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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, )

**PRELIMINARY INJUNCTION**

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 December 17, 2010, the Court entered a temporary restraining order and scheduled  
 27 a preliminary injunction hearing. Doc. 19. Before the preliminary injunction hearing on  
 28 January 6, 2011, TMC filed a stipulation for entry of a preliminary injunction. Doc. 25. The

1 stipulation was signed on behalf of Defendants by Nader Eghestad, the father of Defendant  
2 Nastaran Eghestad. Defendants did not appear at the preliminary injunction hearing.  
3 Because it does not appear that Nader Eghestad holds any legal position with Defendant  
4 Millennium Vision, LLC, and TMC has presented no evidence that he is authorized to act  
5 on behalf of his daughter Nastaran Eghestad, the Court will not enter an injunction on the  
6 basis of his stipulation. The Court will, however, enter the injunction on the basis of TMC's  
7 uncontroverted assertions in the verified complaint (Doc. 1) and the other filings in this case.

8 **I. Preliminary Injunction.**

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

13 **A. Success on the Merits.**

14 TMC has shown that it is likely to succeed on its trademark infringement claims  
15 (counts one and two) and its claim for breach of contract (count four). The verified  
16 complaint and the evidence presented in support of the TRO application and in supplemental  
17 filings (*see* Doc. 24) show that Millennium has breached the franchise agreement by failing  
18 to pay royalty and promotional fees to TMC, and has breached post-termination obligations  
19 of that agreement and infringed TMC's federally-registered trademarks by continuing to use  
20 the CIRCLE K marks in connection with the operation of its store.

21 **B. Irreparable Harm.**

22 TMC has shown that it is likely to suffer irreparable harm in the absence of a  
23 preliminary injunction. The damage to TMC's reputation and customer goodwill constitutes  
24 irreparable harm. *See MySpace, Inc. v. Wallace*, 498 F. Supp. 2d 1293, 1305 (C.D. Cal.  
25 2007) ("Harm to business goodwill and reputation is unquantifiable and considered  
26 irreparable."). Indeed, "[i]n a trademark infringement claim, 'irreparable injury may be  
27 presumed from a showing of likelihood of success on the merits.'" *GoTo.com, Inc. v. Walt*  
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1 *Disney Co.*, 202 F.3d 1199, 1204 n.4 (9th Cir. 2000) (quoting *Brookfield Communications,*  
2 *Inc. v. W. Coast Entm't Corp.*, 174 F.3d 1036, 1066 (9th Cir.1999)).

3 **C. Balance of Hardships.**

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

12 **D. Public Interest.**

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

19 **II. Conclusion.**

20 TMC has met its burden for obtaining a preliminary injunction. It has shown that it  
21 is likely to succeed on the merits of its trademark infringement and breach of contract claims,  
22 that it is will suffer immediate and irreparable harm if a preliminary injunction is not issued,  
23 that the balance of equities tips in its favor, and that an injunction is in the public interest.  
24 Given the likelihood of success on the merits and Defendants’ lack of opposition to the  
25 preliminary injunction, the Court concludes that security will not be required for the  
26 preliminary injunction. The Court will order that TMC’s security of \$25,000 posted in  
27 support of the TRO be returned to TMC.

