

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

AQUAPAW BRANDS LLC,

Plaintiff,

v.

TROPICALPARADISE, *et al.*,

Defendants.

Civil Action No. 23-1598

(Judge Cercone)

[PROPOSED] FINAL DEFAULT JUDGMENT AND PERMANENT INJUNCTION¹

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” hereto (hereinafter referred to as “Defaulting Defendants”) for Defaulting Defendants’ federal unfair competition, federal copyright infringement, and related state and common law claims, in their manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying offering for sale and/or selling and/or sale of Infringing Products.²

The Court, having considered the Plaintiff’s Motion for Default Judgment and Permanent

¹ This default judgment does not dispose of all the claims against all of the Defendants. Several are still in negotiations and have not been defaulted. These Defendants are not included in the Schedule A for this motion.

² As alleged in the Complaint, are Defendants are promoting, selling, offering for sale, and distributing goods using confusingly similar imitations of at least one photo or screenshot from at least one of Plaintiff’s copyrighted videos or photographs covered by U.S. Copyright Reg. No. VA-0002098373, U.S. Copyright Reg. No. VA-0002098372, U.S. Copyright Reg. No. VA-0002096921, and U.S. Copyright Reg. No. PA-0002068689 (“Plaintiff’s Copyrighted Works”) (or an unauthorized derivative thereof), and/or (2) using Plaintiff’s works in a willful attempt to pass off their goods as genuine versions of Plaintiff’s goods, thus unfairly competing (“Infringing Products”), throughout the United States, including within the Commonwealth of Pennsylvania and this district, by operating fully interactive, commercial Internet based e-commerce stores accessible in Pennsylvania, via at least the Aliexpress.com Amazon.com, eBay.com, Joybuy, Temu, Walmart.com, and wish.com Internet market place platforms operating using the seller identities identified on Schedule “A” to the Complaint (the “Seller IDs”).

Injunction, the Declaration of Brian Samuel Malkin 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 listed on the Schedule A in the Complaint.

II. Damage Awards

IT IS FURTHER ORDERED that because it serves the compensatory and punitive purpose of the Lanham Act and the Copyright Act's prohibitions on willful infringement and because Plaintiff has sufficiently set forth the basis for the disgorgement of profits of \$2,000,000.00 (unfair competition damages) and statutory damages of 150,000.00 (copyright damages) in its supporting papers, the Court finds that such awards are reasonable and Plaintiff is awarded damages of \$2,150,000.00 against each of the Defaulting Defendants, severally and individually, as listed on Schedule A.

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 and

using Plaintiff's copyrighted works 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 Copyrighted Works;

- (2) directly or indirectly infringing in any manner any of the Plaintiff's copyrights or engaging in any unfair competition against the Plaintiff;
- (3) using any reproduction, counterfeit, copy, or colorable imitation of Plaintiff's copyrights, photographs, or other rights including, without limitation, the Plaintiff's Copyrighted Works to sell any goods or services not authorized by Plaintiff;
- (4) using any of Plaintiff's copyrights, or other rights including, without limitation, photographs, or artwork that are confusing or substantially similar to the Plaintiff's Copyrighted Plaintiff's Works on or in connection with the manufacturing, importing, exporting, advertising, marketing, 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,³ Merchant Storefronts⁴ 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 display for the purposes of circumventing or otherwise avoiding the prohibitions set forth in this Order.

B. IT IS FURTHER ORDERED that, pursuant to 17 U.S.C. § 503(b), 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 copyrights or other rights including, without limitation, the Plaintiff’s Works, or bear any marks, photographs, and/or artwork that are confusingly similar or substantially similar to the Plaintiff’s Works.

³ “User Accounts” are any and all accounts with the online marketplace platforms Aliexpress.com, Amazon.com, eBay.com, Joybuy, Temu.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.

⁴ “Merchant Storefronts” are 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.

C. IT IS FURTHER ORDERED that Third Party Service Providers⁵ and Financial Institutions⁶ 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").

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

⁵ Third Party Service Providers are Amazon Services, LLC d/b/a Amazon.com, and Amazon Payments, Inc. d/b/a Amazon Pay (collectively "Amazon"), Joybuy Marketplace operated by Jingdong E-Commerce (Trade) Hong Kong Co., Ltd and JD E-Commerce America (collectively, "Joybuy"), Whaleco Inc., a Delaware Corporation, which is a wholly owned subsidiary of Pinduoduo Inc. which is owned by PDD Holdings (collectively, "Temu"), eBay, Inc. d/b/a ebay.com, Walmart Inc. and Wal-Mart.com USA, LLC, wish.com, Alibaba.com US LLC d/b/a Alibaba.com and Aliexpress.com, and any other 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.

⁶ Financial Institutions are any banks, financial institutions, credit card companies and payment processing agencies, such as 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")⁶, Amazon Payments, Inc., Walmart Pay, PayPal, Inc. d/b/a paypal.com, and Context Logic, Inc. d/b/a wish.com ("Financial Institutions"), and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of any Defaulting Defendant.

moving, storing, distributing, returning, or otherwise disposing of, in any manner products which use Plaintiff's 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) 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 Plaintiff's registered copyright and/or unfairly competing with Plaintiff's Product (i.e., preventing a seller from listing for sale under the identified ASINs); and

(4) all online marketplaces, including but not limited to aliexpress.com,

Amazon.com, eBay.com, Joybuy, Temu.com, Walmart.com, and Wish.com, shall upon receipt of this Order, suspend, block, tombstone, and/or delete any and all product listings identified by Plaintiff as either displaying an identical or substantially similar product to copyrighted work, whether sold by the Defendants or other persons or entities; 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, 17 U.S.C. § 502(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”);⁷
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

⁷ 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.

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 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, Alibaba.com Hong Kong Limited, which operates the AliExpress.com platform, Context Logic, Inc. d/b/a Wish.com, Walmart.com, eBay Inc., Joybuy, Temu.com, and Etsy, Inc., shall permanently cease fulfillment of and sequester those goods, and surrender the same to the Plaintiff;
- 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 shall be released;

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

Senior Judge David S. Cercone
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 Number	Defendant/Store Name	Seller ID
1	TropicalParadise	57ee2e936a20961027ed12dd
2	Doggy Steven Store	5dd14fdf703f613b40199956
3	Gift House	5837843215914549efa74462
4	HANXU_NN	63ef35ea57f6c85801d8b8b8
5	nangua	5789b8a99035dc555db25d43
6	xuxiaojun1759	60b0736e36badc94eaffc880
7	yiyyaya	5783466488eb7a0ff31c511a
8	A Family Of Pet Lovers Store	1102765582
9	AODOO shipping Store	1101548934
10	Aquakiwi Store	1101893106
11	Art Bath Store	1101561007
12	AYIJIA-01 Store	1101411973
14	Cute Store	1102728273
15	DGFC HPA Store	1101494615
16	DleHome Store	1101879889
17	Dudon PETS Store	1101309206
18	EHEH Store	1101251677
19	Fashion Clothes For Dogs Store	1102772193
20	FisPet Store	1101986732
21	Gloabl Pets Supplier Store	1101774718
22	Hinko Gany Store	1101397265
23	homegarden1 Store	1101328102
24	HOTcolor Store	1101825446
25	Impression Home Store	1102588103
27	JANEYI Store	1102156587
28	KeePiy Store	1101868284
29	KOVA TOY Store	1101535082
30	LM Love Pet Store	1101672153
31	LYPets Store	1101384895
32	Magjew Store	1102085314
33	MARUI Store	1101938695
34	ONE PET SUPPLY Store	1101802232
35	OnePet Store	1101954910
36	online hot deals Store	1102005455
37	PETART Store	1102815517
38	Pets Tribe Store	1101303711
39	Petsupplies Dropshipping Store	1101381892

40	PowerPaw Store	1101391964
41	rabichen Store	1101821375
42	Shop1100227377 Store	1102021462
43	Shop1855178 Store	1101103503
44	Shop911458011 Store	1101623327
45	Spicy strips Store	1101610283
46	SSHEN PET Store	1102775209
47	sunnoo Store	1101693689
48	TAIBAIJIA Official Store	1100447201
49	TIPEGON Official Store	1101288772
50	Urwellcome Store	1101930100
51	WBWBMY Store	1101516853
52	With Pets Store	1101553176
53	World Pet Supplies Store	1102499012
54	Xleipet Store	1101425963
55	XRuiPet	1101136545
56	XWangPet Store	1101315865
57	Yaluosi Store	1101894886
58	Yongliang LED Lighting Store	1101698793
59	YOZWOO Home Store	1102203325
60	YPLG Store	1101319659
61	ZhuLi866 Store	1101910530
62	RFCW Pet Supplies Store	1102776541
66	linshengshangdian	AZ4AF9NXEDD9I
67	ReCheng	A1PBMPVVG01QG5E
68	RUN666	A1LSNKBB09HWXP
69	Teagany	AW9YB5V49RGHI
70	WANGSUAN	A34KSQ1M9FITHR
71	xilei888	A3J3ZH8KN8J19Z
72	Shenzhen Kaiyuan da electronic Commerce Co., LTD	10963
75	Excellent Products Shop	6072727823483
76	Many cats	4828499765869
77	Shenzhen Bolandi Toys Co Ltd	6126377163188

83	G-CHEN	101276139
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
88	Xinlie	101095294