

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

AQUAPAW BRANDS LLC,

Plaintiff,

v.

FLO PET, *et al.*,

Defendants.

Civil Action No. 21-988

FILED UNDER SEAL

**1) TEMPORARY RESTRAINING ORDER; 2) ORDER RESTRAINING ASSETS AND
MERCHANT STOREFRONTS; 3) ORDER TO SHOW CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT ISSUE; AND 4) ORDER AUTHORIZING EXPEDITED
DISCOVERY**

This matter is before the Court upon Plaintiff's *Ex Parte* Application for the following: 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts (as defined *infra*); 3) an order to show cause why a preliminary injunction should not issue; and 4) an order authorizing expedited discovery against the Defendants identified on **Schedule "A"** to the Complaint and attached hereto (collectively, the "Defendants"). The Court has considered the Application, the evidence in the record, and the applicable law.

By the instant Application, Plaintiff AquaPaw Brands LLC moves *ex parte* pursuant to 35 U.S.C. § 283, Federal Rules of Civil Procedure 64 and 65, and The All Writs Act, 28 U.S.C. § 1651(a), for entry of a temporary restraining order and an order restraining assets and Merchant Storefronts, for violations of the Patent Act. Because Plaintiff has satisfied the requirements for the issuance of a temporary restraining order, and good cause is shown, the Court grants Plaintiff's Application.

FACTUAL FINDINGS & CONCLUSION OF LAW

1. Plaintiff, AquaPaw Brands LLC, is likely to prevail on its Patent Act claim at trial.

2. Plaintiff sells its dog Pet Bathing Tool under U.S. registered trademark Aquapaw[®] (i.e. Aquapaw[®] Pet Bathing Tool).

3. The innovative features of Plaintiff's Product are the subject of U. S. Patent No. 10,531,728 entitled "Hand Attachable Animal Washing Apparatus" (the "Plaintiff's Patent").

4. Defendants, by operating Internet based e-commerce stores, and fully interactive, commercial Internet websites operating under Defendants' respective seller identities set forth on Schedule "A" hereto (the "Seller IDs"), have advertised, promoted, sold, and offered for sale product(s) that Plaintiff has determined is not a genuine Aquapaw[®] Pet Bathing Tool product and infringe at least one claim of the Plaintiff's Patent.

5. Through the e-commerce marketplace platform, Plaintiff accessed all of the e-commerce stores operating under Defendants' Seller IDs and captured the Defendants' listings at issue on the e-commerce stores. At the conclusion of the process, the detailed webpages and photographs were inspected by Plaintiff's representative who confirmed that each Defendant is offering for sale products that infringe upon at least one claim of the Plaintiff's Patent ("Infringing Products").

6. Plaintiff, as well as consumers and animal owners, are likely to suffer immediate and irreparable losses, damages and injuries before Defendants can be heard in opposition, unless Plaintiff's Application for *ex parte* relief is granted. There is good cause to believe that the unauthorized and unlicensed offering for sale and sale of Infringing Products will continue in

the marketplace; that consumers are likely to be misled, confused, and disappointed by the quality of the products so advertised, and that Plaintiff may suffer loss of sales for their genuine products and an unnatural erosion of the legitimate marketplace in which they operate. There is also good cause to believe that if Plaintiff proceeds on notice to Defendants of this Application, Defendants can easily and quickly change the ownership or modify e-commerce store account data and content, change payment accounts, redirect consumer traffic to other seller identification names, and transfer assets and ownership of Seller IDs, thereby thwarting Plaintiff's ability to obtain meaningful relief. As other courts have recognized, proceedings against those who deliberately traffic in infringing merchandise are often useless if notice is given to the adverse party.

7. The balance of potential harm to Defendants of being prevented from continuing to profit from their illegal and infringing activities if a temporary restraining order is issued is far outweighed by the potential harm to Plaintiff, their reputation, and their goodwill as a manufacturer and distributor of quality products, if such relief is not issued.

8. The public interest favors issuance of the temporary restraining order in order to protect Plaintiff's interests and protect the public from being deceived and defrauded by the passing off of Defendants substandard goods as Plaintiff's genuine goods.

9. Under Pennsylvania law this Court may issue a prejudgment asset restraint where Plaintiff's complaint asserts a claim for money damages. Therefore, this Court has the authority to grant Plaintiff's request for a prejudgment asset freeze to preserve the relief sought by Plaintiff and preserve the Defendants' ability to at least partially satisfy a judgment.

10. Similarly, if Defendants are given notice of the Application, they are likely to destroy, move, hide or otherwise make inaccessible to Plaintiff the records and documents

relating to Defendants' illegal and infringing activities. Therefore, Plaintiff has good cause to be granted expedited discovery.

ORDER

Based on the foregoing findings of fact and conclusions of law, Plaintiff's Application is hereby **GRANTED** as follows (the "Order"):

I. Temporary Restraining Order

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, that each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order are hereby restrained as follows:

- (1) from (a) their unauthorized and unlicensed use of Plaintiff's Patent, distribution, marketing, advertising, offering for sale, or sale of any Infringing Products; and (b) shipping, delivering, holding for sale, transferring or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner products that infringe upon at least one claim of the Plaintiff's Patent;
- (2) from secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with any computer files, data, business records, documents or any other records or evidence relating to their User Accounts,¹ Merchant Storefronts² or

¹ As defined in the Complaint, a "User Account" is any and all accounts with online marketplace platform, including, Amazon.com, eBay.com, aliexpress.com and wish.com, as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendants, their respective officers, employees, agents, servants and all other persons in active concert with any of them.

² As defined in the Application, a "Merchant Storefront" is any and all User Accounts through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them operate storefronts to manufacture, import, export, advertise, market, promote, distribute, display, offer

any money, securities or other property or assets of Defendants (hereinafter collectively referred to as “Defendants’ Assets”);

(3) effecting assignments or transfers, forming new entities or associations, or creating and/or utilizing any other platform, User Account, Merchant Storefront or any other means of importation, exportation, advertising, marketing, promotion, distribution, and/or display for the purposes of circumventing or otherwise avoiding the prohibitions set forth in this Order;

(4) each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order shall immediately cease offering for sale the Infringing Products within metatags or other markers within website source code, from use on any web page (including as the title of any product listing), from any advertising links to other websites, from search engines’ databases or cache memory, and any other form of use such terms or works which is visible to a computer user or serves to direct computer searches to Internet based e-commerce stores owned, or operated by each Defendant, including the Merchant Storefronts operating under the Seller IDs;

(5) each Defendant shall not transfer ownership of the User Accounts or Merchant Storefronts associated with the Seller IDs;

(6) each Defendant shall preserve copies of all computer files relating to the use of any User Accounts and/or Merchant Storefronts under the Seller IDs and shall take steps necessary

for sale, sell and/or otherwise deal in products which are held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them.

to retrieve computer files relating to the use of the User Accounts and/or Merchant Storefronts under their Seller IDs that may be deleted before the entry of this Order;

(7) upon receipt of notice of this Order, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to Alibaba.com US LLC d/b/a Aliexpress.com (“Aliexpress”), Amazon.com, Inc. and its affiliate, Amazon Services LLC d/b/a Amazon.com (“Amazon”), eBay, Inc. d/b/a eBay.com (“eBay”), and Context Logic, Inc d/b/a wish.com (“Wish”) (“Third Party Service Provider(s)”) and AliPay US Inc. d/b/a Alipay.com (“Alipay”), Amazon Payments, Inc. d/b/a pay.amazon.com, and PayPal, Inc. d/b/a paypal.com (“PayPal”) (“Financial Institution(s)”, and their related companies and affiliates, shall immediately identify and restrain all funds, as opposed to ongoing account activity, in or which are hereafter transmitted into the accounts related to the Defendants as identified on Schedule “A” hereto, as well as all funds in or which are transmitted into (i) any other accounts of the same customer(s); (ii) any other accounts which transfer funds into the same financial institution account(s), and/or any of the other accounts subject to this Order; and (iii) any other accounts tied to or used by any of the Seller IDs identified on Schedule “A” hereto;³

(8) upon receipt of notice of this Order, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to the Third Party Service Provider(s) and the Financial Institution(s), shall immediately divert to a holding account for the trust of the Court all

³ This Order contemplates that discovery may reveal that Defendants may have other user accounts operated by other Third Party Service Providers and Financial Institutions and that the additionally discovery Third Party Service Providers and Financial Institutions, once identified and provided with notice, shall also be subject to the discovery, restraints and injunctions set forth in this Order.

funds in or which are hereafter transmitted into all accounts related to Defendants identified in Schedule "A" hereto, and associated payment accounts, and any other accounts for the same customer(s) as well as any other accounts which transfer funds into the same financial institution account(s) as any other accounts subject to this Order;

(9) The Third Party Service Provider(s) and Financial Institution(s) shall further, within five (5) business days of receiving this Order, provide Plaintiff's counsel with all data that details (i) an accounting of the total funds restrained and identifies the financial account(s) which the restrained funds are related to, and (ii) the account transactions related to all funds transmitted into financial account(s) which have been restrained. Such restraining of the funds and the disclosure of the related financial institution account information shall be made without notice to the account holders, until after those accounts are restrained. No funds restrained by this Order shall be transferred or surrendered by any Third Party Service Provider or Financial Institution for any purpose (other than pursuant to a chargeback made pursuant to that Third Party Service Provider or Financial Institution's security interest in the funds) without express authorization of this Court;

(10) Upon Plaintiff's request, any Internet marketplace who is provided with notice of this Order, including but not limited to the Third Party Service Provider(s) and Financial Institution(s), shall immediately cease fulfillment of and sequester Defendants' inventory assets corresponding to the Seller IDs identified on Schedule "A" hereto in its inventory, possession, custody, or control, and hold such goods in trust for the Court during pendency of this action;

- (11) this Order shall apply to the Seller IDs, associated Accounts and Merchant Storefronts, and any other seller identification names, Accounts or Merchant Storefronts, Third Party Service Provider or Financial Institution accounts which are being used by Defendants for the purpose of infringing on at least one claim of the Plaintiff's Patent;
- (12) Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to the Third Party Service Provider(s) and the Financial Institution(s), subject to this Order may petition the Court to modify the asset restraint set out in this Order; and
- (13) this Order shall remain in effect until the date for the hearing to show cause why a preliminary injunction should not be issued as set forth below, or until such further dates as set by the Court or stipulated by the parties.

B. IT IS HEREBY ORDERED, as sufficient cause has been shown, that upon Plaintiff's request, any Internet marketplace who is provided with notice of this Order, including but not limited to the Third Party Service Providers and Financial Institutions, is hereby restrained and enjoined from engaging in any of the following acts or omissions pending the hearing and determination of Plaintiff's Application for a preliminary injunction, or until further order of the Court:

- (1) secreting, concealing, transferring, disposing of, withdrawing, encumbering or paying Defendants' Assets from or to financial accounts associated with or utilized by any Defendant or any Defendant's User Accounts or Merchant Storefront(s) (whether said account is located in the U.S. or abroad) ("Defendants' Financial Accounts") until further ordered by this Court; and

(2) within (5) days after receiving notice of this Order, providing services to Defendants, Defendants' User Accounts and Defendants' Merchant Storefronts, including, without limitation, continued operation of Defendants' User Accounts and Merchant Storefronts, and any other listings linked to the same sellers or linked to any other alias seller identification names being used and/or controlled by Defendants.

C. IT IS HEREBY ORDERED, as sufficient cause has been shown, that, upon Plaintiffs' request, within no later than five (5) calendar days of Plaintiffs' request:

(1) Amazon.com, Inc., and its related companies and affiliates, including Amazon Services, LLC, and Amazon Payments, Inc. (collectively "Amazon"), are hereby restrained and enjoined, pending the hearing and determination of Plaintiff's Application for a preliminary injunction, or until further order of the Court, from processing payments for any products listed under the following Amazon Standard Identification Numbers (ASIN): B06Y3QSGWP by any Seller that has not been authorized by Plaintiff; Plaintiff shall provide notice to Amazon of Plaintiff's authorized sellers;

(2) Amazon.com, Inc., and its related companies and affiliates, including Amazon Services, LLC, and Amazon Payments, Inc., shall place the following Amazon Standard Identification Number B06Y3QSGWP, into Amazon's gating program, so that Plaintiff will be able to control which sellers list product under these ASINs; and

(3) upon Plaintiff's request, Amazon.com, Inc., and its related companies and affiliates, including Amazon Services, LLC, and Amazon Payments, Inc., shall remove listings and/or advertisements for any product that Plaintiff identifies as infringing on at least one claim of the Plaintiff's Patent (i.e., preventing a seller from listing for sale under the identified ASIN);

(4) The Plaintiff has demonstrated that the following products as pictured in the attached **Schedule “B”** are either made, used by, offered for sale or sold into the United States contain every element or equivalent of at least one claim of the Plaintiff’s Patent; consequently, all online marketplaces, including but not limited to, Amazon.com, ebay.com, aliexpress.com, and wish.com, shall upon receipt of this Order, suspend, block, tombstone, and/or delete any and any product listings identified by the Plaintiff as either identical or substantially similar, to the above-described products in **Schedule “B”**, whether sold by the Defendant or other persons or entities.

(5) Upon Plaintiff’s request, a Third-Party Service Provider shall remove listings and/or advertisements for any product that infringes on at least one claim of the Plaintiff’s Patent; and

(6) this Order shall remain in effect during the pendency of this action or until further order of the Court.

II. Order to Show Cause Why a Preliminary Injunction Should Not Issue and Service of Order

A. Defendants are hereby ORDERED to show cause before this Court in the United States District Court for the Western District of Pennsylvania, via ZoomGov videoconference on **August 11, 2021, at 9:00 a.m.**, why a preliminary injunction, pursuant to FRCP 65(a), should not issue. **Defendants are on notice that failure to appear at the hearing may result in the imposition of a preliminary injunction against them.**

B. Opposing papers, if any, shall be filed electronically with the Court and served on Plaintiff’s counsel by delivering copies thereof to the office of Ference & Associates LLC at 409

Broad Street, Pittsburgh, Pennsylvania 15143 before **August 6, 2021**. Plaintiff shall file any Reply papers on or before **August 9, 2021**.

C. After Plaintiff's counsel has received confirmation from the Third Party Service Providers and Financial Institutions or otherwise, regarding the restraint of funds directed herein, Plaintiff shall serve copies of the Complaint, the Application, this Order, and any Discovery on each Defendant via their corresponding email/online contact form provided on the Internet based e-commerce stores operating under the respective Seller IDs, or by providing a copy of this order by e-mail to the marketplace platform, which in turn notifies each Defendant of the Order, or by other means reasonably calculated to give notice which is permitted by the Court. In addition, Plaintiff shall post copies of the Complaint, Application, this Order, any Discovery, and all other pleadings and documents filed in this action on a website designated by Plaintiff,⁴ and shall provide the website address to Defendants via e-mail/online contact form, and such notice so given shall be deemed good and sufficient service thereof. Plaintiff shall continue to provide notice of these proceedings and copies of the documents on file in this matter to Defendants by regularly updating the website designated by Plaintiff or by other means reasonably calculated to give notice which is permitted by the Court.

III. Order Authorizing Expedited Discovery

A. IT IS FURTHER ORDERED, as sufficient cause has been shown, that:

(1) Plaintiff may propound interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and Defendants, their respective officers, employees, agents, servants

⁴ Rule 65 has been interpreted to require that a party have notice of the motion and hearing; perfecting service on a defendant is not a prerequisite to the entry of a preliminary injunction order. *Pate v. Gov't of the Virgin Islands*, 2015 WL 1937701 n.9 (VI Sup. Ct. April 17, 2015); *Corrigan Dispatch Co. v. Casa Guzman, S.A.*, 569 F.2d 300, 302 (5th Cir. 1978).

and attorneys, and all persons in active concert or participation with any of them, who receive actual notice of this Order, shall provide written responses under oath to such interrogatories within fourteen (14) days of service to Plaintiff's counsel.

(2) Plaintiff may serve requests for the production of documents pursuant to FRCP 26 and 34, and Defendants, their respective officers, employees, agents, servants and attorneys, and all persons in active concert or participation with any of them, who receive actual notice of this Order, shall produce all documents responsive to such requests within fourteen (14) days of service to Plaintiff's counsel.

(3) Plaintiff may serve requests for admissions pursuant to FRCP 26 and 36, and Defendants, their respective officers, employees, agents, servants and attorneys, and all persons in active concert or participation with any of them, who receive actual notice of this Order, shall provide written responses under oath to such requests within fourteen (14) days of service to Plaintiff's counsel.

B. IT IS FURTHER ORDERED, as sufficient cause has been shown, that within fourteen (14) days of receiving actual notice of this Order, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to the Third Party Service Provider(s) and the Financial Institution(s), shall provide to Plaintiff's counsel all documents and records in their possession, custody or control (whether located in the U.S. or abroad) relating to Defendants' User Accounts and Defendants' Merchant Storefronts, including, but not limited to, documents and records relating to:

(1) any and all User Accounts and Defendants' Merchant Storefronts and account details, including, without limitation, identifying information and account numbers for any and

all User Accounts and Defendants' Merchant Storefronts that Defendants have ever had and/or currently maintain with the respective Third Party Service Provider;

- (2) the identities, location and contact information, including any and all e-mail addresses of Defendants that were not previously provided;
- (3) the Defendants' methods of payment, methods for accepting payment and any and all financial information, including, but not limited to, information associated with Defendants' User Accounts and Defendants' Merchant Storefronts, a full accounting of Defendants' sales history and listing history under such accounts and Defendants' Financial Accounts associated with Defendants' User Accounts and Defendants' Merchant Storefronts; and
- (4) Defendants' unauthorized and unlicensed use of Plaintiff's Patent.

V. Security Bond

IT IS FURTHER ORDERED that Plaintiff shall place security (corporate surety bond, cash, certified check, or attorney's check) in the amount of **\$5,000.00** with the Court, which amount is determined adequate for the payment of any damages any person may be entitled to recover as a result of an improper or wrongful restraint ordered hereunder. **If security is cash, certified check, or attorney's check, the funds will be deposited into the Court's local Registry, where it will remain until further order by the Court.**

VI. Summons

IT IS FURTHER ORDERED that the Clerk of the Court shall issue a single original summons in the name of "FLO PET and all other Defendants identified in the Complaint" that will apply to all Defendants.

IT IS SO ORDERED.

SIGNED this 28th day of July, 2021, at 10:45 a.m.
Pittsburgh, Pennsylvania

/s/ Christy Criswell Wiegand
CHRISTY CRISWELL WIEGAND
UNITED STATES DISTRICT JUDGE

Schedule “A”

Defendants With Store Name and Seller ID

Defendant No.	Defendant/Store Name	Seller ID
1	FLO PET	A194IS3ICJQ9A8
2	ATEVEN	A194IS3ICJQ9A8
3	BIANWOSHOP	A1EQO44G3OGZYN
4	BlueSky Concepts	AUZSTHAUAWVHI
5	changyuanshidiwenshangmaoyouxiangongsi	A2636V446VDOQZ
6	chenzhifa1247	A3OWZDEBXSERBM
7	Classier	A22KWEH2NQ4J9U
8	EGO OFFICIAL STORE	A2E77WWUA18WUR
9	excellentUS	A3SSOY7INO37S1
10	feixueer	A1LQPL61AZAWBK
11	FengRui Ltd	A1CXOKK0NI3QHD
12	Feutav	A2LVTHZNLIGTPR
13	LunaTree	A2F1UT4DM9UHF5
14	meizhixing	A3N9NNJGL0WGNR
15	Ocathnon USA	ATFM4Q4YZIKS
16	Siksin	AY00LPZREP9MA
17	Smiley Choice	A534YEHTGZC4P
18	TaiYuanShiXiaoDianQuLiDuBinGuan	A1XA9DMTPIQ2XA
19	TEnter	A1ZNKN09QNKKV4
20	THEAMOR	AESDXIEX5W3QZ
21	winga	A5BY4YRHD8J3M
22	WUNA	A177GNV088P62A

Defendant No.	Defendant/Store Name	Seller ID
23	yearncnll	A2LVQ7C33YYH8A
24	zuolong	ASSW0R2ASLISD
25	1k9bulldogs	152942818474
26	2019dajidali	363419739156
27	beauty_now	203478507068
28	buyitnpw	133663229023
29	compuwiz2008	114633163034
30	craftmegazone	251846544876
31	dailyselect	313363509675
32	didog-pet	194062869513
33	dogsupplier5	265109109611
34	gtlifestyle	373431872742
35	ideal_paradis2008	363419740051
36	jenux.w	323138113562
37	linfo20082011	203260585240
38	liorasulin_store	393310393168
39	live_more_mart	363272852605
40	ntxy34	203106778095
41	onepounddeals	402890109011
42	onopoly	174640073228
43	peirisemarket.001	363383392460
44	petpiller_online_store	313523048016
45	sairon2016	164218092692
46	sairong	184314676862

Defendant No.	Defendant/Store Name	Seller ID
47	sk789456123	303902447207
48	techaccessoriesoutlet	192180508976
49	yanzeo	184541192745
50	ywgreentime7	154037471814
51	Angle Gaura's Store	5134032
52	AYX pets products Store	5115093
53	Brilliant Gaura's Store	5882024
54	CDDM Store	5045402
55	daidaidog Store	911068014
56	Dogs&Cats Supplies Factory Store	911788744
57	FANTALIFE Store	5008354
58	GOOD Pets Products Store	910939032
59	Goodlife house holdaily Store	5885363
60	HomeDecor-Pet Store	5002060
61	i House Store	5788344
62	JOYYOURLIFE Store	911115260
63	KEVNICELY Pet-Life Store	910554326
64	KISDE Store	900241098
65	Kitchenbar supplies Store	5729079
66	Kuso Store	5790179
67	LeChong World Store	900244038
68	LT Tools Store	5872377
69	Mandakini Pets Store	5880972
70	Nancy Wang's store	800907

Defendant No.	Defendant/Store Name	Seller ID
71	PanAo Pet Store	1242039
72	pawstrip Official Store	1316428
73	Petly Store	910330050
74	PTHAFUN PetHappyFun Store	911133231
75	SDX Online Store	605740
76	Shop4643047 Store	4643047
77	Shop5632046 Store	5632046
78	Shop911067111 Store	911067111
79	Shop911135035 Store	911135035
80	Shop911609123 Store	911609123
81	Spring Homeware Store	5067250
82	VZZ Official Store	5665015
83	Warm Department Store Store	911772689
84	Yi Ye Bao Fu Store	5788876
85	CHINESE STORE	566706e63a698c07b635d688
86	crn	5ec7e07718a38aed6c78c348
87	eczer rodriguez	5da7432944ba68078281d33a
88	linmeixiu	5e155d8dbbf4740022036b0b
89	OSP	595cfd28905fdb3dbc824c5a
90	Richfash	5ffd3ade462cdf04833b1b1e
91	SHUIQIXIA	5ab38bf167d25c516fc8a92c
92	Smooome International	5f0a87b2d5dea8d402f82f28
93	songjiulin7419	5fc49df442eefa12d868de80
94	XMJ.JIUSHIWO	5db25ba77c0d0801c04ff456

Defendant No.	Defendant/Store Name	Seller ID
95	Zlnbor-8	5dc927b74b0ae7758c00d88f

Schedule "B" Patent Infringing Products

Type 1 Infringing Product



Type 2 Infringing Product

