

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case Number: 24-23061-CIV-MARTINEZ

ON CLOUDS GMBH,

Plaintiff,

vs.

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

Defendants.

**SEALED ORDER GRANTING PLAINTIFF’S *EX PARTE* APPLICATION
FOR ENTRY OF TEMPORARY RESTRAINING ORDER AND
ORDER RESTRAINING TRANSFER OF ASSETS**

THIS CAUSE came before this Court on Plaintiff On Clouds GmbH’s (“Plaintiff”) *Ex Parte* Application for Entry of Temporary Restraining Order, Preliminary Injunction, and Order Restraining Transfer of Assets (the “Motion”), (ECF No. 8).¹ This Court has reviewed the Motion, pertinent portions of the record, and applicable law and is otherwise fully advised in the premises.

I. FACTUAL BACKGROUND

Plaintiff moves *ex parte* for entry of a temporary restraining order against Defendants, the Individuals, Business Entities, and Unincorporated Associations identified on Schedule “A” to the Complaint (collectively “Defendants”), and an entry of an order restraining the financial accounts used by Defendants, pursuant to 15 U.S.C. § 1116, Fed. R. Civ. P. 65, and The All Writs Act, 28 U.S.C. § 1651(a), and this Court’s inherent authority. Plaintiff is the owner of the federally

¹ This Court will address Plaintiff’s request for a preliminary injunction in a separate order filed simultaneously hereto. This Order deals solely with Plaintiff’s request for the entry of a temporary restraining order and order restraining transfer of assets.

registered trademarks (the “On Marks”) identified in the Declaration of Anna Jakobsson. (Jakobsson Decl., ECF No. 8-1 at 2, 10-21.) The On Marks are used in connection with the manufacture and distribution of high-quality goods in the categories identified above. (*See id.*)

Defendants, through Internet based e-commerce stores under the seller names identified on Schedule “A” hereto (the “E-commerce Store Names”), have advertised, promoted, offered for sale, or sold goods bearing and/or using what Plaintiff has determined to be counterfeits, infringements, reproductions, or colorable imitations of the On Marks. (*See* Jakobsson Decl. ¶¶ 9, 11-13; Declaration of Stephen M. Gaffigan in Support of Plaintiff’s Motion for TRO (“Gaffigan Decl.”) ¶¶ 2-3, ECF No. 8-2; Declaration of Kathleen Burns in Support of Plaintiff’s Motion for TRO (“Burns Decl.”) ¶ 4, ECF No. 8-3.)

Although each Defendant may not copy and infringe each On Mark for each category of goods protected, Plaintiff has submitted sufficient evidence showing each Defendant has infringed, at least, one or more of the On Marks. (Jakobsson Decl. ¶¶ 4, 9-13.) Defendants are not now, nor have they ever been, authorized or licensed to use, reproduce, or make counterfeits, reproductions, or colorable imitations of the On Marks. (*See id.* ¶¶ 9, 12-13.)

Plaintiff’s counsel retained Invisible Inc, a licensed private investigative firm, to investigate the promotion and sale of counterfeit and infringing versions of Plaintiff’s products by Defendants and to document the available payment account data for receipt of funds paid to Defendants for the sale of counterfeit versions of Plaintiff’s branded products. (*See* Jakobsson Decl. ¶ 10; Burns Decl. ¶ 3; Gaffigan Decl. ¶ 2.) Invisible Inc accessed the Internet based e-commerce stores operating under each of Defendants’ E-commerce Store Names and placed orders from each Defendant for the purchase of various products, all bearing and/or using counterfeits of, at least, one of Plaintiff’s trademarks at issue in this action, and requested each product to be

shipped to an address in the Southern District of Florida. (See Burns Decl. ¶ 4 and Composite Exhibit 1 thereto, ECF No. 8-4.) Each order was processed entirely online and following the submission of the orders, Invisible Inc documented the information for finalizing payment for the products ordered from Defendants to their respective financial account as identified on Schedule “A.”² (Burns Decl. ¶ 4, n.1; Gaffigan Decl. ¶ 5.) At the conclusion of the process, the detailed web pages and images of the various On branded products offered for sale and ordered via Defendants’ E-commerce Store Names were sent to On’s representative for inspection. (See Burns Decl. ¶ 4; Jakobsson Decl. ¶ 11; Gaffigan Decl. ¶ 2.) Plaintiff reviewed the various branded products offered for sale and ordered by Invisible Inc by reviewing the Internet based e-commerce stores operating under each of the E-commerce Store Names or the detailed web page captures thereof, and determined the products were non-genuine, unauthorized versions of Plaintiff’s products. (See Jakobsson Decl. ¶¶ 10-13.)

