

**AFFIRMED and Opinion Filed August 10, 2020**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-19-01261-CV**

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**EPHRAIM MCGUIRE-SOBRINO, Appellant  
V.  
TX CANNALLIANCE LLC, Appellee**

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**On Appeal from the 429th Judicial District Court  
Collin County, Texas  
Trial Court Cause No. 429-05476-2019**

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**MEMORANDUM OPINION**

Before Chief Justice Burns<sup>1</sup> and Justices Pedersen, III, and Evans  
Opinion by Justice Evans

Appellant Ephraim McGuire-Sobrino appeals the trial court's order granting appellee TX Cannalliance LLC ("Cannalliance") a temporary injunction. In a single issue, McGuire-Sobrino asserts the trial court abused its discretion in granting the injunction. We affirm.

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<sup>1</sup> The Honorable David L. Bridges, Justice, participated in the submission of this case, however, he did not participate in the issuance of this opinion due to his death on July 25, 2020. Chief Justice Robert Burns has substituted in for Justice Bridges and has reviewed the briefs and the record before the Court.

## **BACKGROUND**

In 2019, Raymond Trey Tijerina formed Cannalliance as a single-member, manager-managed Texas limited liability company. Cannalliance primarily does business using the name Texas Cannabis Business Alliance (“TCBA”) and exists to support and educate Texans on issues and opportunities in the Texas cannabis market. TCBA worked with McGuire-Sobrino to assist with its digital assets and promotional efforts. McGuire-Sobrino established and/or managed the following digital assets: (1) TCBA’s website and its associated Squarespace account and domain name registrar; (2) TCBA’s Instagram account; (3) TCBA’s Facebook account; (4) TCBA’s LinkedIn account; (5) TCBA’s Twitter account; and (6) TCBA’s membership and mailing lists (collectively, the “digital assets”). At some point, TCBA learned it was no longer able to access its LinkedIn, Facebook and Instagram accounts, or membership and subscriber lists. Further, TCBA was not able to edit the content of its webpage. TCBA accused McGuire-Sobrino of editing the TCBA’s website content and canceling scheduled event notifications without its permission.

On September 27, 2019, Cannalliance filed a petition asserting claims for conversion, tortious interference with existing contract, tortious interference with prospective relations, and trademark infringement as well as a request for a temporary restraining order against McGuire-Sobrino. Cannalliance sought a restraining order to restrain McGuire-Sobrino from (1) excluding TCBA’s access to

the digital assets; (2) deleting or altering any previous content or from distributing any new content on the digital assets; (3) altering any relations with existing TCBA service providers which provide the digital assets; (4) directly contacting any TCBA members or subscribers; and (5) interfering with any activities TCBA engaged in utilizing the digital assets. On September 29, 2019, the trial court granted Cannalliance's request for a temporary restraining order. At the hearing on October 14, 2019, Tijerina testified in support of Cannalliance's request for a temporary injunction with the same conditions as the temporary restraining order. Tijerina, the sole managing member of Cannalliance, identified the website, social media accounts, and email address of the TCBA and stated that they were subject to the control of Cannalliance, as well as his approval. As of September 26, 2019, Tijerina testified that Cannalliance did not have full administrative access to its website, social media accounts, and gmail account. Cannalliance was not able to access its social media to update, modify or change the account, and he testified that events were deleted from TCBA's social media accounts. Tijerina reached out to McGuire-Sobrino but he failed to respond which lead to this lawsuit. Following the granting of the temporary restraining order, Tijerina did not regain access to the accounts or the website. Tijerina testified that his inability to control Cannalliance's digital assets and website is "crippling our ability to market and promote our events, to sell tickets to support the business" and can affect its representation of Cannalliance because it "can smear the public perception and paint a bad picture of the ability to

have control over our business.” Following the hearing, the trial court issued a temporary injunction on October 15, 2019 (the “order”). McGuire-Sobrino filed a notice of appeal of the interlocutory order on October 16, 2019.

## ANALYSIS

In his sole issue, McGuire-Sobrino asserts the trial court abused its discretion when it granted the temporary injunction.

### A. Standard of Review

The appeal of an order granting or denying a temporary injunction is an appeal from an interlocutory order. *Davis v. Huey*, 571 S.W.2d 859, 861 (Tex. 1978). Accordingly, the merits of the underlying case are not presented for appellate review. *Id.* Appellate review of an order granting or denying a temporary injunction is strictly limited to a determination of whether there has been a clear abuse of discretion in granting or denying such order. *Id.* The reviewing court must not substitute its judgment for that of the trial court unless the trial court’s decision was so arbitrary that it exceeded the bounds of reasonableness. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). The trial court abuses its discretion if (i) it misapplies the law to established facts or (ii) the evidence does not reasonably support the court’s determinations as to probable right of recovery or probable injury. *Loye v. Travelhost, Inc.*, 156 S.W.3d 615, 619 (Tex. App.—Dallas 2004, no pet.). No abuse of discretion exists if some evidence reasonably supports the trial court’s decision. *Butnaru*, 84 S.W.3d at 211. Further, the trial court does not abuse

its discretion when it makes a decision based on conflicting evidence. *Loye*, 156 S.W.3d at 619. The reviewing court draws all legitimate inferences from the evidence in the light most favorable to the trial court's judgment. *Tom James of Dallas, Inc. v. Cobb*, 109 S.W.3d 877, 883 (Tex. App.—Dallas 2003, no pet.).

## **B. Rule 683**

Texas Rule of Civil Procedure 683 requires:

Every order granting an injunction and every restraining order shall set for the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Every order granting a temporary injunction shall include an order setting the cause for trial on the merits with respect to the ultimate relief sought. The appeal of a temporary injunction shall constitute no cause for delay of the trial.

See TEX. R. CIV. P. 683. The purpose of Rule 683 is to adequately inform a party of what he is enjoined from doing and the reason why he is so enjoined. *El Tacaso, Inc. v. Jireh Star, Inc.*, 356 S.W.3d 740, 744 (Tex. App.—Dallas 2011, no pet.). The requirements of Rule 683 are mandatory and must be strictly followed. *InterFirst Bank San Felipe, N.A. v. Paz Const. Co.*, 715 S.W.2d 640, 641 (Tex. 1986). When a temporary injunction order does not adhere to the requirements of Rule 683, the injunction order is subject to being declared void and dissolved. *Id.*

Appellant asserts the order states by conclusory means the action to be enjoined and the terms of that injunction, and fails to state, “with legal sufficiency, the proper reasons why the trial court found the temporary injunction is required, ie: [sic] the facts, evidence, or specific testimony upon which the trial court based it’s [sic] finding of irreparable harm Appellee TCBA will suffer should the injunction does [sic] not issue.”<sup>2</sup> We disagree.

Here, the trial court included the following findings in its order:

1. Plaintiff TX Cannalliance LLC was formed on January 25, 2019, as a manager-managed Texas limited liability company[.]
2. Raymond Trey Tijerina is the sole manager of TX Cannalliance LLC.
3. TX Cannalliance LLC organizes and promotes events related to opportunities and changes in the cannabis industry.
4. TX Cannalliance LLC primarily promotes its events under the name Texas Cannabis Business Alliance (“TCBA”) utilizing the following assets (the “Digital Assets”):
  - a. The TCBA website . . . , and its associated Squarespace account and domain name registrar;
  - b. The TCBA Instagram account . . . ;
  - c. The TCBA Facebook account . . . ;
  - d. The TCBA LinkedIn account . . . ;
  - e. The TCBA Twitter account . . . ; and
  - f. The TCBA membership and mailing lists.

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<sup>2</sup> Appellant also asserts that the order does not comply with Rule 683 because it “fails to prove up a probable right to recovery, an imminent threat of irreparable harm, and/or that TCBA has no other adequate remedy.” As we address these arguments below, we do not address them here.

g. The TCBA email accounts . . . and . . . .

