

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

BROADWAY PINE BRANDS LLC,

Plaintiff,

v.

SHIRO HOUSE, *et al.*,

Defendants.

Civil Action No. 21-cv-00406

Judge Ranjan

[PROPOSED] FINAL DEFAULT JUDGMENT AND PERMANENT INJUNCTION

This matter comes before the Court upon Motion by Plaintiff for entry of a default judgment and permanent injunction against the Defendants identified on Schedule “A” (hereinafter referred to as “Defaulting Defendants”) for Defaulting Defendants’ false designation of origin, passing off, unfair competition, federal trademark infringement and related state and common law claims arising out of Defaulting Defendants’ unfair competition, infringing use of Plaintiff’s trade dress, and federally registered trademark, in their manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying offering for sale and/or selling and/or sale of Infringing Products.¹

¹ As alleged in Plaintiff’s Complaint, Defendants have offered for sale, sold, and distributed knock-off and infringing versions of Plaintiff’s Butterfly Craze® Daisy Pillow 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 Internet marketplace 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*, (a) 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 Butterfly Craze® Daisy Pillow 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, at least, the Internet based e-commerce stores operated via at least the Amazon.com, eBay, Aliexpress, and Wish.com Internet marketplace platforms.

The Court, having considered the Plaintiff's Motion for Default Judgment and Permanent Injunction, the Declaration of Stanley D. Ference III in support of thereof, the Certificates of Service of the Summons and Complaint, the Entries of Default by the Clerk of Courts, and upon all other pleadings and papers on file in this Action, it is hereby ORDERED as follows (hereinafter, "Order"):

I. Defaulting Defendants' Liability

Judgment is granted in favor of Plaintiff on all claims asserted against Defendants in the Complaint.

II. Damage Awards

IT IS FURTHER ORDERED that, because it would serve both the compensatory and punitive purposes of the Lanham Act's prohibitions on willful infringement, and because Plaintiff has sufficiently set forth the basis for the statutory damages awards requested in its Motion for Default Judgment, the Court finds that such awards are reasonable and Plaintiff is awarded damages of \$4,000,000.00 against Defendants Defendant Nos. 7, 14, 32, 44, 54, 60, 69, and 74, and damages of \$2,000,000.00 against each of the additional Defaulting Defendants as listed on Schedule A plus post judgment interest.

III. Permanent Injunction

A. IT IS HEREBY ORDERED that each Defaulting Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defaulting Defendant having notice of this Default Judgment Order shall be permanently restrained and enjoined from:

- (1) manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Infringing Products, using the Plaintiff's trade dress, Plaintiff's Mark², and the Plaintiff's Works³ 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 the Plaintiff's trade dress, Plaintiff's Mark, and the Plaintiff's Works;
- (2) directly or indirectly infringing in any manner any of the Plaintiff's trade dress, trademarks, or copyrights or engaging in any unfair competition against the Plaintiff;
- (3) using any reproduction, counterfeit, copy, or colorable imitation of Plaintiff's trade dress, trademarks, photographs, or other rights including, without limitation, the Plaintiff's trade dress, Plaintiff's Mark, and the Plaintiff's Works to identify any goods or services not authorized by Plaintiff;
- (4) using any of Plaintiff's trade dress, trademarks, copyrights, or other rights including, without limitation, the Plaintiff's trade dress, the Plaintiff's Mark, and the Plaintiff's Works, or any other trade dress, marks, photographs, or artwork that are confusing or substantially similar to the Plaintiff's trade dress, Plaintiff's Mark, and Plaintiff's Works on or in connection with the manufacturing, importing, exporting, advertising, marketing,

² Plaintiff's Mark refers to U.S. Reg. No. 3,528,611 for BUTTERFLY CRAZE for "On-line retail store service featuring decorative products, costumes, toys, gifts and fashion accessories; wholesale stores featuring decorative products, costumes, toys, gifts and fashion accessories, in Class 35 (U.S. CLS. 100, 101, and 102)."

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

promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in the Infringing Products;

- (5) using any false designation of origin or false description, or engaging in any action which is likely to cause confusion, cause mistake and/or to deceive members of the trade and/or the public as to the affiliation, connection or association of any product manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale or sold by Defaulting Defendants with Plaintiff, and/or as to the origin, sponsorship or approval of any product manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale or sold by Defaulting Defendants and Defaulting Defendants' commercial activities by Plaintiff;
- (6) 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"); and
- (7) 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

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.

display for the purposes of circumventing or otherwise avoiding the prohibitions set forth in this Order.

B. IT IS FURTHER ORDERED that, pursuant to 15 U.S.C. § 1118, the Defaulting Defendants must deliver up for destruction to Plaintiff any and all Infringing Products and any and all packaging, labels, tags, advertising and promotional materials and any other materials in the possession, custody or control of the Defaulting Defendants that infringe any of Plaintiff's trade dress, trademarks, copyrights or other rights including, without limitation, the Plaintiff's trade dress, Plaintiff's Mark and/or the Plaintiff's Works, or bear any marks, photographs, and/or artwork that are confusingly similar or substantially similar to the Plaintiff's trade dress, Plaintiff's Mark and/or the Plaintiff's Works.

C. IT IS FURTHER ORDERED that Third Party Service Providers⁶ and Financial Institutions⁷ are permanently enjoined and restrained from:

secreting, concealing, transferring, disposing of, withdrawing, encumbering or paying Defaulting Defendants' Assets from or to financial accounts associated with or utilized by any Defaulting Defendant or any Defaulting Defendant's User Accounts or Merchant Storefronts (whether said account is located in the U.S. or abroad) ("Defaulting Defendants' Financial Accounts").

⁶ Third Party Service Providers are any third-party providing services in connection with any Defaulting Defendant and/or any Defaulting Defendant's Merchant Storefront, including, without limitation, Internet Service Providers, back-end service providers, web designers, sponsored search engine providers, sponsored ad-words providers, sponsored shopping providers, merchant account providers, third-party processors and other payment processing services, shippers, domain name registrars and domain name registries.

⁷ Financial Institutions are any banks, financial institutions, credit card companies and payment processing agencies, such as AliPay US Inc. d/b/a Alipay.com ("Alipay"), Amazon Payments, Inc. d/b/a pay.amazon.com, and PayPal, Inc. d/b/a paypal.com ("PayPal"), Context Logic, Inc. d/b/a wish.com, and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of any Defaulting Defendant.

D. IT IS FURTHER ORDERED that the Third Party Service Providers and Financial Institutions shall be permanently restrained and enjoined from engaging in any of the following acts or omissions:

providing services to Defaulting Defendants, Defaulting Defendants' User Accounts and Defaulting Defendants' Merchant Storefronts, including, without limitation, continued operation of Defaulting Defendants' User Accounts and Merchant Storefronts which are connected in any way in 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 trade dress, trademark and copyrights.

IV. Follow-Up Requests

IT IS FURTHER ORDERED, as sufficient cause has been shown, that, upon Plaintiff's request, within no later than five (5) calendar days of Plaintiff's request:

(1) Upon Plaintiff's request, any Third Party Service Provider shall remove listings and/or advertisements for any product that Plaintiff identifies as unfairly competing with Plaintiff's Butterfly Craze[®] Daisy Pillow, and which has been identified as shipping from, or as originating from, outside the United States (i.e., preventing a seller from listing for sale under the identified ASIN);

(2) 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);

(3) However, the seller controlling such listings shall not be subject to financial account restraint.

V. Post-Judgment Asset Transfer and Asset Freeze Order

A. IT IS FURTHER ORDERED that in accordance with Rule 64 of the Federal Rules of Civil Procedure, 15 U.S.C. § 1116(a) and this Court’s inherent equitable powers to issue remedies ancillary to its authority to provide final relief, and given the difficulties Plaintiff would have enforcing this Order, Defaulting Defendants’ Assets from Defaulting Defendants’ Financial Accounts that were and/or are attached and frozen or restrained pursuant to the Temporary Restraining Order and/or Preliminary Injunction Order, or which are attached and frozen or restrained pursuant to any future order entered by the Court in this Action (collectively, “Defaulting Defendants’ Frozen Assets” and “Defaulting Defendants’ Frozen Accounts”), are, to the extent that a given Defaulting Defendant’s Frozen Assets equal the Defaulting Defendants’ Individual Damages Award, hereby released and transferred to Plaintiff as full satisfaction of the Defaulting Defendants’ Individual Damages Award for that Defaulting Defendant. Those Defaulting Defendant’s Frozen Assets shall be transferred to Plaintiff by Financial Institution(s) through Plaintiff’s counsel within twenty (20) business days following service of this Default Judgment Order. Upon receipt by Plaintiff’s counsel of such Defaulting Defendant’s Frozen Assets in full satisfaction of the Defaulting Defendants’ Individual Damages Award, the Financial Institution(s) holding that Defaulting Defendant’s Frozen Assets and Defaulting Defendants’ Frozen Accounts may unfreeze that Defaulting Defendant’s Frozen Assets and Defaulting Defendant’s Frozen Accounts. To the extent that a Defaulting Defendant’s Frozen Assets are less than the Defaulting Defendants’ Individual Damages Award, that Defaulting Defendant’s Frozen Assets are hereby released

