

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

BROADWAY PINES BRANDS LLC,

Plaintiff,

v.

TOY STORAGE WORLD (TSW), *et al.*,

Defendants.

Civil Action No.

FILED UNDER SEAL

**DECLARATION OF STANLEY D. FERENCE III IN SUPPORT OF
PLAINTIFF'S *EX PARTE* MOTION FOR ORDER
AUTHORIZING ALTERNATE SERVICE OF PROCESS**

I, STANLEY D. FERENCE III, hereby declare as follows:

1. I am an attorney with the law firm of Ference & Associates LLC (“the Ference Firm”), located at 409 Broad Street, Pittsburgh, Pennsylvania 15143 and represent Broadway Pine Brands LLC (“Plaintiff”) in the above-referenced action. I make and submit this declaration in support of Plaintiff’s *Ex Parte*¹ Motion for Alternative Service of Process on the Defendants, the Individuals, Partnerships, and Unincorporated Associations identified on Schedule “A” of the Complaint (collectively “Defendants”). I am personally knowledgeable of

¹ Contemporaneously herewith, Plaintiff has filed its *Ex Parte* Application for Temporary Restraining Order, Preliminary Injunction, and Order Restraining Transfer of Assets (“*Ex Parte* Application for Temporary Restraining Order”), together with the supporting Declarations and Exhibits. The present Motion makes reference to Plaintiff’s *Ex Parte* Application for Temporary Restraining Order, and as such, Plaintiff seeks to prevent premature disclosure of that filing. (See Declaration of Stanley D. Ference III in Support of Plaintiffs’ *Ex Parte* Application for Temporary Restraining Order [“*Ference Dec.*”] ¶ 1, n. 1, filed herewith.) However, Plaintiff is filing this Motion so that, in the event Plaintiff’s *Ex Parte* Application for Temporary Restraining Order and the instant Motion are granted, Plaintiff can effectuate service of process pursuant to Rule 4 of the Federal Rules of Civil Procedure simultaneously with providing notice of the Court’s order on Plaintiff’s *Ex Parte* Application for Temporary Restraining Order.

the matters set forth in this Declaration and, if called upon to do so, I could and would competently testify to the following facts set forth below.

2. Contemporaneously herewith, Plaintiff filed its *Ex Parte* Application for Temporary Restraining Order. I hereby incorporate by reference all factual allegations contained in my Declaration filed in Support of Plaintiff's *Ex Parte* Application for Temporary Restraining Order.

3. Off-shore e-commerce store operators offering for sale infringing products typically: (1) provide false, misleading and/or incomplete names and physical address information to conceal their locations and avoid liability for their unlawful conduct; and (2) rely primarily on electronic communications to communicate with their third-party service providers and customers. In my experience in anti-counterfeiting investigations, even if a purported address is provided on an e-commerce store, it is unlikely to be legitimate. E-mail has proved to be a reliable mechanism for quickly providing notice to e-commerce store operators in similar cases. Indeed, thousands of defendants in cases I have overseen have confirmed receipt of actual notice via e-mail.

4. An investigation of the e-commerce stores operating under the Seller Aliases identified in Schedule A to the Complaint shows that few, if any, provide a physical address on the e-commerce store. In most instances, Defendants must provide an email address and physical address to third-party online marketplace platforms such as eBay, AliExpress, Amazon, and Wish.com when registering their account. Unlike an email address, however, which is typically verified by the third-party online marketplace platforms, no verification typically occurs for physical addresses. Since an e-commerce store operator can input any physical address, such addresses are usually false and/or are not where the e-commerce store operator is

located. As such, even if a physical address is available, it is not a reliable means for identifying and locating Defendants.

5. Amazon.com, Inc., which operates the Amazon.com marketplace, maintains contact e-mail addresses for sellers operating via Amazon.com, and based upon past actions, Amazon identifies these contact e-mail addresses for all Defendants at issue upon compliance with the Court's Temporary Restraining Order, such as the temporary restraining order Plaintiff is requesting in the instant case. Additionally, I know that Amazon's Buyer-Seller Messaging Service is a system that facilitates communication between customers and merchants in the Amazon marketplace. By using the Buyer-Seller Messaging Service, a customer can communicate with an Amazon merchant via a unique anonymized electronic mail ("e-mail") address. This anonymized e-mail alias is treated in the same way as a real e-mail address.² E-mails sent via Amazon's Buyer-Seller Messaging Service are routed to the merchant via the anonymized e-mail address. Additionally, Amazon maintains a history of all e-mails routed through its system and allows a customer to see a copy of the e-mail on the Messages page in the customer's account. More importantly, customers are automatically notified when an e-mail message is not delivered to the merchant, or the merchant's e-mail address is invalid.

6. eBay.com, Inc., which operates the eBay.com marketplace, maintains contact e-mail addresses for sellers operating via their marketplace, and based upon past actions, eBay.com, Inc. identifies these contact e-mail addresses for Defendants at issue upon compliance with a temporary restraining order, such as the temporary restraining order Plaintiff is requesting in the instant case. Additionally, Defendants operating their respective e-commerce stores via

² See Amazon's Buyer-Seller Messaging Service, available at https://www.amazon.com/gp/help/customer/display.html/ref=help_search_1-1?ie=UTF8&nodeId=201889440&qid=1607026820&sr=1-1 (last visited October 25, 2021).

the Internet marketplace website eBay.com have provided an electronic form of contact in the form of eBay.com's messaging system. eBay.com's messaging system facilitates communication between customers and merchants in the eBay.com marketplace.

7. Furthermore, sellers operating via eBay.com use money transfer and retention services with PayPal, Inc. ("PayPal"), as a method to receive monies generated through the sale of Infringing Products. Defendants have provided at least one accurate contact email address to PayPal in order to conduct business via their respective Seller IDs. Defendants' PayPal account e-mail addresses must necessarily be valid, working e-mail addresses; otherwise, Defendants would not be able to process payments through their PayPal accounts.³ Moreover, pursuant to PayPal's Electronic Communication Delivery Policy (E-Sign Disclosure and Consent), PayPal account holders consent to receive all communication electronically, including via e-mail, and are required to maintain a valid e-mail address. If PayPal discovers an e-mail address has become invalid such that electronic communications sent to the e-mail address by PayPal are returned, PayPal may deem the account to be inactive and disable transaction activity until a valid, working e-mail address is provided. Based upon past actions, PayPal identifies these contact e-mail address for all Defendants at issue upon compliance with a temporary restraining order, such as the temporary restraining order Plaintiff is requesting in the instant case.

8. Context Logic, Inc., which operates the wish.com website, maintains contact e-mail addresses for sellers operating via Wish.com, and based upon past actions, ContextLogic, Inc. identifies these additional contact e-mail addresses for all Defendants at issue upon compliance with a temporary restraining order, such as the temporary restraining order Plaintiff is requesting in the instant case.

³ See PayPal's Electronic Communication Delivery Policy (E-Sign Disclosure and Consent), available at <https://www.paypal.com/us/webapps/mpp/ua/esign-full> (last visited October 25, 2021).

9. AliExpress.com's ("AliExpress") Messaging Service is an available means for contacting sellers on that online marketplace. The AliExpress Messaging Service is a system that facilitates communication between customers and merchants in the AliExpress marketplace. By using the Messaging Service, a customer can communicate with an AliExpress merchant via a unique anonymized electronic mail ("e-mail") address. This anonymized e-mail alias is treated in the same way as a real e-mail address.⁴ Additionally, AliExpress allows a customer to see a copy of the message on the Messages Center page in the customer's account. More importantly, customers are automatically notified when an e-mail message is not delivered to the merchant.

10. Each Defendant will be provided with notice of this action electronically by providing the address to Plaintiff's designated website to their corresponding e-mail addresses and/or onsite contact forms. In this manner, Defendants will receive a web address at which they can access all electronic filings to view, print, or download documents filed in the case similar to the Court's CM.ECF procedures.

11. Additionally, Plaintiff will also notify Defendants of this action via website publication. Plaintiff have created a publication website and will be posting copies of the Complaint, the Application for Temporary Restraining Order, this instant Motion, Discovery, and other documents filed in this action on their publication website ("Plaintiff's Website"), such that anyone accessing Plaintiff's website will find copies of these documents. The address and a link to Plaintiff's Website will be provided to Defendants via their known e-mail accounts and/or onsite contact forms, and will be included as part of service of process in this matter.

⁴ See How to contact seller, available at <https://service.aliexpress.com/page/knowledge?pageId=37&category=1000022034&knowledge=1060073785&language=en> (last visited October 25, 2021).

12. My firm has good cause to believe that many of the Defendants are residing and/or operating from the People’s Republic of China (“China”), or other foreign countries and/or redistribute products from sources in those locations. Plaintiff’s investigation of Defendants looked at multiple connection data points, such as information contained on Defendants’ actual e-commerce stores operating under their respective Seller IDs, shipping information and the investigative data provided thereunder, and determined Defendants’ illegal operations are most likely based in and/or shipping from Bulgaria, Canada, China, Ireland, Israel, Romania, Turkey, or other foreign jurisdictions. While Plaintiff has not been able to determine Defendants’ exact location due to their concealed addresses, Plaintiff has good cause to believe Defendants are not residents of the United States.

13. I reviewed the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters (“Hague Convention”),⁵ to which, *inter alia*, the United States, Bulgaria, Canada, China, Ireland, Israel, Romania, and Turkey are signatories. Bulgaria, China, and Turkey have declared that they oppose the service of documents in their territory by the alternative means of service outlined in Article 10 of the Convention, including, the service of process by postal channels.⁶ The Hague Convention, however, does not preclude service by e-mail, and the declarations to the Hague Convention filed by Bulgaria, China, and Turkey do not expressly prohibit e-mail service. A true and correct copy

⁵ See also Hague Service Convention, November 15, 1965, 20 U.S.T. 361, available at <https://www.hcch.net/en/instruments/conventions/full-text/?cid=17> (last visited October 25, 2021) (full text of the Hague Service Convention); <https://www.hcch.net/en/instruments/conventions/status-table/?cid=17> (last visited October 25, 2021) (listing the current contracting states).

⁶ Although Canada and Romania have each filed a Declaration in regards to the Hague Convention, the Declaration does not mention Article 10, and therefore, they have not objected to service by postal channels outlined in Article 10(a) of the Convention. Ireland specifically opposes the procedures set forth in Articles 10(b) and 10(c) of the Convention only. Although Israel does not object to service as outlined in Article 10, Israel provides additional requirements to effect service of process through the methods set forth in Articles 10(b) and 10(c).

of the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters and a list of the signatory Members are attached hereto as **Exhibit 1.**⁷

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 16, 2021 Pittsburgh, Pennsylvania

/s/Stanley D. Ference III
Stanley D. Ference III

⁷ Exhibit 1 also contains a true and correct printout of Bulgaria's, China's, and Turkey's Declaration/Reservation/Notification in regards to the Hague Convention, available at <https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=28&disp=resdn> <https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=393&disp=resdn> <https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=425&disp=resdn> (last visited July 15, 2021)