

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

MERCH TRAFFIC, LLC,

PLAINTIFF,

V.

THE PARTNERSHIPS AND UNINCORPORATED  
ASSOCIATIONS IDENTIFIED ON SCHEDULE A,

DEFENDANTS.

CASE No.: 1:24-cv-01269

JUDGE JOHN F. KNESS

MAGISTRATE JUDGE JEFFREY COLE

**FILED UNDER SEAL**

**MEMORANDUM IN SUPPORT OF PLAINTIFF’S *EX PARTE* MOTION FOR ENTRY  
OF A TEMPORARY RESTRAINING ORDER, INCLUDING A TEMPORARY  
INJUNCTION, A TEMPORARY ASSET RESTRAINT, AND EXPEDITED DISCOVERY**

Plaintiff, Merch Traffic, LLC (“Merch Traffic” or “Plaintiff”), submits this Memorandum in support of its *Ex Parte* Motion for Entry of a Temporary Restraining Order, including a temporary injunction, a temporary asset restraint, and expedited discovery (“TRO”).

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## **MEMORANDUM OF LAW**

### **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

Plaintiff is requesting temporary *ex parte* relief based on an action for trademark infringement, counterfeiting, false designation of origin, violation of the Illinois Uniform Deceptive Trade Practices Act (UDTPA), and copyright infringement, against the defendants identified on Schedule A to the Complaint (the “Defendants”). As alleged in the Complaint, Defendants operate fully interactive, ecommerce Internet stores under the online marketplace accounts listed on Schedule A (the “Seller Aliases” or “Defendant Internet Stores”), using infringing and counterfeit versions of the Sublime federally registered trademarks and copyrights<sup>1</sup> (“Sublime Trademarks,” “Sublime Copyrights” – collectively, “Merch Traffic Intellectual Property (IP)”), by offering for sale and/or selling unauthorized, unlicensed, and counterfeit products (the “Counterfeit Sublime Products” or “Counterfeit Products”).

Defendants conduct a sophisticated counterfeiting operation targeting Illinois residents by operating ecommerce stores using one or more Seller Aliases, through which Illinois residents can purchase Counterfeit Sublime Products. A logical relationship exists between the Defendant Internet Stores, established by uniquely shared identifiers, such as design elements and similarities of the counterfeit products offered for sale, suggesting that Defendants’ counterfeiting operation arises out of the same transaction, occurrence, or series of transactions or occurrences.

Plaintiff is forced to file this action to combat Defendants’ counterfeiting of its Merch Traffic Intellectual Property, as well as to protect unknowing consumers from purchasing Counterfeit Sublime Products, and therefore respectfully requests that this Court issue an *ex parte* Temporary Restraining Order (“TRO”), which would: (1) temporarily restrain Defendants’ continued manufacture, distribution, offering for sale, and sale of Counterfeit Sublime Products; (2) temporarily restrain Defendants’ assets

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<sup>1</sup> True and correct copies of Plaintiff’s federally registered trademarks and copyrights were attached to the Complaint as Exhibits 1 and 2, respectively.

to preserve Plaintiff's right to an equitable accounting; and, (3) authorize expedited discovery allowing Plaintiff to inspect Defendants' records relating to the Counterfeit Sublime Products and Defendants' financial accounts.

## **II. STATEMENT OF FACTS**

### **A. Plaintiff's Trademarks and Copyrights**

Plaintiff, Merch Traffic, LLC, acts as the merchandiser, licensor, and enforcement agent of and for all authorized products utilizing the Sublime Copyrights and Trademarks (referred to as "Sublime Products") in the United States. *See* Declaration of Emily Holt ("Holt Decl.") at ¶ 4. The owner of the Sublime Trademarks and Sublime Copyrights is Jake and Troy Brand, LLC. *Id.* at ¶ 7. Merch Traffic is the exclusive licensee and is authorized by Jake and Troy Brand, LLC to enforce its rights in and to the Sublime Trademarks and Copyrights.

