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18 CV 10437

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MATTEL, INC.

Plaintiff

v.

AARON'S FASHION STORE, ANIME
FACTORY BRANCH STORE, ANNA BAGS
STORE, BEIJING YICHANG INT'L TRADING
CO., LTD., BLYGIRL STORE,
CHRISTYCHRISTY STORE, CITYKO STORE,
DGFSTM KIDS CLOTHES STORE, DIANBAI
COUNTY WEI LI DA TRADE CO., LTD.,
DONGGUAN BABY FURNITURE CO., LTD.,
DONGGUAN CITY BAOFU FURNITURE CO.,
LTD., DONGGUAN LE YU RAINCOAT CO.,
LTD., DONGGUAN TOP IDEA GIFTS CO.,
LTD., EDUCATIONAL JUGGLE STORE,
EVER BRIGHT INDUSTRIAL PRODUCTS
CO., LTD., EVER FRIENDSHIP,
FRANKLINSHIRT STORE, FSFLY RC HOBBY
STORE, FUJIAN JUNKE IMPORT & EXPORT
TRADING CO., LTD., FUNPLUS
INFLATABLES (GUANGZHOU) CO., LTD.,

Civil Case No.:

~~PROPOSED~~ *kpt*

1) TEMPORARY RESTRAINING
ORDER; 2) ORDER
RESTRAINING ASSETS AND
MERCHANT STOREFRONTS; 3)
ORDER TO SHOW CAUSE WHY
A PRELIMINARY INJUNCTION
SHOULD NOT ISSUE; 4) ORDER
AUTHORIZING BIFURCATED
AND ALTERNATIVE SERVICE;
AND 5) ORDER AUTHORIZING
EXPEDITED DISCOVERY

FILED UNDER SEAL

GIVEU DIRECT MANUFACTURER STORE, GOLAX INDUSTRIAL CO., LTD., GOOD TOY STORE, GUANGZHOU AEOR INFLATABLE CO., LTD., GUANGZHOU BARRY INDUSTRIAL CO., LTD., GUANGZHOU CAIYUN INFLATABLE PRODUCTS CO., LTD., GUANGZHOU CHANNAL INFLATABLE CO., LTD., GUANGZHOU FUNWORLD INFLATABLES LIMITED, GUANGZHOU HAOYI INFLATABLE CO., LTD., GUANGZHOU HAPPY ISLAND TOYS CO., LTD., GUANGZHOU KUOYE TOYS CO., LTD., GUANGZHOU LYT TOYS CO., LTD., GUANGZHOU MAGICAL INFLATABLE CO., LTD., GUANGZHOU YBJ TOYS CO., LIMITED, GUANGZHOU YINHE INFLATABLE PRODUCTS CO., LTD., GUANGZHOU YUE XUAN MODEL GAS PRODUCTS CO., LTD., HANGZHOU KETENG TRADE CO., LTD., HANGZHOU ZHEN YANG STORE, HAPPINESS PARTY STORE, HAPPY ISLAND OFFICIAL STORE, HENAN XUANHUA IMP. & EXP. TRADING CO., LTD., HOPETOO BACKDROP STORE, HOT TOYS, HUIPIN DECORATION STORE, HUNAN ZHIDUOFU LEATHER BAGS CO., LTD., ITOYS WORLD, ITOYS WORLD 2 STORE, IT'S FUN STORE, JC BAKING FACTORY STORE, JILIN PROVINCE HZD TRADE CO., LTD., JIMITU STORE, JINJIANG JINLONG STATIONERY CO., LTD., JULIEXIA TOYDOLL STORE, KENDAMA BALL, LABI TOY STORE, LAST CANVAS, LEFUN ONLINE STORE, LONG SHENG TOY STORE, LUCY FOR YOU STORE, MASCOT FACTORY STORE, MIMI BIU STORE, MING QUAN IMPORT AND EXPORT COMPANY STORE, MOFUN (GUANGZHOU) OUTDOORS CO., LTD., NALAN TOY STORE, NAMIHUI NMH STORE, NANJING NEW CLIMATE TOUR WARE CO., LTD., NINGBO BECOL STATIONERY & GIFTS CO., LTD., NINGBO XINJING TOYS CO., LTD., PIO-TOYS STORE, PRZY FACTORY STORE, PUPUKOU OFFICIAL STORE, QUANZHOU XIANGFENG BAGS CO., LTD., RUIAN FUN ARTS &

