

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 24-62388-CIV-SINGHAL**

ADIDAS AG, *et al.*,

Plaintiffs,

vs.

THE INDIVIDUALS, BUSINESS ENTITIES,
AND UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE “A,”

Defendants.

**PLAINTIFFS’ *EX PARTE* APPLICATION FOR ENTRY OF
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION
AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

Plaintiffs, adidas AG, adidas International Marketing B.V., and adidas America, Inc. (collectively “adidas” or “Plaintiffs”), hereby do apply, on an *ex parte* basis, for entry of a temporary restraining order, and upon expiration of the temporary restraining order and a preliminary injunction against Defendants, the Individuals, Business Entities, and Unincorporated Associations identified on Schedule “A” hereto (“Defendants”) pursuant to 15 U.S.C. § 1116, Fed. R. Civ. P. 65, The All Writs Act, 28 U.S.C. § 1651(a), and the Court’s inherent authority. In support thereof, Plaintiffs submit the following memorandum of law.

I. INTRODUCTION

Defendants are knowingly and intentionally promoting, advertising, distributing, offering for sale, and selling goods bearing and/or using counterfeits and confusingly similar imitations of one or more of Plaintiffs’ registered trademarks within this district and throughout the United States by operating fully interactive, commercial Internet websites under the domain names identified on Schedule “A” hereto (“Subject Domain Names”). Plaintiffs obtained evidence clearly

demonstrating that Defendants (a) are engaged in the advertising, offering for sale, and sale of counterfeit and infringing versions of Plaintiffs' goods; and (b) accomplish their sales of counterfeit and infringing goods via the Internet using, at least, the Subject Domain Names. Plaintiffs' Complaint thus alleges claims for trademark counterfeiting and infringement, false designation of origin, common law unfair competition, and common law trademark infringement.

Defendants' unlawful activities have caused and will continue to cause Plaintiffs irreparable injury. Among other things, Defendants (1) deprive Plaintiffs of their rights to determine the manner in which their trademarks are presented to the public through merchandising; (2) defraud the public into thinking Defendants' goods are valuable, authorized goods of Plaintiffs; (3) deceive the public as to Plaintiffs' sponsorship of and/or association with their goods and the websites through which such goods are marketed and sold; and (4) wrongfully trade and capitalize on Plaintiffs' reputations and goodwill and the commercial value of Plaintiffs' trademarks.

Defendants have wrongfully damaged Plaintiffs' abilities to market their goods and educate consumers about their brands via the Internet in a free and fair marketplace, and are participating in the creation and/or maintenance of an illegal marketplace on the World Wide Web (the "Web"), the purposes of which are to (i) confuse consumers regarding the source of Defendants' goods for profit, and (ii) expand the marketplace for illegal, counterfeits of Plaintiffs' branded goods while shrinking the legitimate marketplace for Plaintiffs' genuine branded goods. The natural and intended byproduct of Defendants' combined actions is the erosion of the overall legitimate marketplace in which Plaintiffs operate and the goodwill associated with Plaintiffs' names. Defendants are causing Plaintiffs ongoing irreparable harm. Accordingly, Plaintiffs seek entry of a temporary restraining order (i) prohibiting Defendants' wrongful use of Plaintiffs' trademarks and (ii) disabling Defendants' unlawful businesses operating under the Subject Domain Names.

II. STATEMENT OF FACTS

A. Plaintiffs' Rights.

Plaintiffs' own all rights in and to the federally registered trademarks listed in Paragraphs 4 and 5 (the "adidas Marks") of the Declaration of Amanda Luz in Support of Plaintiffs' Application for TRO ("Luz Decl."), which are used in connection with the manufacture and distribution of quality goods in the categories identified therein. (Luz Decl. ¶¶ 4–5; see also United States Trademark Registrations for the adidas Marks attached as Comp. Ex. "1" to the Compl. [DE 1-2]. The adidas Marks are symbols of Plaintiffs' quality, reputations, and goodwill and have never been abandoned. (See Luz Decl. ¶¶ 7–11.) Plaintiffs expend substantial resources developing, advertising, and otherwise promoting the adidas Marks. (See id. ¶ 8.) Accordingly, the adidas Marks are famous marks as the term is used in 15 U.S.C. § 1125(c)(1).

Furthermore, Plaintiffs extensively use, advertise, and promote the adidas Marks in the United States in interstate commerce in association with the sale of their high-quality goods, and carefully monitor and police the use of the adidas Marks. (See id. at ¶¶ 6–11.) As a result, members of the consuming public readily identify products sold under the adidas Marks as being quality merchandise sponsored and approved by Plaintiffs. (Id.) The adidas Marks are widely recognized trademarks in the United States, and the trademarks have achieved secondary meaning; as such, the adidas Marks have come to symbolize the enormous goodwill of Plaintiffs' genuine products throughout the United States. (Id.) At all times relevant hereto, Defendants have been aware of Plaintiffs' (a) ownership of the adidas Marks; (b) exclusive right to use the adidas Marks; and (c) substantial goodwill embodied in, and favorable recognition for, the adidas Marks.

