

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-cv-21356-ALTMAN

XYZ CORPORATION,

Plaintiff,

v.

THE INDIVIDUALS, CORPORATIONS,
LIMITED LIABILITY COMPANIES,
PARTNERSHIPS AND UNINCORPORATED
ASSOCIATIONS IDENTIFIED IN
SCHEDULE “A” HERETO,

Defendants.

SEALED ORDER GRANTING EX PARTE
MOTION FOR TEMPORARY RESTRAINING ORDER

Our Plaintiff, Hong Kong Leyuzhen Technology Co. Limited, filed an *Ex Parte* Motion for Temporary Restraining Order, Including a Temporary Injunction, a Temporary Injunction, a Temporary Asset Restraint, Expedited Discovery, and Service of Process by E-Mail and/or Electronic Publication (the “Motion”) [ECF No. 5] against the fully interactive, e-commerce stores¹ (the “Online Marketplaces”) operating under the domain names on the online Walmart platform identified in Schedule A to the Complaint and attached hereto (collectively the “Defendants”). After reviewing the Motion and the accompanying record, we **GRANT** the Plaintiff’s Motion [ECF No. 5] as follows:

THE LAW

To obtain a temporary restraining order, a party must demonstrate “(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that the

¹ The e-commerce store URLs are listed on Schedule A attached hereto.

entry of the relief would serve the public interest.” *Schiavo ex. rel Schindler v. Schiavo*, 403 F.3d 1223, 1225–26 (11th Cir. 2005).

Additionally, Fed. R. Civ. P. Rule 65 provides that:

The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney on if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

FED. R. CIV. P. 65(b)(1).

Ex parte temporary restraining orders “should be restricted to serving their underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer.” *Granny Goose Foods, Inc. v. Bd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974).

ANALYSIS

We find, in the absence of adversarial presentation, that we have personal jurisdiction over the Defendants because the Defendants directly target their business activities toward consumers in the United States, including consumers in the State of Florida. Specifically, the Plaintiff has provided a basis to conclude that the Defendants have targeted sales to Florida residents by setting up and operating e-commerce stores that target United States consumers by using one or more seller aliases, offer shipping to the United States, including to the State of Florida, and intentionally offering for sale counterfeit copies of swimwear and clothing (“Counterfeit Goods”) of the goods that Plaintiff sells in connection with Plaintiff’s federally registered word mark, MODLILY (“Plaintiff’s Products”), as shown in U.S. Trademark Registration No. 5994759 (the “Plaintiff’s Trademark”).

In this case, the Plaintiff has presented screenshot evidence that each Defendant's e-commerce store on Walmart marketplace is reaching out to do business with Florida residents by operating one or more commercial, interactive internet stores that use, without authorization, the Plaintiff's Trademark through which Florida residents can and do purchase counterfeit copies of the Plaintiff's Products. *See* Complaint Sealed Exhibit 3 [ECF No. 10-3] (including screenshot evidence and internet link confirming that each Defendant's Internet store displays the Plaintiff's Trademark without authorization in connection with offering Counterfeit Goods and they stand ready, willing, and able to ship the Counterfeit Goods to customers in Florida). Accordingly, the Court finds that the Plaintiff stands a likelihood of success on the merits of its trademark infringement, unfair competition, and false designation of origin, and state law trademark infringement and unfair competition claims for relief.

The Court additionally finds that issuance of the requested injunctive relief would be in the public interest by protecting consumers from being misled by the unauthorized use of the Plaintiff's Trademark by the Defendants on their internet stores to entice the purchase of the Counterfeit Goods. The Court also finds that it need not balance the interests of the Defendants in this case because there is credible evidence to conclude they are engaged in, among other things, willful trademark infringement of the Plaintiff's Trademark.

The Court also finds that issuing this Order without notice pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure is appropriate because the Plaintiff has presented specific facts in the Declarations of William Brees, Emily Heim, and En Fang, in support of the Motion and accompanying evidence clearly showing that immediate and irreparable injury, loss, or damage will result to the movant before the adverse parties can be heard in opposition. Specifically, in the absence of an *ex parte* Order, the Defendants could and likely would move any assets from accounts in financial

institutions under this Court's jurisdiction to offshore accounts. Accordingly, this Court Orders as follows:

TEMPORARY RESTRAINING ORDER

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

- a. Using the Plaintiff's Trademark or any reproduction, counterfeit, copy or colorable imitation of the Plaintiff's Trademark in connection with the manufacture, importation, distribution, advertisement, offer for sale and/or sale of merchandise that is not the genuine products of the Plaintiff, or in any manner likely to cause others to believe that the infringing products are connected with the Plaintiff or the Plaintiff's Products;
- b. 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 the Plaintiff, nor authorized by the Plaintiff to be sold or offered for sale, and which bear the Plaintiff's Trademark or any reproductions, counterfeit copies, or colorable imitations thereof;
- c. Using, linking to, transferring, selling, exercising control over, or otherwise owning the user accounts associated with the Plaintiff's Trademark, the Online Marketplaces listed in Schedule A attached to the Complaint, or any other domain name or online marketplace account that is being used to sell Defendant's products, or is how Defendant could continue to sell Counterfeit Goods;
- d. Manufacturing, distributing, promoting, or selling any labels, tags, decals, emblems, signs or other forms of markings, packaging, wrappers, containers, or promotional

materials bearing the Plaintiff's Trademark or any marks that include or are colorable imitations of or confusingly similar to the Plaintiff's Trademark;

