

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 11-23557-CIV-UNGARO/TORRES

ACUSHNET COMPANY, *et al.*,

Plaintiffs,

vs.

TANG HAINAN, *et al.*,

Defendants.

/

**REPORT AND RECOMMENDATION ON PLAINTIFFS’
APPLICATION FOR ENTRY OF PRELIMINARY INJUNCTION**

THIS CAUSE is before the Court on Plaintiffs’ Application for Entry of Preliminary Injunction (“Application for Preliminary Injunction”). [D.E. 5].¹ Plaintiffs Acushnet Company, Callaway Golf Company, Roger Cleveland Golf Company, Inc., SRI Sports Limited, Karsten Manufacturing Corporation, and Taylor Made Golf Company, Inc. (collectively “Plaintiffs”) move for entry of a preliminary injunction against Defendants Tang Hainan, Xud Zhang, and Does 1-10 (collectively “Defendants”) doing business as the domain names identified on Schedule “A” appended hereto (the “Subject Domain Names”) and an order restraining the financial accounts used by Defendant Tang Hainan, pursuant to 15 U.S.C. § 1116 and Fed. R. Civ. P. 65.

The Court convened a hearing on November 15, 2011 at which only counsel for Plaintiffs was present and available to present evidence supporting the Application for

¹ By Order dated November 3, 2011, the Honorable Ursula Ungaro referred this motion to the undersigned. [D.E. 13].

Preliminary Injunction. Despite proper service on Defendants of all relevant filings in this case (as discussed below), Defendants have not responded to the Application for Preliminary Injunction, nor made any filing in this case, nor have Defendants appeared in this matter either individually or through counsel. Because Plaintiffs have satisfied the requirements for the issuance of a preliminary injunction, we recommend that Plaintiffs' Application for Preliminary Injunction [D.E. 5] be **GRANTED**.

I. FACTUAL BACKGROUND

On November 3, 2011, Judge Ungaro entered an Order Granting Temporary Restraining Order *Ex Parte* based on the following facts from Plaintiffs' Complaint for Damages and Injunctive Relief [D.E. 1], Plaintiffs' *Ex Parte* Application for Entry of a Temporary Restraining Order, Preliminary Injunction, and Order Restraining Transfer of Assets Tied to the Counterfeiting Operation [D.E. 5], and supporting evidentiary submissions. [D.E. 13].

Plaintiff Acushnet Company ("Acushnet") is a corporation organized under the laws of Delaware, having its office and principal place of business at 333 Bridge Street, Fairhaven, Massachusetts 02719. [Compl. ¶ 2]. Acushnet is engaged in the manufacture, promotion, distribution, and sale in interstate commerce, including within this Judicial District, of quality golf equipment and related products under multiple federally registered trademarks. [D.E. 5-14 (Declaration of Lisa Rogan in Support of Plaintiffs' *Ex Parte* Application ("Rogan Decl.")) ¶¶ 4-5].

Acushnet is the owner of all rights in and to the following trademarks which are valid and registered on the Principal Register of the United States Patent and Trademark Office (collectively the “Acushnet Marks”):



Trademark	Registration Number	Registration Date	Class / Goods
TITLEIST	316,118	August 14, 1934	IC 028 - golf balls
TITLEIST	934,406	May 23, 1972	IC 028 - golf equipment comprising golf balls, golf clubs, golf bags, golf gloves and golf headcovers
<i>Titleist</i>	1,155,766	May 26, 1981	IC 028 - golf equipment, namely, golf balls, golf clubs and golf bags
	1,601,034	June 12, 1990	IC 028 - golf balls
PRO V1	2,806,919	January 20, 2004	IC 028 - golf balls
AP2	3,831,911	August 10, 2010	IC 028 - golf clubs
	3,831,914	August 10, 2010	IC 028 - golf clubs


The Acushnet Marks are used in connection with the manufacture and distribution of high quality goods in at least the categories identified above. (*See* Rogan Decl. ¶ 5; *see also* United States Trademark Registrations of the Acushnet Marks at issue (“Acushnet Trademark Registrations”) attached as Composite Exhibit A to the Rogan Decl.).

