

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

AIRIGAN SOLUTIONS, LLC,

Plaintiff,

v.

SNOWQI, *et al.*,

Defendants.

Civil Action No. 23-cv-232

Judge Schwab

PRELIMINARY INJUNCTION ORDER

WHEREAS, on February 14, 2023, 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 all of the Defendants identified on the attached Schedule “A”, 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 Walmart Pay operated by Wal-Mart.com USA, LLC., in light of Defendants’ intentional and willful offerings for sale and/or sales of Infringing Products¹ (“Application”);

¹ As alleged in Plaintiff’s Complaint, “. . . Defendants have offered for sale and sold substandard products infringe at least Claim 1 of Plaintiff’s U.S. Patent No. 9,968,211 (“Plaintiff’s Patent”) (“Infringing Product(s)”) using Plaintiff’s registered trademark (*i.e.*, U.S. Trademark Reg. No. 5,142,630 for the wordmark “NEGG”) and/or that use packaging that bears and/or is used in connection with marks and/or trade dress (hereinafter referred to as the “Plaintiff’s Marks) that is confusing or substantially similar to Plaintiff’s authentic products (“Plaintiff’s Products”) through accounts with the online marketplace platforms Amazon.com, ebay.com,

WHEREAS, on the same day, 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, the Court entered the following Orders:

(A) 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts, against all the Defendants identified on the attached **Schedule “A”**, the Third-Party Service Providers, and the Financial Institutions (“TRO”)(February 16, 2023) (ECF No. 16); and

(B) an Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3)(February 16, 2023) (ECF No. 18);

WHEREAS, on February 27, 2023, upon Plaintiff’s Motion, the Court extended the temporary restraining order and ordered the Defendants to appear on March 16, 2023 at 9:30 a.m., and show cause why a preliminary injunction should not be entered;

WHEREAS, on March 16, 2023 at 9:30 a.m., Plaintiff appeared for the Order to Show Cause Hearing, however no Defendants appeared. Further, no Third-Party Service Providers or Financial Institutions appeared.

I. Order Continuing Restraints

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, the injunctive relief previously granted on February 16, 2023 (ECF No. 16) and extended by order of February 27, 2023, shall remain in place through the pendency of this litigation, and issuing this Preliminary Injunction (hereafter “PI Order”) is warranted under FRCP 65,

Alibaba.com, Aliexpress.com, Walmart.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. (“User Account(s)”).

Section 34 of the Lanham Act, and Section 283 of the Patent Act. The Court finds that Plaintiff relies upon a presumptively valid patent, and that nothing in the record calls that validity into question. The evidence establishes that Plaintiff has shown a sufficient likelihood of success on the merits of this action. The Court also concludes that Plaintiff has shown that immediate and irreparable injury, loss, and damage will likely result should the relief entered by this Order not be granted. Specifically, the Court finds that Defendants' infringing products are likely to continue to cause Plaintiff to suffer loss profits, compromise the value of Plaintiff's brand, and negatively impact Plaintiff's relationships with its current customers and its ability to attract new customers. Defendants will not be harmed by the imposition of the injunctive relief requested, because the injunction only prohibits Defendants from taking actions they are otherwise not entitled to perform under the law. And finally, the public interest favors the issuance of the requested injunction, and Plaintiff has no adequate remedy at law for the immediate and irreparable harms identified.

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 Plaintiffs' 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,² Merchant Storefronts³ 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 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

² As defined in the Application, a “User Account” is, as defined in the Complaint, any and all accounts with at least one of the online marketplace platform(s), Amazon.com, eBay.com, Aliexpress.com, Walmart.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.

³ 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.

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), Walmart Pay operated by Walmart.com USA, LLC, (“Walmart”)”) and 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”)⁴, 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”

⁴ WorldPay US, Inc. (“WorldPay”) processes transactions on behalf of Alibaba and Alipay, which may appear as “Aliexpress” on a cardholder’s credit card statement.

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;⁵

- (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 Plaintiffs’ 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

⁵ 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.

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 Plaintiffs' 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 Plaintiffs' 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 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 Order in accordance with the Alternative Service Order.

B. IT IS HEREBY ORDERED, as sufficient cause has been shown, that upon Plaintiffs' 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 Plaintiffs' 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 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) Amazon is ordered to remove any seller identified by Plaintiff from the following Amazon Standard Identification Numbers (ASINs): B01N7SXX0W (black NEGG®), B085G3Q3BX (blue NEGG®), B01MT9U0HK (red NEGG®), B01NATZUY2 (white

NEGG[®]), B01N235WK4 (yellow NEGG[®]), B079P5N8Q6 (pink NEGG[®]), B079P6QVNR (fuschia NEGG[®]), and B079P4HPVM (green NEGG[®])⁶;

(2) Amazon is ordered to suspend any ASIN that was associated with a product already identified by prior Order of this Court in the present lawsuit to be Counterfeit, Infringing, or unfairly competing, as designated in the Schedule A third column under “**Amazon ASIN Number(s)**” (i.e., any seller is prevented from listing for sale under the identified ASIN); and

(3) Upon Plaintiff’s request, any Third Parties are ordered to suspend any listing of a product that Plaintiff assert infringes at least one claim of the Plaintiff’s Patent, and/or infringes Plaintiff’s Works and/or Mark and/or Trade Dress, and is identified as originating outside of the United States and unfairly competing with Plaintiff’s Product.

II. Order Authorizing Discovery

- A. IT IS FURTHER ORDERED, as sufficient cause has been shown through Defendants’ failure to: respond, participate in the ordered Rule 26(f) conference, and appear at the show cause hearing on March 16, 2023, Plaintiff may propound discovery upon 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 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,

⁶ These are the current ASINs assigned to the Plaintiff’s Products by Amazon.

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) 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, Plaintiff's Works, Plaintiff's Trade Dress, and/or Plaintiff's Mark in connection with the distribution, marketing, advertising, offering for sale, or sale of any Infringing Products.

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

WHEREAS, the reasons for keeping the documents in this case sealed no longer exist, it is FURTHER ORDERED that the Clerk of Court is hereby directed to unseal all the documents previously filed under seal in this case.

SO ORDERED.

SIGNED this 16th day of March, 2023
Pittsburgh, Pennsylvania

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc Stanley D. Ference III, Esq.
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Schedule "A"

Defendants with Store Name and Seller ID

Defendant No.	Defendant/Store Name	Seller ID
1	SnowQI	101188190
2	ganzhoushengxiawanqingmaoyiyouxiangongsi	101268682
3	GHCD Co.Ltd	101223963
4	Housester	101246930
5	KUNMINGYOUUDUOMINGDIANZISHANGWUYOUXIANGONGSI	101190950
6	Meizhoushixinganfengjianzhuzhuangshigongchengyouxiangongsi	101274519
7	sanmenxiaxiaoyuanhuazhuangpin	101294875
8	shaoxingyinchaofangzhipinyouxiangongsi	101209742
9	SZYDZ	101111823
10	WWNER	101290513
11	Jilin Baiying Trade Co., Ltd.	1102371479
12	Light Up Warmth Life Store	1101796443
13	JUANITO MALL	A2B1V1TOOCC03T
14	Omelle M	A2FN5RAQ9EIPQW
15	SHANGYOUZSWD	A2UDP1BPH0KGKI
16	shuangtao baihuo	AERVD23MES010
17	SJYBHFZD	A3BTK4T8HDLHQB
18	nirm_arav	304106096617