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## BLOGS

Preliminary Injunctions

# Court Rejects Argument That Continued Use of Trademarks Would Not Cause Irreparable Harm

A recent decision by the United States District Court for the Southern District of Indiana addressed a novel argument by a terminated franchisee to justify its continued use of its franchisor's trademark. In *Country Inns & Suites by Carlson, Inc. v. Nayan, LLC*, 2008 WL 4735267 (S.D. Ind. Oct. 28, 2008), CIS had terminated the franchisee for failure to pay amounts owed under its license agreement. When the franchisee continued to operate using CIS trademarks, CIS brought suit. Gray Plant Mooty represented the franchisor.

The franchisee conceded that CIS was likely to succeed on the merits of its claim because the franchisee had failed to make required payments under the license agreement. The franchisee contended, however, that CIS could not show that it would be irreparably harmed by the franchisee's continued use of the trademarks because the franchisee's default was purely a monetary one. The franchisee argued that its continued use of the marks would not harm CIS's customer goodwill or reputation because, at most, prospective customers would be confused only as to the franchisee's payment of required license fees. The court flatly rejected that argument, reaffirming the Seventh Circuit's "well-settled presumption that irreparable harm generally follows from trademark infringement." The court found that the nature of the franchisee's default was irrelevant. Instead, CIS would suffer irreparable harm as a matter of law if a terminated franchisee were permitted to continue displaying CIS's trademarks after termination. Such use would confuse the public as to the franchisee's continued affiliation with CIS, thus causing irreparable harm to CIS. Accordingly, the court enjoined the franchisee from further use or display of CIS' trademarks.