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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

TRAFFICSCHOOL.COM, INC., a  
California corporation; DRIVERS ED  
DIRECT, LLC., a California limited  
liability company,

Plaintiffs,

v.

EDRIVER, INC., ONLINE GURU,  
INC., FIND MY SPECIALIST, INC.,  
and SERIOUSNET, INC., California  
corporations; RAVI K. LAHOTI, an  
individual; RAJ LAHOTI, an  
individual, and DOES 1 through 10.

Defendants.

Case No. CV067561 PA (CWx)  
*The Hon. Percy Anderson*

**EX PARTE APPLICATION FOR  
INTERIM STAY OF INJUNCTION  
PENDING HEARING ON MOTION  
FOR STAY PENDING APPEAL**

[Proposed Order Lodged Concurrently  
Herewith]

Complaint Filed November 28, 2006  
Trial Commenced: November 6, 2007

1 TO THE ABOVE-CAPTIONED COURT, ALL PARTIES AND  
2 ATTORNEYS OF RECORD:

3 Defendants eDriver, Inc., Online Guru, Inc., Find My Specialist, Seriousnet,  
4 Inc., Ravi K. Lahoti, and Raj Lahoti ("Defendants") hereby file this *ex parte*  
5 application for an interim stay of the permanent injunction until a full motion for  
6 stay of can be heard by this Court.

7 By this application, Defendants ask for an interim stay of the permanent  
8 injunction pending hearing on a motion for stay pending appeal. The four factors  
9 taken into consideration in determining whether to grant a stay – success on the  
10 merits; injury to the stay applicant; injury to other parties; and the public interest –  
11 favor a stay pending appeal.

12 Defendants have a reasonable chance of success on the merits of the appeal  
13 on the grounds that:

- 14 • The injunction is more restrictive than necessary to remedy any alleged  
15 confusion and causes disproportionate hardship. This dramatic loss puts the  
16 Online Guru business and 19 employees in jeopardy, rendering a profitable  
17 business unprofitable and requiring drastic downsizing of advertising  
18 expenses (currently) and employees (if no relief is forthcoming);
- 19 • Further corrective measures taken in the wake of the Findings by this Court  
20 have all but eliminated the receipt of personal information from visitors; and
- 21 • The underlying finding of false advertising is subject to legitimate legal  
22 questions including: (a) whether the claim at issue in the case is in fact a  
23 trademark claim under 15 U.S.C. § 1125(a)(1)(A), for which an interest in the  
24 mark DMV (which Plaintiffs lack) is a prerequisite to standing; (b) whether,  
25 even if the claim is properly brought under 15 U.S.C. § 1125(a)(1)(B),  
26 Plaintiffs have demonstrated a sufficient injury or competitive nexus to  
27 establish standing; (c) whether there is sufficient proof of confusion given the  
28 substantially flawed Maronick survey and statistically modest evidence of

1 actual confusion; (d) whether there is sufficient proof of materiality of any  
2 alleged confusion; and (e) whether Plaintiffs' unclean hands obviated the basis  
3 for relief in this case.

4 *Ex parte* relief is necessary because, as set forth in Defendants concurrently  
5 filed motion, and in prior papers, the harm to the DMV.ORG website from a splash  
6 page is substantial many visitors simply turn away from the site upon landing,  
7 unexpectedly, on the splash page. As the Tognazzini declaration showed, fickle  
8 Internet users do not like splash pages as they delay progress; users associate such  
9 splash pages with salacious websites dealing in pornography and other vices and  
10 will simply leave rather than waste further time on uncertain results. This evidence  
11 shows that the splash page is having a broader impact than expected or intended by  
12 associating the DMV.ORG website with the false and often fatal impression the  
13 splash page establishes.

14 Plaintiffs cannot identify any harm to them from staying the injunction  
15 pending appeal as the Court has already found that they presented no evidence of  
16 cognizable injury, even from prior versions of the DMV.ORG website.

17 The harm to the public from staying the injunction would be minimal. Since  
18 the Court issued its Findings in June 2008, DMV.ORG has added significant  
19 additional, unavoidable disclaimers and specific email safeguards to address the  
20 Court's concerns. Evidence submitted with this motion tends to show that  
21 DMV.ORG's prior array of disclaimers and screens resolved the problem of  
22 personal information transmission, perhaps better than the splash page does.

23 Also, the public has a significant interest in access to information on the  
24 Internet. The splash page disrupts this access to information by casting doubt upon  
25 whether the DMV.ORG website in fact contains information related to motor  
26 vehicle concerns. Although there was no allegation in this case that the DMV.ORG  
27 website is anything other than an informational website on such topics, users seeing  
28 the splash page are being misled.

1 Pursuant to Local Rule 7-19.1, Defendants have provided notice of this  
2 application to counsel for Plaintiffs by e-mail. (Daucher Decl., Ex. A.) Plaintiffs'  
3 Counsel indicated that they intend to oppose the application. (Id., Ex. A.)

4 Pursuant to Local Rule 7-19, Defendants hereby identify contact information  
5 for counsel for Plaintiffs' counsel as follows:

6 David Makous and Mina Hamilton  
7 Lewis Brisbois Bisgaard & Smith LLP  
8 221 North Figueroa Street, Suite 1200, Los Angeles, California 90012  
9 Phone: (213) 250-1800; [hamilton@lbbslaw.com](mailto:hamilton@lbbslaw.com)

10 In support of this application, Defendants rely on the Motion for Stay of the  
11 Permanent Injunction Pending Appeal and supporting declarations of Raj Lahoti and  
12 Brian M. Daucher, as well as the previously filed Tognazzini declaration.  
13 Defendants respectfully request that this Court grant this *ex parte* application, and  
14 temporarily stay the permanent injunction until a decision can be made on the  
15 Motion to Stay (proposed hearing date October 14).


16 If the Court is inclined to deny an interim stay pending further briefing on this  
17 matter, then Defendants respectfully request that this Court promptly deny both this  
18 application and the contemporaneous motion so that Defendants may seek their  
19 remedy before the Court of Appeal.

20 DATED: September 10, 2008

21 Respectfully submitted,

22 SHEPPARD MULLIN RICHTER & HAMPTON LLP

23  
24 By

  
25 \_\_\_\_\_  
26 BRIAN M. DAUCHER  
27 Attorneys for Defendants  
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