

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

GAG GIFTS FOR GOOD CAUSES, LLC
(dba: POOPING POOCHES),

Plaintiff,

v.

THE INDIVIDUALS, CORPORATIONS,
LIMITED LIABILITY COMPANIES,
PARTNERSHIPS, AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE A HERETO,

Defendants.

Case No.:

COMPLAINT

Plaintiff, GAG GIFTS FOR GOOD CAUSES, LLC, dba: POOPING POOCHES (hereinafter “Plaintiff” and/or “POOPING POOCHES”), by and through undersigned counsel, hereby complains of the Partnerships and Unincorporated Associations identified in Schedule A attached hereto (collectively, “Defendants”), and alleges as follows:

INTRODUCTION

1. This action has been filed by Plaintiff to combat e-commerce store operators who trade upon Plaintiff’s reputation and goodwill by offering for sale and/or selling unauthorized and unlicensed products using infringing and counterfeit versions of Plaintiff’s federally registered trademarks (the “Counterfeit Products”).

2. Defendants created numerous Internet Stores and designed them to appear to be selling genuine Plaintiff's products, while selling inferior imitations of Plaintiff's products. Defendant Internet Stores share unique identifiers, such as design elements and similarities of the counterfeit products offered for sale, establishing a logical relationship between them and suggesting that Defendants' illegal operations arise out of the same transaction, occurrence, or series of transactions or occurrences. Defendants attempt to avoid liability by going to great lengths to conceal both their identities and the full scope and interworking of their illegal counterfeiting operation. Plaintiff is forced to file this action to combat Defendants' counterfeiting of Plaintiff's registered trademarks as well as to protect unknowing consumers from purchasing unauthorized products over the Internet. Plaintiff has been and continues to be irreparably damaged through consumer confusion, dilution and tarnishment of its valuable trademarks as a result of Defendants' actions and seek injunctive and monetary relief.

3. This Court has personal jurisdiction over each Defendant, in that each Defendant conducts significant business in Illinois and in this Judicial District, and the acts and events giving rise to this lawsuit of which each Defendant stands accused were undertaken in Illinois and in this Judicial District. In addition, each Defendant has offered to sell and ship infringing products into this Judicial District.

JURISDICTION AND VENUE

4. This Court has original subject matter jurisdiction over this matter pursuant to 28 U.S. Code §§ 1331 and 1367. POOPING POOCHES' federal claims are predicated on the Lanham Act, 15 U.S.C. § 1125, and its claims arising under the State of Illinois are so substantially related to its federal claims such that they form part of the same case or controversy under Article III of the U.S. Constitution.

5. This Court has personal jurisdiction over Defendants because they have expressly aimed tortious activities towards the State of Illinois and have established sufficient minimum contacts with Illinois by advertising and selling substantial quantities of infringing products to consumers within Illinois through a highly interactive commercial website. POOPING POOCHES' claims arise out of the Defendants' substantial and regular sales of infringing products that cause direct harm to POOPING POOCHES.

6. Venue is properly found in this Judicial District under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claim herein occurred within this Judicial District, or, in the alternative, because a Defendant is subject to personal jurisdiction in this District.

THE PLAINTIFF

7. Plaintiff owns and manages the licensing, sale, and marketing of "POOPING POOCHES" brand products. Plaintiff, POOPING POOCHES, is a California corporation with its principal place of business at 2201 Shore Line Dr, #1786 Alameda, CA 9450. Plaintiff JACOB WAGENMAN is the Chief Executive Officer of POOPING POOCHES.

8. Plaintiff is in the business of developing, marketing, selling and distributing of POOPING POOCHES products. POOPING POOCHES has been a highly sought after product, a staple gift, and staple "Gag Gift" across the country for over ten (10) years. Original POOPING POOCHES calendars bring life's beauty and humor to light by displaying high quality images of animals relieving themselves in beautiful natural settings. POOPING POOCHES brand calendars feature original, copyright protected photography. Fans of the calendar are able compete for a spot in the following year's calendar edition by submitting high-resolution photos of their pet to info@poopingpooches.com. POOPING POOCHES is not just a brand that pays homage to the art of comedic gift-giving, POOPING POOCHES has been a business partner with the Maui Humane

Society since 2013. One dollar (\$1) from the sale of each calendar is donated to the Maui Humane Society to support animals in need.

