

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO
CIVIL DIVISION

ELLORA’S CAVE PUBLISHING, INC.)
1056 Home Avenue)
Akron, Ohio 44310)

CASE NO.

and)

JUDGE

JASMINE-JADE ENTERPRISES, LLC)
1056 Home Avenue)
Akron, Ohio 44310)

Plaintiffs,)

-vs-)

DEAR AUTHOR MEDIA NETWORK,)
LLC, AN IOWA LIMITED LIABILITY)
COMPANY)

COMPLAINT:
INJUNCTIVE RELIEF
DEFAMATION

Statutory Agent: Jennifer Gerrish-Lampe)
531 77th Street)
West Des Moines, IA 50266)

MOTION FOR TEMPORARY
RESTRAINING ORDER

and)

JURY DEMAND ENDORSED HEREON

JENNIFER GERRISH-LAMPE)
Aka Jane Litte)
630 E. Locust Street)
Des Moines, IA 50319)

INSTRUCTIONS FOR SERVICE

PARTIES AND JURISDICTION

1. Ellora’s Cave Publishing, Inc. (Ellora’s) is an Ohio Corporation with its principal place of business located in Summit County, Ohio.

2. Jasmine Jade Enterprises, LLC (Jasmine-Jade) is an Ohio limited liability Company with its principal place of business located in Summit County, Ohio. Ellora’s and Jasmine-Jade are sometimes collectively referred to as the “Companies.”

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3. Dear Author Media Network, LLC (Dear Author) is an Iowa Limited Liability Company doing business in the State of Ohio and an address for service of process c/o Statutory Agent, Jennifer Gerrish-Lampe 531 77th Street, West Des Moines, Iowa, 50266.

4. Defendant Jennifer Gerrish-Lampe aka Jane Litte (Lampe) is an individual who has submitted writings which appear in Dear Author and are published for review in Summit County, Ohio with an address for service of process located at 630 E. Locust Street, Des Moines IA 50319.

5. Venue is proper in Summit County because the injuries resulting from Defendants' publication of defamatory information occurred in this County.

6. This Court has personal jurisdiction over this defendant because (a) it engages in activities which affect commerce in Ohio; (b) committed violations of Ohio law in Ohio; and (c) published defamatory and unlawful information concerning Plaintiffs that are Ohio businesses and the defamatory publication was directed to and substantially felt in Ohio.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

7. Ellora's is a publishing company which contracts with authors (Hereinafter Authors") to publish electronic books.

8. Lampe founded an internet blog entitled Dear Author (the "Blog") which is operated by Dear Author.

9. Lampe publishes her own writings on the Blog under the name Jane Litte.

10. On September 14, 2014, Lampe authored an internet blog which was published by Dear Author and displayed across the nation in a article entitled "The Curious Case of Ellora's Cave" ("Libelous Publication").

11. In this Libelous Publication, Lampe makes many allegations that are false and are not supported by creditable or competent evidence in an effort to mar Plaintiffs' reputations.

12. Specifically, in an effort to undermine public and private trust and confidence in the continuing viability of the Companies, Defendants made false and defamatory statements concerning the Companies' financial stability and practices, insinuating that the Companies are on the verge of financial ruin. Such false statements include:

- a. That employees of Ellora's are going unpaid when in fact they are being paid.
- b. That the Authors have not received royalty payments in over six months when in fact they are being paid.
- c. That unpaid royalties, editor fees, and cover artist fees amount to several thousands of dollars perhaps approaching six figures when in fact they do not.
- d. That Ellora's is liquidating assets when in fact it is not.
- e. That the author portal shut down to prevent Author's from checking on their royalties when in fact it was not.
- f. That the founder of Ellora's, Tina Engler (Engler), has been going on high end shopping sprees while the Authors and employees who make money for the Companies go without when in fact she is not.
- g. That Engler recently purchased a home in West Hollywood Hills when in fact she did not.

13. Additionally, this Libelous Publication furthers the heightens the false impression of financial instability and attempts to induce panic in Plaintiff's Authors by stating that Ellora's will close by the end of the year or is likely to undergo a bankruptcy where the Authors'

intellectual property rights can be sold to the highest bidder. A copy of the Libelous Publication is attached hereto as Exhibit "A."

14. The Libelous Publication is calculated through its implications and connotations to convey to the public false and misleading suggestions about Ellora's current business affairs and status.

