

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

The Right Reverend Charles G. vonRosenberg)	Case No. 2:13-cv-00587-RMG
et al.,)	
)	
Plaintiffs,)	SECOND PETITION
)	TO ENFORCE
v.)	THE INJUNCTION
)	
The Right Reverend Mark J. Lawrence et al.,)	
)	
Defendants.)	
_____)	

Plaintiffs, The Episcopal Church in South Carolina (the Historic Diocese), Bishop vonRosenberg, Bishop Adams, and The Episcopal Church, submit this Second Petition Enforce the Court’s Order and Opinion and Permanent Injunction issued on September 19, 2019 (Dkt. 667) (hereinafter the “Injunction”), which was enforced for a first time by the Court’s Order and Opinion issued on December 18, 2019 (hereinafter the “First Enforcement Order”) (Dkt. 693).¹

INTRODUCTION

This Second Petition to Enforce the Injunction is similar to the first one. Despite having already been found in contempt, Defendants continue to violate the Injunction. Defendants still hold themselves out to be the Historic Diocese, using its marks and co-opting its history and goodwill, in a variety of ways, detailed below. Plaintiffs accordingly ask the Court to enforce its Injunction, for a second time, and to provide any further relief that the Court deems appropriate under its contempt powers, as well as the safe distance rule, in order to compel and ensure Defendants’ future compliance.

¹ The parties are referred to herein in the same way they are referred to in the Injunction.

BACKGROUND

This litigation began in early 2013. (Dkt. 1). This Court has already set forth a detailed background of this dispute, in both the Injunction and the First Enforcement Order, which background is hereby incorporated by reference. (Dkt. 667; Dkt. 693).

The Injunction, issued on September 19, 2019, details why TECSC is the successor of the Historic Diocese, the owner of its marks,² and the rightful claimant of its history and goodwill. (Dkt. 667). The Injunction further explains that Defendants, who founded the Disassociated Diocese in 2012, yet claim to be the Historic Diocese founded in the eighteenth century, engaged in trademark infringement and false advertising under the Lanham Act, warranting the imposition of a permanent injunction. (Dkt. 667).

The First Enforcement Order, issued on December 18, 2019, details how Defendants violated the Injunction by continuing to use the Historic Diocese's marks and claiming its history and goodwill, by using "Founded in 1785," "14th Bishop," "XIV Bishop," and "229th Diocesan Convention," by providing website links to past journals of the Historic Diocese using its marks, and by redirecting internet users with the Historic Diocese's domain names. (Dkt. 693).

Defendants appealed both the Injunction and the First Enforcement Order to the Fourth Circuit Court of Appeals. (Appeal No. 2112). Defendants also moved for a stay of the Injunction from this Court, and then from the Fourth Circuit Court of Appeals, and both motions for a stay were denied. (Dkt. 693); (Appeal No. 2112, Order dated January 14, 2020, Dkt. 38).

² This Court has recognized that Plaintiffs' marks include: "The Protestant Episcopal Church in the United States," "The Episcopal Church," "The Episcopal Church Welcomes You," "La Iglesia Episcopal," The Episcopal Shield, "Diocese of South Carolina," "The Episcopal Diocese of South Carolina," "The Protestant Episcopal Church in the Diocese of South Carolina," and The Diocesan Seal. (Dkt. 667, pp. 72-73; Dkt. 693, p. 2-3).

Since the First Enforcement Order, over the last several months, Defendants have continued to violate the Injunction in the same or similar ways, detailed below.

LAW

This Court set forth the applicable legal standard in its First Enforcement Order. (Dkt. 693).

“A court has continuing jurisdiction over its permanent injunction regardless of a pending appeal.” (Dkt. 693, p. 4) (citing *Hudson v. Pittsylvania Cty., Va.*, 774 F.3d 231, 234 (4th Cir. 2014)). Indeed, it is recognized that injunctions “often require [] continuing supervision by the issuing court and always a continuing willingness to apply its powers and processes on behalf of the party who obtained that equitable relief.” *Thompson v. U.S. Dept. Housing & Urban Dev.*, 404 F.3d 821, 833 (4th Cir. 2005) (quoting *System Fed'n No. 91 v. Wright*, 364 U.S. 642, 647 (1961)).

