

The Eighth Circuit Court of Appeals let stand Judge Frank's grant of summary judgment that Walt Disney did not infringe any trademark of Leslie Davis and his company Earth Protector, Inc. Davis sued Disney for trademark infringement over a Disney movie called *Up, Up and Away*. The movie featured a fictional company called Earth Protectors that used software to control the minds of kids in a nefarious plot to take over the world. Davis took umbrage over the negative use of a name so similar to his company's name. However, the appellate court agreed with the trial court that there was no trademark infringement for several reasons: (1) Davis used Earth Protector in conjunction with products and services of an environmental-advocacy nature and Disney used the similar mark only as the name of a fictional company in a children's movie, (2) there was no evidence that Disney intended to confuse the public, and (3) Disney never affixed the mark to any products such as copies of the movie or promotional material. Despite some evidence of actual confusion, the appellate court concluded that "[b]ecause the movie's depiction of the company using the mark is resoundingly negative, it is unlikely that viewers will assume that the real Earth Protector, Inc. was a sponsor of the movie or that Earth Protector, Inc. and Disney are otherwise affiliated." *Leslie A. Davis, et al. v. The Walt Disney Co. et al.*, No. 05-1999 (8th Cir. Dec. 5, 2005).

Judge Kyle dismissed a misappropriation of trade secret complaint after a bench trial. Ad Associates sued Carol Brennan and her company for misappropriation of trade secrets and other related claims arising from Brennan's competition with her former employer, Ad Associates. Ad Associates claimed that Brennan stole trade secrets, specifically customer lists and publication fax numbers. However, the Court disagreed with Ad Associates that these customer lists and fax numbers were trade secrets. As to the publication fax numbers (fax numbers of publications that sell advertising), the Court found that this information was publicly available and therefore not a trade secret. Similarly, the Court found the customer lists created by Brennan from her memory were not trade secrets because she was never told by Ad Associates that customer names were confidential and "Ad Associates cannot credibly argue that Brennan should have erased her memory before going into business for herself." *Ad Assocs. Inc. v. Coast to Coast Classifieds, Inc. and Carol Brennan*, Civ. No. 04-3418 (Dec. 12, 2005).

Judge Davis granted a patent-infringement defendant's motion to stay the lawsuit while the asserted patents undergo reexamination at the Patent and Trademark Office. CNS and Creative Integration & Design sued Silver Eagle Labs for infringement of two patents. The two patents concern disposable nasal dilators - marketed and sold as Breathe Right nasal strips by CNS. Silver Eagle asked the Patent Office to take a second look (reexamination) at the validity of the two CNS patents and the Patent Office agreed to do so. Silver Eagle then asked the Court to suspend the lawsuit until the reexamination was complete. Citing its broad discretion on such issues, the Court agreed to suspend the lawsuit because (1) the case is in the early stages of discovery, (2) the parties had not yet proposed claim constructions, and (3) the parties will benefit from the input of the Patent Office on several issues. *CNS, Inc. and Creative Integration & Design, Inc. v. Silver Eagle Labs, Inc.*, Civ. No. 04-968 (D. Minn. Nov. 29, 2004)