

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TARI LABS, LLC,
Plaintiff,

v.

LIGHTNING LABS, INC.,
Defendant.

Case No. [3:22-cv-07789-WHO](#)

**ORDER ENTERING TEMPORARY
RESTRAINING ORDER**

Re: Dkt. No. 25

Tari Labs, LLC, brings this motion for a temporary restraining order (“TRO”) against Lightning Labs, Inc., seeking to temporarily restrain Lightning’s use of the name “TARO” for its protocol because it infringes Tari’s trademark for the “TARI” protocol. Both are blockchain-based software protocols used to create and transfer digital assets, and both companies market their protocols to similar software developer customers. Although Tari purports to make consumer-facing products itself while Lightning creates the protocol so outside developers can make consumer-facing products, those retail products seem to overlap both in use and in customer bases, and so the similar names and marks are likely to confuse customers. For those and the following reasons, on this record I find Tari is likely to succeed on the merits, has shown likelihood of irreparable harm, and shows the balance of equities and public interest favor a TRO.

BACKGROUND

I. FACTUAL BACKGROUND

Tari alleges in this trademark infringement lawsuit that Lightning’s use of the name “TARO” for its blockchain-based “protocol” infringes Tari’s trademark for its “platform” of blockchain and cryptocurrency-related products, including its own blockchain-based protocol,

1 “TARI.”¹

2 The “TARI protocol” is an “open-source” software based on blockchain technology that
3 “enables users to create and transfer digital assets.” Declaration of Naveen Jain (“Jain Decl.”)
4 [Dkt. No. 28] ¶ 1. The protocol was initially launched in April 2020 by a team of individuals
5 experienced in cryptocurrency and startups. *Id.* ¶¶ 9-10. Though still in its development, the
6 TARI protocol will allow users to transfer many kinds of digital assets, “including stablecoins,
7 non-fungible tokens (NFTs), tickets, in-app purchases on mobile devices, loyalty points, and other
8 assets.” *Id.* ¶ 2. Tari targets developers for the use and development of the protocol itself, and
9 also targets retail consumers with other products and services from its TARI platform, that use or
10 work with the Tari protocol. *Id.* ¶¶ 2-4. Its products currently include a “Tari wallet” and “Tari
11 tokens,” though it plans to expand. *See id.* ¶¶ 4-6. Tari and the TARI protocol have been featured
12 by various news sources and have been marketed to consumers, and Tari has a moderate social
13 media following. *Id.* ¶¶ 10-12.

14 The TARO protocol was developed after the Bitcoin blockchain was updated in late 2021
15 with functionality called “Taproot,” which allows for more types of transactions to take place on
16 that blockchain.² Declaration of JP Singh (“Singh Decl.”) [Dkt. No. 38] ¶ 30; Declaration of
17 Olaoluwa Osuntokon (“Osuntokon Decl.”) [Dkt. No. 36] ¶¶ 15-17. In response to this
18 development, Lightning—which builds tools intended for developers to use to build consumer-
19 facing applications—announced in April 2022 the “TARO protocol,” which is built using the
20 Taproot functionality. Jain Decl. ¶¶ 27-29, 31. The TARO protocol is intended to be used to issue
21 and transfer digital assets over the blockchain. *Id.* ¶¶ 31-33. Lightning says the TARO protocol

22
23 ¹ The trademark is for:

24 Cryptocurrency trading and exchange services, namely, providing a digital
25 currency or digital token for use by members of an on-line community via a global
26 computer network; cryptocurrency trading and exchange services, namely,
27 providing a digital currency or digital token, incorporating cryptographic protocols,
28 used to operate and build applications and blockchains on a decentralized computer
platform and as a method of payment for goods and services and as a method of
transfer of digital assets.

Declaration of Naveen Jain (“Jain Decl.”) [Dkt. No. 28] Ex. 8.

² This update was separate from the actions and parties involved in this case.

1 was named as such because one founder liked the name, because another founder was Nigerian
2 and ate taro as a child,³ and because “taproot” and “taro” are related. Declaration of Elizabeth
3 Stark (“Stark Decl.”) [Dkt. No. 39] ¶ 39; Osuntokon Decl. ¶¶ 21, 25.

4 Concerned that that TARO protocol would operate in the same product area and confuse
5 customers with its name choice, Tari executives reached out to Lightning executives several times
6 throughout 2022, alerting them to the TARO trademark and concerns about consumer confusion
7 and asking for a name change. *See* Stark Decl. Ex. 16; Declaration of J. Noah Hagey (“Hagey
8 Decl.”) [Dkt. No. 26]; Supplemental Declaration of Naveen Jain (“Jain Supp. Decl.”) [Dkt. No.
9 45] Ex. 1. Tari contends that the TARI and TARO protocols directly compete by selling their
10 products and by seeking feedback from similar developers. *See* Jain Decl. ¶¶ 20-23. Tari asserts
11 that both companies use the same marketing channels, media and technology platforms, and
12 industry press publications. *Id.* ¶¶ 24-26. Tari also says that Lightning’s TARO protocol is
13 receiving increased press attention, in part due to recent “Community Calls” Lightning has held to
14 promote the product. *Id.* ¶¶ 28-30.

15 Lightning ignored or denied the accusations throughout 2022, *see* Stark Decl. Ex. 16;
16 Hagey Decl.; Jain Supp. Decl. Ex. 1, and in September, it publicly released its open-source
17 “TARO protocol.”⁴ Singh Decl. ¶ 33. In December 2022, Tari sued for trademark infringement.
18 [Dkt. No. 1].

19 Tari now asserts that on February 5, 2023, Lightning’s Chief Technology Officer
20 announced that a new version of the TARO protocol would be released within a month. *See* Jain
21 Decl. ¶ 32. Tari says that the following day, another Lightning executive stated that this newest
22 version of the TARO protocol would have “just about everything needed to fully get off the
23 ground.” *Id.* ¶ 3; *see also id.* Ex. 27. Concerned this impending “launch” would immediately
24 harm its brand, reputation, and business, Tari filed the present motion for a temporary restraining
25 order (“TRO”).

26
27 ³ *See also infra* n.11.

28 ⁴ Counsel for Lightning repeatedly confirmed at the hearing that Lightning knew of the
accusations and, as of the hearing date, does not intend to change the name of its TARO protocol.

II. PROCEDURAL BACKGROUND

1 Tari filed its complaint on December 8, 2022. [Dkt. No. 1]. Lightning answered on
 2 February 7, 2023. [Dkt. No. 24]. On February 21, 2023, Tari filed its TRO, (“Mot.”) [Dkt. No.
 3 25], along with nearly 500 pages of exhibits, [Dkt. Nos. 26, 27, 28]. I held a short hearing to set a
 4 briefing schedule and issued an order maintaining the status quo. [Dkt. Nos. 32, 34]. Lightning
 5 filed its opposition on February 27, 2023, (“Oppo.”) [Dkt. No. 35], along with nearly 700 pages of
 6 exhibits, [Dkt. Nos. 36, 37, 38]. Tari replied on March 2, 2023, (“Repl.”) [Dkt. No. 43⁵], with
 7 over 150 pages of exhibits, [Dkt. Nos. 43, 44, 45]. I order Lightning to file a sur-reply specifically
 8 addressing the new evidence raised by Tari in its reply concerning the “Taro Wallet,” which
 9 Lightning did. (“Surrepl.”) [Dkt. No. 48]. I held a hearing on March 8, 2023, at which counsel
 10 for both parties appeared.

