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**F I L E D**  
 Clerk of the Superior Court  
**APR 0 4 2007**  
 By: M. WONG-JIMENEZ, Deputy

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6  
7 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

10 PACIFIC LAW CENTER, a Professional Law  
11 Corporation,

12 Plaintiff,

13 v.

14 SHAHROKH SAADATNEJAD, individually  
and doing business as  
15 PACIFICLAWCENTERS.COM and  
USHOSTAGE.COM; and DOES 1 through  
16 50, inclusive,

17 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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## I 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."<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> He reiterated that demand to Mr. Slattery.<sup>4</sup>

### **Pacific Law Center.**

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

---

<sup>1</sup> Phillips Decl., p. 1, ¶ 6.

<sup>2</sup> 15 U.S.C. § 1125 (c)(1); Phillips Decl. p. 1, ¶ 7.

<sup>3</sup> Phillips Decl., Exhibit 1.

<sup>4</sup> Phillips Decl., p. 2, ¶ 10.

1 emphasizing criminal, bankruptcy and personal injury case, in San Diego. It registered the  
2 internet domain names "pacificlawcenter.com," "pacifidawcenter.net,"  
3 "pacificlawcenter.org" and "pacificlawcenter.ws" and has maintained ownership of those  
4 domain names.<sup>5</sup>

5 Pacific Law Center has used the exclusive trademark "Pacific Law Center" in its  
6 professional business and in an extensive advertising and marketing campaign, including  
7 television, telephone business directories, print and various other media.<sup>6</sup>

8 It has used and advertised the internet domain names, and operated internet sites at  
9 the addresses, "pacificlawcenter.com," "pacificlawcenter.net," "pacificlawcenter.org" and  
10 "pacificlawcenter.ws" to advertise and promote its activities as a law firm.<sup>7</sup>

11 Pacific Law Center has built up valuable goodwill in its "Pacific Law Center" service  
12 mark and trade name, and the public generally has come to associate its mark exclusively  
13 with Pacific Law Center's professional business in California.<sup>8</sup>

#### 14 **State Court Criminal Case.**

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

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

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

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

25  
26 <sup>5</sup> Phillips Decl., p. 1, ¶ 7.

27 <sup>6</sup> *Id.*

28 <sup>7</sup> *Id.*

<sup>8</sup> *Id.*



1  
2  
3 **III**  
4 **THE 1999 ANTI-CYBERSQUATTING AND CONSUMER PROTECTION ACT GIVES THIS**  
5 **COURT THE POWER TO RESTRAIN SAADAT-NEJAD'S MISAPPROPRIATION OF PACIFIC**  
6 **LAW CENTER'S SERVICE MARK AND TRADE NAME**

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

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

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

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

27 <sup>9</sup> *Mattel, Inc. v. Internet Dimensions, Inc.*, 55 USPQ2d 1620 (S.D. NY 2000).

28 <sup>10</sup> *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.").

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

3 In short, Pacific Law Center has established **eight** of the nine factors that 15 U.S.C.  
4 § 1125(d)(1)(B) and 15 U.S.C. § 1125(c)(1) suggests a court might consider in determining  
5 whether there is actionable cybersquatting. Indeed, the only factor that Pacific Law Center  
6 has not addressed is whether Saadat-Nejad provided material and misleading false contact  
7 information when he applied for the registration of the domain names. He has, however, a  
8 pattern of prior conduct, his attack on Pacific Law Center.

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

12 **Cyber-Squatting Requires No Commercial Use or Confusion.**

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

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

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

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

24  
25 <sup>11</sup> *Bosley Medical Institute, Inc. v. Kremer*, 403 F.3d 672, 608-81 (9<sup>th</sup> Cir. 2005); *The Christensen Firm v.*  
26 *Chameleon Data Corp.* (2006) 2006 US. Dist. LEXIS 79710 (W.D. Wash.). See also *Daimler Chrysler v.*  
*The Net Inc.*, 388 F.3d 201 (6<sup>th</sup> Cir. 2004); *Ford Motor Company v. Catalanatte*, 342 F.3d 543 (6<sup>th</sup> Cir.  
2003).

