

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CRATERS & FREIGHTERS,
Plaintiff,

No. C 09-04531 CW

ORDER RE: SANCTIONS

v.

DAISYCHAIN ENTERPRISES, dba
FREIGHT & CRATE; CATHY BENZ; and
FRED BENZ.
Defendants.

On March 5, 2014, Plaintiff Craters & Freighters moved for an order to show cause why Defendants Cathy Benz and Fred Benz should not be held in civil and criminal contempt for violating the permanent injunction entered by this Court on May 5, 2010. Plaintiff asserts that Defendants are using Plaintiff's trademarked name "to advertise its products." On March 12, 2014, the Court entered an order to show cause why Defendants should not be held in contempt. Defendants filed a response to the order to show cause¹ and Plaintiff filed a reply. Having considered the

¹ Plaintiff has filed a motion to strike Defendants' response on two grounds. Plaintiff asserts that the response was not timely filed. Plaintiff further argues that Defendants' response violates Federal Rule of Civil Procedure 11 because it is "disingenuous." Pro se Defendants' response was filed three days after the deadline and Plaintiff has failed to make a showing of any Rule 11 violation. Accordingly, the Court DENIES the motion to strike. Docket No. 131.

1 parties' papers and the record in this case, the Court declines to
2 sanction Defendants.

3 LEGAL STANDARD

4 A district court has the inherent authority to enforce
5 compliance with its orders through a civil contempt proceeding.
6 Int'l Union, UMWA v. Bagwell, 512 U.S. 821, 827-28 (1994). "The
7 standard for finding a party in civil contempt is well settled:
8 The moving party has the burden of showing by clear and convincing
9 evidence that the [non-moving party] violated a specific and
10 definite order of the court." FTC v. Affordable Media, LLC, 179
11 F.3d 1228, 1239 (9th Cir. 1999) (quoting Stone v. City & County of
12 San Francisco, 968 F.2d 850, 856 n.9 (9th Cir. 1992)). The
13 contempt "need not be willful, and there is no good faith
14 exception to the requirement of obedience to a court order." In
15 re Dual-Deck Video Cassette Recorder Antitrust Litig., 10 F.3d
16 693, 695 (9th Cir. 1993). "But a person should not be held in
17 contempt if his action appears to be based on a good faith and
18 reasonable interpretation of the court's order." Id. (internal
19 formatting and quotation marks omitted). "'Substantial
20 compliance' with the court order is a defense to civil contempt,
21 and is not vitiated by 'a few technical violations' where every
22 reasonable effort has been made to comply." Id. (citing Vertex
23 Distrib., Inc. v. Falcon Foam Plastics, Inc., 689 F.2d 885, 891
24 (9th Cir. 1982)).

25 DISCUSSION

26 Plaintiff submits evidence that an internet search for
27 "craters and freighters" provided results that included "Craters
28 And Freighters - Domestic & Int'l Freight - wrapitexpress.com,"

1 which linked to www.wrapitexpress.com, the website for Wrapit
2 Express. Ritchie Supp. Dec., Ex. A. Plaintiff also submits
3 evidence that a search for "craters & freighters" provided results
4 that included "Freighters And Craters - Domestic & Int'l Freight -
5 www.wrapitexpress.com," which also led to www.wrapitexpress.com. Id.

6 The permanent injunction prohibits the use of "Freight &
7 Crate" and the use of "the registered trademark 'Craters &
8 Freighters' for any purpose whatsoever." Docket No. 104.
9 "Freighters And Craters" is an infringing use of Plaintiff's
10 registered trademark, "Craters & Freighters."

11 Plaintiff alleges that Defendants Cathy Benz and Fred Benz
12 are "owners and operators" of Wrapit Express. In support of this
13 contention, Plaintiff submits evidence that Defendants Cathy Benz
14 and Fred Benz are listed as the Terminal Manager and Facilities
15 Manager, respectively, on the Wrapit Express website. Schmitz
16 Supp. Decl., Ex. C. Defendants counter that they are employees,
17 not owners of Wrapit Express, although they do admit that as
18 employees, they "are responsible for the advertising of WrapIt
19 Express Ltd." Defendants' Dec. ¶ 5.

20 Defendants also represent that they did not know about the
21 infringing search results, which they assert were the result of
22 "optimization" of their Google AdWords account. Defendants
23 further assert that they have "since disabled the offending
24 programming and sincerely apologize for any confusion." Id. at ¶
25 10. The Court notes that the exhibit to Defendants' declaration
26 suggests that Defendants are responsible for the content of their
27 AdWords results on Google and admonishes Defendants to ensure that
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1 all future advertisements comply with the permanent injunction.

2 Plaintiff makes much of the fact that it attempted to contact
3 Defendants regarding the infringing search results prior to filing
4 the motion for an order to show cause. However, Plaintiff admits
5 that it sent all communications to an address in Windsor,
6 California, not the address for service listed for Defendants on
7 the Case Management/Electronic Case Filing (CM/ECF) system.
8 Indeed, even after Defendants noted that the motion for an order
9 to show cause was served at the incorrect address, Plaintiff
10 served its reply at that same address. The Court admonishes
11 Plaintiff that it must send all communications, including cease
12 and desist letters and court filings, to the address for service
13 listed on CM/ECF. While Defendants have a duty to ensure that
14 they are complying with the injunction, Plaintiff should make good
15 faith efforts to communicate with Defendants if they discover any
16 infringing activity. These good faith efforts include contacting
17 Defendants at their addresses for service, as well as other known
18 addresses.

19 Defendants must ensure that their addresses for service are
20 kept up to date on CM/ECF. Mr. Benz is approved as an electronic-
21 filer and is currently receiving electronic notifications of all
22 filings. However, as a non-attorney, Mr. Benz cannot represent
23 Ms. Benz. Accordingly, all documents must be manually served on
24 Ms. Benz at the address for service listed on CM/ECF.

25 CONCLUSION

26 For the foregoing reasons, the Court declines to issue
27 sanctions against Defendants and DENIES Plaintiff's motion to
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1 strike. Docket No. 131. Plaintiff's motion to appear by
2 telephone is DENIED as moot. Docket No. 132.

3 IT IS SO ORDERED.

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5 Dated: 4/9/14


6 CLAUDIA WILKEN
7 United States District Judge
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