

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 23-62077-CIV-COHN/VALLE

STEPHEN M. GAFFIGAN, an individual, and
STEPHEN M. GAFFIGAN P.A., a Florida
corporation,

Plaintiffs,

vs.

THE INDIVIDUAL, BUSINESS ENTITY, OR
UNINCORPORATED ASSOCIATION
OPERATING THE DOMAIN NAMES,
STEPHENMGAFFIGANPA.COM and
ATTORNEYSTEPHENMGAFFIGANPA.CO
M, and THE INDIVIDUAL, BUSINESS
ENTITY, OR UNINCORPORATED
ASSOCIATION OPERATING UNDER THE
FACEBOOK SOCIAL MEDIA IDENTITY,
STEPHEN M. GAFFIGAN PA,

Defendants.

ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION

THIS CAUSE is before the Court upon Plaintiffs' Motion for Preliminary Injunction [DE 5] ("Motion"). The Court has considered the Motion, the Application for Temporary Restraining Order, and is otherwise fully advised in the premises. The Court also heard oral arguments from Plaintiffs' counsel at a motion hearing held on November 20, 2023. Although Defendants received sufficient notice of these proceedings, no Defendant responded to the Motion or appeared at the preliminary-injunction hearing.

I. Factual Background

On November 1, 2023, Plaintiffs filed this action against two individuals, business entities, and unincorporated associations.¹ See generally DE 1 (Compl.). Plaintiffs allege that Defendants are misrepresenting the nature and origin of Defendant’s fictitious legal services, impersonating Plaintiffs, misappropriating Gaffigan’s name, image, likeness and/or persona (“Gaffigan’s Name”) and the related firm names, and using SMGPA’s trademarks without consent or authorization. See id. ¶¶ 8-13; 19-39. Plaintiffs thus have asserted the following claims against Defendants: (1) false association and sponsorship and false representation of facts under section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a); (2) unauthorized appropriation of name or likeness under Florida Statutes § 540.08; (3) common-law right of publicity and unauthorized misappropriation of name or likeness; and (4) unfair or deceptive trade practices under Florida Statutes § 501.204. DE 1 ¶¶ 40-68.

On November 2, 2023, Plaintiffs filed their Application for Entry of Temporary Restraining Order and Preliminary Injunction. DE 5. On November 2, 2023, the Court granted Plaintiffs’ request for a Temporary Restraining Order (“TRO”). See DE 8. Based on strong evidence that Defendants are engaged in a false endorsement advertising campaign that deliberately and intentionally misappropriates Gaffigan’s Name and the related firm names, the Court found that Plaintiffs had established all four requirements for a TRO: (1) a substantial likelihood of success on the merits; (2) that Plaintiffs would

¹ Defendants are the Individual, Business Entity, and Unincorporated Association operating the domain names, stephenmgaffiganpa.com and attorneystephenmgaffiganpa.com, and the Individual, Business Entity, or Unincorporated Association operating under the Facebook social media identity, Stephen M. Gaffigan PA, both identified on Schedule “A” attached hereto.

suffer irreparable injury if a restraining order were not granted; (3) that the threatened injury to Plaintiffs outweighed the harm the relief would cause to Defendants; and (4) that entry of the restraining order would serve the public interest. See id. at 4-5; Schiavo ex rel. Schindler v. Schiavo, 403 F.3d 1223, 1225-26 (11th Cir. 2005) (per curiam).

The Court thus temporarily restrained Defendants and associated persons from using Gaffigan's name, image, likeness, or persona, related firm names, and SMGPA's trademarks in connection with their fraudulent legal services and internet advertising campaign. See DE 8 at 5-6. Moreover, the Court required Plaintiffs to post a bond of \$10,000.00 and, to promptly serve the Complaint, the Motion, and the TRO upon Defendants through their known e-mail address accounts and a webpage containing the case filings. See id. at 10-11.² The Court cautioned Defendants that "if they do not timely respond to Plaintiff's Motion for Preliminary Injunction and do not appear at the scheduled hearing, the Court may enter a preliminary injunction against them by default." See DE 8 at 12 (emphasis omitted).

As noted above, Defendants neither responded to the Motion nor appeared at the related hearing. Before the hearing, Plaintiffs identified one witness who had submitted a written declaration in support of the Motion. See DE 13. Because Defendants did not appear at the hearing, however, Plaintiffs relied on the witness's declaration in lieu of live testimony.

