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-cv-284 Judge Schwab

[PROPOSED] FINAL DEFAULT JUDGMENT AND PERMANENT INJUNCTION

This matter comes before the Court upon Motion by Plaintiff, Airigan Solutions, LLC ("Plaintiff") for entry of a default judgment against: the Defendants set forth in Attachment "A" (hereinafter collectively referred to as "Defendants" or individually as "Defendant"),[1] for Defendants' trademark counterfeiting and infringement, false designation of origin, passing off, unfair competition, patent infringement and related state and common law claims arising out of Defendants' infringing use of Plaintiff's NEGG Marks, in their manufacturing,

[1] Defendants are sophisticated sellers, each operating one or more commercial businesses using their respective user accounts. Defendants were and/or are systematically directing and/or targeting their business activities at consumers in the U.S., including Pennsylvania, through accounts with online marketplace platforms such as Amazon.com, as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them ("User Accounts"). Through these User Accounts, Defendants, their respective officers, employees, agents, servants and all persons in active concert of participation with any of them, operate storefronts to manufacture, import, export, advertise, market, promote, distribute, offer for sale and/or otherwise deal in products, including the Counterfeit Products (as defined *infra*), which are held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them ("Merchant Storefront(s)").

importing, exporting, advertising, marketing, promoting, distributing, displaying offering for sale and/or selling offering for sale and/or sale of Counterfeit Products.[2]

The Court, having considered the Declaration of Brian Samuel Malkin in support of Plaintiffs' Motion for Default Judgment and a Permanent Injunction ("Motion for Default Judgment"), the Certificate of Service of the Summons and Complaint, Entry of Default of the Clerk of Courts, and upon all other pleadings and papers on file in this Action, it is hereby ORDERED as follows (hereinafter, "Default Judgment Order"):

I. Defendants' Liability

Judgment is granted in favor of Plaintiff on all claims asserted against Defendants in the Complaint.

II. Damage Awards

IT IS FURTHER ORDERED that, because it would serve both the compensatory and punitive purposes of the Lanham Act's prohibitions on willful infringement, and because Plaintiff has sufficiently set forth the basis for the statutory damages awards requested in its Motion for Default Judgment, the Court finds that such awards are reasonable and Plaintiff is awarded $2,000,000.00 in statutory damages against each of the Defendants pursuant to Section 15 U.S.C. § 1117(c) of the Lanham Act, plus post-judgment interest.

[2] "Counterfeit Products" are substandard products bearing or using Plaintiff's registered trademark (*i.e.,* U.S. Trademark Reg. No. 5,142,630 for the wordmark "NEGG") and/or that use packaging that bears and/or is used in connection with marks and/or trade dress (hereinafter referred to as the "NEGG Marks) that is confusing or substantially similar to Plaintiff's authentic products sold using the NEGG Marks and/or that infringe at least Claim 1 of Plaintiff's U.S. Patent No. 9,968,211 entitled "PERSONAL EGG PEELER" (hereinafter referred to as "the '211 patent")

III. Permanent Injunction

A. IT IS HEREBY ORDERED that each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant, having notice of this Order shall be permanently restrained and enjoined as follows:

(1) from manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Counterfeit Products;

(2) from secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with: (i) Counterfeit Products and/or (ii) any computer files, data, business records, documents or any other records or evidence relating to their User Accounts, Merchant Storefronts or any money, securities or other property or assets of Defendants (hereinafter collectively referred to as "Defendants' Assets") and the manufacture, importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products;

(3) effecting assignments or transfers, forming new entities or associations, or creating and/or utilizing any other platform, User Account, Merchant Storefront or any other means of importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products for the purposes of circumventing or otherwise avoiding the prohibitions set forth in this Order;

(4) each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order shall immediately discontinue use of any marks that are confusingly similar with

the Plaintiff's NEGG® trademark, within metatags or other markers within website source code, from use on any web page (including as the title of any product listing), from any advertising links to other websites offering Counterfeit Products for sale, from search engines' databases or cache memory, and any other form of use such that the NEGG® trademark or a confusingly similar mark are visible to a computer user or serves to direct computer searches to a Merchant Storefront registered, owned, or operated by each Defendant, including the Merchant Storefronts operating under the Seller IDs;

(5) each Defendant shall not transfer ownership of the User Accounts or Merchant Storefronts associated with the Seller IDs;

(6) this Order shall apply to the Seller IDs, associated Accounts and Merchant Storefronts, and any other seller identification names, Accounts or Merchant Storefronts, and Amazon accounts which are being used by Defendants for the purpose of counterfeiting the NEGG products at issue in this action and/or unfairly competing with Plaintiff;

(7) the Third Party Service Provider(s) or Financial Institution(s) or any Defendant or financial institution account holder subject to this Order may petition the Court to modify the asset restraint set out in this Order; and

(8) the Alternative Service Order shall remain in effect during the pendency of this action or until further order of the Court, Plaintiff shall serve the Defendants with a copy of this Order in accordance with the Alternative Service Order.

