

**SUPREME COURT-STATE OF NEW YORK
SHORT FORM ORDER**

Present:

HON. TIMOTHY S. DRISCOLL
Justice Supreme Court

-----X **TRIAL/IAS PART: 16**
DE WELL CONTAINER SHIPPING CORP.,

Plaintiff,

Index No: 12955-11
Motion Seq. No. 2
Submission Date: 12/16/11

-against-

**MINGWEI GUO, HONG GUO, JACKSON TSAI,
ROSE PANZARELLA, DE WELL LOGISTICS USA,
INC., and DW LOGISTICS SOLUTIONS, INC.,**

Defendants.

-----X
**MINGWEI GUO, HONG GUO and JACKSON
TSAI,**

Third-Party Plaintiffs,

-against-

**SHANGHAI DE WELL CONTAINER SHIPPING
CORP., SHI YANG and CHANG WOO KIM,**

Third-Party Defendants.

-----X

The following papers have been read on this motion:

Notice of Motion.....X
Affidavit in Support and Exhibits.....X
Memorandum of Law in Support.....X
Affirmation in Response and Exhibit.....X
Affidavit in Response and Exhibit.....X
Correspondence dated December 13, 2011.....X
Declaration of B. Goodhouse and Exhibits.....X
Reply Memorandum of Law in Support.....X

This matter is before the court on the motion filed by Plaintiff De Well Container Shipping Corp. ("De Well NY" or "Plaintiff") on December 1, 2011 and submitted on December 16, 2011. Defendants consent to some of the requested relief. For the reasons set forth below, the Court grants Plaintiff's motion in its entirety, and directs Plaintiff to post a bond in the sum of \$100,000, within thirty (30) days of the date of this Order, as a condition of this injunctive relief. The Court further directs that the temporary restraining order issued by the Court on September 8, 2011 shall remain in effect pending further court order.

BACKGROUND

A. Relief Sought

Plaintiff moves for an Order, pursuant to CPLR § 6301, preliminarily enjoining Defendants Mingwei Guo, Hong Guo, Jackson Tsai, Rose Panzarella, De Well Logistics USA, Inc. and DW Logistics Solutions, Inc. (collectively "Defendants"), their officers, agents, servants, employees and attorneys, and all those persons acting in concert with them, pending disposition of this action, from 1) using on or in connection with any goods or services, including for the importation, sale, offering for sale, distribution, advertising, promotion, labeling or packaging of any goods or services, or using for any commercial purpose whatsoever, including listings in directories and other trade publications, any trademark, service mark, name, word, symbol or device that includes the term "DE WELL" or "DW," or any colorable imitation, variation or derivation thereof, or any mark that is likely to be confused with any mark owned or used by Plaintiff; 2) representing by any means whatsoever, whether directly or indirectly, that any services or goods sold, offered for sale, advertised, promoted or provided by Defendants are associated or affiliated with, sponsored, endorsed or authorized by, or connected to Plaintiff; 3) committing any further acts of trademark infringement, unfair competition, deceptive trade practices or false advertising with respect to any product or service of Plaintiff; and 4) causing, engaging or permitting any individual or entity to perform any of the aforementioned acts.

B. The Parties' Background

On September 8, 2011, in connection with a prior Order to Show Cause filed by Plaintiff seeking injunctive relief, the Court issued a temporary restraining order ("TRO") that directed that, pending a hearing on Plaintiff's prior application for preliminary injunctive relief, "all

parties shall ensure that all corporate books and records shall be preserved in the ordinary course of business and the corporation shall operate according to its bylaws and duly enacted resolutions.” Plaintiff subsequently withdrew its Prior Order to Show Cause. The TRO remains in effect.

