

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

PHILIPPE CHARRIOL  
INTERNATIONAL LIMITED,  
  
Plaintiff,

vs.

A'LOR INTERNATIONAL  
LIMITED,  
  
Defendant.

CASE NO. 13CV1257-MMA (BGS)

**ORDER DENYING  
PLAINTIFF'S *EX PARTE*  
APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER;**

**DENYING APPLICATION FOR  
AN ORDER TO SHOW CAUSE  
WHY A PRELIMINARY  
INJUNCTION SHOULD NOT  
ISSUE;**

**DENYING APPLICATION FOR  
A SEIZURE ORDER;**

**DENYING APPLICATION FOR  
A SUBSTITUTE CUSTODIAN  
ORDER;**

**DENYING EXPEDITED  
DISCOVERY ORDER**

[Doc. No. 3]

On May 30, 2013, Plaintiff Philippe Charriol International Limited (“Plaintiff”) filed a complaint against Defendant A’lor International Limited (“Defendant”) alleging trademark counterfeiting, trademark infringement, and other related claims. [Doc. No. 1.] Plaintiff also filed an *ex parte* application for a temporary restraining order (“TRO”) seeking, *inter alia*, to enjoin Defendant from

1 manufacturing and distributing jewelry which infringes Plaintiff’s trademarks.  
2 [Doc. No. 3.] For the reasons set forth below, the Court **DENIES** Plaintiff’s *ex*  
3 *parte* TRO motion. Accordingly, the Court also **DENIES** all accompanying  
4 requests.

5 **BACKGROUND**

6 Plaintiff Philippe Charriol International Limited is the owner of the worldwide  
7 luxury brand, CHARRIOL, which creates and sells distinctive watches, jewelry,  
8 leather goods, and accessories sold in more than 60 countries. Since its inception in  
9 1984, CHARRIOL has used cable as a distinctive element of its jewelry design,  
10 finding inspiration from, among other things, Celtic art. Plaintiff has trademarked  
11 several cable and metallic nautical rope designs, and is actively engaged in  
12 expanding its cable design jewelry throughout the world.

13 Defendant A’lor is a California corporation and is Plaintiff’s exclusive  
14 jewelry distributor in the United States and Canada (the “Territory”). The parties’  
15 relationship is defined by an October 1, 2010 Exclusive Jewelry License Agreement.  
16 Under the Jewelry Agreement, Defendant is charged with designing jewelry  
17 collections and presenting them for Plaintiff’s approval, and then producing the  
18 collections and distributing the jewelry to Defendant’s network of dealers for sale to  
19 consumers. A’lor maintains its own jewelry line in addition to distributing  
20 Plaintiff’s jewelry.

21 Various restrictions were placed in the Jewelry Agreement which, according  
22 to Plaintiff, were intended by the parties for Plaintiff to exercise tight and unfettered  
23 control over how the CHARRIOL cable design, name, appearance, image, and brand  
24 was used and promoted by A’lor, and to prevent A’lor, a putative competitor with its  
25 own jewelry line and products, from selling under the A’lor name. However,  
26 Plaintiff alleges that rather than fulfilling its duties under the Jewelry Agreement,  
27 Defendant A’lor has instead undertaken increasingly aggressive steps to build and  
28 develop its own line of “Alor” jewelry at the expense of the strength of the

1 CHARRIOL name and brand. Plaintiff alleges to have recently discovered that  
2 Defendant A'lor has engaged in harmful commercial activity that has damaged and  
3 will continue to harm the CHARRIOL name and brand, and create considerable  
4 confusion in the mind of consumers about the differences between A'lor's jewelry  
5 and the CHARRIOL brand. Specifically, Plaintiff cites the following acts:<sup>1</sup>

