

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

THE MEDIA GROUP, INC.,	:	
Plaintiff,	:	CIVIL ACTION NO.
v.	:	3-00-CV-2034 (JCH)
	:	
ONTEL PRODUCTS CORP.,	:	
ASHOK KHUBANI, TARA	:	
PRODUCTIONS, INC., and	:	
TARA BORAKOS,	:	
Defendants.	:	JANUARY 12, 2001

**RULING ON PLAINTIFF’S MOTION FOR TEMPORARY
RESTRAINING ORDER/PRELIMINARY INJUNCTION**

This is a cause of action for damages and injunctive relief alleging trademark infringement and unfair competition under Section 43(a) of the Lanham Act, copyright infringement in violation of 17 U.S.C. § 501, and unfair competition under the Connecticut Unfair Trade Practices Act. The plaintiff, The Media Group, Inc. (“MGI”), has filed a motion for a temporary restraining order and preliminary injunction. Because the court concludes that the plaintiff has not established a likelihood of success on the merits, the motion is denied.

I. FACTUAL BACKGROUND

The complaint alleges that MGI, a designer, manufacturer, and marketer of products, sells hanging devices, comprising a hook and a vacuum locking system called “Smart Hooks” and “Happy Hangems.” In selling the products, MGI uses

several marketing channels including retail sales outlets, print advertising, television, and electronic marketing. Through those mediums, the complaint alleges, MGI has built up substantial goodwill and customer recognition and identification in the trademarks associated with the products.

The complaint alleges that the defendants, Ontel Products Corporation (“Ontel”), Ashok Khubani, Tara Productions, Inc. (“Tara”), and Tara Borakos, had access to the hanging devices and that defendant Tara produced similar hanging devices which Ontel subsequently marketed and distributed under the name “Snap Hooks.” The complaint alleges that the defendants’ use of the “Snap Hooks” name was a willful and intentional attempt to trade on and benefit from the association in the minds of consumers with MGI’s “Smart Hooks” trademark. Further, the complaint alleges that the use of the trademark “Snap Hooks” misrepresents and falsely describes to the public the origin and source of the defendants’ products and creates a likelihood of confusion by ultimate purchasers. As a result, the plaintiff alleges that sales of its product have suffered.

MGI and Ontel both plan to market their products at the International Housewares Show in Chicago, Illinois. The Housewares Show is being held from January 16-19, 2001. On January 10, 2001, MGI filed the motion for a temporary restraining order seeking to enjoin defendant Ontel from using the mark “Snap

Hooks” in connection with marketing activities at the Housewares Show.

II. ARGUMENT

The “standards which govern consideration of an application for a temporary restraining order . . . are the same standards as those which govern a preliminary injunction.” Local 1814, Int’l Longshoremen’s Ass’n v. N.Y. Shipping Ass’n, Inc., 965 F.2d 1224, 1228 (2d Cir. 1992). “A preliminary injunction may be granted only when the party seeking the injunction establishes that ‘1) absent injunctive relief, it will suffer irreparable harm, and 2) either a) that it is likely to succeed on the merits, or b) that there are sufficiently serious questions going to the merits to make them a fair ground for litigation, and that the balance of hardships tips decidedly in favor of the moving party.’” Statharos v. N.Y. City Taxi & Limousine Comm’n, 198 F.3d 317, 321 (2d Cir. 1999) (citations omitted). Preliminary injunctive relief “is an ‘extraordinary and drastic remedy which should not be routinely granted.’” Buffalo Forge Co. v. Ampco-Pittsburgh Corp., 638 F.2d 568, 569 (2d. Cir 1981) (quoting Medical Society of New York v. Toia, 560 F.2d 535, 538 (2d Cir. 1977).

The Lanham Act prohibits the use in commerce, without consent, of any unregistered, common law trademarks in a way that is likely to cause confusion. Time, Inc. v. Petersen Publishing Co., 173 F.3d 113, 117 (2d Cir. 1999) (quoting

15 U.S.C. § 1125(a)(1)). Under 15 U.S.C. § 1125(a)(1), the plaintiff has the burden of proving that “it has a valid mark entitled to protection and that the defendant’s use of it is likely to cause confusion.” Arrow Fastener Co. v. Stanley Works, 59 F.3d 384, 390 (2d Cir. 1995) (internal citations omitted). Marks that are inherently distinctive are entitled to trademark protection. See Time, Inc., 173 F.3d at 117. Suggestive marks that “suggest[] the product, though it may take imagination to grasp the nature of the product[,]” are also protected. Gruner + Jahr USA Publishing v. McNeil-P.P.C., Inc., 991 F.2d 1072, 1076 (2d Cir. 1993). If a mark is “merely descriptive,” it is entitled to federal trademark protection only if it has acquired secondary meaning by becoming distinctive of the goods in commerce. Time, Inc., 173 F.3d at 117; see also Estee Lauder, Inc. v. The Gap, Inc., 108 F.3d 1503, 1509 (2d Cir. 1997).

