

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

TALISMAN DESIGNS, LLC,

Plaintiff,

v.

YOOMIE, *et al.*,

Defendant.

Civil Action No.

21-CV-121

(Judge Schwab)

PRELIMINARY INJUNCTION ORDER

Whereas on January 28, 2021, 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 the Defendants identified on **Schedule “A”** to the Complaint and attached hereto (collectively, the “Defendants”), in light of the Defendant’s intentional and willful offering for sale and sales of knock-off and infringing products.² (“Application”).

Whereas, on that same day, 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 Complaint, 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 Infringing 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 the Complaint, Defendants are either (i) using without authorization Plaintiff’s copyrighted photograph(s) and/or sculpture (“Plaintiff’s Works”), while promoting, selling, offering for sale and distributing knock-offs of Plaintiff’s Product thus unfairly competing, in a willful attempt to pass off their knock-off products as genuine versions of Plaintiff’s Products, and/or (ii) infringing on Plaintiff’s Works and/or (iii) infringing Plaintiff’s federally registered trademark BACON BIN[®], while offering to sell and selling knock-offs. Plaintiff has alleged that all of the Defendants are infringing on at least one of Plaintiff’s Works and unfairly competing, but only Defendant Nos. 15, 23, and 43 are using Plaintiff’s Mark to sell their knock-off goods.

Whereas on January 29, 2021, at 9:00 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”) (Doc. No. 7); and

(B) Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3) (Doc. No. 15) (“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 none have entered an appearance or filed on opposition to the Show Cause Order. Further, none of the Third Party Service Provider(s) or Financial Institution(s) have entered an appearance or filed an opposition to the Show Cause Order.

I. Restraining Order

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, the injunctive relief previously granted on January 29, 2021 (Doc. No. 7), shall remain in place through the pendency of this litigation, and issuing this Preliminary Injunction (hereafter “PI Order”) is warranted under FRCP 65, and 15 U.S.C. § 1116.

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 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,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 and/or Plaintiff's Trade Dress within metatags or other markers within website source

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 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;⁵

- (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

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.

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 modified by the Court or stipulated by the parties.

B. 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[®] with a hot pad), by any Seller that has not been authorized by Plaintiff, 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, and/or is advertised with any of the Plaintiff’s copyrighted images or sculpture, 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,⁶ 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,

(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.

⁶ 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.

- (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 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' 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.

IV. 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 10th day of February, 2021
Pittsburgh, Pennsylvania

s/Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc Stanley D. Ference III, Esq.
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Brian Samuel Malkin, Esq.
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Schedule “A”
Defendants With Store Name and Seller ID

Defendant No.	Defendant/Store Name	Seller ID
1	YOOMIE	A3RBVW6FDFNKIC
2	Autonomier-US	A3A1TEPEPQ7NOM
3	BESTARY	A17MOFTYE4PKSU
4	Binpure	AKYC54J0AWIFP
5	canwei	A11NAMAISXAE7U
6	Cary Electronic(China)	A3E4CV0XUBPVVF
7	Dankoshon shops	A22MZERV2XDQ5X
8	DDTC-us	A3LWUK2KVLL6KR
9	difuluoen	A2EQKGK75H5YTC
10	Eleviey	AUP5WNAQQ2NMR
11	GENGGU	A2VQ3B116L1568
12	Golf Professional	A2090WPV676MON
13	guo jinlei	A18W8HB7MYSM41
14	HUIER STORE	A3A3GI8YMBE5ON
15	IN1S	AWL3DJU0XDWT1
16	JHFDS	AGQEZ8M1LWECR
17	Jilei Keji	AFC5DEAY1LM0A
18	JiliJili	A2SRG09212P007
19	KELAIEN	A79G11MBEB0JA
20	KITBE	A1XC4AEM2BORZB
21	luoyangqixunshangmaoyouxiangongsi	ADYT0CWIDZKVG

Defendant No.	Defendant/Store Name	Seller ID
22	luxbox	A2ER2C9N8QNA3V
23	lygg	A32VY65T9IT14Q
24	manbl	A1DQ8AWC43L9LB
25	Meitongda daily necessities	AJIZE4YNQIV1K
26	MOUNTAINTOP	AZWCJPIKKGWAK
27	Q.&L.	AZ7251T6HIIYN
28	rao jintang	A1IWGB4982OFGA
29	RUSTCHG BTHCHP	A25PYXE2AY8JCS
30	Shan Xi Xin Li Yuan Wang Luo Ke Ji You Xian Gong S	A4SRJ0GURFN3N
31	SJHP	A3VF67YWYV8RQ7
32	STILLKEEPER	ARJ09JL9RSTTH
33	Sunmoon	A3NFUR13LS26RR
34	Wanshuin	A32D7QR57OAV3N
35	Willtuan	A8ZG5TE6ZO55B
36	wuyongyou5	AFE7WOSN1NIB7
37	XIAOLONGLEE	A2V0TSN1A9DEWY
38	Ycanware	A2ANEGZNRJEKQ
39	yingying123	A28DET7AF84CII
40	yishen9986	A2DBZ34F7C67MQ
41	Yuanyunni	ASNERO9R5Z3IH
42	Z.J. Store (Free delivery within 15 days)	A3E7IPK20ALHW
43	ZZZOEY	A2F7CQUVK5SQ95