

UNITED STATES COURT OF APPEALS FOR FEDERAL CIRCUIT

2009-1213

RENATA MARCINKOWSKA,

Plaintiff-Appellant,

V.

IMG WORLDWIDE, INC.,

Defendant- Appellee,

And

DEL CAMPO SAATCHI & SAATCHI,

Defendant- Appellee,

Appeal from the United States District Court of South Carolina
In case no. 0:07-CV-1214, Judge Joseph F. Anderson, Jr.

PLAINTIFF-APPELLANT RESPONSE TO DEFENDANTS-APPELLEE PRINCIPAL
BRIEF

After reading the Defendants - Appellee's Principal Brief, I fully stand behind my Informal Brief, however I would like to share with the Honorable Federal Court of Appeals the following:

I have to agree with IMG and DCNSS that the Amended Complaint was not written well. It is deficient in detail, and doesn't provide substance of written documents and facts that I have provided. After re-reading this document (docket 16), I have also noticed a spelling error that significantly changed the meaning of the entire document. Where it says "...claims 1 and 5 of the '669 Patent" it should have been "...claims 1 to 5 of the '669 Patent...."

My patent number 6,814,669 "Dual Surface for Sport Event or Game" includes paragraph about exhibition matches on a Dual Surface Tennis

Court and not only tennis court. There are 5 claims in my patent and ALL of them are integral parts of my patent.

I would like to ask the Honorable Court not to dismiss my case based on a spelling error and quality of one document.

DEFENDANTS- APPELLEE HAVE ALTERED THE E-MAIL AGAIN.

In their Principal Brief the Defendants have changed again the meaning and the wording of my alleged e-mail. This e-mail is very important because IMG and DCNSS have been using this e-mail as their main evidence and the District Court Judge used this e-mail in his Order.

In the version provided to the District Court (docket 67 exhibit A) my alleged e-mail says:

“ Hi Mr. Roberts,

I have noticed that your company is promoting a tennis match between Roger Federer and Nadal on May2 in Mayorca. It is on a hybrid court ,which is actually my idea ,which al have a patent for. If the excibition goes well in Mayorca which I believe is run by a Mr.Pablo Del Campo, would you be interested in doing it in the US? I would like to get a licensing agreement on my patant and believe that possibilities are endless with Hybrid Court. I will try to call your office tomorrow. Thank you for your time. Sincerely Renata Marcinkowska, inventor of the ‘Dual Sports Surface Court”. “

In the new version provided by IMG and DCNSS to the Federal Court of Appeals in their Principal Brief (page number 24) my alleged e-mail says:

“ I have noticed that your company is promoting a tennis match between Roger Federer and Nadal on May 2 in Mayorca. It is on a hybrid court, which is actually my idea, which I have a patent for. **If the execution goes well in Mayorca** which I believe is run by a Mr. Pablo Del Campo, **would you be interested in doing it in the US?** I would like to get a licensing agreement on my patant and believe that possibilities are endless with [a] Hybrid Court. I will try to call your office tomorrow. Thank you for your time. Sincerely Renata Marcinkowska, inventor of the “ Dual Sports Surface Court”.

I would like to ask the Federal Court of Appeals to take a closer look at this e-mail. Please take a look at the grammar, the spelling and the content. I am a graduate of Oklahoma State University and an author of a book "Power Drills for Team Tennis". I have written extensively for various magazines including NSWTA , Tennis Life , Sun Tennis, PTR and others. Although, I am not perfect in English, as it is my second language, I would never have used such primitive and full of errors language. Furthermore the name for my invention is " Dual Surface for Sport Event or Game " and not "Dual Sports Surface Court". The person who altered this e-mail didn't even know the name of my invention .

I do not have a true version of my e-mail written to Mr. Roberts. This is because I have written to Mr. Roberts using his website. For a person with average computer knowledge like me, it was impossible to print a copy of my e-mail. However, it is my understanding that any e-mail send via website can be changed from the receiving side.

Also, I would like to point that this alleged e-mail showed up in a second Declaration of Pablo Del Campo on April 18, 2008. This e-mail was not mentioned before in Affidavit of Pablo Del Campo from February 15, 2008 nor in Motion to Dismiss of Defendant Del Campo Nazca Saatchie& Saatchie Publicidad, S.A. from February 25, 2008 (docket 50).

If possible, I would like to give to Honorable Federal Court of Appeals a sworn statement that none of the presented by Defendants versions of this alleged e-mail are mine.

I would like to stress that my e-mail was written to Mr. Roberts , president of Saatchie and Saatchie and not to Pablo Del Campo. I have never written to Pablo Del Campo, and it is not true that DCNSS did not accept my invitation to negotiate a license. Defendants are trying to mislead the Federal Courts of Appeals . In the version presented by Defendants in Principal Brief (page 24/ 25) Defendants stated that Pablo Del Campo responded to my e-mail on April 27, 2007 via e-mail as follows:

I really appreciate your offer to license your patent rights in order to produce an event in the United States of America. I am very busy right now due to the last moment aspects of the organization of " THE BATTLE OF SURFACES " in Palma de Mallorca, but we can talk about your offer after

looking at the results of the first edition of “ THE BATTLE OF SURFACES”. Please, don’t hesitate to contact me whenever you want.