“A court enforces its injunctions through ‘a finding of contempt, [which] springs from the court’s inherent equitable powers.’” (Dkt. 693, p. 4) (quoting *Innovation Ventures, LLC v. N2G Distrib., Inc.*, 763 F.3d 524, 544 (6th Cir. 2014) (citing *Porter v. Warner Holding Co.*, 328 U.S. 395, 398, 66 S.Ct. 1086 (1946))). “To make out a claim for civil contempt, the movant must demonstrate, by clear and convincing evidence, four elements:

- (1) the existence of a valid decree of which the alleged contemnor had actual or constructive knowledge;
- (2) that the decree was in the movant’s “favor”;
- (3) that the alleged contemnor by its conduct violated the terms of the decree, and had knowledge (at least constructive knowledge) of such violations;
- and (4) that the movant suffered harm as a result.

(Dkt. 693, p. 4) (quoting *Rainbow Sch., Inc. v. Rainbow Early Educ. Holding LLC*, 887 F.3d 610, 617 (4th Cir. 2018) (citations omitted)).

“Importantly, intent is irrelevant to a finding of civil contempt.” (Dkt. 693, p. 5) (citing *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191, 69 S. Ct. 497, 499 (1949) (“Since the purpose is remedial, it matters not with what intent the defendant did the prohibited act.”)). “However, the order allegedly violated must be one that had set forth ‘in specific detail an unequivocal command’ which a party has violated.” (Dkt. 693, p. 5) (quoting *In re Gen. Motors Corp.*, 61F.3d256, 258 (4th Cir. 1995) (citations omitted)).

A district court’s civil contempt order is reviewed for an abuse of discretion. *Colonial Williamsburg Found. v. The Kittinger Co.*, 38 F.3d 133, 136 (4th Cir.1994). “When a district court’s decision is based on an interpretation of its own order, [the appellate court’s] review is even more deferential because district courts are in the best position to interpret their own orders.” *JTH Tax, Inc. v. H & R Block E. Tax Servs., Inc.*, 359 F.3d 699, 705 (4th Cir. 2004).

In Lanham Act cases, such as this one, “when faced with parties who have already been found to violate a trademark, ‘[t]he sole issue before the district court . . . [is] whether [defendants] violated the injunction, that is, whether the [the new mark] is ‘confusingly similar’ to the [enjoined mark].” (Dkt. 693, p. 5) (quoting *Wella Corp. v. Wella Graphics, Inc.*, 37 F.3d 46, 48 (2d Cir. 1994) (citing *Oral-B Labs. v. Mi-Lor Corp.*, 810 F.2d 20, 22-23 (2d Cir.1987)). Logically extending this principle to false advertising, the issue is whether the new advertisements are similar to those that were enjoined.

“In making this determination, it is well-settled that ‘a party subject to a preliminary injunction has a ‘duty to keep a safe distance from the line drawn by the district court’s injunction.’” (Dkt. 693, p. 5) (quoting *Simone v. VSL Pharm., Inc., No. CV TDC-15-1356*, 2016 WL 3466033, at *16 (D. Md. June 20, 2016) (citing *Oral-B Labs.*, 810 F.2d at 24. *See also Howard Johnson Co., Inc. v. Khimani*, 892 F.2d 1512, 1517 (11th Cir. 1990) (“[T]he legal

posture of this case places a heavier burden upon the [alleged infringer] of avoiding a colorable imitation of or diluting [its competitor's] trade and service marks than upon a party not already preliminarily enjoined from engaging in such activity.”); 5 McCarthy on Trademarks and Unfair Competition § 30:21 (5th ed.) (“A trademark infringer, once caught, should expect some fencing in. It should have its conduct carefully scrutinized in future use and should not be allowed to claim the same leniency accorded a good faith user who starts use of the mark which the enjoined defendant has shifted to.”)).

“In reviewing an infringer’s later use, the so-called ‘Safe Distance Rule’ is an equitable principle that permits courts to:

require a business to ‘keep a safe distance away from the margin line—even if that requirement involves a handicap as compared with those who have not disqualified themselves.’ ... The safe distance rule thus ‘prevent[s] known infringers from using trademarks whose use by non-infringers would not necessarily be actionable.’

