

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

FELD ENTERTAINMENT, INC. AND
RINGLING BROS.-BARNUM &
BAILEY COMBINED SHOWS, INC.,

Plaintiff,

vs.

CASE NO. 8:17-cv-3075-JDW-TBM

ROBERT JAMES RITCHIE
(p/k/a KID ROCK); AND LIVE NATION
ENTERTAINMENT, INC.

Defendants.

**PLAINTIFFS' MOTION FOR PRELIMINARY
INJUNCTION AND SUPPORTING MEMORANDUM
(REQUEST FOR HEARING AND ORAL ARGUMENT¹)**

Pursuant to Federal Rule of Civil Procedure 65 and Local Rule 4.06, Plaintiffs, Feld Entertainment, Inc. (“Feld Entertainment”) and Ringling Bros.-Barnum & Bailey Combined Shows, Inc. (“Combined Shows”) (collectively “Plaintiffs” or “Ringling Bros.”), move for a preliminary injunction enjoining Robert James Ritchie (p/k/a Kid Rock) and Live Nation Entertainment, Inc. (“Live Nation”) (collectively “Defendants”) from using Ringling Bros.’ famous mark “THE GREATEST SHOW ON EARTH.” Specifically, Ringling Bros. seeks a narrowly tailored injunction halting Defendants’ use of “GREATEST SHOW ON EARTH” in connection with Kid Rock’s upcoming concert tour, which Defendants have been promoting as the “GREATEST SHOW ON EARTH TOUR 2018” and variations of that phrase.

Over its 145-year history, Ringling Bros. has performed all across the United States before tens of millions of people and has extensively advertised and promoted its famous mark, THE GREATEST SHOW ON EARTH. In addition, Ringling Bros.’ performances and mark

¹ Pursuant to Local Rules 3.01(j) and 4.06(a), Plaintiffs request oral argument on this motion and estimates that two hours will be required.

have become such a part of Americana that the estimated value of unpaid media coverage was over \$700,000,000 in 2016. Throughout its history, Ringling Bros. has established an overarching image: wholesome, family-friendly entertainment, which is invaluable to its business. Defendants' use of Ringling Bros.' famous mark in connection with Kid Rock's notorious performances—laced with F-bombs and sexual innuendo—tarnishes this family-oriented image and dilutes the mark. A narrow, limited preliminary injunction is essential to restore the status quo that existed prior to Defendants' unauthorized commercial use of Ringling Bros.' mark.

Grounds for this motion are set forth in the following memorandum of law and accompanying Declarations of Lisa Joiner (“Joiner Decl.”), Stephen Payne (“Payne Decl.”), Bradley Timberlake (“Timberlake Decl.”), Vinicio Murillo (“Murillo Decl.”), Tanya Lee (“Lee Decl.”) and Susan Schwartz McDonald (“McDonald Decl.”). Attached as Exhibit 1 is a Proposed Order on Motion for Preliminary Injunction.

I. STATEMENT OF FACTS

A. THE GREATEST SHOW ON EARTH is a Famous Trademark

Combined Shows is the owner of several incontestable² Federal trademark registrations, including U.S. Trademark Registration Nos. 1,363,330; 1,363,568; 1,366,779; 2,185,161; 2,380,169; 2,511,740; 3,015,685; and 3,020,576 (collectively, “Ringling Bros.’ Marks” or the “Trademarks”). Joiner Decl. ¶¶ 4-11 and Exs. 1-8. Each trademark includes “THE GREATEST SHOW ON EARTH,” either as text or in conjunction with a design. For example, Registration No. 3,015,685 is for THE GREATEST SHOW ON EARTH for entertainment services in the

² An incontestable mark has been registered and in continuous use for at least five years; it cannot be challenged on grounds that it is merely descriptive and is presumed to have achieved secondary meaning and therefore, is a relatively strong mark. *Caliber Auto. Liquidators, Inc. v. Premier Chrysler, Jeep, Dodge, LLC*, 605 F.3d 931, 938 n.34, 939 (11th Cir. 2010).

nature of a circus. Joiner Decl. ¶ 10 and Ex. 7. Ringling Bros.’ first use of the mark was in 1891 (*see id.*, Ex. 7) and its earliest registration dates back *thirty* years. *Id.* ¶ 4 and Ex. 1.

Ringling Bros. and Barnum & Bailey Circus (the “Ringling Bros. Circus” or “Circus”) is the largest circus in the United States and has been in operation continuously since 1872, touring most recently through May 21, 2017. Payne Decl. ¶ 8. The Circus has appeared annually in major cities throughout the United States, including Florida, typically for one to two weeks at a time (sometimes longer) and in smaller cities typically for three or more days at a time. *Id.* For example, from 2012-2016, approximately 1,000 performances were presented in approximately 80 cities per year, to an average of 3.76 million people annually. *Id.*

Ringling Bros. has extensively used its Trademarks to identify itself and the Circus in advertisements and promotional materials, including television, radio, and print advertisements, on billboards and websites, and in a motion picture. Payne Decl. ¶ 9; Timberlake Decl. ¶ 5; Lee Decl. ¶ 13. It is currently using them on its websites, as part of promotional materials, and in connection with the sale of goods throughout the United States by itself and its licensees. Payne Decl. ¶¶ 9, 11; Joiner Decl. ¶ 30. The Circus performs in about 80 cities a year, and prior to a Circus performance in a major city, Ringling Bros. engages in a blitz of local advertising highlighting the Trademarks. Timberlake Decl. ¶ 6. Consumers in the area begin seeing and hearing print, television and radio advertising for Ringling Bros. Circus, highlighting the Trademarks, about 6-8 weeks prior to the Circus arriving at each venue. *Id.* In addition, in advance of a show, Ringling Bros. provides the venue an online media guide and/or other specific communication, highlighting the Trademarks and including descriptions of the Circus and photographs for use on the venue's website. *Id.* The advertising and promotion also

includes “e buzz” via electronic communication, announcements to the press, posters, program books, souvenirs and joint promotions with other companies. Timberlake Decl. ¶ 5.

Millions of people see those advertisements and promotional materials each year. From 2012 to 2016, Ringling Bros. spent in excess of \$65 million on advertising and promotion relating to the Trademarks. Timberlake Decl. ¶ 8. In Florida alone, during that same period, Ringling Bros. spent in excess of \$5 million to promote its brand and products. *Id.*

As a result of the popularity of Ringling Bros. Circus and its associated Trademarks, there has been substantial unsolicited coverage by the media, which is not paid advertising by Ringling Bros. Circus. Payne Decl. ¶ 15. For example, there have been daily programming, television specials, and documentaries on CBS, NBC, ABC, Univision, Discovery Channel, Fox Sports, The History Channel, Nickelodeon, the Family Channel and other networks, viewed by approximately 60 million people, in which Ringling Bros. Circus and the mark THE GREATEST SHOW ON EARTH were prominently displayed. Payne Decl. ¶ 11. Ringling Bros. Circus has also been featured in many printed publications of national and local importance, such as the *Tampa Tribune*, *Miami Herald*, *Orlando Sentinel*, *People Magazine*, *The Wall Street Journal*, *The New York Times*, *The Washington Post*, and *USA Today*. *Id.* ¶¶ 11, 15. Further, Ringling Bros. Circus has been the subject of a major, award-winning 1952 motion picture production entitled “THE GREATEST SHOW ON EARTH,” with Charlton Heston and Betty Hutton, prominently featuring THE GREATEST SHOW ON EARTH mark (with permission of Ringling Bros.). Lee Decl. ¶ 13 and Ex. 11; Payne Decl. ¶ 9. According to an independent media intelligence company, the estimated earned media advertising value of this media coverage was over \$375 million for the first five months of 2017, with over 40 billion estimated unique impressions, and over \$700 million for 2016, with over 57 billion estimated

unique impressions. Payne Decl. ¶ 16. These numbers do not include substantial radio exposure, including, for example, four separate segments on NPR in March-May, 2017. *Id.*

