

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

GLOBAL ARCHERY PRODUCTS, INC.))	
)	
Plaintiff,))	Civil Action No.: 1:15-cv-297-JVB-SLC
)	
v.))	JURY TRIAL DEMANDED
)	
JORDAN GWYTHER d/b/a))	
LARPING.ORG and UPSHOT ARROWS,))	
)	
Defendant.))	

**MOTION FOR TEMPORARY RESTRAINING
ORDER, PRELIMINARY INJUNCTION AND HEARING**

Pursuant to Rule 65 of the Federal Rules of Civil Procedure and N.D. Ind. L.R. 65-1, Plaintiff Global Archery Products, Inc. (“Global”), by counsel, moves the Court for the entry of a temporary restraining order as well as a preliminary injunction and order, enjoining Defendant Jordan Gwyther d/b/a Larping.Org and Upshot Arrows (“Gwyther”), its respective officer, directors, principals, agents, servants, employees, successor and assigns, and all of those in active concert and participation with Gwyther, and each of them who receives notice directly or otherwise of such injunctive relief to:

(1) Cease issuing any press releases, advertisements, letters, promotional materials, articles, and oral or other written statements including posts on social media sites such as Gofundme, YouTube, Facebook, and Twitter, that falsely, misleadingly, or deceptively associate or otherwise imply that this action was initiated and is being prosecuted to interfere with the general public’s ability to engage in live action role playing (“LARP”);

(2) Cease issuing any press releases, advertisements, letters, promotional materials, articles, and oral or other written statements including posts on social media sites such as

Gofundme, YouTube, Facebook, and Twitter, that falsely, misleadingly, or deceptively associate or otherwise imply that this action was initiated and is being prosecuted to interfere with the general public's ability to engage in LARP archery;

(3) Cease issuing any press releases, advertisements, letters, promotional materials, articles, and oral or other written statements including posts on social media sites such as Gofundme, YouTube, Facebook, and Twitter, that falsely, misleadingly, or deceptively associate or otherwise imply that this action was initiated and is being prosecuted to assert patent rights as to any and all foam tipped arrows;

(4) Cease issuing any press releases, advertisements, letters, promotional materials, articles, and oral or other written statements including posts on social media sites such as Gofundme, YouTube, Facebook, and Twitter, that falsely, misleadingly, or deceptively associate or otherwise use the registered trademark "Archery Tag®";

(5) Cease issuing any press releases, advertisements, letters, promotional materials, articles, or oral or other written statements including posts on social media sites such as Gofundme, YouTube, Facebook, and Twitter, that make false or misleading description or representation of fact with respect to Global, Global's products and/or the instant lawsuit;

(6) Cease from otherwise engaging in false advertising or deceptive trade practices with respect to Global or Global's products;

(7) Requiring Gwyther to identify and recall from any third party any and all copies of press releases, advertisements, promotional materials, and other written statements including posts on social media sites complained of in Global's brief in support of this motion for injunctive relief;

(8) Requiring Gwyther to issue corrective press releases, advertisements, letters,

promotional materials, articles, posts on social media sites and e-mails to all individuals who received the false and misleading materials complained of in Global's brief in support of this motion;

(9) Return all funds collected from the general public; and

(10) File with the Court and serve upon Global's counsel within fifteen (15) days after issuance of a preliminary injunction a written report filed under oath setting forth in detail the manner and form in which Gwyther has complied with the injunction.

The entry of a temporary restraining order and preliminary injunction against Gwyther is necessary to prevent Global from continuing to be irreparably harmed by Gwyther's false misleading and deceptive trade practices. Gwyther has used its false, misleading and deceptive press releases, advertisements, and posts on social media sites in interstate commerce to unfairly compete in the marketplace with Global with the intent and goal of diverting sales of Global's products to Gwyther as well harming the reputation of Global so as to lower such repudiation in the estimation of the community and to deter third persons from associating or dealing with Global. These facts and evidence, which fully support Global's request for injunctive relief, are set forth more fully in Global's Brief In Support Of Its Motion for a Preliminary Injunction, in the pleadings on file herein, and by the exhibits thereto.

Global respectfully requests this Court to schedule a prompt hearing on this matter.

This is not an *ex parte* request. Global has provided notice to Gwyther's counsel of this motion.

