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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE AGAVE PROJECT LLC, d/b/a
THORNTAIL, and JOEL
VANDENBRINK, individual,

Plaintiffs,

CASE NO. 2:23-cv-1984

ORDER GRANTING IN PART
PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER

v.

HOST MASTER 1337 SERVICES LLC,
a ST. KITTS and NEVIS company, and
a DOE,

Defendants.

Plaintiffs The Agave Project LLC, d/b/a Thorntail Hard Agave (“Thorntail”) and Joel VandenBrink filed a lawsuit on December 22, 2023, to “stop Defendants, Host Master 1337 LLC and a Doe, from cybersquatting on the domain ‘thorntailhardavage.com’ and using this domain, as well as mirror websites, to publish false, defamatory, and disparaging content about Thorntail and Vande[n]Brink with the intent to interfere with Plaintiff’s business.” Dkt. No. 1 at 1.

1 Plaintiffs move for a temporary restraining order to block Defendants from
2 using the thorntailhardagave.com domain or publishing defamatory content about
3 Plaintiffs. They also request leave to serve Defendants by mail and email and to
4 conduct expedited discovery. For the reasons explained below, the Court GRANTS
5 in part the motion.

6 1. BACKGROUND

7 According to the complaint, Thorntail is an alcohol beverage company that
8 VandenBrink incorporated in March 2023. Dkt. No. 1 at 3. Plaintiffs allege that as
9 early as March 2023, they secured trademark rights in the “Thorntail Hard Agave”
10 mark by offering for sale, securing an agreement for distribution of, and continuing
11 to market and promote their products under the Thorntail Hard Agave brand. *Id.* at
12 3-5.

13 Plaintiffs claim that between May and August 2023, Defendant Doe created
14 and registered the domains “thorntailhardagave.com,” “anonimcard.com,” and
15 “kompletedesignbuild.com” (“Subject Websites”) to display various inflammatory
16 and false statements and images about Plaintiffs. *Id.* at 4-5. To hide his identity,
17 Doe used Defendant Host Master 1337 LLC as an intermediary to register the
18 domains through Tucows, which according to Plaintiffs has a history of refusing to
19 comply with valid “takedown” requests from trademark holders. *Id.* at 6.

20 In November 2023, Plaintiffs tried to gain control of the
21 thorntailhardagave.com domain through the World Intellectual Property
22 Organization’s Uniform Domain-Name Dispute-Resolution Policy (“UDRP”) arbitration
23 process. *Id.* at 7. Plaintiffs named Host Master 1337 as the registrant of

1 the domain, but Host Master 1337 never responded to Plaintiffs' UDRP complaint.
2 *Id.* Through the UDRP process, Plaintiffs learned that Host Master 1337 provided
3 only a P.O. Box and email address, and not a physical address, when it registered
4 the domains of the Subject Websites with Tucows. Dkt. No. 3 at 1-2. On December
5 12, 2023, an arbitrator denied Plaintiffs' request to transfer the domain based on
6 his finding Thorntail had not acquired secondary meaning. Dkt. No. 1 at 7.

7 Plaintiffs now move for a temporary restraining order to enjoin operation of
8 the Subject Websites. Since filing their motion, however, Plaintiffs report that the
9 Subject Websites have been "taken down." Dkt. No. 9 at 1-2. Even so, Plaintiffs
10 maintain their request for preliminary relief. *Id.* Plaintiffs also seek expedited
11 discovery from third parties to determine Doe's identity and leave to serve
12 Defendants through alternative service.

13 2. DISCUSSION

14 2.1 Legal Standard.

15 A Temporary Restraining Order ("TRO") is an "extraordinary remedy that
16 may only be awarded upon a clear showing that the plaintiff is entitled to such
17 relief." *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). The
18 standard for issuing a TRO is the same as that of a preliminary injunction—the
19 moving party must demonstrate "[(1)] 'that he is likely to succeed on the merits,
20 [(2)] that he is likely to suffer irreparable harm in the absence of preliminary relief,
21 [(3)] that the balance of equities tips in his favor, and [(4)] that an injunction is in
22 the public interest.'" *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009)

1 (quoting *Winter*, 555 U.S. at 20). All four elements must be present, although a
2 “stronger showing of one element may offset a weaker showing of another.” *All. for*
3 *the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

4 **2.2 Plaintiffs have not shown that a TRO should issue.**

5 Plaintiffs’ motion focuses mostly on the strength of their claims against
6 Defendants, but they cannot evade the requirements of Rule 65 by arguing the
7 merits of their claim. Plaintiffs fail to demonstrate that they will suffer “irreparable
8 harm” without preliminary relief, which defeats their quest for a TRO.

