

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
(Dallas Division)**

SFX MOTOR SPORTS, INC.,)
 a Texas Corporation,)
)
 Plaintiff,)
)
 v.)
)
ROBERT DAVIS, TRIPLECLAMPS and)
 www.supercrosslive.com,)
)
 Defendants.)

Civil Action No. 3-06CV0276-L

**PLAINTIFF’S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN
SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

I.

PROPOSED FINDINGS OF FACT

1. Plaintiff SFX Motor Sports, Inc. (“SFX”), a Texas corporation, is engaged in the business of promoting, producing and presenting motorcycle racing events known as Supercross throughout the United States and in foreign countries. Supercross is a competitive motorcycle racing event conducted at indoor stadiums in which contestants compete over a man-made dirt track that contains various jumps, bumps and hairpin turns. (Plaintiff’s Appendix (“P. App.”) at p. ____)

2. Two series of events that SFX has helped to make famous in the sport of supercross motorcycle racing are the Supercross Championship Series and the World Supercross GP. These two competitions consist of a total of more than 100 individual races conducted

during a season that typically extends from mid-December through May of the following year.

(P. App. ____)

3. The Supercross Championship Series and World Supercross GP events are presented before live audiences of 40,000 or more. Live audience attendance for these competitions exceeded 750,000 people during the past season. In addition to live audience attendance, the Supercross Championship Series events and World Supercross GP events are broadcast live on radio, via audio web cast, and on television, including, at present, CBS and Speed Channel. (P. App. ____)

4. SFX and its predecessors have invested thousands of man-hours and millions of dollars in producing, organizing, advertising, promoting and popularizing the Supercross Championship Series and World Supercross GP in particular, and, more generally, the sport of Supercross. As a result, the Supercross Championship Series and World Supercross GP competitions have acquired substantial fame and celebrity, including substantial goodwill and value. (P. App. ____)

5. To further promote the Supercross Championship Series and World Supercross GP and to broaden and expand the popularity of these events, SFX and its predecessors have made it a practice to solicit and acquire title sponsors for these tournaments. SFX and its sponsors have expended considerable effort and expense in advertising and promoting these competitions as well as the numerous individual events which comprise these competitions at major sports stadia such as Texas Stadium in Dallas, Reliant Stadium in Houston, Angel Stadium in Anaheim, SBC Park in San Francisco, Qualcomm Stadium in San Diego, and the Georgia Dome in Atlanta. In calendar year 2006, and for a period expiring in 2009, the Supercross Championship Series and World Supercross GP are being sponsored by AMP'D MOBILE, a

broadband wireless service provider which offers traditional voice and text phone services, including fully customizable handsets offering a variety of content including music, video, entertainment, sports and gaming. As a result, the Supercross Championship Series is now called the AMP'D Mobile AMA Supercross Championship Series and the World Supercross GP is now referred to as the AMP'D Mobile World Supercross GP. (P. App. ____)

6. SFX produces a live audio broadcast for each event in its Supercross Championship Series and World Supercross GP which airs as a web cast exclusively on SFX's web site at www.supercross.cc.com. SFX has registered its copyrights in these audio web casts (the "Audio Web Casts"), including the following:

Supercross LIVE! Audio Webcast - Toronto, ON 12/03/05 (SR 370-325)

Supercross LIVE! Audio Webcast - Vancouver, BC 12/10/05 (SR 370-324)

Supercross LIVE! Audio Webcast - Anaheim, CA 01/07/06 (SR 370-319)

Supercross LIVE! Audio Webcast - Phoenix, AZ 01/14/06 (SR 370-320)

Supercross LIVE! Audio Webcast - Anaheim, CA 01/21/06 (SR 370-321)

Supercross LIVE! Audio Webcast - San Francisco, CA 01/28/06 (SR 370-322)

Supercross LIVE! Audio Webcast - Anaheim, CA 02/04/06 (SR 370-323)

Supercross LIVE! Audio Webcast - San Diego, CA 02/11/06 (SR 370-370)

Supercross LIVE! Audio Webcast - St. Louis, MO 02/18/06 (SR 370-371)

Supercross LIVE! Audio Webcast - Atlanta, GA 02/25/06 (SR 370-877)

(P. App. ____)

7. Initially without the knowledge of SFX and always without the authorization or consent of SFX, Defendants have broadcast and performed SFX's Audio Web Casts of Supercross Championship Series and World Supercross GP events at their Web site

www.supercrosslive.com. Defendants have continued their infringement of SFX's copyrights despite repeated requests by SFX that Defendant cease infringing SFX's copyrights.

