STATE OF MINNESOTA
IN COURT OF APPEALS
A10-864

North Star International Trucks, Inc. d/b/a Astleford International Trucks, et al.,
Respondents,

vs.

Navistar, Inc.,
Appellant,

Boyer Ford Trucks, Inc.,
Defendant.

Filed January 4, 2011
Affirmed
Toussaint, Judge

Hennepin County District Court
File No. 27-CV-10-511

Robert L. DeMay, Douglas R. Boettge, Elizabeth C. Kramer, Kristin R. Sarff, Arthur G. Boylan, Leonard, Street and Deinard, P.A., Minneapolis, Minnesota (for respondents)

George W. Soule, Melissa R. Stull, Bowman and Brooke, LLP, Minneapolis, Minnesota; and

Michael R. Levinson, Seyfarth Shaw, LLP, Chicago, Illinois (for appellant)

Considered and decided by Toussaint, Presiding Judge; Johnson, Chief Judge; and Crippen, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Judge

Respondent-dealers North Star International Trucks, Inc. d/b/a Astleford International Trucks, and Astleford Equipment Co. Inc. d/b/a Astleford International Idealease & Isuzu, sued appellant-manufacturer Navistar, Inc., and defendant Boyer Ford Trucks, Inc., asserting in pertinent part that Navistar violated the Motor Vehicle Sale and Distribution Act (MVSDA), Minn. Stat. §§ 80E.01-.18 (2008 & Supp. 2009), and the Heavy and Utility Equipment Manufacturers and Dealers Act (HUEMDA), Minn. Stat. §§ 325E.068-.0684 (2008). Appellant challenges an equitable temporary injunction order preserving the status quo pending adjudication of respondents' claims by prohibiting appellant from issuing a notice of termination to respondents. Because the temporary injunction is not premature, the district court did not violate MVSDA or HUEMDA, and the district court did not misapply the *Dahlberg* factors, we affirm.

D E C I S I O N

"A temporary injunction is an extraordinary equitable remedy that preserves the status quo pending a trial on the merits." *Cent. Lakes Educ. Assoc. v. Indep. Sch. Dist. No. 743, Sauk Centre*, 411 N.W.2d 875, 878 (Minn. App. 1987), *review denied* (Minn. Nov. 13, 1987). "A temporary injunction should be granted only when it is clear that the rights of a party will be irreparably injured before a trial on the merits can be held." *Webb Publ'g Co. v. Fosshage*, 426 N.W.2d 445, 448 (Minn. App. 1988).

This court interprets statutes and reviews justiciability issues, such as ripeness, de novo. *Sorenson v. St. Paul Ramsey Med. Ctr.*, 457 N.W.2d 188, 190 (Minn. 1990)

(stating the standard of review for questions of statutory interpretation); *Schiff v. Griffin*, 639 N.W.2d 56, 59 (Minn. App. 2002) (stating the standard of review for justiciability issues). But the decision of whether to grant an equitable temporary injunction is left to the district court's discretion; the sole issue on appeal is whether the district court abused that discretion by disregarding either the facts or principles of equity. *Cent. Lakes Educ. Ass'n*, 411 N.W.2d at 878. "A district court's findings of fact regarding entitlement to injunctive relief will not be set aside unless clearly erroneous." *Haley v. Forcelle*, 669 N.W.2d 48, 55 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003). On review, facts are considered in the light most favorable to the prevailing party. *Metro. Sports Facilities Comm'n v. Minn. Twins P'ship*, 638 N.W.2d 214, 220 (Minn. App. 2002), *review denied* (Minn. Feb. 4, 2002).

I.

Appellant makes, assembles, and markets International-brand trucks and parts, which it distributes through a network of dealers. Appellant and each of its dealers enter into a contract known as a Dealer/Sales Maintenance Agreement (contract), which is a personal services contract that governs the relationship between the parties. Respondents are each dealers of International trucks and truck parts under separate contracts with appellant. Scott Dawson is the principal of both dealers.

In November 2009, appellant notified respondents that it deemed both to be in breach of their respective contracts due, in relevant part, to their inability to achieve a reasonable share of the market in their sales of heavy and severe service trucks within their areas of responsibility. The letter stated, "Unless [respondents take] appropriate

corrective action by April 30, 2010, [appellant] shall consider itself entitled to serve notice to terminate."

In January 2010, respondents sued appellant. Respondents alleged, in pertinent part, that they were *not* in breach of their respective contracts with appellant and that appellant's notice of breach was pretextual and was actually aimed at assisting Boyer in replacing respondents as an International truck and truck-part dealer. Respondents asserted several causes of action against appellant, including counts under MVSDA and HUEMDA for appellant's actions that respondents asserted materially changed the competitive circumstances of their contracts without good cause. Respondents also moved the district court for an equitable temporary injunction prohibiting appellant from issuing notices of termination to respondents pending adjudication of their claims.

The district court determined that respondents' rights would be irreparably injured by appellant's issuance of a notice of termination before adjudication of respondents' claims and therefore granted respondents' temporary-injunction motions. Appellant disagrees, arguing that respondents' claims were not ripe and therefore the temporary injunction was also premature.

Appellant argues that the sole claim under which respondents sought the temporary injunction prohibiting appellant from issuing a notice of termination was their MVSDA claim under Minn. Stat. § 80E.06. Section 80E.06, subdivision 1, provides, in pertinent part, that "no manufacturer shall *cancel, terminate, or fail to renew* any franchise relationship with a licensed new motor vehicle dealer unless the manufacturer has [satisfied certain conditions]." (Emphasis added.) Appellant argues that because a

notice of termination, as opposed to actual termination, does not constitute a redressable injury under Minn. Stat. § 80E.06, respondents' MVSDA claim was not yet ripe and therefore the temporary injunction sought pending a trial on the merits of the MVSDA claim was premature.

But appellant is incorrect in its assertion that respondents sought the temporary injunction only under their MVSDA claim. Respondents' temporary-injunction motion reflects that they sought the injunction pending a trial on the merits of their HUEMDA claim as well as their MVSDA claim. In their motion, respondents alleged that "there is a very strong likelihood that . . . [appellant] has substantially changed the competitive circumstances of each of [respondents'] dealerships without good cause in violation of Minn. Stat. § 325E.0681, subd. 1," which is a part of HUEMDA. Respondents argued that an order enjoining appellant from issuing a notice to terminate respondents' contracts was necessary to preserve the status quo until a trial on the merits.

Respondents' complaint alleged that appellant took several actions that, together, prevented respondents from achieving what appellant considered to be a reasonable market share in the sales of heavy and severe service trucks within their areas of responsibility and therefore substantially changed the competitive circumstances of the contracts without good cause, in violation of Minn. Stat. § 325E.0681, subd. 1. For example, respondents alleged that appellant (1) unilaterally removed 51 zip-code areas from respondent North Star's area of responsibility under its contract with appellant, (2) transferred those zip-code areas to Boyer's Rogers location, (3) reimbursed Boyer for International-brand parts replacement and services performed at Boyer's Lauderdale and

Savage locations (unauthorized locations less than two miles from North Star's Minneapolis dealership and Astleford's Burnsville dealership, respectively), and (4) employed an inappropriate performance measure so as to intentionally arrive at distorted and misleading results regarding respondents' market-share obligations under their contracts and to inappropriately justify the notice of breach.

Appellant does not dispute that it removed 51 zip-code areas from North Star's area of responsibility and transferred those zip-code areas to Boyer. Respondents supported their allegations regarding appellant's reimbursements to Boyer and its use of inappropriate performance measures with deposition and affidavit testimony respondents submitted to the district court in support of their temporary-injunction motion.

Under these circumstances, the district court could implicitly determine, as it did here, that respondents demonstrated a likely redressable injury under HUEMDA and that their HUEMDA claim was therefore ripe. *See Astleford Equip. Co. Inc. v. Navistar Int'l Transp. Corp.,* 632 N.W.2d 182, 191 (Minn. 2001) (construing "substantial change of circumstances" under the statute, stating that "the ultimate conclusion as to whether there was a violation of the statute must be based on the specific facts of the case presented" and "a court should engage in a case-by-case factual inquiry in reaching its ultimate conclusion of whether there has been a substantial change in the competitive circumstances"). Therefore, we conclude that respondents' HUEMDA claim is ripe for consideration by the district court and that the temporary injunction pending adjudication of the claim is not premature.