Plaintiff Callaway Golf Company (“Callaway Golf”) is a corporation organized under the laws of Delaware, having its office and principal place of business at 2180 Rutherford Road, Carlsbad, California 92008. [Compl. ¶ 3]. Callaway Golf is engaged in the manufacture, promotion, distribution, and sale in interstate commerce, including within this Judicial District, of quality golf equipment and related products under

multiple federally registered trademarks. [D.E. 5-17 (Declaration of Mike Dow in Support of Plaintiffs' *Ex Parte* Application ("Dow Decl.")) ¶¶ 4-5].

Callaway Golf is the owner of all rights in and to the following trademarks which are valid and registered on the Principal Register of the United States Patent and Trademark Office (collectively the "Callaway Golf Marks"):

Trademark	Registration Number	Registration Date	Class / Goods
Odyssey	1,704,295	July 28, 1992	IC 028 - golf clubs, golf bags, golf club heads, golf club shafts, head covers for golf clubs, hand grips for golf clubs, and golf balls
Callaway Golf	2,160,157	May 26, 1998	IC 024 - golf towels IC 025 - shirts, sweaters, jackets, hats, caps and visors IC 028 - golf clubs, golf bags, and golf club head covers
	2,161,569	June 2, 1998	IC 024 - golf towels IC 025 - shirts, sweaters, jackets, hats, caps, and visors IC 028 - golf clubs, golf bags, and golf club head covers
Callaway	2,166,033	June 16, 1998	IC 028 - golf clubs
Callaway	2,360,664	June 20, 2000	IC 028 - golf balls
Big Bertha	2,769,319	September 30, 2003	IC 028 - golf club, golf club head covers and golf bags
	2,883,072	September 7, 2004	IC 025 - shirts, sweaters, jackets, wind resistant jackets, hats, caps, visors, pants, shorts, t-shirts, golf shoes and spikes
Callaway Golf	2,941,846	April 19, 2005	IC 025 - golf shoes and spikes
FT-I	3,263,223	July 10, 2007	IC 028 - golf clubs
FT-9	3,593,203	March 17, 2009	IC 028 - covers for golf clubs; golf club covers; golf clubs
BIG BERTHA DIABLO	3,595,821	March 24, 2009	IC 028 - golf clubs; head covers for golf clubs; golf bags; golf balls


	3,677,707	September 1, 2009	IC 028 - golf bags; golf balls; golf clubs; head covers for golf clubs
FT-iZ	3,737,687	January 12, 2010	IC 028 - golf clubs, golf club head covers, golf bags and component club heads
X-24 HOT	3,874,857	November 9, 2010	IC 028 - golf clubs
RAZR Hawk	3,979,419	June 14, 2011	IC 028 - golf clubs

The Callaway Golf Marks are used in connection with the manufacture and distribution of high quality goods in at least the categories identified above. (See Dow Decl. ¶ 5; see also United States Trademark Registrations of the Callaway Golf Marks at issue (“Callaway Golf Trademark Registrations”) attached as Composite Exhibit A to the Dow Decl.).

Plaintiff Roger Cleveland Golf Company, Inc. is a corporation organized under the laws of California, having its office and principal place of business at 5601 Skylab Road, Huntington Beach, California 92647. Plaintiff SRI Sports Limited is the parent company of Roger Cleveland Golf Company, Inc. and a corporation organized and existing under the laws of Japan, having its principle place of business in Chuo-Ku Kobe Japan. Roger Cleveland Golf Company, Inc. and SRI Sports Limited shall be jointly referred to herein as “Cleveland Golf.” [Compl. ¶ 4]. Cleveland Golf is engaged in the manufacture, promotion, distribution, and sale in interstate commerce, including within this Judicial District, of quality golf equipment and related products under multiple federally registered trademarks. [D.E. 5-20 (Declaration of Donald J. Reino in Support of Plaintiffs’ *Ex Parte* Application (“Reino Decl.”)) ¶¶ 4-5].