Revenues obtained from services rendered and goods sold under the Trademarks are well in excess of \$50,000,000. Joiner Decl. 32. Those revenues include ticket sales and sales of goods bearing the Ringling Bros.' Trademarks. *Id.* at ¶¶ 30, 32. Feld Entertainment also maintains a website at www.ringlingonlinestore.com, which has advertised the CIRCUS and continues to sell merchandise related to the CIRCUS. Timberlake Decl. ¶ 5 and Ex. 1. Payne Decl. ¶ 9. In addition, the Trademarks are licensed to third parties by Combined Shows for a wide variety of goods and services, which produce considerable additional revenue. Joiner Decl. ¶ 30. Current licensees of the mark THE GREATEST SHOW ON EARTH include providers of: confections and snacks; storybooks and personalized books; and train sets. *Id.* In the past five years, Combined Shows has also licensed the mark THE GREATEST SHOW ON EARTH for the sale of other products including: paper products and novelty items; different types of food and drinks; tee shirts and sportswear; food preparation products such as popcorn poppers and ice cream makers; children's sunglasses; and wall calendars. *Id.*

Further, in an effort to promote its brand and related merchandise, Ringling Bros. enters into joint promotions with retailers throughout the United States (such as, Chick-fil-A, Ingles Market, MetroPCS, EasterSeals, Gas South, and Zaxby's), in which retailers pay for advertisements in consideration for the right to associate themselves with Ringling Bros. Timberlake Decl. ¶ 9. Ringling Bros. has engaged in countless joint campaigns in many diverse markets. *Id.* The joint promotions include the prominent display of THE GREATEST SHOW ON EARTH mark, resulting in significant additional public exposure of the mark. *Id.*

Despite the closure of the touring circus in May 2017, Ringling Bros. has never abandoned its Trademarks or otherwise ceased their use. Joiner Decl. ¶ 28. In fact, Ringling Bros. has an active licensing program and has several entertainment projects either in production or under consideration that utilize the Trademarks and continues to sell merchandise bearing THE GREATEST SHOW ON EARTH. *Id.* One example of the continuing use of the trademark THE GREATEST SHOW ON EARTH is a current broadcast agreement to air two programs relating to the Ringling Bros. Circus. *Id.* The production work began last spring and is ongoing. *Id.* The initial program airings are scheduled for May 2018 in the United States with rights granted for international distribution as well. *Id.* As part of this agreement, rights to use THE GREATEST SHOW ON EARTH, rights to use footage from the Ringling Bros. Circus and access to performers of the Ringling Bros. Circus were granted. *Id.* Other opportunities granting rights to use THE GREATEST SHOW ON EARTH are under consideration. *Id.*

Ringling Bros.' Trademarks have, by virtue of Ringling Bros.' extensive efforts, garnered a wholesome, family-oriented image and reputation. Payne Decl. ¶ 17; Timberlake Decl. ¶ 10. That reputation, which is invaluable to Ringling Bros.' business of providing family-oriented entertainment and products, would be damaged by an association with a business or individual that did not take such extensive efforts to garner and maintain a wholesome, family-oriented image. *Id.*; *Joiner Decl.* ¶ 29. Accordingly, Ringling Bros. carefully selects its licensees and has strict quality control provisions for licensees. *Id.* ¶ 29; Timberlake Decl. ¶¶ 10-11. Ringling Bros.' practice is not to be involved with companies or individuals who promote violence, alcohol, illegal activities, sex or cigarettes. Joiner Decl. ¶ 29. Ringling Bros. places great importance on its ability to freely select with whom it associates, or alternatively, chooses not to associate with, as a third party licensee or sponsor in order to ensure that any third party usage of

the Trademarks is authorized, consistent with Ringling Bros.' brand, and not permitting any variations of THE GREATEST SHOW ON EARTH without prior written consent. *Id.* ¶¶ 29, 31; Timberlake Decl. ¶ 12. All of the foregoing in this Section constitutes evidence of fame.

B. Defendants' Diluting Uses Of Ringling Bros.' Trademarks

In order to protect against any potential loss of the distinctiveness of its famous Trademarks, Ringling Bros. has an enforcement program by which it notifies potential diluters or infringers of the mark THE GREATEST SHOW ON EARTH. Joiner Decl. ¶ 12. As part of its enforcement program, on or about October 24, 2017, Ringling Bros. received a press release that Defendants were promoting and launching the "GREATEST SHOW ON EARTH TOUR 2018" (referred to herein as the "Tour") at www.kidrock.com and offering tickets for sale on www.livenation.com and www.ticketmaster.com. *Id.* ¶ 13 and Ex. 9; Payne Decl. ¶ 23. (Ticketmaster merged into Live Nation Entertainment, Inc., one of the Defendants herein.) The Tour is scheduled to appear in venues throughout the United States and Canada including venues in, at least, Kansas City, Missouri; Nashville, Tennessee; Louisville, Kentucky; Tulsa, Oklahoma; Houston, Texas; Atlanta, Georgia; Charlotte, North Carolina; Toronto, Ontario; Columbus, Ohio; Philadelphia, Pennsylvania; Cleveland, Ohio; Uncasville, Connecticut; Baltimore, Maryland; Newark, New Jersey; Nassau County, New York; Chicago, Illinois; Omaha, Nebraska; Denver, Colorado; Phoenix, Arizona; Las Vegas, Nevada and two sold out shows in Durant, Oklahoma. *See* Joiner Decl. ¶ 14 and Ex. 10. With few exceptions, these venues have also hosted THE GREATEST SHOW ON EARTH Circus over the past three years, as part of a Ringling Bros. engagement. Joiner Decl. ¶ 14.

Defendants have repeatedly used "GREATEST SHOW ON EARTH" in commerce—namely, their advertising and promotion of Kid Rock's upcoming concert Tour and the sale of tickets for the Tour. In particular, Defendants have been promoting and launching the Tour at

www.kidrock.com and offering tickets for sale on www.livenation.com and www.ticketmaster.com. Lee Decl. ¶¶ 3-5 and Exs. 2, 3; Payne Decl. ¶ 23. For example, the www.kidrock.com, www.livenation.com and www.ticketmaster.com websites include a banner stating “GREATEST SHOW ON EARTH TOUR 2018.” Lee Decl. ¶¶ 3, 4, 5 and Exs. 1, 2, 3; Joiner Decl. ¶¶ 15, 16, 17 and Exs. 10-12. Also, as part of the Tour, a Kid Rock concert, being held on December 31, 2017, is being promoted and advertised as “THE GREATEST NEW YEAR’S EVE BASH ON EARTH,” further associating Kid Rock with Ringling Bros.’ Marks, even though it is a variation of the famous mark. Joiner Decl. ¶ 18 and Ex. 14. Still further, Defendants are offering VIP packages, including a “Greatest Show on Earth VIP Package,” that include, among other things, an “exclusive Kid Rock- Greatest Show on Earth wall flag,” “collectible Greatest Show on Earth poster,” and “Commemorative Greatest Show on Earth VIP ticket.” Payne Decl. ¶ 23; Joiner Decl. ¶ 19 and Ex. 15. Also, Defendants are (i) sending unsolicited emails to consumers who might be interested in purchasing tickets, prominently displaying “Kid Rock’s Greatest Show on Earth Tour” in such emails (Joiner Decl. ¶ 20 and Ex. 16); (ii) inundating customers with references to Kid Rock’s “GREATEST SHOW ON EARTH TOUR” at every step of the ticket purchasing process (Lee Decl. ¶ 6 and Ex. 4); (iii) generating tickets that state “Greatest Show on Earth” (Lee Decl. ¶ 7 and Ex. 5); and (iv) upon information and belief, using online marketplaces to sell merchandise, including t-shirts, that are emblazoned with the words “GREATEST SHOW ON EARTH TOUR” (Joiner Decl. ¶ 21 and Ex. 17).