B. Defendants Wrongfully Use Plaintiffs' Trademarks.

Defendants do not have, nor have they ever had, the right or authority to use the adidas Marks for any purpose. (Luz Decl. ¶¶ 13, 15.) Despite their known lack of authority to do so,

Defendants are concurrently promoting and otherwise advertising, distributing, selling and/or offering for sale goods, through their Subject Domain Names, using counterfeit and infringing trademarks that are exact copies of one or more of the adidas Marks, without authorization (“Defendants’ Goods”). (Luz Decl. ¶¶ 13–15; Declaration of Virgilio Gigante in Support of Plaintiffs’ Application for TRO (“Gigante Decl.”) ¶ 2; see also relevant web page captures from Defendants’ interactive, commercial Internet websites operating under the Subject Domain Names displaying Plaintiffs’ branded items offered for sale (“Defendants’ Websites”) attached as Comp. Ex. “1” to the Gigante Decl.)¹ Plaintiffs’ representative, who is trained to identify the distinctions between genuine adidas-branded merchandise and counterfeit copies of the same, reviewed and visually inspected the various products bearing the adidas Marks offered for sale by Defendants via the Internet websites operating under each of the Subject Domain Names and determined the products were non-genuine, unauthorized versions of Plaintiffs’ products. (See Luz Decl. ¶¶ 14–15.)

Given Defendants’ slavish copying of the adidas Marks, Defendants’ Goods offered for sale and sold under identical marks are indistinguishable to consumers, both at the point of sale and post-sale. By using the adidas Marks, Defendants have created a false association between their counterfeit and infringing goods and websites and Plaintiffs in violation of 15 U.S.C. § 1125(a) and are causing and will continue to cause Plaintiffs irreparable harm. (Luz Decl. ¶ 22.)

Section 45 of the Lanham Act defines a “counterfeit” as “a spurious mark which is identical with, or substantially indistinguishable from, a registered mark.” 15 U.S.C. § 1127. Also,

¹ Plaintiffs have prepared a chart for the convenience of the Court providing an example of the trademarks counterfeited and types of goods offered for sale by each Defendant, including citations to the evidence. (See Gigante Decl. ¶ 2 and Comp. Ex. “2” attached thereto, infringement chart providing an example of the trademarks counterfeited and types of goods offered for sale per Defendant, including citations to the evidence.)

using the “ocular test” of direct comparison, courts have found that even marks that are slightly modified from the registered marks copied are to be considered counterfeit marks. See Fimab-Finanziaria Maglificio vs. Helio Import/Export, Inc., 601 F. Supp. 1 (S.D. Fla. 1983). Comparing the adidas Marks to the marks used by Defendants in connection with Defendants’ Goods reveals the obvious counterfeit nature of such Goods. Defendants’ Goods are being promoted, advertised, offered for sale, sold, and/or displayed in search engine results pages by Defendants within this district and throughout the United States. (Luz Decl. ¶¶ 13-15; Gigante Decl. ¶ 2; see Defendants’ Websites.). Defendants are profiting by preying upon consumers, many of whom have no knowledge Defendants are defrauding them. Defendants’ activities infringe on Plaintiffs’ rights. The Subject Domain Names are a substantial part of how Defendants further their scheme and cause Plaintiffs’ harm.

C. Defendants Unfairly Compete with and Cause Indivisible Harm to Plaintiffs.

Defendants are all using counterfeits and infringements of Plaintiffs’ famous names and the adidas Marks to make their websites appear more relevant and attractive to consumers shopping for genuine adidas branded products online. While each Defendant causes direct individual harm to Plaintiffs, the combined effect of Defendants’ unlawful activities functions as a force multiplier to cause Plaintiffs a single indivisible harm. (Luz Decl. ¶¶ 20–21.) In other words, they are all logically part of the same occurrence. Defendants are therefore properly joined in this action pursuant to Fed. R. Civ. P. 20. See Bose Corp. v. The P’ships and Unincorporated Ass’ns Identified on Schedule “A,” 334 F.R.D. 511 (N.D. Ill. Feb. 19, 2020) (holding that the combined effect of the individual harm suffered by a plaintiff from online counterfeiters creates injuries to the plaintiff in the aggregate constituting an occurrence under Rule 20.)

Specifically, genuine adidas branded goods are widely legitimately advertised, promoted, offered for sale, and discussed by Plaintiffs and unrelated third parties via the Internet. (Luz Decl.

¶ 16.) Visibility on the Internet, particularly via search engines and social media platforms, is important to Plaintiffs’ overall marketing and consumer education efforts. (Id. at ¶ 17.) Plaintiffs expend significant resources on Internet marketing and consumer education regarding their products, including search engine optimization, search engine marketing, and social media strategies, which allow Plaintiffs and others to fairly educate consumers about the value associated with the adidas brand and the goods sold thereunder. (Id.; see also Compl. ¶ 25.)

