

STATE OF MAINE  
CUMBERLAND, ss

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-13-135  
TDW - CUM - 12/17/2013

CONCORDIA PARTNERS LLC,

Plaintiff,

v.

MARCELLE PICK, et al,

Defendants

ORDER

STATE OF MAINE  
Cumberland, ss, Clerk's Office

DEC 17 2013

**RECEIVED**

Before the court is a motion by plaintiff Concordia Partners LLC for a preliminary injunction.

The court has considered the submissions of Concordia and of defendants Marcelle Pick and Pick Enterprises LLC (collectively "Pick Enterprises"), the affidavits submitted by both sides, and the points raised at oral argument on December 11.

In ruling on a preliminary injunction, the court must ordinarily consider four factors: (1) whether the plaintiffs will suffer irreparable injury in the absence of a preliminary injunction; (2) whether that injury outweighs any harm which granting injunctive relief would inflict on the defendant, (3) whether plaintiffs have demonstrated a likelihood of success on the merits (at most, a probability; at least, a substantial possibility); and (4) whether the public interest would be adversely affected by granting the injunction. *Bangor Historic Track Inc. v. Department of Agriculture*, 2003 ME 140 ¶ 9, 837 A.2d 129; *Ingraham v. University of Maine*, 441 A.2d 691, 693 (Me. 1982).

The primary relief sought by Concordia is an injunction prohibiting Pick Enterprises from displaying on its website certain articles whose copyright is allegedly

owned by Concordia under section 8H of a 2006 Licensing Agreement between the parties.

The court concludes that Concordia has shown irreparable injury under the principle that harm that is apparent but that cannot easily be quantified is sufficient to justify injunctive relief. *Ross-Simons of Warwick Inc. v. Baccarat Inc.*, 217 F.3d 8, 13 (1st Cir. 2000). Pick Enterprises argues with some force that the major harm to Concordia results from its loss of the W2W website, which is the acknowledged property of Pick Enterprises. This may be correct, but it does not allow Pick Enterprises to inflict significant additional harm by appropriating articles to which it appears likely that Concordia has the copyright pursuant to the Licensing Agreement and thereby subjecting Concordia to Google's duplicate content penalty.<sup>1</sup>

On the issue of whether the injury to Concordia if an injunction is not issued outweighs any injury to Pick Enterprises if an injunction is entered, the court concludes that the balance of harms strongly favors Concordia. Indeed, the court sees no harm to Pick Enterprises from the granting of an injunction limited to prohibiting Pick Enterprises from displaying on its website articles to which Concordia appears to own the copyright. Pick Enterprises retains the W2W website and trademark, retains the portal to Ms. Pick's Clinic, and retains its rights to all of the articles and other materials which are not the subject of this injunction.

The court also concludes that under section 8H of the 2006 Licensing Agreement Concordia has demonstrated a reasonable likelihood of success on its claim that it owns the copyright to the articles that are the subject of this order. Although there is ample

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<sup>1</sup> On the subject of harm the court was invited by the parties to google the subjects of the disputed articles. In a set of five searches, the W2W website appeared in each case on the second page of the search. In each case Concordia's website was not found in the first 10 pages of the google search, and the court terminated the search at that point.

evidence that Ms. Pick was the source of the ideas for many of the articles to which Concordia now claims the copyright, an author may not copyright ideas – copyright applies to the expression of ideas. See *Harper & Row Publishers Inc. v. Nation Enterprises*, 471 U.S. 539, 556-57 (1985).

In light of this principle, the court does not find section 8H to be ambiguous and concludes based on all the affidavits submitted that Concordia has established a reasonable likelihood of success on its claim that under section 8H, Concordia owns the copyright to the articles on the attached Schedule A.

Finally, the court can discern no harm to the public interest from the granting of the injunctive relief specified in this order.

Pick Enterprises argues that Concordia is barred from injunctive relief because it has unclean hands. Whether Concordia correctly decided not to rely on an eleventh hour statement from an attorney for Pick Enterprises retreating from its former position that the 2006 Licensing Agreement was not subject to renewal is an open question but that does not constitute unclean hands that would bar injunctive relief. This is particularly true because, regardless of the manner in which the 2006 Licensing Agreement was terminated or who was at fault, the provision which Concordia now seeks to enforce involves the respective rights of the parties post-termination.

Two other points should be made. First, although Concordia originally sought other injunctive relief, including relief based on the contention that that Pick Enterprises had also appropriated marketing materials and website architecture belonging to Concordia, Concordia has not demonstrated a likelihood of success on any issue other than the issue on which the court has granted relief as set forth below.

Second, the titles of eleven articles on the revised list as to which Concordia seeks injunctive relief are identical to the titles of certain articles that the 2006 Licensing

Agreement specifically awards to Pick Enterprises. Accordingly, the court has deleted those eleven articles from Concordia's revised list as shown by the additional deletions on Schedule A attached hereto. Where indexes appear on Schedule A, defendants are required to remove any articles covered by this order from any indexes appearing on defendant's website.

The entry shall be:

1. Plaintiff's motion for a preliminary injunction is granted to the extent set forth below.
2. The Court hereby orders defendants to remove from the womentowomen.com website and from any other website maintained by defendants, both from the website and from any index on the website, the articles listed on the attached Schedule A.
3. This order shall be binding on each of the defendants, their agents, servants, employees, attorneys, successors and assigns, and upon those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise.
4. This order shall remain in effect, unless modified or vacated by further order of the court, until the entry of final judgment in this case.
5. There being no showing that this order may cause any financial detriment to Defendants, the giving of security pursuant to M.R.Civ.P. 65(c) is hereby waived.
6. In all other respects, plaintiff's motion for a preliminary injunction is denied.
7. The Clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: December 16, 2013

  
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Thomas D. Warren  
Justice, Superior Court

## SCHEDULE A to order dated December 16, 2013

- 1 "Am I losing my mind?"—What you can do about fuzzy thinking
- 2 8 Steps to kick your sugar cravings to the curb
- 3 A natural approach to insulin resistance
- 4 Adrenal extremes - could you be on your way to Cushing's or Addison's disease?
- 5 Adrenal fatigue - the effects of high cortisol levels and what you can do about it
- 6 Adrenal stress and weight loss
- 7 Aging with grace — a natural approach to preserving your "health span"
- 8 Allergies and sensitivities—causes and solutions
- 9 Alternative treatment for hypothyroidism
- 10 An introduction to insulin resistance
- 11 ~~Antidepressants and natural alternatives~~
- 12 ~~Anxiety in women - causes, symptoms and natural relief~~
- 13 Are you an emotional eater?
- 14 Are you wired to worry? How to quiet your anxious mind
- 15 ~~Avoiding holiday stress~~
- 16 Best place to store fat? The belly
- 17 Blood glucose - could you be on a path to diabetes?
- 18 ~~Bone density, osteoporosis, and the risk of bone fracture~~
- 19 ~~Bone mineral density testing and bone scan results~~
- 20 Caffeine and your adrenals - could they be paying dearly?
- 21 Caffeine pros and cons: effects of caffeine on your body
- 22 Can you speed up your metabolism to lose weight?
- 23 ~~Causes of inflammation~~
- 24 Choosing the best multivitamin
- 25 Confused about carbohydrates? A quick guide to the carb spectrum
- 26 Could stress be affecting your thyroid?
- 27 Could yeast be disturbing your digestion?
- 28 C-reactive protein (CRP and hs-CRP) – are you on fire?
- 29 ~~Deep breathing—the truly essential exercise~~
- 30 Dependency and withdrawal - detoxing from caffeine
- 31 Detoxification - clear and cleanse your body
- 32 ~~DHEA and adrenal balance~~
- 33 Diet soda—how healthy is it?
- 34 ~~Digestive health for women~~
- 35 Do you have symptoms of hypothyroidism?
- 36 Do you have weight loss resistance?
- 37 Early menopause - feeling good and finding your way
- 38 Eat safe — six simple ways to enhance the quality of your food
- 39 Eating to ease — or even eliminate — your PMS symptoms
- 40 Eating to support your adrenal glands — small choices can make a difference
- 41 Eating to support your thyroid - simple ways to naturally preserve thyroid function

