

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FILED: AUG 12, 2008

JONES DAY,
a General Partnership,

Plaintiff,

v.

BlockShopper.com,
an unincorporated business entity,

and

Brian Timpone,
d/b/a Blockshopper.com,
an individual,

and

Edward Weinhaus,
d/b/a Blockshopper.com,
an individual,

Defendants.

Case No.: 08CV4572
JUDGE DARRAH
Judge: MAGISTRATE JUDGE COX
RCC

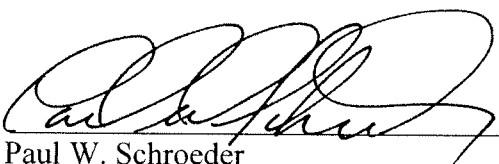
MOTION FOR TEMPORARY RESTRAINING ORDER

Pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, Plaintiff Jones Day (“Jones Day”), respectfully requests that this Court enter a Temporary Restraining Order: (1) enjoining Defendants’ use of Jones Day’s federally-registered service marks JONES DAY and JONES DAY (and Design) (the “Jones Day Service Marks”), including, but not limited to, providing links to the web site www.jonesday.com; (2) engaging in any conduct which dilutes the Jones Day Service Marks; and (3) using any content from the Jones Day web site.

As set forth more fully in the attached Memorandum in Support, which is incorporated herein by this reference, Defendants’ use of the Jones Day Service Marks violates the Federal Trademark Dilution Act and the Lanham Act. Defendants’ conduct is intentional and injurious to Jones Day’s business and is irreparably harming the goodwill associated with intellectual property owned by Jones Day. Accordingly, this Court should issue a Temporary Restraining Order enjoining any further use or publication of the Jones Day Service Marks.

Date: August 12, 2008

Respectfully submitted,

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

JONES DAY,)
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Plaintiff,)
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v.)
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BlockShopper.com,)
an unincorporated business entity,)
)
and)
)
Brian Timpone,)
d/b/a Blockshopper.com,)
an individual,)
)
and)
)
Edward Weinhaus,)
d/b/a Blockshopper.com,)
an individual,)
)
Defendants.)

Case No.: _____
Judge: _____

**PLAINTIFF JONES DAY'S MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER**

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INTRODUCTION

Plaintiff, Jones Day (“Jones Day”), moves this Court for an Order enjoining Defendants Blockshopper.com (“Blockshopper”), Brian Timpone (“Timpone”) and Edward Weinhaus (“Weinhaus”) from committing further acts of service mark dilution and service mark infringement arising out of Defendants’ unauthorized use of Jones Day’s valuable and famous service marks JONES DAY and JONES DAY (and Design).

As established below, Defendants are intentionally trading upon the fame and recognition of the Jones Day Service Marks. Defendants’ behavior is indisputably unlawful and irreparably harmful to Jones Day. Jones Day will ultimately succeed on its claims against Defendants. Moreover, Defendants will not be harmed by the entry of an injunction. Accordingly, Jones Day respectfully requests that this Court expeditiously enter a temporary restraining order against Defendants’ unlawful conduct.

In compliance with Rule 65(b) of the Federal Rules of Civil Procedure, Jones Day has served notice of its Complaint and Motion for Temporary Restraining Order on Defendants by electronic mail and by overnight express. (See Declaration of Kristy Posch, attached hereto as Exhibit A and by this reference herein incorporated).

FACTUAL BACKGROUND

The Fame and Recognition of the Jones Day Service Marks

Tracing its origins to 1893 in Cleveland, Ohio, Jones Day is one of the world’s largest and most famous law firms, with more than 2,200 lawyers resident in 30 geographically diverse locations worldwide. (Attached hereto as Exhibit B and by reference herein incorporated is the Declaration of Lee Ann Russo, Esq., ¶¶ 3 and 4). Jones Day is fortunate to have been selected to act as principal outside counsel to, or provide significant legal representation for, more than half

of the *Fortune* 500 companies, as well as to a wide variety of other entities, including privately-held companies, financial institutions, investment firms, health care providers, retail chains, foundations, educational institutions and individuals. (Id., ¶ 9). Surveys repeatedly list Jones Day as one of the law firms most frequently engaged by domestic corporations, and many of the Firm's lawyers have achieved national recognition in their disciplines. (Id., ¶ 10). Jones Day has been ranked first among litigation departments in the United States, and consistently ranks among the finest litigation departments in the United States. (Id.)

In the United States, Jones Day maintains offices in Atlanta, Chicago, Cleveland, Columbus, Dallas, Houston, Irvine, Los Angeles, New York, Palo Alto, Pittsburgh, San Diego, San Francisco and Washington, D.C. (Id., ¶ 5). Jones Day's international practice is also significant and expanding. In addition to representing a large number of its United States-based clients in international matters, Jones Day represents many major companies based in Europe, the Middle East, Asia, and Latin America. (Id., ¶ 6). Jones Day maintains a significant presence in the principal legal and regulatory capitals of the world. In Europe, more than 400 lawyers are based in Brussels, Frankfurt, London, Madrid, Milan, Moscow, Munich and Paris. (Id., ¶ 7). In Asia, more than 200 lawyers are based in Beijing, Hong Kong, Shanghai, Singapore, Taipei, and Tokyo. (Id., ¶ 8). Jones Day also has offices in Sydney, Australia. (Id.)

As a result of the high quality of legal services it has provided to its clients for more than a century, and its reputation as one of the premier law firms in the United States, if not the world, Jones Day's name and service marks have become very valuable assets and are famous. (Id. ¶ 15). Since at least as early as July 1983, Jones Day has used, and continues to use, the service mark JONES DAY to identify the legal services the Firm provides. (Id., ¶ 16). The Firm has used the service mark JONES DAY in commerce in other forms since at least 1939. (Id.) As a

direct result of the time and effort promoting the Jones Day Service Marks, Jones Day's clients, its competitors and the general public have come to associate high-quality legal services provided by Jones Day by its use of the name and service mark JONES DAY in both word and stylized forms. (Id., ¶ 20).

Jones Day is the owner of two United States Service Mark Registrations, Numbers 2,212,877 and 2,316,539, for the mark JONES DAY to identify legal services (collectively the "Jones Day Service Marks"). The Jones Day Service Marks are valid and have become incontestable. (Id., ¶ 13, Ex. 1).

Jones Day vigorously protects its rights in and to the Jones Day Service Marks. (Id., ¶ 17). For example, in March 2000, Judge Nugent of the United States District Court for the Northern District of Ohio enjoined a cybersquatter from posting any content on web sites at the domain names *www.jonesdayreavis.com*, *www.jonesdayreavispogue.com*, and *www.jonesdayreavisandpogue.com* or from registering any domain name that is identical or confusingly similar to any registered or common law service mark of Jones Day, including but not limited to, the Jones Day Service Marks. (See Jones Day Reavis & Pogue v. Wick, et al., Case No. 1:00CV613 (N.D. Ohio 2000)). Moreover, in November, 2005, Judge Economus of the United States District Court for the Northern District of Ohio held that the Jones Day Service Marks are famous and awarded temporary and permanent injunctive relief to Jones Day against a cybersquatter who had registered *www.jonesdays.com*. (See Jones Day v. Patel, Case No. 1:05CV2584 (N.D. Ohio 2005)). Jones Day also was awarded costs, statutory damages and attorneys' fees. (See Order dated January 10, 2006, a true and correct copy of which is attached hereto as Exhibit C and by reference herein incorporated).

In 2006, Jones Day again successfully enforced its service marks against improper internet usage. Jones Day sued for trademark dilution in the United States District Court for the Northern District of Ohio (Case No. 1:06CV01174). The suit ultimately settled when the defendant agreed to refrain from referencing or using, directly or indirectly, “Jones Day” or the Jones Day Service Marks. (Russo Decl., ¶ 19).

Defendants’ Unlawful Conduct

Defendants Weinhaus and Timpone co-founded, registered and operate the internet web site located at the domain *www.blockshopper.com* (the “Web Site”). (Posch Decl., ¶ 3, Ex. 1). Defendants Weinhaus and Timpone use the Web Site to operate the Defendant business Blockshopper.com. (Id.).

Blockshopper.com is a business predicated upon gathering and publishing details of private residential real estate transactions. (Id.). Defendants use the Web Site as a tool by which to solicit advertisements and garner advertising income. For example, the Web Site touts that: “BlockShopper.com offers special advertising and sponsorship packages created to meet your local customer acquisition or brand-building needs.” (Id.). In order to make their site more attractive to potential advertisers, Defendants use the service marks of others, link to web sites owned by others and use material from web sites belonging to others. (Id.).

Defendants have used the Jones Day Marks on the Web Site. On at least two occasions, Defendants have linked “articles” on the Web Site to the Jones Day web site. (Id.). Defendants also have used materials from the Jones Day web site on the Web Site. A review of the content of the Web Site reveals that the photographs of at least two Jones Day associates are identical to the photographs which appear on the Jones Day web site. (Id.).

Defendants have no business connection or association with Jones Day. (Russo Decl., ¶ 23). Jones Day never has authorized Defendants to use any intellectual property owned by Jones Day, including the Jones Day Marks. (Id.). Defendants' use of the Jones Day Marks, the link to the Jones Day web site and the use of proprietary information from the Jones Day web site creates the false impression that Jones Day is affiliated with and/or approves of the business conducted by the Defendants. (Id., ¶¶ 22-24). Such an impression is false, disparages Jones Day and infringes and dilutes the Jones Day Marks. (Id., ¶ 24).

Jones Day's Notice to Defendants

Jones Day did not become aware of Defendants' use of the Jones Day Service Marks until July 2008. (Id., ¶ 22). After Jones Day became aware of the use of the Jones Day Service Marks, it contacted Defendants on July 10, 2008, and requested that the Defendants cease all use of the Jones Day Marks, cease linking to the Jones Day web site and cease use of Jones Day's web site content. (Complaint Ex. E). Jones Day did not receive a response to this letter.

On July 17, 2008, Jones Day again contacted Defendants and requested that the Defendants cease all use of the Jones Day Marks, cease linking to the Jones Day web site and cease use of Jones Day's web site content. (Complaint Ex. F). Again, Defendants failed to respond to Jones Day's requests. Defendants continue to operate the Web Site and use Jones Day's intellectual property.

Obviously, Defendants do not intend to cease their unlawful and disparaging use of the Jones Day Service Marks. Because Defendants' conduct has and continues to injure the valuable service mark rights of Jones Day, Jones Day seeks immediate injunctive relief to prevent further irreparable harm. A copy of the proposed Temporary Restraining Order is attached for the Court's convenience at Exhibit D and by reference herein incorporated.

ARGUMENT

DEFENDANTS' USE OF THE JONES DAY SERVICE MARKS SHOULD BE ENJOINED.

A. Jones Day Meets The Standard For Injunctive Relief.

In the Seventh Circuit, the standard for granting a temporary restraining order is the same as the standard for granting a preliminary injunction. YourNetDating, Inc. v. Mitchell, 88 F. Supp. 2d 870, 871 (N.D. Ill. 2000). In deciding a motion for a preliminary injunction, a court must determine whether: (1) the plaintiff has some likelihood of success on the merits; (2) there is an adequate remedy at law; and (3) plaintiff will suffer irreparable harm if the injunction is not granted. Ty, Inc. v. Jones Group, Inc., 237 F.3d 891, 895 - 896 (7th Cir. 2001).

If the above conditions are met, then the Court must consider the irreparable harm that the non-moving party will suffer if preliminary relief is granted, and the public interest in denying or granting the injunction. Id. The more likely it is that the plaintiff will succeed on the merits, the less the balance of irreparable harms need favor the plaintiff's position. Id. In this matter, all of the factors weigh heavily in favor of entering the requested injunctive relief.

B. Jones Day Is Likely To Succeed On The Merits.

1. Defendants' Use Of "Jones Day" Dilutes The Distinctive Value Of The Jones Day Service Marks.

a. Defendants Are Engaged In Trademark Dilution As A Matter Of Law.

The Federal Trademark Dilution Act, 15 U.S.C. § 1125(c) ("FTDA"), permits the owner of a famous mark to seek an injunction against the "use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury." 15 U.S.C. § 1125(c)(1).

In contrast to an infringement claim, injury resulting from dilution does not result from consumer confusion about the source of a product or service. Dilution is the lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of the presence or absence of competition between the owner of the famous mark and other parties, or likelihood of confusion, mistake or deception. 15 U.S.C. § 1125. Dilution can occur either by blurring or tarnishment of a mark. 15 U.S.C. § 1125(c)(2)(B)-(C). The FTDA was enacted to “protect[] the trademark owner from the erosion of the distinctiveness and prestige of a trademark...” Eli Lilly & Co. v. Natural Answers, Inc., 233 F.3d 456, 466 (7th Cir. 2000).

A review of the plain language of the FTDA reveals that Jones Day is likely to prevail on the merits of its trademark dilution claim. The Jones Day Services Marks are famous, and Defendant’s conduct tarnishes and blurs the distinctive Jones Day Service Marks.

b. Defendant’s Use of “Jones Day” Blurs and Tarnishes the Jones Day Service Marks.

Jones Day can establish each of the statutory elements of a dilution claim. In order to prove trademark dilution pursuant to 15 U.S.C. § 1125(c), a party must show: (1) it is the owner of a famous mark; (2) the mark is being used by defendant in interstate commerce; (3) the use began after the mark became famous; and (4) there is a likelihood of dilution either by blurring or tarnishment of the famous mark. Fame can be demonstrated by several factors including “[t]he duration, extent, and geographic reach of advertising and publicity of the mark...” Id. Blurring occurs when there is an “association arising from the similarity between a mark or trade name and a famous mark that impairs the distinctiveness of the famous mark.” Id. Tarnishment occurs when there is an “association arising from the similarity between a mark or trade name and a famous mark that harms the reputation of the famous mark.” Id.

As set forth in the Declaration of Lee Ann Russo, Esq., Jones Day owns two incontestable registrations for the Jones Day Service Marks. (Russo Decl., Ex. 1). Incontestable registrations are conclusively presumed to be distinctive. 15 U.S.C. § 1115(b). Moreover, Jones Day has been using “Jones Day” and the Jones Day Service Marks for nearly seventy (70) years throughout the world. (Russo Decl., ¶ 16).

Jones Day provides significant legal representation for more than half of the *Fortune* 500 companies, and surveys repeatedly list Jones Day as one of the law firms most frequently engaged by domestic corporations. (*Id.*, ¶¶ 9 and 10). Jones Day has been ranked first among litigation departments in the United States and consistently ranks among the finest litigation departments in the United States. (*Id.*, ¶ 10). Moreover, Jones Day has spent millions of dollars advertising and promoting the Jones Day Service Marks. (*Id.*, ¶ 19). As a direct result of the time, money and efforts of Jones Day, the Jones Day Service Marks have come to serve as a unique identifier of a standard of quality of legal services originating from Jones Day. (*Id.*, ¶ 20). Finally, as a matter of law, the Jones Day Service Marks are famous. The United States District Court for the Northern District of Ohio has so held. (*See* Ex. C).

It cannot be disputed that Defendants began using the Jones Day Service Marks well after Jones Day. Defendants’ use both blurs and tarnishes the Jones Day Service Marks, thereby diluting the distinctive quality of the marks and lessening the capacity of the marks to identify the legal services provided by the Firm. Defendants cannot dispute that their use of the Jones Day Service Marks is diluting the distinctive value of the marks. “The *sine qua non* of tarnishment is a finding that plaintiff’s mark will suffer negative associations through defendant’s use.” *Hormel Foods Corp. v. Jim Henson Prods.*, 73 F.3d 497, 507 (2d Cir. 1996). *See also* *Eli Lilly*, 233 F.3d at 466 (“Dilution by tarnishing occurs when a junior mark’s

similarity to a famous mark causes consumers mistakenly to associate the famous mark with the defendant's inferior or offensive product.”).

For instance, in America Online, Inc. v. IMS, 24 F. Supp. 2d 548 (E.D. Va. 1998), the court held that there had been dilution by tarnishment because the Defendant had used the plaintiff's registered trademark “AOL” in connection with his junk e-mail practices. While the junk mail did not originate from AOL, the defendant put the initials “aol” into the header of nearly 60 million junk e-mails. The plaintiff argued, and the court agreed, that the AOL mark was tarnished due to the “strong likelihood of dilution by negative associations that AOL subscribers make between AOL and Melle’s junk e-mailing practices.” Id. at 552.

The negative associations found in America Online are the type of negative associations resulting from Defendants’ use of the Jones Day Service Marks. As the direct result of decades of providing high quality legal services, Jones Day has built a strong reputation as a premier law firm. In contrast, Defendants are riding the coat tails of famous service marks as a means by which to solicit internet advertising. Much like the AOL mark was damaged by it being associated with junk e-mail, the Jones Day Marks are tarnished by the association with Defendants’ predatory practices. Clients or potential clients of Jones Day may be dissuaded to engage the services of the Firm due to the implication that the Firm is somehow associated with a web site such as the one operated by Defendants.

Defendants’ use of the Jones Day Service Marks constitutes dilution by blurring, as well. Dilution by blurring results from interference with the source-identifying function of a trademark. Dilution by blurring whittles away the value of a trademark when it is used to identify the services of someone other than the mark’s owner. 4 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 24.67 at 24-133. Selling power is destroyed because

the trademark's uniqueness has been blurred. Id. See also Eli Lilly, 233 F.3d at 466 (“Dilution by blurring...occurs when consumers ‘see the plaintiff's mark used on a plethora of different goods and services...raising the possibility that the mark will lose its ability to serve as a unique identifier of the plaintiff's product.’”) (citations omitted). Examples of dilution by blurring could include CLOROX power tools, EXXON lap top computers or KODAK pianos. 4 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition § 24.94.2 at 24-227.

Dilution by blurring is readily apparent in this case. Viewers of the Web Site will now call to mind two sets of services – those provided by Jones Day and those provided by Defendants. Defendants' use of the Jones Day Service Marks is a blatant free ride on Jones Day's substantial investment in the Jones Day Service Marks. Defendants' use has diminished the Jones Day Service Marks both by blurring the unique association between Jones Day and the Jones Day Service Marks. Thus, Defendants should be enjoined.

Defendants have appropriated the Jones Day Service Marks in a blatant attempt to capitalize on the fame and recognition of the Jones Day Service Marks. It is plain from the content of the Web Site that Defendants are using the Jones Day Service Marks in a manner that dilutes the distinctive quality of the Jones Day Service Marks. First, Defendants are using the Jones Day Service Mark to advertise and promote Defendants' services. Second, the nature of the Web Site itself (publishing private real estate transaction details) reveals that Defendants are disparaging Jones Day by suggesting that the Firm approves or is otherwise affiliated with the business of Blockshopper. In short, Defendants are using the famous Jones Day Service Marks in a manner that dilutes their distinctive quality, and such use should be enjoined.

2. Jones Day Is Likely To Prevail On The Merits Of Its Service Mark Infringement Claims.

In addition to its claim for dilution, Jones Day has asserted a claim against Defendants for service mark infringement. (Complaint). Jones Day is likely to prevail on this claim, as well.

Section 43(a) of the Lanham Act prohibits service mark infringement, service mark dilution and false designation of origin. Relevant sections of the statute impose liability on those who “use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.” 15 U.S.C. § 1114(1)(a). To succeed on the merits of its service mark infringement claim, Jones Day must show: (1) that the Jones Day Service Marks are valid service marks owned by Jones Day; and (2) Defendants’ use of the Jones Day Service Marks creates a likelihood of confusion. 15 U.S.C. § 1114. As set forth below, Jones Day has substantial evidence to establish these elements.

a. Jones Day Has The Exclusive Rights To Use the Jones Day Service Marks.

Defendants cannot dispute the validity and strength of the Jones Day Service Marks. A certificate of registration is *prima facie* evidence of the validity, ownership and exclusive right to use the registered mark at issue in connection with services specified in the certificate of registration. 15 U.S.C. § 1057. Further, registered service marks which have become incontestable under § 15 of the Lanham Act are presumed to be strong. 15 U.S.C. § 1065.

Jones Day has continuously used the Jones Day Service Marks since at least as early as 1939. (Russo Decl. ¶ 17). Jones Day obtained its first federal registration for the mark “Jones Day” on December 22, 1998, and both of the Jones Day Service Mark Registrations are incontestable. (Ex. 2 to Russo Decl.) As such, there can be no dispute that Jones Day is the sole

owner of valid registrations for the Jones Day Service Marks. Thus, the first required element for demonstrating a likelihood of success on the merits is easily satisfied.

b. Defendant's Continued Use Of The Jones Day Service Marks Establishes "Likelihood of Confusion" As A Matter Of Law.

"The 'keystone' of trademark infringement is 'likelihood of confusion' as to source, **affiliation, connection or sponsorship of goods or services** among the relevant class of customers and potential customers." TV Land v. Viacom Int'l, Inc., 908 F. Supp. 543, 550 (N.D. Ill. 1995) (emphasis added). The sole purpose of Defendants' use of the Jones Day Marks is to create the impression that they are in some manner associated or affiliated with Jones Day and/or that Jones Day approves of their practices. Providing links to the Jones Day web site further evidences the danger of confusion as to the affiliation or endorsement. Thus, this Court can readily find in favor of Jones Day as to the element of likelihood of confusion.

That a likelihood of confusion exists based upon Defendants' unauthorized and continued use of the Jones Day Service Marks is fortified by consideration of the multi-factor test set forth by the Seventh Circuit: (1) the similarity of the marks in appearance and suggestion; (2) the similarity of the products; (3) the area and manner of concurrent use; (4) the degree of care likely to be used by consumers; (5) the strength of the plaintiff's mark; (6) whether any actual confusion exists; and (7) the defendant's intent to palm off its goods as those of the plaintiffs. Ty, Inc., 237 F.3d at 897 -898. None of these factors by itself is dispositive of the likelihood of confusion question, and different factors will weigh more heavily from case to case depending on the particular facts and circumstances involved. Id. Even though no one factor is decisive, the similarity of the marks, the intent of the defendant, and evidence of actual confusion are the "most important factors" in a likelihood of confusion case. Id.

The Jones Day Service Marks are indisputably strong, as evidenced by the incontestable service mark registrations, nearly 70 years of use, and the millions spent advertising and promoting them. (Russo Decl., ¶¶ 16, 19); 15 U.S.C. § 1115(b). Jones Day is prominently recognized throughout the world as a premier law firm, has been ranked first among litigation departments in the United States and tops the BTI Consulting Group's national survey of Client Service Performance for Law Firms. (Russo Decl., ¶¶ 10-11). The marks at issue are identical, which further dictates that confusion is likely. Moreover, the marketing channels are identical. Jones Day uses the internet to provide information about the services it provides. (Russo Decl. ¶ 12).

Defendants' obvious intent to benefit from the goodwill represented by the Jones Day Service Marks further dictates that Jones Day is entitled to relief. Defendants' reasons for using the Jones Day Service Marks is to lend the appearance of legitimacy to what they are doing by misappropriating the selling power associated with the Jones Day Service Marks, or, to draw attention to what they are doing, neither of which is permissible use. Defendants' intent to profit from their use of the Jones Day Service Marks weighs heavily in favor of a finding of likelihood of confusion. Thus, the totality of the relevant factors support a finding of "likelihood of confusion" as to sponsorship or affiliation between Jones Day and Blockshopper. Jones Day is therefore highly likely to prevail on its service mark infringement claims.

C. There is No Adequate Remedy at Law and Jones Day Will Continue To Suffer Irreparable Injury In The Absence Of Immediate Injunctive Relief.

The injuries caused by trademark infringement "are by their very nature irreparable and not susceptible of adequate measurement for remedy at law." Processed Plastic Co. v. Warner Communications, Inc., 675 F.2d 852, 858 (7th Cir. 1982). Jones Day's clients and the public have come to expect high quality legal services from Jones Day. Jones Day has earned and

enjoys an outstanding reputation. It has built substantial goodwill in the Jones Day Marks. Defendants' unlawful use of the Jones Day Marks harms that substantial goodwill, and there is no monetary judgment that can undo or remediate that harm. Unless Defendants' unlawful use of the Jones Day Service Marks is enjoined, Jones Day will suffer damage to their reputation and loss of goodwill causing irreparable injury to Jones Day.

D. Injunctive Relief Will Not Harm Defendant And Will Serve The Public Interest.

In deciding whether to issue a temporary restraining order, the Court should also consider the harm to Defendants if they are enjoined, as well as whether the order will serve the public interest. Ty, Inc., 237 F.3d at 897-898.

A Temporary Restraining Order will not harm Defendants. Defendants have chosen to engage in illegal activities in a blatant attempt to gain a free windfall from the goodwill Jones Day has built at significant cost over many years. Granting injunctive relief would require Defendants to cease their impermissible use of the Jones Day Service Marks. Defendants would not suffer any harm if such a Temporary Restraining Order is entered. Perhaps most importantly, Defendants are free to, and can, continue to operate the Web Site without using the Jones Day Service Marks, and without linking to the Jones Day web site or using Jones Day proprietary web site content.¹

Finally, granting a Temporary Restraining Order will serve the public interest. The public has an interest in not being confused by improper use of another's trademark. See Int'l Kennel Club of Chicago, Inc. v. Mighty Star, Inc., 846 F.2d 1079, 1092 (7th Cir. 1988) (“[T]he relevant consideration [in determining whether the public interest will be disserved by the grant

¹ Where, as is the case here, the injunction will cause no harm to defendant, no bond is required. See, e.g., Special Educ. Services v. RREEF Performance, Partnership-I, L.P., No. 95 C 6468, 1996 WL 41251, *2 (N.D. Ill. Jan. 29, 1996) (“This court has explained that SES need not post security for the preliminary injunction because the injunction will do little or no harm to RREEF.”) (citing Scherr v. Volpe, 466 F.2d 1027, 1035 (7th Cir. 1972)).

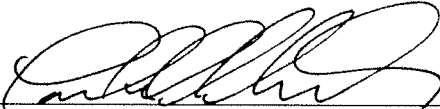
of an injunction] is the consumer's interest in not being deceived about the products they purchased.”). Thus, a Temporary Restraining Order should issue. Defendants will not be harmed and the public interest is served.

CONCLUSION

The overwhelming evidence demonstrates that Jones Day is likely to prevail on the merits of its dilution and infringement claims. Jones Day is suffering irreparable harm, and the public interest will be served by injunctive relief. For the foregoing reasons, Jones Day respectfully requests that this Court issue a Temporary Restraining Order in the form attached hereto as Exhibit D.

Dated: August 12, 2008

Respectfully submitted,

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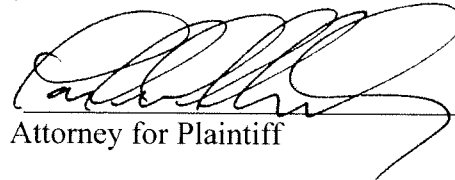
CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the foregoing Motion for Temporary Restraining Order and Memorandum in Support, together with all exhibits thereto, was served via electronic mail and overnight courier on this 12th day of August, 2008 on:

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