15. This Libelous Publication has caused distress among current Authors under contract with Ellora's, and Ellora's has received numerous contacts from Authors wishing to rescind contracts based on this Publication.

16. This Libelous Publication has caused distress among employees and contractors with Ellora's and Ellora's has received numerous contracts from employees and contractors concerned about the current state of the business.

17. This Libelous Publication has also prevented Ellora's from contracting with other potential authors.

18. Jasmine Jade is another entity owned and operated by Engler is referenced in the Libelous Publication.

19. The Libelous Publication has caused distress among employees, contractors, and clients of Jasmine Jade and Jasmine Jade has received numerous contacts from employees, contractors, and clients concerned about the current state of business of Jasmine Jade.

FIRST CLAIM

(Injunctive Relief)

20. Ellora's and Jasmine Jade incorporates by reference each and every allegation above as if recited verbatim.

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21. Lampe has published libelous statements which have detrimentally impacted Ellora's current and future business endeavors.

22. If Lampe is allowed to continue to publish these libelous statements including the Libelous Publication, Ellora's will be irreparably damaged.

23. There is a substantial likelihood that Plaintiffs will succeed on the merits.

24. The threatened injury to Plaintiffs outweighs whatever damage that the proposed injunction will cause to Defendants.

25. Accordingly, Plaintiffs seek injunctive relief prohibiting Defendants, either directly or indirectly, from making any libelous statements and further, requiring Defendants to remove from any and all sources any previous libelous statements including removing from any and all sources the Libelous Publication.

SECOND CLAIM
(Defamation-Libel)

26. Ellora's and Jasmine Jade incorporates by reference each and every allegation above as if recited verbatim.

27. Defendants, Dear Author and Lampe, maliciously contriving and intending to injure Plaintiffs and deprive them of the respect, confidence, and esteem made false and defamatory statements concerning Plaintiffs business, in writing and published them on the internet with the intent to damage Plaintiffs' business amongst its readers, Authors, prospective authors and other third parties.

28. As a result of the Defendants conduct, Plaintiffs have been deprived in the State of Ohio and across the county of public confidence and confidence of its affiliates and have wrongfully been held in distrust.

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29. The false statements were published by Defendants with malice, hatred and ill will toward Plaintiffs with a desire to injure them.

30. Plaintiffs have suffered economic damages and damage to their reputation and good will as a result of the actions of Defendants.

31. Plaintiffs are entitled to punitive damages and reasonable attorney fees as a result of the malicious conduct of Defendants.

THIRD CLAIM
(Defamation-Libel Per Se)

32. Ellora's and Jasmine Jade incorporates by reference each and every allegation above as if recited verbatim.

33. Defendants have made false statements against Plaintiffs falsely alleging that Plaintiffs are engaging in unethical business practices intended to deprive its Authors and employees of compensation due them.

34. Said statements directly relate to Plaintiffs' trade and business.

35. These false statements were published to third parties, and to all the world, via the internet.

36. These statements tend to, and in fact do, injure Plaintiffs in their trade and business.

37. Defendants made these statements and published them with reckless disregard for the truth.

38. As a result of the Libelous Publication Plaintiffs have suffered economic damages and damage to their reputation and good will.

39. Plaintiffs are entitled to punitive damages and reasonable attorney fees as a result of the malicious conduct of Defendants.

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DEMAND

WHEREFORE, having fully stated its Complaint, Plaintiff Ellora's Cave Publishing, Inc. respectfully requests this Court issue the following relief against Defendants and Defendants' agents and employees:

- Immediate and permanent injunctive relief prohibiting the publication of any previous or future libelous content against Ellora's.
- Permanent injunctive relief requiring Defendant's to remove any postings from Dear Author the blog post of September 14, 2014 concerning Plaintiffs.
- Judgment against the Defendants in an amount no less than \$25,000.00, plus punitive damages and interest thereon.
- All further and other relief deemed appropriate, including interest, costs, expenses, and reasonable attorney fees.

Respectfully submitted,

NIEKAMP, WEISENSELL, MUTERSBAUGH, &
MASTRANTONIO, LLP

/s/ Steven W. Mastrantonio

Steven W. Mastrantonio (0062575)
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mastrantonio@nwm-law.com
Counsel for Plaintiffs

Daniel M. Horrigan, Summit County Clerk of Courts

JURY DEMAND

Plaintiff demands trial by jury duly empanelled upon each and every issue in controversy subject to the procedural laws, rules, and regulations of the State of Ohio.