II. LEGAL STANDARD

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) (applying the test to a preliminary injunction in a Lanham Act case). 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

² E-mail addresses provided by certain Defendants are also identified on Schedule “A” hereto. (See Gaffigan Decl. ¶ 3, n.2; Burns Decl. ¶ 4 n.2.)

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 "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).

III. CONCLUSIONS OF LAW

The declarations Plaintiff submitted in support of its Motion support the following conclusions of law:

A. Plaintiff has a strong probability of proving at trial that (1) consumers are likely to be confused by Defendants' advertisement, promotion, sale, offer for sale, and/or distribution of goods bearing and/or using counterfeits, reproductions, or colorable imitations of the On Marks, and that (2) the products Defendants are selling and promoting for sale are copies of Plaintiff's products that bear and/or use copies of the On Marks.

B. Because of the infringement of On Marks, Plaintiff is likely to suffer immediate and irreparable injury if a temporary restraining order is not granted. The following specific facts, as set forth in Plaintiff's Complaint, Application for Temporary Restraining Order, and accompanying declarations, demonstrate that immediate and irreparable loss, damage, and injury will result to Plaintiff and to consumers before Defendants can be heard in opposition unless Plaintiff's request for *ex parte* relief is granted:

1. Defendants own or control Internet based e-commerce stores operating under their seller names which advertise, promote, offer for sale, and sell products bearing counterfeit and infringing trademarks in violation of Plaintiff's rights;

2. There is good cause to believe that more counterfeit and infringing products bearing and/or using Plaintiff's trademarks will appear in the marketplace; that consumers are likely to be misled, confused, and/or disappointed by the quality of these products; and that Plaintiff may suffer loss of sales for its genuine products; and

3. There is good cause to believe that if Plaintiff proceeds on notice to Defendants of this Application for Temporary Restraining Order, Defendants can easily and quickly change the ownership or modify e-commerce store data and content, change payment accounts, redirect consumer traffic to other e-commerce store names, and transfer assets and ownership of the E-commerce Store Names, thereby thwarting Plaintiff's ability to obtain meaningful relief.

C. The balance of potential harm to Defendants in restraining their trade in counterfeit and infringing branded goods if a temporary restraining order is issued is far outweighed by the potential harm to Plaintiff, its reputation, and its goodwill as a manufacturer and distributor of quality products if such relief is not issued.

D. The public interest favors issuance of the temporary restraining order to protect Plaintiff's trademark interests and protect the public from being defrauded by the palming off of counterfeit goods as Plaintiff's genuine goods.

E. Under 15 U.S.C. § 1117(a), Plaintiff may be entitled to recover, as an equitable remedy, the illegal profits gained through Defendants' distribution and sales of goods bearing and/or using counterfeits and infringements of the On Marks. *See Reebok Int'l, Ltd. v. Marnatech Enters., Inc.*, 970 F.2d 552, 559 (9th Cir. 1992) (quoting *Fuller Brush Prods. Co. v. Fuller Brush Co.*, 299 F.2d 772, 777 (7th Cir. 1962) ("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.””).

F. 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.*, 51 F.3d at 987 (citing *Federal Trade Commission v. United States Oil & Gas Corp.*, 748 F.2d 1431, 1433-34 (11th Cir. 1984)).

