

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

Trademark Rightsholder Identified in Exhibit 1,)	
)	
Plaintiff,)	
)	1:23-cv-16216
v.)	
)	Dist. Judge Sara L. Ellis
The Individuals, Partnerships, and Unincorporated Associations Identified on Schedule A,)	
)	Mag. Judge Sheila M. Finnegan
)	
Defendants)	

Plaintiff’s Motion for Entry of a Preliminary Injunction

NOW COMES Trademark 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 Trademark Rightsholder Identified in Exhibit 1 (“Plaintiff”) has brought the present action against the defendants in Schedule A of the Complaint (collectively, “Defendants”) under Sections 32 and 43(a) of the Lanham Act and the Illinois Uniform Deceptive Trade Practices Act. As Plaintiff alleges in the Complaint, Defendants are without authorization selling products using Plaintiff’s registered trademark (the “Infringing Products”) through at least the fully interactive e-commerce stores and online marketplaces identified within the Schedule A attached to the Complaint.

On November 30, 2023, this Court granted Plaintiff’s Ex Parte Motion for Entry of a Temporary Restraining Order (“TRO”). [Dkt. 11]. 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., PayPal, eBay, and

Amazon) that included a link to said website. [Dkt. 11, at ¶ 6]. Pursuant to the TRO and since the TRO was entered, Amazon accounts associated with the Defendant Online Stores have been preserved. *See*, Declaration of Adam Urbanczyk, 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 reproducing, distributing, displaying, or otherwise exploiting without authorization the Plaintiff Mark during the pendency of this litigation. As part of the preliminary injunction, Plaintiff requests that Defendants' Amazon 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).

i. 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.

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

The Lanham Act authorizes this Court to enter injunctive relief "according to principles of equity and upon such terms as the court may deem reasonable, to prevent violation of any right of the registrant of a mark." 15 U.S.C. § 1116(a). 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 has 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 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 concerning funds in certain accounts associated with the Defendant Online Stores, and continues to investigate Defendants' operations. Urbanczyk Decl. ¶ 3. The Defendant Online Stores' Amazon accounts on average sold substantially more Infringing Product

alone than amounts which are restrained. Urbanczyk 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: December 11, 2023

Respectfully Submitted

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Certificate of Service

I hereby certify that on the December 11, 2023, 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.

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