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1 Wednesday, February 8, 2006 Fresno, California

2 12:23 p.m.

3 THE CLERK: Item five. CV-F-06-126-OWW-LJO. Mail
4 Boxes Etc. versus Dale Martinez. Application for TRO.

5 (Off the record.)

6 THE COURT: May we have the parties appearances,
7 please.

8 MR. GRENARDO: Yes. David Grenardo for Mail Boxes
9 Etc., the plaintiff.

10 MS. DARBY: Good afternoon, Your Honor. Amy Darby on
11 behalf of Dale Martinez, the defendant.

12 THE COURT: All right. This is an application for a
13 temporary restraining order in case number 06-CV-0126. There
14 is also a case that has been brought against -- and I am
15 looking for that case and not finding it up here. Has it been
16 assigned a number, Angela?

17 THE CLERK: Yes, it has, Your Honor.

18 THE COURT: What's the number of the second case?

19 THE CLERK: CV-F-06-127-OWW-LJO. Mail Boxes Etc.
20 versus Dennis Meeks, et al.

21 THE COURT: All right. And do we understand that
22 we're having a telephonic appearance in that case?

23 THE CLERK: Yes, sir. Let me --

24 THE COURT: Do you have the attorney?

25 THE CLERK: Let me find him.

1 (Calling Mr. Hanks.)

2 THE CLERK: I just called the matter entitled Mail
3 Boxes versus Dennis Meeks, et al.

4 THE COURT: This is Judge Wanger speaking. Mr.
5 Hanks, for whom are you appearing?

6 MR. HANKES: Your Honor, I am appearing for Dennis
7 and Pamela Meeks, who are the defendants here.

8 THE COURT: All right. We have called a companion
9 case, Mail Boxes Etc., Inc. versus Dale Martinez and Lupe
10 Martinez. And we have had appearances by Mr. Grenardo for the
11 plaintiff and by Ms. Darby for the Martinez defendants. And
12 this is the time that the Court had set on shortened notice
13 for the hearing of an application for temporary restraining
14 order.

15 Counsel are advised that in this district, we do not
16 issue ex parte temporary restraining orders except in
17 extremely exigent circumstances, which this did not appear to
18 require issuance of an order without notice.

19 Now, I have had an extensive submission filed by the
20 Martinez defendants, which includes an extensive chronicle of
21 apparently the litigation history between these parties in the
22 state court in Los Angeles County. I also have assertions
23 that the trademarks that are in dispute and/or any related
24 configuration or representation of the mark allegedly,
25 according to the defendants, have been abandoned. And that

1 there are ongoing disputes over the franchise agreement
2 whereby the original right to use the marks was granted.

3 And I'm summarizing extremely and not going into the
4 detail that was provided. But that there is litigation
5 pending in the superior court over whether or not the
6 franchise contracts have been breached, whether or not the
7 marks are in current use, whether or not the format and style
8 of business under the franchise agreement is being conducted
9 and whether or not, after the acquisition of the MBE entity by
10 UPS, which has allegedly changed the format and operates the
11 business in a different way with different economic
12 parameters, whether all of this in effect renders this a case
13 which, first of all, there is no urgent necessity for any kind
14 of equitable relief, certainly in terms of with this kind of a
15 dispute, potential success on the merits, which would be
16 required, or the public interest being involved.

17 And if the mark is in dispute, not its existence or
18 its authenticity as being a registered mark, but the
19 entitlement to use the mark and the business is viewed such as
20 it is, this would be the kind of -- where there is strong
21 evidentiary dispute, the kind of matter where it would not
22 come in and ex parte grant of injunctive relief would be made.
23 Rather we would hear this matter on a hearing set for an order
24 to show cause whether a preliminary injunction should issue.

25 And so certainly -- and this is directed to Mr.

1 Grenardo, in light of all this information, what's going on
2 here?

3 MR. GRENARDO: Your Honor --

4 MR. HANKES: Your Honor --

5 THE COURT: And so I -- I will tell you at the outset
6 that this is the busiest court in the United States. This
7 court has 1,023 cases individually. And so what I'm wondering
8 is when I see this kind of response and the kind of litigation
9 history there is, what is going on?

