

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TALISMAN DESIGNS, LLC,

Plaintiff,

v.

AHAPPYDAY, *et al.*,

Defendants.

Civil Action No. 20-1915

Robert J. Colville

PRELIMINARY INJUNCTION ORDER

WHEREAS, Plaintiff filed an *Ex Parte* Application for the following: 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts (as defined *infra*); 3) an order to show cause why a preliminary injunction should not issue; and 4) an order authorizing expedited discovery against the Defendants identified on **Schedule “A”** to the Complaint and attached hereto (collectively, the “Defendants”)¹. The Court has considered the Application, the evidence in the record, and the applicable law.

WHEREAS, Plaintiff filed an *Ex Parte* Motion for An Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3);

¹ As alleged in the Complaint, each of the Defendants is (a) Defendants are (i) using Plaintiff’s Copyrighted Photograph or other of plaintiff’s photographs, while promoting, selling, offering for sale and distributing knock-offs of Plaintiff’s Product, thus unfairly competing, and/or (ii) infringing Plaintiff’s Work; and/or (iii) using Plaintiff’s federally registered trademark TAN DON’T BURN[®] (“Plaintiff’s Mark”), while offering to sell and selling knock-offs of Plaintiff’s Product, thus counterfeiting . Defendants accomplish their illegal sales through the use of, at least, the Internet based e-commerce stores operated via at least the Amazon.com, eBay.com, Wish.com and AliExpress.com Internet marketplace platforms. Based on this evidence, Plaintiff’s Complaint alleges claims for federal unfair competition in violation of Section 43(a) of the Trademark Act of 1946, as amended; federal copyright infringement; common law unfair competition; and common law trademark infringement, all pursuant to 15 U.S.C. § 1125(a), 17 U.S.C. §§ 101 et seq, and The All Writs Act, 28 U.S.C. § 1651(a). While all of the Defendants are allegedly unfairly competing, Plaintiff has alleged that only Defendant Nos. 1, 8, 121, and 124 have used Plaintiff’s Mark to sell their goods.

WHEREAS, On December 10, 2020, the Court entered the following Orders:

(A) (1) a temporary restraining order; (2) an order restraining assets and Merchant Storefronts, (3) an order to show cause why a preliminary injunction should not issue; and (4) an order authorizing expedited discovery against all of the Defendants identified on the attached Schedule "A", and the Third Party Service Providers and Financial Institutions, in light of Defendants' intentional and willful offerings for sale and/or sales of Infringing Products ("Application"); and

(B) Order Authorizing Alternative Service on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3) ("the Alternative Service Order");

WHEREAS, upon Plaintiff's motion, in order to give Plaintiff additional time to serve the Defendants, and to provide the Defendants with sufficient time to respond to the Show Cause Order, this Court extended the initial TRO, re-set the briefing schedule, and re-scheduled the Show Cause Hearing to January 25, 2021.

WHEREAS, pursuant to the terms of the Alternative Service Order, the Defendants have been served with notice of this Show Cause Hearing; and

WHEREAS, on January 25, 2021, Plaintiff appeared for the Order to Show Cause Hearing, however no Defendants appeared. Further, none of the Third Party Service Provider(s) or Financial Institution(s) appeared.

ORDER

I. Restraining Order

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, the injunctive relief previously granted on December 10, 2020, and extended by further Orders, shall remain in place through the pendency of this litigation, and issuing this Preliminary Injunction (hereafter “PI Order”) is warranted under 15 U.S.C. § 1116, 17 U.S.C. § 502, and Federal Rule of Civil Procedure 65.

Accordingly, 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 are hereby restrained as follows:

- (1) from (a) their unauthorized and unlicensed use of Plaintiff’s Mark and/or Plaintiff’s Work in connection with the distribution, marketing, advertising, offering for sale, or sale of any products; and (b) shipping, delivering, holding for sale, transferring or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner products which use Plaintiff’s Mark and/or Plaintiff’s Works;
- (2) from secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with any computer files, data, business records, documents or any other records or evidence relating to their User Accounts,² Merchant Storefronts³ or

² As defined in the Application, a “User Account” is, as defined in the Complaint, any and all accounts with online marketplace platform(s) Amazon.com, eBay.com, Aliexpress.com, and wish.com as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendants, their respective officers, employees, agents, servants and all other persons in active concert with any of them.