(Dkt. 693, p. 6) (quoting *Simone*, 2016 WL 3466033, at *26 quoting *John Allan Co. v. Craig Allen Co., LLC*, 540 F.3d 1133, 1142 (10th Cir. 2008); *Innovation Ventures, LLC v. N2G Distrib., Inc.*, 763 F.3d 524, 544 (6th Cir. 2014)). “It is a standard that, ‘relieve[s] the reviewing court of the need to retry the entire range of issues that may be relevant in an infringement action for each small variation the defendant makes to the enjoined mark.’” (Dkt. 693, p. 6) (quoting *Simone*, 2016 WL 3466033, at *26) (quoting *PRL USA Holdings, Inc. v. US Polo Ass'n, Inc.*, 520 F.3d 109, 118 (2d Cir.2008)). “While the Fourth Circuit has not formally adopted the rule, it has commented that the rule’s reasoning is ‘persuasive.’” (Dkt. 693, p. 6) (quoting *Osem Food Indus. Ltd. v. Sherwood Foods, Inc.*, 917 F.2d 161, 164 (4th Cir. 1990) (“we note that some courts have indicated persuasively that once a company commits an unfair business practice it

should thereafter be required to keep a safe distance away from the margin line.”) (citations omitted)).

VIOLATIONS OF THE INJUNCTION

Defendants continuing violations of the Injunction include the use of the following: “Diocese of South Carolina” (or “Diocese of SC”), “Protestant Episcopal Church in the Diocese of South Carolina,” “1785,” “14th Bishop” (or “XIV Bishop”), “2009 Convention,” “2008” consecration, the Diocesan Seal, and the Episcopal Shield. The below chart provides examples, without limitation, of such violations, including the website addresses, the relevant text (with emphases added), and references to exhibits attached hereto, which are screenshots of such websites.³

<i>Violation</i>	<i>Website Address</i>	<i>Text (with emphases added)</i>	<i>Ex.</i>
“Diocese of South Carolina” (or “Diocese of SC”)	https://stmichaelschurch.net/about/what-we-believe/	“St Michael’s Church (the Parish) is an Anglican congregation in the <i>Diocese of South Carolina</i> .”	1
	https://stmichaelschurch.net/about/anglican-communication/	“The <i>Diocese of South Carolina</i> is a member of ACNA”	2
	https://www.htwindermere.org/about.html	“The Rt. Rev. Mark J. Lawrence, Bishop, <i>Diocese of SC</i> ”	3
	https://www.oldstandrews.org/parish-history	“Old St. Andrew’s aligned with the <i>Diocese of South Carolina</i> and left The Episcopal Church. The Diocese and Old St. Andrew’s subsequently affiliated with the Anglican Church in North America.”	4

³ The website addresses provided here were all active and last visited as of the date of this filing. It is Plaintiffs’ hope that Defendants make changes to these websites immediately. For the record, however, Plaintiff’s have also provided screenshots of these websites as exhibits, taken as of the date of this filing.

	http://churchoftheascensionhagoodsc.com/ewExternalFiles/NEWSLETTER.pdf https://www.ckgrace.org/about-us https://www.acna.org/admin_units/1402	<p>membership in the Anglican Church in North America and the <i>historic Diocese of South Carolina</i>.”</p> <p>“...Bishop Mark Lawrence and the <i>Diocese of SC</i>...”</p> <p>“We are part of the <i>Diocese of South Carolina</i>, founded in 1785, under the leadership of Bishop Mark Lawrence.”</p> <p>“Grace Anglican Parish was admitted to the <i>Diocese of SC</i> as a mission church in 2014.”</p>	12 13 14
“Protestant Episcopal Church in the Diocese of South Carolina”	https://saint-james.org/statement-of-faith/ https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program#section-header-11	<p>“As the Vestry and People of Saint James Church in the <i>Protestant Episcopal Church in the Diocese of South Carolina</i>, we ascribe to the following as our core doctrine...”</p> <p>[Spreadsheet showing that Defendants applied for and received a Paycheck Protection Program (“PPP”) loan using the name “<i>Protestant Episcopal Church in the Diocese of South Carolina</i>”]</p>	15 16
“1785”	https://www.facebook.com/angdioceseofsc/ https://www.ckgrace.org/about-us	<p>“Founding Date 1785”</p> <p>“We are part of the Diocese of South Carolina, founded in 1785, under the leadership of Bishop Mark Lawrence.”</p>	17 18
“14 th Bishop” or “XIV Bishop”	https://www.facebook.com/pg/angdioceseofsc/about/?ref=page_internal	<p>“We continue as faithful Anglicans under the leadership of The Rt. Rev. Mark J. Lawrence, the <i>14th Bishop</i> of the Diocese, pursuing the vision first cast in his message at the 2009 Diocesan Convention, where he urged us to focus on ‘Making Biblical Anglicans for a Global Age.’”</p>	19 20

