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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RED HEAD, INC.,

No. C-08-5703 EMC

Plaintiff,

v.

FRESNO ROCK TACO, LLC,

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTIONS FOR PRELIMINARY
INJUNCTION AND FOR WRIT OF
ATTACHMENT**

Defendant.

(Docket Nos. 7, 9)

Plaintiff Red Head, Inc. ("RHI") has filed suit against Defendant Fresno Rock Taco, LLC ("Rock Taco") for, *inter alia*, trademark infringement and breach of contract. At the time that RHI filed its complaint, it also filed two *ex parte* applications seeking temporary restraining orders ("TROs") and a writ of attachment. A TRO was granted by Chief Judge Walker, acting as the general duty judge. *See* Docket No. 17 (order, filed on 12/24/08). In his order, Chief Judge Walker also set a hearing before the undersigned, as the presiding judge, as to whether a preliminary injunction continuing the TROs should issue. This Court held the hearing on December 31, 2008, and, having considered the parties' briefs and accompanying submissions, as well as the oral argument of counsel, the Court finds RHI has established grounds for the issuance of a preliminary injunction for the reasons stated on the record and as will be supplemented in a more detailed order to be issued shortly. The Court hereby **GRANTS** in part and **DENIES** in part the relief sought by RHI.

More specifically, the Court hereby grants a preliminary injunction effective during the pendency of this action but denies the writ of attachment and orders the following relief:

- 1 1. Rock Taco, all of its officers, members, owners, agents, representatives, servants, and
2 employees, and all those acting in concert or privity with them who receive actual notice of
3 this order are restrained and enjoined from:
- 4 A. Publicly displaying any of RHI's intellectual property, including without limitation
5 the Cabo Wabo trademarks and trade dress and the name and likeness of Sammy
6 Hagar;
- 7 B. Publicly displaying any trademark or trade dress that imitates or is confusingly
8 similar to the Cabo Wabo trademarks and trade dress, or that is likely to cause
9 confusion, mistake, deception, or public misunderstanding as to the origin of Rock
10 Taco's goods and services or their connection to RHI; and/or
- 11 C. Transferring; conveying, assigning, pledging, selling, encumbering, changing
12 ownership, vesting of title to, or otherwise disposing of any assets held in the name of
13 Rock Taco other than in the ordinary course of business as provided below.
- 14 2. Rock Taco shall continue (or establish if not already established pursuant to the TRO issued
15 by Chief Judge Walker) an account for the purpose of segregating any monies generated
16 from the operation of the Fresno Cabo Wabo Cantina or any successor restaurant, including
17 but not limited to the Memphis Blues Barrel Room, located at the Village of Granite Park,
18 4000 North Cedar, Fresno, California and shall provide an accounting of all assets, including
19 but not limited to all personal property assets, including monies, from August 29, 2008
20 through December 31, 2008. Rock Taco shall deposit all cash on hand and all future monies
21 generated from the operation of the Fresno Cabo Wabo Cantina or successor restaurant into
22 the account so established and shall be prohibited from making any expenditures from this
23 account except as follows:
- 24 A. Payment of any payroll expense (including fringe benefits and taxes and premiums
25 for workers' compensation and unemployment insurance) falling due in the ordinary
26 course of business, but not excluding any payment to Milt Barbis or any immediate
27 relative;
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- B. Payment for goods and services for use in the normal course of business but excluding any payments to Milt Barbis, any immediate relative, or any business owned (in part or whole) or controlled (in part or whole) by any such persons;
- C. Payment of taxes if payment is necessary to avoid penalties which will accrue if there is any further delay in payment; and/or
- D. Payment of reasonable legal fees and reasonable costs and expenses required for Rock Taco's representation in the action.

3. Rock Taco shall permit RHI to conduct an audit of Rock Taco's books and records to determine royalties owed for the months of October, November, and December 2008 and to ensure compliance with paragraph 2 above.

This preliminary injunction is secured by the \$10,000 bond already posted by RHI. Paragraphs 2 and 3 of this preliminary injunction may be lifted upon Rock Taco's posting of an adequate undertaking in the amount of \$117,000.

This order disposes of Docket Nos. 7 and 9.

IT IS SO ORDERED.

Dated: December 31, 2008



EDWARD M. CHEN
United States Magistrate Judge