

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

AIRIGAN SOLUTIONS, LLC,

Plaintiff,

v.

BABYMOVE, *et al.*,

Defendants.

Civil Action No. 19-166

(Judge Fischer)

[PROPOSED] FINAL DEFAULT JUDGMENT AND PERMANENT INJUNCTION

This matter comes before the Court upon Motion by Plaintiff, Airigan Solutions, LLC (“Plaintiff”) for entry of a default judgment against: the Defendants set forth in Attachment “A”, hereinafter referred to as “Defaulting Defendants”,¹ for Defaulting Defendants’ trademark counterfeiting and infringement, false designation of origin, passing off, unfair competition, patent infringement and related state and common law claims arising out of Defaulting Defendants’ infringing use of Plaintiff’s NEGG Marks, in their manufacturing,

¹ Defaulting Defendants are sophisticated sellers, each operating one or more commercial businesses using their respective user accounts. Defendants were and/or are systematically directing and/or targeting their business activities at consumers in the U.S., including Pennsylvania, through accounts with online marketplace platforms such as Aliexpress.com and eBay.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”). Through these User Accounts, Defendants, their respective officers, employees, agents, servants and all persons in active concert of participation with any of them, operate storefronts to manufacture, import, export, advertise, market, promote, distribute, offer for sale and/or otherwise deal in products, including the Counterfeit Products (as defined *infra*), 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)”).

importing, exporting, advertising, marketing, promoting, distributing, displaying offering for sale and/or selling offering for sale and/or sale of Counterfeit Products.²

The Court, having considered the Declaration of Brian Samuel Malkin in support of Plaintiffs' Motion for Default Judgment and a Permanent Injunction ("Motion for Default Judgment"), the Certificate of Service of the Summons and Complaint, Entry of Default of the Clerk of Courts, and upon all other pleadings and papers on file in this Action, it is hereby ORDERED as follows (hereinafter, "Default Judgment Order"):

I. Defaulting Defendants' Liability

Judgment is granted in favor of Plaintiff on all claims asserted against Defendants in the Complaint;

II. Damage Awards

IT IS FURTHER ORDERED that, because it would serve both the compensatory and punitive purposes of the Lanham Act's prohibitions on willful infringement, and because Plaintiff has sufficiently set forth the basis for the statutory damages awards requested in its Motion for Default Judgment, the Court finds that such awards are reasonable and Plaintiff is awarded statutory damages against each of the Defaulting Defendants pursuant to Section 15 U.S.C. § 1117(c) of the Lanham Act as follows, plus post-judgment interest:

² "Counterfeit Products" are 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 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")

Def No.	DEFAULTING DEFENDANT	STATUTORY DAMAGES
1	Babymove	\$2,000,000.00
2	BinggoHO	\$2,000,000.00
3	BOUCHlet	\$2,000,000.00
4	Clynch	\$2,000,000.00
5	Cobre Guisante E Co Ltd	\$2,000,000.00
6	Drakales	\$2,000,000.00
7	Fashionw	\$2,000,000.00
8	Flyingdreamss	\$2,000,000.00
10	Leapon	\$2,000,000.00
11	Linenstoreonline889	\$2,000,000.00
12	Loverver	\$2,000,000.00
13	Maternitybargains4less	\$2,000,000.00
14	PENNYMAI	\$2,000,000.00
15	Poley	\$2,000,000.00
16	Sharongoogle9	\$2,000,000.00
17	Ticloy	\$2,000,000.00
18	VOTRON ONLINE, LLC	\$2,000,000.00
19	WhileHot	\$2,000,000.00
20	Yingweiyuan	\$2,000,000.00

III. Permanent Injunction

A. IT IS HEREBY ORDERED 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 shall be permanently restrained and enjoined 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) this Order shall apply to the Seller IDs, associated Accounts and Merchant Storefronts,

and any other seller identification names, Accounts or Merchant Storefronts, Context Logic, Inc. d/b/a wish.com (Wish)(“Third Party Service Provider(s)”), and PayPal, Inc. d/b/a paypal.com (“PayPal”)(“Financial Institution(s)”) 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;

(7) the Third Party Service Provider(s) or Financial Institution(s) 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

(8) the 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 Order in accordance with the Alternative Service Order.

