

11-18-83

STITES & HARBISON

200 McCLURE BUILDING
FRANKFORT, KENTUCKY 40601

(502) 223-3477

RUFUS LISLE
KENT McELWAIN
NATHAN ELLIOTT, JR.
T. KENNEDY HELM, JR.
RICHARD BUSH, JR.
LIVELY M. WILSON
BEN L. KESSINGER, JR.
JAMES W. STITES, JR.
CALVERT T. ROSZELL, P. S. C.
BEN B. FOWLER
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WINFREY P. BLACKBURN, JR.
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J. BISSELL ROBERTS

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PHILLIP J. SHEPHERD
MARSHA THEISS
JOHN L. TATE
REBECCA F. SCHUPBACH
KAREN L. MARPLE
JEFFREY YUSSMAN
JUDITH A. VILLINES
DAVID C. TRIMBLE
BROOKS D. KUBIK
GREGORY P. PARSONS

OF COUNSEL
S. LLOYD CARDWELL
CARL L. WEDEKIND, JR.

JAMES W. STITES
(1897-1975)
CLINTON M. HARBISON
(1886-1980)
HENRY E. McELWAIN, JR.
(1891-1966)
BEN L. KESSINGER
(1896-1958)

600 WEST MAIN
LOUISVILLE, KENTUCKY 40202
(502) 587-3400

101 EAST VINE STREET
LEXINGTON, KENTUCKY 40507
(606) 253-0373

November 17, 1983

Ms. Mary Mayfield
Secretary to Judge Unthank
United States District Court
Eastern District of Kentucky
Federal Building
Pikeville, Kentucky 41501

Re: Holiday Inns, Inc. v. Blake Ratliff Enterprises, Inc.
Blake Ratliff and Bonnie Ratliff
Civil Action No. 82-112 (Pikeville Division)

Dear Ms. Mayfield:

Howes Johnson and I have filed with the Court the enclosed Stipulation of Dismissal in the above styled matter. Under FRCP 41, this stipulation resolves all pending matters in the case, and you should therefore remove from Judge Unthank's calendar the pre-hearing conference set for February 21, 1984, as well as the trial date scheduled for March 14, 1984.

Under the stipulation, the parties agreed to the release of the \$1,000 cash bond which was filed by Holiday Inns. I have attached to this letter an Order which should be signed by Judge Unthank directing the Clerk to remit the bond, plus whatever interest may have accrued, if any, to my client. If you or Judge Unthank have any problems with this approach, please let me know.

I certainly want to thank you personally for your assistance and cooperation in the various scheduling problems with this case. Your interest and concern were certainly much appreciated. I look forward to my next opportunity to practice in your court.

Yours very truly,

Bruce F. Clark

BFC:pjt
Enclosures

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE DIVISION

CIVIL ACTION NO. 82-112

HOLIDAY INNS, INC.

PLAINTIFF

VS.

STIPULATION OF DISMISSAL

BLAKE RATLIFF ENTERPRISES, INC.,
a Kentucky corporation; Blake Ratliff
and Bonnie Ratliff

DEFENDANTS

* * * * *

The parties to this civil action, by and through their counsel, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, stipulate and agree that all claims and counterclaims of any kind whatsoever arising out of the business relationship between the parties and the termination of that business relationship which is the subject matter of this civil action have been settled, and that the complaint of the Plaintiff, Holiday Inns, Inc., as well as the counterclaims of the Defendants, Blake Ratliff Enterprises, Inc. and Blake Ratliff and Bonnie Ratliff, individually, shall be and the same are hereby dismissed with prejudice.

The parties further agree that Plaintiff's \$1,000.00 cash bond shall be released.

This the _____ day of _____, 1983.

JOHNSON & JOHNSON
P. O. BOX 470
PAINTSVILLE, KENTUCKY 41240

BY: _____
S.H. JOHNSON
ATTORNEY FOR DEFENDANTS

STITES & HARBISON
200 MCCLURE BUILDING
FRANKFORT, KENTUCKY 40601

BY: Bruce F. Clark
BRUCE F. CLARK
ATTORNEY FOR PLAINTIFF

TO: Judge
FROM: Donald
DATE: 4-14-83
RE: 82-112
Holiday Inns, Inc. v. Blake Ratliff Enterprises, Inc., et al
Hearing, Thurs., 4-14-83, at 10:00 a.m.

Synopsis: This is the infringement of trademark and service mark case plff brought alleging that defs. were operating as a licensee of Holiday Inns, when in fact, they were not yet a licensee of plff.

