

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MUELLER SPORTS MEDICINE, INC.,

Plaintiff,

v.

BEVERIDGE MARKETING, LLC.,
d/b/a BMC Custom Eye Black,

Defendant.

ORDER

04-C-648-C

A hearing on plaintiff Mueller Sports Medicine, Inc.'s motion for a preliminary injunction was held in this case on November 2, 2004. Allen Arntsen and Steve Nickels represented plaintiff. Michael Fitzpatrick, Jeff Boggs and Timothy Molino represented defendant.

After hearing evidence and arguments, I denied plaintiff's motion for a preliminary injunction, concluding that plaintiffs had not shown any likelihood of ultimate success on its claim that defendant's tattoos infringed plaintiff's U.S. Patent '909. Plaintiff will not be irreparably harmed by the denial of the motion; its injuries are primarily monetary. Further, the balance of harms tips in favor of defendant, whose entire business is based upon the sale of its tattoos. The interest of the public is in equipoise: the public is served when patents

are protected; it is not served when patents are given that exceed the bounds of the patent.

ORDER

IT IS ORDERED that plaintiff Mueller Sports Medicine, Inc.'s motion for a preliminary injunction, enjoining defendant Beveridge Marketing, LLC., d/b/a BMC Custom Eye Black from selling its Eye Black tattoos is DENIED.

Entered this 3rd day of November, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge