

SEALED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 25-cv-21495-WILLIAMS/GOODMAN

ADIDAS AG, *et al.*,

Plaintiffs,

v.

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

Defendants.

**SEALED REPORT AND RECOMMENDATIONS ON PLAINTIFFS'
EX PARTE APPLICATION FOR INJUNCTIVE RELIEF**

adidas AG, adidas International Marketing B.V., and adidas America, Inc. (collectively, "Plaintiffs" or "adidas") filed an *Ex Parte* Application for Entry of a Temporary Restraining Order and Preliminary Injunction against the Individuals, Business Entities, and Unincorporated Associations identified on Schedule "A" (collectively "Defendants"). [ECF No. 6 ("Motion")].¹ United States District Judge Kathleen M. Williams referred "all discovery disputes and non-dispositive pretrial motions" to me. [ECF No. 8].

For the reasons set forth below, the Undersigned **respectfully recommends** that the Court **grant in part** and **deny in part** this Motion.

¹ There are 144 Defendants total. [ECF No. 6, pp. 20–23]. Plaintiffs attached their Schedule "A" list to the Motion. *Id.* The list includes each Defendant's domain name.

I. FACTUAL BACKGROUND

This is a trademark infringement case in which Plaintiffs allege that Defendants, through their individual online-based seller stores, are advertising, promoting, offering for sale, or selling goods using or bearing what Plaintiffs have determined to be infringements of their registered trademarks (“adidas Marks”).

Plaintiffs’ Complaint asserts four counts: (1) trademark counterfeiting and infringement pursuant to § 32 of the Lanham Act (15 U.S.C. § 1114); (2) false designation of origin pursuant to § 43(a) of the Lanham Act (15 U.S.C. § 1125(a)); (3) common law unfair competition; and (4) common law trademark infringement. [ECF No. 1].

Plaintiffs are business entities engaged in manufacturing and distributing athletic footwear, apparel, and sporting equipment bearing the adidas Marks. [ECF No. 1, ¶¶ 4–6, 17]. Plaintiffs registered various trademarks to protect their brand. *Id.* at ¶ 18.² The adidas Marks are used in conjunction with the design, manufacture, and distribution of quality goods[.]” *Id.* Plaintiffs discovered that Defendants “directly engage in unfair competition with Plaintiffs by advertising, offering for sale and/or selling goods each using counterfeits and infringements of one or more of Plaintiffs’ trademarks to consumers within the United States and this [D]istrict through at least the commercial Internet website[.]” *Id.* at ¶ 13; *see also* [ECF No. 6-1, ¶ 13 (“[Plaintiffs] learned Defendants are promoting, advertising, offering for sale and/or selling goods using counterfeit and infringing trademarks which are exact

² Copies of Plaintiffs’ Certificates of Registration for the adidas Marks are attached to Plaintiffs’ Complaint. [ECF No. 1-2].

copies of one or more of the adidas Marks, without authorization, via at least the commercial Internet websites operating under their domain names set forth on Schedule 'A'["].

As part of an investigation into Defendants, Plaintiffs' law firm accessed all of Defendants' e-commerce stores. [ECF No. 6-2, ¶ 2]. "The websites are fully interactive and allow users to browse the online stores for products bearing Plaintiffs' trademarks, add products to the online shopping carts, proceed to a point of checkout, and otherwise actively exchange data electronically." *Id.*³

According to Plaintiffs, Defendants' actions have irreparably damaged them:

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.

[ECF No. 6, p. 2]. Consequently, Plaintiffs brought this action against Defendants [ECF No. 1] and thereafter filed this Motion [ECF No. 6]. Plaintiffs also filed declarations in support of their Motion from: (1) their Legal Counsel for Brand Protection in North America, Amanda Luz, and (2) their attorney, Virgilio Gigante. [ECF Nos. 6-1; 6-2].

³ Plaintiffs included screenshots [ECF No. 6-3] of the types of counterfeited goods offered for sale by Defendants. *See also* [ECF No. 6-6 (chart)].

II. LEGAL STANDARD AND ANALYSIS

To obtain a temporary restraining order, a party must demonstrate: “(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 nonmovant; and (4) that the entry of the relief would serve the public interest.” *Schiavo ex. Rel Schindler v. Schiavo*, 403 F.3d 1223, 1225–26 (11th Cir. 2005); *see also Levi Strauss & Co. v. Sunrise Int’l. Trading Inc.*, 51 F.3d 982, 985 (11th Cir. 1995). Additionally, a court may only issue a temporary restraining order without notice to the adverse party or its attorney if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b)(1).

Ex parte temporary restraining orders and injunctions “should be restricted to serving their underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer.” *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cty.*, 415 U.S. 423, 439 (1974).