The Sublime Trademarks: are inherently distinctive, have been used exclusively and continuously; have never been abandoned; are valid, subsisting, and in full force and effect; are incontestable pursuant to 15 U.S.C. § 1065; qualify as famous marks under 15 U.S.C. § 1125(c)(1); and identify products as merchandise originating from Jake and Troy Brand, LLC by way of Merch Traffic. *Id.* at ¶ 8. The Sublime Copyrights are graphic works consisting of images of a sun that are commonly associated with the band and used on Sublime Products. *Id.* at ¶ 10. Merch Traffic has expended substantial time and resources developing and promoting the Sublime Trademarks and Copyrights. *Id.* at ¶ 11. As a result, the Merch Traffic IP is widely recognized, and exclusively associated by consumers and the public as being products sourced from Plaintiff. *Id.* Merch Traffic has ensured that products bearing its IP are manufactured to the highest quality standards. *Id.* at ¶ 12. As such, the recognition and goodwill associated with the brand is of incalculable and inestimable value to Merch Traffic. *Id.*

## **B. Defendants' Unlawful Activities**

Significant counterfeiting and intellectual property infringement has stemmed from the success of the Sublime brand. See the Declaration of Ashlyn Oswald Beiersdorf (“Beiersdorf” Decl.) at ¶ 4. As a result, Merch Traffic implemented an anti-counterfeiting program that investigates suspicious ecommerce activity and online marketplace listings identified through proactive Internet sweeps. *Id.* Merch Traffic encountered numerous Defendant Internet Stores offering for sale, selling, and importing Counterfeit Sublime Products. *Id.* Defendants are not authorized by Merch Traffic to use the Sublime Intellectual Property. *Id.* at ¶ 5; Holt Decl. at ¶ 13. Furthermore, Defendants operate legitimate-looking Internet stores which bear remarkable similarities and utilize nearly-identical evasion techniques to conceal their identities and avoid enforcement efforts which all together establish a logical and interrelated relationship among the Defendants. Beiersdorf Decl. at ¶ 8.

### **i. Defendants Operate Similar Legitimate-Looking Internet Stores.**

The online marketplace accounts and product listings of Defendants are designed to facilitate counterfeit sales by giving the impression to consumers that they are authorized retailers featuring genuine Sublime Products. *Id.* at ¶ 7. The Defendant Internet Stores are designed to appear sophisticated and give the impression of authenticity, by: (1) accepting payment in U.S. dollars, through third-party ecommerce platforms and payment processors; (2) incorporating trustworthy features, such as “live 24/7” customer service; (3) implementing security solutions consumers associate with authorized retailers, displaying the logos of McAfee® Security, VeriSign®, Visa®, MasterCard®, and PayPal®; and, (4) including authentic images and design elements. *Id.* Other notable common features include the: Counterfeit Sublime Products offered; images of product listings; stores’ layout and appearance; listing descriptions; naming conventions, listing names and product titles; metadata; domain redirection and domain name registrations; shipping, payment, and check-out methods; anonymity; general absence of identifying or contact information; and similarly priced goods. *Id.* at ¶ 9.

ii. Defendants Employ Various Tactics to Conceal Their Identities.

Defendants utilize evasive tactics to conceal their identities, including, among other things: 1) using multiple aliases and addresses to register online marketplace accounts in order to avoid detection, while operating a massive network of Internet Stores dealing in counterfeit products; 2) using privacy services that conceal their identities and contact information; 3) registering new domain names/online marketplace accounts under different aliases, abandoning accounts named in lawsuits; 4) transferring hosting of their websites to rogue servers, located outside the U.S., removing themselves from the reach of the Court, frustrating enforcement efforts of IP rights-holders; and 5) retaining anonymity by shipping counterfeit products in small quantities via international mail without a return address and/or using false information, thereby minimizing detection by U.S. Customs and Border Protection. *Id.* at ¶¶ 12, 13.

Furthermore, counterfeiters such as Defendants, frequently operate multiple payment processor and merchant accounts, including but not limited to one or more financial accounts operated through e-commerce platforms and payment processors such as eBay, Inc. (“eBay”), PayPal, Inc. (“PayPal”), Payoneer, Inc. (“Payoneer”), Stripe, Inc. (“Stripe”), ContextLogic, Inc. (“Wish”), Amazon Payments, Inc. (“Amazon”), Walmart, Inc. (“Walmart”), Printerval, WhaleCo, Inc. (“Temu”), and Alipay US, Inc. (“Alipay”) (collectively referred to herein as “Third-Party Payment Providers”), hiding behind layers of payment gateways, thereby allowing them to persist in their illegal operation without detection, and despite Plaintiff’s best enforcement efforts. *Id.* at ¶ 14. Upon information and belief, Defendants regularly move funds obtained by their infringement of Plaintiff’s IP, from the accounts associated with their online marketplaces – which are held by Third-Party Payment Providers – to offshore bank accounts, which fall outside the jurisdiction of this Court. *Id.*

### **III. ARGUMENT**

Defendants’ purposeful and unlawful conduct is causing and will continue to cause irreparable harm to Plaintiff’s reputation and the goodwill associated with the Merch Traffic IP. Rule 65(b) of the



Federal Rules of Civil Procedure provides that the Court may issue an *ex parte* Temporary Restraining Order, where immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party can be heard in opposition. Fed. R. Civ. P. 65(b). Entry of a TRO is appropriate, as it would prevent ongoing injury to Plaintiff stemming from Defendants' wrongful use of the Sublime Trademarks and Copyrights and preserve the status quo until such time as a hearing can be held.

In the absence of an *ex parte* TRO, Defendants likely will register new online marketplace accounts under new aliases, modify registration data and content, change hosts, redirect traffic to other websites in their control, and move any assets from U.S.-based bank accounts to offshore bank accounts, outside the jurisdiction of this Court. Beiersdorf Decl. at ¶ 16. Courts have recognized that civil actions against counterfeiters present special challenges that justify proceeding on an *ex parte* basis. *See Columbia Pictures Indus., Inc. v. Jasso*, 927 F. Supp. 1075, 1077 (N.D. Ill. 1996) (observing that “proceedings against those who deliberately traffic in infringing merchandise are often useless if notice is given to the infringers”). As such, Plaintiff respectfully requests that this Court issue the requested *ex parte* temporary restraining order.

This Court has original subject matter jurisdiction over these claims pursuant to the Lanham Act, 15 U.S.C. § 1051, *et seq.*, 28 U.S.C. §§ 1338(a)-(b), and 28 U.S.C. § 1331; and, has jurisdiction over the claims in this action that arise under the laws of the State of Illinois pursuant to 28 U.S.C. § 1367(a), because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts. Venue is proper under 28 U.S.C. § 1391. This Court may also properly exercise personal jurisdiction over Defendants since they directly target business activities toward consumers in this Judicial District by operating Internet Stores, which directly offer for sale, and provide a platform through which Illinois residents can purchase Counterfeit Sublime Products. *Christian Dior Couture, S.A. v. Lei Liu et al.*, 2015 U.S. Dist. LEXIS 158225, at \*6 (N.D. Ill. Nov. 17, 2015) (personal jurisdiction proper over defendants offering to sell alleged infringing

product to United States residents, including Illinois; no actual sale required). Each Defendant is committing tortious acts, engaging in interstate commerce, and has wrongfully caused Merch Traffic substantial injury in the State of Illinois.

**A. Standard for Temporary Restraining Order and Preliminary Injunction**

District Courts within this Circuit hold that the standard for granting a TRO and the standard for granting a preliminary injunction are identical. *See, e.g. Charter Nat'l Bank & Trust v. Charter One Fin., Inc.*, 2001 WL 527404, \*1 (N.D. Ill. May 15, 2001) (citation omitted). A party seeking to obtain a preliminary injunction must demonstrate: (1) that its case has some likelihood of success on the merits; (2) that no adequate remedy at law exists; and, (3) that it will suffer irreparable harm if the injunction is not granted. *See Ty, Inc. v. The Jones Group, Inc.*, 237 F.3d 891, 895 (7th Cir. 2001).

If the Court is satisfied that these conditions have been met, it must consider the harm the nonmoving party will suffer if preliminary relief is granted, balancing such harm against the irreparable harm the moving party will suffer if denied relief. *Id.* Finally, the Court must consider the potential effect on the public interest in denying or granting the injunction. *Id.* The Court then weighs all of these factors, “sitting as would a chancellor in equity,” when deciding whether to grant the injunction. *Id.* This process involves engaging in what the Court has deemed “the sliding scale approach” – the more likely the plaintiff will succeed on the merits, the less the balance of harms need favor the plaintiff’s position. *Id.*

**B. Plaintiff Will Likely Succeed on the Merits**

i. Plaintiff Will Likely Succeed on Its Trademark Infringement and Counterfeiting Claim

A defendant is liable for trademark infringement and counterfeiting under the Lanham Act if it, “without the consent of the registrant, use[s] in commerce any reproduction, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods...which such use is likely to cause confusion, or to cause mistake, or to deceive.” 15 U.S.C. § 1114(1). As such, a Lanham Act trademark infringement claim has three elements: (1) Plaintiff’s

trademark is distinctive enough to be worthy of protection; (2) defendants are not authorized to use the trademark; and (3) a likelihood of confusion exists as to the origin or sponsorship of defendants' products. *See* 15 U.S.C. § 1125(a); *Neopost Industrie B.V. v. PFE Int'l Inc.*, 403 F. Supp. 2d 669, 684 (N.D. Ill. 2005) (citation omitted).

The Sublime Trademarks are: inherently distinctive; registered with the United States Patent and Trademark Office on the Principal Register; have been continuously used; have never been abandoned; are valid, subsisting, and in full force and effect; and, often incontestable pursuant to 15 U.S.C. § 1065. Holt Decl. at ¶ 8. As such, the registrations constitute *prima facie* evidence of their validity and of Merch Traffic's exclusive right to use the marks pursuant to 15 U.S.C. § 1057(b). Furthermore, Merch Traffic has not authorized Defendants to use the Sublime Trademarks, nor are the Defendants authorized licensors or resellers of Sublime Products. *Id.* at ¶ 13. Thus, Plaintiff satisfies the first and second elements of its Lanham Act claim.

Plaintiff satisfies the third element of its Lanham Act claim in two ways: under the Seventh Circuit's seven-factor likelihood of confusion test; and/or through the presumption of confusion inherent in the manufacture and distribution of counterfeit products. The Seventh Circuit's seven enumerated factors include: (1) similarity between the marks in appearance and suggestion; (2) similarity of the products; (3) area and manner of concurrent use; (4) degree of care likely to be exercised by consumers; (5) strength of complainant's mark; (6) actual confusion; and, (7) intent of the defendants to palm off their products as that of another. *AutoZone, Inc. v. Strick*, 543 F.3d 923, 929 (7th Cir. 2008). No one factor is dispositive, but the similarity of the marks, actual confusion, and the defendant's intent are "particularly important." *Id.*

All seven factors weigh heavily in Merch Traffic's favor. First, Defendants' use of Plaintiff's Sublime Trademarks is identical in appearance, and done so in a manner, which suggests to the consumer, that the source or origin of the Counterfeit Sublime Products is Merch Traffic. Beiersdorf Decl. at ¶ 10.

Second, Defendants' Counterfeit Sublime Products are intentionally designed to look identical or similar to genuine Sublime Products. *Id.* Third, both Plaintiff and Defendants advertise and sell their products via the Internet in the same area and identical manner. *Id.* Fourth, potential consumers purchasing Sublime Products are diverse, with varying degrees of sophistication, likely to have difficulty distinguishing genuine Sublime Products from Counterfeit Sublime Products. Fifth, the Sublime Trademarks have become famous, distinctive, and internationally recognizable; they signify to consumers that the Sublime Products come from Plaintiff and are manufactured to the highest quality standards. Holt Decl. at ¶¶ 11-12. Finally, evidence of actual consumer confusion is not required to prove that a likelihood of confusion exists, particularly given the compelling evidence that Defendants are attempting to "palm off" their goods as genuine Sublime Products. *CAE, Inc. v. Clean Air Eng'g, Inc.*, 267 F.3d 660, 685 (7th Cir. 2001); *see also Sands, Taylor & Wood Co. v. Quaker Oats Co.*, 978 F.2d 947, 960 (7th Cir. 1992) (the Seventh Circuit has consistently found that "plaintiff need not show actual confusion in order to establish likelihood of confusion.").

While the seven-factor likelihood of confusion test has been proven in Plaintiff's favor, Plaintiff can further establish that a likelihood of confusion exists through an additional independently sufficient basis – the presumption of confusion inherent in Defendants' counterfeiting operation. The Seventh Circuit has held that where "one produces counterfeit goods in an apparent attempt to capitalize upon the popularity of, and demand for, another's product, there is a presumption of a likelihood of confusion." *Microsoft Corp. v. Rechanik*, 249 F. App'x 476, 479 (7th Cir. 2007). Accordingly, here, the Court can presume a likelihood of confusion from Defendants' use of the Sublime Trademarks.

ii. Plaintiff Will Likely Succeed on Its False Designation of Origin Claim and Illinois Uniform Deceptive Trade Practices Act Claim.

A plaintiff bringing a false designation of origin claim under 15 U.S.C. § 1125(a) must show: (1) plaintiff has a protectable trademark; and (2) a likelihood of confusion will exist as to the origin of

plaintiff's products. *All Star Championship Racing, Inc. v. O'Reilly Auto. Stores, Inc.*, 2013 WL 1701871, \*10 (C.D. Ill. Apr. 18, 2013) (citing *Johnny Blastoff, Inc. v. Los Angeles Rams Football Co.*, 188 F.3d 427, 436 (7th Cir. 1999)), which is similar to the Lanham Act test. Furthermore, in Illinois, courts resolve unfair competition and deceptive trade practices claims, "according to the principles set forth under the Lanham Act." *Spex, Inc. v. Joy of Spex, Inc.*, 847 F. Supp. 567, 579 (N.D. Ill. 1994). Since Plaintiff has established a likelihood of success on the merits for its trademark infringement claim against Defendants (*see supra*), a likelihood of success on the merits for Plaintiff's false designation of origin and IUDTP claims are also established.

iii. Plaintiff Will Likely Succeed on Its Copyright Infringement Claim.

To establish copyright infringement under 17 U.S.C. § 501, a plaintiff must prove two elements: (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original. *JCW Investments, Inc. v. Novelty, Inc.*, 482 F.3d 910, 914 (7th Cir. 2007). Moreover, copyright protection extends to "derivative works," or "work[s] based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization . . . , or any other form in which a work may be recast, transformed, or adapted." 17 U.S.C. § 101.

Here, Plaintiff is the owner of the Sublime Copyrights. Holt Decl. at ¶ 10. The Counterfeit Sublime Products contain and/or are marketed using images protected by the Sublime Copyrights. Beiersdorf Decl. at ¶ 12. As such, the infringement is clear on its face and establishes that Plaintiff is likely to succeed on the merits.

C. **There is no Adequate Remedy at Law, and Plaintiff Will Suffer Irreparable Harm in the Absence of Preliminary Relief**

The Seventh Circuit has "clearly and repeatedly held that damage to a trademark holder's goodwill can constitute irreparable injury for which the trademark owner has no adequate legal remedy." *Re/Max N. Cent., Inc. v. Cook*, 272 F.3d 424, 432 (7th Cir. 2001) (citing *Eli Lilly & Co. Natural Answers*,

*Inc.*, 233 F.3d 456, 469 (7th Cir. 2000)). Irreparable injury “almost inevitably follows” when there is a high probability of confusion because such injury “may not be fully compensable in damages.” *Helene Curtis Industries, Inc. v. Church & Dwight Co., Inc.*, 560 F.2d 1325, 1332 (7th Cir. 1977) (citation omitted). “The most corrosive and irreparable harm attributable to trademark infringement is the inability of the victim to control the nature and quality of the defendants’ goods.” *Int’l Kennel Club of Chicago, Inc. v. Mighty Star, Inc.*, 846 F.2d 1079, 1092 (7th Cir. 1988). As such, monetary damages are likely to be inadequate compensation for such harm. *Ideal Indus., Inc. v. Gardner Bender, Inc.*, 612 F.2d 1018, 1026 (7th Cir. 1979).

Defendants’ unauthorized use of the Sublime Trademarks and Copyrights has and continues to irreparably harm Plaintiff through diminished goodwill and brand confidence, damage to Plaintiff’s reputation, loss of exclusivity, and loss of future sales. Holt Decl. at ¶¶ 14-19. The extent of such harm, and the possible diversion of customers due to loss of brand confidence, are both irreparable and incalculable, thus warranting an immediate halt to Defendants’ infringing activities through injunctive relief. *See Promatek Industries, Ltd. v. Equitrac Corp.*, 300 F.3d 808, 813 (7th Cir. 2002) (Finding that damage to plaintiff’s goodwill was irreparable harm for which plaintiff had no adequate remedy at law). Furthermore, Defendants’ intentional infringements deprive Plaintiff of the ability to control the creative content protected by the trademarks and copyrights; devalues the Sublime brand by associating it with inferior quality goods; and, undermines the value of the trademarks and copyrights by creating the impression that infringement may be undertaken with impunity thereby threatening Plaintiff’s ability to develop further licensees and maintain existing licensee relationships. Holt Decl. at ¶ 18. These are recognized irreparable harms for which monetary compensation is inadequate. *See MGM Studios, Inc. v. Grokster, Ltd.*, 518 F. Supp. 2d 1197, 1219 (C.D. Cal. 2007) (“In sum, Plaintiffs have offered two independently sufficient grounds for a finding of irreparable harm. Plaintiffs will suffer irreparable harm because of [Defendant’s] likely inability to pay for the past and/or future infringements that it has

induced. Additionally, [Defendant's] inducement has and will continue to irreparably harm Plaintiff's ability to enforce its exclusive rights."); *Warner Bros. Entm't, Inc. v. WTV Sys.*, 824 F. Supp. 2d 1003, 1013-14 (C.D. Cal. 2011) (recognizing that the perception of the ability to infringe copyright protected work undermines the ability to develop and conduct business).

Accordingly, Plaintiff has satisfied the Seventh Circuit's standard for granting preliminary relief by establishing that there is no adequate remedy at law and that Plaintiff will continue to suffer irreparable harm in the absence of such relief.

**D. The Balancing of Harms Tips in Plaintiff's Favor**

Plaintiff has demonstrated (1) a likelihood of success on the merits, (2) no adequate remedy at law, and (3) the threat of irreparable harm if preliminary relief is not granted. The Court must next consider the potential harm that Defendants could suffer if preliminary relief is granted, balancing such harm against the irreparable harm Plaintiff will suffer if relief is denied. *Ty, Inc.*, 237 F.3d at 895. As willful infringers, Defendants are entitled to little equitable consideration. "When considering the balance of hardships between the parties in infringement cases, courts generally favor the trademark owner." *Krause Int'l Inc. v. Reed Elsevier, Inc.*, 866 F. Supp. 585, 587-88 (D.D.C. 1994). This is because "[o]ne who adopts the marks of another for similar goods acts at his own peril since he has no claim to the profits or advantages thereby derived." *Burger King Corp. v. Majeed*, 805 F. Supp. 994, 1006 (S.D. Fla. 1992) (internal quotation marks omitted). Therefore, the balancing of harms "cannot favor a defendant whose injury results from the knowing infringement of the plaintiff's [intellectual property]." *Malarkey-Taylor Assocs., Inc. v. Cellular Telecomms. Indus. Ass'n.*, 929 F. Supp. 473, 478 (D.D.C. 1996).

Defendants are knowingly using Merch Traffic's protected Intellectual Property, in order to profit from sales of Counterfeit Sublime Products. Thus, the balance of equities tips decisively in Plaintiff's favor. As such, equity requires Defendants be ordered to cease their unlawful conduct.

#### **IV. THE EQUITABLE RELIEF SOUGHT IS APPROPRIATE**

In addition to this Court's inherent authority to issue injunctive relief, the Lanham Act authorizes courts to issue injunctive relief "according to the 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(a). Furthermore, Rule 65(b) of the Federal Rules of Civil Procedure provides that a court may issue a temporary restraining order without notice where facts show that the movant will suffer immediate and irreparable injury, loss, or damage before the adverse party can be heard in opposition. The facts in this case warrant such relief.

##### **A. Temporary Restraining Order Immediately Enjoining Defendants' Unauthorized and Unlawful Use of Plaintiff's Intellectual Property is Appropriate**

Plaintiff requests a temporary injunction requiring Defendants to immediately cease all use of the Sublime Trademarks and Copyrights on or in connection with any products listed on all Defendant Internet Stores. Such relief is necessary to stop the ongoing harm to the Plaintiff as well as the ongoing harm to consumers, and to prevent the Defendants from continuing to benefit from their unauthorized use of the Sublime Trademarks and Copyrights. The need for *ex parte* relief is magnified in today's global economy, where counterfeiters can easily and anonymously operate over the Internet. Plaintiff is currently unaware of the true identities and locations of Defendants, as well as other ecommerce Internet Stores used to distribute infringing and Counterfeit Sublime Products. Many courts have authorized immediate injunctive relief in similar cases involving unauthorized use of trademarks and copyrights and counterfeiting. *See, e.g., Viacom International Inc. v. The Partnerships*, No. 21-cv-04219 (N.D. Ill. Aug. 25, 2021), and *Metallica, a California General Partnership v. The Partnerships*, No. 21-cv-04709 (N.D. Ill. Sept. 9, 2021).

##### **B. Preventing the Fraudulent Transfer of Assets is Appropriate**

Plaintiff requests an *ex parte* restraint of Defendants' assets so that Plaintiff's right to an equitable accounting of Defendants' profits from sales of Counterfeit Sublime Products is not impaired. Issuing an



*ex parte* restraint will ensure Defendants' compliance. If such a restraint is not granted in this case, Defendants may disregard their responsibilities and fraudulently transfer financial assets to overseas accounts before a restraint is ordered. Specifically, upon information and belief, the Defendants in this case hold most of their assets in offshore accounts, making it easy to hide or dispose of assets, which will render an accounting by Plaintiff meaningless.

Courts have the inherent authority to issue a prejudgment asset restraint when plaintiff's complaint seeks relief in equity. *Animale Grp. Inc. v. Sunny's Perfume Inc.*, 256 F. App'x 707, 709 (5th Cir. 2007). In addition, Plaintiff has shown a strong likelihood of succeeding on the merits of its trademark and copyright infringement and counterfeiting claims; therefore, Plaintiff is entitled, "subject to the principles of equity, to recover . . . defendant's profits." 15 U.S.C. § 1117(a)(1). Plaintiff's Complaint seeks, among other relief, that Defendants account for and pay to Plaintiff all profits realized by reason of Defendants' unlawful acts. Therefore, this Court has the inherent equitable authority to grant Plaintiff's request for a prejudgment asset freeze to preserve the relief sought.