As described in a Detroit Free Press article about a Kid Rock concert on September 11, 2017, Kid Rock took the stage beginning with his song "Greatest Show on Earth" surrounded by an array of circus characters. Payne Decl. ¶ 26 and Ex. 4. In addition, in connection with another event, Kid Rock’s 3rd Annual Fish Fry, held on October 6 and 7, 2017, a venue contact

requested assistance in obtaining three circus performers for the event. Murillo Decl. ¶¶ 4-16 and Exs. 1-3. Information was provided as to who could provide the circus performers, though it was later learned that Kid Rock or his team cancelled the request for the performers. Prior to cancelling the request, there was no mention of a Kid Rock Tour named the Greatest Show on Earth.

Kid Rock's performances and public image are antithetical to Ringling Bros.' wholesome, family-oriented image and reputation and his use of Ringling Bros.' Trademarks severely tarnish those marks. For example, at a live Kid Rock show on November 11, 2017, Kid Rock repeatedly used vulgar language, both in his songs and in addressing the audience. Payne Decl. ¶¶ 19, 20. When performing his song the "Greatest Show on Earth," he sang "the greatest f***ing show on earth." *Id.* at ¶ 20. He also delivered remarks bashing the social welfare policies of the United States Government and criticized single mothers, stating that: "They shouldn't have more kids if they can't take care of the kids they already f***ing have!" *Id.* He also performed his song "You've Never Met a Motherf***er Quite Like Me." *Id.* Further, he opened the show with a projected graphic that said "F*** Tank" and had dancers performing onstage wearing bikini tops, short skirts and visible underwear. *Id.* at ¶ 21 and Ex. 1. Kid Rock was also openly drinking alcohol onstage, and he offered merchandise for sale at the venue bearing the words "You've Never Met a Motherf***er Quite Like Me" and "Don't Give a Flyin' Hillbilly F***." *Id.* ¶¶ 20, 22. Kid Rock also created a video entitled "Greatest Show on Earth [Official Music Video]," which towards the end promotes the Tour, displaying "GREATEST SHOW ON EARTH" and "COMING TO A CITY NEAR YOU"—the video likewise contains vulgar language, obscene gestures and images of women in various stages of undress. *Id.* ¶ 24,

25 and Exs. 2 and 3; Timberlake Decl. ¶ 13 and Ex. 2. On YouTube, the video has received more than 2 million views since its release. Payne Decl. ¶ 24.

Defendants' use of the Ringling Bros.' Trademarks as part of the promotion of Kid Rock's Tour creates an association with Ringling Bros. and tarnishes those marks. Payne Decl. ¶ 27. Plainly, such use of the "Greatest Show on Earth" by Kid Rock and Live Nation is inconsistent with and antithetical to the family-friendly reputation that Ringling Bros. has built over the last century in connection with the Trademarks and was not, and would never be, authorized by Ringling Bros. Such use, if not stopped, will harm both Ringling Bros. and its Trademarks and cannot be compensated solely by money. *Id.* ¶ 28; Timberlake Decl. ¶ 14.

On October 26, 2017, in-house counsel for Ringling Bros. sent an email to Kid Rock's manager, Lee Trink, advising him of Ringling Bros.' position regarding its trademark rights in THE GREATEST SHOW ON EARTH and followed up the next day with an email and a message marked "URGENT" through the website www.kidrock.com. Joiner Decl. ¶¶ 22, 23 and Exs. 18-19. In response, Mr. Trink provided the name of Kid Rock's attorney, Peter Paterno, and Ringling Bros.' counsel sent an email to him and had a conversation with him. *Id.* ¶ 24 On November 2, 2017, outside counsel for Ringling Bros. sent a cease and desist letter to Kid Rock's attorney, copying Lee Trink (Kid Rock's manager), Michael Rapino and Michael Rowles both of Live Nation, and Jon Loba of BBR Music Group, Kid Rock's record label. *Id.* ¶ 25 and Ex. 21. On November 16, 2017, Kid Rock's outside counsel responded, claiming that the assertions in the cease-and-desist letter were misplaced and, in particular, that "use of a mark in a title [referring to Kid Rock's use of "GREATEST SHOW ON EARTH" in the name of his concert tour] does not violate the Lanham Act." *Id.* ¶ 27 and Ex. 22 at 1. Contrary to his lawyer's position, Kid Rock has himself obtained trademark registrations for titles of concert

tours, including AMERICAN BAD ASS (which is also the title of one of his songs), as well as CHILLIN' THE MOST (a lyric in one of his songs). Lee Decl. ¶¶ 9-11 and Exs. 7-10.

Based upon the foregoing and Defendants' insistence to continue their course of conduct unaltered, it is clear that Defendants have no intention to cease their unauthorized use of the Ringling Bros.' Marks unless enjoined.

II. LEGAL STANDARD FOR PRELIMINARY INJUNCTION

A preliminary injunction order should be issued when the plaintiff can demonstrate: (1) a likelihood of success on the merits of the claim; (2) the irreparable nature of the threatened injury; (3) the potential harm that might be caused to the opposing party or others if the order is issued; and (4) the public interest, if any. *See* M.D. Fla. R. 4.05(b)(4); *see also* *Schiavo ex rel., Schindler v. Schiavo*, 403 F.3d 1223, 1225-26 (11th Cir. 2005). "No particular quantum of proof is required as to each of the four criteria." *Laboratorios Roldan v. Tex Int'l, Inc.*, 902 F. Supp. 1555, 1565 (S.D. Fla. 1995) (quotation marks and brackets omitted). In addition, in evaluating a preliminary injunction motion, the Court "may rely on affidavits and hearsay materials which would not be admissible evidence for a permanent injunction if the evidence is appropriate given the character and objectives of the injunctive proceeding." *Levi Strauss & Co. v. Sunrise Int'l Trading Inc.*, 51 F.3d 982, 985 (11th Cir. 1995) (internal quotation marks omitted).

As set forth below, the facts of this case more than meet the standard for issuing a preliminary injunction against Defendants to protect Ringling Bros.' trademark rights.

III. RINGLING BROS. IS ENTITLED TO A PRELIMINARY INJUNCTION AGAINST DEFENDANTS

A. Ringling Bros. Is Likely To Succeed On The Merits.

Substantial evidence, set forth in the six supporting sworn Declarations and the exhibits thereto, establishes that Ringling Bros. is likely to succeed in at least its claim for trademark dilution under 15 U.S.C. § 1125(c).

Trademark dilution grants protection to trademarks beyond that provided by the classic “likelihood of confusion” test for trademark infringement under the Lanham Act. 15 U.S.C. §1051 *et seq.* In plain terms, differing from trademark infringement, dilution protects the holders of famous marks from the “gradual whittling away” of the famous marks’ distinctiveness through use by third parties, including on products that do not compete with each other. *Facebook, Inc. v. Teachbook.com LLC*, 819 F. Supp. 2d 764, 785 (N.D. Ill. 2011).

1. Legal Standard for Dilution under the Trademark Dilution Revision Act, 15 U.S.C. § 1125(c)

The Trademark Dilution Revision Act (“TDRA”), 15 U.S.C. § 1125(c), provides that

[s]ubject to the principles of equity, the owner of a *famous mark* that is distinctive, inherently or through acquired distinctiveness, shall be entitled to an injunction against another person who, at any time *after the owner’s mark has become famous, commences use of a mark or trade name in commerce* that is *likely to cause dilution by blurring* or dilution by *tarnishment* of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.

15 U.S.C. § 1125(c)(1) (emphasis added). Thus, a claim for dilution under the TDRA requires a plaintiff to so show that (1) the mark is famous; (2) the defendant has commenced use of the mark in commerce; (3) the defendant’s use began after the mark achieved fame; and (4) the use is likely to cause dilution of the mark by blurring or tarnishment. *Id.*; *see also Bentley Motors Ltd. v. McEntegart*, 976 F. Supp. 2d 1297, 1312-13 (M.D. Fla. 2013).

2. Ringling Bros.' Trademarks are Famous

Under the TDRA, “a mark is famous if it is widely recognized by the general consuming public of the United States as a designation of source of the goods or services of the mark’s owner.” 15 U.S.C. § 1125(c)(2)(A). “To be famous, a mark must have a degree of distinctiveness and strength beyond that needed to serve as a trademark[;] it must be truly prominent and renowned.” *Bentley Motors*, 976 F. Supp. 2d at 1313 (quotation marks and ellipses omitted).

In determining whether a mark possesses the requisite degree of recognition, the court may consider all relevant factors, including the following:

- (i) The duration, extent, and geographic reach of advertising and publicity of the mark, whether advertised or publicized by the owner or third parties.
- (ii) The amount, volume, and geographic extent of sales of goods or services offered under the mark.
- (iii) The extent of actual recognition of the mark.
- (iv) Whether the mark was registered under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register.

15 U.S.C. § 1125(c)(2)(A); *see also Bentley Motors Corp.*, 976 F. Supp. 2d at 1313.

As set forth in Section I.A., *supra*, substantial evidence supports the fact that Ringling Bros.' Trademarks were famous prior to and including the time Defendants have used those marks. Ringling Bros. Circus is the largest circus in the United States and has been in operation since 1872. Payne Decl. ¶ 8. It has appeared annually in cities throughout the United States, in some places for weeks at a time. *Id.* In recent years, it has presented 1,000 performances to 3.76 million people on average annually. *Id.*; *see also Bentley Motors*, 976 F. Supp. 2d at 1313 (noting that the trademark BENTLEY has been used “since at least 1957” and Bentley’s “B IN

WINGS” mark has been used “since 1919”); *Nike Inc. v. Variety Wholesalers, Inc.*, 274 F. Supp. 2d 1352, 1372 (S.D. Ga. 2003) (noting “the length of use of the marks”).

Further, Ringling Bros. has extensively advertised and promoted its Trademarks on television, radio, in print, on websites, and in a motion picture. Payne Decl. ¶¶ 9, 11. Millions of people each year have seen those advertisements and promotional materials. From 2012 to 2016, Ringling Bros. spent in excess of \$65 million on advertising and promotion. Timberlake Decl. ¶ 8; *see also PODS Enter., LLC v. U-Haul Int’l, Inc.*, 126 F. Supp. 3d 1263, 1277 (M.D. Fla. 2015) (fame of mark supported by “evidence that [plaintiff] spent \$70 million in advertising by 2008, and in excess of \$186 million in 2014”); *Nike Inc. v. Variety Wholesalers, Inc.*, 274 F. Supp. 2d at 1372 (fame of mark supported by evidence of “extensive advertising on a worldwide basis”); *Adidas-America, Inc. v. Payless Showsource, Inc.*, 546 F. Supp. 2d 1029, 1063 (D. Or. 2008) (fame supported by evidence of ‘huge’ expenditures” in advertising and promotion).

Ringling Bros. and its Trademarks have also received substantial unsolicited media coverage, including in (i) daily programming, television specials, and documentaries on numerous networks viewed by approximately 60 million people, (ii) numerous printed publications of national and local importance; and (iii) a major, award-winning motion picture entitled “THE GREATEST SHOW ON EARTH,” prominently featuring THE GREATEST SHOW ON EARTH mark. Payne Decl. ¶¶ 9, 11, 15; *see also New York City Triathlon, LLC v. NYC Triathlon Club, Inc.*, 704 F. Supp. 2d 305, 321 (S.D.N.Y. 2010) (fame supported where mark had been “publicized ... via Plaintiffs own efforts, by sponsors, or *via unsolicited coverage*” by numerous major media outlets (emphasis added)); *Addidas America, Inc. v. Skechers USA, Inc.*, 149 F. Supp. 3d 1222, 1247 (D. Or. 2016) (noting that goods carrying trademark have been “the subject of numerous media and pop culture references”). The

estimated advertising value of this unsolicited media coverage since 2016 is in the hundreds of millions and its reach, in terms of estimated unique impressions, is in the tens of billions. Payne Decl. ¶ 16.

In addition, Ringling Bros. has licensed its Trademarks to third parties for a wide variety of goods and services and entered into numerous joint promotions with nationally known retailers, all of which results in significant additional exposure of the Trademarks to the public. Timberlake Decl. ¶ 9.

Finally, Ringling Bros.’ Trademarks have been registered with the Patent and Trademark Office on the principal register at all relevant times, and such trademarks, including its “THE GREATEST SHOW ON EARTH” mark, are incontestable. *See* Joiner Decl. ¶¶ 4-11; *see also Bentley Motors*, 976 F. Supp. 2d at 1313 (fame of marks supported by trademark registration); *Nike Inc. v. Variety Wholesalers, Inc.*, 274 F. Supp. 2d at 1372 (same); *PODS*, 126 F. Supp. 3d at 1277-78 (fame supported by trademark registration and “the incontestable status” of the mark).

Notably, the Fourth Circuit has acknowledged that Ringling Bros.’ “THE GREATEST SHOW ON EARTH” mark was famous. *See Ringling Bros.-Barnum & Bailey Combined Shows, Inc. v. Utah Div. of Travel Dev.*, 170 F.3d 449, 452 (4th Cir. 1999) (noting “essentially undisputed evidence” that mark was famous)³; *see also Adidas-America, Inc. v. Payless Shoesource, Inc.*, 546 F. Supp. 2d at 1063 (court relying on prior finding of fame).

Thus, under the standard set out in the Trademark Dilution Revision Act of 2006, Ringling Bros.’ Trademarks are entitled to protection as famous marks based on the evidence submitted herein.

³ While the court found no dilution in that case, it was decided under the 1999 Trademark Dilution Act, which required showing actual dilution, as opposed to the lesser likelihood of dilution standard of the 2006 TDRA. *Id.* at 452-53.

