

OCT 31 2018

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CLERK U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA

AIRIGAN SOLUTIONS, LLC.,

CIVIL ACTION NO. 18-1462

Plaintiff,

v.

FILED UNDER SEAL

ARTIFACTS_SELLING, *et al.*,

Defendants.

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF'S *EX PARTE* APPLICATION FOR 1) A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION; 2) AN ORDER RESTRAINING ASSETS AND MERCHANT STOREFRONTS; 3) AN ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE; 4) AN ORDER AUTHORIZING ALTERNATIVE SERVICE BY ELECTRONIC MEANS; AND 5) AN ORDER AUTHORIZING EXPEDITED DISCOVERY

Plaintiff requests judicial notice of temporary restraining orders, alternative service orders, and bond amounts in cases involving defendants using Alibaba.com, AliExpress.com, Amazon.com, eBay.com, and other Third Party Service Providers¹.

¹ As defined in Plaintiff's Complaint, the term "Third Party Service Provider" refers to online marketplace platforms, including, without limitation, those owned and operated, directly or indirectly by Alibaba, AliExpress, Amazon, and eBay as well as any and all as yet undiscovered online marketplace platforms and/or entities through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them manufacture, import, export, advertise, market, promote, distribute, offer for sale, sell and/or otherwise deal in Counterfeit Products which are hereinafter identified as a result of any order entered in this action, or otherwise.

Ex.	Case Name	Third Party Service Provider	Date	Document	Bond Amt.
1	<i>Talavera Hair Prods., Inc. v. Taizhou Yunsung Electrical Appliance Co., Ltd. a business entity and The Individuals, P'ships & Unincorporated Assns. Identified on Exhibit "I", No. 18-CV-823 (S.D. Cal.)</i>	Amazon.com eBay.com	5/10/18 5/24/18	TRO Order Granting Motion Authorizing Alternate Service on Defendants	\$10,000
2	<i>Apple Corps Ltd. v. 3W Store, No. 18-CV-60656 (S.D. Fla.)</i>	AliExpress.com Amazon.com Bonanza.com eBay.com newegg.com	3/28/18 3/28/18	TRO Order Authorizing Alternate Service of Process on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3)	\$10,000
3	<i>Iron Maiden Holdings Ltd. v. The P'ships & Unincorporated Assns. Identified on Schedule "A", No. 18-CV-522, N.D. Ill.</i>	Amazon.com Alibaba.com iOffer.com	2/1/18	TRO	\$10,000
4	<i>Ideavillage Products Corp. v. Dongguan Shipai Loofah Sponge Commodity Factory d/b/a Bathing Store, No. 18-cv-901, S.D. NY</i>	Alibaba.com Aliexpress.com DHgate.com	2/2/18	TRO	\$5,000

<i>Ex.</i>	<i>Case Name</i>	<i>Third Party Service Provider</i>	<i>Date</i>	<i>Document</i>	<i>Bond Amt.</i>
5	<i>Airigan Solutions, LLC v. Bufujiugan, et al, No. 18-cv-1330</i>	Amazon.com	10/16/18	Amended TRO ² Amended Order ³ Authorizing Alternate Service of Process on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3)	\$5,000

Copies of the orders have been redacted by removing the Schedules identifying the Defendants. An Order authorizing alternate service of process is included in the Temporary Restraining Order ¶13 for the case attached at Exhibit 3 and in the Temporary Restraining Order Section IV (p. 14) in the case attached as Exhibit 4.

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² This Order amended the original TRO entered by the Court on October 9, 2018.

³ This Order amended the original Order Authorizing Alternative Service entered by the Court on October 9, 2018

Respectfully submitted,

FERENCE & ASSOCIATES LLC

Dated: 10/31/2018

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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 (1) GRANTING EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER; (2)
SETTING PRELIMINARY
INJUNCTION HEARING AND
BRIEFING SCHEDULE**

(ECF No. 9)

Presently before the Court is Plaintiff Talavera Hair Products, Inc.’s Ex Parte Application for Entry of Temporary Restraining Order and Preliminary Injunction, (“TRO App.,” ECF No. 9). For the reasons set forth below, the Court **GRANTS** Plaintiff’s Application for Entry of Temporary Restraining Order.

BACKGROUND

On April 30, 2018, Plaintiff filed a complaint against Defendants Taizhou Yunsung Electrical Appliance Company, LTD and against the Individuals, Partnerships, and

1 Unincorporated Associations Identified on Exhibit “1”. (“Compl.,” ECF No. 1).¹ Plaintiff
2 concurrently filed the instant Ex Parte Application, along with a Request for Judicial
3 Notice, the Declaration of Victor Talavera, the Declaration of Darren J. Quinn, and the
4 Declaration of Jerold I. Schneider, along with various exhibits.

5 Plaintiff is a corporation that sells a product called the Split-Ender “that quickly and
6 easily trims split ends from hair.” (*Id.* ¶ 13.) Plaintiff owns copyrights, trademark rights,
7 and patent rights regarding the product. (*Id.* ¶ 16.) Plaintiff owns registered copyrights for
8 its packaging (VA 2-092-823) and for its manual (VA 2-093-2090). (“Talavera Decl.,”
9 ECF No. 6-11, ¶ 2.) Plaintiff owns Trademark Registration Number 2,645,923 for “Split-
10 Ender” for “Electric and battery-operated hair trimmers for the removal of split and
11 damaged hair ends; scissors, razors and electric shavers.” (*Id.*) Plaintiff “claims non-
12 registered trade dress rights with respect to its packaging and non-registered trademark
13 rights with respect to source identifying names (*e.g.* Talavera) and short phrases (*e.g.*
14 “SNIPS THE ENDS, NOT THE LENGTH”).” (TRO App. 2 (citing Talavera Decl. ¶ 2).)
15 Plaintiff also owns three United States Patents: Patent No. US 6,588,108; Patent No. US
16 7,040,021; and Patent No. US 9,587,811. (Talavera Decl. ¶ 2.)

17 Plaintiff’s product is sold on, among other places, Amazon.com and eBay.com.
18 (TRO App. 2.) Plaintiff claims Defendant Taizhou and 78 other Defendants (the Seller ID
19 Defendants) “are infringers of Plaintiff’s copyrights, trademark rights, and patent rights
20 who manufactured, advertised, and/or sold knock-offs of Plaintiff’s Split-Ender® product
21 via Internet marketplace platforms – Amazon.com or eBay.com.” (*Id.* at 9.) Defendant
22 Taizhou is the manufacturer of the infringing products. The Seller ID Defendants offer for
23 sale and sell allegedly infringing goods through Amazon.com or eBay.com using Amazon
24 or eBay seller identities. (*Id.* at 3.)

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27 ¹ Exhibit 1 can be found at ECF No. 1-3 and attached to the conclusion of this Order. The Defendants
28 listed on the Exhibit will be referred to as “Seller ID Defendants.” The listed Seller IDs of the Seller ID
Defendants are the seller identification names used on Amazon.com or eBay.com.

1 Plaintiff filed the present Motion requesting the Court issue a temporary restraining
2 order (“TRO”), and upon expiration of the TRO, a preliminary injunction against
3 Defendants. Plaintiff requests the Court issue a TRO without providing notice to
4 Defendants.

5 **LEGAL STANDARD**

6 Federal Rule of Civil Procedure 65(b) governs the issuance of temporary restraining
7 orders (“TRO”).

8 **I. Ex Parte Application for TRO**

9 A court may only issue a TRO without notice to the adverse party if:

10 (A) specific facts in an affidavit or a verified complaint clearly show that
11 immediate and irreparable injury, loss, or damage will result to the movant
12 before the adverse party can be heard in opposition; and

13 (B) the movant’s attorney certifies in writing any efforts made to give notice
and the reasons why it should not be required.

14 Fed. R. Civ. P. 65(b)(1). Further, “[e]very temporary restraining order issued without
15 notice must state the date and hour it was issued; describe the injury and state why it is
16 irreparable; state why the order was issued without notice; and be promptly filed in the
17 clerk’s office and entered in the record.” Fed. R. Civ. P. 65(b)(2). The Supreme Court has
18 held, “[e]x parte temporary restraining orders are no doubt necessary in certain
19 circumstances, but under federal law they should be restricted to serving their underlying
20 purpose of preserving the status quo and preventing irreparable harm just so long as is
21 necessary to hold a hearing, and no longer.” *Granny Goose Foods, Inc. v. Teamsters*, 415
22 U.S. 423, 438–39 (1974).

23 Ex parte TROs “may be appropriate ‘where notice to the adverse party is impossible
24 either because the identity of the adverse party is unknown or because a known party cannot
25 be located in time for a hearing.’” *Reno Air Racing Ass’n, Inc. v. McCord*, 452 F.3d 1126,
26 1131 (9th Cir. 2006) (quoting *Am. Can Co. v. Mansukhani*, 742 F.2d 314, 322 (9th Cir.
27 1984)). If notice could have been given, “courts have recognized ‘a very narrow band of
28 cases in which ex parte orders are proper because notice to the defendant would render

1 fruitless the further prosecution of the action.” *Id.* (quoting *Am. Can Co.*, 742 F.2d at
2 322). One example of such a situation is “where an alleged infringer is likely to dispose
3 of the infringing goods before the hearing.” *Id.* To show this, “plaintiffs must show that
4 defendants would have disregarded a direct court order and disposed of the goods within
5 the time it would take for a hearing . . . [and] must support such assertions by showing that
6 the adverse party has a history of disposing of evidence or violating court orders or that
7 persons similar to the adverse party have such a history.” *Id.* (internal quotations omitted)
8 (quoting *First Tech. Safety Sys., Inc. v. Depinet*, 11 F.3d 641, 650 (6th Cir. 1993).

9 **II. Temporary Restraining Order**

10 The standard for a temporary restraining order is identical to the standard for a
11 preliminary injunction. *Frontline Med. Assocs., Inc. v. Coventry Healthcare Worker’s*
12 *Comp., Inc.*, 620 F. Supp. 2d 1109, 1110 (C.D. Cal. 2009). A plaintiff seeking preliminary
13 relief must establish “[1] that he is likely to succeed on the merits, [2] that he is likely to
14 suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities
15 tips in his favor, and [4] that an injunction is in the public interest.” *Winter v. Nat. Res.*
16 *Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The elements of this test are “balanced, so that
17 a stronger showing of one element may offset a weaker showing of another.” *All. for Wild*
18 *Rockies v. Cottrell*, 622 F.3d 1045, 1049–50 (9th Cir. 2010), *rev’d on other grounds*, 632
19 F.3d 1127 (9th Cir. 2011). Generally, a temporary restraining order is considered to be “an
20 extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is
21 entitled to such relief.” *Winter*, 555 U.S. at 22.

22 **ANALYSIS**

23 **I. TRO Without Notice**

24 The Court first analyzes whether the TRO is appropriate on an ex parte basis.

25 ***A. Impossibility of Notice for Some Seller ID Defendants***

26 Plaintiff argues it is impossible to give notice to all Defendants because Plaintiff
27 does not have email addresses for many of the Amazon Seller ID Defendants. (TRO App.
28 14.) Plaintiff requests as part of its relief that the Court order Amazon to provide current

1 email addresses for the Seller ID Defendants so that the Defendants can be noticed. (*Id.* at
2 14–15.) The Court agrees that it is impossible for Plaintiff to provide notice to those
3 Defendants for whom it does not have any contact information.

4 ***B. Notice Would Render Further Prosecution Fruitless***

5 Plaintiff argues “[p]roviding notice to the Defendants infringing on Amazon.com
6 and eBay.com would ‘render further prosecution fruitless.’” (TRO App. 12 (citing *SATA*
7 *GmbH & Co. Kg v. Wenzhou New Century Int’l, Ltd.*, No. CV 15-08157-BRO (EX), 2015
8 WL 6680807, at *1 (C.D. Cal. Oct. 19, 2015)). This is because: (1) Defendant Taizhou
9 has already “disregarded a consent court order in China to not infringe” and therefore has
10 a history of violating court orders; (2) Seller ID Defendants have evaded infringement
11 enforcement by re-listing infringing items under different Amazon ASIN numbers, eBay
12 auctions, or Seller IDs; (3) Persons similar to Defendants, in other cases, have a history of
13 evading infringement; (4) The Seller ID Defendants do business through their Amazon or
14 eBay Seller ID names which provide them with anonymity; (5) Plaintiff has already sent
15 “cease and desist notices to Amazon and eBay identifying infringing items separately
16 offered for sale by the Seller ID Defendants.” Plaintiff also sent letters to the Defendants
17 at the email addresses it has for them. (*See* ECF No. 6-16.) Plaintiff states Defendants are
18 therefore aware they are dealing with infringing products; (6) Because “the Internet-based
19 e-commerce stores and Seller IDs at issue are under Defendants’ complete control,
20 Defendants have the ability to modify e-commerce store data and content, redirect
21 consumer traffic to other seller identification names, change payment accounts, and
22 transfer assets and ownership of the Seller ID”; and (7) “Defendants can also easily
23 electronically transfer and secret the funds sought to be restrained if they obtain advance
24 notice of Plaintiff’s TRO.” (*Id.* at 12–14.)

25 ***C. Analysis***

26 As to Defendant Taizhou, Plaintiff has provided sufficient evidence that notice
27 would render prosecution fruitless. After engaging in mediation in China, the Parties
28 agreed that Taizhou would terminate all acts which infringe Plaintiff’s patent. (*See* ECF

1 No. 6-12.) Plaintiff states that Taizhou still manufactures and sells infringing products
2 called “FASIZ,” “HAIR TRIMMER,” “UMATE,” and “LESCOLTON.” (Talavera Decl.
3 ¶¶ 7–9.) Plaintiff states Taizhou has therefore directly disregarded the China court order
4 by selling infringing products. Given that Taizhou has failed to heed a court order in the
5 past, the Court finds Plaintiff has shown that notice to Taizhou in this matter would render
6 further prosecution fruitless.

7 As to the Seller ID Defendants, Plaintiff states it “has spent an enormous amount of
8 time and effort sending infringing cease and desist notices to Amazon and eBay regarding
9 items sold by Seller ID Defendants.” (Talavera Decl. ¶ 11.) When contacted, Amazon and
10 eBay sometimes remove an infringing item, but “new infringements continued under
11 different Amazon ASIN numbers or eBay auctions or even under different Seller IDs.” (*Id.*
12 ¶¶ 11–13.) Amazon supplied Plaintiff with some email addresses to communicate with
13 Seller ID Defendants directly. (*Id.* ¶ 15.) Plaintiff then sent cease and desist letters to these
14 email addresses. (*See* ECF No. 6-16.)

15 Plaintiff has pointed to nine different cases in other districts where temporary
16 restraining orders have been granted in similar circumstances against similar Seller ID
17 Internet infringers who used Amazon.com and eBay.com to sell infringing products. (ECF
18 Nos. 6-1 to 6-10.)² This shows that other courts have determined that temporary restraining
19 orders are warranted against defendants similar to the Seller ID Defendants in this case;
20 thus, this shows that “persons similar to” the Seller ID Defendants have “a history of
21 disposing of evidence or violating court orders.” *See Reno Air Racing*, 452 F.3d at 1131.

22 The Court finds that notice to Defendants would likely result in the disappearance
23 or transfer of the counterfeit products. Notice would “jeopardize Plaintiff’s ability to
24 prevent irreparable injury, to stop the distribution of the counterfeit [products], and to
25 determine the source and extent of the Defendants’ dealings in the counterfeit . . .
26 products.” *See SATA GmbH*, 2015 WL 6680807, at *5 (finding the same). Therefore,
27

28 ² Plaintiff requests the Court take judicial notice of these orders. The Court **GRANTS** the request.

1 Plaintiff has proven that “immediate and irreparable injury, loss, or damage will result”
2 due to the potential loss of products and funds if Defendants were given notice. Fed. R.
3 Civ. P 65(b)(1).³ Plaintiff has met its burden in proving why notice should not be required,
4 and that notice is impossible to some Defendants given that they operate anonymously via
5 the Internet and cannot promptly be served before a noticed hearing. Thus, Plaintiff may
6 proceed on an ex parte basis.

7 **II. Temporary Restraining Order**

8 As noted above, a plaintiff seeking a TRO must establish (1) that he is likely to
9 succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of
10 preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction
11 is in the public interest. *Winter*, 555 U.S. at 20.

12 Having reviewed the materials submitted, the Court is satisfied that Plaintiff has met
13 its burden under *Winter*. The Court finds Plaintiff has proven it has a likelihood of success
14 on its infringement claims for its copyright, trademark, and patents. Plaintiffs have also
15 convincingly argued that Defendants’ alleged infringement and counterfeiting have and
16 will continue to result in lost customers and damage to Plaintiff’s goodwill and business
17 reputation, which are irreparable injuries. Further, the balance of equities tip in favor of
18 granting an injunction, and an injunction is in the public interest.

19 **CONCLUSION AND ORDERS**

20 Preliminary Injunction Hearing and Orders

21 1. The Court **GRANTS** Plaintiff’s Ex Parte Application for a Temporary
22 Restraining Order as detailed below. The parties are **HEREBY ORDERED** to appear for
23 a preliminary injunction hearing on May 31, 2018 at 9:30 a.m. in Courtroom 4D of the
24 United States Courthouse located at 221 West Broadway, San Diego, CA, 92101, at which
25 time this TRO **SHALL EXPIRE**. At this time, Defendants and/or any other affected
26

27 ³ Plaintiff’s attorney has filed a declaration detailing why he believes notice to Defendants would be
28 impossible and that Defendants would significantly alter the status quo before the Court can determine
the parties’ respective rights were they given notice. (ECF No. 9-23).

1 persons may challenge the appropriateness of this Order and move to dissolve the same
2 and at which time the Court will hear argument on Plaintiff's requested preliminary
3 injunction.

4 2. Any response or opposition to Plaintiff's Motion for Preliminary Injunction
5 must be filed and served on Plaintiff's counsel on or before May 18, 2018. Plaintiff shall
6 file any Reply Memorandum on or before May 25, 2018. The above dates may be revised
7 upon stipulation by all parties and approval of this Court.

