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V.I. Carnival Committee Files Lawsuit Against Dept. of Tourism For Infringing Trademarks, TRO to be Filed Tuesday

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V.I. Carnival in St. Thomas in 2019.. By. REEMY-REEMZ
PHOTOGRAPHY/VICONSORTIUM

A long-brewing dispute between the decades-old V.I. Carnival Committee, which has been in existence for 70 years, and the V.I. Dept. of Tourism, which in 2020 took over carnival operations through its Division of Festivals arm, has boiled over into the public domain, with the V.I. Carnival Committee, or V.I.C.C., filing a lawsuit against V.I. Dept. of Tourism and Division of Festivals leaders Monday for trademark infringement in the District Court of the Virgin Islands.

Named in the lawsuit is Joseph Boschulte in his capacity as Dept. of Tourism commissioner, Ian Turnbull in his capacity as director of the Division of Festivals, and Halvor Hart, who currently is employed as assistant Division of Festivals director and former executive director of the V.I.C.C.

The action was taken under the The Lanham Act, which is the primary federal trademark statute of law in the United States. The Act prohibits a number of activities, including trademark infringement, trademark dilution, and false advertising.

The V.I.C.C., which was founded in 1952, said that it has used its trademarks, "Virgin Islands Carnival" and "St. Thomas Carnival" in connection with the annual carnival program together with a number of designs and logos throughout the past 70 years. "Such marks and names have been publicly attributed as originating with and being owned by the V.I. Carnival Committee," reads the lawsuit.

The V.I.C.C. alleges that the Dept. of Tourism and its Division of Festivals used trademarks "St. Thomas Carnival" and "Virgin Islands Carnival" during promotions of the 2020 annual carnival in St. Thomas. More recently, D.O.T. and the Division of Festivals have been promoting "Carnival St. Thomas" and "Carnival Virgin Islands", however the V.I.C.C. contends that such changing around of words does little to distinguish from its copyrights.

This year's carnival promotions from the Division of Festivals come with a caption "St. Thomas Carnival VI 70th Anniversary", as seen below.

**ST. THOMAS
CARNIVAL VI**

70th

ANNIVERSARY

**ALL VENDORS
OR 48 HOURS**

BOAT S...

St. Tho...
May 1, 2...

**A NEW CULTURAL
ROOGADOO FOR**

**UNITED STATES
VIRGIN
ISLANDS**
ST CROIX ST JOHN ST THOMAS

**U.S. VIRGIN ISLANDS
DIVISION OF
FESTIVALS**

"There is no doubt that the juxtaposition of individual elements of the mark like Carnival Virgin Islands and or Carnival St. Thomas, as depicted by many of the posters and other promotions produced by the Tourism Department is insufficient to obviate a likelihood of confusion as source, sponsorship and affiliation. Conversely, the juxtaposition actually exacerbate confusion rather than mitigate it," the lawsuit, seen [here](#), reads.

The lawsuit calls the Dept. of Tourism's actions "a hostile takeover" of the V.I.C.C. business, and says D.O.T. "has embarked on a campaign to aggressively solicit the Carnival Committee's vendors and sponsors who have been known to have an existing relationship with the Carnival Committee for decades."

It adds, "Even more troubling, the Tourism Department hired the V.I. Carnival Committee's former Executive Director, Halvor Hart, to spearhead the department's campaign. To do so, Hart cleared out the Carnival Committee's office and took vendor contact lists, volunteer contact lists, application forms for contracts, waivers, indemnity agreements, and the judging criteria used for various competitions. Hart also served up [the] Carnival Committee's format for the subcommittee, events, volunteer organizational structure, to the Department of Tourism on a silver platter."

The lawsuit says the V.I. government on Nov. 1 2019 embarked on an "unlawful and terrifying exercise" demanding that the V.I.C.C., a private organization, allow the V.I. government to appoint three members to its board and to submit the V.I.C.C.'s bylaws to the government for revision.

Additionally, according to the lawsuit, the V.I. Dept. of Tourism on Nov. 8, 2019 told the V.I.C.C. that it possessed the sole authority to "maintain and control receipts and disbursement of all funds for private donations and all funds for public donations, and sponsorships for all festivals." The lawsuit says D.O.T. cited a law which at the time was newly enacted, that gave the department such authority.

The law, which placed the execution of the territory's carnival and festivals under the Dept. of Tourism, represented a sea change and defunded the V.I.C.C. of public dollars. According to the V.I.C.C., which is separate from the St. Croix Carnival Committee, the V.I. government provided anywhere from \$200,000 to \$500,000 annually to the V.I.C.C. to execute the annual St. Thomas Carnival, also known as the V.I. Carnival. The V.I.C.C. also raised hundreds of thousands of dollars from private sponsors.