3. Defendants have used Ringling Bros.' Trademarks in Commerce

Defendants have commenced use of Ringling Bros.' "THE GREATEST SHOW ON EARTH" mark "in commerce" under 15 U.S.C. § 1125(c). The term "use in commerce" means "the bona fide use of a mark in the ordinary course of trade." 15 U.S.C. § 1127. For services, such as Kid Rock's concert tour, that means "us[ing] or display[ing]" the mark "in the sale or advertising" of the services. *Id.* For goods, such as Defendants' merchandise, that means placing the mark on "the goods or their containers or the displays associated therewith." *Id.*

Here, Defendants have repeatedly used "GREATEST SHOW ON EARTH" in commerce—namely, their advertising and promotion of Kid Rock's upcoming concert tour (including numerous references to "GREATEST SHOW ON EARTH" on Defendants' tour-related webpages), the sale of tickets for that tour, and on tour-related merchandise. *See* Lee Decl. ¶¶ 3-7 and Exs. 1-5; Payne Decl. ¶ 23; Joiner Decl. ¶¶ 15-17, 19, 21 and Exs. 11-13, 15 and 17; *see also Bentley Motors*, 976 F. Supp. 2d at 1313 (use in commerce found where defendant "promoted, advertised, partially manufactured, offered for sale the infringing kit cars"). The evidence demonstrates that Defendants have used commercially the "GREATEST SHOW ON EARTH" to identify Kid Rock's concert tour and related merchandise and that their use was thus a trademark usage. *Sands, Taylor & Wood Co. v. Quaker Oats Co.*, 978 F.2d 947, 953-54 (7th Cir. 1992) (holding that a word or phrase functions as a trademark when it is used by a source of a product "to identify itself to the public as the source of its product" and "create in the public consciousness an awareness" of the product's source (internal brackets omitted)). Notably, Kid Rock (Robert Ritchie) has himself obtained trademark registrations for concert tour names that are based on common words and song titles—e.g., AMERICAN BAD ASS (also a title of a Kid Rock song) and CHILLIN' THE MOST (also a lyric from a Kid Rock song) (Reg.

Nos. 2,877,990 and 4,555,942). Lee Decl. ¶¶ 9-11 and Exs. 7-10. Defendants cannot credibly argue that such trademarks are not permitted under the Lanham Act.⁴

4. Defendants' use of Ringling Bros.' Trademarks began after the Trademarks achieved fame.

Defendants' use of Ringling Bros.' Trademarks began only recently in October 2017. That is well after Ringling Bros.' Trademarks had achieved fame in the course of Ringling Bros.' 100-plus year history, as described above.

5. Defendants' use of Ringling Bros.' Trademarks are likely to cause dilution by blurring.

Under the TDRA, “dilution by blurring’ is association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark.” 15 U.S.C. § 1125(c)(2)(B). The ultimate question here is, thus, whether the Defendants’ use of “GREATEST SHOW ON EARTH” is “likely to cause an association arising from their similarity” to Ringling Bros.’ Trademarks, which impairs Ringling Bros.’ Trademarks’ “tendency to identify the source” of Ringling Bros.’ services and products “in a unique way.” *PODS*, 126 F. Supp. 3d at 1277 (citations omitted); *see also Wyndham Vacation Ownership, Inc. v. Timeshares Direct, Inc.*, No. 6:13-CV-195-ORL-28, 2013 WL 5289734, at *3 (M.D. Fla. Sept. 19, 2013) (allegation of likelihood of dilution sufficient where the plaintiff alleged that defendant’s use was “likely to lessen and has lessened and will continue to lessen the capacity of the Plaintiffs’ Marks to identify and distinguish the goods and services of Plaintiffs” (internal

⁴ Defendants have asserted that their use of GREATEST SHOW ON EARTH is noncommercial and, as a result, protected from dilution claims. Joiner Decl., Ex. 22 at 2, citing 15 U.S.C. § 1125(c)(3)(C). They are wrong—Defendants’ use is plainly commercial—namely, drawing attention to and identifying services (Kid Rock’s nationwide concert tour) and products (tour-related merchandise). *See PODS*, 126 F. Supp. 3d at 1275 (noting “considerable evidence that U-Haul used ‘pods’ and ‘pod’ on its website for the purpose of drawing attention to and identifying its competing product”). Defendants have undoubtedly benefited from that use here. *See id.* at 1275-76 (“noting that “U-Haul ‘undoubtedly’ benefitted from that use in promoting its products and services”).

brackets omitted)). “A plaintiff’s showing that a defendant used identical trademarks may constitute circumstantial evidence sufficient to support a finding of dilution.” *Bentley Motors*, 976 F. Supp. 2d at 1314.

In determining whether a mark or trade name is likely to cause dilution by blurring, the court may consider all relevant factors, including six specific factors, which are considered below. 15 U.S.C. § 1125(c)(2)(B).

As to factor (i), Defendants have used marks that are virtually identical to Ringling Bros.’ THE GREATEST SHOW ON EARTH mark—the only difference being Defendants’ omission of the “THE” before “GREATEST SHOW ON EARTH.” Thus, there is not only “similarity,” but virtual identity, between Defendants’ trademark use of “GREATEST SHOW ON EARTH” and Ringling Bros.’ famous mark. *See Bentley Motors*, 976 F. Supp. 2d at 1314; *see also Nike Inc. v. Variety Wholesalers, Inc.*, 274 F. Supp. 2d at 1372 (concluding that defendant had diluted Nike trademarks “due to the identical or virtually identical character of the marks”). This factor strongly favors Ringling Bros.

As to factor (ii), “[i]n the context of blurring, distinctiveness refers to the ability of the famous mark uniquely to identify a single source and thus maintain its selling power.” *University of Kansas v. Sinks*, 565 F. Supp. 2d 1216, 1257 (D. Kan. 2008). Here, Ringling Bros.’ marks are highly distinctive based on, among other things, Ringling Bros.’ 145-year history and its extensive and successful efforts during that time to make the public aware of its marks. This factor also favors Ringling Bros.

As to factor (iii), Ringling Bros. has exclusive trademark rights in “THE GREATEST SHOW ON EARTH” and is actively pursuing all unauthorized uses of “THE GREATEST SHOW ON EARTH,” of which it becomes aware. Ringling Bros. has made great efforts over

the years to protect its famous Trademarks against piracy and any potential loss of the distinctiveness of those marks, monitoring third party usage of the Trademarks and notifying unauthorized users, potential diluters or infringers. Joiner Decl. ¶ 12. It also ensures that licensees are held to Ringling Bros.’ strict quality control standards and conform to the family-oriented values that Ringling Bros. considers essential to its brand. *See id.* ¶ 29; *PODS*, 126 F. Supp. 3d at 1278 (noting “PODS’ efforts to preserve the exclusivity of its marks”); *see also supra* pp. 5-6.⁵ Accordingly, this factor favors Ringling Bros.

As to factor (iv), Ringling Bros.’ Trademarks have a very high degree of recognition and association with Ringling Bros., as described in Section III.A.2, *supra*, in connection with their fame. *See Citigroup Inc. v. Capital City Bank Group, Inc.*, Opp. No. 91177415, 2010 WL 595586, at *27 (T.T.A.B. Feb. 17, 2010) (“This Congressionally mandated factor seems redundant in view of the fact that opposer must establish that its mark is famous as a prerequisite for establishing a dilution claim.”). This factor strongly favors Ringling Bros.

