

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

AIRIGAN SOLUTIONS, LLC,

Plaintiff,

v.

BELVIA, *et al.*,

Defendants.

Civil Action No. 20-284

(Judge Schwab)

FILED UNDER SEAL

[PROPOSED] PRELIMINARY INJUNCTION ORDER

WHEREAS, Plaintiff filed an *Ex Parte* Application for the following: 1) a temporary restraining order; 2) an order restraining assets and Merchant 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”, Amazon.com, Inc., and its related companies and affiliates, including 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”);

¹ 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, “. . . 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 Account(s)”).

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 February 26, 2020 at 1:00 p.m., the Court entered the following Orders:

(A) 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts, against all of the Defendants identified on the attached **Schedule “A”**, and Amazon (“TRO”) (Doc. No. 11); and

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

WHEREAS, on March 2, 2020, Plaintiff filed an Ex Parte Application for extending the TRO against all of the Defendants, identified on the attached Schedule “A” and Amazon (“Application for Extended TRO”).

WHEREAS, On March 2, 2020, the Court entered the following Order:

1) extending the TRO; 2) order restraining assets and Merchant Storefronts; and 3) order to show cause why a preliminary injunction should not issue; against the Defendants, identified on the attached Schedule “A”, and Amazon (“Order Extending TRO”) (Doc. No. 18);

WHEREAS, pursuant to the terms of the Alternative Service Order, the Defendants have been served with notice of this Show Cause Hearing; and

WHEREAS, on March 11, 2020, Plaintiff appeared for the Order to Show Cause Hearing, however no Defendants appeared. Further, Amazon did not appear.

I. Restraining Order

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, the injunctive relief previously granted on February 26, 2020 at 11:00 a.m. (Doc. No. 11) and extended by order of March 1, 2020 (Doc. No. 18), 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 manufacture, importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products;

³ 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.

- (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) using any marks that are confusingly similar with the Plaintiff's NEGG[®] trademark, within metatags or other markers within website source code, on any web page (including as the title of any product listing), in any advertising links to other websites offering Counterfeit Products for sale, in search engines' databases or cache memory, and any other form of use such that the NEGG[®] trademark or a confusingly similar mark is 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; and
- (5) transferring 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 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

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.

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 those in privity with Defendants and with actual notice of this Order, including Third Party Service Providers,⁵ 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:

(1) providing services for any accounts through which Defendants engage in the sale of Counterfeit Products, including without limitation, continued operation of Defendants' User Accounts and Merchant Storefronts;

(2) displaying any advertisements used by or associated with Defendants in connection with the sale of Counterfeit Products; and

⁵ Third Party Service Providers are any third-party providing services in connection with any Defendant and/or any Defendant's Merchant Storefront, including, without limitation, Internet Service Providers, back-end service providers, web designers, sponsored search engine providers, sponsored ad-words providers, sponsored shopping providers, merchant account providers, third-party processors and other payment processing services, shippers, domain name registrars and domain name registries.

(3) displaying links to any User Accounts or Merchant Storefronts associated with the Defendants in search results, including but not limited to, having links to any product listings, User Accounts, or Merchant Storefronts in any search index.

C. IT IS HEREBY ORDERED, as sufficient cause has been shown, that:

(1) Amazon shall continue to be restrained and enjoined, from 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; and

(3) upon Plaintiff's request, Amazon shall remove listings and/or advertisements for any product that Plaintiff identifies as unfairly competing with Plaintiff's NEGG[®] egg peeler and which has been identified as shipping from, or as originating from, outside the United States (i.e., preventing a seller from listing for sale under the identified ASIN);

(4) the Third Party Service Providers and Financial Institutions,⁶ including Amazon, are hereby restrained 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

C. IT IS HEREBY ORDERED, as sufficient cause has been shown, that: to the extent not already done, within five (5) days of restraining funds pursuant to this Section, Amazon shall provide to Plaintiff's counsel a listing of any disbursements made from each Amazon account containing restrained funds between the date of receipt of this Order until the date the funds were restrained. Plaintiff may issue interrogatories requiring a response under oath.

D. IT IS HEREBY ORDERED, as sufficient cause has been shown,

(1) that 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 or Plaintiff's counsel.

(2) 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

⁶ Financial Institutions are any banks, financial institutions, credit card companies and payment processing agencies, such as Amazon Payments, Inc., and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of any Defendant.

- (3) This Order shall remain in effect until such further dates as set by the Court or stipulated by the parties.

II. Order Authorizing Discovery

- A. IT IS FURTHER ORDERED, as sufficient cause has been shown through Defendants' failure to respond, participate in the ordered Rule 26(f) conference, and appear at the show cause hearing on March 11, 2020, Plaintiff may propound discovery upon 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 responses 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, 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:
 - (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' 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. 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 ____ day of March, 2020
Pittsburgh, Pennsylvania

cc Stanley D. Ference III, Esq.
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Brian Samuel Malkin, Esq.
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Arthur J. Schwab
United States District Judge

SCHEDULE "A"
DEFENDANTS BY STORENAME AND STORE NUMBER

Def. No.	Defendant/ Amazon Store Name	Amazon Seller ID	Amazon ASIN
1	Belvia	A4L02AA7I9NE5	B07Y9ZZ4S9 B081DWBW7B B081DW1KRN B07Y7T9SWR
2	cute dog	ATDG7C379EMAO	B083WGM9XH B083WGBMGV B083WVH3K
3	Homkit.	A1PBCUPNNGPUBV	B07YSY97H5
4	LXLIFE	A1V0ISVSOOVG6Z	B0836Y674V B081TW78Z7 B0836YTR31 B083Z5T56M B083SLLPPZ B0836YL1XW B083Z144DK B083Z8NXWQ B083ZCDW74
5	qualityhome	A3LRRFXO5FKZY9	B08259PZJH