

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

SNEAKER MATCH, LLC,  
an Arizona Limited Liability Company,

Plaintiff,

Case No.: 1-21-cv-05927

v.

JOHN DOES 1-10,

Defendants.

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**MEMORANDUM IN SUPPORT OF PLAINTIFF’S *EX PARTE* MOTION FOR ENTRY OF A TEMPORARY RESTRAINING ORDER, INCLUDING TEMPORARY TRANSFER OF THE DOMAIN NAMES, TEMPORARY ASSET RESTRAINT, EXPEDITED DISCOVERY, AND ELECTRONIC SERVICE OF PROCESS**

Plaintiff Sneaker Match LLC (“Plaintiff” or “Sneaker Match”) submits this Memorandum in support of its *Ex Parte* Motion for Entry of a Temporary Restraining Order (“TRO”), including a temporary transfer of the Domain Names, a temporary asset restraint, expedited discovery, and electronic service of process (the “*Ex Parte* Motion”).

**I. INTRODUCTION AND SUMMARY OF ARGUMENT**

Plaintiff Sneaker Match LLC (“Plaintiff” or “Sneaker Match”) is requesting temporary *ex parte* relief based on an action for trademark infringement, counterfeiting, false designation of origin, and copyright infringement against the defendants identified on Schedule “A” (ECF 1-4) to the Complaint (collectively the “Defendants”). As alleged in Sneaker Match’s Complaint, Defendants are promoting, advertising, marketing, distributing, offering for sale, and selling products, including clothing and fashion accessories, using infringing and counterfeit versions of Sneaker Match’s federally registered trademarks, unauthorized copies of Sneaker Match’s federally registered copyrighted designs, or both (collectively, the “Unauthorized Sneaker Match Products”), through, at least, the fully interactive, e-commerce stores operating under several

aliases and at several domain names.

Defendants run a sophisticated counterfeiting operation and have targeted sales to Illinois residents by setting up and operating e-commerce stores using one or more Aliases through which Illinois residents can view and purchase unauthorized and counterfeit Sneaker Match Products. The e-commerce stores operating under the aliases share unique identifiers establishing a logical relationship between them. Further, Defendants attempt to avoid and mitigate liability by operating under one or more Aliases to conceal both their identities and the full scope and interworking of their operation. Sneaker Match is forced to file these actions to combat Defendants' counterfeiting of its registered trademarks and infringement of its registered copyrights, as well as to protect unknowing consumers from purchasing unauthorized Sneaker Match Products over the Internet. Defendants' ongoing unlawful activities should be immediately restrained, and Sneaker Match respectfully requests that this Court issue *ex parte* a Temporary Restraining Order.

## **II. STATEMENT OF FACTS**

### **A. Sneaker Match's Trademarks, Copyrights and Products**

The Sneaker Match business began in June of 2014 based on the unique business concept of selling t-shirts customized to coordinate with popular sneakers online via the [www.sneakermatchtees.com](http://www.sneakermatchtees.com) website ("Sneaker Match Website"). The Sneaker Match business model has been a wild success. Sneaker Match has sold products including t-shirts, sweatshirts, hats, and recently, face masks, (collectively, the "Sneaker Match Products") on its website throughout the United States and Internationally. The Sneaker Match business has grown based on its online presence and reputation. Declaration of Alejandro Rodriguez, (the "Rodriguez Declaration") at 3. The majority of Sneaker Match's site traffic is a result of organic traffic as opposed to paid advertising. Sneaker Match is a global business with online retail services via a

state-of-the-art website and marketing and advertising online across social media channels. The Sneaker Match Website and Sneaker Match Products prominently display Sneaker Match's federally registered trademarks SNEAKER MATCH and SNEAKER MATCH TEES as well as



, the Sneaker Match Design Mark (collectively the “Sneaker Match Marks”). *Id.* at 5. Sneaker Match includes the Sneaker Match Marks as a source indicator at the point of sale online, on the product listing images, within the product listing titles and descriptions, on the website banners, and on the Sneaker Match Products’ hang tags and packaging. *Id.* at 6. True and correct copies of the United States registration certificates for the registered Sneaker Match Marks are attached to the Rodriguez Declaration as *Exhibit 1*. The registrations for the registered Sneaker Match Marks are valid, subsisting, and in full force and effect. *Id.* at 5. The registrations for the registered Sneaker Match Marks constitute *prima facie* evidence of their validity and of Sneaker Match’s exclusive right to use the registered Sneaker Match Marks pursuant to 15 U.S.C. § 1057(b).