II.

Appellant argues that the temporary injunction violates HUEMDA and MVSDA because neither statute provides for any relief against a notice to terminate, as opposed to termination itself. When interpreting a statute, our object is to "ascertain and effectuate the intention of the legislature." Minn. Stat. § 645.16 (2008). "[An appellate court] first look[s] to see whether the statute's language, on its face, is clear or ambiguous. A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation." *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quotation and citations omitted). If the legislature's intent is clearly discernible from a statute's unambiguous language, appellate courts interpret the language according to its plain meaning, without resorting to other principles of statutory construction. *State v. Anderson*, 683 N.W.2d 818, 821 (Minn. 2004). "But where a statute is ambiguous, we must turn to other means to discern the legislature's intent, and construe the statute to be consistent with that intent." *Montplaisir v. Indep. Sch. Dist. No. 23*, 779 N.W.2d 880, 883 (Minn. App. 2010).

Appellant is correct that HUEMDA and MVSDA provide a statutory framework for termination of a dealer agreement by appellant and for establishment or relocation of a dealership. Appellant is also correct that both HUEMDA and MVSDA authorize statutory injunctive relief for violations of those statutes. Minn. Stat. §§ 80E.01-.17, 325E.068-.0684. But appellant's claim that HUEMDA and MVSDA somehow limit the

district court's power to grant equitable injunctive relief is unsupported.[1]

HUEMDA and MVSDA do not contain any language limiting equitable injunctive relief in cases where claims are brought under those statutes. Minn. Stat. §§ 80E.17, 325E.0684. This court cannot read such a prohibition into the plain language of the statute. *See Tracy State Bank v. Tracy-Garvin Co-op*, 573 N.W.2d 393, 395 (Minn. App. 1998) (stating that "this court is prohibited from adding words to a statute and cannot supply what the legislature either purposely omitted or inadvertently overlooked"); *Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) ("[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court."), *review denied* (Minn. Dec. 18, 1987).

To the contrary, HUEMDA clearly states that the statutory injunctive relief it authorizes for violations of HUEMDA is "in addition to any other remedies permitted by law." Minn. Stat. § 325E.0684. The law permits a district court to order a temporary injunction as a matter of equity when "it is clear that the rights of a party will be irreparably injured before a trial on the merits can be held." *Webb Publ'g Co.*, 426 N.W.2d at 448; *see also Cent. Lakes Educ. Ass'n*, 411 N.W.2d at 878 (explaining that a temporary injunction is an "equitable remedy that preserves the status quo pending a trial

[1] Appellant cites *Metro Motors, LLC v. Nissan Motor Corp.*, 170 F. Supp. 2d 888 (D. Minn. 2001), in support of its argument that the temporary injunction here violates MVSDA. The *Metro Motors* court concluded that a plaintiff's claim for declaratory judgment under MVSDA was not ripe, and therefore the district court had no subject matter jurisdiction over the claim where defendant had not terminated the franchise agreement and had not issued a notice of termination. 170 F. Supp. 2d at 890-91. But *Metro Motors* contains no discussion of whether an equitable temporary injunction ordered pending a trial on the merits of HUEMDA and MVSDA claims violates either statute, which is the issue we must address here.

on the merits").

Therefore, we conclude that the district court did not violate MVDSA or HUEMDA by ordering the temporary injunction. We decline to address appellant's argument that the temporary injunction is contrary to public-policy considerations underlying HUEMDA and MVSDA. *See Lefto v. Hoggsbreath Enters.*, 567 N.W.2d 746, 749 (Minn. App. 1997) (declining to address appellant's public-policy arguments regarding the interpretation of a statute where the plain language of the statute supported the district court's interpretation), *aff'd on other grounds*, 581 N.W.2d 855 (Minn. 1998).

III.

