

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

TALISMAN DESIGNS, LLC,

Plaintiff,

v.

AHAPPYDAY, *et al.*,

Defendants.

Civil Action No. 20-1915

FILED UNDER SEAL

PLAINTIFF'S EXPEDITED INTERROGATORIES

AND NOW comes Plaintiff, by and through undersigned counsel, and serves the following Expedited Interrogatories on each Defendant in this action. In accordance with the Court Order dated December 10, 2020 ("TRO"), your responses are due no later than fourteen (14) days after these Interrogatories are served on you.

DEFINITIONS

1. Where a defined term is referenced herein and not defined herein, the defined term should be understood as it is defined in the Complaint, Plaintiff's *Ex Parte* Application, and/or the TRO.
2. The terms "Defendant," "you," and "your" refer to the Defendant listed on Amended Schedule A, including all affiliates and subsidiaries, receiving these Interrogatories.
3. The terms "concerning" or "relating to" (or any forms thereof) mean constituting, reflecting, representing, supporting, contradicting, referring to, stating, describing, noting, embodying, containing, mentioning, studying, analyzing, discussing, evaluating, or relevant to.

As indicated, the terms necessarily include information which is in opposition to as well as in support of the position(s) and claim(s) of the parties in this civil action.

4. The terms “communication” or “communications” refer to any transmission of information, the information transmitted, and any process by which information is transmitted, and will include written communications, electronic communications, and oral communications.

5. The term “person” refers to natural persons, firms, proprietorships, associations, partnerships, corporations and every other type of organization or entity.

6. The terms “document” or “documents” refer to all written, typed, printed, recorded, filmed or reproduced by any other mechanical process, photographic, or graphic matter of every type and description, however and by whomever prepared, produced, reproduced, disseminated, or made, in any form, whether originals or copies, now or formerly in your possession, custody, or control, including, but not limited to: letters; correspondence; e-mails; memoranda; records; books; minutes of all types of meetings; contracts; subcontracts; agreements; exhibits; attachments; intra-office and inter-office communications; analyses; bulletins; regulations, rules, directives, advisory opinions, manuals, proposals; estimates; recommendations; opinions; messages; instructions; notes; notebooks; measurements; designs; sketches; drawings; blueprints; data sheets; telephone records; tapes; computer stored data; computer disks; diaries; desk calendars; work sheets; reports; facsimiles; records of telephone conversations, meetings and conferences; notes and records of conversations or interviews; invoices; bills; statements; accounts; checks; drafts; notices; computer printouts; computer tapes; photographs; slides; negatives; motion pictures; video recordings; tape or other voice recordings and transcriptions thereof; data compilations from which information can be obtained, translated, if necessary, by you through detection devices into reasonably usable form; and any other

writings or recordings or data compilations from which information can be obtained in your actual or constructive possession, custody, or control, including drafts and multiple versions of documents containing marginalia or other comments or notes not appearing on the original. If any document was, but is no longer, in your possession or subject to your control, identify the document and identify its disposition, including, where applicable, the person who currently has possession and/or control of it.

7. The words “identify” or “identity” mean when used in reference to:
 - (a) a document, to state separately: (i) its type (letter, report, memorandum, etc.); (ii) its date; (iii) its subject matter; (iv) the identity of each author or signer; and (v) its present location and the identity of its custodian;
 - (b) an oral statement, communication, conference or conversation, to state separately: (i) its date and the place where it occurred; (ii) its substance; (iii) the identity of each person(s) participating in the communication or conversation; and (iv) the identity and location of all notes, memoranda or other documents memorializing, referring to or relating to the subject matter of the statement;
 - (c) a natural person or persons, to state separately: (i) the full name of each such person; (ii) his or her present or last known business address, or his or her present or last known residential address; and (iii) the employer of the person at the time to which the request or interrogatory is directed and the person’s title or position at that time; and
 - (d) an organization or entity (other than a natural person), a company, a corporation, a firm, an association, or a partnership, to state separately:
 - (e) the full name and type of organization or entity; (ii) the date and state of organization or incorporation, if a business entity; (iii) the address of each of its principal places of business and headquarters; and (iv) the nature of the business conducted or services rendered.
8. Respond separately and in writing to each interrogatory.
9. In answering these interrogatories, furnish all information that is known to you,

your attorneys, agents, advisers, employees or persons otherwise acting on your behalf. If any of these requests for information cannot be answered in full, answer them to the fullest extent

possible, state the reasons for your inability to answer the remainder, and state fully the information, knowledge, or belief you now have concerning the unanswered portions.

10. Each interrogatory shall be construed as referring to information now within the knowledge, possession, custody or control of you or your attorneys, agents, advisers, employees or persons otherwise acting on your behalf, as well as any information, knowledge, data, document, or communication that subsequently is obtained or discovered by you or by your attorneys, agents, advisers, employees or persons otherwise acting on your behalf, that demonstrates that any answer originally provided in response to these requests for information was either incorrect or incomplete. Such supplemental information is to be supplied promptly to the party propounding these interrogatories with a designation as to which request the information is responsive.

11. If you do not answer an interrogatory because you claim the information requested is privileged, as to each such interrogatory, state the privilege claimed, set forth the facts relied upon to support your claim of privilege, and identify each document and/or communication upon which you base your claim of privilege.

5. If any document forms a part of or the entire basis for any answer, identify that document.

6. If any responsive document or portion of a responsive document is withheld from production on a claim of privilege, work-product protection, or other discovery immunity, such document should be identified on a privilege log which states, as to each such document: the name, affiliation, and job title of its author(s); the name, affiliation, and job title of its recipient(s); the name, affiliation, and job title of any copyholder(s); the date of the document;

the basis for the claim of privilege, protection or immunity; and the request to which the document is responsive.

7. These interrogatories are ongoing and you are required to file supplemental answers and/or provide additional documents as additional information becomes available.

INTERROGATORIES

1. Identify yourself, including stating your true name and physical address.

ANSWER:

2. Identify the name and location and URL of any and all websites that you 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 you own and/or operate.

ANSWER:

3. Identify each of your Financial Accounts, including stating the account details for each account, which should include the account numbers and current account balances.

ANSWER:

4. State the steps taken by you to comply with the TRO.

ANSWER:

5. Identify each Infringing and/or Counterfeit Product that you have sold.

ANSWER:

6. For each product identified by you in your answer to interrogatory number 5, state:
- (a) The identity of each individual involved in, or with knowledge of, the conception, research, and development of the product, including but not limited to the packaging in the products are packaged;
 - (b) The date the product was launched, first sold, or offered for sale by you;
 - (c) The number of units of products that you have sold since their launch, broken down by month;
 - (d) The U.S. dollar sales that you have earned from the products since their launch, broken down by month;
 - (e) The profits that you have earned from the products since their launch, broken down by month;
 - (f) The identity of each individual with knowledge of the number of units sold, dollar sales, and profits that you have earned from the products since their launch;
 - (g) The amount of products and/or packaging in which the products are packaged currently in inventory;
 - (h) The identity of each entity involved in the research, conception, and/or development of the products and/or packaging in which the products are packaged;
 - (i) The identity of each entity involved in manufacturing and/or supplying the products and/or packaging in which the products are packaged.

ANSWER:

/s/ Stanley D. Ference III

Stanley D. Ference III

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Brian Samuel Malkin

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PLAINTIFFS' EXPEDITED REQUESTS FOR PRODUCTION OF DOCUMENTS

AND NOW comes Plaintiff, by and through its attorneys, and serves the following Expedited Requests for Production of Documents on each Defendant in this action. In accordance with the Court Order dated December 10, 2020 ("TRO"), your responses are due no later than fourteen (14) days after these Requests for Production are served on you.

DEFINITIONS

1. Where a defined term is referenced herein and not defined herein, the defined term should be understood as it is defined in the Complaint, Plaintiff's *Ex Parte* Application, and/or the TRO.
2. The terms "Defendant," "you," and "your" refer to the Defendant listed on Schedule A, including all affiliates and subsidiaries, receiving these Requests for Production.
3. The terms "concerning" or "relating to" (or any forms thereof) mean constituting, reflecting, representing, supporting, contradicting, referring to, stating, describing, noting, embodying, containing, mentioning, studying, analyzing, discussing, evaluating, or relevant to.

