

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ZAHARA ARIEL LLC, et al.,
Plaintiffs,

v.

LIONSGATE ENTERTAINMENT
CORP., et al.,
Defendants.

CV 23-4694 DSF (AGR_x)

Order DENYING Application for
a Temporary Restraining Order
(Dkt. 2)

Plaintiffs Zahara Ariel LLC and Jaryah Bobo have moved for a temporary restraining order to enjoin the release of the film *The Blackening* (the Film) pending resolution of this copyright infringement case.

The standard for entering a temporary restraining order is substantially identical to the standard for a preliminary injunction. See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co., 240 F.3d 832, 839 n.7 (9th Cir. 2001). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” Winter v. Natural Res. Def. Council, 555 U.S. 7, 20 (2008). Although a plaintiff seeking a preliminary injunction must make a showing on each factor, the Ninth Circuit employs a “version of the sliding scale” approach where “a stronger showing of one element may offset a weaker showing of another.” Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1131-35 (9th Cir. 2011). Under this approach, a court may issue a preliminary injunction where there are

“serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff . . . so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” Id. at 1135 (internal quotation marks omitted).

Plaintiffs have not demonstrated any substantial likelihood of success on the merits. The Film is alleged to infringe Plaintiffs’ copyrights in both a card game, “Black Card Revoked,” and a screenplay, “Southern Education.” But Plaintiffs present little to no detail regarding either the game or the screenplay and there is no reason to believe that the expression of ideas in either has been copied in the making of the film. Left without any details of the expression of ideas in Plaintiffs’ game and screenplay, Plaintiffs’ motion is based purely on the concept of using questions on cards to test a person’s “Blackness.” But an idea or concept, rather than the expression of that idea or concept, cannot be protected by copyright. Skidmore as Tr. for Randy Craig Wolfe Tr. v. Led Zeppelin, 952 F.3d 1051, 1069 (9th Cir. 2020) (“[C]opyright . . . does not protect every aspect of a work; ideas, concepts, and common elements are excluded.”).

The Film has a further horror/comedy element where the testing of “Blackness” is done by a killer who chooses victims based on their ability to answer the questions. This element is shared by the “Southern Education” screenplay, but Plaintiffs admit that the horror/comedy aspect of the “Blackness” questioning was present in a comedy sketch created by some of the Defendants prior to the creation of “Southern Education.” Thus, this additional similarity provides little to no support for Plaintiffs’ position.

Plaintiffs have also not shown any significant likelihood of irreparable harm. The Film is set to be released this weekend and is expected to gross a substantial amount of money. Therefore, there is likely to be money available to compensate Plaintiffs for the use of their material if Plaintiffs eventually succeed in this suit. Further, Plaintiffs have greatly delayed filing this suit and motion which suggests the likelihood of irreparable harm is low. The existence of the Film has been known since at least its presentation at the Toronto International


Film Festival last year and plans for widespread distribution have also been known for a similar period of time, yet Plaintiffs only filed this case within the last week.

The balance of the hardships and the public interest also favor denial of the motion. Large amounts of money have been put into the creation and promotion of the Film and presumably people expect to see it this weekend. Last minute delay of its release will squander large amounts of marketing money and very possibly reduce any future revenue from the Film if Defendants tried to release it later given the disappointment and embarrassment produced by the earlier cancellation.

Plaintiffs have not established that any of the relevant factors favor an injunction. The motion for a temporary restraining order is DENIED.

IT IS SO ORDERED.

Date: June 16, 2023


Dale S. Fischer
United States District Judge