IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS 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.: 1:24-cv-13117

PLAINTIFF'S SUPPLEMENTAL MEMORANDUM ESTABLISHING THAT JOINDER IS PROPER

Plaintiff, GAG GIFTS FOR GOOD CAUSES, LLC, dba POOPING POOCHES ("Plaintiff" or "Pooping Pooches"), submits the following memorandum establishing that joinder is proper:

INTRODUCTION

Plaintiff is responsible for the creation and distribution of fun and humorous Pooping Pooches calendars that display twelve specially curated photographs of animals relieving themselves in beautiful natural settings. Jacob Wagenman ("Wagenman"), the Chief Executive Officer, derived the idea from a playful and unusual family tradition, beginning with his grandmother, of pointing out pooping dogs to each other. Although this family tradition began as a joke, Wagenman has now turned it into a profitable and popular company that generates and sells these calendars and owns associated intellectual property, U.S. Trademark Registration Nos. 6,197,383 and 7,071,501 (the "Pooping Pooches Trademarks"). Wagenman has also made it a priority to give back to his community by having engaged in a partnership with the Maui Humane Society since 2013 in which one dollar from the sale of each Pooping Pooches calendar is donated to the organization to support animals in need. Thus, Plaintiff is entirely responsible for the conception and development of the Pooping Pooches company and brand as well as the popularity of the Pooping Pooches Trademarks.

Defendants are various individuals and business entities that manufacture and distribute products that infringe on Plaintiff's Pooping Pooches Trademarks, including other calendars, Christmas ornaments, and coloring books. Defendants improperly attempt to capitalize on the brand recognition and goodwill that Plaintiff has spent years and considerable resources cultivating and illegally cause consumer confusion by representing their products as though they emanate from, are associated with, or approved by Pooping Pooches when that is not the case.

On December 20, 2024, Plaintiff filed its Complaint against twenty-seven (27) Schedule A Defendants that are infringing on its Pooping Pooches Trademarks [DE 2]. Plaintiff also filed its Motion for an *Ex Parte* Temporary Restraining Order against the Schedule A Defendants in order to put a stop to their relentless infringing activities [DE 3]. On January 2, 2025, the Court questioned the propriety of joinder of the Schedule A Defendants in this action and ordered Plaintiff to file this memorandum explaining the connection between the Schedule A Defendants as well as an explanation as to why joinder is proper [DE 12].

LEGAL STANDARD

Permissive joinder is governed by the standard set forth in Rule 20 of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 20. "Rule 20(a)(2) provides that defendants may be joined in a single action if '(A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action.'" *Roadget Bus. Pte.. Ltd. v. Individuals, Corp., Ltd. Liab. Cos., P'ships, & Unincorporated Ass'ns Identified on Schedule A Hereto*, No. 24 CV 607, 2024 U.S. Dist. LEXIS 119991, at *19-20 (N.D. Ill. July 9, 2024). "[Determining whether joinder is proper] involves a case-by-case assessment of the facts and circumstances and balancing of the key factors underlying the joinder analysis – fundamental fairness to plaintiffs, judicial economy, and avoiding prejudice to defendants." *Viking Arm AS v. P'ships & Unincorporated Ass'ns Identified on Schedule* A, No. 24 C 1566, 2024 U.S. Dist. LEXIS 104123, at *5-6 (N.D. Ill. June 6, 2024). Courts have generally maintained a favorable attitude towards joinder to the extent that it helps promote judicial efficiency, "[T]he impulse is toward entertaining the broadest possible scope of action consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged.'" *Bailie v. P'ships & Unincorporated Ass'ns Identified on Schedule A*, No. 24 cv 2150, 2024 U.S. Dist. LEXIS 87494, at *6 (N.D. Ill. May 15, 2024) (quoting *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 724, 86 S. Ct. 1130, 16 L. Ed. 218 (1966)).

A. The Schedule A Defendants' Infringement Arises Out of the Same Transactions or Occurrences

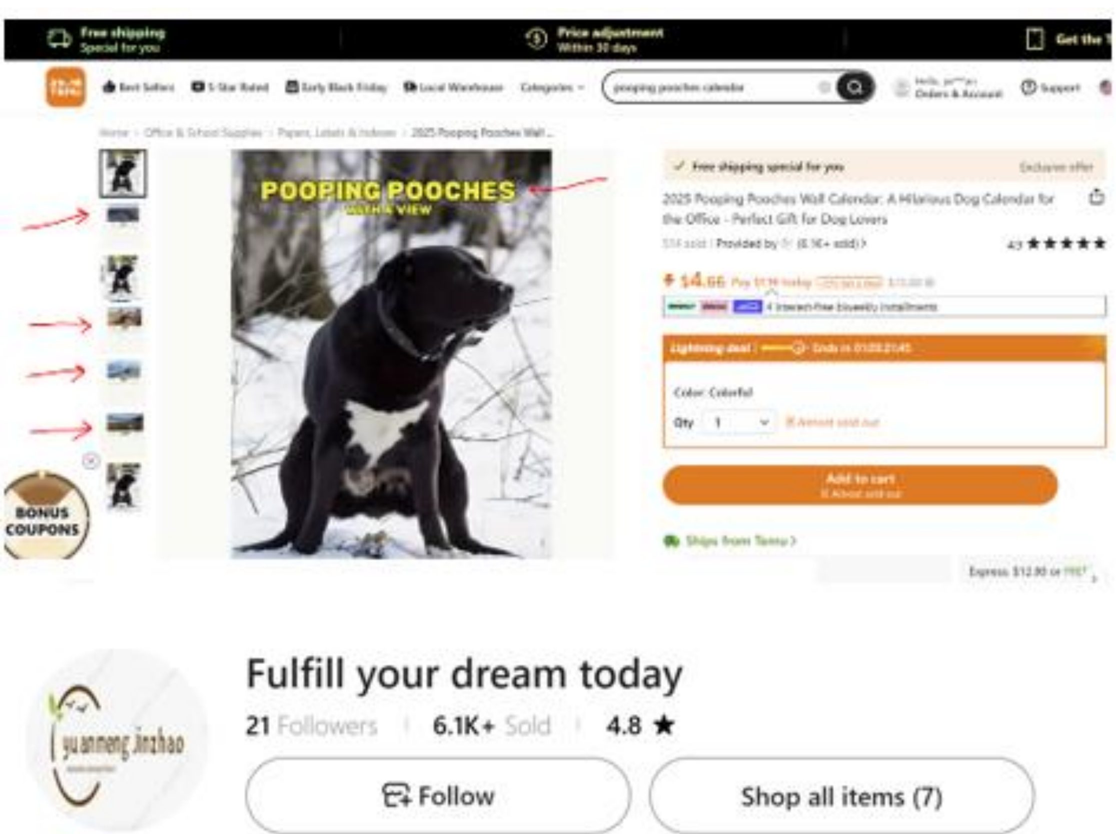
In addressing the first element of permissive joinder, many courts in the Northern District of Illinois have used the logical relationship test. "'[I]ndependent defendants satisfy the transaction-or-occurrence test of Rule 20 when there is a logical relationship between the separate causes of action. The logical relationship test is satisfied if there is a substantial evidentiary overlap.'" *Roadget Bus. Pte.. Ltd.*, No. 24 CV 607 at *25 (quoting *In re EMC Corp.*, 677 F.3d 1351, 1358 (Fed. Cir. 2012)). "The Seventh Circuit has explained that '[t]he purpose behind the [logical relationship] rule is judicial economy; to avoid a multiplicity of actions by resolving in a single lawsuit all disputes that ensue from a common factual background.'" *Zamora v. Jaddou*, 347 F.R.D. 505, 508 (N.D. Ill. 2024). "'To be part of the "same transaction" requires shared, overlapping facts that give rise to each cause of action.'" *Id.* at 508-509 (quoting *In re EMC Corp.*, 677 F.3d at 1359). Courts in this district have previously found that "due to the nature of the internet, 'an "occurrence" of mass harm easily can be inflicted even if there is no express "transactional" coordination among the attackers.'" *Bailie*, No. 24 cv 2150 at *8.

Although Rule 20 mentions both transactions and occurrences, courts in this district have found that an occurrence is a broader event than a transaction. *See Bose Corp. v. P'ships & Unincorporated Ass'ns Identified on Schedule "A"*, 334 F.R.D. 511, 516 (N.D. Ill. 2020) ("Unlike a "transaction," an "occurrence" is not necessarily the product of joint or coordinated action"). *Bose Corp.* articulated why internet infringement cases are unique circumstances concerning joinder of defendants, "The internet frequently produces occurrences that can be described as cooperative but not transactional or intentionally coordinated. Individual actions which alone may have minimal impact…can have a substantial impact through aggregation that is only possible through the internet." *Id.* The harm the plaintiff in *Bose Corp.* suffered was a result of the Defendants' collective actions rather than any individual effort; in fact, the sales any one defendant may have derived from the sale of their infringing products alone likely did not have much an effect on the plaintiff. *Id.* at 517. However, the occurrence of the defendants' infringement resulted in the impactful harm to the plaintiff and compelled the plaintiff to seek relief through the courts as its only remedy. *Id.* As the court found, "[F]iling individual causes of action against each counterfeiter [would ignore] the form of the harm [the plaintiff] faces." *Id.*