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5. The term “person” refers to natural persons, firms, proprietorships, associations, partnerships, corporations and every other type of organization or entity.

6. The terms “document” or “documents” refer to all written, typed, printed, recorded, filmed or reproduced by any other mechanical process, photographic, or graphic matter of every type and description, however and by whomever prepared, produced, reproduced, disseminated, or made, in any form, whether originals or copies, now or formerly in your possession, custody, or control, including, but not limited to: letters; correspondence; e-mails; memoranda; records; books; minutes of all types of meetings; contracts; subcontracts; agreements; exhibits; attachments; intra-office and inter-office communications; analyses; bulletins; regulations, rules, directives, advisory opinions, manuals, proposals; estimates; recommendations; opinions; messages; instructions; notes; notebooks; measurements; designs; sketches; drawings; blueprints; data sheets; telephone records; tapes; computer stored data; computer disks; diaries; desk calendars; work sheets; reports; facsimiles; records of telephone conversations, meetings and conferences; notes and records of conversations or interviews; invoices; bills; statements; accounts; checks; drafts; notices; computer printouts; computer tapes; photographs; slides; negatives; motion pictures; video recordings; tape or other voice recordings and transcriptions thereof; data compilations from which information can be obtained, translated, if necessary, by you through detection devices into reasonably usable form; and any other

writings or recordings or data compilations from which information can be obtained in your actual or constructive possession, custody, or control, including drafts and multiple versions of documents containing marginalia or other comments or notes not appearing on the original. If any document was, but is no longer, in your possession or subject to your control, identify the document and identify its disposition, including, where applicable, the person who currently has possession and/or control of it.

7. The words “identify” or “identity” mean when used in reference to:
 - (a) a document, to state separately: (i) its type (letter, report, memorandum, etc.); (ii) its date; (iii) its subject matter; (iv) the identity of each author or signer; and (v) its present location and the identity of its custodian;
 - (b) an oral statement, communication, conference or conversation, to state separately: (i) its date and the place where it occurred; (ii) its substance; (iii) the identity of each person(s) participating in the communication or conversation; and (iv) the identity and location of all notes, memoranda or other documents memorializing, referring to or relating to the subject matter of the statement;
 - (c) a natural person or persons, to state separately: (i) the full name of each such person; (ii) his or her present or last known business address, or his or her present or last known residential address; and (iii) the employer of the person at the time to which the request or interrogatory is directed and the person’s title or position at that time; and
 - (d) an organization or entity (other than a natural person), a company, a corporation, a firm, an association, or a partnership, to state separately:
 - (e) the full name and type of organization or entity; (ii) the date and state of organization or incorporation, if a business entity; (iii) the address of each of its principal places of business and headquarters; and (iv) the nature of the business conducted or services rendered.

INSTRUCTIONS

1. Respond separately and in writing to each document request.
2. In answering these requests for information, furnish all information that is known to you, your attorneys, agents, advisers, employees or persons otherwise acting on your behalf. If

any of these requests for information cannot be answered in full, answer them to the fullest extent possible, state the reasons for your inability to answer the remainder, and state fully the information, knowledge, or belief you now have concerning the unanswered portions.

3. Each request for information shall be construed as referring to information now within the knowledge, possession, custody or control of you or your attorneys, agents, advisers, employees or persons otherwise acting on your behalf, as well as any information, knowledge, data, document, or communication that subsequently is obtained or discovered by you or by your attorneys, agents, advisers, employees or persons otherwise acting on your behalf, that demonstrates that any answer originally provided in response to these requests for information was either incorrect or incomplete. Such supplemental information is to be supplied promptly to the party propounding these requests for information with a designation as to which request the information is responsive.

4. If you do not answer a request for information because you claim the information requested is privileged, as to each such request, state the privilege claimed, set forth the facts relied upon to support your claim of privilege, and identify each document and/or communication upon which you base your claim of privilege.

