

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CASCADE MANUFACTURING SALES,  
INC., a Washington corporation,

Plaintiff,

vs.

PROVIDENT CO TRUST, a Washington  
trust dba WORMSWRANGLER.COM;  
BARRY RUSSELL, an individual,

Defendants.

CASE NO: C08-5433RBL

CASCADE MANUFACTURING SALES,  
INC.'S MOTION FOR A PRELIMINARY  
INJUNCTION

Noted for Hearing: **August 15, 2008**

ORAL ARGUMENT REQUESTED

**I. INTRODUCTION**

Cascade Manufacturing Sales, Inc. (“*Cascade*”), the owner of the federally registered trademark, “WORM FACTORY,” (the “*Mark*”) seeks an injunction preventing Provident Co Trust, d/b/a WormsWrangler.com (“*Provident*”) and Barry Russell (“*Russell*”) from unlawfully using Cascade’s Mark and logo pending resolution of this lawsuit. Provident is using Cascade’s Mark and logo in an infringing manner on Provident’s website (the “*Site*”) accessible at <wormswrangler.com>. Provident has also unlawfully used Cascade’s Mark and logo in online advertising efforts and on Provident’s pricing/order forms. Provident’s use of Cascade’s Mark and logo is unlawful and infringing as Provident lacks a license to use the Mark or logo. As a result, an injunction is necessary to stop Provident’s unlawful actions

1 and preserve Cascade’s goodwill in the Mark pending resolution of this lawsuit.

2 **II. FACTUAL BACKGROUND**

3 **A. CASCADE’S BUSINESS AND RIGHTS IN THE MARK**

4 Since 1999, Cascade has engaged in the business of manufacturing and selling  
5 composting bins. (*See* Rhodes Decl., ¶ 2.) Throughout its years of operation, Cascade has  
6 extensively promoted its products and has used the federally registered trademark, “WORM  
7 FACTORY” (the “*Mark*”) (Registration number 3448973) as well as a logo to promote its  
8 compost bins. (*See* Rhodes Decl., ¶ 3, **Ex. A.**) In fact, the Mark and logo have been used in  
9 commerce by Cascade since at least 2000, and Cascade’s use of the Mark and logo has been  
10 substantially continuous and exclusive. (*Id.*, ¶ 4.) In addition, Cascade has received  
11 extensive media coverage. It has been featured on, or appeared in, numerous television  
12 shows and other media, including: Paul James, Gardening by the Yard, HGTV and  
13 Gardening with Ciscoe Morris on King 5 TV. (*Id.*, ¶ 5.)

14 Cascade is well recognized in its industry and is one of the preeminent manufacturers  
15 of composting bins. (*See* Benoy Decl., ¶ 5; Rhoads Decl., ¶ 6.) Cascade’s recognition stems  
16 from the fact that it has expended a considerable amount of time, money, and effort to build  
17 strong brand recognition and goodwill, including building goodwill in its Mark and logo, and  
18 in its sourcing and processes. (*See* Rhoads Decl., ¶ 7.) Cascade’s products are sold not only  
19 in the United States but also in the UK, Canada, Ireland, France, Germany and South Africa.  
20 Cascade engages in the promotion and sales of its products through various channels,  
21 including the internet and traditional retail stores. (*Id.*, ¶ 8.)

22 Composting bins vary in quality, size, color, construction, and by the features they  
23 offer. (*Id.*, ¶ 9.) Customers are selective about these attributes, as well as about where and  
24 how a particular composting bin is manufactured. (*Id.*, ¶ 10.)

25 **B. PROVIDENT’S ACTS OF INFRINGEMENT**

26 Provident is a “trust” which is operated by Barry Russell. Barry Russell is the trustee  
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1 of Provident, and operates the wormswrangler.com website (the “*Site*”). The Site was  
2 formerly registered to Mr. Russell’s name. (Balasubramani Decl., ¶ 2.) Provident markets  
3 and sells its composting bins through various channels, including direct sales and distribution  
4 through internet websites, such as eBay.com. (*Id.*, ¶ 12) Provident sells composting bins  
5 which are similar in style and in the same cost-range as Cascade. It is fair to say that the two  
6 entities are competitors and market to the same or similar customer base. (*Id.*, ¶ 13.)

7 Provident and Cascade previously had a business relationship pursuant to which  
8 Provident would purchase Cascade’s composting bins for re-sale. Approximately nineteen  
9 (19) months ago, Provident defaulted on the operative agreement and ceased paying Cascade  
10 the amounts which Cascade was due. (*Id.*, ¶ 14.) As of the date of this filing, Provident  
11 owes Cascade over ten thousand dollars. Provident has not disputed these amounts – it has  
12 simply refused to pay them. The operative agreement does not contain any provisions for an  
13 ongoing trademark license between Cascade and Provident. (*Id.*, ¶ 15.)

14 Provident is currently using Cascade’s Mark and logo on its Site. Specifically,  
15 Provident purports to offer for sale “WORM FACTORY”-branded products. (*See Rhoads*  
16 *Decl.*, ¶ 16; **Ex. B.**) Provident has also utilized Cascade’s Mark and logo on its order forms.  
17 (*See Rhoads Decl.*, ¶ 16; **Ex. C.**) In addition, Provident has used Cascade’s Mark  
18 extensively in online advertising efforts, including for key-word based search engine  
19 advertising and metatags underlying the Site. (*See Rhodes Decl.*, ¶ 17.)

### 20 **C. PROVIDENT’S INFRINGEMENTS CAUSED CUSTOMER CONFUSION**

21 Provident’s acts of infringements have caused confusion among Cascade’s customers  
22 or potential customers. One long-time Cascade customer who also sells composting bins  
23 attests that she received numerous queries from customers regarding the differences between  
24 the two brands of “worm factory” composting bins. (*See Rhodes Decl.*, ¶ 18; *see generally*  
25 *Benoy Decl.*) Customers have asked about the difference between the composting bins sold  
26 by Provident through the Site and those sold by Cascade. Customers have expressed to  
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1 Cascade’s customers and associates confusion as to the source of these two products. (*See*  
2 Benoy Decl. ¶ 9.) Additionally, customers expressed actual confusion in postings on the  
3 internet (in message boards). (*See* Rhoads Decl. ¶19, **Ex. D.**)

4 Cascade’s counsel sent a letter to Provident’s counsel requesting Provident to cease  
5 and desist the infringing use of Cascade’s Mark and logo. (*See* Rhoads Decl. ¶20, **Ex. E.**)  
6 Provident has thus far refused to stop utilizing Cascade’s Mark. (*See* Rhoads Decl. ¶21, **Ex.**  
7 **F.**) Provident initially questioned whether Cascade had any rights in the Mark. When  
8 presented with Cascade’s federal registration for the Mark, Provident then claimed that it was  
9 using the Mark pursuant to a license and that Cascade’s rights were junior due to a third  
10 party’s use of the Mark. (*Id.*)

### 11 **III. ARGUMENT**

#### 12 **A. A PRELIMINARY INJUNCTION IS APPROPRIATE TO PREVENT** 13 **PROVIDENT’S CONTINUED INFRINGEMENTS**

##### 14 1. Preliminary Injunction standards.

15 The issuance of a preliminary injunction is appropriate where the moving party can  
16 demonstrate either: “(1) a likelihood of success on the merits and the possibility of  
17 irreparable injury or (2) that serious questions going to the merits were raised and the balance  
18 of hardships tips sharply in its favor.” Brookfield Communications, Inc. v. West Coast  
19 Entertainment Corp., 174 F.3d 1036, 1046 (9th Cir. 1999); *see also* Clear Channel Outdoor,  
20 Inc. v. City of Los Angeles, 340 F.3d 810, 813 (9th Cir. 2003). These two alternatives  
21 represent “two points on a sliding scale in which the required degree of irreparable harm  
22 increases as the probability of success decreases.” eAcceleration Corp. v. Trend Micro, Inc.,  
23 408 F. Supp. 2d 1110, 1113 (W.D. Wash. 2006). Here, Cascade will be entitled to a  
24 preliminary injunction upon demonstrating the likelihood of success on its trademark claims.

##### 25 2. Cascade is entitled to an injunction because it is likely to succeed on its 26 Lanham Act claims.

27 The elements necessary to establish a trademark infringement claim and an unfair  
competition claim under sections 32 and 43(a) of the Lanham Act are identical.