8 3. Defendants are cautioned that failure to attend the preliminary injunction
9 hearing may result in confirmation of the relief provided herein, immediate issuance of the
10 requested preliminary injunction to take effect immediately upon expiration or dissolution
11 of the TRO, and may otherwise extend for the pendency of this litigation upon the same
12 terms and conditions that comprise this TRO.

13 4. After Plaintiff's counsel has received confirmation from the financial
14 institutions regarding the funds restrained as directed herein, Plaintiff shall serve a copy of
15 the Complaint, Application for Temporary Restraining Order, and this Order, on each
16 Defendant via their corresponding e-mail address, or on each Defendant via their
17 corresponding online contact form provided on the e-commerce stores operating under the
18 Seller IDs, or by providing a copy of this Order by e-mail to the marketplace platform for
19 each of the Seller IDs so that the marketplace platform, in turn, notifies each Defendant of
20 the Order, or by other means reasonably calculated to give notice which is permitted by the
21 Court. In addition, Plaintiff shall post copies of the Complaint, Application for Temporary
22 Restraining Order, and this Order, as well as all other documents filed in this action on the
23 website located at <http://federallawsuitnotice.com> and shall provide the website address
24 and a link to the website to the Defendants via e-mail/online contact form. Plaintiff shall
25 continue to provide notice of these proceedings and copies of the documents on file in this
26 matter to the Defendants by regularly updating the website located at
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1 <http://federallawsuitnotice.com>, or by other means reasonably calculated to give notice
2 which is permitted by the Court;⁴

3 5. Additionally, for the purpose of providing additional notice of this
4 proceeding, and all other pleadings, orders, and documents filed herein, the owners,
5 operators and/or administrators of the Internet marketplace platforms, including but not
6 limited to, Amazon.com and eBay.com, and/or financial institutions, payment processors,
7 banks, escrow services, and money transmitters, including but not limited to, Amazon
8 Payments, Inc. (“Amazon”), and PayPal, Inc. (“PayPal”), and their related companies and
9 affiliates shall, at Plaintiff’s request, provide Plaintiff’s counsel with any e-mail address
10 known to be associated with the Defendants’ respective Seller IDs.

11 Temporary Restraining Order

12 6. Each Defendant, its officers, directors, employees, agents, subsidiaries,
13 distributors, and all persons in active concert or participation with any Defendant having
14 notice of this Order are hereby temporarily restrained:

15 a. from making, manufacturing or causing to be manufactured, importing,
16 using, advertising or promoting, distributing, selling or offering to sell split
17 end hair trimmer products (including split end hair trimmer products marked
18 “FASIZ,” “HAIR TRIMMER,” “UMATE” or “LESCOLTON”) that infringe:

19 (i) Patent No. US 6,588,108 issued July 8, 2003 for HAIR TRIMMING
20 DEVICE WITH REMOVABLY MOUNTABLE COMPONENTS
21 FOR REMOVAL OF SPLIT ENDS AND STYLING OF HAIR (the
22 “108 Patent”);

23 (ii) Patent No. US 7,040,021 issued May 9, 2006 for HAIR
24 TRIMMING DEVICE WITH REMOVABLY MOUNTABLE
25

26 _____
27 ⁴ Plaintiff states it has a physical address for defendant Taizhou. (ECF No. 9-23, ¶ 21.) Plaintiff is to
28 serve Defendant Taizhou with the documents listed above at this address or inform the Court why this is
not possible or worthwhile.

1 COMPONENTS FOR REMOVAL OF SPLIT ENDS AND STYLING
2 OF HAIR (the “’021 Patent”); or

3 (iii) Patent No. US 9,587,811 issued May 9, 2006 for HAIR
4 TRIMMING DEVICE (the “’811 Patent”).

5 b. from reproducing, distributing or transferring Defendants’ existing split
6 end hair trimmer packaging marked “FASIZ,” “HAIR TRIMMER,”
7 “UMATE” or “LESCOLTON” or from infringing any of the exclusive rights
8 in 17 U.S.C. §106 with respect to Plaintiff’s copyrighted packaging or from
9 using Plaintiff’s distinctive trade dress packaging on Defendants’ packaging.

10 c. from reproducing, distributing or transferring Defendants’ existing split
11 end hair trimmer manual marked “FASIZ,” “HAIR TRIMMER,” “UMATE”
12 or “LESCOLTON” or from infringing any of the exclusive rights in 17
13 U.S.C. §106 with respect to Plaintiff’s copyrighted manual, including
14 reproducing, creating derivative works, displaying or distributing Plaintiff’s
15 manual;

16 d. from infringing, counterfeiting, or diluting Plaintiff’s registered Split-
17 Ender® trademark;

18 e. from secreting, concealing, destroying, selling off, transferring, or
19 otherwise disposing of: (i) any split end hair trimmer products, packaging or
20 manuals that infringe Plaintiff’s patents, trademarks or copyrights; or (ii) any
21 evidence relating to the manufacture, importation, sale, offer for sale,
22 distribution, or transfer of any any split end hair trimmer products, packaging
23 or manuals that infringe Plaintiff’s patents, trademarks or copyrights.

24 7. Each Defendant, its officers, directors, employees, agents, subsidiaries,
25 distributors, and all persons in active concert or participation with any Defendant having
26 notice of this Order shall immediately discontinue any infringing use of Plaintiff’s
27 copyrights, trademarks, trade dress, or patents, on or in connection with all Internet-based
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1 e-commerce stores owned and operated, or controlled by them, including the Internet-based
2 e-commerce stores operating under the Seller IDs;

3 8. Each Defendant, its officers, directors, employees, agents, subsidiaries,
4 distributors, and all persons in active concert or participation with any Defendant having
5 notice of this Order shall immediately discontinue any infringing use of Plaintiff's
6 registered Split-End® trademark or Plaintiff's unregistered source identifying names
7 (*e.g.*, TALAVERA) or short phrases (*e.g.*, "SNIPS THE ENDS, NOT THE LENGTH")
8 within website source code, from use on any webpage (including as the title of any web
9 page), from any advertising links to other websites, from search engines' databases or
10 cache memory, and any other form of use of such terms that are visible to a computer user
11 or serves to direct computer searches to Internet-based e-commerce stores registered,
12 owned, or operated by any Defendant, including the Internet-based e-commerce stores
13 operating under the Seller IDs;

14 9. Each Defendant shall not transfer ownership of the Internet-based e-commerce
15 stores under their Seller IDs during the pendency of this action, or until further order of the
16 Court;

17 10. Each Defendant shall preserve copies of all computer files relating to the use
18 of any of the Internet-based e-commerce stores website businesses under their Seller IDs
19 and shall take all steps necessary to retrieve computer files relating to the use of the
20 Internet-based e-commerce stores under their Seller IDs that may have been deleted before
21 the entry of this Order;

22 11. Upon Plaintiff's request, any Internet marketplace website operators and/or
23 administrators who are provided with notice of the injunction shall immediately cease
24 facilitating access during the pendency of this action to any and all listings and associated
25 images of Defendants' split-end hair trimmer products, packaging and manuals used by the
26 Defendants via the e-commerce stores operating under their respective Seller IDs;

27 12. Upon receipt of notice of this Order, all financial institutions, payment
28 processors, banks, escrow services, money transmitters, or marketplace platforms,

1 including, but not limited to, Amazon, and PayPal, and their related companies and
2 affiliates shall (i) immediately identify all financial accounts and/or sub-accounts
3 associated with the Internet based e-commerce stores operating under the Seller IDs and/or
4 the e-mail addresses identified on Exhibit "1" hereto, as well as any other related accounts
5 of the same customer(s); (ii) identify all other accounts which transfer funds into the exact
6 same financial institution account(s) or any of the other financial accounts subject to this
7 Order; and (iii) restrain the transfer of all funds, as opposed to ongoing account activity,
8 held or received for their benefit or to be transferred into their respective financial accounts,
9 and any other financial accounts tied thereto; and (iv) immediately divert those restrained
10 funds to a holding account for the trust of the Court.

11 13. Upon receipt of notice of this Order, all financial institutions, payment
12 processors, bank, escrow services, money transmitters, or marketplace platforms receiving
13 notice of this Order, including but not limited to, Amazon and PayPal, and their related
14 companies and affiliates, shall further, within five business days of receiving this Order,
15 provide Plaintiff's counsel with all data that details (i) an accounting of the total funds
16 restrained and identifies the financial account(s) and sub-account(s) which the restrained
17 funds are related to, and (ii) the account transactions related to all funds transmitted into
18 the financial account(s) and sub-account(s) which have been restrained. Such restraining
19 of the funds and the disclosure of the related financial institution account information shall
20 be made without notice to the account owners or the financial institutions until after those
21 accounts are restrained. No funds restrained by this Order shall be transferred or
22 surrendered by any financial institution, payment processor, bank, escrow service, money
23 transmitter, or marketplace website, including but not limited to, Amazon and PayPal, and
24 their related companies and affiliates for any purpose (other than pursuant to a chargeback
25 made pursuant to their security interest in the funds) without the express authorization of
26 this Court;

27 14. This Order shall apply to the Seller IDs, associated e-commerce stores, and
28 any other seller identification names, e-commerce stores, or financial accounts which are

1 being used by the Defendants for the purpose of infringing Plaintiff's copyrights, trademark
2 rights or patent rights at issue in this action and/or unfairly competing with the Plaintiff;

3 15. Any Defendant or financial institution account holder subject to this Order
4 may petition the Court to modify the asset restraint set out in this Order;

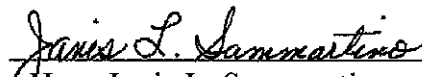
5 16. This Order shall remain in effect until the date for the hearing on the Motion
6 for Preliminary Injunction set forth above, or until such further dates as set by the Court or
7 stipulated to by the parties.

8 Bond

9 17. Plaintiff **SHALL POST** a corporate surety bond, cash, certified check, or
10 attorney's check in the amount of ten thousand dollars (\$10,000) as security, determined
11 adequate for the payment of such damages as any person may be entitled to recover as a
12 result of wrongful restraint hereunder. In the Court's discretion, the bond may be subject
13 to increase should an application be made in the interest of justice.

14 **IT IS SO ORDERED.**

15 Dated: May 10, 2018


16 Hon. Janis L. Sammartino
17 United States District Judge
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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 GRANTING MOTION
AUTHORIZING ALTERNATIVE
SERVICE ON DEFENDANTS**
(ECF No. 18)

Presently before the Court is Plaintiff Talavera Hair Products, Inc.’s Ex Parte Application for Order Authorizing Alternative Service on Defendants, (“MTN,” ECF No. 18). Plaintiff requests an order authorizing alternate service of process on Defendants via email and website publication.

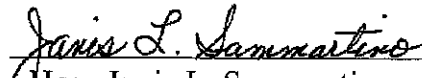
Pursuant to the Federal Rules of Civil Procedure, an individual or corporation “may be served at a place not within any judicial district of the United States . . . by other means not prohibited by international agreement, as the court orders.” Fed. R. Civ. P. 4(f)(3), (g). Service under Rule 4(f)(3) must be directed by the court, not prohibited by international agreement, and comport with constitutional notions of due process. *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1014–16 (9th Cir. 2002). It is within the Court’s discretion “to craft alternate means of service.” *Id.* at 1016.

1 Plaintiff states service by email and website publication is not prohibited by
2 international agreement. (MTN 13.) This is because Plaintiff is unaware of the foreign
3 physical addresses of the Seller ID Defendants. Plaintiff is aware of the foreign address of
4 Defendant Taizhou but states that it is not required to attempt service by other methods
5 before service by email. (*Id.* at 15 (citing *Rio Props.*, 284 F.3d at 1014).) Further, Plaintiff
6 is aware of the physical address of a few Defendants but states that service by email is
7 “reasonably calculated to give actual notice” to the parties. Cal. Civil Code § 412.30; *see*
8 *Facebook, Inc. v. Banana Ads, LLC*, No. C-11-3619 YGR, 2012 WL 1038752, at *9 (N.D.
9 Cal. Mar. 27, 2012) (holding service by email is “‘reasonably calculated to give actual
10 notice’ to the Domestic Defendants. The Domestic Defendants, like the Foreign
11 Defendants, are all engaged in internet-based commercial activities and rely on email as a
12 means of communication”).

13 Good cause appearing, the Court **GRANTS** Plaintiff’s Ex Parte Motion and
14 **AUTHORIZES** alternate service of process on Defendants via email and website
15 publication. The email message **SHALL NOTIFY** each Defendant that a suit has been
16 filed against it in the United States District Court for the Southern District of California,
17 along with a link to the website www.federallawsuitnotice.com. Further, to the extent
18 Plaintiff is in possession of any physical addresses of any of the Defendants, it **SHALL**
19 also serve those defendants by mail.

20 **IT IS SO ORDERED.**

21 Dated: May 24, 2018

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23 Hon. Janis L. Sammartino
24 United States District Judge
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

18-60656 CV-UU

APPLE CORPS LIMITED and SUBAFILMS
LIMITED,

Plaintiffs,

FILED UNDER SEAL

vs.

3W STORE, *et al.*

Defendants.

**SEALED ORDER GRANTING EX PARTE APPLICATION FOR ENTRY
OF TEMPORARY RESTRAINING ORDER**

THIS CAUSE came before the Court upon Plaintiffs' *Ex Parte* Application for Entry of Temporary Restraining Order, Preliminary Injunction, and Order Restraining Transfer of Assets (the "Application"). The Court has carefully reviewed the Application and the record and is otherwise fully advised in the premises.

By the instant Application, Plaintiffs, Apple Corps Limited and Subafilms Limited YETI Coolers, LLC (collectively "Plaintiffs") move *ex parte*, for entry of a temporary restraining order against Defendants, the Individuals, Partnerships, and Unincorporated Associations identified on Schedule "A" hereto (collectively "Defendants"), and an entry of an order restraining the financial accounts used by Defendants, pursuant to 15 U.S.C. § 1116 and Fed. R. Civ. P. 65, and The All Writs Act, 28 U.S.C. § 1651(a).

For the reasons set forth herein, Plaintiffs' *Ex Parte* Application for Temporary Restraining Order is **GRANTED**.

I. Factual Background¹

The Plaintiff, Apple Corps Limited, is the registered owner of the following trademarks, which are valid and registered on the Principal Register of the United States Patent and Trademark Office (the "BEATLES Marks").

Trademark	Registration Number	Registration Date	Class(es) / Good(s)
THE BEATLES	1,752,120	February 16, 1993	IC 014 – Watches. IC 018 - Wallets. IC 025 - Headwear, sweatshirts, t-shirts, shirts.

¹ The factual background is taken from Plaintiffs' Complaint, *Ex Parte* Application for Temporary Restraining Order, and supporting Declarations submitted by Plaintiffs.

<p>BEATLES</p>	<p>4,373,956</p>	<p>July 30, 2013</p>	<p>IC 009 - Telephone apparatus, namely, telephones; telephone receivers, telephone answering machines, mobile telephones; cases for mobile telephones; cell phone covers; covers for mobile telephones, namely, fitted plastic films known as skins for covering and protecting electronic apparatus in the nature of mobile telephones; straps for mobile telephones; telephone call indicator lights and electro-mechanical shakers for detecting and signaling incoming telephone calls; mechanical and electric egg timers; boxes and cases specially adapted for holding audio cassettes, video cassettes, gramophone records, audio compact discs, audio mini discs, video discs, and interactive compact discs or cd-roms.</p> <p>IC 014 - Jewelry boxes not of metal, including ceramic and porcelain jewelry boxes for trinkets; jewelry; horological and chronometric instruments, namely, watches and clocks; watch straps, cuff links, brooches, bracelets, bangles, earrings, pendants, medallions, trinkets being jewelry, charms being jewelry, rings being jewelry, tie pins, jewelers ornamental tie pins, lapel pins, tie clips, collectible non-monetary coins, ornamental pins; articles of precious metal and their alloys, and articles coated with precious metal and their alloys, namely, belt buckles for clothing, coasters, jewelry boxes, key rings, key chains; hat and shoe ornaments and key fobs all of precious metal; rings being jewelry; ornamental pins; cigarette and cigar cases; precious stones; semi-precious stones; statuettes and figurines of precious metal or precious</p>
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		<p>stone or coated therewith; scale model vehicles, ships or submarines all made from, or coated with precious metal or precious stone.</p> <p>IC 018 - Goods made from leather or imitation leather, namely, waist pouches for carrying purses and wallets; luggage, carry on traveling bags, clutch bags, trunks, business card cases, rucksacks, backpacks, purses, wallets, key cases, luggage tags; billfolds, leather key fobs, key cases, umbrellas; bags, namely, handbags, shoulder bags, all purpose sports bags, barrel bags, carry-on flight bags, and duffel bags, suitcases, attaché cases, school bags, satchels, gym bags, beach bags and credit card cases; hand carry overnight cases of metal, plastic or resin; tote bags, including metal totes; textile shopping bags; identity card holders of leather and imitations of leather.</p> <p>IC 024 - Decorative window curtains of wood, reed, bamboo, beads or plastic; household linen; bed linen; bedspreads; table linen; table cloths not of paper; table mats not of paper; textile table napkins; coasters made of table linen or textile; unfitted fabric furniture covers; bed sheets, pillow cases, duvet covers; towels; face towels; face washing cloths; curtains; wall hanging of textile; cloth banners; cloth bunting; cloth flags; handkerchiefs; cushion covers; pre-cut textiles for making into cushions and cushion covers; traced cloths for embroidery.</p> <p>IC 025 - Footwear and headgear, namely, hats and caps; clothing, namely, shirts,</p>
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		<p>polo shirts, T-shirts, sweatshirts; sweatpants; jackets, coats; pullovers; vests; articles of underclothing, namely, underwear; shorts; scarves; silk pocket squares; neck-ties; braces in the nature of suspenders; belts; socks; long-sleeved shirts and long sleeved T-shirts; silk scarves; silk scarves in the shape of squares for wearing over the head or around the neck; pants; fleece tops; thermal tops; jerseys; baseball jerseys; hockey jerseys; sweaters; tank tops; waistcoats; trousers; golf shirts; golf pants; golf shoes; swim wear; beachwear; night gowns; pajamas; dressing gowns; bathrobes; bathing caps; head bands; slippers; beach shoes; sandals; clothing for toddlers, infants and babies, namely, rompers, shortalls, babies' sleep suits; cloth babies' bibs.</p>
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(See Declaration of Paul Cole in Support of Plaintiffs' Application for Temporary Restraining Order ["Cole Decl."] ¶¶ 4-5; *see also* United States Trademark Registrations of the BEATLES Marks at issue attached as Composite Exhibit 1 to the Complaint. The BEATLES Marks are used in connection with the manufacture and distribution of quality goods in the categories identified above. (See *id.* ¶¶ 4-5.)