CRAFTS FACTORY, RUIAN SUPERJOY
IMPORT & EXPORT FIRM, SHANDONG
PEACH TOWN TOYS & GIFTS CO., LTD.,
SHANGHAI BLUE DREAMLAND
AMUSEMENT EQUIPMENT CO., LTD.,
SHANGHAI CHUANGZHI CRAFT & GIFTS
CO., LTD., SHANGHAI EPIC PACIFIC
LUGGAGE & BAG CO., LTD., SHANGHAI
HUAITONG INFLATED ARTICLE CO., LTD.,
SHANTOU CHENGHAI TOYSBASE
FACTORY, SHANTOU JH TOYS TRADING
FIRM, SHANTOU PRETTY COAST PLASTIC
TOYS CO., LIMITED, SHANXI PARTY
WONDERLAND TRADING CO., LTD.,
SHENZHEN BRIDGETOWORLD
TECHNOLOGY CO., LTD., SHENZHEN
DREAMWAY TRADE CO., LTD., SHENZHEN
GOFASHION SHOPPING STORE, SHENZHEN
HART STATIONERY CO., LTD., SHENZHEN
LEVIN PLUSH TOYS CO., LTD., SHENZHEN
LEVIN TOYS & GIFTS CO., LIMITED,
SHENZHEN MEIYAN TECHNOLOGY CO.,
LTD., SHENZHEN QUSART TECHNOLOGY
CO., LTD., SHENZHEN R&D TECHNOLOGY
CO., LTD., SHENZHEN REIANS TRADING
CO., LTD., SHENZHEN SIGAO TOYS CO.,
LTD., SHENZHEN SVEDA TECHNOLOGY
CO., LTD., SHENZHEN XHS TOYS
MANUFACTURE CO., LTD., SHENZHEN
YAD TOYS CO., LTD., SHOP1303858 STORE,
SHOP1923022 STORE, SHOP3626103 STORE,
SMILEWILL 01 STORE, SUNJOY
INFLATABLES MFG (GUANGZHOU) CO.,
LTD., SUPER TOYS C T, TOY PLANET,
WALLET WORLD STORE, WEIFANG
ZHENNING IMPORT & EXPORT CO., LTD.,
WENZHOU BONVAN STATIONERY & GIFTS
CO., LTD., WENZHOU CHONGKUN
PRINTING CO., LTD., WENZHOU JIAOTAI
STATIONERY CO., LTD., WHEETKID STORE,
WUHAN SPINKY TRADE COMPANY LTD.,
WUXI YANYANG INTERNATIONAL
TRADING CO., LTD., XIAMEN TOPLINK
CRAFT CO., LTD., XIAMEN YICHANG
INDUSTRY AND TRADE CO., LTD.,
YANGZHOU AMOUR TOY CO., LTD.,

YANGZHOU EVERGROW TOYS
MANUFACTURE CO., LTD., YANGZHOU
QIXI ARTS & CRAFTS CO., LTD.,
YANGZHOU XIYU TOYS AND GIFTS CO.,
LTD., YANGZHOU YOUCHUANG TOYS CO.,
LTD., YANTAI AIRART INFLATABLE CO.,
LTD., YANTAI DAMING INFLATABLE CO.,
LTD., YANTAI HI INFLATABLE CO., LTD.,
YANTE STORE, YIWU CHANGQING TOYS
CO., LTD., YIWU CITY NANCHI TRADING
CO., LTD., YIWU HECHENG IMPORT &
EXPORT CO., LTD., YIWU ISABELLA ARTS
& CRAFTS CO., LTD., YIWU JUNHAO
TRADING CO., LTD., YIWU MINGKAI
GARMENT CO., LTD., YIWU PARTYGO E-
COMMERCE FIRM, YIWU SEVENYO
TEXTILE CO., LTD., YIWU YECHENG
TRADE LIMITED COMPANY, YIWU
ZHIJIANG INTERNATION TRADE CO., LTD,
YOGOHO STORE, YOUR CHILDHOOD
STORE, YUNHE QIAODA TECHNOLOGY
CO., LTD., YUNHE QIQU WOODEN TOYS
FACTORY, ZHEJIANG HAIFU LEISURE
PRODUCTS CO., LTD., ZHENGZHOU ANXIN
AMUSEMENT EQUIPMENT CO., LTD.,
ZHENGZHOU BEILEDUO INDUSTRY CO.,
LTD., ZHENGZHOU CARNEE TRADING CO.,
LTD., ZHENGZHOU DH AMUSEMENT
EQUIPMENT CO., LTD., ZHENGZHOU LIXIN
AMUSEMENT MACHINE CO., LTD.,
ZHENGZHOU SANQGROUP MACHINERY
AND EQUIPMENT CO., LTD., ZHENGZHOU
SHOWANN COMMERCIAL AND TRADING
CO., LTD., ZHENGZHOU WINSUN
AMUSEMENT EQUIPMENT CO., LTD. and
ZHENGZHOU YUETON AMUSEMENT
EQUIPMENT CO., LTD,

