

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

3  
4 CRATERS & FREIGHTERS,  
5

6 Plaintiff,

7 v.

8 DAISYCHAIN ENTERPRISES, dba  
9 FREIGHT & CRATE; CATHY BENZ; and  
10 FRED BENZ.

11 Defendants.

No. C 09-04531 CW

ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
CONTEMPT SANCTIONS

12 \_\_\_\_\_/  
13 Plaintiff Craters & Freighters moves for contempt sanctions  
14 against Defendants Cathy Benz and Fred Benz. Defendants oppose  
15 both motions. After considering the parties' submissions and oral  
16 argument, Court grants the motions.

17 BACKGROUND

18 On May 5, 2010, the Court entered a permanent injunction  
19 prohibiting Defendants from using the infringing mark "Freight &  
20 Crate." Docket No. 104. The injunction specifically prohibited  
21 the use of the mark "in conjunction with any web-based  
22 advertisement." Id.

23 On March 5, 2014, Plaintiff Craters & Freighters moved for an  
24 order to show cause why Defendants Cathy Benz and Fred Benz should  
25 not be held in civil and criminal contempt for violating the  
26 permanent injunction entered by this Court on May 5, 2010.  
27 Plaintiff asserted that Defendants were using Plaintiff's  
28 trademarked name "to advertise its products." Docket No. 126.  
Specifically, Plaintiff presented evidence of internet search

1 results that included infringement. The Court issued an order to  
2 show cause why Defendants should not be held in contempt. Docket  
3 No. 127. On April 8, 2014, Defendants responded in writing that  
4 any infringement was inadvertent and they had "since disabled" the  
5 advertising program that caused the infringing internet search  
6 results. Docket No. 133. On April 9, 2014, the Court declined to  
7 impose sanctions, but admonished Defendants of their duty to  
8 comply with the injunction. Docket No. 137.

9 On April 14, 2014, Plaintiff filed another motion for an  
10 order to show cause why Defendants should not be held in civil and  
11 criminal contempt for violating the Court's injunction. Docket  
12 No. 138. Plaintiff submitted evidence that, on the morning of  
13 April 10, 2014, the day after the Court entered its order  
14 declining to impose sanctions, an internet search for "wrap it  
15 express" produced results that included "WrapIt Express Freight &  
16 Crate," which linked to the WrapIt Express website, "Wrapit  
17 express freight crate," which linked to a yellowpages.com  
18 advertisement for WrapIt Express and "Wrapit Express Crate,  
19 Freight and Logistics," which linked to the Facebook page for  
20 Wrapit Express. Schmitz Dec., Ex. A. Plaintiff submits evidence  
21 that it repeated the internet search on April 11, 12, 13 and 14  
22 and obtained the same or similar results. Defendants admit that  
23 they "are responsible for the advertising of WrapIt Express Ltd."  
24 Docket No. 134 ¶ 5.

25 The Court ordered Defendants to appear at a hearing to show  
26 cause why they should not be held in contempt for failure to  
27 comply with the permanent injunction.  
28

DISCUSSION

I. Contempt

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

As explained in the March 12, 2014 and April 25, 2014 orders to show cause, Plaintiff has submitted evidence of multiple infringing internet search results for WrapitExpress. Defendants admit that they "are responsible for the advertising of WrapIt Express Ltd." Docket No. 134 ¶ 5. Some of those infringing

1 results were discovered on April 10, 2014, just one day after the  
2 Court declined to issue sanctions.

3 Defendants do not dispute that the search results violate the  
4 permanent injunction. Instead, they argue that they are doing  
5 their best to comply and are having a difficult time communicating  
6 with Google. However, Plaintiff presents evidence that at least  
7 one of the search results, a "Google Place Ad," requires the  
8 company seeking the advertisement to "claim" the words they want  
9 included in the advertisement. Docket No, 146, Ex. A ¶ 15. In  
10 this case, the words on the advertisement discovered by Plaintiff  
11 were "Wrapit Exptress Freight & Crate." This advertisement  
12 violates the permanent injunction.

13 Thus, because Defendants have failed to show that they  
14 substantially complied with the May 2010 injunction, the Court  
15 holds them in contempt.

16 II. Sanctions

17 Civil contempt sanctions are "characterized by the court's  
18 desire to compel obedience to a court order, or to compensate the  
19 contemnor's adversary for the injuries which result from the  
20 noncompliance." Falstaff Brewing Corp. v. Miller Brewing Co., 702  
21 F.2d 770, 778 (9th Cir. 1983) (citations omitted). As such, these  
22 sanctions are typically "designed to compel future compliance with  
23 a court order" and should be made "avoidable through obedience."  
24 Int'l Union, 512 U.S. at 827.

25 Accordingly, the Court orders Defendants to comply with the  
26 Permanent Injunction. If at any time after May 21, 2014,  
27 Plaintiff produces evidence of infringing internet advertisements,  
28

1 Defendants will be required to pay \$1,000 per day that such  
2 advertisements are found.

3 III. Attorneys' Fees and Costs

4 The Court further orders Defendants to pay Plaintiff's  
5 reasonable attorneys' fees and costs expended in pursuing the  
6 March 5, 2014 and April 14, 2014 motions for order to show cause.  
7 Within ten days of the date of this order, Plaintiff is directed  
8 to submit its attorneys' billing records and hourly rates. Within  
9 five days thereafter, Defendants may submit a response of no more  
10 than five pages, addressing any dispute with the amount of  
11 Plaintiff's request for fees. Within five days of Defendants'  
12 response, Plaintiff may file a reply of no more than three pages.

13 CONCLUSION

14 For the reasons set forth above, Plaintiff's motion for  
15 contempt sanctions is GRANTED. The Court hereby holds Defendants  
16 in contempt for failing to comply with the May 2010 permanent  
17 injunction. Defendants are directed to ensure immediate  
18 compliance. Failure to do so will be considered further contempt  
19 and result in coercive sanctions of \$1,000 per day that any  
20 infringing internet advertisements are found. In addition,  
21 Defendants will be ordered to pay Plaintiff's reasonable  
22 attorneys' fees and costs expended in pursuing the March 5, 2014  
23 and April 14, 2014 motions for order to show cause.

24 IT IS SO ORDERED.

25  
26 Dated: 5/22/2014

27   
CLAUDIA WILKEN  
United States District Judge