

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

[PROPOSED] 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”, Amazon Services LLC and Amazon Payments, Inc. (collectively “Amazon”), in light of Defendants’ intentional and willful offerings for sale and/or sales of Counterfeit Products² (“Application”);

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);

¹ 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.

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 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”).

WHEREAS, On May 2, 2019 at 11:00 a.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”**, and Amazon (“TRO”); and

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

WHEREAS, Plaintiff filed an Ex Parte Application for amending the TRO against all of the Defendants, identified on the attached Amended Schedule “A” and Amazon (“Application for Amended TRO”).

WHEREAS, Plaintiff filed an Ex Parte Motion for an Amended Alternative Service Order authorized alternative service upon all the Defendants in Amended Schedule “A”, Pursuant to Federal Rule of Civil Procedure 4(f)(3).

WHEREAS, On May 28, 2019, the Court entered the following Orders:

(A) 1) an amended 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 against the Defendants, identified on the attached Amended Schedule “A”, Amazon Services, Inc. and Amazon Payments, Inc. (“TRO”); and

(B) Amended Order Authorizing Alternative Service on the Defendants in Amended Schedule “A”, Pursuant to Federal Rule of Civil Procedure 4(f)(3) (“Amended Alternative Service Order”).

WHEREAS, pursuant to the terms of the Amended Alternative Service Order, the Defendants have been served; and

WHEREAS, on July 5, 2019, Plaintiff appeared for the Order to Show Cause Hearing, however no Defendants appeared. Further, Amazon did not appear.

ORDER

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, the injunctive relief previously granted on May 2, 2019 at 11:00 a.m. shall remain in place through the pendency of this litigation, and issuing this Preliminary Injunction (hereafter “PI Order”) is warranted under FRCP 65, Section 34 of the Lanham Act, and Section 283 of the Patent 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;
- (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 Accounts³, Merchant Storefronts or any money, securities or other property or assets of Defendants (hereinafter collectively referred to as “Defendants’ Assets”) and the

³ As defined in the Application, a “User Account” is As defined in the Complaint, a “User Account” is 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.

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) 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, Amazon, 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" hereto⁴;
- (8) Amazon, 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) Amazon 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

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 discovered 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.

restrained by this Order shall be transferred or surrendered by Amazon for any purpose (other than pursuant to a chargeback made pursuant to Amazon 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 Amazon 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;

(11) Amazon, 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 during the pendency of this action or until further order of the Court, and Plaintiff shall serve the Defendants with a copy of this PI Order in accordance with the Alternative Service Order.

B. IT IS HEREBY ORDERED, as sufficient cause has been shown, that Amazon shall continue to be restrained and enjoined from engaging in any of the following acts or omissions shall remain in effect during the pendency of this action 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 Amazon is hereby restrained and enjoined from engaging in any of the following acts or omissions shall remain in effect during the pendency of this action or until further order of the Court:

(1) 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;

(2) processing payments for any products listed under the following Amazon Standard Identification Numbers (ASINs): B01N7SXX0W (black NEGG[®]), B01MT9U0HK (red NEGG[®]), B01NATZUY2 (white NEGG[®]), B01N235WK4 (yellow NEGG[®]), B079P5N8Q6 (pink NEGG[®]), B079P6QVNR (fuschia NEGG[®]), and B079P4HPVM (green NEGG[®]), by any Seller that has not been authorized by Plaintiff; contemporaneously with the service of this Order, Plaintiff shall provide notice to Amazon of Plaintiff's authorized sellers;

(3) Amazon shall place the following Amazon Standard Identification Numbers (ASINs): B01N7SXX0W (black NEGG[®]), B01MT9U0HK (red NEGG[®]), B01NATZUY2 (white NEGG[®]), B01N235WK4 (yellow NEGG[®]), B079P5N8Q6 (pink NEGG[®]), B079P6QVNR (fuschia NEGG[®]), and B079P4HPVM (green NEGG[®]), into Amazon's gating program, so that Plaintiff will be able to control which sellers list product under these ASINs.

II. Order Authorizing Expedited Discovery

A. IT IS FURTHER ORDERED, as sufficient cause has been shown, the expedited discovery previously granted in the TRO, as amended, shall remain in place through the pendency of this litigation, 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, Amazon 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, or any other products bearing the NEGG Marks and/or marks that are

confusingly similar to, identical to, and constitute an infringement of the NEGG Marks and/or infringed at least claim 1 of the '211 patent.

III. Follow-Up Requests

A. IT IS FURTHER ORDERED, as sufficient cause has been shown, that, upon Plaintiff's request, within no later than five(5) calendar days of Plaintiff's request:

(1) Amazon is ordered to remove any seller identified by Plaintiff from the following Amazon Standard Identification Numbers (ASINs): B01N7SXX0W (black NEGG[®]), B01MT9U0HK (red NEGG[®]), B01NATZUY2 (white NEGG[®]), B01N235WK4 (yellow NEGG[®]), B079P5N8Q6 (pink NEGG[®]), B079P6QVNR (fuschia NEGG[®]), and B079P4HPVM (green NEGG[®]);

(2) Amazon is ordered to suspend any ASIN listing product that Plaintiff asserts unfairly competes with Plaintiff's NEGG[®] egg peeler and is identified as "shipping from China" or as originating from China (i.e. any seller is prevented from listing for sale under the identified ASIN); and

(3) Amazon is ordered to suspend any ASIN that was associated with a product already identified by prior Order of this Court in the present lawsuit to be Counterfeit or Infringing as designated in the Amended Schedule A third column under "**Amazon ASIN Number(s)**" (i.e. any seller is prevented from listing for sale under the identified ASIN),

(4) however, the Seller controlling such listing shall not be subject to financial account restraint unless the Seller is added as a Defendant in this lawsuit.

B. IT IS FURTHER ORDERED, as sufficient cause has been shown, that:

Amazon shall re-establish the following Amazon Standard Identification Numbers (ASINs): B079P5N8Q6 (pink NEGG[®]), B079P6QVNR (fuschia NEGG[®]), and B079P4HPVM (green NEGG[®]); as variants of the B01MT9TX1Z ASIN, so that all seven of the NEGG[®] ASINs will appear as variants of the B01MT9TX1Z ASIN, so that all seven of the NEGG[®] ASINs will appear as variants.

IV. 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.

V. Unsealing Order

WHEREAS, the reasons for keeping the documents in this case sealed no longer exist, it is FURTHER ORDERED that the Clerk of Court is hereby directed to unseal all the documents previously filed under seal in this case.

SO ORDERED.

SIGNED this ____ day of July, 2019, at _____ .m.
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

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 | A21KIIYNV8YHVW |
| 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 | |
| | | B07QHLJKG9 | |
| | | B07QHPP751 | |
| 5 | Amberqin | B07PHQ1KGM | A1M3C1XY082K7J |
| 6 | briskyii | B07QWT8C3H | A3KXARCXYPN3FL |
| | | B07QXQZZ1R | |
| | | B07QY TZ199 | |
| | | B07QZXVKXY | |
| 7 | Chic-Micky | B07QZ12HH8 | ATFTJ2CNRI2E |
| | | B07R297SPY | |
| 8 | chuanhai | B07N2B82NF | A3HXNITIFY6I4K |
| | | B07N2D1X2J | A3HXNITIFY6I4K |
| 9 | CleanLove | B07QWSYJZ5 | A1WCXLV84EX628 |
| | | B07QXS1KYY | |
| | | B07QYSFVCK | |
| 10 | csdsgsf | 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 | |
| | | B07PQK6ZW5 | |
| 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 | A2YE5JOUNHKNK77 |

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