Defendants

On this day, the Court considered Plaintiff's *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; 4) an order authorizing bifurcated and alternative service and 5) an order authorizing expedited discovery against Defendants Aaron's Fashion Store, Anime Factory Branch Store, Anna Bags Store, Beijing Yichang Int'l Trading Co., Ltd., Blygirl Store, CHIRSTYCHRISTY Store, CITYKO Store, DGFSTM kids clothes Store, Dianbai County Wei Li Da Trade Co., Ltd., Dongguan Baby Furniture Co., Ltd., Dongguan City Baofa Furniture Co., Ltd., Dongguan Le Yu Raincoat Co., Ltd., Dongguan Top Idea Gifts Co., Ltd., Educational Juggle Store, Ever Bright Industrial Products Co., Ltd., Ever Friendship, FranklinShirt Store, FSFLY RC HOBBY Store, Fujian Junke Import & Export Trading Co., Ltd., FunPlus Inflatables (Guangzhou) Co., Ltd., GiveU Direct Manufacturer Store, Golax Industrial Co., Ltd., Good Toy Store, Guangzhou Aeor Inflatable Co., Ltd., Guangzhou Barry Industrial Co., Ltd., Guangzhou Caiyun Inflatable Products Co., Ltd., Guangzhou Channal Inflatable Co., Ltd., Guangzhou Funworld Inflatables Limited, Guangzhou Haoyi Inflatable Co., Ltd., Guangzhou Happy Island Toys Co., Ltd., Guangzhou Kuoye Toys Co., Ltd., Guangzhou LYT Toys Co., Ltd., Guangzhou Magical Inflatable Co., Ltd., Guangzhou YBJ Toys Co., Limited, Guangzhou Yinhe Inflatable Products Co., Ltd., Guangzhou Yue Xuan Model Gas Products Co., Ltd., Hangzhou KeTeng Trade Co., Ltd., Hangzhou Zhen Yang Store, happiness party Store, HAPPY ISLAND Official Store, Henan Xuanhua Imp. & Exp. Trading Co., Ltd., Hopetoo Backdrop Store, Hot toys, Huipin Decoration Store, Hunan Zhiduofu Leather Bags Co., Ltd., iToys World, iToys World 2 Store, It's fun Store, JC baking factory store, Jilin Province HZD Trade Co., Ltd., JIMITU Store, Jinjiang Jinlong Stationery Co., Ltd., Juliexia ToyDoll Store, kendama ball, Labi Toy Store, Last Canvas, LeFun Online Store, LONG SHENG TOY Store, lucy

for you Store, Mascot factory Store, MIMI BIU Store, Ming Quan import and export company Store, Mofun (Guangzhou) Outdoors Co., Ltd., nalan toy store, namihui NMH Store, Nanjing New Climate Tour Ware Co., Ltd., Ningbo Becol Stationery & Gifts Co., Ltd., Ningbo Xinjing Toys Co., Ltd., PIO-TOYS Store, PRZY factory Store, PUPUKOU Official Store, Quanzhou Xiangfeng Bags Co., Ltd., Ruian Fun Arts & Crafts Factory, Ruian Superjoy Import & Export Firm, Shandong Peach Town Toys & Gifts Co., Ltd., Shanghai Blue Dreamland Amusement Equipment Co., Ltd., Shanghai Chuangzhi Craft & Gifts Co., Ltd., Shanghai Epic Pacific Luggage & Bag Co., Ltd., Shanghai Huaitong Inflated Article Co., Ltd., Shantou Chenghai Toysbase Factory, Shantou JH Toys Trading Firm, Shantou Pretty Coast Plastic Toys Co., Limited, Shanxi Party Wonderland Trading Co., Ltd., Shenzhen Bridgetoworld Technology Co., Ltd., Shenzhen DreamWay Trade Co., Ltd., Shenzhen Gofashion Shopping Store, Shenzhen Hart Stationery Co., Ltd., Shenzhen Levin Plush Toys Co., Ltd., Shenzhen Levin Toys & Gifts Co., Limited, Shenzhen Meiyuan Technology Co., Ltd., Shenzhen Qusart Technology Co., Ltd., Shenzhen R&D Technology Co., Ltd., Shenzhen Reians Trading Co., Ltd., Shenzhen Sigao Toys Co., Ltd., Shenzhen Sveda Technology Co., Ltd., Shenzhen XHS Toys Manufacture Co., Ltd., Shenzhen Yad Toys Co., Ltd., Shop1303858 Store, Shop1923022 Store, Shop3626103 Store, smilewill 01 Store, Sunjoy Inflatables MFG (Guangzhou) Co., Ltd., Super toys C T, Toy Planet, Wallet World Store, Weifang Zhenning Import & Export Co., Ltd., Wenzhou Bonvan Stationery & Gifts Co., Ltd., Wenzhou Chongkun Printing Co., Ltd., Wenzhou Jiaotai Stationery Co., Ltd., WheetKID Store, Wuhan Spinky Trade Company Ltd., Wuxi YanYang International Trading Co., Ltd., Xiamen Toplink Craft Co., Ltd., Xiamen Yichang Industry And Trade Co., Ltd., Yangzhou Amour Toy Co., Ltd., Yangzhou Evergrow Toys Manufacture Co., Ltd., Yangzhou Qixi Arts & Crafts Co., Ltd., Yangzhou Xiyu Toys And Gifts Co., Ltd., Yangzhou Youchuang Toys Co., Ltd., Yantai Airart