SRI Sports Limited is the owner, and Roger Cleveland Golf Company, Inc. is the licensee of all rights in and to the following trademarks, which are valid and registered

on the Principal Register of the United States Patent and Trademark Office (collectively the "Cleveland Golf Marks"):

Trademark	Registration Number	Registration Date	Class / Goods
<i>Cleveland</i>	2,070,051	June 10, 1997	IC 018 - carry all bags and umbrellas. IC 025 - golf apparel, namely, shirts, caps, visors, sweatshirts and sweater vests. IC 028 - golf clubs, golf club heads, golf club shafts, golf club grips, golf bags, golf bag covers, and golf club head covers.
CLEVELAND	2,070,054	June 10, 1997	IC 018 - carry all bags and umbrellas. IC 025 - golf apparel, namely, shirts, caps, visors, sweatshirts and sweater vests. IC 028 - golf clubs, golf club heads, golf club shafts, golf club grips, golf bags, golf bag covers, and golf club head covers.
	2,302,251	December 21, 1999	IC 028 - golf clubs, and golf club heads, namely, woods, irons and putters
SRIXON	2,993,532	December 16, 1997	IC 025 - Golf wear, namely, caps. IC 028 - Bags, namely, golf bags, equipment for golf, especially, but not limited to, golf balls, golf clubs.
ZIP GROOVES	3,463,468	July 8, 2008	IC 028 - Golf clubs and golf club heads, namely, wedges, iron-type golf clubs and metal wood-type golf clubs and heads.

The Cleveland Golf Marks are used in connection with the manufacture and distribution of high quality goods in at least the categories identified above. (See Reino

Decl. ¶ 5; *see also* United States Trademark Registrations of the Cleveland Golf Marks at issue (“Cleveland Golf Trademark Registrations”) attached as Composite Exhibit A to the Reino Decl.).

Plaintiff Karsten Manufacturing Corporation (“Karsten”) is a corporation organized under the laws of Arizona having its office and principal place of business at 2201 W. Desert Cove, Phoenix, Arizona 85029. [Compl. ¶ 5]. Karsten is engaged in the manufacture, promotion, distribution, and sale in interstate commerce, including within this Judicial District, of quality golf equipment and related products under multiple federally registered trademarks. [D.E. 5-23 (Declaration of Jud Hawken in Support of Plaintiffs’ *Ex Parte* Application (“Hawken Decl.”)) ¶¶ 4-5].


Karsten is the owner of all rights in and to the following trademark which is valid and registered on the Principal Register of the United States Patent and Trademark Office (the “Karsten Mark”):





Trademark	Registration Number	Registration Date	Class / Goods
PING	704,552	September 20, 1960	IC 28 - Golf clubs

The Karsten Mark is used in connection with the manufacture and distribution of high quality goods in at least the categories identified above. (*See* Hawken Decl. ¶ 5; *see also* United States Trademark Registrations of the Karsten Mark at issue (“Karsten Trademark Registration”) attached as Composite Exhibit A to the Hawken Decl.).

Plaintiff Taylor Made Golf Company, Inc., a subsidiary of adidas AG (“TaylorMade-adidas Golf”), is a corporation organized under the laws of Delaware, having its office and principal place of business at 5545 Fermi Court, Carlsbad, California 92008. [Compl. ¶ 6]. TaylorMade-adidas Golf is engaged in the manufacture, promotion, distribution, and sale in interstate commerce, including within this Judicial District, of quality golf equipment and related products under multiple federally registered trademarks. [D.E. 5-26 (Declaration of Jeni B. Zuercher in Support of Plaintiffs’ *Ex Parte* Application (“Zuercher Decl.”)) ¶¶ 4-5].

TaylorMade-adidas Golf is the owner of all rights in and to the following trademarks which are valid and registered on the Principal Register of the United States Patent and Trademark Office (collectively the “TaylorMade-adidas Marks”):

Trademark	Registration Number	Registration Date	Class / Goods
TAYLOR MADE	1,200,542	July 6, 1982	IC 028 - Golf Clubs.
TAYLOR MADE	1,374,009	December 3, 1985	IC 028 - golf bags and golf club head covers.
BURNER	1,411,498	September 30, 1986	IC 028 - golf clubs.
RESCUE	2,092,034	August 26, 1997	IC 028 - golf clubs.
	2,557,110	April 2, 2002	IC 018 - Golf umbrellas, luggage and bags, namely, non-canvas tote bags, for golfers. IC 025 - Clothing, namely, hats, visors, caps. IC 028 - Golf equipment, namely golf clubs, golf grips, putters, shafts, golf balls, golf gloves, golf tees, golf club covers, and golf bags.

