

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Residential Energy Services Network, Inc. v. Building Science
Institute, Ltd. Co., et al.

Residential Energy Services Network · No. 22-cv-1641-AGS-MSB · Decided November 21, 2025

SUMMARY

The United States District Court for the Southern District of California denied Building Science Institute’s motion for reconsideration of a preliminary injunction concerning the use of “HERS” in connection with home energy ratings. The court held that the proffered evidence was not newly discovered, that subsequent legal authorities did not constitute an intervening change in controlling law, and that the defendant had not shown clear error regarding the treatment of a settlement agreement.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Andrew G. Schopler
JURISDICTION	United States District Court for the Southern District of California
DECIDED	November 21, 2025
DOCKET	22-cv-1641-AGS-MSB
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved for reconsideration of the court's prior preliminary-injunction ruling, challenging only the likelihood-of-success prong.
STANDARD OF REVIEW	Reconsideration is appropriate only upon newly discovered evidence, clear error or manifest injustice, or an intervening change in controlling law. Newly discovered evidence must have been unknown before the hearing and undiscoverable through reasonable diligence.
PRECEDENTIAL VALUE	unpublished district-court order
PARTIES	Building Science Institute, Ltd. Co. v. Residential Energy Services Network, Inc.

TOPICS

trademark infringement

trademark law

motion for reconsideration

injunctions

civil procedure

PRACTICE AREAS

trademark

civil procedure

commercial litigation

intellectual property

injunctive relief

QUESTIONS PRESENTED

1. Whether Building Science Institute presented newly discovered evidence warranting reconsideration of the preliminary injunction.
2. Whether intervening legal authority required reconsideration of the preliminary injunction's likelihood-of-success analysis.
3. Whether the court committed clear error by treating the California Energy Commission settlement agreement as akin to a license agreement.
4. Whether the unopposed motion for judicial notice should be granted.

HOLDINGS

1. Reconsideration was unwarranted because the evidence existed before the preliminary-injunction hearing and Building Science Institute failed to show that it could not have discovered and presented the evidence through reasonable diligence.
2. No intervening change in controlling law required reconsideration. Great Concepts made the challenge to the trademark more demanding, OpenAI was not binding and did not address the specific issue presented, and Heritage Alliance merely recognized discretion already reflected in the statute and existing case law.
3. The court did not commit clear error. Even if describing the California Energy Commission settlement agreement as “akin to a license” was imprecise, the court understood the agreement's essential facts and terms, so its prior ruling was not clearly erroneous.

KEY QUOTATIONS

“Reconsideration is appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” (Opinion at 1)

“To be clearly erroneous, a decision must strike [the Court] as more than just maybe or probably wrong; it must be dead wrong.” (Opinion at 5)

FACTUAL BACKGROUND

Residential Energy Services Network owns the HERS trademark, and the court had preliminarily enjoined Building Science Institute from using “HERS” to describe a Home Energy Rating System. Building Science Institute relied on preexisting USPTO files, trademark-prosecution materials, California Energy Commission documents, and a settlement agreement to argue that the preliminary injunction should be reconsidered. It also

argued that later trademark decisions and the court's characterization of the settlement agreement demonstrated a changed legal landscape or clear error.

PROCEDURAL HISTORY

The court previously preliminarily enjoined Building Science Institute from improperly using “HERS” to describe a Home Energy Rating System because the use likely infringed Residential Energy Services Network's trademark. Building Science Institute moved for reconsideration based on purported newly discovered evidence, intervening legal decisions, and clear error. The court denied reconsideration and granted an unopposed motion for judicial notice.

DISPOSITION

other

CASES CITED

- School District No. 1J, Multnomah County, Oregon v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993)
- Frederick S. Wyle Professional Corp. v. Texaco, Inc., 764 F.2d 604, 609 (9th Cir. 1985)
- Wells Fargo Bank, N.A. v. Mahogany Meadows Avenue Trust, 979 F.3d 1209, 1218 (9th Cir. 2020)
- Great Concepts, LLC v. Chutter, Inc., 90 F.4th 1333, 1335–37, 1339–40 (Fed. Cir. 2024)
- Robi v. Five Platters, Inc., 918 F.2d 1439, 1444 (9th Cir. 1990)
- OpenAI, Inc. v. Open A.I., Inc., 719 F. Supp. 3d 1033 (N.D. Cal. 2024)
- OpenAI, Inc. v. Open A.I., Inc., No. 24-1963, 2024 WL 4763687 (9th Cir. Nov. 13, 2024)
- Heritage Alliance v. American Policy Roundtable, 133 F.4th 1063, 1070 (Fed. Cir. 2025)
- United States v. Hollis, 506 F.3d 415, 421 (5th Cir. 2007)

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