5. If any document forms a part of or the entire basis for any answer, identify that document.

6. If any responsive document or portion of a responsive document is withheld from production on a claim of privilege, work-product protection, or other discovery immunity, such document should be identified on a privilege log which states, as to each such document: the name, affiliation, and job title of its author(s); the name, affiliation, and job title of its recipient(s); the name, affiliation, and job title of any copyholder(s); the date of the document;

the basis for the claim of privilege, protection or immunity; and the request to which the document is responsive.

7. These requests are ongoing and you are required to file supplemental answers and/or provide additional documents as additional information becomes available.

REQUESTS FOR PRODUCTION

1. Produce all documents sufficient to identify your true name and physical address.

RESPONSE:

2. Produce all documents concerning the name and location and URL of any and all websites that you 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 you own and/or operate.

RESPONSE:

3. Produce all documents concerning your manufacture, sale and/or offer for sale of Infringing and/or Counterfeit Products, including the complete sales records for any and all sales of Infringing and/or Counterfeit Products, including number of units sold, price per unit, total gross revenues received and profit (in U.S. dollars) and dates thereof.

RESPONSE:

4. Produce all documents sufficient to show the account details for any and all of your Financial Accounts, including the account numbers and current account balances.

RESPONSE:

5. Produce all documents concerning the steps taken by you to comply with the TRO.

RESPONSE:

6. For each Infringing and/or Counterfeit Product identified by you in your answer to interrogatory number 5, produce a sample of the Infringing and/or Counterfeit Product and all documents concerning:

- (a) the sales, profits, or revenue that you projected to earn from the product;
- (b) the number of units of product that you have sold;
- (c) the dollars sales that you have actually earned from the product;
- (d) the profits that you have actually earned from the product;
- (e) the launch or rollout of the product;
- (f) contracts you have with manufacturers or suppliers of the product and/or the packaging in which the product is packaged;

- (g) the manufacturers or suppliers of the product and/or the packaging in which the product is packaged; and
- (h) the customers to whom you sold the product and/or the packaging in which the product is packaged.

RESPONSE:

- 5. Produce all documents that refer to the Plaintiff's Product.

RESPONSE:

- 6. Produce all documents that refer to Plaintiff.

RESPONSE:

- 7. Produce all documents concerning any communications you or your agent had with Plaintiff or any representative of Plaintiff.

RESPONSE:

- 8. Produce all documents concerning any communications you or your agent had with any Third Party Service Provider.

RESPONSE:

9. Produce all documents concerning the Plaintiff's copyrighted photograph used in your listing.

RESPONSE:

10. Produce all documents concerning communications from consumers that refer to the Plaintiff's Product, including but not limited to communications from consumers that indicate confusion as to the source or origin of the Plaintiff's Product and/or the Infringing and/or Counterfeit Products.

RESPONSE:

11. Produce a copy of each web page on which you sold and/or offered for sale Infringing and/or Counterfeit Products.

RESPONSE:

12. Produce all documents concerning communications from manufacturers, distributors, retailers, suppliers, vendors, or brokers about the Infringing and/or Counterfeit Products.

RESPONSE:

13. Produce all documents concerning your customers for the Infringing and/or Counterfeit Products, including documents sufficient to identify your customers.

RESPONSE:

/s/ Stanley D. Ference III

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Attorneys for Plaintiffs

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PLAINTIFF'S EXPEDITED REQUESTS FOR ADMISSIONS

AND NOW comes Plaintiff, by and through its attorneys, and serves the following Expedited Requests for Admissions on each Defendant in this action. In accordance with the Court Order dated December 10, 2020 ("TRO"), your responses are due no later than fourteen (14) days after these Requests for Admissions are served on you.

DEFINITIONS

1. Where a defined term is referenced herein and not defined herein, the defined term should be understood as it is defined in the Complaint, Plaintiff's *Ex Parte* Application, and/or the TRO.
2. The terms "Defendant," "you," and "your" refer to the Defendant listed on Schedule A, including all affiliates and subsidiaries, receiving these Requests.
3. The terms "concerning" or "relating to" (or any forms thereof) mean constituting, reflecting, representing, supporting, contradicting, referring to, stating, describing, noting, embodying, containing, mentioning, studying, analyzing, discussing, evaluating, or relevant to.

