

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 24-24178-CIV-BECERRA

TIFFANY (NJ) LLC,

Plaintiff,

vs.

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

Defendants.

**PLAINTIFF'S *EX PARTE* APPLICATION FOR ENTRY OF
TEMPORARY RESTRAINING ORDER, PRELIMINARY
INJUNCTION, AND ORDER RESTRAINING TRANSFER
OF ASSETS AND MEMORANDUM OF LAW
IN SUPPORT THEREOF**

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Plaintiff, Tiffany (NJ) LLC (“Tiffany” or “Plaintiff”), hereby does apply, on an *ex parte* basis, for entry of a temporary restraining order and an order restraining transfer of assets, and upon expiration of the temporary restraining order, 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 this Court’s inherent authority. In support thereof, Tiffany submits 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 of Tiffany’s registered trademarks within this district and throughout the United States (the “U.S.”), by operating e-commerce stores under the seller names identified on Schedule “A” hereto (the “E-commerce Store Names”). Tiffany’s evidence clearly demonstrates that Defendants (a) are advertising, offering for sale, and sale of counterfeit and infringing versions of Tiffany’s goods; and (b) accomplish their sales of their counterfeit and infringing goods using, at least, the E-commerce Store Names.

Defendants’ unlawful activities deprive Tiffany of its right to determine the way its trademarks are presented to the public. Defendants have and continue to wrongfully trade and capitalize on Tiffany’s reputation and goodwill and the commercial value of Tiffany’s trademarks. By their activities, Defendants are defrauding Tiffany, certain non-party businesses, and consumers for their own benefit. Defendants should not be permitted to continue their unlawful activities, which are causing Tiffany ongoing irreparable harm. Thus, Tiffany seeks entry of a temporary restraining order prohibiting Defendants’ further wrongful use of Tiffany’s trademarks.

Tiffany also seeks to restrain Defendants’ unlawful profits. Tiffany’s evidence

demonstrates Defendants use money transfer and/or retention/processing services, or have their payments processed on their behalf, using at least, PayPal, Inc. (“PayPal”) and/or Stripe, Inc. (“Stripe”) (collectively, the “Financial Entities”) to accept payment for the sale of their counterfeit and infringing products. The Lanham Act allows Tiffany to recover the unlawful profits gained through Defendants’ distribution and sales of counterfeit and infringing goods. See 15 U.S.C. § 1117(a). Considering the inherently deceptive nature of the counterfeiting business, Tiffany has good reason to believe Defendants will hide or transfer their ill-gotten assets beyond the jurisdiction of this Court unless they are restrained. To preserve the disgorgement remedy and all other equitable remedies available to Tiffany, Tiffany seeks an *ex parte* order restraining Defendants’ assets, including specifically, funds transmitted through the Financial Entities.

II. STATEMENT OF FACTS

A. Plaintiff’s Rights.

Tiffany is the owner of all rights in and to the federally registered trademarks identified in Paragraph 4 of the Declaration of Annabelle Greseth in Support of Plaintiff’s Application for TRO (the “Tiffany Marks”), which are used in connection with the manufacture and distribution of high-quality goods in the categories identified therein. (See Declaration of Annabelle Greseth in Support of Plaintiff’s Application for Entry of TRO [“Greseth Decl.”] ¶¶ 4-5, filed herewith; see also U.S. Trademark Registrations for the Tiffany Marks [“Tiffany’s Trademark Regs.”] attached as Comp. Ex. 1 to the Compl. ECF No. [1-2], incorporated herein by reference.) The Tiffany Marks are symbols of Tiffany’s quality, reputation, and goodwill and have never been abandoned. (Greseth Decl. ¶¶ 6-7.) Tiffany expends substantial resources developing, advertising, and otherwise promoting its trademarks. (Id.) Accordingly, the Tiffany Marks are famous marks as the term is used in 15 U.S.C. § 1125(c)(1). Furthermore, Tiffany extensively uses, advertises, and promotes

the Tiffany Marks in the U.S. in interstate commerce in association with its high-quality goods, and has carefully monitored and policed the use of the Tiffany Marks. (Id. at ¶¶ 5-7.) As a result of Tiffany's efforts, the Tiffany Marks have acquired fame in the consumer market. (Id.) The Tiffany Marks are among the most widely recognized trademarks in the U.S., and the trademarks have achieved secondary meaning. (Id.) At all times relevant hereto, Defendants have been aware of Tiffany's (a) ownership of the Tiffany Marks; (b) exclusive rights to use such Marks; and (c) substantial goodwill embodied in, and favorable recognition for, the Tiffany Marks.