Similar to the plaintiff in *Bose Corp.*, Plaintiff here suffers harm as a result of the Schedule A Defendants' actions as an aggregate whole. The Defendants' attempts to capitalize on Plaintiff's intellectual property in order to divert sales from Plaintiff to themselves have had a severe and detrimental effect on Plaintiff's ability to run its business and support its employees. Thus, the

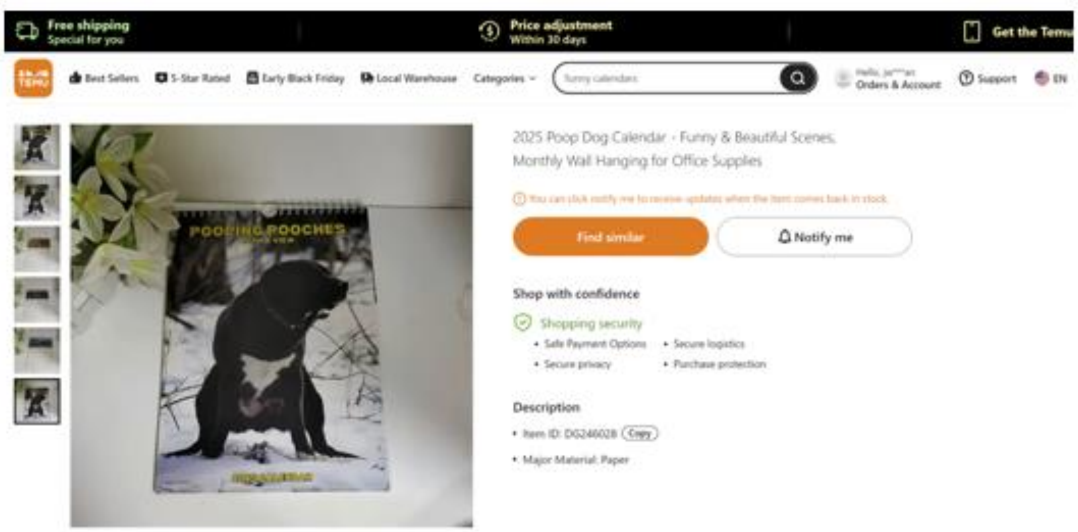
Defendants' actions collectively constitute an occurrence that, while perhaps not as coordinated as a transaction, is definitely intentional and impactful.

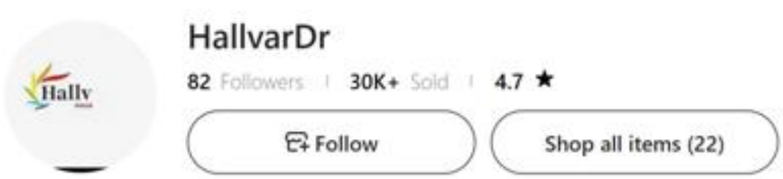
Further, in addition to the aggregate whole, there is a logical relationship between the Defendants' infringement because various sellers offer products on their storefronts bearing the exact same images and text. The below images are only a small sampling of the evidence Plaintiff has detected thus far regarding the Schedule A Defendants' coordination:




Free shipping
Special for you
Free returns
Up to 90 days*
POOPING POOCHES
Free shipping special for you
2025 Pooping Dogs A4 Wall Calendar - Humorous Monthly Planner with Unique Dog Scenes, Perfect for Dog Lovers & Office Decor
$4.97
Add to cart
Ships from Temu


EP
Epiphany clothing accessories
75 Followers
12K+ Sold
4.8 ★
Follow
Shop all items (20)


Free shipping
Special for you
Price adjustment
Within 30 days
2025 Poop Dog Calendar - Funny & Beautiful Scenes, Monthly Wall Hanging for Office Supplies
Find similar
Notify me
Shop with confidence
Shopping security
Description
Major Material: Paper


HallvarDr
82 Followers
30K+ Sold
4.7 ★
Follow
Shop all items (22)

It is extremely unlikely that the Defendants are independently selling the exact same infringing calendars on their storefronts under anonymous usernames with little to no identifying information. Thus, Plaintiff's well pled factual allegations permit the Court to infer a logical relationship which supports the judicial economy and efficiency of actions because the Defendants have all infringed upon Plaintiff's two Pooping Pooches Trademarks in the same way and because the dispute at hand arises from the same factual background and conduct. Plaintiff has invested copious amounts of time and resources thus far into investigating the Schedule A Defendants in an effort to determine as much information as possible about their collective infringement prior to filing suit and has made factual allegations sufficient to permit joinder due to the logical relationship between the Defendants' acts and the questions of law and fact common to the occurrences.

