BA provided them.
5 They may not modify the contents of these devices in any way.

6 Defendant Lubahn must, within one week of service of this order, return the
7 vehicle that 3BA provided to him.

8 DATED this 3rd day of June, 2010.

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12 The Honorable Richard A. Jones
13 United States District Judge
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