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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

PACIFIC LAW CENTER, a Professional Law Corporation,

Plaintiff,

v.

SHAHROKH SAADATNEJAD, individually and doing business as PACIFICLAWCENTERS.COM and USHOSTAGE.COM; and DOES 1 through 50, inclusive,

Defendants.

CASE NO. GIC 878352

PACIFIC LAW CENTER'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF ITS MOTION FOR PRELIMINARY INJUNCTION

Date: April 20, 2007
Time: 3:00 p.m.
Dept. 75

Complaint Filed: January 12, 2007

I/C Judge: Hon. Richard E.L. Strauss

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INTRODUCTION

For the Court's convenience, Pacific Law Center draws together in this memorandum the authority that addresses the Court's questions and that supports its right to a preliminary injunction.

II
MATERIAL FACTS

The material facts are not in substantial dispute. Indeed, there are few facts necessary to the narrow issue before this Court.

Most of the facts in Saadat-Nejad's omnibus declaration are unnecessary; some are wrong. Pacific Law Center, however, will spare the Court a point-by-point rebuttal and focus on the few germane, undisputed facts.

Pacific Law Center has registered and owns four websites: "pacificlawcenter.com," "pacificlawcenter.net," "pacificlawcenter.org" and "pacificlawcenter.ws."[1] Pacific Law Center has established a secondary meaning that associates its distinctive and famous common law service mark and trade name—its firm name—with its professional practice.[2]

Saadat-Nejad has no legitimate trademark, common law or registered, in any name even remotely similar to Pacific Law Center and specifically pacificlawcenters.com or pacific-law-centers.com.

Distance himself now as he might try, Saadat-Nejad, through his then-attorney, Mary Prevost, made a half million dollar demand on Pacific Law Center to stop using pacificlawcenters.com and related sites.[3] He reiterated that demand to Mr. Slattery.[4]

Pacific Law Center.

Pacific Law Center has been doing business as a law firm, with a practice

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[1] Phillips Decl., p. 1, ¶ 6.
[2] 15 U.S.C. § 1125 (c)(1); Phillips Decl. p. 1, ¶ 7.
[3] Phillips Decl., Exhibit 1.
[4] Phillips Decl., p. 2, ¶ 10.

emphasizing criminal, bankruptcy and personal injury case, in San Diego. It registered the internet domain names "pacificlawcenter.com," "pacifidawcenter.net," "pacificlawcenter.org" and "pacificlawcenter.ws" and has maintained ownership of those domain names.[5]

Pacific Law Center has used the exclusive trademark "Pacific Law Center" in its professional business and in an extensive advertising and marketing campaign, including television, telephone business directories, print and various other media.[6]

It has used and advertised the internet domain names, and operated internet sites at the addresses, "pacificlawcenter.com," "pacificlawcenter.net," "pacificlawcenter.org" and "pacificlawcenter.ws" to advertise and promote its activities as a law firm.[7]

Pacific Law Center has built up valuable goodwill in its "Pacific Law Center" service mark and trade name, and the public generally has come to associate its mark exclusively with Pacific Law Center's professional business in California.[8]

State Court Criminal Case.

On August 31, 2006, Saadat-Nejad retained Pacific Law Center to defend him against criminal charges pending against him in San Diego and for which he was then in custody.

Shortly thereafter, Saadat-Nejad became dissatisfied with Pacific Law Center's representation, terminated its representation of him and began a course of conduct, including posting disparaging comments about Pacific Law Center on the internet, all calculated to interfere with and damage it and its business operations.

Saadat-Nejad Misappropriated Pacific Law Center's Domain Names.

On September 20, 2006, Saadat-Nejad registered and obtained ownership of the internet domain name "pacificlawcenters.com," which is one letter off, and confusingly similar to, the internet domain names registered to Pacific Law Center and sites it uses.

