

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
Eastern Division**

**MARVIN ROSENBLUM, individually)
and on behalf of the ESTATE OF)
GEORGE ORWELL, and ROSENBLUM)
PRODUCTIONS, INC.,)**

Plaintiffs,)

v.)

**ORWELL PRODUCTIONS, INC., and)
VIACOM, INC., formerly known as)
CBS CORPORATION.)**

Defendants.)

No. 00C 5034

JUDGE HOLDERMAN

COMPLAINT

NOW COME Plaintiffs, Marvin Rosenblum, individually, and on behalf of the Estate of George Orwell; and Rosenblum Productions, Inc., through their attorneys, the law firm of GOLD & COULSON, a partnership of professional and limited liability corporations, and complain of Defendants as follows:

INTRODUCTION

1. This suit is brought by the proprietors of pertinent intellectual property rights in the novel "1984" written by the late British author George Orwell.

2. "1984", first published in 1949, became a best seller, and remains one of the most read books in the English language. In a recent survey conducted by the Modern Library, "1984"

was ranked among the top ten most influential books of the 20th Century.

3. The central theme of Mr. Orwell's novel is well-known. "1984" is set in a totalitarian society led by the unseen but ever present central character called "Big Brother", in which persons are watched in their houses by video cameras 24 hours a day. The phrase "Big Brother" appears numerous times in the novel, and is a central, recurring theme. The book presents a serious and chilling political thesis.

4. In the early 1980's, Plaintiffs acquired from Mr. Orwell's estate the motion picture and television rights to "1984".

5. In 1984, pursuant to the above acquisition, Plaintiffs produced a motion picture based closely on the Mr. Orwell's novel, entitled "1984", starring Richard Burton and John Hurt. This film received widespread critical acclaim, and won the Evening Standard Award as Best Film of 1984. The film continues to be shown on television in commerce throughout the United States and elsewhere, and continues to be available at libraries and stores on videocassettes for television play.

6. Plaintiffs' film "1984", like the Orwell novel, is set in a totalitarian society led by an unseen but ever-present character called "Big Brother", in which persons are watched in their houses by video cameras 24 hours a day. The phrase "Big Brother" appears numerous times in the film, and Mr. Orwell is specifically credited by name, both at the beginning and at the end, in the film.

7. Plaintiffs have also developed television programs and computer/video games using the name "Big Brother", based on Mr. Orwell's novel.

8. Beginning in July, 2000, Defendants Orwell Productions, Inc. and Viacom, Inc.

have caused to be produced and telecast in this District and Division, and throughout the United States, a dramatic television series entitled “Big Brother”.

9. Defendants’ television series “Big Brother” is set in a house in which the inhabitants are watched by video cameras 24 hours a day, and directed and interviewed by an unseen person called “Big Brother”. The show’s logo is the word “Big Brother”, with camera zoom lenses extending outward from the “g” and the “o”. The show has garnered many negative critical reviews, and CBS has been criticized for pandering to voyeurism, but the show has nevertheless drawn a large audience and generated many websites devoted to the show.

10. Out of the hundreds of thousands of possible names for Defendants’ production company, the name “Big Brother” utilized was “Orwell Productions, Inc.,” evidencing Defendants’ intention to trade on the fame and repute of the late Mr. Orwell and his novel about “Big Brother”.

11. On information and belief, Defendants have planned or developed a sequel “Big Brother” to be telecast in the United States after the present series concludes.

12. The production and telecasting by Defendants of the television series “Big Brother” violates Plaintiffs’ intellectual property rights in Mr. Orwell’s novel, trades on the novel’s fame and reputation, passes the show off as being related to Mr. Orwell’s novel, and dilutes and damages the value of Plaintiffs’ film “1984” and any subsequent works based on the novel, all as set forth more fully below.

THE PARTIES

13. Plaintiff Marvin Rosenblum is a citizen of the State of Illinois, and a resident in

this District and Division. He is a Chicago attorney and film producer. In addition to “1984”, his company has been involved in production of the films “White Mischief” starring Gretta Scacchi and Charles Dance, and “The Playboys” starring Albert Finney, Aidan Quinn, Robin Wright, and Milo O’Shea. Mr. Rosenblum has also optioned film rights to Ayn Rand’s novel “We The Living”.