Inflatable Co., Ltd., Yantai Daming Inflatable Co., Ltd., Yantai Hi Inflatable Co., Ltd., YanTe Store, Yiwu Changqing Toys Co., Ltd., Yiwu City Nanchi Trading Co., Ltd., Yiwu Hecheng Import & Export Co., Ltd., Yiwu Isabella Arts & Crafts Co., Ltd., Yiwu Junhao Trading Co., Ltd., Yiwu Mingkai Garment Co., Ltd., Yiwu Partygo E-Commerce Firm, Yiwu Sevenyo Textile Co., Ltd., Yiwu Yecheng Trade Limited Company, YIWU ZHIJIANG INTERNATIONAL TRADE CO., LTD, YOGOHO Store, YOUR CHILDHOOD store, Yunhe Qiaoda Technology Co., Ltd., Yunhe Qiqu Wooden Toys Factory, Zhejiang Haifu Leisure Products Co., Ltd., Zhengzhou Anxin Amusement Equipment Co., Ltd., Zhengzhou Beileduo Industry Co., Ltd., Zhengzhou Carnee Trading Co., Ltd., Zhengzhou DH Amusement Equipment Co., Ltd., Zhengzhou Lixin Amusement Machine Co., Ltd., Zhengzhou Sanqgroup Machinery And Equipment Co., Ltd., Zhengzhou Showann Commercial And Trading Co., Ltd., Zhengzhou Winsun Amusement Equipment Co., Ltd. and Zhengzhou Yueton Amusement Equipment Co., Ltd. (hereinafter collectively referred to as “Defendants” or individually as “Defendant”), Third Party Service Providers (as defined *infra*) and Financial Institutions (as defined *infra*) in light of Defendants’ intentional and willful offerings for sale and/or sales of Counterfeit Products (as defined *infra*) (“Application”).¹ A complete list of Defendants is attached hereto as **Schedule A**, which also includes links to Defendants’ Merchant Storefronts. Having reviewed the Application, Declarations of Jessica Arnaiz, Lisa Delanty and Brienne Scully, along with exhibits attached thereto and other evidence submitted in support thereof, the Court makes the following findings of fact and conclusions of law:

¹ Where a defined term is referenced herein and not defined herein, the defined term should be understood as it is defined in the Complaint or Application.

FACTUAL FINDINGS & CONCLUSIONS OF LAW

1. Mattel, through its family of companies, is a leading designer, developer, marketer, manufacturer and distributor of well-known children's toys and games ("Mattel Products") under its iconic brands, including, but not limited to: Barbie, Thomas & Friends, Hot Wheels, American Girl and Fisher-Price ("Mattel Brands");

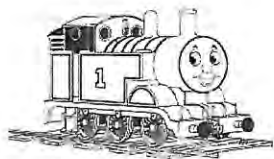
2. One of Mattel's most popular and successful brands is Thomas and Friends, which features the main character Thomas the Tank Engine as a blue, cheery, anthropomorphic steam engine ("Thomas the Tank Engine");

3. Thomas the Tank Engine was originally part of a children's book series and lives on the fictional island of Sodor and aspires to be a "Really Useful Engine," which is the highest praise possible for trains that are part of the Sodor Railway. Thomas the Tank Engine encourages his fellow trains to be the best they can be, and imparts lessons about friendship, altruism and perseverance;

4. Thomas the Tank Engine and the other train characters soon became an award-winning hit around the world, launching a television spin-off series, *Thomas & Friends*, and a vast range of commercial products, including trains and tracks, games, puzzles and books ("Thomas & Friends Products");

5. While Mattel has gained significant common law trademark and other rights in its Thomas & Friends Products, through use, advertising, and promotion, Mattel and its predecessors in interest have also protected these valuable rights by obtaining federal trademark registrations;

6. For example, Mattel, through its wholly-owned subsidiary Gullane (Thomas) Limited, is the owner and/or licensee of U.S. Trademark Reg. No. 3,799,968 for



for a variety of goods in Classes 9, 16, 24, 25 and 28, U.S. Reg. No. 3,085,762 for “THOMAS & FRIENDS” for a variety of goods in Classes 9, 16, 25, 28 and 41, U.S. Trademark Reg. No. 3,500,987 for “THOMAS & FRIENDS” for a variety of goods in Classes 3, 11, 14 and 24 and U.S. Trademark Reg. No. 3,531,151 for “THOMAS & FRIENDS” for a variety of goods in Classes 18, 20, 21 and 29 (collectively, the “Thomas & Friends Marks”);

7. The Thomas & Friends Marks are currently in use in commerce in connection with the Thomas & Friends Products and the Thomas & Friends Marks are valid, subsisting and incontestable;

8. In addition, Plaintiff is also the owner and/or licensee of both registered and unregistered copyrights in and related to the Thomas & Friends Products;