27 <sup>12</sup> *Bosley, supra*, 403 F.2d at 680-681.

28 <sup>13</sup> *The Christensen Firm, supra*, 206 U.S. Dist. LEXIS \*8.

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

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

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

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

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

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

23 **Saadat-Nejad’s Remedies.**

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

27 \_\_\_\_\_  
28 <sup>14</sup> *Bosley Medical Institute, supra*, 403 F.3d at 681.

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

3 **IV**  
4 **THE FIRST AMENDMENT ISSUES**

5 The limited relief Pacific Law Center seeks does not impair First Amendment's rights.  
6 California—The *Balboa Island Village Case*.

7 The *Balboa Island Village* case is fully briefed and has been argued before the  
8 California Supreme Court.<sup>15</sup> That case addresses—in a defamation action—a **permanent**  
9 injunction affecting the content of speech.

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

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

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

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

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

25 <sup>17</sup> Article I, § 2, subdivision (a).

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

27 <sup>19</sup> *Southeastern Promotions, Ltd. v. Conrad* (1975) 420 U.S. 546, 558. See *Madsen v. Women's Health Care,  
28 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).

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

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

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

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

16 **California—Aguilar.**

17 *Balboa Island Village Inn* is not the first time that the California Supreme Court has  
18 had to address the prior restraint question under both California and federal law. In *Aguilar*,  
19 the Court upheld an injunction that barred racial epithets precisely because the California  
20 Legislature had enacted a statutory scheme—the FEHA—that protected employees from such  
21 workplace conduct. The *Aguilar* court relied on *Pittsburgh Press* and *Madsen*, among other  
22 decisions, in which courts have upheld injunctions prohibiting expression that violates a  
23

24  
25 <sup>20</sup> *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4<sup>th</sup> 121 (violation of anti-discrimination statute).

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

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

<sup>23</sup> Gov. Code §1290, et seq.

1 specific statutory prohibition.<sup>24</sup>

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

8 **Federal – Limited Injunctions Are Permissible.**

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

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

20

21 <sup>24</sup> *Aguilar, supra*, 12 Cal.App.4<sup>th</sup> at 140.

22 <sup>25</sup> *Kingsley Books, Inc. v. Brown* (1957) 354 U.S. 436, 437.

23 <sup>26</sup> *Near v. Minnesota* (1931) 283 U.S. 697.

24 <sup>27</sup> *Pittsburgh Press, supra*, 413 U.S. at 390.

25 <sup>28</sup> *Id.* See, for example, *Times Film Corporation v. Chicago* (1961) 365 U.S. 43; *Chaplinsky 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.”

26 <sup>29</sup> *Bose Corp v. Consumer Union of the United States, Inc.* (1984) 466 U.S. 485.

27 <sup>30</sup> Citing to *Chiplinsky, supra*.

28 <sup>31</sup> *Beauharnais v. Illinois* (1952) 343 U.S. 250.

<sup>32</sup> *Chiplinsky, supra*.

<sup>33</sup> *Brandenburg v. Ohio* (1969) 395 U.S. 444.

1 obscenity;<sup>34</sup> and, child pornography.<sup>35</sup> Nor is advance review of speech—arguably a form of  
2 “prior restraint”—impermissible.<sup>36</sup>

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

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

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

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

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

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

16 Section 502(a) provides:

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

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

20 Section 3426.2 states:

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

24 <sup>34</sup> *Roth v. United States* (1957) 354 U.S. 476.

<sup>35</sup> *New York v. Ferber* (1982) 458 U.S. 747.

25 <sup>36</sup> *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.

26 <sup>37</sup> *Tory v. Cochran* (2005) 544 U.S. \_\_\_, 125 S.Ct. at 2511. *Tory v. Cochran* was a picketing speech case.

<sup>38</sup> 15 U.S.C. § 1125(d); *Mattel, Inc. v. Internet Dimensions, Inc.*, 55 USPQ 2d 1620 (S.D. N.Y. 2000).

