

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

AIRIGAN SOLUTIONS, LLC,

Plaintiff,

v.

ABAGAIL, *et al.*,

Defendants.

Civil Action No.

19-503

(Judge Fischer)

**FILED UNDER SEAL**

**DECLARATION OF MARGARET B. TYLER  
IN SUPPORT OF PLAINTIFF'S APPLICATION  
FOR A PRELIMINARY INJUNCTION**

I, MARGARET B. TYLER, do hereby declare:

1. I am over eighteen (18) years of age. I have never been convicted of a felony or any criminal offense involving moral turpitude, and I am fully competent to testify to the matters stated herein. I have personal knowledge of every statement made in this Declaration and such statements are true and correct.

2. I am the President and one of the co-founders of Plaintiff, Airigan Solutions, LLC ("Airigan"), a limited liability company organized and existing under the laws of the State of Connecticut.

3. I make this declaration in support of Plaintiff's Application for a Preliminary Injunction. I hereby incorporate by reference the statements made in my Declarations dated May 2, 2019, and May 28, 2019, previously filed in this matter.

### **Airigan's ASINs for Genuine Product on Amazon.com**

4. Products on Amazon are assigned specific codes. These codes are referred to as Amazon Standard Identification Numbers (ASINs). Airigan controls seven ASINs under which product is sold -- B01N7SXX0W (black NEGG<sup>®</sup>), B01MT9U0HK (red NEGG<sup>®</sup>), B01NATZUY2 (white NEGG<sup>®</sup>), B01N235WK4 (yellow NEGG<sup>®</sup>), B079P6QVNR (Fuschia NEGG<sup>®</sup>), B079P4HPVM (Green NEGG<sup>®</sup>), and B079P5N8Q6 (Pink NEGG<sup>®</sup>).

5. Until recently, all seven of these ASINs were considered to be variants of the B01MT9TX1Z ASIN, so when any one of these ASINs was viewed, the other ASINs would also be displayed as a variant. Now, however, only the B01N7SXX0W (black NEGG<sup>®</sup>), B01MT9U0HK (red NEGG<sup>®</sup>), B01NATZUY2 (white NEGG<sup>®</sup>), B01N235WK4 (yellow NEGG<sup>®</sup>) ASINs are so linked. Airigan has tried numerous times to have Amazon re-link the B079P6QVNR (Fuschia NEGG<sup>®</sup>), B079P4HPVM (Green NEGG<sup>®</sup>), and B079P5N8Q6 (Pink NEGG<sup>®</sup>) to the parent ASIN unsuccessfully.

6. Not all of the sellers under the ASINs controlled by Airigan are in fact authorized sellers. Despite being requested to do so, Amazon has permitted unauthorized sellers to list under Airigan controlled ASINs and has not promptly removed unauthorized sellers. Examples of current unauthorized sellers on Airigan controlled ASINs include "The Tudak Store" (Seller ID A22KFM5Z7ZZZ12) on B01N7SXX0W (black NEGG<sup>®</sup>), B01MT9U0HK (red NEGG<sup>®</sup>), B01NATZUY2 (white NEGG<sup>®</sup>), B01N235WK4 (yellow NEGG<sup>®</sup>) and Cellaway (Seller ID A1G2M4IXYFSLV1) on B01MT9U0HK (red NEGG<sup>®</sup>).

### **Counterfeit Product Using Other ASINs**

7. Any product currently listed under an ASIN other than one of the seven ASINs controlled by Airigan is not authorized product.

8. Attached as Exhibits 1-6 are excerpts of printouts of the Amazon pages for the following six ASINs, along with the listing of sellers, as of the afternoon of July 1, 2019: B07NS6GL9N (Red), B07MXJFGYV (Black), B07NQFLP1M (Black), B07Q1W7T8S (Red), B07PQK6ZW5 (Red), and B07TG9S5YV (Red).

9. All of these ASINS except for B07TG9S5YV (Red) have been used by defendants in the present lawsuit. Specifically, Defendant Nos. 4, 26, 31, and 42 have sold under B07NS6GL9N (Red); Defendant Nos. 3, 4, 20, 28, 29, 30, 34, 39, 41, and 43 have sold under B07MXJFGYV (Black); Defendant Nos. 1, 10, 32, 34, 40, and 46 and sold under B07NQFLP1M (Black); Defendant No. 47 has sold under B07Q1W7T8S (Red); and Defendant Nos. 19 and 20 have sold under B07PQK6ZW5 (Red). At the time both the original Complaint and Amended Complaint were filed, all sellers under these ASINs were named as defendants in the present lawsuit.

10. As shown in Exhibit 6, the listing for the sole seller under B07TG9S5YV (Red) states the product “Ships from China.” No sellers based in China are authorized re-sellers of the NEGG<sup>®</sup> egg peeler. No product originating in China is a genuine NEGG<sup>®</sup> egg peeler.

### **Amazon’s Role in E-Commerce and Impact on Advertising**

11. Amazon now accounts for over 50% of e-commerce sales. (“Why Some Merchants Are Avoiding Amazon,” <https://www.forbes.com/sites/kirimasters/2019/05/22/why->

[some-merchants-are-avoiding-amazon/](#) (last visited July 2, 2019). Our experience has been that a number of consumers prefer to make purchases at Amazon, instead of a brand owner's website.

12. From Thursday, June 27, 2019, through Monday, July 1, 2019, Airigan ran a targeted advertising campaign on Facebook advertising a 4<sup>th</sup> of July special of 25% off and free shipping. The advertisements featured a "buy now" button that upon clicking took a prospective purchaser to an Airigan website to make the purchase.

13. Despite the advertising linking to an Airigan website, several of Airigan's authorized re-sellers on Amazon have reported to Airigan that their sales spiked beginning on Thursday, June 27, 2019, the first day of Airigan's Facebook advertising campaign.

14. Purchasers on Amazon are motivated to purchase a product for the lowest available price. Although the sales of Airigan's authorized re-sellers increased during our Facebook advertising campaign, the sales by sellers of the counterfeit NEGG<sup>®</sup> egg peelers also increased, because the counterfeit NEGG<sup>®</sup> egg peelers are offered at a lower price. As shown in Exhibit 1-6, the majority of the counterfeit NEGG<sup>®</sup> egg peelers are priced (including shipping) from \$7.49 - \$10.00. Genuine NEGG<sup>®</sup> egg peelers are sold for \$17.95.

15. The presence of sellers of counterfeit NEGG<sup>®</sup> egg peelers on Amazon, which accounts for over 50% of e-commerce sales, limits the amount and type of advertising Airigan does. The more advertising Airigan does, the more traffic is driven to Amazon, and a number of consumers will ultimately purchase the lowest priced product – which is a counterfeit product, not a genuine NEGG<sup>®</sup> egg peeler.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 3, 2019  
Southport, Connecticut

/s/ Margaret B. Tyler  
Margaret B. Tyler