

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

TOKA, LLC,

Plaintiff,

v.

MILESSTORE, *et al.*,

Defendants.

Civil Action No.

FILED UNDER SEAL

**REQUEST FOR JUDICIAL NOTICE OF TEMPORARY RESTRAINING ORDERS
IN OTHER CASES GRANTING THE RELIEF SOUGHT IN THE PRESENT CASE**

Plaintiff is seeking an *ex parte* TRO and an *ex parte* Order for Alternative Service. Such relief has been granted multiple times here in the Western District and in other Courts. Plaintiff requests judicial notice of the following example orders in other cases granting the relief sought in the present case:

Ex.	Case Name	Platform(s)	Date	Document	Bond Amt.
1	<i>Aquapaw Brands LLC, v. TropicalParadise, et al.</i> , No. 23-1598 (W.D. Pa.)(Cercone, J)	AliExpress.com Amazon.com, Joybuy, Temu.com,Wal- mart.com, Wish.com	9/8/23 9/8/23 11/2/23	TRO Order Granting Motion Authorizing Alternate Service PI	\$5,000
2	<i>Broadway Pine Brands LLC v. Shiro House, et al.</i> , No. 21-406 (W.D. Pa.) (Ranjan, J N)	AliExpress.com Amazon.com, eBay.com, Wish.com	3/30/21 3/30/21 5/13/21	TRO Order Granting Motion Authorizing Alternate Service PI	\$5,000
3	<i>Talisman Designs, LLC v. Dasani, et al.</i> , No. 20-1084 (W.D. Pa.)(Schwab, J)	AliExpress.com Amazon.com, eBay.com,Wish .com	7/21/20 7/21/20 8/3/20	TRO Order Granting Motion Authorizing Alternate Service PI (after show cause hearing via Government Zoom® conferencing)	\$5,000 (after text order reduced)

Ex.	Case Name	Platform(s)	Date	Document	Bond Amt.
4	<i>Gorge Design Group, LLC, et al. v Syarme, et al.</i> , No. 20-1384 (W.D. Pa)(Stickman, J) <i>related to</i> No. 19-1454	Aliexpress.com, Amazon.com, eBay.com, Shopify, related cases include Alibaba.com, Wish.com	09/21/20 09/21/20 10/6/20	TRO Order Granting Motion Authorizing Alternate Service PI	\$5,000
5	<i>Doggie Dental INC., et al., v Max_Buy, et al.</i> , No. 19-746 (W.D. Pa)(Hornak, J) <i>related to</i> No. 19-682, 19-1283, 19-1283,	eBay.com, related cases include Amazon.com Aliexpress.com, Wish.com	06/27/19 06/27/19 07/22/19	TRO Order Granting Motion Authorizing Alternative Service PI	\$5,000

Respectfully submitted,

Dated: May 1, 2025

/s/ Stanley D. Ference III

Stanley D. Ference III

Pa. ID No. 59899

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FERENCE & ASSOCIATES LLC

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Attorney for Plaintiff

EXHIBIT 1

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-cv-1598

Judge Cercone

FILED UNDER SEAL

1) TEMPORARY RESTRAINING ORDER; 2) ORDER RESTRAINING ASSETS AND MERCHANT STOREFRONTS; 3) ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE; AND 4) ORDER AUTHORIZING EXPEDITED DISCOVERY

This matter is before the Court upon Plaintiff's *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 the Defendants identified on **Schedule "A"** to the Complaint and attached hereto (collectively, the "Defendants"). The Court has considered the Application, the evidence in the record, and the applicable law.

By the instant Application, Plaintiff moves *ex parte* pursuant to 15 U.S.C. § 116, 17 U.S.C. § 502, Federal Rules of Civil Procedure 64 and 65, and The AllWrits Act, 28 U.S.C. § 1651(a), for entry of a temporary restraining order and an order restraining assets and Merchant Storefronts, for violations of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a), the Copyright Act, 17 U.S.C. § 501, and related state law claims. Because Plaintiff has satisfied the requirements for the issuance of a temporary restraining order, and good cause has been shown for the issuance of the same, the Court grants Plaintiff's Application.

FACTUAL FINDINGS & CONCLUSION OF LAW

1. Plaintiff, AquaPaw Brands LLC, is likely to prevail on its Copyright and Lanham Act claims at trial.

2. Plaintiff's patented product solved the challenging problem of bathing a dog by examining the task from the dog's perspective.¹ By creating a sprayer/scrubber operable by one hand, the inventor was able to hold and comfort the dog with the free hand while cleaning the pet with the device. Today, the product is sold by Plaintiff under the brand name Aquapaw[®] Pet Bathing Tool ("Plaintiff's Product").

3. Plaintiff's Product is marketed and advertised extensively including on its website aquapaw.com and its storefront on Amazon.com. The unique features of Plaintiff's Product and the manner in which it is marketed and advertised, including, the distinct photographs, the design, the instructions, the packaging, and the unique presentation of the product, all comprise Plaintiff's valuable intellectual property ("IP") and all have become distinct in consumer's minds such that consumers associate all of this IP with Plaintiff's Product. Screenshots from Plaintiff's Website and Amazon Store are attached as **Complaint Exhibit 1**

4. Defendants, by operating Internet based e-commerce stores, and fully interactive, commercial Internet websites operating under Defendants' respective seller identities set forth on Schedule "A" hereto (the "Seller IDs"), are promoting, advertising, distributing, selling, and/or offering for sale of goods bearing and/or using marks that are virtually identical, both visually and phonetically, to Plaintiff's Copyrighted Works, and/or substantially similar copies thereof

¹ The innovative features of Plaintiff's Product are the subject of U. S. Patent No. 10,531,728 entitled "Hand Attachable Animal Washing Apparatus".

and Plaintiff has determined the products that each Defendant is offering for sale are not genuine products.

5. Through the e-commerce marketplace platform, Plaintiff accessed all of the e-commerce stores operating under Defendants' Seller IDs and captured the Defendants' listings at issue on the e-commerce stores. At the conclusion of the process, the detailed webpages and photographs were inspected by Plaintiff's representative who confirmed that each Defendant has used without authorization 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") ("Infringing Products").

6. Plaintiff, as well as consumers and animal owners, is likely to suffer immediate and irreparable losses, damages and injuries before Defendants can be heard in opposition, unless Plaintiff's Application for *ex parte* relief is granted. There is good cause to believe that the unauthorized and unlicensed offering for sale and sale of Infringing Products will continue in the marketplace; that consumers are likely to be misled, confused, and disappointed by the quality of the products so advertised; and that Plaintiff may suffer loss of sales for its genuine products and an unnatural erosion of the legitimate marketplace in which they operate. There is also good cause to believe that if Plaintiff proceeds on notice to Defendants of this Application, Defendants can easily and quickly change the ownership or modify e-commerce store account data and content, change payment accounts, redirect consumer traffic to other seller identification names, and transfer assets and ownership of Seller IDs, thereby thwarting Plaintiff's ability to obtain meaningful relief. As other courts have recognized, proceedings

against those who deliberately traffic in infringing merchandise are often useless if notice is given to the adverse party.

7. The balance of potential harm to Defendants of being prevented from continuing to profit from their illegal and infringing activities if a temporary restraining order is issued is far outweighed by the potential harm to Plaintiff, its reputation, and its goodwill as a manufacturer and distributor of quality products, if such relief is not issued.

8. The public interest favors issuance of the temporary restraining order in order to protect Plaintiff's interests and protect the public from being deceived and defrauded by the passing off of Defendants substandard goods as Plaintiff's genuine goods.

9. Under Pennsylvania law this Court may issue a prejudgment asset restraint where Plaintiff's complaint asserts a claim for money damages.² Therefore, this Court has the authority to grant Plaintiff's request for a prejudgment asset freeze to preserve the relief sought by Plaintiff and preserve the Defendants' ability to at least partially satisfy a judgment.

10. Similarly, if Defendants are given notice of the Application, they are likely to destroy, move, hide or otherwise make inaccessible to Plaintiff the records and documents relating to Defendants' illegal and infringing activities. Therefore, Plaintiff has good cause to be granted expedited discovery.

² Under Pennsylvania law, pre-judgment restraints are permitted as against all defendants. *Walter v. Stacey*, 837 A.2d 1205 (Pa. Super. 2003) (injunction entered restraining assets in action seeking damages for a wrongful death); *Hoxworth v. Blinder, Robinson & Co., Inc.*, 903 F.2d 186 (3d Cir. 1990) (affirming injunction entered restraining assets in class action lawsuit). Pre-judgment restraints are appropriate against these U.S. sellers under *Walter* and *Hoxworth*. See also, *Doggie Dental Inc. et al. v. AvantDigital et al.*, 21-cv-565-MRH (W.D. Pa., filed April 29, 2021) and *Doggie Dental Inc. et al. v. CDOOffice et al.*, 21-cv-271-MRH (W.D. Pa., filed February 25, 2021). *Doggie Dental Inc. v. Go Well*, No. 19-cv-1282 (W.D. Pa. Oct. 11, 2019) (Hornak, J.) (sellers on amazon.com); *Doggie Dental Inc. v. Worthbuyer*, No. 19-cv-1283 (W.D. Pa. Oct. 11, 2019) (Hornak, J.) (sellers on ebay.com); *Doggie Dental Inc. v. Max_Buy*, No. 19-cv-746 (W.D. Pa. June 27, 2019) (Hornak, J.) (sellers on ebay.com); *Doggie Dental Inc. v. Anywill*, No. 19-cv-682 (W.D. Pa. June 13, 2019) (Hornak, J.) (sellers on amazon.com); *Airigan Solutions, LLC v. Abagail*, No. 19-cv-503 (May 28, 2019) (Fischer, J.) (sellers on amazon.com); *Airigan Solutions, LLC v. Babymove*, No. 19-cv-166 (W.D. Pa. Feb. 14, 2019) (Fischer, J.) (sellers on amazon.com); *Airigan Solutions, LLC v. Artifacts_Selling*, No. 18-cv-1462 (W.D. Pa. Oct. 31, 2018) (Fischer, J.) (sellers on ebay.com and aliexpress.com).

ORDER

Based on the foregoing findings of fact and conclusions of law, Plaintiff's Application is hereby **GRANTED** as follows (the "Order"):

I. Temporary Restraining Order

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, that 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 are hereby restrained as follows:

- (1) from (a) their unauthorized and unlicensed use of Plaintiff's Copyrighted Works, 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 Plaintiff's Copyrighted Works;
- (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,³ Merchant Storefronts⁴ or

³ As defined in the Complaint, a "User Account" is any and all accounts with online marketplace platform, including, Aliexpress.com, Amazon.com, eBay.com, Joybuy, Temu, Wish.com, and Walmart.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 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.

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 Copyrighted Works which is visible to a computer user or serves to direct computer searches to Internet based 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 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 (“Third Party Service Provider(s)”), and financial institutions, including but not limited to, 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”)⁵, Amazon Payments, Inc., Walmart Pay, PayPal, Inc. d/b/a paypal.com, and Context Logic, Inc. d/b/a wish.com (“Financial Institutions,”)⁶ 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” 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

⁵ WorldPay US, Inc. (“WorldPay”) processes transactions on behalf of Alibaba and Alipay, which may appear as “Aliexpress” on a cardholder’s credit card statement.

⁶ Plaintiff acknowledges it is seeking multiple forms of relief. Plaintiff will promptly provide supplemental briefing or oral argument on any issue should the Court request it.

this Order; and (iii) any other accounts tied to or used by any of the Seller IDs identified on Schedule “A” hereto;⁷

- (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 Plaintiff’s 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 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

⁷ 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.

or Financial Institution's security interest in the funds) without express authorization of this Court;

(10) Upon Plaintiff's 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 selling the Infringing Products;

(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 shall remain in effect until the date for the hearing to show cause why a preliminary injunction should not be issued as set forth below, or until such further dates as set by the Court or stipulated by the parties.

B. IT IS HEREBY ORDERED, as sufficient cause has been shown, that upon Plaintiff's 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 Plaintiff's 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 five (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 HEREBY 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 using Plaintiff's Copyrighted Works (i.e., preventing a seller from listing for sale under the identified ASIN);

(4) The Plaintiff has demonstrated that the following products as pictured in the attached **Schedule "B"** are either made, used by, offered for sale or sold into the United States are Infringing Products; consequently, all online marketplaces, including but not limited to, Alibaba, amazon.com, ebay.com, aliexpress.com, Joybuty, Temu, Walmart.com, and wish.com, shall upon receipt of this Order, suspend, block, tombstone, and/or delete any and any product listings identified by the Plaintiff as either identical or substantially similar, to the above-described products in **Schedule "B"**, whether sold by the Defendant or other persons or entities.

(5) Upon Plaintiff's request, a Third-Party Service Provider shall remove listings and/or advertisements for any product advertised using Plaintiff's Photographs and/or Videos.

(6) this Order shall remain in effect during the pendency of this action or until further order of the Court.

II. Order to Show Cause Why a Preliminary Injunction Should Not Issue and Service of Order

A. Defendants are hereby ORDERED to show cause **in-person** before this Court in the United States District Court for the Western District of Pennsylvania, in Courtroom 7A, Seventh Floor, United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania, on the **3rd day of October, 2023, at 1:30 p.m.**, why a preliminary injunction, pursuant to FRCP 65(a), should not issue. **Defendants are on notice that failure to appear at the hearing may result in the imposition of a preliminary injunction against them.**

B. Opposing papers, if any, shall be filed electronically with the Court and served on Plaintiff's counsel by delivering copies thereof to the office of Ference & Associates LLC at 409 Broad Street, Pittsburgh, Pennsylvania 15143 before **September 26, 2023**. Plaintiff shall file any Reply papers on or before **October 2, 2023**.

C. After Plaintiff's counsel has received confirmation from the Third Party Service Providers and Financial Institutions or otherwise, regarding the restraint of funds directed herein, Plaintiff shall serve copies of the Complaint, the Application, this Order, and any Discovery on each Defendant via their corresponding email/online contact form provided on the Internet based e-commerce stores operating under the respective Seller IDs, or by providing a copy of this order by e-mail to the marketplace platform, which in turn notifies each Defendant of the Order, or by other means reasonably calculated to give notice which is permitted by the Court. In addition, Plaintiff shall post copies of the Complaint, Application, this Order, any Discovery, and all other pleadings and documents filed in this action on a website designated by Plaintiff,⁸ and shall

⁸ Rule 65 has been interpreted to require that a party have notice of the motion and hearing; perfecting service on a defendant is not a prerequisite to the entry of a preliminary injunction order. *Pate v. Gov't of the Virgin Islands*, 2015 WL 1937701 n.9 (VI Sup. Ct. April 17, 2015); *Corrigan Dispatch Co. v. Casa Guzman, S.A.*, 569 F.2d 300, 302 (5th Cir. 1978).

provide the website address to Defendants via e-mail/online contact form, and such notice so given shall be deemed good and sufficient service thereof. Plaintiff shall continue to provide notice of these proceedings and copies of the documents on file in this matter to Defendants by regularly updating the website designated by Plaintiff or by other means reasonably calculated to give notice which is permitted by the Court.

III. Order Authorizing Expedited Discovery

A. IT IS FURTHER ORDERED, as sufficient cause has been shown, that:

- (1) Plaintiff may propound interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and 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.
- (2) Plaintiff may serve requests for the production of documents pursuant to FRCP 26 and 34, and 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 produce all documents responsive to such requests within fourteen (14) days of service to Plaintiff's counsel.
- (3) Plaintiff may serve requests for admissions pursuant to FRCP 26 and 36, and 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 requests 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, 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) any and 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 Copyrighted Works.

V. Security Bond

IT IS FURTHER ORDERED that Plaintiff shall place security (corporate surety bond, cash, certified check, or attorney's check) in the amount of **\$5,000.00** with the Court, which amount is determined adequate for the payment of any damages any person may be entitled to recover as a result of an improper or wrongful restraint ordered hereunder. **If security is cash, certified check, or attorney's check, the funds will be deposited into the Court's local Registry, where it will remain until further order by the Court.**

VI. Summons

IT IS FURTHER ORDERED that the Clerk of the Court shall issue a single original summons in the name of "TROPICALPARADISE and all other Defendants identified in the Complaint" that will apply to all Defendants.

IT IS SO ORDERED.

SIGNED this 8th day of September, 2023
Pittsburgh, Pennsylvania

s/ David Stewart Cercone
David Stewart Cercone
Senior United States District Judge

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	yyiyaya	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
13	Cute Paws Pets Store	1102137215
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
26	Ipawspace Pet Store	1102498241
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	WBWBMV 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
63	aofenggasiefeng	A2SCBNZHH38FSF
64	Guanlai01	A3879TLL9WFEZF
65	Homegarchen	A2XM1301Y2GYM
66	linshengshangdian	AZ4AF9NXEDD9I
67	ReCheng	A1PBMPVG01QG5E
68	RUN666	A1LSNKBB09HWXP
69	Teagany	AW9YB5V49RGHI
70	WANGSUAN	A34KSQ1M9FITHR
71	xilei888	A3J3ZH8KN8J19Z
72	Shenzhen Kaiyuan da electronic Commerce Co., LTD	10963
73	Shenzhen Mingxinyang trading Co., LTD	9330
74	Chengdu orange flower Cheng technology Co., LTD	11419
75	Excellent Products Shop	6072727823483
76	Many cats	4828499765869
77	Shenzhen Bolandi Toys Co Ltd	6126377163188
78	Sports Hall	70968774437
79	TGB	2524121526999
80	Thousands of birds to Lin	145676434025




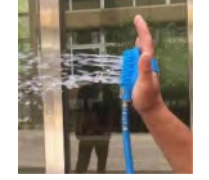



81	Tirth	321798588190
82	Worry free shop	40793316327
83	G-CHEN	101276139
84	LiFeng Electronic Co. ItD	101245782
85	Niuta Technology Co., Ltd	101295021
86	SHANG HAI BAO YU ELECTRONIC BUSINESS CO LTD	101044628
87	Ugerlov Fashion Co. Ltd	101180744
88	Xinlie	101095294

Schedule “B” Defendant/Store Names and Infringing Products

Defendant No.	Defendant/Store Name	Screen shot
1	TropicalParadise	
2	Doggy Steven Store	
3	Gift House	
4	HANXU_NN	
5	nangua	
6	xuxiaojun1759	
7	yiyaya	
8	A Family Of Pet Lovers Store	






9	AODOO shipping Store	
10	Aquakiwi Store	
11	Art Bath Store	
12	AYIJIA-01 Store	 <p data-bbox="1136 1024 1282 1087"> PRODUCT DESCRIPTION Pet Bathing Brush Soft Bristles Pet-friendly design, safe and effective Professional pet grooming tool Soft and gentle touch Durable and long-lasting </p> 
13	Cute Paws Pets Store	
14	Cute Store	

15	DGFC HPA Store	
16	DleHome Store	
17	Dudon PETS Store	
18	EHEH Store	
19	Fashion Clothes For Dogs Store	
20	FisPet Store	
21	Gloabl Pets Supplier Store	









22	Hinko Gany Store	
23	homegarden1 Store	
24	HOTcolor Store	
25	Impression Home Store	
26	Ipawspace Pet Store	
27	JANEYI Store	
28	Keepiy Store	










29	KOVA TOY Store	
30	LM Love Pet Store	
31	LYPets Store	
32	Magjew Store	
33	MARUI Store	
34	ONE PET SUPPLY Store	
35	OnePet Store	
36	online hot deals Store	
37	PETART Store	










38	Pets Tribe Store	
39	Petsupplies Dropshipping Store	
40	PowerPaw Store	<p>HOW TO USE</p> 
41	rabichen Store	
42	Shop1100227377 Store	
43	Shop1855178 Store	
44	Shop911458011 Store	

45	Spicy strips Store	
46	SSHEN PET Store	
47	sunnoo Store	
48	TAIBAIJIA Official Store	
49	TIPEGON Official Store	
50	Urwellcome Store	
51	WBWBM Store	
52	With Pets Store	

53	World Pet Supplies Store	
54	Xleipet Store	
55	XRuiPet	
56	XWangPet Store	
57	Yaluosi Store	
58	Yongliang LED Lighting Store	
59	YOZWOO Home Store	

60	YPLG Store	
61	ZhuLi866 Store	
62	RFCW Pet Supplies Store	
63	aofenggasiefeng	
64	Guanlai01	
65	Homegarchen	
66	linshengshangdian	
67	ReCheng	

68	RUN666	
69	Teagany	
70	WANGSUAN	
71	xilei888	
72	Shenzhen Kaiyuan da electronic Commerce Co., LTD	
73	Shenzhen Mingxinyang trading Co., LTD	
74	Chengdu orange flower Cheng technology Co., LTD	
75	Excellent Products Shop	
76	Many cats	

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78	Sports Hall	
80	TGB	
81	Thousands of birds to Lin	
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83	Worry free shop	
84	G-CHEN	
85	LiFeng Electronic Co. ItD	
86	Niuta Technology Co., Ltd	

87	SHANG HAI BAO YU ELECTRONIC BUSINESS CO LTD	
88	Ugerlov Fashion Co. Ltd	

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AQUAPAW BRANDS LLC,
Plaintiff,

v.

