



## White Supremacists, After Plotting to Kill Judge, Lose Attorney Fee Dispute

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A white-supremacist group can be held liable for attorney fees in a trademark infringement case because of harassing and criminal litigation conduct, including plotting to kill the trial judge, according to a federal appeals court ruling that stretched fee-shifting under the Lanham Act beyond the law's traditional infringement provisions.

The 7th Circuit said it was the first time the court had been asked to consider litigation conduct in terms of fee-shifting in an infringement case.

In this case, the white-supremacist group's conduct involved threats, intimidation and an alleged plot to murder the federal judge hearing the infringement suit — conduct the 7th Circuit found to be oppressive, according to court records.

The Lanham Act is a federal law that provides for the registration and protection of trademarks. The act's fee-shifting provisions are contained in Section 1117(a) and until this ruling had applied only to "exceptional" cases involving intentional, deliberate or willful trademark infringement.

The appellate court said the legislative history of Section 1117(a) supported its finding that a case was exceptional if the conduct during litigation was "oppressive."

The dispute arose in 1993 when a California-based religious charity organization called the TE-TA-MA Trust Foundation learned that its trademark for "Church of the Creator" was being used by a white-supremacist group in Illinois headed by Matt Hale, court filings say.

TE-TA-MA's members believe in universal love and respect and the family unification of mankind, according to court records, while Hale's group, World Church of the Creator, believes the white race is the creator of all worthwhile culture and civilization; its literature is frequently racist and anti-Semitic.

In May 2000 TE-TA-MA filed a lawsuit against the World Church in the U.S. District Court for the Northern District of Illinois, asserting state and federal trademark claims and other state causes of action.

Judge Joan H. Lefkow ruled in favor of the World Church, agreeing with its argument that TE-TA-MA's "Church of the Creator" mark fell in the generic category. Generic marks cannot be registered as trademarks.

TE-TA-MA appealed to the U.S. Court of Appeals for the 7th Circuit, which reversed Judge Lefkow's ruling. The appeals court concluded that the phrase "Church of the Creator" was descriptive rather than generic.

With the case now back before her, Judge Lefkow issued an order and injunction directing the World Church to take several actions, including to transfer certain Web site addresses and remove any infringing mark.

TE-TA-MA then asked the court to award it attorney fees because of threatening

communications it allegedly received from Hale, World Church's founder and self-described "Pontifex Maximus" or high priest.

According to court records, Judge Lefkow and TE-TA-MA's attorneys were also both repeatedly on the receiving end of alleged harassment by Hale and the World Church members.

Hale went so far as to solicit the murder of Judge Lefkow and attempt to influence her by force. He was arrested by federal agents in January 2003 and was convicted on the charges last spring. *United States v. Hale*, No. 03 CR 0011 (N.D. Ill. Apr. 26, 2004).

TE-TA-MA's motion presented the unusual question of whether fees in trademark infringement cases should be awarded due to litigation conduct. Since Hale's conduct was unrelated to the issue of infringement, Judge Lefkow declined to declare the case "exceptional" under Section 1117(a) and denied the group's motion for fees. TE-TA-MA appealed.

The 7th Circuit acknowledged that it had always interpreted the "exceptional case" requirement of the Lanham Act's fee-shifting provision to mean cases in which there had been some measure of culpability on the part of the losing party, meaning that the infringing conduct was malicious, fraudulent, deliberate or willful.

However, after reviewing the legislative history of Section 1117(a), the court concluded that Congress intended the award of fees under the statute to be guided by broad principals of equity in addition to culpable infringing conduct.

The court held that attorney fees could be awarded under Section 1117(a)'s "exceptional" rule if the litigation conduct was oppressive; Hale and the World Church's conduct had in fact been oppressive, the court said.

"By any reasonable measure, the World Church's actions were egregious and beyond the pale of acceptable litigation conduct," the court said in reversing Judge Lefkow's judgment and remanding for further proceedings.

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TE-TA-MA Truth Foundation-Family of URI v. World Church of the Creator, No. 03-4085,  
2004 WL 2849571 (7th Cir. Dec. 13, 2004).

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