

STATE OF MISSOURI )  
 ) SS  
CITY OF ST. LOUIS )

MISSOURI CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT  
(City of St. Louis)

COIN ACCEPTORS, INC., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
U.S. BANK NATIONAL )  
ASSOCIATION, ) No. 0822-CC09868  
 )  
Defendant, ) Division No. 5  
 )  
& )  
 )  
MARS, INCORPORATED, )  
 )  
Intervenor- )  
Defendant. )

ORDER AND JUDGMENT

This case comes before the Court on Plaintiff Coin Acceptors, Inc.'s Motion for Preliminary Injunction. The Court now rules as follows:

On January 5, 1990, Mars, Incorporated ("Mars") filed suit in the United States District Court for the District of New Jersey ("District Court") against Coin Acceptors, Inc. ("Coinco") for patent infringement. On November 17, 2005, the District Court

found that Coinco infringed U.S. Patent Nos. 3,870,137 ("137 Patent") and 4,438,719 ("719 Patent") and entered a final judgment on liability. The United States Court of Appeals for the Federal Circuit affirmed the District Court's liability judgment.

On May 22, 2007, the District Court entered a final judgment awarding damages to Mars for infringement of the 137 and 719 patents. On June 11, 2007, Mars filed a notice of appeal from the original judgment to the United States Court of Appeals for the Federal Circuit; and Coinco later cross-appealed. On August 6, 2007, the District Court granted Coinco's motion to stay the enforcement of the original judgment pending the outcome of the appeal to the United States Court of Appeals for the Federal Circuit. The District Court's stay order required Coinco to post a standby letter of credit in favor of Mars. On August 7, 2007, U.S. Bank issued an "Irrevocable Standby Letter of Credit" ("Letter of Credit") in favor of Mars in the amount of \$28,819,966.

To draw upon the Letter of Credit, Mars is required to present U.S. Bank an executed sight draft, an executed drawing certificate, and the original Letter of Credit. Further, only one drawing may be made under the Letter of Credit. The drawing certificate requires Mars to certify that:

(i) all issues presented in the appeal of the Mars Litigation by Coin Acceptors, Inc. (the "Account Party") to the United States Court of Appeals for the Federal Circuit have been fully and finally resolved and the time for any petition for certiorari to the Supreme Court for the United States of America ("Supreme Court") has passed or, if the Account Party filed a petition for certiorari to the Supreme Court, the Supreme Court has denied the petition for certiorari or, if the Supreme Court granted the petition for certiorari, the Supreme Court has fully and finally resolved all issues presented in the petition for certiorari (collectively, a "Final Determination"); (ii) a certified copy of the Final Determination is attached to this Drawing Certificate; (iii) as a result of the Final Determination, the Account Party owes Mars the sum of \$\_\_\_\_\_, consisting of \$\_\_\_\_\_ in damages and \$\_\_\_\_\_ in post-judgment interest; and (iv) a computation (certified by an independent, internationally recognized firm of certified public accountants) of such post-judgment interest using the applicable Treasury Bill rate provided by 28 U.S.C. Section 1961 calculated from \_\_\_\_\_, and compounded annually, is attached to this drawing certificate.

The Letter of Credit also states:

We hereby agree that a sight draft drawn under and in strict conformity with all of the terms and conditions of this Letter of Credit will be duly honored by us on the date which is the tenth (10<sup>th</sup>) Business Day after the date we send a copy of the sight draft and accompanying Drawing Certificate to the Account Party . . . unless we have received . . . a court order enjoining us from honoring such sight draft before we have honored such sight draft.

On June 2, 2008, the United States Court of Appeals for the Federal Circuit affirmed in part and reversed in part the original

judgment by holding that Mars lacked standing to recover reasonable royalty damages for the period between 1996 and 2003. The Court remanded the case to the District Court for a recalculation of the damages.

On August 12, 2008, the Letter of Credit was amended to extend its expiration date to November 15, 2009.

On October 27, 2008, Coinco petitioned the Supreme Court of the United States for a writ of certiorari. That petition was denied on December 1, 2008.

Mars made a demand upon the Letter of Credit on December 12, 2008. Mars presented U.S. Bank with an executed Drawing Certificate certifying that "as a result of the Final Determination, [Coinco] owes Mars the sum of \$27,144,061 (as of December 8, 2008), consisting of \$25,217,805 in damages and \$1,926,256 in post-judgment interest as of December 8, 2008, plus \$3,521 per day thereafter until payment is made." On December 16, 2008, U.S. Bank notified Coinco of Mars' demand and informed Coinco that it would honor the demand on December 31, 2008.

