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Skyrocket, LLC d/b/a Skyrocket Toys LLC

18 CV 11280

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SKYROCKET, LLC d/b/a SKYROCKET TOYS
LLC,

Plaintiff

v.

SATOY STORE, B2B BABY, COOLTOY
STORE, CORDAZLE TOY STORE STORE,
DOUBLED, DROPSHIP PROFESSIONAL
SERVICE STORE, DZ_JEWELRY A/K/A DZ-
TOYS AND GAMES ONLINE STORE,
EDENKING, EKINCHAN, GOOD SISDER
STORE, HIZOECHU TOY STORE, JAYSUING,
JIANGYUANZE, JINKEDA688, JOCESTYLE
GLOBAL DIRECT STORE, JTOY, KIDS_DRESS,
KIDS_SHOW, LENOVA,
LIANGJINGJING_KITCHEN,
LIANGJINGJING_NO1, LIANGJINGJING_NO3,
LIANGJINGJING_WATCH, LIGHTCRACK, LJ
FUN STORE, LOLSURPRISE OFICIAL STORE,
LOYUDAY STORE, MANDYE STORE,
MICSELLCOM, MVP999 STORE, NINGBO
JINGFENG INTERNATIONAL TRADE CO.,
LTD., OUMEIDA TOY STORE, SHENZHEN
HONGJIAXIN PLASTIC PRODUCTS CO., LTD.,
SHENZHEN LONGESEN TECHNOLOGY CO.,

CIVIL ACTION No. _____

**DECLARATION OF JOHN
ARDELL AND
ACCOMPANYING EXHIBITS IN
SUPPORT OF 1) *EX PARTE*
APPLICATION FOR A
TEMPORARY RESTRAINING
ORDER; 2) AN ORDER
RESTRAINING ASSETS AND
MERCHANT STOREFRONTS; 3)
AN ORDER TO SHOW CAUSE
WHY A PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE; 4) ORDER
AUTHORIZING BIFURCATED
AND ALTERNATIVE SERVICE
AND 5) ORDER AUTHORIZING
EXPEDITED DISCOVERY**

FILED UNDER SEAL

LTD., SHENZHEN XINQI TECHNOLOGY CO.,
LTD., SHINE FOR YOU STORE, SHOP2945021
STORE, SHOP2951139 STORE, SHOP3661063
STORE, SHOP3680088 STORE,
SWEET_CARGO, TOP_TOY, TOYGUYS,
TRITRUT, YANGZHOU DU LALA CRAFTS
CO., LTD., YANGZHOU HOME KA CRAFTS
LTD., YIWU CITY TRENDZ ACCESSORIES
CO., LTD., YIWU DEMI ELECTRONIC
COMMERCE CO., LTD., YIWU HAO YI PAPER
PRODUCTS FIRM and YIWU TOP TOY
FACTORY,

Defendants

**CONFIDENTIAL/FILED UNDER SEAL
NOT TO BE OPENED EXCEPT BY ORDER OF THE COURT**

DECLARATION OF JOHN ARDELL¹

I, John Ardell, hereby declare as follows:

1. I am over eighteen (18) years of age. I have never been convicted of a felony or any criminal offense involving moral turpitude, and I am fully competent to testify to the matters stated herein. I have personal knowledge of every statement made in this Declaration and such statements are true and correct.
2. I am the Executive Vice President of Marketing and Co-Founder of Skyrocket, LLC d/b/a Skyrocket Toys LLC, a limited liability company organized under the laws of the state of California (“Skyrocket” or “Plaintiff”). I make and submit this affirmation in connection with Skyrocket’s *ex parte* application for: 1) a temporary restraining order; 2) an order restraining assets and Merchant Storefronts; 3) an order to show cause why a preliminary injunction should not issue; 4) an order authorizing bifurcated and alternative service; and 5) an order authorizing expedited discovery against the above-captioned Defendants (hereinafter collectively referred to as “Defendants”), Third Party Service Providers and Financial Institutions in light of Defendants’ intentional and willful offerings for sale and/or sales of Counterfeit Products (as defined *infra*) (“Application”).
3. Plaintiff is a leading global manufacturer and tech-entertainment company that designs and sells innovative consumer electronics, gaming products and children’s toys under its well-known brands, including Pomsies, as well as other proprietary properties, such as Recoil, Sky Viper and Mebo (“Skyrocket Product(s)").

