

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

HONG KONG YU'EN E-COMMERCE CO.	)	
LIMITED,	)	
	)	
Plaintiff,	)	Case No: 1:24-cv-12483-EEB-
	)	MDW
v.	)	
	)	
THE INDIVIDUALS, CORPORATIONS,	)	Honorable Judge Elaine E. Bucklo
LIMITED LIABILITY COMPANIES,	)	Magistrate M. David Weisman
PARTNERSHIPS AND UNINCORPORATED	)	
ASSOCIATIONS IDENTIFIED IN	)	
SCHEDULE "A" HERETO,	)	
	)	
Defendants.	)	

**MEMORANDUM IN SUPPORT OF DEFENDANT FUNLINGO'S
OPPOSED MOTION TO DISSOLVE PRELIMINARY INJUNCTION AND
FOR LEAVE TO CONDUCT EXPEDITED DISCOVERY**

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Defendant Funlingo, through its undersigned counsel, submits this memorandum of law in support of its motion to dissolve preliminary injunction and for leave to conduct expedited discovery.

PRELIMINARY STATEMENT

“*Ex dolo malo non oritur actio*”- Fraud never gives a right of action. *Church v. Proctor*, 66 F. 240, 244 (1st Cir. 1895). This longstanding principle should be applied with full force in this case, where the Plaintiff, a Chinese garment exporter, has improperly exploited the Schedule A proceedings as a tool to target and undermine the businesses of its Chinese competitors.

Funlingo seeks to dissolve the Preliminary Injunction pursuant to Rule 65(b)(4) because Plaintiff’s purported evidence of Funlingo’s trademark infringement does not stand up to adversarial scrutiny. Plaintiff’s claim for injunctive relief is crucially flawed for two reasons. First, Plaintiff has mischaracterized the appearance of “Modlily” in the post-domain paths of the URLs associated with Funlingo’s ASINs as being “evidence” of infringement, because “the presence of another’s trademark in a post-domain path of a URL would [not] violate trademark law.” *Interactive Products Corp. v. a2z Mobile Office Solutions, Inc.*, 326 F.3d 698 (6th Cir. 2003).

Second, Plaintiff is not entitled to preliminary injunction due to unclean hands. Through unfounded infringement and joinder claims, Plaintiff has successfully frozen the businesses of its 20 competitors by paying only a \$5,000 surety bond. This constitutes an unfair use of the judicial system, particularly where Plaintiff misrepresented to the Court that service was complete, when it in fact sent an incorrect Schedule A to defendants, resulting in summons and complaints that did not list their names. Moreover, Plaintiff misrepresented to the Court that its preliminary injunction motion was filed on a non-*ex parte* basis, while the only evidence supporting the

motion, Dkt. #8, was under seal and was withheld from Funlingo despite repeated requests. Beyond Dkt. #8, Plaintiff has refused to provide Funlingo any of the documents filed under seal in this case (except the list of 129 URLs associated with Funlingo's Amazon store) and has refused to disclose the documents subpoenaed from Amazon through expedited discovery. This withholding of evidence has caused unnecessary delays in Funlingo's investigation of Plaintiff's claims, the formation of its defense, and its efforts to dissolve preliminary injunction.

Plaintiff's claims are indicative of the sweeping "one size fits all" approach that is becoming increasingly common in this District. This case and others, follow a similar pattern, whereby a plaintiff files a complaint under seal alleging trademark infringement, moves *ex parte* for a temporary restraining order and then obtains a preliminary injunction. Defendants, who do not immediately realize that they have been sued, discover that their assets have been restrained, which may be the first time they learn of any dispute—let alone lawsuit. Defendants are under strong pressure to settle because of the burden of the preliminary injunction, and any defendants who do not settle end up being defaulted. Using this modus operandi, Plaintiff here has sued 20 defendants—while the primary basis for joining all of the defendants together in this case is Plaintiff's unproven, conclusory accusation that all of the defendants are "working in active concert" and have conducted the violative conducts "jointly and severally."