	https://holytrinitygrahamville.wordpress.com/bishop/	“On January 26, 2008 at a festive service in the Cathedral of Saint Luke and Saint Paul in Charleston, Mark Joseph Lawrence was consecrated the <i>14th Bishop</i> of the Anglican Diocese of South Carolina.”	
“2009 Convention”	https://adosc.org/about/	“We continue as faithful Anglicans under the leadership of The Rt. Rev. Mark J. Lawrence, the Bishop of the Diocese, pursuing the vision first cast in his message at the <i>2009 Diocesan Convention</i> , where he urged us to focus on “Making Biblical Anglicans for a Global Age.” Our continuing mission is, “To respond to the Great Commission by so presenting Jesus Christ in the power of the Holy Spirit that all may come to know Him as Savior and follow Him as Lord in the fellowship of His Church.””	21
	https://www.facebook.com/pg/angdioceseofsc/about/?ref=page_internal	“We continue as faithful Anglicans under the leadership of The Rt. Rev. Mark J. Lawrence, the 14th Bishop of the Diocese, pursuing the vision first cast in his message at the <i>2009 Diocesan Convention</i> , where he urged us to focus on ‘Making Biblical Anglicans for a Global Age.’”	22
“2008” consecration	https://adosc.org/bishop-mark-lawrence/	“On January 26, <i>2008</i> at a festive service in the Cathedral of Saint Luke and Saint Paul in Charleston, Mark Joseph Lawrence was <i>consecrated</i> the Bishop of the Anglican Diocese of South Carolina.”	23
	http://bishopmarklawrence.org/?page_id=11	“Bishop Mark Joseph Lawrence was <i>consecrated</i> the Bishop of the Anglican Diocese of South Carolina on January 26, <i>2008</i> , at the Cathedral of St. Luke and St. Paul in Charleston.”	24
	https://holytrinitygrahamville.wordpress.com/bishop/	“On January 26, <i>2008</i> at a festive service in the Cathedral of Saint Luke and Saint Paul in Charleston, Mark Joseph Lawrence was <i>consecrated</i> the 14th	25

		Bishop of the Anglican Diocese of South Carolina.”	
Diocesan Seal	https://www.ckgrace.org/about-us	[Image]	26
Episcopal Shield	https://www.facebook.com/AnglicanInWalterboro/	[Image]	27

The legal analysis of these violations of the Injunction, under the law cited above, is the same as that set forth by the Court in the First Enforcement Order. (Dkt. 693). Defendants continue to engage in the same actions prohibited by the Injunction and called out in the First Enforcement Order, or similar actions of the same ilk. In sum, Defendants continue to hold themselves out to be the Historic Diocese, using its marks and co-opting its pre-2012 history and goodwill dating back to the eighteenth century. The Court should find, for a second time, that Defendants are in contempt and compel them to comply with the Injunction by immediately discontinuing this unlawful conduct. Further, in light of Defendants’ repeated violations and reluctance to clearly distinguish themselves from the Historic Diocese, the Court should exercise its discretion to issue any sanctions or directives that the Court deems appropriate to deter Defendants from engaging in any further trademark infringement and false advertising under the Lanham Act and to ensure that Defendants keep a safe distance from engaging in the conduct prohibited by the Injunction.

CONCLUSION

Plaintiffs treasure their marks, history, and goodwill. These are invaluable assets to Plaintiffs’ religious mission and their broad local constituency of parishes, clergy, and congregants in the eastern part of this State that make up the Historic Diocese, a diocese of The Episcopal Church. For nearly *eight* years now, Defendants, a newly formed competing

organization, have been misappropriating these invaluable assets, intentionally, causing widespread public confusion as to who is the Historic Diocese and what it stands for. This Court ordered Defendants to stop nearly one year ago, and already held them in contempt for a first time. Despite this, they continue.

WHEREFORE, respectfully, the Court should grant this Second Petition for Enforcement of the Injunction.

Dated: September 10, 2020

Respectfully submitted,

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