

1 THE HONORABLE FRED Van SICKLE

2 RICHARD D. CAMPBELL
3 CAMPBELL & BISSELL, PLLC
4 7 South Howard Street, Suite 416
5 Spokane, WA 99201
6 Telephone: (509) 455-7100
7 Facsimile: (509) 455-7111

8 Attorneys for Plaintiff

9 UNITED STATES DISTRICT COURT FOR THE
10 EASTERN DISTRICT OF WASHINGTON

11	WENDLE MOTORS, INC.,)	
12)	Case No.: CV-06-334-FVS
13	Plaintiff,)	
14	vs.)	WENDLE MOTORS, INC.’S
15	RANDOLPH HONKALA and)	MEMORANDUM IN
16	RENEE HONKALA, individually)	SUPPORT OF MOTION
17	and the marital community)	FOR PRELIMINARY
18	comprised thereof,)	INJUNCTION
)	
	Defendants.)	

19 **I. INTRODUCTION**

20 *Plaintiff Wendle Motors, Inc. (“Wendle”) submits this memorandum in*
21 *support of its Motion for Preliminary Injunction. Because the issues and*
22 *burden are the same for a TRO as a Preliminary Injunction, Plaintiff’s brief*
23

1 below essentially mirrors its Motion for Temporary Restraining Order. At
2 this time, Wendle has no new evidence as due to the time frame for this
3 hearing, it has not served nor received any expedited discovery on the
4 Defendants. Defendants did not object to the terms of the TRO and should
5 have no objection to the terms of the Preliminary Injunction Order which
6 seeks to preserve the status quo through a trial on the merits. Plaintiff has
7 made the defamation portion of the injunction bilateral to follow the spirit of
8 the TRO.
9

10 **II. STATEMENT OF FACTS**

11 1. Defendant Randy Honkala is a former Wendle employee.
12 Through Ford's "Power Lease" program, Honkala purchased two Power
13 Leases from separate individuals. (Verified Compl., ¶ 7, 10).
14

15 2. Wendle was not a party to the actual purchase of either of the
16 two Power Leases, however, once in ownership of the Power Leases, Honkala
17 ordered two of his Shelby GT 500's (one coupe and one convertible) through
18 Wendle. (Verified Compl., ¶ 11).
19

20 3. Through no fault of Wendle, the delivery of the Coupe was
21 delayed until approximately August 30, 2006. Other than the factory delays
22 to the delivery of the Coupe, Honkala made no complaints to Wendle about
23 the Coupe. (Verified Compl., ¶ 13).
24

1 4. On or about June 26, 2006, Honkala applied for employment at
2 Wendle. Wendle hired Honkala as a sales associate beginning July 1, 2006.
3 As part of his employment, Honkala was notified concerning his duties about
4 the dissemination of confidential information. (Verified Compl., ¶ 14).

5
6 5. On or about August 14, 2006, for reasons not material to this
7 lawsuit, Honkala's employment ended at Wendle. As part of an exit
8 interview, Honkala acknowledged that Wendle Motors' business information,
9 property and all other Company assets are considered proprietary and
10 property of Wendle. (Verified Compl., ¶ 15).

11
12 6. On August 23, 2006, Honkala sent an email to Chud Wendle
13 under the pseudonym Art from the email address
14 "2007shelbygt500@earthlink.net" informing Mr. Wendle that in his opinion
15 Wendle scored a "10 out of 10" on an internet site article listing ten trouble
16 signs at a dealership. This was a false statement. (Verified Compl., ¶ 16).

17 7. When new vehicles are typically delivered to Wendle from Ford,
18 they follow the following process: The vehicles are delivered by rail to the
19 rail yard at Orillia, Washington (near Kent). The cars are unloaded and
20 separated and grouped by dealers. Commercial carriers then load the cars on
21 to semi-truck trailers, perform a brief external inspection for obvious damage,
22 and haul the cars to the dealers. The vehicles are then delivered by
23

1 commercial carrier from Orillia to Wendle. For protection from damage
2 during the transit process, the vehicles are covered with a white plastic
3 material (commonly called “stickers”) at the Ford factory. Wendle notifies
4 the customer the vehicle is en route and once Wendle received the vehicle, it
5 removes the stickers and performs a Pre-delivery Inspection (“PDI”) to ensure
6 the vehicle is free from defects before turning it over to the customer.
7 (Verified Compl., ¶ 19).

9 9. Honkala’s Convertible arrived in Orillia on October 11, 2006.
10 Honkala was eager to receive the Convertible, and asked for special
11 permission from Wendle to pick up the car himself from the rail yard at
12 Orillia. Wendle acquiesced, but since cars cannot be released directly to the
13 customer, Honkala had to bring along a Wendle employee to sign for the
14 Convertible. Wendle put Honkala in touch with one of its contract drivers.
15 Wendle typically pays those drivers \$0.20 cents per mile. Honkala negotiated
16 a price directly with the driver of \$120.00 flat rate. Honkala picked up the
17 Convertible, put it on a trailer, and hauled it to his residence in Colbert,
18 Washington on October 12, 2006. (Verified Compl., ¶ 20).

21 10. Honkala was supposed to bring the Convertible to Wendle on
22 October 13, 2006 for the PDI. Honkala failed or refused to bring the car in
23 for the inspection. (Verified Compl., ¶ 21).

1 11. On or about October 14, 2006, Honkala removed the stickers
2 himself and discovered the vehicle had minor cosmetic body damage which
3 occurred during production. This upset Honkala. He sent pictures of the
4 problems to Wendle and demanded Wendle do something about it. Mr. Keys
5 told Honkala that he needed to bring the car in so Wendle could look at it and
6 determine what had to be done. (Verified Compl., ¶ 22).

8 12. On or about October 19, 2006, Honkala brought the Convertible
9 in so the Western Zone Manager from Ford, Matt Devlin, could inspect the
10 Convertible. Devlin agreed with Honkala that the condition of the car was
11 not acceptable and that it was a problem created at the factory during
12 production, and not by Wendle. (Verified Compl., ¶ 23).

14 13. Devlin, as Ford's representative, offered Honkala two options:
15 (1) Wendle would repair the damage at no charge under the vehicle warranty
16 and all repairs would meet Ford's quality standards; or (2) Honkala could
17 return the convertible to Wendle for a full refund, and then order a new
18 Shelby GT 500 of his choice.¹ (Verified Compl., ¶ 24).

20 14. Honkala chose the option of having Wendle buy the Convertible
21 from him and have Ford provide him with a new Shelby GT 500. Ford

22 _____
23 ¹ This option was not required by Washington law, but offered as goodwill to a valuable customer.

1 agreed to expedite production of the replacement vehicle. Honkala was not
2 forced or coerced in his decision. (Verified Compl., ¶ 25).

3 15. Wendle gave Honkala a complete refund of the purchase price of
4 the car, including tax and license, and Wendle repaired the cosmetic defects
5 on the Convertible as it was titled Owner of the Convertible and free to
6 market or sell it. The total repair bill for the defects was less than \$450.00.
7 (Verified Compl., ¶ 26).

9 16. On October 26, 2006, Honkala came to Wendle ordered another
10 Coupe as a replacement vehicle. Subsequently, Honkala requested a change
11 to the interior color and wanted to add a navigation system. Ford indicated
12 that the navigation system option was not available. This upset Honkala.
13 (Verified Compl., ¶ 27).

15 17. On or about November 2, 2006, Wendle decided to sell the
16 Convertible on E-bay.com. The listing was for 10 days which ended on
17 November 13, 2006. On the E-bay posting, Wendle, in the comment section,
18 fully disclosed the issue by stating:

20 Rare Opportunity:

21 Used 2007 Ford Mustang Shelby GT 500 convertible with under
22 200 miles. Car was purchased new at this dealership by a
23 collector and Ford Power Lease holder. While at the factory the
24 car was scratched and had to have the left rear fender re-finished.
The work was done prior to shipment and there was dust

1 between the paint and the clear coat. The work was not
2 acceptable to the customer and he requested that Ford build him
3 another vehicle since he was planning to keep this one in storage
4 and didn't want one that had paint work. Ford agreed to build
5 him another vehicle and we were able to purchase this one back
6 from the customer and have the fender re-finished properly. As
7 you can see by the pictures the work has been done and the car
8 looks beautiful.

6 The car is torch red with the black leather. It has the interior
7 upgrade package and Sirius.

8 (Verified Compl., ¶ 28).

9 18. On or about November 5, 2006, Honkala learned of Wendle's
10 intent to sell the car on E-bay.com. This upset Honkala. On November 5,
11 2006, Honkala, through the web-name *GT500Convert* began posting false and
12 slanderous information on the website *SVTPerformance.com* concerning the
13 Power Lease, Wendle's role in the transaction, Wendle's attempt to sell the
14 car on E-bay.com, the condition of the vehicle. (Verified Compl., ¶ 29, 30).

16 19. *SVTPerformance.com* is a website frequented by car enthusiasts
17 throughout the nation. It hosts forums for these car enthusiasts to discuss
18 information about Ford's SVT vehicles. Wendle has an internet presence and
19 markets and sells cars over the internet. Each of the persons receiving or
20 reading Honkala's false, slanderous and misleading statements was a potential
21 customer. Those individuals also knew other potential customers. (Verified
22 Compl., ¶ 31).

1 20. Similar false statements and dissemination of misappropriated
2 trade secrets were posted by Honkala on *Stangsunleashed.com* under the
3 webname *TwinTurboBoss*. (Verified Compl., ¶ 32).

4 21. Upon information and belief Honkala has posted false statements
5 and has disseminated misappropriated trade secrets on other websites and
6 continues to do so. (Verified Compl., ¶ 33).

7 22. On November 15, 2006, Honkala contacted directly the
8 successful bidder on the Convertible on E-bay.com and discouraged him from
9 buying the Convertible from Wendle. Honkala made false statements to the
10 bidder about his transaction with Wendle, the condition of the vehicle, and
11 bidder about his transaction with Wendle, the condition of the vehicle, and
12 Wendle's reputation and business practices. (Verified Compl., ¶ 36).

13 23. The successful bidder of the vehicle read the negative and false
14 information Honkola made about the vehicle and decided not to go through
15 with the purchase. (Verified Compl., ¶ 37).

16 24. The negative and false information posted by Honkala has
17 lessened and impaired the value of the Convertible. (Verified Compl., ¶ 38).

18 25. Honkala also posted proprietary information misappropriated
19 from his employment at Wendle for his personal gain and with the intent to
20 injure Wendle's reputation and cause pecuniary damage to Wendle. Such
21 statements include, but are not limited to:
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23

- 1 • “how [sic] about if everyone here calls the 800 number and or
2 goes online and makes an inquiry as it cost them money each
3 time. Just go to FORD.com and use 99207 for zip code. to [sic]
inquire about a vehicle, [sic]”

4 (Verified Compl., ¶ 39).

5 26. Wendle believe that Honkala or someone acting in concert with
6 him posted false and slanderous information on *SVTPerformance.com* posing
7 as a salesman at Wendle. (Verified Compl., ¶ 40).

8 27. Honkola has, and continues to, email various managers at Ford,
9 including the CEO of Ford, false statements concerning Wendle, the
10 condition of the vehicle, as well as other false and misleading statements.
11 These emails were intended to injure, and have injured, Wendle’s reputation
12 and credibility with Ford, which in turn will have a financial impact on
13 Wendle. (Verified Compl., ¶ 41).

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16 **III. ARGUMENT AND AUTHORITY**

17 Generally, the basis for injunctive relief in federal court is the
18 inadequacy of legal remedies and irreparable injury. Weinberger v. Romero-
19 Barcello, 456 U.S. 305, 312, 102 S.Ct. 1798, 1803 (1982). In order to
20 determine whether to grant injunctive relief, this Court must look at the
21 following factors:

- 22 (1) the likelihood of plaintiff’s success on the merits;

1 (2) the possibility of plaintiff's suffering irreparable injury if relief
2 is not granted;

3 (3) the extent to which the balance of hardships favors the
4 respective parties; and

5 (4) in certain cases, when the public interest will be advanced by the
6 provision of preliminary relief.