9. Plaintiff is the owners of U.S. Trademark Registration No. 6,197,383 (“POOPING POOCHES”) in class 16 and U.S. Trademark Registration No. 7,071,501 (“POOPING POOCHES”) in classes 16, 21, 25, and 28. (collectively, the “POOPING POOCHES Trademarks”).

10. The above registrations for the POOPING POOCHES marks are valid, subsisting, and in full force and effect. True and correct copies of the federal trademark registration certificates for the above-referenced marks are attached hereto as Exhibits 1 and 2.

11. The POOPING POOCHES Trademarks are distinctive and identify merchandise as goods originating from POOPING POOCHES or its duly authorized licensees. The POOPING POOCHES Trademarks have been continuously used and never abandoned.

12. Plaintiff’s POOPING POOCHES Trademarks are exclusive to Plaintiff and are displayed prominently on Plaintiff’s Products and extensively in Plaintiff’s marketing and promotional materials. Plaintiff’s POOPING POOCHES Trademarks have been the subject of substantial and continuous marketing and promotion by Plaintiff at great expense. In fact, Plaintiff have expended significant resources annually advertising, promoting and marketing featuring Plaintiff’s POOPING POOCHES Trademarks. Plaintiff’s promotional efforts include — by way of example, but not limitation — print media, a website (<https://poopingpooches.com/>), social media sites, multiple ecommerce sites, and point of sale materials. Because of these and other factors, Plaintiff’s POOPING POOCHES Trademarks have become very well-known.

13. Plaintiff's POOPING POOCHES Trademarks are distinctive when applied to Plaintiff's Products, signifying to the purchaser that the products come from Plaintiff and are manufactured to Plaintiff's quality standards. Whether Plaintiff manufacture the products themselves or license others to do so, Plaintiff have ensured that products bearing their trademarks are manufactured to the highest quality standards. Plaintiff's POOPING POOCHES Trademarks have achieved fame and recognition, which has only added to the inherent distinctiveness of the marks. As such, the goodwill associated with Plaintiff's POOPING POOCHES Trademarks is incalculable and of inestimable value to Plaintiff. Plaintiff's POOPING POOCHES Trademarks qualify as famous marks, as used in 15 U.S.C. §1125 (c)(1), and have been continuously used and never abandoned.

14. Plaintiff have expended substantial time, money, and other resources in developing, advertising, and otherwise promoting its Trademarks. As a result, products bearing the POOPING POOCHES Trademarks are widely recognized and exclusively associated by consumers, the public and the trade as products sourced from Plaintiff.

THE DEFENDANTS

15. Defendants are individuals and business entities who, upon information and belief, mostly reside in the People's Republic of China or other foreign jurisdictions. Defendants conduct business throughout the United States, including Illinois and within this Judicial District, through the operation of the fully interactive commercial websites and online marketplaces operating under the Defendants' Internet Stores. Each Defendant targets the United States, including Illinois, and has offered to sell and, on information and belief, has sold and continues to sell counterfeit products to consumers within the United States, including Illinois and this Judicial District.

16. More and more infringing online sellers who offer identical infringing products are being discovered online daily. Online sellers are increasingly copying Plaintiff's product, copyrights, and trademarks due to its exponential growth in popularity. As such, Plaintiff shall seek to add additional defendants as the relevant facts and information come to light.

THE DEFENDANTS' UNLAWFUL CONDUCT

17. The success of Plaintiff's brand has resulted in its counterfeiting. Plaintiff have identified numerous domain names linked to fully interactive websites and marketplace listings on platforms including, but not limited to, Temu.com, eBay.com, Walmart.com, Amazon.com, AliExpress.com, and Etsy.com, including the Defendants' Internet Stores, and social media accounts which were offering for sale, selling and importing counterfeit products to consumers in this Judicial District and throughout the United States. Defendants have persisted in creating the Defendants' Internet Stores. Internet websites like the Defendant Internet Stores are estimated to receive tens of millions of visits per year and generate over \$135 billion in annual online sales. According to an intellectual property rights seizures statistics report issued by Homeland Security, the manufacturer's suggested retail price (MSRP) of goods seized by the U.S. government in 2013 was over \$1.74 billion, up from \$1.26 billion in 2012. Internet websites like the Defendants' Internet Stores are also estimated to contribute to tens of thousands of lost jobs for legitimate businesses and broader economic damages such as lost tax revenue.

