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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**FELDENKRAIS GUILD OF NORTH AMERICA,**

Plaintiff,

vs.

**FRANK WILDMAN, ET AL.,**

Defendants.

CASE NO. 18-cv-2340-YGR

**ORDER GRANTING PRELIMINARY  
INJUNCTION**

Plaintiff Feldenkrais Guild of North America (“FGNA”) filed its complaint alleging trademark infringement and breach of contract, as well as its *ex parte* motion for a temporary restraining order and order to show cause for a preliminary injunction against defendants Frank Wildman and Feldenkrais Movement Institute. (Dkt. Nos. 1, 19.) On May 1, 2018, the Court granted the temporary restraining order and issued its Order to Show Cause Why A Preliminary Injunction Should Not Issue. (Dkt. No. 26.) The parties filed their response and reply, and the matter came on for hearing on May 15, 2018.

The Court, having read and considered the papers and pleadings on file, the evidence submitted in support and in opposition, and the arguments of the parties, and for the reasons stated herein, **GRANTS** a Preliminary Injunction under the terms set forth below.<sup>1</sup>

**I. SUMMARY OF FACTS**

FGNA is a not-for-profit membership association that promotes and supports the Feldenkrais Method® of somatic education and its practitioners. (Declaration of Nancy Haller, ¶ 3.) The purposes of the FGNA include increasing public awareness of the Feldenkrais Method® of somatic education, certifying and providing opportunities for continuing education of

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<sup>1</sup> The Court notes that it has set an expedited schedule for trial on the merits of the complaint. (See Dkt. No. 36.)

1 practitioners, and protecting the quality of the Feldenkrais® work and research in the effectiveness  
 2 of the Feldenkrais Method® of somatic education. (*Id.*) FGNA first began certifying  
 3 Feldenkrais® practitioners in 1989. There are about 1300 current members of the FGNA,  
 4 including over 1150 members offering services throughout the United States. (*Id.* ¶ 6.)

5 **A. FGNA’s Trademarks, Service Marks, and Certification Marks**

6 FGNA has been using certain trademarks since as early as the early 1970s, and first  
 7 obtained trademark registrations covering certain marks in 1985. (*Id.* ¶ 4.) The United States  
 8 Patent and Trademark Office has issued numerous federal trademark registrations to FGNA, set  
 9 forth as follows:

Mark	Registration No.	Date of Registration
Feldenkrais	1,374,266	December 3, 1985
Feldenkrais Method	1,982,044	June 25, 1996
Guild Certified Feldenkrais Teacher	2,187,073	September 8, 1998
Awareness Through Movement	1,353,317	August 6, 1985
ATM	4,011,600	August 16, 2011
Functional Integration	1,286,531	July 17, 1984
FI	4,184,962	August 7, 2012

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17 In addition, FGNA owns other trademarks, service marks, and certification marks. (Haller  
 18 Decl. ¶10.) For example, FGNA owns the certification mark GCFT<sup>CM</sup>, an acronym for Guild  
 19 Certified Feldenkrais Teacher® as well as the certification mark Guild Certified Feldenkrais  
 20 Practitioner<sup>CM</sup> and its acronym GCFP<sup>CM</sup>. Relevant consumers recognize the use of these marks as  
 21 certifying that the user is a qualified Feldenkrais® Practitioner or Teacher. (*Id.* ¶ 10.)

22 FGNA regulates the quality of those persons holding themselves out as practitioners and  
 23 trainers of the Feldenkrais Method® of somatic education by controlling the use of the marks.  
 24 The FGNA has established rules for those who may use the FGNA Marks. (*Id.* ¶¶ 12-16; Exh. D  
 25 FGNA Policy E2.4.2.1 FGNA Service Marks, Certification Marks and Trademarks, hereinafter  
 26 “FGNA Marks Policy”.) Guild Certified Feldenkrais Practitioners, FGNA Professional Members,  
 27 authorized trainees are granted licenses to use certain of the FGNA Marks, subject to enumerated  
 28 conditions in the FGNA Marks Policy. (*Id.* ¶ 5.) To be eligible to use the FGNA Marks, persons

