

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

TERRY GENE BOLLEA professionally
known as HULK HOGAN,

Plaintiff,

vs.

Case No. 12012447CI-011

HEATHER CLEM; GAWKER MEDIA, LLC
aka GAWKER MEDIA; GAWKER MEDIA
GROUP, INC. aka GAWKER MEDIA;
GAWKER ENTERTAINMENT, LLC;
GAWKER TECHNOLOGY, LLC; GAWKER
SALES, LLC; NICK DENTON; A.J.
DAULERIO; KATE BENNERT, and
BLOGWIRE HUNGARY SZELLEMI
ALKOTAST HASZNOSITO KFT aka
GAWKER MEDIA,

Defendants.

**PLAINTIFF TERRY BOLLEA'S MOTION IN LIMINE NO. 20 TO EXCLUDE AND
STRIKE DEFENDANTS' UNDISCLOSED WITNESS: MINDGEEK**

Plaintiff Terry Bollea, professionally known as "Hulk Hogan" ("Mr. Bollea"), hereby moves this Court in limine under Fla. Stat. § 90.104 for an Order prohibiting Defendants from introducing any testimony, evidence, or argument, during any portion of the trial, related to their recently listed witness MindGeek (corporate representative).

In support of his motion, Mr. Bollea states the following:

1. On June 8, 2015, Defendants served their Witness List for trial, which includes a previously undisclosed witness: "Corporate Representative" of "MindGeek."
2. June 8, 2015 was the first time this entity and its unidentified corporate representative were identified as a witness in this case.
3. The parties engaged in discovery for over two years, during which time MindGeek was never disclosed.

4. Defendants have not even identified the actual name of the person who they plan to call as a witness at trial. Apparently, it will be a surprise to Defendants, as well as to Mr. Bollea and the Court.

5. “A primary purpose in the adoption of the Florida Rules of Civil Procedure is to **prevent the use of surprise, trickery, bluff and legal gymnastics.**” *Surf Drugs, Inc. v. Vermette*, 236 So.2d 108, 111 (Fla. 1970) (emphasis added). *Spencer v. Beverly*, the DCA held: “The discovery rules were enacted to eliminate surprise, to encourage settlement, and to assist in arriving at the truth. If that be the acknowledged purpose of those particular rules, then any evidence to be used at trial should be exhibited upon proper motion.” 307 So. 2d at 462 (citing *Surf Drugs*).

6. In *Binger v. King Pest Control*, 401 So.2d 1310 (Fla. 1981), the Florida supreme court provided guidance for analyzing a trial court’s exclusion of testimony that should have been disclosed prior to trial. The trial court “should be guided largely by a determination as to whether use of the undisclosed witness will prejudice the objecting party. Prejudice in this sense refers to the surprise in fact of the objecting party, and it is not dependent on the adverse nature of the testimony. Other factors which may enter into the trial court’s exercise of discretion are: (i) the objecting party’s ability to cure the prejudice or, similarly, his independent knowledge of the existence of the witness; (ii) the calling party’s possible intentional, or bad faith, noncompliance with the pretrial order; and (iii) the possible disruption of the orderly and efficient trial of the case (or other cases).” *Binger*, 401 So.2d at 1314.

7. On March 2, 2015, Defendants served their initial trial witness list, which included 30 witnesses, but not MindGeek. Fact discovery closed on April 10, 2015. On June 8,

2015, Defendants identified a “Corporate Representative” of “MindGeek” as a fact witness for the first time.

8. Mr. Bollea has no idea what, if any, relevant knowledge MindGeek has about the facts of this case.

9. Defendants’ untimely revelation of MindGeek unfairly prejudices Mr. Bollea because he was denied the opportunity to conduct discovery concerning this “witness” when Defendants failed to disclose MindGeek during discovery. Now, there is not sufficient time to investigate and depose this new witness.

10. Defendants should not be permitted to engage in ambush litigation such as this. *See Southstar Equity, LLC v. Lai Chau*, 998 So.2d 625, 630 (Fla. 2nd DCA 2008) (holding trial court did not abuse its discretion in excluding the testimony of an unlisted witness; “Indeed, in light of the limited information that the defendants provided to the trial court, a decision permitting the witness to testify may well have been an abuse of discretion.”); *Thompson v. Wal-Mart Stores, Inc.*, 60 So.3d 440, 444 (Fla. 3d DCA 2011) (“Trial courts should not allow litigants to circumvent the rules by preparing [this type of evidence] at the last minute.”).

For the foregoing reasons, Mr. Bollea requests that the Court enter an Order prohibiting Defendants from introducing any testimony, evidence, or argument, during any portion of the trial, related to MindGeek (corporate representative), and enter an order striking MindGeek from Defendants’ Witness List.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail via the e-portal system this 12th day of June, 2015 to the following:

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