UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

MAGBAG LLC,	)	Case No.: 3:25-CV-01376
Plaintiff,	)	Judge: Waverly D. Crenshaw, Jr.
v.	)	Magistrate Judge: Barbara D. Holmes
THE ENTITIES, PARTNERSHIPS, AND UNINCORPORATED ASSOCIATIONS LISTED ON SCHEDULE A,	)	**SEALED DOCUMENT**
Defendants.	)	**JURY DEMAND**

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF ITS EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER, ORDER RESTRAINING MERCHANT STOREFRONTS AND DEFENDANTS' ASSETS, ORDER FOR EXPEDITED DISCOVERY, AND ORDER AUTHORIZING ALTERNATIVE SERVICE

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I. INTRODUCTION

Plaintiff designs, markets, and sells the popular Magnetic Bottle Bag (the "Product"). Plaintiff owns federal trademark registrations for the Magnetic Bag Company mark (the "Mark"), Magnetic Attachment Bag design patent (the "Patent"), and federal copyright registrations covering promotional materials and images used in connection with the Product (the "Copyrighted Works"). (Compl. ¶¶ 1, 10-21, Exs. 1-3).

Defendants are a network of largely unknown individuals and entities operating online storefronts through e-commerce platforms like Amazon, AliExpress, Alibaba, eBay, Temu, and Walmart. (Compl. ¶¶ 2, 29; Powell Decl. ¶ 2, Ex. A). These Defendants are advertising, offering for sale, and selling counterfeit and infringing versions of Plaintiff's Product that unlawfully use the Mark, Patent, and incorporate unauthorized reproductions or derivatives of the Copyrighted Works. (Compl. ¶¶ 24-31; Powell Decl. ¶¶ 2-5, Exs. A-D; Lozinski Decl. ¶ 3).

Defendants' actions are causing significant and irreparable harm to Plaintiff, including lost sales, damage to its brand reputation and goodwill, and widespread consumer confusion. (Compl. ¶¶ 32-35; Lozinski Decl. ¶¶ 4-7). Many Defendants appear to operate from foreign jurisdictions, using anonymity to facilitate their infringement and shield their assets–primarily funds held in e-commerce platform and payment processor accounts–from recovery. (Compl. ¶¶ 2, 33; Powell Decl. ¶ 2).

Immediate *ex parte* relief is necessary. Providing notice to Defendants would almost certainly cause them to transfer or conceal assets derived from their infringing activities, shut down current storefronts, and establish new ones under different aliases, thereby thwarting the Court's ability to grant meaningful relief and frustrating Plaintiff's ability to enforce its rights. *See, e.g., In re Vuitton et Fils S.A.*, 606 F.2d 1, 4-5 (2d Cir. 1979) (recognizing that notice to counterfeiters often results in the destruction of evidence and dissipation of assets).

II. FACTUAL BACKGROUND

The detailed factual background is set forth in Plaintiff's Sealed Amended Complaint (hereinafter, Compl.) and the supporting Declarations of Kyle Lozinski and Mr. Powell. Key facts include:

Plaintiff's Rights: Plaintiff owns U.S. Design Patent No. D1,087,596 for the Magnetic Attachment Bag. (Compl. Ex. 1). Plaintiff also owns multiple U.S. Copyright registrations for images and other promotional materials. (Compl. Ex. 2). Plaintiff owns U.S Trademark Registration No. 7,546,435 for the Magnetic Bag Company mark. (Compl. Ex. 3).

Defendants' Infringing Conduct: Defendants operate online stores selling counterfeit Magnetic Bag Company products. (Powell Decl. ¶ 2-5, Exs. A-D). Their listings feature unauthorized uses of the Mark, unauthorized uses of the Patent, and direct copies or derivatives of Plaintiff's Copyrighted Works. (Compl. ¶¶ 24-31; Powell Decl. ¶ 2, Ex. A). Evidence confirms Defendants are using the Mark in listing text, and to trigger search results and ads, copying the Patent, and copying Plaintiff's photos. (Powell Decl. ¶ 2, Ex. A).