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5 Phillips Decl., p. 1, ¶ 7.
6 *Id.*
7 *Id.*
8 *Id.*

III
THE 1999 ANTI-CYBERSQUATTING AND CONSUMER PROTECTION ACT GIVES THIS COURT THE POWER TO RESTRAIN SAADAT-NEJAD'S MISAPPROPRIATION OF PACIFIC LAW CENTER'S SERVICE MARK AND TRADE NAME

Congress passed the 1999 Anti-Cybersquatting and Consumer Protection Act—15 U.S.C. § 1125(d)—to protect consumers and American business, to promote growth of online commerce, and to provide clarity for trademark owners by prohibiting bad faith and abuse of registration of distinctive marks as Internet domain names with the intent to profit from goodwill associated with those marks.[9] Nothing in 15 U.S.C. § 1125(d) preempts state law remedies.[10] Pacific Law Center's third cause of action is brought under the Cybersquatting Acts.

Saadat-Nejad has no prior use of either domain name in connection with any *bona fide* offering of goods or services. Nor does Saadat-Nejad have a *bona fide* non-commercial or fair use of any mark in a site accessible under the domain name. Saadat-Nejad has made clear his intent to divert clients from Pacific Law Center's on-line location to sites accessible under the domain names that he has registered with the intent to tarnish or disparage Pacific Law Center.

He has created a likelihood of confusion about the source, sponsorship, affiliation or endorsement of his sites. Saadat-Nejad has demanded half a million dollars—through a lawyer purportedly representing him—to stop using the pacificlawcenters.com domain name and other Pacific Law Center domain names.

The Pacific Law Center marks are distinctive and famous in that they are widely recognized by the general consuming public in San Diego, in California and across the United States as a designation of the services of Pacific Law Center. Saadat-Nejad's

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9 *Mattel, Inc. v. Internet Dimensions, Inc.*, 55 USPQ2d 1620 (S.D. NY 2000).

10 *Sporty's Farm, LLC v. Sportman's Market, Inc.*, 202 F.3d 489, 493 (2000 2d Cir.) (cybersquatting defined as "prevent[ing] use of the domain name by the mark owners, who might infrequently have been willing to pay 'ransom' in order to get 'their names' back.").

registration of multiple domain names which he knows are identical or confusingly similar to the marks of Pacific Law Center—marks that are distinctive and famous.

In short, Pacific Law Center has established **eight** of the nine factors that 15 U.S.C. § 1125(d)(1)(B) and 15 U.S.C. § 1125(c)(1) suggests a court might consider in determining whether there is actionable cybersquatting. Indeed, the only factor that Pacific Law Center has not addressed is whether Saadat-Nejad provided material and misleading false contact information when he applied for the registration of the domain names. He has, however, a pattern of prior conduct, his attack on Pacific Law Center.

Saadat-Nejad has no right to misappropriate domain names already registered to Pacific Law Center or to misappropriate domain names so confusingly similar to the names it uses. He is attempting to hold Pacific Law Center hostage for at least a half a million dollars.

Cyber-Squatting Requires No Commercial Use or Confusion.

Pacific Law Center does not have to show **any** commercial interference with its law practice to prevail under the Anti-Cybersquatting Act. In cases almost directly in point,[11] the Ninth Circuit has held that the Anti-Cybersquatting Act does not contain a commercial use requirement.[12]

The Christensen law firm sued Chameleon because, Chameleon had shifted the registration of the Christenson law firm's domain names to itself to gain leverage in a payment dispute. The district court held:

> An individual may be held liable under the ACPA for cybersquatting if the person (1) registers, traffics in, or uses a domain name identical or confusingly similar to a distinctive mark, and (2) has a bad faith intent to profit from use of the mark as a domain name.[13]

The court noted that many of the decisions under ACPA refer to "an extortionate offer

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[11] *Bosley Medical Institute, Inc. v. Kremer*, 403 F.3d 672, 608-81 (9th Cir. 2005); *The Christensen Firm v. Chameleon Data Corp.* (2006) 2006 US. Dist. LEXIS 79710 (W.D. Wash.). See also *Daimler Chrysler v. The Net Inc.*, 388 F.3d 201 (6th Cir. 2004); *Ford Motor Company v. Catalanatte*, 342 F.3d 543 (6th Cir. 2003).

