

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

OSPREY LLC,

Plaintiff,

v.

POOLWHALE, *et al.*,

Defendants.

Civil Action No.

FILED UNDER SEAL

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

Plaintiff is 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 Courts. Indeed, this Court and other Courts have entered such orders during the COVID-19 Pandemic Emergency. See Exhibits 4 - 7 (Courts operating under COVID-19 Emergency restrictions entered Orders, including Preliminary Injunction Orders after a show cause hearing was conducted by telephone or Zoom[®] conference only). Plaintiff requests judicial notice of the following example orders in other cases granting the relief sought in the present case:

Ex.	Case Name	Platform(s)	Date	Document	Bond Amt.
1	<i>Doggie Dental Inc., et al. v. Ahui</i> , No. 19-1627 (W.D. Pa.) (Hornak,J.) <i>related to</i> Nos. 19-cv-1283, 19-cv-1282, 19-cv-746, and 19-cv-682	Amazon.com; related cases include ebay.com	12/26/19 12/26/19 02/11/20	TRO Order Granting Motion Authorizing Alternate Service PI	\$5,000
2	<i>Gorge Designs v Accessmall, et al.</i> , No 19-1454 (W.D. Pa.)(Stickman, J)	Aliexpress.com, eBay.com	11/12/19 11/12/19 12/20/19	TRO Order Granting Motion Authorizing Alternative Service PI	\$5,000
3	<i>Airigan Solutions, LLC v. Abagail, et al.</i> , (W.D. Pa.)(Fischer, J) <i>related to</i> Nos. 20-cv-284, 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)	\$5,000

Ex.	Case Name	Platform(s)	Date	Document	Bond Amt.
4	<i>Talisman Designs, LLC v. Dasani, et al.</i> , No. 20-1084 (W.D. Pa.)(Schwab, J)	AliExpress.com, Amazon.com, eBay.com, Wish.com	7/21/20 7/21/20 8/3/20	TRO Order Granting Motion Authorizing Alternate Service PI (after show cause hearing via Government Zoom [®] conferencing because of COVID-19 restrictions)	\$5,000 (after text order reduced)
5	<i>Ffrench v. The Partnerships and Unincorporated Associations Identified on Schedule "A"</i> , No. 20-cv-03178 (N.D. Ill.) (Kennelly, J.)	Amazon, eBay, AliExpress, Wish, DHGate	6/1/20 6/24/20	TRO and Order Granting Motion Authorizing Alternate Service (p. 10 of TRO) PI (after show cause hearing conducted by telephone conference because of COVID-19 restrictions)	\$10,000

Ex.	Case Name	Platform(s)	Date	Document	Bond Amt.
6	<i>Apple Corps Ltd, et al v Merchclan.com, et al.,</i> " No. 20-cv- 60982 (S.D. Fl.) (Dimitrouleas, J)	Amazon.com, dhgate.com, Wish.com	5/21/20 5/21/20 6/12/20	TRO Order Granting Motion Authorizing Alternate Service PI	\$10,000
7	<i>Smart Study Co., Ltd. v. A Pleasant Trip Store,</i> No. 20-cv-1733 (S.D. NY)(Vyskocil, J)	Alibaba.com, AliExpress.com	2/27/20 5/7/20	TRO and Order Granting Motion Authorizing Alternate Service (p. 10 of TRO) PI (after show cause hearing conducted by telephone conference because of COVID-19 restrictions)	\$5,000

Respectfully submitted,

Dated: August 24, 2020

/s/ Stanley D. Ference III

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EXHIBIT 1

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

DOGGIE DENTAL INC., *et al.*,

Plaintiffs,

v.

AHUI, *et al.*,

Defendants.

Civil Action No. 19-01627

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**

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 35 U.S.C. § 283, 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 Patent Act. 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. The Court finds that Plaintiffs, Doggie Dental, Inc. (“Doggie Dental”) and Peter Dertsakyan (“Dertsakyan”), are likely to prevail on their Patent Act claim 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 (“Plaintiffs’ Product”) 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[®] (“Plaintiffs’ Mark”) that safely and easily permits dogs to brush their own teeth removing plaque and tarter.

3. 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.”

4. 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.”

5. Dertsakyan is the owner of U.S. copyright registration VA 2-122-455 directed to various photographs related to the BRISTLY[®] dog toothbrush (the “Plaintiffs’ Works”). Dertsakyan is also the owner of unregistered copyrights related to the Plaintiffs’ Product.

6. 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.

7. Dertsakyan is the owner of U.S. Patent No. 10477838 for “Pet chew toy for dental self-cleaning by domestic pets,” (Plaintiffs’ Patent” or “the ‘838 Patent”).

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 that Plaintiffs have determined are not genuine BRISTLY® products and infringe at least one claim of the ‘838 patent.

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 offering for sale products and infringe upon at least one claim of the Plaintiffs’ Patent (“Infringing Products”).

10. 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 offering for sale and sale of Infringing Products 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.

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 Plaintiffs, their reputation, and their goodwill as a manufacturer and distributor of quality products, if such relief is not issued.

12. 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.

13. Under Pennsylvania law this Court may issue a prejudgment asset restraint where Plaintiffs' complaint asserts a claim for money damages. 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.

14. 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' Patent, distribution, marketing, advertising, offering for sale, or sale of any Infringing Products; and (b) shipping, delivering, holding for sale, transferring or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner products that infringe upon at least one claim of the Plaintiff's Patent;
- (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");

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

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.

- (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 offering for sale the Infringing Products 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 been 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 Amazon Services LLC d/b/a Amazon.com ("Amazon")

(“Third Party Service Provider(s)”), Amazon Payments, Inc. d/b/a Pay.amazon.com (“Amazon Pay”) (“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

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.

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 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 on at least one claim of the Plaintiffs' Patent;

(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 8th day of JANUARY, 2020 at 11:30 p.m. EST 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.**

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 JANUARY 3, 2020 Plaintiffs shall file any Reply papers on or before JANUARY 7, 2020 at Noon, 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' counsel shall file notice of such confirmation on the docket under seal without the need for redaction within twenty-four (24) hours of the receipt of confirmation. Additionally, after receiving the aforementioned confirmation regarding the restraint of funds, 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:

- (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

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 (VI Sup. Ct. April 17, 2015); *Corrigan Dispatch Co. v. Casa Guzman, S.A.*, 569 F.2d 300, 302 (5th Cir. 1978).

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' Patent.

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.

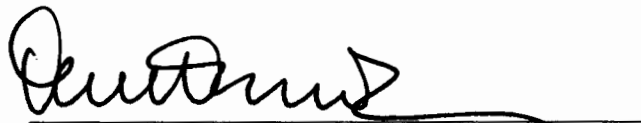
VI. Summons

IT IS FURTHER ORDERED that the Clerk of the Court shall issue a single original summons in the name of "AHUI and all other Defendants identified in the Complaint" that will apply to all Defendants. Plaintiffs shall give notice (via electronic means) of this Order, all other Orders entered at anytime in this case, and all pleadings and papers in this action to all entities set out in Paragraph I(A)(7) above, and shall give notice by authorized service of this Order, all other Orders, and all papers in this case to all Defendants within twenty-four (24) hours of notice that all relevant accounts have been frozen.

SO ORDERED.

ENTERED this 26th day of December, 2019, at 1:45 p.m. EST
Pittsburgh, Pennsylvania

Unless otherwise extended, this Restraining Order expires at Noon EST, 1/9, 2020


MARK R. HORNAK
CHIEF UNITED STATES DISTRICT JUDGE

Schedule "A"

Defendants With Store Name and Seller ID

Def. No.	Defendant/ Amazon Store Name	Amazon Seller ID	Amazon ASIN
1	Ahui	A3U2CPCPJ050N8	B07TX92ZNQ
2	Ailivehome	A2Q37ZZMRPWEUV	B07JH3TYV8
3	All Prime LLC	A1NRBK5OKTLIFR	B07XLP62VR
4	Allmall888	A25OCV4VBOQUKF	B07RJWXCLF
5	ANVS Tech	A8LT6FXIOGDFT	B07ML5G2WQ
6	AogeUS	A3MWRF119YSYCT	B07VWVJZZT
7	Artker	A1LTFO55JILCQ2	B07XMLYNKX
8	Atta Boy	A2WOOIJCDNZIVD	B07QKQ6P6T
9	Augama	A2A5F1J2BTE5O5	B07S4D657W
10	Auter USA	A16DKW394FVK2S	B07X7RHPMJ
11	Autozity	ATVDEQ3O2D7PY	B07ZHDXT5K
12	Axiaoxiao	A3SRZL3PDSSGPU	B07V4273FX
13	Aya Chic	AV58HO4Y4YG5	B07LCJJGG9
14	Ayebeau	A2GOBGX3PC0YNJ	B07TS4GTND
15	Babaer	A2X8047YTWB3QG	B07XX9KQ86
16	Bettersounds	ARCWMCB8R9G28	B07RNP5Q64
17	Bibolin	A1596LJ1S5W3TG	B07LH5JDX4
18	Big Desert	A2CQ3M4XU1WT8J	B07PDL8267
19	Boafig	A33GCS1BVSIGL2	B07PXR9TH4
20	Botaniqueessentials	A1HG09WM1GIS7A	B07QK33ZZN
21	BRHHO	A1PBBFMFMOEZ72	B07S4FY7HM

Def. No.	Defendant/ Amazon Store Name	Amazon Seller ID	Amazon ASIN
22	BringerPet	A2R8LQFQXAS02Q	B07WK75VB8
23	Broshooo	A3DZSMYMI1CGXN	B07PVKB6SQ
24	BUOCEANS-SKY	A1ON3DR30UNJHY	B07XNYDDC1
25	BUYBST	A1ZLNBDINT4IZU	B07Q5G1WZ2
26	Bzonsmart Direct	AHONMT16XCO00	B07PLQK56B
27	Chaomike	A1MUD9GV35XJN5	B07QYGMGZ5
28	CheerMaker	A1FJAUSPRZ91OI	B07QGS8GZQ
29	Cyprapid	A2H9A2I79SE359	B07QPLPMV6
30	Cypropid Direct	A2L3N86K9OOJ00	B07Q2S72S1
31	Dawginme	A6MFQINS9TKP3	B07TNF9D8N
32	DIFFLIFE Inc	A14AEQBL1VFTWB	B07P4199GW
33	Doubletrain	A2BZJ01X7OFC	B07QY73XV3
34	DR Bucks	A331COZNMVERF	B07V5PYY7R
35	Dreamvasion	A28KT5WWRGE7GR	B07QLQS6GF
36	Dubybloom	A2ZULWH0LC4SA6	B07TP56PM9
37	DXH2019	A3M8MU0XHHRI3U	B07YXS75QK
38	Earthly Hand	A3HKUNZ7QQ4AD8	B07PN324L3
39	Elyvate	A1IPX60SQL9IEQ	B07M76PXTD
40	Emgoods	A2LPDVL9EG7Y8D	B07SKG3D13
41	EMITEC	A285W476ZH7S3L	B07MKGZCDS
42	Engerwall	A13Z6ZJ65GO471	B07QLRYY61
43	EVENTS	A3NPMCN3ASH8M4	B07V7B7LGR
44	Everyday Joy	A32042ABW1EBA8	B07NWNFYVM
45	Fairwin-Direct	A1GBD5L13AYNED	B081JFX4C6

Def. No.	Defendant/ Amazon Store Name	Amazon Seller ID	Amazon ASIN
46	Fanslong	A34N1Y0D6522AJ	B07P66FHST
47	FFHPET	A2L3DPHTO3K7G0	B07M633DGX
48	FG [FamilyGroup]	AH6POBJ04HF6W	B07L2GNRNT
49	FlyingStork	A2EJVGYMF7UK0J	B07V4GHY2P
50	FULNEW	A2V NK3XIPF7PLU	B07MRJ2RCR
51	FunCo	AECMRGNZ74088	B07MF1TNSW
52	Gardencolo	A24TIWOB6Y52IL	B07QBLRLSC
53	Geluck&Mohary Global US Online	A12SEMS6M015RN	B07L8X9F6T
54	Grasp It	A2IO9PWGSATNPH	B07YYZ8JYD B07RN4QCR9
55	Hanheng	A2UPRT91JV93PY	B07R5LLFH2
56	HAO MA LTD	A3EF4QA3MVKSFL	B07PJGZMGM
57	HAPPY MARIE	A20ZIABWRFKMA9	B07QRGJXGW
58	Heacra	AGVE3N6Y5CYPB	B07NBDLMM2
59	HETOO	A3SCDVBQWCDYIU	B07QYDVFXL B07TCGJSSP
60	Hinrylife	A1KLHJR9WIMQXT	B07PPD7D7P
61	Holdoor	A1BQ1S3TWD05A7	B07TVSNSNG
62	Honestptner Direct	A3740H0TCLDQY9	B07SJZ2YDT
63	Hongsound	A3PTAN2I58BT4Z	B07QYKJ8VZ
64	HULUN	A2XBW8WTZGI7TK	B07M78ZKTV
65	I-pure items	A2IKTKEPMEW9NQ	B07S9YBB4S
66	Itemsandgoods323	A113GJ49XJ0SIC	B07X2D5RHB
67	JALLAB	A3FQ5H4F6Hmw2Y	B07MJQ2T34
68	JerJen Business Solutions	A2PQ2V6AX51B8D	B07MQJHPPL

Def. No.	Defendant/ Amazon Store Name	Amazon Seller ID	Amazon ASIN
69	JiaJiaLove	AGDDEEE9Q9FWQ	B07HHYVJZJ
70	Jiasber	A15C2T7YZ8QIDS	B07ZYHJ3M9
71	JINGSHENG TEC	AB11VYRIO8TE	B07TXNKXTL
72	Jpettie	A2YGY78UR8AVK6	B07MF2TKR2
73	Juhang	A2TY3CN5B4MKGE	B07M8PMY4V
74	Ka June	A6FLM7VSPKANY	B07RC71CRL
75	KAMNIA	A34XEIJ0FYM5OX	B07ZG2G5WV
76	KELAD	A2MZV8VHYSK1OY	B07XWP28FF
77	KEWANG	A74N1N376UNJB	B07QL71MGN
78	Kimcon	AO9O9WLJQ0VVO	B07SPKJZP4
79	KJ-bunny-US	ALB5NY1WH6KJV	B07QNZNC4N
80	KNNSRE	AAA6O4A42RACT	B07W3BK77P
81	Kutrer	A2FT22UGQSB DG3	B07QB3SSBT
82	LAVYU SHOP	A1HKBCWJ4EX7YI	B07YTS1BVR
83	LEOHOM Direct	ASM1G21RKWQVG	B07TDPTLD8
84	LEVETT STORE	A1YQCLYW752GQI	B07JM387ZJ
85	Lingweida2018	A1BED976EGRA99	B07Y5ZXTRF
86	Linktor	A1ZVD45MDQVSMM	B07RHSZJSV
87	LISTOS'	A6HG3VO4UEWN9	B07TZM7B34
88	LIZFZFLI	A236T2XB36SL7	B07TQSWJ31
89	LMP-PRO	A11O52YR611ZR9	B07QKFXQ7T
90	LOMEVE	A352GYI24QCF3Z	B07STV2VTS
91	Lou Yan	A2YRJYJTFGTKUM	B07X41WNT9
92	Lovac	A3KWOYXC59CG8P	B07MH4N7WG

Def. No.	Defendant/ Amazon Store Name	Amazon Seller ID	Amazon ASIN
93	Magnoloran	A2TJM3J6VRTRAR	B07PN2MQKD
94	Manfore	A3U8N0MA47KIZ7	B07QWR6VDM
95	Mansgoods	A3LGEKSF23N94S	B07VJ5JDMY
96	Marcek	AWDL348ZQ8N4Q	B07RB6R8Y5
97	Mini US	A274PS7EH4STWC	B07R8BSLXH
98	MIRYUM	A2D0P7B0LUIPOK	B07M66D9D9
99	Mofei	A2PQ8GKZW MX6XO	B07M888BGT
100	Moonia No.1 Store	A1NT1LLAH3SCVB	B07QR1V93V
101	Mosbug-Store	AFVD5UBZ7I22I	B07HH3N3L6
102	MOZOOSON DIRECT	A24C9RK7XFZ5LV	B07PQRWYPG
103	MS hong	A1MQ17GQ2699WZ	B07QQBSKZJ
104	Mulan&PH Factory	A2SU0GAVJ9OA9J	B07Y8GN6FZ
105	NEWA TRADING	A10I7J9V9M8UOX	B07R1JDQ7Q
106	NiceKrud	A14NSFVD7ZKOLB	B07SZH3KL3
107	Niuworld	A3DOF2HOZYWW1W	B07QYGC471
108	OKA Direct	A1ZRM0A1AY8AC2	B07XC7QZSL
109	Okistore	A2FKVCM8E90CN7	B07S8QV59T
110	Olrom	AYYYCQXUD1A4U	B07QPCHLJB
111	OUTUNG	AS7QBW9ESCL9F	B07P14HWQR
112	PAHOO LLC	A1PBK72SX0L8IP	B07QXQHMLF
113	PauliaTT	A3K8K2UU71WIT9	B07QX1XL8R
114	PG.Kinwang	A2AJ6IHT4WO3W7	B07MMBHGW1
115	Pihappy	A1PV795YHMBJGI	B07Q25CLY9
116	PINAOL	A1JK4GXUMS499Q	B07RWM1SD8

Def. No.	Defendant/ Amazon Store Name	Amazon Seller ID	Amazon ASIN
117	Popiy	A1Q9OSIFTKPHWR	B07WMNVQHQ
118	Positive Vibes Express	AGEUY7G2B7SJ8	B07MW7HLNB
119	Pounce n Play Shop	A2ZULWH0LC4SA6	B07SD1T9C5
120	PrestigeWD	A1IWUYFQ8VPBJA	B07QMC1D5Z
121	Price-Pop	A2W7S7E1K9VJ4Q	B07QCJS7B
122	PTREWOD	ABNG47SIUQFAZ	B07QLJX436
123	Rikounan	A2VDQPJKSUWURR	B07T2468K2
124	Roce Today	A2HDQ4UQ1J0OF5	B07N76GPHQ
125	Rolkstone	A3QQ5K8GTSXFUD	B07QD5BPW7
126	Shaks goods	A27ZPTUC3E5HSF	B07QZX6C1T
127	Shandongxiaogouchongwuyongpinyouxiangongsi	A1G9JETKBXHNNN	B07TLTB8C5
128	SHINCO	A7BAKTUTEHM2O	B07R1HSP9F
129	SIRAY US	A3FKKDXF1C4S2J	B07ZWVZPWH
130	SmileToSell	AZ132CXWZM3HD	B07X2D5RHB
131	ST-Transfer	A2N3YB5UINFLFN	B07QDXK6PJ
132	Tainni	A2E59C3851JHM0	B07P6M37JT
133	Telvo Zan	A2RC7Q07GD3RH	B07V9L79TM
134	TEVOLT	A299ZWGKWWZRGV	B07Q8FK62L
135	Timall	A3KI1U01FJ1NRZ	B07PM1W9YR
136	Timeless Ecommerce LLC	A3DJS3V27B8IVH	B07MNB9WXV
137	Turuistore	A27R4FX0T9XSJO	B07TG2BMR1
138	Typscoltd	A1MCEOOSW27MAR	B07X3ZRDHC
139	UKSIDE	A10KV9KRQ12CA7	B07R24KYG7
140	USDev	AUXBS4D5MP7HI	B07Q4C52MB

Def. No.	Defendant/ Amazon Store Name	Amazon Seller ID	Amazon ASIN
141	Vndaxau	A29LGGMEB2YKCZ	B07PHFM5XK
142	WiseDare	A333C8NL57A6TA	B07PPHP8GK
143	Wisedom	A2PWVG57ETOCZH	B07JKSV17D B07JKLFMZK
144	Wittystore	A26GPK5EBKIN24	B07TMB297H
145	Xuanbon	A35P6T4SL4VZQE	B07QSBWMF1
146	Yaloon	AHSAI3V6SYIB3	B07VWS6VBJ
147	Yiruichepin	A2A5VAZIS1BIUO	B07P9TFV4X
148	Yiwu Lanjie Trading Co., Ltd	A6LZWYNZ7QGCD	B07RJTXGJ3
149	Yocolostrap	A2GL7JZEGNR5TQ	B07WSMJTG9
150	YouZeus	A1CMENCU6TZLEC	B07R28DTJD
151	3rdchanceinc	A388QZ7SQ71TRM	B074MR6GX5

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DOGGIE DENTAL INC., *et al.*,

Plaintiffs,

v.

AHUI, *et al.*,

Defendants.

CIVIL ACTION NO. 19-01627

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 26TH day of December, 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),

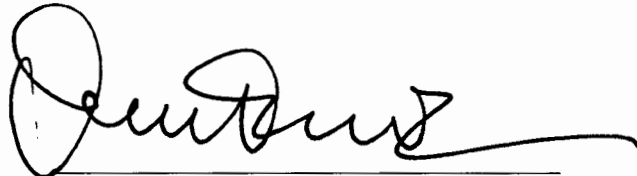
IT IS HEREBY ORDERED that said Motion is GRANTED;

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,

AND

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.



MARK R. HORNAK
CHIEF UNITED STATES DISTRICT JUDGE

cc Stanley D. Ference III, Esq.
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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.

AHUI, *et al.*,

Defendants.

Civil Action No.

19-1627

(Chief Judge Mark R. Hornak)

PRELIMINARY INJUNCTION ORDER

WHEREAS, on December 17, 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 Amazon Services LLC d/b/a Amazon.com (“Amazon”) (“Third Party Service Provider(s)”), Amazon Payments, Inc. d/b/a Pay.amazon.com (“Amazon Pay”) (“Financial Institution(s)”) (Collectively, “Amazon”), 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 one or more of the claims of U.S. Patent No. 10,477,838 (“Plaintiffs’ Patent” or “the ‘838 patent”) by offering for sale, selling, and distributing knock-off versions of Plaintiffs’ BRISTLY® dog toothbrush (“Infringing Products”). 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.

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. 9);

WHEREAS on December 26, 2019, at 1:45 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”**, and Amazon (“TRO”) (ECF No. 17); and

(B) an Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3) (ECF No. 19);

WHEREAS, on January 6, 2020, and January 23, 2020, upon Plaintiffs’ Motion, the Court extended the temporary restraining order and ordered the Defendants to appear on February 11, 2020 at 3:15 p.m., and show cause why a preliminary injunction should not be entered (ECF Nos. 26, 44);

WHEREAS, on February 11, 2020 at 3:15 p.m., Plaintiffs 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 December 26, 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 35 U.S.C. § 283, Federal Rules of Civil Procedure 64 and 65, and The All Writs Act, 28 U.S.C. § 1651(a).

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' Patent, distribution, marketing, advertising, offering for sale, or sale of any Infringing Products; and (b) shipping, delivering, holding for sale, transferring or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner products that infringe upon at least one claim of the Plaintiff's Patent;
- (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;

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

- (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 offering for sale the Infringing Products 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 been 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 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.

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 an 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 on at least one claim of the Plaintiffs' Patent;

(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 and the Alternative Service Order (ECF No. 19) 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 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' 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 Eleventh day of February, 2020, at 3:30 p.m. EST
Pittsburgh, Pennsylvania

A handwritten signature in black ink, appearing to read 'Mark R. Hornak', written over a horizontal line.

