

I, Brian Samuel Malkin, hereby declare as follows:

1. I am over eighteen (18) years of age. I have never been convicted of a felony or any criminal offense involving moral turpitude, and I am fully competent to testify to the matters stated herein. I have personal knowledge of every statement made in this Declaration and such statements are true and correct.

2. I am one of the attorneys working for Ference & Associates LLC (“the Ference Firm” or “Plaintiff’s Counsel”), legal counsel for Plaintiff, Airigan Solutions, LLC (“Airigan” or “Plaintiff”). I make this declaration in support of Plaintiff’s *Ex Parte* Request to Extend the Temporary Restraining Order (TRO), Continue the Order to Show Cause Hearing, and Modify Schedule (“Application”).¹

3. The TRO provides that “sufficient cause has been shown, that such alternative service by electronic means ordered herein shall be made within five (5) days of the Financial Institutions’ and Third Party Service Providers’ compliance with Paragraph III (A) and (V)(C) of this Order and in *no event later than 10 days from the date of this order* [July 19, 2018].” (*emphasis added*). (p. 10).

4. Further, the TRO requires a show cause hearing on July 30, 2018, and provides that Defendants file opposing papers and serve them on or before July 24, 2018.

5. As set forth below, though all of the Financial Institutions and Third Party Service Providers have been served with the TRO, as of now, Plaintiff cannot serve Defendants operating Accounts and Merchant Storefronts on Wish.com.

¹ Where a defined term is referenced herein but not defined, it should be understood as it is defined in the Amended Complaint or Application.

6. Plaintiff currently has email addresses for the Alibaba.com Defendants, the eBay.com Defendants, and the DhGate.com Defendants.

7. Plaintiff believes that service by messaging app could be accomplished for the Aliexpress.com Defendants and the Amazon.com Defendants but, Plaintiff does not yet have the email addresses for the Wish.com Defendants and, as set forth in the *Second Malkin Dec.*, there is no messaging app for the Wish.com Defendants to accomplish alternative electronic service.

8. In accordance with the TRO entered on July, 19, 2018, I served the temporary restraining order upon all the Financial Institutions and Third Party Service Providers.

9. On July 19, 2018, I served Alipay.com Co., Ltd. and Ant Financial Services Group, d/b/a Alipay.com, Amazon Payments, Inc. d/b/a Pay.amazon.com, Dunhuang Group d/b/a DhPay.com, Payoneer, Inc. d/b/a Payoneer.com, PayPal, Inc. d/b/a PayPal.com, PingPong Global Solutions, Inc., a New York corporation d/b/a PingPong.

10. On July 20, 2018, I served Alibaba Group Holding Ltd. and Alibaba.com US LLC d/b/a Alibaba.com, Alibaba Group Holding Ltd. and Alibaba.com US LLC d/b/a Aliexpress.com, Amazon Services LLC d/b/a Amazon.com, Dunhuang Group d/b/a DhGate.com, eBay, Inc. d/b/a eBay.com, I served Context Logic, Inc. d/b/a Wish.com.

11. On July 22, 2018, an authorized agent for Alipay reported via email that “We’re currently in the process of handling the account freezing. While we are working efficiently on the matter, please note that because multiple departments and teams are involved in this process, and also due to the large number of accounts at issue, it may take a week or even a bit longer to finish the process.” Thus, as of this declaration, Alipay.com has not indicated compliance with the TRO.

12. On July 23, 2018, legal counsel for Alibaba.com wrote in an email that she had received and reviewed the temporary restraining order and that it would be processed upon Plaintiff's agreement to certain terms and conditions and in a "reasonable time". I handled the terms and conditions and expect delivery of the required information (i.e., contact information for the Aliexpress Defendants) as promised but have not yet received it. Thus, Alibaba.com and Aliexpress.com have not yet indicated compliance with the TRO.

13. On July 23, 2018, eBay.com provided the eBay Defendants' contact information. Thus, eBay is in compliance with the TRO.