Harm to Plaintiff and Consumers: Defendants' low-quality counterfeits have led to actual consumer confusion and complaints directed at Plaintiff. (Lozinski Decl. ¶¶ 4-7). Plaintiff suffers ongoing irreparable harm through lost sales, erosion of goodwill, and dilution of its brand. (Compl. ¶¶ 32-35; Lozinski Decl. ¶¶ 4-7).

Defendants' Nature: Defendants operate anonymously or under fictitious names, often based overseas, with their primary U.S. connection being financial accounts holding proceeds from infringing sales. (Compl. ¶¶ 2, 36; Powell Decl. ¶ 2).

III. LEGAL STANDRD FOR EX PARTE TEMPORARY RESTRAINING ORDER

Under Federal Rule of Civil Procedure 65(b), a court may issue a TRO without notice if: "(A) 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; and (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required." Fed. R. Civ. P. 65(b)(1).

In the Sixth Circuit, courts consider four factors when deciding whether to grant a TRO or preliminary injunction: (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by issuance of the injunction. *See Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.*, 511 F.3d 535, 542 (6th Cir. 2007). These factors are balanced, not prerequisites. *Id*.

As demonstrated below, Plaintiff satisfies all requirements for *ex parte* relief.

IV. ARGUMENT

A. Plaintiff Satisfies the Requirements for a Temporary Restraining Order

1. Plaintiff demonstrates a strong likelihood of success on the merits.

Plaintiff's evidence establishes a strong likelihood of success on its claims for trademark infringement, design patent infringement, copyright infringement, and unfair competition.

(a) Trademark Infringement (15 U.S.C. § 1114)

To succeed on its trademark infringement claim, Plaintiff must show (1) it owns a registered trademark, (2) Defendants used the mark in commerce in connection with the sale or advertising of goods, and (3) Defendants' use is likely to cause consumer confusion. *See Hensley Mfg. v. ProPride Inc.*, 579 F.3d 603, 609 (6th Cir. 2009).

Here, Plaintiff owns the valid and registered Magnetic Bag Company mark. (Compl. Ex. 3; Powell Decl. ¶ 8). Defendants are using this exact mark, or trivially modified versions in

online listings hosted on major e-commerce platforms accessible nationwide, satisfying the "use in commerce" requirement. (Powell Decl. ¶ 2, Ex. A).

Defendants' use of Plaintiff's Mark in the product listing pages for such bags creates a likelihood of confusion. *See Daddy's Junky Music Stores, Inc. v. Big Daddy's Family Music Ctr.*, 109 F.3d 275, 280 (6th Cir. 1997) (listing factors for likelihood of confusion). The use of Plaintiff's Mark for search engine optimization and purchase of the trademarked term for advertising in search results, for the purpose of passing off Defendants' confusingly similar goods as those of the mark holder, constitutes use of the mark in commerce. *See Rescuecom Corp. v. Google, Inc.*, 562 F.3d 123, 129-30 (2d Cir. 2009) (holding that Google's alleged practice of recommending and selling plaintiff's trademark as a keyword to competitors constituted "use in commerce"); *see also Network Automation, Inc, v, Advanced Sys. Concepts, Inc.*, 638 F.3d 1137 (9th Cir. 2011); *1-800 Contacts, Inc. v. Lens.com, Inc.*, 722 F.3d 1229, 1242 (10th Cir. 2013) (finding keyword purchases constitutes "use in commerce" and focusing analysis on likelihood of confusion); *Brookfield Commc'ns, Inc. v. W. Coast Entm't Corp.*, 174 F.3d 1036, 1064 (9th Cir. 1999) (use of trademark in metatags for search engine optimization constitutes use in commerce).

The evidence, including consumer complaints, confirms actual confusion is occurring. (Lozinski Decl. ¶¶ 4-7). Plaintiff is highly likely to succeed on this claim.

(b) Design Patent Infringement (35 U.S.C § 271)

To prove design patent infringement, Plaintiff must show (1) it owns a validly issued and in-force design patent and (2) and an ordinary observer would find the accused and patented designs to be substantially similar such that it induces him to purchase the accused product believing it to be the patent owner's product. *See Gorham Mfg. Co. v. White*, 81 U.S. 511, 528 (1871); *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 678 (Fed. Cir. 2008).

Plaintiff owns the valid and registered Patent. (Compl. Ex. 1; Powell Decl. ¶ 6). Defendants' magnetic gym bag products use identical or substantially similar designs to Plaintiff's Patent. (Powell Decl. ¶¶ 2-5, Exs. A-D). Plaintiff's investigative photographs show that the design of the product sold through the infringing listings is identical or at least substantially similar to Plaintiff's patented design.

An ordinary observer would find the Defendants' designs and Plaintiff's patented designs to be substantially similar. In fact, customers found themselves confused by Defendants' products. Many customers purchased products from Defendants because they believed they were ordering an authentic product from Plaintiff. (Lozinski Decl. ¶ 4-7). Exhibit C to the Powell Declaration documents numerous instances where Defendants' products were at least substantially similar to Plaintiff's patented design. Plaintiff is highly likely to succeed on its design patent infringement claim.

(c) Copyright Infringement (17 U.S.C. § 501)

A claim for copyright infringement requires proof of (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original. *See Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991); *Kohus v. Mariol*, 328 F.3d 848, 853 (6th Cir. 2003).

Plaintiff owns valid copyright registrations for numerous original works used to promote the Product, including images and promotional materials. (Compl. Ex. 2; Powell Decl. ¶ 7). Defendants have directly copied, reproduced, and displayed these Copyrighted Works (or derivative versions thereof) without authorization in their online product listings to market their counterfeit goods. (Compl. ¶ 51; Powell Decl. ¶ 2, Ex. A). Exhibit 2 to the Complaint meticulously document specific instances where Defendants used copies or derivatives of

Plaintiff's registered works. This constitutes direct evidence of copying. Plaintiff is highly likely to succeed on its copyright infringement claim.

(d) Unfair Competition (Tennessee Common Law)

Under Tennessee common law, unfair competition includes "passing off" one's goods as those of another. The analysis largely mirrors that for federal trademark and trade dress infringement, focusing on likelihood of confusion. *See Sovereign Order of Saint John of Jerusalem, v. Grady*, 119 F.3d 1236, 1241 (6th Cir. 1997) (citing Tennessee law); *Men of Measure Clothing, Inc. v. Men of Measure, Inc.*, 710 S.W.2d 43, 47 (Tenn. Ct. App. 1986).

As established above, Defendants' use of Plaintiff's Mark and Patent on counterfeit goods is proven to have caused, and is overwhelmingly likely to continue to cause, consumer confusion, misleading consumers into believing Defendants' products are affiliated with or originate from Plaintiff. (Compl. ¶ 56; Lozinski Decl. ¶¶ 4-7). Many uses by Defendants of Plaintiff's copyrighted material are likely to confuse consumers into thinking they are purchasing genuine Magnetic Bag Company products. (Powell Decl. ¶ 2, Ex. A). This conduct constitutes unfair competition under Tennessee law. Plaintiff is likely to succeed on this claim as well.

2. **Plaintiff will suffer irreparable harm absent a TRO.**

In the Sixth Circuit, irreparable harm is generally presumed upon a finding of likelihood of success on trademark, or copyright infringement claims. *See Audi AG v. D'Amato*, 469 F.3d 534, 550 (6th Cir. 2006) (trademark); *see also Cadence Design Sys., Inc. v. Avant! Corp.*, 125 F.3d 824, 827 (9th Cir. 1997) (copyright).