MARK R. HORNAK
CHIEF UNITED STATES DISTRICT JUDGE

Schedule “A”

Defendants With Store Name and Seller ID

Def. No.	Defendant/ Amazon Store Name	Amazon Seller ID	Amazon ASIN
2	Ailivehome	A2Q37ZZMRPWEUV	B07JH3TYV8
4	Allmall888	A25OCV4VBOQUKF	B07RJWXCLF
5	ANVS Tech	A8LT6FXIOGDFT	B07ML5G2WQ
6	AogeUS	A3MWRF119YSYCT	B07VWVJZZT
7	Artker	A1LTFO55JILCQ2	B07XMLYNKX
8	Atta Boy	A2WOOIJCDNZIVD	B07QKQ6P6T
9	Augama	A2A5F1J2BTE5O5	B07S4D657W
10	Auter USA	A16DKW394FVK2S	B07X7RHPMJ
11	Autozity	ATVDEQ3O2D7PY	B07ZHDXT5K
12	Axiaoxiao	A3SRZL3PDSSGPU	B07V4273FX
13	Aya Chic	AV58HO4Y4YG5	B07LCJJGG9
14	Ayebeau	A2GOBGX3PC0YNJ	B07TS4GTND
15	Babaer	A2X8047YTWB3QG	B07XX9KQ86
16	Bettersounds	ARCWMCB8R9G28	B07RNP5Q64
17	Bibolin	A1596LJ1S5W3TG	B07LH5JDX4
18	Big Desert	A2CQ3M4XU1WT8J	B07PDL8267
19	Boafig	A33GCS1BVSIGL2	B07PXR9TH4
21	BRHHO	A1PBBFMFMOEZ72	B07S4FY7HM
22	BringerPet	A2R8LQFQXAS02Q	B07WK75VB8

Def. No.	Defendant/ Amazon Store Name	Amazon Seller ID	Amazon ASIN
23	Broshooo	A3DZSMYMI1CGXN	B07PVKB6SQ
24	BUOCEANS-SKY	A1ON3DR30UNJHY	B07XNYDDC1
25	BUYBST	A1ZLNBDINT4IZU	B07Q5G1WZ2
26	Bzonsmart Direct	AHONMT16XCO00	B07PLQK56B
27	Chaomike	A1MUD9GV35XJN5	B07QYGMGZ5
28	CheerMaker	A1FJAUSPRZ91OI	B07QGS8GZQ
29	Cyprapid	A2H9A2I79SE359	B07QPLPMV6
30	Cypropid Direct	A2L3N86K9OOJ00	B07Q2S72S1
31	Dawginme	A6MFQINS9TKP3	B07TNF9D8N
32	DIFFLIFE Inc	A14AEQBL1VFTWB	B07P4199GW
33	Doubletrain	A2BZJ01X7OFC	B07QY73XV3
34	DR Bucks	A331COZNMVERF	B07V5PYY7R
35	Dreamvasion	A28KT5WWRGE7GR	B07QLQS6GF
36	Dubybloom	A2ZULWH0LC4SA6	B07TP56PM9
37	DXH2019	A3M8MU0XHHRI3U	B07YXS75QK
38	Earthly Hand	A3HKUNZ7QQ4AD8	B07PN324L3
39	Elyvate	A1IPX60SQL9IEQ	B07M76PXTD
40	Emgoods	A2LPDVL9EG7Y8D	B07SKG3D13
41	EMITEC	A285W476ZH7S3L	B07MKGZCDS
42	Engerwall	A13Z6ZJ65GO471	B07QLRYY61
43	EVENTS	A3NPMCN3ASH8M4	B07V7B7LGR
44	Everyday Joy	A32042ABW1EBA8	B07NWNFYFVM
45	Fairwin-Direct	A1GBD5L13AYNED	B081JFX4C6
46	Fanslong	A34N1Y0D6522AJ	B07P66FHST

Def. No.	Defendant/ Amazon Store Name	Amazon Seller ID	Amazon ASIN
48	FG [FamilyGroup]	AH6POBJ04HF6W	B07L2GNRNT
50	FULNEW	A2V NK3XIPF7PLU	B07MRJ2RCR
51	FunCo	AECMRGNZ74088	B07MF1TNSW
52	Gardencolo	A24TIWOB6Y52IL	B07QBLRLSC
53	Geluck&Mohary Global US Online	A12SEMS6M015RN	B07L8X9F6T
54	Grasp It	A2IO9PWGSATNPH	B07YYZ8JYD B07RN4QCR9
55	Hanheng	A2UPRT91JV93PY	B07R5LLFH2
56	HAO MA LTD	A3EF4QA3MVK SFL	B07PJGZMGM
57	HAPPY MARIE	A20ZIABWRFKMA9	B07QRGJXGW
58	Heacra	AGVE3N6Y5CYPB	B07NBDLMM2
59	HETOO	A3SCDVBQWCDYIU	B07QYDVFXL B07TCGJSSP
60	Hinrylife	A1KLHJR9WIMQXT	B07PPD7D7P
61	Holdoor	A1BQ1S3TWD05A7	B07TVSNSNG
62	Honestptner Direct	A3740H0TCLDQY9	B07SJZ2YDT
63	Hongsound	A3PTAN2I58BT4Z	B07QYKJ8VZ
64	HULUN	A2XBW8WTZGI7TK	B07M78ZKTV
65	I-pure items	A2IKTKEPMEW9NQ	B07S9YBB4S
67	JALLAB	A3FQ5H4F6H MW2Y	B07MJQ2T34
68	JerJen Business Solutions	A2PQ2V6AX51B8D	B07MQJHPPL
69	JiaJiaLove	AGDDEEE9Q9FWQ	B07HHYVJZJ
70	Jiasber	A15C2T7YZ8QIDS	B07ZYHJ3M9
71	JINGSHENG TEC	AB11VYRIO8TE	B07TXNKXTL
72	Jpettie	A2YGY78UR8AVK6	B07MF2TKR2

Def. No.	Defendant/ Amazon Store Name	Amazon Seller ID	Amazon ASIN
73	Juhang	A2TY3CN5B4MKGE	B07M8PMY4V
74	Ka June	A6FLM7VSPKANY	B07RC71CRL
75	KAMNIA	A34XEIJ0FYM5OX	B07ZG2G5WV
76	KELAD	A2MZV8VHYSK1OY	B07XWP28FF
77	KEWANG	A74N1N376UNJB	B07QL71MGN
78	Kimcon	AO9O9WLJQ0VVO	B07SPKJZP4
80	KNNSRE	AAA6O4A42RACT	B07W3BK77P
81	Kutrer	A2FT22UGQSBGD3	B07QB3SSBT
82	LAVYU SHOP	A1HKBCWJ4EX7YI	B07YTS1BVR
83	LEOHOM Direct	ASM1G21RKWQVG	B07TDPTLD8
84	LEVETT STORE	A1YQCLYW752GQI	B07JM387ZJ
85	Lingweida2018	A1BED976EGRA99	B07Y5ZXTRF
86	Linktor	A1ZVD45MDQVSMM	B07RHSZJSV
87	LISTOS'	A6HG3VO4UEWN9	B07TZM7B34
88	LIZFZFLI	A236T2XB36SL7	B07TQSWJ31
89	LMP-PRO	A1IO52YR61IZR9	B07QKFXQ7T
91	Lou Yan	A2YRJYJTFGTKUM	B07X41WNT9
93	Magnoloran	A2TJM3J6VRTRAR	B07PN2MQKD
94	Manfore	A3U8N0MA47KIZ7	B07QWR6VDM
95	Mansgoods	A3LGEKSF23N94S	B07VJ5JDMY
96	Marcek	AWDL348ZQ8N4Q	B07RB6R8Y5
97	Mini US	A274PS7EH4STWC	B07R8BSLXH
98	MIRYUM	A2D0P7B0LUIPOK	B07M66D9D9
99	Mofei	A2PQ8GKZW6XO	B07M888BGT

Def. No.	Defendant/ Amazon Store Name	Amazon Seller ID	Amazon ASIN
100	Moonia No.1 Store	A1NT1LLAH3SCVB	B07QR1V93V
101	Mosbug-Store	AFVD5UBZ7I22I	B07HH3N3L6
102	MOZOOSON DIRECT	A24C9RK7XFZ5LV	B07PQRWYPG
103	MS hong	A1MQ17GQ2699WZ	B07QQBSKZJ
104	Mulan&PH Factory	A2SU0GAVJ9OA9J	B07Y8GN6FZ
105	NEWA TRADING	A10I7J9V9M8UOX	B07R1JDQ7Q
107	Niuworld	A3DOF2HOZYWW1W	B07QYGC471
108	OKA Direct	A1ZRM0A1AY8AC2	B07XC7QZSL
109	Okistore	A2FKVCM8E90CN7	B07S8QV59T
110	Olrom	AYYYCQXUD1A4U	B07QPCHLJB
111	OUTUNG	AS7QBW9ESCL9F	B07P14HWQR
112	PAHOO LLC	A1PBK72SX0L8IP	B07QXQHMLF
113	PauliaTT	A3K8K2UU71WIT9	B07QX1XL8R
114	PG.Kinwang	A2AJ6IHT4WO3W7	B07MMBHGW1
115	Pihappy	A1PV795YHMBJGI	B07Q25CLY9
116	PINAOL	A1JK4GXUMS499Q	B07RWM1SD8
117	Popiy	A1Q9OSIFTKPHWR	B07WMNVQHQ
118	Positive Vibes Express	AGEUY7G2B7SJ8	B07MW7HLNB
119	Pounce n Play Shop	A2ZULWH0LC4SA6	B07SD1T9C5
120	PrestigeWD	A1IWUYFQ8VPBJA	B07QMC1D5Z
121	Price-Pop	A2W7S7E1K9VJ4Q	B07QCJJS7B
122	PTREWOD	ABNG47SIUQFAZ	B07QLJX436
123	Rikounan	A2VDQPJKSUWURR	B07T2468K2
124	Roce Today	A2HDQ4UQ1J0OF5	B07N76GPHQ

Def. No.	Defendant/ Amazon Store Name	Amazon Seller ID	Amazon ASIN
125	Rolkstone	A3QQ5K8GTSXFUD	B07QD5BPW7
126	Shaks goods	A27ZPTUC3E5HSF	B07QZX6C1T
127	Shandongxiaogouchongwuyongpinyouxiangongsi	A1G9JETKBXHNNN	B07TLTB8C5
128	SHINCO	A7BAKTUTEHM2O	B07R1HSP9F
129	SIRAY US	A3FKKDXF1C4S2J	B07ZWVZPWH
130	SmileToSell	AZ132CXWZM3HD	B07X2D5RHB
131	ST-Transfer	A2N3YB5UINFLFN	B07QDXK6PJ
132	Tainni	A2E59C3851JHM0	B07P6M37JT
133	Telvo Zan	A2RC7Q07GD3RH	B07V9L79TM
135	Timall	A3KI1U01FJ1NRZ	B07PM1W9YR
136	Timeless Ecommerce LLC	A3DJS3V27B8IVH	B07MNB9WXV
137	Turuistore	A27R4FX0T9XSJO	B07TG2BMR1
138	Typscoltd	A1MCEOOSW27MAR	B07X3ZRDHC
139	UKSIDE	A10KV9KRQ12CA7	B07R24KYG7
140	USDev	AUXBS4D5MP7HI	B07Q4C52MB
141	Vndaxau	A29LGGMEB2YKCZ	B07PHFM5XK
142	WiseDare	A333C8NL57A6TA	B07PPHP8GK
143	Wisedom	A2PWVG57ETOCZH	B07JKSV17D B07JKLFMZ
145	Xuanbon	A35P6T4SL4VZQE	B07QSBWMF1
146	Yaloon	AHSAI3V6SYIB3	B07VWS6VBJ
147	Yiruichepin	A2A5VAZIS1BIUO	B07P9TFV4X
148	Yiwu Lanjie Trading Co., Ltd	A6LZWYNZ7QGCD	B07RJTXGJ3
149	Yocolostrap	A2GL7JZEGNR5TQ	B07WSMJTG9

Def. No.	Defendant/ Amazon Store Name	Amazon Seller ID	Amazon ASIN
150	YouZeus	A1CMENCU6TZLEC	B07R28DTJD
151	3rdchanceinc	A388QZ7SQ71TRM	B074MR6GX5

EXHIBIT 2

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

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 Gorge Design Group, LLC, and Kirby Erdely move *ex parte* pursuant to 15 U.S.C. § 116, 15 U.S.C. § 283, 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. § 1125(a), the Patent Act, 15 U.S.C. § 281, 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, Gorge Design Group, LLC, (“Gorge Design Group”) and Kirby Erdely (“Erdely”), are likely to prevail on their Lanham Act claims, Patent claims, and related state law claims at trial.

2. David J. Brown, invented the Orange Screw ground anchor (the “Ultimate Ground Anchor”) and Kirby Erdely, David J. Brown’s son-in-law, is the owner of the patent related thereto; Gorge Design Group, LLC and Kirby Erdely are the owners of all the intellectual property related thereto. They are a family-owned business and the named Plaintiffs in this lawsuit. Erdely brought his father-in law’s invention to market, and now, with Gorge Design, sell the unique and revolutionary product under the common law trademark ULTIMATE GROUND ANCHOR (“Plaintiffs’ Mark”) that is the most effective ground anchor ever made (“Plaintiffs’ Product”). The Plaintiffs’ Product is made of 100% recycled materials and manufactured in the U.S.A. The Plaintiffs’ Product will secure pets; anchor RV awnings; hold tarps over boats, ATVs and firewood; as well as ensure tents and sunshades stay put

3. Plaintiffs have gained significant common law trademark and other rights in Plaintiffs’ Mark, through use, advertising, and promotion.

4. Plaintiffs are the owners of various published photographs, videos, artwork, creative text and product instructions appearing on kickstarter.com and orangescrew.com. (“Plaintiffs’ Works”).

5. In addition to their common law trademark rights in Plaintiff’s Mark, Kirby Erdely is the owner of U.S. Patent No. 7309198 for “Re-useable threaded tie downs” (“the ‘198 Patent”).

6. 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 Plaintiff's Mark, Plaintiffs' Works and/or used Plaintiffs' Patent without authorization and Plaintiffs have determined the products that each Defendant is offering for sale are not genuine products.

7. 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' Mark and/or Plaintiffs' Works and/or Infringing one or more claims of Plaintiffs' Patent without authorization and the products that each Defendant is offering for sale are not genuine products.

8. 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' Mark and Plaintiffs' Works, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), that at least one claim of the '198 Patent has been infringed, and prevailing on their related state law claims.

9. Plaintiffs, as well as consumers, 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' Mark, Plaintiffs' Works, and infringement of at least one claim of the '198 Patent 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.

10. 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.

11. 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.

12. 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, 15 U.S.C. § 1117(a)(1), 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.

13. 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' 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;
- (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 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;

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.

- (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 been 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;³
- (8) upon receipt of notice of this Order, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms,

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 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.

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 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 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. 9B on the 26th day of Nov, 2019 at 9:30 a m __.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.**

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 11-22, 2019. Plaintiffs shall file any Reply papers on or before 11-25, 2019.

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.

III. 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.

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 (VI Sup. Ct. April 17, 2015); *Corrigan Dispatch Co. v. Casa Guzman, S.A.*, 569 F.2d 300, 302 (5th Cir. 1978).

(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' Mark, Plaintiffs' Works, and/or 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 any products which use Plaintiffs' Plaintiffs' Mark, Plaintiffs' Works, and/or infringe at least one claim of the '198 Patent.

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 \$ 5,000 Dollars (Five thousand) 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 12 day of November, 2019, at 1:27 p.m.
Pittsburgh, Pennsylvania

2 M 8 SKT
UNITED STATES DISTRICT JUDGE

Schedule “A”
Defendants With Store Name and Seller ID

Defendant No.	Defendant/Store Name	Seller ID
1	accessmall	58646d05dec9f84caa86e023
2	anticipate	5911303d4cb67623d7bc4cdb
3	chanzon	594e136cabea91780b592536
4	cherry women shop	582bd5b396db2604d0408093
5	cindydress	5922cbb7f4a3d44d77d19e18
6	corolissally	595d91c5b8bc5d54d0957d0a
7	crystalshining	58c695ec3f49637fe80cffbf
8	daisyshop	58dba57e3af68752ad25314b
9	DlawnPxansy	5b1931257752c84b77602de9
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
19	LXUTHER MXARLOWE	5b17e9ee7b94e120fd0b7e86
20	minsdeal	5a421f4c87c25b70c1122d9d

Defendant No.	Defendant/Store Name	Seller ID
21	miongxianhghaoegf	5af3fad87824ca4f7a395aed
22	MYDC	589ac0cf396f39509689b133
23	purpledoo	59df4d1615da07122388aac0
24	quemeige	5b30511d337afb6439eb5ed6
25	REDLIU	5b91d07e6c62af49fb12f823
26	renxinstore	5a5d9e017276532645020439
27	sandlasho	59f9785f7276531984a7090f
28	SHXK	57280df53a698c7be7e3d3bc
29	uyuanludbi	5ae5283f18d9210d85a3701a
30	wangfujianCBD	5850d604e7881151bd24940a
31	wonbubu	5a096b61e65033699e2c00e8
32	xiaoshengliwuhuanxi	5aa2a784823a3e3a6f7141cd
33	xijinjin123	58fdecf94d5a2c91117d583dd
34	xsevenboy	5aa3d823a6bf7a4fca85b76d
35	zhangyuting	58d7d0b8c430d85372ebd087
36	zhengruilan	58cfdc99225295056b23305
37	zhongnianshuang	5b18d99d7752c82722602f2e
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
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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

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

FILED UNDER SEAL

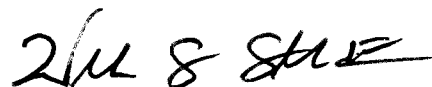
**ORDER ON PLAINTIFF'S EX PARTE MOTION FOR AN ORDER AUTHORIZING
ALTERNATIVE SERVICE ON DEFENDANTS PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 4(f)(3)**

AND NOW, this 12 day of November, 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

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;

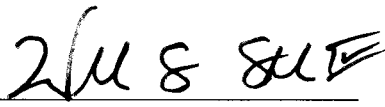
- (2) the identities, location and contact information, including any and all e-mail addresses of Defendants that were not previously provided;
- (3) the Defendants' methods of payment, methods for accepting payment and any and all financial information, including, but not limited to, information associated 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	accessmall	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
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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

EXHIBIT 3

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 been 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	ATFTJ2CNRI2E
		B07R297SPY	
8	chuanhai	B07N2B82NF	A3HXNITIFY6I4K
		B07N2D1X2J	A3HXNITIFY6I4K
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	B07P9JVV4R	A22TF75IW23E0E
		B07PBM4ZTX	
19	kouhaivsea	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/or 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:

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 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

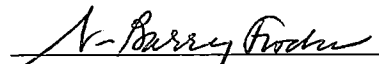
IT IS FURTHER ORDERED, the \$5,000.00 bond posted by Plaintiff shall remain with the Court until a final disposition of this case or until this PI Order is terminated.

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 11220.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

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

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

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

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

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

EXHIBIT 4

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

TALISMAN DESIGNS, LLC,

Plaintiff,

v.

DASANI, *et al.*,

Defendants.

Civil Action No. 2:20-cv-1084

FILED UNDER SEAL

**~~PROPOSED~~ 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 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 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, Plaintiff TALISMAN DESIGNS, LLC, move *ex parte* pursuant to 15 U.S.C. § 1116, 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 federal unfair competition in violation of Section 43(a) of the Trademark Act of 1946, as amended; federal trademark infringement; common law unfair competition; and common law trademark infringement. Because Plaintiff has satisfied the

requirements for the issuance of a temporary restraining order, the Court grants Plaintiff's Application.

FACTUAL FINDINGS & CONCLUSION OF LAW

1. Plaintiff, TALISMAN DESIGNS, LLC, ("Talisman" or "Plaintiff") is likely to prevail on its Lanham Act claims, and related state law claims at trial.

2. Katherine Waymire founded Talisman Designs in 2002 making handmade wine accessories and packaging out of her home. Since then, Talisman Designs has created and innovated all of its own products and packaging. Today, Talisman is a well-known national brand in the gift and houseware industries. It is recognized for its quality, inventions, creative packaging and whimsical characters. Talisman innovates across four main categories – Baking, Prep Tools, Wood/Collections and Fun & Funky. Each category has a different, distinct look. Talisman's customers immediately recognize their products because of this. For instance, in the Fun & Funky line of products, most of the products have a distinct character that is personified by a face or character. Talisman's customers often immediately recognize their new products as being sold by them.

3. Talisman's top selling product called the Bacon Bin[®] bacon grease container ("Plaintiff's Product") was conceived by Waymire. Plaintiff owns the federally registered trademark U.S. Reg. No. U.S. Trademark Registration No. 5,398,411 for BACON BIN[®]. The Bacon Bin[®] grease holder is sold in online marketplaces such as Amazon.com and in brick and mortar stores. The Plaintiff's Product is designed to both strain and then store bacon grease that is poured into it while hot (up to 500 degrees Fahrenheit). The Plaintiff's Product includes a distinct tin can shape with ridges all around it and a whimsical sculpted piggy face top. ("Plaintiff's Trade Dress" or "Trade Dress").

4. Plaintiff has gained significant rights in Plaintiffs' Mark and Trade Dress, through use, advertising, and promotion. Plaintiff is also the owner of various published photographs, videos, artwork, creative text, and product instructions appearing on talismandesigns.com and ("Plaintiff's Works").

5. 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 Plaintiff's Mark and/or Plaintiff's Works and/or Plaintiff's Trade Dress without authorization and Plaintiff has determined the products that each Defendant is offering for sale are not genuine products.

6. Through the e-commerce marketplace platform, Plaintiff 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 Plaintiff's representative who confirmed that each Defendant is featuring, displaying, and/or using Plaintiffs' Mark and/or Plaintiffs' Works and/or Trade Dress without authorization and the products that each Defendant is offering for sale are not genuine products.

7. Plaintiff has 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' Mark and/or Plaintiffs' Works and/or Plaintiff's Trade Dress, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), in violation of the Section 1114 of the Lanham Act, and prevailing on its related state law claims.

8. Plaintiff, as well as consumers, is 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. There is good cause to believe that the unauthorized and unlicensed use of Plaintiffs' Mark, Plaintiffs' Works, and/or Plaintiff's Trade Dress 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 Plaintiff may suffer loss of sales for its genuine products and an unnatural erosion of the legitimate marketplace in which it operates. There is also good cause to believe that if Plaintiff proceeds 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 Plaintiff's 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.

9. 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 reputation, and its goodwill as a manufacturer and distributor of quality products, if such relief is not issued.

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

11. Under Pennsylvania law this Court may issue a prejudgment asset restraint where Plaintiff's complaint asserts a claim for money damages. This Court also has the inherent

authority to issue a prejudgment asset restraint when Plaintiff's complaint seeks relief in equity. According to both 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 authority to grant Plaintiff's request for a prejudgment asset freeze to preserve the relief sought by Plaintiff and preserve the Defendants' ability to at least partially satisfy a judgment.

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' illegal and infringing activities. 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 (a) their unauthorized and unlicensed use of Plaintiff's Mark, Plaintiff's Works and/or Plaintiff's Trade Dress 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 Plaintiff's Mark, Plaintiff's Works, and/or Plaintiff's Trade Dress;

- (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 Plaintiffs' Mark and/or Plaintiffs' Works and/or Plaintiff's Trade Dress within metatags or other markers within website source

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

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 been 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"), Amazon.com, Inc. and its affiliate, Amazon Services LLC d/b/a Amazon.com ("Amazon"), 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"), Amazon Payments, Inc. d/b/a pay.amazon.com, 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 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 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 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.

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

(10) Upon Plaintiff's 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 Plaintiff's Trade Dress 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 Plaintiff's 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 Plaintiff's 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. 7C on the 3rd day of August at 9:30 by Zoom Video Conference ~~12~~ 12 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.**

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 July 28, 2020. Plaintiffs shall file any Reply papers on or before July 31, 2020.

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.

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 (VI Sup. Ct. April 17, 2015); *Corrigan Dispatch Co. v. Casa Guzman, S.A.*, 569 F.2d 300, 302 (5th Cir. 1978).

- (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 Plaintiffs' 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 Plaintiffs' 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 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 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' unauthorized and unlicensed use of Plaintiff's Mark, and/or Plaintiffs' Works, and/or Plaintiff's Trade Dress in connection with the distribution, marketing, advertising, offering for sale, or sale of any products, and any products which use Plaintiffs' Plaintiffs' Mark, and/or Plaintiffs' Works, and/or Plaintiff's Trade Dress.

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 \$ 250,000.00 Dollars () ^{Clerk of} 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 "DASANI and all other Defendants identified in the Complaint" that will apply to all Defendants.

SO ORDERED.

SIGNED this ^{21st} day of July, 2020, at 1:00 pm
Pittsburgh, Pennsylvania


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TALISMAN DESIGNS, LLC,

Plaintiff,

v.

DASANI, *et al.*,

Defendants.

CIVIL ACTION NO. 2:20-cv-1084

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 22 day of July, 2020, 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.

s/Arthur J. Schwab

United States District Judge

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

07/22/2020	view 20	TEXT ORDER: The Security Bond ordered at Doc. No. 14 in the amount of \$250,000 is hereby modified. Plaintiff shall be required to post a bond in the amount of \$5,000 with the Clerk of Court. Signed by Judge Arthur J. Schwab on 7/22/20. Text-only entry; no PDF document will issue. This text-only entry constitutes the Order of the Court or Notice on the matter. (lck) (Entered: 07/22/2020)
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TALISMAN DESIGNS, LLC,

Plaintiff,

v.

DASANI, *et al.*,

Defendants.

Civil Action No. 20-1084

(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 to the Complaint and attached hereto (collectively, “the Defendants”), in light of the Defendants intentional and willful unfair competition and infringement of Plaintiff’s trademark and trade dress (“the Infringing Products”)² (“Application”);

¹ A “Merchant Storefront” is any and all User Accounts, as defined in the Complaint, any and all accounts with online marketplace platform(s) Amazon.com, eBay.com, Aliexpress.com, and wish.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 alleged in Plaintiff’s Complaint, “. . . Defendants have offered for sale, sold, and distributed knock-off and infringing versions of Plaintiff’s BACON BIN[®] grease container which closely mimic the appearance of Plaintiff’s genuine product within this district and throughout the United States by operating e-commerce stores established at least via the Amazon.com, eBay.com, Wish.com, and AliExpress.com Internet marketplaces (“User Account(s)”). Plaintiff’s top selling product is the Bacon Bin[®] grease container. (“Plaintiff’s Product”). Plaintiff owns the federally registered trademark U.S. Reg. No. 5,398,411 for BACON BIN[®]. The Plaintiff’s Product includes a distinct tin can shape with ridges all around it and a whimsical sculpted piggy face top. (“Plaintiff’s Trade Dress” or “Trade Dress”). Plaintiff is also the owner of various published photographs, videos, artwork, creative text, and product instructions appearing on talismandesigns.com website. (“Plaintiff’s Works” or “Works”).

