

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

AIRIGAN SOLUTIONS, LLC,

Plaintiff,

Civil Action No. 18-1330

v.

BUFUJIUGAN, *et al.*,

Defendants.

**FILED UNDER SEAL**

~~XXXXXXXXXX~~ **PRELIMINARY INJUNCTION ORDER**

WHEREAS, Plaintiff filed an *Ex Parte* Application for the following: 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts<sup>1</sup>; 3) an order to show cause why a preliminary injunction should not issue; and 4) an order authorizing expedited discovery against Defendant Nos. 1 – 6, identified on the attached Amended Schedule “A”, Amazon Services, Inc. and Amazon Payments, Inc. (collectively “Amazon” or “Third Party Service Provider”) in light of Defendants’ intentional and willful offerings for sale and/or sales of Counterfeit Products<sup>2</sup> (“Application”).

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<sup>1</sup> 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.

<sup>2</sup> As alleged in Plaintiff’s Complaint, “. . . the Defendants identified in **Amended Schedule “A”** of the Complaint, were and/are currently manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and or/selling patent infringing and counterfeit products with Airigan’s NEGG<sup>®</sup> trademark and/or logo and using marking, packaging and trade dress that are confusingly similar and/or identical to those of Airigan (“Infringing Products” or “Counterfeit Products”).

WHEREAS, Plaintiff filed an Ex Parte Motion for An Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3);

WHEREAS, On October 9, 2018 at 7:00 a.m., the Court entered the following Orders:

(A) 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts; 3) an order to show cause why a preliminary injunction should not issue; and 4) an order authorizing expedited discovery against Defendant Nos. 1 – 6, identified on the attached Amended Schedule “A”, Amazon Services, Inc. and Amazon Payments, Inc. (“TRO”); and

(B) Order Authorizing Alternative Service on Defendant Nos. 1 – 6, Pursuant to Federal Rule of Civil Procedure 4(f)(3)(“Alternative Service Order”).

WHEREAS, Plaintiff filed an Ex Parte Application for amending the TRO against all of the Defendants, identified on the attached Amended Schedule “A”, Amazon Services, Inc. and Amazon Payments, Inc. (“Application for Amended TRO”).

WHEREAS, Plaintiff filed an Ex Parte Motion for an Amended Alternative Service Order authorized alternative service upon all the Defendants in Amended Schedule “A”, Pursuant to Federal Rule of Civil Procedure 4(f)(3).

WHEREAS, On October 16, 2018 at 12:35 p.m., the Court entered the following Orders:

(A) 1) an amended 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 against the Defendants, identified on the attached Amended Schedule “A”, Amazon Services, Inc. and Amazon Payments, Inc. (“TRO”); and

(B) Amended Order Authorizing Alternative Service on the Defendants in Amended Schedule “A”, Pursuant to Federal Rule of Civil Procedure 4(f)(3) (“Amended Alternative Service Order”).

WHEREAS, pursuant to the terms of the Amended Alternative Service Order, the Defendants have been served; and

WHEREAS, on November 26, 2018, Plaintiff appeared for the Order to Show Cause Hearing, however no Defendants appeared. Further, Amazon did not appear.

**ORDER**

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, the injunctive relief previously granted on October 31, 2018 at 1:45 p.m. shall remain in place through the pendency of this litigation, and issuing this Preliminary Injunction (hereafter “PI Order”) is warranted under FRCP 65, Section 34 of the Lanham Act, and Section 283 of the Patent Act. Accordingly, 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 continue to be 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 continue to 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 continue to 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, to the extent not already done, 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; and
- (12) this PI Order and the Amended Alternative Service Order shall remain in effect during the pendency of this action or until further order of the Court, and Plaintiff shall serve the Defendants with a copy of this PI Order in accordance with the Amended Alternative Service Order.

B. IT IS HEREBY ORDERED, as sufficient cause has been shown, that Amazon shall continue to be 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 shall be restrained and enjoined from engaging in any of the following acts or omissions until further order of the Court:

(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<sup>®</sup>), B01MT9U0HK (red NEGG<sup>®</sup>), B01NATZUY2 (white NEGG<sup>®</sup>), B01N235WK4 (yellow NEGG<sup>®</sup>), B079P5N8Q6 (pink NEGG<sup>®</sup>), B079P6QVNR (fuschia NEGG<sup>®</sup>), and B079P4HPVM (green NEGG<sup>®</sup>), 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<sup>®</sup>), B01MT9U0HK (red NEGG<sup>®</sup>), B01NATZUY2 (white NEGG<sup>®</sup>), B01N235WK4 (yellow NEGG<sup>®</sup>), B079P5N8Q6 (pink NEGG<sup>®</sup>), B079P6QVNR (fuschia NEGG<sup>®</sup>), and B079P4HPVM (green NEGG<sup>®</sup>), into Amazon's gating program, so that Plaintiff will be able to control which sellers list product under these ASINs.

## II. Order Authorizing Expedited Discovery

- A. IT IS FURTHER ORDERED, as sufficient cause has been shown, that the expedited discovery previously granted in the Amended TRO shall remain in place through the pendency of this litigation, including, 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, to the extent not previously provided, 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 Amazon;
- 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. Amazon Standard Identification Numbers (ASINs): B01N7SXX0W (black NEGG<sup>®</sup>), B01MT9U0HK (red NEGG<sup>®</sup>), B01NATZUY2 (white NEGG<sup>®</sup>), B01N235WK4 (yellow NEGG<sup>®</sup>), B079P5N8Q6 (pink NEGG<sup>®</sup>), B079P6QVNR (fuschia NEGG<sup>®</sup>), and B079P4HPVM (green NEGG<sup>®</sup>)

### III. Security Bond

IT IS FURTHER ORDERED, the \$5,000.00 bond posted by Plaintiff shall remain with the Court until a final disposition of this case or until this PI Order is terminated.

**SO ORDERED.**

SIGNED this 26<sup>TH</sup> day of November, 2018, at 9:00 A.m.  
Pittsburgh, Pennsylvania

  
Nora Barry Fischer  
United States District Judge

cc Stanley D. Ference III, Esq.  
courts@ferencelaw.com  
Brian Samuel Malkin, Esq.  
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**AMENDED SCHEDULE "A"**  
**DEFENDANTS BY NUMBER AND SELLER ID**

<b>Def. No.</b>	<b>Defendant / Seller ID</b>	<b>Amazon Seller ID</b>	<b>Infringing Item's ASIN</b>
1	bufujiugan	A25PGNY3G3IZJ0	B07FCJ6NLH
2	DiMshop	A1Y5VRHOIHHLBT	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	Ojljjhdfdi	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