/s/ Steven W. Mastrantonio

STEVEN W. MASTRANTONIO (0062575)
Counsel for Plaintiffs

INSTRUCTIONS FOR SERVICE

Please serve a copy of the Summons and Complaint and the attached Motion for Temporary Restraining Order upon the Defendants at the addresses set forth in the caption, simultaneously by certified mail, return receipt requested.

/s/ Steven W. Mastrantonio

STEVEN W. MASTRANTONIO (0062575)
Counsel for Plaintiffs

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Sep 14, 2014

The Curious Case of Ellora's Cave



Jane [EBOOKS](#) [Elloras-Cave](#) [137 Comments](#)



Long before there was the Kindle, long before self publishing, long before the emergence of Fifty Shades, a digital first publisher by the name of Ellora's Cave began to deliver sexy reads that would transform the face of romance publishing. Ellora's Cave was established in 2000 as an outlet for Tina Engler to publish books with heavy sexy content that were romantic in nature. Because there was no "ebook" in the late 1990s, Engler would create PDFs and email them to reader who sent her money via paypal. In 2000, EC was established and soon thereafter, it would become a powerhouse selling hundreds of thousands of ebooks a year in a world where ebooks did not exist for the most part.

Engler's path was not dissimilar to that of JK Rowling. She went from welfare to millionaire in a short time.

Ellora's Cave fed an unheretofore unexplored appetite of women for explicit scenes, bold women, and frank language. Prior to 2000, references to the penis would often be couched in terms such as "manroot" "stalk" and "pleasure rod". The clitoris or vagina would be known in equally obscure terms. Now it's not uncommon to see the use of "cock", "cunt", or "pussy" within many mainstream romances whether they be historical, contemporary or paranormal. Today the line between erotic romance and non erotic romance appears blurred, not just for readers but authors and publishers as well.

But in 2000, erotic romance was a new and somewhat scary thing for mainstream publishers. In fact, the recent acquisition or launch of digital publishing arms for mainstream publishers followed a similar trajectory to the old acquisition and launch of erotic romance lines. While it might seem ludicrous today, in the early to mid 2000s, agents had to identify which publishers would accept erotic romances and which would not. And it was a big deal when traditional publishers started accepting erotic romances regularly.

Erotic romance author pioneers like Susan Johnson, Robin Schone, and Bertrice Small would likely seem tame to many of today's readers but in the mid 1990s, they were writing ground breaking books. Schone, for example, wrote the first female masturbation scene in *Awaken My Love* published in 1995. Erotic romances were long considered the bastard child of the genre with major mainstream NYT bestselling authors decrying their existence. (I won't link to those posts because I'm sure we've all said things ten years ago we regret).

As Ellora's Cave began to flourish, arguments began to spring up about its legitimacy. There was row after online row about whether digital publishing was a legitimate career path. The Romance Writer's of America (RWA) denounced it and refused to acknowledge digitally published authors in its Published Author Network or for its awards. In fact, it wasn't until 2012 when a digital first book won the organization's RITA award. (Fiona Lowe's Boomerang Bride from Carina Press).

The truth was, though, Ellora's Cave was thriving in the mid 2000s and through its digital publishing portal, many women were empowered not just through the stories themselves, but through the act of making money. Some may scoff at the source of the money, but all green spends the same. There were several authors making six figures a year and there were even more making a living wage—for the first time in their lives.

As the world began to catch on to digital books and the Kindle was launched creating a second wave ebook revolution, Ellora's Cave seemed poised to launch itself into publishing super stardom. It had thousands of backlist titles and it had launched many of the bestselling authors today—Bella Andre, Lora Leigh, Christine Warren, Beth Kery, Lauren Dane, Jaci Burton, to name a few.

Yet something strange happened. Growth stagnated. In 2010, it was revealed that EC's revenues were \$5 million but a reported \$6.7 million in 2006. How on earth was a digital publisher's income declining in the biggest boom period of digital books? (This was before self publishing took off). Word of Ms. Engler's increasingly erratic behavior surfaced on odd places on the internet and then came the lawsuits. In 2008, former employee Christina Brashears filed suit for unpaid monies against EC. EC countersued. Brashears, Publisher and Chief Operating Officer, left and formed Samhain. Bad blood existed which culminated with EC agreeing to a settlement of undisclosed amount. The damages were alleged to be in the high six figures to low seven figures. EC's behavior during this lawsuit was so egregious, the judge commented on it in his ruling ordering damages to be paid to Brashears. In 2009, EC filed suit against Borders accusing them of illegal business practices. The suit went nowhere.

