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MAR 07 2019

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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

RAPID SLICER, LLC,

CIVIL ACTION NO. 19-249

Plaintiff,

v.

FILED UNDER SEAL

BUYSPRY, *et al.*,

Defendants.

**DECLARATION OF CINDY FOX
IN SUPPORT OF PLAINTIFF'S *EX PARTE* APPLICATION
FOR ENTRY OF A TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

I, CINDY FOX, do hereby declare:

1. I am over eighteen (18) years of age. I have never been convicted of a felony or any criminal offense involving moral turpitude, and I am fully competent to testify to the matters stated herein. I have personal knowledge of every statement made in this Declaration and such statements are true and correct.
2. I am the President and one of the member/managers and co-founders of Plaintiff, Rapid Slicer, LLC ("Rapid Slicer"), a limited liability company organized and existing under the laws of the State of Connecticut.
3. I make this declaration in support of Plaintiff's *Ex Parte* Application for Entry of a Temporary Restraining Order and Preliminary Injunction against Defendants, the Individuals, Partnerships, and Unincorporated Associations identified on Schedule "A" to the Complaint.

4. The Defendants use the interactive commercial Internet websites and Internet based e-commerce stores (“Online Marketplace Platforms”, hereafter “OMPs”) using the seller identities and store names set forth on **Schedule “A”** to the Complaint.

5. Rapid Slicer, LLC was founded in 2006 and is in the business of producing, marketing and selling the Rapid Slicer Product, as defined *infra*, which was launched in 2017.

6. The genuine Rapid Slicer Product (Fig 1, below) is designed so that by filling the base with food and gripping the food with the lid, a horizontal knife cut through the middle of the base and the lid results in safely sliced food. (“Plaintiff’s Rapid Slicer Product” or “Rapid Slicer Brand food slicer”) (Fig. 2, below):



Fig. 1



Fig. 2

The distinctive design of the Rapid Slicer Product found on all of the packaging and on-line sales materials was created by the Plaintiff.

7. Rapid Slicer is the owner of U.S. Trademark Reg. No. 5,647,154 (“RAPID SLICER” and design): RAPID SLICER and design **RapidSlicer** for “Vegetable slicers; Non-electric food slicers” in Class 8. A true and correct copy of the trademark registration certificate is attached to the Complaint as “Exhibit 1”. (“Rapid Slicer Mark”).

8. The Rapid Slicer Mark, the logo (shown in the paragraph above), and packaging have acquired distinctiveness among consumers:

9. Rapid Slicer is the owner of U.S. Copyright Reg. No. VA-2-112-976 for “Rapid Slicer Packaging (2017)”. A true and correct copy of the Registration and the registered packaging comprising the photographs and text (instructions) is attached to the Complaint as “Exhibit 2”. (“Rapid Slicer Work”).

10. The Rapid Slicer Mark, the logo, the photographs, and the packaging have acquired distinctiveness among consumers. Hereinafter, the Rapid Slicer Mark, the Rapid Slicer Logo, and the packaging for the Rapid Slicer Product are collectively referred to as the “Plaintiff’s Marks”). The Rapid Slicer food slicer and the Plaintiff’s Marks have become well-known amongst consumers and retailers and have and continue to receive widespread publicity.¹ The Rapid Slicer food slicer has been featured on national television on *The Today Show* and *Good Morning America*.

11. The Rapid Slicer Brand food slicer typically retails for between \$12.95 and \$16.00.

12. The Rapid Slicer Brand food slicer has been successful though sales have suffered drastically in the past nine or more months due to the infringing and counterfeit products offered for sale and sold by the Defendants.

13. The Rapid Slicer Brand food slicer is sold through its own merchant storefront on Amazon.com, through its website at www.rapidslicer.com and by a few authorized re-sellers

¹ See, e.g., *The Today Show*, <https://www.today.com/video/window-vacuum-toilet-wand-latest-gadgets-from-home-and-housewares-show-1186669635945> (demonstrating the Rapid Slicer); *Good Morning America*, <https://flashdealfinder.com/good-morning-america-deals-steals-1-31-19/>

entitled to purchase wholesale and then sell the product at retail. Several of the authorized re-sellers are located in Pennsylvania, including, but not limited to, Pittsburgh, Allegheny County.

14. The features of the Rapid Slicer Brand food slicer, the federally registered Rapid Slicer Mark, the distinct photographs, the distinct Rapid Slicer logo and design, the instructions, the packaging, and the unique presentation of the product, all comprise Rapid Slicer's valuable intellectual property ("IP") and all have become distinct in consumer's minds such that consumers associates all of this IP with Rapid Slicer's genuine Rapid Slicer Brand food slicer.

15. Rapid Slicer only manufactures the genuine Rapid Slicer Brand food slicer in the United States and closely controls the quality of the product. Thus, if a product that purports to be a Rapid Slicer Brand food slicer is manufactured in China or overseas it is a counterfeit.

16. Likewise a food slicer through visual inspection and analysis is offered for sale online and is presented with various indicia (i.e., photographs, packaging, description) that it is a rapid slicer food slicer and is sold as "NEW" by an unauthorized re-seller at below market price it is also a counterfeit.

17. Due to the success of Rapid Slicer and its Rapid Slicer Brand food slicer, they have become the target of multiple counterfeiters seeking to profit off the goodwill and reputation and fame enjoyed by Rapid Slicer and its Rapid Slicer Brand food slicer.

18. The counterfeiting activities have driven sales and prices down. Indeed, wholesale orders from Rapid Slicer's re-sellers have precipitously dropped due the pervasive activities of the counterfeiters.

19. Moreover, my business partner and I have been forced to police the various OMPs to identify and seek takedowns of the counterfeit products since allowing them to continue

causes damage to Rapid Slicer's reputation and bottom line. Some of these counterfeiters sell their fake rapid slicers at a fraction of the controlled retail price, going as low as \$3.00 or \$4.00. Because of the software provided by the various OMPs, the lowest priced items are sorted to the top and/or promoted by the software and then purchased by the consumers and the genuine Rapid Slicer[®] Brand food slicer is ignored. I have had varied success in identifying and requesting takedowns of the various counterfeit listings and as soon as I get one taken down another counterfeit is listed to replace it.

20. Another major problem with the OMPs is that there is a direct and convenient connection between various Chinese and overseas manufactures to the counterfeiters. In essence, a counterfeiter in Vietnam or Russia, for example, may order a crate of counterfeit products from a Chinese manufacturer, have them drop shipped to a fulfillment center in the US, for example, Amazon fulfillment, and then sell the counterfeit product to a US consumer through Amazon or eBay Marketplace storefronts. The ease of this system encourages counterfeiting to flourish.

21. For these reasons, Rapid Slicer retained the legal counsel of Ference & Associates LLC ("the Ference Firm") to perform the policing of various OMPs, including Alibaba.com, AliExpress.com, Amazon.com, eBay.com, and wish.com. During the process, the Ference Firm uncovered many sellers of Counterfeit Product on Alibaba.com, AliExpress.com, Amazon.com, and eBay.com, and wish.com. Chinese Manufacturers were supplying many of the identified sellers with counterfeit products flooding the OMPs and damaging Rapid Slicer's business. This damage to Rapid Slicer's business will continue unless Rapid Slicer receives the sought after restraining order and injunctive relief.

22. I have reviewed **Composite Exhibit 1** and the pictured Counterfeit Products and upon my information and belief, the Defendants identified in **Schedule "A"** of the Complaint,

were and/are currently manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and or/selling trademark and copyright infringing and counterfeit products with Rapid Slicer's Rapid Slicer Mark and/or logo and using marking, packaging and trade dress that are confusingly similar and/or identical to those of Rapid Slicer to U.S. consumers, including those consumers in Pennsylvania, through their OMP storefronts. Further, for the photographs of packaging that is infringing on the Copyright of the Rapid Slicer Work, and the Counterfeit food slicer purchased and received from the Defendant buyspry are attached to my Declaration as **Exhibit 1**).

23. None of the identified Defendants are authorized re-sellers of genuine Rapid Slicer Brand food slicer. Moreover, none of the identified Defendants are authorized to manufacture, import, export, advertise, offer for sale or sell any Rapid Slicer Brand food slicers or any food slicers that purport to be Rapid Slicer Brand food slicer or any food slicers that are counterfeits of the Rapid Slicer Brand food slicer. Further, Rapid Slicer never consented or granted permission to any of the identified Defendants to use Rapid Slicer's artwork, photographs, or any of Rapid Slicer's other IP.

24. I have confirmed that all of the food slicers in **Composite Exhibit 1** are counterfeit. These counterfeit food slicers were ordered, received, and inspected as part of the investigation leading up to the current filing of this lawsuit. Comparison of the genuine Rapid Slicer Brand food slicer to the counterfeits in this exhibit reveals that the counterfeit food slicers, their packaging and their presentation are cheaply produced poor copies of Rapid Slicer's IP. These clearly indicate that they were manufactured in China or other foreign jurisdictions. Yet, the writing on the packaging is in English. So, they were intentionally manufactured and packaged to be shipped to English speaking countries, like the US.

25. Defendants actions have caused and will continue to cause, in the event the requested relief is not granted, irreparable harm to Rapid Slicer's goodwill and reputation as well as to the unassuming consumers who will continue to believe that the Defendants' cheaply produced, inferior, and typically faulty counterfeit products are produced, authorized, approved, endorsed or licensed by Rapid Slicer, when they are not.

26. Defendants' intentional and illegal conduct, including selling inferior counterfeit food slicers using Rapid Slicer's various IP into the U.S. and the Commonwealth of Pennsylvania has caused lost profits to Rapid Slicer and damaged the inherent value of Rapid Slicer's business and the Rapid Slicer Mark, and, by diluting the Brand and goodwill, damaging Rapid Slicer's reputation for providing high quality fully functioning food slicers, and interfering with Rapid Slicer's relationships with its customers and authorized resellers, as well as impeding Rapid Slicer's ability to attract new customers and business.

27. All of the injuries and damages described above are taking place in the United States, including in Pittsburgh, Allegheny County, Pennsylvania.

28. In addition to trying to stop the injuries and damages caused to Rapid Slicer's business, Rapid Slicer also is seeking in this lawsuit to protect consumers from being exposed to and purchasing the substandard, faulty, and potentially dangerous counterfeits that wrongly indicate their origin as being from Rapid Slicer or wrongly bear the federally registered Rapid Slicer Mark or are a poor and cheaply made imitation of the Rapid Slicer Brand food slicer.

29. I have worked with Rapid Slicer's legal counsel in this case to assist them in identifying counterfeit products and have provided them with various leads in order to find the various outlets for the counterfeit products. If called upon by the Court, Rapid Slicer's legal

counsel is able to explain additional differences between the genuine Rapid Slicer Brand food slicer and the counterfeit products offered by the identified Defendants.

30. To be sure that none of the Defendants receive advance notice of the relief and remedies requested in Plaintiff's Complaint, or the *Ex Parte* Application for Entry of a Temporary Restraining Order and Preliminary Injunction in this case, neither I nor anybody else at Rapid Slicer have publicized the filing of this lawsuit.

I declare under penalty of perjury that the foregoing is true and correct.

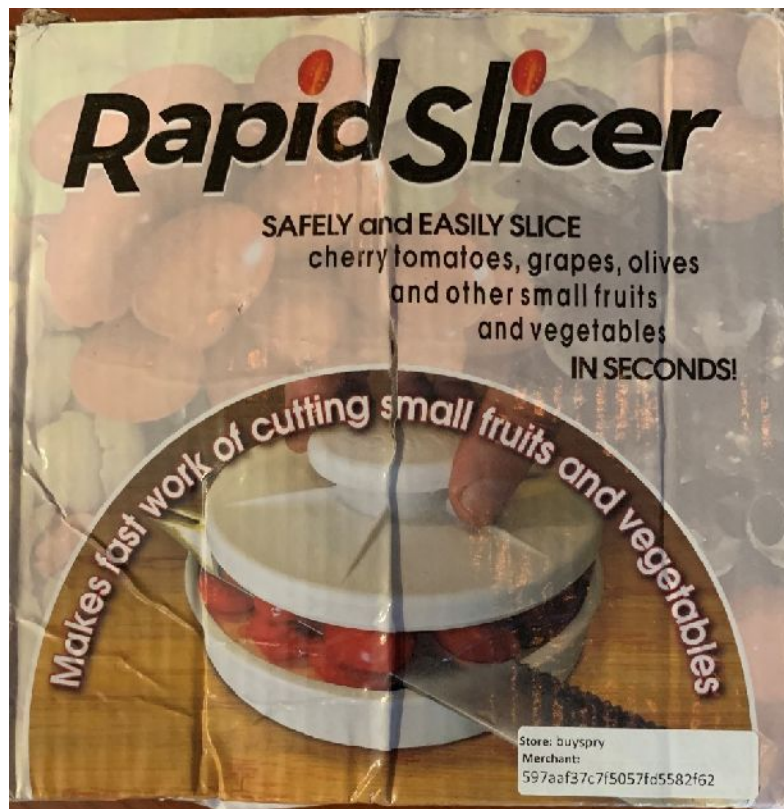
Dated: 2/22/2019

Shelton, Connecticut

/s/ Cindy Fox
Cindy Fox

“Exhibit 1-1”

Front of Box



Back of Box



“Exhibit 1-2”



Counterfeit Food Slicer