

## Wrestler Luchasaurus Can't Tap Out Of Mask Copyright Suit

By **Henrik Nilsson**

Law360 (May 17, 2023, 4:28 PM EDT) -- A Louisiana federal judge on Tuesday declined to toss a costume mask maker's suit alleging All Elite Wrestling and professional wrestler Austin Matelson infringed its copyright by selling a modified version of its scaly viper mask, which Matelson wears as his stage persona Luchasaurus.



Wrestler Luchasaurus, right image, allegedly infringed on CFX's Viper mask. (Court Documents)

In an **order** issued Tuesday, U.S. District Judge Eldon E. Fallon said the visual similarity between the copyrighted "Viper Silicone Mask" manufactured by Composite Effects LLC, or CFX, and the "Luchasaurus Masks" sold by Matelson and All Elite Wrestling LLC is enough to keep the company's suit alive.

Matelson and AEW argued in the motion to dismiss that CFX's mask is not substantially similar to its own.

But Judge Fallon said that a jury could find a copyright violation has occurred given that the intricate scaling pattern that CFX asserted "remains essentially unchanged from the copyrighted work to the Luchasaurus masks."

Before he was signed to AEW, the wrestler bought a modified version of CFX's viper mask in 2016, according to the order.

When CFX learned that Matelson would join AEW's roster, the mask maker contacted the wrestler to try to enter into an agreement allowing him to use the imagery of the mask. The parties never agreed, but Matelson continued to use the mask as part of his costume even after he started wrestling for the organization in 2019, according to the order.

The mask has gone through different iterations throughout the years, according to the complaint.

CFX filed suit in December, alleging Matelson never signed an agreement with CFX after he and AEW manufactured and sold tens of thousands of merchandise goods, including T-shirts, face masks and action figures, based on the Luchasaurus masks, according to the order.

CFX argued that photographs show that the Luchasaurus masks are reproductions of the Viper mask, with some additional elements such as horns and alterations including cutting out the mouth hole.

Matelson and AEW argued that CFX's claim under Louisiana's Unfair Trade Practices Act is preempted by federal law as the complaint contains no allegations of fraud, misrepresentation or other unethical content, which the Fifth Circuit has held is necessary to overcome federal preemption.

Judge Fallon, however, disagreed.

"In addition to arguing violation of their copyright, CFX has pleaded that 'defendants engaged in deceitful and unethical conduct by misrepresenting their intentions and intentionally prolonging negotiations in a deceptive manner so [that they] could secure a third party to steal CFX's designs,'" Judge Fallon said. "At the [dismissal] stage, the court finds that this is adequate to plausibly plead that CFX's LUTPA claim is not preempted by federal copyright law."

Counsel for Matelson declined to comment Wednesday. Lawyers for CFX did not immediately respond to a request for comment.

Composite Effects LLC is represented by Robert Devin Ricci and Mary Margaret Love of Kean Miller LLP.

Matelson is represented by Brent A. Talbot of Chaffe McCall LLP and Matthew T. Kemp of Shumaker Loop & Kendrick LLP.

All Elite Wrestling LLC is represented by Brad Elliot Harrigan of Tolar Harrigan & Morris LLC and Bradley Mark Stohry of Reichel Stohry Dean LLP.

The case is Composite Effects LLC v. All Elite Wrestling LLC et al., case number 2:22-cv-05351, in the U.S. District Court for the Eastern District of Louisiana.

--Editing by Daniel King.

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