In the Brashears lawsuit, EC was accused of inappropriately diverting funds to Tina Engler through overpayment of rent. In 2009, the prevailing market rent for the space EC was occupying in Akron Ohio was around \$40K but EC was paying Engler close to \$100K per month. EC was providing loans to various officers at no interest and there was no indication those loans were ever repaid.

At the same time, court records showed repeated tax violations by Engler and Jasmine Jade Enterprises. Since 2009, Engler has had a tax lien filed against her by Ohio Department of Taxation in every year except 2010.

- Nov 2009: \$26,972.74
- Dec 2009: \$83,586.11
- Jan 2011: \$29,271.98
- Aug 2011: \$44,391.84
- Jul 2012: \$62,769.64
- July 2013: \$35,853.21 (currently unpaid)

- June 2014: \$105,819.92 (currently unpaid)

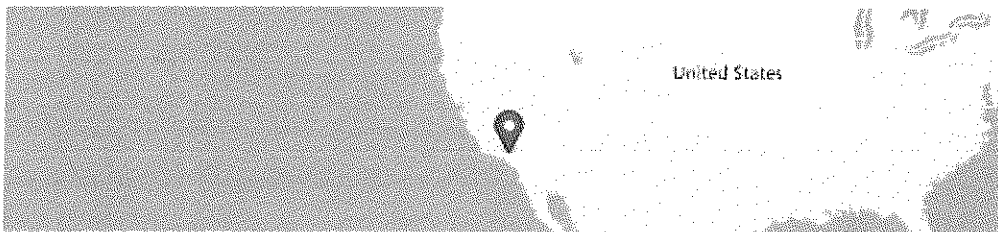
In March of 2014, Engler was hit with another tax bill, this time from the City of Akron in the amount \$29,679.52. Court documents reveal she is paying \$2,473.70 per month. In the meantime, Engler boasts of her Rodeo Drive shopping trips and her new property purchase in West Hollywood on her Facebook page. She claims that she is having the head of her security detail investigate "everyone" and turn over information to "Interpol."



Jaid Black

July 26

P.S. The head of my security detail... A former intelligence officer for the US military... Reads all my emails & tracks most of you down. (Excluding real fans.) So I already know (1) none of you are legit & (2) every time you take a piss. He then turns your info over to Interpol if you happen to be on any country's wanted list. Think before contacting me with your hard-on bullshit. End of "rant: the sequel." — 🇺🇸 feeling determined in West Hollywood, CA



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What likely saved EC prior to this year was the acquisition of 75 books from author Laurann Dohner. You may not have heard of her recently, but Dohner is a huge seller for EC. She began hitting the combined lists in 2012 and continued to hit them thereafter. With her tremendous backlist and the high prices, there's no question that Dohner was keeping EC afloat along with Lolita Lopez, Mari Carr, surprise hit Jo Wylde, and a handful of others.

In 2014, this appears to not be the case. In an email to the EC authors and confirmed by the CEO Patty Marks, the sales for EC books have plummeted.

Many authors and other workers associated with the production of EC books are afraid to speak out. They email me and DM me from made up accounts and beg for secrecy. They speak of a vindictive company who will be unafraid to retaliate and many of them who are owed several thousands of dollars fear that the money may never be paid to them should any outward showing of non allegiance be discovered.

But the problems within Ellora's Cave are deep and broad and should be brought into the light of day, not only for those existing authors and creators but for future ones. In internal emails, the CEO

admits that *"the drastic drop in sales has resulted in large net short term variable production losses and slow and often negative return on investment for EC on almost every new book we publish, with the exception of a handful of the highest sellers."*

- There is a set of authors who have not received royalty payments in over six months. EC has blamed this repeatedly on a new accounting system installed in December of 2013.
- CEO Marks admits that "already submitted finished books" will be paid but that "payment may be delayed."
- For editors, any partial work would not be paid, only finished work and that by finishing the work, they must accept the terms of the late payment.
- Partial work that is completed should be sent in to be finished by an in house editor and no partial work will be paid for.
- Failure to turn in either partial work or finished work will result in a 25% deduction of overall payment for that project.
- The author portal has been shut down where a select few authors could check their royalties.
- Authors request for return of their rights have been rejected and **some are told that their books will be published with or without their approval.**
- The total sum of unpaid royalties, editor fees, cover artist fees is in the several thousands, perhaps approaching six figures.
- EC has held warehouse sales advertised via online forums and through eBay.