The Plaintiff, Subafilms Limited, is the registered owner of the following trademark, which is valid and registered on the Principal Register of the United States Patent and Trademark Office (the "YELLOW SUBMARINE Mark").

Trademark	Registration Number	Registration Date	Class(es) / Good(s)
YELLOW SUBMARINE	3,328,170	November 6, 2007	IC 009 - Telephone apparatus, namely covers for mobile telephones; straps for mobile telephones. IC 025 - Shirts; polo shirts; t-shirts; long-sleeved shirts and long-sleeved t-shirts; sweatshirts; jackets; pullovers; vests; scarves; pocket squares made of silk; neckties; hats; caps; sock; thermal tops; jerseys; sweaters; tank tops; pajamas; clothing for toddlers, infants and babies namely, one piece garments for infants and toddlers, sleep suits, t-shirts and long-sleeved t-shirts.

(See Cole Decl. ¶¶ 10-11; see also United States Trademark Registrations of the YELLOW SUBMARINE Mark at issue attached as Composite Exhibit 2 to the Complaint. The YELLOW SUBMARINE Mark is used in connection with the manufacture and distribution of quality goods in the categories identified above. (See *id.* ¶¶ 10-11.)

Defendants, by operating e-commerce stores via the Internet marketplace platforms, AliExpress.com, Amazon.com, Bonanza.com, eBay.com, and newegg.com, under their seller identification names identified on Schedule "A" hereto (the "Seller IDs"),² have advertised,

² Defendant Numbers 1-3 operate their e-commerce stores via their respective Sellers IDs through the e-commerce marketplace platform AliExpress.com; Defendant Numbers 4-21 operate their e-commerce stores via their respective Sellers IDs through the e-commerce marketplace platform, Amazon.com; Defendant Numbers 22-45 operate their e-commerce stores via their respective Sellers IDs through the e-commerce marketplace platform, Bonanza.com;

promoted, offered for sale, or sold goods bearing what Plaintiffs have determined to be counterfeits, infringements, reproductions or colorable imitations of the BEATLES Marks and/or the YELLOW SUBMARINE Mark (collectively "Plaintiffs' Marks"). (*See* Cole Decl. ¶¶ 16-21; Declaration of Stephen Gaffigan in Support of Plaintiffs' Application for Temporary Restraining Order ["Gaffigan Decl."] ¶ 2; Declaration of Eric Rosaler in Support of Plaintiffs' Application for Temporary Restraining Order ["Rosaler Decl."] ¶ 4; Declaration of Kathleen Burns in Support of Plaintiffs' Application for Temporary Restraining Order ["Burns Decl."] ¶ 4.)

Although each Defendant may not copy and infringe Plaintiffs' trademarks for each category of goods protected, Plaintiffs have submitted sufficient evidence showing that each Defendant has infringed, at least, one or more of Plaintiffs' Marks. (*See* Cole Decl. ¶¶ 16-21.) Defendants are not now, nor have they ever been, authorized or licensed to use, reproduce, or make counterfeits, reproductions, or colorable imitations of Plaintiffs' Marks. (*See id.* ¶¶ 16, 18-21, 24.)

Plaintiffs' counsel retained AED Investigations, Inc. ("AED"), and Invisible Inc ("Invisible"), both licensed private investigative firms, to investigate the promotion and sale of counterfeit and infringing versions of Plaintiffs' branded products by Defendants (*See* Cole Decl. ¶ 17; Rosaler Decl. ¶ 3; Burns Decl. ¶ 3; Gaffigan Decl. ¶ 2.) Through AliExpress.com, Amazon.com, Bonanza.com, eBay.com and newegg.com, AED and Invisible collectively accessed the Internet based e-commerce stores operating under the Seller IDs and placed orders from each Seller ID for the purchase of various products, all bearing counterfeits of, at least, one of Plaintiffs' trademarks at issue in this action, and requested each product to be shipped to one

Defendant Numbers 46-96 operate their e-commerce stores via their respective Sellers IDs through the e-commerce marketplace platform, e-Bay.com; and Defendant Numbers 97-98 operate their e-commerce stores via their respective Sellers IDs through the e-commerce marketplace platform, newegg.com.

of their addresses in the Southern District of Florida.³ (See Rosaler Decl. ¶ 4; Burns Decl. ¶ 4.) Each order was processed entirely online, and following the submission of the orders, AED and Invisible received information for finalizing payment for the various products ordered via Alibaba.com Hong Kong Limited, which operates the AliExpress.com platform (i.e., “AliExpress”), and its related companies, Zhejiang Ant Small and Micro Financial Services Group Co., Ltd., Alipay (China) Internet Technology Co. Ltd., and Alipay.com Co., Ltd. (collectively referred to as “Alipay”),⁴ Amazon Payments, Inc.,⁵ or PayPal, Inc. (“PayPal”) to Defendants’ respective PayPal accounts. (*Id.*) At the conclusion of the process, the detailed web page captures and images of Plaintiffs’ branded products ordered via Defendants’ Seller IDs were sent to Plaintiffs’ representative for inspection. (See Cole Decl. ¶ 18; Gaffigan Decl. ¶ 2.)

Plaintiffs’ representative reviewed and visually inspected the detailed web page captures and images reflecting Plaintiffs’ branded products AED and Invisible ordered from Defendants through the Internet based e-commerce stores operating under their respective Seller IDs, and determined the products were not genuine versions of Plaintiffs’ goods. (See Cole Decl. ¶¶ 18-21.)

³ Although the product checkout page for Defendant Number 38 reflects multiple cushion covers marked numerically from 1-16, the actual cushion cover AED purchased is identified as Number 1. (See Rosaler Decl. ¶ 4, n.1.) Additionally, although the product checkout pages for Defendant Numbers 55 and 72 reflect multiple phone covers, the actual phone covers Invisible purchased are identified as “Pattern Number: Beatles.” (See Burns Decl. ¶ 4, n.1.)

⁴ Worldpay US, Inc. (“Worldpay”) processes transactions on behalf of Alibaba and Alipay, which may appear as “Aliexpress” on a cardholder’s credit card statement. (See Gaffigan Decl. ¶ 4.)

⁵ Amazon is an e-commerce marketplace that allows Defendants to conduct their commercial transactions privately via Amazon’s payment processing and retention service, Amazon Payments, Inc. As such, Defendants’ payment information is not publicly disclosed. However, because Amazon also operates as a money transmitter for sales made on Amazon, it has the ability to identify, and restrain, the payment accounts associated with each Defendant. (See Gaffigan Decl. ¶ 5.)

II. Legal Standard

In order to obtain a temporary restraining order, a party must demonstrate “(1) [there is] a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that the entry of the relief would serve the public interest.” *Schiavo ex. rel Schindler v. Schiavo*, 403 F.3d 1223, 1225–26 (11th Cir. 2005); *see also Levi Strauss & Co. v. Sunrise Int’l. Trading Inc.*, 51 F. 3d 982, 985 (11th Cir. 1995) (applying the test to a preliminary injunction in a Lanham Act case). Additionally, a court may only issue a temporary restraining order without notice to the adverse party or its attorney if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition [and] (B) the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b)(1). *Ex parte* temporary restraining orders “should be restricted to serving their underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer.” *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974).

III. Conclusions of Law

The declarations Plaintiffs submitted in support of their *Ex Parte* Application for Temporary Restraining Order support the following conclusions of law:

A. Plaintiffs have a very strong probability of proving at trial that consumers are likely to be confused by the Defendants’ advertisement, promotion, sale, offer for sale, or distribution of goods bearing counterfeits, reproductions, or colorable imitations of Plaintiffs

Marks, and that the products Defendants are selling and promoting are copies of Plaintiffs' products that bear copies of Plaintiffs' Marks.

B. Because of the infringement of Plaintiffs' Marks, Plaintiffs are likely to suffer immediate and irreparable injury if a temporary restraining order is not granted. The following specific facts, as set forth in Plaintiffs' Complaint, Application for Temporary Restraining Order, and accompanying declarations, demonstrate that immediate and irreparable loss, damage, and injury will result to the Plaintiffs and to consumers before the Defendants can be heard in opposition unless Plaintiffs' request for *ex parte* relief is granted:

1. Defendants own or control e-commerce stores via Internet marketplace platforms operating under their seller identification names which advertise, promote, offer for sale, and sell products bearing counterfeit and infringing trademarks in violation of Plaintiffs' rights;

2. There is good cause to believe that more counterfeit and infringing products bearing Plaintiffs' trademarks will appear in the marketplace; that consumers are likely to be misled, confused, and disappointed by the quality of these products; and that Plaintiffs may suffer loss of sales for their genuine products; and

3. There is good cause to believe that if Plaintiffs proceed on notice to the Defendants of this Application for Temporary Restraining Order, Defendants can easily and quickly transfer or modify e-commerce store data and content, change payment accounts, redirect consumer traffic to other seller identification names, and transfer assets and ownership of the seller identification names, thereby thwarting Plaintiffs' ability to obtain meaningful relief;

C. The balance of potential harm to Defendants in restraining their trade in counterfeit and infringing branded goods if a temporary restraining order is issued is far outweighed by the potential harm to Plaintiffs reputation and goodwill if such relief is not issued.

D. The public interest favors issuance of the temporary restraining order to protect Plaintiffs' trademark interests and protect the public from being defrauded by the palming off of counterfeit products as Plaintiffs' genuine products.

E. Under 15 U.S.C. § 1117(a), Plaintiffs may be entitled to recover, as an equitable remedy, the illegal profits gained through Defendants' distribution and sales of goods bearing counterfeits and infringements of Plaintiffs' Marks. *See Reebok Int'l, Ltd. v. Marnatech Enters., Inc.*, 970 F.2d 552, 559 (9th Cir. 1992) (quoting *Fuller Brush Products Co. v. Fuller Brush Co.*, 299 F.2d 772, 777 (7th Cir. 1962) ("An accounting of profits under § 1117(a) is not synonymous with an award of monetary damages: '[a]n accounting for profits . . . is an equitable remedy subject to the principles of equity.'")).

F. Requesting equitable relief "invokes the district court's inherent equitable powers to order preliminary relief, including an asset freeze, in order to assure the availability of permanent relief." *Levi Strauss & Co.*, 51 F.3d at 987 (11th Cir. 1995) (citing *Federal Trade Commission v. United States Oil and Gas Corp.*, 748 F.2d 1431, 1433-34 (11th Cir. 1984)).

G. In light of the inherently deceptive nature of the counterfeiting business, and the likelihood that the Defendants have violated federal trademark laws, Plaintiffs have good reason to believe Defendants will hide or transfer their ill-gotten assets beyond the jurisdiction of this Court unless those assets are restrained.

Upon review of Plaintiffs' Complaint, *Ex Parte* Application for Temporary Restraining Order, and supporting evidentiary submissions, it is hereby

ORDERED that Plaintiffs' *Ex Parte* Application for Temporary Restraining Order is **GRANTED**, according to the terms set forth below:

TEMPORARY RESTRAINING ORDER

(1) Each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order are hereby temporarily restrained:

- a. From manufacturing, importing, advertising, promoting, offering to sell, selling, distributing, or transferring any products bearing Plaintiffs' Marks, or any confusingly similar trademarks, other than those actually manufactured or distributed by the Plaintiffs; and
- b. From secreting, concealing, destroying, selling off, transferring, or otherwise disposing of: (i) any products, not manufactured or distributed by the Plaintiffs, bearing Plaintiffs' Marks, or any confusingly similar trademarks; or (ii) any evidence relating to the manufacture, importation, sale, offer for sale, distribution, or transfer of any products bearing Plaintiffs' Marks, or any confusingly similar trademarks.

(2) Each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order shall immediately discontinue the use of Plaintiffs' Marks or any confusingly similar trademarks, on or in connection with all Internet based e-commerce stores owned and operated, or controlled by them, including the Internet based e-commerce stores operating under the Seller IDs;

(3) Each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order shall immediately discontinue the use of Plaintiffs' Marks, or any confusingly similar trademarks within metatags or other markers within website source code, from use on any webpage (including as the title of any web page), from any advertising links to other

websites, from search engines' databases or cache memory, and any other form of use of such terms that are visible to a computer user or serves to direct computer searches to Internet based e-commerce stores registered, owned, or operated by any Defendant, including the Internet based e-commerce stores operating under the Seller IDs;

(4) Each Defendant shall not transfer ownership of the Internet based e-commerce stores under their Seller IDs during the pendency of this action, or until further order of the Court;

(5) Each Defendant shall preserve copies of all computer files relating to the use of any of the Internet based e-commerce stores website businesses under their Seller IDs and shall take all steps necessary to retrieve computer files relating to the use of the Internet based e-commerce stores under their Seller IDs that may have been deleted before the entry of this Order;

(6) Upon Plaintiffs request, any Internet marketplace website operators and/or administrators who are provided with notice of the injunction, shall immediately cease facilitating access during the pendency of this action, to any and all listings and associated images of the products bearing counterfeits and/or infringements of Plaintiffs' Marks used by the Defendants via the e-commerce stores operating under their respective Seller IDs:

(7) Upon receipt of notice of this Order, all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to, Alibaba.com Hong Kong Limited, which operates the AliExpress.com platform ("AliExpress"), Zhejiang Ant Small and Micro Financial Services Group Co., Ltd. ("Ant Financial Services"), AliPay (China) Internet Technology Co. Ltd. and Alipay.com Co., Ltd. (collectively, "Alipay"), Worldpay US, Inc. ("Worldpay"), Amazon Payments, Inc.

("Amazon"),⁶ and PayPal, Inc. ("PayPal")⁷, and their related companies and affiliates shall (i) immediately identify all financial accounts and/or sub-accounts associated with the Internet based e-commerce stores operating under the Seller IDs and/or the e-mail addresses identified on Schedule "A" hereto, as well as any other related accounts of the same customer(s); (ii) identify all other accounts which transfer funds into the exact same financial institution account(s) or any of the other financial accounts subject to this Order; and (iii) restrain the transfer of all funds, as opposed to ongoing account activity, held or received for their benefit or to be transferred into their respective financial accounts, and any other financial accounts tied thereto; and (iv) immediately divert those restrained funds to a holding account for the trust of the Court.

(8) Upon receipt of notice of this Order, all financial institutions, payment processors, bank, escrow services, money transmitters, or marketplace platforms receiving notice of this Order, including but not limited to, AliExpress, Ant Financial Services, Alipay, Worldpay, Amazon, PayPal, and their related companies and affiliates, shall further, within five business days of receiving this Order, provide Plaintiffs' counsel with all data that details (i) an accounting of the total funds restrained and identifies the financial account(s) and sub-account(s) which the restrained funds are related to, and (ii) the account transactions related to all funds transmitted into the financial account(s) and sub-account(s) which have been restrained. Such restraining of the funds and the disclosure of the related financial institution account information shall be made without notice to the account owners or the financial institutions until after those accounts are restrained. No funds restrained by this Order shall be transferred or surrendered by

⁶ Amazon is licensed to do business in the State of Florida by the Florida Office of the Controller and is therefore subject to personal jurisdiction in this Court. (See Gaffigan Decl. ¶ 5.)

⁷ PayPal is licensed to do business in the State of Florida by the Florida Office of the Controller and is therefore subject to personal jurisdiction in this Court. (See Gaffigan Decl. ¶ 6.)

any financial institution, payment processor, bank, escrow service, money transmitter, or marketplace website, including but not limited to, AliExpress, Ant Financial Services, Alipay, Worldpay, Amazon, PayPal, and their related companies and affiliates for any purpose (other than pursuant to a chargeback made pursuant to their security interest in the funds) without the express authorization of this Court;

(9) This Order shall apply to the Seller IDs, associated e-commerce stores, and any other seller identification names, e-commerce stores, or financial accounts which are being used by the Defendants for the purpose of counterfeiting Plaintiffs' Marks at issue in this action and/or unfairly competing with the Plaintiffs;

(10) Any Defendant or financial institution account holder subject to this Order may petition the Court to modify the asset restraint set out in this Order;

(11) This Order shall remain in effect until the date for the hearing on the Motion for Preliminary Injunction set forth below, or until such further dates as set by the Court or stipulated to by the parties;

BOND TO BE POSTED

(12) Pursuant to 15 U.S.C. § 1116(d)(5)(D) and Federal Rule of Civil Procedure 65(c), Plaintiffs shall post a bond in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00), as payment of damages to which Defendants may be entitled for a wrongful injunction or restraint, during the pendency of this action, or until further Order of the Court. In the Court's discretion, the bond may be subject to increase should an application be made in the interest of justice;

PRELIMINARY INJUNCTION

(13) A hearing is set before this Court in the United States Courthouse located at 299 East Broward Boulevard, Fort Lauderdale, Florida 33301, Courtroom 205F, on April, 11 th, 2017, at 10:00AM., at which 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 Plaintiffs' requested preliminary injunction;

(14) After Plaintiffs' counsel has received confirmation from the financial institutions regarding the funds restrained as directed herein, Plaintiffs shall serve a copy of the Complaint, Application for Temporary Restraining Order, and this Order, on each Defendant via their corresponding e-mail address, or on each Defendant via their corresponding online contact form provided on the e-commerce stores operating under the Seller IDs, or by providing a copy of this Order by e-mail to the marketplace platform for each of the Seller IDs so that the marketplace platform, in turn, notifies each Defendant of the Order, or by other means reasonably calculated to give notice which is permitted by the Court. In addition, Plaintiffs shall post copies of the Complaint, Application for Temporary Restraining Order, and this Order, as well as all other documents filed in this action on the website located at <http://servingnotice.com/anu975/index.html> and shall provide the website address and a link to the website to the Defendants via e-mail/online contact form, and such notice so given shall be deemed good and sufficient service thereof. Plaintiffs shall continue to provide notice of these proceedings and copies of the documents on file in this matter to the Defendants by regularly updating the website located at <http://servingnotice.com/anu975/index.html>, or by other means reasonably calculated to give notice which is permitted by the Court;

(15) Additionally, for the purpose of providing additional notice of this proceeding, and all other pleadings, orders, and documents filed herein, the owners, operators and/or administrators of the Internet marketplace platforms, including but not limited to AliExpress.com, Amazon.com, Bonanza.com, eBay.com, and newegg.com, and/or financial institutions, payment processors, banks, escrow services, and money transmitters, including but not limited to AliExpress, Ant Financial Services, Alipay, Worldpay, Amazon or PayPal, and their related companies and affiliates shall, at Plaintiffs' request, provide Plaintiffs' counsel with any e-mail address known to be associated with the Defendants' respective Seller IDs;

(16) Any response or opposition to Plaintiffs' Motion for Preliminary Injunction must be filed and served on Plaintiffs' counsel by April 6th, 2018. Plaintiffs shall file any Reply Memorandum on or before April 9th, 2017. The above dates may be revised upon stipulation by all parties and approval of this Court. Defendants are hereby on notice that failure to appear at the hearing may result in the imposition of a preliminary injunction against them pursuant to 15 U.S.C. § 1116(d), Fed. R. Civ. P. 65, The All Writs Act, 28 U.S.C. § 1651(a), and this Court's inherent authority.

