

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

TALISMAN DESIGNS, LLC,

Plaintiff,

v.

JACKSUN, *et al.*,

Defendants.

Civil Action No.

FILED UNDER SEAL

**MEMORANDUM OF LAW IN SUPPORT OF
EX PARTE APPLICATION FOR: 1) 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**

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

TALISMAN DESIGNS, LLC,

Plaintiff,

v.

JACKSUN, *et al.*,

Defendants.

Civil Action No.

FILED UNDER SEAL

I. INTRODUCTION

Plaintiff Talisman Designs, LLC (“Talisman Designs” or “Plaintiff”) submits this memorandum of law in support of its *ex parte* application for: 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 above-referenced Defendants (hereinafter collectively referred to as “Defendants” or individually as “Defendant”) and the third party entities identified below (“Application”).¹

Specifically, Plaintiff has obtained evidence clearly demonstrating that Defendants are without authorization or license using Plaintiff’s copyrighted pig face sculpture (“Plaintiff’s Work”) while promoting, selling, offering for sale and distributing knock-offs of Plaintiff’s Product, thus infringing Plaintiff’s Work. Defendants accomplish their illegal sales through the use of, at least, the Internet based e-commerce stores operated via at least one of Amazon.com,

¹ Plaintiff acknowledges it is seeking multiple forms of relief. Plaintiff will promptly provide supplemental briefing or oral argument on any issue should the Court request it.

eBay.com, Wish.com and AliExpress.com Internet marketplace platforms. Based on this evidence, Plaintiff's Complaint alleges claims federal copyright infringement pursuant to the Copyright Act, 17 U.S.C. § 501(a), *et seq.*

Defendants' sale, distribution, and advertising of the Knock-off Products are highly likely to cause consumers to believe that Defendants are offering Plaintiff's genuine product when in fact they are not. To illustrate, below are several examples which vividly show that the Knock-off Products itself and the manner in which it is marketed is designed to confuse and mislead consumers into believing that they are purchasing Plaintiff's genuine product or that the Knock-off Products is otherwise approved by or sourced from Plaintiff:

Plaintiff's Copyrighted Sculpture



Listing of Defendant elakashe0 Showing Infringing Sculpture



Plaintiff's Copyrighted Sculpture

Listing of Defendant Ali-Mohamed Showing Infringing Sculpture



Plaintiff's Copyrighted Sculpture



Excerpt of Listing of Defendant Happy Girl Favorites Showing Infringing Sculpture



Plaintiff's Copyrighted Sculpture



Listing of Defendant beauty-shop2050 Showing Infringing Sculpture



Additional photographic comparisons of Plaintiff's Product and the Infringing Products are attached as **Complaint Exhibit 1**.

See Declaration of Katherine Waymire (the "Waymire Dec.") at ¶ 18.

Defendants' actions have resulted in actual confusion in the marketplace between Defendants' Infringing Product and Plaintiff's genuine products. *Id.* at ¶ 19. Numerous purchasers of Defendants' Infringing Product have written on-line reviews to complain about the quality of the Infringing Product believing same to be a genuine version of Plaintiff's Product *Id.* Examples of such complaints include: "Awfully small. Lucky if it holds a full pint. Mine came in an envelope package without a box or strainer. I'm thinking of returning."; "Product did not come with lid. I feel I have been ripped off. Who is going to go through the hassle of returning a \$10.00 item...ONLY CHINA..."; "The package was damaged and the head was missing from the package." *Id.* at ¶ 19. Such complaints and negative comments are likely not just made directly to Plaintiff, but are also posted by buyers of the Infringing Products on various websites and social media sites for all the world to see. *See id.*

Defendants' Infringing Products are cheaply produced and substantially inferior to the genuine product. *Id.* at ¶ 5. Plaintiff's genuine products are made from BPA Free, FDA approved silicone that is safe up to 500 degrees Fahrenheit; it is unknown what Defendants' Infringing

Products are made from. *Id.* As poorly designed and manufactured products, Defendants' Infringing Products create serious risk since they are intended to hold up to 500 degrees Fahrenheit liquids and if they melt, collapse, or otherwise fail a user may suffer serious injury in the nature of burns. *Id.* Plaintiff has received numerous calls about receiving products without the strainer. *Id.* Without the support of the strainer, the walls of the container portion of the Infringing Product can be squeezed together causing hot grease to pour onto the unsuspecting consumer. *Id.*

According to the Fiscal Year 2018 U.S. Customs and Border Protection ("CBP") Intellectual Property Seizure Statistics Report, e-commerce sales have resulted in a sharp increase in the shipment of unauthorized products into the United States. *Declaration of Stanley D. Ference III* (the "Ference Dec.") at ¶ 3. Over 90% of all CBP intellectual property seizures were smaller international mail and express shipments (as opposed to large shipping containers). *Id.* Over 85% of CBP seizures originated from mainland China and Hong Kong. *Id.* According to a report released by the U.S. Chamber of Commerce Global Intellectual Property Center (GIPC) titled Measuring the Magnitude of Global Counterfeiting, at least 86 percent of all global counterfeit products originate in Chinese and Hong Kong markets. *Id.* at ¶ 4. A February 2017 report commissioned by Business Action to Stop Counterfeiting and Piracy (BASCAP) and the International Trademark Association (INTA) entitled The Economic Impacts of Counterfeiting and Piracy included findings that counterfeit and pirated products account for billions in economic losses, resulting in tens of thousands of lost jobs for legitimate businesses and broader economic losses, including lost tax revenue. *Id.* at ¶ 5.

Defendants' unlawful activities have deprived and continue to deprive Plaintiff of its exclusive rights to reproduce, distribute and/or sell its Works in violation of the Copyright Act.

By their activities, Defendants are defrauding Plaintiff and the consuming public for Defendants' benefit. Defendants are unjustly profiting at the Plaintiff's expense. Defendants should not be permitted to continue their unlawful activities, which are causing Plaintiff ongoing irreparable harm. Accordingly, Plaintiff is seeking entry of a temporary restraining order prohibiting Defendants' from further harming the Plaintiff through their willful and bad faith infringement of the Plaintiff's Work.

Talisman Designs also seeks to restrain the illegal profits generated by Defendants. Plaintiff has obtained evidence that Defendants operating their Seller IDs via Amazon.com ("Amazon") necessarily use money transfer and/or retention/processing services with Amazon as a method to receive monies generated through the sale of counterfeit products. Amazon operates as a money transmitter for sales made on Amazon and as such Amazon has the ability to identify, and restrain, the payment accounts associated with the Defendants who use their respective Seller IDs via Amazon to conduct their commercial transactions. See Declaration of Brian Samuel Malkin ("*Malkin Dec.*"), ¶ 1 - 9. Additionally, Talisman Designs also obtained evidence that the Defendants operating their Seller IDs via eBay.com use money transfer and retention services with PayPal, Inc. ("PayPal") as a method for accepting payment for the sale of their counterfeit products. *Id.* and *Taylor Dec.* Furthermore, Talisman Designs obtained evidence that Defendants operating their Seller IDs via Wish.com have their payments processed on their behalf using an aggregate escrow account in the name of ContextLogic, Inc. ("ContextLogic"). *Id.* Lastly, Talisman Designs has obtained evidence that Defendants operating their Seller IDs via AliExpress.com ("AliExpress") have their payments processed on their behalf using aggregate escrow accounts in the name of Alibaba.com Hong Kong Limited, which operates the AliExpress.com platform (i.e., "AliExpress"), and its related companies, Zhejiang Ant Small and

Micro Financial Services Group Co., Ltd. AliPay (China) Internet Technology Co. Ltd., and Alipay.com Co., Ltd. (collectively referred to as “AliPay”).² *Id.*

In light of the inherently deceptive nature of the knock-off and infringing business, Plaintiff has good reason to believe Defendants will hide or transfer their ill-gotten assets beyond the jurisdiction of this Court unless they are restrained. The Copyright Act allows Plaintiff to recover the illegal profits gained through Defendants’ distribution and sale of their copyright infringing goods. *See* 17 U.S.C. § 504(b). Furthermore, in Pennsylvania, a pre-judgment restraint of existing assets is appropriate where a plaintiff asserts a claim for money damages.³ *Walter v. Stacey*, 837 A.2d 1205 (Pa. Super. 2003) (injunction entered restraining assets in action seeking damages for a wrongful death); *Hoxworth v. Blinder, Robinson & Co., Inc.*, 903 F.2d 186 (3d Cir. 1990) (affirming injunction entered restraining assets in class action lawsuit). To preserve the disgorgement remedy and the ability to at least partially satisfy a judgment, Plaintiff seeks an *ex parte* order restraining Defendants’ assets, including specifically, funds transmitted through Amazon, PayPal, ContextLogic, AliPay, and Worldpay (collectively, the “Financial Institutions”). The Court has jurisdiction over all of the Third Party Service Providers and Financial Institutions, or alternatively, they have voluntarily cooperated and submitted to the Court’s jurisdiction in prior counterfeiting lawsuits like this one. *See Malkin Dec.*

This Court has previously granted the relief sought herein in actions involving similar claims under Section 43(a) of the Lanham Act for passing off knock-offs using plaintiff marks, copyrighted works, and/or trade dress. *Doggie Dental, Inc. v. Ahui*, No. 19-cv-1627 (W.D. Pa.

² WorldPay US, Inc. (“WorldPay”) processes transactions on behalf of Alibaba and Alipay, which may appear as “Aliexpress” on a cardholder’s credit card statement. (*See* Brian Samuel Malkin (“*Malkin Dec.*”), ¶ 8, filed herewith.)

³ Fed. R. Civ. P. 64 provides “every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment.”

Dec. 12, 2019)(Hornak, J.)(sellers on amazon.com), *Gorge Designs v Accessmall, et al.*, No 19-1454 (W.D. Pa.)(Stickman, J)(sellers on Aliexpress.com and eBay.com); *Doggie Dental Inc. v. Go Well*, No. 19-cv-1282 (W.D. Pa. Oct. 11, 2019) (Hornak, J.) (sellers on amazon.com); *Doggie Dental Inc. v. Worthbuyer*, No. 19-cv-1283 (W.D. Pa. Oct. 11, 2019) (Hornak, J.) (sellers on ebay.com); *Doggie Dental Inc. v. Max_Buy*, No. 19-cv-746 (W.D. Pa. June 27, 2019) (Hornak, J.) (sellers on ebay.com); *Doggie Dental Inc. v. Anywill*, No. 19-cv-682 (W.D. Pa. June 13, 2019) (Hornak, J.) (sellers on amazon.com). Other courts have granted the relief sought herein in actions involving claims under Section 43(a) of the Lanham Act and copyright infringement. *Millennium IP, Inc. v. The Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 18-cv-3778 (N.D. Ill. June 6, 2018) (nearly 400 defendants, including sellers on amazon.com and ebay.com); *Nu Image, Inc. v. The Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 17-cv-2918 (N.D. Ill. May 12, 2017) (over 200 defendants, including sellers on amazon.com and ebay.com). Furthermore, other courts have granted the relief sought herein whether the defendants are located outside of the United States or based in the United States. *Cartier International A.G. v. Replicapaneraiwatches.cn*, No. 17-cv-62401 (S.D. Fla. Jan. 2, 2018) (mix of U.S. and foreign defendants) and *Juul Labs, Inc. v. The Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 18-cv-1382 (E.D. Va. Nov. 16, 2018) (all U.S. defendants).

Finally, even during the current pandemic, federal courts in other States have entered temporary restraining orders and preliminary injunctions. *See, e.g., Ffrench v. The Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 20-cv-03178 (N.D. Ill.) (Kennelly, J.)(TRO and PI Orders entered on June 1, 2020 and June 24, 2020, respectively); *Apple Corps Ltd, et al v Merchclan.com, et al.*,” No. 20-cv- 60982 (S.D. Fl.) (Dimitrouleas,

J)(TRO and PI Orders entered on May 21, 2020 and June 12, 2020, respectively); *Smart Study Co., Ltd. v. A Pleasant Trip Store*, No. 20-cv-1733 (S.D. NY)(Vyskocil, J)(TRO and PI Orders entered on February 27, 2020 and May 7, 2020, respectively).