8. The Defendants are displaying and performing SFX's Audio Broadcasts on their website through a process known as "streaming." Basically, the Defendants are transferring SFX's Audio Web Casts to their website and thereby displaying or performing the Audio Web Casts at their website in "real time." The Defendants admit this in their Sixth Affirmative Defense in which they state that Tripleclamps does not copy SFX's Audio Web Casts but rather broadcasts or performs the "same audio web cast."

9. As a result of Defendants' broadcast of SFX's Audio Web Casts on their website, SFX has lost the control of its copyrighted works which Congress vested in copyright owners. In particular, SFX has lost control of the environment in which the Audio Web Casts are presented to the public. For example, SFX has presented the Audio Web Casts to the public on a website which features the logos and advertisements of AMP'D MOBILE, a broadband wireless service provider which sponsors the Supercross Championship Series and World Supercross CP. The Defendants are denying SFX its right to sell sponsorships which offer sponsors the right to have their advertisements appear on a website that is the exclusive source of the Audio Web Casts.

10. Moreover, since SFX first notified the Defendants of its rights and demanded that the Defendants cease infringing SFX's copyrights, the Defendants have posted on their website comments critical of SFX's efforts to enforce its rights and Defendants have encouraged visitors to their website to make similar complaints about SFX's alleged "anti-competitive conduct." In short, Defendants have broadcast SFX's Audio Web Casts on a website that disparages SFX. (P. App. ____)

11. Defendants have refused SFX's repeated requests to stop their broadcasts of SFX's Audio Web Casts. (P. App. ____) Unless Defendants are restrained by this Court they will continue to deny SFX the control of its Audio Web Casts to which SFX is entitled under the Copyright Act and they will continue to irreparably harm SFX.

II.

PROPOSED CONCLUSIONS OF LAW

1. SFX is the sole and exclusive owner of all right, title and interest in and to the copyrights in the Audio Web Casts of Supercross Championship Series and World Supercross GP events, which are broadcast at SFX's web site, www.supercross.cc.com.

2. SFX has registered its copyrights in the Audio Web Casts in the United States Copyright Office.

3. Therefore, under the Copyright Act, SFX has the exclusive right publicly to perform and display the Audio Web Casts. 17 U.S.C. §106(4) and (5).

4. Defendants are infringing upon SFX's exclusive rights to display and to perform the Audio Web Casts by streaming the Audio Web Casts through their website. 17 U.S.C. §501; *National Football League v. Primetime 24 Joint Venture*, 211 F.3d 10, 12-13 (2nd Cir. 2000); *National Football League v. TVRadioNews Corp.*, 53 U.S.P.Q.2d 1831, 1837 (W.D.Pa. 2000).

5. SFX has suffered irreparable harm and, if the Defendants are not preliminarily enjoined, will continue to be irreparably harmed by Defendant's infringement of SFX's copyrights. *National Football League v. TVRadioNews Corp.*, 53 U.S.P.Q.2d 1831, 1838 (W.D.Pa. 2000).

6. The threatened injury to SFX if no preliminary injunction is issued outweighs any harm defendant may suffer if a preliminary injunction is issued. SFX has suffered irreparable

harm as a result of Defendants' conduct and will continue to suffer irreparable harm if the Defendants are not enjoined. In contrast, the only harm the Defendants will suffer is the inability to conduct an unlawful business. That detriment to the Defendants is not entitled to any consideration by this Court, because it would be incongruous to hold that if an enterprise relies on copyright infringement for its survival it is entitled to infringe the rights of a copyright owner. *National Football League v. TVRadioNews Corp.*, 53 U.S.P.Q.2d 1831, 1838 (W.D.Pa. 2000).

7. The public interest will be best served by upholding copyright protections and preventing the misappropriation of the creative energies and resources which are invested in the display of copyrighted works such as the Audio Web Casts. *National Football League v. TVRadioNews Corp.*, 53 U.S.P.Q.2d 1831, 1838 (W.D.Pa. 2000).

8. SFX is entitled to a preliminary injunction prohibiting and restraining Defendants Davis and Tripleclamps, their officers, agents, servants, employees and representatives and all other persons, firms and corporations in active concert or participation with them from web casting or otherwise displaying or performing SFX's Audio Web Casts. 17 U.S.C. §502; *National Football League v. TVRadioNews Corp.*, 53 U.S.P.Q.2d 1831 (W.D.Pa. 2000); *Georgia Television v. TV News Clips of Atlanta*, 718 F.Supp. 939 (N.D.Ga. 1989).

Dated: June 23, 2006

Respectfully submitted,

/s/ Robert W. Kantner

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 23, 2006, he served a copy of this Proposed Findings of Fact and Conclusions of Law on Defendants by hand delivery to Mr. Davis at his residence at 10709 Wolf Creek Lane, Rowlett, Texas 75089.

/s/ Robert W. Kantner

Robert W. Kantner