9. For example, Mattel, through its wholly-owned subsidiary Gullane (Thomas) Limited, is the owner and/or licensee of U.S. Copyright Reg. PA 1-930-773, covering Thomas & Friends: The Thomas Way, U.S. Copyright Reg. TX 7-953-676, covering Thomas & Friends: Story Time Collection, U.S. Copyright Reg. TX 7-973-191, covering Thomas & Friends: Special Delivery (Lift-a-Flap Sound Book), U.S. Copyright Reg. TX 7-973-196, covering Thomas & Friends: Railway Race Day (Lift-a-Flap Sound Book), U.S. Copyright Reg. TX 7-973-208, covering Thomas & Friends: I’m Ready to Read with Thomas (Play-a-Sound book), U.S. Copyright Reg. TX 7-985-398, covering Thomas & Friends: I Can Help Thomas (Play-a-Sound book), U.S. Copyright Reg. TX 7-992-119, covering Thomas & Friends: Nine Favorite Tales (Little Golden Book Collection), U.S. Copyright Reg. TX 8-149-304, covering Thomas & Friends: Books & Blocks and U.S. Copyright Reg. TX 4-442-061, covering Thomas the tank engine / by W. Awdry (collectively, the “Thomas & Friends Works”);

10. Defendants are manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling products bearing or used in connection with the Thomas & Friends Marks and/or Thomas & Friends Works, and/or products in packaging and/or containing labels and/or hang tags bearing the Thomas & Friends Marks and/or Thomas & Friends Works, and/or bearing or used in connection with marks and/or artwork that are confusingly or substantially similar to the Thomas & Friends Marks and/or Thomas & Friends Works and/or products that are identical or confusingly or substantially similar to the Thomas & Friends Products (collectively referred to as, “Infringing Product(s)” or “Counterfeit Product(s)”) through accounts with online marketplace platforms such as Alibaba.com and AliExpress.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 persons in active concert or participation with any of them (“User Accounts”) (*see Schedule A* for links to Defendants’ Merchant Storefronts and listings for Counterfeit Products);

11. Defendants are not, nor have they ever been, authorized distributors or licensees of the Thomas & Friends Products. Neither Plaintiff, nor any of Plaintiff’s authorized agents, have consented to Defendants’ use of the Thomas & Friends Marks and/or Thomas & Friends Works, nor has Plaintiff consented to Defendants’ use of any identical or confusingly or substantially similar marks or artwork;

12. Plaintiff is likely to prevail on its Lanham Act claims, copyright claims and related state law claims at trial;

13. As a result of Defendants' infringements, Plaintiff, as well as consumers, are likely to suffer immediate and irreparable losses, damages and injuries before Defendants can be heard in opposition, unless Plaintiff's Application for *ex parte* relief is granted:

- a. Defendants have offered for sale and sold substandard Counterfeit Products that infringe the Thomas & Friends Marks and Thomas & Friends Works;
- b. Plaintiff has well-founded fears that more Counterfeit Products will appear in the marketplace; that consumers may be misled, confused and disappointed by the quality of these Counterfeit Products, resulting in injury to Plaintiff's reputation and goodwill; and that Plaintiff may suffer loss of sales for its Thomas & Friends Products; and
- c. Plaintiff has well-founded fears that if it proceeds on notice to Defendants on this Application, Defendants will: (i) secret, conceal, destroy, alter, sell-off, transfer or otherwise dispose of or deal with Counterfeit Products or other goods that infringe the Thomas & Friends Marks and Thomas & Friends Works, the means of obtaining or manufacturing such Counterfeit Products, and records relating thereto that are in their possession or under their control, (ii) inform their suppliers and others of Plaintiff's claims with the result being that those suppliers and others may also secret, conceal, sell-off or otherwise dispose of Counterfeit Products or other goods infringing the Thomas & Friends Marks and Thomas & Friends Works, the means of obtaining or manufacturing such Counterfeit Products, and records relating thereto that are in their possession or under their control, (iii) secret, conceal, transfer or otherwise dispose of their ill-gotten proceeds from its sales of Counterfeit Products or other goods infringing the Thomas & Friends Marks and Thomas & Friends Works

and records relating thereto that are in their possession or under their control and/or (iv) open new User Accounts through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them manufacture, import, export, advertise, market, promote, distribute, offer for sale, sell and/or otherwise deal in products, including Counterfeit 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 (“Merchant Storefront(s)”) under new or different names and continue to offer for sale and sell Counterfeit Products with little to no consequence;

14. The balance of potential harm to Defendants of being prevented from continuing to profit from their illegal and infringing activities if a temporary restraining order is issued is far outweighed by the potential harm to Plaintiff, its business, the goodwill and reputation built up in and associated with the Thomas & Friends Marks and Thomas & Friends Works and to its reputations if a temporary restraining order is not issued;

15. Public interest favors issuance of the temporary restraining order in order to protect Plaintiff’s interests in and to its Thomas & Friends Marks and Thomas & Friends Works, and to protect the public from being deceived and defrauded by Defendants’ passing off of their substandard Counterfeit Products as Thomas & Friends Products;