LEGAL STANDARD

12 Federal Rule of Civil Procedure 65 governs preliminary injunctions and temporary
 13 restraining orders. Fed. R. Civ. Proc. 65. The standard for both forms of relief is the same. *See*
 14 *Stulhbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

15 A preliminary injunction may be issued if a plaintiff establishes: (1) likelihood of success
 16 on the merits; (2) likelihood of irreparable harm in the absence of preliminary relief; (3) that the
 17 balance of equities tips in his favor; and (4) that an injunction is in the public interest. *See Winter*
 18 *v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). “Injunctive relief [is] an extraordinary
 19 remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such
 20 relief.” *Id.* at 22. The Ninth Circuit has held that “‘serious questions going to the merits’ and a
 21 hardship balance that tips sharply toward the plaintiff can support issuance of an injunction,
 22 assuming the other two elements of the *Winter* test are also met.” *All. for the Wild Rockies v.*
 23 *Cottrell*, 632 F.3d 1127, 1132 (9th Cir. 2011). “A stronger showing of one element may offset a
 24 weaker showing of another. For example, a stronger showing of irreparable harm to plaintiff
 25 might offset a lesser showing of likelihood of success on the merits.” *Id.* at 1131.

27 ⁵ I consider and cite to the timely filed reply at Dkt. No. 43, in part because Tari did not explain
 28 what changes were made to the document filed at Dkt. No. 46 and in part because Tari did not re-
 append the declarations that were filed at Dkt. No. 43.

1 **DISCUSSION**

2 I address the four factors governing TROs below. Tari makes a strong showing of success
3 on the merits and meets the statutory rule for a rebuttable presumption of irreparable harm, which
4 Lightning fails to rebut. The balance of equities and public interest factors are less strong but at
5 this stage, favor Tari. Accordingly, and for the following reasons, Tari’s motion is granted.

6 **I. LIKELIHOOD OF SUCCESS ON THE MERITS**

7 The parties fervently debate Tari’s likelihood of success on the merits of its trademark
8 infringement claims but agree on the legal test that applies. “To prevail on its Lanham Act
9 trademark claim, a plaintiff must prove: (1) that it has a protectible ownership interest in the
10 mark;⁶ and (2) that the defendant’s use of the mark is likely to cause consumer confusion.”
11 *Rearden LLC v. Rearden Com., Inc.*, 683 F.3d 1190, 1202 (9th Cir. 2012) (quotation marks
12 omitted) (citing *Network Automation, Inc. v. Advanced Sys. Concepts, Inc.*, 638 F.3d 1137, 1144
13 (9th Cir. 2011)). “More precisely . . . at the preliminary injunction [or TRO] stage, [the plaintiff]
14 must establish this it is likely to be able to show such a likelihood of confusion.” *Brookfield*
15 *Commc’ns, Inc. v. W. Coast Ent. Corp.*, 174 F.3d 1036, 1053 n.15 (citation omitted).

16 Consumer confusion may be shown as either forward or reverse confusion. *Ironhawk*
17 *Techs., Inc. v. Dropbox, Inc.*, 2 F.4th 1150, 1159 (9th Cir. 2021). “Forward confusion occurs
18 when consumers believe that goods bearing the junior mark came from, or were sponsored by, the
19 senior mark holder. By contrast, reverse confusion occurs when consumers dealing with the
20 senior mark holder believe that they are doing business with the junior one.” *Id.* at 1159-60
21 (citations and internal quotation marks omitted).⁷

22 The likelihood of confusion element is government by the eight “*Sleekcraft* factors”:

23 _____
24 ⁶ Though Lightning seems to contest Tari’s protected ownership interest, *Oppo*, 7 n.2, I find that
25 Tari is likely to succeed on the merits of this element because Tari submitted evidence of its
26 registered trademark. *See Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1124 (9th Cir. 2014)
27 (“Registration of a mark is prima facie evidence of the validity of the mark, the registrant’s
28 ownership of the mark, and the registrant’s exclusive right to use the mark in connection with the
goods specified in the registration.” (citing 15 U.S.C. § 1115(a))). As Lightning notes, additional
discovery will be necessary to contest this evidence.

⁷ Because I find that Tari establishes it is likely to succeed on its reverse confusion claim, I do not
address the forward confusion claim at this time.

1 “(1) strength of the protected mark; (2) proximity and relatedness of the goods; (3) type of goods
2 and the degree of consumer care; (4) similarity of the protected mark and the allegedly infringing
3 mark; (5) marketing channel convergence; (6) evidence of actual consumer confusion;
4 (7) defendant’s intent in selecting the allegedly infringing mark; and (8) likelihood of product
5 expansion.” *Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1125 (9th Cir. 2014) (citing *AMF
6 Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348-49 (9th Cir. 1979), *abrogated on other grounds by
7 Mattel Inc. v. Walking Mountain Prods.*, 353 F.3d 792, 810 n.19 (9th Cir. 2003)). “[T]his multi-
8 factor approach must be applied in flexible fashion” and the facts are “not a rote checklist”; “[a]
9 determination may rest on only those factors that are most pertinent to the particular case . . . and
10 other variables besides the enumerated factors should also be taken into account based on the
11 particular circumstances.” *Rearden*, 683 F.3d at 1209 (citations omitted). “[A] plaintiff need not
12 satisfy every factor, provided that strong showings are made with respect to some of them.” *Pom
13 Wonderful*, 775 F.3d at 1125 (quoting *Survivor Media, Inc. v. Survivor Prods.*, 406 F.3d 625, 631
14 (9th Cir. 2005)). And as the Ninth Circuit cautioned in 1999 in a case concerning Internet domain
15 names—a new technology at the time—courts “must be acutely aware of excessing rigidity when
16 applying the [*Sleekcraft* factors] in the Internet context; *emerging technologies require a flexible
17 approach.*” *Brookfield*, 174 F.3d at 1054 (emphasis added).

18 **A. Strength of the Mark**

19 “The stronger a mark—meaning the more likely it is to be remembered and associated in
20 the public mind with the mark’s owner—the greater the protection it is accorded by the trademark
21 laws.” *Network Automation*, 638 F.3d at 1149 (quoting *Brookfield*, 174 F.3d at 1058). “A mark’s
22 strength is ‘evaluated in terms of its conceptual strength and commercial strength.’” *JL Beverage
23 Co., LLC v. Jim Beam Brands Co.*, 828 F.3d 1098, 1106 (9th Cir. 2016) (citation omitted).
24 “Conceptual strength involves classification of a mark ‘along a spectrum of generally increasing
25 inherent distinctiveness as generic, descriptive, suggestive, arbitrary, or fanciful.’” *Network
26 Automation*, 638 F.3d at 1149 (quoting *Brookfield*, 174 F.3d at 1058). “Arbitrary or fanciful
27 marks deserve wide protection because the trademark holder can properly expect to run into very
28 little confusion from honest competitors . . . [and because] the trademark holder must work hard to

1 make consumers associate the trademark with the product.” *Dreamwerks Prod. Grp., Inc. v. SKG*
 2 *Studio*, 142 F.3d 1127, 1130 n.7 (9th Cir. 1998). “Commercial strength is based on ‘actual
 3 marketplace recognition,’ and thus ‘advertising expenditures can transform a suggestive mark into
 4 a strong mark.’” *Network Automation*, 638 F.3d at 1149 (quoting *Brookfield*, 174 F.3d at 1058).

5 In cases of reverse confusion, I assess “whether consumers doing business with the senior
 6 user might mistakenly believe that they are dealing with the junior user,” which requires
 7 “evaluat[ing] the conceptual strength of [the plaintiff’s] mark and compar[ing] it to the
 8 commercial strength of [the defendant’s] mark.” *Ironhawk*, 2 F.4th at 1162 (quoting *JL Beverage*
 9 *Co.*, 828 F.3d at 1107). “[I]n a reverse confusion claim, a plaintiff with a commercially weak
 10 mark is more likely to prevail than a plaintiff with a stronger mark, and this is particularly true
 11 when the plaintiff’s weaker mark is pitted against a defendant with a far stronger mark.” *Id.* at
 12 1163 (quoting *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 841 (9th Cir. 2002) (per curiam)). Indeed,
 13 the central question is whether the junior mark is so commercially strong as to overtake or
 14 “swamp the reputation” of the senior mark. *Id.* at 1162-63 (first citing *Walter v. Mattel, Inc.*, 210
 15 F.3d 1108, 1111 n.2 (9th Cir. 2000); and then citing *Dreamwerks*, 142 F.3d at 1130 n.5).

16 The parties agree that Tari is a conceptually strong mark because it is an “arbitrary
 17 mark[.]” *Oppo*. 9 n.3; *Mot.* 11:10-21; *see also Dreamwerks*, 142 F.3d at 1130 n.7. Tari has an
 18 “Arabic or Italian” etymology “relating to a Mediterranean gold coin used in the Middle Ages.”
 19 *Mot.* 11:10-12 (citing Jain Decl. ¶ 14). Though apparently chosen because coins are tangentially
 20 related to payment technology, typical consumers are unlikely to understand this association. I
 21 agree that the mark is arbitrary or fanciful.

22 Turning to the commercial strength of the marks, Tari seems to argue both that its mark is
 23 strong and that its mark is weak. *See Mot.* 11:22-28 (asserting Tari has substantially invested in
 24 its brand), *Mot.* 12:1-8 (arguing for application of the reverse confusion doctrine, which applies
 25 where “plaintiff’s weaker mark is pitted against a defendant with a far stronger mark” (citation
 26 omitted)). Lightning contends that the TARI mark is commercially weak, *Oppo*. 8:9-9:3, and I
 27 tend to agree on this record—Tari has pointed to a few news articles, a moderate social media
 28 following, Jain Decl. Ex. 19, and no evidence of advertising expenditures besides perhaps travel to

1 conferences.

2 In contrast, Lightning has a commercially strong mark. Lightning notes that “many”
3 public developers already know about and use its TARO protocol, Oppo 32:19, and Tari submits
4 evidence of at least one developer using the TARO brand name on its newly developed wallet
5 product, Repl. 1:10-2:3. Additionally, Tari submits evidence showing Lightning is a well-known
6 brand with powerful financial investors, Jain Decl. ¶¶ 15-16, TARO has received significant press
7 attention including from *Forbes*, *id.* ¶ 30, Ex. 9, and TARO has a strong social media presence, *id.*
8 ¶ 31. Though unlike *Ironhawk*, 2 F.4th at 1163, where there was evidence of the defendant’s
9 significant marketing expenditures related to the allegedly infringing product, here Lightning has
10 the commercially stronger mark because of the evidence showing “actual marketplace
11 recognition,” *Network Automation*, 638 F.3d at 1149 (citation omitted). Accordingly, like the
12 plaintiff in *Ironhawk*, here Tari may be able to show that Lightning’s use of the TARO mark may
13 “swamp the reputation” of the TARI mark, and Tari’s reputation and business could be affected.
14 Based on this somewhat limited record, then, I find that Tari is likely to show that this element
15 favors finding infringement.

16 **B. Proximity and Relatedness of the Goods**

17 The parties fervently disagree on the proximity of the goods in the market. Lightning even
18 contests the fundamental basis of Tari’s expert report because the methodology was grounded in
19 the assumption that the goods are proximate in the market.

20 “Goods and services are related when they are complementary, sold to the same class of
21 purchasers, or similar in use and function.” *Ironhawk*, 2 F.4th at 1163 (citing *Sleekcraft*, 599 F.2d
22 at 350). A plaintiff suing for trademark infringement “need not establish that the parties are direct
23 competitors to satisfy the proximity or relatedness factor.” *Rearden*, 683 F.3d at 1212. Rather,
24 “[r]elated goods (or services) are those ‘which would be reasonably thought by the buying public
25 to come from the same source if sold under the same mark.’” *Ironhawk*, 2 F.4th at 1163 (quoting
26 *Sleekcraft*, 599 F.2d at 348 n.10). Within the Ninth Circuit, courts “adopt[] a rather flexible
27 approach to the whole notion of competition.” *Rearden*, 683 F.3d at 1212 (collecting cases).
28 Even where “the parties are not direct competitors,” “[t]heir businesses may be sufficiently

1 ‘complementary’ or ‘related’ that the public is likely to be confused as to the source of the
2 services.” *Am. Int’l Grp., Inc. v. Am. Int’l Bank*, 926 F.2d 829, 832 (9th Cir. 1991) (citations
3 omitted).

4 Lightning describes its TARO protocol as a “software protocol” that allows developers “to
5 build new digital assets on the Bitcoin blockchain and transact with them over the Bitcoin
6 blockchain or the Lightning Network.” *Oppo*. 3:22-25 (citing Stark Decl. ¶¶ 36, 41). Tari
7 describes its TARI protocol as “a blockchain protocol . . . that allows users to create and transfer
8 digital assets on the blockchain. . . . [and] allows developers and other market participants to build
9 the protocol into their technology and create their own tools for transferring digital assets.” *Mot*.
10 2:19-22 (citing Jain Decl. ¶¶ 2-7). Though Lightning seems to disagree, both companies assert
11 that they make a blockchain protocol that allows developers or other users to build and transfer
12 digital assets. Accordingly, the protocols are “similar in use or function,” *Ironhawk*, 2 F.4th at
13 1163 (citation omitted), and the businesses are “related,” *Am. Int’l Grp.*, 926 F.2d at 832.

14 Lightning repeatedly contends that the TARO protocol is intended only for developers,
15 which would mean that it is not sold to the same class of purchasers as the TARI protocol. *See*,
16 *e.g.*, *Oppo*. 1:11-16, 3:17-18, 4:8-11, 17:9-11. But Tari says its protocol is also directed to
17 developers, *see, e.g.*, Jain Decl. ¶¶ 2-3, so evidently there is at least some overlap in the customer
18 bases. Lightning also says that it can only be used on the Bitcoin blockchain and that Bitcoin
19 developers rarely work on other blockchains, *see* Singh Decl. ¶¶ 22-24, but Tari contests whether
20 developers are so dedicated to a single blockchain, *see* Jain Supp. Decl. ¶ 19, points out that
21 Lightning’s executives are encouraging overlap with technology on different blockchains, *id.* ¶ 22;
22 *id.* Exs. 5, 6; and adds that Tari has announced plans to make its protocol compatible with the
23 Bitcoin blockchain, which is where the TARO protocol operates, *id.* ¶ 20.⁸

24
25 ⁸ Lightning strongly emphasizes the importance of the two protocols operating on different
26 blockchains. As noted, it seems there is more overlap than Lightning believes. But I am also not
27 so sure that operating on different blockchains is as important as Lightning makes it seem, so long
28 as the products (protocols) are similar and operate in the same blockchain space. Here is a
hypothetical example comparison, using a more established blockchain-based product: If Bitcoin
owned a trademark protecting its famous name and cryptocurrency coin, and a new company
called “Bytcoin” started production of a new cryptocurrency coin on another blockchain, it seems
clear that Bitcoin would be able to assert a trademark infringement claim against Bytcoin for use

1 Accordingly, there is sufficient evidence in the record to show that Tari is likely to succeed
2 in showing that the protocols are related and proximate in the market. It is true that Lightning may
3 be able to show, after further discovery, that the way developers and consumers encounter the
4 product is wholly distinct—but it has not done this yet, and I am not so convinced it will be able to
5 sufficiently in a way that defeats Tari’s assertions. This factor favors a TRO.

6 **C. Type of Goods and the Degree of Consumer Care**

7 This factor considers “the sophistication of the customers,” including whether a
8 “‘reasonably prudent consumer’ would take the time to distinguish between the two product
9 lines.” *Ironhawk*, 2 F.4th at 1167 (citation omitted). “‘When the buyer has expertise in the field,’
10 or ‘the goods are expensive, the buyer can be expected to exercise greater care in his purchases.’”
11 *Id.* (citation omitted).

12 It is not clear whether this factor favors Tari or Lightning given the parties’ disagreement
13 over the relevant products. If only the protocols were at issue, this factor leans toward Lightning.
14 The protocols are directed at software developers, and it makes sense that they are sophisticated
15 consumers who exercise great care when choosing their software. Of course, neither party
16 presents any evidence of whether software developers pay for the protocol—indeed, both say their
17 protocols are “open-source,” Mot. 18:22-24; Oppo. 2:22-27; Repl. 12:7, which seems to mean
18 accessible for free—and if the consumers are not paying for the product, of course they would be
19 less discerning in their choices than those paying any monetary fee. But overall, at this point Tari
20 does not sufficiently rebut that software developers take care in their software decisions.

21 That said, less-sophisticated consumers can use and purchase the products that are built
22 with the protocols. For example, Tari points to the wallets: Even if TARI and TARO wallets
23 currently work on different blockchains, it is not clear from the record that an ordinary consumer
24 would exercise sufficient care to confirm the underlying blockchain when she chooses a wallet.

25 _____
26 of its name for a nearly identical product, despite the fact that they operate on separate
27 blockchains. That is essentially Tari’s argument here, concerning protocol instead of coins. *See*
28 *also Telegram Messenger Inc. v. Lantah, LLC*, No. 18-CV-02811-CRB, 2018 WL 3753748, at *1-
2, 6 (N.D. Cal. Aug. 8, 2018), *aff’d*, 782 F. App’x 528 (9th Cir. 2019) (enjoining the use of an
allegedly infringing trademark for cryptocurrency products, including coins, without noting that
the products operated on the same or different blockchains).

1 And while Lightning argues the “TARO wallet” is meant for developers, not consumers, its
2 argument that the TARO name will never be seen by consumers is implausible, at least on this
3 record.

4 Accordingly, at this stage, I find this factor neutral.

5 **D. Similarity of the Marks**

6 “The following axioms define and delimit the similarity analysis: (1) similarity is best
7 evaluated by appearance, sound, and meaning; (2) marks should be considered in their entirety and
8 as they appear in the marketplace; and (3) similarities weigh more heavily than differences.” *Pom*
9 *Wonderful*, 775 F.3d at 1127 (citation and footnote omitted); *see also Network Automation*, 638
10 F.3d at 1151 (emphasizing the importance of addressing how consumers would encounter the
11 mark in the marketplace). “[T]he more similar the marks in terms of appearance, sound, and
12 meaning, the greater the likelihood of confusion.” *Brookfield*, 174 F.3d at 1055 (holding
13 “MovieBuff” and “MovieBuff.com” were “essentially identical”). “[A]s the similarities between
14 two marks increase, so too does the likelihood of confusion.” *Pom Wonderful*, 775 F.3d at 1127
15 (citation omitted). “Non-visual similarities are particularly important where . . . there is no
16 evidence that consumers encounter the marks side-by-side in the marketplace.” *Id.* at 1129 n.9.

17 Tari’s expert declaration submitted a screenshot of the “landing page” for each company,
18 showing Tari’s mark and Lightning’s allegedly infringing mark:



Taro

22 *Palmatier Decl.* ¶¶ 22, 41; *see also Network Automation*, 638 F.3d at 1151 (noting the importance
23 of considering how the marks will be encountered “in the marketplace”).

24 The appearance and sound of the products’ marks are extremely similar. Both use the
25 same three first letters, have two syllables, and are pronounced almost identically, with both
26 emphasizing the first syllable more strongly than the second (TAR-ee; TAR-oh). *See Pom*
27 *Wonderful*, 775 F.3d at 1129 (emphasizing importance of the marks’ pronunciation); *Brookfield*,
28 174 F.3d at 1055 (same). Of course, all the letters in TARI are capitalized while only the “T” in

1 Taro is (though it seems all letters in TARO are capitalized when referencing the protocol, as
2 referred to by the parties in their briefs), the Tari mark has a small logo next to it, and the last
3 letter of each differs. The words’ meanings also differ. But “similarities weigh more heavily than
4 differences.” *Pom Wonderful*, 775 F.3d at 1127. These marks are very similar.

5 I am also persuaded by Tari’s point that developer-consumers of the Taro protocol are
6 likely to use the Taro name on their consumer-facing products, in order to show consumers that
7 the products they are purchasing are connected to the protocol. *See Network Automation*, 638
8 F.3d at 1151 (noting the importance of considering how the marks will be encountered “in the
9 marketplace”). This is significant because it emphasizes the importance of the *word* itself, and
10 therefore the similarities between the words “Tari” and “Taro,” more than the color, size, or font
11 of the text. *See iCall, Inc. v. Tribair, Inc.*, No. C-12-2406 EMC, 2012 WL 5878389, at *7 (N.D.
12 Cal. Nov. 21, 2012) (“[O]ne feature of a mark may be more significant and it is proper to give
13 greater force and effect to that dominant feature.” (quoting McCarthy on Trademarks & Unfair
14 Competition § 23:42)); *see also Pom Wonderful*, 775 F.3d at 1129-30 (holding that even where
15 “the presentation of the marks differ[ed] in terms of prominence, font, size, and capitalization,” the
16 district court erred in finding similarity weighed against the plaintiff, because the marks had
17 identical pronunciation, meaning, and letters). For example, the “Taro Wallet” shows the word
18 “Taro” in white, apparently using a slightly different font from the one used by Lightning on
19 Taro’s “landing page,” but the name “Taro Wallet” is obviously very similar to “Tari Wallet,”
20 which is precisely Tari’s concern. *See* Repl. 1:16-22.⁹

21 Accordingly, I find that Tari has shown a likelihood of success concerning the similarity of
22 marks.¹⁰

24 ⁹ This also addresses a point made by Lightning’s expert, that TARO does not have a “logo” and
25 that the image provided in Tari’s declaration is merely “a heading” on a developer page. Butler
26 Decl. ¶ 25. Even if true, this does not address the fact that consumers are likely to encounter the
“TARO” *name*—regardless of what the text looks like—if TARO’s non-Lightning developers
continue to use the TARO to connect their products to the TARO protocol.

27 ¹⁰ Lightning’s cited cases are not to the contrary. *See* Oppo. 12:22-13:2. In *iCall*, 2012 WL
28 5878389, at *8, Judge Chen compared the words “iCall” and “WiCall” and discounted “to some
degree” the similarity of the word “Call,” which described the calling product, to focus on the

E. Marketing Channel Convergence

1 “In assessing marketing channel convergence, courts consider whether the parties’
2 customer bases overlap and how the parties advertise and market their products.” *Pom Wonderful*,
3 775 F.3d at 1130 (citing *Nutri/System, Inc. v. Con–Stan Indus., Inc.*, 809 F.2d 601, 606 (9th Cir.
4 1987)). “Marketing channels can converge even when different submarkets are involved so long
5 as ‘the general class of . . . purchasers exposed to the products overlap.’” *Id.* (citing *Sleekcraft*,
6 599 F.2d at 353).

7 Lightning does not contest that both parties use the same marketing channels, including
8 “Twitter, Substack, and Github.” *Oppo*. 17:16-19 (agreeing Lightning also uses those marketing
9 channels and asserting that “*all* companies in the software development and cryptocurrency spaces
10 use these common online platforms”).

11 But Lightning contends this factor does not favor Tari because their consumer bases do not

12
13 _____
14 dissimilarity between the “dominant component[s]” of the words, “i” and “Wi.” He thoughtfully
15 reasoned that while pronounced similarly (“eye” and “why”), the aural difference from adding the
16 “w” was “not insignificant”; the word “i” had no meaning while “wi” referred to “wifi”; and most
17 importantly, the defendants had provided evidence showing the marks were only encountered
18 along with the “very distinct” logos. *Id.* Here, while the different meanings of Taro and Tari
19 favor the defendants, the words have near-identical pronunciations and the aural difference is
20 insignificant. And while “Tari” sometimes appears next to its logo, sometimes it does not, and
21 “Taro” never appears with a logo; Judge Chen’s point was that the logos themselves offered
22 distinction, which is not possible when sometimes there is no logo. *See id.*

23 In addition to being out of circuit and out of district, *FieldTurf USA Inc. v. TenCate*
24 *Thiolon Middle E.*, 945 F. Supp. 2d 1379, 1390 (N.D. Ga. 2013), combined the “similarity” and
25 “customer care” factors when it reasoned that “Evolution” and “Revolution” differed by only one
26 letter and were pronounced differently, but customers were sophisticated and unlikely to be
27 deceived by this difference. The order later noted that the customer bases were also distinct
28 because the products represented entirely different stages of manufacturing. *Id.* I find this
reasoning inapposite, and if anything, supportive of Tari because it emphasized the similarity
between the names.

29 Lastly, Lightning cites *Haven Capital Management, Inc. v. Havens Advisors, L.L.C.*, 965
30 F. Supp. 528 (S.D.N.Y. 1997), *aff’d*, 159 F.3d 1346 (2d Cir. 1998). In addition to being out of
31 circuit, *Haven* explained that “[o]bviously” the words “haven” and “havens” were similar, which
32 favors Tari’s position. *Id.* at 531. Additionally, there the defendant-investment advisers were
33 legally precluded from advertising generally, whereas the plaintiff could advertise to the public, so
34 the defendant’s mark was only presented to a marketplace of “sophisticated investors” who were
35 “required to put up significant money” that would be “tied up for a minimum of eighteen months.”
36 *Id.* Here, Lightning repeatedly argues that its developer-consumers are highly sophisticated but
37 does not similarly say that they are required to invest significant sums of money that render them
38 unlikely to make a mistake in choosing their product. *Cf. id.* This case is also inapposite.

1 overlap. Oppo. 17:6-15. I am not convinced. Both companies target their products at software
 2 developers. Jain Decl. ¶¶ 2-4, 8, 11; Singh Decl. ¶¶ 27, 31, 34. Lightning says TARO is only
 3 used by Bitcoin developers, whom Lightning asserts do not use any other blockchain technology,
 4 Singh Decl. ¶¶ 23-24, but Tari strongly contests that developers restrict themselves to a single
 5 blockchain, Jain Supp. Decl. ¶ 49, asserts that the TARI protocol will be developed for use on
 6 multiple blockchains, *id.* ¶¶ 20-21, and says Lightning itself is advocating for more technology to
 7 be used on multiple blockchains, *id.* ¶ 22. Additionally, and with respect to Lightning’s repeated
 8 assertions that its products and name will never be consumer-facing, *see, e.g.*, Oppo 4:8-11
 9 (“[O]rdinary consumers . . . are highly unlikely to come into contact with the TARO name.”), Tari
 10 provided evidence that Taro’s name is *already* being used by a developer using Taro’s protocol,
 11 for a “Taro Wallet,” Jain Supp. Decl. Ex. 13. At this stage it seems reasonable that the consumers
 12 for the Tari Wallet and the Taro Wallet are likely to overlap despite Lightning’s arguments to the
 13 contrary. At the very least, Tari makes a strong showing that “the general class of . . . purchasers
 14 exposed to the products overlap.” *Pom Wonderful*, 775 F.3d at 1130 (citation omitted).

15 Accordingly, given the uncontested overlap in marketing channels, and the clear showing
 16 of likely overlap between users of the parties’ products, this favor strongly favors Tari.