18. Upon information and belief, Defendants facilitate sales by designing the Defendants' Internet Stores so that they appear to unknowing consumers to be authorized online retailers, outlet stores, or wholesalers selling genuine POOPING POOCHES products. Many of the Defendants' Internet Stores look sophisticated and accept payment in U.S. dollars via credit cards and Amazon, eBay, Etsy, AliExpress, Temu, and Walmart. Defendants' Internet Stores often include images and

design elements that make it very difficult for consumers to distinguish such counterfeit sites from an authorized website. Plaintiff has not licensed nor authorized Defendants to use its Trademarks and none of the Defendants are authorized retailers of their genuine products.

19. Upon information and belief, Defendants deceive unknowing consumers by using the Plaintiff's POOPING POOCHES Trademarks without authorization on its products, and within the content, text, and/or meta tags of its websites to attract various search engines looking for websites relevant to consumer searches for Plaintiff's products. Additionally, upon information and belief, Defendants use other unauthorized search engine optimization (SEO) tactics and social media spamming so that the Defendants' Internet Stores listings show up at or near the top of relevant search results and misdirect consumers searching for Plaintiff's genuine products. Further, Defendants utilize similar illegitimate SEO tactics to propel new domain names to the top of search results after others are shut down. As such, Plaintiff seek to disable the Domain Names owned by Defendants through which their counterfeit products are sold.

20. Defendants go to great lengths to conceal their identities and often use multiple fictitious names and addresses to register and operate their massive network of Internet Stores. For example, many of Defendants' names and physical addresses used to register their Domain Names are incomplete, contain randomly typed letters, or fail to include cities or states. Other Defendants' Domain Names use privacy services that conceal the owners' identity and contact information. Upon information and belief, some of the tactics used by the Defendants to conceal their identities and the scope and interworking of their counterfeit operations to avoid being shut down include regularly creating new websites and online marketplace accounts on various platforms using the identities listed in Schedule A to the Complaint, as well as other fictitious names and addresses.

21. Even though Defendants operate under multiple names, there are numerous similarities among the Defendants' Internet Stores. For example, some of the Defendants' websites have identical layouts, even though different aliases were used to register their respective domain names. In addition, the counterfeit products for sale in the Defendants' Internet Stores bear similarities and indicia of being related to one another, suggesting that the counterfeit products were manufactured by a common source and that Defendants are interrelated. The Defendants' Internet Stores also include other notable common features, including use of the same domain name registration patterns, unique shopping cart platforms, similar payment and check-out methods, meta data, illegitimate SEO tactics, HTML user-defined variables, domain redirection, lack of contact information, identically or similarly priced items and volume sales discounts, similar hosting services, similar name servers, and the use of the same text and images.

22. In addition to operating under fictitious names, Defendants in this case and defendants in other similar cases against online counterfeiters use a variety of other common tactics to evade enforcement efforts. For example, when counterfeiters like Defendants receive notice of a lawsuit, they will often register new domain names or online marketplace accounts under new aliases and move website hosting to rogue servers located outside the United States once notice of a lawsuit is received. Rogue servers are notorious for ignoring take down demands sent by brand owners. Counterfeiters will also ship products in small quantities via international mail to minimize detection by U.S. Customs and Border Protection. A 2012 U.S. Customs and Border Protection report on seizure statistics indicated that the Internet has fueled "explosive growth" in the number of small packages of counterfeit goods shipped through the mail and express carriers.

23. Further, counterfeiters such as Defendants typically operate multiple credit card and merchant accounts behind layers of payment gateways so that they can continue to operate in spite

of Plaintiff's enforcement efforts. Upon information and belief, Defendants maintain offshore bank accounts and regularly move funds from their U.S. merchant accounts to offshore bank accounts outside the jurisdiction of this Court. Indeed, analysis of transaction logs from prior similar cases indicate that offshore counterfeiters regularly move funds from U.S.-based merchant accounts to China-based bank accounts, for example, outside the jurisdiction of this Court.

24. Defendants, without any authorization or license from Plaintiff, have knowingly and willfully used and continue to use Plaintiff's POOPING POOCHES Trademarks in connection with the advertisement, distribution, offering for sale, and sale of counterfeit products into the United States and Illinois over the Internet. Each Defendants' Internet Stores offer shipping to the United States, including Illinois and, on information and belief, each Defendant has offered to sell counterfeit products into the United States, including Illinois.

25. Defendants' use of Plaintiff's POOPING POOCHES Trademarks in connection with the advertising, distribution, offering for sale and sale of pirated and counterfeit products, including the sale of pirated and counterfeit products into Illinois, is likely to cause and has caused confusion, mistake, and deception by and among consumers and is irreparably harming Plaintiff.

