

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

PUSHPEEL LLC,

Plaintiff,

v.

SCHEDULE A DEFENDANTS,

Defendants.

Case No. 25-cv-1957

(Judge Hornak)

**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**

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**I. INTRODUCTION**

Plaintiff, Pushpeel LLC (“Pushpeel”), submits this memorandum of law in support of its *ex parte* application for: 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts (as defined *infra*); 3) an order to show cause why a preliminary injunction should not issue; and 4) an order authorizing expedited discovery against above-referenced Defendants (hereinafter collectively referred to as “Defendants” or individually as “Defendant”), and the third parties, Amazon Services, LLC d/b/a Amazon.com, and Amazon Payments, Inc. d/b/a Amazon Pay (collectively “Amazon”), Whaleco Inc., a Delaware Corporation, which is a wholly owned subsidiary of Pinduoduo Inc. which is owned by PDD Holdings (collectively, “Temu”), eBay, Inc. d/b/a ebay.com, Walmart Inc. and Wal-Mart.com USA, LLC, wish.com, Alibaba.com US LLC d/b/a Alibaba.com and Aliexpress.com (“Third Party Service Providers”) and financial institutions, including but not limited to, Zhejiang Ant Small and Micro Financial Services Group Co., Ltd. AliPay (China) Internet Technology Co. Ltd., and Alipay.com Co., Ltd. (collectively referred to as “AliPay”)<sup>1</sup>, Amazon Payments, Inc., Walmart Pay, Klarna, Inc. d/b/a

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<sup>1</sup> WorldPay US, Inc. (“WorldPay”) processes transactions on behalf of Alibaba and Alipay, which may appear as “Aliexpress” on a cardholder’s credit card statement.

Klarna, PayPal, Inc. d/b/a paypal.com, and Context Logic, Inc. d/b/a wish.com (“Financial Institutions”).

Defendants are knowingly and intentionally promoting, advertising, distributing, offering for sale, and selling patent infringing versions of Plaintiff’s sensorial activity toy (the “Infringing Product”) which infringe at least one claim of U.S. Patent No. 12,478,892 (“Plaintiff’s Patent” or the “892 patent”) throughout the United States, including within the Commonwealth of Pennsylvania and this district, by operating fully interactive, commercial Internet based e-commerce stores established via third-party marketplaces accessible in Pennsylvania operating using the seller identities identified on Schedule “A” to the Complaint (the “Seller IDs”). Specifically, Plaintiff has obtained evidence clearly demonstrating that (a) Defendants have willfully infringed one or more of the claims of Plaintiff’s Patent by offering for sale, selling, and distributing knock-off versions of Plaintiff’s Product; and (b) Defendants accomplish their infringing sales through the use of, at least, the Internet based e-commerce stores operated via at least one of the electronic storefronts on AliExpress, Amazon.com, eBay.com, Temu, Walmart.com, and wish.com Internet marketplace platforms. Based on this evidence, Plaintiff’s Complaint alleges a claim for patent infringement pursuant to 35 U.S.C. § 271 (a).

Shown below is a side-by-side comparison of figures of the ‘892 patent showing different embodiments and examples of Defendants’ Infringing Products:

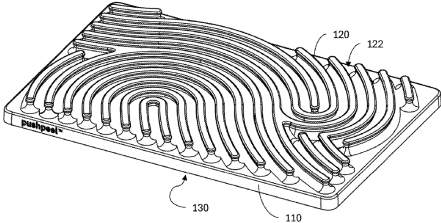

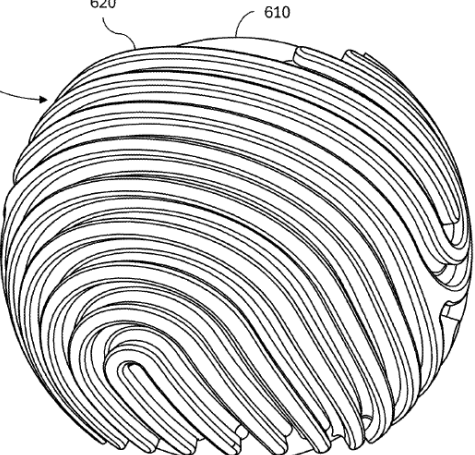

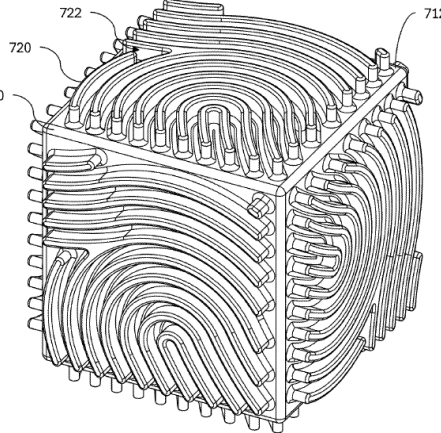

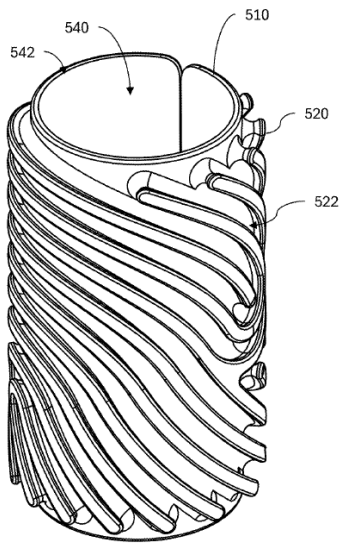

Figure No.	Figure	Example of Defendants' Product
Fig. 1A	 <p>Technical drawing of a rectangular device with a grid of pins. Curved lines represent a pattern on the surface. Labels include 110, 120, 122, and 130.</p>	<p><i>Type 1</i></p> 
Fig. 6	 <p>Technical drawing of a spherical object with curved lines. Labels include 610, 620, and 622.</p>	<p><i>Type 2</i></p> 
Fig. 7	 <p>Technical drawing of a rectangular device with a grid of pins. Curved lines represent a pattern on the surface. Labels include 710, 720, 722, and 712.</p>	<p><i>Type 3</i></p> 

Figure No.	Figure	Example of Defendants' Product <i>Type 4</i>
Fig. 5		

See Declaration of Sayer Murphy (the “Murphy Dec.”) at ¶ 4.

According to the Fiscal Year 2021 U.S. Customs and Border Protection (“CBP”) Intellectual Property Seizure Statistics Report, e-commerce sales have resulted in a sharp increase in the shipment of unauthorized products into the United States. *Declaration of Stanley D. Ference III* (the “*Ference Dec.*”) at ¶ 3. Over 89% of all CBP intellectual property seizures were smaller international mail and express shipments (as opposed to large shipping containers). *Id.* Over half (51%) of CBP seizures originated from mainland China and Hong Kong. *Id.* An analysis by Daniel C.K. Chow, in “Alibaba, Amazon, and Counterfeiting in the Age of the Internet,” 40 NW. J. INT’L L. & BUS. 157, 186 (2020), finds that third-party service providers do not adequately subject new sellers to verification and confirmation of their identities, allowing counterfeiters to “routinely use false or inaccurate names and addresses when registering with these e-commerce platforms.” *Id.* at ¶ 4. A report prepared by the U. S. Department of Homeland Security’s Office of Strategy, Policy, and Plans (January 2020) finds that counterfeiters hedge against the risk of being caught and having their websites taken down from an

e-commerce platform by preemptively establishing multiple virtual storefronts. Since platforms generally do not require marketplace sellers to identify the underlying business entity, counterfeiters have many difference profiles even though they are commonly owned and operated. *Id.* at ¶ 5.

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 infringement of at least one claim of Plaintiff's Patent.

Moreover, Plaintiff has obtained evidence that Defendants use money transfer and/or retention/processing services with financial institutions such as Amazon, Alipay, Paypal, Klarna, Walmart Pay, and Context Logic, Inc. *See Declaration of Declaration of Dee Odell* (the "*Odell Dec.*") ¶¶ 1 - 3, and Declaration of Stanley D. Ference III ("*Ference Dec.*"), ¶¶ 1 - 15, filed herewith. Plaintiff seek to restrain Defendants' assets. In light of the inherently deceptive nature of the infringing and knock-off business, Plaintiff has good reason to believe Defendants will hide or transfer their ill-gotten assets beyond the jurisdiction of this Court unless they are restrained. Plaintiff is aware that the Third Party Service Providers and Financial Institutions will submit to the Court's jurisdiction and comply with Court's orders concerning such restraints. *See Ference Dec., generally.* In Pennsylvania, a pre-judgment restraint of existing assets is appropriate where a plaintiff asserts a claim for money damages.<sup>2</sup> *Walter v. Stacey*, 837 A.2d

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<sup>2</sup> 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." These remedies include, arrest, attachment, garnishment, replevin, sequestration, and corresponding or equivalent remedies. *See*

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). To prevent the depletion of ill-gotten gains of the Defendants and the ability to at least partially satisfy a judgment, Plaintiff seeks an *ex parte* order restraining Defendants' asset, including specifically, funds transmitted through the Financial Institutions. Courts in our district have previously granted the relief sought herein in actions involving claims for trademark counterfeiting and patent infringement. *See generally*, *AquaPaw Brands LLC, v Yan-Peng, et al.*, 21-cv-1784 (Slip. Op., July 29, 2022)(Wiegand, J.)[ECF No. 62], *Aquapaw Brands LLC, v Flo Pet, et al.*, No. 21-cv-988 (Slip. Op., July 29, 2022)(Wiegand, J.)[ECF No. 58] *Aquapaw Brands LLC, v Tiktoks, et al.*, No. 21-cv-696 (Slip. Op., July 29, 2022)(Wiegand, J.)[ECF No. 56], *AquaPaw LLC v. Allnice, et al.*, No. 20-cv-1954 (Slip. Op., July 29, 2022)(Wiegand, J.)[ECF No. 85]. *Doggie Dental Inc. v. Go Well*, No. 19-cv-1282 (W.D. Pa. Oct. 11, 2019) (Hornak, J.) (sellers on amazon.com); *Doggie Dental Inc. v. Worthbuyer*, No. 19-cv-1283 (W.D. Pa. Oct. 11, 2019) (Hornak, J.) (sellers on ebay.com); *Doggie Dental Inc. v. Max\_Buy*, No. 19-cv-746 (W.D. Pa. June 27, 2019) (Hornak, J.) (sellers on ebay.com); *Doggie Dental Inc. v. Anywill*, No. 19-cv-682 (W.D. Pa. June 13, 2019) (Hornak, J.) (sellers on amazon.com); *Airigan Solutions, LLC v. Abagail*, No. 19-cv-503 (May 28, 2019) (Fischer, J.) (sellers on amazon.com); *Airigan Solutions, LLC v. Babymove*, No. 19-cv-166 (W.D. Pa. Feb. 14, 2019) (Fischer, J.) (sellers on amazon.com); *Airigan Solutions*,

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Fed. R. Civ. P. 64 (b). In the case of *Grupo Mexicana de Desarrollo v Alliance Bond Fund*, 527 U. S. 308 (1990) , the Supreme Court considered the issue of asset restraint in the context of a *money damages only* case and not one of equitable interest like Plaintiff's case. In the instant case involving Plaintiff's request for a pre-judgment restraint, based upon an injunction flowing for Plaintiff's patent rights, Plaintiffs claim an equitable interest in the proposed restrained accounts. The ill-gotten gains obtained by selling its infringing products **directly flow** into the proposed restrained account. There was no such fact pattern in *Grupo* and thus it does not speak to this situation. Moreover, the Court indicated that it was not determining whether the law of the forum state provided the availability of such an injunction under Rule 65. *Id.*, n. 3.

*LLC v. Artifacts\_Selling*, No. 18-cv-1462 (W.D. Pa. Oct. 31, 2018) (Fischer, J.) (sellers on ebay.com and aliexpress.com).

## **II. STATEMENT OF FACTS**

### **A. Plaintiff's Patent and Product**

Plaintiff, Pushpeel LLC, is the owner of a United States Patent that protects Plaintiff's sensorial activity toy. Pushpeel is owned by Sayer Murphy, the named inventor on the patent. Mr. Murphy supports his family with the sales of Pushpeel's sensorial activity toy. Pushpeel has developed, advertised, and promoted its sensorial activity toy and has spend substantial time, money, and resources doing so. Such sensorial activity toy, largely do to the efforts of Plaintiff, has become successful and has garnered the attention of the public, who associate the sensorial activity toy with Plaintiff. Pushpeel has not authorized any other entity to manufacture, import, export, advertise, create derivative works, offer for sale, or sell any goods that are within the scope of the claims of Pushpeel's patent.

