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Defendant Funlingo, through the undersigned counsel, submits this memorandum of law in reply to Plaintiff's opposition ([Dkt. #60](#)) and in further support of Funlingo's motion to dissolve preliminary injunction and for leave to conduct expedited discovery ([Dkt. #47](#)).

ARGUMENTS

1. Funlingo Has Established Entitlement to Dissolve The Preliminary Injunction

The preliminary injunction should be dissolved because Plaintiff is not likely to succeed on the purported trademark infringement claim against Funlingo, and because Plaintiff made material misrepresentations in obtaining the preliminary injunction and has unclean hands in this lawsuit.

Plaintiff alleges that it owns the "Modlily" trademark, and accused Funlingo of trademark infringement because 129 URLs ([Dkt. #47-2](#)) containing the word "Modlily" in the URLs' post-domain paths would direct consumers to an Amazon webpage selling Funlingo's products, namely, "Funlingo 2024 Women's Long Sleeve Tops Dressy Pleated Square Neck Tunic Blouses Casual Loose Shirts" ([Dkt. #47-3](#)). However, courts have repeatedly held that the "presence of another's trademark in a post-domain path of a URL [does not] violate trademark law." [*Interactive Products Corp. v. a2z Mobile Office Solutions, Inc.*](#), 326 F.3d 687, 698 (6th Cir. 2003); [*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).

Despite this clear law foreclosing its claims, Plaintiff filed one complaint against twenty defendants which does not mention Funlingo other than identifying it in a "sealed" Schedule A along with 19 other unrelated defendants ([Dkt. #1](#) and [#1-2](#)), moved *ex parte* for a temporary restraining order to freeze Funlingo's Amazon account based on the 129

URLs ([Dkt. #47-2](#)), emailed Funlingo a wrong Schedule A that does not even list Funlingo as a defendant ([Dkt. #27-2](#)), and misrepresented in the proof of service that the email constitutes proper service of process ([Dkt. #29](#) and [#30](#)).

Plaintiff then moved for a preliminary injunction. However, the only evidence supporting this motion, [Dkt. #8-1](#) and [#8-2](#), was filed under seal and was not served on defendants (see [Dkt. #32-1](#) at 4 [referring to Dkt. No. 8 as the evidence]). Plaintiff mischaracterized the appearance of “Modlily” in the post-domain paths of the URLs associated with Funlingo’s ASINs as being “evidence” of infringement – as a matter of law, it is not evidence of infringement. *Interactive Products*, 326 F.3d 698 (“the presence of another’s trademark in a post-domain path of a URL would [not] violate trademark law”). Worse, Plaintiff’s serving an incorrect pleading effectively deprived Funlingo of due process, since Funlingo could not be expected to oppose Plaintiff’s preliminary injunction motion when the pleading it received does not name it as a defendant.

Therefore, Funlingo made the instant motion to dissolve the preliminary injunction.

2. Plaintiff’s Opposition Lacks Merit And Is Full of False Statements

Plaintiff, in its opposition brief, avoids the core issue that cases such as *Interactive Products* and *Instant One Media* have well established that the appearance of “Modlily” in the post-domain paths of Funlingo’s URLs is not actionable infringement at all. Plaintiff neither tries to distinguish *Interactive Products* and *Instant One Media*, nor cites any cases holding differently. Rather, Plaintiff blithely states, without any explanation, that “the case law that is cited [by Funlingo] does not warrant argument in response or further research, as it is wholly inapposite on the facts.” ([Dkt. #60](#) at 6)

In truth, Plaintiff’s opposition reads less like a reasoned legal brief and more like

an attempt by a party caught in the act to deflect attention from the real issues. Throughout the opposition, Plaintiff resorts to baseless countercharges—accusing Funlingo’s counsel of making false statements and even going so far as to seek sanctions.

These attacks are unfounded and irresponsible.

For example, Plaintiff falsely asserts that Funlingo’s motion “fails to set forth the legal basis or standards” and thus “frustrates Plaintiff’s ability to present a logical argument in opposition” ([Dkt. #60](#) at 3).

This accusation is demonstrably false. Funlingo’s motion cited legal authorities throughout, including dispositive case law such as [Interactive Products](#) and [Instant One Media](#) in support of the argument that Plaintiff is not likely to succeed on the merits of its infringement claims and therefore the preliminary injunction should be dissolved; [Bidi Vapor, LLC v. Vaporz LLC](#), 543 F. Supp. 3d 619, 635 (N.D. Ill. 2021), for the proposition that unclean hands justifies denying preliminary injunctive relief; and [Hard Drive Prods., Inc. v. Doe](#), 283 F.R.D. 409 (N.D. Ill. 2012), to support the Court’s authority to permit expedited discovery upon a showing of good cause. ([Dkt. #47](#) at 12.) Plaintiff’s blanket assertion to the contrary suggests that it failed to review Funlingo’s motion papers.

