

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

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| 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,           | ) | <b>JURY DEMAND</b>                  |
|                                 | ) |                                     |
| Defendants.                     | ) |                                     |

**PLAINTIFF’S EX PARTE MOTION FOR CLARIFICATION OF THE COURT’S  
DECEMBER 23, 2025 TEMPORARY RESTRAINING ORDER AND MEMORANDUM  
OF LAW IN SUPPORT**

Plaintiff MagBag LLC (“Plaintiff”), pursuant to Federal Rule of Civil Procedure 7(b), respectfully moves for clarification of the Court’s December 23, 2025, Temporary Restraining Order (Doc. No. 19) (the “TRO” or “Order”). Clarification is urgently needed to permit Plaintiff to ensure the relief granted in the TRO is effective.

The Court granted Plaintiff’s request for a TRO to enjoin Defendants’ infringing conduct and freeze their assets, finding that such relief was necessary to maintain the status quo. *Id.* at 2–3. The Court also scheduled a show cause hearing for January 6, 2026, for Defendants to address why a preliminary injunction should not issue. *Id.* at 3.

However, the Order also stated that “affirmative relief sought by Plaintiff is denied as premature.” *Id.* Plaintiff is unable to determine whether the Court’s ruling on this point should be read to pertain to Plaintiff’s requests for expedited discovery (including leave to serve third-party subpoenas) and for authorization to use alternative means of service of process on the anonymous and foreign-based Defendants. Plaintiff is therefore uncertain whether the Court’s

general denial of “affirmative relief” was intended to prohibit these essential procedural mechanisms.

As detailed below, these procedural tools are not the type of “affirmative relief” that alters the status quo. Rather, they are indispensable to effectuate the Court’s Order, provide constitutionally required notice to Defendants, and facilitate the preliminary injunction hearing the Court has scheduled. Without the ability to issue subpoenas and effect service, Plaintiff cannot reliably identify or notify the Defendants, rendering the TRO and the upcoming hearing ineffective. Accordingly, Plaintiff respectfully requests that the Court clarify that its Order permits Plaintiff to proceed with expedited discovery and alternative service as originally requested.

#### **I. FACTUAL BACKGROUND**

On December 22, 2025, Plaintiff filed an ex parte motion for a TRO against hundreds of anonymous online storefronts engaged in a widespread counterfeiting scheme. (Doc. Nos. 11, 12). Recognizing that the Defendants are anonymous, difficult to locate, and likely operating from foreign jurisdictions, Plaintiff’s motion specifically requested authorization to:

1. Conduct limited, expedited discovery by serving subpoenas on third-party e-commerce platforms and payment processors to obtain the identities, contact information, and financial details of the Defendants. (Doc. No. 14, at 14).
2. Effect alternative service of process on Defendants under Federal Rule of Civil Procedure 4(f)(3) by email and publication on a designated website, as traditional service methods are impracticable. (Doc. No. 14, at 14–15).

On December 23, 2025, the Court granted the TRO, enjoining Defendants’ infringing conduct and freezing assets linked to their infringing storefronts. (Doc. No. 19). The Court found this relief necessary to preserve the status quo pending the preliminary injunction hearing, now

set for January 6, 2026. *Id.* at 3. In its Order, the Court noted that “a temporary restraining order is limited to maintaining the status quo, so affirmative relief sought by Plaintiff is denied as premature.” *Id.* The Order is silent as to the specific requests for expedited discovery and alternative service.

## **II. ARGUMENT**

Clarification is urgently needed because, without the ability to conduct discovery and effect service, Plaintiff is in an impossible position. It cannot identify the very Defendants the Court has enjoined, nor can it provide them with legally sufficient notice of the TRO and the upcoming hearing as required by due process.

### **A. Expedited Discovery and Alternative Service Are Procedural Tools, Not “Affirmative Relief” That Disturbs the Status Quo.**

The Court correctly noted that injunctions altering the status quo—often termed mandatory or “affirmative” injunctions—are disfavored at the TRO stage. *See, e.g., N.E. Ohio Coal. for the Homeless & Serv. Emp. Int’l Union, Local 1199 v. Blackwell*, 467 F.3d 999, 1006 (6th Cir. 2006) (noting the purpose of a TRO is generally to preserve the status quo). However, the “affirmative relief” referenced in this line of cases refers to orders that compel an adverse party to take a substantive action, thereby changing the parties’ positions.

Here, Plaintiff’s requests for expedited discovery and alternative service are purely procedural. They do not compel Defendants to perform any act or alter the substantive balance between the parties. Instead, they are court-authorized mechanisms that are standard in online infringement cases and are necessary to manage the litigation and give practical effect to the Court’s prohibitory orders. *See Arista Records, LLC v. Doe 3*, 604 F.3d 110, 119 (2d Cir. 2010) (outlining the standard for granting expedited discovery to identify anonymous defendants); *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1016 (9th Cir. 2002) (confirming that Rule 4(f)(3) grants courts the flexibility to order service by email where reasonably calculated to

provide notice). This District has accordingly granted these procedural affordances at the TRO stage in an indistinguishable Schedule A case, and they are commonly granted in Schedule A litigation in other districts as well. Order, *Grand Isle Games LLC v. The Entities, P'ships and Uninc. Ass'ns. Listed on Sched. A*, No. 3:25-cv-00390, D.I. 17 at 2-3 (M.D. Tenn. Apr. 22, 2025); *Peanuts Worldwide LLC v. Partnerships & Unincorporated Associations Identified on Schedule "A"*, 347 F.R.D. 316, 331 (N.D. Ill. 2024). These are not premature substantive remedies; they are the necessary first steps to prosecuting the case.

**B. Without These Tools, the TRO and Preliminary Injunction Hearing Are Rendered Ineffective.**

The Court's Order will be frustrated if Plaintiff cannot proceed with discovery and service. The practical realities of this case dictate a specific sequence:

1. **Discovery to Identify Defendants:** The third-party platforms, who are not themselves defendants in this case but host the Defendants' stores or process their payments (e.g., Amazon, Alibaba, Paypal), are the only entities that possess the information needed to identify the anonymous Defendants. Plaintiff must serve subpoenas on these platforms to obtain names, email addresses, physical addresses, and financial account information. Without leave for expedited discovery, Plaintiff cannot serve these subpoenas. Fed. R. Civ. P. 26(d)(1).<sup>1</sup>
2. **Service to Provide Notice:** Once Plaintiff obtains contact information, it must serve the Defendants with the Summons, Complaint, and this Court's TRO. Because Defendants are located overseas, use aliases, and commonly include only partial or false physical address information, if any, on the seller pages of the e-commerce sites

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<sup>1</sup> Plaintiff's request for expedited discovery-related relief in this Motion is limited to the authorization to serve early subpoenas seeking documents sufficient to identify Defendants, Defendants' contact information, and Defendants' financial accounts. For clarity, Plaintiff is not currently requesting that the Court directly order third parties to produce the specific information requested as part of Plaintiff's original Motion.

they use, alternative service by email and website publication is the only viable method.

3. **Notice as a Prerequisite for Further Relief:** A preliminary injunction cannot be entered against Defendants without proper service and notice of the hearing. If Defendants are not validly served, they are not yet subject to the Court's jurisdiction, and the January 6, 2026, hearing would be a nullity as to them. Since Plaintiff cannot reliably identify Defendants or effect service on the vast majority of them prior to expiry of the TRO without expedited discovery authorization and alternative service, these procedural rulings are necessary to effectuate the Court's TRO.

Without clarification, Plaintiff is caught in a procedural paradox: the Court has granted a TRO to preserve the status quo, but Plaintiff is barred from taking the necessary steps to enforce that TRO or to bring the Defendants before the Court for the scheduled hearing. This allows Defendants to simply ignore the Order and wait for the 14-day TRO to expire, after which they can dissipate the frozen assets and resume their infringement, defeating the entire purpose of the Court's intervention.

### **III. CONCLUSION**

For the foregoing reasons, Plaintiff MagBag LLC respectfully requests that the Court enter an order clarifying that its December 23, 2025, Order (Doc. No. 19) was not intended to deny Plaintiff's procedural requests, as enumerated below, and expressly authorizes Plaintiff to:

1. Immediately serve limited, expedited discovery, including third-party subpoenas pursuant to Fed. R. Civ. P. 45, upon the relevant e-commerce platforms, payment processors, and other third-party service providers to ascertain Defendants' identities, locations, and contact information; and

2. Serve the Summons, Complaint, the TRO, and all other pleadings and papers in this action upon Defendants pursuant to Fed. R. Civ. P. 4(f)(3) and 4(h)(2) by electronic mail and by publication via a designated website.

Dated: December 29, 2025

Respectfully submitted,

/s/ G. Edward Powell III

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### **CERTIFICATE OF SERVICE**

I hereby certify that on December 29, 2025, a true and correct copy of the foregoing Motion 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