Sneaker Match Products were, to Plaintiff’s knowledge, the first and are the most popular products in Plaintiff’s niche market. The Sneaker Match Marks are distinctive when applied to the Sneaker Match Products, signifying to the purchaser that the products come from Sneaker Match and are manufactured to Sneaker Match’s quality standards. *Id.* at 8. The Sneaker Match Marks have achieved recognition among relevant consumers, which has only added to the distinctiveness of the marks. *Id.* As such, the goodwill associated with the Sneaker Match Marks is of incalculable and inestimable value to Sneaker Match. *Id.*

Sneaker Match has also registered some of its designs with the United States Copyright Office (the “Sneaker Match Copyrighted Designs”). *Id.* at 9. Evidence of the U.S. federal

copyright registrations for the Sneaker Match Copyrighted Designs are attached to the Rodriguez Declaration as *Exhibit 2*. Among the exclusive rights granted to Sneaker Match under the U.S. Copyright Act are the exclusive rights to reproduce, prepare derivative works of, distribute copies of, display, and import copies of the Sneaker Match Copyrighted Design to the public.

### **B. Defendants' Unlawful Activities**

The success of the Sneaker Match brand has resulted in its significant counterfeiting. Rodriguez Declaration at 10. Consequently, Sneaker Match has invested significant time and resources in investigating infringement and counterfeiting efforts on the Internet. *Id.* Recently, Sneaker Match has identified numerous fully interactive e-commerce stores, including those operated by Defendants which were and/or are offering for sale and/or selling Unauthorized Sneaker Match Products to consumers in this Judicial District and throughout the United States. *Id.* Sneaker Match's well-pleaded allegations regarding registration patterns, similarities among the e-commerce stores operated by Defendants, the Unauthorized Sneaker Match Products for sale thereon, and common tactics employed to evade enforcement efforts establish a logical relationship among the Defendants and that Defendants are an interrelated group of counterfeiters. *Id.* At 15-16. If Defendants provide additional credible information regarding their identities, Sneaker Match will take appropriate steps to amend its Complaint.

Plaintiff has provided a list of the infringing links at *Exhibit 3* to the Rodriguez Declaration and screenshots of the infringement at *Exhibit 4* to the Rodriguez Declaration.

### **III. ARGUMENT**

Defendants' purposeful, intentional, and unlawful conduct is causing and will continue to cause irreparable harm to Sneaker Match's reputation and the goodwill symbolized by the

Sneaker Match Marks and the Sneaker Match Copyrighted Designs. Rule 65(b) of the Federal Rules of Civil Procedure provides that the Court may issue an *ex parte* TRO where immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition. Fed. R. Civ. P. 65(b). The entry of a TRO is appropriate because it would immediately stop the Defendants from benefiting from their wrongful use of the Sneaker Match Trademarks and the Sneaker Match Copyrighted Designs and preserve the status quo until a hearing can be held.

In the absence of a TRO without notice, the Defendants can and likely will register new e-commerce stores under new aliases and move any assets to offshore bank accounts outside the jurisdiction of this Court. Courts have recognized that civil actions against counterfeiters present special challenges that justify proceeding on an *ex parte* basis. See *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”). As such, Sneaker Match respectfully requests that this Court issue the requested *ex parte* TRO.

This Court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the Lanham Act, 15 U.S.C. § 1051, *et seq.*, the Copyright Act 17 U.S.C. § 501, *et seq.*, 28 U.S.C. §§ 1338(a)-(b), and 28 U.S.C. § 1331. Venue is proper pursuant to 28 U.S.C. § 1391.

This Court may properly exercise personal jurisdiction over Defendants since Defendants directly target business activities toward consumers in the United States, including Illinois, through at least the fully interactive, e-commerce stores. Specifically, Defendants have targeted sales to Illinois residents by setting up and operating e-commerce stores that target United States

consumers using one or more aliases through which Illinois residents can purchase Unauthorized Sneaker Match Products. *See* Complaint at ¶¶ 6, 26 - 28, 30, and 33-38. *See, e.g., Christian Dior Couture, S.A. v. Lei Liu et al.*, 2015 U.S. Dist. LEXIS 158225, at 6 (N.D. Ill. Nov. 17, 2015) (personal jurisdiction is proper over defendants offering to sell alleged infringing product to United States residents, including Illinois; no actual sale required). Each of the Defendants is committing tortious acts in Illinois, is engaging in interstate commerce, and has wrongfully caused Sneaker Match substantial injury in the State of Illinois.

**A. Standard for Temporary Restraining Order and Preliminary Injunction**

District Courts within this Circuit hold that the standard for granting a TRO and the standard for granting a preliminary injunction are identical. *See, e.g. Charter Nat'l Bank & Trust v. Charter One Fin., Inc.*, No. 2001 WL 527404, at \*1 (N.D. Ill. May 15, 2001) (citation omitted). A party seeking to obtain a preliminary injunction must demonstrate: (1) that its case has some likelihood of success on the merits; (2) that no adequate remedy at law exists; and (3) that it will suffer irreparable harm if the injunction is not granted. *See Ty, Inc. v. The Jones Group, Inc.*, 237 F.3d 891, 895 (7th Cir. 2001).

If the Court is satisfied that these three conditions have been met, then it must consider the harm that the nonmoving party will suffer if preliminary relief is granted, balancing such harm against the irreparable harm the moving party will suffer if relief is denied. *Id.* Finally, the Court must consider the potential effect on the public interest (non-parties) in denying or granting the injunction. *Id.* The Court then weighs all of these factors, “sitting as would a chancellor in equity,” when it decides whether to grant the injunction. *Id.* (quoting *Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 11 (7th Cir. 1992)). This process involves engaging in what the Court has deemed “the sliding scale approach” – the more likely the plaintiff will succeed on the merits, the less the balance of harms need favor the plaintiff’s position. *Id.*

**B. Sneaker Match Will Likely Succeed on the Merits**

i. Sneaker Match Will Likely Succeed on Its Trademark Infringement and Counterfeiting, and False Designation of Origin Claims.

A defendant is liable for trademark infringement and counterfeiting under the Lanham Act if it, “without the consent of the registrant, use[s] in commerce, any reproduction, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods ... which such use is likely to cause confusion, or to cause mistake, or to deceive.” 15 U.S.C. § 1114(1). A Lanham Act trademark infringement claim has two elements. *See* 15 U.S.C. § 1125(a). First, a plaintiff must show “that its mark is protected under the Lanham Act.” *Barbecue Marx, Inc. v. 551 Ogden, Inc.*, 235 F.3d 1041, 1043 (7th Cir. 2000). Second, plaintiff must show that the challenged mark is likely to cause confusion among consumers. *Id.*

In this case, Sneaker Match’s registered Sneaker Match Marks are distinctive and are registered with the United States Patent and Trademark Office. Rodriguez Declaration at 5. The registrations for the registered Sneaker Match Marks are valid, subsisting, in full force and effect. *Id.* The registrations for the registered Sneaker Match Marks constitute *prima facie* evidence of their validity and of Sneaker Match’s exclusive right to use the registered Sneaker Match Marks pursuant to 15 U.S.C. § 1057(b). Sneaker Match has not licensed or authorized Defendants to use any of the Sneaker Match Marks, and none of the Defendants are authorized retailers of genuine Sneaker Match Products. *Id.* at 10. Thus, Sneaker Match satisfies the first element of its Lanham Act claim.

The Seventh Circuit has held that where “one produces counterfeit goods in an apparent attempt to capitalize upon the popularity of, and demand for, another’s product, there is a presumption of a likelihood of confusion.” *Microsoft Corp. v. Rechanik*, 249 F. App’x 476, 479

(7th Cir. 2007). Accordingly, the Court can presume a likelihood of confusion from Defendant's use of the Sneaker Match Marks. The result is the same when considered in light of the Seventh Circuit's seven enumerated factors to determine whether there is a likelihood of confusion, which include: (1) similarity between the marks in appearance and suggestion; (2) similarity of the products; (3) area and manner of concurrent use; (4) degree of care likely to be exercised by consumers; (5) strength of complainant's mark; (6) actual confusion; and, (7) intent of the defendants to palm off their products as that of another. *AutoZone, Inc. v. Strick*, 543 F.3d 923, 929 (7th Cir. 2008). No one factor is dispositive, but the similarity of the marks, actual confusion, and the defendant's intent are "particularly important." *Id.*