1 eAcceleration, 408 F. Supp. 2d at 1114; Brookfield, 174 F.3d at 1047, n. 8. Specifically, the  
2 party seeking the injunction must demonstrate that: (1) “it owns a valid mark and thus a  
3 protectable interest” and (2) “the alleged infringer’s use of the mark is likely to cause  
4 confusion.” Brookfield, 174 F.3d at 1046 fn.6 (citing AMF, Inc. v. Sleekcraft Boats, 599  
5 F.2d 341, 348 (9th Cir. 1979)). Thus, in the instant case, in order to be entitled to an  
6 injunction, Cascade must show that (1) it owns a valid and protectable interest in the,  
7 “WORM FACTORY” Mark and (2) Provident’s use of the Mark is likely to cause consumer  
8 confusion.

9 *a. validity of the Mark*

10 Registration of a mark on the United States Patent and Trademark Office’s Principal  
11 Register “constitutes prima facie evidence of the validity of a registered mark and of the  
12 trademark owner’s exclusive right to use the mark on the goods and services specified in the  
13 registration.” Brookfield, 174 F.3d at 1047. In addition, “federal registration of a trademark  
14 endows it with a strong presumption of validity”. KP Permanent Make-Up, Inc. v. Lasting  
15 Impression I, Inc., 408 F.3d 596, 604 (9th Cir. 2005).

16 Here, Cascade’s “WORM FACTORY” mark is registered on the Principal Register  
17 (Reg. No. 3448973). (See Rhoads Decl., **Ex A.**) Cascade’s registration is thus prima facie  
18 evidence of the validity of the Mark and Cascade’s ownership therein. As a result, Cascade  
19 satisfies the first prong of the test because “it owns a valid mark and thus a protectable  
20 interest.”

21 *b. likelihood of confusion*

22 In order to satisfy the second prong of the two-part test, Cascade must show that the  
23 public is likely to be somehow confused about the source or sponsorship of Provident’s  
24 products (the alleged infringer), and associate Provident’s products with Cascade’s products.  
25 Brookfield, 174 F.3d at 1053. However, at the preliminary injunction stage, Cascade does  
26 not have the burden of conclusively establishing a likelihood of confusion. Rather, Cascade  
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1 must merely demonstrate that “it is likely to be able to show such a likelihood of confusion.”  
2 Brookfield, 174 F.3d at 1053, n. 15; *see also* J. Thomas McCarthy, MCCARTHY ON  
3 TRADEMARKS AND UNFAIR COMPETITION, § 23:12, at 23-48 to 23-49 (2003).

4 The determination of a likelihood of confusion is guided by the Sleekcraft factors,  
5 which are: “(1) the strength of the marks; (2) proximity of the goods; (3) similarity of the  
6 marks; (4) evidence of actual confusion; (5) marketing channels used; (6) type of goods and  
7 the degree of care likely to be exercised by the purchaser; (7) defendant’s intent in selecting  
8 the mark; and (8) likelihood of expansion of the product lines.” Sleekcraft, 599 F.2d at 348-  
9 49. However, the Sleekcraft factors are not exhaustive, and are flexible. Brookfield, 174  
10 F.3d at 1054. Some factors are deemed more important than others, and “it is often possible  
11 to reach a conclusion with respect to likelihood of confusion after considering only a subset  
12 of the factors.” Id. (citing Dreamwerks Prod. Group v. SKG Studio, 142 F.3d 1127, 1130-32  
13 (9th Cir. 1998)). For example, a finding of actual confusion is not necessary in order to  
14 determine there is a likelihood of confusion under the Lanham Act. Hard Rock Café  
15 Licensing Corp. v. Pacific Graphics, Inc., 776 F. Supp. 1454, 1461 (W.D. Wash. 1991)  
16 (quoting American Int’l Group, Inc. v. American Int’l Bank, 926 F.2d 829, 832 (9th Cir.  
17 1983)). Courts have noted that in the context of the internet, the three most important  
18 Sleekcraft factors are “(1) similarity of the marks, (2) the relatedness of the goods or  
19 services, and (3) the simultaneous use of the Web as a marketing channel.” Brookfield, 174  
20 F.3d at 1055 n. 16; *see also* GoTo.Com, Inc. v. The Walt Disney Co., et al., 202 F.3d 1199,  
21 1205 (9th Cir. 2000) (“This trinity constitutes the most crucial body of the Sleekcraft  
22 analysis...”).

