

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SPORT SHOTS, LLC,	§	
	§	
Complainant,	§	
	§	
v.	§	Civ. Action No. _____
	§	
THE INDIVIDUALS, BUSINESS ENTITIES, AND	§	
UNINCORPORATED ASSOCIATIONS	§	
IDENTIFIED IN EXHIBIT 1,	§	
	§	
Respondents.	§	

EX PARTE APPLICATION FOR ENTRY OF TEMPORARY RESTRAINING ORDER, PRELIMINARY
INJUNCTION, AND ORDER RESTRAINING TRANSFER OF ASSETS AND INCORPORATED
MEMORANDUM OF LAW

Plaintiff, Sport Shots, LLC, (“Sport Shots”) by and through its undersigned counsel, hereby moves this Honorable Court for a Temporary Restraining Order and an Order Restraining Transfer of Assets, and upon expiration of the Temporary Restraining Order, a Preliminary Injunction against Defendants, the individuals, partnerships, and unincorporated associations identified on Schedule “A” to the Complaint in this action (“Defendants”) pursuant to 15 U.S.C. § 1116, 17 U.S.C. § 502, Fed. R. Civ. P. 65, and The All Writs Act, 28 U.S.C. § 1651(a), and in support thereof states as follows:

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I. INTRODUCTION

1. Defendants are knowingly and intentionally promoting, advertising, distributing, offering for sale, and selling goods bearing counterfeits and confusingly similar imitations of one or more of Plaintiff's registered trademarks and copyrights within this district and throughout the United States by operating e-commerce stores established via third party marketplace platforms under their seller identification names identified on "Exhibit 1" to the Complaint (the "Seller IDs").

2. Specifically, Plaintiff has obtained evidence clearly demonstrating that: (a) Defendants are engaged in the advertisement, offering for sale, and sale of counterfeit and infringing versions of Plaintiff's goods; and (b) Defendants accomplish their sales of counterfeit and infringing goods via the Internet through the use of, at least, eight e-commerce stores operated via Internet marketplace platforms under the Seller IDs. Exhibits B-C.

3. Based on this evidence, Plaintiff's Complaint alleges claims for trademark and copyright infringement under the Lanham Act and Title 17 of the United States Code.

4. Defendants' unlawful activities have deprived and continue to deprive Plaintiff of its right to determine the manner in which its trademarks and copyrights are presented to the public. Defendants have and continue to wrongfully trade and capitalize on Plaintiff's reputation and goodwill and the commercial value of Plaintiff's trademarks and copyrights. Ex. A. By their activities, Defendants are defrauding Plaintiff, certain non-party businesses, and the consuming public for their own benefit.

5. Defendants should not be permitted to continue their unlawful activities, which are causing Plaintiff ongoing irreparable harm. Accordingly, Plaintiff is seeking entry of a

Temporary Restraining Order, prohibiting Defendants' further wrongful use of Plaintiff's trademarks and copyrights. Plaintiff also seeks to restrain the illegal profits generated by Defendants.

6. Plaintiff has obtained evidence that Defendants are operating their Seller IDs via Alibaba.com, AliExpress.com, Amazon.com, eBay, Fruugo, Shein, Temu, Walmart.com, and others. See Complaint at Ex. 1; Ex. C. All these seller platforms process payments or have related companies that perform payment processing for them. Ex. C-D.

7. The Lanham Act allows Plaintiff to recover the illegal profits gained through Defendants' distribution and sales of counterfeit and infringing goods by illegally using Plaintiff's trademarks. See 15 U.S.C. § 1117(a)). The Copyright Act allows Plaintiff to recover actual damages and the infringer's profits arising from copyright infringement. See 17 U.S.C. § 504(b)).

8. In light of the inherently deceptive nature of the counterfeiting business, Plaintiff has good reason to believe Defendants will hide or transfer their ill-gotten assets beyond the jurisdiction of this Court unless they are restrained. Accordingly, to preserve the disgorgement remedy, Plaintiff seeks an *ex parte* order restraining Defendants' assets, including specifically, funds transmitted through payment processors for the platforms on which Defendants engage in their illegal activities.

II. STATEMENT OF FACTS

A. Background on Sport Shots

1. Sport Shots is a Wisconsin Limited Liability Company with its principal place of business at 2131 E Birch Dr., Oak Creek, WI 53154. Ex. A, Parks Decl. ¶ 5. The Owner of Sport

Shots is Dilan Parks. Ex. A, Parks Decl. ¶ 4. Sport Shots is a company established about 10 years ago and has been in continuous operation since then. Ex. A, Parks Decl. ¶ 6.

2. Sport Shots designs and sells a golf ball shaped shot glass, Patent No. D1097815, and markets and sells it as Golf Shots®, the Trademark Certificate of Registration. Ex. A, Parks Decl. ¶ 6. Each ball holds 1.5oz with a sealable screw on cap, and they come in three packs of either white or pink. Ex. A, Parks Decl. ¶ 8. Sport Shots markets them as the perfect gift for golfers and as a fun way to liven up golf outings, parties and home bars. Ex. A, Parks Decl. ¶ 8.

3. Sport Shots sells Golf Shots® on its website at <https://drinkshotshots.com/> and its Amazon store at Amazon.com Seller Profile: Sport Shots, LLC. Ex. A, Parks Decl. ¶ 7. Sport Shots also sells its Golf Shots via authorized distributors and retailers on the world wide web, where it promotes and sells genuine products with the Sport Shots Mark to consumers. Ex. A, Parks Decl. ¶ 21. Sport Shots offers for sale and sells its products within the state of Texas, including this district, and throughout the United States. Ex. A, Parks Decl. ¶ 10. Online sales of products with the Sport Shots Mark via the web represent a significant portion of Sport Shots' business related to Golf Shots. Ex. A, Parks Decl. ¶ 22.

4. Like other intellectual property rights owners, Sport Shots suffers ongoing violations of its rights by counterfeiters and infringers, such as Defendants herein. Ex. A, Parks Decl. ¶ 11. This harms Sport Shots, it dupes the consuming public, and the Defendants earn substantial profits. Ex. A, Parks Decl. ¶ 12.

5. To combat the harm caused by Defendants' infringing conduct, Sport Shots spends money on legal fees and investigative fees to enforce its intellectual property rights. Ex. A, Parks Decl. ¶ 13. The explosion of internet infringement forced Sport Shots to spend time and money

to protect itself and its customers from the confusion and the erosion of Plaintiff's brand. Ex. A, Parks Decl. ¶ 14.

B. Sport Shots Trademark Rights

6. Plaintiff created and sells shot containers that look like golf balls under the federally registered trademark Golf Shots (collectively the "Golf Shots Mark"), designed to disguise a container of a shot of alcohol as a golf ball for use while playing golf. Ex. A, Parks Decl. ¶ 6. The golf ball shot containers look and feel like a golf ball but permit the user to remove the top, pour a shot of alcohol into the body of the container and secure the lid for permissible use while playing golf. Ex. A, Parks Decl. ¶¶ 6, 8.