7
8 See, Miller v. California Pacific Medical Center, 991 F.2d 536, 540 (9th Cir.
9 1993). Said another way, the moving party must show either (1) a
10 combination of probable success and possibility of irreparable injury or (2)
11 that serious questions are raised and the balance of hardships tip in favor of
12 the moving party. Id. The moving party must make a "clear showing" that it
13 satisfies these factors. Mazurek v. Armstrong, 520 U.S. 968, 972, 117 S.Ct.
14 1865, 1867 (1997).

15
16 It is important to note that the foregoing factors are considered as a
17 whole, not independently, and other words, a strong showing with regard to
18 one factor may overcome weaknesses which might exist with regard to other
19 factors. For example, as the probability of success increases, the required
20 degree of irreparable harm decreases and vice versa. See, Miller, 991 F.2d at
21 540, citing U.S. v. Odessa Union Warehouse Co-op, 833 F.2d 172, 174 (9th
22 Cir. 1987). Similarly, "if arguments for one factor are particularly strong, an
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1 injunction may issue even if the arguments in other areas are rather weak.”
2 City Fed. Financial Corp. v. Office of Thrift Supervision, 58 F.3d 738, 747
3 (D.C. Cir. 1995).

4 Federal courts have considerable discretion in determining whether to
5 issue a preliminary injunction. A court’s decision regarding injunctive relief
6 will not be reversed on appeal unless the court applied incorrect law, relied
7 on “clearly erroneous” factual findings or otherwise abused its discretion.
8 Ocean Garden, Inc. v. Marktrade, Inc., 953 F.2d 500, 502 (9th Cir. 1991).

9
10 **A. The Possibility of Success on the Merits Is Extremely High.**

11 Wendle has asserted a federal cause of action against Honkala for
12 breach of Section 43(a) of the Lanham Act and several state law causes of
13 action (misappropriation trade secrets, tortious interference with business
14 relations, slander, and breach of consumer protection act) over which this
15 Court has supplemental jurisdiction.
16

17 **1. Honkala misappropriated and disseminated trade**
18 **secrets in violation of RCW § 19.108.**

19 Under Washington’s Uniform Trade Secrets Act, “improper means”
20 includes breach of a duty to maintain secrecy. RCW 19.108.010(1).
21 Misappropriation means the acquisition of a trade secret by a person who
22 knew or had reason to know that his knowledge of the trade secrets was
23
24

1 acquired under circumstances giving rise to a duty to maintain secrecy.
2 RCW 19.108.010(2)(b)(ii). A trade secret means information that derives
3 independent economic value from not being generally known and is the
4 subject of reasonable efforts to maintain the secrecy. RCW 19.108.010(4).

5
6 For trade secrets to exist, they must not be “readily ascertainable by
7 property means” from some other source. Boeing Co. v. Serracin Corp., 108
8 Wn.2d 38, 50, 738 P.2d 665, 674 (1987).

9 Here, Honkala was notified of his duty to maintain secrecy over
10 confidential information when he began and ended his employment at
11 Wendle. (See Aff. of C. Wendle, ¶ 3). Honkala disseminated statements
12 concerning Wendle’s business practices, alleged dealings with former
13 customers, and costs associated with leads derived from its 800 number and
14 the Ford website. (See Aff. of C. Wendle, ¶ 5).