TROPICALPARADISE, *et al.*,
Defendants.

CIVIL ACTION NO. 2:23-cv-1598

FILED UNDER SEAL

**ORDER ON PLAINTIFF'S EX PARTE MOTION FOR AN ORDER AUTHORIZING
ALTERNATIVE SERVICE ON DEFENDANTS PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 4(f)(3)**

AND NOW, this 8th day of September, 2023, upon consideration of Plaintiff's Ex Parte Motion for an Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3),

IT IS HEREBY ORDERED that said Motion is GRANTED;

IT IS FURTHER ORDERED that Plaintiff are authorized to make alternative service of the Summonses, the Complaint, any discovery, and all filings in this matter upon each Defendant in this action, as follows:

1. via e-mail by providing the address to Plaintiff's designated website to Defendants via (i) the e-mail accounts provided by Defendants as part of the data related to their respective e-commerce stores, or (ii) the e-commerce marketplace for each of the e-commerce stores, or
2. via website publication by posting copies of the Summonses, Complaint, any Discovery, and all filings in this matter on Plaintiff's designated website on www.ferencelawsuit.com.

s/David Stewart Cercone
David Stewart Cercone
Senior U.S. District Court Judge

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

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-cv-1598

FILED UNDER SEAL

PRELIMINARY INJUNCTION ORDER

WHEREAS, 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 the Defendants identified on **Schedule “A”** to the Complaint and attached hereto (collectively, the “Defendants”)¹. The Court has considered the Application, the evidence in the record, and the applicable law.

WHEREAS, 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, On September 8, 2023, the Court entered the following Orders:

¹ 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”).

(A) (1) a temporary restraining order; (2) an order restraining assets and Merchant Storefronts, (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”, and the Third-Party Service Providers and Financial Institutions, in light of Defendants’ intentional and willful offerings for sale and/or sales of Infringing Products (“Application”); and

(B) Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3) (“the Alternative Service Order”);

WHEREAS, upon Plaintiff’s motion, in order to give Plaintiff additional time to serve the Defendants, and to provide the Defendants with sufficient time to respond to the Show Cause Order, this Court extended the initial TRO, re-set the briefing schedule, and re-scheduled the Show Cause Hearing to November 2, 2023.

WHEREAS, pursuant to the terms of the Alternative Service Order, the Defendants have been served with notice of this Show Cause Hearing; and

WHEREAS, on November 2, 2023, Plaintiff appeared for the Order to Show Cause Hearing, however no Defendants appeared. Further, none of the Third-Party Service Provider(s) or Financial Institution(s) appeared.

ORDER

I. Restraining Order

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, the injunctive relief previously granted on September 8, 2023, and extended by further Order, shall remain in place through the pendency of this litigation, and issuing this Preliminary Injunction

(hereafter “PI Order”) is warranted under 15 U.S.C. § 1116, 17 U.S.C. § 502, and Federal Rules of Civil Procedure 64 and 65.

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 are hereby restrained as follows:

- (1) from (a) their unauthorized and unlicensed use of Plaintiff’s Copyrighted Works, 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 Plaintiff’s Copyrighted Works;
- (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

² As defined in the Complaint, a “User Account” is any and all accounts with online marketplace platform, including, Aliexpress.com, Amazon.com, eBay.com, Joybuy, Temu, Wish.com, and Walmart.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.

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 Copyrighted Works which is visible to a computer user or serves to direct computer searches to Internet based 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 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 (“Third Party Service Provider(s)”), and financial institutions, including but not limited to, 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., Walmart Pay, PayPal, Inc. d/b/a paypal.com, and Context Logic, Inc. d/b/a wish.com (“Financial Institutions,”)⁵ 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” 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;⁶

(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

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.

⁵ Plaintiff acknowledges it is seeking multiple forms of relief. Plaintiff will promptly provide supplemental briefing or oral argument on any issue should the Court request it.

⁶ 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.

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 Plaintiff’s 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 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 Plaintiff’s 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 selling the Infringing Products;

(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 PI 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 PI Order in accordance with the Alternative Service Order.

B. IT IS HEREBY ORDERED, as sufficient cause has been shown, that upon Plaintiff's 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 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 HEREBY ORDERED, as sufficient cause has been shown, that:

- (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 using Plaintiff’s Copyrighted Works (i.e., preventing a seller from listing for sale under the identified ASIN);

- (4) The Plaintiff has demonstrated that the following products as pictured in the attached **Schedule “B”** are either made, used by, offered for sale or sold into the United States are Infringing Products; consequently, all online marketplaces, including but not limited to, Alibaba, amazon.com, ebay.com, aliexpress.com, Joybuy, Temu, Walmart.com, and wish.com, shall upon receipt of this Order, suspend, block, tombstone, and/or delete any and any product listings identified by the Plaintiff as either identical or substantially similar, to the above-described products in **Schedule “B”**, whether sold by the Defendant or other persons or entities.
- (5) Upon Plaintiff’s request, a Third-Party Service Provider shall remove listings and/or advertisements for any product advertised using Plaintiff’s Photographs and/or Videos; and
- (6) this Order shall remain in effect during the pendency of this action or until further order of the Court.

II. Order Authorizing Expedited Discovery

A. IT IS FURTHER ORDERED, as sufficient cause has been shown, that:

- (1) Plaintiff may propound interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and 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.
- (2) Plaintiff may serve requests for the production of documents pursuant to FRCP 26 and 34, and 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 produce all documents responsive to such requests within fourteen (14) days of service to Plaintiff's counsel.

(3) Plaintiff may serve requests for admissions pursuant to FRCP 26 and 36, and 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 requests 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, 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) any and 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.

III. Security Bond

IT IS FURTHER ORDERED that 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

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 2nd day of November, 2023.
Pittsburgh, Pennsylvania

s/David Stewart Cercone
David Stewart Cercone
Senior United States District Judge

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	yyiyaya	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
26	Ipawspace Pet Store	1102498241
27	JANEYI Store	1102156587
28	KeePiy Store	1101868284
29	KOVA TOY Store	1101535082
30	LM Love Pet Store	1101672153
31	LYPets Store	1101384895
32	Magijew 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
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51	WBWBM 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
■	■	■
64	Guanlai01	A3879TLL9WFEZF
65	Homegarchen	A2XM1301Y2GYM
66	linshengshangdian	AZ4AF9NXEDD9I
67	ReCheng	A1PBMPVG01QG5E
68	RUN666	A1LSNKBB09HWXP
69	Teagany	AW9YB5V49RGHI
70	WANGSUAN	A34KSQ1M9FITHR
71	xilei888	A3J3ZH8KN8J19Z
72	Shenzhen Kaiyuan da electronic Commerce Co., LTD	10963
73	Shenzhen Mingxinyang trading Co., LTD	9330
74	Chengdu orange flower Cheng technology Co., LTD	11419
75	Excellent Products Shop	6072727823483
76	Many cats	4828499765869
77	Shenzhen Bolandi Toys Co Ltd	6126377163188
■	■	■

█	█	█
█	█	█
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82	Worry free shop	40793316327
83	G-CHEN	101276139
84	LiFeng Electronic Co. ItD	101245782
85	Niuta Technology Co., Ltd	101295021
86	SHANG HAI BAO YU ELECTRONIC BUSINESS CO LTD	101044628
87	Ugerlov Fashion Co. Ltd	101180744
88	Xinlie	101095294

Schedule “B”

Defendant No.	Defendant/Store Name	Screen shot
1	TropicalParadise	
2	Doggy Steven Store	
3	Gift House	
4	HANXU_NN	
5	nangua	
6	xuxiaojun1759	
7	yiyaya	
8	A Family Of Pet Lovers Store	
9	AODOO shipping Store	

10	Aquakiwi Store	
11	Art Bath Store	
12	AYIJIA-01 Store	 <p data-bbox="1031 766 1161 934"> PRODUCT DESCRIPTION - Pet-friendly, safe and effective - Easy to use - Professional quality and performance - Durable and long-lasting - Easy to clean - Professional quality </p> 
13	Cute Paws Pets Store	
14	Cute Store	
15	DGFC HPA Store	
16	DleHome Store	<p data-bbox="1057 1564 1154 1581">SIMPLE OPERATION</p> 
17	Dudon PETS Store	










18	EHEH Store	
19	Fashion Clothes For Dogs Store	
20	FisPet Store	
21	Gloabl Pets Supplier Store	
22	Hinko Gany Store	
23	homegarden1 Store	
24	HOTcolor Store	
25	Impression Home Store	






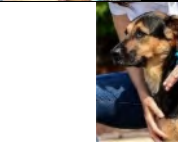




26	Ipawspace Pet Store	
27	JANEYI Store	
28	KeePiy Store	
29	KOVA TOY Store	
30	LM Love Pet Store	
31	LYPets Store	
32	Magjew Store	
33	MARUI Store	
34	ONE PET SUPPLY Store	

35	OnePet Store	
36	online hot deals Store	
37	PETART Store	
38	Pets Tribe Store	
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41	rabichen Store	
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45	Spicy strips Store	 
46	SSHEN PET Store	
47	sunnoo Store	
48	TAIBAIJIA Official Store	
49	TIPEGON Official Store	
50	Urwellcome Store	
51	WBWBMV Store	
52	With Pets Store	 
53	World Pet Supplies Store	 

54	Xleipet Store	
55	XRuiPet	
56	XWangPet Store	
57	Yaluosi Store	
58	Yongliang LED Lighting Store	
59	YOZWOO Home Store	
60	YPLG Store	
61	ZhuLi866 Store	

62	RFCW Pet Supplies Store	
63	aofenggasiefeng	
64	Guanlai01	
65	Homegarchen	
66	linshengshangdian	
67	ReCheng	
68	RUN666	
69	Teagany	
70	WANGSUAN	

71	xilei888	
72	Shenzhen Kaiyuan da electronic Commerce Co., LTD	
73	Shenzhen Mingxinyang trading Co., LTD	
74	Chengdu orange flower Cheng technology Co., LTD	
75	Excellent Products Shop	
76	Many cats	
77	Shenzhen Bolandi Toys Co Ltd	
78	Sports Hall	
80	TGB	
81	Thousands of birds to Lin	








82	Tirith	
83	Worry free shop	
84	G-CHEN	
85	LiFeng Electronic Co. ItD	
86	Niuta Technology Co., Ltd	
87	SHANG HAI BAO YU ELECTRONIC BUSINESS CO LTD	
88	Ugerlov Fashion Co. Ltd	 <p>Shower Adapter</p> <p>Adapters Included!</p> <p>Garden Hose + Target Adapter</p>

EXHIBIT 2

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 2:21-cv-406

FILED UNDER SEAL

1) TEMPORARY RESTRAINING ORDER; 2) ORDER RESTRAINING ASSETS AND MERCHANT STOREFRONTS; 3) ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE; AND 4) ORDER AUTHORIZING EXPEDITED DISCOVERY

This matter is before the Court upon Plaintiff's *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 the Defendants identified on **Schedule "A"** to the Complaint and attached hereto (collectively, the "Defendants"). The Court has considered the Application, the evidence in the record, and the applicable law.

By the instant Application, Plaintiff, move *ex parte* pursuant to 15 U.S.C. § 1116, Federal Rules of Civil Procedure 64 and 65, and The All Writs Act, 28 U.S.C. § 1651(a), for entry of a temporary restraining order and an order restraining assets and Merchant Storefronts, for federal unfair competition in violation of Section 43(a) of the Trademark Act of 1946, as amended; federal unfair competition, federal trademark infringement; common law unfair competition; and common law trademark infringement, and related state law claims. Because Plaintiff has satisfied

the requirements for the issuance of a temporary restraining order, and good cause has been shown, the Court grants Plaintiff's Application.

FACTUAL FINDINGS & CONCLUSION OF LAW

1. Plaintiff, BROADWAY PINE BRANDS LLC, ("Broadway" or "Plaintiff") is likely to prevail on its Lanham Act claims, and related state law claims at trial and there is a substantial basis to support each of the below findings.

2. The original designer and creator of the Daisy Pillow, Yi Ping Lai, President of Heart to Heart Gifts, Inc. ("Heart to Heart") began by making handmade pillows, pillow beds, and accessories out her home in 1995. Since then, she created and innovated all of the Heart to Heart Gifts, Inc.'s products and packaging. This is a costly effort involving graphic design, industrial design and tooling. It takes time to create, design, test, redesign and retest prototypes. A lot of money was spent on photography to show how the product Works or to highlight the end result. That photography is used on the company's website, Amazon store, sent to customers, and used at tradeshow. Products are introduced to retailers via tradeshow across the country. This introduction process costs a lot of money but it is a chance to show customers the quality and use of the product.

3. Like the other Heart to Heart Gifts products, Plaintiff's product branded the BUTTERFLY CRAZE® Daisy Pillow ("Plaintiff's Product") was conceived by Yi Ping Lai, the former owner of Heart to Heart Gifts. Today, the Butterfly Craze Daisy Pillows are a well-known national brand in the gift and houseware industries. It is recognized for its quality, inventions, creative packaging and whimsical designs. Customers often immediately recognize new products as being invented and designed by Heart to Heart Gifts. It is for that reason that the Plaintiff acquired Heart to Heart Gifts, including its all of the assets, intellectual property,

goodwill and brands. More specifically, Plaintiff acquired and is the current owner of the Butterfly Craze brand Pillow.

4. Plaintiff has gained significant rights in Plaintiff's Product, through use, advertising, and promotion. Plaintiff is also the owner of a federally registered trademark ("Plaintiff's Mark"), plus photographs ("Plaintiff's Works"), videos, artwork, creative text, and product instructions appearing on butterflycraze.com and Amazon.com.

5. Defendants, by operating Internet based e-commerce stores, and fully interactive, commercial Internet websites operating under Defendants' respective seller identities set forth on Schedule "A" hereto (the "Seller IDs"), Defendants are either (i) using Plaintiff's photographs, while promoting, selling, offering for sale and distributing knock-offs of Plaintiff's Product, thus unfairly competing, and/or (ii) infringing Plaintiff's Works; and/or (iii) using Plaintiff's federally registered trademark BUTTERFLY CRAZE[®] ("Plaintiff's Mark")¹, while offering to sell and selling knock-offs of Plaintiff's Product, thus counterfeiting.

6. Through the e-commerce marketplace platform, Plaintiff accessed all of the e-commerce stores operating under Defendants' Seller IDs and captured the Defendants' listings at issue on the e-commerce stores. At the conclusion of the process, the detailed webpages and photographs were inspected by Plaintiff's representative who confirmed that each Defendant is featuring, displaying, and/or using Plaintiff's Works, Plaintiff's photographs, and/or Plaintiff's Mark, without authorization and the products that each Defendant is offering for sale are not genuine products (i.e. selling Knock-off Products).

¹ Plaintiff's Mark is the subject of U.S. Reg. No. 3528611, BUTTERFLY CRAZE[®] for "online retail store services featuring decorative products, costumes, toys, gifts and fashion accessories; wholesale stores featuring decorative products, costumes, toys, gifts, and fashion accessories" in international class 35. While all of the Defendants are allegedly unfairly competing, Plaintiff has alleged that only Defendant Nos. 7, 14, 16, 23, 28, 32, 40, 41, 44, 54, 55, 60, 69, 70, and 74 have used Plaintiff's Mark to sell their goods.

7. Plaintiff has a strong probability of proving at trial that consumers are likely to be confused by Defendants' advertisement, promotion, sale, offer for sale, or distribution of products with unauthorized and unlicensed uses of Plaintiff's Mark and Plaintiff's Works in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), in violation of the Section 1114 of the Lanham Act, and prevailing on their related state law claims.

8. Plaintiff has a strong probability of proving their claims under the Lanham Act, and related state law claims and there is substantial basis to support each of the below findings.

9. Plaintiff, as well as consumers, is likely to suffer immediate and irreparable losses, damages and injuries before Defendants can be heard in opposition, unless Plaintiff's Application for *ex parte* relief is granted. There is good cause to believe that the unauthorized and unlicensed use of Plaintiff's Works and/or Plaintiff's Mark will continue in the marketplace; that consumers are likely to be misled, confused, and disappointed by the quality of the products so advertised, and that Plaintiff may suffer loss of sales for its genuine products and an unnatural erosion of the legitimate marketplace in which it operates. There is also good cause to believe that if Plaintiff proceeds on notice to Defendants of this Application, Defendants can easily and quickly change the ownership or modify e-commerce store account data and content, change payment accounts, redirect consumer traffic to other seller identification names, and transfer assets and ownership of Seller IDs, thereby thwarting Plaintiff's ability to obtain meaningful relief. As other courts have recognized, proceedings against those who deliberately traffic in infringing merchandise are often useless if notice is given to the adverse party.