[12] *Bosley, supra*, 403 F.2d at 680-681.

[13] *The Christensen Firm, supra*, 206 U.S. Dist. LEXIS *8.

to sell" as the hallmark of a bad faith intent to profit and found that Chameleon's "extortionate offer" to transfer the domain names back to resolve the fee dispute created a fact issue concerning its bad faith intent to profit. That intent may be shown by an offer to transfer a domain name to obtain a benefit in commercial dispute negotiation.

The district court also found, as a matter of law, that the transfer of the domain names constituted "registration" of those domain names under the ACPA.

Bosley Medical provided surgical hair transplants and owns, among others, the registered trademark Bosley Medical. Kramer, a dissatisfied former patient, purchased the domain name bosleymedical.com. Then, five days later, Kramer delivered a two page letter that read:

> Let me know if you want to discuss this. Once it is spread over the internet it will have a snowball effect and be too late to stop. M. Kramer [phone number]. P.S. I always follow through on my promises.

Reversing the district court's grant of summary judgment in Kramer's favor the Ninth Circuit held that 15 U.S.C. § 1125(d) does not require plaintiff to show that the defendant has engaged in **any** commercial use. Rather, all that the trademark owner asserting an anti-cybersquatting claim must establish is (1) a valid trademark entitled to protection; (2) that its mark is distinct and famous; (3) the defendant's domain name is identical or confusingly similar to, or in the case of famous marks, dilutive of, the owner's mark; and (4) the defendant used, registered or trafficked in the domain name; (5) with a bad faith intent to profit.[14]

Pacific Law Center has made a very strong showing of each of those elements. It has also demonstrated irreparable harm. Accordingly, it is entitled to injunctive relief.

Saadat-Nejad's Remedies.

Saadat-Nejad is not without remedy. If Saadat-Nejad has a claim against the United States government, he has his legal remedy. If he has a claim against Pacific Law Center, he has a legal remedy.

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[14] *Bosley Medical Institute, supra*, 403 F.3d at 681.

Cybersquatting and abuse of their domain names and service marks, however, is **not** a **legal** remedy.

IV
THE FIRST AMENDMENT ISSUES

The limited relief Pacific Law Center seeks does not impair First Amendment's rights.

California—The *Balboa Island Village* Case.

The *Balboa Island Village* case is fully briefed and has been argued before the California Supreme Court.[15] That case addresses—in a defamation action—a **permanent** injunction affecting the content of speech.

In Court of Appeal in *Balboa Island Village Inn*[16] held that an injunction permanently barring Lemen from making certain statements adjudicated to be defamatory under the common law causes of action for liable and slander constituted a content-based prior restraint on speech in violation of both the First Amendment and the California Constitution.[17] That court, however, went on to say:

> A content-based injunction restraining speech is constitutionally permissible if speech has been adjudicated to violate **a specific statutory scheme** expressing a compelling state interest justifying a prior restraint on speech, or is necessary to a protect a right equal in stature to the constitutional right of free speech, and is no broader than necessary.[18]

The *Balboa Island Village Inn* court acknowledged that prior restraints are not unconstitutional *per se* under either federal[19] or state[20] law. The court found, however, that: (1) the injunction at issue was content-based—it forbad Lemen from ever making statements to non-parties based on the content of her statements; and, more importantly, (2) neither

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15 *Balboa Island Village Inn, Inc. v. Lemen*, case no. S127904. Pacific Law Center understands that the parties argued that case on January 15, 2007.

16 *Balboa Island Village Inn, Inc. v. Lemen* (2004) 121 Cal.App.4th 583, review granted. *Balboa Island Village Inn, Inc. v. Lemen* (Cal. 2004) 2004 Cal. LEXIS 11901. Pacific Law Center dismisses the appellate court decision because it helps frame the issues before the California Supreme Court.

17 Article I, § 2, subdivision (a).

18 *Balboa Island Village Inn, supra*, 121 Cal.App.4th at 583. (Emphasis added.)

