

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Maddry v. Luoxue

No. 5:25-cv-02449-BLF (N.D. Cal. Mar. 14, 2025) · No. 5:25-cv-02449-BLF · Decided March 14, 2025

OPINION

1 2 3 UNITED STATES DISTRICT COURT 4 NORTHERN DISTRICT OF CALIFORNIA 5
SAN JOSE DIVISION 6 7 DANIEL M. MADDRY, Case No. 5:25-cv-02449-BLF 8 Plaintiff,
ORDER DENYING EX PARTE 9 v. APPLICATION FOR TEMPORARY RESTRAINING
ORDER 10 LUOXUE, et al., [Re: Dkt. No. 2] 11 Defendants. 12 13 Before the Court is pro se
Plaintiff Daniel Maddry’s Ex Parte Application for Temporary 14 Restraining Order and Request
for Expedited Relief, which was filed in combination with the 15 Complaint in this action on
March 11, 2025.

Dkt. No. 2 (“TRO App.”). For the following 16 reasons, the Court DENIES Plaintiff’s application.
17 I. BACKGROUND 18 This case concerns Plaintiff’s original creative work entitled
“Discernment,” a card game. 19 Dkt. No. 1 (“Compl.”) ¶ 1. Plaintiff, an individual residing in
California, asserts that he is the sole 20 owner of the game, and that it is “a creative work
protected under United States copyright law.” 21 Id. ¶ 6.

He also alleges that he holds the registered trademark for the “Christians Like” logo 22 displayed
on the game box. Id. Supported by a Kickstarter campaign, Discernment was created 23 on June 1,
2023 and published on June 1, 2024. Id. ¶ 12 & Exs. 1, 2.

The game includes 500 24 cards, each with unique content authored by Plaintiff, and is distributed
in a “distinctive black and 25 blue pixelated box.” Compl. ¶ 12. 26 Plaintiff alleges that on
February 23, 2025, he “identified counterfeit versions of 27 Discernment being sold on Amazon.”
Id. ¶ 17. Those counterfeit products were listed at a 60 1 counterfeit listings appeared on
Walmart.com and eBay.com as well.

Id. ¶ 16 & Exs. 6, 7. On 2 February 26, 2025 and February 28, 2025, Plaintiff emailed Cease and
Desist letters to Defendants 3 Luoxue, Zhang Zhenkai, and Guoyanqing, each alleged to be “an
individual or business entity” 4 operating out of China. Compl. ¶¶ 7–9, 19. Plaintiff also
“promptly reported the counterfeit 5 listings to Amazon, which temporarily removed the listings”
and “informed Plaintiff that the 6 listings would be reinstated unless proof of a filed lawsuit is
provided.” Id. ¶ 20.

7 Thereafter, Plaintiff filed the present lawsuit, which asserts one cause of action for 8 Copyright
Infringement under 17 U.S.C. §§ 106, 501. Compl. at 5. He simultaneously sought a 9 temporary

restraining order (“TRO”) “to enjoin Amazon.com, Inc., Walmart.com, and eBay.com 10 from continuing to allow Defendants’ counterfeit listings of Plaintiff’s copyrighted card game 11 Discernment to remain active on their platforms and to prevent Defendants from further infringing 12 activities.” Dkt.

No. 2 at 1. 13 II. LEGAL STANDARD 14 Under Federal Rule of Civil Procedure 65, a district court “may issue a temporary 15 restraining order without written or oral notice to the adverse party or its attorney only if” the 16 following requirements are met: (A) specific facts in an affidavit or a verified complaint clearly show that 17 immediate and irreparable injury, loss, or damage will result to the movant before the 18 adverse party can be heard in opposition; and (B) the movant’s attorney certifies in writing any efforts made to give notice and 19 the reasons why it should not be required.

20 Fed. R. Civ. P. 65(b)(1). 21 The standard for issuing a temporary restraining order is identical to the standard for 22 issuing a preliminary injunction. *Stuhlbarg Int’l Sales Co., Inc. v. John D. Brush & Co.*, 240 F.3d 23 832, 839 n.7 (9th Cir. 2001); *Lockheed Missile & Space Co. v. Hughes Aircraft Co.*, 887 F. Supp. 24 1320, 1323 (N.D. Cal. 1995). An injunction is a matter of equitable discretion and is “an 25 extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled 26 to such relief.” *Winter v. Nat.*

Res. Def. Council, Inc., 555 U.S. 7, 22 (2008). In addition, “a TRO 27 ‘should be restricted to... preserving the status quo and preventing irreparable harm just so long 1 *Covenant v. Trump*, 932 F.3d 742, 779 (9th Cir. 2018) (quoting *Granny Goose Foods, Inc. v. 2 Brotherhood of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974)). 3 A plaintiff seeking preliminary injunctive relief must establish “[1] that he is likely to 4 succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary 5 relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public 6 interest.” *Winter*, 555 U.S. at 20. “[I]f a plaintiff can only show that there are serious questions 7 going to the merits—a lesser showing than likelihood of success on the merits—then a preliminary 8 injunction may still issue if the balance of hardships tips sharply in the plaintiff’s favor, and the 9 other two *Winter* factors are satisfied.” *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 10 (9th Cir.

