

**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* RESPONSE TO THE COURT’S ORDER TO SHOW CAUSE

On January 2, 2025, the Court issued an Order to Show Cause [ECF No. 4], requiring Plaintiffs, adidas AG, adidas International Marketing B.V., and adidas America, Inc. (collectively “adidas” or “Plaintiffs”) to show cause why joinder of Defendants is proper under Rule 20 and why the Court should not drop parties pursuant to Rule 21 of the Federal Rules of Civil Procedure. In connection therewith, Plaintiffs’ *ex parte*¹ response is as follows:

1. On December 19, 2024, Plaintiffs filed their Complaint for Injunctive Relief [ECF No. 1] against a group of 35 Defendants who are directly related and operating as a single, multi-pronged organization collectively trading on adidas’s famous trademarks and reputations and goodwill by offering for sale goods using counterfeit versions of Plaintiffs’ federally registered trademarks.

¹ Plaintiffs are filing their response *ex parte* as Plaintiffs have yet to provide Defendants with notice of this action. On December 23, 2024, Plaintiffs filed their Ex Parte Application for Temporary Restraining Order and Preliminary Injunction (“*Ex Parte* Application for Temporary Restraining Order”) [ECF No. 6], together with the supporting Declarations and Exhibits, which is currently pending before the Court.

2. Joinder in this case is proper, because Defendants are directly related and operating as a single, multi-pronged organization engaged in the sale of counterfeit adidas-branded goods. Plaintiffs' well-pleaded allegations, in the Complaint, supported by Plaintiffs' evidentiary submissions in this action, establish that Defendants are concurrently working in the same manner to sell counterfeit Chanel branded goods in the same transaction or occurrence, or series of transactions or occurrences causing an indivisible harm to adidas and the consuming public.

3. Fed. R. Civ. P. 20(a)(2) allows a plaintiff to assert a right of relief against multiple defendants where there is: (1) a right to relief arising out of the same transaction or occurrence, or series of transactions or occurrences, and (2) some question of law or fact common to all persons seeking to be joined. See Fed. R. Civ. P. 20(a); see also Alexander v. Fulton County, 207 F.3d 1303, 1323 (11th Cir. 2000), overruled on other grounds by Manders v. Lee, 338 F.3d 1304 (11th Cir. 2003). "The central purpose of Rule 20 is to promote trial convenience and expedite the resolution of disputes, thereby eliminating unnecessary lawsuits." Id. To that end, the Supreme Court has instructed courts to employ a liberal approach to permissive joinder of claims and parties in the interest of judicial economy. United Mine Workers, 383 U.S. at 724.

4. In determining whether the relief sought arises out of the same "transaction or occurrence", courts apply a "case-by-case approach" based upon a flexible standard to permit all reasonably related claims for relief by or against different parties to be tried in a single proceeding. Mosley v. General Motors Corp., 497 F.2d 1330, 1333 (8th Cir. 1974). A "transaction or occurrence" is not defined in Rule 20(a); however, courts have looked to the similar "transaction or occurrence" test for compulsory counterclaims under Rule 13(a) for guidance in their interpretation of Rule 20. See Alexander, 207 F.3d at 1323. This inquiry looks for a "logical relationship" between the claims when considering whether they arose from the same transaction.

See id.; see also Moore v. N.Y. Cotton Exch., 270 U.S. 593, 610, 46 S. Ct. 367, 70 L. Ed. 750 (1926) (noting that “[t]ransaction” is a word of flexible meaning” and holding that two claims arise from the same “transaction” when there is a “logical relationship” between them); Mosley, 497 F.2d at 1333 (holding, based on analogy to Rule 13(a), that the “transaction or occurrence” requirement of Rule 20 permits “all reasonably related claims” to be tried together). “Under this test, a logical relationship exists if the claims rest on the same set of facts or the facts, on which one claim rests, activate additional legal rights supporting the other claim.” Solar Eclipse Inv. Fund VII v. T-Mobile United States, No. 20-CV-25257, 2021 WL 4085504 *23 (S.D. Fla. Feb. 16, 2021) (citing Smith v. Trans—Siberian Orchestra, 728 F. Supp. 2d 1315, 1319 (M.D. Fla. 2010) (citing Republic Health Corp. v. Lifemark Hosps. of Fla., 755 F.2d 1453, 1455 (11th Cir. 1985)). “Stated differently, ‘there is a logical relationship when ‘the same operative facts serve as the basis of both claims.’” Solar Eclipse Inv., 2021 WL 4085504 *23 (citing Republic Health, 755 F.2d at 1455 (quoting Plant v. Blazer Fin. Servs., Inc., 598 F.2d 1357, 1361 (5th Cir. 1979)).