19 *Southeastern Promotions, Ltd. v. Conrad* (1975) 420 U.S. 546, 558. See *Madsen v. Women's Health Care, Inc.* (1994) 512 U.S. 753, 763, fn. 2 (injunctions based on prior unlawful conduct); *Freedman v. Maryland* (1965) 380 U.S. 51, 58 (unprotected films may be enjoined). *Pittsburgh Press Co. v. Pittsburgh Commission On Human Relations* (1973) 413 U.S. 376, 390 (violation of anti-discrimination legislature).

liable nor slander are part of a statutory scheme embodying any compelling state interest that might justify a content-based prior restraint.

At the Supreme Court oral argument—at least according to a reporter who was present—a majority of the Court suggested that narrowly drawn injunctions aimed at blocking defamatory speech would not violate either the United States or California Constitutions' free speech guarantees.[21]

As Professor Chemerinsky framed the issues presented in *Balboa Island Village Inn* they are: (1) whether a **permanent** injunction as a remedy in a defamation action violates the First Amendment; and (2) whether a **permanent** injunction violates the First Amendment when it is not **narrowly** tailored in its prohibition of all speech, in any place, at any time, about a matter of public concern, when imposed without an actual malice finding.

In his brief before the Supreme Court, Professor Chemerinsky acknowledged the Court's decision in *Aguilar*,[22] and argued that it was not contrary to his position in *Balboa Island Village Inn* because the injunction in *Aguilar*—which he said was a prior restraint—was issued under the Fair Employment and Housing Act (FEHA).[23]

California—*Aguilar.*

Balboa Island Village Inn is not the first time that the California Supreme Court has had to address the prior restraint question under both California and federal law. In *Aguilar*, the Court upheld an injunction that barred racial epitaphs precisely because the California Legislature had enacted a statutory scheme—the FEHA—that protected employees from such workplace conduct. The *Aguilar* court relied on *Pittsburgh Press* and *Madsen*, among other decisions, in which courts have upheld injunctions prohibiting expression that violates a

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[20] *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121 (violation of anti-discrimination statute).

[21] See Exhibit 1. Chief Justice George and Justices Baxter, Corrigan and Werdegar apparently challenged the defense assertion that damages—not an injunction—was the **only** permissible relief for a defamation victim. It appeared that only Justice Kinnard and, possibly, Justice Moreno felt that the Court of Appeal decision was correct.

[22] *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, *cert. denied* 529 U.S. 1138 (2000).

[23] Gov. Code §1290, *et seq.*

specific statutory prohibition.[24]

The *Aguilar* Court also contrasted *Kingsley Books*[25]—in which the Court upheld a provision authorizing a "limited injunctive remedy prohibiting the sale and distribution of obscene material"—with *Near*,[26] and pointed out that the Court has drawn a distinction between restraint that prohibited **future** issues of a publication because **past** issues had been found offensive, (*Near*) and *Kingsley Books*, in which, no attempt was made to bar **future** new and contested publications.

Federal – Limited Injunctions Are Permissible.

In *Pittsburgh Press*,[27] the Supreme Court upheld a Pennsylvania statute that barred, *inter alia*, newspapers from displaying employment advertisements that discriminated on the basis of gender. The Court said of itself that "it has never held that all injunctions [affecting expression] are impermissible." An impermissible prior restraint exists only where the government is given discretion to regulate or prohibit protected speech; the prior restraint doctrine has no application to unprotected expression.[28]

In *Bose*,[29] the Court found that there were categories of communications to which the First Amendment did not extend because they "are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality."[30] Among such, the Court identified: libelous speech;[31] fighting words,[32] incitement to riot;[33]