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 August 21, 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, (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”) (Doc. No. 14); and

(B) Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3) (Doc. No. 19)(“the Alternative Service Order”);

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 August 3, 2020, Plaintiff appeared for the Order to Show Cause Hearing, however no Defendants appeared. Further, none of the Third Party Service Provider(s) or Financial Institution(s) appeared.

I. Restraining Order

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, the injunctive relief previously granted on July 21, 2020 at 1:00 p.m. (Doc. No. 14), shall remain in place through the pendency of this litigation, 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 (a) their unauthorized and unlicensed use of Plaintiff's Mark, Plaintiff's Works and/or Plaintiff's Trade Dress 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 Plaintiff's Mark, Plaintiff's Works, and/or Plaintiff's Trade Dress;
- (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,³ Merchant Storefronts⁴ 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 Plaintiffs' Mark and/or Plaintiffs' Works

³ As defined in the Application, a "User Account" is, as defined in the Complaint, any and all accounts with online marketplace platform(s) Amazon.com, eBay.com, Aliexpress.com, and wish.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.

⁴ 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.

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 been deleted before the entry of this Order;
- (7) upon receipt of the 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"), Amazon.com, Inc. and its affiliate, Amazon Services LLC d/b/a Amazon.com ("Amazon"), 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"), Amazon Payments, Inc. d/b/a pay.amazon.com, and PayPal, Inc. d/b/a paypal.com ("PayPal") ("Financial Institution(s)'), 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" hereto⁵;

- (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 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 Third Party Service Provider(s) and Financial Institution(s) 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 any Third Party Service Provider or Financial Institution for any purpose (other than pursuant to a chargeback made pursuant to that Third Party Service

⁵ 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.

authorization of this Court;

- (10) Upon Plaintiff's 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, or Amazon accounts which are being used by Defendants for the purpose of infringing the Plaintiffs' Mark, Plaintiffs' Works, and/or Plaintiff's Trade Dress 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.

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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,⁶ 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 Infringing 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 Infringing Products; and
- (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 be restrained and enjoined, from processing payments for any products listed under the following Amazon Standard Identification Numbers (ASINs):
B07DW6MZWL (red BACON BIN[®]), B07F1F6RQH (pink BACON BIN[®]),
(B07HJX4646 –red twin pack BACON BIN[®]), and B07HJSB44L (red BACON BIN[®])

⁶ 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.

with a hot pad), 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;

(2) upon Plaintiff's request, Amazon shall remove listings and/or advertisements for any
product that Plaintiff identifies as unfairly competing with Plaintiff's BACON BIN[®]
grease container, and which has been identified as shipping from, or as originating from,
outside the United States, by suspending, tombstoning, and/or deleting, the identified
listing (i.e., preventing a seller from listing for sale under the identified ASIN);

(3) the Third Party Service Providers and Financial Institutions,⁷ 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.

⁷ As defined, *supra*, Financial Institutions, include, any banks, financial institutions, credit card companies and
payment processing agencies, such as AliPay US Inc. d/b/a Alipay.com ("Alipay"), Amazon Payments, Inc.
d/b/a pay.amazon.com, Context Logic, Inc. d/b/a wish.com, and PayPal, Inc. d/b/a paypal.com ("PayPal"), and
other companies or agencies that engage in the processing or transfer of money and/or real or personal property
of any Defendant.

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 Third Party Service Providers or Financial Institutions, for any purpose (other than pursuant to a chargeback made pursuant to the their respective security interest in the funds) without express authorization of this Court or Plaintiff's counsel.
- (2) Any Third Party Service Provider or 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; and
- (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 August 3, 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 written responses under oath to such interrogatories within fourteen (14) 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, to the extent not previously provided, all 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

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 products which use Plaintiff's Mark, and/or Plaintiff's Trade Dress and/or Plaintiff's Works, and/or works substantially similar to Plaintiff's Works.

III. Security Bond

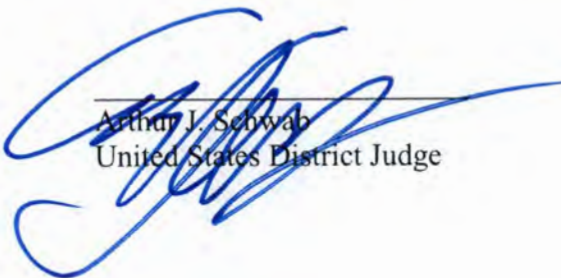
IT IS FURTHER ORDERED, the \$5,000.00 bond posted by Plaintiff shall remain with the Court until a final disposition of this case or until this PI Order is terminated.

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 3rd day of August, 2020
Pittsburgh, Pennsylvania

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



Arthur J. Schwab
United States District Judge

Schedule "A"**Defendants With Store Name and Seller ID**

Defendant No.	Defendant/Store Name	Seller ID
1	DASANI	ATWOABRKYDC59
2	AA-fashion	A3R7VUXP8AT6S8
3	AllsuperDirect	AESJW6KWLXZZO
4	baohuqusihanjin	A35XH4DTR1O922
5	cemic	A1X7CNIEN7DAP
6	CT Direct Store	A38P5DA6CB99N9
7	Daxin	AJAHSQ2TPQEX
8	DR Natural	A21IN20G1LWJKE
9	Emivery Direct	A3S1O0BZZUE1U1
10	Fhsow	A1ZPD8ZX5BN2LR
11	funarrow	A11EDQ6UQ5OH8F
12	Greatpad	A32YVIBG6BNSKB
13	LaiYam	A1MSS2SSNSY7RT
14	LEEaccessory	A1Y0HOOSKBQF1L
15	Light-Ren	A1RZNE5Y09EUVY
16	maohuashangcheng	AB9YO0PVOGT90
17	OSTRO	A2KILDZTMV99DJ
18	QinAi	A5W0LZ4LY0Q0O
19	Royu	A2AYZSNA83UAIF
20	Sanmubo Trade	A2UCZ8AC20X9W6
21	showhole	A1CP0MDAL9JFTM
22	Sundlight	A1N3YRM4VTR0A3

Defendant No.	Defendant/Store Name	Seller ID
23	SY Direct Store	A1ELP0PQ13RD0E
24	Upperroof44	A3GHARM07X54LI
25	Urnanal	AWGOQPJ5SE78U
26	usams original	A3K2RIQKJ8SW2W
27	VISUSONLINE	A21RES4S72ALEU
28	VQS-LLC	A1QD4AWVLVNP4U
29	waypool	A25M12QDJFPJ1E
30	xiangze	AREX3GV4VPP0N
31	XINGPE	A1N0MYF79XSWTA
32	YDKJ	A1WET5VOG1HXBH
33	Yuanzhou US	A5QFDIOZIFKII
34	YunFine INC	A2ARSDLAEJ3COI
35	Yuzoe Store	A3GN86PNVGF184
36	Zhengpin	A1KBFROQYDV7B1
37	ZHONGLI-US	A1MC9F7B3O19JE
38	aolipugre	383518263944
39	bachelor-button-a	333608813259
40	beists	383553117141
41	betwill-88	402309551475
42	bluebell-b	203004989583
43	casand85	392764754120
44	cdhujun	373031990208
45	cell.expert	133402785849
46	chinatownno1	303559475515

Defendant No.	Defendant/Store Name	Seller ID
47	df-311	373060172021
48	dowri-75	164266070522
49	eastauspicious	174144262125
50	e-suggestion	224048112803
51	fashionyard68	143448120483
52	fat-mango	303497561617
53	fist-line2	392814825784
54	gardenshow	324193547715
55	gelamee	164269285197
56	gld_germanladen	383469479344
57	heart-soul888	324140352658
58	hksense153	124176456042
59	home-ahome	383378201131
60	homefree-us	392834135342
61	homeshop-us	353108622657
62	hugee6	133416619418
63	icenzma	303550394507
64	iriscelandine6	133442160171
65	jiazew	233569793121
66	jinshan2013	143622388821
67	joysistars	133429929570
68	lightshh	283597139862
69	lucky.shop_7	193481500820
70	nuoka7	313087749438

Defendant No.	Defendant/Store Name	Seller ID
71	odhe15	114230900808
72	onlinenice	202830539871
73	priestlyy	153946400943
74	pulsation	264663620296
75	qingc44	362799729739
76	qingfengtop5	184300363524
77	rainc7	362979394791
78	shineshopa	193473326177
79	silentmusic1666-1	313120735128
80	ss-goodstore	303573840783
81	swtdkgs	383521127485
82	sx68wq	353062380490
83	teaodan	373034603063
84	tongliaoixinxi	313109484873
85	wyunlon0	174263789449
86	xxinlle	383609503982
87	zhezch	193439383324
88	zhongtll	362978977410
89	aweihge15gr	5b5547b64543f458cbe2177c
90	baifumeimei	5832ad867284901b9ba0fd31
92	DJY	5df1e06f75e81c0a4000a6ad
93	guchastore	5a6843aa471c1439542b45e8
94	pangxiefang~77	5d5762b94290153c6e58f002

Defendant No.	Defendant/Store Name	Seller ID
95	bbql Store	4921100
96	Daily supplies Store	4776031
97	Drop Shipping to Whole world Store	4697081
98	Fantasy House&Garden Store	5478164
100	H&F Store	2906124
101	mzyxxsz Store	2477008
102	WenTao Accessories Store	1185160
103	Wonder Dreaming Store	4347001

EXHIBIT 5

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ROBERT ANDREW FFRENCH,

Plaintiff,

Civil Action No.: 1:20-cv-03178

v.

Judge Matthew F. Kennelly

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

Defendants.

SEALED TEMPORARY RESTRAINING ORDER

THIS CAUSE being before the Court on Plaintiff, Plaintiff, ROBERT ANDREW FFRENCH, ("FFRENCH" or "Plaintiff") *Ex Parte* Motion for Entry of a Temporary Restraining Order, Including a Temporary Injunction, a Temporary Asset Restraint, Expedited Discovery, and Service of Process by Email and Electronic Publication (the "Ex Parte Motion") against the defendants identified on Schedule A to the Complaint and attached hereto (collectively, the "Defendants") and using at least the online marketplace accounts identified in Schedule A (the "Online Marketplace Accounts"), and this Court having heard the evidence before it hereby GRANTS Plaintiff's *Ex Parte* Motion in its entirety.

This Court further finds that it has personal jurisdiction over the Defendants since the Defendants directly target their business activities toward consumers in the United States, including Illinois, offering to sell and ship products into this Judicial District. Specifically, Defendants are reaching out to do business with Illinois residents by operating one or more commercial, interactive Internet Stores through which Illinois residents can purchase products

bearing counterfeit versions of the SHOTLOC Trademarks, which are covered by U.S. Trademark Registration Nos. 4,218,495 and 6,023,219.

This Court also finds that issuing this Order without notice pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure is appropriate because Plaintiff has presented specific facts in the Declaration of Robert Andrew Ffrench paragraphs 15-24, and the Declaration of Keith A. Vogt, paragraphs 5-11, and accompanying evidence clearly showing that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition. Specifically, in the absence of an *ex parte* Order, Defendants could and likely would modify registration data and content, redirect traffic to other websites/stores in their control, and move any assets from accounts in U.S.-based financial institutions, including, but not limited to, PayPal accounts, to offshore accounts. *Id.* As other courts have recognized, proceedings against those who deliberately traffic in counterfeit merchandise are often useless if notice is given to the adverse party. Accordingly, this Court orders that:

1. Defendants, their affiliates, officers, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through, under or in active concert with them be temporarily enjoined and restrained from:

- a. using Plaintiff's SHOTLOC Trademarks or any reproductions, counterfeit copies or colorable imitations thereof in any manner in connection with the distribution, marketing, advertising, offering for sale, or sale of any product that is not a genuine SHOTLOC product or not authorized by Plaintiff to be sold in connection with Plaintiff's SHOTLOC Trademarks;
- b. passing off, inducing, or enabling others to sell or pass off any product as a genuine SHOTLOC product or any other product produced by Plaintiff, that

is not Plaintiff's or not produced under the authorization, control or supervision of Plaintiff and approved by Plaintiff for sale under Plaintiff's SHOTLOC Trademarks;

- c. committing any acts calculated to cause consumers to believe that Defendants' products are those sold under the authorization, control or supervision of Plaintiff, or are sponsored by, approved by, or otherwise connected with Plaintiff;
- d. further infringing Plaintiff's SHOTLOC Trademarks and damaging Plaintiff's goodwill;
- e. otherwise competing unfairly with Plaintiff in any manner;
- f. shipping, delivering, holding for sale, transferring or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner, products or inventory not manufactured by or for Plaintiff, nor authorized by Plaintiff to be sold or offered for sale, and which bear any of Plaintiff's SHOTLOC Trademarks or any reproductions, counterfeit copies or colorable imitations thereof; and
- g. using, linking to, transferring, selling, exercising control over, or otherwise owning the online marketplace accounts, or any domain name or other Online Marketplace Account that is being used to sell or is the means by which Defendants could continue to sell Counterfeit SHOTLOC Products.

2. Those in privity with Defendants and with actual notice of this Order, including any online marketplaces such as, but not limited to, Alibaba Group Holding Ltd., Alipay.com Co., Ltd. and any related Alibaba entities (collectively, "Alibaba"), social media platforms,

Facebook, YouTube, LinkedIn, Twitter, Internet search engines such as Google, Bing and Yahoo, shall within three (3) business days of receipt of this Order:

- a. disable and cease providing services for any accounts through which Defendants engage in the sale of counterfeit and infringing goods using the SHOTLOC Trademarks, including any accounts associated with the Defendants listed on Schedule A;
- b. disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of counterfeit and infringing goods using the SHOTLOC Trademarks; and
- c. take all steps necessary to prevent links to the Defendant Online Marketplace Accounts on Schedule A from displaying in search results, including, but not limited to, removing links to the Defendant Online Marketplace Accounts from any search index.

3. Defendants and any third party with actual notice of this Order who is providing services for any of the Defendants, or in connection with any other websites operated by Defendants, including, without limitation, any online marketplace platforms such as Alibaba, advertisers, Facebook, Internet Service Providers ("ISP"), web hosts, back-end service providers, web designers, sponsored search engine or ad-word providers, banks, merchant account providers, including PayPal, Amazon, Alibaba, DHGate, third party processors and other payment processing service providers, shippers, and domain name registrars (collectively, the "Third Party Providers") shall, within five (5) business days after receipt of such notice, provide to Plaintiff expedited discovery, including copies of all documents and records in such person's or entity's possession or control relating to:

- a. The identities and locations of Defendants, their agents, servants, employees, confederates, attorneys, and any persons acting in concert or participation with them, including all known contact information;
- b. the nature of Defendants' operations and all associated sales and financial information, including, without limitation, identifying information associated with the Online Marketplace Accounts, and Defendants' financial accounts, as well as providing a full accounting of Defendants' sales and listing history related to their respective Online Marketplace Accounts;
- c. Defendants' websites and/or any online marketplace accounts; and
- d. Any financial accounts owned or controlled by Defendants, including their agents, servants, employees, confederates, attorneys, and any persons acting in concert or participation with them, including such accounts residing with or under the control of any banks, savings and loan associations, payment processors or other financial institutions, including, without limitation, PayPal, Amazon, Alibaba, DHGate, or other merchant account providers, payment providers, third party processors, and credit card associations (e.g., MasterCard and VISA).

4. Defendants and any persons in active concert or participation with them who have actual notice of this Order shall be temporarily restrained and enjoined from transferring or disposing of any money or other of Defendants' assets until further ordered by this Court.

5. PayPal, Inc. ("PayPal") shall, within two (2) business days of receipt of this Order, for any Defendant or any of Defendants' online marketplace accounts or websites:

- a. Locate all accounts and funds connected to and related to Defendants, Defendants' online marketplace accounts, including, but not limited to, any PayPal accounts connected to and related to the information listed in Schedule A hereto and the email addresses identified in Exhibit 2 to the Declaration of Robert Andrew Ffrench; and
- b. Restrain and enjoin any such accounts or funds from transferring or disposing of any money or other of Defendants' assets until further ordered by this Court.

6. Amazon Payments, Inc. ("Amazon") and its related companies and affiliates shall, within two (2) business days of receipt of this Order, identify and restrain all funds, as opposed to ongoing account activity, in or which hereafter are transmitted into the Amazon accounts related to 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" hereto; Amazon shall further, provide Plaintiff's counsel with all data which 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 the 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 owners 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 the express authorization of this Court;

7. ContextLogic, Inc. (“WISH”) and its related companies and affiliates shall, within two (2) business days of receipt of this Order, identify and restrain all funds, as opposed to ongoing account activity, in or which hereafter are transmitted into the WISH accounts related to 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 WISH accounts subject to this Order; and (iii) any other WISH accounts tied to or used by any of the sellers identified on Schedule “A” hereto; WISH shall further, provide Plaintiff’s counsel with all data which 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 the 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 owners until after those accounts are restrained. No funds restrained by this Order shall be transferred or surrendered by WISH for any purpose (other than pursuant to a chargeback made pursuant to WISH’s security interest in the funds) without the express authorization of this Court;

8. ALIPAY US, INC. (“ALIPAY”) and its related companies and affiliates including but not limited to ALIBABA GROUP HOLDING LTD. (“ALIBABA”), shall, within two (2) business days of receipt of this Order, identify and restrain all funds, as opposed to ongoing account activity, in or which hereafter are transmitted into the ALIPAY accounts related to 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 ALIPAY accounts subject

to this Order; and (iii) any other ALIPAY accounts tied to or used by any of the sellers identified on Schedule "A" hereto; ALIPAY shall further, provide Plaintiff's counsel with all data which 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 the 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 owners until after those accounts are restrained. No funds restrained by this Order shall be transferred or surrendered by ALIPAY for any purpose (other than pursuant to a chargeback made pursuant to ALIPAY's security interest in the funds) without the express authorization of this Court;

9. eBay, Inc. ("eBay") and its related companies and affiliates shall, within two (2) business days of receipt of this Order, identify and restrain all accounts and funds, as opposed to ongoing account activity, in or which hereafter are transmitted into the eBay accounts related to 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 eBay accounts subject to this Order; and (iii) any other eBay accounts tied to or used by any of the sellers identified on Schedule "A" hereto; eBay shall further, provide Plaintiff's counsel with all data which 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 the 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 owners until after those accounts are restrained. No funds restrained by this Order

shall be transferred or surrendered by eBay for any purpose (other than pursuant to a chargeback made pursuant to eBay's security interest in the funds) without the express authorization of this Court;

10. Heguang International Limited or Dunhuang Group d/b/a DHGATE, DHGate.com, DHPORT, DHLINK and DHPAY ("DHGate") and its related companies and affiliates shall, within two (2) business days of receipt of this Order, identify and restrain all accounts and funds, as opposed to ongoing account activity, in or which hereafter are transmitted into the DHGate accounts related to 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 DHGate accounts subject to this Order; and (iii) any other DHGate accounts tied to or used by any of the sellers identified on Schedule "A" hereto; DHGate shall further, provide Plaintiff's counsel with all data which 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 the 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 owners until after those accounts are restrained. No funds restrained by this Order shall be transferred or surrendered by DHGate for any purpose (other than pursuant to a chargeback made pursuant to DHGate's security interest in the funds) without the express authorization of this Court;

11. Any banks, savings and loan associations, payment processors, or other financial institutions, for any Defendant or any of Defendants' online marketplace accounts or websites, shall within two (2) business days of receipt of this Order:

- a. Locate all accounts and funds connected to Defendants, Defendants' online marketplace accounts or Defendants' websites, including, but not limited to, any accounts connected to the information listed in Schedule A hereto and the email addresses identified in Exhibit 2 to the Declaration of Robert Andrew Ffrench; and
- b. Restrain and enjoin such accounts from receiving, transferring or disposing of any money or other of Defendants' assets until further ordered by this Court.

12. Plaintiff may provide notice of these proceedings to Defendants, including notice of the preliminary injunction hearing and service of process pursuant to Fed.R.Civ.P. 4(f)(3), by electronically publishing a link to the Complaint, this Order and other relevant documents on a website or by sending an e-mail to the e-mail addresses identified in Exhibit 2 to the Declaration of Robert Andrew Ffrench and any e-mail addresses provided for Defendants by third parties that includes a link to said website. The Clerk of Court is directed to issue a single original summons in the name of "Foshan city star rubber products co., LTD and all other Defendants identified in the Complaint" that shall apply to all Defendants. The combination of providing notice via electronic publication and e-mail, along with any notice that Defendants receive from Marketplaces and payment processors, shall constitute notice reasonably calculated under all circumstances to apprise Defendants of the pendency of the action and afford them the opportunity to present their objections.

13. Plaintiff's Schedule A to the Complaint, Exhibit 2 to the Declaration of Robert Andrew Ffrench, and this Order shall remain sealed until Defendants' financial accounts are restrained. Plaintiff shall file unsealed versions of the Complaint, Schedule A to the Complaint, Exhibit 2 to the Declaration of Robert Andrew Ffrench, and this Order using the CM/ECF system prior to the expiration of this Order.

14. Plaintiff shall deposit with the Court Ten Thousand Dollars (\$10,000.00), either cash, cashier's check or surety bond, as security, which amount was determined adequate for the payment of such damages as any person may be entitled to recover as a result of a wrongful restraint hereunder.

15. Any Defendants that are subject to this Order may appear and move to dissolve or modify the Order on two days' notice to Plaintiff or on shorter notice as set by this Court.

This Temporary Restraining Order without notice is entered at 9:00 A.M. on June 1, 2020, and shall remain in effect for fourteen (14) days.



U.S. District Court Judge

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ROBERT ANDREW FFRENCH,

Plaintiff,

v.

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

Defendants.

Civil Action No.: 1:20-cv-03178

Judge Matthew F. Kennelly

Magistrate Judge Jeffrey Cummings

NOTICE OF MOTION

PLEASE TAKE NOTICE that on Monday, June 29, 2020 at 9:25 a.m., Plaintiff, by its counsel, shall appear telephonically, before the Honorable Judge Matthew F. Kennelly in Courtroom 2103 at the U.S. District Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois, and present Plaintiff's Motion for Entry of a Preliminary Injunction.

DATED: June 19, 2020

Respectfully submitted,

/s/ Keith A. Vogt

Keith A. Vogt (Bar No. 6207971)

Keith Vogt, Ltd.

111 West Jackson Boulevard, Suite 1700

Chicago, Illinois 60604

Telephone: 312-675-6079

E-mail: keith@vogtip.com

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that on June 19, 2020, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, I will electronically publish the documents on a website, and I will send an e-mail to the e-mail addresses identified in Exhibit 2 to the Declaration of Robert Andrew Ffrench and any e-mail addresses provided for Defendants by third parties that includes a link to said website.

/s/ Keith A. Vogt

Keith A. Vogt

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ROBERT ANDREW FFRENCH,

Plaintiff,

Civil Action No.: 1:20-cv-03178

v.

Judge Matthew F. Kennelly

THE PARTNERSHIPS AND UNINCORPORATED
ASSOCIATIONS IDENTIFIED ON SCHEDULE “A”,

Defendants.

PRELIMINARY INJUNCTION ORDER

THIS CAUSE being before the Court on Plaintiff, ROBERT ANDREW FFRENCH’s (“Ffrench” or “Plaintiff”), Motion for a Preliminary Injunction, and this Court having heard the evidence before it hereby GRANTS Plaintiff’s Motion for Entry of a Preliminary Injunction in its entirety against the defendants identified in Schedule A (collectively, the “Defendants”).

THIS COURT HEREBY FINDS that it has personal jurisdiction over the Defendants since the Defendants directly target their business activities toward consumers in the United States, including Illinois. “In the context of cases like this one, that means a plaintiff must show that each defendant is actually operating an interactive website that is accessible in Illinois and that each defendant has aimed such site at Illinois by standing ready, willing and able to ship its counterfeit goods to customers in Illinois in particular (or otherwise has some sufficient voluntary contacts with the state).” *Am. Bridal & Prom Indus. Ass’n v. P’ships & Unincorporated Ass’ns Identified on Schedule A*, 192 F.Supp.3d 924, 934 (N.D. Ill. 2016). In this case, Plaintiff has presented screenshot evidence that each Defendant Internet Store is reaching out to do business with Illinois residents by operating one or more commercial, interactive Internet Stores through which Illinois residents can and do purchase products using counterfeit versions of Plaintiff’s Trademarks. *See*

Docket No. 12 which includes screenshot evidence confirming that each Defendant Internet Store does stand ready, willing and able to ship its counterfeit goods to customers in Illinois bearing infringing and/or counterfeit versions of the SHOTLOC trademarks, U.S. Trademark Registration Nos. 4,218,495 and 6,023,219 (collectively “The SHOTLOC Trademarks”).

THIS COURT FURTHER FINDS that injunctive relief previously granted in the Temporary Restraining Order (“TRO”) should remain in place through the pendency of this litigation and that issuing this Preliminary Injunction is warranted under Federal Rule of Civil Procedure 65. Evidence submitted in support of this Motion and in support of Ffrench’s previously granted Motion for a Temporary Restraining Order establishes that Ffrench has a likelihood of success on the merits; that no remedy at law exists; and that Ffrench will suffer irreparable harm if the injunction is not granted.

Specifically, Ffrench has proved a *prima facie* case of trademark infringement because (1) the SHOTLOC Trademarks are distinctive marks and are registered with the U.S. Patent and Trademark Office on the Principal Register, (2) Defendants are not licensed or authorized to use the SHOTLOC Trademarks, and (3) Defendants’ use of the SHOTLOC Trademarks are causing a likelihood of confusion as to the origin or sponsorship of Defendants’ products with Ffrench. Furthermore, Defendants’ continued and unauthorized use of the SHOTLOC Trademarks irreparably harms SHOTLOC through diminished goodwill and brand confidence, damage to SHOTLOC’s reputation, loss of exclusivity, and loss of future sales. Monetary damages fail to address such damage and, therefore, Ffrench has an inadequate remedy at law. Moreover, the public interest is served by entry of this Preliminary Injunction to dispel the public confusion created by Defendants’ actions. Accordingly, this Court orders that:

1. Defendants, their affiliates, officers, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through, under or in active concert with them be temporarily enjoined and restrained from:
 - a. using the SHOTLOC Trademarks or any reproductions, counterfeit copies or colorable imitations thereof in any manner in connection with the distribution, marketing, advertising, offering for sale, or sale of any product that is not a genuine SHOTLOC product or not authorized by Ffrench to be sold in connection with the SHOTLOC Trademarks;
 - b. passing off, inducing, or enabling others to sell or pass off any product as a genuine SHOTLOC product or any other product produced by Ffrench, that is not Ffrench's or not produced under the authorization, control or supervision of Ffrench and approved by Ffrench for sale under the SHOTLOC Trademarks;
 - c. committing any acts calculated to cause consumers to believe that Defendants' products are those sold under the authorization, control or supervision of Ffrench, or are sponsored by, approved by, or otherwise connected with SHOTLOC;
 - d. further infringing the SHOTLOC Trademarks and damaging Ffrench's goodwill;
 - e. otherwise competing unfairly with Ffrench in any manner;
 - f. shipping, delivering, holding for sale, transferring or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner, products or inventory not manufactured by or for Ffrench, nor authorized by Ffrench to be

sold or offered for sale, and which bear any of the SHOTLOC Trademarks or any reproductions, counterfeit copies or colorable imitations thereof;

- g. using, linking to, transferring, selling, exercising control over, or otherwise owning the Online Marketplace Accounts, or any other online marketplace account that is being used to sell or is the means by which Defendants could continue to sell Counterfeit/Infringing SHOTLOC products; and
 - h. operating and/or hosting at the Online Marketplace Accounts and any other online marketplace accounts registered or operated by Defendants that are involved with the distribution, marketing, advertising, offering for sale, or sale of any product bearing the SHOTLOC Trademarks or any reproductions, counterfeit copies or colorable imitations thereof that is not a genuine SHOTLOC product or not authorized by Ffrench to be sold in connection with the SHOTLOC Trademarks.
2. Those in privity with Defendants and with actual notice of this Order, including any online marketplaces such as, but not limited to Amazon, (collectively, "Marketplaces"), social media platforms, Facebook, YouTube, LinkedIn, Twitter, Internet search engines such as Google, Bing and Yahoo, shall within three (3) business days of receipt of this Order:
- a. disable and cease providing services for any accounts through which Defendants engage in the sale of counterfeit and infringing goods using the SHOTLOC Trademarks, including any accounts associated with the Defendants listed in Schedule A;

- b. disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of counterfeit and infringing goods using the SHOTLOC Trademarks; and
 - c. take all steps necessary to prevent links to the Defendant Online Marketplace Accounts identified in Schedule A from displaying in search results, including, but not limited to, removing links to the Online Marketplace Accounts from any search index.
- 3. Defendants and any third party with actual notice of this Order who is providing services for any of the Defendants, or in connection with any of Defendants' Online Marketplace Accounts or other websites operated by Defendants, including, without limitation, any online marketplace platforms such as Marketplaces, advertisers, Facebook, Internet Service Providers ("ISP"), web hosts, back-end service providers, web designers, sponsored search engine or ad-word providers, banks, merchant account providers, including PayPal, Alipay, Western Union, third party processors and other payment processing service providers, shippers, and online marketplace registrars (collectively, the "Third Party Providers") shall, within five (5) business days after receipt of such notice, provide to Ffrench expedited discovery, including copies of all documents and records in such person's or entity's possession or control relating to:
 - a. The identities and locations of Defendants, their agents, servants, employees, confederates, attorneys, and any persons acting in concert or participation with them, including all known contact information;
 - b. the nature of Defendants' operations and all associated sales and financial information, including, without limitation, identifying information

associated with the Online Marketplace Accounts, and Defendants' financial accounts, as well as providing a full accounting of Defendants' sales and listing history related to their respective Online Marketplace Accounts;

- c. Defendants' websites and/or any Online Marketplace Accounts;
- d. The Defendant Online Marketplace Accounts registered by Defendants; and
- e. Any financial accounts owned or controlled by Defendants, including their agents, servants, employees, confederates, attorneys, and any persons acting in concert or participation with them, including such accounts residing with or under the control of any banks, savings and loan associations, payment processors or other financial institutions, including, without limitation, Amazon, PayPal, Alipay, Western Union, or other merchant account providers, payment providers, third party processors, and credit card associations (e.g., MasterCard and VISA).

- 4. Defendants and any persons in active concert or participation with them who have actual notice of this Order shall be temporarily restrained and enjoined from transferring or disposing of any money or other of Defendants' assets until further ordered by this Court.
- 5. eBay, Inc. ("eBay"), PayPal, Inc. ("PayPal"), Context Logic, Inc. ("WISH"), Amazon Payments, Inc. ("Amazon"), Alipay US, Inc. and its entities ("Alipay"), Alibaba Group Holding Limited ("Alibaba"), and Heguang International Limited or Dunhuang Group d/b/a DHGATE, DHGate.com, DHPORT, DHLINK and DHPAY ("DHGate"), shall, within two (2) business days of receipt of this Order, for any Defendant or any of Defendants' Online Marketplace Accounts or websites:

- a. Locate all accounts and funds connected to Defendants, Defendants' Online Marketplace Accounts or Defendants' websites, including, but not limited to, any eBay, PayPal, WISH, Amazon, Alipay, Alibaba and DHGate accounts connected to the information listed in Schedule A hereto or the email addresses identified in Exhibit 2 to the Declaration of Robert Andrew Ffrench; and
 - b. Restrain and enjoin any such accounts or funds that are non-U.S. foreign based from transferring or disposing of any money or other of Defendants' assets until further ordered by this Court.
6. Any banks, savings and loan associations, payment processors, or other financial institutions, for any Defendant or any of Defendants' Online Marketplace Accounts or websites, shall within two (2) business days of receipt of this Order:
 - a. Locate all accounts and funds connected to Defendants, or Defendants' Online Marketplace Accounts, including, but not limited to, any accounts connected to the information listed in Schedule A hereto or the email addresses identified in Exhibit 2 to the Declaration of Robert Andrew Ffrench; and
 - b. Restrain and enjoin such accounts from receiving, transferring or disposing of any money or other of Defendants' assets until further ordered by this Court.
7. Ffrench may provide notice of these proceedings to Defendants, including notice of the preliminary injunction hearing and service of process pursuant to Fed.R.Civ.P. 4(f)(3), by electronically publishing a link to the Complaint, this Order and other relevant documents on a website, or by sending an e-mail to the e-mail addresses identified in Exhibit 2 to the Declaration of Robert Andrew Ffrench and any e-mail addresses provided for Defendants by third parties that includes a link to said website. The Clerk of Court is directed to issue

a single original summons in the name of “Foshan city star rubber products co., LTD and all other Defendants identified in Complaint” that shall apply to all Defendants. The combination of providing notice via electronic publication and e-mail, along with any notice that Defendants receive from Online Marketplace Accounts and payment processors, shall constitute notice reasonably calculated under all circumstances to apprise Defendants of the pendency of the action and afford them the opportunity to present their objections.

8. Any Defendants that are subject to this Order may appear and move to dissolve or modify the Order on two days' notice to Ffrench or on shorter notice as set by this Court.
9. The \$10,000 bond posted by Ffrench shall remain with the Court until a Final disposition of this case or until this Preliminary Injunction is terminated.

Dated: June 24, 2020



U.S. District Court Judge

SCHEDULE A

No.	DEFENDANTS
1	Foshan city star rubber products co., LTD
2	Huiyang Kangde Silicone Rubber Ware Co., Ltd.
3	Shenzhen Mingli Toys Manufacturing Co., Ltd.
4	Shanghai Maikuan Sporting Goods Co., Ltd.
5	Nanjing Bewe Int'l Trading Co., Ltd.
6	Shenzhen Qing Yu Rubber And Plastic Product Co., Ltd.
7	Shenzhen Royal Silicone Product Co., Ltd.
8	Xiamen Xinmingxiang Import & Export Co., Ltd.
9	Easy Buy Online
10	liang jialiang's store
11	Toplander Outdoor Store
12	Digital-Camo Sales Store
13	Gnome Store
14	DREAMHUNTER- Store
15	SHAOERS Store
16	Super Online Technology Co., Ltd
17	Hiton Outdoor Store Store
18	Youthful Sporting & Entertainment Store
19	Loving Adventure Store
20	Johnny Pro Store
21	LEMZONE OutdoorSports Store
22	Exercise&Healthy Store
23	Water & Horsing Sporting Store
24	Gmarty VIP Store
25	exercise&keep fit Store
26	GSTL Online Store
27	TAVIEW FIT Store
28	BD 4sport Store
29	LLL Outdoor Store
30	True Thus Store
31	Outdoor ideas Store
32	Wild Natures Store
33	Affordable Outdoor Fitness Store
34	Complete Outdoor Fitness Store
35	EMPHY Shop
36	Shenzhen MiHan Technology Company
37	Rain force

38	Nice Evening
39	Hinseryo
40	Heybe Co.,Ltd
41	dexing
42	Jiadi US
43	Hapyd59
44	Richeal8
45	Sunlightpower
46	Zw_network
47	Sportmill
48	Miluoshi
49	Luckygirl17
50	Buildourdream
51	shootingbrake
52	Yiamia
53	Hunterjungle
54	Cfgs
55	6hk7243
56	7hk8918
57	aiyamore
58	allstar-seller
59	bigvip8018
60	blingquality
61	blingzingshop
62	clother_trade
63	conceitzhang
64	cybernowa
65	dragonball-fourth
66	e-suggestion
67	electron365
68	felif-7
69	flowersbud
70	flowersgrass
71	fuszww
72	global_village
73	gmallselection
74	greenteatime2016
75	gxnews78793_1
76	halishio

77	happyvalley009
78	hftndbkn-3
79	hulushop2010
80	infinite.force22
81	jewelry-base
82	jfdxfybq-0
83	kzyu_17
84	li-lang-da-fiath
85	lifestore777
86	little.apple2014
87	luganomart
88	lxh688
89	mrzo_33
90	myeshopdealstore
91	new-mall
92	olahema00
93	pfn-59
94	picturesque-landscape
95	ppptyiad_6
96	qualityitemsseller123
97	queensny2018
98	rasgswkgflgq45
99	rocm84
100	rookie-xu
101	shalo-3238
102	shoppingeveryday
103	soptoptrade2015
104	tgsbuys
105	trs-seller2012
106	tsbuynow
107	vesny89735-6
108	whemyqong5
109	whitedaisy666
110	wonderfulbuying36588
111	xiaochali0
112	yaloofashion
113	yanggerpt
114	zhifei-82
115	zhome2015

116	I Love Baby Store
117	Tomtopone Wholesale
118	fashionnews
119	LDU supermarket
120	Touch you qiu
121	bigbossgood
122	runfaster
123	Clumsy bear
124	Blingblingring
125	xiexiaoyufishlove
126	dixiaolang111
127	whaleuncle

EXHIBIT 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-60982-CIV-DIMITROULEAS/SNOW

APPLE CORPS LIMITED and SUBAFILMS
LIMITED,

Plaintiffs,

vs.

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

Defendants.

**SEALED ORDER GRANTING *EX PARTE* APPLICATION FOR ENTRY
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") [DE 6], filed herein on May 20, 2020. The Court has carefully reviewed the Application and the record and is otherwise fully advised in the premises.

By the instant Application, Plaintiffs, Apple Corps Limited and Subafilms Limited (collectively "Plaintiffs") move *ex parte*, for entry of a temporary restraining order against Defendants, the Individuals, Partnerships, and Unincorporated Associations identified on Schedule "A" hereto (collectively "Defendants"), and an entry of an order restraining the financial accounts used by Defendants, 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 the reasons set forth herein, Plaintiffs' *Ex Parte* Application for Temporary Restraining Order [DE 6] is **GRANTED**.

I. Factual Background¹

Plaintiff, Apple Corps Limited, is the registered owner of the following trademarks, which are valid and 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 014 - Watches. IC 018 - Wallets IC 025 - Headwear, sweatshirts, t-shirts, shirts.
BEATLES	4,373,956	July 30, 2013	IC 009 - 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. IC 014 - Jewelry boxes not of metal,

¹ The factual background is taken from Plaintiffs’ Complaint, Application for Temporary Restraining Order, and supporting Declarations submitted by Plaintiffs.

			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. 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 transfers for decorating textiles; printed wall charts; paperweights, not of precious
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			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. 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. 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. 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
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			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. 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.
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(See Declaration of Paul Cole in Support of Plaintiffs' Application for Temporary Restraining Order (Cole Decl.) ¶¶ 4-5; *see also* United States Trademark Registrations of the BEATLES Marks at issue attached as Composite Exhibit 1 to the Complaint.) The BEATLES Marks are used in connection with the manufacture and distribution of quality goods in the categories identified above. (See *id.* ¶¶ 4-5.)

Plaintiff, Subafilms Limited, is the registered owner of the following trademark, which is valid and 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 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;

Trademark	Registration Number	Registration Date	Class(es) / Good(s)
			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 Cole Decl. ¶¶ 10-11; *see also* United States Trademark Registrations of the YELLOW SUBMARINE Mark at issue attached as Composite Exhibit 2 to the Complaint.) The YELLOW SUBMARINE Mark is used in connection with the manufacture and distribution of quality goods in the categories identified above. (*See id.*)

Defendants, by operating a commercial Internet website under the domain name or e-commerce stores via the Internet marketplace platforms under their seller identification names identified on Schedule “A” hereto (the “Subject Domain Name and Seller IDs”), have advertised, promoted, offered for sale, or sold goods bearing what Plaintiffs have determined to be counterfeits, infringements, reproductions and/or colorable imitations of the BEATLES Marks and/or the YELLOW SUBMARINE Mark (collectively “Plaintiffs’ Marks”). (*See* Cole Decl. ¶¶ 16-20; Declaration of Stephen M. Gaffigan in Support of Plaintiffs’ Application for Temporary Restraining Order (“Gaffigan Decl.”) ¶ 2; Declaration of Kathleen Burns in Support of Plaintiffs’ Application for Temporary Restraining Order (Burns Decl.”) ¶ 4.)

Although each Defendant may not copy and infringe each of Plaintiffs’ Marks for each category of goods protected, Plaintiffs have submitted sufficient evidence showing that each Defendant has infringed, at least, 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 id.* ¶¶ 16, 18-20, 23.)

Plaintiffs' counsel 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. (*See* Cole Decl. ¶ 17; Burns Decl. ¶ 3; Gaffigan Decl. ¶ 2.) Invisible accessed Internet website and Internet based e-commerce stores operating under the Subject Domain Name and Seller IDs and placed orders from each Defendant 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 and Comp. Exs. 1 through 6 thereto.) Each order was processed entirely online, and following the submission of the orders, Invisible received information for finalizing payment² for the various products ordered via Amazon Payments, Inc.,³ via DHpay.com,⁴ via PayPal, Inc. ("PayPal")⁵ to

² Invisible was instructed not to transmit the funds to finalize the sale for the orders from some of the Defendants so as to avoid adding additional funds to Defendants' coffers. (*See* Gaffigan Decl. ¶ 2, n.1; Burns Decl. ¶ 4, n.1.)

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, but Amazon Payments, Inc. has the ability to identify and restrain the payment accounts using a seller's unique seller identification number. (*See* Gaffigan Decl. ¶ 5; Burns Decl. ¶ 4, n.2.)

⁴ Defendant Numbers 30-53 use the non-party e-commerce marketplace platform, DHgate.com, which processes its payments via the third-party platform, DHpay.com. The DHgate.com and DHpay.com platforms are operated by the Dunhuang Group, who utilizes Camel FinTech Inc to process transactions and deal with refunds and chargebacks on behalf of DHgate.com to its customers. (*See* Burns Decl. ¶ 4, n.3; Gaffigan Decl. ¶ 6.)

⁵ Upon completion of Invisible's purchase from Defendant Number 68 operating via eBay.com, Invisible discovered that the PayPal receipt received did not identify the Defendant's PayPal financial account in the form of an e-mail address. However, the receipt identifies the

Defendants' respective PayPal accounts and/or via Defendants' respective payee,⁶ which are identified on Schedule "A" hereto.⁷ (*See id.*) At the conclusion of the process, the detailed web page captures⁸ and images of the various Plaintiffs' branded products ordered via Defendants' Subject Domain Name and Seller IDs were sent to Plaintiffs' representative, Paul Cole, for inspection. (*See* Cole Decl. ¶ 18; Gaffigan Decl. ¶ 2.)

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

Transaction Identification Number ("Transaction ID") for the purchase made from this Defendant's Seller IDs, and PayPal is able to identify a PayPal account using the Transaction ID. (*See* Burns Decl. ¶ 4, n.4.)

⁶ The payee for the orders placed from Defendant Numbers 79-105 identifies "Joom USA Inc," which is the aggregate PayPal account for purchases made via Joom.com. (*See* Burns Decl. ¶ 4 n.5; Gaffigan Decl. ¶ 8.) The Joom.com platform itself is not the ultimate merchant, but it can tie a particular Seller ID using the seller's unique merchant identification number to a reported transaction and identify the merchant's funds held within the aggregate account. (*See* Gaffigan Decl. ¶ 8.)

The payee for the orders placed from Defendant Numbers 106-109's Wish.com Seller IDs identifies "PayPal *Wish," which is the aggregate PayPal account for purchases made Wish.com. (*See* Burns Decl. ¶ 4 n.5; Gaffigan Decl. ¶ 9.) The Wish.com platform itself is not the ultimate merchant, but it can tie a particular Seller ID using the seller's unique merchant identification number to a reported transaction and identify the merchant's funds held within the aggregate account. (*See* Gaffigan Decl. ¶ 9.)

⁷ Defendant Number 1 also provided a contact e-mail address in connection with its Subject Domain Name, which is included on Schedule "A" hereto. (*See* Burns Decl. ¶ 4 n.6.)

⁸ The web pages captured and downloaded by Plaintiffs' counsel's office, Stephen M. Gaffigan, P.A., identifying the Seller Identification Number, Store Name and/or Store Number for certain Defendants are included in Comp. Exs. "2," "3" and "5" to the Burns Decl.

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. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cnty*, 415 U.S. 423, 439 (1974).

III. Conclusions of Law

The declarations Plaintiffs submitted in support of their *Ex Parte* 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. The following specific facts, as set forth in Plaintiffs' Complaint, Application for Temporary Restraining Order, and accompanying declarations, demonstrate 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 a commercial Internet website or e-commerce stores via Internet marketplace platforms operating under their domain name and seller identification names 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 domain registration or e-commerce store data and content, change payment accounts, redirect consumer traffic to other domain names and seller identification names, and transfer assets and ownership of the domain names and seller identification names, 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 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.*, 51 F.3d at 987 (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.

Upon review of Plaintiffs' Complaint, Application for Temporary Restraining Order, and supporting evidentiary submissions, it is hereby

ORDERED that Plaintiffs' Application for Temporary Restraining Order [DE 6] is **GRANTED**, according to the terms set forth below:

TEMPORARY RESTRAINING ORDER

(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 the 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 websites and Internet based e-commerce stores owned and operated, or controlled by them, including the Internet website and Internet based e-commerce stores operating under the Subject Domain Name and 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 websites and Internet based e-commerce stores registered, owned, or operated by any Defendant, including the Internet website and Internet based e-commerce stores operating under the Subject Domain Name and Seller IDs;

(4) Each Defendant shall not transfer ownership of the Internet website or Internet based e-commerce stores operating under their Subject Domain Name and 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 the Internet website and any of the Internet based e-commerce stores operating under their Subject Domain Name and Seller IDs and shall take all steps necessary to retrieve computer files relating to the use of the Internet website or Internet based e-commerce stores under their Subject Domain Name and 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”), Dunhuang Group (which operates the DHgate.com and DHPay.com platforms), Camel FinTech Inc, PayPal, Inc. (“PayPal”), SIA Joom, which operates the Joom.com platform (“Joom”), ContextLogic, Inc., which operates the Wish.com website (“ContextLogic”), and their related companies and affiliates shall (i) immediately identify all financial accounts and/or sub-accounts, associated with the Internet website and Internet based e-commerce stores operating under the Subject Domain Name and Seller IDs, merchant identification numbers, and/or the e-mail addresses identified on Schedule “A” hereto, as well as any other 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; (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, Dunhuang Group, Camel FinTech Inc, PayPal, Joom, 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, Dunhuang Group, Camel FinTech Inc, PayPal, Joom, 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) 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;

(9) This Order shall apply to the Subject Domain Name and Seller IDs, associated website and e-commerce stores, and any other domain names, websites, seller identification names, e-commerce stores, or financial accounts which are 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) This 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;

BOND TO BE POSTED

(11) Pursuant to 15 U.S.C. § 1116(d)(5)(D) and Federal Rule of Civil Procedure 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;

PRELIMINARY INJUNCTION

(12) A **HEARING** is set before this Court on **Friday, June 12, 2020, at 2:30 P.M.**, in Courtroom 205B at the U.S. Courthouse, 299 E. Broward Boulevard, Fort Lauderdale, Florida, at which time Defendants and/or any other affected persons may challenge the appropriateness of this Order and move to dissolve the same and at which time the Court will hear argument on Plaintiffs' requested preliminary injunction.⁹

(13) After Plaintiffs' counsel has received confirmation from the financial institutions regarding the funds restrained as directed herein, Plaintiffs shall serve a copy of the Complaint, Application for Temporary Restraining Order, and this Order, on each Defendant by e-mail via

⁹ Plaintiffs' counsel is granted permission to appear at the hearing telephonically. By no later than June 10, 2020, Plaintiffs' counsel shall provide the Court with a telephone number where the Court may reach counsel by telephone at the time of the hearing. For clarity, please do not use a speaker phone.

