

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

CONNOR SPORT COURT INTERNATIONAL,)
LLC, a Delaware limited liability)
company,)
)
Plaintiff,)
)
vs.)
)
CWF FLOORING, INC., d/b/a)
plasticsportcourttiles.com, d/b/a)
sporttiles.pro, a California)
corporation,)
)
Defendant.)

Case No. 2:17-CV-042 BSJ

BEFORE THE HONORABLE BRUCE S. JENKINS

DATE: AUGUST 4, 2017

REPORTER'S TRANSCRIPT OF PROCEEDINGS

HEARING ON MOTION

Reporter: REBECCA JANKE, CSR, RMR
(801) 521-7238

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

FOR THE PLAINTIFF: THORPE, NORTH & WESTERN, LLP
BY: IAN WANG, ESQ.
175 SOUTH MAIN STREET, SUITE 900
SALT LAKE CITY, UTAH 84111

MR. JAMES MAKSIMUK APPEARED
AS PRESIDENT OF CWF FLOORING

1 AUGUST 4, 2017

SALT LAKE CITY, UTAH

2 P R O C E E D I N G S

3 * * *

4 THE COURT: Good afternoon. And let's turn again to
5 Connor Sport Court International vs. CWF Flooring, 17-C-42,
6 here today on a continued motion for default. And those who
7 are making appearances, if you will be good enough to make a
8 record for us, tell us who you are and whom you represent.

9 MR. WANG: Thank you, Your Honor. Ian Wang on
10 behalf of the plaintiff.

11 THE COURT: I can't hear you.

12 MR. WANG: Ian Wang on behalf of the plaintiff
13 Connor Sport Court international.

14 THE COURT: Okay. Is there a attorney here to
15 represent the defendant?

16 MR. MAKSIMUK: Good afternoon, Your Honor. I'm
17 James Maksimuk, the president of CWF Flooring.

18 THE COURT: Yeah. You're welcome to observe, but
19 you're not going to be able to participate.

20 MR. MAKSIMUK: Okay. I question the jurisdiction of
21 this Court.

22 THE COURT: I won't listen to you, and I'll tell you
23 why. I'll tell you why.

24 MR. MAKSIMUK: Please --

25 THE COURT: Three times you have been told that an

1 entity can't represent itself.

2 MR. MAKSIMUK: Okay.

3 THE COURT: You're not a lawyer. Our local rule
4 requires a lawyer to represent the entity.

5 MR. MAKSIMUK: Uh-huh.

6 THE COURT: That hasn't been done. You've been told
7 three times; by the Magistrate, by the Court and by the
8 Court. The Court in a letter and the Court here in open
9 court.

10 MR. MAKSIMUK: Okay. Yes.

11 THE COURT: We gave you over a month to get some
12 help.

13 MR. MAKSIMUK: Correct. I understand that.

14 THE COURT: And that's fine. So sit down, and you
15 may observe, but you're not going to participate.

16 MR. MAKSIMUK: Well, Your Honor, I question the
17 venue.

18 THE COURT: Sit down.

19 MR. MAKSIMUK: I question the venue.

20 THE COURT: Sit down.

21 MR. MAKSIMUK: I ask permission to talk, Your
22 Honor.

23 THE COURT: Sit down. We'll consider that, but I'm
24 going to listen to the motion first.

25 MR. MAKSIMUK: I won't sit down. I'd like to --

1 THE COURT: Sit down.

2 MR. MAKSIMUK: Your Honor, I'd like to cite Supreme
3 Court ruling --

4 THE COURT: Sit down. I don't want to have to have
5 the marshal have you sit down.

6 MR. MAKSIMUK: -- Quarrier vs. Peabody, Supreme
7 Court ruling. And I quote: The appearance by a corporation
8 in a plea to the jurisdiction of a Court should not be in
9 person or by attorney but may be by the president.

10 I am making my presence now, and I -- in the
11 interests of justice, Your Honor, and make the playing field
12 even, I would like to challenge the venue. I have no
13 business in the State of Utah, Your Honor. I do not do
14 business here. I have never sold a Sport Court tile in the
15 State of Utah. I don't do business here. I only do business
16 in the state of California. And for that reason -- and my
17 witnesses are in the state of California. And I want this
18 Court to even the playing field, the playing field, to serve
19 the interests of justice, to move to the state of California.

20 Attorney Wang is licensed in the state of
21 California. And I know -- I suspect that his law firm was
22 perhaps suspecting that I would make a motion or request to
23 move to the state of California. The plaintiff is ready to
24 move to California. That's why the law firm chose him,
25 because he's licensed in the state of California.