14. On July 23, 2018, legal counsel for Payoneer, Inc., indicated that once Plaintiff provided the email addresses of the Defendants, Payoneer, Inc. would be able to comply with the temporary restraining order. Subsequently, I provided, by email, to legal counsel, the email addresses that I previously obtained for the Alibaba.com Defendants, the dhGate.com defendants, and the eBay.com defendants. I have not yet been able to provide the email addresses for the Aliexpress.com, Amazon.com or Wish.com Defendants. Thus, Payoneer, Inc. has not indicated compliance with the TRO as yet.

15. On July 24, 2018, an authorized agent from Amazon.com and pay.Amazon.com confirmed that the TRO was received and that it would be processed within 3 working days. However, as of the date of this Declaration, Amazon.com has not indicated compliance with the TRO.

16. On July 24, 2018, an authorized agent sent an email that included the DHGate sellers' contact information and emails. Thus, DHGate is in compliance with the TRO.

17. On July 25, 2018, an authorized agent from PayPal, Inc. indicated that they were working on complying with the TRO. However, as of the date of this Declaration, PayPal, Inc. has not indicated compliance with the TRO.

18. On July 25, 2018, legal counsel for Context Logic, Inc. d/b/a Wish.com indicated that they were working on complying with the TRO. However, as of the date of this Declaration, Context Logic, Inc. d/b/a Wish.com has not indicated compliance with the TRO. Additionally, since Wish.com does not have in in-app messaging system, I have no method to serve the Wish.com Defendants without the information requested.

19. On July 25, 2018, I spoke to a former legal counsel for PingPong and he indicated that he had the TRO and would discuss it with PingPong and get back to me. Thus, PingPong has not yet complied with the TRO.

20. Based upon all of my communications with the Third Party Service Providers and Financial Institutions, I do not reasonably believe that I can serve the wish Defendants before the July 30, 2018 Preliminary Injunction hearing.

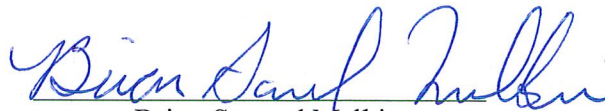
21. Further, based upon my research and review of other brand owners' lawsuits, I have a reasonable belief that if service on the Defendants takes place before all of the Third Party Service Providers, and Financial Institutions comply with the TRO, the Defendants are likely to communicate amongst each other about the Plaintiff's lawsuit and TRO and may be able to evade the TRO.

22. Finally, since none of the Defendants have been served due to the Financial Institutions not complying with the TRO as of yet, it would be appropriate to extend the date for

the show cause hearing and to modify the briefing schedule to allow the Defendants, once served, time to file opposition papers, and likewise Plaintiff to file any replies.²

I declare under the penalty of perjury laws of the United States of America that to the best of my knowledge the foregoing is true and correct.

Executed this 27th day of July, 2018, at Pittsburgh, Pennsylvania.


Brian Samuel Malkin

² For example, in *Talavera Hair Prods., Inc. v. Taizhou Yunsung Electrical Appliance Co., Ltd. a business entity and The Individuals, P'ships & Unicorporated Assns. Identified on Exhibit "1"*, No. 18-CV-823 (S.D. Cal.) the Court continued the hearing on the Preliminary Injunction for two (2) weeks, moved the time for Defendants to file papers in opposition, and extended the Temporary Restraining Order "until further Order of Court." (a copy of the May 31, 2018 Order is attached hereto as Exhibit 1). In *Apple Corps Ltd. v. 3W Store*, No. 18-CV-60656 (S.D. Fla.), a Magistrate Judge held a hearing on the Preliminary Injunction and issued a report and recommendation. The Court issued an Order that the Temporary Restraining Order "is hereby extended and shall remain in effect until this Court rules on the Report and Recommendation issued by Magistrate Judge Patrick M. Hunt." (A copy is attached hereto as Exhibit 2). It is not unusual in the Southern District of New York for such adjustments in briefing because of delays in Third Party Service Provider's responses. For example, in the case of *WowWee Group Limited, et. al. v. Meirly, et. al.*, Civil Case. No. 18-cv-706 (AJN) (S.D.N.Y), the original briefing schedule was modified based upon Plaintiff's representation that they could not serve the Defendants within the original TRO schedule (copy of Memorandum Order attached as Exhibit 3); *See also Allstar Marketing Group, LLC v. 158, et. al.*, Civil Case No. 18-cv-4101-GHW)S.D.N.Y)(copy of Memorandum Order attached as Exhibit 4). Likewise, In *William Mark Corporation v I&cc*, No. 18-CV-3889 (S.D.N.Y.) (Abrams, J.), a Temporary Restraining Order was entered on May 2, 2018, and the Show Cause Hearing was scheduled for June 1, 2018. On May 14, 2018, the Temporary Restraining Order was extended until June 1, 2018. (copy of Memorandum Order attached as Exhibit 5).

Third Malkin Declaration

EXHIBIT 1

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TALAVERA HAIR PRODUCTS, INC.,
Plaintiff,
v.
TAIZHOU YUNSUNG ELECTRICAL
APPLIANCE CO., LTD, et al,
Defendants.

Case No.: 18-CV-823-JLS (JLB)

**ORDER CONTINUING HEARING
ON PLAINTIFF’S MOTION FOR
PRELIMINARY INJUNCTION; AND
SETTING BRIEFING SCHEDULE**

The Court held a hearing on Plaintiff’s Motion for Preliminary Injunction on May 31, 2018 at 9:30 a.m. The hearing on Plaintiff’s Motion is **CONTINUED** to June 14, 2018 at 1:30 p.m. At this time, Defendants and/or any other affected persons may challenge the appropriateness of this Order and move to dissolve the same and at which time the Court will hear argument on Plaintiff’s requested preliminary injunction.


Any opposition to Plaintiff’s Motion **SHALL** be filed on or before June 11, 2018. Any reply **SHALL** be filed on or before June 12, 2018. Plaintiff **SHALL** serve this Order on all Defendants.

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1 The Temporary Restraining Order is **EXTENDED** until further order of the Court.
2 **IT IS SO ORDERED.**

3 Dated: May 31, 2018

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5 Hon. Janis L. Sammartino
6 United States District Judge
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Third Malkin Declaration

EXHIBIT 2

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 18-cv-60656-UU

APPLE CORPS LIMITED and SUBAFILMS
LIMITED,

Plaintiffs,

v.

3W STORE, *et al*,

Defendants.


ORDER EXTENDING TEMPORARY RESTRAINING ORDER

THIS CAUSE is before the Court upon Plaintiffs' Motion to Extend Temporary Restraining Order, (D.E. 27), filed April 11, 2018.

On March 28, 2018, the Court entered a Sealed Order Granting *Ex Parte* Application for Entry of Temporary Restraining Order (the "Temporary Restraining Order"), (D.E. 11), and referred Plaintiffs' Motion for Preliminary Injunction to the Honorable Magistrate Judge Patrick M. Hunt, (D.E. 9). Subsequently, Magistrate Judge Patrick M. Hunt held a hearing on Plaintiffs' Motion for Preliminary Injunction and issued a Report and Recommendation on Plaintiffs' Motion for Preliminary Injunction on April 11, 2018, (D.E. 26). The parties have fourteen (14) days to file objections to Magistrate Judge Patrick M. Hunt's Report and Recommendation on Plaintiffs' Motion for Preliminary Injunction. (See D.E. 26 at p. 15.) The Temporary Restraining Order is set to expire prior to the parties' fourteen (14) days objection period ending on April 25, 2018. Therefore, the Court finds good cause to extend the Temporary Restraining Order. See Fed. R. Civ. P. 65(b)(2). Accordingly, it is hereby

ORDERED AND ADJUDGED that the Motion is GRANTED. The Temporary Restraining Order, (D.E. 11), entered by this Court on March 28, 2018, is hereby extended and shall remain in effect until this Court rules on the Report and Recommendation issued by Magistrate Judge Patrick M. Hunt.