23 *i. the marks are identical in this case*

24 The similarity of the marks is a critical issue in analyzing the Sleekcraft factors – the  
25 more similar the marks, the more likely consumers will be confused as to the origin and  
26 sponsorship of the goods or services. GoTo.Com, 202 F.3d at 1205. In particular, the more  
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1 similar the marks in terms of the appearance, sound and meaning, the greater likelihood of  
2 confusion. Brookfield, 174 F.3d at 1054.

3 Here, there is no question the mark used by Prudent is similar in appearance, sound  
4 and meaning to Cascade’s federally registered mark, “WORM FACTORY.” Specifically,  
5 Prudent is using *an identical mark and logo* on its website and order forms and has used the  
6 Mark in its online advertising efforts. (*See Rhoads Decl., Exs. B, C, & D.*) As a result, this  
7 favor weighs heavily in favor of Cascade.

8 *ii. the goods and services are also identical*

9 The relatedness of the goods and services at issue is also a key Sleekcraft factor. This  
10 is because “related goods are generally more likely than unrelated goods to confuse the  
11 public as to the producers of the goods.” Brookfield, 174 F.3d at 1055; *see also GoTo.Com*,  
12 202 F.3d at 1206.

13 Here, Cascade and Provident are competitors, and the products sold by Cascade and  
14 Provident are identical: composting bins. (*See Rhoads Decl., Exs. B and C.*) In addition,  
15 both Cascade and Provident sell composting bins through internet websites, such as eBay.  
16 (*See Rhoads Decl., ¶8.*) As a result, given the fact that Cascade and Provident sell virtually  
17 identical products and Provident is using Cascade’s Mark and logo on its products, there is a  
18 high degree of a likelihood of confusion. *See Brookfield*, 174 F.3d at 1056 (the virtual  
19 identity of the marks used with identical products or services results in a finding of a  
20 likelihood of confusion).

21 *iii. the simultaneous use of the web as a marketing channel*

22 The simultaneous use of the web as a marketing channel is a factor that many courts  
23 have “recognized as exacerbating the likelihood of confusion.” Brookfield, 174 F.3d at 1057  
24 (citations omitted). Here, both Cascade and Provident utilize the internet as a marketing and  
25 advertising channel as well as maintain their own websites. In addition, Provident has used  
26 Cascade’s Mark and logo in its own online advertising and marketing activities. As a result,  
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1 there is a likelihood of confusion here where both Cascade and Provident have a web  
2 presence and use the web for marketing and sales activities.

3 *c. Cascade puts forth evidence of actual confusion*

4 In addition to the likelihood of confusion based on the factors above, Cascade also  
5 puts forth actual evidence of confusion from two sources. One of Cascade's long-time  
6 customers who also sells gardening and composting products attests to numerous instances of  
7 customers being confused as to the relationship between the two types of "worm factory"-  
8 branded bins. (See generally Benoy Decl.) Similarly, customers have posted on the internet  
9 (in forums) questions and discussion indicating actual confusion as to the relationship  
10 between the Cascade and Provident. (See Rhoads Decl. ¶19, Ex. D.) Cascade's concerns  
11 here are not speculative – it was motivated to act in this instance by actual confusion and  
12 harm to Cascade's revenues.

13 *d. Cascade's request for an injunction is appropriate*

14 Given the fact that Provident is using Cascade's Mark and logo, Provident's goods  
15 and Cascade's goods are identical and both companies use the web for marketing and sales  
16 activities, there is a likelihood of confusion. In addition, Cascade puts forth evidence of  
17 actual confusion. (See Rhoads Decl., Ex. D.)<sup>1</sup> Accordingly, Cascade has made a sufficient  
18 showing of likelihood that it will prevail on its Lanham Act claims, and it satisfies the test for  
19 being entitled to injunctive relief.

20 3. Cascade and its brand will suffer irreparable harm absent an injunction.

21 In both trademark and unfair competition actions, once the moving party "establishes  
22 a likelihood of confusion, it is ordinarily presumed that the [moving party] will suffer  
23 irreparable harm." Rodeo Collection, Ltd. v. West Seventh, 812 F.2d 1215, 1217 (9th Cir.  
24 1987). As discussed above, the facts overwhelmingly suggest there is a likelihood of  
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26 <sup>1</sup> This evidence is not objectionable at the preliminary injunction stage, where the Court has flexibility to consider  
27 hearsay evidence. See, e.g., Republic of Philippines v. Marcos, 862 F.2d 1355, 1363 (9th Cir. 1988).