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

4. Plaintiff sells its Skyrocket Products throughout the U.S. and the world through major retailers, quality toy stores, department stores and online marketplaces, including, but not limited to, Walmart, Target and Amazon.com.
5. One of Plaintiff's most recent and successful Skyrocket Products is Pomsies, which are interactive plush toy pets that children can play games with, cuddle and wear as accessories ("Pomsies Products"). Pomsies look like giant pom-poms that feature large, sparkly eyes and ears with a long, bendable tail that can wrap around a child's wrist, hair or backpack to take them on the go
6. Pomsies not only react to touch and movement through hidden sensors built into the plush, but their eyes also change colors to reflect their moods. Pomsies can have up to 50 different reactions.
7. Currently, there are 13 different Pomsies to collect, ranging from Boots the Cat to Sydney the Koala to Luna the Unicorn and more. Images of Skyrocket's Pomsies Products are attached hereto as **Exhibit A** and incorporated herein by reference.
8. Pomsies has been named one of the "hottest toys for 2018" by *New York Magazine* and was included in *Amazon's 2018 Holiday Toy List*.²
9. Pomsies Products retail for approximately \$15.00 each.
10. While Plaintiff has gained significant common law trademark and other rights in its Pomsies Products through its extensive use, advertising and promotion, Plaintiff has also protected its valuable rights by filing for and obtaining a federal trademark registration.
11. Plaintiff is the owner of U.S. Trademark Registration No. 5,572,184 for "POMSIES" for a

² Liza Corsillo, *The 21 Holiday Toys to Buy Now Before They Sell Out, According to Trend Forecasters* (Nov. 6, 2018), NEW YORK MAGAZINE, <http://nymag.com/strategist/article/top-kids-toys-for-christmas.html/>; Remi Rosmarin, *Amazon predicts these will be the 100 hottest toys every kid wants this holiday season* (October 13, 2018), BUSINESS INSIDER, <https://www.businessinsider.com/amazon-best-toys-games-holidays-christmas-2018-9>.

variety of goods in Class 28 (“Pomsies Mark”). A true and correct copy of the registration certificate for the Pomsies Mark is attached hereto as **Exhibit B** and incorporated herein by reference.

12. The Pomsies Mark is currently in use in commerce in connection with the Pomsies Products. The constructive date of first use based on Plaintiff’s federal trademark registration for the Pomsies Mark is at least as early as June 15, 2018.
13. In addition, Plaintiff owns both registered and unregistered copyrights in and related to the Pomsies Products.
14. Plaintiff has protected its valuable rights by filing and obtaining U.S. copyright registrations in and relating to the Pomsies Products. For example, Plaintiff is the owner of U.S. Copyright Registration No. VA 2-127-288, covering the Pomsies Cat, U.S. Copyright Registration No. VA 2-127-368, covering the Pomsies Dog, U.S. Copyright Registration No. VA 2-127-287, covering the Pomsies Dragon, U.S. Copyright Registration No. VA 2-127-381, covering the Pomsies Koala, U.S. Copyright Registration No. VA 2-127-371, covering the Pomsies Unicorn and U.S. Copyright Registration No. VA 2-127-295, covering the Pomsies Packaging, as well as numerous common law copyrights (“Pomsies Works”). True and correct copies of the registration certificates for the Pomsies Works are attached hereto as **Exhibit C** and incorporated herein by reference.
15. The success of the Pomsies Products is due in large part to Plaintiff’s marketing, promotion and distribution efforts. These efforts include, but are not limited to, the advertising and promotion of the Pomsies Products through Plaintiff’s website entirely dedicated to the Pomsies Products, <http://www.pomsies.com/>, nationwide television advertising campaigns for the Pomsies Products, print and internet-based advertising and publicity for the Pomsies Products, placement of the Pomsies Products at dozens of authorized major retail outlets,

both domestically and abroad, and Plaintiff's participation in trade shows.

