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

HONG KONG YU'EN E-COMMERCE CO. LIMITED, Plaintiff, v. THE INDIVIDUALS, CORPORATIONS, LIMITED LIABILITY COMPANIES, PARTNERSHIPS AND UNINCORPORATED ASSOCIATIONS IDENTIFIED IN SCHEDULE "A" HERETO, Defendants.	**Case No. 1:24-cv-12483-EEB-MDW** **Honorable Judge Elaine E. Bucklo** **Magistrate M. David Weisman** HEARING DATE: January 15, 2025 HEARING TIME: 9:45 AM COURTROOM: 2243

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Plaintiff HONG KONG YU'EN E-COMMERCE CO. LIMITED, ("Plaintiff") submits this Memorandum of Law in support of its Motion for Preliminary Injunction (the "Motion").

The Motion is supported by the pleadings and papers on file in this action, including the Motion for Temporary Restraining Order [Dkt. No. 8], the Declaration of Shawn A. Mangano, Esq. (the "Mangano Decl."), the Declaration of En Fang (the "Fang Decl."), together with the arguments set forth herein and any oral argument by counsel entertained by the Court at the hearing set on this matter.

I. INTRODUCTION

Through the Motion, Plaintiff requests entry of a Preliminary Injunction, with notice, after a hearing. On January 3, 2025, the named Schedule "A" Defendants for which the Amazon online sales platform (the "Platform") provided email addresses associated with their storefronts/accounts were served electronically as authorized by the TRO entered by the Court. (Mangano Decl. ¶ 5.)

As such, Plaintiff's Motion is properly submitted to the Court on a non-*ex parte* basis.

Plaintiff's Motion requests entry of a Preliminary Injunction against the Defendants listed in Schedule "A" ("Defendants") that are operating online sales storefronts (the "Online Marketplace") on the Amazon online sales platform (the "Platform"), which uses, without authorization, Plaintiff's federally registered trademark (the "Brand Trademark") to offer competing products of inferior quality (the "Counterfeit Products") for sale through the Platform. (Mangano Decl. ¶¶ 6-7.) Specifically, Defendants incorporates Plaintiff's Brand Trademark, without authorization to do so, in its Counterfeit Product descriptions, Search Engine Optimization ("SEO") terms, and other means to deceptively attract unwitting consumers looking for genuine Brand Trademark products to its Online Marketplace offering inferior, knockoff goods. (*Id.*) Defendant's unauthorized and infringing conduct has subjected Plaintiff to irreparable harm through, at least, the loss of consumer goodwill in the Brand Trademark and the loss of consumer goodwill in the quality of authentic products offered by the company through the Brand Trademark. (Fang Decl. ¶¶ 7-9.)

The foregoing circumstances demonstrate that Plaintiff's Motion squarely meets the requirements for entry of preliminary injunctive relief. *See, e.g., Columbia Pictures Indus., Inc. v. Jasso*, 927 F. Supp. 1075, 1076 (N.D. Ill. 1996). In short, Plaintiff's Motion demonstrates a high likelihood of success on the merits of its claims for relief, including its trademark infringement allegations, based on the direct, unauthorized use of its federally registered Brand Trademark. Moreover, Plaintiff would clearly suffer irreparable harm absent entry of injunctive relief based on the unauthorized infringement of its rights held in and to the Brand Trademark. Finally, the balance of the hardships tips decidedly in the company's favor, and granting the requested relief is in the public interest. Accordingly, and as argued below, the Court should grant the Motion and enter a Preliminary Injunction against the Defendant.

II. STATEMENT OF FACTS

a. Plaintiff's Brand Trademark is Highly Successful and the Company Spends a Considerable Amount in the United States to Protect and Promote It.

This action involves enforcement of Plaintiff's federally registered trademark reflected in the Brand Trademark. (Mangano Decl. ¶ 6; Fang Decl. ¶¶ 4-5.) The Asserted Brand (the "Asserted Brand") is an extremely well-known source of women's clothing in the United States and has been the subject of rampant counterfeit sales through online platforms such as Walmart and Amazon, which Walmart is at issue in this action. (*Ibid.*) These are two of the largest online retailers in the World – and Plaintiff does not sell its products through any one of them. (*Ibid.*) Rather, Plaintiff only sells its genuine Asserted Brand products through its own website, Modlily.com. (*Ibid.*)

Plaintiff derives a significant amount of revenue from the sale of its Asserted Branded products in the United States. Plaintiff's estimated gross revenue from United States sales likely exceeds $25,000,000 USD per year. (Fang Decl. ¶ 6.) Of this amount, Plaintiff estimates that well over $1,500,000 is derived from sales in the State of Illinois. (*Id.*) In sum, Plaintiff is a highly successful company that services a considerable number of patrons in the United States and, more specifically, in the State of Illinois.