1 THE COURT: Counsel has filed his motion.

2 MR. MAKSIMUK: Yes.

3 THE COURT: Back in -- his Complaint was filed on
4 January 2 of 2017. On February 9, 2017, the Complaint was
5 properly served --

6 MR. MAKSIMUK: It was not properly served.

7 THE COURT: -- on CWF's registered agent.

8 MR. MAKSIMUK: It was not properly served. I have
9 never received it. I made --

10 THE COURT: No. No.

11 MR. MAKSIMUK: It was not --

12 THE COURT: You sat here a month or so ago.

13 MR. MAKSIMUK: Yes.

14 THE COURT: We had you make some telephone calls.

15 MR. MAKSIMUK: Yes.

16 THE COURT: We ascertained what the records show in
17 California. The record shows the registered agent, your
18 agent, was properly served, and that was pretty well
19 demonstrated the last time we met. On April 26 of '17, you
20 asked the magistrate for an extension of time to find
21 counsel.

22 MR. MAKSIMUK: Your Honor --

23 THE COURT: Magistrate Judge Warner responded to
24 Mr. Maksimuk's email by stating, quote: All requests to
25 extend time need to be in the form of a motion filed by an

1 attorney because a company cannot appear pro se. That's the
2 local rule.

3 MR. MAKSIMUK: Okay.

4 THE COURT: I'm bound by the rule. You're bound by
5 the rule.

6 MR. MAKSIMUK: Yes, Your Honor, but citing U.S. Code
7 1391 regarding venue, a civil action may be brought in a
8 judicial district where any defendant resides. I ask the
9 Honorable Court to respect that decision -- that rule,
10 rather.

11 THE COURT: I ask --

12 MR. MAKSIMUK: I have no business here.

13 THE COURT: -- you to respect the local rule.

14 MR. MAKSIMUK: Yes. Well, it serves the --

15 THE COURT: Where is your attorney?

16 MR. MAKSIMUK: -- interests of justice. My
17 witnesses are there. I flew --

18 THE COURT: No. Where is your attorney?

19 MR. MAKSIMUK: -- from California to here twice.

20 THE COURT: Where is your attorney?

21 MR. MAKSIMUK: I question the venue, Your Honor. I
22 don't belong here.

23 THE COURT: No. No.

24 MR. MAKSIMUK: I do not have an attorney.

25 THE COURT: Where is your attorney?

1 MR. MAKSIMUK: I do not have an attorney. This is
2 not the trial. This is all pretrial, Your Honor.

3 THE COURT: Your initial request to the Magistrate
4 was --

5 MR. MAKSIMUK: This is pretrial, Your Honor.

6 THE COURT: -- to give you an extension so that you
7 could find an attorney.

8 MR. MAKSIMUK: I question the venue, Your Honor. I
9 wish you'd make a ruling on the venue, please.

10 THE COURT: I'm listening to you, but I'm indicating
11 to you that I have to have --

12 MR. MAKSIMUK: Yeah. Would you like -- I'm asking
13 you --

14 THE COURT: You're not here pro se, you see. You're
15 not here as an individual.

16 MR. MAKSIMUK: Yes.

17 THE COURT: The company is here, and the company is
18 unrepresented.

19 MR. MAKSIMUK: I'm asking you to make a decision --

20 THE COURT: You make your record.

21 MR. MAKSIMUK: -- on the venue.

22 THE COURT: I'm happy to have you make your
23 record.

24 MR. MAKSIMUK: Will you make a decision on the
25 change of venue, please, citing those specific quotes I just

1 mentioned?

2 THE COURT: Counsel, you may proceed.

3 MR. WANG: Thank you, Your Honor. Just to clarify,
4 would Your Honor like me to actually respond to what
5 Mr. Maksimuk has to say?

6 THE COURT: You're happy to respond, but I'm
7 interested in your motion.

8 MR. WANG: Okay. Well, Your Honor, as you know, as
9 the plaintiff has already explained during the previous
10 hearing back on -- back in June, the plaintiff filed the
11 Complaint in this case back in January, on January 17. And
12 as Your Honor has already explained on the record, during
13 the -- on February 9, the defendant's registered agent was
14 properly served with a copy of the Complaint, and it was
15 clarified during the hearing last June that, you know, we
16 confirmed that the registered agent for CWF Flooring was
17 properly served, although Mr. Maksimuk himself may not have
18 received a copy of the Complaint.

19 However, the record here in this case is established
20 that Mr. Maksimuk did receive a copy of the Complaint by
21 April of this year, and he had requested an extension of time
22 to find counsel, and the Court and the Magistrate Judge has
23 informed or instructed CWF Flooring that it had to find --
24 that it had to be represented by counsel, and to this date
25 CWF Flooring does not have an attorney to represent it. It

1 has not answered the Complaint. The clerk of the Court has
2 entered a default against CWF Flooring, and presently, again,
3 the plaintiff renews its motion for entry of default judgment
4 against CWF Flooring.