Counterfeiters like Defendants embrace similar marketing strategies to Plaintiffs and are concurrently leveraging them to cause greater, more significant harm to Plaintiffs. The combination of all Defendants engaging in the same exact illegal activity for the same purpose over the same time span causes Plaintiffs irreparable harm in a way that the individual actions occurring alone might not. See, Bose Corp., 334 F.R.D. at 517 (“[Plaintiff] does not perceive any one counterfeiter to be the problem. Each injury by itself is relatively inconsequential to [Plaintiff]. Rather, it is the injuries in the aggregate . . . that is harmful and from which [Plaintiff] seeks shelter.”) Defendants are jointly and concertedly harming Plaintiffs’ marketing efforts on the Internet by blocking and consistently increasing the cost of online visibility for Plaintiffs’ legitimate, authorized websites. (Luz Decl. ¶ 20.) The combination of Defendants’ unlawful activities increases Plaintiffs’ cost to market their genuine goods and educate consumers about their brand. (Id.); see, Bose Corp., 334 F.R.D. at 517 (“Seeking relief against each member of the swarm one by one defies common sense, because it is the swarm—the fact that all Defendants are attacking at once—that is the defining aspect of the harm from which [Plaintiff] seeks relief.”).

Defendants, each of whom is likely aware of the existence of the illegal marketplace and the activities of the others to perpetuate the same, are combining the force of their actions to cause individual, concurrent, and indivisible harm to Plaintiffs and consumers. (See Luz Decl. ¶¶ 20–21;

Compl. ¶¶ 29, 35-36). See also Bose Corp., 334 F.R.D. at 517 (“Joinder of all defendants who are part of the swarm attacking [Plaintiff’s] trademarks flows easily from conceptualizing the swarm as the relevant Rule 20 ‘occurrence.’”) By engaging in market building strategies based upon an illegal use of the adidas Marks, Defendants are obliterating the otherwise open and available marketplace space in which Plaintiffs have the right to fairly market their goods and associated message. (Luz Decl. ¶ 19.) Through their combined concurrent actions, Defendants are causing individual, concurrent, and indivisible harm to Plaintiffs and the consuming public by (i) depriving Plaintiffs and other third parties of the ability to fairly compete for space within marketing results, (ii) causing an overall degradation of the value of the goodwill associated with the adidas Marks, (iii) increasing Plaintiffs’ overall cost to market their goods and educate consumers about their brand via the Web, and (iv) creating and maintaining an illegal marketplace using the World Wide Web which perpetuates the ability of Defendants to confuse consumers and harm Plaintiffs with impunity. (See Luz Decl. ¶ 20.) See, Bose Corp., 334 F.R.D. at 517 (“From the plaintiff’s perspective . . . it is irrelevant whether the swarm is intentionally coordinated or simply a product of market forces enabled by the internet.”)

Meaningful space on the Web, including marketplace and social media advertisement space, is akin to real estate – there is only so much of it available. Website operators, including Plaintiffs and Defendants, expend significant resources incorporating concepts and popular search terms, such as the adidas Marks, into their on-site and off-site content and advertising to promote visibility on the Web. (See Luz Decl. ¶¶ 18–19.) A significant part of relevant market targeting involves reaching a specific demographic or profile based upon a user’s search terms. (See id.) Plaintiffs are doing so through the use of their trademarks in which they have made a substantial economic investment, and Defendants are doing so through subterfuge and unlawful use of the

adidas Marks. Each Defendant is helping to create and maintain the overall illicit marketplace where they market and sell their respective goods and confuse consumers.

Plaintiffs, their trademark rights, and associated goodwill are suffering death by 1,000 cuts caused by the combined force of all Defendants' individual but concurrent unlawful activities. The combined force and effect of all of Defendants' actions are causing the single indivisible harm of the mass consumer confusion and the denial of Plaintiffs' right to fairly compete for visibility on the Web.

III. ARGUMENT

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

Plaintiffs are seeking entry of a temporary restraining order (i) prohibiting Defendants' further wrongful use of Plaintiffs' trademarks and (ii) disabling Defendants' websites operating under the Subject Domain Names during the pendency of this action. The requested relief is necessary to immediately stop Defendants' ongoing, intentional confusion of consumers and the associated irreparable harm occurring to Plaintiffs.

Rule 65(b) of the Federal Rules of Civil Procedure provides, in part, that a temporary restraining order may be granted without written or oral notice to the opposing party or that party's counsel 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). Moreover, temporary restraining orders are available on an *ex parte* basis if the movant shows through an affidavit that there is a threat of intervening immediate, irreparable harm before the adverse party may be heard in opposition and the movant's attorney certifies in writing why notice should not be required. Fed. R. Civ. P. 65(b). As demonstrated herein, such

irreparable and immediate injury will result to Plaintiffs if Defendants' wrongful activities are not immediately stopped by the issuance of a temporary restraining order. This is such a case.

Defendants fraudulently promote, advertise, offer for sale, and sell goods using counterfeits of the adidas Marks via their Subject Domain Names. Specifically, Defendants are wrongfully using counterfeits and infringements of the adidas Marks to increase consumer traffic to their illegal operations. By their actions, Defendants are creating a false association in the minds of consumers between Defendants and Plaintiffs. The entry of a temporary restraining order will serve to immediately stop Defendants from benefiting from their wrongful use of the adidas Marks and preserve the status quo until such time as a hearing can be held. See Dell Inc. v. BelgiumDomains, LLC, No. 07-22674 2007 WL 6862341, at *2 (S.D. Fla. Nov. 21, 2007) (finding *ex parte* relief more compelling where Defendants' scheme "is in electronic form and subject to quick, easy, untraceable destruction by Defendants.")

Absent a temporary restraining order without notice, Defendants can significantly alter the status quo before the Court can determine the parties' respective rights. The Subject Domain Names and associated websites at issue are under Defendants' complete control, and they can modify registration data and content, change hosts and, most importantly, redirect traffic to other websites they control. (Gigante Decl. ¶ 4.) Moreover, many Defendants operate Internet websites, which they optimize for the sale of counterfeit and infringing versions of Plaintiffs' branded merchandise. This process provides Defendants with their power to unfairly compete with Plaintiffs by catapulting their illegal websites into top search engine results. All that optimization power, built through the illegal use of the adidas Marks, can easily be transferred to a new domain name in a matter of minutes through what is known as a redirect to push traffic from the Subject Domain Names to new domains not yet identified. (Id. at ¶¶ 5–6.) The result would be to slingshot

the new domains to the top of the search engine results pages by leveraging the Internet traffic to the domains in suit, which was built through the illegal use of the adidas Marks. (*Id.* at ¶ 6.) In short, Defendants would completely erase the status quo by transferring all the benefits of their prior illegal activities to new websites. (*Id.* at ¶¶ 5–6).

Moreover, federal courts have long recognized that civil actions against counterfeiters – whose very businesses are built around the deliberate misappropriation of rights and property belonging to others – present special challenges that justify proceeding on an *ex parte* basis. 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”); see also adidas AG v. 2013jeremyscottxadidas.com, No. 13-61867-Civ, 2013 WL 5306704 (S.D. Fla. Sept. 19, 2013) (Rosenbaum, R.) (Order granting *Ex Parte* Application for Temporary Restraining Order). This Court should prevent an injustice from occurring by issuing a temporary restraining order which precludes Defendants from continuing to display their infringing content via the websites operating under the Subject Domain Names and which, after allowing an opportunity for objections, temporarily places control of the websites in the hands of the Court. Only such an order will prevent ongoing irreparable harm and maintain the status quo.

B. Standard for Temporary Restraining Order and Preliminary Injunction.

In this Circuit, the standard for obtaining a temporary restraining order and the standard for obtaining a preliminary injunction are the same. See Emerging Vision, Inc. v. Glachman, No. 10-cv-80734, 2010 WL 3293346, at *3 (S.D. Fla. June 29, 2010) (citing Siegel v. LePore, 120 F. Supp. 2d 1041 (S.D. Fla. 2000) aff’d 234 F.3d 1163 (11th Cir. 2000)). To obtain a temporary restraining order or a preliminary injunction, 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 the non-movant; and (4) that entry of the relief would serve the public interest. Schiavo ex rel. Schindler v. Schiavo, 403 F.3d 1223, 1225-26 (11th Cir. 2005). Plaintiffs' evidence establishes all of the relevant factors.

1. Probability of Success on the Merits of Plaintiffs' Claims.

a) Likelihood of Success on Counterfeiting Claim.

Title 15 U.S.C. §1114 provides liability for trademark infringement if, 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 (2022). Plaintiffs must demonstrate (1) ownership of the trademarks at issue; (2) Defendants' use of the trademarks is without Plaintiffs' 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). Plaintiffs' evidence satisfies these requirements.

The first two elements of Plaintiffs' trademark counterfeiting and infringement claims are easily met. The adidas Marks are owned by Plaintiffs and registered on the Principal Register of the United States Patent and Trademark Office, and all have become "incontestable" under 15 U.S.C. §§ 1058 and 1065. (See Comp. Ex. "1" to the Compl.) See Ocean Bio-Chem, Inc. v. Turner Network Television, Inc., 741 F. Supp. 1546, 1554 (S.D. Fla. 1990) ("Incontestable status provides conclusive evidence of the registrant's exclusive right to use the registered mark, subject to §§ 15 and 33(b) of the Lanham Act."). Moreover, Defendants have never had the right or authority to use the adidas Marks. (Luz Decl. ¶ 13.)