II. STATEMENT OF FACTS

A. Plaintiff's BACON BIN® Bacon Grease Container

Waymire founded Talisman Designs in 2002 making handmade wine accessories and packaging out of her home, Declaration of Katherine Waymire (“*Waymire Dec.*”), ¶ 1. Since then, Talisman Designs has created and innovated all of its own products and packaging. *Id.* This is a costly effort involving graphic design, industrial design and tooling. *Id.* It takes time to create, design, test, redesign and retest prototypes. *Id.* Plaintiff introduces its products to retailers via tradeshows across the country. *Id.* This introduction process costs a lot of money but it is a chance to show our customers the quality and use of the product. *Id.* Today, Talisman is a well-known national brand in the gift and houseware industries. *Id.* It is recognized for its quality, inventions, creative packaging and whimsical characters. *Id.* Talisman innovates across four main categories – Baking, Prep Tools, Wood/Collections and Fun & Funky. *Id.* Each category has a different, distinct look. *Id.* Talisman’s customers immediately recognize their products because of this. *Id.* For instance, in the Fun & Funky line of products, most of the products have a distinct character that is personified by a face or character. *Id.* Talisman’s customers often immediately recognize their new products as being sold by them. *Id.*

Talisman’s top selling product called the BACON BIN® bacon grease container (“Plaintiff’s Product”) was conceived by Waymire during a weekend at a cabin. *Id.* at ¶ 6. She often cooked bacon and used tin cans to dispose of the grease. *Id.* The tin cans were always very hot to handle and she hated not being able to recycle the cans. *Id.* When she stopped using

canned goods, she disposed of the grease in a coffee mug. *Id.* One day she noticed a fly in the grease in her coffee mug and that was her moment of design. *Id.* She wanted something to look like a can (with the ridges), to be safer to hold with hot grease (vs metal), she wanted it to be fun with a whimsical piggy face, and she wanted the product to strain the grease. *Id.* The strainer adds rigidity to the product structure preventing it from collapsing while being held with hot grease. *Id.* The Bacon Bin[®] grease holder is sold in online marketplaces such as Amazon.com and in brick and mortar stores. *Id.*

Plaintiff's Product has been featured in videos, articles, or podcasts by numerous media outlets, including NBC's "The Today Show", ABC's "Good Morning America", and *Buzz Feed*. *Id.* at ¶ 6.

Genuine goods using Plaintiff's Work (as defined below) are widely legitimately advertised and promoted by Plaintiff, its authorized distributors, and unrelated third parties via the Internet. *Id.* at ¶ 8. Over the past several years, visibility on the Internet, particularly via Internet search engines such as Google, Yahoo!, and Bing, has become increasingly important to Plaintiff's overall marketing. *Id.*

Thus, Plaintiff and its authorized distributors expend significant monetary resources on Internet marketing, including search engine optimization ("SEO") strategies. *Id.* at ¶ 9. Other costs include print catalog ads, tradeshows, and handing out free samples. *Id.* Those strategies allow Plaintiff and its authorized retailers to fairly and legitimately educate consumers about the value associated with Plaintiff's brand and the goods sold thereunder. *Id.* Similarly, Defendants' individual seller's stores are indexed on search engines and compete directly with Plaintiff for space in the search results. *Id.*

B. Plaintiff's Rights

Plaintiff is the owner of various published photographs, videos, artwork, creative text, and product instructions appearing on Plaintiff's website talismandesigns.com and its store on Amazon.com. Screen shots of Plaintiff's Amazon Store and website appear in Exhibit 2 of the Complaint. Additionally, Plaintiff has taken numerous steps to protect Plaintiff's Product. For instance, Plaintiff is the owner of U.S. Trademark Registration No. 5,398,411 for BACON BIN® for "jars for cooking grease sold empty" in Class 21. A copy of the trademark registration certificate is attached to the Complaint as Exhibit 3A. Plaintiff also owns U.S. Copyright Registration No. VA-2-214-107, the subject of which is photographs of Plaintiff's Product. Additionally, Plaintiff is the owner of U.S. Copyright Registration No. VA-2-218-985 for Plaintiff's Pig Face Sculpture ("Plaintiff's Work"). Copies of the Copyright registrations and deposit copies are attached to the Complaint as Exhibit 3B and Exhibit 3C, respectively.

The Plaintiff's Product is designed to both strain and then store bacon grease that is poured into it while hot (up to 500 degrees Fahrenheit). *Id.* at ¶ 11. The Plaintiff's Product is designed to both strain and then store bacon grease that is poured into it while hot (up to 500 degrees Fahrenheit). *Id.* The Plaintiff's Product which is molded in red or pink (as seen below) includes a distinct tin can shape with ridges all around it and a whimsical sculpted piggy face top (Plaintiff's Work). Plaintiff identified the need for this product and created the market for this product. *Id.* Below are images of one of Plaintiff's Products, which retails for \$15.00:



The combined distinct features of the container and the Plaintiff's Mark, all function as a trade dress so that consumers are certain that Plaintiff is the source of the Bacon Bin[®]. Plaintiff is also the owner of various published photographs, videos, artwork, creative text and product instructions appearing on its web site talismandesigns.com. Screen shots of the Plaintiff's website and Amazon store are shown in Complaint **Exhibit 2**. *Id.* at ¶ 12.

The arrangement and combination of these features are arbitrary, non-functional, and fanciful and constitute legally protectable trade dress. The Plaintiff's Work, Mark, and Trade Dress has acquired secondary meaning identifying Plaintiff as the source of the products bearing it. The secondary meaning was acquired prior to use of the Plaintiff's Work and Trade Dress by Defendants.

Plaintiff's Work, Mark and Trade Dress have been used in interstate commerce to identify and distinguish Plaintiff's goods. *Id.* at 14. Plaintiff's Work, Mark and Trade Dress has been used by Plaintiff prior in time to Defendants' use of this mark. *Id.* Plaintiff's' Work, Mark

and Trade Dress has never been assigned or licensed to any of the Defendants in this matter. *Id.* The Plaintiff's Work, Mark and Trade Dress are symbols of Plaintiff's quality, reputation, and goodwill and has never been abandoned. *Id.*

B. Plaintiff's Efforts to Police the Defendants' Conduct

The Defendants use the interactive commercial Internet websites and Internet based e-commerce stores using the Seller IDs set forth on "Schedule A" to the Complaint. *See Fennell Dec.*⁴, ¶ 3. These interactive commercial Internet websites provide on-line Merchant Storefronts (as defined *infra*) that allow the Defendants to maintain their anonymity while advertising, offering for sale, and selling Infringing Products into the United States and into Pennsylvania. The Internet marketplaces used by these Defendants include AliExpress.com, Amazon.com, eBay.com, and wish.com. *See Fennell Dec.*, ¶ 3 and Composite Exhibit 1 attached thereto.

Plaintiff has been forced to police the various Internet marketplaces to identify and seek takedowns of unlawful listings for the Infringing Products since allowing the unlawful listings to continue is causing damage to Plaintiff's reputation and bottom line. *Waymire Dec.*, at ¶ 16. Some Defendants sell their fake version of Plaintiff's Product at a fraction of the controlled retail price, going as low as \$3.00 or \$4.00. *Id.* Because of the software provided by the various Internet marketplaces, the lowest priced items are sorted to the top and/or promoted by the software and then purchased by the consumers. *Id.* The Plaintiff's Product is ignored. *Id.* Plaintiff has had varied success in identifying and requesting takedowns of the various unlawful listings and as soon as one is taken down another unlawful listing replaces it. *Id.*

⁴ Refers to the Declaration of Taylor Fennell in Support of Plaintiff's Application for Temporary Restraining Order and Preliminary Injunction, filed herewith.

Another major problem with the Internet marketplaces is that there is a direct and convenient connection between various Chinese and other unidentified manufactures to the Infringing Products. *Id.* In essence, a counterfeiter in Vietnam or Russia, for example, may order a crate of Infringing Products from a Chinese manufacturer, have them drop shipped to a fulfillment center in the United States, and then sell the Infringing Products to a US consumer through a Third Party Service Provider. *Id.* The ease of this system encourages knock-offs to flourish. *Id.*

For these reasons, Plaintiff retained the legal counsel of Ference & Associates LLC (“the Ference firm”) to perform the policing of various Internet marketplaces. *Id.* at ¶ 17. During the process, the Ference firm identified many Chinese manufacturers operating on Marketplace Storefronts hosted by the Internet marketplaces. *See id.* These manufacturers were supplying many of the other identified Defendants with infringing products flooding the Internet marketplaces and damaging Plaintiff’s business. This damage to Plaintiff’s business will continue unless Plaintiff receives the sought after restraining order and injunctive relief. *Id.*

D. The Defendants' Wrongful Conduct

Defendants do not have, nor have they ever had, the right or authority to use Plaintiff's Work for any purpose. *Id.* at ¶ 22. Defendants' unlawful activities have deprived and continue to deprive Plaintiff of its rights to fair competition. *Id.* By their activities, Defendants are defrauding Plaintiff and the consuming public for Defendants' benefit. *Id.* Defendants should not be permitted to continue their unlawful activities, which are causing Plaintiff ongoing irreparable harm. *Id.* Accordingly, Plaintiff is seeking entry of a temporary restraining order prohibiting Defendants' further wrongful infringement of Plaintiff's Work. *Id.*

Given Defendants' copying, reproduction, manufacturing, and distributing of Plaintiff's Work, the Infringing Products are indistinguishable to consumers, both at the point of sale and post-sale. *Id.* at ¶ 23. By using Plaintiff's intellectual property, Defendants have created a false association between their Infringing Products, their Internet e-commerce stores, and Plaintiff. Thus trading on the fame and reputation of the Plaintiff's goods. Their infringements of Plaintiff's Work deprive Plaintiff of the ability to control the creative quality protected by the copyright, it devalues the Plaintiff's BACON BIN[®] grease container brand by associating it with inferior quality goods, and it undermines the value of the Plaintiff's IP by creating the impression that infringement may be undertaken with impunity which threatens Plaintiff's ability to attract investors and markets for the Plaintiff's Products. *Id.* at ¶ 24.

As part of Plaintiff's counsel's ongoing investigation regarding the sale of Infringing Products, Plaintiff's counsel investigated the promotion and sale of Infringing Products by Defendants and obtained available payment account data for receipt of funds by Defendants for the sale of knock-off versions of Plaintiff's genuine products through the Seller IDs. *Fennell Dec.*, ¶ 3. Through visual inspection of Defendants' listings for Infringing Products, it was

confirmed that each Defendant is using the Plaintiff's Work without authorization and that the product that each Defendant is offering for sale, using product features virtually identical to Plaintiff's Work, are in fact, not genuine products. *Id.* The checkout pages or order forms for the Infringing Products confirm that each Defendant was and/or is still currently offering for sale and/or selling Infringing Products through their respective Merchant Storefronts and User Accounts and that each Defendant provides shipping and/or has actually shipped Infringing products to the United States, including to customers located in Pennsylvania. At checkout, a shipping address located in the Pittsburgh area ("the Pennsylvania Address") in the Western District of Pennsylvania verified that each Defendant provides shipping to the Pennsylvania Address. *Id.* Plaintiff's President inspected the detailed web listings describing the Infringing Products Defendants are offering for sale through the Internet based e-commerce stores operating under each of their respective Seller IDs, and determined the products were not genuine versions of Plaintiff's products. *Id.* and Composite Exhibit 1, and *Waymire Dec.* All of the products shipped and received were physically examined and determined not to be authentic. ¶¶ 25 – 27.⁵

17 U.S.C. § 106 grants the owner of a copyright of a sculpture the exclusive rights to reproduce and display the work. Through the copying of Plaintiff's Work, Defendants have violated the Plaintiff's exclusive rights in its sculpture. A comparison of Plaintiff's Work to the

