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18 CV 11280

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

*Plaintiff*

v.

5ATOY 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\_KITCHE,  
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 BRIENNE  
SCULLY AND ACCOMPANYING  
EXHIBIT 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 BRIEANNE SCULLY<sup>1</sup>**

I, Brieanne Scully, hereby declare as follows:

1. I am an attorney with the law firm of Epstein Drangel LLP (“Epstein Drangel”), located at 60 East 42<sup>nd</sup> Street, Suite 2520, New York, New York 10165 and represent Plaintiff Skyrocket, LLC d/b/a Skyrocket Toys LLC’s (“Skyrocket” or “Plaintiff”) in the above-referenced action. I make and submit this declaration in connection with Plaintiff’s *ex parte* application for the following: 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-named 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”).
2. Epstein Drangel represents Plaintiff in intellectual property matters and has been trained by Plaintiff on how to identify Counterfeit Products.
3. Based on my research, Alibaba.com, AliExpress.com and DHgate.com are online marketplace platforms which allow manufacturers, wholesalers and other third-party merchants, like Defendants, to advertise, distribute, offer for sale, sell and ship their wholesale and retail products originating from China directly to consumers worldwide, and specifically to consumers residing in the U.S., including New York.
4. *Forbes* recently reported that as some of the leaders of China’s e-commerce and digital

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<sup>1</sup> 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.



retail market, Alibaba.com, AliExpress.com and DHgate.com have generated hundreds of billions in sales worldwide.<sup>2</sup>

5. My research also revealed that international marketplaces, including the U.S., make up a significant percentage of sales made on Alibaba.com, AliExpress.com and DHgate.com. For example, in 2016, revenue from international retail sales grew by 25% on AliExpress.com to \$342 million and 15% on Alibaba.com to \$841 million.<sup>3</sup> The press reported that the growth in sales on AliExpress.com resulted from an increase in the number of buyers, particularly from the U.S., as well as other larger countries like Russia and Brazil.<sup>4</sup> Additionally, according to *Business Insider*, excluding China, the U.S. was among the top five countries with packages coming from Alibaba's marketplaces on the company's "Singles' Day" (often compared to the U.S.'s Cyber Monday) in 2015, which resulted in over \$14 billion in sales in one day.<sup>5</sup> Further, DHgate.com offers 25 million consumer products from 1.2 million suppliers for sale on its platform and attributes over half of its sales to U.S. buyers alone.<sup>6</sup>
6. As recently addressed in the *Wall Street Journal*, *Fortune*, *New York Times* and other reputable publications,<sup>7</sup> several federal lawsuits have been filed against China-based sellers

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<sup>2</sup> See Kenneth Rapoza, *Jack Ma's Alibaba Promises Huge Sales Boom, \$910 Billion In Merchandise Volume By 2020*, FORBES (Jun. 15, 2016), <http://www.forbes.com/sites/kenrapoza/2016/06/15/jack-ma-foretells-huge-sales-boom-for-chinese-e-commerce-giant-alibaba/#78d364486b52>.

<sup>3</sup> See Frank Tong, *Alibaba's annual web sales easily surpass U.S. e-retail sales*, DIGITALCOMMERCE360.COM (May 5, 2016), <https://www.internetretailer.com/2016/05/05/alibabas-annual-web-sales-easily-surpass-us-e-retail-sales>.

<sup>4</sup> See Frank Tong, *An Alibaba site sells \$4.5 billion in one year to consumers outside of China*, DIGITALCOMMERCE360.COM (Sept. 11, 2014), <https://www.internetretailer.com/2014/09/11/alibaba-site-sells-45-billion-one-year-consumers-outs>.

<sup>5</sup> See Bob Bryan, *Alibaba just proved it's more than just some Chinese company*, BUSINESS INSIDER (Nov. 15, 2015), <http://www.businessinsider.com/alibaba-international-expansion-2015-11>.

<sup>6</sup> See Nona Tepper, *U.S. buyers account for half the sales on Hong Kong-based wholesale site DHgate.com*, DIGITALCOMMERCE360, (Jun. 22, 2015), <https://www.internetretailer.com/2015/06/22/us-buyers-account-half-sales-dhgatecom>.

