

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

STURGIS MOTORCYCLE RALLY, INC.,

Civil File No.: 11-cv-5052-JLV

Plaintiff,

v.

**RUSHMORE PHOTO & GIFTS, INC.,
JRE, INC., CAROL NIEMANN,
PAUL A. NIEMANN, and BRIAN M.
NIEMANN,**

Defendants.

-AND-

**RUSHMORE PHOTO & GIFTS, INC.,
JRE, INC., CAROL NIEMANN,
PAUL A. NIEMANN, and BRIAN M.
NIEMANN,**

Counterclaim-Plaintiffs,

v.

STURGIS MOTORCYCLE RALLY, INC.,

Counterclaim-Defendant.

**DEFENDANTS/COUNTERCLAIM-PLAINTIFFS' MOTION FOR A TEMPORARY
RESTRAINING ORDER AND A PRELIMINARY INJUNCTION
(EXPEDITED ORAL ARGUMENT REQUESTED)**

Defendants/Counterclaim-Plaintiffs respectfully request that this Court grant their Motion for a Temporary Restraining Order and Preliminary Injunction. Defendants/Counterclaim-Plaintiffs seek a temporary restraining order and preliminary injunction that precludes Sturgis Motorcycle Rally, Inc. ("SMRI") and its subsidiaries, parents, officers, directors, agents,

servants, employees, affiliates, attorneys and all other persons in active concert or participation with SMRI, including law enforcement, from enforcing or threatening to enforce SMRI's Federal Trademark/Service Mark Registration No. 3,923,284 ("Sturgis Registration") or any alleged exclusive rights in the name "Sturgis" or from threatening that SMRI and/or its agents of law enforcement will be conducting seizures at and around the upcoming Rally of any "non-licensed" goods that use or incorporate the name "Sturgis," until the final resolution of this dispute, including but not limited to during the upcoming Sturgis Biker Rally.

Defendants also seek an order instructing SMRI to provide notice and a copy of the injunction to all persons, entities, or vendors that SMRI has already threatened with enforcement of the Sturgis Registration, as well as all of SMRI's licensees of the Sturgis Registration. Defendants also seek an order instructing SMRI to provide notice and a copy of the injunction to all of SMRI's agents, licensees, affiliates, and law enforcement under SMRI's direction or control, and explain to them the prohibitions of the injunction.

In support of their Motion, Defendants/Counterclaim-Plaintiffs file their Memorandum of Law, the Declaration of Aaron W. Davis and the exhibits thereto, the Declarations of Brian Niemann and Paul Niemann, and the following vendor/customer declarations:

- Declaration of Raymond J. Dvorak, Country Stores, Inc. d/b/a BJ's Sturgis
- Declaration of Joseph Lupo, Sturgis Swap Meet
- Declaration of William Gormley, Bill's Trailer Sales
- Declaration of Charleston Angderson, Charley's Sturgis Classic Bike Event
- Declaration of Christina Butler, Am Sunsations
- Declaration of Patricia Houska, Bargain Barn
- Declaration of Debra Wallenberg, Frontier Photo/T-Sshirt, Inc.
- Declaration of Darrell Lynch
- Declaration of Cem Iskenoer, Patch Stop
- Declaration of Josef Levy, Ryder Sports
- Declaration of Ray Gold, Daytona Pin and Patch
- Declaration of Gary Nowicki, Jake & the Fatman/East Coast Syndicate
- Declaration of Ergun Rezel, Biller Desion
- Declaration of Kathy Driggs, Katmandu RV Park

Declaration of Rita & Raymond Farhat, Step from the Beach II
Declaration of Harlan Kirwan, Pam's Purple Door
Declaration of Kent Mortimer, Renegade Classics
Declaration of LaVon Mortimer, Sturgis Rally Week, Inc.
Declaration of John Schroeder, Solitude Miles
Declaration of Ravaye Meltzer, Jumbo Trading, LLC
Declaration of Leo Clark, Sturgis Billet Barn
Declaration of Abdoll Farrokhi, Black Hills Gifts
Declaration of Nir Celist, Biker Apparel, Inc.
Declaration of Vincent Tranni, Krys & Co, Inc.
Declaration of Krys Tranni, Krys & Co, Inc.
Declaration of Mike Young, Black Hills Rugs
Declaration of Cheryl & DeWayne Wiedman, Dakota Silver, d/b/a Sturgis Shorts & Leather
Declaration of Patricia Elley, The Daisy Chain, Inc.
Declaration of Robert S. Quinn, Express Marketing
Declaration of Grady R. Crew, Bad Lands Trading Post, LLC
Declaration of Tim Wiebelhaus, Wiebelhaus Companies, Inc.
Declaration of Shelly Dillion, Iron Creek Leather & Gifts, LLC

REQUEST FOR EXPEDITED ORAL ARGUMENT

Given the impending start of the Sturgis Biker Rally on August 8, 2011, Defendants/Counterclaim-Plaintiffs hereby request immediate entry of a temporary restraining order, following by an expedited hearing for oral argument on the motion, at the Court's convenience.

Respectfully Submitted,

Dated: August 3, 2011

By: /s/ J. Crisman Palmer
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CERTIFICATE OF SERVICE

I hereby certify on August 3, 2011, a true and correct copy of
**DEFENDANTS/COUNTERCLAIM-PLAINTIFFS' MOTION FOR A TEMPORARY
RESTRAINING ORDER AND A PRELIMINARY INJUNCTION
(EXPEDITED ORAL ARGUMENT REQUESTED)** was served electronically through the
CM/ECF system upon the following individuals:

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By: :/s/J. Crisman Palmer
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