5 THE COURT: Okay. Was a default entered with the
6 clerk?

7 MR. WANG: Yes, Your Honor.

8 THE COURT: And what date was that?

9 MR. WANG: Let me make sure. The default was
10 entered by the clerk of the court on May 18, 2017.

11 THE COURT: Okay. Now, starting with your first
12 claim or the claims that remain, take them up one by one and
13 proffer your evidence.

14 MR. WANG: Okay. So as to -- as to -- well, there
15 are a total of six counts in the Complaint, and I will start
16 with Count I, infringement of a federally registered
17 trademark under --

18 THE COURT: I'm having trouble hearing you, so speak
19 up. Make sure everybody can hear you.

20 MR. WANG: Sure. So under Count I, for infringement
21 of a federally registered trademark under 15 USC 1114, Connor
22 Sport Court International owns several registered trademarks,
23 federally registered trademarks for the term "Sport Court,"
24 including trademark registration numbers 1155586, 1727818,
25 1177220 and 2479328. The -- in the Complaint, Connor Sport

1 Court has alleged that the defendant owns and maintains a
2 website that is accessible through the domain
3 plasticsportcourttiles.com, which contains the term "Sport
4 Court," which is a registered mark owned by Connor Sport
5 Court.

6 THE COURT: Okay. Which registered mark does it
7 contain?

8 MR. WANG: It contains the Sport Court mark.

9 THE COURT: Now, you gave me two or three marks.

10 MR. WANG: Right.

11 THE COURT: I want to know which mark you're talking
12 about.

13 MR. WANG: Actually, all of them, Your Honor,
14 because all four of the marks that I -- that I had mentioned
15 are for the term "Sport Court". They are just registered for
16 different goods relating to flooring surfaces.

17 THE COURT: Okay. Now, which flooring surfaces
18 relate to the product that people are complaining about here?

19 MR. WANG: Well, for example, the mark 1727818 is
20 for recreational and athletic play surfaces, and also 2479328
21 for Sport Court for use in connection with plastic
22 interlocking floor tiles, so those two would be the -- sort
23 of the most related to the floor tiles sold by the defendant,
24 CWF Flooring.

25 THE COURT: Now, in reference to that first cause of

1 action --

2 MR. WANG: Uh-huh.

3 THE COURT: What relief are you asking for?

4 MR. WANG: In reference to the first cause of
5 action, the plaintiff is seeking an order that would
6 permanently enjoin CWF Flooring from using the terms "Sport
7 Court," "Sports Court," "Sport Courts," "Multi-Sport Court,"
8 "Multi-Sports Court" or any variation thereof in connection
9 with the marketing or sale of flooring products and
10 services.

11 THE COURT: Well, are you asserting the use or
12 something beyond plastic tiles?

13 MR. WANG: Just to clarify, is Your Honor asking,
14 are we asserting that -- that the proposed injunction should
15 cover more than -- than the use of those marks for plastic
16 floor tiles?

17 THE COURT: What is your evidence that it's been
18 used for something other than plastic tiles?

19 MR. WANG: Well, Your Honor, the evidence is just
20 based on the defendant's website, which shows that it -- you
21 know, the defendant is selling other kinds of -- all other
22 kinds of flooring.

23 THE COURT: What does it say?

24 MR. MAKSIMUK: Do I have any opportunity to refute
25 that, Your Honor?

1 **THE COURT: No. You sit there. You listen.**

2 MR. MAKSIMUK: Yes, sir.

3 THE COURT: He'll go ahead. You're not appearing
4 here as an attorney. You're a stranger to this lawsuit in an
5 sense.

6 MR. MAKSIMUK: Sir, I'm not a stranger.

7 THE COURT: You go ahead.

8 I'm interested in the --

9 MR. MAKSIMUK: The word "Sport Court" is nowhere on
10 my website. If we could look at the website now we can put
11 this to rest.

12 THE COURT: I'm asking for his proffer. It's his
13 proffer. I'm not trying this case, but it's his proffer.
14 It's a default case. Go ahead.

15 MR. WANG: Your Honor, I'm -- I currently do not
16 have the website in front of me, but what is --

17 THE COURT: You're asking for very broad relief.

18 MR. WANG: Yes.

19 THE COURT: And I had trouble when I read your
20 prayer for relief as to its breadth, and it's a question of
21 what proffer you have that justifies the relief that you're
22 asking for in this very broad order.

23 MR. WANG: Yes. I understand, Your Honor. So, the
24 main -- the main -- the main basis for the relief, including
25 this injunction against the use of the variations of Sport

1 Court is, one, the fact that Connor Sport Court International
2 owns these registered -- valid and subsisting registered
3 marks for Sport Court and has been using the -- this mark and
4 has valuable trademark rights in the Sport Court marks.

