

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

February 4, 2022

Christopher M. Wolpert
Clerk of Court

INSTRUCTURE, INC., a Delaware
corporation,

Plaintiff Counter Defendant –
Appellee,

v.

CANVAS TECHNOLOGIES, INC.
a Delaware corporation,

Defendant Counterclaimant –
Appellant.

No. 22-4000
(D.C. No. 2:21-CV-00454-DAK-CMR)
(D. Utah)

ORDER

Before **PHILLIPS** and **CARSON**, Circuit Judges.

Defendant-Appellant Canvas Technologies, Inc. (“Canvas Tech”) has moved for a stay pending appeal of a preliminary injunction order issued by the United States District Court for the District of Utah. That order held that under the Lanham Act, 15 U.S.C. § 1125(a)(1)(B), Canvas Tech had infringed upon the “Canvas” trademark held by Plaintiff-Appellee Instructure, Inc. Accordingly, the district court enjoined Canvas Tech from further use of the “Canvas” mark in its business and ordered Canvas Tech to remove the mark from any marketing, including signs, posters, billboards, advertisements, other printed matter, and all internet posts and social media. Instructure has filed a response, and Canvas Tech has filed a reply.

This court evaluates the traditional stay factors in deciding whether to stay the district court's order. *See Nken v. Holder*, 556 U.S. 418, 434-35 (2009). Those factors are “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Id.* at 434 (internal quotation marks omitted). “A stay is not a matter of right, even if irreparable injury might otherwise result. It is instead an exercise of judicial discretion, and the propriety of its issue is dependent upon the circumstances of the particular case.” *Id.* at 433 (brackets, internal quotation marks, and citation omitted).

Considering all the circumstances we are not persuaded that Canvas Tech has carried its “burden of showing that the circumstances justify an exercise of [our] discretion.” *Id.* at 434.

The motion for stay is DENIED.

Entered for the Court

A handwritten signature in black ink, appearing to read 'C. M. Wolpert', written over a horizontal line.

CHRISTOPHER M. WOLPERT, Clerk