

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

DOGGIE DENTAL INC, *et al.*,

Plaintiffs,

v.

MAX_BUY, *et al.*,

Defendants.

Civil Action No. 19-cv-746

Judge Hornak

FILED UNDER SEAL

**PLAINTIFFS' *EX PARTE* MOTION FOR AN ORDER
TO EXTEND THE TEMPORARY RESTRAINING ORDER, CONTINUE THE SHOW
CAUSE HEARING, AND MODIFY THE BRIEFING SCHEDULE**

Plaintiffs hereby move this Court on an *ex parte* basis, for an order to extend the temporary restraining order, continue the show cause hearing, and modify the briefing schedule. In support thereof, Plaintiffs submit the following:

I. INTRODUCTION

Plaintiffs are suing Defendants for federal unfair competition, copyright infringement, common law unfair competition, and common law trademark infringement. Defendants are knowingly and intentionally promoting, advertising, distributing, offering for sale, and selling knock-off products within this district and throughout the United States by operating e-commerce stores established via the Internet marketplace website eBay.com (“eBay”), under the seller identification names identified on Schedule “A” to the Complaint (the “Seller IDs”)

On June 27, 2019, this Court entered a Sealed Order (“Order”) (ECF No. 15) granting 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 the Defendants, and eBay, Inc. d/b/a eBay.com (“eBay”) and PayPal, Inc. d/b/a paypal.com (“PayPal”). The Order was served on PayPal the same day. On July 1, 2019, PayPal’s legal department indicated that PayPal did not yet have enough information to perform the search, identification and restraint of the defendants’ financial accounts. The necessary information was promptly obtained from eBay and transmitted to PayPal (*Malkin Dec.*,¹ ¶ 4). As of today (July 8, 2019), PayPal has communicated that some of the Defendant’s financial accounts have been identified and restrained. The Order set a date of on or before July 8, 2019, for Defendants’ papers in opposition to be served. Additionally, the Order set a Show Cause Hearing on Plaintiffs’ Application for July 10, 2019 at 4:00 p.m. EDT. The timing of the hearing and service of the Summons, Complaint, and the *Ex Parte* Application were predicated upon PayPal acting within five (5) days of receipt of the Order. As discussed below, PayPal does not appear to have restrained all of the Defendants’ accounts as of today (July 8, 2019). Thus, Plaintiffs are requesting a modification of the briefing schedule and the Show Cause Hearing date.

II. STATEMENT OF FACTS

Section I (A)(7) of the Order provides that upon receipt of notice of this Order, PayPal shall locate, attach and freeze Defendants’ Assets. The Order provides that PayPal is to notify Plaintiffs’ counsel when the asset freeze is completed. Once the Asset Freeze is completed, Plaintiffs’ counsel is to serve the Defendants. (*Malkin Dec.*, ¶ 6).

In this way, the Plaintiffs are assured that Defendants are not able to avoid the Court’s Order by receiving advanced notice of the suspension before the asset freeze. (*Malkin Dec.*, ¶¶ 7

¹ *Malkin Dec.* refers to the July 8, 2019 Declaration of Brian Samuel Malkin submitted herewith.

-8). Plaintiffs' counsel promptly served PayPal as of June 27, 2019. (*Malkin Dec.*, ¶ 4). As of this morning (July 8, 2019) PayPal responded indicating that some of the Defendants' financial accounts are restrained. However, it would appear that some of the Defendants' accounts are yet to be identified and then restrained by PayPal (*Malkin Dec.*, ¶ 5). Since PayPal has only this morning communicated this information, Plaintiffs' counsel does not believe that there is sufficient time to ensure that all of the financial accounts have been restrained and then to serve the Defendants. (*Malkin Dec.*, ¶¶ 5, 8 - 9).

III. ARGUMENT

It is appropriate to extend the Temporary Restraining Order, continue the Show Cause Hearing, adjust the date for serving any papers in opposition, and provide Plaintiff with additional time to ensure that all of the financial accounts have been restrained by PayPal and then to serve Defendants. (*Malkin Dec.*, ¶¶ 7 - 8).

Preserving the careful sequencing of asset freeze, suspension of accounts, and finally service is provided for in the Order. Specifically, as stated in the Order "the Court allows enough time for Plaintiffs to serve the Financial Institutions and the Third Party Service Providers with this Order and for the Financial Institutions and/or the Third Party Service Providers to comply with the Paragraph I(A)(7) of this Order before requiring service on Defendants. See *id.*

Good Cause Exists for Extending the Temporary Restraining Order

Federal Rule of Civil Procedure 65(b) provides that a Temporary Restraining Order "order expires at the time after entry—not to exceed 14 days—that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a

longer extension.” Thus, the Temporary Restraining Order will expire unless extended by the Court.

It is not atypical to extend a Temporary Restraining Order in cases like the present case. Indeed, in *Doggie Dental Inc. v. Anywill, et al.*, 19-cv-682, this Court extended the TRO to provide enough time to restrain the financial accounts and to serve the defendants. (ECF No. 24 (Order entered June 18, 2019)). See also *Rapid Slicer, LLC v. Buyspry, et al*, 19-cv-249, Judge Marilyn Horan of this Court extended the Temporary Restraining Order to permit Plaintiff more time to serve the Defendants. (See ECF No. 23) (Order entered March 26, 2019).

In other similar counterfeiting cases, Courts have extended Temporary Restraining Orders. For example, in *Talavera Hair Prods., Inc. v. Taizhou Yunsung Electrical Appliance Co., Ltd. a business entity and The Individuals, P’ships & Unicorporated Assns. Identified on Exhibit “1”*, No. 18-CV-823 (S.D. Cal. May 22, 2018) [ECF No. 16] the Court continued the hearing on the Preliminary Injunction for **two (2) weeks**, moved the time for Defendants to file papers in opposition, and extended the Temporary Restraining Order “until the Court rules on Plaintiff’s Motion for Preliminary Injunction.” In *Apple Corps Ltd. v. 3W Store*, No. 18-CV-60656 (S.D. Fla. April 12, 2018) [ECF No. 28], a Magistrate Judge held a hearing on the Preliminary Injunction and issued a report and recommendation. The Court issued an Order that the Temporary Restraining Order “is hereby extended and shall remain in effect until this Court rules on the Report and Recommendation issued by Magistrate Judge Patrick M. Hunt.” It is not unusual in the Southern District of New York for such adjustments in briefing because of delays in Third Party Service Provider’s responses. For example, in the case of *WowWee Group Limited, et. al. v. Meirly, et. al.*, Civil Case. No. 18-cv-706 (S.D.N.Y Feb. 5, 2018) (ECF No. 4), the original briefing schedule was modified based upon Plaintiff’s representation that they could

not serve the Defendants within the original TRO schedule; *see also Allstar Marketing Group, LLC v. 158, et. al.*, Civil Case No. 18-cv-4101 (S.D.N.Y. May 24, 2018) (ECF No. 7). Likewise, In *William Mark Corporation v I&cc*, No. 18-CV-3889 (S.D.N.Y. May 23, 2018) (ECF No. 19), a Temporary Restraining Order was entered on May 2, 2018, and the Show Cause Hearing was scheduled for June 1, 2018. On May 14, 2018, the Temporary Restraining Order was extended until June 1, 2018.

Given that PayPal has not yet confirmed that all of the Defendants' accounts have been frozen, good cause exists to extend the Temporary Restraining Order in this case. Likewise, the briefing schedule which provides opposition papers be filed on or before July 8, 2019 should be extended. Finally, the show cause hearing scheduled for July 10, 2019 at 4:00 p.m. EST should be re-scheduled to a later date. To allow adequate time to ensure that all of the accounts are frozen and to accomplish service on the Defendants, it would be prudent to extend the dates such that the TRO is extended to and including July 19, 2019. (*Malkin Dec.*, ¶ 9).

IV. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully submit good cause exists for extending the Temporary Restraining Order to no later than July 19, 2019, continuing the Show Cause Hearing, and modifying the schedule.

A Proposed Order granting this motion is submitted herewith.

Respectfully submitted,

Dated: July 8, 2019

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