

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

3
4 CRATERS & FREIGHTERS,

5 Plaintiff,

6 v.

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

10 Defendants.

No. C 09-04531 CW

ORDER GRANTING
PLAINTIFF'S MOTION FOR
CONTEMPT SANCTIONS

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United States District Court
For the Northern District of California

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On May 22, 2014, the Court entered an order granting Plaintiff's motion for contempt sanctions against Defendants Cathy Benz and Fred Benz. In its May 22 order the Court noted that Plaintiff had submitted evidence of multiple infringing internet search results for WrapitExpress and Defendants did not dispute that the search results violate the permanent injunction. Instead, Defendants argued that they were doing their best to comply and were having a difficult time communicating with Google. At the May 15 hearing regarding sanctions, Plaintiff agreed that it would have its IT department provide Defendants with instructions regarding how to remove the offending internet advertisements.

The Court ordered Defendants to comply with the Permanent Injunction and further ordered that if, at any time after May 21, 2014, Plaintiff produced evidence of infringing internet advertisements, Defendants would be required to pay \$1,000 per day that such advertisements are found. On May 28, 2014, Plaintiff

1 filed a motion for coercive sanctions based on advertisements it
2 discovered on the internet on May 22, 23, 24, 25, 26 and 27.
3 Defendants' response was due by June 11, 2014. To date,
4 Defendants have not responded.

5 DISCUSSION

6 As noted above, at the May 15 hearing on Plaintiff's motion
7 for sanctions, Plaintiff agreed that it would have its IT
8 department send Defendants instructions regarding how to take down
9 infringing internet advertisements. In its motion Plaintiff
10 states it "immediately complied and served Defendants with such
11 instructions." Motion at 2. However, Plaintiff did not e-file or
12 mail the instructions to Defendants until May 22, 2014, one week
13 after the May 15 hearing, and one day after Defendants' deadline
14 to remove the infringing advertisements.

15 Nonetheless, Plaintiff presents evidence that certain
16 infringing advertisements were still available on the internet on
17 May 27, 2014, five days after Plaintiff e-filed and mailed
18 Defendants the instructions.¹ Among those advertisements was a
19 www.yellowpages.com advertisement, which was one of the types of
20 advertisements that Plaintiff provided instructions for deleting.
21 Moreover, Plaintiff provides evidence of a www.freightnet.com
22 profile that includes the infringing title, "Wrapit Express
23 Freight Crate and Logistics." Schmitz Dec., Ex. A. That
24 advertisement contains a clear link that says, "Is this your
25 company? - please login to edit your details." Id.

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27 ¹ Defendant Fred Benz is a registered e-filer who would have
28 received a copy of the instructions on May 22.

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Plaintiff provides no explanation for why it waited until the day after the deadline for compliance to provide the instructions for taking down the infringing advertisements. Moreover, Plaintiff does not provide any explanation for why it waited six days after discovering the infringing advertisements to file its motion or why it should be able to collect six days of coercive sanctions because of that delay. Accordingly, the Court will impose coercive sanctions for one day. Plaintiff may submit screen shots with supporting declarations for subsequent days if the infringing advertisements were still accessible on the internet after Plaintiff filed its motion.

CONCLUSION

For the reasons set forth above, Plaintiff's motion for contempt sanctions is GRANTED. Within seven days of the date of this order, Defendants are ordered to pay Plaintiff \$1,000.

IT IS SO ORDERED.

Dated: 6/30/2014



CLAUDIA WILKEN
United States District Judge