27 <sup>39</sup> *Cadence Design Sys. v. Avant! Corp* (9<sup>th</sup> Cir. 1998) 125 F.3d 824 (granting preliminary injunction for  
28 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).

1 in order to eliminate commercial advantage that otherwise would be derived  
2 from the misappropriation.<sup>40</sup>

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

4 Section § 77t(b) provides:

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

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

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

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

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

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

24 Whenever the Commission has reason to believe (1) that any person,  
25 partnership, or corporation is violating, or is about to violate, any provision of  
26 law enforced by the Federal Trade Commission, and (2) that the enjoining  
27 thereof pending the issuance of a complaint by the Commission . . . would be  
28 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.<sup>43</sup>

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

<sup>40</sup> *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).

<sup>41</sup> *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.

<sup>42</sup> *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 trademark owner and the buying public are slighted, if the court provides no greater remedy than an injunction").

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



1 Section 332 provides that “[t]he district courts . . . shall have jurisdiction, for cause  
2 shown[,] to restrain violations of section 301 [21 USCS § 331], except paragraphs (h), (i), and  
3 (j).”<sup>44</sup>

#### 4 Application to Pacific Law Center.

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

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

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

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

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

<sup>45</sup> *Dawn Donut Co. v. Heart’s Food Stores, Inc.* (1959) 267 F.2d 358 (2d Cir.).

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

28 <sup>47</sup> *DVD Copy Control Association, supra*, 31 Cal.4<sup>th</sup> 864.

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

3 **Time, Place and Manner Restrictions Are Legitimate.**

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

8 “The First Amendment does not guaranty the right to communicate one’s views at all  
9 times and places or in **any manner** that may be desired.”<sup>49</sup> Accordingly, while Mr.  
10 Saadatnejad may have First Amendment protection for **what** he wants to say, he may not say  
11 it in a **manner** that infringes a protected right: Pacific Law Center’s statutory right not to  
12 have him infringe or abuse its mark or trade name.

13 Time, place and matter restrictions on speech are constitutional, provided that they  
14 are “content-neutral,” are “narrowly tailored to serve a substantial government interest” and  
15 allow “for reasonable alternative avenues of communication.”<sup>50</sup>

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

22 Here, Pacific Law Center seeks is “manner” restriction, nothing more. Saadatnejad  
23 can say whatever he thinks important, but he cannot say it by using Pacific Law Center’s

24 \_\_\_\_\_  
25 <sup>48</sup> *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.

26 <sup>49</sup> *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 (9<sup>th</sup> Cir.).

27 <sup>50</sup> *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).

28

1 trademark or its trade name.

2 **The Relief Pacific Law Center Seeks.**

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

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

9  
10 **V**  
**PACIFIC LAW CENTER HAS MET THE REQUIREMENTS**  
**FOR A PRELIMINARY INJUNCTION**

11 Pacific Law Center is entitled to an injunction because its legal remedy is  
12 inadequate<sup>51</sup> and great or irreparable harm may result.<sup>52</sup> It has demonstrated that it is  
13 “reasonably probable” that it will prevail on the merits.<sup>53</sup>

14 The Court must exercise its discretion “in favor of the party most likely to be  
15 injured.... If denial of an injunction would result in great harm to the plaintiff, and the  
16 defendants would suffer little harm if it were granted, then it is an abuse of discretion to fail  
17 to grant the preliminary injunction.”<sup>54</sup>

18 While this Court has discretion in ruling on Pacific Law Center’s application for  
19 preliminary injunction, such discretion must be exercised in light of the following  
20 interrelated factors: (1) who will suffer greater injury;<sup>55</sup> and (2) is there a reasonable  
21 probability that plaintiffs will prevail on the merits?<sup>56</sup> The court’s determination must be  
22 guided by a “mix” of the potential-merit and interim-harm factors; the greater plaintiff’s  
23

