

FILED

NOV 07 2019

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

CLERK U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA

GORGE DESIGN GROUP, LLC, *et al.*,

Plaintiffs,

Civil Action No. 19-1454

v.

ACCESSMALL, *et al.*,

Defendants.

FILED UNDER SEAL

**REQUEST FOR JUDICIAL NOTICE OF TEMPORARY RESTRAINING ORDERS
IN OTHER CASES GRANTING THE RELIEF SOUGHT IN THE PRESENT CASE**

Plaintiffs are seeking an *ex parte* TRO and an *ex parte* Order for Alternative Service.

Such relief has been granted multiple times here in the Western District and in other States.

Plaintiffs request judicial notice of the following example orders in other cases granting the relief sought in the present case:

<i>Ex.</i>	<i>Case Name</i>	<i>Platform(s)</i>	<i>Date</i>	<i>Document</i>	<i>Bond Amt.</i>
1	<i>Doggie Dental Inc., et al. v. Worthbuyer</i> , No. 19-cv-1283 (W.D. Pa.) (Homak,J.) <i>related to</i> Nos. 19-cv-1282, 19-cv-746, and 19-cv-682	eBay.com; related cases include Amazon.com	10/11/19 10/10/19 10/23/19	TRO Order Granting Motion Authorizing Alternate Service PI	\$5,000

Ex.	Case Name	Platform(s)	Date	Document	Bond Amt.
2	<i>Airigan Solutions, LLC v. Abigail, et al.</i> , No. 19-cv-503 (W.D. Pa.)(Fischer, J) <i>related to</i> Nos. 19-cv-166, 18-cv-1462, and 18-cv-1330	Amazon.com; related cases include eBay.com, Alibaba.com, AliExpress.com	5/2/19 5/2/19 7/5/19	TRO Order Granting Motion Authorizing Alternate Service PI (with hearing transcript attached)	\$5000
3	<i>Rapid Slicer, LLC v. Art-House, et al.</i> , No. 19-411 (W.D. Pa.)(Horan, J) <i>related to</i> No. 19-cv-249	AliExpress.com ,Amazon.com, eBay.com, related case includes Wish.com	4/15/19 4/15/19 5/20/19	TRO Order Granting Motion Authorizing Alternate Service PI	\$5000
4	<i>Apple Corps Ltd, et al v The Individuals, Partnerships and Unincorporated Associations Identified on Schedule "A,"</i> No. 19-cv-60928 (S.D. Fl.) (Ungaro, J)	Amazon.com, eBay.com, and Wish.com	4/22/19 4/22/19 5/24/19	TRO Order Granting Motion Authorizing Alternate Service PI	\$10,000

<i>Ex.</i>	<i>Case Name</i>	<i>Platform(s)</i>	<i>Date</i>	<i>Document</i>	<i>Bond Amt.</i>
5	<i>Allstar Marketing Group, LLC v. Alice Wonder Household, No. 19-cv-4208 (S.D. NY)(Failla,J)</i>	Alibaba.com, AliExpress.com	5/9/19 5/24/19	TRO and Order Granting Motion Authorizing Alternate Service (p.8 of TRO) PI	\$5000

Respectfully submitted,

Dated: November 7, 2019

/s/ Stanley D. Ference III

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

DOGGIE DENTAL INC., *et al.*,

Plaintiffs,

v.

WORTHBUYER, *et al.*,

Defendants.

Civil Action No. **19-CV-1283**

FILED UNDER SEAL

[REDACTED] 1) 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

This matter is before the Court upon Plaintiffs' *Ex Parte* Application for the following: 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts (as defined *infra*); 3) an order to show cause why a preliminary injunction should not issue; and 4) an order authorizing expedited discovery against the Defendants identified on **Schedule "A"** to the Complaint and attached hereto (collectively, the "Defendants"). The Court has considered the Application, the evidence in the record, and the applicable law.

By the instant Application, Plaintiffs Doggie Dental Inc. and Peter Dertsakyan move *ex parte* pursuant to 15 U.S.C. § 116, 17 U.S.C. § 502, Federal Rules of Civil Procedure 64 and 65, and The All Writs Act, 28 U.S.C. § 1651(a), for entry of a temporary restraining order and an order restraining assets and Merchant Storefronts, for violations of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a), the Copyright Act, 17 U.S.C. § 501, and related state law claims. Because Plaintiffs have satisfied the requirements for the issuance of a temporary restraining order, the Court grants Plaintiffs' Application.

FACTUAL FINDINGS & CONCLUSION OF LAW

1. Plaintiffs, Doggie Dental, Inc. ("Doggie Dental") and Peter Dertsakyan ("Dertsakyan"), are likely to prevail on their Lanham Act claims, Copyright claims, and related state law claims at trial, *and that there is a substantial basis to support each of the below findings.*

2. Dertsakyan is the inventor of the BRISTLY[®] dog toothbrush and the owner of intellectual property related thereto; Doggie Dental is the exclusive licensee of such intellectual property. Plaintiffs developed and sell a unique and revolutionary product under the federally registered trademark BRISTLY ("BRISTLY[®] Mark") that safely and easily permits dogs to brush their own teeth removing plaque and tarter ("BRISTLY[®] Product").

3. Plaintiffs have gained significant common law trademark and other rights in their BRISTLY[®] Product, through use, advertising, and promotion.

4. Dertsakyan is the owner of U.S. Trademark Registration No. 5,815,298 for BRISTLY directed to "Non-medicated dental preparations for pets, namely, toothpaste and preparations for removing plaque; Home dental care products for dogs and cats, namely, toothpaste; Dental care and oral hygiene products for pets, namely, tooth cleaning preparations; Non-edible dental chews for pets; Non-medicated oral dental chews for dogs."

5. Dertsakyan is the owner of U.S. Trademark Registration No. 5,844,832 for BRISTLY directed to "Toothbrushes for animals; Toothbrushes for pets; Home dental care products for dogs and cats, namely, toothbrush."

6. Dertsakyan is the owner of U.S. copyright registration VA 2-122-455 directed to various photographs related to the BRISTLY[®] dog toothbrush (the "BRISTLY[®] Works").

Dertsakyan is also the owner of unregistered copyrights related to the BRISTLY[®] dog toothbrush.

7. In addition, Dertsakyan is also the owner of various design patent applications directed to the BRISTLY[®] dog toothbrush, including an issued European Registered Community Design (005818606-0001), a pending U.S. design patent application, and a pending Chinese design patent application.

8. Defendants, by operating Internet based e-commerce stores, and fully interactive, commercial Internet websites operating under Defendants' respective seller identities set forth on Schedule "A" hereto (the "Seller IDs"), have advertised, promoted, sold, and offered for sale goods featuring, displaying, and/or using Plaintiffs' BRISTLY[®] Mark and/or Plaintiffs' BRISTLY[®] Works without authorization and Plaintiffs have determined the products that each Defendant is offering for sale are not genuine BRISTLY[®] products.

9. Through the e-commerce marketplace platform, Plaintiffs accessed all of the e-commerce stores operating under Defendants' Seller IDs and captured the Defendants' listings at issue on the e-commerce stores. At the conclusion of the process, the detailed webpages and photographs were inspected by Plaintiffs' representative who confirmed that each Defendant is featuring, displaying, and/or using Plaintiffs' BRISTLY[®] Mark and/or Plaintiffs' BRISTLY[®] Works without authorization and the products that each Defendant is offering for sale are not genuine BRISTLY[®] products.

10. Plaintiffs have a strong probability of proving at trial that consumers are likely to be confused by Defendants' advertisement, promotion, sale, offer for sale, or distribution of products with unauthorized and unlicensed uses of Plaintiffs' BRISTLY[®] Mark and copyrighted works in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114, and Section 43(a) of the

Lanham Act, 15 U.S.C. § 1125(a), that Plaintiffs' copyrights have been infringed in violation of 15 U.S.C. § 501, and prevailing on their related state law claims.

11. Plaintiffs, as well as consumers and animal owners, are likely to suffer immediate and irreparable losses, damages and injuries before Defendants can be heard in opposition, unless Plaintiffs' Application for *ex parte* relief is granted. There is good cause to believe that the unauthorized and unlicensed use of Plaintiffs' BRISTLY[®] Mark and copyrighted works will continue in the marketplace; that consumers are likely to be misled, confused, and disappointed by the quality of the products so advertised, and that Plaintiffs may suffer loss of sales for their genuine products and an unnatural erosion of the legitimate marketplace in which they operate. There is also good cause to believe that if Plaintiffs proceed on notice to Defendants of this Application, Defendants can easily and quickly change the ownership or modify e-commerce store account data and content, change payment accounts, redirect consumer traffic to other seller identification names, and transfer assets and ownership of Seller IDs, thereby thwarting Plaintiffs' ability to obtain meaningful relief. As other courts have recognized, proceedings against those who deliberately traffic in infringing merchandise are often useless if notice is given to the adverse party.

12. The balance of potential harm to Defendants of being prevented from continuing to profit from their illegal and infringing activities if a temporary restraining order is issued is far outweighed by the potential harm to Plaintiffs, their reputation, and their goodwill as a manufacturer and distributor of quality products, if such relief is not issued.

13. The public interest favors issuance of the temporary restraining order in order to protect Plaintiffs' interests and protect the public from being deceived and defrauded by the passing off of Defendants substandard goods as Plaintiffs' genuine goods.

14. Under Pennsylvania law this Court may issue a prejudgment asset restraint where Plaintiffs' complaint asserts a claim for money damages. This Court also has the inherent authority to issue a prejudgment asset restraint when Plaintiffs' complaint seeks relief in equity. According to both the Lanham Act and Copyright Act, 15 U.S.C. § 1117(a)(1) and 17 U.S.C. 504(b), Plaintiffs are entitled, "subject to the principles of equity, to recover ... defendant's profits." Plaintiffs seek, among other relief, that Defendants account for and pay to Plaintiffs all profits realized by Defendants by reason of Defendants' unlawful acts. Therefore, this Court has the authority to grant Plaintiffs' request for a prejudgment asset freeze to preserve the relief sought by Plaintiffs and preserve the Defendants' ability to at least partially satisfy a judgment.

15. Similarly, if Defendants are given notice of the Application, they are likely to destroy, move, hide or otherwise make inaccessible to Plaintiffs the records and documents relating to Defendants' illegal and infringing activities. Therefore, Plaintiffs have good cause to be granted expedited discovery.

ORDER

Based on the foregoing findings of fact and conclusions of law, Plaintiffs' Application is hereby **GRANTED** as follows (the "Order"):

I. Temporary Restraining Order

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, 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 are hereby restrained as follows:

- (1) from (a) their unauthorized and unlicensed use of Plaintiffs' BRISTLY[®] trademark and copyrights in connection with the distribution, marketing, advertising, offering for sale, or sale of any products; and (b) shipping, delivering, holding for sale, transferring or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner products which use Plaintiffs' BRISTLY[®] trademark and copyrights;
- (2) from secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with any computer files, data, business records, documents or any other records or evidence relating to their User Accounts,¹ Merchant Storefronts² or any money, securities or other property or assets of Defendants (hereinafter collectively referred to as "Defendants' Assets");
- (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, and/or display 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 the BRISTLY[®] Mark and/or BRISTLY[®]

¹ As defined in the Application, a "User Account" is, as defined in the Complaint, any and all accounts with online marketplace platform(s) eBay.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.

² 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 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.

Works 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, from search engines' databases or cache memory, and any other form of use such terms or works which is visible to a computer user or serves to direct computer searches to Internet based e-commerce stores 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 be deleted before the entry of this Order;
- (7) upon receipt of notice of this Order, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to eBay, Inc. d/b/a eBay.com ("eBay") ("Third Party Service Provider(s)") and PayPal, Inc. d/b/a paypal.com ("PayPal") ("Financial Institution(s)"), and their related companies and affiliates, shall immediately identify and restrain all funds, as opposed to ongoing account activity, in or which are hereafter transmitted into 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" hereto;³

- (8) upon receipt of notice of this Order, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to the Third Party Service Provider(s) and the Financial Institution(s), shall immediately divert to a holding account for the trust of the Court all funds in or which are hereafter transmitted into 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) The Third Party Service Provider(s) and Financial Institution(s) shall further, within five (5) business days of receiving this Order, provide Plaintiffs' 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 restrained by this Order shall be transferred or surrendered by any Third Party Service Provider or Financial Institution for any purpose (other than pursuant to a chargeback made pursuant to that Third Party Service Provider

³ 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 discovery 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.

or Financial Institution's security interest in the funds) without express authorization of this Court;

- (10) Upon Plaintiffs' request, any Internet marketplace who is provided with notice of this Order, including but not limited to the Third Party Service Provider(s) and Financial Institution(s), shall immediately cease fulfillment of and sequester Defendants' inventory assets corresponding to the Seller IDs identified on Schedule "A" hereto in its inventory, possession, custody, or control, and hold such goods in trust for the Court during pendency of this action;
- (11) this Order shall apply to the Seller IDs, associated Accounts and Merchant Storefronts, and any other seller identification names, Accounts or Merchant Storefronts, Third Party Service Provider or Financial Institution accounts which are being used by Defendants for the purpose of infringing the BRISTLY® Mark and/or BRISTLY® Works and/or BRISTLY® Trade Dress at issue in this action and/or unfairly competing with Plaintiff;
- (12) Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to the Third Party Service Provider(s) and the Financial Institution(s), subject to this Order may petition the Court to modify the asset restraint set out in this Order; and
- (13) this Order shall remain in effect until the date for the hearing to show cause why a preliminary injunction should not be issued as set forth below, or until such further dates as set by the Court or stipulated by the parties.

B. IT IS HEREBY ORDERED, as sufficient cause has been shown, that upon Plaintiffs' request, any Internet marketplace who is provided with notice of this Order, including but not

limited to the Third Party Service Providers and Financial Institutions, is hereby restrained and enjoined from engaging in any of the following acts or omissions pending the hearing and determination of Plaintiffs' Application for a preliminary injunction, or until further order of the Court:

- (1) 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; and
- (2) within (5) days after receiving notice 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, and any other listings linked to the same sellers or linked to any other alias seller identification names being used and/or controlled by Defendants.

II. Order to Show Cause Why a Preliminary Injunction Should Not Issue and Service of Order

A. Defendants are hereby ORDERED to show cause before this Court in the United States District Court for the Western District of Pennsylvania, the U.S. Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania in Courtroom No. 6A on the 23rd day of October 2019, at 3:00 p.m.* or at such other time that this Court deems appropriate, why a preliminary injunction, pursuant to FRCP 65(a), should not issue. **Defendants are on notice that failure to appear at the hearing may result in the imposition of a preliminary injunction against them.**

* Consolidated with 19-CV-1282 for purposes of such hearing.

B. Opposing papers, if any, shall be filed electronically with the Court and served on Plaintiffs' counsel by delivering copies thereof to the office of Ference & Associates LLC at 409 Broad Street, Pittsburgh, Pennsylvania 15143 before ~~October 21~~¹⁸, 2019. Plaintiffs shall file any Reply papers on or before October 21, 2019, *if notice as set out below has been given to all Defendants!*

C. After Plaintiffs' counsel has received confirmation from the Third Party Service Providers and Financial Institutions or otherwise, regarding the restraint of funds directed herein,^{*} Plaintiffs shall serve copies of the Complaint, the Application, this Order, and any Discovery on each Defendant via their corresponding email/online contact form provided on the Internet based e-commerce stores operating under the respective Seller IDs, or by providing a copy of this order by e-mail to the marketplace platform, which in turn notifies each Defendant of the Order, or by other means reasonably calculated to give notice which is permitted by the Court. In addition, Plaintiffs shall post copies of the Complaint, Application, this Order, any Discovery, and all other pleadings and documents filed in this action on a website designated by Plaintiffs,⁴ and shall provide the website address to Defendants via e-mail/online contact form, and such notice so given shall be deemed good and sufficient service thereof. Plaintiffs shall continue to provide notice of these proceedings and copies of the documents on file in this matter to Defendants by regularly updating the website designated by Plaintiffs or by other means reasonably calculated to give notice which is permitted by the Court, *or as otherwise directed by The Court.*

III. Order Authorizing Expedited Discovery

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

⁴ Rule 65 has been interpreted to require that a party have notice of the motion and hearing; perfecting service on a defendant is not a prerequisite to the entry of a preliminary injunction order. *Pate v. Gov't of the Virgin Islands*, 2015 WL 1937701 n.9 (V.I. Sup. Ct. April 17, 2015); *Corrigan Dispatch Co. v. Casa Guzman, S.A.*, 569 F.2d 300, 302 (5th Cir. 1978).

** Plaintiff's counsel shall file Notice of such compliance on the docket under seal without the need for redactions under*

(1) Plaintiffs 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 Plaintiffs' counsel.

(2) Plaintiffs 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 Plaintiffs' counsel.

(3) Plaintiffs may serve requests for admissions pursuant 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 Plaintiffs' counsel.

B. IT IS FURTHER ORDERED, as sufficient cause has been shown, that within fourteen (14) days of receiving actual notice of this Order, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to the Third Party Service Provider(s) and the Financial Institution(s), shall provide to Plaintiffs' 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:

- (1) 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;
- (2) the identities, location and contact information, including any and all e-mail addresses of Defendants that were not previously provided;
- (3) 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
- (4) Defendants' unauthorized and unlicensed use of Plaintiffs' BRISTLY trademark and copyrights in connection with the distribution, marketing, advertising, offering for sale, or sale of any products, and any products which use Plaintiffs' BRISTLY trademark and copyrights.

V. Security Bond

IT IS FURTHER ORDERED that Plaintiffs shall place security (corporate surety bond, cash, certified check, or attorney's check) in the amount of \$ Five Thousand Dollars (\$5,000.00) with the Court, which amount is determined adequate for the payment of any damages any person may be entitled to recover as a result of an improper or wrongful restraint ordered hereunder.

VI. Summons

IT IS FURTHER ORDERED that the Clerk of the Court shall issue a single original summons in the name of "WORTHBUYER and all other Defendants identified in the Complaint" that will apply to all Defendants.

SO ORDERED.

SIGNED this 11th day of October, 2019, at 3:30 p.m. EDT
Pittsburgh, Pennsylvania



MARK R. HORNAK
CHIEF UNITED STATES DISTRICT JUDGE

*** Plaintiffs shall give notice (via electronic means) of this Order, all other Orders entered at anytime in this case, and all Pleadings or Papers in this action to all entities set out in Paragraph 1 (A)(7) above, and shall give notice by an authorized service of this Order, all other Orders, and all papers in this case to all Defendants, within 24 hours of notice that all relevant accounts have been frozen.

*** Unless otherwise extended, this Restraining Order expires at 3:15 p.m. EDT, October 25, 2019.

SCHEDULE "A"
DEFENDANTS BY SELLER ID AND ITEM NUMBER

Defendant No.	Defendant/ eBay Seller ID	eBay Item No.
1	worthbuyer	123585242994
2	junmaioo-7	362491524324
3	xieji-52	383050819764
4	bestbagmall2	233285846228
5	chensini2	163777846497
6	hanbi-57	143329672188
7	madline2018	372671254517
8	carmha_84	362738344333
9	mrsrespect	323794418886
10	treasures-of-rare	254299882645
11	family-store-online	392390249370
12	is_2863	362731337189
13	joeetrib	163693407367
14	marandajoshua	223447298112
15	nakaalys	254231930513

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DOGGIE DENTAL INC., *et al.*,

Plaintiffs,

v.

WORTHBUYER, *et al.*,

Defendants.

CIVIL ACTION NO. 19-1283

FILED UNDER SEAL

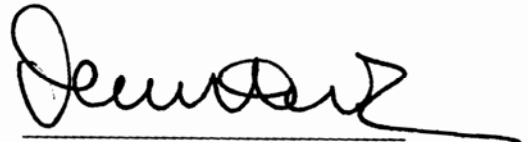
**ORDER ON PLAINTIFF'S EX PARTE MOTION FOR AN ORDER AUTHORIZING
ALTERNATIVE SERVICE ON DEFENDANTS PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 4(f)(3)**

AND NOW, this ^{10th} day of October, 2019, upon consideration of Plaintiff's Ex Parte Motion for an Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3),

IT IS HEREBY ORDERED that said Motion is GRANTED;

IT IS FURTHER ORDERED that Plaintiffs are authorized to make alternative service of the Summonses, the Complaint, any discovery, and all filings in this matter upon each Defendant in this action, as follows:

1. via e-mail by providing the address to Plaintiffs' designated website to Defendants via (i) the e-mail accounts provided by Defendants as part of the data related to their respective e-commerce stores, or (ii) the e-commerce marketplace for each of the e-commerce stores, or
2. via website publication by posting copies of the Summonses, Complaint, any Discovery, and all filings in this matter on Plaintiffs' designated website on www.ferencelaw.com.



United States District Judge

cc Stanley D. Ference III, Esq.
courts@ferencelaw.com
Brian Samuel Malkin, Esq.
bmalkin@ferencelaw.com

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

DOGGIE DENTAL INC., *et al.*,

Plaintiffs,

v.

WORTHBUYER, *et al.*,

Defendants.

Civil Action No. 19-cv-1283

(Chief Judge Mark R. Hornak)

PRELIMINARY INJUNCTION ORDER

WHEREAS, on October 8, 2019, Plaintiffs Doggie Dental Inc. and Peter Dertsakyan filed an *Ex Parte* Application seeking 1) a temporary restraining order; 2) an order restraining assets and “Merchant Storefronts”, as defined *infra*; 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 eBay, Inc. d/b/a eBay.com (“eBay”) (“Third Party Service Provider(s)”) and PayPal, Inc. d/b/a paypal.com (“PayPal”) (“Financial Institution(s)”), in light of Defendants’ intentional and willful offerings for sale and/or sales of Infringing Products¹ (“Application”);

¹ 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 products that have infringed upon Plaintiffs’ federally registered trademark rights and Plaintiffs’ federally registered copyrights. Defendants have used Plaintiffs’ copyrighted photographs and/or BRISTLY® trademark while marketing their knock-off products in a willful attempt to pass them off as genuine BRISTLY® products; and Defendants accomplish their infringing sales through the use of, at least, the Internet based e-commerce stores operated via at least the Third Party Service Provider marketplace platform. (“Infringing Product”).

WHEREAS, on the same day, Plaintiffs filed an Ex Parte Motion for an Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3)(ECF No. 6);

WHEREAS on October 11, 2019, at 3:30 p.m. (expiring at 3:15 p.m., October 25, 2019), 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"**, eBay, and PayPal ("TRO")(ECF No. 19); and

(B) an Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3)(ECF No. 18);

WHEREAS, on October 23, 2019, Plaintiff appeared for the Order to Show Cause Hearing, however no Defendants appeared. Further, eBay and PayPal did not appear.

ORDER

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, the injunctive relief previously granted on October 11, 2019 shall remain in place through the pendency of this litigation or until further order of this Court as to those Defendants listed on the attached Schedule "A," and issuing this Preliminary Injunction is warranted under FRCP 65, the Lanham Act and the Copyright Act, 15 U.S.C. § 1117(a)(1) and 17 U.S.C. § 504(b).

Accordingly, each Defendant identified on the attached Schedule "A," 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 (a) their unauthorized and unlicensed use of Plaintiffs' BRISTLY[®] trademark and copyrights in connection with the distribution, marketing, advertising, offering for sale, or sale of any products; and (b) shipping, delivering, holding for sale, transferring or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner products which use Plaintiffs' BRISTLY[®] trademark and copyrights;
- (2) from secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with any computer files, data, business records, documents or any other records or evidence relating to their User Accounts,² Merchant Storefronts³ or any money, securities or other property or assets of Defendants (hereinafter collectively referred to as "Defendants' Assets");
- (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, and/or display 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 the BRISTLY[®] trademark and/or BRISTLY[®]

² As defined in the Application, a "User Account" is, as defined in the Complaint, any and all accounts with online marketplace platform(s) eBay.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.

³ 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 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.

Works 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, from search engines' databases or cache memory, and any other form of use such terms or works which is visible to a computer user or serves to direct computer searches to Internet based e-commerce stores 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 be deleted before the entry of this Order;
- (7) upon receipt of notice of this Order, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to the Financial Institution(s) and Third Party Service Provider(s), and their related companies and affiliates, shall immediately identify and restrain all funds, as opposed to ongoing account activity, in or which are hereafter transmitted into 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" hereto;⁴

- (8) upon receipt of notice of this Order, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to the Third Party Service Provider(s) and the Financial Institution(s), shall immediately divert to a holding account for the trust of the Court all funds in or which are hereafter transmitted into 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) The Third Party Service Provider(s) and Financial Institution(s) shall further, within five (5) business days of receiving this Order, provide Plaintiffs' counsel with all data, to the extent not already provided, 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 restrained or that continue to be restrained by this Order shall be transferred or surrendered by any Third Party Service Provider or Financial Institution for any purpose (other than pursuant to a chargeback made pursuant

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, on-line market place platforms, and Financial Institutions, once identified and provided with notice, shall also be subject to the discovery, restraints and injunctions set forth in this Order.

to that Third Party Service Provider or Financial Institution's security interest in the funds) without express authorization of this Court;

- (10) Upon Plaintiffs' request, any Internet marketplace who is provided with notice of this Order, including but not limited to the Third Party Service Provider(s) and Financial Institution(s), shall immediately cease fulfillment of and sequester Defendants' inventory assets corresponding to the Seller IDs identified on Schedule "A" hereto in its inventory, possession, custody, or control, and hold such goods in trust for the Court during pendency of this action;
- (11) this Order shall apply to the Seller IDs, associated Accounts and Merchant Storefronts, and any other seller identification names, Accounts or Merchant Storefronts, Third Party Service Provider or Financial Institution accounts which are being used by Defendants for the purpose of infringing the BRISTLY[®] Trade Dress and/or BRISTLY[®] trademark and/or BRISTLY[®] Works, at issue in this action and/or unfairly competing with Plaintiff;
- (12) Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to the Third Party Service Provider(s) and the Financial Institution(s), subject to this Order may petition the Court to modify the asset restraint set out in this Order; and
- (13) 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, any Internet marketplace who is provided with notice of this Order, including but not limited to the Third Party Service Providers and Financial Institutions, shall continue to be restrained and enjoined from engaging in any of the following acts or omissions pending the final outcome of this litigation, or until further order of the Court:

- (1) 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"); and
- (2) within (5) days after receiving notice 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, and any other listings linked to the same sellers or linked to any other alias seller identification names being used and/or controlled by Defendants.