7. Plaintiff is the owner of all rights in and to the Golf Shots Mark, U.S. Reg. No. 7,577,461 in International Class 21 registered on November 26, 2024, on the Principal Register of the United States Patent and Trademark Office (the "Golf Shots Mark") Ex. A, Parks Decl. ¶ 15 and Ex. 1 thereto. The Golf Shots Mark consists of the wording Golf Shots in standard characters. Ex. A, Parks Decl. ¶ 16, Ex. 1. On January 20, 2017, Plaintiff first used and placed the Golf Shots Mark into the stream of commerce. Ex. A, Parks Decl. ¶ 16, Ex. 1.

8. The Sport Shots Mark identifies and distinguishes Plaintiff's high-quality, original and patented goods. Ex. A, Parks Decl. ¶ 17.

9. The Sport Shots Mark is exclusive to Sport Shots and is visible on the packaging, and the registered symbol is on Sport Shots' website and invoices when the authentic product is purchased. Ex. A, Parks Decl. ¶ 18. Sport Shot's products have been extensively promoted and advertised at great expense to Sport Shots. Ex. A, Parks Decl. ¶ 23.

10. The Sport Shots Mark is distinctive and signifies to the purchaser that the products come from Sport Shots and are manufactured to its quality standards. Ex. A, Parks Decl. ¶ 24.

11. The goodwill associated with the Sport Shot Mark is of incalculable and inestimable value. Ex. A, Parks Decl. ¶ 26. Sport Shots has expended substantial time, money, and other resources developing, advertising, and otherwise promoting the Sport Shot Marks in the U.S. in connection with Sport Shots' goods. Ex. A, Parks Decl. ¶ 27. Sport Shots' average marketing and promotional investments are between \$50,000 - \$60,000 per month. Ex. A, Parks Decl. ¶ 27. As a result of Sport Shots' efforts, members of the consuming public readily identify photographs and merchandise bearing or sold under the Sport Shots Mark as being high-quality, original and patented Sport Shots products sponsored and approved by Plaintiff. Ex. A, Parks Decl. ¶ 31.

12. Plaintiff monitors and polices the Sport Shots Mark carefully. Ex. A, Parks Decl. ¶ 32. Genuine goods bearing or sold under the Sport Shots Mark are widely legitimately advertised and promoted by Sport Shots on its website, on Amazon as an authorized seller, and via authorized distributors and retailers on the Internet. Ex. A, Parks Decl. ¶¶ 33, 48. Visibility on the Internet, including via search engines like Google, Yahoo!, and Bing, is important to Plaintiff's marketing efforts. Ex. A, Parks Decl. ¶ 61. Plaintiff invests in Internet marketing and consumer education, including search engine optimization ["SEO"] strategies, that educate consumers about the value associated with Plaintiff's products and the goods marked with the Sport Shots Marks. Ex. A, Parks Decl. ¶ 35-36).

C. Sport Shot's Copyrights

13. Sport Shots is the owner of all rights in and to certain photographs created by Sport Shots to market and sell Golf Shots as set forth in the summary of the illustrations with

Registration Certificates attached hereto in Exhibit 1. The Copyrights are grouped as follows:

- a. Registration Number VA 2-449-613/serial number VA0002449613 applies to the group of published photographs labeled GBS-2, GBS-3, GBS-6, GBS-10, GBS-11, GBS-12, GBS-13, and GBS-14 (“Golf Shots 2024”);
- b. Registration Number VA 2-449-614/serial number VA0002449614 applies to GBS-1;
- c. Registration Number VA 2-449-615/serial number VA0002449615 applies to GBS-4; and
- d. Registration Number VA 2-449-617/serial number VA0002449617 applies to photograph GBS-5.

(collectively “Sport Shots Rights”). Ex. A, Parks Decl. ¶ 37, Ex. 1.

14. Sport Shots is the owner of all rights in and to the Sport Shots Rights duly recorded with the United States Copyright Office. Ex. A, Parks Decl. ¶ 38.

15. The Sport Shots Rights relate to those certain photographs depicting the design, use and packaging of Golf Shots from the perspective view of the front and side of the packaging with the screw on top completely removed and lid held just above the body; closeup of the side of the packaging and three Golf Shots with one lid slightly askew to the right; closeup of a Golf Shot with the lid removed and leaning on the body from the 10 o'clock position; packaging standing prone and turned 30 degrees to show both the front and side of the packaging; two packages side by side leaned against a golf bag; front of the package held by a gloved hand above a golf cart; two opened Golf Shots held by one gloved and one not gloved hand; front of the package held by a gloved hand with a golf tee box and link in the background; package laying on its back at a 30 degree angle exposing the bottom with bar code and side along with three Golf

Shots with one lid removed and leaning against the open body slightly askew to the right. Ex. A, Parks Decl. ¶ 39, Ex. 1.

16. The Registration Decision date for Golf Shots 2024 was June 20, 2025, and the photographs were published May 15, 2024, to July 15, 2024. Golf Shots 2024 received Registration Number VA 2-449-613/serial number VA0002449613 which has not expired and is valid. Ex. A, Parks Decl. ¶ 40, Ex. 1.

17. The Registration Decision date for GBS-1 was June 20, 2025, and the photograph was published May 15, 2024. GBS-1 received Registration Number VA 2-449-614/serial number VA0002449614 which has not expired and is valid. Ex. A, Parks Decl. ¶ 41, Ex. 1.

18. The Registration Decision date for GBS-4 was June 20, 2025, and the photograph was published May 15, 2024. GBS-4 received Registration Number VA 2-449-615/serial number VA0002449615 which has not expired and is valid. Ex. A, Parks Decl. ¶ 42, Ex. 1.

19. The Registration Decision date for GBS-5 was June 20, 2025, and the photograph was published May 15, 2024. GBS-5 received Registration Number VA 2-449-617/serial number VA0002449617 which has not expired and is valid. Ex. A, Parks Decl. ¶ 43, Ex. 1.

20. Sport Shots marked the Golf Shots Rights on its packaging. Ex. A, Parks Decl. ¶ 44.

21. As with the Sport Shots Mark, the Sport Shots Rights are exclusive to Sport Shots and are visible on the packaging, website, and invoices when the authentic product is purchased. Ex. A, Parks Decl. ¶ 46.

22. In addition, the Sport Shots Rights have been used in interstate commerce to identify and distinguish Sport Shots's high-quality, original and patented Golf Shots for over a

year. Ex. A, Parks Decl. ¶ 47. The Sport Shots Rights are symbols of Sport Shots' quality packaging, goods, reputation and goodwill and have never been abandoned. Ex. A, Parks Decl. ¶ 47.