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24 *Aguilar, supra*, 12 Cal.App.4th at 140.
25 *Kingsley Books, Inc. v. Brown* (1957) 354 U.S. 436, 437.
26 *Near v. Minnesota* (1931) 283 U.S. 697.
27 *Pittsburgh Press, supra*, 413 U.S. at 390.
28 *Id.* See, for example, *Times Film Corporation v. Chicago* (1961) 365 U.S. 43; *Chaplinski v. State of New Hampshire* (1942) 315 U.S. 568; *Bose Corporation v. Consumers Union of the United States, Inc.* (1984) 466 U.S. 485. Even in *Near, supra*, 283 U.S. at 708—in which the court struck down an injunction as a prior restraint—it said: "liberty of speech and of the press is not an absolute right, and the state may punish its abuse."
29 *Bose Corp v. Consumer Union of the United States, Inc.*. (1984) 466 U.S. 485.
30 Citing to *Chiplinsky, supra*.
31 *Beauharnais v. Illinois* (1952) 343 U.S. 250.
32 *Chiplinsky, supra*.
33 *Brandenburg v. Ohio* (1969) 395 U.S. 444.

obscenity;[34] and, child pornography.[35] Nor is advance review of speech—arguably a form of "prior restraint"—impermissible.[36]

As recently as 2005, the Court did not outlaw injunctive relief even in a defamation case. Rather, in striking an arguably moot and overbroad restriction, the Court affirmed that any such injunction must be narrowly tailored.[37]

Directly in point, Congress has determined—in order to protect consumers and American business, to promote growth of on-line commerce and to provide clarity for trademark owners—that it would prohibit bad faith abuse of the registration of distinctive marks as internet domain names with the intent to profit from them.[38]

Not Only Do the United States and California Constitutions Not Bar the Relief Pacific Law Center Seeks, but Decisions Interpreting Them Support a Preliminary Injunction in this Case.

As the respective Supreme Courts affirmed in *Pittsburgh Press* and *Aguilar*, a legitimate statutory scheme that embodies a governmental interest permits injunctive relief.

In addition to 15 U.S.C. §1125(d), we have other examples:

- **Copyright Law, 17 U.S.C. §§ 501, *et seq.***

Section 502(a) provides:

> Any court having jurisdiction of a civil action arising under this title may . . . grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.[39]

- **Trade Secret Law, Cal. Civ. Code §§ 3426, *et seq.***

Section 3426.2 states:

> Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional period of time

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34 *Roth v. United States* (1957) 354 U.S. 476.
35 *New York v. Ferber* (1982) 458 U.S. 747.
36 *Times Film Corp. v. Chicago* (1961) 365 U.S. 43, 44; *Freedman v. Maryland* (1965) 380 U.S. 51, 58; *Paris Adult Theater I v. Salton* (1973) 413 U.S. 49, 55.
37 *Tory v. Cochran* (2005) 544 U.S. ___, 125 S.Ct. at 2511. *Tory v. Cochran* was a picketing speech case.
38 15 U.S.C. § 1125(d); *Mattel, Inc. v. Internet Dimensions, Inc.*, 55 USPQ 2d 1620 (S.D. N.Y. 2000).
39 *Cadence Design Sys. v. Avant! Corp* (9th Cir. 1998) 125 F.3d 824 (granting preliminary injunction for copyright infringement); *see also Spence v. Washington* (1974) 418 U.S. 405, 417 (1974) (Rehnquist, J., dissenting) (giving copyright law as an example of a speech restriction).

in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.[40]

- **Securities Law, 15 U.S.C. §§ 77a, *et seq.***

Section § 77t(b) provides:

Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this title [15 USCS §§ 77a et seq.], or of any rule or regulation prescribed under authority thereof, the Commission may, in its discretion, bring an action in any district court of the United States, or United States court of any Territory, to enjoin such acts or practices, and upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.[41]

- **Trademark Law, 15 U.S.C. §§ 1111, *et seq.***

Section 1116(a) empowers courts to issue injunctions to restrain speech:

The several courts vested with jurisdiction of civil actions arising under this Act shall have power to grant injunctions, according to the principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the registrant of a mark registered in the Patent and Trademark Office or to prevent a violation under subsection (a), (c), or (d) of section 43 [15 USCS § 1125].[42]

- **Federal False Advertising (Federal Trade Commission Act), 15 U.S.C. §§ 41, *et seq.***

Section § 53(b) states that a court may issue an injunction in these circumstances:

Whenever the Commission has reason to believe (1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission, and (2) that the enjoining thereof pending the issuance of a complaint by the Commission . . . would be in the interest of the public the Commission . . . may bring suit in a district court of the United States to enjoin any such act or practice.[43]

- **Food, Drug & Cosmetics Act, 21 U.S.C. §§ 301, *et seq.***

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[40] *DVD Copy Control Assn., Inc. v. Bunner* (2003) 31 Cal.4th 864 (reversing appellate court and finding that the injunction was not a prior restraint because it was content neutral and was issued following unlawful conduct).