14. Plaintiff Rosenblum Productions, Inc. is a corporation organized under the laws of Illinois, with its principal place of business in Chicago, Illinois, in this District and Division. It is Mr. Rosenblum’s production company.

15. Defendant Orwell Productions, Inc. is a corporation organized under the laws of California, with its principal place of business in the State of California. Orwell Productions, Inc. is the producer of the offending television series “Big Brother”.

16. Defendant Viacom, Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business in the State of New York. In or about May of this year, CBS Corporation and its subsidiaries merged with Viacom, Inc. Viacom Inc. has caused the offending television series “Big Brother” to be telecast across the United States.

JURISDICTION AND VENUE

17. Subject-matter jurisdiction in this Court is founded upon 28 U.S.C. § 1331 and § 1338, as this case arises under the laws of the United States and supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

18. Subject-matter jurisdiction in this Court is also founded upon 28 U.S.C. § 1332,

as Plaintiffs and Defendants are citizens of different states, and the matter in controversy exceeds \$75,000.00.

19. Venue is proper in this District and Division pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the claims occurred in this District and Division; and because the Defendants are subject to personal jurisdiction in this District and Division.

GENERAL ALLEGATIONS

20. In 1949 British resident Mr. George Orwell authored the novel entitled "1984" as described above in paragraphs 2 and 3. It has been distributed in commerce since 1949.

21. Mr. Orwell died in March, 1950 and was survived by his widow Sonia Orwell.

22. At all material times, Mr. Orwell's widow and the literary executors of Mr. Orwell's estate have been extremely protective of Mr. Orwell's reputation and the manner in which his works are commercially exploited.

23. In 1955, under a twenty (20) year license, a motion picture based on "1984" was produced, starring Edmond O'Brien. When the license expired in 1975, Sonia Orwell, so displeased with the adaptation and quality of the film, prevented any further distribution of that version.

24. An authorized radio play audiocassette based on Mr. Orwell's novel starring Richard Widmark, is entitled "1984 George Orwell's 'Big Brother'", and is also available in libraries and stores.

25. As memorialized by agreements dated December 1, 1980, June 15, 1983, and November 8, 1993; Plaintiff Marvin Rosenblum purchased and acquired all the television and motion picture rights to the novel "1984". These agreements are attached and incorporated herein as Exhibits A, B and C. Among the rights acquired by Plaintiff Marvin Rosenblum was the authority to sue for infringements in the estate's name and/or on the estate's behalf (See Ex. A, page 5, ¶ 4).

26. Pursuant to the rights he had purchased, Plaintiff Marvin Rosenblum, with his production company Plaintiff Rosenblum Productions, Inc., produced the film "1984" in 1984. It stars Richard Burton and John Hurt, and received wide critical acclaim. It continues to be exhibited in commerce on television and available on videocassettes for television play. The phrase "Big Brother" was thus first used by Plaintiffs in this context in commerce in 1984.

27. An authorized musical sound track based on the film, by the Eurythmics, is also available in commerce, and is entitled "1984 - for the Love of Big Brother".

28. In August of 1995, Mr. Rosenblum formed Newspeak Media Inc., a related company. Newspeak purchased from the Orwell Estate the electronic media rights for internet and computer games based on "1984".

29. Plaintiff Rosenblum Productions, Inc. and related entities then used the phrase "Big Brother" in commerce in connection with an interactive cd-rom/online project: "big brother, inspired by George Orwell's 1984". Plaintiff Marvin Rosenblum, through this related company, also developed a website: "www.big-brother.com". See Ex. D to the Complaint.

30. On or about April 8, 1997, Newspeak, Plaintiffs' related company, filed an intent-to-use trademark registration application for the name "Big Brother" for games. Newspeak began

developing a "1984" based computer game through a licensee. On March 7, 1997, the Patent and Trademark Office stated that "the mark of the application identified appears to be entitled to registration." On July 1, 1997, a Notice of Allowance was issued by the Patent and Trademark Office. Newspeak's licensee failed to file a use statement and on January 2, 1998 Newspeak's application expired.