- 6 • A'lor's website passes-off CHARRIOL Products as A'lor  
7 products; that is, www.alor.com displays CHARRIOL Products  
8 as A'lor products. Such passing-off even includes A'lor  
9 marketing and selling CHARRIOL cufflinks which include the  
10 A'lor logo and symbol.
- 11 • A'lor knocking-off CHARRIOL Products outside the United  
12 States and Canada, for instance, in Australia and Kazakhstan.  
13 Plaintiff alleges that it just discovered that A'lor has started  
14 selling rebranded CHARRIOL Products in Australia through  
15 Acacia Agencies, an Australian-based jewelry wholesaler. Each  
16 of these CHARRIOL knock-off jewelry items are 18kt gold  
17 jewelry licensed under the Jewelry Agreement, and are composed  
18 of CHARRIOL designs approved by PCI to be manufactured and  
19 distributed by A'lor only in the U.S. and Canada. Plaintiff does  
20 not yet know, but suspects that A'lor is selling the same  
21 CHARRIOL jewelry as A'lor jewelry in Kazakhstan.
- 22 • Alor's passing-off and trading upon CHARRIOL's name within  
23 Alor's own media advertising.
- 24 • A'lor's passing-off on Facebook, by prominently inserting the  
25 A'lor name within the CHARRIOL Facebook page, or displaying  
26 CHARRIOL jewelry on the A'lor Facebook page, purporting that

---

27  
28 <sup>1</sup> Plaintiff's motion includes a variety of other allegedly-harmful activity engaged in by Defendant. The Court has thoroughly considered each activity but, for sake of brevity, does not include them here.

1 it is A'lor jewelry.

- 2 • Alor's use of the phrase "Cable& 18kt Gold Jewelry" in a  
3 manner that (1) misrepresents and confuses consumers that A'lor  
4 has an exclusive for such jewelry; and (2) is unapproved by  
5 Plaintiff as required under the Jewelry Agreement.

6 Based on these and other incidents, Plaintiff alleges that Defendant A'lor is  
7 violating Plaintiff's trademarks as well as breaching the parties' Jewelry Agreement.  
8 As a result, Plaintiff filed the instant action, alleging nine separate causes of action.  
9 Presently, Plaintiff requests that the Court grant a TRO against Defendant based on  
10 the actions alleged in the complaint. Specifically, Plaintiff seeks a TRO to enjoin  
11 Defendant A'lor from:

- 12 1. displaying, selling, offering for sale, or distributing jewelry depicted as  
13 "Alor" jewelry inside and outside the United States and Canada that is  
14 actually CHARRIOL jewelry designed and produced by A'lor under  
15 the Jewelry Agreement;
- 16 2. displaying, selling, offering for sale, or distributing "Alor" jewelry  
17 inside and outside the Territory that infringes upon Plaintiff's  
18 Trademarks; and
- 19 3. using Plaintiff's Trademarks in combination with A'lor's promotion,  
20 display, advertising, and sale of A'lor jewelry.

### 21 DISCUSSION

22 The purpose of a TRO is to preserve the status quo before a preliminary  
23 injunction hearing may be held; its provisional remedial nature is designed merely to  
24 prevent irreparable loss of rights prior to judgment. *Granny Goose Foods, Inc. v.*  
25 *Brotherhood of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 439 (1974). The  
26 legal standard that applies to a motion for a TRO is the same as a motion for a  
27 preliminary injunction. *See Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240  
28 F.3d 832, 839 n.7 (9th Cir. 2001). To obtain a TRO or preliminary injunction, the

1 moving party must show: (1) a likelihood of success on the merits; (2) a likelihood  
2 of irreparable harm to the moving party in the absence of preliminary relief; (3) that  
3 the balance of equities tips in the moving party's favor; and (4) that an injunction is  
4 in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20  
5 (2008).

6 With respect to issuing an *ex parte* TRO, Federal Rule of Civil Procedure  
7 65(b)(1) provides that a "court may issue a temporary restraining order without  
8 written or oral notice to the adverse party or its attorney only if: (A) specific facts in  
9 an affidavit or a verified complaint clearly show that immediate and irreparable  
10 injury, loss, or damage will result to the movant before the adverse party can be  
11 heard in opposition; and (B) the movant's attorney certifies in writing any efforts  
12 made to give notice and the reasons why it should not be required." Fed. R. Civ. P.  
13 65 (emphasis added).

14 The United States Supreme Court has held that there are stringent restrictions  
15 imposed by Rule 65 because "our entire jurisprudence runs counter to the notion of  
16 court action taken before reasonable notice and an opportunity to be heard has been  
17 granted both sides of a dispute." *Granny Goose*, 415 U.S. 423 at 439.

