

**COPY**

Appellate Case No.: H021153

**COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT**

DVD COPY CONTROL  
ASSOCIATION, INC.,

Plaintiffs-Respondent,

v.

ANDREW BUNNER

Defendant-Appellant.

**FILED**

JAN 21 2004

Court of Appeal - Sixth App. Dist.

By \_\_\_\_\_  
DEPUTY

**Appeal from the Superior Court of the State of California  
County of Santa Clara, Honorable William J. Elfving, Presiding Judge  
Case No. 1-99-CV-786804**

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**DVD COPY CONTROL ASSOCIATION'S  
NOTICE OF MOTION TO DISMISS APPEAL FOR MOOTNESS**

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**Attorneys for Plaintiff-Respondent  
DVD COPY CONTROL ASSOCIATION, INC.**

Pursuant to California Rules of Court 41, DVD Copy Control Association, Inc. ("DVD CCA") hereby respectfully requests that this Court issue an order dismissing as moot the appeal now pending in the above-captioned matter (the "Appeal").

1 The Appeal was brought by Bunner to contest an order granting in part DVD CCA's request for a preliminary injunction against Bunner and others;

2. Plaintiff DVD CCA has now voluntarily dismissed the complaint in the superior court, thereby extinguishing the preliminary injunction;

3. The issue before this Court – whether the preliminary injunction was correctly issued – is therefore moot.

**WHEREFORE, DVD CCA hereby requests that this Court issue an order dismissing as moot the appeal currently pending before it in this matter.**

Dated: January 21, 2004.



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**IT IS SO ORDERED**

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**DVD COPY CONTROL  
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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
DVD COPY CONTROL ASSOCIATION'S MOTION TO DISMISS  
APPEAL AS MOOT**

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DVD COPY CONTROL ASSOCIATION, INC.**

Pursuant to Rule 41 of the California Rules of Court, DVD Copy Control Association, Inc. ("DVD CCA") by and through the undersigned counsel hereby submits this Memorandum of Points and Authorities in Support of its Motion to Dismiss the Appeal in the above-captioned matter as moot.

### **I. The Appeal Should Be Dismissed As Moot**

California appellate courts routinely dismiss appeals pending before them as moot when the underlying superior court action is resolved or dismissed, rendering the controversy on appeal non-justiciable. *See, e.g., Muccianti, v. Willow Creek Care Center*, 108 Cal.App.4th 13, 133 Cal.Rptr.2d (5th Dist. 2003); *People v. Aurelio R*, 167 Cal.App.3d 52, 212 Cal.Rptr. 868 (2nd Dist. 1985).<sup>1</sup>

The appeal now before this Court was brought by Bunner to contest the issuance of a preliminary injunction by the Superior Court for Santa Clara County in the underlying action. DVD CCA has now voluntarily dismissed that action (*see* Voluntary Dismissal, attached hereto as Exh. 1), thereby extinguishing the preliminary injunction and rendering the appeal of that preliminary injunction moot.

The dismissal of moot appeals rests on the bedrock legal principle that courts should not render advisory opinions, but only opinions on actual controversies ripe for adjudication. *Coleman v. Department of Personnel*

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<sup>1</sup> *See also In Re Ray Gordon Davernport*, 40 F.3d 298, 299-300 (9th Cir. 1994); *US. v. Ford*, 650 F.2d 1141, 1142-43 (9th Cir. 1981).

*Administration*, (1991) 52 Cal.3d 1102, 1126, 278 Cal.Rptr. 346; *Lynch v. Superior Court* (1970) 1 Cal.3d 910, 912, 83 Cal.Rptr. 670; *Donato v. Board of Barber Examiners*, 56 Cal.App.2d 916, 133 P.2d 490 (2nd Dist. 1943): As stated by the court in *Donato*: "The task entrusted to us is to decide cases; the rendition of opinions is but an incident to the performance of that task."