As to factor (v), Defendants have plainly intended to create an association with Ringling Bros.’ famous marks. In his September 11, 2017 concert, Kid Rock took the stage beginning with his song “Greatest Show on Earth” surrounded by an array of circus characters. Payne Decl. ¶ 26 and Ex. 4. In connection with another event, Kid Rock’s 3rd Annual Fish Fry, held on October 6 and 7, 2017, a venue contact sought assistance in obtaining three circus performers

⁵ Over the years, Ringling Bros. efforts to protect its marks have not always prevailed—for example, in the last thirty years, Ringling Bros. was denied a preliminary injunction against the use of “THE GREATEST BAR ON EARTH” (*Ringling Bros.-Barnum & Bailey Combined Shows, Inc. v. B.E. Windows Corp.*, 937 F. Supp. 204, 214 (1996)), and the use of “THE GREATEST SNOW EARTH” was found to be non-diluting under the prior dilution statute, which required proof of actual dilution instead of likelihood of dilution (*Utah Div. of Travel Dev.*, 170 F.3d at 451)). However, none of those cases involved trademark dilution by use of the phrase “GREATEST SHOW ON EARTH,” as Defendants have done here. In any event, “a limited amount of third party use is insufficient to defeat a showing of substantially exclusive use.” *Nike, Inc. v. Nikepal Intern., Inc.*, No. 2:05-cv-1468, 2007 WL 2782030, at *7 (E.D. Cal. Sept. 18, 2007).

(though ultimately did not use them). Murillo Decl. ¶¶ 4-16. Clearly, then, Kid Rock recognized the association of “Greatest Show on Earth” with Ringling Bros.’ Trademarks and has demonstrated an intent to trade on the goodwill of the Trademarks and Ringling Bros. *See also PODS*, 126 F. Supp. 3d at 1278 (noting “the evidence of U-Haul’s intent to use ‘pod’ and ‘pods’ to create an association with the PODS mark”). This factor also favors Ringling Bros.

As to factor (vi), substantial evidence (described above) demonstrates that there is an actual association between “GREATEST SHOW ON EARTH” and Ringling Bros.’ Trademarks. Ringling Bros. has over the past century performed all across the United States before millions of people. It has extensively advertised and promoted its marks and its marks have been repeatedly received unsolicited media coverage. *See supra*, pp. 3-4. Notably, Ringling Bros. was contacted regarding Defendants’ unauthorized use of “THE GREATEST SHOW ON EARTH” marks by Dave Brooks, Founder of Amplify, a digital media company covering the live entertainment industry, and a Senior Correspondent at Billboard Magazine, who expressed surprise at Kid Rock’s use of GREATEST SHOW ON EARTH, when that mark is owned by and associated with Ringling Bros. Payne Decl. ¶ 18. This factor strongly favors Ringling Bros.

All of the above factors support Ringling Bros. In addition, courts often consider survey evidence as probative of dilution—in particular, surveys concerning whether a defendant’s use of a mark “impairs the distinctiveness” (15 U.S.C. § 1125(c)(2)(B)) of the plaintiff’s famous mark. Accordingly, Ringling Bros. retained a respected survey expert to conduct such a survey. McDonald Decl. ¶¶ 2-5, 7. The thrust of the survey was to determine whether Defendants’ use of “GREATEST SHOW ON EARTH” evoked a “circus” in the minds of the respondents. *Id.* ¶¶ 23, 24. If so, that would tend to show that Defendants’ use impaired the ability of Ringling Bros. famous mark to uniquely identify the circus. *Id.* at ¶ 25. The results of the survey showed that

31% of respondents who were exposed to “Kid Rock’s Greatest Show on Earth Tour” associated that name with the “circus”—thus impairing the ability of Ringling Bros.’ famous “THE GREATEST SHOW ON EARTH” mark to uniquely identify the circus. McDonald Decl. ¶ 24. *See Jada Toys, Inc. v. Mattel, Inc.*, 518 F.3d 628, 636 (9th Cir. 2008) (finding survey evidence supports dilution); *National Pork Board v. Supreme Lobster and Seafood Co.*, Opp. No. 91166701, 2010 WL 2513872, at *18 (T.T.A.B. June 11, 2010) (“dilution survey shows that more than thirty-five percent of the survey respondents associate applicant’s slogan with opposers’ slogan”). Dr. McDonald specifically stated:

While dilution often carries with it the implication of brand degradation through negative associations or connotations, dilution of the Ringling Bros.’ brand based on a misappropriated wordmark can occur even among Kid Rock enthusiasts. Dilution blurs brand boundaries by interrupting the stimulus-response process through which consumers reflexively connect a brand with a trademark. That specificity and clarity of brand identity – the ability to use your own trademark and call only yourself to mind among the consuming public – are what constitutes the fundamental rationale for commercial branding and what motivate marketers to police their boundaries with great vigilance. A richly cultivated brand identity can have a life even after the business ceases to operate in conventional ways. Indeed, the equity in a brand is often its most important asset, and no responsible brand steward sits idly by as another commercial entity scavenges famous branding elements for its own marketing purpose. When rigorous survey methodology documents that a sizeable proportion of the consumer public associates “greatest show on earth” with the circus, use of the phrase “Greatest Show on Earth” to evoke the excitement of any other theatrical extravaganza besides the circus – whether wholesome entertainment or not -- is literally the essence of dilution as marketers conceive of it. In my experience, 31% is well above the threshold for concern.

McDonald Decl. ¶ 26. Thus, there can be no doubt that Defendants’ use of Ringling Bros.’ famous mark is likely to cause dilution by blurring.

6. Defendants’ use of Ringling Bros.’ Trademarks are likely to cause dilution by tarnishment.

Under the TDRA, “‘dilution by tarnishment’ is association arising from the similarity between a mark or trade name and a famous mark that harms the reputation of the famous mark.”

15 U.S.C. § 1125(c)(2)(C). “Tarnishing occurs when a trademark is linked to products of shoddy quality, or is portrayed in an unwholesome or unsavory context, with the result that the public will associate the lack of quality or lack of prestige in the defendants’ goods with the plaintiffs’ unrelated goods.” *Delta Air Lines, Inc. v. Network Consulting Assoc., Inc.*, No. 8:14-cv-948, 2014 WL 4347839, at *6 (M.D. Fla. Sept. 2, 2014) (citation omitted). “It is well settled that a mark is tarnished when its likeness is placed in the context of sexual activity, obscenity, or illegal activity. *Pfizer Inc. v. Sachs*, 652 F. Supp. 2d 512, 525 (S.D.N.Y. 2009) (internal quotation marks omitted); *id.* (finding dilution by tarnishment of plaintiff-Pfizer’s mark Viagra where Defendant-advertisers “exhibited [a] Viagra-branded missile at an adult entertainment exhibition, and informed Pfizer that the missile would be displayed again, with two models ‘riding’ the missile and distributing condoms.”). A mark may also be tarnished if it “loses its ability to serve as a ‘wholesome identifier’ of the plaintiff’s product.” *Delta Air Lines, Inc. v. Influence Direct, LLC*, No. 3-14-0926, 3-14-1112, 2016 WL 310068, at *4 (M.D. Tenn. Jan.15, 2016).

Here, Ringling Bros. Trademarks have, by virtue of Ringling Bros.’ extensive efforts, garnered a wholesome, family-oriented image and reputation. Payne Decl. ¶ 17. That reputation, which is invaluable to Ringling Bros.’ business of providing family-oriented entertainment and products, would be damaged by an association with a business or individual that did not take such extensive efforts to garner and maintain a wholesome, family-oriented image. *Id.*; *see also supra*, pp. 5-6.

Kid Rock’s performances and public image are antithetical to Ringling Bros. wholesome, family-oriented image and reputation and his use of Ringling Bros.’ Trademarks severely tarnish those marks. For example, at his live show on November 11, 2017 (part of the Tour), Kid Rock repeatedly used vulgar language, including numerous uses of f**k (and variations of that word).