B. Defendants Wrongfully Use Plaintiff's Trademarks.

Defendants do not have, nor have they ever had, the right or authority to use the Tiffany Marks for any purpose. (Greseth Decl. ¶¶ 9, 12-13.) However, despite their known lack of authority to do so, Defendants are concurrently promoting and otherwise advertising, distributing, offering for sale, and/or selling, through their respective E-commerce Store Names, goods bearing and/or using counterfeit and infringing trademarks that are exact copies of one or more of the Tiffany Marks without authorization ("Defendants' Goods"). (Greseth Decl. ¶¶ 9-13; Declaration of Stephen M. Gaffigan in Support of Plaintiff's Application for TRO ["Gaffigan Decl."] ¶ 2, filed herewith; Declaration of Kathleen Burns in Support of Plaintiff's Application for TRO ["Burns Decl."] ¶ 4, filed herewith; see also relevant web page captures from Defendants' e-commerce stores operating under the E-commerce Store Names displaying the Tiffany branded items offered for sale ["Defendants' E-commerce Store Names"] attached as Comp. Ex. 1 to the Burns Decl.)

Given Defendants' slavish copying of the Tiffany Marks, Defendants' Goods offered for sale and sold under identical marks are indistinguishable to consumers, both at the point of sale and post-sale. Additionally, by using the Tiffany Marks, Defendants have created a false association between their counterfeit and infringing goods and e-commerce stores and Tiffany.

Such false association is in violation of 15 U.S.C. § 1125(a) and is causing and will continue to cause Tiffany irreparable injury. (Greseth Decl. ¶¶ 8, 24.)

As part of its ongoing investigation regarding the sale of counterfeit and infringing products, Tiffany's counsel retained Invisible Inc, a licensed private investigative firm, to investigate the promotion and sale of counterfeit and infringing Tiffany branded products by Defendants and to obtain the available payment account data for receipt of funds paid to Defendants for the sale of counterfeit Tiffany branded products. (Greseth Decl. ¶ 10; Gaffigan Decl. ¶ 2; Burns Decl. ¶ 3.) Invisible Inc accessed the Internet based e-commerce stores operating under the E-commerce Store Names, placed orders from each Defendant for the purchase of a product bearing and/or using, or suspected of bearing, counterfeits of, at least, one of the Tiffany Marks at issue in this action – and requested each product be shipped to an address in the Southern District of Florida. (Burns Decl. ¶ 4, nn.1-3 and Comp. Ex. 1 thereto.) Each order was processed entirely online, and following the submission of the orders, Invisible Inc received information for finalizing payment for the products ordered from Defendants to their respective financial account as identified on Schedule "A" hereto. (Burns Decl. ¶ 4, n.4; Gaffigan Decl. ¶ 5.) E-mail addresses and other means of electronic contact provided by Defendants are also identified on Schedule "A" hereto. (Burns Decl. ¶ 4, n.1; Gaffigan Decl. ¶ 3, n.3.) At the conclusion of the process, the detailed web page captures and images of the various Tiffany branded products offered for sale and ordered via Defendants' E-commerce Store Names, together with photographs of some of the products received, were sent to Tiffany's representative, Annabelle Greseth, for inspection. (See Burns Decl. ¶ 4; Greseth Decl. ¶ 11; Gaffigan Decl. ¶ 2.)

Tiffany's representative, Annabelle Greseth, who is trained to identify the distinctions between genuine Tiffany branded merchandise and counterfeit copies of the same, reviewed and

visually inspected the detailed web page captures reflecting the Tiffany branded products ordered by Invisible Inc, together with photographs of certain received goods, and determined the products were non-genuine, unauthorized versions of Tiffany's goods. (Greseth Decl. ¶¶ 10-13.)

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. 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). A comparison of the Tiffany Marks to the marks used by Defendants in connection with the sale of Defendants' Goods reveals the obvious counterfeit nature of Defendants' Goods. (Compare Tiffany's Trademark Regs. with Defendants' E-commerce Store Names.) Defendants' Goods are being advertised, offered for sale, and sold by Defendants to consumers within this district and throughout the U.S. (See Burns Decl. ¶ 4.) Defendants are profiting by preying upon consumers, many of whom have no knowledge Defendants are defrauding them. The E-commerce Store Names and their payment accounts are a substantial part of how Defendants further their scheme and cause harm to Tiffany.

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

Defendants are all using counterfeits and infringements of Tiffany's famous name and the Tiffany Marks to make their e-commerce stores appear more relevant and attractive to consumers shopping for genuine Tiffany products online. While each Defendant causes direct individual harm to Tiffany, the combined effect of Defendants' unlawful activities functions as a force multiplier to cause Tiffany a single indivisible harm. (See Greseth Decl. ¶¶ 17, 21-23.) 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 Tiffany branded goods are widely legitimately advertised, promoted, offered for sale, and discussed by Tiffany, its authorized distributors, and unrelated third parties via the Internet. (Greseth Decl. ¶ 14.) Visibility on the Internet, particularly via search engines and social media platforms, is important to Tiffany’s overall marketing and consumer education efforts. (*Id.* at ¶ 15.) Tiffany expends significant monetary and other resources on Internet marketing and consumer education regarding its products, including search engine optimization, search engine marketing, and social media strategies, which allow Tiffany and others to educate consumers fairly and legitimately about the value associated with the Tiffany brand and the goods sold thereunder. (*Id.*; see also Compl. ¶ 23.)

Counterfeiters like Defendants embrace similar marketing strategies to Tiffany and are concurrently leveraging it to cause greater and more significant harm to Tiffany. The combination of all Defendants engaging in the same exact illegal activity for the same purpose over the same time span causes Tiffany irreparable harm in a way that the individual actions occurring alone might not. See, e.g., 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 Tiffany’s marketing efforts on the Internet by blocking and consistently increasing the cost of online visibility for Tiffany’s legitimate, authorized e-commerce website. (Greseth Decl. ¶¶ 22-23.) Moreover, the combination of Defendants’ unlawful activities increases Plaintiff’s cost to market its genuine goods and

educate consumers about its 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 Tiffany and consumers. (See Greseth Decl. ¶¶ 17-23; Compl. ¶¶ 27-28, 40-41.) 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 Tiffany Marks, Defendants are obliterating the otherwise open and available marketplace space in which Tiffany has the right to fairly market its goods and associated message. Through their combined concurrent actions, Defendants are causing individual, concurrent, and indivisible harm to Tiffany and the consuming public by (i) depriving Tiffany 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 Tiffany Marks by viewing inferior products in either the pre or post sale setting, and/or (iii) increasing Tiffany’s overall cost to market its goods and educate consumers about its brand via the Internet. (Greseth Decl. ¶ 23.) See also 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. E-commerce operators, including

Tiffany and Defendants, spend significant resources incorporating concepts and popular search terms, such as the Tiffany Marks, into their on-site and off-site content and advertising to promote visibility on the World Wide Web. Tiffany is doing so through the use of its trademarks in which it has made a substantial economic investment, and Defendants are doing so through subterfuge and unlawful use of the Tiffany Marks. Each Defendant is helping to create and maintain the overall illicit marketplace where they market and sell their respective goods and confuse consumers. Thus, 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 Tiffany's right to fairly compete for visibility on the Web.

III. ARGUMENT

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

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). This is such a case.

Defendants fraudulently promote, advertise, offer to sell, and sell goods bearing and/or using counterfeits and infringements of the Tiffany Marks via their e-commerce stores using the E-commerce Store Names to increase consumer traffic to their illegal operations. The entry of a temporary restraining order will serve to immediately stop Defendants from benefiting from their wrongful use of the Tiffany Marks and will preserve the status quo until such time as a hearing can be held. See Dell Inc. v. BelgiumDomains, LLC, Case 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. In particular, the e-commerce stores at issue are under Defendants’ complete control. Defendants can change the ownership or modify e-commerce store and private messaging account data and content, change payment accounts, redirect consumer traffic to other seller names and private messaging accounts, and transfer assets and ownership of the E-commerce Store Names. (Gaffigan Decl. ¶ 4.) Such modifications can happen in a short span of time after Defendants are provided with notice of this action. (*Id.*) Thus, Defendants can easily electronically transfer and secret the funds sought to be restrained if they obtain advance notice of Plaintiff’s Application for TRO, thwarting the Court’s ability to grant meaningful relief and can completely erase the status quo. (*Id.*) As Defendants engage in unlawful counterfeiting activities, Tiffany has no reason to believe Defendants will make their assets available for recovery pursuant to an accounting of profits and other equitable remedies or will adhere to the authority of this Court any more than they have adhered to federal law. (*Id.*)

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”); On Clouds GmbH v. Individuals, No. 24-23160-CIV-BECERRA, 2024 U.S. Dist. LEXIS 190280 (S.D. Fla. Aug. 27, 2024, docketed Aug. 28, 2024) (Order granting the plaintiff a temporary restraining order and restraining the defendants’ assets and defendants’ related assets). This Court should prevent an injustice from occurring by issuing

an *ex parte* temporary restraining order which precludes Defendants from continuing to display their infringing content or modifying or deleting any related content or data. 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, Case 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)). In order 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); see also Levi Strauss & Co. v. Sunrise Int'l Trading Inc., 51 F.3d 982, 985 (11th Cir. 1995) (affirming entry of preliminary injunction and freezing of assets). Tiffany's evidence establishes all of the relevant factors.

1. Probability of Success on the Merits of Tiffany's 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 (2024). Tiffany must demonstrate (1) ownership of the trademarks at issue; (2) Defendants' use of the trademarks is without Tiffany's 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).

The first two elements of Tiffany's trademark counterfeiting and infringement claim are easily met. The Tiffany Marks are owned by Tiffany and registered on the Principal Register of the United States Patent and Trademark Office. All but three of the trademarks at issue herein, (Trademark Registrations 5,176,498, 7,185,896 and 7,185,897) have become "incontestable" under 15 U.S.C. §§ 1058 and 1065. (Greseth Decl. ¶ 4; see also Tiffany's Trademark Regs.) 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 Tiffany Marks. (Greseth Decl. ¶¶ 9, 12-13.)

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.

A trademark's strength is determined by viewing the mark in its entirety as it appears in the marketplace. See Lone Star Steakhouse and Saloon, Inc. v. Longhorn Steaks, Inc., 106 F.3d 355, 362 (11th Cir. 1997). 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 Tiffany Marks are strong, arbitrary, and fanciful marks. (Greseth Decl. ¶ 4; see also Tiffany's Trademark Registrations.)

The Tiffany Marks have also acquired secondary meaning. Tiffany expends substantial resources developing, advertising, and promoting the Tiffany Marks. (Greseth Decl. ¶¶ 6-7.) The Tiffany Marks enjoy widespread recognition and are prominent in the minds of consumers. Products bearing the Tiffany Marks are among the most widely recognized marks in the U.S. (Id.)

(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 Tiffany Marks. (Compare Tiffany's Trademark Regs. with Defendants' E-commerce Store Names.)

(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 Tiffany sells. (Greseth Decl. ¶¶ 4-5; see generally Defendants' E-commerce Store Names.) Because they bear and/or use counterfeits of the Tiffany Marks, Defendants' Goods appear virtually identical to Tiffany's genuine products in the consumer market. 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 Tiffany 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 U.S., including the Southern District of Florida. (Greseth Decl. ¶¶ 6, 9, 11, 14; Burns Decl. ¶ 4.) Thus, the conditions of purchase for both parties are unmistakably identical. Moreover, both target the same general U.S. consumers, and as such, Tiffany is 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 that by the Defendants herein, it is appropriate to infer Defendants intended to benefit from Tiffany's reputation, to Tiffany's 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 based upon the circumstantial evidence available. Defendants are advertising, offering to sell and selling counterfeit goods identical in appearance to those sold by Tiffany. (Greseth Decl. ¶¶ 4-5, 9-13; Burns Decl. ¶ 4 and Comp. Ex. 1 thereto.) 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 Tiffany Marks, which undeniably creates the impression they are viewing genuine goods sold or authorized by Tiffany. 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 factors weigh only in Tiffany's favor. Tiffany has thus shown a probability of success on the merits of its 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 763. 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. Because Tiffany has established the merits of its trademark counterfeiting claim, a likelihood of success is also shown as to its claims for false designation of origin, common law unfair competition, and trademark infringement.

2. Tiffany is Suffering Irreparable Injury.

As expressed by the Eleventh Circuit: “[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) (citations omitted). Such a finding of irreparable injury following a showing of likelihood of confusion is virtually always made in a case such as this, where a plaintiff has demonstrated it will lose control of its reputation as a result of a defendant’s activities. Id. A likelihood of confusion exists herein because Defendants are engaged in counterfeiting activities using spurious designations indistinguishable from the Tiffany Marks.

3. The Balance of Hardship Tips Sharply in Tiffany’s Favor.

Tiffany has expended resources to develop the quality, reputation, and goodwill associated with the Tiffany Marks. (Greseth Decl. ¶¶ 6-8.) Should Defendants be permitted to continue their trade in counterfeit goods, Tiffany will suffer irreparable injury to its reputation. (See id. at ¶¶ 8, 24.) However, Defendants will suffer no legitimate hardship, because Defendants have no right to engage in their present counterfeiting and infringing 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 Tiffany’s genuine goods. The public has an interest in not being misled as to the origin, source, or sponsorship of trademarked products. See Nailtiques 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 Tiffany’s Trademarks is Appropriate.

Tiffany requests an order requiring Defendants to immediately cease all use of the Tiffany Marks, or substantially similar marks, including on or in connection with all e-commerce stores they own and operate, or control. Such relief is necessary to stop the ongoing harm to Tiffany’s trademarks and goodwill and to prevent Defendants from continuing to benefit from the increased consumer traffic to their unlawful operations created by their unlawful use of the Tiffany Marks. Many courts, including this Court, have authorized immediate injunctive relief in similar cases involving the unauthorized use of trademarks.¹

2. An *Ex Parte* Order Restraining Transfer of Assets is Appropriate.

In addition to an order temporarily restraining Defendants’ practices, the Court should further enter an order limiting the transfer of Defendants’ unlawfully gained assets. Tiffany has demonstrated above that it will likely succeed on the merits of its claims. As such, under 15 U.S.C.

¹ See On Clouds GmbH v. Individuals, No. 24-23160-CIV-BECERRA, 2024 U.S. Dist. LEXIS 190280 (S.D. Fla. Aug. 27, 2024, docketed Aug. 28, 2024) (Order Granting *Ex Parte* Application for Entry of Temporary Restraining Order); Chanel, Inc. v. Individuals, No. 24-22823-CIV-BECERRA, 2024 U.S. Dist. LEXIS 187281 (S.D. Fla. Aug. 5, 2024) (same). Accord Malletier v. Individuals, No. 24-23194-CIV-RUIZ, 2024 U.S. Dist. LEXIS 188550 (S.D. Fla. Aug. 26, 2024, docketed Aug. 27, 2024) (same); Whirlpool Corp. v. Individuals, No. 24-61253-CIV-SMITH, 2024 U.S. Dist. LEXIS 187675 (S.D. Fla. Aug. 20, 2024) (same); Luxottica Grp. S.P.A. v. Individuals, No. 24-61246-CIV-DAMIAN, 2024 U.S. Dist. LEXIS 188565 (Aug. 7, 2024) (same); Tiffany NJ LLC v. Individuals, No. 24-61345-CIV-DIMITROULEAS, 2024 U.S. Dist. LEXIS 156996 (S.D. Fla. July 30, 2024) (same); Chanel, Inc. v. Individuals, No. 24-22336-CIV-BLOOM, 2024 U.S. Dist. LEXIS 158234 (S.D. Fla. June 24, 2024) (same); Specialized Bicycle Components, Inc. v. Individuals, No. 24-60490-CIV-SINGHAL, 2024 U.S. Dist. LEXIS 158157 (S.D. Fla. April 12, 2024) (same); Chanel, Inc. v. Individuals, No. 23-62372-CIV-ROSENBERG, 2024 U.S. Dist. LEXIS 51749 (S.D. Fla. Jan. 31, 2024) (same).

§ 1117, Tiffany will be entitled to an accounting and payment of the profits earned by Defendants throughout the course of their counterfeiting scheme. 15 U.S.C. § 1117(a) (2024). Due to the deceptive nature of the counterfeiting business and Defendants' deliberate violations of federal trademark laws, Tiffany respectfully requests this Court grant additional *ex parte* relief identifying payment accounts and restraining the transfer of all monies held or received by the Financial Entities, or other financial institutions, for the benefit of any one or more of the Defendants. (Gaffigan Decl. ¶ 5.) See SEC v. ETS Payphones, 408 F.3d 727, 735 (11th Cir. 2005) (finding it proper to all of the defendant's assets, because it was necessary to preserve sufficient funds for the potential disgorgement in the case).

This Court has broad authority to grant such an order. The Supreme Court has provided that district courts have power to grant preliminary injunctions to prevent a defendant from transferring assets in cases where an equitable interest is claimed. Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc., 527 U.S. 308, 144 L. Ed. 2d 319, 119 S. Ct. 1961 (1999). Almost every Circuit has interpreted Rule 65 of the Federal Rules of Civil Procedure to grant authority to courts to restrain assets *pendente lite*. See Mason Tenders Dist. Council Pension Fund v. Messera, 1997 WL 223077 (S.D.N.Y. May 7, 1997) (acknowledging that “[a]lmost all the Circuit Courts have held that Rule 65 is available to freeze assets *pendente lite* under some set of circumstances”).

In light of the illicit nature of the counterfeiting business and the ability of counterfeiters to practically eliminate their evidentiary trails by conducting their business entirely over the Internet, courts in the Eleventh Circuit, among others, have particularly noted the significance of such asset restraints in cases involving counterfeiting defendants. See, e.g. Levi Strauss & Co. v. Sunrise Int'l Trading, 51 F.3d 982 (11th Cir. 1995); Reebok Int'l Ltd. v. Marnatech Enter., 737 F. Supp. 1515 (S.D. Cal. 1989), aff'd, 970 F.2d 552 (9th Cir. 1992). In Levi Strauss, the Eleventh