5 THE COURT: What I've got so far is the name.

6 MR. WANG: Yes.

7 THE COURT: And plastic tiles.

8 MR. WANG: Uh-huh.

9 THE COURT: That's all I've seen so far.

10 MR. WANG: Well, so our -- Connor Sport Court's
11 concern is that the defendant's use of the domain,
12 plasticsportcourttiles.com to -- you know, that having this
13 website accessible through that domain will lead, you know,
14 consumers to mistakenly assume that, you know, the products
15 that the defendant is selling, whether they be plastic floor
16 tiles or other flooring surfaces --

17 THE COURT: You have particular products. You have
18 products 1 through 4, basically?

19 MR. WANG: Uh-huh.

20 THE COURT: Now, the name that you've shown me is
21 plastic tiles. That's just one of the products?

22 MR. WANG: Yes. Plastic Sport Court tiles, yes.

23 THE COURT: Yes. And the point is, if someone is
24 infringing --

25 MR. WANG: Uh-huh.

1 THE COURT: -- if someone is infringing, you don't
2 say: Plastic tiles, stop.

3 But you say: Plastic tiles, the word.

4 You have a very broad order. No one has proffered
5 to me, anyway, at this point, what it is that's being
6 purportedly sold over that name --

7 MR. WANG: Uh-huh.

8 THE COURT: -- the so-called hidden name, as far as
9 your products are concerned.

10 MR. WANG: Well, in -- I think our response to Your
11 Honor is that the main concern really, here, is the use of
12 the domain name, which includes the Sport Court mark that
13 Connor Sport Court has registered. And, you know --

14 THE COURT: Well, it's one thing to say --

15 MR. WANG: Uh-huh.

16 THE COURT: -- stop using the name.

17 MR. WANG: Right.

18 THE COURT: Stop using the name.

19 MR. WANG: Uh-huh.

20 THE COURT: But it's quite another thing to go
21 beyond that.

22 MR. WANG: I see what Your Honor is saying. And so,
23 at a minimum, and this is the -- one of the other items that
24 Connor Sport Court is requesting in its -- as a -- as relief
25 is that, you know, we would -- we are asking for the Court to

1 order the transfer of that domain,
2 plasticsportcourttiles.com.

3 THE COURT: Well, that's one of the interesting
4 questions, but that's lower down in your Complaint.

5 MR. WANG: Right, yes.

6 THE COURT: Have we finished talking about the first
7 cause of action?

8 MR. WANG: Yes. Yes. I believe so, Your Honor.

9 THE COURT: How about the second cause of action?

10 MR. WANG: So, the second cause of action of action
11 is for false designation of origin and unfair competition.
12 In the Complaint, Connor Sport Court alleged -- you know,
13 alleges that it owns the Sport Court trademarks that we have
14 previously described and that we believe that the defendant's
15 use of plasticsportcourttiles.com to -- that the website, that
16 the defendant's website that is accessible through
17 plasticsportcourttiles.com is likely to cause confusion or
18 mistake, you know, as to -- with the public for -- as to the
19 affiliation, connection or association of CWF Flooring with
20 Connor --

21 THE COURT: You want them to stop using it?

22 MR. WANG: Yes. And so we would want them to stop
23 using that domain name, yes.

24 MR. MAKSIMUK: Your Honor,
25 plasticsportcourttiles.com is offline.

1 THE COURT: You'll have a chance in a few minutes.

2 MR. MAKSIMUK: It's off line. It's been offline,
3 and he knows that, and he complemented me for taking it
4 offline. It's not online right now. If we can being go to
5 the internet right now, we can resolve this, Your Honor.

6 THE COURT: Just relax.

7 The third one.

8 MR. WANG: The third Count for -- is for a claim for
9 a violation of Utah Code Annotated, Title 13, Section 11a-3,
10 which is for deceptive trade practices.

11 THE COURT: And what's your relief that you ask for
12 there?

13 MR. WANG: Again, I think, Your Honor, the relief is
14 just for an injunction enjoining the defendant from using
15 variations of Sport Court.

16 THE COURT: And your fourth one?

17 MR. WANG: The fourth one for unfair competition
18 under Utah State law, under Utah Code Annotated, Title
19 13-5a-101. Again, we --

20 THE COURT: What are you asking for there?

21 MR. WANG: Again, Your Honor, for an injunction that
22 the defendant be enjoined from using the marks Sport Court or
23 the variations thereof.

24 THE COURT: And your fifth one?

25 MR. WANG: The fifth one, Your Honor, is for federal

1 trademark dilution.

2 THE COURT: I'm sorry?

3 MR. WANG: Trademark dilution.

4 THE COURT: Okay.

5 MR. WANG: Trademark dilution.

6 THE COURT: And what relief are you asking for
7 there.

8 MR. WANG: Again, the same relief as previously
9 mentioned before, the injunction enjoining the defendant.

10 THE COURT: Stop using our name.

11 MR. WANG: Right. Stop using the Sport Court mark
12 or variations thereof.

13 THE COURT: Well, that's a little indefinite. Let's
14 put it that way. Okay. The sixth, is it different in any
15 way?