II. Order Authorizing Expedited Discovery

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

- (1) Plaintiffs 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 Plaintiffs' counsel.

(2) Plaintiffs 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 Plaintiffs' counsel.

(3) Plaintiffs may serve requests for admissions pursuant 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 Plaintiffs' counsel.

B. IT IS FURTHER ORDERED, as sufficient cause has been shown, that within fourteen (14) days of receiving actual notice of this Order, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to the Third Party Service Provider(s) and the Financial Institution(s), to the extent not already provided, shall provide to Plaintiffs' 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:

(1) 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;

- (2) the identities, location and contact information, including any and all e-mail addresses of Defendants that were not previously provided;
- (3) 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
- (4) Defendants' unauthorized and unlicensed use of Plaintiffs' BRISTLY® trademark and copyrights in connection with the distribution, marketing, advertising, offering for sale, or sale of any products, and any products which use Plaintiffs' BRISTLY® trademark and copyrights.

V. 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 further order of this Court, or until this Order is terminated.

SO ORDERED.

SIGNED this 23rd day of October, 2019, at 3:55 p.m.
Pittsburgh, Pennsylvania



Mark R. Hornak
Chief United States District Judge

SCHEDULE "A"
DEFENDANTS BY SELLER ID AND ITEM NUMBER

Defendant No.	Defendant/ eBay Seller ID	eBay Item No.
1	worthbuyer	123585242994
2	junmaioo-7	362491524324
3	xieji-52	383050819764
4	bestbagmall2	233285846228
5	chensini2	163777846497
6	hanbi-57	143329672188
7	madline2018	372671254517
8	carmha 84	362738344333
9	mrsrespect	323794418886
10	treasures-of-rare	254299882645
11	family-store-online	392390249370
12	is 2863	362731337189
13	joeetrib	163693407367
14	marandajoshua	223447298112
15	nakaalys	254231930513

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

FILED UNDER SEAL

**1) 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**

On this day the Court considered Plaintiff's *Ex Parte* Application for the following: 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts (as defined *infra*); 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, Inc. and Amazon Payments, Inc. in light of Defendants' intentional and willful offerings for sale and/or sales of Counterfeit Products (as defined *infra*) ("Application") Having reviewed the Application, the Declarations of Margaret B. Tyler, Brian Samuel Malkin, Stanley D. Ference III, and Amy Cline, along with the exhibits attached thereto and other evidence submitted in support thereof, the Court makes the following findings of fact and conclusions of law:

FACTUAL FINDINGS & CONCLUSION OF LAW

1. Plaintiff is likely to prevail on its Lanham Act claims, patent claims, and related state law claims at trial;

2. As a result of Defendants' infringements, Plaintiff as well as consumers are likely to suffer immediate and irreparable losses, damages and injuries before Defendants can be heard in opposition, unless Plaintiff's Application for *ex parte* relief is granted:

- a. Defendants have offered for sale and sold 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 ("NEGG Products") 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") (collectively referred to as, "Counterfeit Product(s)" or "Infringing Product(s)") that overall infringe the NEGG Marks and/or at least Claim 1 of the '211 patent through accounts with the online marketplace platform Amazon.com, by Defendants ("User Account¹(s)");
- b. Plaintiff has well-founded fears that more Counterfeit Products will appear in the marketplace; that consumers may be misled, confused and disappointed by the quality of these Counterfeit Products, resulting in injury to Plaintiff's reputation and goodwill; and that Plaintiff may suffer loss of sales for its NEGG Products; and
- c. Plaintiff has well-founded fears that if it proceeds on notice to Defendants on this Application, Defendants will: (i) secret, conceal, destroy, alter, sell-off, transfer or otherwise dispose of or deal with Counterfeit Products or other goods that infringe the

¹ As defined in the Application, 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.

NEGG Marks and/or at least Claim 1 of the '211 patent, the means of obtaining or manufacturing such Counterfeit Products, and records relating thereto are in their possession or under their control, (ii) inform their suppliers and others of Plaintiff's claims with the result being that those suppliers and others may also secret, conceal, sell-off or otherwise dispose of Counterfeit Products or other goods infringing the NEGG Marks and/or at least Claim 1 of the '211 patent, the means of obtaining or manufacturing such Counterfeit Products, and records relating thereto that are in their possession or under their control, (iii) secret, transfer or otherwise dispose of their ill-gotten proceeds from their sales of Counterfeit Products or other goods infringing NEGG Marks and/or at least Claim 1 of the '211 patent and records relating thereto that are in their possession or under their control and/or (iv) open new User Accounts through which Defendants, import, export, advertise, market, promote, distribute, offer for sale, sell and/or otherwise deal in products, including Counterfeit Products ("Merchant Storefront(s)²") under new or different names and to continue to offer for sale and sell Counterfeit Products with little to no consequence;

3. The balance of potential harm to Defendants of being prevented from continuing to profit from their illegal and infringing activities if a temporary restraining order is issued is far outweighed by the potential harm to Plaintiff, its business, the goodwill and reputation built up in and associated with the NEGG Marks and to its reputation if a temporary restraining order is not

² 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.

issued; in the absence of a temporary restraining order Plaintiff would be forced to compete against its own patented invention, a situation that places a substantial hardship on a patentee;

4. Public interest favors issuance of the temporary restraining order in order to protect Plaintiff's interests in and to its NEGG Marks and its patented invention and to protect the public from being deceived and defrauded by Defendants' passing off of their substandard Counterfeit products as NEGG Products.

5. Plaintiff has not publicized its request for a temporary restraining order in any way.

6. Service on Defendants via electronic means is reasonably calculated to result in proper notice to Defendants.

7. This Court has the inherent authority to issue a prejudgment asset restraint when plaintiff's complaint seeks relief in equity. In addition, Plaintiff has shown a strong likelihood of succeeding on the merits of its trademark infringement and counterfeiting claim, so according to the Lanham Act 15 U.S.C. § 1117(a)(1), Plaintiff is entitled, "subject to the principles of equity, to recover ... defendant's profits." Plaintiff seeks, among other relief, that Defendants account for and pay to Plaintiff all profits realized by Defendants by reason of Defendants' unlawful acts. Therefore, this Court has the inherent equitable authority to grant Plaintiff's request for a prejudgment asset freeze to preserve the relief sought by Plaintiff.

8. If Defendants are given notice of the Application, they are likely to secret, conceal, transfer or otherwise dispose of their ill-gotten proceeds from their sales of Counterfeit Products or other goods infringing the NEGG Marks and at least Claim 1 of the '211 patent. Therefore, good cause exists for granting Plaintiff's request for an asset restraining order. It typically takes Financial Institutions a minimum of five (5) days to locate, attach and freeze

Defendants' Assets (as defined *infra*) and/or Defendants' Financial Accounts (as defined *infra*) and it is not unusual for the Third Party Service Provider (as defined *infra*) operating the online marketplaces a minimum of two (2) weeks to freeze Defendants' Merchant Storefronts. As such, the Court allows enough time for Plaintiff to serve the Financial Institutions and the Third Party Service Provider with this Order and for the Financial Institutions and/or the Third Party Service Provider to comply with the Paragraphs I(B)(1) through I(B)(2) and I(C)(1) of this Order, respectively, before requiring service on Defendants.

9. Similarly, if Defendants are given notice of the Application, they are likely to destroy, move, hide or otherwise make inaccessible to Plaintiff the records and documents relating to Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or sale of Counterfeit Products. Therefore, Plaintiff has good cause to be granted expedited discovery.

ORDER

Based on the foregoing findings of fact and conclusions of law, Plaintiff's Application is hereby **GRANTED** as follows (the "Order"):

I. Temporary Restraining Order

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, 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 are hereby 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 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) 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 be deleted before the entry of this Order;
- (7) upon receipt of the notice of this Order, Amazon Payments, Inc. (“Amazon”), and its related companies and affiliates, shall immediately identify and restrain all funds, as opposed to ongoing account activity, in the Amazon 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 Amazon accounts subject to this Order; and (iii) any other Amazon accounts tied to or used by any of the Seller IDs identified on Schedule “A” hereto³;
- (8) Amazon shall immediately divert to a holding account for the trust of the Court all funds in all Amazon 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

³ This Order contemplates that discovery may reveal that Defendants may have used other user accounts, operated by other Third Party Service Providers Financial Institutions other than Amazon and that any additional discovered Third Party Service Providers and Financial Institutions, once identified and provided with notice, shall be subject to the discovery, restraints, and injunctions set forth in this Order.

any other accounts which transfer funds into the same financial institution account(s) as any other Amazon accounts subject to this Order;

- (9) Amazon shall further, 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 restrained by this Order shall be transferred or surrendered by Amazon for any purpose (other than pursuant to a chargeback made pursuant to Amazon's 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;
- (12) this Order shall remain in effect until the date for the hearing to show cause why a preliminary injunction should not be issued as set forth below, or until such further dates as set by the Court or stipulated by the parties;

B. 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 pending the hearing and determination of Plaintiff's Application for a preliminary injunction, 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 pending the hearing and determination of Plaintiff's Application for a preliminary injunction, 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; 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.

II. Order to Show Cause Why a Preliminary Injunction Should Not Issue and Order of Notice

A. Defendants are hereby ORDERED to show cause before this Court in the United States District Court for the Western District of Pennsylvania, the U.S. Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania in Courtroom No. 5B on the **10th day of May, 2019 at 1:30 p.m.** or at such other time that this Court deems appropriate, why a preliminary injunction, pursuant to FRCP 65(a), should not issue.

B. IT IS FURTHER ORDERED that opposing papers, if any, shall be filed electronically with the Court and served on Plaintiff's counsel by delivering copies thereof to the office of Ference & Associates LLC at 409 Broad Street, Pittsburgh, Pennsylvania 15143 before **May 7, 2019**. Plaintiff shall file any Reply papers on or before **May 9, 2019 at 12:00 p.m.**

III. Order Authorizing Expedited Discovery

A. IT IS FURTHER ORDERED, as sufficient cause has been shown, 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, 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.

V. Security Bond

IT IS FURTHER ORDERED that Plaintiff shall place security (corporate surety bond, cash, certified check, or attorney's check) in the amount of \$5,000.00 Dollars (five thousand dollars) with the Court, which amount is determined adequate for the payment of any damages

any person may be entitled to recover as a result of an improper or wrongful restraint ordered hereunder.

SO ORDERED.

SIGNED this 2nd day of May, 2019, at 2:00 p.m.
Pittsburgh, Pennsylvania

s/Nora Barry Fischer
UNITED DISTRICT JUDGE

SCHEDULE "A"
DEFENDANTS BY STORENAME AND STORE NUMBER

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	
		B07QHLJKG9	
		B07QHPP751	
5	Amberqin	B07PHQ1KGM	A1M3C1XY082K7J
6	briskyii	B07QWT8C3H	A3KXARCXYPN3FL
		B07QXQZZ1R	
		B07QY TZ199	
		B07QZXVKXY	
7	Chic-Micky	B07QZ12HH8	ATFTJ2CNR12E
		B07R297SPY	
8	chuanhai	B07N2B82NF	A3HXNITIFY614K
		B07N2D1X2J	A3HXNITIFY614K
9	CleanLove	B07QWSYJZ5	A1WCXLV84EX628
		B07QXS1KYY	
		B07QYSFVCK	
10	csdsdfs	B07NQFLP1M	AVCHPNNLWQ2JT
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	kouhaisvsea	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
22	Liveda	B07PZ6BJ9D	AD6YMMDELKPQX
		B07PZ6BL97	
23	Outdoorshop	B07MXHQ5PJ	A1JGJ9K6KISDM1
		B07NS54TBT	
24	Pachira Macrocarpa	B07PN4ZSJM	A20EMP02C4BYNG
25	RONGCHI Inc.	B07NRL35Z5	A3Q4ZQGJUIW2TA
26	Sitelly	B07NS2XFKS	A1X0D9XW5NZPBR
		B07NS54TBT	
		B07NS6GL9N	
27	skybayyyyy	B07QXRFYBR	A1C127MPMEMG0T
		B07QYS5S3Q	
28	Sum-mer	B07MXHQ5PJ	A355KY8JEF44JY
		B07MXJFGYV	

29	Sunpangpang	B07MXGPHW6	A2F5TSXEE9J51Y
		B07MXH1ND4	
		B07MXHQ5PJ	
		B07MXJFGYV	

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AIRIGAN SOLUTIONS, LLC.,

Plaintiff,

v.

ABAGAIL, *et al.*,

Defendants.

CIVIL ACTION NO. 19-503

FILED UNDER SEAL

**ORDER ON PLAINTIFF'S EX PARTE MOTION FOR AN ORDER AUTHORIZING
ALTERNATIVE SERVICE ON DEFENDANTS PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 4(f)(3)**

AND NOW, this 2nd day of May, 2019, upon consideration of Plaintiff's Ex Parte Motion for an Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3),

IT IS HEREBY ORDERED that said Motion is GRANTED;

IT IS FURTHER ORDERED that Plaintiff is authorized to make alternative service of the Summonses, the Complaint and all pleadings and discovery in this matter upon each Defendant in this action, as follows:

1. via the e-mail accounts provided by that Defendant (i) as part of the data related to its e-commerce store, including by onsite contact forms, or
(ii) via the e-commerce platform e-mail for each of the e-commerce stores, or
2. via publication by posting copies of the Summonses, Complaint, and all subsequent filings on www.ferencelaw.com.

s/Nora Barry Fischer

Nora Barry Fischer

United States District Judge

cc Stanley D. Ference, III, Esq.

courts@ferencelaw.com

Brian Samuel Malkin, Esq.

bmalkin@ferencelaw.com

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

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:

secretary, 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

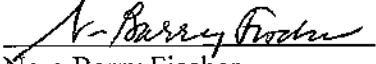
IT IS FURTHER ORDERED, the \$5,000.00 bond posted by Plaintiff shall remain with the Court until a final disposition of this case or until this PI Order is terminated.

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 5th day of July, 2019, at 11:20.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

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

AIRIGAN SOLUTIONS, LLC,

Plaintiff,

vs.

Civil Action No. 19-503

ABAGAIL, et al.,

Defendant.

Transcript of Proceedings held on Friday, July 5, 2019,
in the United States District Court, 700 Grant Street,
Pittsburgh, PA 15219, before Honorable Nora Barry Fischer,
United States District Judge.

APPEARANCES:

For the Plaintiff: Ference & Associates, LLC
by Stanley D. Ference, III, Esq., and
Brian S. Malkin, Esq.

For the Defendants: (Not present)

Court Reporter: Noreen A. Re, RMR, CRR
700 Grant Street
Suite 5300
Pittsburgh, PA 15219

Proceedings recorded by mechanical stenography;
transcript produced by computer-aided transcription.

P R O C E E D I N G S

1
2
3 THE COURT: This is the time and place for
4 proceedings in the matter styled Airigan Solutions, LLC,
5 Plaintiff, versus Abigail, et al., Defendants, Civil Action
6 No. 19-cv-503. Present on behalf of the Plaintiff are both
7 counsel, Stanley Ference and Brian Malkin. Both of whom are
8 appearing here in person.

9 Now, we had initially scheduled this matter to start
10 at 11:30 in the morning. It's now about 11:16. Counsel are
11 here and ready to proceed. And, to that end, I would note no
12 one else has appeared on behalf of any party to this matter.
13 In fact, no one has appeared on behalf of the Defendants.

14 My staff -- that's Mr. Kravetz, Mr. Galovich and the
15 remainder of my clerks and interns -- have also told me no one
16 has made any contact with our chambers about this matter.
17 Meanwhile, this hearing has been duly scheduled on the Court's
18 CM/ECF system. It also appears on the Court's website. And
19 it's also posted on the halls of the courthouse, as I have now
20 been told, twice.

21 Since we're the only game in town, there could be no
22 line trying to get up here from the security station on the
23 first floor; and so that would not be the reason for any kind
24 of a delay in appearing here today.

25 By way of background, on May 2, 2019, the Plaintiff

1 filed a complaint against a number of sellers on Amazon
2 alleging that they had sold knock-off versions of its Negg.
3 Negg is N-E-G-G. The Negg is an egg peeler, and they were
4 being sold through amazon.com and using Amazon payments.

5 Now, this case is related to a number of other
6 complaints filed at Civil Actions No. 18-1330, 18-1462 and
7 19-166, all of which are brought against sellers on Amazon,
8 eBay, aliexpress.com, Pay Pal and wish.com. On the same day
9 this Court issued a temporary restraining order authorizing
10 expedited discovery and ordered the Defendants to show cause
11 why a preliminary injunction should not issue in this case,
12 and I set this matter for hearing.

13 On May 28, 2019, the Plaintiff filed an amended
14 complaint adding additional Defendants to this lawsuit. The
15 Court then issued an amended temporary restraining order and
16 amended orders authorizing expedited discovery and to show
17 cause why a preliminary injunction should not issue in this
18 case.

19 I initially set this matter for hearing on June 10th,
20 but at the request of Plaintiff granted a continuance until
21 today's date. And, hence, the matter is scheduled for today.

22 Now, the Plaintiff's attorney has represented that
23 they have served all of the Defendants pursuant to the Court's
24 order for alternative service. Plaintiffs subsequently
25 submitted a proposed preliminary injunction order, along with

1 a declaration by the inventor, Margaret Tyler, and a number of
2 exhibits, all of which the Court has had the opportunity to
3 review and consider in advance of today's proceedings.

4 Once again, no representative and no counsel have
5 entered appearances for any of the Defendants as of this time,
6 nor has anyone appeared here in open court, despite the
7 Court's scheduling of this hearing.

8 Now, at this time I ask Mr. Ference and Mr. Malkin
9 whether you intend to put on any additional evidence at this
10 time, either by witness or by document.

11 MR. FERENCE: No, Your Honor. We rely on our papers.

12 THE COURT: To that end, as the Court has indicated,
13 the Court has carefully reviewed the papers in this case
14 including the most recent amended complaint; and, in addition,
15 the Court has had the benefit of the proposed preliminary
16 injunction order and, most importantly, the declaration of
17 Margaret B. Tyler.

18 Ms. Tyler identifies herself as the president and one
19 of the co-founders of Plaintiff, Airigan Solutions. And, to
20 that end, she provides the Court with background as to how
21 Amazon sells, that particularly products are assigned specific
22 codes. And, to that end, relative to her company's invention;
23 namely, seven of the assigned code numbers called Amazon
24 Standard Identification Numbers were considered to be variants
25 of B01MT9TX -- 1 or I -- ZSIAN. And, to that end, apparently,

1 she and members of her company have tried numerous times to
2 have Amazon relink, but they have been unsuccessful in this
3 regard.

4 And, as she advises the Court, not all of the sellers
5 under the ASINs controlled by Airigan are, in fact, authorized
6 sellers. And even though Amazon's been requested to do so, it
7 has continued to permit unauthorized sellers to list under
8 Airigan-controlled ASINs, and it has not promptly removed
9 unauthorized dealers.

10 And, to that end, she actually provides a number of
11 printouts as exhibits; and they demonstrate what appears on
12 the Amazon site. And that, in the Court's estimation, is
13 consistent with what she tells me by way of declaration.

14 And she points out something that I think we all well
15 know, that Amazon now accounts for over 50 percent of
16 E-commerce sales. Meanwhile, what's happening here is that
17 these products that Amazon is selling allegedly as Neggs are,
18 indeed, not Neggs, but they're being produced primarily in
19 China.

20 She further tells me at Paragraph 10, no sellers
21 based in China are authorized resellers of the Negg egg
22 peeler; and no product originating in China is a genuine Negg
23 egg peeler, despite what these postings on Amazon might say.

24 She also says -- and this is kind of interesting, as
25 these cases are developed -- that Airigan ran targeted

1 advertising. And what's happening, basically, is this
2 advertising that her company is running is, in effect, inuring
3 to the benefit of these counterfeiters and Amazon. And, as we
4 all know, people are always looking for a bargain; and they're
5 trying to find the lowest available price. These counterfeit
6 Negg egg peelers are priced anywhere between \$7.49 and \$10.
7 Whereas, the genuine Negg egg peeler is sold for \$17.95.

8 And so the more her company tries to advertise, in
9 effect, it's not necessarily benefiting her company, Airigan,
10 but it's benefiting these counterfeiters and, indeed, Amazon.

11 So having considered all of that, and certainly
12 having considered what I've learned through the rest of this
13 litigation and related cases, it would appear that the
14 Plaintiff's position is well-taken in this case seeking a
15 preliminary injunction order.

16 But having said that, Mr. Ference and Mr. Malkin, do
17 you have any argument you would like to present at this time?

18 MR. FERENCE: Nothing other than what was in our
19 paperwork, Your Honor, although we would be happy to answer
20 any questions you may have.

21 THE COURT: Okay. No. I think that you've been very
22 self-explanatory. And, as I've said in other hearings we've
23 had in these cases each and every time, I think you and
24 Mr. Malkin have risen to the challenge providing well-done
25 documents including briefing as well as declarations and

1 exhibits. It makes the judge's job very easy.

2 So having considered the Plaintiff's complaint, the
3 amended complaint, the motion for temporary restraining order
4 and supporting evidence, having considered the position of the
5 Plaintiff and, again, no one having appeared on behalf of the
6 Defendants, having considered the proposed order and certainly
7 the declaration of Ms. Tyler and the attachments, as the Court
8 just reviewed, and also having considered what I've learned in
9 the related matters at Civil Actions No. 18-1330, 18-1462 and
10 19-166, the Court will enter the preliminary injunction order
11 in the form as presented by the Plaintiff. I also order that
12 the \$5,000 bond, which had been previously posted, shall
13 remain in place.

14 I further order that Amazon shall comply within five
15 calendar days. Now, to that end, at this time I have been
16 provided with the preliminary injunction order; and I'll sign
17 off on same here in open court, having all of you read these
18 in anticipation of today's proceeding.

19 (Pause.)

20 THE COURT: Once again, I would note that we still
21 have not seen anyone appearing on behalf of the Defendants,
22 nor has my chambers been contacted by anyone on behalf of the
23 Defendants.

24 So the Court has entered both of these orders on this
25 5th day of July 2019. And I've timed it at 11:30, as we're

1 just about at the 11:30 mark. Now, before I conclude, do
2 either counsel wish a copy of today's proceedings by way of
3 transcript?

4 MR. FERENCE: No, Your Honor.

5 THE COURT: Okay. If at some point that becomes
6 important, of course, you'll get in touch with our chambers;
7 and we'll order preparation. Is there any other matter for
8 the Court's attention?

9 MR. FERENCE: No, Your Honor.

10 MR. MALKIN: No, Your Honor.

11 THE COURT: Relative to this case, do you anticipate
12 any other related filings that might appear?

13 MR. FERENCE: It all depends on what's in the
14 marketplace, Your Honor.

15 THE COURT: Okay. All right. Has there been any
16 reaction, by the way, to the other lawyers that have been
17 entered?

18 MR. FERENCE: No.

19 THE COURT: Just coincidentally, I don't know where I
20 was the last few days. I think I know where I was. I think I
21 was actually at the funeral home. And for whatever reason,
22 somebody I was talking to brought up the fact that he or she
23 purchased things on Amazon. And that particular person was
24 complaining to me about the fact that you don't almost know
25 where these things are coming from. You don't know the

1 country of origin.

2 And this particular person was complaining that they
3 thought Amazon should do a better job before it puts something
4 out in the marketplace as to where these things are coming
5 from and the like. So I thought that was kind of interesting.

6 Coincidentally, on the ride in, I think it was NPR
7 this morning had a story about Amazon and how it's grown from
8 selling books. But it was always Mr. Bezos' idea that it was
9 going to be much more than a book seller. Is that what you
10 heard, too, Mr. Ference?

11 MR. FERENCE: I did not hear that, Your Honor. I
12 thought you were going to say it was the story about a Third
13 Circuit decision that came out on July 3rd involving Amazon.
14 And I have two copies here for you.

15 THE COURT: The one where they were found to be
16 strictly liable as a seller as well?

17 MR. FERENCE: Correct.

18 THE COURT: I did read that. Actually, I passed it
19 on to my daughter, who is a dog lover, because of the
20 underlying facts, how that leash, I guess, snapped back. And
21 the dog owner lost her eye. It's a pretty remarkable factual
22 basis.

23 MR. FERENCE: Well, the Third Circuit decision gives
24 a little bit of background on how Amazon's business operates
25 and how people come to be listed as sellers on Amazon. Given

1 your experience with these cases, I thought reading that
2 portion of the decision might be of interest to you.

3 THE COURT: Well, certainly. I've only read the
4 blurb, if you will, that we get automatically when the opinion
5 came down. Frankly, it's Hornbook law. They're in the chain
6 of sale.

7 MR. FERENCE: This is the first decision that has
8 found Amazon to be a seller for anything that has been sold by
9 a third party on the Amazon website.

10 THE COURT: Interesting.

11 MR. FERENCE: So that's one of the reasons why in
12 these cases we're naming the stores that are selling it
13 instead of Amazon. As previously, everybody -- the courts
14 that have considered it have found Amazon does not take
15 possession or title to the good and, thus, is not a seller and
16 does not have any liability.

17 THE COURT: But Amazon is making some money along the
18 way.

19 MR. FERENCE: Yes, they are.

20 THE COURT: Right. So it sounds to me like a seller.
21 Right?

22 MR. FERENCE: Sounds to us like a seller as well,
23 Your Honor.

24 THE COURT: Well, we'll be happy to take a copy, if
25 you have it. Because I think that my clerks might be

1 interested in reading a full opinion, if they haven't. And I
2 know our intern, Mr. Constantino, would be interested, too.

3 MR. FERENCE: I have two copies for you.

4 THE COURT: Thank you. We appreciate that. It saves
5 us some paper. Both of those are signed, Mr. Kravetz. So the
6 originals of the preliminary injunction orders, having been
7 signed, we're going to be providing them to Mr. Ference and
8 Mr. Malkin. And then we'll be entering our order on the
9 docket. Mr. Kravetz checked that I actually signed.

10 THE DEPUTY CLERK: It's only one line.

11 THE COURT: Is there anything else for the Court's
12 attention? Otherwise, we'll wish you a good weekend. And
13 enjoy the rest of this holiday weekend.

14 MR. FERENCE: Thank you very much, Your Honor. We
15 have nothing else at this time.

16 MR. MALKIN: Thank you, Your Honor.

17 -----

18 (Whereupon, the above-captioned matter was
19 concluded.)

20 -----

21 C E R T I F I C A T E

22 I, NOREEN A. RE, RMR, CRR, certify that the
23 foregoing is a correct transcript from the record of
proceedings in the above-entitled case.

24 s\ Noreen A. Re
25 NOREEN A. RE, RMR, CRR
Official Court Reporter

July 12, 2019
Date of Certification

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

RAPID SLICER, LLC,

Plaintiff,

v.

ART-HOUSE STORE, *et al.*,

Defendants.

Civil Action No. 19-411

Judge Marilyn J. Horan

FILED UNDER SEAL

1) 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

On this day the Court considered Plaintiff's *Ex Parte* Application for the following: 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts (as defined *infra*); 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"**, Alibaba Group Holding Ltd and Alibaba.com US LLC d/b/a Aliexpress.com ("Aliexpress"), Amazon Services LLC d/b/a Amazon.com, and eBay, Inc. d/b/a eBay.com ("eBay") ("Third Party Service Provider(s)") and Alipay US Inc. d/b/a Alipay.com ("Alipay"), Amazon Payments, Inc. d/b/a Pay.amazon.com ("Amazon Pay") and PayPal, Inc. d/b/a paypal.com ("PayPal") ("Financial Institutions") in light of Defendants' intentional and willful offerings for sale and/or sales of Counterfeit Products and/or Infringing Products (as defined *infra*) ("Application") Having reviewed the Application, the Declarations of Cindy Fox, Brian Samuel Malkin, Stanley D. Ference III, and Jennifer Lineberry, along with the exhibits attached

thereto and other evidence submitted in support thereof, the Court makes the following findings of fact and conclusions of law:

FACTUAL FINDINGS & CONCLUSION OF LAW

1. Plaintiff is likely to prevail on its Lanham Act claims, Copyright claims, and related state law claims at trial;
2. Rapid Slicer has gained significant common law trademark and other rights in its Rapid Slicer Product, through use, advertising, and promotion. Rapid Slicer has also protected its valuable rights by filing for obtaining a federal trademark registration.
3. Rapid Slicer is the owner of the registered trademark RAPID SLICER and design **RapidSlicer**¹. (“Rapid Slicer Mark”).
4. In addition, Rapid Slicer is the owner of the federally registered copyright for its packaging (“U.S. Copyright Reg. No. VA-2-112-976) (referred to as, “Rapid Slicer Work”).
5. As a result of Defendants’ infringements, Plaintiff as well as consumers are likely to suffer immediate and irreparable losses, damages and injuries before Defendants can be heard in opposition, unless Plaintiff’s Application for *ex parte* relief is granted:
 - a. Defendants have offered for sale and sold substandard products bearing or using Plaintiff’s Mark and/or Rapid Slicer Work that use packaging that bears and/or is used in connection with Mark and/or trade dress (collectively referred to as the “Plaintiff’s Mark”) that is confusing or substantially similar to Plaintiff’s authentic products sold using Plaintiff’s Mark and/or that infringe on Plaintiff’s federally registered copyright for the Rapid Slicer Work that overall infringe the Rapid Slicer

¹ (U.S. Reg. No. 5,647,154 attached as **Exhibit 1 to the Complaint**)

Mark and/or Rapid Slicer Work (collectively referred to as “Infringing Product(s)” or “Counterfeit Product(s)”) through accounts with the online marketplace platform Alibaba Group Holding Ltd and Alibaba.com US LLC d/b/a Aliexpress.com (“Aliexpress”), Amazon Services LLC d/b/a Amazon.com, and eBay, Inc. d/b/a eBay.com (“eBay”) (“Third Party Service Provider(s)”) and Alipay US Inc. d/b/a Alipay.com (“Alipay”), Amazon Payments, Inc. d/b/a Pay.amazon.com (“Amazon Pay”) and PayPal, Inc. d/b/a paypal.com (“PayPal”) (“Financial Institutions”), by Defendants (“User Account²(s)”);

- b. Plaintiff has well-founded fears that more Counterfeit Products and Infringing Products will appear in the marketplace; that consumers may be misled, confused and disappointed by the quality of these Counterfeit Products and Infringing Products, resulting in injury to Plaintiff’s reputation and goodwill; and that Plaintiff may suffer loss of sales for its Rapid Slicer Product; and
- c. Plaintiff has well-founded fears that if it proceeds on notice to Defendants on this Application, Defendants will: (i) secret, conceal, destroy, alter, sell-off, transfer or otherwise dispose of or deal with Counterfeit Products or Infringing Products or other goods that infringe the Rapid Slicer Mark and/or Rapid Slicer Work, the means of obtaining or manufacturing such Counterfeit Products or Infringing Products, and records relating thereto are in their possession or under their control, (ii) inform their suppliers and others of Plaintiff’s claims with the result being that those suppliers and others may also secret, conceal, sell-off or otherwise dispose of Counterfeit Products

² As defined in the Application, a “User Account” is, as defined in the Complaint, any and all accounts with online marketplace platform(s) Aliexpress.com, Amazon.com, and eBay.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.

or Infringing Products or other goods infringing the Rapid Slicer Mark, the means of obtaining or manufacturing such Counterfeit Products or Infringing Products, and records relating thereto that are in their possession or under their control, (iii) secret, transfer or otherwise dispose of their ill-gotten proceeds from their sales of Counterfeit Products or Infringing Products or other goods infringing the Rapid Slicer Mark and records relating thereto that are in their possession or under their control and/or (iv) open new User Accounts through which Defendants, import, export, advertise, market, promote, distribute, offer for sale, sell and/or otherwise deal in products, including Counterfeit Products or Infringing Products (“Merchant Storefront(s)³”) under new or different names and to continue to offer for sale and sell Counterfeit Products and Infringing Products with little to no consequence;

6. The balance of potential harm to Defendants of being prevented from continuing to profit from their illegal and infringing activities if a temporary restraining order is issued is far outweighed by the potential harm to Plaintiff, its business, the goodwill and reputation built up in and associated with the Rapid Slicer Mark and Rapid Slicer Work;

7. Public interest favors issuance of the temporary restraining order in order to protect Plaintiff’s interests in and to its Rapid Slicer Mark and Rapid Slicer Work and to protect the public from being deceived and defrauded by Defendants’ passing off of their substandard Counterfeit Products as Raid Slicer Product(s) or Defendants selling Infringing Products as Rapid Slicer Work(s).

³ 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 or Infringing 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.

8. Plaintiff has not publicized its request for a temporary restraining order in any way.

9. Service on Defendants via electronic means is reasonably calculated to result in proper notice to Defendants.

10. This Court has the inherent authority to issue a prejudgment asset restraint when plaintiff's complaint seeks relief in equity. In addition, Plaintiff has shown a strong likelihood of succeeding on the merits of its trademark infringement and counterfeiting claim, so according to the Lanham Act 15 U.S.C. § 1117(a)(1), Plaintiff is entitled, "subject to the principles of equity, to recover ... defendant's profits." Plaintiff seeks, among other relief, that Defendants account for and pay to Plaintiff all profits realized by Defendants by reason of Defendants' unlawful acts. Therefore, this Court has the inherent equitable authority to grant Plaintiff's request for a prejudgment asset freeze to preserve the relief sought by Plaintiff.

11. If Defendants are given notice of the Application, they are likely to secret, conceal, transfer or otherwise dispose of their ill-gotten proceeds from their sales of Counterfeit Products, Infringing Products, or other goods infringing the Rapid Slicer Mark or Rapid Slicer Work. Therefore, good cause exists for granting Plaintiff's request for an asset restraining order. It typically takes Financial Institutions a minimum of five (5) days to locate, attach and freeze Defendants' Assets (as defined *infra*) and/or Defendants' Financial Accounts (as defined *infra*) and it is not unusual for the Third Party Service Provider (as defined *infra*) operating the online marketplaces a minimum of two (2) weeks to freeze Defendants' Merchant Storefronts. As such, the Court allows enough time for Plaintiff to serve the Financial Institutions and the Third Party Service Provider with this Order and for the Financial Institutions and/or the Third Party Service

Provider to comply with the Paragraphs I(B)(1) through I(B)(2) and I(C)(1) of this Order, respectively, before requiring service on Defendants.

12. Similarly, if Defendants are given notice of the Application, they are likely to destroy, move, hide or otherwise make inaccessible to Plaintiff the records and documents relating to Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or sale of Counterfeit Products or Infringing Products. Therefore, Plaintiff has good cause to be granted expedited discovery.

ORDER

Based on the foregoing findings of fact and conclusions of law, Plaintiff's Application is hereby **GRANTED** as follows (the "Order"):

I. Temporary Restraining Order

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, 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 are hereby restrained as follows:

- (1) from manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Counterfeit Products and/or Infringing Products, or any other products bearing the Plaintiff's Mark and/or Mark that are confusingly similar to, identical to and constitute a counterfeiting or infringement of the Rapid Slicer Mark and/or incorporating the Rapid Slicer Work and/or artwork that is substantially similar to, identical to, and constitute an infringement of the Rapid Slicer Work;

- (2) from secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with: (i) Counterfeit Products and/or Infringing Products 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 and/or Infringing 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 and/or Infringing 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 Mark that are confusingly similar with the Plaintiff’s Mark and/or substantially similar to the Rapid Slicer Work, 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 and/or Infringing Products for sale, from search engines’ databases or cache memory, and any other form of use such that the Plaintiff’s Mark or a confusingly similar mark or a substantially similar to the Rapid Slicer Work 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, Alibaba Group Holding Ltd and Alibaba.com US LLC d/b/a Aliexpress.com (“Aliexpress”), Amazon Services LLC d/b/a Amazon.com, and eBay, Inc. d/b/a eBay.com (“eBay”) (“Third Party Service Provider(s)”) and Alipay US Inc. d/b/a Alipay.com (“Alipay”), Amazon Payments, Inc. d/b/a Pay.amazon.com (“Amazon Pay”) and PayPal, Inc. d/b/a paypal.com (“PayPal”) (“Financial Institutions”), and their related companies and affiliates, shall immediately identify and 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;

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 discovery Third Party

(8) Alibaba Group Holding Ltd and Alibaba.com US LLC d/b/a Aliexpress.com (“Aliexpress”), Amazon Services LLC d/b/a Amazon.com, and eBay, Inc. d/b/a eBay.com (“eBay”) (“Third Party Service Provider(s)”) and Alipay US Inc. d/b/a Alipay.com (“Alipay”), Amazon Payments, Inc. d/b/a Pay.amazon.com (“Amazon Pay”) and PayPal, Inc. d/b/a paypal.com (“PayPal”) (“Financial Institutions”) shall immediately 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) Alibaba Group Holding Ltd and Alibaba.com US LLC d/b/a Aliexpress.com (“Aliexpress”), Amazon Services LLC d/b/a Amazon.com, and eBay, Inc. d/b/a eBay.com (“eBay”) (“Third Party Service Provider(s)”) and Alipay US Inc. d/b/a Alipay.com (“Alipay”), Amazon Payments, Inc. d/b/a Pay.amazon.com (“Amazon Pay”) and PayPal, Inc. d/b/a paypal.com (“PayPal”) (“Financial Institutions”) shall further, 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 restrained by this Order shall be transferred or

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.

surrendered by any Third Party Service Provider or Financial Institution for any purpose (other than pursuant to a chargeback made pursuant to that Third Party Service Provider or Financial Institution's 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, Third Party Service Provider or Financial Institution accounts which are being used by Defendants for the purpose of counterfeiting the Rapid Slicer Product and/or infringing the Rapid Slicer work, at issue in this action and/or unfairly competing with Plaintiff;
- (11) a Third Party Service Provider Financial Institution, 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;
- (12) this Order shall remain in effect until the date for the hearing to show cause why a preliminary injunction should not be issued as set forth below, or until such further dates as set by the Court or stipulated by the parties;

B. IT IS HEREBY ORDERED, as sufficient cause has been shown, that the Alibaba Group Holding Ltd and Alibaba.com US LLC d/b/a Aliexpress.com ("Aliexpress"), Amazon Services LLC d/b/a Amazon.com, and eBay, Inc. d/b/a eBay.com ("eBay") ("Third Party Service Provider(s)") and Alipay US Inc. d/b/a Alipay.com ("Alipay"), Amazon Payments, Inc. d/b/a Pay.amazon.com ("Amazon Pay") and PayPal, Inc. d/b/a paypal.com ("PayPal") ("Financial Institutions") are hereby restrained and enjoined from engaging in any of the following acts or omissions pending the hearing and determination of Plaintiff's Application for a preliminary injunction, 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 the Third Party Service Providers and Financial Institutions are hereby restrained and enjoined from engaging in any of the following acts or omissions pending the hearing and determination of Plaintiff's Application for a preliminary injunction, or until further order of the Court: 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;
- D. IT IS HEREBY ORDERED, as sufficient cause has been shown, that after Plaintiff's Counsel has received confirmation from Third Party Service Providers and Financial Institutions regarding the funds restrained as directed herein, the Plaintiff shall serve the Defendants as directed in the separately entered Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3).

II. Order to Show Cause Why a Preliminary Injunction Should Not Issue and Order of Notice

A. Defendants are hereby ORDERED to show cause before this Court in the United States District Court for the Western District of Pennsylvania, the U.S. Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania in Courtroom No. 8A on **the 30th day of April at 9:30 a.m.** or at such

other time that this Court deems appropriate, why a preliminary injunction, pursuant to FRCP 65(a), should not issue.

B. IT IS FURTHER ORDERED that opposing papers, if any, shall be filed electronically with the Court and served on Rapid Slicer's counsel by delivering copies thereof to the office of Ference & Associates LLC at 409 Broad Street, Pittsburgh, Pennsylvania 15143 **before 5:00 p.m. on April 26, 2019**. Rapid Slicer shall file any Reply papers **before noon on April 29, 2019**.

III. Order Authorizing Expedited Discovery

A. IT IS FURTHER ORDERED, as sufficient cause has been shown, 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'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 admissions pursuant 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'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, Alibaba Group Holding Ltd and Alibaba.com US LLC d/b/a Aliexpress.com ("Aliexpress"), Amazon Services LLC d/b/a Amazon.com, and eBay, Inc. d/b/a eBay.com ("eBay") ("Third Party Service Provider(s)") and Alipay US Inc. d/b/a Alipay.com ("Alipay"), Amazon Payments, Inc. d/b/a Pay.amazon.com ("Amazon Pay") and PayPal, Inc. d/b/a paypal.com ("PayPal") ("Financial Institutions") 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

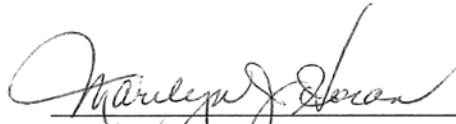
- d. Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling of Counterfeit Products and/or Infringing Products, or any other products bearing the Rapid Slicer Mark and/or Mark that are confusingly similar to, identical to, and constitute an infringement of the Rapid Slicer Mark and/or substantially similar to the Rapid Slicer Work.

V. Security Bond

IT IS FURTHER ORDERED that Plaintiff shall place security (corporate surety bond, cash, certified check, or attorney's check) in the amount of **\$5,000.00 (five thousand dollars)** with the Court, which amount is determined adequate for the payment of any damages any person may be entitled to recover as a result of an improper or wrongful restraint ordered hereunder.

SO ORDERED.

SIGNED this 15th day of April, 2019, at 9:00 a.m.
Pittsburgh, Pennsylvania



Marilyn J. Horan
United States District Judge

SCHEDULE "A"
DEFENDANTS BY STORENAME AND STORE NUMBER

Def No.	Defendant / AliExpress Store Name	AliExpress Store Number
1	Art-House Store	2341184
2	Culcu of Store	3661109
3	EnjoyMy Life Store	4422024
4	FREEDLY Life Store	2901108
5	Hey, Living Store	2942083
6	Innovation Painting Store	3113008
7	KingPet Market Store	2881374
8	Lauraayerre Store	4035037
9	Magical House Store	3077002
10	Manbo life Store	3190036
11	Sweet Treats	1813314
12	Sweettreats Official Store	1182793
13	TinGrace's Garret House Store	2797002
14	Xeon Life Trading Store	2947066
15	Zone Gathering Store	3414006

Def No.	Defendant / Amazon Store Name	Amazon ASIN Number	Amazon Seller ID
16	Big-Time	B07L885G61	A3CHZUFMWYW6A1
17	Gold Happy	B07KW7XQYG	A2GPYXZWFHL3C6

Def No.	Defendant / eBay Seller Name	eBay Item No.	PayPal E-mail
18	Beautyshopss	302985638422	fdangreen@outlook.com
19	Hi17new	292849869220	zhangdhe@outlook.com
20	Homeproduct_Sell	173423190922	homeproductsell@outlook.com
21	Kanzezolstore	113419574318	tnedirect@gmail.com
22	Magnetic-a	302953543850	javicasanovaduval@gmail.com

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

RAPID SLICER, LLC,

Plaintiff,

v.

ART-HOUSE STORE, *et al.*,

Defendants.

Civil Action No. 19-411

Judge Marilyn J. Horan

FILED UNDER SEAL

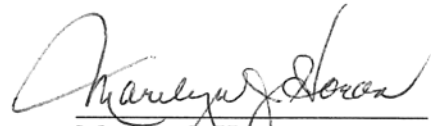
**ORDER ON PLAINTIFF'S EX PARTE MOTION FOR AN ORDER AUTHORIZING
ALTERNATIVE SERVICE ON DEFENDANTS PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 4(f)(3)**

AND NOW, this 15th day of April, 2019, upon consideration of Plaintiff's Ex Parte Motion for an Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3),

IT IS HEREBY ORDERED that said Motion is GRANTED;

IT IS FURTHER ORDERED that until further order of Court, Plaintiff is authorized to make alternative original service of the Summonses, the Complaint, and discovery in this matter upon each Defendant in this action, as follows:

1. via the e-mail accounts provided by that Defendant (i) as part of the data related to its e-commerce store, including by onsite contact forms, and (ii) via the e-commerce platform e-mail for each of the e-commerce stores, and
2. via publication by posting copies of the Summonses, Complaint, discovery, and all future filings on www.ferencelaw.com.


Marilyn J. Horan
United States District Judge

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

RAPID SLICER, LLC,

Plaintiff,

v.

ART-HOUSE STORE, *et al.*,

Defendants.

Civil Action No. 19-411

(Judge Horan)

FILED UNDER SEAL

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 Storefronts;¹ 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”, Alibaba Group Holding Ltd and Alibaba.com US LLC d/b/a Aliexpress.com (“Aliexpress”), Amazon Services LLC d/b/a Amazon.com (“Amazon”), and eBay, Inc. d/b/a eBay.com (“eBay”) (“Third Party Service Provider(s)”) and Alipay US Inc. d/b/a Alipay.com (“Alipay”), Amazon Payments, Inc. d/b/a Pay.amazon.com (“Amazon Pay”) and PayPal, Inc. d/b/a paypal.com (“PayPal”)

¹ As defined in the Complaint, 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 Infringing or 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.

(“Financial Institutions”), 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);

WHEREAS, On April 15, 2019, at 9:00 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”**, Context Logic, Inc. d/b/a wish.com (Wish), and PayPal, Inc. d/b/a paypal.com (“PayPal”) (“TRO”)(ECF No. 11); and

(B) Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3)(ECF No. 12);

WHEREAS, on April 26, 2019, the TRO duration was extended until further order of the Court (ECF No. 19); and

WHEREAS, on May 20, 2019, Plaintiff appeared for the Order to Show Cause Hearing, however no Defendants appeared. Further, Aliexpress, Amazon, eBay, Alipay, Amazon Pay, and PayPal did not appear.

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 substandard products bearing or using Plaintiff’s Mark and/or Rapid Slicer Work that use packaging that bears and/or is used in connection with Mark and/or trade dress (collectively referred to as the “Plaintiff’s Mark”) that is confusing or substantially similar to Plaintiff’s authentic products sold using Plaintiff’s Mark and/or that infringe on Plaintiff’s federally registered copyright for the Rapid Slicer Work that overall infringe the Rapid Slicer Mark and/or Rapid Slicer Work (collectively referred to as “Infringing Product(s)” or “Counterfeit Product(s)”) to U.S. consumers, including those consumers in Pennsylvania, though their Merchant Storefronts.

ORDER

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, the injunctive relief previously granted on April 15, 2019, and extended by Order of April 26, 2019, shall remain in place until further order of the Court, and issuing this Preliminary Injunction (hereafter “PI Order”) is warranted under FRCP 65, and Section 34 of the Lanham 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 and/or Infringing Products, or any other products bearing the Plaintiff’s Mark and/or Mark that are confusingly similar to, identical to and constitute a counterfeiting or infringement of the Rapid Slicer Mark and/or incorporating the Rapid Slicer Work and/or artwork that is substantially similar to, identical to, and constitute an infringement of the Rapid Slicer Work;
- (2) from secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with: (i) Counterfeit Products and/or Infringing Products 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 and/or Infringing 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 and/or Infringing 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 Mark that are confusingly similar with the Plaintiff's Mark and/or substantially similar to the Rapid Slicer Work, 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 and/or Infringing Products for sale, from search engines' databases or cache memory, and any other form of use such that the Plaintiff's Mark or a confusingly similar mark or a substantially similar to the Rapid Slicer Work 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, the Financial Institutions, 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" hereto³;
- (8) the Financial Institutions, 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) the Financial Institutions 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

³ 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 discovery 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. No funds restrained by this Order shall be transferred or surrendered by the Financial Institutions for any purpose (other than pursuant to a chargeback made pursuant to the Financial Institutions 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 Third Party Service Providers or Financial Institutions which are being used by Defendants for the purpose of counterfeiting the Rapid Slicer Product and/or infringing the Rapid Slicer work, at issue in this action and/or unfairly competing with Plaintiff;

(11) Third Party Service Providers or Financial Institutions, 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 Preliminary Injunction Order and the Alternative Service Order shall remain in effect until further order of the Court, and Plaintiff shall serve the Defendants with a copy of this Preliminary Injunction Order, and all future filings, in accordance with the Alternative Service Order.

B. IT IS HEREBY ORDERED, as sufficient cause has been shown, that the Third Party Service Providers and Financial Institutions shall continue to be restrained and enjoined from engaging in any of the following acts or omissions pending the hearing and determination of Plaintiff's Application for a preliminary injunction, 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 the Third Party Service Providers and Financial Institutions shall continue to be restrained and enjoined from engaging in any of the following acts or omissions until further order of the Court: 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.

II. Order Authorizing Expedited Discovery

- A. IT IS FURTHER ORDERED, as sufficient cause has been shown, the expedited discovery previously granted in the TRO shall remain in place until further order of this Court, 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, the Third Party Service Providers and Financial Institutions 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 Providers or Financial Institutions;
- 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 and/or Infringing Products, or any other products bearing the Rapid Slicer Mark and/or Mark that are confusingly similar to, identical to, and constitute an infringement of the Rapid Slicer Mark and/or substantially similar to the Rapid Slicer Work.

III. Security Bond

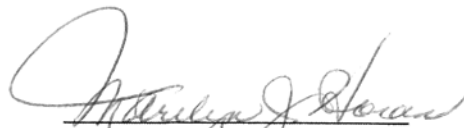
IT IS FURTHER ORDERED, the \$5,000.00 bond posted by Plaintiff shall remain with the Court until a final disposition of this case or until this PI Order is terminated.

IV. 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 20th day of May, 2019
Pittsburgh, Pennsylvania



Marilyn J. Horan
United States District Judge

cc Stanley D. Ference III, Esq.
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Brian Samuel Malkin, Esq.
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 19-cv-60928-UU

APPLE CORPS LIMITED and
SUBAFILMS LIMITED,

Plaintiffs,

v.

THE INDIVIDUALS, PARTNERSHIPS
AND UNINCORPORATED
ASSOCIATIONS IDENTIFIED ON
SCHEDULE "A,"

Defendants.

**SEALED ORDER GRANTING *EX PARTE* APPLICATION FOR
OF TEMPORARY RESTRAINING ORDER**

THIS CAUSE came before the Court upon Plaintiffs' *Ex Parte* Application for Entry of Temporary Restraining Order, Preliminary Injunction, and Order Restraining Transfer of Assets (the "Application for Temporary Restraining Order") against Defendants,¹ pursuant to 15 U.S.C. § 1116 and Fed. R. Civ. P. 65 and The All Writs Act, 28 U.S.C. § 1651(a), for alleged violations of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a), D.E. 6. Because Plaintiffs have satisfied the requirements for the issuance of a temporary restraining order, the Court will grant Plaintiffs' Application for Temporary Restraining Order, D.E. 6, for the reasons discussed below.

¹ Each of the Defendants in this action is listed in Schedule A, which is attached to this Order.

I. FACTUAL BACKGROUND²

1. Plaintiff, Apple Corps Limited, is the owner of the following trademarks registered on the Principal Register of the United States Patent and Trademark Office (the “BEATLES Marks”):

Trademark	Registration Number	Registration Date	Class(es) / Good(s)
THE BEATLES	1,752,120	February 16, 1993	IC 025 - Headwear, sweatshirts, t-shirts, shirts.
BEATLES	4,373,956	July 30, 2013	IC 009 – Decorative refrigerator magnets; computer keyboard accessories, namely mouse pads and wrist rests in the form of pads for use with computers; telephone apparatus, namely, telephones; telephone receivers, telephone answering machines, mobile telephones; cases for mobile telephones; cell phone covers; covers for mobile telephones, namely, fitted plastic films known as skins for covering and protecting electronic apparatus in the nature of mobile telephones; straps for mobile telephones; telephone call indicator lights and electro-mechanical shakers for detecting and signaling incoming telephone calls; mechanical and electric egg timers; boxes and cases specially adapted for holding audio cassettes, video cassettes, gramophone records, audio compact discs, audio mini discs, video discs, and interactive compact discs or cd-roms.

² The factual background is taken from Plaintiffs’ Complaint, D.E. 1, Plaintiffs’ Application for Temporary Restraining Order, D.E. 6, and supporting evidentiary submissions. Plaintiffs filed declarations and exhibits annexed thereto in support of their Application for Temporary Restraining Order.

			<p>IC 014 - Jewelry boxes not of metal, including ceramic and porcelain jewelry boxes for trinkets; jewelry; horological and chronometric instruments, namely, watches and clocks; watch straps, cuff links, brooches, bracelets, bangles, earrings, pendants, medallions, trinkets being jewelry, charms being jewelry, rings being jewelry, tie pins, jewelers ornamental tie pins, lapel pins, tie clips, collectible non-monetary coins, ornamental pins; articles of precious metal and their alloys, and articles coated with precious metal and their alloys, namely, belt buckles for clothing, coasters, jewelry boxes, key rings, key chains; hat and shoe ornaments and key fobs all of precious metal; rings being jewelry; ornamental pins; cigarette and cigar cases; precious stones; semi-precious stones; statuettes and figurines of precious metal or precious stone or coated therewith; scale model vehicles, ships or submarines all made from, or coated with precious metal or precious stone.</p> <p>IC 016 – Posters; prints, namely, photograph prints and pictorial prints; pictures; art prints and framed art prints; framed and unframed pictorial prints, cartoon prints, lithographic prints, color prints, caricature prints, computer generated pictorial prints, and black and white, and color prints featuring hidden or three dimensional images; paper desk mats; pen and pencil cases; pen and pencil boxes; pen and pencil holders; drawing rulers; erasers; printed paper embroidery design patterns; sewing patterns for making clothes, knitting patterns. iron-on</p>
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		<p>transfers for decorating textiles; printed wall charts; paperweights, not of precious metal; babies' bibs of paper; bookmarks; passport holders all made from leather or imitation leather; pencil cases, notelets and autograph books; reusable textile lunch bags; reusable plastic shopping bags.</p> <p>IC 018 - Goods made from leather or imitation leather, namely, waist pouches for carrying purses and wallets; luggage, carry on traveling bags, clutch bags, trunks, business card cases, rucksacks, backpacks, purses, wallets, key cases, luggage tags; billfolds, leather key fobs, key cases, umbrellas; bags, namely, handbags, shoulder bags, all purpose sports bags, barrel bags, carry-on flight bags, and duffel bags, suitcases, attaché cases, school bags, satchels, gym bags, beach bags and credit card cases; hand carry overnight cases of metal, plastic or resin; tote bags, including metal totes; textile shopping bags; identity card holders of leather and imitations of leather.</p> <p>IC 021 – Drinking vessels, namely, glasses, mugs, jugs, and tankards not of precious metal; bottles, namely, seltzer bottles for use as barware, sport bottles sold empty, and vacuum bottles; insulated bottles, namely, thermal insulated bottles and flasks for beverages.</p> <p>IC 024 - Decorative window curtains of wood, reed, bamboo, beads or plastic; household linen; bed linen; bedspreads; table linen; table cloths not of paper; table mats not of paper; textile table napkins;</p>
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			<p>coasters made of table linen or textile; unfitted fabric furniture covers; bed sheets, pillow cases, duvet covers; towels; face towels; face washing cloths; curtains; wall hanging of textile; cloth banners; cloth bunting; cloth flags; handkerchiefs; cushion covers; pre-cut textiles for making into cushions and cushion covers; traced cloths for embroidery.</p> <p>IC 025 - Footwear and headgear, namely, hats and caps; clothing, namely, shirts, polo shirts, T-shirts, sweatshirts; sweatpants; jackets, coats; pullovers; vests; articles of underclothing, namely, underwear; shorts; scarves; silk pocket squares; neck-ties; braces in the nature of suspenders; belts; socks; long-sleeved shirts and long sleeved T-shirts; silk scarves; silk scarves in the shape of squares for wearing over the head or around the neck; pants; fleece tops; thermal tops; jerseys; baseball jerseys; hockey jerseys; sweaters; tank tops; waistcoats; trousers; golf shirts; golf pants; golf shoes; swim wear; beachwear; night gowns; pajamas; dressing gowns; bathrobes; bathing caps; head bands; slippers; beach shoes; sandals; clothing for toddlers, infants and babies, namely, rompers, shortalls, babies' sleep suits; cloth babies' bibs.</p>
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(See Declaration of Paul Cole in Support of Plaintiffs' Application for Temporary Restraining Order ["Cole Decl."] ¶¶ 4-5.) The BEATLES Marks are used in connection with the manufacture and distribution of quality goods in the categories identified above. (See Cole Decl. ¶¶ 4-5.)

Plaintiff, Subafilms Limited, is the owner of the following trademark registered on the Principal Register of the United States Patent and Trademark Office (the “YELLOW SUBMARINE Mark”):

Trademark	Registration Number	Registration Date	Class(es) / Good(s)
YELLOW SUBMARINE	3,328,170	November 6, 2007	<p>IC 009 - Musical sound and video recordings; gramophone records featuring music; audio compact discs featuring music; computer game software; video game software; interactive entertainment software for generating games, puzzles, images, musical entertainment, visual entertainment or movie clips; sunglasses; eyeglass cases; magnets; fridge magnets; mouse pads being accessories for keyboards; telephone apparatus, namely, covers for mobile telephones; straps for mobile telephones; and downloadable sound and video records featuring music, musicians, caricatures, cartoons, animation, movie clips, album art or music memorabilia images provided over broadcast, communications, satellite and computer networks.</p> <p>IC 025 - Footwear; shirts; polo shirts; t-shirts; long-sleeved shirts and long-sleeved t-shirts; sweatshirts; jackets; pullovers; vests; scarves; pocket squares made of silk; neck-ties; hats; caps; sock; thermal tops; jerseys; sweaters; tank tops; pajamas; clothing for toddlers, infants and babies namely, one-piece</p>

Trademark	Registration Number	Registration Date	Class(es) / Good(s)
			garments for infants and toddlers, sleep suits, t-shirts and long-sleeved t-shirts.

(See Cole Decl. ¶¶ 10-11.) The YELLOW SUBMARINE Mark is used in connection with the manufacture and distribution of quality goods in the categories identified above. (See Cole Decl. ¶¶ 10-11.)

2. Defendants, through the Internet based e-commerce stores operating under the seller identification names identified on Schedule “A” hereto (the “Seller IDs”), have advertised, promoted, offered for sale, or sold goods bearing what Plaintiffs have determined to be counterfeits, infringements, reproductions or colorable imitations of the BEATLES Marks and/or the YELLOW SUBMARINE Mark (collectively “Plaintiffs’ Marks”). (See Cole Decl. ¶¶ 16-20; see also Declaration of T. Raquel Wiborg-Rodriguez in Support of Plaintiffs’ Application for Temporary Restraining Order [“Wiborg-Rodriguez Decl.”] ¶ 2; Declaration of Kathleen Burns in Support of Plaintiffs’ Application for Temporary Restraining Order [“Burns Decl.”] ¶ 4.)

3. Plaintiffs have submitted sufficient evidence showing each Defendant has infringed one or more of Plaintiffs’ Marks. (See Cole Decl. ¶¶ 16-20.) Defendants are not now, nor have they ever been, authorized or licensed to use, reproduce, or make counterfeits, reproductions, or colorable imitations of Plaintiffs’ Marks. (See Cole Decl. ¶¶ 16, 18-20, 23.)

4. Counsel for Plaintiffs’ retained Invisible Inc (“Invisible”), a licensed private investigative firm, to investigate the promotion and sale of counterfeit and infringing versions of Plaintiffs’ branded products by Defendants and to obtain the available payment account data for receipt of funds paid to Defendants for the sale of counterfeit versions of Plaintiffs’ branded

products through the Seller IDs. (*See* Cole Decl. ¶ 17; Burns Decl. ¶ 3; Wiborg-Rodriguez Decl. ¶ 2.) Through Amazon.com, eBay.com and Wish.com, Invisible accessed all of the e-commerce stores operating under Defendants’ Seller IDs and placed orders from each Seller ID for the purchase of various products, all bearing counterfeits of, at least, one of Plaintiffs’ trademarks at issue in this action, and requested each product to be shipped to Invisible’s address in the Southern District of Florida. (*See* Burns Decl. ¶ 4.) Each order was processed entirely online, and following the submission of the orders, Invisible received information for finalizing payment for the various products ordered via Amazon Payments, Inc.,³ PayPal, Inc. (“PayPal”) to Defendants’ respective PayPal accounts and/or via Defendants’ respective payee,⁴ which are identified on Schedule “A” hereto.⁵ (*See id.*) At the conclusion of the process, the detailed web page captures and images of Plaintiffs’ branded products ordered via Defendants’ Seller IDs were sent to Plaintiffs’ representative for inspection. (*See* Cole Decl. ¶ 18; Wiborg-Rodriguez Decl. ¶ 2; Burns Decl. ¶ 4; *see also* relevant web page captures from Defendants’ Seller IDs attached as Composite Exhibits 1 through 3 to the Burns Decl.)

³ Amazon is an e-commerce marketplace that allows Defendants to conduct their commercial transactions privately via Amazon’s payment processing and retention service, Amazon Payments, Inc. As such, Defendants’ payment information is not publicly disclosed. (*See* Wiborg-Rodriguez Decl. ¶ 3.)

⁴ Upon completion of Invisible’s purchases from the relevant Defendants, the PayPal e-mail accounts were not provided on the corresponding transaction pages, rather, the accounts appeared as Transaction IDs. Invisible has personal knowledge that PayPal is able to identify a PayPal account using the Transaction ID. The Transaction IDs have been redacted to prevent these Defendants from tracing the transaction back to this matter. Plaintiffs’ counsel will provide a copy of the unredacted information to the Court upon request. (*See* Burns Decl. ¶ 4, n.1.)

⁵ “PayPal * Wish” was identified as the payee for each of Invisible’s orders from Defendant Numbers 66-82’s Wish.com Seller IDs. Kathleen Burns, an officer of Invisible Inc, has personal knowledge from past investigations that “WISH (ContextLogic Inc.)” is the named PayPal recipient for individual transactions conducted with the respective Seller IDs. (*See* Burns Decl. ¶ 4, n.2.)

5. Plaintiffs' representative reviewed and visually inspected the detailed web page captures reflecting Plaintiffs' branded products Invisible ordered from Defendants through the Internet based e-commerce stores operating under their respective Sellers IDs, and determined the products were not genuine versions of Plaintiffs' goods. (See Cole Decl. ¶¶ 18-20.)

II. LEGAL STANDARD

In order to obtain a temporary restraining order, a party must demonstrate “(1) [there is] a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that the entry of the relief would serve the public interest.” *Schiavo ex. rel Schindler v. Schiavo*, 403 F.3d 1223, 1225–26 (11th Cir. 2005); see also *Levi Strauss & Co. v. Sunrise Int’l. Trading Inc.*, 51 F. 3d 982, 985 (11th Cir. 1995) (applying the test to a preliminary injunction in a Lanham Act case). Additionally, a court may only issue a temporary restraining order without notice to the adverse party or its attorney if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition [and] (B) the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b)(1). *Ex parte* temporary restraining orders “should be restricted to serving their underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer.” *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cnty*, 415 U.S. 423, 439 (1974).

III. ANALYSIS

The declarations Plaintiffs submitted in support of their Application for Temporary Restraining Order support the following conclusions of law:

A. Plaintiffs have a strong probability of proving at trial that consumers are likely to be confused by Defendants' advertisement, promotion, sale, offer for sale, or distribution of goods bearing counterfeits, reproductions, or colorable imitations of Plaintiffs' Marks, and that the products Defendants are selling and promoting for sale are copies of Plaintiffs' products that bear copies of Plaintiffs' Marks.

B. Because of the infringement of Plaintiffs' Marks, Plaintiffs are likely to suffer immediate and irreparable injury if a temporary restraining order is not granted. It clearly appears from the following specific facts, as set forth in Plaintiffs' Complaint, Application for Temporary Restraining Order, and accompanying declarations on file, that immediate and irreparable loss, damage, and injury will result to the Plaintiffs and to consumers before Defendants can be heard in opposition unless Plaintiffs' request for *ex parte* relief is granted:

1. Defendants own or control Internet based e-commerce stores via Internet marketplace websites operating under their Seller IDs which advertise, promote, offer for sale, and sell products bearing counterfeit and infringing trademarks in violation of Plaintiffs' rights;

2. There is good cause to believe that more counterfeit and infringing products bearing Plaintiffs' trademarks will appear in the marketplace; that consumers are likely to be misled, confused, and disappointed by the quality of these products; and that Plaintiffs may suffer loss of sales for their genuine products; and

3. There is good cause to believe that if Plaintiffs proceed on notice to the Defendants on this Application for Temporary Restraining Order, Defendants can easily and

quickly transfer or modify e-commerce store data and content, change payment accounts, redirect consumer traffic to other seller identification names, and transfer assets and ownership of Seller IDs, thereby thwarting Plaintiffs' ability to obtain meaningful relief;

C. The balance of potential harm to Defendants in restraining their trade in counterfeit and infringing branded goods if a temporary restraining order is issued is far outweighed by the potential harm to Plaintiffs, their respective reputations, and their goodwill as manufacturers and distributors of quality products, if such relief is not issued.

D. The public interest favors issuance of the temporary restraining order to protect Plaintiffs' trademark interests and protect the public from being defrauded by the palming off of counterfeit goods as Plaintiffs' genuine goods.

E. Under 15 U.S.C. § 1117(a), Plaintiffs may be entitled to recover, as an equitable remedy, the illegal profits gained through Defendants' distribution and sales of goods bearing counterfeits and infringements of Plaintiffs' Marks. *See Reebok Int'l, Ltd. v. Marnatech Enters., Inc.*, 970 F.2d 552, 559 (9th Cir. 1992) (quoting *Fuller Brush Products Co. v. Fuller Brush Co.*, 299 F.2d 772, 777 (7th Cir. 1962) ("An accounting of profits under § 1117(a) is not synonymous with an award of monetary damages: '[a]n accounting for profits . . . is an equitable remedy subject to the principles of equity.'")).

F. Requesting equitable relief "invokes the district court's inherent equitable powers to order preliminary relief, including an asset freeze, in order to assure the availability of permanent relief." *Levi Strauss & Co. v. Sunrise Int'l Trading Inc.*, 51 F.3d 982, 987 (11th Cir. 1995) (citing *Federal Trade Commission v. United States Oil and Gas Corp.*, 748 F.2d 1431, 1433-34 (11th Cir. 1984)).

G. In light of the inherently deceptive nature of the counterfeiting business, and the likelihood that Defendants have violated federal trademark laws, Plaintiffs have good reason to believe Defendants will hide or transfer their ill-gotten assets beyond the jurisdiction of this Court unless those assets are restrained.

IV. CONCLUSION

For the foregoing reasons, it is

ORDERED AND ADJUDGED that Plaintiffs' Application for Temporary Restraining Order, D.E. 6, is hereby **GRANTED** as follows:

(1) 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 are hereby temporarily restrained:

- a. From manufacturing, importing, advertising, promoting, offering to sell, selling, distributing, or transferring any products bearing Plaintiffs' Marks, or any confusingly similar trademarks, other than those actually manufactured or distributed by the Plaintiffs; and
- b. From secreting, concealing, destroying, selling off, transferring, or otherwise disposing of: (i) any products, not manufactured or distributed by Plaintiffs, bearing Plaintiffs' Marks, or any confusingly similar trademarks; or (ii) any evidence relating to the manufacture, importation, sale, offer for sale, distribution, or transfer of any products bearing Plaintiffs' Marks, or any confusingly similar trademarks; or (iii) any assets or other financial accounts subject to this Order, including inventory assets, in the actual or constructive possession of, or owned, controlled, or held by, or subject to access by, any Defendant, including, but not limited to, any assets held by or on behalf of any Defendant.

(2) 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 the use of Plaintiffs' Marks or any confusingly similar

trademarks, on or in connection with all Internet based e-commerce stores owned and operated, or controlled by them, including the Internet based e-commerce stores operating under the Seller IDs;

(3) 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 the use of Plaintiffs' Marks, or any confusingly similar trademarks within metatags or other markers within website source code, from use on any webpage (including as the title of any web page), from any advertising links to other websites, from search engines' databases or cache memory, and any other form of use of such terms that are visible to a computer user or serves to direct computer searches to Internet based e-commerce stores registered, owned, or operated by any Defendant, including the Internet based e-commerce stores operating under the Seller IDs;

(4) Each Defendant shall not transfer ownership of the Internet based e-commerce stores under their Seller IDs during the pendency of this action, or until further order of the Court;

(5) Each Defendant shall preserve copies of all computer files relating to the use of any of the Internet based e-commerce stores under their Seller IDs and shall take all steps necessary to retrieve computer files relating to the use of the Internet based e-commerce stores under their Seller IDs that may have been deleted before the entry of this Order;

(6) Upon receipt of notice of this Order, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to, Amazon Payments, Inc. ("Amazon"), PayPal, Inc. ("PayPal"), ContextLogic, Inc., which operates the Wish.com website ("ContextLogic"), and their related companies and affiliates shall (i) immediately identify and restrain all funds in all financial accounts and/or sub-accounts associated with the Internet based e-commerce stores operating

under the Seller IDs, the store URLs, and/or the e-mail addresses identified on Schedule “A” hereto, as well as any other related accounts of the same customer(s); (ii) identify all other accounts which transfer funds into the exact same financial institution account(s) or any of the other financial accounts subject to this Order; (iii) restrain the transfer of all funds, as opposed to ongoing account activity, held or received for their benefit or to be transferred into their respective financial accounts, and any other financial accounts tied thereto; and (iv) immediately divert those restrained funds to a holding account for the trust of the Court.

(7) Upon receipt of notice of this Order, Defendants and all financial institutions, payment processors, bank, escrow services, money transmitters, or marketplace platforms receiving notice of this Order, including but not limited to, Amazon, PayPal, ContextLogic, and their related companies and affiliates, shall further, within five business days of receiving this Order, provide Plaintiffs’ counsel with all data that details (i) an accounting of the total funds restrained and identify the financial account(s) and sub-account(s) which the restrained funds are related to, and (ii) the account transactions related to all funds transmitted into the financial account(s) and sub-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 owners or the financial institutions until after those accounts are restrained. No funds restrained by this Order shall be transferred or surrendered by any financial institution, payment processor, bank, escrow service, money transmitter, or marketplace website, including but not limited to, Amazon, PayPal, ContextLogic, and their related companies and affiliates for any purpose (other than pursuant to a chargeback made pursuant to their security interest in the funds) without the express authorization of this Court;

(8) This Temporary Restraining Order shall remain in effect until the date for the

hearing on the Motion for Preliminary Injunction set forth below, or until such further dates as set by the Court or stipulated to by the parties but, absent a request for an extension, shall not exceed fourteen (14) days from the date of entry of this order pursuant to Federal Rule of Civil Procedure 65(b)(2);

(9) This Temporary Restraining Order shall apply to the Seller IDs, associated e-commerce stores, and any other seller identification names, e-commerce stores, or financial accounts being used by the Defendants for the purpose of counterfeiting Plaintiffs' Marks at issue in this action and/or unfairly competing with the Plaintiffs;

(10) 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;

(11) As a matter of law, this Order shall no longer apply to any Defendant or associated e-commerce store dismissed from this action, or as to which Plaintiffs have withdrawn their request for a temporary restraining order;

(12) Pursuant to 15 U.S.C. § 1116(d)(5)(D) and Fed. R. Civ. P. 65(c), Plaintiffs shall post a bond in the amount of **Ten Thousand Dollars and Zero Cents (\$10,000.00)**, as payment of damages to which Defendants may be entitled for a wrongful injunction or restraint, during the pendency of this action, or until further Order of the Court. In the Court's discretion, the bond may be subject to increase should an application be made in the interest of justice ;

(13) After Plaintiffs' counsel has received confirmation from the financial institutions, Amazon, PayPal and ContextLogic, or otherwise, regarding the funds restrained as directed herein, Plaintiffs shall serve copies of the Complaint, Application for Temporary Restraining Order and this Order, on each Defendant via their corresponding e-mail/online contact form provided on the Internet based e-commerce stores operating under the Seller IDs, or by other means reasonably

calculated to give notice which is permitted by the Court. In addition, Plaintiffs shall post copies of the Complaint, the Application for Temporary Restraining Order, and this Order, and all other pleadings and documents on file in this action on the website located at <http://servingnotice.com/aw1ma3/index.html>,⁶ and shall provide the website address to Defendants via e-mail/online contact form, and such notice so given shall be deemed good and sufficient service thereof. Plaintiffs shall continue to provide notice of these proceedings and copies of the documents on file in this matter to the Defendants by regularly updating the website located at <http://servingnotice.com/aw1ma3/index.html>, or by other means reasonably calculated to give notice which is permitted by the Court;

(14) Additionally, for the purpose of providing additional notice of this proceeding, and all other pleadings, orders, and documents filed herein, the owners, operators and/or administrators of the Internet marketplace platforms, including but not limited to Amazon.com, eBay.com, ContextLogic, and their related companies and affiliates shall, at Plaintiffs' request, provide Plaintiffs' counsel with any e-mail address known to be associated with the Defendants' respective Seller IDs;

(15) **Any response or opposition** to Plaintiffs' Motion for Preliminary Injunction must be filed and served on Plaintiffs' counsel forty-eight (48) hours prior to the hearing, and filed with the Court, along with Proof of Service. Plaintiffs shall file any **Reply Memorandum** twenty-four (24) hours prior to the hearing. The above dates may be revised by Magistrate Judge Hunt. Defendants are hereby on notice that failure to appear at the hearing may result in the imposition

⁶ In this Circuit, Rule 65, Fed. R. Civ. P., has been interpreted to require that a party have notice of the motion and hearing; perfecting service on a defendant is not a prerequisite to the entry of a preliminary injunction order. See *Corrigan Dispatch Co. v. Casa Guzman, S.A.*, 569 F.2d 300, 302 (5th Cir. 1978); *Diamond Crystal Brands, Inc. v. Wallace*, 531 F. Supp. 2d 1366, 1370-71 (N.D. Ga. 2008).

of a preliminary injunction against them pursuant to 15 U.S.C. § 1116(d), The All Writs Act, 28 U.S.C. § 1651(a), Fed. R. Civ. P. 65, and this Court's inherent authority.

DONE AND ORDERED in Chambers at Miami, Florida, this 22d day of April, 2019.



URSULA UNGARO
UNITED STATES DISTRICT JUDGE

cc: counsel of record via email

Magistrate Judge Hunt

**SCHEDULE A:
DEFENDANTS BY NUMBER, SELLER ID, ASSOCIATED
FINANCIAL ACCOUNTS AND STORE URL**

Def. No.	Defendant / Seller ID	Amazon Seller ID Number / PayPal Account	Store URL
1	Alvis Bronte	AD9ARQGH36QV	
2	Amy020Carllyle	A3HICZWI9AX8A0	
3	CAPXIE	A817QBAVSTU1M	
4	Dunca Montgo	A3CRCZUUNTFLPA	
5	Emily Maugham	AQMO6ZXH198N1	
6	Gullei	A3MW9XFSDSZ0QR	
7	happyhealt	A27NAOUBPFS2WE	
8	Hefei Rui Qu Trading	A1AFK463NB7KLA	
9	Lionel Attlee	A1XWZEBD037SIW	
10	newpikfiees	AFU314IYHD2JN	
11	Penelope Tours	A3A17LOCTVXVHR	
12	Spanwell	AMHHN393C5U4Q	
13	SWM-5X	AUG53TO7N61DX	
14	W.Morgan	A2H0A30WWVE3JN	
15	Xinduqubangteshangmaobu	A1OPVNW5AG5A2U	
16	YiYou GID	AU5TPHCX500LK	
17	z moon	A208IBTQBAHKT3	
18	8-94455	maomao77827702@vip.qq.com	
19	abjuki0	kuswarahadi63@gmail.com	
20	adejoj_0	adenjojo3@gmail.com	
21	adityradi0	adityaradit09@yahoo.com	
22	annofri_0	ricohuang1988@gmail.com	
23	anouargoods	anameyouttc0112zee@gmail.com	
24	arifiardiama-0	mozza48arfie@gmail.com	
25	bettershopin	joncouturier@hotmail.com	

26	blink_eyez	MaryDeniseLomo@outlook.com	
27	bud-3278	aribudiman93360@yahoo.com	
28	cannie0411	jxlilian78@163.com	
29	chaeruhud0	[Redacted Transaction ID]	
30	cnwrcanada	gui00128@gmail.com	
30	gol5873	gui00128@gmail.com	
31	dadanalio	bungatangkai15@gmail.com	
32	daniboy_78	daniarbib78@gmail.com	
33	de_144178	dwicw.eh@gmail.com	
34	ec-leather	e520mini@hotmail.com	
35	eshopforeverything	eshop4everything@gmail.com	
36	fav_shop2	favbrisyonsep@gmail.com	
37	fuzaiibaba	ruizh11925@163.com	
38	hardly_no	[Redacted Transaction ID]	
39	helens5162	charlie.13@bigpond.com	
40	himposters	janblok79@ziggo.nl	
41	intarer0	intanrere218@yahoo.com	
42	ispark_au	[Redacted Transaction ID]	
43	jala_sz58n3c	kandangayam8@gmail.com	
44	jlfantasticstore	zhouganguk@yeah.net	
45	jordan_samen-shop	rohman.kimin789@hotmail.com	
46	khatho-55	khabibt98@gmail.com	
47	lukimansy_0	[Redacted Transaction ID]	
48	motivationus	maor.contracting@gmail.com	
49	naysantik0	stepbystip@outlook.com	
50	no6store	yumaeb@hotmail.com	
51	oorva68	oorva1968@gmail.com	
52	oskolpavel	oskolpavel@gmail.com	
53	pinkybeauty_au	[Redacted Transaction ID]	
54	pizhuzhposter	liangshenhao8311@163.com	

55	pratiwfitriyan_0	pratiwi.fitriyani88@gmail.com	
56	rainbowharry	hoywercasol@163.com	
57	renacustom	terry_lorena@yahoo.com	
58	sansbazaar	suwanrit201168@hotmail.com	
59	sembja-0	sembranajaka@yahoo.com	
60	songsora-0	sorachai525@gmail.com	
61	sonnsury_0	cerataxsalam@gmail.com	
62	sunmoon-42	[Redacted Transaction ID]	
63	tansint	tansinst@gmail.com	
64	watcharaphonkhong10	watcharaphong3a0@gmail.com	
65	youmeans	zhgang3111@gmail.com	
66	chenrenpeng890090	PayPal *Wish	https://www.wish.com/merchant/5ab2803fbed12254d1e7d4c
67	chenyaxiang999	PayPal *Wish	https://www.wish.com/merchant/5aa4e33e54bd093d370cb39c
68	CJJWSMM	PayPal *Wish	https://www.wish.com/merchant/59a91846439a9864b0d58b20
69	classb	PayPal *Wish	https://www.wish.com/merchant/592797efdfc41c414a49c174
70	demi lovato fan	PayPal *Wish	https://www.wish.com/merchant/59400a8920d56c363e35adda
71	Elim Clothes	PayPal *Wish	https://www.wish.com/merchant/58382b1f14cb421bd25b9477
72	heqiuydmimi	PayPal *Wish	https://www.wish.com/merchant/5a5091e9471c140c778acb44
73	Kuni Trade Co., Ltd	PayPal *Wish	https://www.wish.com/merchant/5405be447f086e104a711f0a
74	liao xianzhong	PayPal *Wish	https://www.wish.com/merchant/5ad403eb18d9213077753b8a
75	linlifan789	PayPal *Wish	https://www.wish.com/merchant/5a5ddc0b430b7120279e33f3
76	LTjin	PayPal *Wish	https://www.wish.com/merchant/5a6700013c3aa225f51e2191
77	QiMeiDi	PayPal *Wish	https://www.wish.com/merchant/565d95113aa6ad200766cdd4
78	Shiny Home	PayPal *Wish	https://www.wish.com/merchant/5559500ef0e5480e8b6f8599
79	sinonarui flag	PayPal *Wish	https://www.wish.com/merchant/58354af7e2928624c9199f9a

80	songjiaxingxiaodian	PayPal *Wish	https://www.wish.com/merchant/5a157245ad472376aaa5f28b
81	wangqiong fashion	PayPal *Wish	https://www.wish.com/merchant/58e7071dd1248010634dd6cf
82	yiwishishang	PayPal *Wish	https://www.wish.com/merchant/5901de6fb7a0d61127136610

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 19-cv-60928-UU

APPLE CORPS LIMITED and
SUBAFILMS LIMITED,

Plaintiffs,

vs.

THE INDIVIDUALS, PARTNERSHIPS
AND UNINCORPORATED
ASSOCIATIONS IDENTIFIED ON
SCHEDULE "A,"

Defendants.

SEALED ORDER ON PLAINTIFFS' *EX PARTE*
MOTION TO AUTHORIZE ALTERNATIVE SERVICE

THIS CAUSE is before the Court upon Plaintiffs' *Ex Parte* Motion for Order Authorizing Alternate Service of Process on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3), filed April 11, 2019.

THIS COURT has carefully considered the Motion, the pertinent portions of the record, and is otherwise fully advised in the premises. For reasons set forth below, Plaintiffs' Motion is granted.

INTRODUCTION

Plaintiffs move for an order authorizing service of the Summonses, Complaint, Amended Complaint, and all pleadings and discovery upon Defendants in this action¹ via e-mail or by posting copies of such pleadings on Plaintiffs' designated website, which will appear at the URL <http://servingnotice.com/aw1ma3/index.html>. As grounds for their Motion, Plaintiffs argue that

¹ Each of the Defendants in this action is listed in Schedule A, which is attached to this Order.

they have good cause to suspect that Defendants are all residents of the People’s Republic of China (“China”), the Kingdom of Thailand (“Thailand”), Republic of Indonesia (“Indonesia”), Republic of Singapore (“Singapore”), the Kingdom of Cambodia (“Cambodia”), Australia, Ukraine, United Arab Emirates or other foreign countries, and these foreign Defendants utilize electronic means as reliable forms of contact. D.E. 7, pp. 1-5, 13-16.

LEGAL STANDARD

Federal Rule of Civil Procedure 4(f)(3) provides: “Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served at a place not within any judicial district of the United States by other means not prohibited by international agreement, as the court orders.” Rule 4(f)(3) therefore requires that service be (1) directed by the court; and (2) not prohibited by international agreement. *See, e.g., Chanel, Inc. v. Zhixian*, No. 10-CV-60585, 2010 WL 1740695, at *2 (S.D. Fla. Apr. 29, 2010). Rule 4 does not require a party attempt service of process by those methods enumerated under subsections (f)(1) and (f)(2), including by diplomatic channels and letters rogatory, before petitioning the court for alternative relief under subsection 4(f)(3). *See TracFone Wireless, Inc. v. Bitton*, 278 F.R.D. 687, 692 (S.D. Fla. Jan. 11, 2012) (noting that, in regards to Rule 4(f)(3), “there is no indication from the plain language of the Rule that the three subsections, separated by the disjunctive “or,” are meant to be read as a hierarchy.”) The Court can order alternative methods of service under Rule 4(f)(3) as long as such methods comport with due process. *Id.*

DISCUSSION

Plaintiffs move for an order authorizing service by means of e-mail and Internet posting because Defendants “operate Internet-based businesses and use electronic means of communication” and such means of service is not prohibited by international agreement. D.E. 7, p. 13. Plaintiffs, therefore, assert that e-mail is reasonably calculated to give Defendants notice of

this action. Plaintiffs have presented evidence which, it argues, show that Defendants can receive and communicate via e-mail by means of, at least, an e-mail address or online contact form associated with each Defendant such that Plaintiffs could reliably serve Defendants by e-mail. D.E. 7, pp. 3-7. The Court will first address whether such service is prohibited by international agreement and then discuss the Court's discretion in authorizing such service.

A. Whether Service by Email and Website is Prohibited by International Agreement

Plaintiffs argue that the proposed method of alternative service does not violate the Hague Convention or international law.² To determine whether an international agreement prohibits service via e-mail or Internet posting against a defendant in China, Australia or Ukraine³ the Court will examine the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T. S. 163 ("Hague Service Convention"). *Zhixian*, 2010 WL 1740695, at *2.

The Court concludes that the Hague Service Convention does not prohibit service on Defendants by means of e-mail service or Internet posting. Where a signatory nation has objected to the alternative means of service provided by the Hague Convention, that objection is expressly limited to those means and does not represent an objection to other forms of service, such as e-mail or posting. *Stat Med. Devices, Inc. v. HTL-Strefa, Inc.*, Case No. 15-cv-20590-FAM, 2015 U.S. Dist. LEXIS 122000 (S.D. Fla. Sept. 14, 2015) ("This Court and many other federal courts

² The Court need not address whether the proposed method of service violates Chinese, Australian or Ukraine law because as long as court-directed service is "not prohibited by an international agreement," such service may be accomplished "in contravention of the laws of the foreign country." *Zhixian*, 2010 WL 1740695, at *2.

³ Thailand, Indonesia, Singapore, Cambodia and the United Arab Emirates are not signatories to the Hague Convention. Additionally, there are no service treaties between the United States and Thailand, Indonesia, Singapore, Cambodia or the United Arab Emirates. Thus, there are no international agreements prohibiting service by e-mail or posting on a designated website. D.E. 7, p. 14.

have permitted service by electronic mail and determined that an objection to Article 10 of the Hague Convention i.e. an objection to service through “postal channels” does not equate to an express objection to service via electronic mail.”). A court acting under Rule 4(f)(3) therefore remains free to order alternative means of service where a signatory nation has not expressly objected to those means. *See Gurung v. Malhotra*, 279 F.R.D. 215, 219 (S.D.N.Y. 2011). Accordingly, service by e-mail or internet communication does not, therefore, violate an international agreement.

B. Discretion to Authorize Service by E-mail and Internet Publication

Plaintiffs argue that the Court should exercise its discretion to authorize service by e-mail and Internet posting because such service is the “most reliable means of communicating with [Defendants] . . . and, consequently, the most reliable means of providing Defendants with notice of this action.” D.E. 7, p. 10. Plaintiffs also argue that service via Internet posting will provide an “additional source of reliability as Defendants will be able to see copies of the Complaint, Amended Complaint, and all other documents on file in this matter electronically via their Internet browser.” *Id.*

As an initial matter, the decision to “issue an order allowing service by alternate means lies solely within the discretion of the district court.” *Chanel, Inc. v. Lin*, No. 08-23490-CIV, 2009 WL 1034627, at *1 (S.D. Fla. Apr. 16, 2009) (citing *Prewitt Enters., Inc. v. Org. of Petroleum Exporting Countries*, 353 F.3d 916, 921 (11th Cir. 2003)). Nonetheless, any alternate methods must fulfill the requirements of due process under the United States Constitution. *Lin*, 2009 WL 1034627, at *1 (denying motion to serve defendants via email because Plaintiffs have “not demonstrated that service of process by e-mail would be reasonably calculated to put the Defendant on notice that litigation was pending against him.”); *but see Rio Props., Inc. v. Rio Inter'l Interlink*, 284 F.3d 1007, 1017 (9th Cir. 2002) (“In proper circumstances, this broad

constitutional principle unshackles the federal courts from anachronistic methods of service and permits them entry into the technological renaissance.”). “Constitutional due process requires only that service of process provide ‘notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” *Zhixian*, 2010 WL 1740695, at *3 (internal citations omitted). For this reason, courts have allowed service by e-mail and Internet posting where it is the “most likely method to reach defendants.” *Id.* (collecting cases).

The Court concludes that e-mail service and Internet posting are indeed the most likely means of communication to reach Defendants, who operate via the Internet and rely on electronic communications for the operation of their businesses. D.E. 7, pp. 11-12. The Court reaches this conclusion for two reasons. First, Plaintiffs have adequately demonstrated that e-mails sent via e-mail addresses or online contact forms associated with Defendants’ e-commerce stores, social media accounts, and Internet websites operating under the Seller IDs and Subject Domain Names and are not returned as undeliverable are likely to reach Defendants via e-mail. D.E. 7, pp. 3-6; *see also Zhixian*, 2010 WL 1740695, at *3; *Rio Props., Inc.*, 284 F.3d at 1016; *Gaffigan v. Does 1-10*, 689 F. Supp. 2d 1332, 1342 (S.D. Fla. 2010) (citing *Popular Enters., LLC v. Webcom Media Grp., Inc.*, 225 F.R.D. 560, 562 (E.D. Tenn. 2004) (finding that an e-mail sent to an e-mail address supplied by defendant to its domain name registrar did not bounce back and presumably reached defendant)). Second, Plaintiffs have voluntarily created a website accessible to the public, including Defendants, which will provide an additional safeguard to ensure Defendants’ notice of filings and orders issued in this proceeding. D.E. 7, pp. 6-7. In an abundance of caution, the Court will order that Plaintiffs not only serve Defendants by e-mail communication, but also certify proof of service by posting each filing and order issued in this case on the Internet posting website located at <http://servingnotice.com/aw1ma3/index.html>.

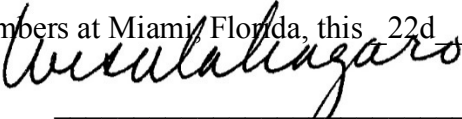
For these reasons, the Court is satisfied that service upon Defendants via e-mail and by posting on Plaintiffs' designated website, under the unique circumstances of this case, is "reasonably calculated to notify Defendants of the pendency of this action and provide Defendants with an opportunity to present any objections," such that it satisfies the requirements of due process. *Zhixian*, 2010 WL 1740695, at *3. Accordingly, it is

ORDERED AND ADJUDGED that the Motion, D.E. 7, is GRANTED, as follows:

1. Plaintiffs SHALL serve the Summons, Complaint, Amended Complaint, and all other filings in this matter, including Court Orders, upon each Defendant identified on Schedule "A" via e-mail by providing the address to Plaintiffs' designated serving notice website to each Defendant via the e-mail accounts provided by Defendants as part of the data related to their respective e-commerce stores, including customer service e-mail addresses and onsite contact forms, or via the e-commerce platform e-mail for each of the e-commerce stores; and

2. Plaintiffs SHALL serve Defendants via website posting by posting a copy of the Summons, Complaint, Amended Complaint, and all other filings in this matter on Plaintiffs' designated serving notice website appearing at the URL <http://servingnotice.com/aw1ma3/index.html>.

DONE AND ORDERED in Chambers at Miami, Florida, this 22^d day of April, 2019.



URSULA UNGARO
UNITED STATES DISTRICT JUDGE

cc:
Counsel of record via cm/ecf

SCHEDULE "A"
DEFENDANTS BY NUMBER, SELLER ID, AND MEANS OF CONTACT

Def. No.	Defendant / Seller ID	Means of Contact
1	Alvis Bronte	AD9ARQGH36QV
2	Amy020Carllyle	A3HICZWI9AX8A0
3	CAPXIE	A817QBAVSTU1M
4	Dunca Montgo	A3CRCZUUNTFLPA
5	Emily Maugham	AQMO6ZXH198N1
6	Gullei	A3MW9XFSDSZ0QR
7	happyhealt	A27NAOUBPFS2WE
8	Hefei Rui Qu Trading	A1AFK463NB7KLA
9	Lionel Attlee	A1XWZEED037SIW
10	newpikfiees	AFU314IYHD2JN
11	Penelope Tours	A3A17LOCTVXVHR
12	Spanwell	AMHHN393C5U4Q
13	SWM-5X	AUG53TO7N61DX
14	W.Morgan	A2H0A30WWVE3JN
15	Xinduqubangteshangmaobu	A1OPVNW5AG5A2U
16	YiYou GID	AU5TPHCX500LK
17	z moon	A208IBTQBAHKT3
18	8-94455	maomao77827702@vip.qq.com
19	abjuki0	kuswarahadi63@gmail.com
20	adejoj_0	adenjojo3@gmail.com
21	adityradi0	adityaradit09@yahoo.com
22	annofri_0	ricohuang1988@gmail.com
23	anouargoods	anameyoupttc0112zee@gmail.com
24	arifiardiana-0	mozza48arfie@gmail.com
25	bettershopin	joncouturier@hotmail.com
26	blink_eyez	MaryDeniseLomo@outlook.com

27	bud-3278	aribudiman93360@yahoo.com
28	cannie0411	jxljian78@163.com
29	chaeruhud0	[Redacted Transaction ID]
30	cnwrcanada	gui00128@gmail.com
30	gol5873	gui00128@gmail.com
31	dadanalio	bungatangkai15@gmail.com
32	daniboy_78	daniarbib78@gmail.com
33	de_144178	dwicw.eh@gmail.com
34	ec-leather	e520mini@hotmail.com
35	eshopforeverything	eshop4everything@gmail.com
36	fav_shop2	favbrisyonsepa@gmail.com
37	fuzaiibaba	ruizh11925@163.com
38	hardly_no	[Redacted Transaction ID]
39	helens5162	charlie.13@bigpond.com
40	himposters	janblok79@ziggo.nl
41	intarer0	intanrere218@yahoo.com
42	ispark_au	[Redacted Transaction ID]
43	jala_sz58n3c	kandangayam8@gmail.com
44	jlfantasticstore	zhouganguk@yeah.net
45	jordan_samen-shop	rohman.kimin789@hotmail.com
46	khatho-55	khabibt98@gmail.com
47	lukimansy_0	[Redacted Transaction ID]
48	motivationus	maor.contracting@gmail.com
49	naysantik0	stepbystip@outlook.com
50	no6store	yumaeb@hotmail.com
51	oorva68	oorva1968@gmail.com
52	oskolpavel	oskolpavel@gmail.com
53	pinkybeauty_au	[Redacted Transaction ID]
54	pizhuzhposter	liangshenhao8311@163.com

55	pratiwfitriyan_0	pratiwi.fitriyani88@gmail.com
56	rainbowharry	hoywercasol@163.com
57	renacustom	terry_lorena@yahoo.com
58	sansbazaar	suwanrit201168@hotmail.com
59	sembja-0	sembranajaka@yahoo.com
60	songsora-0	sorachai525@gmail.com
61	sonnsury_0	cerataxsalam@gmail.com
62	sunmoon-42	[Redacted Transaction ID]
63	tansint	tansinst@gmail.com
64	watcharaphonkhong10	watcharaphong3a0@gmail.com
65	youmeans	zhgang3111@gmail.com
66	chenrenpeng890090	https://www.wish.com/merchant/5ab2803fbed12254d1e7d4c
67	chenyaxiang999	https://www.wish.com/merchant/5aa4e33e54bd093d370cb39c
68	CJWSMM	https://www.wish.com/merchant/59a91846439a9864b0d58b20
69	classb	https://www.wish.com/merchant/592797efdfc41c414a49c174
70	demi lovato fan	https://www.wish.com/merchant/59400a8920d56c363e35adda
71	Elim Clothes	https://www.wish.com/merchant/58382b1f14cb421bd25b9477
72	heqiuydmimi	https://www.wish.com/merchant/5a5091e9471c140c778acb44
73	Kuni Trade Co., Ltd	https://www.wish.com/merchant/5405be447f086e104a711f0a
74	liao xianzhong	https://www.wish.com/merchant/5ad403eb18d9213077753b8a
75	linlifan789	https://www.wish.com/merchant/5a5ddc0b430b7120279e33f3
76	LTjin	https://www.wish.com/merchant/5a6700013c3aa225f51e2191
77	QiMeiDi	https://www.wish.com/merchant/565d95113aa6ad200766cdd4
78	Shiny Home	https://www.wish.com/merchant/5559500ef0e5480e8b6f8599
79	sinonarui flag	https://www.wish.com/merchant/58354af7e2928624c9199f9a
80	songjiaxingxiaodian	https://www.wish.com/merchant/5a157245ad472376aaa5f28b

81	wangqiong fashion	https://www.wish.com/merchant/58e7071dd1248010634dd6cf
82	yi yishishang	https://www.wish.com/merchant/5901de6fb7a0d61127136610

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. LAUDERDALE DIVISION**

Case No.: 19-60928-CIV-UNGARO/HUNT

APPLE CORPS LIMITED and
SUBAFILMS LIMITED,

Plaintiffs,

vs.

ALVIS BRONTE, *et al.*,

Defendants.

REPORT AND RECOMMENDATION
ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

THIS CAUSE came before the Court upon Plaintiffs' Motion for Preliminary Injunction, (the "Motion for Preliminary Injunction") against Defendants,¹ pursuant to 15 U.S.C. § 1116, Federal Rule of Civil Procedure 65, and The All Writs Act, 28 U.S.C. § 1651(a), for alleged violations of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a), ECF No. 6. The Honorable Ursula Ungaro, United States District Judge, referred the Motion for Preliminary Injunction to the undersigned. ECF No. 14; *see also* 28 U.S.C. § 636(b); S.D. Fla. Mag. R. 1. The undersigned has carefully reviewed the pleadings, the record in this case, and the applicable law and is otherwise fully advised in the premises.

The undersigned held a hearing on May 9, 2019, at which only counsel for Plaintiffs was present and available to present evidence supporting the Motion for Preliminary Injunction. Defendants have not responded to the Motion for Preliminary Injunction, nor made any filing in this case, nor have the Defendants appeared in this

¹ Defendants are the Individuals, Partnerships and Unincorporated Associations identified on Schedule "A" hereto.

matter either individually or through counsel. For the reasons more fully discussed below, the undersigned respectfully RECOMMENDS that Plaintiffs' Motion for Preliminary Injunction, ECF No. 6, be GRANTED.

I. FACTUAL BACKGROUND²

Plaintiff, Apple Corps Limited, is the owner of the following trademarks registered on the Principal Register of the United States Patent and Trademark Office (the "BEATLES Marks").

Trademark	Registration Number	Registration Date	Class(es) / Good(s)
THE BEATLES	1,752,120	February 16, 1993	IC 025 - Headwear, sweatshirts, t-shirts, shirts.
BEATLES	4,373,956	July 30, 2013	IC 009 – Decorative refrigerator magnets; computer keyboard accessories, namely mouse pads and wrist rests in the form of pads for use with computers; telephone apparatus, namely, telephones; telephone receivers, telephone answering machines, mobile telephones; cases for mobile telephones; cell phone covers; covers for mobile telephones, namely, fitted plastic films known as skins for covering and protecting electronic apparatus in the nature of mobile telephones; straps for mobile telephones; telephone call indicator lights and electro-mechanical shakers for detecting and signaling incoming telephone calls; mechanical and electric egg timers; boxes and cases specially adapted for holding

² This factual background is taken from Plaintiffs' Amended Complaint, ECF No. 10, Plaintiffs' Motion for Preliminary Injunction, ECF No. 6, and supporting evidentiary submissions. Plaintiffs filed declarations and exhibits annexed thereto in support of their Motion for Preliminary Injunction. The declarations are available in the docket at the following entries: Declaration of Paul Cole, ECF No. 6-1, Declaration of T. Raquel Wiborg-Rodriguez, ECF No. 6-2, and Declaration of Kathleen Burns, ECF No. 6-3.

Trademark	Registration Number	Registration Date	Class(es) / Good(s)
			<p>audio cassettes, video cassettes, gramophone records, audio compact discs, audio mini discs, video discs, and interactive compact discs or cd-roms.</p> <p>IC 014 - Jewelry boxes not of metal, including ceramic and porcelain jewelry boxes for trinkets; jewelry; horological and chronometric instruments, namely, watches and clocks; watch straps, cuff links, brooches, bracelets, bangles, earrings, pendants, medallions, trinkets being jewelry, charms being jewelry, rings being jewelry, tie pins, jewelers ornamental tie pins, lapel pins, tie clips, collectible non-monetary coins, ornamental pins; articles of precious metal and their alloys, and articles coated with precious metal and their alloys, namely, belt buckles for clothing, coasters, jewelry boxes, key rings, key chains; hat and shoe ornaments and key fobs all of precious metal; rings being jewelry; ornamental pins; cigarette and cigar cases; precious stones; semi-precious stones; statuettes and figurines of precious metal or precious stone or coated therewith; scale model vehicles, ships or submarines all made from, or coated with precious metal or precious stone.</p> <p>IC 016 - Bond, carbon, copy, printing and writing paper; cardboard; printed matter, namely, printed awards, printed award certificates, and reproductions of printed award certificates, and printed emblems and forms; book binding materials, namely, coated paper for use as book binding and book binding cloth; mounted and unmounted photographs; stationery; adhesive tapes for stationery or household purposes; artist materials, namely, paint brushes, artists' sketch pads, drawing and painting papers and charcoal pencils;</p>

Trademark	Registration Number	Registration Date	Class(es) / Good(s)
			<p>electric and non-electric typewriters; office requisites, namely, paper shredders and embossers; printed instructional and teaching materials on the subject of music; plastic bubble packs for packaging; printing type; printing blocks; posters; books, namely, educational books on the subject of musical groups, books on the subject of the entertainment industry, books on the subject of modern history, and biographies; address books; song books; business cards; paper gift cards, postcards; printed invitations; greeting cards; calendars; photograph albums; prints, namely, photograph prints and pictorial prints; paper gift bags; paper gift boxes; note pads, note books; adhesive backed paper for stationery purposes; pens, pencils and crayons; stationery push pins and thumbtacks; diaries; blank checks and blank check books; check book covers; coasters of cardboard or paper. gift tags of paper and cardboard; decorative pencil tip ornaments made from paper, cardboard and paper mache; stickers; decalcomania; ring binders in the nature of document files; folders; personal organizers; covers for books and for personal organizers; paper table cloths; printed sheet music; printed paper publications in the nature of magazines, activity books, and coloring books on the subject matter of musicians, animation, caricatures, cartoons, fiction and motion picture films; books, booklets, pamphlets, printed guides, comic books and magazines on the subject of music, musicians, caricatures, animation, cartoons, fiction and motion picture films; comic books; general feature magazines; children's activity books; scrapbook albums; crossword puzzle books; educational activity books on the subject of music; writing paper; envelopes; small note</p>

Trademark	Registration Number	Registration Date	Class(es) / Good(s)
			<p>pads; trading cards; pictures; art prints and framed art prints; framed and unframed pictorial prints, cartoon prints, lithographic prints, color prints, caricature prints, computer generated pictorial prints, and black and white, and color prints featuring hidden or three dimensional images; graphic art etchings; cardboard gift boxes; paper gift wrap; memo pads; stationery paper; book covers; figurines of paper, cardboard or paper mache; party decorations of paper, cardboard or paper mache for Christmas use; kits composed of paper or cardboard for making paper figurines; collectable non-postage commemorative stamps; rubber stamps; protective covers for books and personal organizers for stationery use; telephone directories; paper desk mats; pen and pencil cases; pen and pencil boxes; pen and pencil holders; drawing rulers; erasers; printed paper embroidery design patterns; sewing patterns for making clothes, knitting patterns. iron-on transfers for decorating textiles; printed wall charts; paperweights, not of precious metal; babies' bibs of paper; bookmarks; passport holders all made from leather or imitation leather; pencil cases, notelets and autograph books; reusable textile lunch bags; reusable plastic shopping bags.</p> <p>IC 018 - Goods made from leather or imitation leather, namely, waist pouches for carrying purses and wallets; luggage, carry on traveling bags, clutch bags, trunks, business card cases, rucksacks, backpacks, purses, wallets, key cases, luggage tags; billfolds, leather key fobs, key cases, umbrellas; bags, namely, handbags, shoulder bags, all-purpose sports bags, barrel bags, carry-on flight bags, and duffel bags, suitcases, attaché</p>

Trademark	Registration Number	Registration Date	Class(es) / Good(s)
			<p>cases, school bags, satchels, gym bags, beach bags and credit card cases; hand carry overnight cases of metal, plastic or resin; tote bags, including metal totes; textile shopping bags; identity card holders of leather and imitations of leather.</p> <p>IC 021 – Drinking vessels, namely, glasses, mugs, jugs, and tankards not of precious metal; bottles, namely, seltzer bottles for use as barware, sport bottles sold empty, and vacuum bottles; insulated bottles, namely, thermal insulated bottles and flasks for beverages.</p> <p>IC 024 - Decorative window curtains of wood, reed, bamboo, beads or plastic; household linen; bed linen; bedspreads; table linen; table cloths not of paper; table mats not of paper; textile table napkins; coasters made of table linen or textile; unfitted fabric furniture covers; bed sheets, pillow cases, duvet covers; towels; face towels; face washing cloths; curtains; wall hanging of textile; cloth banners; cloth bunting; cloth flags; handkerchiefs; cushion covers; pre-cut textiles for making into cushions and cushion covers; traced cloths for embroidery.</p> <p>IC 025 - Footwear and headgear, namely, hats and caps; clothing, namely, shirts, polo shirts, T-shirts, sweatshirts; sweatpants; jackets, coats; pullovers; vests; articles of underclothing, namely, underwear; shorts; scarves; silk pocket squares; neck-ties; braces in the nature of suspenders; belts; socks; long-sleeved shirts and long sleeved T-shirts; silk scarves; silk scarves in the shape of squares for wearing over the head or around the neck; pants; fleece tops;</p>

Trademark	Registration Number	Registration Date	Class(es) / Good(s)
			thermal tops; jerseys; baseball jerseys; hockey jerseys; sweaters; tank tops; waistcoats; trousers; golf shirts; golf pants; golf shoes; swim wear; beachwear; night gowns; pajamas; dressing gowns; bathrobes; bathing caps; head bands; slippers; beach shoes; sandals; clothing for toddlers, infants and babies, namely, rompers, shortalls, babies' sleep suits; cloth babies' bibs.