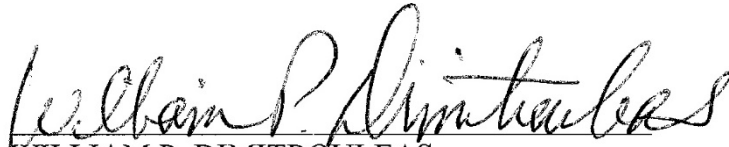
their corresponding e-mail address and/or online contact form provided on the website and e-commerce stores operating under the respective Subject Domain Name and Seller IDs, or by providing a copy of this Order by e-mail to the registrar of record for the Subject Domain Name or the marketplace platforms for each of the Seller IDs so that the registrar and marketplace platform, 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 for Temporary Restraining Order, and this Order, as well as all other documents filed in this action on the website located at <http://servingnotice.com/awoa7y/index.html>, and shall provide the address to the website to the 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/awoa7y/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 websites, and/or financial institutions, payment processors, banks, escrow services, money transmitters, and marketplace platforms, including but not limited to Amazon.com, DHgate.com, eBay.com, Joom.com, Wish.com and ContextLogic, 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 by **June 4, 2020**. Plaintiffs shall file any Reply Memorandum on or before **June 8, 2020**. The above dates may be revised upon stipulation by all

parties and approval of this Court. Defendants are hereby on notice that failure to appear at the hearing may result in the imposition of a preliminary injunction against them pursuant to 15 U.S.C. § 1116(d), Fed. R. Civ. P. 65, The All Writs Act, 28 U.S.C. § 1651(a), and this Court's inherent authority.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida,
this 21st day of May, 2020.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies provided to:
Counsel of Record

**SCHEDULE A:
DEFENDANTS BY NUMBER, SELLER ID,
ASSOCIATED FINANCIAL ACCOUNTS AND ADDITIONAL E-MAIL ADDRESS**

Def. No.	Defendant / Seller ID	Financial Account Information	Additional E-Mail Address
1	merchclan.com	phamngocbich27060@gmail.com	support@merchclan.com
2	Alimalalisai	A300CFBDH69OG1	
3	BayBiGO	A219XDZ2LMV2WN	
4	Dean Carnegie	A2J9MHTG1KPIDZ	
5	Dick Church	A18NAJBQ54GGV0	
6	EarBell	A1BHFGCJ0ES7JV	
7	Eastern Cowboy	A1T1M6SMLCQDJ2	
8	Geralry	A2AURW80L41FGB	
9	Giieena	AAXBIB59PYCZX	
10	jiningjintaihedianzishangw uyouxiangongsi	AZHN6KGYOITZZ	
11	junlianxianpeixianbaihuodi an	A1M1ZJ0OWX0MXE	
12	Kingreat	A38Q90S4MK3W0	
13	Koongso	A2XFZTCE7XHII8	
14	LAVYINGYUSA	AH3JNM3ZN1B45	
15	Lemonran	AZ32M0N64H7KA	
16	li liangshengsdftrdf	AK2GR196NUQLP	
17	liqiqimaoyouxiangongsi	A3AJ3DLY8J8GVW	
18	longjia917024	A3HA3Q20CFBWOW	
19	Magices	A1U2TVYBMOD9F0	
20	MARI DM	A188J7CGR17RKI	
21	shangzuo	AAGI6NEOD1J8E	
22	skdj	A15JJ24YYL2RCM	
23	SPbSj	AQ7Q1N7UDCQI3	
24	TOMFOXs	A5TK1M2E0IFQY	
25	Toresia	A3SVZYLKVDJRY3	

26	UJJERYTOW	A3BXLWNP6MZ0EG	
27	xuankeke	A2A8H7AJPKQ9XV	
28	yi chang ding cai zhuang shi gong cheng you xian	A3BSK2K9NXYLEC	
29	zhendian	AH86M0WZOMYRM	
30	Amaz2016	20279261	
31	Bapeaape	20569870	
32	Cloth_mall	20994301	
33	Cnkk	21092061	
34	Cooposc	21227252	
35	Designlife	20800367	
36	Dh_kenzo	21227254	
37	Dododi	20968960	
38	fishclub	21185153	
39	giantcutedepartments	21081345	
40	Good_babyclothes	20608955	
41	H_ss	19312457	
42	Iiceef	21227651	
43	Ktmsky	21176071	
44	liqyi0304	20471186	
45	Malleight	20451232	
46	Memell	21226975	
47	Popooi	21141938	
48	shangshenglingshig	20549067	
49	Sunflower_fz	20996077	
50	Tt_lady	21065021	
51	Vipvood	21227130	
52	Vogocm55	20899187	
53	Yanliw123	16213451	
54	basap-37	hahajuity@gmail.com	

55	ca1862	pakcamat0011@gmail.com	
56	charity_79	charityburris55@gmail.com	
57	cvcvx_1	dewiriana898@gmail.com	
58	dadandodo0	dadangdodot679@gmail.com	
59	dayrifa_0	dayu7820@gmail.com	
60	deyfdidi0	deyfadidit453@gmail.com	
61	dipras23	dimasprasetya56@hotmail.com	
62	diyamay-0	diyanmaya67@gmail.com	
63	gunjae-0	gunturjaelani88@gmail.com	
64	id2015.berl	adeliaberlian@yahoo.com	
65	jokpel-0	jokopelo209@gmail.com	
66	joobla-8	oblak6223@gmail.com	
67	latif45	happykamudan@gmail.com	
68	marketdaymarketday	Transaction ID:44P28451KL3153647	
69	nanankose0	nanangkosem6675@gmail.com	
70	nguybich65	aduong15987@gmail.com	
71	rizfatu_0	rizafatur688@gmail.com	
72	rudiyantputr-0	rudiyantoputra21@gmail.com	
73	sajiw_0	bagussajiwo138@gmail.com	
74	yaanrro_0	iyo.tai89@gmail.com	
75	yogsetiawa_1	setiawanyoga016@gmail.com	
76	yongpinlon0	dragon1yp@163.com	
77	yumanugroh_0	yumannugroho21@gmail.com	
78	zitnala-0	zitnialam547@gmail.com	
79	Arbutus	5b51a4768b2c370353deec85	
80	Atlanta	5af010f08b2c3703f45133b3	
81	Barcelona	5af0125c8b45130383483ad3	
82	Beagirl	5b8e1e408b451303f398c65c	
83	Bluebell	5b51a4c01436d40366ca9a53	

84	Cairo	5af013558b2c3703f451678e	
85	DC Shoes	5be2d6518b4513034ead677e	
86	Dream Back KiD	5ddf3e1b28fc710301cb951f	
87	Dublin	5af012f01436d40316ece4c7	
88	EnjoyLi	5c9351091436d4030152564c	
89	Gnbu1	5dd3affc8b2c370301901b46	
90	Golden Bamboo	5b51a25a8b451303bc8c1ad7	
91	Houston	5af0110c8b451303834829ca	
92	Istanbul	5af012681436d40316ecc871	
93	Milan	5af010491436d40316ec71a8	
94	Mint	5b51a26f8b451303bc8c1bb2	
95	Morning Glory-43	5b51a7c08b451303bc8c716b	
96	Munich	5af010cd8b2c3703f4513196	
97	NMUM	5d9b514136b54d03012b9ad9	
98	QWA327	5e0aa2b08b2c3703019f66fc	
99	San Diego	5af012038b45130383483470	
100	sanjose	1510907051958937023-153-3-26193-734915978	
101	Star Cluster	5b51a3131436d40366ca872e	
102	Taraxacum-50	5b51acad1436d40366cb145d	
103	Tiger Lily-49	5b51ac558b451303bc8caf22	
104	Vienna	5af010018b2c3703f450dd4c	
105	Warsaw	5af011618b2c3703f45138b9	
106	lucky and happy	5e09cdcae0e2e0098eb668f4	
107	luoshuanglin0812	5e0dd94ca577533230033073	
108	marinaallenshop	59dba4be15da0767683bb10b	
109	Tobeno1shop	59f88ab368788b1a4c181ee5	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-60982-CIV-DIMITROULEAS/SNOW

APPLE CORPS LIMITED and SUBAFILMS
LIMITED,

Plaintiffs,

vs.

THE INDIVIDUALS, PARTNERSHIPS AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE “A,”

Defendants.

**SEALED ORDER AUTHORIZING ALTERNATE SERVICE OF PROCESS ON
DEFENDANTS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 4(f)(3)**

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) (the “Motion”) [DE 7], filed herein on May 20, 2020. The Court has carefully considered the Motion and is otherwise fully advised in the premises.

Plaintiffs seek an order granting alternative service of process on the Defendants in this action, all of which are foreign. Plaintiffs allege that Defendants have established Internet-based businesses and utilize electronic means as reliable forms of contact. Therefore, Plaintiffs seek to serve these Defendants by both e-mail and website posting.

Rule 4(h)(2) for the Federal Rules of Civil Procedure (the “Rules”) defines the contours of service upon foreign corporations and incorporates the service methods set forth regarding individuals in Rule 4(f). Rule 4(f)(3), in turn, provides that service may be accomplished “by other means not prohibited by international agreement, as the court orders.” Alternative methods of service under Rule 4(f)(3) are available without first attempting service by other means. *Rio*

Props., Inc. v. Rio Int'l Interlink, 284 F.3d 1007, 1015 (9th Cir. 2002). “So especially in a circumstance where service upon a foreign corporation under Rule 4(f)(1) or 4(f)(2) has been cumbersome, district courts have broad discretion under Rule 4(f)(3) to authorize other methods of service that are consistent with due process and are not prohibited by international agreements.” *Brookshire Brothers, Ltd. v. Chiquita Brands Int'l, Inc.*, Case No. 05-CIV-21962, 2007 WL 1577771, at *2 (S.D. Fla. May 31, 2007) (citing *Prewitt Enters., Inc. v. Org. of Petroleum Exporting Countries*, 353 F.3d 916, 921, 927 (11th Cir. 2003)).

For the following reasons, the Court finds that alternative service of process under Rule 4(f)(3) is warranted. First, the Hague Convention does not specifically preclude service by e-mail and website 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 e-mail or website 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) (noting that an objection to the alternative forms of service set forth in the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 658 U.N.T.S. 16, is limited to the specific forms of service objected to). 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, the requested service methods are not prohibited by international agreement.

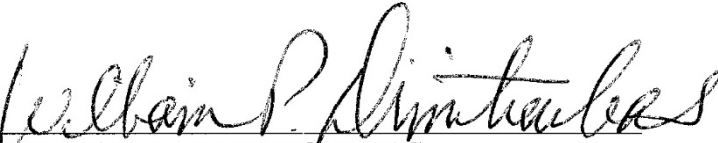
Second, Defendants have at least one known and valid form of electronic contact, and Plaintiffs have created a website for the sole purpose of providing notice of this action to Defendants, the address to which will be provided to Defendants' known e-mail accounts and onsite contact forms. Therefore, service via e-mail and through website posting is “reasonably

calculated, under all circumstances, to apprise [Defendants] of the pendency of the action and afford them an opportunity to present their objections.” *See Brookshire Brothers, Ltd.*, 2007 WL 1577771, at *1. Thus, the Court will exercise its discretion to allow service on Defendants through e-mail and website posting.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. The Motion [DE 7] is hereby **GRANTED**;
2. Pursuant to Rule 4(f)(3), Plaintiffs are permitted to serve the Summonses, Complaint, and all other filings and discovery in this matter upon each Defendant:
 - a. by providing the address to Plaintiffs’ designated serving notice website to Defendants via the e-mail accounts provided by each Defendant as part of the data related to its e-commerce store or website, 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 or registrar of record for the domain name. *See* Schedule “A” attached to the Motion [DE 7], which lists Defendants’ Subject Domain Name and Seller IDs and associated means of contact; **and**
 - b. by publicly posting a copy of the Summonses, Complaint, and all filings and discovery in this matter on Plaintiffs’ designated serving notice website appearing at <http://servingnotice.com/awoa7y/index.html>.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida,
this 21st day of May, 2020.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies provided to:
Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 20-60982-CIV-DIMITROULEAS/SNOW

APPLE CORPS LIMITED and SUBAFILMS
LIMITED,

Plaintiffs,

vs.

MERCHCLAN.COM, *et al.*,

Defendants.

ORDER GRANTING APPLICATION FOR ENTRY OF PRELIMINARY INJUNCTION

THIS CAUSE came before the Court upon Plaintiffs' Application for Entry of Preliminary Injunction (the "Application") [DE 6]. The Court has carefully reviewed the Application and the record and is otherwise fully advised in the premises.

By the instant Application, Plaintiffs, Apple Corps Limited and Subafilms Limited (collectively "Plaintiffs") move for entry of a preliminary injunction against Defendants, the Individuals, Partnerships, and Unincorporated Associations Identified on Schedule "A" hereto (collectively "Defendants"), pursuant to 15 U.S.C. § 1116 and Fed. R. Civ. P. 65, and The All Writs Act, 28 U.S.C. § 1651(a).

The Court convened a hearing on June 12, 2020, at which only counsel for Plaintiffs was present and available to present evidence supporting the Application. Because Plaintiffs have satisfied the requirements for the issuance of a preliminary injunction, the Court will now grant Plaintiffs' Application for Preliminary Injunction as to all Defendants.

I. Factual Background¹

Plaintiff, Apple Corps Limited, is the registered owner of the following trademarks, which are valid and 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 014 - Watches. IC 018 - Wallets IC 025 - Headwear, sweatshirts, t-shirts, shirts.
BEATLES	4,373,956	July 30, 2013	IC 009 - 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.

¹ The factual background is taken from Plaintiffs’ Amended Complaint, Application for Preliminary Injunction, and supporting Declarations submitted by Plaintiffs.

			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. 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
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			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. 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. 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. 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;
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			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. 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.
--	--	--	--

(See Declaration of Paul Cole in Support of Plaintiffs' Application for Preliminary Injunction (Cole Decl.") ¶¶ 4-5; *see also* United States Trademark Registrations of the BEATLES Marks at issue attached as Composite Exhibit 1 to the Amended Complaint.) The BEATLES Marks are used in connection with the manufacture and distribution of quality goods in the categories identified above. (*See id.* ¶¶ 4-5.)

Plaintiff, Subafilms Limited, is the registered owner of the following trademark, which is valid and 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 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;

Trademark	Registration Number	Registration Date	Class(es) / Good(s)
			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 Cole Decl. ¶¶ 10-11; *see also* United States Trademark Registrations of the YELLOW SUBMARINE Mark at issue attached as Composite Exhibit 2 to the Amended Complaint.) The YELLOW SUBMARINE Mark is used in connection with the manufacture and distribution of quality goods in the categories identified above. (*See id.*)

Defendants, by operating a commercial Internet website under the domain name or e-commerce stores via the Internet marketplace platforms under their seller identification names identified on Schedule “A” hereto (the “Subject Domain Name and Seller IDs”), have advertised, promoted, offered for sale, or sold goods bearing what Plaintiffs have determined to be counterfeits, infringements, reproductions and/or colorable imitations of the BEATLES Marks and/or the YELLOW SUBMARINE Mark (collectively “Plaintiffs’ Marks”). (*See* Cole Decl. ¶¶ 16-20; Declaration of Stephen M. Gaffigan in Support of Plaintiffs’ Application for Preliminary Injunction (“Gaffigan Decl.”) ¶ 2; Declaration of Kathleen Burns in Support of Plaintiffs’ Application for Preliminary Injunction (Burns Decl.) ¶ 4.)

Although each Defendant may not copy and infringe each of Plaintiffs’ Marks for each category of goods protected, Plaintiffs have submitted sufficient evidence showing that each Defendant has infringed, at least, 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 id.* ¶¶ 16, 18-20, 23.)

Plaintiffs' counsel 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. (*See* Cole Decl. ¶ 17; Burns Decl. ¶ 3; Gaffigan Decl. ¶ 2.) Invisible accessed Internet website and Internet based e-commerce stores operating under the Subject Domain Name and Seller IDs and placed orders from each Defendant 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 and Comp. Exs. 1 through 6 thereto.) Each order was processed entirely online, and following the submission of the orders, Invisible received information for finalizing payment² for the various products ordered via Amazon Payments, Inc.,³ via DHpay.com,⁴ via PayPal, Inc. ("PayPal")⁵ to

² Invisible was instructed not to transmit the funds to finalize the sale for the orders from some of the Defendants so as to avoid adding additional funds to Defendants' coffers. (*See* Gaffigan Decl. ¶ 2, n.1; Burns Decl. ¶ 4, n.1.)

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, but Amazon Payments, Inc. has the ability to identify and restrain the payment accounts using a seller's unique seller identification number. (*See* Gaffigan Decl. ¶ 5; Burns Decl. ¶ 4, n.2.)

⁴ Defendant Numbers 30-53 use the non-party e-commerce marketplace platform, DHgate.com, which processes its payments via the third-party platform, DHpay.com. The DHgate.com and DHpay.com platforms are operated by the Dunhuang Group, who utilizes Camel FinTech Inc to process transactions and deal with refunds and chargebacks on behalf of DHgate.com to its customers. (*See* Burns Decl. ¶ 4, n.3; Gaffigan Decl. ¶ 6.)

⁵ Upon completion of Invisible's purchase from Defendant Number 68 operating via eBay.com, Invisible discovered that the PayPal receipt received did not identify the Defendant's PayPal

Defendants' respective PayPal accounts and/or via Defendants' respective payee,⁶ which are identified on Schedule "A" hereto.⁷ (*See id.*) At the conclusion of the process, the detailed web page captures⁸ and images of the various Plaintiffs' branded products ordered via Defendants' Subject Domain Name and Seller IDs were sent to Plaintiffs' representative, Paul Cole, for inspection. (*See* Cole Decl. ¶ 18; Gaffigan Decl. ¶ 2.)

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

financial account in the form of an e-mail address. However, the receipt identifies the Transaction Identification Number ("Transaction ID") for the purchase made from this Defendant's Seller IDs, and PayPal is able to identify a PayPal account using the Transaction ID. (*See* Burns Decl. ¶ 4, n.4.)

⁶ The payee for the orders placed from Defendant Numbers 79-105 identifies "Joom USA Inc," which is the aggregate PayPal account for purchases made via Joom.com. (*See* Burns Decl. ¶ 4 n.5; Gaffigan Decl. ¶ 8.) The Joom.com platform itself is not the ultimate merchant, but it can tie a particular Seller ID using the seller's unique merchant identification number to a reported transaction and identify the merchant's funds held within the aggregate account. (*See* Gaffigan Decl. ¶ 8.)

The payee for the orders placed from Defendant Numbers 106-109's Wish.com Seller IDs identifies "PayPal *Wish," which is the aggregate PayPal account for purchases made Wish.com. (*See* Burns Decl. ¶ 4 n.5; Gaffigan Decl. ¶ 9.) The Wish.com platform itself is not the ultimate merchant, but it can tie a particular Seller ID using the seller's unique merchant identification number to a reported transaction and identify the merchant's funds held within the aggregate account. (*See* Gaffigan Decl. ¶ 9.)

⁷ Defendant Number 1 also provided a contact e-mail address in connection with its Subject Domain Name, which is included on Schedule "A" hereto. (*See* Burns Decl. ¶ 4 n.6.)

⁸ The web pages captured and downloaded by Plaintiffs' counsel's office, Stephen M. Gaffigan, P.A., identifying the Seller Identification Number, Store Name and/or Store Number for certain Defendants are included in Comp. Exs. "2," "3" and "5" to the Burns Decl.

On May 19, 2020, Plaintiffs filed their Complaint [DE 1] and thereafter their Amended Complaint on June 1, 2020 [DE 18] against Defendants for federal trademark counterfeiting and infringement, false designation of origin, common law unfair competition, and common law trademark infringement. On May 20, 2020, Plaintiffs filed their *Ex Parte* Application for Entry of Temporary Restraining Order, Preliminary Injunction, and Order Restraining Transfer of Assets [DE 6]. On May 21, 2020, this Court entered an Order Granting *Ex Parte* Application for Entry of Temporary Restraining Order (the “TRO”) [DE 9] and temporarily restrained Defendants from infringing Plaintiffs’ Marks at issue. Pursuant to the Court’s May 21, 2020 TRO, Plaintiffs properly served Defendants with a copy of the Amended Complaint, and all filings in this matter, and the Court’s May 21, 2020 TRO [see DE Nos. 21 and 22]. On June 12, 2020, the Court conducted a hearing on Plaintiffs’ Application, at which only counsel for Plaintiffs was in attendance.

II. Legal Standard

In order 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. Conclusions of Law

The declarations Plaintiffs submitted in support of their Application for Preliminary Injunction 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 preliminary injunction is not granted. The following specific facts, as set forth in Plaintiffs' Amended Complaint, Application for Preliminary Injunction, and accompanying declarations, demonstrate that immediate and irreparable loss, damage, and injury will result to the Plaintiffs and to consumers because it is more likely than not that:

1. Defendants own or control a commercial Internet website or e-commerce stores via Internet marketplace platforms operating under their domain name and seller identification names 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 goods 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.*, 51 F.3d at 987 (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.

Upon review of Plaintiffs' Amended Complaint, Application for Preliminary Injunction, and supporting evidentiary submissions, it is hereby

ORDERED that Plaintiffs' Application for Preliminary Injunction [DE 6] is **GRANTED**, according to the terms set forth below:

(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 the 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 websites and Internet based e-commerce stores owned and operated, or controlled by them, including the Internet website and Internet based e-commerce stores operating under the Subject Domain Name and 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 that are visible to a computer user or serves to direct computer searches to Internet websites and Internet based e-commerce stores registered, owned, or operated by any Defendant, including the Internet website and Internet based e-commerce stores operating under the Subject Domain Name and Seller IDs;

(4) Each Defendant shall not transfer ownership of the Internet website or Internet based e-commerce stores operating under their Subject Domain Name and 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 the Internet website and any of the Internet based e-commerce stores operating under their Subject Domain Name and Seller IDs and shall take all steps necessary to retrieve computer files relating to the use of the Internet website or Internet based e-commerce stores under their Subject Domain Name and 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"), Dunhuang Group (which operates the DHgate.com and DHPay.com platforms), Camel FinTech Inc, PayPal, Inc. ("PayPal"), SIA Joom, which operates the Joom.com platform ("Joom"), 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 all financial accounts and/or sub-accounts, associated with the Internet website and Internet based e-commerce stores operating under the Subject Domain Name and Seller IDs, merchant identification numbers, and/or the e-mail addresses identified on Schedule “A” hereto, as well as any other 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; (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, Dunhuang Group, Camel FinTech Inc, PayPal, Joom, 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, Dunhuang Group, Camel FinTech Inc, PayPal, Joom, 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) 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;

(9) This Order shall apply to the Subject Domain Name and Seller IDs, associated website and e-commerce stores, and any other domain names, websites, seller identification names, e-commerce stores, or financial accounts which are 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) Pursuant to 15 U.S.C. § 1116(d)(5)(D) and Federal Rule of Civil Procedure 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 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;

(11) 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 websites, and/or financial institutions, payment processors, banks, escrow services, money transmitters, and marketplace platforms, including but not limited to Amazon.com, DHgate.com, eBay.com, Joom.com, Wish.com and ContextLogic, shall, at Plaintiffs' request, provide Plaintiffs' counsel with any e-mail address known to be associated with the Defendants' respective Seller IDs;

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

DONE AND ORDERED in Chambers in Fort Lauderdale, Broward County, Florida,
this 12th day of June, 2020.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies provided to:
Counsel of Record

SCHEDULE A:
DEFENDANTS BY NUMBER, SUBJECT DOMAIN NAME, SELLER ID,
ASSOCIATED FINANCIAL ACCOUNTS AND ADDITIONAL E-MAIL ADDRESS

Def. No.	Defendant by Subject Domain Name / Seller ID	Financial Account Information	Additional E-Mail Address
1	merchclan.com	phamngocbich27060@gmail.com	support@merchclan.com
2	Alimalalisai	A300CFBDH69OG1	
3	BayBiGO	A219XDZ2LMV2WN	
4	Dean Carnegie	A2J9MHTG1KPIDZ	
5	Dick Church	A18NAJBQ54GGV0	
6	EarBell	A1BHFGCJ0ES7JV	
7	Eastern Cowboy	A1T1M6SMLCQDJ2	
8	Geralry	A2AURW80L41FGB	
9	Giieena	AAXBIB59PYCZX	
10	jiningjintaihedianzishangw uyouxiangongsi	AZHN6KGYOITZZ	
11	junlianxianpeixianbaihuodi an	A1M1ZJ0OWX0MXE	
12	Kingreat	A38Q90S4MK3W0	
13	Koongso	A2XFZTCE7XHII8	
14	LAVYINGYUSA	AH3JNM3ZN1B45	
15	Lemonran	AZ32M0N64H7KA	
16	li liangshengsdftrdf	AK2GR196NUQLP	
17	liqiqimaoyouxiangongsi	A3AJ3DLY8J8GVW	
18	longjia917024	A3HA3Q20CFBWOW	
19	Magices	A1U2TVYBMOD9F0	
20	MARI DM	A188J7CGR17RKI	
21	shangzuo	AAGI6NEOD1J8E	
22	skdj	A15JJ24YYL2RCM	
23	SPbSj	AQ7Q1N7UDCQI3	
24	TOMFOXES	A5TK1M2E0IFQY	

25	Toresia	A3SVZYLKVDJRY3	
26	UJJERYTOW	A3BXLWNP6MZ0EG	
27	xuankeke	A2A8H7AJPKQ9XV	
28	yi chang ding cai zhuang shi gong cheng you xian	A3BSK2K9NXYLEC	
29	zhendian	AH86M0WZOMYRM	
30	Amaz2016	20279261	
31	Bapeaape	20569870	
32	Cloth_mall	20994301	
33	Cnkk	21092061	
34	Cooposc	21227252	
35	Designlife	20800367	
36	Dh_kenzo	21227254	
37	Dododi	20968960	
38	fishclub	21185153	
39	giantcutedepartments	21081345	
40	Good_babyclothes	20608955	
41	H_ss	19312457	
42	Iiceef	21227651	
43	Ktmsky	21176071	
44	liqyi0304	20471186	
45	Malleight	20451232	
46	Memell	21226975	
47	Popooi	21141938	
48	shangshenglingshig	20549067	
49	Sunflower_fz	20996077	
50	Tt_lady	21065021	
51	Vipvood	21227130	
52	Vogocm55	20899187	
53	Yanliw123	16213451	

54	basap-37	hahajuity@gmail.com	
55	ca1862	pakcamat0011@gmail.com	
56	charity_79	charityburris55@gmail.com	
57	cvcvx_1	dewiriana898@gmail.com	
58	dadandodo0	dadangdodot679@gmail.com	
59	dayrifa_0	dayu7820@gmail.com	
60	deyfdidi0	deyfadidit453@gmail.com	
61	dipras23	dimasprasetya56@hotmail.com	
62	diyamay-0	diyanmaya67@gmail.com	
63	gunjae-0	gunturjaelani88@gmail.com	
64	id2015.berl	adeliaberlian@yahoo.com	
65	jokpel-0	jokopelo209@gmail.com	
66	joobla-8	oblak6223@gmail.com	
67	latif45	happykamudan@gmail.com	
68	marketdaymarketday	Transaction ID:44P28451KL3153647	
69	nanankose0	nanangkosem6675@gmail.com	
70	nguybich65	aduong15987@gmail.com	
71	rizfatu_0	rizafatur688@gmail.com	
72	rudiyantputr-0	rudiyantoputra21@gmail.com	
73	sajiw_0	bagussajiwo138@gmail.com	
74	yaanrro_0	iyo.tai89@gmail.com	
75	yogsetiawa_1	setiawanyoga016@gmail.com	
76	yongpinlon0	dragon1yp@163.com	
77	yumanugroh_0	yumannugroho21@gmail.com	
78	zitnala-0	zitnialam547@gmail.com	
79	Arbutus	5b51a4768b2c370353deec85	
80	Atlanta	5af010f08b2c3703f45133b3	
81	Barcelona	5af0125c8b45130383483ad3	
82	Beagirl	5b8e1e408b451303f398c65c	

83	Bluebell	5b51a4c01436d40366ca9a53	
84	Cairo	5af013558b2c3703f451678e	
85	DC Shoes	5be2d6518b4513034ead677e	
86	Dream Back KiD	5ddf3e1b28fc710301cb951f	
87	Dublin	5af012f01436d40316ece4c7	
88	EnjoyLi	5c9351091436d4030152564c	
89	Gnbu1	5dd3affc8b2c370301901b46	
90	Golden Bamboo	5b51a25a8b451303bc8c1ad7	
91	Houston	5af0110c8b451303834829ca	
92	Istanbul	5af012681436d40316ecc871	
93	Milan	5af010491436d40316ec71a8	
94	Mint	5b51a26f8b451303bc8c1bb2	
95	Morning Glory-43	5b51a7c08b451303bc8c716b	
96	Munich	5af010cd8b2c3703f4513196	
97	NMUM	5d9b514136b54d03012b9ad9	
98	QWA327	5e0aa2b08b2c3703019f66fc	
99	San Diego	5af012038b45130383483470	
100	sanjose	1510907051958937023-153-3-26193-734915978	
101	Star Cluster	5b51a3131436d40366ca872e	
102	Taraxacum-50	5b51acad1436d40366cb145d	
103	Tiger Lily-49	5b51ac558b451303bc8caf22	
104	Vienna	5af010018b2c3703f450dd4c	
105	Warsaw	5af011618b2c3703f45138b9	
106	lucky and happy	5e09cdcae0e2e0098eb668f4	
107	luoshuanglin0812	5e0dd94ca577533230033073	
108	marinaallenshop	59dba4be15da0767683bb10b	
109	Tobeno1shop	59f88ab368788b1a4c181ee5	

EXHIBIT 7

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Powers, I

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Facsimile: (212) 292-5391
Attorneys for Plaintiff
Smart Study Co., Ltd.

