

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 be 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.

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.

- (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	raine7	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	zhongtl1	362978977410
89	aweihgel5gr	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