31. In early 1995, pursuant to the rights he purchased, Plaintiffs Marvin Rosenblum and Rosenblum Productions, Inc. began developing a television series called "Big Brother", based on the novel "1984".

32. Beginning in May of 1998, Plaintiff Marvin Rosenblum, circulated in commerce to producers across the country a copyrighted proposal for this television series named "Big Brother". This proposed "Big Brother" series is to be based on Mr. Orwell's novel "1984". See Ex. E attached to this Complaint.

33. On or about February 7, 2000, Plaintiffs Marvin Rosenblum and Rosenblum Productions, Inc. applied for a "Big Brother" service mark registration for television programs, series, motion pictures, and on-line computer games. This application is pending.

34. On or about April 10, 2000, CBS Corp. stated on its website, that it would entertain contestant applications for a television show entitled "Big Brother"

35. In May of 2000, Plaintiff Rosenblum notified Orwell Productions, Inc. and CBS, Inc. that their announced "Big Brother" program violated his intellectual property rights, and requested that they cease and desist from using the name "Big Brother" and related references for their television program.

36. In May of 2000, Viacom, Inc., and CBS Corp. merged into Defendant Viacom,

Inc.

37. On or about July 5, 2000, Defendants caused to be televised in the United States the first episode of their television series entitled “Big Brother” as described in ¶9 above.

Episodes of this program have been regularly telecast since that date into this District and Division, and elsewhere.

38. The televised credits of Defendants’ television show list “Orwell Productions, Inc.” as the producer and/or copyright proprietor.

39. Defendants have established a web site for their series, called “BigBrother2000.com”, which is linked to “CBS.com”.

CAUSES OF ACTION

COUNT I- LANHAM ACT, 15 U.S.C. § 1125(a)

40. Paragraphs 1 through 39 are realleged and incorporated herein.

41. Defendants have used in commerce in connection with their television series a combination of words and devices, namely: a television show called “Big Brother” with the logo described in ¶9 above, set in a house in which the inhabitants are watched by video cameras, directed and interrogated by a person known as Big Brother and produced by a company called “Orwell Productions, Inc”.

42. Defendants’ activities in promoting and distributing the television series “Big Brother”, using this combination, is likely to cause confusion and mistake, and likely to deceive as to the affiliation, connection, association, sponsorship, and approval of Defendants’ “Big Brother” series with Mr. Orwell’s novel and Plaintiffs’ motion picture and television rights

therein, including the word, name, and device combination described in ¶s 3 and 6 above.

43. Defendants' activities with respect to "Big Brother" tend to falsely represent, and are likely to deceive and confuse the public into believing that the television series "Big Brother" is affiliated with, connected to, associated with, sponsored by, or approved by owners of Mr. Orwell's novel and Plaintiffs, who own the television and motion picture rights therein.

44. Indeed, numerous journalists, and members of the public on websites, have expressed the view that Defendants' show "Big Brother" is based on Mr. Orwell's novel.

45. Plaintiffs are, and are likely to be, damaged by such actions of Defendants.

46. Defendants' conduct in creating such deception and confusion is willful.

WHEREFORE, Plaintiffs pray for an entry of judgment in their favor, and for appropriate relief as sought below.

COUNT II- LANHAM ACT, 15 U.S.C. §1125(c)

47. Paragraphs 1 through 46 are realleged and incorporated herein.

48. Using the combination described in paragraphs 9 and 41 above, Defendants through their television series have willfully intended to trade on the reputation of Mr. Orwell, his novel "1984", and thus Plaintiffs' rights in that work.

49. Plaintiffs' Orwell/1984 combination of words, names, and devices, also described in ¶s 3 and 6 above, employing a character called Big Brother, and the phrase Big Brother, in an environment where the inhabitants are watched in their houses by video camera 24 hours a day, all created by Mr. Orwell, constitutes a famous mark.

50. Defendants' conduct has and will continue to cause dilution and cheapening of the distinctive quality of this mark and of Plaintiffs' television and motion picture rights in "1984".

51. Plaintiffs are and will be impaired in their ability to exploit their rights to "1984", due to Defendants' dilution described above.

WHEREFORE, Plaintiffs pray for an entry of judgment in their favor, and for appropriate relief as sought below.