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

secreting, concealing, transferring, disposing of, withdrawing, encumbering or paying Defendants' Assets from or to financial accounts associated with or utilized by any Defendant or any Defendant's User Accounts or Merchant Storefront(s) (whether said account is located in the U.S. or abroad) ("Defendants' Financial Accounts");

C. IT IS FURTHER ORDERED that Amazon shall be permanently restrained and enjoined from engaging in any of the following acts or omissions:

(1) providing services to Defendants, Defendants' User Accounts and Defendants' Merchant Storefronts, including, without limitation, continued operation of Defendants' User Accounts and Merchant Storefronts;

(2) processing payments for any products listed under the following Amazon Standard Identification Numbers (ASINs): B01N7SXX0W (black NEGG®), B01MT9U0HK (red NEGG®), B01NATZUY2 (white NEGG®), B01N235WK4 (yellow NEGG®), B079P5N8Q6 (pink NEGG®), B079P6QVNR (fuschia NEGG®), and B079P4HPVM (green NEGG®), by any Seller that has not been authorized by Plaintiff; contemporaneously with the service of this Order, Plaintiff shall provide notice to Amazon of Plaintiff's authorized sellers; and

(3) Amazon shall place the following Amazon Standard Identification Numbers (ASINs): B01N7SXX0W (black NEGG®), B01MT9U0HK (red NEGG®), B01NATZUY2 (white NEGG®), B01N235WK4 (yellow NEGG®), B079P5N8Q6 (pink NEGG®), B079P6QVNR (fuschia NEGG®), and B079P4HPVM (green NEGG®), into Amazon's

gating program, so that Plaintiff will be able to control which sellers list product under these ASINs.

D. IT IS FURTHER ORDERED that Defendants and/or Amazon shall destroy any and all Counterfeit Products and any and all packaging, labels, tags, advertising and promotional materials and any other materials in the possession, custody or control of Defendants that infringe any of Plaintiffs' trademarks, copyrights or other rights including, without limitation, the NEGG Marks or, bear any marks that are confusingly or substantially similar to the NEGG Marks and pursuant to 15 U.S.C. § 1118;

IV. Follow-Up Requests

IT IS FURTHER ORDERED, as sufficient cause has been shown, that, upon Plaintiff's request, within no later than five(5) calendar days of Plaintiff's request:

(1) Amazon is ordered to remove any seller identified by Plaintiff from the following Amazon Standard Identification Numbers (ASINs): B01N7SXX0W (black NEGG®), B01MT9U0HK (red NEGG®), B01NATZUY2 (white NEGG®), B01N235WK4 (yellow NEGG®), B079P5N8Q6 (pink NEGG®), B079P6QVNR (fuschia NEGG®), and B079P4HPVM (green NEGG®);

(2) Amazon is ordered to suspend any ASIN listing product that Plaintiff asserts unfairly competes with Plaintiff's NEGG® egg peeler and is identified as originating outside of the United States (i.e. any seller is prevented from listing for sale under the identified ASIN); and

(3) Amazon is ordered to suspend any ASIN that was associated with a product already identified by prior Order of this Court in the present lawsuit to be Counterfeit or Infringing as designated in the Amended Schedule A third column under "**Amazon ASIN**

Number(s)" (i.e. any seller is prevented from listing for sale under the identified ASIN),

(4) however, the Seller controlling such listings shall not be subject to financial account restraint.

V. Post-Judgment Asset Transfer and Asset Freeze Order

A. IT IS FURTHER ORDERED that in accordance with Rule 64 of the Federal Rules of Civil Procedure, 15 U.S.C. § 1116(a) and this Court's inherent equitable powers to issue remedies ancillary to its authority to provide final relief, and given the difficulties Plaintiff would have enforcing this Default Judgment Order, Defendants' Assets from Defendants' Financial Accounts that were and/or are attached and frozen or restrained pursuant to the TRO and/or PI Order, or which are attached and frozen or restrained pursuant to any future order entered by the Court in this Action, (collectively, "Defendants' Frozen Assets" and "Defendants' Frozen Accounts," respectively), are, to the extent that a given Defendant's Frozen Assets equal the Defendants' Individual Damages Award, hereby released and transferred to Plaintiff as full satisfaction of the Defendants' Individual Damages Award for that Defendant, and those Defendant's Frozen Assets shall be transferred to Plaintiff through Plaintiff's counsel forthwith, and upon receipt by Plaintiff's counsel of such Defendant's Frozen Assets in full satisfaction of the Defendants' Individual Damages Award, the Financial Institution(s) holding that Defendant's Frozen Assets and Defendants' Frozen Accounts may unfreeze that Defendant's Frozen Assets and Defendant's Frozen Accounts. To the extent that a Defendant's Frozen Assets are less than the Defendants' Individual Damages Award, that Defendant's Frozen Assets are hereby released and transferred to Plaintiffs as partial satisfaction of the Defendants' Individual Damages Award for that Defendant and those

Defendant's Frozen Assets shall be transferred to Plaintiff through Plaintiff's counsel forthwith, and