1 must provide verification of graduation from a professional Feldenkrais Method® training  
2 program that has been accredited by FGNA or another recognized international board under  
3 approved policies; completion of a "crossover plan" approved by the North American Training  
4 Accreditation Board (an entity related to FGNA that is responsible for accrediting training  
5 programs); or have been granted an exception to those requirements by the FGNA Board of  
6 Directors. (*Id.* ¶ 13.) Members must complete: (i) continuing competence requirements, including  
7 self-assessment, creation of learning plan; (ii) twenty hours of appropriate continuing education  
8 annually; and (iii) 100 hours of professional practice annually. Members also must agree to  
9 comply with FGNA policies.<sup>2</sup> (*Id.* ¶¶ 14-15.) Finally, new members must complete the applicable  
10 form and pay the applicable fee. (*Id.* ¶ 16.)

11 Certified Feldenkrais® practitioners are allowed to use its trademarks, service marks and  
12 certification marks in connection with educational services relating to somatic education, among  
13 other services. (*Id.* ¶ 4.) FGNA and its authorized licensees have continuously used the FGNA's  
14 trademarks, service marks and certification marks in connection with these services for several  
15 decades. (*Id.*) Only people personally trained by Dr. Feldenkrais, graduates of FGNA-accredited  
16 training programs, and others who have received authorization from FGNA are eligible to be  
17 certified by, to become members of FGNA, and to use the FGNA's trademarks, service marks and  
18 certification marks. (*Id.* ¶ 5.)

19 **B. Conduct of Wildman and Feldenkrais Movement Institute**

20 From 1978 to January 22, 2018, defendant Wildman was an FGNA member. He was  
21 certified by FGNA as a Feldenkrais® practitioner and was authorized to use the FGNA Marks.  
22 He agreed and was obligated to abide by the FGNA code of conduct. Wildman was president of  
23 FGNA during 1997, and was the chair of the FGNA committee that wrote the FGNA standards of  
24 practice. (*Id.* ¶ 17.)

25 Wildman's relationship with the FGNA ended on January 22, 2018, when the FGNA and  
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27 <sup>2</sup> See Haller Decl. Exh. D ("E2.3.2.1 The Feldenkrais Method® of Somatic Education  
28 Standards of Practice; E2.3.3.2 Code of Professional Conduct; and E2.4.2.1-ED FGNA Service  
Marks, Certification Marks and Trademarks.")

1 Wildman entered into a confidential agreement amidst allegations of Wildman’s misconduct.  
2 (Haller Decl., Exh. E, “the Agreement.”) Under the four-page Agreement, Wildman  
3 acknowledged that he is no longer an FGNA member, an FGNA Certified Feldenkrais®  
4 Practitioner, nor an FGNA Certified Feldenkrais® Trainer. (*Id.* §§ 2-4.) Wildman agreed not to  
5 teach or practice the Feldenkrais® Method. (*Id.* § 8.) As of the effective date of the Agreement,  
6 Wildman agreed to “refrain from using any FGNA trademarks, service mark, or certification  
7 marks.” (*Id.* § 5.) He agreed to “not represent himself or hold himself out as being certified,  
8 licensed, accredited by, or otherwise associated with, the FGNA, the Feldenkrais® Method, or any  
9 FGNA trademark, service mark, or certification mark.” (*Id.*) The Agreement requires that  
10 Wildman refrain from all use of the FGNA Marks. (*Id.*) Under the Agreement, Wildman had  
11 until March 22, 2018, to make the changes required. (Haller Decl. ¶ 26.) By his own admission,  
12 Wildman failed to complete the changes. (Declaration of Frank Wildman, Dkt. No. 33-3, at ¶13.)  
13 This action ensued.

14 **II. APPLICABLE STANDARD**

15 The Court may grant preliminary injunctive relief in order to prevent “immediate and  
16 irreparable injury.” Fed. R. Civ. P. 65(b). To establish a right to a preliminary injunction, a  
17 plaintiff must demonstrate that: (1) it is likely to succeed on the merits; (2) it is likely to suffer  
18 irreparable harm absent preliminary relief; (3) the balance of equities tips in its favor; and (4) the  
19 injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008);  
20 *American Trucking Associations, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1054 (9th Cir. 2009).

