

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Play Beverages, LLC, and CirTran)
Beverage Corp.,)
)
Plaintiffs,)

vs.)

Playboy Enterprises International, Inc.,)
Jimmy Esebag, United Licensing Group,)
Inc., Ron Coopersmith, RLC Partners,)
LLC, Redi Fze, and Paul Levin,)
)
Defendants.)

No. 12 L 12181

Calendar S

Playboy Enterprises International, Inc.,)
)
Counter-Plaintiff,)

Judge Raymond W. Mitchell

vs.)

Play Beverages, LLC, and CirTran)
Beverage Corp.,)
)
Counter-Defendants.)

ORDER

This matter is before the Court on Defendant Playboy Enterprises International, Inc.'s motion for permanent injunction.

This case having been tried to a jury, the jury having rendered a verdict on October 21, 2016 ("Verdict"), the Court having entered Judgment on the Verdict on October 25, 2016, and the Court being fully advised in the premises,

IT IS HEREBY FOUND AND ORDERED:

1. The jury found that the Product License Agreement ("License Agreement") between Counter-Defendant Play Beverages, LLC ("PlayBev") and Counter-Plaintiff Playboy Enterprises International, Inc. ("Playboy"), Exhibit 1001,

was not renewed (Special Verdict Form No. 10). Based on the evidence presented at trial, the License Agreement, as extended, expired on September 30, 2012.

2. The jury found that PlayBev and Counter-Defendant CirTran Beverage Corp. (“CirTran Beverage”) had engaged in willful trademark infringement (Special Verdict Form No. 7), trademark counterfeiting (Special Verdict Form No. 8), and willful deceptive trade practices (Special Verdict Form No. 9).

3. 815 ILCS 510/3 provides that “[a] person likely to be damaged by a deceptive trade practice of another may be granted injunctive relief upon terms that the court considers reasonable.” Based on the evidence presented at trial, the Court finds that Playboy is likely to be damaged by the deceptive trade practices of PlayBev and CirTran Beverage in continuing to use Playboy’s trademarks without permission after expiration of the License Agreement.

4. 15 U.S.C. §1116(a) authorizes the Court “to grant injunctions, according to the principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the registrant of a mark registered in the Patent and Trademark Office . . . Any such injunction may include a provision directing the defendant to file with the court and serve on the plaintiff within thirty days after the service on the defendant of such injunction, or such extended period as the court may direct, a report in writing under oath setting forth in detail the manner and form in which the defendant has complied with the injunction.”

5. A party seeking a permanent injunction must demonstrate (1) a clear and ascertainable right in need of protection, (2) that it will suffer irreparable harm if the injunction is not granted, and (3) that no adequate remedy at law exists. *E.g.*, *Swigert v. Gillespie*, 2012 IL App (4th) 120043, ¶ 27. Playboy has satisfied these requirements, as set forth below.

6. Playboy has a clear and ascertainable right in need of protection, which was undisputed in the case: its ownership of and right to control the use of its trademarks (“Playboy Marks”).

7. Playboy will suffer irreparable harm absent an injunction. The jury found that PlayBev and CirTran Beverage willfully infringed upon those marks, engaged in counterfeiting, and committed deceptive trade practices. The jury found a likelihood of confusion caused by PlayBev and CirTran Beverage’s use of the Playboy Marks. Based upon the evidence presented at trial, the Court agrees with the jury’s findings. Further, Playboy presented evidence – and it was undisputed at trial – that PlayBev and CirTran Beverage have continued to use the Playboy Marks to promote and sell Playboy Energy Drink domestically and internationally,

since the expiration of the License Agreement in 2012, and up to and including the present. Finally, Playboy presented evidence at trial that PlayBev and CirTran Beverage's use of the Playboy Marks has caused and threatens to cause harm to Playboy's reputation. The Court finds that the harm to Plaintiff will continue into the future absent an injunction. The Court also finds that legal remedies are inadequate to compensate for the injury.

8. Therefore, the Court finds that a permanent injunction is appropriate both pursuant to the Lanham Act and the Illinois Deceptive Trade Practices Act.

9. The Court hereby orders that PlayBev and CirTran Beverage, and each of their directors, officers, employees, and agents, and all persons or distributors acting under contract with either or both of them, or otherwise acting in concert with them, are forever enjoined from using the Playboy Marks, or any mark confusingly similar thereto, or likely to cause confusion therewith, in manufacture, sale, offering for sale, distribution, marketing, promotion (by means of holding events or otherwise), or advertising of any service or product, including but not limited to energy drinks and water, anywhere in the United States or the world.

10. The Court further orders each of PlayBev and CirTran Beverage, within ten days of entry of this Order, to: (i) destroy all products and materials in its possession, custody or control bearing the Playboy Marks, including without limitation, cans of Playboy Energy Drink, advertising and promotional materials, and "point of sale" materials, (ii) serve copies of this Order on each distributor that PlayBev or CirTran Beverage has authorized to manufacture and/or distribute Playboy Energy Drink or to whom PlayBev or CirTran Beverage or its suppliers have ever shipped Playboy Energy Drink, and (iii) cease using and transfer to Playboy all website domain names and social media handles using the Playboy name (including abbreviations thereof including but not limited to "PB", "PPLY", and "PLAY") or any of Playboy's trademarks, and (iv) for those website domain names and social media handles (of any type – business or personal) that do not contain the Playboy name (or any abbreviations thereof) or any of Playboy's trademarks, immediately remove from the content of such website or social media account any and all references to Playboy (including any abbreviations thereof), Playboy's trademarks and the words "Playboy Energy Drink" whether incorporated by words or images.

11. Within thirty days after entry of this Order, PlayBev and CirTran Beverage shall file with the Court and serve on Playboy a report in writing under oath setting forth in detail the manner and form in which they have complied with this Order. Such report shall include proof of the destruction of all infringing materials, a list of all current and former persons and entities with whom PlayBev and/or CirTran Beverage have contracted for the manufacture, sale or distribution

of Playboy Energy Drink, proof of service of this Order on such persons and entities, and a list of all the website domain names and social media handles in issue.

12. Playboy may serve this Order on any person or entity whom Playboy reasonably believes or suspects might be engaging in the unauthorized use of the Playboy Marks in connection with the manufacture, promotion, distribution or sale of energy drinks or other products, including without limitation any person or entity with whom PlayBev and/or CirTran Beverage have contracted for the manufacture, sale or distribution of Playboy Energy Drink.

13. This Order has been narrowly tailored to be no more extensive or burdensome than required to protect Playboy's legal right to control the use of its trademarks.

ENTERED, *Judge Raymond W. Mitchell*
JAN 12 2017
Circuit Court - 1992

Judge Raymond W. Mitchell, No. 1992