Beyond any presumption, Plaintiff's evidence substantiates concrete irreparable harm. Defendants' sale of counterfeit goods directly diverts sales from Plaintiff. (Compl. ¶ 32). More critically, the likely inferior quality of these knockoffs (Powell Decl. ¶¶ 3-5, Exs. B-D; Lozinski Decl. ¶ 4) damages Plaintiff's reputation and the goodwill associated with the Magnetic Bag

Company brand, harm that is difficult, if not impossible, to quantify or repair with monetary damages alone. *See Wynn Oil Co. v. Thomas*, 839 F.2d 1183, 1191 (6th Cir. 1988) (loss of goodwill constitutes irreparable injury). The documented consumer confusion further underscores this harm. (Lozinski Decl. ¶¶ 4-7). This harm is ongoing and requires immediate cessation. *Circuit City Stores, Inc. v. CarMax, Inc.*, 165 F.3d 1047, 1056 (6th Cir. 1999) ("irreparable injury 'ordinarily follows when a likelihood of confusion or possible risk to reputation appears' from infringement or unfair competition.") (quotation omitted).

3. **The balance of equities strongly favors Plaintiff.**

The balance of hardships tips decidedly in Plaintiff's favor. Plaintiff seeks only to enjoin Defendants from engaging in unlawful activity – infringing Plaintiff's valid intellectual property rights and passing off their goods as Plaintiff's. Defendants have no legitimate interest in continuing their counterfeiting scheme. *See YETI Coolers, LLC v. Individuals, Bus. Entities, & Unincorporated Associations Identified on Schedule A*, 566 F. Supp. 3d 1333, 1341 (S.D. Fla. 2021) ("The balance of potential harm to Defendants in restraining their trade in counterfeit and infringing branded goods if a preliminary injunction is far outweighed by the potential harm to Plaintiff, its reputation, and its goodwill as a manufacturer and distributor of quality products, if such relief is not issued.").

Conversely, denying the TRO would allow Defendants to continue inflicting irreparable harm on Plaintiff's business and brand while potentially dissipating the assets derived from their illegal conduct. The hardship on Defendants from being prevented from breaking the law is negligible compared to the significant harm Plaintiff faces if infringement continues unabated. *See Concrete Mach. Co. v. Classic Lawn Ornaments, Inc.*, 843 F.2d 600, 612 (1st Cir. 1988) (stating that, by contrast, the harm to the defendant is the cost of halting the allegedly infringing activity).

4. **An injunction serves the public interest.**

The public interest is strongly served by granting the requested injunctive relief. Enjoining the sale of counterfeit goods protects consumers from being deceived into purchasing potentially inferior or unwanted products. *See Rolex Watch U.S.A., Inc. v. Crowley*, 74 F.3d 716, 720 (6th Cir. 1996) (noting public interest in preventing consumer confusion). Furthermore, upholding trademark rights vindicates the purpose of the Lanham Act. S.Rep. No. 1333, 79th Cong., 2d Sess., 3 (1946) ("[T]he purpose underlying [the Lanham Act] is twofold. One is to protect the public so it may be confident that, in purchasing a product bearing a particular trade-mark which it favorably knows, it will get the product which it asks for and wants to get. Secondly, where the owner of a trade-mark has spent energy, time, and money in presenting to the public the product, he is protected in his investment from its misappropriation by pirates and cheats. This is the well-established rule of law protecting both the public and the trade-mark owner.").

Allowing counterfeiters to operate with impunity undermines these goals.

B. An Ex Parte Order is Necessary and Appropriate.

Plaintiff satisfies the requirements for *ex parte* relief under Rule 65(b). As detailed in the Powell Declaration, Defendants operate through anonymous online storefronts, often using false or incomplete identifying information and appearing to be based overseas. (Powell Decl. ¶ 2; Compl. ¶¶ 2, 33). Experience in numerous similar counterfeiting cases demonstrates that providing notice to such defendants typically results in the immediate transfer or concealment of funds, destruction of records, and abandonment of current online identities, only to reappear under new aliases. *See, e.g., CCA & B, LLC v. Anhui Subang Energy Conservation Tech. Co.*, No. 1:23-CV-178-TWT, 2023 WL 3627885, at *4 (N.D. Ga. Feb. 3, 2023) (granting *ex parte* TRO against online counterfeiters because notice would allow them to "transfer any ill-gotten

gains away from the Marketplaces, hide their identities, cover up evidence of their infringing activities, and shield their ill-gotten assets"); *Louis Vuitton*, 606 F.2d at 4-5.

