



Judge Denies Injunction Against Perez Hilton

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Citing defects in the evidence presented, a Los Angeles federal judge has denied photo agency X17's efforts to enjoin celebrity blogger Perez Hilton from allegedly snatching photos and posting them on his popular Web site.

In a minute order dated March 6 but filed Thursday, U.S. District Court Judge Valerie Baker Fairbank ruled X17 had not met its burden of proof to persuade her to issue a preliminary injunction against the blogger, whose real name is Mario Lavandeira.

"Plaintiff has not presented competent evidence sufficient to establish a likelihood (or raise serious questions regarding) success on the merits, or to establish that the danger of irreparable injury or imbalance in hardships are sufficient to warrant injunctive relief, with respect to either the copyright infringement claim or the claim for 'hot news' misappropriation," Fairbank wrote.

The judge indicated X17 failed to authenticate certain evidence filed to support its motion. The evidence includes photographs, Web site screenshots and copyright applications.

"None of the documents is identified individually," Fairbank wrote. "It is not known who prepared the registration applications, or who (if anyone) filed them. It is not known who retrieved the photos from either X17's archives or Lavandeira's Web site, when or how they did so, or on what basis they can be sure that the printouts accurately reflect the contents of the archive or Web site.

"Instead of providing this crucial information, X17 merely describes its copies as 'true and correct' and legal papers as 'valid,' 'timely submitted' and so forth," she added. "Such vague language alone does not amount to competent evidence of the documents' authenticity."

The only evidence Fairbank found authentic were the photo agency's assignment contracts with various photographers.

X17's hot news misappropriation claims also failed, Fairbank wrote, because the company did not provide evidence that Lavandeira's "use of the photographs in question threaten the existence of the service plaintiff provides: i.e. the gathering and distribution of celebrity photographs."

The decision comes just a month after X17 claimed victory when U.S. District Court Judge Gary Fees ruled its "hot news" claim encompassed photographs and was not preempted by the Copyright Act.

The case has since been transferred to Fairbank, a veteran Los Angeles Superior Court judge recently appointed to the federal bench, who denied the injunction without oral argument. Fairbank took a hearing on the motion set for Monday off calendar.

"We have the evidence ready, it's just a matter of putting it together in the way the court wants us to put it," said X17's attorney, John Tehranian, of Turner Green Afrasiabi & Arledge in Costa Mesa. "We feel we presented proper evidence, especially under the lax standards for a preliminary injunction, but we're happy to come back and provide the court with the evidence it needs."

Tehranian said he believes once the court sees the required evidence, Fairbank will rule in X17's favor.

"We're disappointed the court didn't bring us in," Tehranian said of the canceled hearing. "We certainly could have provided testimony at that time."

Lavandeira's attorney, Bryan Freedman of Freedman & Taitelman in Los Angeles, said X17 simply created arguments without bothering to supply the court with evidence, and Fairbank's decision "is the biggest ruling by far in the case. You get the first look at the court's opinion in the matter.

"It's nice to see the right decision being made in this case," Freedman said. "And we feel vindicated by the court's ruling."

Freedman said his client is considering filing a motion for summary judgment.

"Our sole focus was defeating the motion for preliminary injunction," he said. "Our client sees himself protecting the rights of bloggers everywhere and will continue to do so."

X17 isn't the only photo agency that has a beef with Lavandeira's use of photos. An Australian photographer is threatening to sue him when he travels to Sydney next month to co-host an MTV awards show.

According to The Daily Telegraph, paparazzo Jamie Fawcett told the newspaper's "Sydney Confidential" he will personally serve Lavandeira court papers alleging violations of copyright, defamation and damages over his use of the photographer's images on perezhilton.com.

Lavandeira told the newspaper he wasn't worried.

"I'm not doing anything illegal ... and feel confident a jury of my peers will side with me," he said.

The Los Angeles case is X17 Inv. v. Lavandeira, 06cv7608.