³ As defined in the Application, a “Merchant Storefront” is any and all User Accounts through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them operate storefronts to manufacture, import, export, advertise, market, promote, distribute, display, offer

any money, securities or other property or assets of Defendants (hereinafter collectively referred to as “Defendants’ Assets”);

- (3) effecting assignments or transfers, forming new entities or associations, or creating and/or utilizing any other platform, User Account, Merchant Storefront or any other means of importation, exportation, advertising, marketing, promotion, distribution, and/or display for the purposes of circumventing or otherwise avoiding the prohibitions set forth in this Order;
- (4) 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 use of the Plaintiff’s Mark and/or Plaintiff’s Work within metatags or other markers within website source code, from use on any web page (including as the title of any product listing), from any advertising links to other websites, from search engines’ databases or cache memory, and any other form of use such terms or works which is visible to a computer user or serves to direct computer searches to Internet based e-commerce stores owned, or operated by each Defendant, including the Merchant Storefronts operating under the Seller IDs;
- (5) each Defendant shall not transfer ownership of the User Accounts or Merchant Storefronts associated with the Seller IDs;
- (6) each Defendant shall preserve copies of all computer files relating to the use of any User Accounts and/or Merchant Storefronts under the Seller IDs and shall take steps necessary

for sale, sell and/or otherwise deal in products which are held by or associated with Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them.

to retrieve computer files relating to the use of the User Accounts and/or Merchant Storefronts under their Seller IDs that may have been deleted before the entry of this Order;

- (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 Alibaba.com US LLC d/b/a Aliexpress.com (“Aliexpress”), Amazon.com, Inc. and its affiliate, Amazon Services LLC d/b/a Amazon.com (“Amazon”), eBay, Inc. d/b/a eBay.com (“eBay”), and Context Logic, Inc d/b/a wish.com (“Wish”) 'Shopify Inc.' and 'Shopify International Ltd. (“Third Party Service Provider(s)”) and AliPay US Inc. d/b/a Alipay.com (“Alipay”), Amazon Payments, Inc. d/b/a pay.amazon.com, and PayPal, Inc. d/b/a paypal.com (“PayPal”) (“Financial Institution(s)”), and their related companies and affiliates, shall immediately identify and restrain all funds, as opposed to ongoing account activity, in or which are hereafter transmitted into the accounts related to the Defendants as identified on Schedule “A” hereto, as well as all funds in or which are transmitted into (i) any other accounts of the same customer(s); (ii) any other accounts which transfer funds into the same financial institution account(s), and/or any of the other accounts subject to this Order; and (iii) any other accounts tied to or used by any of the Seller IDs identified on Schedule “A” hereto;⁴
- (8) 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 the Third Party Service Provider(s) and the Financial

⁴ This Order contemplates that discovery may reveal that Defendants may have other user accounts operated by other Third Party Service Providers and Financial Institutions and that the additionally discovered Third Party Service Providers and Financial Institutions, once identified and provided with notice, shall also be subject to the discovery, restraints and injunctions set forth in this Order.

Institution(s), shall immediately divert to a holding account for the trust of the Court all funds in or which are hereafter transmitted into all accounts related to Defendants identified in Schedule "A" hereto, and associated payment accounts, and any other accounts for the same customer(s) as well as any other accounts which transfer funds into the same financial institution account(s) as any other accounts subject to this Order;

(9) The Third Party Service Provider(s) and Financial Institution(s) shall further, within five (5) business days of receiving this Order, provide Plaintiff's counsel with all data that details (i) an accounting of the total funds restrained and identifies the financial account(s) which the restrained funds are related to, and (ii) the account transactions related to all funds transmitted into financial 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 holders, until after those accounts are restrained. No funds restrained by this Order shall be transferred or surrendered by any Third Party Service Provider or Financial Institution for any purpose (other than pursuant to a chargeback made pursuant to that Third Party Service Provider or Financial Institution's security interest in the funds) without express authorization of this Court;

(10) Upon Plaintiff's request, any Internet marketplace who is provided with notice of this Order, including but not limited to the Third Party Service Provider(s) and Financial Institution(s), shall immediately cease fulfillment of and sequester Defendants' inventory assets corresponding to the Seller IDs identified on Schedule "A" hereto in its inventory, possession, custody, or control, and hold such goods in trust for the Court during pendency of this action;

- (11) this Order shall apply to the Seller IDs, associated Accounts and Merchant Storefronts, and any other seller identification names, Accounts or Merchant Storefronts, Third Party Service Provider or Financial Institution accounts which are being used by Defendants for the purpose of infringing the Plaintiff's Mark and/or Works and/or unfairly competing with Plaintiff;
- (12) Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to the Third Party Service Provider(s) and the Financial Institution(s), subject to this Order may petition the Court to modify the asset restraint set out in this Order; and
- (13) this PI Order and the Alternative Service Order shall remain in effect during the pendency of this action or until further order of the Court, and Plaintiff shall serve the Defendants with a copy of this PI Order in accordance with the Alternative Service Order.