DONE AND ORDERED in Chambers in ^{Miami}Fort ~~Lauderdale~~, ~~Broward~~ County, Florida, this 28th day of Mar., 2018.


United States District Judge

Copies provided to:

Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.

18-60656 CV-111

APPLE CORPS LIMITED and
SUBAFILMS LIMITED,

Plaintiffs,

FILED UNDER SEAL

vs.

3W STORE, *et al.*,

Defendants.

**ORDER AUTHORIZING ALTERNATE SERVICE OF PROCESS ON
DEFENDANTS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 4(f)(3)**

THIS CAUSE is before the Court upon Plaintiffs' *Ex Parte* Motion for Order Authorizing Alternate Service of Process on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3) (the "Motion"). The Court has carefully considered the Motion and is otherwise fully advised in the premises.

Plaintiffs seek an order granting alternative service of process on the Defendants in this action, all of which are foreign. Plaintiffs allege that the Defendants have established Internet-based businesses and utilize electronic means as a reliable forms of contact. Therefore, Plaintiffs seek to serve these Defendants by both email and website publication.

Rule 4(h)(2) for the Federal Rules of Civil Procedure (the "Rules") defines the contours of service upon foreign corporations and incorporates the service methods set forth regarding individuals in Rule 4(f). Rule 4(f)(3), in turn, provides that service may be accomplished "by other means not prohibited by international agreement, as the court orders." Alternative methods of service under Rule 4(f)(3) are available without first attempting service by other means. *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1015 (9th Cir. 2002). "So especially in a

circumstance where service upon a foreign corporation under Rule 4(f)(1) or 4(f)(2) has been cumbersome, district courts have broad discretion under Rule 4(f)(3) to authorize other methods of service that are consistent with due process and are not prohibited by international agreements.” *Brookshire Brothers, Ltd. v. Chiquita Brands Int’l, Inc.*, Case No. 05-CIV-21962, 2007 WL 1577771, at *2 (S.D. Fla. May 31, 2007) (citing *Prewitt Enters., Inc. v. Org. of Petroleum Exporting Countries*, 353 F.3d 916, 921, 927 (11th Cir. 2003)).

For the following reasons, the Court finds that alternative service of process under Rule 4(f)(3) is warranted. First, the Hague Convention does not specifically preclude e-mail and publication service. Where a signatory nation has objected to the alternative means of service provided by the Hague Convention, that objection is expressly limited to those means and does not represent an objection to other forms of service, such e-mail or publication. *Star Med. Devices, Inc. v. HTL-Strefa, Inc.*, Case No. 15-cv-20590-FAM, 2015 U.S. Dist. LEXIS 122000 (S.D. Fla. Sept. 14, 2015) (noting that an objection to the alternative forms of service set forth in the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 658 U.N.T.S. 16, is limited to the specific forms of service objected to). A court acting under Rule 4(f)(3) therefore remains free to order alternative means of service where a signatory nation has not expressly objected to those means. *See Gurung v. Malhotra*, 279 F.R.D. 215, 219 (S.D.N.Y. 2011). Accordingly, the requested service methods are not prohibited by international agreement.

Second, Defendants have at least one known and operational email, and Plaintiffs have created a website for the sole purpose of providing notice of this action to Defendants, a link to which will be provided to Defendants’ known email accounts. Therefore, service via email and through website publication is “reasonably calculated, under all circumstances, to apprise

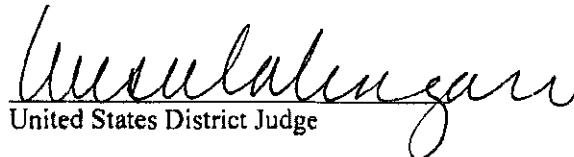
[Defendants] of the pendency of the action and afford them an opportunity to present their objections.” See *Brookshire Brothers, Ltd.*, 2007 WL 1577771, at *1. Thus, the Court will exercise its discretion to allow service on the Defendants through email and website publication.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The Motion is hereby **GRANTED**;
2. Pursuant to Rule 4(f)(3), Plaintiffs are permitted to serve the Summonses, Complaint, and all subsequent pleadings, filings, and discovery upon each Defendant via:

- a. e-mail provided by each Defendant as part of the data related to its e-commerce store, including customer service e-mail addresses and onsite contact forms, or via the e-commerce platform email for each of the e-commerce stores. See Schedule “A” attached to the Motion, which lists Defendants’ Seller IDs and associated e-mails; **and**
- b. via publication by posting copies of the Summonses, Complaint, and all current and subsequent pleadings, filings, and discovery on Plaintiffs’ Internet website appearing at <http://servingnotice.com/anu975/index.html>.

DONE AND ORDERED in Chambers in Fort Lauderdale, Broward County, Florida,
this 28th day of Mar, 2018.


United States District Judge

Copies provided to:

Counsel of Record

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

Case No. 18-cv-60656-UU

APPLE CORPS LIMITED, *et al.*,

Plaintiffs,

v.

3 W STORE, *et al.*,

Defendants.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

THIS CAUSE comes before the Court upon the Report and Recommendation, issued by Magistrate Judge Patrick M. Hunt on April 11, 2018 (D.E. 26). Judge Hunt recommended that Plaintiffs' Motion for Preliminary Injunction (D.E.6) be granted.

The Parties' objections to the Report were due by April 25, 2018, (D.E. 25) and no party has filed objections. *See LoConte v. Dugger*, 847 F.2d 145 (11th Cir. 1988), *cert. denied*, 488 U.S. 958 (1988) (holding that failure to file timely objections bars the parties from attacking factual findings on appeal). The matter is thus ripe for disposition.

THIS COURT has made a *de novo* review of the entire file and record herein, and, being otherwise fully advised in the premises, it is hereby

ORDERED and ADJUDGED that the Magistrate Judge's Report and Recommendation, (D.E. 26), is RATIFIED, AFFIRMED and ADOPTED. It is further

ORDERED AND ADJUDGED that Plaintiffs' Motion for Preliminary Injunction (D.E. 6) is GRANTED pursuant to the terms set forth in the Report and Recommendation.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION**

Case No.: 18-cv-60656-UNGARO/HUNT

APPLE CORPS LIMITED and
SUBAFILMS LIMITED,

Plaintiffs,

vs.

3W STORE, *et al*,

Defendants.

REPORT AND RECOMMENDATION
ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

THIS CAUSE is before this Court upon Plaintiffs' Apple Corps Limited and Subafilms Limited's Motion for Preliminary Injunction, ("Motion for Preliminary Injunction"), ECF No. 6, against Defendants¹ pursuant to 15 U.S.C. § 1116 and Fed. R. Civ. P. 65, and The All Writs Act, 28 U.S.C. § 1651(a), for alleged violations of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a). The Honorable Ursula Ungaro, United States District Judge, referred the Motion for Preliminary Injunction to the undersigned. ECF No. 9; *see also* 28 U.S.C. § 636(b); S.D. Fla. Mag. R. 1. The undersigned has carefully reviewed the pleadings, the record in this case, the applicable law and is otherwise fully advised in the premises.

The undersigned held a hearing on April 11, 2018, at which only counsel for Plaintiffs was present and available to present evidence supporting the Motion for Preliminary Injunction. Defendants have not responded to the Motion for Preliminary

¹ Defendants are the Individuals, Partnerships and Unincorporated Associations identified on Schedule "A" hereto.

Injunction, nor made any filing in this case, nor have the Defendants appeared in this matter either individually or through counsel. For the reasons more fully discussed below, the undersigned respectfully RECOMMENDS that Plaintiffs' Motion for Preliminary Injunction be GRANTED.

I. FACTUAL BACKGROUND²

The Plaintiff, Apple Corps Limited, is the owner of the following trademarks which are valid and registered on the Principal Register of the United States Patent and Trademark Office (collectively, the "BEATLES Marks").

Trademark	Registration Number	Registration Date	Class(es) / Good(s)
THE BEATLES	1,752,120	February 16, 1993	IC 014 – Watches. IC 018 - Wallets. IC 025 - Headwear, sweatshirts, t-shirts, shirts.

² This factual background is taken from Plaintiffs' Complaint, ECF No. 1, Plaintiffs' Motion for Preliminary Injunction, ECF No. 6, and supporting evidentiary submissions. Plaintiffs filed declarations and exhibits annexed thereto in support of their Application for Temporary Restraining Order. The declarations are available in the docket at the following entries: Declaration of Paul Cole, ECF No. 6-6, Declaration of Stephen M. Gaffigan, ECF No. 6-13, Declaration of Eric Rosaler, ECF No. 6-2 and Declaration of Kathleen Burns, ECF No. 6-7.

<p>BEATLES</p>	<p>4,373,956</p>	<p>July 30, 2013</p>	<p>IC 009 - Telephone apparatus, namely, telephones; telephone receivers, telephone answering machines, mobile telephones; cases for mobile telephones; cell phone covers; covers for mobile telephones, namely, fitted plastic films known as skins for covering and protecting electronic apparatus in the nature of mobile telephones; straps for mobile telephones; telephone call indicator lights and electro-mechanical shakers for detecting and signaling incoming telephone calls; mechanical and electric egg timers; boxes and cases specially adapted for holding audio cassettes, video cassettes, gramophone records, audio compact discs, audio mini discs, video discs, and interactive compact discs or cd-roms.</p> <p>IC 014 - Jewelry boxes not of metal, including ceramic and porcelain jewelry boxes for trinkets; jewelry; horological and chronometric instruments, namely, watches and clocks; watch straps, cuff links, brooches, bracelets, bangles, earrings, pendants, medallions, trinkets being jewelry, charms being jewelry, rings being jewelry, tie pins, jewelers ornamental tie pins, lapel pins, tie clips, collectible non-monetary coins, ornamental pins; articles of precious metal and their alloys, and articles coated with precious metal and their alloys, namely, belt buckles for clothing, coasters, jewelry boxes, key rings, key chains; hat and shoe ornaments and key fobs all of precious</p>
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		<p>metal; rings being jewelry; ornamental pins; cigarette and cigar cases; precious stones; semi-precious stones; statuettes and figurines of precious metal or precious stone or coated therewith; scale model vehicles, ships or submarines all made from, or coated with precious metal or precious stone.</p> <p>IC 018 - Goods made from leather or imitation leather, namely, waist pouches for carrying purses and wallets; luggage, carry on traveling bags, clutch bags, trunks, business card cases, rucksacks, backpacks, purses, wallets, key cases, luggage tags; billfolds, leather key fobs, key cases, umbrellas; bags, namely, handbags, shoulder bags, all purpose sports bags, barrel bags, carry-on flight bags, and duffel bags, suitcases, attaché cases, school bags, satchels, gym bags, beach bags and credit card cases; hand carry overnight cases of metal, plastic or resin; tote bags, including metal totes; textile shopping bags; identity card holders of leather and imitations of leather.</p> <p>IC 024 - Decorative window curtains of wood, reed, bamboo, beads or plastic; household linen; bed linen; bedspreads; table linen; table cloths not of paper; table mats not of paper; textile table napkins; coasters made of table linen or textile; unfitted fabric furniture covers; bed sheets, pillow cases, duvet covers; towels; face towels; face washing cloths; curtains; wall hanging of textile; cloth banners;</p>
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		<p>cloth bunting; cloth flags; handkerchiefs; cushion covers; pre-cut textiles for making into cushions and cushion covers; traced cloths for embroidery.</p> <p>IC 025 - Footwear and headgear, namely, hats and caps; clothing, namely, shirts, polo shirts, T-shirts, sweatshirts; sweatpants; jackets, coats; pullovers; vests; articles of underclothing, namely, underwear; shorts; scarves; silk pocket squares; neck-ties; braces in the nature of suspenders; belts; socks; long-sleeved shirts and long sleeved T-shirts; silk scarves; silk scarves in the shape of squares for wearing over the head or around the neck; pants; fleece tops; thermal tops; jerseys; baseball jerseys; hockey jerseys; sweaters; tank tops; waistcoats; trousers; golf shirts; golf pants; golf shoes; swim wear; beachwear; night gowns; pajamas; dressing gowns; bathrobes; bathing caps; head bands; slippers; beach shoes; sandals; clothing for toddlers, infants and babies, namely, rompers, shortalls, babies' sleep suits; cloth babies' bibs.</p>
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See ECF No. 6-6 ¶¶ 4-5. The BEATLES Marks are used in connection with the manufacture and distribution of quality goods in the categories identified above. See *id.*

The Plaintiff, Subafilms Limited, is the owner of the following trademark which is valid and registered on the on the Principal Register of the United States Patent and Trademark Office (the “YELLOW SUBMARINE Mark”).

Trademark	Registration Number	Registration Date	Class(es) / Good(s)
YELLOW SUBMARINE	3,328,170	November 6, 2007	IC 009 - Telephone apparatus, namely covers for mobile telephones; straps for mobile telephones. IC 025 - Shirts; polo shirts; t-shirts; long-sleeved shirts and long-sleeved t-shirts; sweatshirts; jackets; pullovers; vests; scarves; pocket squares made of silk; neck-ties; hats; caps; sock; thermal tops; jerseys; sweaters; tank tops; pajamas; clothing for toddlers, infants and babies namely, one piece garments for infants and toddlers, sleep suits, t-shirts and long-sleeved t-shirts.

See ECF No. 6-6 ¶¶ 10-11. The YELLOW SUBMARINE Mark is used in connection with the manufacture and distribution of quality goods in the categories identified above. See *id.*

Defendants, by operating e-commerce stores via the Internet marketplace platforms, AliExpress.com, Amazon.com, Bonanza.com, eBay.com, and newegg.com, under their seller identification names identified on Schedule "A" hereto (the "Seller IDs")³, have advertised, promoted, offered for sale, or sold goods bearing what Plaintiffs

³ Defendant Numbers 1-3 operate their e-commerce stores via their respective Sellers IDs through the e-commerce marketplace platform AliExpress.com; Defendant Numbers 4-21 operate their e-commerce stores via their respective Sellers IDs through the e-commerce marketplace platform, Amazon.com; Defendant Numbers 22-45 operate their e-commerce stores via their respective Sellers IDs through the e-commerce marketplace platform, Bonanza.com; Defendant Numbers 46-96 operate their e-

have determined to be counterfeits, infringements, reproductions or colorable imitations of the BEATLES Marks and/or the YELLOW SUBMARINE Mark (collectively "Plaintiffs' Marks"). See ECF No. 6-6 ¶¶ 16-21; ECF No. 6-13 ¶ 2; ECF No. 6-2 ¶ 4; ECF No. 6-7 ¶ 4.

Although each Defendant may not copy and infringe Plaintiffs' trademarks for each category of goods protected, Plaintiffs have submitted sufficient evidence showing that each Defendant has infringed, at least, one or more of Plaintiffs' Marks. See ECF No. 6-6 ¶¶ 16-21. Defendants are not now, nor have they ever been, authorized or licensed to use, reproduce, or make counterfeits, reproductions, or colorable imitations of Plaintiffs' Marks. See *id.* ¶¶ 16, 18-21, 24.

Plaintiffs' counsel retained AED Investigations, Inc. ("AED"), and Invisible Inc. ("Invisible"), both licensed private investigative firms, to investigate the promotion and sale of counterfeit and infringing versions of Plaintiffs' branded products by Defendants. See ECF No. 6-6 ¶ 17; ECF No. 6-2 ¶ 3; ECF No. 6-7 ¶ 3; ECF No. 6-13 ¶ 2. Through AliExpress.com, Amazon.com, Bonanza.com, eBay.com and newegg.com, AED and Invisible collectively accessed the Internet based e-commerce stores operating under the Seller IDs and placed orders from each Seller ID for the purchase of various products, all bearing counterfeits of, at least, one of Plaintiffs' trademarks at issue in this action, and requested each product to be shipped to one of their addresses in the Southern District of Florida.⁴ See ECF No. 6-2. ¶ 4; ECF No. 6-7 ¶ 4. Each order was

commerce stores via their respective Sellers IDs through the e-commerce marketplace platform, e-Bay.com; and Defendant Numbers 97-98 operate their e-commerce stores via their respective Sellers IDs through the e-commerce marketplace platform, newegg.com.

⁴ Although the product checkout page for Defendant Number 38 reflects multiple cushion covers marked numerically from 1-16, the actual cushion cover AED purchased

processed entirely online, and following the submission of the orders, AED and Invisible received information for finalizing payment for the various products ordered via Alibaba.com Hong Kong Limited, which operates the AliExpress.com platform (i.e., "AliExpress"), and its related companies, Zhejiang Ant Small and Micro Financial Services Group Co., Ltd., Alipay (China) Internet Technology Co. Ltd., and Alipay.com Co., Ltd. (collectively referred to as "Alipay"),⁵ Amazon Payments, Inc.,⁶ or PayPal, Inc. ("PayPal") to Defendants' respective PayPal accounts. See *id.* At the conclusion of the process, the detailed web page captures and images of Plaintiffs' branded products ordered via Defendants' Seller IDs were sent to Plaintiffs' representative for inspection. See ECF No. 6-6 ¶ 18; ECF No. 6-13 ¶ 2.

