

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

BOUNCING BEAR BOTANICALS, INC.;)
JONATHAN SLOAN and BRAD MILLER;)

Plaintiffs,)

v.)

KTW ENTERPRISES, LTD.; RYAN SCOTT,)
a/k/a BO SCOTT; and ALEX DIMOV, d/b/a)
ALLEGRA ENTERPRISES;)

Defendants.)

CIVIL ACTION

No. 10-4138-KHV

MEMORANDUM AND ORDER

Bouncing Bear Botanicals, Inc., Jonathan Sloan and Brad Miller bring suit against KTW Enterprises, Ltd., Ryan Scott and Alex Dimov, alleging violations of the Lanham Act, 15 U.S.C. § 1121 et seq., and various supplemental state law tort claims and trademark violations. See Complaint (Doc. #1) filed Nov. 10, 2011. This matter is before the Court on Defendants KTW Enterprises, LTD. And Ryan Scott a/k/a Bo Scott's Motion For Stay Of Preliminary Injunction Hearing And Discovery, Or In The Alternative Motion For Protective Order (Doc. #58) filed March 9, 2011, Plaintiffs' Motion For Leave To File Surreply To Motion For Stay Of Discovery (Doc. 58) (Doc. #89) filed May 27, 2011 and plaintiffs' Motion To Set A Preliminary Injunction Hearing Date (Doc. #44) filed February 22, 2011.

As a preliminary matter, the Court sustains as uncontested Plaintiffs' Motion For Leave To File Surreply To Motion For Stay Of Discovery (Doc. 58) (Doc. #89) filed May 27, 2011. See D. Kan. Rule 7.4(b).

As to Defendants KTW Enterprises, LTD. And Ryan Scott A/K/A Bo Scott's Motion For

Stay Of Preliminary Injunction Hearing And Discovery, Or In The Alternative Motion For Protective Order (Doc. #58) filed March 9, 2011, movants ask the Court to stay the preliminary injunction hearing and discovery pending its ruling on their motion to dismiss for lack of jurisdiction, or in the alternative, to enter a protective order granting essentially the same relief. On September 21, 2011, the Court overruled movants' motion to dismiss. See Memorandum and Order (Doc. #123). The Court did not set a preliminary injunction hearing prior to ruling, and it thus effectively gave movants a portion of the relief which they sought in their motion. Further, as plaintiffs have noted, movants affirmatively sought discovery from plaintiffs after filing this motion. Thus, it appears to the Court that at this point, movants have achieved the relief which they seek. The Court therefore overrules movants' motion. To the extent the Court has incorrectly interpreted movants' position, they may file another motion which clarifies the relief they seek.

Finally, the Court sustains plaintiffs' Motion To Set A Preliminary Injunction Hearing Date (Doc. #44) filed February 22, 2011 and sets a hearing for October 5 and 6, 2011 at 9:30 a.m. The Court understands that defense attorney Mr. DuBroff is unavailable on October 5, but expects that co-counsel or local counsel can handle the hearing. Because plaintiffs have no motion for preliminary injunction on file, the Court directs plaintiffs to file such a motion if the current facts are other as represented in the briefs on the motion for a hearing date.

IT IS THEREFORE ORDERED that Defendants KTW Enterprises, LTD. And Ryan Scott A/K/A Bo Scott's Motion For Stay Of Preliminary Injunction Hearing And Discovery, Or In The Alternative Motion For Protective Order (Doc. #58) filed March 9, 2011, be and hereby is **OVERRULED.**

IT IS FURTHER ORDERED that Plaintiffs' Motion For Leave To File Surreply To

Motion For Stay Of Discovery (Doc. 58) (Doc. #89) filed May 27, 2011 and plaintiffs' Motion To Set A Preliminary Injunction Hearing Date (Doc. #44) filed February 22, 2011, be and hereby are **SUSTAINED**.

IT IS FURTHER ORDERED that a preliminary injunction hearing is set for 9:30 a.m. on October 5 and 6 in Courtroom 476 of the Robert J. Dole U.S. Courthouse in Kansas City, Kansas.

Dated this 28th day of September, 2011 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge