THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:21-cv-00067-MR

DMARCIAN, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**O R D E R**
	)	
DMARCIAN EUROPE BV,	)	
	)	
Defendant.	)	
_____	)	

THIS MATTER is before the Court on the Defendant's Response [Doc. 61] to the Court's Show Cause Order [Doc. 54] as to why the Defendant should not be held in contempt for violations of the Court's Preliminary Injunction [Doc. 39]. The Court conducted a hearing on July 28, 2021, on the return of the Court's Show Cause Order.

I.   PROCEDURAL BACKGROUND

On May 26, 2021, the Court entered an Order imposing a Preliminary Injunction against the Defendant. [Doc. 39]. The Preliminary Injunction enjoined the Defendant, its officers, agents, servants, employees, attorneys, affiliates, and those persons in active concert or participation with it from:

> (1) providing services to any customers located
> outside of Europe, Africa, or Russia, except for the

six customers detailed in the Defendant's Brief on Proposed Voluntary Commitments [Doc. 32 at 4 n.3];

(2) providing access to any of its websites to IP addresses from countries outside of Europe, Africa, or Russia. The Defendant shall inform website visitors from outside of those areas that it does not create new accounts in that region and shall direct those customers to contact dmarcian, Inc. for services through the Plaintiff's website https://dmarcian.com;

(3) making changes to the copyrighted software except as specifically and expressly allowed or directed by this Order;

(4) using the Plaintiff's trademark in any manner unless such use is accompanied by a statement which reads: "This trademark is the trademark of dmarcian, Inc. This website is produced and generated and posted by dmarcian Europe BV, which is a different entity from dmarcian, Inc. This trademark is being used at this location without the permission of dmarcian, Inc. and only pursuant to the terms of a court order allowing its temporary use during litigation between dmarcian, Inc. and dmarcian Europe BV." That statement must be at least the size of the trademark itself, as presented, or 12-point type when displayed on a 24" computer screen, whichever is larger. Such statement must appear immediately adjacent to the location where the trademark appears, and must be shown at each location where the trademark appears, whether that be on the Defendant's website, in printed material, an electronic display, or otherwise;

(5) displaying any website with the "dmarcian" name unless that website includes a statement that "The dmarcian software was originally developed by dmarcian, Inc. This is not the website of dmarcian,

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Inc. The website of dmarcian, Inc. can be found at
https://dmarcian.com."   That statement must be
displayed as a banner at the top of each page of the
website on which the dmarcian name appears and
must be of a size that is at least 12-point type when
displayed on a 24" computer screen, and the
reference to the website of the Plaintiff must be a link
to that website;

(6) redirecting, encouraging, or allowing any
customer to change its service provider or payment
recipient from dmarcian, Inc. to dmarcian Europe,
BV; or

(7) making any public statement about dmarcian, Inc.
except as expressly allowed or directed herein.

[Doc. 39 at 75-77].

On June 22, 2021, the Plaintiff filed a Motion for Order to Show Cause.

[Doc. 43]. The Plaintiff argues that the Defendant is violating the Preliminary

Injunction by continuing to use the Plaintiff's trademark without the obligatory

disclaimers, continuing to display the "dmarcian" name without the obligatory

disclaimers, soliciting customers to change service providers from the

Plaintiff to the Defendant, and making public statements about the Plaintiff.

[Id. at 1-2]. The Plaintiff seeks sanctions, including reasonable attorney's

fees. [Id. at 3].

On June 28, 2021, the Court entered the present Show Cause Order,

directing the Defendant to show cause why the Court should not impose

sanctions for failure to comply with the Preliminary Injunction. [Doc. 54]. On

July 6, 2021, the Defendant filed its response to the Court's Order to Show Cause. [Doc. 61]. On July 13, 2021, the Plaintiff replied. [Doc. 66]. Accompanying their filings the parties have presented extensive written testimony and documentary evidence showing the manner in which the Defendant has acted in response to the Preliminary Injunction. The Court conducted a hearing on July 28, 2021, on the return of the Court's Show Cause Order and thereby provided an opportunity for the Defendant to show why it should not be held in civil contempt.

II. STANDARD OF REVIEW

District courts have "inherent power to enforce compliance with their lawful orders through civil contempt." Sullivan v. United States, 384 U.S. 364, 370 (1966). "That power includes the ability to award damages and attorney's fees to an aggrieved party." Rainbow Sch., Inc. v. Rainbow Early Educ. Holding LLC, 887 F.3d 610, 617 (4th Cir. 2018) (citing Hutto v. Finney, 437 U.S. 678, 691 (1978)). To establish civil contempt, there must be clear and convincing evidence of 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.

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United States v. Ali, 874 F.3d 825, 831 (4th Cir. 2017).

III.   FACTUAL BACKGROUND

Upon consideration of the evidence presented by the parties, the Court finds the following facts to be established by clear and convincing evidence:

A.   Defendant's Refusal to Give Injunction to the Dutch Court

1.   On January 29, 2021, the Defendant commenced an action against the Plaintiff in a Dutch court. [Doc. 26-1 at ¶ 39].

2.   On February 1, 2021, the Dutch court entered an injunction against the Plaintiff without the Plaintiff having filed an appearance. [Id.].

3.   On March 12, 2021, the Plaintiff commenced the present action in this Court. [Doc. 1].

4.   On March 25, 2021, the Plaintiff filed a motion for a temporary restraining order and preliminary injunctive relief. [Doc. 6].

5.   On March 30, 2021, the Defendant filed a memorandum in opposition to the Plaintiff's motion for injunctive relief, arguing in part that an injunction by this Court preventing the Defendant from servicing customers in Europe, Russia, and Africa would "contradict a Dutch court's recent judgment that Plaintiff and its founder must "grant dmarcian Europe access to the (computer) systems necessary to service its customers," [Doc. 11 at 1], and that the Plaintiff was "wrong

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