

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.: CV 16-04109-AB (PLAx)

Date: March 6, 2019

Title: *Disney Enterprises, Inv., et al. v. VidAngel, Inc.*

Present: The Honorable **ANDRÉ BIROTTE JR., United States District Judge**

Carla Badirian
Deputy Clerk

N/A
Court Reporter

Attorney(s) Present for Plaintiff(s):

Attorney(s) Present for Defendant(s):

None Appearing

None Appearing

Proceedings: [In Chambers] ORDER DENYING VIDANGEL'S MOTION TO MODIFY THE PRELIMINARY INJUNCTION

Before the Court is Defendant VidAngel, Inc.'s ("VidAngel") Motion to Modify the Preliminary Injunction. ("Motion," Dkt. No. 265.) Plaintiffs Disney Enterprises, Inc., et al. ("Plaintiffs") filed an opposition and VidAngel filed a reply. The Court **DENIES** the Motion.

DISCUSSION

This order assumes familiarity with the Court's Order Granting Plaintiffs' Motion for a Preliminary Injunction ("PI Order," Dkt. No. 144) and the Court's three orders (Dkt. Nos. 198, 225, 207) responding to VidAngel's three prior motions to clarify or modify the PI Order (Dkt. Nos. 182, 187, 200).

At the time of the PI Order, VidAngel used a disc-based service to filter and stream Plaintiffs' movies to its customers. VidAngel claims that, since then, it developed a new "stream-based" service that "corrected each of the infirmities on which this Court based" the PI Order. Mot. 4:3-5. VidAngel argues that even if the stream-based service infringes,

it does not cause irreparable harm, that the PI impermissibly permits all fair uses of Plaintiffs' works, and that the PI is overbroad, and that therefore the PI should be modified to except VidAngel's stream-based service.

VidAngel seeks a modification to the existing four-paragraph preliminary injunction by adding a fifth paragraph that expressly excepts its stream-based service from the scope of the injunction, as follows:

(5) except that providing a motion picture filtering service that requires each of Defendant's customers, or Defendant acting on its customers' behalf, to pay a streaming service licensed to transmit motion pictures copyrighted by Plaintiffs to such consumers for private viewing shall not be deemed a violation of paragraphs (2)-(4), above.

See Mot. 1:12-16.

On February 6, 2019, the Court vacated the February 8 hearing and took the Motion under submission. On February 10, 2019, VidAngel filed a Notice of Lodging of Proposed Amended Order. (Dkt. No. 278.) Therein, VidAngel proposes "an additional, more concise method of granting the relief requested" that it says it was planning to present at the vacated hearing. Notably, VidAngel's amended proposed order omits the fifth paragraph that expressly excepts the stream-based service from the PI and that was the sole modification VidAngel seeks in its motion, and instead either deletes or adds language to each of the four paragraphs of the existing PI to expressly limit their application to VidAngel's disc-based service.

The Motion is **DENIED**.

First, the relief VidAngel seeks by the amended proposed order is not properly before the Court: it is not what VidAngel met and conferred with Plaintiffs about, nor was it squarely addressed in the briefing. VidAngel's expectation that it could simply amend its request for relief for the first time at the hearing was misguided. Absent leave of court, briefing is closed upon the filing of a reply, and the Court prepares for the hearing based on the timely-filed briefing. A litigant who, without cause, presents a new argument for the first time at the hearing (or thereafter) ambushes opposing counsel and the court, and squanders court resources. The Court will not accept such tactics.

Second, the Motion is denied for all of the reasons stated in the Court's previous orders. In sum, although VidAngel has couched its request variously in its several motions, at bottom it seeks an adjudication to the effect that its stream-based service does not cause irreparable harm or is fair use, or that VidAngel's only infringing conduct involves its disc-based service. The Court previously explained—and need not repeat—

why it declined to undertake such an adjudication in the context of a motion to construe/modify the PI Order, and those same reasons apply now. The Motion is **DENIED**.

IT IS SO ORDERED.