The Eleventh Circuit uses a seven-factor test in determining the third element, likelihood of confusion. See Ross Bicycles, Inc. v. Cycles USA, Inc., 765 F.2d 1502, 1506 (11th Cir. 1985). These factors, as outlined in Safeway Store, Inc. v. Safeway Discount Drugs, Inc., are: (1) the strength of the mark; (2) the similarity of marks; (3) the similarity of the goods; (4) similarity of the sales methods; (5) the similarity of advertising media; (6) defendant's intent; and (7) evidence of actual confusion. See 675 F.2d 1160, 1164 (11th Cir. 1982); see also Lipscher v. LRP Publ'ns, Inc., 266 F.3d 1305, 1303 (11th Cir. 1997). The seven factors listed are to be weighed and balanced and no single factor is dispositive. (Id.)

(1) Strength of the Marks.

The spectrum of protectability and strength for trademarks is divided into four primary types of designations: (1) coined, fanciful or arbitrary; (2) suggestive; (3) descriptive; and (4) generic. See Two Pesos, Inc. v. Taco Cabana, Inc., 505 U.S. 763, 768, 112 S. Ct. 2753, 120 L.Ed.2d 615 (1992). Arbitrary or fanciful marks are the strongest and deemed inherently distinctive and entitled to protection. (See id.) It cannot be seriously disputed that the adidas Marks are strong, arbitrary and fanciful marks. (See Comp. Ex. "1" to the Compl.) The adidas Marks have also acquired secondary meaning. Plaintiffs expend substantial resources in developing, advertising, and promoting the adidas Marks. (Luz Decl. ¶¶ 6–9.) The adidas Marks enjoy widespread recognition in the United States and are prominent in the minds of consumers.

(2) Similarity of the Marks.

Likelihood of confusion is greater when an infringer uses the exact trademark. Turner Greenberg Assocs. v. C & C Imps., 320 F. Supp. 2d 1317, 1332 (S.D. Fla. 2004). Defendants are using marks that are identical to the adidas Marks. (Compare Comp. Ex. "1" to the Compl. with Comp. Ex. "1" to the Gigante Decl.)

(3) Similarity of the Goods.

“The greater the similarity between the products and services, the greater the likelihood of confusion.” John H. Harland Co. v. Clarke Checks, Inc., 711 F.2d 966, 976 (11th Cir. 1983). Defendants are selling the same types of goods Plaintiffs sell. (Luz Decl. ¶¶ 4–5; see generally Defendants’ Subject Domain Names, attached as Comp. Ex. “1” to the Gigante Decl.) Because they bear counterfeits of the adidas Marks, Defendants’ Goods appear virtually identical to Plaintiffs’ genuine products. Standing alone, this similarity can be held sufficient to establish a likelihood of confusion. See John H. Harland Co., 711 F.2d at 976.

(4) Similarity of Sales Method and (5) Advertising Method.

Convergent marketing channels increase the likelihood of confusion. See Turner Greenberg Assocs., 320 F. Supp. 2d at 1332. Both Plaintiffs and Defendants sell and advertise 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 Florida. (Luz Decl. ¶¶ 7, 16–17.) Moreover, both target the same general United States consumers, and as such, Plaintiffs are directly competing with Defendants’ products.

(6) Defendants’ Intent.

This district has held that when an alleged infringer adopts a mark “with the intent of obtaining benefit from the plaintiff’s business reputation, ‘this fact alone may be sufficient to justify the inference that there is confusing similarity.’” Turner Greenberg Assocs., 320 F. Supp. 2d at 1333, citing Carnival Corp. v. Seaescape Casino Cruises, Inc., 74 F. Supp. 2d 1261, 1268 (S.D. Fla. 1999). In a case of clear-cut copying such as in this case, it is appropriate to infer Defendants intended to benefit from Plaintiffs’ reputations, to Plaintiffs’ detriment. See Playboy Ent., Inc. v. P.K. Sorren Export Co. Inc. of Fla., 546 F. Supp. 987, 996 (S.D. Fla. 1982).

(7) Evidence of Actual Confusion.

Actual confusion is unnecessary to establish infringement since the test is likelihood of confusion. See Frehling Enters. v. Int'l Select Group, Inc., 192 F.3d 1330, 1340 (11th Cir. 1999). In this case, however, it is reasonable to infer actual confusion exists in the marketplace because Defendants are advertising, offering to sell and selling counterfeit goods identical in appearance to those sold by Plaintiffs. (Luz Decl. ¶¶ 13–15; see also Defendants' Websites.) Even if buyers are told of the bogus nature of Defendants' Goods, other consumers viewing Defendants' Goods in a post-sale setting will obviously be confused, because they are viewing goods bearing the adidas Marks creating the impression they are viewing genuine goods sold or authorized by Plaintiffs. Such post-sale confusion is entirely actionable. See Remcraft Lighting Products, Inc. v. Maxim Lighting, Inc., 706 F. Supp. 855, 859 (S.D. Fla. 1989) ("The likelihood of confusion need not occur at wholesale level when the end user will be confused.")