<sup>7</sup> See Kathy Chu, *Alibaba Vows Crackdown on Fakes Amid Trade Group Controversy*, WALL STREET JOURNAL (May 13, 2016), <http://www.wsj.com/articles/alibaba-vows-crackdown-on-fakes-amid-trade-group-controversy-1463127605?>; Scott Cendrowski, *Chinese Regulator Again Calls Out Alibaba for Counterfeit Goods*, FORTUNE (Aug. 10, 2016), <http://fortune.com/2016/08/11/alibaba-counterfeit-goods-regulator/>; see Kathy Chu, *Alibaba Suspends*

on Alibaba.com, AliExpress.com and DHgate.com (along with these same online marketplace platforms themselves and stand-alone websites)<sup>8</sup> in light of the astronomical number of counterfeit and/or infringing products that are being offered for sale and sold at a rampant rate.<sup>9</sup>

7. Additionally, the Office of the United States Trade Representative (“USTR”) publishes an annual “Notorious Markets List” which highlights specific physical and online markets around the world that are reported to be engaging in and facilitating substantial copyright piracy and trademark counterfeiting, and which is intended to help the U.S. and foreign governments prioritize intellectual property rights (IPR) enforcement that protects job-supporting innovation and creativity in the U.S. and around the world.<sup>10</sup> In December 2015, the USTR released the results of its Special 301 Out-of-Cycle Review of Notorious Markets for 2015, for the purpose of identifying particularly infamous markets, and

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*From Anticounterfeiting Group*, WALL STREET JOURNAL (May 13, 2016), <http://www.wsj.com/articles/alibaba-suspended-from-anticounterfeiting-group-1463170527?tesla=y>; *Fake UGG Boots: Deckers Outdoor Awarded \$686 Million In Lawsuit Against Chinese Counterfeiters*, HUFFINGTON POST (May 3, 2012), [http://www.huffingtonpost.com/2012/05/03/ugg-chinese-counterfeiters-counterfeit-lawsuit\\_n\\_1474320.html](http://www.huffingtonpost.com/2012/05/03/ugg-chinese-counterfeiters-counterfeit-lawsuit_n_1474320.html); Maria Bobila, *Belstaff Will Receive \$42 Million From Over 600 Counterfeit Websites*, FASHIONISTA (Oct. 13, 2015), <http://fashionista.com/2015/10/belstaff-counterfeit-websites-case>; and Michael Schuman, *A Small Table Maker Takes On Alibaba's Flood of Fakes*, N.Y. TIMES (Mar. 18, 2017), <https://www.nytimes.com/2017/03/18/business/alibaba-fake-merchandise-e-commerce.html>.

<sup>8</sup> See Kathy Chu, *Alibaba Vows Crackdown on Fakes Amid Trade Group Controversy*, WALL STREET JOURNAL (May 13, 2016), <http://www.wsj.com/articles/alibaba-vows-crackdown-on-fakes-amid-trade-group-controversy-1463127605?>; Scott Cendrowski, *Chinese Regulator Again Calls Out Alibaba for Counterfeit Goods*, FORTUNE (Aug. 10, 2016), <http://fortune.com/2016/08/11/alibaba-counterfeit-goods-regulator/>; see also Kathy Chu, *Alibaba Suspends From Anticounterfeiting Group*, WALL STREET JOURNAL (May 13, 2016), <http://www.wsj.com/articles/alibaba-suspended-from-anticounterfeiting-group-1463170527?tesla=y>.

<sup>9</sup> See Kathy Chu, *Luxury brands get tougher with counterfeiters – and Alibaba*, MARKETWATCH (Aug. 16, 2016), <http://www.marketwatch.com/story/luxury-brands-get-tough-with-counterfeiters-2016-08-16-91031611>; Gilian Wong, *Alibaba Sued Over Alleged Counterfeits*, WALL STREET JOURNAL (May 17, 2015), <http://www.wsj.com/articles/alibaba-sued-over-alleged-counterfeits-1431877734>; and Scott Cendrowski, *There's no end in sight for Alibaba's counterfeit problem*, FORTUNE (May 18, 2015), <http://fortune.com/2015/05/18/theres-no-end-in-sight-for-alibabas-counterfeit-problem/>.

<sup>10</sup> See Press Release, Office of the United States Trade Representative, 2015 Notorious Markets List Spotlights Fight Against Global Privacy and Counterfeiting of American Products (Dec. 2015), available at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/december/2015-notorious-markets-list>;

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, 2015 OUT-OF-CYCLE REVIEW OF NOTORIOUS MARKETS (2015), available at <https://ustr.gov/sites/default/files/USTR-2015-Out-of-Cycle-Review-Notorious-Markets-Final.pdf>.



specifically identified DHGate.com as such a “particularly infamous Notorious Market.”<sup>11</sup>