16. Plaintiff and the Pomsies Products' successes are also due to Plaintiff's use of high quality materials and processes in making the Pomsies Products.
17. Additionally, Plaintiff owes a substantial amount of the success of the Pomsies Products to its consumers and word-of-mouth buzz that its consumers have generated.
18. Plaintiff's efforts, the quality of Plaintiff's Pomsies Products, its marketing, promotion and distribution efforts, as well as the word-of-mouth buzz generated by its consumers have made the Pomsies Products, Pomsies Works and Pomsies Mark prominently placed in the minds of the public. Retailers, retail buyers, consumers and members of the public have become familiar with the Pomsies Products and associate them exclusively with Plaintiff.
19. As a result of such associations, Plaintiff and its Pomsies Products, the Pomsies Works and Pomsies Mark have acquired valuable reputations and goodwill among the public.
20. Plaintiff has gone to great lengths to protect its interests in and to the Pomsies Products, Pomsies Works and Pomsies Mark. No one other than Plaintiff is authorized to manufacture, import, export, advertise, offer for sale or sell any good utilizing the Pomsies Works or Pomsies Mark without the express written permission of Plaintiff.
21. In light of the success of Plaintiff's Pomsies Products, Plaintiff and its Pomsies Products has become targets for unscrupulous individuals and entities wishing to exploit the goodwill, reputation and fame of the Pomsies Products, Pomsies Works and Pomsies Mark, and Plaintiff routinely investigates and enforces against such activities.
22. As part of these efforts, Plaintiff authorized Epstein Drangel LLP ("Epstein Drangel") to retain New Alchemy Limited ("NAL"), a company that provides intellectual property infringement research services, to investigate and research manufacturers and/or third-party merchants offering for sale and/or selling Counterfeit Products on online

marketplaces such as Alibaba.com, AliExpress.com and DHgate.com, which allow manufacturers and third-party merchants, like Defendants, to advertise, distribute, offer for sale, sell and ship their retail products, originating from China, directly to consumers worldwide and specifically to consumers residing in the U.S.

23. Through NAL's investigative and enforcement efforts, Plaintiff learned of Defendants' infringing and counterfeiting actions, which vary and include, but are not limited to, manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling infringing Pomsies Products bearing the Pomsies Mark and Pomsies Works, and/or bearing marks and artwork that are substantially or confusingly similar to the Pomsies Mark and Pomsies Works, and/or are identical or substantially or confusingly similar to the Pomsies Products ("Infringing Products" or "Counterfeit Products") to U.S. consumers (including those located in the state of New York) through Defendants' Merchant Storefronts on the online marketplace platforms Alibaba.com, AliExpress.com and DHgate.com.
24. Through visual inspection of Defendants' listings for Counterfeit Products ("Infringing Listings"), we confirmed that each and every Defendant uses the Pomsies Mark and/or displays the Pomsies Works in the Infringing Listings without authorization, and that the products that each and every Defendant offers for sale use and feature virtually identical copies of Plaintiff's Pomsies Mark or Pomsies Works are, in fact, Counterfeit Products.
25. We have also confirmed that all Defendants are not, nor have they ever been, authorized distributors or licensees of the Pomsies Products. Plaintiff never consented to Defendants' use of Plaintiff's Pomsies Mark or Pomsies Works, nor has Plaintiff consented to Defendants' use of any identical or confusingly or substantially similar marks or artwork.

26. We use high quality materials and processes in making the Pomsies Products to meet or exceed U.S. requirements and standards.
27. Our inspection of the Infringing Listings revealed, among other things, improper packaging, incorrect labeling, wrong coloring and below-market pricing.
28. One of the principal reasons why Plaintiff instituted an active anti-infringement enforcement program is to protect its consumers from purchasing counterfeit and/or infringing consumer products that wrongly bear Plaintiff's name, and which may be unsafe or of poor quality, which is particularly important given the Skyrocket Products, including the Pomsies Products, are directed towards children.
29. Defendants' intentional and deceitful misconduct has likely resulted in lost profits Plaintiff and has damaged the inherent value of the Pomsies Mark, impaired Plaintiff's reputation for providing high-quality products and diluted Plaintiff's brands and the goodwill associated therewith, negatively affecting Plaintiff's relationships with current customers (including both retail customers and end consumers) and its ability to attract new customers.
30. We trained Plaintiff's counsel, Epstein Drangel, on how to identify infringing Pomsies Products. Epstein Drangel is available to identify additional differences between the Counterfeit Products and the authentic Pomsies Products upon request of the Court. Plaintiff keeps its procedures to determine the authenticity of its Pomsies Products confidential in order to streamline and ensure accuracy of the identification process for Plaintiff and its anti-infringement team.
31. Neither I, nor anyone else at Skyrocket, to the best of my knowledge, have publicized this Application or Plaintiff's intent to seek entry of a temporary restraining order against Defendants or any third party.

I declare under the penalty of perjury under the laws of the United States of America that to the best of my knowledge the foregoing is true and correct.

Executed on this 29th day of November 2018 in Los Angeles, CA.