Plaintiffs' representative reviewed and visually inspected the detailed web page captures and images reflecting Plaintiffs' branded products AED and Invisible ordered from Defendants through the Internet based e-commerce stores operating under their respective Seller IDs, and determined the products were not genuine versions of Plaintiffs' goods. See ECF No. 6-6 ¶¶ 18-21.

is identified as Number 1. See ECF No. 6-2 ¶ 4, n.1. Additionally, although the product checkout pages for Defendant Numbers 55 and 72 reflect multiple phone covers, the actual phone covers Invisible purchased are identified as "Pattern Number: Beatles." See ECF No. 6-7 ¶ 4, n.1.

⁵ Worldpay US, Inc. ("Worldpay") processes transactions on behalf of Alibaba and Alipay, which may appear as "Aliexpress" on a cardholder's credit card statement. See ECF No. 6-13 ¶ 4.

⁶ Amazon is an e-commerce marketplace that allows Defendants to conduct their commercial transactions privately via Amazon's payment processing and retention service, Amazon Payments, Inc. As such, Defendants' payment information is not publicly disclosed. However, because Amazon also operates as a money transmitter for sales made on Amazon, it has the ability to identify, and restrain, the payment accounts associated with each Defendant. See ECF No. 6-13 ¶ 5.

On March 27, 2018, Plaintiffs filed their *Ex Parte* Application for Entry of Temporary Restraining Order, Preliminary Injunction, and Order Restraining Transfer of Assets. ECF No. 6. On March 28, 2018, the Court entered a Sealed Order Granting *Ex Parte* Application for Entry of Temporary Restraining Order, ECF No. 11, and temporarily restrained Defendants from infringing Plaintiffs' Marks at issue. The Temporary Restraining Order also directed AliPay, Amazon Payments, Inc. and PayPal to identify and restrain funds in payment accounts associated with Defendants and to divert those funds to a holding account. Pursuant to the March 28, 2018 Order, Plaintiffs properly served each Defendant with a copy of the *Ex Parte* Application for Entry of Temporary Restraining Order, Preliminary Injunction, and Order Restraining Transfer of Assets, the Court's March 28, 2018 Order, and all filings in this matter. Thereafter, Plaintiffs filed certificates of service confirming service on Defendants. ECF Nos. 21-23.

II. LEGAL STANDARD

To obtain a preliminary injunction, a party must demonstrate "(1) [there is] a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that the entry of the relief would serve the public interest." *Schiavo ex. rel Schindler v. Schiavo*, 403 F.3d 1223, 1225–26 (11th Cir. 2005); *see also Levi Strauss & Co. v. Sunrise Int'l. Trading Inc.*, 51 F. 3d 982, 985 (11th Cir. 1995) (applying the test to a preliminary injunction in a Lanham Act case).

III. ANALYSIS

The declarations Plaintiffs submitted in support of their Motion for Preliminary Injunction support the following conclusions of law:

A. Plaintiffs have a very strong probability of proving at trial that consumers are likely to be confused by the Defendants' advertisement, promotion, sale, offer for sale, or distribution of goods bearing counterfeits, reproductions, or colorable imitations of Plaintiffs Marks, and that the products Defendants are selling and promoting are copies of Plaintiffs' products that bear copies of Plaintiffs' Marks.

B. Because of the infringement of Plaintiffs' Marks, Plaintiffs are likely to suffer immediate and irreparable injury if a preliminary injunction is not granted. The following specific facts, as set forth in Plaintiffs' Complaint, Motion for Preliminary Injunction, and accompanying declarations demonstrate that immediate and irreparable loss, damage, and injury will result to the Plaintiffs and to consumers because it is more likely than not that:

1. The Defendants own or control e-commerce stores via Internet marketplace platforms operating under their seller identification names which advertise, promote, offer for sale, and sell products bearing counterfeit and infringing trademarks in violation of Plaintiffs' rights; and

2. There is good cause to believe that more counterfeit and infringing products bearing Plaintiffs' trademarks will appear in the marketplace; that consumers are likely to be misled, confused, and disappointed by the quality of these products; and that Plaintiffs may suffer loss of sales for their genuine products.

C. The balance of potential harm to Defendants in restraining their trade in counterfeit and infringing branded products if a preliminary injunction is issued is far outweighed by the potential harm to Plaintiffs, their reputations and goodwill as manufacturers and distributors of quality products, if such relief is not issued.

D. The public interest favors issuance of the preliminary injunction to protect Plaintiffs' trademark interests and protect the public from being defrauded by the palming off of counterfeit products as Plaintiffs' genuine products.

IV. RECOMMENDATION

For the foregoing reasons, the undersigned respectfully RECOMMENDS that Plaintiffs' Motion for Preliminary Injunction, ECF No. 6, be GRANTED as follows:

(1) Each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order are hereby restrained and enjoined until further order of this Court:

- a. From manufacturing, importing, advertising, promoting, offering to sell, selling, distributing, or transferring any products bearing Plaintiffs' Marks, or any confusingly similar trademarks, other than those actually manufactured or distributed by the Plaintiffs; and
- b. From secreting, concealing, destroying, selling off, transferring, or otherwise disposing of: (i) any products, not manufactured or distributed by Plaintiffs, bearing Plaintiffs' Marks, or any confusingly similar trademarks; or (ii) any evidence relating to the manufacture, importation, sale, offer for sale, distribution, or transfer of any products bearing Plaintiffs' Marks, or any confusingly similar trademarks.

(2) Each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order shall immediately discontinue, until further order of this Court, the use of Plaintiffs' Marks or any confusingly similar trademarks, on or in connection with all Internet based e-commerce stores owned and operated, or controlled by them including the Internet based e-commerce stores operating under the Seller IDs;

(3) Each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order shall immediately discontinue, until further order of this Court, the

use of Plaintiffs' Marks, or any confusingly similar trademarks within metatags or other markers within website source code, from use on any web page (including as the title of any web page), from any advertising links to other websites, from search engines' databases or cache memory, and any other form of use of such terms which are visible to a computer user or serves to direct computer searches to Internet based e-commerce stores registered, owned, or operated by each Defendant, including the Internet based e-commerce stores operating under the Seller IDs;

(4) Each Defendant shall not transfer ownership of the Internet based e-commerce stores under their Seller IDs during the pendency of this Action, or until further order of the Court;

(5) Each Defendant shall continue to preserve copies of all computer files relating to the use of any of the Internet based e-commerce stores website businesses under their Seller IDs and shall take all steps necessary to retrieve computer files relating to the use of the Internet based e-commerce stores under their Seller IDs that may have been deleted before the entry of this Order;

(6) Upon Plaintiffs' request, any Internet marketplace website operators and/or administrators who are provided with notice of the injunction, shall, to the extent not already done, immediately cease facilitating access during the pendency of this action, to any and all listings and associated images of the products bearing counterfeits and/or infringements of Plaintiffs' Marks used by the Defendants via the e-commerce stores operating under their respective Seller IDs;

(7) Upon receipt of notice of this Order, all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to, Alibaba.com Hong Kong Limited, which operates the

AliExpress.com platform ("AliExpress"), Zhejiang Ant Small and Micro Financial Services Group Co., Ltd. ("Ant Financial Services"), Alipay (China) Internet Technology Co. Ltd. and Alipay.com Co., Ltd. (collectively, "Alipay"), Worldpay US, Inc. ("Worldpay"), Amazon Payments, Inc. ("Amazon"),⁷ and PayPal, Inc. ("PayPal")⁸, and their related companies and affiliates shall, to the extent not already done, (i) immediately identify all financial accounts and/or sub-accounts associated with the Internet based e-commerce stores operating under the Seller IDs and/or the e-mail addresses identified on Schedule "A" hereto, as well as any other related accounts of the same customer(s); (ii) identify all other accounts which transfer funds into the exact same financial institution account(s) or any of the other financial accounts subject to this Order; and (iii) restrain the transfer of all funds, as opposed to ongoing account activity, held or received for their benefit or to be transferred into their respective financial accounts, and any other financial accounts tied thereto; and (iv) immediately divert those restrained funds to a holding account for the trust of the Court;

(8) Upon receipt of notice of this Order, all financial institutions, payment processors, bank, escrow services, money transmitters, or marketplace platforms receiving notice of this Order, including but not limited to, AliExpress, Ant Financial Services, Alipay, Worldpay, Amazon, PayPal, and their related companies and affiliates, shall further, to the extent not already done, within five business days of receiving this Order, provide Plaintiffs' counsel with all data that details (i) an accounting of the

⁷ Amazon is licensed to do business in the State of Florida by the Florida Office of the Controller and is therefore subject to personal jurisdiction in this Court. See ECF No. 6-13 ¶ 5.

⁸ PayPal is licensed to do business in the State of Florida by the Florida Office of the Controller and is therefore subject to personal jurisdiction in this Court. See ECF No. 6-13 ¶ 6.

total funds restrained and identifies the financial account(s) and sub-account(s) which the restrained funds are related to, and (ii) the account transactions related to all funds transmitted into the financial account(s) and sub-account(s) which have been restrained. No funds restrained by this Order shall be transferred or surrendered by any financial institution, payment processor, bank, escrow service, money transmitter, or marketplace website, including but not limited to, AliExpress, Ant Financial Services, Alipay, Worldpay, Amazon, PayPal, and their related companies and affiliates for any purpose (other than pursuant to a chargeback made pursuant to their security interest in the funds) without the express authorization of this Court;

(9) This Order shall apply to the Seller IDs, associated e-commerce stores, and any other seller identification names, e-commerce stores, or financial accounts which are being used by the Defendants for the purpose of counterfeiting Plaintiffs' Marks at issue in this action and/or unfairly competing with the Plaintiffs;

(10) Any Defendant or financial institution account holder subject to this Order may petition the Court to modify the asset restraint set out in this Order;

(11) Pursuant to 15 U.S.C. § 1116(d)(5)(D) and Federal Rule of Civil Procedure 65(c), Plaintiffs shall maintain their previously posted bond in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00), as payment of damages to which the Defendants may be entitled for a wrongful injunction or restraint, during the pendency of this action, or until further order of the Court. In the Court's discretion, the bond may be subject to increase should an application be made in the interest of justice;

(12) Additionally, for the purpose of providing additional notice of this proceeding, and all other pleadings, orders, and documents filed herein, the owners,

operators and/or administrators of the Internet marketplace websites, financial institutions, payment processors, banks, escrow services, and money transmitters, including but not limited to AliExpress.com, Amazon.com, Bonanza.com, eBay.com, newegg.com, AliExpress, Ant Financial Services, Alipay, Worldpay, Amazon or PayPal, and their related companies shall, to the extent not already done, at Plaintiffs' request, provide Plaintiffs' counsel with any e-mail address known to be associated with the Defendants' respective Seller IDs; and

(13) This Order shall remain in effect during the pendency of this action, or until such further dates as set by the Court or stipulated by the parties;

Within fourteen days after being served with a copy of this Report and Recommendation, any Party may serve and file written objections to any of the above findings and recommendations as provided by the Local Rules for this district. 28 U.S.C. § 636(b)(1); S.D. Fla. Mag. R. 4(b). The Parties are hereby notified that a failure to timely object waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions contained in this Report and Recommendation. 11th Cir. R. 3-1 (2016); see *Thomas v. Arn*, 474 U.S. 140 (1985).

DONE AND SUBMITTED at Fort Lauderdale, Florida this 11th day of April, 2018.



PATRICK M. HUNT
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

The Honorable Ursula Ungaro

All counsel of record

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IRON MAIDEN HOLDINGS LTD.,

Plaintiff,

v.

THE PARTNERSHIPS AND UNINCORPORATED
ASSOCIATIONS IDENTIFIED ON SCHEDULE "A",

Defendants.

Case No.: 1:18-cv-522

Judge Jorge L. Alonso

Magistrate Judge Maria Valdez

SEALED TEMPORARY RESTRAINING ORDER

THIS CAUSE being before the Court on Plaintiff, Iron Maiden Holdings Ltd.'s ("IMHL" or "Plaintiff") *Ex Parte* Motion for Entry of a Temporary Restraining Order, Including a Temporary Injunction, a Temporary Transfer of the Defendant Domain Names, a Temporary Asset Restraint, Expedited Discovery, and Service of Process by Email and/or Electronic Publication (the "Ex Parte Motion") against the defendants identified on Schedule A to the Complaint and attached hereto (collectively, the "Defendants") and using at least the domain names identified in Schedule A (the "Defendant Domain Names") and the online marketplace accounts identified in Schedule A (the "Online Marketplace Accounts"), and this Court having heard the evidence before it hereby GRANTS Plaintiff's Ex Parte Motion in its entirety.

This Court further finds that it has personal jurisdiction over the Defendants since the Defendants directly target their business activities toward consumers in the United States, including Illinois, offering to sell and ship products into this Judicial District. Specifically, Defendants are reaching out to do business with Illinois residents by operating one or more commercial, interactive Internet Stores through which Illinois residents can purchase products

bearing counterfeit versions of the IRON MAIDEN Trademarks, IRON MAIDEN trademarks, which are covered by U.S. Trademark Registration Nos. 4,848,431; 3,840,031; 1,307,146; 1,306,972 and 1,308,370; and U.S. Trademark Serial No. 87/135,379.

This Court also finds that issuing this Order without notice pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure is appropriate because Plaintiff has presented specific facts in the Declaration of Paul Varley paragraphs 13-24, and the Declaration of Keith A. Vogt, paragraphs 5-11, and accompanying evidence clearly showing that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition. Specifically, in the absence of an *ex parte* Order, Defendants could and likely would modify registration data and content, change hosts, redirect traffic to other websites in their control, and move any assets from accounts in U.S.-based financial institutions, including PayPal accounts, to offshore accounts. *Id.* As other courts have recognized, proceedings against those who deliberately traffic in counterfeit merchandise are often useless if notice is given to the adverse party. Accordingly, this Court orders that:

1. Defendants, their affiliates, officers, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through, under or in active concert with them be temporarily enjoined and restrained from:

- a. using Plaintiff's IRON MAIDEN Trademarks or any reproductions, counterfeit copies or colorable imitations thereof in any manner in connection with the distribution, marketing, advertising, offering for sale, or sale of any product that is not a genuine IRON MAIDEN product or not authorized by Plaintiff to be sold in connection with Plaintiff's IRON MAIDEN Trademarks;

- b. passing off, inducing, or enabling others to sell or pass off any product as a genuine IRON MAIDEN product or any other product produced by Plaintiff, that is not Plaintiff's or not produced under the authorization, control or supervision of Plaintiff and approved by Plaintiff for sale under Plaintiff's IRON MAIDEN Trademarks;
- c. committing any acts calculated to cause consumers to believe that Defendants' products are those sold under the authorization, control or supervision of Plaintiff, or are sponsored by, approved by, or otherwise connected with Plaintiff;
- d. further infringing Plaintiff's IRON MAIDEN Trademarks and damaging Plaintiff's goodwill;
- e. otherwise competing unfairly with Plaintiff in any manner;
- f. shipping, delivering, holding for sale, transferring or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner, products or inventory not manufactured by or for Plaintiff, nor authorized by Plaintiff to be sold or offered for sale, and which bear any of Plaintiff's IRON MAIDEN Trademarks or any reproductions, counterfeit copies or colorable imitations thereof;
- g. using, linking to, transferring, selling, exercising control over, or otherwise owning the Online Marketplace Accounts, the Defendant Domain Names, or any other domain name or online marketplace account that is being used to sell or is the means by which Defendants could continue to sell Counterfeit IRON MAIDEN Products; and

for the Defendant Domain Names, and domain name registrars, shall within three (3) business days of receipt of this Order:

- a. disable and cease providing services for any accounts through which Defendants engage in the sale of counterfeit and infringing goods using the IRON MAIDEN Trademarks, including any accounts associated with the Defendants listed on Schedule A;
- b. disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of counterfeit and infringing goods using the IRON MAIDEN Trademarks; and
- c. take all steps necessary to prevent links to the Defendant Domain Names identified on Schedule A from displaying in search results, including, but not limited to, removing links to the Defendant Domain Names from any search index.

5. Defendants and any third party with actual notice of this Order who is providing services for any of the Defendants, or in connection with any of Defendants' websites at the Defendant Domain Names or other websites operated by Defendants, including, without limitation, any online marketplace platforms such as iOffer and Alibaba, advertisers, Facebook, Internet Service Providers ("ISP"), web hosts, back-end service providers, web designers, sponsored search engine or ad-word providers, banks, merchant account providers, including PayPal, Alibaba, Western Union, third party processors and other payment processing service providers, shippers, and domain name registrars (collectively, the "Third Party Providers") shall, within five (5) business days after receipt of such notice, provide to Plaintiff expedited

discovery, including copies of all documents and records in such person's or entity's possession or control relating to:

- a. The identities and locations of Defendants, their agents, servants, employees, confederates, attorneys, and any persons acting in concert or participation with them, including all known contact information;
 - b. the nature of Defendants' operations and all associated sales and financial information, including, without limitation, identifying information associated with the Online Marketplace Accounts, the Defendant Domain Names, and Defendants' financial accounts, as well as providing a full accounting of Defendants' sales and listing history related to their respective Online Marketplace Accounts and Defendant Domain Names;
 - c. Defendants' websites and/or any Online Marketplace Accounts;
 - d. The Defendant Domain Names or any domain name registered by Defendants;
and
 - e. Any financial accounts owned or controlled by Defendants, including their agents, servants, employees, confederates, attorneys, and any persons acting in concert or participation with them, including such accounts residing with or under the control of any banks, savings and loan associations, payment processors or other financial institutions, including, without limitation, PayPal, Alibaba, Western Union, or other merchant account providers, payment providers, third party processors, and credit card associations (e.g., MasterCard and VISA).
6. Defendants and any persons in active concert or participation with them who have

actual notice of this Order shall be temporarily restrained and enjoined from transferring or disposing of any money or other of Defendants' assets until further ordered by this Court.

