



To: Partners of B2B CFO Partners, LLC
From: Jerry L. Mills, Managing Member
Date: February 10, 2011
Re: **Two More Victories For B2B CFO Partners, LLC v. Kaufman, et al.**

As you know, in October of 2009, B2B CFO, LLC and B2B CFO Partners, LLC filed suit in federal court against Kenneth Kaufman and his CFOWise entities. Our claims include copyright infringement, misappropriation of trade secrets, violation of the Lanham Act, and a claim for racketeering.

In essence, our claims seek to hold Kaufman and his entities accountable for misappropriating our intellectual property after leaving B2B CFO in early 2007. As part of our case, we have alleged that Kaufman copied materials from B2B CFO's 2005 Manual and used them in his 2008 and 2009 Manuals.

In the course of pursuing the case, we filed a motion for partial summary judgment on the issue of whether Kaufman infringed the copyright we have on B2B CFO's 2005 Manual that all of you have received. The purpose of a motion like that is to convince the court to rule on claims early in the case and not wait for the jury to decide them.

Kaufman opposed the motion, claiming, among other things, that our 2005 Manual was not worthy of copyright protection and that he had not infringed the copyright in creating his 2008 and 2009 Manuals. The federal judge heard oral argument on our motion on February 3, 2011 and has now issued a ruling on that motion. I want to share with you some particulars about the ruling, because they are very favorable to our case. They demonstrate very clearly that B2B CFO has a strong claim for copyright infringement against Kaufman and his entities.

I want to highlight in particular two portions of the ruling by the federal judge on our motion for partial summary judgment. Ultimately, the judge did not grant our motion for partial summary judgment, but that does not mean that the motion and the judge's ruling should be considered a "loss".

In fact, as a whole, the ruling is extremely positive for our case and shows very plainly that we have a very strong copyright infringement claim against Kaufman and his entities.

Key Finding #1: **The Court Found as a Matter of Law That Our 2005 Manual is Entitled to Copyright Protection.**

One of Kaufman's primary defenses to our copyright infringement claim was his contention that our 2005 Manual was not entitled to copyright protection. However, the judge squarely refuted that defense and specifically found:

"...as a matter of law ... the 2005 Manual is entitled to copyright protection."

The judge correctly pointed out that I ***“spent many hours organizing and drafting the 2001 Manual and the revisions for the 2005 Manual [and that I]... made choices regarding which concepts and ideas to include in the Manuals and how to express those concepts.”***

The judge also said, ***“Mills’s expression and organization of those ideas possesses sufficient originality to warrant copyright protection.”***

These findings all indicate very strongly that our 2005 Manual is entitled to copyright protection and are a solid foundation for what we believe will ultimately be a verdict in our favor for copyright infringement against Kaufman and his CFOwise entities.

Key Finding #2: **The Court Found as a Matter of Law Under the “Extrinsic Test” for Copyright Infringement That Kaufman’s 2008 and 2009 Manuals Share a Similarity of Ideas and Expression With Our 2005 Manual.**

To explain our second “victory” in the Court’s recent order, I need to explain a little about copyright law.

To prove our case of copyright infringement against Kaufman, we are required to prove that his 2008 and 2009 Manuals are “substantially similar” to our 2005 Manual. To do that, the law requires us to satisfy two “tests.” The first test is called the *“extrinsic test”*. This test evaluates the outward appearance of the Manuals and other objective criteria to determine whether or not they are substantially similar. The second test is a subjective test. It is called the *“intrinsic test.”* That test determines whether a reasonable reader would consider the look and feel and meaning of the Manuals to be substantially similar.

In ruling on our motion for partial summary judgment, the judge first considered the “extrinsic test” and concluded that we passed that test. In fact, the judge unequivocally ruled:

“...as a matter of law... Plaintiffs have proven that the Kaufman 2008 and 2009 Manuals share a similarity of ideas and expression with the 2005 Manual.”

In other words, the Court found that we have satisfied the extrinsic test, a fundamental hurdle we had to get past in order to succeed on our claim for copyright infringement.

The Court considered next the “intrinsic test” and simply concluded that it was going to let the jury decide that test. The Court’s ruling, in effect, is that the “intrinsic test” is an issue that must generally go to the jury. However, in light of the Court’s ruling on the “extrinsic test,” we see the Court’s finding as a clear victory and major accomplishment in our effort to hold Kaufman and the CFOwise entities accountable for copyright infringement.

We will continue our efforts to hold Kaufman and his CFOwise entities responsible for wrongfully misappropriating our intellectual property. We do have other claims pending against Kaufman and his entities other than copyright infringement and we intend to fully pursue those claims until we have an appropriate and satisfactory resolution. We want Kaufman and his entities to know that, as a former partner of this firm, he is accountable for misappropriating our intellectual property and misusing it against us in unfair ways.

Prior Victory: Injunction vs. Kenneth A. Kaufman, et. al.

The United States District Court ruled the following on February 3, 2011 in the case of B2B CFO Partners, LLC: et. al, Plaintiffs, vs. Kenneth Al Kaufman: et. al., Defendants.

At Plaintiffs' request, the Court set a preliminary injunction hearing for February 3, 2011. At the time set for the hearing, the parties stipulated in open court to the entry of a preliminary injunction. Pursuant to that stipulation,

IT IS ORDERED preliminarily enjoining Defendants, including all agents, partners, members, and others having any ownership interest in any Defendant, from the following:

1. Retaining any copy of the B2B CFO Training Manual-2005 ("2005 Manual");
2. Using in Defendants' business any derivative work or product that infringes Plaintiffs' copyright in the 2005 Manual, including but not limited to the documents referred to herein as Kaufman's 2008 Manual, Kaufman's 2009 Manual, and any proposals. Defendants will collect all copies, including electronic copies, of the aforementioned Kaufman 2008 Manual, Kaufman 2009 Manual, and proposals. Defendants will provide the Manuals to Plaintiffs' counsel with a confidential designation, and Defendants' counsel may retain copies of the Manuals. Defendants shall provide the proposals to Defendants' counsel for his eyes only. Defendants' counsel shall certify in writing to Plaintiffs' counsel and the Court a description of the proposals Defendants have provided;
3. Engaging in any way in any conduct that infringes Plaintiffs' copyright in the 2005 Manual; and

IT IS FURTHER ORDERED that this Order applies to members of CFOWise Promise, LLC at the time this lawsuit was filed and thereafter.