

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 EVERGREEN RESEARCH AND
4 MARKETING, LLC, a California limited
liability company

5 Plaintiff,

6 vs.

7 MYSTICAL DISTRIBUTING CO., LTD, a
8 Canadian limited partnership, and DOES 1-10,

9 Defendants.

No: 2:15-cv-00318-JAD-PAL

**Order Denying Without Prejudice
Ex Parte Application for Temporary
Restraining Order [Doc. 6]**

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11 Plaintiff Evergreen Research and Marketing moves on an *ex parte* basis for an
12 Emergency Temporary Restraining Order and Preliminary Injunction under Rule 65 of the
13 Federal Rules of Civil Procedure and Local Rule 7-5. In a complaint filed on February 23,
14 2015, Evergreen alleges that Defendants Mystical Distributing are advertising, displaying,
15 and offering to sell an insect-repelling wristband called the “Bug Bracelet” that infringes on
16 Evergreen’s trade dress. *See* Doc. 1. It further alleges that Mystical intends to sell this Bug
17 Bracelet at a trade show in Las Vegas, Nevada, that begins on March 1, 2015. Evergreen
18 therefore seeks a temporary restraining order to prevent Mystical (1) from using Evergreen’s
19 trade dress to advertise, manufacture, produce, sell, or distribute the Bug Bracelet; and (2)
20 from destroying, altering, or otherwise disposing of any documents, electronic files, or
21 business record related to the Bug Bracelet.

22 Evergreen has presented a persuasive case for the granting of a temporary restraining
23 order. Its supporting exhibits show that the Bug Bracelet sold by Mystical, who used to
24 distribute an insect-repelling wristband of Evergreen’s called SUPERBAND®, uses
25 packaging and marketing banners nearly identical to that used by Evergreen to sell
26 SUPERBAND®. *See* Doc. 6-2 at 12-24. But before I can issue a temporary restraining order,
27 Evergreen must “give[] security “in an amount that the court considers proper to pay the
28 costs and damages sustained by any party found to have been wrongfully enjoined or

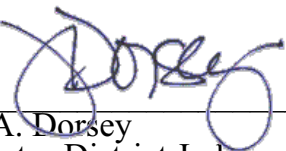
1 restrained.” Fed. Rule of Civ. P. 65(c). Nowhere in its motion does Evergreen offer to do
2 this. Nor does it provide any argument or authority that might help me determine what a
3 reasonable security amount might be in this case.

4 Moreover, there appears to be some confusion about the estimated harm Evergreen
5 expects to incur should I not issue a temporary restraining order: in its motion, Evergreen
6 states that the estimated harm is “approximately \$50,000,” Doc. 6-1 at 9; but in the
7 Declaration of Evergreen President Robert Albert on which Evergreen’s motion relies, the
8 estimated harm is “approximately \$500,000.” Doc. 6-2 at ¶16. One of these is likely just a
9 typo. But without more full guidance from Evergreen on how to determine the amount it will
10 need to give in security to protect Mystical’s interests, I decline to issue the temporary
11 restraining order it seeks. Evergreen’s motion is therefore denied without prejudice. Should
12 Evergreen decide to file a new motion for temporary restraining order, the security
13 requirement laid out in Federal Rule of Civil Procedure should be directly addressed.

14 **CONCLUSION**

15 Accordingly, it is HEREBY ORDERED that Plaintiff’s Motion for *Ex Parte*
16 Application for a Temporary Restraining Order [Doc. 6] is **DENIED WITHOUT**
17 **PREJUDICE.**

18 DATED: February 26, 2015.

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21 Jennifer A. Dorsey
22 United States District Judge
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