9 The primary injuries that Plaintiffs allege are a “significant loss of
10 prospective customers, partnering business, goodwill, and business reputation.”
11 Dkt. No. 2 at 20. But apart from quoting a “potential strategic partner” as refusing
12 to partner with Plaintiffs on a business deal unless the thorntailhardagave.com
13 domain is taken down, Dkt. No. 4 at 1-2, Plaintiffs do not offer any evidence of
14 actual or imminent loss to their business or reputation.

15 The Subject Websites have been taken down, removing them as a present
16 threat. And while the loss of goodwill and reputation are important considerations
17 in gauging irreparable harm, Plaintiffs’ conclusory and speculative statements
18 about the possibility of loss if the websites are reactivated do not count as a “clear
19 showing” that they are entitled to relief. *Winter*, 555 U.S. at 22 (“Issuing a
20 preliminary injunction based only on a possibility of irreparable harm is
21 inconsistent with our characterization of injunctive relief as an extraordinary
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1 remedy that may only be awarded upon a clear showing that the plaintiff is entitled
2 to such relief.”).

3 Moreover, some of the threatened harms Plaintiffs identified are not
4 necessarily irreparable, as lost business agreements and customers may be
5 addressed through an award of money damages. *See Idaho v. Coeur d’Alene Tribe*,
6 794 F.3d 1039, 1046 (9th Cir. 2015) (“Purely economic harms are generally not
7 irreparable, as money lost may be recovered later, in the ordinary course of
8 litigation.”).

9 Finally, Plaintiffs’ claims about the threat of injury are undercut by the
10 simple passage of time, as the Subject Websites were live for over six months before
11 Plaintiffs sought relief. *See Citibank, N.A. v. Citytrust*, 756 F.2d 273, 276 (2d Cir.
12 1985) (“Preliminary injunctions are generally granted under the theory that there is
13 an urgent need for speedy action to protect the plaintiffs’ rights. Delay in seeking
14 enforcement of those rights, however, tends to indicate at least a reduced need for
15 such drastic, speedy action.”).

16 Because the Subject Websites have been taken down and the threat of future
17 injury is speculative for now, the Court cannot find that Plaintiffs will *likely* suffer
18 irreparable harm without an immediate injunction. *Stormans, Inc.*, 586 F.3d at
19 1127 (“The proper legal standard for preliminary injunctive relief requires a party
20 to demonstrate ... that he is likely to suffer irreparable harm in the absence of
21 preliminary relief....”). Given that Plaintiffs have failed to clearly show a likelihood
22 of irreparable harm, which is perhaps “the single most important prerequisite for
23 the issuance of a preliminary injunction,” the Court need not analyze the remaining

1 perquisites to granting preliminary relief. *Freedom Holdings, Inc. v. Spitzer*, 408
2 F.3d 112, 114 (2d Cir. 2005); *see Winter*, 555 U.S. at 22 (“Our frequently reiterated
3 standard requires plaintiffs seeking preliminary relief to demonstrate that
4 irreparable injury is likely in the absence of an injunction.”).

5 Accordingly, Plaintiffs’ motion for a temporary restraining order is DENIED.

6 **2.3 Good cause is found to conduct expedited discovery.**

7 Plaintiffs also seek leave to conduct limited expedited discovery to learn the
8 identity of Doe and the operator of the Subject Websites. Specifically, Plaintiffs
9 propose subpoenaing “(1) the domain registrars for websites
10 thorntailhardagave.com, anonimcard.com (Tucows Domains Inc.), and
11 kompletedesignbuild.com (Whois Privacy Corp.); (2) website hosts for
12 kompletedesignbuild.com (Cloudflare Inc.); and (3) back-end service providers, web
13 designers, or other service providers that may be identified as a result of discovery
14 directed at domain registrars and website hosting services.” Dkt. No. 2 at 23.

15 Typically, parties may not seek “discovery from any source before the
16 conference required by Rule 26(f).” Fed. R. Civ. P. 26(d)(1). But expedited discovery
17 before a Rule 26(f) conference is permitted for “[g]ood cause ... where the need for
18 expedited discovery, in consideration of the administration of justice, outweighs the
19 prejudice to the responding party.” *Semitoool, Inc. v. Tokyo Electron Am., Inc.*, 208
20 F.R.D. 273, 276 (N.D. Cal. 2002).

21 Plaintiffs have shown good cause to conduct limited early discovery to
22 identify Doe. Courts routinely allow early discovery solely to identify “Doe”
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1 defendants on whom process could not otherwise be served. *See, e.g., Music Grp.*
2 *Macao Com. Offshore Ltd. v. John Does I-IX*, No. 14-CV-621 RSM, 2014 WL
3 11010724, at *1–2 (W.D. Wash. July 18, 2014) (granting expedited discovery from
4 Twitter, Inc. sufficient to identify Doe defendants). So Plaintiffs’ stated purpose in
5 seeking the subpoenas justifies their request.

6 The Court finds that no prejudice to Defendants will result if Plaintiffs are
7 given leave to conduct expedited discovery. Plaintiffs’ request is narrowly tailored to
8 seek information only from those domain registrars, website hosts, and back-end
9 service providers associated with Defendants. Furthermore, Plaintiffs’ proposed
10 discovery is directed to non-parties—not the Defendants—which courts recognize as
11 “not imposing a significant burden upon defendants.” *Amazon.com, Inc. v. Yong*, No.
12 21-170RSM, 2021 WL 1237863, at *3 (W.D. Wash. Apr. 2, 2021) (internal quotation
13 marks omitted).

14 Thus, the Court GRANTS Plaintiffs’ motion for limited expedited discovery to
15 subpoena records related to the Doe Defendant.

16 **2.4 Alternative service of process is appropriate for Defendant Host**
17 **Master 1337, but not the Doe Defendant.**

18 Plaintiffs seek an order permitting service by email address and P.O. Box on
19 Defendants. To start, Plaintiffs ask the Court to treat Host Master 1337 as Doe’s
20 registered agent for the purpose of service. But Doe’s identity, location, and
21 relationship to Host Master 1337, if any, are all unknown, so the Court cannot
22 determine whether or how Doe can properly be served, including whether Doe may
23 be served through Host Master 1337. Thus, the Court DENIES Plaintiffs’ motion to

1 serve Doe through alternative means. As explained above, however, the Court has
2 granted Plaintiffs leave to conduct expedited third-party discovery to discern the
3 identity of Doe; Plaintiffs may renew their motion for alternative service if more is
4 learned about Doe's identity.

5 Next, Plaintiffs request leave to serve Host Master 1337 by mail at a P.O.
6 Box in Saint Kitts and Nevis and via email. Plaintiffs obtained this contact
7 information through the UDRP process, but they could not identify a physical
8 address for Host Master 1337.

9 A foreign corporation may be served "at a place not within any judicial
10 district of the United States, in any manner prescribed by Rule 4(f) for serving an
11 individual, except personal delivery under (f)(2)(C)(i)." Fed. R. Civ. P. 4(h)(2). Rule
12 4(f)(1) provides for service "by an internationally agreed means of service. . . such as
13 those authorized by the Hague Convention." And Rule 4(f)(2) provides that "if there
14 is no internationally agreed means, or if an international agreement allows but does
15 not specify other means" then service can happen by a "method that is reasonably
16 calculated to give notice." Lastly, Rule 4(f)(3) allows for "service by other means not
17 prohibited by international agreement, as the court orders."

18 Host Master 1337's P.O. Box is in Saint Kitts and Nevis. Plaintiffs argue that
19 the dual-island nation is a party to the Hague Convention, but it is not listed as a
20 current signatory to the Hague Convention on the Service Abroad of Judicial and
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1 Extrajudicial Documents.¹ See Contracting Parties and Signatories to Convention of
2 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents
3 in Civil or Commercial Matters, [https://www.hcch.net/en/instruments/
4 conventions/status-table/?cid=17](https://www.hcch.net/en/instruments/conventions/status-table/?cid=17) (last visited December 29, 2023); see also *TEMPO
5 Networks LLC v. Gov't of NIA*, No. CIV. 2:14-6334 WJM, 2015 WL 4757911, at *5
6 (D.N.J. Aug. 12, 2015) (“[B]ecause Nevis and St. Kitts are not listed as current
7 members or signatories of the Hague Convention, the Hague Convention does not
8 apply.”). This forecloses service under Rule 4(f)(1), but not under subsection (f)(3).