The Lanham Act authorizes the Court to issue an injunction “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 registered in the Patent and Trademark

Office[.]” 15 U.S.C. § 1116(a). Generally, “[i]njunctive relief is the remedy of choice for trademark and unfair competition cases, since there is no adequate remedy at law for the injury caused by a defendant’s continuing infringement.” *Burger King Corp. v. Agad*, 911 F. Supp. 1499, 1509–10 (S.D. Fla. 1995) (citation omitted).

Whether Plaintiffs Met Federal Rule of Civil Procedure 65(b)(1)

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 it clearly appears from the specific facts shown by affidavit or verified complaint “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).

As discussed in more detail below, absent a temporary restraining order without notice, Defendants will continue to cause Plaintiffs irreparable injury. [ECF No. 6, p. 15]. These Defendants reap the benefits of their unauthorized practice in the form of revenue and other profits from the sale of goods using the adidas Marks. The Undersigned finds that Plaintiffs have met the necessary Fed. R. Civ. P. 65(b) requirements for purposes related to **only** the temporary restraining order.

“While a temporary restraining order may be issued without notice to the adverse party, a preliminary injunction is issued **after** the adverse party has received notice of the requested relief.” *Doc Dev., LLC v. Ewc Franchise Grp., Inc.*, No. 18-21092-CIV, 2018 WL 2007045, at *1 (S.D. Fla. Mar. 23, 2018) (emphasis added). *See* Fed. R. Civ. P. 65(b)(1) (“The court may issue a temporary restraining order without written or oral notice to the adverse

party[.]” (alteration added)); *id.* 65(a)(1) (“The court may issue a preliminary injunction only on notice to the adverse party.”). The United States Supreme Court has stated that the notice required under Rule 65(a) “implies a hearing in which the defendant is given a fair opportunity to oppose the application and to prepare for such opposition.” *Granny Goose Foods*, 415 U.S. at 448 n.6.

But the District Court should **not** enter a preliminary injunction against Defendants until Plaintiffs provide them with the required notice, including the opportunity to respond and be heard. *See Mental Health Network, Inc. v. Marsteller*, No. 22-10003-CIV, 2022 WL 19330944, at *1 (S.D. Fla. Feb. 4, 2022).

Elements for a Temporary Restraining Order

As noted above, Plaintiffs’ request must meet four elements: “(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 nonmovant; and (4) that the entry of the relief would serve the public interest.” *Schiavo ex. Rel Schindler*, 403 F.3d at 1225–26. Based on Plaintiffs’ Motion [ECF No. 6], the Complaint [ECF No. 1], and the declarations [ECF Nos. 6-1; 6-2] submitted with the attached exhibits, Plaintiffs have a strong probability of proving at trial that Defendants continuously infringed Plaintiffs’ intellectual property, and, that if equitable relief is not granted, then the continued infringement of those works will likely cause Plaintiffs to suffer an immediate and irreparable injury.

The first element Plaintiffs must demonstrate is whether it will have “a substantial likelihood of success on the merits.” *Id.* at 1225. “[T]he elements of a claim for trademark infringement occur[] when a person ‘use[s] in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark’ which ‘is likely to cause confusion, or to cause mistake, or to deceive.’” *Chanel, Inc. v. Reznik*, No. 07-60493-CIV, 2007 WL 9710719, at *2 (S.D. Fla. Nov. 21, 2007) (quoting *Frehling Enters. v. Int’l Select Grp., Inc.*, 192 F.3d 1330, 1335 (11th Cir. 1999)). Thus, to prevail on Count I, Plaintiffs must show: “(1) that [their] mark[s] ha[ve] priority and (2) that [] [D]efendants’ mark is likely to cause consumer confusion.” *Id.*

Plaintiffs have sufficiently alleged and established each of these elements: (1) Plaintiffs own the adidas Marks; (2) Defendants are selling, offering for sale, and marketing products with the adidas Marks without Plaintiff’s consent or authorization; and (3) the marks used on the products Defendants are selling, offering for sale, and marketing are identical to the adidas Marks and thus, likely to cause consumer confusion. [ECF Nos. 1, ¶¶ 17–34, 42–43; 6-1–6-6]. Based on the Motion, the attached declarations, the exhibits, and the allegations in the Complaint, the Undersigned finds that Plaintiffs have established a *prima facie* case of trademark infringement⁴ and consequently demonstrated a high likelihood of success on the merits.

⁴ “A movant need only demonstrate a substantial likelihood of success on one of its claims to obtain a preliminary injunction.” *White Cap, L.P. v. Heyden Enterprises, LLC*, No. 23-14248-CIV, 2024 WL 3738925, at *3 (S.D. Fla. July 19, 2024), *report and recommendation adopted*, No. 23-14248-CIV, 2024 WL 3861528 (S.D. Fla. Aug. 19, 2024) (citing *Sapphire Consulting*

“Defendants do not have, nor have they ever had, the right or authority to use the adidas Marks” and “the adidas Marks have never been assigned or licensed to be used on any of the websites operating under the Subject Domain Names.” [ECF No. 6-1, ¶ 13]. The screenshot attachments to Plaintiffs’ Motion, together with the declarations, show Defendants selling products that look **identical** to the adidas Marks. [ECF Nos. 6-1–6-6].

