

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

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

Plaintiffs,

v.

ACCESSMALL, *et al.*,

Defendants.

Civil Action No. 19-1454

(Judge Stickman)

Filed Under Seal

██████████ PRELIMINARY INJUNCTION ORDER

WHEREAS, on November 7, 2019, Gorge Design Group, LLC and Kirby Erdely (“Plaintiffs” or “Gorge”) 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 Alibaba.com US LLC d/b/a Aliexpress.com (“Aliexpress”), eBay, Inc. d/b/a eBay.com (“eBay”), and Context Logic, Inc d/b/a wish.com (“Wish”) (“Third Party Service Provider(s)”) and AliPay US Inc. d/b/a Alipay.com (“Alipay”), 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”)(ECF No. 4);

¹ As alleged in Plaintiff’s Complaint, Defendants have offered for sale, sold, and distributed knock-off and infringing versions of Plaintiffs’ Ultimate Ground Anchor ground anchor product which closely mimic the appearance of Plaintiffs’ genuine product within this district and throughout the United States by operating e-commerce stores established at least via the wish.com, aliexpress.com, and eBay.com.com Internet marketplace using their respective Store Names and Seller Names set forth on Schedule “A”. The Defendants identified in **Schedule “A”** of the Complaint, were and/are, *inter alia*, promoting, selling, offering for sale and distributing their Infringing Products, thus(i) unfairly competing by using Plaintiffs’ photographs, videos, artwork, creative text and product instructions while marketing their knock-off products in a willful attempt to pass off their knock-off products as genuine versions of Plaintiffs’ Products; and (ii) infringing at least one of the claims of Plaintiffs’ registered U.S. Patent. (“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. 16);

WHEREAS on November 12, 2019, at 1:27 p.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"**, the Third Party Service Providers and the Financial Institutions ("TRO")(ECF No. 13); and

(B) an Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3)(ECF No. 16);

WHEREAS on November 22, 2019, upon Plaintiffs' motion, the TRO was extended and the show cause hearing was rescheduled to December 20, 2019;

WHEREAS, on December 20, 2019, Plaintiff appeared for the Order to Show Cause Hearing, however no Defendants appeared. Further, none of the Third Party Service Providers or Financial Institutions appeared or opposed the entry of the Preliminary Injunction.

ORDER

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, the injunctive relief previously granted on November 12, 2019, and extended on November 22, 2019, shall remain in place through the pendency of this litigation or until further order of this Court, and issuing this Preliminary Injunction is warranted under FRCP 65, the Lanham Act, 15 U.S.C. § 1125(a) and the Patent Act, 15 U.S.C. § 281, and related state laws.

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 (a) their unauthorized and unlicensed use of Plaintiffs' Mark², Plaintiffs' Works³ and infringement of at least one claim of the '198 Patent 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' Mark, Plaintiffs' Works, or infringe the claims of the '198 Patent⁴;
- (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,⁵ Merchant Storefronts⁶ 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

² As defined in the Application, Plaintiffs' Mark is its common law trademark ULTIMATE GROUND ANCHOR.

³ As defined in the Application, Plaintiffs' Works are its published photographs, videos, artwork, creative text and product instructions appearing on kickstarter.com and orangescrew.com

⁴ Refers to U.S. Patent No. 7309198 for "Re-useable threaded tie downs".

⁵ As defined in the Application, a "User Account" is, as defined in the Complaint, any and all accounts with online marketplace platform(s) Third Party Service Providers and Financial Institutions, 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.

⁶ 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.

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 Plaintiffs' Mark or Plaintiffs' 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 Alibaba.com US LLC d/b/a Aliexpress.com ("Aliexpress"), eBay, Inc. d/b/a eBay.com ("eBay"), and Context Logic, Inc d/b/a wish.com ("Wish") ("Third Party Service Provider(s)") and AliPay US Inc. d/b/a Alipay.com ("Alipay"), 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;⁷

(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

⁷ 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.

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 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 Plaintiffs' Mark, Plaintiffs' Works, and/or infringe on one or more claims of the '198 Patent 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 conclusion of this case 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, 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' Mark, Plaintiffs' Works and infringement of at least one claim of the '198 Patent 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' Mark, Plaintiffs' Works, or infringe the claims of the '198 Patent.