B. IT IS HEREBY ORDERED, as sufficient cause has been shown, that upon Plaintiff's request, any Internet marketplace who is provided with notice of this Order, including but not limited to the Third Party Service Providers and Financial Institutions, is hereby restrained and enjoined from engaging in any of the following acts or omissions pending the hearing and determination of Plaintiff's Application for a preliminary injunction, or until further order of the Court:

- (1) secreting, concealing, transferring, disposing of, withdrawing, encumbering or paying Defendants' Assets from or to financial accounts associated with or utilized by any Defendant or any Defendant's User Accounts or Merchant

Storefront(s) (whether said account is located in the U.S. or abroad)

(“Defendants’ Financial Accounts”) until further ordered by this Court; and

- (2) within (5) days after receiving notice of this Order, providing services to Defendants, Defendants' User Accounts and Defendants' Merchant Storefronts, including, without limitation, continued operation of Defendants' User Accounts and Merchant Storefronts, and any other listings linked to the same sellers or linked to any other alias seller identification names being used and/or controlled by Defendants.

C. IT IS HEREBY ORDERED, as sufficient cause has been shown, that:

- (1) Amazon.com, Inc., and its related companies and affiliates, including Amazon Services, LLC, and Amazon Payments, Inc. (collectively “Amazon”), are hereby restrained and enjoined, pending the hearing and determination of Plaintiff’s Application for a preliminary injunction, or until further order of the Court, from processing payments for any products listed under the following Amazon Standard Identification Numbers (ASINs): B005FYC9XM - red PIE SHIELD, B012A0DXJ2 (red twin pack PIE SHIELD), B012A0E2PG – Aqua twin pack PIE SHIELD), B012A0DYZU – royal blue twin pack PIE SHIELD) by any Seller that has not been authorized by Plaintiff; Plaintiff shall provide notice to Amazon of Plaintiff’s authorized sellers;
- (2) Amazon.com, Inc., and its related companies and affiliates, including Amazon Services, LLC, and Amazon Payments, Inc., shall place the following Amazon Standard Identification Numbers (ASINs): B005FYC9XM - red PIE SHIELD, B012A0DXJ2 (red twin pack PIE SHIELD), B012A0E2PG – Aqua twin pack PIE SHIELD), B012A0DYZU – royal blue twin pack PIE SHIELD), into Amazon’s gating program, so that Plaintiff will be able to control which sellers list product under these ASINs; and

- (3) upon Plaintiff's request, Amazon.com, Inc., and its related companies and affiliates, including Amazon Services, LLC, and Amazon Payments, Inc., shall remove listings and/or advertisements for any product that Plaintiff identifies as unfairly competing with Plaintiff's Product (i.e., preventing a seller from listing for sale under the identified ASIN);
- (4) upon Plaintiff's request, a Third Party Service Provider shall remove listings and/or advertisements for any product that infringes on Plaintiff's Work and/or Mark; and
- (5) this Order shall remain in effect during the pendency of this action or until further order of the Court.

II. Order Authorizing Expedited Discovery

A. IT IS FURTHER ORDERED, as sufficient cause has been shown, that:

- (1) Plaintiff may propound interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and Defendants, their respective officers, employees, agents, servants and attorneys, and all persons in active concert or participation with any of them, who receive actual notice of this Order, shall provide written responses under oath to such interrogatories within fourteen (14) days of service to Plaintiffs' counsel.
- (2) Plaintiff may serve requests for the production of documents pursuant to FRCP 26 and 34, and Defendants, their respective officers, employees, agents, servants and attorneys, and all persons in active concert or participation with any of them, who receive actual notice of this Order, shall produce all documents responsive to such requests within fourteen (14) days of service to Plaintiffs' counsel.

(3) Plaintiff may serve requests for admissions pursuant to FRCP 26 and 36, and Defendants, their respective officers, employees, agents, servants and attorneys, and all persons in active concert or participation with any of them, who receive actual notice of this Order, shall provide written responses under oath to such requests within fourteen (14) days of service to Plaintiffs' counsel.

B. IT IS FURTHER ORDERED, as sufficient cause has been shown, that within fourteen (14) days of receiving actual notice of this Order, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to the Third Party Service Provider(s) and the Financial Institution(s), shall provide to Plaintiff's counsel all documents and records in their possession, custody or control (whether located in the U.S. or abroad) relating to Defendants' User Accounts and Defendants' Merchant Storefronts, including, but not limited to, documents and records relating to:

- (1) any and all User Accounts and Defendants' Merchant Storefronts and account details, including, without limitation, identifying information and account numbers for any and all User Accounts and Defendants' Merchant Storefronts that Defendants have ever had and/or currently maintain with the respective Third Party Service Provider;
- (2) the identities, location and contact information, including any and all e-mail addresses of Defendants that were not previously provided;
- (3) the Defendants' methods of payment, methods for accepting payment and any and all financial information, including, but not limited to, information associated with Defendants' User Accounts and Defendants' Merchant Storefronts, a full accounting of Defendants' sales history and listing history under such accounts and Defendants'

Financial Accounts associated with Defendants' User Accounts and Defendants' Merchant Storefronts; and

- (4) Defendants' unauthorized and unlicensed use of Plaintiff's Mark, and/or Plaintiffs' Works, and/or Plaintiff's Trade Dress in connection with the distribution, marketing, advertising, offering for sale, or sale of any products, and any products which use Plaintiffs' Plaintiffs' Mark, and/or Plaintiffs' Works.

III. Security Bond

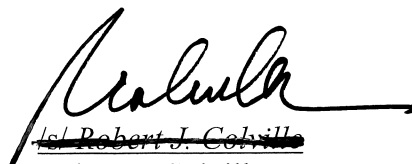
IT IS FURTHER ORDERED that the \$5,000.00 bond posted by Plaintiff shall remain with the Court until a final disposition of this case or until this PI Order is terminated.

IV. Unsealing Order

IT IS FURTHER ORDERED that the Clerk of the Court shall unseal this case and the papers previously filed.

SO ORDERED.

SIGNED this 25th day of January, 2021
Pittsburgh, Pennsylvania


~~Robert J. Colville~~
Robert J. Colville
United States District Judge

Schedule "A"
Defendants With Store Name and Seller ID

Defendant No.	Defendant/Store Name	Seller ID
1	Ahappyday	A8PS7A0Y57P0A
2	Aibiner	A1CVGM67PPRTQ7
█	█	█
4	ATROPOS	A12SWEFY2QHPI
5	AUSDU Inc	A2LD1EE5T2YVV8
6	Bestchoice YOU	A208TYNRRKERB3
7	Boliaman	A2KZF41J0UYPKJ
8	Bonng	A11EH75LZ4DK7F
9	BUETERE	A3EKMYV3Z5ZL8S
10	Celiy	A2ST25VXLIZN24
11	Clothful	A2DOUJNFVELSRE
12	eiffelhuang	AHIKYU1KTZP1P
13	EPSVCSEWN	A39OT8PXZ5CR3G
14	Feilifan Direct	A3M5HS9Y7S2TM0
15	foshanshiqijuyouxiangongsi	A2OBW67AEWJ15X
█	█	█
17	Green FOX	A2LOVHC7GLCK3T
18	HANGNUO	A1VKP8T9XSRPTB
19	Iuhan	A3ONUT6Q0JZ4TA
20	Jaxus	ATWVLV8H1GXP2
21	JTW bargain shop	A2FPERXQ4LVDUD

Defendant No.	Defendant/Store Name	Seller ID
22	JX First wave	A344GORIAPP0BW
23	Lexburner	A3MY46XYX78X48
24	little-BOY	A1Q0S3UP4XLFTE
25	Liyes	A1K0HT3CT5RLJY
■	■	■
27	ManyeeDirect US	A39ZMQMS2HOD0I
■	■	■
29	Neepanda	A3SUIOOFD69JFE
30	Onebycitess-US	A4CNS6PJ0ANV3
31	PinCute	A1FM3Y2YQ90N58
32	Pokerking	A1G9BGJYY2NQCZ
33	RBGKing	A2PFBS52NCZ0PC
34	RongJun	A36C2X60IU5BT4
35	Samoii	A1U6468W860CBL
36	sandistore	A3KO3PI5YS5IC9
37	Sea beauty	A3VWLO271FGY7Z
38	Seorsok	A13OKZ2LJKYOUT
39	Sugebeauty	A3ERDYXPE3V91Q
40	TTSAM_meisam	APPNCQQZQ0FQH
41	Wakaka US	A4I2Y402FF0Q6
■	■	■
43	xsmner	A3HQ8CYJXXQIHQ
44	2005warehouse	124341817641

