

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WORLD CHESS US, INC. and WORLD :
CHESS EVENTS LTD., :
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 Plaintiffs, :
 :
 - against - :
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 CHESSGAMES SERVICES LLC, E-LEARNING: :
 LTD., and LOGICAL THINKING LTD., :
 :
 Defendants. :
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16 Civ. 8629 (VM)
DECISION AND ORDER

VICTOR MARRERO, United States District Judge.

Plaintiffs World Chess US, Inc. and World Chess Events Ltd. (collectively, "World Chess") filed a complaint in this Court against defendants Chessgames Services LLC ("Chessgames"), E-Learning Ltd. ("E-Learning"), and Logical Thinking Ltd. (together with E-Learning, "Chess24") (collectively, "Defendants"). The complaint alleges (1) misappropriation of "hot news" and (2) breach of contract or, in the alternative, tortious interference with contractual relations.

World Chess filed a motion for a temporary restraining order and preliminary injunction, seeking to prevent Defendants from publishing updates regarding the 2016 World Chess Championship Match ("Championship") while the games are in progress. The motion was supported by a memorandum of law dated November 7, 2016. ("Memorandum," Dkt. No. 16.) The

Championship was scheduled to commence in New York City on November 11, 2016 and continue through November 30, 2016. On November 10, Chess24 filed its Memorandum of Law in Opposition to World Chess's Motion. ("Opposition," Dkt. No. 11.)

The Court held a preliminary injunction hearing on November 10, 2016, at which it heard oral argument from World Chess and Chess24.¹ ("Preliminary Injunction Hearing," Dkt. Minute Entry for Nov. 10, 2016). For the reasons stated by the Court at the conclusion of the Preliminary Injunction Hearing and the reasons stated below, World Chess's motion for a preliminary injunction is DENIED.

I. FACTUAL BACKGROUND

World Chess, a British Virgin Islands corporation with its principal place of business in New York, organizes championship-level chess tournaments and sells tickets for admission to its live tournament events. World Chess also maintains a website on which it distributes real-time webcasts of tournament games and commentary, among other things, to website subscribers. (Memorandum, at 1-2.) World Chess is the organizer of the Championship.

¹ At the time of the Preliminary Injunction Hearing, Chessgames had not yet secured legal counsel and therefore did not participate in the hearing. (See "November 10 Letter," Dkt. No. 13.)

Chess24, a Gibraltar corporation, is the operator of a website providing chess-oriented content, including, among other things, a "live broadcast" of matches from major events and accompanying commentary. (Opposition, at 5.) While the designation may suggest otherwise, Chess24's "live broadcasts" do not consist of "video feeds of the players of the chess games themselves" but rather of a "computer-generated 'virtual' chess board" on which Chess24 displays a chess player's moves as the live game progresses. (Id.) Chess24 also reports on live games by displaying a series of alphanumeric characters corresponding to specific chess moves, and by providing running commentary from chess experts as to the matches' progress. (See Id., at 5-6; "McGourty Declaration," Dkt. No. 12, at 4-5.)

The previous World Chess Championship, which was held in 2014, was organized by World Chess and reported on by Chess24 in the manner described above without issue between the parties. (See Opposition, at 7.) Following the March 2016 "Candidates Tournament," an affiliate of World Chess initiated litigation against Chess24 in Moscow seeking monetary and injunctive relief alleging Chess24 engaged in unfair competition by reporting on and broadcasting the players' chess moves. On October 25, 2016, the Commercial

Court of Moscow held a hearing in the matter and denied World Chess relief. (See id., at 7-8.)

On November 7, World Chess filed the complaint in this action against Chess24 and Chessgames alleging (1) misappropriation of "hot news" and (2) breach of contract or, in the alternative, tortious interference with contractual relations. The complaint also seeks to require third party service providers to take any actions necessary to block the Defendants' websites from continuing to operate should Defendants fail to comply with the temporary restraining order. Finally, World Chess seeks declaratory relief "to confirm the enforceability of World Chess's website and admission ticket terms and conditions and that the defendants' retransmission of the chess moves is in violation of one or both of these contracts and also constitutes actionable misappropriation." ("Complaint," Dkt. No. 1, at 2.)