16. Plaintiff has not publicized its request for a temporary restraining order in any way;

17. Service on Defendants via electronic means is reasonably calculated to result in proper notice to Defendants.

18. If Defendants are given notice of the Application, they are likely to secret, conceal, transfer or otherwise dispose of their ill-gotten proceeds from their sales of Counterfeit Products

or other goods infringing the Thomas & Friends Marks and Thomas & Friends Works. Therefore, good cause exists for granting Plaintiff's request for an asset restraining order. It typically takes Financial Institutions a minimum of five (5) days after service of the Order (as defined *infra*) to locate, attach and freeze Defendants' Assets (as defined *infra*) and/or Defendants' Financial Accounts (as defined *infra*) and online marketplace platforms, including, without limitation, Alibaba.com and AliExpress.com, as well as any and all as yet undiscovered online marketplace platforms and/or entities through which Defendants, their respective officers, employees, agents, servants and all persons in active concert or participation with any of them manufacture, import, export, advertise, market, promote, distribute, offer for sale, sell and/or otherwise deal in Counterfeit Products which are hereinafter identified as a result of any order entered in this action, or otherwise ("Third Party Service Providers") a minimum of five (5) days to freeze Defendants' Merchant Storefronts. As such, the Court allows enough time for Plaintiff to serve the Financial Institutions and Third Party Service Providers with this Order, and for the Financial Institutions and Third Party Service Providers to comply with the Paragraphs I(B)(1) through I(B)(2) and I(C)(1) of this Order, respectively, before requiring service on Defendants.

19. Similarly, if Defendants are given notice of the Application, they are likely to destroy, move, hide or otherwise make inaccessible to Plaintiff the records and documents relating to Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or sale of Counterfeit Products. Therefore, Plaintiff has good cause to be granted expedited discovery.

ORDER

Based on the foregoing findings of fact and conclusions of law, Plaintiff's Application is hereby **GRANTED** as follows (the "Order"):

I. Temporary Restraining Order

A. IT IS HEREBY ORDERED, as sufficient cause has been shown, that Defendants are 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 as referenced in **Paragraph (II)(A)** below:

- 1) manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale, selling and/or otherwise dealing in Counterfeit Products, or any other products bearing the Thomas & Friends Marks and/or marks that are confusingly similar to, identical to and constitute a counterfeiting or infringement of the Thomas & Friends Marks and/or incorporating the Thomas & Friends Works and/or artwork that is substantially similar to, identical to and constitute an infringement of the Thomas & Friends Works;
- 2) communicating, directly or indirectly, with any person or persons: (i) from whom they purchased or obtained any Counterfeit Products; (ii) to whom they sold or offered to sell such Counterfeit Products or (iii) of whom they know, or reasonably believe, to possess, control or have access to any such Counterfeit Products;
- 3) secreting, concealing, destroying, altering, selling off, transferring or otherwise disposing of and/or dealing with: (i) Counterfeit Products and/or (ii) any computer files, data, business records, documents or any other records or evidence relating to their User Accounts, Merchant Storefronts or any money, securities or other property or assets of Defendants (whether said assets are located in the U.S. or abroad) (hereinafter collectively referred to as "Defendants' Assets") and the manufacture, importation, exportation, advertising, marketing, promotion, distribution, display, offering for sale and/or sale of Counterfeit Products;

- 4) 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, display, offering for sale and/or sale of Counterfeit Products for the purposes of circumventing or otherwise avoiding the prohibitions set forth in this Order; and
- 5) knowingly instructing, aiding or abetting any other person or business entity in engaging in any of the activities referred to in subparagraphs I(A)(1) through I(A)(4) above and I(B)(1) through I(B)(2) and I(C)(1) below.

B. IT IS HEREBY ORDERED, as sufficient cause has been shown, that the Alibaba Group d/b/a Alibaba.com and Aliexpress.com (“Alibaba”) payment services (*e.g.*, Alipay.com Co., Ltd., Ant Financial Services), PayPal Inc. (“PayPal”), Payoneer Inc. (“Payoneer”) and PingPong Global Solutions, Inc. (“PingPong”) (Alibaba, PayPal, Payoneer and PingPong are collectively referred to as the “Financial Institutions”) are 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 as referenced in **Paragraph (II)(A)** below, 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;
- 2) 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 Defendants' Assets and Defendants' Financial Accounts;
and

- 3) knowingly instructing, aiding or abetting any person or business entity in engaging in any of the activities referred to in subparagraphs I(A)(1) through I(A)(4) and I(B)(1) through I(B)(2) above and I(C)(1) below.

C. IT IS HEREBY ORDERED, as sufficient cause has been shown, that the Third Party Service Providers are 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 as referenced in **Paragraph (II)(A)** below, or until further order of the Court:

- 1) within five (5) days after receipt of service 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
- 2) knowingly instructing, aiding, or abetting any other person or business entity in engaging in any of the activities referred to in subparagraphs I(A)(1) through I(A)(4), I(B)(1) through I(B)(2) and I(C)(1) above.