The next element Plaintiffs must demonstrate is that if the requested relief is not granted, then they will suffer irreparable injury. *Schiavo ex. Rel Schindler*, 403 F.3d at 1225–26. “In order for an injury to be irreparable, it cannot be undone through monetary remedies.” *VAS Aero Servs., LLC v. Arroyo*, 860 F. Supp. 2d 1349, 1362 (S.D. Fla. 2012).

Plaintiffs have met this burden. They have demonstrated that Defendants’ actions are causing them “individual, concurrent and indivisible harm” by:

(i) depriving adidas of its right to fairly compete for space online and within search engine results and reducing the visibility of adidas’s genuine goods on the World Wide Web, (ii) causing an overall degradation of the value of the goodwill associated with the adidas Marks, and/or (iii) increasing adidas’s overall cost to market its goods and educate consumers about their brands via the Internet.”

[ECF Nos. 6-1, ¶¶ 16–20].

The third element requires that the movant prove that “the threatened injury

Servs. LLC v. Anderson, No. 6:20-cv-1724-CEM-LRH, 2021 WL 1053276, at *3 (M.D. Fla. Feb. 12, 2021) (“When a plaintiff asserts multiple claims as a basis for a preliminary injunction, the plaintiff ‘need only establish a substantial likelihood of success on one claim.’” (citation omitted)); *Schiavo ex rel. Schindler v. Schiavo*, 357 F. Supp. 2d 1378, 1384 (M.D. Fla. 2005) (“To obtain temporary injunctive relief, [a party] must show a substantial likelihood of success on at least one claim.”), *aff’d*, 403 F.3d 1223 (11th Cir. 2005)).

outweighs the harm the preliminary injunction would cause the other litigant.” *Head Kandy, LLC v. McNeill*, No. 23-CV-60345, 2023 WL 6309985, at *16 (S.D. Fla. Sept. 12, 2023), *report and recommendation adopted*, No. 23-CV-60345-RAR, 2023 WL 7318907 (S.D. Fla. Nov. 7, 2023) (quoting *Chavez v. Fla. SP Warden*, 742 F.3d 1267, 1271 (11th Cir. 2014)). Thus, the Court “must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008).

Based on Plaintiffs’ likelihood of success on their trademark infringement claim, the balance of harms weighs in favor of granting Plaintiffs a temporary restraining order. Unless Defendants are enjoined and restrained, Plaintiffs are likely to suffer further injuries that cannot be fully compensated or measured in money. The costs and hardship related to protecting Plaintiffs’ trademarks outweighs any potential damage to Defendants. A temporary restraining order would prevent Defendants from publicly using Plaintiffs’ trademarks without permission. **That is not a harm.** But, even if it were, this purported “harm” would not outweigh the justification behind issuing this temporary restraining order.

The final element is whether “the entry of relief would serve the public interest.” *Schiavo ex. Rel Schindler*, 403 F.3d at 1226. Here, the imposition of a temporary restraining order would not disserve the public interest because “[t]he public interest **favours** issuance of the temporary restraining order to protect [the] [p]laintiff’s trademark interests and protect the public from being defrauded by the palming off of counterfeit goods as [the]

plaintiff's genuine goods." *Betty's Best, Inc. v. Individuals, P'ships & Unincorporated Associations Identified on Schedule 'A'*, No. 1:23-CV-22322-KMW, 2023 WL 6171566, at *3 (S.D. Fla. Sept. 21, 2023) (emphasis added).

There is good cause to believe that without the entry of the requested injunctive-type relief provided by a temporary restraining order, Defendants could: (1) continue to benefit from their illegal activities; (2) redirect consumer traffic to other seller identification names; (3) transfer assets and ownership of their store names; and (4) continue their negative impact on Plaintiff's reputation and sales. [ECF Nos. 6, p. 15; 6-2, ¶¶ 5-6].

The Undersigned finds that Plaintiffs have successfully met each of the necessary elements for a temporary restraining order. However, because Defendants have not received notice under Fed. R. Civ. P. 65(c), Plaintiffs have not met all of the necessary elements for a preliminary injunction.