Ironically, it is Plaintiff—not Funlingo—who has failed to set forth any legal basis or standard. Plaintiff’s opposition cites no case law, no rule, and no statute in support of its arguments. Plaintiff’s brief – saturated with false factual allegations and unsupported legal conclusions –exceeds the page limit set forth in Local Rule 7.1. But as the court observed in [Life After Hate, Inc. v. Free Radicals Project, Inc.](#), 334 F.R.D. 413 (N.D. Ill. 2020), “extra pages may not mean stronger argument.” [Id.](#) at 414. As the Seventh Circuit has further emphasized, “evidence, not arguments or conclusions, is what counts.” [Id.](#) at n.1.

Plaintiff's ripeness argument is equally unavailing. Plaintiff contends that this motion to dissolve the preliminary injunction is not ripe for judicial review because there is "no harm or injury threatened or actually incurred and there is thus nothing to redress by way of this motion." ([Dkt. #60](#) at 4.) This assertion is not only unsupported by any legal authority, but it is also legally incoherent. While the ripeness doctrine has been applied to prevent the premature granting of preliminary injunction, *see, e.g., Finch v. Treto*, 82 F.4th 572, 579 (7th Cir. 2023), it has no application here, where a preliminary injunction has already been granted and a restrained party seeks its dissolution. Since the Court has already issued a preliminary injunction, it necessarily follows that a request to dissolve the injunction is ripe for judicial review. (Of course, if the Court finds the claims in the case are not ripe, the consequence would be dismissal of the action.)

Plaintiff also argues—without citing any legal authority—that because this Court previously found the evidence sufficient when granting Plaintiff's *ex parte* TRO, the Court should adhere to that determination and decline to reconsider the matter. According to Plaintiff:

For Defendant to later by this motion argue anything otherwise is, without question, a disrespect of this Court's authority and a public denouncement of the advisability of the Court's findings, something that the Court acutely had the preparation to make when it was one of only two entities able to see the full extent of the sealed evidence of infringement in the case while and before making that determination, and such conduct by Defendant and counsel is beyond inappropriate and sanctionable for reasons abound.

([Dkt. #60](#) at 10.)

This argument is entirely unfounded. If Plaintiff's reasoning were accepted, then no motion to dissolve preliminary injunction, no motion for reconsideration, and no motion

to vacate default judgment would ever be permitted, and any party bringing such motions would be deemed *per se* sanctionable. That is plainly not the law.

To the contrary, it is well established that “[f]indings made at the preliminary injunction stage do not bind the district court as the case progresses.” [Michigan v. U.S. Army Corps of Eng’rs](#), 667 F.3d 765, 782 (7th Cir. 2011). [FRCP 65](#)(b)(4) expressly allows litigants to move to dissolve or modify preliminary injunction, which is an especially important procedural right in cases such as this where the initial relief was granted based on Plaintiff’s *ex parte* submission.

In its opposition, Plaintiff attempts to downplay the significance of its service of a defective pleading—specifically, a Schedule A that did not even name Funlingo as a defendant—by characterizing it as a mere “scrivener’s error” or “typographical error.” Plaintiff further suggests that this Court was aware of the error at the time it granted the preliminary injunction and nevertheless proceeded to do so. According to Plaintiff, it had corrected the Schedule A prior to the Court’s ruling, and the Court accepted the revised filing before issuing its decision, thus “eradicating any theoretical concern that the Court somehow would have denied the motion in any way *because* of the typo.” ([Dkt. #60](#) at 7.) The temporal sequence set forth by Plaintiff is factually incorrect.

In reality, the Court granted the preliminary injunction on January 13, 2025 ([Dkt. #34](#)), at a time when no defendant had appeared or filed any opposition, and there is no indication in the record that the Court was then aware that Plaintiff had served a wrong pleading omitting the very parties it purported to sue. It was not until a month later—on February 13, 2025, in response to Funlingo’s inquiry—that Plaintiff acknowledged the error and filed a Notice of Errata attaching the corrected Schedule A ([Dkt. #40](#)).

Accordingly, Plaintiff's assertion that "the Court accepted" the erroneous filing and nevertheless granted the preliminary injunction is inaccurate and disingenuous.