16 MR. WANG: The sixth one is just for trademark
17 dilution under Utah State law and, again, the request for
18 relief is the same.

19 THE COURT: Basically what you're saying is: Stop
20 using the name.

21 MR. WANG: Yes. Stop using Sport Court in that
22 domain name and in any other way, yeah.

23 THE COURT: There is no other relief that you are
24 asking for?

25 MR. WANG: Well, in addition, Your Honor, we of

1 course would like to request, you know, the payment of --
2 Connor Sport Court would like to request the payment of its
3 legal costs and attorney's fees in this matter.

4 THE COURT: That's a different question.

5 MR. WANG: Right.

6 THE COURT: In that particular question, there's
7 been no specific motion filed.

8 MR. WANG: No. That's correct, Your Honor, and I
9 believe that, under local Rule 54-2, the Connor Sport Court
10 can -- has two weeks following the entry of final judgment to
11 file such a motion.

12 THE COURT: But the relief that you're asking for in
13 your case-in-chief --

14 MR. WANG: Yes.

15 THE COURT: -- is a determination that you've got a
16 valid registration?

17 MR. WANG: Yes.

18 THE COURT: And your assertion that they have used
19 the name and you want them to stop.

20 MR. WANG: Yes, Your Honor. So, yes, thank you.
21 So, just to summarize, the relief that we're seeking is a
22 declaration that the Connor Sport Court Sport Court marks are
23 valid, subsisting, that they are distinctive and not generic
24 and that the -- you know, the defendant has infringed the
25 Sport Court marks and for the defendant to transfer the

1 ownership of the --

2 THE COURT: I won't deal with transfer.

3 MR. WANG: Huh?

4 THE COURT: I won't deal with transfer.

5 MR. WANG: Right. And that -- yeah, that the

6 defendant will have to transfer that

7 plasticsportcourttiles.com domain to Connor Sport Court and

8 that the defendant is, again, enjoined from using the Sport

9 Court mark.

10 THE COURT: It's one thing to say stop.

11 MR. WANG: Right.

12 THE COURT: And quite another thing to say

13 transfer.

14 MR. WANG: Yes. Yeah. Yes, Your Honor. I -- yes,

15 there is a material difference between stop and transfer.

16 THE COURT: Sure.

17 MR. WANG: Uh-huh.

18 THE COURT: Now I'm going to let you say something

19 just to let you say something and make your record, but I've

20 indicated three times --

21 MR. MAKSIMUK: Yes, sir.

22 THE COURT: Three times.

23 MR. MAKSIMUK: Yes, sir.

24 THE COURT: You're not a party.

25 MR. MAKSIMUK: Yes.

1 THE COURT: We have an entity called CWF Flooring.

2 MR. MAKSIMUK: Yes, sir. Can I ask the plaintiff --

3 THE COURT: It's a corporate or LLC. You're not a
4 member of the bar. We'll note the fact that you're here, and
5 you're welcome to chat for a few minutes.

6 MR. MAKSIMUK: Thank you, Your Honor. May I ask the
7 plaintiff to show where the term "Sport Court" is on my
8 website. Can you show us the evidence?

9 THE COURT: Well, no. Have you taken it down?

10 MR. MAKSIMUK: No. No. The word "Sport Court" is
11 not even on my website. There is no justification to remove
12 it. Furthermore plasticsportcourttiles.com has been removed.

13 THE COURT: When was that removed?

14 MR. MAKSIMUK: Excuse me?

15 THE COURT: When?

16 MR. MAKSIMUK: Months ago. In fact --

17 THE COURT: About when?

18 MR. MAKSIMUK: Attorney Wang knows because he
19 sent me a communication. It's been down for -- a long time
20 ago.

21 THE COURT: Well, do you know when it was removed?

22 MR. WANG: Your Honor, I do not -- I do not know
23 what Mr. Maksimuk is referring to when he says --

24 THE COURT: Do you have an iPad with you?

25 MR. MAKSIMUK: No, sir, but I have an iPhone.

1 THE COURT: Okay. Pull it up and show it to him.

2 MR. MAKSIMUK: Yes, please. Show us where the word
3 "Sport Court" is on the website.

4 MR. WANG: Your Honor --

5 MR. MAKSIMUK: Can you show us?

6 MR. WANG: Your Honor, my understanding is that
7 plasticsportcourttiles.com used to have -- is -- or the last
8 time I checked, which was probably sometime in July, was
9 redirecting to the CWF Flooring's main website. And, again,
10 the objection that -- or the -- you know, that we, Connor
11 Sport Court would like, you know, the defendant to stop using
12 that domain.