	2,557,111	April 2, 2002	<p>IC 018 - Golf umbrellas, luggage and bags, namely, non-canvas tote bags, for golfers.</p> <p>IC 025 - Clothing, namely, hats, visors, caps, shirts, skirts, blouses, sweaters, slacks, shorts, jackets, coats, pullovers, cardigans and shoes.</p> <p>IC 028 - Golf equipment, namely golf clubs, golf grips, putters, shafts, golf balls, golf gloves, golf tees, golf club covers, and golf bags.</p>
ROSSA	2,820,220	March 2, 2004	IC 028 - Golf equipment, namely, golf clubs, golf grips, putters, shafts, golf club covers, and golf bags.
R7	2,960,850	June 7, 2005	IC 028 - Golf equipment, namely, golf clubs, wedges, irons, golf club heads, golf club shafts.
	3,032,873	December 20, 2005	IC 028 - Golf equipment, namely, golf clubs, shafts, golf club covers.
AGSI	3,252,375	June 12, 2007	IC 028 - Golf equipment, namely golf clubs, golf putters, golf clubheads, golf clubhead inserts, golf club covers, and golf bags.
	3,276,214	August 7, 2007	IC 028 - Golf equipment, namely golf clubs, and shafts.
R9	3,652,607	July 7, 2009	IC 028 - Golf equipment, namely, golf clubs, golf heads, golf club shafts.
BURNER PLUS	3,673,923	August 25, 2009	IC 028 - Golf clubs.
BURNER	3,680,379	September 8, 2009	IC 028 - Golf balls
	3,868,743	October 26, 2010	IC 028 - golf equipment, namely, golf clubs, shafts, golf balls, golf gloves, golf club covers and golf bags.
R11	3,951,066	April 26, 2011	IC 028 - Golf equipment, namely, golf clubs, golf grips, golf club heads, golf club shafts, and golf bags.

The TaylorMade-adidas Golf Marks are used in connection with the manufacture and distribution of high quality goods in at least the categories identified above. (See Zuercher Decl. ¶ 5; *see also* United States Trademark Registrations of the TaylorMade-adidas Golf Marks at issue (“TaylorMade-adidas Golf Trademark Registrations”) attached as Composite Exhibit A to the Zuercher Decl.).

Plaintiffs retained Investigative Consultants to investigate the sale of counterfeit versions of Plaintiffs’ respective products by Defendants. (See Rogan Decl. ¶ 12; Dow Decl. ¶ 12; Reino Decl. ¶ 12; Hawken Decl. ¶ 12; Zuercher Decl. ¶ 12; D.E. 5-29 (Declaration of Brandon Tanori in Support of Plaintiffs’ *Ex Parte* Application (“Tanori Decl.”)) ¶ 3). In August 2011, Brandon Tanori (“Tanori”), an employee of Investigative Consultants, placed an order for the purchase of (i) a golf club and golf balls, both bearing the Acushnet Marks at issue via the Internet website operating under the domain name greatestgolfclubs.com; (ii) a golf club bearing the Callaway Golf Marks at issue via the Internet website operating under the domain name golfstore18.com; (iii) a golf club bearing the Cleveland Golf Marks at issue via the Internet website operating under the domain name golfsuno.com; (iv) a golf club bearing the Karsten Mark at issue via the Internet website operating under the domain name golfsuno.com; and golf clubs bearing the TaylorMade-adidas Golf Marks at issue via the Internet website operating under the domain name golfsales365.com. (See Tanori Decl. ¶¶ 4-8 and Composite Exhibit A through E attached thereto). Tanori finalized his purchase of the TaylorMade-adidas Golf branded golf clubs using PayPal to the PayPal account identified as “expectation60@hotmail.com,” and he received a

receipt for his payment identifying Tang Hainan² as the merchant and providing the transaction identification number, 24D54351EW650224G. (See Tanori Decl. ¶ 8 and Composite Exhibit E attached thereto; D.E. 5-2 (Declaration of Stephen M. Gaffigan in Support of Plaintiffs' *Ex Parte* Application ("Gaffigan Decl.")) ¶ 10). Each of Tanori's purchases was processed entirely online, and he received confirmation of his purchases via e-mail. (See Tanori Decl. ¶¶ 4-8 and Composite Exhibit A through E attached thereto).

