

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

(Judge Hornak)

[PROPOSED] FINAL DEFAULT JUDGMENT AND PERMANENT INJUNCTION

This matter comes before the Court upon Motion by Plaintiffs for entry of a default judgment and permanent injunction against the Defendants identified on Schedule “A” hereto (hereinafter referred to as “Defaulting Defendants”) for Defaulting Defendants’ trademark counterfeiting and infringement, false designation of origin, passing off, unfair competition, copyright infringement and related state and common law claims arising out of Defaulting Defendants’ infringing use of Plaintiffs’ federally registered trademark, trade dress, common law trademark, and copyrighted works in their manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying offering for sale and/or selling and/or sale of Counterfeit Products.¹

The Court, having considered the Plaintiffs’ Motion for Default Judgment and Permanent Injunction, the Declaration of Brian Samuel Malkin in support of thereof, the Certificates of Service of the Summons and Complaint, the Entries of Default by the Clerk of Courts, and upon

¹ Counterfeit Products are products which are promoted, offered for sale, or sold bearing or using confusingly similar imitations of, or marks or artwork which are substantially similar to, the Plaintiffs’ federally registered BRISTLY trademark (U.S. Trademark Reg. Nos. 5,815,298 and 5,844,832), Plaintiffs’ trade dress, or Plaintiffs’ copyrighted works.

all other pleadings and papers on file in this Action, it is hereby ORDERED as follows (hereinafter, "Order"):

I. Defaulting Defendants' Liability

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

II. Damage Awards

IT IS FURTHER ORDERED that because it serves the compensatory and punitive purpose of the prohibitions on willful infringement of both the Lanham Act and Copyright Act; and because Plaintiffs have sufficiently set forth the basis for the statutory damages awards requested in their supporting papers, the Court finds that such awards are reasonable and Plaintiffs are awarded damages against each of the following Defaulting Defendants in the following amounts:

A. an award as set forth below against the identified Defaulting Defendant

Deft. No.	Seller	Damages
12	is_2863	\$2,150,000.00

B. an award of \$2,000,000.00 against each of the remaining eleven (9) Defaulting Defendants; for a total of twenty million one hundred fifty thousand (\$20,150,000.00), together with pre-judgment interest;

III. Permanent Injunction

A. IT IS HEREBY ORDERED that each Defaulting Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defaulting Defendant having notice of this Default Judgment Order shall be

permanently restrained and enjoined from:

- (1) (a) manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Counterfeit Products, or any other products incorporating Plaintiffs' BRISTLY trademark, Plaintiffs' trade dress, marks that are confusing similar to Plaintiffs' BRISTLY trademark, Plaintiffs' trade dress, or Plaintiffs' copyrighted works 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, trade dress, or copyrighted works;
- (2) directly or indirectly infringing in any manner any of the Plaintiffs' trademarks, trade dress, or copyrights or engaging in any unfair competition against the Plaintiffs;
- (3) using any reproduction, counterfeit, copy, or colorable imitation of Plaintiffs' trademarks, trade dress, copyrighted works, or other rights including, without limitation, the Plaintiffs' Mark, Plaintiffs' trade dress, and the Plaintiffs' Works to identify any goods or services not authorized by Plaintiffs;
- (4) using any of Plaintiffs' trademarks, trade dress, copyrights, or other rights including, without limitation, the Plaintiffs' Mark, Plaintiffs' trade dress, and the Plaintiffs' Works, or any other marks, trade dress, photographs, or artwork that are confusing or substantially similar to the Plaintiffs' Mark, Plaintiffs' trade dress, and Plaintiffs' Works on or in connection with the manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Counterfeit Products;

- (5) using any false designation of origin or false description, or engaging in any action which is likely to cause confusion, cause mistake and/or to deceive members of the trade and/or the public as to the affiliation, connection or association of any product manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale or sold by Defaulting Defendants with Plaintiffs, and/or as to the origin, sponsorship or approval of any product manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale or sold by Defaulting Defendants and Defaulting Defendants' commercial activities by Plaintiffs;
- (6) 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"); and
- (7) 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.

² User Accounts are 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 Merchant Storefronts are 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.