In order to determine whether a possessor of a valid mark has established that the use of a similar mark is likely to create confusion, district courts in this circuit apply “the Polaroid factors.” Time, Inc., 173 F.3d at 117; Polaroid Corp. v. Polaroid Electronics Corp., 287 F.2d 492, 495 (2d Cir. 1961). The Polaroid factors are: (1) the strength of the mark; (2) the degree of similarity between the two marks; (3) the proximity of the products; (4) the likelihood that the prior owner will bridge the gap; (5) actual confusion; (6) the defendant’s good faith in adopting

its mark; (7) the quality of the defendant's product; and (8) the sophistication of the buyers. See Time, Inc., 173 F.3d at 117. The Polaroid factors are not applied mechanically. See Nabisco, Inc. v. Warner-Lambert Co., 220 F.3d 43, 45 (2d Cir. 2000). Rather, the court should weigh the overall impact of the factors to "ascertain whether there is a likelihood of confusion on the part of an appreciable segment of the purchasing public as to the source of the product." Gruner + Jahr USA Publishing v. Meredith Corp., 991 F.2d 1072, 1079-1080 (2d Cir. 1993).

The court finds that, based on the record before it, the plaintiff has failed to demonstrate a likelihood of success on the merits because there is insufficient evidence of a likelihood of confusion on the part of the purchasing public. While the plaintiff has established likelihood of success or, at least, sufficiently serious questions going to the merits with regard to several of the Polaroid factors, e.g., proximity, bridging the gap, and sophistication, the court does not find that the overall impact of those factors demonstrates consumer confusion.

In its motion, MGI has not provided sufficient evidence of the context in which the products are marketed or the methods used to market the products.¹

¹ Attached to the Motion for Temporary Restraining Order is a product enclosure sheet for the plaintiff's product and some printed packaging-type sheet for the defendants' product. Notice of Motion and Motion for Temporary Restraining Order/Preliminary Injunction [Dkt. No. 10-1], Exs. B, E. However, in a conference held today (not on the record), plaintiff's counsel stressed that the real source of confusion was the television

“[I]n determining whether two marks are confusingly similar, we must ‘appraise the overall impression created by . . . the context in which they are found and consider the totality of factors that could cause confusion among prospective purchasers.’” Nabisco, Inc., 220 F.3d at 47 (quoting Streetwise Maps, Inc. v. Vandam, Inc., 159 F.3d 739, 744 (2d Cir. 1998)). In this case, the court cannot determine whether the products are marketed so similarly as to cause confusion to customers attending the Housewares Show as there is no demonstration that the products are marketed in confusingly similar ways or that there has been any actual consumer confusion or is likely to be. Considering the overall impact of the Polaroid factors, the court concludes that, on the present record before the court, the plaintiff has not established a likelihood of success on the merits or sufficiently serious questions going to the merits to make them a fair ground for litigation with the balance of hardships tips decidedly in favor of the moving party. Because of the court’s finding on this element, it need not reach the issue of irreparable harm.²

marketing of the defendant’s product. However, videotapes or other evidence of the same are not in the record.

² While the court reserves judgment on whether the plaintiff has demonstrated irreparable harm, the court notes that the plaintiff waited until three business days prior to the Housewares Show to file the motion for a temporary restraining order. “Significant delay in applying for injunctive relief in a trademark case tends to neutralize any presumption that infringement alone will cause irreparable harm pending trial, and such delay alone may justify denial of a preliminary injunction for trademark infringement.”

III. CONCLUSION

For the foregoing reasons, the plaintiff's Motion for a Temporary Restraining Order is DENIED. The Motion for Preliminary Injunction is referred to the Honorable Stefan R. Underhill for hearing on January 16, 2001 at 10:00 a.m. If either party intends to rely on videotape or other print marketing material, it should be delivered to Judge Underhill's chambers by 4:00 p.m. Friday, January 12, 2001.

SO ORDERED.

Dated at Bridgeport, Connecticut this 12th day of January, 2001.

_____/s/_____
Janet C. Hall
United States District Judge

Citibank v. Citytrust, 756 F.2d 273, 276 (2d Cir. 1985); see also Tough Traveloer, Ltd. v. Outbound Prods., 60 F.3d 964, 968 (2d Cir. 1995); Century Time Ltd. v. Interchron Ltd., 729 F. Supp. 366, 369 (S.D.N.Y. 1990).