The true version of this e-mail (docket 60 exhibit 5) is:

“ Dear Ms. Marcinkowska,
Mr. Kevin Roberts, Worldwide CEO of Saatchie & Saatchie has re-send to me your e-mail since I am the CEO of DEL CAMPO NAZCA SAATCHIE & SAATCHIE PUBLICIDAD S. A., the agency who has developed “THE BATTLE OF SURFACES”. I really appreciate your offer to license your patent rights in order to produce an event in the United States of America. I am very busy right now due to the last moment aspects of the organization of “ THE BATTLE OF SURFACES” in Palma de Mallorca, but we can talk about your offer after looking at the results of the first edition of “ THE BATTLE OF SURFACES ”. Please don’t hesitate to contact me whenever you want.”

In this incomplete version of an e-mail presented to Federal Circuit Court of Appeals Defendants not only try to make a false impression that the e-mail was written to Pablo Del Campo, but also that DCNSS did not accept my invitation to negotiate a license. Because Mr. Del Campo and DCNSS have never received any business propositions from me they simply could not have rejected “my” offer.

On the other hand Defendant IMG has received several offers since 2004.

JUDGE AND ORDERS

After the Judgment from District Court from December 29, 2008 I was told that I can look through my entire record. In the beginning of January 2009, I went to the Courthouse and pulled the entire docket available in my case. I appealed from District Court decision in January 2009. During reading documents from the docket I discovered that one of the main Defendants documents was this altered e-mail. I also discovered that Judge Anderson has spend a significant amount of time discussing this e-mail in his Order, and this e-mail has had a significant impact on his decision making. I also discovered that a lot of the written facts and documents that I have provided were not on the docket. Because of these discoveries and also unusual

circumstances surrounding my case, on February 4, 2009 (5 weeks after his Judgment) I wrote to the Judge a letter. This letter was not any kind of a motion. The purpose of this letter was to inform the Judge about my discoveries, and the nature of my lawsuit during the last few months. I felt obligated to let the Judge know about my discoveries (docket 116). I already appealed in January 2009 to a higher Court and certainly didn't intend to or wanted Judge Anderson to be a substitute for Court of Appeals. Unfortunately Judge Anderson misinterpreted my intentions.

IMG AND THE CASE

I would like to mention again that in 2004 when I talked to officials from IMG, they were not just lower level officials. They were the pillars of IMG tennis community. They have told me that they are not interested in my invention, but that they will come back to me if the situation changes. After milking me from all details about the exhibition , IMG in 2005 started to collaborate with foreign company (the other Defendant) about my invention.

DEFENDENTS AND PROFITS

The Defendants in their Principal Brief stated that ‘...Del Campo testified that DCNSS had no involvement in the ticket sales, and did not share any revenues generated by the ticket sales....’ (Principal Brief , page 8, and 28). According to his agreement with Fundacion Illesport , he received royalty in the fixed amount of two hundred thousand euros. (200 000 euros)- Appendix exhibit C page A 000131-A 000132

According to the License Agreement from April 3, 2007 Del Campo Nazca Saatchie & Saatchie Publicidad S.A. granted Fundacion Illesport rights to :

“ a) the rights to organize and/or produce the first edition of the Event, at the aforementioned place and date (the LICENSEE hiring, to such effects, (I) **IMG** (ii) the Players to play at the said first edition of the Event, either through **IMG** directly, as applicable; (iii) the Stadium ; (iv) the television network/s; and (v) in general, everything necessary for the fulfillment of the first edition of the Event);”

b) the right to commercially exploit the Rights, throughout the Territory and during the Validity of this Agreement; including the Event's advertising and promotion (A&P), its broadcasting by any media, either existing or to be created during the Validity hereof (“**broadcasting** “), ticket sale (“**ticketing**”), merchandize sale (**merchandising**), and sponsorship sale (“**sponsorship**”) notwithstanding the right vested upon the LICENSOR on this specific aspect in the assumption of renewal under Clause 7.

According to the same License Agreement , Foundation Illesport (Licensee) must pay royalties to Del Campo Nazca Saatchie & Saatchie Publicidad S.A. (Licensor) **two hundred thousands euros - E 200.000.**

“In consideration of the rights granted under the preceding clauses, the LICENSEE must pay royalties to the LICENSOR in the fixed amount of two hundred thousand euros (E 200 000), to be paid as follows: (I)the amount of sixty thousand euros (E 60 000) within forty eight (48) business hours as from subscription hereof (ii) the amount of one hundred and twenty thousand euros (E 120 000), on the twenty fourth (24 th) of April , 2007 ; and (iii) the amount of twenty thousand euros (E 20 000), on the eight (8) of May, 2007.

All payments to the LICENSOR shall be made by the LICENSEE in Euros (e) free from any charges, expenses and/or commissions (without detriment to the application of such tax laws are in force in the Kingdom of Spain whenever applicable), by bank transfer to the account stated herebelow (or such other accounts as are notified by the LICENSOR to the LICENSEE at least three business days in advance)”.