On rare occasions appellate courts retain and decide appeals that are moot, but only "where the issues are important and of continuing interest." See *Burch v. George*, 7 Cal.4th 246, 253 n.4 (1994), 866 P.2d 92, 96 n.4 (dealing addressing whether state will and trust rules were preempted by federal ERISA laws); *Jasperson v. Jessica's Nail Clinic*, 216 Cal.App.3d 1099, 265 Cal.Rptr. 30 (dealing with the validity of AIDS anti-discrimination statutes); *Deronde v. The Regents Of The University Of California*, 28 Cal.3d 875, 625 P.2d 220, 172 Cal.Rptr. 677 (1981) (dealing with affirmative action in college admissions). That is not the case here. The issues to be resolved on this appeal deal with the particular facts of this particular case-- (i) whether the degree of public dissemination of the trade secrets which are the subject of the injunction issued below had extinguished their trade secret status; (ii) whether the efforts of the plaintiff in this case to preserve the secrecy of the trade secrets were adequate; and (iii) whether this defendant knew or had reason to know that the trade secrets he published were obtained by improper means. These issues are not "important and of continuing interest." Moreover, this case is only at the preliminary injunction

stage. As a result the record, necessarily, is not as well developed as would be a record after discovery and a trial on the merits. This court should not be reviewing this case on the basis of a less than fully developed record. Finally, in most of the cases in which the courts have rendered decisions despite the mootness of the matter, it has been at the request of *both* parties to the litigation. Obviously, that is not the case here.

## II. Conclusion

For all the foregoing reasons, it is respectfully submitted that this appeal should be dismissed.

Dated: January 21, 2004

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Christopher J. Cox, Esq. (Bar No. 151650) WEIL, GOTSHAL & MANGES LLP 201 Redwood Shores Parkway Redwood Shores, CA 94065 chris.cox@weil.com	TELEPHONE NO.: 650-802-3000  FOR COURT USE ONLY ENDORSED FILED JAN 21 2004 CHIEF EXECUTIVE OFFICER/CLERK SUPERIOR COURT OF CA COUNTY OF SANTA CLARA Sara Batrez
ATTORNEY FOR (Name): Plaintiff DVD Copy Control Assn., Inc. Insert name of court and name of judicial district and branch court, if any:	
SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SANTA CLARA	
PLAINTIFF/PETITIONER: DVD COPY CONTROL ASSN. INC.	
DEFENDANT/RESPONDENT: ANDREW THOMAS MCLAUGHLIN, et al.	
<b>REQUEST FOR DISMISSAL</b> <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): Trade secrets - misappropriation	CASE NUMBER: 1-99-CV-786804

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1. TO THE CLERK: Please dismiss this action as follows:
- a. (1)  With prejudice      (2)  Without prejudice
  - b. (1)  Complaint      (2)  Petition
  - (3)  Cross-complaint filed by (name):
  - (4)  Cross-complaint filed by (name):
  - (5)  Entire action of all parties and all causes of action
  - (6)  Other (specify):\*

on (date):  
on (date):

Date: January 21, 2004  
 Christopher J. Cox, Esq.  
 (TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY)

  
 (SIGNATURE)

\* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

Attorney or party without attorney for: DVD Copy Control Assn. Inc.  
 Plaintiff/Petitioner     Defendant/Respondent  
 Cross-complainant

2. TO THE CLERK: Consent to the above dismissal is hereby given.\*\*  
 Date:  
 (TYPE OR PRINT NAME OF  ATTORNEY  PARTY WITHOUT ATTORNEY)

  
 (SIGNATURE)  
 Attorney or party without attorney for:

\*\* If a cross-complaint - or Response (Family Law) seeking affirmative relief - is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(f) or (j).

Plaintiff/Petitioner     Defendant/Respondent  
 Cross-complainant


- (To be completed by clerk)
- 3.  Dismissal entered as requested on (date):
  - 4.  Dismissal entered on (date):
  - 5.  Dismissal not entered as requested for the following reasons (specify):

JAN 21 2004  
as to only (name):

- 6.  a. Attorney or party without attorney notified on (date):
- b. Attorney or party without attorney not notified. Filing party failed to provide  
        a copy to conform     means to return conformed copy

JAN 21 2004

Date: JAN 21 2004

  
 Sara Batrez  
 Chief Executive Officer/Clerk  
 Clerk, by \_\_\_\_\_ Deputy