

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

TRT, LLC,

Plaintiff,

v.

THE PARTNERSHIPS AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED IN SCHEDULE "A",

Defendants.

Case No. 23-cv-16575

Judge John J. Tharp, Jr.
Magistrate Judge Gabriel A. Fuentes

**BRIEF IN SUPPORT OF PLAINTIFF'S EX PARTE MOTION FOR ENTRY OF A
TEMPORARY RESTRAINING ORDER, INCLUDING A TEMPORARY INJUNCTION,
A TEMPORARY ASSET RESTRAINT, AND EXPEDITED DISCOVERY**

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY OF THE ARGUMENT 8

II. STATEMENT OF FACTS..... 9

A. Plaintiff’s Intellectual Property..... 9

 1. *Plaintiff’s Design Patent*..... 9

 2. *Plaintiff’s Copyrighted Works* 10

 3. *Plaintiff’s Trademark*..... 10

B. Defendants’ Unlawful Activities 11

III. ARGUMENT..... 12

A. Standard for Temporary Restraining Order and Preliminary Injunction 13

B. Plaintiff Will Likely Succeed on the Merits 14

 1. *Design Patent Infringement* 14

 2. *Copyright Infringement*..... 15

 3. *Trademark Infringement and Counterfeiting*..... 16

C. There is No Adequate Remedy at Law, and Plaintiff Will Suffer Irreparable Harm in the Absence of Preliminary Relief..... 18

D. The Balance of Harms Tips in Plaintiff’s Favor, and the Public Interest is Served by Entry of the Injunction 20

IV. THE EQUITABLE RELIEF SOUGHT IS APPROPRIATE..... 22

A. A Temporary Restraining Order Immediately Enjoining Defendants’ Unauthorized and Unlawful Use of Plaintiff’s Intellectual Property is Appropriate 22

B. Preventing the Fraudulent Transfer of Assets is Appropriate..... 23

C. Plaintiff is Entitled to Expedited Discovery 24

V. A BOND SHOULD SECURE THE INJUNCTIVE RELIEF..... 25

VI. CONCLUSION 27

TABLE OF AUTHORITIES

U.S. SUPREME COURT CASES

Feist Pub’lns., Inc. v. Rural Tel. Serv. Co., 499 U.S. 340 (1991) 16

U.S. COURTS OF APPEALS CASES

Animale Grp. Inc. v. Sunny’s Perfume, Inc., 256 F. App’x 707 (5th Cir. 2007) 23

Apple Inc. v. Samsung Elecs. Co., Ltd., 786 F.3d 983 (Fed. Cir. 2015) 15

AutoZone, Inc. v. Strick, 543 F.3d 923 (7th Cir. 2008)..... 17

Barbecue Marx, Inc. v. 551 Ogden, Inc., 235 F.3d 1041 (7th Cir. 2000)..... 17

CAE, Inc. v. Clean Air Eng’g, Inc., 267 F.3d 660 (7th Cir. 2001) 18

Ethicon Endo-Surgery, Inc. v. Covidien, Inc., 796 F.3d 1312 (Fed. Cir. 2015) 15

Helene Curtis Indus., Inc. v. Church & Dwight Co., Inc., 560 F.2d 1325 (7th Cir. 1977)..... 19

Ideal Indus., Inc. v. Gardner Bender, Inc., 612 F.2d 1018 (7th Cir. 1979)..... 19

Int’l Kennel Club of Chicago, Inc. v. Mighty Star, Inc., 846 F.2d 1079 (7th Cir. 1988)..... 19

JCW Invs., Inc. v. Novelty, Inc., 482 F.3d 910 (7th Cir. 2007)..... 16

Microsoft Corp. v. Rechanik, 249 F. App’x 476 (7th Cir. 2007)..... 17

Processed Plastic Co. v. Warner Commc’ns, Inc., 675 F.2d 852 (7th Cir. 1982)..... 19

Promatek Indus., Ltd. v. Equitrac Corp., 300 F.3d 808 (7th Cir. 2002)..... 20

Ratham Grp. v. Tanenbaum, 889 F.2d 787 (8th Cir. 1989)..... 25

Re/Max N. Cent., Inc. v. Cook, 272 F.3d 424 (7th Cir. 2001) 18

U.S. DISTRICT COURTS CASES

. Deckers Outdoor Corp. v. P’ships and Unincorporated Ass’ns Identified on Sched. “A”, 13-cv-02167, 2013 WL 1337616 (N.D. Ill. Mar. 27, 2013)..... 25