Plaintiff's counsel certifies that, given the nature of Defendants' operations and the fungibility of their assets (online marketplace funds), providing notice before securing injunctive relief and an asset freeze would render subsequent relief ineffective. (See Certificate of Counsel, attached). Therefore, proceeding *ex parte* is essential to prevent immediate and irreparable harm – namely, the dissipation of assets traceable to infringing conduct and the continuation of infringement under new guises.

C. An Asset Freeze is Essential to Preserve Plaintiff's Remedies.

Plaintiff requests an order freezing Defendants' assets held in accounts with e-commerce platforms (e.g., Amazon, AliExpress, Alibaba, eBay, Temu, Walmart) and third-party payment processors (e.g, PayPal, Payoneer) utilized by Defendants. Such relief is frequently granted in counterfeiting cases, particularly against foreign or anonymous defendants, to preserve the possibility of equitable remedies like disgorgement of illicit profits. *See Levi Strauss & Co. v. Sunrise Int'l Trading Inc.*, 51 F.3d 982, 987 (11th Cir. 1995) (affirming asset freeze in counterfeiting case as within court's equitable powers to ensure meaningful final relief); *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1105-06 (2d Cir. 1972).

Without an immediate freeze, Defendants can easily transfer funds out of these accounts, likely beyond the Court's reach, frustrating Plaintiff's ability to recover damages or Defendants' ill-gotten gains. The requested freeze is narrowly tailored to assets linked to Defendants' infringing storefronts and is necessary to maintain the status quo and preserve the Court's ability to render a meaningful final judgment.

D. Expedited Discovery is Warranted.

Plaintiff seeks leave to conduct limited, expedited discovery directed at the relevant e-commerce platforms, payment processors, and other third-party service providers associated with Defendants' storefronts. Rule 26(d)(1) permits early discovery upon a showing of good cause. *See Arista Records, LLC v. Doe 3*, 604 F.3d 110, 119 (2d Cir. 2010) (standard for expedited discovery). Good cause exists here because: (1) Plaintiff requires information (identities, contact details, financial account information, sales data) to identify and serve Defendants, effectuate the asset freeze, quantify damages, and prepare for the preliminary injunction hearing; (2) this information is solely in the possession of third parties; and (3) the need for prompt relief against ongoing infringement necessitates swift action. *See Semitool, Inc. v. Tokyo Electron A, Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002) (listing factors for evaluating good cause for expedited discovery).

Courts routinely grant expedited discovery in online infringement cases involving anonymous defendants. *See e.g., Warner Bros. Records Inc. v. Does 1-14*, 555 F. Supp. 2d 1, 2 (D.D.C. 2008). The requested discovery is narrowly targeted to uncover information essential for prosecuting this action and enforcing the TRO.

E. Alternative Service of Process is Necessary.

Given that Defendants are largely anonymous, difficult to locate, and likely domiciled outside the United States, Plaintiff requests authorization for alternative service of process under Federal Rule of Civil Procedure 4(f)(3). This rule permits service on foreign individuals by means "not prohibited by international agreement, as the court orders." Rule 4(h)(2) allows service on foreign corporations in any manner prescribed by Rule 4(f) except personal delivery.

Electronic service via email addresses associated with Defendants' online stores and/or through the internal messaging systems of the e-commerce platforms is reasonably calculated to

provide notice under the circumstances. *See Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1017-18 (9th Cir. 2002) (approving email service under Rule 4(f)(3) on foreign entity operating internet business). Plaintiff also proposes service by publication on a designated website, a method also approved in similar counterfeit cases. *See, e.g., Chanel, Inc. v. Does 1-100*, No. C 10-3987, 2010 WL 4282210, at *4 (N.D. Cal. Oct. 26, 2010). These methods are necessary to effectuate service on Defendants who actively conceal their identities and locations.

REQUESTED RELIEF

WHEREFORE, Plaintiff MagBag LLC respectfully requests that this Court enter an *ex parte* Temporary Restraining Order providing the following relief:

1. **Enjoining Defendants**, their officers, agents, servants, employees, attorneys, and all persons acting in active concert or participation with them, from:
    1. Manufacturing, importing, advertising, promoting, distributing, offering for sale, or selling any products with a design identical to or substantially similar to Plaintiff's Patent (U.S. Design Patent No. D1087,596);
    2. Copying, reproducing, distributing, displaying, or making derivative works of Plaintiff's Copyrighted Works (including those identified in the Compl. Ex. 2) in connection with the advertising, promotion, offering for sale, or sale of any unauthorized products;
    3. Manufacturing, importing, advertising, promoting, distributing, offering for sale, or selling any products bearing the Magnetic Bag Company Mark (U.S. Reg. No. 7,546,435), or any confusingly similar variations thereof;
    4. Using any false designation of origin or false description that is likely to cause confusion regarding the affiliation, connection, or association of Defendants' products with Plaintiff;

5. Assisting, aiding, or abetting any other person or entity in engaging in or performing any of the activities referred to above.

2. **Restraining and Freezing Assets:** Immediately restraining and enjoining Defendants and any third parties acting on their behalf (including e-commerce platforms like Amazon, AliExpress, Alibaba, eBay, Temu, Walmart, and financial institutions or payment processors like PayPal, Payoneer, Stripe, etc.) from transferring withdrawing, or disposing of funds or other assets held in or traceable to Defendants' seller accounts or financial accounts associated with the storefronts listed in Schedule A, pending further order of the Court.
3. **Permitting Expedited Discovery:** Authorizing Plaintiff to immediately serve limited, expedited discovery requests (including interrogatories and requests for production of documents) upon Defendants and relevant third-party service providers (including e-commerce platforms, payment processors, shipping companies, and social media platforms) to ascertain Defendants' identities, locations, contact information, sales data, and financial account details associated with the infringing activities.
4. **Authorizing Alternative Service:** Authorizing Plaintiff to serve the Summons, Complaint, this Order, and all other pleadings and papers in this action upon Defendants by: (a) electronic mail to the email addresses provided by Defendants to the e-commerce platforms and/or payment processing associated with their storefronts; (b) electronic message through the internal messaging systems of the e-commerce platforms; and/or (c) publication via a designated website accessible to Defendants.

5. **Directing Cooperation:** Requiring Defendants and any relevant third-party platforms hosting Defendants' infringing listings (including those identified in Schedule A and Exhibit A to the Powell Declaration) to immediately disable such listings and cease facilitating access to any websites or storefronts used by Defendants in connection with the infringing activities.
6. **Setting a Hearing:** Setting a date and time for a hearing on Plaintiff's Motion for a Preliminary Injunction, at which Defendants may appear and show cause, if any, why the relief requested herein should not be extended during the pendency of this action.
7. **Waiving Security Bond:** Waiving the security bond requirement under Rule 65(c), alternatively, setting a nominal bond amount, given the strong likelihood of success and the fact that Defendants are engaged in counterfeiting, making it unlikely they will suffer legitimate damages from the TRO. *See Doctor's Assocs., Inc. v. Distajo*, 66 F.3d 438, 456 (2d Cir. 1995) (court has discretion to waive bond or set nominal amount). In the alternative, Plaintiff requests that the security bond amount be set no higher than $5,000.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant its *Ex Parte* Motion and issue the proposed Temporary Restraining Order submitted herewith.

Dated: December 22, 2025

Respectfully submitted,

/s/ G. Edward Powell III

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CERTIFICATE OF SERVICE

I hereby certify that on December 22, 2025, a true and correct copy of the foregoing Memorandum has been filed electronically with the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

s/ G. Edward Powell III
G. Edward Powell III