21 So long as the plaintiff makes a threshold showing of irreparable harm and likelihood of  
22 success on the merits, a stronger showing on one element may offset a weaker showing on  
23 another. *Alliance for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-33 (9th Cir. 2011); *see also*  
24 *Leiva-Perez v. Holder*, 640 F.3d 962, 966 (9th Cir. 2011). The *Winter* factors are evaluated on a  
25 sliding scale: “serious questions going to the merits, and a balance of hardships that tips sharply  
26 toward the plaintiff can support issuance of preliminary injunction, so long as the plaintiff also  
27 shows that there is a likelihood of the irreparable injury and that the injunction is in the public  
28 interest.” *Alliance for Wild Rockies*, 632 F.3d at 1134-35.

1     **III.     DISCUSSION AND FINDINGS**

2             **A.     Likelihood of Success on the Merits**

3             To establish a likelihood of success, plaintiff need not conclusively prove its case or show  
4     that it is “more likely than not” to prevail. *Univ. of Tex. V. Camenisch*, 451 U.S. 390, 395 (1981);  
5     *Leiva-Perez*, 640 F.3d at 966; *see also Singer Mgmt. Consultants, Inc. v. Milgram*, 650 F.3d 223,  
6     229 (3d Cir. 2011). Rather, a “fair chance” of success is the standard for granting preliminary  
7     injunctive relief. *Benda v. Grand Lodge of IAM*, 584 F.2d 308, 315 (9th Cir. 1978). Here, the  
8     Court finds that FGNA has established a likelihood of success on the merits of its claims for  
9     breach of contract and trademark infringement.

10                 **I.     Breach of Contract**

11             First, as to the breach of contract claims, Wildman concedes that he failed to make all the  
12     changes required under the Agreement. (Oppo. at 1:3-4; 4:4-6; Wildman Decl. ¶ 13.) By the time  
13     of the application for the temporary restraining order, Wildman and his assistant were only able to  
14     remove or revise 70% of the items identified by FGNA’s counsel as being in violation of the  
15     Agreement. (Wildman Decl. ¶ 13.)

16             Wildman owns, operates, produces, and manages a website at the url  
17     FeldenkraisInstitute.org, and is responsible for all content on the website. (Haller Decl. ¶ 26.)  
18     Wildman uses this website to market and promote himself and FMI. The required changes to his  
19     website at FeldenkraisInstitute.org have not been made and it continues to contain numerous  
20     unauthorized uses of the FGNA Marks. Wildman is also the owner, operator, producer and  
21     manager of a website at the url “FrankWildmanMovement.org,” which he uses to market and  
22     promote himself and his business. Wildman has made some required changes to his website at  
23     FrankWildmanMovement.org, but not all, such that the website continues to include unauthorized  
24     uses of the FGNA Marks. (*Id.* ¶ 27.) Wildman also markets and promotes himself through various  
25     social media and social networking platforms such as Facebook, YouTube, and LinkedIn.

26             Each of Wildman’s pages on these social media and social networking platforms continue  
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1 to contain numerous unauthorized uses of the FGNA Marks. (*Id.* ¶ 28.)<sup>3</sup> In addition, Wildman  
2 has failed to remove FGNA Marks from his biography for purposes of promotion of himself and  
3 his business. For instance, Wildman’s biography for a 1440 Multiversity program states that he is  
4 a “Feldenkrais Method® expert,” and uses the Feldenkrais Method® trademark five times in one  
5 paragraph. By his continued use of the FGNA Marks, Wildman is in violation of the parties’  
6 Agreement.<sup>4</sup>

7 In response to the request for injunctive relief, defendants contend that the Court should  
8 not grant FGNA equitable relief due to its “unclean hands.” Defendants argue that paragraph 8 of  
9 the Agreement is an unlawful non-competition agreement barred by California Business &  
10 Professions Code section 16600. Based upon the record presently before the Court, defendants’  
11 argument is without merit. The Agreement precludes Wildman from “teaching or engaging in the  
12 professional practice of the Feldenkrais® Method.” It does not prohibit Wildman from teaching  
13 or engaging in any professional practice so long as he does not represent that practice to be “the  
14 Feldenkrais® Method.”