<i>Bulgari, S.p.A. v. P’ships and Unincorporated Assn’s Identified on Sched. “A”, No. 14-cv-04819, 2014 WL 3765854 (July 29, 2014)</i>	26
<i>Burger King Corp. v. Majeed, 805 F. Supp. 994 (S.D. Fla. 1992)</i>	21
<i>Charter Nat’l Bank & Tr. v. Charter One Fin., Inc., No. 01 C 0905, 2001 WL 527404 (N.D. Ill. May 15, 2001)</i>	14
<i>Christian Dior Couture, S.A. v. Levi Liu, et al., No. 15 C 6325, 2015 U.S. Dist. LEXIS 158225 (N.D. Ill. Nov. 17, 2015)</i>	13
<i>Christian Dior Couture, S.A. v. P’ships and Unincorporated Ass’ns Identified on Sched. “A”, No. 21-cv-04828, 2021 WL 6881868 (N.D. Ill. Oct. 19, 2021)</i>	26
<i>Chrome Cherry Ltd. v. P’ships, et al., No. 21-cv-05491, 2021 WL 6752296 (N.D. Ill. Oct. 20, 2021)</i>	23, 24, 25
<i>Columbia Pictures Indus., Inc. v. Jasso, 927 F. Supp. 1075 (N.D. Ill. 1996)</i>	12
<i>Deckers Outdoor Corp. v. The P’ships, et al., No. 15-cv-3249 (N.D. Ill. Apr. 4, 2015)</i>	23
<i>Frerck v. John Wiley & Sons, Inc., 850 F.2d 889 (N.D. Ill. 2012)</i>	20
<i>Grumpy Cat Ltd. v. Individuals, Corps., LLCs, P’ships, and Unincorporated Assn’s Identified on Sched. A., No. 21-cv-05847, 2022 WL 18937691 (N.D. Ill. Mar. 28, 2022)</i>	26
<i>Iron Maiden Holdings Ltd. v. P’ships and Unincorporated Ass’ns Identified on Sched. “A”, No. 18-cv-01098, 2018 WL 2077732 (N.D. Ill. Mar. 6, 2018)</i>	26
<i>John Doe v. P’ships and Unincorporated Ass’ns Identified on Schedule “A,” No. 22-cv-07134 (N.D. Ill. filed Dec. 19, 2022)</i>	23
<i>Krause Int’l Inc. v. Reed Elsevier, 866 F. Supp. 585 (D.D.C. 1994)</i>	21
<i>Lorillard Tobacco Co. v. Montrose Wholesale Candies, Nos. 03 C 4844, 03 C 5311, 2005 WL 3115892 (N.D. Ill. Nov. 8, 2005)</i>	24

<i>Malarkey-Taylor Assoc., Inc. v. Cellular Telecomms Indus. Ass’n</i> , 929 F. Supp. 473 (D.D.C. 1996).....	21
<i>Mercis B.V. P’ships and Unincorporated Assn’s Identified on Sched. “A”</i> , No. 21-cv-00872, 2021 WL 4699007 (N.D. Ill. Mar. 19, 2021)	26
<i>Oakley, Inc. v. P’ship and Unincorporated Assn’s Identified on Sched. “A”</i> , No. 20-cv-06676, 2021 WL 9455191 (N.D. Ill. Dec. 11, 2020) (\$10,000 bond)	26
<i>Peng v. P’ships and Unincorporated Ass’ns Identified on Schedule A</i> , No. 21-cv-1344, 2021 WL 4169564 (N.D. Ill. Sep. 14, 2021).....	20
<i>Spinmaster, Ltd. v. Overbreak, LLC</i> , 404 F. Supp. 1097 (N.D. Ill. 2005).....	21
<i>Ty, Inc. v. The Jones Grp., Inc.</i> , 237 F.3d 895 (7th Cir. 2001).....	14, 21
<i>Vance v. Rumsfield</i> , No. 06 C 6964, 2007 WL 4557812 (N.D. Ill. Dec. 21, 2007).....	25
<i>Wham-O Holding, Ltd. v. P’ships and Unincorporated Assn’s Identified on Sched. “A”</i> , No. 21-cv-01885, 2021 WL 2627458 (N.D. Ill. May 4, 2021)	26

STATUTES

15 U.S.C. § 1051.....	13
15 U.S.C. § 1057.....	11
15 U.S.C. § 1114.....	16
15 U.S.C. § 1116.....	19
15 U.S.C. § 1126.....	16
17 U.S.C. § 106.....	16
17 U.S.C. § 501.....	13, 15
28 U.S.C. § 1331.....	13
28 U.S.C. § 1367.....	13

28 U.S.C. § 1391.....	13
35 U.S.C. § 271.....	13, 14
35 U.S.C. § 282.....	10
35 U.S.C. § 289.....	14
Fed. R. Civ. P. 26.....	25
Fed. R. Civ. P. 65.....	12, 20

**BRIEF IN SUPPORT OF PLAINTIFF’S REFILED EX PARTE MOTION
FOR ENTRY OF A TEMPORARY RESTRAINING ORDER,
INCLUDING A TEMPORARY INJUNCTION, A TEMPORARY
ASSET RESTRAINT, AND EXPEDITED DISCOVERY**

Plaintiff TR Tools, LLC (“Plaintiff”) submits this Brief in support of its *Ex Parte* Motion for Entry of a Temporary Restraining Order (“TRO”), including a temporary injunction, a temporary asset restraint, and expedited discovery (the “*Ex Parte* Motion”).

I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

Plaintiff is requesting temporary *ex parte* relief in its Complaint for design patent infringement, copyright infringement, trademark infringement and counterfeiting, false designation of origin, violation of the Illinois Uniform Deceptive Trade Practices Act, and civil conspiracy against the Defendants identified in Schedule “A” of the Complaint (“Defendants”). As alleged in the Complaint, Defendants are reproducing, offering for sale, and/or selling products which infringe Plaintiff’s federally registered design patent. Defendants are also using unauthorized reproductions or derivative works of Plaintiff’s federally copyrighted works to hold themselves out as being authorized by Plaintiff through its marketing materials. Finally, Defendants are promoting, marketing, distributing, offering for sale, and/or selling unauthorized versions of Plaintiff’s TITE-REACH branded products. Defendants are using fully interactive, commercial internet stores operating under at least the Seller Aliases identified in Schedule “A” of the Complaint (“Defendant Internet Stores”) to conduct their infringing activities.