Plaintiff's opposition to expedited discovery is similarly grounded in a false premise. Plaintiff alleges that this Court held an "in person" "initial court appearance" on March 7, 2025 for this case—the same day Funlingo filed its motion—and argues that Funlingo should have simply served a Rule 26 written discovery request instead of seeking expedited discovery. ([Dkt. #60](#) at 14.) This argument is premised entirely on the false assertion that an initial court appearance occurred on March 7, 2025. However, the record reflects no such appearance, and undersigned counsel, who is based in New York, did not travel to Chicago to attend any court hearing or meet Plaintiff's counsel in person. Plaintiff's assertion of an in-person initial court appearance is a factual misrepresentation. Indeed, Funlingo filed its motion for expedited discovery precisely because Funlingo could not serve a document request under [FRCP 26\(d\)\(1\)](#).

3. Plaintiff's Request for Sanction is Baseless

In an apparent attempt to divert the Court's attention from the substantive deficiencies in its case, Plaintiff has resorted to making false and inflammatory accusations against Funlingo's counsel and has gone so far as to seek sanctions. Yet Plaintiff cites no legal authority—no case law, rule, or statute—in support of its sanction demand. Plaintiff presumably relies on [FRCP 11\(b\)](#), which requires attorneys to "make a reasonable inquiry into the factual and legal basis for the claims asserted," and provides for sanctions when counsel fails "to make an objectively reasonable investigation." [Gottlieb v. Westin Hotel Co.](#), 990 F.2d 323, 327 (7th Cir. 1993). However, "[t]o avoid chilling legitimate advocacy, courts must apply Rule 11 cautiously," and "[a]n attorney should not take a motion for the

imposition of Rule 11 sanctions lightly.” Dean v. Thompson, No. 92 C 20388, 1993 WL 299072 (N.D. Ill. July 9, 1993).

Moreover, Rule 11(c)(2) requires that “[a] motion for sanctions must be made separately from any other motion” and “must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service.” FRCP 11(c)(2). Here, Plaintiff has neither filed a separate motion nor complied with the 21-day safe harbor requirement. Thus, its request for sanctions in its opposition brief is procedurally improper.

Ironically, Plaintiff seeks to sanction Funlingo’s counsel for doing precisely what Rule 11 requires: conducting a factual and legal investigation into the claims asserted.

Plaintiff accuses counsel of sending “repetitive, demanding, harassing, and threatening emails” (Dkt. #60 at 13), and of “coercing a Zoom conference” through “repeatedly harassing [emails]” (Dkt. #60 at 3). These allegations are entirely without merit. The full chain of correspondence between counsel, attached as Exhibit K (Dkt. #47-12 at 10/13), conclusively refutes these claims. Nothing in the email record reflects any harassing, improper, or unprofessional conduct. Rather, the emails show a professional and diligent effort by Funlingo’s counsel to obtain clarification of the legal and factual basis for Plaintiff’s claims—efforts that were repeatedly met with evasion, delay, and non-responsiveness from Plaintiff’s counsel, including missed Zoom conference, unanswered phone calls, and ignored emails. Plaintiff now attempts to reframe routine and appropriate litigation communications as “harassment”—a characterization that is not only inaccurate but affirmatively misleading.

Even more troubling is Plaintiff’s false accusation that Funlingo’s counsel engaged

in “[f]raudulent manipulating [of] evidence” ([Dkt. #60](#) at 16). The sole basis for this extraordinary allegation is that, during the February 27, 2025 Zoom conference, Funlingo’s counsel demonstrated to Plaintiff’s counsel via screen-sharing that the list of 129 URLs—each containing the term “Modlily” in the post-domain path—did not constitute evidence of trademark infringement. (See [Dkt. #47-1](#) at ¶ 20.) Counsel’s real-time, online demonstration illustrated that the URLs remained fully functional after the term “Modlily” was removed, and that those URLs would continue to direct to the same Amazon product pages regardless of what term appeared between “www.amazon.com/” and “/dp/[ASIN].” (See [Dkt. #47](#) at 6–7.)

This demonstration was not evidence manipulation, but a factual illustration of how Amazon’s URL structure works—an analysis consistent with the holdings in the [Interactive Products](#) and [Instant One Media](#) courts, which both held that post-domain terms do not, as a matter of law, signify source or constitute trademark infringement. Plaintiff now mischaracterizes this demonstration as a “manipulation” and a “neat trick” ([Dkt. #60](#) at 11), but this mischaracterization is both false and malicious. The demonstration was a repeatable, transparent exercise designed to aid the Court in understanding the technical basis for Funlingo’s position—namely, that the 129 URLs presented by Plaintiff are not probative of infringement. The purpose of this exercise and its import were spelled out in clear terms in the motion (see [Dkt. #47](#) at 6–7). Plaintiff’s accusation that this was “fraudulent manipulation” is a reckless and malicious charge that misstates both the facts and the law.

