TROUTMAN AMIN, LLP
Puja Amin (State Bar # 299547)
Brittany A. Andres (State Bar # 340856)
Maxwell Levins (State Bar # 357137)
400 Spectrum Center Drive, Suite 1550
Irvine, California 92618
Telephone: +1 949 350 3663
Facsimile: +1 949 203 8689
amin@troutmanamin.com
brittany@troutmanamin.com
maxwell@troutmanamin.com

Attorneys for Plaintiffs
ERIC J. TROUTMAN and TROUTMAN
AMIN, LLP

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ERIC J. TROUTMAN and TROUTMAN AMIN, LLP,

Plaintiffs,

v.

SYMPLE LENDING LLC,

Defendant.

Case No. 8:25-cv-1181-JVS-KES

REPLY IN SUPPORT OF *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: ENTRY OF A PRELIMINARY INJUNCTION

Hearing Date: June 17, 2025
Hearing Time: 9:00 a.m.
Courtroom: 10C
Judge: Hon. James V. Selna

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. INTRODUCTION 6
II. RELEVANT BACKGROUND 7
III. ARGUMENT 8
A. Defendant is Incorrect in Characterizing the Preliminary Injunction as Mandatory Rather Than Prohibitive. 8
B. Plaintiffs Have Demonstrated a Likelihood of Success in Their Trademark Infringement Action. 9
1. The Protected Mark is Exceptionally Strong. 10
i. The Protected Mark is Conceptually Strong. 10
ii. The Protected Mark is Commercially Strong. 14
2. At Minimum, Defendant's Usage of the Infringing Mark Improperly Suggests Plaintiffs' Sponsorship or Affiliation. 15
3. The Protected Mark and Infringing Mark are Practically Identical. 18
4. Although Not Required, There is Already Actual Confusion. 19
5. Defendant Uses the Same Marketing Channels as Plaintiffs. 20
6. Plaintiffs' Services Allow Defendant to Capitalize on Plaintiffs' Goodwill, Regardless of Consumer Sophistication or Diligence. 21
7. Plaintiffs are Entitled to a Presumption that Defendant Intentionally Copied the Protected Mark, Which Defendant Fails to Rebut. 22
8. Likelihood of Expansion is at Least Neutral. 25
C. Plaintiffs Fail to Rebut Presumption of Irreparable Harm 25
D. The Balance of Equities Strongly Favors Plaintiffs. 27
E. Denial of the Preliminary Injunction Harms the Public. 28
F. Even if the Court Does Not Find a Likelihood of Success on the Merits, Plaintiffs Show Serious Questions Going to the Merits 29
IV. CONCLUSION 29

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

TABLE OF AUTHORITIES

Cases

Abercrombie & Fitch Co. v. Moose Creek, Inc.,
486 F.3d 629 (9th Cir. 2007) 11

AMF, Inc. v. Sleekcraft Boats,
599 F.2d 341 (9th Cir. 1979) .... passim

Apple, Inc. v. Amazon.com Inc.,
No. C 11-1327 PJH, 2011 WL 2638191 (N.D. Cal. July 6, 2011) 15

Athleta, Inc. v. Pitbull Clothing Co.,
No. CV 12-10499-CAS FMOX, 2013 WL 142877 (C.D. Cal. Jan. 7, 2013) 11

Boldface Licensing + Branding v. By Lee Tillett, Inc.,
940 F. Supp. 2d 1178 (C.D. Cal. 2013) 12, 14

Brookfield Commc'ns, Inc. v. W. Coast Ent. Corp.,
174 F.3d 1036 (9th Cir. 1999) .... passim

Charles Schwab & Co. v. Hibernia Bank,
665 F. Supp. 800 (N.D. Cal. 1987) 11

Vision Wheel, Inc v. Vision Forged,
732 F. Supp. 3d 1161 (C.D. Cal. 2024) 25

Cohn v. Petsmart, Inc.,
281 F.3d 837 (9th Cir. 2002) 20

Cove USA LLC v. No Bad Days Enters., Inc.,
No. 820CV02314JLSKES, 2022 WL 423399 (C.D. Cal. Jan. 5, 2022) 26

Dreamworks Prod. Group, Inc. v. SKG Studio,
142 F.3d 1127 (9th Cir. 1998) 16

E.&.J. Gallo Winery v. Gallo Cattle Co.,
967 F.2d 1280 (9th Cir. 1992) 15

Entrepreneur Media, Inc. v. Smith,
279 F.3d 1135 (9th Cir. 2002) 13, 14

F.T.C. v. Aaron Michael Jones,
No. 8:17-cv-00058 (C.D. Cal. dismissed Jan. 11, 2017) 16, 26

Friends of the Wild Swan v. Weber,
767 F.3d 936 (9th Cir. 2014) 29

GoTo.com, Inc. v. Walt Disney Co. ("*GoTo*"),
202 F.3d 1199 (9th Cir. 2000) .... passim

Grupo Salinas Inc. v. JR Salinas Wheels & Tires Inc.,
No. SACV161923JVSKESX, 2016 WL 9277320 (C.D. Cal. Dec. 22, 2016) 17

Henry Schein, Inc. v. Cook,
191 F. Supp. 3d 1072 (N.D. Cal. 2016) 27

Hokto Kinoko Co. v. Concord Farms, Inc.,
738 F.3d 1085 (9th Cir. 2013) 22, 23

Int'l Med. Devices, Inc. v. Cornell,
No. CV2003503CBMRAOX, 2021 WL 686441 (C.D. Cal. Jan. 20, 2021) 9

Ironhawk Techs., Inc. v. Dropbox, Inc.,
2 F.4th 1150 (9th Cir. 2021) 15

JL Beverage Co., LLC v. Jim Beam Brands Co.,
828 F.3d 1098 (9th Cir. 2016) 23

La Quinta Worldwide LLC v. Q.R.T.M., S.A. de C.V.,
762 F.3d 867 (9th Cir. 2014) 19

Lahoti v. Vericheck, Inc.,
636 F.3d 501 (9th Cir. 2011) 10, 25

Lerner & Rowe PC v. Brown Engstrand & Shely LLC,
119 F.4th 711 (9th Cir. 2024) 16

M2 Software, Inc. v. Madacy Ent.,
421 F.3d 1073 (9th Cir. 2005) 14, 15

Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.,
571 F.3d 873 (9th Cir. 2009) 8, 9

Monster Energy Co. v. Integrated Supply Network, LLC,
No. ED CV 17-548-CBM, 2018 WL 3361062 (C.D. Cal. June 4, 2018) 17, 25

Moose Creek, Inc. v. Abercrombie & Fitch Co.,
331 F. Supp. 2d 1214 (C.D. Cal. 2004) 13

Network Automation, Inc. v. Advanced Sys. Concepts, Inc.,
638 F.3d 1137 (9th Cir. 2011) 9, 14, 15, 16, 20

Pac. Sunwear of California Inc. v. KP Fashion Co.,
No. SACV0801141JVSANX, 2009 WL 10670246 (C.D. Cal. Mar. 20, 2009) .. 19

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

Pac. Sunwear of California, Inc. v. Kira Plastinina Style, Ltd.,
364 F. App'x 330 (9th Cir. 2010) 19

Pintrest v. Pintrips, Inc.,
140 F. Supp. 3d 997 (N.D. Cal. 2015) 20

Playboy Enters., Inc. v. Baccarat Clothing Co., Inc.,
692 F.2d 1272 (9th Cir. 1982) 28

Playboy Enters., Inc. v. Netscape Commc'ns Corp.,
354 F.3d 1020 (9th Cir. 2004) 21

Plough, Inc. v. Kreis Laboratories,
314 F.3d 635 (9th Cir. 1963) 19

Pom Wonderful LLC v. Hubbard,
775 F.3d 1118 (9th Cir. 2014) 10, 25

PowerFood, Inc. v. Sports Sci. Inst.,
No. C-93-0259 MHP, 1993 WL 13681782 (N.D. Cal. Mar. 11, 1993) 11

Punchbowl, Inc. v. AJ Press LLC,
No. 2:21-cv-03010-SVW-MAR, 2024 WL 4005220 (C.D. Cal. Aug. 22, 2024) 19

Rearden LLC v. Rearden Com., Inc.,
683 F.3d 1190 (9th Cir. 2012) 15, 28

Starbucks Corp. v. McKinney,
602 U.S. 339 (2024) 25

Tse, Saiget, Watanabe & McClure, Inc. v. Gentlecare Sys., Inc.,
936 F.2d 580 (9th Cir. 1991) 13

Winter v. National Resources Defense Council, Inc.,
555 U.S. 7 (2008) 6, 29

Statutes

15 U.S.C. § 1116 .... 6, 25

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

1 **I. INTRODUCTION**

2 Plaintiffs Eric J. Troutman and Troutman Amin, LLP ("Plaintiffs") seek a
3 Preliminary Injunction (ECF No. 19) preventing usage of the Infringing Mark by
4 Defendant Symple Lending LLC ("Defendant").

5
6
7
8

9 ECF No. 19, at 2 (on left, the "Infringing Mark"); Registration No. 7233778 (on right,
10 the "Protected Mark"). Defendant's Response and Opposition to Order to Show
11 Cause re: Entry of a Preliminary Injunction (ECF No. 25) (the "OSC Opposition")
12 offers three unpersuasive arguments against issuance of the Preliminary Injunction.

13 First, Defendant incorrectly contends that Plaintiffs seek a mandatory
14 injunction, rather than a prohibitive injunction, to mislead the Court into applying a
15 more burdensome standard than is generally required by trademark law.

16 Second, Defendant argues that Plaintiffs are unable to show a likelihood of
17 success on the merits by improperly characterizing the eight factors in *AMF, Inc. v.*
18 *Sleekcraft Boats*, 599 F.2d 341 (9th Cir. 1979) as elements. Plaintiffs need not
19 demonstrate every factor weighs in their favor, as the analysis under *Sleekcraft* is a
20 "pliant one" where "some factors are much more important than others." *GoTo.com,*
21 *Inc. v. Walt Disney Co.* ("*GoTo*"), 202 F.3d 1199, 12 (9th Cir. 2000).

22 Third, whilst ignoring black letter law, Defendant ineffectively argues that the
23 injunctive relief factors from *Winter v. National Resources Defense Council, Inc.*,
24 555 U.S. 7 (2008) do not favor the Preliminary Injunction. *See* 15 U.S.C. § 1116(a),

25 Defendant wholly fails to counter the core of Plaintiffs' arguments: that usage
26 of the Infringing Mark creates confusion that Defendant is associated with Plaintiffs.
27 It is not. The Preliminary Injunction must issue to protect Plaintiffs and the public.

28

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

II. RELEVANT BACKGROUND

On June 3, 2025, after Plaintiffs submitted their *Ex Parte* Application (the "Application") (ECF No. 10) and before the Court granted the Temporary Restraining Order, Plaintiffs became aware of additional evidence. *See* Decl. of Puja J. Amin in Support of App., ECF No. 23, at ¶ 4. Specifically, Plaintiffs' counsel came across a "sponsored" Instagram Story from the @SympleLending Instagram account. *Id.* at ¶ 4. Ms. Amin was not following the account, nor was she connected with the account in any way. *Id.* at ¶ 3. The following is a screenshot of that post:

Ex. A of Amin Decl., ECF No. 23-1.

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

III. ARGUMENT

A. Defendant is Incorrect in Characterizing the Preliminary Injunction as Mandatory Rather Than Prohibitive.

A prohibitory injunction "prohibits a party from taking action and 'preserve[s] the status quo pending a determination of the action on the merits.'" *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009) (citation omitted). In a trademark infringement action, the "status quo" refers to the time from before the defendant "began using its allegedly infringing logo." *GoTo*, 202 F.3d at 1199.

As a heightened standard is the only way that Defendant can oppose the Preliminary Injunction, Defendant focuses on the heightened standard itself rather than when the standard is triggered. *See* OSC Opp'n, at 8:8–17. Defendant is correct that a "mandatory injunction goes well beyond simply maintaining the status quo…." OSC Opp'n, at 8:8–9 (citing *Marlyn Nutraceuticals*, 871 F.3d at 879). However, Defendant makes no effort to define the "status quo," which means "the last, uncontested status which preceded the pending controversy." *Marlyn Nutraceuticals*, 571 F.3d at 879 (citation omitted).

Plaintiffs contest Defendant's usage of the Infringing Mark. Accordingly, the last, uncontested status proceeding the **controversy** was the period before Defendant began usage of the Infringing Mark—not the period before the filing of the lawsuit and after the usage began. Each action sought by Defendant's Preliminary Injunction plainly seeks the prohibition of an action that was taken after Defendant began using the Infringing Mark. *See* ECF No. 19:6–22. Accordingly, the Preliminary Injunction seeks to restore the status quo of before Defendant first used the Infringing Mark.

The *GoTo* court expressly rejected the defendant's "confused" argument that the proposed preliminary injunction altered the status quo simply because it forced the defendant to affirmatively stop infringing conduct. *GoTo*, 202 F.3d at 1210. If the status quo in a trademark infringement action referred to the period directly before

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

the lawsuit, every trademark infringement action would require the heightened showing for a mandatory injunction. *GoTo*, 202 F.3d at 1210 (characterizing the defendant's argument for a mandatory preliminary injunction as an "absurd situation[] in which [the] plaintiffs could never bring suit once infringing conduct had begun").

Just as was the case in *GoTo*, the status quo here is the time period from before Defendant began using the Infringing Mark. Removing posts containing the Infringing Mark from social media and publicly displayed versions of the Infringing Mark are not actions that require a showing for a mandatory injunction. *See Int'l Med. Devices, Inc. v. Cornell*, No. CV2003503CBMRAOX, 2021 WL 686441, at *8 (C.D. Cal. Jan. 20, 2021) (citing *GoTo*, 202 F.3d at 1210) ("In trademark infringement cases, the status quo is the period ***just before infringement***.") (emphasis added). As with most cases in trademark law that do not involve a product recall,[1] Plaintiffs clearly seek a prohibitive injunction. *See id.* at *4, *8–10 (C.D. Cal. Jan. 20, 2021) (granting prohibitive preliminary injunction where the plaintiff sought to have the defendant remove posts that infringed on their trademark).

B. Plaintiffs Have Demonstrated a Likelihood of Success in Their Trademark Infringement Action.

A trademark infringement action requires a plaintiff to demonstrate two elements: (a) ownership of a valid trademark and (b) a likelihood of consumer confusion. *Network Automation, Inc. v. Advanced Sys. Concepts, Inc.*, 638 F.3d 1137, 1144 (9th Cir. 2011).

As an initial matter, Defendant makes no effort to contest Plaintiffs' ownership of a valid registration for the Protected Mark. *See* Registration No. 7233778. As

[1] The only trademark case Defendant cites regarding mandatory injunctions involved a product recall. *See* Opp'n, at 8:1 (citing *Marlyn Nutraceuticals*, 571 F.3d at 879 (holding that "the affirmative step of recalling" a product constituted a mandatory injunction)).

stated by Defendant, because "Plaintiffs allege they have a protectable ownership interest in the [Protected] Mark … Defendant turns its focus to the likelihood of confusion test." OSC Opp'n, at 8:28–9:2. Defendant then states, in a footnote, that it "does not concede Plaintiffs' ownership of any trademark rights and plans on seeking cancellation of Plaintiffs' registration." *Id.* at 9:27–28. If Defendant seeks cancellation of the Protected Mark, it can take that up with the USPTO. Having made no specific argument regarding the cancellation of the Protected Mark, the only issue before this Court is the likelihood of confusion test. *Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1124 (9th Cir. 2014) ("When proof of registration is uncontested, the ownership interest element ... is met.").

Turning to the likelihood of consumer confusion analysis, the eight *Sleekcraft* factors are used to determine whether an infringing mark is likely to cause consumer confusion: (1) strength of the protected mark, (2) similarity of the infringing mark to the protected mark, (3) proximity or relatedness of the goods or services, (4) evidence of actual confusion, (5) marketing channels used, (6) types of goods or services and degree of care likely to be exercised by the consumer; (7) the defendant's intent to select the mark, and (8) likelihood of expansion of product or service lines. *Sleekcraft,* 599 F.2d at 348-49.

1. The Protected Mark is Exceptionally Strong.

There are two components of the strength-of-the-mark analysis: (i) conceptual strength and (ii) commercial strength. *See Lahoti v. Vericheck, Inc.*, 636 F.3d 501, 508 (9th Cir. 2011).

i. The Protected Mark is Presumptively and Conceptually Strong.

"Marks can be conceptually classified along a spectrum of generally increasing inherent distinctiveness as generic, descriptive, suggestive, arbitrary, or fanciful." *Brookfield Commc'ns, Inc. v. W. Coast Ent. Corp.*, 174 F.3d 1036, 1058 (9th Cir. 1999). A mark is arbitrary or fanciful where it has "no intrinsic connection to the

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

1 product with which the mark is used[.]" *Brookfield*, 174 F.3d at 1058. A mark that is
2 arbitrary or fanciful is entitled to a presumption of conceptual strength. *Id.*;
3 *Abercrombie & Fitch Co. v. Moose Creek, Inc.*, 486 F.3d 629, 633 (9th Cir. 2007).
4 As stated and unrebutted by Defendant, the Protected Mark is arbitrary and
5 fanciful and thus falls on the highest end of the distinctiveness spectrum. OSC Opp'n,
6 at 10:1–3 (citing App. at 17:5–11). Defendant understandably makes no effort to
7 contest that the Protected Mark is arbitrary or fanciful, as a lion on a crest does not
8 evoke legal services, which the Protected Mark commercially represents. *See Athleta,*
9 *Inc. v. Pitbull Clothing Co.*, No. CV 12-10499-CAS FMOX, 2013 WL 142877, at *6
10 (C.D. Cal. Jan. 7, 2013) (applying word mark standard to design marks and holding
11 that "the plaintiff's [] design mark is a strong, arbitrary, and inherently distinctive
12 mark, because this design bears no relation to the goods on which it is sold and has
13 no other apparent meaning"). Defendant does not meaningfully contest the
14 conceptual strength of the Protected Mark. *See* OSC Opp'n, at 10:1–5. Accordingly,
15 the Protected Mark is entitled to a presumption of conceptual strength.
16 Defendant is incorrect that the Protected Mark operates in a "crowded field"
17 and fails to carry its burden in proffering that argument. *See* OSC Opp'n, at 10:9. It
18 is true that a mark that is "arbitrary and thus presumptively strong [can] nonetheless
19 be classified as weak due to [a] 'crowded field' of similar marks." *Abercrombie &*
20 *Fitch Co.*, 486 F.3d at 633 (citation omitted). However, given the presumption of
21 strength afforded to arbitrary marks, even on a preliminary injunction, it is the
22 defendant's "burden of showing how extensive the uses are and how long they have
23 continued" in a "crowded field" analysis. *Charles Schwab & Co. v. Hibernia Bank*,
24 665 F. Supp. 800, 806 (N.D. Cal. 1987); *see PowerFood, Inc. v. Sports Sci. Inst.*, No.
25 C-93-0259 MHP, 1993 WL 13681782, at *5 (N.D. Cal. Mar. 11, 1993) (granting
26 preliminary injunction and explaining that the "defendant has [the] burden" in a
27 "crowded field" analysis). In the "crowded field" analysis on a motion for
28 preliminary injunction, "registration evidence may not be given *any* weight."

Boldface Licensing + Branding v. By Lee Tillett, Inc., 940 F. Supp. 2d 1178, 1191 (C.D. Cal. 2013) (citation omitted) (emphasis in original). "[T]hird-party registrations are not probative of conceptual weakness without evidence that the marks were actually used in commerce and viewed by consumers." *Id.*

Even on a preliminary injunction, Defendant has the burden to show other marks being ***used*** in a crowded field. Defendant primarily relies on USPTO Registration information in its crowded field argument. Ex. D of Decl. of Sara Escalante, ECF No. 25-6 (thousands of pages of USPTO registrations and applications). However, USPTO registrations on their own are not to be given "any weight" in a crowded field analysis. *Boldface Licensing*, 940 F. Supp. 2d at 1191. The reason for this is simple: "without evidence that 'the registrations and applications [are] in fact used in commerce, [the] evidence [will] not show that [the Protected Mark] is weakened because it is used in a "crowded field" of similar marks on similar goods.'" *Id.* Accordingly, for Defendant's "crowded field" argument to carry any weight, the cited registrations must be accompanied by evidence of actual usage in commerce. *See id*.

Only one single piece of usage "evidence" offered by Defendant of purportedly similar marks (Exhibit E of the Declaration of Sara Escalante) corresponds to any of the registrations or applications listed in Exhibit D of that same declaration. That one piece of usage evidence offered by Defendant is a LinkedIn post that links to TCPAWorld.com—the website owned and operated by Plaintiffs. *See* Ex. E of Decl. of Sara Escalante, ECF No. 25-7, at 10 (citing Eric J. Troutman, *MEET YOUR MAKERS: The Fifteen Companies/People That Will Set Standards for the Entire Lead Generation Industry*, (June 13, 2024), https://tcpaworld.com/2024/06/13/meet-your-makers-the-fifteen-companies-people-that-will-set-standards-for-the-entire-lead-generation-industry). The remaining usage evidence does not correspond to any of the USPTO registrations or applications cited in Defendant's improperly attached evidence. Levins Decl. in Support of Reply, at ¶¶ 4–5. The remaining "uses" are

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

exceptionally off-point. Usage of components of the Protected Mark by primary schools, amateur Sri Lankan soccer clubs, and Iraqi photographers do not factor into a "crowded field" analysis, as none of them are registered with the USPTO nor are they used in the same commercial field. *See id.*; ECF No. 25-7, at 11, 13, 17; *Tse, Saiget, Watanabe & McClure, Inc. v. Gentlecare Sys., Inc.*, 936 F.2d 580 (9th Cir. 1991) (upholding district court's declination to consider evidence in "crowded field" argument that did not show usage of actual marks).[2]

Evin if Defendant had offered relevant evidence of usage in commerce required to sustain a coherent "crowded field" argument, Defendant makes no effort to define the "field" itself. The "field" is not simply the entirety of the USPTO's trademark registration and application database. *See Entrepreneur Media, Inc. v. Smith*, 279 F.3d 1135, 1144 (9th Cir. 2002) ("[T]he relevant field is a field which at least broadly would include or be related to the plaintiff's business.").

Because the "crowded field" analysis requires Defendant to show the "use of *similar marks on similar goods* [*or services*,]" Defendant's "crowded field" argument would need to have produced evidence of similar marks ***on similar services***. *Moose Creek, Inc. v. Abercrombie & Fitch Co.*, 331 F. Supp. 2d 1214, 1224 (C.D. Cal. 2004) (emphasis in original). Aside from an application which is currently published for opposition and is unlikely to be approved, Defendant has not produced any evidence of similar marks on similar services. *See* OSC Opp'n, at 11:11 (citing ECF No. 25-6, at 652–53). Although Defendant highlights one application and contends that mark was first used in 2020—it relies on information provided by the application itself, which does not constitute evidence of ***use*** in commerce for a "crowded field" argument. *See Boldface*, 940 F. Supp. 2d at 1191. And the link included by Defendant

[2] If Defendant believed it had a "crowded field" argument to make, then surely attaching the relevant portions rather than all 1,181 pages of (unauthenticated) third-party research would have been the more prudent maneuver. *See* ECF No. 25-6, at 2–1,154; ECF No. 25-7 at 2–28.

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

1 does not include any usage of the applied-for mark, to where that mark could factor
2 into a "crowded field" argument. *See* Ex. I of Levins Decl. in Support of Reply. And
3 even if it did, the cited mark does not rival the similarity between the Protected Mark
4 and Infringing Mark. *See* ECF No. 25-6, at 653.

5 **ii. The Protected Mark is Commercially Strong.**

6 "Commercial strength is based on 'actual marketplace recognition,' and thus
7 'advertising expenditures can transform a suggestive mark into a strong mark.'"
8 *Network Automation, Inc.*, 638 F.3d at 1149 (quoting *Brookfield*, 173 F.3d at 1058).
9 "The district court [can] properly decline[] to consider commercial strength, which,
10 as an evidence-intensive inquiry, is unnecessary at the preliminary injunction stage."
11 *Id.* "[A] lack of commercial strength cannot diminish the overall strength of a
12 conceptually strong mark so as to render it undeserving of protection." *M2 Software,*
13 *Inc. v. Madacy Ent.*, 421 F.3d 1073, 1081 (9th Cir. 2005). "Otherwise, a mark which
14 is conceptually strong may never have the opportunity to blossom into its full
15 commercial potential through effective marketing." *Id.*

16 Selectively citing from *Network Automation*, a case which deemed it
17 unnecessary for a court to consider the "evidence-intensive inquiry" of commercial
18 strength at the preliminary injunction stage, Defendant mischaracterizes the law by
19 turning to a case that considered this factor on summary judgment. *See* OSC Opp'n,
20 at 11:5–11 (citing *Entrepreneur Media, Inc.*, 279 F.3d at 1144 (reviewing grant of
21 summary judgment)). Most importantly here, as set forth in Section III.B.1.i above,
22 the Protected Mark is conceptually strong and therefore unaffected even by a lack of
23 finding commercial strength. *M2 Software*, 421 F.3d at 1081.

24 Still, Plaintiffs have set forth significant evidence regarding the time and
25 seven-figure expenditures they have invested in the Protected Mark. *See* App. at
26 17:15 (citing Decl. of Eric J. Troutman ("Troutman Decl."), ECF No. 10-1, at ¶¶ 9–
27 10). It can also demonstrate use of the Protected Mark in commerce, which has been
28 exclusive contrary to Defendant's assertion. And while the Protected Mark has been

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

used for three years, finding the Protected Mark is not strong because it has not been used for a long enough time would deny it the "opportunity to blossom into its full commercial potential[.]" *M2 Software, Inc.*, 421 F.3d at 1081. Additionally, Plaintiffs will be able to offer evidence as to the public recognition of the Protected Mark at a "more appropriate" stage. *See Apple, Inc. v. Amazon.com Inc.*, No. C 11-1327 PJH, 2011 WL 2638191, at *6 (N.D. Cal. July 6, 2011) (citing *Network Automation, Inc.*, 638 F.3d at 1149) (declining to consider commercial strength at the preliminary injunction stage).

2. At Minimum, Defendant's Usage of the Infringing Mark Improperly Suggests Plaintiffs' Sponsorship or Affiliation.

"Goods and services are related when they are complementary, sold to the same class of purchasers, or similar in use and function." *Ironhawk Techs., Inc. v. Dropbox, Inc.*, 2 F.4th 1150, 1163 (9th Cir. 2021) (citing *Sleekcraft*, 599 F.2d at 350). However, a plaintiff "need not establish that the parties are direct competitors to satisfy the proximity or relatedness factor." *Id.* (quoting *Rearden LLC v. Rearden Com., Inc.*, 683 F.3d 1190, 1213 (9th Cir. 2012)).

Defendant's own argument is that Plaintiffs offer services that are complimentary to its own. Specifically, Defendant contends that Plaintiffs "are so motivated to publicly attack Defendant because Defendant's competitors are Plaintiffs' clients." TRO Opp'n, at 7:8–9. Assuming this is the case, and Plaintiffs' clients are Defendant's competitors, it stands to reason that Plaintiffs offer services to companies that are in the same or a similar line of business as Defendant. In this case, there is no doubt that the services offered by Defendant are complimentary to the services offered by Plaintiffs. Accordingly, the "danger of consumer confusion is heightened." *E.&J. Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280, 1291 (9th Cir. 1992). At the very least, the services sold by Defendant are complimentary to Plaintiffs' services, given the Federal Trade Commission's ("FTC") consent order against Mr. Fraley for violations of the Telephone Consumer Protection Act

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

1 ("TCPA") and the fact that Plaintiffs are specialists in defending against the TCPA.
2 *See* Stipulation to Entry of Final Order for Permanent Injunction and Civil Penalty
3 Judgment as to Defendant Houston Fraley ("FTC Consent Order"), ECF No. 5,
4 *F.T.C. v. Aaron Michael Jones et al.*, 8:17-cv-00058 (C.D. Cal. dismissed per
5 stipulation January 11, 2017).

6 Even if the Court does not find that the services are complimentary, that does
7 not preclude a finding for Plaintiffs on this factor. "The 'relatedness of each
8 company's prime directive isn't relevant' … Instead, the focus is on whether the
9 consuming public is likely to somehow associate" the defendant's products or
10 services with the plaintiff. *Brookfield*, 174 F.3d at 1056 (quoting *Dreamworks Prod.*
11 *Group, Inc. v. SKG Studio*, 142 F.3d 1127, 1131 (9th Cir. 1998)).

12 Defendant mistakenly relies on a case that involved keyword advertising—
13 meaning sponsoring of the plaintiff's word mark on a search engine so that the
14 defendant appears as a "sponsored link" when a consumer searches the plaintiff—
15 which is an area that has a specific and developed body of law. In considering the
16 grant of summary judgment, the *Lerner* court noted that "clear labeling can eliminate
17 the likelihood of initial interest confusion in cases involving Internet search terms."
18 *Lerner & Rowe PC v. Brown Engstrand & Shely LLC*, 119 F.4th 711, 723 (9th Cir.
19 2024) (citation omitted). Unlike *Lerner*, this case involves two exceptionally similar
20 design marks and does not concern internet search terms.

21 In *GoTo*, the Ninth Circuit was tasked with deciding whether two "remarkably
22 similar" logos used on the internet demonstrated a likelihood of success on the merits
23 to issue a preliminary injunction. *GoTo*, 202 F.3d at 1203. The logos in question were
24 for the plaintiff, a search engine, and the defendant (Disney). *Id.* The Court
25 determined that "the use of remarkably similar trademarks on different web sites
26 creates a likelihood of confusion amongst Web users" *Id*. at 1206. At the time, Disney
27 was launching its "Go Network" web portal of websites of Disney properties,
28 including ABC and ESPN. *Id*. Noting the similarity between the Go To Network and

1 the plaintiff's search engine, the court determined that even if Disney's services were
2 limited to areas "such as entertainment and leisure—[the] analysis would remain the
3 same" in part due to the similarity of the logos. *Id.* at 1207 n.2.
4 As set forth below in Section III.B.3, the high degree of similarity between
5 these two marks is undeniable. Indeed, only party to this litigation is repeatedly
6 offering a side-by-side comparison of the Protected Mark and Infringing Mark—and
7 it is not Defendant.
8
9
10
11
12
13

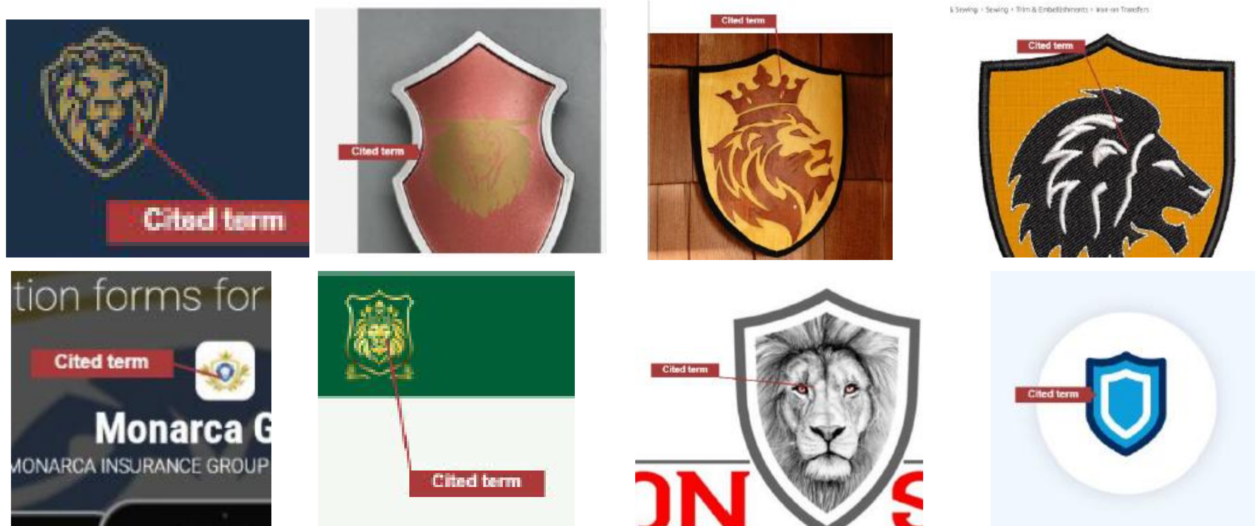
14 Ex. A of Troutman Decl., ECF No. 10-2; Ex. F of Levins Decl., ECF No. 10-12.
15 Similar to *GoTo*, the use of remarkably similar logos are being used on the
16 internet to promote the Parties' respective services. ECF No. 10-6, at ¶¶ 5–7; Ex. A
17 of Amin Decl. Accordingly, the court should determine that consumers are likely to
18 be confused due to the similarity between the marks. *See Monster Energy Co. v.*
19 *Integrated Supply Network, LLC*, No. ED CV 17-548-CBM-RAO, 2018 WL
20 3361062, at *3, *8 (C.D. Cal. June 4, 2018) (finding that a reasonable trier of fact
21 could conclude that the defendant's automotive tools were associated with the
22 plaintiff, a maker of energy drinks, in part due to the degree of similarity between the
23 marks). A finding on this factor is further strengthened by the fact that "both parties
24 exist in the same geographic area[s]" as both parties not only have offices in Irvine
25 but also have an office in Florida. *See Grupo Salinas Inc. v. JR Salinas Wheels &*
26 *Tires Inc.*, No. SACV161923JVSKESX, 2016 WL 9277320, at *3 (C.D. Cal. Dec.
27 22, 2016).
28

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

3. The Protected Mark and Infringing Mark are Practically Identical.

"Although similarity is measured by the marks as entities, similarities weigh more heavily than differences." *Sleekcraft*, 599 F.2d at 351.

