

1 Barry L. Breslow
Nevada Bar No. 3023
2 Michael A. Burke
Nevada Bar No. 11527
3 **ROBISON, BELAUSTEGUI, SHARP & LOW**
A Professional Corporation
4 71 Washington Street
Reno, Nevada 89503
5 Telephone: 775-329-3151
Facsimile: 775-329-7941
6 Emails: bbreslow@rbsllaw.com

7 Attorneys for Defendant
CHANGZHOU FIRST INTERNATIONAL TRADE CO., LTD.

9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 FUTURE MOTION, INC.,

Civil Action No. 2:16-cv-00013-MMD-CWH

12 Plaintiff,

**DEFENDANT’S MOTION FOR AWARD
OF ATTORNEY FEES, COSTS, AND
DAMAGE**

13 vs.

14 CHANGZHOU FIRST INTERNATIONAL
15 TRADE CO., LTD.,

16 Defendant.

17
18 Defendant Changzhou First International Trade Co., Ltd. (“Changzhou”) hereby moves the
19 Court to reopen this case for the purpose of awarding Changzhou its attorneys’ fees and costs for
20 responding to Plaintiff Future Motion, Inc.’s (“Future Motion”) Emergency Motion for an *Ex*
21 *Parte* Temporary Restraining Order and a Preliminary Injunction. (See Dkt. Nos. 24-29.) Further,
22 as previously set forth in Changzhou’s opposition to the preliminary injunction motion,
23 Changzhou moves for an award of a bond in the amount of \$100,000 to reimburse Changzhou for
24 business expenses incurred, lost sales suffered, and reputational damage resulting from Future
25 Motion’s improper and unwarranted temporary restraining order (“TRO”). (Dkt. No. 24 at 43-44.)

26 Future Motion filed and was granted the *ex parte* TRO on January 6, 2016. (Dkt. Nos. 8
27 and 11.) It is now abundantly clear, however, that the sole purpose of Future Motion’s TRO was to
28 deprive its chief competitor Changzhou of its lawful right to display Changzhou’s Trotter product

1 at the Consumer Electronics Show (“CES”) in Las Vegas, Nevada on January 6-9, 2016. CES is
2 the world’s largest electronics and technology show, and was a major opportunity for Changzhou
3 to promote sales of its Trotter product. Instead, Future Motion orchestrated an effort to obtain a
4 baseless TRO and to effect seizure of Changzhou’s products from CES. These acts caused
5 Changzhou to lose sales and suffer public embarrassment at a critical juncture in marketing its new
6 Trotter product. Indeed, Future Motion engaged in a significant media campaign to gain free
7 publicity from the fact that it wrongfully prevented Changzhou’s sales. (See, e.g., Exhibit A
8 attached hereto.)

9 Moreover, Future Motion directly relied upon its baseless TRO to obtain additional
10 financial backing for itself. On February 3, 2016, Future Motion announced that it had obtained
11 \$3.2 million in additional funding for its business. (See Exhibit B attached hereto.) One of the
12 stated bases for obtaining that funding was that Future Motion “vigorously protects its Intellectual
13 Property as it protects safety and a ride experience that cannot be replicated by knock-offs.” (Id.)
14 Interestingly, Future Motion dropped this lawsuit against Changzhou on February 4, 2016 – the
15 *next day* after announcing it obtained the new funding.

16 It is now apparent that Future Motion’s actions were conducted with full knowledge that
17 that the asserted patents (US Patent Nos. D746,928 and 9,101,817) were non-infringed and invalid.
18 (Dkt. Nos. 24-29.) Future Motion undoubtedly sought the TRO and preliminary injunction with
19 the expectation that Changzhou would not fight back in this litigation, and therefore would not
20 discover the fatal flaws in Future Motion’s case. Unfortunately for Future Motion, Changzhou did
21 fight back.

22 Changzhou filed an opposition to the preliminary injunction motion on January 29, 2016,
23 explaining in detail that the two patents in suit were both noninfringed by Changzhou’s Trotter
24 product and invalid in light of Future Motion’s own prior art (as well as the prior art of others),
25 most of which was never disclosed to the United States Patent Office. (Dkt Nos. 24-29.) For
26 example, with respect to Future Motion’s design patent, its “proof” of infringement consisted of a
27 single sentence by the inventor, coupled with a few of the figures in the patent. (Dkt. No. 24 at
28 6:16-7:17.) This was insufficient on its face, as a design patent must be construed and

1 infringement evaluated based on all of the figures. *Contessa Food Prods., Inc. v. Conagra, Inc.*,
2 282 F.3d 1370, 1379 (Fed. Cir. 2002) (“We hold that the ‘ordinary observer’ analysis is not limited
3 to the ornamental features of a subset of the drawings, but instead must encompass the claimed
4 ornamental features of all figures of a design patent.”) Further, with respect to Future Motion’s
5 utility patent, the “proof” of infringement provided no claim construction analysis (which is
6 required under Federal Circuit law) and relied on a conclusory claim chart. (Dkt. No. 24 at 22:6-
7 26:17.) Moreover, Future Motion baldly stated that it was aware of no anticipatory prior art to
8 either patent, but it neglected to tell the Court about prior art disclosures of Future Motion’s own
9 ONEWHEEL® product and other similar products. (Id. at 17:14-22:5; 27:1-7.)

10 Upon reviewing Changzhou’s opposition and supporting declarations, Future Motion
11 simply gave up, filing a voluntary notice of dismissal. Even then, Future Motion only offered to
12 dismiss without prejudice – despite the uncontroverted evidence that the patents in suit were non-
13 infringed and invalid.

14 Future Motion never had a reasonable basis for filing this litigation. Instead, Future Motion
15 misused the judicial system for the unfounded purpose of preventing its competitor from
16 displaying a competing product at the industry’s largest trade show. After obtaining its TRO and
17 inflicting unwarranted harm on Changzhou, Future Motion now hopes it can slink away unnoticed,
18 with no repercussions. This Court, however, should hold Future Motion accountable for its
19 actions. Changzhou requests that the Court exercise its inherent powers to reopen this case for the
20 limited purpose of granting the following relief:

- 21 1. An award of \$100,000 to fully compensate Changzhou for expenses to attend CES,
22 lost sales at CES that were wrongfully restrained by the TRO, and embarrassment
23 caused at CES and subsequently due to the improper TRO;
- 24 2. An award of Changzhou’s attorneys’ fees and costs for the significant, yet
25 unnecessary, effort in responding to Future Motion’s preliminary injunction
26 motion;
- 27 3. An order that Future Motion will issue a press release notifying the public that it
28 dismissed the present case.

See Milota v. Hexion Specialty Chems. Canada, Inc., No. 3:13-cv-909, 2015 U.S. Dist. LEXIS

1 50998, at *9 (D. Or. Apr. 16, 2015) (citing *Samho Co. v. Sorks-Iturup*, 254 F. App'x 569, 570 (9th
 2 Cir. 2007)) (“A dismissal under *Rule 41(a)(1)(A)(i)* does not deprive the district court from
 3 jurisdiction over the issue of attorney’s fees and costs.”); *U.S. D.I.D. Corp. v. Windstream*
 4 *Comms., Inc.*, 775 F.3d 128, 131 (2nd Cir. 2014) (“We agree that a district court may grant
 5 recovery from a TRO security after the plaintiff files a notice of voluntary dismissal.”).

6 Changzhou previously submitted a declaration in support of its expenses to attend CES,
 7 lost sales at CES, and embarrassment resulting from the improper TRO. (Dkt. No. 25) It is also
 8 willing to provide an accounting of its attorneys’ fees and costs in responding to the preliminary
 9 injunction motion, if requested by the Court to do so. Changzhou likewise is willing to submit
 10 further briefing on the lack of a reasonable basis by Future Motion for filing this litigation,
 11 including making a motion under Rule 11 of the Federal Rules of Civil Procedure, if the Court
 12 deems such briefing useful.¹

13 Further, Changzhou understands that Future Motion’s filing of the Notice of Voluntary
 14 Dismissal automatically dissolves the TRO put in place by the Court, and that Changzhou is free
 15 to begin selling its Trotter product in the United States. To remove any potential ambiguity in the
 16 mind of the public, however, Changzhou requests that the Court enter an Order explicitly
 17 dissolving the TRO.

18 Finally, Changzhou requests a hearing with the Court to further address its petition for
 19 attorneys’ fees, costs and damages.

20 Respectfully submitted this 5 day of February, 2016.

21 ROBISON, BELAUSTEGUI, SHARP & LOW
 22 A Professional Corporation
 23 71 Washington Street
 24 Reno, Nevada 89503

25 
 26 BARRY L. BRESLOW
 27 MICHAEL A. BURKE

28 ¹ If the Court requests further briefing, Changzhou may request an order granting it discovery on Future Motion’s
 bases for filing its Complaint and motion for TRO, including but not limited to Future Motion’s knowledge of the
 invalidity and non-infringement of the asserted patents.

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

Of Counsel:
Jeffrey D. Blake
MERCHANT & GOULD, P.C.
191 Peachtree Street, NE, Suite 3800
Atlanta, GA 30303
Tel: (404) 954-5100

Jeffrey S. Ward
Wendy M. Ward
Stephen Howe
MERCHANT & GOULD P.C.
10 East Doty Street, Suite 600
Madison, WI 53703
Tel: (608) 280-6750

Tong Wu
MERCHANT & GOULD P.C.
3200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Tel: (612) 332-5300

Attorneys for Defendant
CHANGZHOU FIRST INTERNATIONAL TRADE
CO., LTD.

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, that I am over the age of 18 and not a party to the above-referenced case, and that on the date below I caused to be served a true copy of the **DEFENDANT'S MOTION FOR AWARD OF ATTORNEY FEES, COSTS, AND DAMAGES** on all parties to this action by the method(s) indicated below:

X I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

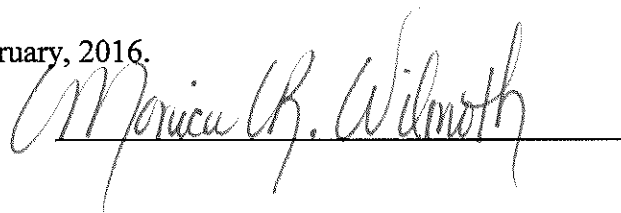
W. West Allen
Lewis Roca Rothgerger Christie, LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Email: wallen@lrrlaw.com

Kolish Hartwell, P.C.
Shawn J. Kolitch, Esq.
200 Pacific Building
520 S.W. Yamhill Street
Portland, Oregon 97204
Email: shawn@khpatent.com

Attorneys for Plaintiff Future Motion, Inc.

_____ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

DATED: This 5th day of February, 2016.



Exhibit

A

1/29/2016

U.S. Marshals Raid Hoverboard Booth at CES - Bloomberg Business

U.S. Marshals Raid Hoverboard Booth at CES

The maker of the Onewheel electric skateboard called in federal marshals to shut down the booth of a company making a similar product.

Joshua Brustein

joshuabrustein

January 7, 2016 — 5:24 PM CST

On Thursday afternoon, two U.S. federal marshals showed up at the Consumer Electronics Show to conduct a raid. As a crowd gathered, the marshals packed up a one-wheeled skateboard on display at a Chinese company's booth, as well as a sign and fliers promoting the product, and carried them away. It quickly became clear this wasn't the usual CES publicity stunt. Staffers for the company, Changzhou First International Trade Co., were stunned.

Until that moment, Changzhou First International Trade was having a successful day. It wasn't the only discount electronic skateboard dealer around, but passersby seemed taken by the design of its product, the Trotter. Instead of a board with a wheel on either end, like the popular hoverboards seen around the show, the Trotter looks like a seesaw with one big wheel in the middle. One man with a microphone and a camera stopped to take some footage; another quizzed employees about how fast the thing could go. The booth's staff had trouble answering even basic questions in English, but they did their best.

CES, the world's largest annual gadget conference taking place in Las Vegas this week, has always been full of small-bore dealers, many from China, selling products that look like something you might find in the discount bin at a Best Buy. The Consumer Technology Association, the trade group that puts on the show, welcomes them, as long as they pay the appropriate fees to rent a booth. Unoriginality is not against the rules.

But there is a long-running strain of resentment among companies that feel their patents and trademarks are being violated by low-cost competitors. CES's legal department issues guidelines for those who feel wronged, and there's even a list of rules for face-to-face disputes, including prohibitions on "loud, offensive or embarrassing confrontations" and a limit on the number of people who come along to accuse someone of ripping them off. The CTA asks companies not to bring more than two employees, one translator, and a

1/29/2016

U.S. Marshals Raid Hoverboard Booth at CES - Bloomberg Business

lawyer.

