

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY _____
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TEXAS DEPARTMENT OF
TRANSPORTATION,

Plaintiff,

-vs-

Case No. A-11-CA-726-SS

CHRISTIE CRAIG, et al.,

Defendants.

ORDER

BE IT REMEMBERED on this day the Court held a hearing in the above-styled cause, and specifically considered Plaintiff Texas Department of Transportation ("TxDOT")'s Motion for Temporary Restraining Order [#2]. At the conclusion of the hearing, the Court delivered its oral ruling DENYING TxDOT's motion. The Court now memorializes that ruling in this opinion.

Defendants are involved in the writing, publication, and distribution of a romance novel entitled "Don't Mess With Texas," which is scheduled to go on sale August 23, 2011. TxDOT, which has the phrase "Don't Mess With Texas" trademarked in connection with the State of Texas' anti-littering campaign, seeks a temporary restraining order preventing the sale of the book.

The Court denies TxDOT's motion for two reasons. First, the Court is not convinced TxDOT has a substantial likelihood of success on the merits. Apart from Defendants' "First Amendment right to choose an appropriate title for literary works," *Westchester Media v. PRL USA Holdings, Inc.*, 214 F.3d 658, 664 (5th Cir. 2000), the Court finds significant counsel's concession

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that none of TxDOT's trademark registrations cover books. In light of these concerns, the Court lacks sufficient evidence to conclude TxDOT has a substantial likelihood of success on the merits.

Second, the Court finds the balance of harms does not favor TxDOT. At the hearing, Defendants' counsel represented 35,000 copies of the book had been printed and distributed to retailers, and were scheduled to go on sale at the open of business on August 23, 2011. Therefore, enjoining the sale of the books would not only deprive Defendants of significant revenue from the sales, but would also subject them to the potentially sizeable additional costs of guaranteeing compliance with the Court's order. Moreover, the Court doubts Defendants' book will fly off the shelves with such speed that sales could not be enjoined in the future, should TxDOT prevail on its claims in this lawsuit. Finally, in light of the questionable popularity of Defendants' book, any harm TxDOT might suffer is merely speculative; and to the extent TxDOT may suffer concrete financial harm, there is no evidence suggesting Defendants could not compensate TxDOT financially. Accordingly, the Court finds the balance of harms does not weigh in favor of the issuance of a temporary restraining order at this time.

Accordingly,

IT IS ORDERED that Plaintiff Texas Department of Transportation's Motion for Temporary Restraining Order [#2] is DENIED, without prejudice to the filing of a motion for preliminary injunction at a later time.

SIGNED this the 23rd day of August 2011.



SAM SPARKS
UNITED STATES DISTRICT JUDGE