Sneaker Match has submitted extensive documentation showing that Defendants are selling Unauthorized Sneaker Match Products that look similar to genuine Sneaker Match Products and use infringing and counterfeit marks identical and confusingly similar to the Sneaker Match Marks. Rodriguez Declaration at 12-14 and *Exhibits 3 and 4*. Both Sneaker Match and Defendants advertise and sell their products to consumers via the Internet, targeting consumers looking for genuine Sneaker Match Products. *Id.* Those consumers are diverse with varying degrees of sophistication, and they are likely to have difficulty distinguishing genuine Sneaker Match Products from Unauthorized Sneaker Match Products. Indeed, it appears that Defendants are intentionally trying to induce consumers looking for genuine Sneaker Match Products to purchase Unauthorized Sneaker Match Products instead. Accordingly, Sneaker Match is likely to establish a *prima facie* case of trademark infringement, counterfeiting, and false designation of origin.

ii. Sneaker Match Is Likely to Succeed on Its Copyright Infringement Claim

The United States Copyright Act provides that "[a]nyone who violates any of the



exclusive rights of the copyright owner ... is an infringer of the copyright.” 17 U.S.C. § 501. Among these exclusive rights granted to Sneaker Match under the Copyright Act are the exclusive rights to reproduce, prepare derivative works of, distribute copies of, and display the Sneaker Match Copyrighted Designs to the public. 17 U.S.C. § 106.

To establish a claim for copyright infringement, a plaintiff must show: “(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original.” *JCW Invs., Inc. v. Novelty, Inc.*, 482 F.3d 910, 914 (7th Cir. 2007) (internal citations omitted). Copying can be shown through direct evidence, or it can be inferred where a defendant had access to the copyrighted work and the accused work is substantially similar. *Spinmaster, Ltd. v. Overbreak LLC*, 404 F. Supp. 2d 1097, 1102 (N.D. Ill. 2005). To determine whether there is a substantial similarity that indicates infringement, Courts use the “ordinary observer” test which asks whether “an ordinary reasonable person would conclude that the defendant unlawfully appropriated protectable expression by taking material of substance and value.” *Id.* A work may be deemed infringing if it captures the “total concept and feel of the copyrighted work.” *Id.*

With respect to the first element, Sneaker Match is the owner of relevant federally registered copyrights. As to the second element, Defendants are willfully and deliberately reproducing the Sneaker Match Copyrighted Designs in their entirety and are willfully and deliberately distributing copies of the Sneaker Match Copyrighted Designs to the public by sale. Defendants’ unauthorized copies are identical or substantially similar to the Sneaker Match Copyrighted Designs. Such blatant copying infringes upon Sneaker Match’s exclusive rights under 17 U.S.C. §§ 106. As such, Sneaker Match has proved it has a reasonable likelihood of success on the merits for its copyright infringement claim.

**C. There Is No Adequate Remedy at Law, and Sneaker Match Will Suffer Irreparable Harm in the Absence of Preliminary Relief**

The Seventh Circuit has “clearly and repeatedly held that damage to a trademark holder's goodwill can constitute irreparable injury for which the trademark owner has no adequate legal remedy.” *Re/Max N. Cent., Inc. v. Cook*, 272 F.3d 424, 432 (7th Cir. 2001) (citing *Eli Lilly & Co. v. Natural Answers, Inc.*, 233 F.3d 456, 469 (7th Cir.2000)). Likewise, an injury to a copyright holder that is “not easily measurable in monetary terms, such as injury to reputation or goodwill, is often viewed as irreparable.” *EnVerve, Inc. v. Unger Meat Co.*, 779 F. Supp. 2d 840, 844 (N.D. Ill. 2011). Irreparable injury “almost inevitably follows” when there is a high probability of confusion because such injury “may not be fully compensable in damages.” *Helene Curtis Industries, Inc. v. Church & Dwight Co., Inc.*, 560 F.2d 1325, 1332 (7th Cir. 1977) (citation omitted). “The most corrosive and irreparable harm attributable to trademark infringement is the inability of the victim to control the nature and quality of the defendants’ goods.” *Int’l Kennel Club of Chicago, Inc. v. Mighty Star, Inc.*, 846 F.2d 1079, 1092 (7th Cir. 1988). As such, monetary damages are likely to be inadequate compensation for such harm. *Ideal Indus., Inc. v. Gardner Bender, Inc.*, 612 F.2d 1018, 1026 (7th Cir. 1979).