Dated: February 10, 2016

s/Dean E. McConnell
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was electronically filed on this 10th day of February 2016, by way of the Court's electronic filing system, and that a copy of this filing will be sent to all counsel of record via the Court's electronic filing system.

/s/ Dean E. McConnell

**IN THE UNITED STATES DISTRICT COURT
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GLOBAL ARCHERY PRODUCTS, INC.)	
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Plaintiff,)	Civil Action No.: 1:15-cv-297-JVB-SLC
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v.)	JURY TRIAL DEMANDED
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JORDAN GWYTHER d/b/a)	
LARPING.ORG and UPSHOT ARROWS,)	
)	
Defendant.)	

**PLAINTIFF GLOBAL ARCHERY PRODUCTS, INC.’S
BRIEF IN SUPPORT OF ITS MOTION FOR TEMPORARY
RESTRAINING ORDER, PRELIMINARY INJUNCTION AND HEARING**

Pursuant to Rule 65 of the Federal Rules of Civil Procedure and N.D. Ind. L.R. 65-1, Plaintiff Global Archery Products, Inc. (“Global”), by counsel and in support of its motion for the entry of a temporary restraining order as well as a preliminary injunction and order against Defendant Jordan Gwyther d/b/a Larping.Org and Upshot Arrows (“Gwyther”) shows the Court as follows:

I. ISSUE PRESENTED

Whether a temporary restraining order and preliminary injunction should issue enjoining Gwyther from further committing acts of unfair competition by disseminating press releases, advertisements, and social media postings that falsely, misleadingly, and deceptively misstates the nature and extent of this pending action so that Gwyther can obtain a pecuniary benefit and further damage the goodwill associated with Global and its ARCHERY TAG® products?

II. INTRODUCTION

Gwyther has misused and misrepresented to the public Global’s complaint in this action to create the false and misleading impression that Global is attempting to assert and protect

intellectual property rights far in excess of those at issue in this action. By doing so, Gwyther has deliberately mislead consumers regarding the nature and scope of this action which has resulted in irreparable damage to Global. For this reason, Global seeks a temporary restraining order and preliminary injunction preventing Gwyther from continuing this reckless behavior.

Specifically, on February 8, 2016, Gwyther created a “gofundme” page and posted a YouTube video that creates the false impression in the market place that (a) Global was attempting to interfere with the public’s ability to engage in a recreational activity known as Live Action Role Playing (“LARP”)¹; (b) Global was attempting to interfere with the public’s ability to engage in a recreational activity known as LARP archery; and (c) Global was attempting to assert a patent as to *all* foam tipped arrows. To perpetuate this false and misleading impression, Gwyther used Global’s registered trademark ARCHERY TAG®. Gwyther’s conduct has created havoc and confusion in the marketplace for Global, disrupting Global’s business and unfairly competing with Global. This was not an “accident” or an “innocent” mistake, but rather, was a calculated maneuver done by Gwyther to unfairly damage Global’s reputation, divert sales of Global’s products to Gwyther and to dupe the general public into funding Gwyther’s defense of this action.

A temporary restraining order and preliminary injunction is the proper remedy to prevent Gwyther from causing further harm to Global and from otherwise unfairly competing with Global. Every day that Gwyther is allowed to continue this course of conduct and without corrective actions, causes the harm done to Global to grow, in the form of lost sales, damaged customer relations, and loss of goodwill.

¹ LARP is defined as “At it’s simplest you could say that larping is a continuation of a table-top roleplaying game that people choose to act out by becoming a character and staging a fantasy world experience in which their character lives.” www.larping.org/larp-definition/

III. BACKGROUND

Global is the owner of two U.S. Patents (U.S. Patent No. 8,449,413 and U.S. Patent No. 8,932,159) (the “Patents”). *See* Exhibit A, Declaration of John Jackson (“Jackson Declaration”), Paragraph 2. The Patents generally relate to specific forms of a non-lethal arrow that is used in activities marketed and promoted by Global and its authorized licensees under the ARCHERY TAG® trademarks. *Id.* Global is the owner of U.S. Trademark Registrations No. 4,208,868 and No. 4,208,868 for the ARCHERY TAG® (the “Trademarks”). ARCHERY TAG® is a game which is similar to dodgeball but is played using archery bows and non-lethal foam-tipped arrows covered by the Patents. *Id.*

Gwyther is selling and offering for sale in the United States products it refers to as the “Crossbow Bolt”, “Flat Tip Larp Arrow”, “Glow in the Dark Larp Arrow”, and “Round Tip Larp Arrow” (collectively referred to hereinafter as the “Gwyther’s Arrows”). *See* Complaint [Doc. 1] at paragraph 10 at p. 4. *See* Defendant’s Answer to Complaint and Affirmative Defenses (“Answer”) [Doc.11] at paragraph 10. Gwyther has also used the ARCHERY TAG® trademark:

- Advertising for Gwyther’s Arrows. Complaint at paragraph 11 and Exhibit F;
- As paid key words with one or more search engines such as, by way of example, Google. *Id.* at paragraph 12; and
- On Amazon.com to market and promote competing sets of ARCHERY TAG® equipment. *Id.* at paragraph 13;

Gwyther is not authorized or licensed to use the ARCHER TAG® trademarks. Jackson Declaration at 5. This action was initiated enforce the Patents as well as the ARCHERY TAG® trademarks. The Complaint sets forth nine counts – only two of which involve the Patents. The other seven counts are predicated on Gwyther’s misuse and misappropriation of the ARCHERY TAG® trademarks, his false advertising, and his tortious interference with Global’s business

relationships. Thus, only 22.2% of the original action involves the patents, yet Gwyther falsely and misleadingly omits the other issues in this case in the YouTube video.

On February 8, 2016, Gwyther created a “gofundme” page which solicited funds from the general public purportedly to aid in his legal defense of this action. To induce the general public to donate money to him (and make sales of his products), Gwyther stated, among other things:

- “The End of Larp Archery in North America”;
- “I’m reaching out to you today with something *that has the potential to ruin larp in North America as we know it*, specifically in regards to larp archery.” (emphasis added)
- “Over the past few months I’ve become stuck in a legal battle *with someone who claims to own the patent on foam tipped arrows*, the kind we use in larp . . .” (emphasis added)
- “Very few people in the larp community have a substantial income. I, myself, have a day job and sell these arrows (and other larp equipment) *as a part time hobby which doesn’t generate a great deal of income*. However, right now, the state of the entire larp hobby is at risk.” (emphasis added)
- “I genuinely believe that this is one of the biggest threats to our hobby in recent times and I cannot defend this threat without your help.”
- “In the complaint you will see many claims against me. Some of which are completely untrue, while others are “junk” that is trying to be passed off as breaking the law when in fact *we have done nothing wrong*.” (emphasis added).

A true and accurate copy of Gwyther’s gofundme page is attached heretofore as Exhibit B.

(<https://www.gofundme.com/savelarparchery>). Gwyther also posted a video to YouTube

(<https://m.youtube.com/watch?v=ey8qr492iY>) in which Gwyther repeated the gofundme page

representations. Each of the above-referenced statements are false and misleading.

Omitted from these representations, however, are the facts that:

- This action was also initiated to enforce the ARCHER TAG® trademarks and stop his false advertising;
- This action was also initiated to prohibit Gwyther from tortious interference with Global’s contractual and business relationships; and

- Gwyther has admitted receiving some \$47,000.00 from his sale of Gwyther’s Arrows. See Gwyther’s Motion for Relief from Local Patent Rules, For Limited Discovery, and for a Show-Cause Hearing at paragraph 2 [Document 16).

As a result of Gwyther’s false, deceptive and misleading statements and omission of certain facts (herein “False Advertising”), Global has been inundated with hateful phone calls, emails, and posts on its social media sites. Some of the messages Global has received go so far as stating that they hope that people at Global are “brutally murdered.” Jackson Declaration at Group Exhibit 1 thereon. Gwyther, however, has now received over \$3,000 from donations from the general public with comments such as:

\$30
18 hours ago
Take them down. ^^

\$10
1 day ago
Read the PDF with the claim. They are suing "Larping" and do not even try to hide it.

and

\$5
1 day ago
F...ing pieces of trash I hope you win against this scum

\$50
David Pulcifer
1 day ago
I hate patent trolls. Let's win this.

\$20
Steven LaFond
1 day ago
Nope. Patent trolls are awful people.

See Exhibit B.