10 MR. GRENARDO: Yes, Your Honor. There are two cases
11 that are going on with the Meeks and Martinez defendants.
12 However, we brought this case into your court, Your Honor,
13 because we wanted speedy recovery. The defendants are here,
14 the witnesses are here and the stores are here.

15 Now, when you look at the complaints, and I can give
16 you a copy of each complaint, trademark infringement of MBE's
17 trademark is not at issue in those cases. Despite --

18 THE COURT: The Los Angeles cases?

19 MR. GRENARDO: There's a Los Angeles case, Your
20 Honor, and there's a case that is brought in San Diego where
21 Meeks is a plaintiff in that case. And that has since been
22 stayed pending arbitration. They're now in arbitration. In
23 neither of those cases are the trademark infringement, MBE's
24 trademarks at issue.

25 In addition -- in addition --

1 MR. HANKES: Your Honor, I'm on the telephone and I
2 don't have the benefit of being able to observe. And I don't
3 know if I'm supposed to interrupt or wait.

4 THE COURT: No, you're not supposed to interrupt.
5 You're supposed to wait.

6 MR. HANKES: I'm interrupting.

7 THE COURT: You'll have your opportunity to be heard,
8 Mr. Hankes.

9 MR. HANKES: Thank you, sir.

10 THE COURT: You're welcome.

11 MR. GRENARDO: In addition, Your Honor, the violation
12 of post termination obligations by MBE stores that have
13 gone --

14 THE COURT: Isn't there an issue whether there is a
15 valid termination or not? Isn't that what's being litigated?

16 MR. GRENARDO: That may be a part of it, Your Honor.
17 But if you look at the BK case, it dealt with wrongful
18 termination of a franchisee contract, of a franchise contract.
19 And in that case, the Court said the alleged wrongful
20 termination of a franchise contract is not relevant to the
21 infringement of a trademark in the Lanham Act.

22 THE COURT: If a license to use the mark is granted
23 by a franchise contract and there's a dispute over the
24 continuing validity of that contract or whether it is or is
25 not validly terminated, thereby granting the right to use the

1 mark, seems to me it's at least in dispute. I understand what
2 the case says in the abstract, but it's not an analogous case
3 actually.

4 MR. GRENARDO: This is the same situation, Your
5 Honor, plaintiffs are not disputing that the franchise
6 agreements have expired. They have expired.

7 THE COURT: Well, they may have expired according to
8 their terms, but legally there's a dispute whether or not
9 there is a termination as that term of art is used within the
10 franchise agreement itself, unless I'm misreading the papers.

11 MR. GRENARDO: Well, I think the BK case speaks for
12 itself, Your Honor, where it says that the alleged wrongful
13 termination is not relevant to an infringement, trademark
14 infringement claim. And the issues that we decided in the
15 state court cases, one that was in arbitration, they will not
16 be dispositive of these issues here. They will not determine
17 the issues. They do not cover the same issues. They're not
18 identical issues as defendants seem to --

19 THE COURT: Well, let me ask. How do you respond to
20 the allegation that your client is no longer using the MBE
21 mark for this kind of parcel service or mail drop service that
22 the Mail Boxes entities have used and that it's not currently
23 in use by your clients?

24 MR. GRENARDO: Your Honor, in our papers, we set out
25 that there are over 800,000 mailbox, MBE mail box holders in

1 the United States. And over 4,000 MBE store locations world
2 wide. Defendants argue that MBE may not be using the MBE
3 marks for any new franchises, but that's beside the point.
4 We're still using our marks. There are still these Mail Boxes
5 Etc. mailbox holders, 800,000 in the United States, Your
6 Honor. And over 4,000 locations of MBE stores over -- in the
7 world. So to say that we've abandoned it doesn't make too
8 much sense, doesn't sit too well with MBE.