10. The balance of potential harm to Defendants of being prevented from continuing to profit from their illegal and infringing activities if a temporary restraining order is issued is far

outweighed by the potential harm to Plaintiff, its reputation, and its goodwill as a manufacturer and distributor of quality products, if such relief is not issued.

11. The public interest favors issuance of the temporary restraining order in order to protect Plaintiff's interests and protect the public from being injured, deceived and defrauded by the passing off of Defendants substandard goods as Plaintiff's genuine goods.

12. Under Pennsylvania law this Court may issue a prejudgment asset restraint where Plaintiff's complaint asserts a claim for money damages. This Court also has the inherent authority to issue a prejudgment asset restraint when Plaintiff's complaint seeks relief in equity. According to the Lanham Act, 15 U.S.C. § 1117(a)(1), Plaintiff is entitled, "subject to the principles of equity, to recover ... defendant's profits." Plaintiff seeks, among other relief, that Defendants account for and pay to Plaintiff all profits realized by Defendants by reason of Defendants' unlawful acts. Therefore, this Court has the authority to grant Plaintiff's request for a prejudgment asset freeze to preserve the relief sought by Plaintiff and preserve the Defendants' ability to at least partially satisfy a judgment.

13. Similarly, if Defendants are given notice of the Application, they are likely to destroy, move, hide or otherwise make inaccessible to Plaintiff the records and documents relating to Defendants' illegal and infringing activities. Therefore, Plaintiff has good cause to be granted expedited discovery.

ORDER

Based on the foregoing findings of fact and conclusions of law, Plaintiff's Application is hereby **GRANTED** as follows (the "Order"):

I. Temporary Restraining Order

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, that 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 are hereby restrained as follows:

- (1) from (a) their unauthorized and unlicensed use of Plaintiff's Mark and/or Plaintiff's 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 Mark and/or Plaintiff's Works;
- (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

² 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 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.

- 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 discontinue use of the Plaintiff's Mark and/or Plaintiff's Works 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 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)”) 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 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” 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;⁴

- (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 Plaintiff’s counsel with all data that

⁴ 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 discovered 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.

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 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 Plaintiff's 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 the Plaintiff's Mark and/or Works and/or unfairly competing with Plaintiff;

(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 shall remain in effect until the date for the hearing to show cause why a preliminary injunction should not be issued as set forth below, or until such further dates as set by the Court or stipulated by the parties.

B. IT IS HEREBY ORDERED, as sufficient cause has been shown, that upon Plaintiff's 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 Plaintiff's 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 HEREBY ORDERED, as sufficient cause has been shown, that:

- (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 (ASINs): B00ZAS7HBM (hot pink large DAISY PILLOW), B00ZAS7J2Y (blue large DAISY PILLOW), B007496M20 (pink large DAISY PILLOW), B0073VWDDG (purple large DAISY PILLOW), B0073WL200 (green large DAISY PILLOW), B01EZ31P8S (blue medium DAISY PILLOW), B01EZ31P9M (hot pink medium DAISY PILLOW), by any Seller that has not been authorized by Plaintiff; contemporaneously with the service of this Order, Plaintiff shall provide notice to Amazon of Plaintiff’s authorized sellers;
- (3) Amazon.com, Inc., and its related companies and affiliates, including Amazon Services, LLC, and Amazon Payments, Inc., shall place the following Amazon Standard Identification Numbers (ASINs): B00ZAS7HBM (hot pink large DAISY PILLOW), B00ZAS7J2Y (blue large DAISY PILLOW), B007496M20 (pink large DAISY PILLOW), B0073VWDDG (purple large DAISY PILLOW), B0073WL200 (green large DAISY PILLOW), B01EZ31P8S (blue medium DAISY PILLOW), B01EZ31P9M (hot pink medium DAISY PILLOW), into Amazon’s gating program, so that Plaintiff will be able to control which sellers list product under these ASINs; and
- (4) 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 unfairly competing with

- Plaintiff's Product (i.e., preventing a seller from listing for sale under the identified ASIN);
- (5) Upon Plaintiff's request, a Third-Party Service Provider, shall remove listings and/or advertisements for any product that infringes on Plaintiff's Works and/or Mark; and
- (6) This Order shall remain in effect until the date for the hearing to show cause why a preliminary injunction should not be issued as set forth below, or until such further dates as set by the Court or stipulated by the parties.

**II. Order to Show Cause Why a Preliminary Injunction
Should Not Issue and Service of Order**

- A. Defendants are hereby ORDERED to show cause before this Court at a videoconference hearing to be held on the 22nd day of April, 2021 at 11:00 a.m. for why a preliminary injunction pursuant to FRCP 65(a), should not issue. **Defendants are on notice that failure to appear at the hearing may result in the imposition of a preliminary injunction against them.** The parties shall contact Chambers to obtain the videoconference link.
- B. Opposing papers, if any, shall be filed electronically with the Court and served on Plaintiffs' counsel by delivering copies thereof to the office of Ference & Associates LLC at 409 Broad Street, Pittsburgh, Pennsylvania 15143 before April 13, 2021. Plaintiffs shall file any Reply papers on or before April 16, 2021.
- C. After Plaintiffs' counsel has received confirmation from the Third Party Service Providers and Financial Institutions or otherwise, regarding the restraint of funds directed herein, Plaintiffs shall serve copies of the Complaint, the Application, this Order, and any Discovery on each Defendant via their corresponding email/online contact form provided on the Internet based

e-commerce stores operating under the respective Seller IDs, or by providing a copy of this order by e-mail to the marketplace platform, which in turn notifies each Defendant of the Order, or by other means reasonably calculated to give notice which is permitted by the Court. In addition, Plaintiffs shall post copies of the Complaint, Application, this Order, any Discovery, and all other pleadings and documents filed in this action on a website designated by Plaintiffs,⁵ and shall provide the website address to Defendants via e-mail/online contact form, and such notice so given shall be deemed good and sufficient service thereof. Plaintiffs shall continue to provide notice of these proceedings and copies of the documents on file in this matter to Defendants by regularly updating the website designated by Plaintiffs or by other means reasonably calculated to give notice which is permitted by the Court.

III. Order Authorizing Expedited Discovery

A. IT IS FURTHER ORDERED, as sufficient cause has been shown, that:

- (1) Plaintiff may propound interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and 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 Plaintiffs' counsel.
- (2) Plaintiff may serve requests for the production of documents pursuant to FRCP 26 and 34, and Defendants, their respective officers, employees, agents, servants and attorneys, and all persons in active concert or participation with any of them, who receive actual

⁵ Rule 65 has been interpreted to require that a party have notice of the motion and hearing; perfecting service on a defendant is not a prerequisite to the entry of a preliminary injunction order. *Pate v. Gov't of the Virgin Islands*, 2015 WL 1937701 n.9 (VI Sup. Ct. April 17, 2015); *Corrigan Dispatch Co. v. Casa Guzman, S.A.*, 569 F.2d 300, 302 (5th Cir. 1978).

notice of this Order, shall produce all documents responsive to such requests within fourteen (14) days of service to Plaintiffs' counsel.

- (3) Plaintiff may serve requests for admissions pursuant to FRCP 26 and 36, and 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 requests within fourteen (14) days of service to Plaintiffs' 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, 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) any and 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 Mark, and/or Plaintiffs' Works in connection with the distribution, marketing, advertising, offering for sale, or sale of any products, and any products which use Plaintiffs' Plaintiffs' Mark, and/or Plaintiffs' Works.

V. Security Bond

IT IS FURTHER ORDERED that Plaintiffs shall place security (corporate surety bond, cash, certified check, or attorney's check) in the amount of \$ 5,000 Dollars (five-thousand dollars) with the Court, which amount is determined adequate for the payment of any damages any person may be entitled to recover as a result of an improper or wrongful restraint ordered hereunder.

VI. Summons

IT IS FURTHER ORDERED that the Clerk of the Court shall issue a single original summons in the name of "SHIRO HOUSE and all other Defendants identified in the Complaint" that will apply to all Defendants.

SO ORDERED.

SIGNED this 30th day of March, 2021, at 12:30
p.m. Pittsburgh, Pennsylvania

s/ J. Nicholas Ranjan
UNITED STATES DISTRICT JUDGE

Schedule "A"
Defendants With Store Name and Seller ID

Defendant No.	Defendant/Store Name	Seller ID
1	Shiro House	AO7O6LWW69O3X
2	*m·kvfa*	A1GPU45BQASLZ1
3	Alderaian	A3EBBM1568OB30
4	ALK7	AZ3OLQ8187630
5	aozhun	ASEUXLETHI4Y
6	Asibeiu	A2P9NBU7XCCOFQ
7	Banens	A2SSDH8T7HB4BU
8	Bonling	A3711ZD81F1UJD
9	ConboEY	A229NX2SLISJ99
10	CQCYD 7-15 Days Fast Delivery	A12QD2QFPLA9X4
11	DDUOMI	A1GK27UNLJT4TZ
12	DHGEX	A103LBR8EX1N48
13	DilingÔDiling	A2FXS73200LKOZ
14	Dimocax	AJP0PD1O3DGA2
15	Eddizu	A2DJE863SU2MU6
16	Enjoy*Life.*&	AOE9PAP4M0GU6
17	FanBo So	A2JOCW3M9KNMHZ
18	Foutou	A309F00C1L8YA8
19	Fthome	A2UDVIVQQ2SWXG
20	Georgia-visitor	A2BO95VTBINQCN
21	GH+GS	A1XAUBYOOLF1GY
22	GUOYINZHIPIN	AZXX4YLIY9QD

Defendant No.	Defendant/Store Name	Seller ID
23	GYSTL	A31J3IIAL8RI88
24	hgs76dh	A1GNJ0L6IEMC58
25	HonMohui	A1J2LOG9IGAL20
26	JIAHUIIdianshang	A2XNADO6Q9H5E1
27	JINGTAODIANZI	A1QYIW1HDBTTNF
28	JJcye	A20VV6JUVACB20
29	JuanX	A1BJBLDUO3ET52
30	kwjiliguala±	A2RCFR10RMAVMU
31	lan diao	A38V9ZC6TLKPV8
32	Lindsay Nixon(20-26 Days Delivery)	A23TJ6XHINM6HD
33	Liontobuy	A1DOEP57X2K2JZ
34	LJEA-US	A2GVX087JFO5YN
35	Longtous	A1Y96VML4RNQ3
36	LONPYAO	A2M6CFO3E1R2PW
37	lucky ☆°C81US	A2VJP7ZX0UH6VC
38	LUJIAHAO180	A1P8GAC7G6FB2B
39	Marridon	A28IZYH4T3DAHC
40	mei yun	A2Z6T9H84TL1BZ
41	Mia Yonger(20-26 Days Delivery)	A2LC87COY29AOI
42	Mild Milk.	AP5N6HIAPCHCY
43	MInPInLa	A3AZJDXCVCHVQK
44	MoliQ	A2NR5E7IQNTZ3I
45	MSIYOU	A2GSVW9R96OFID

Defendant No.	Defendant/Store Name	Seller ID
46	naijing-Fast Delivery (7-15 days)	A3CNEDKDB0UAFF
47	NANCY99	A29654R28ZMDWL
48	NANGYANG	ADCHCPP17JEBO
49	Ounabing	A1IV2N6N897ZZ0
50	Owill (7-15 Days Fast Delivery)	AES3TBGYMVMVYV
51	PINGJIN	A1MMCOAOCOYQFA
52	powlance	A21DOA8WOKBJC9
53	QIUsujing	A3UH6UZACX29NN
54	RapidYasuo	AT07G7YS4UPSZ
55	Renpojo	AY7AAF0S7HJ8U
56	Selltam.	A11P520JI703ME
57	SHIYI Girl	AIU1IMGVXVAZQ
58	Sunday8	A2NCGU6N5OXGJB
59	Syysgift	A1EQR11O0X7VTZ
60	The orchid shop	AZ4JDOFF8X61C
61	Tini-Store	A2N2SVY65F3QKF
62	udhOnshD	A7LJKPN8Q5IGX
63	Unparalleled	AAEJ0TZ8QBKCR
64	Wear-DOY	A2YNMWKAOZTIB3
65	WUYU STORE	A1DDBGECZL3VFW
66	XEHWG	A26P31KEZQAFFM
67	XuYuan SC	A3KK04QNGEGRD7
68	YanYanLady	A8RBVODAW00AN
69	YIXUANYX	AXSS8QBGKFR6H

Defendant No.	Defendant/Store Name	Seller ID
70	Yolo17&&&%	AUBXF2TRMPR6X
71	Youdw	A2A6AEZ0OKN47N
72	Yowein	A102J2LW09ZAA3
73	zhuxinxing	A2LS3H6FBE1SH
74	济源天翔商贸有限公司 [Jiyuan Tianxiang Trading Company]	A1JZO62R2D4VD5
75	dangworld-8	265028331607
76	linxia-2136	224316778432
77	long9tansha	363279616563
78	sironwen-0	324461177626
79	wangti-67	143918412141
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
90	SevenU Store	4921031
91	Shop2944189 Store	2944189
92	Shop5055184 Store	5055184

Defendant No.	Defendant/Store Name	Seller ID
93	Shop5426288 Store	5426288
94	Shop5517084 Store	5517084
95	Shop911137204 Store	911137204
96	bianyiren	5b0cb8e101287527a576e9e7
97	ElfinHome	566f60cd4ba04645665167bb
98	ngoc234	5e59dac3d3f7da16c02405ea

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BROADWAY PINE BRANDS LLC,

Plaintiff,

v.

SHIRO HOUSE, *et al.*,

Defendants.

CIVIL ACTION NO. 2:21-cv-406

FILED UNDER SEAL

**ORDER ON PLAINTIFF'S EX PARTE MOTION FOR AN ORDER AUTHORIZING
ALTERNATIVE SERVICE ON DEFENDANTS PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 4(f)(3)**

AND NOW, this 30th day of March, 2021, upon consideration of Plaintiff's Ex Parte Motion for an Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3),

IT IS HEREBY ORDERED that said Motion is GRANTED;

IT IS FURTHER ORDERED that Plaintiffs are authorized to make alternative service of the Summonses, the Complaint, any discovery, and all filings in this matter upon each Defendant in this action, as follows:

1. via e-mail by providing the address to Plaintiffs' designated website to Defendants via (i) the e-mail accounts provided by Defendants as part of the data related to their respective e-commerce stores, or (ii) the e-commerce marketplace for each of the e-commerce stores, or
2. via website publication by posting copies of the Summonses, Complaint, any Discovery, and all filings in this matter on Plaintiffs' designated website on www.ferencelaw.com.

s/ J. Nicholas Ranjan
United States District Judge

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

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. 21-406

(Judge Ranjan)

PRELIMINARY INJUNCTION ORDER

WHEREAS, on March 29, 2021, Plaintiff, Broadway Pine Brands LLC 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)”), in light of Defendants’ intentional and willful offerings for sale and/or sales of Knock-Off Products¹ (“Application”).

¹ As alleged in Plaintiffs’ Complaint, “. . .the Defendants identified in **Schedule “A”** of the Complaint, As alleged in the Complaint, Defendants are either (i) using without authorization Plaintiff’s distinct photograph(s)(“Plaintiff’s Works”),while promoting, selling, offering for sale and distributing knock-offs of Plaintiff’s Product thus unfairly competing, in a willful attempt to pass off their knock-off products as genuine versions of Plaintiff’s Products, and/or (ii) using Plaintiff’s federally registered service mark Butterfly Craze® (“Plaintiff’s Mark”), while offering to sell and selling knock-offs of Plaintiff’s Product, thus counterfeiting.

WHEREAS on March 30, 2021, the Court entered the following Orders:

(A) 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts; 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”**, and Amazon (“TRO”) (ECF No. 19); and

(B) an Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3);

WHEREAS, on April 14, 2021, upon Plaintiff’s Motion, the Court extended the temporary restraining order and ordered the Defendants to appear on May 13, 2021 at 1:00 pm., and show cause why a preliminary injunction should not be entered (ECF No. 23);

WHEREAS, the Court then re-scheduled the show cause hearing to one hour later at 2:00 p.m. on the same day; and

WHEREAS, on May 13, 2021 at 2:00 p.m., Plaintiff appeared for the Order to Show Cause Hearing, however no Defendants appeared. Further, no Third Parties or Financial Institutions appeared to oppose the show cause order.

ORDER

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, that the injunctive relief previously granted on March 30, 2021, and extended and shall remain in place through the pendency of this litigation or until further order of this Court, and issuing this

While all of the Defendants are alleged to be unfairly competing, Plaintiff has alleged that only Defendant Nos. 7, 14, 16, 23, 28, 32, 40, 41, 44, 54, 55, 60, 69, 70, and 74 have used Plaintiff’s Mark to sell their goods. To be the unfairly competing products, whether counterfeit or not, are referred to as Knock-Offs.

Preliminary Injunction is warranted under 15 U.S.C. § 1116, Federal Rules of Civil Procedure 64 and 65, and The All Writs Act, 28 U.S.C. § 1651(a).

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 are hereby restrained as follows:

- (1) from (a) their unauthorized and unlicensed use of Plaintiff's Mark and/or Plaintiff's 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 Mark and/or Plaintiff's Works;
- (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

² 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 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.

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 discontinue use of the Plaintiff's Mark and/or Plaintiff's Works 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 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)”) 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 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” 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;⁴

- (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 Plaintiff’s counsel with all data that

⁴ 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 discovered 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.

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 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 Plaintiff's 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 the Plaintiff's Mark and/or Works and/or unfairly competing with Plaintiff;

(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 shall remain in effect until the date for the hearing to show cause why a preliminary injunction should not be issued as set forth below, or until such further dates as set by the Court or stipulated by the parties.

B. IT IS HEREBY ORDERED, as sufficient cause has been shown, that upon Plaintiff's 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 Plaintiff's 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 Plaintiffs' request, within no later than five (5) calendar days of Plaintiffs' 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 (ASINs): B00ZAS7HBM (hot pink large DAISY PILLOW), B00ZAS7J2Y (blue large DAISY PILLOW), B007496M20 (pink large DAISY PILLOW), B0073VWDDG (purple large DAISY PILLOW), B0073WL200 (green large DAISY PILLOW), B01EZ31P8S (blue medium DAISY PILLOW), B01EZ31P9M (hot pink medium DAISY PILLOW), by any Seller that has not been authorized by Plaintiff; contemporaneously with the service of this Order, 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 Numbers (ASINs): B00ZAS7HBM (hot pink large DAISY PILLOW), B00ZAS7J2Y (blue large DAISY PILLOW), B007496M20 (pink large DAISY PILLOW), B0073VWDDG (purple large DAISY PILLOW), B0073WL200 (green large DAISY PILLOW), B01EZ31P8S (blue medium DAISY PILLOW), B01EZ31P9M (hot pink medium DAISY PILLOW), 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 unfairly competing with Plaintiff's Product (i.e., preventing a seller from listing for sale under the identified ASIN); and
- (4) Upon Plaintiff's request, a Third-Party Service Provider, shall remove listings and/or advertisements for any product that infringes on Plaintiff's Works and/or Mark.