Defendants have targeted sales to Illinois residents by creating and operating e-commerce stores that target United States consumers using various Seller Aliases and offer shipping to the United States, including Illinois. E-commerce stores operating under these Seller Aliases share unique identifiers establishing a logical relationship between them. Further, Defendants attempt to avoid and mitigate liability by operating under one or more Seller Aliases to conceal their identities

and the full scope and interworking of their operation. Plaintiff is forced to file this action to combat Defendants' infringement of its design patent and copyrights, counterfeiting and copying of its federally registered trademarks, and to protect unknowing consumers from purchasing unauthorized versions of TITE-REACH branded products over the internet. Defendants' ongoing unlawful activities should be restrained, and Plaintiff respectfully requests that this court issue a Temporary Restraining Order.

II. STATEMENT OF FACTS

A. Plaintiff's Intellectual Property

Plaintiff is an Iowa limited liability company and is the creator and seller of high-quality, unique extension wrenches for use in difficult to reach places (collectively, the "TITE-REACH Products"). *See* Decl. of Wayne Huisman ("Huisman Decl.") ¶ 3. Plaintiff sells these products to consumers through its TITE-REACH brand via the Plaintiff's e-commerce marketplaces¹ and markets them on various online platforms.² *Id.* ¶ 11. Since its inception in 2009, Plaintiff has obtained trademark, copyright, and design patent protection to develop and strengthen its brand. Plaintiff is engaged in the business of distributing and retailing its products within the Northern District of Illinois under the TITE-REACH trademark. *Id.* ¶ 4.

1. Plaintiff's Design Patent

Plaintiff was duly and legally issued a design patent by the United States Patent and Trademark Office ("USPTO") on January 5, 2010 (Reg. No. US D607,289). *Id.* ¶¶ 5-6. The design patent claims the ornamental design for an extension wrench, as shown and described in the patents. Plaintiff uses the patented design in connection with its TITE-REACH brand. Plaintiff has

¹ Plaintiff's [website](#).

² Facebook (<https://web.facebook.com/tite.reach.wrench/>); YouTube (https://www.youtube.com/channel/UC5oiTaIeLi_ciule8Tz_Inw); Twitter (https://twitter.com/tite_reach); Pinterest (<https://www.pinterest.ph/titereach/>); Instagram (<https://www.instagram.com/titereachwrenches/>).

the exclusive right under the design patent to license, make, use, develop, offer for sale, sell, and import products covered by the design patent. The registration of Plaintiff's design patent creates a presumption of its validity pursuant to 35 U.S.C. § 282(a). Huisman Decl. ¶¶ 5-6. Defendants' making, offering for sale, selling, and importing of the accused products without authorization from the Plaintiff and in violation of Plaintiff's intellectual property rights are irreparably damaging the Plaintiff. *Id.* ¶¶ 23-26.

2. Plaintiff's Copyrighted Works

Plaintiff created its copyrighted works in 2017, 2019, and 2022. Since their creation, Plaintiff has published, distributed, and publicly displayed copies of the copyrighted works in the U.S. by using them as marketing materials for its TITE-REACH brand. Plaintiff has disseminated the works via its e-commerce marketplaces. Plaintiff owns federal registrations for the copyrighted works (U.S. Reg. Nos. PAu 4-160-494, VA 2-327-778, VA 2-328-515, and VA 2-329-848). *Id.* ¶ 4. The registrations of Plaintiff's copyrighted works constitute prima facie evidence of their validity and of Plaintiff's exclusive right to copy, reproduce, distribute, and publicly display the copyrighted works pursuant to 17 U.S.C. § 106. Defendants' copies, reproductions, distribution, public display, and derivative works of Plaintiff's copyrighted works without authorization and in violation of Plaintiff's intellectual property rights are irreparably damaging the Plaintiff. *Id.* ¶¶ 23-26.

3. Plaintiff's Trademark

Plaintiff established its unique TITE-REACH branded storefront to offer high-quality and unique designs after noting a need for wrenches that can be used to reach otherwise inaccessible nuts and bolts. Since its first use in commerce in 2009, Plaintiff has introduced a variety of TITE-REACH Products through its e-commerce marketplaces. Plaintiff's products have been advertised

with its federally registered trademark TITE-REACH (U.S. Reg. No. 5,506,965) (the “TITE-REACH Trademark”) for several years. Plaintiff continues to heavily advertise its products on all its e-commerce marketplaces, social media, product demonstration videos, and other advertisement outlets. Its websites and social media feature original content, reviews, and testimonials for TITE-REACH branded products. Plaintiff’s strong presence in the market fostered by its substantial and continuous marketing and promotion efforts has allowed it to be recognized nationwide and worldwide. Huisman Decl. ¶ 11. The TITE-REACH Trademark is distinctive and identifies the merchandise as goods originating from the Plaintiff. *Id.* ¶ 9. As a result, consumers recognize that products bearing the TITE-REACH Trademark originate exclusively with the Plaintiff. *Id.* The national recognition, reputation, and goodwill associated with Plaintiff’s brand have made the TITE-REACH Trademark an invaluable asset of Plaintiff. *Id.* ¶ 10. The registration of Plaintiff’s trademark constitutes prima facie evidence of its validity and of Plaintiff’s exclusive right to use the trademark pursuant to 15 U.S.C. § 1057(b). *Id.* ¶ 4. The TITE-REACH Trademark has been continuously used and never abandoned since its first use in commerce. Defendants’ sales of counterfeit products and usage of Plaintiff’s trademark without authorization and in violation of Plaintiff’s intellectual property rights are irreparably damaging the Plaintiff. *Id.* ¶¶ 23-26.