### **B. The Defendants' Wrongful Conduct**

Defendants are a collection of foreign, anonymous, and sophisticated sellers on the Amazon, Temu, Walmart, and other online marketplaces, operating under seller identities and/or online marketplace accounts as set forth in **Schedule "A"** to the Complaint. Defendants, upon information and belief, are an interrelated group of infringers working in active concert and have communicated, cooperated, shared information, and coordinated their efforts to create an infringing marketplace operating in parallel to Plaintiff's legitimate marketplace. Defendants share unique identifiers, such as design elements and similarities among unauthorized products, establishing a logical relationship that suggests they are operating cooperatively throughout the

supply chain.<sup>3</sup> Defendants use aliases to avoid liability, going to great lengths to conceal their identities and the full extent of their intertwined, illegal operation.<sup>4</sup> This allows Defendants to offer the infringing works at a price lower than the Plaintiff.

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 from their PayPal accounts to the offshore accounts.

Defendants are selling unauthorized products that are based on and Plaintiff's sensorial toy and infringe at least one claim of Plaintiff's United States Patent.<sup>5</sup> Defendants conduct business, offer for sale, and, on information and belief, have sold and continue to sell the infringing works throughout the United States, including in Pennsylvania and this Judicial District. Defendants facilitate sales by designing their storefront to appear to unknowing customers to be authorized online retailers selling genuine Evergreen Farms Work. Defendants have full knowledge of Plaintiff's ownership of the Evergreen Farms Work, including Plaintiff's exclusive right to use and license the work.

### **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

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<sup>3</sup> See Department of Homeland Security, *Combating Trafficking in Counterfeit and Pirated Goods*, Jan. 24, 2020, (<https://www.dhs.gov/publication/combating-trafficking-counterfeit-and-pirated-goods>).

<sup>4</sup> See Xinhua, *Fighting China's Counterfeits in the Online Era*, China Daily (Sept. 19, 2017), available at [www.chinadaily.com.cn/business/2017-09/19/content\\_32200290.htm](http://www.chinadaily.com.cn/business/2017-09/19/content_32200290.htm).

<sup>5</sup> See Complaint, ¶ 1 for example of the types of Defendants' products compared to the figures of Plaintiff's patent. Claim charts are attached to the Complaint as Exhibit 4.

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. *Walter 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., Inc.*, 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 is causing and will continue to cause irreparable harm to Plaintiff and, therefore, an *ex parte* TRO is warranted.

This Court has previously granted the injunctive relief sought by Plaintiff in actions involving intellectual property, including copyright infringement. A *Request for Judicial Notice* has been filed herewith detailing cases in which the relief sought herein has been previously granted.

#### **A. The Court May Exercise Jurisdiction Over Defendants**

This Court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the Federal Copyright Act, 17 U.S.C. § 101, *et seq.*, 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 Defendants are, 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**

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. It then must be determined whether exercising personal jurisdiction meets the requirements of constitutional due process. *Id.*

This Court may exercise personal jurisdiction over the Defendants pursuant to 42 Pa. Cons. Stat. § 5322. "A federal district court 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." *Marten v. Godwin*, 499 F.3d 290, 296 (3d Cir. 2007) (quoting *Provident Nat'l Bank v. Cal. Fed. Sav. & Loan Ass'n*, 819 F.2d 434, 436 (3d Cir. 1987)); Fed. R. Civ. P. 4(e). 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).

42 Pa. Cons. Stat. § 5322(a) (the “Pennsylvania Long-Arm Statute”) authorizes a tribunal of the Commonwealth of Pennsylvania to exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action or other matter arising from such person: transacting any business in the Commonwealth, causing harm or tortious injury by an act or omission in or outside the Commonwealth of Pennsylvania, or committing any violation within the jurisdiction of the Commonwealth of any statute or rule or regulation promulgated thereunder by any governmental 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).

The Pennsylvania long-arm statute confers personal jurisdiction over Defendants because of their habitual transacting of business in this jurisdiction. 42 Pa. Cons. Stat. § 5322(a)(1). Defendants regularly, through a series of similar acts, conduct, transact, and/or solicit business in Pennsylvania and this Judicial District and realize pecuniary gain doing so. *Id.* § 5322(a)(1)(i). The acts of Defendants constitute a series of similar acts given the clear relationship between the Defendants, identified by shared unique storefronts and the striking similarity of the infringing

products, highly suggesting that Defendants' illegal operations arise out of the same series of transactions, marked by a cooperative effort throughout the supply chain. *See* Department of Homeland Security, *Combating Trafficking in Counterfeit and Pirated Goods*, Jan. 24, 2020, (<https://www.dhs.gov/publication/combating-trafficking-counterfeit-and-pirated-goods>).

This Court has personal jurisdiction over Defendants because they have shipped and continue to ship merchandise into this jurisdiction. 42 Pa. Cons. Stat. § 5322 (a)(1)(iii). Defendants direct their business activities toward Pennsylvania consumers through the Amazon, Temu, Walmart, and other online marketplaces, 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 infringing products directly to Pennsylvania and this Judicial district.

This Court has personal jurisdiction over Defendants because Defendants caused harm to Plaintiff by acts outside the Commonwealth. *Id.* § 5322(a)(4). Defendants are depriving Plaintiff of her right to fairly compete for space online by reducing the visibility of Plaintiff's copyrighted works. Defendants are also reducing the retail market value of Plaintiff's copyrighted works 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 creative content and quality of the works, as well as the ability to license the valuable copyrights. This loss of control has resulted in an irreversible loss of goodwill and reputation with Plaintiff's hard-earned customers.

## 2. Exercising Personal Jurisdiction Over Defendants Comports With Due Process

Exercising personal jurisdiction over Defendants pursuant to 42 Pa. Cons. Stat. § 5322 is consistent with constitutional due process since Defendants have sufficient minimum contacts with the forum state 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)).

For a federal court to exercise personal jurisdiction over a defendant in accordance with the long-arm statute of the jurisdiction, exercising personal jurisdiction must be consistent with the Due Process Clause of the United States Constitution. 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.” *Id.*; *O’Connor v. Sandy Lane Hotel Co., Ltd.*, 496 F.3d 312, 317 (3d Cir. 2007). To determine whether the maintenance of the suit does not offend “traditional notions of fair play and substantial justice,” the defendant must be found to have sufficient “minimum contacts” with the forum state. *Remick v. Manfredy*, 238 F.3d 248, 255 (3d Cir. 2001) (quoting *International Shoe Co.*, 326 U.S. at 316). 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 (1987)); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). Additionally, for personal jurisdiction to be valid and comport with the Due Process Clause, the litigation at issue must “arise out of or relate to” at least one of those activities. *O’Connor*, 496 F.3d at 317.

This Court has jurisdiction over Defendants based on their internet-based sales into the United States and this judicial district. The seminal case of *Zippo Mfg. Co. v. Zippo Dot Com*,

*Inc.* is informative on whether a defendant who transacts business in a jurisdiction through the internet can be deemed to have sufficient “minimum contacts” with the jurisdiction as to comport with the Due Process Clause. *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997). *Zippo Mfg. Co.* established a sliding-scale test to determine personal jurisdiction based on a defendant’s internet-based activities. The test categorizes websites into three categories based on their level of interactivity and the commercial nature of the information exchange, with the court explaining:

[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 result of applying the test is that, in cases where a defendant is clearly doing business through its website in the forum state, and where the claim relates to or arises out of the use of the website, personal jurisdiction exists. *Toys “R” Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 452 (3d Cir. 2003). The reasoning behind this is that business conducted over the internet should not yield different results than in-person transactions if the entity intentionally reaches beyond its boundaries to conduct business with foreign residents. *Zippo Mfg. Co.*, 952 F. Supp. at 1124.

The Third Circuit clarified the *Zippo* framework in *Toys “R” Us, Inc. v. Step Two, S.A.*, 318 F.3d 446 (3rd Cir. 2003) by emphasizing the intentionality requirement—i.e., requiring that the defendant intentionally conducts business with residents of the forum state. *Id.* at 452. This aligns the *Zippo* framework with the purposeful availment requirement, necessitating “evidence that the defendant ‘purposefully availed’ itself of conducting activity in the forum state by directly targeting its web site to the state, knowingly interacting with residents of the forum state via its web site, or through sufficient other related contacts.” *Id.* at 454.

Here, Defendants directed their business activities at consumers in Pennsylvania and this Judicial District through the Online Marketplaces, through which consumers can view, purchase, and receive delivery for Defendants’ infringing products as well as communicate with Defendants regarding those products. Defendants’ ability to “knowingly interact” with residents of Pennsylvania and this Judicial District, in addition to the repeated transactions and sales made to consumers in Pennsylvania, constitutes sufficient purposeful availment as to subject Defendants to the personal jurisdiction of this Court. *Id.* at 454; *see Willyoung v. Colorado Custom Hardware, Inc.*, 2009 U.S. Dist. LEXIS 91557, at \*13 (W.D. Pa. 2009) (finding personal jurisdiction where defendant intentionally and repeatedly sold its products over the internet to Pennsylvania customers); *Gentex Corp.*, 978 F. Supp. 2d at 398 (M.D. Pa. 2013) (finding personal jurisdiction where Pennsylvania customers placed at least 17 orders on non-resident defendant’s interactive website).

Defendants’ storefronts fall on the end of the *Zippo* spectrum of a defendant “clearly [doing] business over the internet,” rather than a passive website which is merely accessible to users in foreign jurisdictions. *Zippo Mfg. Co.*, 952 F. Supp. at 1124; *see Law Sch. Admission Council, Inc. v. Tatro*, 153 F. Supp. 3d 714, 720 (E.D. Pa. 2015). Even if Defendants’ storefronts

would be placed in the middle of the scale, examining “the commercial nature of the exchange of information that occurs on the Web site,” it is clear that the interaction and exchange of information by Pennsylvania consumers on Defendants’ storefronts are the exact type of commercial interactions that the *Zippo* court foresaw when formulating the test. *Id.*

Additionally, the present suit arises out of Defendants’ contacts with Pennsylvania and this Judicial District. *O’Connor*, 496 F.3d at 317. The products that are offered for sale, purchased and delivered to Pennsylvania and this Judicial District, and subject to customer communications with Defendants are the infringing products from which this suit arises.

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.”

### **3. 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 law, 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); *see D’Agostino v. Appliances Buy Phone, Inc.*, 633 Fed. Appx. 88, 93 (3d Cir. 2015). 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 . . . copyrights.” 28 U.S.C. § 1338(a). The claims asserted against Defendants arise under the Copyright Act (17 U.S.C. § 101 et seq.), an Act of Congress relating to copyrights.

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 Marketplace that Defendants have voluntarily opened accounts with for the purpose of selling the infringing products targets the entirety of the United States. The selected Online Marketplace is promoted in the United States, provides prices in U.S. Dollars, advertises free shipping to U.S. buyers, including those in Pennsylvania, and provides reviews of users in the United States. Defendants have sold, and/or continue to sell, the infringing products in the United States. *Odell Dec.*, ¶¶ 3–4. Defendants additionally provide U.S. buyers the option to communicate with Defendants regarding the infringing 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 her right to fairly compete for space online, reducing the retail market value of Plaintiff’s patented products, irreparably damaging Plaintiff’s goodwill and reputation, and causing Plaintiff the loss of control over the creative content and quality of its products and the ability to license its valuable patent.

Given the abovementioned considerations, this Court may exercise personal jurisdiction over Defendants pursuant to Federal Rule of Civil Procedure 4(k)(2), the “federal long-arm statute.” Plaintiff’s claim arises under federal copyright law, and therefore Defendant is not subject to jurisdiction in any state’s courts of general jurisdiction. Additionally, the present litigation results from Defendants’ activities directed at the aggregate United States. Therefore, this Court’s exercise of personal jurisdiction is proper.

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

An *ex parte* order is essential to this case to prevent Plaintiff from suffering immediate and irreparable injury. Defendants are actively promoting, advertising, selling and infringing

Plaintiff's patent via their interactive e-commerce storefronts. Defendants are passing off their infringing products as genuine and causing irreparable harm to Plaintiff, including loss of good will with customers, decreased market price of the Plaintiff's patented product, increased costs associated with educating customers, increased marketing costs, and loss of profit resulting from Defendants' displacement of Plaintiff's legitimate, patented product with infringing knock-off products. The entry of an *ex parte* temporary restraining order and preliminary injunction which precludes Defendants from continuing to offer for sale and sell infringing products via the Online Marketplace or modifying or deleting any related content or data would halt Defendants from benefiting from their illegal and wrongful use of Plaintiff's patent and preserve the status quo until such a time as a hearing can be held. Absent a restraining order, Defendants will significantly alter the status quo before the Court can determine the parties' respective rights.

The Court has the authority to issue an *ex parte* temporary restraining order. Federal Rule of Civil Procedure 65(b) states, in pertinent part, that "[t]he Court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if . . . specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b)(1). To evaluate whether preliminary relief is warranted, 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)).

The Patent Act additionally authorizes courts to issue injunctive relief “in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable.” 35 U.S.C. § 283 An *ex parte* order is essential in this case to prevent immediate and irreparable injury to Plaintiff. 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). 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).

Plaintiff is entitled to preliminary relief since it meets all requirements of both 17 U.S.C. § 502(a) and Federal Rule of Civil Procedure 65(b). Plaintiff will likely succeed on the merits of its patent infringement claim, has been irreparably harmed as a result of Defendants infringing activities, the balance of hardship tips heavily in Plaintiff's favor, and granting the temporary restraining order and preliminary injunction is in the public interest.

## **1. Plaintiff is Likely to Prevail on its Patent Infringement Claim**

Plaintiff have established a likelihood of success on its cause of action for patent infringement. “Section 271(a) of the Patent Act defines direct infringement as ‘whoever without authority makes, uses, offers to sell, or sells any patented invention, within the U.S. or imports into the U.S. any patented invention during the term of the patent therefor, infringes the patent.’ 35 U.S.C. § 271(a).” *Grecia v. McDonald’s Corp.*, 2018 U.S. App. LEXIS 5903, at \*7-8 (Fed. Cir. Mar. 6, 2018).

In this case, Plaintiff is the lawful owner of the Plaintiff’s Patent. Plaintiff has submitted extensive documentation showing that Defendants make, use, offer for sale, sell, and/or import in the United States for subsequent sale or use products that infringe directly at least claim 1 of the Plaintiff’s Patent. *Odell Dec.*, **Composite Exhibit 1**; *Murphy Dec.*, ¶ 4; **Exhibit 1** and **Exhibit 4** to the Complaint. To show infringement, Plaintiff submitted a detailed exemplar infringement claim chart for Plaintiff’s Patent that set forth the text of the patent claim compared with images of the exemplar infringing product. See **Exhibit 4** to Complaint. Thus, Plaintiff has shown it is likely to prevail on its patent infringement claims.

As to validity, “[e]ach issued patent carries with it a presumption of validity under 35 U.S.C. § 282.” *Tinnus Enters., LLC v. Telebrands Corp.*, 846 F.3d 1190, 1205 (Fed. Cir. 2017). “This presumption is sufficient to establish a likelihood of success on the validity issue, absent a challenge by the accused infringer.” *Id.*

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

Defendants' infringing activities must be stopped immediately in order to prevent any further harm to Plaintiff. Not only does Plaintiff stand to suffer lost profits as a result of Defendants' competing substandard Infringing Products, but it destroys the inherent value of Plaintiff's brand, it impairs Plaintiff's reputation for providing quality products, it dilutes Plaintiff's brand and goodwill, and it negatively affects Plaintiff's relationships with its current customers and its ability to attract new customers.

The Plaintiff will suffer irreparable harm through the continued infringement of the Plaintiff's Patent by Defendants. 35 U.S.C. § 154(a)(1) provides "[e]very patent shall contain ... a grant to the patentee, his heirs or assigns, of the right to exclude others from making, using, offering for sale, or selling the invention throughout the United States...." "It is well-settled that, because the principal value of a patent is its statutory right to exclude, the nature of the patent grant weighs against holding that monetary damages will always suffice to make the patentee whole." *Hybritech Inc. v. Abbott Labs.*, 849 F.2d 1446, 1456-57 (Fed. Cir. 1988). "If monetary relief were the sole relief afforded by the patent statute, then injunctions would be unnecessary and infringers could become compulsory licensees for as long as the litigation lasts." *Id.* at 1457 (quoting *Atlas Powder Co. v. Ireco Chems.*, 773 F.2d 1230, 1233 (Fed. Cir. 1985)).

Accordingly, injunctive relief is an appropriate remedy for patent infringement. *See eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 394 (2006) ("We hold only that the decision whether to grant or deny injunctive relief rests within the equitable discretion of the district courts, and that such discretion must be exercised consistent with traditional principles of equity, in patent disputes no less than in other cases governed by such standards.").

Unless the Defendants are enjoined, the Plaintiff will lose its hard-earned market share, which further supports a finding of irreparable harm. *Abbott Labs. v. Sandoz, Inc.*, 544 F.3d 1341, 1361-62 (Fed. Cir. 2008) (citing *Purdue Pharma L.P. v. Boehringer Ingelheim GmbH*, 237 F.3d 1359, 1368 (Fed. Cir. 2001)); *Bio-Tech. Gen. Corp. v. Genentech, Inc.*, 80 F.3d 1553, 1566 (Fed. Cir. 1996); *Polymer Techs., Inc. v. Bridwell*, 103 F.3d 970, 975-76 (Fed. Cir. 1996)). In this case, the Plaintiff almost certainly will suffer great and unpredictable harm should Defendants continue their infringing activity.

Defendants are offering their substandard Infringing Products, often in wholesale quantities, at significantly below market prices with which Plaintiff cannot compete given the high-quality materials and construction necessary to manufacture the Plaintiff's genuine product. *See Mint, Inc. v. Iddi Amad*, No. 10-cv-9395-SAS, 2011 U.S. Dist. LEXIS 49813, at \*9 , n.23 (S.D.N.Y. May 9, 2011) ("the loss of pricing power resulting from the sale of inexpensive 'knock-offs' is, by its very nature, irreparable") (citing *Abbott Labs. v. Sandoz, Inc.*, 544 F.3d 1341, 1362 (Fed. Cir. 2008) (citing *Purdue Pharma L.P. v. Boehringer Ingelheim GmbH*, 237 F.3d 1359, 1368 (Fed. Cir. 2001) (likelihood of price erosion and loss of market position are evidence of irreparable harm); *Polymer Techs., Inc. v. Bridwell*, 103 F.3d 970, 975-76 (Fed. Cir. 1996) (loss of market opportunities cannot be quantified or adequately compensated and is evidence of irreparable harm)).

Harm to a patent holder's goodwill also supports issuance of a preliminary injunction. *AstraZeneca LP v. Apotex Corp.*, 633 F.3d 1042, 1063 (Fed. Cir. 2010); *see also Reebok Int'l Ltd. v. J. Baker, Inc.*, 32 F.3d 1552, 1558 (Fed. Cir. 1994) ("Harm to reputation resulting from confusion between an inferior accused product and a patentee's superior product is a type of harm that is often not fully compensable by money because the damages caused are speculative

and difficult to measure.”). Here, there is ample evidence (*see De Sousa Dec.*, ¶¶ 18–29) that Defendants’ infringing conduct will irreparably harm the goodwill and reputation of the Plaintiff.

Finally, because Defendants are individuals and business who, upon information and belief, likely reside in the foreign jurisdictions with no U.S. presence, any monetary judgment is likely uncollectable. *See Robert Bosch, LLC v. Pylon Mfg. Corp.*, 659 F.3d 1142, 1156 (Fed. Cir. 2011) (reversing denial of permanent injunction where the likely availability of monetary damages was in question, citing *O2 Mirco Int’l Ltd. v. Beyond Innovation Tech. Co.*, No. 2:04-cv-0032, 2007 WL 869576, at \*2 (E.D. Tex. Mar. 21, 2007) where “‘all three defendants are foreign corporation and that there is little assurance that [plaintiff] could collect money damages’”). Furthermore, other district court have found that money damages were insufficient in similar cases involving foreign infringers. *E.g., Aevoe Corp. v. AE Tech Co., Ltd.*, No. 2:12-cv-0053, 2012 WL 760692, at \*5 (D. Nev. Mar. 7, 2012) (“[A] finding of irreparable harm was not clearly erroneous because it also found that since AE Tech is a foreign corporation, money damages would be insufficient.”); *Otter Prods. V. Anke Group Indus. Ltd.*, 2:13-cv-00029, 2013 WL 5910882, at \*2 (D. Nev. Jan. 8, 2013) (“because Anke has no presence in the United States, it may be difficult or impossible to Otterbox to enforce a monetary judgment against Anke”); *Bushnell, Inc. v. Brunton Co.*, 673 F.Supp.2d. 1241, 1263 (D. Kan. 2009) (granting preliminary injunction; “the prospect of collecting money damages from a foreign defendant with few to no assets in the United States tips in favor of a finding of irreparable harm”); *Nike, Inc. v. Fujian Bestwinn Industry Co., Ltd.*, 166 F.Supp.3d 1177, 1179 (D. Nev. 2016) (“[B]ecause Bestwinn has no presence in the United States, it may be difficult or impossible for NIKE to recover a money judgment against Bestwinn”).

For the reasons stated above, Plaintiff will suffer immediate and irreparable injury, loss, or damage if an *ex parte* Temporary Restraining Order is not issued in accordance with Federal Rule of Civil Procedure 65(b)(1).

### **3. The Balance of Hardships Favors Plaintiff**

The balance of hardships unquestionably and overwhelmingly favors Plaintiff in this case. Here, as described above, Plaintiff has suffered, and will continue to suffer, irreparable harm to its business, the value, goodwill and reputation built up in and associated with the Plaintiff's Product and to their reputation as a result of Defendants' willful and knowing sales of Infringing Products. In contrast, any harm to Defendants would only be the loss of Defendants' ability to continue to offer their Infringing Products for sale, or, in other words, the loss of the benefit of being allowed to continue to unfairly profit from their illegal and infringing activities. "Indeed, to the extent defendants 'elect[] to build a business on products found to infringe[,] [they] cannot be heard to complain if an injunction against continuing infringement destroys the business so elected.'" *Windsurfing Intern, Inc. v. AMF, Inc.*, 782 F.2d 995, 1003 n.12 (Fed. Cir. 1986); *Broad. Music, Inc. v. Prana Hosp., Inc.*, 158 F. Supp. 3d 184, 196 (S.D.N.Y. 2016) (quoting *Mint, Inc. v. Amad*, 2011 U.S. Dist. LEXIS 49813, at \*3 (S.D.N.Y. 2011) (internal quotation marks and citation omitted)); *see also Mitchell Group USA LLC*, No. 14-cv-5745-DLI/JO, 2014 U.S. Dist. LEXIS 143001, at \*6-7 (E.D.N.Y. Feb. 17, 2014) (citing *Philip Morris USA Inc. v. 5 Bros. Grocery Corp.*, No. 13-cv-2451-DLI/SMG, 2014 U.S. Dist. LEXIS 112274 (E.D.N.Y. Aug. 5, 2014) ("Absent an injunction, there will be further erosion of Plaintiff's goodwill and reputation. Defendants, on the other hand, will be called upon to do no more than refrain from what they have no right to do in the first place.")).

#### **4. The Relief Sought Serves the Public Interest**

As Plaintiff has demonstrated, Defendants have been profiting from the sale of Infringing Products. Thus, the balance of equities tips decisively in Plaintiff's favor. The public is currently under the false impression that Plaintiff has granted a license or permission to Defendants with respect to the Plaintiff's Patent. In this case, the injury to the public is significant, and the injunctive relief that Plaintiff seeks is specifically intended to remedy that injury by dispelling the public confusion created by Defendants' actions. Since Defendants have willfully and knowingly inserted knock-off Infringing Products into the marketplace, the public would benefit from a temporary restraining order and preliminary injunction halting any further sale and distribution of Defendants' Infringing Products. As such, equity requires that Defendants be ordered to cease their unlawful conduct.

#### **C. Plaintiff is Entitled to an Order (1) Preventing the Fraudulent Transfer of Assets, and (2) Freezing Defendants' Merchant Storefronts**

##### **1. Defendants' Assets Must be Frozen**

In addition, the Court should enter an order limiting the transfer of Defendants' unlawfully gained asserts. Plaintiff has demonstrated above that it will likely succeed on the merits of its claims. Furthermore, it is unlikely that Defendants possess the funds to satisfy any potential judgment. Due to the deceptive nature of Defendants' business, and Defendants' deliberate violations of patent law, Plaintiff respectfully request this Court grant additional *ex parte* relief restraining the transfer of all monies held or received by as Amazon, Alipay, Paypal, Walmart Pay or Context Logic, Inc., 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 & Nathel, 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 Plaintiff seek both equitable and legal relief in relation to specific funds, a court retains its equitable power to freeze assets.”); *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 (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).

This Court has broad authority to grant such an order, and has done so on multiple occasions. *See, e.g., AquaPaw Brands LLC, v Yan-Peng, et al.*, 21-cv-1784 (Slip. Op., July 29, 2022)(Wiegand, J.)[ECF No. 62], *Aquapaw Brands LLC, v Flo Pet, et al.*, No. 21-cv-988 (Slip. Op., July 29, 2022)(Wiegand, J.)[ECF No. 58] *Aquapaw Brands LLC, v Tiktoks, et al.*, No. 21-cv-696 (Slip. Op., July 29, 2022)(Wiegand, J.)[ECF No. 56], *AquaPaw LLC v. Allnice, et al.*, No. 20-cv-1954 (Slip. Op., July 29, 2022)(Wiegand, J.)[ECF No. 85]. . The Third Circuit has ruled that district courts have the power to grant preliminary injunctions to prevent a defendant from transferring assets in order to protect a future damages remedy. *Hoxworth v. Blinder, Robinson & Co., Inc.*, 903 F.2d 186 (1990). Pennsylvania courts have also restrained assets to protect a future damages remedy. *Walter v. Stacey*, 837 A.2d 1205 (Pa. Super. 2003) (injunction entered restraining assets in action seeking damages for a wrongful death). Moreover, almost every Circuit has interpreted Rule 65 of the Federal Rules of Civil Procedure to grant authority to restrain assets *pendent lite*. *See 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”).

An asset freeze in the instant matter is unquestionably warranted because Defendants, who appear to be unknown individuals, that are manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling Infringing Products to U.S. consumers solely via the Internet, and accepting payment for such Infringing Products in U.S. Dollars through Financial Institutions, thereby causing irreparable harm to Plaintiff in the form of lost sales, loss of goodwill and loss of control of its reputation with licensees, retailers and consumers, can, and most certainly have the incentive to, transfer and hide their ill-gotten funds if their assets are not frozen. .

Moreover, to provide complete equitable relief, courts have granted such orders without providing notice to the defendants. Specifically, federal courts have held that where advance notice of an asset restraint is likely to cause a party to alienate the assets sought to be restrained, a temporary restraining order may be issued *ex parte*. See *F.T. Int'l Ltd. v. Mason*, 2000 WL 1514881 \*3 (E.D. Pa. 2000) (granting *ex parte* TRO restraining defendants' bank accounts upon finding that advance notice would likely have caused the defendants to secret or alienate funds); *CSC Holdings, Inc. v. Greenleaf Elec., Inc.*, 2000 WL 715601 (N.D. Ill. 2000) (granting *ex parte* TRO enjoining cable television pirates and restraining pirates' assets); *Dama S.P.A. v. Doe*, 2015 U.S. Dist. LEXIS 178076, at \*4-6 (S.D.N.Y. June 12, 2015) (agreeing that, "Plaintiff's concerns regarding the likelihood of dissipating assets merit the extraordinary remedy of *ex parte* relief and that there is a strong likelihood that advance notice of the motion would cause Defendants to drain Financial Institution accounts, thereby depriving Plaintiff of the remedy it seeks") and *SEC v. Caledonian Bank Ltd.*, 317 F.R.D. 358 (S.D.N.Y. 2016) (granting Plaintiff's request for an *ex parte* asset freeze based on Plaintiff's assertion that Defendants were foreign entities, and therefore could easily move assets out of bank or brokerage accounts at a moment's notice).

In this case, Defendants' blatant violations of patent law warrant an *ex parte* order restraining the transfer of their ill-gotten assets. Moreover, as Defendants' business are conducted anonymously over the Internet, Plaintiff has additional cause for *ex parte* relief, as Defendants may easily secret or transfer their assets with the Court's or Plaintiff's knowledge.

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

A temporary restraining order which, in part, restrains and enjoins the Third Party Service Provider(s), as well as any and all as yet undiscovered online marketplace platforms, from providing services to Defendants' User Accounts and Merchant Storefronts is warranted and necessary because the continued offering for sale and/or sale of the Infringing Products by Defendants on their Merchant Storefronts through their User Accounts will result in immediate and irreparable injury to Plaintiff, as described above. *See Gucci Am., Inc. v. Weixing Li*, 768 F.3d 122, 126 (2d Cir. 2014) (Hon. Richard J. Sullivan entered a temporary restraining order, which, in part, enjoined the sale of counterfeit goods on the Internet) 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) (Hon. Katherine B. Forrest entered a temporary restraining order which was subsequently converted into a preliminary injunction, which, in part, disabled the defendants' websites, which were their means of distributing, offering for sale and selling Infringing Products.).

One reason why courts have ordered this relief is the ease with which a Merchant Storefront may be set up. For example, a defendant who knowingly sells Infringing Products will likely try and set up another Merchant Storefront to keep selling when the current Merchant Storefront stops working. 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 another Merchant Storefront to sell non-Infringing Products. The proposed Order merely blocks any goodwill associated with the Merchant Storefront which sold Infringing Products; the Defendants are free to set up a new Merchant Storefront that does not sell Infringing Products.

Blocking the good will associated with the Merchant Storefront helps prevent the situation with the defendants where the Infringing Product listing has been taken down but if someone (e.g., a repeat buyer) contacts a Defendant at the Merchant Storefront using the messaging system provided by the online marketplace asking for the Infringing Product, it will be made available by a Defendant. *Id.* The only way to preclude this type of harm to Plaintiff is to freeze the Defendants' Merchant Storefronts.

A freezing of Defendants' Merchant Storefronts also acts to provide immediate notice of the present action to Defendants. Indeed, a number of cases have required that the domain names on which a defendant's storefront operates be turned over to the plaintiff and pointed to a webpage providing notice of the lawsuit against the defendant. *Iron Maiden Holdings Ltd. v. The P'ships & Unincorporated Assns. Identified on Schedule "A"*, No. 18-CV-522 (N.D. Ill. Feb. 1, 2018) ("Plaintiff may provide notice of these proceedings to Defendants, including notice of the preliminary injunction hearing and service of process pursuant to Fed.R.Civ.P. 4(f)(3), by electronically publishing a link to the Complaint, this Order and other relevant document on a website to which the Defendant Domain Names which are transferred to Plaintiff's control will redirect"). Thus, the freezing of Defendants' Merchant Storefronts is also a manner of ensuring that Defendants receive notice of the present action.

#### **D. Plaintiff is Entitled to an Order Authorizing Expedited Discovery**

Plaintiff respectfully requests that the Court issue an order authorizing expedited discovery from Defendants, Financial Institutions, and Third Party Service Providers regarding the scope and extent of Defendants' infringing activities, 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 with any of them ("User Accounts"), and any and all User Accounts through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them operate storefronts to manufacture, import, export, advertise, market, promote, distribute, display, offer for sale, sell and/or otherwise deal in products, including Infringing Products, which are held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them ("Merchant Storefront(s)") including, without limitation, those owned and operated, directly or indirectly, by the Third Party Service Provider and the Financial Institutions.

The Court has the authority to issue an order authorizing expedited discovery from Defendants, Financial Institutions, and Third-Party Service Providers. District courts have the authority to require early document production and permit expedited discovery from defendants and third parties. Fed. R. Civ. P. 26(d)(2)(C), (f); *see Reybold Grp. of Cos. V. Doe*, 323 F.R.D. 205, 208; *Manny Film LLC v. Doe*, 98 F. Supp. 3d 693, 694 (D.N.J. 2015); *N. Atl. Operating Co. v. Huang*, 194 F. Supp. 3d 634, 639 (E.D. Mich. 2016). Generally, parties may not seek discovery

before they have conferred pursuant to Federal Rule of Civil Procedure 26(f); however, Rule 26(d)(1) allows a party to seek a court order permitting early discovery before the parties have conferred. *Reybold Grp. Of Cos.*, 323 F.R.D. at 208; Fed. R. Civ. P. 26(d)(1).