Circuit upheld an order granting an asset restraint against an alleged counterfeiter where the complaint included a request for a permanent injunction and the equitable remedy of disgorgement of the alleged counterfeiter's profits under 15 U.S.C. § 1117. Levi Strauss, 51 F.3d at 987. Distinguishing Levi Strauss from two earlier cases not involving Lanham Act claims, the Court emphasized the necessity of the restraint holding that a "request for 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." Id. citing Federal Trade Commission v. United States Oil and Gas Corp., 748 F.2d 1431, 1433-34 (11th Cir. 1984) (district court may exercise its full range of equitable powers, including a preliminary asset restraint, to ensure that permanent equitable relief will be possible). Indeed, courts may issue broad asset restraints to preserve the availability of permanent relief, including assets that are not directly traceable to the fraudulent activity that serves as a basis for the equitable relief requested. See S. E. C. v. Lauer, 445 F. Supp. 2d 1362, 1370 (S.D. Fla. 2006) (noting that there is no requirement for the restrained assets be traceable to the fraudulent activity underlying a lawsuit); Levi Strauss & Co., 51 F.3d at 987-88 (upholding asset restraint, including assets not linked to the profits of the alleged illegal activity, noting the defendants may request the court exempt any particular assets); Kemp v. Peterson, 940 F.2d 110, 113-14 (4th Cir. 1991) (district court may restrain assets not specifically traced to illegal activity). In similar cases, this Court and others have entered the precise relief sought herein.²

² See e.g., On Clouds GmbH v. Individuals, No. 24-23160-CIV-BECERRA, 2024 U.S. Dist. LEXIS 190280 (S.D. Fla. Aug. 27, 2024, docketed Aug. 28, 2024) (Order granting TRO, *inter alia*, restraining funds held or received by financial institution to preserve assets to satisfy Plaintiff's requested relief); Chanel, Inc. v. Individuals, No. 24-22823-CIV-BECERRA, 2024 U.S. Dist. LEXIS 187281 (S.D. Fla. Aug. 5, 2024) (same). Accord Malletier v. Individuals, No. 24-23194-CIV-RUIZ, 2024 U.S. Dist. LEXIS 188550 (S.D. Fla. Aug. 26, 2024, docketed Aug. 27, 2024) (same); Whirlpool Corp. v. Individuals, No. 24-61253-CIV-SMITH, 2024 U.S. Dist. LEXIS 187675 (S.D. Fla. Aug. 20, 2024) (same); Luxottica Grp. S.P.A. v. Individuals, No. 24-61246-CIV-DAMIAN, 2024 U.S. Dist. LEXIS 188565 (Aug. 7, 2024) (same); Tiffany NJ LLC v.

Similarly, in Reebok v. Marnatech, the District Court granted Reebok a limited restraint of the defendants' assets for the purpose of preserving those assets, thus ensuring the availability of a meaningful accounting after trial. Reebok Int'l Ltd., 737 F. Supp. at 1526. In affirming the decision, the Ninth Circuit determined that the plaintiff met its burden of demonstrating: (1) a likelihood of success on the merits; (2) immediate and irreparable harm because of defendants' counterfeiting activities; and (3) that defendants might hide their allegedly ill-gotten profits if their assets were not frozen. Reebok Int'l Ltd., 970 F.2d 552, 563 (9th Cir. 1992). Moreover, the Court reasoned: "because the Lanham Act authorizes the District Court to grant Reebok an accounting of [defendant's] profits as a form of final equitable relief, the District Court has the inherent power to freeze [defendant's] assets in order to ensure the availability of that final relief." Reebok Int'l Ltd., 970 F.2d. at 559; see also Republic of Philippines v. Marcos, 862 F.2d 1355, 1364 (9th Cir. 1988), cert. denied, 490 U.S. 1035 (1989) ("[a] court has the power to issue a preliminary injunction in order to prevent a defendant from dissipating assets in order to preserve the possibility of equitable remedies").

Using the power to issue provisional remedies ancillary to their authority to provide final equitable relief, numerous courts have granted orders restraining defendants from transferring their assets under trademark infringement claims. See e.g., Levi Strauss, 51 F.3d at 987; Reebok Int'l Ltd., 970 F.2d at 559. Moreover, to provide complete equitable relief, courts have granted such orders without providing notice to the defendants. Specifically, federal courts have held that where advance notice of an asset restraint is likely to cause a party to alienate the assets sought to be

Individuals, No. 24-61345-CIV-DIMITROULEAS, 2024 U.S. Dist. LEXIS 156996 (S.D. Fla. July 30, 2024) (same); Chanel, Inc. v. Individuals, No. 24-22336-CIV-BLOOM, 2024 U.S. Dist. LEXIS 158234 (S.D. Fla. June 24, 2024) (same); Specialized Bicycle Components, Inc. v. Individuals, No. 24-60490-CIV-SINGHAL, 2024 U.S. Dist. LEXIS 158157 (S.D. Fla. April 12, 2024) (same); Chanel, Inc. v. Individuals, No. 23-62372-CIV-ROSENBERG, 2024 U.S. Dist. LEXIS 51749 (S.D. Fla. Jan. 31, 2024) (same).