Commensurate with these sales, Plaintiff spends a considerable amount of the operating capital in the United States to protect and promote the Asserted Brand through use of the Brand Trademark. (*Id.*) Specifically, Plaintiff estimates that it spends anywhere from $8,000,000 to $12,000,000 USD each year to advertise its Asserted Brand in the United States through such online advertising sources as Google Ads, Facebook, and Bing. (*Id.*) Simply put, Plaintiff is an extremely successful company that earns millions of dollars from product sales in the United States

– including within the State of Illinois. (*Id.*) To do so, Plaintiff annually spends tens of millions of dollars advertising in the United States to promote the sale of its Asserted Brand. (*Id.*)

Succinctly stated, Plaintiff simply will no longer tolerate the proliferation of counterfeit sales through the unauthorized use of its federally registered Brand Trademark on online platforms, such as Walmart, through which it does not offer its genuine products. As such, Defendant's counterfeit operations must be stopped. Otherwise, Plaintiff's intellectual property rights reflected in the Brand Trademark, which it has paid significant funds to obtain exclusive rights in and to, and that it spends considerable resources to advertise and promote, are rendered overwhelmingly diminished if not rendered worthless. (Fang Decl. ¶ 6.)

b. Plaintiff has Presented Substantial Evidence of Trademark Infringement.

As previously presented to this Court in connection with the company's request for entry of a temporary restraining order [Dkt. No. 8], Plaintiff has presented substantial evidence that Defendant is using its Brand Trademark without authorization to do so in connection with its sales of Counterfeit Products. [*Id.*] This evidence includes a literal one-for-one unauthorized copying of Brand Trademark and its unauthorized display on Defendant's Online Marketplace, which is offering substandard, counterfeit products for sale to United States citizens, including those residing in the State of Illinois. [*Id.*] Substantively, this evidence clearly demonstrates that Plaintiff has an extremely high likelihood of success on the merits of its trademark infringement claim, as well as its associated claims for false designation of origin and violation of Illinois' deceptive trade practices act.

As also previously argued to this Court in support of its request for entry of a temporary restraining order [Dkt. No. 8], Plaintiff would unquestionably suffer irreparable harm absent entry of injunctive relief through the spoliation of essential evidence and Defendant absconding with significant ill-gotten gains derived from their intentional infringement of Plaintiff's Brand Trademark. These facts continue to exist today and also supports entry of preliminary injunctive relief effective until full adjudication of this matter. (Mangano Decl. ¶ 10.) Accordingly, as argued herein, Plaintiff respectfully requests the Court further enjoin the Defendants through entry of a Preliminary Injunction.

III. APPLICABLE LEGAL STANDARDS

To be entitled to preliminary injunctive relief, the moving party must first show that it has (1) a reasonable likelihood of success on the merits of its claims for relief, and (2) that it would suffer irreparable harm absent entry of injunctive relief. *See Publications Int'l v. Meredith Corp.,* 88 F.3d 473, 478 (7th Cir. 1996).

If these threshold requirements are met by the moving party, the court then "exercise[s] its discretion whether the balance of the harms weighs in favor of the moving party or whether the nonmoving party or the public interest will be harmed sufficiently such that the injunction should be denied." *Christian Legal Soc'y v. Walker,* 453 F.3d 853, 859 (7th Cir. 2018). "This process involves engaging in what we term the sliding scale approach; the more likely the [moving party] will succeed on the merits, the less the balance of irreparable harms need favor the [moving party's] position." *Ty, Inc. v. Jones Group, Inc.,* 237 F.3d 891, 895 (7th Cir. 2001).

Application of the foregoing legal standards to Plaintiff's Motion demonstrates that it is entitled to entry of a Preliminary Injunction.

IV. ARGUMENT

Plaintiff's Motion essentially asks the Court to enter a Preliminary Injunction after having granted its prior request for entry of the TRO. [Dkt. No. 23.] Courts in this judicial district addressing similar allegations of Internet-based intellectual property infringement and associated counterfeiting activity have issued preliminary injunctive relief after entering a temporary restraining order. *See, e.g., Alicia Vannoy Call v. The P'ships,* No. 23-cv-04043 (N.D. Ill. July 25, 2023) (unpublished). Plaintiff is independently entitled to entry of preliminary injunctive relief in this action based on the record presented. Even without consideration for this presumption, the circumstances presented clearly justify granting Plaintiff's request for preliminary injunctive relief.

a. Plaintiff Has Demonstrated a High Likelihood of Success on The Merits.

As demonstrated in through its TRO submissions, Plaintiff has a high likelihood of success on the merits of, at least, its trademark infringement claim for relief. [Dkt. No. 8] Moreover, all of Plaintiff's asserted claims for relief are predicated on the unauthorized use of its Brand Trademark by the Defendants. Thus, Plaintiff's showing that Defendant has used its Brand Trademark without authorized virtually compels Defendant's liability on its claims for relief for false designation of origin and violation of Illinois deceptive trade practices act. [Dkt. Nos. 1, 27.]

A defendant is liable for trademark infringement and counterfeiting under the Lanham Act if it, "without the consent of the registrant, use[s] in commerce any reproduction, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods ... which such use is likely to cause confusion, or to cause mistake, or to deceive." 15 U.S.C. § 1114(1). A Lanham Act trademark infringement claim has two elements. 15 U.S.C. § 1125(a). First, Plaintiff must show "that its mark is protected under the Lanham Act." *See Barbecue Marx, Inc. v. 551 Ogden, Inc.*, 235 F.3d 1041, 1043 (7th Cir. 2000). Second, Plaintiff must show that the challenged mark is likely to cause confusion among consumers. *See Id.*

In this case, Plaintiff's Brand Trademark is distinctive and is registered with the USPTO. (Mangano Decl. ¶ 6.) Plaintiff's Brand Trademark registration is valid, subsisting, in full force and effect. (*Id.*) The registration for the Brand Trademark constitutes *prima facie* evidence of its validity and of Plaintiff's exclusive right to use pursuant to 15 U.S.C. §1057(b). Furthermore, Plaintiff has not licensed or authorized Defendant to use its Brand Trademark, and the Defendant is not an authorized retailers of genuine Brand products. (Mangano Decl. ¶ 9; Fang Decl. ¶ 7.)

Turning next to the likelihood of confusion, the Seventh Circuit has held that where "one produces counterfeit goods in an apparent attempt to capitalize upon the popularity of, and demand for, another's product, there is a presumption of a likelihood of confusion." *Microsoft Corp. v. Rechanik*, 249 F. App'x 476, 479 (7th Cir. 2007). Accordingly, the Court can presume a likelihood of confusion from Defendant's unauthorized use of the Brand Trademark.

The result is the same when considered in light of the Seventh Circuit's seven enumerated factors to determine whether there is a likelihood of confusion, which include: (1) similarity between the marks in appearance and suggestion; (2) similarity of the products; (3) area and manner of concurrent use; (4) degree of care likely to be exercised by consumers; (5) strength of complainant's mark; (6) actual confusion; and (7) intent of the defendants to palm off their products as that of another. *AutoZone, Inc. v. Strick*, 543 F.3d 923, 929 (7th Cir. 2008). No one factor is dispositive, but the similarity of the marks, actual confusion, and the defendant's intent are "particularly important." *AutoZone, Inc.,* 543 F.3d at 929.

Here, Defendants are accused of directly copying and using Plaintiff's Brand Trademark, without authorization, to promote the sale of its Counterfeit Products. (Fang Decl. ¶¶ 7-8.) Moreover, Defendant is accused of doing so to divert consumers desiring to purchase authentic Brand products from Plaintiff to its Online Marketplace to solicit purchases of Counterfeit Products. (*Id.*) These circumstances justify a finding of likelihood of confusion under either the

Seventh Circuit's presumption of such conclusion or through application of its seven-factor analysis. *See AutoZone, Inc.,* 543 F.3d at 929.

Based on the foregoing circumstances, Plaintiff has demonstrated an extremely high likelihood of success on the merits of its asserted claims in this action against Defendants, all of which are factually predicated on the unauthorized use of its Brand Trademark. [Dkt. No. 1, 27.] Accordingly, Plaintiff has clearly demonstrated that it has a high likelihood of success on the merits for its asserted claims for relief, which satisfies the first requirement for issuance of the requested injunctive relief. *See Publications Int'l,* 88 F.3d at 478.

b. Plaintiff Would Suffer Irreparable Harm Absent Entry of Injunctive Relief.

Next, Plaintiff would unquestionably suffer irreparable harm is preliminary injunctive relief is not granted. *See id.* The Lanham Act authorizes courts to issue injunctive relief "according to principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the registrant of a mark ...." 15 U.S.C. § 1116(a).

As with the issued TRO, Plaintiff requests issuance of the preliminary injunction to prevent the Defendants from using, without authorization, the company's Brand Trademark in connection with the manufacture, importation, distribution, offering for sale, and sale of its Counterfeit Products. (Mangano Decl. ¶ 12.) Allowing such conduct to continue would subject Plaintiff to continuing, direct harm to its Brand Trademark and Asserted Brand through the loss of reputation and loss of consumer goodwill. (*Id.;* Fang Decl. ¶ 9.) Both of these harms are incapable of being ascertained through resulting economic loss, thereby demonstrating irreparable harm. *See Life Spine, Inc. v, Aegis Spine, Inc.,* 8 F.4th 531, 546 (7th Cir. 2021); *Ty, Inc.,* 237 F.3d at 902. Accordingly, absent issuance of this requested preliminary injunctive relief, Defendants' intentional infringement of its Brand Trademark will unquestionably continue and subject the company to irreparable harm – now and in the future. (Mangano Decl. ¶ 12; Fang Decl. ¶ 9.)

Plaintiff's demonstration of irreparable harm is also supported by the high likelihood that Defendant would delete information related to its Online Marketplace if preliminary injunctive relief is not granted, thereby erasing key evidence related to their online accounts - such as product sales information and ill-gotten funds derived from their intentional infringement of the Brand Trademark. (Mangano Decl. ¶ 14.) This harm simply cannot be monetarily quantified and, as such, supports a finding of irreparable harm. *See Graphic Design Marketing, Inc. v. Xtreme Enterprises, Inc.,* 772 F.Supp.2d 1029, 1034 (E.D. Wis. 2011). This same harm justified entry of the TRO and it continues to exist today, which clearly justifies entry of the requested preliminary injunction. *See id.* Simply put, absent granting the requested injunctive relief, Plaintiff would be irreparably harmed through Defendant's efforts to avoid enforcement of the company federally protected rights by this Court. (Mangano Decl. ¶ 14; Fang Decl. ¶¶ 8-10.)

c. The Balance of The Hardships Tips Strongly in Favor of Plaintiff and Entry of Injunctive Relief is in The Public Interest.

Having satisfied the first two requirements for issuance of preliminary injunctive relief, the next two inquiries presented consider the balance of the hardships between the Plaintiff and the parties being restrained, and whether the issuing the injunction would be in the public's interest. *See Columbia Pictures Indus., Inc.*, 927 F. Supp. at 1076. Here, both factors support granting Plaintiff's Motion.

Turning first to the balance of the hardships, Plaintiff has demonstrated Defendant's illegal use of its Brand Trademark. [Dkt. Nos. 1, 8, 27] In fact, the evidence presented raises an extremely strong inference that Defendants have willfully infringed Plaintiff's Brand Trademark. Under these circumstances, very little, if any, deference should be given to any hardships experienced by

Defendants should injunctive relief be entered in Plaintiff's favor. Accordingly, the balance of the hardships tips strongly in Plaintiff's favor.

Likewise, issuance of the requested injunctive relief is in the public's interest. By granting Plaintiff's Motion, the Court would be furthering that interest by rewarding the company's development and dissemination of new styles, colors, and sizes of women's clothing, which is visually displayed through its advertising and marketing with the Asserted Brand and Brand Trademark such as those reflected in in this action. (Fang Decl. ¶ 11.) On the other hand, there would be no public interest furthered by allowing Defendant to continue to distribute and sell their counterfeit products through the unauthorized use of Plaintiff's Brand Trademark. Accordingly, the public's interest would be strongly served by granting Plaintiff's Motion.

V. There is Good Cause to Extend the Temporary Restraining Order Until There is a Ruling on this Motion.

The TRO issued in this matter is set to expire on January 9, 2025. [Dkt. No. 23.] As such, Plaintiff requests an extension of the TRO to maintain the status quo until there a hearing can be conducted on the Motion. Granting such relief is appropriate, so that Defendants are provided with an opportunity to oppose Plaintiff's request for entry of preliminary injunctive relief.

Rule 65 of the Federal Rules of Civil Procedure ("Rule 65") dictates that under ordinary circumstances, a temporary restraining order cannot exceed 14 days, although the court may extend it "for a like period" for good cause. Fed. R. Civ. P. 65(b)(2). However, in *H-D Mich., LLC v. Hellenic Duty Free Shops S.A.*, the Seventh Circuit affirmed that allowing a TRO to remain in effect until a decision on a motion for preliminary injunction was proper. *H-D Mich., LLC,* 694 F.3d 827, 843-45 (7th Cir. 2012). In affirming the TRO extension, the Seventh Circuit explicitly recognized that there will be cases where the maximum 28-day limit does not give the parties sufficient time to prepare for a preliminary injunction hearing. *H-D Mich., LLC,* 694 F.3d at 843-45. If the extension exceeds the maximum duration for a TRO under Rule 65(b), the extension "becomes in effect a preliminary injunction that is appealable, but the order remains effective." *Id.* at 844; *see also, Christian Dior Couture, S.A. v. The Partnerships, et al.*, No. 21-cv-04861 (N.D. Ill. Nov. 19, 2021) (Docket Entry 32) (further extending TRO to and including the date on which the Court would adjudicate the motion for preliminary injunction, exceeding the maximum duration for a TRO under Rule 65(b)); *Luxottica Group S.p.A., et al. v. rbzxr.com, et al.*, No. 20-cv-02297 (N.D. Ill. May 12, 2020) (Docket Entry 52) (same).

Defendants have been provided with notice of this case. If there is justifiable grounds for failing to extend the TRO or converting the granted TRO into a Preliminary Injunction pending a hearing on Plaintiff's Motion, Defendants will be able to present such evidence. In addition, Plaintiff respectfully submits that there is good cause to extend the TRO, since there is a high probability that the Defendants will continue to irreparably harm Plaintiff without the TRO in place, which includes potential efforts by the Defendant to move any assets from its Platform-based and other financial accounts to off-shore bank accounts absent extension of the TRO without prior to adjudication of the company's Motion for entry of preliminary injunctive relief.

VI. The Current Bond is Sufficient to Protect Defendants Interests.

The Court has previously required Plaintiff to post a bond in the sum of $5,000.00 in connection with issuance of the TRO. [Dkt. No. 23.] The exact same circumstances, if not more, supporting the Court's determination of this bond amount apply to Plaintiff's request for entry of a Preliminary Injunction. (Mangano Decl. ¶ 14.) Moreover, the Court is presented with facts and supporting evidence that clearly demonstrates Defendant has infringed Plaintiff's Brand

Trademark. (*Id.*; Fang Decl. ¶¶ 8-10.) This blatant, intentional conduct demonstrates that Plaintiff has an exceptionally high likelihood of success on the merits of its asserted claims for relief. *See Columbia Pictures Indus., Inc.*, 927 F. Supp. at 1076. Such a strong showing militates against a subsequent finding that injunctive relief was improperly granted. Accordingly, Plaintiff requests the Court maintain the current bond amount required for issuance of the TRO for issuance of the preliminary injunction.

VII. CONCLUSION

For the foregoing reasons, Plaintiff additionally respectfully requests the Court grant its request for entry of a preliminary injunction and maintain the current bond amount required under the TRO, together with issuing any other relief that it deems just and proper.

DATED: January 9, 2025

Respectfully submitted,

By: */s/ Shawn A. Mangano*

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of January 2025, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Illinois, Eastern Division, using the electronic case filing system. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means. Notice of this filing is provided to unrepresented parties for whom contact information has been provided via email and by posting the filing on a URL contained on our website http://blointernetenforcement.com, and distributed to ecommerce platform, Amazon.

Respectfully submitted,

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