

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11
12 INSPECTION MANAGEMENT SYSTEMS,
13 INC.,

2:09-cv-00023-MCE-GGH

14 Plaintiff,

15 v.

TEMPORARY RESTRAINING ORDER

16 OPEN DOOR INSPECTIONS, INC.,
17 MICHAEL R. SCHEIDERICH; KEVIN
18 SCHEIDERICH; BOB FISHER; RUN
19 TANGENT, LLC,

20 Defendants.

21 -----oo0oo-----
22

23 The above matter came before the Court upon Plaintiffs' Ex
24 Parte Application, filed January 15, 2009 for entry of a
25 Temporary Restraining Order, and request for an Order to Show
26 Cause why a Preliminary Injunction should not issue. Following
27 its review of the papers submitted on behalf of Plaintiff, the
28 Court conducted a hearing at 3:00 p.m. on January 16, 2009.
Matthew R. Eason appeared on behalf of Plaintiff. Defendants
were represented by Robin Gentry.

1 Issuance of a temporary restraining order, as a form of
2 preliminary injunctive relief, is an extraordinary remedy, and
3 Plaintiffs have the burden of proving the propriety of such a
4 remedy by clear and convincing evidence. See Granny Goose Foods,
5 Inc. v. Teamsters, 415 U.S. 423, 442 (1974). In order to warrant
6 issuance of such relief, Plaintiffs must demonstrate either: 1) a
7 combination of probable success on the merits and a likelihood of
8 irreparable injury; or 2) that serious questions are raised and
9 the balance of hardships tips sharply in favor of granting the
10 requested injunction. Stuhlbarg Int'l Sales Co., Inc. v. John D.
11 Brush & Co., Inc., 240 F.3d 832, 839-40 (9th Cir. 2001); Winter
12 v. Natural Resources Defense Council, 129 S. Ct. 365, 375 (2008).
13 (likelihood rather than possibility of success on the merits
14 required for issuance of preliminary injunctive relief). These
15 two alternatives represent two points on a sliding scale,
16 pursuant to which the required degree of irreparable harm
17 increases or decreases in inverse correlation to the probability
18 of success on the merits. Roe v. Anderson, 134 F.3d 140-0, 1402
19 (9th Cir. 1998); United States v. Nutri-cology, Inc., 982 F.2d
20 1374, 1376 (9th Cir. 1985). Under either formulation of the test
21 for granting injunctive relief, however, Plaintiffs must
22 demonstrate a significant threat of irreparable injury. Oakland
23 Tribune, Inc. v. Chronicle Publ. Co., 762 F.2d 1374 (9th Cir.
24 1985).

25 //

26 //

27 //

28 //

1 The propriety of a temporary restraining order, in
2 particular, hinges on a significant threat of irreparable injury
3 (Simula, Inc. Autoliv, Inc., 175 F.3d 716, 725 (9th Cir. 1999))
4 that must be imminent in nature. Caribbean Marine Serv. Co. v.
5 Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

6 Having considered the documents presented, and after hearing
7 arguments of counsel, the Court finds that Plaintiff has
8 demonstrated a significant threat of irreparable injury from the
9 various acts of unlawful competition alleged to have been
10 committed by Defendants. Specifically, according to the
11 Declarations offered by Plaintiff, Defendant Michael R.
12 Scheiderich has breached his End User Licensing Agreement for use
13 of Plaintiff's home inspection software by copying and/or
14 emulating said software and developing for sale his own competing
15 version. Plaintiff further claims that Defendant Scheiderich,
16 and the other named defendants, intend to launch their allegedly
17 infringing software at a national trade show for Home Inspectors
18 to be held between January 21, 2009 and January 25, 2009 in
19 Orlando, Florida. The Court further finds that legal remedies
20 may be inadequate to redress such injury, and that Plaintiff has
21 demonstrated a likelihood of success on the merits. Finally, the
22 Court also determines that any potential damage to Defendants is
23 outweighed by the threatened injury to Plaintiff. Plaintiff's
24 Application for Temporary Restraining Order is consequently
25 GRANTED. It is hereby ordered as follows:

26 //

27 //

28 //

1
2 A. A Temporary Restraining Order shall be issued
3 immediately. Defendants, their officers, representatives,
4 and all persons acting on their behalf, and all of them
5 ("Defendants") are hereby enjoined and restrained, directly
6 or indirectly, whether acting alone or in concert with
7 others, as follows:

8
9 1. Defendants are ordered to cease and desist from any
10 further solicitation for sale, sale, development or
11 operation of any software server program for home
12 inspectors;

13
14 2. Defendants are ordered to refrain from any other
15 conduct infringing on the IMS software, as identified
16 within the End User Licensing Agreement attached to
17 Plaintiff's Complaint as Exhibit "A".

18
19 B. This Order shall remain in full force and effect
20 pending further order of this Court. A hearing on
21 Plaintiffs' request for a preliminary injunction is
22 scheduled for January 28, 2009 at 9:00 a.m.. Opposition to
23 Plaintiffs' request for injunctive relief in that regard
24 shall be filed by Defendants not later than January 22,
25 2009. Plaintiffs' reply, if any, is due on January 26,
26 2009.

27 //

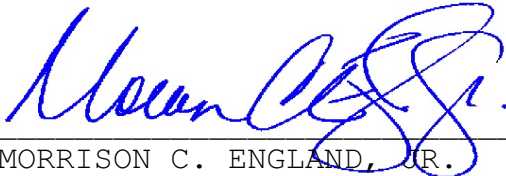
28 //

1 C. Plaintiff shall post a bond in the amount of \$25,000.00,
2 which must be posted not later than 4:00 p.m. on Monday,
3 January 20, 2009. This Order shall take effect on
4 Plaintiff's posting of that bond.

5
6 IT IS SO ORDERED.

7
8 DATED this 16th day of January, 2009, at 4:15 p.m.

9 Dated: January 16, 2009

10
11 
12

13 MORRISON C. ENGLAND, JR.
14 UNITED STATES DISTRICT JUDGE
15
16
17
18
19
20
21
22
23
24
25
26
27
28