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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BRANDI PASSANTE,

Plaintiff,

vs.

HUNTER MOORE and JOHN DOES 1-25,

Defendants.

Case No.: SACV 12-01866-JVS(ANx)

**ORDER GRANTING PLAINTIFF'S EX
PARTE APPLICATION FOR
TEMPORARY RESTRAINING
ORDER; ORDER TO SHOW CAUSE
RE: PRELIMINARY INJUNCTION;
AND ORDER OF IMPOUNDMENT**

Before the Court is an Application for Temporary Restraining Order; Order to show Cause Re: Preliminary Injunction; And Order of Impoundment filed by Plaintiff Brandi Passante (“Plaintiff” or “Passante”). Having considered the papers and heard oral argument, the Court GRANTS Plaintiff’s Application for Temporary Restraining Order and Order to show Cause Re: Preliminary Injunction for the reasons discussed below.

I. LEGAL STANDARD

To obtain a temporary restraining order and/or a preliminary injunction in the Ninth Circuit, Plaintiff must show (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm absent a preliminary injunction; (3) that the balance of equities tips in favor of issuing an injunction; and (4) that an injunction is in the public interest. *State of Alaska v. Native*

1 *Village of Venetie*, 856 F.2d 1384, 1389 (9th Cir. 1988); *Winter v. Natural Res. Def. Council,*
2 *Inc.*, 555 U.S. 7, 129 S.Ct. 365, 374 (2008). A preliminary injunction is intended to preserve the
3 status quo and prevent irreparable loss of rights before judgment. *See, e.g., Textile Unlimited, Inc.*
4 *v. A. BMH & Co.*, 240 F.3d 781, 786 (9th Cir. 2001); *Sierra On-Line, Inc. v. Phoenix Software,*
5 *Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). Because there is no adequate remedy at law,
6 injunctive relief is the “remedy of choice” in trademark cases. *Century 21 Real Estate Corp. v.*
7 *Sandlin*, 846 F.2d 1175, 1180 (9th Cir. Cal. 1988).

8 **II. DISCUSSION**

9 **a. Likelihood of Success on the Merits of Her Claims.**

10 Plaintiff has established a likelihood of success on her Lanham Act claims.

11 Defendant’s use of Passante’s name and likeness in commerce in connection with a video and
12 associated images thereof or therefrom (collectively “Video), and his false and misleading claims
13 that the Video originated with Passante were intended to deceive the public into believing that
14 Passante was in some way affiliated with Moore, thereby driving web traffic to his illicit website.
15 The Video disseminated by Moore not only contains images that disparage Passante, but also
16 contains a virus that poses a threat to viewers who attempt to watch it. Passante has suffered
17 emotional, physical and psychological damage, including damage to her personal and
18 professional reputation.

19 Plaintiff has established that Moore has defrauded consumers by misrepresenting a
20 material fact consisting of the false representation that the female appearing in the Video posted
21 on his websites are in fact Passante. The false claims result in damage because of the spread of
22 the computer virus which downloads when individuals lured to the website click on the play
23 icon. As a direct and proximate result of Moore’s actions, Passante has suffered incalculable
24 damages and irreparable harm.

1 **b. Absent Injunctive Relief Plaintiff Will Suffer Irreparable Injury**

2 Defendant damages Plaintiff’s professional reputation by attributing lack of chastity and
3 immoral acts to Plaintiff when he falsely claims the woman in the Video is in fact, Plaintiff.
4 Damage to one’s professional reputation constitutes irreparable injury as one cannot be made
5 whole by financial recompense.

6 **c. The Balance of Hardships Strongly Favors Plaintiff**

7 After balancing the interests of all parties and weighing the damage to each, Passante has
8 demonstrated that she will suffer greater hardship in the absence of a temporary restraining order
9 than Moore will by having to comply with one. The harm to Passante in particular, due to the
10 damage to her reputation, and to the public in general, as a consequence of the computer virus,
11 far outweighs any harm that may result to Moore.

12 **d. The Public Interest Strongly Favors Granting Plaintiff Injunctive Relief**

13 The public interest weighs in favor of injunctive relief.

14 **TEMPORARY RESTRAINING ORDER**

15 IT IS HEREBY ORDERED that Defendant Moore and his representatives and any other
16 persons or entities in privity or acting in concert or participation with Moore, immediately
17 remove the Video from all websites under the control of Moore and be immediately temporarily
18 restrained from:

- 19 1. Posting, publishing, advertising, marketing, displaying and otherwise disseminating the
20 Video and the associated virus.
21 2. Providing links from any website to any other website posting, publishing, advertising,
22 marketing, displaying and otherwise disseminating the Video and the associated virus.
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1 3. Assisting, facilitating or encouraging others to engage in the conduct set forth above in
2 Nos. 1-2.

3 IT IS FURTHER ORDERED that Moore, his representatives, and any and all other persons
4 acting in concert or participation with Moore, with notice of this Order, shall preserve, and not
5 destroy, erase, delete, dispose of, or alter any documents or records, in whatever format,
6 including electronic documents, computer files, computer discs and drives, that relate to, reflect,
7 record, or contain any information regarding the origin, promotion, marketing, advertising,
8 purchase, sale, offer to sell, payment, storage, and/or distribution of the Video, or any
9 communications with any party concerning the origin, promotion, marketing, advertising,
10 purchase, sale, offer to sell, payment, storage, and/or distribution of the Video .

11 IT IS FURTHER ORDERED that Moore, his representatives, and any and all other persons
12 acting in concert or participation with Moore, with notice of this Order, shall retrieve any copies
13 of the Video or any information relating thereto which Moore has previously delivered or
14 communicated to any third parties.

15 IT IS FURTHER ORDERED that this Temporary Restraining Order shall remain in effect
16 until the date for the hearing on the Order to Show Cause set forth below, or until such further
17 dates as set by the Court or stipulated to by the parties.

18 **SECURITY**

19 IT IS ORDERED that Plaintiff shall post a bond in the amount of \$2,000, as security for
20 this Court's issuance of the Temporary Restraining Order, set forth hereinabove.

21 **ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION**

22 IT IS ORDERED that Defendant shall show cause unless Defendant waives the right to
23 do so, before the Honorable Judge James V. Selna of the United States District Court for the
24 Central District of California located at Ronald Reagan Federal Building and United States

1 Courthouse, 411 West Fourth Street, Room 1053, Santa Ana, California on November 9, 2012 at
2 1:30 p.m. why a preliminary injunction should not issue restraining and enjoining Moore, his
3 representatives and any other persons or entities in privity or acting in concert or participation
4 with him, from posting, marketing, advertising, promoting, distributing, providing, or otherwise
5 offering the Video to the public

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7 IT IS FURTHER ORDERED Moore show cause why all of Moore's computers, servers
8 and other electronic storage devices that contain copies Videos should not be impounded by the
9 United States Marshall's offices and the materials stored in a secure location.

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11 Plaintiff shall make service upon the Defendant of the Complaint, Application for
12 Temporary Restraining Order and Order to Show Cause and all supporting papers no later than 5
13 p.m. October 29, 2012. Defendant shall file and serve, either personally or electronically, any
14 response to the Order to Show Cause no later than noon November 5, 2012. Plaintiff may file
15 and serve, either personally or electronically, a reply no later than 9:00 a.m. November 8, 2012.

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17 IT IS SO ORDERED.

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19 DATED: October 26, 2012, 4:00 p.m.



UNITED STATES DISTRICT JUDGE

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