The seven above factors weigh only in Plaintiffs' favor. Plaintiffs have therefore shown a probability of success on the merits of their trademark counterfeiting and infringement claim.

b) Likelihood of Success on False Designation of Origin, Common Law Unfair Competition, and Common Law Trademark Infringement Claims.

As with a trademark infringement claim, the test for liability for false designation of origin under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), is also whether the public is likely to be deceived or confused by the similarity of the marks at issue. Two Pesos, 505 U.S. at 780. Additionally, whether a defendant's use of a plaintiff's trademarks creates a likelihood of confusion between the plaintiff's and the defendant's products is also the determining factor in the analysis of unfair competition under the common law of Florida and Florida common law trademark infringement. See Planetary Motion, Inc. v. Techsplosion, Inc., 261 F.3d 1188, 1193 n.4 (11th Cir. 2001) ("Courts may use an analysis of federal infringement claims as a 'measuring

stick’ in evaluating the merits of state law claims.”); PetMed Express, Inc. v. MedPets.com, Inc., 336 F. Supp. 2d 1213, 1217–18 (S.D. Fla. 2004). Whether the violation is called infringement, unfair competition, or false designation of origin, the test is identical – is there a “likelihood of confusion?” Two Pesos, 505 U.S. at 763. Thus, because Plaintiffs have established the merits of their trademark counterfeiting and infringement claims against Defendants, a likelihood of success is also shown for Plaintiffs’ false designation of origin, as well as their common law unfair competition and trademark infringement claims.

2. Plaintiffs are Suffering Irreparable Injury.

As the Eleventh Circuit stated: “[A] sufficiently strong showing of likelihood of confusion [caused by trademark infringement] may by itself constitute a showing of ... [a] substantial threat of irreparable harm.” Ferrellgas Ptnrs., L.P. v. Barrow, 143 Fed. Appx., 180, 191 (11th Cir. 2005) (citing McDonald’s Corp. v. Robertson, 147 F.3d 1301, 1310 (11th Cir. 1998)). Such a finding of irreparable injury following a showing of likelihood of confusion is virtually always made cases like this, where a plaintiff demonstrated it will lose control of its reputation due to a defendant’s activities. Id. A likelihood of confusion exists herein as Defendants engaged in counterfeiting activities using spurious designations indistinguishable from the adidas Marks.

3. The Balance of Hardship Tips Sharply in Plaintiffs’ Favor.

Plaintiffs expend substantial resources to develop the quality, reputation, and goodwill associated with the adidas Marks. (Luz Decl. ¶¶ 7–8.) Should Defendants be permitted to continue their trade in counterfeit goods, Plaintiffs will suffer losses and damage to their reputations. (Id. at ¶ 22.) However, Defendants will suffer no legitimate hardship in the event a temporary restraining order is issued as they have no right to engage in their present activities.

4. The Relief Sought Serves the Public Interest.

Defendants are engaged in unlawful activities and are directly defrauding consumers by palming off Defendants' Goods as Plaintiffs' genuine goods. The public has an interest in not being misled as to the origin, source, or sponsorship of trademarked products. See Naitiques Cosmetic Corp. v. Salon Sciences, Corp., 1997 WL 244746, 5, 41 U.S.P.Q.2d 1995, 1999 (S.D. Fla.1997) ("The interests of the public in not being victimized and misled are important considerations in determining the propriety of granting injunctive relief.").

C. The Equitable Relief Sought is 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).

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

Plaintiffs request an order requiring Defendants immediately cease all use of the adidas Marks, or substantially similar marks, including on or in connection with all websites and domain names they own and operate, or control. Such relief is necessary to stop the ongoing harm to Plaintiffs' trademarks 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 adidas Marks. This Court and others have authorized immediate injunctive relief in similar cases involving the unauthorized use of trademarks.²

² See, e.g., Chanel, Inc. v. allswisswatch.si, No. 24-61080-CIV, 2024 U.S. Dist. LEXIS 189269 (S.D. Fla. June 27, 2024) (Order granting *Ex Parte* Application for Temporary Restraining Order); Adidas AG v. Individuals, Bus. Entities, & Unincorporated Ass'ns, No. 24-60347-Civ-Singhal, 2024 U.S. Dist. Lexis 186792 (S.D. Fla. Mar. 6, 2024) (same); Malletier v. louisvuittonoutlets.us, No. 23-60995-Civ-Singhal, 2023 U.S. Dist. Lexis 156835 (S.D. Fla. June 29, 2023) (same); Chanel, Inc. v. Replicachanelpurses.com, No. 23-61189-Civ-Singhal, 2023 U.S. Dist. Lexis