II. Order Authorizing Expedited Discovery

A. IT IS FURTHER ORDERED, as sufficient cause has been shown, that:

- (1) Plaintiff may propound interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and 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.
- (2) Plaintiff may serve requests for the production of documents pursuant to FRCP 26 and 34, and 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 produce all documents responsive to such requests within fourteen (14) days of service to Plaintiff's counsel.
- (3) Plaintiff may serve requests for admissions pursuant to FRCP 26 and 36, and 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 requests 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, 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) any and 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 Mark, and/or Plaintiff's Works in connection with the distribution, marketing, advertising, offering for sale, or sale of any products, and any products which use Plaintiff's Mark, and/or Plaintiff's Works.

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 further order of this Court, or until this Order is terminated.

SO ORDERED.

SIGNED this 13th day of May, 2021
Pittsburgh, Pennsylvania

s/ J. Nicholas Ranjan
J. NICHOLAS RANJAN
UNITED STATES DISTRICT JUDGE

Schedule “A”
Defendants With Store Name and Seller ID

Defendant No.	Defendant/Store Name	Seller ID
1	Shiro House	AO7O6LWW69O3X
2	*m·kvfa*	A1GPU45BQASLZ1
3	Alderaian	A3EBBM1568OB30
4	ALK7	AZ3OLQ8187630
5	aozhun	ASEUXLETHW4Y
6	Asibeiul	A2P9NBU7XCCOFQ
7	Banens	A2SSDH8T7HB4BU
8	Bonlting	A3711ZD81F1UJD
9	ConboEY	A229NX2SLISJ99
10	CQCYD 7-15 Days Fast Delivery	A12QD2QFPLA9X4
11	DDUOMI	A1GK27UNLJT4TZ
12	DHGXC	A103LBR8EX1N48
13	DilingÔDiling	A2FXS732O0LKOZ
14	Dimocax	AJP0PD1O3DGA2
15	Eddizu	A2DJE863SU2MU6
16	Enjoy*Life.*&	AOE9PAP4M0GU6
17	FanBo So	A2JOCW3M9KNMHZ
18	Foutou	A309F00C1L8YA8
19	Fthome	A2UDVIVQQ2SWXG
20	Georgia-visitor	A2BO95VTBINQCN
21	GH+GS	A1XAUBYOOLF1GY

Defendant No.	Defendant/Store Name	Seller ID
22	GUOYINZHIPIN	AZXK4YLIY9QD
23	GYSTL	A31J3IIAL8RI88
24	hgs76dh	A1GNJ0L6IEMC58
25	HonMohui	A1J2LOG9IGAL2O
26	JIAHUIadianshang	A2XNADO6Q9H5E1
27	JINGTAODIANZI	A1QYIW1HDBTTNF
28	JJcye	A20VV6JUVACB2O
29	JuanX	A1BJBLDUO3ET52
30	kwjiliguala±	A2RCFR10RMAVMU
31	lan diao	A38V9ZC6TLKPV8
32	Lindsay Nixon(20-26 Days Delivery)	A23TJ6XHINM6HD
33	Liontobuy	A1DOEP57X2K2JZ
34	LJEA-US	A2GVX087JFO5YN
35	Longtous	A1Y96VML4RNQ3
36	LONPYAO	A2M6CFO3E1R2PW
37	lucky ☆°C81US	A2VJP7ZX0UH6VC
38	LUJIAHAO180	A1P8GAC7G6FB2B
39	Marridon	A28IZYH4T3DAHC
40	mei yun	A2Z6T9H84TL1BZ
41	Mia Yonger(20-26 Days Delivery)	A2LC87COY29AOI
42	Mild Milk.	AP5N6HIAPCHCY
43	MInPInLa	A3AZJDXCVCHVQK
44	MoliQ	A2NR5E7IQNTZ3I

Defendant No.	Defendant/Store Name	Seller ID
45	MSIYOU	A2GSVW9R96OFID
46	naijing-Fast Delivery (7-15 days)	A3CNEDKDB0UAFF
47	NANCY99	A29654R28ZMDWL
48	NANGYANG	ADCHCPP17JEBO
49	Ounabing	A1IV2N6N897ZZ0
50	Owill (7-15 Days Fast Delivery)	AES3TBGYMYYV
51	PINGJIN	A1MMCOAOCOYQFA
52	powlance	A21DOA8WOKBJC9
53	QIUsujing	A3UH6UZACX29NN
54	RapidYasuo	AT07G7YS4UPSZ
55	Renpojo	AY7AAF0S7HJ8U
56	Selltam.	A11P520JI703ME
57	SHIYI Girl	AIU11MGVXVAZQ
58	Sunday8	A2NCGU6N5OXGJB
59	Syysgift	A1EQR11O0X7VTZ
60	The orchid shop	AZ4JDOFF8X61C
61	Tini-Store	A2N2SVY65F3QKF
62	udhOnshD	A7LJKPN8Q5IGX
63	Unparalleled	AAEJ0TZ8QBKCR
64	Wear-DOY	A2YNMWKAOZTIB3
65	WUYU STORE	A1DDBGECZL3VFW
66	XEHWG	A26P31KEZQAFFM
67	XuYuan SC	A3KK04QNGEGRD7
68	YanYanLady	A8RBVODAW00AN

Defendant No.	Defendant/Store Name	Seller ID
69	YIXUANYX	AXSS8QBGKFR6H
70	Yolo17&&&%	AUBXF2TRMPR6X
71	Youdw	A2A6AEZ0OKN47N
72	Yowein	A102J2LW09ZAA3
73	zhuxinxing	A2LS3H6FBE1SH
74	济源天翔商贸有限公司 [Jiyuan Tianxiang Trading Company]	A1JZO62R2D4VD5
75	dangworld-8	265028331607
76	linxia-2136	224316778432
77	long9tansha	363279616563
78	sironwen-0	324461177626
79	wangti-67	143918412141
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
90	SevenU Store	4921031
91	Shop2944189 Store	2944189

Defendant No.	Defendant/Store Name	Seller ID
92	Shop5055184 Store	5055184
93	Shop5426288 Store	5426288
94	Shop5517084 Store	5517084
95	Shop911137204 Store	911137204
96	bianyiren	5b0cb8e101287527a576e9e7
■	■	■
98	ngoc234	5e59dac3d3f7da16c02405ea

EXHIBIT 3

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

TALISMAN DESIGNS, LLC,

Plaintiff,

v.

DASANI, *et al.*,

Defendants.

Civil Action No. 2:20-cv-1084

FILED UNDER SEAL

~~PROPOSED~~ 1) TEMPORARY RESTRAINING ORDER; 2) ORDER RESTRAINING ASSETS AND MERCHANT STOREFRONTS; 3) ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE; AND 4) ORDER AUTHORIZING EXPEDITED DISCOVERY

This matter is before the Court upon Plaintiff's *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 the Defendants identified on **Schedule "A"** to the Complaint and attached hereto (collectively, the "Defendants"). The Court has considered the Application, the evidence in the record, and the applicable law.

By the instant Application, Plaintiff TALISMAN DESIGNS, LLC, move *ex parte* pursuant to 15 U.S.C. § 1116, Federal Rules of Civil Procedure 64 and 65, and The All Writs Act, 28 U.S.C. § 1651(a), for entry of a temporary restraining order and an order restraining assets and Merchant Storefronts, for federal unfair competition in violation of Section 43(a) of the Trademark Act of 1946, as amended; federal trademark infringement; common law unfair competition; and common law trademark infringement. Because Plaintiff has satisfied the

requirements for the issuance of a temporary restraining order, the Court grants Plaintiff's Application.

FACTUAL FINDINGS & CONCLUSION OF LAW

1. Plaintiff, TALISMAN DESIGNS, LLC, ("Talisman" or "Plaintiff") is likely to prevail on its Lanham Act claims, and related state law claims at trial.

2. Katherine Waymire founded Talisman Designs in 2002 making handmade wine accessories and packaging out of her home. Since then, Talisman Designs has created and innovated all of its own products and packaging. Today, Talisman is a well-known national brand in the gift and houseware industries. It is recognized for its quality, inventions, creative packaging and whimsical characters. Talisman innovates across four main categories – Baking, Prep Tools, Wood/Collections and Fun & Funky. Each category has a different, distinct look. Talisman's customers immediately recognize their products because of this. For instance, in the Fun & Funky line of products, most of the products have a distinct character that is personified by a face or character. Talisman's customers often immediately recognize their new products as being sold by them.

3. Talisman's top selling product called the Bacon Bin[®] bacon grease container ("Plaintiff's Product") was conceived by Waymire. Plaintiff owns the federally registered trademark U.S. Reg. No. U.S. Trademark Registration No. 5,398,411 for BACON BIN[®]. The Bacon Bin[®] grease holder is sold in online marketplaces such as Amazon.com and in brick and mortar stores. The Plaintiff's Product is designed to both strain and then store bacon grease that is poured into it while hot (up to 500 degrees Fahrenheit). The Plaintiff's Product includes a distinct tin can shape with ridges all around it and a whimsical sculpted piggy face top. ("Plaintiff's Trade Dress" or "Trade Dress").

4. Plaintiff has gained significant rights in Plaintiffs' Mark and Trade Dress, through use, advertising, and promotion. Plaintiff is also the owner of various published photographs, videos, artwork, creative text, and product instructions appearing on talismandesigns.com and ("Plaintiff's Works).

5. Defendants, by operating Internet based e-commerce stores, and fully interactive, commercial Internet websites operating under Defendants' respective seller identities set forth on Schedule "A" hereto (the "Seller IDs"), have advertised, promoted, sold, and offered for sale goods featuring, displaying, and/or using Plaintiff's Mark and/or Plaintiff's Works and/or Plaintiff's Trade Dress without authorization and Plaintiff has determined the products that each Defendant is offering for sale are not genuine products.

6. Through the e-commerce marketplace platform, Plaintiff accessed all of the e-commerce stores operating under Defendants' Seller IDs and captured the Defendants' listings at issue on the e-commerce stores. At the conclusion of the process, the detailed webpages and photographs were inspected by Plaintiff's representative who confirmed that each Defendant is featuring, displaying, and/or using Plaintiffs' Mark and/or Plaintiffs' Works and/or Trade Dress without authorization and the products that each Defendant is offering for sale are not genuine products.

7. Plaintiff has a strong probability of proving at trial that consumers are likely to be confused by Defendants' advertisement, promotion, sale, offer for sale, or distribution of products with unauthorized and unlicensed uses of Plaintiffs' Mark and/or Plaintiffs' Works and/or Plaintiff's Trade Dress, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), in violation of the Section 1114 of the Lanham Act, and prevailing on its related state law claims.

8. Plaintiff, as well as consumers, is likely to suffer immediate and irreparable losses, damages and injuries before Defendants can be heard in opposition, unless Plaintiff's Application for *ex parte* relief is granted. There is good cause to believe that the unauthorized and unlicensed use of Plaintiffs' Mark, Plaintiffs' Works, and/or Plaintiff's Trade Dress will continue in the marketplace; that consumers are likely to be misled, confused, and disappointed by the quality of the products so advertised, and that Plaintiff may suffer loss of sales for its genuine products and an unnatural erosion of the legitimate marketplace in which it operates. There is also good cause to believe that if Plaintiff proceeds on notice to Defendants of this Application, Defendants can easily and quickly change the ownership or modify e-commerce store account data and content, change payment accounts, redirect consumer traffic to other seller identification names, and transfer assets and ownership of Seller IDs, thereby thwarting Plaintiff's ability to obtain meaningful relief. As other courts have recognized, proceedings against those who deliberately traffic in infringing merchandise are often useless if notice is given to the adverse party.

9. The balance of potential harm to Defendants of being prevented from continuing to profit from their illegal and infringing activities if a temporary restraining order is issued is far outweighed by the potential harm to Plaintiff, its reputation, and its goodwill as a manufacturer and distributor of quality products, if such relief is not issued.

10. The public interest favors issuance of the temporary restraining order in order to protect Plaintiff's interests and protect the public from being injured, deceived and defrauded by the passing off of Defendants substandard goods as Plaintiff's genuine goods.

11. Under Pennsylvania law this Court may issue a prejudgment asset restraint where Plaintiff's complaint asserts a claim for money damages. This Court also has the inherent

authority to issue a prejudgment asset restraint when Plaintiff's complaint seeks relief in equity. According to both the Lanham Act, 15 U.S.C. § 1117(a)(1), Plaintiff is entitled, "subject to the principles of equity, to recover ... defendant's profits." Plaintiff seeks, among other relief, that Defendants account for and pay to Plaintiff all profits realized by Defendants by reason of Defendants' unlawful acts. Therefore, this Court has the authority to grant Plaintiff's request for a prejudgment asset freeze to preserve the relief sought by Plaintiff and preserve the Defendants' ability to at least partially satisfy a judgment.

12. Similarly, if Defendants are given notice of the Application, they are likely to destroy, move, hide or otherwise make inaccessible to Plaintiff the records and documents relating to Defendants' illegal and infringing activities. Therefore, Plaintiff has good cause to be granted expedited discovery.

ORDER

Based on the foregoing findings of fact and conclusions of law, Plaintiff's Application is hereby **GRANTED** as follows (the "Order"):

I. Temporary Restraining Order

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, that 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 are hereby restrained as follows:

- (1) from (a) their unauthorized and unlicensed use of Plaintiff's Mark, Plaintiff's Works and/or Plaintiff's Trade Dress 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 Mark, Plaintiff's Works, and/or Plaintiff's Trade Dress;

- (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,¹ Merchant Storefronts² 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 discontinue use of the Plaintiffs' Mark and/or Plaintiffs' Works and/or Plaintiff's Trade Dress within metatags or other markers within website source

¹ 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 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.

² 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.

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 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)") 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 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" 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;³

- (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 Plaintiff's 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 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

³ 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 discovered 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.

or Financial Institution's security interest in the funds) without express authorization of this Court;

(10) Upon Plaintiff's 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 the Plaintiffs' Mark, Plaintiffs' Works, and/or Plaintiff's Trade Dress and/or unfairly competing with Plaintiff;

(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 shall remain in effect until the date for the hearing to show cause why a preliminary injunction should not be issued as set forth below, or until such further dates as set by the Court or stipulated by the parties.

B. IT IS HEREBY ORDERED, as sufficient cause has been shown, that upon Plaintiff's 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 Plaintiff's 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.

II. Order to Show Cause Why a Preliminary Injunction Should Not Issue and Service of Order

A. Defendants are hereby ORDERED to show cause before this Court in the United States District Court for the Western District of Pennsylvania, the U.S. Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania in Courtroom No. 7C on the 3rd day of August at 9:30 by Zoom Video Conference ~~A.m. or at such other time that this Court deems appropriate~~, why a preliminary injunction, pursuant to FRCP 65(a), should not issue. **Defendants are on notice that failure to appear at the hearing may result in the imposition of a preliminary injunction against them.**

B. Opposing papers, if any, shall be filed electronically with the Court and served on Plaintiffs' counsel by delivering copies thereof to the office of Ference & Associates LLC at 409 Broad Street, Pittsburgh, Pennsylvania 15143 before July 28, 2020. Plaintiffs shall file any Reply papers on or before July 31, 2020.

C. After Plaintiffs' counsel has received confirmation from the Third Party Service Providers and Financial Institutions or otherwise, regarding the restraint of funds directed herein, Plaintiffs shall serve copies of the Complaint, the Application, this Order, and any Discovery on each Defendant via their corresponding email/online contact form provided on the Internet based e-commerce stores operating under the respective Seller IDs, or by providing a copy of this order by e-mail to the marketplace platform, which in turn notifies each Defendant of the Order, or by other means reasonably calculated to give notice which is permitted by the Court. In addition, Plaintiffs shall post copies of the Complaint, Application, this Order, any Discovery, and all other pleadings and documents filed in this action on a website designated by Plaintiffs,⁴ and shall provide the website address to Defendants via e-mail/online contact form, and such notice so given shall be deemed good and sufficient service thereof. Plaintiffs shall continue to provide notice of these proceedings and copies of the documents on file in this matter to Defendants by regularly updating the website designated by Plaintiffs or by other means reasonably calculated to give notice which is permitted by the Court.

III. Order Authorizing Expedited Discovery

A. IT IS FURTHER ORDERED, as sufficient cause has been shown, that:

⁴ Rule 65 has been interpreted to require that a party have notice of the motion and hearing; perfecting service on a defendant is not a prerequisite to the entry of a preliminary injunction order. *Pate v. Gov't of the Virgin Islands*, 2015 WL 1937701 n.9 (VI Sup. Ct. April 17, 2015); *Corrigan Dispatch Co. v. Casa Guzman, S.A.*, 569 F.2d 300, 302 (5th Cir. 1978).

(1) Plaintiff may propound interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and 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 Plaintiffs' counsel.

(2) Plaintiff may serve requests for the production of documents pursuant to FRCP 26 and 34, and 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 produce all documents responsive to such requests within fourteen (14) days of service to Plaintiffs' counsel.

(3) Plaintiff may serve requests for admissions pursuant to FRCP 26 and 36, and 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 requests within fourteen (14) days of service to Plaintiffs' 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, 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) any and 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 Mark, and/or Plaintiffs' Works, and/or Plaintiff's Trade Dress in connection with the distribution, marketing, advertising, offering for sale, or sale of any products, and any products which use Plaintiffs' Plaintiffs' Mark, and/or Plaintiffs' Works, and/or Plaintiff's Trade Dress.

V. Security Bond

IT IS FURTHER ORDERED that Plaintiffs shall place security (corporate surety bond, cash, certified check, or attorney's check) in the amount of \$ 250,000.00 Dollars (_____) ^{Clerk of} with the Court, which amount is determined adequate for the payment of any damages any person may be entitled to recover as a result of an improper or wrongful restraint ordered hereunder.

VI. Summons

IT IS FURTHER ORDERED that the Clerk of the Court shall issue a single original summons in the name of "DASANI and all other Defendants identified in the Complaint" that will apply to all Defendants.

SO ORDERED.

SIGNED this 21st day of July, 2020, at 1:00 pm
Pittsburgh, Pennsylvania



UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TALISMAN DESIGNS, LLC,

Plaintiff,

v.