B. Questions of Law or Fact Common to All Defendants Will Arise in the Action for Trademark Infringement

Courts in this district have previously found that if a plaintiff can satisfy the first requirement of permissive joinder, then they will be naturally able to satisfy the second requirement. *See Zamora*, 347 F.R.D. at 509 ("[T]he Court holds that to the extent that Plaintiffs satisfy Rule 20(a)(1)(A), they will also satisfy Rule 20(a)(1)(B) given their allegations. If Plaintiffs' claims are logically related for purposes of Rule 20(a)(1)(A), it means they share a common core of facts"). Courts have also found that common questions or law or fact common to all defendants do not arise in infringement cases where, unlike here, the plaintiff is alleging infringement of multiple copyrights against defendants who are each alleged to have infringed upon different copyrights. *See Roadget Bus. Pte.. Ltd.*, No. 24 CV 607 at *32 ("The validity of [one] copyright and whether a certain Defendant infringed it does not raise a common question of law with a claim that a different Defendant infringed a different copyright").

In this case, all Schedule A Defendants have infringed upon Plaintiff's two Pooping Pooches Trademarks. Defendants all sell products bearing the name "Pooping Pooches" on sites such as Amazon and Temu in the same manner and within the same time period and provide minimal information on their storefront pages to remain anonymous. Because the circumstances between the Defendants are identical, the questions of law and fact that will arise concerning this dispute will be common to all Defendants. Further, the same counts and requests for relief are asserted against all Defendants, so the Defendants' activities will all be analyzed under the same principles and through the same lens of liability. Thus, it follows that joinder of the Schedule A Defendants makes sense because of these commonalities.

C. Joinder of the Schedule A Defendants is Consistent with Principles of Fairness and Efficiency

In reviewing questions of joinder, courts prioritize principles of fundamental fairness and whether joining parties will serve the interests of the judicial economy. *See Abraham v. Group O, Inc.*, No. 16 C 11642, 2018 U.S. Dist. LEXIS 14490, at *9, 15 (N.D. Ill. Jan. 30, 2018). In considering whether the judicial economy is served by joinder, courts may consider factors such as "overlapping discovery and duplicative judicial effort." *Robinson v. Dart*, No 13 C 1502, 2014 U.S. Dist. LEXIS 7696, at *24 (N.D. Ill. Jan. 21, 2024). Harm to the parties is also a substantial consideration. *See Viking Arm AS*, No. 24 C 1566 at *6 ("[T]he continuing harm to plaintiffs who seek immediate relief from courts to protect their intellectual property rights and prevent further economic loss is a strong consideration").

Joinder is proper as to the Schedule A Defendants because it does not violate principles of fundamental fairness. Plaintiff is a small business that is greatly harmed by the efforts of these infringers, and this lawsuit is the only means by which it can fight back against the Defendants' willful and intentional acts. The Defendants sell similar products, sell on the same variety of platforms, employ the same tactics of remaining anonymous, and share similarities in the titles and appearances of their storefronts. Further, they are all infringing on the same two trademarks, the Pooping Pooches Trademarks. Thus, Plaintiff is not randomly including a host of Schedule A Defendants without merit; Plaintiff is making a coordinated effort against a particular group of infringers to stop rampant and uncontrolled harm against its business. It would be fundamentally unfair to allow these infringers' unauthorized and unlawful activities to continue in violation of Plaintiff's interest in its own intellectual property.

Additionally, permitting joinder in this circumstance promotes principles of judicial efficiency. As aforementioned, Defendants are committing infringement of Plaintiff's Pooping Pooches Trademarks in the same manner and on the same timeline; thus, the circumstances arise out of the same transaction or occurrence and there are common questions of law and fact that pertain to each Defendant. If joinder is not permitted, Plaintiff has to face the consideration of bringing twenty-seven individual suits against each of these Schedule A Defendants; twenty-seven trademark infringement lawsuits focused on the same trademarks, the same Plaintiff, and the same facts, in the same judicial district. This consequence brings more activity to the courts in the Northern District of Illinois and increases the likelihood that the same judges will be overseeing many of these cases. Allowing Plaintiff to include the twenty-seven Schedule A Defendants it has, through research, determined to be infringing on its Pooping Pooches Trademarks in the same manner and circumstances does not cause any undue harm on the Defendants that outweighs the harm that Plaintiff is likely to face if joinder is not permitted.

CONCLUSION

Joinder of the Schedule A Defendants is proper in this dispute because the occurrences of collective infringement have caused and continue to cause great harm to Plaintiff, there are common questions of law and fact that will arise in the action, and no defendant will be prejudiced by its inclusion in the suit. For the reasons set forth in this memorandum, Plaintiff respectfully requests that the Court permit joinder of the Schedule A Defendants.

Dated: January 10, 2024

Respectfully submitted,

/s/ Cory Jay Rosenbaum
(electronically signed)

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