Although IMG was very actively involved in this event to my knowledge they have never released information about their profits from this Event.

FALSE ADVERTISING UNDER LANHAM ACT , JURISDICTION UNFAIR BUSSINESS PRACTICE, DAMAGES AND CONSPIRACY

To my knowledge, Pablo Del Campo and DCNSS have a Trademark to the phrase “The Battle of Surfaces”. However, they have no rights to sell

Licenses to my invention.

In the License Agreement from April 3, 2007 Del Campo Nazca Saatchi & Saatchie Publicidad S.A. presented themselves as (Appendix page A 000129) :

“...the LICENSOR is the sole and exclusive owner of all the rights of business exploitation and accessories related to the Event (together with copyrights, trademarks, and domain names as aforementioned in the whereas clauses above , hereinafter referred to as the “Rights”...”

According to the same agreement

“...all labels, sales material, advertising, posters, TV commercials, promotion material and further kinds of promoting and/or advertising for first edition of the Event, wheather they are in printed or digital format, in the mass media and/or in any other media, be printed bearing and corresponding ownership credit and copyright notices “ c “ in favor of LICENSOR as follows:

© 2005) del Campo Nazca Saatchi & Saatchie Publicidad S.A. “

As I mentioned in my Informal Brief the Defendants registered active websites and a Trademark in the United States. If they didn't intend to target South Carolina and The United States population than what was the purpose of those registrations?

After reading the Principal Brief I have noticed that Defendants intentionally are trying to create a negative image about me. For example on page 12 (footnote 7) they state that I didn't personally attend the June 4-th Hearing as a strategic choice that I have made based upon the recommendations of my attorneys. However , in Defendants documents to District Court (docket 106) they suggest conflict in my personal schedule with regards to the same Hearing. These kind of statements written to the Court by Defendants are intentionally malicious and are written to discredit me in the eyes of Honorable Court.

DAMAGES

In their Principal Brief Defendants stated that Amended Complaint fails to

allege special damages to me or adverse impact on the public interest. At the time when the Amended Complaint was written the damage to me or the public were not possible to assess. With a time flow it is evident how damaging economically, emotionally and historically this has been.

When the Amended Complaint was written I didn't have knowledge about their Licensing Agreement in which Defendants admit that they knew about me and my patent. This information became available after the Complaint was written. By taken this exhibition outside of the United States IMG and DCNSS acted with malice not only towards me, but also towards American public. IMG also acted intentionally malicious towards me by telling me that my invention does not interest them, but later collaborated with DCNSS and used my invention.

Because of Defendants action I have suffered significantly. I have lost revenues from Licensing. Furthermore because IMG is involved in this dispute other potential promoters are scared. Emotionally, it has been very damaging to me and my Family and historically Pablo Del Campo by taking credit in the eyes of the world for my invention stole my place in Tennis History. How can that be repaired?

American public was stripped of potential jobs and South Carolina and United States government from revenues related to taxes. Instead of American people and SC and US Government the jobs and money went to Mallorca.

According to Defendants Principal Brief one of the reasons my case should be dismissed is because of lack of jurisdiction.

Does that mean that Pablo Del Campo and other foreign citizens can strip American citizens from accomplishments of their lives without any kind of consequences?

Does that mean that they can present themselves as owners of stolen goods, sell them abroad to the other parties as theirs -like DCNSS , who received at least **E 200.000** for inventions that aren't theirs, just as long as they are co partnered by Americans?

Does that mean that they can make a profit from American intellectual properties just by taking them outside of the United States and saying that

they are theirs?

Does that mean that they can register websites in the United States, and own Trademarks in the United States, but claim to be untouchable when it comes to US Laws?

Does that mean that they can avoid their responsibilities to the United States just because they are rich, famous or foreign ?

Does that mean that American Companies who work with them and conspire with them can find another foreigner and do it all over again?

Does that mean that IMG and other American Companies can intentionally milk American patent holders from their inventions and than take them abroad to avoid paying a license fee?

Does that mean that American citizens are not protected from this kind of behavior and foreign citizens have more rights than Americans?

Does that mean that even if they get caught they have already made so much money that they can effort to hire an army of the best lawyers to defend their case?

In Principal Brief Defendants used a lot of examples from different cases. My case is very unique and also a lot of activities took place using Internet. This is a very new area that has not been fully explored yet. Therefore, a lot examples used by Defendants are not applicable in my case.

I would like to ask the Honorable United States Court of Appeals for Federal Circuit to draw your judgment on your judicial experience and common sense.

Please, do not dismiss my case, reverse the decision of a District Court Judge and remand for further proceeding.

Respectfully submitted, on June 21, 2009



Renata Marcinkowska

I certify that on June 21, 2009 I served a copy of this Response to following parties:



Renata Marcinkowska

Vaibhav P. Kadaba
Kilpatrick Stockton LLP
1100 Peachtree Street, NE
Suite 2800
Atlanta, GA 30309

H. Sam Mabry
Haynsworth Sinkler Boyd
PO Box 2048
Greenville, SC 29602