9 THE COURT: All right. Well, let me ask -- we'll
10 start with the Martinez case. And we'll let Ms. Darby
11 respond.

12 MS. DARBY: Thank you, Your Honor. First of all,
13 defendants agree with the Court and citing, you know, Admiral
14 Stockdale, vice president candidate for Ross Perot. Who am I
15 and why am I here? I mean, we've been litigating these exact
16 same issues for the last three years down in Los Angeles
17 Superior Court.

18 Defendants misrepresented that the trademark is not a
19 part of our case. In fact, it is a part of our case. We
20 could even cite to the Court the specific pages where we've
21 stated they have breached our contract by destroying our MBE
22 mark. The contracts require that MBE would nationally
23 advertise MBE, which they have not done since 2003. The
24 contracts require that they would continue this Mail Boxes
25 Etc. system, of which in 2003 there are only 300 Mail Boxes

1 Etc. stores left in the nation.

2 THE COURT: Not 4,000?

3 MS. DARBY: Not 4,000.

4 MR. GRENARDO: I said world wide, Your Honor.

5 MS. DARBY: World wide. There's a geographic limit
6 on trademarks. But in any event, the thing is that they have
7 abandoned the mark. In fact, their own counsel admits they've
8 abandoned the mark. In our case down in Los Angeles Superior
9 Court, and I cited to the Court or transcript there and I
10 think we even highlighted it to the Court, where counsel said
11 there is no such animal as an MBE center. It does not exist.

12 Well, if it doesn't exist, then how are we possibly
13 causing irrevocable harm? And especially since the scribe
14 got it right that we think we have to renew as an MBE center
15 and enter into a contract. We did take down our signs. The
16 photographs that defendants have submitted to Your Honor show
17 that we are no longer using the MBE mark despite the fact that
18 we think we had a valid right to do so. Out of an abundance
19 of caution.

20 Furthermore, Your Honor, jurisdiction of this court
21 is not even proper by Mail Boxes Etc. own franchise agreement.
22 If you check out Exhibit A to the Sleeper declaration.
23 Section 18.08. Actually, I'm sorry, 18.09.

24 THE COURT: It's a forum selection clause and a venue
25 selection clause.

1 MS. DARBY: Yes, Your Honor. In fact, if I may read
2 it to you. It says "The parties hereby consent that venue and
3 jurisdiction for all actions enforcing and/or arising out of
4 this agreement shall be litigated in the city of San Diego,
5 County of San Diego, State of California, USA to the exclusion
6 of the courts of any other state or county."

7 Clearly this is arising out of this agreement since
8 they cite provisions of this agreement all over the place in
9 their TRO papers. And are seeking to enforce the post
10 termination covenant that are allegedly set forth in this
11 agreement. And the trademark is licensed by this agreement.

12 So we would argue that jurisdiction is neither proper
13 before this court, that plaintiff should have sought action in
14 San Diego court if they were going to seek action. But even
15 more important, they should have sought a cross-complaint in
16 our own Morgate action currently pending where the judge is
17 intimately familiar with these issues that are already raised
18 in our complaint.

19 THE COURT: How did the case end up in Los Angeles
20 County given this forum selection clause?

21 MS. DARBY: Great question, Your Honor. The way that
22 ended up in LA is that we filed in San Diego court an action
23 by the name of Jeffer versus Mail Boxes Etc. That case was
24 consolidated and coordinated with the Morgate case up in Los
25 Angeles because the Morgate case had originally just named the

1 defendant UPS. And since there was so many overlying issues
2 between both cases, they were coordinated up. And Mail Boxes
3 Etc. stipulated in a written stipulation that they agreed to
4 allow the Los Angeles court to have jurisdiction in that case.

5 But in this case, there's no agreement between the
6 parties that would modify the exclusive jurisdiction provision
7 that MBE, with superior bargaining power, drafted. MBE would
8 require its franchisees from all over the country to sue in
9 San Diego which is a hardship on those franchisees. But they
10 did it. And now they speak, despite the pending action, to
11 the contrary to try to enjoin our clients from the issues that
12 are being litigated right there in southern California.

