

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

BRUCE KIRBY, INC., and  
BRUCE KIRBY

Plaintiffs,

vs.

LASERPERFORMANCE (EUROPE) LIMITED,  
QUARTER MOON, INCORPORATED,  
KARAYA (JERSEY) LIMITED,  
VELUM LIMITED ITM SA (ANTIGUA AND  
BARBUDA),  
INTERNATIONAL SAILING FEDERATION  
LIMITED,  
INTERNATIONAL LASER CLASS  
ASSOCIATION, and  
FARZAD RASTEGAR

Defendants.

Civil Action No.  
3:13-cv-00297-RNC

May 17, 2013

**MEMORANDUM IN SUPPORT OF  
PLAINTIFFS’ MOTION FOR PREJUDGMENT REMEDY**

Pursuant to Rule 64 of the Federal Rules of Civil Procedure, and Connecticut General Statutes § 52-278a *et seq.*, Plaintiffs BRUCE KIRBY, INC. and BRUCE KIRBY (hereinafter “Plaintiffs” or “Kirby”) seek a prejudgment remedy enjoining the use, disposal, and/or transfer of all production tooling, molds, and plugs for producing Kirby Sailboats, copies of the Construction Manual, ISAF Plaques, and New ISAF Plaques (as referred to and described herein and in the First Amended Complaint) in the possession, custody, or control of Defendants LASERPERFORMANCE (EUROPE) LIMITED (“LP Europe”), QUARTER MOON, INCORPORATED (“Quarter Moon”), KARAYA (JERSEY) LIMITED (“Karaya”), VELUM LIMITED ITM SA (ANTIGUA AND BARBUDA)(“Velum”), (collectively “Laser

Performance”) and FARZAD RASTEGAR (“Rastegar”). Kirby seeks this remedy to enjoin the use and/or transfer of confidential information and materials by Defendants and maintain the status quo with respect to these materials.

### **BACKGROUND**

This action was filed on March 4, 2013, and a First Amended Complaint was filed on April 30, 2013. Kirby seeks recovery of damages and equitable relief from Rastegar and Laser Performance for: (1) trademark counterfeiting, arising under the Lanham Act, 15 U.S.C. §1114 (2) trademark infringement, unfair competition, and false designation of origin arising under the Lanham Act, 15 U.S.C. §1114 (3) unfair trade practices under the Connecticut Unfair Trade Practices Act (CUTPA), (4) misappropriation of Bruce Kirby’s publicity rights, (5) default of two contracts (the 1983 and 1989 Builder Agreements), and (6) inducement to default the 1983 and 1989 Builder Agreements.

### **DISCUSSION**

A prejudgment remedy is necessary in this case to protect Kirby and preserve the status quo among the parties. Kirby’s allegations and supporting evidence more than meet the probable cause standard for granting such a remedy. Furthermore, Rastegar owns and/or controls the Laser Performance companies, as well as several other companies with unusual corporate relationships and registrations in exotic locations overseas. A prejudgment remedy is essential in this case because Rastegar and Laser Performance are in possession of confidential documents and manufacturing implements that Laser Performance continues to use, and that Rastegar is capable of disposing of or transferring to other associated companies and/or third parties. Disclosure of the confidential documents, continued manufacture of the Kirby Sailboat, or disposal and/or transfer of the means of production that are the subject of this case would all

violate explicit post-termination obligations of Quarter Moon and LP Europe (collectively “Builders”).

**I. Probable Cause Supporting a Prejudgment Remedy is Present in this Case**

Kirby’s claims against Laser Performance and Rastegar are chronicled in detail in the First Amended Complaint in this case and the numerous documents attached as exhibits thereto. This case is complicated, but the Introduction in the First Amended Complaint explains the essential facts. A prejudgment remedy is warranted where a moving party shows probable cause for the success of the legal claims brought. In this case, especially for its claims against Laser Performance and Rastegar for default of contract and default of contractual post-termination obligations, Kirby has provided more than enough evidence to support the issuance of a prejudgment remedy.