In its Memorandum of Law in Support of the instant motion, Plaintiff’s counsel affirms that, since the issuance of the TRO, Plaintiff has reviewed documents and correspondence authored by Defendants which have demonstrated that Defendants have “elevated their wrongdoing to a new level” and, specifically, that:

Defendant Hong (“Kim”) Guo - while serving as the president of De Well NY and using De Well NY’s resources, and with the active assistance of her co-Defendants - incorporated a new freight forwarding company under a name nearly identical to Plaintiff’s [footnote omitted], for the express purpose of deceiving the public into believing there is a connection or relationship with Plaintiff. Were there any doubt about Defendants’ intentions to deceive the public, Ms. Guo, with the assistance of her co-Defendants, was preparing to inform Plaintiff’s customers that the new company would be handling their freight forwarding needs going forward. Defendants have gone so far as to prepare draft communications to be sent to Plaintiff’s customers in furtherance of their plan to deceive. Those actions are likely, and indeed intended, to cause confusion in the workplace.

P’s Memorandum of Law at p. 2

Defendants consent to the relief requested by Plaintiff in the Order to Show Cause *sub judice* (“Instant Motion”), except that Defendants do not consent to the branch of Plaintiff’s Instant Motion that seeks to restrain Defendants and their agents from “committing any further acts of trademark infringement, unfair competition, deceptive trade practices or false advertising with respect to any product or service of Plaintiff.” As that is the sole issue on which the parties disagree, the Court’s decision will focus on that disputed provision (“Disputed Provision”).

In the Amended Complaint,¹ Plaintiff describes the action as follows:

This is an action by a New York corporation to redress a pattern of severe and continuing misconduct and breaches of fiduciary duty by former and current directors, officers, and employees of [Plaintiff] that has severely damaged the financial stability and corporate good will of [Plaintiff] and, if allowed to continue, threatens the corporation’s survival.

More specifically, this case involves Defendants’ gross mismanagement, fraudulent conduct, unauthorized and illegal corporate actions, improper use of corporate

¹ The parties’ submissions did not include a copy of the Amended Complaint, but the Court has since been provided with a copy of the Amended Complaint which it has reviewed.

funds, and ongoing plan to divert business from Plaintiff to two new corporations, each of which was established by Defendant Hong Guo during the time that she served as the President of [Plaintiff], and each of which is 100% owned by her. Documentary evidence obtained by Plaintiff leaves no question of Ms. Guo's intention to divert [Plaintiff's] business to her newly-created companies, and of her use of [Plaintiff's] resources, employees, and assets to build those companies. It is equally indisputable that each of the Defendants herein knew of and participated in, and supported Ms. Guo's plan at every opportunity.

Amended Compl. at ¶¶ 1 and 2

The Amended Complaint contains eighteen (18) causes of action. Those causes of action are: 1) a request for a declaratory judgment, as to all Defendants, with respect to the validity of certain resolutions adopted at a Special Meeting convened on September 6, 2011 and the resulting authority of certain individuals vis a vis Plaintiff, 2) conversion, as to Defendants Hong (Kim) Guo (Ms. Huo"), Jackson Thai ("Thai") and Mingwei (Peter) Huo ("Mr. Huo"), related to their refusal to return control of corporate assets to the Corporation, 3) conversion, as to Defendants Ms. Guo, Tsai and Rose Panzarella ("Panzarella"), related to their theft/destruction of bank records, 4) conversion, as to Defendant Tsai, based on his misappropriation of corporate funds for writing checks from Plaintiff to himself totaling over \$40,000, 5) a violation of New York Business Corporations Law § 720, as to Defendants Mr. and Mrs. Huo, for improperly conveying Plaintiff's assets to Defendants, 6) trademark infringement, against all Defendants, for infringing Plaintiff's De Well Marks by incorporation a competing company intended to offer identical services under the trade name DW Logistics Solutions, Inc. and/or De Well Logistics USA, Inc., 7) unfair competition and misappropriation, against all Defendants, based on Defendants' use of "DW" and/or "De Well" in connection with services they have offered, in a manner designed to deceive the public and misappropriate Plaintiff's intellectual property, reputation and good will, 8) a violation of New York General Business Law § 133, against all Defendants, based on Defendants' use of Plaintiff's symbol with the intent to deceive or mislead the public, 9) a violation of New York General Business Law § 349, against all Defendants, based on Defendants' conduct which includes materially misleading conduct and actions targeted at consumers, 10) State Law Trademark Dilution, as to all Defendants, based on their use of Plaintiff's marks which is likely to dilute Plaintiff's trademarks and service marks, 11) injury to business reputation, against all Defendants, 12) breach of fiduciary duty as to Ms. Guo by, *inter alia*, her use of Plaintiff's funds and facilities to form a competing business,

13) breach of fiduciary duty as to Mr. Guo by, *inter alia*, his use of Plaintiff's funds and facilities to form a competing business, 14) breach of fiduciary duty by Panzarella by, *inter alia*, engaging in conduct that facilitated the formation, licensing and operation of the unauthorized De Well entities and concealing that conduct from Plaintiff, 15) breach of fiduciary duty by Tsai by, *inter alia*, engaging in conduct that facilitated the formation, licensing and operation of the unauthorized De Well entities and concealing that conduct from Plaintiff, 16) aiding and abetting breach of fiduciary duty by Panzarella by providing Ms. Guo with substantial assistance in her acts of breaching her fiduciary duties to Plaintiff, 17) aiding and abetting breach of fiduciary duty by Tsai by providing Ms. Guo with substantial assistance in her acts of breaching her fiduciary duties to Plaintiff, and 18) civil conspiracy against all Defendants who allegedly participated in a "common plan to enrich themselves at the expense of [Plaintiff]" (Am. Compl. at ¶ 165).

Shi Yang ("Yang"), a member of the board of directors and chief executive officer of De Well NY, affirms that he is also the owner of Shanghai De Well Container Shipping Corp. ("De Well China"). De Well NY is a freight forwarding company that functions as an intermediary between a client seeking to ship goods and shipping companies that ship goods. De Well NY and De Well China are affiliated companies that work together to ensure shipment and receipt of customers' goods, primarily between the United States and China.

From its incorporation in 1996 until September of 2011, Hong (Kim) Guo ("Ms. Guo"), the wife of Mingwei (Peter) Guo ("Mr. Guo"), served as the President of De Well NY. She dealt regularly with Plaintiff's customers and was familiar with its operations and confidential customer list. Yang affirms that, within the last year, De Well China became aware of misconduct and breaches of fiduciary duty by Ms. Guo and those acting under her direction, including Defendants Rose Panzarella ("Panzarella") and Jackson Thai ("Thai"). As a result, Shanghai De Well Container Transport Corp., the 51% owner of De Well NY, determined that changes were needed within De Well NY's management. When Ms. Guo would not agree to those changes, Plaintiff initiated the instant action.

Yang avers that De Well NY and its affiliated companies use several service marks, including De Well Container Shipping, De Well NY and De Well Logistics (collectively "De Well Marks"), which have become well known through the international freight forwarding industry. In addition, Plaintiff's customers and employees often refer to De Well as "DW." Plaintiff recently learned that Ms. Guo has been taking steps to incorporate one or more freight

forwarding companies under names including De Well and DW, as reflected by numerous emails provided (Ex. A to Yang Aff. in Supp.).

Yang affirms that these emails demonstrate that Defendants incorporated two entities with names that are likely to cause confusion with the De Well Marks. On April 20, 2010, Defendants and their agents incorporated a company under the name De Well Logistics USA, Inc. And on June 18, 2010, Defendants and their agents incorporated a company under the name DW Logistics Solutions, Inc. Emails and incorporation papers (Ex. B to Yang Aff. in Supp.) reflect that these new companies (“New Companies”) listed the same address as that of De Well NY. Defendants incorporated the New Companies without Plaintiff’s knowledge. In addition, as reflected by emails provided (*id.* at Ex. C), Ms. Guo retained an attorney to obtain a license from the Federal Maritime Commission (“FMC”) for one of the New Companies to operate as an ocean freight forwarder.