13 THE COURT: All right. Let me hear from Mr. Hanks
14 now.

15 MR. HANKES: Good afternoon, Your Honor. I
16 appreciate the Court's allowing me to appear telephonically.
17 Our situation is a little bit different from that of the
18 plaintiffs in the Morgate case in that the Meeks are a part of
19 a consolidated AAA Arbitration Group, which defendants
20 compelled the arbitration. And I hope Your Honor has received
21 the limited oppositions that we -- Mr. Boulter was able to
22 file before he got on the plane yesterday.

23 THE COURT: Unfortunately, no.

24 MR. HANKES: I'm sorry, Your Honor.

25 THE COURT: I haven't received that.

1 MR. HANKES: I thought they were filed yesterday.

2 MR. GRENARDO: I may have a copy of that. Let me
3 look.

4 THE COURT: You've received it?

5 MR. GRENARDO: Yes.

6 THE COURT: All right. We have some individuals,
7 sir, if you would, why don't you identify yourselves for the
8 record.

9 MR. MEEKS: My name is Dennis Meeks, Mail Boxes Etc.
10 I guess it's not Mail Boxes Etc. anymore.

11 THE COURT: You have something in your hand?

12 MR. MEEKS: Well, I have pictures showing they have
13 taken down all the trademarks and I also have --

14 MR. HANKES: Um --

15 THE COURT: Go ahead, Mr. Hankes.

16 MR. HANKES: I don't know what happened with the
17 filing, Your Honor, because it is important. These -- these
18 folks are already in arbitration against these defendants as
19 Ms. Darby has indicated, the breaches of contract regarding
20 the destruction of the mark and the license of the trademark
21 are issues in that arbitration. There is a published state
22 court opinion called Independent Association of Mailbox Center
23 Owners, Inc. versus Mail Boxes, Etc. USA, Inc. at 133 Cal.
24 App. 4th 396, which is our case and we accomplished
25 consolidation.

1 The AAA arbitration is not moving forward at this
2 time because the appeals court is -- has indicated that the
3 issue of who's going to pay the up front cost of arbitration
4 has to be decided prior to that moving forward.

5 But these claims are in arbitration and our view of
6 what is happening here, because they haven't just done this in
7 Your Honor's court. They refused to expand these franchise
8 agreements, attempted to force our clients to become the UPS
9 store, which operates on a business model which we allege is
10 not only faulty, but fraudulent. There are at this time
11 scores of UPS stores going out of business around the country.
12 Our clients do not want to go out of business.

13 And the other side, in our view, is the total breach.
14 And this morning they filed against another client in Virginia
15 and in Oklahoma. And what they're trying to do is use this
16 process to circumvent the handling of the merits of the case
17 that has been going on for two or three years and of paying
18 orders against our clients on diminimus allegations.

19 Mr. and Mrs. Meeks are in the courtroom and if they
20 can hear me, I'd just ask that they stand up so they can
21 identify themselves.

22 THE COURT: Yes, they're here and I recognize them.

23 MR. HANKES: Okay.

24 THE COURT: All right.

25 MR. HANKES: We don't see how there should be

1 anything taking place in this court when the arbitration
2 clauses specifically say that non-monetary matters have to be
3 handled in arbitration. That's what their arbitration clause
4 in this case says.

5 THE COURT: All right. What's the section number of
6 the arbitration provision?

7 MR. HANKES: I believe it's paragraph 1407.

8 THE COURT: Excuse me. I'm suffering the aftermath
9 of a cold. And so that's me that's hacking.

10 MR. HANKES: In this case, 1407 of Exhibit A to the
11 complaint, Your Honor.

12 THE COURT: Which page?

13 MR. HANKES: It's paragraph 1407 on page 38 of
14 Exhibit A.

15 THE COURT: All right.

16 MR. HANKES: The -- midway through the paragraph, it
17 states, "Any non-monetary disputes shall be submitted to and
18 settled by binding arbitration." And in our limited
19 opposition papers, we pointed out to the Court that the fact
20 that there were these pending arbitrations and an arbitration
21 clause should have been disclosed in the filing of these
22 papers and that we would ask for sufficient time to prepare a
23 motion to compel arbitration.

