

“Meandering Evening Stroll” Helps Defeat Preliminary Injunction Motion Against AMAZON FIRE TV

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by Sandra Edelman



A recent decision by the United States Court of Appeals for the 11th Circuit highlights the perils of delay in filing a motion for a preliminary injunction in a trademark infringement case. In Wreal, LLC v. Amazon.com, Inc. (11th Cir. Oct. 28, 2016), the appellate court affirmed the denial of preliminary injunctive relief because the

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plaintiff “pursued its preliminary injunction motion with the urgency of someone out on a meandering evening stroll rather than someone in a race against time.”

Plaintiff Wreal, LLC is a technology company that developed a platform for streaming online pornography under the registered marks FyreTV and FyreTV.com. Wreal’s streaming service was initially available over its website and through a proprietary set-top box, but it subsequently developed a FyreTV application and shifted its business model to streaming over third-party devices. Amazon began using the mark “Fire” in 2011 in connection with its Kindle Fire tablet. In 2012 and 2013, Amazon developed several new

products, including a new generation of tablets, a phone and a set-top box, and it decided to use the Fire mark along with the Amazon house mark in connection with all of these products.

On April 2, 2014, Amazon launched the Amazon Fire TV set-top box to stream general interest video and third-party streaming services such as Netflix. Two weeks after the launch of Amazon Fire TV, Wreal filed a complaint for trademark infringement and unfair competition in Florida federal district court, relying on a theory of “reverse confusion.” Significantly, however, Wreal conducted no discovery, made only routine case management filings, and waited until September 22, 2014 – over five months after filing its complaint – to move for a preliminary injunction.

The district court concluded that Wreal’s unexplained five-month delay in seeking a preliminary injunction undermined any showing of irreparable injury, one of four threshold requirements for obtaining expedited relief. The 11th Circuit agreed: “A delay in seeking a preliminary injunction of even only a few months – though not necessarily fatal – militates against a finding of irreparable harm.” Wreal did not offer any justification for the delay, and its motion “relied exclusively on evidence that was available to Wreal at the time it filed its complaint in April 2014,” demonstrating that it had the evidence it thought it needed when the case commenced. Because Wreal did not establish reversible error with respect to the irreparable injury requirement, the appellate court held it was unnecessary to consider the district court’s other conclusions that Wreal had failed to demonstrate a likelihood of success on the merits and that any potential injury to Wreal exceeded the harm to Amazon from an injunction.

For more on the impact of delay in seeking preliminary injunctive relief in trademark infringement cases, see S. Edelman & F. Sunderji, “Delay in Filing Preliminary Injunction Motions: 2015 Edition,” 105 Trademark Reporter 1012 (Sept-Oct 2015).