

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

OSPREY LLC,

Plaintiff,

v.

POOLWHALE, *et al.*,

Defendants.

Civil Action No. 20-1253

**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 (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.

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 27, 2020, 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 the Third Party Service Providers and Financial Institutions, in light of

Defendants' intentional and willful offerings for sale and/or sales of Infringing Products<sup>1</sup> ("Application"); and

(B) Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3) ("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 October 5, 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.

## **ORDER**

### **I. Restraining Order**

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, the injunctive relief previously granted on August 27, 2020, 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.

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<sup>1</sup> As alleged in Plaintiff's Complaint, Defendants have offered for sale, sold, and distributed knock-off and infringing versions of Plaintiff's FrogLog<sup>®</sup> animal rescue device 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 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 (and/or counterfeits), (b) unfairly competing by using Plaintiff's photographs, videos, artwork, creative text, product instructions, trade dress, and registered FrogLog<sup>®</sup> trademark while marketing their knock-off products in a willful attempt to pass off their knock-off products as genuine versions of Plaintiff's Product, and (c) Defendants accomplish their infringing sales through the use of, at least, the Internet based e-commerce stores operated via at least the Amazon.com, eBay.com, Wish.com and AliExpress.com Internet marketplace platforms..

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<sup>2</sup>, Plaintiff's Works<sup>3</sup>, 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,<sup>4</sup> Merchant Storefronts<sup>5</sup> or any money, securities or other property or assets of Defendants (hereinafter collectively referred to as "Defendants' Assets");

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<sup>2</sup> Plaintiff's Mark refers to U.S. Reg. No. 5,390,968 for FROGLOG for "Non-metal floating container comprised of a fabric pouch containing an inflated bladder and sandbag, placed on the edge of a swimming pool for small animals to escape using the ramp attached to the floating device" in class 20.

<sup>3</sup> Plaintiff's Works refers to various published photographs, videos, artwork, creative text and product instructions appearing on Plaintiff's web site froglog.us.

<sup>4</sup> 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 ("Third Party Service Provider(s)") 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.

<sup>5</sup> 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 use of the Plaintiffs' Mark and/or Plaintiffs' Works and/or Plaintiff's Trade Dress 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"),

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;<sup>6</sup>

(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;

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<sup>6</sup> 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.

(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 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 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 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, 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,

- (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;
- (3) Upon Plaintiff's request, Third Party Service Provider shall remove listings and/or advertisements for any product that Plaintiff identifies as unfairly competing with Plaintiff's FrogLog® animal rescue device, and which has been identified as shipping from, or as originating from, outside the United States (i.e., preventing a seller from listing for sale under the identified ASIN);
- (4) Amazon is ordered to suspend, strong block, and/or delete any ASIN that was associated with a product already identified by prior Order of this Court in the present lawsuit to be unfairly competing, Counterfeit or Infringing as designated in the Schedule A under "**Amazon ASIN Number(s)**" (i.e., any seller is prevented from listing for sale under the identified ASIN);
- (5) However, the seller controlling such listings shall not be subject to financial account restraint; and
- (6) This Order shall remain in effect until such further dates as set by the Court or stipulated by the parties.

## II. 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 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.

**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.

**SO ORDERED.**

SIGNED this 5<sup>th</sup> day of October, 2020  
Pittsburgh, Pennsylvania

s/ W. Scott Hardy  
W. Scott Hardy  
United States District Judge

cc/ecf: All counsel of record

**Schedule “A”**  
**Defendants With Store Name and Seller ID**

<b>Defendant No.</b>	<b>Defendant/Store Name</b>	<b>Seller ID</b>
1	Poolwhale	AEPR4LMOKNPKA
█	█	█
3	AGAWA_house11	A2ZO922P67B7KN
4	Aksop	A1TRF68ND84W2U
5	Argunt Store	A3831WYR3X5WVH
6	dsgfsgdfg200	A2YSIZ4OG17I4V
7	Fairy Guo Shop	A2KWYWKL4B6QLC
█	█	█
9	Fekuit	A2K5QQABQBC5B4
10	fun deal	A2U1RYRX8C60H8
█	█	█
12	Glumes	A2IOM3JKMZMC52
13	Griony	A1R9PMG0DX0HPZ
14	HD Wholesale Market	A2Q0W5WETZ6XLX
15	HHQueen	A3EE0WRMT05RWS
█	█	█
17	HN Direct	A2ZIEVSZZ6K9R2
18	Jueupo Store	A1O5JWDGBL9D3C
19	LISJFS1	A1XE41GTZQSYMA
20	lotteQW	AEZE53PEMO3JX
21	Nicemeet	A2YLD7XZP3EI04
22	Owlhouse	ALXL4KFVY48JU
23	Qklovni	A1T7QGGA0FXMO0