B. IT IS FURTHER ORDERED that the Third Party Service Provider(s) or Financial Institution(s) are permanently enjoined and restrained from:

secretory, 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”);

C. IT IS FURTHER ORDERED that the Third Party Service Provider(s) and Financial Institution(s) shall be permanently restrained and enjoined from engaging in any of the following acts or omissions:

(1) 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 FURTHER ORDERED that Defaulting Defendants must deliver up for destruction to Plaintiffs any and all Counterfeit Products and any and all packaging, labels, tags, advertising and promotional materials and any other materials in the possession, custody or control of Defaulting Defendants that infringe any of Plaintiffs' trademarks, copyrights or other rights including, without limitation, the NEGG Marks or, bear any marks that are confusingly or substantially similar to the NEGG Marks and pursuant to 15 U.S.C. § 1118;

IV. Post-Judgment Asset Transfer and Asset Freeze Order

A. IT IS FURTHER ORDERED that in accordance with Rule 64 of the Federal Rules of Civil Procedure, 15 U.S.C. § 1116(a) and this Court's inherent equitable powers to issue remedies ancillary to its authority to provide final relief, and given the difficulties Plaintiff would have enforcing this Default Judgment Order, Defaulting Defendants' Assets from Defaulting Defendants' Financial Accounts that were and/or are attached and frozen or restrained pursuant to the TRO and/or PI Order, or which are attached and frozen or restrained pursuant to any future order entered by the Court in this Action, (collectively, "Defaulting Defendants' Frozen Assets" and "Defaulting Defendants' Frozen Accounts," respectively), are, to the extent that a given Defaulting Defendant's Frozen Assets equal the Defaulting Defendants' Individual Damages Award, hereby released and transferred to Plaintiff as full satisfaction of the Defaulting Defendants' Individual Damages Award for that Defaulting Defendant, and those Defaulting Defendant's Frozen Assets shall be transferred to Plaintiff through Plaintiff's counsel forthwith, and upon receipt by Plaintiff's counsel of such Defaulting Defendant's Frozen Assets in full satisfaction of the Defaulting Defendants' Individual Damages Award, the Financial Institution(s) holding that Defaulting Defendant's Frozen Assets and Defaulting Defendants' Frozen Accounts may unfreeze that Defaulting

Defendant's Frozen Assets and Defaulting Defendant's Frozen Accounts. To the extent that a Defaulting Defendant's Frozen Assets are less than the Defaulting Defendants' Individual Damages Award, that Defaulting Defendant's Frozen Assets are hereby released and transferred to Plaintiffs as partial satisfaction of the Defaulting Defendants' Individual Damages Award for that Defaulting Defendant and those Defaulting Defendant's Frozen Assets shall be transferred to Plaintiff through Plaintiff's counsel forthwith, and

B. IT IS FURTHER ORDERED that in accordance with Rule 64 of the Federal Rules of Civil Procedure and this Court's inherent equitable powers to issue remedies ancillary to its authority to provide final relief, and given the difficulties Plaintiff would have enforcing this Default Judgment Order, the Court also hereby grants Plaintiff's request for a post-judgment restraining order continuing the attachment of each Defaulting Defendant's Frozen Assets until Plaintiff has recovered the full payment of the Defaulting Defendants' Individual Damages Award owed to it by that Defaulting Defendant under this Default Judgment Order, or until further order of this Court; and

C. IT IS FURTHER ORDERED that in accordance with this Court's inherent equitable powers to issue remedies ancillary to its authority to provide final relief, and given the difficulties Plaintiff would have enforcing this Default Judgment, until Plaintiff has recovered the full payment of the Defaulting Defendants' Individual Damages Award owed to it by any Defaulting Defendant under this Default Judgment Order, in the event that Plaintiff discovers new and/or additional Defaulting Defendants' Assets (whether said assets are located in the U.S. or abroad) and/or Defaulting Defendants' Financial Accounts (whether said account is located in the U.S. or abroad) ("Defaulting Defendants' Additional Assets" and "Defaulting Defendants' Additional Financial Accounts," respectively), Plaintiff shall

have the ongoing authority to serve this Default Judgment Order on any Financial Institutions controlling or otherwise holding such Defaulting Defendants' Additional Assets and/or Defaulting Defendants' Additional Financial Accounts ("Financial Institutions Holding Defaulting Defendants' Additional Assets and/or Financial Accounts")³;