COUNT I
TRADEMARK INFRINGEMENT AND COUNTERFEITING (15 U.S.C. § 1114)

26. Plaintiff repeats and incorporates by reference herein the allegations contained in paragraphs 1-24 of this Complaint.

27. This is a trademark infringement action against Defendants based on their unauthorized use in commerce of counterfeit imitations of Plaintiff's products and unauthorized use of its Trademarks in connection with the sale, offering for sale, distribution, and/or advertising of infringing goods. Plaintiff's POOPING POOCHES Trademarks are highly distinctive. Consumers have come to expect the highest quality from Plaintiff's products provided under its Trademarks.

28. Defendants have sold, offered to sell, marketed, distributed, and advertised, and are still selling, offering to sell, marketing, distributing and advertising pirated, infringing, and counterfeit products in connection with Plaintiff's POOPING POOCHES Trademarks without Plaintiff's permission.

29. Plaintiff is the owner of the POOPING POOCHES Trademarks (Exhibits 1 & 2). The United States Registrations for Plaintiff's POOPING POOCHES Trademarks are in full force and effect. Upon information and belief, Defendants have knowledge of Plaintiff's rights in its Trademarks and are willfully infringing and intentionally using Plaintiff's POOPING POOCHES Trademarks on counterfeit products. Defendants' willful, intentional and unauthorized use of Plaintiff's POOPING POOCHES Trademarks is likely to cause and is causing confusion, mistake and deception as to the origin and quality of the counterfeit products among the general public.

30. Defendants' activities constitute willful trademark infringement and counterfeiting under 15 U.S.C. §§ 1114, 1117.

31. The injuries and damages sustained by Plaintiff have been directly and proximately caused by Defendants' wrongful reproduction, use, advertisement, promotion, offering to sell and sale of counterfeit POOPING POOCHES products

32. Plaintiff has no adequate remedy at law, and, if Defendants' actions are not enjoined, Plaintiff will continue to suffer irreparable harm to their reputation and the goodwill of their well-known Trademarks.

COUNT II
FALSE DESIGNATION OF ORIGIN (15 U.S.C. § 1125(a))

33. Plaintiff repeats and incorporates by reference herein the allegations contained in paragraphs 1-24 of this Complaint.

34. Defendants' promotion, marketing, offering for sale and sale of counterfeit products have created and are creating a likelihood of confusion, mistake and deception among the general public as to the affiliation, connection or association with Plaintiff or the origin, sponsorship or approval of Defendants' counterfeit products by Plaintiff.

35. By using Plaintiff's POOPING POOCHES Trademarks in connection with the sale of counterfeit imitations of Plaintiff's products, Defendants create a false designation of origin and a misleading representation of fact as to the origin and sponsorship of the counterfeit products.

36. Defendants' conduct constitutes willful false designation of origin and misrepresentation of fact as to the origin and/or sponsorship of the counterfeit imitations of Plaintiff's products to the general public under 15 U.S.C. §§ 1114, 1125.

37. Plaintiff has no adequate remedy at law, and, if Defendants' actions are not enjoined, Plaintiff will continue to suffer irreparable harm to their reputation and the goodwill of their brand.

COUNT III
VIOLATION OF ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES ACT
(815CS § 510/1, et seq.)

38. Plaintiff repeats and incorporates by reference herein the allegations contained in paragraphs 1-24 of this Complaint.

39. Defendants have engaged in acts violating Illinois law including, but not limited to, passing off their counterfeit products as those of Plaintiff, causing likelihood of confusion and/or misunderstanding as to the source of its goods, causing likelihood of confusion and/or misunderstanding as to an affiliation, connection or association with genuine products, representing that their products have Plaintiff's approval when they do not, and engaging in other conduct which creates likelihood of confusion or misunderstanding among the public.

40. The foregoing Defendants' acts constitute a willful violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510/1 et seq.