DASANI, *et al.*,

Defendants.

CIVIL ACTION NO. 2:20-cv-1084

FILED UNDER SEAL

**ORDER ON PLAINTIFF'S EX PARTE MOTION FOR AN ORDER AUTHORIZING
ALTERNATIVE SERVICE ON DEFENDANTS PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 4(f)(3)**

AND NOW, this 22 day of July, 2020, upon consideration of Plaintiff's Ex Parte Motion for an Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3),

IT IS HEREBY ORDERED that said Motion is GRANTED;

IT IS FURTHER ORDERED that Plaintiffs are authorized to make alternative service of the Summonses, the Complaint, any discovery, and all filings in this matter upon each Defendant in this action, as follows:

1. via e-mail by providing the address to Plaintiffs' designated website to Defendants via (i) the e-mail accounts provided by Defendants as part of the data related to their respective e-commerce stores, or (ii) the e-commerce marketplace for each of the e-commerce stores, or
2. via website publication by posting copies of the Summonses, Complaint, any Discovery, and all filings in this matter on Plaintiffs' designated website on www.ferencelaw.com.

s/Arthur J. Schwab
United States District Judge

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

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

TALISMAN DESIGNS, LLC,

Plaintiff,

v.

DASANI, *et al.*,

Defendants.

Civil Action No. 20-1084

(Judge Schwab)

FILED UNDER SEAL

~~PROPOSED~~ PRELIMINARY INJUNCTION ORDER

WHEREAS, Plaintiff filed an *Ex Parte* Application for the following: 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts;¹ 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 to the Complaint and attached hereto (collectively, “the Defendants”), in light of the Defendants intentional and willful unfair competition and infringement of Plaintiff’s trademark and trade dress (“the Infringing Products”)² (“Application”);

¹ A “Merchant Storefront” is any and all User Accounts, as defined in the Complaint, any and all accounts with online marketplace platform(s) Amazon.com, eBay.com, Aliexpress.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.

² As alleged in Plaintiff’s Complaint, “. . . Defendants have offered for sale, sold, and distributed knock-off and infringing versions of Plaintiff’s BACON BIN[®] grease container 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, eBay.com, Wish.com, and AliExpress.com Internet marketplaces (“User Account(s)”). Plaintiff’s top selling product is the Bacon Bin[®] grease container. (“Plaintiff’s Product”). Plaintiff owns the federally registered trademark U.S. Reg. No. 5,398,411 for BACON BIN[®]. The Plaintiff’s Product includes a distinct tin can shape with ridges all around it and a whimsical sculpted piggy face top. (“Plaintiff’s Trade Dress” or “Trade Dress”). Plaintiff is also the owner of various published photographs, videos, artwork, creative text, and product instructions appearing on talismandesigns.com website. (“Plaintiff’s Works” or “Works”).

WHEREAS, 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, On August 21, 2020 at 1:00 p.m., the Court entered the following Orders:

(A) (1) a temporary restraining order; (2) an order restraining assets and Merchant Storefronts, (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”**, and Amazon (“TRO”) (Doc. No. 14); and

(B) Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3) (Doc. No. 19)(“the Alternative Service Order”);

WHEREAS, pursuant to the terms of the Alternative Service Order, the Defendants have been served with notice of this Show Cause Hearing; and

WHEREAS, on August 3, 2020, Plaintiff appeared for the Order to Show Cause Hearing, however no Defendants appeared. Further, none of the Third Party Service Provider(s) or Financial Institution(s) appeared.

I. Restraining Order

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, the injunctive relief previously granted on July 21, 2020 at 1:00 p.m. (Doc. No. 14), shall remain in place through the pendency of this litigation, and issuing this Preliminary Injunction (hereafter “PI Order”) is warranted under FRCP 65, and Section 34 of the Lanham Act.

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 Plaintiff's Mark, Plaintiff's Works and/or Plaintiff's Trade Dress 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 Mark, Plaintiff's Works, and/or Plaintiff's Trade Dress;
- (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,³ Merchant Storefronts⁴ 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 discontinue use of the Plaintiffs' Mark and/or Plaintiffs' Works

³ 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 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 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.

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 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 the 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)") 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 their related companies and affiliates, shall continue to restrain all funds, as opposed to ongoing account activity, in the accounts related to the Defendants as identified on Schedule "A" 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" hereto⁵;

- (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 continue to divert to a holding account for the trust of the Court all funds in 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, to the extent not already done, within five (5) business days of receiving this Order, provide Plaintiff's 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 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

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 discovered 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.

authorization of this Court;

- (10) Upon Plaintiff's 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, or Amazon accounts which are being used by Defendants for the purpose of infringing the Plaintiffs' Mark, Plaintiffs' Works, and/or Plaintiff's Trade Dress and/or unfairly competing with Plaintiff;
- (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 PI 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 PI Order in accordance with the Alternative Service Order.

B. IT IS HEREBY ORDERED, as sufficient cause has been shown, that those in privity with Defendants and with actual notice of this Order, including Third Party Service Providers,⁶ shall continue to be restrained and enjoined from engaging in any of the following acts or omissions shall remain in effect during the pendency of this action or until further order of the Court:

- (1) providing services for any accounts through which Defendants engage in the sale of Infringing Products, including without limitation, continued operation of Defendants' User Accounts and Merchant Storefronts;
- (2) displaying any advertisements used by or associated with Defendants in connection with the sale of Infringing Products; and
- (3) displaying links to any User Accounts or Merchant Storefronts associated with the Defendants in search results, including but not limited to, having links to any product listings, User Accounts, or Merchant Storefronts in any search index.

C. IT IS HEREBY ORDERED, as sufficient cause has been shown, that:

- (1) Amazon shall be restrained and enjoined, from processing payments for any products listed under the following Amazon Standard Identification Numbers (ASINs):
B07DW6MZWL (red BACON BIN[®]), B07F1F6RQH (pink BACON BIN[®]),
(B07HJX4646 –red twin pack BACON BIN[®]), and B07HJSB44L (red BACON BIN[®])

⁶ Third Party Service Providers are any third-party providing services in connection with any Defendant and/or any 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.

contemporaneously with the service of this Order, Plaintiff shall provide notice to Amazon of Plaintiff's authorized sellers;

(2) upon Plaintiff's request, Amazon shall remove listings and/or advertisements for any product that Plaintiff identifies as unfairly competing with Plaintiff's BACON BIN[®] grease container, and which has been identified as shipping from, or as originating from, outside the United States, by suspending, tombstoning, and/or deleting, the identified listing (i.e., preventing a seller from listing for sale under the identified ASIN);

(3) the Third Party Service Providers and Financial Institutions,⁷ are hereby restrained 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

C. IT IS HEREBY ORDERED, as sufficient cause has been shown, that: to the extent not already done, within five (5) days of restraining funds pursuant to this Section, Amazon shall provide to Plaintiff's counsel a listing of any disbursements made from each Amazon account containing restrained funds between the date of receipt of this Order until the date the funds were restrained. Plaintiff may issue interrogatories requiring a response under oath.

⁷ As defined, *supra*, Financial Institutions, include, 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, Context Logic, Inc. d/b/a wish.com, and PayPal, Inc. d/b/a paypal.com ("PayPal"), and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of any Defendant.

- (1) that no funds restrained by this Order shall be transferred or surrendered by Third Party Service Providers or Financial Institutions, for any purpose (other than pursuant to a chargeback made pursuant to the their respective security interest in the funds) without express authorization of this Court or Plaintiff's counsel.
- (2) Any Third Party Service Provider or Financial Institution or any Defendant or financial institution account holder subject to this Order may petition the Court to modify the asset restraint set out in this Order; and
- (3) This Order shall remain in effect until such further dates as set by the Court or stipulated by the parties.

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 August 3, 2020, 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) 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, to the extent not previously provided, all Third Party Service Providers and Financial Institutions shall provide to Plaintiff's counsel all documents and records in their possession, custody or control (whether located in the U.S. or

including, but not limited to, documents and records relating to:

- (1) any and 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' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling of products which use Plaintiff's Mark, and/or Plaintiff's Trade Dress and/or Plaintiff's Works, and/or works substantially similar to Plaintiff's Works.

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.

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

TALISMAN DESIGNS, LLC,

Plaintiff,

v.

DASANI, *et al.*,

Defendants.

Civil Action No. 20-1084

(Judge Schwab)

~~FILED UNDER SEAL~~

~~PROPOSED~~ PRELIMINARY INJUNCTION ORDER

WHEREAS, Plaintiff filed an *Ex Parte* Application for the following: 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts;¹ 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 to the Complaint and attached hereto (collectively, “the Defendants”), in light of the Defendants intentional and willful unfair competition and infringement of Plaintiff’s trademark and trade dress (“the Infringing Products”)² (“Application”);

¹ A “Merchant Storefront” is any and all User Accounts, as defined in the Complaint, any and all accounts with online marketplace platform(s) Amazon.com, eBay.com, Aliexpress.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.

² As alleged in Plaintiff’s Complaint, “. . . Defendants have offered for sale, sold, and distributed knock-off and infringing versions of Plaintiff’s BACON BIN[®] grease container 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, eBay.com, Wish.com, and AliExpress.com Internet marketplaces (“User Account(s)”). Plaintiff’s top selling product is the Bacon Bin[®] grease container. (“Plaintiff’s Product”). Plaintiff owns the federally registered trademark U.S. Reg. No. 5,398,411 for BACON BIN[®]. The Plaintiff’s Product includes a distinct tin can shape with ridges all around it and a whimsical sculpted piggy face top. (“Plaintiff’s Trade Dress” or “Trade Dress”). Plaintiff is also the owner of various published photographs, videos, artwork, creative text, and product instructions appearing on talismandesigns.com website. (“Plaintiff’s Works” or “Works”).

WHEREAS, 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, On August 21, 2020 at 1:00 p.m., the Court entered the following Orders:

(A) (1) a temporary restraining order; (2) an order restraining assets and Merchant Storefronts, (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”**, and Amazon (“TRO”) (Doc. No. 14); and

(B) Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3) (Doc. No. 19)(“the Alternative Service Order”);

WHEREAS, pursuant to the terms of the Alternative Service Order, the Defendants have been served with notice of this Show Cause Hearing; and

WHEREAS, on August 3, 2020, Plaintiff appeared for the Order to Show Cause Hearing, however no Defendants appeared. Further, none of the Third Party Service Provider(s) or Financial Institution(s) appeared.

I. Restraining Order

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, the injunctive relief previously granted on July 21, 2020 at 1:00 p.m. (Doc. No. 14), shall remain in place through the pendency of this litigation, and issuing this Preliminary Injunction (hereafter “PI Order”) is warranted under FRCP 65, and Section 34 of the Lanham Act.

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 Plaintiff's Mark, Plaintiff's Works and/or Plaintiff's Trade Dress 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 Mark, Plaintiff's Works, and/or Plaintiff's Trade Dress;
- (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,³ Merchant Storefronts⁴ 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 discontinue use of the Plaintiffs' Mark and/or Plaintiffs' Works

³ 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 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 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.

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 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 the 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)") 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 their related companies and affiliates, shall continue to restrain all funds, as opposed to ongoing account activity, in the accounts related to the Defendants as identified on Schedule "A" 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" hereto⁵;

- (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 continue to divert to a holding account for the trust of the Court all funds in 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, to the extent not already done, within five (5) business days of receiving this Order, provide Plaintiff's 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 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

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 discovered 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.

authorization of this Court;

- (10) Upon Plaintiff's 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, or Amazon accounts which are being used by Defendants for the purpose of infringing the Plaintiffs' Mark, Plaintiffs' Works, and/or Plaintiff's Trade Dress and/or unfairly competing with Plaintiff;
- (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 PI 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 PI Order in accordance with the Alternative Service Order.

B. IT IS HEREBY ORDERED, as sufficient cause has been shown, that those in privity with Defendants and with actual notice of this Order, including Third Party Service Providers,⁶ shall continue to be restrained and enjoined from engaging in any of the following acts or omissions shall remain in effect during the pendency of this action or until further order of the Court:

- (1) providing services for any accounts through which Defendants engage in the sale of Infringing Products, including without limitation, continued operation of Defendants' User Accounts and Merchant Storefronts;
- (2) displaying any advertisements used by or associated with Defendants in connection with the sale of Infringing Products; and
- (3) displaying links to any User Accounts or Merchant Storefronts associated with the Defendants in search results, including but not limited to, having links to any product listings, User Accounts, or Merchant Storefronts in any search index.

C. IT IS HEREBY ORDERED, as sufficient cause has been shown, that:

- (1) Amazon shall be restrained and enjoined, from processing payments for any products listed under the following Amazon Standard Identification Numbers (ASINs):
B07DW6MZWL (red BACON BIN[®]), B07F1F6RQH (pink BACON BIN[®]),
(B07HJX4646 –red twin pack BACON BIN[®]), and B07HJSB44L (red BACON BIN[®])

⁶ Third Party Service Providers are any third-party providing services in connection with any Defendant and/or any 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.

contemporaneously with the service of this Order, Plaintiff shall provide notice to Amazon of Plaintiff's authorized sellers;

(2) upon Plaintiff's request, Amazon shall remove listings and/or advertisements for any product that Plaintiff identifies as unfairly competing with Plaintiff's BACON BIN[®] grease container, and which has been identified as shipping from, or as originating from, outside the United States, by suspending, tombstoning, and/or deleting, the identified listing (i.e., preventing a seller from listing for sale under the identified ASIN);

(3) the Third Party Service Providers and Financial Institutions,⁷ are hereby restrained 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

C. IT IS HEREBY ORDERED, as sufficient cause has been shown, that: to the extent not already done, within five (5) days of restraining funds pursuant to this Section, Amazon shall provide to Plaintiff's counsel a listing of any disbursements made from each Amazon account containing restrained funds between the date of receipt of this Order until the date the funds were restrained. Plaintiff may issue interrogatories requiring a response under oath.

⁷ As defined, *supra*, Financial Institutions, include, 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, Context Logic, Inc. d/b/a wish.com, and PayPal, Inc. d/b/a paypal.com ("PayPal"), and other companies or agencies that engage in the processing or transfer of money and/or real or personal property of any Defendant.

- (1) that no funds restrained by this Order shall be transferred or surrendered by Third Party Service Providers or Financial Institutions, for any purpose (other than pursuant to a chargeback made pursuant to the their respective security interest in the funds) without express authorization of this Court or Plaintiff's counsel.
- (2) Any Third Party Service Provider or Financial Institution or any Defendant or financial institution account holder subject to this Order may petition the Court to modify the asset restraint set out in this Order; and
- (3) This Order shall remain in effect until such further dates as set by the Court or stipulated by the parties.

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 August 3, 2020, 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) 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, to the extent not previously provided, all Third Party Service Providers and Financial Institutions shall provide to Plaintiff's counsel all documents and records in their possession, custody or control (whether located in the U.S. or

including, but not limited to, documents and records relating to:

- (1) any and 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' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling of products which use Plaintiff's Mark, and/or Plaintiff's Trade Dress and/or Plaintiff's Works, and/or works substantially similar to Plaintiff's Works.

III. Security Bond

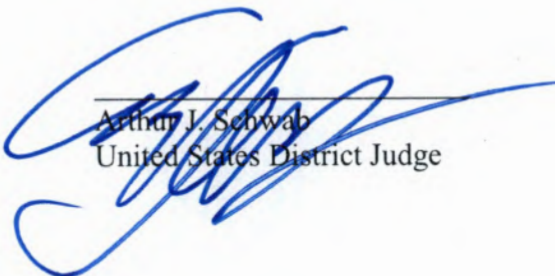
IT IS FURTHER ORDERED, the \$5,000.00 bond posted by Plaintiff shall remain with the Court until a final disposition of this case or until this PI Order is terminated.

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 3rd day of August, 2020
Pittsburgh, Pennsylvania

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



Arthur J. Schwab
United States District Judge

Schedule "A"**Defendants With Store Name and Seller ID**

Defendant No.	Defendant/Store Name	Seller ID
1	DASANI	ATWOABRKYDC59
2	AA-fashion	A3R7VUXP8AT6S8
3	AllsuperDirect	AESJW6KWLXZZO
4	baohuqusihanjin	A35XH4DTR1O922
5	cemic	A1X7CNIEN7DAP
6	CT Direct Store	A38P5DA6CB99N9
7	Daxin	AJAHSQ2TPQEX
8	DR Natural	A21IN20G1LWJKE
9	Emivery Direct	A3S1O0BZZUE1U1
10	Fhsow	A1ZPD8ZX5BN2LR
11	funarrow	A11EDQ6UQ5OH8F
12	Greatpad	A32YVIBG6BNSKB
13	LaiYam	A1MSS2SSNSY7RT
14	LEEaccessory	A1Y0HOOSKBQF1L
15	Light-Ren	A1RZNE5Y09EUVY
16	maohuashangcheng	AB9YO0PVOGT90
17	OSTRO	A2KILDZTMV99DJ
18	QinAi	A5W0LZ4LY0Q0O
19	Royu	A2AYZSNA83UAIF
20	Sanmubo Trade	A2UCZ8AC20X9W6
21	showhole	A1CP0MDAL9JFTM
22	Sundlight	A1N3YRM4VTR0A3

Defendant No.	Defendant/Store Name	Seller ID
23	SY Direct Store	A1ELP0PQ13RD0E
24	Upperroof44	A3GHARM07X54LI
25	Urnanal	AWGOQPJ5SE78U
26	usams original	A3K2RIQKJ8SW2W
27	VISUSONLINE	A21RES4S72ALEU
28	VQS-LLC	A1QD4AWVLVNP4U
29	waypool	A25M12QDJFPJ1E
30	xiangze	AREX3GV4VPP0N
31	XINGPE	A1N0MYF79XSWTA
32	YDKJ	A1WET5VOG1HXBH
33	Yuanzhou US	A5QFDIOZIFKII
34	YunFine INC	A2ARSDLAEJ3COI
35	Yuzoe Store	A3GN86PNVGF184
36	Zhengpin	A1KBFROQYDV7B1
37	ZHONGLI-US	A1MC9F7B3O19JE
38	aolipugre	383518263944
39	bachelor-button-a	333608813259
40	beists	383553117141
41	betwill-88	402309551475
42	bluebell-b	203004989583
43	casand85	392764754120
44	cdhujun	373031990208
45	cell.expert	133402785849
46	chinatownno1	303559475515

