

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

George & Company, LLC, a
New York limited liability company,

Civil No. 09-2973 (DWF/RLE)

Plaintiff,

v.

ORDER

Xavier Enterprises, Inc., a Minnesota
Corporation; and Keith Miller, an
Individual, both d/b/a Game Planet and
d/b/a Gameoutfitter.com; and Does 1-95,

Defendants.

Anthony R. Zeuli, Esq., Scott W. Johnston, Esq., and George C. Golla, Esq., Merchant & Gould PC, counsel for Plaintiff.

Brock P. Alton, Esq., and Roger H. Gross, Esq., Gislason & Hunter LLP, counsel for Defendant.

This matter is before the Court on a Motion for Temporary Restraining Order brought by Plaintiff George & Company, LLC (“George & Co.”). George & Co. owns all right, title, and interest in the federally registered trademarks LCR and LCR and Design (together, the “LCR Marks”). George & Co. uses the LCR Marks in connection with dice games, party games, and board games featuring specially marked dice and chips, and in particular the “Left Center Right” dice game that George & Co. developed and has been manufacturing and selling since 1986. (Decl. of Peter Smilanich (“Smilanich Decl.”) ¶¶ 4-5.) In its Verified Complaint, George & Co. asserts claims for

federal trademark infringement under 15 U.S.C. §§ 1115 and 1117, federal unfair competition and related claims under 15 U.S.C. § 1125, counterfeiting under 15 U.S.C. § 1116(d), state trademark and unfair competition, a violation of the Deceptive Trade Practices Act, Minn. Stat. § 325D.43, *et seq.*, a violation of the Unlawful Trade Practices Act, Minn. Stat. § 325D.09, *et seq.*, and copyright infringement. For purposes of the present motion, George & Co. relies only on its federally registered LCR Marks, and the trademark infringement, counterfeiting, and unfair and deceptive trade practices claims based on Defendants' use of the LCR Marks.

In short, George & Co. asserts that Defendant Xavier Enterprises, Inc. ("Xavier") was an authorized distributor for George & Co. and that Xavier and the other defendants are now intentionally infringing George & Co.'s rights by selling an inferior version of the "Left Center Right" game using George & Co.'s LCR Marks without consent or authorization. George & Co. requests that this Court enter a temporary restraining order enjoining Defendants from purchasing, offering for sale, selling, and distributing counterfeit LCR dice games; an order for expedited discovery; and an order to show cause for preliminary injunction.

The Court determines that George & Co. has demonstrated that it will suffer irreparable harm absent the restraining order, that the balance of harms favors George & Co., that the public interest favors George & Co., and that George & Co. is likely to succeed on the merits of at least one of its federal claims with respect to the LCR Mark. *See Coca-Cola Co. v. Purdy*, 382 F.3d 774, 782 (8th Cir. 2004); *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981). Accordingly, the Court grants George &

Co.'s Motion for Temporary Restraining Order. The reasons for the Court's determination will be more fully set forth in a separate forthcoming memorandum opinion.

Based on the files, records, and proceedings herein, and for the reasons to be set forth in a separate memorandum, **IT IS ORDERED** that:

1. George & Co.'s Motion for Temporary Restraining Order (Doc. No. 2) is **GRANTED** as follows.

a. Defendants and Defendants' directors, officers, agents, servants, employees, subsidiaries, affiliates, and all persons in active concert or participation with, through or under Defendants are temporarily enjoined from using in any way the LCR Marks or any reproduction, counterfeit, copy, or colorable imitation of said marks in connection with the advertising, offering for sale, or sale of any of Defendants' goods or services.

2. The parties are authorized to engage in discovery immediately.

3. Plaintiffs shall post cash or a bond in the amount of \$15,000 within ten (10) days of this Order.

Dated: November 17, 2009

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge