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**

MEMORANDUM OF LAW IN SUPPORT OF *EX PARTE* APPLICATION FOR: 1) 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

Stanley D. Ference III
Pa. ID No. 59899
courts@ferencelaw.com
FERENCE & ASSOCIATES LLC

409 Broad Street
Pittsburgh, Pennsylvania 15143
(412) 741-8400 – Telephone
(412) 741-9292 – Facsimile

Attorneys for Plaintiff

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiff, TOKA LLC, ("Plaintiff") submits this memorandum of law in support of its *ex parte* application for: 1) a temporary restraining order; 2) an order restraining assets and Defendant 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 above-referenced Defendants (hereinafter collectively referred to as "Defendants" or individually as "Defendant"), Amazon Services LLC d/b/a Amazon.com ("Amazon"), Amazon Payments, Inc. d/b/a Pay.amazon.com ("Amazon Pay"), eBay, Inc. d/b/a ebay.com, wish.com, Alibaba.com US LLC d/b/a Alibaba.com and Aliexpress.com ("Third Party Service Providers") and Walmart Inc., d/b/a Walmart.com ("Walmart") ("Application").[1]

Defendants are knowingly and intentionally promoting, advertising, distributing, offering for sale, and selling knock-off and infringing versions of Plaintiff's patented EZ OUTLET® outlet extender and/or are making false claims regarding the products they are

[1] Plaintiff acknowledges they are seeking multiple forms of relief. Plaintiff will promptly provide supplemental briefing or oral argument on any issue should the Court request it.

promoting, advertising, distributing, offering for sale and selling throughout the United States, including within the Commonwealth of Pennsylvania and this district, by operating fully interactive, commercial Internet based e-commerce stores. Defendants are operating the Defendant Merchant Storefronts using the seller identities identified on Schedule "A" to the Complaint (the "Seller IDs"). The Defendant Merchant Storefronts are accessible in Pennsylvania via the Amazon.com, AliExpress.com, eBay.com, Wish.com, and Walmart.com online marketplaces.

Specifically, Plaintiffs have obtained evidence clearly demonstrating that Defendants have: (1) infringed Plaintiff's design patent; (2) unfairly competed with Plaintiff by using Plaintiff's images to advertise a product and delivering a different product to consumers that is not Plaintiff's product; (3) passing off fully assembled product as meeting applicable UL standards, when – at best – only a single component meets such standards; (4) unfairly competed with Plaintiff by falsely representing the product being sold is ETL certified as meeting applicable UL safety standards; and/or (5) unfairly competed with Plaintiff by falsely representing the product being sold is electrically grounded, when in fact the product is not electrically grounded.

Defendants are accomplishing their illegal sales through online marketplaces including Amazon.com, AliExpress.com, eBay.com, Wish.com, and Walmart.com online marketplaces ("Online Marketplaces"). Defendants' unlawful operations and false advertisements are causing Plaintiff significant irreparable harm, including loss of good will with customers, decreased market price of its patented product, increased costs associated with educating customers, increased marketing costs, and loss of profits resulting from Defendants' displacement of Plaintiff's legitimate, accurately advertised, patented EZ

OUTLET® outlet extender with knock-off products. Defendants' sale of the infringing and falsely advertised products are also highly likely to cause confusion in customers.

Defendants' advertisement, sale, and distribution of the Infringing and Falsely Advertised Products are highly likely to cause consumers to believe that Defendants are offering genuine EZ OUTLET® outlet extenders or a similar product that is of the same quality when, in fact, they are not. To illustrate, below are several examples which vividly show that the Infringing Product itself and the manner in which it is marketed is designed to confuse and mislead consumers into believing that they are purchasing Plaintiffs' EZ OUTLET® outlet extender, that the Infringing Product is otherwise approved by or sourced from Plaintiff, or that the Falsely Advertised Product is electrically grounded and comparable to Plaintiff's:

Product is Advertised Using Images of Plaintiff's EZ OUTLET®	Product Sold is Different From Product Advertised and Falsely Represents Product is Grounded		
	Outlet Side Showing Grounded Outlet	Blade Side of Plug Showing Grounded Plug	Plug Open Showing Two Wires (No Ground Wire)
			

Defendants' actions have resulted in actual confusion among consumers as to the characteristics and qualities of Defendants' products. Based on the above evidence, Plaintiff's Complaint alleges a claim for infringement of Plaintiff's federally registered patent in violation of the Patent Act; multiple claims for federal unfair competition in violation of Section 43(a) of the Trademark Act of 1946, as amended; and common law

unfair competition pursuant to 35 U.S.C. § 281, 15 U.S.C. § 1125(a), 28 U.S.C. § 1338(a)-(b), 28 U.S.C. § 1331, and The All Writs Act, 28 U.S.C. § 1651(a). Defendants' unlawful activities have deprived and continue to deprive Plaintiff of its rights to fair competition. By their activities, Defendants are defrauding Plaintiff and the consuming public for Defendants' benefit. Defendants should not be permitted to continue their unlawful activities, which are causing Plaintiff ongoing irreparable harm. Accordingly, Plaintiff is seeking entry of a temporary restraining order prohibiting Defendants' further false advertising.

The Court has personal jurisdiction over Defendants pursuant to 42 Pa. Cons. Stat. § 5322, or alternatively, Federal Rule of Civil Procedure 4(k)(2). Defendant meets the requirements of Pennsylvania's long-arm statute (42 Pa. Cons. Stat. § 5322), and the exercise of jurisdiction complies with constitutional due process. Defendants are also subject to personal jurisdiction pursuant to Federal Rule of Civil Procedure 4(k)(2) since Plaintiff's claims arise under federal patent law and under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), federal statutes, and the exercise of jurisdiction is consistent with the United States Constitution and laws.

Plaintiff is entitled to an *ex parte* temporary restraining order and preliminary injunction under Federal Rule of Civil Procedure 65(b) and 15 U.S.C. § 1117(a). Plaintiff has established the requisite elements for the Court to issue the requested preliminary relief. Plaintiff has demonstrated a reasonable probability of success on the merits of its patent infringement claims and federal unfair competition claims (including its false advertising claims), that it will suffer irreparable harm absent preliminary relief, that the balance of hardship favors Plaintiff, and that public interest favors issuing relief.

Plaintiff is entitled to an *ex parte* order preventing the fraudulent transfer of assets. Plaintiff has demonstrated that the equitable relief it seeks is appropriate in this action due to the likelihood that Plaintiff will become entitled to the encumbered funds upon final judgment and that, without the freeze, Defendants will likely move or otherwise dispose of the relevant funds.

Plaintiff is entitled to an order freezing Defendants' user accounts, Seller IDs, and Defendant Merchant Storefronts. Plaintiff has demonstrated a substantial likelihood of further infringement of its valuable patent and continued false advertising resulting in additional irreparable harm to Plaintiff absent an order freezing Defendants' Seller IDs. Defendants' past behavior and disregard for federal patent and commerce law strongly indicate that they will continue promoting their infringing products and false advertisements absent immediate measures preventing continued use of their storefronts.

Plaintiff is also entitled to an order authorizing expedited discovery. Plaintiff seeks information identifying Defendants, the full scope of their operations, the location of the infringing items, and the whereabouts of the proceeds from their illegal activities. Plaintiff has demonstrated that the request is reasonable in light of the circumstances and there will be little, if any, burden placed on Defendants stemming from such an order.

Plaintiff respectfully requests that the Court issue the abovementioned orders. Without the issuance of the requested orders, Plaintiff will continue to suffer irreparable harm from Defendants' infringing activity and false advertisements, and Plaintiff's ability to effectively pursue its claims will be severely impaired, if not entirely lost.

II. STATEMENT OF FACTS

A. The Parties

1. Plaintiff

Plaintiff, Toka LLC, is the owner of U.S. Patent Nos. D1,006,758 for OUTLET EXTENDER (issued Dec. 5, 2023) and 12,155,158 for WALL MOUNTING OUTLET EXTENDER (issued Nov. 26, 2024) that protect the innovate design of the EZ OUTLET® outlet extender and all intellectual property relating thereto.[2] The EZ OUTLET® outlet extender is an innovative rotatable and telescopic power outlet extender that allows for relocation of a wall power outlet to a different and more convenient location without requiring electrical work or professional installation, without cluttering surrounding surfaces, and which can be repositioned or remounted to accommodate changing needs.

Plaintiff developed and is engaged in the business of manufacturing and distributing, throughout the world, including within this district, the EZ OUTLET® outlet extender through its website, ezoutlet.com, and its Amazon.com and Walmart.com storefronts. Only Plaintiff is authorized to manufacture, import, export, advertise, offer for sale, or sell any goods utilizing the EZ OUTLET® outlet extender design without the express written permission of Plaintiff.

Plaintiff has developed, advertised, and promoted the EZ OUTLET® outlet extender and has spent substantial time, money, and resources doing so. The EZ OUTLET® outlet extender, largely due to the efforts of Plaintiff, has grown successful and garnered the attention of the public, who associate the EZ OUTLET® outlet extender exclusively with Plaintiff. Plaintiff's EZ OUTLET® outlet extender is listed by Intertek (a Nationally Recognized Testing Laboratory for

[2] The Patent Registrations are valid, subsisting, and in full force and effect. See Complaint **Exhibit 1** for the Patent Registration Numbers and images of the relevant patented design.

the United States) as complying with UL Standard 498A for Current Taps and Adapters. Such compliance earned Plaintiff's Product the Electrical Testing Laboratories (ETL) certification which signifies to consumers that the approved products are safe for use and meet or exceed industry safety standards to minimize hazards such as electrical fires and/or shock. As a result of this, Plaintiff has a reputation among consumers as a premium power accessory company that offers innovative and high-quality products. Plaintiff's positive reputation has garnered widespread goodwill among consumers.

2. Defendants

Defendants are a collection of foreign, anonymous, and sophisticated sellers on the Amazon.com, AliExpress.com, eBay.com, Wish.com, and Walmart.com online marketplaces, operating under seller identities as set forth in **Schedule "A"** to the Complaint. Defendants have created an unfair and infringing marketplace operating in parallel to Plaintiff's legitimate marketplace. Defendants Infringing and Falsely Advertised Products share unique identifiers such as similar characteristics, including the color, shape, and size of the products, as well as the nature of the false claims set forth in the product listings, suggesting that Defendants' unlawful operations arise out of the same transaction, occurrence, or series of transactions or occurrences. Defendants use aliases to avoid liability, going to great lengths to conceal their identities and the full extent of their intertwined, illegal operation. This allows Defendants to offer the unlawful products at a price lower than the EZ OUTLET® outlet extender.

Defendants regularly create new websites and online marketplace accounts using aliases to avoid detection by Plaintiff. The identification of the individuals behind these marketplace accounts is difficult to attain given the fictitious names and addresses associated with the

accounts. Upon information and belief, Defendants also maintain offshore bank accounts and regularly move funds derived from their Online Marketplace accounts to offshore accounts.

Defendants are selling unauthorized products that are based on and derived from Plaintiff's patented EZ OUTLET® outlet extender design and/or are advertising, selling, and distributing products based on false claims.[3] Defendants conduct business, offer for sale, and on information and belief, have sold and continue to sell the Infringing and Falsely Advertised Products throughout the United States, including in Pennsylvania and this Judicial District. Defendants facilitate sales by designing their storefronts to appear to unknowing customers to be authorized online retailers selling genuine EZ OUTLET® outlet extenders and/or to be selling an alternative outlet extender that is electrically grounded and of comparable quality. Defendants have full knowledge of Plaintiff's ownership of the EZ OUTLET® outlet extender design and utility patents, including Plaintiff's exclusive right to use and license the design.

B. Defendants' Wrongful Conduct

Defendants make explicit and implicit claims that their outlet extenders originate from Plaintiff and/or that their outlet extenders are electrically grounded. Defendants recognize the importance of UL certification to consumers and, in an attempt to capitalize on this, explicitly assert these false claims in product listings, advertisement, and description. Due to the highly technical testing equipment needed to measure electrical safety standards, consumers are unable to verify these claims at home. *Id.* at ¶ 19. These claims set forth by Defendant are literally false and are intended to delude consumers into believing that Defendants' products are of a superior quality to other accurately advertised products, including Plaintiff's. *Id.* at ¶ 21.

[3] See Complaint ¶6 for pictures of the EZ OUTLET® outlet extender compared to the Defendants' product listings. *See also* Declaration of Dee Odell submitted herewith.

Defendants conduct business, offer for sale, and on information and belief, have sold and continue to sell falsely advertised products throughout the United States, including in Pennsylvania and this Judicial District. *Odell Dec.* at ¶ 2. As part of Plaintiff's counsel's ongoing investigation regarding the false advertisements, counsel visited each of Defendants' Merchant Storefronts. *Id.* at ¶ 3. Counsel was able to access each product listing while present in Allegheny County. *Id.* The checkout pages confirm that each Defendant was and/or is still currently offering for sale and/or selling falsely advertised products through their respective online marketplace accounts and that each Defendant provides shipping and/or has actually shipped the falsely advertised products to the United States, including to customers located in Pennsylvania. *Id.* at ¶ 4. At checkout, a shipping address located in the Pittsburgh area ("the Pennsylvania Address") in the Western District of Pennsylvania verified that each Defendant provides shipping to the Pennsylvania Address. *Id.* at ¶ 5.

III. ARGUMENT

This Court is empowered to issue an *ex parte* TRO where immediate and irreparable injury, loss, or damage will result to the movant before the adverse party may be heard in opposition. *See* Fed. R. Civ. P. 65(b). In Pennsylvania, a pre-judgment restraint of existing assets is appropriate where a plaintiff asserts a claim for monetary damages and posts a bond. *Walker v. Stacey*, 837 A.2d 1205, 1207-10 (Pa. Super. 2003) (assets restrained in action seeking monetary damages for wrongful death); *Hoxworth v. Blinder, Robinson & Co.*, 903 F.2d 186, 194-97 (3d Cir. 1990) (acknowledging the district court's power to issue a preliminary injunction to protect a potential future damages remedy); *see also* Fed. R. Civ. P. 64 ("[E]very remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment."). Here Defendants' willful infringing

conduct and false advertisements are causing and will continue to cause irreparable harm to Plaintiff and, therefore, an *ex parte* TRO is warranted.

A. This Court Has Personal Jurisdiction Over Defendants

This court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the Patent Act, 35 U.S.C. § 281, Lanham Act, 15 U.S.C. § 1125(a), 28 U.S.C. § 1338(a)-(b), and 28 U.S.C. § 1331.

Venue is proper in this Court pursuant to 28 U.S.C. § 1391. Defendants reside outside of the United States and are subject to venue in any district. Defendants solicit business in this Judicial District and, upon information and belief, conduct and transact significant business in this district. Therefore, venue is proper in this Court.

Defendants are subject to the personal jurisdiction of this Court. Defendants are subject to personal jurisdiction pursuant to the Pennsylvania long-arm statute, 42 Pa. Cons. Stat § 5322, and exercising personal jurisdiction under the statute is consistent with due process. Alternatively, Defendants are also subject to the personal jurisdiction of this Court pursuant to Federal Rule of Civil Procedure 4(k)(2) because Plaintiff's claim arises under federal patent law and defendant is, therefore, not subject to jurisdiction in any state's courts of general jurisdiction, and exercising jurisdiction is consistent with the United States constitution and laws.

1. The Court May Exercise Personal Jurisdiction over Defendants Pursuant to 42 Pa. Cons. Stat. § 5322

Federal courts "may assert personal jurisdiction over a nonresident of the state in which the court sits to the extent authorized by the law of that state." *D'Jamoos v. Pilatus Aircraft*, 566 F.3d 94, 102 (3d Cir. 2009) (quoting *Provident Nat'l Bank v. Cal. Fed. Sav. & Loan Ass'n*, 819 F. 2d 434, 436 (3d Cir. 1987)). Determining whether a court may exercise personal jurisdiction

over a non-resident defendant is a two-step inquiry. The Court must first determine whether exercising personal jurisdiction is authorized under the appropriate state long arm statute. *Renner v. Lanard Toys*, 33 F.3d 277, 279 (3d Cir. 1994); *see* 42 Pa. Cons. Stat. § 5322; Fed. R. Civ. P. 4(e)(1). It then must be determined whether exercising personal jurisdiction meets the requirements of constitutional due process. *See IMO Industries, Inc. v. Kiekert AG*, 155 F.3d 254, 259 (3rd Cir.1998).

This Court may exercise personal jurisdiction over the Defendants pursuant to 42 Pa. Cons. Stat. § 5322. Pennsylvania state law provides for jurisdiction "to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States." 42 Pa. Cons. Stat. § 5322(b); *Marten*, 499 F.3d at 296; *Hammons v. Ethicon, Inc.*, 240 A.3d 537, 548 (Pa. 2020). Pennsylvania's Long Arm Statute is, therefore, coextensive with the Due Process Clause. *Gentex Corp v. Abbott*, 978 F. Supp. 2d 391, 395 (M.D. Pa. 2013).

Pennsylvania authorizes personal jurisdiction over the Defendant pursuant to 42 Pa. Cons. Stat. § 5322 (a) which provides, in pertinent part, "A tribunal of this Commonwealth may exercise personal jurisdiction over a person … as to a cause of action or other matter arising from such person: (1) Transacting any business in this Commonwealth for the purpose of thereby realizing pecuniary benefit . . . (3) Causing harm or tortious injury by an act or omission in this Commonwealth. (4) Causing harm or tortious injury by an act or omission outside this Commonwealth . . . (10) Committing any violation within the jurisdiction of the Commonwealth of any statute, home rule charter, local ordinance or resolution, or rule or regulation promulgated thereunder by any government unit or of any order of court or other government unit." 42 Pa. Cons. Stat. § 5322(a)(1), (3), (4), (10).

"Transacting any business in the Commonwealth" includes: (i) the doing by any person in this Commonwealth of a series of similar acts for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object; (ii) the doing of a single act in this Commonwealth for the purpose of thereby realizing pecuniary benefit or otherwise accomplishing an object with the intention of initiating a series of such acts; (iii) the shipping of merchandise directly or indirectly into or through this Commonwealth; (iv) the engaging in any business or profession within this Commonwealth, whether or not such business requires license or approval by any government unit of this Commonwealth. 42 Pa. Cons. Stat. § 5322(a)(1)(i)–(iv).

Courts have regularly exercised personal jurisdiction over a given defendant based on that defendant's operation of a fully interactive website through which consumers can access the site from anywhere and purchase products. *Zippo*, 952 F.Supp. 1119, 1128 (W.D. Pa. 1997); *Lutz v. Rakuten, Inc.*, 376 F. Supp. 3d 455, 465 (E.D. Pa. 2019); *R.Q.C. Ltd. V. JKM Enterprises, Inc.*, WL 4792148 (W.D. Pa. 2014). Such is the case with Defendants' Merchant Storefronts, which allow for customers all over the world (including within Allegheny County, Pennsylvania) to view and purchase products, including the Infringing and Falsely Advertised Products, as demonstrated by the Defendant Merchant Storefronts themselves and Plaintiff's purchase of the Infringing and Falsely Advertised products.

Accordingly, this Court has personal jurisdiction over Defendants, who have intentionally availed themselves of the opportunity to do business in Pennsylvania, and specifically in Allegheny County, Pennsylvania, through their fully interactive web sites to offer for sale and/or sell falsely advertised products. Defendants direct their business activities toward Pennsylvania consumers through various Online Marketplaces including Amazon.com, AliExpress.com, eBay.com, Wish.com, and Walmart.com, through which Defendants offer shipping to

Pennsylvania and this Judicial District. Defendants accept U.S. Dollars and calculate, charge, and remit tax based on sales to both Pennsylvania and this Judicial District. After completing a purchase from Defendants, Defendants ship the infringed products directly to Pennsylvania and this Judicial district.

Defendants' decisions to open their respective accounts for the purpose of selling Infringing and Falsely Advertised Products through their Defendant Merchant Storefronts alone support a finding that Defendants have intentionally used these marketplace platforms "as a means for establishing regular business with a remote forum." *EnviroCare Techs, LLC v. Simanovsky,* No. 11-CV-3458, 2012 U.S. Dist. LEXIS 78088, at *10 (E.D.N.Y. June 4, 2012) (quoting *Boschetto v. Hansing*, 539 F.3d 1011, 1019 (9th Cir. 2008); *see also Lifeguard Licensing Corp.*, 2016 U.S. Dist. LEXIS 89149, at *8; *EnviroCare Techs., LLC*, 2012 U.S. Dist.. LEXIS 78088, at *10. Courts have found that "commercial sellers" on "well-known, national . . . website[s]" are in fact subject to personal jurisdiction, as these Defendants "must have been able to foresee the possibility of being hauled into court [in the present jurisdiction]." *Malcom v. Esposito*, 63 Va. Cir. 440, 446 (Cir. Ct. 2003); *see also EnviroCare Techs., LLC*, 2012 U.S. Dist.. LEXIS 78088, at *12.

Here, by advertising, offering for sale, selling, distributing, and shipping retail products directly to consumers across the United States and specifically in Pennsylvania, Defendants have committed tortious acts, as alleged herein, outside of Pennsylvania, thus directly giving rise to the claims asserted in the instant action. 42 Pa. Cons. Stat. § 5322(a)(4). The injury to Plaintiff clearly occurred within Pennsylvania, as Defendants' Online Marketplace listings resulted in consumers throughout the United States, and specifically in Pennsylvania, purchasing infringing and/or falsely advertised products. Defendants are depriving Plaintiff of its right to fairly compete for

space in Online Marketplaces by reducing the visibility of Plaintiff's legitimate products. Defendants are also reducing the retail market value of Plaintiff's EZ OUTLET® outlet extender through diminished pricing, likely accomplished through cooperative efforts throughout the supply chain. Additionally, Defendants have irreparably damaged Plaintiff by depriving Plaintiff of control over the quality of products using the patented EZ OUTLET® outlet extender design, as well as the ability to license the innovative design. This loss of control has resulted in an irreversible loss of goodwill and reputation with Plaintiff's hard-earned customers.

Plaintiff and/or Plaintiff's counsel have viewed Defendants' falsely advertised products via their Defendant Merchant Storefronts. Thus, Defendants' sophisticated commercial operations, specifically including their offering for sale and/or selling of falsely advertised products through their interactive Defendant Merchant Storefronts, along with Defendants' own representations on their online marketplace accounts that they ship the falsely advertised products to the United States, including to Pennsylvania addresses, unequivocally establishes that Defendants conduct business within this District and the claims in this suit arise from Defendants' business dealings and transactions with consumers in Pennsylvania. *See Zippo Mfg. Co. v. Zippo DOT Com*, 952 F. Supp. 1119 (W.D. Pa. 1997).

1. Exercising Personal Jurisdiction Over Defendants Comports with Due Process

The assertion of personal jurisdiction over Defendants also comports with the Due Process Clause of the U.S. Constitution, as Defendants have "certain minimum contacts … such that maintenance of th[is] suit does not offend 'traditional notions of fair play and substantial justice.'" *Calder v. Jones*, 465 U.S. 783, 788 (1984) (quoting *Milliken v. Meyer*, 311 U.S. 457 (1940)).

This Court may exercise personal jurisdiction when the plaintiff can establish that the cause of action at issue arose from the defendant's activities with the forum state. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. at 414 (1984). The Defendant's contacts with the forum state must be such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940*)); O'Connor v. Sandy Lane Hotel Co., Ltd.*, 496 F.3d 312, 317 (3d Cir. 2007). The plaintiff initially bears the burden of proving a *prima facie* case, by a preponderance of the evidence, that the defendant's contacts with the forum state meet the "minimum contacts" test. *Carteret Sav. Bank, F.A. v. Shushan*, 954 F.2d 141, 146 (3d Cir. 1992); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (U.S. 1985); *see Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 243 (2d. Cir. 2007) ("In the language of minimum contacts, when the defendants committed 'their intentional, and allegedly tortious, actions expressly aimed at California, they must have reasonably anticipated being hauled into court there.'") (internal quotations omitted). (W.D. Pa. 1997).

Here, the Defendants intentionally directed their activity towards the Pennsylvania market, thereby purposefully availing themselves of "the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." This Court has jurisdiction over Defendants based on their internet-based sales into the United States and this judicial district. Thus, the Plaintiff has made out a *prima facie* case, by a preponderance of the evidence that Defendants' contacts with Pennsylvania meet the "minimum contacts" test.

Pennsylvania's long-arm statute provides that jurisdiction may be exercised "to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States."

42 Pa. Cons. Stat. § 5322(b). Thus, because Pennsylvania's long-arm statute is coextensive with the dictates of the U.S. Constitution, the traditional two-step analysis is collapsed into a single inquiry: "whether the exercise of personal jurisdiction would conform with the Due Process Clause." *Poole v. Sasson,* 122 F. Supp. 2d 556, 558 (E. D. Pa. 2000); *see also Renner v. Lanard Toys Limited,* 33 F.3d 277, 279 (3d Cir. 1994) ("[T]his court's inquiry is solely whether the exercise of personal jurisdiction over the defendant would be constitutional."). Due process requires that the defendant have "minimum contacts" with the forum state. *Remick v. Manfredy,* 238 F.3d 248, 255 (3d Cir. 2001) (quoting *International Shoe Co. v. Washington,* 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945)). "Minimum contacts must have a basis in 'some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.'" *Remick,* 238 F.3d at 255 (quoting *Asahi Metal Indus. Co., Ltd. v. Superior Court of California,* 480 U.S. 102, 109, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987)).

Here, each of the Defendants has used an interactive website for offering for sale and selling the Infringing and Falsely Advertised Products. This Court has personal jurisdiction over each Defendant based upon internet-based sales activity into the United States and this judicial district. The seminal opinion in this regard is *Zippo Mfg. Co*, 952 F. Supp. at 1119. In *Zippo*, this Court established a "sliding scale" analytical framework for internet-based personal jurisdiction cases based upon the "level of interactivity and commercial nature of the exchange of information that occurs on the Web site" 952 F. Supp. at 1124. The court explained:

> [T]he likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet. This sliding scale is consistent with well-developed personal jurisdiction principles. At one end of the spectrum are situations where a defendant clearly does business over the Internet. If the defendant

> enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper. At the opposite end are situations where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions. A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise personal jurisdiction. The middle ground is occupied by interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site.

Id.

The Third Circuit endorsed this general framework in *Toys "R" Us, Inc. v. Step Two, S.A.,* 318 F.3d 446 (3d Cir. 2003), but clarified that the plaintiff must also provide evidence of "the intentional nature of the defendant's conduct vis-a-vis the forum state." *Id.* at 452. In other words, "there must be some evidence that the defendant 'purposefully availed' itself of conducting activity in the forum state, by directly targeting its website to the state, knowingly interacting with residents of the forum state via its website, or through sufficient other related contacts." *Id.* at 454; *see also Mellon Bank (East) PSFS, N.A. v. DiVeronica Bros., Inc.*, 983 F.2d 551, 556 (3d Cir. 1993) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985)).

In the wake of *Zippo* and *Toys "R" Us*, most courts have concluded that a defendant that intentionally conducts business transactions over an interactive website with customers in the forum state has purposefully availed itself of the laws of that forum. In *Square D*, for example, the defendant's website contained links providing "a [telephone] number and e-mail address for the purpose of placing an order," information concerning product warranties, and a link that permitted a potential purchaser to "submit a form specifying the manufacturer, catalog number, and quantity of the product to be purchased, as well as the purchaser's company name, phone, fax and e-mail." *Square D Co. v. Scott Elec. Co.*, No. 06-459, 2008 WL 4462298, at 3 (W.D. Pa.

Sept. 30, 2008). There was also a space on the form for additional "comments" concerning a proposed transaction. *Id.* Although a customer could not directly order products using only the website, customers could "commence the ordering process" by "provid[ing] much of the same type of information that would be required for an order (e.g., manufacturer, quantity, catalog number, contact information)." *Id.* at 8. Indeed, the court noted that the website had produced "twenty-four (24) Pennsylvania customers and a total of $10,238.25 in sales" for the defendant. *Id.* at 9. Although this amount represented "less than 1%" of the defendant's total sales, the Court concluded that it was sufficient to establish personal jurisdiction in the state of Pennsylvania. *Id.* As explained by the court:

> The website was more than a mere advertisement; rather, it was an interactive site that allowed customers to take the first step in an ordering process that could be completed with one phone call or e-mail. By knowingly selling and shipping a product that is at issue in this litigation to a customer [in] Pennsylvania, the Moving Defendants purposefully availed themselves of the laws and privileges of this forum.

Id. at 11.

Willyoung v. Colorado Custom Hardware, Inc. is similarly instructive. *Willyoung v. Colorado Custom Hardware, Inc.,* 2009 WL 3183061 (W. D. Pa. Sept. 30, 2009). In *Willyoung,* the website at issue allowed visitors to "request a catalog by supplying certain information according to the website prompts, contact the company directly by-email, subscribe to [defendant's] on-line newsletter, and search, view, and select products for on-line purchase via a 'shopping cart.'" *Id* .at 12. Over a two-year period, Pennsylvania customers had utilized the website to place 211 orders amounting to $41,566.05 in sales. *Id*. Based on the foregoing, the court concluded that the defendant had purposefully availed itself of the privilege of conducting business in the state of Pennsylvania by "intentionally and repeatedly engag[ing] in internet-

based sales of its products to Pennsylvania residents via its website." *Id*. at 13. Other courts have frequently reached the same conclusion. *See, e.g.*, *Gentex Corp. v. Abbott*, 978 F. Supp. 2d 391, 398 (M.D. Pa. 2013) (finding personal jurisdiction where non-resident defendant's interactive website was used by Pennsylvania residents to place at least 17 orders over a three-year period); *TRE Services, Inc. v. U .S. Bellows, Inc*., 2012 WL 2872830, 4–5 (W.D. Pa. July 12, 2012) (finding personal jurisdiction based on defendant's commercially interactive website that accepted orders from Pennsylvania); *Gourmet Video, Inc. v. Alpha Blue Archives, Inc.*, 2008 WL 4755350, 3 (D.N.J. Oct. 29, 2008) ("Personal jurisdiction is properly exercised over a defendant using the Internet to conduct business in the forum state."); *L'Athene, Inc. v. EarthSpring LLC*, 570 F. Supp. 588, 593–94 (D. Del. 2008) (defendants purposely availed themselves of doing business in state of Delaware where they operated a website accessible in Delaware, received orders and payments from customers in Delaware, and shipped their products to Delaware).

Thus, Defendants have all offered interactive websites for viewing, ordering, and paying for the Infringing and Falsely Advertised Products and have purposefully availed themselves of the opportunity to conduct business with Pennsylvania citizens with their respective online marketplace accounts. Further, there is sufficient evidence to establish the type of "intentional interaction with the forum state" required by the Third Circuit for the exercise of personal jurisdiction. *See Toys "R" Us*, 318 F.3d at 451–52 (requiring evidence that the defendant has "intentionally interact[ed] with the forum state). *See, e.g.*, *Square D*., 2008 WL 4462298 at 9 n.10 (concluding that an amount equal to less than 1% of overall sales was sufficient to establish minimum contacts); *Zippo*, 952 F.Supp. at 1127 (exercising personal jurisdiction despite that only 2% of the defendant's customers were Pennsylvania residents); *L'Athene*, 570 F. Supp. 2d at 593–94 (exercising personal jurisdiction despite that sales to the forum state constituted less

than 1% of defendants' total annual sales based on units sold). As noted in *Zippo*, "[t]he Supreme Court has made clear that even a single contact can be sufficient." *Zippo*, 952 F. Supp. at 1127 (citing *McGee v. Int'l Life Ins. Co*., 355 U.S. 220, 223, 78 S.Ct. 199, 2 L. Ed. 2d 223 (1957)); *see also Square D*., 2008 WL 4462298 at 9 n. 10 (noting that, while an argument based on a minute number of overall sales might be "valid in the context of general jurisdiction, in the context of specific jurisdiction it is evidence that supports Plaintiff's argument that the Moving Defendants purposefully availed themselves of the laws and privileges of Pennsylvania by selling and shipping products to residents of the Commonwealth.").

Since the Defendants have purposefully availed themselves of the opportunity to conduct business with Pennsylvania citizens through their interactive websites, the Court must next consider whether this litigation "arises out of and relate[s] to" those sales. *D'Jamoos*, 566 F.3d at 102. Here, the lawsuit directly arises out of Defendants' respective sales of infringing and falsely advertised products to Pennsylvania residents through their interactive websites. *See, e.g.*, *Willyoung*, 2009 WL 3183061 at 13 ("The second part of our jurisdictional inquiry is also easily satisfied because this litigation arises out of and relates to BGM's use of its web site to conduct internet-based sales of its merchandise to Pennsylvania residents.") (internal quotation marks omitted); *Square D*., 2008 WL 4462298 at 11 (finding the relatedness requirement satisfied where "at least one" of the products sold to a Pennsylvania resident by the defendant was from the allegedly line of products at issue in the litigation). All of the products Infringing and/or Falsely Advertised Products which are the subject of this lawsuit were sold into Pennsylvania. Therefore, the "arise[s] out of and relate[s] to" test is easily met here.

Finally, the Court must consider whether the exercise of jurisdiction would otherwise comport with "traditional notions of fair play and substantial justice." *O'Connor v Sandy Lane*

Hotel Co., Ltd, 496 F.3d 312, 316 (3rd Cir. 2007) (quoting *Int'l Shoe*, 326 U.S. at 316). Because the existence of minimum contacts makes jurisdiction presumptively constitutional, the defendant at step three of the specific-jurisdiction-inquiry process "must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." *Id.* (quoting *Burger King*, 471 U.S. at 477). The burden upon the defendant at this stage of the inquiry is considerable. *See Pennzoil Prods. Co. v. Colelli & Assocs., Inc*., 149 F.3d 197, 207 (3rd Cir. 1998) (noting that if minimum contacts are present, then jurisdiction will be unreasonable only in "rare cases"); *Grand Entm't Group, Ltd., v. Star Media Sales, Inc*., 988 F.2d 476, 483 (3rd Cir.1993) ("The burden on a defendant who wishes to show an absence of fairness or lack of substantial justice is heavy."). As the Third Circuit has observed:

> The Supreme Court has identified several factors that courts should consider when balancing jurisdictional reasonableness. Among them are the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate [and international] judicial system's interest in obtaining the most efficient resolution of controversies, and [t]he procedural and substantive interests of other nations.

O'Connor, 496 F.3d at 324 (internal quotations omitted).

Here, the Plaintiff's interest in obtaining convenient and effective relief in the forum of its choice and Pennsylvania's interest in protecting its citizens from the sale of knock-off and/or falsely advertised goods within its borders are factors that weigh heavily in finding personal jurisdiction of the Defendants. *See Square D*, 2008 WL 4462298 at 12 (concluding that jurisdiction should be exercised in Pennsylvania "because the goods in question potentially pose a danger to the public and were sold to residents of this Commonwealth."). As the court noted in *Zippo*, "[i]f [the defendant] had not wanted to be amenable to jurisdiction in Pennsylvania, the

solution would have been simple—it could have chosen not to sell its [products] to Pennsylvania residents." *Zippo*, 952 F. Supp. at 1126–27.

Given the foregoing consideration, this Court's exercise of personal jurisdiction over Defendants complies with constitutional due process. Defendants have personally availed themselves of the market and laws of Pennsylvania and this Judicial District and have sufficient minimum contacts with the Commonwealth and this Judicial District such that the maintenance of the case will not offend "traditional notions of fair play and substantial justice." Accordingly, Plaintiff respectfully submits that this Court has personal jurisdiction over Defendants in this action.

2. The Court May Exercise Personal Jurisdiction Over Defendants Pursuant to Federal Rule of Civil Procedure 4(k)(2).

Even if Defendants suggest that their use of the Online Marketplace does not constitute sufficient contacts with Pennsylvania and the Court accepts that argument, Federal Rule of Civil Procedure 4(k)(2) confers personal jurisdiction over defendants when (1) a claim arises under federal law, (2) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction, and (3) exercising jurisdiction is consistent with the United States Constitution and laws. Fed. R. Civ. P. 4(k)(2); *see Saudi v. Acomarit Maritimes Servs., S.A.*, 114 F. App'x 449, 455 (3d Cir. 2004) (applying the elements of Fed. R. Civ. P. 4(k)(2)).

The claims asserted against Defendants arise under federal patent and commerce law and Defendants do not have sufficient contacts to be subject to general jurisdiction in any state court, therefore making it proper for this Court to exercise personal jurisdiction over Defendants. Fed. R. Civ. P. 4(k)(2)(A); 28 U.S.C. § 1338(a); *see D'Agostino v. Appliances Buy Phone Inc.,* 633 Fed. Appx. 88, 93 (3d Cir. 2015).

Plaintiff's claim for patent infringement and false advertising arises under the Patent Act 35 U.S.C. § 271 and Lanham Act, 15 U.S.C. § 1125(a), federal statutes which provides a civil cause of action against any individual who makes, uses, offers to sell, or sells any patented invention without authority to do so and who uses false or misleading descriptions, that are likely to cause confusion, in connection with the advertising or promotion of a good or service. The first requirement for personal jurisdiction to be conferred upon this Court under Federal Rule of Civil Procedure 4(k)(2) is therefore satisfied.

The patent claims asserted against Defendants arise under federal patent laws, and therefore Defendants are not subject to jurisdiction in any state's courts of general jurisdiction. Fed. R. Civ. P. 4(k)(2)(A); 28 U.S.C. § 1338(a). Defendants are not subject to jurisdiction in any state's courts of general jurisdiction since "[n]o State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents." 28 U.S.C. § 1338(a). The claims asserted against Defendants arise under the Patent Act, an Act of Congress relating to patents. Additionally, Defendants target the United States as a whole, and if the Court finds their contacts with Pennsylvania insufficient, their nationwide purposeful availment would leave them subject to jurisdiction in no individual state's courts of general jurisdiction.

General jurisdiction exists over a foreign defendant (sister-state or foreign-country) only when the defendant's contacts with the State are so 'continuous and systematic' as to render them essentially at home in the forum State. *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (citing *Goodyear Dunlop Tires Operations, S.A., v. Edgar D. Brown*, 564 U.S. 915, 919 (2011)). The Supreme Court of the United States has long held that continuous activity of "some sorts" within a state, such as participating in commerce therein, is not enough to support the contention that a defendant is to be

subjected to general jurisdiction in the court of that state. *Id.* at 132. For a corporation to be considered at home in a forum state in which they are not incorporated nor have their principal place of business, there must be exceptional circumstances. *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 448, 72 S.Ct. 413, 96 L.Ed. 485 (1952) (finding that a corporation ceasing operations in their place of incorporation viewed in combination with the president of the corporation moving to, keeping an office and company files in, and overseeing company activities from the forum state renders the corporation essentially at home in the forum).

Here, Defendants are incorporated in and oversee their business operations from foreign jurisdictions. Defendants have directed their commercial activities towards every jurisdiction within the United States through their use of the Amazon.com, AliExpress.com, eBay.com, Wish.com, and Walmart.com online marketplaces, but do not have significant contacts with any particular jurisdiction that rise even remotely near the level of contact required to be considered at home within a particular jurisdiction. *Molnlycke Health Care AB v. Dumex Medical Surgical Products LTD.,* 64 F.Supp2d 448, 451 (E.D. Pa. 1999) ("To hold that the possibility of ordering products from a website establishes general jurisdiction would effectively hold that any corporation with such a website is subject to general jurisdiction in every state. The court is not willing to take such a step".) The absence of general jurisdiction over Defendants in any state additionally satisfies the second requirement for the exercise of personal jurisdiction to be appropriate in this Court.

Exercising jurisdiction over Defendants is consistent with the United States Constitution and laws. Fed. R. Civ. P. 4(k)(2)(B). Federal Rule of Civil Procedure 4(k)(2) (the "federal long-

arm statute") remedies a gap in the enforcement of federal laws, allowing a court to look at a defendant's contacts with the United States as a whole to determine whether exercising jurisdiction is consistent with Due Process. *Koken v. Pension Benefit Guar. Corp.*, 430 F. Supp. 2d 493, 499 (E.D. Pa. 2006) (citing Fed. R. Civ. P. 4 Advisory Committee Note & *Central States Southeast and Southwest Areas Pension Fund*, 2000 WL 1015937, at 4 (N.D. Ill. 2000)); *Sköld v. Galderma Labs., L.P.*, 99 F. Supp. 3d 585, 602–03 (E.D. Pa. 2015) (quoting *Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 455 n.7 (3d Cir. 2003)). Under the paradigm of Federal Rule of Civil Procedure 4(k)(2), exercising personal jurisdiction over a defendant is proper when the defendant has "purposefully directed his activities at residents of the forum and the litigation results from alleged injuries that 'arise out of or related to' those activities." *Sköld*, 99 F. Supp. 3d at 603 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)); *see Saudi*, 114 Fed. App'x at 455.

Defendants here have substantial contacts with the United States as a whole. Defendants have purposefully directed their activities at the aggregate United States. The Online Marketplaces that Defendants have voluntarily opened accounts with for the purpose of selling the falsely advertised products target the entirety of the United States. *See Graduate Mgmt. Admission Council v. Raju*, 241 F. Supp. 2d 589, 590, 597–600 (E.D. Va. 2003) (finding personal jurisdiction over an online seller defendant where they directed their online activity at the United States, targeted U.S. customers, and provided a testimonial from a U.S. citizen); *Lang Can, Inc. v. VNG Corp.*, 40 F.4th 1034, 1040-43 (9th Cir. 2022) (finding jurisdiction over mobile app owner since there was "substantial evidence of intentional direction into the United States market"). The Defendant Merchant Storefronts are promoted in the United States via the Amazon.com, AliExpress.com, eBay.com, Wish.com, and Walmart.com online marketplaces,

provide prices in U.S. Dollars, advertise free shipping to U.S. buyers, including those in Pennsylvania, and provide reviews from users in the United States. Defendants have sold, and/or continue to sell, the Infringing and/or Falsely Advertised Products in the United States. Defendants additionally provide U.S. buyers the option to communicate with Defendants regarding the Infringing and/or Falsely Advertised products.

The present litigation results from the injuries sustained by Plaintiff that arise out of Defendants' activities in the United States. Defendants are depriving Plaintiff of its right to fairly compete for space in Online Marketplaces and irreparably damaging Plaintiff's goodwill and reputation. Given the above-mentioned considerations, this Court may exercise personal jurisdiction over Defendants pursuant to Federal Rule of Civil Procedure 4(k)(2), the "federal long-arm statute." The claims asserted against Defendants arise under federal commerce and patent law and Defendants do not have sufficient contacts to be subject to general jurisdiction in any state court. Additionally, the present litigation results from Defendants activities directed at the aggregate United States. Therefore, personal jurisdiction is proper.

B. Plaintiff is Entitled to an Ex Parte Temporary Restraining Order and a Preliminary Injunction

An *ex parte* order is essential in this case to prevent immediate and irreparable injury to Plaintiff. Defendants herein are actively promoting, advertising, selling and infringing upon Plaintiff's patented EZ OUTLET® outlet extender and/or are promoting, advertising, selling alternative outlet extenders that are falsely represented as being electrically grounded via their interactive e-commerce storefronts, User Accounts, and Seller IDs. Defendants are passing off their infringing products as genuine and causing irreparable harm to Plaintiff, including loss of good will customers, decreased market price of the patented product, increased costs associated

with educating customers, increased marketing costs, and lost profit resulting from Defendants' displacement of Plaintiff's legitimate, patented design on Online Marketplaces with infringing knock-off products. Defendants are misrepresenting the origin, characteristics, and/or qualities of their goods by explicitly and impliedly asserting that their outlet extenders are authentic EZ OUTLET® outlet extenders and/or that they are electrically grounded. Through these misrepresentations, Defendants are thereby likely to cause confusion, deception, and mistake in the minds of consumers, leading them to incorrectly believe that Defendants are offering products that are legitimate EZ OUTLET® outlet extenders and/or are alternative outlet extenders of equal quality.

Defendants' infringing activities and false advertisements are causing irreparable harm to Plaintiff, including lost sales, loss of control of reputation, loss of control of product quality, and loss of consumer goodwill. The entry of an *ex parte* temporary restraining order and preliminary injunction which precludes Defendants from continuing to display their infringing products and untrue claims would serve to immediately stop Defendants from benefiting from the infringement of Plaintiff's patented EZ OUTLET® outlet extender design and the false advertisements at issue and preserve the status quo until such time as a hearing can be held. *See Dell Inc. v. BelgiumDomains, LLC*, Case No. 07-22674 2007 WL 6862341, at 2 (S.D Fla. Nov. 21, 2007) (finding *ex parte* relief more compelling where Defendants' scheme "is in electronic form and subject to quick, easy, untraceable destruction by Defendants.")

Rule 65(b) of the Federal Rules of Civil Procedure provides, in pertinent part, that a temporary restraining order may be granted without written or oral notice to the opposing party or that party's counsel where "it clearly appears from the specific facts shown by affidavit . . . that immediate and irreparable injury, loss or damage will result to the applicant before the

adverse party or that party's attorney can be heard in opposition." Fed. R. Civ. P. 65(b)(1). Further, this Court has inherent power to grant an *ex parte* restraining order. *See Link v. Wabush R. R.*, 370 U.S. 626, 630–31 (1962) ("Inherent powers are governed by the 'control necessarily vested in courts to manage their own affairs as to achieve the orderly and expeditious disposition of cases.' (citation omitted)"). Indeed, the Supreme Court has indicated that federal courts have broad inherent powers to accomplish justice. *See Chambers v. Nasco, Inc*., 501 U.S. 32, 44 (1991).

Absent a temporary restraining order without notice, Defendants can and, based upon Plaintiff's counsel's past experience, will significantly alter the status quo before the Court can determine the parties' respective rights. In particular, the Seller IDs at issue are under the Defendants' complete control. Thus, Defendants have the ability to modify e-commerce store data and content, redirect consumer traffic to other seller identification names, change payment accounts, and transfer assets. *Declaration of Stanley D. Ference III ("Ference Dec."),* ¶ *6*. Such modifications can happen in a short period of time after Defendants are provided with notice of this action. *Id*. Defendants can also easily electronically transfer and secret the funds sought to be restrained if they obtain advance notice of Plaintiff's Application for a Temporary Restraining Order and thereby thwart the Court's ability to grant meaningful relief and can completely erase the status quo. *Id*. As Defendants engage in deceptive and illegal activities, Plaintiff has no reason to believe that Defendants will make their assets available for recovery pursuant to an account of profits or will adhere to the authority of this Court any more than they have adhered to the Lanham Act.

This Court should prevent an injustice from occurring by issuing an *ex parte* temporary restraining order which precludes Defendants from continuing to display their infringing

products and false advertisements via the Amazon.com, AliExpress.com, eBay.com, Wish.com, and Walmart.com Online Marketplaces or modifying or deleting any related content or data. Only such an order will prevent ongoing irreparable harm and maintain the status quo. The immediate and irreparable harm to Plaintiff's business and reputation—as well as to the goodwill associated with Plaintiff's product—in denying its application for an *ex parte* temporary restraining order, greatly outweighs the harm to Defendants' interests in continuing to offer for sale and sell the Infringing and Falsely Advertised products.

Many courts have granted an *ex parte* temporary restraining order in situations where the harm to plaintiff far outweighs the harm to defendants.[4] To evaluate whether preliminary relief is warranted in a false advertisement claim, the Third Circuit has held that the moving party must show: (1) a reasonable probability of success in the litigation; (2) that it will suffer irreparable harm if the injunction is not granted; (3) the balance of hardships tips in its favor; and (4) that the public interest favors such relief. *See Kos Pharms., Inc. v. Andrx Corp*., 369 F.3d 700, 708 (3d Cir. 2004) (citing *Allegheny Energy, Inc. v. DQE, Inc.,* 171 F.3d 153, 158 (3d Cir. 1999)); *Reilly v. City of Harrisburg*, 858 F.3d 173, 176 (3d Cir. 2017) (citing *Del. River Port Auth. v. Transamerican Trailer Transport, Inc*., 501 F.2d 917, 919–20 (3d Cir. 1974)).

As shown below, Plaintiff readily meet the criteria for obtaining a temporary restraining order and preliminary injunction. The "standard which govern consideration of an application for

[4] *See, e.g., Intenze Products, Inc. v. 1586, et al.,* No. 18-cv-4611-RWS (S.D.N.Y. May 24, 2018)*; Allstar Marketing Group, LLC v. 158, et al.,* No. 18-cv-4101-GHW, Dkt. 22 (S.D.N.Y. May 17, 2018)*; William Mark Corporation v. 1&cc, et al.,* No. 18-cv-3889-RA, Dkt. 18 (S.D.N.Y. May 2, 2018)*; WOW Virtual Reality, Inc. v. Bienbest, et al.,* No. 18-cv-3305-VEC, Dkt. 9 (S.D.N.Y. April 16, 2018)*; Ideavillage Products Corp. v. abc789456, et al*., No. 18-cv-2962-NRB, Dkt. 11 (S.D.N.Y. April 11, 2018)*; Ideavillage Products Corp. v. Aarhus, et al.,* No. 18-cv-2739-JGK, Dkt. 22 (S.D.N.Y. March 28, 2018)*; Moose Toys Pty Ltd. et al., v. 963, et al*., No. 18-cv-2187-VEC, Dkt. 16 (S.D.N.Y. April 2, 2018)*; Off-White, LLC v. A445995685, et al.,* No. 18-cv-2009-LGS, Dkt. 5 (S.D.N.Y. March 27, 2018)*; Spin Master Ltd. and Spin Master, Inc. v. 158, et al.,* No. 18-cv-1774-PAE, Dkt. 18 (Feb. 27, 2018) (cases asserting section 43(a) violations in which *ex parte* applications for relief were granted).

a temporary restraining order are the same standards as those which govern a preliminary injunction." *Local 1814, Int'l Longshoremen's Ass'n v. N.Y. Shipping Ass'n, Inc.,* 965 F.2d 1224, 1228 (2d Cir. 1992). *See also Hall v. Johnson*, 599 F.Supp.2d 1, 6 n. 2 (D.D.C. 2009); *accord Sterling Commercial Credit-Michigan, LLC v. Phoenix Industries I, LLC*, 762 F.Supp.2d 8 (D.D.C. 2011); *Coalition for Parity, Inc. v. Sebelius*, 709 F.Supp.2d 6 (D.D.C. 2010). As detailed below, Plaintiff has met the standard for preliminary injunction, and accordingly, as temporary restraining order should also issue against Defendants.

1. Plaintiff Is Likely to Prevail on the Merits of The Litigation

a. Plaintiff Will Prevail on Its Design Patent Infringement Claim as Defendants Offer to Sell Their Products Using Images of Plaintiff's Product

Plaintiff will likely succeed on its patent infringement claim brought under 35 U.S.C. § 271(a). A patent is infringed when a person "without authority makes, uses, offers to sell, or sells any patented invention within the United States… during the term of the patent . . . ." 35 U.S.C. § 271(a). A design patent contains a single claim. 37 C.F.R. § 1.153. "Whether a design patent is infringed is determined by first construing the claim to the design … and then comparing it to the design of the accused device." *OddzOn Prods., Inc. v. Just Toys, Inc*., 122 F. 3d 1396, 1404-05 (Fed. Cir. 1997) (citation omitted). The Federal Circuit has established that the sole test for design patent infringement is the ordinary observer test. *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 678 (Fed. Cir. 2008). The ordinary observer test originated in *Gorham v. White*, 81 U.S. 511 (U.S. 1872), where the Supreme Court held "if, in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other, the first one patented is infringed by the other." Id. at 528. Thus, to show infringement under the ordinary observer test, a plaintiff must demonstrate that "an ordinary

observer, familiar with the prior art designs, would be deceived into believing that the accused product is the same as the patented design." *Crocs Inc. v. ITC et al*., 598 F.3d 1294, 1303 (Fed. Cir. 2010) (citing *Egyptian Goddess*, 543 F.3d at 681). Ordinary observers are those having "ordinary acuteness, bringing to the examination of the article upon which the design has been placed that degree of observation which men of ordinary intelligence give." *Gorham*, 81 U.S. at 528. "[T]he test of infringement must be the effect produced upon the eye of a prospective purchaser who for the first time sees the two articles and is pleased to the point of buying." *Sanson Hosiery Mills, Inc. v. Warren Knitting Mills, Inc*., 202 F.2d 395, 398 n.2 (3d Cir. 1953) (quoting *Standard Match Corporation v. Bell Machine Co.,* 7 Cir., 1936, 83 F.2d 365, 367).

In evaluating a patent infringement claim, the Court must (1) construe the asserted claims to ascertain their meaning and scope and (2) the trier of fact must then compare the properly construed claims with the accused infringing product. *Wonderland Switzerland AG v. Evenflo Company, Inc.*, 564 F.Supp.3d 320, 324 (D. Del. 2021) (*citing, Kahn v. Gen. Motors Corp.*, 135 F.3d 1472, 1477 (Fed. Cir. 1998)). In the present case, plaintiff's product is covered by plaintiff's design patent and defendants are using images of plaintiff's product in their advertisements (that is, offering to sell plaintiff's patented product). A comparison of plaintiff's product to Figure 1 of the plaintiff's design patent may be found in the *Declaration of Catherine Joynt*, ¶ 16.

"The comparison step of the infringement analysis requires the fact-finder to determine whether the patented design as a whole is substantially similar in appearance to the accused design. The patented and accused designs do not have to be identical in order for design patent infringement to be found." *OddzOn Prods*., 122 F.3d at 1405. "The proper comparison requires a side-by-side view" of the patent design and the accused product. *Crocs Inc*., 598 F.3d at 1304.

The accused products in this case are the plaintiff's own product, which are depicted in the images used by Defendants to show the product they are offering for sale. As is readily apparent from a side-by-side comparison, the plaintiff's product includes the same design features, distinguishable from the prior art and not to be discounted due to functionality, as the design claimed in the figures for the Plaintiff's design patent. As the side-by-side comparison demonstrates, the products defendants are offering for sale have a deceptively similar if not identical overall visual effect that deceives purchasers and easily satisfies the ordinary observer test.

b. Defendants' Advertisements Set Forth Literally False Claims (1) That their Products are Plaintiff's by Using Plaintiff's Images to Sell Their Product; (2) The Entirety of Their Outlet Extenders Comply With UL Standards; (3) That Their Outlet Extenders are ETL Certified, and (4) That the Products Have a Functional Grounded Plug.

Liability for false advertising under § 43(a) of the Lanham Act arises if a commercial message, statement, or advertisement is either (1) literally false or (2) literally true or ambiguous but, given the merchandising context, it has the tendency to deceive or confuse consumers. 15 U.S.C. § 1125(a)(1)(B).

In deciding whether an advertising claim is literally false, a court must decide first whether the claim conveys an unambiguous message and second whether that unambiguous message is false. *Groupe SEB USA, Inc. v. Euro-Pro Operating LLC*, 774 F.3d 192, 198 (3d Cir. 2014) (citing *Novartis Consumer Health, Inc. v. Johnson & Johnson-Merck Consumer Pharms. Co.*, 290 F.3d 578, 587-88 (3d. Cir. 2002)). A literally false claim "may be either explicit or conveyed by necessary implication when, considering the advertisement in its entirety, the audience would recognize the claim as readily as if it had been explicitly stated." *Novartis*, 290 F.3d at 587-88. To make something explicit is to state it clearly and precisely. *Groupe SEB USA*,

F.3d at 200. Regardless of if it is explicit or implied, a claim must be unambiguous to be considered literally false. *Novartis*, 290 F.3d at 586. When an advertisement sets forth a claim using industry standard units of measurements to communicate the performance capabilities and qualities of their product, that claim is unambiguous. *Groupe SEB USA*, F.3d at 199.

Defendants' claims that their products are Plaintiff's by using Plaintiff's pictures are unambiguous. Defendants, in selling their infringing and falsely advertised outlet extenders, use Plaintiff's copyrighted images to advertise their products. Defendants clearly and unequivocally represent to consumers that the products depicted—and products actually being sold—are the same. Defendants' use of Plaintiff's photos is not obscure or incidental but is central to their deceptive marketing strategy. The use of the photos is clearly meant to be unambiguous, making clear to consumers that they are ordering products that mirror the features and safety standards of Plaintiff's.

The claims Defendants are making by using Plaintiff's images are clearly false. Defendants are not authorized or licensed to sell Plaintiff's products. The products that customers receive are not the products depicted in the advertised images. The products are materially different and inferior to the products depicted in the advertisements. By using Plaintiff's photographs, Defendants falsely convey that their products possess the same quality, features, certifications, and design as Plaintiff's outlet extenders, when in reality they do not.

There is nothing ambiguous about Defendants' claims that their products are ETL certified. Defendants' Amazon listings state "The extended outlet … is ETL certified for indoor use." This statement mark indicates, and leads consumers to believe, that the entirety of each product is certified to meet applicable UL standards, when in fact the product is not so certified and in compliance with recognized safety standards. The UL certification is often a significant

factor in consumer's purchasing decisions, given the high value customer's place in the peace of mind that their product will not cause electrical shocks or house fires. Further, these claims are demonstrably false. The Defendants' products, including the packaging, contain no such ETL certification marks.

There is nothing ambiguous about Defendants' claims that the entirety of their outlet extenders comply with UL standards. *See Joynt Dec.*, at ¶ 21. Defendants' products indicate a UL certification mark on the plug between the prongs. This mark indicates, and leads consumers to believe, that the entirety of each product is UL certified, when in fact only the plug's pigtail is UL certified. The placement of the mark in this conspicuous location indicates to the ordinary consumer that the entirety of the product is UL certified and in compliance with recognized safety standards. The products at issue are outlet extenders consisting largely of two ends of a plug. The UL mark at one end of the outlet extender unambiguously indicates that the product is consistent with UL safety standards—not that only a small portion of the overall product is consistent with those standards.

Further, these claims are demonstrably false. Although a component of the plug may be UL certified, the outlet extender as a whole—including wiring, housing, any surge protection features, etc.—is not UL certified. Defendants' use of the UL mark falsely implies that the entire outlet extender meets UL's rigorous safety standards, which is blatantly not the case. The UL certification is often a significant factor in consumer's purchasing decisions, given the high value customer's place in the peace of mind that their product will not cause electrical shocks or house fires.

Defendants' claims that their products have a functional grounded plug are unambiguous. The representations that the outlet extenders sold by Defendants are equipped with properly

functioning grounded plugs are made explicitly and without qualification in Defendants' marketing materials. The images used to sell Defendants' products plainly show that the products have grounded receptacles and grounded plugs—significant features for consumer safety. These advertisements are clear and unambiguous.

Defendants' claims regarding the existence of a functional grounded receptacles and plugs are false and misleading. When customers receive the products, they find an outlet extender that facially displays a grounded plug. Upon further inspection, however, the grounding features of the outlet extender stop there. There is no grounding wire that connects the top outlet to the plug that is inserted into the wall. The advertised grounding feature, therefore, has zero function and is meant to mislead customers into believing that the products are safer and of higher quality than they actually are.

When an advertisement is found to be false on its face, actual deception or a tendency to deceive is presumed, and the plaintiff is excused from the burden of proof as to that element. *Novartis*, 290 F.3d at 587. Therefore, if a plaintiff proves that a defendant's claim is literally false, a court may grant the requested relief without proof of the advertisement's impact on the buying public. *Id.* at 586. As established in the preceding paragraphs, Defendant's explicit, quantifiable representations were literally false. Because of the inherently deceptive nature of facially false claims, Plaintiff is not required to present evidence of consumer deception in order for an injunction to issue. *Novartis*, 290 F.3d at 587.

1. Defendants' Literally False Claims are Material.

The Lanham Act also requires a false advertising claim to be material. The materiality inquiry focuses on whether the defendant's claims are likely to influence consumers' purchasing decisions. *See, e.g.*, *Dentsply Int'l, Inc. v. Great White, Inc.*, 132 F. Supp. 2d 310, 325 (M.D. Pa.

2000) (finding claim that product offers a useful feature that its competitor does not would influence purchasing decisions). A plaintiff may demonstrate materiality by showing that the defendant "misrepresented an inherent quality or characteristic of the product." *Osmose, Inv. v. Viance, LLC*, 612 F.3d 1298, 1319 (11th Cir. 2010); *Cashmere & Camel Hair Mfrs. Inst. v. Saks Fifth Avenue*, 284 F.3d 302, 311-12 (1st Cir. 2002); *S.C. Johnson & Son, Inc. v. Clorox Co.*, 241 F.3d 232 (2d Cir. 2001).

Defendants' false and unambiguous representations—i.e., their unauthorized use of Plaintiff's product photographs, their advertisements claiming ETL certification, the markings on their outlet extender claiming UL certification for the entire outlet extender, and their express claims that the outlet extenders contain functional grounded plugs—are material. These claims are efforts to falsely convey to consumers that Defendants' products mirror the quality and features of Plaintiff's successful product. Each of these representations misstates an inherent quality or characteristic of the products being sold—namely, the products' origins, safety features, and compliance with electrical standards. These are all features that are clearly of the utmost importance to consumers, given the great lengths Defendants go to to present their products as having these features. By falsely depicting the quality and safety of their outlet extenders and suggesting an affiliation with Plaintiff's trusted brand, Defendants mislead consumers regarding attributes that are critical to the decision to purchase an electrical device. Therefore, the claims made by Defendants are material.

2. Defendants' Products Travel in Interstate Commerce.

The products which are at issue in this case are advertised, offered for sale, sold and/or distributed via the Amazon.com, AliExpress.com, eBay.com, Wish.com, and Walmart.com online marketplaces. These online marketplaces target consumers in the United States and does

not provide sellers with the ability to opt into or out of any particular jurisdiction (i.e., state) within the United States. Defendants, although foreign entities, accept payment in U.S. Dollars and ship products throughout the United States. *Id.*, at ¶ 20. In advertising, offering for sale, selling, distributing and shipping retail products to consumers across the United States through the use of online marketplaces, Defendants conduct satisfies the interstate commerce requirement.

3. Plaintiff is Likely to Experience Declining Sales and Loss of Good Will.

In cases of injunctive relief, the likelihood of injury requirement is satisfied where the plaintiff shows that the defendant's advertising has a tendency to deceive. *Parkway Baking Co. v. Freihofer Baking Co.*, 255 F.2d 641 (3d Cir. 1958). When an advertisement is shown to be literally false, the tendency to deceive is presumed. *Novartis*, 290 F.3d at 587. Advertising that has a tendency to deceive gives the wrongdoer an unfair advantage in the marketplace. The sales of a plaintiff's products will likely be harmed if the competing products' advertisements tend to mislead consumers. *Time Warner Cable, Inc. v. DIRECTV, Inc.*, 497 F.3d 144, 161 (2d Cir. 2007) (citing *Coca-Cola Co. v. Tropicana Products, Inc.,* 690 F.2d 312, 317 (2d Cir. 1982)). For example, advertising that wildly exaggerates the features of a product falsely tells the public that a product is more desirable than it really is and causes consumers to buy the product who would not otherwise do so.

Here, the products sold, as stated in the foregoing sections, display features that are entirely made up to mimic the legitimate features of Plaintiff's product. When consumers search for an outlet extender, they are highly likely to encounter one of Defendants' falsely advertised products. Because these products are often sold at prices significantly lower than Plaintiff's original outlet extenders, each sale of Defendants' products directly displaces a sale of Plaintiff's

legitimate product. Consumers who receive one of Defendants' inferior products will wrongly associate the product—and any dangerous features it may have—with Plaintiff, thereby damaging the goodwill Plaintiff has built over the years.

c. Plaintiff is Likely to Prevail on its State Law Claims

"Under Pennsylvania law, the elements necessary to prove unfair competition through false advertising parallel those elements needed to show a Lanham Act violation, absent the requirement for goods to travel in interstate commerce." *KDH Elec. Sys., Inc. v. Curtis Tech. Ltd.*, 826 F. Supp. 2d 782, 807 (E.D. Pa. 2011). A second analysis evaluating identical elements is unnecessary to determine the likelihood of Plaintiff's success on the merits of this claim. For the reasons set forth in the paragraphs above, Plaintiff is likely to satisfy the remaining elements and prevail on its claim for Pennsylvania common law unfair competition.

2. Plaintiff Will Suffer Irreparable Harm in the Absence of an Injunction Leaving it With No Adequate Remedy at Law

Before granting a preliminary injunction, a district court must consider the extent to which the moving party will suffer irreparable harm without injunctive relief. *Novartis*, 290 F.3d at 595. A plaintiff establishes irreparable harm if it "demonstrate[s] a significant risk that it will experience harm that cannot adequately be compensated after the fact by monetary damages." *Pharmacia Corp.*, 292 F. Supp. 2d at 608 (quotation omitted). The irreparable harm showing requires a plaintiff to demonstrate "a reasonable basis for the belief that … [it] is likely to be damaged as a result of the false advertising." *W.L. Gore & Assoc., Inc. v. Totes Inc.*, 788 F. Supp. 800, 810 (D. Del. 1992). Grounds for irreparable injury include lost sales, loss of control of reputation, loss of trade, loss in market share, and a loss of goodwill. *Novartis*, 290 F.3d at

596 (citations omitted). In addressing the standard of proof of irreparable harm for a plaintiff bringing claims of false advertisement the court stated:

> "It is virtually impossible to prove that so much of one's sales will be lost or that one's goodwill will be damaged as a direct result of a competitor's advertisement. Too many market variables enter into the advertising-sales equation. Because of these impediments, a Lanham Act plaintiff who can prove actual lost sales may obtain an injunction even if most of his sales decline is attributable to factors other than a competitor's false advertising."

Schick Mfg., Inc. v. Gillette Co., 372 F. Supp. 2d 273, 285 (D. Conn. 2005) (citing *Coca-Cola Co. v. Tropicana Products, Inc.*, 690 F.2d 312, 316 (2d Cir. 1982)).

Here, Plaintiff can establish a significant risk of irreparable harm because Defendants' false claims are likely to cause prospective purchasers to believe that Defendants' outlet extenders are of the same quality as Plaintiff's, which is not true. *Joynt Dec.*, at ¶ 26. As direct competitors on Online Marketplaces, Plaintiff's accurately advertised outlet extender appears in the same search results as Defendant's falsely advertised outlet extenders. *Id.* at ¶ 27. As direct competitors, false advertisements that lure customers to purchase Defendants' products on the basis of inaccurately stated features will inevitability reduce and displace Plaintiff's sales. *See Schick Mfg., Inc.*, 372 F. Supp. 2d at 287 (fact that parties are "head-to-head competitors supports an inference" that a literally false advertisement will cause irreparable harm, even in the absence of consumer surveys or market research).

Defendants' sale of inferior and falsely advertised outlet extenders threatens to permanently damage Plaintiff's hard-earned reputation for safety, quality, and reliability—core elements of Plaintiff's brand goodwill. Consumers who purchase Defendants' substandard products, believing them to be associated with Plaintiff, are likely to experience product failures or safety risks, leading to negative associations with Plaintiff's brand. Such reputational harm cannot be adequately measured or compensated through monetary damages alone. Once

Plaintiff's reputation for trustworthiness and product integrity is tarnished, it is virtually impossible to fully restore consumer confidence.

3. The Balance of Hardships Favors Plaintiffs

In granting preliminary relief under Federal Rule of Civil Procedure 65(b) and 15 U.S.C. § 1117, this Court must consider whether the harm to the Plaintiff if the relief is not granted outweighs the harm to Defendant if the relief is granted. *See TD Bank N.A. v. Hill*, 928 F.3d 259, 278 (3d Cir. 2019); *Shields v. Zuccarini*, 254 F.3d 476, 482 (3d Cir. 2001); *Kos Pharms., Inc. v. Andrx Corp.*, 369 F.3d at 708. When the only hardship that the defendant will suffer is lost profits from sales of the product at issue in the litigation, such an argument "merits little equitable consideration". *Sream*, 2019 WL 2180224, at 10 (quoting *Triad Sys. Corp. v. Se. Exp. Co.*, 64 F.3d 1330, 1338 (9th Cir. 1995) (superseded on other grounds)). Defendants are not entitled to claim "any legal entitlement to any economic benefits resulting from such false advertising." *Novartis*, 129 F. Supp. 2d at 369, *aff'd,* 290 F.3d at 596; *see also Dentsply Int'l, Inc.*, 132 F. Supp. 2d at 326. ("Although Defendant may suffer decreased sales if it is precluded from false advertising, that hardship will not be undue.").

The substantial harm being suffered by Plaintiff as outlined above far outweighs any possible harm that would result if Defendant were required to comply with the law. Moreover, to the extent Defendant is harmed by an injunction, that injury was caused by Defendants' own misconduct in making false claims and may be discounted by the Court. *Novartis*, 290 F.3d at 596. Any financial loss caused by the injunction, is "self-imposed" and cannot possibly outweigh the possible harm to Plaintiff that would result if Defendant were permitted to continue publishing its false advertising claims. *Novartis*, 129 F. Supp. 2d at 369, *aff'd,* 290 F.3d at 596; *see also W.L. Gore & Assoc., Inc.*, 788 F. Supp. at 810. (concluding false advertisements were

"carelessly or irresponsibly made and that any 'prejudice' which accrues can be considered to be self-inflicted"). Plaintiff is suffering irreparable harm through lost sales, loss of control of reputation, and loss of consumer goodwill—damages which have permanent effects on Plaintiff's business. Whereas Defendants' only injury would be loss of profits as a result of their own intentional wrongdoings. Therefore, the balance of hardships points sharply in favor of Plaintiff.

4. The Relief Sought Serves the Public Interest

"A temporary restraining order or preliminary injunction is in the public interest whenever a plaintiff has established a reasonable likelihood of establishing that the defendant has engaged in false advertising in violation of the Lanham Act. That is because the "Lanham Act is itself a public interest statute intended to protect the consuming public and competitors from false and deceiving statements which a company chooses to utilize in advertising its goods or services." *Suzie's Brewery Co. v. Anheuser-Busch Companies, LLC*, 519 F. Supp. 3d 839, 856 (D. Or. 2021) (citing *U-Haul Int'l, Inc. v. Jartran, Inc.*, 522 F. Supp. 1238, 1242 (D. Ariz. 1981), *aff'd*, 681 F.2d 1159 (9th Cir. 1982)). The public has an interest in receiving accurate information and avoiding confusion in the marketplace in order to facilitate free, open, and fair competition. *Id.*; *Pharmacia Corp. v. GlaxoSmithKline Consumer Healthcare, L.P.*, 292 F.Supp.2d 594, 609 (D.N.J. 2003). The public interest in truthful advertising is furthered by a court's prohibition of advertising that is literally false. *Pharmacia Corp.*, 292 F.Supp.2d at 610 (citing *Dentsply Intern., Inc. v. Great White, Inc.*, 132 F.Supp.2d 310, 326 (M.D. Pa. 2000)).

Defendants are directly defrauding the consuming public by making literally false representations in their product advertisements, listings, and descriptions. These literally false claims directly conflict with the public interest in receiving accurate information and maintaining

a free and fair marketplace. Therefore, it serves the public interest to enjoin Defendants from further dissemination of literally false advertisements.

Granting the TRO and preliminary injunction additionally serves the public interest by protecting consumers from purchasing unsafe and hazardous electrical products. Defendants' falsely advertised outlet extenders lack essential safety features, such as functional grounding and UL certification, creating a serious risk of electrical shock or fire. Preventing the sale of these unsafe products safeguards public safety and ensures that consumers can rely on the integrity of certified electrical goods.

Plaintiff is entitled to preliminary relief since it meets all requirements of both the common law false advertisement preliminary injunction standard and Federal Rule of Civil Procedure 65(b). Plaintiff will likely succeed on the merits of its false advertising claim, has been irreparably harmed as a result of Defendants' false advertisement, the balance of hardship tips heavily in Plaintiff's favor, and granting the temporary restraining order and preliminary injunction is in the public interest. The damage that Defendants' continued false advertising will cause Plaintiff will not be halted without the entry of an order granting a preliminary injunction and TRO.

C. Plaintiff is Entitled to an Order Preventing 1) The Fraudulent Transfer of Assets and 2) Freezing of Defendants' Merchant Storefronts

1. Defendants' Assets Must be Frozen

The Court should grant additional *ex parte* relief restraining the transfer of funds held or received by any online marketplace or other financial institution for the benefit of any of the Defendants. Plaintiff has demonstrated a high likelihood of success on the merits of its false advertising claim and patent infringement claim. As such, under 15 U.S.C. § 1117(a) and 35

U.S.C. § 271(a) Plaintiff will be entitled to an accounting and payment of the profits earned by Defendants throughout the course of their unlawful conduct.

It is unlikely that Defendants possess the funds to fully satisfy any potential judgement. Additionally, Defendants are anonymous sellers located in foreign countries and are likely to transfer and hide their funds if their assets are not frozen, leading to a high probability that Plaintiff will be unable to recover damages. Due to the deceptive nature of Defendants' business and the Defendants' deliberate violations of the Lanham and Patent Act, Plaintiff respectfully request this Court grant additional *ex parte* relief restraining the transfer of all monies held by any online marketplace or other financial institutions for the benefit of any one or more of the Defendants. *See, e.g.*, Balenciaga Am., Inc. v. Dollinger, No. 10-cv-2912-LTS, 2010 U. S. Dist. LEXIS 107733, at 22 (S.D.N.Y. Oct. 8, 2010) (citing Wishnatzki &N athel, Inc. v. H.P. Island-Wide, Inc., No. 00-cv-8051-JSM, 2000 U.S. Dist. LEXIS 15664, at 4 (S.D.N.Y. 2000) ("[W]here plaintiffs seek both equitable and legal relief in relation to specific funds, a court retains it equitable power to freeze assets."); *Int'l Star Class Yacht Racing Ass'n v. Tommy Hilfiger USA., Inc.,* 146 F.3d 66, 71-72 (2d Cir. 1998) ("A district court faced with a Lanham Act violation possesses some degree of discretion in shaping [the] relief according to the principles of equity and the individual circumstances of each case" within the parameters of allowing an accounting for profits); *George Basch Co., Inc. v. Blue Coral, Inc.*, 968 F.2d 1532, 1537 (2d Cir. 1992); Tiffany (NJ) LLC v. Forbse, No. 11-cv-4976-NRB, 2012 U.S. Dist. LEXIS 72148, at 34 (S.D.N.Y. May 23, 2012); Warner Bros. Entm't Inc. v. Doe, No. 14-cv-3492- KPF, 2014 U.S. Dist.. LEXIS 190098 (S.D.N.Y. May 29, 2014); and *Hoxworth v. Blinder, Robinson & Co., Inc*., 903 F.2d 186 (3d Cir. 1990) (district court has power to issue an injunction in order to protect a

future damages remedy; the unsatisfiability of a money judgment can constitute irreparable injury).

The Court has the authority to grant this order. The Supreme Court has held that district courts have the authority to grant prejudgment asset freezes in cases seeking equitable relief. *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Funds, Inc.*, 527 U.S. 308, 325 (1999). The holding of *Grupo Mexicano* is consistent with the Third Circuit's stance on district courts' authority to grant prejudgment asset freezes. *See, e.g.*, *Hoxworth*, 903 F.2d at 197 (3d Cir. 1990); *Elliott v. Kiesewetter*, 98 F.3d 47, 58 (3d Cir. 1996). Additionally, under Federal Rule of Civil Procedure 65, district courts have the inherent equity power to issue orders freezing the assets of defendants. Fed. R. Civ. P. 65; *Marsellis-Warner Corp. v. Rabens*, 51 F. Supp. 2d 508, 536 (D.N.J. 1999); See also, *Mason Tenders Dist. Council Pension Fund v. Messera*, 1997 WL 223077 (S.D.N.Y. May 7, 1997) (acknowledging that "[a]lmost all of the Circuit Courts have held that Rule 65 is available to freeze assets *pendent lite* under some set of circumstances").

Plaintiff may obtain an order restraining Defendants' Assets by demonstrating a "likelihood of dissipation of the claimed assets, or other inability to recover money damages, if relief is not granted." *DatatechEnters. LLC v. FFMagnatLtd.,* No. 12-cv-04500-CRB, 2012 U.S. Dist. LEXIS 131711, at 12 (N.D. Cal. Sept. 14, 2012) (citing *Johnson v. Couturier,* 572 F.3d 1067, 1085 (9th Cir. 2009)). While the assets frozen should be confined to the profits acquired by a defendant's illegal activity, the burden is on the party resisting the freeze to provide documentary proof that particular assets do not stem from the false advertisements. *See North Face Apparel Corp. v. TC Fashions, Inc.*, 2006 U.S. Dist. LEXIS 14226, at 10 (S.D.N.Y. 2006); *Roadget Bus. Pte. Ltd. V. Individuals, Corp., LLC*, 735 F. Supp. 3d 981, 983 (N.D. Ill. 2024).

Plaintiff is seeking equitable relief in the form of recovered profits derived from Defendants' false advertisements, and, therefore, an order to freeze Defendants' assets is appropriate in this action. For a court to exercise its equitable power to protect future damages,[5] a plaintiff must show: (1) that they are likely to become entitled to the encumbered funds upon final judgement, and (2) that without the asset freeze, they will be unable to recover the funds, causing irreparable harm. *Hoxwroth*, 903 F.2d at 197; *see also Elliott*, 98 F.3d at 57–58 (applying the *Hoxworth* factors to determine whether the court may issue the plaintiff's sought-after asset freeze).

Plaintiff is likely to become entitled to the encumbered funds upon final judgement. As previously discussed above, Plaintiff has demonstrated that it has a high likelihood of success on its false advertising claim and the corresponding remedy for its Lanham Act claim entitles Plaintiff to recover actual damages suffered by them as a result of the false advertisements along with the profits derived from Defendant's untruthful claims. 15 U.S.C. § 1117(a). This remedy will allow Plaintiff to become entitled to the encumbered assets.

Plaintiff will likely be unable to recover the funds without an asset freeze. In considering whether plaintiff will be unable to recover the funds, and thus suffer irreparable harm, the likelihood that the funds will be consumed, dissipated, or fraudulently conveyed is relevant. *Elliott*, 98 F.3d at 58. Without an asset freeze, Defendants will likely move funds from Online Storefronts into offshore bank accounts that will be inaccessible to Plaintiff upon final judgement. Defendants will simply remove themselves from the online marketplaces and take

[5] Fed. R. Civ. P. 64 provides "every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment." In Pennsylvania, a pre-judgment restraint of existing assets is appropriate where a plaintiff asserts a claim for money damages. *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).

their assets with them, making Plaintiff's recovery of the assets prohibitively difficult or impossible.

The asset freeze may be granted *ex parte*, without giving notice to Defendants. Where advance notice of an order to freeze assets will likely cause a defendant to alienate the relevant assets, orders to freeze assets have been held as appropriate without giving notice to the defendants. *ee, e.g.*, *F.T. Int'l Ltd. v. Mason*, 2000 WL 1514881, at 3 (E.D. Pa. 2000); *Dama S.P.A.* v. *Doe,* 2015 U.S. Dist. LEXIS 178076, at 4–6 (S.D.N.Y. June 12, 2015); *SEC v. Caledonian Bank Ltd.*, 317 F.R.D. 358 (S.D.N.Y. 2016); *Elliott*, 98 F.3d at 58. The high likelihood that Defendants will consume, dissipate, or otherwise fraudulently convey the funds in the event they have notice of the order would cause the irreparable harm the order is meant to avoid. *See Elliott*, 98 F.3d at 58. The inherently deceptive and intentional nature of Defendants' conduct in publishing false advertisements and infringing Plaintiff's patents shows their disregard for the law. Because of this, there is good reason to believe that if Defendants are given notice of an order freezing their assets, they will take steps to ensure their funds are secured and out of Plaintiff's or the legal system's reach.

Plaintiff is entitled to an *ex parte* order freezing the assets of Defendant. Plaintiff has demonstrated a high likelihood of success on the merits of its Lanham Act and Patent Infringement claims. Additionally, given their past deceptive behavior and tendency to disregard the law, Defendants are likely to move funds beyond Plaintiff's reach in the absence of an order freezing the funds.

2. Defendants' User Accounts and Merchant Storefronts Must be Frozen

Plaintiff requests that the court issue an order freezing Defendants' Seller IDs, Merchant Storefronts, and all undiscovered online marketplace accounts. An order is necessary to prevent defendants from continuing to sell falsely advertised and infringing products. The continued false advertising of Defendants' infringing products will result in further irreparable harm to Plaintiff, compounding the harm, as described above, already suffered by Plaintiff. See *Gucci Am., Inc. v. Weixing Li*, 768 F.3d 122, 126 (2d Cir. 2014) and *AW Licensing, LLC v. Bao, No.* 15-cv-1373, 2015 U.S. Dist.. LEXIS 177101, at 3 (S.D.N.Y. Apr. 1, 2015) (granting temporary restraining orders enjoining the defendants' use of the Internet to sell and distribute the products that were at issue in the proceedings.)