B. IT IS FURTHER ORDERED that, pursuant to 15 U.S.C. § 1118 and 17 U.S.C. § 503 (b), the Defaulting Defendants must deliver up for destruction to Plaintiffs 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 the Defaulting Defendants that infringe any of Plaintiffs' trademarks, trade dress, copyrights or other rights including, without limitation, the Plaintiffs' Mark, Plaintiffs' trade dress, and/or the Plaintiffs' Works, or bear any marks, photographs, and/or artwork that are confusingly similar or substantially similar to the Plaintiffs' Mark, Plaintiffs' trade dress, and/or the Plaintiffs' Works.

C. IT IS FURTHER ORDERED that Third Party Service Providers⁴ and Financial Institutions⁵ are permanently enjoined and restrained from:

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

D. IT IS FURTHER ORDERED that the Third Party Service Providers and Financial Institutions shall be permanently restrained and enjoined from engaging in any of the following acts or omissions:

providing services to Defaulting Defendants, Defaulting Defendants' User Accounts and

⁴ Third Party Service Providers are any third-party providing services in connection with any Defaulting Defendant and/or any Defaulting 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.

⁵ Financial Institutions are any banks, financial institutions, credit card companies and payment processing agencies, such as PayPal, Inc. d/b/a paypal.com, and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of any Defaulting Defendant.

Defaulting Defendants' Merchant Storefronts, including, without limitation, continued operation of Defaulting Defendants' User Accounts and Merchant Storefronts which are connected in any way in 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, trade dress, and copyrights.

IV. Follow-Up Requests

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

(1) eBay is ordered to suspend any listing for a product that Plaintiffs assert is counterfeit, or infringes Plaintiffs' trademark, trade dress, copyright, and/or unfairly competes with the Plaintiffs' BRISTLY dog toothbrush (i.e., any seller is prevented from listing for sale under the identified eBay Item Number); and

(2) eBay is ordered to suspend any listing that was associated with a product already identified by prior Order of this Court in the present lawsuit to be counterfeit, infringing, or unfairly competing, as designated in the Schedule A third column under "eBay Item No." (i.e., any seller is prevented from listing for sale under the identified eBay Item Number);

(3) 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), 17 U.S.C. § 502 (a), and this Court's inherent equitable

powers to issue remedies ancillary to its authority to provide final relief, and given the difficulties Plaintiffs would have enforcing this Order, Defaulting Defendants' Assets from Defaulting Defendants' Financial Accounts that were and/or are attached and frozen or restrained pursuant to the Temporary Restraining Order and/or Preliminary Injunction Order, or which are attached and frozen or restrained pursuant to any future order entered by the Court in this Action (collectively, "Defaulting Defendants' Frozen Assets" and "Defaulting Defendants' Frozen Accounts"), are, to the extent that a given Defaulting Defendant's Frozen Assets equal the Defaulting Defendants' Individual Damages Award, hereby released and transferred to Plaintiffs as full satisfaction of the Defaulting Defendants' Individual Damages Award for that Defaulting Defendant. Those Defaulting Defendant's Frozen Assets shall be transferred to Plaintiffs by Financial Institution(s) through Plaintiffs' counsel within twenty (20) business days following service of this Default Judgment Order. Upon receipt by Plaintiffs' counsel of such Defaulting Defendant's Frozen Assets in full satisfaction of the Defaulting Defendants' Individual Damages Award, the Financial Institution(s) holding that Defaulting Defendant's Frozen Assets and Defaulting Defendants' Frozen Accounts may unfreeze that Defaulting Defendant's Frozen Assets and Defaulting Defendant's Frozen Accounts. To the extent that a Defaulting Defendant's Frozen Assets are less than the Defaulting Defendants' Individual Damages Award, that Defaulting Defendant's Frozen Assets are hereby released and transferred to Plaintiffs as partial satisfaction of the Defaulting Defendants' Individual Damages Award for that Defaulting Defendant and those Defaulting Defendant's Frozen Assets shall be transferred to Plaintiffs, by the Financial Institution(s), through Plaintiffs' counsel forthwith.