B. Defendants’ Unlawful Activities

The success of Plaintiff’s brand has resulted in significant copying and counterfeiting. Huisman Decl. ¶ 12. In recent years, Plaintiff has identified hundreds of fully interactive online marketplace listings on various platforms³ and has been struggling to keep up with the volume of takedown requests needed to suppress the ongoing infringement. *Cf.* Decl. of James E. Judge ¶¶ 12-14 (“Judge Decl.”). Plaintiff has also identified Seller Aliases attached to the Defendant Internet

³ These include, but are not limited to, Alibaba, AliExpress, Amazon, CJ Drop Shipping, DHgate, eBay, Joybuy, Shopify, Temu, Wish, and Walmart.

Stores, which were offering for sale and selling counterfeit products to consumers and using Plaintiff's registered intellectual property to market said counterfeit products to consumers in this Judicial District and nationwide. Huisman Decl. ¶ 14. Plaintiff's allegations in its Complaint regarding registration patterns, common design elements, similarities among the Defendant Internet Stores, counterfeit products for sale, marketing used thereon, and common tactics employed to evade enforcement efforts establish a logical relationship among the Defendants suggesting that Defendants are interrelated. *Id.* ¶¶ 19-20. If Defendants provide credible information regarding their identities, Plaintiff will take appropriate steps to amend the complaint.

III. ARGUMENT

Defendants' purposeful, intentional, and unlawful conduct is causing and will continue to cause irreparable harm to Plaintiff's reputation and goodwill symbolized by its TITE-REACH trademark, copyrighted works, and patented design. *Id.* ¶¶ 23-26. 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 Defendants from benefitting from their wrongful use of Plaintiff's intellectual property and preserve the status quo until a hearing can be held.

In the absence of a TRO without notice, Defendants can and will likely register new domain names or online marketplace accounts under new aliases and move any assets to offshore bank accounts outside the jurisdiction of this Court. *Id.* ¶ 20. 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, Plaintiff respectfully requests this Court to 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 Patent Act, 35 U.S.C. § 271; the Copyright Act, 17 U.S.C. § 501; the Lanham Act, 15 U.S.C. § 1051, *et seq.*; 28 U.S.C. § 1338(a)-(b); and 28 U.S.C. § 1331. This Court has jurisdiction over the claims in this action that arise under the laws of the State of Illinois pursuant to 28 U.S.C. § 1367(a), because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts. Venue is proper pursuant to 28 U.S.C. § 1391.

The 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 operating under Defendants’ Seller Aliases. Specifically, Defendants’ e-commerce stores allow for Illinois residents to view and/or purchase their unauthorized and infringing products, which infringe on Plaintiff’s various registered intellectual property. *See, e.g., Christian Dior Couture, S.A. v. Levi Liu, et al.*, No. 15 C 6325, 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, and no actual sale was required); *see also* Huisman Decl. ¶¶ 13-14, 21. Each of the Defendants is committing tortious acts in Illinois, engaging in interstate commerce, and has wrongfully caused Plaintiff substantial injury in 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 (“PI”) are identical. *See, e.g., Charter Nat’l Bank &*

Tr. v. Charter One Fin., Inc., No. 01 C 0905, 2001 WL 527404, at *1 (N.D. Ill. May 15, 2001) (internal citations omitted). A party seeking a PI must demonstrate that: “(1) its case has some likelihood of success on the merits; (2) that no adequate remedy at law exists; and (3) it will suffer irreparable harm if the injunction is not granted.” *See Ty, Inc. v. The Jones Grp., Inc.*, 237 F.3d 895 (7th Cir. 2001).

If this 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 denied. *Id.* Finally, this Court must consider the potential effect on the public interest (non-parties) in denying or granting the injunction. *Id.* This Court must then weigh all these facts, “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 this Court has deemed the “sliding scale approach”—the more likely the plaintiff will succeed on the merits, the less balance of harms need favor the plaintiff’s position. *Id.*

B. Plaintiff Will Likely Succeed on the Merits

1. Design Patent Infringement

The United State Patent Act provides that “whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patents.” 35 U.S.C. § 271(a). A defendant is liable for design patent infringement if the party, “without license of the owner, (1) applies the patented design, or any colorable imitation thereof, to any article of manufacture for the purpose of sale, or (2) sells or exposes for sale any article of manufacture to which such design or colorable imitation has been applied.” 35 U.S.C. § 289. To prevail in a design

patent infringement action, the design patent owner must show that, “in the eye of an ordinary observer, giving such attention as a purchaser usually gives, two designs are substantially the same, if the resemblance is such as to deceive such an observer, inducing him to purchase one supposing it to be the other.” *Ethicon Endo-Surgery, Inc. v. Covidien, Inc.*, 796 F.3d 1312, 1335 (Fed. Cir. 2015). (internal citations omitted). A design patent owner need not show proof of actual deception of a purchaser to show design patent infringement. *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 786 F.3d 983, 999-1000 (Fed. Cir. 2015), *rev’d in part on other grounds*, 580 U.S. 53 (2016).

Plaintiff owns a valid design patent that is registered with the USPTO. Huisman Decl. ¶¶ 5-6. The registration is valid, subsisting, and in full force and effect. Plaintiff has not licensed or authorized Defendants to use the patented design, yet they are making, using, offering to sell, selling and/or importing products which are similar or identical to Plaintiff’s patented design.