The Northern District of Illinois, in *Lorillard Tobacco Co. v. Montrose Wholesale Candies*, entered an asset restraining order in a trademark infringement case brought by a tobacco company against owners of a store selling counterfeit cigarettes. *Lorillard Tobacco Co. v. Montrose Wholesale Candies*, 2005 WL 3115892, at \*13 (N.D. Ill. Nov. 8, 2005). The Court recognized that it was explicitly allowed to issue a restraint on assets for lawsuits seeking equitable relief. *Id.* (citing *Grupo Mexicano, de Desarrollo, S.A. v. Alliance Bond Fund*, 527 U.S. 308, 325 (1999)). As the tobacco company sought a disgorgement of the storeowner's profits, an equitable remedy, the Court found that it had the authority to freeze the storeowner's assets. *Id.*

Plaintiff has shown a likelihood of success on the merits, an immediate and irreparable harm suffered as a result of Defendants' activities, and that, unless Defendants' assets are frozen, Defendants will likely hide or move their ill-gotten funds to offshore bank accounts. Accordingly, an asset restraint

preventing the fraudulent transfer of assets is appropriate and proper.

### **C. Plaintiff Is Entitled to Expedited Discovery**

The United States Supreme Court has held that “federal courts have the power to order, at their discretion, the discovery of facts necessary to ascertain their competency to entertain the merits.” *Vance v. Rumsfeld*, 2007 WL 4557812, \*6 (N.D. Ill. Dec. 21, 2007) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S. Ct. 2380 (1978)). Furthermore, courts have broad power over discovery and may permit discovery in order to aid in the identification of unknown defendants. *See* Fed. R. Civ. P. 26(b)(2); *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980). Additionally, under Federal Rule of Civil Procedure 65(d)(2)(C), this Court has the power to order any third-party, in active concert with the Defendants, to provide expedited discovery in an action once notice of the order is given. *Id.*

Plaintiff respectfully requests expedited discovery, specifically of Third-Party Payment Providers, to discover the bank and payment system accounts Defendants use for their counterfeit operations. The request in Plaintiff’s proposed TRO is limited to include only what is essential to prevent further irreparable harm. Without this information, an asset restraint would have little value as Plaintiff would not know the entities upon whom to serve the Order. Discovery of these accounts, so they can be frozen, is necessary to ensure Defendants’ activities are contained. *See, e.g., Decker’s Outdoor Corporation v. The Partnerships, et al.*, No. 15-cv-3249 (N.D. Ill. April 4, 2015) (unpublished). Accordingly, Plaintiff respectfully requests expedited discovery be granted.

### **V. A BOND SHOULD SECURE THE INJUNCTIVE RELIEF**

The posting of security upon issuance of a TRO or preliminary injunction is vested in the Court’s sound discretion. *Rathmann Grp. v. Tanenbaum*, 889 F.2d 787, 789 (8th Cir. 1989); Fed. R. Civ. P. 65(c). Because of the strong and unequivocal nature of Plaintiff’s evidence of counterfeiting, infringement, and unfair competition, Plaintiff respectfully requests that this Court require Plaintiff to post a bond of no more than Ten Thousand U.S. Dollars (\$10,000.00). *See, e.g., Monster Energy Co. v. Chen Wensheng*,

136 F. Supp. 3d 897, 910-11 (N.D. Ill. 2015).

## VI. CONCLUSION

Defendants' counterfeiting operations are significantly injuring and irreparably harming Merch Traffic's business, its Sublime Products and intellectual property, consumers, and the general public. Without entry of the requested relief, Defendants' infringement and deceptive use will continue to lead prospective consumers and the public to believe that Defendants' Counterfeit Sublime Products have been manufactured by or emanate from Merch Traffic, when in fact, they have not.

In view of the foregoing, and consistent with previous similar cases, Plaintiff respectfully requests that this Court enter a Temporary Restraining Order in the form submitted herewith, and set a status hearing before its expiration, at which hearing Plaintiff intends to present a motion for preliminary injunction.

Dated: March 7, 2024

Respectfully submitted,

/s/ Alison K. Carter

Ann Marie Sullivan

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**ATTORNEYS FOR PLAINTIFF**