15 Thus, the Court concludes that plaintiff has shown a likelihood of success on the merits of  
16 its breach of contract claim.

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18 <sup>3</sup> Defendants argued that the evidence of their continued unauthorized uses of the FGNA  
19 Marks was not admissible. To the contrary, and aside from Wildman’s own concession of  
20 continued unauthorized use, the declaration of Nancy Haller represented personal knowledge of  
21 the facts therein and that “as of today’s date” on the date of the declaration, the enumerated  
22 unauthorized uses continued on the social media and social networking platforms used by  
Wildman. (Haller Decl. ¶¶ 1, 28.) The Court finds the evidence submitted sufficient to establish  
likelihood of success on the merits here.

23 <sup>4</sup> Defendants argue that FMI is not a party the Agreement, and therefore not bound by it.  
24 Whether or not FMI is a party to the Agreement, or is an alter ego of Wildman, FMI is responsible  
25 for its acts of infringement. Use of the FGNA Marks without authorization, in a manner that is  
26 likely to cause consumer confusion, results in trademark infringement. FMI derived its rights to  
27 use the FGNA Marks solely from Wildman. When Wildman was authorized to use the FGNA  
28 Marks, that license also was applicable to FMI. Consequently, when Wildman gave up his license  
to use the FGNA Marks, FMI could no longer use the FGNA Marks based upon Wildman’s  
membership. No evidence was offered to demonstrate that FMI had a license or other right to use  
the FGNA Marks independent of Wildman’s rights to use them under the FGNA Service Marks  
Policy.

1                                    **2.        Trademark Infringement**

2                                    In addition, the Court finds that plaintiff is likely to succeed on its trademark infringement  
3 claim. Based upon the record before the Court, defendants’ continued use of the FGNA Marks  
4 constitutes trademark infringement. To succeed on its claim of trademark infringement, FGNA  
5 must demonstrate: (1) ownership of a valid and protectable trademark; and (2) defendants’ use of  
6 the mark is likely to cause consumer confusion, thereby infringing on the plaintiff’s rights.  
7 *Aurora World, Inc. v. Ty Inc.*, 719 F.Supp.2d 1115, 1141 (C.D. Cal. 2009) (quoting *Dep’t of Parks*  
8 *& Rec. v. Bazaar Del Mundo Inc.*, 448 F.3d 1118, 1124 (9th Cir. 2006)). When, as here, two  
9 marks are identical and used for the same goods, courts have found that the likelihood of  
10 confusion is overwhelming, even if no other factors favor a finding of confusion. *Brookfield*  
11 *Communs., Inc. v. W. Coast Ent’t. Corp.*, 174 F.3d 1036, 1056 (9th Cir 1999); *see also Lindy Pen*  
12 *Co. v. Bic Pen Corp.*, 796 F.2d 254, 256-57 (9th Cir. 1986) (reversing district court’s finding of no  
13 likelihood of confusion given “the overwhelming likelihood of confusion resulting from the direct  
14 competition of pens with virtually identical marks”).<sup>5</sup> Further, use of the same marketing channels  
15 “increase[s] the likelihood of confusion.” *Nutri/System, Inc. v. Con-Stan Indus., Inc.*, 809 F.2d  
16 601, 606 (9th Cir. 1987) (citing *Sleekcraft*, 599 F.2d at 353).

17                                    The facts of ownership here are not contested. FGNA asserts, and defendants do not  
18 dispute, that each of its registrations for trademarks are current, presumed valid, in force, and  
19 incontestable under 15 U.S.C. section 1065. All of the FGNA Marks at issue were in existence  
20 and in use at the time Wildman was the president of FGNA, and many had been in use or  
21 registered many years before he was president. Similarly undisputed is FGNA’s contention that  
22 all of its claimed marks, whether trademarks, service marks, certification marks or related  
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24                                    <sup>5</sup> The Ninth Circuit has developed an eight-factor test to guide the determination of a  
25 likelihood of confusion. *AMF, Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348-49 (9th Cir. 1979)  
26 (“*Sleekcraft*”). “The *Sleekcraft* factors are intended as an adaptable proxy for consumer  
27 confusion, not a rote checklist.” *Network Automation, Inc. v. Advanced Sys. Concepts, Inc.*, 638  
28 F.3d 1137, 1145 (9th Cir. 2011) (citations omitted). Given that the marks at issue here are  
identical and are being used for nearly identical services, and that defendants do no contest the  
*Sleekcraft* factors in opposition, the Court does not analyze the showing on each factor in reaching  
the decision herein.

