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

XYZ Corporation, Plaintiff, v. THE INDIVIDUALS, CORPORATIONS, LIMITED LIABILITY COMPANIES, PARTNERSHIPS AND UNINCORPORATED ASSOCIATIONS IDENTIFIED IN SCHEDULE “A” HERETO, Defendants.	**Case No. 1:24-cv-12483**

PLAINTIFF’S MOTION FOR LEAVE TO FILE UNDER SEAL

Plaintiff XYZ Corporation, (“Plaintiff”), by and through its counsel, the Bayramoglu Law Offices, LLC, files this Motion for Leave to File Under Seal (the “Motion”). This Motion is made and based on the papers and pleadings on file in this action, the Declaration of Shawn A. Mangano, Esq. in Support of Motion for Leave to File Under Seal (the “Mangano Decl.”), Exhibit 1 to the Declaration of Shawn A. Mangano, and the arguments contained herein, and any argument of counsel entertained by the Court.

I. INTRODUCTION

A. Plaintiff’s Request to *Temporarily* Proceed Anonymously and to Seal.

This involves the unauthorized use of Plaintiff’s brand trademark (the “Brand Trademark”) by certain individuals and entities located in the People’s Republic of China (“China”) and Hong Kong (the “Defendants”) through the sale of knockoff branded women’s clothing, accessories, and related merchandise (the “Counterfeit Products”) through online marketplaces (the “Online

Marketplaces") established on such third-party sales platforms as eBay, AliExpress, Alibaba, Wish.com, Walmart, Etsy, DHgate, Temu, and the Amazon platform at issue in this case as listed in Schedule "A" to the Complaint (the "Platform"). [Dkt. No. 1 at 2.] Specifically, Plaintiff's Complaint asserts the following claims for relief against the Defendants: (1) federal trademark infringement and counterfeiting; (2) federal unfair competition; (4) federal false designation of origin; and (5) violation of the Illinois Deceptive Trade Practices Act. [Dkt. No. 1 at 10-15.] Concurrently with this Motion, Plaintiff is seeking issuance of a temporary restraining order (the "TRO").

As argued below, the Motion seeks *temporary* leave to proceed under a corporate pseudonym, XYZ Corporation and to *temporarily* seal the documents in this action until such time as the Court considers Plaintiff's TRO request and, if granted, until the designated third-party online Platform complies with its requirements. Once the Platform complies with the TRO, Plaintiff will immediately advise the Court of such compliance and unilaterally request this action be unsealed and the company's corporate identity be publicly disclosed.

Plaintiff maintains that it has more than sufficient extraordinary circumstances to justify its request to *temporarily* proceed anonymously and to justify the *temporary* sealing of this action. Plaintiff has been identified by SellerDefense.cn and posting has been created to inform sellers who infringe that Plaintiff is seeking relief from infringing counterfeiters (Mangano Decl. ¶ 13, Ex. 1). This posting allows infringers the opportunity to monitor Plaintiff and to engage in evasive action, such as transfer of funds to offshore accounts, temporarily remove trademark, move products to other ASINs (Amazon Standard Identification Number), change contact information, close current seller store and re-open as a new store, or other such actions to avoid Plaintiff obtaining relief. *See Doe v. Village of Deerfield*, 819 F.3d 372, 376-77 (7th Cir. 2016). In fact, the dissemination of Plaintiff's trademark enforcement efforts has already started through the posting of information concerning a parallel action pending in this judicial district. (Mangano Decl. ¶ 13, Ex. 1).

Imposing the requested *temporary* sealing measures serves to protect Plaintiff's ability to secure an equitable restraint of Defendants'' illegally obtained funds held by the Platform, preserves electronic evidence that is otherwise subject to permanent loss if Defendants were to delete/delist their Online Marketplaces maintained on the Platform, while recognizing the public's access to the pleadings and papers filed in these proceedings. *See XYZ Corp. v. Partnerships & Associations Identified in Schedule A,* Case No. 21-cv-06471, 2022 WL 180151, at *2 (N.D.Ill. Jan. 20, 2022).

B. Plaintiff's Brand and Brand Trademark.

Plaintiff founded its brand (the "Brand") in 2017, which is dedicated to women's fashion apparel and serves consumers in the United States and throughout the world. [Dkt. No. 1 at 1.] Since founding the Brand, Plaintiff has expended significant time, financial and corporate resources to promote, market, develop, and establish the Brand as a high quality and reputable source for women's fashion apparel, accessories, and related merchandise. In connection with these Brand establishment efforts, Plaintiff secured registration of its Brand Trademark. (Mangano Decl. ¶ 7.)

Specifically, Plaintiff is a highly successful online merchant that specializes in manufacturing and selling women's clothing, accessories, and related merchandise bearing its Brand and/or Brand Trademark exclusively through its own website. (*Id.* ¶ 8.) Plaintiff spends more than $10,000,000 annually in the United States through such online advertising channels as Google Ads, Facebook, and Bing to advertise, market, and promote its Brand and products bearing the Brand Trademark. (Mangano Decl. ¶ 8.) These advertising efforts have allowed Plaintiff to recognize annual Brand-related gross revenues exceeding $25,000,000 in annual gross sales from United States sales, which includes over $1,500,000 in annual gross sales revenue from the State of Illinois. (*Id.*) Simply put, Plaintiff's Brand and Brand Trademark have become famous throughout the United States and around the world and they represent significant, highly valued company assets. (*Id*.)

C. Defendants' Willful Infringement of Plaintiff's Brand Trademark.

Unfortunately, the success of Plaintiff's Brand has resulted in the sale of counterfeit Brand products through the unauthorized use of the company's Brand Trademark by numerous online sellers operating through a counterfeit network based in China and Hong Kong. (*Id.* ¶ 9.) Through the filing of this action, Plaintiff seeks to enforce its federally protected rights against the Defendants for their willful infringement of the company's Brand Trademark. [Dkt. No. 1-1.]

As alleged in the Complaint, Defendants are unlawfully using Plaintiff's Brand Trademark to promote, advertise, market, distribute, offer for sale, and sell their Counterfeit Products through their Online Marketplaces maintained on the Platform. [Dkt. No. 1 at 2.] In short, Defendants operate a highly sophisticated network whereby they offer Counterfeit Products, of lesser quality and at a discounted price, by associating these inferior products with Plaintiff's Brand through the unauthorized use of the Brand Trademark. (Mangano Decl. ¶ 10.) Defendants' unauthorized use of the Brand Trademark have caused Plaintiff to suffer, and to continue to suffer, irreparable harm through, among other things, the company's loss of public Brand reputation and goodwill. (*Id*.)

D. Defendants' Sophisticated Counterfeit Product Network.

Defendants are alleged to be operating as part of a sophisticated counterfeit network based in China and Hong Kong. [Dkt. No. 1 ¶¶ 20-30.] As part of Defendants' sophisticated counterfeit network, they rely on common supply chains and the same manufacturing sources for their Counterfeit Products. (Mangano Decl. ¶ 11.) Defendants employ these common supply chains and manufacturing sources because the Counterfeit Products being offered for sale by using Plaintiff's Brand Trademark without authorization are incapable of being fabricated on a limited or individual basis. (*Id.*)

Defendants additionally operate their Online Marketplaces on the Platform under a variety of seller aliases that ensure the takedown of one marketplace will minimally affect their Counterfeit Product sales operations through other marketplaces. (*Id.* ¶ 12.) More importantly, however, the takedown of one of Defendants' Online Marketplaces provides them with notice of the proceedings and allows them to take immediate action to withdraw or transfer all funds maintained in their associated online merchant accounts to banking institutions over which courts, such as this one, have no enforcement jurisdiction. (*Id.*) Accordingly, absent holistic enforcement efforts against all Defendants on an *ex parte* basis, notice-based, individual Online Marketplace enforcement only announces the commencement of the proceedings and results in the deprivation of equitable asset restraints against unlawful sales proceeds and invites the deletion/delisting of the targeted Online Marketplaces. (*Id.*)

In addition to the foregoing, Defendants are believed to be actively monitoring all enforcement actions pending in this judicial district. (*Id.* ¶ 13.) In this regard, Plaintiff's lead counsel has prosecuted at least fifteen (15) intellectual property enforcement actions in this judicial district in the last calendar year. (*Id.*) In each of these actions, all of which involved Chinese Schedule "A" Defendants selling knockoff women's clothing through the display of federally protected content on third-party online sales platforms, including the designated Platform in this case, have requested plaintiff information, disclosure of the brand rights being enforced, the identification of counsel and the assigned judge, and the results of any requests for injunctive relief through a variety of online message board, chatrooms, and websites such as “SellerDefense.cn”. (Mangano Decl. ¶ 13.) In fact, the dissemination of Plaintiff’s trademark enforcement efforts has already started through the posting of information concerning a parallel action pending in this judicial district. (*Id.*, Ex. 1).

These repeated, identical actions, demonstrates a highly coordinated counterfeit operation which Defendants are alleged to be participating in. (*Id.* ¶ 14.) More importantly, these coordinated efforts clearly demonstrate that if Plaintiff’s identity, the identity of its Brand, the identify of its Brand Trademark were publicly disclosed prior to the Platform’s compliance with the anticipated TRO, Defendants will immediately do the following: (1) publish the Plaintiff’s name, Brand, and enforced Brand Trademark to all other potential counterfeit defendants operating on the Platform or on other third-party online sales platforms; (2) transfer all funds out of their Online Marketplace merchant accounts; and (3) destroy electronic sales information and/or delete/delist their Online Marketplaces. (*Id.*) Accordingly, absent *temporarily* permitting Plaintiff to proceed anonymously and authorizing the *temporary* sealing of the pleadings in this case, Plaintiff would be deprived of the ability to freeze funds garnered from Defendants’ infringing sales, secure email addresses and other information related to Defendants, and obtain electronic sales data from the Platform. (*Id.*)

II. ARGUMENT

As set forth above, the Motion seeks permission for Plaintiff to *temporarily* proceed anonymously and to *temporarily* seal the filings in this case. Plaintiff requests that these sealing mechanisms only be in place until the designated online Platform complies with the requirements of the anticipated TRO, which essentially entails freezing all funds held in the Defendants’ Online Marketplaces, disables Defendants’ Online Marketplaces, provides the email addresses associated with the Online Marketplaces, and produces all sales data for the Counterfeit Products. (Mangano Decl. ¶ 15.) Plaintiff's request not only demonstrates extraordinary circumstances to justify issuance, but it is also narrowly tailored to only restrict the public's access to filings in this action until TRO compliance is obtained.

A. Sealing Plaintiff's Brand, Trademark, and Trademark Identifiers is Justified.

The first aspect of Plaintiff's Motion is the company's request to seal the proceedings, including the identity of its Brand, Brand Trademark, and associated Brand Trademark registration identifiers pending compliance with the anticipated TRO by the designated online Platform. This request essentially seeks to seal the identify of Plaintiff's Brand and its Brand Trademark until the Platform can freeze Defendants' Online Marketplace merchant accounts, thereby preserving the company's ability to equitably restrain those assets against a potential disgorgement of profits recovery. (Mangano Decl. ¶ 16.) Such circumstances justify temporarily sealing the requested information. *See Zorro Productions, Inc. v. Individuals, Corporations, Limited Liability Companies, et al,* Case No. 1:23-cv-05761, 2023 WL 8807254, at *3-4 (N.D. Ill. Dec. 20, 2023) ("*Zorro*"). As stated by the court in *Zorro*:

> A motion to seal often makes sense when the plaintiff seeks an asset freeze to secure the potential recovery of future equitable monetary relief. Secrecy is sometimes necessary to preserve the possibility of obtaining equitable relief down the road. The reality is simple: seal it and seize it, or say goodbye.

Id. at *3.

Plaintiff's request to *temporarily* seal the requested information is being done for the exact, proper purpose recognized by the court in *Zorro* – to restrain funds received by Defendants through their unauthorized use of the company's Brand Trademark to sell their Counterfeit Products to preserve the possibility of equitable recovery through a disgorgement of profits. (Mangano Decl. ¶ 16.) Simply put, Plaintiff is requesting the Court "seal it and seize it, or say goodbye . . ." to Defendants' ill-gotten gains held in their Online Marketplace merchant accounts. Accordingly, Plaintiff's request to seal is justified by the circumstances presented and should be granted by the Court.

B. Exception Circumstances Justify Permitting Plaintiff to Proceed Anonymously.

Turning next to Plaintiff's request to *temporarily* proceed anonymously, exceptional circumstances exist that justify granting the company's request. In this regard, Plaintiff is only requesting permission to proceed anonymously until the designated online Platform complies with the requirements of the anticipated TRO. (Mangano Decl. ¶ 17.) Once such compliance occurs, Plaintiff will immediately advise the Court of same and unilaterally request that its corporate identity be publicly disclosed and all documents filed in the case be unsealed. (*Id.*)

To proceed anonymously, a party must demonstrate exceptional circumstances that outweigh both the public policy in favor of identified parties and the prejudice to the opposing party that would result from anonymity." *Village of Deerfield*, 819 F.3d at 376-77. Furthermore, the party seeking to proceed anonymously must demonstrate that the safeguards already in place will not otherwise protect its interest in enforcing its brand rights. *See XYZ Corp.*, 2022 WL 180151, at *2.

Exceptional circumstances exist to justify Plaintiff's request to *temporarily* proceed anonymously until the designated online Platform complies with the terms of the anticipated TRO. *See Village of Deerfield*, 819 F.3d at 376-77. First, Plaintiff faces the threat of being deprived of its ability to obtain equitable monetary relief, secured required sales information, and is exposed to the high likelihood that Defendants will render other relevant electronic data inaccessible through the deletion/delisting of the Online Marketplaces if is identity is known. (Mangano Decl. ¶ 18,) Simply put, Defendants in this action, identical to those in other Schedule "A" cases lead counsel has prosecuted in this judicial district, will immediately disclose Plaintiff's identity and uncover the Brand and Brand Trademark being enforced through a host of message boards, chatrooms, group chats, and websites if the company is not allowed to proceed anonymously until the designated online Platform complies with the terms of the anticipated TRO. (*Id.*) Denying the request to proceed anonymously would render the sealing of Plaintiff's Brand, Brand Trademark, and Brand Trademark filing identifiers authorized by the Court meaningless. (*Id.*)

Next, Plaintiff's identified exceptional circumstances outweigh the *temporary* non-public identification of the company. *See Village of Deerfield*, 819 F.3d at 376-77. As mentioned above, Plaintiff faces the highly likely evisceration of its right to equitable recovery against the Defendants and the spoliation of material evidence concerning Defendants' infringing sales and related information if it is not allowed to proceed anonymously. (Mangano Decl. ¶ 19.) In contrast, the public's interest in knowing the identity of a party availing itself of the federal court system will only be delayed *temporarily*, and not permanently withheld, until the Platform complies with the terms of the anticipated TRO. (*Id.*) Accordingly, Plaintiff's narrowly tailored request to proceed anonymously places its right to relief against alleged willful infringers of federally protected rights outweighs the public's interest in immediate access to the company's identity.

Likewise, Plaintiff's interest in proceeding anonymously on a *temporary* basis outweighs any prejudice to the Defendants. *See Village of Deerfield*, 819 F.3d at 376-77. To be clear, Defendants are alleged to be willful infringers of Plaintiff's Brand Trademark. In this regard, Plaintiff has submitted an extraordinary amount of evidence in support of its request for entry of a TRO, which, among other things, includes screenshots illustrating such infringement, purchase records for Counterfeit Products, and shipment of same to the City of Chicago. (Mangano Decl. ¶ 20.) Under these circumstances, the only prejudice that Defendants could suffer from Plaintiff proceeding anonymously is the inability to liquidate their Online Marketplace merchant accounts, advise other counterfeit infringers to do the same, and to destroy or render material electronic evidence inaccessible. (*Id.*) Accordingly, Plaintiff's request to proceed anonymously outweighs any prejudice to the Defendants.

Finally, the safeguards already in place will not otherwise protect Plaintiff's interest in enforcing its Brand rights. *See XYZ Corp.*, 2022 WL 180151, at *2. Simply put, this is not a trademark enforcement action whereby issuance of the requested temporary injunctive relief will immediately enjoin the party holding ill-gotten gains or is in possession of material evidence. Rather, the requested temporary injunctive relief must first be sent to the designated online Platform for compliance. (Mangano Decl. ¶ 21.) The Platform must then suspend the Defendants' Online Marketplaces and restrain any funds held in their associated merchant accounts. (*Id.*) It is the presence of this third-party, the Platform, that requires allowing Plaintiff to proceed anonymously until the Platform complies with the anticipated TRO's requirements. (*Id.*) Absent doing so, and merely relying on the issuance of the anticipated TRO, would render the Court's sealing of Plaintiff's Brand, Brand Trademark, and related information meaningless. (*Id.*) Moreover, it would provide Defendants with sufficient information to drain their Online Marketplace merchant accounts, alter other infringers of Plaintiff's enforcement efforts, and allow Defendants to destroy or render material electronic sales and other information inaccessible. (*Id.*) Accordingly, simply issuing Plaintiff's requested TRO without allowing it to proceed anonymously would not sufficiently protect the company's Brand enforcement efforts.

Based on the foregoing, Plaintiff has demonstrated that it meets the requirements to *temporarily* proceed anonymously in this action until the designated online Platform complies with the terms of the anticipated TRO. Plaintiff has demonstrated exceptional circumstances in support of its request, the demonstrated circumstances outweigh the public's interest in disclosing its identity, the company's interest in proceeding anonymously outweighs any prejudice to the Defendants, and the safeguards in place in issuing the anticipated TRO would not sufficiently protect the company's Brand enforcement interest. *See Village of Deerfield*, 819 F.3d at 376-77. Accordingly, the Court should grant Plaintiff's request to *temporarily* proceed anonymously until the designated online Platform complies with the requirements of the anticipated TRO.

III. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court grant its Motion and temporary seal the requested information, which includes, at least, the company's Brand, Brand Trademark, and any Brand Trademark filing identifiers. Plaintiff additionally requests the Court permit it to temporarily proceed anonymously until the designated online Platform complies with the requirements of the anticipated TRO, together with such other relief as the Court deems just and proper.

Dated: December 4, 2024

Respectfully Submitted

By: */s/ Shawn A. Mangano*

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