

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Action No. 07-cv-01402-REB-CBS

SHANE CO., a Colorado corporation,

Plaintiff,

v.

PACIFIC DIAMOND & SWISS WATCH EXCHANGE, INC., and
THEODORE G. GONZALES, a/k/a Ted Gonzales,

Defendants.

TEMPORARY RESTRAINING ORDER

Blackburn, J.

This matter is before me on the plaintiff's **Motion for Temporary Restraining Order** [#2], filed July 3, 2007. The motion is granted.

On July 6, 2007, I entered an Minute Order [#6] setting a hearing on the Motion for Temporary Restraining Order for Tuesday, July 10, 2007, beginning at 1:30 p.m. In that order I also required the plaintiff to serve the defendants with the Complaint [#1], the Motion for Temporary Restraining Order [#2], and the July 6, 2007 Minute Order. Additionally, I directed the plaintiff to notify the defendants as soon as practicable by the most expeditious means (one or more) available, e.g., telephone, facsimile, and/or e-mail, etc., of the Complaint [#1], the Motion for Temporary Restraining Order [#2], and the July 6, 2007, Minute Order. The returns of service [#7 & #8] filed by the plaintiff indicate that the defendants were served with the relevant documents on July 6, 2007, at 11:35 a.m. Hawaii standard time. The defendants are residents of Hawaii.

Beginning at 1:30 p.m. today, July 10, 2007, I held a hearing on the plaintiff's motion for temporary restraining order [#2], filed July 3, 2007. At the time of the hearing, the court had not received any filing from the defendants, nor had the court received any communication of any kind from the defendants. The plaintiff presented evidence, an offer of proof, and argument in support of its motion for temporary restraining order. At the conclusion of the July 10, 2007, hearing, I issued a detailed oral ruling from the bench, and I granted the plaintiff's motion for temporary restraining order. For the sake of a clear record, I issue this written order, which summarizes my oral ruling.¹

I have personal jurisdiction over the parties to this action. Venue is proper in the United States District Court for the District of Colorado. I have subject matter jurisdiction over this action under 15 U.S.C. § 1121 (action arising under the Lanham Act), 28 U.S.C. § 1331 (federal question), 28 U.S.C. 1338(a) (action arising under Act of Congress relating to trademarks), 28 U.S.C. § 1338(b) (action asserting a claim of unfair competition joined with a substantial and related claim under the trademark laws), and 28 U.S.C. § 1367 (supplemental jurisdiction).

In determining whether a temporary restraining order should issue, I have judicially noticed all relevant adjudicative facts in the file and record *pro tanto*; I have considered the evidence adduced at the hearing; I have considered the offer of proof made by counsel for the plaintiff, and I have considered the reasons stated, arguments advanced, and authorities cited by the plaintiff in its papers and during the July 10,

¹ Thus, this written order is issued to confirm, supplement, and expatiate the findings of fact, conclusions of law, and temporary orders entered from the bench in open court at the conclusion of the hearing on July 10, 2007.

2007, hearing. I incorporate in this order my findings of fact, conclusions of law, and orders, as stated in my oral ruling from the bench on July 10, 2007.

For the purposes of this order, the phrase “You Have a Friend Family of trademarks” includes the following trademarks used and owned by the plaintiff which are registered with the United States Trademark Office: 1) NOW YOU HAVE FRIEND IN THE DIAMOND BUSINESS; 2) NOW YOU HAVE A FRIEND IN THE RUBY BUSINESS; 3) NOW YOU HAVE A FRIEND IN THE SAPPHIRE BUSINESS; 4) NOW YOU HAVE A FRIEND IN THE PEARL BUSINESS; and 5) NOW YOU HAVE A FRIEND IN THE BRIDAL JEWELRY BUSINESS.

THEREFORE, IT IS ORDERED as follows:

1. That under FED. R. CIV. P. 65, the plaintiff’s motion for temporary restraining order [#2], filed July 10, 2007, **IS GRANTED** on the terms stated in this order, effective forthwith;

2. That effective forthwith and pending further order of court, the defendants, Pacific Diamond & Swiss Watch Exchange, Inc., and Theodore G. Gonzales, a/k/a Ted Gonzales, jointly and severally, and their agents, servants, employees, attorneys in fact, attorneys in law, and any and all persons in active concert or participation with the defendants, jointly or severally, who receive actual notice of this Temporary Restraining Order by personal service or otherwise, shall be **TEMPORARILY ENJOINED AND RESTRAINED** from their use of the plaintiff’s You Have a Friend Family of trademarks in any form of advertising, promotion, or use on the Internet, including use of the family of trademarks as metatags;

3. That on or before 5:00 p.m., mountain daylight time on **Monday, July 16,**

2007, the plaintiff shall deposit with the Clerk of the Court the sum of five hundred dollars (\$500) as security for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongly enjoined or restrained;

4. That this Temporary Restraining Order shall expire, if not sooner modified or dissolved, on **Tuesday, July 24, 2007**, at 3:45 p.m., mountain daylight time;

5. That the court shall hear the plaintiff's motion for preliminary injunction, which is an integral part of its Motion for Temporary Restraining Order, on **Monday, July 23, 2007**, commencing at 1:30 p.m., mountain daylight time, reserving the balance of that afternoon, if necessary, for hearing; and

6. That the plaintiff shall serve a copy of this Temporary Restraining Order on the defendants in the manner prescribed by law.

Dated July 10, 2007, at 3:45 p.m., at Denver, Colorado.

BY THE COURT:

s/ Robert E. Blackburn
Robert E. Blackburn
United States District Judge