1 common law marks, regardless of registration, have acquired significant good will through the  
2 extensive and widespread use. They are distinctive as a source identifier and certification  
3 indicator in connection with the FGNA providing of services and licensing of others to use its  
4 marks in connection with the services identified in those registrations and as indicating that the  
5 user has met the FGNA’s rigorous requirements. FGNA has invested significant resources to  
6 advertise its and its licensee’s educational services offered in connection with the FGNA Marks.  
7 FGNA is the beneficiary of many third party stories and articles providing significant and positive  
8 press coverage to the FGNA services resulting in the development of significant goodwill for the  
9 FGNA Marks.

10 The facts regarding confusion are likewise not in serious contention. Defendants’ services  
11 are nearly identical to those of FGNA’s and its licensees, and both are marketed and promoted  
12 through the Internet, key word searching, social media and social networking platforms and direct  
13 mail. The record before the Court indicates that defendants are using marks identical to the FGNA  
14 Marks to promote services that are the same services FGNA promotes, licenses, or certifies.  
15 (Haller Dec. ¶ 33.) Consequently, the parties are in direct competition with each other.

16 Defendants contend that they are not liable for trademark infringement because they are  
17 simply making “fair use” of the trademarks in their webpages and other marketing materials. A  
18 nominative fair use is one that “does not attempt to capitalize on consumer confusion or to  
19 appropriate the cachet of one product for a different one . . . . [but instead is a use] where the only  
20 word reasonably available to describe a particular thing is pressed into service.” *New Kids on the*  
21 *Block v. News Am. Pub., Inc.*, 971 F.2d 302, 308 (9th Cir. 1992). The nominative fair use standard  
22 bars liability for an unauthorized use of a trademark where: (1) the product or service is not be  
23 readily identifiable without use of mark; (2) only so much of the mark is used as is reasonably  
24 necessary to identify the product or service; and (3) the user does nothing that would, in  
25 conjunction with the mark, suggest sponsorship or endorsement by the trademark holder. *Id.* All  
26 three elements must be met for the defense to apply. *See, e.g. Brother Records, Inc. v. Jardine*,  
27 318 F.3d 900, 908 (9th Cir. 2003) overruled on other grounds in *Toyota Motor Sales, U.S.A. v.*  
28 *Tabari*, 610 F.3d 1171 (9th Cir. 2010). Defendants have not offered any evidence to meet these



1 elements. Wildman can identify and describe his services without making use of the FGNA  
2 Marks and has done so in identifying his services as “Frank Wildman Movement” and “Change  
3 Your Age Method.” He has not offered evidence to support his contention that “there is no other  
4 way to describe the public-domain body movement and principles” than the use of the term  
5 “Feldenkrais.”

6 The Court therefore finds the plaintiff has established a likelihood of success on its claim  
7 that defendants’ continued use of the FGNA Marks constitutes infringement upon FGNA’s rights  
8 in the FGNA Marks.

9 **B. Irreparable Harm**

10 To establish a right to a preliminary injunction, a plaintiff must demonstrate “a significant  
11 threat of irreparable injury.” *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 725 (9th Cir. 1999).