13 THE COURT: He says he has.

14 MR. MAKSIMUK: I have. Here's the website. Show me
15 where Sport Court is.

16 THE COURT: You show him, and show him your website.

17 MR. MAKSIMUK: This is it right here.

18 THE COURT: Okay.

19 MR. MAKSIMUK: Show us -- go ahead, hold it. Show
20 use where Sport Court is on the website.

21 MR. WANG: Your Honor, honestly, it does not matter
22 that the -- what is being complained about at this point is
23 the fact that plasticsportcourttiles.com, the domain,
24 redirects to the defendant's main commercial website.

25 THE COURT: Yeah. Do you maintain a website at all

1 with plastic Sport Court?

2 MR. MAKSIMUK: I do.

3 THE COURT: Okay. And where is that located?

4 MR. MAKSIMUK: Well, it goes -- it goes -- I took it
5 down. It goes directly to sporttiles.pro.

6 THE COURT: Where do you have a direction to anybody
7 using the words "Sport Court"?

8 MR. MAKSIMUK: Pardon?

9 THE COURT: Do you have a domain anywhere --

10 MR. MAKSIMUK: No. No. I do not.

11 Can you show me.

12 THE COURT: -- that in any way.

13 MR. MAKSIMUK: No.

14 THE COURT: -- uses the words "Sport Court"?

15 MR. MAKSIMUK: No. No, sir.

16 THE COURT: And when do you say you took it down?

17 MR. MAKSIMUK: Months ago.

18 THE COURT: Okay. And what kind of a domain do you
19 maintain now?

20 MR. MAKSIMUK: Sporttiles.pro.

21 THE COURT: I'm sorry?

22 MR. MAKSIMUK: Sporttiles.pro.

23 So you can't show me the Sport Court on the website?
24 Yes or no? Yes or no?

25 MR. WANG: What I'm saying is that it doesn't

1 matter.

2 THE COURT: No. No. No. No.

3 MR. MAKSIMUK: Of course it matters. You made --
4 you made the allegations that I have Sport Court on my
5 website.

6 THE COURT: No. No. No. You converse by standing
7 over there.

8 MR. MAKSIMUK: Sure. He made allegations and now he
9 can't prove it?

10 THE COURT: Well, it depends.

11 MR. MAKSIMUK: Where is it on the website?

12 THE COURT: You see, your practical problem, your
13 practical problem, as I pointed out more than once --

14 MR. MAKSIMUK: Yes, sir.

15 THE COURT: -- is there is a pending Complaint, a
16 pending Complaint, filed early this year, a pending Complaint
17 to which no one, no one has filed a response. Why? Because
18 no attorney has made an appearance.

19 MR. MAKSIMUK: Show us where --

20 THE COURT: All I've got is a Complaint.

21 MR. MAKSIMUK: He's making a false statements, Your
22 Honor.

23 THE COURT: Plus the proffer, plus the proffer.

24 MR. MAKSIMUK: False statements, all false.

25 THE COURT: Okay. But I'm trying to be helpful.

1 MR. MAKSIMUK: Yes, Your Honor.

2 THE COURT: And I'm interested in pulling up your
3 website.

4 MR. MAKSIMUK: It's right here, Your Honor.

5 THE COURT: Okay. Show it to him.

6 MR. MAKSIMUK: To him?

7 THE COURT: Show it to him. Let him pull it up as
8 well.

9 MR. MAKSIMUK: Yeah. Can we go to sporttiles.pro?

10 MR. WANG: Excuse me, Your Honor. I'm just turning
11 my phone on. I turned it off when I came in.

12 THE COURT: Okay. You know, when somebody sends the
13 company a letter and says whatever it says and, as a result
14 of that letter, somebody takes the site down, takes the site
15 down, then it makes sense to write somebody a letter and say:
16 Look, I took the site down, and this is what I've got.

17 MR. MAKSIMUK: And that was done.

18 THE COURT: And I would suspect that if you've
19 already taken it down, there's no real problem with somebody
20 even entering an order by default that says: Don't use that
21 term.

22 MR. WANG: So, Your Honor, I just wanted to clarify
23 that, you know, I believe what Mr. Maksimuk is saying is that
24 there used -- when the Complaint was filed, the Complaint in
25 paragraph 19 of the Complaint alleges that the defendant, CWF

1 Flooring, owns and maintains the website located at
2 plasticsportcourttiles.com, at that domain. And what
3 Mr. Maksimuk is saying is that he has removed the website or
4 he has taken down that website that is at that domain.
5 However, Connor Sport Court -- however, this -- when one
6 enters plasticsportcourttiles.com into a web browser, as I
7 just did right now, what happens is the user is redirected to
8 CWF Flooring's existing commercial website at sporttiles.pro.

