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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

SEED SERVICES, INC., a California corporation,
Plaintiff,
v.
WINSOR GRAIN, INC., a Minnesota corporation, WILLIAM L. COOK, an individual, and DOES 1 through 35, inclusive,
Defendants.

**CASE NO. 1:10-CV-2185 AWI GSA
ORDER RE: TEMPORARY
RESTRAINING ORDER**

I. History

Plaintiff Seed Services, Inc. (“Seed Services”) produces and supplies seeds for agricultural production. Defendant Winsor Grain, Inc. (“Winsor Grain”) sells Seed Services’s products in the Middle East. Defendant William Cook (“Cook”) is the owner and president of Winsor Grain (collectively “Defendants”). On August 30, 2010, Seed Services and Defendants entered into a contract whereby Seed Services agreed to buy certain assets of Winsor Grain (“Contract”). In key part, Winsor Grain agreed to give Seed Services its trademarks (the use of the name “California Gold” among others), to turn over its customer list, to have Cook act as Seed Services’s agent for nine months, and to cease all new sales to the Middle East. In return, Seed Services agreed to pay Winsor Grain a total of \$1,000,000.

1 Seed Services filed suit on November 22, 2010, alleging Defendants violated the Contract
2 by selling seed to Erzam Agricultural Trading Co. in Saudi Arabia (“Erzam”), one of the
3 customers on the list. Recently, Seed Services also alleged that Cook has sought to sell seeds he
4 calls “California Gold” grown in Australia to Erzam. Seed Services originally sought a
5 temporary restraining order in December 2011; the motion was denied as it concerned trademark
6 violations, which was a claim that was not part of this case. Seed Services filed an amended
7 complaint that alleged violations of the Lanham Act. Seed Services has now made a motion for
8 an ex parte temporary restraining order. Doc. 66.

9 10 **II. Legal Standards**

11 Under Fed. Rule Civ. Proc. 65(b), a court may issue an ex parte temporary restraining
12 order only if: (1) it clearly appears...that immediate and irreparable injury, loss, or damage will
13 result to the applicant before the adverse party or that party’s attorney can be heard in opposition,
14 and (2) the applicant’s attorney certifies to the court in writing the efforts, if any, which have
15 been made to give the notice and the reasons supporting the claim that notice should not be
16 required. Fed. R. Civ. Pro. 65(b); Reno Air Racing Ass’n v. McCord, 452 F.3d 1126, 1130 (9th
17 Cir. 2006). Rule 65(b)’s requirements are “stringent,” and temporary restraining orders that are
18 granted ex parte are to be “restricted to serving their underlying purpose of preserving the status
19 quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no
20 longer.” Granny Goose Foods, Inc. v. Brotherhood of Teamsters, 415 U.S. 423, 438-39 (1974).

21 The substantive standard for granting a temporary restraining order is the same as the
22 standard for entering a preliminary injunction. Bronco Wine Co. v. U.S. Dep’t of Treasury, 997
23 F.Supp. 1309, 1313 (E.D. Cal. 1996); Lockheed Missile & Space Co. v. Hughes Aircraft Co.,
24 887 F.Supp. 1320, 1323 (N.D. Cal. 1995). A plaintiff seeking a preliminary injunction must
25 establish: (1) that he/she is likely to succeed on the merits, (2) that he/she is likely to suffer
26 irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in
27 his/her favor, and (4) that an injunction is in the public interest. Winter v. Natural Res. Def.
28 Council, Inc., 555 U.S. 7, 18 (2008). “Injunctive relief...must be tailored to remedy the specific

1 harm alleged.” Park Vill. Apt. Tenants Ass’n v. Mortimer Howard Trust, 636 F.3d 1150, 1160
2 (9th Cir. 2011).