1. Upon notice of this Default Judgment Order, Financial Institutions Holding Defaulting Defendants' Additional Assets and/or Financial Accounts shall immediately locate Defaulting Defendants' Additional Financial Accounts, attach and restrain such Defaulting Defendants' Additional Assets in Defaulting Defendants' Additional Financial Accounts from being secreted, concealed, transferred or disposed of or withdrawn; and
2. After five (5) business days following the service of this Default Judgment on Financial Institutions Holding Defaulting Defendants' Additional Assets and/or Financial Accounts, Financial Institutions Holding Defaulting Defendants' Additional Assets and/or Financial Accounts shall transfer all Defaulting Defendants' Additional Assets to Plaintiffs as partial or full satisfaction of the Defaulting Defendants' Individual Damages Award, unless Defaulting Defendant has filed with this Court and served upon Plaintiffs' counsel a request that such Defaulting Defendants' Additional Assets be exempted from this Default Judgment Order. At the time the funds are released, Financial Institutions Holding Defaulting Defendants' Additional Assets and/or Financial Accounts shall transfer all Defaulting Defendants' Additional Assets shall provide to Plaintiff a breakdown

³ This Order contemplates that investigation and/or discovery during judgment collection may reveal that Defaulting Defendants may have used other user accounts, operated by other Third Party Service Providers and Financial Institutions other than those named and that any additional discovered Third Party Service Providers and Financial Institutions, once identified and provided with notice, shall be subject to the restraints, asset seizure and turn over in this Order.

reflecting the (i) total funds restrained in this matter per Defendant; (ii) the total chargebacks, refunds, and/or transaction reversals deducted from each Defendant's funds, restrained prior to release; and (iii) the total funds released per Defendant to the Plaintiff.

V. Miscellaneous Relief

- A. Upon Plaintiff's request, the Third Party Service Provider(s) or Financial Institution(s) shall disable and/or cease facilitating access to the Seller IDs, including any other alias seller identification names being used offer for sale and/or sell Counterfeit or Infringing Products.
- B. Any failure by Defaulting Defendants to comply with the terms of this Default Judgment Order shall be deemed contempt of Court, subjecting Defaulting Defendants to contempt remedies to be determined by the Court, including fines and seizure of property;
- C. Interest from the date this action was filed shall accrue at the legal rate pursuant to 28 U.S.C § 1961.
- D. The bond posted by Plaintiff in the amount of \$5,000.00 is hereby ordered released by the Clerk.
- E. This Court shall retain jurisdiction over this matter and the parties in order to construe and enforce this Judgment and permanent injunction.

SO ORDERED.

SIGNED this _____ day of _____, 2019
Pittsburgh, Pennsylvania

Nora Barry Fischer
United States District Judge

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

SCHEDULE "A"
DEFENDANTS BY STORENAME AND MERCHANT ID

Def No.	Store Name	Merchant ID
1	Babymove	5a0053d9448a525e05f95b61
2	BinggoHO	59b780a8776ab911b97fe10e
3	BOUCHlet	59f292f19fbc517588f33c9d
4	Clynch	59f2e8540a332a6c1cd3c84f
5	Cobre Guisante E Co Ltd	5a65563187c25b41a3b940d9
6	Drakales	5a02c731471c1473154520dd
7	Fashionw	53abb83fd91139358bc33000
8	Flyingdreamss	5a0053d9448a525e05f95b61
10	Leapon	5a04103c37f9f833f59737a4
11	Linenstoreonline889	59dde1b6dbd28202fc4a0336
12	Loverver	58aae9777584195057a197cb
13	Maternitybargains4less	582c7b5f728de64721487e86
14	PENNYMAI	5a3f4e80da6ce64e16594439
15	Poley	5a050b4437f9f81e6b0dd89d
16	Sharongoogle9	59b8e806eea5c553061c50c9
17	Ticloy	59e9558cdc7a91139c84a7b4
18	VOTRON ONLINE, LLC	566194f756521824069d571c
19	WhileHot	5a0ffbc4149ff83ea610805d
20	Yingweiyan	5ab9fe801b98df7014c70343