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JULIUS BAER BANK AND TRUST CO. LTD

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

BANK JULIUS BAER & CO.
LTD, a Swiss entity; and JULIUS
BAER BANK AND TRUST CO.
LTD, a Cayman Islands entity,

Plaintiffs,

v.

WIKILEAKS, an entity of unknown
form, WIKILEAKS.ORG, an entity
of unknown form; DYNADOT,
LLC, a California Limited Liability
Corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO. CV08-0824 JSW
[Hon. Jeffrey S. White; CTRM 2]

DECLARATION OF EVAN SPIEGEL
IN SUPPORT OF PLAINTIFFS'
NOTICE OF NON-OPPOSITION BY
DEFENDANTS WIKILEAKS AND
WIKILEAKS.ORG TO PLAINTIFFS'
APPLICATION FOR PRELIMINARY
INJUNCTION AND COURT'S OSC

[Filed Concurrently With: Plaintiffs'
Notice of Non-Opposition by Defendants,
Wikileaks and Wikileaks.org to Plaintiffs'
Application for Preliminary Injunction]

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DECLARATION OF EVAN SPIEGEL

I, EVAN SPIEGEL, declare as follows:

1. I am an attorney at law duly qualified to practice before the Courts of the State of California, and am an associate with the firm of Lavelly & Singer Professional Corporation, attorneys for Plaintiffs Bank Julius Baer & Co. Ltd and Julius Baer Bank and Trust Co. Ltd. The facts stated herein are stated of my own personal knowledge and, if called and sworn as a witness, I could and would testify competently thereto. As to those matters stated on the basis of information and belief, I am so informed and believe those matters to be true.

2. This Declaration is made in support of Plaintiffs Bank Julius Baer & Co. Ltd's ("BJB") and Julius Baer Bank and Trust Co. Ltd's ("JBBT") (collectively, "Julius Baer" and/or "Plaintiffs") accompanying Notice of Non-Opposition by Defendants Wikileaks and Wikileaks.org to Plaintiffs' Application for OSC re Preliminary Injunction (the "Application") and the Court's Order to Show Cause, dated February 14, 2008, as to why a Preliminary Injunction should not issue against Defendants (the "OSC").

3. This matter relates primarily to the protection and enforcement of privacy and property rights. The spread of stolen private bank records, account numbers and information, tax documents and other protected consumer records, significantly harms privacy rights of every single individual in the United States and world-wide, and could have a harmful impact on confidence in the banking industry as a whole. The leak of confidential bank records, including altered and semi-forged documents, by the anonymous Wikileaks Defendants, unchecked, will likely have a devastating impact on financial institutions and the authorities ability to combat credit and identity fraud.

4. On February 14, 2008, the Court issued the Temporary Restraining Order ("TRO") and Order to Show Cause as to why a Preliminary Injunction should

1 not issue against Defendants (the "OSC"), which is set for hearing on February 29,
2 2008, at 9:00 a.m. before this Court. On February 14, 2008, Plaintiffs served a
3 copy of the TRO and OSC on the Wikileaks Defendants via e-mail, per the Court's
4 prior order, at four separate e-mail addresses. The e-mail addresses included two
5 of the wikileaks.org e-mail addresses (believed transmitted prior to removal of the
6 removal of the related domain name DNS services), but regardless, also to the
7 personal e-mail address for Julian Assange, a joint founder of Wikileaks and the
8 person represented by Julie Turner to the Court to be the direct contact person for
9 Wikileaks, and to the personal e-mail address for a listed officer of Wikileaks. A
10 Proof of Service has been filed with the Court as Docket Numbers 50.

11 5. After service of the TRO and OSC, the Wikileaks Defendants
12 confirmed and acknowledged in writing on their back-up mirrored Websites their
13 receipt of and knowledge of the Court's Orders. Although their "counsel" Julie
14 Turner represented to the Court that Wikileaks was without counsel and was seeking
15 new counsel, Wikileaks has in fact stated on its Website that "Wikileaks has six
16 pro-bono attorney's in S.F on roster to deal with a legal assault ..." Attached hereto
17 as Exhibit "A" is a true and correct copy of a printout from one of the mirrored
18 active Wikileaks Websites. Attached hereto as Exhibit "B" is a true and correct
19 copy of a printout of a Wikileaks Spokesperson statement published on a website
20 dedicated to discussion of the Wikileaks Website. Attached hereto as Exhibit "C"
21 is a true and correct copy of printouts from one of the mirrored active Wikileaks
22 Websites.

23 6. Despite notice of the TRO and their written acknowledgment of the
24 Court's Orders, the Wikileaks Defendants' owners and operators have continued to
25 openly display, post and disseminate the JB Property on their Wikileaks Websites.
26 Under their veil of anonymity, the Wikileaks Defendants continue to operate and
27 have stated their blatant and open contempt for the Court, the U.S. legal system and
28 privacy rights of all persons everywhere. Despite the TRO, Wikileaks has stated

1 that they will "keep on publishing, in-fact, given the level of suppression involved
2 in this case, Wikileaks will step up publication of documents ...", that "Backups are
3 on-line" and that "Wikileaks has many backup sites ... which remain active." See
4 Exhibits "A" and "C".

5 7. The TRO and OSC set Wednesday, February 20, 2008 at 12:00 p.m.
6 as the deadline for Defendants, and anyone else, to file and serve any opposition to
7 the issuance of the Preliminary Injunction. As of Friday, February 22, 2008 at
8 approximately 1:00 p.m., no opposition papers to the Application and the TRO and
9 OSC have been filed or served by the Wikileaks Defendants, or any third-parties,
10 to Plaintiffs.

11 I declare under penalty of perjury under the laws of the United States of
12 America that the foregoing is true and correct.

13 Executed this 22nd day of February 2008, at Los Angeles, California.

14
15 /s/
16 EVAN N. SPIEGEL

17
18 I hereby attest that I have on file all holographic signatures for any signatures
19 indicated by a conformed signature (/s/) within this efiled document.

20 /s/
21 WILLIAM J. BRIGGS, II

EXHIBIT A

Wikileaks.org under injunction

From Wikileaks

Wikileaks Press Release

WIKILEAKS.ORG DOWN AFTER EX-PARTE LEGAL ATTACK BY CAYMAN ISLANDS BANK

http://wikileaks.be/wiki/Wikileaks.org_under_injunction

Contacts: <http://wikileaks.be/wiki/Contact>

Mon Feb 18 00:00:00 GMT 2008

The following release has not been proofed due to time constraints.

Transparency group Wikileaks forcibly censored at ex-parte Californian hearing -- ordered to print blank pages -- 'wikileaks.org' name forcibly deleted from Californian domain registrar -- the best justice Cayman Islands money launderers can buy?

When the transparency group Wikileaks was censored in China last year, no-one was too surprised. After all, the Chinese government also censors the Paris based Reporters Sans Frontiers and New York Based Human Rights Watch. And when Wikileaks published the secret censorship lists of Thailand's military Junta, no-one was too surprised when people in that country had to go to extra lengths to read the site. But on Friday the 15th, February 2008, in the home of the free and the land of the brave, and a constitution which states "Congress shall make no law... abridging the freedom of speech, or of the press", the Wikileaks.org press was shutdown:

BANK JULIUS BAER & CO. LTD, a
Swiss entity; and JULIUS BAER BANK
AND TRUST CO. LTD, a Cayman Island
entity,

ORDER GRANTING
PERMANENT INJUNCTION

WIKILEAKS, an entity of unknown form;
WIKILEAKS.ORG, an entity of unknown
form; DYNADOT, LLC, a California
limited liability company; and DOES 1
through 10, inclusive,

[..]

IT IS HEREBY ORDERED:

[..]

Dynadot shall immediately clear and remove all DNS hosting
records for the wikileaks.org domain name and prevent the
domain name from resolving to the wikileaks.org website or
any other website or server other than a blank park page,
until further order of this Court.

The Cayman Islands is located between Cuba and Honduras. In July 2000, the United States Department of the Treasury Financial Crimes Enforcement Network issued an advisory states stating that there were "serious deficiencies in the counter-money laundering systems of the Cayman Islands", "Cayman Islands law makes it impossible for the supervisory and regulatory authority to obtain information held by financial institutions regarding their client's identity", "Failure of financial institutions in the Cayman Islands to report suspicious transactions is not subject to penalty" and that "These deficiencies, among others, have caused the Cayman Islands to be identified by the Financial Action Task Force on Money Laundering (The 'FATF') as non-cooperative in the fight against money laundering". As of 2006 the U.S. State Department listed the Cayman Islands in its money laundering "Countries of Primary Concern".

