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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

LIBERTY MEDIA HOLDINGS, LLC, a  
California Corporation,  
  
Plaintiff,  
  
vs.  
JAMES MARCH, individually; DI S.A., a  
foreign corporation; RYOICHI  
WATANABE, an individual; JASON  
PHILLIPS, an individual; DAVID  
SMITH, an individual; ADRUSH  
MEDIA, a foreign corporation;  
NAMEVIEW, INC., a foreign  
corproation; MYCLICKTO.COM, a  
California corporation; DIRECT  
PRIVACY ID 826C9; and DOES 1-500,  
  
Defendants.

CASE NO. 10cv1809 WQH (BLM)  
  
ORDER

HAYES, Judge:

The matters before the Court are the Motion for Limited Temporary Restraining Order Freezing Domain Name Portfolios of Defendants in Default, Ryoichi Watanabe, Jason Phillips, David Smith, Adrush Media, and Nameview, Inc. and the Motion for Order Temporarily Sealing Portions of the File submitted by Plaintiff Liberty Media Holdings, LLC.

**BACKGROUND**

On August 31, 2010, Plaintiff Liberty Media Holdings, LLC, filed the Complaint (ECF No. 1) and on October 18, 2010, Plaintiff filed a First Amended Complaint (ECF No. 6)

1 alleging claims of cyberpiracy, cybersquatting, and trademark infringement against Defendants  
2 for their use of website domain names which target Plaintiff's trademark CORBIN FISHER.  
3 Plaintiff contends that Defendant Watanabe is likely the alias of a resident of Tokyo who  
4 registered an infringing domain name through Godaddy.com; Defendant Phillips is likely the  
5 alias of a resident of the UK who registered an infringing domain name through  
6 Publicdomainregistry.com; Defendant Smith is a foreign individual who registered infringing  
7 domain names through Above.com; Defendant Adrush Media is Dutch corporation who  
8 registered an infringing domain name through Directnic, Ltd.; and Nameview, Inc. is a Canada  
9 corporation who registered an infringing domain name through Nameview, Inc.

10 On January 20, 2011, this Court issued an Order permitting Plaintiff Liberty Media  
11 Holdings, LLC to serve Defendants Ryoichi Watanabe, Jason Phillips, David Smith, and  
12 Adrush Media via their last known valid email address. (ECF No. 22). Summons were  
13 returned executed as to Defendants Ryoichi Watanabe, Jason Phillips, David Smith, Adrush  
14 Media, and Nameview, Inc. (ECF Nos. 25-29). On March 28, 2011, the Clerk of the Court  
15 entered Default against Defendants Ryoichi Watanabe, Jason Phillips, David Smith, Adrush  
16 Media, and Nameview, Inc. (ECF No. 41).

17 **I. Motion for Limited Temporary Restraining Order Freezing Domain Name**  
18 **Portfolios filed by Plaintiff**

19 Plaintiff requests that the Court issue a order without notice restraining Ryoichi  
20 Watanabe, registrant of corbin-fisher.info at [getbigfast2010@gmail.com](mailto:getbigfast2010@gmail.com); Jason Phillips,  
21 registrant of ilovecorbinfisher.com at [info@jasonphillips.co.uk](mailto:info@jasonphillips.co.uk); David Smith, registrant of  
22 cornbinfisher.com, corbimfisher.com, corbinfisheer.com, and corbinfisher.com at  
23 [parkdns@gmail.com](mailto:parkdns@gmail.com); Adrush Media, registrant of corbin-fisher.com at  
24 [adrushmedia@gmail.com](mailto:adrushmedia@gmail.com); and Nameview, Inc. registrant of corbingfisher.com at  
25 [corbingfisher.com@monikerprivacy.net](mailto:corbingfisher.com@monikerprivacy.net), and any domain name registrars utilized by the  
26 Defendants from transferring any and all domain names held by or registered by Defendants  
27 until Defendants satisfy any judgment entered in this case or until Defendants appear and show  
28 cause as to why the order should be lifted.

1 Plaintiff contends that it has information regarding the Defendants in the form of  
2 WHOIS reports which include Defendants' names and email addresses. Plaintiff contends that  
3 the WHOIS information can be used to "freeze" Defendants' domain name portfolios. In other  
4 words, the WHOIS information can be used to identify Defendants Ryoichi Watanabe, Jason  
5 Phillips, David Smith, Adrush Media, and Nameview, Inc. to domain name registrars and the  
6 domain name registrars can prevent Defendants from transferring any domain name registered  
7 to them.