In further support of Plaintiff’s contention that Defendants selected the New Companies’ names to create the appearance of a connection between the New Companies and De Well NY and China, Yang provides copies of emails to and from Plaintiff’s customers (Ex. D to Yang Aff. in Supp.) in which “De Well” is abbreviated as “DW”, which were sent after Defendants incorporated the New Companies but before Plaintiff learned of the New Companies. Yang provides additional emails and documentation that, he contends, supports Plaintiff’s claim that Defendants intend to market the New Companies in a manner designed falsely to communicate the impression that they are affiliated with De Well NY.

In opposition, Ms. Guo affirms that her husband Mr. Guo, the holder of “not less than 49%” of the outstanding shares of De Well NY (Guo Aff. in Opp. at ¶ 3), has filed a petition seeking dissolution of De Well NY on the grounds that its other shareholder, De Well China, has diverted corporate opportunities properly belonging to De Well NY. Ms. Guo avers that one way in which De Well China has diverted corporate opportunities is by incorporating numerous entities through the United States, to which it has diverted assets of De Well China. Ms. Guo also avers that De Well China has used the “unregistered designation ‘De Well’” (*id.* at ¶ 4) in these entities, without the knowledge or consent of De Well NY. This conduct has allegedly diminished the value of Mr. Guo’s interest in the assets of De Well NY.

Ms. Guo concedes that, after she was terminated by Plaintiff, she took steps to open a new freight forwarding company. She notes that she has no restrictive covenant with De Well NY and submits, therefore, that she has the right to do business, and compete with De Well NY,

in the freight forwarding industry. She disputes Plaintiff's claims that the New Companies will cause confusion in the industry, and affirms that she ceased using the name DW Logistics Solutions, Inc. and began a freight forwarding business in November 2, 2011 under the name Maxword Logistics, Inc. ("Maxworld"), as reflected by the New York State Department of State filing provided (Ex. A to Guo Aff. in Opp.). Moreover, she claims that although she has the right to use the mark "DW" in any company name, she does not intend to do business using the "DW" mark. She affirms that she incorporated De Well Logistics USA, Inc. as an affiliate of De Well NY, because she had learned that De Well China had incorporated numerous entities throughout the United States using the name "De Well," to which it had diverted business and assets of De Well New York. She did so in an effort to protect the name of De Well NY, in the event that De Well China opened a competing business in the New York area.

In reply, Plaintiff's counsel provides emails from October and December of 2010, and January of 2011, which include emails from December 2, 2010 and December 3, 2010 (Ex. B to Goodhouse Decl.). In a December 2, 2010 email from Ms. Guo to Panzarella, regarding "DW Logistics Solutions," Ms. Guo wrote [all errors in original]:

Rose,

I need Wilson or John to set up DW LS web and mail. Also need to access to email from here. If I set up the web and email, do you think if someone do Google search, will they find us? Web probable easier to be track down. What do you think?

Thanks
Kim

In response, Panzarella sent the following email on December 3, 2010 to Mrs. Guo, as well as an individual named Wilson Lee at AVIDSOLUTIONSCORP.COM, with the subject line "RE: DW Logistics Solutions" [all errors in original]:

Hi Kim,

Note that we already registerd the domain: dw-logistics.com and dwlogistics.us. I don't think easy for them to find us on web. They need to search by NEW YORK STATE RECORDS by company name, so if they don't know company name they can not find out.

So I changed the email address accordingly and made up passwords for the below.

Hi Wilson,

Can you setup email address and access to Kim, John Edward a.s.a.p., they need to access using the web just like dewellusa (outlook web)

Let me know as soon as they can activate. Sorry this is kind of urgent!