Authors are now asking readers to not buy EC books. See [Avril Ashton](#) and [Cat Grant](#).

Despite authors, editors, and cover artists going unpaid, Engler is in the process of launching at least one, if not three, different businesses. She has a new e-publishing serial available that she is writing, she has a production company which she advertises as producing an untitled horror film and is attempting to shop a reality TV show around her publishing company and the Ellora's Cavemen, and she has a self-publishing services company called Beton Black Press.

A report from Ohio business record places Ellora's Cave revenues at \$15 million last year. So why is it that tax liens go unpaid as well as the salaries or royalties of creative individuals? It is unknown but it sounds like the money is being mismanaged at best and improperly diverted at worst.

What's the result? Many people believe that EC will close its doors before the summer is over but at least by the end of the year. If it enters bankruptcy, author's intellectual property rights are part of the estate and can be sold off to the highest bidder. It could wind down and revert the rights back but it's doubtful that will happen.

For authors, a lawsuit could be brought but oftentimes those are expensive. If EC has not paid royalties, then its materially breached the contract. Problematically for authors, courts often look for the breach to be "cured" or in other words, if EC can pay the owed royalties, the contract is not voided (legal term). A claim for diversion of funds (a piercing the corporate veil argument) can usually only be brought by shareholders or directors in a company. Neither are a position that the author holds. And in every case, the author is only due her royalties. If she should sue and the author not be paid, then the contract could possibly be cancelled.

No author wants to see EC go bankrupt but they also want to be paid. As do the editors and cover artists. It rankles to see Ms. Engler post on her Facebook page of high end shopping sprees while individuals who make money for her company go without.

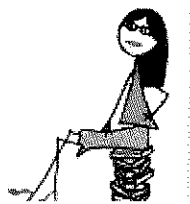
There's a sad irony to the fact that a publisher that gave many women a living by writing about women exercising sexual agency now looks to be placing these women authors in a very vulnerable position, one that sets a really poor example for digital publishing in yet another new era of Romance writing.

Note: if you do plan on commenting anonymously, please use an alternate email. we use avatars here at Dear Author which are associated with your email address.

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Jane Litte

Jane Litte is the founder of Dear Author, a lawyer, and a lover of pencil skirts. She spends her downtime reading romances and writing about them. Her TBR pile is much larger than the one shown in the picture and not as pretty. You can reach Jane by email at jane @ dearauthor dot com

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO
CIVIL DIVISION

ELLORA'S CAVE PUBLISHING,
INC., *et al.*

Plaintiff,

-vs-

DEAR AUTHOR MEDIA NETWORK,
LLC, *et al.*

Defendants.

CASE NO.:

JUDGE

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

NOW COME Plaintiffs, by and through undersigned counsel, and hereby move the Court for a Temporary Restraining Order to enjoin the Defendants from publishing false and defamatory statements about Plaintiffs and their business. The reasons in support of this Motion are detailed in the attached Memorandum.

Respectfully submitted,

**NIKAMP, WEISENSELL, MUTERSBAUGH, &
MASTRANTONIO, LLP**

/s/ Steven W. Mastrantonio

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Counsel for Plaintiffs

**MEMORANDUM IN SUPPORT OF THE MOTION OF ELLORA’S CAVE
PUBLISHING, INC. AND JASMINE JADE ENTERPRISES FOR A TEMPORARY
RESTRAINING ORDER AND A PRELIMINARY INJUNCTION AGAINST
DEFENDANTS DEAR AUTHOR MEDIA NETWORK, LLC AND JENNIFER
GERRISH-LAMPE AKA JANE LITTE**