In evaluating whether a temporary injunction is warranted, the district court must consider the five *Dahlberg* factors: (1) the nature and background of the relationship between the parties; (2) the balance of harm to the parties; (3) the likelihood that the party seeking the injunction will prevail on the merits of the action; (4) whether there are public-policy considerations; and (5) whether there are any administrative burdens involved in judicial supervision and enforcement of the temporary injunction. *Metro. Sports Facilities Comm'n*, 638 N.W.2d at 220-21 (quoting *Dahlberg Bros. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321-22 (1965)). This court also considers the *Dahlberg* factors when determining whether the district court abused its discretion. *Id.*

The district court must make sufficient findings to permit meaningful appellate review. Minn. R. Civ. P. 52.01; *Crowley Co. v. Metro. Airports Comm'n*, 394 N.W.2d 542, 544-45 (Minn. App. 1986) (remanding appeal from denial of injunction to district

court to make necessary findings). When a district court "fails to analyze the *Dahlberg* factors in granting a temporary injunction, the court commits error." *State by Ulland v. Int'l. Ass'n. of Entrepreneurs of Am.*, 527 N.W.2d 133, 135 (Minn. App. 1995), *review denied* (Minn. Apr. 18, 1995).

In this case, the district court's order reflects that it analyzed each of the five *Dahlberg* factors and made several findings of fact on each factor. The district court ultimately found that each of the five factors weighed in favor of granting respondents a temporary injunction. Appellant does not challenge the district court's finding that the administrative burden weighs in favor of granting the injunction but argues that the district court erred with regard to each of the other *Dahlberg* factors.

A. Appellant argues that the district court misapplied HUEMDA in several ways to erroneously find that the relationship between the parties, the likelihood that respondents would prevail on the merits, and public-policy considerations weighed in favor of granting the temporary injunction. Appellant first contends that the district court ignored the legal standard set forth in *Astleford Equip. Co.*, 632 N.W.2d at 191, for what constitutes a substantial change in competitive circumstances under HUEMDA. We disagree. The district court clearly and accurately articulated the standard set forth by the Minnesota Supreme Court before analyzing the likelihood of success on the merits of respondents' claims. The district court accurately cited *Astleford Equip. Co.* for the proposition that a substantial change in competitive circumstances is

> a change that has a substantially adverse although not necessarily lethal effect on the dealership. It is a change that is material to the continued existence of the dealership, one that significantly diminishes its viability, its

> ability to maintain a reasonable profit over the long term or to stay in business.

Astleford Equip. Co., 632 N.W.2d at 191. There is no evidence in the record that the district court failed to apply the *Astleford* standard when it found that appellant has likely taken a number of actions that have substantially changed the competitive circumstances of respondents' contracts, as appellant suggests. *See White v. Dep't of Natural Res.*, 567 N.W.2d 724, 734 (Minn. App. 1997) (stating that error is never presumed on appeal), *review denied* (Minn. Oct. 31, 1997).

Appellant next challenges the district court's finding that it removed 51 zip-code areas from North Star's contract, arguing that the finding does not support a substantial change in competitive circumstances under HUEMDA because the removal of zip-code areas was specifically authorized under the contract.[2] But the district court found the removal of zip-code areas to be only one part of a larger pattern of conduct by appellant. Furthermore, the issue of whether or not the contracts permitted appellant to adjust North Star's areas of responsibility (defined by zip codes) is of little consequence because HUEMDA does not permit such actions when taken as a means to substantially change competitive circumstances of dealer agreements without good cause, as the district court found was likely to have occurred here. *See* Minn. Stat. § 325E.068, subd. 1 (stating: "No equipment manufacturer . . . may . . . substantially change the competitive

[2] Appellant notes that the district court mistakenly found that appellant "removed fifty-one zip codes from *Plaintiffs'* area of responsibility." (Emphasis added.) Because none of the parties demonstrates prejudice by the district court's mistake, we conclude that the error is harmless. Errors that do not affect the substantial rights of the parties are to be ignored. Minn. R. Civ. P. 61.

circumstances of a dealership agreement without good cause.").