D. Defendants' Counterfeiting and Infringing Activities

23. The success of Sport Shots' products resulted in counterfeiting and infringement by individuals and entities unlawfully using the trademarks, copyrights, and goodwill built by Sport Shots to sell cheap imitation counterfeits of Sport Shots' products. Ex. A, Parks Decl. ¶¶ 11, 12. The Sport Shots Mark and Sport Shots Rights, collectively "Sport Shots Mark and Rights", have never been assigned or licensed to any of the Defendants. Ex. A, Parks Decl. ¶ 72. Defendants' use of the Golf Shots Mark and Rights to market their counterfeit golf ball looking containers create a false association between Sport Shots and the infringing party. Ex. A, Parks Decl. ¶ 78. Despite Defendants' lack of authority, they are promoting, advertising, distributing, selling and/or offering for sale, through their respective Seller IDs, goods bearing counterfeit and infringing copies of the Sport Shots Marks and Rights without authorization ("Defendants' Goods"). Ex. A, Parks Decl. ¶ 79.

24. Plaintiff's anticounterfeiting program investigates suspicious websites and online marketplace listings identified in proactive Internet sweeps and reported by consumers. Ex. A, Parks Decl. ¶ 64. Plaintiff investigated the promotion and sale of counterfeit and infringing products by Defendants to obtain payment account information for funds paid to Defendants for the sale of counterfeit products. Ex. A, Parks Decl. ¶ 65. These investigations established that Defendants use Alibaba.com, AliExpress.com, eBay, Fruugo, Shein, Temu, Walmart.com and others to sell Counterfeit Products from foreign countries such as China to consumers in the United States. Ex. A, Parks Decl. ¶ 66. Sport Shots or someone under its supervision viewed

counterfeit products using the Sport Shots Mark and Rights, added products to the online shopping cart, proceeded to a point of checkout, and exchanged data with each e-commerce store. Ex. A, Parks Decl. ¶ 69, Ex.'s 2-4. Sport Shots placed test orders from certain Defendants via their e-commerce stores operating under the Seller IDs for the purchase of various products all bearing counterfeits and infringements of the Sport Shots Mark and Rights. Ex. A, Parks Decl. ¶ 81, Ex.'s 2-4.

25. Sport Shot's orders were processed entirely online and following the submission of the orders, Sport Shots, or someone under its supervision, received information to finalize payment for each of the products ordered via a payment processor for Alibaba.com, AliExpress.com, eBay, Fruugo, Shein, Temu, Walmart.com, and others. Ex. A, Parks Decl. ¶ 82. Sport Shots, or someone under its supervision, captured detailed web pages for each Defendant reflecting each counterfeit or infringing product bearing counterfeits and infringements of Sport Shots Mark and Rights. Ex. A, Parks Decl. ¶ 70, Ex.'s 2-4. These web pages show Defendants slavishly copy one or more of the Sport Shots Mark and Rights and offer Defendants' Goods for sale under similar or identical marks indistinguishable to consumers, both at the point of sale and post-sale. Ex. A, Parks Decl. ¶ 76, Ex.'s 2-4. Defendants created a false association between their counterfeit and infringing goods, their e-commerce stores, and this false association causes Plaintiff irreparable harm and damage. Ex. A, Parks Decl. ¶ 78.

26. Sport Shots, or someone under its supervision, personally analyzed each of the Seller IDs and determined that Counterfeit Products were being offered for sale to residents of the United States. Ex. A, Parks Decl. ¶ 75. Plaintiff or someone under its supervision reviewed and visually inspected the detailed web page captures and photographs reflecting the Plaintiff

branded products and determined the products were not genuine versions of Plaintiff's goods. Ex. A, Parks Decl. ¶ 75.

E. The Irreparable Harm to Plaintiff in the Form of Price Erosion, Damage to Reputation, and Loss of Goodwill Not Compensable by Damages Alone.

27. Defendants are selling their infringing goods to consumers within this district and throughout the United States. Ex. A, Parks Decl. ¶¶ 79, 82. Defendants make substantial sums of money preying on members of the public, many of whom have no knowledge Defendants are defrauding them. Ex. A, Parks Decl. ¶ 12. With the limited sales data made available by Aliexpress.com, Alibaba.com, eBay, Fruugo, Shein, Temu, Amazon.com, and Walmart.com, Plaintiff was still able to determine that in 2025 more than 20,515 counterfeit products were sold using the Sport Shots Mark and Rights. Ex. A, Parks Decl. ¶ 103. Each sale results in a direct loss to Sport Shots. Ex. A, Parks Decl. ¶ 80. It is estimated that the approximate lost profits per year for Sport Shots is \$1,363,837.20 (USD). Ex. A, Parks Decl. ¶ 103.

28. Defendants falsely represent that their counterfeit and infringing goods are genuine, authentic, endorsed, and authorized by Plaintiff. Ex. A, Parks Decl. ¶ 97. Defendants' internet activities infringe on Plaintiff's intellectual property rights. Ex. A, Parks Decl. ¶ 97. The Seller IDs and associated payment accounts are a substantial part of the means by which Defendants further their scheme and cause harm to Plaintiff. Ex. A, Parks Decl. ¶ 97.

29. As the illegal marketplace for Sport Shots' products grows on the Internet, the legitimate marketplace for authentic Sport Shots' products shrinks. Ex. A, Parks Decl. ¶ 83. Monetary damages cannot adequately compensate Sport Shots for ongoing infringement because monetary damages fail to address the loss of control and damage to Sport Shots'

reputation and goodwill. Ex. A, Parks Decl. ¶ 84. Furthermore, monetary damages are difficult, if not impossible, to ascertain due to the inability to calculate measurable damage in dollars and cents caused to our reputation and goodwill by acts of infringement. Ex. A, Parks Decl. ¶ 85.

30. Sport Shots' goodwill and reputation are irreparably damaged when the Sport Shots Mark is used on goods not authorized, produced or manufactured by Plaintiff and photographs under the Sport Shots Rights are used to advertise and sell the counterfeit products. Ex. A, Parks Decl. ¶ 86. Moreover, brand confidence is damaged, which can result in loss of future sales and market share. Ex. A, Parks Decl. ¶ 87. The harm to Sport Shots' reputation and goodwill and the possible diversion of customers due to loss in brand confidence are largely unquantifiable. Ex. A, Parks Decl. ¶ 88. Sport Shots is further irreparably harmed by the unauthorized use of the Sport Shots Mark and Rights because counterfeiters take away its ability to control the nature and quality of Counterfeit Products. Ex. A, Parks Decl. ¶ 89.

31. Loss of quality control over goods bearing or sold under the Sport Shots Mark and Rights and, in turn, loss of control over our reputation, is neither calculable nor precisely compensable. Ex. A, Parks Decl. ¶ 90. The sale of counterfeit and infringing products bearing or sold under the Sport Shots Mark and Rights causes consumer confusion that weakens the Sport Shots Mark and Rights brand recognition and reputation. Ex. A, Parks Decl. ¶ 91. Mistake and confusion will cause consumers to believe Plaintiff offers low quality products; confused consumers who buy inferior quality infringing products thinking they are genuine undermines Plaintiff's reputation and goodwill.¹ Ex. A, Parks Decl. ¶¶ 92, 93.