The law was enacted through legislation sponsored by Senator Janelle Sarauw and former Senators Myron Jackson and Nereida Rivera-O'Reilly in the 32nd Legislature.

The bill was created based on senators' displeasure with the management of public funds used to put on carnival, and the VI Carnival Committee's (St. Thomas Carnival) clandestine attitude related to how the monies were being spent, according to public statements made by senators.

During an August 2018 budget hearing in the Committee on Finance, senators, irate because of the lack of information that was being provided by the V.I.C.C., assailed committee members and vowed to change the system. The lambaste came after testifier Mr. Hart, who at the time served as executive director of the V.I.C.C., had initially failed to furnish complete financial records to lawmakers. Instead, Mr. Hart only provided records of the 2018 \$545,000 the committee received from the government of the Virgin Islands to put on the V.I. Carnival, even as the V.I.C.C.'s gross

total was \$837,369.01 — leaving an unaccounted difference of \$292,369.01.

Mr. Hart immediately came under fire from lawmakers not pleased with the partial information. The senators were even more incensed because it was only June of 2018 that the Committee on Workforce Development, Consumer Affairs and Culture had subpoenaed the carnival committee after it failed to provide detailed accounting information, and the no-show of key carnival committee members.

During the August 2018 budget hearing, however, lawmakers' patience had arrived to a tipping point. "Let me you ask you a question," Mrs. Rivera-O'Reilly offered, "if there is nothing to hide, what impedes the committee from sharing information?" The question was directed to Mr. Hart, who responded by stating that information was provided in the documents submitted. But Mrs. Rivera-O'Reilly, unsatisfied, pushed back. "That only speaks in detail to the funds that are given to you by the government of the Virgin Islands. It does not include any detailed information beyond those dollars. Are you aware of this? Yes or no." Mr. Hart said he had provided a profit and loss statement relative to the funds raised outside of the government's \$545,000.

Mrs. Rivera-O'Reilly, known for doing her research and digging out information from testifiers, was unsatiated. She told Mr. Hart that just as he had furnished detailed numbers relative to the \$545,000 provided by the government, she needed such detail accounting of the remaining \$292,369.01. "If you have nothing to hide, why is the committee not complying?" she asked.

Mr. Hart said the information relative to sponsors was confidential and could not be provided. But Mr. Rivera-O'Reilly immediately rebuked him: "We are not asking you to tell us who your sponsors are... but how you spend that money is still the business of the people of this territory."

She then charged, "Well, you are rogue." Former Governor Kenneth Mapp signed the bill into law [early January 2019](#).

The V.I.C.C. in its lawsuit cites the Fifth Amendment of the U.S. Constitution, which guarantees that a property owner has an actionable "takings claim" when the government takes private property without paying for it.

The V.I.C.C. is expected to file a temporary restraining order against the Dept. of Tourism, according to documents viewed by the Consortium. Part of it reads, "The V.I. Carnival Committee has met the four-factored injunction standard and has demonstrated that it would succeed on the merits. The Plaintiff respectfully requests an injunction enjoining the Department of Tourism, its executives, officers, agents and attorneys from infringing on its property rights protected under the Lanham Act."

It further states that at best, the Dept. of Tourism and its Division of Festivals are competitors of the V.I.C.C. And it alleges that with the continued use of its trademarks by the Dept. of Tourism, the V.I.C.C. continues to suffer irreparable harm that cannot be healed.

"Trademark infringement, in comparison to copyright or patent infringement, is different because trademark infringement can result in reputational injury that cannot be compensated for after the fact. 5 J. McCarthy on Trademarks and Unfair Competition § 30:47 (4th ed. 1996). See also Abbott Labs., 971 F.2d at 16 (noting that "it is virtually impossible to ascertain the precise economic consequences of intangible harms, such as damage to reputation and loss of goodwill, caused by [Lanham Act] violations")."

The V.I.C.C. is requesting that the District Court sets an early hearing on the matter. "If not feasible, the V.I. Carnival Committee requests that this Court enter a temporary restraining order – directing the Defendants to immediately cease using “St. Thomas Carnival” or “Virgin Islands Carnival” or any similar name including but not limited to St. Thomas Carnival V.I., Carnival St. Thomas, and Carnival Virgin Islands and to take whatever action needed to remove all posters, marketing, and advertising with these names forthwith."

Attorney Terri Griffiths is representing the V.I.C.C.

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