STATEMENT OF FACTS

Ellora’s Cave Publishing, Inc. (“Ellora’s”) is a leading online publisher of female oriented romance novels. Dear Author Media Network, LLC (“Dear Author”) is a media outlet who publishes articles on its blog entitled ‘Dear Author’ (the “Blog”). Jennifer Gerrish-Lampe (“Lampe”) is the owner of Dear Author who submits writings to be published on the Blog under the name Jane Litte. On September 14, 2014, Lampe wrote and published on the Dear Author blog an article entitled “The Curious Case of Ellora’s Cave” (the “Blog Publication”). The Blog Publication contains numerous false and defamatory statements about Ellora’s financial condition which are intended to place the company in a negative light and induce panic in its staff and online authors. The Blog Publication also falsely and maliciously impugns the integrity of Plaintiffs and of their officers with respect to the Companies’ internal financial dealings. The false statements are detailed and incorporated in this motion through the Affidavit of Patricia Marks, which is attached hereto as Exhibit A. This Blog Publication has caused distress among contracted authors, employees and other contractors and has further impeded Ellora’s ability to enter into new contracts with prospective authors, employees, and contractors by shaking their confidence in Ellora’s business dealings and financial stability. The Blog Publication also maliciously or recklessly makes false statements against Jasmine Jade Enterprises thereby negatively impacting Jasmine Jade’s business.

I. STANDARD OF REVIEW

The purpose of a temporary restraining order is to preserve the status quo or prevent irreparable harm. According to Ohio courts, a party requesting a preliminary injunction (and/or a temporary restraining order) must show that: “(1) there is a substantial likelihood that the plaintiff will prevail on the merits, (2) the plaintiff will suffer irreparable injury if the injunction is not granted, (3) no third parties will be unjustifiably harmed if the injunction is granted, and (4) the public interest will be served by the injunction.” *Mike McGarry & Sons, Inc. v. Robert Gross, et al.*, 2006 Ohio 1759, P10 (8th Dist.) (citing *Procter & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260, 267 (2000)).

The plaintiff must establish each element by clear and convincing evidence which will provide the court with a firm belief as to the facts sought to be established. *Cincinnati Bar Assn. v. Massengale*, 58 Ohio St. 3d 121, 122 (1991). “However, in determining whether to grant injunctive relief, no one factor is dispositive” and the courts must balance all four factors with the “flexibility which traditionally has characterized the law of equity.” *McGarry & Sons* at P11 (citing *Cleveland v. Cleveland Elec. Illum. Co.*, 115 Ohio App.3d 1, 14 (1996)).

The purpose of a preliminary injunction “is merely to preserve the relative positions of the parties until a trial on the merits can be held.” *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). A temporary restraining order, for that matter, “is customarily granted on the basis of procedures less formal and evidence less complete than one would find in the record of a trial on the merits.” *Midwest Retailer Associated, Ltd. v. City of Toledo*, 563 F. Supp. 2d 796, (N.D. Ohio 2008) (citing *Univ. of Tex. v. Camenisch*).

II. ANALYSIS

A. Likelihood of Success on the Merits

Ellora's and Jasmine Jade has a substantial likelihood of success on the merits against Defendants, based upon the fact that the Defendants have published false statements on its website about Ellora's business practices and financial status. In order to prevail in a Defamation suit, plaintiffs must establish (1) the statements are false, (2) the statements are defamatory toward Plaintiff, (3) the statement was made in writing, (4) the statement was published, and (5) the defendants are guilty for some degree of fault. *Hersch v. E.W. Scripps Co.* 3 Ohio App.3d 367, 374 (1981).

In this case, the testimony of Patricia Marks establishes that the statements detailed in the attached Affidavit made by Defendants are false. The statements are also defamatory in that they consist of attacking Plaintiffs' good will and business reputation. Whether a statement is defamatory is determined not only by the words themselves, but also how the words are used within the context of the entire publication and what implications the publication is calculated to convey to the reader. *Am. Chem. Soc'y v. Leadscope, Inc.* 133 Ohio St.3d 366 (2012). The Blog Publication clearly insinuates that Ellora's is a failing company and cautions authors, employees, from contractors from associating or doing business with Ellora's Cave. Based on these statements, Ellora's has a strong possibility of success on the merits of its claims.

B. Irreparable Injury

It is clear that Ellora's will suffer irreparable injury if Defendants are allowed to continue to publish the Blog Publication on the internet. Contracted authors of Ellora's have already started contacting the company regarding the status of business affairs and concerns over intellectual property rights in the event of a bankruptcy. Further, employees and contractors

have contacted Ellora's expressing concern over whether they will be compensated as required under their contracts. Finally, potential authors are being negatively influenced against contracting with Ellora's as a result of the Blog Publication. While some of this damage can be quantified into monetary terms, much of it, such as the lost opportunities to sign new authors and the loss of good will, are not quantifiable in dollars.

