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SEND
ORIGINAL CLOSED

FILED
CLERK, U.S. DISTRICT COURT
AUG 29 2006
CENTRAL DISTRICT OF CALIFORNIA
DEPUTY

8 Attorney for Defendants,
9 Jeff Meehan, David Aynehchi, and Allstar Tire and Wheel, Inc.

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 SOUTHERN DIVISION

NOTE CHANGES MADE BY THE COURT.

13 JUDGED

14 RACING SPORTS, INC., a
15 California corporation
16 Plaintiff,

Case No.: SACV05-683 AHS (MLGx)

17 vs.

~~PROPOSED~~ STATEMENT OF
UNCONTROVERTED FACTS AND
CONCLUSIONS OF LAW

18 JEFF MEEHAN, an individual; DAVID
19 S. AYNEHCHI, an individual;
20 ALLSTAR TIRE AND WHEEL, INC.,
21 an entity; HANDSOME METAL CO.,
22 LTD dba HUNTER ALLOY, a Taiwan
23 entity; and Does 1 through 10, inclusive,
24 Defendants.

25 Date of Hearing: ~~August 14, 2006~~ 2/1

26 Time of Hearing: ~~10:00 a.m.~~

27 Courtroom Number: ~~10A~~

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DOCKETED ON CM
AUG 30 2006
BY *RL* 178

After considering the papers supporting and opposing Defendant's motion for summary judgment, and the oral argument of counsel, the Court determines that the following facts have been established as undisputed:

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UNDISPUTED FACTS

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UNDISPUTED FACTS	EVIDENTIARY SUPPORT
1. Plaintiff, R-1 Racing Sports (“R1”) does not currently have a copyright certificate from the United States Copyright Office for “R-1 Racing Sports,” registration number 2,706,923	R1’s Response to Defendants’ Requests for Admissions (“RFA”) No. 1. , attached as Exhibit D to the Declaration of David V. Jafari.
2. Exhibit A of R1’s Complaint is not a copyright registration but is in fact a trademark registration.	RFA No. 2
3. R1 did not apply for a certificate of registration for its copyright before filing this lawsuit.	RFA No. 4
4. R1 did not have a certificate of registration for its copyrights before filing this lawsuit.	RFA No. 1 and 3
5. R1 was not denied registration of its copyrights before the filing of this lawsuit.	RFA No. 4
6. R1 misrepresented to the Court and to Defendants that it had applied for and obtained a certificate of copyright registration before the filing this lawsuit.	R1’s Complaint ¶ 21 attached as Exhibit A to the Jafari Declaration.

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7. R1 does not currently have a certificate of copyright registration for the copyrights alleged to have been infringed in this action.

RFA No. 1 and 3.

8. R1 does not currently have a copyright certificate from the United States Copyright Office for its "copyrighted photographs or works" as described in paragraphs 13, 14, and 20 of its Complaint.

RFA No. 3

~~9. R1 has not applied for a certificate of registration from the United States Copyright Office for its "copyrighted photographs or works" as described in paragraphs 13, 14, and 20 of its Complaint.~~

RFA No. 4

ans

Based on the above Undisputed Facts, the Court makes the following conclusions of law:

CONCLUSIONS OF LAW

1. Summary judgment is favored as "an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action." Celotex Corp. v. Catrett, 477 U.S. 317, 327, 106 S. Ct. 2548, 2555 (1986).

1 2. Summary judgment is warranted when the moving party has met its
2 burden of persuading the court that there is “no genuine issue of material fact” and
3 that it is entitled to judgment as a matter of law.” FED.R.CIV.P. Rule 56(c).

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5 3. To satisfy its burden, the moving party must establish beyond
6 controversy every essential element of its claim or defense. Fontenot v. Upjohn Co.,
7 780 F.2d 1190, 1194 (5th Cir.1986); see also Southern Calif. Gas Co. v. City of Santa
8 Ana, 336 F.3d 885, 888 (9th Cir. 2003).

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10 4. “A Court does not have jurisdiction over a copyright claim until the
11 copyright has been registered.” Just Water Heaters Inc. v. Affordable Water Heaters
12 & Plumbing, Inc., 2006 U.S. Dist. LEXIS 9006, *5 (D. Cal. 2006).

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14 5. “[N]o action for infringement of the copyright in any United States work
15 shall be instituted until . . . registration of the copyright claims has been made in
16 accordance with this title.” 17 U.S.C. § 411. See also Brush Creek Media, Inc. v.
17 Boujaklian, 2002 WL 1906620 (N.D.Cal.2002).