9 Under Rule 4(f)(3), “trial courts have authorized a wide variety of alternative
10 methods of service including publication, ordinary mail, mail to the defendant’s last
11 known address, delivery to the defendant’s attorney, telex, and most recently,
12 email.” *Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1016 (9th Cir. 2002).
13 Regardless of the method, service “must also comport with constitutional notions of
14 due process.” *Id.* That is, the “method of service crafted by the district court must be
15 ‘reasonably calculated, under all the circumstances, to apprise interested parties of
16 the pendency of the action and afford them an opportunity to present their
17 objections.’” *Id.* at 1016-17 (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339
18 U.S. 306, 314 (1950)).

19 The Court could find no international agreement expressly prohibiting
20 Plaintiffs’ proposed methods of service.

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22 ¹ Plaintiffs cite an electronic bulletin from the U.S. Citizen and Immigration
23 Services, announcing that Saint Kitts and Nevis has recently entered the Hague
Adoption Convention, but the Adoption Convention does not discuss service abroad.

1 Plaintiffs do not have a valid physical address at which to serve Host Master
2 1337, but they have shown that Host Master 1337 “has structured its business such
3 that it could only be contacted via its email address” and P.O. Box. *Bright Sols. For*
4 *Dyslexia, Inc. v. Lee*, No. 15-CV-01618-JSC, 2017 WL 10398818, at *7 (N.D. Cal.
5 Dec. 20, 2017), report and recommendation adopted, No. 15-CV-01618-CW, 2018
6 WL 4927702 (N.D. Cal. Mar. 26, 2018). Plaintiffs emailed Defendants copies of the
7 complaint and their motion papers seeking a TRO, and the Subject Websites were
8 taken down the next day. *See* Dkt. Nos. 7, 9. The Court agrees with Plaintiffs that
9 the most reasonable inference from this action is that Defendants have actual notice
10 of this lawsuit and are monitoring the email account.

11 Under similar circumstances, courts have held that service via email and
12 international mail are valid methods of service under Rule 4(f)(3). *See, e.g., Rio*
13 *Properties, Inc.*, 284 F.3d at 1018 (“[W]hen faced with an international e-business
14 scofflaw, playing hide-and-seek with the federal court, email may be the only means
15 of effecting service of process.”); *Brockmeyer v. May*, 383 F.3d 798, 800 (9th Cir.
16 2004) (holding service of process by international mail is permitted by the Hague
17 Convention); *Amazon.com Inc. v. Bamb Awns*, No. C22-402-MLP, 2023 WL 2837076,
18 at *3 (W.D. Wash. Apr. 7, 2023) (authorizing service by email to defendants located
19 abroad).

20 Plaintiffs have identified an email address and P.O. Box that Host Master
21 1337 registered in connection with its business and that the email address remains
22 active. Viewed as a whole, the Court finds sufficient indicia that Host Master 1337
23 is likely to receive notice if served by email and international mail. Service in this

1 way is reasonably calculated under all the circumstances to apprise Host Master
2 1337 of the pendency of this action and to give it a chance to defend its
3 interests. *See Rio Properties, Inc.*, 284 F.3d at 1016-17.

4 3. CONCLUSION

5 In sum, the Court rules as follows:

6 3.1. The Court DENIES Plaintiffs' motion for a temporary restraining
7 order.

8 3.2. The Court also DENIES Plaintiffs' request for the Court to require
9 Defendants to show cause why a preliminary injunction should not
10 issue.

11 3.3. The Court GRANTS Plaintiffs' motion for expedited discovery.

12 Plaintiffs are granted leave to serve Rule 45 subpoenas on the entities
13 and individuals below solely to gather account information that will
14 help identify the Doe Defendant:

- 15 • the domain registrars for websites thorntailhardagave.com,
16 anonimcard.com (Tucows Domains Inc.), and
17 kompletedesignbuild.com (Whois Privacy Corp.);
- 18 • website hosts for kompletedesignbuild.com (Cloudflare Inc.); and
- 19 • back-end service providers, web designers, or other service
20 providers that may be identified as a result of discovery directed at
21 domain registrars and website hosting services.
- 22 • Plaintiffs must provide a copy of this order with each subpoena
23 issued.