If the Court has concerns with Ellora's assertion of incalculable and irreparable injury, it should be noted that "other courts have held that, 'when there is a strong likelihood of success on the merits, preliminary injunctive relief may be justified even though plaintiff's case of irreparable injury may be weak.'" *McGarry v. Gross*, 2006 Ohio 1759 at P19 (8th Dist.) (quoting *Blakeman's Valley Office Equip., Inc. v. Bierdeman*, 152 Ohio App.3d 86 (2003) quoting *Cleveland Elec. Illum. Co., supra*).

The facts are strikingly similar to *Bluemile, Inc. v. Yourcolo, LLC*. In *Bluemile*, the plaintiff, an Ohio corporation, sought a temporary injunction against the defendant, who owned a website claiming the same business name. *Bluemile, Inc. v. Yourcolo, LLC*, 2011 U.S. Dist. LEXIS 62178 (S.D. Ohio June 10, 2011), at *1-2. The complaint alleged that the defendants defamed and interfered with the plaintiff's business, as false comments on the defendant's website injured plaintiff's business. *Id.* at *2. After balancing the factors and noting that the harm is difficult to quantify, the court granted the injunction, noting that the plaintiff would suffer "irreparable harm and injury" because:

[The] offending materials are accessible via the internet, [and] issuance of the temporary restraining order is not likely to cause substantial harm to the [d]efendants or others before this mater can be resolved on the merits, and the public interest is served by the removal of false and misleading information from the internet. *Id.* at *3-4.

Other states have found that limiting speech can help stop this type of harm. In *Guion v. Terra Marketing*, for example, the Supreme Court of Nevada issued a temporary restraining order to stop the defendant from displaying signs hurting a business's reputation because "the right to carry on a lawful business without obstruction is a property right, and acts committed without just cause or excuse which interfere with the carrying on of plaintiff's business or destroy its custom, its credit or its profits, do an irreparable injury and thus authorized the issuance of an injunction." *Guion v. Terra Marketing*, 90 Nev. 237, 240 (Nevada 1974) (citing *Tappan Motors, Inc. v. Waterbury*, 318 N.Y.S.2d 125 (New York 1971)).

Here, the court should grant the temporary restraining order, as did the court in *Bluemile*, after finding Ellora will likely prevail on the merits, as it is both an available remedy and one to prevent irreparable injury and will protect the public from becoming misled by false information.

C. Substantial Harm to Others

Granting the temporary restraining order will not cause any harm to others. This request for a temporary restraining order is limited in its scope only to Dear Author and Lampe from continuing to publish the Blog Publication and from publishing any new Blog Publications against Plaintiffs. Dear Author and Lampe will be able to continue to operate their business and supply content not in violation of this Temporary Restraining Order for the Blog. Accordingly, there will be no substantial harm to others should this court grant the temporary restraining order.

D. Public Interest

The grant of a temporary restraining order in this case serves the best interests of the public. The public should not be led to believe erroneous libelous statements. It is in the best

interests of the public to prevent such libelous statements and to promote legal forms of free speech, as recognized in *Bluemile*.

CONCLUSION

WHEREFORE, for the above-stated reasons, the Plaintiff, Ellora's Cave Publishing, Inc. and Jasmine Jade Enterprises, LLC, respectfully moves this Honorable Court for a Temporary Restraining Order, pursuant to Ohio R. Civ. P. 65(a), to enjoin Defendants, Dear Author Media Network, LLC and Jennifer Gerrish-Lampe aka Jane Litte, from continuing to publish or publishing in the future any Blog Publications referencing or regarding Plaintiffs in any way. Additionally, Plaintiff request that Defendants disclose the name of the anonymous commenters on the blog so that the spreading of the defamatory statement can be stopped.

Respectfully submitted,

**NIEKAMP, WEISENSELL, MUTERSBAUGH, &
MASTRANTONIO, LLP**

/s/ Steven W. Mastrantonio

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that service of the forgoing was requested by the undersigned to be served by the Clerk of Court as an attachment to the Complaint to the Defendants by certified mail at the addresses set forth in the caption by certified mail.

/s/ Steven W. Mastrantonio

Steven W. Mastrantonio