

IN THE CHANCERY COURT, STATE OF WYOMING

2022 WYCH 4

Cloud Peak Law Group, P.C.,

Plaintiff,

v.

Firstbase.IO, Inc.,

Defendant.

Case No. CH-2022-0000006

**Order Denying Motion for Temporary Restraining Order
and Preliminary Injunction**

[¶ 1] This matter is before the court on Cloud Peak’s motion for a temporary restraining order and preliminary injunction. (FSX No. 67902428). The parties fully briefed the motion, and the court heard oral argument on October 25, 2022. For the reasons below, Cloud Peak’s motion is denied.

BACKGROUND

[¶ 2] The court is filing contemporaneously with this order a detailed *Order Denying Motion to Dismiss*.¹ That order sets forth the factual background and procedural history of this case in detail. Those details need not be repeated here. Instead, they are incorporated into this order by this reference.

LEGAL STANDARD

[¶ 3] Injunctions have rightfully been labeled “extraordinary remedies” with “far-reaching force” that require “caution” and “delicate judicial” consideration. *Operation Save Am. v. Jackson*, 2012 WY 51 ¶ 19, 275 P.3d 438, 447 (Wyo. 2012) (citing *In re Adoption of RHA*, 702 P.2d 1259, 1266 (Wyo. 1985)).

[¶ 4] A party seeking temporary or preliminary injunctive relief must establish (1) it is substantially likely to succeed on the merits and (2) it will likely suffer irreparable injury if the injunction is denied because no adequate remedy at law

¹ *Cloud Peak v. Firstbase*, 2022 WYCH 3, ¶¶ 3-23 (Wyo. Ch. C. 2022).

exists. *CBM Geosolutions, Inc. v. Gas Sensing Tech. Corp.*, 2009 WY 113, ¶¶ 7-10, 215 P.3d 1054, 1057-58 (Wyo. 2009).

[¶ 5] Of these two factors, the showing of irreparable harm has been called “the single most important prerequisite for the issuance of a preliminary injunction.” *Universal Consulting & Tech., Inc. v. Dymond*, No. 10-CV-243-D, 2010 WL 11562035, at *4 (D. Wyo. Nov. 23, 2010). Accordingly, an injunction will issue only when “the threatened harm is irreparable.” *The Tavern, LLC v. Town of Alpine*, 2017 WY 56, ¶ 36, 395 P.3d 167, 177 (Wyo. 2017). Harm is irreparable when the injury “is of a peculiar nature, so that compensation in money cannot atone for it.” *Polo Ranch Co. v. Cheyenne*, 2003 WY 15, ¶ 26, 61 P.3d 1255, 1264 (Wyo. 2003) (cleaned up).

DISCUSSION

[¶ 6] Money can atone for Cloud Peak’s alleged loss of revenue and goodwill.

[¶ 7] Cloud Peak asserts that without an injunction it will be put in the “impossible position of attempting to prove a future revenue stream from clients who have been wrongfully taken from it.” *Plf. Mot. for TRO & PI* (FSX No 67902428), at 14. Far from impossible to calculate, Cloud Peak’s loss of revenue for future registered-agent services is readily calculable.

[¶ 8] Cloud Peak received “\$149.00 (\$100.00 for Wyoming filing fees and \$49.00 for first-year RA services) per entity,” per year. *See Compl.* ¶ 10. Firstbase has reportedly “taken approximately forty (40) clients per month.” *Aff. of A. Pierce attached to Plf. Mot. for TRO & PI*, ¶ 23. The number of clients lost combined with standard and straightforward registered-agent fee terms give Cloud Peak a basis for calculating damages.

[¶ 9] Cloud Peak has not identified what is “impossible” about ascertaining the number of clients lost and calculating the amounts those clients would have paid under the standard registered-agent fee terms. While the court appreciates the challenges faced by Cloud Peak, it recognizes that such challenges do not constitute the sort of “irreparable harm” required for a preliminary injunction.

[¶ 10] Indeed, the irreparable harm requirement is demanding. For example, not even total loss of income is considered irreparable because it can be remedied by later payments. *Sampson v. Murray*, 415 U.S. 61, 90, 94 S.Ct. 937, 39 L.Ed.2d 166 (1974). For this same reason, injuries from the analogous scenario of termination of an exclusive distribution agreement are not considered irreparable. *Sandoz Inc. v.*

Cediprof, Inc., No. 20 CIV. 5568, 2020 WL 4482634, at *3 (S.D.N.Y. Aug. 3, 2020). Cloud Peak’s loss of future revenue injury falls short of meeting the demanding irreparable harm standard.

[¶ 11] Cloud Peak’s loss of goodwill injury also comes up short. Cloud Peak generally states that Firstbase caused confusion among Cloud Peak clients, which “cuts directly at Cloud Peak’s credibility, goodwill, and reputation. *Plf. Mot. for TRO & PI*, at 14. A loss of goodwill and business reputation can constitute irreparable harm. *See Alarm Funding Assocs., LLC v. Sec. Prod. Co., LLC*, No. 1:14-CV-0128-S, 2015 WL 11090396, at *12 (D. Wyo. Feb. 13, 2015). But only when the loss of goodwill is certain and loss profits cannot be compensated by money damages. *See Life Techs. Corp. v. AB Sciex Pte. Ltd.*, No. 11-CV-325, 2011 WL 1419612, at *7 (S.D.N.Y. Apr. 11, 2011).

[¶ 12] Cloud Peak has not specified how any injury to its goodwill and reputation, if proven, cannot be adequately addressed by money damages. The conclusory statement that Firstbase has directly cut at Cloud Peak’s credibility, goodwill, and reputation is insufficient to establish irreparable harm and justify the drastic remedy of a preliminary injunction.

[¶ 13] Because the court concludes Cloud Peak did not show it will suffer irreparable harm, the court need not consider whether Cloud Peak is likely to prevail on the merits of its claims. *See Universal Consulting & Tech., Inc.*, 2010 WL 11562035, at *6 (declining to analyze remaining requirements for the issuance of a preliminary injunction because plaintiff failed to show irreparable harm).

CONCLUSION

[¶ 14] Cloud Peak has not shown it will suffer irreparable harm not compensable by money damages in the absence of temporary or preliminary injunctive relief. This failure warrants denial of the extreme remedy of preliminary injunctive relief. Accordingly, the court **DENIES** Cloud Peak’s motion for a temporary restraining order and preliminary injunction.

IT IS SO ORDERED.

DATED: 12/21/2022

/s/ Steven K Sharpe
CHANCERY COURT JUDGE