<b>Defendant No.</b>	<b>Defendant/Store Name</b>	<b>Seller ID</b>
■	■■■■■■■■■■	■■■■■■■■■■
■	■■■■■■	■■■■■■■■■■
26	sanwoodUS	ANLNC86EKTZ4X
27	ShunWangGongSi	A38LSCSJPYXGP7
28	SOQAL-US	A3D3KS6YUZ1VMU
29	Suripow-US	A1VUNE5BTKXCC1
■	■■■■■■■■■■	■■■■■■■■■■
31	tegongse	A1RA54VOR7G4MV
32	thyeuju	AVGZ18T52YKIC
■	■■■■■■	■■■■■■■■■■
34	Wangyuting	ALVSCW5EI5K9O
35	Waydress	A31FDUJZ0PDSE9
■	■■■■■■	■■■■■■■■■■
37	Wiixiong	A2UUEAH6HCLPRU
■	■■■■■■■■■■	■■■■■■■■■■
■	■■■■■■■■■■	■■■■■■■■■■
■	■■■■■■■■■■	■■■■■■■■■■
41	donnakent	373100943450
42	enjoyho222	154023701809
43	enjoyho555	392829771657
44	enjoyho666	383636671866
■	■■■■■■■■■■	■■■■■■■■■■
46	lealstore9604	392851139787
■	■■■■■■■■■■	■■■■■■■■■■
■	■■■■■■■■■■	■■■■■■■■■■

<b>Defendant No.</b>	<b>Defendant/Store Name</b>	<b>Seller ID</b>
49	raar969	373076289227
50	rn-legacy96*	184309895202
51	soonhua_digital	184338431040
■	██████████	██████████
53	yozh80	153967818407
54	447275C53DF1A	5df0aab2ee40310699521ae3
■	██████████	████████████████████
56	fdgbhfh4532	5e50f36338654d7fc0db715a
57	fgdfh464yy	5e468ca436477690929128fc
58	FGHBFBN3453	5e512c1238654da8b4db71a9
■	██████████	████████████████████
■	██████████	████████████████████
■	██████████████████	████████████████████
62	linna42396395	5df7174833d32201c8e412ec
■	██████████	████████████████████
■	██████████████	████████████████████
■	████████████████████	████████████████████
■	██████████	████████████████████
■	██████████████	████████████████████
68	wfhhfrg	5e9ec0066ea3de58645a263f
■	██████████████	████████████████████
■	██████████	████████████████████
71	XingluomaonF	5e9e6d826ea3deba9e5a214d
■	██████████	████████████████████

<b>Defendant No.</b>	<b>Defendant/Store Name</b>	<b>Seller ID</b>
73	DiDiBaby Store	5240291
74	Doolland online outdoor Store	5791654
75	Fashionable Healthy Life Store	2670229
76	Five gogogo Store	4477048
█	█	█
78	ImaginationBaby Store	2947152
79	Indoor Outdoor Fun Store	4859028
80	IPartyshow Store	4430161
81	KaiMan Outdoor Store	4422155
82	Manual Tools Store	3893019
83	Ordernow Store	340533
84	Pro Outdoor Sporting Dropship Store	2624037
85	Professional Outdoor Dropshipping Store	5068001
86	Shop5568062 Store	5568062
87	Shop5703040 Store	5703040
88	SuperSports Store	5419049
89	Sweetly Storage Market Dropshipping Store	4414168
90	the Ninth Gift for Baby Store	3390009
91	VOGVIGO Dropshipping Gardening Supplies Store	4474115
92	YSTD Global Store	4374011