Thereafter, the golf club and golf balls bearing Plaintiffs' individual trademarks purchased by Tanori were inspected by Plaintiffs' respective representatives, and each determined the items to be non-genuine, unauthorized versions of Plaintiffs' respective products. (See Rogan Decl. ¶ 14; Dow Decl. ¶ 14; Reino Decl. ¶ 14; Hawken Decl. ¶ 14; Zuercher Decl. ¶ 14). Additionally, Plaintiffs' representatives each reviewed and visually inspected the items bearing Plaintiffs' respective trademarks offered for sale on the Internet websites operating under the relevant Subject Domain Names and determined the products were unauthorized, non-genuine versions of Plaintiffs' respective products. (See Rogan Decl. ¶ 15; Dow Decl. ¶ 15; Reino Decl. ¶ 15; Hawken Decl. ¶ 15; Zuercher Decl. ¶ 15).

Based on the investigations, Plaintiffs allege that Defendants have advertised, offered for sale, and/or sold at least (i) golf clubs, golf balls, golf bags, and golf gloves bearing counterfeit and infringing trademarks which are exact copies of the Acushnet Marks; (ii) golf clubs, golf balls, golf bags, golf shoes, golf towels, and caps bearing

² The merchant's name identified on the PayPal receipt for the Taylor Made branded golf clubs purchased via golfsales365.com is translated into English as Tang Hainan. (See Gaffigan Decl. ¶ 10).

counterfeit and infringing trademarks which are exact copies of the Callaway Golf Marks; (iii) golf clubs bearing counterfeit and infringing trademarks which are exact copies of the Cleveland Golf Marks; (iv) golf clubs bearing counterfeit and infringing trademarks which are exact copies of the Karsten Mark; and (v) golf clubs, golf putters, golf balls, golf bags, umbrellas, and caps bearing counterfeit and infringing trademarks which are exact copies of the TaylorMade-adidas Golf Marks. (See Rogan Decl. ¶¶ 11-17; Dow Decl. ¶¶ 11-17; Reino Decl. ¶¶ 11-17; Hawken Decl. ¶¶ 11-17; Zuercher Decl. ¶¶ 11-17; Tanori Decl. ¶¶ 4-8 and Composite Exhibits A through E attached thereto; Gaffigan Decl. ¶¶ 2-4, and Exhibits B and C attached thereto; *see also* relevant web pages from Defendants' Internet websites operating under the Subject Domain Names ("Defendants' Websites") attached as Composite Exhibit A to the Gaffigan Decl.). Defendants are not now, nor have they ever been, authorized or licensed to use, reproduce, or make counterfeits, reproductions, and/or colorable imitations of the Acushnet Marks, Callaway Golf Marks, Cleveland Golf Marks, Karsten Mark, and TaylorMade-adidas Golf Marks (collectively "Plaintiffs' Marks"). (See Rogan Decl. ¶ 11; Dow Decl. ¶ 11; Reino Decl. ¶ 11; Hawken Decl. ¶ 11; Zuercher Decl. ¶ 11).

On September 30, 2011, Plaintiffs filed their Complaint against Defendants for trademark counterfeiting and infringement, false designation of origin, and cyberpiracy. [D.E. 1]. A week later, on October 6, 2011, Plaintiffs filed their *Ex Parte* Application for Entry of a Temporary Restraining Order, Preliminary Injunction, and Order Restraining Transfer of Assets Tied to the Counterfeiting Operation. [D.E. 5].

On November 3, 2011, Judge Ungaro granted Plaintiffs' *Ex Parte* Application for a Temporary Restraining Order and Order Restraining Transfer of Assets Tied to the Counterfeiting Operation and temporarily restrained Defendants from infringing the Plaintiffs' Marks at issue, restrained the assets tied to the counterfeiting operation, and scheduled a hearing on Plaintiffs' Application for Preliminary Injunction for November 15, 2011 before the undersigned Magistrate Judge. [D.E. 13].

On November 14 and 15, 2011, Plaintiffs filed Second Declarations in Support of Preliminary and Permanent Injunctive Relief identifying two additional domain names utilized by Defendants to further their alleged infringing and counterfeiting activities. [D.E. 20, 23].³

Pursuant to the Court's November 3, 2011 Order, Plaintiffs properly served Defendants with a copy of the *Ex Parte* Application for Entry of a Temporary Restraining Order, Preliminary Injunction, and Order Restraining Transfer of Assets Tied to the Counterfeiting Operation and supporting papers, Judge Ungaro's Order Granting Temporary Restraining Order *Ex Parte*, the Summonses and Complaint, and all filings in this matter, via e-mail and publication as detailed in the Proofs of Service on file in this matter. [D.E. 15-17, 21-22].

As previously mentioned, Defendants did not appear at the November 15th hearing nor have they appeared in this action or responded in any way to any filing in the case.

³ Plaintiffs identified the additional domain names mygolfing18.com and clubsaleonline.com which are connected to the Defendants and the original sixty-eight Subject Domain Names at issue in this matter.

II. CONCLUSIONS OF LAW

The declarations Plaintiffs submitted in support of their Application for Preliminary Injunction support the following conclusions of law:

A. Plaintiffs have a very strong probability of proving at trial that consumers are likely to be confused by Defendants' advertisement, promotion, sale, offer for sale, and/or distribution of golf equipment and related goods bearing counterfeits, reproductions, and/or colorable imitations of Plaintiffs' Marks, and that the products Defendants are selling are copies of Plaintiffs' respective products that bear copies of the Acushnet Marks on golf clubs, golf balls, golf bags, and golf gloves, the Callaway Golf Marks on golf clubs, golf balls, golf bags, and golf gloves, the Cleveland Golf Marks on golf clubs, the Karsten Mark on golf clubs, and the TaylorMade-adidas Golf Marks on golf clubs, golf putters, golf balls, golf bags, umbrellas, and caps.

B. Because of the infringement of the Plaintiffs' Marks, Plaintiffs are likely to suffer immediate and irreparable injury if a preliminary injunction is not granted. It clearly appears from the following specific facts, as set forth in Plaintiffs' Complaint, Application for Preliminary Injunction, and accompanying declarations on file, that immediate and irreparable loss, damage, and injury will result to Plaintiffs and to consumers because it is more likely than not that:

1. Defendants are operating Internet businesses that advertise, offer for sale, and sell, at least golf clubs, golf balls, golf bags, and golf gloves bearing counterfeit and infringing trademarks in violation of Acushnet's rights; golf clubs, golf balls, golf bags, golf shoes, golf towels, and caps bearing counterfeit and infringing

trademarks in violation of Callaway Golf's rights; golf clubs bearing counterfeit and infringing trademarks in violation of Cleveland Golf's rights; golf clubs bearing counterfeit and infringing trademarks in violation of Karsten's rights; and golf clubs, golf putters, golf balls, golf bags, umbrellas, and caps bearing counterfeit and infringing trademarks in violation of TaylorMade-adidas Golf's rights;

2. Unless the injunction is granted, more counterfeit and infringing products bearing Plaintiffs' respective trademarks will appear in the marketplace; that consumers may be misled, confused, and disappointed by the quality of these products; and that Plaintiffs may suffer loss of sales for their respective genuine products;

3. Unless the injunction is granted, Defendants can easily and quickly transfer the registrations for many of the Subject Domain Names, or modify registration data and content, change hosts, and redirect traffic to other websites, thereby thwarting Plaintiffs' ability to obtain meaningful relief;

4. The balance of potential harm to Defendants in restraining their trade in counterfeit and infringing branded goods if a preliminary injunction is issued is far outweighed by the potential harm to Plaintiffs, their respective reputations, and goodwill as manufacturers of high quality products if such relief is not issued; and

5. The public interest favors issuance of a preliminary injunction in order to protect Plaintiffs' trademark interests and protect the public from being defrauded by the palming off of counterfeit goods as genuine goods of the respective Plaintiffs.

