

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

KOREAN ASSOCIATION OF SAIPAN)

Plaintiff,)

v.)

JUM KEUM LIM, JANG SOO LEE, and)
BONG KEUN JUN,)

Defendants.)

Civil Action No. 00-0120

ORDER

I. PROCEDURAL BACKGROUND

This matter came before the court on March 10, 2000, in Courtroom 223A at 9:00 a.m. on Plaintiff's motion for a preliminary injunction. Stephen J. Nutting, Esq., appeared on behalf of the Plaintiff, Korean Association of Saipan. Jesus Borja, Esq., appeared on behalf of the Defendants, Jum Keum Lim, Jang Soo Lee, and Bong Keun Jun. The court, having heard and considered the arguments of counsel, and having been fully informed of the premises, now renders its written decision.

II. FACTS

The Korean Association of Saipan (Association) is a non-profit corporation incorporated on July 22, 1980. The Association was organized for the purpose of assisting Korean individuals residing in the Commonwealth.

The Association is governed in accordance with its corporate by-laws which establish procedures whereby officials are elected and serve various terms administering the day-to-day activities of the Association. A President, Vice-President, and a Board of Representatives guide the Association throughout their tenure. [p. 2]

Historically, the President was elected to serve a one-year term. However, on February 18, 1999, the by-laws were amended to provide that the President serve a two-year term and

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amended to abolish the “Election Control Committee.” Also on February 18, 1999, the Association elected Yang Hun Lee to serve as the twenty-third President of the Association.

On January 29, 2000, however, Defendant Jum Keum Lim published a notice in the Korean Community News which purported to convene a meeting of the “Election Control Committee” of the Association.

On February 19, 2000, Defendants announced that Defendant Jang Soo Lee had been appointed as Chief of the “Election Control Committee.” Plaintiff asserts that such action took place without the lawful approval of the Association or in accordance with its by-laws.

On March 3 and March 4, 2000, a second notice was published whereby it was announced that Defendants were appointed to the office of President and Vice-President without a vote as they had run for office unopposed. Again, Plaintiff asserts that such action took place without the lawful approval of the Association or in accordance with its by-laws.

On March 7, Plaintiff filed a verified complaint for injunction and for damages. Also on March 7, 2000, Plaintiff filed an *ex parte* motion for temporary restraining order against Defendants.

On March 8, 2000, the court entered an order granting Plaintiff’s motion for a temporary restraining order. The court’s order restrains Defendants from purporting to act on behalf of the Korean Association of Saipan or representing themselves as agents, directors or officers of the Association. The court further ordered that Defendants shall not present or publish to the general public or to members of the Korean Association of Saipan any sign or notice by which Defendants, or Defendants’ agents, employees, or associates purport to act on behalf of or otherwise represent the Korean Association of Saipan.

On March 10, 2000, the court entertained the arguments of Plaintiff and Defendants as to whether a preliminary injunction should issue and bind Defendants until such time as a determination on Plaintiff’s underlying complaint may be made on the merits. [p. 3]

III. ISSUE

Whether the court should grant Plaintiff's motion for a preliminary injunction on the ground that Defendants have unlawfully been holding themselves out as official representatives of the Korean Saipan Association in contravention of the by-laws and procedures of the Association.

IV. ANALYSIS

Com. R. Civ. P. 65(a) permits the court to issue a preliminary injunction. It is appropriate to consult interpretation of counterpart federal rules when interpreting Commonwealth procedural rules as the interpretation of such rules can be highly persuasive. *See Govendo v. Micronesian Garment Mafg., Inc.*, 2 N.M.I. 270 (1991). Whether injunctive relief should be granted is within the court's sound discretion. *Mississippi Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5th Cir. 1985). A preliminary injunction is an extraordinary remedy that should only be granted with the utmost care and should not be granted unless the need is clear. *Gold v. Ziff Communications Co.*, 553 N.E.2d 404, 408 (Ill. App. Ct. 1989). The function of a preliminary injunction is to preserve the *status quo* pending a determination of the action on the merits. *Los Angeles Mem'l Coliseum Comm'n. V. Nat'l Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980).

"The traditional equitable criteria for granting preliminary injunctive relief are: (1) a strong likelihood of success on the merits; (2) the possibility of irreparable injury to plaintiff if the preliminary relief is not granted; (3) a balance of hardships favoring the plaintiff; and (4) advancement of the public interest in certain cases." *Johnson v. California State Bd. of Accountancy*, 72 F.3d 1427, 1430 (9th Cir. 1995), *citing Dollar Rent A Car v. Travelers Indem. Co.*, 774 F.2d 1371, 1374 (9th Cir. 1985). "Alternatively, a court may issue a preliminary injunction if the moving party demonstrates either a combination of probable success on the merits and the possibility of irreparable harm, or the existence of serious questions going to the merits and a balance of hardships tipping in its favor." *Id.*, *see also Vision Sports Inc. v. Melville Corp.*, 888 F.2d 609, 612 (9th Cir. 1989); *Los Angeles Mem'l Coliseum Comm'n. v. Nat'l*

Football League, supra. Here, Plaintiff asserts under the [p. 4] alternative standard that the Association has shown probable success on the merits and the possibility of irreparable harm.

1. Probable Success on the Merits.

Plaintiff's complaint seeks a permanent injunction to restrain Defendants from further using the name of the Association and further representing themselves to be officers and directors of the Association. Plaintiff, therefore, must show that injunctive relief is a proper remedy and must show a probability that a permanent injunction will be granted after a trial on the merits.

