

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

OSPREY LLC,

Plaintiff,

v.

ALLADINBOX, et al.,

Defendants.

Civil Action No. 20-1253

(Judge Hardy)

[PROPOSED] PRELIMINARY INJUNCTION ORDER

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

WHEREAS, Plaintiff filed an Ex Parte Motion for An Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3);

WHEREAS, On August 19, 2021, the Court entered the following Orders:

(A) (1) a temporary restraining order; (2) an order restraining assets and Merchant Storefronts, (3) an order to show cause why a preliminary injunction should not issue; and (4) an order authorizing expedited discovery against all of the Defendants identified on the attached **Schedule “A”**, and the Third Party Service Providers and Financial Institutions, in light of

Defendants' intentional and willful offerings for sale and/or sales of Infringing Products¹ ("Application"); and

(B) Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3) ("the Alternative Service Order");

WHEREAS, pursuant to the terms of the Alternative Service Order, the Defendants have been served with notice of this Show Cause Hearing; and

WHEREAS, on September 1, 2021, Plaintiff appeared for the Order to Show Cause Hearing, however no Defendants appeared. Further, none of the Third Party Service Provider(s) or Financial Institution(s) appeared.

ORDER

I. Restraining Order

A. IT IS HEREBY ORDERED, IT IS HEREBY ORDERED, as sufficient cause has been shown, the injunctive relief previously granted on August 19, 2021, shall remain in place through the pendency of this litigation, and issuing this Preliminary Injunction (hereafter "PI Order") is warranted under FRCP 65, and Section 34 of the Lanham Act.

¹ As alleged in Plaintiff's Complaint, Defendants have offered for sale, sold, and distributed knock-off and infringing versions of Plaintiff's FrogLog[®] animal rescue device which closely mimic the appearance of Plaintiff's genuine product within this district and throughout the United States by operating e-commerce stores established at least via the Amazon.com, eBay.com, Wish.com and AliExpress.com Internet marketplaces using their respective Store Names and Seller Names set forth on Schedule "A". The Defendants identified in **Schedule "A"** of the Complaint, were and/are, *inter alia*, promoting, selling, offering for sale and distributing their Infringing Products (and/or counterfeits), (b) unfairly competing by using Plaintiff's photographs, videos, artwork, creative text, product instructions, trade dress, and registered FrogLog[®] trademark while marketing their knock-off products in a willful attempt to pass off their knock-off products as genuine versions of Plaintiff's Product, and (c) Defendants accomplish their infringing sales through the use of an Internet based e-commerce stores operated via at least one of the Amazon.com, eBay.com, Wish.com and AliExpress.com Internet marketplace platforms.

Accordingly, each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order shall continue to be restrained as follows:

- (1) from (a) their unauthorized and unlicensed use of Plaintiff's Mark, Plaintiff's Works and/or Plaintiff's Trade Dress in connection with the distribution, marketing, advertising, offering for sale, or sale of any products; and (b) shipping, delivering, holding for sale, transferring or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner products which use Plaintiff's Mark², Plaintiff's Works³, and/or Plaintiff's Trade Dress;
- (2) from secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with any computer files, data, business records, documents or any other records or evidence relating to their User Accounts,⁴ Merchant Storefronts⁵ or any money, securities or other property or assets of Defendants (hereinafter collectively referred to as "Defendants' Assets");
- (3) effecting assignments or transfers, forming new entities or associations, or creating and/or utilizing any other platform, User Account, Merchant Storefront or any other

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

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

⁴ As defined in the Application, a "User Account" is, as defined in the Complaint, any and all accounts with online marketplace platform(s) Amazon.com, eBay.com, Aliexpress.com, and wish.com ("Third Party Service Provider(s)") as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendants, their respective officers, employees, agents, servants and all other persons in active concert with any of them.

⁵ As defined in the Application, a "Merchant Storefront" is any and all User Accounts through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them operate storefronts to manufacture, import, export, advertise, market, promote, distribute, display, offer for sale, sell and/or otherwise deal in products which are held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them.

means of importation, exportation, advertising, marketing, promotion, distribution, and/or display for the purposes of circumventing or otherwise avoiding the prohibitions set forth in this Order;

- (4) each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order shall immediately discontinue use of the Plaintiffs' Mark and/or Plaintiffs' Works and/or Plaintiff's Trade Dress within metatags or other markers within website source code, from use on any web page (including as the title of any product listing), from any advertising links to other websites, from search engines' databases or cache memory, and any other form of use such terms or works which is visible to a computer user or serves to direct computer searches to Internet based e-commerce stores owned, or operated by each Defendant, including the Merchant Storefronts operating under the Seller IDs;
- (5) each Defendant shall not transfer ownership of the User Accounts or Merchant Storefronts associated with the Seller IDs;
- (6) each Defendant shall preserve copies of all computer files relating to the use of any User Accounts and/or Merchant Storefronts under the Seller IDs and shall take steps necessary to retrieve computer files relating to the use of the User Accounts and/or Merchant Storefronts under their Seller IDs that may be deleted before the entry of this Order;
- (7) upon receipt of notice of this Order, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to Alibaba.com US LLC d/b/a Aliexpress.com ("Aliexpress"), Amazon.com, Inc. and its affiliate, Amazon Services LLC d/b/a Amazon.com ("Amazon"), eBay, Inc. d/b/a eBay.com ("eBay"), and Context Logic, Inc d/b/a

wish.com (“Wish”) (“Third Party Service Provider(s)”) and AliPay US Inc. d/b/a Alipay.com (“Alipay”), Amazon Payments, Inc. d/b/a pay.amazon.com, and PayPal, Inc. d/b/a paypal.com (“PayPal”) (“Financial Institution(s)”), and their related companies and affiliates, shall immediately identify and restrain all funds, as opposed to ongoing account activity, in or which are hereafter transmitted into the accounts related to the Defendants as identified on Schedule “A” hereto, as well as all funds in or which are transmitted into (i) any other accounts of the same customer(s); (ii) any other accounts which transfer funds into the same financial institution account(s), and/or any of the other accounts subject to this Order; and (iii) any other accounts tied to or used by any of the Seller IDs identified on Schedule “A” hereto;⁶

(8) upon receipt of notice of this Order, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to the Third Party Service Provider(s) and the Financial Institution(s), shall immediately divert to a holding account for the trust of the Court all funds in or which are hereafter transmitted into all accounts related to Defendants identified in Schedule “A” hereto, and associated payment accounts, and any other accounts for the same customer(s) as well as any other accounts which transfer funds into the same financial institution account(s) as any other accounts subject to this Order;

(9) The Third Party Service Provider(s) and Financial Institution(s) shall further, within five (5) business days of receiving this Order, provide Plaintiff’s counsel with all data that details (i) an accounting of the total funds restrained and identifies the financial account(s) which the restrained funds are related to, and (ii) the account transactions

⁶ This Order contemplates that discovery may reveal that Defendants may have other user accounts operated by other Third Party Service Providers and Financial Institutions and that the additionally discovered Third Party Service Providers and Financial Institutions, once identified and provided with notice, shall also be subject to the discovery, restraints and injunctions set forth in this Order.

related to all funds transmitted into financial account(s) which have been restrained. Such restraining of the funds and the disclosure of the related financial institution account information shall be made without notice to the account holders, until after those accounts are restrained. No funds restrained by this Order shall be transferred or surrendered by any Third Party Service Provider or Financial Institution for any purpose (other than pursuant to a chargeback made pursuant to that Third Party Service Provider or Financial Institution's security interest in the funds) without express authorization of this Court;

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

(11) this Order shall apply to the Seller IDs, associated Accounts and Merchant Storefronts, and any other seller identification names, Accounts or Merchant Storefronts, Third Party Service Provider or Financial Institution accounts which are being used by Defendants for the purpose of infringing the Plaintiffs' Mark, Plaintiffs' Works, and/or Plaintiff's Trade Dress and/or unfairly competing with Plaintiff;

(12) Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to the Third Party Service Provider(s) and the Financial Institution(s), subject to this Order may petition the Court to modify the asset restraint set out in this Order; and

(13) this PI Order and the Alternative Service Order shall remain in effect during the pendency of this action or until further order of the Court, and Plaintiff shall serve the Defendants with a copy of this PI Order in accordance with the Alternative Service Order.

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

(1) providing services for any accounts through which Defendants engage in the sale of Infringing Products, including without limitation, continued operation of Defendants' User Accounts and Merchant Storefronts;

(2) displaying any advertisements used by or associated with Defendants in connection with the sale of Infringing Products; and

(3) displaying links to any User Accounts or Merchant Storefronts associated with the Defendants in search results, including but not limited to, having links to any product listings, User Accounts, or Merchant Storefronts in any search index.

C. IT IS HEREBY ORDERED, as sufficient cause has been shown,

(1) That no funds restrained by this Order shall be transferred or surrendered by Third Party Service Providers or Financial Institutions, for any purpose (other than pursuant to a chargeback made pursuant to their respective security interest in the funds) without express authorization of this Court or Plaintiff's counsel.

- (2) Any Third Party Service Provider or Financial Institution or any Defendant or financial institution account holder subject to this Order may petition the Court to modify the asset restraint set out in this Order;
- (3) Amazon is ordered to suspend, strong block, and/or delete any ASIN that was associated with a product already identified by prior Order of this Court in the present lawsuit to be unfairly competing, Counterfeit or Infringing as designated in the Schedule A under “**Amazon ASIN Number(s)**” (i.e., any seller is prevented from listing for sale under the identified ASIN);
- (4) 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 (ASIN): B004UHY2TY (Froglog 1-pack) or ASIN: B01LQR8W2S (Froglog 2-pack), into Amazon’s gating program, so that Plaintiff will be able to control which sellers list product under these ASINs; and
- (5) Upon Plaintiff’s request, any 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 unfairly competing, infringing on the Plaintiff’s Mark, using Plaintiff’s Works as shown in “**Schedule B**” or infringing on the Plaintiff’s Trade Dress;
- (6) However, the seller controlling such listings shall not be subject to financial account restraint; and
- (7) This Order shall remain in effect until such further dates as set by the Court or stipulated by the parties.

II. Order Authorizing Expedited Discovery

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

- (1) Plaintiff may propound interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and Defendants, their respective officers, employees, agents, servants and attorneys, and all persons in active concert or participation with any of them, who receive actual notice of this Order, shall provide written responses under oath to such interrogatories within fourteen (14) days of service to Plaintiffs' counsel.
- (2) Plaintiff may serve requests for the production of documents pursuant to FRCP 26 and 34, and Defendants, their respective officers, employees, agents, servants and attorneys, and all persons in active concert or participation with any of them, who receive actual notice of this Order, shall produce all documents responsive to such requests within fourteen (14) days of service to Plaintiffs' counsel.
- (3) Plaintiff may serve requests for admissions pursuant to FRCP 26 and 36, and Defendants, their respective officers, employees, agents, servants and attorneys, and all persons in active concert or participation with any of them, who receive actual notice of this Order, shall provide written responses under oath to such requests within fourteen (14) days of service to Plaintiffs' counsel.

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

User Accounts and Defendants' Merchant Storefronts, including, but not limited to, documents and records relating to:

- (1) any and all User Accounts and Defendants' Merchant Storefronts and account details, including, without limitation, identifying information and account numbers for any and all User Accounts and Defendants' Merchant Storefronts that Defendants have ever had and/or currently maintain with the respective Third Party Service Provider;
- (2) the identities, location and contact information, including any and all e-mail addresses of Defendants that were not previously provided;
- (3) the Defendants' methods of payment, methods for accepting payment and any and all financial information, including, but not limited to, information associated with Defendants' User Accounts and Defendants' Merchant Storefronts, a full accounting of Defendants' sales history and listing history under such accounts and Defendants' Financial Accounts associated with Defendants' User Accounts and Defendants' Merchant Storefronts; and
- (4) Defendants' unauthorized and unlicensed use of Plaintiff's Mark, and/or Plaintiffs' Works, and/or Plaintiff's Trade Dress in connection with the distribution, marketing, advertising, offering for sale, or sale of any products, and any products which use Plaintiffs' Plaintiffs' Mark, and/or Plaintiffs' Works, and/or Plaintiff's Trade Dress.

III. Security Bond

IT IS FURTHER ORDERED, the \$5,000.00 bond posted by Plaintiff shall remain with the Court until a final disposition of this case or until this PI Order is terminated.

IV. Unsealing Order

IT IS FURTHER ORDERED, there being no further reason to keep the case sealed, the Clerk is directed to unseal the case and all the papers on the docket.

SO ORDERED.

SIGNED this ____ day of September, ____, 2021
Pittsburgh, Pennsylvania

W. Scott Hardy
UNITED STATES DISTRICT JUDGE

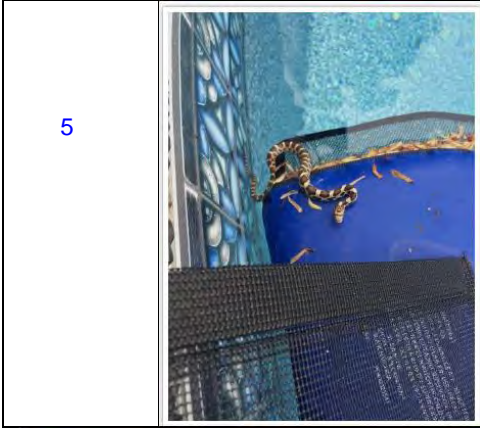
Schedule “A”
Defendants With Store Name and Seller ID

Defendant No.	Defendant/Store Name	Seller ID
1	ALLADINBOX	A36DQT73CEERIS
2	24 Hours Online	A3DPAVX7QWQI2F
3	CHENZHENSHOP	A33KAWSR0THKIG
4	desbit	A24WEY7IIYDMK0
5	Docerlady	A1WHZ6YO81GOCU
6	Dujuanus	ALDQLSKWT6309
7	fan pin dian zi	ALLU66LX5ZNTY
8	FLSHAZI	A2C6SUA8JNGW2K
9	GlobalSeller22	A36W3SLSY8P9VG
10	HANASAN Store	A362O7BAI275J1
11	JYBZ-US	A2KHPRYKCQ9G6C
12	KfLei	AREWZ6IBL97RZ
13	Kiddisie	A3TND0R1TYSPNC
14	kuaxunshangmao	A244P1XFGK62E4
15	LantingHT	APTJ68IDNR6T5
16	LEMESO	A2Z6COAYSTNQXY
17	liula	A261QS0W4U5G8L
18	Lubinus	A2JC2YWQ3ZWWTD
19	marenychstore	A2BQHRUNFFBDLJ
20	MDHSF	A2HI9PC9W60BHR
21	mingleideusdian	A2O4URDM4QI4X1
22	MONIANSHANGMAO	AF47RPALQC84W

Defendant No.	Defendant/Store Name	Seller ID
23	nadashangmao	A1CHS4SL6TRFMH
24	Onlyouniver	A21JDA42P2MQTT
25	Sally He	A333ESX4FJLCWU
26	shanghaishop666	A3RSJ7WYXBVU1M
27	SHENGZE	A2QAAMWPTC1Y2A
28	Shudeshop	A3E5ASNBD1LXOX
29	sprifleng	A2DWJ59UFAWCOQ
30	sudaxinhong	A1085FHOYUQNWS
31	sunaggd	A2NGWSTY3EGVEB
32	tengzhoushihuayixin	A19R90HHVQM778
33	TianJingRui	A12SX9C86HX7NJ
34	Tingtingbao	A2I0P9PMCQ2N79
35	VMPETV	A38B8U8CJ8V1TG
36	WenDeaiful	A2BMS7FPWQEQIH
37	Wenheshop	A2V5AZCGF2SQI
38	WUQIANLOVE	AZ54FM69QG9LH
39	XINJIUSUPPLY	A3J2NBOQJCGOOU
40	YiChuan Jiao1	A2HWROPOGJJ957
41	YONGZHR	A23O62QO9MV7TB
42	zuoxuequan1994	A1TKBR2S5930CW

SCHEDULE "B"

Plaintiff's Photographs



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