Payne Decl. ¶¶ 19, 20, 21. He also delivered remarks bashing U.S. social welfare policies and criticizing single mothers (*Id.* ¶ 20); had scantily-clad dancers perform onstage (*Id.* ¶ 21); and openly drank alcohol onstage (*id.* ¶ 20). A video he created that promotes the Tour, which has been viewed over 2 million times on YouTube, likewise contains vulgar language, obscene gestures and images of women in various stages of undress. *Id.* ¶ 24, 25.

Defendants' use of the Ringling Bros.' Trademarks as part of the promotion of and name of Kid Rock's tour creates an association with Ringling Bros. and tarnishes those marks. Payne Decl. ¶ 27. Plainly, such use by Kid Rock and Live Nation of the "Greatest Show on Earth" is inconsistent with and antithetical to the family-friendly reputation that Ringling Bros. has built over the last century in connection with the Trademarks and was not, and would never be, authorized by Ringling Bros. Such use, if not stopped, will harm both Ringling Bros. and its Trademarks and cannot be compensated solely by money. *Id.* ¶¶ 19, 28.

B. Ringling Bros. Will Suffer Irreparable Injury If An Injunction Is Not Granted.

The TDRA acknowledges that trademark dilution, by its nature, causes irreparable harm—expressly providing that “[s]ubject to the principles of equity, the owner of the famous mark ... *shall be entitled to an injunction*” against a defendant that is likely to cause dilution of the famous mark. 15 U.S.C. § 1125(c)(1) (emphasis added); *see also McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1310 (11th Cir. 1998) (“Moreover, trademark actions are common venues for the issuance of preliminary injunctions” (quotation marks omitted)); *New York City Triathlon*, 704 F. Supp. 2d at 327 (granting preliminary injunction for trademark dilution).

Also, even if irreparable injury were not presumed, there is ample evidence that Ringling Bros. will suffer irreparable injury if an injunction is not issued. As explained above, for more than a century, Ringling Bros. has successfully used THE GREATEST SHOW ON EARTH

mark making it synonymous with wholesome, family-oriented fun. Defendants' use of the mark thus threatens to undo more than a century of effort. There is no other adequate remedy to halt Defendants' dilution of Ringling Bros.' mark. And, significantly, without a preliminary injunction, Kid Rock's concert Tour will be completed by the time this case is finally decided and the resulting harm to Ringling Bros. marks fully inflicted.

C. The Potential Harm to Defendants From An Injunction Is Minimal And Outweighed By The Irreparable Injury to Ringling Bros.

The balance of hardships strongly favors Ringling Bros. Without a preliminary injunction, Defendants would continue to freely use Ringling Bros.' Trademarks, blurring and tarnishing them. *See General Motors Corp. v. Phat Cat Carts, Inc.*, 504 F. Supp. 2d 1278, 1287 (M.D. Fla. 2006) ("Without a preliminary injunction Plaintiff would lose control of its trademarks because Defendant would freely continue to use Plaintiff's registered marks."). As a result, the value and good will of the Ringling Bros.' Trademarks will begin eroding, the full value of which cannot be easily calculated or redressed. *See id.*

Any harm to Defendants by their dilution of Ringling Bros.' mark is self-inflicted (especially given that Defendants were aware of the association of those marks with Ringling Bros.) and entitled to little weight. *See CiCi Enter., LP v. Four Word Motion, LLC*, No. 6:16CV1679, 2016 WL 9244626, at *4 (M.D. Fla. Oct. 17, 2016). Further, the potential harm to Defendants is *de minimus*—Defendants simply need to remove the Ringling Bros.' Marks from their advertising and promotion of Kid Rock's Tour and tour-related merchandise. Presumably, people who are going to Kid Rock's concerts to see him perform will do so regardless.

D. The Public Interest Favors Granting An Injunction.

As this court has acknowledged, "the public is interested in fair competitive practices and in the protection of trademarks and trade names." *General Motors*, 504 F. Supp. 2d at 1288.

Issuing a preliminary injunction here would further that public interest. Further, the TDRA expressly provides for injunctive relief against a defendant that causes dilution of a famous mark (15 U.S.C. § 1125(c)(1)), as Defendants have done in this case. Thus, the public policy embodied in the TDRA favors an injunction.

IV. RINGLING BROS.’ BOND AMOUNT SHOULD BE WAIVED, OR, ALTERNATIVELY, NOMINAL

Although Rule 65 customarily requires a bond as a condition for issuance of a preliminary injunction, waiver of the bond requirement is within a district court’s discretion. *See, e.g., BellSouth Telecomms., Inc. v. MCIMetro Access Transmission Servs., LLC*, 425 F.3d 964, 971 (11th Cir. 2005) (“the court may elect to require no security at all”); *Caterpillar, Inc. v. Nationwide Equip.*, 877 F. Supp. 611, 617 (M.D. Fla. 1994) (waiving bond requirement in trademark infringement case); *TracFone Wireless Inc. v. Washington*, 978 F. Supp. 2d 1225, 1235 (M.D. Fla. 2013) (stating that because the plaintiff had a high probability of succeeding on the merits of the Lanham Act claim and defendant had no legitimate interest in the continued use of the trademarks, no bond was required). Alternatively, if a bond is required, a nominal amount should be sufficient. *See, e.g., Developers Sur. and Indem. Co. v. Hansel Innovations, Inc.*, No. 8:14-cv-425, 2014 WL 2968138, at *7-8 (M.D. Fla. July 1, 2014) (noting that the posting of a security was “undoubtedly onerous” and finding a minimal bond appropriate).

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully submit that a preliminary injunction should be issued to enjoin Defendants’ use of “Greatest Show on Earth” in connection with Kid Rock’s concert Tour and grant Plaintiffs any other relief the Court deems appropriate.

Dated: December 26, 2017

Respectfully submitted,

Of Counsel:

Laura Goldbard George
Ian G. DiBernardo
STROOCK & STROOCK & LAVAN LLP
180 Maiden Lane, New York, New York
(212) 806-5400
lgoldbard@stroock.com
idibernardo@stroock.com

BY: /s/ A. Brian Albritton
A. Brian Albritton (Fla. Bar No. 0777773)
PHELPS DUNBAR LLP
100 South Ashley Drive, Suite 1900
Tampa, FL 33602
(813) 472-7557
Fax (813) 472-7570
brian.albritton@phelps.com
Attorneys for Plaintiffs

*Special Admission Attorney Certifications Will
be Filed With the Clerk

**Attorneys for Plaintiffs Feld Entertainment,
Inc. and Ringling Bros.-Barnum & Bailey
Combined Shows, Inc.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 26th day of December, 2017, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that a true and correct copy of the Motion for Preliminary Injunction and its attachments will be served (1) together with a copy of the Complaint on Defendant Ritchie at his residence at 11 Ocean Drive, Jupiter, FL 33496.; and (2) on the Registered Agent for Defendant Live Nation Entertainment Inc. c/o Corporate Creations Network, Inc., 3411 Silverside Road, Tatnall Bldg., Suite 104, Wilmington, DE 19810 by Process Server on December 27, 2017. Also, a copy of the Complaint and attachments and the Motion for Preliminary Injunction and its attachments will be delivered by UPS Overnight on December 27, 2017 to the attorney for Defendant Ritchie, Seth Miller, Esq. King, Holmes, Paterno & Soriano, LLP, 1900 Ave of the Stars, 25th Floor, Los Angeles, CA 90067 and via U.S. Mail (Overnight), to Robert James Ritchie, P.O. Box 3876, Tequesta, FL 33469.