(See ECF No. 6-1 ¶¶ 4-5.) The BEATLES Marks are used in connection with the manufacture and distribution of quality goods in the categories identified above. (See *id.* at ¶¶ 4-5.)

Plaintiff, Subafilms Limited, is the owner of the following trademark registered on the Principal Register of the United States Patent and Trademark Office (the “YELLOW SUBMARINE Mark”):

Trademark	Registration Number	Registration Date	Class(es) / Good(s)
YELLOW SUBMARINE	3,328,170	November 6, 2007	IC 009 - Musical sound and video recordings; gramophone records featuring music; audio compact discs featuring music; computer game software; video game software; interactive entertainment software for generating games, puzzles, images, musical entertainment, visual entertainment or movie clips; sunglasses; eyeglass cases; magnets; fridge magnets; mouse pads being accessories for keyboards; telephone

Trademark	Registration Number	Registration Date	Class(es) / Good(s)
			apparatus, namely, covers for mobile telephones; straps for mobile telephones; and downloadable sound and video records featuring music, musicians, caricatures, cartoons, animation, movie clips, album art or music memorabilia images provided over broadcast, communications, satellite and computer networks. IC 025 - Footwear; shirts; polo shirts; t-shirts; long-sleeved shirts and long-sleeved t-shirts; sweatshirts; jackets; pullovers; vests; scarves; pocket squares made of silk; neck-ties; hats; caps; sock; thermal tops; jerseys; sweaters; tank tops; pajamas; clothing for toddlers, infants and babies namely, one-piece garments for infants and toddlers, sleep suits, t-shirts and long-sleeved t-shirts.

(See ECF No. 6-1 ¶¶ 10-11.) The YELLOW SUBMARINE Mark is used in connection with the manufacture and distribution of quality goods in the categories identified above.

(See *id.* at 6-1 ¶¶ 10-11.)

Defendants, through the Internet based e-commerce stores operating under the seller identification names identified on Schedule “A” hereto (the “Seller IDs”), have advertised, promoted, offered for sale, and/or sold goods bearing what Plaintiffs have determined to be counterfeits, infringements, reproductions or colorable imitations of the

BEATLES Marks and/or the YELLOW SUBMARINE Mark (collectively “Plaintiffs’ Marks”). (See ECF No. 6-1 ¶¶ 16-20; ECF No. 6-2 ¶ 2; and ECF No. 6-3 ¶ 4.)

Plaintiffs have submitted sufficient evidence showing each Defendant has infringed one or more of Plaintiffs’ Marks. (See ECF No. 6-1 ¶¶ 16-20.) Defendants are not now, nor have they ever been, authorized or licensed to use, reproduce, or make counterfeits, reproductions, or colorable imitations of Plaintiffs’ Marks. (See *id.* at ¶¶ 16, 18-20, 23.)

Counsel for Plaintiffs retained Invisible Inc (“Invisible”), a licensed private investigative firm, to investigate the promotion and sale of counterfeit and infringing versions of Plaintiffs’ branded products by Defendants, and to obtain the available payment account data for receipt of funds paid to Defendants for the sale of counterfeit versions of Plaintiffs’ branded products through the Seller IDs. (See ECF No. 6-1 ¶ 17; ECF No. 6-3 ¶ 3; and ECF No. 6-2 ¶ 2.) Through Amazon.com, eBay.com and Wish.com, Invisible accessed all of the e-commerce stores operating under Defendants’ Seller IDs and placed orders from each Seller ID for the purchase of various products, all bearing counterfeits of, at least, one of Plaintiffs’ trademarks at issue in this action, and requested each product to be shipped to Invisible’s address in the Southern District of Florida. (See ECF No. 6-3 ¶ 4.) Each order was processed entirely online, and following the submission of the orders, Invisible received information for finalizing payment for the various products ordered via Amazon Payments, Inc.,³ PayPal, Inc. (“PayPal”) to Defendants’ respective PayPal accounts and/or via Defendants’ respective

³ Amazon is an e-commerce marketplace that allows Defendants to conduct their commercial transactions privately via Amazon’s payment processing and retention service, Amazon Payments, Inc. As such, Defendants’ payment information is not publicly disclosed. (See ECF No. 6-2 ¶ 3.)

payee,⁴ which are identified on Schedule “A” hereto.⁵ (Id.) At the conclusion of the process, the detailed web page captures and images of Plaintiffs’ branded products ordered via Defendants’ Seller IDs were sent to Plaintiffs’ representative for inspection. (See ECF No. 6-1 ¶ 18; ECF No. 6-2 ¶ 2; ECF No. 6-3 ¶ 4; see also ECF No. 6-4; ECF No. 6-5; ECF No. 6-6.)

Plaintiffs’ representative reviewed and visually inspected the detailed web page captures reflecting Plaintiffs’ branded products Invisible ordered from Defendants through the Internet based e-commerce stores operating under their respective Seller IDs, and determined the products were not genuine versions of Plaintiffs’ goods. (See ECF No. 6-1 ¶¶ 18-20.)

On April 11, 2019, Plaintiffs filed their *Ex Parte* Application for Entry of Temporary Restraining Order, Preliminary Injunction, and Order Restraining Transfer of Assets. ECF No. 6. On April 22, 2019, the Court entered an Order Granting Plaintiffs’ *Ex Parte* Application for Entry of Temporary Restraining Order and temporarily restrained Defendants from infringing Plaintiffs’ Marks at issue. ECF No. 12. The Temporary Restraining Order also directed Amazon Payments, Inc. PayPal and ContextLogic Inc., to identify and restrain funds in payment accounts associated with

⁴ Upon completion of Invisible’s purchases from the relevant Defendants, the PayPal e-mail accounts were not provided on the corresponding transaction pages, rather, the accounts appeared as Transaction IDs. Invisible has personal knowledge that PayPal is able to identify a PayPal account using the Transaction ID. The Transaction IDs have been redacted to prevent these Defendants from tracing the transaction back to this matter. Plaintiffs’ counsel will provide a copy of the unredacted information to the Court upon request. (See ECF No. 6-3 ¶ 4, n.1.)

⁵ “PayPal * Wish” was identified as the payee for each of Invisible’s orders from Defendant Numbers 66-82’s Wish.com Seller IDs. Kathleen Burns, an officer of Invisible Inc, has personal knowledge from past investigations that “WISH (ContextLogic Inc.)” is the named PayPal recipient for individual transactions conducted with the respective Seller IDs. (See ECF No. 6-3 ¶ 4, n.2.)

Defendants and to divert those funds to a holding account. Pursuant to the April 22, 2019 Order, Plaintiffs properly served each Defendant identified on Schedule A to the Order with a copy of the *Ex Parte* Application for Entry of Temporary Restraining Order, Preliminary Injunction, and Order Restraining Transfer of Assets, the Court's April 22, 2019 Order, and all filings in this matter. Thereafter, Plaintiffs filed certificates of service confirming service on Defendants. ECF Nos. 30-31, 33-34.

II. LEGAL STANDARD

To obtain a preliminary injunction, a party must demonstrate “(1) [there is] a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that the entry of the relief would serve the public interest.” *Schiavo ex. rel Schindler v. Schiavo*, 403 F.3d 1223, 1225–26 (11th Cir. 2005); *see also Levi Strauss & Co. v. Sunrise Int’l. Trading Inc.*, 51 F. 3d 982, 985 (11th Cir. 1995) (applying the test to a preliminary injunction in a Lanham Act case).

III. ANALYSIS

The declarations Plaintiffs submitted in support of their Motion for Preliminary Injunction support the following conclusions of law:

A. Plaintiffs have a very strong probability of proving at trial that consumers are likely to be confused by the Defendants’ advertisement, promotion, sale, offer for sale, or distribution of goods bearing counterfeits, reproductions, or colorable imitations of Plaintiffs’ Marks, and that the products Defendants are selling and promoting for sale are copies of Plaintiffs’ products that bear copies of Plaintiffs’ Marks.

B. Because of the infringement of Plaintiffs’ Marks, Plaintiffs are likely to suffer immediate and irreparable injury if a preliminary injunction is not granted. The

following specific facts, as set forth in Plaintiffs' Amended Complaint, Motion for Preliminary Injunction, and accompanying declarations on file demonstrate that immediate and irreparable loss, damage, and injury will result to the Plaintiffs and to consumers because it is more likely true than not that:

1. Defendants own or control Internet based e-commerce stores via Internet marketplace websites operating under their Seller IDs which advertise, promote, offer for sale, and sell products bearing counterfeit and infringing trademarks in violation of Plaintiffs' rights; and

2. There is good cause to believe that more counterfeit and infringing products bearing Plaintiffs' trademarks will appear in the marketplace; that consumers are likely to be misled, confused, and disappointed by the quality of these products; and that Plaintiffs may suffer loss of sales for their genuine products.

C. The balance of potential harm to Defendants in restraining their trade in counterfeit and infringing branded products if a preliminary injunction is issued is far outweighed by the potential harm to Plaintiffs, their respective reputations, and their goodwill as manufacturers and distributors of quality products, if such relief is not issued.

D. The public interest favors issuance of the preliminary injunction to protect Plaintiffs' trademark interests and protect the public from being defrauded by the palming off of counterfeit products as Plaintiffs' genuine goods.

E. Under 15 U.S.C. § 1117(a), Plaintiffs may be entitled to recover, as an equitable remedy, the illegal profits gained through Defendants' distribution and sales of goods bearing counterfeits and infringements of Plaintiffs' Marks. *See Reebok Int'l, Ltd. v. Marnatech Enters., Inc.*, 970 F.2d 552, 559 (9th Cir. 1992) (quoting *Fuller Brush*

Products Co. v. Fuller Brush Co., 299 F.2d 772, 777 (7th Cir. 1962) (“An accounting of profits under § 1117(a) is not synonymous with an award of monetary damages: ‘[a]n accounting for profits . . . is an equitable remedy subject to the principles of equity.’”).

F. Requesting equitable relief “invokes the district court’s inherent equitable powers to order preliminary relief, including an asset freeze, in order to assure the availability of permanent relief.” *Levi Strauss & Co. v. Sunrise Int’l Trading Inc.*, 51 F.3d 982, 987 (11th Cir. 1995) (citing *Federal Trade Commission v. United States Oil and Gas Corp.*, 748 F.2d 1431, 1433-34 (11th Cir. 1984)); and

G. In light of the inherently deceptive nature of the counterfeiting business, and the likelihood that Defendants have violated federal trademark laws, Plaintiffs have good reason to believe Defendants will hide or transfer their ill-gotten assets beyond the jurisdiction of this Court unless those assets are restrained.

IV. RECOMMENDATION

For the foregoing reasons, the undersigned respectfully RECOMMENDS that Plaintiffs’ Motion for Preliminary Injunction, ECF No. 6, be GRANTED as follows:

- (1) 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 are hereby restrained and enjoined until further order of this Court:
 - a. From manufacturing, importing, advertising, promoting, offering to sell, selling, distributing, or transferring any products bearing Plaintiffs’ Marks, or any confusingly similar trademarks, other than those actually manufactured or distributed by the Plaintiffs; and
 - b. From secreting, concealing, destroying, selling off, transferring, or otherwise disposing of: (i) any products, not manufactured or distributed by Plaintiffs, bearing Plaintiffs’ Marks, or any confusingly similar trademarks; or (ii) any evidence relating to the manufacture, importation, sale, offer for sale, distribution, or transfer of any products bearing Plaintiffs’ Marks, or any confusingly similar trademarks; or (iii) any assets or other financial accounts subject to this Order, including

inventory assets, in the actual or constructive possession of, or owned, controlled, or held by, or subject to access by, any Defendant, including, but not limited to, any assets held by or on behalf of any Defendant.

(2) 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, until further order of this Court, the use of Plaintiffs' Marks or any confusingly similar trademarks, on or in connection with all Internet based e-commerce stores owned and operated, or controlled by them, including the Internet based e-commerce stores operating under the Seller IDs;

(3) 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, until further order of this Court, the use of Plaintiffs' Marks, or any confusingly similar trademarks within metatags or other markers within website source code, from use on any webpage (including as the title of any web page), from any advertising links to other websites, from search engines' databases or cache memory, and any other form of use of such terms which are visible to a computer user or serves to direct computer searches to Internet based e-commerce stores registered, owned, or operated by each Defendant, including the Internet based e-commerce stores operating under the Seller IDs;

(4) Each Defendant shall not transfer ownership of the Internet based e-commerce stores under their Seller IDs during the pendency of this action, or until further order of the Court;

(5) Each Defendant shall continue to preserve copies of all computer files relating to the use of any of the Internet based e-commerce stores under their Seller IDs and shall take all steps necessary to retrieve computer files relating to the use of the

Internet based e-commerce stores under their Seller IDs that may have been deleted before the entry of this Order;

(6) Upon receipt of notice of this Order, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to, Amazon Payments, Inc. ("Amazon"), PayPal, Inc. ("PayPal"), ContextLogic, Inc., which operates the Wish.com website ("ContextLogic"), and their related companies and affiliates shall, to the extent not already done, (i) immediately identify and restrain all funds in all financial accounts and/or sub-accounts associated with the Internet based e-commerce stores operating under the Seller IDs, the store URLs, and/or the e-mail addresses identified on Schedule "A" hereto, as well as any other related accounts of the same customer(s); (ii) identify all other accounts which transfer funds into the same financial institution account(s) or any of the other financial accounts subject to this Order; and (iii) restrain the transfer of all funds, as opposed to ongoing account activity, held or received for their benefit or to be transferred into their respective financial accounts, and any other financial accounts tied thereto; and (iv) immediately divert those restrained funds to a holding account for the trust of the Court;

(7) Upon receipt of notice of this Order, Defendants and all financial institutions, payment processors, bank, escrow services, money transmitters, or marketplace platforms receiving notice of this Order, including but not limited to, Amazon, PayPal, ContextLogic, and their related companies and affiliates, shall further, to the extent not already done, provide Plaintiffs' counsel with all data that details (i) an accounting of the total funds restrained and identify the financial account(s) and sub-account(s) which the restrained funds are related to, and (ii) the account transactions

related to all funds transmitted into the financial account(s) and sub-account(s) which have been restrained. No funds restrained by this Order shall be transferred or surrendered by any financial institution, payment processor, bank, escrow service, money transmitter, or marketplace website, including but not limited to, Amazon, PayPal, ContextLogic, and their related companies and affiliates for any purpose (other than pursuant to a chargeback made pursuant to their security interest in the funds) without the express authorization of this Court;

(8) This Order shall apply to the Seller IDs, associated e-commerce stores, and any other seller identification names, e-commerce stores, or financial accounts being used by the Defendants for the purpose of counterfeiting Plaintiffs' Marks at issue in this action and/or unfairly competing with the Plaintiffs;

(9) 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;

(10) As a matter of law, this Order shall no longer apply to any Defendant or associated e-commerce store dismissed from this action, or as to which Plaintiffs have withdrawn their request for a preliminary injunction;

(11) Pursuant to 15 U.S.C. § 1116(d)(5)(D) and Fed. R. Civ. P. 65(c), Plaintiffs shall maintain their previously posted bond in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00), as payment of damages to which the Defendants may be entitled for a wrongful injunction or restraint, during the pendency of this action, or until further order of the Court. In the Court's discretion, the bond may be subject to increase should an application be made in the interest of justice;

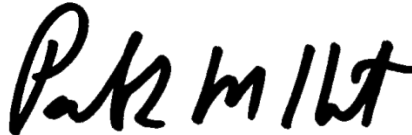
(12) Additionally, for the purpose of providing additional notice of this proceeding, and all other pleadings, orders, and documents filed herein, the owners,

operators and/or administrators of the Internet marketplace platforms, including but not limited to Amazon.com, eBay.com or ContextLogic, and their related companies and affiliates shall, to the extent not already done, at Plaintiffs' request, provide Plaintiffs' counsel with any e-mail address known to be associated with the Defendants' respective Seller IDs; and

(13) This Order shall remain in effect during the pendency of this action, or until such further dates as set by the Court or stipulated by the parties;

(14) Within fourteen days after being served with a copy of this Report and Recommendation, any Party may serve and file written objections to any of the above findings and recommendations as provided by the Local Rules for this district. 28 U.S.C. § 636(b)(1); S.D. Fla. Mag. R. 4(b). The Parties are hereby notified that a failure to timely object waives the right to challenge on appeal the district court's order based on unobjected-to factual and legal conclusions contained in this Report and Recommendation. 11th Cir. R. 3-1 (2016); see *Thomas v. Arn*, 474 U.S. 140 (1985).

DONE and SUBMITTED at Fort Lauderdale, Florida, this 9th day of May, 2019.



PATRICK M. HUNT
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

The Honorable Ursula Ungaro

All counsel of record

**SCHEDULE A:
DEFENDANTS BY NUMBER, SELLER ID / STORE NUMBER, ASSOCIATED
FINANCIAL ACCOUNTS AND STORE URL**

Def. No.	Defendant / Seller ID	Amazon Seller ID Number / PayPal Account	Store URL
1	Alvis Bronte	AD9ARQGHD36QV	
2	Amy020Carllyle	A3HICZWI9AX8A0	
3	CAPXIE	A817QBAVSTU1M	
4	Dunca Montgo	A3CRCZUUNTFLPA	
5	Emily Maugham	AQMO6ZXH198N1	
6	Gullei	A3MW9XFSDSZ0QR	
7	happyhealt	A27NAOUBPFS2WE	
8	Hefei Rui Qu Trading	A1AFK463NB7KLA	
9	Lionel Attlee	A1XWZEBD037SIW	
10	newpikfiees	AFU314IYHD2JN	
11	Penelope Tours	A3A17LOCTVXVHR	
12	Spanwell	AMHHN393C5U4Q	
13	SWM-5X	AUG53TO7N61DX	
14	W.Morgan	A2H0A30WWVE3JN	
15	Xinduqubangtेशangmao bu	A1OPVNW5AG5A2U	
16	YiYou GID	AU5TPHCX500LK	
17	z moon	A208IBTQBAHKT3	
18	8-94455	maomao77827702@vip.qq.com	
19	abjuki0	kuswarahadi63@gmail.com	
20	adejoj_0	adenjojo3@gmail.com	
21	adityradi0	adityaradit09@yahoo.com	
22	annofri_0	ricohuang1988@gmail.com	
23	anouargoods	anameyoupttc0112zee@gmail.com	
24	arifiardiama-0	mozza48arfie@gmail.com	
25	betershopin	joncouturier@hotmail.com	

26	blink_eyez	MaryDeniseLomo@outlook.com	
27	bud-3278	aribudiman93360@yahoo.com	
28	cannie0411	jxlian78@163.com	
29	chaeruhud0	[Redacted Transaction ID]	
30	cnwrcanada	gui00128@gmail.com	
30	gol5873	gui00128@gmail.com	
31	dadanalio	bungatang kai15@gmail.com	
32	daniboy_78	daniarbib78@gmail.com	
33	de_144178	dwicw.eh@gmail.com	
34	ec-leather	e520mini@hotmail.com	
35	eshopforeverything	eshop4everything@gmail.com	
36	fav_shop2	favbrisyonsepe@gmail.com	
37	fuzai baba	ruizh11925@163.com	
38	hardly_no	[Redacted Transaction ID]	
39	helens5162	charlie.13@bigpond.com	
40	himpsters	janblok79@ziggo.nl	
41	intarer0	intanrere218@yahoo.com	
42	ispar k_au	[Redacted Transaction ID]	
43	jala_sz58n3c	kandangayam8@gmail.com	
44	jlfantasticstore	zhouganguk@yeah.net	
45	jordan_samen-shop	rohman.kimin789@hotmail.com	
46	khatho-55	khabibt98@gmail.com	
47	lukimansy_0	[Redacted Transaction ID]	
48	motivationus	maor.contracting@gmail.com	
49	naysantik0	stepbystip@outlook.com	
50	no6store	yumaeb@hotmail.com	
51	oorva68	oorva1968@gmail.com	
52	oskolpavel	oskolpavel@gmail.com	
53	pinkybeauty_au	[Redacted Transaction ID]	
54	pizhuzhaposter	liangshenhao8311@163.com	
55	pratiw fitriyan_0	pratiwi.fitriyani88@gmail.com	

56	rainbowharry	hoywercasol@163.com	
57	renacustom	terry_lorena@yahoo.com	
58	sansbazaar	suwanrit201168@hotmail.com	
59	sembja-0	sembranajaka@yahoo.com	
60	songsora-0	sorachai525@gmail.com	
61	sonnsury_0	cerataxsalam@gmail.com	
62	sunmoon-42	[Redacted Transaction ID]	
63	tansint	tansinst@gmail.com	
64	watcharaphonkhongl0	watcharaphong3a0@gmail.com	
65	youmeans	zhgang3111@gmail.com	
66	chenrenpeng890090	PayPal *Wish	https://www.wish.com/merchant/5ab2803fbeed12254d1e7d4c
67	chenyaxiang999	PayPal *Wish	https://www.wish.com/merchant/5aa4e33e54bd093d370cb39c
68	CJJWSMM	PayPal *Wish	https://www.wish.com/merchant/59a91846439a9864b0d58b20
69	classb	PayPal *Wish	https://www.wish.com/merchant/592797efdfc41c414a49c174
70	demi lovato fan	PayPal *Wish	https://www.wish.com/merchant/59400a8920d56c363e35adda
71	Elim Clothes	PayPal *Wish	https://www.wish.com/merchant/58382b1f14cb421bd25b9477
72	heqiuymimi	PayPal *Wish	https://www.wish.com/merchant/5a5091e9471c140c778acb44
73	Kuni Trade Co., Ltd	PayPal *Wish	https://www.wish.com/merchant/5405be447f086e104a711f0a
74	liaoxianzhong	PayPal *Wish	https://www.wish.com/merchant/5ad403eb18d9213077753b8a
75	linlifan789	PayPal *Wish	https://www.wish.com/merchant/5a5ddc0b430b7120279e33f3
76	LTjin	PayPal *Wish	https://www.wish.com/merchant/5a6700013c3aa225f51e2191
77	QiMeiDi	PayPal *Wish	https://www.wish.com/merchant/565d95113aa6ad200766cdd4
78	Shiny Home	PayPal *Wish	https://www.wish.com/merchant/5559500ef0e5480e8b6f8599
79	sinonarui flag	PayPal *Wish	https://www.wish.com/merchant/58354af7e2928624c9199f9a
80	songjiaxingxiaodian	PayPal *Wish	https://www.wish.com/merchant/5a157245ad472376aaa5f28b

81	wangqiong fashion	PayPal *Wish	https://www.wish.com/merchant/58e7071dd1248010634dd6cf
82	yyishishang	PayPal *Wish	https://www.wish.com/merchant/5901de6fb7a0d61127136610

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 19-cv-60928-UU

APPLE CORPS LIMITED and SUBAFILMS
LIMITED,

Plaintiffs,

v.

ALVIS BRONTE, *et al*,

Defendants.

ORDER ADOPTING MAGISTRATE'S REPORT AND RECOMMENDATION

THIS CAUSE comes before the Court upon Magistrate Judge Patrick M. Hunt's Report and Recommendation on Plaintiffs' Motion for Preliminary Injunction. D.E. 36.

On April 22, 2019, the Court referred Plaintiffs' Motion for Preliminary Injunction to the Magistrate Judge Patrick M. Hunt. D.E. 14. On May 9, 2019, Magistrate Judge Hunt held a hearing, at which only counsel for Plaintiffs was available and presented evidence supporting their Motion for Preliminary Injunction. D.E. 36. On May 9, 2019, Magistrate Judge Hunt issued a Report and Recommendation, *id.*, recommending that Plaintiffs' Motion for Preliminary Injunction, D.E. 6, be granted. Judge Hunt provided Defendants with fourteen (14) days from the date of service of the Report and Recommendation to file an objection. Plaintiffs filed two certificates of service, D.E. 38, D.E. 39, indicating that they had served the report and recommendation on Defendants on May 9, 2019 by email and website posting. As of the date of this Order, no party has filed an objection to the Report, and the time to do so pursuant to Local Magistrate Rule 4(b) has elapsed. The matter is therefore ripe for disposition.

The Court has carefully reviewed the entire file and record herein, and, being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED that the Report and Recommendation, D.E. 36, is RATIFIED, AFFIRMED and ADOPTED. It is further

ORDERED AND ADJUDGED that Plaintiffs' Motion for a Preliminary Injunction, D.E. 6, is GRANTED. A Preliminary injunction is entered against Defendants¹ pursuant to the terms set forth in the Report and Recommendation. It is further

ORDERED AND ADJUDGED THAT PLAINTIFFS SHALL SERVE this Order upon Defendants by email and website posting and shall file proof of such service by **Friday, May 31, 2019**.