Defendants’ unauthorized use of the Sneaker Match Marks has and continues to irreparably harm Sneaker Match through diminished goodwill and brand confidence, damage to Sneaker Match’s reputation, and loss of future sales. *Rodriguez Declaration*. Defendants’ advertising and work to increase traffic to their websites is and will continue to permanently damage Sneaker Match's’ own SEO and website traffic it has worked to build over the past six years. The extent of the harm to Sneaker Match’s reputation and goodwill and the probable diversion of customers due to loss in brand confidence and damage to SEO are both irreparable and incalculable, thus warranting an immediate halt to Defendants’ infringing activities through

injunctive relief. See *Promatek Industries, Ltd. v. Equitrac Corp.*, 300 F.3d 808, 813 (7th Cir. 2002) (finding that damage to plaintiff's goodwill was irreparable harm for which plaintiff had no adequate remedy at law). Sneaker Match will suffer immediate and irreparable injury, loss, or damage if an *ex parte* Temporary Restraining Order is not issued in accordance with Federal Rule of Civil Procedure 65(b)(1). Rodriguez Declaration.

**D. The Balancing of Harms Tips in Sneaker Match's Favor, and the Public Interest Is Served by Entry of the Injunction**

As noted above, if the Court is satisfied that Sneaker Match has demonstrated (1) a likelihood of success on the merits, (2) no adequate remedy at law, and (3) the threat of irreparable harm if preliminary relief is not granted, then it must next consider the harm that Defendants will suffer if preliminary relief is granted, balancing such harm against the irreparable harm that Sneaker Match will suffer if relief is denied. *Ty, Inc.*, 237 F.3d at 895. As willful infringers, Defendants are entitled to little equitable consideration. "When considering the balance of hardships between the parties in infringement cases, courts generally favor the trademark owner." *Krause Int'l Inc. v. Reed Elsevier, Inc.*, 866 F. Supp. 585, 587-88 (D.D.C. 1994). This is because "[o]ne who adopts the mark of another for similar goods acts at his own peril since he has no claim to the profits or advantages thereby derived." *Burger King Corp. v. Majeed*, 805 F. Supp. 994, 1006 (S.D. Fla. 1992) (internal quotation marks omitted). Therefore, the balance of harms "cannot favor a defendant whose injury results from the knowing infringement of the plaintiff's trademark." *Malarkey-Taylor Assocs., Inc. v. Cellular Telecomms. Indus. Ass'n*, 929 F. Supp. 473, 478 (D.D.C. 1996).

As Sneaker Match has demonstrated, Defendants have been profiting from the sale of Unauthorized Sneaker Match Products. Thus, the balance of equities tips decisively in Sneaker Match's favor. The public is currently under the false impression that Defendants are operating

their e-commerce stores with Sneaker Match's approval and endorsement. In this case, the injury to the public is significant, and the injunctive relief that Sneaker Match seeks is specifically intended to remedy that injury by dispelling the public confusion created by Defendants' actions. As such, equity requires that Defendants be ordered to cease their unlawful conduct.

#### **IV. THE EQUITABLE RELIEF SOUGHT IS APPROPRIATE**

The Lanham Act authorizes courts to issue injunctive relief "according to the principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the registrant of a mark ...." 15 U.S.C. § 1116(a).

##### **A. An Order Immediately Enjoining Defendants' Unauthorized and Unlawful Use of the Sneaker Match Marks and Sneaker Match Copyrighted Designs Is Appropriate**

Sneaker Match requests a temporary injunction requiring the Defendants to immediately cease all use of the Sneaker Match Marks, or substantially similar marks and/or copying and distribution of the Sneaker Match Copyrighted Designs, on or in connection with all e-commerce stores operating under the Aliases. Such relief is necessary to stop the ongoing harm to the Sneaker Match Marks and associated goodwill, as well as harm to consumers, and to prevent the Defendants from continuing to benefit from their unauthorized use of the Sneaker Match Marks and/or copying and distribution of the Sneaker Match Copyrighted Designs. The need for *ex parte* relief is magnified in today's global economy where counterfeiters can operate anonymously over the Internet. Sneaker Match is currently unaware of both the true identities and locations of the Defendants, as well as other e-commerce stores used to distribute Unauthorized Sneaker Match Products. Many courts have authorized immediate injunctive relief in similar cases involving the unauthorized use of trademarks and counterfeiting. *See, e.g., Deckers Outdoor Corporation v. The Partnerships, et al.*, No. 15-cv-3249 (N.D. Ill. Apr. 4, 2015) (unpublished) (order granting *ex parte* Motion for Temporary Restraining Order).