**II. Order to Show Cause Why A Preliminary Injunction
Should Not Issue And Order Of Notice**

- ✓ A. Defendants are hereby ORDERED to show cause before this Court in Courtroom 618 of the United States District Court for the Southern District of New York at ~~500 Pearl Street~~ 40 Foley Square, New York, New York on November 26, 2018 at 10:00 a.m. or at such other time that this Court deems appropriate, why a preliminary injunction, pursuant to FRCP 65(a), should not issue.

B. IT IS FURTHER ORDERED that opposing papers, if any, shall be filed electronically with the Court and served on Plaintiff's counsel by delivering copies thereof to the office of Epstein Drangel LLP at 60 East 42nd Street, Suite 2520, New York, NY 10165, Attn: Jason M. Drangel on or before November 20, 2018. Plaintiff shall file any Reply papers on or before November 23, 2018.

C. IT IS FURTHER ORDERED that Defendants are hereby given notice that failure to appear at the show cause hearing scheduled in **Paragraph II(A)** above may result in the imposition of a preliminary injunction against them pursuant to FRCP 65, which may take effect immediately upon the expiration of this Order, and may extend throughout the length of the litigation under the same terms and conditions set forth in this Order.

III. Asset Restraining Order

A. IT IS FURTHER ORDERED pursuant to FRCP 64 and 65 and CPLR 6201 and this Court's inherent equitable power to issue provisional remedies ancillary to its authority to provide final equitable relief, as sufficient cause has been shown, that within five (5) days of receipt of service of this Order, the Financial Institutions shall locate and attach Defendants' Financial Accounts and shall provide written confirmation of such attachment to Plaintiff's counsel.

IV. Order Authorizing Alternative Service by Electronic Means

A. IT IS FURTHER ORDERED pursuant to FRCP 4(f)(3), as sufficient cause has been shown, that service may be made on, and shall be deemed effective as to Defendants if it is completed by the following means:

- 1) delivery of: (i) PDF copies of this Order together with the Summons and Complaint, and (ii) a link to a secure website (including Dropbox.com, NutStore.com, a large mail link created through RPost.com and via website publication through a specific page dedicated to this Lawsuit accessible through ipcounselorslawsuit.com) where each

Defendant will be able to download PDF copies of this Order together with the Summons and Complaint, and all papers filed in support of Plaintiff's Application seeking this Order to Defendants' e-mail addresses, as identified in **Schedule A** or may otherwise be determined; or

- 2) delivery of a message to Defendants through the same means that Plaintiff's agents have previously communicated with Defendants, namely the system for communications established by the Third Party Service Providers on their respective platforms, notifying Defendants that an action has been filed against them in this Court and providing a link to a secure website (such as Dropbox.com, NutStore.com or a large mail link created through RPost.com) where each Defendant will be able to download PDF copies of this Order together with the Summons and Complaint, and all papers filed in support of Plaintiff's Application seeking this Order.

B. IT IS FURTHER ORDERED, as sufficient cause has been shown, that such alternative service by electronic means ordered herein shall be made within five (5) days of the Financial Institutions and Third Party Service Providers' compliance with **Paragraphs III(A)** and **V(C)** of this Order.

C. IT IS FURTHER ORDERED, as sufficient cause has been shown, that the Clerk of the Court shall issue a single original summons in the name of "Aaron's Fashion Store and all other Defendants identified in the Complaint" that will apply to all Defendants.

D. IT IS FURTHER ORDERED, as sufficient cause has been shown, that service may be made and shall be deemed effective as to the following if it is completed by the below means:

- 1) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where PayPal will be able to download a PDF copy of this Order via electronic mail to EE Omaha Legal

Specialist at EEOMALegalSpecialist@paypal.com;

- 2) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where AliPay will be able to download a PDF copy of this Order via electronic mail to Mr. Benjamin Bai, Vice President and Chief IP Counsel of Ant Financial Services Group at benjamin.bai@alipay.com and/or Mr. Di Zhang, Member of the Legal & Compliance Department – IP, at di.zd@alipay.com;
- 3) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where Alibaba will be able to download a PDF copy of this Order via electronic mail to Ms. Jacqueline Ko, Legal Counsel, Alibaba Group at jacqueline.ko@alibaba-inc.com;
- 4) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where Payoneer will be able to download a PDF copy of this Order via electronic mail to Payoneer’s Customer Service Management at customerservicemanager@payoneer.com and Edward Tulin, counsel for Payoneer, at Edward.Tulin@skadden.com; and
- 5) delivery of: (i) a PDF copy of this Order, or (ii) a link to a secure website where PingPong will be able to download a PDF copy of this Order via electronic mail to PingPong’s Legal Department at xieqt@pingpongx.com and legal@pingpongx.com and Matthew Ball, counsel for PingPong, at Matthew.Ball@khgates.com.