One reason why courts have ordered this relief is the ease with which a Merchant Storefront may be set up, altered, or transferred. For example, a defendant who knowingly sells falsely advertised or infringing products will likely try and set up another online marketplace account or create new product listings when the current ones are frozen. Moreover, freezing Defendants' Merchant Storefronts would ensure that ownership and operation of the storefronts cannot be changed, thereby maintaining the potential for Plaintiff to obtain full relief. This brings into play a balancing of the hardship to Defendants against the hardship to Plaintiff if the relief is not granted. In the present case, the hardship to Plaintiff outweighs any hardship to Defendants. The proposed order does not block any of the enjoined Defendants from setting up other online marketplace accounts to sell accurately advertised products, therefore allowing them to continue legitimate business operations. The proposed order freezing Defendants' Merchant Storefronts merely ensures that the false advertisements and infringing sales will not further damage Plaintiff irreparably.

D. Plaintiff is Entitled to an Order Authorizing Expedited Discovery

Additionally, Plaintiff respectfully requests that the Court issue an order authorizing expedited discovery from Defendants, Financial Institutions and the Third Party Service Provider regarding the scope and extent of Defendants' deceptive advertisements and infringing sales, as well as Defendants' account details and other information relating to Defendants' Financial Accounts, Assets and/or any and all User Accounts and or Financial Accounts with the Third Party Service Provider, including, without limitation any and all websites, any and all accounts with online marketplace platforms, as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendants, their respective officers, employees, agents, servants, and all other persons in active concert or participation with any of them, operate storefronts to manufacture, import, export, advertise, market, promote, display, offer for sale, sell, and/or distribute products, including those which are falsely advertised or infringing, which are held by or associated with Defendants, their respective officers, employees, agents, servants and all person in active concert or participation with any of them including, without limitation, those owned and operated, directly or indirectly, by the Third Party Service Provider and the Financial Institutions.

District courts have broad power to require early document production and to permit expedited discovery. See Fed. R. Civ. P. 30(b), 34(b). Generally, a party may not seek discovery prior to a Rule 26(f) conference unless authorized by a court order. *See* Fed. R. Civ. P. 26(d)(1). However, courts will traditionally grant expedited discovery when the party seeking it demonstrates: (1) irreparable injury; (2) some likelihood of success on the merits; (3) some connection between expedited discovery and the avoidance of irreparable injury; and (4) some evidence that the injury which will result without expedited discovery looms greater than the

injury that defendant will suffer if expedited discovery is granted. *See, e.g.*, *Advanced Portfolio Technologies, Inc. v. Advanced Portfolio Technologies Ltd.*, 1994 U.S. Dist.. LEXIS 18457, at 7 (S.D.N.Y. Dec. 28, 1994). Courts are now commonly applying a more flexible "good cause" test to examine "the discovery request . . . on the entirety of the record to date and the reasonableness of the request in light of all surrounding circumstances." Ayyash v. Bank Al-Madina, 233 F.R.D. 325, 326 (S.D.N.Y. 2005) (quoting Merrill Lynch, Pierce, Fenner & Smith, Inc. v. O'Connor, 194 F.R.D. 618, 624 (N.D. 1ll. 2000)). [6] In assessing reasonableness, courts should weigh the need for discovery at an early stage in the litigation against the breadth of the discovery requests and the prejudice to the responding party. *Vision Films, Inc. v. Doe*, 2013 U.S. Dist. LEXIS 38440, at 3 (quoting *Kone Corp.*, 2011 U.S. Dist. LEXIS 109518, at 4). Factors to consider are the timing and context of the discovery, the purpose and scope of the requests and the nature of the burden on the defendant. *Id.*

Regardless of which test is applied, Plaintiff has established that it is entitled to the expedited discovery requested. Plaintiff has demonstrated both irreparable injury and its probability of success on the merits above, and taking into account the anonymous nature of Defendants, their business operations and the fact that they appear to be foreign individuals or companies who have both the incentive and the capability to hide or destroy relevant business records and other discoverable information and documentation upon hearing of this action. Defendants have displayed no shortage of behavior that indicates their willingness to disregard the law and evade detection. There is no reason to believe that they will abruptly choose to begin

[6] See, e.g., Malibu Media, LLC v. Doe, 2016 U.S. Dist. LEXIS 64656, at 4 (S.D.N.Y. May 16, 2016); Malibu Media, LLC v. Doe, 2015 U.S. Dist. LEXIS 87751, at 2-3 (S.D.N.Y. July 6, 2015); Milk Studios, LLC v. Samsung Elecs. Co., 2015 U.S. Dist. LEXIS 38710, at 4-5 (S.D.N.Y. Mar. 25, 2015); Admarketplace, Inc. v. Tee Support, Inc., No., 2013 U.S. Dist. LEXIS 129749, at 3-4 (S.D.N.Y. Sept. 11, 2013); Dig. Sin, Inc. v. Does 1-176, 279 F.R.D. 239, 241 (S.D.N.Y. 2012); and Stern v. Cosby, 246 F.R.D. 453, 457 (S.D.N.Y. 2007) (agreeing with the Ayyash Court that the more flexible approach is the better approach.).

complying with the law and preserve discoverable materials until after a Rule 26(f) conference. Plaintiff respectfully submits that there is good cause for this Court to grant Plaintiff the expedited discovery requested herein because it will prevent further injury to Plaintiff and assist Plaintiff in pursuing its claims against Defendants and in recovering the damages to which it is entitled. *See Ayyash*, 233 F.R.D., at 327.

Despite the likelihood of success of Plaintiff's claims and the injury it has and continues to endure, if this Court were to deny expedited discovery, Plaintiff's may lose the opportunity to effectively pursue their claims against defendants because there are several aspects of Defendants' commercial activities that Plaintiffs are not yet able to confirm, including: 1) the true identities of Defendants, 2) the full scope of Defendants' false claims, and/or 3) where the proceeds from Defendants' false advertisements and infringing sales have gone. See *Admarketplace, Inc. v. Tee Support, Inc.*, No. 13-cv-5635- LGS, 2013 U.S. Dist.. LEXIS 129749, at 5 (S.D.N.Y. Sep. 11, 2013) (finding that a plaintiff "who has a potentially meritorious claim and no ability to enforce it absent expedited discovery, has demonstrated good cause for expedited discovery"). Therefore, only through an order from the Court allowing expedited discovery will Plaintiff be able to fully ascertain the extent of Defendants' illegal activities. The breadth of Plaintiff's discovery requests is not overly broad as any narrower set of requests would only reveal a portion of the information vital to Plaintiff's case and may lead Defendants to conceal or destroy materials outside the scope of the requests. *Malibu Media, LLC v. Doe*, 109 F. Supp. 3d 165, 168 (D.D.C. 2015); *Manny Film LLC*, 98 F. Supp. 3d at 695–96.

Any prejudice or burden Defendants, their financial institutions, or any third-party service provider may face from expedited discovery is insignificant, particularly in comparison to the harm Plaintiff will encounter without expedited discovery. The material requested from

Plaintiff is not so difficult to attain or convey as to cause an undue burden on Defendant or any other party. Plaintiff primarily requests readily available information such as user account details, financial accounts, and similar information. Even in cases where defendants are required to sift through substantial quantities of files, work collaboratively with government or court officials, or even retrieve documents from foreign countries written in another language, courts have still upheld the request for expedited discovery as not causing undue burden. *See, e.g.*, *Oglala Sioux Tribe v. Hunnik*, 298 F.R.D. 453, 458 (D.S.D. 2014); *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 277 (N.D. Cal. 2002) ("While Defendants claim some logistical inconvenience in responding to the request inasmuch as most of the documents are located in Japan and many may be in Japanese, the Court fails to see why given current communication technology, Defendants cannot respond quickly . . . ."). Plaintiff's request is, therefore, reasonable under the circumstances and will not cause Defendant or any other third-party undue burden.

Plaintiff respectfully requests an *ex parte* Order allowing expedited discovery in order to permit it to discover certain identifying information, including information concerning all of Defendants' Financial Accounts, Assets and User Accounts and their sales of falsely advertised products. Under Fed. R. Civ. P. 65(d)(2)(C), this Court has the power to bind any third parties who are in active concert with Defendants that are given notice of the Order to provide expedited discovery. In the absence of an order authorizing expedited discovery, Plaintiff will likely be deprived of the ability to effectively pursue its claims. For the preceding reasons, Plaintiff submits that its request should be granted.

E. Plaintiffs' Request for a Security Bond in the Amount Of $5,000 is Adequate

Federal Rule of Civil Procedure 65(c) requires that, when a court issues a preliminary injunction or a temporary restraining order, the moving party gives security to the nonmoving party in an amount the court deems proper to account for costs and damages sustained by any party found to have been wrongfully enjoined or restrained. Fed. R. Civ. P. 65(c). Rule 65(c) acts as a device to "protect the opposing party from incurring costs and damages in the event that the stay is wrongfully imposed." *Jurista v. Amerinox Processing, Inc.*, 492 B.R. 707, 783 (D.N.J. 2013). The bond additionally acts as a limitation of liability for the moving party, with the Third Circuit emphasizing that a wrongfully enjoined party only has recourse against the bond. *Sprint Communs. Co. L.P. v. CAT Communs. Int'l, Inc.*, 335 F.3d 235, 240 (3d Cir. 2003) (quoting *Hoxworth*, 903 F.2d at 210 n.31). Therefore, the amount of the bond is the price the moving party will pay if the injunction is wrongly issued. *Sprint Communs. Co. L.P.*, 335 F.3d at 240 (quoting *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 805 (3d Cir. 1989)).

Plaintiffs respectfully submit that in connection with the Court's order pursuant to its inherent equitable power requiring that the Defendants' Assets and Defendants Financial Accounts be frozen by the Financial Institutions, Plaintiffs' provision of security in the amount of $5,000 ("Security Bond") is more than sufficient. This Security Bond is for the same amount that has been deemed sufficient in other similar cases. *See, e.g., Suzie's Brewery Company*, 519 F.Supp.3d at 856; *Novation Solutions, Inc. v. Issuance Inc.*, No. 2:23-CV-00696-WLH-KSX, 2023 WL 6373871, at 15 (C.D. Cal. Aug. 16, 2023); *Yokum v. Pat O'Brien's Bar, Inc.*, 99 So. 3d 74, 77 (La. App. 4th Cir. 2012).

Plaintiffs believe that Defendants would be unable to show a strong likelihood of harm, and even if Defendants were to experience a likelihood of harm, such harm is outweighed by the

harm to Plaintiff, as detailed above. For these reasons, Plaintiffs respectfully request that the Court, in accordance with Fed. R. Civ. P. 65(a), enter the Security Bond in the amount of $5,000.

IV. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that their Application be granted *ex parte* and that the Court enter: 1) a temporary restraining order; 2) an order restraining assets and Defendant Merchant Storefronts; 3) an order to show cause why a preliminary injunction should not issue; and 4) an order authorizing expedited discovery against Defendants, the Third Party Service Providers and the Financial Institutions, in the form of the [Proposed] Order accompanying this Application, and such other relief to which Plaintiff may show it is legally entitled.

Respectfully submitted,

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/s/ Stanley D. Ference III
Stanley D. Ference III
Pa. ID No. 59899
courts@ferencelaw.com

FERENCE & ASSOCIATES LLC
409 Broad Street
Pittsburgh, Pennsylvania 15143
(412) 741-8400 – Telephone
(412) 741-9292 – Facsimile

Attorney for Plaintiff