24 THE COURT: All right. I've got a -- before me, I've
25 got the Martinez' agreement and is there an arbitration clause

1 in theirs?

2 MR. HANKES: The Martinez people are not part of our
3 case, Your Honor.

4 THE COURT: Understood.

5 MS. DARBY: Yeah.

6 MR. HANKES: And I --

7 MS. DARBY: I am looking right now, Your Honor.

8 MR. HANKES: Their litigation is not in arbitration.

9 THE COURT: All right.

10 MR. HANKES: So I would not be urging that theirs
11 should be arbitrated because I believe those parties have
12 decided not to arbitrate. We think we've got it consolidated
13 under the published decision that I cited.

14 THE COURT: Yes.

15 MR. HANKES: And that's where we are and we don't
16 think we belong in this federal court or the one in Virginia
17 or the one in Oklahoma or the ones that they're continuing to
18 file. Because what they're really trying to do here is use an
19 economic -- economically unconscionable behavior to squash
20 these people and make it impossible for them to continue going
21 forward.

22 THE COURT: Well --

23 MR. HANKES: There were --

24 THE COURT: What I'm going to do in the Meeks case is
25 I'm going to deny without prejudice the motion for temporary

1 restraining order. We'll set a briefing schedule on motions
2 to dismiss based on jurisdiction, motions to compel
3 arbitration or any other motion that is appropriately brought
4 in the action. And you may assert the defenses.

5 And I'm sorry, all I've been able to do is just to
6 look at these papers now. As I said, I've been continuously
7 involved in a jury trial in this court and I have a massive
8 scheduling conference in the Delta Smelt case involving most
9 of the water in central California. And so I must admit I
10 have not had time to go through all these papers.

11 But in the Meeks case, when were your clients served.

12 MR. HANKES: I don't -- my clients have not been
13 served, Your Honor.

14 THE COURT: Not served.

15 MR. HANKES: We got something -- I got something by
16 email at about two p.m. eastern time on Monday. And it came
17 through in pieces. And I got the declaration of Mr. Sleeper
18 at about eight p.m. eastern time on Monday. And as I said, we
19 did -- we thought we submitted electronically two documents in
20 opposition, which I didn't think we'd be able to get in. But
21 we did.

22 THE COURT: Well, he who seeks equity must come into
23 the Court with clean hands and he who seeks equity must do
24 equity and so there's no basis to issue a TRO today. This
25 looks like an ambush.

1 MR. GRENARDO: Your Honor, may I say something?

2 THE COURT: What do you want to say?

3 MR. GRENARDO: Your Honor, this Court absolutely has
4 jurisdiction to hear this.

5 THE COURT: You haven't even served these people. I
6 have no jurisdiction over them. Until you serve a summons and
7 complaint, you don't have personal jurisdiction over a party,
8 counsel. Didn't you learn that in law school?

9 MR. GRENARDO: Yes, Your Honor.

10 THE COURT: All right. What I will do is this. I'm
11 going to order that this temporary restraining order request
12 in the Meeks case be denied without prejudice. And I will
13 entertain no further applications for equitable relief,
14 injunctive relief in this case before the Meeks are served and
15 further, until there is an opportunity to bring the
16 preliminary issues. Arbitration is also a jurisdiction of the
17 court. All those are jurisdictional issues. And so whether
18 12(b)(1) or 12(b)(2) motions, those motions will be heard in
19 anticipation of and before any merits decisions in this case.

20 And so you may prepare that order, Mr. Hankes, and
21 lodge it electronically. I don't know if you're admitted.
22 You're in Boston, aren't you?