By: 
John Ardell

EXHIBIT A





EXHIBIT B

United States of America

United States Patent and Trademark Office

POMSIES

Reg. No. 5,572,184

Registered Sep. 25, 2018

Int. Cl.: 28

Trademark

Principal Register

Skyrocket Toys, LLC (CALIFORNIA LIMITED LIABILITY COMPANY)
12910 Culver Blvd. Suite F
Los Angeles, CALIFORNIA 90066

CLASS 28: Pet toys; Plush dolls; Plush toys; Novelty toy items in the nature of electronic plush pets; Stuffed and plush toys

FIRST USE 6-15-2018; IN COMMERCE 6-15-2018

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 87-726,667, FILED 12-19-2017



Andrei Iancu

Director of the United States
Patent and Trademark Office

REQUIREMENTS TO MAINTAIN YOUR FEDERAL TRADEMARK REGISTRATION

WARNING: YOUR REGISTRATION WILL BE CANCELLED IF YOU DO NOT FILE THE DOCUMENTS BELOW DURING THE SPECIFIED TIME PERIODS.

Requirements in the First Ten Years*

What and When to File:

- **First Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) between the 5th and 6th years after the registration date. See 15 U.S.C. §§1058, 1141k. If the declaration is accepted, the registration will continue in force for the remainder of the ten-year period, calculated from the registration date, unless cancelled by an order of the Commissioner for Trademarks or a federal court.
- **Second Filing Deadline:** You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between the 9th and 10th years after the registration date.* See 15 U.S.C. §1059.

Requirements in Successive Ten-Year Periods*

What and When to File:

- You must file a Declaration of Use (or Excusable Nonuse) and an Application for Renewal between every 9th and 10th-year period, calculated from the registration date.*

Grace Period Filings*

The above documents will be accepted as timely if filed within six months after the deadlines listed above with the payment of an additional fee.

***ATTENTION MADRID PROTOCOL REGISTRANTS:** The holder of an international registration with an extension of protection to the United States under the Madrid Protocol must timely file the Declarations of Use (or Excusable Nonuse) referenced above directly with the United States Patent and Trademark Office (USPTO). The time periods for filing are based on the U.S. registration date (not the international registration date). The deadlines and grace periods for the Declarations of Use (or Excusable Nonuse) are identical to those for nationally issued registrations. See 15 U.S.C. §§1058, 1141k. However, owners of international registrations do not file renewal applications at the USPTO. Instead, the holder must file a renewal of the underlying international registration at the International Bureau of the World Intellectual Property Organization, under Article 7 of the Madrid Protocol, before the expiration of each ten-year term of protection, calculated from the date of the international registration. See 15 U.S.C. §1141j. For more information and renewal forms for the international registration, see <http://www.wipo.int/madrid/en/>.

NOTE: Fees and requirements for maintaining registrations are subject to change. Please check the USPTO website for further information. With the exception of renewal applications for registered extensions of protection, you can file the registration maintenance documents referenced above online at <http://www.uspto.gov>.

NOTE: A courtesy e-mail reminder of USPTO maintenance filing deadlines will be sent to trademark owners/holders who authorize e-mail communication and maintain a current e-mail address with the USPTO. To ensure that e-mail is authorized and your address is current, please use the Trademark Electronic Application System (TEAS) Correspondence Address and Change of Owner Address Forms available at <http://www.uspto.gov>.

EXHIBIT C

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Pomsies Cat.

Type of Work: Visual Material

Registration Number / Date: VA0002127288 / 2018-11-19

Application Title: Pomsies Cat.

Title: Pomsies Cat.

Description: Electronic file (eService)

Copyright Claimant: Skyrocket LLC. Address: 12910 Culver Blvd, Suite F, Los Angeles, CA, 90066, United States.

Date of Creation: 2017

Date of Publication: 2018-02-17

Nation of First Publication: United States

Authorship on Application: Skyrocket LLC, employer for hire; Citizenship: United States. Authorship: sculpture.

Rights and Permissions: Jason M. Drangel, Epstein Drangel LLP, 60 E. 42nd Street, Suite 2520, New York, NY, 10165, United States, (212) 292-5390, mail@ipcounselors.com

Names: [Skyrocket LLC](#)



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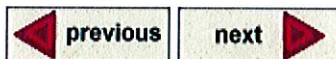
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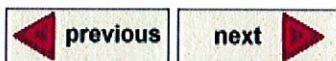
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Pomsies Dog.