3 4 **III. Discussion**

5 The Contract provided that Seed Services would acquire Winsor Grain’s customer list
6 and the associated right to sell to those customers in the Kingdom of Saudi Arabia and the
7 Middle East. Winsor Grain also assigned the name “Winsor Grain” and certain tradenames or
8 trademarks to Seed Services, including: (a) U.S. Trademark Registration No. 3,909,586, the
9 “California Gold” mark; (b) U.S. Trademark Registration No. 2,755,555, the “Frisco” mark; (c)
10 U.S. Trademark Registration No. 2,958,765, the “Pacific Grain and Seed Brand” mark; (d) U.S.
11 Trademark Registration No. 2,982,806, the “Circle and Plant Design” mark; (e) U.S. Trademark
12 Registration No. 2,986,619, the “Red Panic” mark; and (f) U.S. Trademark Registration No.
13 2,987,117, the “PSW and Design” mark. Doc. 66, Part 2, Ex. 2, (21-25 of 34). Subsequently,
14 Cook attempted to sell alfalfa seed grown in Australia to Seed Services customers in Saudi
15 Arabia under the “California Gold” brand. Doc. 66, Part 6, Ashour Declaration.

16 “[I]n order to show a probability of success in the causes of action for trademark
17 infringement, false designation of origin and unfair competition, [parties] need show that a
18 likelihood of confusion exists.” Sardi’s Restaurant Corp. v. Sardie, 755 F.2d 719, 723 (9th Cir.
19 1985), citations omitted. “[I]rreparable injury may be presumed from a showing of likelihood of
20 success on the merits of a trademark infringement claim.” Brookfield Communs., Inc. v. West
21 Coast Entertainment Corp., 174 F.3d 1036, 1066 (9th Cir. 1999), citing Metro Publ’g, Ltd. v. San
22 Jose Mercury News, 987 F.2d 637, 640 (9th Cir. 1993). Likelihood of confusion is determined
23 by an eight factor test: “1. strength of the mark; 2. proximity of the goods; 3. similarity of the
24 marks; 4. evidence of actual confusion; 5. marketing channels used; 6. type of goods and the
25 degree of care likely to be exercised by the purchaser; 7. defendant’s intent in selecting the mark;
26 and 8. likelihood of expansion of the product lines.” AMF, Inc. v. Sleekcraft Boats, 599 F.2d
27 341, 348-49 (9th Cir. 1979). The marks are identical. The products are substantially the same
28 product. The marketing channel used is a narrow one: Cook approached Seed Services’s

1 customers directly, and also approached its Middle Eastern sales agent. It also appears that Cook
2 chose to use the “California Gold” brand to capitalize on the goodwill/reputation that brand has
3 built up. These factors suggest that Seed Services will prevail on the merits of the Lanham Act
4 claim. The likelihood of confusion supports a finding of irreparable harm in the absence of an
5 injunction. The equities favor Seed Services and an injunction is in public interest.

6 Seed Services argues that “on March 6, 2012, supplemental documents were received
7 from Winsor Grain indicating (a) as late as the end of December 2011, Mr. Cook was continuing
8 to offer ‘California Gold’ alfalfa, to Seed Services’ customers in Saudi Arabia, and (b) that at
9 least one shipment of alfalfa, with an unknown brand name, had been shipped by Mr. Cook to
10 Qatar.” Doc. 66, Part 5, Brief, at 3:9-12; see Doc. 66, Part 2, Exs. 7 and 8, (33-34 of 34). Mr.
11 Cook’s continuing efforts at selling “California Gold” branded alfalfa seed justifies granting a
12 restraining order without hearing from Defendants in opposition.

13 This injunction involves activity outside the United States. To support this sort of
14 injunction under the Lanham Act, “there are three criteria that must be considered: (1) there must
15 be some effect on American foreign commerce; (2) the effect must be sufficiently great to present
16 a cognizable injury to plaintiffs under the federal statute; (3) the interest of and links to American
17 foreign commerce must be sufficiently strong in relation to those of other nations.”