Together with the Complaint, World Chess also filed a Motion seeking an order to prohibit Chess24 from republishing updates of each game at the Championship while the matches are in progress. World Chess argues that, as the organizer of the Championship, it "has obtained exclusive access to and rights to stage and disseminate the [chess] moves" themselves. (Memorandum, at 13-14.) Accordingly, World Chess

argues Chess24's "reproduction of the moves made by contestants" constitutes "misappropriation of the chess moves" and should be enjoined. (Id., at 13, 21.)

In its Opposition, Chess24 argues that the information on which it seeks to report, including the chess players' moves, consists of factual data that will be in the public domain by the time of Chess24's reports and commentary. (See Opposition, at 6.) Chess24 maintains that it will not be copying (or pirating) any content prepared by World Chess and "nothing will be published on the Chess24 Website before it is made public from some other source." (Id., at 5-6.) Rather, Chess24 states that it intends to gather its website content of the Championship chess moves not from any agents attending and reporting on the matches, but from a variety of secondary sources that are publicly available, including the broadcasting of the Championship on Norwegian television and from third-party websites, such as posts on Facebook and Twitter. (See id.) Chess24 contends that it will then project the players' moves onto a virtual chess board of Chess24's creation; make alphanumeric notations of the moves in a manner commonly understood in the sport; and provide their subscribers with detailed written and video commentary about the Championship. (See id., at 4-5.)

II. DISCUSSION

A. LEGAL STANDARD

The district court has wide discretion in determining whether to grant a preliminary injunction. See Grand River Enter. Six Nations, Ltd. v. Pryor, 481 F.3d 60, 66 (2d Cir. 2007) (per curiam) (citations omitted). However, a preliminary injunction "is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." Id. at 66 (internal quotation marks omitted).²

A party seeking a preliminary injunction must demonstrate "(1) either (a) a likelihood of success on the merits or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in the movant's favor, and (2) irreparable harm in the absence of the injunction." Faiveley Transport Mahno AB v. Wabtec Corp., 559 F.3d 110, 116 (2d Cir. 2009) (citation and internal quotation marks omitted).

B. APPLICATION

The Court finds that World Chess has failed to make a sufficient showing that it is entitled to injunctive relief.

² The legal standards governing preliminary injunctions and temporary restraining orders are the same. See AFA Dispensing Group B.V. v. Anheuser-Busch, Inc., 740 F. Supp. 2d 465, 471 (S.D.N.Y. 2010).

First, World Chess has failed to demonstrate that Defendants would be pirating, by live redistribution on their websites, the reports of chess moves that World Chess would produce and distribute. The Court is not persuaded that Chess24 would be taking content from World Chess and merely "free-riding" or republishing the information for Chess24's own subscribers. Rather, the evidence presented indicates that Chess24 digests factual information about the Championship from secondary sources and creates its own website content at great expense. (See Opposition, at 4-5.)

Second, World Chess must show that it is more likely than not to prevail should this action be tried in court. See AFA Dispensing Grp. B.V., 740 F. Supp. 2d at 473. World Chess has not met its burden. World Chess relies on the Second Circuit's decision in National Basketball Association v. Motorola, Inc., 105 F.3d 841, 845 (2d Cir. 1997), for the proposition that Defendants are liable for "hot news" misappropriation. However, as Chess24 contends, National Basketball Association expressly rejected the NBA's "hot news" misappropriation argument. Specifically, the Second Circuit "held that the NBA could not prevent Motorola from attending and watching basketball games and selling play-by-play accounts of the game to its mobile customers." 105 F.3d at 846. In pertinent part, the Second Circuit found that:

"Motorola . . . expend[s] their own resources to collect purely factual information generated in NBA games to transmit to SportsTrax pagers. They have their own network and assemble and transmit data themselves." Id. at 854.

Similarly, in Barclays Capital Inc. v. Theflyonthewall.com, Inc., financial services firms brought suit against an Internet-based subscription news aggregation service alleging "hot news" misappropriation and copyright infringement as to their securities recommendations. Plaintiffs argued that the defendant's republication of their securities recommendations before they were known to the public constituted "hot news" misappropriation. See 650 F.3d 876 (2d Cir. 2011). The Second Circuit dismissed the case, holding that the "hot news" misappropriation claim was preempted by federal copyright law and that the defendant was not "free riding" on the plaintiffs' efforts, but rather were collecting, summarizing, and disseminating news of the securities recommendations "through a substantial organization effort." Id. at 905.