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 20 day of December 20, 2019, at 10:07 a.m.
Pittsburgh, Pennsylvania



William S. Stickman
United States District Judge

**Amended Schedule “A”
Defendants With Store Name and Seller ID**

Defendant No.	Defendant/Store Name	Seller ID
1	accesssmall	58646d05dec9f84caa86e023
2	anticipate	5911303d4cb67623d7bc4cdb
3	chanzon	594e136cabea91780b592536
4	cherry women shop	582bd5b396db2604d0408093
5	cindydress	5922cbb7f4a3d44d77d19e18
6	corolissally	595d91c5b8bc5d54d0957d0a
7	crystalshining	58c695ec3f49637fe80cffbf
8	daisyshop	58dba57e3af68752ad25314b
10	eternallystores	58edc33abef1c35ed33698d0
11	fujiayanli	5b066676c721a914acf89cfc
12	goodsbuyhere	5a249f7a3c3aa252eb5c984e
13	happydeer	592e352f6fffc76b617d55ce
14	HFDS2017	58bd18c881cd4b5269dcb22b
15	Hicherry	56f8d9fe796b2f589b96a387
16	hongmei store	58ba65193cee5052a6754733
17	HQhuangL	58be263c7089df52945ec75a
18	JOLL	5d502e7a1527547edbad504d
20	minsdeal	5a421f4c87c25b70c1122d9d

Defendant No.	Defendant/Store Name	Seller ID
22	MYDC	589ac0cf396f39509689b133
23	purpledoo	59df4d1615da07122388aac0
24	quemeige	5b30511d337afb6439eb5ed6
25	REDLIU	5b91d07e6c62af49fb12f823
26	renxinstore	5a5d9e017276532645020439
27	sandlasho	59f9785f7276531984a7090f
28	SHXK	57280df53a698c7be7e3d3bc
31	wonbubu	5a096b61e65033699e2c00e8
33	xijinjin123	58fdcf94d5a2c91117d583dd
35	zhangyuting	58d7d0b8c430d85372ebd087
36	zhengruilan	58cfdc99225295056b23305
38	zhouzhongren	58e8aa549d883a158792495f
39	AZZD Store	4997257
40	appleooqw Store	4992463
41	City spray Store	5112048
42	Cookie's Outdoor Store	4413061
43	Cute Pets Market Store	2654214

Defendant No.	Defendant/Store Name	Seller ID
44	Eathevin Store	5046244
45	Esportes Store	4811026
46	Extreme crossing Store	5008317
47	Global Dropship 3 Store	4597029
48	Golden Retriever Outdoor Store	4468010
49	Good husband Store	5236011
50	Handclap Store	5042241
51	HandsomeBoy Store	5125103
52	HimanJie Store	2342222
53	HOMO dropship Store	5008322
54	KEEP Store	4500019
55	Lenzero Store	4808144
56	Libero Store	2703003
57	Loveliness Jewel Store	2956076
58	Magical Life Store	3248077
59	MAGORUI AR Store	4404113
60	Nine Suns Store	5107092
61	OuRui outdoor hunting Store	5129052
62	Outdoor Lifestyle Store	2662151
63	Outdoor Recreation Store	4460042
64	OutDooree K Store	4420112
65	OutdoorWorld Store	2916023
66	Pawprint Store	2675065

Defendant No.	Defendant/Store Name	Seller ID
67	pigpig Store	4576048
68	Pinellia outdoor Store	5005261
69	Respect Store	2947059
70	Romantic All House Store	5003134
71	Shop5236009 Store	5236009
72	SnugLan Store	5003133
73	To Keep Fit Store	3857035
74	topsell Store	4929028
75	WENY Store	4700002
76	ZJBeauty World Store	4801023
77	ZX Qianduoduo Store	3048016
78	brilliantly-illuminated	183964432945
79	flowersbud	153657848803
80	gift_select	283632713922
81	home-garden-us	233355365189
82	homme-fashion501	362776364840
83	jewellery.garden	362765984030
84	pqud064jxsaf-2	233362072602
85	technology-onsale	123948056857