

1 **Cara Burns (SBN: 137557)**
 2 **Hicks, Mims, Kaplan & Burns**
 3 **2800 28th Street Suite 300**
 4 **Santa Monica, California 90405**
Telephone: (310) 314-1721
Facsimile: (310) 314-1725
cburns@hmkblawyers.com

5 **Attorneys for Plaintiff,**
 6 **Giant Merchandising**

7
 8 **UNITED STATES DISTRICT COURT**
 9 **EASTERN DISTRICT OF CALIFORNIA**

10	GIANT MERCHANDISING)	Case No. 1:07-CV-00399 OWW TAG
11)	
12	Plaintiff,)	TEMPORARY RESTRAINING ORDER;
13	v.)	ORDER OF SEIZURE; AND ORDER TO
14	JOHN DOES 1-100, JANE DOES 1-100)	SHOW CAUSE WHY A PRELIMINARY
15	AND XYZ COMPANY,)	INJUNCTION SHOULD NOT ISSUE
16	Defendants.)	

17 Based upon the complaint, memorandum of points and authorities, Declaration of Scott
 18 Faraday and the Certificate of Counsel of Cara R. Burns and all other pleadings and proceedings
 19 heretofore had herein and good cause being shown:

20 **IT IS HEREBY ORDERED** that defendants, John Does 1-100, Jane Does 1-100 and
 21 XYZ Company their true identities being unknown (collectively "Defendants), show cause before
 22 the Honorable Oliver W. Wanger, United States District Court Judge, in Courtroom 3 of the
 23 United States District Court for the Eastern District of California, located at 2500 Tulare Street,
 24 Fresno, California at 9:00 a.m. on March 23, 2007 or as soon thereafter as counsel can be heard,
 25 why an order pursuant to Fed. R. Civ. P. Rule 65, the Lanham Act 15 U.S.C. § 1051 et. seq., and
 26 Local Rule 65, should not be entered granting to Plaintiff, Giant Merchandising, a preliminary
 27 injunction to enjoin the Defendants from manufacturing, distributing, selling or holding for sale,
 28

1 any clothing, jewelry, photographs, posters and other merchandise (collectively the "Infringing
2 Merchandise") bearing the trademarks, servicemarks, likenesses, tradenames or tour logos of the
3 group known as "EVANESCENCE" (collectively, the "Tradenames").

4 **AND IT APPEARING TO THE COURT** that Defendants are about to sell and distribute
5 the Infringing Merchandise bearing any or all of the Tradenames as set forth in Plaintiff's
6 complaint and declarations, and will continue to carry out such acts unless restrained by order of
7 the Court;

8 **AND IT APPEARING TO THE COURT** that immediate and irreparable injury, loss or
9 damage will result to the Plaintiff before Defendants can be identified and given notice and their
10 attorneys can be heard in opposition to the granting of the temporary restraining order, in that the
11 Defendants are preparing to manufacture, distribute and sell Infringing Merchandise as set forth in
12 the Plaintiff's complaint, and that, unless said Defendants are enjoined from said manufacture,
13 distribution, and sale, the Plaintiff will suffer immediate and irreparable injury and harm in the
14 form of a loss of income, lessening and dilution of the value of the Tradenames, interference with
15 Plaintiff's ability to exploit, market and license its merchandising rights, confusion in the
16 marketplace as to the duly authorized source of merchandise depicting the Tradenames, and
17 impairment of the good will Plaintiff and its licensors have in the said Tradenames;

18 **IT IS FURTHER ORDERED** that pending hearing and determination of this application,
19 or the expiration of ten (10) court days from the date hereof, the Defendants, their agents, servants,
20 employees, attorneys, successors and assigns and all persons, firms and corporations acting in
21 concert with them, and each of them, be and hereby are temporarily restrained from
22 manufacturing, distributing and selling Infringing Merchandise bearing the any or all of the
23 Tradenames;

1 **AND IT IS FURTHER ORDERED** that pursuant to 1116 (a), the United States Marshal,
2 for this District or any district in which Plaintiff enforces this order, the state police, local police or
3 local deputy sheriffs, off duty officers of the same, and any person acting under their supervision,
4 are hereby authorized to seize and impound any and all Infringing Merchandise bearing any or all
5 of the Tradenames of **EVANESCENCE** which Defendants attempt to sell or are holding for sale,
6 including any from any carton, container, vehicle, or other means of carriage in which the
7 Infringing Merchandise is found from six (6) hours before to six (6) hours after any performance
8 of the tour within a ten (10) mile vicinity of the halls, stadiums or arenas at which said Tour shall
9 be performing, including but not limited to on March 16, 2007 at the Selland Arena in Fresno,
10 California;

11 **AND IT IS FURTHER ORDERED** that this order be and is hereby conditioned upon
12 Plaintiff's filing with the Clerk of this Court an undertaking in the form of a bond, certified check,
13 or cash in the amount of \$20,000 no later than March 16, 2007, to secure the payment of such
14 costs and damages not to exceed such sum as may be suffered or sustained by any party who is
15 found to be wrongfully restrained hereby;
16

17 **AND IT IS FURTHER ORDERED** that this temporary restraining order is conditioned
18 upon the Plaintiff's advancing to the law enforcement officers such sum as is required by the same
19 to cover the fees for their said services, in the event Plaintiff seeks their services in this or any
20 other district;
21

22 **AND IT IS FURTHER ORDERED** that service of a copy of this order to show cause
23 together with the complaint, be made upon the Defendants by the United States Marshal, state or
24 local police, local deputy sheriffs or by any person over the age of eighteen (18) years not a party
25 to this action selected for that purpose by the Plaintiff, at the time of the seizure provided herein is
26 effected and that such service shall be deemed good and sufficient;
27

28 **AND IT IS FURTHER ORDERED** that the process server shall offer a receipt to each

1 person from whom Infringing Merchandise is seized and that the Plaintiff shall be deemed
2 substitute custodian for all Infringing Merchandise seized;

3 **AND IT IS FURTHER ORDERED** that each and every defendant served with a copy of
4 this order promptly, courteously and peaceably identify himself or herself to the aforementioned
5 process server and that the process server or agents for Plaintiff be allowed to photograph, video
6 tape or otherwise identify the Defendant;

7 **AND IT IS FURTHER ORDERED** that Defendants' responsive papers, if any, shall be
8 filed with the Clerk of this Court and served upon the attorneys for Plaintiff by delivering copies
9 to its counsel on or before March 20, 2007. Any reply shall be filed by the Plaintiff and served
10 upon each appearing defendant or his/her counsel on or before March 22, 2007. Plaintiff is to
11 provide copies of all other filed pleadings at the request of any identified defendant;

12 **AND IT IS FURTHER ORDERED** that any defendant who is hereafter served with a
13 copy of this order who objects to the provisions hereof may submit his or her objections to this
14 Court or otherwise move for relief from this Court according to the Federal Rules of Civil
15 Procedure 65(b), but no such objection shall serve to suspend this Order or stay the terms herein
16 unless otherwise ordered by this Court.

17 **AND IT IS FURTHER ORDERED** that pursuant to Local Rule 65-231 and F.R.C.P.
18 Rule 65 (d), any defendant can apply to this Court for modification/dissolution of this Order on 2
19 days notice or shorter notice as this Court may allow.

20 **IT IS SO ORDERED.**

21 Dated: March 14, 2007
22 At: 8:30 a.m.

23 /s/ Oliver W. Wanger
24 UNITED STATES DISTRICT COURT JUDGE