

1
2 IN THE UNITED STATES DISTRICT COURT
3
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA

5 CRATERS & FREIGHTERS,

6 Plaintiff,

7 v.

8 DAISYCHAIN ENTERPRISES, d/b/a FREIGHT
9 AND CRATE; KATHY BENZ; and FRED BENZ,

10 Defendants.
_____ /

No. C 09-4531 CW

AMENDED ORDER
GRANTING PLAINTIFF'S
MOTION FOR A
PRELIMINARY
INJUNCTION
(Docket No. 10)

11
12 On October 22, 2009, Plaintiff Craters & Freighters moved ex
13 parte for a temporary restraining order enjoining Defendants
14 Daisychain Enterprises, Kathy Benz and Fred Benz from, among other
15 things, infringing upon Plaintiff's intellectual property. In its
16 Order of October 26, 2009, the Court denied Plaintiff's application
17 and set a hearing date of December 3, 2009 for Plaintiff's motion
18 for a preliminary injunction (Docket No. 22). At the December 3
19 hearing, the Court ordered Defendants to file an opposition to
20 Plaintiff's motion by December 11. Defendants timely filed an
21 opposition.

22 Defendants provide conclusory arguments that Plaintiff's
23 claims lack merit and might be barred by a defense of laches.
24 However, Defendants offer no competent evidence to support their
25 assertions. Without evidence, Defendants do not defeat Plaintiff's
26 showing of its likelihood of success on the merits and the
27 possibility of irreparable injury.

28 Thus, having considered all of the papers submitted by the

1 parties, the Court GRANTS Plaintiff's motion for a preliminary
2 injunction. Pending final resolution of this case, Defendants,
3 their employees and agents, and any other persons acting with
4 Defendants or on Defendants' behalf are restrained and enjoined
5 from:

- 6 (a) using the infringing mark "Freight & Crate" in
7 conjunction with any shipping or packaging services;
8 (b) using the infringing mark "Freight & Crate" in
9 conjunction with any web-based advertisement or print
10 advertisement;
11 (c) using the infringing mark "Freight & Crate" at any call
12 center to suggest that Freight & Crate is affiliated with
13 Plaintiff Craters & Freighters;
14 (d) from identifying themselves anywhere or any time, by
15 their own initiative or in response to questions by
16 others, as "Craters & Freighters" or as affiliated with
17 Plaintiff Craters & Freighters;
18 (e) using Plaintiff Craters & Freighters' copyrighted
19 materials in advertisement and promotions; and
20 (f) from using the registered trademark "Craters &
21 Freighters" for any purpose whatsoever.

22 Plaintiff's motion for default judgment is scheduled to be heard
23 before Magistrate Judge Joseph Spero on January 29, 2010 at 9:30
24 a.m.

25
26 Dated: December 16, 2009



27 CLAUDIA WILKEN
28 United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

CRATERS & FREIGHTERS,
Plaintiff,

Case Number: CV09-04531 CW

CERTIFICATE OF SERVICE

v.

DAISYCHAIN ENTERPRISES, et al.,
Defendants.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on December 16, 2009, I SERVED a true and correct copy of the attached, by placing said copy in a postage paid envelope addressed to the persons hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy into an inter-office delivery receptacle located in the Clerk's office.

Fred Benz
574 N. Sonora Way
P.O. Box 490
Eagle, ID 83616

Kathy Benz
574 N. Sonora Way
P.O. Box 490
Eagle, ID 83616

Dated: December 16, 2009

Richard W. Wieking, Clerk
By: Marc Pilotin, Deputy Clerk