

## **TAHITIAN NONI INTERNATIONAL v. DEAN**

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## **TAHITIAN NONI INTERNATIONAL v. DEAN**

**Case:** Tahitian Noni International v. Dean (2009)

**Subject Category:** Federal court cases, Distributor agreement

**Agency Involved:** Private civil suit

**Court:** United States District Court - Central Utah

**Case Synopsis:** Dean was a distributor of Tahitian Noni products who, in violation of his distributor agreement, solicited members of his downline to drop Tahitian Noni and promote a competitor's products. Tahitian Noni moved for an injunction prohibiting Dean from promoting the competitor or any other network marketing company based upon the distributor agreement which prohibited Dean from engaging in any other network marketing program while he was with Tahitian Noni.

**Legal Issue:** Is a distributorship agreement that prohibits the distributor from engaging in any network marketing enforceable?

**Court Ruling:** No. The court found that the agreement, which restricted the distributor from engaging in any network marketing for three years, was unreasonable because it would effectively destroy Dean's career in the industry of his choice.

**Practical Importance to Business of MLM/Direct Sales/Direct Selling/Network Marketing/Party Plan/Multilevel Marketing:** Noncompete restrictions in distributorship agreements should contain only the restrictions necessary to protect the goodwill of the company. Restrictions should not be so broad as to prevent distributors from pursuing any other network marketing opportunities. Restrictions preventing distributors from dealing with competitors are probably reasonable if limited in geographic and temporal scope.

**TAHITIAN NONI INTERNATIONAL v. DEAN**, Case No. 2:09-CV-51 TS (2009): Dean was a distributor of Tahitian Noni products who, in violation of his distributor agreement, solicited members of his downline to drop Tahitian Noni and promote a competitor's products. Tahitian Noni moved for an injunction prohibiting Dean from promoting the competitor or any other network marketing company based upon the distributor agreement which prohibited Dean from engaging in any other network marketing program while he was with Tahitian Noni.

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TAHITIAN NONI INTERNATIONAL, Plaintiff,

v.

ROBERT L. DEAN, JR, TOP GUN INTERNATIONAL, HERSCHEL GIBBS, BRIDGES INTERNATIONAL, DONNA ALLEN, PREPROSPER INC, and NONI MATTERS, Defendants.

Case No. 2:09-CV-51 TS.

United States District Court, D. Utah, Central Division.

January 26, 2009.

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MEMORANDUM DECISION AND ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

TED STEWART, District Judge.

This matter is before the Court on Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction against Defendants Dean and Top Gun International ("Top Gun"), filed originally in the Utah Fourth District Court on January 13, 2009. Plaintiff's Motion for Temporary Restraining Order was granted, ex parte, by the state court on January 13, 2009, and was to expire on January 23, 2009 at 2:15 p.m. The case was removed to this Court on January 21, 2009,<sup>1</sup> based on diversity jurisdiction. Federal law provides that the temporary restraining order ("TRO") issued by the state court remains in effect

after removal until it expires or until dissolved by the Court.<sup>2</sup> Furthermore, federal law requires that the Court apply federal procedural rules in any further ruling on the motion.<sup>3</sup>

Fed. R. Civ. P. 65(b)(3) states that when, as here, a party has obtained an ex parte TRO, that party must proceed with the motion for a preliminary injunction and, if they do not, the Court must dissolve the TRO. As applied to the case before the Court, that means that the Plaintiff, having obtained their TRO ex parte, must proceed with their motion for a preliminary injunction and bears the burden of proof in any proceeding. In an attempt to accommodate the expiration deadline for the previously issued TRO, the Court held oral arguments on the Motion for Preliminary Injunction on January 23, 2009, at 9:00 a.m. After careful consideration of oral arguments and written submissions by all parties, the Court finds that Plaintiff has met its burden in establishing the requirements for injunctive relief, in part, and the Motion for Preliminary Injunction will be granted in part and denied in part.

## I. STANDARD OF REVIEW

The Tenth Circuit has stated that "[a] preliminary injunction is an extraordinary remedy, and thus the right to relief must be clear and unequivocal."<sup>4</sup> Plaintiff must show: (1) a substantial likelihood of success on the merits; (2) irreparable harm to the movant if the injunction is denied; (3) the threatened injury outweighs the harm that the preliminary injunction may cause the opposing party; and (4) the injunction, if issued, will not adversely affect the public interest.<sup>5</sup> If Plaintiff can satisfy the last three requirements, the standard for meeting the first requirement becomes more lenient.<sup>6</sup>

## II. FACTUAL BACKGROUND

The following facts are taken from the parties' written submissions. Plaintiff is a corporation which sells nutritional supplements made, primarily, from a tropical fruit known commonly as the Noni fruit. Defendant Dean began working for Plaintiff as an Independent Product Consultant ("IPC") in 2001. Defendant Top Gun is a corporation operated by Dean in order to further his business in the network marketing industry. Dean signed annual employment contracts with Plaintiff, the most recent being signed mid-2008 (the "IPC Agreement"), and which is set to expire within a year.

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