Bond Amount Under Federal Rule of Civil Procedure 65(c)

In their Motion, Plaintiffs request that the "Court require [them] to post a bond of no more than ten thousand dollars (\$10,000.00)[.]" [ECF No. 6, p. 19]. Federal Rule of Civil Procedure 65(c) provides that "the court may issue a preliminary injunction or a temporary restraining order **only if** the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Even though bonds are normally required, "it is well-established that the amount of security required by [Rule 65(c)] is a matter within the discretion of the trial court, and the court may elect to require no security at all." *TracFone Wireless, Inc. v.*

Wash., 978 F. Supp. 2d 1225, 1235 (M.D. Fla. 2013) (quoting *BellSouth Telecomms., Inc. v. MCI Metro Access Transmission Servs., LLC*, 425 F.3d 964, 971 (11th Cir. 2005)).

Plaintiffs have a high probability of succeeding on the merits of their trademark infringement claim, and because Defendants have no legitimate interest in the continued use of the adidas Marks, other courts have found that the Court does not *need* to require Plaintiffs to post a bond. *See Harris v. Hous. Auth. of City of Daytona Beach*, No. 6:01-cv-254, 2001 WL 36404273, at *5 (M.D. Fla. Apr. 25, 2001) (not requiring a bond where the preliminary injunction would result in minimal potential harm to the defendant); *Univ. Books & Videos, Inc. v. Metro. Dade Cnty.*, 33 F. Supp. 2d 1364, 1374 (S.D. Fla. 1999) (not requiring a bond where the movant had a high probability of succeeding on the merits of its claim); *TracFone Wireless, Inc.*, 978 F. Supp. 2d at 1235 (same).

However, in an abundance of caution, the Undersigned **respectfully recommends** that the Court **grant** Plaintiffs' request to post a bond in the amount of \$10,000.00, an amount this Court has previously found to be reasonable. *See Chanel, Inc. v. bdlady.com*, No. 20-60568-CIV, 2020 WL 3266567, at *5 (S.D. Fla. Mar. 17, 2020) (requiring the plaintiff to post a \$10,000.00 bond based on the plaintiff's evidence of trademark infringement).

III. CONCLUSION

For the reasons listed above, the Undersigned **respectfully recommends that the Court grant in part** Plaintiffs' *ex parte* request for injunctive relief [ECF No. 6] against Defendants using the language provided in Plaintiffs' proposed order [ECF No. 6-7] (as it sees fit).

At bottom, the District Court should: (1) **grant** Plaintiffs' request for a temporary restraining order; (2) **set** a Zoom hearing date related to the preliminary injunction request; (3) **mandate** that Plaintiffs serve a copy of that Order, this Report and Recommendations, their Motion [ECF No. 6], and the Complaint [ECF No. 1] at least five (5) days before the preliminary injunction hearing date to Defendants; (4) **require** Plaintiffs to file Certificates of Service on CM/ECF once complete; and (5) **require** Plaintiffs to file on CM/ECF a proposed Order adopting this Report and Recommendations and issuing a temporary restraining order with terms consistent with the instant Recommendations.

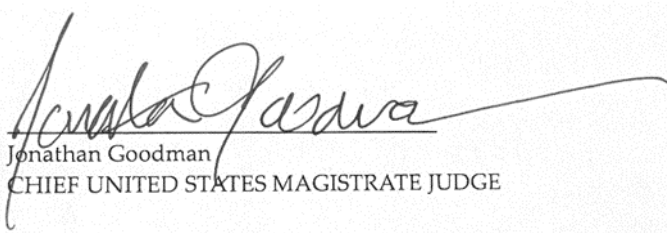
[NOTE: Pursuant to Fed. R. Civ. P. 65(b)(2), this Order granting the temporary restraining order "must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record." However, the Order "expires at the time after entry--not to exceed 14 days--that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record." *Id.*

Therefore, the preliminary injunction hearing date must be set within that timeframe in order to comply with Rule 65(b). Additionally, because Plaintiffs' request for a preliminary injunction is *ex parte*, this hearing "must be set at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order." *Id.* at 65(b)(3)].

IV. OBJECTIONS

The parties will have three (3)⁵ days from the date of being served with a copy of this Report and Recommendations within which to file written objections, if any, with the District Judge. Each party may file a response to the other party's objection within three (3) days of the objection. Failure to file objections timely shall bar the parties from a *de novo* determination by the District Judge of an issue covered in the Report and shall bar the parties from attacking on appeal unobjected-to factual and legal conclusions contained in this Report except upon grounds of plain error if necessary in the interest of justice. *See* 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *Henley v. Johnson*, 885 F.2d 790, 794 (11th Cir. 1989); 11th Cir. R. 3-1 (2016).

RESPECTFULLY RECOMMENDED in Chambers, in Miami, Florida, on April 4, 2025.



Jonathan Goodman
CHIEF UNITED STATES MAGISTRATE JUDGE

Copies Furnished to:

The Honorable Kathleen M. Williams
All Counsel of Record

⁵ The Undersigned is shortening the deadline because Defendants have not been served yet and it seems unlikely that Plaintiffs will object to the included recommendations.