7. Western Union shall, within two (2) business days of receipt of this Order, block any Western Union money transfers and funds from being received by the Defendants identified in Schedule A until further ordered by this Court.

8. PayPal, Inc. ("PayPal") shall, within two (2) business days of receipt of this Order, for any Defendant or any of Defendants' Online Marketplace Accounts or websites:

- a. Locate all accounts and funds connected to and related to Defendants, Defendants' Online Marketplace Accounts or Defendants' websites, including, but not limited to, any PayPal accounts connected to and related to the information listed in Schedule A hereto and the email addresses identified in Exhibit 2 to the Declaration of Paul Varley; and
- b. Restrain and enjoin any such accounts or funds from transferring or disposing of any money or other of Defendants' assets until further ordered by this Court.

9. Amazon Payments, Inc. ("Amazon") and its related companies and affiliates shall, within two (2) business days of receipt of this Order, identify and restrain all funds, as opposed to ongoing account activity, in or which hereafter are transmitted into the Amazon accounts related to Defendants as identified on Schedule "A" hereto, as well as all funds in or which are transmitted into (i) any other accounts of the same customer(s), (ii) any other accounts which transfer funds into the same financial institution account(s), and/or any of the other Amazon accounts subject to this Order; and (iii) any other Amazon accounts tied to or used by any of the Seller IDs identified on Schedule "A" hereto; Amazon shall further, provide Plaintiff's counsel

with all data which details (i) an accounting of the total funds restrained and identifies the financial account(s) which the restrained funds are related to, and (ii) the account transactions related to all funds transmitted into the financial account(s) which have been restrained. Such restraining of the funds and the disclosure of the related financial institution account information shall be made without notice to the account owners until after those accounts are restrained. No funds restrained by this Order shall be transferred or surrendered by Amazon for any purpose (other than pursuant to a chargeback made pursuant to Amazon's security interest in the funds) without the express authorization of this Court;

10. ALIPAY US, INC. ("ALIPAY") and its related companies and affiliates shall, within two (2) business days of receipt of this Order, identify and restrain all funds, as opposed to ongoing account activity, in or which hereafter are transmitted into the ALIPAY accounts related to Defendants as identified on Schedule "A" hereto, as well as all funds in or which are transmitted into (i) any other accounts of the same customer(s), (ii) any other accounts which transfer funds into the same financial institution account(s), and/or any of the other ALIPAY accounts subject to this Order; and (iii) any other ALIPAY accounts tied to or used by any of the sellers identified on Schedule "A" hereto; ALIPAY shall further, provide Plaintiff's counsel with all data which details (i) an accounting of the total funds restrained and identifies the financial account(s) which the restrained funds are related to, and (ii) the account transactions related to all funds transmitted into the financial account(s) which have been restrained. Such restraining of the funds and the disclosure of the related financial institution account information shall be made without notice to the account owners until after those accounts are restrained. No funds restrained by this Order shall be transferred or surrendered by ALIPAY for any purpose (other

than pursuant to a chargeback made pursuant to ALIPAY's security interest in the funds) without the express authorization of this Court;

11. ContextLogic, Inc. ("WISH") and its related companies and affiliates shall, within two (2) business days of receipt of this Order, identify and restrain all funds, as opposed to ongoing account activity, in or which hereafter are transmitted into the WISH accounts related to Defendants as identified on Schedule "A" hereto, as well as all funds in or which are transmitted into (i) any other accounts of the same customer(s), (ii) any other accounts which transfer funds into the same financial institution account(s), and/or any of the other WISH accounts subject to this Order; and (iii) any other WISH accounts tied to or used by any of the sellers identified on Schedule "A" hereto; WISH shall further, provide Plaintiff's counsel with all data which details (i) an accounting of the total funds restrained and identifies the financial account(s) which the restrained funds are related to, and (ii) the account transactions related to all funds transmitted into the financial account(s) which have been restrained. Such restraining of the funds and the disclosure of the related financial institution account information shall be made without notice to the account owners until after those accounts are restrained. No funds restrained by this Order shall be transferred or surrendered by WISH for any purpose (other than pursuant to a chargeback made pursuant to WISH's security interest in the funds) without the express authorization of this Court;

12. Any banks, savings and loan associations, payment processors, or other financial institutions, for any Defendant or any of Defendants' Online Marketplace Accounts or websites, shall within two (2) business days of receipt of this Order:

- a. Locate all accounts and funds connected to Defendants, Defendants' Online Marketplace Accounts or Defendants' websites, including, but

not limited to, any accounts connected to the information listed in Schedule A hereto and the email addresses identified in Exhibit 2 to the Declaration of Paul Varley; and

- b. Restrain and enjoin such accounts from receiving, transferring or disposing of any money or other of Defendants' assets until further ordered by this Court.

13. Plaintiff may provide notice of these proceedings to Defendants, including notice of the preliminary injunction hearing and service of process pursuant to Fed.R.Civ.P. 4(f)(3), by electronically publishing a link to the Complaint, this Order and other relevant documents on a website to which the Defendant Domain Names which are transferred to Plaintiff's control will redirect, or by sending an e-mail to the e-mail addresses identified in Exhibit 2 to the Declaration of Paul Varley and any e-mail addresses provided for Defendants by third parties that includes a link to said website. The Clerk of Court is directed to issue a single original summons in the name of "2015idhantz and all other Defendants identified in the Complaint" that shall apply to all Defendants. The combination of providing notice via electronic publication or e-mail, along with any notice that Defendants receive from domain name registrars and payment processors, shall constitute notice reasonably calculated under all circumstances to apprise Defendants of the pendency of the action and afford them the opportunity to present their objections.

14. Plaintiff's Complaint, Schedule A to the Complaint, Exhibit 2 to the Declaration of Paul Varley, and this Order shall remain sealed until Defendants' financial accounts are restrained. Plaintiff shall file unsealed versions of the Complaint, Schedule A to the Complaint, Exhibit 2 to the Declaration of Paul Varley, and this Order using the CM/ECF system prior to the

expiration of this Order. Plaintiff shall deposit with the Court Ten Thousand Dollars (\$10,000.00), either cash, cashier's check or surety bond, as security, which amount was determined adequate for the payment of such damages as any person may be entitled to recover as a result of a wrongful restraint hereunder.

15. Any Defendants that are subject to this Order may appear and move to dissolve or modify the Order on two days' notice to Plaintiff or on shorter notice as set by this Court.

This Temporary Restraining Order without notice is entered at 10:00 a.m. on February 1, 2018, and shall remain in effect for fourteen (14) days.

ENTERED:

2/1/18

A handwritten signature in black ink, appearing to be 'JL Alonso', enclosed within a large, hand-drawn oval.

Jorge L. Alonso
U.S. District Court Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AIRIGAN SOLUTIONS, LLC.,

Plaintiff,

v.

BUFUJIUGAN, *et al.*,

Defendants.

Civil Action No. 18-1330

FILED UNDER SEAL

AMENDED 1) TEMPORARY RESTRAINING ORDER; 2) ORDER RESTRAINING ASSETS AND MERCHANT STOREFRONTS; 3) ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE; AND 4) ORDER AUTHORIZING EXPEDITED DISCOVERY

On this day the Court considered Plaintiff's *Ex Parte* Application for the following: 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts (as defined *infra*); 3) an order to show cause why a preliminary injunction should not issue; and 4) an order authorizing expedited discovery against all of the Defendants identified on the attached **Amended Schedule "A"**, Amazon Services, Inc. and Amazon Payments, Inc. in light of Defendants' intentional and willful offerings for sale and/or sales of Counterfeit Products (as defined *infra*) ("Application") Having reviewed the Application, the Declarations of Margaret B. Tyler, Brian Samuel Malkin, Stanley D. Ference III, and Jennifer Lineberry, along with the exhibits attached thereto and other evidence submitted in support thereof, the Court makes the following findings of fact and conclusions of law:

FACTUAL FINDINGS & CONCLUSION OF LAW

1. Plaintiff is likely to prevail on its Lanham Act claims, patent claims, and related state law claims at trial;

2. As a result of Defendants' infringements, Plaintiff as well as consumers are likely to suffer immediate and irreparable losses, damages and injuries before Defendants can be heard in opposition, unless Plaintiff's Application for *ex parte* relief is granted:

- a. Defendants have offered for sale and sold substandard products bearing or using Plaintiff's registered trademark (*i.e.*, U.S. Trademark Reg. No. 5,142,630 for the wordmark "NEGG") and/or that use packaging that bears and/or is used in connection with marks and/or trade dress (hereinafter referred to as the "NEGG Marks) that is confusing or substantially similar to Plaintiff's authentic products sold using the NEGG Marks ("NEGG Products") and/or that infringe at least Claim 1 of Plaintiff's U.S. Patent No. 9,968,211 entitled "PERSONAL EGG PEELER" (hereinafter referred to as "the '211 patent") (collectively referred to as, "Counterfeit Product(s)" or "Infringing Product(s)") that overall infringe the NEGG Marks and/or at least Claim 1 of the '211 patent through accounts with the online marketplace platform Amazon.com, by Defendants ("User Account¹(s)");
- b. Plaintiff has well-founded fears that more Counterfeit Products will appear in the marketplace; that consumers may be misled, confused and disappointed by the quality of these Counterfeit Products, resulting in injury to Plaintiff's reputation and goodwill; and that Plaintiff may suffer loss of sales for its NEGG Products; and
- c. Plaintiff has well-founded fears that if it proceeds on notice to Defendants on this Application, Defendants will: (i) secret, conceal, destroy, alter, sell-off, transfer or otherwise dispose of or deal with Counterfeit Products or other goods that infringe the

¹ As defined in the Application, a "User Account" is, as defined in the Complaint, any and all accounts with online marketplace platforms Amazon.com, as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendants, their respective officers, employees, agents, servants and all other persons in active concert with any of them.

NEGG Marks and/or at least Claim 1 of the '211 patent, the means of obtaining or manufacturing such Counterfeit Products, and records relating thereto are in their possession or under their control, (ii) inform their suppliers and others of Plaintiff's claims with the result being that those suppliers and others may also secret, conceal, sell-off or otherwise dispose of Counterfeit Products or other goods infringing the NEGG Marks and/or at least Claim 1 of the '211 patent, the means of obtaining or manufacturing such Counterfeit Products, and records relating thereto that are in their possession or under their control, (iii) secret, transfer or otherwise dispose of their ill-gotten proceeds from their sales of Counterfeit Products or other goods infringing NEGG Marks and/or at least Claim 1 of the '211 patent and records relating thereto that are in their possession or under their control and/or (iv) open new User Accounts through which Defendants, import, export, advertise, market, promote, distribute, offer for sale, sell and/or otherwise deal in products, including Counterfeit Products ("Merchant Storefront(s)²") under new or different names and to continue to offer for sale and sell Counterfeit Products with little to no consequence;

3. The balance of potential harm to Defendants of being prevented from continuing to profit from their illegal and infringing activities if a temporary restraining order is issued is far outweighed by the potential harm to Plaintiff, its business, the goodwill and reputation built up in and associated with the NEGG Marks and to its reputation if a temporary restraining order is not

² As defined in the Application, a "Merchant Storefront" is any and all User Accounts through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them operate storefronts to manufacture, import, export, advertise, market, promote, distribute, display, offer for sale, sell and/or otherwise deal in products, including Counterfeit Products, which are held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them.

issued; in the absence of a temporary restraining order Plaintiff would be forced to compete against its own patented invention, a situation that places a substantial hardship on a patentee;

4. Public interest favors issuance of the temporary restraining order in order to protect Plaintiff's interests in and to its NEGG Marks and its patented invention and to protect the public from being deceived and defrauded by Defendants' passing off of their substandard Counterfeit products as NEGG Products.

5. Plaintiff has not publicized its request for a temporary restraining order in any way.

6. Service on Defendants via electronic means is reasonably calculated to result in proper notice to Defendants.

7. This Court has the inherent authority to issue a prejudgment asset restraint when plaintiff's complaint seeks relief in equity. In addition, Plaintiff has shown a strong likelihood of succeeding on the merits of its trademark infringement and counterfeiting claim, so according to the Lanham Act 15 U.S.C. § 1117(a)(1), Plaintiff is entitled, "subject to the principles of equity, to recover ... defendant's profits." Plaintiff seeks, among other relief, that Defendants account for and pay to Plaintiff all profits realized by Defendants by reason of Defendants' unlawful acts. Therefore, this Court has the inherent equitable authority to grant Plaintiff's request for a prejudgment asset freeze to preserve the relief sought by Plaintiff.

8. If Defendants are given notice of the Application, they are likely to secret, conceal, transfer or otherwise dispose of their ill-gotten proceeds from their sales of Counterfeit Products or other goods infringing the NEGG Marks and at least Claim 1 of the '211 patent. Therefore, good cause exists for granting Plaintiff's request for an asset restraining order. It typically takes Financial Institutions a minimum of five (5) days to locate, attach and freeze

Defendants' Assets (as defined *infra*) and/or Defendants' Financial Accounts (as defined *infra*) and it is not unusual for the Third Party Service Provider (as defined *infra*) operating the online marketplaces a minimum of two (2) weeks to freeze Defendants' Merchant Storefronts. As such, the Court allows enough time for Plaintiff to serve the Financial Institutions and the Third Party Service Provider with this Order and for the Financial Institutions and/or the Third Party Service Provider to comply with the Paragraphs I(B)(1) through I(B)(2) and I(C)(1) of this Order, respectively, before requiring service on Defendants.

9. Similarly, if Defendants are given notice of the Application, they are likely to destroy, move, hide or otherwise make inaccessible to Plaintiff the records and documents relating to Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or sale of Counterfeit Products. Therefore, Plaintiff has good cause to be granted expedited discovery.

ORDER

Based on the foregoing findings of fact and conclusions of law, Plaintiff's Application is hereby **GRANTED** as follows (the "Order"):

I. Temporary Restraining Order

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, that each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order are hereby restrained as follows:

- (1) from manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Counterfeit Products;
- (2) from secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with: (i) Counterfeit Products and/or (ii) any computer files, data, business records, documents or any other records or evidence relating to their User Accounts, Merchant Storefronts or any money, securities or other property or assets of Defendants (hereinafter collectively referred to as “Defendants’ Assets”) and the manufacture, importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products;
- (3) effecting assignments or transfers, forming new entities or associations, or creating and/or utilizing any other platform, User Account, Merchant Storefront or any other means of importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products for the purposes of circumventing or otherwise avoiding the prohibitions set forth in this Order;
- (4) each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order shall immediately discontinue use of any marks that are confusingly similar with the Plaintiff’s NEGG ® trademark, within metatags or other markers within website source code, from use on any web page (including as the title of any product listing), from any advertising links to other websites offering Counterfeit Products for sale, from search engines’ databases or cache memory, and any other form of use such that the NEGG ® trademark or a confusingly similar mark are visible to a computer user or

serves to direct computer searches to a Merchant Storefront registered, owned, or operated by each Defendant, including the Merchant Storefronts operating under the Seller IDs;

- (5) each Defendant shall not transfer ownership of the User Accounts or Merchant Storefronts associated with the Seller IDs;
- (6) each Defendant shall preserve copies of all computer files relating to the use of any User Accounts and/or Merchant Storefronts under the Seller IDs and shall take steps necessary to retrieve computer files relating to the use of the User Accounts and/or Merchant Storefronts under their Seller IDs that may be deleted before the entry of this Order;
- (7) upon receipt of the notice of this Order, Amazon Payments, Inc. (“Amazon”), and its related companies and affiliates, shall immediately identify and restrain all funds, as opposed to ongoing account activity, in the Amazon accounts related to the Defendants as identified on Amended Schedule “A” hereto, as well as all funds in or which are transmitted into (i) any other accounts of the same customer(s); (ii) any other accounts which transfer funds into the same financial institution account(s), and/or any of the other Amazon accounts subject to this Order; and (iii) any other Amazon accounts tied to or used by any of the Seller IDs identified on Amended Schedule “A” hereto;
- (8) Amazon shall immediately divert to a holding account for the trust of the Court all funds in all Amazon accounts related to Defendants identified in Amended Schedule “A” hereto, and associated payment accounts, and any other accounts for the same customer(s) as well as any other accounts which transfer funds into the same financial institution account(s) as any other Amazon accounts subject to this Order;

(9) Amazon shall further, within five (5) business days of receiving this Order, provide Plaintiff's counsel with all data that details (i) an accounting of the total funds restrained and identifies the financial account(s) which the restrained funds are related to, and (ii) the account transactions related to all funds transmitted into financial account(s) which have been restrained. Such restraining of the funds and the disclosure of the related financial institution account information shall be made without notice to the account holders, until after those accounts are restrained. No funds restrained by this Order shall be transferred or surrendered by Amazon for any purpose (other than pursuant to a chargeback made pursuant to Amazon's security interest in the funds) without express authorization of this Court;

(10) this Order shall apply to the Seller IDs, associated Accounts and Merchant Storefronts, and any other seller identification names, Accounts or Merchant Storefronts, or Amazon accounts which are being used by Defendants for the purpose of counterfeiting the NEGG products at issue in this action and/or unfairly competing with Plaintiff;

(11) Amazon or any Defendant or financial institution account holder subject to this Order may petition the Court to modify the asset restraint set out in this Order;

(12) this Order shall remain in effect until the date for the hearing to show cause why a preliminary injunction should not be issued as set forth below, or until such further dates as set by the Court or stipulated by the parties;

B. IT IS HEREBY ORDERED, as sufficient cause has been shown, that Amazon is hereby restrained and enjoined from engaging in any of the following acts or omissions pending the hearing and determination of Plaintiff's Application for a preliminary injunction, or until further order of the Court:

secreting, concealing, transferring, disposing of, withdrawing, encumbering or paying Defendants' Assets from or to financial accounts associated with or utilized by any Defendant or any Defendant's User Accounts or Merchant Storefront(s) (whether said account is located in the U.S. or abroad) ("Defendants' Financial Accounts") until further ordered by this Court;

C. IT IS HEREBY ORDERED, as sufficient cause has been shown, that Amazon is hereby restrained and enjoined from engaging in any of the following acts or omissions pending the hearing and determination of Plaintiff's Application for a preliminary injunction, or until further order of the Court, within (5) days after receipt of service of this Order:

- (1) providing services to Defendants, Defendants' User Accounts and Defendants' Merchant Storefronts, including, without limitation, continued operation of Defendants' User Accounts and Merchant Storefronts;
- (2) processing payments for any products listed under the following Amazon Standard Identification Numbers (ASINs): B01N7SXX0W (black NEGG[®]), B01MT9U0HK (red NEGG[®]), B01NATZUY2 (white NEGG[®]), and B01N235WK4 (yellow NEGG[®]), by any Seller that has not been authorized by Plaintiff; contemporaneously with the service of this Order, Plaintiff shall provide notice to Amazon of Plaintiff's authorized sellers; and
- (3) Amazon shall place the following Amazon Standard Identification Numbers (ASINs): B01N7SXX0W (black NEGG[®]), B01MT9U0HK (red NEGG[®]), B01NATZUY2 (white NEGG[®]), and B01N235WK4 (yellow NEGG[®]) into Amazon's gating program, so that Plaintiff will be able to control which sellers list product under these ASINs.