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

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

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

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

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

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

1 showing on one, the less must be shown on the other to support an injunction.<sup>57</sup>

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


4 VI  
5 CONCLUSION

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

11  
12 DATED: April 6, 2007

SOLOMON WARD SEIDENWURM & SMITH, LLP

13  
14 By:

  
EDWARD J. MCINTYRE  
CHRISTINA M. MILLIGAN  
Attorneys for Pacific Law Center

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

**F I L E D**  
Clerk of the Superior Court  
**APR 06 2007**  
By: M. WONG-JIMENEZ, Deputy

1 EDWARD J. MCINTYRE [SBN 80402]  
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5 Facsimile: (619) 231-4755

6 Attorneys for Pacific Law Center

7

8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

9

10

11 PACIFIC LAW CENTER, a Professional Law  
Corporation,

12

Plaintiff,

13

v.

14

15 SHAHROKH SAADATNEJAD, individually  
and doing business as  
16 PACIFLAWCENTERS.COM and  
USHOSTAGE.COM; and DOES 1 through  
17 50, inclusive,

17

Defendants.

18

19

I, Deborah K. Pearson, declare:

20

I am employed in the County of San Diego, State of California. I am over the age of  
21 18 years and not a party to this action. My business address is Solomon Ward Seidenwurm  
22 & Smith, LLP, 401 B Street, Suite 1200, San Diego, California 92101.

23

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

25

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

26

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

28

**COPY**

1 on the parties in this action listed in the attached Proof of Service List, which is incorporated  
2 herein by this reference, by the following means:

3  **(BY MAIL – AS INDICATED BELOW)** I caused each such envelope to be  
4 sealed and placed for collection and mailing from my business address. I am  
5 readily familiar with the practice of Solomon Ward Seidenwurm & Smith, LLP  
6 for collection and processing of correspondence for mailing, said practice  
7 being that in the ordinary course of business mail is deposited with the  
8 postage thereon fully prepaid in the United States Postal Service the same day  
as it is placed for collection. I am aware that upon motion of the party served,  
service is presumed invalid if the postal cancellation date or postage meter  
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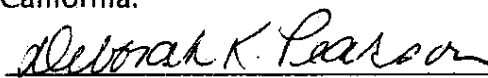
11  **(BY FEDERAL EXPRESS – AS INDICATED BELOW)** I am readily familiar with  
12 the practice of Solomon Ward Seidenwurm & Smith, LLP for the collection  
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15 by facsimile transmission from (619) 231-4755 and the transmission was  
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16 facsimile machine to properly issue a transmission report, a copy of which will  
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17  **(BY EMAIL – AS INDICATED BELOW)** These documents were transmitted by  
18 email transmission from dlorhan@swsslw.com on April 6, 2007, and the  
transmission was reported as complete and without error.

19 I declare under penalty of perjury under the laws of the State of California that the  
20 foregoing is true and correct.

21 Executed on April 6, 2007, at San Diego, California.

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23 \_\_\_\_\_  
DEBORAH K. PEARSON

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**PROOF OF SERVICE LIST**

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San Diego, CA 92111  
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 SAN DIEGO, CA 92101

**APPROVED DIRECT INSURANCE BILLING**

CARRIER NAME: 57112.002 (EJM)  
 ADDRESS:  
 CITY, STATE, ZIP:  
 ADJUSTER: APR 5 '07 PM 4:02  
 INSURED: P 57112.002  
 CLAIM NUMBER:  
 DATE OF LOSS:

ATTORNEY/BAR #: PHONE: 619-233-0300  
 ATTENTION: Debbie ATTORNEY'S FILE NO. 57112.002  
 REPRESENTING  PL  PE  DE  RE  OTHER

**COURT CASE INFORMATION**

COURT: San Diego Superior  
 CASE NO. GIC 878352  
 CASE NAME: Pacific Law Center  
 Shahrokh v Saadati  
 DATE OF HEARING  
 TIME  AM  PM / DEPT.

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 2 Deal. of Philipps  
 3 Dist. of Law  SEE ATTACHED

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