12 Evidence of lost business or business opportunities, as well as damage to goodwill, will satisfy the  
13 requirement to show irreparable harm. *See, e.g., Stuhlberg Int’l Sales Co., Inc. v. John D. Brush  
14 and Co.*, 240 F.3d 832, 841 (9th Cir. 2001) (“[e]vidence of threatened loss of prospective  
15 customers or goodwill certainly supports a finding of the possibility of irreparable harm”); *Herb  
16 Reed Enterprises, LLC v. Fla. Entm’t Mgmt., Inc.*, 736 F.3d 1239, 1250 (9th Cir. 2013) (“Evidence  
17 of loss of control over business reputation and damage to goodwill could constitute irreparable  
18 harm.”). “A district court has considerable discretion in fashioning suitable relief and defining the  
19 terms of an injunction.” *Lamb-Weston, Inc. v. McCain Foods, Ltd.*, 941 F.2d 970, 974 (9th Cir.  
20 1991). “Injunctive relief, however, must be tailored to remedy the specific harm alleged.” *Id.*

21 The Court finds that, as a result of defendants’ conduct, FGNA is likely to suffer  
22 immediate and irreparable harm loss, damage, and injury, unless FGNA’s request for injunctive  
23 relief is granted. Defendants’ unauthorized use of the FGNA Marks prevents FGNA from  
24 controlling the quality of the services associated with its marks. FGNA has received numerous  
25 complaints about Wildman’s ongoing use of the FGNA Marks, and his continuing to hold himself  
26 out as being associated with FGNA. (Haller Decl. ¶ 36.) Wildman’s continued use of the FGNA  
27 Marks is likely to result in harm loss of the value associated with the FGNA Marks and  
28 reputational harm, as well as loss of goodwill with respect to FGNA’s members. These losses are

1 not readily compensable by an award of monetary damages. Further, under the Agreement,  
2 Wildman acknowledged that any breach would cause FGNA irreparable injury and that damages  
3 would be an inadequate remedy in the event of such breach, such that injunctive relief would be  
4 permissible for a breach or threatened breach by Wildman. (Haller Decl., Exh. E § 19.) This  
5 factor favors injunctive relief.

6 **C. Balance of Equities**

7 In determining the balance of equities, courts look to “the degree of harm that will be  
8 suffered by the plaintiff or the defendant if the injunction is improperly granted or denied.” *Scotts*  
9 *Co. v. United Indus. Corp.*, 315 F.3d 264, 284 (9th Cir. 2002); *accord Winter*, 555 U.S. at 24  
10 (2008). The balance of potential harm to defendants of being enjoined from use of the FGNA  
11 Marks until a trial on the merits is far outweighed by the potential harm to FGNA, its goodwill,  
12 and reputation associated with the FGNA Marks if a preliminary injunction order is not issued.  
13 Defendants concede that Wildman did not comply with the terms of the Agreement timely.  
14 Leaving aside any matters that may be in dispute between the parties, Wildman concedes that he  
15 did not take down webpages that he knew were in clear violation of the Agreement, but instead  
16 continued piecemeal efforts to edit the material well past the deadline, never taking down pages  
17 with potential violations until the temporary restraining order herein issued. (Wildman Decl.  
18 ¶¶ 10-13.) Wildman represents that the process of removing even those uses he acknowledges are  
19 in violation of the Agreement is “time-consuming” and requires review of “hundreds of pages.”  
20 (*Id.* ¶ 11.) In view of the hundreds of potential violations and improper uses of the FGNA Marks,  
21 the equities favor a preliminary injunction, even if it requires Wildman to take down defendants’  
22 websites entirely for a period of time.

23 The Court has set an expedited schedule, with a trial set to proceed a little over four  
24 months from the filing of the complaint herein, in order to minimize the harms from a preliminary  
25 injunction pending trial. (Dkt. No. 36.) In light of that, the balance of harms favors preliminary  
26 granting injunctive relief.

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1           **D.     Public Interest**

2           “The public interest inquiry primarily addresses [the] impact on non-parties rather than  
3 parties.” *Sammartano v. First Judicial District Court*, 303 F.3d 959, 974 (9th Cir. 2002). The  
4 public interest will be served by the issuance of a temporary restraining order and preliminary  
5 injunction, as the public has a strong interest in being free from confusion caused by the  
6 unauthorized use of trademarks. *See Brookfield Communs.*, 174 F.3d at 1066 (“preliminary  
7 injunctive relief is appropriate... to promote the public interest in protecting trademarks  
8 generally”); *Wetzel's Pretzels, LLC v. Johnson*, 797 F. Supp. 2d 1020, 1029 (C.D. Cal. 2011)  
9 (“public has a strong interest in being free from the confusion caused by unauthorized use”);  
10 *Morrocanoil, Inc. v. Moroccan Gold, LLC*, 590 F. Supp. 2d 1271, 1281 (C.D. Cal. 2008) (holding  
11 the public has a “right not to be deceived or confused”). The public has a right to choose services  
12 knowing that they are not being misled as to whether those services are offered by parties  
13 authorized by FGNA to hold themselves out as being associated with the FGNA. The public  
14 interest favors issuance of a preliminary injunction to protect the public from being harmed or  
15 deceived by defendants representing their services as authorized by, certified by, endorsed by, or  
16 associated with FGNA.