**II. Order to Show Cause Why a Preliminary Injunction
Should Not Issue and Order of Notice**

Defendants are hereby ORDERED to show cause before this Court in the United States District Court for the Western District of Pennsylvania, the U.S. Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania in Courtroom No. 5B on the 26th day of November , 2018 at 9:00 a.m., why a preliminary injunction, pursuant to FRCP 65(a), should not issue.

III. Order Authorizing Expedited Discovery

A. IT IS FURTHER ORDERED, as sufficient cause has been shown, that:

- (1) Plaintiff may propound interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and Defendants, their respective officers, employees, agents, servants and attorneys, and all persons in active concert or participation with any of them, who receive actual notice of this Order, shall provide written responses under oath to such interrogatories within fourteen (14) days of service to Plaintiff or Plaintiff's counsel.
- (2) Plaintiff may serve requests for the production of documents pursuant to FRCP 26 and 34, and Defendants, their respective officers, employees, agents, servants and attorneys, and all persons in active concert or participation with any of them, who receive actual notice of this Order, shall produce all documents responsive to such requests within fourteen (14) days of service to Plaintiff's counsel.
- (3) Plaintiff may serve requests for admission to FRCP 26 and 36, and Defendants, their respective officers, employees, agents, servants and attorneys, and all persons in active concert or participation with any of them, who receive actual notice of this

Order, shall provide written responses under oath to such requests within fourteen (14) days of service to Plaintiff or Plaintiff's counsel.

B. IT IS FURTHER ORDERED, as sufficient cause has been shown, that:

Within fourteen (14) days of receiving actual notice of this Order, Amazon shall provide to Plaintiff's counsel all documents and records in their possession, custody or control (whether located in the U.S. or abroad) relating to Defendants' User Accounts and Defendants' Merchant Storefronts, including, but not limited to, documents and records relating to:

- a. any and all User Accounts and Defendants' Merchant Storefronts and account details, including, without limitation, identifying information and account numbers for any and all User Accounts and Defendants' Merchant Storefronts that Defendants have ever had and/or currently maintain with the respective Third Party Service Provider;
- b. the identities, location and contact information, including any and all e-mail addresses of Defendants that were not previously provided;
- c. the Defendants' methods of payment, methods for accepting payment and any and all financial information, including, but not limited to, information associated with Defendants' User Accounts and Defendants' Merchant Storefronts, a full accounting of Defendants' sales history and listing history under such accounts and Defendants' Financial Accounts associated with Defendants' User Accounts and Defendants' Merchant Storefronts; and

- d. Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling of Counterfeit Products, or any other products bearing the NEGG Marks and/or marks that are confusingly similar to, identical to, and constitute an infringement of the NEGG Marks and/or infringed at least claim 1 of the '211 patent.

V. Security Bond

IT IS FURTHER ORDERED that Plaintiff shall place security (corporate surety bond, cash, certified check, or attorney's check) in the amount of \$5,000.00 Dollars (five thousand dollars) with the Court, which amount is determined adequate for the payment of any damages any person may be entitled to recover as a result of an improper or wrongful restraint ordered hereunder.

SO ORDERED.

SIGNED this 16th day of October, 2018, at 12:35 p.m.
Pittsburgh, Pennsylvania

s/Nora Barry Fischer
Nora Barry Fischer
United States District Judge

cc: Stanley D. Ference III, Esq.
courts@ferencelaw.com

Brian Samuel Malkin, Esq.
bmalkin@ferencelaw.com

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AIRIGAN SOLUTIONS, LLC,

Plaintiff,

v.

BUFUJIUGAN, *et al.*,

Defendants.

Civil Action No. 18-1330

FILED UNDER SEAL

**AMENDED ORDER ON PLAINTIFF'S EX PARTE MOTION FOR AN ORDER
AUTHORIZING ALTERNATIVE SERVICE ON DEFENDANTS PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 4(f)(3)**

AND NOW, this 16th day of October, 2018, upon consideration of Plaintiff's Ex Parte Motion for an Order Amending the Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3),

IT IS HEREBY ORDERED that said Motion is GRANTED;

IT IS FURTHER ORDERED that Plaintiff is authorized to make alternative service of the Summonses, the Amended Complaint and all pleadings and discovery in this matter upon each Defendant in this action, including the Defendants on Amended Schedule "A", as follows:

1. via the e-mail accounts provided by that Defendant (i) as part of the data related to its e-commerce store, including by onsite contact forms, or
(ii) via the e-commerce platform e-mail for each of the e-commerce stores, or
2. via publication by posting copies of the Summonses, Complaint, and all subsequent pleadings and discovery on www.ferencelaw.com.

s/Nora Barry Fischer

Nora Barry Fischer
United States District Judge

cc Stanley D. Ference III, Esq.
courts@ferencelaw.com
Brian Samuel Malkin, Esq.
bmalkin@ferencelaw.com

AMENDED SCHEDULE “A”
DEFENDANTS BY NUMBER AND SELLER ID

Def. No.	Defendant / Seller ID	Amazon Seller ID	Infringing Item's ASIN
1	bufujiugan	A25PGNY3G3IZJ0	B07FCJ6NLH
2	DiMshop	A1Y5VRHOIHLYLBT	B01N235WK4
3	E-ADF	A2366G1DUF6SX2	B07GCMBBK4 B07GCJZ2QW
4	OETT-YO	A1SDI4H10GEEP2	B07FCJ6NLH
5	Phase 1 Marketing	A1HINY1A3NZVNR	B01N235WK4
6	Smart Store !	A2B399SB2E7YE3	B07CGN969R
7	advancedshop	A1WNRDNB1EJOCC	B07DTCN5ZS B07DTCPG1K
8	BJack-LiuA	A1XYEEJLU2VYRW	B07D5WGNX8
9	BossUS	A3UJLGCS6JV6GS	B07H4LNBBF
10	Intercall	AJ6FETZIMC9Y4	B07J68PX75
11	InterDeals	A1BHX9P4XEQYDA	B07CGN969R
12	Jiaowoliudehua	A2NU7SYXC6DICY	B07FCJYFH1
13	Kelly Babbitt	A2X7GCOADAKNPF	B01N7SXX0W B01MT9U0HK B01NATZUY2 B01N235WK4
14	Labu Store	A1EFTOGAHWG4ZS	B07CWDRZ4T
15	Maideer	AC9NN1P2FVMB1	B07CSJPYSN B07JVGN22S
16	NO9ESHOP	A38G93U3TYL81Z	B01N7SXX0W B01MT9U0HK B01NATZUY2

			B01N235WK4
17	Nanther	A2LJN2LH2HMHWQ	B01MT9U0HK
18	Ojljjhfdi	A3A7WP66AL8LMF	B07FCJTFH1
19	Pingdi	ALD9OR5X6E2T3	B07HFDQD35
20	Right Tools	A2T24BDCEDZXXL	B01N235WK4
21	SpideR	A1VD1RPG8A938O	B07J3WL7VR
22	UniGalaxy	A154P2LSGXXCOP	B07D5VXMQM B07D5WDCBX B07D5W33BW B07D5WGNX8
23	Wakstone Commerce	A3QRW4K85D5UTT	B07C7VQ57W B07CGN969R
24	yuanzhugao	A2PZGLW78EBDKW	B07HMTG9TF B07HMHDQRJ

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18 CV 901

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IDEAVILLAGE PRODUCTS CORP.,
Plaintiff

v.

DONGGUAN SHIPAI LOOFAH SPONGE
COMMODITY FACTORY d/b/a BATHING SHOP
STORE, H&JOY AUTHORIZED STORE a/k/a
SHOP1976050 STORE, NINGBO FINE SOURCE
IMP & EXP CO. LTD., NINGBO GREENFOREST
IMPORT & EXPORT CO., LTD., NINGBO KIVEN
IMPORT AND EXPORT CO., LTD., PINGYANG
MEIXUAN PLASTIC CRAFT MANUFACTURER,
THE SONGEN INTERNATIONAL TRADE CO.,
LTD. a/k/a PINGYANG SONGEN CRAFTS
FACTORY, SHENZHEN ABOEL ELECTRONIC
TECHNOLOGY CO., LTD., SHENZHEN
AMERKE ELECTRONIC CO., LTD., SHENZHEN
BENWEI ELECTRONIC CO., LTD., SHENZHEN
C-MYWAY ELECTRONICS CO., LTD.,
SHENZHEN REEGIS TECHNOLOGY CO., LTD.,
SHENZHEN VAPEUR TECHNOLOGY CO., LTD.,
XIAMEN BEST FORTUNE IMPORT & EXPORT
CO., LTD., XIAMEN YUESHI TRADE CO., LTD.,
YIWU ANJIU IMPORT & EXPORT CO., LTD.,
YIWU JIMENG DAILY CONSUMABLES CO.,
LTD., YIWU NEWBIE HOUSEHOLD ARTICLES
CO., LTD., YIWU WINDEX TOOLS FACTORY,

CIVIL ACTION No.

**1) TEMPORARY
RESTRAINING ORDER; 2)
ORDER RESTRAINING
ASSETS AND MERCHANT
STOREFRONTS; 3) ORDER TO
SHOW CAUSE WHY A
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE; 4)
ORDER AUTHORIZING
ALTERNATIVE SERVICE BY
ELECTRONIC MEANS; AND 5)
ORDER AUTHORIZING
EXPEDITED DISCOVERY**

FILED UNDER SEAL

YIWU YOUMAI GENERAL MERCHANDISE
CO., LTD., YONGKANG EASY IMPORT &
EXPORT CO., LTD., ZHEJIANG SOWELL
COMMODITY CO., LTD., ZHENGZHOU GREE
WELL IMPORT & EXPORT CO., LTD. and _GB
HOUSEWEAR STORE,
Defendants

On this day, the Court considered Plaintiff's *ex parte* application for the following: 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts (as defined *infra*); 3) an order to show cause why a preliminary injunction should not issue; 4) an order authorizing alternative service; and 5) an order authorizing expedited discovery against Defendants Dongguan Shipai Loofah Sponge Commodity Factory d/b/a Bathing shop Store, H&JOY Authorized Store a/k/a Shop1976050 Store, Ningbo Fine Source Imp & Exp Co. Ltd., Ningbo Greenforest Import & Export Co., Ltd., Ningbo Kiven Import And Export Co., Ltd., Pingyang Meixuan Plastic Craft Manufacturer, The Songen International Trade Co., Ltd. a/k/a Pingyang Songen Crafts Factory, Shenzhen Aboel Electronic Technology Co., Ltd., Shenzhen Amerke Electronic Co., Ltd., Shenzhen Benwei Electronic Co., Ltd., Shenzhen C-Myway Electronics Co., Ltd., Shenzhen Reegis Technology Co., Ltd., Shenzhen Vapeur Technology Co., Ltd., Xiamen Best Fortune Import & Export Co., Ltd., Xiamen Yueshi Trade Co., Ltd., Yiwu Anjiu Import & Export Co., Ltd., Yiwu Jimeng Daily Consumables Co., Ltd., Yiwu Newbie Household Articles Co., Ltd., Yiwu Windex Tools Factory, Yiwu Youmai General Merchandise Co., Ltd., Yongkang Easy Import & Export Co., Ltd., Zhejiang Sowell Commodity Co., Ltd., Zhengzhou Gree Well Import & Export Co., Ltd. and _GB Housewear Store (hereinafter collectively referred to as "Defendants" or individually as "Defendant"), Third Party Service Providers (as defined *infra*) and Financial Institutions (as defined *infra*), in light of Defendants' intentional and willful

offerings for sale and/or sales of Counterfeit Products (as defined *infra*) (“Application”).¹ A complete list of Defendants is attached hereto as **Schedule A**. Having reviewed the Application, the Declarations of Jessica Arnaiz, LoriAnn Lombardo and Spencer Wolfgang, along with the exhibits attached thereto and other evidence submitted in support thereof, the Court makes the following findings of fact and conclusions of law:

FACTUAL FINDINGS & CONCLUSIONS OF LAW

1. Plaintiff is a leading developer, producer, marketer, and distributor of quality, innovative consumer products. Plaintiff promotes and sells its products through national direct response television advertising commonly called “As Seen On TV” (“ASOTV”). Plaintiff also promotes and sells its ASOTV products at the retail level at well-known mass retail outlets, including, without limitation: Wal-Mart, Target Stores, Bed Bath & Beyond, Toys R Us, Rite-Aid, CVS and Walgreens; through catalog companies; online, through its own website and its retail customers’ websites; as well as through a network of international distributors, among other channels of trade;

2. Plaintiff is among the most well-known, well-respected sources of many of the most popular and most successful ASOTV products sold in the United States;

3. One of Plaintiff’s most successful products is a line of exfoliating and cleaning brushes for both the body and face that bring the experience of a spa treatment directly to the user (collectively, “Spin Spa Product(s)”). The Spin Spa products cleanse, pamper and sooth tired and achy muscles, while simultaneously providing a clean and fresh experience for the user’s skin;

4. The Spin Spa Products have achieved tremendous success and notoriety since they were first introduced in 2006 and retail for \$14.99;

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

5. Defendants are manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling infringing and/or counterfeit products bearing and/or using the Spin Spa Mark (as defined *infra*) and/or marks that are confusingly similar to, identical to and constitute a counterfeiting and/or infringement of the Spin Spa Mark and/or displaying and/or incorporating the Spin Spa Work (as defined *infra*) and/or works that are substantially similar to, identical to and constitute infringement of the Spin Spa Work (“Counterfeit Products” or “Infringing Products”) through accounts with online marketplace platforms such as Alibaba.com, AliExpress.com and DHgate.com, as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them (“User Accounts”) (*see Schedule A* for links to Defendants’ Merchant Storefronts (as defined *infra*) and listings for Counterfeit Products);

6. Plaintiff is the owner of U.S. Trademark Registration No. 3,130,985 for “SPIN SPA” for a variety of goods in Class 21 (hereinafter, the “Spin Spa Mark”) and the Spin Spa Mark is valid, subsisting and incontestable.

7. Plaintiff is the owner of U.S. Copyright Registration No. PA 2-066-887, covering the Spin Spa Commercial, (hereinafter collectively referred to as the “Spin Spa Work”);

8. Defendants are not, nor have they ever been, authorized distributors or licensees of the Spin Spa Products. Neither Plaintiff, nor any of Plaintiff’s authorized agents, has consented to Defendants’ use of the Spin Spa Mark and/or Spin Spa Work, nor has Plaintiff consented to Defendants’ use of any identical or confusingly similar marks or artwork;

9. Plaintiff is likely to prevail on its Lanham Act claims, copyright infringement claims and related state law claims at trial;

10. As a result of Defendants' infringements, Plaintiff, as well as consumers, is likely to suffer an immediate and irreparable loss, damage and injury before Defendants can be heard in opposition, unless Plaintiff's Application for *ex parte* relief is granted:

- a. Defendants have offered for sale and sold substandard Counterfeit Products that infringe the Spin Spa Mark and/or Spin Spa Work;
- b. Plaintiff has well-founded fears that more Counterfeit Products will appear in the marketplace; that consumers may be misled, confused and disappointed by the quality of these Counterfeit Products, resulting in the consequent injury to Plaintiff's reputation and goodwill; and that Plaintiff may suffer loss of sales for its Spin Spa Products; and
- c. Plaintiff's well-founded fears that if they proceed on notice to Defendants on this Application, Defendants will: (i) secret, conceal, destroy, alter, sell-off, transfer or otherwise dispose of or deal with Counterfeit Products or other goods that infringe the Spin Spa Mark and/or Spin Spa Work, the means of obtaining or manufacturing such Counterfeit Products, and records relating thereto that are in their possession or under their control, (ii) inform their suppliers and others of Plaintiff's claims with the result being that those suppliers and others may also secret, conceal, sell-off or otherwise dispose of Counterfeit Products or other goods infringing the Spin Spa Mark and/or Spin Spa Work, the means of obtaining or manufacturing such Counterfeit Products, and records relating thereto that are in their possession or under their control, (iii) secret, conceal, transfer or otherwise dispose of their ill-gotten proceeds from its sales of Counterfeit Products or other goods infringing the Spin Spa Mark and/or Spin Spa Work and records relating thereto that are in their possession

or under their control and/or (iv) open new User Accounts through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them, operate storefronts to manufacture, import, export, advertise, market, promote, distribute, offer for sale, sell and/or otherwise deal in products, including the Counterfeit Products, which are held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them ("Merchant Storefront(s)") under new or different names and continue to offer for sale and sell Counterfeit Products with little to no consequence;

11. The balance of potential harm to Defendants of being prevented from continuing to profit from their illegal and infringing activities if a temporary restraining order is issued is far outweighed by the potential harm to Plaintiff, their business, the goodwill and reputation built up in and associated with the Spin Spa Mark and Spin Spa Work and to Plaintiff's reputation if a temporary restraining order is not issued;

12. Public interest favors issuance of the temporary restraining order in order to protect Plaintiff's interests in and to the Spin Spa Mark and Spin Spa Work, and to protect the public from being deceived and defrauded by Defendants' passing off of their substandard Counterfeit Products as Spin Spa Products;

13. Plaintiff has not publicized its request for a temporary restraining order in any way;

14. Service on Defendants via electronic means, including the delivery of copies of the Summons and Complaint, together with all documents filed in support of Plaintiff's Application by (i) e-mail, such as by using RMail.com and Outlook.com or (ii) messaging through Defendants'

User Accounts and publication of links to the same on a website accessible to Defendants, is reasonably calculated to result in proper notice to Defendants;

15. If Defendants are given notice of the Application, they are likely to secret, conceal, transfer or otherwise dispose of their ill-gotten proceeds from their sales of Counterfeit Products or other goods infringing the Spin Spa Mark and/or the Spin Spa Work. Therefore, good cause exists for granting Plaintiff's request for an asset restraining order. It typically takes noticed Financial Institutions and/or Third Party Service Providers a minimum of five (5) days to locate, attach and freeze Defendants' Assets (as defined *infra*) and/or Defendants' Financial Accounts (as defined *infra*). As such, in its order, the Court should allow enough time for the Financial Institutions and/or Third Party Service Providers to freeze Defendants' Assets and Financial Accounts before requiring service on Defendants.