Plaintiff has submitted extensive documentation showing that Defendants are making, using, offering to sell, selling, and/or importing counterfeit products which, in the eye of an ordinary observer, are deceptively like Plaintiff’s genuine products. Similarities between Plaintiff’s patented design and Defendants’ counterfeit products are readily available—their counterfeit products are extension wrenched that are essentially exact copies of Plaintiff’s claimed design. Finally, Plaintiff has not licensed or authorized Defendants to use Plaintiff’s patented design, and none of the Defendants are authorized retailers of Plaintiff’s genuine products. Accordingly, Plaintiff is likely to establish a *prima facie* case of design patent infringement.

2. Copyright Infringement

A defendant is liable for copyright infringement if they have exercised a copyright owner’s exclusive rights without authorization. 17 U.S.C. § 501. To prevail in a copyright infringement action, the copyright owner must show that they own a valid copyright in the work and that the

defendant copied the work without authorization. *Id.*; see also *Feist Pub'ns., Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991); *JCW Invs., Inc. v. Novelty, Inc.*, 482 F.3d 910, 914 (7th Cir. 2007).

Here, Plaintiff owns valid copyrights that are registered with the U.S. Copyright Office. Huisman Decl. ¶ 4. The registrations for the copyrights are valid, subsisting, and in full force and effect, and they constitute prima facie evidence of their validity and of Plaintiff's exclusive right to the copyrighted works. 17 U.S.C. § 106. Plaintiff has not licensed or authorized Defendants to use the copyrighted works, yet they are using them or derivative works of the same in their marketing materials. Thus, Plaintiff satisfies both elements of a copyright infringement claim.

Plaintiff plans to submit extensive documentation showing that Defendants are using Plaintiff's copyrighted works and derivative works to market their products. Similarities between Plaintiff's copyrighted works and the works of the Defendants are readily available—Defendants have either used the exact images copyrighted by Plaintiffs or derivative works, which include minor changes, such as, but not limited to, changes in product color, different placement of items in the images, and removal of Plaintiff's trademarks or marketing language from the images. Accordingly, Plaintiff is likely to establish a prima facie case of copyright infringement.

3. Trademark Infringement and Counterfeiting

A defendant is liable for trademark infringement and counterfeiting under the Lanham Act if they, “without the consent of the registrant, use 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. 15 U.S.C. § 1126(a). First, a plaintiff must show “that its mark is protected under the

Lanham Act,” and second, that the challenged mark is likely to cause confusion among consumers. *Barbecue Marx, Inc. v. 551 Ogden, Inc.*, 235 F.3d 1041, 1043 (7th Cir. 2000).

Here, Plaintiff’s TITE-REACH trademark is inherently distinctive and registered with the USPTO. Huisman Decl. ¶¶ 4, 9. The registration is valid, subsisting, and in full force and effect, and constitutes prima facie evidence of the trademarks’ validity. *Id.*; *see also* 15 U.S.C. § 1057(b). Plaintiff has not licensed or authorized Defendants to use the TITE-REACH trademark, and none of the Defendants are authorized retailers of its authentic and genuine products. *Id.* ¶¶ 15, 21. Thus, Plaintiff satisfied the first element of its Lanham Act claim.

Where “one produced 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, this Court can presume a likelihood of confusion from Defendants’ use of the TITE-REACH Trademark. The result is the same when considered in light of the Seventh Circuit’s factors to determine whether a likelihood of confusion exists, namely: (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 the complainant’s mark; (6) actual confusion; and (7) intent of the defendants to palm off their products as those of another. *AutoZone, Inc. v. Strick*, 543 F.3d 923, 929 (7th Cir. 2008). No one factor is dispositive, but the first, sixth, and seventh factors are “particularly important.” *Id.*

Plaintiff plans to submit extensive documentation showing that Defendants are offering for sale and selling counterfeit products that look like genuine TITE-REACH Products and are using infringing and counterfeit marks identical to the TITE-REACH trademark. Similarities between the Plaintiff’s genuine products and Defendants’ counterfeit products are readily available—the

genuine and counterfeit products are designed and advertised as extension wrenches and Defendants use the TITE-REACH trademark to advertise their counterfeit products to unsuspecting consumers. Huisman Decl. ¶¶ 15-16.

Both parties advertise their products via the internet and target consumers searching for genuine TITE-REACH branded products. These consumers vary in degrees of sophistication and are likely to have difficulty distinguishing genuine TITE-REACH products from counterfeit products. Therefore, it appears that Defendants are intentionally trying to induce consumers looking for genuine TITE-REACH products to purchase counterfeit versions instead. *Id.* Evidence of actual consumer confusion is not required to prove that a likelihood of confusion exists, particularly given the compelling evidence that Defendants are attempting to “pass off” their goods as TITE-REACH products. *See CAE, Inc. v. Clean Air Eng’g, Inc.*, 267 F.3d 660, 685 (7th Cir. 2001). Accordingly, Plaintiff is likely to establish a prima facie case of trademark infringement and counterfeiting, and false designation of origin.

C. There is No Adequate Remedy at Law, and Plaintiff Will Suffer Irreparable Harm in the Absence of Preliminary Relief

Plaintiff’s TITE-REACH patented design, copyrights, and trademark are intimately connected. Plaintiff utilizes all forms of its protected intellectual property to build on the popularity and success of its TITE-REACH brand. Defendants’ unauthorized use of all Plaintiff’s intellectual property has harmed and continues to irreparably harm Plaintiff through diminished goodwill and brand confidence, damage to Plaintiff’s reputation, loss of exclusivity, and loss of future sales. Huisman Decl. ¶¶ 23-26.