Based on a review of the evidence in this case, the Court finds no material difference between the facts presented here and those at issue in National Basketball Association and Barclays Capital Inc.. As an initial matter, the Court is not persuaded that World Chess alone can report on the

Championship game scores. Indeed, it is well-established that sports scores and events, like players' moves in the Championship, are facts not protectable by copyright. See Nat'l Basketball Ass'n., 105 F.3d at 946. Further, the evidence presented here shows Chess24 has expended considerable resources and hired employees to collect from secondary sources, analyze, and project factual information about the Championship, among other things, to its users. (Opoosition, at 5; McGourty Declaration, at 7.) Like Motorola's SportsTrax pager, Chess24's virtual chessboard and compilation of players' moves display factual data that Chess24 has "assemble[d] and transmit[ted] . . . themselves." Nat'l Basketball Ass'n., 105 F.3d at 854.

Third, "[a] showing of irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction." Faiveley Transport Mahno AB, 559 F.3d at 116. "To satisfy the irreparable harm requirement, Plaintiffs must demonstrate that absent a preliminary injunction they will suffer an injury that is neither remote nor speculative, but actual and imminent, and one that cannot be remedied if a court waits until the end of trial to resolve the harm." Grand River Enter. Six Nations, Ltd., 481 F.3d at 66.

Here, World Chess has failed to show that it would suffer an immediate injury that cannot be remedied by money damages

after trial. Even assuming World Chess is correct that - in the absence of relief - Defendants' reproduction of the chess moves made by the contestants in the Championship devalues World Chess's website product and threatens the existence of its website, World Chess has provided no basis for concluding that it cannot be sufficiently compensated by money damages. The alleged injury here - that a rival website operated by Defendants may supplant some in-person ticket sales and subscribership to World Chess's website - is precisely the type of loss compensable by money damages. Moreover, as Chess24 indicates, World Chess licenses "to various websites the right to report on the [Championship] in real time, thus implicitly conceding that any injury is fully compensable by monetary damages (i.e. lost licensing fees)." (Opposition, at 3.)

Fourth, World Chess has failed to show that the balance of equities tips decidedly in its favor. World Chess argues that "absent a preliminary injunction with a temporary restraining order, World Chess will likely lose a substantial number of subscribers and lose its goodwill as the party with exclusive control over dissemination of Championship updates and organizer of the Championship." (Memorandum, at 20.) By contrast, Chess24 argues that it will lose revenue and reputation if prevented from reporting on the Championship.

On balance, the Court agrees with Chess24 that the public interest is best served by the robust reporting of factual data concerning the contestants' moves accompanied by analysis and commentary on the Championship.

Having found that World Chess has failed to establish that it satisfies the requirements for a preliminary injunction, the Court is persuaded that Defendants should be permitted to report on the Championship while this action is pending.

III. ORDER

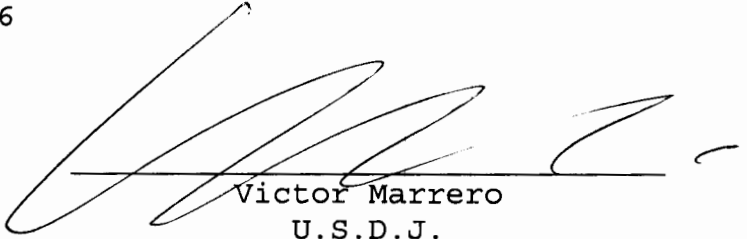
For the foregoing reasons, it is hereby

ORDERED that the motion of plaintiffs World Chess US, Inc. and World Chess Events Ltd. (collectively, "World Chess") for a temporary restraining order and preliminary injunctive relief prohibiting defendants Chessgames Services LLC ("Chessgames"), E-Learning Ltd. ("E-Learning"), and Logical Thinking Ltd. (together with E-Learning, "Chess24") (collectively, "Defendants") from republishing the updates of each game at the World Chess Championship ("Championship") in

New York City from November 11, 2016 to November 30, 2016,
while the game is in progress is **DENIED**.

SO ORDERED.

Dated: New York, New York
22 November 2016



Victor Marrero
U.S.D.J.