

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Patent Rightsholder Identified in Exhibit 1,)	
)	
)	
Plaintiff,)	
)	Case No. 24-cv-683
v.)	
)	Hon. Lindsay C. Jenkins
The Individuals, Partnerships, and)	
Unincorporated Associations Identified on)	
Schedule A,)	
)	
Defendants.)	

Plaintiff’s Motion for Entry of a Preliminary Injunction

NOW COMES Patent Rightsholder Identified in Exhibit 1 (“Plaintiff”), by and through its undersigned counsel, and submits this Motion for Entry of a Preliminary Injunction.

I. Introduction

Plaintiff Patent Rightsholder Identified in Exhibit 1 (“Plaintiff”) has brought the present action against the defendants in Schedule A of the Complaint (collectively, “Defendants”) for design patent infringement. As alleged in the Complaint, Defendants are offering for sale and selling an unauthorized and unlicensed product, namely a certain plush toy, that infringes Plaintiff’s patented design (the “Infringing Product”) through at least the fully interactive, e-commerce stores¹ operating under the seller aliases identified in Schedule A to the Complaint (the “Seller Aliases”).

¹ The e-commerce store URLs are listed on Schedule A to the Complaint.

On February 1, 2024, this Court granted Plaintiff's Ex Parte Motion for Entry of a Temporary Restraining Order ("TRO"). [Dkt. 10]. The TRO authorized Plaintiff to provide to defendants notice of these proceedings and the preliminary injunction hearing to Defendants by electronically publishing a link to the Complaint, the TRO, and other relevant documents on a website and sending an email to the email addresses provided by third parties (e.g., Walmart, Temu, eBay, and Amazon) that included a link to said website. [Dkt. 10, at ¶ 7]. Pursuant to the TRO and since the TRO was entered, Amazon, eBay, Temu, and Walmart payment accounts associated with the Defendant Online Stores have been preserved. *See*, Declaration of Christopher Ktenas, at ¶ 2. Plaintiff respectfully requests this Court to convert the TRO to a preliminary injunction against the Defendants so that the Defendants remain enjoined from making, using, offering for sale, selling, and importing any products not authorized by Plaintiff that include any reproduction, copy, or colorable imitation of the designs claimed in the Plaintiff Design during the pendency of this litigation. As part of the preliminary injunction, Plaintiff requests that Defendants' storefront payment accounts remain preserved until completion of these proceedings.

II. Argument

a. **A preliminary injunction extending relief already granted in the TRO is appropriate.**

Plaintiff respectfully requests that this Court convert the TRO to a preliminary injunction to prevent further unlawful conduct by Defendants. Courts addressing similar allegations of e-Commerce infringement have also issued preliminary injunctions following a temporary restraining order. *See, e.g., Deckers Outdoor Corp. v. The P'ships and Unincorporated Assocs. Identified on Schedule "A"*, No. 15-cv-3249 Dkt. 32 (N.D. Ill. May 6, 2015); *Oakley, Inc. v.*

Does 1-100, No. 12-cv-9864 Dkt. 23 (N.D. Ill. Dec. 27, 2012); Mon Cheri Bridals, LLC v Does 1-464, No. 19-cv-02362 Dkt. 31 (N.D. Ill. May 21, 2019).

b. This Court has already found that the requirements for entry of a preliminary injunction have been satisfied.

In the Seventh Circuit, the standard for granting a preliminary injunction is identical to the standard for entering a TRO, and in this case the requirements for entry of a preliminary injunction have been satisfied. *See, e.g., Charter Nat'l Bank & Trust v. Charter One Fin., Inc.*, 2001 WL 527404, at *1 (N.D. Ill. May 15, 2001) (citation omitted). Generally, a party seeking to obtain a preliminary injunction or must demonstrate: (i) that such party's case has some likelihood of success on the merits; (ii) that no adequate remedy at law exists; and (iii) that such party will suffer irreparable harm if the injunction is not granted. *Ty, Inc. v. The Jones Group, Inc.*, 237 F.3d 891, 895 (7th Cir. 2001); *Columbia Pictures Indus., Inc. v. Jasso*, 927 F. Supp. 1075, 1076 (N.D. Ill. 1996); *see, Coach, Inc. v. The P'ships & Unincorporated Assocs. Identified on Schedule "A"*, 2013 WL 5477573, at *1 (N.D. Ill. Oct. 1, 2013) (granting preliminary injunction against foreign online resellers after entry of TRO). Because this Court has already entered the TRO, this Court has already found the requirements for entry of the preliminary injunction have been met.

c. The equitable relief sought, including asset preservation, remains appropriate.