2. Entry of an Order Prohibiting Transfer of the Domain Names During the Pendency of this Action is Appropriate.

To preserve the status quo, Plaintiffs seek an order temporarily modifying control of and prohibiting Defendants from transferring the Subject Domain Names to other parties. Under the operating rules of domain name registrars, defendants involved in domain name litigation easily can, and often will, change the ownership of a domain name and thereby frustrate the court's ability to provide relief to a plaintiff. (Gigante Decl. ¶ 4.) Moreover, Defendants can modify website content to thwart discovery and redirect traffic to other websites to thwart effective injunctive relief. (*Id.* at ¶¶ 4–6.) Accordingly, to preserve the status quo and ensure the possibility of eventual effective relief, courts in trademark cases involving domain names regularly grant such relief.³

156820 (S.D. Fla. June 26, 2023) (same); Chanel, Inc. v. Replicsachanel.com, No. 21-62492-Civ-Singhal, 2021 U.S. Dist. Lexis 259816 (S.D. Fla. Dec. 16, 2021) (same); Adidas AG v. Adidasboostoutlet.com, No. 21-62397-Civ-Singhal, 2021 U.S. Dist. Lexis 261509 (S.D. Fla. Dec. 16, 2021) (same); Abercrombie & Fitch Trading Co. v. Abercrombiesturkey, No. 20-cv-60417-Singhal, 2020 U.S. Dist. Lexis 108115 (S.D. Fla. Mar. 2, 2020). See also adidas AG v. Adidaschinhhang.net, No. 23-62427-Civ-Dimitrouleas, 2024 U.S. Dist. Lexis 34479 (S.D. Fla. Jan. 3, 2024) (same); Richemont Int'l Sa v. Aaareplicawatch.com, No. 23-62202-Civ-Smith, 2023 U.S. Dist. Lexis 234655 (S.D. Fla. Dec. 5, 2023) (same); Adidas AG v. Adidascampusireland.com, No. 23-62196-Civ-Altman, 2023 U.S. Dist. Lexis 231861 (S.D. Fla. Nov. 28, 2023) (same); Richemont Int'l Sa v. Cartierclone.com, No. 23-60536-Civ-Ruiz, 2023 U.S. Dist. Lexis 157948 (S.D. Fla. Mar. 22, 2023) (same); Louis Vuitton Malletier v. lvhut.net, No. 22-60228-Civ-Bloom, 2022 U.S. Dist. Lexis 22890 (S.D. Fla. Feb. 8, 2022) (same).

³ See, e.g., Chanel, Inc. v. allswisswatch.si, No. 24-61080-CIV, 2024 U.S. Dist. LEXIS 189269 (S.D. Fla. June 27, 2024) (Order prohibiting Defendants from transferring, *inter alia*, domain names during pendency or until further Order of the Court); Malletier v. louisvuittonoutlets.us, No. 23-60995-Civ-Singhal, 2023 U.S. Dist. Lexis 156835 (S.D. Fla. June 29, 2023) (same); Chanel, Inc. v. Replicachanelpurses.com, No. 23-61189-Civ-Singhal, 2023 U.S. Dist. Lexis 156820 (S.D. Fla. June 26, 2023) (same); Chanel, Inc. v. Replicsachanel.com, No. 21-62492-Civ-Singhal, 2021 U.S. Dist. Lexis 259816 (S.D. Fla. Dec. 16, 2021) (same); Adidas AG v. Adidasboostoutlet.com, No. 21-62397-Civ-Singhal, 2021 U.S. Dist. Lexis 261509 (S.D. Fla. Dec. 16, 2021) (same); Abercrombie & Fitch Trading Co. v. Abercrombiesturkey, No. 20-cv-60417-Singhal, 2020 U.S. Dist. Lexis 108115 (S.D. Fla. Mar. 2, 2020) (same). See also adidas AG v. Adidaschinhhang.net, No. 23-62427-Civ-Dimitrouleas, 2024 U.S. Dist. Lexis 34479 (S.D. Fla. Jan. 3, 2024) (same); Richemont Int'l Sa v. Aaareplicawatch.com, No. 23-62202-Civ-Smith, 2023 U.S. Dist. Lexis 234655 (S.D. Fla. Dec. 5, 2023) (same); Adidas AG v. Adidascampusireland.com, No.

Here, an interim order prohibiting Defendants from transferring the Subject Domain Names 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 Plaintiffs full relief.

