

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

RAPID SLICER, LLC,

Plaintiff,

v.

BUYSPPRY, *et al.*,

Defendants.

Civil Action No. 2:19-cv-249

Judge Marilyn J. Horan

FILED UNDER SEAL

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 **Schedule "A"**, Context Logic, Inc. d/b/a wish.com ("Wish" or "Third Party Service Provider") and PayPal, Inc. d/b/a paypal.com ("PayPal" or "Financial Institution(s)") in light of Defendants' intentional and willful offerings for sale and/or sales of Counterfeit Products and/or Infringing Products (as defined *infra*) ("Application") Having reviewed the Application, the Declarations of Cindy Fox, 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, Copyright claims, and related state law claims at trial;
2. Rapid Slicer has gained significant common law trademark and other rights in its Rapid Slicer Product, through use, advertising, and promotion. Rapid Slicer has also protected its valuable rights by filing for obtaining a federal trademark registration.
3. Rapid Slicer is the owner of the registered trademark RAPID SLICER and design **RapidSlicer**¹. (“Rapid Slicer Mark”).
4. In addition, Rapid Slicer is the owner of the federally registered copyright for its packaging (“U.S. Copyright Reg. No. VA-2-112-976) (referred to as, “Rapid Slicer Work”).
5. 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 Mark and/or Rapid Slicer Work that use packaging that bears and/or is used in connection with Mark and/or trade dress (collectively referred to as the “Plaintiff’s Mark”) that is confusing or substantially similar to Plaintiff’s authentic products sold using Plaintiff’s Mark and/or that infringe on Plaintiff’s federally registered copyright for the Rapid Slicer Work that overall infringe the Rapid Slicer Mark and/or Rapid Slicer Work (collectively referred to as “Infringing Product(s)” or

¹ (U.S. Reg. No. 5,647,154 attached as **Exhibit 1 to the Complaint**)

“Counterfeit Product(s)”) through accounts with the online marketplace platform Context Logic, Inc. d/b/a wish.com (“Wish”), by Defendants (“User Account²(s)”);

- b. Plaintiff has well-founded fears that more Counterfeit Products and Infringing Products will appear in the marketplace; that consumers may be misled, confused and disappointed by the quality of these Counterfeit Products and Infringing Products, resulting in injury to Plaintiff’s reputation and goodwill; and that Plaintiff may suffer loss of sales for its Rapid Slicer Product; 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 Infringing Products or other goods that infringe the Rapid Slicer Mark and/or Rapid Slicer Work, the means of obtaining or manufacturing such Counterfeit Products or Infringing 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 Infringing Products or other goods infringing the Rapid Slicer Mark, the means of obtaining or manufacturing such Counterfeit Products or Infringing 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 Infringing Products or other goods infringing the Rapid Slicer Mark and records relating thereto that are in their possession or under their control

² As defined in the Application, a “User Account” is, as defined in the Complaint, any and all accounts with online marketplace platform(s) Context Logic, Inc. d/b/a wish.com (“Wish”) and PayPal, Inc., d/b/a paypal.com (“PayPal”), 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.

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 or Infringing Products (“Merchant Storefront(s)³”) under new or different names and to continue to offer for sale and sell Counterfeit Products and Infringing Products with little to no consequence;

6. 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 Rapid Slicer Mark and Rapid Slicer Work;

7. Public interest favors issuance of the temporary restraining order in order to protect Plaintiff’s interests in and to its Rapid Slicer Mark and Rapid Slicer Work and to protect the public from being deceived and defrauded by Defendants’ passing off of their substandard Counterfeit Products as Raid Slicer Product(s) or Defendants selling Infringing Products as Rapid Slicer Work(s).

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

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

³ 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 or Infringing 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.

10. 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.

11. 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, Infringing Products, or other goods infringing the Rapid Slicer Mark or Rapid Slicer Work. 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.

12. 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 or Infringing 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 and/or Infringing Products, or any other products bearing the Plaintiff's Mark and/or Mark that are confusingly similar to, identical to and constitute a counterfeiting or infringement of the Rapid Slicer Mark and/or incorporating the Rapid Slicer Work and/or artwork that is substantially similar to, identical to, and constitute an infringement of the Rapid Slicer Work;
- (2) from secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with: (i) Counterfeit Products and/or Infringing Products 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 and/or Infringing 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 and/or Infringing 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 Mark that are confusingly similar with the Plaintiff’s Mark and/or substantially similar to the Rapid Slicer Work, 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 and/or Infringing Products for sale, from search engines’ databases or cache memory, and any other form of use such that the Plaintiff’s Mark or or a confusingly similar mark or a substantially similar to the Rapid Slicer Work 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, Wish and PayPal, and their related companies and affiliates, shall immediately identify and restrain all funds, as opposed to ongoing account activity, in the accounts related to the 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 accounts subject to this Order; and (iii) any other accounts tied to or used by any of the Seller IDs identified on Schedule “A” hereto⁴;
- (8) Wish and PayPal shall immediately divert to a holding account for the trust of the Court all funds in all accounts related to Defendants identified in 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 accounts subject to this Order;
- (9) Wish and PayPal shall further, within five (5) business days of receiving this Order, provider 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)

