

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

XYZ CORPORATION,

PLAINTIFF,

v.

THE PARTNERSHIPS AND UNINCORPORATED  
ASSOCIATIONS IDENTIFIED ON SCHEDULE “A,”

DEFENDANTS.

**CIVIL ACTION NO: 1:22-cv-04189**

**JUDGE GARY FEINERMAN**

**MEMORANDUM OF LAW IN SUPPORT OF  
PLAINTIFF’S MOTION FOR ENTRY OF A PRELIMINARY INJUNCTION**

Plaintiff Vortex, Inc. (“Vortex”) submits this Memorandum of Law in support of its Motion for Entry of a Preliminary Injunction.

**I. INTRODUCTION**

Vortex filed the present lawsuit against the defendants identified on Schedule A to the Complaint (collectively, the “Defendants”) for federal trademark infringement (Count I), counterfeiting (Count II), false designation of origin (Count III), copyright infringement (Count IV), and violation of the Illinois Uniform Deceptive Trade Practices Act (Count V). As alleged in the Complaint (ECF #1), the Defendants are promoting, advertising, distributing, offering for sale, and selling products and merchandise bearing marks, logos, and other designations that are identical to or substantially similar to Vortex’s THE TEXAS CHAINSAW MASSACRE trademark and copyright registrations (the “Counterfeit Products”) through various fully interactive, commercial Internet stores operating under at least the online marketplace accounts identified on Schedule A to the Complaint (collectively, the “Defendant Internet Stores”).

## II. STATEMENT OF FACTS

On August 18, 2022, this Court granted Vortex's *Ex Parte* Motion for Entry of a Temporary Restraining Order ("the SEALED TRO"). [Docket Nos. 20 and 21]. At the same time the Court issued the SEALED TRO, the Court also granted Vortex's Motion for Electronic service, authorizing Vortex to serve Defendants with the filings in this lawsuit via electronic publication and e-mail. [Docket Nos. 10 and 21]. Since, and pursuant to entry of the SEALED TRO, numerous financial accounts associated with the Defendant Internet Stores have been frozen. *See* Declaration of Jeff Leung (hereinafter, "Leung Declaration") at ¶ 2.

Vortex respectfully requests that this Court issue a preliminary injunction against all Defendants, so that they shall be and remain enjoined from the manufacture, importation, distribution, offering for sale, and sale of the Counterfeit Products during the pendency of this litigation. As part of the Preliminary Injunction, Vortex requests that all Defendants' financial accounts shall be and remain frozen until completion of these proceedings.

## III. ARGUMENT

### A. A Preliminary Injunction Extending Relief Already Granted in the SEALED TRO Is Appropriate

Vortex respectfully requests that this Court issue a preliminary injunction to prevent further unlawful conduct by Defendants. Courts addressing similar allegations of Internet-based counterfeiting have also issued preliminary injunctions following a temporary restraining order. *See, e.g., Deckers Outdoor Corporation v. The Partnerships, et al.*, No. 15-cv-3249 (N.D. Ill. May 6, 2015) (unpublished).

#### i. This Court Has Already Found that the Requirements for a Preliminary Injunction Have Been Satisfied

"The standards for a temporary restraining order and the standards for a preliminary injunction are identical." *See, e.g., Charter Nat'l Bank & Trust v. Charter One Fin., Inc.*, 2001

WL 527404, at \*1 (N.D. Ill. May 15, 2001). Given the Court's prior issuance of a temporary restraining order, the requirements for entry of a preliminary injunction have already been satisfied. 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). By virtue of this Court's entry of the SEALED TRO, it has already found that the above requirements have been satisfied.

ii. The Equitable Relief Sought Remains Appropriate

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

Vortex requests issuance of a preliminary injunction so that Defendants' financial accounts remain frozen. Since entry of the SEALED TRO, Vortex has obtained information from e-commerce platforms and payment processors such as Wish, Alibaba, DH Gate, or AliExpress, PayPal, LianLian Pay, and AliPay, including the identity of several financial accounts linked to the Defendant Internet Stores which were offering for sale and/or selling the Counterfeit Products. Furthermore, numerous financial accounts associated with the Defendant Internet Stores have been frozen. In the absence of a preliminary injunction, Defendants may attempt to move assets from any of these accounts to an untraceable accounts. Therefore, assets for each of the Defendants should be frozen and remain so for the remainder of the proceedings.

The amount of damages to which Vortex is entitled, as set forth in the Complaint, far exceeds any amount contained in any of the Defendants' frozen financial accounts. For example, Vortex's prayer for relief requests statutory damages which, pursuant to 15 U.S.C. § 1117(c)(2) can be up to \$2 million from each Defendant. In addition, and as stated in Vortex's Memorandum in

Support of a Temporary Restraining Order [Docket No. 10 at p. 15], federal courts, including the Northern District of Illinois, have granted orders preventing the fraudulent transfer of assets. *See, e.g., Lorillard Tobacco Co. v. Montrose Wholesale Candies & Sundries, Inc.*, 2005 WL 3115892 (N.D. Ill. Nov. 8, 2005). As such, an order freezing the assets for all Defendants should be granted.

In addition, Vortex requests that the preliminary injunction order the transfer of the Defendant domain names to Vortex's control so that the continued use of the domains in carrying out acts of infringement can be temporarily disabled pursuant to 15 U.S.C. § 1116(a) which authorizes this Court "to grant injunctions ... to prevent the violation of any right of the registrant of a mark...." Moreover, under Federal Rule of Civil Procedure 65(d)(2)(C), this Court has the power to bind any third parties, such as domain name registries and financial institutions, who are in active concert with the Defendants or who aid and abet Defendants and are given actual notice of the order.

#### IV. CONCLUSION

In view of the foregoing, Vortex respectfully requests that this Court enter the preliminary injunction.

Dated: October 14, 2022

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was electronically-filed on October 14, 2022, with the Clerk of the Court using the CM/ECF system. I will serve filed copies of the document on Defendants via electronic publication on a website and/or email.

*/s/ Jeff Leung*  
Jeff Leung