1 confusion in the instant case. Cascade also puts forth some evidence of actual confusion.

2 Cascade has expended considerable time, money and effort to build strong brand  
3 name recognition for its Mark and logo in its industry. Cascade is well-known as its products  
4 are sold throughout the world and Cascade has been featured on various television shows.  
5 Provident's use of Cascade's Mark and logo will damage the goodwill and reputation  
6 established by Cascade resulting in irreparable harm to Cascade. (Rhoads Decl., ¶ 24.) Once  
7 damaged, Cascade will not be able to repair its goodwill.

8 4. The balance of hardships and the public interest tip away from Provident.

9 The balance of hardships and the public interest factors also tip in Cascade's favor.  
10 Specifically, Provident will not suffer a great hardship as a result of being prevented from  
11 using Cascade's Mark and logo because Provident is not entitled to use the Mark and logo in  
12 the first place. In addition, Provident will not suffer any great economic loss from being  
13 prohibited from using Cascade's Mark and logo. See Hard Rock Café Licensing Corp., 776  
14 F.Supp. at 1463 (citing Helene Curtis Industries v. Church and Dwight Co., Inc., 560 F.2d  
15 1325, 1333 (7th Cir. 1977) (an alleged infringer will not suffer a great hardship where the  
16 alleged infringer has misappropriated the trademark owner's entire logo)). On the other hand,  
17 Cascade's goodwill and reputation will suffer greatly if Provident is permitted to continue to  
18 use Cascade's Mark and logo because Cascade's Mark and logo may be associated with an  
19 inferior product. Last, there is a public interest to protect trademarks since it is the public  
20 who benefits most from the goodwill and reputation built around trademarks. This is  
21 because trademarks and logos enable consumers to quickly identify the quality of goods or  
22 services.

23 In conclusion, given the fact that: (1) Cascade has a likelihood of success on its  
24 Lanham Act claims, (2) Cascade will suffer irreparable harm unless an injunction is issued,  
25 and (3) the balance of hardships and public interest tip in Cascade's favor, the Court should  
26 enjoin Provident from using Cascade's Mark and logo on its identical goods pending  
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1 resolution of this lawsuit.

2 **B. PROVIDENT DOES NOT HAVE ANY VALID DEFENSES**

3 In response to Cascade’s cease and desist letter, Provident raised two possible  
4 defenses, neither of which are colorable. First, Provident argued that it had a license from  
5 Cascade to use the Mark. Second, Provident argued that has superior rights in the Mark due  
6 to a third party’s pre-existing use of the mark.

7 1. Provident does not have a license from Cascade.

8 While a trademark license need not be in writing, the party seeking to rely on the  
9 license must put forth some evidence that a license exists. When pressed for such evidence,  
10 Provident failed to provide any. Provident seems to think that there is some de facto  
11 partnership agreement around the mark. In response to Cascade’s demand, Provident  
12 alleged:

13 Mr. Rhoads [of Cascade] came to Mr. Russell to discuss manufacturing a worm bin  
14 and they both agreed to use the “Mark” in their marketing efforts to create a business  
15 selling worm bins.

16 (*See* Rhoads Decl. ¶ 21, **Ex. F.**) Provident’s allegation lacks any support whatsoever in any  
17 documentation. Nor does Provident point to any conduct which is consistent with  
18 Provident’s version of the facts. Cascade applied for and obtained a federal registration. To  
19 the extent Provident felt that it had some rights in the mark it would have presumably had  
20 some discussions with Cascade. Alternatively it would have made itself aware of Cascade’s  
21 application and intervened in some manner. It did neither, which suggests that Provident’s  
22 allegations lack any factual support.

23 2. Provident’s arguments regarding senior use by a third party are irrelevant.

24 Provident also raised the issue of a third party’s use of the mark that allegedly pre-  
25 dated Cascade’s use. The precise scope of Provident’s arguments is unclear, but to the extent  
26 it argues that the rights of the third party somehow affect Cascade’s rights it is mistaken.

