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6 **IN THE UNITED STATES DISTRICT COURT**  
 7 **FOR THE DISTRICT OF ARIZONA**

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9 TMC Franchise Corporation, )

No. CV-10-2423-PHX-DGC

10 Plaintiff, )

**TEMPORARY RESTRAINING ORDER**

11 vs. )

12 Millennium Vision, LLC; and Nastaran )  
 13 Eghtesad, )

14 Defendants. )

15 TMC Franchise Corporation is the franchisor of retail convenience stores operated  
 16 under the CIRCLE K® trademark and franchise system. On October 2, 2009, TMC and  
 17 Millennium Vision LLC entered into a franchise agreement, pursuant to which Millennium  
 18 was granted the right to operate a CIRCLE K store in Folsom, California. The store opened  
 19 in February 2010.

20 On November 9, 2010, TMC filed suit against Millennium and Nastaran Eghtesad,  
 21 one of Millennium's principals and a guarantor to the franchise agreement. The verified  
 22 complaint asserts six claims: trademark infringement, false designation of origin, violation  
 23 of the Arizona Uniform Trade Secrets Act, breach of contract, breach of promissory note, and  
 24 breach of personal guaranty. Doc. 1. TMC seeks injunctive relief, specific performance,  
 25 damages, and attorneys' fees. *Id.*

26 On November 16, 2010, TMC filed an application for a temporary restraining order  
 27 (TRO) against Millennium pursuant to Rule 65 of the Federal Rules of Civil Procedure.  
 28 Doc. 11. In an order dated November 22, 2010, the Court noted that the application does not

1 contain a certificate showing that it has been served on Defendants, and directed TMC to  
2 comply with Rule 65(b)(1) if the application is brought without notice. Doc. 15. On  
3 December 9, 2010, TMC filed a request that the Court issue a TRO without notice pursuant  
4 to Rule 65(b)(1). Doc. 17.

5 Having considered the requirements of Rule 65 and the standard for obtaining  
6 temporary injunctive relief, and having reviewed the well-pled factual allegations of the  
7 verified complaint, the application for a TRO, the request for issuance without notice, and  
8 the supporting affidavits and exhibits, the Court finds that a TRO should issue without notice.

9 **I. The Application for TRO.**

10 To obtain a temporary restraining order, TMC must show that it is likely to succeed  
11 on the merits, that it is likely to suffer irreparable harm in the absence of preliminary relief,  
12 that the balance of equities tips in its favor, and that an injunction is in the public interest.  
13 *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 129 S. Ct. 365, 374 (2008).

14 **A. Success on the Merits.**

15 TMC has shown that it is likely to succeed on its trademark infringement claims  
16 (counts one and two) and its claim for breach of contract (count four). The verified  
17 complaint and the evidence presented in support of the application for a TRO show that  
18 Millennium has breached the franchise agreement by failing to pay royalty and promotional  
19 fees to TMC, and has breached post-termination obligations of that agreement and infringed  
20 TMC's federally-registered trademarks by continuing to use the CIRCLE K marks in  
21 connection with the operation of its store.

22 **B. Irreparable Harm.**

23 TMC has shown that it is likely to suffer irreparable harm in the absence of a TRO.  
24 The damage to TMC's reputation and customer goodwill constitutes irreparable harm. *See*  
25 *MySpace, Inc. v. Wallace*, 498 F. Supp. 2d 1293, 1305 (C.D. Cal. 2007) ("Harm to business  
26 goodwill and reputation is unquantifiable and considered irreparable."). Indeed, "[i]n a  
27 trademark infringement claim, 'irreparable injury may be presumed from a showing of  
28 likelihood of success on the merits.'" *GoTo.com, Inc. v. Walt Disney Co.*, 202 F.3d 1199,

1 1204 n.4 (9th Cir. 2000) (quoting *Brookfield Communications, Inc. v. W. Coast Entm't*  
2 *Corp.*, 174 F.3d 1036, 1066 (9th Cir.1999)). “This presumption effectively conflates the dual  
3 inquiries of this prong into the single question of whether the plaintiff has shown a likelihood  
4 of success on the merits.” *Id.*

5 **C. Balance of Hardships.**

6 Where, as in this case, the plaintiff shows intentional infringement, the defendant  
7 “cannot complain of the harm that will befall it when properly forced to desist from its  
8 infringing activities.” *Triad Sys. Corp. v. Se. Express Co.*, 64 F.3d 1330, 1338 (9th Cir.  
9 1995). Indeed, “[w]here the only hardship that the defendant will suffer is lost profits from  
10 an activity which has been shown likely to be infringing, such an argument in defense ‘merits  
11 little equitable consideration[.]’” *Id.* (citation omitted). Because TMC has shown that it is  
12 likely to succeed on its trademark infringement claims, the balance of hardships tips in its  
13 favor.