20 CV 01733

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SMART STUDY CO., LTD.,

Plaintiff

v.

A PLEASANT TRIP STORE, ANGELBABY TOY STORE, AYAKIDS STORE, BA BA STORE, BABY PARTY CO., LTD STORE, BAIDU STORE, BALALA BABY CHILD STORE, BAODING QIANGUYI JEWELRY DESIGN CO., LTD., BRILLIANT CHEERFUL LIFE STORE, CHAOZHOU CHAO'AN YILUGAOFEI BALLOON CO., LTD., CHAOZHOU SIMAIER TRADING CO., LTD., CR COLOURFUL STORE, CREATIVEBEAD GARMENT ACCESSORIES CO., LTD., DAN K STORE, DGFSTM STORE, DONGGUAN CITY XINZHONG ELECTRONIC COMMERCE CO., LIMITED, DONGGUAN KINSHUN PACKING MATERIALS CO., LTD., DONGGUAN NUOSHENG ELECTRONIC TECHNOLOGY CO., LTD., FESTIVE & PARTY SUPPLIES ARTS STORE, FOSHAN WELLWIDE APPAREL CO., LTD., FUZHOU NICROLANDEE ARTS & CRAFTS CO., LTD., FUZHOU PARTYCOOL TRADING CO., LTD., GANSU BIXI INTERNATIONAL TRADING CO., LTD., GANZHOU MANLIAN CARTOON CO., LTD., GOLDBAYCE FACTORY STORE, GUANGDONG YAZHEN TECHNOLOGY DEV. CO., LTD, GUANGZHOU DADIOUS BABY CO.,

Civil Case No.:

[PROPOSED]

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., GUANGZHOU FENGCAI CO., LTD.,
GUANGZHOU HUABO INTERNATIONAL
TRADE CO., LTD., GUANGZHOU IFUN TOYS
CO., LIMITED, GUANGZHOU RUNNING FUN
TOYS CO., LIMITED, GUANGZHOU SANGUI
INTERNATIONAL TRADE CO., LTD.,
GUANGZHOU SUPERCUTELAND
COMMODITY CO., LTD., HANGZHOU AUWIN
TRADING CO., LIMITED, HANGZHOU
EASTERNHOPE ARTS & CRAFTS CO., LTD.,
HANGZHOU FANXIANG E-COMMERCE CO.,
LTD., HANGZHOU JINGMAI NETWORK
TECHNOLOGY CO., LTD., HANGZHOU
OWNER PARTY CO., LTD., HANGZHOU
YOULAIKE CRAFTS CO., LTD., HEHOM
STORE, HENAN BAIDI E-COMMERCE CO.,
LTD., HUARUITENG PARTY SUPPLIES STORE,
JANNA STORE, JIANGSU CREATE SKY
INTERNATIONAL LTD., JIANGXI XIETAI
PRINTING CO., LTD., JILIN ZHENGFENG
TRADING CO., LTD., JINTONG STORE, KU
PAI99 STORE, MOSNI ANIMEFIGURE STORE,
NINGBO H&W SPORTING GOODS CO., LTD.,
NINGBO JIANGBEI TONSIN CRAFTS
FACTORY, NINGBO RAINDOL TRADING CO.,
LTD., NINGBO YINZHOU SINOMAKER
IMPORT AND EXPORT CO., LTD., OUR WARM
DIRECT STORE, OURWARM
HOMEDECORATION STORE, PARTY
SUPPLIER STORE, PARTY/WEDDING DECOR
STORE, PARTY520 STORE, PHOTO
BACKGROUND PROP STORE, PUJIANG
MEIRUI CRYSTAL CO., LTD., QIMINGXING
STORE, QUANZHOU DISEN IMP.& EXP. CO.,
LTD., QUANZHOU JUYU BAGS CO., LTD.,
QUANZHOU LINGKE BAGS CO., LIMITED,
SHANGHAI FUNKEY TOY CO., LTD.,
SHANGHAI GRAVIM INDUSTRIAL CO., LTD.,
SHANGHAI ZHEYI TRADING CO., LTD.,
SHANTOU ASIAN ELEPHANT TOYS
FACTORY, SHANTOU CHENGHAI TODAY
TRADING FIRM, SHANTOU WELLFA PRINT &
PACK CO., LTD., SHAOXING CITY JIUZHAN
IMP & EXP TRADE CO., LTD., SHEN MA
STORE, SHENSHUWEN LITTLE GIRL STORE,
SHENZHEN DCMD CULTURAL GOODS CO.,
LTD., SHENZHEN KING AND KING SPORTS
GOODS CO., LTD., SHENZHEN LISA GIFTS CO.,
LIMITED, SHENZHEN REIANS TRADING CO.,
LTD., SHENZHEN SKY CITY PRINTING CO.,
LTD., SHENZHEN WOTI TRADE LIMITED,

SHOP2850021 STORE, SHOP5102067 STORE,
SHOP5253226 STORE, SHOP5372342 STORE,
SHOP5427103 STORE, SHOP5432265 STORE,
SHOP5477028 STORE, SHOP5481031 STORE,
SUPERCATLYN STORE, SUPERGRAVES
STORE, SUPERNAMI STORE,
SUPERNAUTILUS STORE, SUPERY PARTY
STORE, SUZHOU LINYE TEXTILE CO., LTD.,
TAIZHOU LIANGYUAN TOYS CO., LTD.,
TAIZHOU UNION TIME IMP&EXP CO., LTD.,
TIAN MA STORE, TIANJIN BESTDAN
TRADING CO., LTD., T-SHIRT01 STORE,
XIAMEN ECSON TECHNOLOGY CO., LTD.,
XIAMEN KYOKDA TRADE CO., LTD., XIAMEN
PALMY IMPORT & EXPORT CO., LTD.,
XIAMEN STONE INDUSTRIAL AND TRADING
CO., LTD., XIAMEN UMISS MANUFACTURING
AND TRADING CO., LTD., XI'AN NAMAY
CRAFTS CO., LTD., XI'AN SILK ROAD CRAFTS
CO., LTD., XINZHAO STORE, XIONGXIAN
YANGYUE LATEX PRODUCT CO., LTD.,
YANGZHOU CHAOMAN CULTURAL MEDIA
CO., LTD., YIWU BANYAN E-COMMERCE CO.,
LTD., YIWU BOKUN GARMENT CO., LTD.,
YIWU CHAOLA CLOTHING CO., LTD., YIWU
CHENWANG TRADING CO. LTD, YIWU CITY
JO TOYS CO., LTD., YIWU CITY NOVELTY
PARTY CRAFTS CO., LTD., YIWU CITY PAFU
CRAFT & GIFT CO., LTD., YIWU CITY QING LI
GARMENT CO., LTD., YIWU DOLIKE
CLOTHING CO., LTD., YIWU FANBAI IMPORT
AND EXPORT CO., LTD., YIWU FENGQING
TOY CO., LTD., YIWU FOBALLOON TRADING
CO., LTD., YIWU GUANGCUI JEWELRY
FACTORY, YIWU HAOLV TOYS CO., LTD.,
YIWU HAWIN TOYS CO., LTD., YIWU HERUI E-
COMMERCE COMPANY LIMITED, YIWU
HINTCAN TRADE CO., LTD., YIWU HONGXING
TOYS CO., LTD., YIWU HT BALLOON CO.,
LTD., YIWU HUIRAN CRAFTS CO., LTD., YIWU
JINGDUN TRADING CO., LTD., YIWU KAYSAI
TOYS CO., LTD., YIWU LAIDY APPAREL FIRM,
YIWU LEILING IMPORT & EXPORT CO., LTD.,
YIWU MARDAV COMMODITY CO., LTD.,
YIWU MEIYA JEWELRY FACTORY, YIWU
MIQI TRADING CO., LTD., YIWU NINGSU E-
COMMERCE CO., LTD., YIWU POSHPRINCESS
GARMENT CO., LTD., YIWU QIDA
ELECTRONIC CO., LTD., YIWU SHARESHINE
TRADING CO., LTD., YIWU SHUYUN TRADING
CO., LTD., YIWU SIBAISHUO IMPORT AND

EXPORT CO., LTD., YIWU TINGHONG IMPORT
AND EXPORT CO., LTD., YIWU XUAN HUI
TEXTILE CO., LTD., YIWU YAWOO CLOTHING
CO., LTD., YIWU YOUTENG PAPER CRAFTS
CO., LTD., YIWU ZEDAN GARMENT CO., LTD.,
YIWU ZHOUTING TRADE CO., LTD.,
YONGKANG YUEXIU INDUSTRY & TRADE
CO., LTD., YR BABY STORE, YUAILIUR
STORE, ZAOZHUANG HAPPY BEAR CRAFTS
CO., LTD., ZHANGZHOU CALLFENY PAPER
CRAFT CO., LTD., ZHANGZHOU RAYSUN CO.,
LTD., ZHEJIANG XIELI SCIENCE AND
TECHNOLOGY CO., LTD., ZHEJIANG YADU
IMPORT & EXPORT CO., LTD. AND ZHEJIANG
YANXIA ART&CRAFT CO., LTD.,

Defendants

GLOSSARY

<u>Term</u>	<u>Definition</u>
Plaintiff or Smart Defendants	Smart Study Co., Ltd. A Pleasant trip Store, Angelbaby Toy Store, Ayakids Store, ba ba Store, Baby party co., LTD Store, bai du Store, BALALA BABY CHILD Store, Baoding Qianguyi Jewelry Design Co., Ltd., Brilliant Cheerful Life Store, Chaozhou Chao'an Yilugaofei Balloon Co., Ltd., Chaozhou Simaier Trading Co., Ltd., CR Colourful Store, Creativebead Garment Accessories Co., Ltd., dan k Store, Dgfstm Store, Dongguan City Xinzhong Electronic Commerce Co., Limited, Dongguan Kinshun Packing Materials Co., Ltd., Dongguan Nuosheng Electronic Technology Co., Ltd., Festive & Party Supplies Arts Store, Foshan Wellwide Apparel Co., Ltd., Fuzhou Nicrolandee Arts & Crafts Co., Ltd., Fuzhou Partycool Trading Co., Ltd., Gansu Bixi International Trading Co., Ltd., Ganzhou Manlian Cartoon Co., Ltd., Goldbayce Factory Store, Guangdong Yazhen Technology Dev. Co., Ltd, Guangzhou Dadious Baby Co., Ltd., Guangzhou Fengcai Co., Ltd., Guangzhou Huabo International Trade Co., Ltd., Guangzhou Ifun Toys Co., Limited, Guangzhou Running Fun Toys Co., Limited, Guangzhou Sangui International Trade Co., Ltd., Guangzhou Supercuteland Commodity Co., Ltd., Hangzhou Auwin Trading Co., Limited, Hangzhou Easternhope Arts & Crafts Co., Ltd., Hangzhou Fanxiang E-Commerce Co., Ltd., Hangzhou Jingmai Network Technology Co., Ltd., Hangzhou Owner Party Co., Ltd., Hangzhou Youlaike Crafts Co., Ltd., Hehom Store, Henan Baidi E-Commerce Co., Ltd., HuaRuiTeng Party Supplies Store, Janna Store, Jiangsu Create Sky International Ltd., Jiangxi Xietai Printing Co., Ltd., Jilin Zhengfeng Trading Co., Ltd., Jintong Store, ku pai99 Store, Mosni AnimeFigure Store, Ningbo H&W Sporting Goods Co., Ltd., Ningbo Jiangbei Tonsin Crafts Factory, Ningbo Raindol Trading Co., Ltd., Ningbo Yinzhou Sinomaker Import And Export Co., Ltd., Our Warm Direct Store, ourwarm HomeDecoration Store, Party Supplier Store, party/wedding Decor Store, party520 Store, Photo Background Prop Store, Pujiang Meirui Crystal Co., Ltd., qimingxing Store, Quanzhou Disen Imp.& Exp. Co., Ltd., Quanzhou Juyu Bags Co., Ltd., Quanzhou Lingke Bags Co., Limited, Shanghai Funkey Toy Co., Ltd., Shanghai Gravim Industrial Co., Ltd., Shanghai Zheyi Trading Co., Ltd., Shantou Asian Elephant Toys

	Factory, Shantou Chenghai Today Trading Firm, Shantou Wellfa Print & Pack Co., Ltd., Shaoxing City Jiuzhan Imp & Exp Trade Co., Ltd., shen ma Store, ShenShuWen littlegirl Store, Shenzhen DCMD Cultural Goods Co., Ltd., Shenzhen King And King Sports Goods Co., Ltd., Shenzhen Lisa Gifts Co., Limited, Shenzhen Reians Trading Co., Ltd., Shenzhen Sky City Printing Co., Ltd., Shenzhen Woti Trade Limited, Shop2850021 Store, Shop5102067 Store, Shop5253226 Store, Shop5372342 Store, Shop5427103 Store, Shop5432265 Store, Shop5477028 Store, Shop5481031 Store, superCaitlyn Store, SuperGraves Store, SuperNami Store, SuperNautilus Store, Supery Party Store, Suzhou Linye Textile Co., Ltd., Taizhou Liangyuan Toys Co., Ltd., Taizhou Union Time Imp&Exp Co., Ltd., tian ma Store, Tianjin Bestdan Trading Co., Ltd., t-shirt01 Store, Xiamen Ecsen Technology Co., Ltd., Xiamen Kyokda Trade Co., Ltd., Xiamen Palmy Import & Export Co., Ltd., Xiamen Stone Industrial And Trading Co., Ltd., Xiamen Umiss Manufacturing And Trading Co., Ltd., Xi'an Namay Crafts Co., Ltd., Xi'an Silk Road Crafts Co., Ltd., XinZhao Store, Xiongqian Yangyue Latex Product Co., Ltd., Yangzhou Chaoman Cultural Media Co., Ltd., Yiwu Banyan E-Commerce Co., Ltd., Yiwu Bokun Garment Co., Ltd., Yiwu Chaola Clothing Co., Ltd., Yiwu Chenwang Trading CO. LTD, Yiwu City JO Toys Co., Ltd., Yiwu City Novelty Party Crafts Co., Ltd., Yiwu City Pafu Craft & Gift Co., Ltd., Yiwu City Qing Li Garment Co., Ltd., Yiwu Dolike Clothing Co., Ltd., Yiwu FanBai Import And Export Co., Ltd., Yiwu Fengqing Toy Co., Ltd., Yiwu Foballoon Trading Co., Ltd., Yiwu Guangcui Jewelry Factory, Yiwu Haolv Toys Co., Ltd., Yiwu Hawin Toys Co., Ltd., Yiwu Herui E-Commerce Company Limited, Yiwu Hintcan Trade Co., Ltd., Yiwu Hongxing Toys Co., Ltd., Yiwu HT Balloon Co., Ltd., Yiwu Huiran Crafts Co., Ltd., Yiwu Jingdun Trading Co., Ltd., Yiwu Kaysai Toys Co., Ltd., Yiwu Laidy Apparel Firm, Yiwu Leiling Import & Export Co., Ltd., Yiwu Mardav Commodity Co., Ltd., Yiwu Meiya Jewelry Factory, Yiwu Miqi Trading Co., Ltd., Yiwu Ningsu E-Commerce Co., Ltd., Yiwu Poshprincess Garment Co., Ltd., Yiwu Qida Electronic Co., Ltd., Yiwu Shareshine Trading Co., Ltd., Yiwu Shuyun Trading Co., Ltd., Yiwu Sibaishuo Import And Export Co., Ltd., Yiwu Tinghong Import And Export Co., Ltd., Yiwu Xuan Hui Textile Co., Ltd., Yiwu Yawoo Clothing Co., Ltd., Yiwu Youteng Paper Crafts
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	Co., Ltd., Yiwu Zedan Garment Co., Ltd., Yiwu Zhouting Trade Co., Ltd., Yongkang Yuexiu Industry & Trade Co., Ltd., YR BABY Store, yuailiur Store, Zaozhuang Happy Bear Crafts Co., Ltd., Zhangzhou Callfeny Paper Craft Co., Ltd., Zhangzhou Raysun Co., Ltd., Zhejiang Xieli Science And Technology Co., Ltd., Zhejiang Yadu Import & Export Co., Ltd. and Zhejiang Yanxia Art&Craft 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, NY 10003; 721 Broadway, New York, NY 10003; 944 Havemeyer Ave, Bronx, NY 10473;
Complaint	Plaintiff's Complaint filed on February 27, 2020
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 February 27, 2020
Kang Dec.	Declaration of You Jae Kang 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
Baby Shark Content	One of Smart's most successful creations, which is the

	Pinkfong “Baby Shark” song and viral music video with characters
Baby Shark Applications	U.S. Trademark Serial Application Nos.: 79/253,035 for “BABY SHARK” for a variety of goods in Classes 41, 25, 16 and 9; 88/046,099 for “PINKFONG BABY SHARK” for a variety of goods in Class 28; 79/252,869 for “PINKFONG” for a variety of goods in Class 41; 79/249,403 for “PINKFONG BABY SHARK” for a variety of goods in Classes 24 and 21; and 88/396,786 for “PINKFONG BABY SHARK” for a variety of goods in Class 25
Baby Shark Registrations	U.S. Trademark Registration Nos.: 5,803,108 for “BABY SHARK” for a variety of goods in Class 28; 5,483,744 for “PINKFONG” for a variety of goods in Classes 3 and 21; 5,327,527 for “PINKFONG” for a variety of goods in Classes 9, 16 and 28; and 4,993,122 for “PINKFONG” a variety of goods in Classes 9 and 25
Baby Shark Marks	The Baby Shark Registrations and Baby Shark Applications
Baby Shark Works	U.S. Copyright Registration Nos.: VA 2-130-856, covering Baby Shark; VA 2-130-847, covering Daddy Shark; VA 2-130-854, covering Mommy Shark; VA 2-131-983, covering Pink Fong Mascot; SR 823-609, covering Baby Shark (Sound Recording and Music); PA 2-142-905, covering Baby Shark (Motion Picture)
Baby Shark Products	Smart has developed and initiated an extensive worldwide licensing program for a wide variety of consumer products such as toys, sound books, t-shirts, associated with and/or related to the Baby Shark Content
Counterfeit Products	Products bearing or used in connection with the Baby Shark Marks and/or Baby Shark Works, and/or products in packaging and/or containing labels and/or hang tags bearing the Baby Shark Marks and/or Baby Shark Works, and/or bearing or used in connection with marks and/or artwork that are confusingly or substantially similar to the Baby Shark Marks and/or Baby Shark Works and/or products that are identical or confusingly or substantially similar to the Baby Shark 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 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 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, You Jae Kang 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. Smart is a global entertainment company specializing in developing animated and gaming content to deliver high-quality entertainment. Headquartered in Seoul, South Korea, Smart currently has 220 employees and offices in Los Angeles, Shanghai and Hong Kong. Smart has developed award-winning brands including "Pinkfong", "Monster Super League", "JellyKing" and "Tamago Monsters".

2. Through Smart's preschool brand, Pinkfong, the company produces modern-day songs and stories to provide stimulating and fun learning experiences to children. One of Smart's most successful creations is the Pinkfong "Baby Shark" song and viral music video with characters, which to date has amassed nearly 3.1 billion views on YouTube and debuted at No. 32 on the Billboard Hot 100 Chart.

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

3. Smart has developed and initiated an extensive worldwide licensing program for a wide variety of consumer products such as toys, sound books and t-shirts associated with and/or related to the BABY SHARK and PINKFONG trademarks and the Baby Shark Content.

4. While Plaintiff has gained significant common law trademark and other rights in its Baby Shark Content and Baby Shark Products, through use, advertising and promotion, Plaintiff has also protected its valuable rights by filing for and obtaining federal trademark registrations.

5. For example, Plaintiff owns the Baby Shark Marks, including U.S. Trademark Registrations Nos.: 5,803,108 for “BABY SHARK” for a variety of goods in Class 28; 5,483,744 for “PINKFONG” for a variety of goods in Classes 3 and 21; 5,327,527 for “PINKFONG” for a variety of goods in Classes 9, 16 and 28; and 4,993,122 for “PINKFONG” a variety of goods in Classes 9 and 25. Additionally, Smart is the owner of U.S. Trademark Serial Application Nos.: 79/253,035 for “BABY SHARK” for a variety of goods in Classes 41, 25, 16 and 9; 88/046,099 for “PINKFONG BABY SHARK” for a variety of goods in Class 28; 79/252,869 for “PINKFONG” for a variety of goods in Class 41; 79/249,403 for “PINKFONG BABY SHARK” for a variety of goods in Classes 24 and 21; and 88/396,786 for “PINKFONG BABY SHARK” for a variety of goods in Class 25.

6. The Baby Shark Marks are currently in use in commerce in connection with the Baby Shark Content and Baby Shark Products.

7. In addition, Plaintiff also owns the registered copyrights related to the Baby Shark Content and Baby Shark Products. For example, Plaintiff owns the Baby Shark Works, including U.S. Copyright Registrations Nos.: VA 2-130-856, covering Baby Shark; VA 2-130-847, covering Daddy Shark; VA 2-130-854, covering Mommy Shark; VA 2-131-983, covering Pink Fong Mascot; SR 823-609, covering Baby Shark (Sound Recording and Music); PA 2-142-905, covering Baby Shark (Motion Picture).

8. 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);

9. Defendants are not, nor have they ever been, authorized distributors or licensees of the Baby Shark Products. Neither Plaintiff, nor any of Plaintiff's authorized agents, have consented to Defendants' use of the Baby Shark Works and/or Baby Shark Marks, nor has Plaintiff consented to Defendants' use of marks and/or artwork that are confusingly and/or substantially similar to, identical to and constitute a counterfeiting or infringement of the Baby Shark Works and/or Baby Shark Marks;

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

11. 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 Baby Shark Works and/or Baby Shark Marks;
- 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 Baby Shark 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 Baby Shark Works and/or Baby Shark Marks, 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 Baby Shark Works and/or Baby Shark Marks, 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 Baby Shark Works and/or Baby Shark Marks 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;

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 Plaintiff, its business, the goodwill and reputation built up in and associated with the Baby Shark Works and/or Baby Shark Marks and to its reputations if a temporary restraining order is not issued;

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

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

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

16. 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 Baby Shark Works and/or Baby Shark Marks. Therefore, good cause exists for granting Plaintiff's request for an asset restraining order. It typically takes the 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 the 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.

17. 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 Baby Shark Works and/or Baby Shark Marks and/or marks and/or artwork that are confusingly and/or substantially similar to, identical to and constitute a counterfeiting or infringement of the Baby Shark Works and/or Baby Shark Marks;
- 2) directly or indirectly infringing in any manner Plaintiff's Baby Shark Marks and Baby Shark Works;
- 3) using any reproduction, counterfeit, copy or colorable imitation of Plaintiff's Baby Shark Marks and Baby Shark Works, to identify any goods or service not authorized by Plaintiff;
- 4) using Plaintiff's Baby Shark Marks and/or Baby Shark Works and/or any other marks that are confusingly similar to the Baby Shark Marks and/or any other artwork that is substantially similar to the Baby Shark Works, on or in connection with Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, offering for sale, selling and/or otherwise dealing in 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 Defendants with Plaintiff, 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 Defendants and Defendants' commercial activities and Plaintiff;

- 6) 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;
- 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, 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
- 8) knowingly instructing any other person or business entity to engage in any of the activities referred to in subparagraphs I(A)(1) through I(A)(7) 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 any person or business entity to engage in any of the activities referred to in subparagraphs I(A)(1) through I(A)(7) 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 any other person or business entity to engage in any of the activities referred to in subparagraphs I(A)(1) through I(A)(7), 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 18C 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 March 19, 2, 2020 at 3:00 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 March 9, 2020 ^{at 4:00 p.m.} Plaintiff shall file any Reply papers on or before

✓ March 12, 2020. ^{at 4:00 p.m.}

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 Bifurcated and 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 to be determined after having been 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) 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 "A Pleasant trip Store 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 PayPal 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. Rachel Wang, Legal Counsel, Alibaba Group at rachel.wy@alibaba-inc.com and Ms. Yujuan He, Paralegal, Alibaba Group at chloe.he@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 legal@pingpongx.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 Baby Shark Marks and/or Baby Shark Works and/or marks and/or artwork that are confusingly and/or substantially similar to, identical to and constitute an infringement of the Baby Shark Marks and/or Baby Shark Works.