As set forth in the Application, the overwhelming similarities between the Protected Mark and Infringing Mark include: "(1) a yellow lion (2) wearing a blue-and-yellow patterned crown (3) on an inner blue inner crest (4) placed on a blue and yellow patterned outer crest." App. at 18:17–19. Defendant offers nothing but trivial distinctions between the marks, such as the fact that, if you zoom in enough, Defendant's Infringing Mark is "baring teeth, while [the Protected Mark] is not." This distinction is quite obviously a trivial difference that one would not notice without specifically looking for differences. The overall impression of the Infringing Mark is identical to that of the Protected Mark. Defendant's remaining arguments to distinguish the Protected Mark from the Infringing Mark are similarly trivial and downright contradict Defendant's assertion that the logos identified in Section II of the OSC Opposition are "nearly identical" to the Protected Mark. *See* OSC Opp'n, at 7:5 (citing ECF No. 25-7).



ECF No. 25-7, at 13, 16. 19–24. If the above logos are "nearly identical" to the Protected Mark, then surely the Infringing Mark is also "nearly identical" to the

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

Protected Mark. *See* OSC Opp'n, at 7:5; *GoTo*, 202 F.3d at 1206 ("Quibbles over trivial distinctions between these two logos are unimpressive.").

4. Although Not Required, There is Already Actual Confusion.

Especially when a mark has been in use for a period of a few years, the difficulties in gathering actual evidence of confusion "generally make its absence unnoteworthy." *La Quinta Worldwide LLC v. Q.R.T.M., S.A. de C.V.*, 762 F.3d 867, 876 (9th Cir. 2014) (quoting *Brookfield*, 174 F.3d at 1050). However, evidence of actual confusion can strengthen a plaintiff's case where that evidence is available. *Sleekcraft*, 599 F.3d at 348 (citing *Plough, Inc. v. Kreis Laboratories*, 314 F.3d 635, 639 (9th Cir. 1963)). This factor is "weighed heavily" where "there is evidence of past confusion" or "when the particular circumstances indicate such evidence should have been available." *Id.* at 353.

Contrary to Defendant's "bald assertion," Plaintiffs have presented clear evidence of actual confusion. *See* OSC Opp'n, at 14. Plaintiff Troutman clearly attested that he has "***already*** needed to clarify that Troutman Amin, LLP is not affiliated with Defendant in any way due to confusion with the Infringing Mark." Troutman Decl. at ¶ 13 (emphasis added). This Court is properly entitled to rely on the declaration to determine whether the Preliminary Injunction is appropriate. *See Pac. Sunwear of California Inc. v. KP Fashion Co.*, No. SACV0801141JVSANX, 2009 WL 10670246, at *2 n.2 (C.D. Cal. Mar. 20, 2009), *aff'd sub nom. Pac. Sunwear of California, Inc. v. Kira Plastinina Style, Ltd.*, 364 F. App'x 330 (9th Cir. 2010) (dismissing objections based on evidence included in declarations at preliminary injunction stage).

Moreover, Defendant's reliance on *Punchbowl, Inc. v. AJ Press LLC*, No. 2:21-cv-03010-SVW-MAR, 2024 WL 4005220, at *10 (C.D. Cal. Aug. 22, 2024), is entirely misguided. Although this Court stated that "[m]istaken inquiries about affiliation which are easily clarified" do not constitute evidence of actual confusion, it immediately cited *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 842 n.7 (9th Cir. 2002)

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

for the proposition that this evidence is insufficient "***standing alone***." *Id.* (emphasis added). Here, however, this evidence does not stand alone—every *Sleekcraft* factor weighs in Plaintiffs' favor. *See* ECF Nos. 18–19 (finding "a reasonable likelihood that Plaintiffs will prevail on the merits" and describing Defendant's logo as a "confusingly similar trademark to Plaintiffs' registered trademark").

5. Defendant Uses the Same Marketing Channels as Plaintiffs.

"Overlapping or convergent marketing channels, such as marketing on the same social media website, can increase the likelihood that consumers may encounter both marks and become confused." *Pintrest v. Pintrips, Inc.*, 140 F. Supp. 3d 997, 1018 (N.D. Cal. 2015) (citing *Network Automation*, 638 F.3d at 1151).

Plaintiffs' evidence demonstrates that the mark was used in an advertisement on Instagram. Ex. A of Amin Decl. Mr. Fraley's declaration states the following: "Symple's Lion Symbol is used internally. It ***is*** not used to represent or advertise Symple Lending's brand or services in commerce; it ***is*** not Symple Lending's official logo, nor ***is*** it featured anywhere on Symple Lending's public website." Fraley Decl. at ¶ 20 (emphasis added). All Defendant has shown here is that they are not going to declare under oath that they are violating a Court Order. Indeed, the Infringing Mark ***was*** plainly used in commerce multiple times in an effort to promote Defendant. *See id.* In the spirit of fairness, Plaintiffs intentionally offered this evidence so that Defendant may have the chance to address the evidence in its Opposition. *See* Notice of Supplemental Evidence, ECF No. 22. Defendant instead chose feigned ignorance so that it can misleadingly imply that it has not used the Protected Mark in commerce. *See* Fraley Decl. at ¶ 20.

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

Sponsoring a post on Instagram demonstrates that Defendant uses the mark on the same medium as Plaintiffs. *See* Ex. D of Troutman Decl., ECF No. 10-5. Instagram is a platform where Plaintiffs have directly and indirectly spent significant sums, totaling over seven figures, to promote the Protected Mark. Troutman Decl. at ¶¶ 8–11. Plaintiffs have expended great cost to ensure that nearly any time a user or the official account for the University of California, Berkeley Golden Bears posts a highlight from a college basketball, volleyball, or football game hosted by the Golden Bears, a glimpse of the Protected Mark will be included. *Id.* at ¶ 10.

See Compl., ECF No. 1, at ¶ 34. By promoting the Infringing Mark on Instagram in connection with Defendant, Defendant intentionally used the goodwill that Plaintiffs have built on that same platform. Additionally, both Defendant and Plaintiffs use team sponsorships for sporting events. *See* @symplestrong, *Proud to have sponsored the Des Moines Menace in this year's Lamar Hunt U.S. Open Cup!,* Instagram (May 1, 2025), https://www.instagram.com/p/DJHpop2uZ6AA1QG4EqE9RXxmewcL3lA6Sqm7jY0.

6. Plaintiffs' Services Allow Defendant to Capitalize on Plaintiffs' Goodwill, Regardless of Consumer Sophistication or Diligence.

As set forth in the Application, "[i]nitial interest confusion is customer confusion that creates initial interest in a competitor's product." *Playboy Enters., Inc. v. Netscape Commc'ns Corp.*, 354 F.3d 1020, 1025 (9th Cir. 2004).

Defendant ignores the concept of initial interest confusion altogether, and strategically ignores the danger to consumers, opting to focus on the danger to prosepctive employees. Yet again, Defendant ignores the evidence of the Infringing Mark being sponsored on Instagram to accounts that do not follow Defendant to promote Defendant. *See* Amin Decl., at ¶¶ 3–4. After seeing the Infringing Mark, consumers are likely to associate Defendant with Plaintiffs due to the similarity between the marks—an association which provides Defendant with an unearned sense of legitimacy based on Plaintiffs' carefully developed goodwill, and the general trust afforded to law firms.