3. Entry of an Order Modifying Control, Redirecting, and Disabling the Subject Domain Names is Appropriate

Courts recognize an interim order redirecting, transferring, disabling, or canceling the offending domain names displaying the counterfeit goods is the only means of affording a plaintiff interim relief that avoids irreparable harm. Plaintiffs request the Court enter an order requiring the registrars and the registries that maintain the Top Level Domain (“TLD”) Zone files for the Subject Domain Names change the registrar of record for the Subject Domain Names to a holding account with a Registrar of Plaintiffs’ choosing, where they will be held in trust for the Court during the pendency of this action and set to automatically redirect to Plaintiffs’ designated serving notice website appearing at the URL <http://servingnotice.com/D41s9x/index.html>.⁴ Upon such redirection, a copy of all pleadings, documents, and Court orders issued in this matter will be

23-62196-Civ-Altman, 2023 U.S. Dist. Lexis 231861 (S.D. Fla. Nov. 28, 2023) (same); Richemont Int’l Sa v. Cartierclone.com, No. 23-60536-Civ-Ruiz, 2023 U.S. Dist. Lexis 157948 (S.D. Fla. Mar. 22, 2023) (same); Louis Vuitton Malletier v. lvhut.net, No. 22-60228-Civ-Bloom, 2022 U.S. Dist. Lexis 22890 (S.D. Fla. Feb. 8, 2022) (same).

⁴ Such relief regarding a change of registrars was granted by this Court in Chanel, Inc. v. allswisswatch.si, No. 24-61080-CIV, 2024 U.S. Dist. LEXIS 189269 (S.D. Fla. June 27, 2024); Malletier v. louisvuittonoutlets.us, No. 23-60995-Civ-Singhal, 2023 U.S. Dist. Lexis 156835 (S.D. Fla. June 29, 2023); Chanel, Inc. v. Replicachanelpurses.com, No. 23-61189-Civ-Singhal, 2023 U.S. Dist. Lexis 156820 (S.D. Fla. June 26, 2023); Chanel, Inc. v. Replicsachanel.com, No. 21-62492-Civ-Singhal, 2021 U.S. Dist. Lexis 259816 (S.D. Fla. Dec. 16, 2021); Adidas AG v. Adidasboostoutlet.com, No. 21-62397-Civ-Singhal, 2021 U.S. Dist. Lexis 261509 (S.D. Fla. Dec. 16, 2021); and by other Courts in. See also adidas AG v. Adidaschinhhang.net, No. 23-62427-Civ-Dimitrouleas, 2024 U.S. Dist. Lexis 34479 (S.D. Fla. Jan. 3, 2024); Adidas AG v. Adidascampusireland.com, No. 23-62196-Civ-Altman, 2023 U.S. Dist. Lexis 231861 (S.D. Fla. Nov. 28, 2023); Richemont Int’l Sa v. Cartierclone.com, No. 23-60536-Civ-Ruiz, 2023 U.S. Dist. Lexis 157948 (S.D. Fla. Mar. 22, 2023); Louis Vuitton Malletier v. lvhut.net, No. 22-60228-Civ-Bloom, 2022 U.S. Dist. Lexis 22890 (S.D. Fla. Feb. 8, 2022).

visible to Defendants the moment they type their own domain names into their web browsers. The Subject Domain Names would remain in Defendants' legal ownership, but they would no longer be able to display infringing and counterfeit website content in this matter. Rather, this would serve as an effective means of notifying Defendants of the pendency of this action, the relief sought by Plaintiffs, and affording them and any other interested parties with an opportunity to object.

D. An Appropriate Bond Should Secure the Injunction.

The posting of security upon issuance of a temporary restraining order or preliminary injunction is vested in the Court's sound discretion. Fed. R. Civ. P. 65(c). Because of the strong and unequivocal nature of Chanel's counterfeiting evidence, Chanel 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 should an application be made in the interest of justice.

IV. CONCLUSION

In view of the foregoing, Plaintiffs respectfully request this Court grant their *ex parte* application and enter a temporary restraining order as to Defendants in the form submitted herewith and schedule a hearing on Plaintiffs' Motion for a Preliminary Injunction before the expiration of the temporary restraining order.

DATED: December 22, 2024.

Respectfully submitted,

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SCHEDULE A
DEFENDANTS BY NUMBER AND SUBJECT DOMAIN NAME

Defendant Number	Defendant / Domain Name
1	allkicks.shop
2	91sheep.net
3	basetao.xyz
4	boolopo.net
5	carlkicks.net
6	cnfactory.co
7	cnfashionbuy.shop
8	cocokicks.xyz
9	cocosneakers.co
10	coolkicks.shoes
11	crewkicks.shoes
12	elevenkicks.co
13	fashionreps.shoes
14	flightkickz.co
15	goosemasterkim.org
16	hicoco.co
17	hypeunique.net
18	joystudio.xyz
19	kickbulk.shop
20	lkkiks.net
21	mangomeee.shop
22	monicasneaker.co
23	mrhou.net
24	ogtony.xyz
25	perfectkicks.shoes
26	popkicks.co
27	repkicks.shoes
28	repsnkrs.co
29	shoesreplica.com
30	sneakershead.net

31	sneakerwill.shoes
32	suprize.shop
33	uaplg.org
34	ua-shoes.net
35	uasneakers.net