/s/ A. Brian Albritton
A. Brian Albritton

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

FELD ENTERTAINMENT, INC. AND
RINGLING BROS.-BARNUM &
BAILEY COMBINED SHOWS, INC.,

Plaintiff,

vs.

CASE NO. 8:17-cv-3075-JDW-TBM

ROBERT JAMES RITCHIE
(p/k/a KID ROCK); AND LIVE NATION
ENTERTAINMENT, INC.

Defendants.

ORDER ON MOTION FOR PRELIMINARY INJUNCTION

Before the Court is Plaintiffs' Motion for Preliminary Injunction. In their motion, Plaintiffs Feld Entertainment, Inc. and Ringling Bros.-Barnum & Bailey Combined Shows, Inc. generally seek to enjoin the defendants Robert James Richie p/k/a Kid Rock and Live Nation Entertainment Inc. from diluting and tarnishing the plaintiffs' trademarks, including its mark, "The Greatest Show on Earth," by using the same or a similar mark or phrasing as part of or in conjunction with a concert tour that Defendants are promoting under the name, "Greatest Show on Earth Tour 2018." The Court has considered the parties' memorandum of law along with any supporting declarations and evidence, and a hearing was held on Plaintiffs' Motion on _____, 2018. Based upon the record in this case and for other good cause shown, the Plaintiffs' Motion for Preliminary Injunction is GRANTED:

THE COURT HEREBY FINDS as follows:

1. Ringling Bros.-Barnum & Bailey Combined Shows, Inc. ("Combined Shows") is the owner of several valid incontestable Federal trademark registrations, including U.S. Trademark Registration Nos. 1,363,330; 1,363,568; 1,366,779; 2,185,161; 2,380,169; 2,511,740;

3,015,685; and 3,020,576 for the mark THE GREATEST SHOW ON EARTH (collectively, “Ringling Bros.’ Mark” or the “Trademark”). The Trademark is a famous mark.

2. The Ringling Bros.’ Trademark, including THE GREATEST SHOW ON EARTH, have garnered a wholesome, family-oriented image and reputation, which is highly valued by Ringling Bros. Ringling Bros. protects its Trademark by carefully selecting its licensees and has strict quality control provisions for licensees.

3. Robert James Ritchie (p/k/a Kid Rock) and Live Nation Entertainment, Inc. (“Live Nation”) (collectively “Defendants”) are promoting and launching a concert tour by Kid Rock called the “GREATEST SHOW ON EARTH TOUR 2018” and “KID ROCK’S GREATEST SHOW ON EARTH TOUR,” THE GREATEST NEW YEAR’S EVE BASH ON EARTH and any variations thereof currently scheduled for the present through at least part of 2018 (the “Tour”). The Tour is scheduled to appear in venues throughout the United States. Defendants have repeatedly used “GREATEST SHOW ON EARTH” in commerce by their advertising and promotion of the Tour, the sale of tickets for the Tour and the sale of goods. That use in commerce began only recently, well after Ringling Bros.’ Trademarks had become famous.

4. Substantial evidence, including a dilution survey, establishes that Defendants’ use of “GREATEST SHOW ON EARTH” impairs the ability of Ringling Bros. famous “THE GREATEST SHOW ON EARTH” mark to uniquely identify the circus. There is, therefore, a substantial likelihood that Defendants’ use of Ringling Bros.’ Trademarks will dilute the Trademarks by blurring.

5. Defendants’ use of the Ringling Bros. Trademarks creates an association with Ringling Bros. that tarnishes its Trademarks. That use is inconsistent with and antithetical to the

family-friendly reputation that Ringling Bros. has built over the last century in connection with the Trademarks. There is, therefore, a substantial likelihood that Defendants' use of Ringling Bros.' Trademarks will dilute those Trademarks by tarnishment.

6. Plaintiffs are currently suffering and will suffer irreparable injury to its famous Trademarks, as well as its reputation and goodwill, unless it is granted preliminary injunctive relief. Plaintiffs' injury outweighs any harm which granting injunctive relief might cause the Defendants. Plaintiff is likely to succeed on the merits of its underlying trademark dilution claims and the public interest will not be adversely affected by the granting of preliminary injunctive relief.

7. Defendants have no legitimate interest in the continued use of the Trademarks, and, in any event, only *de minimus* potential damages from being enjoined from using those Trademarks.

THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED THAT: Defendants, their officers, agents, servants, employees, and attorneys and any and all other persons in active concert, or participation with them:

A. Are hereby enjoined from advertising, using, diluting or tarnishing THE GREATEST SHOW ON EARTH mark (the "Mark") and any variation of that mark, including without limitation, "GREATEST SHOW ON EARTH TOUR 2018," "KID ROCK'S GREATEST SHOW ON EARTH TOUR 2018" and "THE GREATEST NEW YEAR'S EVE BASH ON EARTH" and any variations thereof (collectively with the Mark, the "Enjoined Mark") in connection the Tour or any other Kid Rock performances, including without limitation, being enjoined from:

1. Promoting, advertising and marketing including an Enjoined Mark on the website at www.kidrock.com;

2. Including an Enjoined Mark on any website, blog or social media, including, but not limited to, the Kid Rock YouTube Channel;
3. Promoting, advertising and marketing materials bearing or using an Enjoined Mark;
4. Using an Enjoined Mark in any advertisements, promotions, marketing, rendering of services, sale of goods or other materials, in any medium, in connection with the Tour;
5. Promoting, advertising, marketing, offering for sale and selling tickets for the Tour on www.livenation.com, www.ticketmaster.com and any other website using an Enjoined Mark;
6. Promotion, advertising and marketing of the Tour using an Enjoined Mark by the venues where the Tour will appear, both onsite and the websites used by the venues;
7. Radio, print and advertising through any medium of the Tour using an Enjoined Mark;
8. Advertising, promoting, marketing, offering for sale and selling the GREATEST SHOW ON EARTH VIP package, including, but not limited to, KID ROCK GREATEST SHOW ON EARTH wall flag, KID ROCK GREATEST SHOW ON EARTH poster, KID ROCK GREATEST SHOW ON EARTH commemorative GREATEST SHOW ON EARTH VIP ticket;
9. Advertising, promoting, marketing, offering for sale and selling merchandise bearing or using an Enjoined Mark;
10. Use of an Enjoined Mark on tickets for the Tour; and
11. Any and all other uses by Defendants including an Enjoined Mark. (Nos. 1 through 11 collectively the “Enjoined Uses”)

B. Are to deliver all catalogs, signs, displays, labels, brochures, videos, images, merchandise, advertising and promotional material bearing the Enjoined Uses in their possession or subject to Defendants’ control or direction to the Clerk of the Court for maintenance during the pendency of this action and for destruction upon entry of a Final Judgment.

C. To promptly remove the Enjoined Uses from all websites owned or operated on behalf of Defendants, their parents, subsidiaries and affiliated companies, their respective officers, agents, servants, employees and attorneys and those persons in active concert or participation with them.

D. To file with the Court within 30 days of the Order a report, signed under oath with a copy to Plaintiffs' attorneys, setting forth in detail the manner and form in which Defendants have complied with the Order.

E. The requirement that Plaintiffs post a bond is hereby waived.

IT IS SO ORDERED

ENTERED this _____ day of _____, 2018,

UNITED STATES DISTRICT JUDGE