

**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

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S
MOTION FOR ENTRY OF A PRELIMINARY INJUNCTION**

Plaintiff, Merch Traffic, LLC, (“Merch Traffic” or “Plaintiff”) submits this Memorandum of Law in support of its Motion for Entry of a Preliminary Injunction.

MEMORANDUM OF LAW

I. INTRODUCTION

Plaintiff, Merch Traffic, LLC, brings the present action against the defendants identified on Schedule A to the Complaint (collectively, the “Defendants”) for federal trademark infringement and counterfeiting (Count I), false designation of origin (Count II), violation of the Illinois Uniform Deceptive Trade Practices Act (Count III), and copyright infringement (Count IV). As alleged in Merch Traffic’s Complaint [Docket No. 7], the Defendants are promoting, advertising, distributing, offering for sale, and selling products using counterfeit versions of the federally registered Sublime trademarks, unauthorized copies of the federally registered Sublime copyrights, and/or both (collectively, the “Counterfeit Sublime Products”) through various fully interactive, commercial Internet stores operating under at least the online marketplace accounts identified on Schedule A to the Complaint (collectively, the “Defendant Internet Stores” or “Seller Aliases”).

II. STATEMENT OF FACTS

On June 11, 2024, this Court granted Merch Traffic, LLC’s *Ex Parte* Motion for Entry of a Temporary Restraining Order (“the TRO”). [23]. The TRO authorized Merch Traffic to provide notice of these proceedings and the preliminary injunction hearing to Defendants by electronically publishing a link to the Complaint, the TRO, and other relevant documents on a website and by sending an e-mail to the e-mail addresses provided for Defendants by third parties that includes a link to said website. [23] at ¶ 8. This Court granted Merch Traffic’s *Ex Parte* Motion to Extend the Temporary Restraining Order until July 9, 2024. [26]. Since, and pursuant to entry of the TRO, several financial accounts associated with the Defendant Internet Stores have been frozen. See Declaration of Ann Marie Sullivan (hereinafter, “Sullivan Declaration”) at ¶ 2.

Merch Traffic respectfully requests that this Court convert the TRO to a preliminary

injunction against Defendants, so that they remain enjoined from the manufacture, importation, distribution, offering for sale, and sale of Counterfeit Sublime Products during the pendency of this litigation. As part of the Preliminary Injunction, Merch Traffic requests that Defendants' financial accounts remain frozen until completion of these proceedings.

III. ARGUMENT

A. A Preliminary Injunction Extending Relief Already Granted in the TRO Is Appropriate

Merch Traffic respectfully requests that this Court convert the TRO to a preliminary injunction to prevent further unlawful conduct by Defendants. Courts addressing similar allegations of Internet-based counterfeiting have also issued preliminary injunctions following a temporary restraining order. *See, e.g., Decker's Outdoor Corporation v. The Partnerships, et al.*, No. 15-cv-3249 (N.D. Ill. May 6, 2015) (unpublished).

i. This Court Has Already Found that the Requirements for a Preliminary Injunction Have Been Satisfied

The standard for granting a TRO and the standard for granting a preliminary injunction are identical in this Circuit; as such, the requirements for entry of a preliminary injunction extending the TRO have been satisfied. *See, e.g., Charter Nat'l Bank & Trust v. Charter One Fin., Inc.*, 2001 WL 527404, at *1 (N.D. Ill. May 15, 2001) (citations omitted). A temporary restraining order or preliminary injunction may be issued upon a showing that: "(1) there is a reasonable likelihood that Plaintiff will succeed on the merits; (2) Plaintiff will suffer irreparable injury if the order is not granted because there is no adequate remedy at law; (3) the balance of hardships tips in Plaintiff's favor; and (4) the public interest will not be disserved by the injunction." *Columbia Pictures Indus., Inc. v. Jasso*, 927 F. Supp. 1075, 1076 (N.D. Ill. 1996). By virtue of this Court's entry of the TRO, it has already found that the above requirements have been satisfied.

ii. The Equitable Relief Sought Remains Appropriate

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(a).

Merch Traffic requests conversion of the TRO to a preliminary injunction so that Defendants’ accounts in U.S.-based financial institutions remain frozen. Since entry of the TRO, e-commerce platforms and payment processors such as Amazon, Ecrater, eBay, Printerval, Temu, Walmart, Wish, and Alipay (collectively referred to herein as “Payment Processors”), have provided Merch Traffic with information, including the identification of several financial accounts linked to the Defendant Internet Stores which were offering for sale and/or selling Counterfeit Sublime Products. In the absence of a preliminary injunction, Defendants may attempt to move any assets from any accounts in U.S.-based financial institutions to an offshore account. Therefore, Defendants’ assets should remain frozen for the remainder of the proceedings.

The amount of damages to which Merch Traffic is entitled, as set forth in the Complaint, far exceeds any amount contained in any of the Defendants’ frozen financial accounts. For example, Merch Traffic’s prayer for relief requests statutory damages which can be up to \$2 million from each Defendant. [7]. In addition, and as established in Merch Traffic’s TRO Memorandum [15], many federal courts, including the Northern District of Illinois, have granted orders preventing the fraudulent transfer of assets. *See, e.g., Lorillard Tobacco Co. v. Montrose Wholesale Candies & Sundries, Inc.*, 2005 WL 3115892 (N.D. Ill. Nov. 8, 2005). As such, an order continuing to freeze the Defendants’ assets is proper.

IV. CONCLUSION

In view of the foregoing, Merch Traffic respectfully requests that this Court enter the preliminary injunction.

Dated: July 5, 2024

Respectfully submitted,

/s/ Alison K. Carter

Ann Marie Sullivan

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 5, 2024 a true and correct copy of the above and foregoing document was: electronically filed, with the Clerk of the Court using the CM/ECF system; electronically published on a website to which the Defendants have been directed pursuant to the Service of Process; and emailed to all email addresses identified or provided for Defendants by the Defendants or third-parties, which includes a link to said website.

/s/ Alison K. Carter
Alison K. Carter