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Porn Makers Win \$16 Million in Copyright Infringement Suit

By D. Heimpel

LOS ANGELES - A federal jury has awarded a pair of pornographers \$16.4 million in a copyright infringement and right of publicity claim that followed a trail of knock-off DVDs from the San Fernando Valley's adult entertainment production hub to a Costco-sized warehouse of the stuff in Montreal.

Pornography insiders and lawyers said the verdict, reached after 1½ days of deliberation on Aug. 10, was the largest for adult-entertainment producers in a copyright claim and sends a message to counterfeiters that juries are willing to look at the industry fairly.

"We were very concerned to go in front of a federal court judge," said Sean E. Macias, a name partner at Los Angeles' Leader Kozmor Macias and an attorney for one of the plaintiffs, Ashley Gasper, aka Jules Jordan.

To prove the shoddy nature of the counterfeits, the jury had to be shown clips of the videos.

"It was very stressful, going in. Showing a Walt Disney film would have been a lot easier," Macias said.

Lawyers for defendant Alain Elmaleh, owner of Montreal-based Kaytel Video Distribution, said they were waiting for Judge S. James Otero to review motions seeking to reduce the jury award.

Mike Plotkin, Elmaleh's lead defense lawyer, said that if Otero's ruling was unsatisfactory, his client would appeal.

Intellectual property litigator Lincoln Bandlow, who was not a part of the case, said the award illustrates the value of brands in the adult entertainment world and a court's willingness to defend that value.

"There is a lot of piracy of video content," Bandlow said. "And porn is ripped off as frequently if not more frequently than other types of video, and it is just as protectable."

The award came after a two-year investigation that saw counterfeit copies of 40 titles show up all over the world.

During the trial, Gasper, one of adult entertainment's most awarded directors, who uses the pseudonym Jules Jordan and is based in Van Nuys, testified that he came across counterfeit copies of his films in the Eighth Avenue area of New York City in the spring of 2005.

"I walked in to 16 [porn] shops in a four-mile radius," he said. In every one, he said, he found a bootlegged copy of one of the 13 titles produced under his Jules Jordan name. The films included his most popular series: "Flesh Hunter" and "Ass Worship."

He said Evil Angel, another adult entertainment production company also based in Van Nuys and onetime Jules Jordan distributor, found an additional 27 of its titles copied during an inventory of returned films.

The two parties sued the distributor in federal court in Los Angeles on Sept. 15, 2005. The cases later were consolidated. *Jules Jordan Video, Inc. v. Kaytel Video Distribution* CV05-0517 SJO, and *John Stagliano Inc. v. Alain Elmaleh et al.* CV505-6769 SJO.

The trail of bootlegged DVDs started in late 2004, when both Evil Angel and Jules Jordan titles started being returned to stores at an alarming rate.

Gasper said the returns piqued the companies' interests. They found that the returned DVDs were written on DVD-5, a lower-quality disc than the standard DVD-9. Many of the returned discs' menus did not work, Gasper said, and in some cases artifact patterns obscured the images, a common symptom of trying to cram too much information on an inferior disc.

Evil Angel and Jules Jordan started suing the individual stores carrying the counterfeit films. By mid-2005, the store owners had divulged information on the distributors, and in September, Evil Angel and Jules Jordan sued Elmaleh, calling him the piracy mastermind.

Gasper said he was able to trace the films through a numbering system that Royal Philips Electronics of the Netherlands, the Dutch company that manufactures DVD glass masters, also known as stampers, from which thousands of DVDs can be replicated, uses to ensure it is paid royalties.

Using the numbers found on the counterfeit discs, Gasper said, lawyers for Evil Angel and Jules Jordan found that the stampers were being made in Brea, Calif., and were then shipped to Montreal and replicated by a company called Diadem.

Through an intermediary, Sylnet, Elmaleh bought the replicated DVDs, Gasper said. Then, through a shell company run by his hairdresser, Elmaleh distributed the X-rated films across the border, he said.

Gasper recalled ordering counterfeit copies of his DVDs from as far as France through online pornography stores.

The jury's large verdict, Gasper said, reflects the value of the films.

He said Kaytel went to so much trouble and expense to counterfeit and distribute the DVDs because of their per-unit value. He said that his DVDs garner anywhere from \$15 to \$22 wholesale and can retail from \$29.95 to \$79.95.

"These are real collector's items," he said.

He said average production for a film runs \$30,000, mainly because of the price of the talent - female stars - he employs.

Mark Kernes, the editor of Adult Video News, the industry's trade publication, said Gasper's success has come largely from his exploitation of the genre that Evil Angel CEO John Stagliano made popular the early '90s with the "Adventures of Butt Man" series, which features interaction between the performers and the viewers.

"The performers directly address the viewer," Kernes said. "The fantasy is that the viewer is having sex with the performer."

Gasper, who stars in some of the films himself, said the quality of the talent helps, too.

Finding such talent, coupled with using the interactive shooting approach and employing high-quality production techniques, helped Gasper win numerous Adult Video News awards as a director and gross \$10 million in the six years that he has been in business.

Of the \$16.4 million jury award, \$5.4 million will go to Gasper and the other \$11.2 million will go to Evil Angel.

Evil Angel's attorney, sole practitioner Allan Gelbard, a former pornography cameraman himself, said that this was not a "paper victory" and that Elmaleh had enough assets to pay what the jury awarded.

Elmaleh could not be reached for comment.