

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

RAPID SLICER, LLC,

Plaintiff,

v.

BUYSPRY, *et al.*,

Defendants.

Civil Action No. 19-249

(Judge Horan)

FILED UNDER SEAL

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 Storefronts¹; 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), and PayPal, Inc. d/b/a paypal.com (“PayPal”), in light of Defendants’ intentional and willful offerings for sale and/or sales of Counterfeit Products² (“Application”);

¹ As defined in the Complaint, 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 Infringing or 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.

² As alleged in Plaintiff’s Complaint, “. . . 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 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 “Counterfeit Product(s)”) to U.S. consumers, including those consumers in Pennsylvania, though their Merchant Storefronts.

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 March 11, 2019 at 1:15 p.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 all of the Defendants identified on the attached **Schedule “A”**, Context Logic, Inc. d/b/a wish.com (Wish), and PayPal, Inc. d/b/a paypal.com (“PayPal”) (“TRO”); and

(B) Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3).

WHEREAS, on March 26, 2019, Plaintiff appeared for the Order to Show Cause Hearing, however no Defendants appeared. Further, Wish and PayPal did not appear.

ORDER

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, the injunctive relief previously granted on March 11, 2019 at 1:15 p.m. shall remain in place and until further order of the Court, and issuing this Preliminary Injunction (hereafter “PI Order”) is warranted under FRCP 65, Section 34 of the Lanham 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 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 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 have been 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 continue to 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" hereto³;

³ 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.

- (8) Wish and PayPal, shall continue to 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, to the extent not already done, 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 Wish and PayPal for any purpose (other than pursuant to a chargeback made pursuant to Wish and PayPal 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 and 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; and

(12) this PI Order and the Alternative Service Order shall remain in effect until further order of the Court, and Plaintiff shall serve the Defendants with a copy of this PI Order, and all future filings, in accordance with the Alternative Service Order and the provisions of **IV. Service** set forth herein.

B. IT IS HEREBY ORDERED, as sufficient cause has been shown, that Wish and PayPal 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 Wish and PayPal shall continue to be restrained and enjoined from engaging in any of the following acts or omissions 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.

II. Order Authorizing Expedited Discovery

A. IT IS FURTHER ORDERED, as sufficient cause has been shown, the expedited discovery previously granted in the TRO shall remain in place until further order of this Court, 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, Wish and 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.

III. Security Bond

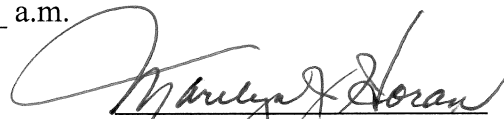
IT IS FURTHER ORDERED, the \$5,000.00 bond posted by Plaintiff shall remain with the Court until a final disposition of this case or until this PI Order is terminated.

IV. Service

IT IS FURTHER ORDERED, Plaintiff shall serve this Order and all subsequent filings on known Defendants both by email and mail, where said information is known to Plaintiff, in accordance with FRCP 5(b)(2)(C).

SO ORDERED.

SIGNED this 11th day of April, 2019, at 8:30 a.m.
Pittsburgh, Pennsylvania



Marilyn J. Horan
United States District Judge

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