8. In December 2016, the USTR added Alibaba to its “Notorious Markets” list due to its high levels of “reported counterfeiting and piracy.”<sup>12</sup>
9. The USTR’s most recent “Notorious Markets” list, released in January 2017, demonstrates that there remain serious and substantial concerns about Alibaba.”<sup>13</sup> The 2017 USTR report specifically notes the tremendous amount of infringing products being offered for sale and/or sold on Alibaba’s online marketplace Taobao.com. Additionally, DHGate.com remains on this most recent “Notorious Markets” list as a result of the continued availability of a “wide variety of counterfeit or copyright-infringing consumer goods.”
10. Despite the fact that Alibaba.com, AliExpress.com and DHgate.com have systems in place to report intellectual property infringement, sellers of counterfeit and/or infringing products frequently re-post their listings for such products on their respective User Accounts and Merchant Storefronts once taken down, or open a new User Account and/or new Merchant Storefront on Alibaba.com, AliExpress.com or DHgate.com, or a previously hereto unknown online marketplace platform, under a different seller name and post the same listings for counterfeit and/or infringing products.<sup>14</sup>
11. In our experience, Alibaba.com, AliExpress.com and DHgate.com generally do not terminate a seller’s account or membership after a single or even a second or third

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<sup>11</sup> *Id.*

<sup>12</sup> Laura Stevens, *Alibaba Lands on U.S. Governments’ ‘Notorious Markets’ List for Fakes*, WALL STREET JOURNAL (Dec. 21, 2016), <https://www.wsj.com/articles/alibaba-lands-on-u-s-governments-notorious-markets-list-for-fakes-1482356081>; see also Chinatichnews.com Editor, *Alibaba Lands on U.S. Notorious Markets List for Lax Counterfeit Policies*, CHINATECHNEWS (Dec. 22, 2016), <https://www.chinatichnews.com/2016/12/22/24615-alibaba-lands-on-u-s-notorious-markets-list-for-lax-counterfeit-policies>

<sup>13</sup> OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, 2017 OUT-OF-CYCLE REVIEW OF NOTORIOUS MARKETS (2017), available at <https://ustr.gov/sites/default/files/files/Press/Reports/2017%20Notorious%20Markets%20List%201.11.18.pdf>.

<sup>14</sup> Nona Tepper, *U.S. buyers account for half the sales on Hong Kong-based wholesale site DHgate.com*, DIGITALCOMMERCE360, (Jun. 22, 2015), <https://www.internetretailer.com/2015/06/22/us-buyers-account-half-sales-dhgatecom>.

complaint of infringement against the seller. Pursuant to Alibaba.com's Posting Rules regarding the Penalty of Intellectual Property Rights Infringement, a seller's account is not terminated until the "fourth infringement complained by an identical rights holder based on an identical intellectual property."<sup>15</sup> Similarly, under the AliExpress Intellectual Property Rights Protection Policy, a seller's membership with AliExpress.com is not terminated until at least four complaints of serious infringements have been received.<sup>16</sup>

12. Given our experience in policing against counterfeiters on Alibaba.com, AliExpress.com and DHgate.com, sellers operating Merchant Storefronts, like Defendants, often use evasive tactics, such as aliases, false addresses and other incomplete identification information to conceal their identities and avoid detection. These tactics commonly are used to attempt to circumvent, among other remedies, restraining orders issued with prior notice, by disappearing or claiming ignorance of their responsibilities, while simultaneously destroying any evidence of their counterfeiting actions and draining their financial accounts.

13. Further based on our experience, because Alibaba.com, AliExpress.com and DHgate.com do not require sellers to display their registered business name or trade name, contact name, complete address or any other contact information, sellers, like Defendants, use Alibaba.com, AliExpress.com and DHgate.com, as well as other currently unknown online marketplace platforms, as a means for selling infringing and/or counterfeit products with almost total anonymity.

14. Additionally, our experience has shown that sellers on Alibaba.com, AliExpress.com and

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<sup>15</sup> *Enforcement Actions for Intellectual Property Right Infringement Claims*, Section B(2) "Serious Infringement", available at, <http://rule.alibaba.com/rule/detail/2043.htm?spm=a271m.8038972.0.0.fHxRG9>.

<sup>16</sup> See *AliExpress Intellectual Property Rights Protection Policy*, available at, [http://activities.aliexpress.com/adcms/help-aliexpress-com/ipr\\_penalty.php?spm=a271m.8038972.0.0.fHxRG9](http://activities.aliexpress.com/adcms/help-aliexpress-com/ipr_penalty.php?spm=a271m.8038972.0.0.fHxRG9).

DHgate.com often use shipping or delivery services, such as EMS and DHL, that provide minimal tracking and/or use false or incomplete return addresses to further conceal their identities.

