

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

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No. 97-10036  
Summary Calendar

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HOGAN SYSTEMS, INC.,

Plaintiff-Appellant,

VERSUS

CYBRESOURCE INTERNATIONAL, INC.; DAVID BOEHR;  
DOUGLAS PERADOWSKI; JAMES HELMS; MICHAEL GREENE,

Defendants-Appellees.

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Appeal from the United States District Court  
For the Northern District of Texas

(3:96-CV-2083-H)

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October 20, 1997

Before DUHÉ, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:\*

Hogan Systems, Inc. ("Hogan") filed suit in July 1996 against Cybresource International, Inc. ("Cybresource") and its employees, James Helms, Douglas Peradowski and David Boehr, seeking injunctive and monetary relief from these defendants for copyright

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\*Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

infringement, breach of contract, trade secret misappropriation, unfair competition, tortious interference and misappropriation. In August 1996, Hogan filed its application for a preliminary injunction and on December 10, 1996, the district court conducted an evidentiary hearing on the requested injunctive relief. At the conclusion of the hearing, the district court dictated its findings and conclusions into the record and denied Hogan's request for temporary injunctive relief. Hogan timely appealed such denial to this Court, pursuant to 28 U.S.C. § 1292(a)(1).

During the pendency of this appeal, the parties continued to prosecute the case before the district court and in early June 1997 the district court granted the motion for summary judgment filed by Cybresource and its employees. Hogan timely appealed from such final judgment and that appeal is separately docketed in this Court under Cause No. 97-10645, "Hogan Systems, Inc. v. Cybresource International, et al." On June 30, 1997, Cybresource, et al. filed their motion to dismiss this appeal (97-10036) for mootness because of the entry of such summary judgment.

We have carefully considered Cybresource's motion to dismiss for mootness and the response of Hogan thereto and conclude that this appeal has not been rendered moot because the summary judgment in favor of Cybresource has itself been appealed and there has been no final determination of the validity or not of such summary judgment. Accordingly, we deny the motion to dismiss this appeal for mootness.

We have carefully reviewed the briefs and record excerpts and relevant portions of the record itself; and conclude, for the reasons dictated by the district court into the record on December 12, 1996, that the district court did not err in denying Hogan's motion for temporary injunction. Accordingly, the Order filed on December 12, 1996, by the district court is affirmed.

We have not addressed and nothing herein should be construed as addressing, the issues raised in the separate appeal No. 97-10645, "Hogan Systems, Inc. v. Cybresource International, Inc., et al.," now pending before this Court.