

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

AIRIGAN SOLUTIONS, LLC,

Plaintiff,

v.

ABAGAIL, *et al.*,

Defendants.

Civil Action No. 19-cv-503

(Judge Fischer)

FILED UNDER SEAL

PLAINTIFF'S *EX PARTE* MOTION TO AMEND TEMPORARY RESTRAINING ORDER; ORDER RESTRAINING ASSETS AND MERCHANT STOREFRONTS; ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE; AND ORDER AUTHORIZING EXPEDITED DISCOVERY

Plaintiff, Airigan Solutions, LLC (“Airigan” or “Plaintiff”), hereby moves this Court on an *ex parte* basis to amend the previously issued *ex parte* Temporary Restraining Order to include the Defendants, the Individuals, Partnerships, and Unincorporated Associations identified on **Amended Schedule “A”** hereto (collectively “Defendants”)¹ and which are included in the Amended Complaint that is being contemporaneously filed herewith. In support thereof, Airigan submits the following:

I. INTRODUCTION

This is an action for trademark counterfeiting and infringement, false designation of origin, common law unfair competition, common law trademark infringement, and patent

¹ Airigan is contemporaneously filing an Amended Complaint that is substantively identical to the original Complaint except that the **Amended Schedule “A”** thereto includes newly added Defendants. Airigan is also contemporaneously moving to amend the original Order permitting alternate service to permit alternate service on the newly added Defendants. Airigan hereby incorporates by reference its Application for TRO and Motion for Alternative Service, together with supporting declarations and exhibits.

infringement. Defendants are knowingly and intentionally promoting, advertising, distributing, offering for sale, and selling goods bearing counterfeits of Airigan's registered trademark within this district and throughout the United States by operating e-commerce stores established via the Internet marketplace website, Amazon.com ("Amazon"), under their respective seller identification names (the "Seller IDs").

On May 2, 2019, Plaintiff filed its Complaint together with its *Ex Parte* Application for Entry of a Temporary Restraining Order and Preliminary Injunction (the "Application for TRO") as to the original Defendants. On May 2, 2019, the Court entered an Order granting an *Ex Parte* Temporary Restraining Order, and on May 8, 2019, the Court entered an Order extending the Temporary Restraining Order and re-scheduling the hearing on the Preliminary Injunction for June 10, 2019, at 3:00 p.m.

Airigan is filing herewith an Amended Complaint that names 18 additional defendants (A2KSD, DyCldi, Elisabeth Armand, GE Mountain, Max Happy-US-LOCAL Shipping, MonoShop, MYUOOT, niky-xie, Olga Plazova, Peiban, ProShinyZone, Rotking, Sydney Olsons, The moment, Ubaby, USZhideDirect, Wisuduyz, and zhouyuanbiao) and by this Motion seeks to amend the May 2, 2019, Temporary Restraining Order to include these newly added Defendants who are also knowingly and intentionally promoting, advertising, distributing, offering for sale, and selling goods bearing counterfeits of Airigan's registered trademark within this district and throughout the United States by operating e-commerce stores established via the Amazon Internet marketplace website.

II. ARGUMENT

The papers submitted by Airigan on May 2, 2019, – in particular, the *Memorandum of Law* – set forth the governing law with respect to the issuance of a Temporary Restraining Order

for counterfeit products. In the present Motion, Airigan incorporates the previously filed papers by reference, and will limit the present Motion to showing the newly added Defendants are subject to the personal jurisdiction of the court, are selling counterfeit product, and it is appropriate to amend the previously entered Temporary Restraining Order.

A. The Newly Added Defendants are Subject to Personal Jurisdiction

Airigan has in its possession counterfeit product that has been shipped into this District from a number of the newly added Defendants. All of the newly added defendants, however, operate a fully interactive website directed to residents of the Commonwealth of Pennsylvania, and will ship product to the Commonwealth of Pennsylvania. Furthermore, all of the newly added Defendants collect Pennsylvania sales tax. *See* May 28, 2019, Declaration of Margaret B. Tyler (“*Tyler Dec.*”), ¶ 5, and May 28, 2019, Declaration of Amy Cline (“*Cline Dec.*”), ¶ 2 and *Composite Exhibit 2* thereto. *Composite Exhibit 2* includes, for each newly added Defendant, documentation showing their willingness to ship counterfeit product into Pennsylvania and, for a number of the newly added Defendants, documentation showing counterfeit product was actually shipped into Pennsylvania.

As discussed in Plaintiff’s *Memorandum of Law* submitted on May 2, 2019 (pgs. 12-24), it is not necessary for a defendant to actually ship counterfeit product into Pennsylvania to be subject to personal jurisdiction in Pennsylvania. A defendant is subject to personal jurisdiction in a state where the defendant offers counterfeit product for sale through an interactive website. Therefore, this Court has personal jurisdiction over the newly added Defendants.

B. The Newly Added Defendants are Selling Counterfeit Product

The new Defendants are also selling Counterfeit and Infringing Products² through Accounts³ and Merchant Storefronts⁴ on Amazon.com. *See* May 28, 2019 Declaration of Margaret B. Tyler (“*Tyler Dec.*”), ¶¶ 5-9; May 28, 2019 Declaration of Amy Cline (“*Cline Dec.*”), ¶ 2 and *Composite Exhibit 2* thereto; and May 28, 2019, Declaration of Stanley D. Ference III (“*Ference Dec.*”), ¶ 4. It is not necessary for Airigan to obtain and physically review a sample of product from each newly added Defendant to make a determination that Defendants are selling counterfeit and infringing product.

In *Ideavillage Products Corp. v. Dongguan Shipai Loofah Sponge Commodity Factory d/b/a Bathing Store*, No. 18-cv-901 (S.D.N.Y. Feb. 2, 2018), an on-line counterfeiting case, the Temporary Restraining Order was issued against nearly 25 defendants even though no counterfeit product was actually delivered into New York State or physically reviewed by the plaintiff. *Ideavillage* showed – as Airigan has shown here – that each defendant ships counterfeit

² As alleged in Plaintiff’s Amended 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® 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”).

³ As defined in the Application, a “User Account” is, as defined in the Complaint, any and all accounts with online marketplace platforms Amazon.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 other persons in active concert with any of them.

⁴ 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.

product into the state and a determination of infringement was made through visual inspection of the Defendants' listings for counterfeit products.

As in the *Ideavillage* case, for those newly added Defendants for which Airigan has not reviewed actual product, Airigan is able to confirm with certainty through visual inspection of the newly added Defendants' listings on Amazon the counterfeit products offered for sale by each newly added Defendant in its listing are, in fact, infringing, particularly given the low prices at which the newly added Defendants are offering counterfeit products. As reflected in the copies of each newly added Defendants' listings attached to *Composite Exhibit 2*, the newly added Defendants' counterfeit products are virtually indistinguishable from Airigan's genuine NEGG® brand egg peeler. Therefore, Airigan has shown that the newly added Defendants are offering for sale and/or selling counterfeit product.

C. It is Proper to Amend the Temporary Restraining Order

A temporary restraining order may be modified if the proposed changes are equitable in light of subsequent changes in the facts or law, or for any other good reason. *See Thornbrook Int'l, Inc. v. Rivercross Foundation*, 2003 WL 22289853, * 2, No. No. 03 C 1113 (N.D. Ill., Oct. 6, 2003) (citing *Movie Systems, Inc. v MAD Minneapolis Auto Distributors*, 717 F. 2d 427, 430 (8th Cir. 1983); *Canal Authority v. Callaway*, 489 F.2d 567, 578 (5th Cir. 1974)). In counterfeiting cases such as the present case, temporary restraining orders have been amended to include additional defendants. *See Gaffigan v. Does 1-10 d/b/a tiffjewelrystore.com, et al.*, 2010 WL 2925091, No. 09-61206 (S.D. Fl., July 22, 2010) (order adopting Magistrate's report and recommendation to grant motion to amend temporary restraining order to include additional defendant domain names).

III. CONCLUSION

Airigan's motion seeks to amend the temporary restraining order to add additional Amazon Merchant Storefronts by way of Seller IDs and ASIN numbers. Since Plaintiff has already demonstrated good cause for granting the first Application for a temporary restraining order and since the balance of equities continues to weigh in favor of the Plaintiff, it is appropriate for the Court to amend the temporary restraining order to include the new Defendants and further enjoin Amazon.

A proposed Order granting this motion is submitted herewith, together with a proposed Amended Temporary Restraining Order.

Respectfully submitted,

Dated: May 28, 2019

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AMENDED SCHEDULE "A"
DEFENDANTS BY NUMBER AND SELLER ID

Def No.	Defendant / Amazon Store Name	Amazon ASIN Number(s)	Amazon Seller ID
1	Abagail	B07NQFLP1M	A21KIIYNV8YHVV
2	AHuShi	B07QWT2JH7	AWX8XMIYVF7QQ
		B07QYS6JC3	
		B07QYVDFVF	
3	Aidmei	B07MXJFGYV	A3L0946AZBVYR3
4	Ailite store	B07CGLHK7N	A3MUUEM4U5X3XU
		B07MKG6QQ7	
		B07MTZ3W3F	
		B07MV1X4M8	
		B07MV25KMV	
		B07MV3K64H	
		B07MXGPHW6	
		B07MXH1ND4	
		B07MXHQ5PJ	
		B07MXJFGYV	
		B07NKYLY4H	
		B07NS54TBT	
		B07NS6GL9N	
		B07PBM4ZTX	
		B07QF425Z6	
		B07QGK7TP8	
		B07QHLJG9	
		B07QHPP751	
5	Amberqin	B07PHQ1KGM	A1M3C1XY082K7J
6	briskyii	B07QWT8C3H	A3KXARCXYPN3FL
		B07QXQZZ1R	
		B07QYTZ199	
		B07QZXVKXY	
7	Chic-Micky	B07QZ12HH8	ATFTJ2CNRI2E
		B07R297SPY	
8	chuanhai	B07N2B82NF	A3HXNITIFY6I4K
		B07N2D1X2J	A3HXNITIFY6I4K
9	CleanLove	B07QWSYJZ5	A1WCXLV84EX628
		B07QXS1KYY	
		B07QYSFVCK	
10	csdsdfs	B07NQFLP1M	AVCHPNNLWQ2JT

Def No.	Defendant / Amazon Store Name	Amazon ASIN Number(s)	Amazon Seller ID
11	Darshion	B07PX13K8N	A2IP6GH42RTP7E
		B07PZBC16L	
		B07Q272PKW	
		B07Q27W15T	
		B07Q29179B	
12	DiLi - Store	B07NMZQ427	AE14FAH2M5ZM0
		B07PXPBSTS	
13	e-AuctionMaven	B07MXHQ5PJ	AOGT2L9H7NK9E
14	fengde direct	B07QKV467X	AE5QR4B6AJMXY
		B07QKVVB2Q	
		B07QKVZKFJ	
		B07QKWP9TZ	
		B07QKWS6ZV	
15	FMAB	B07MTYBCL4	A3HM587EHCEMA9
		B07MV3K64H	
		B07NKYLY4H	
16	Haudrey	B07QXVB97L	A1HG69UO66CE3L
		B07R2B8M62	
17	Hotlive	B07MXHQ5PJ	A244OF9QJLAZC1
18	KaBoRu	B07P9JVY4R	A22TF75IW23E0E
		B07PBM4ZTX	
19	kouhaivsea	B07PN92SDC	A1AORWZJYSKMPI
		B07PQJ599P	
		B07PQJL5L2	
		B07PQJY7TR	
		B07PQK6ZWS	
20	Kuohai Store	B07MXGPHW6	A1XLU0RT4RSUDL
		B07MXHQ5PJ	
		B07MXJFGYV	
		B07MTZ3W3F	
		B07MXH1ND4	
		B07PN92SDC	
		B07PQJ599P	
		B07PQJL5L2	
		B07PQJY7TR	
		B07PQK6ZW5	
		B07PVY7C8F	
		B07PWW6QLG	
		B07PYT2KMY	
		B07PZ6KR37	
		B07PZ6N8VH	
		B07Q1B85DG	
21	LeDom	B07CGLHK7N	A1923BZ0T98EJM

Def No.	Defendant / Amazon Store Name	Amazon ASIN Number(s)	Amazon Seller ID
22	Liveda	B07PZ6BJ9D B07PZ6BL97	AD6YMMDELKPQX
23	Outdoorshop	B07MXHQ5PJ B07NS54TBT	A1JGJ9K6KISDM1
24	Pachira Macrocarpa	B07PN4ZSJM	A20EMP02C4BYNG
25	RONGCHI Inc.	B07NRL35Z5	A3Q4ZQGJUIW2TA
26	Sitelly	B07NS2XFKS B07NS54TBT B07NS6GL9N	A1X0D9XW5NZPBR
27	skybayyyyy	B07QXRFYBR B07QYS5S3Q	A1C127MPMEMG0T
28	Sum-mer	B07MXHQ5PJ B07MXJFGYV	A355KY8JEF44JY
29	Sunpangpang	B07MXGPHW6 B07MXH1ND4 B07MXHQ5PJ B07MXJFGYV	A2F5TSXEE9J51Y
30	A2KSD	B07MXJFGYV	AXXTQBWSANVTU
31	DyCldi	B07NS6GL9N	A2SJ7A3IU0IRH3
32	Elisabeth Armand	B07NQFLP1M	A2SRZU0UYSHDS2
33	GE Mountain	B07QC6YD2S B07QF8VDCL	A36B1MUV1HOB6R
34	Max Happy-US-LOCAL Shipping	B07MXGPHW6 B07MXHQ5P B07MXJFGYV B07NQFLP1M B07PHQ1KGM	A3RH2ZS9PSMYEU
35	MonoShop	B07PZ6BL97 B07R27VVLV B07QY5V2J1	A2VMWBL9M2ENWA
36	MYUOOT DIRECT	B07MV2KNCC	AE7ZTDKHSIS83
37	niky-xie	B07S9472H4	A3KQVI0IEWTZ3P
38	Olga Plazova	B07NS54TBT	A2YVFN47KVV6CZ
39	Peiban	B07MXJFGYV	A2MOD6G8HVV235
40	ProShinyZone	B07NQFLP1M	A2HJ9GY7THVA2V
41	Rotking	B07MXJFGYV	A28591RH23M7W
42	Sydney Olsons	B07NS6GL9N	AJUUI0MJTJ2UA
43	The moment	B07MXJFGYV	A37TTWS0KQF48Z
44	Ubaby	B07NS54TBT	A1VH40GG5FK0SG
45	USZhideDirect	B07RLZLHWR	A3AGD6PLJGLBC8
46	Wisuduyz	B07MXHQ5PJ B07NQFLP1M	A2YE5JOUNHNC77

Def No.	Defendant / Amazon Store Name	Amazon ASIN Number(s)	Amazon Seller ID
47	zhouyuanbiao	B07NM6ZBDL B07NM767H8 B07PZRXB4H B07Q1W7T8S	A37CB8JQ3Z6N2C