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Exit the Dragon: Tenth Circuit Affirms Dismissal of Cybersquatting Claim on Bruce Lee's "Jeet Kune Do" Mark Brought by Non-Owner Martial Arts Instructor

Article By:

McDermott Will & Emery

The **U. S. Court of Appeals for the Tenth Circuit** affirmed the ***sua sponte* dismissa**l of Carter Hargrave's *pro se* **trademark infringement claim** since he was not the registered owner, but a non-exclusive licensee which had no right to assert the claim. The Court concluded that the district court did not abuse its discretion or violate due process by dismissing Hargrave's claims at a hearing on his motion for default judgment since his complaint was meritless and could not be salvaged by amendment. *Hargrave v. Chief Asian LLC;* Case No. 11-5112 (10th Cir., May 7, 2012) (Lucero, J.).

Jeet Kune Do, translated as "the way of the intercepting fist," is a martial arts discipline created and popularized in the 1960s by famed martial artist and actor Bruce Lee. Plaintiff Carter Hargrave, a martial arts instructor and founder of the World Jeet Kune Do Federation, filed a complaint against owners of the www.jeetkunedo.com website. Hargrave claimed that the defendants were cyber-squatting and infringing on his interests in the mark "Jeet Kune Do".

To state a claim for trademark infringement under 15 U.S.C. §1114(1) or cyberpiracy under §1125(d), the party bringing the action must be the registered owner or assignee of the mark. If a mark is not registered, a claim may still be brought for trademark infringement under §1125(a)(1).

Concord Moon LP, a California limited partnership of whom certain heirs of Bruce Lee are principals, controls the rights in and to the intellectual property of the Bruce Lee Estate and is the registered owner of the "Jeet Kune Do" trademark. At a hearing on Hargrave's motion for default judgment, Hargrave submitted a copy of a settlement agreement between him and Concord Moon LP as well as a "Trademark Assignment Abstract of Title" in order to establish his rights to the mark. The district court determined that the plain language of the agreement did not grant any exclusive right to the mark, but was simply a basic license to use the mark. Also, the "Trademark Assignment Abstract of Title" outlined a succession of owners and showed that Hargrave was not, nor had ever been, the owner or assignee of the mark. Since Hargrave was not the owner of the registered mark, the 10th Circuit agreed he lacked standing to bring claims under §1114(1) or §1125(d).

Hargrave further argued that he had a common law right to the "Jeet Kune Do" mark that could give rise to claims under §1125(a). However, since the mark was already registered and ownership recorded, a common law trademark was not necessary and §1125(a) did not apply. Since

Hargrave’s complaint was based on a legal interest that he did not possess and could not establish though subsequent amendment, the 10th Circuit determined that the district court’s *sua sponte* dismissal with prejudice for failure to state a claim was proper.

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