G. In light of the inherently deceptive nature of the counterfeiting business, and the likelihood that Defendants have violated federal trademark laws, Plaintiff has 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, it is **ORDERED AND ADJUDGED** that the Motion, (ECF No. 8), is **GRANTED** as follows:

(1) Each of the Defendants, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any of the Defendants having notice of this Order are temporarily restrained as follows:

- a. From manufacturing, importing, advertising, promoting, offering to sell, selling, distributing, or transferring any products bearing and/or using the On Marks, or any confusingly similar trademarks, other than those actually manufactured or distributed by Plaintiff; and
- b. From secreting, concealing, destroying, selling off, transferring, or otherwise disposing of: (i) any products, not manufactured or distributed by Plaintiff, bearing and/or using the On Marks, or any confusingly similar trademarks; (ii) any evidence relating to the manufacture, importation, sale,

offer for sale, distribution, or transfer of any products bearing and/or using the On Marks, or any confusingly similar trademarks; or (iii) any assets or other financial accounts subject to this Order, including inventory assets, in the actual or constructive possession of, or owned, controlled, or held by, or subject to access by, any Defendant, including, but not limited to, any assets held by or on behalf of any Defendant.

(2) Each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order shall immediately discontinue the use of the On Marks or any confusingly similar trademarks, on or in connection with all e-commerce stores owned and operated, or controlled by them, including the Internet based e-commerce stores operating under the E-commerce Store Names;

(3) Each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order shall immediately discontinue the use of the On 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), from any advertising links to other websites, from search engines' databases or cache memory, and any other form of use of such terms that are visible to a computer user or serves to direct computer searches to e-commerce stores registered, owned, or operated by any Defendant, including the e-commerce stores operating under the E-commerce Store Names;

(4) Each Defendant shall preserve copies of all computer files relating to the use of any of the E-commerce Store Names and shall take all steps necessary to retrieve computer files

relating to the use of the E-commerce Store Names that may have been deleted before the entry of this Order;

(5) Upon Plaintiff's request, the privacy protection service for any of the E-commerce Store Names for which the registrant uses such privacy protection service to conceal the registrant's identity and contact information is ordered to disclose to Plaintiff the true identities and contact information of those registrants;

(6) Upon receipt of notice of this Order, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to, PayPal, Inc. ("PayPal") and Stripe Inc. ("Stripe"), and their related companies and affiliates shall immediately (i) identify all financial accounts and/or sub-accounts, associated with the Internet e-commerce stores operating under the E-commerce Store Names, payees, merchant identification numbers, and/or the e-mail addresses identified on Schedule "A" hereto, as well as any other related accounts of the same customer(s); (ii) identify all other accounts which transfer funds into the same financial institution account(s) or any of the other financial accounts subject to this Order; (iii) restrain the transfer of all funds, as opposed to ongoing account activity, held or received for their benefit or to be transferred into their respective financial accounts, and any other financial accounts tied thereto; and (iv) divert those restrained funds to a holding account for the trust of the Court;

(7) Upon receipt of notice of this Order, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to, PayPal and Stripe, and their related companies and affiliates, shall further, within five business days of receiving notice of this Order, provide Plaintiff's counsel with all data that details (i) an accounting of the total funds restrained and identify the financial

account(s) and sub-account(s) which the restrained funds are related to, and (ii) the account transactions related to all funds transmitted into the financial account(s) and sub-account(s) which have been restrained. Such restraining of the funds and the disclosure of the related financial institution account information shall be made without notice to the account owners or the financial institutions until after those accounts are restrained. No funds restrained by this Order shall be transferred or surrendered by any financial institution, payment processor, bank, escrow service, money transmitter, or marketplace website, including but not limited to, PayPal and Stripe, and their related companies and affiliates for any purpose (other than pursuant to a purchase refund chargeback made by a consumer) without the express authorization of this Court;

(8) Any Defendant or financial institution account holder subject to this Order may petition the Court to modify the asset restraint set out in this Order;

(9) This Order shall apply to the E-commerce Store Names, associated e-commerce stores, and any other seller identification names, e-commerce stores, or financial accounts which are being used by Defendants for the purpose of counterfeiting the On Marks and/or unfairly competing with the Plaintiff;

(10) As a matter of law, this Order shall no longer apply to any Defendant or associated e-commerce store name dismissed from this action or as to which Plaintiff has withdrawn its request for a temporary restraining order;

(11) This Order shall remain in effect until such time that Plaintiff's Motion for Entry of Preliminary Injunction can be heard, **not to exceed twenty-eight (28) days after entry of this Order**, or until such further dates as set by the Court or stipulated to by the parties. Though Federal Rule of Civil Procedure 65(b), requires that entry of a TRO may not exceed fourteen (14) days,

the Court finds good cause exists to extend the Order given the nature of the Defendants' unknown whereabouts and illicit Internet activity described herein.


(12) Pursuant to 15 U.S.C. § 1116(d)(5)(D) and Federal Rule of Civil Procedure 65(c), Plaintiff shall post a 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 the Court. In the Court's discretion, the bond may be subject to increase should an application be made in the interest of justice.

(13) After Plaintiff's counsel has received confirmation from the financial institutions regarding the funds restrained as directed herein, Plaintiff shall serve a copy of the Complaint, Application for Temporary Restraining Order, and this Order, on each Defendant by e-mail via their corresponding e-mail address and/or online contact form provided on the e-commerce stores and websites operating under the respective E-commerce Store Names, or by providing a copy of this Order by e-mail to the registrar of record for each of the E-commerce Store Names so that the registrar, in turn, notifies each Defendant of the Order, or by other means reasonably calculated to give notice which is permitted by the Court. In addition, Plaintiff shall post copies of the Complaint, Application for Temporary Restraining Order, and this Order, as well as all other documents filed in this action on the website located at <http://servingnotice.com/ONx7a3/index.html> and shall provide the address to the website to Defendants via e-mail/online contact form, and such notice so given shall be deemed good and sufficient service thereof. Plaintiff shall continue to provide notice of these proceedings and copies of the documents on file in this matter to Defendants by regularly updating the website located at <http://servingnotice.com/ONx7a3/index.html>, or by other means reasonably calculated to give notice which is permitted by the Court.

(14) Additionally, for the purpose of providing additional notice of this proceeding and all other pleadings, orders, and documents filed herein, the owners, operators, and/or administrators of the e-commerce stores and/or financial institutions, payment processors, banks, escrow services, money transmitters, and marketplace platforms, including but not limited to, PayPal and Stripe, and their related companies and affiliates shall, at Plaintiff's request, provide Plaintiff's counsel with any e-mail addresses known to be associated with Defendants' respective E-commerce Store Names.

(15) The Clerk **SHALL** file this Order under seal until further order of the Court.

DONE AND ORDERED in Chambers at Miami, Florida, this 15 day of August 2024.



JOSE E. MARTINEZ
UNITED STATES DISTRICT JUDGE

Copies provided to:
Magistrate Judge Sanchez
All Counsel of Record

SCHEDULE A
DEFENDANTS BY E-COMMERCE STORE NAME,
FINANCIAL ACCOUNT INFORMATION, AND E-MAIL ADDRESS

Def. No.	Defendant / E-commerce Store Name	Payee Information	Merchant ID / Transaction Information	PayPal E-mail	E-mail Addresses
1	oncloudshoesforall.com	KyleFGramAktiengesellschaft	KEWHM8BMFL922		
		UNATHI KEKANA	3V53NRD5HQBZS	UNATHI_KEKANA@HOTMAIL.COM	
2	on-cloudy.com	oncloud	ZA6LUY6YUF5Q4		support@on-cloudy.com
3	shuckson.com	Stripe Payment	ACQRA *shirtqe Transaction Date: July 1, 2024 Posted Date: July 2, 2024 Category: Merchandise & inventory		support@ltsmrd.top
4	okdbest.com	Okdbest Online Store	ZSEKNMHNZ8ZAG		service@okdbest.com service@bericch.com
5	reverieh.com	东莞市誉讴装饰材料有限公司	4LFT52DRECZKJ		service@reverieh.com service@treeofocan.com
6	letfact.life	Stripe Payment	BILLYBOMBINGLTD Transaction Date: June 20, 2024 Posted Date: June 21, 2024 Category: Merchandise & inventory		
6	topdteven.best	Stripe Payment	BILLYBOMBINGLTD Transaction Date: June 20, 2024 Posted Date: June 21, 2024 Category: Merchandise & inventory		
7	usfashionbuy.com	fashionbuy	FW2C5W39SL95U		fashionshop-servers@outlook.com