Best Regards,
Rose

C. The Parties' Positions

Plaintiff submits that it has demonstrated its right to the requested injunctive relief, first by establishing its likelihood of success on its claim for trademark infringement. Plaintiff argues that it has established that 1) Plaintiff has used the De Well NY Marks since 1996, and that Defendants' use of the De Well Marks is junior to Plaintiff's use of those Marks which began in 2010; 2) the Marks at issue are likely to be confused, given the inherent distinctiveness and awareness in the marketplace of the De Well Marks, and the substantial similarity of Defendants' Marks and the De Well Marks; 3) given that the parties provide identical services, their companies clearly compete with each other; and 4) Defendants have demonstrated bad faith in adopting the competing Marks, as evidenced by the emails demonstrating Defendants' intention to use a mark likely to cause confusion with the De Well Marks, to communicate to Plaintiff's customers that Defendants are affiliated with De Well NY and its affiliated companies, and to hide their actions from Plaintiff.

Plaintiff contends, further, that it has demonstrated irreparable injury without the requested injunctive relief because trademark infringement, as established here, will result in a loss of reputation and good will that Plaintiff established over many years, which cannot be compensated by money damages. Plaintiff also argues that a balancing of the equities favors Plaintiff in light of the significant investment of time and money made by Plaintiff in developing the De Well Marks, and the fact that Defendants have not yet provided any services under the De Well Logistics USA and/or DW Logistics Solutions marks and, therefore, have not developed good will or a reputation that may be affected by injunctive relief.

Defendants oppose the Disputed Provision, submitting, *inter alia*, that 1) Defendants will not consent to the Disputed Provision on the grounds that it is "clearly overbroad," seeks to enjoin conduct that Defendants deny having engaged in and is not supported by Plaintiff's moving papers (Cohen Aff. at ¶ 9); and 2) while Plaintiff characterizes its motion as one

designed to enjoin Defendants from using the designations “De Well” or “DW” in a competing business, Plaintiff’s real intent is to “improperly and inappropriately enjoin Defendants from competing with Plaintiff” (*id.* at ¶ 23).

In reply, Plaintiff 1) notes that Defendants do not dispute that, while owing fiduciary duties to Plaintiff, they started new companies “with the goal of stealing De Well NY’s business” (P’s Reply Memorandum at p. 2); 2) submits that Defendants’ malicious intentions are evidenced by a) Ms. Guo’s engagement of an attorney in obtaining FMC licenses for DW Logistics Solutions, b) Defendants’ use of Plaintiff’s IT vendors to set up domain names and email addresses for the new company, and c) Defendants’ discussions regarding steering customers from Plaintiff to the new company; 3) Defendants have not addressed the documents referred to in Yang’s Affidavit, which clearly demonstrate their improper conduct; 4) Defendants’ refusal to consent to the Disputed Provision suggests that Defendants intend to “continue their fraudulent schemes...under the name Maxworld Logistics, Inc.” (*id.* at p. 4); and 5) Ms. Guo’s assertion that her decision to start a new company was prompted by her removal from Plaintiff is contradicted by evidence demonstrating that she had been taking steps to start a new freight forwarding company for more than a year prior to her removal.