On July 9, 1982, the Court issued a preliminary injunction giving defs. 6 weeks to discontinue operations as a "Holiday Inn" and to stop using their trademark at their motel.

The Court also ordered counsel for defs. to advise the Court when the P/I had been complied with. The six-week deadline was up on 8-12-82.

Pending Motions:

1. #20 - Plff has moved the Court for Summary Judgment on the basis of the pleadings, affidavits, and the testimony of Blake Ratliff.
2. #23 - Plff has moved the Court for an Order finding defs. in contempt and for damages and attorneys' fees incidental to obtaining compliance with the preliminary injunction & the Lanham Act.
#25 - Plff's memo supporting the contempt motion.
3. #35 - Motion by plff for leave to file a supplemental memo setting forth plff's damages as requested in plff's earlier motion.

***** Plff tendered its supplemental memo at the time it filed for leave to file same on 4-1-83.

Comments:

1. Defendants have not responded to any of plff's motions.

STITES & HARBISON

(FORMERLY STITES, McELWAIN & FOWLER
AND HARBISON, KESSINGER, LISLE & BUSH)

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3400 FIRST NATIONAL TOWER
LOUISVILLE, KENTUCKY 40202
(502) 587-3400

101 EAST VINE STREET
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(606) 253-0373

January 19, 1983

Ms. Mary Mayfield
United States District Court
Eastern District of Kentucky
Federal Building
Pikeville, KY 41501

Re: Holiday Inns, Inc. vs. Blake Ratliff Enterprises,
Inc., et al
Civil Action No. 82-112

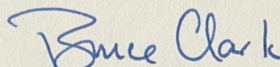
Dear Ms. Mayfield:

Pursuant to your request, I am providing you a copy of my motion for rescheduling of the hearing date in the above styled matter currently set for April 4, 1983. While I would like the hearing date scheduled the week before my departure, a date in the week after I return would be most satisfactory.

I certainly appreciate the understanding which you exhibited in this matter.

Yours very truly,

STITES & HARBISON



Bruce F. Clark

BFC:pjt

Enclosure

COURT'S FINDINGS AT CONCLUSION OF HEARING ON MOTION FOR
PRELIMINARY INJUNCTION HELD July 1, 1982, in CI 82-112,
HOLIDAY INNS, INC. V. BLAKE RATLIFF ENTERPRISES, ET AL.

THE COURT: Let me have the record.

THE CLERK: Yes, Your Honor.

(The case file was handed to the Court.)

THE COURT: The Court finds that the plaintiff, Holiday Inns,
Inc., is a corporation organized and existing under the laws of
the State of Tennessee that the defendant, Blake Ratliff
Enterprises, Inc., is a corporation existing under the laws of the
Commonwealth of Kentucky, with its principal place of business
located at Paintsville. And let the record reflect that the
principal place of business of the plaintiff is at Memphis,
Tennessee.

That by reason of the diversity of citizenship this Court
would have jurisdiction of the parties. That by reason of the

good faith pleading of the plaintiff that the amount in controversy exceeds the sum of \$10,000, exclusive of interest and costs. Is there any objection as to the amount of controversy, Mr. Johnson?

MR. JOHNSON: No, Your Honor.

THE COURT: All right. The Court finds that the Court has jurisdiction of the subject matter. By reason of the fact that Johnson County, Kentucky is in the Eastern District of Kentucky, this Court has--that venue of this action is proper.

The evidence reflects that the plaintiff and the defendant had entered into negotiations regarding a franchise to operate a motel at Paintsville, Johnson County, Kentucky under the name of Holiday Inns, that by reason of a dispute over a grab rail on the bathtubs the negotiations broke down, that there were attempts to resolve the dispute.

However, the plaintiff would not waive the requirement of the grab bar and the defendant would not agree to install the grab bar. That in the process of the negotiation the defendant had manufactured by a local sign company a Holiday Inn sign and had purchased soft goods such as soap, towels, ashtrays and other merchandise containing the name Holiday Inn.

The evidence reflects that the defendant with knowledge that he does not have the franchise or permission to hold himself out as a Holiday Inn has nevertheless been doing business with the Holiday Inn sign in front of his motel and has been using and is using the soft goods in his business reflecting the name Holiday Inn.

The Court is of the opinion and finds that a preliminary injunction should be granted and entered enjoining the defendant from using the Holiday Inn sign and soft goods and holding himself out--holding his motel out as a Holiday Inn, as a franchised Holiday Inn.

However, the problem presented to the Court is the manner in which the preliminary injunction will be put into effect. By reason of the fact that the Holiday Inn services have sold to the defendant the soft goods within the past 45 days, the Court is going to give the defendant six weeks within which to phase out the use of the soft goods.

The Court will put into effect-- No, the Court has been advised through the evidence and finds that the defendant has a local sign company in the process of manufacturing another sign and the Court has been advised that manufacturing a sign of this size is similar to building a house, that it requires some time.

However, if the defendant is enjoying the benefits of the sign, effective of today he will start paying appropriate damages for the use of this sign until the new sign is put up. The Court will not set the damages as of this time which he will pay for the use of this sign, but we will do that in the final hearing of the merits.

In any event, the new sign will be put up before six weeks. Now, you gentlemen understand starting as of today he is going to be paying Holiday Inn some type of damage for the use of this Holiday Inn sign from now until six weeks, if it takes that long.

If he gets a new sign up in 30 days, he will only be paying the damages for 30 days. But in no event will it be more than six weeks before the new sign is put up.

We will have to make a determination what effect the Holiday Inn sign has on his business and that way we will determine what the proper damages would be, gentlemen.

Now, I assume the--

MR. JOHNSON: Your Honor, excuse me.

THE COURT: Yes, sir.

MR. JOHNSON: Point of clarification, we are actually talking about two signs. You mentioned the grade sign which is the large one and the one visible from the highway.

THE COURT: Both signs.

MR. CLARK: All signs.

THE COURT: Right.

MR. JOHNSON: Then he would be apportioning damages to each of the two signs? That's my point. One will make it up quicker than the other, Your Honor.

THE COURT: We will make a total finding of damage but I think we would apportion each item which would be each sign.

MR. CLARK: Do signs include billboards, too, Your Honor? They have billboards on the highway.

MR. JOHNSON: They will also be phased out in six weeks.

THE COURT: Well, I think the billboards ought to be taken down. Are you talking about billboards 5 miles down the road, 20 miles down the road?

MR. JOHNSON: Yes, Your Honor. We are in the process of phasing those out.

THE COURT: Those ought to be phased out within--I don't know, make them six weeks, too. Everything six weeks, gentlemen.

You will prepare the preliminary injunction and tender it to the Court.

MR. CLARK: Yes, Your Honor.

THE COURT: And send a copy to counsel for the defendant.

MR. JOHNSON: Yes, Your Honor.

THE COURT: All right.

MR. CLARK: Thank you, sir.

THE COURT: Anything further we can take up in this matter, gentlemen?

MR. CLARK: Nothing further from the plaintiff, Your Honor.

MR. JOHNSON: Nothing further from the defendant, Your Honor.

THE COURT: Mr. Marshal, you may announce a recess.

THE MARSHAL: Yes, Your Honor. All rise. This honorable court will be in recess for court and course.

MR. CLARK: Your Honor, will there be bond?

THE COURT: Yes, sir. Let's have bond in the amount of a thousand dollars. Mr. Wells, I would like to see you in chambers.

MR. WELLS: Thank you, Your Honor.

(Court adjourned at 10:32 p.m.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
PIKEVILLE

CIVIL ACTION NO. 82-112

HOLIDAY INNS, INC.

PLAINTIFF

VS

MEMORANDUM OPINION AND ORDER

BLAKE RALTIFF ENTERPRISES, ET AL

DEFENDANTS

The Court finds that the plaintiff, Holiday Inns, Inc., is a corporation organized and existing under the laws of the state of Tennessee with its principal place of business at Memphis, Tennessee. The defendant, Blake Ratliff, Enterprises, Inc., is a corporation existing under the laws of the state of Kentucky with its principal place of business at Paintsville, Johnson County, Kentucky. This Court has jurisdiction of the parties by reason of diversity of citizenship and by agreement of counsel the pleadings reflect that the amount in controversy exceeds the sum of Ten Thousand Dollars (\$10,000.00).

The evidence reflects and the Court finds that the plaintiff and defendant had entered into good faith negotiations regarding the granting of a franchise by the plaintiff to the defendant to operate a motel at Paintsville, Johnson County, Kentucky. The granting of such franchise entails the use of a sign bearing the name of Holiday Inn and the purchase of certain soft goods or merchandise, such as soap, towels, astrays, and other sundries bearing the name of Holiday Inns.

