

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
CALIFORNIA

Le v. Huynh

Le · No. 23-cv-00914-SI · Decided March 13, 2023

SUMMARY

The United States District Court for the Northern District of California denied Dien Le’s ex parte motion for a temporary restraining order against Trinh Ngoc Huynh and Huynh Dining. The court held that plaintiff failed to provide the certification required by Federal Rule of Civil Procedure 65(b)(1)(B) and did not establish the requirements for injunctive relief, including likelihood of success and irreparable harm. The court stated that plaintiff could seek a preliminary injunction after providing defendants notice and an opportunity to be heard.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Northern District of California                                                                                                                                                                                                                                                                                                                                                              |
| WRITING FOR THE COURT | Susan Illston                                                                                                                                                                                                                                                                                                                                                                                                                     |
| JURISDICTION          | United States District Court for the Northern District of California                                                                                                                                                                                                                                                                                                                                                              |
| DECIDED               | March 13, 2023                                                                                                                                                                                                                                                                                                                                                                                                                    |
| DOCKET                | 23-cv-00914-SI                                                                                                                                                                                                                                                                                                                                                                                                                    |
| DISPOSITION           | denied                                                                                                                                                                                                                                                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | Plaintiff sought ex parte relief under Federal Rule of Civil Procedure 65(b), requesting a temporary restraining order and an order to show cause why a preliminary injunction should not issue.                                                                                                                                                                                                                                  |
| STANDARD OF REVIEW    | A temporary restraining order requires the movant to establish a likelihood of success on the merits, a likelihood of irreparable harm absent relief, that the balance of equities favors relief, and that relief is in the public interest. An ex parte TRO additionally requires compliance with Rule 65(b)(1), including specific facts showing immediate and irreparable injury and a written certification regarding notice. |
| PRECEDENTIAL VALUE    | unpublished                                                                                                                                                                                                                                                                                                                                                                                                                       |

TOPICS

- injunctions
- civil procedure
- trademark infringement
- copyright infringement
- commercial litigation

## PRACTICE AREAS

civil procedure

intellectual property

commercial litigation

remedies

## QUESTIONS PRESENTED

1. Whether plaintiff satisfied Federal Rule of Civil Procedure 65(b)(1)(B) by certifying in writing the efforts made to provide notice and the reasons notice should not be required.
2. Whether plaintiff established the elements required for a temporary restraining order, including likelihood of success on the merits, irreparable harm, favorable balancing of equities, and consistency with the public interest.

## HOLDINGS

1. An ex parte temporary restraining order cannot issue when the movant fails to provide the written certification required by Federal Rule of Civil Procedure 65(b)(1)(B). Plaintiff's failure to file that certification was independently fatal to the motion.
2. Plaintiff was not entitled to a temporary restraining order because plaintiff failed to establish the required elements, including a likelihood of success on the merits, irreparable harm, and a public-interest basis for relief.

## KEY QUOTATIONS

*"Rule 65(b) of the Federal Rules of Civil Procedure permits a court to issue a temporary restraining order without notice to the adverse party only where "specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant...." (at 2)*

*"Plaintiff has failed to file the certification necessary for the Court to grant its ex parte motion for a temporary restraining order. In addition, plaintiff has failed to establish the elements necessary for a temporary restraining order." (at 4)*

## FACTUAL BACKGROUND

Dien Le owned Hue Restaurant in San Jose and alleged that former employee Trinh Ngoc Huynh opened Huynh Dining across the street. Le alleged that Huynh Dining used a confusingly similar name, similar food offerings, and an almost identical menu, infringing Le's copyright and trademarks. The court observed that the restaurant names, logos, and menus were materially different and that the menus were not identical.

## PROCEDURAL HISTORY

Dien Le filed an action alleging copyright infringement, Lanham Act infringement and unfair competition, and California unfair competition. Plaintiff then filed an ex parte motion for a temporary restraining order. The district court denied the motion because plaintiff failed to provide the Rule 65(b)(1)(B) certification explaining why notice should not be required and failed to establish the requirements for temporary injunctive relief.

## DISPOSITION

denied

#### CASES CITED

- *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 438-39 (1974)
- *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n. 7 (9th Cir. 2001)
- *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)
- *Reno Air Racing Ass'n, Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006)

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