DONE AND ORDERED in Chambers at Miami, Florida, this 24th day of May, 2019.



URSULA UNGARO
UNITED STATES DISTRICT JUDGE

cc: counsel of record via cm/ecf

¹ Defendants are the Individuals, Partnerships and Unincorporated Associations identified on Schedule "A" hereto.

SCHEDULE "A"
DEFENDANTS BY NUMBER AND SELLER ID

Def. No.	Defendant / Seller ID
1	Alvis Bronte
2	Amy020Carllyle
3	CAPXIE
4	Dunca Montgo
5	Emily Maugham
6	Gullei
7	happyhealt
8	Hefei Rui Qu Trading
9	Lionel Attlee
10	newpikfies
11	Penelope Tours
12	Spanwell
13	SWM-5X
14	W.Morgan
15	Xinduqubang gteshangmaobu
16	YiYou GID
17	z moon
18	8-94455
19	abjuki0
20	adejoj 0
21	adityradi0
22	annofri 0
23	anouargoods
24	arifiardiama-0
25	bettershopin

26	blink eyez
27	bud-3278
28	cannie0411
29	chaeruhud0
30	cnwrcanada
30	gol5873
31	dadanali0
32	daniboy 78
33	de 144178
34	ec-leather
35	eshopforeverything
36	fav shop2
37	fuzaibaba
38	hardly no
39	<i>Dismissed</i>
40	himposters
41	intarer0
42	ispark au
43	jala sz58n3c
44	jlfantasticstore
45	jordan samen-shop
46	khatho-55
47	lukimansy 0
48	motivationus
49	naysantik0
50	no6store
51	oorva68
52	oskolpavel
53	pinkybeauty au
54	pizhuzhposter

55	pratiwfitriyan 0
56	rainbowharry
57	renacustom
58	sansbazaar
59	sembja-0
60	songsora-0
61	sonnsury_0
62	sunmoon-42
63	tansint
64	watcharaphonkhongl0
65	youmeans
66	chenrenpeng890090
67	chenyaxiang999
68	CJWSMM
69	classb
70	demi lovato fan
71	Elim Clothes
72	hequydmimi
73	Kuni Trade Co., Ltd
74	liaoxianzhong
75	linlifan789
76	LTjin
77	QiMeiDi
78	Shiny Home
79	sinonarui flag
80	songjiaxingxiaodian
81	wangqiong fashion
82	yiishishang

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New York, NY 10165
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Facsimile: (212) 292-5391
Attorneys for Plaintiff
Allstar Marketing Group, LLC

19 CV 04208

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALLSTAR MARKETING GROUP, LLC,

Plaintiff

v.

ALICE WONDER HOUSEHOLD (SHANGHAI) CO., LTD., ANHUI JIAOYANG SOFT DOOR CO., LTD., ANPING YUANSHEG MESH CO., LTD., DOBE LIVING MUSEUM, DREAMING HOUSE STORE, EASTONY INDUSTRIES (NINGBO) CO., LTD., EXCLAMATION MARK, HEFEI SUNHOPE TRADE CO., LIMITED, HELLO2017 STORE, HUANGHUA TECO BUILDING MATERIAL CO., LTD., HUZHOU SAIRUN TEXTILE CO., LTD., JU FENG WINDOW DECORATION JIANGSU CO., LTD., LANDCENT (CHINA) INDUSTRIAL AND DEVELOPMENT CO., LTD., LEADING YOUR LIFE STORE, LIFESTYLE HOUSE STORE, SHOP106095 STORE, SHOP3676100 STORE, SHOP3878130 STORE, SVKITCHEN STORE, TAIZHOU PURPLE STAR GIFTS CO., LTD., XIAMEN WEIZIRAN INDUSTRY & TRADE CO., LTD., YIWU SENSO HOUSEHOLD GOODS CO.,

Civil Case No.:

~~PROPOSED~~ KPT

- 1) TEMPORARY RESTRAINING ORDER; 2) ORDER RESTRAINING MERCHANT STOREFRONTS AND DEFENDANTS' ASSETS WITH THE FINANCIAL INSTITUTIONS; 3) ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE; 4) ORDER AUTHORIZING BIFURCATED AND ALTERNATIVE SERVICE; AND 5) ORDER AUTHORIZING EXPEDITED DISCOVERY

FILED UNDER SEAL

LTD. and YIWU YOUMAI GENERAL
MERCHANDISE CO., LTD.,

Defendants

GLOSSARY

Term	Definition
Plaintiff or “Allstar”	Allstar Marketing Group, LLC
Defendants	Alice Wonder Household (Shanghai) Co., Ltd., Anhui Jiaoyang Soft Door Co., Ltd., Anping Yuansheng Mesh Co., Ltd., DoBe Living Museum, Dreaming House Store, Eastony Industries (Ningbo) Co., Ltd., exclamation mark, Hefei Sunhope Trade Co., Limited, hello2017 Store, Huanghua Techo Building Material Co., Ltd., Huzhou Sairun Textile Co., Ltd., Ju Feng Window Decoration Jiangsu Co., Ltd., Landcent (China) Industrial And Development Co., Ltd., Leading your life Store, Lifestyle House Store, Shop106095 Store, Shop3676100 Store, Shop3878130 Store, SVKitchen Store, Taizhou Purple Star Gifts Co., Ltd., Xiamen Weiziran Industry & Trade Co., Ltd., Yiwu Senso Household Goods Co., Ltd. and Yiwu Youmai General Merchandise Co., Ltd.
Alibaba	Alibaba.com, an online marketplace platform that allows manufacturers, wholesalers and other third-party merchants, like Defendants, to advertise, offer for sale, sell, distribute and ship their wholesale and retail products originating from China directly to consumers across the world and specifically to consumers residing in the U.S., including New York
AliExpress	Aliexpress.com, an online marketplace platform that allows manufacturers, wholesalers and other third-party merchants, like Defendants, to advertise, offer for sale, sell, distribute and ship their wholesale and retail products originating from China directly to consumers across the world and specifically to consumers residing in the U.S., including New York
Epstein Drangel	Epstein Drangel LLP, counsel for Plaintiff
NAL	New Alchemy Limited, a company that provides intellectual property infringement research services, to investigate and research manufacturers, wholesalers, retailers and/or other merchants offering for sale and/or selling counterfeit products on online marketplace platforms
New York Addresses	20 Cooper Sq, New York, New York 10003; 2542 Elm Drive, New York, NY 10013; 676 Wagon Ave Hamburg, New York 14075
Complaint	Plaintiff’s Complaint filed on May 9, 2019
Application	Plaintiff’s <i>Ex Parte</i> Application for: 1) a temporary restraining order; 2) an order restraining Merchant Storefronts (as defined <i>infra</i>) and Defendants’ Assets (as defined <i>infra</i>) with the Financial Institutions (as defined <i>infra</i>); 3) an order to show cause why a

	preliminary injunction should not issue; 4) an order authorizing bifurcated and alternative service and 5) an order authorizing expedited discovery filed on May 9, 2019
De Marco Dec.	Declaration of Jennifer De Marco in Support of Plaintiff's Application
Arnaiz Dec.	Declaration of Jessica Arnaiz in Support of Plaintiff's Application
Scully Dec.	Declaration of Brienne Scully in Support of Plaintiff's Application
Magic Mesh Mark	U.S. Trademark Registration No. 4,075,316 for "MAGIC MESH" for a variety of goods in Class 19 with a constructive date of first use of March 1, 2011
Magic Mesh Works	U.S. Copyright Reg. VA 1-855-122, covering the Magic Mesh Packaging (English Only), U.S. Copyright Reg. VA 1-855-121, covering the Magic Mesh Packaging (English/French), U.S. Copyright Reg. TXu 1-768-422, covering the Magic Mesh Instruction Manual, U.S. Copyright Reg. VA 1-854-907, covering the Magic Mesh Website (English, USA) (www.magicmesh.com), U.S. Copyright Reg. VAu 1-155-990, covering the Magic Mesh Product Packaging and U.S. Copyright Reg. PA 1-756-445, covering the Magic Mesh Television Commercial
Magic Mesh Products	A hands-free screen door, which keeps fresh air in and bugs out, that opens easily and magically closes itself with strong magnets
Counterfeit Products	Products bearing or used in connection with the Magic Mesh Mark and/or Magic Mesh Works, and/or products in packaging and/or containing labels and/or hang tags bearing the Magic Mesh Mark and/or Magic Mesh Works, and/or bearing or used in connection with marks and/or artwork that are confusingly or substantially similar to the Magic Mesh Mark and/or Magic Mesh Works and/or products that are identical or confusingly or substantially similar to the Magic Mesh Products
Infringing Listings	Defendants' listings for Counterfeit Products
User Accounts	Any and all websites and any and all accounts with online marketplace platforms such as Alibaba and/or AliExpress, 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
Merchant Storefronts	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
Defendants' Assets	Any and all money, securities or other property or assets of Defendants (whether said assets are located in the U.S. or abroad)
Defendants' Financial Accounts	Any and all financial accounts associated with or utilized by any Defendants or any Defendants' User Accounts or Merchant Storefront(s) (whether said account is located in the U.S. or abroad)
Financial Institutions	Any banks, financial institutions, credit card companies and payment processing agencies, such as PayPal Inc., Payoneer Inc., the Alibaba Group d/b/a Alibaba.com payment services (e.g., Alipay.com Co., Ltd., Ant Financial Services Group), PingPong Global Solutions, Inc., and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of Defendants
Third Party Service Providers	Online marketplace platforms, including, without limitation, those owned and operated, directly or indirectly by Alibaba and/or AliExpress, as well as any and all as yet undiscovered online marketplace platforms and/or entities through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them manufacture, import, export, advertise, market, promote, distribute, offer for sale, sell and/or otherwise deal in Counterfeit Products which are hereinafter identified as a result of any order entered in this action, or otherwise

On this day, the Court considered Plaintiff's *ex parte* application for the following: 1) a temporary restraining order; 2) an order restraining Merchant Storefronts and Defendants' Assets with the Financial Institutions; 3) an order to show cause why a preliminary injunction should not issue; 4) an order authorizing bifurcated and alternative service and 5) an order authorizing expedited discovery against Defendants, Third Party Service Providers and Financial Institutions in light of Defendants' intentional and willful offerings for sale and/or sales of Counterfeit Products.¹ A complete list of Defendants is attached hereto as **Schedule A**, which also includes links to Defendants' Merchant Storefronts and Infringing Listings. Having reviewed the Application, Declarations of Jessica Arnaiz, Jennifer De Marco and Brienne Scully, along with exhibits attached thereto and other evidence submitted in support thereof, the Court makes the following findings of fact and conclusions of law:

FACTUAL FINDINGS & CONCLUSIONS OF LAW

1. Plaintiff is a leading developer, producer, marketer, and distributor of quality, innovative consumer products that Plaintiff promotes and sells throughout the United States and the world through major retailers and well-known mass retail outlets, including, but not limited to: Wal-Mart, Target and Bed Bath & Beyond, as well as through its retail customers' websites and a network of international distributors, among other channels of trade.

2. One of Plaintiff's most popular and successful products is Magic Mesh, a hands-free screen door, which keeps fresh air in and bugs out, that opens easily and magically closes itself with strong magnets.

3. While Plaintiff has gained significant common law trademark and other rights in its Magic Mesh Products, through use, advertising and promotion, Plaintiff has also protected its valuable rights by filing for and obtaining a federal trademark registration.

¹ Where a defined term is referenced herein and not defined herein, the defined term should be understood as it is defined in the Complaint, Application or Glossary.

4. For example, Plaintiff owns the Magic Mesh Mark, including U.S. Trademark Registration No. 4,075,316 for “MAGIC MESH” for a variety of goods in Class 19 with a constructive date of first use of March 1, 2011.

5. The Magic Mesh Mark is currently in use in commerce in connection with the Magic Mesh Products.

6. In addition, Plaintiff also owns the registered copyrights related to the Magic Mesh Products. For example, Plaintiff owns the Magic Mesh Works, including U.S. Copyright Reg. VA 1-855-122, covering the Magic Mesh Packaging (English Only), U.S. Copyright Reg. VA 1-855-121, covering the Magic Mesh Packaging (English/French), U.S. Copyright Reg. TXu 1-768-422, covering the Magic Mesh Instruction Manual, U.S. Copyright Reg. VA 1-854-907, covering the Magic Mesh Website (English, USA) (www.magicmesh.com), U.S. Copyright Reg. VAu 1-155-990, covering the Magic Mesh Product Packaging and U.S. Copyright Reg. PA 1-756-445, covering the Magic Mesh Television Commercial.

7. Defendants are manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale or Counterfeit Product through Defendants’ User Accounts and Merchant Storefronts with Alibaba and AliExpress (*see Schedule A* for links to Defendants’ Merchant Storefronts and Infringing Listings);

8. Defendants are not, nor have they ever been, authorized distributors or licensees of the Magic Mesh Products. Neither Plaintiff, nor any of Plaintiff’s authorized agents, have consented to Defendants’ use of the Magic Mesh Mark and/or Magic Mesh Works, nor has Plaintiff consented to Defendants’ use of any identical or confusingly similar marks;

9. Plaintiff is likely to prevail on its Lanham Act, copyright and related common law claims at trial;

10. As a result of Defendants' infringements, Plaintiff, as well as consumers, are likely to suffer immediate and irreparable losses, damages and injuries before Defendants can be heard in opposition, unless Plaintiff's Application for *ex parte* relief is granted:

- a. Defendants have offered for sale and sold substandard Counterfeit Products that infringe the Magic Mesh Mark and/or Magic Mesh Works;
- b. Plaintiff has well-founded fears that more Counterfeit Products will appear in the marketplace; that consumers may be misled, confused and disappointed by the quality of these Counterfeit Products, resulting in injury to Plaintiff's reputation and goodwill; and that Plaintiff may suffer loss of sales for its Magic Mesh Product; and
- c. Plaintiff has well-founded fears that if it proceeds on notice to Defendants on this Application, Defendants will: (i) secret, conceal, destroy, alter, sell-off, transfer or otherwise dispose of or deal with Counterfeit Products or other goods that infringe the Magic Mesh Mark and/or Magic Mesh Works, the means of obtaining or manufacturing such Counterfeit Products, and records relating thereto that are in their possession or under their control, (ii) inform their suppliers and others of Plaintiff's claims with the result being that those suppliers and others may also secret, conceal, sell-off or otherwise dispose of Counterfeit Products or other goods infringing the Magic Mesh Mark and/or Magic Mesh Works, the means of obtaining or manufacturing such Counterfeit Products, and records relating thereto that are in their possession or under their control, (iii) secret, conceal, transfer or otherwise dispose of their ill-gotten proceeds from its sales of Counterfeit Products or other goods infringing the Magic Mesh Mark and/or Magic Mesh Works and records relating thereto that are in their possession or under their control and/or (iv) open new User Accounts and Merchant Storefront under new or different names and continue to offer for sale and sell Counterfeit Products with little to no consequence;

11. The balance of potential harm to Defendants of being prevented from continuing to profit from their illegal and infringing activities if a temporary restraining order is issued is far outweighed by the potential harm to Plaintiff, its business, the goodwill and reputation built up in and associated with the Magic Mesh Mark and/or Magic Mesh Works and to its reputations if a temporary restraining order is not issued;

12. Public interest favors issuance of the temporary restraining order in order to protect Plaintiff's interests in and to its Magic Mesh Mark and/or Magic Mesh Works, and to protect the public from being deceived and defrauded by Defendants' passing off of their substandard Counterfeit Products as Magic Mesh Products;

13. Plaintiff has not publicized its request for a temporary restraining order in any way;

14. Service on Defendants via electronic means is reasonably calculated to result in proper notice to Defendants.

15. If Defendants are given notice of the Application, they are likely to secret, conceal, transfer or otherwise dispose of their ill-gotten proceeds from their sales of Counterfeit Products or other goods infringing the Magic Mesh Mark and/or Magic Mesh Works. Therefore, good cause exists for granting Plaintiff's request for an asset restraining order. It typically takes Financial Institutions a minimum of five (5) days after service of the Order to locate, attach and freeze Defendants' Assets and/or Defendants' Financial Accounts and it is anticipated that it will take Third Party Service Providers a minimum of five (5) days to freeze Defendants' Merchant Storefronts. As such, the Court allows enough time for Plaintiff to serve the Financial Institutions and Third Party Service Providers with this Order, and for the Financial Institutions and Third Party Service Providers to comply with the Paragraphs I(B)(1) through I(B)(2) and I(C)(1) of this Order, respectively, before requiring service on Defendants.

16. Similarly, if Defendants are given notice of the Application, they are likely to destroy, move, hide or otherwise make inaccessible to Plaintiff the records and documents relating

to Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or sale of Counterfeit Products. Therefore, Plaintiff has good cause to be granted expedited discovery.

ORDER

Based on the foregoing findings of fact and conclusions of law, Plaintiff's Application is hereby **GRANTED** as follows:

I. Temporary Restraining Order

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, that Defendants are hereby restrained and enjoined from engaging in any of the following acts or omissions pending the hearing and determination of Plaintiff's Application for a preliminary injunction as referenced in **Paragraph (II)(A)** below:

- 1) manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Counterfeit Products, or any other products bearing the Magic Mesh Mark and/or Magic Mesh Works and/or marks and/or artwork that are confusingly and/or substantially similar to, identical to and constitute a counterfeiting or infringement of the Magic Mesh Mark and/or Magic Mesh Works;
- 2) communicating, directly or indirectly, with any person or persons: (i) from whom they purchased or obtained any Counterfeit Products; (ii) to whom they sold or offered to sell such Counterfeit Products or (iii) of whom they know, or reasonably believe, to possess, control or have access to any such Counterfeit Products;
- 3) 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 Defendants' Assets and the manufacture,

importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products;

- 4) 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; and
- 5) knowingly instructing, aiding or abetting any other person or business entity in engaging in any of the activities referred to in subparagraphs I(A)(1) through I(A)(4) above and I(B)(1) through I(B)(2) and I(C)(1) below.

B. IT IS HEREBY ORDERED, as sufficient cause has been shown, that the Third Party Service Providers and Financial Institutions are hereby restrained and enjoined from engaging in any of the following acts or omissions pending the hearing and determination of Plaintiff's Application for a preliminary injunction as referenced in **Paragraph (II)(A)** below, or until further order of the Court:

- 1) secreting, concealing, transferring, disposing of, withdrawing, encumbering or paying Defendants' Assets from or to Defendants' Financial Accounts until further ordered by this Court;
- 2) secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with any computer files, data, business records, documents or any other records or evidence relating to Defendants' Assets and Defendants' Financial Accounts; and
- 3) knowingly instructing, aiding or abetting any person or business entity in engaging in any of the activities referred to in subparagraphs I(A)(1) through I(A)(4) and I(B)(1) through I(B)(2) above and I(C)(1) below.

C. IT IS HEREBY ORDERED, as sufficient cause has been shown, that the Third Party Service Providers are hereby restrained and enjoined from engaging in any of the following acts or omissions pending the hearing and determination of Plaintiff's Application for a preliminary injunction as referenced in **Paragraph II(A)** below, or until further order of the Court:

- 1) within five (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; and
- 2) knowingly instructing, aiding, or abetting any other person or business entity in engaging in any of the activities referred to in subparagraphs I(A)(1) through I(A)(4), I(B)(1) through I(B)(2) and I(C)(1) above.

II. Order to Show Cause Why A Preliminary Injunction Should Not Issue And Order Of Notice

- A. Defendants are hereby ORDERED to show cause before this Court in Courtroom 618 of the United States District Court for the Southern District of New York at ~~500 Pearl Street~~/40 Foley Square, New York, New York on Thursday, May 23, 2019 at 12:00 p.m. or at such other time that this Court deems appropriate, why a preliminary injunction, pursuant to Fed. R. Civ. P. 65(a), should not issue.
- B. IT IS FURTHER ORDERED that opposing papers, if any, shall be filed electronically with the Court and served on Plaintiff's counsel by delivering copies thereof to the office of Epstein Drangel LLP at 60 East 42nd Street, Suite 2520, New York, NY 10165, Attn: Jason M. Drangel on or before Monday, May 20, 2019. Plaintiff shall file any Reply papers on or before Wednesday, May 22, 2019.
- C. IT IS FURTHER ORDERED that Defendants are hereby given notice that failure to appear at the show cause hearing scheduled in **Paragraph II(A)** above may result in the imposition of a

preliminary injunction against them pursuant to Fed. R. Civ. P. 65, which may take effect immediately upon the expiration of this Order, and may extend throughout the length of the litigation under the same terms and conditions set forth in this Order.

III. Asset Restraining Order

- A. IT IS FURTHER ORDERED pursuant to Fed. R. Civ. P. 64 and 65 and N.Y. C.P.L.R. 6201 and this Court's inherent equitable power to issue provisional remedies ancillary to its authority to provide final equitable relief, as sufficient cause has been shown, that within five (5) days of receipt of service of this Order, the Financial Institutions shall locate and attach Defendants' Financial Accounts and shall provide written confirmation of such attachment to Plaintiff's counsel.

IV. Order Authorizing Alternative Service by Electronic Means

- A. IT IS FURTHER ORDERED pursuant to Fed. R. Civ. P. 4(f)(3), as sufficient cause has been shown, that service may be made on, and shall be deemed effective as to Defendants if it is completed by the following means:

- 1) delivery of: (i) PDF copies of this Order together with the Summons and Complaint, or (ii) a link to a secure website (including NutStore, a large mail link created through Rmail.com and via website publication through a specific page dedicated to this Lawsuit accessible through ipcounselorslawsuit.com) where each Defendant will be able to download PDF copies of this Order together with the Summons and Complaint, and all papers filed in support of Plaintiff's Application seeking this Order to Defendants' e-mail addresses, as identified in **Schedule A** or may otherwise be determined; or.
- 2) delivery of a message to Defendants through the same means that Plaintiff's agents have previously communicated with Defendants, namely the system for communications established by the Third Party Service Providers on their respective

platforms, notifying Defendants that an action has been filed against them in this Court and providing a link to a secure website (such as NutStore or a large mail link created through Rmail.com) where each Defendant will be able to download PDF copies of this Order together with the Summons and Complaint, and all papers filed in support of Plaintiff's Application seeking this Order.

- B. IT IS FURTHER ORDERED, as sufficient cause has been shown, that such alternative service by electronic means ordered herein shall be deemed effective as to Defendants, Third Party Service Providers and Financial Institutions through the pendency of this action.
- C. IT IS FURTHER ORDERED, as sufficient cause has been shown, that such alternative service by electronic means ordered herein shall be made within ~~five (5)~~ ^{three (3)} days of the Financial Institutions and Third Party Service Providers' compliance with **Paragraphs III(A) and V(C)** of this Order.
- D. IT IS FURTHER ORDERED, as sufficient cause has been shown, that the Clerk of the Court shall issue a single original summons in the name of "Alice Wonder Household (Shanghai) Co., Ltd. and all other Defendants identified in the Complaint" that will apply to all Defendants.
- E. IT IS FURTHER ORDERED, as sufficient cause has been shown, that service may be made and shall be deemed effective as to the following if it is completed by the below means:
- 1) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where PayPal Inc. will be able to download a PDF copy of this Order via electronic mail to EE Omaha Legal Specialist at EEOMALegalSpecialist@paypal.com;

- 2) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where AliPay.com Co., Ltd., Ant Financial Services will be able to download a PDF copy of this Order via electronic mail Mr. Di Zhang, Member of the Legal & Compliance Department – IP, at di.zd@alipay.com;
- 3) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where Alibaba will be able to download a PDF copy of this Order via electronic mail to Ms. Jacqueline Ko, Legal Counsel, Alibaba Group at jacqueline.ko@alibaba-inc.com;
- 4) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where Payoneer Inc. will be able to download a PDF copy of this Order via electronic mail to Payoneer Inc.'s Customer Service Management at customerservicemanager@payoneer.com and Edward Tulin, counsel for Payoneer Inc., at Edward.Tulin@skadden.com; and
- 5) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where PingPong Global Solutions, Inc. will be able to download a PDF copy of this Order via electronic mail to PingPong Global Solutions, Inc.'s Legal Department at xieqt@pingpongx.com and legal@pingpongx.com and Matthew Ball, counsel for PingPong Global Solutions, Inc., at Matthew.Ball@khgates.com.

V. Order Authorizing Expedited Discovery

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

- 1) Within fourteen (14) days after receiving service of this Order, each Defendant shall serve upon Plaintiff's counsel a written report under oath providing:
 - a. their true name and physical address;
 - b. the name and location and URL of any and all websites that Defendants own and/or operate and the name, location, account numbers and URL for any and all User Accounts and Merchant Storefronts on any Third Party Service Provider platform that Defendants own and/or operate;

- c. the complete sales records for any and all sales of Counterfeit Products, including but not limited to number of units sold, the price per unit, total gross revenues received (in U.S. dollars) and the dates thereof;
 - d. the account details for any and all of Defendants' Financial Accounts, including, but not limited to, the account numbers and current account balances; and
 - e. the steps taken by each Defendant, or other person served to comply with **Section I**, above.
- 2) Plaintiff may serve interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure as well as Local Civil Rule 33.3 of the Local Rules for the Southern and Eastern Districts of New York and Defendants who are served with this Order shall provide written responses under oath to such interrogatories within fourteen (14) days of service to Plaintiff's counsel.
- 3) Plaintiff may serve requests for the production of documents pursuant to Fed. R. Civ. P. 26 and 34, and Defendants who are served with this Order and the requests for the production of documents shall produce all documents responsive to such requests within fourteen (14) days of service to Plaintiff's counsel.
- B. IT IS FURTHER ORDERED, as sufficient cause has been shown, that within five (5) days of receipt of service of this Order the Financial Institutions shall identify any and all of Defendants' Financial Accounts, and provide Plaintiff's counsel with a summary report containing account details for any and all such accounts, which shall include, at a minimum, identifying information for Defendants, including contact information for Defendants (including, but not limited to, mailing addresses and e-mail addresses), account numbers and account balances for any and all of Defendants' Financial Accounts and confirmation of said compliance with this Order.