27 Priority in trademark is relative “between the parties.” *See* Specialty Measurements,

1 Inc. v. Measurement Sys., Inc., 763 F. Supp. 91, 95 (D.N.J. 1991). In Specialty  
2 Measurements, the court rejected the alleged infringer’s argument which relied on third party  
3 use, and noted that “raising the rights of third parties, should not be allowed as a defense in  
4 any trademark case.” See also Bulk Mfg. Co. v. Schoenbach Products Co., 1980 U.S. Dist.  
5 LEXIS 16488, 208 U.S.P.Q. 664, 667 (S.D.N.Y. 1980) (“The defendants may not . . . rely  
6 upon another’s prior use to defeat plaintiff’s right in a mark it appropriated and used before  
7 the defendants did.”).

8 **C. THE BOND SHOULD BE MINIMAL ABSENT EVIDENCE OF DAMAGES**  
9 **FROM COMPLIANCE PUT FORTH BY PROVIDENT**

10 Rule 65(c) requires the Court to set bond prior to issuing preliminary relief. FED R.  
11 Civ. P. 65(c). Trial courts are accorded wide discretion in setting a bond. Walczak v. EPL  
12 Prolong, Inc., 198 F.3d 725, 733 (9th Cir. 1999). The bond may be set at zero where there is  
13 no evidence that a party will suffer damages from the issuance of an injunction. See Gorbach  
14 v. Reno, 219 F.3d 1087, 1092 (9th Cir. 2000). A party requesting bond must submit  
15 evidence regarding likely damages. Connecticut General Life Ins. Co. v. New Images of  
16 Beverly Hills, 321 F.3d 878, 882 (9th Cir. 2003) (refusing to address a bond-related question  
17 on appeal where the district court was not presented with the bond issue).

18 Here, the injunction seeks to prevent Provident and Russell from utilizing Cascade’s  
19 Mark and logo on any products or on any other materials. Provident and Russell will not  
20 suffer any damages as a result of being prevented from using Cascade’s Mark and logo since  
21 Provident and Russell are not entitled to utilize Cascade’s Mark and logo in any event. As a  
22 result, Cascade requests that the Court set the bond at zero.

23 **D. CASCADE PROVIDED PROVIDENT ADEQUATE NOTICE**

24 A motion for preliminary injunction can be issued as long as there is notice to the  
25 opposing party. Four Seasons Hotels & Resorts, B.V. v. Consorcio Barr, S.A., 320 F.3d  
26 1205, 1210 (11th Cir. 2003) (citing FED. R. CIV. P. 65(a)(1) (“No preliminary injunction shall  
27 be issued without notice to the adverse party.”)); Granny Goose Foods, Inc. v. Teamsters,

1 415 U.S. 423, 434 n.7 (1974). Rule 65 does not speak to “service” in the traditional sense.  
2 Rather, “the sufficiency of notice is a matter left within the discretion of the trial court.” Four  
3 Seasons, 320 F.3d at 1210 (internal quotation marks and citations omitted).

4 Here, counsel for Provident agreed to accept service. (*See* Balasubramani Decl., ¶ 3.)  
5 By agreement of the parties (and due to schedules of counsel), the parties agreed to note the  
6 Motion for August 8. Counsel for Provident advised that this schedule would work from its  
7 perspective. (*Id.*) In an effort to further accommodate Provident, Cascade noted the motion  
8 for August 15, 2008. In these circumstances, Provident has been provided more than  
9 sufficient notice under Rule 65.

#### 10 IV. CONCLUSION

11 For the foregoing reasons, Cascade requests that the Court issue an injunction  
12 preventing Provident and Russell from using Cascade’s Mark and logo in any manner  
13 pending resolution of this lawsuit.

14  
15 Respectfully submitted, and dated this 13<sup>th</sup> day of July, 2008.

16 **BALASUBRAMANI LAW**

17 

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I filed the foregoing: (1) **Motion for Preliminary Injunction,**  
3 (2) **Declarations of Ralph Rhodes, Dorothy Benoy and Venkat Balasubramani,** and (3)  
4 **Proposed Order,** via the Court's cm/ecf system.

5 I also sent a copy of the foregoing documents to opposing counsel via email and legal  
6 messenger:

7 Thomas J. Westbrook, Esq.  
8 Evergreen Plaza Building  
9 711 Capitol Way, Suite 701  
10 Olympia, WA 98501

11 I certify under penalty of perjury of the laws of the State of Washington that the foregoing is  
12 true and correct, and that I executed this certificate of service on July 13, 2008.

13 

14 Venkat Balasubramani, WSBA 28269