42	Essential nutrition for healthy weight
43	Exercise series with nutrition and fitness expert, JJ Virgin
44	Finding peace for your legs - a simple approach to restless legs syndrome
45	Findings on HRT since the Women's Health Initiative - an individual approach is best
46	For women who have had a hysterectomy
47	Gastrointestinal distress - could it be intestinal parasites
48	Giving yourself the gift you deserve: lifelong health
49	Gluten intolerance and celiac disease - should you be concerned?
50	Health and vitamins— who should take dietary supplements and why?
51	Help prevent weak bones - what to avoid
52	Herbs for healing digestive imbalance
53	<del>High blood pressure— lowering the strain</del>
54	High-fructose corn syrup
55	How stress can make us gain weight
56	How the Hoffman Quadrinity Process works
57	<del>How thyroid issues affect weight gain</del>
58	Index - Adrenal health
59	Index - Bioidentical Hormones
60	Index - Bone Health
61	Index - Detoxification
62	Index - Digestive Health
63	Index - Drug therapy
64	Index - Emotions, anxiety and mood
65	Index - Exercise and lifestyle
66	Index - Fatigue and insomnia
67	Index - Fractures and fracture healing
68	Index- General women's health articles
69	Index - Health topics
70	Index - healthy aging
71	Index - Heart Health
72	Index - Hormonal imbalance
73	Index - HRT
74	Index - Hysterectomy
75	Index - Inflammation
76	Index - Insulin resistance
77	Index - Menopause/Perimenopause
78	Index - Nutrition
79	Index - Osteopenia and osteoporosis
80	Index - Osteoporosis and bone health
81	Index - PCOS and insulin resistance

82	Index - PMS and menstruation
83	Index - Quick reads
84	Index - Sex and fertility
85	Index - Thyroid health
86	Index - uncategorized
87	Index - Understand your body
88	Index - Urinary incontinence
89	Index - weight loss
90	Index - Women's health testing
91	Infertility
92	Infertility: an alternative perspective
93	Inflammation — the key to chronic disease?
94	Inflammation and your bones - prevent osteoporosis by cooling the fire
95	Information on emotions, health, and stress — connections worth exploring
96	Information on fatigue and insomnia
97	Insomnia — reset your inner clock and get back to sleep
98	Interpreting your medical test results — a necessary element of maintaining women's health
99	Is adrenal imbalance keeping you from sleep at night?
100	Is it me or my adrenals?
101	Is stress affecting your memory and cognition?
102	Joint pain and arthritis - quieting the inflammatory noise
103	Leaky gut syndrome - how healing your digestive tract promotes total wellness
104	Let it out - the power of anger
105	Lymphoma and Lymphedema
106	Natural treatments for adrenal imbalance - restoring the energy you thought was lost
107	<del>Natural weight loss</del>
108	Nature's sleeping aids - a dream come true
109	Omega-3 fatty acids — essential to health and happiness
110	Omega-3's, phytonutrients, and the Mediterranean diet
111	On depression, anxiety, and mood
112	On emotions, anxiety and mood
113	Our perspective on the risks of HRT
114	<del>Perimenopause</del>
115	Popular weight loss plans for women — what works?
116	Post hysterectomy symptoms and ovarian function in women
117	<del>Probiotics - for life!</del>
118	Purging the poisons: how to support natural body detoxification
119	<del>Reducing inflammation - the natural approach</del>
120	Rekindling desire — the soul of your libido

- 121 Release negative patterns - heal yourself emotionally and physically
- 122 Seasonal affective disorder - getting back to nature
- 123 seeing clearly about dry eyes and menopause
- 124 Selenium and thyroid health
- 125 Seven myths about women's health
- 126 Seven tips for stunning skin at any age
- 127 Sexology 101 - ignite your sex life with advice from an expert
- 128 Solving stress-induced sleeplessness naturally
- 129 Stress and your health - it's not just about being happier
- 130 ~~Sugar substitutes and the potential danger of Splenda~~
- 131 Testing digestive system function
- 132 The best cellulite treatment - a holistic approach
- 133 The digestive system and dysbiosis
- 134 ~~The link between IBS, acid reflux and antacids~~
- 135 ~~The lymph system and your health~~
- 136 ~~The truth about cholesterol and fat~~
- 137 The truth about modern health care — it's in your capable hands
- 138 Thyroid testing for hypothyroidism
- 139 Thyroid-stimulating hormone (TSH) — a window into your metabolism
- 140 Treating fibromyalgia naturally — so you can shine again
- 141 ~~Urinary incontinence — help for female bladder problems~~
- 142 Urinary incontinence treatment
- 143 ~~Urinary incontinence treatment — What you can do right now~~
- 144 What is adrenal fatigue?
- 145 What is gluten - and why are we so sensitive to it?
- 146 What is set point weight?

