



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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ORDER

HARVEST ON GEARY INC., A CALIFORNIA CORPORATION ET AL VS. HARVEST
OF NAPA, INC., A CALIFORNIA CORPORATION ET AL

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

FILED
San Francisco County Superior Court

MAR 08 2019

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

HARVEST ON GEARY, INC., et al.,

Case No. CGC-18-571773

Plaintiffs,

vs.

**ORDER DENYING APPLICATION FOR
PRELIMINARY INJUNCTION**

HARVEST OF NAPA, INC., et al.,

Defendants.

Plaintiffs¹ move to preliminarily enjoin defendants² from using or licensing the name “Harvest” in California in the retail cannabis business, “whether medical or recreational.” As plaintiffs note, our courts balance two factors in considering preliminary injunction applications: (1) likelihood that the moving party will prevail on the merits and (2) relative interim harm the parties may suffer. (*Nutro Products, Inc. v. Cole Grain Co.* (1992) 3 Cal.App.4th 860, 865.) The moving party has the burden to show all elements necessary to an injunction. (*Saltonstall v. City of Sacramento* (2014) 231 Cal.App.4th 837, 856.)

Merits. Plaintiffs have two “Harvest” recreational cannabis stores in San Francisco and they registered two California trademarks in 2015, including for use of “Harvest” in cannabis sales. Defendants have opened a “Harvest” medical cannabis store in Napa, so plaintiffs say they will be able to prove infringement of their California trademarks.

¹ Plaintiffs are Harvest on Geary, Inc., Good Living Mgmt II, Inc. and Cosecha Holding Co., Inc.

² Defendants are Harvest of Napa, Inc., Harvest of Merced LLC, Harvest of Moreno Valley LLC, Harvest Dispensaries, Cultivation & Production Facilities, LLC and Harvest Enterprises, Inc.

However, defendants have been using the “Harvest” name in connection with cannabis since 2013. They have had a web-based “Harvest” cannabis site reaching California since 2013, as well as “Harvest” operations across the country. Indeed, defendants say plaintiffs’ principal learned about successful use of the word “Harvest” in cannabis sales during a 2014 trip to Arizona to meet defendants’ principal – a visit now a subject of litigation in Arizona.

Plaintiffs argue that defendants’ federal trademarks are untenable, and point to a paucity of case law as to whether web-based sites truly operate in states they reach.


At this juncture, plaintiffs’ chances of prevailing on their trademark infringement claim appear to be a toss-up; they have not proven likelihood of success on the merits.

Harms. Plaintiffs’ showing of interim harm is thin. The lead argument is that their San Francisco employees saw job postings for defendants’ Napa store and were “concerned about their job security.” Why employees of a recreational cannabis store would be concerned about a medical cannabis store 50 miles away is not clear. Plaintiffs also speculate about likelihood of confusion and injury to their reputation and goodwill, but proffer little evidence. Defendants say the reputation they have built for “Harvest” nationally will, if anything, benefit plaintiffs.

Defendants’ showing of interim harm is thin too. They say plaintiffs’ conduct is “a stain on the industry” and that they plan “numerous locations” in California. But, again, little evidence is offered.

Plaintiffs bear the burden of showing that the balance of harms favors them and they have not done so. The preliminary injunction is denied.

Dated: March 8, 2019


Richard B. Ulmer Jr.
Judge of the Superior Court

I, the undersigned, certify that I am an employee of the Superior Court of California, County Of San Francisco and not a party to the above-entitled cause and that on March 11, 2019 I served the foregoing ORDER DENYING APPLICATION FOR PRELIMINARY INJUNCTION on each counsel of record or party appearing in propria persona by causing a copy thereof to be enclosed in a postage paid sealed envelope and deposited in the United States Postal Service mail box located at 400 McAllister Street, San Francisco CA 94102-4514 pursuant to standard court practice.

Date: March 11, 2019



By: M. GOODMAN

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