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 Plaintiffs would have enforcing this Order, the Court also hereby grants Plaintiffs' request for a post-judgment restraining order continuing the attachment of each Defaulting Defendant's Frozen Assets until Plaintiffs have recovered the full payment of the Defaulting Defendants' Individual Damages Award owed to it by that Defaulting Defendant under this Order, or until further order of this Court.

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 Plaintiffs would have enforcing this Order:

1. until Plaintiffs have recovered the full payment of the Defaulting Defendants' individual damages award owed to them by any Defaulting Defendant under this Order, in the event that Plaintiffs discover new and/or additional Defaulting Defendants' Assets (whether said assets are located in the U.S. or abroad) and/or Defaulting Defendants' Financial Accounts (whether said account is located in the U.S. or abroad) ("Defaulting Defendants' Additional Assets" and "Defaulting Defendants' Additional Financial Accounts," respectively), Plaintiffs shall have the ongoing authority to serve this Order on any Financial Institutions controlling or otherwise holding such Defaulting Defendants' Additional Assets and/or Defaulting Defendants' Additional Financial Accounts ("Financial Institutions Holding Defaulting Defendants' Additional Assets and/or Financial Accounts");⁶
2. upon notice of this Order, Financial Institutions Holding Defaulting Defendants'

⁶ This Order contemplates that investigation and/or discovery during judgment collection may reveal that Defaulting 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 Financial Institutions, once identified and provided with notice, shall be subject to the restraints, asset seizure and turn over in this Order.

Additional Assets and/or Financial Accounts shall immediately locate Defaulting Defendants' Additional Financial Accounts, attach and restrain such Defaulting Defendants' Additional Assets in Defaulting Defendants' Additional Financial Accounts from being secreted, concealed, transferred or disposed of or withdrawn; and

3. no later than after twenty (20) business days following the service of this Order on Financial Institutions Holding Defaulting Defendants' Additional Assets and/or Financial Accounts, Financial Institutions Holding Defaulting Defendants' Additional Assets and/or Financial Accounts shall transfer all Defaulting Defendants' Additional Assets to Plaintiffs as partial or full satisfaction of the Defaulting Defendants' Individual Damages Award, unless Defaulting Defendant has filed with this Court and served upon Plaintiffs' counsel a request that such Defaulting Defendants' Additional Assets be exempted from this Order; at the time the funds are transferred, Financial Institutions Holding Defaulting Defendants' Additional Assets and/or Financial Accounts shall provide to Plaintiffs a breakdown reflecting: the (i) total funds restrained in this matter per Defaulting Defendant; (ii) the total chargebacks, refunds, and/or transaction reversals deducted from each Defaulting Defendant's funds, restrained prior to release; and (iii) the total funds transferred per Defaulting Defendant to the Plaintiffs.

VI. Miscellaneous Relief

- A. Upon Plaintiffs' request, the Third Party Service Provider(s) or Financial Institution(s) shall disable and/or cease facilitating access to the Seller IDs, including deleting, and/or

suspending identified listings, and any other alias seller identification names being used to offer for sale and/or sell Infringing Products;

- B. The Plaintiffs 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 Defaulting Defendants in connection with the Defaulting Defendants' promotion, offering for sale, and/or sale of Counterfeit Products;
- C. Upon the Plaintiffs' 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 a Defaulting Defendant to comply with the terms of this Default Judgment Order shall be deemed contempt of Court, subjecting the Defaulting Defendant to contempt remedies to be determined by the Court, including fines and seizure of property;
- E. Interest from the date of this action was filed shall accrue at the legal rate pursuant to 28 U.S.C § 1961;
- F. The bond posted by Plaintiffs in the amount of \$5,000.00 is hereby ordered released by the Clerk;
- G. Plaintiffs shall serve the Defaulting Defendants with a copy of this Order in accordance with the Alternative Service Order; and

H. 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

Mark. R. Hornak
Chief United States District Judge

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

Defendant No.	Defendant/ eBay Seller ID	eBay Item No.
2	junmaioo-7	362491524324
3	xieji-52	383050819764
5	chensini2	163777846497
6	hanbi-57	143329672188
8	carmha_84	362738344333
9	mrsrespect	323794418886
10	treasures-of-rare	254299882645
11	family-store-online	392390249370
12	is_2863	362731337189
13	joetrib	163693407367