UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

GRAND ISLE GAMES, LLC, Plaintiff, v. THE ENTITIES, PARTNERSHIPS, AND UNINCORPORATED ASSOCIATIONS LISTED ON SCHEDULE A, Defendants.	)	Case No.: 3:25-cv-00390 Judge: Aleta A. Trauger **JURY DEMAND**

PLAINTIFF GRAND ISLE GAMES'S BRIEF IN OPPOSITION TO DEFENDANTS BINSOL'S AND TLOVVVAR'S MOTIONS TO DISMISS

Plaintiff Grand Isle Games, LLC, by and through undersigned counsel, respectfully submits this Response in Opposition to Defendants Binsol's and Tlovvvar's (collectively "Defendants") Motions to Dismiss pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(6). (D.I. 68; D.I. 77). For the reasons set forth below, Defendants' Motions should be denied.

I. INTRODUCTION

Both of the moving Defendants counterfeited Plaintiff's trademark, infringed Plaintiff's trade dress, and offered the infringing product for sale via e-commerce storefronts hosted on Walmart.com. D.I. 9 (hereinafter "Compl.") ¶¶ 45-50, 55-60; D.I. 9-1 at 9, 18-19; D.I. 14-2 at 1, 2. Defendant Binsol copied at least one of Plaintiff's copyrighted works for purposes of marketing the infringing product. D.I. 9-1 at 13; D.I. 14-2 at 1. Neither motion disputes any of these facts. Both assert—supported only by a single unauthenticated screenshot and the parties' say-so, not by material in Plaintiff's Complaint or declarations under penalty of perjury—that the infringing listings did not result in any U.S. sales. Both argue that, in the absence of infringing

sales into or other contacts with Tennessee, personal jurisdiction is improper. And both claim that the evidence of infringement presented to them by Plaintiff is insufficient, rendering Plaintiff's Complaint subject to dismissal.

These arguments are both factually and legally insufficient. To show lack of personal jurisdiction such that the Complaint should be dismissed under Rule 12(b)(2), Defendants must show both that jurisdiction would be improper in the state courts of Tennessee *and* that jurisdiction would be improper under Rule 4(k)(2), the federal long-arm statute. The Complaint adequately alleges infringing sales into Tennessee, so Defendants must come forward with evidence—not just unsupported assertions—showing that there were no such sales. Even if Defendants were to prove their assertions that they did not complete any infringing sales into the United States, jurisdiction would still be proper under Rule 4(k)(2) and the Fifth Amendment Due Process Clause, as Defendants intentionally directed their infringing activities at the United States, causing harm to Plaintiff here.

To show that the Complaint fails to state a claim, Defendants must demonstrate that the Complaint itself does not contain sufficient factual matter to plausibly show that the defendant is liable for the misconduct alleged. Defendants do not attempt to make this showing; they challenge the sufficiency of Plaintiff's evidence, not the Complaint's allegations. That challenge cannot support a motion to dismiss under Rule 12(b)(6). For these reasons, Defendants' Motions should be denied.

II. LEGAL STANDARD

A. Federal Rule of Civil Procedure 12(b)(2)

A court may decide a motion to dismiss for lack of personal jurisdiction based on pleadings and declarations alone, discovery permitted for the purposes of the motion, or an evidentiary hearing. *Malone v. Stanley Black & Decker, Inc.*, 965 F.3d 499, 504 (6th Cir. 2020). When a motion is decided on pleadings and declarations alone, plaintiffs need only meet the "relatively slight" burden of showing a prima facie case for personal jurisdiction, and factual disputes are assessed in the light most favorable to the plaintiff. *Id.* at 505; *CompuServe, Inc. v. Patterson*, 89 F.3d 1257, 1262 (6th Cir. 1996).

In contrast, a defendant must properly support their Rule 12(b)(2) motion to dismiss with evidence. 965 F.3d at 504. Where the defendant disputes sales or other jurisdictional facts, adequate discovery must be afforded before dismissal. *Id.* at 505-06. Only after such discovery may the Court, if necessary, require the plaintiff to prove jurisdiction by a preponderance of the evidence at an evidentiary hearing.