IV. ARGUMENT

This is a straightforward case of false advertising under the Lanham Act. *See* 15 U.S.C. 1125(a). Gwyther has falsely, misleading and deceptively issued the smear campaign against Global to unfairly compete with Global. Gwyther's misrepresentations have, and will to continue to, if not enjoined by this Court, irreparably harm Global.

The Seventh Circuit has set forth the legal standard for obtaining for injunctive relief:

To obtain preliminary injunctive relief, the plaintiff must first: (1) show "some likelihood of success on the merits," and (2) show that the plaintiff "has no adequate remedy at law and will suffer irreparable harm if" the requested injunctive relief is denied. *Stuller, Inc. v. Steak N Shake Enterprises, Inc.*, 695 F.3d 676, 678 (7th Cir.2012)(internal quotations omitted)(quoting *Ty, Inc. v. Jones Group, Inc.*, 237 F.3d 891, 895 (7th Cir.2001); *see also Wisconsin Right To Life, Inc. v. Barland*, 751 F.3d 804, 830 (7th Cir.2014) (explaining that "[o]n the merits questions, the burdens at the preliminary injunction stage track the burdens at trial")(internal quotations omitted)(quoting *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006)).

If the plaintiff satisfies such threshold requirements, in the secondary phase the court must then: (1) "consider the irreparable harm that the nonmoving party will suffer if preliminary relief is granted, balancing such harm against the irreparable harm the moving party will suffer if relief is denied," and (2) "the public interest in granting or denying an injunction." *Stuller*, 695 F.3d at 678. When balancing the harms, the court should use a sliding scale approach, under which "the greater the likelihood of success on the merits, the less heavily the balance of harms must tip in the moving party's favor." *Korte v. Sebelius*, 735 F.3d 654, 665 (7th Cir.2013); *see also Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S. of America, Inc.*, 549 F.3d 1079, 1086 (7th Cir.2008)(explaining that the court "must somehow balance the nature and degree of the plaintiff's injury, the likelihood of prevailing at trial, the possible injury to the defendant if the injunction is granted, and the wild card that is the public interest")(internal quotations omitted)(quoting *Lawson Prods., Inc. v. Avnet, Inc.*, 782 F.2d 1429, 1433 (7th Cir.1986)).

In considering irreparable harm, the question is whether the party seeking relief will suffer irreparable harm in the interim period prior to the resolution of its claims. *Girl Scouts of Manitou Counsel*, 549 F.3d at 1086

A. Global Has a Strong Likelihood of Success on the Merits

The Lanham Act is the statutory basis for a false advertising claim. It states, in

relevant part:

(a)(1) Any person who, on or in connection with any goods or services... uses in commerce any word ...or false designation of origin, false or misleading description of fact, or false or misleading representations of fact, which –

...

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such acts.

See 15 U.S.C. § 1125(a)(1)(B).

The Seventh Circuit has established a five element test for plaintiffs seeking to prove liability under the Lanham Act. Specifically, a plaintiff must show that the

defendant:

- (1) made a false or misleading statement;
- (2) that actually deceives or is likely to deceive a substantial segment of the advertisement's audience;
- (3) on a subject material to the decision to purchase the goods;
- (4) touting goods entering interstate commerce; and
- (5) that results in actual or probable injury to the plaintiff.

B. Sanfield, Inc. v. Finlay Fine Jewelry Corp., 168 F.3d 967, 971 (7th Cir. 1999).

“Where the statement in question is actually false, then the plaintiff need not show that the statement either actually deceived consumers or was likely to do so.” *Id.* See *M-3 Associates, Inc. v. Cargo Systems Inc.*, 2004 WL 834690 (N.D. Ind. 2004), (when the statements at issue are literally false, the plaintiff did not need to prove that the statements had a tendency to deceive a substantial segment of the market or that such deception was material “since this is an extension of the second step.”)

1. Gwyther Has Made False and Misleading Statements

Gwyther has made false and misleading statements in his False Advertising. *See* Exhibit A and B. The False Advertisement falsely state that this lawsuit is “the end of larp archery in North America” and “has the potential to ruin larp in North America as we know it, specifically in regards to larp archery.” Gwyther also falsely states that Global “has made it clear that he wishes for his foam tipped arrow to be used only for the purpose of Archery Tag . . .” These statements, amongst other made on the gofundme page and in the YouTube video, are blatantly false and misleading. In fact, Global’s products are routinely sold to and used by persons and organizations that LARP. *See* Jackson Declaration at 6. Global has no intent to go after anyone in the LARP community and has no ill will towards anyone in the LARP community. These statements were made purposefully, willfully, and intentionally in order to falsely indicate to the intended audience that Global was attempting to prohibit the general public from engaging in LARP and LARP archery in particular.

Gwyther did this to obfuscate the fact that the instant lawsuit was actually about *his* personal conduct and specifically *his* misuse and misappropriation of Global’s ARCHER TAG® trademarks, *his* false advertising, and *his* tortious interference with Global’s business relationships. In fact, but for these actions, Global might not have even taken action against Gwyther as it was only when Global’s licensees started contacting Global and complaining about Gwyther’s conduct that Global was forced to take action.

Gwyther then underscored his misrepresentation through the use of a self-serving question and answer:

I dont [sic] use these type of arrows at my game - why should I care?

I think the main point here is that someone is threatening a portion of your hobby, of the nerd community, is being attacked and will change for the foreseeable future.

As a community, as a hobby, this is important and we should defend it together so that our hobby can grow and expand instead of being reduced due to greed.

See Exhibit B (emphasis added). No mention is made of the claims against Gwyther for his misuse and misappropriation of Global's ARCHER TAG® trademarks at all, and even though Gwyther provides a link to a pdf copy of the Complaint, Gwyther also peremptorily discredits it by stating:

In the complaint you will see many claims against me. Some of which are completely untrue, while others are "junk" that is trying to be passed off as breaking the law when in fact we have done nothing wrong.

Id.

This attempt at discrediting the claims predicated on Gwyther's misuse of Global's ARCHER TAG® trademarks, false advertising, and tortious interference with Global's business relationships also ignores Gwyther's own pleadings in this action. In fact, Gwyther has admitted that he has "used the name 'Archery Tag' to describe a particular game that is known by that same name or to refer to the products available by one or more competitors that are used to play a game called Archery Tag, *including the purchase of key words on Google.*" *See* Answer at paragraph 12, p. 9 (emphasis added). *See also* paragraph 15 ("Mr. Gwyther Admits that on at least one occasion he has placed a paid advertisement on Google in which he asserts an opinion that his Gwyther's Arrows were 'better than Archery Tag!'")

Even assuming, for the sake of argument, that Gwyther's False Advertisement is not literally false, it can hardly be argued that Gwyther's False Advertisement does not "convey a false impression or [is] misleading in context, as demonstrated by actual consumer confusion." *Abbott Laboratories v. Mead Johnson & Co.*, 971 F.2d 6, 14 (7th Cir. 1992). As clearly evident by the comments made by the general public both on-line in response to the False Advertising (Exhibit B) and directly to Global (Jackson Declaration at Group Exhibit 1), consumers falsely

believe that Global is attempting to interfere with their ability to engage in LARP and LARP archery.

In summary, Gwyther's False Advertisement contains literally false statements that have a tendency to deceive. As such, this factor favors issuance of a temporary restraining order and preliminary injunction enjoining Gwyther from issuing any further false and misleading statements.

2. Gwyther's False Advertisement Actually Deceived and Tend to Deceive a Substantial Portion of the Intended Audience

Gwyther's False Advertisement is directed towards consumers who purchase products sold by both Global and Gwyther. As set forth above, these consumers were deceived by Gwyther's False Advertisement. *See* Exhibits B and C. Gwyther's False Advertisement thus both clearly deceived a substantial portion of the intended audience and obviously tend to deceive a substantial portion of the intended audience. As such, this factor is decisively in Global's favor as well.

3. Gwyther's Statements are Material in that They Influence a Deceived Consumer's Purchasing Decision

A deceived consumer is not going to purchase a hobby product from Global when they have been lead to believe that Global is actively attempting to "ruin" that hobby. For example:

02/08/2016

Dustin Mills

Not Selected

Contact Not Made

Reason:I have a general question

Just sending in a message to let you know I and our small group have officially decided to stop playing your game and buying any products associated with it. Bullying a small company with a lawsuit to block sale of arrows (with a lot of prior 'art' and a few patents in other countries) just to set precedent for use against larger companies is absolutely despicable. You are potentially ruining a part of an entire hobby in this. I know I'm just one person within a small group of others, but it needs to be said. I'll be encouraging others to check this case out in larger circles within the LARP community as well. Just so that it is clear the case I speak of: <http://www.scribd.com/doc/285019022/Complaint>

Group Exhibit 1 to Jackson Declaration. Thus, once again, this factor is decisively in favor of the issuance of injunctive relief against Gwyther.

4. Gwyther's False Advertisement Were Introduced Into Interstate Commerce.

As set forth above, it is undisputed that Gwyther's False Advertisement was introduced into interstate commerce. This factor also falls decisively in Global's favor.

5. There is a Causal Link Between the False Advertisement and Harm to Global.

Gwyther's False Advertising is causing members of the general public, as well as current customers of Global, to hold Global in complete disdain. A cursory review of Group Exhibit 1 to Jackson's Declaration unequivocally demonstrates this point. As such, Global's business has been unfairly disrupted by having to deal with the public outcry caused by the False Advertisement who falsely believe that Global is attempting to interfere with their hobby. Clearly there is a causal link between the False Advertisements and the harm being done to Global.

B. Global Has and Will Continue to Suffer Irreparable Injury Without an Injunction

"It is well settled that injuries arising from Lanham Act violations are presumed to be irreparable, even if the plaintiff fails to demonstrate a business loss." *Northern Star Industries, Inc. v. Douglas Dynamics LLC*, 848 F.Supp.2d 934, 949 (E.D. Wis. 2012) (citing *Abbott Labs*, 971 F.2d at 16. "This presumption, it appears, is based upon the judgment that it is virtually impossible to ascertain the precise economic consequences of intangible harms, such as damage to reputation and loss of goodwill, caused by such violations." *Id.*

Here, Global's reputation and goodwill in the industry has been and is being irreparably damaged by Gwyther's False Advertisement. Portrayed by Gwyther as the Goliath out to crush all competitors and usurp total and complete control over LARP, Global is now the target of a hate campaign by some of its own customers as well as members of the general public who, but for the False Advertisement, could have become customers of Global. Rather than buy Global's

products, the general sentiment now directed to Global is that Global's founders should be brutally murdered. Needless to say, it is doubtful that Global's products would be purchased by these persons or anyone may pass on the False Advertising.

C. Issuance of the Requested Injunctive Relief Will Not Cause Substantial Harm to Others

Global has suffered and will continue to suffer substantial harm if a temporary restraining order and preliminary injunction does not issue. Other than Gwyther's desire to unfairly compete with Global and profit from the False Advertisement, no legitimate purpose is served through allowing Gwyther to continue to make false and misleading statements. No other parties other than Global and Gwyther will be affected by a properly worded temporary restraining order and injunction. Global has invested a substantial amount of time and money in developing its products and getting them to market. Global has also built up a substantial amount of goodwill in the industry that is being harmed by Gwyther's conduct. Any harm that may be caused to Gwyther should be discounted because the harm was brought upon itself by issuing false and misleading statements in the False Advertisement.

D. The Public Interest Is Served by Truthful Advertising

There is a public interest in "preventing confusion and deception in the marketplace and protecting the trademark holder's property interest in the mark." *Lorillard Tobacco Co. v. Amouri's Grand Foods, Inc.*, 453 F.3d 377, 383 (6th Cir. 2006). It should also come as no surprise that courts have found a strong public interest in preventing false and misleading advertising. *See American Home Products Corp. v. Johnson & Johnson*, 654 F. Supp. 568, 590 (S.D.N.Y. 1987). Finally, the public interest favors entry of a preliminary injunction in this case because "the public is equally interested in fair competitive practices and clearly opposed to being deceived in the marketplace." *McNeil Laboratories, Inc. v. American Home Products*

Corp., 416 F.Supp. 804, 809 (D. N.J. 1976). This factor thus also favors entry of a preliminary injunction enjoining Gwyther's unfair trade practice.

V. CONCLUSION

For the foregoing reasons, this Court should grant a temporary restraining order as well as a preliminary injunction enjoining Gwyther from issuing False Advertisements as well as requiring Gwyther to correct the False Advertisement in the market.

Dated: February 10, 2016

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was electronically filed on this 10th day of February 2016, by way of the Court's electronic filing system, and that a copy of this filing will be sent to all counsel of record via the Court's electronic filing system.

/s/ Dean E. McConnell