⁵ See e.g., *Gucci Am., Inc. v. Tyrrell-Miller*, 678 F. Supp. 2d 117, 119 (S.D.N.Y. 2008) (Plaintiff's Intellectual Property Manager found that the products offered for sale on the Defendant's websites were non-genuine counterfeit products, based on a visual inspection of Defendant's websites); *Malletier v. 2016bagslouisvuitton.com*, No. 16-61554-CIV- DPG, 2016 U.S. Dist. LEXIS 93072, at *3 (S.D. Fla. July 18, 2016) (Plaintiff's representative reviewed the items bearing the Louis Vuitton Marks offered for sale through Defendant's Internet websites and determined the products to be non-genuine, unauthorized versions of the Plaintiff's products.); *Chanel Inc. v. Yang*, No. C-12-04428-PJH (DMR), 2013 U.S. Dist. LEXIS 151104, at *5-6 (N.D. Cal. Aug. 13, 2013) (Plaintiff's Director of Legal Administration reviewed the various Chanel-branded products offered for sale by Defendants on each of the websites operating under the subject domain names, and determined that the products were non-genuine Chanel products); *Chanel, Inc. v. Powell*, No. C/A 2:08-0404-PMD-BM, 2009 U.S. Dist. LEXIS 127709, at *7 (D.S.C. 2009) (Plaintiff's representative personally reviewed the printouts reflecting the various Chanel brand products offered for sale by the Defendant through its website, and concluded that those products were non-genuine Chanel products).

advertising and offering for sale of Defendants' products reveals the obvious knock-off and infringing nature of Defendants' activities. Defendants' goods are being promoted, advertised, offered for sale, and sold by Defendants to consumers within this district and throughout the United States. Defendants are making substantial sums of money by preying upon members of the general public, many of whom have no knowledge Defendants are defrauding them. Defendants are also falsely representing to consumers that their goods are genuine, authentic, endorsed, and authorized by Plaintiff. Defendants' use of Plaintiff's Work in Defendants' advertising and copying and distributing their knock offs constitutes copyright infringement. Ultimately, Defendants' Internet activities infringe upon Plaintiff's intellectual property rights. The Seller IDs, and associated payment accounts, are a substantial part of the means by which Defendants further their scheme to fraudulently trade off of the fame and reputation of the Plaintiff's authentic goods and unjustly deprive of the Plaintiff of profits and cause harm to Plaintiff.

In light of the covert nature of Defendants' offshore and infringing activities and the importance of creating economic disincentives for such infringing activities, courts have recognized these concerns and routinely grant *ex parte* applications for relief in cases asserting, *inter alia*, copyright infringements on the Internet.⁶ Accordingly, Plaintiff respectfully requests

⁶ See, e.g., *Intenze Products, Inc. v. 1586, et al.*, No. 18-cv-4611-RWS (S.D.N.Y. May 24, 2018); *Allstar Marketing Group, LLC v. 158, et al.*, No. 18-cv-4101-GHW, Dkt. 22 (S.D.N.Y. May 17, 2018); *William Mark Corporation v. 1&cc, et al.*, No. 18-cv-3889-RA, Dkt. 18 (S.D.N.Y. May 2, 2018); *WOW Virtual Reality, Inc. v. Bienbest, et al.*, No. 18-cv-3305-VEC, Dkt. 9 (S.D.N.Y. April 16, 2018); *Ideavillage Products Corp. v. abc789456, et al.*, No. 18-cv-2962-NRB, Dkt. 11 (S.D.N.Y. April 11, 2018); *Ideavillage Products Corp. v. Aarhus, et al.*, No. 18-cv-2739- JGK, Dkt. 22 (S.D.N.Y. March 28, 2018); *Moose Toys Pty Ltd. et al., v. 963, et al.*, No. 18-cv-2187-VEC, Dkt. 16 (S.D.N.Y. April 2, 2018); *Off-White, LLC v. A445995685, et al.*, No. 18-cv-2009-LGS, Dkt. 5 (S.D.N.Y. March 27, 2018); *Spin Master Ltd. and Spin Master, Inc. v. 158, et al.*, No. 18-cv-1774-PAE, Dkt. 18 (Feb. 27, 2018); *JLM Couture, Inc. v. Aimibridal, et al.*, No. 18-cv-1565-JMF, Dkt. 18 (S.D.N.Y. Feb. 21, 2018); *Spin Master Ltd. and Spin Master, Inc. v. Alisy, et al.*, No. 18-cv-543-PGG, Dkt. 16 (S.D.N.Y. Jan. 22, 2018); *WowWee Group Limited, et al. v. Meirly, et al.*, No. 18-cv-706-AJN, Dkt. 11 (S.D.N.Y. Jan. 26, 2018); *Ideavillage Products Corp. v. Dongguan Shipai Loofah Sponge Commodity Factory*,

that this Court grant their *ex parte* Application for the following: 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 Defendants, the Third Party Service Provider and Financial Institutions.

III. ARGUMENT

A. THIS COURT HAS PERSONAL JURISDICTION OVER DEFENDANTS

Federal courts “may assert personal jurisdiction over a nonresident of the state in which the court sits to the extent authorized by the law of that state.” *D’Jamoos v. Pilatus Aircraft*, 566 F.3d 94, 102 (3d Cir. 2009) (quoting *Provident Nat’l Bank v. Cal. Fed. Sav. & Loan Ass’n*, 819 F.2d 434, 436 (3rd Cir. 1987)). This determination entails a two-step inquiry. First, the court must determine whether the long-arm statute of the forum allows courts of that state to exercise jurisdiction over the defendant. Fed. R. Civ. P. 4 (e) (1). Second, if the forum state allows

et al., No. 18-cv-901-PGG, Dkt. 20 (S.D.N.Y. Feb. 1, 2018); *WowWee Group Limited, et al. v. A249345157, et al.*, No. 17-cv-9358-VEC, Dkt. 18 (S.D.N.Y. Dec. 11, 2017); *HICKIES, Inc. v. Shop1668638 Store, et al.*, No. 17-cv-9101-ER, Dkt. 14 (S.D.N.Y. Dec. 6, 2017); *Ideavillage Products Corp. v. Dongguan Opete Yoga Wear Manufacturer Co., Ltd., et al.*, No. 17-cv-9099-JMF, Dkt. 19 (S.D.N.Y. Nov. 27, 2017); *Ideavillage Products Corp. v. Shenzhen City Poly Hui Foreign Trade Co., Ltd., et al.*, No. 17-cv-8704-JGK. (S.D.N.Y. May 24, 2017); *Moose Toys Pty LTD et al. v. Guangzhou Junwei Trading Company d/b/a Backgroundshop et al.*, No. 17-cv-2561-LAK, Dkt. 12 (S.D.N.Y. May 11, 2017); *Rovio Entertainment Ltd. and Rovio Animation OY v. Angel Baby Factory d/b/a Angelbabyfactory et al.*, No. 17- cv-1840-KPF, Dkt. 11 (S.D.N.Y. March 27, 2017); *Ontel Products Corporation v. Airbrushpainting Makeup Store a/k/a Airbrushespainting et al.*, No. 17-cv-871-KBF, Dkt. 20 (S.D.N.Y. Feb. 6, 2017); *Ideavillage Products Corp. v. Bling Boutique Store, et al.*, No. 16-cv-09039-KMW, Dkt. 9 (S.D.N.Y. Nov. 21, 2016); *Gucci America, Inc., et al v. Alibaba Group Holding LTD, et al.*, No. 1:15-cv-03784-PKC (S.D.N.Y. June 23, 2015) (unpublished); *Chanel, Inc. v. Conklin Fashions, Inc.*, No. 3:15-cv-893-MAD/DEP, 2015 U.S. Dist. LEXIS 109886, at *10-13 (N.D.N.Y. Aug. 14, 2015); *Belstaff Grp. SA v. Doe, No. 15-cv-2242-PKC/MHD*, 2015 U.S. Dist. LEXIS 178124, at *2 (S.D.N.Y. June 18, 2015); *AW Licensing, LLC v. Bao*, No. 15-cv-1373, 2015 U.S. Dist. LEXIS 177101, at *2-3 (S.D.N.Y. Apr. 1, 2015); *Klipsch Grp., Inc. v. Big Box Store Ltd.*, No. 1:12-cv-06283-VSB, 2012 U.S. Dist. LEXIS 153137, at *3-4 (S.D.N.Y. Oct. 24, 2012); *True Religion Apparel, Inc. et al. v. Xiaokang Lee et al.*, No. 1:11-cv-08242-HB (S.D.N.Y. Nov. 15, 2011) (unpublished); *N. Face Apparel Corp. v. Fujian Sharing Imp. & Exp. Ltd. Co.*, No. 1:10- cv-1630-AKH, 2011 U.S. Dist. LEXIS 158807 (S.D.N.Y. June 24, 2011); *Tory Burch, LLC v. Yong Sheng Int’l Trade Co., Ltd.*, No. 1:10-cv-09336-DAB, (S.D.N.Y. Jan. 4, 2011) (unpublished); *Chloe v. Designersimports.com USA, Inc.*, No. 07-cv-1791 -CS/GAY, 2009 U.S. Dist. LEXIS 42351, at *2 (S.D.N.Y. Apr. 29, 2009); see also *In re Vuitton et Fils, S.A.*, 606 F.2d 1 (2d Cir. 1979) (holding that *ex parte* temporary restraining orders are indispensable to the commencement of an action when they are the sole method of preserving a state of affairs in which the court can provide effective final relief).

jurisdiction, the court must determine whether exercising personal jurisdiction over the defendant in a given case is consistent with the Due Process Clause of the U.S. Constitution. *See IMO Industries, Inc. v. Kiekert AG*, 155 F.3d 254, 259 (3rd Cir.1998). As alleged herein, Defendants' unlawful, counterfeiting and/or infringing activities subject them to long-arm jurisdiction in Pennsylvania under 42 P. A. Cons. Stat. § 5322. Furthermore, Pennsylvania's exercise of jurisdiction over Defendants thereunder comports with due process.

1. Defendants are Subject to Personal Jurisdiction Under 42 P.A. C.S.A. § 5322

Pennsylvania authorizes personal jurisdiction over the Defendant pursuant to 42 Pa. Cons. Stat § 5322 (a) which provides in pertinent part: "A tribunal of this Commonwealth may exercise personal jurisdiction over a person ... as to a cause of action or other matter arising from such person: (1) Transacting any business in this Commonwealth. Without excluding other acts which may constitute transacting business for the purpose of this paragraph: (ii) The doing of a single act in this Commonwealth for the purpose of thereby realizing pecuniary benefit...(3) Causing harm or tortious injury by an act or omission in this Commonwealth. (4) Causing harm or tortious injury by an act or omission outside this Commonwealth. . .(10) Committing any violation within the jurisdiction of the Commonwealth of any statute, home rule charter, local ordinance or resolution, or rule or regulation promulgated thereunder by any government unit or of any order of court or other government unit."

Courts have regularly conferred personal jurisdiction on a given defendant based on that defendant's operation of a fully interactive website through which consumers can access the site from anywhere and purchase products, as is the case with Defendants' User Accounts and Merchant Storefronts, and allow for customers all over the world (including within Allegheny County, Pennsylvania) to view and purchase products, including Infringing Products, as

demonstrated by the websites themselves and Plaintiff's purchase of Infringing Products. *See Fennell Dec.*, ¶ 3 and Composite Exhibit 1, and *Waymire Dec.*, ¶ 27 - 29. *See n. 6, infra.* (collecting cases in which operating interactive web sites was deemed sufficient to confer personal jurisdiction upon the Court).

Here, by advertising, offering for sale, selling, distributing and shipping retail products directly to consumers across the world, including consumers located throughout the U.S. and specifically in Pennsylvania, Defendants have committed tortious acts, as alleged herein, outside of Pennsylvania, thus directly giving rise to the claims asserted in the instant action. *See Fennell Dec.*, ¶ 2 and Composite Exhibit 1; *see also Lorillard Tobacco Co. v. Applewood Party Store, Inc.*, 2006 WL 2925288 (E.D. Mich. 2006) (defendant's local sale of counterfeit "Newport" cigarettes had an economic effect on interstate commerce); *AI Mortg. Corp. v. AI Mortg. and Financial Services, LLC*, 2006 WL 1437744 (W.D. Pa. 2006) (while plaintiff's provision of services was "predominantly intrastate" in character, its mark was eligible for protection since, even absent an interstate sale, its advertising crossed state lines and, therefore, had entered interstate commerce), *see later opinion, A-1 Mortg. Corp. v. Day One Mortg., LLC*, 2007 WL 30317 (W.D. Pa. 2007) (court awarded permanent injunctive relief in its award of summary judgment to plaintiff).

Here, the injury clearly occurred within Pennsylvania, as Defendants' Infringing Listings, resulted in consumers throughout the U.S., and specifically in Pennsylvania, purchasing Infringing Products. *See Fennell Dec.*, ¶ 2 and Composite Exhibit 1. As a direct result of Defendants' infringing actions, Plaintiff has suffered harm in Pennsylvania through lost sales in Pennsylvania and lost Pennsylvania consumers. *See Waymire Dec.*, ¶¶ 27 - 30.

Accordingly, this Court has personal jurisdiction over Defendants who have intentionally availed themselves of the opportunity to do business in Pennsylvania, and specifically in Allegheny County, Pennsylvania, through their fully interactive web sites, as well as yet undiscovered online marketplaces, to offer for sale and/or sell Infringing Products. The identified Defendants merely use fanciful and made up store names or seller ids without complete addresses, contact information, phones numbers and the like. *See FERENCE Dec.*, ¶¶ 6 - 7; Defendants used and continue to advertise, market, promote, offer for sale, sell, distribute and/or import Infringing Products to Pennsylvania and/or potential customers, including in Allegheny County, Pennsylvania. *See Waymire Dec.* ¶¶ 27 - 30.

Here, the fact that Defendants have chosen to open their respective User Accounts for the purpose of selling Infringing Products through their Merchant Storefronts, as well as any and all as yet undiscovered online marketplace platforms, alone supports a finding that Defendants have intentionally used these marketplace platforms, “as a means for establishing regular business with a remote forum.” *EnviroCare Techs, LLC v. Simanovsky, No. 11-CV-3458, 2012 U.S. Dist.. LEXIS 78088, at *10 (E.D.N.Y. June 4, 2012)* (quoting *Boschetto v. Hansing*, 539 F.3d 1011, 1019 (9th Cir. 2008)); *see also Lifeguard Licensing Corp.*, 2016 U.S. Dist.. LEXIS 89149, at *8 and *EnviroCare Techs., LLC*, 2012 U.S. Dist.. LEXIS 78088, at *10. Courts have indeed found that “commercial sellers” on “well-known, national . . . website[s]” are in fact subject to personal jurisdiction, as these Defendants “must have been able to foresee the possibility of being hauled into court [in the present jurisdiction].” *Malcom v. Esposito*, 63 Va. Cir. 440, 446 (Cir. Ct. 2003); *see also EnviroCare Techs., LLC*, 2012 U.S. Dist.. LEXIS 78088, at *12.

Whether a Defendant physically shipped Infringing Products into Pennsylvania is not determinative of whether personal jurisdiction exists, as courts in this Circuit examine a given

defendant’s online interactions with consumers in considering whether a particular defendant has transacted business in the forum state. *See Fennell Dec.* ¶ 2. *See Zippo Mfg. Co.*, 952 F. Supp. at 1119; *Rolex Watch, U.S.A., Inc. v. Pharel*, 09 CV 4810 (RRM) (ALC), 2011 U.S. Dist. LEXIS 32249, at 6 (E.D.N.Y. Mar. 11, 2011) (finding personal jurisdiction over defendant, a resident of South Carolina, because he transacted business in New York by monitoring and responding to inquiries for counterfeit watches through websites accessible in New York). Plaintiff and Plaintiff’s counsel have viewed Defendant’s Infringing Products via their online User Accounts and Merchant Storefronts, physically received and examined them, and Defendant’s paid Pennsylvania sales tax for the privilege of intentionally shipping the products into this district. *See Fennell Dec.*, ¶ 2 and *Waymire Dec.* ¶¶ 27 - 30.⁷ Thus, Defendants’ sophisticated

⁷ *See Skrodzki v. Marcello*, 810 F. Supp. 2d 501, 512-13 (E.D.N.Y. 2011), and that, “[t]he offering for sale of even one copy of an allegedly infringing item, even if no sale results, is sufficient to give personal jurisdiction over the alleged infringer under N.Y. CPLR § 302. *Cartier v. Seah LLC*, 598 F. Supp. 2d 422, 425 (S.D.N.Y. 2009). Moreover, under Second Circuit case law, when analyzing personal jurisdiction in the Internet context, “traditional statutory and constitutional principles remain the touchstone of the inquiry,” and while a website’s interactivity, “may be useful” for analyzing personal jurisdiction ‘insofar as it helps to decide whether the defendant ‘transacts any business’ in New York,’” ... “it does not amount to a separate framework for analyzing internet-based jurisdiction.” *Best Van Lines, Inc.*, 490 F.3d at 252 (quoting *Best Van Lines, Inc. v. Walker*, No. 03- Civ. 6585 (GEL), 2004 U.S. Dist. LEXIS 7830, at *9 (S.D.N.Y. May 4, 2004)) (citing *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997)). Sister circuits similarly rely on the traditional principles guiding the personal jurisdiction analysis when analyzing the same in the Internet context, namely the Eleventh Circuit (see, e.g., *Oldfield v. Pueblo De Bahia Lora, S.A.*, 558 F.3d 1210, 1219-1224 (11th Cir. 2011) (criticizing the over-reliance on the sliding scale of interactivity analysis and instead applying a traditional personal jurisdiction analysis in an Internet case where the website was fully interactive); see also *Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339, 1356-58 (11th Cir. 2013) (applying the traditional purposeful availment test in a case where defendant’s fully interactive website was accessible in Florida, and was selling and distributing infringing goods through his website to Florida consumers), and the Seventh Circuit (see, e.g., *Advanced Tactical Ordnance Systems, LLC v. Real Action Paintball, Inc.*, 751 F.3d 796, 803 (7th Cir. 2010) (addressing the impact of a defendant’s online activities upon the personal jurisdiction analysis and reiterating that, as with offline activities, the Court must focus upon the deliberate actions of the defendant within the State)), are instructive in considering whether the exercise of jurisdiction over Defendants in the instant action is appropriate under similar, if not identical facts. For example, courts in the Eleventh Circuit have routinely granted temporary restraining orders, preliminary injunctions and default judgments in online counterfeiting cases where no purchases of the counterfeit/infringing products were made, but the plaintiffs alleged and confirmed that each of the foreign defendants operated fully interactive commercial websites through which they advertised, promoted, offered for sale, and sold products bearing what the plaintiff determined to be counterfeit and infringing trademarks into the U.S., and in interstate commerce, in violation of the plaintiff’s rights. See, e.g., *Malletier*, 2016 U.S. Dist. LEXIS 93072, at *3; *Mycoskie v. 2016tomsshoesaleoutlet.us*, No. 16-61523- CIV-GAYLES, 2016 U.S. Dist. LEXIS 95963, at *4 (S.D. Fla. July 22, 2016); *Adidas AG v.*

commercial operations, specifically including their offering for sale and/or selling of Infringing Products through their highly interactive User Accounts and Merchant Storefronts, along with Defendants' own representations on their Merchant Storefronts that they ship Infringing Products to the U.S., including to Pennsylvania addresses, unequivocally establishes that Defendants conduct business within this District and the claims in this suit arise from Defendants' business dealings and transactions with consumers in Pennsylvania. *See Zippo Mfg. Co. v. Zippo DOT Com*, 952 F. Supp. 1119 (W.D. Pa. 1997).

2. Exercising Personal Jurisdiction Over Defendants Comports With Due Process

The assertion of personal jurisdiction over Defendants also comports with the Due Process Clause of the U.S. Constitution, as Defendants have “certain minimum contacts ... such that maintenance of th[is] suit does not offend ‘traditional notions of fair play and substantial

007adidasuk.com, No. 15-61275-CIV-GAYLES, 2015 U.S. Dist. LEXIS 179020, at *8 (S.D. Fla. 2015); *Louis Vuitton Malletier, S.A. v. 2015shoplvhandbag.com*, No. 15-62531-CIV-BLOOM, 2015 U.S. Dist. LEXIS 181477, at *11 (S.D. Fla. Dec. 18, 2015); *Abercrombie & Fitch Trading Co. v. Abercrombieclassic.com*, No. 15-62579-CIV-CMA, 2015 U.S. Dist. LEXIS 179041, at *5 (S.D. Fla. Dec. 11, 2015); *Gucci Am., Inc. v. Gucci-Outlet.com*, No. 15-62165-CIV-DPG, 2015 U.S. Dist. LEXIS 181483, at *3-4 (S.D. Fla. Nov. 9, 2015); *Chanel, Inc. v. 2012leboyhandbag.com*, No. 15-61986-CIV-WJZ, 2015 U.S. Dist. LEXIS 177989, at *3 (S.D. Fla. Oct. 13, 2015); *Abercrombie & Fitch Trading Co. v. Abercrombieandfitchdk.com*, No. 15-62068-CIV-BB, 2015 U.S. Dist. LEXIS 179117, at *5 (S.D. Fla. Oct. 7, 2015); *Malletier v. 2015louisvuittons.com*, No. 15-61973-CIV-BB, 2015 U.S. Dist. LEXIS 181452, at *11 (S.D. Fla. Sep. 29, 2015); *Chanel, Inc. v. Chanelstore.com*, No. 15-61156-CIV-CMA, 2015 U.S. Dist. LEXIS 179101, at *5 (S.D. Fla. August 31, 2015). Similarly, the Seventh Circuit, in *Illinois v. Hemi Group LLC*, held that it had personal jurisdiction over the foreign defendants because they operated a nationwide business model where they intentionally created and operated several commercial, interactive websites to offer products for sale and allow online orders from Illinois residents, specifically noting that the “[defendants] maintained commercial websites through which customers could purchase cigarettes, calculate their shipping charges using their zip codes, and create accounts,” and as a result, the “[defendants] stood ready and willing to do business with Illinois residents.” *Illinois v. Hemi Group LLC*, 622 F.3d 754, 756 (7th Cir. 2010); *see also Monster Energy Co. v. Chen Wensheng*, 136 F. Supp. 3d 897, 906 (N.D. Ill. 2015) (holding that defendants had “expressly aimed” their actions at the state, making specific personal jurisdiction proper even without a sale made to an Illinois resident, because in addition to intentionally creating and operating commercial, fully interactive AliExpress.com Internet stores through which consumers can purchase counterfeit Monster Energy Products, the defendants had affirmatively selected a shipping option to ship counterfeit products to the U.S., including to Illinois residents, and the plaintiffs' exhibits showed that the named defendants had specifically offered to sell particular counterfeit products to individuals with Illinois shipping addresses and provided PayPal account number for the buyer to make the payment for the item, and as a result, the defendants expressly elected to do business with the residents of all fifty states, including Illinois).

justice.”” *Calder v. Jones*, 465 U.S. 783, 788 (1984) (quoting *Milliken v. Meyer*, 311 U.S. 457 (1940)).

This Court may exercise personal jurisdiction when the plaintiff can establish that the cause of action at issue arose from the defendant’s activities within the forum state. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. at 414 (1984). The plaintiff initially bears the burden of proving a *prima facie* case, by a preponderance of the evidence, that the defendant’s contacts with the forum state meet the “minimum contacts” test. *Carteret Sav. Bank, F.A. v. Shushan*, 954 F.2d 141, 146 (3d Cir. 1992). *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (U.S. 1985); see *Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 243 (2d. Cir. 2007) (“In the language of minimum contacts, when the defendants committed ‘their intentional, and allegedly tortious, actions expressly aimed at California, they must have reasonably anticipated being hailed into court there.’”) (internal quotations omitted); Here, the Defendants intentionally directed their activity towards the Pennsylvania market, thereby purposefully availing themselves of “the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” See *Waymire Dec.* ¶ 29. See *Fennell Dec.* ¶ 2 and Composite Exhibit 1. Thus, the Plaintiff has made out a *prima facie* case, by a preponderance of the evidence that Defendants’ contacts with the Pennsylvania meet the “minimum contacts” test.

Pennsylvania’s long-arm statute provides that jurisdiction may be exercised “to the fullest extent allowed under the Constitution of the U.S. and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the U.S.” 42 Pa. C. S. A. § 5322(b) (1981). Thus, because Pennsylvania’s long-arm statute is coextensive with the dictates of the U.S. Constitution, the traditional two-step analysis is collapsed into a single inquiry: “whether the exercise of personal jurisdiction would conform with the Due Process Clause.”

Poole v. Sasson, 122 F. Supp. 2d 556, 558 (E. D. Pa. 2000); *see also Renner v. Lanard Toys Limited*, 33 F.3d 277, 279 (3d Cir. 1994) (“[T]his court’s inquiry is solely whether the exercise of personal jurisdiction over the defendant would be constitutional.”). Due process requires that the defendant have “minimum contacts” with the forum state. *Remick v. Manfredy*, 238 F.3d 248, 255 (3d Cir. 2001) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945)). “Minimum contacts must have a basis in ‘some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.’” *Remick*, 238 F.3d at 255 (quoting *Asahi Metal Indus. Co., Ltd. v. Superior Court of California*, 480 U.S. 102, 109, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987)).

Here, each of the Defendants has used an interactive web site for offering for sale and selling infringing products. This Court has personal jurisdiction over each Defendant based upon internet-based sales activity into the US and this judicial district. The seminal opinion in this regard is *Zippo Mfg. Co.*, 952 F. Supp. at 1119. In *Zippo*, this court established a “sliding scale” analytical framework for internet-based personal jurisdiction cases based upon the “level of interactivity and commercial nature of the exchange of information that occurs on the Web site.” 952 F. Supp. at 1124. The court explained:

[T]he likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet. This sliding scale is consistent with well-developed personal jurisdiction principles. At one end of the spectrum are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper. At the opposite end are situations where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions. A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise personal jurisdiction. The middle ground is occupied by

interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site.

Id.

The Third Circuit endorsed this general framework in *Toys “R” Us, Inc. v. Step Two, S.A.*, 318 F.3d 446 (3rd Cir. 2003), but clarified that the plaintiff must also provide evidence of “the intentional nature of the defendant’s conduct vis-a-vis the forum state.” *Id.* at 452. In other words, “there must be some evidence that the defendant ‘purposefully availed’ itself of conducting activity in the forum state, by directly targeting its website to the state, knowingly interacting with residents of the forum state via its website, or through sufficient other related contacts.” *Id.* at 454. *See also Mellon Bank (East) PSFS, N.A. v. DiVeronica Bros., Inc.*, 983 F.2d 551, 556 (3d Cir. 1993) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985))

In the wake of *Zippo* and *Toys “R” Us*, most courts have concluded that a defendant that intentionally conducts business transactions over an interactive website with customers in the forum state has purposefully directed itself of the laws of that forum. In *Square D*, for example, the defendant’s website contained links providing “a [telephone] number and e-mail address for the purpose of placing an order,” information concerning product warranties, and a link that permitted a potential purchaser to “submit a form specifying the manufacturer, catalog number, and quantity of the product to be purchased, as well as the purchaser’s company name, phone, fax and e-mail.” *Square D Co. v. Scott Elec. Co.*, No. 06-459, 2008 WL 4462298, at *3 (W.D. Pa. Sept. 30, 2008). There was also a space on the form for additional “comments” concerning a proposed transaction. *Id.* Although a customer could not directly order products using only the website, customers could “commence the ordering process” by “provid[ing] much of the same type of information that would be required for an order (e.g., manufacturer, quantity, catalog

number, contact information).” *Id.* at *8, Indeed, the court noted that the website had produced “twenty-four (24) Pennsylvania customers and a total of \$10,238.25 in sales” for the defendant. *Id.* at *9. Although this amount represented “less than 1%” of the defendant’s total sales, the Court concluded that it was sufficient to establish personal jurisdiction in the state of Pennsylvania. *Id.* As explained by the court:

The website was more than a mere advertisement; rather, it was an interactive site that allowed customers to take the first step in an ordering process that could be completed with one phone call or e-mail. By knowingly selling and shipping a product that is at issue in this litigation to a customer [in] Pennsylvania, the Moving Defendants purposefully availed themselves of the laws and privileges of this forum. *Id.* at *11.

Willyoung v. Colorado Custom Hardware, Inc. is similarly instructive. *Willyoung v. Colorado Custom Hardware, Inc.*, 2009 WL 3183061 (W. D. Pa. Sept. 30, 2009). In *Willyoung*, the website at issue allowed visitors to “request a catalog by supplying certain information according to the website prompts, contact the company directly by e-mail, subscribe to [defendant’s] on-line newsletter, and search, view, and select products for on-line purchase via a ‘shopping cart.’ ” *Id.* at *12. Over a two-year period, Pennsylvania customers had utilized the website to place 211 orders amounting to \$41,566.05 in sales. *Id.* Based on the foregoing, the court concluded that the defendant had purposefully availed itself of the privilege of conducting business in the state of Pennsylvania by “intentionally and repeatedly engag[ing] in internet-based sales of its products to Pennsylvania residents via its website.” *Id.* at *13. Other courts have frequently reached the same conclusion. *See also Gentex Corp. v. Abbott*, 978 F. Supp. 2d 391, 398 (M.D. Pa. 2013) (finding personal jurisdiction where non-resident defendant’s interactive website was used by Pennsylvania residents to place at least 17 orders over a three-year period); *TRE Services, Inc. v. U.S. Bellows, Inc.*, 2012 WL 2872830, *4–5 (W.D. Pa. July 12, 2012) (finding personal jurisdiction based on defendant’s commercially interactive website

that accepted orders from Pennsylvania); *Gourmet Video, Inc. v. Alpha Blue Archives, Inc.*, 2008 WL 4755350, *3 (D.N.J. Oct. 29, 2008) (“Personal jurisdiction is properly exercised over a defendant using the Internet to conduct business in the forum state.”); *L’Athene, Inc. v. EarthSpring LLC*, 570 F. Supp. 588, 593–94 (D. Del. 2008) (defendants purposely availed themselves of doing business in state of Delaware where they operated a website accessible in Delaware, received orders and payments from customers in Delaware, and shipped their products to Delaware). Thus, the Defendants in this case have all offered interactive web sites for viewing, ordering, and paying for the Counterfeit Goods and have purposefully availed themselves of the opportunity to conduct business with Pennsylvania citizens with their respective Merchant Storefronts.

Further there is sufficient evidence to establish the type of “intentional interaction with the forum state” required by the Third Circuit for the exercise of personal jurisdiction. *See Toys “R” Us*, 318 F.3d at 451–52 (requiring evidence that the defendant has “intentionally interact[ed] with the forum state). *See, e.g., Square D.*, 2008 WL 4462298 at *9 n. 10 (concluding that an amount equal to less than 1% of overall sales was sufficient to establish minimum contacts); *Zippo*, 952 F.Supp. at 1127 (exercising personal jurisdiction despite that only 2% of the defendant’s customers were Pennsylvania residents); *L’Athene*, 570 F. Supp. 2d at 593–94 (exercising personal jurisdiction despite that sales to the forum state constituted less than 1% of defendants’ total annual sales based on units sold). As noted in *Zippo*, “[t]he Supreme Court has made clear that even a single contact can be sufficient.” *Zippo*, 952 F. Supp. at 1127 (citing *McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 223, 78 S.Ct. 199, 2 L. Ed. 2d 223 (1957)); *see also Square D.*, 2008 WL 4462298 at *9 n. 10 (noting that, while an argument based on a minute number of overall sales might be “valid in the context of general jurisdiction, in the context of

specific jurisdiction it is evidence that supports Plaintiff's argument that the Moving Defendants purposefully availed themselves of the laws and privileges of Pennsylvania by selling and shipping products to residents of the Commonwealth.”).

Since the Defendants have purposefully availed themselves of the opportunity to conduct business with Pennsylvania citizens through their interactive websites, including collecting and paying Pennsylvania sales tax, the Court must next consider whether this litigation “arise[s] out of and relate[s] to” those sales. *D’Jamoos*, 566 F.3d at 102. Here, the lawsuit directly arises out of the Defendants’ respective sales of Infringing Products to Pennsylvania residents through their interactive websites. *See, e.g., Willyoung*, 2009 WL 3183061 at *13 (“The second part of our jurisdictional inquiry is also easily satisfied because this litigation arises out of and relates to BGM’s use of its web site to conduct internet-based sales of its merchandise to Pennsylvania residents.”) (internal quotation marks omitted); *Square D.*, 2008 WL 4462298 at *11 (finding the relatedness requirement satisfied where “at least one” of the products sold to a Pennsylvania resident by the defendant was from the allegedly infringing line of products at issue in the litigation). All of the Infringing Products which are the subject of this lawsuit were sold into Pennsylvania. Therefore, the “arise[s] out of and relate[s] to” test is easily met here.

Finally, the Court must consider whether the exercise of jurisdiction would otherwise comport with “traditional notions of fair play and substantial justice.” *O’Connor v Sandy Lane Hotel Co., Ltd*, 496 F.3d 312, 316 (3rd Cir. 2007)(quoting *Int’l Shoe*, 326 U.S. at 316). Because the existence of minimum contacts makes jurisdiction presumptively constitutional, the defendant at step three of the specific-jurisdiction-inquiry process “must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.” *Id.* (quoting *Burger King*, 471 U.S. at 477). The burden upon the defendant at this stage of the

inquiry is considerable. *See Pennzoil Prods. Co. v. Colelli & Assocs., Inc.*, 149 F.3d 197, 207 (3rd Cir. 1998) (noting that if minimum contacts are present, then jurisdiction will be unreasonable only in “rare cases”); *Grand Entm’t Group, Ltd., v. Star Media Sales, Inc.*, 988 F.2d 476, 483 (3rd Cir.1993) (“The burden on a defendant who wishes to show an absence of fairness or lack of substantial justice is heavy.”). As the Third Circuit has observed:

The Supreme Court has identified several factors that courts should consider when balancing jurisdictional reasonableness. Among them are the burden on the defendant, the forum State’s interest in adjudicating the dispute, the plaintiff’s interest in obtaining convenient and effective relief, the interstate [and international] judicial system’s interest in obtaining the most efficient resolution of controversies, and [t]he procedural and substantive interests of other nations.

O’Connor, 496 F.3d at 324 (internal quotations omitted).

Here, the Plaintiff’s interest in obtaining convenient and effective relief in the forum of its choice and Pennsylvania’s interest in protecting its citizens from the sale of infringing goods within its borders are factors that weigh heavily in finding personal jurisdiction of the Defendants. *See Square D*, 2008 WL 4462298 at *12 (concluding that jurisdiction should be exercised in Pennsylvania “because the counterfeit goods in question potentially pose a danger to the public and were sold to residents of this Commonwealth.”); *Zippo*, 952 F.Supp. at 1127 (noting Pennsylvania’s strong interest in resolving trademark infringement claims implicating its citizens and giving “due regard to the Plaintiff’s choice to seek relief in Pennsylvania”). As the court noted in *Zippo*, “[i]f [the defendant] had not wanted to be amenable to jurisdiction in Pennsylvania, the solution would have been simple—it could have chosen not to sell its [products] to Pennsylvania residents.” *Id.* at 1126–27.

Accordingly, Plaintiff respectfully submits that this Court has personal jurisdiction over Defendants in this action.

B. PLAINTIFF IS ENTITLED TO AN *EX PARTE* TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION

An *ex parte* order is essential in this case to prevent immediate and irreparable injury to Plaintiff. Rule 65(b) of the Federal Rules of Civil Procedure provides, in pertinent part, that a temporary restraining order may be granted without written or oral notice to the opposing party or that party's counsel where "it clearly appears from the specific facts shown by affidavit . . . that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition." Fed. R. Civ. P. 65(b). Further, this court has inherent power to grant an *ex parte* restraining order. *See Link v. Wabush R. R.*, 370 U.S. 626, 630 – 31 (1962) ("Inherent powers are governed by the 'control necessarily vested in courts to manage their own affairs as to achieve the orderly and expeditious disposition of cases.' (citation omitted)"). Indeed, the Supreme Court has indicated that federal courts have broad inherent powers to accomplish justice. *See Chambers v. Nasco, Inc.*, 501 U.S. 32, 44 (1991). Moreover, under the Copyright Act, 17 U.S.C. § 502 (a), any court with jurisdiction may grant a temporary and final injunction to prevent or restrain infringement of a copyright.

Defendants herein fraudulently promote, advertise, sell, and offer for sale goods infringing Plaintiff's Work, via their fully interactive, commercial Internet e-commerce stores using the Seller IDs. Specifically, Defendants wrongfully use infringements of Plaintiff's Work to increase traffic to their illegal operations. By their actions, Defendants are passing off Defendants' Infringing Products as Plaintiff's genuine products and creating a false association in the minds of consumers between Defendants and Plaintiff. The entry of a temporary restraining order would serve to immediately stop Defendants from benefiting from their wrongful use of Plaintiff's intellectual property at issue and preserve the status quo until such time as a hearing can be held. *See Dell Inc. v. BelgiumDomains, LLC*, Case No. 07-22674 2007

WL 6862341, at *2 (S.D Fla. Nov. 21, 2007) (finding *ex parte* relief more compelling where Defendants' scheme "is in electronic form and subject to quick, easy, untraceable destruction by Defendants.")

Absent a temporary restraining order without notice, Defendants can and, based upon Plaintiff's counsel's past experience, will significantly alter the status quo before the Court can determine the parties' respective rights. In particular, the Seller IDs at issue are under the Defendants' complete control. Thus, Defendants have the ability to modify e-commerce store data and content, redirect consumer traffic to other seller identification names, change payment accounts, and transfer assets. *Ference Dec.*, ¶ 6. Such modifications can happen in a short period of time after Defendants are provided with notice of this action. *Id.* Defendants can also easily electronically transfer and secret the funds sought to be restrained if they obtain advance notice of Plaintiff's Application for a Temporary Restraining Order and thereby thwart the Court's ability to grant meaningful relief and can completely erase the status quo. *Id.* As Defendants engage in illegal infringing activities, Plaintiff has no reason to believe Defendants will make their assets available for recovery pursuant to an account of profits or will adhere to the authority of this Court any more than they have adhered to the Copyright Act.

"Courts in other circuits dealing with foreign on-line counterfeiters and infringers have not hesitated to exercise [their] authority [to grant an *ex parte* order] in infringement cases in which there is a danger the defendants will destroy, conceal, or transfer counterfeit goods."

Moose Toys Pty, Ltd. v. Thriftway Hylan Blvd. Drug Corp., No. 15- cv-4483-DLI/MDG, 2015 U.S. Dist.. LEXIS 105912, at *8 (E.D.N.Y. Aug. 6, 2015). Moreover, federal courts have long recognized that civil actions against counterfeiters - whose very business is built around the deliberate misappropriation of rights and property belonging to others - present special

challenges that justify proceeding on an *ex parte* basis. See *Columbia Pictures Indus., Inc. v. Jasso*, 927 F. Supp. 1075, 1077 (N.D. Ill. 1996) (observing that “proceedings against those who deliberately traffic in infringing merchandise are often useless if notice is given to the infringers”); *Time Warner Entertainment Co., L.P. v. Does*, 876 F. Supp. 407, 410-11 (E.D.N.Y. 1994).

This Court should prevent an injustice from occurring by issuing an *ex parte* temporary restraining order which precludes Defendants from continuing to display their infringing products via the Internet e-commerce stores or modifying or deleting any related content or data. Only such an order will prevent ongoing irreparable harm and maintain the status quo. The immediate and irreparable harm to Plaintiff’s business and reputation -- as well as to the goodwill associated with Plaintiff’s Work -- in denying its Application for an *ex parte* temporary restraining order, greatly outweighs the harm to Defendants’ interests in continuing to offer for sale and sell Infringing Products. Many courts have granted an *ex parte* temporary restraining order in situations where the harm to plaintiffs far outweighed the harm to defendants.⁸

The Third Circuit holds that a district court must evaluate the following four factors in deciding whether preliminary injunctive relief is appropriately entered: (1) the extent to which the moving party will suffer irreparable harm without injunctive relief; (2) the likelihood that the moving party will succeed on the merits; (3) the extent to which the nonmoving party will suffer irreparable harm if the injunction is issued; and (4) the public interest. *AT&T Co. v. Winback and Conserve Program, Inc.*, 42 F.3d 1421, 1427 (3d Cir. 1994). Courts routinely grant preliminary injunctive relief when a party's intellectual property rights are threatened by the sale of counterfeit versions of its products based on a copyright holder's inability "to control the quality of the goods manufactured

⁸ See, *supra* fn. 5, 6, and 7 (collecting cases granted *ex parte* temporary restraining order in situations where harm to plaintiffs far outweighed harm to defendants.).

and sold under the holder's trademark." *El Greco Leather Prods. Co. v. Shoe World, Inc.*, 806 F.2d 392, 395 (2d Cir. 1986). As shown below, Plaintiff readily meets the criteria for obtaining a temporary restraining order and preliminary injunction. *Louis Vuitton Malletier v. Burlington Coat Factory Warehouse Corp.*, 426 F.3d 532, 537 (2d Cir. 2005) (quoting *Federal Express Corp. v. Federal Espresso, Inc.*, 201 F.3d 168, 173 (2d Cir. 2000)). The "standards which govern consideration of an application for a temporary restraining order are the same standards as those which govern a preliminary injunction." *Local 1814, Int'l Longshoremen's Ass'n v. N.Y. Shipping Ass'n, Inc.*, 965 F.2d 1224, 1228 (2d Cir. 1992). See also *Hall v. Johnson*, 599 F.Supp.2d 1, 6 n. 2 (D.D.C. 2009); accord *Sterling Commercial Credit-Michigan, LLC v. Phoenix Industries I, LLC*, 762 F.Supp.2d 8 (D.D.C. 2011); *Coalition for Parity, Inc. v. Sebelius*, 709 F.Supp.2d 6 (D.D.C. 2010). As detailed below, Plaintiff has met the standard for a preliminary injunction, and accordingly, a temporary restraining order should also issue against Defendants.

1. **Plaintiff Will Suffer Irreparable Harm in The Absence of an Injunction Leaving It With No Adequate Remedy at Law**

Defendants' infringing activities must be stopped immediately in order to prevent any further harm to Plaintiff. Not only does Plaintiff stand to suffer lost profits as a result of Defendants' competing substandard Infringing Products, but it deprives Plaintiff of its exclusive rights under the Copyright Act, it destroys the inherent value of Plaintiff's Work, it impairs Plaintiff's reputation for providing quality products, it dilutes Plaintiff's brand and goodwill and it negatively affects Plaintiff's relationships with its current customers and its ability to attract new customers. See *Waymire Dec.*, ¶¶ 29 - 31.

"In the context of copyright infringement cases, the harm to the plaintiff's property interest has often been characterized as irreparable in light of possible market confusion." *CJ*

Prods. LLC v. Concord Toys Int'l, No. 10-CV-5712 (ENV)(JO), 2011 U.S. Dist. LEXIS 4983, at *15 (E.D.N.Y. Jan. 19, 2011) (citing *Merkos L'Inyonei Chinuch, Inc. v. Otsar Sifrei Lubavitch, Inc.*, 312 F.3d 94, 96-97 (2d Cir. 2002)). Courts generally issue injunctions in this context because “proving ‘the loss of sales due to infringement is . . . notoriously difficult.’” *CJ Prods. LLC v. Snuggly Plushez LLC*, 809 F. Supp. 2d 127, 145 (E.D.N.Y. 2011) (citation omitted).

Also, because Defendants’ substandard Infringing Products are virtually indistinguishable from Plaintiff’s genuine products, not only could any injury that results from use of Defendants’ substandard Infringing Products be attributed to Plaintiff (*See Waymire Dec.*, ¶ 20), thereby causing irreparable harm to Plaintiff in the form of unquantifiable lost sales, loss of goodwill and loss of control of its reputation with authorized licensees, retailers and consumers, but Plaintiff potentially could be exposed to legal liability for any such injury, which is of particular importance given the nature of the genuine products. *Id.* Thus, this factor weighs heavily in Plaintiff’s favor.

2. **Plaintiff is Likely to Prevail on The Merits of Its Copyright Infringement Claims**

Plaintiff asserts one cause of action under 17 U.S.C. § 501(a). Plaintiff has established a likelihood of success on its cause of action for copyright infringement. To prove copyright infringement pursuant to 17 U.S.C. § 501, the plaintiff must demonstrate two elements: (1) ownership of a copyright and (2) copying by the defendant. *Dam Things From Denmark v. Russ Berrie & Co.*, 290 F.3d 548, 561 (3d Cir. 2002). Plaintiff is the exclusive owner of U.S. Copyright Reg. No. VA-2-218-985 directed to Plaintiff’s Pig Face Sculpture. A true and correct copy of which is attached as Complaint **Exhibit 3C**. Defendants had actual notice of Plaintiff’s exclusive rights in and to the copyrighted work in the Plaintiff’s Work.

Without permission, Defendants knowingly and intentionally reproduced, copied, and displayed the Plaintiff's Work by manufacturing, distributing, displaying, offering for sale and/or selling Infringing Products which copy or are substantially similar to the Plaintiff's Work. *See Fennell Dec. Composite Exhibit 1*. Therefore, Defendants' display, distribution, and sale of the unauthorized copies infringe Plaintiff's exclusive rights to reproduce, prepare derivative works, distribute and display its copyrighted material under 17 U.S.C. § 106.

3. The Balance of Hardships Favors Plaintiff

The balance of hardships unquestionably and overwhelmingly favors Plaintiff in this case. Here, as described above, Plaintiff has suffered, and will continue to suffer, irreparable harm to its business, the value, goodwill and reputation built up in and associated with the Plaintiff's Work and to its reputation as a result of Defendants' willful and knowing sales of substandard imitations of the Plaintiff's genuine product. *See Waymire Dec.*, ¶¶ 19 - 29. In contrast, any harm to Defendants would only be the loss of Defendants' ability to continue to offer their Infringing Products for sale, or, in other words, the loss of the benefit of being allowed to continue to unfairly profit from their illegal and infringing activities. "Indeed, to the extent defendants 'elect[] to build a business on products found to infringe[,] [they] cannot be heard to complain if an injunction against continuing infringement destroys the business so elected.'" *Windsurfing Intern, Inc. v. AMF, Inc.*, 782 F.2d 995, 1003 n.12 (Fed. Cir. 1986); *Broad. Music, Inc. v. Prana Hosp., Inc.*, 158 F. Supp. 3d 184, 196 (S.D.N.Y. 2016) (quoting *Mint, Inc. v. Amad*, 2011 U.S. Dist.. LEXIS 49813, at *3 (S.D.N.Y. 2011) (internal quotation marks and citation omitted)); *see also Mitchell Group USA LLC*, No. 14-cv-5745-DLI/JO, 2014 U.S. Dist.. LEXIS 143001, at *6-7 (E.D.N.Y. Feb. 17, 2014) (citing *Philip Morris USA Inc. v. 5 Bros. Grocery Corp.*, No. 13-cv-2451-DLI/SMG, 2014 U.S. Dist.. LEXIS 112274 (E.D.N.Y. Aug. 5, 2014)

(“Absent an injunction, there will be further erosion of plaintiff’s goodwill and reputation. Defendants, on the other hand, will be called upon to do no more than refrain from what they have no right to do in the first place.”)). Further, the Defendant’s continuing infringing activities are causing irreparable harm to the Plaintiff’s reputation and depriving Plaintiff of its exclusive rights to duplicate, reproduce and distribute its Work.

4. The Relief Sought Serves the Public Interest

Defendants are directly defrauding the consuming public by palming off the Infringing Products as Plaintiff’s genuine goods. The “public has an interest in not being deceived—in being assured that the mark it associates with a product is not attached to goods of unknown origin and quality.” Public interest can be defined a number of ways, but in a trademark case, it is most often a synonym for the right of the public not to be deceived or confused. *2 McCarthy*, § 30:21. *See Bill Blass, Ltd. v. Saz Corp.*, 751 F.2d at 156 (there is a public interest in the protection of the trademark and to avoid confusion in the public); *SK & F, Co. v. Premo Pharmaceutical Laboratories*, 625 F.2d 1055, 1057 (3d Cir.1980) (“preventing deception of the public is itself in the public interest”). *See also International Kennel Club v. Mighty Star, Inc.*, 846 F.2d at 1092 n. 8 (“[T]he relevant consideration is the consumer’s interest in not being deceived.”) Here, the public has an interest in being able to rely on the high quality of the Plaintiff’s genuine products using the Plaintiff’s Work. Since Defendants have willfully and knowingly inserted substandard Infringing Products into the marketplace, the public would benefit from a temporary restraining order and preliminary injunction halting any further sale and distribution of Defendants’ Infringing Products. *See Waymire Dec.*, ¶¶ 23 - 31.

C. PLAINTIFF IS ENTITLED TO AN ORDER PREVENTING 1) THE FRAUDULENT TRANSFER OF ASSETS AND 2) FREEZING OF DEFENDANTS' MERCHANT STOREFRONTS

1. Defendants' Assets Must be Frozen

In addition, the Court should enter an order limiting the transfer of Defendants' unlawfully gained assets. Plaintiff has demonstrated above that they will likely succeed on the merits of their claims. As such, under 17 U.S.C. § 504(b), Plaintiff will be entitled to an accounting and payment of the profits earned by Defendants throughout the course of their unlawful scheme. Furthermore, it is unlikely that Defendants possess the funds to satisfy any potential judgment and Pennsylvania law also permits the prejudgment restraint sought by Plaintiff. Due to the deceptive nature of Defendants' business, and Defendants' deliberate violations of the Copyright Act, Plaintiff respectfully requests this Court grant additional *ex parte* relief restraining the transfer of all monies held or received by Context Logic, PayPal, Amazon, and AliPay or other financial institutions for the benefit of any one or more of the Defendants. *See, e.g., Balenciaga Am., Inc. v. Dollinger*, No. 10-cv-2912-LTS, 2010 U. S. Dist. LEXIS 107733, at *22 (S.D.N.Y. Oct. 8, 2010) (citing *Wishnatzki & Nathel, Inc. v. H.P. Island-Wide, Inc.*, No. 00-cv-8051-JSM, 2000 U.S. Dist. LEXIS 15664, at *4 (S.D.N.Y. 2000) (“[W]here plaintiffs seek both equitable and legal relief in relation to specific funds, a court retains its equitable power to freeze assets.”); *Int'l Star Class Yacht Racing Ass'n v. Tommy Hilfiger USA., Inc.*, 146 F.3d 66, 71-72 (2d Cir. 1998) (“A district court faced with a Lanham Act violation possesses some degree of discretion in shaping [the] relief according to the principles of equity and the individual circumstances of each case” within the parameters of allowing an accounting for profits); *George Basch Co., Inc. v. Blue Coral, Inc.*, 968 F.2d 1532, 1537 (2d Cir. 1992); *Tiffany (NJ) LLC v. Forbse*, No. 11-cv-4976-NRB, 2012 U.S. Dist. LEXIS

72148, at *34 (S.D.N.Y. May 23, 2012); *Warner Bros. Entm't Inc. v. Doe*, No. 14-cv-3492-KPF, 2014 U.S. Dist.. LEXIS 190098 (S.D.N.Y. May 29, 2014); and *Hoxworth v. Blinder, Robinson & Co., Inc.*, 903 F.2d 186 (3d Cir. 1990) (district court has power to issue an injunction in order to protect a future damages remedy; the unsatisfiability of a money judgment can constitute irreparable injury).

This Court has broad authority to grant such an order. The Supreme Court has provided that district courts have the power to grant preliminary injunctions to prevent a defendant from transferring assets in cases where an equitable interest is claimed. *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Funds, Inc.*, 527 U.S. 308 (1999). The Third Circuit has additionally ruled that district courts have the power to grant preliminary injunctions to prevent a defendant from transferring assets in order to protect a future damages remedy. *Hoxworth v. Blinder, Robinson & Co., Inc.*, 903 F.2d 186 (1990). Moreover, almost every Circuit has interpreted Rule 65 of the Federal Rules of Civil Procedure to grant authority to restrain assets *pendent lite*. See *Mason Tenders Dist. Council Pension Fund v. Messera*, 1997 WL 223077 (S.D.N.Y. May 7, 1997) (acknowledging that “[a]lmost all of the Circuit Courts have held that Rule 65 is available to freeze assets *pendent lite* under some set of circumstances”).

Courts have the inherent authority to issue a prejudgment asset restraint when plaintiff’s complaint seeks relief in equity. *Animale Grp. Inc. v. Sunny’s Perfume Inc.*, 256 F. App’x 707, (5th Cir. 2007); *Levi Strauss & Co. v. Sunrise Int’l Trading Inc.*, 51 F.3d 982, 987 (11th Cir. 1995); *Reebok Int’l Ltd. v. Marnatech Enters., Inc.*, 970 F.2d 552, 559 (9th Cir. 1992). In the years since *Marnatech*, many federal courts have granted the temporary restraint of an infringer’s assets in cases similar to this one, including recently in actions against operators of ‘rogue’ websites selling infringing products to ensure the availability of an equitable accounting. See,

e.g., *The North Face Apparel Corp. and PRL USA Holdings, Inc. v. Fujian Sharing, et al.*, Civil Action No. 10-Civ-1630 (AKH) (S.D.N.Y. March 2, 2010); *National Football League v. Chen Cheng, et al.*, No. 11-Civ-00344 (S.D.N.Y. January 19, 2011); *Tory Burch LLC v. Yong Sheng Intl Trade Co., Ltd.*, No. 10-Civ-9336 (S.D.N.Y. December 17, 2010).

Plaintiffs may obtain an order restraining Defendants' Assets by demonstrating a "likelihood of dissipation of the claimed assets, or other inability to recover money damages, if relief is not granted." *DatatechEnters. LLC v. FFMagnatLtd.*, No. 12-cv-04500-CRB, 2012 U.S. Dist. LEXIS 131711, at *12 (N.D. Cal. Sept. 14, 2012) (citing *Johnson v. Couturier*, 572 F.3d 1067, 1085 (9th Cir. 2009)). District courts have the "authority to freeze those assets which could [be] used to satisfy an equitable award of profits." *North Face Apparel Corp. v. TC Fashions, Inc.*, No. 05-cv-9083-RMB, 2006 U.S. Dist. LEXIS 14226, at *10 (S.D.N.Y. Mar. 30, 2006) (internal citation omitted). In doing so, a court "may exempt any particular assets from the freeze on the ground that they [are] not linked to the profits of allegedly illegal activity." *Id.* at *11. Yet, the onus is on "the party seeking relief [from any such asset freeze] to 'present documentary proof'" that its profits do not stem from such illegal activity. *Id.*

Under 17 U.S.C. § 504(b), a plaintiff in an action arising under the Copyright Act is entitled to recover a defendant's profits derived from the infringement and also the plaintiff's damages. Furthermore, in the Third Circuit, the inability of a defendant to satisfy a judgment for legal damages justifies a pre-judgment restraint of existing assets. *Hoxworth v. Blinder, Robinson & Co., Inc.*, 903 F.2d 186 (3d Cir. 1990) (concluding the unsatisfiability of a money judgment can constitute irreparable injury).

An asset freeze in the instant matter is unquestionably warranted because Defendants, who appear to be unknown individuals, that are manufacturing, importing, exporting,

advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling Infringing Products to U.S. consumers solely via the Internet, and accepting payment for such Infringing Products in U.S. Dollars through Financial Institutions, thereby causing irreparable harm to Plaintiff in the form of lost sales, loss of goodwill and loss of control of its reputation with licensees, retailers and consumers, and can, and most certainly have the incentive to, transfer and hide their ill-gotten funds if their assets are not frozen. *See Ference Dec.*, ¶ 6.

Moreover, to provide complete equitable relief, courts have granted such orders without providing notice to the defendants. Specifically, federal courts have held that where advance notice of an asset restraint is likely to cause a party to alienate the assets sought to be restrained, a temporary restraining order may be issued *ex parte*. *See F.T. Int'l Ltd. v. Mason*, 2000 WL 1514881 *3 (E.D. Pa. 2000) (granting *ex parte* TRO restraining defendants' bank accounts upon finding that advance notice would likely have caused the defendants to secret or alienate funds); *CSC Holdings, Inc. v. Greenleaf Elec., Inc.*, 2000 WL 715601 (N.D. Ill. 2000) (granting *ex parte* TRO enjoining cable television pirates and restraining pirates' assets); *Dama S.P.A. v. Doe*, 2015 U.S. Dist. LEXIS 178076, at *4-6 (S.D.N.Y. June 12, 2015) (agreeing that, "Plaintiff's concerns regarding the likelihood of dissipating assets merit the extraordinary remedy of *ex parte* relief and that there is a strong likelihood that advance notice of the motion would cause Defendants to drain Financial Institution accounts, thereby depriving Plaintiff of the remedy it seeks") and *SEC v. Caledonian Bank Ltd.*, 317 F.R.D. 358 (S.D.N.Y. 2016) (granting plaintiff's request for an *ex parte* asset freeze based on plaintiff's assertion that Defendants were foreign entities, and therefore could easily move assets out of bank or brokerage accounts at a moment's notice).⁹

⁹ See also *supra* fn. 5

In this case, Defendants' blatant violations of the Copyright Act warrant an *ex parte* order restraining the transfer of their ill-gotten assets. Moreover, as Defendants' business are conducted anonymously over the Internet, Plaintiff has additional cause for *ex parte* relief, as Defendants may easily secret or transfer their assets with the Court's or Plaintiff's knowledge.

2. Defendants' User Accounts and Merchant Storefronts Must be Frozen

A temporary restraining order which, in part, restrains and enjoins the Third Party Service Provider(s), as well as any and all as yet undiscovered online marketplace platforms, from providing services to Defendants' User Accounts and Merchant Storefronts is warranted and necessary because the continued offering for sale and/or sale of the Infringing Products by Defendants on their Merchant Storefronts through their User Accounts will result in immediate and irreparable injury to Plaintiff, as described above. *See Gucci Am., Inc. v. Weixing Li*, 768 F.3d 122, 126 (2d Cir. 2014) (Hon. Richard J. Sullivan entered a temporary restraining order, which, in part, enjoined the sale of counterfeit goods on the Internet) and *AW Licensing, LLC v. Bao*, No. 15-cv-1373, 2015 U.S. Dist. LEXIS 177101, at *3 (S.D.N.Y. Apr. 1, 2015) (Hon. Katherine B. Forrest entered a temporary restraining order which was subsequently converted into a preliminary injunction, which, in part, disabled the defendants' websites, which were their means of distributing, offering for sale and selling counterfeit products.).¹⁰

One reason why courts have ordered this relief is the ease with which a Merchant Storefront may be set up. For example, a defendant who knowingly sells Infringing Products will likely try and set up another Merchant Storefront to keep selling when the current Merchant Storefront stops working. *See FERENCE Dec.*, ¶ 6. This brings into play a balancing of the hardship to Defendants against the hardship to Plaintiff if the relief is not granted. In the present

¹⁰ See *id.*

case, the hardship to Plaintiff outweighs any hardship to Defendants. The proposed Order does not block any of the enjoined Defendants from setting up another Merchant Storefront to sell non-Infringing Products. The proposed Order merely blocks any goodwill associated with the Merchant Storefront which sold Infringing Products; the Defendants are free to set up a new Merchant Storefront that does not sell Infringing Products.

Blocking the good will associated with the Merchant Storefront helps prevent the situation with the defendants where the Infringing Product listing has been taken down but if someone (e.g., a repeat buyer) contacts a Defendant at the Merchant Storefront using the messaging system provided by the online marketplace asking for the Infringing Product it will be made available by a Defendant. *Id.* The only way to preclude this type of harm to Plaintiff is to freeze the Defendants' Merchant Storefronts.