The raid on the show floor, which involved federal law enforcement, was the result of a weekslong effort by Future Motion, a Silicon Valley startup that said it invented and patented a self-balancing electric skateboard that looks strikingly similar to the ones the marshals confiscated. The company sent about a half-dozen people from its legal team to accompany the marshals in the raid. The CTA declined to comment, as did a woman present during the raid who appeared to be in charge of the booth, saying the company intended to consult a lawyer. Lynzey Donahue, a U.S. Marshals official, said marshals served a court order at CES.

Future Motion's Onewheel skateboard is the brainchild of Kyle Doerksen, a designer who had previously worked on electric bicycles. Several years ago, Doerksen quit his job at the design company Ideo, made a prototype, and rented a booth at CES 2014. The idea was popular enough that a Kickstarter campaign, launched on the same day, eventually raised \$630,000. The following year, Doerksen came back with a more finished model. His company, which decided against getting a booth this year, is in town to meet with potential business partners.

Doerksen began the process of patenting aspects of the Onewheel several years ago. In August, Future Motion received a patent for the underlying technology. Earlier this week, it got a second one for the device's design. This patent prohibits competitors from making something that an ordinary observer might confuse with the Onewheel. "Would we have done this without the design patent being issued? The answer is we wouldn't have bothered," said Shawn Kolitch, a lawyer for the company. "If you can show the design patent drawing next to an accused product side by side, and they look identical, it helps your case."

Future Motion first found out about the Changzhou First International Trade product late last year, when a Onewheel user posted about it in an online forum. A listing by the Chinese company on Alibaba's online marketplace promised to provide some 2,000 boards per month for about \$500 apiece to retailers. (Future Motion sells the Onewheel for \$1,500 through its website.) "We said, 'Wow, that's clearly a knockoff,'" Doerksen said. According to Alibaba's website, retailers in Iceland, Germany, and the U.S. bought about \$70,000 worth of products.

In December, Kolitch sent a letter to Changzhou First International Trade demanding that it stop selling the products. He never heard back. Kolitch tried again the day before the show floor opened, by approaching the booth directly but got nowhere. By 3:30 p.m. on Wednesday, Onewheel filed a request with a judge to stop the Trotters from being displayed on the show floor.

The newfangled electronic skateboards that have captured the imagination of geeks recently have been

1/29/2016

U.S. Marshals Raid Hoverboard Booth at CES - Bloomberg Business

dominated by dozens of off-brand companies. A recent segment on NPR's *Planet Money* reported how the hoverboard trend has emerged almost spontaneously from dozens of Chinese factories at once. But Shane Chen, a Chinese-American inventor, disputed that idea. He said the so-called hoverboards were his idea. Like Doerksen, Chen is trying to get the government to crack down on his competitors.

After the raid at CES, all the merchandise and signs had been stripped off the booth. The Chinese company's staff sat around, unclear about what to do next. For Doerksen, getting the booth shut down serves not only to cut off what he saw as an illegitimate competitor but also to protect the reputation of the entire electric skateboard industry. The explosion in popularity of these products have been threatened by reports of low-quality hoverboards bursting into flames. "If customers start to view the space as full of low-quality, low-cost products, that reflects poorly on everybody," said Doerksen. "We hate to see someone poison the well."

Here's how it's all going down.

Read this next

- ▶ [This Company Is Winning the Hoverboard Race](#)
 - ▶ [Lexus Builds a Functional Hoverboard Prototype](#)
-

- [CES](#)

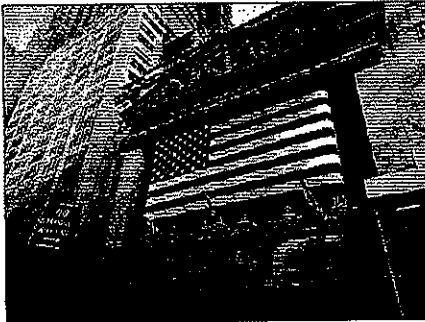
Exhibit

B

- Real Money Pro Portfolio
- Chairman's Club

FREE:

- TheStreet
- MainStreet
- Hot Topics:
- Distressed Companies
- Super Bowl Stocks
- Toxic Stocks
- Stocks Under \$10
- Cramer's Best Stocks 2016
- Cramer's ABCs
- Top 5 Stocks for February



Is Wall Street Bracing for the Worst Year Since 2008?

