

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

Civil Action No. 14-cv-00323-REB-KLM

COMPLIANCE SOLUTIONS OCCUPATIONAL TRAINERS, INC., a Colorado corporation,

Plaintiff,

v.

SAFETY HELPERS, LLC, DELINQUENT APRIL 1, 2012, a Colorado limited liability company, and
KYLE KNEBEL, an individual,

Defendants.

ORDER

Blackburn, J.

This matter comes before me on **Plaintiff's Motion for Contempt** [#24],¹ filed April 10, 2014. Plaintiff seeks to have me find defendants in contempt of the **Order** [#231], filed February 28, 2014, granting the parties' stipulation regarding use by defendants of the trademark-in-suit. Although neither party has requested a hearing, caselaw clearly provides that a civil contempt may not be imposed without one. I therefore set this matter for hearing.

"Civil contempts provide a remedy for a party who has been injured by the violation of a court order." *Hyde Construction Co. v. Koehring Co.*, 388 F.2d 501, 511 (10th Cir.), *cert. denied*, 88 S.Ct. 1654 (1968). Unlike criminal contempt, which seeks to punish a party for past acts, civil contempt is remedial in nature and seeks to

¹ "[#24]" is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

compel compliance with a court order for the benefit of the complainant. **International Union, United Mine Workers of America v. Bagwell**, 512 U.S. 821, 827-28, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994); **Home Design Services, Inc. v. B & B Custom Homes, LLC**, 2008 WL 927683 at *2 (D. Colo. Apr. 3, 2008).

“Sanctions for civil contempt may only be employed for either or both of two distinct remedial purposes: (1) to compel or coerce obedience to a court order . . .; and (2) to compensate the contemnor's adversary for injuries resulting from the contemnor's noncompliance[.]” **O’Conner v. Midwest Pipe Fabrications, Inc.**, 972 F.2d 1204, 1211 (10th Cir. 1992) (citation and internal quotation marks omitted).² Plaintiff here seeks coercive contempt sanctions, which “look to the future and are designed to aid the plaintiff by bringing a defiant party into compliance with the court order.” **Latrobe Steel Co. v. United Steelworkers**, 545 F.2d 1336, 1344 (3rd Cir. 1976).³ Specifically, plaintiff asks that defendants be fined \$2,500 per day until such time as they cease using the allegedly confusingly similar mark. **See O’Connor**, 972 F.2d at 1211; **General Signal Corp. v. Donallco, Inc.**, 787 F.2d 1376, 1380 (9th Cir. 1986).

A finding of civil contempt is proper where (1) a valid court order existed; (2) the respondent had knowledge of that order; and (3) the respondent disobeyed that order. **FTC v. Kuykendall**, 371 F.3d 745, 756-57 (10th Cir. 2004). The moving party is

² Although Federal Rule of Criminal Procedure governs motions for criminal contempt, there is no corresponding procedural rule applicable to civil contempts. **Home Design Services, Inc.**, 2008 WL 927683 at *4.

³ By contrast, compensatory sanctions seek to "compensate the complainant through the payment of money for damages caused by past acts of disobedience." **Latrobe Steel**, 545 F.2d at 1344. Plaintiff here does not seek compensatory sanctions.

required to establish a prima facie case of contempt by demonstrating that certain conduct was required by a previous court order and that the alleged contemnor failed to comply with that order. **United States v. Hayes**, 722 F.2d 723, 725 (11th Cir. 1984).

The alleged contemnor is entitled to notice and a hearing on the issues raised by and inherent to the motion for contempt.

A person charged with civil contempt is entitled to a show cause hearing, to be represented by counsel, to be given adequate notice, and to have an opportunity to be heard. A civil contempt proceeding, which may lead to a penalty, is a trial rather than a hearing on a motion. Testimony is by way of live witnesses and not by affidavit. A civil contempt proceeding is conducted in accordance with the Federal Rules of Evidence. [The alleged contemnor] and [its] attorney must be accorded a reasonable period of time in which to prepare a defense. Civil contempt must be established by clear and convincing evidence.

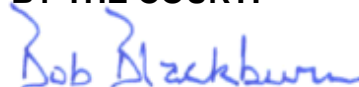
Home Design Services, Inc., 2008 WL 927683 at *4 (internal citations omitted).

Accordingly, the court will set this matter for evidentiary hearing at a reasonable time in advance to allow defendants to prepare and to respond to the allegations brought against them.

THEREFORE, IT IS ORDERED that the court **SHALL CONDUCT** an evidentiary hearing on **Plaintiff's Motion for Contempt** [#24], filed April 10, 2014, on **Friday, July 18, 2014**, commencing at **1:30 p.m. MDT**, reserving the remainder of the afternoon, if necessary.

Dated May 20, 2014, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge