

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

ALLSEASON ENTERPRISES, LLC

Plaintiff,

v.

MYKYTA MELNIK, LLC, *et al.*,

Defendants.

Civil Action No. 24-CV-921

(Judge Colville)

Jury Trial Requested

FILED UNDER SEAL

PLAINTIFF’S *EX PARTE* MOTION TO AMEND TEMPORARY RESTRAINING ORDER; ORDER RESTRAINING ASSETS AND MERCHANT STOREFRONTS; ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE; AND ORDER AUTHORIZING EXPEDITED DISCOVERY

Plaintiff, ALLSEASON ENTERPRISES, LLC, hereby moves this Court on an *ex parte* basis to amend the previously issued *ex parte* Temporary Restraining Order to include the Defendants, the Individuals, Partnerships, and Unincorporated Associations identified on **Amended Schedule “A”** hereto (collectively “Defendants”)¹ and which are included in the Amended

¹ Plaintiff is contemporaneously filing an Amended Complaint that is substantively identical to the original Complaint except that the **Amended Schedule “A”** thereto includes newly added Defendants: DIAMOND SHOPE LLC, HELIOS LIMINAL PARTNERS II, LLC, HVG MAPLE GROVE ASSOCIATES, LLC, NOURISH NATION, VIGORNOVA, BRIGHTSKY GOODS, CUTTYFLYHEALTH, DS CYCLING HOME, JACK SHOPPING MALL, JMQJMQ, JMQJMQHEALTH, 2DAYSHIPS, CHENZHUOQIAOKEJISHANMAO, CHUANYA, CROSS-BORDER ELECTRONICS, DSGFGFD, FUMEISHANGMAO11, GENIUS KING, HAICHUANGGUOJI, HEALSHE SHOP, JIAHO, KADINGAKEJKHKNFGEJDU, KUNMINGTIAN TONGTONGSEWANGLUOKEJIYOUXIANGONGSI, KUNMINGZHILIANGLUOKEJIYOUXIANGONGSI, LIYINGJIAXIAOLONG, SEA MOSS SHILAJIT, SIMPLESMART, SMILE KING, TAIQUE NETWORK, VIGORNOVA, WERIXS, XIUJINSHANGMAOYOUXIANGONGSI, YUHUSHANGMAOYOUXIANGONGSI. Plaintiff is also contemporaneously moving to amend the original Order permitting alternate service to permit alternate service on the newly added Defendants. Plaintiff hereby incorporates by reference its Application for TRO and Motion for Alternative Service, together with supporting declarations and exhibits.

Complaint that is being contemporaneously filed herewith. In support thereof, Plaintiff submits the following:

I. INTRODUCTION

Specifically, Plaintiff has obtained evidence clearly demonstrating that Defendants are using without authorization Plaintiff's copyrighted photographs² and some are engaged in Trademark Infringement and Counterfeiting of Plaintiff's Marks³ and some are infringing on Plaintiff's Trade Dress⁴, and still others are engaged in Review Hi-Jacking, while promoting, selling, offering for sale and distributing knock-offs of Plaintiff's Products⁵ in a willful attempt to pass off their knock-off products as genuine versions of Plaintiff's Products within this district and throughout the United States by operating e-commerce stores established via at least one of the Internet marketplace websites Amazon.com, aliexpress.com, eBay.com, Joybuy, Temu, wish.com, and Walmart.com under their Store Names and

² Plaintiff has obtained the following copyright registrations on its original photographs used to Market and advertise its products: TX 9-367-638, TX 9-388-519, TX 9-388-522, TX 9-388-523, TX 9-389-848, TX 9-389-849, TX 9-394-790 all with the title "Multimineral Sea Moss Black Seed" published on October 15, 2022. True and correct copies of the registrations and the deposit copies are attached to the Complaint and marked, respectively, as **Exhibits 3A – G** ("Plaintiff's Works")

³ Plaintiff owns the common law trademark CLEAN NUTRA™ and registered trademarks, CLEAN NUTRA & design (U.S. Reg. No. 7031116 and CLEAN NUTRACEUTICALS & design (U.S. Reg. No. 7031117) ("Plaintiff's Marks")(True and Correct Copies of the registration certificates are attached to the Complaint as **Exhibits 4A and 4B**)

⁴ Plaintiff's Trade Dress comprises the organization, selection of the text, arrangement of the elements of the creative artwork and colors for the label, the differently colored spheres containing abbreviations for various vitamins, minerals, and supplements, the black tree shaped background and the distinctly proportioned text. The Trade Dress is distinct and immediately conveys the source of the goods to the consumer.

⁵ Plaintiff directly sells its supplements on its Amazon store using the ASIN BOBG94RWYN (single bottle) and ASIN BOBG6TGKZS (two bottles). ASIN Refers to Amazon Standard Identification Number. Each product is assigned a unique ASIN when listed on Amazon.

Seller Names identified on Schedule “A” of the Complaint (the “Seller IDs” (“Infringing or Knock-Off Products.”)⁶

On July 2, 2024, Plaintiff filed its Complaint together with its *Ex Parte* Application for Entry of a Temporary Restraining Order and Preliminary Injunction (the “Application for TRO”) as to the original Defendants. On July 3, 2024, the Court entered an Order granting an *Ex Parte* Temporary Restraining Order, scheduling the hearing on the Preliminary Injunction for July 18, 2024 at 10:00 a.m. [ECF No. 19]

Plaintiff is filing herewith an Amended Complaint that names additional defendants as set forth in the **Amended Schedule “A”** (**marked up** to delineate original defendants from additional defendants) and by this Motion seeks to amend the July 3, 2024, Temporary Restraining Order to include these newly added Defendants who are also knowingly and intentionally promoting, advertising, distributing, offering for sale, and selling goods bearing counterfeits of Plaintiff’s registered trademark within this district and throughout the United States by operating e-commerce stores established via the Amazon Internet marketplace website.

II. ARGUMENT

The papers submitted by Plaintiff on July 2, 2024, – in particular, the *Memorandum of Law* – set forth the governing law with respect to the issuance of a Temporary Restraining Order

⁶ Plaintiff has indicated that prior to filing this lawsuit, Plaintiff viewed a public seller profile that is published by certain Defendant’s storefronts that purports to identify the name and address of the Defendant. Solely based upon their representation on their storefronts, the following defendants have identified themselves as US-based and are not at this time alleged to be foreign sellers: 2DAYSHIPS, aboutbargains, BLOOMS ROYALE, CYTAL NF LLC, FX Cosmetics, Diamond Shope llc, Helios Liminal Partners Ii, Llc, Hvg Maple Grove Associates, Llc, Mykyta melnik, Llc, Nourish Nation, VigorNova, SharkLabsUSA, Simplemart, Snatched N Pretty, This & That 365, Doctor Commerce, Belle & Peach, Chailens Supple LLC, DEMPIRE LLC, Full Focus 365, MEGA MART CENTER LLC, Meishka Products LLC, Tartazo Surplus LLC, and vigornava.

for Infringing Products. In the present Motion, Plaintiff incorporates the previously filed papers by reference, and will limit the present Motion to showing the newly added Defendants are subject to the personal jurisdiction of the court, are selling counterfeit product, and it is appropriate to amend the previously entered Temporary Restraining Order. Courts in our district have granted motions to amend temporary restraining orders under similar circumstances. For example, in *Airigan Solutions, LLC v. Abigail, et al.*, No. 19-cv-503 (W.D. Pa., May 28, 2019), Judge Fischer of this district granted leave to amend a temporary restraining order to add additional infringing defendants before the show cause hearing.

A. The Newly Added Defendants are Subject to Personal Jurisdiction

Plaintiff has in its possession Infringing Products that have been shipped into this District from a number of the newly added Defendants. All of the newly added defendants, however, operate a fully interactive website directed to residents of the Commonwealth of Pennsylvania, and will ship product to the Commonwealth of Pennsylvania. Furthermore, all of the newly added Defendants collect Pennsylvania sales tax. *See* July 2, 2024, Declaration of Oscar Preciado (“*Preciado Dec.*”), ¶ 5, and July 2, 2024, Declaration of Dee Odell (“*Odell Dec.*”), ¶ 3 and *Composite Exhibit 2* thereto. *Composite Exhibit 2* includes, for each newly added Defendant, documentation showing their willingness to ship counterfeit product into Pennsylvania and, for a number of the newly added Defendants, documentation showing counterfeit product was actually shipped into Pennsylvania.

As discussed in Plaintiff’s *Memorandum of Law* submitted on July 2, 2024 (pgs. 22-25), it is not necessary for a defendant to actually ship product into Pennsylvania to be subject to personal jurisdiction in Pennsylvania. A defendant is subject to personal jurisdiction in a state

where the defendant offers infringing product for sale through an interactive website. Therefore, this Court has personal jurisdiction over the newly added Defendants.

B. The Newly Added Defendants are Selling Counterfeit Product

The new Defendants are also selling Infringing Products⁷ through Accounts⁸ and Merchant Storefronts⁹ on the Third Party Service Providers¹⁰. See July 12, 2024 Declaration of (“*Preciado Dec.*”), ¶¶ 5 - 9; July 12, 2024 Declaration of Dee Odell (“*Odell Dec.*”), ¶ 3 and **Composite Exhibit 2** thereto. It is not necessary for Plaintiff to obtain and physically review a



⁷ As alleged in Plaintiff’s Amended Complaint, “. . .the Defendants identified in **Amended Schedule “A”** of the Complaint, were and/are Defendants are using without authorization Plaintiff’s copyrighted photographs⁷ and some are engaged in Trademark Infringement and Counterfeiting of Plaintiff’s Marks and some are infringing on Plaintiff’s Trade Dress⁷, and still others are engaged in Review Hi-Jacking, while promoting, selling, offering for sale and distributing knock-offs of Plaintiff’s Products in a willful attempt to pass off their knock-off products as genuine versions of Plaintiff’s Products within this district and throughout the United States by operating e-commerce stores established via at least one of the Internet marketplace websites Amazon.com, aliexpress.com, eBay.com, Joybuy, Temu, wish.com, and Walmart.com under their Store Names and Seller Names identified on **Amended Schedule “A”** of the Amended Complaint (the “Seller IDs” (“Infringing or Knock-Off Products.”))

⁸ As defined in the Application, a “User Account” is, as defined in the Complaint, any and all accounts with online marketplace platforms, 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.

⁹ 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, including Infringing 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.

¹⁰ Third Party Service Providers include the online 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”), Joybuy Marketplace operated by Jingdong E-Commerce (Trade) Hong Kong Co., Ltd. and JD E-Commerce America (“Joybuy”), Whaleco Inc., a Delaware Corporation, which is a wholly owned subsidiary of Pinduoduo Inc. which is owned by PDD Holdings (collectively, “Temu”), Walmart.com USA LLC and Walmart, Inc. (“Walmart”), and Context Logic, Inc d/b/a wish.com (“Wish”).

sample of product from each newly added Defendant to make a determination that Defendants are selling Infringing Product because their infringing conduct may be verified by viewing their online use of the Plaintiff's Marks and/or Works and/or Trade Dress or by viewing their online listings that Hi Jack Plaintiff's ratings.

In *Ideavillage Products Corp. v. Dongguan Shipai Loofah Sponge Commodity Factory d/b/a Bathing Store*, No. 18-cv-901 (S.D.N.Y. Feb. 2, 2018), an on-line infringing case, the Temporary Restraining Order was issued against nearly 25 defendants even though no infringing product was actually delivered into New York State or physically reviewed by the plaintiff. *Ideavillage* showed – as Plaintiff has shown here – that each defendant ships Infringing Product or has been verified as infringing on one more of Plaintiff's common law trademark CLEAN NUTRA™ and registered trademarks CLEAN NUTRA & design (U.S. Reg. No. 7031116): and CLEAN  NUTRACEUTICALS & design (U.S. Reg. No. 7031117):  (“Plaintiff's Marks”)(True and Correct Copies of the registration certificates are attached hereto as **Amended Complaint Exhibits 4A and 4B**) and/or Works¹¹and/or Trade Dress¹² and/or engages in Ratings Hi-Jacking, has demonstrated that they are ready, willing and able to ship into the state and a determination of infringement was made through visual inspection of the Defendants' listings.

¹¹ As alleged in the Amended Complaint, the Plaintiff's Works refers to the following copyright registrations on its original photographs used to market and advertise its products: TX 9-367-638, TX 9-388-519, TX 9-388-522, TX 9-388-523, TX 9-389-848, TX 9-389-849, TX 9-394-790 all with the title “Multimineral Sea Moss Black Seed” published on October 15, 2022.¹¹ True and correct copies of the registrations and the deposit copies are attached to the Complaint and marked, respectively, as **Exhibits 3 A – G**.

¹² Plaintiff's Trade Dress comprises the organization, selection of the text, arrangement of the elements of the creative artwork and colors for the label, the differently colored spheres containing abbreviations for various vitamins, minerals, and supplements, the black tree shaped background and the distinctly proportioned text.

As in the above cases, for those newly added Defendants for which Plaintiff has not reviewed actual product, Plaintiff is able to confirm with certainty through visual inspection of the newly added Defendants' listings offered for sale by each newly added Defendant in its listing are, in fact, infringing. As reflected in the copies of each newly added Defendants' listings attached to **Composite Exhibit 2**, the newly added Defendants' products are virtually indistinguishable from Plaintiff's genuine product. Therefore, Plaintiff has shown that the newly added Defendants are offering for sale and/or selling Infringing Product.

C. It is Proper to Amend the Temporary Restraining Order

A temporary restraining order may be modified if the proposed changes are equitable in light of subsequent changes in the facts or law, or for any other good reason. *See Thornbrook Int'l, Inc. v. Rivercross Foundation*, 2003 WL 22289853, * 2, No. No. 03 C 1113 (N.D. Ill., Oct. 6, 2003) (citing *Movie Systems, Inc. v MAD Minneapolis Auto Distributors*, 717 F. 2d 427, 430 (8th Cir. 1983); *Canal Authority v. Callaway*, 489 F.2d 567, 578 (5th Cir. 1974)). In cases such as the present case, temporary restraining orders have been amended to include additional defendants. *See Airigan Solutions, LLC v. Abigail, et al.*, No. 19-cv-503 (W.D. Pa., May 28, 2019)(Fisher, J.)(order amending the temporary restraining order), *Gaffigan v. Does 1-10 d/b/a tiffjewelrystore.com, et al.*, 2010 WL 2925091, No. 09-61206 (S.D. Fl., July 22, 2010) (order adopting Magistrate's report and recommendation to grant motion to amend temporary restraining order to include additional defendant domain names).

III. CONCLUSION

Plaintiff's motion seeks to amend the temporary restraining order to add additional electronic storefronts by way of Seller IDs should be granted. Since Plaintiff has already demonstrated good cause for granting the first Application for a temporary restraining order and

since the balance of equities continues to weigh in favor of the Plaintiff, it is appropriate for the Court to amend the temporary restraining order to include the new Defendants and further enjoin the relevant Third Party Service Providers, Financial Institutions¹³ and Defendants.

A proposed Order granting this motion is submitted herewith, together with a proposed Amended Temporary Restraining Order.

Respectfully submitted,

Dated: July 12, 2024

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¹³ All financial institutions, payment processors, banks, escrow services, money transmitters, or (“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”), Walmart d/b/a Walmart Pay (“Financial Institution(s)”), and their related companies and affiliates.