18 6. A “certificate of copyright registration from the Copyright Office is a
19 prerequisite to bringing a copyright infringement claim.” Loree Rodkin Management
20 Corp. v. Ross-Simons, Inc., 315 F. Supp.2d 1053, 1055 (C.D.Cal.2004); Ryan v. Carl
21 Corp., 1998 WL320817, *5 (N.D.Cal.1998); Joyce v. Renaissance Design Inc., 56
22 U.S.P.Q.2D (BNA) 1541, 6 (C.D.Cal.2000); Brush Creek Media, Inc. v. Boujaklian,
23 2002 WL 1906620, *9 (N.D.Cal.2002); and Just Water Heaters Inc. v. Affordable
24 Water Heaters & Plumbing, Inc., *supra* *10 (D. Cal. 2006).

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26 7. In order to “register a copyright claim,” a plaintiff cannot merely have a
27 pending registration or have submitted an application for registration, but must have
28 been issued a certificate of registration from the Copyright Office. Loree Rodkin

1 Management Corp., 315 F. Supp.2d 1053, 1055 (C.D.Cal.2004); Ryan v. Carl Corp.,
2 supra at *5; Brush Creek Media, Inc. v. Boujaklian, supra at *9; Just Water Heaters
3 Inc. v. Affordable Water Heaters & Plumbing, Inc., supra at 10.

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5 8. 17 U.S.C. § 411 (a) distinguishes registration from mere application as a
6 prerequisite to suit, “In any case, however, where the deposit, application, and fee
7 required for registration have been delivered to the Copyright Office in proper form
8 **and registration has been refused**, the applicant is entitled to institute an action for
9 infringement if notice thereof, with a copy of the complaint, is served on the Register
10 of Copyrights.”

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12 9. A party is bound by what it says in its Complaint because a statement in a
13 Complaint, Answer, or Pre-Trial Order is a “judicial admission.” See American Title
14 Ins. Co. v. Lacelaw Corp., supra, 861 F.2d at 226.

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16 10. “Judicial admissions are formal admissions in the pleadings which have
17 the effect of withdrawing a fact from issue and dispensing with the need for proof of
18 that fact.” Matthews v. Xerox Corp., 319 F. Supp.2d 1166, 1171 (S.D.Cal.2004)
19 (quoting In re Fordson Engineering Corp., 25 B.R. 506, 509 (Bkrcty.E.D.Mich.1982.)


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21 11. Plaintiff cannot change a fundamental aspect of its Complaint to avoid
22 summary judgment. Matthews v. Xerox Corp., 319 F. Supp.2d 1166, 1172
23 (S.D.Cal.2004)

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25 12. “Under federal law, stipulations and admissions in the pleadings are
26 generally binding on the parties and the Court.” American Title Ins. Co. v. Lacelaw
27 Corp., 861 F.2d 224, 226 (9th Cir. 1988) (quoting Ferguson v. Neighborhood Housing
28 Services, 780 F.2d 549, 551 (6th Cir. 1986); see also Gerlach v. Volvo Cars of North
America, 1997 WL 129004 *4 n.2 (E.D. Pa 1997) (a plaintiff’s statement in its

1 complaint are binding admissions that cannot be ignored simply because they no
2 longer serve the plaintiff's litigation interests); Andrews v. Metro North Commuter R.
3 Co., 882 F.2d 705, 707 (2d Cir. 1989) ("A party ... cannot advance one version of the
4 facts in his pleadings, conclude that his interests would be better served by a different
5 version, and amend his pleadings to incorporate that version, safe in the belief that the
6 trier of fact will never learn of the changes in the stories").

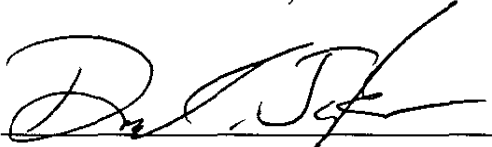
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8 13. Judgment ^{has been} ~~shall be~~ entered in favor of Defendants, Jeff Meehan, David S. AMW
9 Aynehchi, Allstar Tire and Wheel, Inc., and Handsome Metal Co., Ltd and against
10 Plaintiff R-1 Racing Sports, Inc.

11 Dated: August 28, 2006.

12 By: 
13 The Honorable Alicemarie H. Stotler
14 United States District Court Judge

15
16 Respectfully submitted,
17 JAFARI LAW GROUP, P.C.

18
19 Dated: July 24, 2006

20 By: 
21 David V. Jafari, Esq.
22 Attorney for Defendants and
23 Counterclaimants, Jeff Meehan, David S.
24 Aynehchi and Allstar Tire & Wheels,
25 Inc.
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