⁴ This Order contemplates that discovery may reveal that Defendants may have other user accounts operated by other Third Party Service Providers and Financial Institutions and that the additionally discovery Third Party Service Providers and Financial Institutions, once identified and provided with notice, shall also be subject to the discovery, restraints and injunctions set forth in this Order.

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 Wish or PayPal for any purpose (other than pursuant to a chargeback made pursuant to Wish or PayPal'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 Wish or PayPal accounts which are being used by Defendants for the purpose of counterfeiting the Rapid Slicer Product and/or infringing the Rapid Slicer work, at issue in this action and/or unfairly competing with Plaintiff;

(11) Wish, PayPal, 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 Wish and PayPal 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, 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 Wish and PayPal 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, or until further order of the Court: within (5) days after receipt of service 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;
- D. IT IS HEREBY ORDERED, as sufficient cause has been shown, that after Plaintiff's Counsel has received confirmation from Wish and PayPal regarding the funds restrained as directed herein, the Plaintiff shall serve the Defendants as directed in the separately entered Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3).

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 the United States District Court for the Western District of Pennsylvania, the U.S. Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania in Courtroom No. 8A on **the 26th day of March at 1:15 p.m.** or at such other time that this Court deems appropriate, why a preliminary injunction, pursuant to FRCP 65(a), should not issue.

B. IT IS FURTHER ORDERED that opposing papers, if any, shall be filed electronically with the Court and served on Rapid Slicer's counsel by delivering copies thereof to the office of Ference & Associates LLC at 409 Broad Street, Pittsburgh, Pennsylvania 15143 **before 5:00 p.m. on March 22, 2019**. Rapid Slicer shall file any Reply papers **before noon on March 25, 2019**.

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'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 admissions pursuant 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'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, Context Logic, Inc. d/b/a wish.com ("Wish) and PayPal, Inc. d/b/a paypal.com ("PayPal") and PayPal, Inc. d/b/a paypal.com ("PayPal") 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

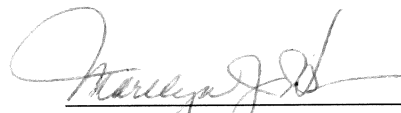
- d. Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling of Counterfeit Products and/or Infringing Products, or any other products bearing the Rapid Slicer Mark and/or Mark that are confusingly similar to, identical to, and constitute an infringement of the Rapid Slicer Mark and/or substantially similar to the Rapid Slicer Work.

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 (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 11th day of March, 2019, at 1:30 p.m.
Pittsburgh, Pennsylvania



Marilyn J. Horan
UNITED STATES DISTRICT JUDGE

SCHEDULE "A"
DEFENDANTS BY NUMBER AND SELLER ID

Def No.	Store Name	Merchant ID
1	buyspry	597aaf37c7f5057fd5582f62
2	bluezhangyy	596b10d3abea9175d6152e76
3	buqiuqibiao	5adc44bb9bda4e48da91931b
4	chanzon	594e136cabea91780b592536
5	daisyshop	58dba57e3af68752ad25314b
6	forpricetrade	58d32a5df8782d55bffff4fc
7	freegarden	5996555215da071d681483f5
8	Honey Home	561cc46937552b5abcf896ee
9	Incoherent	5aaa9a2ccc0c86989644c3f
10	kittysstory	58e7619b575d8523d0c9a494
11	KUEGOU/cool clothes to buy	58aefae44d038c69bdc03137
12	lepanxiaodian	593247738635f04ec4345b8f
13	R-fer3C	58da10e43743c352cdfaf55c
14	ringsmart	54ad1facd630ed1ad698d029
15	sijifuzhuangku	5af0f49849727961ba55e10a
16	tinyskydeal	58b440271cd1a950d8adc44c
17	woyaobangbangde	5ac4fc66a71fbf76e68c25cb
18	xuanshu	5aeac289618aa1165f183545