5. TX Cannalliance LLC will likely be able to show that it has a right to immediate possession of and control over its confidential mailing list; that Sobrino wrongfully exercised dominion and control over the mailing list by using it in a way that departed from the conditions under which it was received, in that he has used and continues to use the confidential client lists for his own benefit to the exclusion of TX Cannalliance LLC; that Sobrino has refused to return the property on demand by TX Cannalliance LLC; and that Sobrino's wrongful acts have proximately caused, and are causing, injury to TX Cannalliance LLC, resulting in damages from loss of use, public confusion as to scheduled events, and the inability of TX Cannalliance LLC to continue its promotional efforts.
6. TX Cannalliance LLC will likely be able to show that Sobrino has improperly used its "Texas Cannabis Business Alliance" mark for his own promotional purposes, utilizing the Digital Assets for promotion of content not approved by TX Cannalliance LLC, and using such identical mark, in identical channels, for identical services, to an unwitting public.
7. Harm is imminent to TX Cannalliance LLC as a result of Sobrino's conduct depriving TX Cannalliance LLC of the ability to adequately manage the Digital Assets. The Court finds that if it does not issue a temporary injunction, TX Cannalliance LLC will be irreparably injured because the disruption of TX Cannalliance LLC access to the Digital Assets and Sobrino's interference with such platforms damages the goodwill and reputation enjoyed by TX Cannalliance LLC. The Court further finds that TX Cannalliance LLC has no adequate remedy at law because damages cannot be accurately calculated given the complexity of calculating harm to business goodwill as well as ancillary harm resulting from Plaintiffs inability to operate.
8. TX Cannalliance LLC will therefore suffer probable injury unless this Court immediately
  - a. Restrains Sobrino from excluding TX Cannalliance LLC's access to the Digital Assets;

- b. Restrains Sobrino from deleting or altering any previous content or from distributing any new content on the Digital Assets;
  - c. Restrains Sobrino from altering any relations with existing TX Cannalliance LLC service providers which provide the Digital Assets and is related to services provided to TX Cannalliance LLC.
9. TX Cannalliance LLC will likely be awarded recovery in this case.
  10. TX Cannalliance LLC has exercised due diligence in prosecuting the underlying claim in this cause.
  11. TX Cannalliance LLC's injury outweighs any injury to Sobrino that may occur on issuance of this injunction.
  12. Sobrino's exclusion of TX Cannalliance LLC from the Digital Assets changes the status quo, which was on or about September 25, 2019, when TX Cannalliance LLC had full administrative control over, or full authority to grant or deny administrative control over, the Digital Assets.
  13. TX Cannalliance LLC shall, prior to the issuance of a writ of injunction, file with the clerk a bond or cash deposit of \$100.

The trial court then ordered as follows:

It is therefore ORDERED that effective as of the date of this Order, a temporary injunction issue, operative until judgment in this case, which enjoins Sobrino, and all of his agents, servants, and employees, as follows:

- a. Restrains Sobrino from excluding TX Cannalliance LLC's access to the Digital Assets, and requires that Sobrino provide TX Cannalliance LLC with full administrative control over the Digital Assets;
- b. Restrains Sobrino from deleting or altering any previous content or from distributing any new content on the Digital Assets;



- c. Restrains Sobrino from altering any relations with existing TX Cannalliance LLC service providers which provide the Digital Assets and is related to services provided to TX Cannalliance [sic] LLC;
- d. Orders the clerk to issue notice to Sobrino that the trial in this matter is set for February 17, 2020, at 9:00 a.m.

Here, we find that the order meets the requirements of Rule 683. First, it clearly details the reasons for its issuance—that Cannalliance will likely be able to show that McGuire-Sobrino has (1) wrongly exercised dominion and control over Cannalliance’s mailing list; (2) used Cannalliance’s confidential client lists for his own benefit to the exclusion of Cannalliance; (3) improperly used its TCBA mark for his own promotional purposes; and (4) used Cannalliance’s digital assets for promotion of content not authorized by Cannalliance. The order further states that McGuire-Sobrino’s wrongful actions have caused or are causing injury to Cannalliance because of loss of use, public confusion as to schedule of events, inability of Cannalliance to continue its promotional efforts, and loss of good will and reputation. The order further describes the acts which McGuire-Sobrino is restrained from doing: (1) excluding Cannalliance’s access to the digital assets; (2) deleting or altering any previous content or from distribution new content on the digital assets; and (3) altering any relations with existing LLC service providers which provide the digital assets. Finally, the order included a date for a trial on the merits. Accordingly, we conclude this order met the requirements of Rule 683.

### **C. Elements of Temporary Injunction**

A temporary injunction is an extraordinary remedy that does not issue unless the party seeking relief pleads and proves three specific elements: (1) a cause of action; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *See Butnaru*, 84 S.W.3d at 204. A trial court at a temporary injunction hearing determines whether the applicant is entitled to preserve the status quo pending trial on the merits. *Id.* The status quo is defined as the last, actual, peaceable, non-contested status that preceded the pending controversy. *In re Newton*, 146 S.W.3d 648, 651 (Tex. 2004).