¹ Even if a consumer knows she is buying counterfeit goods, prospective consumers who see those goods used by others may mistakenly believe such goods to be genuine and may consequently develop a poor impression of

32. Sport Shots is further irreparably damaged due to a loss of exclusivity. Sport Shots' extensive marketing and innovative patented designs are aimed at growing and sustaining sales. Ex. A, Parks Decl. ¶ 95. When counterfeiters use the Sport Shot Mark and Rights on goods without authorization, the exclusivity of the Sport Shots' products, as well as Sport Shots' reputation, are damaged and eroded, resulting in a loss of unquantifiable future sales. Ex. A, Parks Decl. ¶ 95).

III. ARGUMENT

A. A Temporary Restraining Order is Essential to Prevent Immediate Injury.

33. A temporary restraining order may be granted without written or oral notice where "specific facts in an affidavit . . . clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b). Entry of a TRO is warranted here. Plaintiff has shown that Defendants fraudulently promote, advertise, sell, and offer for sale goods bearing counterfeits and infringements of the Sport Shots Mark and Rights via their e-commerce stores using the Seller IDs, and are creating a false association in the minds of consumers between Defendants and Plaintiff. Ex. A, Parks Decl. Plaintiff has shown Defendants are wrongfully using counterfeits and infringements of the Sport Shots Mark and Rights to increase consumer traffic to their illegal operations. Ex. A, Parks Decl.

34. The entry of a temporary restraining order would immediately stop defendants and preserve the status quo until such time as a hearing can be held.² Absent a TRO, Defendants

Plaintiff's products. Such post-sale confusion results in further damage Plaintiff's reputation and correlates to a loss of unquantifiable future sales. Ex. A, Parks Decl. ¶ 94.

² See *Rio Bravo Produce, Ltd. v. Superior Tomato-Avocado, Ltd., Inc.*, No. CIV.A. SA-11-CA-1126, 2011 WL 6938450, at *3 (W.D. Tex. Dec. 30, 2011) (finding *ex parte* relief appropriate because of a substantial likelihood that absent injunctive relief, defendant's assets would be dissipated making recovery unlikely for the plaintiff).

can and will significantly alter the *status quo* before the Court can determine the parties' respective rights. The internet e-commerce stores are under Defendants' complete control, and Defendants can change ownership or e-commerce store data and content, redirect consumer traffic, change payment accounts, and transfer assets and ownership of the Seller IDs at a moment's notice. Ex. A, Parks Decl. ¶ 7. Defendants can easily and quickly transfer and secret the funds sought to be restrained and thereby thwart the Court's ability to grant meaningful relief. Ex. A, Parks Decl. ¶ 7.

35. Defendants engage in illegal counterfeiting and infringing activities. Ex. A, Parks Decl. Due to the Defendants' ability to quickly remove assets from the jurisdiction of this Court, Defendants' assets will be unavailable for recovery or an accounting of profits without the entry of an *ex parte* TRO. Ex. A, Parks Decl. ¶ 7. The business of counterfeiters is built on deliberate misappropriation of rights and property belonging to others. See Ex. A, Parks Decl. Proceeding on an *ex parte* basis is a well-established practice.³

B. Standard for Temporary Restraining Order and Preliminary Injunction.

36. To obtain a TRO or a preliminary injunction⁴, a party must establish (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

³ See *Brainstorm CC, LLC v. Doe 1*, No. 4:20-CV-554, 2020 WL 8267578, at *8 (E.D. Tex. July 21, 2020) (granting plaintiff's *ex parte* Motion for a Temporary Restraining Order and Expedited Discovery); *Chanel, Inc. v. P'ship & Unincorporated Ass'n Identified in Schedule A*, No. CIV.A. H-12-2085, 2012 WL 3527147, at *2 (S.D. Tex. Aug. 14, 2012) (granting plaintiff's *ex parte* Application for Entry of a Temporary Restraining Order).

⁴ The standard for obtaining a temporary restraining order and the standard for obtaining a preliminary injunction are the same. See *Whole Woman's Health v. Paxton*, 264 F. Supp. 3d 813, 818 (W.D. Tex. 2017) (citing *Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 452 (5th Cir. 2014)).

the non-movant; and (4) that entry of the relief would not disserve the public interest.⁵ Plaintiff's evidence establishes all of the relevant factors.

1. Probability of Success on the Merits of Plaintiff's Claims.

a. Likelihood of Success on Counterfeiting Claim.

37. Liability for trademark infringement is established where, without the consent of the registrant, a defendant uses "in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive." 15 U.S.C. § 1114. Plaintiff must demonstrate (1) ownership of the trademarks at issue; (2) Defendants' use of the trademarks is without plaintiff's authorization; and (3) Defendants' use is likely to cause confusion, mistake, or deception as to the source, affiliation, or sponsorship of Defendants' Goods. See 15 U.S.C. § 1114(1). Plaintiff's evidence satisfies these requirements of 15 U.S.C. § 1114.

38. The Sport Shot Mark and Rights are owned by Plaintiff and registered on the Principal Register of the United States Trademark Office. Ex. A, Parks Decl. ¶ 15, Ex. 1. The Sport Shots Mark and Rights have never been assigned or licensed to any of the Defendants. Ex. A, Parks Decl. ¶ 72. Defendants have never had the right or authority to use the Sport Shots Mark and Rights. Ex. A, Parks Decl. ¶ 98. The first two elements have been met.

39. Likelihood of confusion, the third factor, is established by an evaluation of eight

⁵ *Lake Charles Diesel, Inc. v. Gen. Motors Corp.*, 328 F.3d 192, 196 (5th Cir. 2003); see also *Janvey v. Alguire*, 647 F.3d 585, 603 (5th Cir. 2011) (affirming entry of preliminary injunction and freezing of assets).

“digits of confusion.”⁶ These digits are: (1) the type of mark infringed, (2) the similarity between the marks, (3) the similarity of the products, (4) the identity of the retail outlets and purchasers, (5) the identity of the advertising media used, (6) the defendant's intent, (7) evidence of actual confusion, and (8) the degree of care exercised by potential purchasers.⁷

40. Among the eight digits of confusion, two possess particular prominence: bad intent and actual confusion.⁸ Bad intent (the sixth digit) may alone be sufficient to justify an inference that there is a likelihood of confusion.⁹ And actual confusion (the seventh digit) “constitutes the best evidence of a likelihood of confusion.”¹⁰

41. However, “no single factor is dispositive, and a finding of a likelihood of confusion need not be supported by a majority of the factors.”¹¹ The eight-digit analysis “may weigh differently from case to case, depending on the particular facts and circumstances involved.”¹²

1) Type of Mark Infringed

42. In assessing the type of mark in an infringement claim, the court must determine the mark's strength. “The stronger the mark, the greater the likelihood that consumers will be confused by competing uses of the mark.”¹³ The strength of a mark is determined by two factors.

⁶ See *Bd. of Supervisors for La. State Univ. Agric. & Mech. College v. Smack Apparel Co.*, 550 F.3d 465, 478 (5th Cir. 2008).