VI. Security Bond

✓ A. IT IS FURTHER ORDERED that Plaintiff shall place security in the amount of

\$ 5000.00

✓ 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.

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, You Jae Kang 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 27th day of February, 2020, at 1:20 p.m.

Paul A. Engelke
UNITED STATES DISTRICT JUDGE

Paul, I *J*

SCHEDULE A

No	Defendant	Infringing Listing	Merchant Storefront	Alipay Account	Email
1	A Pleasant Trip Store	https://www.aliexpress.com/item/4000424587764.html	https://www.aliexpress.com/store/3150006		
2	AngieBaby Toy Store	https://www.aliexpress.com/item/10000011298072.html	https://www.aliexpress.com/store/5372030		
3	Avabids Store	https://www.aliexpress.com/item/4000105785145.html	https://www.aliexpress.com/store/5062431		
4	ba ba Store	https://www.aliexpress.com/item/4000379601344.html	https://www.aliexpress.com/store/5076167		
5	Baby party co., LTD Store	https://www.aliexpress.com/item/4000370514534.html	https://www.aliexpress.com/store/4085009		
6	baibai do Store	https://www.aliexpress.com/item/4000394660439.html	https://www.aliexpress.com/store/5074181		
7	BABALA BABY CHILD Store	https://www.aliexpress.com/item/4000164361911.html	https://www.aliexpress.com/store/5008913		
8	Baoding Qingyue Jewelry Design Co., Ltd.	https://www.aliexpress.com/product-detail/Baby-Shark-Party-Supplies-25-Birthday_6214039089.html	https://dangdangqr.en.alibaba.com		amymingyue@163.com;
9	Bright Cheerful Life Store	https://www.aliexpress.com/item/4000369365604.html	https://www.aliexpress.com/store/5372342		shirley@1688ball.com
10	Chaozhou Chao an Yitupatel Ballroom Co., Ltd	https://www.aliexpress.com/product-detail/Onlup-18-inch-round-slogan-balloon_621273543348.html	https://onlup.en.alibaba.com		sz1479738@qq.com
11	Chaozhou Simaler Trading Co., Ltd	https://www.aliexpress.com/product-detail/New-design-birthday-baby-shower-decoration_621873554339.html	https://fomeballroom.en.alibaba.com		
12	CR Colourful Store	https://www.aliexpress.com/item/31047484587.html	https://creecolorfulstore.aliexpress.com/store/3507056		
13	Creativeband Garment Accessories Co., Ltd.	https://www.aliexpress.com/product-detail/Baby-Shark-Party-Decorations-Birthday-Kids_62723718113.html	https://creativeband.en.alibaba.com		natalie@gzfucun.com
14	dan k Store	https://www.aliexpress.com/item/40002181141301.html	https://www.aliexpress.com/store/4410066		
15	Digimix Store	https://www.aliexpress.com/item/400094341159.html	https://www.aliexpress.com/store/3103048		
16	Dongguan City Xinhong Electronic Commerce Co., Ltd	https://www.aliexpress.com/product-detail/Shark-Baby-Costumes-Kids-Halloween-Costume_62309697782.html	https://greatchildren.en.alibaba.com		lmgsmr001@126.com
17	Dongguan Kishun Packing Materials Co., Ltd	https://www.aliexpress.com/product-detail/Baby-Shark-Table-Cloth-Cartoon-Shark_62295906044.html	https://dglmshun.en.alibaba.com		cecilia@kshun.com
18	Dongguan Nusheng Electronic Technology Co., Ltd	https://www.aliexpress.com/product-detail/Cartoon-Birthday-Disposable-Set-Boy-Baby_62115608277.html	https://partylink.en.alibaba.com		zcs9959@qq.com
19	Festive & Party Supplier Arts Store	https://www.aliexpress.com/item/4000337816730.html	https://www.aliexpress.com/store/1854705		
20	Foxchan Wellwide Apparel Co., Ltd	https://www.aliexpress.com/product-detail/2019-summer-cartoon-shark-design-toddler_623347032328.html	https://wellwide.en.alibaba.com		wellwide@21cn.com
21	Fuchou Nicobandee Arts & Crafts Co., Ltd	https://www.aliexpress.com/product-detail/Micro-Blue-Pink-Birthday-POO_6201030283.html	https://up-top.en.alibaba.com		zretalun@nicobee-party.com
22	Fuzhou Partytop Trading Co., Ltd	https://www.aliexpress.com/product-detail/117-Pcs-Shark-Baby-Tableware-Kit_62400633660.html	https://partytop.en.alibaba.com		partytop@163.com
23	Ganxi Bai International Trading Co., Ltd	https://www.aliexpress.com/product-detail/Free-Shipping-8-Inch-Baby-Shark_62298509512.html	https://mifonyou.com		jill@mifonyou.com
24	Ganzhou Manlion Cartoon Co., Ltd	https://www.aliexpress.com/product-detail/Adult-lovely-pink-plush-baby-shark_60384973886.html	https://mli.en.alibaba.com		sales01@mliartoon.com;
25	Goldbance Factory Store	https://www.aliexpress.com/item/4000942012200.html	https://www.aliexpress.com/store/1758138		hanhongkang@ena.com;
26	Guangdong Yachun Technology Dev. Co., Ltd	https://www.aliexpress.com/product-detail/Customer-kid-stay-baby-shark_62748310756.html	https://polyethen.en.alibaba.com		525593373@qq.com;
27	Guangzhou Dadious Baby Co., Ltd	https://www.aliexpress.com/product-detail/New-Design-Baby-Safe-Push-Toy_62079737515.html	https://dabioys.en.alibaba.com		linda940303@gmail.com
28	Guangzhou Fengcai Co., Ltd	https://www.aliexpress.com/product-detail/1ids-gift-animal-backpack-baby-shark_60709443495.html	https://babycat.en.alibaba.com		sisag@yachun.com
29	Guangzhou Huabo International Trade Co., Ltd	https://www.aliexpress.com/product-detail/Mickey-Paw-Patrol-Frozen-Baby-Shark_62344569919.html	https://supercute.en.alibaba.com		babycat@huabocartoon.com;
30	Guangzhou Hun Toys Co., Limited	https://www.aliexpress.com/product-detail/Lovely-Giant-Infantable-Pink-Fox-anltable_6235464275.html	https://jgzhuabo.en.alibaba.com		mioklu@supercute.com;an
31	Guangzhou Running Fun Toys Co., Limited	https://www.aliexpress.com/product-detail/Running-Fun-CE-Lovely-baby-yellow_62394237639.html	https://fuzhuo168@163.com		oucca_009@outmail.com
32	Guangzhou Singul International Trade Co., Ltd	https://www.aliexpress.com/product-detail/Unluxe-lovely-baby-shark-bags-for_62039724652.html	https://fuzhuo168@163.com		linda940303@gmail.com
33	Guangzhou Superoutland Commodity Co., Ltd	https://www.aliexpress.com/product-detail/Karate-animal-backpack-baby-shark-bag_60641781350.html	https://fuzhuo168@163.com		linda940303@gmail.com
34	Hangzhou Auwin Trading Co., Limited	https://www.aliexpress.com/product-detail/Disposable-Table-Decoration-Baby-Shark-Wholesale_622106431373.html	https://hauwin.en.alibaba.com		lydia@hauwin.com
35	Hangzhou Eastenthope Arts & Crafts Co., Ltd	https://www.aliexpress.com/product-detail/Cute-Baby-Shark-Party-Supplies-Happy_62116301516.html	https://easternhope.en.alibaba.com		salund3@easternhope.cc
36	Hangzhou Fanzhang E-Commerce Co., Ltd	https://www.aliexpress.com/product-detail/10-guest-auby-shark-party-paper_62126887846.html	https://eachthink.en.alibaba.com		jacky@eachthink.com
37	Hangzhou Jingnal Network Technology Co., Ltd	https://www.aliexpress.com/product-detail/Wholesale-3D-Printing-Cute-Unicorn-Backpack_62332901243.html	https://top99.en.alibaba.com		top99top@163.com
38	Hangzhou Owner Party Co., Ltd	https://www.aliexpress.com/product-detail/Festive-Custom-Safari-Wedding-Event-Baby_62243458242.html	https://ownerparty.en.alibaba.com		sales1008@ownerparty.com
39	Hangzhou Youlake Crafts Co., Ltd	https://www.aliexpress.com/product-detail/Baby-Shark-Party-Favors-Table-Centerpieces_622778173754.html	https://cnulike.en.alibaba.com		claire@ulilike.com
40	Hefei Store	https://www.aliexpress.com/item/32989122163.html	https://hebeimtoy.aliexpress.com/store/4497067		hebeimtoy@outlook.com
41	Hefei Store	https://www.aliexpress.com/product-detail/Baby-gifts-plum-animal-cartoon-animal_621188399554.html	https://hnbaidi.en.alibaba.com		rob@hnbaidi.com;
42	Huabai Teag Party Supplies Store	https://www.aliexpress.com/item/4000219316585.html	https://www.aliexpress.com/store/5164036		595773256@qq.com
43	Jarria Store	https://www.aliexpress.com/item/4000391146473.html	https://www.aliexpress.com/store/5361143		
44	Jingou Create Sky International Ltd	https://www.aliexpress.com/product-detail/Birthday-Party-Supplies-Shark-Shape-Kids_6276458578.html	https://csdk.en.alibaba.com		luke_xia20@create-sky.com
45	Jiangxi Xietai Printing Co., Ltd	https://www.aliexpress.com/product-detail/Baby-Shark-Birthday-Party-Supplies-9_62331676913.html	https://hieraiprinting.en.alibaba.com		wicai011@xietai.co
46	Jilin Zhongfeng Trading Co., Ltd	https://www.aliexpress.com/product-detail/Hot-style-baby-sharks-ang-ang_62304945906.html	https://jizhengfang.en.alibaba.com		doan@jizhengfang.com
47	Jinrong Store	https://www.aliexpress.com/item/33021609512.html	https://www.aliexpress.com/store/4854033		
48	Ku jiaide Store	https://www.aliexpress.com/item/4000273429100.html	https://www.aliexpress.com/store/5056068		
49	Wooni Animefigure Store	https://www.aliexpress.com/item/4000256089721.html	https://www.aliexpress.com/store/5372290		
50	Ningbo H&W Sporting Goods Co., Ltd	https://www.aliexpress.com/product-detail/Hot-Selling-Shark-Shape-Pu-Foam_62393028646.html	https://hwgsport.en.alibaba.com		gm@h@hwgsport.net

51 Ningbo Jianghai Tonsin Crafts Factory	https://www.alibaba.com/product-detail/TK-Personalized-Baby-Shark-One-Acrylic_62187393948.html	https://nbgzyp.en.alibaba.com	info@nbgzyp.com
52 Ningbo Bando Trading Co., Ltd.	https://www.alibaba.com/product-detail/WHY303-47-86-45cm-Amazon-Wish-Kids_62163413021.html	https://nbgzyp.en.alibaba.com	info@nbgzyp.com
53 Ningbo Yinzhou Sinomaker Import And Export Co., Ltd.	https://www.alibaba.com/product-detail/party-decorations-baby-shower-shark-theme_62089412116.html	https://sinomaker.en.alibaba.com	representative@sinomaker.com.cn
54 Our Warm Direct Store	https://www.aliexpress.com/item/OurWarm-Baby-Shark-Birthday-Party-Backdrop-Kids-Birthday-Photo-Backdrop-Under-The-Sea-Mermaid-Party-Baby-Shower_32959411805.html	https://www.aliexpress.com/store/29594021	
55 Our Warm Home Decoration Store	https://www.aliexpress.com/item/OurWarm-Baby-Shark-Birthday-Party-Decorations-Under-The-Sea-Backdrop-Cartoon-Shark-Photography-Background-Baby-Shower_3299573351.html	https://ourwarm-direct.en.aliexpress.com/store/2761868	
56 Party Supplier Store	https://www.aliexpress.com/item/Baby-Shark-Family-Attack-Gaming-Cake-Toppers-Birthday-Party-Decoration-Cupcake-Toppers-Pick-Baby-Shower-Party_3299573351.html	https://www.aliexpress.com/store/3899047	
57 Party Wedding Decor Store	https://www.aliexpress.com/item/10000070138658.html	https://www.aliexpress.com/store/5401034	
58 Party 520 Store	https://www.aliexpress.com/item/4000344080750.html	https://happybirthday520.aliexpress.com/store/5050861	
59 Photo Background Print Store	https://www.aliexpress.com/item/4000407314422.html	https://cn1518993130nly.en.alibaba.com	meifuyuyata@163.com
60 Pulling Meirui Crystal Co., Ltd.	https://www.alibaba.com/product-detail/Inkjet-Design-Photos-Layer-Engraving-Baby_62274060601.html	https://www.aliexpress.com/store/4408175	
61 Qingming Store	https://www.aliexpress.com/item/4000219667326.html	https://disenbae.en.alibaba.com	ase@kingdian.com
62 Quanzhou Diansi Imp. & Exp. Co., Ltd.	https://www.alibaba.com/product-detail/Mot-sale-3D-EVA-baby-shark_62389375316.html	https://swindings.en.alibaba.com	info@jinhuaqiang.com
63 Quanzhou Juyi Bags Co., Ltd.	https://www.alibaba.com/product-detail/Push-Cute-Cartoon-Animal-Bag-Girl_62014932437.html	https://bagsupplier.en.alibaba.com	sales@jinhuaqiang.com
64 Quanzhou Lingke Bags Co., Limited	https://www.alibaba.com/product-detail/Kids-baby-shark-backpack-bag_62060277134.html	https://turkeytoy.en.alibaba.com	info@turkeytoy.com
65 Shanghai Funlady Toy Co., Ltd.	https://www.alibaba.com/product-detail/19-inch-cute-custom-lids-shark_62263667816.html	https://quanzhou.en.alibaba.com	sales66@plush toys.cn
66 Shanghai Gaoxin Industrial Co., Ltd.	https://www.alibaba.com/product-detail/10cm-Plush-Cartoon-Shark-to-Babies_62116529756.html	https://alibaba.en.alibaba.com	service@quanzhou.com
67 Shanghai Zheyi Trading Co., Ltd.	https://www.alibaba.com/product-detail/Poly-sally-baby-gifts-cartoon-backpack_62284265268.html	https://alibaba.en.alibaba.com	90@zheyi.com
68 Shantou Asion Elephant Toys Factory	https://www.alibaba.com/product-detail/Sea-Friendly-Vinyl-Tow-Manufacturer-Fox_62346374693.html	https://alibaba.en.alibaba.com	59373156@qq.com
69 Shantou Chenghai Today Trading Firm	https://www.alibaba.com/product-detail/2019-Amazon-Product-Baby-Shark-Bag_2009356130.html	https://today-forces.en.alibaba.com	terryhe334@gmail.com
70 Shantou Wellia Print & Pack Co., Ltd.	https://www.alibaba.com/product-detail/Accept-Customized-Printed-Food-Grade-Plastic_60480761344.html	https://yuefoss.en.alibaba.com	crkandy@gmail.com
71 Shaoxing City Jizhuang Imp. & Exp. Trade Co., Ltd.	https://www.alibaba.com/product-detail/Shark-Baby-Children's Birthday-Party_622293679984.html	https://jizhuanggroup.en.alibaba.com	jesse@hanchina.com
72 Shen Ma Store	https://www.aliexpress.com/item/4000339136483.html	https://www.aliexpress.com/store/5050901	
73 Shen Shu Wen Intelligent Store	https://www.aliexpress.com/item/4000261079989.html	https://www.aliexpress.com/store/5371160	223399400@qq.com
74 Shenzhen DCMO Cultural Goods Co., Ltd.	https://www.alibaba.com/product-detail/DCMO-LED-Shark-Baby-Toy-Fox_62139138856.html	https://dcmo.en.alibaba.com	lwz427@163.com
75 Shenzhen King And King Sports Goods Co., Ltd.	https://www.alibaba.com/product-detail/Baby-shark-neoprene-soupaclic-holder-popsicle_62174423113.html	https://king2king.en.alibaba.com	sales01@king2king.com
76 Shenzhen Lian Gifts Co., Limited	https://www.alibaba.com/product-detail/Baby-shark-birthday-party-set-cartoon_62204699558.html	https://lianglits.en.alibaba.com	info@lianglits.com.cn
77 Shenzhen Reians Trading Co., Ltd.	https://www.alibaba.com/product-detail/Cartoon-Shark-Birthday-Party-Theme-Aluminum_62143603834.html	https://hulun.en.alibaba.com	hansu@w@163.com
78 Shouchen Sky City Printing Co., Ltd.	https://www.alibaba.com/product-detail/shark-inflatable-balloons-baby-shower-decoration_62193600219.html	https://skytown.en.alibaba.com	reliorh@163.com
79 Shenzhen Woli Trade Limited	https://www.alibaba.com/product-detail/New-Style-PVC-Rubber-Baby_62265521460.html	https://skytown.en.alibaba.com	yyvnmehur2019@163.com
80 Shop2850021 Store	https://www.aliexpress.com/item/32918281584.html	https://woli.en.alibaba.com	woli188@163.com
81 Shop5102067 Store	https://www.aliexpress.com/item/4000039590852.html	https://www.aliexpress.com/store/2850021	
82 Shop5153226 Store	https://www.aliexpress.com/item/400034840964.html	https://www.aliexpress.com/store/5102067	
83 Shop5172343 Store	https://www.aliexpress.com/item/4000269527254.html	https://www.aliexpress.com/store/5153226	
84 Shop517105 Store	https://www.aliexpress.com/item/4000380533980.html	https://www.aliexpress.com/store/517105	
85 Shop5432265 Store	https://www.aliexpress.com/item/400041513006.html	https://www.aliexpress.com/store/5432265	
86 Shop5477028 Store	https://www.aliexpress.com/item/4000427836485.html	https://www.aliexpress.com/store/5477028	
87 Shop5481031 Store	https://www.aliexpress.com/item/4000418943038.html	https://www.aliexpress.com/store/5481031	
88 SuperCaliyn Store	https://www.aliexpress.com/item/4000208660385.html	https://www.aliexpress.com/store/5135008	
89 SuperGanze Store	https://www.aliexpress.com/item/4000267498122.html	https://www.aliexpress.com/store/5135008	
90 SuperLam Store	https://www.aliexpress.com/item/4000268279422.html	https://www.aliexpress.com/store/5135008	
91 SuperMallus Store	https://www.aliexpress.com/item/4000268276026.html	https://www.aliexpress.com/store/5135008	
92 Supery Party Store	https://www.aliexpress.com/item/4000074037799.html	https://www.aliexpress.com/store/5135008	
93 Suzhou Liangye Textile Co., Ltd.	https://www.alibaba.com/product-detail/Wholesale-cheap-price-trial-bath-supr_62030661847.html	https://liangyexile.en.alibaba.com	liangye@liangyexile.com
94 Taizhou Lianyun Toys Co., Ltd.	https://www.alibaba.com/product-detail/75-Ft-Friction-Baby-Shark_6217692674.html	https://liangcraft.en.alibaba.com	paymona@liangcraft.com
95 Taizhou Union Time Imp&Exp Co., Ltd.	https://www.alibaba.com/product-detail/Union-Time-Kids-Birthday-Cupcake-Decoration_62285604785.html	https://union-time.en.alibaba.com	johnchen66@outlook.com
96 Tian Ma Store	https://www.aliexpress.com/item/4000344456375.html	https://www.aliexpress.com/store/5045309	don10141@outlook.com
97 Tianjin Baotian Trading Co., Ltd.	https://www.alibaba.com/product-detail/Bestand-Print-Child-Back-Pack-Corner_62194843636.html	https://Baotian.en.alibaba.com	angela@econ-tech.com
98 J-shiroki Store	https://www.aliexpress.com/item/4000304035812.html	https://www.aliexpress.com/store/5423047	info@econ-tech.com
99 Kiamen Econ Technology Co., Ltd.	https://www.alibaba.com/product-detail/Children's Birthday-Baby-Shark-Theme_62299488520.html	https://econ-homey.en.alibaba.com	

148	Yongchang Tieshi Industry & Trade Co., Ltd.	https://www.alibaba.com/product-detail/2020-New-Arrivals-Shark-Party-Supplies_62352356620.html	https://cn.yuechu.en.alibaba.com	sales16@yinyuocraft.com
149	VR BABY Store	https://www.aliexpress.com/item/400039585096.html	https://www.aliexpress.com/store/5068270	
150	yuailu Store	https://www.aliexpress.com/item/4000221103303.html	https://www.aliexpress.com/store/5145106	
151	Zaozhuang Happy Bear Crafts Co., Ltd.	https://www.alibaba.com/product-detail/NH-NL041-KING-HEIGHT-Wholesale-Cheap_62036479175.html	https://dumiletoy.en.alibaba.com	happybearcrafts@126.com
152	Zhangzhou Calligraphy Paper Craft Co., Ltd.	https://www.alibaba.com/product-detail/hot-sale-in-amazon-7pcs-baby_62333706645.html	https://callenry.en.alibaba.com	ginga@callenry.com
153	Zhangzhou Ruyuan Co., Ltd.	https://www.alibaba.com/product-detail/Baby-Shark-Spiral-Hanging-Decoration_62286677355.html	https://raysunind.en.alibaba.com	sales@raysun.me
154	Zhejiang Xueli Science And Technology Co., Ltd.	https://www.alibaba.com/product-detail/5-inch-round-cheap-baby-shark_62397581357.html	https://helleech.en.alibaba.com	bsen16485649@gmail.com
155	Zhejiang Yada Import & Export Co., Ltd.	https://www.alibaba.com/product-detail/Children's-Birthday-Paper-Cup-Paper_62185419121.html	https://yadu.en.alibaba.com/	besa@yadu.com
156	Zhejiang Yanxia Arts&Craft Co., Ltd.	https://www.alibaba.com/product-detail/hot-selling-customized-baby-shark-birthday_62170617039.html	https://yinyuocraft.en.alibaba.com	sales01@yinyuocraft.com

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DATE FILED: 5/5/2020

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SMART STUDY CO., LTD.,

Plaintiff

v.

A PLEASANT TRIP STORE, *et al.*,

Defendants

20-cv-1733 (MKV)

**PRELIMINARY
INJUNCTION ORDER**

WHEREAS, Plaintiff¹ having moved *ex parte* on February 27, 2020 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 (Dkts. 12 – 16);

WHEREAS, the Court entered an Order granting Plaintiff's Application on February 27, 2020 which ordered Defendants to appear on March 19, 2020 at 3:00 p.m. to show cause why a preliminary injunction should not issue (Dkt. 21);

WHEREAS, the Court subsequently entered an Order on March 5, 2020, extending the TRO and rescheduling the March 19, 2020 show cause hearing to May 5, 2020 at 3:00 p.m. ("March 5, 2020 Order") (Dkt. 18);

WHEREAS, on March 16, 2020 and March 17, 2020, pursuant to the alternative methods of service authorized by the TRO, Plaintiff served the Summons, Complaint, TRO, all papers filed in support of the Application and the March 5, 2020 Order on each and every Defendant;

WHEREAS, on May 4, 2020, Plaintiff filed a Certificate of Service affirming that service had been effected on each and every Defendant (Dkt. 20), and Plaintiff's counsel represented the same at the Show Cause Hearing on May 5, 2020;

WHEREAS, on May 5, 2020 at 3:00 p.m., Plaintiff appeared at the Show Cause Hearing. No Defendants appeared.

For the reasons stated on the record at the Show Cause Hearing and in the Court's separate opinion detailing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED:

1. The injunctive relief previously granted in the TRO shall remain in place through the

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

pendency of this litigation. 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 Baby Shark Marks and/or Baby Shark Works and/or marks or artwork that are confusingly or substantially similar to, identical to and constitute a counterfeiting and/or infringement of the Baby Shark Marks and/or Baby Shark Works;
- ii. directly or indirectly infringing in any manner any of Plaintiff's Baby Shark Marks and/or Baby Shark Works;
- iii. using any reproduction, counterfeit, copy or colorable imitation of Plaintiff's Baby Shark Marks and/or Baby Shark Works, to identify any goods or services not authorized by Plaintiff;
- iv. using any of Plaintiff's Baby Shark Marks and/or Baby Shark Works or any other marks and/or artwork that are confusingly or substantially similar to the Baby Shark Marks and/or Baby Shark Works on or in connection with Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Counterfeit Products;
- v. 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 Defendants with Plaintiff, 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 Defendants and Defendants' commercial activities and Plaintiff;

- vi. 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;
- vii. 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
- viii. 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)(vii) above and 1(b)(i) through 1(b)(ii) and 1(c)(i) below.