17 **F. Evidence of Actual Confusion**

18 “[E]vidence of actual confusion, at least on the part of an appreciable portion of the actual
 19 consuming public, constitutes strong support for a ‘likelihood of confusion’ finding.” *Reardon*,
 20 683 F.3d at 1210 (citing *Playboy Enters., Inc. v. Netscape Comm’cs Corp.*, 354 F.3d 1020, 1026
 21 (9th Cir. 2004)). “[C]onfusion on the part of potential consumers may be relevant” and “non-
 22 consumer confusion can serve as a proxy for consumer confusion.” *Id.* at 1215 (citations omitted).
 23 “Because of the difficulty in garnering such evidence . . . the failure to prove instances of actual
 24 confusion is not dispositive.” *Ironhawk*, 2. F.4th at 1165 (quoting *Sleekcraft*, 599 F.2d at 353).
 25 “Therefore, ‘this factor is weighed heavily only when there is evidence of past confusion or,
 26 perhaps, when the particular circumstances indicate such evidence should have been available.’”
 27 *Id.* (quoting *Sleekcraft*, 599 F.2d at 353).

28 Tari points to three pieces of evidence that it says show actual confusion: (1) examples of

1 confusion on the social media application Telegram and in a news article; (2) its expert report; and
2 (3) Lightning’s counsel’s mix-up of the marks.

3 First, Tari’s users mistyping “Tari” and instead typing “Taro” on Telegram shows that the
4 name is similar, can easily be mistyped, and might be mistaken inadvertently due to typographical
5 error. *See Jain Supp. Decl. Ex. 12*. This favors Tari. But I am less convinced that these
6 screenshots show *confusion* because it seems as though the consumers were strictly discussing
7 Tari and all other members of the conversation understood the typo to refer to Tari, and because
8 nothing shows any consumers knew about or were directed to the TARO protocol. Tari’s exhibit
9 showing a mix-up in a blog post is somewhat more convincing because it demonstrates repeated
10 use of “TARI” when the author was describing the “TARO” protocol. *See Palmatier Supp. Rep.*
11 *Ex. 1 at 9*. While it is again clear from context that the post discusses TARO, the post appears to
12 be an informational blog for developers or consumers, so even small typos could create confusion.
13 *See Reardon*, 683 F.3d at 1215 (considering confusion on behalf of potential consumers and non-
14 consumers as relevant to actual confusion). This somewhat favors Tari.

15 Second, Tari’s expert report purports to show very high levels of consumer confusion. *See*
16 *Palmatier Rep.* Lightning contends the entire report should be disregarded, and some of its
17 expert’s criticisms seem valid, particularly regarding the lack of controls and the use of leading
18 questions. *See Butler Rep.* However, Lightning did not submit an opposing report showing, for
19 example, a survey that demonstrated *no* confusion among consumers (likely due to the time-
20 limited nature of the motion and briefing schedule, though perhaps also because it is not clear
21 whether Lightning must *disprove* actual confusion). And, one of its most fervent criticisms is that
22 Tari’s expert’s use of a *Squirt* survey is flawed because the products do not appear in close
23 proximity in the marketplace. *See id.* ¶¶ 17-27. As discussed, I am not persuaded by this
24 argument. Accordingly, at this stage I find the survey may show the possibility of actual
25 confusion, but I cannot say at this time that it affirmatively *shows* actual confusion.

26 Third, Tari points out the mistake made by Lightning’s former counsel in responding to
27 Tari’s demand letter, where counsel wrote “Taro Labs” instead of “Tari Labs.” *See Hagey Decl.*
28 *Ex. 2 at 2*. Non-consumer confusion may indicate confusion on behalf of actual consumers, *see*

1 *Reardon*, 683 F.3d at 1215, and it is particularly poignant that Lightning’s counsel made this
2 mistake in response to a demand letter asking its client to stop using the name out of fear of
3 confusing customers. But I do not find this evidence is as helpful for Tari as Tari seems to
4 believe, because it does not show the impact on actual consumers.

5 Finally, Lightning argues that crypto investors and developers are sophisticated and
6 unlikely to confuse the products, but in reply Tari points to information showing confusion among
7 crypto investors concerning a recent blockchain product launch by the company Coinbase. *See*
8 Repl. 12:19-25; 13:15-19 (explaining that Coinbase recently launched a blockchain network called
9 Base, and in response crypto investors rapidly brought significant amounts of BASE, an
10 unaffiliated and unrelated crypto token); *see also* Jain Supp. Ex. 10. This supports Tari’s assertion
11 that developers and other users of cryptocurrency can be confused by similar product names, but
12 again does not affirmatively demonstrate there was any actual confusion here.

13 Accordingly, while this factor may tip slightly in Tari’s favor, it is “not dispositive” of the
14 inquiry into likelihood of confusion. *Ironhawk*, 2. F.4th at 1165.

15 **G. Defendant’s Intent in Selecting the Mark**

16 When assessing the defendant’s intent to infringe, “[t]his factor favors the plaintiff where
17 the alleged infringer adopted his mark with knowledge, actual or constructive, that it was another’s
18 trademark.” *Id.* at 1167 (internal quotation marks omitted) (citing *JL Beverage*, 828 F.3d at 1111-
19 12). For reverse confusion cases, the court “ask[s] whether there is some evidence that the junior
20 user, when it knew of the senior user, was at fault for not adequately respecting the rights of the
21 senior user.” *Id.* at 1167-68 (quoting 4 *McCarthy on Trademarks and Unfair Competition* § 23:10
22 (5th ed. 2020)). “Intent can be shown through . . . ‘evidence that, for example, the [junior user]
23 knew of the mark, should have known of the mark, . . . or otherwise culpably disregarded the risk
24 of reverse confusion.’” *Id.* at 1168 (citation omitted).

25 Tari repeatedly reached out to Lightning, alerted it to Tari’s trademark and its expectations
26 and fears of confusion, and even offered to help develop a new mark. *See* Repl. 4:25-5:14
27 (collecting sources). These documents are sufficient to show, at this stage, that Lightning knew of
28 the Tari mark and the Tari protocol. *See Ironhawk*, 2. F.4th at 1167. Lightning says that it did not

1 believe that there would be actual confusion, in part because its TARO protocol was not consumer
 2 facing like some of Tari’s products. *See* Stark Decl. Ex. 16 (showing message exchange between
 3 Tari and Lightning executives with the latter stating, “[I] don’t think it’s similar, it’s a root
 4 vegetable” as well as “and [TARO is] not consumer-facing anyway”). But it is not clear that a
 5 belief of noninfringement—without additional confirmation or any other steps, in the face of
 6 repeated requests to change including via a demand letter, and in the context of obviously similar
 7 names—constitutes a “good-faith” belief sufficient to overcome the evidence that Lightning knew
 8 its name choice might infringe but went ahead anyway. *See Ironhawk*, 2 F.4th at 1167-68; *cf. JL*
 9 *Beverage Co., LLC v. Jim Bean Brands Co.*, 815 F. App’x 110, 112-13 (9th Cir. 2020)
 10 (unpublished) (holding it was not clearly erroneous for district court to find intent factor neutral
 11 where defendant knew of the mark but the marks were not similar).