COUNT III- Copyright Infringement 17 U.S.C. § 501

52. Paragraphs 1 through 39 are realleged and incorporated herein.

53. The novel "1984" was and is wholly original to George Orwell and was and is copyrightable subject-matter under the laws of the United States.

54. At all material times compliance has been maintained for "1984" in all respects with applicable copyright provisions. The copyright for the novel "1984" was registered in 1949 (Reg. Nos, CIA 33770, 2259), and its renewal was registered in 1977 (Reg. No. R 641953).

55. Plaintiffs, at all times since the purchase of the exclusive visual rights, have complied in all respects with the requirements of the copyright laws.

56. Plaintiff Rosenblum, as the exclusive licensee of certain rights in the pre-existing novel, is deemed the copyright owner of the pre-existing novel for the purpose of exercising those rights.

57. Defendants' production and distribution of the television show "Big Brother"

infringes Plaintiff Rosenblum's exclusive license to produce motion pictures and television shows based on the copyrighted novel "1984", as well as the pre-existing novel.

58. Specifically, Defendants use of the show's name "Big Brother", the unseen character named Big Brother, the production name and credit of "Orwell Productions, Inc.", all used in a television show depicting a home's inhabitants being watched by video cameras, together represent not merely an idea, but the specific expression of the idea, which is substantially similar to the specific expression of the same idea in the novel "1984", and its derivative works, the motion picture "1984" which continues to be shown on television and continues to be available on videocassettes for television viewing.

59. Defendants have unlawfully appropriated from Plaintiffs their television rights and motion picture rights to this original constituent element.

60. Defendants have no license or other form of permission to copy or distribute any part of the derivative motion picture and television rights to "1984" or to the rights in the novel "1984".

WHEREFORE, Plaintiffs pray for an entry of judgment in their favor, and for appropriate relief as sought below.

COUNT IV - Illinois Anti-Dilution Act, 765 ILCS 1036/65

61. The allegations of paragraphs 1 through 39, and the allegations of Counts II and III, are realleged and incorporated herein.

62. Defendants' conduct as alleged has caused dilution of the distinctive quality of Plaintiffs' famous mark in Illinois, and elsewhere.

63. Defendants' conduct is intentional and willful.

WHEREFORE, Plaintiffs pray for an entry of judgment in their favor, and for appropriate relief as sought below.

COUNT V - Common Law Unfair Competition

64. Paragraphs 1 through 39 and the allegations of Counts II and III, are realleged and incorporated herein.

65. Said acts of Defendants constitute unfair competition and an infringement of Plaintiffs' common law rights in the distinctive mark described in ¶ 49 used in connection with the television rights to "1984".

66. Defendants have infringed Plaintiffs' mark as alleged with the intent to deceive the public into believing that its series "Big Brother" is affiliated with Mr. Orwell's "1984".

67. Defendants conduct is willful.

WHEREFORE, Plaintiffs pray for an entry of judgment in their favor, and for appropriate relief as sought below.

COUNT VI - Interference with Prospective Economic Advantage

68. Paragraphs 1 through 39, and the allegations of Counts II and III, are realleged and incorporated herein.

69. Plaintiffs own the rights to exploit "1984" in television shows and in motion pictures.

70. At all material times, Plaintiffs have been engaged in marketing efforts with third-

parties in an effort to exploit Plaintiffs' rights in "1984".

71. Defendants knew, or should have known, of Plaintiffs' ongoing marketing efforts.

72. Defendants' dilution of Plaintiffs' rights by their production and marketing of Defendants' Big Brother has maliciously interfered with Plaintiffs' ability to market its rights, and the prospective economic advantages those rights offer.

WHEREFORE, Plaintiffs pray for an entry of judgment in their favor, and for appropriate relief as sought below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that Defendants be preliminarily and permanently enjoined from infringing Plaintiffs' rights and that Plaintiffs be awarded damages in an amount to be determined, including, but not limited to, Defendants' profits; Plaintiffs' damages, including an award for corrective advertising, trebled damages, attorneys fees, and costs, and such further relief as may be appropriate, including punitive damages.

PLAINTIFFS DEMAND TRIAL BY JURY.

Respectfully submitted

By one of their attorneys

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