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. Nat. Answers, Inc., 233 F.3d 456, 469 (7th Cir. 2000)). 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 Indus., Inc. v. Church & Dwight Co., Inc.*, 560 F.2d 1325, 1332 (7th Cir. 1977) (internal citations 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.” *Processed Plastic Co. v. Warner Commc’ns, Inc.*, 675 F.2d 852, 858 (7th Cir. 1982) (internal citation omitted); *see also* Judge Decl. 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).

Further, Congress’s enactment of the Trademark Modernization Act of 2020 clarifies the criteria for irreparable harm, stating that “a plaintiff seeking any injunction shall be entitled to a rebuttable presumption of irreparable harm upon a finding of a violation or a likelihood of success on the merits, depending on the type of injunction sought.” 15 U.S.C. § 1116(a). The Act clarifies the standard for irreparable harm for injunction in trademark cases, emphasizing that proof of likelihood of confusion is sufficient to establish both a likelihood of success on the merits and irreparable harm. *Id.* Thus, with current law in this Court and Congress’s recently enacted interpretation of irreparable harm, Plaintiff has and will continue to suffer harm with Defendants’ current counterfeiting and infringing actions.

Likewise, the Plaintiff will suffer irreparable harm if Defendants are allowed to continue to use Plaintiff’s copyrighted works to market their products. Plaintiffs in copyright infringement cases have been granted injunctive relief where a defendant’s continued use would damage the Plaintiff’s “reputation, goodwill, competitive position, and market share” as well as its “investment in and commitment to high standards of quality control and customer service.” *Frerck v. John*

Wiley & Sons, Inc., 850 F.2d 889, 893 (N.D. Ill. 2012) (citing *Apple, Inc. v. Psystar Corp.*, 673 F.Supp.2d 943, 948-49 (N.D. Cal. 2009)).

Finally, the Defendants' use of Plaintiff's patented design has harmed and continues to irreparably harm the Plaintiff's goodwill, reputation, and business opportunities. *Peng v. P'ships and Unincorporated Ass'ns Identified on Schedule A*, No. 21-cv-1344, 2021 WL 4169564, *3 (N.D. Ill. Sep. 14, 2021) (internal citations omitted). Additionally, "any monetary judgment is likely uncollectable" because, upon information and belief, many Defendants named in Schedule A reside in the People's Republic of China. This factor also weighs in favor of injunctive relief. *Id.*

Defendants' unauthorized use of Plaintiff's intellectual property has harmed and continues to irreparably harm Plaintiff through diminished goodwill and brand confidence, damage to Plaintiff's reputation, loss of exclusivity, loss of future sales, and damage to its extensive quality control efforts. Huisman Decl. ¶¶ 23-26. The extent of the harm to Plaintiff's reputation and associated goodwill along with the possible diversion of customers due to loss in brand confidence are both irreparable and incalculable, thus warranting an immediate halt to Defendants' infringing activities through injunctive relief. *See Promatek Indus., Ltd. v. Equitrac Corp.*, 300 F.3d 808, 813 (7th Cir. 2002) (finding that damage to the plaintiff's goodwill was irreparable harm for which the plaintiff had no adequate remedy at law); *see also* Huisman Decl. ¶¶ 23-26. Plaintiff will suffer immediate and irreparable injury, loss, or damage if an *ex parte* TRO is not issued in accordance with Fed. R. Civ. P. 65(b)(1).

D. The Balance of Harms Tips in Plaintiff's Favor, and the Public Interest is Served by Entry of the Injunction

As noted above, if this Court is satisfied that Plaintiff has demonstrated that (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 Plaintiff will suffer if relief is denied. *Ty, Inc.*, 237 F.3d at 895. As willful infringers, Defendants are entitled to little equitable consideration since, “[w]hen considering the balance of hardships between the parties in infringement cases, courts generally favor the trademark owner.” *Krause Int’l Inc. v. Reed Elsevier*, 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 for 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 Assoc., Inc. v. Cellular Telecomms Indus. Ass’n*, 929 F. Supp. 473, 478 (D.D.C. 1996). As Plaintiff has demonstrated, Defendants have been profiting from the sale of counterfeit products protected by Plaintiff’s TITE-REACH trademark, copyrights, and design patent. Thus, the balance of equities tips decisively in Plaintiff’s favor.

The public is currently under the false impression that Defendants are operating their Defendant Internet Stores through their Seller Aliases with Plaintiff’s approval and endorsement. Huisman Decl. ¶ 16. Furthermore, in the context of design patents, the public interest will continue to be disserved by “discouraging creativity due to the lack of protection of the creator’s rights” if no injunctive relief is granted. *See Spinmaster, Ltd. v. Overbreak, LLC*, 404 F. Supp. 1097, 1112 (N.D. Ill. 2005).

In this case, the injury to the public is significant and the injunctive relief that Plaintiff seeks is specifically intended to remedy that injury by dispelling the public confusion created by

Defendants' actions. Huisman Decl. ¶ 26. As such, equity requires that Defendants be ordered to cease their unlawful conduct.

IV. THE EQUITABLE RELIEF SOUGHT IS APPROPRIATE

The Copyright Act, Patent Act, and Lanham Act authorize courts to issue injunctive relief in accordance with “the principles of equity” and “upon such terms as the court may deem reasonable” to prevent “or restrain infringement of a copyright,” or to prevent the violation of “any right of the registrant of a mark” and “any right secured by patent.” 17 U.S.C. § 502; 35 U.S.C. § 283; 15 U.S.C. § 1116(a).