DONE AND ORDERED in Chambers at Miami, Florida, this 12th day of April, 2018.



URSULA UNGARO
UNITED STATES DISTRICT JUDGE

cc;
counsel of record via cm/ecf
Magistrate Judge Patrick M. Hunt

Third Malkin Declaration

EXHIBIT 3



Epstein Drangel LLP
 60 East 42nd Street, Suite 2520, New York, NY 10165
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2/5/18

SO ORDERED

HON. ALISON J. NATHAN
 UNITED STATES DISTRICT JUDGE

February 5, 2018

VIA ECF

Hon. Alison J. Nathan
 United States District Judge
 Thurgood Marshall
 United States Courthouse, Courtroom 906
 40 Foley Square
 New York, New York 10007

Re: *WowWee Group Limited, et al. v. Meirly, et al.*
 Civil Case No. 18-cv-706 (AJN)
TRO Deadlines

Dear Judge Nathan,

In light of the below representations of counsel, the Court *sua sponte* extends the deadline for opposition to February 6, 2018 at 5 P.M. Replies, if any, shall be due by February 7, 2018 at 5 P.M. Plaintiffs shall effectuate service of this Order by February 6, 2018 at 12 P.M. pursuant to the terms of service in the TRO. SO ORDERED.

We represent Plaintiffs, WowWee Group Limited, WowWee Canada, Inc. and WowWee USA, Inc. ("Plaintiffs" or "WowWee"), in the above-referenced lawsuit ("Lawsuit"). On January 26, 2018, the Court entered a Temporary Restraining Order ("TRO") and on January 29, 2018 entered an Amended Sealed Order.

As per the terms of the TRO, "alternative service by electronic means ordered herein shall be made within (2) days of the Financial Institutions' and Third Party Service Providers' compliance with Paragraph III(A) of this Order, but in any event, shall be made no later than ten (10) days from the date of this Order" upon Defendants. In accordance with the TRO and Amended Sealed Order, Wish was served on January 29, 2018. Wish subsequently responded to the TRO on February 1, 2018 after close of business. Due to the nature of the initial discovery provided by Wish, which identifies Defendants' email addresses necessary for service, Plaintiffs were unable to begin effecting service as per the terms of the TRO until today, February 5, 2018. Although it is Plaintiffs' experience that Defendants in similar matters typically do not file opposition to the TRO, in light of the foregoing, Plaintiffs respectfully draw the Court's attention to these dates because the TRO ordered that any opposition papers be filed on or before February 2, 2018 in anticipation of the February 8, 2018 Order to Show Cause hearing.

We thank the Court for its time and courtesies.

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 DATE FILED: FEB 05 2018

Hon. Alison J. Nathan
February 5, 2018
Page 2

Respectfully submitted,

EPSTEIN DRANGEL LLP

BY: /s/ Mary Kate Brennan
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Facsimile: (212) 292-5391
Attorneys for Plaintiffs
WowWee Group Limited,
WowWee Canada, Inc. and
WowWee USA, Inc.

Third Malkin Declaration

EXHIBIT 4



Epstein Drangel LLP
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May 24, 2018

VIA ECF

Hon. Gregory H. Woods
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

MEMORANDUM ENDORSED

Re: *Allstar Marketing Group, LLC v. 158, et al.*
Civil Case No. 18-cv-4101 (GHW)
Status Update and Request to Modify Briefing Schedule

Dear Judge Woods,

We represent Plaintiff Allstar Marketing Group, LLC (“Plaintiff” or “Allstar”) in the above-captioned matter (“Action”). On May 17, 2018, the Court entered a temporary restraining order (“TRO”). The TRO scheduled an Order to Show Cause Hearing on why a preliminary injunction should not issue on May 30, 2018 at 9:30 a.m. It also set forth the following briefing schedule: 1) Defendants’ opposing papers, if any, shall be filed on or before May 23, 2018 and 2) Plaintiff shall file any reply papers on or before May 28, 2018.