15. On behalf of Plaintiff, we retained New Alchemy Limited (“NAL”), a company that provides trademark infringement research services, to investigate and research manufacturers, wholesalers and/or third-party merchants offering for sale and/or selling products bearing and/or using the Pomsies Mark and/or marks that are confusingly similar to, identical to and constitute an infringement of the Pomsies Mark and/or displaying and/or incorporating the Pomsies Works and/or works that are substantially similar to, identical to and constitute infringement of the Pomsies Works and/or otherwise infringe Plaintiff’s Pomsies Products (“Counterfeit Products”) on Alibaba.com, AliExpress.com and DHgate.com.
16. It is our experience that discovery will reveal that certain Defendants are related insofar as they engage in coordinated operations involving the manufacturing, distributing, offering for sale and sale of Counterfeit Products.<sup>17</sup>
17. Through visual inspection of Defendants’ listings for Counterfeit Products (“Infringing Listings”), we confirmed that the products that each Defendant offered for sale using virtually identical copies of the Pomsies Mark and/or Pomsies Works are, in fact, Counterfeit Products.
18. A representative sample of true and correct images of the Counterfeit Products taken from Defendants’ Infringing Listings in comparison to true and correct images from Plaintiff’s authentic Pomsies Products are attached hereto as **Exhibit A** and incorporated herein by

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<sup>17</sup> For example, in a similar case involving the sale of counterfeit toys by China-defendants on an online marketplace platform, preliminary discovery and a subsequent initial investigation connected seven of the defendants as related entities. *See WowWee Group Limited, et al. v. HAOQIN, et al.*, No. 17-cv-9893 (WHP) (S.D.N.Y Jan. 9, 2018).



reference.

19. Through visual inspection of the Infringing Listings, we also confirmed that each of Defendants' Infringing Listings are in English and accept payment in U.S. dollars.
20. Additionally, our visual inspection of the Infringing Listings revealed that many Defendants are self-described manufacturers and/or trading companies that offer the Counterfeit Products through Alibaba.com, AliExpress.com and DHgate.com exclusively, in wholesale quantities (some requiring a minimum quantity per order), at below-market prices.
21. In light of the multiple Defendants involved in this action, most of whom are selling the Counterfeit Products in wholesale quantities only (making the cost to purchase and store the Counterfeit Products prohibitive), and shipping the same from China with significant lead times (potentially causing an unnecessary and unreasonable delay in the filing of this action), since we are able to confirm with certainty that the Counterfeit Products offered for sale by each Defendant in the Infringing Listings are, in fact, counterfeit, through the visual inspection of the Infringing Listings, the low prices at which Defendants are offering the Counterfeit Products, and because no authentic Pomsies Products whatsoever are available on Alibaba.com, AliExpress.com and DHgate.com, we have not instructed NAL to complete the purchases for the Counterfeit Products.
22. We also have reviewed each of Defendants' Merchant Storefronts and User Accounts and confirmed that many Defendants use unidentifiable seller names unassociated with a registered business, manufacturing company or trading company. Moreover, most Defendants fail to disclose an accurate or complete address or any other contact information on their respective Merchant Storefronts or User Accounts on Alibaba.com, AliExpress.com and DHgate.com.

23. For this reason and the reasons discussed earlier, the true identities, locations and contact information of Defendants, as well as the locations of the Counterfeit Products that Defendants are offering for sale and/or selling, are unclear and virtually impossible for Plaintiff to obtain independently.
24. We have used RPost's online services and confirm that its services include verifying valid proof of authorship, content and delivery of an email as well as the official time and date an email was sent and received.
25. It is our experience that sellers of counterfeit and/or infringing products, such as Defendants, are in constant communication with each other and regularly participate in online chatroom discussions involving illegal counterfeiting activities, pending litigation and potential new lawsuits.
26. Moreover, the Chinese Ministry of Commerce published an article regarding Epstein Drangel's involvement in litigation regarding the sale of Chinese counterfeits on e-commerce platforms.<sup>18</sup>
27. In our experience, a small group of attorneys represent defendants in anti-counterfeiting lawsuits similar to the case at hand, and we have been informed by said defense counsel that they closely monitor the PACER docket, looking for potential new cases and clients.
28. 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 the Defendants to any third party.

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<sup>18</sup> See <http://shangwutousu.mofcom.gov.cn/article/resume/af/201711/20171102664964.shtml>.

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 4<sup>th</sup> day of December 2018 in New York,  
New York.

By:   
Brienne Scully



# EXHIBIT A

Authentic Pomsies Product	Defendant	Defendant's Counterfeit Product
	<p data-bbox="716 646 906 682">5ATOY Store</p>	
	<p data-bbox="738 1470 883 1505">kids_show</p>	



micsellcom



**Yiwu Hao Yi  
Paper Products  
Firm**





