

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] 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 collectively referred to as “Defendants” or individually as “Defendant”),¹ for 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 Defendants’ infringing use of Plaintiff’s NEGG Marks, in their manufacturing,

¹ 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 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 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. 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 \$2,000,000.00 in statutory damages against each of the Defendants pursuant to Section 15 U.S.C. § 1117(c) of the Lanham Act, 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")

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, and 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;
- (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, Plaintiff shall serve the Defendants with a copy of this Order in accordance with the Alternative Service Order.

B. IT IS FURTHER ORDERED that Amazon Services, Inc. (“Third Party Service Provider(s)”) and Amazon Payments, Inc. (“Financial Institution(s)”) (collectively “Amazon”) are permanently enjoined and restrained from:

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”);

C. IT IS FURTHER ORDERED that Amazon 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;

(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; and

(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.

D. IT IS FURTHER ORDERED that Defendants and/or Amazon shall destroy 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 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. Follow-Up Requests

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 listings shall not be subject to financial account restraint.

V. 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, Defendants’ Assets from 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, “Defendants’ Frozen Assets” and “Defendants’ Frozen Accounts,” respectively), are, to the extent that a given Defendant’s Frozen Assets equal the Defendants’ Individual Damages Award, hereby released and transferred to Plaintiff as full satisfaction of the Defendants’ Individual Damages Award for that Defendant, and those Defendant’s Frozen Assets shall be transferred to Plaintiff through Plaintiff’s counsel forthwith, and upon receipt by Plaintiff’s counsel of such Defendant’s Frozen Assets in full satisfaction of the Defendants’ Individual Damages Award, the Financial Institution(s) holding that Defendant’s Frozen Assets and Defendants’ Frozen Accounts may unfreeze that Defendant’s Frozen Assets and Defendant’s Frozen Accounts. To the extent that a Defendant’s Frozen Assets are less than the Defendants’ Individual Damages Award, that Defendant’s Frozen Assets are hereby released and transferred to Plaintiffs as partial satisfaction of the Defendants’ Individual Damages Award for that

Defendant and those 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 Defendant's Frozen Assets until Plaintiff has recovered the full payment of the Defendants' Individual Damages Award owed to it by that 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 Defendants' Individual Damages Award owed to it by any Defendant under this Default Judgment Order, in the event that Plaintiff discovers new and/or additional Defendants' Assets (whether said assets are located in the U.S. or abroad) and/or Defendants' Financial Accounts (whether said account is located in the U.S. or abroad) ("Defendants' Additional Assets" and "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 Defendants' Additional Assets and/or Defendants' Additional Financial Accounts ("Financial Institutions Holding Defendants' Additional Assets and/or Financial Accounts")³;

³ This Order contemplates that investigation and/or discovery during judgment collection may reveal that 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

1. Upon notice of this Default Judgment Order, Financial Institutions Holding Defendants' Additional Assets and/or Financial Accounts shall immediately locate Defendants' Additional Financial Accounts, attach and restrain such Defendants' Additional Assets in 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 Defendants' Additional Assets and/or Financial Accounts, Financial Institutions Holding Defendants' Additional Assets and/or Financial Accounts shall transfer all Defendants' Additional Assets to Plaintiffs as partial or full satisfaction of the Defendants' Individual Damages Award, unless Defendant has filed with this Court and served upon Plaintiffs' counsel a request that such Defendants' Additional Assets be exempted from this Default Judgment Order. At the time the funds are released, Financial Institutions Holding Defendants' Additional Assets and/or Financial Accounts shall transfer all Defendants' Additional Assets shall provide to Plaintiff a breakdown 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.

VI. 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

Financial Institutions, once identified and provided with notice, shall be subject to the restraints, asset seizure and turn over in this Order.

seller identification names being used offer for sale and/or sell Counterfeit or Infringing Products.

- B. Any failure by Defendants to comply with the terms of this Default Judgment Order shall be deemed contempt of Court, subjecting 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

ATTACHMENT "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	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	
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	kouhainvsea	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
24	Pachira Macrocarpa	B07PN4ZSJM	A20EMP02C4BYNG
25	RONGCHI Inc.	B07NRL35Z5	A3Q4ZQGJUIW2TA
		B07NS6GL9N	
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
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	A2YE5JOUNHNK77

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