C. Under 15 U.S.C. § 1117(a), Plaintiffs may be entitled to recover, as an equitable remedy, the illegal profits gained through Defendants' distribution and sales

of goods bearing counterfeits and infringements of Plaintiffs' Marks. *See Reebok Int'l, Ltd. v. Marnatech Enters., Inc.*, 970 F.2d 552, 559 (9th Cir. 1992) ("An accounting of profits under § 1117(a) is not synonymous with an award of monetary damages: '[a]n accounting for profits . . . is an equitable remedy subject to the principles of equity.'" (quoting *Fuller Brush Products Co. v. Fuller Brush Co.*, 299 F.2d 772, 777 (7th Cir. 1962))).

D. Requesting equitable relief "invokes the district court's inherent equitable powers to order preliminary relief, including an asset freeze, in order to assure the availability of permanent relief." *Levi Strauss & Co. v. Sunrise Int'l Trading Inc.*, 51 F.3d 982, 987 (11th Cir. 1995) (citing *Federal Trade Commission v. United States Oil and Gas Corp.*, 748 F.2d 1431, 1433-34 (11th Cir. 1984)).

E. In light of the inherently deceptive nature of the counterfeiting business, and Defendants' blatant violation of the federal trademark laws, Plaintiffs have good reason to believe Defendants will hide or transfer their ill-gotten assets beyond the jurisdiction of this Court unless those assets are restrained.

Accordingly, based on the foregoing reasons, we respectfully **RECOMMEND** that Plaintiffs' Application for a Preliminary Injunction [D.E. 5] be **GRANTED**. It should also be **ORDERED** and **ADJUDGED** as follows:

1. Each of the Defendants, their officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with them having notice of this Order are hereby restrained and enjoined, pending termination of this action:

- (a) From manufacturing, importing, advertising, promoting, offering to sell, selling, distributing, or transferring any products bearing the Acushnet Marks, Callaway Golf Marks, Cleveland Golf Marks, Karsten Mark, and/or TaylorMade-adidas Golf Marks, or any confusingly similar trademarks, other than those actually manufactured or distributed by Plaintiffs; and
- (b) From secreting, concealing, destroying, selling off, transferring, or otherwise disposing of: (I) any products, not manufactured or distributed by Plaintiffs, bearing the Acushnet Marks, Callaway Golf Marks, Cleveland Golf Marks, Karsten Mark, and/or TaylorMade-adidas Golf Marks, or any confusingly similar trademarks; or (ii) any evidence relating to the manufacture, importation, sale, offer for sale, distribution, or transfer of any products bearing the Acushnet Marks, Callaway Golf Marks, Cleveland Golf Marks, Karsten Mark, and/or TaylorMade-adidas Golf Marks, or any confusingly similar trademarks.

2. Each of the Defendants, their officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with them having notice of this Order shall, until the conclusion of this matter, discontinue the use of the Acushnet Marks, Callaway Golf Marks, Cleveland Golf Marks, Karsten Mark, and/or TaylorMade-adidas Golf Marks or any confusingly similar trademarks, on or in connection with all Internet websites owned and operated, or controlled by them, including the Internet websites operating under the Subject Domain Names identified on Schedule "A" attached hereto;

3. Each of the Defendants, their officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with them having notice of this Order shall, until the conclusion of this matter, discontinue the use of the Acushnet Marks, Callaway Golf Marks, Cleveland Golf Marks, Karsten Mark, and/or TaylorMade-adidas Golf Marks, or any confusingly similar trademarks within domain name extensions, metatags or other markers within website source

code, from use on any webpage (including as the title of any web page), any advertising links to other websites, from search engines' databases or cache memory, and any other form of use of such terms which is visible to a computer user or serves to direct computer searches to websites registered by, owned, or operated by each Defendant, including the Internet websites operating under the Subject Domain Names;

4. Each Defendant shall not transfer ownership of the Subject Domain Names during the pendency of this Action, or until further Order of the Court;

5. The domain name Registrars for the Subject Domain Names are directed, to the extent not already done, to transfer to Plaintiffs' counsel, for deposit with this Court, domain name certificates for the Subject Domain Names;