14 **D. Public Interest.**

15 The “public interests favors elimination of consumer confusion” caused by trademark  
16 infringement. *Starcom Mediavest Group, Inc. v. Mediavestw.com*, No. 10-CV-04025-LHK,  
17 2010 WL 3564845, at \*1 (N.D. Cal. Sept. 13, 2010). Given that Millennium is operating a  
18 convenience store that serves dozens, if not hundreds, of consumers each day, the public  
19 interest is served by eliminating confusion as to whether Millennium’s store is a legitimate  
20 CIRCLE K store.

21 **II. The Request for Issuance Without Notice.**

22 TMC has presented evidence showing that it made repeated attempts to serve process  
23 on Defendants and give them notice of the application for a TRO. Doc. 17-1. It appears that  
24 Defendants may be evading service. TMC also has shown that Defendants have actual  
25 knowledge of this suit and the underlying dispute arising out of the franchise agreement. *Id.*  
26 Specific facts in the verified complaint and supporting affidavits show that TMC has  
27 suffered, and continues to suffer, irreparable harm to its reputation and customer goodwill  
28 from the alleged infringing activities of Millennium. The Court finds, pursuant to Rule

1 65(b)(1), that a TRO should issue without notice to Millennium.

2 **III. Conclusion.**

3 TMC has met its burden for obtaining a TRO without notice, that is, it has shown that  
4 it is likely to succeed on the merits of its trademark infringement and breach of contract  
5 claims, that it is will suffer immediate and irreparable harm if a TRO is not issued before  
6 Millennium can be heard in opposition, that the balance of equities tips in its favor, that an  
7 injunction is in the public interest, and that it has made diligent and good faith efforts to give  
8 notice to Millennium. Given the nature of Millennium's business, and TMC's likelihood of  
9 success on the merits, the Court concludes that security in the amount of \$25,000 will  
10 reasonably protect Millennium against injury if this injunction is entered incorrectly.

11 **IT IS ORDERED:**

- 12 1. Plaintiff TMC Franchise Corporation's application for temporary restraining  
13 order (Doc. 11) is **granted**.
- 14 2. Plaintiff TMC Franchise Corporation's request that the Court issue a TRO  
15 without notice (Doc. 17) is **granted** pursuant to Rule 65(b)(1).
- 16 3. Defendant Millennium Vision LLC, its officers, agents, servants, and  
17 employees, and those persons in active concert or participation with them who  
18 receive actual notice hereof by personal service or otherwise, are prohibited  
19 from using the CIRCLE K® trademarks, trade name and trade dress and falsely  
20 associating with the CIRCLE K® franchise system.
- 21 4. Defendant Millennium Vision LLC is required to comply fully with its post-  
22 termination obligation to de-identify contained in paragraph 12.7(C) of the  
23 parties' franchise agreement (Doc. 1-1 at 36). Specifically, Millennium Vision  
24 shall (a) immediately cease using the CIRCLE K® Marks or any name, logo,  
25 slogans, or symbols or other designations that might tend to mislead or confuse  
26 the public or give the impression that Millennium Vision's store, located at  
27 301 E. Bidwell Street, Folsom, California, is associated with Plaintiff TMC  
28 Franchise Corporation's or its CIRCLE K® brand.

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- 5. Pursuant to Rule 65(c), Plaintiff TMC Franchise Corporation shall promptly post a security bond in the amount of **\$25,000.00**.
- 6. Plaintiff TMC Franchise Corporation and its counsel immediately shall make a good faith and diligent effort to serve a copy of this order on Defendants.
- 7. This temporary restraining order, unless extended for good cause, expires on **December 30, 2010**.
- 8. A preliminary injunction hearing will be held on **December 30, 2010 at 2:00 p.m.**

DATED this 17th day of December, 2010 at 12:25 p.m..

  
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David G. Campbell  
United States District Judge