Type of Work: Visual Material**Registration Number / Date:** VA0002127368 / 2018-11-20**Application Title:** Pomsies Dog.**Title:** Pomsies Dog.**Description:** Electronic file (eService)**Copyright Claimant:** Skyrocket LLC. Address: 12910 Culver Blvd, Suite F, Los Angeles, CA, 90066, United States.**Date of Creation:** 2017**Date of Publication:** 2018-02-17**Nation of First Publication:** United States**Authorship on Application:** Skyrocket LLC, employer for hire; Citizenship: United States. Authorship: sculpture.**Rights and Permissions:** Jason M. Drangel, Epstein Drangel LLP, 60 E. 42nd Street, Suite 2520, New York, NY, 10165, United States, (212) 292-5390, mail@ipcounselors.com**Names:** [Skyrocket LLC](#)

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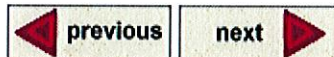
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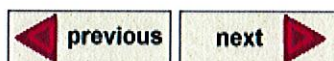
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Pomsies Dragon.

Type of Work: Visual Material**Registration Number / Date:** VA0002127287 / 2018-11-19**Application Title:** Pomsies Dragon.**Title:** Pomsies Dragon.**Description:** Electronic file (eService)**Copyright Claimant:** Skyrocket LLC. Address: 12910 Culver Blvd, Suite F, Los Angeles, CA, 90066, United States.**Date of Creation:** 2017**Date of Publication:** 2018-02-17**Nation of First Publication:** United States**Authorship on Application:** Skyrocket LLC, employer for hire; Citizenship: United States. Authorship: sculpture.**Rights and Permissions:** Jason M. Drangel, Epstein Drangel LLP, 60 E. 42nd Street, Suite 2520, New York, NY, 10165, United States, (212) 292-5390, mail@ipcounselors.com**Names:** [Skyrocket LLC](#)

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Pomsies Koala.

Type of Work: Visual Material**Registration Number / Date:** VA0002127381 / 2018-11-20**Application Title:** Pomsies Koala.**Title:** Pomsies Koala.**Description:** electronic file.**Copyright Claimant:** Skyrocket LLC. Address: 12910 Culver Blvd, Suite F, Los Angeles, CO, 90066, United States.**Date of Creation:** 2017**Date of Publication:** 2018-02-17**Nation of First Publication:** United States**Authorship on Application:** Skyrocket LLC, employer for hire; Citizenship: United States. Authorship: sculpture.**Rights and Permissions:** Jason M. Drangel, Epstein Drangel LLP, 60 E. 42nd Street, Suite 2520, New York, NY, 10165, United States, (212) 292-5390, mail@ipcounselors.com**Names:** [Skyrocket LLC](#)

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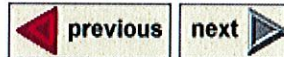
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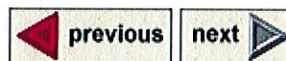
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Pomsies Unicorn.

Type of Work: Visual Material**Registration Number / Date:** VA0002127371 / 2018-11-20**Application Title:** Pomsies Unicorn.**Title:** Pomsies Unicorn.**Description:** Electronic file (eService)**Copyright Claimant:** Skyrocket LLC. Address: 12910 Culver Blvd, Suite F, Los Angeles, CA, 90066, United States.**Date of Creation:** 2017**Date of Publication:** 2018-02-17**Nation of First Publication:** United States**Authorship on Application:** Skyrocket LLC, employer for hire; Citizenship: United States. Authorship: sculpture.**Rights and Permissions:** Jason M. Drangel, Epstein Drangel LLP, 60 E. 42nd Street, Suite 2520, New York, NY, 10165, United States, (212) 292-5390, mail@ipcounselors.com**Names:** [Skyrocket LLC](#)

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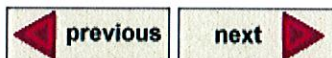
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Pomsies Packaging.

Type of Work: Visual Material**Registration Number / Date:** VA0002127295 / 2018-11-19**Application Title:** Pomsies Packaging.**Title:** Pomsies Packaging.**Description:** Electronic file (eService)**Copyright Claimant:** Skyrocket LLC. Address: 12910 Culver Blvd, Suite F, Los Angeles, CA, 90066, United States.**Date of Creation:** 2017**Date of Publication:** 2018-02-17**Nation of First Publication:** United States**Authorship on Application:** Skyrocket LLC, employer for hire; Citizenship: United States. Authorship: 2-D artwork.**Rights and Permissions:** Epstein Drangel LLP, 60 E. 42nd Street, Suite 2520, New York, NY, 10165, United States**Names:** [Skyrocket LLC](#)

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