Defendant No.	Defendant/Store Name	Seller ID
47	df-311	373060172021
48	dowri-75	164266070522
49	eastauspicious	174144262125
50	e-suggestion	224048112803
51	fashionyard68	143448120483
52	fat-mango	303497561617
53	fist-line2	392814825784
54	gardenshow	324193547715
55	gelamee	164269285197
56	gld_germanladen	383469479344
57	heart-soul888	324140352658
58	hksense153	124176456042
59	home-ahome	383378201131
60	homefree-us	392834135342
61	homeshop-us	353108622657
62	hugee6	133416619418
63	icenzma	303550394507
64	iriscelandine6	133442160171
65	jiazew	233569793121
66	jinshan2013	143622388821
67	joysistars	133429929570
68	lightshh	283597139862
69	lucky.shop_7	193481500820
70	nuoka7	313087749438

Defendant No.	Defendant/Store Name	Seller ID
71	odhe15	114230900808
72	onlinenice	202830539871
73	priestlyy	153946400943
74	pulsation	264663620296
75	qingc44	362799729739
76	qingfengtop5	184300363524
77	raine7	362979394791
78	shineshopa	193473326177
79	silentmusic1666-1	313120735128
80	ss-goodstore	303573840783
81	swtdkgs	383521127485
82	sx68wq	353062380490
83	teaodan	373034603063
84	tongliaoixinxi	313109484873
85	wyunlon0	174263789449
86	xxinlle	383609503982
87	zhezch	193439383324
88	zhongtl1	362978977410
89	aweihgel5gr	5b5547b64543f458cbe2177c
90	baifumeimei	5832ad867284901b9ba0fd31
92	DJY	5df1e06f75e81c0a4000a6ad
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94	pangxiesfang~77	5d5762b94290153c6e58f002

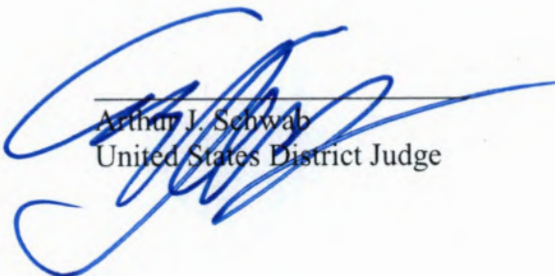
Defendant No.	Defendant/Store Name	Seller ID
95	bbql Store	4921100
96	Daily supplies Store	4776031
97	Drop Shipping to Whole world Store	4697081
98	Fantasy House&Garden Store	5478164
100	H&F Store	2906124
101	mzyxxsz Store	2477008
102	WenTao Accessories Store	1185160
103	Wonder Dreaming Store	4347001

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 3rd day of August, 2020
Pittsburgh, Pennsylvania

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



Arthur J. Schwab
United States District Judge

Schedule "A"**Defendants With Store Name and Seller ID**

Defendant No.	Defendant/Store Name	Seller ID
1	DASANI	ATWOABRKYDC59
2	AA-fashion	A3R7VUXP8AT6S8
3	AllsuperDirect	AESJW6KWLXZZO
4	baohuqusihanjin	A35XH4DTR1O922
5	cemic	A1X7CNIEN7DAP
6	CT Direct Store	A38P5DA6CB99N9
7	Daxin	AJAHSQ2TPQEX
8	DR Natural	A21IN20G1LWJKE
9	Emivery Direct	A3S1O0BZZUE1U1
10	Fhsow	A1ZPD8ZX5BN2LR
11	funarrow	A11EDQ6UQ5OH8F
12	Greatpad	A32YVIBG6BNSKB
13	LaiYam	A1MSS2SSNSY7RT
14	LEEaccessory	A1Y0HOOSKBQF1L
15	Light-Ren	A1RZNE5Y09EUVY
16	maohuashangcheng	AB9YO0PVOGT90
17	OSTRO	A2KILDZTMV99DJ
18	QinAi	A5W0LZ4LY0Q0O
19	Royu	A2AYZSNA83UAIF
20	Sanmubo Trade	A2UCZ8AC20X9W6
21	showhole	A1CP0MDAL9JFTM
22	Sundlight	A1N3YRM4VTR0A3

Defendant No.	Defendant/Store Name	Seller ID
23	SY Direct Store	A1ELP0PQ13RD0E
24	Upperroof44	A3GHARM07X54LI
25	Urnanal	AWGOQPJ5SE78U
26	usams original	A3K2RIQKJ8SW2W
27	VISUSONLINE	A21RES4S72ALEU
28	VQS-LLC	A1QD4AWVLVNP4U
29	waypool	A25M12QDJFPJ1E
30	xiangze	AREX3GV4VPP0N
31	XINGPE	A1N0MYF79XSWTA
32	YDKJ	A1WET5VOG1HXBH
33	Yuanzhou US	A5QFDIOZIFKII
34	YunFine INC	A2ARSDLAEJ3COI
35	Yuzoe Store	A3GN86PNVGF184
36	Zhengpin	A1KBFROQYDV7B1
37	ZHONGLI-US	A1MC9F7B3O19JE
38	aolipugre	383518263944
39	bachelor-button-a	333608813259
40	beists	383553117141
41	betwill-88	402309551475
42	bluebell-b	203004989583
43	casand85	392764754120
44	cdhujun	373031990208
45	cell.expert	133402785849
46	chinatownno1	303559475515

Defendant No.	Defendant/Store Name	Seller ID
47	df-311	373060172021
48	dowri-75	164266070522
49	eastauspicious	174144262125
50	e-suggestion	224048112803
51	fashionyard68	143448120483
52	fat-mango	303497561617
53	fist-line2	392814825784
54	gardenshow	324193547715
55	gelamee	164269285197
56	gld_germanladen	383469479344
57	heart-soul888	324140352658
58	hksense153	124176456042
59	home-ahome	383378201131
60	homefree-us	392834135342
61	homeshop-us	353108622657
62	hugee6	133416619418
63	icenzma	303550394507
64	iriscelandine6	133442160171
65	jiazew	233569793121
66	jinshan2013	143622388821
67	joysistars	133429929570
68	lightshh	283597139862
69	lucky.shop_7	193481500820
70	nuoka7	313087749438

Defendant No.	Defendant/Store Name	Seller ID
71	odhe15	114230900808
72	onlinenice	202830539871
73	priestlyy	153946400943
74	pulsation	264663620296
75	qingc44	362799729739
76	qingfengtop5	184300363524
77	raine7	362979394791
78	shineshopa	193473326177
79	silentmusic1666-1	313120735128
80	ss-goodstore	303573840783
81	swtdkgs	383521127485
82	sx68wq	353062380490
83	teaodan	373034603063
84	tongliaoixinxi	313109484873
85	wyunlon0	174263789449
86	xxinlle	383609503982
87	zhezch	193439383324
88	zhongtl1	362978977410
89	aweihgel5gr	5b5547b64543f458cbe2177c
90	baifumeimei	5832ad867284901b9ba0fd31
92	DJY	5df1e06f75e81c0a4000a6ad
93	guchastore	5a6843aa471c1439542b45e8
94	pangxiesfang~77	5d5762b94290153c6e58f002

Defendant No.	Defendant/Store Name	Seller ID
95	bbql Store	4921100
96	Daily supplies Store	4776031
97	Drop Shipping to Whole world Store	4697081
98	Fantasy House&Garden Store	5478164
100	H&F Store	2906124
101	mzyxxsz Store	2477008
102	WenTao Accessories Store	1185160
103	Wonder Dreaming Store	4347001

EXHIBIT 4

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

GORGE DESIGN GROUP, LLC, *et al.*,

Plaintiffs,

v.

SYARME, *et al.*,

Defendants.

Civil Action No. 20-1384

(Judge Stickman)

FILED UNDER SEAL

**(1) TEMPORARY RESTRAINING ORDER; 2) ORDER RESTRAINING ASSETS AND
MERCHANT STOREFRONTS; 3) ORDER TO SHOW CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT ISSUE; AND 4) ORDER AUTHORIZING EXPEDITED
DISCOVERY**

This matter is before the Court upon Plaintiffs' *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 the Defendants identified on **Schedule "A"** to the Complaint and attached hereto (collectively, the "Defendants"). The Court has considered the Application, the evidence in the record, and the applicable law.

By the instant Application, Plaintiffs Gorge Design Group, LLC, and Kirby Erdely move *ex parte* pursuant to 15 U.S.C. § 116, 15 U.S.C. § 283, Federal Rules of Civil Procedure 64 and 65, and The All Writs Act, 28 U.S.C. § 1651(a), for entry of a temporary restraining order and an order restraining assets and Merchant Storefronts, for violations of the Lanham Act, 15 U.S.C. § 1125(a), the Patent Act, 15 U.S.C. § 281, and related state law claims. Because Plaintiffs have satisfied the requirements for the issuance of a temporary restraining order, the Court grants Plaintiffs' Application.

FACTUAL FINDINGS & CONCLUSION OF LAW

1. Plaintiffs, Gorge Design Group, LLC, (“Gorge Design Group”) and Kirby Erdely (“Erdely”), are likely to prevail on their Lanham Act claims, Patent claims, and related state law claims at trial.
2. David J. Brown, invented the Orange Screw ground anchor (the “Ultimate Ground Anchor”) and Kirby Erdely, David J. Brown’s son-in-law, is the owner of the patent related thereto; Gorge Design Group, LLC and Kirby Erdely are the owners of all the intellectual property related thereto. They are a family-owned business and the named Plaintiffs in this lawsuit. Erdely brought his father-in law’s invention to market, and now, with Gorge Design, sell the unique and revolutionary product under the common law trademark ULTIMATE GROUND ANCHOR (“Plaintiffs’ Mark”) that is the most effective ground anchor ever made (“Plaintiffs’ Product”). The Plaintiffs’ Product is made of 100% recycled materials and manufactured in the U.S.A. The Plaintiffs’ Product will secure pets; anchor RV awnings; hold tarps over boats, ATVs and firewood; as well as ensure tents and sunshades stay put
3. Plaintiffs have gained significant common law trademark and other rights in Plaintiffs’ Mark, through use, advertising, and promotion.
4. Plaintiffs are the owners of various published photographs, videos, artwork, creative text and product instructions appearing on kickstarter.com and orangescrew.com. (“Plaintiffs’ Works”).
5. In addition to their common law trademark rights in Plaintiff’s Mark, Kirby Erdely is the owner of U.S. Patent No. 7309198 for “Re-useable threaded tie downs” (“the ‘198 Patent”).

6. Defendants, by operating Internet based e-commerce stores, and fully interactive, commercial Internet websites operating under Defendants' respective seller identities set forth on Schedule "A" hereto (the "Seller IDs"), have advertised, promoted, sold, and offered for sale goods featuring, displaying, and/or using Plaintiff's Mark, Plaintiffs' Works and/or used Plaintiffs' Patent without authorization and Plaintiffs have determined the products that each Defendant is offering for sale are not genuine products.

7. Through the e-commerce marketplace platform, Plaintiffs accessed all of the e-commerce stores operating under Defendants' Seller IDs and captured the Defendants' listings at issue on the e-commerce stores. At the conclusion of the process, the detailed webpages and photographs were inspected by Plaintiffs' representative who confirmed that each Defendant is featuring, displaying, and/or using Plaintiffs' Mark and/or Plaintiffs' Works and/or Infringing one or more claims of Plaintiffs' Patent without authorization and the products that each Defendant is offering for sale are not genuine products.

8. Plaintiffs have a strong probability of proving at trial that consumers are likely to be confused by Defendants' advertisement, promotion, sale, offer for sale, or distribution of products with unauthorized and unlicensed uses of Plaintiffs' Mark and Plaintiffs' Works, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), that at least one claim of the '198 Patent has been infringed, and prevailing on their related state law claims.

9. Plaintiffs, as well as consumers, are likely to suffer immediate and irreparable losses, damages and injuries before Defendants can be heard in opposition, unless Plaintiffs' Application for *ex parte* relief is granted. There is good cause to believe that the unauthorized and unlicensed use of Plaintiffs' Mark, Plaintiffs' Works, and infringement of at least one claim of the '198 Patent will continue in the marketplace; that consumers are likely to be misled,

confused, and disappointed by the quality of the products so advertised, and that Plaintiffs may suffer loss of sales for their genuine products and an unnatural erosion of the legitimate marketplace in which they operate. There is also good cause to believe that if Plaintiffs proceed on notice to Defendants of this Application, Defendants can easily and quickly change the ownership or modify e-commerce store account data and content, change payment accounts, redirect consumer traffic to other seller identification names, and transfer assets and ownership of Seller IDs, thereby thwarting Plaintiffs' ability to obtain meaningful relief. As other courts have recognized, proceedings against those who deliberately traffic in infringing merchandise are often useless if notice is given to the adverse party.

10. The balance of potential harm to Defendants of being prevented from continuing to profit from their illegal and infringing activities if a temporary restraining order is issued is far outweighed by the potential harm to Plaintiffs, their reputation, and their goodwill as a manufacturer and distributor of quality products, if such relief is not issued.

11. The public interest favors issuance of the temporary restraining order in order to protect Plaintiffs' interests and protect the public from being deceived and defrauded by the passing off of Defendants substandard goods as Plaintiffs' genuine goods.

12. Under Pennsylvania law this Court may issue a prejudgment asset restraint where Plaintiffs' complaint asserts a claim for money damages. This Court also has the inherent authority to issue a prejudgment asset restraint when Plaintiffs' complaint seeks relief in equity. According to both the Lanham Act, 15 U.S.C. § 1117(a)(1), Plaintiffs are entitled, "subject to the principles of equity, to recover ... defendant's profits." Plaintiffs seek, among other relief, that Defendants account for and pay to Plaintiffs all profits realized by Defendants by reason of Defendants' unlawful acts. Therefore, this Court has the authority to grant Plaintiffs' request for

a prejudgment asset freeze to preserve the relief sought by Plaintiffs and preserve the Defendants' ability to at least partially satisfy a judgment.

13. Similarly, if Defendants are given notice of the Application, they are likely to destroy, move, hide or otherwise make inaccessible to Plaintiffs the records and documents relating to Defendants' illegal and infringing activities. Therefore, Plaintiffs have good cause to be granted expedited discovery.

ORDER

Based on the foregoing findings of fact and conclusions of law, Plaintiffs' Application is hereby **GRANTED** as follows (the "Order"):

I. Temporary Restraining Order

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, that 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 are hereby restrained as follows:

- (1) from (a) their unauthorized and unlicensed use of Plaintiffs' Mark, Plaintiffs' Works and infringement of at least one claim of the '198 Patent 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 Plaintiffs' Mark, Plaintiffs' Works, or infringe the claims of the '198 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,¹ Merchant Storefronts² 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 discontinue use of the Plaintiffs’ Mark or Plaintiffs’ Works 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 e-commerce stores owned, or operated by each Defendant, including the Merchant Storefronts operating under the Seller IDs;

¹ As defined in the Application, a “User Account” is, as defined in the Complaint, any and all accounts with online marketplace platform(s) eBay.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.

² 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.

- (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 have been 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 Services LLC d/b/a amazon.com (“Amazon”), eBay, Inc. d/b/a eBay.com (“eBay”), Shopify (USA), Inc. d/b/a Shopify.com (“Shopify”) (“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 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” 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;³

³ 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 discovered 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.

- (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 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 the Plaintiffs' Mark, Plaintiffs' Works, and/or infringe on one or more claims of the '198 Patent at issue in this action and/or unfairly competing with Plaintiff;

(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;

(13) The domain name registries for the Defendant's Domain Names, including but not limited to, VeriSign, Inc., Neustar, Inc., Afilias Limited, CentralNic, Nominet, and the Public Interest Registry, within three (3) business days of receipt of this Order or prior to expiration of this Order, whichever date shall occur first, shall at Plaintiffs' choosing:

(a) unlock and change the registrar of record for the Defendant Domain Names to a registrar of Plaintiffs' selection until further ordered by this Court; or

(b) disable the Defendant's Domain Names and make them inactive and untransferable until further ordered by this Court.

(14) The domain name registrars, including but not limited to, GoDaddy Operating Company, LLC (“GoDaddy”), Name.com, PDR LTD. d/b/a PublicDomainRegistry (“PDR”), and Namecheap Inc. (“Namecheap”), within three (3) business days of receipt of this Order or prior to expiration of this Order, whichever data shall occur first, shall take any steps necessary to transfer the Defendant’s Domain Names to a registrar account of Plaintiffs selection so that the Defendant’s Domain Names can be redirected or disabled until further ordered by this Court; and

(15) this Order shall remain in effect until the date for the hearing to show cause why a preliminary injunction should not be issued as set forth below, or until such further dates as set by the Court or stipulated by the parties.

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.

II. Order to Show Cause Why a Preliminary Injunction Should Not Issue and Service of Order

A. Defendants are hereby ORDERED to show cause before this Court in the United States District Court for the Western District of Pennsylvania, the U.S. Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania in Courtroom No. 86 on the 5 day of October at 10:30 AM __.m. or at such other time that this Court deems appropriate, why a preliminary injunction, pursuant to FRCP 65(a), should not issue. **Defendants are on notice that failure to appear at the hearing may result in the imposition of a preliminary injunction against them.**

B. Opposing papers, if any, shall be filed electronically with the Court and served on Plaintiffs' counsel by delivering copies thereof to the office of Ference & Associates LLC at 409 Broad Street, Pittsburgh, Pennsylvania 15143 before Oct 2, 2020. Plaintiffs shall file any Reply papers on or before Oct 5, 2020.

C. After Plaintiffs' counsel has received confirmation from the Third Party Service Providers and Financial Institutions or otherwise, regarding the restraint of funds directed herein, Plaintiffs shall serve copies of the Complaint, the Application, this Order, and any Discovery on each Defendant via their corresponding email/online contact form provided on the Internet based e-commerce stores operating under the respective Seller IDs, or by providing a copy of this order by e-mail to the marketplace platform, which in turn notifies each Defendant of the Order, or by other means reasonably calculated to give notice which is permitted by the Court. In addition, Plaintiffs shall post copies of the Complaint, Application, this Order, any Discovery, and all

other pleadings and documents filed in this action on a website designated by Plaintiffs,⁴ and shall provide the website address to Defendants via e-mail/online contact form, and such notice so given shall be deemed good and sufficient service thereof. Plaintiffs shall continue to provide notice of these proceedings and copies of the documents on file in this matter to Defendants by regularly updating the website designated by Plaintiffs or by other means reasonably calculated to give notice which is permitted by the Court.

III. Order Authorizing Expedited Discovery

A. IT IS FURTHER ORDERED, as sufficient cause has been shown, that:

- (1) Plaintiffs may propound interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and 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 Plaintiffs' counsel.
- (2) Plaintiffs may serve requests for the production of documents pursuant to FRCP 26 and 34, and 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 produce all documents responsive to such requests within fourteen (14) days of service to Plaintiffs' counsel.
- (3) Plaintiffs may serve requests for admissions pursuant to FRCP 26 and 36, and Defendants, their respective officers, employees, agents, servants and attorneys, and all

⁴ Rule 65 has been interpreted to require that a party have notice of the motion and hearing; perfecting service on a defendant is not a prerequisite to the entry of a preliminary injunction order. *Pate v. Gov't of the Virgin Islands*, 2015 WL 1937701 n.9 (VI Sup. Ct. April 17, 2015); *Corrigan Dispatch Co. v. Casa Guzman, S.A.*, 569 F.2d 300, 302 (5th Cir. 1978).