In fact, on October 29, 2024, Judge Daniel ruled in an earlier Schedule A lawsuit commenced by Plaintiff (case number 1:24-cv-11029) that "the conclusory statements" in Plaintiff's complaint – which is almost identical to the complaint in this lawsuit – would "do nothing to establish the propriety of joinder" and that "joinder under Fed. R. Civ. P. 20 is rarely appropriate in Schedule A cases" (see Ex. H, Civil Docket for Former Action).

Funlingo also seeks court leave to conduct expedited discovery, requesting that Plaintiff

produce within three (3) business days the following documents, as they are necessary for Funlingo to defend this case and assert counterclaims against Plaintiff, and it would be unfair to allow Plaintiff to continue withholding them from defendants:

1. All documents filed under seal in this case, or alternatively, an order directing the Court Clerk to unseal all documents previously filed under seal in this matter.
2. All documents that Amazon has produced to Plaintiff thus far in this case.
3. The "Schedule A" filed under seal as Exhibit 2 to the Complaint in the earlier case Hong Kong Yu'En E-Commerce v. USA 1ST Store, Case No. 1:24-cv-11029, with the docket number "[Case: 1:24-cv-11029, Document #: 2-2.](#)"

Plaintiff stated that it “would not oppose [Funlingo’s] motion to obtain the sealed documents in this case, as that is [Funlingo’s] right ... but would oppose a motion for expedited discovery ... and dissolution of the [preliminary injunction]” (see Ex. K at 1).

ARGUMENT

I. THE COURT SHOULD DISSOLVE THE PRELIMINARY INJUNCTION

Preliminary relief “is an exercise of a very far-reaching power, *never* to be indulged in except in a case *clearly* demanding it. It is never awarded as a matter of right.” *Packaging Corp. of Am., Inc. v. Croner*, 419 F. Supp. 3d 1059, 1072 (N.D. Ill. 2020) (emphasis added). A motion for preliminary injunction triggers a two-phase analysis—a threshold phase and a balancing phase. *See SFG, Inc. v. Musk*, 2019 WL 5085716, at 2 (N.D. Ill. Oct. 10, 2019). The threshold showing requires Plaintiff to demonstrate (1) some likelihood of success on the merits of the underlying litigation; (2) irreparable harm; and (3) the lack of an adequate remedy at law. *Checker Car Club of Am., Inc. v. Fay*, 262 F. Supp. 3d 621, 626 (N.D. Ill. 2017).

Where, as here, the Plaintiff cannot clear the threshold hurdles, this Court need not engage in the balancing phase of the analysis, which assesses “the harm to the movant if the

injunction is not issued against the harm to the [Defendants] if it is issued improvidently,” as well as the public interest. *Id.*

A. Plaintiff Presented NO Evidence Showing Infringement by Funlingo

Despite conclusory, sweeping allegations, Plaintiff has failed to present ANY evidence that Funlingo has infringed its trademark “Modlily.” The only document that Plaintiff alleged to be evidence of Funlingo’s infringement is a list of 129 URLs associated with Funlingo’s seller webpage at Amazon (Ex. A). But this is not evidence. *Instant One Media, Inc. v. EzFaux Decor, LLC*, No. 1:19-CV-00540-WMR, 2022 WL 4596641, at *2 (N.D. Ga. July 26, 2022).

Plaintiff does not appear to claim that “Modlily” has ever appeared in Funlingo’s product descriptions or anywhere else in Funlingo’s Amazon store. Its infringement claims are solely based on the 129 URLs listed in the purported evidence presented by Plaintiff, which, according to that list, each URL contains “Modlily” in the post-domain paths and directs consumers to an Amazon webpage selling Funlingo’s products. “However, Plaintiff has mischaracterized the URL as ‘evidence’ that Defendant is [infringing its trademark].” *Id.*, at *1.

“Although Plaintiff has shown that its trademark words or phrases can appear in post-domain URLs associated with the ASINs when conducting an online search for products on Amazon.com, the information reflected in the post-domain URLs merely shows how Amazon’s data is organized and/or the search terms that are provided by the person initiating the search. Plaintiff has failed to show how Defendant could be held responsible for the information contained in Amazon.com’s post-domain URLs. Accordingly, Plaintiff is not entitled to a preliminary injunction regarding the use of the specified ASINs.” *Id.*, at *3.

In fact, courts facing similar claims have routinely held that “words or phrases appearing in a post-domain URLs do not constitute trademark infringement.” *Id.*, at *2.

In *Interactive Products Corp. v. a2z Mobile Office Solutions, Inc.*, 326 F.3d 687 (6th Cir. 2003) – the first and perhaps the only Circuit-level authority in this area thus far – the Sixth Circuit held that, unlike a website domain name, which consumers typically view as a signifier of source, a post-domain path in a URL “merely shows how the website’s data is organized within the host computer’s files.” *Id.*, at 696-97. As such, post-domain paths generally do not signify source for consumers and, consequently, do not cause consumer confusion. *Id.*

As the Sixth Circuit explained in *Interactive Products*, “[e]ach website has a corresponding domain name, which is an identifier somewhat analogous to a telephone number or street address. ... Because of the importance of a domain name in identifying the source of a website, many courts have held that the use of another’s trademark within the domain name of a website can constitute a trademark violation.” *Id.*, at 691.

“Each web page within a website has a corresponding uniform resource locator (“URL”) (e.g., a2zsolutions.com/ desks/floor/laptraveler/dkfl-lt.htm), which consists of a domain name and a post-domain path. A post-domain path (e.g., /desks/floor/laptraveler/dkfl-lt.htm) merely shows how a website's data is organized within the host computer's files.” *Id.* While the domain name signifies its source of origin, “the post-domain path serves a different function and does not signify source of origin.” *Id.*, at 697. **“Because post-domain paths do not typically signify source, it is unlikely that the presence of another’s trademark in a post-domain path of a URL would ever violate trademark law.”** *Id.*, at 698 (bold added).

As for the 129 URLs presented by Plaintiff in this case, “www.amazon.com/” is the domain name, and the text that comes after the slash is the post-domain path. The appearance of “Modlily” in these post-domain paths is not actionable infringement as a matter of law.

Plaintiff’s allegations in this case are almost identical to the facts in *Instant One Media*,

Inc. v. EzFaux Decor, LLC, No. 1:19-CV-00540-WMR, 2022 WL 4596641 (N.D. Ga. July 26, 2022). In *Instant One*, the plaintiff argued that the defendant infringed its trademark “Instant Granite” by selling products under the URL “<https://amazon.com/Instant-Counter-Granite-Adhesive-Venetian/dp/B00O05UCKY/>.” The *Instant One* Court rejected this argument, holding that the URL was not “evidence” of violative conduct because “information in a post-domain URL resulting from an online search does not constitute trademark infringement.” *Id.*, at *2.

Like *Instant One*, Plaintiff here similarly claims that Funlingo infringed its trademark because “Modlily” allegedly appears in the post-domain paths of the 129 URLs. However, just as the *Instant One* Court and *Interactive Products* Court have held, the appearance of “Modlily” in the post-domain paths is not actionable infringement at all.

In fact, the 129 URLs will remain valid after removing “Modlily” therefrom, and they will be valid regardless of what words or phrases are inserted between “www.amazon.com/” and “/dp/[ASIN].” Take the first URL from the list, “<https://www.amazon.com/Funlingo-Square-Modlily-Coverage-3X-Large/dp/B0C8RZL9Y9?th=1&psc=1>,” as an example. That URL directs customers to an Amazon webpage selling “Funlingo 2024 Women’s Long Sleeve Tops Dressy Pleated Square Neck Tunic Blouses Casual Loose Shirts” (see Ex. B). However, after deleting “Modlily” from the URL, the resulting URL – “<https://www.amazon.com/Funlingo-Square-Coverage-3X-Large/dp/B0C8RZL9Y9?th=1&psc=1>” – will still direct customers to the same webpage (see Ex. C). In fact, the only valid portion of this URL is “<https://www.amazon.com/dp/B0C8RZL9Y9>” (see Ex. D). No matter what words or phrases are inserted between “www.amazon.com/” and “/dp/B0CRZL9Y9” – such as “coca-cola” or “clarks” – the resulting URLs will nevertheless direct customers to this same webpage (see Ex. E [inserting “coca-cola”] and Ex. F [inserting “clarks”]).

Furthermore, a customer making a search on Amazon can type in “Modlily” in the post-URL paths of every Amazon URL and still make the link valid. For example, if we insert “Modlily” into the Diet Coke Store’s Amazon webpage “www.amazon.com/dp/B06XCPQPLC,” the resulting URL, “www.amazon.com/Modlily/dp/B06XCPQPLC,” will direct us to the same webpage, which sells “Diet Coke Mini-Can 7.5oz, 10 Pack” (see Ex. G). The fact that the URL contains “Modlily” in the post-domain path and directs the customer to a Diet Coke webpage can in no way be deemed evidence to claim that Coca-Cola is infringing the Modlily mark. This illustrates why “information in a post-domain URL resulting from an online search does not constitute trademark infringement.” *Instant One*, at *2.

Therefore, the list of 129 URLs presented by Plaintiff is not “evidence” at all. This is exactly why the *Instant One* Court found that its prior preliminary injunction order “improperly relied on Plaintiff’s mischaracterization of the URLs associated with specific ASINs as being ‘evidence’ of Defendant’s [] violative conduct” and, for that reason, vacated the injunction in its entirety. *Id.*

Since Plaintiff has presented no evidence, the preliminary injunction should be dissolved.

B. Plaintiff Is Not Entitled To Preliminary Injunction Due To Unclean Hands

“Unclean hands has been recognized as a defense to a preliminary injunction in a Lanham Act case and may justify denying such an injunctive request.” *Bidi Vapor, LLC v. Vaperz LLC*, 543 F. Supp. 3d 619, 635 (N.D. Ill. 2021). To invoke equity, Plaintiff “should come to Court with clean hands,” *id.*; but it did not.

Here, Plaintiff filed Schedule A complaints and made *ex parte* TRO motions under seal, deliberately to freeze its competitors’ Amazon seller accounts abruptly and deny them due process rights to defend. To induce the Court to grant the TRO, Plaintiff submitted the purported

evidence of infringement *ex parte*, which was presented without giving any defendants the opportunity to challenge the motion. As a result, the defendants learned of the Schedule A lawsuits not through service of process, but by discovering that their seller accounts were frozen by the TRO, all without a day in court. Most of the defendants, being in China and unfamiliar with U.S. court proceedings, found themselves unable to continue their business due to the account freeze. Rather than incurring expensive legal fees to fight for their rights in U.S. courts, these Chinese competitors might be coerced into accepting Plaintiff's demand and making "settlement payments" to ransom their businesses.

Funlingo is one of the victims of Plaintiff's Schedule A scheme. Its Amazon seller's account was frozen first. Several days later, it received emails from Plaintiff's counsel with Summons, the original Complaint (Dkt. #1), and the First Amended Complaint (Dkt. #27) as email attachments, saying that Funlingo was sued in this case. However, neither the Summons nor the two versions of the complaint contain Funlingo's name, but they reference a Schedule A to the Complaint. The Schedule A to the original Complaint allegedly served by Plaintiff (Dkt. #1-2), however, does not list any defendants' names since it is no more than a cover page stating that "Exhibit 2 Filed Under Seal." Plaintiff never provided any documents filed under seal. The Schedule A to the First Amended Complaint (Dkt. #27-2) listed 17 Walmart sellers, none of which is Funlingo. It was not until February 13, 2025, when Funlingo appeared by counsel and raised this issue with Plaintiff, asking why Funlingo's name could not be found in any served pleadings (see Gao Decl. at ¶ 14), that Plaintiff simply stated it had filed an "erroneous" Schedule A to the First Amended Complaint, and then filed the "corrected" list (Dkt. #42-2). By that time, however, Funlingo's Amazon business had been improperly interrupted for over a month without service of the correct pleading. Funlingo has reason to doubt whether it is a mere

clerical error, as Plaintiff alleged, or a purposeful act by Plaintiff to hinder the ability of defendants – Plaintiff’s competitors – to timely appear and defend this case.