2014) (internal quotation marks and citations omitted). 11 III. DISCUSSION 12 Plaintiff’s application makes three separate requests: First, Plaintiff seeks an order 13 requiring Amazon.com, Inc. (“Amazon”), Walmart.com (“Walmart”), and eBay.com (“eBay”) to 14 “[i]mmediately remove all counterfeit listings of Discernment” and “[p]rohibit[ing] Defendants 15 and John Does 1-10, inclusive, from listing or selling counterfeit copies of Discernment pending 16 further order of this Court.” TRO App. at 4.

Second, Plaintiff seeks an order “requiring 17 Defendants and any third-party platforms to: a. Preserve all sales records, communications, and 18 inventory data related to counterfeit copies of

Discernment to ensure key evidence is retained[, 19 and] b. Provide Plaintiff with an accounting of profits from counterfeit sales.” Id. at 4–5. And 20 third, Plaintiff seeks an order “[g]rant[ing] expedited discovery to: a. Identify all known sellers 21 offering counterfeit copies of Discernment... [and] b. Require Amazon, Walmart, and eBay to 22 disclose seller information and correspondence related to these counterfeit listings.” Id. at 5.

23 As a preliminary matter, the latter two of Plaintiff’s three requests are not appropriate 24 subjects of an ex parte application for an injunction, as both concern discovery matters more 25 appropriately dealt with at a later time and through the proper procedures.

For example, Plaintiff’s 26 request for an order “[g]rant[ing] expedited discovery to: a. Identify all known sellers offering 27 counterfeit copies of Discernment... [and] b. Require Amazon, Walmart, and eBay to disclose 1 seek discovery covered by 17 U.S.C. § 512(h).

Under that provision, “[a] copyright owner... 2 may request the clerk of any United States district court to issue a subpoena to a service provider 3 for identification of an alleged infringer” by filing with the clerk (1) a copy of a notification of 4 claimed infringement submitted to the provider in accordance with 17 U.S.C. § 512(c)(3)(A), (2) a 5 proposed subpoena, and (3) “a sworn declaration to the effect that the purpose for which the 6 subpoena is sought is to obtain the identity of an alleged infringer and that such information will 7 only be used for the purpose of protecting” the copyright owner’s rights.

17 U.S.C. § 512(h)(1)– 8 (2). Plaintiff does not need a court order where the Digital Millennium Copyright Act provides a 9 subpoena process for obtaining production of these materials. See id. 10 Insofar as Plaintiff seeks expedited discovery of information that would not be covered by 11 17 U.S.C. § 512(h), a court may grant a request for expedited discovery on a showing of “good 12 cause.” See *Semtool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D.

273, 276 (N.D. Cal. 2002). 13 “Good cause may be found where the need for expedited discovery, in consideration of the 14 administration of justice, outweighs the prejudice to the responding party.” Id. “[S]pecifically in 15 internet infringement cases, ‘courts routinely find good cause exists to issue a Rule 45 subpoena’” 16 in order to discover an anonymous defendant’s identity on an expedited basis, “where [1] a 17 plaintiff makes a prima facie showing of infringement, [2] there is no other way to identify [the] 18 Doe defendant, and [3] there is a risk an [internet service provider] will destroy its logs.” *Bright 19 Sols. for Dyslexia, Inc. v. Doe 1*, No. 15-cv-01618, 2015 WL 5159125, at *1 (N.D.

Cal. Sept. 2, 20 2015) (quoting *UMG Recordings, Inc. v. Doe*, No. 08-cv-1193, 2008 WL 4104214, at *4 (N.D. 21 Cal. Sept. 3, 2008)). For the reasons discussed below in section III.B, Plaintiff has not yet made a 22 prima facie showing of infringement.