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 may lose the opportunity to effectively pursue their claims against Defendants because there are several aspects of Defendants' infringing activities that Plaintiff are not yet able to confirm, including: 1) the true identities of Defendants, 2) the full scope of Defendants' infringing activities, 3) the source or location of Defendants' inventory of Infringing Products and/or 4) where the proceeds from Defendants' infringing activities 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' infringing activities.

Plaintiff respectfully request 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 Infringing Products. The discovery requested on an expedited basis in Plaintiff's [Proposed] Order has been limited to include only that which is essential to prevent further irreparable harm. 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. Moreover, Financial Institutions and the Third-Party Service Provider have complied with

similar requests for expedited discovery in like actions before this Court. *See supra* note 6. Plaintiff respectfully submits that its request should be granted.

**E. Plaintiff’s Request for a Security Bond in the Amount of \$5,000 is Adequate**

Generally, a bond is a condition of preliminary injunctive relief. Fed. R. Civ. P. 65(c) requires a successful applicant for a preliminary injunction to post a bond, “in such sum as the [district] court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined.” Thus, the injunction bond “provides a fund to use to compensate incorrectly enjoined defendants.” *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 804 (3d Cir. 1989) (quotations omitted).

The injunction bond also serves other functions. “It is generally settled that, with rare exceptions, a [party] wrongfully enjoined has recourse only against the bond.” *Id.*; *see also Hoxworth v. Blinder, Robinson & Co., Inc.*, 903 F.2d 186, 210 n. 31 (3d Cir.1990) (Applicants “derive some protection from the bond requirement, for [enjoined parties] injured by wrongfully issued preliminary injunctions can recover only against the bond itself.”). Thus, the bond generally limits the liability of the applicant and informs the applicant of “the price [it] can expect to pay if the injunction was wrongfully issued.” *Instant Air Freight*, 882 F.2d at 805; *see also id.* at 805 n. 9 (“The bond can thus be seen as a contract in which the court and [the applicant] ‘agree’ to the bond amount as the ‘price’ of a wrongful injunction.”) (quotations omitted).

Plaintiff respectfully submits 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, Plaintiff’s provision of security in the amount of \$5,000 (“Security Bond”) is more than sufficient. This Security Bond is equal to an amount

that similar Plaintiff has posted in related cases before Courts, including this one. *See generally*, *Request for Judicial Notice* and cases cited therein. *See, also. Aquapaw Brands LLC, v Yan-Peng, et al.*, 21-cv-1784 (Wiegand, J.) (Temporary Restraining Order required \$5,000 bond), *Aquapaw Brands LLC, v Flo Pet, et al.*, No. 21-cv-988; *Aquapaw Brands LLC, v Tiktoks, et al.*, No. 21-cv-696 (Wiegand, J.) (Temporary Restraining Order required \$5,000 bond), *AquaPaw LLC v. Allnice, et al.*, No. 20-cv-1954 (Wiegand, J) (Temporary Restraining Order required \$5,000 bond); *Doggie Dental Inc. v. Go Well*, No. 19-cv-1282 (W.D. Pa. Oct. 11, 2019) (Hornak, J.) (Temporary Restraining Order required \$5,000 bond); *Doggie Dental Inc. v. Worthbuyer*, No. 19-cv-1283 (W.D. Pa. Oct. 11, 2019) (Hornak, J.) (Temporary Restraining Order required \$5,000 bond); *Doggie Dental Inc. v. Max\_Buy*, No. 19-cv-746 (W.D. Pa. June 27, 2019) (Hornak, J.) (Temporary Restraining Order required \$5,000 bond); *Doggie Dental Inc. v. Anywill*, No. 19-cv-682 (W.D. Pa. June 13, 2019) (Hornak, J.) (Temporary Restraining Order required \$5,000 bond); *Airigan Solutions, LLC v. Artifacts\_Selling*, Civil Action No. 18-cv-1462-NBF (Temporary Restraining Order entered on November 2, 2018, \$5,000.00 bond required), and *Airigan Solutions, LLC v. Babymove*, Civil Action No. 19-cv-166-NBF (Temporary Restraining Order entered on February 14, 2019, \$5,000.00 bond required), *Rapid Slicer, LLC v. Buyspry*, Civil Action No. 19-cv-249-MJH (Temporary Restraining Order entered on March 11, 2019, \$5,000 bond required), *Showtech Merchandising, Inc. v. Various John Doe, et al.*, 2:12-cv-1270 (W.D. Pa. Sept. 6, 2012); *See Wow-Virtual Reality, Inc. v. 740452063 et al.*, No. 18-cv-3618, Dkt. 18 (S.D.N.Y. April 25, 2018); *Rovio Entertainment Ltd. and Rovio Animation OY v. Best Baby and Kid Store, et al.*, No. 17-cv- 4884-KPF, Dkt. 6 (S.D.N.Y. June 28, 2017); *Rovio Entertainment Ltd. and Rovio Animation OY v. Angel Baby Factory d/b/a Angelbaby\_factory et al.*, No. 17-cv-1840-KPF, Dkt. 11 (S.D.N.Y. March 27, 2017). Moreover,

one New York Court has gone as far as to hold that no security bond is necessary in similar circumstances. *See, e.g., Ontel Products Corp. v. Airbrushpainting Makeup Store a/k/a Airbrushpainting, et al.*, No. 17-cv-871-KBF, Dkt. 20 (S.D.N.Y. Feb. 6, 2017).<sup>6</sup>

Plaintiff believes 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, Plaintiff respectfully requests 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 its Application be granted *ex parte* and that the Court enter: 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts; 3) an order to show cause why a preliminary injunction should not issue; and 4) an order authorizing expedited discovery against 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.

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<sup>6</sup> The Second Circuit has held that “[d]istrict courts ... are vested with wide discretion in determining the amount of the bond that the moving party must post.” *Doctor’s Assocs., Inc. v. Stuart*, 85 F.3d 975, 985 (2d Cir. 1996). Typically, “the amount of the bond posted is the limit that a wrongfully restrained party may recover,” but the Court must also balance this against a likelihood of harm the non-movant would be able to show. *Interlink Int’l Fin. Servs., Inc. v. Block*, 145 F. Supp. 2d 312, 314 (S.D.N.Y. 2001); *see also Doctor’s Assocs.*, 85 F.3d at 985.

Respectfully submitted,

Dated: March 6, 2026

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