12 Lightning explains the history and reasoning behind its choice of the name “Taro,”
 13 including its connection to the new Bitcoin functionality called Taproot, its personal meaning for
 14 one of its founders, and its relationship to some of the countries that Lightning hopes to work with
 15 in the future.¹¹ Stark Decl. ¶ 39; Oppo. 3:22-4:4. But regardless of how creative or applicable the
 16 name is for the brand, none of these reasons overcome Tari’s showing—at this stage—that
 17 Lightning intentionally disregarded the risk of reverse confusion by using the name Taro,
 18 especially after repeated warnings. *See Ironhawk*, 2 F.4th at 1168.

19 Accordingly, this factor favors Tari.

20 **H. Likelihood of Product Expansion**

21 Even if I were to assume these protocols were “non-competing goods,”¹² a “‘strong
 22 possibility’ that either party may expand [its] business to compete with the other will weigh in
 23

24 ¹¹ At the hearing, counsel for Lightning strongly emphasized the role that Osuntokon’s childhood
 25 experience eating taro played in the name choice. From Lightning’s declarations, though, it is
 26 apparent that Stark came up with and proposed the name because she liked it, and Osuntokon later
 27 offered the connection to his childhood. *See* Stark Decl. ¶ 39; *see also id.* (confirming “the fact
 28 that taro happened to be a root vegetable” and so connected to Taproot was not initially considered
 in the naming decision).

¹² As noted, both companies make protocols for transferring digital assets on blockchain
 technology. Accordingly, this Order finds that the products are competing goods.

1 favor of finding that the present use is infringing.” *Ironhawk*, 2 F.4th at 1168 (quoting *Sleekcraft*,
2 599 F.2d at 354).

3 In its reply, Tari points to a recently released “Taro Wallet” that it says strongly risks
4 confusing consumers who use or might use its own “Tari Wallet,” and shows that Lightning is
5 likely to expand its business to compete with Tari. Repl. 1:12-2:3. Lightning spends much of its
6 opposition (and also much of its Answer and its initial Letter concerning the TRO hearing, *see*
7 Dkt. Nos. 24, 30) insisting that its product is significantly different from Tari’s, that it is merely a
8 protocol for use by developers, that consumers will likely never see the name “Taro,” that the
9 protocols operate on different blockchains, and that there is no risk of confusion for those reasons.
10 And Lightning further asserts in its sur-reply that the “Taro Wallet” is not a consumer-facing
11 product but currently directly solely at other developers. But, Tari’s entire point seems to be that
12 Lightning markets its protocol to developers to use to make new digital assets, and so the protocol
13 itself and those assets bear the Taro name and therefore risk confusing consumers.

14 Lightning wants to use the TARO name for its protocol, launch it into the world, and then
15 turn a blind eye to the inevitable use its protocol’s name by developers making consumer-facing
16 products that compete directly with Tari’s products. Though I understand Lightning’s assertion
17 that it makes the protocol and does not make those other products, in this new and rapidly
18 developing area of technology, Tari has the stronger argument at this preliminary stage.¹³ *See*
19 *Brookfield*, 174 F.3d at 1054 (noting “emerging technologies require a flexible approach”
20 (emphasis omitted)).

21 Accordingly, Tari is likely to succeed in showing that Lightning may expand its business
22 to compete (further) with Tari’s, which favors implementing a TRO.

23 **III. LIKELIHOOD OF IRREPARABLE HARM**

24 A plaintiff seeking a temporary restraining order or preliminary injunction for violation of
25 15 U.S.C. § 1125(a),(c),(d) is “entitled to a rebuttable presumption of irreparable harm . . . upon a
26

27 ¹³ Lightning also argues that, in some respects, it literally cannot expand into Tari’s business. *See*
28 *Oppo*. 20:5-17. But Tari points to evidence that suggests Lightning has contemplated expanding
its technology beyond the Bitcoin blockchain. *See* Jain Supp. Decl. ¶¶ 21-22.

1 finding of likelihood of success on the merits.” 15 U.S.C. § 1116(a); *see also AK Futures LLC v.*
2 *Boyd St. Distro, LLC*, 35 F.4th 682, 694 (9th Cir. 2022) (same). Because Tari showed a likelihood
3 of success on the merits, it is entitled to this presumption.

4 To rebut this presumption, Lightning does not dispute that Tari’s brand will be harmed but
5 rather asserts Tari’s delay in filing for a TRO was unreasonable. *See* *Oppo*. 20:25-23:12. It is true
6 that Tari has known about the TARO protocol since early 2022, though it presents evidence
7 showing it first tried to resolve the issue amicably with Lightning’s executives and subsequently
8 filed a demand letter. Tari’s motivation for filing now was that Lightning announced it will soon
9 release a fuller update of TARO, which will allow for more developers to use the TARO protocol
10 and build potentially infringing products. There seems to be foundation for that concern, given the
11 recent development of the TARO wallet and Lightning’s own concession that “many external
12 developers have already begun building on TARO under that name.” *Oppo*. 23:18-19.

13 Lightning concedes it had planned to “release” the next “version” of TARO within two
14 months, *Stark Decl.* ¶ 55, but cautions that this release for open-source technology is different
15 from a standard release for a typical consumer product, because all developments are already
16 public, *id.* ¶¶ 48-57. Rather, a “release” or “launch” for open-source software is instead a
17 “symbolic milestone[.]” based on “a series of designated milestones.” *Id.* ¶¶ 49, 53. Accepting
18 that Tari was indeed motivated by Lightning’s statement that it would soon release its next version
19 of the TARO protocol, it seems the fear was less about the software being publicly released and
20 more about the meaning of the announcement that the protocol had reached a particular milestone.
21 In support of that concern, Tari repeatedly argues that its brand will be irreparably harmed if
22 Lightning takes further action on its protocol, including additional announcements or “releases.”

23 Tari presents a reasonable argument for why it waited to file until now. Based on the
24 available evidence and presented arguments, I find that Lightning has not rebutted the presumption
25 of irreparable harm. This factor favors a TRO.

26 **IV. BALANCE OF EQUITIES**

27 Because Lightning failed to rebut the presumption of irreparable harm, it must show that
28 any harm or hardship it will undergo due to a *temporary* restraining order outweighs Tari’s

1 asserted harm to its reputation and brand, and that impact on potential and future customers.