The Cayman's case is not the first time Wikileaks has tackled bad banks. In the second half of last year Wikileaks exposed over \$4,500,000,000's worth of money laundering including by the former president of Kenya, Daniel Arap Moi (see http://wikileaks.be/wiki/The_looting_of_Kenya_under_President_Moi which became the Guardian's front page story in September 2007 and swung the Kenyan vote by 10% leading into the December 2007 election and http://wikileaks.be/wiki/A_Charter_House_of_horrors reported in the Nairobi paper The Standard and now the subject of a High Court Case in Kenya).

To find an injunction similar to the Cayman's case, we need to go back to Monday June 15, 1971 when the New York Times published excerpts of of Daniel Ellsberg's leaked "Pentagon Papers" and found itself enjoined the following day. The Wikileaks injunction is the equivalent of forcing the Times' printers to print blank pages and its power company to turn off press power. The supreme court found the Times censorship injunction unconstitutional in a 6-3 decision.

The Wikileaks.org injunction is ex-parte, engages in prior restraint and is clearly unconstitutional. It was granted on Thursday afternoon by California district court judge White, Bush appointee and former prosecutor.

The order was written by Cayman Island's Bank Julius Baer lawyers and was accepted by judge White without amendment, or representations by Wikileaks or amicus. The case is over several Wikileaks articles, public commentary and documents dating prior to 2003. The documents allegedly reveal secret Julius Baer trust structures used for asset hiding, money laundering and tax evasion. The bank alleges the documents were disclosed to Wikileaks by offshore banking whistleblower and former Vice President the Cayman Island's operation, Rudolf Elmer. Unable to lawfully attack Wikileaks servers which are based in several countries, the order was served on the intermediary Wikileaks purchased the 'Wikileaks.org' name through -- California registrar Dynadot, who then used its access to the internet website name registration system to delete the records for 'Wikileaks.org'. The order also enjoins every person who has heard about the order from from even linking to the documents.

In order to deal with Chinese censorship, Wikileaks has many backup sites such as wikileaks.be (Belgium) and wikileaks.de (Germany) which remain active. Wikileaks never expected to be using the alternative servers to deal with censorship attacks, from, of all places, the United States.

The order is clearly unconstitutional and exceeds its jurisdiction.

Wikileaks will keep on publishing, in-fact, given the level of suppression involved in this case, Wikileaks will step up publication of documents pertaining to illegal or unethical banking practices.

Wikileaks has six pro-bono attorney's in S.F on roster to deal with a legal assault, however Wikileaks was given only hours notice "by email" prior to the hearing. Wikileaks was NOT represented. Wikileaks pre-litigation California council Julie Turner attended the start of hearing in a personal capacity but was then

EXHIBIT A PAGE 6

asked to leave the court room.

White signed the order, drafted by the Cayman Islands bank's lawyers without a single amendment.

The injunction claims to be permanent, although the case is only preliminary.

Wikileaks remains available publishing from non-US, non-Chinese jurisdictions including <http://wikileaks.cx/> and <http://wikileaks.be/>. See http://wikileaks.cx/wiki/Wikileaks:Cover_Names for more.

http://wikileaks.cx/wiki/Bank_Julius_Baer_vs._Wikileaks

<http://wikileaks.cx/wiki/images/Dynadot-injunction.pdf>

http://wikileaks.cx/wiki/Die_Akten_des_Hurricane_Man

http://wikileaks.cx/wiki/Clouds_on_the_Cayman_tax_heaven

Retrieved from "https://wikileaks.be/wiki/Wikileaks.org_under_injunction"

Categories: Analyses | United States | Grand Cayman

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EXHIBIT A PAGE 1

EXHIBIT B

wikileaks' statement 2-16-08.txt

"WikiLeaks.org DNS problems - partly censored by Temporary Restraining Order?"
Posted on February 16, 2008 01:03 AM

"Yes. Wikileaks has been hit by a surprise (less than 24 hours notice, "served by email" TRO on its registrar). The order was granted Thursday afternoon. Wikileaks was NOT notified of the order except through our former council who lives in San Francisco and present for the start of the hearing (then removed from the hearing and its outcome). Dynadot, the Californian domain registrar acted in breach of Wikileaks and ICANN contract by blocking transfer of the domain BEFORE the hearing (and order).

wikileaks.cn (China) has also been seized (illegally), we were expecting that.

However for the land of the free and the brave, we certainly were not were not expecting an attack on the registrar, justified by prior publishing restraint (!) and backed by a bunch of Cayman Islands money launderers and Hollywood lawyers trying to cover up the true structures of trusts and shell companies.

