

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

RICHARD MINSKY, an individual, d/b/a  
SLART® ENTERPRISES,

Plaintiff,

-against-

1:08-CV-819  
(LEK/DRH)

LINDEN RESEARCH, INC., d/b/a LINDEN LAB®,  
a Delaware corporation, JOHN DOE (a/k/a VICTOR  
VEZINA), an individual, PHILIP ROSEDALE, an  
individual, MITCHELL KAPOR, an individual, other  
DOES, presently unknown to Plaintiff,

Defendants.

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**TEMPORARY RESTRAINING ORDER BY CONSENT**

On July 29, 2008, Plaintiff Richard Minsky commenced this action, alleging claims of trademark infringement, trademark dilution, contributory infringement and dilution, in violation of the Lanham Act, 15 U.S.C. § 1141 et seq., and tortious interference and fraud, in violation of New York state law. See Amended Complaint (Dkt. No. 6). On September 4, 2008, following an *ex parte* application by Plaintiff, the Court entered a Memorandum Decision and Order which included a temporary restraining order (“TRO”). Plaintiff’s Motion (Dkt. No. 10); September 4 Order (Dkt. No. 11). That TRO expires as a matter of law at 10:00am on September 14, 2008. September 4 Order; see also FED R. CIV. P. 56(b)(2)

On September 8, 2008, Defendants Linden Research, Inc., Philip Rosedale and Mitchell Kapor moved to dissolve the TRO, reserving their right to raise certain procedural issues including, *inter alia*, personal jurisdiction and/or venue before this Court and the legal sufficiency of Plaintiff’s

Amended Complaint. Dkt. No. 15. On September 10, 2008, the Court held a hearing on the Motion to dissolve and directed the parties to attempt to agree upon a TRO to preserve evidence and maintain the status quo pending adjudication of the Plaintiff's Motion for a preliminary injunction. See Minute Entry (Dkt. No. 19). A briefing schedule on the Motion for a preliminary injunction will be forthcoming.

Upon a consideration of the relevant law and the submissions of the parties, it is hereby **ORDERED**, that the following TRO is hereby entered by stipulation and upon consent of the parties:

1. In the event that Plaintiff identifies the use of a term in the Second Life virtual world which he believes in good faith is an infringement of SLART, the subject of U.S. Federal Trademark Registration No. 3399258 ("Plaintiff's Registration"), and which is being used on or in connection with the services identified in Plaintiff's Registration, Plaintiff may give notice of such alleged infringement to Linden Research, Inc. ("Linden") by sending an email to [removals@lindenlab.com](mailto:removals@lindenlab.com) ("Notice to Linden"). Plaintiff's Notice to Linden shall include a detailed description of the alleged infringement, the user identity associated with the alleged infringement, the specific search which Plaintiff used to identify the use, and the precise location of the alleged infringing use in the Second Life virtual world, and shall be accompanied by a screen shot reflecting the alleged infringing use, which, to the extent possible, shall reflect the date and time of the alleged infringing use. Plaintiff's Notice to Linden shall also include a separate notice, from Plaintiff to the Second Life user who is the source of the alleged infringing use, regarding the alleged infringement ("Notice to User"). The Notice to User shall be in the form set forth in Exhibit A.

2. Except as set forth in paragraph 3 below, within two business days of receipt of a

notice described in paragraph 1 above, Linden shall forward the Notice to User to the Second Life user identified as the source of the alleged infringing use, shall advise the user that this Action is pending, and that, pursuant to this Order, the use must be removed pending the resolution of the Action. Linden will also provide confirmation to Plaintiff via email that his Notice to User has been sent to the email address on file for the user, along with the time and date of transmission. If, within three business days of providing such notice to the user, the alleged infringing use has not been removed from the Second Life virtual world, Linden shall remove the use.

3. In the event that the alleged infringing use is anything other than the use of “SLART” as one word with all letters depicted in a uniform size, font and color, Linden may decline to forward Plaintiff’s notice to the user and shall within three business days of receipt of the notice advise Plaintiff that it has declined to do so. In the event Plaintiff desires to continue to pursue removal of the alleged infringement, Plaintiff and Linden agree that the parties shall submit the issue of whether the alleged infringing use should be removed to U.S. Magistrate Judge David R. Homer for resolution. The parties further agree that they will submit the issue to Magistrate Judge Homer via letter briefs, each not to exceed five pages; Plaintiff shall submit his letter brief no later than five business days after receipt of Linden’s notification to Plaintiff that it has declined to forward his notice, and Linden shall submit its letter brief in response no later than five business days after receipt of Plaintiff’s letter brief. All briefs shall be served on Plaintiff and counsel of record for Defendants by email.

4. Pending the conclusion of this Action, Plaintiff and Defendants shall each preserve:  
(a) all materials reflecting communications between Plaintiff and Defendants related to any notice of alleged infringement submitted by Plaintiff, including, to the extent possible, evidence of date and

time stamps associated with the communications, (b) all materials reflecting any use with respect to which Plaintiff has claimed infringement, including, to the extent possible, evidence of date and time stamps associated with the use, and (c) all materials reflecting communications between Defendants and any user alleged by Plaintiff to be infringing that relate to the alleged infringement, including, to the extent possible, evidence of date and time stamps associated with the communications.

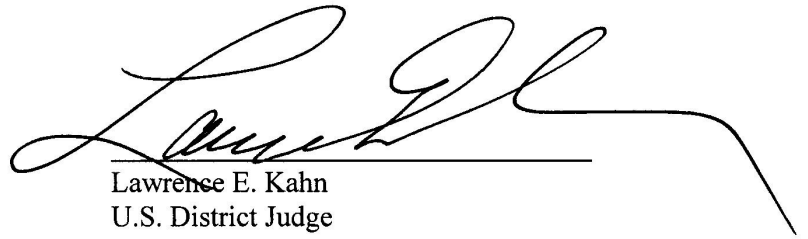
5. In the event that Plaintiff seeks from Defendants the disclosure of any personal identifying information of a Second Life user whom Plaintiff alleges is making an infringing use, Plaintiff shall file a motion with Magistrate Judge Homer setting forth a *prima facie* case of infringement and detailing the reasons the requested disclosure is necessary. The motion shall be heard on the following expedited briefing schedule: (a) Plaintiff shall provide fifteen days notice of motion; (b) Defendants' response shall be due 10 days after the receipt of Plaintiff's notice of motion. In the event that such motion is granted, an appropriate protective order will concurrently be entered to protect, to the extent possible, against the disclosure or dissemination of the personal identifying information of the alleged infringer to third parties outside the context of this Action, on terms to be determined at the time the protective order is entered.

and it is further **ORDERED**, that by consent of the parties, this Order shall expire upon the earlier of (a) dismissal of this Action for any reason, or (b) this Court's Decision following the hearing on Plaintiff's Motion for a preliminary injunction, which may occur no earlier than October 15, 2008; and it is further

**ORDERED**, that the Clerk serve a copy of this Order on all parties.

**IT IS SO ORDERED.**

DATED: September 12, 2008  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge