

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MGM RESORTS INTERNATIONAL, a)
 Delaware corporation,)
)
 Plaintiff,)
 vs.)
)
 UNKNOWN REGISTRANT OF)
 WWW.IMGMCASINO.COM,)
)
 Defendant.)

Case No.: 2:14-cv-1613-GMN-VCF

ORDER

Pending before the Court are the Motion for a Temporary Restraining Order, (ECF No. 7), and Motion for a Preliminary Injunction, (ECF No. 8), filed by Plaintiff MGM Resorts International (“MGM”). For the reasons set forth below, the Court will deny these Motions without prejudice.

This case centers upon allegations that Defendant, the unknown registrant of <www.imgmcasino.com>, has, inter alia, committed cybersquatting and trademark infringement through the creation and operation of its web site. (Compl., ECF No. 1).

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Injunctive relief is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Id.* at 22.

In the Ninth Circuit, “actual irreparable harm must be demonstrated to obtain a permanent injunction in a trademark infringement action.” *Herb Reed Enterprises, LLC v.*

1 Florida Entm't Mgmt., Inc., 736 F.3d 1239, 1249 (9th Cir. 2013) cert. denied, 135 S. Ct. 57
2 (2014). “[T]he irreparable harm requirement for a permanent injunction in a trademark case
3 applies with equal force in the preliminary injunction context.” Id.; see also Titaness Light
4 Shop, LLC v. Sunlight Supply, Inc., No. 13-16959, 2014 WL 5017851, at *1 (9th Cir. Oct. 8,
5 2014) (“The fact that [the plaintiff’s] reputation might be harmed by the marketing of [the
6 defendant’s] products did not establish that irreparable harm to [the plaintiff’s] reputation is
7 likely.”) (emphasis in original). Accordingly, while “loss of control over business reputation
8 and damage to goodwill could constitute irreparable harm,” a court’s finding of such harm
9 cannot be “grounded in platitudes rather than evidence.” Herb Reed, 736 F.3d at 1250.

10 Here, Plaintiff has failed to present any evidence demonstrating a likelihood of
11 irreparable harm. Instead Plaintiff merely argues that:

12 [T]he Defendant’s unauthorized use of the MGM Mark to provide
13 casino services constitutes a gross loss of control over MGM
14 Resorts’ reputation and goodwill because MGM Resorts may now
15 be seen by the consuming public as having approved of, authorized,
16 affiliated itself with, or sponsored Defendant’s online casino
17 services. For instance, if the Defendant cheats or defrauds players
18 on its online casino, players may attribute those acts to MGM
19 Resorts and tarnish MGM Resorts’ stellar reputation. This loss of
20 control over its goodwill and reputation is irreparable and MGM
21 Resorts cannot be adequately compensated by an award of money
22 damages alone.

23 (Mot. for TRO 7:11-18, ECF No. 7) (internal citations omitted).

24 Upon reviewing the photographs of the allegedly infringing web site, (Ex. B. to Mot for
25 TRO at 2-9, ECF No. 7-3), the Court agrees that there is a strong possibility that consumers
26 could incorrectly associate the products and services of <imgmcasino.com> with Plaintiff.
27 However, a showing of similarity combined with speculation regarding loss of control or
28 damage to goodwill is insufficient to warrant a preliminary injunction under the binding
29 authority of the Ninth Circuit. See Herb Reed Enterprises, 736 F.3d at 1250. (“[S]peculation on

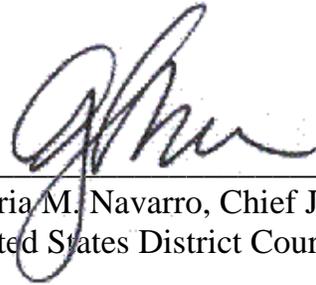
1 future harm . . . does not meet the standard of showing ‘likely’ irreparable harm.”). Plaintiff
2 has failed to carry its burden because it has not provided evidence demonstrating that any
3 consumer has incorrectly assumed that Plaintiff is somehow associated with Defendant’s web
4 site, and that such confusion might lead to reputational damage. The Court cannot grant
5 Plaintiff’s Motions without such a showing.

6 Accordingly,

7 **IT IS HEREBY ORDERED** that Plaintiff’s Motion for a Temporary Restraining Order
8 (ECF No. 7) and Motion for Preliminary Injunction (ECF No. 8) are **DENIED without**
9 **prejudice.**

10 **DATED** this 3rd day of December, 2014.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



Gloria M. Navarro, Chief Judge
United States District Court