After the building had been substantially constructed, but before its final completion and approval by plaintiff, a dispute arose between the plaintiff and defendant regarding the installation of a grab bar in the bathrooms at or near the bathtubs and/or showers. For a period of time the parties discussed the possibility of a waiver of such requirement; however, ultimately the

plaintiff was unable or refused to waive the requirement of a grab bar in the bathrooms.

The defendant caused to be constructed by a local company the Holiday Inn Sign in front of its motel and additionally several billboards along principal roads leading to the motel. This project was commenced and completed before the parties ultimately agreed that their differences could not be reconciled. Moreover, the defendant had purchased soft goods from authorized suppliers within 45-60 days of the hearing herein on plaintiff's motion.

The defendant agrees that it is using the Holiday Inn sign when it is not a Holiday Inn and does not have a franchise to so do. It admits that it has purchased soft goods and is using same. However, defendant contends that this position is brought about through the fault of both parties and that it will take a reasonable time to replace the sign and soft goods. That to compel it to immediately be without signs, advertisement, and soft goods would irreparably damage the defendant.

The Court finds that a preliminary injunction should be and hereby is GRANTED enjoining the defendant from holding itself out as a Holiday Inn. The defendant is further enjoined from purchasing and using the soft goods and merchandise bearing the name Holiday Inns.

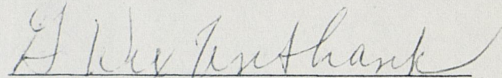
The Court finds that a balance of equitable considerations requires the following conditions as a part of said preliminary injunction:

Effective as of the date of the hearing and granting of the preliminary injunction the defendant will pay damages, in an amount to be later determined by the Court, for the use of the sign and advertisement. In any event, the permissive use of said sign and advertisement shall not exceed a period of six weeks from the date of the hearing and granting of this injunction. The

defendant has a like period, without payment of damage,
for the phasing out of the soft goods herein before
noted.

Counsel for plaintiff will prepare an injunction
in compliance with this memorandum opinion and order
and cause a copy of same to be served upon counsel
for the defendant.

This the 8th day of July, 1982.


G. WIX UNTHANK, JUDGE

STITES, McELWAIN & FOWLER

200 McCLURE BUILDING

FRANKFORT, KENTUCKY 40601

(502) 223-3477

KENT McELWAIN
T. KENNEDY HELM, JR.
JAMES W. STITES, JR.
LIVELY M. WILSON
BEN B. FOWLER
WINFREY P. BLACKBURN, JR.
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MARSHA THEISS
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REBECCA F. SCHUPBACH
JAMES F. ROBERTS
ROBERT W. GRIFFITH
PETER F. CULVER

July 8, 1982

OF COUNSEL
S. LLOYD CARDWELL
FRANK M. DAILEY
J. ROYDEN PEABODY, JR.
CARL L. WEDEKIND, JR.

—
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—
LOUISVILLE OFFICE
3400 FIRST NATIONAL TOWER
LOUISVILLE, KENTUCKY 40202
(502) 587-3400

—
LEXINGTON OFFICE
210 FIRST NATIONAL BUILDING
LEXINGTON, KENTUCKY 40507
(606) 255-5546

Hon. G. Wix Unthank
Judge, U.S. District Court
Eastern District of Kentucky
Federal Building
Pikeville, KY 41501

Re: Holiday Inns, Inc. v. Blake Ratliff Enterprises,
Inc., et al; Civil Action No. 82-112

Dear Judge Unthank:

I have this day mailed for filing in the United States District Court, Eastern District of Kentucky, Pikeville Division, pursuant to your direction, a proposed Preliminary Injunction to be issued in the above styled matter, a copy of which is attached hereto. Included with the Injunction are proposed Findings of Fact and Conclusions of Law for your consideration. This pleading has been served on opposing counsel.

With regard to the Findings, please note that in paragraph 6 and 7, I request that the Court base its jurisdiction, in part, upon the Lanham Act. In addition, I have added as Finding No. 27 a finding concerning the irreparable injury to be suffered by the plaintiff. Though this was understood in the Court's ruling on July 21, 1982, it was not specifically verbalized by the Court.

STITES, McELWAIN & FOWLER

Hon. G. Wix Unthank
July 8, 1982
Page Two

Please note that in the last paragraph to the Injunction I have suggested to the Court that it require counsel for the defendant to file an affidavit at the time that the use of the "Holiday Inn" tradenames and service marks cease. I suggest this paragraph for purposes of establishing the cessation date with regard to the damages being incurred by the plaintiff.

Yours very truly,

STITES, McELWAIN & FOWLER

Bruce F. Clark

Bruce F. Clark

BFC:pjt

Enclosure

cc: Hon. S. Howes Johnson

TO: Judge
FROM: Maggie
DATE: 30 June 1982
RE: Holiday Inns v. Blake Ratliff Enterprises, et al.

HEARING ON PRELIMINARY INJUNCTION 9:00, Thursday

Plaintiff: Holiday Inns

Defendants: Company who built the Paintsville "Holiday Inn",
(and Blake & Bonnie Ratliff, individually, because of
a written guaranty)

TYPE OF ACTION:

Principally, this action is based on the Trademark Laws, for
infringement of service marks and trade name "Holiday Inn".

RELIEF REQUESTED:

1. Preliminary injunction - plaintiff wants them to stop
operating as a "Holiday Inn" until the merits of the
case are decided, and wants them to return the "Holiday
Inn Standards Manual". (Apparently this manual is some
valuable item. It crops up again and again in the pleadings.)
2. a. permanent injunction against the Ratliffs using the
"Holiday Inn" designation
- b. specific performance by the Ratliffs of their promise
that, if certain things happened, they'd return that
Standards Manual, stop operating as a "Holiday Inn",
and stop using "Holiday Inn" equipment and "confidential
methods, techniques," etc.
- c. payment of double the am't which would compensate
Holiday Inns for the infringement,
- d. payment to Holiday Inn of all the Ratliff's proceeds
attributable to the infringement, (plus an am't to
penalize Ratliffs)
- e. damages for "false designation of origin, false
description, false representation, unfair competition,
breach of contract", (causes of action outside the
Trademark Laws)
- f. payment from Ratliffs for goods they were buying from
Holiday Inns.

FACTS:

Briefly, it appears that the Ratliffs started building the motel,
then negotiated w/ Holiday Inn for a franchise ("license") so it could
be a Holiday Inn. Holiday Inn said they'd have to put guard rails on
their bathtubs; Ratliffs refused. License was never granted.
Now Holiday Inn says Ratliffs have backed out of their
"Commitment Agreement". Ratliffs say that Holiday Inn's man told them
they wouldn't have to put up the guard rails. Holiday Inn says the
rail requirement was not waived by them. Ratliffs continue to run it
as a Holiday Inn.

COUNTERCLAIM:

In addition to general denials, Ratliffs say the "Commitment
Agreement" is unenforceable or shouldn't be enforced because:

- a. lack of consideration
- b. violates public policy
- c. Holiday Inns defrauded them by saying they'd waive the
requirement of guardrails

(continued)

ASSIGNED FOR HEARING ON MOTION FOR AT PIKEVILLE JUDGE UNTHANK
PRELIMINARY INJUNCTION

DATE July 1, 1982 AT 9:00 A. M.
3:30-P.-M.

PIKEVILLE CIVIL ACTION NO. 82-112

HOLIDAY INNS, INC.,
a Tennessee Corporation

Bruce F. Clark
Mark R. Overstreet
J. K. Wells

VS:

BLAKE RATLIFF ENTERPRISES, INC.,
a Kentucky Corporation;
BLAKE RATLIFF and
BONNIE RATLIFF

S. H. Johnson

HEARING ON MOTION FOR PRELIMINARY INJUNCTION

4/27/82	#1	COMPLIANT
5/7/82	#2	SUMMONS, w/Marshal's return served on Blake Ratliff husband, for Bonnie Ratliff on 4/28/82; on Blake Ratliff on 4/28/82; on Blake Ratliff Enterprises, Inc., on 4/28/82.
5/10/82	#3	AMENDED COMPLAINT
5/14/82	#4	MOTION of plff for Prelim. Inj. w/Exhibit 1-15 & Exhibit A attached
5/19/82	#6	ANSWER of deft to amended complaint & COUNTER-CLAIM
6/11/82	#8	REPLY of plff to counterclaim

And the Ratliffs counterclaim that:

- a. Holiday Inn didn't keep its part of the bargain (to provide services, employee training, & goods)
- b. Holiday Inn, after Ratliffs orally withdrew their licence application, kept \$45,000 licence fee.
- c. they laid out big bucks in reliance on being able to use the Holiday Inn name
- d. Holiday inn is liable to them for fraud in inducing them to execute the commitment agreement and guaranty agreement, knowing that they'd not waive the guard rail requirement.

Ratliffs want treble or punitive damages, too.

NOTE:

At the hearing, Holiday Inn should specify the manner in which it feels it is being hurt pending a hearing on the merits of their case.