9 And this, according to, you know, the plaintiff,
10 Connor Sport Court, believes that this redirection from
11 plasticsportcourttiles.com is still a use of the Sport Court
12 mark

13 THE COURT: I thought plasticsportcourt.com was
14 taken down.

15 MR. MAKSIMUK: It was -- it is taken down.

16 THE COURT: How come there is a reference?

17 MR. MAKSIMUK: There is no reference. It's is a
18 redirect.

19 THE COURT: He said there just was.

20 MR. MAKSIMUK: Pardon?

21 THE COURT: He said he just pulled it up and there
22 was a reference.

23 MR. MAKSIMUK: But it's not on the worldwide web.
24 Show us where Sport Court is on the website, please.

25 MR. WANG: So, Your Honor, what -- Your Honor, this

1 is -- so basically what is happening is the original website
2 at plasticsportcourttiles.com is no longer there, but the
3 URL, the domain name, is still active in the sense that when
4 somebody goes to that URL and when somebody enters that
5 domain name into a web browser, that redirects them to the
6 sporttiles.pro website. And Connor Sport Court believes and
7 alleges that that is -- that usage of the
8 plasticsportcourttiles.com domain to redirect to another
9 domain and website is still an infringement of its Sport
10 Court marks.

11 THE COURT: Yeah. You maintain two?

12 MR. MAKSIMUK: No. I maintain one, sporttiles.pro.

13 Where is Sport Court on the website?

14 THE COURT: So you don't have any problem, I take
15 it, in making sure that the so-called referring site be shut
16 down?

17 MR. MAKSIMUK: It is shut down. When you go there,
18 it goes --

19 THE COURT: No. Well, you wouldn't have any trouble
20 with the fact that it is or should be. You say it is. They
21 say it should be. Okay.

22 MR. MAKSIMUK: A redirect is a shut down.

23 THE COURT: I'm sorry?

24 MR. MAKSIMUK: A redirect from one URL, from one
25 website to another, is a shut down. The website is not --

1 THE COURT: No. It's the kind of thing that does,
2 by indirection, what people are supposed to stop doing by
3 specific direction.

4 MR. MAKSIMUK: The word "Sport Court" is not on my
5 website. That is the main issue here.

6 Is it? Is Sport Court on the website, Attorney
7 Wang?

8 THE COURT: Well, you can talk together some other
9 time at your own --

10 MR. MAKSIMUK: It's not. It's not on the website.
11 I took it down.

12 THE COURT: Okay. Well, this is where we are, it
13 seems to me.

14 MR. MAKSIMUK: Sport Court is not on the website.

15 THE COURT: This is what I'm going to do. The
16 Court, as a Court, has indicated to this company, through the
17 president of this company, that the local rule involving
18 lawsuits in Federal Court in Utah require an appearance by a
19 company through counsel. That's not occurred.

20 The plaintiff in this case has asked for particular
21 kinds of relief and has waived, apparently, other kinds of
22 relief relating to monetary compensation generally, and a
23 default has been entered over a period of time.

24 First there was a request by the company for an
25 extension to enable an attorney to make an appearance.

1 Secondly, there was a reminder by this Court to the company
2 that it needed to make an appearance through an attorney.
3 Third, the last time we met, in June, we fixed a date, a
4 little over a month, to give the company a chance to make an
5 appearance through an attorney, if I remember right, by the
6 25th of July.

7 That has not been done. That's not been done. The
8 president of the company has made an appearance on occasion,
9 but he's acknowledged that he's not an attorney. A default
10 has been entered.

11 The abbreviated relief, the abbreviated relief asked
12 for by counsel; namely, that there be a determination that
13 there are four existing and valid, registered use of the name
14 "Sport Court" and the allegations that the use of that name
15 in the interior of a suggestion as to Sport Court Tiles is an
16 infringement.

17 I think that, under the causes of action in the
18 Complaint, there is a -- at least a prima facie case there.
19 The relief asked for by counsel, with the exception of a --
20 of a -- of a prayer for transfer of a domain, it seems to me,
21 are well-taken. And the relief asked for in each instance,
22 with that exception, involving the use of the name "Sport
23 Court" or in which it was framed within the interior of Sport
24 Court Tiles is enjoined.

25 The relief asked for by way of transfer is denied.

1 But it would appear to me that a location or a
2 domain referring to the present domain of the defendant is
3 inappropriate doing indirectly what you can't do directly,
4 and as part of the relief, the Court will order that that be
5 taken down, if possible, and that the defendant here refrain
6 from accepting any referral from such a location as part of
7 the vindication of the propriety of the appropriate
8 registration.

9 Now, I do that after providing, through the Court,
10 many months for the defendant to have the opportunity of
11 obtaining counsel and making an appropriate appearance to
12 file whatever appropriate motion may be appropriate.

13 I am going to ask counsel for plaintiff to prepare
14 and submit a suggested form of order prohibiting the use of
15 the term "Sport Court," by this defendant, in any guise, in
16 reference to flooring products.

