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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

VIRTUE GLOBAL HOLDINGS LIMITED,
Plaintiff,
v.
REARDEN LLC, et al.,
Defendants.

Case No. 15-cv-00797-JST

**ORDER DENYING DIGITAL DOMAIN
3.0, INC.’S MOTION TO MODIFY THE
PRELIMINARY INJUNCTION ORDER
AND VIRTUE GLOBAL HOLDINGS
LIMITED’S MOTION TO STAY OR
MODIFY THE PRELIMINARY
INJUNCTION PENDING APPEAL**

Re: Dkt. Nos. 206, 208

Before the Court is non-party Digital Domain 3.0, Inc.’s (“DD3”) motion to modify the preliminary injunction order and Plaintiff Virtue Global Holdings Limited’s (“VGH”) motion to modify or stay the preliminary injunction order pending appeal. See ECF Nos. 206, 208. DD3 and VGH request that the Court make three modifications to the preliminary injunction order: (1) remove the restriction that enjoins them from “using” the MOVA assets, (2) remove the transfer requirement, and (3) substitute those requirements with less restrictive provisions. See ECF No. 206 at 8; ECF No. 208 at 7-8, 18. The Court denies both motions because it lacks jurisdiction.

Because a notice of appeal has been filed, this Court’s jurisdiction to suspend or modify the preliminary injunction is limited. See Nat. Res. Def. Council, Inc. v. Sw. Marine Inc., 242 F.3d 1163, 1166 (9th Cir. 2001); ECF No. 195. The Court may suspend or modify the preliminary injunction only to preserve the status quo established by the preliminary injunction order or to secure the opposing party’s rights. See id. (“The district court retains jurisdiction during the pendency of an appeal to act to preserve the status quo.”); Fed. R. Civ. P. 62(c) (“While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or

1 other terms that secure the opposing party’s rights.”). For example, a district court has jurisdiction
2 to modify a preliminary injunction pending appeal to clarify the requirements imposed by, and to
3 ensure compliance with, the original preliminary injunction order. See, e.g., Nat. Res. Def.
4 Council, Inc., 242 F.3d at 1166-67 (holding that the modifications “were minor adjustments that
5 effectuated the underlying purposes of the original requirements” and therefore “[t]hese
6 modifications did not materially alter the status of the consolidated appeal”). However, a district
7 court does not have jurisdiction to remove restrictions imposed on the appealing party pending
8 appeal. See, e.g., Small v. Operative Plasterers’ & Cement Masons’ Int’l Ass’n Local 200, AFL-
9 CIO, 611 F.3d 483, 495 (9th Cir. 2010) (holding that the district court lacked jurisdiction to delete
10 a paragraph of the preliminary injunction order that imposed restrictions on the party appealing the
11 preliminary injunction).

12 Applying the foregoing rules to the motions at hand, this Court lacks jurisdiction to stay
13 the injunction or make the requested modifications because doing so would materially alter the
14 status of the case on appeal. The modifications requested by VGH and DD3 would not maintain
15 the status quo established by this Court’s preliminary injunction order. Rather, as in Small, these
16 modifications would alter the status quo by removing the use prohibition and transfer requirements
17 imposed on VGH and DD3 by this Court’s preliminary injunction order. See ECF No. 188 at 15-
18 16. Nor would these modifications secure Rearden’s rights as the opposing party. Because the
19 Court lacks jurisdiction to remove the use and transfer provisions, it also declines to substitute
20 those provisions with the less restrictive provisions proposed by DD3.

21 VGH cites LifeScan, Inc. v. Shasta Techs., LLC as an example of a case where this Court
22 has modified a preliminary injunction pending appeal. See ECF No. 220 at 4. That case is
23 inapposite, however, because the modifications to the preliminary injunction were adopted
24 pursuant to stipulation. See LifeScan, Inc. v. Shasta Techs., LLC, No. 12-CV-06360-JST, 2013
25 WL 3200629, at *2 (N.D. Cal. June 24, 2013) (explaining that the opposing party “request[ed] that
26 the Court modify the injunction to explicitly permit the use of their logos or trade dress so long as

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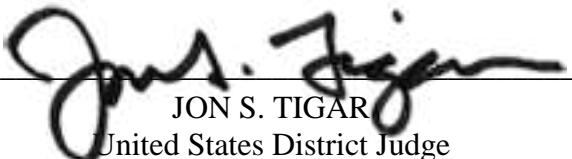
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any such use complies with the nominative fair use test”). Thus, unlike in the present case, it was clear that the opposing party’s rights were not adversely affected by the modifications.

IT IS SO ORDERED.

Dated: July 15, 2016



JON S. TIGAR
United States District Judge