

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 19 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FEDERAL TRADE COMMISSION,

No. 18-56161

Plaintiff-Appellee,

D.C. No.

v.

3:18-cv-01388-MMA-NLS

HARDWIRE INTERACTIVE, INC., AKA
Beauty and Truth, AKA E-Cigs, AKA
Phenom Health, a British Virgin Islands
corporation,

MEMORANDUM*

Defendant-Appellant,

and

TRIANGLE MEDIA CORPORATION, a
Delaware corporation; et al.,

Defendants,

THOMAS W. MCNAMARA,

Receiver.

Appeal from the United States District Court
for the Southern District of California
Michael M. Anello, District Judge, Presiding

Argued and Submitted March 7, 2019

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

Pasadena, California

Before: WARDLAW and BENNETT, Circuit Judges, and CARDONE,** District Judge.

Hardwire Interactive, Inc. (Hardwire), a British Virgin Islands company, appeals the district court's grant of a preliminary injunction in favor of the Federal Trade Commission (FTC) in its enforcement action against Hardwire and U.S.-based Triangle Media Corporation (Triangle), Triangle director Brian Phillips, and U.S.-based Jasper Rain Marketing for their allegedly deceptive marketing scheme. Hardwire contends the injunction is overbroad to the extent it enjoins the company's foreign business activities. We have jurisdiction under 28 U.S.C. § 1292, and we affirm.

The allegedly deceptive marketing scheme offered free trials of electronic cigarettes, dietary supplements, and skincare products for the cost of shipping and handling to U.S. customers, and then later charged consumers and enrolled them in a "continuity" program without their consent. The district court did not abuse its discretion in preliminarily enjoining that conduct, including Hardwire's foreign business activities. The court correctly concluded that Hardwire likely engaged in "unfair or deceptive acts or practices" that "(i) cause or are likely to cause

** The Honorable Kathleen Cardone, United States District Judge for the Western District of Texas, sitting by designation.

reasonably foreseeable injury within the United States; or (ii) involve material conduct occurring within the United States.” 15 U.S.C. § 45(a)(4)(A). The district court correctly found on the record before it that the FTC will likely succeed in showing that Hardwire’s foreign activities independently involved material domestic conduct, including domestic call centers, payment gateways, and marketing operations. The record further supports the district court’s finding that the FTC will likely succeed in showing that Hardwire and U.S.-based Triangle are a common enterprise, and thus Triangle’s material domestic conduct and actions causing injury within the United States can be attributed to Hardwire as well. The evidence showed that Brian Phillips acted on behalf of Hardwire, and that the corporate structure separating Triangle from Hardwire was only a formality. Although Hardwire argues that it could have an all-foreign enterprise going forward, with no domestic business connections, the district court properly disregarded Hardwire’s promises to engage in only foreign conduct going forward and focused instead on the evidence currently before it to find a likelihood of material domestic conduct and reasonably foreseeable injury in the United States.

We reject Hardwire’s assertion that the injunction is overbroad. The district court properly “tailored [the injunction] to remedy the specific harm alleged.”

Lamb-Weston, Inc. v. McCain Foods, Ltd., 941 F.2d 970, 974 (9th Cir. 1991); *see also United States v. AMC Entm’t, Inc.*, 549 F.3d 760, 775 (9th Cir. 2008)

(“Ultimately, the appropriate scope of injunctive relief is guided by the rule that injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” (internal quotation marks and citation omitted)). After finding likelihood of success on the merits, the district court properly balanced the equities and the public interest to find that enjoining Hardwire’s international enterprise, including freezing its foreign assets, was necessary to protect United States consumers, particularly in light of the frequent movement of funds throughout the world among Triangle, Hardwire, and related bank accounts under their control.

AFFIRMED.