CONCORDIA PARTNERS LLC VS MARCELLE PICK ET AL  
CASE #:PORSC-CV-2013-00135

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STATE OF MAINE  
CUMBERLAND, ss

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-13-135  
TDW-CUM-12/27/2013

CONCORDIA PARTNERS LLC,

Plaintiff,

v.

ORDER

MARCELLE PICK, et al,

STATE OF MAINE  
Cumberland, ss, Clerk's Office

Defendants

DEC 27 2013

**RECEIVED**

Before the court are (1) plaintiff's December 20, 2013 emergency motion for clarification of the preliminary injunction or to alter or amend that injunction and (2) defendants' December 26, 2013 motion to alter or amend the preliminary injunction, for relief from the preliminary injunction, for a testimonial hearing, and for a stay of the injunction.

1. Defendants' Motion

Defendants' motion to amend or alter, for relief, for a testimonial hearing, and for a stay is largely a motion for reconsideration of the court's preliminary injunction order dated December 16, 2013. With respect to the merits, defendants have not made any arguments that were not already presented at the preliminary injunction hearing or that could not have been presented at that hearing. Accordingly, except with respect to two issues that may be subject to possible clarification as set forth on section 2 below, defendants' motion is denied without the necessity for plaintiff to respond. See M.R.Civ.P. 7(b)(5).

The only new argument in defendants' motion is an argument based on subject matter jurisdiction. However, the court's ruling was based on the contract between the parties, an issue that this court may decide even if the contract in question allocates the ownership of copyrighted material. Nobel v. Bangor Hydro- Electric Co., 584 A.2d 57, 58 (Me. 1990).

## 2. Issues for Possible Clarification

Defendants suggest there is some unclarity as to which items are covered by the attachment to the December 16 preliminary injunction order. If, after discussion between counsel, there is still any dispute as to the articles covered by the December 16 order, counsel shall schedule a conference by phone or in person at the earliest opportunity. If counsel wish to be on the record, a conference in person shall be necessary.

Plaintiff and defendants appear to agree that at some points in the December 16 order, the court referred to the term "website" when the more accurate term would have been "domain name." This does not affect the relief ordered. Moreover, the court cannot discern which specific references to "website" the parties contend should be amended. If either party contends that this issue is sufficiently important to call for the order to be amended, that party shall request a conference.

This order and the December 16 order are not stayed pending the possible clarifications or amendments set forth above.

#### 4. Plaintiff's Emergency Motion for Clarification or Amendment

For the reasons advanced by plaintiff in its December 20 motion for clarification and in plaintiff's reply memorandum filed today, the court agrees that after removal of the articles set forth in the court's December 16 order, defendants should be ordered to submit updated Sitemaps to the relevant search engines in order to implement the relief set forth in the December 16 order. In particular, the court sees no merit in defendants' contention that requiring updated sitemaps would somehow violate defendants' trademark.

Defendants argue that requiring updated sitemaps would constitute affirmative relief requiring a heightened showing of likelihood of success under Department of Environmental Protection v. Emerson, 563 A.2d 762 (Me. 1989). In the court's view, the submission of updated sitemaps is not mandatory relief within the meaning of Emerson but is part and parcel of the prohibitory relief ordered on December 16 and is required to implement that relief. If defendants remove an article from their website but do not submit an updated sitemap, they will still be capturing web searches as if the article had not been removed. In effect, for purposes of search results, they will not have complied with the order to remove the articles.

In any event, plaintiffs have demonstrated a sufficiently clear likelihood of success on this issue to require the submission of updated site maps.

The entry shall be:

1. Defendants' motion to alter or amend the December 16, 2013 preliminary injunction order, for relief from that order, for a testimonial hearing, and for a stay of that order is denied except for the specific issues identified in this order as to which clarification may be appropriate.

2. On the issues identified in this order for possible clarification, counsel shall contact the clerk's office to schedule a telephonic or in-person conference with the court.

3. On or before December 31, 2013 defendants are ordered to submit updated sitemaps reflecting the removal of the materials ordered to be removed in the court's December 16 order to Google, Google Webmasters Tools, AOL, Bing, Yahoo and Lycos. Defendants shall provide confirmation to plaintiff's counsel that the sitemaps have been updated within 36 hours after submission of the updated sitemaps.

The Clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: December 27, 2013

  
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Thomas D. Warren  
Justice, Superior Court

CONCORDIA PARTNERS LLC VS MARCELLE PICK ET AL  
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