B. IT IS FURTHER ORDERED that in accordance with Rule 64 of the Federal Rules of Civil Procedure and this Court's inherent equitable powers to issue remedies ancillary to its authority to provide final relief, and given the difficulties Plaintiff would have enforcing this Default Judgment Order, the Court also hereby grants Plaintiff's request for a post-judgment restraining order continuing the attachment of each Defendant's Frozen Assets until Plaintiff has recovered the full payment of the Defendants' Individual Damages Award owed to it by that Defendant under this Default Judgment Order, or until further order of this Court; and

C. IT IS FURTHER ORDERED that in accordance with this Court's inherent equitable powers to issue remedies ancillary to its authority to provide final relief, and given the difficulties Plaintiff would have enforcing this Default Judgment, until Plaintiff has recovered the full payment of the Defendants' Individual Damages Award owed to it by any Defendant under this Default Judgment Order, in the event that Plaintiff discovers new and/or additional Defendants' Assets (whether said assets are located in the U.S. or abroad) and/or Defendants' Financial Accounts (whether said account is located in the U.S. or abroad) ("Defendants' Additional Assets" and "Defendants' Additional Financial Accounts," respectively), Plaintiff shall have the ongoing authority to serve this Default Judgment Order on any Financial Institutions controlling or otherwise holding such Defendants' Additional Assets and/or Defendants' Additional Financial Accounts ("Financial Institutions Holding Defendants' Additional Assets and/or Financial Accounts");[3]

[3] This Order contemplates that investigation and/or discovery during judgment collection may reveal that Defendants may have used other user accounts, operated by other Third Party Service Providers and Financial Institutions other than those named and that any additional discovered Third Party Service Providers and

1. Upon notice of this Default Judgment Order, Financial Institutions Holding Defendants' Additional Assets and/or Financial Accounts shall immediately locate Defendants' Additional Financial Accounts, attach and restrain such Defendants' Additional Assets in Defendants' Additional Financial Accounts from being secreted, concealed, transferred or disposed of or withdrawn; and

2. After five (5) business days following the service of this Default Judgment on Financial Institutions holding Defendants' Additional Assets and/or Financial Accounts, Financial Institutions Holding Defendants' Additional Assets and/or Financial Accounts shall transfer all Defendants' Additional Assets to Plaintiffs as partial or full satisfaction of the Defendants' Individual Damages Award, unless Defendant has filed with this Court and served upon Plaintiffs' counsel a request that such Defendants' Additional Assets be exempted from this Default Judgment Order. At the time the funds are released, Financial Institutions Holding Defendants' Additional Assets and/or Financial Accounts shall transfer all Defendants' Additional Assets shall provide to Plaintiff a breakdown reflecting the (i) total funds restrained in this matter per Defendant; (ii) the total chargebacks, refunds, and/or transaction reversals deducted from each Defendant's funds, restrained prior to release; and (iii) the total funds released per Defendant to the Plaintiff.

VI. Miscellaneous Relief

A. Upon Plaintiff's request, the Third Party Service Provider(s) or Financial Institution(s) shall disable and/or cease facilitating access to the Seller IDs, including any other alias seller identification names being used offer for sale and/or sell Counterfeit or Infringing Products;

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

B. The Plaintiff may serve this injunction on any e-mail service provider with a request that the service provider permanently suspend the e-mail addresses which are used by the Defendants in connection with the Defendants' promotion, offering for sale, and/or sale of Counterfeit Products;

C. Upon the Plaintiff's request, any Internet marketplace website operator and/or administrator who is in possession, custody, or control of the Defendants' Counterfeit Products, including but not limited to Amazon.com, Inc. and its affiliates, Alibaba.com Hong Kong Limited, which operates the AliExpress.com platform, eBay Inc., and Etsy, Inc., shall permanently cease fulfillment of and sequester those goods, and surrender the same to the Plaintiff;

D. Any failure by Defendants to comply with the terms of this Default Judgment Order shall be deemed contempt of Court, subjecting Defendants to contempt remedies to be determined by the Court, including fines and seizure of property;

E. Interest from the date this action was filed shall accrue at the legal rate pursuant to 28 U.S.C § 1961;

F. The bond posted by Plaintiff in the amount of $5,000.00 is hereby ordered released by the Clerk; and

G. This Court shall retain jurisdiction over this matter and the parties in order to construe and enforce this Judgment and permanent injunction.

SO ORDERED.

SIGNED this _____ day of _____, 2020
Pittsburgh, Pennsylvania

_____
Arthur J. Schwab
United States District Judge

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

SCHEDULE "A"
DEFENDANTS BY STORENAME AND STORE NUMBER

Def. No.	Defendant/ Amazon Store Name	Amazon Seller ID	Amazon ASIN
2	cute dog	ATDG7C379EMAO	B083WGM9XH B083WGBMGV B083WFVH3K
3	Homkit.	A1PBCUPNNGPUBV	B07YSY97H5
4	LXLIFE	A1V0ISVSOOVG6Z	B0836Y674V B081TW78Z7 B0836YTR31 B083Z5T56M B083SLLPPZ B0836YL1XW B083Z144DK B083Z8NXWQ B083ZCDW74
5	qualityhome	A3LRRFXO5FKZY9	B08259PZJH