C. IT IS FURTHER ORDERED, as sufficient cause has been shown, that within five (5) days of receipt of service of this Order, the Third Party Service Providers shall identify any and all of Defendants' User Accounts and Merchant Storefronts, and provide Plaintiff's counsel with a summary report containing account details for any and all User Accounts and Merchant Storefronts, which shall include, at a minimum, identifying information for Defendants and Defendants' User Accounts and Defendants' Merchant Storefronts, contact information for Defendants (including, but not limited to, mailing addresses and e-mail addresses) and confirmation of said compliance with this Order.

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

- 1) Within fourteen (14) days of receiving actual notice of this Order, all Financial Institutions who are served with this Order shall provide Plaintiff's counsel all documents and records in their possession, custody or control (whether located in the U.S. or abroad) relating to any and all of Defendants' Financial Accounts, including, but not limited to, documents and records relating to:
 - a. account numbers;
 - b. current account balances;
 - c. any and all identifying information for Defendants, Defendants' User Accounts and Defendants' Merchant Storefronts, including, but not limited to, names, addresses and contact information;
 - d. any and all account opening documents and records, including, but not limited to, account applications, signature cards, identification documents and if a business entity, any and all business documents provided for the opening of each and every of Defendants' Financial Accounts;
 - e. any and all deposits and withdrawals during the previous year from each and every one of Defendants' Financial Accounts and any and all supporting documentation,

including, but not limited to, deposit slips, withdrawal slips, cancelled checks and account statements; and

- f. any and all wire transfers into each and every one of Defendants' Financial Accounts during the previous year, including, but not limited to, documents sufficient to show the identity of the destination of the transferred funds, the identity of the beneficiary's bank and the beneficiary's account number.

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

- 1) Within fourteen (14) days of receipt of service of this Order, the Third Party Service Providers shall provide to Plaintiff's counsel all documents and records in its 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 Third Party Service Providers that were not previously provided pursuant to Paragraph V(C);
 - b. the identities, location and contact information, including any and all e-mail addresses of Defendants that were not previously provided pursuant to Paragraph V(C);
 - c. the nature of Defendants' businesses and operations, 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 with

any and all Financial Institutions 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 Magic Mesh Mark and/or Magic Mesh Works and/or marks and/or works that are confusingly and/or substantially similar to, identical to and constitute an infringement of the Magic Mesh Mark and/or Magic Mesh Works.

VI. Security Bond

- A. IT IS FURTHER ORDERED that Plaintiff shall place security in the amount of \$5,000 Dollars (\$5,000) with the Court which amount is determined adequate for the payment of any damages any person may be entitled to recover as a result of an improper or wrongful restraint ordered hereunder. \$5 Five thousand

VII. Sealing Order

- A. IT IS FURTHER ORDERED that Plaintiff's Complaint and exhibits attached thereto, and Plaintiff's *ex parte* Application and the Declarations of Jessica Arnaiz, Jennifer De Marco and Brianne Scully in support thereof and exhibits attached thereto and this Order shall remain sealed until the Financial Institutions and Third Party Service Providers comply with **Paragraphs I(B)-(C), III(A) and V(C)** of this Order.

SO ORDERED.

SIGNED this 9th day of May, 2019, at 9:50 p.m.

Karin Poll Valle
UNITED STATES DISTRICT JUDGE

SCHEDULE A

No	Seller Name	Platform	Infringing Listing	Merchant Storefront	Payment Account	Alipay Account	Email
1	Alice Wonder Household (Shanghai) Co., Ltd.	Alibaba	https://www.alibaba.com/product-detail/Hands-Free-Magic-Polyester-Mesh-Screen_60676309135.html	https://awhsh.en.alibaba.com			lisa@awhsh.com
2	Aihui Jiaoyang Soft Door Co., Ltd.	Alibaba	https://www.alibaba.com/product-detail/2018-new-style-magic-door-mesh_60082879445.html	https://aihujiayang.en.alibaba.com/			aihujiaoyang@jiaoy88.cn
3	Anping Yuanzheng Mesh Co., Ltd.	Alibaba	https://www.alibaba.com/product-detail/Hands-Free-Magic-Mesh-Scal-Well_60768637933.html	https://vwi/remesh.en.alibaba.com/		18831887233	sales@bestmeshes.com
4	DoBe Living Museum	Alieexpress	https://www.aliexpress.com/item/Hands-free-magnetic-mosquito-net-door-screen-soft-yarn-door-curtain-anti-insect-fly-magic-mesh/32860347940.html	https://yongphun.aliexpress.com/store/532213			
5	Dreaming House Store	Alieexpress	https://www.aliexpress.com/item/Colors-door-screen-Hands-free-magnetic-mosquito-net-soft-yarn-door-curtain-anti-insect-fly-magic/32880963885.html	https://www.aliexpress.com/store/2946191			
6	Eastony Industries (Ningbo) Co., Ltd.	Alibaba	https://www.alibaba.com/product-detail/EASTONY-Magic-Mesh-Screen-Door-Mosquito_6077396037.html	https://eastony.en.alibaba.com/			jesiezhou2008@hotmail.com, sales@eastony.com
7	exclamation mark	Alieexpress	https://www.aliexpress.com/item/Hands-Free-Magic-Net-Mesh-Screen-Anti-Insect-Fly-Bug-Mosquito-Curtain-ESM1/32897697972.html	https://www.aliexpress.com/store/1330080			
8	Hefei Sunhope Trade Co., Limited	Alibaba	https://www.alibaba.com/product-detail/Hands-Free-Magic-fly-mesh-magnetic_60526354846.html	https://sunhopeco.en.alibaba.com			seven@jlfreescreendoor.com
9	hello2017 Store	Alieexpress	https://www.aliexpress.com/item/Hands-Free-Magic-Mesh-Screen-Net-Door-magnets-Anti-Mosquito-Bug-Curtain-2-Size/32821942821.html	https://www.aliexpress.com/store/2673139			
10	Huanghua Techo Building Material Co., Ltd.	Alibaba	https://www.alibaba.com/product-detail/White-or-black-magic-door-curtain_60379965382.html	https://techobuilding.en.alibaba.com/			sales01@techobuilding.com
11	Huzhou Sairun Textile Co., Ltd.	Alibaba	https://www.alibaba.com/product-detail/Magic-Curtain-Door-Mesh-Magnetic-Fastening_60646366787.html	https://sairun.en.alibaba.com/			sharon@sairuntextile.com
12	Ju Feng Window Decoration Jiangsu Co., Ltd.	Alibaba	https://www.alibaba.com/product-detail/front-patio-screen-doors-with-magic_60801764787.html	https://jufengs.en.alibaba.com/		13003110025	sales06@aiwanjufeng.com
13	Landcent (China) Industrial And Development Co., Ltd.	Alibaba	https://www.alibaba.com/product-detail/DIY-window-mosquito-net_60399689680.html	https://landcent.en.alibaba.com/			sales11@landcentgroup.com
14	Leading your life Store	Alieexpress	https://www.aliexpress.com/item/Cute-Cartoon-Owl-Pattern-Magnet-Mosquito-Net-Magnetic-Anti-Mosquito-Curtains-Door-Curtains-Prevent-Mosquito-Screen/32837580365.html	https://www.aliexpress.com/store/2937009			
15	Lifestyle House Store	Alieexpress	https://www.aliexpress.com/item/Hands-Free-Magic-Net-Mesh-with-Magnets-Anti-Fly-Bug-Mosquito-Door-Screen-Curtain-Door-Mosquito/32897715174.html	https://www.aliexpress.com/store/3243067			
16	Shop106095 Store	Alieexpress	https://www.aliexpress.com/item/Hands-free-magnetic-mosquito-net-door-screen-soft-yarn-door-curtain-anti-insect-fly-magic-mesh/32884152563.html	https://www.aliexpress.com/store/106095			
17	Shop3676100 Store	Alieexpress	https://www.aliexpress.com/item/Hands-Free-Magic-Mesh-Screen-Net-Door-magnets-Anti-Mosquito-Bug-Curtain-2-Size/32857840726.html	https://www.aliexpress.com/store/3676100			
18	Shop3878130 Store	Alieexpress	https://www.aliexpress.com/item/IPC-Hands-free-Magnetic-Mesh-Screen-Door-screen-High-Quality-soft-yarn-door-curtain-anti-insect/32948097462.html	https://www.aliexpress.com/store/3878130			
19	SVKitchen Store	Alieexpress	https://www.aliexpress.com/item/New-Magnetic-Magic-Door-Mesh-Summer-Magnetic-Fastening-Hand-Anti-Mosquito-Net-Curtain-Anti-insect-Screen/32910608999.html	https://www.aliexpress.com/store/2345332			
20	Taizhou Purple Star Gifts Co., Ltd.	Alibaba	https://www.alibaba.com/product-detail/Magic-Mesh-Screen-Door-Mosquito-Door_60820710251.html	https://pagifts.en.alibaba.com/		18257689987	yangbo@pagifts.cn
21	Xiamen Weiran Industry & Trade Co., Ltd.	Alibaba	https://www.alibaba.com/product-detail/DIY-magnetic-anti-insect-polyester-mosquito_60659534793.html	https://fyziran.en.alibaba.com/			felicia.ye@fyziran.com
22	Yiwu Senso Household Goods Co., Ltd.	Alibaba	https://www.alibaba.com/product-detail/Hot-Sale-Hands-Free-Magic-Net_62028316942.html	https://shengshuo.en.alibaba.com			manager@sensotv.com
23	Yiwu Youmai General Merchandise Co., Ltd.	Alibaba	https://www.alibaba.com/product-detail/mosquito-magic-mesh-screen-door_60674729449.html	https://ymryhh.en.alibaba.com			ywymh@126.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALLSTAR MARKETING GROUP, LLC,

Plaintiff,

-v.-

ALICE WONDER HOUSEHOLD (SHANGHAI) CO., LTD., ANHUI JIAOYANG SOFT DOOR CO., LTD., ANPING YUANSHENG MESH CO., LTD., DOBE LIVING MUSEUM, DREAMING HOUSE STORE, EASTONY INDUSTRIES (NINGBO) CO., LTD., EXCLAMATION MARK, HEFEI SUNHOPE TRADE CO., LIMITED, HELLO2017 STORE, HUANGHUA TECHO BUILDING MATERIAL CO., LTD., HUZHOU SAIRUN TEXTILE CO., LTD., JU FENG WINDOW DECORATION JIANGSU CO., LTD., LANDCENT (CHINA) INDUSTRIAL AND DEVELOPMENT CO., LTD., LEADING YOUR LIFE STORE, LIFESTYLE HOUSE STORE, SHOP106095 STORE, SHOP3676100 STORE, SHOP3878130 STORE, SVKITCHEN STORE, TAIZHOU PURPLE STAR GIFTS CO., LTD., XIAMEN WEIZIRAN INDUSTRY & TRADE CO., LTD., YIWU SENSO HOUSEHOLD GOODS, CO., LTD. and YIWU YOUMAI GENERAL MERCHANDISE CO., LTD.

Defendants.

19 Civ. 4208 (KPF)

ORDER

KATHERINE POLK FAILLA, District Judge:

GLOSSARY

Term	Definition
Plaintiff or "Allstar"	Allstar Marketing Group, LLC
Defendants	Alice Wonder Household (Shanghai) Co., Ltd., Anhui Jiaoyang Soft Door Co., Ltd., Anping Yuansheng Mesh Co., Ltd., DoBe Living Museum, Dreaming House Store, Eastony Industries (Ningbo) Co., Ltd., exclamation mark, Hefei Sunhope Trade Co., Limited, hello2017 Store, Huanghua Techo Building Material Co., Ltd., Huzhou Sairun Textile Co., Ltd., Ju Feng Window

	<p>Decoration Jiangsu Co., Ltd., Landcent (China) Industrial And Development Co., Ltd., Leading your life Store, Lifestyle House Store, Shop106095 Store, Shop3676100 Store, Shop3878130 Store, SVKitchen Store, Taizhou Purple Star Gifts Co., Ltd., Xiamen Weiziran Industry & Trade Co., Ltd., Yiwu Senso Household Goods Co., Ltd. and Yiwu Youmai General Merchandise Co., Ltd.</p>
Alibaba	<p>Alibaba, an online marketplace platform that allows manufacturers, wholesalers and other third-party merchants, like Defendants, to advertise, offer for sale, sell, distribute and ship their wholesale and retail products originating from China directly to consumers across the world and specifically to consumers residing in the U.S., including New York.</p>
AliExpress	<p>Aliexpress.com, an online marketplace platform that allows manufacturers, wholesalers and other third-party merchants, like Defendants, to advertise, offer for sale, sell, distribute and ship their wholesale and retail products originating from China directly to consumers across the world and specifically to consumers residing in the U.S., including New York</p>
Epstein Drangel	<p>Epstein Drangel LLP, counsel for Plaintiff</p>
NAL	<p>New Alchemy Limited, a company that provides intellectual property infringement research services, to investigate and research manufacturers, wholesalers, retailers and/or other merchants offering for sale and/or selling counterfeit products on online marketplace platforms</p>
New York Addresses	<p>20 Cooper Sq., New York, New York 10003; 2542 Elm Drive, New York, NY 10013; 676 Wagon Ave Hamburg, New York 14075</p>
Complaint	<p>Plaintiff's Complaint filed on May 9, 2019</p>
Application	<p>Plaintiff's Ex Parte Application for: 1) a temporary restraining order; 2) an order restraining Merchant Storefronts (as defined infra) and Defendants' Assets (as defined infra) with the Financial Institutions (as defined infra); 3) an order to show cause why a preliminary injunction should not issue; 4) an order authorizing bifurcated and alternative service and 5) an order</p>

	authorizing expedited discovery filed on May 9, 2019
De Marco Dec.	Declaration of Jennifer De Marco in Support of Plaintiff's Application
Arnaiz Dec.	Declaration of Jessica Arnaiz in Support of Plaintiff's Application
Scully Dec.	Declaration of Brienne Scully in Support of Plaintiff's Application
Magic Mesh Mark	U.S. Trademark Registration No. 4,075,316 for "MAGIC MESH" for a variety of goods in Class 19 with a constructive date of first use of March 1, 2011
Magic Mesh Works	U.S. Copyright Reg. VA 1-855-122, covering the Magic Mesh Packaging (English Only), U.S. Copyright Reg. VA 1-855-121, covering the Magic Mesh Packaging (English/French), U.S. Copyright Reg. TXu 1-768-422, covering the Magic Mesh Instruction Manual, U.S. Copyright Reg. VA 1-854-907, covering the Magic Mesh Website (English, USA) (www.magicmesh.com), U.S. Copyright Reg. VAu 1-155-990, covering the Magic Mesh Product Packaging and U.S. Copyright Reg. PA 1-756-445, covering the Magic Mesh Television Commercial
Magic Mesh Products	A hands-free screen door, which keeps fresh air in and bugs out, that opens easily and magically closes itself with strong magnets
Counterfeit Products	Products bearing or used in connection with the Magic Mesh Mark and/or Magic Mesh Works, and/or products in packaging and/or containing labels and/or hang tags bearing the Magic Mesh Mark and/or Magic Mesh Works, and/or bearing or used in connection with marks and/or artwork that are confusingly or substantially similar to the Magic Mesh Mark and/or Magic Mesh Works and/or products that are identical or confusingly or substantially similar to the Magic Mesh Products
Infringing Listings	Defendants' listings for Counterfeit Products
User Accounts	Any and all websites and any and all accounts with online marketplace platforms such as Alibaba and/or AliExpress, 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
Merchant Storefronts	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
Defendants' Assets	Any and all money, securities or other property or assets of Defendants (whether said assets are located in the U.S. or abroad)
Defendants' Financial Accounts	Any and all financial accounts associated with or utilized by any Defendants or any Defendants' User Accounts or Merchant Storefront(s) (whether said account is located in the U.S. or abroad)
Financial Institutions	Any banks, financial institutions, credit card companies and payment processing agencies, such as PayPal Inc. ("PayPal"), Payoneer Inc. ("Payoneer"), the Alibaba Group d/b/a Alibaba.com payment services (e.g., Alipay.com Co., Ltd., Ant Financial Services Group), PingPong Global Solutions, Inc. ("PingPong"), and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of Defendants
Third Party Service Providers	Online platforms, including, without limitation, those owned and operated, directly or indirectly by Alibaba and/or AliExpress, as well as any and all as yet undiscovered online marketplace platforms and/or entities through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them manufacture, import, export, advertise, market, promote, distribute, offer for sale, sell and/or otherwise deal in Counterfeit Products which are hereinafter identified as a result

	of any order entered in this action, or otherwise
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WHEREAS, Plaintiff having moved ex parte on May 9, 2019 against Defendants for the following: 1) a temporary restraining order; 2) an order restraining Merchant Storefronts and Defendants' Assets with the Financial Institutions; 3) an order to show cause why a preliminary injunction should not issue; 4) an order authorizing bifurcated and alternative service and 5) an order authorizing expedited discovery;

WHEREAS, the Court entered an Order granting Plaintiff's Application on May 9, 2019 which ordered Defendants to appear on May 23, 2019 at 12:00 p.m. to show cause why a preliminary injunction should not issue;

WHEREAS, on May 17, 2019, the Court extended the briefing schedule in Section II of the TRO;

WHEREAS, on May 20, 2019, pursuant to the alternative methods of service authorized by the TRO, Plaintiff served the Summons, Complaint, TRO and all papers filed in support of the Application on each and every Defendant;

WHEREAS, May 23, 2019 at 12:00 p.m., Plaintiff appeared at the OSC Hearing, however, no Defendants appeared.

ORDER

1. The injunctive relief previously granted in the TRO shall remain in place through the pendency of this litigation, and issuing this Order is warranted under Federal Rule of Civil Procedure 65 and Section 34 of the Lanham Act.
 - a) Accordingly, Defendants are hereby restrained and enjoined from engaging in any of the following acts or omissions pending the final

hearing and determination of this action or until further order of the Court:

- i. manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Counterfeit Products or any other products bearing the Magic Mesh Mark and/or marks that are confusingly similar to, identical to and constitute a counterfeiting and/or infringement of the Magic Mesh Mark;
- b) Accordingly, the Third Party Service Providers and Financial Institutions are hereby restrained and enjoined from engaging in any of the following acts or omissions pending the final hearing and determination of this action or until further order of the Court:
- i. secreting, concealing, transferring, disposing of, withdrawing, encumbering or paying Defendants' Assets from or to Defendants' Financial Accounts until further ordered by this Court;
 - ii. secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with any computer files, data, business records, documents or any other records or evidence relating to the Defendants' User Accounts, Merchant Storefronts, Defendants' Assets and the manufacture, importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products; and

- iii. knowingly instructing, aiding, or abetting any other person or business entity in engaging in any of the activities referred to in subparagraphs 1(a)(i) and 1(b)(1) through 1(b)(ii) above.
- c) Accordingly, the Third Party Service Providers are hereby restrained and enjoined from engaging in any of the following acts or omissions pending the final hearing and determination of this action or until further order of the Court:
- i. providing services to Defendants, Defendants' User Accounts and Defendants' Merchant Storefronts, including, without limitation, continued operation of Defendants' User Accounts and Merchant Storefronts insofar as they are connected to the Counterfeit Products;
 - ii. secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with any computer files, data, business records, documents or any other records or evidence relating to the Defendants' User Accounts, Merchant Storefronts, Defendants' Assets and the manufacture, importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products; and
 - iii. knowingly instructing, aiding, or abetting any other person or business entity in engaging in any of the activities referred to in subparagraphs 1(a)(i) through 1(a)(viii), 1(b)(i) through 1(b)(iii)

and 1(c)(i) through 1(c)(ii) above.

2. As sufficient cause has been shown, the asset restraint granted in the TRO shall remain in place through the pendency of this litigation, including that:

a) within seven (7) days of receipt of notice of this Order, any newly discovered Financial Institutions who are served with this Order shall locate and attach Defendants' Financial Accounts, shall provide written confirmation of such attachment to Plaintiff's counsel and provide Plaintiff's counsel with a summary report containing account details for any and all such accounts, which shall include, at a minimum, identifying information for Defendants and Defendants' User Accounts, contact information for Defendants (including mailing addresses and e-mail addresses), account numbers and account balances for any and all of Defendants' Financial Accounts.

3. As sufficient cause has been shown, the expedited discovery previously granted in the TRO shall remain in place through the pendency of this litigation, including that:

a) Plaintiff may serve interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure as well as Local Civil Rule 33.3 of the Local Rules for the Southern and Eastern Districts of New York and Defendants who are served with this Order shall provide written responses under oath to such interrogatories within fourteen (14) days of service to Plaintiff's counsel.

- b) Plaintiff may serve requests for the production of documents pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and Defendants who are served with this Order, 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.
- c) Within fourteen (14) days after receiving notice of this Order, all Financial Institutions who receive service of this Order shall provide Plaintiff's counsel with all documents and records in their possession, custody or control (whether located in the U.S. or abroad), relating to any and all of Defendants' Financial Accounts, User Accounts and Merchant Storefronts, including, but not limited to, documents and records relating to:
- i. account numbers;
 - ii. current account balances;
 - iii. any and all identifying information for Defendants and Defendants' User Accounts, including names, addresses and contact information;
 - iv. any and all account opening documents and records, including, but not limited to, account applications, signature cards, identification documents, and if a business entity, any and all business documents provided for the opening of each and every of Defendants'

Financial Accounts;

- v. any and all deposits and withdrawal during the previous year from each and every of Defendants' Financial Accounts and any and all supporting documentation, including, but not limited to, deposit slips, withdrawal slips, cancelled checks and account statements;
- vi. any and all wire transfers into each and every of Defendants' Financial Accounts during the previous year, including, but not limited to, documents sufficient to show the identity of the destination of the transferred funds, the identity of the beneficiary's bank and the beneficiary's account number;
- vii. any and all User Accounts and account details, including, without limitation, identifying information and account numbers for any and all User Accounts that Defendants have ever had and/or currently maintain with the respective Restrained Person(s);
- viii. the identities, location and contact information, including any and all e-mail addresses, of Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them;
- ix. the nature of Defendants' businesses and operations, methods of payment, methods for accepting payment and any and all financial information, including, but not limited to, information associated with Defendants' User Accounts, a full accounting of Defendants' sales history and listing history under such accounts, and

Defendants' Financial Accounts with any and all Restrained Persons associated with Defendants' User Accounts; and

- x. Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling of Infringing Products, or any other products bearing one or more of the Magic Mesh Mark and/or marks that are confusingly similar to, identical to and constitute a counterfeiting and/or infringement of the Magic Mesh Mark.
- d) Within fourteen (14) days of receipt of service of this Order, the Third Party Service Providers shall provide to Plaintiff's counsel all documents and records in its 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:
- i. 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 Third Party Service Providers;
 - ii. the identities, location and contact information, including any and all e-mail addresses of Defendants;
 - iii. the nature of Defendants' businesses and operations, 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 with any and all Financial Institutions associated with Defendants' User Accounts and Defendants' Merchant Storefronts; and

- iv. Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling of Counterfeit Products, or any other products bearing the Magic Mesh Mark and/or Magic Mesh Works and/or marks and/or works that are confusingly and/or substantially similar to, identical to and constitute an infringement of the Magic Mesh Mark and/or Magic Mesh Works.

4. As sufficient cause has been shown, and pursuant to FRCP 4(f)(3), service may be made on, and shall be deemed effective as to Defendants if it is completed by one of the following means:

- a) delivery of: (i) a PDF copy of this Order or (ii) a link to a secure website (including NutStore, a large mail link created through Rmail.com or via website publication through a specific page dedicated to this Lawsuit accessible through ipcounselorslawsuit.com) where each Defendant will be able to download a PDF copy of this Order, to Defendants' e-mail addresses as identified in Schedule A or may otherwise be determined;
- or

b) delivery of a message to Defendants through the system for communications established by the Third Party Service Providers on their respective platforms, notifying Defendants that an action has been filed against them in this Court and providing a link a secure website (such as Nutstore or a large mail link created through Rmail.com) where each Defendant will be able to download PDF copies of this Order.

5. As sufficient cause has been shown, service of this Order shall be made on and deemed effective as to the Third Party Service Providers and Financial Institutions if it is completed by the following means:

a) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where PayPal will be able to download a PDF copy of this Order via electronic mail to EE Omaha Legal Specialist at EEOMALegalSpecialist@paypal.com;

b) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where AliPay.com Co., Ltd., Ant Financial Services will be able to download a PDF copy of this Order via electronic mail to Mr. Di Zhang, Member of the Legal & Compliance Department – IP, at di.zd@alipay.com;

c) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where Alibaba will be able to download a PDF copy of this Order via electronic mail to Ms. Jacqueline Ko, Legal Counsel, Alibaba Group at jacqueline.ko@alibaba-inc.com;

d) delivery of: (i) a PDF copy of this Order, and (ii) a link to a secure

website where Payoneer will be able to download a PDF copy of this Order via electronic mail to Payoneer's Customer Service Management at customerservicemanager@payoneer.com and Edward Tulin, counsel for Payoneer, at Edward.Tulin@skadden.com; and

e) delivery of: (i) a PDF copy of this Order, and (ii) a link to a secure website where PingPong Global Solutions, Inc. will be able to download a PDF copy of this Order via electronic mail to PingPong Global Solution, Inc.'s Legal Department at xieqt@pingpongx.com and legal@pingpongx.com and Mathew Ball, counsel for PingPong, at Matthew.Ball@klgates.com.

6. Defendants are hereby given notice that they may be deemed to have actual notice of the terms of this Order and any act by them or anyone of them in violation of this Order may be considered and prosecuted as in contempt of this Court.
7. The \$5,000.00 bond posted by Plaintiff shall remain with the Court until a final disposition of this case or until this Order is terminated.
8. This Order shall remain in effect during the pendency of this action, or until further order of the Court.
9. Any Defendants that are subject to this Order may appear and move to dissolve or modify the Order on two (2) days' notice to Plaintiff or on shorter notice as set by the Court.

SO ORDERED.

Dated: May 24, 2019
New York, New York

A handwritten signature in blue ink that reads "Katherine Polk Failla". The signature is written in a cursive style with a horizontal line underneath the name.

KATHERINE POLK FAILLA
United States District Judge