15
16 **2. Honkala tortiously interfered with Wendle’s business**
17 **relations.**

18 One who, without a privilege to do so, wrongfully induces or otherwise
19 purposely causes a third person not to perform a contract with another or to
20 enter into or continue a business relation with another is liable to the other for
21 the harm caused thereby. Calbom v. Knutdson, 65 Wn.2d 157, 162-63, 396
22 P.2d 148, 152 (1964). The basic elements going into a prima facie
23

1 establishment of the tort are (1) the existence of a valid contractual
2 relationship or business expectancy; (2) knowledge of the relationship or
3 expectancy on the part of the interferer; (3) intentional interference inducing
4 or causing a breach or termination of the relationship or expectancy; and (4)
5 resultant damage to the party whose relationship or expectancy has been
6 disrupted. Ill will, spite, defamation, fraud, force, or coercion, on the part of
7 the interferer, are not essential ingredients, although such may be shown for
8 such bearing as they may have upon the defense of privilege. Id.

9
10 Here, the facts clearly show that Honkala knew of Wendle's attempts
11 to sell the Convertible on E-bay, was aware that an individual was a
12 successful bidder, and that Wendle was expecting the sale to go through, and
13 Honkala contacted the buyer directly and talked him out of buying the
14 Convertible. (See Aff. of C. Wendle, ¶ 6).

15
16 **3. Honkala published false statements about Wendle and the**
17 **condition of the Convertible.**

18 The elements a plaintiff must establish in a defamation case are falsity,
19 an unprivileged communication, fault, and damages. Mohr v. Grant, 153
20 Wn.2d 812, 822, 108 P.3d 768, 773 (2005) citing Herron v. KING Broad.
21 Co., 112 Wn.2d 762, 767-68, 776 P.2d 98 (1989), 112 Wn.2d at 768; Bender
22 v. City of Seattle, 99 Wn.2d 582, 599, 664 P.2d 492 (1983); Mark v. Seattle

1 Times, 96 Wn.2d 473, 486, 635 P.2d 1081, 1088 (1981); Alpine Indus.
2 Computers, Inc. v. Cowles Publ'g Co., 114 Wn. App. 371, 378, 57 P.3d 1178,
3 64 P.3d 49 (2002); Clardy v. Cowles Publ'g Co., 81 Wn. App. 53, 57, 912
4 P.2d 1078 (1996); Camer v. Seattle Post-Intelligencer, 45 Wn. App. 29, 36,
5 723 P.2d 1195 (1986).
6

7 Wendle will be able to show that statements published by Honkala
8 were false, that he had no privilege to make the false statements, that he was
9 negligent or acted with malice in making the statements and that it was
10 damaged as a proximate result. See Aff. of C. Wendle, ¶ 7).
11

12 **4. Honkala's conduct amounts to a breach of Washington's**
13 **Consumer Protection Act.**

14 To prevail in an action brought under Washington's Consumer
15 Protection Act (RCW 18.26 et. seq), Wendle must establish that: (1)
16 Honkola has engaged in an unfair or deceptive act or practice, (2) in trade or
17 commerce, (3) that impacts the public interest, (4) Wendle has suffered injury
18 in its business, and (5) a causal link exists between the unfair or deceptive act
19 and the injury suffered. Leingang v. Pierce County Medical Bureau, Inc.,
20 131 Wn.2d 133, 150, 930 P.2d 288, 296 (1997). Wendle is able to establish a
21 prima facie case for this cause of action.
22
23
24

1 For conduct to be an unfair or deceptive practice, it must have the
2 capacity to deceive a substantial portion of the public. Segal Co. v. Amazon,
3 280 F.Supp.2d 1229, 1232-33 (W.D. Wash. 2003). Here, Honkala posted his
4 false statements on the internet, thus reaching a wide audience. His “thread”
5 on *SVTPerformance.com* has had 6,543 views as of November 27, 2006.
6 Honkala began the thread on November 5, 2006. (See Aff. of C. Wendle, ¶
7 4).

9 The public interest requirement is established when there is a
10 likelihood that additional persons have been or will be injured in the same
11 fashion. Goodyear Tire & Rubber Co. v. Whiteman Tire, Inc., 86 Wn. App.
12 732, 744-45 , 935 P.2d 628, 635 (1997). Here, other individuals and entities
13 have been similarly injured, in that slanderous statements have been made
14 against Ford and Wendle’s internet manager, Rick Green. (See Aff. of C.
15 Wendle, ¶ 9). Furthermore, other individuals have the possibility of being
16 deceived and harmed as the Convertible is still for sale.

18 Wendle has suffered injury – due solely to Honkala’s
19 misrepresentations, Wendle lost a sale on the Convertible, the value of which
20 has been diminished. (See Aff. of C. Wendle, ¶ 6). Additionally, Wendle
21 has suffered damage to its goodwill, business reputation, and relationship
22 with Ford. (See Aff. of C. Wendle, ¶ 10-11).

1 **B. Wendle Will Be Irreparably Injured If A Preliminary Injunction**
2 **Is Not Issued.**

3 Harm to goodwill and business reputation has been defined as the sort
4 of damages for which a preliminary injunction should issue to protect. See
5 Flying Cross Check, LLC v. Central Hockey League, Inc., 153 F.Supp.2d
6 1253, 1259 (D. Kan. 2001). This type of damage cannot be compensated by
7 money damages, nor can money damages in such a situation be ascertained.
8

9 **C. The Balance Of Hardships Favors Wendle.**

10 Defendant is making tortious and false statements and posting them on
11 the internet. Defendant is aware of the falsity of the statements he is making.
12 Wendle is being financially damaged by these statements and is suffering
13 harm to its goodwill, business reputation. It is easy for Defendant to stop
14 posting on the internet. It is not easy for Wendle to conduct business, while
15 maintaining its reputation and goodwill if Honkala were allowed to continue
16 to post his false statements during the pendency of this action.
17

18 **D. The Public Interest Will Be Advanced Through Issuance of a**
19 **Preliminary Injunction.**

20 The public has an interest in receiving correct facts about a vehicle
21 which is on the market for sale. Defendants have been spending an
22 inordinate amount of time on the Internet posting false and misleading
23 statements concerning the condition of the Convertible. This Court should
24

1 not allow such blatantly abusive conduct to occur, and should require
2 Defendants to cease disseminating false statements immediately.

3 **IV. CONCLUSION**

4 Based on the foregoing, Wendle requests this Court issue a Preliminary
5 Injunction enjoining Defendants and anyone acting in active concert with
6 them:
7

8 (1) from destroying, deleting or altering electronically stored
9 information;

10 (2) from further internet postings or emails or private messages
11 about Wendle, or the sale or condition of the Convertible;

12 (3) from publishing or distributing information about Wendle
13 Motors, Inc. or any of its officers, directors, employees, or affiliated
14 companies;

15 (4) from publishing or distributing information about the sale or
16 condition of the red GT 500 Convertible, VIN #1ZVHT89S775233431,
17 (“Convertible”);
18

19 (5) from contacting potential buyers of the Convertible;

20 (6) from publishing or distributing any proprietary information,
21 trade secrets, or confidential information of Wendle; and
22

1 (7) enjoining Wendle Motors, Inc. and Honkala from engaging in
2 any business defamation of the other, or of the employees, officers, directors
3 or affiliate companies of either during the pendency of this action.

4 DATED this 13th day of December, 2006,

5
6 CAMPBELL & BISSELL, PLLC

7 /s/ Richard D. Campbell

8 RICHARD D. CAMPBELL, WSBA #24078
9 Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of December, 2006, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. I caused to be served a true and correct copy of the foregoing document to the following:

<input type="checkbox"/>	HAND DELIVERY	Randy and Renee Honkala
<input checked="" type="checkbox"/>	U.S. MAIL	505 E. Gem Lane
<input type="checkbox"/>	OVERNIGHT MAIL	Colbert, WA 99005
<input type="checkbox"/>	FAX TRANSMISSION	

/s/ Richard D. Campbell
RICHARD D. CAMPBELL
 Attorney for Plaintiff
 Campbell & Bissell, PLLC
 7 South Howard Street, Suite 416
 Spokane, WA 99201
 Telephone: (509) 455-7100
 Facsimile: (509) 455-7111
 Email: rcampbell@campbell-bissell.com