

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Jonathan Corbett,
Plaintiff

v.

Insomniac Holdings, LLC,
Speedway Motorsports, Inc.
Defendants

16-CV-_____

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

Plaintiff Jonathan Corbett (“CORBETT”) moves this Court under Fed. R. Civ. P. Rule 65 for a temporary restraining order against Defendants Insomniac Holdings, LLC (“INSOMNIAC”) and Speedway Motorsports, Inc. (“SPEEDWAY”).

I. Factual Background

INSOMNIAC is a large and well-known music event producer, and describes itself and the Electric Daisy Carnival (“EDC”) music festival on its Web site as follows¹:

“Throughout its 20-year history, Insomniac has produced more than 250 festivals, concerts and club nights for nearly 4 million attendees in California, Colorado, Florida, Mexico, Michigan, Nevada, New York, Texas, Puerto Rico, and the United Kingdom. The company’s premier annual event, Electric Daisy Carnival Las Vegas, is the largest multi-day music festival in North America, attracting 400,000 fans over three days in June 2014.”

As alleged in the complaint in this action and supporting affidavit to this motion, INSOMNIAC has adopted a policy for those attending EDC that states that they may not bring non-prescription, over-the-counter (“OTC”) medicine into the festival under any circumstances,

¹ “About Us.” Insomniac Holdings, LLC. <https://www.insomniac.com/about-us>

and further that prescription medication may only be brought into the festival if an attendee brings a copy of a doctor's prescription and gets the approval of an INSOMNIAC employee they refer to as a "safety officer." Complaint, ¶¶ 18 – 20 and Exhibit A; Affidavit of Jonathan Corbett, ¶ 5. The Web site makes no mention of the qualifications of the safety officer, nor of the criteria the safety officer may use to determine whether an attendee may bring their medicine into the festival. Complaint, Exhibit A. To effect the medication ban, INSOMNIAC hires an independent security firm to search, "TSA-style," every attendee as they enter the festival.

CORBETT, as a musician and music enthusiast, attends music festivals regularly, including and especially the EDC festival. CORBETT planned to attend the upcoming 2016 edition of EDC occurring on the weekend of June 17th – 19th, but upon inspection of the latest version of the EDC Web site found the above-described policies. Complaint, ¶¶ 17, 18; Affidavit of Jonathan Corbett, ¶¶ 3, 4. As CORBETT needs both prescription and OTC medication on his person to treat health issues, these policies give CORBETT a choice between attending the festival without that medication and risking adverse health effects, or not attending at all.

II. Nature of the Injunction Sought

CORBETT seeks that the Court prohibit both EDC and SPEEDWAY from:

1. Advertising or enforcing, directly or via any of its agents, any policy which prohibits attendees at any music festival, operated or hosted by either party, from entering said festivals with any reasonable quantity of lawful medications.

2. Advertising or enforcing, directly or via any of its agents, any policy which requires attendees at any music festival, operated or hosted by either party, to explain or justify any reasonable quantity of lawful medication as they enter, or at any point during, said festivals.

III. Legal Standard

The U.S. Supreme Court has articulated a four-factor balancing test for evaluating motions for temporary restraining orders: (1) a likelihood of success on the merits; (2) a likelihood of suffering irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in the moving party's favor; and (4) that an injunction is in the public interest. *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 129 S. Ct. 365, 374 (2008). The factors are considered together, and a weak showing in one can be overcome by a stronger showing in the others. *Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 602 (9th Cir. 1991) (allowing injunction when "serious questions are raised and the balance of hardships tips sharply in [movant's] favor").

IV. Argument

A. Plaintiff is Likely to Succeed on the Merits

The U.S. Congress and the legislatures of nearly every state, including California and Nevada, have made clear that Americans who live with medical disabilities are protected against discrimination by enacting extensive statutory schemes prohibiting such discrimination. Americans with Disabilities Act, 42 U.S.C. § 12182(a); Unruh Civil Rights Act, Cal. Civ. Code,

§ 51, *et. seq.*; Nevada Nondiscrimination Law, NRS 651 *et. seq.* To ensure that individuals with disabilities may go about their normal lives even when they are interacting with private businesses, these laws have placed a duty on places of public accommodation not merely to refrain from making affirmative discriminatory acts, but also to avoid discrimination through inaction by requiring “reasonable accommodation” to be made to any disabled person who needs such accommodation to enjoy the services of a business as a person without such a disability would. 28 CFR Part 36.

In the matter before the Court, INSOMNIAC has stated that it will affirmatively discriminate against those whose disabilities require medication by turning them away from the festival (with OTC medication) and/or by forcing them to explain themselves to someone other than their doctor (with prescription medication). Complaint, Exhibit A. Ostensibly, INSOMNIAC has created these policies because it is worried about the unlawful possession, sale, and consumption of drugs at its events, an issue that arises at every music festival since Woodstock in 1969. However, by stating that it will ban attendees from possessing even medication that is clearly lawfully possessed, neither of these two policies passes the muster of federal or state nondiscrimination laws. INSOMNIAC may not pursue a goal of curtailing illegal drug use by effectively excluding, or harassing, the disabled.

B. There Is Sufficient Likelihood of Irreparable Harm Absent a Preliminary Injunction

Every music festival is a unique experience (a point EDC’s marketing team would clearly concede), and by excluding CORBETT because of his disability, INSOMNIAC and SPEEDWAY would be taking that experience from him. Such an injury cannot be compensated

with cash and is considered an “intangible injury” under Ninth Circuit precedent. *Rent-A-Ctr* at 603. Accordingly, the harm is considered irreparable.

It should be noted that the test for “irreparable harm” for the purposes of a TRO does not consider the *severity* of the harm, but the *likelihood* of its occurrence. *Id.* The likelihood of the harm coming about is plainly admitted by INSOMNIAC on its Web site: it states in unambiguous terms that CORBETT will not be allowed into the festival with his OTC medication, and will not be allowed into the festival without explaining his prescription medication to a “safety officer” and hoping that the explanation is satisfactory to this individual. Thus, the likelihood of CORBETT encountering the harm is near certain.

Moreover, a reasonable argument can be made that the mere advertising of a discriminatory policy constitutes a present and continuing harm. A person afraid of denied entry as a result of the policies complained of herein may be dissuaded from purchasing a ticket and reserving accommodations near the festival out of fear that they will lose the value of their purchase when turned away at the gate, or out of fear that they will be forced to endure the embarrassment of having to explain their medical condition to an INSOMNIAC “safety officer.” No one should be forced to, *e.g.*, disclose their HIV status, discuss their treatment for schizophrenia, or expound upon their Irritable Bowel Syndrome in order to enjoy a music event.

C. This Injunction Places Only a De Minimis Burden on the Non-Moving Party

The injunction requested would require virtually no effort or expense for the defendants: they simply need to stop advertising their medicine bans on their Web site and to refrain from stopping attendees from bringing medication into EDC. If anything, prohibiting their medicine

policies will actually save the company the time it would have spent dealing with medicine found on attendees at the entrance. The injunction requested is narrowly tailored to addressing the actual harm CORBETT complains of and does not burden the continuation of the event or the related revenue sources (ticket sales, concessions, and merchandise sales) of INSOMNIAC and SPEEDWAY.

As neither INSOMNIAC nor SPEEDWAY can suffer any discernable harm as a result of the temporary restraining order, no security per Fed. R. Civ. P. 65(c) is appropriate or necessary.

D. The Public Interest Falls Squarely in Favor of Curtailing New, Abusive Search Methods

Worse than the fact that these policies will prevent wise individuals with disabilities from attending EDC, the policies will dangerously encourage young, overly-enthusiastic individuals with disabilities to attempt to forego their medication in order to attend the festival. Regarding the OTC policy, consider the individual with severe allergies who carries diphenhydramine (Benadryl) wherever he goes, but leaves it at home for EDC because of the policy, hoping that he does not have an allergic reaction. Or the individual who knows she often gets migraine headaches, and therefore carries ibuprofen (Advil) wherever she goes, but leaves it at home for EDC, suffering severe pain triggered by the loud music and bright lights of the festival. Regarding the prescription policy, consider those who need to explain their psychiatric medications, epinephrine injectors (“EpiPen”), or HIV medication.

While these hypotheticals are illustrative of why EDC’s policies are dangerous to the public and an injunction is in the interest of the public, the law is clear without the need to ponder these possibilities: Congress and the state legislators of California and Nevada have

determined that public policy is that discrimination be eradicated. As such, there can be no question that a policy of preventing individuals who need medication from having access to that medication at a place of public accommodation is in the public interest.

V. **Conclusion**

For the above reasons, the Plaintiff respectfully requests the Court grant Plaintiff's motion, and issue the proposed temporary restraining order.

Dated: Los Angeles, CA

May 24th, 2016

Respectfully submitted,

Jonathan Corbett

Plaintiff, *Pro Se*

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