RULING OF THE COURT

A. Preliminary Injunction Standards

A preliminary injunction is a drastic remedy and will only be granted if the movant establishes a clear right to it under the law and upon the relevant facts set forth in the moving papers. *William M. Blake Agency, Inc. v. Leon*, 283 A.D.2d 423, 424 (2d Dept. 2001); *Peterson v. Corbin*, 275 A.D.2d 35, 36 (2d Dept. 2000). Injunctive relief will lie where a movant demonstrates a likelihood of success on the merits, a danger of irreparable harm unless the injunction is granted and a balance of the equities in his or her favor. *Aetna Ins. Co. v. Capasso*, 75 N.Y.2d 860 (1990); *W.T. Grant Co. v. Srogi*, 52 N.Y.2d 496, 517 (1981); *Merscorp, Inc. v. Romaine*, 295 A.D.2d 431 (2d Dept. 2002); *Neos v. Lacey*, 291 A.D.2d 434 (2d Dept. 2002). The decision whether to grant a preliminary injunction rests in the sound discretion of the Supreme Court. *Doe v. Axelrod*, 73 N.Y.2d 748, 750 (1988); *Automated Waste Disposal, Inc. v. Mid-Hudson Waste, Inc.*, 50 A.D.3d 1073 (2d Dept. 2008); *City of Long Beach v. Sterling American Capital, LLC*, 40 A.D.3d 902, 903 (2d Dept. 2007); *Ruiz v. Meloney*, 26 A.D.3d 485 (2d Dept. 2006).

Proof of a likelihood of success on the merits requires the movant to demonstrate a clear right to relief which is plain from the undisputed facts. *Related Properties, Inc. v Town Bd. of Town/Village of Harrison*, 22 A.D.3d 587 (2d Dept. 2005); *Abinanti v Pascale*, 41 A.D.3d 395, 396 (2d Dept. 2007); *Gagnon Bus Co., Inc. v Vallo Transp. Ltd.*, 13 A.D.3d 334, 335 (2d Dept. 2004). Thus, while the existence of issues of fact alone will not justify denial of a motion for a preliminary injunction, the motion should not be granted where there are issues that subvert the plaintiff's likelihood of success on the merits to such a degree that it cannot be said that the plaintiff established a clear right to relief. *Advanced Digital Sec. Solutions, Inc. v Samsung Techwin Co., Ltd.*, 53 A.D.3d 612 (2d Dept. 2008), quoting *Milbrandt & Co. v Griffin*, 1 A.D.3d 327, 328 (2d Dept. 2003); *see also* CPLR § 6312(c).

B. Trademark Infringement

Trademark infringement claims are analyzed under the two-prong test described in *Gruner + Jahr USA Publ'g v. Meredith Corp.*, 991 F.2d 1072 (2d Cir. 1993). *Erchonia Corp. f/k/a Therapy Products, Inc. v. M.D. Lionel Bissoon d/b/a Mesotherapie & Estetik*, 2011 U.S. App. LEXIS 3474, ** 2 (2d Cir. 2011). That test involves the examination of 1) whether plaintiff's mark merits protection; and 2) whether defendant's use of a similar mark is likely to cause consumer confusion. *Id.*, citing *Gruner + Jahr* at 1075. The central consideration in assessing a mark's protectability, its degree of distinctiveness, is also a factor in determining the likelihood of confusion. *Id.*, citing *Playtex Prods. v. Georgia-Pacific Corp.*, 390 F.3d 158, 161 (2d Cir. 2004). Eight non-exclusive factors that guide courts' determinations as to whether a likelihood of confusion exists are: 1) strength of the trademark, 2) similarity of the marks, 3) proximity of the products, 4) evidence that the senior user may "bridge the gap" into the market occupied by the junior user's product, 5) evidence of actual confusion, 6) evidence that the junior mark was adopted in bad faith, 7) respective quality of the products, and 8) sophistication of consumers in the relevant market. *Pretty Girl, Inc. v. Pretty Girl Fashions, Inc.*, 778 F. Supp. 2d 261, 267 (E.D.N.Y. 2011), citing *Polaroid Corp. v. Polarad Elecs. Corp.*, 287 F.2d 492 (2d Cir. 1961).

Irreparable harm exists in a trademark case when the party seeking the injunction shows that it will lose control over the reputation of its trademark pending trial, because loss of control over one's reputation is neither calculable nor precisely compensable. *Pretty Girl, Inc.*, 778 F.

Supp. 2d at 269, citing *New York City Triathlon*, 704 F. Supp. 2d 305, 343 (S.D.N.Y. 2010), quoting *Power Test Petroleum Distribs, Inc. v. Calcu Gas, Inc.*, 754 F.2d 91, 95 (2d Cir. 1985).

