

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. _____

CARACOL TELEVISION S.A.,)
)
Plaintiff,)
)
v.)
)
TELEMUNDO TELEVISION)
STUDIOS, LLC., TELEMUNDO)
INTERNACIONAL LLC, and)
TELEMUNDO NETWORK GROUP)
LLC,)
)
Defendants.)
_____)

DECLARATION OF JORGE MARTINEZ DE LEON
IN SUPPORT OF PLAINTIFF’S MOTION
FOR ENTRY OF PRELIMINARY INJUNCTION

1. My name is Jorge Martinez De Leon and I am Legal Representative of Caracol Television S.A.

2. Caracol Television S.A. (“Caracol”) is a sociedad anónima organized and existing under the laws of Colombia, with its principal place of business in Bogota, Colombia. Caracol operates a network of television stations in Colombia, produces programming for broadcast on its television network and through other distributors and carriers in the United States and throughout the world.

3. Upon information and belief, Telemundo Television Studios, LLC (“TTS”), Telemundo Internacional LLC (“TI”), and Telemundo Network Group LLC (“TNG”) (TTS, TI, and TNG, collectively, “Telemundo Companies”), are limited liability companies organized and existing under the laws of Delaware, with their principal place of business in Miami, Florida.

4. TTS produces Spanish-language television programming which is distributed for exhibition through TNG in the United States and through TI throughout the world. TNG operates a Spanish-language television network which distributes television programming through affiliated broadcast stations, cable TV carriers and satellite distributors. TI is a distributor of Telemundo programming internationally. TTS, TNG, and TI operate as subsidiaries of Telemundo Holdings, Inc.

5. On or about October 25, 2012, Caracol and TTS entered into a Co-Production Agreement, a copy of which is attached as Exhibit A to the complaint filed in this case, by which the parties agreed to jointly develop, produce and distribute a Spanish-language telenovela titled “El Señor de los Cielos,” referred to in the Co-Production Agreement as the “Series.”

6. The parties agreed in the Co-Production Agreement that the copyright in the Series, in the script, and in derivative works was owned by Caracol and TTS jointly, subject to certain limitations upon the rights of each as a joint owner.

7. On or about October 25, 2012, Caracol and TI entered into an International Distribution Agreement, a copy of which is attached as Exhibit B to the complaint filed in this case, by which the parties agreed to certain exclusive exploitation and distribution rights as to the Series.

8. Caracol and TTS agreed to limitations upon their rights as joint owners to make derivative works based upon the Series. Clause 5(b) of the Co-Production Agreement provides in part:

In the event that either Party is interested in creating and/or producing or licensing a Remake, Spinoff, or Sequel based on the Series (each a “Derived Series”), such Party shall offer the other Party the option to become a co-producer in the creation, production, and exploitation of such Derived Series. . . . If the Party that receives the offer to co-produce the Derived Series rejects the offer in writing, then the Parties shall negotiate in good faith during the sixty (60) days following

the notice of rejection the terms under which the interested Party may be granted the sole right to produce the Derived Series.

9. The parties completed the production of the Series in accordance with the Co-Production Agreement and began distribution and exploitation in accordance with the terms of the Co-Production Agreement and the International Distribution Agreement. The original Series is a telenovela comprised of 74 episodes, which was first broadcast in 2013.

10. Pursuant to the provisions of Clause 5(b) of the Co-Production Agreement, TTS offered to Caracol the option to co-produce a sequel to the Series. On or about August 27, 2013, Caracol and TTS entered into a letter agreement (the "Letter Agreement"), a copy of which is attached as Exhibit C to the complaint filed in this action. The Letter Agreement provided that TTS would produce and distribute a sequel to the Series, subject to certain exhibition rights granted to Caracol. Clause 3 of the "Term Sheet" attached to the Letter Agreement provides:

a. TTS will develop, produce, own, and distribute a sequel to the "El Señor de los Cielos" (the "Series") for the exhibition and exploitation in the United States, its territories, as well as throughout the world (the "Sequel").

b. The Sequel will be based upon the original format of the Series, which TTS shall have all right to use all elements (e.g., characters, story, scenarios, locales, etc.) derived from the Series and any new elements added by TTS for purposes of creating the Sequel. For clarity, TTS will not be entitled to use images and content licensed by Caracol for the Series, except as agreed mutually by the Parties in a case-by-case scenario.

11. Upon information and belief, TTS produced the Sequel, a telenovela bearing the same title, "El Señor de los Cielos," comprised of 84 episodes, and commonly referred to as the second season, which was first broadcast in 2014. Upon information and belief, TI distributed the Sequel internationally, and licensed exhibitions of the Sequel worldwide.

12. Upon information and belief, TTS produced and exhibited a third season of "El Señor de los Cielos," comprised of 104 episodes and released in 2015, a fourth season comprised

of 80 episodes and released in 2016, a fifth season comprised of 95 episodes released in 2017, and a sixth season released in 2018 and which is currently being broadcast (collectively the “Derived Series”). TTS did not offer to Caracol the opportunity to co-produce any of the Derived Series and did not negotiate any terms with Caracol for the sole production by TTS of the Derived Series. Upon information and belief, TI distributed the Derived Series internationally, and licensed exhibitions of the Derived Series worldwide.