II. Discussion

The preliminary injunction Plaintiffs seek would maintain the relief granted in the TRO until this case is decided on the merits. The requirements for issuing a preliminary

² Plaintiffs have complied with the bond and service requirements. See DE 12 (Notice of Filing Bond), DE 14-15, 19-21, 23-24 (Certificates of Service).

injunction are the same as those for entering a TRO, namely, “(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that the entry of the relief would serve the public interest.” Schiavo ex. rel Schindler v. Schiavo, 403 F.3d 1223, 1225–26. Because a preliminary injunction is “an extraordinary and drastic remedy,” it may not be granted unless the moving party “clearly carries the burden of persuasion as to the four prerequisites.” Church v. City of Huntsville, 30 F.3d 1332, 1342 (11th Cir. 1994) (internal quotation marks omitted); see McDonald’s Corp. v. Robertson, 147 F.3d 1301, 1306 (11th Cir. 1998). Unlike a TRO, a preliminary injunction requires notice to the adverse party and a hearing. See Fed. R. Civ. P. 65(a).

Here, Plaintiffs are substantially likely to succeed on the merits of their claims. Plaintiffs have offered clear evidence that Defendants are engaged in a false endorsement advertising campaign that deliberately and intentionally misappropriates Gaffigan’s Name and the related firm names such that consumers are likely to be misled and confused by Defendants’ online marketing campaign. See 15 U.S.C. § 1125(a); see also DE 5 at 7-12 (Motion) (federal false association and sponsorship claim); see also DE 5 at 12-13 (explaining that Defendants’ use of Plaintiffs’ name and trademarks is unauthorized, and therefore Plaintiffs are likely to succeed on their unauthorized appropriation of name or likeness in violation of Florida Statutes § 540.08 and their common-law right of publicity claims); DE 5 at 13-16 (explaining that Defendants’ representations are deceptive and unfair because Defendants offer the public legal services that are entirely fictitious, thereby injuring Plaintiffs’ business and reputation by

depriving Plaintiffs of the goodwill attached to their name and trademarks in violation of Florida Statutes § 501.204). Further, allowing Defendants to continue this illegal conduct would cause irreparable harm to Plaintiffs by damaging their business and the reputation and goodwill attached to their name and trademarks. And, because Defendants have no right to engage in their unauthorized and misappropriating activities, the balance of harms strongly favors Plaintiffs. Last, enjoining Defendants' conduct—the unauthorized use of Gaffigan's Name and the related firm names and SMGPA's trademarks—serves the public interest. Plaintiffs have therefore clearly proven all four requirements for a preliminary injunction. See Schiavo, 403 F.3d at 1225–26; Church, 30 F.3d at 1342.

Although Defendants have been given notice of the Motion and an opportunity to respond, they have made no effort to rebut Plaintiffs' evidence warranting a preliminary injunction. The Court thus concludes that Plaintiffs' Motion should be granted.

III. Conclusion

For the reasons discussed, it is hereby **ORDERED AND ADJUDGED** as follows:

1. Plaintiffs' Motion for Preliminary Injunction [DE 5] is **GRANTED**;
2. All provisions of the Court's Order Granting Application for Entry of Temporary Restraining Order [DE 8], incorporated by reference in this Order, shall remain in effect while this case is pending or until otherwise ordered; and
3. Plaintiffs shall promptly serve a copy of this Order on Defendants through the means specified in paragraph 15 of the Order Granting Application for Entry of Temporary Restraining Order [DE 8 at 10-11].

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida,
on this 20th day of November, 2023.



JAMES I. COHN
United States District Judge

Copy Provided:
Counsel of record via CM/ECF

SCHEDULE "A"
DEFENDANTS' SUBJECT DOMAIN NAMES, SOCIAL MEDIA ACCOUNT
URLS, AND E-MAIL ADDRESSES

Def No.	Subject Domain Names / Social Media Account	URLs	E-mail Addresses
1	stephenmgaffiganpa.com	https://stephenmgaffiganpa.com/	attorney@stephenmgaffiganpa.com
1	attorneystephenmgaffiganpa.com	http://www.attorneysstephenmgaffiganpa.com/	smg@attorneystephenmgaffiganpa.com attorneysmginternetenf@gmail.com
2	Stephen M. Gaffigan PA	https://www.facebook.com/profile.php?id=100007613086985	