⁷ *Future Proof Brands, L.L.C. v. Molson Coors Bev. Co.*, 982 F.3d 280, 289 (5th Cir. 2020); see also *Marathon Mfg. Co. v. Enerlite Prods. Corp.*, 767 F.2d 214, 218 (5th Cir.1985).

⁸ *Future Proof Brands*, 982 F.3d at 289.

⁹ *Streamline Prod. Sys., Inc. v. Streamline Mfg., Inc.*, 851 F.3d 440, 455 (5th Cir. 2017).

¹⁰ *Future Proof Brands*, 982 F.3d at 289.

¹¹ *Streamline Prod. Sys.*, 851 F.3d at 446.

¹² *Id.*

¹³ *Bd. of Supervisors*, 550 F.3d at 479.

First, it is measured by the distinctiveness of the type of mark.¹⁴ Trademarks are divided into four types: (1) coined, fanciful or arbitrary; (2) suggestive; (3) descriptive; and (4) generic.¹⁵ The strength of a mark “increases as one moves away from generic and descriptive marks toward arbitrary marks.”¹⁶

43. The second factor determining the strength of a mark is the degree to which it is recognized in the marketplace.¹⁷ “Marketplace recognition depends on advertising, length of time in business, public recognition, and uniqueness.”¹⁸ Overall, “[i]nherent distinctiveness is attributable to a mark when the mark almost automatically tells a customer that it refers to a brand and immediately signals a brand or a product source.”¹⁹

44. The Sport Shots Mark and Rights are strong marks. Ex. A, Parks Decl. ¶¶ 19, 24-25. The Sport Shot Mark and Rights have also acquired secondary meaning resulting from Plaintiff’s extensive efforts and expense developing, advertising, and promoting them. Ex. A, Parks Decl. ¶ 27. As a result, the Sport Shots Mark and Rights enjoy widespread recognition in the minds of consumers. Ex. A, Parks Decl. ¶ 31.

¹⁴ *Am. Rice, Inc. v. Producers Rice Mill, Inc.*, 518 F.3d 321, 330 (5th Cir. 2008).

¹⁵ See *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768 (1992).

¹⁶ *Am. Rice, Inc.*, 518 F.3d at 330.

¹⁷ *Springboards To Educ., Inc. v. Houston Indep. Sch. Dist.*, 912 F.3d 805, 814 (5th Cir. 2019), as revised (Jan. 29, 2019), as revised (Feb. 14, 2019).

¹⁸ *RE/MAX Int’l, Inc. v. Trendsetter Realty, LLC*, 655 F. Supp. 2d 679, 698 (S.D. Tex. 2009).

¹⁹ *Amazing Spaces, Inc. v. Metro Mini Storage*, 608 F.3d 225, 230 (5th Cir. 2010).

2) Similarity Between the Marks

45. When determining the similarity between the marks, the court must compare the marks' appearance, sound, and meaning.²⁰ Though a consumer may "recognize that the two designations are distinct, confusion may result if purchasers are likely to assume that the similarities in the designations indicate a connection between the two users."²¹ Thus, "the relevant inquiry is whether ... the marks are sufficiently similar that prospective purchasers are likely to believe that the two users are somehow associated."²²

46. Defendants are using the exact same mark and copyright photographs as the Golf Shots Mark and Rights. Ex. A, Parks Decl. ¶¶ 1-4.

3) Similarity of the Products

47. Similarity of the products or services is a proximity analysis. "The more similar the products and services, the greater the likelihood of confusion."²³ Further, relatedness in distribution and use helps determine the similarity of the products for purposes of consumer confusion and trademark infringement.²⁴

48. Defendants are selling the same types of goods Plaintiff sells. Ex. A, Parks Decl. ¶ 76, Ex.'s 1-4. Because they bear or use counterfeits of the Sport Shots Mark and Rights, Defendants' Goods appear virtually identical to Plaintiff's genuine products in the consumer market. Ex. A, Parks Decl. ¶¶ 76, 91.

²⁰ *Viacom Int'l v. IJR Cap. Invs., L.L.C.*, 891 F.3d 178, 193 (5th Cir. 2018).

²¹ *Elvis Presley Enters. v. Capece*, 141 F.3d 188, 191 (5th Cir. 1998).

²² *Id.*

²³ *Viacom Int'l*, 891 F.3d at 182.

²⁴ See *Bell v. Starbucks U.S. Brands Corp.*, 389 F. Supp. 2d 766, 768 (S.D. Tex. 2005).

4) Identity of the Retail Outlets and Purchasers

49. Courts will evaluate whether the genuine goods and counterfeit goods share the same or similar retail outlets and purchasers.²⁵ “The greater the overlap between retail outlets purchasers, the greater the likelihood of confusion.”²⁶

50. Both Plaintiff and Defendants sell their products using at least one of the same marketing channels, the Internet, in the same geographical distribution areas within the United States, including the Southern District of Texas. Ex. A, Parks Decl. ¶¶ 10,79. The sales channels overlap. The consumers are the same.

5) Identity of the Advertising Media Used

51. To determine the identity of advertising media used in an infringement claim, courts look to various sources of commercial speech, “including at the venues where the products are sold and through the use of internet keywords.”²⁷

52. This factor looks to each party's method of advertising.²⁸ “[T]he standard is whether there is likely to be significant enough overlap in the readership of the publications in which the parties advertise that a possibility of confusion could result.”²⁹

53. Here both parties advertise online. Ex. A, Parks Decl. ¶¶ 60-62, 66-67, 69-70, and

²⁵ See *Future Proof Brands, LLC v. Molson Coors Beverage Co.*, No. A-20-CV-00144-JRN, 2020 WL 3578327, at *4 (W.D. Tex. Mar. 24, 2020), *aff'd sub nom. Future Proof Brands, L.L.C. v. Molson Coors Beverage Co.*, 982 F.3d 280 (5th Cir. 2020).

²⁶ *Viacom Int'l*, 891 F.3d at 194.

²⁷ *Abraham v. Alpha Chi Omega*, 781 F. Supp. 2d 396, 422 (N.D. Tex. 2011).

²⁸ See *John H. Harland Co.*, 711 F.2d at 976.

²⁹ *Frehling Enterprises, Inc. v. Int'l Select Grp., Inc.*, 192 F.3d 1330, 1339–40 (11th Cir. 1999) citing *Safeway Stores, Inc. v. Safeway Discount Drugs, Inc.*, 675 F.2d 1160, 1166 (11th Cir. 1982).

73), Ex.'s 2-4.

6) Defendants' Intent.

54. The intent of the defendant in a trademark infringement case may stand alone in the overall analysis. This is because "[i]f a mark is adopted with the intent of deriving benefit from the reputation of another mark, that fact alone may be sufficient to justify the inference that there is confusing similarity."³⁰ Thus, courts have generally found that the "defendant's intent is a critical factor in determining whether there is a likelihood of confusion."³¹

55. Defendants engage in clear-cut copying here, giving rise to an inference that defendants intended to benefit from plaintiff's reputation to plaintiff's detriment.³²

7) Evidence of Actual Confusion

56. Of critical weight in the digit analysis is evidence of actual confusion. While "[a]ctual confusion need not be proven in a trademark infringement case," the strongest evidence is in cases where "consumers have confused the junior mark for the senior mark."³³ As a matter of evidentiary burden upon the parties, "while very little proof of actual confusion would be necessary to prove the likelihood of confusion, an almost overwhelming amount of proof would be necessary to refute such proof."³⁴

57. A reasonable inference of actual confusion in the marketplace can be found based

³⁰ *Amstar Corp. v. Domino's Pizza, Inc.*, 615 F.2d 252, 254 (5th Cir. 1980).