***A. Summary of Claims for which Prejudgment Remedy is Sought***

***1. Default of the Builder Agreements***

Quarter Moon and LP Europe are successors-in-interest to a series of agreements (“Builder Agreements”) with sailboat builders through which builders received a license to use the Kirby sailboat design in return for the payment of royalties. (First Am. Compl. Introduction; First Am. Compl. ¶¶ 23-28, 34-38.) Quarter Moon and LP Europe defaulted their contractual obligations by failing to pay royalties, failing to provide a notice of change of name, failing to seek prior written consent to assign the rights and obligations under the agreement, producing and selling Kirby Sailboats outside of specified territories, and violating post-termination obligations. (First Am. Compl. ¶¶ 54-59, 64-68, 121-125, 129-133.) Kirby terminated the relevant Builder Agreements in 2012 and 2013; however, Quarter Moon and LP Europe

continued manufacturing and selling Kirby Sailboats under a claim of authorization from the Builder Agreements. (First Am. Compl. ¶¶ 28, 38.)

Upon termination of the 1989 Builder Agreement, Quarter Moon is contractually obligated to discontinue the manufacture of Kirby Sailboats, discontinue the use of the confidential Construction Manual, production tooling, molds, and plugs necessary to build the Kirby Sailboat, and discontinue use of the design of the Kirby Sailboat. (First Am. Compl. ¶¶ 54-59.) Quarter Moon has violated its contractual post-termination obligations under the 1989 Builder Agreement by failing to comply with these provisions. (First Am. Compl. ¶¶ 54-59.)

Upon termination of the 1983 Builder Agreement, LP Europe is contractually obligated to discontinue the manufacture of Kirby Sailboats, discontinue the use of the production tooling, molds, and plugs necessary to build the Kirby Sailboat, and negotiate the sale of the production tooling, molds, and plugs to Kirby or a licensee of Kirby. (First Am. Compl. ¶¶ 64-68.) LP Europe has violated its contractual post-termination obligations under the 1983 Builder Agreement by failing to comply with these provisions. (First Am. Compl. ¶¶ 64-68.)

2. Counterfeiting of the Kirby Sailboat, Trademark Infringement, Unfair Competition, and Misappropriation of Publicity Rights

Quarter Moon, LP Europe, Karaya, and Velum have also manufactured and sold counterfeit Kirby Sailboats with ISAF Plaques bearing the federally registered BRUCE KIRBY trademark in Connecticut and in interstate commerce, constituting counterfeit of the BRUCE KIRBY trademark under the Lanham Act as well as trademark infringement and unfair competition under the Lanham Act and the Connecticut Unfair Trade Practices Act (“CUTPA”). (First Am. Compl. ¶¶ 87, 88, 96, 97, 105.) Because the mark in question includes Bruce Kirby’s name, these acts also violate Bruce Kirby’s right of publicity. (First Am. Compl. ¶¶ 116, 118.)

LASER trademark owners Karaya and Velum have been complicit in the manufacture and sale of the unauthorized and counterfeit Kirby Sailboats, for at least the reason that Karaya and Velum have permitted Quarter Moon and LP Europe to use the LASER trademark on unauthorized and counterfeit Kirby Sailboats. (See First Am. Compl. ¶87.) The LASER trademark is featured on the unauthorized Kirby Sailboats, on the ISAF Plaques and elsewhere. (See First Am. Compl. ¶¶ 106, 137, 139.)

On information and belief, Quarter Moon, LP Europe, Karaya, and Velum are all owned and/or controlled by Rastegar and are cooperating to manufacture and sell unauthorized Kirby Sailboats and transfer the proceeds offshore in lieu of paying royalties to Kirby. (First Am. Compl. ¶¶ 10, 39.)

***B. Issuance of a Prejudgment Remedy Requires a Mere Showing of Probable Cause***

The facts summarized above and pled in more detail in the First Amended Complaint support issuance of a Prejudgment Remedy. In assessing a party's entitlement to a prejudgment remedy, the Court must determine only that the moving party has demonstrated that "there is probable cause that a judgment in the amount of the prejudgment remedy sought, or an amount greater than the amount of the prejudgment remedy sought, taking into account any known defenses, counterclaims or setoffs, will be rendered in the matter in favor of the plaintiff." Conn. Gen. Stat. § 52-278c(a)(2.) "Probable cause" is "a bona fide belief in the existence of the facts essential under the law for the action and such as would warrant a man of ordinary caution, prudence and judgment, under the circumstances, in entertaining it." *Delgado v. Cragganmore Associates, Ltd. Partnership*, No. 3:01CV1633(JCH), 2001 WL 1913745, at \*1 (D. Conn. Oct. 31, 2001) (citing *Three S Development Co. v. Santore*, 193 Conn. 174, 175 (1984)). A full scale trial on the merits of the plaintiff's claim is not required. Rather, the plaintiff must only

demonstrate that there is probable cause "to sustain the validity of the claim." *Id.* (citation and internal quotation marks omitted).