restrained, a temporary restraining order may be issued *ex parte*. See F.T. Int'l Ltd v. Mason, 2000 WL 1514881 *3 (E.D. Pa. 2000) (granting *ex parte* TRO restraining defendants' bank accounts upon finding that advance notice would likely have caused the defendants to secret or alienate funds); CSC Holdings, Inc. v. Greenleaf Elec., Inc., 2000 WL 715601 (N.D. Ill. 2000) (granting *ex parte* TRO enjoining cable television pirates and restraining pirates' assets).

Defendants' blatant violations of federal trademark laws warrant an *ex parte* order restraining the transfer of their assets. Moreover, as Defendants' businesses are conducted anonymously over the Internet, Tiffany has additional cause for *ex parte* relief, as Defendants may easily secret or transfer their assets without the Court's or Tiffany's knowledge.

D. An Appropriate Bond Should Secure the Injunction.

The posting of security upon issuance of a temporary 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 Tiffany's evidence of counterfeiting, Tiffany 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, Plaintiff respectfully requests this Court grant its Application and enter a temporary restraining order in the form submitted herewith and schedule a hearing on Plaintiff's Motion for a Preliminary Injunction before the expiration of the temporary restraining order. Also, due to the time provisions of such an order, in the event the application is granted, Tiffany respectfully requests the Court provide a copy of the Court's Order to Tiffany's counsel via e-mail at stephen@smgpa.cloud so that Tiffany may immediately effectuate any relief ordered therein and provide Defendants proper notice of the order and any subsequent hearing date.

DATED: October 30, 2024.

Respectfully submitted,
STEPHEN M. GAFFIGAN, P.A.

By: **Stephen M. Gaffigan**

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SCHEDULE A
DEFENDANTS BY E-COMMERCE STORE NAME,
FINANCIAL ACCOUNT INFORMATION, AND MEANS OF CONTACT

Def. No.	Defendant / E-commerce Store Name	PayPal Payee	Merchant ID / Transaction Info	PayPal E-mail	Additional Means of Contact
1	ccfashionjewelry.com	深圳市朗克思照明有限公司	K9VDCP8BRGVC4	xyy412308@gmail.com	cc@ccfashionjewelry.com info@ccfashionjewelry.com
2	blingblings.es	Blingblings	LL9GLNQEU6QNE		oliva.sunny.song@gmail.com service@blingblings.es
3	classport.shop	海口龙华辉宏峻百货店	ZTSS2YX9SQSV8		service@classport.shop Jessport@ruralshoes.com
4	cocoshoes.top	南宁市君朗日用百货有限公司	F96QJFSQVMF2J	17689611506@163.com	cocoshoes2011@gmail.com WhatsApp: +852 6432 9578
5	correctkickz.com			76398812@qq.com	correctkickz.cc@gmail.com WhatsApp: +852 5614 0114
6	eleger.co		56P3F7YRER8Q8 T6XZ4CPL3PDH8		support@eleger.co
7	eukick.com	海口美兰崇泊姆电子商务工作室	5X9H6C3YAEBXJ		service@runningpro.shop WhatsApp: +86 173 2700 2347
8	evelynsneaker.com			1013573859@qq.com	evasneaker@gmail.com WhatsApp: +86 181 0058 6611
9	fcmg-sales.com	莆田市湄洲湾北岸经济开发区忠门湄里啪啦服饰店(个体工商户)	KY7YKZAYKJ9ZS		zzy925520@gmail.com
9	saleluxurycn.com	莆田市湄洲湾北岸经济开发区忠门湄里啪啦服饰店(个体工商户)	KY7YKZAYKJ9ZS		zzy925520@gmail.com r4c.lhikdl3t@gmail.com
10	fossilry.cc		QH4F7KX2378GW	yangbing19988dkh@163.com	fossilry@ontlook.net