23 MR. HANKES: I am in Boston, Your Honor, and one of
24 the problems that I have is my chief California co-counsel is
25 out of the country this week. They knew he was out of the

1 country and he has that capability. We haven't yet gone to
2 that system here, so I -- I don't have the ability to do that
3 until they get back. And so I can prepare the order --

4 THE COURT: You will have to be admitted --

5 MR. HANKES: -- but I don't have the ability to file
6 it.

7 THE COURT: You have to be admitted pro hac vice and
8 then you can be admitted to the electronic filing system. Let
9 us do this. We don't know when your clients are going to be
10 served, if --

11 MR. GREJARDO: May we serve that on counsel? Will he
12 accept service?

13 THE COURT: That's a request you'll have to direct to
14 him. The Court doesn't undertake to provide for service by
15 parties. The Federal Rules of Civil Procedure cover that.
16 Therefore, I'm going to simply ask. And I will treat your
17 appearance today as a special appearance. And not a general
18 appearance acknowledging or agreeing to jurisdiction. And you
19 can then lodge that order. You can fax it to the Court. I'll
20 ask our courtroom deputy clerk to give you the fax number
21 here.

22 MR. HANKES: Okay.

23 MS. DARBY: Your Honor --

24 THE CLERK: The fax number is area code 559-494-3912.

25 MR. HANKES: Okay. And the order would say, Your

1 Honor, that --

2 THE COURT: The order would say that the motion for
3 temporary restraining order -- well, first of all, that you
4 appeared specially without acceding to general jurisdiction,
5 the jurisdiction of the court for the purposes of response to
6 this alleged emergency TRO. That the Court finds that in view
7 of an arbitration clause in the franchise agreement, the
8 pending arbitration in apparently the Southern District of
9 California and in view of the dispute over the right to use
10 the mark and the name and its current status, that there is no
11 basis for the issuance of a temporary restraining order on an
12 emergency basis without having an appropriate hearing. And
13 therefore, the motion is denied without prejudice.

14 THE COURT: Okay.

15 MR. HANKES: Okay.

16 THE COURT: All right.

17 MR. HANKES: Your Honor, may I indicate one more
18 thing? Because you've talked about scheduling. We are due in
19 San Diego Superior Court on Friday, the 17th. I am traveling
20 on the 16th and we have filing deadline of both the 10th and
21 the 14th in that and a related matter. And I just ask that
22 the Court take that into consideration in scheduling.

23 THE COURT: All right.

24 MR. HANKES: Going to be on an airplane on Thursday
25 the 16th and most of the night on the 17th.

1 THE COURT: All right. Well, from my order, I intend
2 that any injunctive relief that would be sought against your
3 clients would be on noticed motion. And I'm not going to
4 shorten time. It would be in accordance with the regularly
5 scheduled notice according to the local rules of the Eastern
6 District of California.

7 MR. HANKES: Would we have the opportunity to file
8 our motion before we have to deal with that injunctive issue?

9 THE COURT: Well, my sense is that they can't file
10 that motion before they have served the complaint. And from
11 the time they serve the complaint, you'll be able to file your
12 motion.

13 MR. HANKES: Okay.

14 THE COURT: And since I have said in the order of
15 things I prefer to hear those motions first, which is the
16 obligation of the court to determine whether it has
17 jurisdiction in any case, that would be the first order of
18 business.

19 MR. HANKES: Thank you, Your Honor.

20 THE COURT: All right. Well then, unless you want to
21 stay around for the Martinez case --

22 MR. HANKES: I may, Your Honor.

23 THE COURT: All right.

24 MR. HANKES: If that's all right with the Court.

25 THE COURT: All right. Yes.

1 MS. DARBY: And Your Honor, if I may piggyback on
2 what Your Honor just mentioned. We had a similar situation,
3 which is our clients have not been served either. They served
4 us via email. And we responded based on that email and it was
5 the exact same thing. We received it the day that they filed
6 it, to my knowledge, or the day before. So we kind of rushed
7 here and threw our papers together to get here as well. So we
8 kind of have the same situation.