2 Lightning’s arguments about the balance of equities mirror its arguments above: that there
3 is no evidence of confusion or harm and that Tari’s motion is untimely. *See* Oppo. 23:24-24:8. In
4 contrast, Lightning asserts that it will suffer “reputational damage” from a TRO, particularly
5 because its product is “already widely known” and because many developers have already begun
6 using the TARO protocol. Oppo. 23:17-19. Lightning explains that restraining its public
7 development and production has forced it to create a separate, private repository of code for its
8 TARO protocol so that its internal team could continue developing the protocol while non-
9 Lightning developers simultaneously worked on the open-source code that was already public.
10 *See* Stark Decl. ¶¶ 101-07. It says that its reputation and brand are being harmed because it cannot
11 actively respond to developers that contact Lightning to ask about TARO protocol updates or to
12 submit bug reports, code, or feedback. *Id.* ¶ 107.

13 First, I have doubts as to the irreparability of this asserted harm. Lightning says that the
14 TARO protocol “has not yet ‘launched’ in any significant sense” and that it is an “early prototype”
15 that “can be tested but is not ready for regular use.” Stark Decl. ¶ 53. Pausing the merging of its
16 public and internal development (*not* pausing internal development *or* public development by non-
17 Lightning users) of this early-stage product is unlikely to significantly affect the brand of a
18 company that engages in many other ventures. Lightning also concedes that it can make up for a
19 pause in public development by merging its internal developments with those made on its open-
20 source code by non-Lightning users, though it says it will be “difficult and time-consuming to
21 merge.” Stark Decl. ¶ 101. And, Tari shows that changing the name of the TARO Protocol would
22 be relatively straightforward, *see* Declaration of Michael Berry (“Berry Decl.”) [Dkt. No. 44],
23 which Lightning does not contest, though Lightning asserts that users and developers already
24 know and work under its existing TARO name, *see* Stark Decl. ¶ 108. Given these considerations,
25 it is not at all clear that Lightning will suffer irreparable harm from the maintenance of the status
26 quo, at least until briefing for a preliminary injunction can be completed.

27 Second, even assuming any harm is irreparable, the balance of equities can still favor the
28 plaintiff if the irreparable harm results from the defendant’s allegedly infringing conduct. *Triad*

1 *Sys. Corp. v. Se. Exp. Co.*, 64 F.3d 1330, 1338 (9th Cir. 1995), *superseded by statute on other*
 2 *grounds* (“Where the only hardship that the defendant will suffer is lost profits from an activity
 3 which has been shown likely to be infringing, such an argument in defense merits little equitable
 4 consideration [on an appeal from a preliminary injunction].” (internal quotation marks and citation
 5 omitted)); *see also 2Die4Kourt v. Hillair Cap. Mgmt., LLC*, 692 F. App’x 366, 369 (9th Cir. 2017)
 6 (unpublished) (holding the district court did not abuse its discretion by finding the balance of
 7 equities favored the plaintiffs, where the defendant’s harm of shutting down its business,
 8 terminating its employees, and defaulting on its obligations “result[ed] from [the] defendant’s
 9 allegedly infringing conduct”). Here, Lightning’s purported harms stem solely from its allegedly
 10 infringing use of TARI’s trademark—that is to say, it could continue all activities and
 11 communications if it changed the name of the TARO protocol. Accordingly, I find that the
 12 equities favor Tari, at least on this record.

13 **V. PUBLIC INTEREST**

14 Lightning says the public will be harmed by a TRO because of the impact on developers
 15 working on the TARO protocol. *See* Oppo. 24:10-25:5. Lightning does not articulate what that
 16 impact would be but reiterates that there are many members of the public who actively contribute
 17 to the development of TARO and work on “unaffiliated” projects using TARO, and that a TRO
 18 would force those developers to work on the public open-source version while Lightning
 19 simultaneously develops its internal version. *Id.* Tari argues that preventing consumer confusion
 20 is in the public interest and notes (without evidence) that “the entire industry is under pressure to
 21 weed out bad actors and build community trust.” Oppo. 24:10-11.

22 At this juncture, it is not clear that the public will be particularly affected by maintenance
 23 of the status quo. Tari cites a case from the Central District that reasons, “In trademark cases, the
 24 public interest is the right of the public not to be deceived or confused as to the source of the
 25 parties’ goods.” *FAZE Apparel, LLC v. Faze Clan, Inc.*, No. 2:18-CV-02052-RGK-JEM, 2018
 26 WL 3830027, at *8 (C.D. Cal. May 22, 2018) (finding the public interest weighed in favor of an
 27 injunction where the defendant’s products were likely to cause consumer confusion). I find this
 28 reasoning persuasive. Here, too, Tari shows it is likely to succeed on the merits of its claim that

1 the TARO protocol is likely to confuse consumers. For that reason, and to avoid such confusion,
2 the public interest favors entering a TRO.

3 **VI. FRCP 65(C) BOND REQUIREMENT**

4 “Rule 65(c) invests the district court with discretion as to the amount of security
5 required, *if any*.” *Johnson v. Couturier*, 572 F.3d 1067, 1086 (9th Cir. 2009) (internal quotation
6 marks and citation omitted). “[T]he likelihood of success on the merits . . . tips in favor of a
7 minimal bond or no bond at all.” *People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg’l*
8 *Plan. Agency*, 766 F.2d 1319, 1326 (9th Cir.), *amended*, 775 F.2d 998 (9th Cir. 1985) (citation
9 omitted). Because Tari established likelihood of success on the merits, and because of the
10 speculative nature of Lightning’s financial injury from the TRO, I will not require a bond.

11 **CONCLUSION**

12 The motion for a TRO is GRANTED.

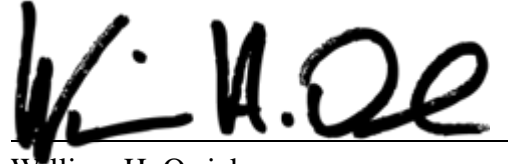
13 Lightning is hereby RESTRAINED from making external updates to its TARO protocol,
14 from merging its internal updates with its public-facing open-source code, and from announcing or
15 otherwise “launching” the next stage or “milestone” of the TARO protocol. Lightning is NOT
16 wholesale restrained from responding to communications from non-Lightning developers and
17 users, though it may not use those communications to further develop its internal or public code
18 repositories. For example, Lightning may respond to inquiries about “when certain features are
19 going to be implemented” but it may not review or substantively respond to submitted bug reports,
20 code, or feedback. *See Stark Decl.* ¶ 107.

21 This Order shall restrain Lightning until the hearing on any motion for dissolution of the
22 TRO or for a preliminary injunction. The parties shall meet and confer on an appropriate schedule
23 for these motions, considering what discovery would be necessary, if any, before the motions are
24 filed. The parties should include a normal briefing schedule, providing the Court with at least two
25 weeks after the last brief is filed prior to the hearing. In the event of disagreement over the
26 schedule, the parties may file a Joint Statement containing the proposed schedules and no more
27 than 2 pages each explaining the superiority of that party’s schedule. The Joint Statement shall be
28 filed no later than March 15, 2023 at noon, Pacific Daylight Saving Time. This Order shall

1 remain in place until a hearing is held on the filed motion(s) and a decision is made.

2 **IT IS SO ORDERED.**

3 Dated: March 13, 2023



William H. Orrick
United States District Judge

United States District Court
Northern District of California

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