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NC Dance Teachers Fend Off Injunction Bid In Trademark Feud

By **Hayley Fowler**

Law360 (September 9, 2024, 10:10 PM EDT) -- A North Carolina charter school can't prevent two former teachers from soliciting students for their dance team using the name "Inspire" amid claims of trademark infringement and false advertising, a federal judge ruled Monday.

U.S. District Judge Frank D. Whitney of the Western District of North Carolina denied a motion for preliminary injunction by plaintiff Mountain Island Day Community Charter School — which does business as Jackson Day School — following a nearly two-hour hearing in Charlotte in which the school took aim at former teachers Megan May and Lisa Lewis.

May and Lewis are accused of promoting a dance team called Inspire Performing Arts Company that sounds confusingly similar to the school's dance team, Inspire Dance Team, the school says. Both teachers previously coached for the school team before leaving a few months ago, according to the school.

In rejecting the preliminary injunction bid, Judge Whitney ruled that Jackson Day School failed to establish previous ownership of the trademark at issue, saying it was still a "close call."

He emphasized that a preliminary injunction was an extraordinary remedy that required the moving party to show that it was likely to succeed on its claims. Judge Whitney said Jackson Day School did not show a likelihood of success on any of the four claims under which it moved for the injunction. The factual issues therefore preclude a ruling in the school's favor, the judge said.

Jackson Day School sued May, Lewis and Inspire Performing Arts on Aug. 27 and simultaneously asked for a preliminary injunction. It accused the two teachers of misappropriating school funds during their employment by telling parents to pay them directly for the dance team's tuition, fundraisers, costumes and competition fees.

May and Lewis left the school in June, started a competing dance team and solicited students to join them, Jackson Day School said. They have since used pictures and videos of the school dance team in their promotional materials, including on social media and Inspire Performing Arts' website, according to the complaint.

The school subsequently accused them of trademark infringement, unfair trade practices, false advertising and breach of their employment contracts, among other claims.

But counsel for May and Lewis painted a different picture on Monday, saying it was the teachers who first created the Inspire dance team while working for another school in 2015.

Alex Long of Shumaker Loop & Kendrick LLP said May and Lewis first established the Inspire dance team at Winding Springs Elementary School in Charlotte, part of the Charlotte-Mecklenburg public school district. The team was formed for underprivileged kids who were not students at Winding Springs but came from local middle and high schools, Long said. Winding Springs only provided the gym for the team to practice, and neither the school nor the school district provided any money for the team, he told the court.

May and Lewis later brought the team with them when they came to work for Jackson Day School in 2018, Long said. The pair decided to leave the charter school earlier this year due to a "hostile work

environment," he said.

Both Jackson Day School and the two teachers now assert ownership of the Inspire trademark as it relates to their dance programs.

Jonathan Vogel of Vogel Law Firm PLLC, arguing for the school, said Monday that the charter school was the rightful owner of the mark because it was conceived by Jackson Day School employees in the course of their employment.

Vogel described the Inspire dance team as an extracurricular activity for which May and Lewis were coaches, but he said the mark itself ultimately belonged to the school.

He said there seemed to be a "misunderstanding" under which May and Lewis have argued that anyone who comes up with a mark has ownership rights. In reality, Vogel said, the Inspire trademark is owned by their employers. Vogel said the school district owned the mark when the teachers were employed at Winding Springs and subsequently abandoned it by failing to use it in commerce for more than three years.

The mark is therefore now owned by Jackson Day School, which has used the mark extensively since at least 2019, Vogel said.

Jackson Day School said May and Lewis' decision to start a competing team has significantly depleted the school's team and caused a loss of goodwill among parents. Vogel also described the teachers' alleged use of pictures and videos showing Jackson Day School's performances to promote their new team as "textbook false advertising."

But Judge Whitney wasn't convinced that the Inspire Dance Team trademark is valid, questioning what makes it distinct.

"Can you just take three words and make a trademark?" he questioned.

Vogel countered that it "doesn't have to be flashy" to get trademark status, noting that NBC — or the National Broadcasting Co. — is also just three words strung together.

Judge Whitney also indicated that the school wasn't facing immediate irreparable harm, saying the fight appears to be over clients and annual fees, which he said could be fixed with monetary damages.

Long, meanwhile, argued in response that Jackson Day School can't usurp ownership of the Inspire trademark when its employees — May and Lewis — created the mark before coming to work for the school.

His co-counsel, Patricia Magee of Shumaker Loop & Kendrick LLP, added that Jackson Day School's restrictive covenants weren't valid. The covenants specifically impose a sweeping communication ban on May and Lewis, which is not reasonable or otherwise protects a legitimate business interest, she said.

Vogel then argued that the preliminary injunction could be limited to preventing May and Lewis from soliciting any current or prospective customers for their dance team in a deceitful manner.

But Judge Whitney questioned to whom that would apply, noting that a "prospective" customer could be anyone.

Jackson Day School is represented by Jonathan A. Vogel of Vogel Law Firm PLLC.

May, Lewis and Inspire Performing Arts Company are represented by Samuel Alexander Long Jr., Patricia Wilson Magee and Christina Davidson Trimmer of Shumaker Loop & Kendrick LLP.

The case is Mountain Island Day Community Charter School et al. v. Inspire Performing Arts Company LLC et al., case number 3:24-cv-00779, in the U.S. District Court for the Western District of North Carolina.

--Editing by Karin Roberts.

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