**B. Transferring the Defendant Domain Names to Sneaker Match's Control Is Appropriate**

As part of the TRO, Sneaker Match also seeks temporary transfer of the Domain Names to Sneaker Match's control in order to disable the counterfeit websites and electronically publish notice of this case to Defendants. Defendants involved in domain name litigation easily can, and often will, change the ownership of a domain name or continue operating the website while the case is pending. Accordingly, to preserve the status quo and ensure the possibility of eventual effective relief, courts in trademark cases involving domain names regularly grant the relief requested herein. *See, e.g., Deckers Outdoor Corporation v. The Partnerships, et al.*, No. 15-cv-3249 (N.D. Ill. April 4, 2015) (unpublished). As such, Sneaker Match respectfully requests that, as part of the TRO, the Court require the relevant registries and/or registrars for the Domain Names to transfer the Domain Names to Sneaker Match, or consistent with the Court's Schedule A template order, disable the domains from operation until further order from this Court.

**C. Preventing the Fraudulent Transfer of Assets Is Appropriate**

Sneaker Match requests an *ex parte* restraint of Defendants' assets so that Sneaker Match's right to an equitable accounting of Defendants' profits from sales of Unauthorized Sneaker Match Products is not impaired. If such a restraint is not granted in this case, Defendants will likely disregard their responsibilities and fraudulently transfer financial assets to overseas accounts before a restraint is ordered. Specifically, on information and belief, the Defendants in this case are residents of Vietnam or other countries in southeast Asia and hold most of their assets in offshore accounts, making it easy to hide or dispose of assets, which will render an accounting by Sneaker Match meaningless.

Courts have the inherent authority to issue a prejudgment asset restraint when plaintiff's complaint seeks relief in equity. *Animale Grp. Inc. v. Sunny's Perfume Inc.*, 256 F. App'x 707,

709 (5th Cir. 2007). In addition, Sneaker Match has shown a strong likelihood of succeeding on the merits of its trademark infringement, counterfeiting, and unfair competition claims, so according to the Lanham Act 15 U.S.C. § 1117(a)(1), Sneaker Match is entitled, “subject to the principles of equity, to recover ... defendant’s profits.” Similarly, Sneaker Match has shown a strong likelihood of succeeding on the merits of its copyright infringement claim, and therefore Sneaker Match is entitled to recover “...any profits of the infringer that are attributable to the infringement.” 17 U.S.C. § 504(b). Sneaker Match’s Complaint seeks, among other relief, that Defendants account for and pay to Sneaker Match all profits realized by Defendants by reason of Defendants’ unlawful acts. Therefore, this Court has the inherent equitable authority to grant Sneaker Match’s request for a prejudgment asset freeze to preserve relief sought by Sneaker Match.

The Northern District of Illinois in *Lorillard Tobacco Co. v. Montrose Wholesale Candies* entered an asset restraining order in a trademark infringement case brought by a tobacco company against owners of a store selling counterfeit cigarettes. *Lorillard Tobacco Co. v. Montrose Wholesale Candies*, 2005 WL 3115892, at \*13 (N.D. Ill. Nov. 8, 2005). The Court recognized that it was explicitly allowed to issue a restraint on assets for lawsuits seeking equitable relief. *Id.* (citing *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund*, 527 U.S. 308, 325 (1999)). Because the tobacco company sought a disgorgement of the storeowner’s profits, an equitable remedy, the Court found that it had the authority to freeze the storeowner’s assets. *Id.*

Sneaker Match has shown a likelihood of success on the merits, an immediate and irreparable harm suffered as a result of Defendants’ activities, and that, unless Defendants’ assets are frozen, Defendants will likely hide or move their ill-gotten funds to offshore bank accounts. Accordingly, an asset restraint is proper.