17           **E.     Security Requirement**

18           Under Rule 65(c) of the Federal Rules of Civil Procedure, no party may be granted a  
19 preliminary injunction without first posting security “in an amount that the court considers proper  
20 to pay the costs and damages sustained by any party found to have been wrongfully enjoined or  
21 restrained.” Fed. R. Civ. P. 65(c). Defendants did not submit any evidence or argument  
22 concerning the appropriate amount of a bond. The Court therefore orders a nominal bond in the  
23 amount of \$5,000.00.

24           **IV.    CONCLUSION**

25           Based upon the foregoing, the Motion for Preliminary Injunction is **GRANTED**. The Court  
26 **ORDERS** as follows:

27           (a)     Defendants Frank Wildman and Feldenkrais Movement Institute, their owners,  
28 affiliates, officers, directors, managers, agents, servants, employees, and any and all persons in

1 active concert or participation with any of them (collectively “Enjoined Persons”), **SHALL NOT**  
2 use without the authorization of FGNA, any of FGNA’s trademarks, service marks, certification  
3 marks, logos, and trade names, including, but not limited to, the marks “Feldenkrais,”  
4 “Feldenkrais Method,” “Functional Integration,” “FI,” “Awareness Through Movement,” “ATM,”  
5 “Guild Certified Feldenkrais Teacher,” “GCFT” “Guild Certified Feldenkrais Practitioner,” and  
6 “GCFP” (the “FGNA Marks”) or any other name, logo, or mark that includes the designation  
7 “Feldenkrais” or that is confusingly or deceptively similar to any of the FGNA Marks, either alone  
8 or in conjunction with other words or symbols, as part of any trademark, service mark,  
9 certification mark, logo, trade name, corporate name, assumed name, domain name, website, email  
10 address, keywords, or metatags on or in relation to any goods or services marketed, promoted,  
11 advertised, sold, offered for sale or provided by the defendants, or in any other manner, including  
12 without limitation, any marketing literature, printed or electronic, on websites, on social media  
13 sites or on social networking sites.

14 For purposes of clarification, this Order prohibits and enjoins:

15 (1) any Enjoined Person’s use of the word “Feldenkrais” in any form other than  
16 as part of the phrase “Dr. Moshe Feldenkrais” in any marketing literature, printed or  
17 electronic, or in any online medium including social media, social networking sites, and  
18 any other website or application; and

19 (2) use of the word “Feldenkrais” in the website url or email address for any  
20 Enjoined Person; and

21 (3) use of the word “Feldenkrais” as part of the organizational name of  
22 defendant Feldenkrais Movement Institute.

23 (b) Defendants Frank Wildman and Feldenkrais Movement Institute, their owners,  
24 affiliates, officers, directors, managers, agents, servants, employees, and any and all persons in  
25 active concert or participation with any of them (collectively “Enjoined Persons”), **SHALL NOT**  
26 use, authorize, permit, or encourage others to use on either defendants’ behalf, the FGNA Marks  
27 in any form or manner that would tend to associate defendants, or their business or services, with  
28 FGNA, including, without limitation, in the marketing, promotion, advertising, identification, sale,

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or offer for sale of goods or services, or in any other manner.

(c) FGNA shall place security in the amount of **\$5,000.00** with the Court for the payment of any damages any person may be entitled to recover as a result of an improper or wrongful restraint ordered hereunder. Proof of such undertaking shall be filed no later than **May 29, 2018**.

**IT IS SO ORDERED.**

Dated: May 23, 2018

  
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**YVONNE GONZALEZ ROGERS**  
**UNITED STATES DISTRICT COURT JUDGE**