Pursuant to the expedited discovery ordered by the TRO, within five days of receipt of the TRO, third-party ContextLogic was to identify any and all of Defendants’ User Accounts and Merchant Storefronts as well as provide contact information for Defendants. Plaintiff served ContextLogic with the TRO on May 18, 2018 and only received a response from ContextLogic with Defendants’ email addresses late yesterday afternoon, May 23, 2018. Consequently, Plaintiff was not able to analyze ContextLogic’s discovery responses and begin service of the TRO and Summons and Complaint pursuant to the terms of the TRO on Defendants until this morning, May 24, 2018. Therefore, Plaintiff respectfully requests that the Court modify the briefing schedule to allow Defendants time, if necessary, to file opposition papers.

Plaintiff further respectfully submits that since Defendants will have been served with the TRO and Summons and Complaint today, May 24, 2018, it would be appropriate to unseal the Action tomorrow, May 25, 2018.

We thank the Court for its time and attention to this matter.

Hon. Gregory H. Woods
May 24, 2018
Page 2

Respectfully submitted,

EPSTEIN DRANGEL LLP

BY: /s/ Mary Kate Brennan
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Attorneys for Plaintiff


Application granted. The deadline for the submission of opposing papers is extended to **May 28, 2018**. Plaintiff's reply, if any, is due no later than **May 29, 2018**. The date of the hearing regarding Plaintiff's proposed preliminary injunction remains **May 30, 2018 at 9:30 a.m.**

The seal described in the Temporary Restraining Order dated May 17, 2018 ("TRO") shall be lifted as to all documents in this action on May 25, 2018.

Plaintiff is directed to serve a copy of this order on all Defendants (as defined on page 2 of the TRO), the Financial Institutions (as defined on page 7 of the TRO), and ContextLogic, Inc.

SO ORDERED.

Dated: May 24, 2018
New York, New York



GREGORY H. WOODS
United States District Judge

Third Malkin Declaration

EXHIBIT 5



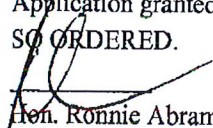
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MEMO ENDORSED

May 14, 2018

VIA EMAIL

Hon. Ronnie Abrams
United States District Judge
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007
Abrams_NYSDCChambers@nysd.uscourts.gov

Application granted.
SO ORDERED.

Hon. Ronnie Abrams
5/14/2018

Re: William Mark Corporation v. I&cc, et al., Civil Case No. 18-cv-3889 (RA)
Request for Extension of TRO

Dear Judge Abrams,

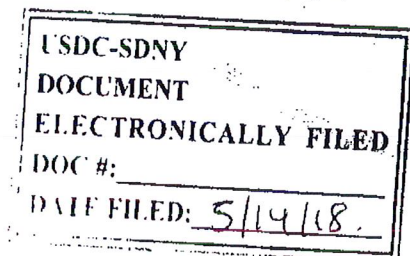
We represent Plaintiff William Mark Corporation (“Plaintiff” or “WMC”), in the above-referenced action (“Action”).¹ On May 2, 2018, Your Honor issued a Temporary Restraining Order (“TRO”). Pursuant to Fed. R. Civ. P. 65, a temporary restraining order is to expire fourteen (14) days after entry, unless extended by the Court. As such, given that the TRO was entered on May 2, 2018, it will expire on May 16, 2018. The Order to Show Cause Hearing on why a preliminary injunction should not issue, however, is scheduled for June 1, 2018 at 10:00 a.m. Consequently, pursuant to Fed. R. Civ. P. 65(b)(2), Plaintiff respectfully requests that the Court extend the TRO through June 1, 2018, the date on which the Order to Show Cause Hearing is scheduled.

We thank the Court for its time and attention to this matter.

Respectfully submitted,

EPSTEIN DRANGEL LLP

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Attorneys for Plaintiff



¹ Where a defined term is referenced herein but not defined, it should be understood as it is defined in the Complaint or Application.