9 MR. GRENARDO: Your Honor, I was planning to serve
10 them today personally. May I do that?

11 THE COURT: Well, again, that's up to you. I am
12 going to, in the Martinez case, find that there appear to be
13 the same questions in this case on the merits relative to
14 whether or not the mark is in current use, the mark is being
15 protected, whether or not the mark has been abandoned, whether
16 or not the franchise agreement has been validly terminated,
17 whether or not the existing litigation in the Los Angeles
18 County Superior Court is a proceeding that would be entitled
19 to deference and abstention under the various doctrines of
20 abstention.

21 And further, that it does not appear that there is
22 any imminent harm given the fact that these litigations have
23 been pending for years between these parties and the business
24 plan and the change in the MBE operations through UPS has been
25 occurring over, when was that acquisition, in 2003.

1 MS. DARBY: It was actually acquired in 2001 and in
2 2003 they rebranded 90 percent of the franchises.

3 THE COURT: 2001. 2003 was the rebranding. In this
4 case, after the service, the Court will entertain
5 jurisdictional motions and any application for preliminary
6 injunction can be brought on noticed motion. I'm going to
7 deny without prejudice the motion for temporary restraining
8 order for all of those reasons.

9 MR. GRENARDO: Your Honor, may I say something?

10 THE COURT: Yes.

11 MR. GRENARDO: Defendants have said that
12 they're -- the same issues are at issue in the state court
13 actions and in the arbitration. And if they would like to
14 point to where trademark infringement and use of the marks
15 after the agreement has expired, then I would be happy to see
16 that. But that's --

17 THE COURT: What they do say is this. They say
18 they're not using the marks. They say that they removed them
19 from their businesses, that they're conducting their
20 businesses without the MBE name or style and that creates a
21 sufficiently disputed issue of fact that, based on a showing
22 that you've made to me, you don't even preponderate.

23 There's a dispute. And we're going to have to have
24 an evidentiary resolution, which could end up being in the
25 nature of a mini trial, quite frankly, and a hearing on a

1 preliminary injunction. You don't show likelihood of success
2 on the merits. That's why I'm denying your motion on the
3 merits relative to the Martinezes.

4 MR. GRENARDO: Your Honor, if they have any
5 trademarks or they've refused to comply with post termination
6 obligations --

7 THE COURT: That goes to the validity of the
8 agreement. Which is you don't deny that that contract is in
9 dispute in the Los Angeles action and so what their rights and
10 what your client's rights are under that agreement are
11 assumedly going to be decided there. Now, whether we ought to
12 piecemeal and litigate paragraph by paragraph that agreement
13 throughout the United States is something that we can take a
14 look at when we've had a chance.

15 But as I have told you, I've been continuously in
16 court since your papers came in working on cases that have
17 higher priority and most of them criminal, quite frankly, that
18 have required my attention. And I have barely read your
19 papers and the response that came in last night. I haven't
20 even seen these exhibits because they didn't come in
21 since -- until this morning and I've been on the bench from
22 the minute I got here to the courthouse this morning.

23 MR. GRENARDO: I haven't seen them myself, Your
24 Honor. But if there is trademark infringement and the
25 consumer is being confused, which is what our declaration from

1 Mr. Sleeper said, that they were using the MBE marks. But,
2 Your Honor, if they're not, we proposed a stipulated
3 injunction that said that they would comply with the post --

4 THE COURT: The law doesn't require that. And I'm
5 getting the distinct impression that either I'm having
6 difficulty in communicating and making myself understood or
7 you're having difficulty hearing me. I've made my ruling.
8 I've stated the grounds for my decision.

9 And in the Martinez case, I'll ask that Ms. Darby
10 prepare an order that is consistent with the findings that I
11 have made.

12 MS. DARBY: Yes, Your Honor. I will do that.

13 THE COURT: Thank you very much.

14 MR. GRENARDO: Thank you, Your Honor.

15 MS. DARBY: Thank you, Your Honor.

16 MR. HANKES: Thank you, Your Honor.

17 (The proceedings were concluded at 1:00 p.m.)

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19 I, KAREN L. LOPEZ, Official Reporter, do hereby
20 certify that the foregoing transcript as true and correct.

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22 DATED: _____
23 KAREN L. LOPEZ

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