No amount of research or diligence by consumers can undo a consumer's impression that Plaintiffs sponsor or are affiliated with Defendant. For consumers seeking legal services, the idea that a law firm is affiliated with a lender would disrupt the diligent research conducted by those consumers. In conducting that research, consumers who are confused regarding affiliation will view Plaintiffs with skepticism due to the implied, improper affiliation between a law firm and private corporation. Conversely, for consumers seeking loan services, even if Defendant were targeting sophisticated consumers with their personal loan products, the sophistication does not protect consumers. Consumers know that they generally cannot learn whether a company is a client of a specific law firm and would be unable to undo the impression that Defendant is more trustworthy due to the implied affiliation with Plaintiffs. No amount of research can fix the false impression created by the Infringing Mark. Accordingly, this factor weighs in favor of Plaintiffs in the likelihood of confusion analysis.

7. Plaintiffs are Entitled to a Presumption that Defendant Intentionally Copied the Protected Mark, Which Defendant Fails to Rebut.

"When an alleged infringer knowingly adopts a mark identical or similar to another's mark, 'courts will presume an intent to deceive the public.'" *Hokto Kinoko*

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

Co. v. Concord Farms, Inc., 738 F.3d 1085, 1096 (9th Cir. 2013) (citation omitted); *JL Beverage Co., LLC v. Jim Beam Brands Co.*, 828 F.3d 1098, 1111 (9th Cir. 2016) (citation omitted). The knowledge may be "actual or constructive" to warrant the presumption. *Id.*

Defendant's Infringing Mark is practically identical to Plaintiffs' Protected mark. Defendant attempts to argue it did not have actual knowledge of the Protected Mark. Even though Mr. Tsuji did not start working as a C-level executive for Defendant until March 31, 2025, the Infringing Mark appears to have been created barely over one month[3] before Mr. Tsuji joined Defendant. *See* Ex. C of Fraley Decl., ECF No. 25-4, at 2. C-level executives generally have contact with a company well before they decide to join. Accordingly, it is highly plausible that Mr. Tsuji provided actual knowledge to Defendant. This is especially true given Mr. Tsuji's own admission that he attended Affiliate Summitt West in 2025, along with Defendants. ECF No. 10-6, at ¶ 10; Decl. of Tsuba Ted Tsuji, ECF No. 25-8, at ¶ 8.

Even if Mr. Tsuji did not provide the actual knowledge of the Protected Mark to Defendant, Mr. Fraley or a representative of Defendant almost certainly had actual knowledge of the Protected Mark. Their offices are located in Irvine. Almost certainly, an individual involved with the Infringing Mark's creation—whether Mr. Fraley, Mr. Tsuji, or another individual—takes flights out of John Wayne International Airport. Given Plaintiffs' extensive marketing efforts in that airport, that is sufficient to demonstrate constructive knowledge of the Protected Mark. *See* Troutman Decl. at ¶ 8. Accordingly, Plaintiffs are entitled to a presumption that Plaintiffs intentionally copied the Protected Mark.

---

[3] Defendant intentionally leaves the date unfilled so that it can pretend that the Infringing Mark was created "two months" before Mr. Tsuji officially joined Defendant, even though its evidence shows the date as February 26, 2025. *See* OSC. Opp'n, at 4:12, 6:8.; Decl. of Houston Fraley ("Fraley Decl.), ECF No. 25-1, at ¶ 12.

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

1 Defendant admits that it has "used a few iterations of its lion symbol since its
2 inception" and the ultimate creation of the Infringing Mark. OSC Opp'n, at 4:15–16.
3 However, notably absent from Defendant's declarations and Opposition images of
4 those iterations. By looking at the iterations, Defendant's deliberate steps to copy the
5 Protected Mark become visible. First, Defendant contends that it has used the "image
6 of a lion" since 2024. OSC Opp'n, at 4:10–12. The original lion image is below.
7
8
9
10
11

12 Ex. H of Levins Decl., ECF No. 10-14. In the next iteration, Defendant changed the
13 color of the lion from blue to yellow and changed the inner background (i.e., negative
14 space) to more closely match the Protected Mark.
15
16
17
18
19
20

21 Ex. G of Levins Decl., ECF No. 10-13. And for the final step, Defendant copied the
22 same pattern and color scheme for the outer background of the Protected Mark,
23 thereby creating the Infringing Mark. Given the location of the office where
24 Defendant displayed the Infringing Mark, and the clear steps Defendant took to inch
25 closer to the Protected Mark, it is likely that Defendant had constructive knowledge
26 of the Protected Mark (at minimum) before adopting the Infringing Mark. Defendant
27 has not offered sufficient evidence to rebut the presumption that it intentionally
28 copied the Protected Mark *See Concord Farms Inc.*, 738 F.3d 1096.

8. Likelihood of Expansion is at Least Neutral.

Where neither party offers evidence of product expansion, courts generally characterize this factor as neutral. *Pom Wonderful*, 775 F.3d at 1131 (citing *Lahoti*, 636 F.3d at 509) (characterizing the product expansion factor as "neutral" because neither party presented evidence regarding the likelihood of expansion)).

Plaintiffs have offered evidence that they printed the Infringing Mark on employee swag and merchandise "represent[ation] of strength and honor." OSC Opp'n, at 4:13–27. Already, this arguably places Defendant in direct competition with Plaintiffs, who sell merchandise featuring the Protected Mark. *See* Troutman Amin, LLP, *The DTW Essentials* (last visited June 16, 2025 at 5:19 p.m.), https://www.youdeservetowin.com/lifestyle. Printing the Infringing Mark on merchandise is not done in a vacuum. Defendant knows and expects that its employees will use that merchandise outside its offices. Of course, that is part of the incentive in printing employee merchandise. Even if it is not the primary line of business, this overlap can already constitute competition in commerce. At the very least, it demonstrates a sufficient likelihood that Defendant may take the merchandise it already prints and place it in commerce. Accordingly, this factor supports finding a likelihood of confusion or is at least neutral. *See Monster Energy Co.*, 2018 WL 3361062, at *5.

C. Plaintiffs Fail to Rebut Presumption of Irreparable Harm.

"[P]laintiffs alleging trademark violations are entitled to 'a rebuttable presumption of irreparable harm ... upon a finding of likelihood of success on the merits.'" *Starbucks Corp. v. McKinney*, 602 U.S. 339, 348 (2024) (quoting 15 U.S.C. § 1116(a) ("Section 1116(a)")).

As explained in the Application, Section 1116(a) governing injunctive relief for trademark infringement was amended in 2020 to explicitly allow the presumption of irreparable harm in trademark infringement preliminary injunctions and temporary restraining orders. App. at 29:20–28 (citing *Vision Wheel, Inc v. Vision Forged,* 732

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

F. Supp. 3d 1161 (C.D. Cal. 2024)). As Plaintiffs have established a reasonable likelihood of success on the merits, the presumption of irreparable harm applies. *See* Orders Granting TRO, ECF Nos. 19–20, at 1:27 ("There is a reasonable likelihood that Plaintiffs will prevail on the merits.").