6. The Registrars and the top-level domain ("TLD") Registries for the Subject Domain Names, upon receipt of this Preliminary Injunction shall, to the extent it is not already done, change or assist in changing, the registrar of record for the Subject Domain Names to a holding account with the United States based Registrar GoDaddy.com, Inc.. GoDaddy.com, Inc. shall hold and/or continue to hold the Subject Domain Names in trust for the Court during the pendency of this action. Additionally, GoDaddy.com, Inc., upon receipt of this Order, shall, to the extent not already done, immediately update and/or not modify the Domain Name System ("DNS") data it maintains for the Subject Domain Names, which links the domain names to the IP addresses where their associated websites are hosted, from NS1.MEDIATEMPLE.NET and NS2.MEDIATEMPLE.NET, which currently causes the domain names to resolve to the website where a copy of the Complaint, Summonses and Orders and other documents on file in this action are displayed. Alternatively, GoDaddy.com, Inc. may,

to the extent not already done, institute and/or maintain a domain name forwarding which will automatically redirect any visitor to the Subject Domain Names to the following Uniform Resource Locator (“URL”) <http://www.servingnotice.com/hainan/index.html> whereon a copy of the Complaint, Summonses and Orders and other documents on file in this action are displayed. The Subject Domain Names shall be maintained on Lock status, preventing the modification or deletion of the domains by the registrar or Defendants;

7. Plaintiffs may enter the Subject Domain Names into Google’s Webmaster Tools and cancel any redirection of the domains that have been entered there by Defendants which redirect traffic to the counterfeit operations to a new domain name and thereby evade the provisions of this Order;

8. Each of the Defendants shall preserve copies of all their computer files relating to the use of any of the Subject Domain Names and shall take all steps necessary to retrieve computer files relating to the use of the Subject Domain Names that may have been deleted before the entry of this Order;

9. Upon receipt of notice of this Order, PayPal, Inc. (“PayPal”) and its related companies and affiliates shall immediately freeze, and/or continue to keep frozen, all PayPal accounts related to the PayPal account recipient “expectation60@hotmail.com” and any other related accounts of the same customer; ⁴

10. PayPal shall also immediately divert, and/or continue to divert, to a holding account for the trust of the Court all funds currently in, or which during the

⁴ PayPal is licensed to do business in the State of Florida by the Florida Office of the Controller and is therefore subject to personal jurisdiction in this Court. (See Gaffigan Decl. ¶ 11 and Exhibit F attached thereto).

pendency of this Order come in to, all PayPal accounts related to the PayPal account recipient "expectation60@hotmail.com" and any other related accounts of the same customer;

11. PayPal shall further, to the extent not already down, within five days of receiving this Order, provide Plaintiffs' counsel with all data which identifies the PayPal accounts frozen as well as an accounting of the funds in the frozen accounts. Such freezing of the accounts and the disclosure of the related financial institution account information shall be made without notice to the account owners or the financial institutions until further order of this Court. PayPal shall receive and maintain this Order and its contents as confidential until further order of this Court;

12. Plaintiffs shall maintain their bond in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00), as payment of damages to which Defendants may be entitled for a wrongful injunction or restraint, during the pendency of this action or until further Order of this Court;

13. This Preliminary Injunction shall remain in effect during the pendency of this action, or until such further date as set by the Court or stipulated to by the parties.

Pursuant to Local Magistrate Rule 4(b), the parties have fourteen (14) days from the date of this Report and Recommendation to serve and file written objections, if any, with the Honorable Ursula Ungaro, United States District Judge. Failure to timely file objections shall bar the parties from a *de novo* determination by the District Judge of an issue covered in the report and bar the parties from attacking on appeal the factual

findings contained herein, if any. *R.T.C. v. Hallmark Builders, Inc.*, 996 F.2d 1144, 1149 (11th Cir. 1993); *LoConte v. Dugger*, 847 F.2d 745 (11th Cir. 1988); *Nettles v. Wainwright*, 677 F.2d 404, 410 (5th Cir. Unit B 1982) (en banc); 28 U.S.C. § 636(b)(1).

DONE AND SUBMITTED in Chambers at Miami, Florida, this 16th day of November, 2011.

/s/ Edwin G. Torres
Edwin G. Torres
United States Magistrate Judge

Copies provided to:
District Judge Ursula Ungaro
All Counsel of Record

SCHEDULE A
SUBJECT DOMAIN NAMES

1. allstockonline.com
2. buzzgolfclubs.com
3. clubsgolfsale.com
4. discountgolfclubs18.com
5. drgolfstore.com
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