Plaintiff's prima facie showing can take either of two forms.

First, Plaintiff can show that this Court has jurisdiction if the courts of general jurisdiction in the State of Tennessee would have jurisdiction over Defendants. Fed. R. Civ. P. 4(k)(1)(A). Since the Tennessee long-arm statute extends to the limits of the Fourteenth Amendment Due Process Clause, Tenn. Code Ann. § 20-2-214(a)(6), jurisdiction is proper under this provision if the Fourteenth Amendment test for personal jurisdiction is satisfied, which requires "minimum contacts" with the forum state "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (citation omitted); *see also Air Prods. & Controls, Inc. v. Safetech Int'l,*

Inc., 503 F.3d 544, 549 (6th Cir. 2007). The Sixth Circuit has established a three-part test for determining whether personal jurisdiction exists under this standard:

> First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.

S. Mach. Co. v. Mohasco Indus., Inc., 401 F.2d 374, 381 (6th Cir. 1968); *see also Air Prods.*, 503 F.3d at 550.

Alternatively, Plaintiff can show that jurisdiction is proper under Rule 4(k)(2), the federal long-arm statute, which supports personal jurisdiction over online sellers who target the U.S. market and whose sales of infringing products are insufficient to establish jurisdiction in any particular state. *Levi Strauss & Co. v. Connolly*, No. 22-CV-04106-VKD, 2023 WL 2347433, at *6 (N.D. Cal. Mar. 2, 2023). This rule was specifically designed for situations where a foreign defendant can be subjected to the jurisdiction of the federal courts under the Fifth Amendment Due Process Clause, but lacks the minimum contacts required under the Fourteenth Amendment for jurisdiction in any single state. *See Merial Ltd. v. Cipla Ltd.*, 681 F.3d 1283, 1293 (Fed. Cir. 2012). The outer limits of this Court's power to subject foreign defendants to personal jurisdiction under the Fifth Amendment Due Process Clause have never been defined in detail, but as the Supreme Court recently clarified, the "minimum contacts" test that governs the Fourteenth Amendment inquiry does *not* govern the Fifth Amendment question. *Fuld v. Palestine Liberation Org.*, No. 24-20, 606 U.S. ___, slip op. at 7-8, 12 (2025) ("[W]e decline to import the Fourteenth Amendment minimum contacts standard into the Fifth Amendment. Rather, the Due Process Clause of the Fifth Amendment necessarily permits a more flexible jurisdictional inquiry commensurate with the Federal Government's broader sovereign authority.").

B. Federal Rule of Civil Procedure 12(b)(6)

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests only the legal sufficiency of the pleading; enough factual matter must be pleaded to allow a court to draw a reasonable inference that the defendant is plausibly liable for the alleged misconduct. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007). By moving to dismiss, the Defendants contend that, even if the allegations are true, those allegations fail to state a claim that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In deciding the motion, the court must draw all reasonable inferences in the plaintiff's favor. *Twombly*, 550 U.S. at 555. The burden rests on the movant to demonstrate that, even crediting the allegations as true, the plaintiff has "raise[d] no right to relief above the speculative level." *Twombly*, 550 U.S. at 555. In doing so, however, defendants cannot present matters outside the pleadings. Fed. R. Civ. P. 12(d).

III. ARGUMENT

A. The Court May Properly Exercise Personal Jurisdiction Over the Moving Defendants.

Plaintiff has made a *prima facie* showing of personal jurisdiction sufficient to defeat Defendants' motions. The Complaint properly alleges jurisdiction under Tennessee's long-arm statute, and even if Defendants could substantiate their contrary assertions, jurisdiction would still be proper under Rule 4(k)(2). Defendants' assertions rely on unsworn statements and a fundamental misreading of jurisdictional requirements, and their motions should therefore be denied.