³¹ *Dallas Cowboys Football Club, Ltd. v. Am.'s Team Props.*, 616 F. Supp. 2d 622, 629 (N.D. Tex. 2009).

³² See *Chevron Chem. Co. v. Voluntary Purchasing Groups, Inc.*, 659 F.2d 695, 704 (5th Cir. 1981) (finding no plausible explanation for defendant's copying of plaintiff's trade dress other than defendant's intent to benefit from plaintiff's goodwill).

³³ *Xtreme Lashes, LLC v. Xtended Beauty, Inc.*, 576 F.3d 221, 225 (5th Cir. 2009).

³⁴ *Id.*

upon the circumstantial evidence that Defendants are advertising and selling goods identical in every way to Plaintiff's goods. Ex. A, Parks Decl. ¶¶ 75, 76, 78, 79, 94, 97, Ex.'s 1-4.

8) Degree of Care Exercised by Potential Purchasers

58. The last factor assesses the degree of care exercised by potential purchasers in commerce. Generally, "the greater the care potential purchasers exercise, the less likely it is they will confuse a junior mark user's products or services with the senior mark user's products or services."³⁵

59. Here, defendants are advertising and selling mugs and drinkware identical to plaintiff's goods, which easily dupes consumers into purchasing defendants' Counterfeit Goods. Ex. A, Parks Decl. ¶¶ 12, 75, 78, Ex.'s 1-4.

60. The eight digits of confusion weigh in plaintiff's favor. Plaintiff has shown a probability of success on the merits of its trademark counterfeiting and infringement claim.

b. Likelihood of Success on False Designation of Origin Claim.

61. Liability for false designation of origin, like trademark infringement, is also established here because the determining factor is whether the public is likely to be deceived or confused by the similarity of the marks at issue.³⁶ The Plaintiff has established the merits of its trademark counterfeiting and infringement claims, therefore likelihood of success is also shown for Plaintiff's claim for false designation of origin.

c. Likelihood of Success on Common Law Unfair Competition Claim.

62. Generally, the same evidence that supports an action for trademark infringement

³⁵ *Springboards to Educ. Inc. v. Houston Ind. School Dist.*, 912 F.3d 805, 817 (5th Cir. 2019).

³⁶ See 15 U.S.C. § 1125(a); *Two Pesos*, 505 U.S. at 780.

under the Lanham Act also supports an action for unfair competition.³⁷ Plaintiff has established the merits of its trademark infringement claims; therefore, likelihood of success is also shown for Plaintiff's unfair competition claim.

d. Likelihood of Success on Common Law Trademark Infringement Claim.

63. The same test applies to common law trademark infringement as to federal trademark infringement.³⁸ Plaintiff has satisfied the three elements of its trademark counterfeiting and infringement claims, therefore common law trademark infringement is also established.

2. Plaintiff is Suffering Irreparable Injury.

64. A threat of irreparable injury is often found where a plaintiff has lost control of the quality of goods and services that are being associated with its mark.³⁹ Under the recently revised Section 1125 of the Lanham Act however, "[a] plaintiff seeking any ... injunction shall be entitled to a rebuttable presumption of irreparable harm . . . upon a finding of likelihood of success on the merits . . . in the case of a motion for a preliminary injunction or a temporary restraining order." 15 U.S.C. § 1116(a). A rebuttable presumption of irreparable injury is thus warranted under the statute.⁴⁰

65. A likelihood of confusion exists herein because Defendants have engaged in

³⁷ *Marathon Mfg. Co.*, 767 F.2d at 217.

³⁸ See *Liquid Manna, LLC v. GLN Glob. Light Network, LLC*, No. SA-14-CV-1123-DAE, 2016 WL 4385587, at *2 (W.D. Tex. Feb. 24, 2016), report and recommendation adopted, No. 5:14-CV-1123-DAE, 2016 WL 4385589 (W.D. Tex. Mar. 14, 2016).

³⁹ See *Paulsson Geophysical Servs., Inc. v. Sigmar*, 529 F.3d 303, 313 (5th Cir. 2008).

⁴⁰ See *Bisous Bisous LLC v. The Cle Grp., LLC*, No. 3:21-CV-1614-B, 2021 WL 3618042, at *12 (N.D. Tex. Aug. 16, 2021); see also *A-76 Technologies, Inc.; dba Aidant Brands v. Mass Management, LLC.*, No. 4:21-CV-923, 2021 WL 6202654, at *2 (S.D. Tex. Sept. 7, 2021).

counterfeiting and infringing activities using spurious designations similar to one or more of the Sport Shots Mark and Rights.

3. The Balance of Hardship Tips Sharply in Plaintiff's Favor.

66. Plaintiff has expended substantial time, money, and other resources to develop the quality, reputation, and goodwill associated with the Sport Shots Mark and Rights. Ex. A, Parks Decl. ¶¶ 27-29, 33, 35. Defendants should not be permitted to continue their trade in counterfeit goods because Plaintiff will suffer substantial losses and damage to its reputation as a result. Ex. A, Parks Decl. ¶¶ 83, 84, 86-87, 91, 94-95.

67. Meanwhile, Defendants will suffer no legitimate hardship, in the event a Temporary Restraining Order is issued, because Defendants have no right to engage in their present counterfeiting and infringing activities.

4. The Relief Sought Serves the Public Interest.

68. The public has an interest in not being deceived or confused as to the origin, source, or sponsorship of trademarked products.⁴¹

69. The public also has a strong interest in protecting the rights of a trademark holder.⁴² Thus, the public interest is not disserved by an injunction prohibiting infringers from using infringing marks.⁴³

⁴¹ See *Best W. Int'l, Inc. v. R & Z Arastu Fam. Ltd. P'ship*, No. SA-07-CA-902-OG, 2007 WL 9710714, at *2 (W.D. Tex. Dec. 10, 2007) (noting that the unauthorized use of the plaintiff's marks likely deceived the public and was thus a disservice to the public interest); see also *TGI Friday's Inc. v. Great NW. Restaurants, Inc.*, 652 F. Supp. 2d 763, 773 (N.D. Tex. 2009) (noting that the public had an interest in not being deceived into patronizing a restaurant that was using plaintiff's marks without authorization).

⁴² *Best W. Int'l, Inc.*, 2007 WL 9710714 at *2.