5. Plaintiffs’ well-pleaded allegations in the Complaint, supported by Plaintiffs’ evidentiary submissions filed in this action, establish that Defendants are directly and logically related such that their conduct arises out of the same transaction or occurrence, or series of transactions or occurrences, and therefore joinder is appropriate. Thus, although Defendants are being named individually, Plaintiffs have good cause to believe the Subject Domain Names are all operationally related. Because the Defendants operate anonymously, Plaintiffs cannot conclusively prove whether the identified Subject Domain Names are, in fact, owned by the same individual at this early, pre-discovery stage, however, it is clear the defendants are part of the same operational entity. Plaintiffs’ good faith belief of the relatedness of the individually named Defendants is supported by the following facts:

- a. Defendants share the same WhatsApp contact number, +447383308176. (See [ECF No. 6-3, pp. 2, 24, 38, 42, 51, 60, 70, 79, 92, 101, 113, 117, 126, 135, 144, 153, 165, 177, 189, 193, 202, 211, 220, 229, 236, 248, 256, 268, 272, 281, 290, 299, 308, 317, 327, *Sealed*]²; see also Gigante Decl. [ECF No. 11-1 *Sealed*] ¶ 3 and Composite Exhibit “1” to the Gigante Decl. [ECF No. 11-2 *Sealed*].)
- b. Defendants’ counterfeiting activities are all emanating from the same interrelated websites, offering for sale the same adidas counterfeit branded goods using identical product images, identical product descriptions, and similar pricing. (See [ECF No. 6-3, pp. 7, 29, 38, 47, 56, 65, 75, 84, 97, 106, 113, 122, 131, 140, 149, 161, 173, 182, 189, 198, 207, 216, 225, 232, 241, 248, 261, 268, 277, 286, 295, 304, 313, 322, 332 *Sealed*]; see also Gigante Decl. [ECF No. 11-1 *Sealed*] ¶ 4 and Composite Exhibit “2” to the Gigante Decl. [ECF No. 11-2 *Sealed*].)
- c. Defendants acts of infringement occurred during the same time period, with the investigation completed on the same day within about a 7-hour period. (See Gigante Decl. [ECF No. 11-1] *Sealed*] ¶ 5.)

Clearly, Defendants are logically and factually connected in their infringing activities and ultimately acting as a single Defendant.

6. Plaintiffs’ well-pleaded allegations also satisfy Fed. R. Civ. P. 20(a)(2)(B), which provides that joinder is proper if “any question of law or fact common to all defendants will arise

² The WhatsApp numbers are visible by hovering over the WhatsApp Icon on the web pages and are identified on the source code pages for the websites. (See Declaration of Virgilio Gigante in Support of Plaintiff’s *Ex Parte* Response to the Order to Show Cause (“Gigante Decl.”) ¶ 4 [ECF No. 11-2]).

in the action.” Defendants, without authorization, have each knowingly and willfully used Plaintiffs’ Marks in connection with the advertisement, distribution, offering to sell, and sale of the Counterfeit Goods into the United States, and this District specifically through the Internet. (See Compl. ¶¶ 26–36.) The relevant questions of fact and law to be decided with respect to each Defendant – whether Plaintiffs have valid trademark rights, infringement of those rights, and the right to injunctive relief – are virtually the same. The method Plaintiffs used in this action to investigate, uncover, and collect evidence of the infringing activity was the same for each Defendant. (See ECF No. 6-2 and 6-3 [*Sealed*].) As a result, the evidence submitted to each Defendant is identical in form and nature. Moreover, because Defendants in this case are all clearly affiliated with one another, there is little risk of a Defendant presenting different factual evidence supporting an individual legal defense or factual distinctions suggesting joinder was not appropriate.

7. Plaintiffs’ well-pleaded allegations establish that Defendants are participating in the same unlawful transaction, occurrence, or series of transactions or occurrences and that joinder is proper. “The touchstone of Rule 20 joinder/severance analysis is whether the interests of efficiency and judicial economy would be advanced by allowing the claims to travel together, and whether any party would be prejudiced if they did.” Fisher v. Ciba Specialty Chems. Corp., 245 F.R.D. 539 (S.D. Ala. 2007). Further, the joinder of Defendants in this action benefits Plaintiffs and Defendants, preventing needless multiple actions in situations where the rights of the parties are more justly and expediently settled in one suit. Plaintiffs submit they have shown that joinder in this case is proper because the Defendants are logically and factually connected in their infringing activities and causing indivisible harm which Plaintiffs seek relief from this Court.

WHEREFORE, Plaintiffs respectfully requests this Court accept Plaintiffs' response to the Court's January 2, 2025, Order to Show Cause and permit this case to proceed against all of the named Defendants.

DATED: January 16, 2025.

Respectfully submitted,

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By: **Virgilio Gigante**

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