18 "[C]ircumstances justifying the issuance of an *ex parte* order are extremely limited."  
19 *Reno Air Racing Ass'n v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006). There are  
20 "a very narrow band of cases in which *ex parte* orders are proper because notice to  
21 the defendant would render fruitless the further prosecution of the action." *Id.*

22 (quoting *American Can Co. v. Mansukhani*, 742 F.2d 314, 322 (7th Cir. 1984)). For  
23 example, to justify an *ex parte* proceeding where an alleged infringer is likely to  
24 dispose of the infringing goods before the hearing, the "applicant must do more than  
25 assert that the adverse party would dispose of evidence if given notice." *Id.* (citation

26 omitted). "[P]laintiffs must show that defendants would have disregarded a direct  
27 court order and disposed of the goods within the time it would take for a hearing . . .  
28 [and] must support such assertions by showing that the adverse party has a history of

1 disposing of evidence or violating court orders or that persons similar to the adverse  
2 party have such a history.” *Id.* (citation omitted).

3 Here, Plaintiff has not addressed or complied with the *ex parte* provisions  
4 under Federal Rule of Civil Procedure 65. In its application, Plaintiff states there is:

5 great risk that A’lor would destroy (in the jewelry trade, destroy often  
6 means melt the jewelry for future use) incriminating evidence if provided  
7 with notice of this TRO without a seizure because if a restraining order  
8 issues, A’lor will be precluded from selling its offending jewelry, and  
9 would therefore have a great incentive to melt the jewelry, allowing for  
10 future use.

11 [TRO Mot. at 41.] A declaration by Plaintiff’s managing director, Ludovic Lesur,  
12 was filed to support this assertion. [See Lesur Decl. ¶ 49 (“If advance notice of this  
13 TRO application is furnished to A’lor, A’lor will likely hide or destroy its relevant  
14 business records and electronically stored information.”)]. However, Plaintiff’s  
15 counsel has not filed a declaration regarding the issue of whether notice should not  
16 be required. Moreover, Plaintiff must assert more than a conclusory allegation that  
17 Defendant may dispose of evidence. *See McCord*, 452 F.3d at 1131.

18 Plaintiff cites a 2007 case from the Southern District of Florida for the  
19 proposition that “Counterfeiters who have no substantial investment in stationary  
20 assets will often disappear or dispose of evidence if served with a notice of  
21 hearing[.]” [TRO Mot. at 41 (citing *Dell Inc. v. Belgium Domains, LLC*, 2007 WL  
22 6862341, at \*3 (S.D. Fla. 2007)). However, *Dell* is distinguishable. There, the  
23 defendants had a history of concealing evidence by using numerous fictitious  
24 businesses, personal names, and shell entities to hide their activities. Further,  
25 defendants could destroy the relevant evidence all with just a few keystrokes,  
26 “leaving no paper trail.” *Dell*, 2007 WL 6862341 at \*2. “The elaborate nature of  
27 Defendants’ scheme demonstrates that Defendants will go to great lengths to conceal  
28 the details of their counterfeiting and cybersquatting scheme. If Defendants learn of  
this proceeding, there will very likely and very quickly be nothing left.” *Id.* Finally,  
the plaintiffs in *Dell* also demonstrated that “same persons involved in similar  
activities have disregarded court orders in the past.” *Id.*

1 Here, Plaintiff does not show a history of concealment on the part of  
2 Defendant. Nor is there proof that similarly situated defendants have disregarded  
3 court orders in the past by illegally destroying evidence. Thus, the Court finds that  
4 Plaintiff has not demonstrated that this case fits within the “very narrow band of  
5 cases” in which *ex parte* orders are proper. *McCord*, 452 F.3d at 1126.


6 **CONCLUSION**

7 Based on the foregoing, the Court **DENIES** Plaintiff’s *ex parte* application for  
8 a TRO. Accordingly, Plaintiff’s accompanying motions for an order to show cause  
9 why a preliminary injunction should not issue, a seizure order, a substitute custodian  
10 order, and an expedited discovery order are also **DENIED**.

11 Plaintiff shall serve Defendant with all documents filed in this matter,  
12 including the complaint, the instant applications, and this Order by ***June 4, 2013***,  
13 and provide proofs of service to the Court by ***June 7, 2013***. Once these documents  
14 are timely served on Defendant, Plaintiff may contact the Court to schedule a  
15 hearing on the request for a preliminary injunction.

16 **IT IS SO ORDERED.**

17 DATED: May 31, 2013

18 

19 Hon. Michael M. Anello  
20 United States District Judge