C. Application of these Principles to the Instant Action

The Court grants Plaintiff's Order to Show Cause in its entirety based on the Court's conclusion that Plaintiff has demonstrated a likelihood of success on the merits of its trademark claim by providing substantial evidence that the De Well NY Marks are entitled to trademark protection, Defendants' use of the De Well Marks is junior to Plaintiff's use of those Marks, and the Marks at issue are likely to be confused, given the a) inherent distinctiveness and awareness in the marketplace of the De Well Marks, b) the substantial similarity of Defendants' Marks and the De Well Marks, and c) the fact that the parties provide identical services and clearly compete with each other. Plaintiff have also provided substantial evidence of Defendants' bad faith in adopting the competing Marks, as evidenced by the emails demonstrating Defendants' intention to use a mark likely to cause confusion with the De Well Marks, to communicate to Plaintiff's customers that Defendants are affiliated with De Well NY and its affiliated companies, and to hide their actions from Plaintiff. Plaintiff has also established irreparable harm by demonstrating that, without the requested injunctive relief, it will lose control over the reputation of its trademark pending trial, because loss of control over one's reputation is neither calculable nor precisely compensable. Finally, a balancing of the equities clearly favors Plaintiff, in light of the evidence before the Court of an apparently secretive and well-organized plan by Defendants to open a business that competes with Plaintiff, in part by the seemingly improper use of the De Well Mark.

The Court grants Plaintiff's motion in its entirety and directs that Defendants Mingwei Guo, Hong Guo, Jackson Tsai, Rose Panzarella, De Well Logistics USA, Inc. and DW Logistics Solutions, Inc., their officers, agents, servants, employees and attorneys, and all those persons acting in concert with them, pending disposition of this action, are immediately enjoined from 1) using on or in connection with any goods or services, including for the importation, sale, offering for sale, distribution, advertising, promotion, labeling or packaging of any goods or services, or using for any commercial purpose whatsoever, including listings in directories and other trade publications, any trademark, service mark, name, word, symbol or device that includes the term "DE WELL" or "DW," or any colorable imitation, variation or derivation thereof, or any mark that is likely to be confused with any mark owned or used by Plaintiff;

2) representing by any means whatsoever, whether directly or indirectly, that any services or goods sold, offered for sale, advertised, promoted or provided by Defendants are associated or affiliated with, sponsored, endorsed or authorized by, or connected to Plaintiff; 3) committing any further acts of trademark infringement, unfair competition, deceptive trade practices or false advertising with respect to any product or service of Plaintiff; and 4) causing, engaging or permitting any individual or entity to perform any of the aforementioned acts.

The Court directs Plaintiff to post a bond in the sum of \$100,000, within thirty (30) days of the date of this Order, as a condition of this injunctive relief.

In addition, the TRO remains in effect, pending further court order.

All matters not decided herein are hereby denied.

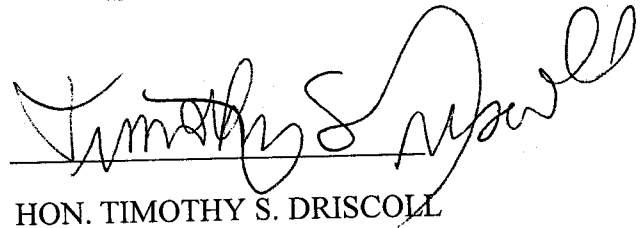
This constitutes the decision and order of the Court.

The Court reminds counsel of their required appearance before the Court for a conference on April 4, 2012 at 9:30 a.m.

DATED: Mineola, NY

January 13, 2012

ENTER

A handwritten signature in black ink, appearing to read "Timothy S. Driscoll", written over a horizontal line.

HON. TIMOTHY S. DRISCOLL

J.S.C.

ENTERED

JAN 24 2012

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**