Defendant No.	Defendant/Store Name	Seller ID
45	3632georgia	373147439959
46	againshopping	392793516612
■	■	■
48	bubg-39	402004747552
49	cake-decorations-tools-2	254740688987
50	cnscapital23	373098785604
51	djnds_onlineseller	184414567965
52	fan.yu	164281335277
53	finelive-168	292849658184
54	freestyle_shopping	353226008598
55	goodlookbody	292805220021
56	homebusiness_8	202536257060
57	idealshippingstore	313220904114
58	linmanl_74	223965111210
59	loveb-8721	362986071790
60	maryli1799	363031733106
61	ming-w	402349534944
62	mmmoren	174259303860
63	nescal7982	383675622352
64	pricenter-ksdy	353199992325
65	qoqolan_1	143066305158
66	seeyamall	264869268583
67	seril_19	143696187559

Defendant No.	Defendant/Store Name	Seller ID
68	speedealsale	203020825504
69	tianzh_3695	143637539350
70	tinycartsmall	164348033296
71	wangti-67	143662589418
72	yasycol76	313135445694
73	zhang_fashion	373043733818
74	20Just For You Store	3088099
75	A Warm Homehouse (Offer Drop Shipping) Store	5364033
76	Age Of Enjoyment Store	5000023
77	ATHome Decor Store	4780008
78	Big Cousin Store Store	2630076
79	BOMBOM Store	4436019
80	Comfort In Your House Store	4917001
81	Counting Stars	2231050
82	Daily Necessities Department Store	3652116
83	Daily Use Universal Tool Store	5005113
84	DaWang Store	3619176
85	DioorHome Store	5398005
86	Dreamering Store	2654032
87	Dropship Kitchen Dining & Bar Store	4502050
88	encoignure Store	4872214

Defendant No.	Defendant/Store Name	Seller ID
89	Gavin Daily Supplies Store	5241191
90	Golden Life Store	3480027
91	Grace2 Store	3631070
92	hayppy Store	3248036
93	Heitan Store	4423106
94	HraInx Store	5056074
95	ISHOWTIENDA Warm Cottage Store	5020090
96	Light Your Life Co.,LTD Store	2335257
97	MEIQIN Store	4696114
98	My House Store Store	2691026
99	Ningbo Hinta Plastic Factory	205843
100	OHFIN Factory Store	3852030
101	Outbreaker77 Store	4412195
102	OVERMAL Store	1665586
103	SE7EN Store	2807026
104	Shop4503052 Store	4503052
105	Shop4964066 Store	4964066
106	Shop5408014 Store	5408014
107	Shop5427198 Store	5427198
108	Shop5597196 Store	5597196
109	Shop5968015 Store	5968015
110	SmartFamily Store	2926092

Defendant No.	Defendant/Store Name	Seller ID
111	store3171 Store	4817046
112	The LoveNest Store	2954140
113	U-Need Store	2931101
114	Vovotrade Trading Store	1831682
115	Warm Dropshipping Store	4429043
116	WholeWorld Store	2885160
117	ZMHEGW Store	3256113
118	agolden	59632e942dcaec4209174b24
119	ALLINKCO	5a0556d53eb22a4f81d4e1bf
120	Danoller	5ac190dbc989496f5176c872
121	ejwkeqkK	5dff38908c920645086d988e
122	Fast Delivery USA	58eb9a0d20061d0fb9a78cd2
123	FBVCHNY678	5e462285600ea13a646f0321
124	huaihuaxinda	591db82b710d01086e378d9c
125	jdojpmoj90	5f115892f926424401a358b1
█	██████████	██
█	██████████	██
128	Krion	5aa63bd91843543f0e0e2172
129	Lingsun Tech	58eccd0f22495c62ac0676d3
130	LKJHA	5e841843ab205e16568dc885
131	mpecnheya	5f1274fb6e5ec83ff9d30717
132	Putars Shop	5909531052693956353bb423
133	sixihaya	5f13cedd4aecbb0733dc8c0e

Defendant No.	Defendant/Store Name	Seller ID
134	Walffel	5b56da81b419d53e3dd7ab34
135	wangadfsdg	5d6f5855ffe2565b41578944
136	wufeifei1	5eb66ec36de0156b1956fc46
■	■	■