The Patent Act 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. Further, this Court has the power to bind any third parties, such as domain name registries and financial institutions, who are in active concert with the Defendants or who aid and abet Defendants and are given actual notice of the order. Fed. R.

Civ. P. 65(d)(2)(C). Accordingly, Plaintiff requests conversion of the TRO into a preliminary injunction so that Defendants' infringing activities remain stymied and their account in U.S.-associated financial institutions remains restrained and frozen. Since the TRO's entry, Amazon, eBay, Temu, and Walmart have provided Plaintiff with information including the identity of payment accounts linked to the Defendant Online Store which were offering for sale and/or selling Infringing Products. In the absence of a preliminary injunction, Defendant will be motivated to and may move assets from its U.S.-associated payment accounts, including Amazon, eBay, Temu, and Walmart accounts, to an offshore account or otherwise transferred beyond recovery. Therefore, Defendants' assets should remain restrained and preserved for the remainder of these proceedings.

The Complaint describes damages to which Plaintiff is entitled. Plaintiff has obtained information from Amazon, eBay, Temu, and Walmart concerning funds in certain accounts associated with Defendants' online storefronts operating under the Seller Aliases, and continues to investigate Defendants' operations. Ktenas Decl. ¶ 3. The online storefronts operating under the Seller Aliases' accounts on average sold substantially more Infringing Product alone than amounts which are restrained. Ktenas Decl. ¶ 3. As such, an order continuing to temporarily preserve the Defendants' assets should be entered. *See, e.g., Lorillard Tobacco Co. v. Montrose Wholesale Candies*, 2005 WL 3115892, at *13 (N.D. Ill. Nov. 8, 2005) (acknowledging Court's authority to freeze assets where the plaintiff sought disgorgement of defendant's profits under the Lanham Act); *CSC Holdings, Inc. v. Redisi*, 309 F.3d 988 (7th Cir. 2002) ("since the assets in question...were the profits of the [defendants] made by unlawfully stealing [the plaintiffs'] services, the freeze was appropriate and may remain in place pending final disposition of this case."); *Reebok Int'l Ltd. v. Marnatech Enters., Inc.*, 970 F.2d 552, 559 (9th Cir. 1992)

("[B]ecause the Lanham Act authorizes the district court to grant [plaintiff] an accounting of [defendant's] profits as a form of final equitable relief, the district court had the inherent power to freeze [defendant's] assets in order to ensure the availability of that final relief."); Monster Energy Co. v. Wensheng, 136 F. Supp. 3d 897, 910 (N.D. Ill. 2015) (denying motion to dissolve preliminary injunction in light of Lanham Act and Copyright Act claims and maintaining injunction bond at \$10,000).

III. Conclusion

In light of the foregoing and this Court's previous entry of the TRO, Plaintiff respectfully requests this Court to enter the preliminary injunction in substantially the same form as provided to the Court in the accompanying proposed order. Coach, 2013 WL 5477573, at *4.

Dated: February 29, 2024

Respectfully,

/s/Christopher Ktenas
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Attorney for Plaintiff

Certificate of Service

I hereby certify that on the February 29, 2024, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, I will electronically publish the documents on a website, and I will send an e-mail to the e-mail addresses provided for Defendants by third parties that includes a link to said website.

Respectfully,

/s/Christopher Ktenas
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Attorney for Plaintiff

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Schedule A,)	
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Defendants.)	

Declaration of Christopher Ktenas

I, Christopher Ktenas, of the City of Chicago, in the State of Illinois, declare as follows:

1. I am an attorney at law, duly admitted to practice before the Courts of the State of Illinois and the U.S. District Court for the Northern District of Illinois. I am the attorney for Plaintiff.

Except as otherwise expressly stated to the contrary, I have personal knowledge of the following facts and, if called as a witness, I could and would competently testify to the following:

2. Pursuant to the temporary restraining order [Dkt. 10] and since the temporary restraining order's entry, Amazon, eBay, Temu, and Walmart payment accounts associated with the Defendant Online Stores have been restrained and preserved, and the Infringing Product listings have been disabled.

3. Per discovery provided by Amazon, across Defendants the average sales volume of Infringing Products alone is approximately 47% greater than the restrained balance. Plaintiff continues its investigation into Defendants' operations.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this February 29, 2024

/s/Christopher Ktenas
Christopher Ktenas