and transferred to Plaintiff as partial satisfaction of the Defaulting Defendants' Individual Damages Award for that Defaulting Defendant and those Defaulting Defendant's Frozen Assets shall be transferred to Plaintiff, by the Financial Institution(s), through Plaintiff's counsel forthwith.

B. IT IS FURTHER ORDERED that in accordance with Rule 64 of the Federal Rules of Civil Procedure and this Court's inherent equitable powers to issue remedies ancillary to its authority to provide final relief, and given the difficulties Plaintiff would have enforcing this Order, the Court also hereby grants Plaintiff's request for a post-judgment restraining order continuing the attachment of each Defaulting Defendant's Frozen Assets until Plaintiff has recovered the full payment of the Defaulting Defendants' Individual Damages Award owed to it by that Defaulting Defendant under this Order, or until further order of this Court.

C. IT IS FURTHER ORDERED that in accordance with this Court's inherent equitable powers to issue remedies ancillary to its authority to provide final relief, and given the difficulties Plaintiff would have enforcing this Order:

1. until Plaintiff has recovered the full payment of the Defaulting Defendants' Individual Damages Award owed to it by any Defaulting Defendant under this Order, in the event that Plaintiff discovers new and/or additional Defaulting Defendants' Assets (whether said assets are located in the U.S. or abroad) and/or Defaulting Defendants' Financial Accounts (whether said account is located in the U.S. or abroad) ("Defaulting Defendants' Additional Assets" and "Defaulting Defendants' Additional Financial Accounts," respectively), Plaintiff shall have the ongoing authority to serve this Order on any Financial Institutions controlling or otherwise holding such Defaulting Defendants' Additional Assets and/or Defaulting

Defendants' Additional Financial Accounts ("Financial Institutions Holding Defaulting Defendants' Additional Assets and/or Financial Accounts");⁸

2. upon notice of this Order, Financial Institutions Holding Defaulting Defendants' Additional Assets and/or Financial Accounts shall immediately locate Defaulting Defendants' Additional Financial Accounts, attach and restrain such Defaulting Defendants' Additional Assets in Defaulting Defendants' Additional Financial Accounts from being secreted, concealed, transferred or disposed of or withdrawn; and
3. no later than after twenty (20) business days following the service of this Order on Financial Institutions Holding Defaulting Defendants' Additional Assets and/or Financial Accounts, Financial Institutions Holding Defaulting Defendants' Additional Assets and/or Financial Accounts shall transfer all Defaulting Defendants' Additional Assets to Plaintiff as partial or full satisfaction of the Defaulting Defendants' Individual Damages Award, unless Defaulting Defendant has filed with this Court and served upon Plaintiff's counsel a request that such Defaulting Defendants' Additional Assets be exempted from this Order; at the time the funds are transferred, Financial Institutions Holding Defaulting Defendants' Additional Assets and/or Financial Accounts shall provide to Plaintiff a breakdown reflecting: the (i) total funds restrained in this matter per Defaulting Defendant; (ii) the total chargebacks, refunds, and/or transaction reversals deducted from each Defaulting Defendant's

⁸ This Order contemplates that investigation and/or discovery during judgment collection may reveal that Defaulting Defendants may have used other user accounts, operated by other Third Party Service Providers and Financial Institutions other than those named and that any additional discovered Third Party Service Providers and Financial Institutions, once identified and provided with notice, shall be subject to the restraints, asset seizure and turn over in this Order.

funds, restrained prior to release; and (iii) the total funds transferred per Defaulting Defendant to the Plaintiff.

VI. Miscellaneous Relief

- A. Upon Plaintiff's request, the Third Party Service Provider(s) or Financial Institution(s) shall disable and/or cease facilitating access to the Seller IDs, including tombstoning, deleting, and/or suspending identified ASINs, and any other alias seller identification names being used to offer for sale and/or sell Infringing Products;
- B. The Plaintiff may serve this injunction on any e-mail service provider with a request that the service provider permanently suspend the e-mail addresses which are used by the Defendants in connection with the Defendants' promotion, offering for sale, and/or sale of Infringing Products;
- C. Upon the Plaintiff's request, any Internet marketplace website operator and/or administrator who is in possession, custody, or control of the Defendants' Infringing Products, including but not limited to Amazon.com, Inc. and its affiliates, shall permanently cease fulfillment of and sequester those goods, and surrender the same to the Plaintiff; and shall notify all known and identified purchasers on the Internet marketplace that they purchased an infringing product;
- D. Any failure by Defendants to comply with the terms of this Default Judgment Order shall be deemed contempt of Court, subjecting Defendants to contempt remedies to be determined by the Court, including fines and seizure of property;
- E. Interest from the date of this action was filed shall accrue at the legal rate pursuant to 28 U.S.C § 1961;

- F. The bond posted by Plaintiff in the amount of \$5,000.00 is hereby ordered released by the Clerk.
- G. Plaintiff shall serve the Defaulting Defendants with a copy of this Order in accordance with the Alternative Service Order; and
- H. This Court shall retain jurisdiction over this matter and the parties in order to construe and enforce this Judgment and permanent injunction.

SO ORDERED.

SIGNED this ____ day of _____, 2023
Pittsburgh, Pennsylvania

J. Nicholas Ranjan
United States District Judge

cc: Stanley D. Ference III, Esq.
courts@ferencelaw.com
Brian Samuel Malkin, Esq.
bmalkin@ferencelaw.com

Schedule “A”
Defendants with Store Name and Seller ID

Defendant No.	Defendant/Store Name	Seller ID
1	SHIRO HOUSE	AO7O6LWW69O3X
█	██████████	██████████
█	██████████	██████████
4	ALK7	AZ3OLQ8187630
█	██████████	██████████
█	██████████	██████████
7	BANENS	A2SSDH8T7HB4BU
█	██████████	██████████
9	CONBOEY	A229NX2SLISJ99
█	████████████████████ ██████████	██████████
█	██████████	██████████
12	DHGCX	A103LBR8EX1N48
█	████████████████████	██████████
14	DIMOCAX	AJP0PD1O3DGA2
█	██████████	██████████
█	████████████████████	██████████
17	FANBO SO	A2JOCW3M9KNMHZ
█	██████████	██████████
█	██████████	████████████████████
█	████████████████████	██████████

Defendant No.	Defendant/Store Name	Seller ID
67	XUYUAN SC	A3KK04QNGEGRD7
68	YANYANLADY	A8RBVODAW00AN
69	YIXUANYX	AXSS8QBGKFR6H
■	■■■■■■■■■■	■■■■■■■■■■
71	YOUDW	A2A6AEZ0OKN47N
■	■■■■■■■■■■	■■■■■■■■■■
■	■■■■■■■■■■	■■■■■■■■■■
74	JIYUAN TIANXIANG TRADING COMPANY	A1JZO62R2D4VD5
■	■■■■■■■■■■	■■■■■■■■■■
■	■■■■■■■■■■	■■■■■■■■■■
■	■■■■■■■■■■	■■■■■■■■■■
■	■■■■■■■■■■	■■■■■■■■■■
■	■■■■■■■■■■	■■■■■■■■■■
80	01888 STORE	4914045
81	ANIUNIU STORE	3477031
82	BEAUTYBABY STORE	3281028
83	BT DROPSHIPPING STORE	911189140
84	CHILD'S TOY STORE	4929007
85	FAINA'S STORE	5484036
86	FUNFUN TOY STORE	910318235
87	GOGOMYLITTLEBABY STORE	3154019
88	GOODLUCK BABY STORE	3210016
89	MUQGEW FOR YOU STORE	4046039

Defendant No.	Defendant/Store Name	Seller ID
90	SEVENU STORE	4921031
91	SHOP2944189 STORE	2944189
92	SHOP5055184 STORE	5055184
93	SHOP5426288 STORE	5426288
94	SHOP5517084 STORE	5517084
95	SHOP911137204 STORE	911137204
96	BIANYIREN	5b0cb8e101287527a576e9e7
■	■	■
98	NGOC234	5e59dac3d3f7da16c02405ea