Furthermore, Plaintiff has been hiding from defendants the purported evidence it submitted under seal to the Court (Dkt. ## 8 and 10). Plaintiff relied on this sealed evidence in moving for the TRO (see Mangano Decl. [Dkt. #7-1] at ¶¶ 12 & 17, and Sullivan Decl. [Dkt. #9] at ¶ 4) and preliminary injunction (see Memo for PI [Dkt. #32-1 at 4] [referring to Dkt. No. 8 as the evidence]), but Plaintiff never served Dkt. # 8 and #10 to defendants, and refused to produce them to Funlingo despite Funlingo’s request (see Ex. K).¹ Plaintiff’s *ex parte* submission of the purported evidence to the Court but refusal to disclose it to defendants deprives the defendants of their due process rights. It impairs Funlingo’s ability to oppose and dissolve the injunction.

In fact, Plaintiff’s representation to the Court that its motion for preliminary injunction was “submitted to Court on a non-ex parte basis” (Dkt. #32) is not true, because Plaintiff, instead of attaching the supporting evidence unsealed to the preliminary injunction, simply referred to the sealed Dkt. No. 8 as its evidence (Dkt. #32-1). Plaintiff cannot, on one hand, allege its motion was non-*ex parte*, and on the other hand, refer to a document it previously submitted under seal and refuse to disclose this sealed document to the other parties. Therefore, because Dkt. No. 8 was the only evidence Plaintiff relied on in support of its preliminary injunction motion and because Dkt. No. 8 was never disclosed to defendants, this Court should never have considered Dkt. No. 8 in determining Plaintiff’s motion for preliminary injunction and should

¹ Plaintiff stated that it would not oppose to Funlingo’s “motion to obtain the sealed documents in this case, as that is [Funlingo’s] right.” (See Ex. K, Email between Counsel.) However, Plaintiff nevertheless refused to produce the sealed documents it filed in this case, which would take only a minute to produce. The only document Plaintiff has provided to Funlingo is the list of 129 URLs (Ex. A).

have found that Plaintiff failed to establish a likelihood of success. Therefore, this Court should dissolve the preliminary injunction order *ab initio* and direct Amazon to lift any restraint on Funlingo's account.

Furthermore, Plaintiff's hiding of its evidence strongly infers its actual knowledge that the list of 129 URLs is not evidence at all. Notably, Plaintiff's former counsel, Shawn Mangano, withdrew from this case on the same day immediately after Funlingo appeared in this case by counsel. Mr. Mangano had previously submitted evidentiary declarations in support of Plaintiff's motions for TRO and preliminary injunction, stating in his declarations that he had personal knowledge of defendants' trademark infringement and that he could competently testify as a fact witness (Dkt. #7-1 at ¶¶ 1 & 11; Dkt. #32-2 at ¶¶ 1 & 8). The coincidence in the timing of his withdrawal from this case after Funlingo's appearance in this case, coupled with the other irregularities and misstatements by Plaintiff in this case, strongly casts doubt on Plaintiff's true purpose in commencing this action and freezing its competitors' businesses.

Plaintiff has made other misrepresentations in this case. In its complaint dated December 4, 2024, Plaintiff falsely stated that this action was "likely Plaintiff's first action commenced in this judicial district to enforce the Brand Trademark" (Dkt. #1 at ¶ 7). Plaintiff repeated the same allegation in its First Amended Complaint dated January 3, 2025 (Dkt. #27 at ¶ 7). This statement was false because, one month before this action, on October 25, 2024, Plaintiff filed an almost identical complaint in this judicial district, under case number 1:24-cv-11029 ("Former Action") (see Ex. I, Former Action Complaint). In the Former Action, Plaintiff also sued 20 defendants, and the name list of the 20 defendants was filed under seal.

Plaintiff knew of this Former Action because it was filed just one month before it commenced this instant action. Plaintiff's counsel also knew of the Former Action because

Plaintiff was represented by the same counsel in the Former Action.

Plaintiff seemingly tries to hide from this Court that it has previously filed the same complaint and that, in the Former Action, it faced a threat of Rule 11 sanctions for making unfounded joinder claims: on October 29, 2024, Judge Daniel issued a *sua sponte* order requiring Plaintiff to show cause why Rule 11 sanctions should not be imposed for making unfounded joinder claims. Specifically, Judge Daniel gave Plaintiff two options: Plaintiff should either provide a good faith basis for alleging that the 20 defendants were acting jointly and severally, or alternatively drop the 20 defendants and only name one defendant. Plaintiff chose the latter. It dropped all 20 Schedule A defendants from the Former Action except one defendant. In light of this, Judge Daniel discharged his rule to show cause during the hearing on November 12, 2024. But he admonished Plaintiff that it was required to have sufficient evidence “before alleging that defendants are acting jointly and severally,” and warned Plaintiff “to be mindful of what goes into [the] complaints” (Ex. J, Transcript for the November 12, 2024 Hearing Before Judge Daniel, at 5:2-13).

Plaintiff has disregarded Judge Daniel’s warnings. Less than a month later, on December 4, 2024, Plaintiff commenced this action and re-filed the same Complaint against 20 Schedule A defendants. To conceal Judge Daniel’s rule to show cause concerning the improper joinder of 20 defendants, Plaintiff misrepresented in the instant action that this was Plaintiff’s first action to enforce its trademark.

Funlingo has asked Plaintiff if the defendants in this case are the same set of Schedule A defendants dropped by Plaintiff in the Former Action, but Plaintiff refused to answer (see Gao Decl. at ¶¶ 22-28). Plaintiff is even refusing to answer whether Funlingo was listed in the Schedule A in the Former Action. Plaintiff’s refusal to answer such a simple question raises a

reasonable inference that, after Judge Daniel discharged the rule to show cause for Rule 11 sanctions, Plaintiff might have refiled the same complaint against the same set of defendants it dropped from the Former Action, hoping that the re-filed case would be assigned to a different judge. If this is the case, Plaintiff may have committed fraud on this Court and on Judge Daniel.

Because Plaintiff has not come to the Court with clean hands, this Court should dissolve preliminary injunction.

II. THE COURT SHOULD PERMIT EXPEDITED DISCOVERY

This Court has broad authority to permit expedited discovery before a Rule 26(f) conference, as long as the requesting party demonstrates “good cause,” which “may be found where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party.” *Hard Drive Prods., Inc. v. Doe*, 283 F.R.D. 409, 410 (N.D. Ill. 2012). In deciding a motion for expedited discovery, the Court evaluates “the entirety of the record to date and the reasonableness of the request in light of all the surrounding circumstances.” *Id.*

Here, there is good cause to seek expedited discovery, requesting that Plaintiff produce within three (3) business days the following documents:

1. All documents filed under seal in this case, or alternatively, an order directing the Court Clerk to unseal all documents previously filed under seal in this matter.
2. All documents that Amazon has produced to Plaintiff thus far in this case.
3. The "Schedule A" filed under seal as Exhibit 2 to the Complaint in the earlier case *Hong Kong Yu'En E-Commerce v. USA 1ST Store*, Case No. 1:24-cv-11029, with the docket number "[Case: 1:24-cv-11029, Document #: 2-2.](#)"

First, there is currently a preliminary injunction order in place that requires Amazon to freeze Funlingo’s seller account. Funlingo needs to dissolve the preliminary injunction to

continue doing business, but it finds that it does not have access to the documents Plaintiff filed under seal in this case, including the purported evidence Plaintiff relied on in establishing a likelihood of success in its motions for injunctive relief. Funlingo has asked Plaintiff for these sealed documents, but to no avail. Instead, Plaintiff takes the odd position that, although it will not oppose Funlingo filing a motion to obtain the sealed documents—as that is Funlingo’s right—it refuses to produce them. (Ex. K).²

The sealed documents are necessary to determine the validity and merits of Plaintiff’s claims, as well as to ensure that Funlingo is not being denied its due process rights. For instance, Plaintiff has alleged in its motions for TRO and preliminary injunction that it has evidence showing 20 defendants’ use of its “Modlily” trademark. (See Mangano Decl. [Dkt. #7-1] at ¶¶ 12 & 17; see Memo for Motion for Preliminary Injunction [Dkt. #32-1 at 4] [referring to Dkt. No. 8 as the evidence in support of the preliminary injunction motion].) However, Plaintiff filed this evidence under seal (Dkt. #8). Plaintiff cannot, on one hand, represent to the Court that its motion for preliminary injunction was made “on a non-*ex parte* basis,” but on the other hand, rely on a document previously filed under seal as its only evidence in support and refuse to disclose it to Funlingo.

This is not the only case. For another example, Plaintiff based its jurisdictional allegation on an “Exhibit ‘1’” attached to the Declaration of Jillian Sullivan in support of its TRO Motion, which, according to the Sullivan Declaration, are “copies of screenshots of the order confirmations and shipping confirmations, indicating the product will be shipped to the State of Illinois, City of Chicago.” (Dkt. #9 at ¶ 4). However, Exhibit 1 to the Sullivan Declaration was

² Funlingo will file an Unopposed Motion for Access to Documents Filed Under Seal, concurrently with this motion.

also filed under seal (Dkt. #9-1 and #10-1), depriving Funlingo access to Plaintiff's evidentiary proof presented to the Court.

In fact, since all 20 Schedule A defendants have been made aware of this lawsuit, there is no legitimate reason to continue sealing any court filings in this case. Therefore, Plaintiff should be ordered to disclose the sealed documents to Funlingo.

Second, Plaintiff has moved *ex parte* for expedited discovery, and, after this Court issued a TRO, Plaintiff has subpoenaed documents from Amazon. Plaintiff cannot, on one hand, subpoena documents from a non-party witness through expedited discovery and, on the other hand, refuse to disclose them to the other parties in this case on the grounds that written discovery has not started yet.

In addition, after receiving documents from Amazon, Plaintiff has not provided any new evidence in its subsequent motion for preliminary injunction (see Dkt. #32-1 at 4 [still relying on Dkt. #8 as the only evidence]). Nor has Plaintiff asserted any new factual allegations in its First Amended Complaint. This raises a reasonable concern as to whether Plaintiff really has a valid trademark infringement claim against defendants, and whether Plaintiff knows it has no claim against Funlingo but nonetheless refuses to withdraw the claims. Therefore, Funlingo needs the documents Plaintiff received from Amazon in this case, which Funlingo believes may support its motion to dissolve the preliminary injunction, its defenses, and possible counterclaims.

Third, Funlingo requests Plaintiff to produce the "Schedule A" that it filed under seal as Exhibit 2 to the Complaint in the Former Action, with docket number "[Case: 1:24-cv-11029 Document #: 2-2](#)". As discussed above, Plaintiff previously filed an almost identical complaint in the Former Action against 20 Schedule A defendants and, facing Judge Daniel's Rule 11(c)(3) order to show cause why sanctions should not be imposed for improper joinder of defendants,

Plaintiff dropped all 20 defendants except one, causing Judge Daniel to discharge his order to show cause. But one month later, Plaintiff refiled the same complaint in this case and again named 20 defendants in Schedule A. Funlingo has asked, but Plaintiff refused to answer, whether the 20 defendants listed in the Schedule A filed under seal in the Former Action are the same as those sued in this case. Plaintiff even refused to disclose whether Funlingo was listed in the Schedule A in the Former Action. Plaintiff's refusal to answer these simple questions raises a serious concern that Plaintiff might have committed fraud on the Court: after Judge Daniel discharged the Rule 11 order to show cause following Plaintiff's dropping 20 Schedule A defendants in the Former Action, Plaintiff might have refiled the same complaint against the same set of defendants. Fraud on the court is grounds for dissolving the preliminary injunction and dismissing the action. *Hoskins v. Dart*, 633 F.3d 541, 543 (7th Cir. 2011) (case dismissed as a sanction for fraud on the court).

Furthermore, the requested documents may also reveal whether Funlingo has a counterclaim for abuse of process, and whether Plaintiff has knowingly made, and refused to withdraw, the unfounded infringement and joinder claims against Funlingo in violation of Rule 11.

For the foregoing reasons, this Court should order Plaintiff to disclose the requested documents without delay.

CONCLUSION

For the foregoing reasons, Defendant Funlingo respectfully requests that the Court grant this motion in its entirety, dissolve the preliminary injunction, order Plaintiff to immediately produce the requested documents, and award such other and further relief as the Court deems just and proper.

Dated: March 7, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2025, a copy of the foregoing was filed via the Court's ECF filing system, thereby serving it upon all counsel of record.

Dated: March 7, 2025

/s/ Zheng Gao
Zheng Gao, Esq.