[41] *United States v. Lilly* (1994) 37 F.3d 1222 (securities law conviction was no violation of First Amendment right to free exercise); *SEC v. Alliance Leasing Corp* (9th Cir. 2002) 28 Fed.App. 648.

[42] *Maier Brewing Co. v. Fleischmann Distilling Corp.* (9th Cir. 1968) 390 F.2d 117, 123 (stating "[w]here, however, the infringement is deliberate and willful, and the products are non-competitive, both the trade-mark owner and the buying public are slighted, if the court provides no greater remedy than an injunction").

[43] *FTC v. Garvey* (9th Cir. 2004) 383 F.3d 891, 900 (recognizing ability to obtain injunctive relief for FTC violation).

Section 332 provides that "[t]he district courts . . . shall have jurisdiction, for cause shown[,] to restrain violations of section 301 [21 USCS § 331], except paragraphs (h), (i), and (j)."[44]

Application to Pacific Law Center.

Trademarks are protected by a specific statutory scheme; the power to enact that scheme derives from the United States Constitution, Article I, section 8, clause 3.[45] Congress has determined that there is a compelling state interest both in establishing a system of registered marks and also permitting injunctive relief when such marks are infringed.[46]

California's Trade Secrets Act—Civil Code §§ 3426, *et seq.*—is another legislative statutory scheme that includes injunctive relief against either actual or threatened misappropriation. In *DVD Copy Control*,[47] the court concluded that an injunction barring a website operator from posting trade secrets did not violate either the First Amendment or the California Constitution. The court found that First Amendment scrutiny was required because the dissemination of computer codes was protected activity. The court also found, however, that an injunction barring the dissemination of trade secrets was not "content based." As the *DVD* court held, just because the trade secret might have some link to a public issue, does not create a legitimate public interest in the secret's disclosure.

So also an injunction that bars the misappropriation of a trademark is also not "content based," even though the injunction necessarily identifies the prohibited speech. While Saadatnejad may have things to say about Pacific Law Center that he contends are of public interest, that does not give him the right to violate its trademark or trade name in saying them.

The First Amendment does not prohibit courts from incidentally enjoining speech in

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44 *U.S. v. Odessa Union Warehouse Co-op* (9th Cir. 1987) 833 F.2d 172 (reversing denial of motion for injunction).

45 *Dawn Donut Co. v. Heart's Food Stores, Inc.* (1959) 267 F.2d 358 (2d Cir.).

46 *Au'Tomotive Gold, Inc. v. Volkswagen America, Inc.* (2006) 457 F.3d 1062 (9th Cir.); *E.&J. Gallo Winery v. Gallo Cattle Company, et al.* (1992) 955 F.2d 1327 (9th Cir.); *First Nationwide Bank v. Nationwide Savings & Loan Association* (1988) 682 F.Supp. 965 (E.D. Ark.).

47 *DVD Copy Control Association, supra*, 31 Cal.4th 864.

order to protect other legitimate rights—especially where the legislature has protected those rights with a specific statutory scheme.

Time, Place and Manner Restrictions Are Legitimate.

Courts have upheld time, place and manner restrictions on speech. The government may impose reasonable time, place and manner restrictions on speech in public fora, provided that the restrictions are (1) content neutral, (2) narrowly tailored to serve a governmental interest, and (3) leave open alternative channels for communication.[48]

"The First Amendment does not guaranty the right to communicate one's views at all times and places or in **any manner** that may be desired."[49] Accordingly, while Mr. Saadatnejad may have First Amendment protection for **what** he wants to say, he may not say it in a **manner** that infringes a protected right: Pacific Law Center's statutory right not to have him infringe or abuse its mark or trade name.