16. Similarly, if Defendants are given notice of the Application, they are likely to destroy, move, hide or otherwise make inaccessible to Plaintiff the records and documents relating to Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or sale of Counterfeit Products. Therefore, good cause exists for granting Plaintiff's request for expedited discovery.

ORDER

Based on the foregoing findings of fact and conclusions of law, Plaintiff's Application is hereby **GRANTED** as follows (the "Order"):

I. Temporary Restraining Order

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, that Defendants, their respective officers, employees, agents, servants and attorneys, and all persons in active concert or participation with any of them (regardless of whether located in the U.S. or abroad), who

receive actual notice of this Order, including, without limitation, any: (1) banks, financial institutions, credit card companies and payment processing agencies, such as PayPal Inc. (“PayPal”), Payoneer Inc. (“Payoneer”), the Alibaba Group d/b/a Alibaba.com and Aliexpress.com (“Alibaba”) and Dunhuang Group d/b/a DHgate.com (“DHgate”) payment services (e.g., Alipay.com Co., Ltd., Ant Financial Services Group or DHpay.com), and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of Defendants (“Financial Institutions”) and (2) online marketplace platforms, including, without limitation, those owned and operated, directly or indirectly, by Alibaba.com, AliExpress.com and DHgate.com, as well as any and all as yet undiscovered online marketplace platforms and/or entities through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them manufacture, import, export, advertise, market, promote, distribute, offer for sale, sell and/or otherwise deal in Counterfeit Products which are hereinafter identified as a result of any order entered in this action, or otherwise (“Third Party Service Providers”) (Financial Institutions and Third Party Service Providers are hereinafter collectively referred to as the “Restrained Persons”), are hereby restrained and enjoined from engaging in any of the following acts or omissions pending the hearing and determination of Plaintiff’s Application for a preliminary injunction as referenced in **Paragraph (II)(A)** below, or until further order of the Court:

- 1) manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Counterfeit Products, or any other products bearing the Spin Spa Mark and/or marks that are confusingly similar to, identical to and constitute a counterfeiting or infringement of the Spin Spa

- Mark and/or incorporating the Spin Spa Work and/or artwork that is substantially similar to, identical to and constitute an infringement of the Spin Spa Work;
- 2) communicating, directly or indirectly, with any person or persons: (i) from whom Defendants purchased or obtained any Counterfeit Products; (ii) to whom Defendants sold or offered to sell such Counterfeit Products or (iii) of whom Restrained Persons know, or reasonably believe, to possess, control or have access to any such Counterfeit Products;
 - 3) secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with: (i) Counterfeit Products and/or (ii) any computer files, data, business records, documents or any other records or evidence relating to the Defendants' User Accounts, Merchant Storefronts, Defendants' Assets and the manufacture, importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products;
 - 4) secreting, concealing, transferring, disposing of, withdrawing, encumbering or paying any money, securities or other property or assets of Defendants (whether said assets are located in the U.S. or abroad) (hereinafter collectively referred to as "Defendants' Assets") from or to financial accounts associated with or utilized by any Defendant or any Defendant's User Accounts or Merchant Storefront(s) (whether said account is located in the U.S. or abroad) ("Defendants' Financial Accounts") until further ordered by this Court;
 - 5) effecting assignments or transfers, forming new entities or associations, or creating and/or utilizing any other platform, User Account, Merchant Storefront or any other means of importation, exportation, advertising, marketing, promotion, distribution,

display, offering for sale and/or sale of Counterfeit Products for the purposes of circumventing or otherwise avoiding the prohibitions set forth in this Order;

- 6) within five (5) days after receiving actual notice of this Order, providing services to Defendants, Defendants' User Accounts and Defendants' Merchant Storefronts, including, without limitation, continued operation of Defendants' User Accounts and Merchant Storefronts; and
- 7) knowingly instructing, aiding, or abetting any other person or business entity in engaging in any of the activities referred to in subparagraphs I(A)(1) through I(A)(6) above.

**II. Order to Show Cause Why A Preliminary Injunction
Should Not Issue And Order Of Notice**

✓ A. Defendants are hereby ORDERED to show cause before this Court in Courtroom 705 of the United States District Court for the Southern District of New York at ~~500 Pearl Street~~/40 Foley Square, New York, New York on February 15, 2018 at 5:00 p.m. or at such other time that this Court deems appropriate, why a preliminary injunction, pursuant to FRCP 65(a), should not issue restraining and enjoining the Restrained Persons from engaging in any of the following acts or omissions pending the final hearing and determination of this action:

- 1) manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Counterfeit Products, or any other products bearing the Spin Spa Mark and/or marks that are confusingly similar to, identical to and constitute a counterfeiting or infringement of the Spin Spa Mark and/or incorporating the Spin Spa Work and/or artwork that is substantially similar to, identical to and constitute an infringement of the Spin Spa Work;

- 2) directly or indirectly infringing in any manner any of Plaintiff's trademarks, copyrights or other rights (whether now in existence or hereafter created) including, without limitation, the Spin Spa Mark or Spin Spa Work;
- 3) using any reproduction, counterfeit, copy or colorable imitation of Plaintiff's trademarks, copyrights or other rights (whether now in existence or hereafter created) including, without limitation, the Spin Spa Mark and Spin Spa Work to identify any goods or services not authorized by Plaintiff;
- 4) using any of Plaintiff's trademarks, copyrights or other rights (whether now in existence or hereafter created) including, without limitation, the Spin Spa Mark and Spin Spa Work, or any other marks or artwork that are confusingly or substantially similar to the Spin Spa Mark and Spin Spa Work, on or in connection with Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Counterfeit Products;
- 5) using any false designation of origin or false description, or engaging in any action which is likely to cause confusion, cause mistake and/or to deceive members of the trade and/or the public as to the affiliation, connection or association of any product manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale or sold by Defendants with Plaintiff, and/or as to the origin, sponsorship or approval of any product manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale or sold by Defendants and Defendants' commercial activities by Plaintiff;

- 6) secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with: (i) Counterfeit Products and (ii) any computer files, data, business records, documents, or any other records or evidence relating to the Defendants' User Accounts, Defendants' Merchant Storefronts, Defendants' Assets and the manufacture, importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products;
 - 7) secreting, concealing, transferring, disposing of, withdrawing, encumbering or paying any of Defendants' Assets from or Defendants' Financial Accounts until further ordered by this Court;
 - 8) providing services to Defendants, Defendants' User Accounts and Merchant Storefronts, including, without limitation, continued operation of Defendants' User Accounts and Merchant Storefronts;
 - 9) effecting assignments or transfers, forming new entities or associations, or creating and/or utilizing any other platform, User Accounts, Merchant Storefronts or any other means of importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products for the purposes of circumventing or otherwise avoiding the prohibitions set forth in any preliminary injunction ordered by the Court in this Action;
 - 10) knowingly instructing, aiding or abetting any other person or business entity in engaging in any of the activities referred to in subparagraphs II(A)(1) through II(A)(9) above.
- B. IT IS FURTHER ORDERED that opposing papers, if any, shall be filed electronically with the Court and served on Plaintiff's counsel by delivering copies thereof to the office of Epstein

Drangel LLP at 60 East 42nd Street, Suite 2520, New York, NY 10165, Attn: Jason M. Drangel
✓ on or before February 13, 2018. Plaintiff shall file any Reply papers on or before
✓ February 14, 2018.

C. IT IS FURTHER ORDERED that Defendants are hereby given notice that failure to appear at the show cause hearing scheduled in **Paragraph II(A)** above may result in the imposition of a preliminary injunction against them pursuant to FRCP 65, which may take effect immediately upon the expiration of this Order, and may extend throughout the length of the litigation under the same terms and conditions set forth in this Order.

III. Asset Restraining Order

- A. IT IS FURTHER ORDERED pursuant to FRCP 64 and 65 and CPLR 6201 and this Court's inherent equitable power to issue provisional remedies ancillary to its authority to provide final equitable relief, as sufficient cause has been shown, that within five (5) days of receipt of notice of this Order, all Financial Institutions and Third Party Service Providers, including, but not limited to, those identified in **Schedule A**, who receive actual notice of this Order, shall locate and attach Defendants Financial Accounts, and shall provide written confirmation of such attachment to Plaintiff's counsel; and
- B. IT IS FURTHER ORDERED, as sufficient cause has been shown, that within five (5) days of receipt of notice of this Order all Financial Institutions and Third Party Service Providers, including but not limited to, those identified in **Schedule A**, who receive actual notice of this Order, shall identify any and all of Defendants' Financial Accounts, and provide Plaintiff and/or Plaintiff's counsel with a summary report containing account details for any and all such accounts, which shall include, at a minimum, identifying information for Defendants, Defendants' User Accounts and Defendants' Merchant Storefronts, contact information for

Defendants (including mailing addresses and e-mail addresses), account numbers and account balances for any and all of Defendants' Financial Accounts.

IV. Order Authorizing Alternative Service by Electronic Means

A. IT IS FURTHER ORDERED pursuant to FRCP 4(f)(3), as sufficient cause has been shown, that service may be made on, and shall be deemed effective as to Defendants if it is completed by one of the following means:

- 1) delivery of a link to a secure website (such as Dropbox.com, NutStore.com, a large mail link created through RPost.com or via website publication through a specific page dedicated to this Lawsuit accessible through ipcounselorslawsuit.com) where each Defendant will be able to download PDF copies of this Order together with the Summons and Complaint, and all papers filed in support of Plaintiff's Application seeking this Order to Defendants' e-mail addresses, as identified in **Schedule A** or may otherwise be determined; or
- 2) delivery of a message to Defendants through the same means that Plaintiff's agents have previously communicated with Defendants, namely the system for communications established by the Third Party Service Providers on their respective platforms, notifying Defendants that an action has been filed against them in this Court and providing a link to a secure website (such as Dropbox.com, NutStore.com or a large mail link created through RPost.com) where each Defendant will be able to download PDF copies of this Order together with the Summons and Complaint, and all papers filed in support of Plaintiff's Application seeking this Order.

B. IT IS FURTHER ORDERED, as sufficient cause has been shown, that such alternative service by electronic means ordered herein shall be made within two (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.

- C. IT IS FURTHER ORDERED, as sufficient cause has been shown, that the Clerk of the Court shall issue a single original summons in the name of "Dongguan Shipai Loofah Sponge Commodity Factory d/b/a Bathing shop Store and all other Defendants identified in the Complaint" that will apply to all Defendants.
- D. IT IS FURTHER ORDERED, as sufficient cause has been shown, that service may be made and shall be deemed effective as to the following Financial Institutions and Third Party Service Providers if it is completed by the following means:
- 1) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where PayPal will be able to download a PDF copy of this Order via electronic mail to EE Omaha Legal Specialist at EEOMALegalSpecialist@paypal.com and to PayPal's counsel, Christopher Celentino, at Christopher.Celentino@dinsmore.com;
 - 2) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where Alipay will be able to download a PDF copy of this Order via electronic mail to Mr. Benjamin Bai, Vice President and Chief IP Counsel of Ant Financial Services Group at benjamin.bai@alipay.com and/or Mr. Di Zhang, Member of the Legal & Compliance Department – IP, at di.zd@alipay.com;
 - 3) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where Alibaba will be able to download a PDF copy of this Order via electronic mail to Ms. Jacqueline Ko, Legal Counsel, Alibaba Group at jacqueline.ko@alibaba-inc.com;
 - 4) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where DHgate (including DHPay.com) will be able to download a PDF copy of this Order via electronic

mail to the counsel for DHgate at slucks@fishkinlucks.com and zkupperman@fishkinlucks.com;

- 5) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where Payoneer will be able to download a PDF copy of this Order via electronic mail to Mr. Ari Kohn, Investigations Lead, Payoneer, at ariko@payoneer.com, to Payoneer's Customer Service Management at customerservicemanager@payoneer.com and Edward Tulin, counsel for Payoneer, at Edward.Tulin@skadden.com.

V. Order Authorizing Expedited Discovery

A. IT IS FURTHER ORDERED, as sufficient cause has been shown, that:

- 1) Within fourteen (14) days after receiving notice of this Order, each Defendant, or other person served, shall serve upon Plaintiff or Plaintiff's counsel a written report under oath providing:
- a. their true name and physical address;
 - b. the name and location and URL of any and all websites that Defendants own and/or operate and the name, location, account numbers and URL for any and all User Accounts and Merchant Storefronts on any Third Party Service Provider platform that Defendants own and/or operate;
 - c. the complete sales records for any and all sales of Counterfeit Products, including number of units sold, price per unit, total gross revenues received (in U.S. dollars) and dates thereof;
 - d. the account details for any and all of Defendants' Financial Accounts, including the account numbers and current account balances; and
 - e. the steps taken by each Defendant, or other person served to comply with **Section I**, above.

- 2) Plaintiff may propound interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure as well as Local Civil Rule 33.3 of the Local Rules for the Southern and Eastern Districts of New York, and Defendants, their respective officers, employees, agents, servants and attorneys, and all persons in active concert or participation with any of them, who receive actual notice of this Order, shall provide written responses under oath to such interrogatories within fourteen (14) days of service to Plaintiff or Plaintiff's counsel.
- 3) Plaintiff may serve requests for the production of documents pursuant to FRCP 26 and 34, and Defendants, their respective officers, employees, agents, servants and attorneys, and all persons in active concert or participation with any of them, who receive actual notice of this Order, shall produce all documents responsive to such requests within fourteen (14) days of service to Plaintiff or Plaintiff's counsel.

B. IT IS FURTHER ORDERED, as sufficient cause has been shown, that:

- 1) Within fourteen (14) days of receiving actual notice of this Order, all Financial Institutions who receive actual notice of this Order shall provide Plaintiff or Plaintiff's counsel all documents and records in their possession, custody or control (whether located in the U.S. or abroad) relating to any and all of Defendants' Financial Accounts, including, but not limited to, documents and records relating to:
 - a. account numbers;
 - b. current account balances;
 - c. any and all identifying information for Defendants, Defendants' User Accounts and Defendants' Merchant Storefronts, including names, addresses and contact information;

- d. any and all account opening documents and records, including, but not limited to, account applications, signature cards, identification documents and if a business entity, any and all business documents provided for the opening of each and every of Defendants' Financial Accounts;
- e. any and all deposits and withdrawals during the previous year from each and every one of Defendants' Financial Accounts and any and all supporting documentation, including, but not limited to, deposit slips, withdrawal slips, cancelled checks and account statements; and
- f. any and all wire transfers into each and every one of Defendants' Financial Accounts during the previous year, including, but not limited to, documents sufficient to show the identity of the destination of the transferred funds, the identity of the beneficiary's bank and the beneficiary's account number.

C. IT IS FURTHER ORDERED, as sufficient cause has been shown, that:

- 1) Within fourteen (14) days of receiving actual notice of this Order, all Third Party Service Providers who receive actual notice of this Order shall provide to Plaintiff or Plaintiff's counsel all documents and records in their possession, custody or control (whether located in the U.S. or abroad) relating to Defendants' User Accounts and Defendants' Merchant Storefronts, including, but not limited to, documents and records relating to:
 - a. any and all User Accounts and Defendants' Merchant Storefronts and account details, including, without limitation, identifying information and account numbers for any and all User Accounts and Defendants' Merchant Storefronts that

Defendants have ever had and/or currently maintain with the respective Third Party Service Provider;

- b. the identities, location and contact information, including any and all e-mail addresses, of Defendants, their respective officers, employees, agents, servants and attorneys, and all persons in active concert or participation with any of them;
- c. the nature of Defendants' businesses and operations, methods of payment, methods for accepting payment and any and all financial information, including, but not limited to, information associated with Defendants' User Accounts and Defendants' Merchant Storefronts, a full accounting of Defendants' sales history and listing history under such accounts and Defendants' Financial Accounts with any and all Financial Institutions associated with Defendants' User Accounts and Defendants' Merchant Storefronts; and
- d. Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling of Counterfeit Products, or any other products bearing the Spin Spa Mark and/or marks that are confusingly similar to, identical to, and constitute an infringement of the Spin Spa Mark and/or incorporating the Spin Spa Work and/or artwork that is substantially similar to, identical to and constitutes infringement of the Spin Spa Work.

VI. Security Bond

✓ A. IT IS FURTHER ORDERED that Plaintiff shall place security in the amount of Five thousand Dollars (\$5000) with the Court, which amount is determined adequate for the payment of any damages any person may be entitled to recover as a result of an improper or wrongful restraint ordered hereunder.

VII. Sealing Order

A. IT IS FURTHER ORDERED that Plaintiff's Complaint and exhibits attached thereto, and Plaintiff's *ex parte* Application and the Declarations of Jessica Arnaiz, LoriAnn Lombardo and Spencer Wolfgang in support thereof and the exhibits attached thereto and this Order shall remain sealed until further ordered by the Court.

SO ORDERED.

SIGNED this 2nd day of February, 2018, at 6:26 p.m. Paul L. Anzoh
UNITED STATES DISTRICT JUDGE