- e. Passing off or enabling others to sell or pass off any goods or services that are not the Plaintiff's genuine goods or services as being the Plaintiff's genuine goods or services;
- f. Falsely representing that the Defendants or the Defendants' goods or services are affiliated with, connected to, or sponsored by the Plaintiff;
- g. Committing any acts calculated to cause consumers to believe that the Defendants' goods or services are the Plaintiff's goods or services;
- h. Communicating in any manner with any suppliers of the Counterfeit Goods or any other people involved in advertising, offering for sale, or selling the Counterfeit Goods regarding the existence of this litigation, or taking any action that would have the effect of revealing to such persons that the Plaintiff initiated this litigation;
- i. Representing by any means whatsoever, directly or indirectly, or doing any other acts or things calculated or likely to cause confusion or mistake, or to deceive consumers into believing that the Defendants' goods are the goods of the Plaintiff or that there is any affiliation or connection between the Plaintiff or its goods and the Defendants or its goods/services, and from otherwise unfairly competing with the Plaintiff;
- j. Advertising, marketing, promoting, offering to sell, selling, distributing, and/or taking orders for the Counterfeit Goods;
- k. Fulfilling orders for, or shipping or distributing the Counterfeit Goods and/or colorable imitations or reconstructions thereof;
- l. Destroying, altering, disposing of, concealing, tampering with or in any manner secreting any and all business records, invoices, correspondence, books of account, receipts or other documentation relating or referring in any manner to the

manufacture, advertising, acquisition, importation, purchase, sale or offer for sale, or distribution of any merchandise bearing the Plaintiff's Trademark or any marks that include or are colorable imitations of or confusingly similar to the Plaintiff's Trademark; and

- m. The Defendants shall not transfer or dispose of any money or other of the Defendants' assets in any of the Defendants' financial accounts.

2. The Plaintiff is authorized to issue expedited written discovery to the Defendants, pursuant to Federal Rules of Civil Procedure 33, 34, 36, and 45 related to:

- a. the identities and locations of the Defendants, their officers, agents, servants, employees, attorneys, and any persons acting in active concert or participation with them, including all known contact information and all associated e-mail addresses;
- b. the nature of the Defendants' operations and all associated sales, methods of payment for services, and financial information, including, without limitation, identifying information associated with the Online Marketplaces and the Defendants' financial accounts, including the Defendants' sales and listing history related to their respective Online Marketplaces; and
- c. any financial accounts owned or controlled by the Defendants, including their officers, agents, servants, employees, attorneys, and any persons acting in active concert or participation with them, including such accounts residing with or under the control of any banks, savings and loan associations, payment processors or other financial institutions, including, without limitation, Temu.com ("Temu"), PayPal Inc. ("PayPal"), Alipay, ContextLogic Inc. d/b/a Wish.com ("Wish"), Alibaba Group Holding Ltd. ("Alibaba"), Ant Financial Services Group ("Ant Financial"), Amazon Pay, Afterpay, Klarna or other merchant account providers,

payment providers, third party processors, and credit card associations (e.g., MasterCard and VISA).

- d. The domain name registries for the the Defendants (“Defendant Domain Names”), including, but not limited to, VeriSign, Inc., Neustar, Inc., Afiliac Limited, CentralNic, Nominet, and the Public Interest Registry, and the domain name registrars, including, but not limited to, GoDaddy Operating Company LLC, Name.com, PDR LTD. d/b/a/ PublicDomainRegistry.com, Cloudflare Inc, Oracle Corp., Amazon Inc., Alibaba Group d/b/a Alibaba Cloud.com, Namesilo, LLC d/b/a privacyguardian.org, and Namecheap Inc., within seven (7) calendar days of receipt of this Order or prior to the expiration of this Order, whichever date shall occur first, shall disable the Defendant Domain Names and make them inactive and untransferable until further order by this Court.
3. Upon the Plaintiff’s request, any third party with actual notice of this Order who is providing services for any of the Defendants, or in connection with any of the Defendants’ Online Marketplaces, including, without limitation, any online marketplace platforms such as TikTok Temu, eBay Inc., AliExpress, Alibaba, Amazon.com Inc., Wish, and Dhgate (collectively the “Third Party Providers”), shall, within seven (7) calendar days after receipt of such notice, provide to the Plaintiff expedited discovery, limited to copies of documents and records in such person’s or entity’s possession or control sufficient to determine:
 - a. the identities and locations of the Defendants, their officers, agents, servants, employees, attorneys, and any persons acting in active concert or participation with them, including all known contact information and all associated e-mail addresses;
 - b. the nature of the Defendants’ operations and all associated sales, methods of payment for services, and financial information, including, without limitation, identifying

information associated with the Online Marketplaces and the Defendants' financial accounts, including the Defendants' sales and listing history related to their respective Online Marketplaces; and

- c. any financial accounts owned or controlled by the Defendants, including their officers, agents, servants, employees, attorneys, and any persons acting in active concert or participation with them, including such accounts residing with or under the control of any banks, savings and loan associations, payment processors or other financial institutions, including, without limitation, PayPal, Alipay, Wish, Alibaba, Ant Financial, Amazon Pay, or other merchant account providers, payment providers, third party processors, credit card associations (e.g., MasterCard and VISA), including present balances on any accounts.