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writings or recordings or data compilations from which information can be obtained in your actual or constructive possession, custody, or control, including drafts and multiple versions of documents containing marginalia or other comments or notes not appearing on the original. If any document was, but is no longer, in your possession or subject to your control, identify the document and identify its disposition, including, where applicable, the person who currently has possession and/or control of it.

7. The words “identify” or “identity” mean when used in reference to:
 - (a) a document, to state separately: (i) its type (letter, report, memorandum, etc.); (ii) its date; (iii) its subject matter; (iv) the identity of each author or signer; and (v) its present location and the identity of its custodian;
 - (b) an oral statement, communication, conference or conversation, to state separately: (i) its date and the place where it occurred; (ii) its substance; (iii) the identity of each person(s) participating in the communication or conversation; and (iv) the identity and location of all notes, memoranda or other documents memorializing, referring to or relating to the subject matter of the statement;
 - (c) a natural person or persons, to state separately: (i) the full name of each such person; (ii) his or her present or last known business address, or his or her present or last known residential address; and (iii) the employer of the person at the time to which the request or interrogatory is directed and the person’s title or position at that time; and
 - (d) an organization or entity (other than a natural person), a company, a corporation, a firm, an association, or a partnership, to state separately:
 - (e) the full name and type of organization or entity; (ii) the date and state of organization or incorporation, if a business entity; (iii) the address of each of its principal places of business and headquarters; and (iv) the nature of the business conducted or services rendered.

INSTRUCTIONS

1. Respond separately and in writing to each request.
2. These requests for admission shall be construed as referring to information now within the knowledge, possession, custody or control of you or your attorneys, agents, advisers,

employees or persons otherwise acting on your behalf, as well as any information, knowledge, data, document, or communication that subsequently is obtained or discovered by you or by your attorneys, agents, advisers, employees or persons otherwise acting on your behalf, that demonstrates that any answer originally provided in response to these requests for information was either incorrect or incomplete. Such supplemental information is to be supplied promptly to the party propounding these requests for information with a designation as to which request the information is responsive.

3. If you do not answer a request for admission because you claim the information requested is privileged, as to each such request, state the privilege claimed, set forth the facts relied upon to support your claim of privilege, and identify each document and/or communication upon which you base your claim of privilege.

4. If you deny a request for admission, set forth your reason and identify and produce any document relied upon in your denial.

REQUESTS FOR ADMISSIONS

1. At all times relevant hereto, Plaintiff owned the Copyright Registration No. VA-0002159164 .

ADMITTED: _____ **DENIED:** _____

2. At all times relevant hereto, Plaintiff owned the U.S. Trademark Registration No. 3993535 for “TAN DON’T BURN” in international class 21.

ADMITTED: _____ **DENIED:** _____

3. At all times relevant hereto, Defendant knew that Plaintiff had the exclusive right to use and license its intellectual property and goodwill associated therewith.

ADMITTED: _____ **DENIED:** _____

4. At all times relevant hereto, Defendant knew that Plaintiff's Mark was distinct and/or had acquired distinctiveness.

ADMITTED: _____ **DENIED:** _____

5. At all times relevant hereto, Defendant knew that the photograph it used in its listing was protected by a federal copyright registration and owned by Plaintiff.

ADMITTED: _____ **DENIED:** _____

6. Admit that you are selling the infringing product on multiple online platforms including the online platform identified in this lawsuit.

ADMITTED: _____ **DENIED:** _____

7. At all times relevant hereto, Plaintiff has the manufacturing and marketing capability to meet the consumer demand for the Plaintiff's Product.

ADMITTED: _____ **DENIED:** _____

8. Despite having the knowledge that you had no license or legal authority to do so, you engaged in the activity of promoting and otherwise advertising, selling, offering for sale, and/or distributing Infringing Products under your Seller ID or Seller IDs.