17 I'll ask counsel for plaintiff, if it so desires, to
18 file an appropriate motion in reference to their claim for
19 costs, alleged fees.

20 MR. WANG: Yes. We can do that, Your Honor.

21 THE COURT: And if you'll do that within a couple of
22 weeks and, as a matter of courtesy, send a copy to the
23 president of the company.

24 MR. MAKSIMUK: Your Honor?

25 THE COURT: Yes.

1 MR. MAKSIMUK: We have not even looked at the
2 website. How can a decision be made? We haven't -- you
3 haven't even looked at the website, Your Honor. How can you
4 make a decision?

5 THE COURT: If the website does not contain the word
6 "Sport Court" --

7 MR. MAKSIMUK: We can't make -- we can not make a
8 decision if we have not looked at the website, Your Honor.
9 We should go to the website. This is not justice, Your
10 Honor. You haven't even looked at the website to find out if
11 the words --

12 THE COURT: You haven't even filed an appropriate
13 Answer through counsel.

14 MR. MAKSIMUK: Your Honor, for the interests of
15 justice, have you looked at the website, Your Honor?

16 THE COURT: You haven't filed an Answer --

17 MR. MAKSIMUK: You cannot make a --

18 THE COURT: -- through counsel.

19 MR. MAKSIMUK: You cannot make a just decision
20 without going and looking at the website. Have you done
21 that, Your Honor?

22 THE COURT: I have the proffer of the limited relief
23 that counsel has asked for.

24 MR. MAKSIMUK: Your Honor --

25 THE COURT: There is no Answer.

1 MR. MAKSIMUK: You have not been to the website,
2 Your Honor.

3 THE COURT: There is a default. I'm not required to
4 litigate the case for you. It's your job --

5 MR. MAKSIMUK: No.

6 THE COURT: -- through your company --

7 MR. MAKSIMUK: You have to serve justice, Your
8 Honor.

9 THE COURT: We don't serve justice --

10 MR. MAKSIMUK: Is the word "Sport Court" --

11 THE COURT REPORTER: Excuse me. Whoa.

12 MR. MAKSIMUK: I'm sorry.

13 THE COURT REPORTER: Don't talk while the Judge is
14 talking.

15 THE COURT: I'm required --

16 MR. MAKSIMUK: Sorry.

17 THE COURT: I am required, under the rules, to live
18 by the rules. And you're required, under the rules, to live
19 by the rules. And if one defaults, one defaults. That's not
20 my job. That's the job of the company.

21 MR. MAKSIMUK: It is your job to serve justice, Your
22 Honor. Your job is to serve justice.

23 THE COURT: That's right.

24 MR. MAKSIMUK: It is in the best interest to go
25 to the website and look at the website, Your Honor.

1 THE COURT: No. Your best interest is to get
2 yourself a lawyer.

3 MR. MAKSIMUK: Please. Please can we do that, Your
4 Honor, please?

5 THE COURT: No. No. You're in default. I've
6 granted the default. I've granted the default judgment.

7 MR. MAKSIMUK: You're not serving justice, Your
8 Honor. You're not serving justice. I'm just appalled that
9 this can happen.

10 THE COURT: No. It's your problem to follow the
11 rules, and your failure to follow the rules results in what
12 it results in. I'm sorry. I follow the rules. It's your
13 job to follow the rules.

14 MR. MAKSIMUK: No. The rules are preventing
15 justice.

16 THE COURT: They may not.

17 MR. MAKSIMUK: They are. You haven't been to the
18 website, Your Honor.

19 THE COURT: They may not, but they are what they
20 are.

21 MR. MAKSIMUK: You have not been to the website.
22 You have not been to the website. I will appeal this
23 decision. For the record, I will appeal --

24 THE COURT: Well, by all means, do so.

25 MR. MAKSIMUK: -- Your Honor.

1 THE COURT: By all means, do so.

2 Send me an order. Send me a judgment.

3 MR. WANG: We will, Your Honor. Thank you.

4 THE COURT: I notice that the relief that you ask
5 for is far slimmer, far less pervasive than the prayer in the
6 Complaint. It's a very limited kind of judgment.

7 MR. WANG: Yes, Your Honor.

8 THE COURT: Quite reserved.

9 And we'll be in recess.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

(Whereupon the proceedings were concluded.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, REBECCA JANKE, do hereby certify that I am a
Certified Court Reporter for the State of Utah;

That as such Reporter I attended the hearing of the
foregoing matter on August 4, 2017, and thereat reported in
Stenotype all of the testimony and proceedings had, and
caused said notes to be transcribed into typewriting, and the
foregoing pages numbered 1 through 35 constitute a full, true
and correct record of the proceedings transcribed.

That I am not of kin to any of the parties and have
no interest in the outcome of the matter;

And hereby set my hand and seal this 10th day of
August, 2017.

REBECCA JANKE, CSR, RPR, RMR