1. Plaintiff Has Established a Prima Facie Case for Jurisdiction Under Tennessee's Long-Arm Statute.

The Complaint alleges that Defendants' infringing conduct was directed at consumers in this District, including through infringing sales in this District and offers to sell and ship counterfeit goods here. (Compl. ¶¶ 12, 14, 45-50; D.I. 9-1 at 9 (accusing Defendants of

trademark infringement)). These allegations are sufficient to establish a *prima facie* case for specific personal jurisdiction under the three-part test established in *Southern Machine Co. v. Mohasco Industries, Inc.*, 401 F.2d 374, 381 (6th Cir. 1968).

First, Defendants purposefully availed themselves of the privilege of acting in Tennessee. By operating commercial storefronts on Walmart.com—an interactive e-commerce platform—and offering to sell and ship infringing products to consumers throughout the United States, including Tennessee, Defendants deliberately engaged with the forum. *See AMB Media, LLC v. OneMB, LLC*, No. 23-5607, 2024 WL 2052151, at *4 (6th Cir. May 8, 2024). A defendant who operates a nationwide business online and does not take steps to block sales into a state forum cannot claim surprise at being haled into court there. *Id.* at *6.

Second, Plaintiff's claims for trademark infringement, trade dress infringement, copyright infringement, and unfair competition directly arise from Defendants' forum-related activities. The harm alleged—consumer confusion and lost sales—stems directly from Defendants' offering of counterfeit goods to consumers in Tennessee and across the U.S. *See id.* at *7.

Third, exercising jurisdiction is reasonable. The intentional infringement alleged in the Complaint was aimed at a Tennessee-based Plaintiff, and Defendants knew or should have known that the resulting harm would be felt here, as Defendants counterfeited Plaintiff's registered trademark, and Plaintiff's address information is available from the USPTO. *See Calder v. Jones*, 465 U.S. 783, 789-90 (1984). Given Tennessee's strong interest in providing a forum for its residents to seek redress for tortious injuries, and because the burden on Defendants to litigate here is no greater than the burden on Plaintiff to litigate in China, jurisdiction is fair and just.

2. Defendants' Factual Challenges Are Improper and Legally Insufficient.

Defendants' central argument—that they made no sales into the United States—is both procedurally improper and factually unsupported. A defendant cannot defeat personal jurisdiction at the motion-to-dismiss stage simply by filing a document with unsworn assertions and unauthenticated screenshots. *See Malone*, 965 F.3d at 504-05; *In re Nadeau*, No. 21-31239, 2023 WL 7288238, at *4 (Bankr. N.D. Ohio Nov. 3, 2023) ("The arguments and factual allegations of pro se litigants[] are not evidence."). The Court must view the pleadings and any competent declarations (again, unsworn statements in briefing do not count) in the light most favorable to the Plaintiff, and Plaintiff's *prima facie* showing is sufficient. *CompuServe*, 89 F.3d at 1262.

Even if credited, Defendants' assertions do not rebut purposeful availment or specific jurisdiction. Regarding purposeful availment, Defendants sell multiple products out of their storefronts, and they do not assert that they have no sales into Tennessee of any products they sell; rather, they assert only that the respective infringing listings did not result in any sales. As Defendants provide no evidence showing that they have zero or *de minimis* sales into or substantive commercial contacts with Tennessee, Plaintiff's prima facie showing of purposeful availment is unrebutted.

Regarding specific "arising out of" jurisdiction, Defendants assert they had no Tennessee—or other U.S.—sales of the infringing products. But Defendants' unsupported, unsworn statements in their briefs are not competent evidence to support their motion. 2023 WL 7288238 at *4. Even if credited, these factual assertions do not negate specific jurisdiction. Each Defendant identifies a single respective Walmart item number, which Plaintiff had identified to them as an infringing product that they offered for sale, and asserts that they did not sell any units of that product into Tennessee or any other State. But Defendants do not claim to have searched their records to identify any additional infringing item numbers, which would be

required to prove they had no infringing Tennessee sales, contra the Complaint. Nor do Defendants show that they are not affiliated with, and not vicariously liable for the activities of, any other seller of infringing goods into Tennessee. As a number of the storefronts selling infringing goods accused in this case are aliases of or otherwise affiliated with the same underlying entity or network of entities (*see* D.I. 32 (reciting multiple defendants as aliases of the same underlying entities)), Defendants must show that they are separate from entities with actual sales in order to defeat jurisdiction. Since all factual inferences must be drawn in favor of Plaintiff at this stage, and Defendants can only negate jurisdiction under Rule 4(k)(1)(A) if all factual inferences are drawn in favor of them, jurisdiction is proper.

Should the Court find a genuine factual dispute regarding Defendants' sales into Tennessee, the appropriate remedy is not dismissal but jurisdictional discovery. *Malone*, 965 F.3d at 505. Dismissal would be premature before Plaintiff has had the opportunity to obtain discovery from Defendants, and potentially more fulsome discovery from third parties such as Walmart, concerning the scope of Defendants' U.S.-directed sales activities.

3. Alternatively, the Court Has Personal Jurisdiction Under Federal Rule of Civil Procedure 4(k)(2).

Even if Defendants could prove they made no sales of infringing products into Tennessee, this Court would still have personal jurisdiction under Rule 4(k)(2). This rule allows for jurisdiction when (1) a claim arises under federal law, (2) the defendant is not subject to jurisdiction in any state's courts, and (3) exercising jurisdiction comports with federal due process. Fed. R. Civ. P. 4(k)(2).

All three conditions are met. First, Plaintiff's claims arise under federal law, namely the Lanham Act and the Copyright Act. Second, by claiming they sold "0 of the accused products to the United States," (D.I. 68 at 1; D.I. 77 at 1), Defendants assert that they are not subject to

personal jurisdiction in *any* state. Since their argument is that the cause of action does not arise out of their contacts with any single state, Defendants have conceded the second element. A defendant cannot defeat Rule 4(k)(2) jurisdiction after making such a representation. *See Merial*, 681 F.3d at 1294. Nor may Defendants now assert that they would consent to jurisdiction elsewhere to defeat Rule 4(k)(2). *In re Stingray IP Sols., LLC*, 56 F.4th 1379, 1385 (Fed. Cir. 2023).

Third, exercising jurisdiction is consistent with the US Constitution and laws, including the Fifth Amendment's Due Process Clause. This Court's power to exercise personal jurisdiction over defendants is related to the sovereign powers of the United States government, not the sovereign powers of individual states. *Fuld*, slip op. at 12. "[M]inimum contacts" with the US as a whole are sufficient but not required, and the Supreme Court has upheld the exercise of jurisdiction based on "predicate conduct that . . . bears a meaningful relationship to the United States" without a showing of minimum contacts. *Id.* at 19. While the extent to which the Fifth Amendment constrains this power has never been decided,[1] both the regulation of foreign commerce and the provision of laws that promote science are part of the federal government's enumerated sovereign powers. U.S. Const. art. I, § 8, cl. 3, 8; *see Fuld*, slip op. at 7-8, 12. Exercising jurisdictional power over foreign defendants who intentionally market products in violation of United States trademark and copyright law in order to divert sales from the protected product, whether successful or not, is necessary and proper for carrying into execution the

[1] There are strong reasons to believe that the Fifth Amendment does not provide any such constraints. *See id.*, slip op. at 2 (Thomas, J., concurring) ("The critical question in these cases is what boundaries the Fifth Amendment's due process guarantee, as originally understood, places on the Federal Government's power to extend personal jurisdiction over respondents. Historical evidence demonstrates that the answer is 'none.'"). Regardless, this Court need go no further than the Supreme Court majority in *Fuld* to uphold jurisdiction here under Rule 4(k)(2).

foreign commerce power and the power to promote the progress of science, and is neither unreasonable, nor unfair. 15 U.S.C. §§ 1114, 1125(a); 17 U.S.C. § 501; *see Fuld*, slip op. at 13.

Moreover, Defendants' specific conduct here, as alleged in the Complaint, bears a meaningful relationship to the United States. Defendants counterfeited a trademark that is federally registered in the United States, copied copyrighted works federally registered in the United States, and infringed trade dress protected by United States law (the Lanham Act) in order to offer infringing products for sale via a United States-based e-commerce platform, for shipment to United States addresses, in prices denominated in United States dollars. It is reasonable and fair to assume that, since Defendants sold products bearing counterfeits of United States registered trademarks, they were aware of their violation of United States law; calling these particular defendants into court now is neither unreasonable nor unfair. *See Fuld*, slip op. at 13.

If Defendants truly have no sales of infringing products, specific personal jurisdiction would likely not be proper in any particular state. *See Int'l Shoe Co.*, 326 U.S. at 316. In such situations, Fed. R. Civ. P. 4(k)(2) authorizes Plaintiffs to hold Defendants accountable for the diminution in value of Plaintiff's brand and the increase in customer confusion stemming from the infringing offers for sale.

Even under the more lenient "minimum contacts" standard, Defendants have sufficient minimum contacts with the United States as a whole. *Synthes (U.S.A.) v. G.M. Dos Reis Jr. Ind. Com de Equip. Medico*, 563 F.3d 1285, 1297 (Fed. Cir. 2009). By operating commercial storefronts on a major United States e-commerce platform and expressly offering to sell and ship infringing products to American consumers, Defendants purposefully availed themselves of the United States market. *Levi Strauss & Co*, 2023 WL 2347433, at *6. Their intentional conduct

was aimed at the United States, and it is here that Plaintiff suffered the resulting harm. Jurisdiction under Rule 4(k)(2) is therefore proper.

B. The Complaint Pleads Facially Plausible Claims for Relief.

Defendants' motions also fail under Rule 12(b)(6) because they improperly challenge the sufficiency of Plaintiff's evidence, not its pleadings. A motion to dismiss tests whether the complaint contains "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). Defendants' demand for "visual evidence" at this stage misapprehends this standard entirely. (D.I. 68 at 3; D.I. 77 at 2). The Complaint's detailed allegations, taken as true, are more than sufficient to state plausible claims.

Schedule A to the Complaint identifies Defendants Binsol and Tlovvvar as Trademark Infringement defendants, Trade Dress Infringement Defendants, and Unfair Competition Defendants. (D.I. 9-1). Binsol is also identified as a Copyright Infringement Defendant. *Id.* The Complaint adequately states all of these claims against Defendants.

1. Count I: Trademark Infringement – 15 U.S.C. § 1114

The complaint states a claim within the meaning of Rule 12(b)(6). Defendants demand specific photo evidence of how they infringed Plaintiff's trademark, but Rule 12(b)(6) only requires that plaintiffs provide enough factual matter to allow a court to draw a reasonable inference that a defendant is plausibly liable for the alleged misconduct. *Twombly*, 550 U.S. at 555, 570. In this case, Plaintiff has pleaded that it owns a valid and subsisting federal registration for a distinctive trademark, "Q-Less®", and that Defendants used in commerce a mark identical or confusingly similar to Plaintiff's "Q-Less®" mark without Plaintiff's permission. (Compl. ¶¶ 17, 32, 46-47). Plaintiff also alleged that, by infringing the mark, Defendants caused consumer confusion, mistake, or deception as to source, affiliation, or sponsorship, causing irreparable

harm to Plaintiff's business. (Compl. ¶¶ 48, 49). Plaintiff alleges that the above conduct violates Section 32 of the Lanham Act, 15 U.S.C. § 1114. (Compl. ¶ 49). Because the facts alleged in Plaintiff's Complaint, taken as true, state a claim for relief, Count I states a cognizable claim for relief.

2. Count II: Trade Dress Infringement – 15 U.S.C. § 1125(a)

Neither Motion to Dismiss alleges a failure to state a claim as to Count II; regardless, the Plaintiff has properly pleaded a cause of action in Count II. The Complaint alleges specific trade dress with a photographic example. (Compl. ¶ 19). It alleges that this trade dress is nonfunctional, has acquired a secondary meaning, and serves to identify Plaintiff as the source of the product. (Compl. ¶ 52). The Complaint then alleges that Defendants used counterfeit or imitation packaging that copied the overall look and feel of Plaintiff's trade dress, causing consumer confusion or mistake as to source or sponsorship of the good, and that this infringement violated Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). (Compl. ¶¶ 53-54). Because the facts alleged in Plaintiff's Complaint, taken as true, state a claim for relief, Count II states a cognizable claim for relief.

3. Count III: Copyright Infringement – 17 U.S.C. § 501

The complaint states a claim against Defendant Binsol within the meaning of Rule 12(b)(6).[2] Defendant Binsol demands specific photo evidence of how they infringed Plaintiff's copyright, but Fed. R. Civ. P. 12(b)(6) only requires that plaintiffs provide enough factual matter to allow a court to draw a reasonable inference that the defendant is plausibly liable for the alleged misconduct. *Twombly*, 550 U.S. at 555, 570. In this case, Plaintiff has pleaded ownership of

[2] Defendant Tlovvvar asserts that the Complaint is defective for not identifying how Tlovvvar used Plaintiff's copyright, but Schedule A does not identify Tlovvvar as a Copyright Infringement Defendant in the first place. D.I. 9 at 14 (omitting Tlovvvar from the list of Copyright Infringement Defendants).

valid, registered copyrights to the product's promotional images, videos, combined text and image works, and other original content. (Compl. ¶ 57). Plaintiff has provided visual examples of how particular defendants in the case have copied and made derivative works of its copyrighted works. (Compl. ¶¶ 32, 34). Plaintiff also alleges that Binsol has reproduced, distributed, made derivative works of, and otherwise used Plaintiff's copyrighted works without permission, violating the exclusive rights granted to Plaintiff under 17 U.S.C. § 106, constituting infringement under 17 U.S.C. § 501, and causing Plaintiff damages. (Compl. ¶¶ 58-60). Because the facts alleged in Plaintiff's Complaint, taken as true, state a claim for relief, Count III states a cognizable claim for relief.

4. Count IV: Unfair Competition – Tennessee Common Law

Neither Motion to Dismiss alleges a failure to state a claim as to Count IV; regardless, the Complaint states a cause of action. Plaintiff's Complaint alleges that Defendants marketed and sold counterfeit or knock-off versions of Plaintiff's product, misled customers into believing infringing goods originated from or were associated with Plaintiff, and that Defendants did so willfully, intentionally, and/or with reckless disregard for Plaintiff's rights. (Compl. ¶¶ 62-64). Plaintiff has also provided visual examples of how particular defendants in the case have committed unfair competition. (Compl. ¶¶ 32, 34). The Complaint alleges that, as a result of these actions, Plaintiff suffered irreparable injury and money damages. (Compl. ¶ 65). Because the facts alleged in Plaintiff's Complaint, taken as true, state a claim for relief, Count IV states a cognizable claim for relief.

IV. CONCLUSION

For the reasons set forth above, Defendants' Motions to Dismiss should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2025, a true and correct copy of the foregoing BRIEF IN OPPOSITION TO DEFENDANTS BINSOL'S AND TLOVVVAR'S MOTIONS TO DISMISS will be served upon the Defendants listed in Schedule A to the Complaint via the alternative methods of service previously authorized by this Court's Order dated April 22, 2025, including service by electronic mail to the email addresses identified for each Defendant and/or by publication, as set forth in said Order. Service on all Defendants who have appeared will additionally be made via ECF.

/s/ *G. Edward Powell III*

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