It is Plaintiff—not Funlingo’s counsel—that seeks to chill legitimate legal advocacy. Plaintiff appears to be alarmed that Funlingo’s counsel has not only challenged the

sufficiency of its evidence but has done so effectively and persuasively. This baseless accusation is not a good-faith response to argument; it is a retaliatory strike aimed at discrediting opposing counsel for presenting inconvenient truths.

The act of falsely accusing opposing counsel of evidence tampering is itself sanctionable conduct. In [*Cavelle v. Chicago Transit Auth.*](#), No. 17-CV-5409, 2020 WL 133277 (N.D. Ill. Jan. 13, 2020), the district court imposed sanctions on Plaintiff and his counsel based on their unfounded “accusations of witness tampering, their failure to correct or withdraw their allegations, and their failure to provide basic information to Defendants for the purpose of investigating the allegations.” [*Id.*](#), at *2. As Judge Robert Dow, Jr. observed, accusation of witness tampering “is not a civil cause of action that Plaintiff and his counsel may bring or not at their whim,” [*id.*](#), at *6, but rather “is an attack on the integrity of the judicial process serious enough to warrant criminalization and severe punishment” that both Courts and those accused must take such allegations seriously. [*Id.*](#), at *5.

Plaintiff accuses Funlingo’s counsel of misrepresenting that he did not have access to sealed Dkt. #8, claiming he displayed it during the February 27, 2025 Zoom conference ([Dkt. #60](#) at 9). This is incorrect. At the time the motion was filed, Funlingo only had a partial excerpt—a three-page list of 129 URLs provided by Plaintiff—which it disclosed in the Gao Declaration ([Dkt. #47-1](#) ¶ 3) and attached as motion Exhibit A ([Dkt. #47-2](#)). This list corresponds to only a portion of [Dkt. #8-1](#) and not the full document, which remained under seal at the time of motion and was not served in its entirety despite repeated requests. Funlingo’s motion accurately described what had been received and sought expedited discovery precisely because Plaintiff refused to produce the complete evidence. Plaintiff’s accusation is both misleading and unfounded.

Plaintiff's counsel alleges that in a March 6, 2025 email, she "directly and expressly advised" Funlingo's counsel that she had found "*additional*, even more convincing evidence of infringement," and accuses Funlingo's counsel of failing to disclose that communication. ([Dkt. #60](#) at 9.) That claim is misleading. The email in question merely stated: "In following up on my end, I learned that we have more than sufficient evidence to proceed. Thank you for taking the time to discuss the URL trick with me, but thankfully it does not defeat the case." ([Dkt. #47-12](#) at 1/13.) Plaintiff's counsel did not identify or describe any "additional" evidence in that message, nor did she attach any such evidence then—or now. Plaintiff likewise failed to submit this purported "more convincing" evidence with its opposition brief, suggesting it does not exist. Instead, Plaintiff continues to oppose any expedited discovery while seeking to keep Funlingo's assets frozen indefinitely, a tactic plainly designed to extract coercive settlement leverage.

Plaintiff alleges that its counsel suggested filing a one-page motion to unseal during the February 27, 2025 Zoom conference, but claims Funlingo delayed until March 7, 2025 to do so. This is inaccurate. As the email record shows, Funlingo's counsel sent Plaintiff a draft motion to unseal on February 28, 2025, requesting confirmation that Plaintiff would not oppose the motion. ([Dkt. #47-12](#) at 4/13.) Plaintiff did not respond until March 6, 2025—nearly a week later. ([Dkt. #47-12](#) at 1/13.) Any delay was caused by Plaintiff's own failure to respond.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in the opening brief, Funlingo respectfully requests that the Court grant its motion in its entirety.

Dated: April 18, 2025

Respectfully submitted,

/s/ Zheng Gao

Zheng Gao, Esq.

Reid & Wise LLC

One Penn Plaza, Suite 2015

New York, New York 10119

C: (212) 858-9968

zgao@reidwise.com

Attorneys for Defendant Funlingo

CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2025, a copy of the foregoing was filed via the Court's ECF filing system, thereby serving it upon all counsel of record.

/s/ Zheng Gao
Zheng Gao, Esq.