**II. Immediate Relief is Needed to Preserve the Status Quo and Protect Kirby's Interests**

***A. Rastegar and Laser Performance are in Possession of Confidential Information and Materials***

LP Europe, Quarter Moon, and Rastegar are in possession of the confidential Construction Manual, production tooling, molds, and plugs necessary to build the Kirby Sailboat. (Kirby Aff. ¶6.) Absent an injunction, it is likely that they will continue to use these materials to manufacture Kirby Sailboats and/or dispose of or transfer the materials to entities not named as parties and therefore beyond the reach of the Court during the pendency of this suit.

Rastegar, LP Europe, and Quarter Moon's retention and continued use of these items is in breach of the post-termination obligations of the 1983 and 1989 Builder Agreements to which they are parties. (Kirby Aff. ¶¶ 7, 8.) Kirby has provided the implements and instructions for building the Kirby Sailboat to Licensed Builders on condition that their confidentiality be maintained. (Kirby Aff. ¶11.) Defendants are entitled to possession of these materials only to the extent that they are authorized builders, licensed by Kirby to use the materials to manufacture the Kirby Sailboat. The continued confidentiality of the method of building the Kirby Sailboat is critical to the protection of Kirby's rights in the sailboat design. (Kirby Aff. ¶11.)

***B. Absent a Prejudgment Remedy, There is a Risk that Defendants will Use and/or Transfer Kirby's Confidential Design Information and Materials***

***1. Protection of Confidential Design Information***

Given Rastegar's past business practices, there is an unacceptable risk that Rastegar will disseminate Kirby's confidential information. (Kirby Aff. ¶11.) This confidential information includes copies of the Construction Manual and production tooling, plugs, and molds needed to

make the Kirby Sailboat. (Kirby Aff. ¶11.) There is also an unacceptable risk that Rastegar will transfer production tooling, plugs, and molds needed to construct Kirby Sailboats to entities that he controls but are not parties to this case. (Kirby Aff. ¶10.) These items are readily transportable and not fixed to any one location. (Kirby Aff. ¶10.)

The only way to protect the confidentiality of Kirby's design and protect Kirby against the continued counterfeiting of the Kirby sailboat is for this Court to enjoin further use, disposal, and/or transfer of the production tooling, molds, plugs, and all copies of the Construction Manual until possession of these items can be fully adjudicated in accordance with the post termination obligations in the Builder Agreements. (Kirby Aff. ¶¶ 10, 11.) Such a prejudgment remedy would preserve the status quo and leave the parties in the current positions with no further damage.

2. Prevention of Unlawful Manufacture of Kirby Sailboats

Quarter Moon and LP Europe are currently in possession of several ISAF Plaques and New ISAF Plaques. (First Am. Compl. ¶¶ 76, 78.) These plaques have no use other than to build Kirby Sailboats; and when affixed to an unauthorized and/or counterfeit Kirby Sailboat, falsely indicate that the boat is sanctioned, authentic, and legitimate. (Kirby Aff. ¶12.) It is likely that Quarter Moon, LP Europe, and/or Rastegar will use these plaques to continue to build unauthorized and counterfeit Kirby Sailboats. (Kirby Aff. ¶12.) There is an unacceptable risk that Rastegar will transfer these plaques to third parties and/or to other associated companies, which will enable the recipients of those plaques to build unauthorized and counterfeit Kirby Sailboats. (Kirby Aff. ¶12.)

Quarter Moon and LP Europe have also retained possession of copies of the Construction Manual, and sets of the plugs, moulds, and tooling needed to construct Kirby Sailboats. (Kirby

Aff. ¶6.) Quarter Moon and LP Europe are using these items to continue to manufacture unauthorized and counterfeit Kirby Sailboats. (Kirby Aff. ¶6.)

In order to prevent the continued and future manufacture of unauthorized and counterfeit Kirby Sailboats, this Court should immediately enjoin the use and/or transfer of all ISAF Plaques, New ISAF Plaques, copies of the Construction manual, and sets of the plugs, moulds, and tooling currently in the possession of Rastegar or any of his affiliated businesses (including Quarter Moon and LP Europe). Issuance of an injunction will prevent irreparable harm Kirby and prevent further actions in default of the Builder Agreements and further infringement of the Kirby trademarks and rights of publicity.

### CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that their Motion for Prejudgment Remedy be granted.

Respectfully submitted,

May 17, 2013

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