A. A Temporary Restraining Order Immediately Enjoining Defendants' Unauthorized and Unlawful Use of Plaintiff's Intellectual Property is Appropriate

Plaintiff requests a TRO requiring Defendants to immediately cease all use of the TITE-REACH Trademark, or substantially similar marks, on or in connection with all Defendant Internet Stores, infringing products and packaging, and their Seller Aliases. Plaintiff also requests a temporary injunction requiring Defendants to immediately cease all manufacture, sale, and/or offers to sell infringing versions of Plaintiff's design patent. Finally, Plaintiff requests a TRO requiring Defendants to immediately cease the publication, reproduction, public display, or any other unlawful exploitation of Plaintiff's copyrighted works. Such relief is necessary to stop the ongoing harm to Plaintiff's intellectual property and associated goodwill, as well as consumer harm, and to prevent the Defendants from continuing to benefit from their unauthorized use of Plaintiff's intellectual property. Huisman Decl. ¶¶ 23-26. The need for ex parte relief is magnified in today's global economy where counterfeiters can operate anonymously over the internet. *Id.* ¶ 18. Plaintiff is currently unaware of both the true identities and locations of Defendants, as well as other Seller Aliases, used to distribute counterfeit products. *Id.* ¶¶ 18-20. Many courts have

authorized immediate injunctive relief in similar cases involving the unauthorized use of design patents, copyrights, trademarks, and counterfeiting. *See, e.g., Chrome Cherry Ltd. v. P'ships and Unincorporated Ass'ns Identified on Schedule "A,"* No. 21-cv-05491, 2021 WL 6752296 (N.D. Ill. Oct. 20, 2021) (granting ex parte Motion for Temporary Restraining Order in design patent infringement case); *see also John Doe v. P'ships and Unincorporated Ass'ns Identified on Schedule "A,"* No. 22-cv-07134 (N.D. Ill. filed Dec. 19, 2022) (granting ex parte Motion for Temporary Restraining Order in copyright infringement case); *Deckers Outdoor Corp. v. P'ship and Unincorporated Ass'ns Identified on Schedule "A,"* No. 15-cv-3249 (N.D. Ill. Apr. 4, 2015) (granting ex parte Motion for Temporary Restraining Order in trademark infringement and counterfeiting case).

B. Preventing the Fraudulent Transfer of Assets is Appropriate

Plaintiff requests ex parte restraint of Defendants' assets so that Plaintiff's right to an equitable accounting of Defendants' profits from sales of counterfeit products is not impaired.⁴ Issuing an *ex parte* restraint will ensure Defendants' compliance. If such a restraint is not granted in this case, Defendants may disregard their responsibilities and fraudulently transfer financial assets to overseas accounts before a restraint is ordered, making it easy to conceal or dispose of assets, and rendering an accounting by Plaintiff meaningless.

Courts have the inherent authority to issue a prejudgment asset restraint when the 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, Plaintiff has shown a strong likelihood of success on the merits of its trademark infringement and counterfeiting claims, and thus, according to the Lanham Act, 15 U.S.C. § 1117(a)(1), Plaintiff is entitled, "subject to the principles of equity, to recover . . .

⁴ Plaintiff has filed a motion for leave to file this memorandum and certain other documents under seal for this same reason.

defendants' profits." Plaintiff's Complaint seeks, among other relief, that Defendants account for and pay Plaintiff all profits realized by Defendants by reason of Defendants' unlawful acts. Therefore, this Court has the inherent equitable authority to grant Plaintiff's request for a prejudgment asset freeze to preserve relief sought by Plaintiff.

In *Lorillard Tobacco Co. v. Montrose Wholesale Candies*, Nos. 03 C 4844, 03 C 5311, 2005 WL 3115892, at *13 (N.D. Ill. Nov. 8, 2005), The Northern District of Illinois entered an asset restraining order in a trademark infringement case brought by a tobacco company against owners of a store selling counterfeit cigarettes. This Court recognized 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)). Since the tobacco company sought disgorgement of the storeowner's profits, which is an equitable remedy, this Court froze the storeowner's assets. *Id.*

Similarly, the court entered an asset restraining order in a design patent infringement case, finding that,

[S]hould Defendants be informed of this proceeding before a temporary restraining order could issue, Defendants will likely register new e-commerce stores under new aliases and move assets to offshore bank accounts outside the jurisdiction of the Court. The Court further [found] that a temporary restraining order immediately enjoining Defendants' unauthorized and unlawful sale of products using infringing versions [of Plaintiff's] United States design patent [was] warranted [there].

Chrome Cherry Ltd., 2021 WL 6752296 at *2. Plaintiff has shown a likelihood of success on the merits, an immediate and irreparable harm suffered because of Defendants' activities, and that, unless Defendants' assets are frozen, Defendants will likely hide or move their funds from their infringing and counterfeit activities to offshore bank accounts. Thus, an asset restraint is proper in the requested TRO and upon entry of a Preliminary Injunction, during the pendency of this action.

C. Plaintiff is Entitled to Expedited Discovery

The Supreme Court has stated 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. 06 C 6964, 2007 WL 4557812, at *6 (N.D. Ill. Dec. 21, 2007) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978)). Courts have much flexibility in determining whether to grant a party’s request for discovery. *Id.* (internal citations omitted). Further, courts have broad power over discovery and may permit discovery to aid in the identification of unknown defendants. *See* Fed. R. Civ. P. 26(b)(2).