Then today there was a fire in our Swedish data center.

Backups are on-line.

ps. The judge in Thursday's hearing was a Bush appointee and former prosecutor, "not noted" as they say, in legal circles for his love of the First Amendment.

Posted by: wikileaks Spokesperson | February 16, 2008 07:07 PM"

EXHIBIT C

US court attacks web freedom

From Wikileaks

US court attacks web freedom; enjoins Wikileaks.org out of existence

Date

2008-02-18

By

Stephen Soldz

One of the most important web sites in recent months has been *Wikileaks.org* (<http://wikileaks.org/>). Created by several brave journalists committed to transparency, *Wikileaks* has published important leaked documents, such as the Rules of Engagement (http://www.wikileaks.be/wiki/US_Rules_of_Engagement_for_Iraq) for Iraq [see my The Secret Rules of Engagement in Iraq (<http://www.counterpunch.org/soldz02052008.html>)], the 2003 (http://www.wikileaks.be/wiki/Camp_Delta_Standard_Operating_Procedure) and 2004 ([http://www.wikileaks.be/wiki/Camp_Delta_Standard_Operating_Procedure_\(2004\)](http://www.wikileaks.be/wiki/Camp_Delta_Standard_Operating_Procedure_(2004))) Guantanamo Camp Delta Standard Operating Procedures (http://www.wikileaks.be/wiki/Guantanamo_document_confirms_psychological_torture), and evidence of major bank fraud in Kenya (http://wikileaks.be/wiki/The_looting_of_Kenya_under_President_moi) [see also here (http://wikileaks.be/wiki/A_Charter_House_of_horrors)] that apparently affected the Kenyan elections. Wikileaks has upset the Chinese government enough that they are attempting to censor it, as is the Thai military junta.

Now censorship has extended to the United States of America, land of the First Amendment. As of Friday, February 15, those going to *Wikileaks.org* (<http://wikileaks.org/>) have gotten **Server not found** messages. Today I received a message (http://freedomspen.org/wiki/Wikileaks.org_under_injunction) explaining that a California court has granted an injunction (<http://wikileaks.cx/wiki/images/Dynadot-injunction.pdf>) written and requested by Cayman Island's Bank Julius Baer lawyers. It seems that the bank is trying to keep the public from accessing documents that may reveal shady dealings. *Wikileaks* was only given a couple of hours notice "by email" and was not even represented at the hearing where a U.S. judge took such a drastic step attempting to totally shut down an important information outlet. The result was this totally unprecedented attempt to totally wipe out the existence of Wikileaks:

"Dynadot shall immediately clear and remove all DNS hosting records for the wikileaks.org domain name and prevent the domain name from resolving to the wikileaks.org website or any other website or server other than a blank park page, until further order of this Court."

There have, of course, been previous attempts by the U.S. Government and others to block publication of particular documents, most famously in 1971 when the Nixon administration attempted to stop publication (<http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB48/>) by the *New York Times* of excerpts from the Pentagon Papers (<http://www.mtholyoke.edu/acad/intrel/pentagon/pent1.html>), leaked by Daniel Ellsberg. But trying to close down an entire site in this way is truly unprecedented. Not even the Nixon administration, when they sought to block publication of the Pentagon Papers, considered closing down the *New York Times* in response.

If this injunction stands, it will set an incredible precedent for all of us who use the web to unveil misbehavior by the rich and powerful. Fortunately, *Wikileaks* is fighting this unconstitutional attack on press freedom,

aided by six pro bono attorneys in San Francisco. While Wikileaks has so far not issued any particular call for support, all who value freedom should stand ready to offer whatever support they need.

Meanwhile, Wikileaks still exists. Its founders, knowing that governments and institutions will go to extreme lengths to censor the truth, have created an extensive network of cover names (http://wikileaks.cx/wiki/Wikileaks:Cover_Names) from which one can access their materials or continue leaking the secrets of governments and the corrupt rich and powerful. Thus, everything is available at Wikileaks.be (<http://wikileaks.be/wiki/Wikileaks>), among other names. Let the leaks continue!

Entry Filed under: Social Issues (<http://psychoanalystsopposewar.org/blog/category/social-problems/>), Democracy (<http://psychoanalystsopposewar.org/blog/category/social-problems/democracy/>), Free Speech (<http://psychoanalystsopposewar.org/blog/category/social-problems/rights-and-liberties/free-speech/>)

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