4. The domain name registries for the Defendant Domain Names, including, but not limited to, VeriSign, Inc., Neustar, Inc., Afiliat Limited, CentralNic, Nominet, and the Public Interest Registry, and the domain name registrars, including, but not limited to, GoDaddy Operating Company LLC, Name.com, PDR LTD. d/b/a PublicDomainRegistry.com, Cloudflare Inc, Oracle Corp., Amazon Inc., Alibaba Group d/b/a Alibaba Cloud.com, Namesilo, LLC d/b/a privacuguardian.org, and Namecheap Inc., within seven (7) calendar days of receipt of this Order or prior to the expiration of this Order, whichever date shall occur first, shall disable the Defendant Domain Names and make them inactive and untransferable until further order by this Court.

5. Upon the Plaintiff's request, those with notice of this Order, including the Third-Party Providers as defined in Paragraph 3, shall within seven (7) calendar days after receipt of such notice, disable and cease displaying any advertisements used by or associated with the Defendants in connection with the sale of counterfeit and infringing goods using the Plaintiff's Trademark.

6. Any Third-Party Providers, including PayPal, Alipay, Alibaba, Ant Financial, Wish, Afterpay, Klarna, and Amazon Pay, shall, within seven (7) calendar days of receipt of this Order:

- a. locate all accounts and funds connected to the Defendants' seller aliases, including, but not limited to, any financial accounts connected to the information listed in Schedule A hereto, and any e-mail addresses provided for the Defendants by third parties; and
- b. restrain and enjoin any such accounts or funds from transferring or disposing of any money or other of the Defendants' assets until further order by this Court.

7. The Plaintiff may provide notice of the proceedings in this case to the Defendants, including notice of the preliminary injunction hearing, service of process pursuant to FED. R. CIV. P. 4(f)(3), and any future motions, by electronically publishing a link to the Complaint, this Order, and other relevant documents on a website and by sending an e-mail to any e-mail addresses provided for the Defendants by third parties. The combination of providing notice via electronic publication and e-mail, along with any notice that the Defendants receive from payment processors, shall constitute notice reasonably calculated under all circumstances to apprise the Defendants of the pendency of the action and afford them the opportunity to present their objections. **The Plaintiff shall be responsible for preparing its own summonses and assuring that the Defendants have been properly served pursuant to Rule 4(f)(3). The Plaintiffs shall promptly file proof of service on the docket.**

8. The Plaintiff must provide notice to the Defendants of any motion for preliminary injunction as required by Rule 65(a)(1).

9. Within seven (7) business days of entry of this Order, the Plaintiff shall deposit with the Court \$5,000.00 (Five Thousand Dollars), either cash, cashier's check or surety bond, as security, which amount has, in the absence of adversarial testing, been deemed adequate for the payment of such damages as any person may be entitled to recover as a result of a wrongful restraint hereunder.

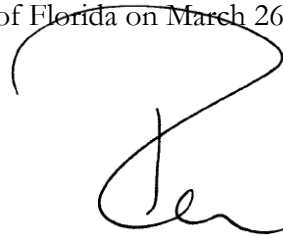
10. A **hearing** is set before this Court on **April 21, 2025, at 11:15 a.m.**, at which time the Defendants and/or any other affected persons may challenge the appropriateness of this Order and move to dissolve the same and at which time the Court will hear argument on whether a preliminary injunction should be granted. The hearing will be held **in person** in **Courtroom 12-4 at the Wilkie D. Ferguson, Jr. U.S. Courthouse, 400 N. Miami Avenue, Miami, Florida 33128**. This Order shall remain in effect until the date of this hearing, or until such further dates as set by the Court or stipulated to by the parties.

11. Any response or opposition to the entry of a preliminary injunction must be filed and served on the Plaintiff's counsel **by April 7, 2025**. The Plaintiff shall file any Reply Memorandum on or before **April 14, 2025**. The above dates may be revised upon stipulation by all parties and approval of this Court. If necessary, the parties may also move for an extension of time.

12. The Defendants are hereby on notice that failure to appear at the hearing may result in the imposition of a preliminary injunction against them pursuant to 15 U.S.C. § 1116(d), Fed. R. Civ. P. 65, The All Writs Act, 28 U.S.C. § 1651(a), and this Court's inherent authority.

13. The Clerk shall file this Order under **SEAL** until further order of the Court.

DONE AND ORDERED in the Southern District of Florida on March 26, 2025.



ROY K. ALTMAN
UNITED STATES DISTRICT JUDGE

cc: counsel of record