V. Order Authorizing Expedited Discovery

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

- 1) Within fourteen (14) days after receiving service of this Order, each Defendant shall serve upon Plaintiff’s counsel a written report under oath providing:
 - a. their true name and physical address;
 - b. the name and location and URL of any and all websites that Defendants own and/or operate and the name, location, account numbers and URL for any and all User

Accounts and Merchant Storefronts on any Third Party Service Provider platform that Defendants own and/or operate;

- c. the complete sales records for any and all sales of Counterfeit Products, including but not limited to number of units sold, the price per unit, total gross revenues received (in U.S. dollars) and the dates thereof;
- d. the account details for any and all of Defendants' Financial Accounts, including, but not limited to, the account numbers and current account balances; and
- e. the steps taken by each Defendant, or other person served to comply with **Section I**, above.

1) Plaintiff may serve interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure as well as Local Civil Rule 33.3 of the Local Rules for the Southern and Eastern Districts of New York and Defendants who are served with this Order shall provide written responses under oath to such interrogatories within fourteen (14) days of service to Plaintiff's counsel.

2) Plaintiff may serve requests for the production of documents pursuant to FRCP 26 and 34, and Defendants who are served with this Order and the requests for the production of documents shall produce all documents responsive to such requests within fourteen (14) days of service to Plaintiff's counsel.

B. IT IS FURTHER ORDERED, as sufficient cause has been shown, that within five (5) days of receipt of service of this Order the Financial Institutions shall identify any and all of Defendants' Financial Accounts, and provide Plaintiff's counsel with a summary report containing account details for any and all such accounts, which shall include, at a minimum, identifying information for Defendants, including contact information for Defendants

(including, but not limited to, mailing addresses and e-mail addresses), account numbers and account balances for any and all of Defendants' Financial Accounts and confirmation of said compliance with this Order.

C. IT IS FURTHER ORDERED, as sufficient cause has been shown, that within five (5) days of receipt of service of this Order, the Third Party Service Providers shall identify any and all of Defendants' User Accounts and Merchant Storefronts, and provide Plaintiff's counsel with a summary report containing account details for any and all User Accounts and Merchant Storefronts, which shall include, at a minimum, identifying information for Defendants and Defendants' User Accounts and Defendants' Merchant Storefronts, contact information for Defendants (including, but not limited to, mailing addresses and e-mail addresses) and confirmation of said compliance with this Order.

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

- 1) Within fourteen (14) days of receiving actual notice of this Order, all Financial Institutions who are served with this Order shall provide Plaintiff's counsel all documents and records in their possession, custody or control (whether located in the U.S. or abroad) relating to any and all of Defendants' Financial Accounts, including, but not limited to, documents and records relating to:
 - a. account numbers;
 - b. current account balances;
 - c. any and all identifying information for Defendants, Defendants' User Accounts and Defendants' Merchant Storefronts, including, but not limited to, names, addresses and contact information;

- d. any and all account opening documents and records, including, but not limited to, account applications, signature cards, identification documents and if a business entity, any and all business documents provided for the opening of each and every of Defendants' Financial Accounts;
- e. any and all deposits and withdrawals during the previous year from each and every one of Defendants' Financial Accounts and any and all supporting documentation, including, but not limited to, deposit slips, withdrawal slips, cancelled checks and account statements; and
- f. any and all wire transfers into each and every one of Defendants' Financial Accounts during the previous year, including, but not limited to, documents sufficient to show the identity of the destination of the transferred funds, the identity of the beneficiary's bank and the beneficiary's account number.

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

- 1) Within fourteen (14) days of receipt of service of this Order, the Third Party Service Providers shall provide to Plaintiff's counsel all documents and records in its 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:
 - a. 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 Third Party Service Providers that were not previously provided pursuant to Paragraph V(C);

- b. the identities, location and contact information, including any and all e-mail addresses of Defendants that were not previously provided pursuant to Paragraph V(C);
- c. the nature of Defendants' businesses and operations, 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 with any and all Financial Institutions associated with Defendants' User Accounts and Defendants' Merchant Storefronts; and
- d. Defendants' manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling of Counterfeit Products, or any other products bearing the Thomas & Friends Marks and/or marks that are confusingly similar to, identical to and constitute an infringement of the Thomas & Friends Marks and/or incorporating the Thomas & Friends Works and/or artwork that is substantially similar to, identical to and constitute infringement of the Thomas & Friends Works.

VI. Security Bond

✓ A. IT IS FURTHER ORDERED that Plaintiff shall place security in the amount of five thousand Dollars (\$5,000.00) with the Court which amount is determined adequate for the payment of any damages any person may be entitled to recover as a result of an improper or wrongful restraint ordered hereunder.

VII. Sealing Order

A. IT IS FURTHER ORDERED that Plaintiff's Complaint and exhibits attached thereto, and Plaintiff's *ex parte* Application and the Declarations of Jessica Arnaiz, Lisa Delanty and Brianne Scully in support thereof and exhibits attached thereto and this Order shall remain sealed until the Financial Institutions and Third Party Service Providers comply with **Paragraphs I(C), III(A) and V(C)** of this Order.

SO ORDERED.

SIGNED this 9th day of November, 2018, at 5:13 p.m.


UNITED STATES DISTRICT JUDGE