Injunctive relief is appropriate as “[i]t is well established that the courts will protect a benevolent, fraternal or social organization in the use of its name by restraining another organization from using the same or one which is deceptively similar.” *Order of Owls v. Owls Club of McKees Rocks, et al.*, 99 F.Supp 555, 556 (D. Pa. 1951) (citations omitted). In *Order of Owls*, the principle issue in the case was whether the names adopted by the defendant corporations were deceptively similar and would tend to cause confusion and misunderstanding in the public mind and therefore deceive and induce strangers to join organization in the belief that it was the older and more established organization. *Id.* The court, in granting a permanent injunction, found that “Order of Owls” was deceptively similar to “Owls Club of McKees Rocks.”

Here, Plaintiff has shown that it is probable that a trial on the merits will show that Defendants not only adopted a similar name and purported to be its officers, but that they adopted the same name, “Korean Association of Saipan.” Furthermore, such a showing was not made by mere conjecture or unsupported allegations but by the introduction of affidavits, exhibits and testimony to that effect.

Specifically, Plaintiff's complaint for injunction and damages filed on March 7, 2000, shows that the Association convened a “General Assembly” meeting on February 18, in which a majority of the sixty-three members in attendance considered and passed amendments to the by-laws increasing the term of office for directors and officers to two years. *See* Plaintiff's

Complaint, at 2; *see also* Plaintiff's Complaint, Exhibit 1 (Minutes of General Meeting). Plaintiff has also shown that despite [p. 5] the result of this meeting, Defendants proceeded to issue a public notice on January 20, 2000, which purported to convene an "Election Control Meeting" even though the Election Control Committee was previously dissolved. *See* Plaintiff's Complaint, Exhibit 2 (Public Notice). Furthermore, Plaintiff has shown that this new "Election Control Committee" issued a public notice declaring that Defendant Jang Soo Lee as its "Chief." *See* Plaintiff's Complaint, Exhibit 3 (Public Notice). Finally, Plaintiff has shown that Defendants issued a public notice declaring Defendant Jum Keum Lim to be President and Defendant Bong Keun Jun to be Vice-President. *See* Plaintiff's Complaint, Exhibit 4 (Public Notice).

Plaintiff has, therefore, presented affidavits, exhibits, and testimony to show that the Association is a lawfully incorporated entity and that the Defendants have improperly claimed to be the "Korean Association of Saipan." As such, the court finds that Plaintiff has met its' burden of showing probable success on the merits at trial.

2. Possibility of Irreparable Harm.

Having established that Plaintiff has shown probable success on the merits at trial, the court must look to whether Plaintiff has established the possibility of irreparable harm. The possibility of irreparable harm must be imminent and not merely unsupported speculation. *ECRI v. McGraw-Hill, Inc.*, 809 F.2d 223, 226 (3rd Cir. 1987). Here, Plaintiff's assert that Defendants' "usurpation" of the name of the Association has deceived the general public and has harmed the reputation of the Association and its officers and directors. In addition, Plaintiff's contend that Defendants' continued use of the name of the Association or continued claim to be the lawful officers of the corporation will create "confusion" within the Korean community and will interfere with its task of aiding the community.

Defendants contend that a risk of confusion within the Korean community does not constitute irreparable harm. The court disagrees. In *Nowling v. Aero Services International, Inc.*, two groups of shareholders in the same corporation sought to hold a special meeting on the same

day. *See Nowling v. Aero Services International, Inc.*, 734 F.Supp 733 (D. La. 1990). The by-laws of the corporation, [p. 6] however, stated that only the President or the Board of the corporation could call a special meeting. As a result, one of the groups sought a preliminary injunction to enjoin the other meeting from taking place. The court, in finding a potential for irreparable harm, stated that “[c]onfusion as to who is the lawful company management and board would taint every transaction attempted by the legitimate board, one or the other.” *Id.*, at 742. Here, Defendants actions could potentially cause “confusion” and each action they take, including proclaiming themselves to be the lawful officers of the Association, could potentially taint the actions of the legitimate officers of the Association. As such, the court finds that Plaintiff has demonstrated the potential for irreparable harm.

V. CONCLUSION

The court finds that Plaintiff has shown probable success on the merits by affidavits, exhibits and testimony which indicate that Defendants are unlawfully holding themselves out to the community as being the original “Korean Association of Saipan.” The court also finds that Plaintiff has shown a potential for irreparable harm by presenting affidavits, exhibits and testimony which indicate that the actions of Defendant in holding themselves out to the community as officers of the Association will cause confusion within the Korean community that will taint the actions of the legitimate officers of the Association and the Association itself. As such, Plaintiff’s motion for a preliminary injunction is **GRANTED**.

Defendants are hereby ordered to refrain from purporting to act on behalf of the Korean Association of Saipan. Defendants are further ordered to refrain from representing themselves to be agents, directors or officers of the Association. In addition, Defendants shall not present or publish to the general public or to members of the Korean Association of Saipan any sign or notice by which Defendants or their agents, employees or associates, purport to act on behalf of or otherwise represent the Korean Association of Saipan.

The court notes that pursuant to Com. R. Civ. P. 65(c), “[n]o restraining order or preliminary injunction shall issue except upon the giving of security, in such sum as the court

deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to [p. 7] have been wrongfully enjoined or restrained.” Com. R. Civ. P. 65(c). As such, the court hereby orders Plaintiff to deposit the sum of two thousand and five hundred dollars (\$2,500.00) with the court as security pursuant to Com. R. Civ. P. 65(c).

It is further noted that this order shall supercede the Temporary Restraining Order entered on March 7, 2000. Also, should the parties wish to expedite this matter pursuant to Com. R. Civ. P. 65(a)(2), they should make such a request as soon as practicable.

So ORDERED this 16 day of March, 2000.

/s/ Juan T. Lizama
JUAN T. LIZAMA, Associate Judge