Time, place and matter restrictions on speech are constitutional, provided that they are "content-neutral," are "narrowly tailored to serve a substantial government interest" and allow "for reasonable alternative avenues of communication."[50]

By the Cybersquatting Act, Congress is not telling Saadat-Nejad **what** he can say about anything; it is simply telling him that he may not do so by misappropriating the service mark or trade name of another and using it as a pseudo-domain name. The legislation is "content-neutral," it "is narrowly tailored to serve a substantial governmental interest" and obviously Saadat-Nejad has all manner of "alternative avenues of communication." In short, we have a constitutionally permissible "manner" restriction.

Here, Pacific Law Center seeks is "manner" restriction, nothing more. Saadatnejad can say whatever he thinks important, but he cannot say it by using Pacific Law Center's

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[48] *Citizens for Peace in Space v. City of Colorado Springs* (2007) 2007 U.S.App. LEXIS 4441, *10; *Ward v. Rock Against Racism* (1989) 491 U.S. 781, 791.

[49] *Heffron v. International Society for Krishna Consciousness, Inc.* (1981) 452 U.S. 640, 647 (emphasis added); *Menotti v. City of Seattle* (2005) 409 F.3d 1113, 1138 (9th Cir.).

[50] *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41, 46-49 (1986); *Fantasyland Video, Inc. v. County of San Diego*, 373 F.Supp.2d 1094, 1103-1104 (S.D. Cal. 2005).

trademark or its trade name.

The Relief Pacific Law Center Seeks.

Pacific Law Center is not attempting to bar what Saadatnejad can say about it—or anyone else for that matter. The only relief Pacific Law Center seeks is that Saadatnejad may not misappropriate its trademark or trade name to his own ends.

A narrowly tailored injunction—what Pacific Law Center seeks here—would only bar Saadatnejad from using Pacific Law Center's trademark or trade name; it does not bar anything he has to say **about** Pacific Law Center or its lawyers.

V
PACIFIC LAW CENTER HAS MET THE REQUIREMENTS FOR A PRELIMINARY INJUNCTION

Pacific Law Center is entitled to an injunction because its legal remedy is inadequate[51] and great or irreparable harm may result.[52] It has demonstrated that it is "reasonably probable" that it will prevail on the merits.[53]

The Court must exercise its discretion "in favor of the party most likely to be injured.... If denial of an injunction would result in great harm to the plaintiff, and the defendants would suffer little harm if it were granted, then it is an abuse of discretion to fail to grant the preliminary injunction."[54]

While this Court has discretion in ruling on Pacific Law Center's application for preliminary injunction, such discretion must be exercised in light of the following interrelated factors: (1) who will suffer greater injury;[55] and (2) is there a reasonable probability that plaintiffs will prevail on the merits?[56] The court's determination must be guided by a "mix" of the potential-merit and interim-harm factors; the greater plaintiff's

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51 Code of Civil Procedure §526; *Thayer Plymouth Center, Inc.* (1967) 255 Cal.App.2d 300, 307; *Pacific Design Sciences Corp. v. Sup. Ct. (Maudlin)* (2004) 121 Cal.App.4th 1100, 1110.

52 Code of Civil Procedure §526(a)(2); *People ex rel. Gow v. Mitchell Brothers' Santa Ana Theater* (1981) 118 Cal.App.3d 863, 870-871.

53 *San Francisco Newspaper Printing Co., Inc. v. Sup. Ct. (Miller)* (1985) 170 Cal.App.3d 438, 442.

54 *Robbins v. Sup. Ct. (County of Sacramento)* (1985) 38 Cal. 3d 199, 205.

55 *Shoemaker v. County of Los Angeles* (1995) 37 Cal.App.4th 618, 633.

56 *Robbins v. Sup. Ct. (County of Sacramento)* (1985) 38 Cal. 3d 199, 206.

showing on one, the less must be shown on the other to support an injunction.[57]

Here Pacific Law Center meets all the criteria and it is entitled to a preliminary injunction.

VI
CONCLUSION

Pacific Law Center stands squarely among those whom Congress intended to protect by the Anti-Cybersquatting and Consumer Protection Act. Saadat-Nejad has no right to rip off its service marks and trade names and then make extortionate demands for a half a million dollars or more just to leave them alone. Pacific Law Center is entitled to, and truly needs, injunctive relief.

DATED: April 6, 2007

SOLOMON WARD SEIDENWURM & SMITH, LLP

By: _____
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[57] *Butt v. State of Calif.* (1992) 4 Cal.4th 668, 678; see also *Pleasant Hill Bayshore Disposal, Inc. v. Chip-It Recycling, Inc.* (2001) 91 Cal.App.4th 678, 696 (where plaintiff demonstrated high likelihood of success on the merits, the court had discretion to issue injunction even if plaintiff could not show balance of harm tips in its favor.)

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Attorneys for Pacific Law Center

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

PACIFIC LAW CENTER, a Professional Law Corporation,

Plaintiff,

v.

SHAHROKH SAADATNEJAD, individually and doing business as PACIFICLAWCENTERS.COM and USHOSTAGE.COM; and DOES 1 through 50, inclusive,

Defendants.

CASE NO. GIC 878352

DECLARATION OF SERVICE

Dept. 75
Complaint Filed: January 12, 2007

I/C Judge: Hon. Richard E.L. Strauss

I, Deborah K. Pearson, declare:

I am employed in the County of San Diego, State of California. I am over the age of 18 years and not a party to this action. My business address is Solomon Ward Seidenwurm & Smith, LLP, 401 B Street, Suite 1200, San Diego, California 92101.

On April 6, 2007, I served a copy, including all exhibits, if any, of the following document(s):

1. PACIFIC LAW CENTER'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF ITS MOTION FOR PRELIMINARY INJUNCTION

2. DECLARATION OF JEFFREY PHILLIPS IN SUPPORT OF PACIFIC LAW CENTER'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF ITS MOTION FOR PRELIMINARY INJUNCTION

Please reference **KNOX FILE #**

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4/6/07							

CLIENT/BILLING INFORMATION

FIRM NAME AND ADDRESS:
EJM
[illegible]

ATTORNEY/BAR #:
PHONE:
FAX:
ATTENTION: Debbie
ATTORNEY'S FILE NO. 57112.002
REPRESENTING ☒ PL ☐ PE ☐ DE ☐ RE ☐ OTHER

APPROVED DIRECT INSURANCE BILLING

CARRIER NAME 57112.002 (EJM)
ADDRESS:
CITY, STATE, ZIP:
ADJUSTER:
INSURED:
CLAIM NUMBER: P 57112.002
DATE OF LOSS:

COURT CASE INFORMATION

COURT San Diego Superior
CASE NO. GIC 848352
CASE NAME: Pacific Law Center Shahrokh v. Saadatnejad
DATE OF HEARING
TIME ☐ AM ☐ PM / DEPT.

LOCATION INFORMATION

$_____

ENTITY TO BE SERVED/DELIVERED/FILED

N/A

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DOCUMENTS/ITEMS ☐ FILING FEES/WITNESS FEES ATTACHED
☐ S&C ☐ S&C/ID ☐ SUB ☐ SUB/DT
(1) Memo of P+A's
(2) Decl. of ~~Phillip~~ Phillips
(3) Decl. of Law
☐ SEE ATTACHED

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3	DELIVERY		10	TAKE-OUT		18	FIELD LOCATE	
4	COURT SERVICES (RESEARCH)		11	WAITING TIME		19	DOCUMENT PREP	
5	SKIP TRACING		12	OVERNIGHT MAILING		20	PREPAID	
6	SPECIAL FOR RUSH		13	SPECIAL HANDLING (FAX)		21	CK #	
7	FEES ADVANCED		14	SPECIAL HANDLING (MILITARY)		22	OTHER	
10	CHECK CHARGE		15	SPECIAL HANDLING (PRISON)		23	OTHER	