18 Ocean Garden, Inc. v. Marktrade Co., 953 F.2d 500, 503 (9th Cir. 1991). Seed Services is an
19 American company selling goods produced in the United States to foreign customers. The
20 crowding out of Seed Services’s sales to customers in Saudi Arabia meets the first factor and the
21 monetary injury from those foregone sales meets the second factor. The third factor is further
22 subdivided into seven considerations: “(1) Degree of conflict with foreign law....(2) Nationality
23 of the parties....(3) Extent to which enforcement is expected to achieve compliance....(4) Relative
24 significance of effects on U.S. as compared to elsewhere....(5) Explicit purpose is to harm U.S.
25 commerce....(6) Foreseeability of such effect....(7) Relative importance of violations within the
26 U.S.” Ocean Garden, Inc. v. Marktrade Co., 953 F.2d 500, 503-4 (9th Cir. 1991). In key part,
27 Cook is an American citizen and Winsor Grain is an American company. The infringement
28 knowingly harms Seed Services’s commerce in a significant manner. The facts of this case

1 support an injunction that restricts the overseas activity of Defendants.

2
3 **IV. Order**

4 1. Plaintiff shall serve a copy of the Motion For Temporary Restraining Order and Order to
5 Show Cause Why a Preliminary Injunction Should Not Issue, this Order, and all associated
6 filings, on Defendants' counsel by electronic service, including by facsimile transmission or
7 federal express, on or before March 12 2012, at 1:00 PM.

8 2. Defendants shall file any and all responsive papers on or before March 19, 2012, at 4:00
9 PM.

10 3. Plaintiff may file reply papers on or before March 21, 2012, at 4:00 PM.

11 4. A hearing on Plaintiff's motion for preliminary injunction will be held on March 26,
12 2012, at 1:30 PM in Courtroom Two.

13 5. Defendants may apply to the Court for modification or dissolution of this Order upon two
14 (2) days' notice to Plaintiff, or upon such shorter notice as the court may allow.

15 6. Plaintiff shall post a bond in the amount of \$25,000.00 as security for this temporary
16 restraining order as required by Fed. Rule Civ. Proc. 65(c).

17 7. William L. Cook, Winsor Grain, Inc., or their agents, employees, or persons acting in
18 concert or participation with them, either directly or through another entity including but not
19 limited to Cook Land & Cattle Pty. Ltd., are temporarily restrained and enjoined from doing the
20 following:

21 a. Using for any purpose the name "Winsor Grain";

22 b. Using for any purpose any tradenames or trademarks conveyed to Seed Services,
23 including: (a) U.S. Trademark Registration No. 3,909,586, the "California Gold" mark; (b) U.S.
24 Trademark Registration No. 2,755,555, the "Frisco" mark; (c) U.S. Trademark Registration No.
25 2,958,765, the "Pacific Grain and Seed Brand" mark; (d) U.S. Trademark Registration No.
26 2,982,806, the "Circle and Plant Design" mark; (e) U.S. Trademark Registration No. 2,986,619,
27 the "Red Panic" mark; and (f) U.S. Trademark Registration No. 2,987,117, the "PSW and
28 Design" mark. (Collectively these tradenames and trademarks and associated intellectual

1 property rights, along with the name “Winsor Grain,” are the “Tradenames and Trademarks.”)

2 c. Importing or attempting to import seeds to the Kingdom of Saudi Arabia or any
3 other country in the Middle East using any of the Tradenames and Trademarks or any
4 confusingly similar names or marks, including but not limited to the “California Gold” name and
5 trademark registered in Australia by a company called “Cook Land and Cattle Pty. Ltd.”

6 d. Selling or attempting to make sales of seeds utilizing any of the Tradenames and
7 Trademarks or any confusingly similar marks to customers located in the Kingdom of Saudi
8 Arabia or any other country in Middle East.

9 e. Contacting any persons in the Middle East for the purposes of making sales of
10 seeds to the Middle East under any of the Tradenames and Trademarks or any confusingly
11 similar names or marks.

12 8. This temporary restraining order is entered on March 9, 2012, at 4:10 PM.

13 IT IS SO ORDERED.

14 Dated: March 9, 2012


15 CHIEF UNITED STATES DISTRICT JUDGE