If you have a \$500,000 portfolio, download the latest report by *Forbes* columnist Ken Fisher's firm. It includes research and analysis you can use in your portfolio right now. Don't miss it!

[Click Here to Download Your Guide!](#)

FISHER INVESTMENTS*

Investor Alert

FREE Access to Cramer's \$2.5-Million Trading Portfolio

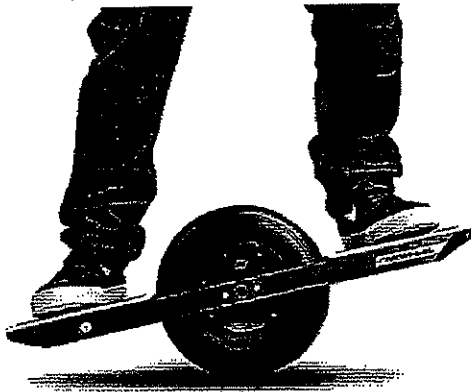
Future Motion, The Company That Invented Onewheel®, Raises \$3.2M In Series A Funding Round

By PR Newswire | 02/03/16 - 07:30 AM EST

Exclusive FREE Report: *Jim Cramer's Best Stocks for 2016*

PR Newswire

SANTA CRUZ, Calif., Feb. 3, 2016 /PRNewswire/ -- Future Motion Inc., makers of the popular Onewheel, the revolutionary electric boardsport, today announced it closed \$3.2 million in Series A funding to expand operations, ship more Onewheels and innovate next-generation products.



New investor Deshe Holdings led the round, with participation from sports marketing leader Paul Crandell. "Ever since I first tried the Onewheel, I knew it was a category-defining product," said Elie Deshe, Partner, Deshe Capital LLC. "Personal mobility is the next technological wave, and Future Motion's Onewheel is uniquely positioned to lead the industry. We're glad to support Kyle and his team during this exciting period of growth."

Future Motion will use the new funding to increase manufacturing capacity and expand their team, particularly in engineering, marketing and operations. Additionally, the company is building out a new R&D center in Santa Cruz with advanced equipment to rapidly develop next-generation recreation-transportation products.

"This round of funding allows us to scale up to reach the overwhelming market demand for Onewheel," said Kyle Doerksen, CEO of Future Motion. "Electric transportation is taking over the world, from cars to motorcycles to bikes and personal digital vehicles like Onewheel. Since software and sensors define the ride experience, the technology is getting better incredibly fast. Consumers are demanding high-quality, safe products from reputable companies that deliver unmatched experiences."

Future Motion is also opening a European distribution and service center to accelerate growth in Europe while providing fast shipping to customers and after-sales support. Onewheel was just awarded the prestigious ISPO BRANDNEW 2016 award at ISPO, the world's largest sporting goods show in Munich, Germany.

The Onewheel experience is unlike anything offered by other products on the market. Designed and built in California from premium materials, it provides a sensation familiar to experienced board riders and approachable for first-timers.

The company vigorously protects its Intellectual Property as it protects safety and a ride experience that cannot be replicated by knock-offs.

STOCKS TO BUY: TheStreet Quant Ratings has identified a handful of stocks with serious upside potential in the next 12-months. [Learn more.](#)

1 of 3

You May Also Like

- | | |
|------------------------------|---------------------------------|
| 1. Top 10 IT Companies | 5. Business Strategy Tools |
| 2. Innovative Business Ideas | 6. Online Company Registration |
| 3. Top 10 Growing Companies | 7. Company Expansion Strategies |
| 4. Business Networking Tips | 8. Index Funds To Invest In |

Check Out Our Best Services for Investors

Action Alerts PLUS

Portfolio Manager Jim Cramer and Director of Research Jack Mohr reveal their investment tactics while giving advanced notice before every trade.

Product Features:

- \$2.5+ million portfolio
- Large-cap and dividend focus
- Intraday trade alerts from Cramer

Quant Ratings

Access the tool that DOMINATES the Russell 2000 and the S&P 500.

Product Features:

- Buy, hold, or sell recommendations for over 4,300 stocks
- Unlimited research reports on your favorite stocks
- A custom stock screener

Stocks Under \$10

David Peltier uncovers low dollar stocks with serious upside potential that are flying under Wall Street's radar.

Product Features:

- Model portfolio
- Stocks trading below \$10
- Intraday trade alerts