Plaintiff respectfully requests expedited discovery to discover bank and payment system accounts Defendants use for their counterfeit sales operations. The expedited discovery requested in Plaintiff’s proposed TRO is limited to include only what is essential to prevent further irreparable harm. Discovery of these financial accounts to freeze them is necessary to ensure that these activities will be contained. *See, e.g. Deckers Outdoor Corp. v. P’ships and Unincorporated Ass’ns Identified on Sched. “A”*, 13-cv-02167, 2013 WL 1337616, at *10 (N.D. Ill. Mar. 27, 2013); *Chrome Cherry Ltd.*, 2021 WL 6752296, at *2 (N.D. Ill. Oct. 20, 2021). Plaintiff’s seizure and asset restraint may have little meaningful effect without the requested relief. Therefore, Plaintiff respectfully request that expedited discovery be granted.

V. A BOND SHOULD SECURE THE INJUNCTIVE RELIEF

The posting of security upon issuance of a TRO or Preliminary Injunction is vested in this Court’s sound discretion. *See Ratham Grp. v. Tanenbaum*, 889 F.2d 787, 789 (8th Cir. 1989); *See also Monster Energy Co. v. Wensheng*, 136 F. Supp. 3d 897, 910 (N.D. Ill. 2015) (*citing* Fed. R. Civ. P. 65(c); *Gateway E. Ry. Co. v. Terminal R.R. Ass’n of St. Louis*, 35 F.3d 1134, 1141 (7th Cir. 1994)). Plaintiff has submitted extensive screenshot evidence showing Defendants’ unlawful activity infringing Plaintiff’s design patent, copyrights, and trademark. *See* Ex. 2 to Huisman Decl.

Defendants share notable common features such as the same registration patterns, advertising tactics, common design elements, and similarities among the Defendant Internet Stores. *See* Huisman Decl. ¶ 19. Additionally, infringing products for sale by the Seller Aliases bear similar irregularities and indicia of being unauthorized to one another, suggesting that the infringing products were manufactured by and come from a common source and that Defendants are interrelated. *Id.* Even though it appears to be hundreds of defendants, there are only a few entities involved in this case.

Because of the strong and unequivocal nature of Plaintiff's evidence of counterfeiting, infringement, and unfair competition, Plaintiff respectfully requests that this Court require Plaintiff to post a bond of no more than ten thousand U.S. dollars (\$10,000.00), an amount consistent with bonds required in similar cases. *See, e.g., Christian Dior Couture, S.A. v. P'ships and Unincorporated Ass'ns Identified on Sched. "A", No. 21-cv-04828, 2021 WL 6881868, at *4 (N.D. Ill. Oct. 19, 2021) (\$10,000 bond); Mercis B.V. P'ships and Unincorporated Assn's Identified on Sched. "A", No. 21-cv-00872, 2021 WL 4699007, at *4 (N.D. Ill. Mar. 19, 2021) (\$10,000 bond); Grumpy Cat Ltd. v. Individuals, Corps., LLCs, P'ships, and Unincorporated Assn's Identified on Sched. A., No. 21-cv-05847, 2022 WL 18937691, at *3 (N.D. Ill. Mar. 28, 2022) (\$10,000 bond); Wham-O Holding, Ltd. v. P'ships and Unincorporated Assn's Identified on Sched. "A", No. 21-cv-01885, 2021 WL 2627458, at *4 (N.D. Ill. May 4, 2021) (\$10,000 bond); Oakley, Inc. v. P'ship and Unincorporated Assn's Identified on Sched. "A", No. 20-cv-06676, 2021 WL 9455191, at *3 (N.D. Ill. Dec. 11, 2020) (\$10,000 bond); Bulgari, S.p.A. v. P'ships and Unincorporated Assn's Identified on Sched. "A", No. 14-cv-04819, 2014 WL 3765854, at *5 (July 29, 2014) (\$10,000 bond); Iron Maiden Holdings Ltd. v. P'ships and Unincorporated Ass'ns Identified on Sched. "A", No. 18-cv-01098, 2018 WL 2077732, at *5 (N.D. Ill. Mar. 6, 2018)• (\$10,000 bond).*

VI. CONCLUSION

Defendants' counterfeiting operations are irreparably harming Plaintiff's business, its well-known TITE-REACH brand, and consumers. Without entry of the requested relief, Defendants' offering for sale and sale of counterfeit products will continue to lead prospective purchasers and others to believe that Defendants' counterfeit products have been manufactured or authorized by Plaintiff, when this is not the case. Thus, entry of an ex parte order is vital. In view of the foregoing, and consistent with previous similar cases, Plaintiff respectfully requests that this Court enter a TRO requiring: (1) Defendants to immediately cease all use of the TITE-REACH Trademark, or substantially similar marks, on or in connection with all Defendant Internet Stores and their Seller Aliases; (2) Defendants to immediately cease making, using, offering to sell, selling, or importing of the infringing products; (3) Defendants to immediately cease all use of Plaintiff's copyrighted works and patented design; (4) a freeze of Defendants' assets; and (5) expedited discovery.

Dated: November 22, 2023

Respectfully submitted,

/s/James E. Judge

Zareefa B. Flener (IL Bar No. 6281397)
James E. Judge (IL Bar No. 6243206)
Patrycia Piaskowski (IL Bar No. 6346239)
Flener IP Law, LLC
77 W. Washington St., Suite 800
Chicago IL 60602
(312) 724-8874
jjudge@fleneriplaw.com