⁴³ See *Paulsson Geophysical Servs., Inc. v. Sigmar*, No. 1-06-CA-952-LY, 2007 WL 9702439, at *3 (W.D. Tex. Feb. 23, 2007), aff'd, 529 F.3d 303 (5th Cir. 2008) ("[A]n injunction preventing Defendants from using a mark that does not

70. Defendants are engaged in illegal activities and are directly defrauding the consuming public by palming off Defendants' Goods as Plaintiff's genuine goods. The public interest favors the issuance of the requested relief to avoid further harm to the public.

C. The Equitable Relief Sought is Appropriate.

71. The Lanham Act authorizes courts to issue injunctive relief "according to principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the registrant of a mark" 15 U.S.C. § 1116.

72. The Copyright Act authorizes courts to issue injunctive relief over a copyright claim "on such terms as they deem reasonable to prevent or restrain infringement of a copyright." 17 U.S.C. § 502(a).

1. Entry of an Order Immediately Enjoining Defendants' Unauthorized and Unlawful Use of Plaintiff's Trademarks and Copyrights is Appropriate.

73. Plaintiff requests an order requiring Defendants immediately cease all use of the Sport Shots Mark and Rights, or substantially similar marks, including on or in connection with all e-commerce stores owned and operated, or controlled by them. This relief is necessary to stop the ongoing harm to Plaintiff's trademarks, copyrights, and goodwill and to prevent Defendants from continuing to benefit from the increased consumer traffic to their illegal operations created by their unlawful use of the Sport Shots Mark and Rights.

74. Many courts, including courts in this Circuit, have authorized immediate injunctive

belong to them will not disserve the public interest."); *TGP Franchising, LLC v. Schooley Media Ventures, LLC*, No. CV SA-16-CA-546-FB, 2016 WL 10567692, at *5 (W.D. Tex. Dec. 6, 2016) (finding that plaintiff was entitled to an injunction because "protecting plaintiff's trademark from infringement [did] not disserve the public interest.").

relief in similar cases involving the unauthorized use of trademarks and copyrights.⁴⁴

2. Entry of an Order Prohibiting Transfer of the Seller IDs During the Pendency of this Action is Appropriate.

75. To preserve the *status quo*, Plaintiff seeks an order temporarily modifying control of and prohibiting Defendants from transferring use or control of the Seller IDs being used and controlled by Defendants to other parties.

76. Like any e-commerce business that becomes aware of litigation against it, Defendants operating online can easily, and often will, change the ownership or modify e-commerce store data and content, change payment accounts, redirect consumer traffic to other seller identification names, and transfer assets and ownership of the Seller IDs, and thereby thwart the Court's ability to grant meaningful relief. Ex. A, Parks Decl. ¶ 7.

77. Here, an interim order prohibiting Defendants from transferring their e-commerce stores operating under the Seller IDs poses no burden on them, preserves the *status quo*, and ensures that this Court, after fully hearing the merits of this action, will be able to afford Plaintiff full relief.⁴⁵

⁴⁴ See *Paulsson Geophysical Servs. v. Sigmar*, 529 F.3d 303, 313 (5th Cir. 2008) (affirming preliminary injunction in trademark and unfair competition matter); *Sambrano v. United Airlines, Inc.*, 2022 U.S. App. LEXIS 4347 (5th Cir. 2022) (reversing denial of preliminary injunction and remanding for further proceedings in copyright infringement matter); *Lakedreams v. Taylor*, 932 F.2d 1103 (5th Cir. 1991) (affirming grant of preliminary injunction in copyright infringement case); *Grae v. Alamo City Motorplex, LLC*, No. 5:18-CV-664-DAE, 2018 WL 4169309, at *6 (W.D. Tex. July 2, 2018) (granting Plaintiff's Application for TRO); *Alamo Area Mut. Hous. Ass'n, Inc. v. Lazenby*, No. 5:17-CV-634- DAE, 2017 WL 7052289, at *6 (W.D. Tex. July 19, 2017) (granting in part plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction); *Brainstorm CC*, 2020 WL 8267578 at *8 (granting plaintiff's *ex parte* Motion for a Temporary Restraining Order and Expedited Discovery); *Chanel, Inc.*, 2012 WL 3527147 at *2 (granting plaintiff's *ex parte* Application for Entry of a Temporary Restraining Order); *Biotics Rsch. Corp. v. Biotics Rsch. of S. California, Inc.*, No. CV H-18-0352, 2018 WL 2323273, at *1 (S.D. Tex. Feb. 8, 2018) (same); *Pro Hardware, Inc. v. Home Ctrs. of Am. Inc.*, 607 F. Supp. 146 (S.D. Tex. April 6, 1984).

⁴⁵ See *Qin v. Partnerships & Unincorporated Associations on Schedule "A"*, No. 6:21-CV-1243-ADA, 2022 WL 80274, at *5 (W.D. Tex. Jan. 7, 2022) (order prohibiting the transfer of defendant online marketplace accounts); *Chanel, Inc.*, 2012 WL 3527147 at *3 (order prohibiting defendants from transferring away the domain names used

3. An *Ex Parte* Order Restraining Transfer of Assets is Appropriate

78. In addition to an order temporarily restraining Defendants' practices, the Court should enter an order limiting the transfer of Defendants' unlawfully gained assets. Plaintiff has demonstrated above that it will likely succeed on the merits of its claims. As such, Plaintiff will be entitled to an accounting and payment of the profits earned by Defendants throughout the course of their counterfeiting scheme. 15 U.S.C. § 1117(a) (2018), 17 U.S.C. § 504.

79. The counterfeiting business is deceptive. Ex. A, Parks Decl. ¶¶ 75, 78-79. In view of Defendants' intentional violations, Plaintiff respectfully requests this Court grant additional *ex parte* relief identifying payment accounts and restraining the transfer of all monies held or received by the financial entities at issue herein for the benefit of any one or more of the Defendants.⁴⁶ This Court has broad authority to grant such an order. The Supreme Court has provided that district courts have the power to grant preliminary injunctions to prevent a defendant from transferring assets in cases where an equitable interest is claimed.⁴⁷ Moreover, almost every Circuit has interpreted Rule 65 of the Federal Rules of Civil Procedure ("FRCP") to grant authority to courts to restrain assets *pendente lite*,⁴⁸ and the Fifth Circuit has done so in

to sell infringing products); *Brainstorm CC*, 2020 WL 8267578 at *7 (order requiring internet hosting services to shut down defendant online stores); *adidas AG*, Case No. 21-60242 (order restraining the transfer of e-commerce stores operating via marketplace platforms).

⁴⁶ See *Animale Grp. Inc. v. Sunny's Perfume Inc.*, 256 F. App'x 707, 709 (5th Cir. 2007) (affirming the district court's authority to enter an asset freeze and require an accounting of lost profits as part of plaintiffs' equitable relief); *Qin*, 2022 WL 80274 at *6 (ordering the restraint of defendants' assets because the fact the defendants were foreign entities with no presence in the United States made collecting a monetary judgment unlikely).

⁴⁷ *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308 (1999).