Even if Plaintiffs did need to demonstrate that they would suffer irreparable harm in the absence of the Preliminary Injunction, Plaintiffs clearly did so even before the evidence of the sponsored Instagram Story. Even without this evidence, the threat of future open house events at which Defendant conducts marketing outreach constitutes a danger of irreparable harm. Given the FTC's consent order, it is unclear how a company Mr. Fraley has founded is conducting marketing outreach to consumers. *See* FTC Consent Order, *Aaron Michael Jones et al.*, 8:17-cv-00058. This danger of irreparable harm is accordingly substantial prospective employees of Defendant, who may believe it is safe or advisable to work with Defendant by virtue of the implied association with Plaintiffs.

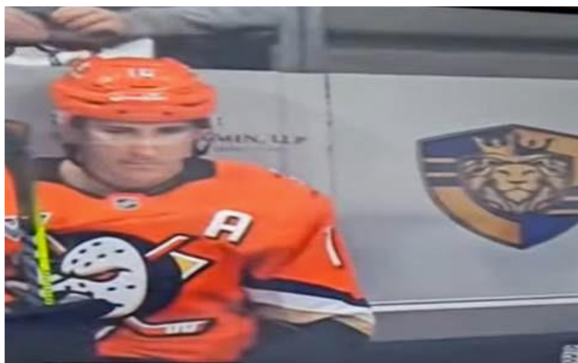
The danger of irreparable harm also applies to prospective consumers who are contacted by Defendant. Plaintiffs' showing is bolstered by the sponsored Instagram Story posted by Defendant. *See* Ex. A of Amin Decl. Of course, law firms and lawyers are not permitted to conduct one-on-one outreach directly to consumers or prospective clients. The danger of even one individual consumer believing that Plaintiffs are associated with Defendant by virtue of a call or a text message ***shatters*** the Protected Mark's goodwill. Evidence of the sponsoring of posts on a social media platform frequently used by Plaintiffs bolsters Plaintiffs' ability to show irreparable harm. *See Cove USA LLC v. No Bad Days Enters., Inc.*, No. 820CV02314JLSKES, 2022 WL 423399, at *2 (C.D. Cal. Jan. 5, 2022) (holding that evidence of irreparable harm was "bolstered by" evidence that the infringement endangered the plaintiff's "hard-won reputation").

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

D. The Balance of Equities Strongly Favors Plaintiffs.

Defendant contends that it will "suffer great harm in that it will be forced to stop using" the Infringing Mark. Specifically, Defendant laments that stopping illegal usage of the Infringing Mark will "hurt employee morale, as well as financially impact [Defendant] in that it has spent approximately $20,000 to $30,000 featuring the symbol in its offices and on employee swag." OSC Opp'n, at 18:18–20. However, costs associated with stopping usage of the Infringing Mark, as a matter of law, do not play into the balance of equities analysis. *See Henry Schein, Inc. v. Cook*, 191 F. Supp. 3d 1072, 1077 (N.D. Cal. 2016) ("An injunction that requires a party to comply with law is not a burden.").

Plaintiffs must also point out the fact that three employees of Defendant got tattoos of the Infringing Mark. OSC Opp'n, at 18:17; Fraley Decl. at ¶ 18. While admittedly fascinating, this fact does not support Defendant's contention that the balance of equities shifts to allow it to break the law and use the mark in commerce due to (ill-advised) tattoos. Even for individuals who love their employers, tattooing a company logo of any kind is… quite unique. Most frequently, people are seemingly comfortable with getting a tattoo of something that is recognizable and in the media. It seems that Plaintiffs' efforts to market the Protected Mark may have provided added familiarity with the Infringing Mark that may have aided the decision to tattoo the Infringing Mark.



Compl. at ¶¶ 34, 37.

On the other hand, if the Infringing Mark is permitted to be used in commerce as Defendant has already done, Plaintiffs will suffer significant costs in informing the public of the lack of any connection between Defendant and Plaintiffs. Such efforts may be legally demanded by the ethical obligations placed on law firms precluding the offering of non-legal services. Accordingly, the need for Plaintiffs to ensure the public is aware that there is no affiliation will be great, and costly, if the Infringing Mark's usage is permitted to continue.

E. Denial of the Preliminary Injunction Harms the Public.

"In addition to the harm caused the trademark owner, the consuming public is equally injured by an inadequate judicial response to trademark infringement." *Playboy Enters., Inc. v. Baccarat Clothing Co., Inc.*, 692 F.2d 1272, 1275 (9th Cir. 1982).

Yet again, Defendant conveniently ignores the additional evidence of use in commerce on Instagram—the same platform utilized by Plaintiffs in its promotion of the Protected Mark. *See* Amin Decl. at ¶¶ 3–4. The sponsored usage of the Infringing Mark plainly poses a danger that the public may believe Defendant is "sponsored by" or "affiliated with" Plaintiffs. *Rearden LLC*, 683 F.3d at 1209. Further, Defendant itself offered strong evidence of confusion themselves, as the first mark listed in its usage report was a slightly cropped version of the Protected Mark, which showed every characteristic copied by the Infringing Mark. *See* Escalante Decl. at ¶ 6; ECF No. 25-7, at 10.

The danger to the public of this (mistaken) belief is exacerbated by the type of law practiced by Plaintiffs overlapping with frequent claims against businesses of the same type as Defendant. Indeed, Defendant's founder already has experience in these types of claims. Accordingly, two sectors of the public are at risk of significant harm by virtue of this association, as explained in Section III.D above.

Finally, Defendant's Opposition admits that Defendant has offices in the exact same locations as Plaintiffs. OSC Opp'n, at 8:5–6. And it confirms that Plaintiffs

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

intend to adopt the Infringing Mark in its other office, likely to be open to the public for future events given Defendant's previous endeavors. Fraley Decl. at ¶ 15. Accordingly, the geographic usage of the Infringing Mark mirroring Plaintiffs' locations poses an additional danger to the public.

F. Even if the Court Does Not Find a Likelihood of Success on the Merits, Plaintiffs Show Serious Questions Going to the Merits.

In the Ninth Circuit, where plaintiffs "can only show that there are 'serious questions going to the merits'—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the 'balance of hardships tips *sharply* in the plaintiff's favor,' and the other two *Winter* factors are satisfied." *Friends of the Wild Swan v. Weber*, 767 F.3d 936, 942 (9th Cir. 2014) (citation omitted).

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant their Application and enter the Preliminary Injunction.

Dated: June 16, 2025

TROUTMAN AMIN, LLP

By: /s/Maxwell Levins
Puja J. Amin
Brittany A. Andres
Maxwell Levins

Attorneys for Plaintiffs Eric J. Troutman and Troutman Amin, LLP

LOCAL RULE 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiffs, certifies that this brief contains 6,939 words, which complies with the word limit set by Local Rule 11-6.1.

/s/ Maxwell Levins
Maxwell Levins

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TROUTMAN AMIN, LLP
400 Spectrum Center Drive, Suite 1550, Irvine CA 92618
troutman@troutmanamin.com

CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2025, a copy of the foregoing was served by ECF to counsel of record.

/s/ Maxwell Levins
Maxwell Levins