#### **i) Irreparable injury**

McGuire-Sobrino first argues that Cannalliance failed to state any facts or show any evidence of an imminent threat of irreparable injury or harm. The party seeking injunctive relief bear the burden to demonstrate irreparable injury. *Lifeguard Benefit Servs., Inc. v. Direct Med. Network Sols., Inc.*, 308 S.W.3d 102, 111 (Tex. App.—Fort Worth 2010, no pet.). A party proves irreparable injury for injunction purposes by proving damages would not adequately compensate the injured party or cannot be measured by any certain proper pecuniary standard. *Id.*

Cannalliance alleged that it is injured by McGuire-Sobrino's actions because McGuire-Sobrino removed content from its digital assets and cancelled scheduled event notifications. Cannalliance offered the testimony of Tijerina, the sole managing member of Cannalliance, who testified that Cannalliance was not able to

access their social media to update, modify or change the account, and events were deleted from the TCBA's social media accounts. Tijerina testified that his inability to control Cannalliance's digital assets and website is "crippling our ability to market and promote our events, to sell tickets to support the business" and can affect its representation of Cannalliance because it "can smear the public perception and paint a bad picture of the ability to have control over our business."

McGuire-Sobrino argues that this testimony does nothing more than recite a fear of a possible contingencies, and cites *Benefield v. State*, 266 S.W.3d 25 (Tex. App.—Houston [1st] 2008, no pet.) in support of his assertion that "such contingencies are not sufficient to support issuance of a temporary injunction." In *Benefield*, the ACHE, a nonprofit corporation providing healthcare services, began to receive federal funding to help cope with the medical care needs in Brazoria County following hurricanes Katrina and Rita. 266 S.W.3d at 28. Brazoria County owns the property on which ACHE's facility is located and leases the land to ACHE. *Id.* The Department of Health and Human Services conducted an on-site review of ACHE and determined that it failed to comply with various requirements and stated that it needed to correct the deficiencies or it would lose its federal funding. *Id.* Some members of ACHE's board of directors terminated Nancy Benefield as CEO of ACHE, changed locks and cancelled contracts without the formal approval of the board of directors. *Id.* Fearful that ACHE was about to lose its federal funding, Brazoria County sued and sought a temporary injunction because ACHE is an

important part of its obligation to provide healthcare assistance to low-income residents. *Id.* at 29–30. At the hearing, Brazoria County relied on evidence that ACHE might not qualify for the federal grant but did not assert that loss of its funding would jeopardize ACHE or its ability to serve low-income residents of Brazoria County. *Id.* at 30. The trial court concluded that “Brazoria County fails to show that it would suffer an imminent, irreparable injury, even if ACHE were to lose its federal funding. At most, Brazoria County has established a fear of the possibility of a future injury, and such a contingency ‘is not sufficient to support issuance of a temporary injunction.’” *Id.* at 31.

Unlike *Benefield*, Cannalliance offered evidence of intangible harm to its business resulting from McGuire-Sobrino’s actions. Tijerina testified that McGuire-Sobrino’s actions were “crippling our ability to market and promote our events, to sell tickets to support the business” and can affect its representation of Cannalliance because it “can smear the public perception and paint a bad picture of the ability to have control over our business.” Texas courts have held that disruption to a business can be irreparable harm. *Intercontinental Terminals Co., LLC v. Vopak N. Am. Inc.*, 354 S.W.3d 887, 895–96 (Tex. App.—Houston [1st Dist.] 2011, no pet.) (“The harm found by the trial court includes loss of goodwill and reputation in the marketplace. Threatened injury to a business’s reputation and good will with customers is frequently the basis for temporary injunctive relief.”); *Frequent Flyer Depot, Inc. v. American Airlines, Inc.*, 281 S.W.3d 215, 228 (Tex. App.—Fort Worth 2009, pet.

denied); *Miller v. Talley Dunn Gallery, LLC*, No. 05-15-00444-CV, 2016 WL 836775, at \*6 (Tex. App.—Dallas Mar. 3, 2016, no pet.). While injuries such as damage to a business’s reputation and good will are not categorically irreparable, the irreparable injury requirement is satisfied when injuries of this nature are difficult to calculate or monetize. *Intercontinental Terminals Co.*, 354 S.W.3d at 895–96. As applicable in this case, courts have further held that assigning a dollar amount to such intangibles as a company’s loss of clientele, goodwill, marketing techniques, and office stability, among others, is not easy. *Id.*, *Frequent Flyer Depot*, 281 S.W.3d at 228. For all these reasons, we conclude that Cannalliance presented evidence of an irreparable injury and overrule this issue.

**ii) Probable right to relief**

A temporary injunction may not issue unless the petitioner can show a probable right to recovery. *Butnaru*, 84 S.W.3d at 204. The phrase “probable right of recovery” is a term of art in the injunction context. *Intercontinental Terminals Co.*, 354 S.W.3d at 897. To show a probable right to recover, an applicant need not show that it will prevail at trial. *Id.* Instead, the applicant must plead a cause of action and present some evidence that tends to sustain it. *Id.* The evidence must be sufficient to raise a bona fide issue as to the applicant’s right to ultimate relief. *Id.* The trial court has broad discretion in determining whether the pleadings and evidence support a temporary injunction. *Id.* at 898.

In this case, Cannalliance asserted claims for conversion, tortious interference with existing contract, tortious interference with prospective relations, and trademark infringement against McGuire-Sobrino. McGuire-Sobrino generally asserts Cannalliance failed to establish a probable right to relief against him in each of the four causes of action. However, as the order only addresses Cannalliance's claim for conversion and trademark infringement, we limit our analysis to these two claims.

**a) Conversion**

In the petition, Cannalliance alleged that that McGuire-Sobrino converted Cannalliance's confidential client lists. In the order, the trial court found:

TX Cannalliance LLC will likely be able to show that it has a right to immediate possession of and control over its confidential mailing list; that Sobrino wrongfully exercised dominion and control over the mailing list by using it in a way that departed from the conditions under which it was received, in that he has used and continues to use the confidential client lists for his own benefit to the exclusion of TX Cannalliance LLC; that Sobrino has refused to return the property on demand by TX Cannalliance LLC; and that Sobrino's wrongful acts have proximately caused, and are causing, injury to TX Cannalliance LLC, resulting in damages from loss of use, public confusion as to scheduled events, and the inability of TX Cannalliance LLC to continue its promotional efforts.<sup>3</sup>

To establish conversion of personal property, a plaintiff must prove (1) the plaintiff owned, had legal possession of, or was entitled to possession of the

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<sup>3</sup> The order refers to both "email lists" and "client lists." Since this case involves digital assets, we conclude based on the hearing and pleadings that these "lists" would be found within the TCBA website, TCBA social media accounts, and email address of the TCBA at issue in this case.

property; (2) the defendant, unlawfully and without authorization, assumed and exercised dominion and control over the property to the exclusion of, or inconsistent with, the plaintiff's rights; (3) the plaintiff made a demand for the property; and (4) the defendant refused to return the property. *See Wise v. SR Dallas, LLC*, 436 S.W.3d 402, 412 (Tex. App.—Dallas 2014, no pet.). Tijerina, the sole managing member of Cannalliance, identified the website, social media accounts, and email address of the TCBA and stated that they were subject to the control of Cannalliance, as well as his approval. Thus, Tijerina, as managing member, had legal possession of the digital assets.

Tijerina further testified that McGuire-Sobrino was an employee of Cannalliance and they worked together.<sup>4</sup> Tijerina testified that, as of September 26, 2019, Cannalliance did not have full administrative access to its website, social media accounts, or the gmail account. Cannalliance was not able to access their social media to update, modify or change the account, and he testified that events were deleted from the TCBA's social media accounts. Tijerina testified that he was seeking McGuire-Sobrino be restrained from contacting any members or subscribers

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<sup>4</sup> In addition, we note that McGuire-Sobrino filed an unsworn declaration which was in the trial court's record. The unsworn declaration was filed on October 10, 2019 with Defendant's Original Answer, Special Exceptions, Rule 91A Motion to Dismiss, Affirmative Defenses & Counterclaims ("Original Answer"). In the hearing, McGuire-Sobrino directly references the Original Answer filing and confirms that the trial court has read the pleading. In the unsworn declaration, he states that he did the following work for the TCBA: (1) starting and building website; (2) starting and building all social media handles; (3) starting business newsletter platform; (4) created business emails for our employees; (5) creating all content and logos for website and social media channels; (6) handled all marketing; and (7) handled business cards, banners and over-all image of the company.

under Cannalliance’s current email list. McGuire-Sobrino stated during the hearing that “I don’t really know what you got locked out of, other than digital assets that I’ve created for our company that I’m not a part of apparently.”<sup>5</sup> Thus, McGuire-Sobrino admitted that he exercised control over the digital assets which interfered with Cannalliance’s right to the digital assets.

Tijerina reached out to McGuire-Sobrino but he failed to respond which led to this lawsuit. Following the granting of the temporary restraining order, Tijerina did not regain access to the digital assets. As Cannalliance did make a demand for access to its digital assets which McGuire-Sobrino did not respond, Cannalliance has shown “some evidence” in support of the elements of conversion. Thus, we conclude, without making any determination on the merits, that the trial court did not abuse its discretion in finding that Cannalliance has shown a probable right to recover on its conversion claim against McGuire-Sobrino.

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<sup>5</sup> In his unsworn declaration, McGuire-Sobrino also states: “I acted to protect my equitable interests in the digital assets I had created and, my equity interests in the business, by revoking admin access for Trey and employee Rob, concerning our original Facebook Page and, I removed their G-Suite licensing admin access which I had created for the business, however they are still able to login to that module and change financial data, make payments, etc.” He further states that he “took further steps to secure the original Instagram and linked-in accounts that I had built from my good faith efforts and sweat equity. I took one final last protective measure by removing the integration between Trey’s new site and CRM from the channels that I built, which Trey had unlawfully attached.” McGuire-Sobrino does deny that he has possession of member list that Cannalliance does not have access to. However, we note that we cannot reverse a trial court’s order if the trial court was presented with conflicting evidence and the record includes evidence that reasonably supports the trial court’s decision. *See Universal Health Servs., Inc. v. Thompson*, 24 S.W.3d 570, 576 (Tex. App.—Austin 2000, no pet.).



**b) Trademark infringement**

In the petition, Cannalliance alleged that Cannalliance has been the exclusive user of the mark “Texas Cannabis Alliance” and that McGuire-Sobrinio has improperly excluded Cannalliance from its use of this mark, and has further improperly used it for his own promotional purposes to provide educational and promotional services within Texas. In the order, the trial court found:

TX Cannalliance LLC will likely be able to show that Sobrinio has improperly used its “Texas Cannabis Business Alliance” mark for his own promotional purposes, utilizing the Digital Assets for promotion of content not approved by TX Cannalliance LLC, and using such identical mark, in identical channels, for identical services, to an unwitting public.

The trial court further concluded that:

The Court finds that if it does not issue a temporary injunction, TX Cannalliance LLC will be irreparably injured because the disruption of TX Cannalliance LLC access to the Digital Assets and Sobrinio’s interference with such platforms damages the goodwill and reputation enjoyed by TX Cannalliance LLC. The Court further finds that TX Cannalliance LLC has no adequate remedy at law because damages cannot be adequately calculated given the complexity of calculating harm to business goodwill as well as ancillary harm resulting from Plaintiff’s inability to operate.

To succeed on a common law claim for trademark or trade name infringement, the party seeking an injunction must show: (1) the name it seeks to protect is eligible for protection; (2) it is the senior user of the name; (3) there is a likelihood of confusion between its mark and that of its competitor; and (4) the likelihood of confusion will cause irreparable injury for which there is no adequate legal remedy.

*All Am. Builders, Inc. v. All Am. Siding of Dallas, Inc.*, 991 S.W.2d 484, 488 (Tex. App.—Fort Worth 1999, no pet.). Trade and service marks are defined as words, names, or symbols that enable consumers both to distinguish goods or services and to identify their source. *Horseshoe Bay Resort Sales, Inc. v. Lake Lyndon B. Johnson Imp. Corp.*, 53 S.W.3d 799, 806 (Tex. App.—Austin 2001, pet. denied). Marks are therefore eligible for protection only if they can identify and distinguish the plaintiff’s goods or services from those of others. *Id.*

As stated above, Tijerina testified at the hearing that he is the sole managing member of Cannalliance. He further testified Cannalliance assumes the name “Texas Cannabis Business Alliance” or “TCBA” when “we’re in the public” and confirmed that Cannalliance has a website, social media accounts, and an email address which operate as TCBA. Tijerina testified that advertisements and events are listed under TCBA and that the TCBA website has been used since the beginning of Cannalliance. Despite this background information, the record lacks any information on whether the name “Texas Cannabis Business Alliance” is eligible for protection. To determine the distinguishing capability of a mark, and thus its eligibility for protection, courts employ the classic trademark continuum articulated in *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 9 (2nd Cir.1976). *Id.* A mark may be (1) fanciful, (2) arbitrary, (3) suggestive, (4) descriptive, or (5) generic. *Id.* Fanciful, arbitrary, and suggestive marks are inherently distinctive and therefore protectable without an additional showing of consumer

identification. *Id.* At the other end of the continuum are generic marks, which are never protectable because they represent the name of the good or service itself and therefore cannot identify or distinguish a particular source. *Id.* at 806–7. Descriptive marks fall somewhere in between. *Id.* at 807. These marks describe a characteristic of the good or service itself and may not be protected absent a showing that the mark has become associated in the minds of consumers with the particular, albeit unknown, source. *Id.* This association is called secondary meaning. *Id.* Here, Cannalliance failed to provide any testimony or evidence as to whether the name TBCA met the eligibility requirements for protection. As such, we conclude that the trial court abused its discretion in finding that Cannalliance had a probable right to recovery on its trademark infringement claim. However, because there were two bases for the relief granted we must examine the relief to determine if any relief granted was solely supported by or related to the trademark claims.

As stated above, the order provides the following relief:

It is therefore ORDERED that effective as of the date of this Order, a temporary injunction issue, operative until judgment in this case, which enjoins Sobrino, and all of his agents, servants, and employees, as follows:

- a. Restrains Sobrino from excluding TX Cannalliance LLC's access to the Digital Assets, and requires that Sobrino provide TX Cannalliance LLC with full administrative control over the Digital Assets;
- b. Restrains Sobrino from deleting or altering any previous content or from distributing any new content on the Digital Assets;

- c. Restrains Sobrino from altering any relations with existing TX Cannalliance LLC service providers which provide the Digital Assets and is related to services provided to TX Cannalliance [sic] LLC;
- d. Orders the clerk to issue notice to Sobrino that the trial in this matter is set for February 17, 2020, at 9:00 a.m.

So, the order granted Cannalliance access to, control of, and security of its Digital Assets and its relationships with service providers to achieve those rights. None of the relief granted above is unique to the trademark infringement claim—that is, all the relief granted is also supported by the conversion claim—there is no need to remand this case to the trial court for modification of the order.

#### **D. Status Quo**

McGuire-Sobrino also asserts that the order “unfairly altered the status quo.” Without any specificity or facts, he asserts in a conclusory manner that the “injunction has disturbed the status quo which existed prior to the issuance of the TRO and, has caused him to endure severe and irreparable injury in the course of defending the same.” McGuire-Sobrino did not introduce any evidence or testimony in support of his assertion that the trial court unfairly altered the status quo.

The purpose of a temporary injunction is to preserve the status quo until a trial on the merits. *Butnaru*, 84 S.W.3d at 204. The status quo is defined as the last, actual, peaceable, noncontested status which preceded the pending controversy. *Frequent Flyer Depot, Inc.*, 281 S.W.3d at 222. Here, Tijerina testified that Cannalliance did not have full administrative access to its website, social media

accounts, and a gmail account as of September 26, 2019. Accordingly, the trial court ordered that McGuire-Sobrino be restrained from (1) excluding Cannalliance's access to its digital assets and provide Cannalliance with administrative control over the digital assets, (2) deleting or altering any previous content or from distributing any new content, and (3) altering any relations with existing LLC service providers which provide the digital assets. Thus, the order returned the parties to their pre-September 26, 2019 status and preserved the status quo until trial. We conclude that the trial court complied with the purpose of the temporary injunction and overrule McGuire-Sobrino's objection.

### **CONCLUSION**

We affirm the trial court's order granting the temporary injunction.

/David Evans/  
DAVID EVANS  
JUSTICE

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**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

EPHRAIM MCGUIRE-SOBRINO,  
Appellant

No. 05-19-01261-CV      V.

TX CANNALLIANCE LLC,  
Appellee

On Appeal from the 429th Judicial  
District Court, Collin County, Texas  
Trial Court Cause No. 429-05476-  
2019.

Opinion delivered by Justice Evans.  
Chief Justice Burns and Justice  
Pedersen, III participating.

In accordance with this Court's opinion of this date, the order of the trial court granting the temporary injunction is **AFFIRMED**.

It is **ORDERED** that appellee TX CANNALLIANCE LLC recover its costs of this appeal from appellant EPHRAIM MCGUIRE-SOBRINO.

Judgment entered August 10, 2020.