

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CASCADE MANUFACTURING SALES,
INC., a Washington corporation,

Plaintiff,

v.

PROVIDNET CO. TRUST, a Washington
trust dba WORMWRANGLER.COM;
BARRY RUSSELL, an individual,

Defendant.

Case No. C08-5433RBL

ORDER ON MOTION FOR
CLARIFICATION AND
RECONSIDERATION

This matter is before the court on Defendant Providnet's Motion for Clarification and Reconsideration [Dkt. #36] of the court's Order granting Plaintiff Cascade's Motion for a Preliminary Injunction. [Dkt. #33].

Defendant argues that the court's order did not specify whether the injunction granted applied to its use of the name "Gusanito Factory of Worms," as well as the term "Worm Factory," which was clearly enjoined by the court's Order. It also seeks guidance as to the time frame for compliance with the court's Order, and argues that 90 days is a reasonable time to cease its infringing conduct.

As to the former point, the court's Order was intended to enjoin the use of the term "Worm Factory" and confusingly similar marks. "Factory of Worms" is confusingly similar to "Worm Factory." Defendant has simply rearranged the two operative words, which does not sufficiently distinguish the Defendant's product from the Plaintiff's. See *PRL USA Holdings, Inc. V. United States Polo Association*, 520 F.2d 109, 117 (2nd Cir. 2008). Nor does the addition of the term "Gusanito" prior to the "Factory of Worms" name remove or

1 cure the infringement.

2 The term "Gusanito," itself, clearly does not infringe and is not enjoined. The term "Worm Wrangler"
3 (which is also used by Defendant to describe its product) does not infringe, and the use of that term is not
4 enjoined.

5 While it is clear that changing the Defendant's website and other marketing materials imposes a burden
6 upon it, that is not a reason to permit a continued infringement. The Defendant has 30 days from the date of
7 this order to comply with the Preliminary Injunction, as clarified by this Order.

8 IT IS SO ORDERED.

9 Dated this 7th day of January, 2009.

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11 RONALD B. LEIGHTON
12 UNITED STATES DISTRICT JUDGE

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