#### **D. Sneaker Match Is Entitled to Expedited Discovery**

The United States Supreme Court has held that “federal courts have the power to order, at their discretion, the discovery of facts necessary to ascertain their competency to entertain the merits.” *Vance v. Rumsfeld*, No. 1:06-cv-06964, 2007 WL 4557812, at \*6 (N.D. Ill. Dec. 21, 2007) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S.Ct. 2380 (1978)). Courts have wide latitude in determining whether to grant a party's request for discovery. *Id.* (citation omitted). Further, courts have broad power over discovery and may permit discovery in order to aid in the identification of unknown defendants. *See* Fed. R. Civ. P. 26(b)(2).

Sneaker Match respectfully requests expedited discovery to discover bank and payment system accounts Defendants use for their counterfeit sales operations. The expedited discovery requested in Sneaker Match's Proposed TRO, attached as Exhibit A to Plaintiff's Motion, is limited to include only what is essential to prevent further irreparable harm. Discovery of these financial accounts so that they can be frozen is necessary to ensure that these activities will be contained. *See, e.g., Deckers Outdoor Corporation v. The Partnerships, et al.*, No. 15-cv-3249 (N.D. Ill. April 4, 2015) (unpublished). Sneaker Match's seizure and asset restraint may have little meaningful effect without the requested relief. Accordingly, Sneaker Match respectfully requests that expedited discovery be granted.

#### **V. A BOND SHOULD SECURE THE INJUNCTIVE RELIEF**

The posting of security upon issuance of a temporary restraining order or preliminary injunction is vested in the Court's sound discretion. *Rathmann Grp. v. Tanenbaum*, 889 F.2d 787, 789 (8th Cir. 1989). Because of the strong and unequivocal nature of Sneaker Match's evidence of counterfeiting, trademark infringement, and copyright infringement, Sneaker Match respectfully requests that this Court require Sneaker Match to post a bond of no more than ten

thousand U.S. dollars (\$10,000.00) at such time the Court re-opens for in-person civil proceedings. *See, e.g., Deckers Outdoor Corporation v. The Partnerships, et al.*, No. 15-cv- 3249 (N.D. Ill. April 4, 2015) (unpublished) (\$10,000 bond).

## **VI. ELECTRONIC SERVICE IS WARRANTED**

Sneaker Match LLC seeks leave to effectuate service of process by email and/or electronic publication. Plaintiff's requested form of electronic service is pulled direct from this Court's standard Schedule A Order. Specifically, Plaintiff seeks leave to provide notice of these proceedings to Defendants, including notice of the preliminary injunction hearing, service of process pursuant to Fed. R. Civ. P. 4(f)(3), and any future motions, by electronically publishing a link to the Complaint, any orders, and other relevant documents on a website and by sending an e-mail to the e-mail addresses identified in Exhibits 3-4 to the Declaration of Rodriguez and any e-mail addresses provided for Defendants by third parties. Plaintiff submits that providing notice via such electronic publication and/or email, along with any notice that Defendants receive from third party service providers, is reasonably calculated under the circumstances to apprise Defendants of the pendency of the action and afford them the opportunity to present their objections.

Electronic service is appropriate and necessary in this case because off-shore e-commerce store operators offering for sale products using counterfeit trademarks typically: (1) do not provide or provide false, misleading and/or incomplete names and physical address information in order to conceal their locations and avoid liability for their unlawful conduct; and (2) rely primarily on electronic communications to communicate with their third party service providers and customers, demonstrating the reliability of this method of communication by which Defendants may be apprised of the pendency of this action. Authorizing service of process solely via e-mail and/or electronic publication will benefit all parties and the Court by ensuring that



Defendants receive prompt notice of this action, thus allowing this action to move forward expeditiously. Absent the ability to serve Defendants in this manner, Sneaker Match will almost certainly be left without the ability to pursue a final judgment.

### CONCLUSION

Defendants' unlawful operations are irreparably harming Sneaker Match's business, its distinctive Sneaker Match brand, and consumers. Without entry of the requested relief, Defendants' advertising and sale of Unauthorized Sneaker Match Products will continue to lead prospective purchasers and others to believe that Defendants' Unauthorized Sneaker Match Products have been manufactured by or emanate from Sneaker Match, when in fact, they have not. Therefore, entry of an *ex parte* order is necessary. In view of the foregoing and consistent with previous similar cases, Sneaker Match respectfully requests that this Court enter a Temporary Restraining Order in the form submitted herewith.

Date: November 10, 2021

Sneaker Match, LLC

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on the date below, the foregoing was served on counsel of record via the Court's ECF system.

Date: November 10, 2021

Sneaker Match, LLC

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