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 requests within fourteen (14) days of service to Plaintiffs' 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, 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 Plaintiffs' 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) any and 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 Plaintiffs' Mark, Plaintiffs' Works, and/or infringement of at least one claim of the '198 Patent in connection with the distribution, marketing, advertising, offering for sale, or sale of any products, and any products which use Plaintiffs' Plaintiffs' Mark, Plaintiffs' Works, and/or infringe at least one claim of the '198 Patent.

V. Security Bond


IT IS FURTHER ORDERED that Plaintiffs shall place security (corporate surety bond, cash, certified check, or attorney's check) in the amount of \$ 5,000 Dollars (5,000 five thousand) with the Court, which amount is determined adequate for the payment of any damages any person may be entitled to recover as a result of an improper or wrongful restraint ordered hereunder.

VI. Summons

IT IS FURTHER ORDERED that the Clerk of the Court shall issue a single original summons in the name of "SYARME and all other Defendants identified in the Complaint" that will apply to all Defendants.

SO ORDERED.

SIGNED this 21 day of September, 2020, at 9:35 a.m.
Pittsburgh, Pennsylvania



WILLIAM S. STICKMAN IV
UNITED STATES DISTRICT JUDGE

Schedule “A”
Defendants With Store Name and Seller ID

Defendant No.	Defendant/Store Name	Seller ID/Subject Domain Name
1	Syarme	A1LE71SBGVALWM
2	CAMPMAX	A26DVICKBT7YGQ
3	Freeland Outdoor	ADN9631RYBGI6
4	goumaiZILIAO	A2J37P0QUG0BZ3
5	Grassland-all	A2F6HPEI0EMAB3
6	MAMAY SUMARNA	A2EQNA5A1HK6E8
7	meaning xuansheng	A1ANGYFOI0TPHS
8	NVHUNG36	A3TM8FWSFXDTL2
9	Iam_1786	372820707148
10	skycorpworld	323981553860
11	Aimfiree Store	728882
12	alexnld	alexnld.com
13	anontee	anontee.com
14	banggood	usa.banggood.com
15	bbfat	shiprole.com
16	berrous	berrous.com
17	bryces-shop	bryces.vip
18	capions	capions.com
19	coohome	coohome.org
20	DANCEMAGIC.SHOP	dancemagic.shop
21	inscriptionlife	inscriptionlife.com

Defendant No.	Defendant/Store Name	Seller ID/Subject Domain Name
22	izyndeal	izyndeal.com
23	lilymi	lilymi.com
24	locasdeals	locasdeals.com
25	mercadomagico	mercadomagico.com
26	motioncomm	motioncomm.com
27	myragrap	myragrap.com
28	nakathalie	oughteu.com
29	orange dancer	orangedancer.com
30	protelikes	protelikes.com
31	quandarn	another2.com
32	reachssgf	shop.reachssgf.com
33	shopbestyo	shopbestyo.com
34	showcasesf	showcasesf.com
35	TODDEALS	toddeals.com
36	tsmalls	tsmalls.shop
37	URBAN & HAWK	urbanandhawk.com
38	waterbests	waterbests.com
39	werebear	werebear.shop

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GORGE DESIGN GROUP, LLC, *et al.*,

Plaintiffs,

v.

SYARME, *et al.*,

Defendants.

CIVIL ACTION NO. 20-1384

(Judge Stickman)

FILED UNDER SEAL

**ORDER ON PLAINTIFF'S EX PARTE MOTION FOR AN ORDER AUTHORIZING
ALTERNATIVE SERVICE ON DEFENDANTS PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 4(f)(3)**

AND NOW, this 21 day of September, 2020, upon consideration of Plaintiff's Ex Parte Motion for an Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3),

IT IS HEREBY ORDERED that said Motion is GRANTED;

IT IS FURTHER ORDERED that Plaintiffs are authorized to make alternative service of the Summonses, the Complaint, any discovery, and all filings in this matter upon each Defendant in this action, as follows:

1. via e-mail by providing the address to Plaintiffs' designated website to Defendants via (i) the e-mail accounts provided by Defendants as part of the data related to their respective e-commerce stores, or (ii) the e-commerce marketplace for each of the e-commerce stores, or
2. via website publication by posting copies of the Summonses, Complaint, any Discovery, and all filings in this matter on Plaintiffs' designated website on www.ferencelaw.com.

Dated:



William S. Stickman IV
United States District Judge

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

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

GORGE DESIGN GROUP, LLC, *et al.*,

Plaintiffs,

v.

SYARME, *et al.*,

Defendants.

Civil Action No. 20-1384

(Judge Stickman)

PRELIMINARY INJUNCTION ORDER

WHEREAS, on September 15, 2020, Gorge Design Group, LLC and Kirby Erdely (“Plaintiffs” or “Gorge”) filed an *Ex Parte* Application seeking 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, said orders issuing against all of the Defendants identified on the attached Schedule “A”, and Third Party Service Providers and Financial Institutions, in light of Defendants’ intentional and willful offerings for sale and/or sales of Infringing Products¹ (“Application”);

WHEREAS, on the same day, Plaintiffs filed an Ex Parte Motion for an Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3);

¹ As alleged in Plaintiff’s Complaint, Defendants have offered for sale, sold, and distributed knock-off and infringing versions of Plaintiffs’ Ultimate Ground Anchor ground anchor product which closely mimic the appearance of Plaintiffs’ genuine product within this district and throughout the United States by operating e-commerce stores established at least via the wish.com, aliexpress.com, and eBay.com.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*, promoting, selling, offering for sale and distributing their Infringing Products, thus (i) unfairly competing by using Plaintiffs’ photographs, videos, artwork, creative text and product instructions while marketing their knock-off products in a willful attempt to pass off their knock-off products as genuine versions of Plaintiffs’ Products; and (ii) infringing at least one of the claims of Plaintiffs’ registered U.S. Patent. (“Infringing Product”).

WHEREAS, On September 21, 2020, the Court entered the following Orders:

(A) (1) a temporary restraining order; (2) an order restraining assets and Merchant Storefronts, (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”**, and the Third Party Service Providers and Financial Institutions; and

(B) Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3) (“the Alternative Service Order”);

WHEREAS, pursuant to the terms of the Alternative Service Order, the Defendants have been served with notice of this Show Cause Hearing; and

WHEREAS, on October 5, 2020, Plaintiff appeared for the Order to Show Cause Hearing, however no Defendants appeared. Further, none of the Third Party Service Provider(s) or Financial Institution(s) appeared.

ORDER

I. Restraining Order

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, the injunctive relief previously granted on September 21, 2020, shall remain in place through the pendency of this litigation or until further order of this Court, and issuing this Preliminary Injunction is warranted under FRCP 65, the Lanham Act, 15 U.S.C. § 1125(a) and the Patent Act, 15 U.S.C. § 281, and related state laws.

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' Mark², Plaintiffs' Works³ and infringement of at least one claim of the '198 Patent⁴ 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 Plaintiffs' Mark, Plaintiffs' Works, or infringe the claims of the '198 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,⁵ Merchant Storefronts⁶ 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

² As defined in the Application, Plaintiffs' Mark is its common law trademark ULTIMATE GROUND ANCHOR.

³ As defined in the Application, Plaintiffs' Works are its published photographs, videos, artwork, creative text and product instructions appearing on kickstarter.com and orangescrew.com

⁴ Refers to U.S. Patent No. 7309198 for "Re-useable threaded tie downs".

⁵ As defined in the Application, a "User Account" is, as defined in the Complaint, any and all accounts with online marketplace platform(s) eBay.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.

⁶ 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;

- (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 discontinue use of the Plaintiffs' Mark or Plaintiffs' Works 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 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 Services LLC d/b/a amazon.com ("Amazon"), eBay, Inc. d/b/a eBay.com ("eBay"), Shopify (USA), Inc. d/b/a Shopify.com ("Shopify") ("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 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” 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;⁷
- (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

⁷ 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 discovered 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.

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 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 the Plaintiffs' Mark, Plaintiffs' Works, and/or infringe on one or more claims of the '198 Patent at issue in this action and/or unfairly competing with Plaintiff;

(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;

(13) The domain name registries for the Defendant's Domain Names, including but not limited to, VeriSign, Inc., Neustar, Inc., Afilias Limited, CentralNic, Nominet, and the Public Interest Registry, within three (3) business days of receipt of this Order or prior to expiration of this Order, whichever date shall occur first, shall at Plaintiffs' choosing:

(a) unlock and change the registrar of record for the Defendant Domain Names to a registrar of Plaintiffs' selection until further ordered by this Court; or

(b) disable the Defendant's Domain Names and make them inactive and untransferable until further ordered by this Court.

(14) The domain name registrars, including but not limited to, GoDaddy Operating Company, LLC ("GoDaddy"), Name.com, PDR LTD. d/b/a PublicDomainRegistry ("PDR"), and Namecheap Inc. ("Namecheap"), within three (3) business days of receipt of this Order or prior to expiration of this Order, whichever date shall occur first, shall take any steps necessary to transfer the Defendant's Domain Names to a registrar account of Plaintiffs selection so that the Defendant's Domain Names can be redirected or disabled until further ordered by this Court; and

(15) this Order shall remain in effect until such further dates as set by the Court or stipulated by the parties.

B. IT IS HEREBY ORDERED, as sufficient cause has been shown, that upon Plaintiff's 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 until further order of the Court:

- (1) providing services for any accounts through which Defendants engage in the sale of Infringing Products, including without limitation, continued operation of Defendants' User Accounts and Merchant Storefronts;
- (2) displaying any advertisements used by or associated with Defendants in connection with the sale of Infringing Products; and
- (3) displaying links to any User Accounts or Merchant Storefronts associated with the Defendants in search results, including but not limited to, having links to any product listings, User Accounts, or Merchant Storefronts in any search index.

C. IT IS HEREBY ORDERED, as sufficient cause has been shown,

- (1) that no funds restrained by this Order shall be transferred or surrendered by Third Party Service Providers or Financial Institutions, for any purpose (other than pursuant to a chargeback made pursuant to the their respective security interest in the funds) without express authorization of this Court or Plaintiff's counsel.
- (2) Any Third Party Service Provider or Financial Institution or any Defendant or financial institution account holder subject to this Order may petition the Court to modify the asset restraint set out in this Order;
- (3) Upon Plaintiff's request, Third Party Service Provider shall remove listings and/or advertisements for any product that Plaintiff identifies as unfairly competing with Plaintiff's Product, and which has been identified as shipping from, or as originating from, outside the United States;

- (4) 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);
- (5) However, the seller controlling such listings shall not be subject to financial account restraint; and
- (6) This Order shall remain in effect until such further dates as set by the Court or stipulated by the parties.

II. Order Authorizing Expedited Discovery

A. IT IS FURTHER ORDERED, as sufficient cause has been shown, that:

- (1) Plaintiffs may propound interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and 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 Plaintiffs’ counsel.
- (2) Plaintiffs may serve requests for the production of documents pursuant to FRCP 26 and 34, and 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 produce all documents responsive to such requests within fourteen (14) days of service to Plaintiffs’ counsel.

(3) Plaintiffs may serve requests for admissions pursuant to FRCP 26 and 36, and 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 requests within fourteen (14) days of service to Plaintiffs' 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, 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 Plaintiffs' 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) any and 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 Plaintiffs' Mark, Plaintiffs' Works, and/or infringement of at least one claim of the '198 Patent in connection with the distribution, marketing, advertising, offering for sale, or sale of any products, and any products which use Plaintiffs' Plaintiffs' Mark, Plaintiffs' Works, and/or infringe at least one claim of the '198 Patent.

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 further order of this Court, or until this 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 6th day of October, 2020
Pittsburgh, Pennsylvania



William S. Stickman IV
UNITED STATES DISTRICT JUDGE

Schedule "A"
Defendants With Store Name and Seller ID

Defendant No.	Defendant/Store Name	Seller ID/Subject Domain Name
1	Syarme	A1LE71SBGVALWM
2	CAMPMAX	A26DVICKBT7YGQ
3	Freeland Outdoor	ADN9631RYBGI6
4	goumaiZILIAO	A2J37P0QUG0BZ3
5	Grassland-all	A2F6HPEI0EMAB3
6	MAMAY SUMARNA	A2EQNA5A1HK6E8
7	meaning xuansheng	A1ANGYFOI0TPHS
8	NVHUNG36	A3TM8FWSFXDTL2
9	Iam_1786	372820707148
10	skycorpworld	323981553860
11	Aimfiree Store	728882
12	alexnld	alexnld.com
13	anontee	anontee.com
█	██████████	██████████
15	bbfat	shiprole.com
16	berrous	berrous.com
█	██████████	██████████
18	capions	capions.com
19	coohome	coohome.org
20	DANCEMAGIC.SHOP	dancemagic.shop
21	inscriptionlife	inscriptionlife.com

Defendant No.	Defendant/Store Name	Seller ID/Subject Domain Name
22	izyndeal	izyndeal.com
23	lilymi	lilymi.com
24	locasdeals	locasdeals.com
■	■	■
26	motioncomm	motioncomm.com
27	myragrap	myragrap.com
28	nakathalie	oughteu.com
29	orange dancer	orangedancer.com
30	protelikes	protelikes.com
31	quandarn	another2.com
32	reachssgf	shop.reachssgf.com
33	shopbestyo	shopbestyo.com
34	showcasesf	showcasesf.com
■	■	■
36	tsmalls	tsmalls.shop
37	URBAN & HAWK	urbanandhawk.com
38	waterbests	waterbests.com
39	werebear	werebear.shop

EXHIBIT 5

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

DOGGIE DENTAL INC., *et al.*,

Plaintiffs,

v.

MAX_BUY, *et al.*,

Defendants.

Civil Action No. 19-cv-00746

FILED UNDER SEAL

**1) TEMPORARY RESTRAINING ORDER; 2) ORDER RESTRAINING ASSETS AND
MERCHANT STOREFRONTS; 3) ORDER TO SHOW CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT ISSUE; AND 4) ORDER AUTHORIZING EXPEDITED
DISCOVERY**

This matter is before the Court upon Plaintiffs' *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 the Defendants identified on **Schedule "A"** to the Complaint and attached hereto (collectively, the "Defendants"). The Court has considered the Application, the evidence in the record, and the applicable law.

By the instant Application, Plaintiffs Doggie Dental Inc. and Peter Dertsakyan move *ex parte* pursuant to 15 U.S.C. § 116, 17 U.S.C. § 502, Federal Rules of Civil Procedure 64 and 65, and The All Writs Act, 28 U.S.C. § 1651(a), for entry of a temporary restraining order and an order restraining assets and Merchant Storefronts, for violations of the Lanham Act, 15 U.S.C. § 1125(a), the Copyright Act, 17 U.S.C. § 501, and related state law claims. Because Plaintiffs have satisfied the requirements for the issuance of a temporary restraining order, the Court grants Plaintiffs' Application.

FACTUAL FINDINGS & CONCLUSION OF LAW

1. Plaintiffs, Doggie Dental, Inc. (“Doggie Dental”) and Peter Dertsakyan (“Dertsakyan”), are likely to prevail on their Lanham Act claims, Copyright claims, and related state law claims at trial, and that there is a substantial basis to support each of the below findings.

2. Dertsakyan is the inventor of the BRISTLY™ dog toothbrush and the owner of intellectual property related thereto; Doggie Dental is the exclusive licensee of such intellectual property. Plaintiffs developed and sell a unique and revolutionary product under the common law trademark BRISTLY (“Bristly Mark”) that safely and easily permits dogs to brush their own teeth removing plaque and tarter (“BRISTLY™ Product”). The BRISTLY Mark is inherently distinctive.

3. Plaintiffs have gained significant common law trademark and other rights in their BRISTLY Product, through use, advertising, and promotion.

4. Dertsakyan is the owner of U.S. copyright registration VA 2-122-455 directed to various photographs related to the BRISTLY™ dog toothbrush (the “Bristly Works”). Dertsakyan is also the owner of unregistered copyrights related to the BRISTLY™ dog toothbrush.

5. In addition to his common law trademark rights in BRISTLY, Dertsakyan is also the owner of various pending trademark applications, including U.S. Application Serial No. 88/177,120 for BRISTLY on the Principal Register for goods which include “non-edible dental chews for pets;” examination of this application has concluded and the application was recently published for opposition by the U.S. Patent and Trademark Office.

6. In addition, Dertsakyan is also the owner of various design patent applications directed to the BRISTLY™ dog toothbrush, including an issued European Registered Community Design (005818606-0001), a pending U.S. design patent application, and a pending Chinese design patent application.

7. Defendants, by operating Internet based e-commerce stores, and fully interactive, commercial Internet websites operating under Defendants' respective seller identities set forth on Schedule "A" hereto (the "Seller IDs"), have advertised, promoted, sold, and offered for sale goods featuring, displaying, and/or using Plaintiffs' BRISTLY Works and/or Plaintiffs' BRISTLY Mark without authorization and Plaintiffs have determined the products that each Defendant is offering for sale are not genuine BRISTLY™ products.

8. Through the e-commerce marketplace platform, Plaintiffs accessed all of the e-commerce stores operating under Defendants' Seller IDs and captured the Defendants' listings at issue on the e-commerce stores. At the conclusion of the process, the detailed webpages and photographs were inspected by Plaintiffs' representative who confirmed that each Defendant is featuring, displaying, and/or using Plaintiffs' BRISTLY Works and/or Plaintiffs' BRISTLY Mark without authorization and the products that each Defendant is offering for sale are not genuine BRISTLY™ products.

9. Plaintiffs have a strong probability of proving at trial that consumers are likely to be confused by Defendants' advertisement, promotion, sale, offer for sale, or distribution of products with unauthorized and unlicensed uses of Plaintiffs' BRISTLY Mark and copyrighted works in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), that Plaintiffs' copyrights have been infringed in violation of 15 U.S.C. § 501, and prevailing on their related state law claims.

10. Plaintiffs, as well as consumers and animal owners, are likely to suffer immediate and irreparable losses, damages and injuries before Defendants can be heard in opposition, unless Plaintiffs' Application for *ex parte* relief is granted. There is good cause to believe that the unauthorized and unlicensed use of Plaintiffs' BRISTLY Mark and copyrighted works will continue in the marketplace; that consumers are likely to be misled, confused, and disappointed by the quality of the products so advertised, and that Plaintiffs may suffer loss of sales for their genuine products and an unnatural erosion of the legitimate marketplace in which they operate. There is also good cause to believe that if Plaintiffs proceed on notice to Defendants of this Application, Defendants can easily and quickly change the ownership or modify e-commerce store account data and content, change payment accounts, redirect consumer traffic to other seller identification names, and transfer assets and ownership of Seller IDs, thereby thwarting Plaintiffs' ability to obtain meaningful relief. As other courts have recognized, proceedings against those who deliberately traffic in infringing merchandise are often useless if notice is given to the adverse party.