Coinco filed its Petition for Temporary Restraining Order and Injunctive Relief on December 23, 2008, in the Circuit Court of the City of St. Louis. This Court entered a temporary restraining order ("TRO") on December 23, 2008, which continues in effect until

January 22, 2009. On December 23, 2008, Coinco was also ordered to post an injunction bond in the amount of \$10,000 for the benefit of U.S. Bank. On January 6, 2009, Mars intervened in this cause of action.

Coinco now seeks a preliminary injunction against U.S. Bank to prevent it from honoring a demand for a draw on the Letter of Credit. Coinco argues that Mars has not complied with the terms and conditions of the Letter of Credit and its demand is premature. Coinco asserts that the Letter of Credit requires that all issues presented in the appeal be "fully and finally resolved." Because the District Court has not made a final determination as to damages on remand from the United States Court of Appeals for the Federal Circuit, Coinco states that a draw may not be made. Coinco notes that Mars has not made any request on the District Court for a recalculation of damages. Coinco further asserts that Mars and Coinco are in complete disagreement as to post-judgment interest. Coinco also notes that Mars may make only one demand on the Letter of Credit.

Mars has filed an Opposition to Coinco's Motion for a Preliminary Injunction. Mars argues that the litigation was fully and finally resolved on December 1, 2008, the date the Supreme Court of the United States denied certiorari, and that there is no

dispute that the money is owed by Coinco to Mars. Mars notes that if the Court believes Coinco's post-appeal interest dispute impacts Mars' request for payment under the Letter of Credit, the Court can order U.S. Bank to make full payment to Mars, but order Mars to hold all amounts above the undisputed amount in an escrow account.

A court, in weighing a motion for a preliminary injunction, should weigh the plaintiffs' probability of success on the merits, the threat of irreparable harm absent the injunction, the balance between such harm and the injury inflicted by the injunction on other interested parties, and the public interest. State ex rel. Director of Revenue v. Gabbert, 925 S.W.2d 838, 839 (Mo. banc 1996). A plaintiff must make some showing of a probability of success on the merits before a preliminary injunction will be issued. Triad Systems Corporation v. Southeastern Express Company, 65 F.3d 1330, 1334 (9th Cir. 1995). The analysis applicable to preliminary relief is not the same as that applicable to the issue of permanent relief after a full hearing. Furniture Mfg. Corp. v. Joseph, 900 S.W.2d 642, 647 (Mo. App. W.D. 1995). Trial courts are allowed broad discretion as to preliminary injunctive relief. Furniture Manufacturing Corp. v. Joseph, 900 S.W.2d 642, 648 (Mo. App. W.D. 1995).

The Court, in its discretion, believes that given the

particular circumstances of this case it is appropriate to grant Coinco's Motion for Preliminary Injunction. The Court finds that the Letter of Credit requires all issues in the appeal be "fully and finally resolved" in order for U.S. Bank to honor a demand to draw by Mars. The Mars litigation has been remanded to the District Court for a recalculation of damages and thus, is not final. There is also a dispute as to post-judgment interest owed and the amount of the draw. Under the terms of the Letter of Credit, only one draw is allowed. The Letter of Credit does not expire until November 15, 2009, allowing time for such a recalculation of damages and for a resolution of the dispute over the amount of the draw. Further, the Letter of Credit contemplates such injunctive relief. The Court further believes that any injury to Mars inflicted by the preliminary injunction is substantially outweighed by the threat of irreparable harm to Coinco. A preliminary injunction will maintain the status quo.

ORDER AND JUDGMENT

THEREFORE, it is Ordered, Adjudged, and Decreed that Coinco's Motion for Preliminary Injunction is granted. U.S. Bank is enjoined from honoring the demand made by Mars on December 12, 2008, for a draw on the Letter of Credit until all issues are fully and finally resolved from the appeal in the Mars litigation, including a new, final judgment from the District Court on damages, and any appeals from that new final judgment to the United States Court of Appeals for the Federal Circuit, and pending the receipt of a new demand from Mars under the Letter of Credit.

SO ORDERED:

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Mark H. Neill #24183  
Circuit Judge

Dated: January 20, 2009

cc: Kenneth J. Mallin, Attorney for Plaintiff Coin Acceptors

James J. Murphy, Attorney for Defendant U.S. Bank National Association

Rudolph A. Telscher, Attorney for Intervenor-Defendant Mars Incorporated