A freezing of Defendants' Merchant Storefronts also acts to provide immediate notice of the present action to Defendants. Indeed, a number of cases have required that the domain names on which a defendant's storefront operates be turned over to the plaintiff and pointed to a webpage providing notice of the lawsuit against the defendant. *Iron Maiden Holdings Ltd. v. The P'ships & Unincorporated Assns. Identified on Schedule "A"*, No. 18-CV-522 (N.D. Ill. Feb. 1, 2018) ("Plaintiff may provide notice of these proceedings to Defendants, including notice of the preliminary injunction hearing and service of process pursuant to Fed.R.Civ.P. 4(f)(3), by electronically publishing a link to the Complaint, this Order and other relevant document on a website to which the Defendant Domain Names which are transferred to Plaintiff's control will redirect"). Thus, the freezing of Defendants' Merchant Storefronts is also a manner of ensuring that Defendants receive notice of the present action.

D. PLAINTIFF IS ENTITLED TO AN ORDER AUTHORIZING EXPEDITED DISCOVERY

Additionally, Plaintiff respectfully requests that the Court order expedited discovery from Defendants, Financial Institutions and the Third Party Service Provider regarding the scope and extent of Defendants' infringing activities, as well as Defendants' account details and other information relating to Defendants' Financial Accounts, Assets and/or any and all User Accounts and or Financial Accounts with the Third Party Service Provider, including, without limitation any and all websites, any and all accounts with online marketplace platforms, 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 ("User Accounts"), and 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 ("Merchant Storefront(s)") including, without limitation, those owned and operated, directly or indirectly, by the Third Party Service Provider and the Financial Institutions.

District courts have broad power to require early document production and to permit expedited discovery. *See* Fed. R. Civ. P. 30(b), 34(b). Expedited discovery may be granted when the party seeking it demonstrates: (1) irreparable injury; (2) some likelihood of success on the merits; (3) some connection between expedited discovery and the avoidance of irreparable injury; and (4) some evidence that the injury which will result without expedited discovery

looms greater than the injury that defendant will suffer if expedited discovery is granted. *See, e.g., Advanced Portfolio Technologies, Inc. v. Advanced Portfolio Technologies Ltd.*, 1994 U.S. Dist. LEXIS 18457, at *7 (S.D.N.Y. Dec. 28, 1994).

Generally, a party may not seek discovery prior to a Rule 26(f) conference unless authorized by a court order. *See Fed. R. Civ. P. 26(d)(1)*. While in the past, Courts have often applied a four-factor test to determine when expedited discovery may be granted,¹¹ they now apply a more flexible “good cause” test to examine “the discovery request . . . on the entirety of the record to date and the *reasonableness* of the request in light of all the surrounding circumstances.” *Ayyash v. Bank Al-Madina*, 233 F.R.D. 325, 326 (S.D.N.Y. 2005) (quoting *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. O’Connor*, 194 F.R.D. 618, 624 (N.D. 11l. 2000)).¹² Regardless of which test is applied, Plaintiff has established that it is entitled to the expedited discovery requested. Plaintiff has demonstrated both irreparable injury and its probability of success on the merits above, and taking into account the covert nature of Defendants, their business operations and the fact that they appear to be foreign individuals or companies who have both the incentive and the capability to hide or destroy relevant business records and other discoverable information and documentation upon hearing of this action, Plaintiff respectfully submits that there is good cause for this Court to grant Plaintiff the

¹¹ “. . . the plaintiff must demonstrate (1) irreparable injury, (2) some probability of success on the merits, (3) some connection between the expedited discovery and the avoidance of the irreparable injury, and (4) some evidence that the injury that will result without expedited discovery looms greater than the injury that the defendant will suffer if the expedited relief is granted.” *Advanced Portfolio Techs., Inc. v. Advanced Portfolio Techs., Ltd.*, 1994 U.S. Dist. LEXIS 18457, at *7 (S.D.N.Y. Dec. 28, 1994).

¹² *See, e.g., Malibu Media, LLC v. Doe*, 2016 U.S. Dist. LEXIS 64656, at *4 (S.D.N.Y. May 16, 2016); *Malibu Media, LLC v. Doe*, 2015 U.S. Dist. LEXIS 87751, at *2-3 (S.D.N.Y. July 6, 2015); *Milk Studios, LLC v. Samsung Elecs. Co.*, 2015 U.S. Dist. LEXIS 38710, at *4-5 (S.D.N.Y. Mar. 25, 2015); *Admarketplace, Inc. v. Tee Support, Inc.*, No., 2013 U.S. Dist. LEXIS 129749, at *3-4 (S.D.N.Y. Sept. 11, 2013); *Dig. Sin, Inc. v. Does 1-176*, 279 F.R.D. 239, 241 (S.D.N.Y. 2012); and *Stern v. Cosby*, 246 F.R.D. 453, 457 (S.D.N.Y. 2007) (agreeing with the *Ayyash* Court that the more flexible approach is the better approach.).

expedited discovery requested herein because it will prevent further injury to Plaintiff and assist Plaintiff in pursuing its claims against Defendants and in recovering the damages to which it is entitled. *See Ayyash*, 233 F.R.D., at 327.

Despite the likelihood of success of Plaintiff's claims and the injury it has and continues to endure, if this Court were to deny expedited discovery, Plaintiff may lose the opportunity to effectively pursue their claims against Defendants because there are several aspects of Defendants' infringing activities that Plaintiff is not yet able to confirm, including: 1) the true identities of Defendants, 2) the full scope of Defendants' infringing activities, 3) the source or location of Defendants' inventory of Infringing Products and/or 4) where the proceeds from Defendants' infringing activities have gone. *See Admarketplace, Inc. v. Tee Support, Inc.*, No. 13-cv-5635- LGS, 2013 U.S. Dist.. LEXIS 129749, at *5 (S.D.N.Y. Sep. 11, 2013) (finding that a plaintiff "who has a potentially meritorious claim and no ability to enforce it absent expedited discovery, has demonstrated good cause for expedited discovery"). Therefore, only through an order from the Court allowing expedited discovery will Plaintiff be able to fully ascertain the extent of Defendants' infringing activities.

Plaintiff respectfully requests an *ex parte* Order allowing expedited discovery in order to permit it to discover certain identifying information, including information concerning all of Defendants' Financial Accounts, Assets and User Accounts and their sales of Infringing Products. The discovery requested on an expedited basis in Plaintiff's [Proposed] Order has been limited to include only that which is essential to prevent further irreparable harm. Under Fed. R. Civ. P. 65(d)(2)(C), this Court has the power to bind any third parties who are in active concert with Defendants that are given notice of the Order to provide expedited discovery. Moreover, Financial Institutions and the Third Party Service Provider have complied with

similar requests for expedited discovery in like actions before this Court. *See supra* note 5.

Plaintiff respectfully submits that its request should be granted.

**E. PLAINTIFF’S REQUEST FOR A SECURITY BOND
IN THE AMOUNT OF \$5,000 IS ADEQUATE**

Generally, a bond is a condition of preliminary injunctive relief. Fed. R. Civ. P. 65(c) requires a successful applicant for a preliminary injunction to post a bond, “in such sum as the [district] court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined.” Thus, the injunction bond “provides a fund to use to compensate incorrectly enjoined defendants.” *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 804 (3d Cir. 1989) (quotations omitted).

The injunction bond also serves other functions. “It is generally settled that, with rare exceptions, a [party] wrongfully enjoined has recourse only against the bond.” *Id.*; *see also Hoxworth v. Blinder, Robinson & Co., Inc.*, 903 F.2d 186, 210 n. 31 (3d Cir.1990) (Applicants “derive some protection from the bond requirement, for [enjoined parties] injured by wrongfully issued preliminary injunctions can recover only against the bond itself.”). Thus, the bond generally limits the liability of the applicant and informs the applicant of “the price [it] can expect to pay if the injunction was wrongfully issued.” *Instant Air Freight*, 882 F.2d at 805; *see also id.* at 805 n. 9 (“The bond can thus be seen as a contract in which the court and [the applicant] ‘agree’ to the bond amount as the ‘price’ of a wrongful injunction.”) (quotations omitted).

Plaintiff respectfully submits that in connection with the Court’s order pursuant to its inherent equitable power requiring that the Defendants’ Assets and Defendants Financial Accounts be frozen by the Financial Institutions, Plaintiffs’ provision of security in the amount

of \$5,000 (“Security Bond”) is more than sufficient. This Security Bond is equal to an amount that similar plaintiffs have posted in related cases before Courts. *See, e.g., Doggie Dental Inc. v. Go Well*, No. 19-cv-1282 (W.D. Pa. Oct. 11, 2019) (Hornak, J.) (Temporary Restraining Order required \$5,000 bond); *Doggie Dental Inc. v. Worthbuyer*, No. 19-cv-1283 (W.D. Pa. Oct. 11, 2019) (Hornak, J.) (Temporary Restraining Order required \$5,000 bond); *Doggie Dental Inc. v. Max_Buy*, No. 19-cv-746 (W.D. Pa. June 27, 2019) (Hornak, J.) (Temporary Restraining Order required \$5,000 bond); *Doggie Dental Inc. v. Anywill*, No. 19-cv-682 (W.D. Pa. June 13, 2019) (Hornak, J.) (Temporary Restraining Order required \$5,000 bond); *Airigan Solutions, LLC v. Artifacts_Selling, Civil Action No. 18-cv-1462-NBF* (Temporary Restraining Order entered on November 2, 2018, \$5,000.00 bond required), and *Airigan Solutions, LLC v. Babymove, Civil Action No. 19-cv-166-NBF* (Temporary Restraining Order entered on February 14, 2019, \$5,000.00 bond required), *Rapid Slicer, LLC v. Buyspry, Civil Action No. 19-cv-249-MJH* (Temporary Restraining Order entered on March 11, 2019, \$5,000 bond required), *Showtech Merchandising, Inc. v. Various John Doe, et al*, 2:12-cv-1270 (W.D. Pa. Sept. 6, 2012); *See Wow-Virtual Reality, Inc. v. 740452063 et al.*, No. 18-cv-3618, Dkt. 18 (S.D.N.Y. April 25, 2018); *Rovio Entertainment Ltd. and Rovio Animation OY v. Best Baby and Kid Store, et al.*, No. 17-cv- 4884-KPF, Dkt. 6 (S.D.N.Y. June 28, 2017); *Rovio Entertainment Ltd. and Rovio Animation OY v. Angel Baby Factory d/b/a Angelbaby_factory et al.*, No. 17-cv-1840-KPF, Dkt. 11 (S.D.N.Y. March 27, 2017). Moreover, one New York Court has gone as far as to hold that no security bond is necessary in similar circumstances. *See, e.g., Ontel Products Corp. v. Airbrushpainting Makeup Store a/k/a Airbrushpainting, et al.*, No. 17-cv-871-KBF, Dkt. 20 (S.D.N.Y. Feb. 6, 2017).¹³

¹³ The Second Circuit has held that “[d]istrict courts ... are vested with wide discretion in determining the amount

Plaintiff believes that Defendants would be unable to show a strong likelihood of harm, and even if Defendants were to experience a likelihood of harm, such harm is outweighed by the harm to Plaintiff, as detailed above. For these reasons, Plaintiff respectfully requests that the Court, in accordance with Fed. R. Civ. P. 65(a), enter the Security Bond in the amount of \$5,000.

IV. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that its Application be granted *ex parte* and that the Court enter: 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 Defendants, the Third Party Service Providers and the Financial Institutions, in the form of the [Proposed] Order accompanying this Application, and such other relief to which Plaintiffs may show they are legally entitled.

Respectfully submitted,

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of the bond that the moving party must post.” *Doctor’s Assocs., Inc. v. Stuart*, 85 F.3d 975, 985 (2d Cir. 1996). Typically, “the amount of the bond posted is the limit that a wrongfully restrained party may recover,” but the Court must also balance this against a likelihood of harm the non-movant would be able to show. *Interlink Int’l Fin. Servs., Inc. v. Block*, 145 F. Supp. 2d 312, 314 (S.D.N.Y. 2001); *see also Doctor’s Assocs.*, 85 F.3d at 985.

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