Appellant next argues that the district court failed to consider whether or not appellant had good cause for its actions under HUEMDA. We disagree. The district court found that respondents were likely to succeed on their HUEMDA claim, and expressly stated, quoting Minn. Stat. § 325E.0681, subd. 1, that HUEMDA prohibits a appellant from "substantially chang[ing] the competitive circumstances of a dealership agreement *without good cause*." (Emphasis added.) The record supports the district court's implicit finding that appellant likely did not have good cause for substantially changing the circumstances of the contracts. For example, affidavit testimony and appellant's notice of breach support that appellant inappropriately lumped respondents together to measure their performance and measured the respondents' performance using an unreasonable standard comparing their "in-market" sales with an unspecified "regional average," even though appellant no longer used these measures.

Finally, appellant contends that the district court made no findings or conclusions explaining how changed circumstances in this case warrant an injunction against appellant issuing a notice of termination. Appellant asserts: "It cannot be said that issuing a notice to terminate is itself a 'substantial change in competitive circumstances' [under HUEMDA] because the district court did not find or conclude that it was." But the district court clearly found that a notice of termination would likely constitute a "further change" to the respondents' competitive circumstances. Appellant does not challenge this finding.

We conclude that the district court correctly applied HUEMDA and, therefore, did not err in its findings regarding the relationship between the parties, the likelihood of respondents prevailing on the merits, and public-policy considerations.

B. The party requesting a temporary injunction must demonstrate that there is no adequate legal remedy and that an injunction is necessary to prevent irreparable injury. *U.S. Bank Nat'l Ass'n v. Angeion Corp.*, 615 N.W.2d 425, 434 (Minn. App. 2000), *review denied* (Minn. Oct. 25, 2000). "An injunction will not issue to prevent an imagined injury which there is no reasonable ground to fear. The threatened injury must be real and substantial." *Hollenkamp v. Peters*, 358 N.W.2d 108, 111 (Minn. App. 1984) (quoting *AMF Pinspotters, Inc. v. Harkins Bowling, Inc.*, 260 Minn. 499, 504, 110 N.W.2d 348, 351 (1961)).

In this case, the district court found that respondents would likely suffer significant and irreparable loss of customers, employees, and business opportunities if appellant was not enjoined from issuing a notice to terminate. The court found that when respondents' customers and employees learned of a notice of termination, they would be likely to abandon the dealerships due to uncertainty about the respondents' futures, and that even if respondents succeeded on the merits of their claims, their former customers and employees would be unlikely to return after developing relationships with other respondents and their dealerships would effectively be destroyed.

Citing Minn. R. Evid. 602, appellant argues that the district court relied on inadmissible, speculative evidence to support its finding that respondents would likely suffer irreparable harm if a temporary injunction was not ordered. Appellant urges this

court to require *precise* proof of irreparable harm. But a showing of irreparable future harm does not require absolute precision. *See Metro. Sports Facilities Comm'n*, 638 N.W.2d at 222 (stating that irreparable harm is "not always susceptible of precise proof").

Minn. R. Civ. P. 65.02(b) authorizes a district court to grant a temporary injunction "if by affidavit, deposition testimony, or oral testimony in court, it appears that sufficient grounds exist therefore." Here, Dawson testified by affidavit that respondents sold 266 International trucks during their fiscal year 2009. Dawson stated that if appellant issued a notice of termination, news of the termination notice would quickly disseminate among respondents' employees as well as potential and existing customers regardless of whether or not the information was publicized. This is because, as Dawson testified, imminent termination would preclude respondents from bidding on contracts involving the future sales of trucks, truck parts, or warranty services to customers; and the employees' work would be drastically impacted as the vast majority of their work is related to the International brand.

Dawson testified that he reasonably anticipated that a notice of termination would result in the loss of over one half of the customers at each dealership within a matter of weeks. Dawson's testimony is based on the fact that more than 90% of Astleford's truck and truck-parts sales, and more than 90% of its service work, involves International; and more than 99% of North Star's truck and truck-parts sales, and more than 95% of its service work, involves International. Further, Dawson testified that in his experience as principal of respondents, truck customers desire a continuity of access to a dealer who can provide service work and do not vary their buying patterns once those patterns have

become established and that therefore respondents could not count on their former customers to return to the dealerships.

Dawson also testified that he reasonably anticipated that respondents' employees, faced with imminent termination of their jobs, would have no choice but to seek other work. By way of example, Dawson stated that in 2009, four of the five members of North Star's parts-sales department permanently left North Star to work for Boyer after Boyer informed them that it was replacing respondents as the International dealer in the Twin Cities.