41. Plaintiff has no adequate remedy at law, and Defendants' conduct has caused Plaintiff to suffer damage to their reputation and goodwill. Unless enjoined by the Court, Plaintiff will suffer future irreparable harm as a direct result of Defendants' unlawful activities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff pray for judgment against Defendants and each of them as follows:

1) That Defendants, their affiliates, officers, agents, servants, employees, attorneys and all persons acting for, with, by, through, under, or in active concert with them be temporarily, preliminarily and permanently enjoined and restrained from:

- a. using Plaintiff's POOPING POOCHES Trademarks or any confusingly similar trademark or name in any manner in connection with the distribution, marketing, advertising, offering for sale, or sale of any product that is not a genuine product or is not authorized by Plaintiff to be sold in connection with Plaintiff's POOPING POOCHES Trademarks;
- b. passing off, inducing, or enabling others to sell or pass off any product as a genuine product or any other product produced by Plaintiff that is not Plaintiff's or is not produced under the authorization, control, or supervision of Plaintiff and approved by Plaintiff for sale under their Trademarks;
- c. committing any acts calculated to cause consumers to believe that Defendants' counterfeit products are those sold under the authorization, control, or supervision of Plaintiff, or are sponsored by, approved by, or otherwise connected with Plaintiff;

- d. further infringing Plaintiff's POOPING POOCHES Trademarks and damaging Plaintiff's reputation and goodwill;
 - e. shipping, delivering, holding for sale, transferring or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner, products or inventory not manufactured by or for Plaintiff, nor authorized by Plaintiff to be sold or offered including Plaintiff's POOPING POOCHES Trademarks, or any reproductions, counterfeit copies, or colorable imitations thereof
 - f. using, linking to, transferring, selling, exercising control over, or otherwise owning the Online Marketplace Accounts, the Defendant Domain Names, or any other domain name or online marketplace account that is being used to sell or is the means by which Defendants could continue to sell counterfeit products; and
 - g. operating and/or hosting websites at the Defendants' Domain Names and any other domain names registered or operated by Defendants that are involved with the distribution, marketing, advertising, offering for sale, or sale of any product bearing Plaintiff's POOPING POOCHES Trademarks or any reproduction, counterfeit copy or colorable imitation thereof that is not a genuine product or is not authorized by Plaintiff to be sold in connection with their Trademarks;
- 2) That Defendants, within fourteen (14) days after service of judgment with notice of entry thereof upon them, be required to file with the Court and serve upon Plaintiff a written report under oath setting forth in detail the manner and form in which Defendants have complied with paragraph 1, a through g, above;
- 3) Entry of an Order that, at Plaintiff's choosing, the registrant of the Defendants' Domain Names shall be changed from the current registrant to Plaintiff, and that the domain name registries

for the Defendants' Domain Names, including, but not limited to, VeriSign, Inc., Neustar, Inc., Afiliast Limited, CentralNic, Nominet, and the Public Interest Registry, shall unlock and change the registrar of record for the Defendants' Domain Names to a registrar of Plaintiff's selection, and that the domain name registrars take any steps necessary to transfer the Defendants' Domain Names to a registrar of Plaintiff's selection; or that the same domain name registries shall disable the Defendants' Domain Names and make them inactive and untransferable;

4) Entry of an Order that, upon Plaintiff's request, those in privity with Defendants and those with notice of the injunction, including any online marketplaces such as Temu, eBay, Etsy, Amazon, Walmart and AliExpress/Alibaba, social media platforms, Facebook, YouTube, LinkedIn, Twitter, Snap Chat, Internet search engines such as Google, Bing and Yahoo, web hosts for the Defendants' Domain Names, and domain name registrars, shall:

- a. disable and cease providing services for any accounts through which Defendants engage in the sale of counterfeit products using Plaintiff's POOPING POOCHES Trademarks including any accounts associated with the Defendants listed in Schedule A;
- b. disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of counterfeit products using Plaintiff's POOPING POOCHES Trademarks; and
- c. take all steps necessary to prevent links to the Defendants' Domain Names identified in Schedule A from displaying in search results, including, but not limited to, removing links to the Defendants' Domain Names from any search index;

5) That Defendants account for and pay to Plaintiff all profits realized by Defendants by reason of Defendants' unlawful acts herein alleged, and that the amount of damages for

infringement of Plaintiff's POOPING POOCHES Trademarks are increased by a sum not exceeding three times the amount thereof as provided by 15 U.S.C. § 1117;

6) In the alternative, Plaintiff is awarded statutory damages pursuant to 15 U.S.C. § 1117(c) of not less than \$1,000 and not more than \$2,000,000 for each and every use of their trademark;

- 1) That Plaintiff is awarded their reasonable attorneys' fees and costs; and
- 2) Award any and all other relief that this Court deems just and proper.

Dated: December 20, 2024

Respectfully submitted,

/s/ Cory Jay Rosenbaum

(electronically signed)

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