However, Plaintiff may be able to seek expedited recovery 23 through the Rule 45 subpoena process if he is later able to make the aforementioned three-part 24 showing. See Fed. R. Civ. P. 45 (discussing federal subpoena rules). 25 Next, Plaintiff’s request for an order “requiring Defendants and any third-party platforms 26 to: a. Preserve all sales records, communications, and inventory data related to counterfeit copies 27 of Discernment to ensure key evidence is retained[, and] b. Provide Plaintiff with an accounting of 1 not served any of the relevant parties or entities yet.

Nor is it even clear that the Court has 2 jurisdiction to issue and enforce a preservation order against third parties in the absence of any 3 subpoena or service of process against them. See *Ferrari v. Gisch*, 225 F.R.D. 599, 612 (C.D. Cal. 4 2004) (“[I]t is unclear whether the court could exercise jurisdiction over third party witnesses.” 5 (citing *In re Grand Casinos, Inc. Sec. Litig.*, 988 F. Supp. 1270, 1273 (D.

Minn. 1997), and *Asset 6 Value Fund Ltd. P’ship v. Find/Svp, Inc.*, No. 97-cv-3977, 1997 WL 588885, *1 (S.D.N.Y. Sept. 7 19, 1997))). As to Defendants, the Court notes that once they have notice of an impending 8 lawsuit, parties are “under a duty to preserve evidence that is relevant or could reasonably lead to 9 the discovery of admissible evidence” even without a preservation order from a court.

See *Comet 10 Techs. U.S. of Am. Inc. v. Beuerman*, No. 18-cv-01441, 2018 WL 1990226, at *6 (N.D. Cal. Mar. 11 15, 2018) (quoting *Bright Sols. for Dyslexia, Inc.*, 2015 WL 5159125, at *2). 12 Finally, a temporary restraining order can only bind “the parties,” “the parties’ officers, 13 agents, servants, employees, and attorneys,” and/or “other persons who are in active concert or 14 participation” with the parties.

See Fed. R. Civ. P. 65(d)(2). “A court ordinarily does not have 15 power to issue an order against a person who is not a party and over whom it has not acquired in 16 personam jurisdiction.” 11A Wright & Miller, *Federal Practice and Procedure* § 2956 (3d ed.); 17 see *Consumer Opinion LLC v. Frankfort News Corp.*, No. 16-cv-05100, 2016 WL 6804607, at *5 18 (N.D.

Cal. Nov. 17, 2016) (denying request for TRO against a third party where the movant had 19 not “address[ed] the district court’s authority—or lack thereof—to issue a TRO against a non- 20 party”). It may be that under 17 U.S.C. § 512(j), this Court has such authority, but Plaintiff has 21 failed to provide any case citations supporting his request. Further, other courts have concluded 22 that such authority is lacking.

E.g., *cPanel, LLC v. Asli*, 719 F. Supp. 3d 1133, 1154–55 (D. Or. 23 2024) (“Rule 65 rests on the premise that ‘a federal court exercising its equitable authority may 24 enjoin named defendants from taking specified unlawful actions. But under traditional equitable 25 principles, no court may lawfully enjoin the world at large.’” (quoting *Whole Woman’s Health v. 26 Jackson*, 595 U.S. 30,

44 (2021)); see TVB Holdings (USA), Inc. v. eNom, Inc., No. 13-cv-624, 27 2014 WL 3717889, at *5 (C.D.

Cal. July 23, 2014) (“The Second Amended Motion does not even 1 relief.”). 2 Amazon, Walmart, and eBay are not parties to this action, as Plaintiff has not named them 3 as defendants. Besides, Plaintiff’s Complaint alleges that Amazon has already taken down the 4 allegedly infringing listings, rendering Plaintiff’s request as to Amazon moot. Compl. ¶ 20; see 5 Ventura Content, Ltd. v. Motherless, Inc., No. 11-cv-5912, 2013 WL 11237204, at *15 (C.D.

Cal. 6 July 3, 2013), aff’d, 885 F.3d 597 (9th Cir. 2018) (“Defendants have already removed the thirty 7 three infringing clips at issue in this case; thus, Plaintiff’s request for injunctive relief is moot.”). 8 Plaintiff has not included any allegations indicating whether or not he issued takedown notices in 9 accordance with 17 U.S.C. § 512(c)(3) to Walmart or eBay, but that provision—and not an 10 application for a temporary restraining order in a case that does not name the service providers as 11 defendants—provides Plaintiff’s path for seeking prompt removal of allegedly infringing works 12 from such websites.