Dawson's affidavit testimony is plainly based on his personal knowledge as principal of respondents, as required by Minn. R. Evid. 602, and demonstrates reasonable grounds for respondents to fear a substantial injury should appellant issue a notice of termination. In other words, the affidavit shows that the threatened injury is both real and substantial. Notably, appellant has not produced any evidence to contradict Dawson's affidavit testimony. Therefore, the record supports the district court's finding that respondents would likely suffer significant harm—specifically, loss of customers, employees, and business opportunities—if appellant is not enjoined from issuing a notice to terminate.

Appellant argues that the district court erred by finding that the future harm in this case was preventable. *See John Peterson Motors v. Gen. Motors Corp.*, 613 F. Supp. 887, 905 (D. Minn. 1985) (denying preliminary injunction based on alleged "destruction of [plaintiff's] business" from defendant's failure to deliver vehicles because plaintiff's business was already "in serious jeopardy"). Respondents claim to have already lost

parts sales and service revenues and suffered reduced profit margins on the trucks and parts they are able to sell. Respondents also acknowledge that they have already lost four employees to Boyer. But there is no evidence that, as appellant's argument implies, respondents have lost half of their customers or that either dealership has been forced to stop bidding on contracts, which is what is reasonably anticipated to occur should appellant issue a notice of termination.

Appellant also argues that respondents have not shown that their injuries will be irreparable, asserting that respondents have an adequate remedy at law and that any injury to respondents is fully compensable with money damages, making injunctive relief inappropriate. *See Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 451 (Minn. App. 2001) (stating that "[t]he party seeking an injunction must demonstrate that there is *no adequate legal remedy* and that the injunction is necessary to prevent irreparable harm" (emphasis added)); *Morse v. City of Waterville*, 458 N.W.2d 728, 729-730 (Minn. App. 1990) (stating that to be irreparable, the harm must be of such a nature that money damages will not suffice), *review denied* (Minn. Sept. 28, 1990).

But Minnesota law recognizes that irreparable harm will result where a party's actions may render the relief sought by the other party ineffectual or impossible to grant at the time of trial. *Seward v. Schrieber*, 240 Minn. 489, 491-92, 62 N.W.2d 48, 50 (1953). Here, as Dawson's affidavit demonstrates, if appellant issued a notice of termination, harm would likely result and would render ineffectual the statutory injunction to which respondents would be entitled under MVSDA and HUEMDA should they succeed on their claims at trial. *See* Minn. Stat. §§ 80E.17 (providing a civil cause

of action to enjoin violations of sections 80E.01 to 80E.17), 325E.0684 (providing a civil cause of action to enjoin unlawful termination, cancellation, nonrenewal, or substantial change of competitive circumstances in violation of sections 325E.068 to 325E.0684). Respondents, in the face of a notice of termination (which appellant could issue pending trial were it not for the temporary injunction), stand to permanently lose current employees and business opportunities as well as half of their current customers.

Regarding the threatened harm to appellant, the district court found that appellant would, at most, have to retain respondents for longer than it would without an injunction and would have to continue to suffer monetary losses as a result of respondents' allegedly poor performance. But the district court noted that it was unable to assess the "relative magnitude of any losses that [appellant] may incur" because it did not provide any evidence on the matter. Appellant argues that the district court's finding was clearly erroneous. We disagree. In appellant's memorandum in opposition to respondents' temporary-injunction motion, it cited to three pages of deposition testimony in support of its position that it would suffer harm if the injunction were granted. But none of the cited testimony provides evidence as to the magnitude of harm that appellant would suffer from an injunction.

Contrary to appellant's argument, the district court also did not err by finding that appellant does not risk the same degree of harm as respondents as a consequence of having to wait to issue a notice to terminate. *See Dahlberg*, 272 Minn. at 276-277, 137 N.W.2d at 322 (concluding, on similar facts, that the balance of hardships weighed heavily in favor of the district court's grant of a temporary injunction prohibiting

appellant from terminating its dealership agreement with dealer). The balance of harms in this case plainly weighs in favor of the temporary injunction granted by the district court.

Affirmed.