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) through 1(a)(vii) and 1(b)(i) 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)(vii), 1(b)(i) through 1(b)(ii) 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;
- 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 associated with Defendants' User Accounts; and
- x. Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling of Counterfeit Products, or any other products bearing one or more of the Baby Shark Marks

and/or Baby Shark Works and/or marks or artwork that are confusingly or substantially similar to, identical to and constitute a counterfeiting and/or infringement of the Baby Shark Marks and/or Baby Shark Works.

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 Baby Shark Marks and/or Baby Shark Works and/or marks or artwork that are confusingly or substantially similar to, identical to and constitute an infringement of the Baby Shark Marks and/or Baby Shark 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 and the separate opinion (once it is filed) detailing the Court's Findings of Fact and Conclusions of Law, and (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 and the separate opinion (once it is filed) detailing the Court's Findings of Fact and Conclusions of Law, to Defendants' e-mail addresses to be determined after having been identified in Schedule A pursuant to Paragraph V(C) of the TRO or may otherwise be determined; or
 - b) 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, 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 a PDF

copy of this Order and the separate opinion (once it is filed) detailing the Court's Findings of Fact and Conclusions of Law.

5. As sufficient cause has been shown, that such alternative service by electronic means ordered in the TRO and herein shall be deemed effective as to Defendants, Third Party Service Providers and Financial Institutions through the pendency of this action.
6. 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 and the separate opinion (once it is filed) detailing the Court's Findings of Fact and Conclusions of Law, and (ii) a link to a secure website where PayPal will be able to download a PDF copy of this Order and the separate opinion (once it is filed) detailing the Court's Findings of Fact and Conclusions of Law via electronic mail to EE Omaha Legal Specialist at EEOMALegalSpecialist@paypal.com;

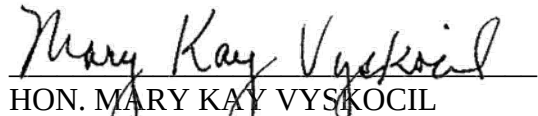
- b) delivery of: (i) a PDF copy of this Order and the separate opinion (once it is filed) detailing the Court's Findings of Fact and Conclusions of Law, and (ii) a link to a secure website where AliPay.com Co., Ltd., Ant Financial Services will be able to download a PDF copy of this Order and the separate opinion (once it is filed) detailing the Court's Findings of Fact and Conclusions of Law via electronic mail 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 and the separate opinion (once it is filed) detailing the Court's Findings of Fact and Conclusions of Law, and (ii) a link to a secure website where Alibaba will be able to download a PDF copy of this Order and the separate opinion (once it is filed) detailing the Court's Findings of Fact and Conclusions of Law via electronic mail to Ms. Rachel Wang, Legal Counsel, Alibaba Group at rachel.wy@alibaba-inc.com and Ms. Yujuan He, Paralegal, Alibaba Group at chloe.he@alibaba-inc.com;
- d) delivery of: (i) a PDF copy of this Order and the separate opinion (once it is filed) detailing the Court's Findings of Fact and Conclusions of Law, and (ii) a link to a secure website where Payoneer Inc. will be able to download a PDF copy of this Order and the separate opinion (once it is filed) detailing the Court's Findings of Fact and Conclusions of Law 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
- e) delivery of: (i) a PDF copy of this Order and the separate opinion (once it is filed) detailing the Court's Findings of Fact and Conclusions of Law, and (ii) a link to a

secure website where PingPong Global Solutions Inc. will be able to download a PDF copy of this Order and the separate opinion (once it is filed) detailing the Court's Findings of Fact and Conclusions of Law via electronic mail to PingPong Global Solutions Inc.'s Legal Department at legal@pingpongx.com.

7. 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.
8. 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.
9. This Order shall remain in effect during the pendency of this action, or until further order of the Court.
10. 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.

SIGNED this 5th day of May, 2020, at 4:35 p.m.
New York, New York


HON. MARY KAY VYSKOCIL
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DOC #:
DATE FILED: 5/7/2020

SMART STUDY CO., LTD.,

Plaintiff,

v.

A PLEASANT TRIP STORE, *et al.*,

Defendants.

1:20-cv-1733 (MKV)

FINDINGS OF FACT AND CONCLUSIONS OF LAW
IN CONNECTION WITH PRELIMINARY INJUNCTION

MARY KAY VYSKOCIL, United States District Judge:

Plaintiff, Smart Study Co., Ltd., commenced this copyright and trademark infringement action with the filing of its Complaint [ECF #6] on February 27, 2020. The case concerns the trademark and copyright rights to commercial use of the “Baby Shark” image and name. *See* Complaint ¶ 8-14. Baby Shark, as explained further below, is a worldwide sensation geared at toddlers and young children that has been marketed and licensed by Plaintiff following the release of a viral video on the internet in 2016. *See* Complaint ¶ 8-9. Plaintiff claims that Defendants, more than 100 individuals, companies, and other business entities, sell counterfeit Baby Shark products through Alibaba and AliExpress (Chinese marketplaces and e-commerce platforms), infringing on its intellectual property. *See* Complaint ¶¶ 26-27, 30-45.

On the same day the Complaint was filed, Plaintiff filed an application for a temporary restraining order and preliminary injunction [ECF #12-16] seeking to enjoin the sale of allegedly counterfeit Baby Shark products, which Plaintiff claims infringe on Plaintiff’s intellectual property rights. The temporary restraining order (“TRO”) was granted that day [ECF #21]. The TRO, *inter alia*, allowed alternative email service on Defendants, retailers who sell allegedly counterfeit

products through internet retail platforms related to Chinese company Alibaba, and set dates for briefing and a hearing on the motion for a preliminary injunction. However, as a result of the global COVID-19 pandemic and the ensuing shutdown of most business in China, more time than originally allowed was needed to locate service email addresses for the Defendants. As a result, the Court modified the TRO to allow Plaintiff more time to serve the Defendants, and for the Defendants to file oppositions to the preliminary injunction motion. *See* ECF #18 at 1. On March 16, 2020, all Defendants were served,¹ *see* ECF #20, and oppositions from Defendants were due April 24, 2020. None were filed.

On May 5, 2020, the Court held a hearing on the application for a preliminary injunction. Only counsel for Plaintiff appeared; no representatives of any Defendant participated in the hearing or have appeared in this action. At the hearing, following argument and questioning of counsel for Plaintiff, the Court granted the motion for a preliminary injunction, and a written Order was entered shortly thereafter. *See* ECF #23 (the “Preliminary Injunction Order”). At the May 5 hearing, the Court summarized its findings of fact and conclusions of law which lead it to grant the injunction, *see* Fed. R. Civ. P. 52(a)(2), but noted a full opinion would follow.

FACTUAL FINDINGS

No Defendant has appeared in this action, and no opposition briefing was filed in advance of the May 5 hearing. Thus, the facts as stated in Plaintiff’s Complaint are undisputed. For the purposes of the motion for a preliminary injunction, the Court adopts all of the facts as stated in the Complaint and the papers in support of the motion. *See Featherstone v. Barash*, 345 F.2d 246, 250 (10th Cir. 1965) (“[I]f there is no dispute between the parties about the facts, allegations of

¹ Plaintiff explained during the May 5 hearing that, as authorized in the TRO, they served Defendants using Rmail, an online service that confirms valid proof of authorship, content, and delivery of an email. Plaintiff explained that Rmail had confirmed that all Defendants received the service emails authorized by the TRO.

the complaint may be accepted as true, thus eliminating the necessity of formal findings.”); *Carpenters’ Dist. Council, Detroit, Wayne & Oakland Ctys. & Vicinity, of United Bhd. of Carpenters & Joiners of Am., AFL-CIO v. Cicci*, 261 F.2d 5, 8 (6th Cir. 1958) (“It is true that if there is no dispute between the parties about the facts, the allegations of a complaint may be accepted as true, thus eliminating the necessity of formal findings . . .”). While not an exhaustive recitation, the Court summarizes the facts here.

Plaintiff is a South Korean company that develops entertainment and gaming content for a global audience. Complaint ¶ 7. Plaintiff produces content directed at preschool-aged children through a single brand, Pinkfong. Complaint ¶ 8. In 2016, Pinkfong released the “Baby Shark” song and music video on YouTube. *Id.* The song and video soon went viral, and today the video has over 3.1 billion views on YouTube. Complaint ¶ 8.² After the video’s release, Plaintiff developed a worldwide licensing program for Baby Shark products, including toys, clothing, and entertainment. Complaint ¶ 9. After the products were introduced to the market, Plaintiff also applied for and received various trademark and copyright registrations for Baby Shark and other related concepts like “Mommy Shark,” “Daddy Shark,” and “Baby Shark (Motion Picture).” Complaint ¶ 13, 15. Today, Baby Shark remains a widely popular brand for young children.

Defendants, who are individuals and business entities located in China, *see* Complaint ¶ 26, attempted to capitalize on the Baby Shark phenomenon by selling allegedly counterfeit Baby Shark products. Complaint ¶ 27. The products are sold on Alibaba and AliExpress, e-commerce platforms that allow merchants to sell goods to a global audience. Complaint ¶ 23. The sites annually have over \$1 billion in sales internationally, including to the United States, *see*

² While the Complaint includes the 3.1 billion number, at the time this opinion is written, the original video has registered more than 5.2 billion YouTube views. *See* Pinkfong! Kids’ Songs & Stories, *Baby Shark Dance | Sing and Dance! | @Baby Shark Official | PINKFONG Songs for Children*, YouTube (June 17, 2016), <https://www.youtube.com/watch?v=XqZsoesa55w&vl=en>.

Complaint ¶ 24, but allegedly have also become known as a marketplace for counterfeit and trademark/copyright infringing goods. See Complaint ¶ 25. Confirming that reputation, Defendants here, rather than proceed through Plaintiff's licensing program, manufactured, marketed, and sold Baby Shark products that appear to infringe on Plaintiff's intellectual property. See Complaint ¶¶ 32, 37. Defendants' products are of lower quality than those produced by Plaintiff and its licensees, and are sold at substantially lower prices, undercutting Plaintiff's market-share and de-valuing Plaintiff's intellectual property. Complaint ¶¶ 3, 11, 37-39.³

CONCLUSIONS OF LAW

A. Personal Jurisdiction

The Court has personal jurisdiction over the Defendants. In reaching this conclusion, the Court applied a two-part analysis: first, the Court considered the law of the forum state to determine if jurisdiction is proper, and second, the Court considered whether exercise of jurisdiction is consistent with due process. *Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*, 732 F.3d 161, 168 (2d Cir. 2013); see *Bristol-Myers Squibb Co. v. Superior Court*, -- U.S. --, 137 S. Ct. 1773, 1779 (2017) ("Because '[a] state court's assertion of jurisdiction exposes defendants to the State's coercive power,' it is 'subject to review for compatibility with the Fourteenth Amendment's Due Process Clause,' which 'limits the power of a state court to render a valid personal judgment against a nonresident defendant.'" (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 918 (2011); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980))).

³ Since commencing the lawsuit, Plaintiff has been in contact with numerous Defendants, with whom they have reached resolutions of the claims in the Complaint. The Court has approved two notices of dismissal with respect to several Defendants.

New York's long arm statute, N.Y. C.P.L.R. § 302(a)(1), provides that a Defendant is subject to personal jurisdiction in New York based on business contacts where both "(1) The defendant [has] transacted business within the state; and (2) the claim asserted [] arise[s] from that business activity." *Licci*, 732 F.3d at 168 (citing *Solè Resort, S.A. de C.V. v. Allure Resorts Mgmt., LLC*, 450 F.3d 100, 103 (2d Cir. 2006)). The "transacted business" giving rise to jurisdiction must include "some purposeful activities within the State that would justify bringing the nondomiciliary defendant before the New York courts." *DH Servs., LLC v. Positive Impact, Inc.*, No. 12-cv-6153 (RA), 2014 WL 496875, at *3 (S.D.N.Y. Feb. 5, 2014) (citing *SPCA of Upstate New York, Inc. v. American Working Collie Association*, 18 N.Y.3d 400, 404 (2012)). Similarly, the "arising from" element requires "relatedness between the transaction and the legal claim such that the latter is not completely unmoored from the former." *Licci*, 732 F.3d at 168.

Both requirements are met here. Since the claims in Plaintiffs' complaint all arise from the sale of allegedly counterfeit and infringing goods, the only question for the Court under New York law is whether the Defendants do sell goods in this state (*i.e.* whether they transact business here). In *Chloè v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158 (2d Cir. 2010), the Second Circuit "update[d] [its] jurisprudence on personal jurisdiction in the age of internet commerce." *Id.* at 165. In *Chloè*, the Court endorsed a finding that a California resident was subject to New York jurisdiction where he sold a single allegedly trademark-infringing handbag (in addition to other non-infringing goods) over the internet into New York in his capacity as an employee of a company that sold other goods into the state. *Id.* at 166-67. The Court found that the Defendant's sale of bags generally into New York was sufficient to constitute "transacting business" and the sale of one bag subject to the suit was sufficiently related to the business. *Id.* at 167. While the full extent of Defendants sales into New York are unknown, their products are available for sale and shipment

to New York. Indeed, to verify its allegation that Defendants transact business in New York, Plaintiff here purchased and received in New York several counterfeit Baby Shark products from approximately ten percent of Defendants. See Declaration of Jessica Arnaiz in Support of the Motion, ECF #14 (“Arnaiz Decl.”), Ex. B.⁴ These fourteen orders, where Plaintiff purchased one or more items, indicate that, at least with regard to these fourteen defendants, jurisdiction is proper in New York because they transact business here.

As for the other Defendants, and as an additional ground for jurisdiction over the fourteen Defendants from whom Plaintiff purchased products, jurisdiction is appropriate because Defendants operate a “highly interactive website” from which consumers in New York can purchase the allegedly infringing goods at issue here. See *Chloë*, 616 F.3d at 170 (collecting New York cases holding that an interactive commercial website accessible from New York constitutes transacting business for personal jurisdiction); *Lifeguard Licensing Corp. v. Ann Arbor T-Shirt Co., LLC*, No. 15-cv-8459 (LGS), 2016 WL 3748480, at *3 (S.D.N.Y. July 8, 2016) (“A website that does more than provide information about a product and allows customers to purchase goods online, is a “highly interactive website,” which may provide a basis for personal jurisdiction under CPLR § 302(a)). That the website Defendants operate is based on the Alibaba platform and that orders are processed by Alibaba, makes no difference, because Defendants operate on the platform as a regular business and not simply as occasional sellers. See *Lifeguard Licensing Corp.*, 2016 WL 3748480, at *3 (“For internet sellers who use an internet storefront like Amazon, courts generally distinguish between two categories. First are commercial vendors who use it “as a means for establishing regular business with a remote forum.” Jurisdiction is proper as to these defendants. In the second category are occasional sellers who use an internet service once to sell

⁴ During the May 5 hearing, Plaintiff explained that in order to ensure that Defendants transact business in New York, Plaintiff’s investigators purchased counterfeit Baby Shark products from approximately ten percent of Defendants.

goods to the highest bidder who happens to be in the forum state.” (citing *EnviroCare Techs., LLC v. Simanovsky*, No. 11-cv-3458 (JS)(ETB), 2012 WL 2001443, at *3 (E.D.N.Y. June 4, 2012))). Because all Defendants operate such a “highly interactive website” as a means to sell their products into New York, and because those websites are accessible in this state, personal jurisdiction over Defendants is appropriate.

Exercise of jurisdiction here is consistent with due process. “The due process inquiry consists of two components—the ‘minimum contacts’ inquiry and the ‘reasonableness’ inquiry.” *McGraw-Hill Global Education Holdings, LLC v. Mathrani*, 295 F. Supp. 3d 404, 413 (S.D.N.Y. 2017); accord *Asahi Metal Indus. Co., Ltd. v. Superior Court*, 480 U.S. 102, 112 (1987) (holding that courts should consider both minimum contacts and substantive reasonableness); see also *Bristol-Myers Squibb*, 137 S. Ct. at 1785-86 (Sotomayor, J., dissenting) (collecting cases). First, Defendants have purposely availed themselves of New York by marketing and selling products into New York through their internet storefronts. As a result, Defendants’ contacts with New York “satisfy the minimum contacts prong of the constitutional inquiry for the same reasons that they satisfy the statutory inquiry.” *Mathrani*, 295 F. Supp. 3d at 413 (citing *Licci*, 732 F.3d at 170 (noting that while “section 302(a)(1) . . . and constitutional due process are not coextensive,” cases in which personal jurisdiction is permitted under the long-arm statute but is prohibited under the due process analysis are “rare”).

Second, asserting jurisdiction here is reasonable. When a plaintiff has made a threshold showing of minimum contacts, the exercise of jurisdiction is favored, but may be overcome where the Defendants present “a compelling case that the presence of some other considerations would render jurisdiction unreasonable.” *Metro. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 568 (2d Cir. 1996) (citing *Burger King v. Rudzewicz*, 471 U.S. 462, 477-78 (1985)). Needless to say,

Defendants have not made any showing that jurisdiction is unreasonable here as they have elected not to appear. *Cf. McGraw-Hill*, 295 F. Supp. 3d at 414 (citing *Peeq Media, LLC v. Buccheri*, 2016 WL 5947295, at *5 (S.D.N.Y. Oct. 13, 2016)). The Court will not endeavor to find additional hardships on the Defendant where they have not otherwise brought them forward; the Plaintiff's election of forum in this case is dispositive. *Accord Asahi*, 480 U.S. at 113-14 (holding that once minimum contacts are established, the plaintiff's interest in obtaining convenient and effective relief is among the factors that determine reasonableness).

Thus, personal jurisdiction over the Defendants is appropriate in New York.

B. Preliminary Injunction

Under Federal Rule of Civil Procedure 65(a), a preliminary injunction is appropriate only if the movant shows: (1) a likelihood of success on the merits or sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in the plaintiff's favor; (2) a likelihood of irreparable injury in the absence of an injunction; (3) that the balance of hardships tips in the plaintiff's favor; and (4) that the public interest would not be disserved by the issuance of an injunction.” *Benihana, Inc. v. Benihana of Tokyo, LLC*, 784 F.3d 887, 895 (2d Cir. 2015)); Fed. R. Civ. P. 65(a).

Plaintiff has demonstrated irreparable harm. “Irreparable harm exists in a trademark case when the party seeking the injunction shows that it will lose control over the reputation of its trademark . . . because loss of control over one’s reputation is neither calculable nor precisely compensable.” *U.S. Polo Ass’n, Inc. v. PRL USA Holdings, Inc.*, 800 F. Supp. 2d 515, 540 (S.D.N.Y. 2011) (alteration in original) (citing *New York City Triathlon, LLC v. NYC Triathlon Club, Inc.*, 704 F. Supp. 2d 305, 343 (S.D.N.Y. 2010), *aff’d*, 511 F. App’x 81 (2d Cir. 2013)). As the undisputed facts in the Complaint allege, Defendants’ actions have deprived Plaintiff of the

ability to control the quality of the products using the Baby Shark name and image. *See El Greco Leather Prods. Co. v. Shoe World, Inc.*, 806 F.2d 392, 395 (2d Cir. 1986) (“One of the most valuable and important protections afforded by the Lanham Act is the right to control the quality of the goods manufactured and sold under the holder’s trademark.”). Moreover, Defendants’ cheaper prices (as a result of the inferior materials) have resulted in devaluation of the marks themselves. *See* Declaration of You Jae Kang in Support of Motion, ECF #15 (“Kang Decl.”), ¶¶ 25-26, 28; Declaration of Brienne Scully in Support of Motion, ECF #16 (“Scully Decl.”), ¶ 21. These injuries are sufficient to constitute irreparable harm. *See Zino Davidoff SA v. CVS Corp.*, 571 F.3d 238, 243-44. (2d Cir. 2009).⁵

Plaintiff also has demonstrated a likelihood of success on the merits of its trademark and copyright claims. On the trademark claims, Plaintiff needs to show that its marks are valid and entitled to protection and that Defendants’ use of the marks is likely to cause confusion. *Tiffany (NJ) Inc. v. eBay, Inc.*, 600 F.3d 93 (2d Cir. 2010). Plaintiff has shown that the marks are valid by including the trademark registrations on file with the United States Patent and Trademark Office. *See* Kang Decl., Ex. A. Additionally, the alleged infringement here, as supported by the undisputed facts and examples Plaintiff includes, are “inherently confusing,” abrogating any need for examination of the factors in *Polaroid Corp. v. Polarad Elecs. Corp.*, 287 F.2d 492, 495 (2d Cir. 1961), because the products in question include counterfeit references and versions of the Baby Shark name and likeness. *See Fendi Adele S.R.L. v. Filene’s Basement, Inc.*, 696 F. Supp. 2d 368, 383 (S.D.N.Y. 2010).

⁵ The Court’s preliminary injunction order also directs certain financial institutions to freeze Defendants’ accounts and for the websites that host Defendants’ storefronts to restrict any access to them. For the reasons stated in Plaintiff’s memorandum of law in support of the motion [ECF #13] and the declarations filed in support of the motion, the court believes that these restrictions are necessary to prevent Defendants from causing further irreparable harm by creating new storefronts and business identities to sell their counterfeit goods.

To obtain a preliminary injunction, Plaintiff need not establish a likelihood of success on every claim. It is sufficient to establish likelihood of success on the merits of only one of its claims. *See 725 Eatery Corp. v. City of New York*, 408 F. Supp. 3d 424, 459 (S.D.N.Y. 2019) (“Further, Plaintiffs need not demonstrate a likelihood of success on the merits of every claim—rather, they need only ‘show a likelihood of success on the merits of at least one of [their] claims.’” (alteration in original) (quoting *L.V.M. v. Lloyd*, 318 F. Supp. 3d 601, 618 (S.D.N.Y. 2018))). That said, Plaintiff also is likely to succeed on its copyright claim.

To prevail on the copyright claim, Plaintiff must prove it owns a valid copyright and that the infringing products copy an “original” element of the work. *See Kwan v. Schlein*, 634 F.3d 224, 229 (2d Cir. 2011). In support of its copyright claim, Plaintiff includes its certificate of registration from the United States Copyright Office to prove it owns a valid copyright. *See Kang Decl.*, Ex. B; *see also Scholz Design, Inc. v. Sard Custom Homes, LLC*, 691 F.3d 182, 186 (2d Cir. 2012) (“A certificate of copyright registration is *prima facie* evidence of ownership of a valid copyright . . .”). Plaintiff has also demonstrated that Defendants are infringing on Plaintiff’s copyright. *See P&G v. Colgate-Pamolive Co.*, 199 F.3d 74, 77 (2d Cir. 1999) (noting that copyright infringement may be proven both by direct and indirect evidence). The Plaintiff’s Complaint and Exhibits, the factual allegations of which the Court has adopted in full for the purposes of this motion, include various pictures of Defendants’ infringing products as compared to Plaintiff’s legal ones. The products, in short, appear practically identical. *See Complaint* ¶ 37-39; *Arnaiz Decl.*, Ex. A; *Scully Decl.*, Ex. A. There is also no doubt that Defendants had access to Plaintiff’s work; indeed, it seems wholly unlikely that Defendants could design, manufacture, and sell their products without any sense that Plaintiff’s work existed. *See Jorgensen v. Epic/Sony Records*, 351 F.3d 46, 51 (2d Cir. 2003) (holding that infringer had access to

copyright owners work where there was a “reasonable possibility” of encountering it). Indeed, Plaintiff’s global marketing efforts using the Baby Shark images and products makes this possibility highly unlikely.

Finally, the balance of hardships tips decidedly in Plaintiff’s favor, and an injunction is in the public interest, for the same reason: Defendants’ business is seemingly based on counterfeit, intellectual property-infringing tactics. There is no argument that requiring Defendants to comply with legal obligations is either a legitimate hardship or against the public interest. “[T]o the extent defendants ‘elect to build a business on products found to infringe[,] [they] cannot be heard to complain if an injunction against continuing infringement destroys the business so elected.’” *Broad Music, Inc. v. Prana Hosp., Inc.*, 158 F. Supp. 3d 184, 196 (S.D.N.Y. 2016) (alterations in original) (quoting *Mint, Inc. v. Amad*, No. 10-cv-9395 (SAS), 2011 WL 1792570, at *3 (S.D.N.Y. May 9, 2011)). Likewise, “injunctive relief here will advance the public’s ‘compelling interest in protecting copyright owners’ marketable rights to their work’ so as to ‘encourage[e] the production of creative work.’” *Id.* (alteration in original) (citing *WPIX, Inc. v. ivi, Inc.*, 691 F.3d 275, 287 (2d Cir. 2012)).

Plaintiff has demonstrated that it is likely to succeed on both its trademark and copyright claims and that absent an injunction it will suffer irreparable harm. Additionally, there is no hardship on Defendants or superseding public interest that warrants the Court deny the motion. A preliminary injunction is appropriate.

CONCLUSION

The foregoing constitutes the Court's Findings of Fact and Conclusions of Law in Support of the issuance of a preliminary injunction. Plaintiff is directed to serve a copy of this opinion on Defendants, as set forth in the Preliminary Injunction Order.

SO ORDERED.

Date: May 7, 2020
New York, NY



MARY KAY VYSKOCIL
United States District Judge