⁴⁸ See *Mason Tenders Dist. Council Pension Fund v. Messera*, 1997 WL 223077 (S.D.N.Y. May 7, 1997) (acknowledging that "[a]lmost all the Circuit Courts have held that Rule 65 is available to freeze assets *pendente lite* under some set of circumstances").

these precise circumstances.⁴⁹

80. In light of the illicit nature of the counterfeiting business and the ability of foreign counterfeiters to practically eliminate their evidentiary trails by conducting their business entirely over the internet, courts have ordered asset restraints in cases involving counterfeiting defendants.⁵⁰

81. Broad asset restraints preserve the availability of permanent relief, including assets that are not directly traceable to the fraudulent activity.⁵¹ In cases substantially similar to this matter, other district courts have entered the precise relief sought herein.⁵² Using the power to issue provisional remedies ancillary to their authority to provide final equitable relief,

⁴⁹ In *Animale Grp.*, the Fifth Circuit upheld an order granting an asset restraint against an alleged counterfeiter where the complaint included a request for a permanent injunction and the equitable remedy of an accounting of the alleged counterfeiter's profits under 15 U.S.C. § 1117. The Court emphasized the authority of the district court to enter the restraint, holding that a request for equitable relief invokes the district court's inherent equitable powers to order preliminary relief, including a limited asset freeze, in order preserve the status quo. *Animale Grp.*, 256 F. App'x at 709.

⁵⁰ See *Levi Strauss & Co. v. Sunrise Intern. Trading Inc.*, 51 F.3d 982, 987 (11th Cir. 1995); *Reebok Int'l Ltd. v. Marnatech Enter.*, 737 F. Supp. 1521 (S.D. Cal. 1989), *aff'd*, 970 F.2d 552 (9th Cir. 1992); *ABG EPE IP, LLC v. 15205060710*, No. 1:21-CV-0618, 2021 WL 2890780, at *4 (N.D. Ga. Feb. 12, 2021).

⁵¹ See *Kemp v. Peterson*, 940 F.2d 110, 113-14 (4th Cir. 1991) (district court may restrain assets not specifically traced to illegal activity); *S.E.C. v. Lauer*, 445 F. Supp. 2d 1362, 1370 (S.D. Fla. 2006) (there is no requirement for the restrained assets be traceable to the fraudulent activity underlying a lawsuit); *Levi Strauss & Co.*, 51 F.3d at 987- 88 (upholding asset restraint, including assets not linked to the profits of the alleged illegal activity, noting the defendants may request the court exempt any particular assets).

⁵² See e.g., *WHAM-O Holding, Ltd. v. Partnerships & Unincorporated Associations Identified on Schedule "A"*, No. 1:21-CV-01885, 2021 WL 2627458 (N.D. Ill. May 4, 2021) (order converting TRO to a preliminary injunction, requiring financial institutions to identify defendants' payment accounts and to restrain the funds in those accounts); *Volkswagen AG v. Unidentified Associations Identified in Schedule A*, No. 1:17-CV-1413, 2018 WL 3653365 (E.D. Va. Jan. 5, 2018) (same); *Spy Optic Inc. v. Individuals, Partnerships & Unincorporated Associations Identified on Schedule A*, No. CV 17-7649 DSF (KSX), 2017 WL 10592133 (C.D. Cal. Nov. 27, 2017) (same); *Taylor Made Golf Company, Inc. v. Individuals, P'ships & Unincorporated Ass'ns Identified on Schedule "A"*, Case No. 20-cv-60468- RS (S.D. Fla. April 9, 2020) (order granting TRO, requiring financial institutions to identify defendants' payment accounts and to restrain the funds in those accounts to preserve assets to satisfy plaintiffs' requested relief); *Whirlpool Corporation v. Discountfridgefilter.com*, Case No. 19-cv-63115-RS (S.D. Fla. Jan. 7, 2020) (same).

numerous courts have granted orders restraining defendants from transferring their assets under trademark infringement claims.⁵³

82. Moreover, to provide complete equitable relief, courts have granted such orders without providing notice to the defendants. Specifically, federal courts have held that where advance notice of an asset restraint is likely to cause a party to alienate the assets sought to be restrained, a temporary restraining order may be issued *ex parte*.⁵⁴ In this case, Plaintiffs have produced proof if taken as true demonstrates that Defendants' are blatantly violating federal trademark and copyright laws. Ex. A, Parks Decl., Ex. 2-4. These infringing activities warrant an *ex parte* order restraining the transfer of their ill-gotten assets. Moreover, Plaintiff has shown that e-commerce operations are easily conducted with nearly complete anonymity and easy mobility to secret the identity and assets. Ex. A, Parks Decl. ¶ 7. Hence, Plaintiff has additional cause for *ex parte* relief, as Defendants may easily secret or transfer their assets without the Court's or Plaintiff's knowledge.

D. A Bond Should Secure the Injunction.

83. Because of the strong and unequivocal nature of Plaintiff's evidence of counterfeiting and infringement, Plaintiff respectfully requests this Court require it to post a bond of no more than ten thousand dollars (\$10,000.00), subject to increase at the Court's discretion

⁵³ Using the power to issue provisional remedies ancillary to their authority to provide final equitable relief, numerous courts have granted orders restraining defendants from transferring their assets under trademark infringement claims.

⁵⁴ See *F.T. Int'l Ltd v. Mason*, No. CIV.A. 00-5004, 2000 WL 1514881, at *3 (E.D. Pa. Oct. 11, 2000) (granting *ex parte* TRO restraining defendants' bank accounts upon finding that advance notice would likely have caused the defendants to secret or alienate funds); *CSC Holdings, Inc. v. Greenleaf Elec., Inc.*, 2000 WL 715601 (N.D. Ill. 2000) (converting *ex parte* TRO into preliminary injunction enjoining cable television pirates and restraining pirates' assets).

should an application be made in the interest of justice. The posting of security upon issuance of a temporary or preliminary injunction is vested in the Court's sound discretion. FED. R. CIV. P. 65(c).

IV. CONCLUSION

84. In view of the foregoing, Plaintiff respectfully requests this Court grant its *Ex Parte* Application and enter a Temporary Restraining Order as to Defendants in the form submitted herewith and schedule a hearing on Plaintiff's Motion for A Preliminary Injunction before the expiration of the Temporary Restraining Order.

85. Additionally, in the event the Application is granted, Plaintiff respectfully requests the Court permit the parties, including witnesses, to appear and testify as necessary telephonically or by remote video at the hearing on Plaintiff's Motion for a Preliminary Injunction, in accordance with the administrative orders of this Court.

86. Furthermore, due to the time provisions of a Temporary Restraining Order, in the event the Application is granted, Plaintiff respectfully requests the Court provide a copy of the Temporary Restraining Order to Plaintiff's counsel via e-mail at jwatts@wattslaw.net so that Plaintiff may immediately effectuate any relief ordered therein and provide Defendants' proper notice of the order and any subsequent hearing date.

Respectfully submitted,

THE WATTS LAW FIRM,P.C.

A handwritten signature in blue ink, appearing to read "Joseph K. Watts". The signature is written in a cursive style with a horizontal line underneath it.

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