

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

INSPECTION MANAGEMENT SYSTEMS,  
INC.,

2:09-cv-00023-MCE-GGH

Plaintiff,

## TEMPORARY RESTRAINING ORDER

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

Defendants.

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The above matter came before the Court upon Plaintiffs' Ex Parte Application, filed January 15, 2009 for entry of a Temporary Restraining Order, and request for an Order to Show Cause why a Preliminary Injunction should not issue. Following its review of the papers submitted on behalf of Plaintiff, the 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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 1998); United States v. Nutri-cology, Inc., 982 F.2d  
20 1374, 1376 (9<sup>th</sup> 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 (9<sup>th</sup> Cir.  
24 1985).

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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 (9<sup>th</sup> Cir. 1999))  
4 that must be imminent in nature. Caribbean Marine Serv. Co. v.  
5 Baldridge, 844 F.2d 668, 674 (9<sup>th</sup> 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:

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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:

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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;

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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".

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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.

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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.

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6 IT IS SO ORDERED.  
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8 DATED this 16th day of January, 2009, at 4:15 p.m.  
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10 Dated: January 16, 2009  
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12 MORRISON C. ENGLAND, JR.  
13 UNITED STATES DISTRICT JUDGE  
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