ADMITTED: _____ **DENIED:** _____

9. You intentionally copied, counterfeited, and sold Plaintiff's goods in order to benefit from the Plaintiff's fame, reputation, and goodwill to divert Plaintiff's profits into your business.

ADMITTED: _____ **DENIED:** _____

10. You cooperated, coordinated, and communicated with the other Defendants in order to take control of the "Buy" Box within at least one of the Third Party Service Provider search results for "Tan Don't Burn" and or "PIE SHIELD" or other confusingly similar terms calculated to cause the Third Party Service Provider search engine to return your listing of Infringing Products instead of Plaintiff's Product.

ADMITTED: _____ **DENIED:** _____

11. At all times relevant hereto, Plaintiff was the owner of various published photographs, videos, artwork, creative text, and product instructions appearing on Plaintiff's website talismandesigns.com ("Plaintiff's Works" or "'Works").

12. **ADMITTED:** _____ **DENIED:** _____

13. At all times relevant hereto, you have been engaged in the fraudulent promotion, advertisement, distribution, offering for sale, and/or sale of goods using a listing that at least one of Plaintiff's Mark, or Plaintiff's Works, or substantially similar copies of Plaintiff's Works.

ADMITTED: _____ **DENIED:** _____

14. You intentionally make, use, offer to sell, or import into the United States knock-offs and/or counterfeit and substandard copies of Plaintiff's Product.

ADMITTED: _____ **DENIED:** _____

15. You intentionally make, use, offer to sell, or import into the United States knock-offs and/or counterfeit and substandard copies of Plaintiff's Product with English language packaging and instructions.

ADMITTED: _____ **DENIED:** _____

16. Despite having the knowledge that you had no license or legal authority to do so, you engaged in the activity of promoting and otherwise advertising, selling, offering for sale, and/or distributing knock-off and or infringing goods featuring, displaying, and/or using at least one of Plaintiffs' Mark, and/or Plaintiff's Works, or substantially similar copies of Plaintiff's Works, without authorization under your Seller ID or Seller IDs.

ADMITTED: _____ **DENIED:** _____

At all times relevant hereto, you were offering and selling infringing and/or counterfeit goods in order to directly compete with Plaintiff's Product.

ADMITTED: _____ **DENIED:** _____

17. You have been named as a defendant in past counterfeiting, infringing and/or knock-off cases.

ADMITTED: _____ **DENIED:** _____

18. You view the cost of defending this lawsuit and any damages that the Plaintiffs might recover as a cost of running your counterfeiting, infringing and/or knock-off selling business.

ADMITTED: _____ **DENIED:** _____

19. You intentionally copied and/or infringed Plaintiff's Mark and/or Works, in order to benefit from the Plaintiffs' fame, reputation, and goodwill to divert Plaintiff's profits into your business.

ADMITTED: _____ **DENIED:** _____

20. Admit that lost profits is the appropriate measure for Plaintiffs' damage claims against you.

ADMITTED: _____ **DENIED:** _____

21. At all times relevant hereto, there was consumer demand for the Plaintiff's Product.

ADMITTED: _____ **DENIED:** _____

22. The consumer demand for the Plaintiff's Product is based upon its unique features which comprise the Plaintiff's intellectual property.

ADMITTED: _____ **DENIED:** _____

23. In the absence of your sales of infringing or counterfeit products, consumers would have purchased Plaintiff's Product.

ADMITTED: _____ **DENIED:** _____

24. But for your sales of illegal counterfeit or infringing products, Plaintiff would have made each sale in place of the sale you made instead and at Plaintiff's pre-infringement selling price.

ADMITTED: _____ **DENIED:** _____

25. Your illegal sales of infringing and/counterfeit products have eroded Plaintiff's market share.

ADMITTED: _____ **DENIED:** _____

26. Your unfair competition has driven the market price of Plaintiff's genuine goods down.

ADMITTED: _____ **DENIED:** _____

27. Plaintiff did not assign, consent to your use of, or license to you any of their intellectual property rights, including the right to use the Plaintiff's Mark, and/or Works, or substantially similar copies of Plaintiff's Works.

ADMITTED: _____ **DENIED:** _____

/s/ Stanley D. Ference III

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