8 Plaintiff contends that it is likely to succeed on the merits because Defendants have  
9 defaulted in this case and "the only formality remaining is the Plaintiff filing its motion for a  
10 default judgment." (Mot. TRO at 4). Plaintiff contends that it will suffer irreparable injury  
11 without the requested injunction on the grounds that there is a "strong possibility that the  
12 Defendant will take actions to frustrate judgment in this case." *Id.* Plaintiff contends that  
13 collection efforts on any judgment entered against them will be "frustrated by a lack of  
14 information on the Defendants and a resistance from the applicable foreign legal systems[]"  
15 because Defendants are located outside of the United States. (Mot. TRO at 2). Plaintiff  
16 contends that "the Defendants will simply take all of [their] U.S. - based assets (their domain  
17 name portfolios) and will spirit them away to registrars in other countries[,] if the requested  
18 order does not issue. *Id.* Plaintiff contends that Defendants will be able to continue to use all of  
19 their domain names and will only be prohibited from disposing of their domain names;  
20 therefore, Defendants will not suffer prejudice and the balance of hardship tips in Plaintiff's  
21 favor. Plaintiff contends that the injunction serves the public interest of upholding intellectual  
22 property protections.

### 23 DISCUSSION

24 The underlying purpose of a temporary restraining order is to preserve the status quo  
25 and prevent irreparable harm before a preliminary injunction hearing may be held. *Granny*  
26 *Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 439 (1974); *see*  
27 *also Reno Air Racing Ass'n v. McCord*, 452 F.3d 1126, 1130-31 (9th Cir. 2006). The standard  
28 for issuing a temporary restraining order is similar to the standard for issuing a preliminary

1 injunction, and requires that the party seeking relief show either “(1) a combination of  
2 likelihood of success on the merits and the possibility of irreparable harm, or (2) that serious  
3 questions going to the merits are raised and the balance of hardships tips sharply in favor of  
4 the moving party.” *Immigrant Assistance Project of the L.A. County of Fed’n of Labor v. INS*,  
5 306 F.3d 842, 873 (9th Cir. 2002). “[T]hese two formulations represent two points on a sliding  
6 scale in which the required degree of irreparable harm increases as the probability of success  
7 decreases.” *Dep’t Parks & Rec. of Calif. v. Bazaar Del Mundo, Inc.*, 448 F.3d 1118, 1123 (9th  
8 Cir. 2006) (citations omitted).

9 Federal Rule of Civil Procedure 65(b) provides that the court may issue a temporary  
10 restraining order without notice to the adverse party or its attorney “only if: (a) specific facts  
11 in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss,  
12 or damage will result to the movant before the adverse party can be heard in opposition; and  
13 (b) the movant's attorney certifies in writing any efforts made to give notice and the reasons  
14 why it should not be required.” Fed. R. Civ. P. 65(b)(1)(A)-(B). Federal Rule of Civil  
15 Procedure 65(b) also provides,

16 Every temporary restraining order issued without notice must state the  
17 date and hour it was issued; describe the injury and state why it is  
18 irreparable; state why the order was issued without notice; and be  
19 promptly filed in the clerk's office and entered in the record. The order  
20 expires at the time after entry--not to exceed 14 days--that the court  
21 sets, unless before that time the court, for good cause, extends it for a  
22 like period or the adverse party consents to a longer extension. The  
23 reasons for an extension must be entered in the record.

24 Fed. R. Civ. P. 65(b)(2).

25 The court may grant an injunction to provide “intermediate relief of the same character  
26 as that which may be granted finally,” but the court may not grant an injunction that “deal[s]  
27 with a matter lying wholly outside the issues in the suit.” *Grupo Mexicano de Desarrollo S.A.*  
28 *v. Alliance Bond Fund, Inc.*, 119 S.Ct. 1961, 1972 (1999) (quotations and citation omitted)  
(finding that a blanket freeze of defendant’s assets was not appropriate on the grounds that it  
was overbroad. In virtually every case, a plaintiff could make a “statement of belief that the  
defendant can easily make away with or transport his money or goods, [request] an injunction  
on him [that is] indefinite in duration [and] disabl[e] him [from using] so much of his funds or

1 property as the court deems necessary for security or compliance with its possible decree ....”).  
2 An equitable freeze of a defendant’s assets is only permissible when the assets are related to  
3 the claims raised by the lawsuit and the seizure is ancillary to the final relief which the district  
4 court is authorized to grant. *Reebok Intern., Ltd. v. Marnatech Enterprises, Inc.*, 970 F.2d 552,  
5 561 (9th Cir. 1992).

6 In this case, Plaintiff Liberty Media Holdings, LLC has failed to submit evidence in  
7 support of its Motion for Temporary Restraining Order. The Complaint is not verified, and the  
8 Motion is not supported by an affidavit. Plaintiff has submitted the Declaration of Marc J.  
9 Randazza, Plaintiff’s counsel, in support of the Motion for Order Temporarily Sealing Portions  
10 of the File. Randazza states in his Declaration: “In my opinion, gained through my years of  
11 experience pursuing intellectual property scofflaws ... I believe that the Defendants will take  
12 steps to move [their domain name] portfolios offshore to frustrate any judgment by this court.”  
13 (Decl. Randazza at 2). The evidence in support of the Motion for Temporary Restraining  
14 Order fails to specifically indicate any facts regarding: (1) the assets which would be the  
15 subject of the restraining order; (2) the Defendants Ryoichi Watanabe, Jason Phillips, David  
16 Smith, Adrush Media, and Nameview, Inc. are likely to transfer their domain names; and (3)  
17 the individuals and entities that would be restrained by the TRO are properly subject to  
18 injunction. The Court concludes that the evidence in the record does not provide specific facts  
19 to establish that immediate and irreparable injury, loss, or damage will result to the movant  
20 before the adverse party can be heard in opposition.

21 In addition, Plaintiff’s proposed temporary restraining order seeks to enjoin Defendants  
22 from transferring not only the domain names which the Complaint alleges are infringing, but  
23 also every domain name which is registered to the Defendants Ryoichi Watanabe, Jason  
24 Phillips, David Smith, Adrush Media, and Nameview, Inc. Plaintiff has failed to show that the  
25 assets it seeks to enjoin are related to the claims raised by the lawsuit and the seizure is  
26 ancillary to the final relief which the district court is authorized to grant. *See Reebok Intern.,*  
27 *Ltd.*, 970 F.2d at 561. In addition, Plaintiffs’ proposed temporary restraining order contains  
28 no time limitation, as required by Rule 65(b). *See Bennett v. Medtronic, Inc.*, 285 F.3d 801,

1 804 (9th Cir. 2002) (holding that a “temporary restraining order” with a 30-day duration and  
2 which was entered after an adversary hearing is “appropriately characterize[d]” as a  
3 preliminary injunction) (citing *Sampson v. Murray*, 415 U.S. 61, 87-88 (1974) (“where an  
4 adversary hearing has been held, and the court’s basis for issuing the order strongly challenged,  
5 classification of [a] potentially unlimited order as a temporary restraining order seems  
6 particularly unjustified”). Plaintiff’s Motion for Temporary Restraining Order is DENIED.

7 **II. Motion to for Order Temporarily Sealing Portions of the File**

8 Plaintiff seeks an order permitting Plaintiff’s Motion for Limited Temporary  
9 Restraining Order Freezing Domain Name Portfolios of Defendants and the Motion for Order  
10 Temporarily Sealing Portions of the File to be filed under seal “until [Plaintiff’s] ex parte  
11 application for [temporary restraining order] can be ruled upon.” (Mot. to Seal at 2).

12 The Court has ruled on Plaintiff’s Motion for Limited Temporary Restraining Order  
13 Freezing Domain Name Portfolios of Defendants. Accordingly, the Motion for Order  
14 Temporarily Sealing Portions of the File is DENIED as moot.

15 **CONCLUSION**

16 IT IS HEREBY ORDERED that the Motion for Limited Temporary Restraining Order  
17 Freezing Domain Name Portfolios of Defendants in Default, Ryoichi Watanabe, Jason Phillips,  
18 David Smith, Adrush Media, and Nameview, Inc. filed by Plaintiff is DENIED. The Motion  
19 for Order Temporarily Sealing Portions of the File filed by Plaintiff is DENIED as moot. The  
20 Clerk of the Court shall file the Motions submitted by Plaintiff Liberty Media Holdings, LLC.

21 DATED: April 13, 2011

22   
23 **WILLIAM Q. HAYES**  
24 United States District Judge