11. The balance of potential harm to Defendants of being prevented from continuing to profit from their illegal and infringing activities if a temporary restraining order is issued is far outweighed by the potential harm to Plaintiffs, their reputation, and their goodwill as a manufacturer and distributor of quality products, if such relief is not issued.

12. The public interest favors issuance of the temporary restraining order in order to protect Plaintiffs' interests and protect the public from being deceived and defrauded by the passing off of Defendants substandard goods as Plaintiffs' genuine goods.

13. Under Pennsylvania law this Court may issue a prejudgment asset restraint where Plaintiffs' complaint asserts a claim for money damages. This Court also has the inherent

authority to issue a prejudgment asset restraint when Plaintiffs' complaint seeks relief in equity. According to both the Lanham Act and Copyright Act, 15 U.S.C. § 1117(a)(1) and 17 U.S.C. 504(b), Plaintiffs are entitled, "subject to the principles of equity, to recover ... defendant's profits." Plaintiffs seek, among other relief, that Defendants account for and pay to Plaintiffs all profits realized by Defendants by reason of Defendants' unlawful acts. Therefore, this Court has the authority to grant Plaintiffs' request for a prejudgment asset freeze to preserve the relief sought by Plaintiffs and preserve the Defendants' ability to at least partially satisfy a judgment.

14. Similarly, if Defendants are given notice of the Application, they are likely to destroy, move, hide or otherwise make inaccessible to Plaintiffs the records and documents relating to Defendants' illegal and infringing activities. Therefore, Plaintiffs have good cause to be granted expedited discovery.

ORDER

Based on the foregoing findings of fact and conclusions of law, Plaintiffs' Application is hereby **GRANTED** as follows (the "Order"):

I. Temporary Restraining Order

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, that 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 are hereby restrained as follows:

- (1) from (a) their unauthorized and unlicensed use of Plaintiffs' BRISTLY trademark and copyrights 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 Plaintiffs' BRISTLY trademark and copyrights;

- (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,¹ Merchant Storefronts² 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 discontinue use of the BRISTLY Mark and/or BRISTLY Works 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

¹ As defined in the Application, a "User Account" is, as defined in the Complaint, any and all accounts with online marketplace platform(s) eBay.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.

² 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.

or works which is visible to a computer user or serves to direct computer searches to Internet based 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 eBay, Inc. d/b/a eBay.com (“eBay”) (“Third Party Service Provider(s)”) 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” 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;³

³ 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.

- (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 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 an 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 the BRISTLY Trade Dress and/or BRISTLY Mark and/or BRISTLY Works, at issue in this action and/or unfairly competing with Plaintiff;

(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 shall remain in effect until the date for the hearing to show cause why a preliminary injunction should not be issued as set forth below, or until such further dates as set by the Court or stipulated by the parties.

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.

II. Order to Show Cause Why a Preliminary Injunction Should Not Issue and Service of Order

A. Defendants are hereby ORDERED to show cause before this Court in the United States District Court for the Western District of Pennsylvania, the U.S. Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania in Courtroom No. 6A on the 10th day of July at 4:00 p.m. EDT or at such other time that this Court deems appropriate, why a preliminary injunction, pursuant to FRCP 65(a), should not issue. **Defendants are on notice that failure to appear at the hearing may result in the imposition of a preliminary injunction against them.**

B. Opposing papers, if any, shall be filed electronically with the Court and served on Plaintiffs' counsel by delivering copies thereof to the office of Ference & Associates LLC at 409 Broad Street, Pittsburgh, Pennsylvania 15143 on or before before July 8, 2019, at 3:00 p.m. EDT. Plaintiffs shall file any Reply papers on or before July 10, 2019, at 3:00 p.m. EDT if notice described below in II(C) below has been given to all Defendants.

C. Plaintiffs' Counsel shall give notice (via electronic means) of this Order, all other Orders, and the Complaint in this action to the entities set forth in paragraph I(A)(7) above, and shall give notice by authorized service of this Order, all other Orders then extant, the Complaint, and the papers in this case to all Defendants within 24 hours of notice from PayPal that all relevant accounts have been frozen.

D. After Plaintiffs' counsel has received confirmation from the Third Party Service Providers and Financial Institutions or otherwise, regarding the restraint of funds directed herein, Plaintiffs' counsel shall file notice of such confirmation on the docket under seal without redaction within 24 hours of receipt of such confirmation. Plaintiffs shall thereafter serve copies of the Complaint, the Application, this Order, and any Discovery on each Defendant via their corresponding email/online contact form provided on the Internet based e-commerce stores operating under the respective Seller IDs, or by providing a copy of this order by e-mail to the marketplace platform, which in turn notifies each Defendant of the Order, or by other means reasonably calculated to give notice which is permitted by the Court. In addition, Plaintiffs shall post copies of the Complaint, Application, this Order, any Discovery, and all other pleadings and documents filed in this action on a website designated by Plaintiffs,⁴ and shall provide the website address to Defendants via e-mail/online contact form, and such notice so given shall be deemed good and sufficient service thereof. Plaintiffs shall continue to provide notice of these proceedings and copies of the documents on file in this matter to Defendants by regularly updating the website designated by Plaintiffs or by other means reasonably calculated to give notice which is permitted by the Court, or as otherwise directed by this Court.

⁴ Rule 65 has been interpreted to require that a party have notice of the motion and hearing; perfecting service on a defendant is not a prerequisite to the entry of a preliminary injunction order. *Pate v. Gov't of the Virgin Islands*, 2015 WL 1937701 n.9 (VI Sup. Ct. April 17, 2015); *Corrigan Dispatch Co. v. Casa Guzman, S.A.*, 569 F.2d 300, 302 (5th Cir. 1978).

III. Order Authorizing Expedited Discovery

A. IT IS FURTHER ORDERED, as sufficient cause has been shown, that:

(1) Plaintiffs may propound interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and 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 Plaintiffs' counsel.

(2) Plaintiffs may serve requests for the production of documents pursuant to FRCP 26 and 34, and 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 produce all documents responsive to such requests within fourteen (14) days of service to Plaintiffs' counsel.

(3) Plaintiffs may serve requests for admissions pursuant to FRCP 26 and 36, and 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 requests within fourteen (14) days of service to Plaintiffs' 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, 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 Plaintiffs' 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) any and 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 Plaintiffs' BRISTLY trademark and copyrights in connection with the distribution, marketing, advertising, offering for sale, or sale of any products, and any products which use Plaintiffs' BRISTLY trademark and copyrights.

V. Security Bond

IT IS FURTHER ORDERED that Plaintiffs shall place security (corporate surety bond, cash, certified check, or attorney's check) in the amount of \$ Five Thousand Dollars (\$5,000.00) with the Court, which amount is determined adequate for the payment

of any damages any person may be entitled to recover as a result of an improper or wrongful restraint ordered hereunder.

SO ORDERED.

Unless otherwise extended, this Restraining Order expires at 12:00 p.m., EDT, July 11, 2019.

SIGNED this 27th day of June, 2019, at 12:00 p.m.
Pittsburgh, Pennsylvania

/s/ Mark R. Hornak

Mark R. Hornak
Chief United States District Judge

cc: (All via email)
Stanley D. Ference, III, Esq.
courts@ferencelaw.com
Brian Samuel Malkin, Esq.
bmalkin@ferencelaw.com

Schedule "A"
Defendants With Item Number

Defendant No.	Defendant/ eBay Seller Name	eBay Item No.
1	max_buy	283260359301 273784204706 283250774663
2	adamchahir91	173621663654
3	airaka	283314176449
4	chmysm2018	312582286181
5	chinacostco_com	401640749164
6	cute-little-bear	283429929853
7	dc_bigshop1	332871800517 233023661242
8	deals4you9	142946752219
9	dedicatedsalesman	113291620121
10	good.deals411	401727604162
11	hantetech	153460905493
12	malifa168	254193025258
13	parts_online_2015	333134236938
14	shengxinyide2019new	163661202341
15	shopiline	143070043285
16	songyupeng1	372520429328 401631019715 401648408725 372520031376
17	4dice_international	113719563861
18	15oceaneshop	133016438995
19	a281768443	123728836755
20	adore-mart	273771923418
21	aldopets	173859442414

Defendant No.	Defendant/ eBay Seller Name	eBay Item No.
22	awesome*deals*today	264257214090
23	bigsquurreliland	223443866206
24	boris11184	123406003014
25	cashow002	264238330272 263996819056
26	chawtabsu0	333152522862 333152558517
27	crab-store	132917299708
28	dd2004720	163648416417
29	electronic_accessory_sales15	113383727885 113383725017
30	etrackonline	382631376693
31	global-onlineshop	192875156977
32	good_go1	173853506737
33	hanguang2018	183570344990 183594630051
34	happy2shopping2014	254014031904
35	happy-shop09	223457967046
36	homca2018	333151368645
37	home-store01	192877988183
38	ilovehome2018	153397186403
39	jaman38	192880268711
40	jostegen0	303047473519
41	lagacreye	264247037577 264247044239
42	letsboomboom	202496064579
43	ludas_mb	223461320615
44	mai202	392262076927
45	makdeep_0	123656394706
46	miggie77392012	183524497018 183568259837

Defendant No.	Defendant/ eBay Seller Name	eBay Item No.
47	nununy3090	233100866536
48	nutrasil	173831912125
49	oxwelle	253908289202
50	oz-sweetdeals	132987937936
51	paradisestore12	123689950279
52	parmesan_cliche	254136633195 254137985242 254137941237 254136632680 254137510050
53	parsayt0	323760244487
54	pha_6296	401732550025
55	plussale2017	183741229962
56	poramatse	143137777670
57	pricenter-ksdy	352642114979
58	qich97	273692053753
59	ralliar401	264281748175
60	rchcommerce1	163648213563
61	rebel1964	183749655490
62	redflower88	192864978584
63	ricji-45	312460809336
64	roberttaylor1589	352653064435
65	savvy-variety-shop	303119683035
66	sellingdaily90	293068665207
67	shopmallclub14	292868640649
68	slayway	372601630606 372601629978
69	sunfurax1	303022558695
70	tabletasemblysales1	254010266311 253990923200 253992995969

Defendant No.	Defendant/ eBay Seller Name	eBay Item No.
71	thph_5710	133021409411
72	timetree88	352625751236
73	towardfor	333126679945
74	truthedge.tech	173861733853
75	uleader666	362581659545
76	us2014.runzh	254095575455
77	usa.best.buying.experience	183681120066 183680993414
78	usa_ezra	273779162823
79	vejusshop17	192818928575
80	warehousedeals365	233119934769 382765057237
81	wewell888	223445427573
82	yair_uza	254181832584
83	yambaystore	123688194538
84	yvsg7734	163479765919
85	allcommerce27	173873059719
86	bruceshark-003	254206435700
87	chuanhu-store	382868561129
88	daos_34	372655989805
89	elshm_23	382855286796
90	excelsellerusa	233202722712
91	gohastings	382909773600
92	japanmarketplace	153397624294
93	ljsuperiorchew	163605701520
94	lucid-dreams	233203320927
95	lxlspets	192877443124 92877442677
96	maexus2018	303114565917
97	oobest_shop	123690828930
98	pege-318	202660041223

Defendant No.	Defendant/ eBay Seller Name	eBay Item No.
99	peninsulahome	223452646909
100	power-option	254033147886
101	presst_55	392187927096
102	ramah76m9	382911102525
103	raysal_64	143224397484
104	rm_best_4u	163549164611
105	saveyourbuy	333122249547
106	sedra-mb	264272772825
107	shimi_di	254207244054
108	simshop2018	323499684952
109	smartshopper2018	192877281447
110	soonhua2010	392267370872
111	thebusybunny	303134296865
112	uniquely_dg	233145027936
113	vestut-56	143222917427
114	violetrosech	323644254194

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

DOGGIE DENTAL INC., *et al.*,

Plaintiffs,

v.

MAX_BUY, *et al.*,

Defendants.

CIVIL ACTION NO. 19-cv-00746

FILED UNDER SEAL

**ORDER ON PLAINTIFF'S EX PARTE MOTION FOR AN ORDER
AUTHORIZING ALTERNATIVE SERVICE ON DEFENDANTS PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 4(f)(3)**

AND NOW, this 27th day of June, 2019, upon consideration of Plaintiff's Ex Parte Motion for an Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3),

IT IS HEREBY ORDERED that said Motion is GRANTED;

IT IS FURTHER ORDERED that Plaintiffs are authorized and directed to make alternative service of the Summonses, the Complaint, any discovery, and all filings and directed in this matter upon each Defendant in this action, as follows:

1. via e-mail by providing the address to Plaintiffs' designated website to Defendants via (i) the e-mail accounts provided by Defendants as part of the data related to their respective e-commerce stores, or (ii) the e-commerce marketplace for each of the e-commerce stores, or
2. via website publication by posting copies of the Summonses, Complaint, any Discovery, and all filings in this matter on Plaintiffs' designated website on www.ferencelaw.com.

3. Plaintiff shall make service of all papers of record at that time via such means within 24 hours of Plaintiff's receiving notice that all PayPal accounts have been frozen.

/s/ Mark R. Hornak
Mark R. Hornak
Chief United States District Judge

cc (All via e-mail)
Stanley D. Ference III, Esq.
courts@ferencelaw.com
Brian Samuel Malkin, Esq.
bmalkin@ferencelaw.com

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

DOGGIE DENTAL INC., *et al.*,

Plaintiffs,

v.

MAX_BUY, *et al.*,

Defendants.

Civil Action No. 19-cv-746

PRELIMINARY INJUNCTION ORDER

WHEREAS, on June 24, 2019, Plaintiffs Doggie Dental Inc. and Peter Dertsakyan filed an *Ex Parte* Application seeking 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”, and eBay, Inc. d/b/a eBay.com (“eBay”) (“Third Party Service Provider(s)”) and PayPal, Inc. d/b/a paypal.com (“PayPal”) (“Financial Institution(s)”), in light of Defendants’ intentional and willful offerings for sale and/or sales of Infringing Products¹ (“Application”);

¹ As alleged in Plaintiff’s Complaint, “. . .the Defendants identified in Schedule “A” of the Complaint, were and/are currently manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and or/selling products that have infringed upon Plaintiffs’ common law trade dress rights and Plaintiffs’ federally registered copyrights. Defendants have used Plaintiffs’ copyrighted photographs and/or common law BRISTLY trademark while marketing their knock-off products in a willful attempt to pass them off as genuine BRISTLY™ products; and Defendants accomplish their infringing sales through the use of, at least, the Internet based e-commerce stores operated via at least the Third Party Service Provider marketplace platform. (“Infringing Product”).

WHEREAS, on the same day, Plaintiffs filed an Ex Parte Motion for an Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3);

WHEREAS on June 27, 2019, at 12:00 p.m., the Court entered the following Orders:

(A) 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts; 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”**, eBay, and PayPal (“TRO”) (ECF No. 15); and

(B) an Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3) (ECF No. 17);

WHEREAS, as on July 9, 2019, upon Plaintiffs’ Motion, the Court entered an Order that extended the TRO (ECF No. 24), and

WHEREAS, on July 17, 2019, Plaintiff appeared for the Order to Show Cause Hearing, however no Defendants appeared. Further, eBay and PayPal did not appear.

ORDER

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, the injunctive relief previously granted on June 27, 2019 at 12:00 noon shall remain in place through the pendency of this litigation or until further order of this Court as to those Defendants listed on the attached Schedule “B”,² and issuing this Preliminary Injunction is warranted under FRCP 65, the Lanham Act and the Copyright Act, 15 U.S.C. § 1117(a)(1) and 17 U.S.C. § 504(b).

² On July 17, 2019, Plaintiffs voluntarily dismissed eighteen of the Defendants that were listed on the original Schedule “A” in the Court’s Order entering a temporary restraining order at ECF No. 15. (ECF No. 33). The

Accordingly, each Defendant identified on the attached Schedule “B”, 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’ BRISTLY trademark and copyrights 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 Plaintiffs’ BRISTLY trademark and copyrights;
- (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,³ Merchant Storefronts⁴ 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

attached Schedule “B” omits these eighteen defendants that have been voluntarily dismissed. Any reference to “Defendant” or “Defendants” herein refers to those defendants listed on the attached Schedule “B”.

³ As defined in the Application, a “User Account” is, as defined in the Complaint, any and all accounts with online marketplace platform(s) eBay.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 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;

- (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 discontinue use of the BRISTLY Mark and/or BRISTLY Works 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 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 the Financial Institution(s) and Third Party Service Provider(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 "B"

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 “B” 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 “B” 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, to the extent not already provided, 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 or that continue to be restrained

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.

by this Order shall be transferred or 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 "B" 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 the BRISTLY Trade Dress and/or BRISTLY Mark and/or BRISTLY Works, at issue in this action and/or unfairly competing with Plaintiff;
- (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 PI 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 PI Order in accordance with the Alternative Service Order.

B. IT IS HEREBY ORDERED, as sufficient cause has been shown, any Internet marketplace who is provided with notice of this Order, including but not limited to the Third Party Service Providers and Financial Institutions, shall continue to be restrained and enjoined from engaging in any of the following acts or omissions pending the final outcome of this litigation, 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"); 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.

II. Order Authorizing Expedited Discovery

A. IT IS FURTHER ORDERED, as sufficient cause has been shown, that:

- (1) Plaintiffs may propound interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and 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 Plaintiffs' counsel.

(2) Plaintiffs may serve requests for the production of documents pursuant to FRCP 26 and 34, and 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 produce all documents responsive to such requests within fourteen (14) days of service to Plaintiffs' counsel.

(3) Plaintiffs may serve requests for admissions pursuant to FRCP 26 and 36, and 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 requests within fourteen (14) days of service to Plaintiffs' 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, 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), to the extent not already provided, shall provide to Plaintiffs' 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) any and 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 Plaintiffs' BRISTLY trademark and copyrights in connection with the distribution, marketing, advertising, offering for sale, or sale of any products, and any products which use Plaintiffs' BRISTLY trademark and copyrights.

* * *

V. 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 further order of this Court, or until this Order is terminated.

SO ORDERED.

SIGNED this 22nd day of July, 2019, at 3:22 p.m. EST
Pittsburgh, Pennsylvania

A handwritten signature in black ink, appearing to read "Mark R. Hornak", written over a horizontal line.

Mark R. Hornak
Chief United States District Judge