13. Prior to the production and release of the Series, Caracol had produced and exhibited two seasons of a telenovela titled “El Cartel” and “El Cartel 2,” each of which were first published in Colombia. Caracol owns the copyrights in “El Cartel” and “El Cartel 2.”

14. Among the elements of “El Cartel” and “El Cartel 2” in which Caracol owns copyright is the portrayal of a fictional character known as El Cabo. This character constitutes an original expression that is distinctively delineated by with a unique combination of character traits, as follows:

- a. El Cabo, the commonly used alias for the character Milton Jimenez, is a man in his 30’s, with dark hair, and a bushy handlebar mustache.
- b. El Cabo wears a lot of gold jewelry: a ring, a gold chain bracelet, and always a thick gold chain necklace with a cross.
- c. El Cabo often wears dark aviator-style wire sunglasses.
- d. El Cabo’s hair is short, sometimes gelled and spiky, sticking up.
- e. El Cabo often wears a straw cowboy hat with the sides of the brim turned up sharply.
- f. El Cabo dresses informally, in a track suit of silky appearance, with a zippered jacket opened about one-quarter revealing a hairy chest.

g. El Cabo wears white sneakers with his track suit

h. El Cabo is from the Colombian region of Antioquia, with a very distinct "Paisa" accent. He often uses the colloquial term of address "*mijo*" (a contraction of *mi hijo*, meaning my son). His speech is vulgar.

i. El Cabo is the main hitman for the Cartel of the Pacific, and is one of the biggest gangsters in Colombia.

j. El Cabo is a cold-blooded killer, hotheaded, vengeful, quick to use weapons, often a handgun or revolver. El Cabo is a cool killer who can murder someone while talking nicely on the phone with his girlfriend at the same time.

k. El Cabo is a contradiction in terms: he is a jester, a fool, but violent; he can be nice, but is coarse and vulgar; he is loyal, but is traitorous as well; he is subservient, but arrogant. He is cynical, excitable, extravagant.

15. The El Cabo character, as he appears the "El Cartel" and "El Cartel 2," is depicted in the photographs attached to this declaration as Exhibit 1.

16. Elements of "El Cartel" and "El Cartel 2," including certain characters, story, and scenarios and the El Cabo character, were licensed by Caracol for use in the Series and in the Sequel.

17. TTS has continued the use of certain elements of "El Cartel" and "El Cartel 2" and in particular the El Cabo character in its productions and licensing of the Derived Series, without seeking Caracol's permission for such use and in violation of Caracol's copyrights. TTS has also used the El Cabo character in commercial promotions of other TTS programs, specifically, an audio-visual piece broadcast by TTS and TNG to promote broadcasts of 2018 World Cup games. While the Letter Agreement permitted TTS to use all elements of the original

Series in the Sequel, TTS did not obtain permission to use elements of “El Cartel” and “El Cartel 2” in the subsequent Derived Series or commercial promotions.

18. The continued use of the El Cabo character by TTS in the Derived Series and in commercial promotions is marked by exactly the same attributes and characteristics of the El Cabo character as portrayed in “El Cartel” and “El Cartel 2.” In fact, TTS has hired the same actor that filled the role of El Cabo in the Caracol productions to portray the same character in the Derived Series and commercial promotions. Examples of The El Cabo character, as he appears the “El Senor de los Cielos” series is depicted in the photographs attached to this declaration as Exhibit 2.

19. Thus, TTS has knowingly and intentionally copied and used the El Cabo character, with full knowledge of Caracol’s copyrights in “El Cartel” and “El Cartel 2” without Caracol’s permission. TTS made unauthorized copies and derivative works of the El Cabo period in its productions of the Derived Series.

20. TI and TNG have knowingly and intentionally distributed, exhibited, and licensed the exhibition of the infringing Derived Series and commercial promotions, and continue to do so.

21. TTS has announced that it intends to produce a seventh season of “El Senor de los Cielos” and it is expected that the new production will include the El Cabo character without obtaining permission from Caracol.

22. Upon information and belief, TTS intends to produce a spinoff series based upon the El Cabo character without obtaining permission from Caracol.

23. Continued and unauthorized use of the El Cabo character by TTS, TNG and TI denies Caracol its right to control its work, denies it the right to realize economic gain from its own use of El Cabo, and threatens the loss of a valuable asset.

24. The wrongful acts of TTS, TI and TNG have caused and are causing great injury to Caracol, which damage cannot be accurately computed, and unless this Court restrains the Telemundo Companies from the further commission of these acts, Caracol will suffer irreparable injury, for all of which Caracol is without any adequate remedy at law.

25. I declare under penalty of perjury that the foregoing is true and correct. Executed on August 23, 2018

A handwritten signature in black ink, appearing to read 'Jorge Martinez de Leon', written over a horizontal line.

Jorge Martinez de Leon