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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 PREPAREME AMERICA LLC,

9 Plaintiff,

10 v.

11 SURVIVAL PREP WAREHOUSE, LLC,  
12 et al.,

13 Defendants,

14 v.

15 CHAD E. ALLEN,

16 Third-Party Defendant.

C17-359 TSZ

MINUTE ORDER

17 The following Minute Order is made by direction of the Court, the Honorable  
18 Thomas S. Zilly, United States District Judge:

19 (1) Plaintiff's motion for temporary restraining order ("TRO"), docket no. 33,  
20 is DENIED. This ruling does not affect plaintiff's motion for a preliminary injunction,  
21 docket no. 33, which remains noted for November 17, 2017. On the current record,  
22 which presents disputed questions of fact, *see Gen. Elec. Co. v. Am. Wholesale Co.*,  
23 235 F.2d 606, 608-09 (7th Cir. 1956) (cited with approval in *Dymo Indus., Inc. v.*  
*Tapeprinter, Inc.*, 326 F.2d 141, 143 (9th Cir. 1964)), the Court cannot conclude that  
plaintiff has shown a likelihood of success on the merits of its currently pleaded  
trademark infringement claim. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7,  
20 (2008); *see Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7  
(9th Cir. 2001) (the standards for a TRO and a preliminary injunction are equivalent).  
The Court also cannot conclude that plaintiff has satisfied the Ninth Circuit's alternative  
"sliding scale" standard, which requires "serious questions going to the merits" and a  
balance of hardships tipping "sharply" in the movant's favor. *Alliance for the Wild*  
*Rockies v. Cottrell*, 632 F.3d 1127, 1131-35 (9th Cir. 2011). Plaintiff asserts that

1 defendants are using Amazon Standard Identification Numbers (“ASINs”) associated  
2 with plaintiff’s products and/or federally registered trademark PERFECT SURVIVAL  
3 KIT. Defendants contend that the ASINs at issue relate to generic, unbranded products,  
4 and they deny that the ASINs are linked specifically to plaintiff’s products. The Court  
5 need not resolve this factual dispute because, even if plaintiff’s allegations were true,  
6 they would not demonstrate trademark infringement. Plaintiff does not claim that  
7 defendants call their product a PERFECT SURVIVAL KIT, advertise their product in  
8 such fashion, place such brand on their product, or otherwise use the mark (as opposed to  
9 ASINs, which are not themselves protected under the Lanham Act) in a manner “likely to  
10 cause consumer confusion.” *See Network Automation, Inc. v. Advanced Sys. Concept,*  
11 *Inc.*, 638 F.3d 1137, 1144 (9th Cir. 2011).

12 (2) The Clerk is directed to send a copy of this Minute Order to all counsel of  
13 record.

14 Dated this 7th day of November, 2017.

15 William M. McCool  
16 Clerk

17 s/Karen Dews  
18 Deputy Clerk