11	getreadys.org			wzb5556688@163.com	cocosneakers@outlook.com WhatsApp: +86 180 5957 6801
12	greenutilityltd.online		XJMYYY3S4XM8N		support@greenutilityltd.online
13	jewelrybuild.com	CHAI TZU - CHUN @jewelrybuild	97BNUPBPH42EL		aaabbbccc330626@gmail.com
14	Jinyi Shoes retail wholesale a.k.a. +8619359440554 a.k.a. 俊弟aj LJR版 (本地 支持送货上门)			dgfsfaf@163.com zwyppaypal@163.com	WhatsApp: +86 193 5944 0554
15	jwfancy.com		6CLPQVLVPRCKJ		support@jwfancy.com MANHSONLE@GMAIL.COM
16	kaideck.shop	Unlock your imagination	YW7CFDQUQRZ4L		SERVICE@KAIDECK.SHOP
17	kailin44088 a.k.a. luxury goods	苏 焯权 @6880887	T885RJF75US22	2687378995@qq.com	469011636@qq.com WhatsApp: +86 183 1280 1720
18	kickspk.com	Unlock your imagination	JU8DSXVDNNM96		SUPPORT@KICKSPK.COM support@kickssu.com
18	kickssu.org	Unlock your imagination	JU8DSXVDNNM96		SUPPORT@KICKSSU.ORG support@kickssu.com
19	kolobag.com	Online Shop	D74KA3BGHWNQE		info@spumall.com info@bxsale.com
20	koolmaker.com	Stripe Payment	SNOWTO.STO* KOOLMAKER Transaction Date: July 22, 2024 Posted Date: July 23, 2024 Category: Merchandise & inventory		support@koolmaker.com 6F7C571E6DC5414096967 A6AD47644EE.PROTECT @WITHHELDFORPRIVACY.COM
21	kw-store.top		8ERX395NJJ3GG	eryuedeqing@outlook.com	uuwa556@gmail.com WhatsApp: +85253194272

22	lalsoft.com a.k.a. fspbo.shop a.k.a. kegegegghh.shop		ZDW2EA7MN2YQ C		contacts@lalsoft.com BELKAABSOLUTLYMA N4@GMAIL.COM
			ZK22QSWY4NR4W		
23	luxere.top	BAGS LUXE @BAGSLUXE	GRWX9K4VBMGZ N		piyi2020@gmail.com info@luxere.top
24	maikesneakers111.co m			ZhangJinYu202424@16 3.com	zhusen19780926@gmail.co m Annareps2023@gmail.com zhusen780926@gmail.com WhatsApp: +86 138 6099 5961
25	matoyli.com		AVT9DA643UDUU		support@matoyli.com AB28F948E2C64911B30D B106DA340C57.PROTECT @WITHHELDFORPRIVA CY.COM
25	testegrila.com		AVT9DA643UDUU		support@testegrila.com Contact@sample.com Support@sample.com contact@yourstore.com
26	monicasneaker.im			choice409@126.com	monicasneaker@gmail.com WhatsApp: +86 183 9600 1806
27	niosneaker.com	Wear your personality, a new summer style	AJARX6JZSMYRN		niosneaker@gmail.com
28	obosneaker.com	盖州顺百商贸有 限公司	T7SE9R8HVVFQA	15659915689@163.com	onebyonemalls@gmail.com
29	oldsnkrs.shop	光远 赵		jjligimvgj92@hotmail.co m	onlykickz0706@gmail.com Godky@163.com WhatsApp: +86 186 4960 5584
30	persting.live	GREEN E- 2FOUR PRIVATE LIMITED	LHL3Z7HRGBAGA		csservice@splendorxa- live.com customer@visable- online.com
31	poposhoes.top	Guangzhou Share Clothing Co.,Ltd	XSEJ6A4ZWB4M8		liu31004@gmail.com info@poposhoes.top
32	sneakershop.ww	伟岚 钱 @WEILANQIAN	CSJWGLWPXJP2G	519097741@qq.com	WhatsApp: +86 159 8011 9208

33	sneakerssport789			qiuxia96@163.com	WhatsApp: +44 7473 486405
34	snkrsclub.cc		G475D5VGJX3U4		SUPPORT@SNKRSClub. CC support@snkrsclub.com snkrsclub- alan@outlook.com PWP- CE5127C33DCB144E78D8 0A5022CD7CC7@PRIVA CYGUARDIAN.ORG WhatsApp: +86 153 3001 0786
35	topfactory2166			topfactory2166@outlook.com	WhatsApp: +86 166 2166 1166
36	usasiha.shop	Unlock your imagination	662WL4LGHA7ME		SERVICE@USASIHA.SH OP
37	worlsoccer.com	上海斗彩信息科技有限公司	DLHY3FPQP3Q3N	aidfen@hotmail.com	hello@worlsoccer.com support@worlsoccer.com 8377557@gmail.com
38	xsir.product a.k.a. welcome to xsir			zhuchuanzheng203@outlook.com	WhatsApp: +86 181 5940 2993
39	zzmoonz.com a.k.a. zzmoonz.shop	zzmoonzshop@gmail.com	P72UBQDS26Y6U		zzmoonzshop@gmail.com