As a result, Plaintiff’s request for a TRO requiring non-parties Amazon, 13 Walmart, and eBay to “[i]mmediately remove all counterfeit listings of Discernment” is DENIED. 14 The Court notes, however, that “pursuant to Rule 65(d)(2)(C), a party can request that this Court 15 enforce an injunction against non-parties after [an] injunction has issued” if the non-party receives 16 notice of the Court’s injunction order and “continues to provide services to Defendants [that] 17 could qualify [it] as an ‘aider or abettor’ under Rule 65(d)(2)(C).” cPanel, 719 F. Supp. 3d at 18 1155–56 (emphasis in original).

19 In light of the above, the following discussion addresses only Plaintiff’s request for an 20 order “[p]rohibit[ing] Defendants and John Does 1-10, inclusive, from listing or selling counterfeit 21 copies of Discernment pending further order of this Court.” TRO App. at 4. 22 A. Ex Parte TRO Notice Rule 23 An ex parte TRO may be issued only if: (A) specific facts in an affidavit or a verified complaint clearly show that 24 immediate and irreparable injury, loss, or damage will result to the movant before the 25 adverse party can be heard in opposition; and (B) the movant’s attorney certifies in writing any efforts made to give notice and 26 the reasons why it should not be required.

27 Fed. R. Civ. P. 65(b)(1). The Court finds that Plaintiff has adequately met these requirements. 1 irreparable injury, loss, or damage will result,” including loss of sales, customer goodwill, and 2 business reputation. Compl. ¶ 18 & Exs. 3, 4.

In addition, Plaintiff has moved for an order 3 permitting alternative service on Defendants. Dkt. No. 3.1 In that motion, Plaintiff describes his 4 efforts to locate and attain contact with

Defendants, as well as the reasons why he believes that 5 alternative service should be permitted. Id. at 1 (invoking “Defendants’ evasive conduct and 6 international location in China”).

In light of Plaintiff’s pro se status, the Court finds that these 7 documents suffice to establish the requirements of Federal Rule of Civil Procedure 65(b)(1). 8 B. Likelihood of Success on the Merits 9 The first Winter factor considers whether the movant is “likely to succeed on the merits” of 10 his claim. Winter, 555 U.S. at 20. Plaintiff’s claim for copyright infringement is based on 11 sections 106 and 501 of the Copyright Act.

Under section 106 of the Copyright Act, the owner of 12 a copyright has various exclusive rights, including rights to reproduce and distribute copies of 13 their copyrighted work. 17 U.S.C. § 106. “Anyone who violates any of the exclusive rights of the 14 copyright owner as provided by section[] 106... is an infringer of the copyright or right of the 15 author.” Id. § 501(a).

In the face of such copyright infringement, the “legal or beneficial owner of 16 an exclusive right under a copyright is entitled, subject to the requirements of section 411, to 17 institute an action for any infringement of that particular right committed while he or she is the 18 owner of it.” Id. § 501(b).

In turn, section 411 states that “no civil action for infringement of the 19 copyright in any United States work shall be instituted until preregistration or registration of the 20 copyright claim has been made in accordance with this title.” Id. § 411(a). 21 Plaintiff fails to show a likelihood of success on the merits, or serious questions going to 22 the merits, because he has not submitted any evidence of the foundational requirement that 23 “preregistration or registration of the copyright claim has been made in accordance with” the 24 Copyright Act prior to institution of the action.

17 U.S.C. § 411(a). Plaintiff submitted evidence 25 of a registered trademark for his “Christians Like” logo, Compl. Ex. 11, but trademark and 26 copyright are separate intellectual property rights, and Plaintiff has not asserted a cause of action 27 1 for trademark infringement. 2 Because likelihood of success on the merits “is a threshold inquiry and is the most 3 important factor” in the preliminary injunction analysis, “a ‘court need not consider the other 4 factors’ if a movant fails” to carry his burden on the first Winter factor.

Baird v. Bonta, 81 F.4th 5 1036, 1040 (9th Cir. 2023) (quoting Env’t Prot. Info. Ctr. v. Carlson, 968 F.3d 985, 989 (9th Cir. 6 2020), and Disney Enters., Inc. v. VidAngel, Inc., 869 F.3d 848, 856 (9th Cir. 2017)). 7 Accordingly, the Court will not proceed to consider the remaining three Winter factors. 8 || IV. ORDER 9 For the foregoing reasons, IT IS HEREBY ORDERED that Plaintiff’s Ex Parte 10 || Application for Temporary Restraining Order and Request for Expedited Relief (Dkt.

No. 2) is 11 DENIED without prejudice to Plaintiff bringing a later motion for preliminary injunction. 12 13 IT IS SO ORDERED. 14 15 || Dated: March 14, 2025 TH LABSON FREEMAN
17 United States District Judge 18 19 20 21 22 23 24 25 26 27 28