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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LASHIFY, INC.,

Plaintiff

v.

SHANDONGCHUANGMEIWEISHENGYONGPI
NYOUXIANGONGSI a/k/a QINGDAO LODY
HAIR PRODUCTS CO., LTD d/b/a B&QAUGEN,

Defendant

CIVIL ACTION NO.

**MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFF'S *EX
PARTE* APPLICATION FOR 1) A
TEMPORARY RESTRAINING
ORDER; 2) ORDER
RESTRAINING DEFENDANT'S
WEBSITE, USER ACCOUNTS,
MERCHANT STOREFRONT AND
DEFENDANT'S ASSETS WITH
THE FINANCIAL INSTITUTIONS;
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

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GLOSSARY

Term	Definition
Plaintiff or Lashify	Lashify, Inc.
Defendant	Shandongchuangmeiweishengyongpinyouxiangongsi a/k/a Qingdao Lody Hair Products Co., Ltd d/b/a B&Qaugen
Amazon	Amazon.com, a Seattle, Washington-based, online marketplace and e-commerce platform owned by Amazon.com, Inc., a Delaware corporation, that allows manufacturers and other third-party merchants, like Defendant, to advertise, distribute, offer for sale, sell and ship their retail products, which, upon information and belief, primarily originate from China, directly to consumers worldwide and specifically to consumers residing in the U.S., including New York
Epstein Drangel	Epstein Drangel LLP, counsel for Plaintiff
New York Address	244 Madison Ave, Suite 411, New York, New York 10016
Complaint	Plaintiff's Complaint
Application	Plaintiff's <i>ex parte</i> Application for: 1) a temporary restraining order; 2) an order restraining Defendant's Website (as defined <i>infra</i>), Defendant's User Accounts (as defined <i>infra</i>), Defendant's Merchant Storefront (as defined <i>infra</i>) and Defendant's Assets (as defined <i>infra</i>) with the Financial Institutions (as defined <i>infra</i>); 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
Lotti Dec.	Declaration of Sahara Lotti in Support of Plaintiff's Application
Sands Dec.	Declaration of Ashly E. Sands in Support of Plaintiff's Application
Lashify System	Do-It-Yourself ("DIY") artificial lash extension system claimed by the Lashify Patent.
Gossamer® Lashes	Lashify's branded artificial lash extensions that are designed to be applied to the underside of a user's natural lashes, and which were invented by Sahara Lotti and practice the Lashify Patent
Control Kit®	Kit sold by Lashify which includes Gossamer® Lashes, a patented wand for fusing the Gossamer® Lashes to the underside of a user's natural lashes, a bond for securing the Gossamer® Lashes to the underside of a user's natural lashes, a sealer for providing protection to the Gossamer® Lashes, and a luxury case.
Lashify Website	https://www.lashify.com/
Lashify Amazon Storefront	https://www.amazon.com/lashify/s?k=lashify
Lashify Social Media	Facebook https://www.facebook.com/lashify/ Instagram https://.instagram.com/lashify YouTube https://www.youtube.com/@Lashify and TikTok https://www.tiktok.com/@lashify
Lashify Patent	U.S. Patent No. 11,253,020 ('020 patent), entitled Artificial Lash Extensions

Infringing Products	Lash clusters and kits that include lash extensions designed to be applied to the underside of natural lashes that infringe one or more claims of the Lashify Patent
Infringing Listings	Defendant's listings for Infringing Products
Defendant's Website	BQLashes.com
User Accounts	Any and all websites owned and/or operated by Defendant (including, without limitation, Defendant's Website), any and all social media accounts through which Defendant, its respective officers, employees, agents, servants and all persons in active concert or participation with Defendant, advertises, promotes, offers for sale and/or sells Infringing Products (including, without limitation, Instagram (https://www.instagram.com/bqlashesofficial/), Facebook (https://www.facebook.com/bqlashesofficial/), YouTube (https://www.youtube.com/@bqlashesofficial/), and TikTok (https://www.tiktok.com/@bqlashesofficial/)) held and/or operated by Defendant, and any and all accounts with online marketplace platforms such as Amazon, as well as any and all as yet undiscovered accounts with additional online marketplace platforms held by or associated with Defendant, its respective officers, employees, agents, servants and all persons in active concert or participation with Defendant
Merchant Storefront	Any and all User Accounts through which Defendant, its respective officers, employees, agents, servants and all persons in active concert or participation with Defendant operates storefronts to manufacture, import, export, advertise, market, promote, distribute, display, make, use, offer for sale, sell and/or otherwise deal in Infringing Products, which are held by or associated with Defendant, its respective officers, employees, agents, servants and all persons in active concert or participation with Defendant
Defendant's Assets	Any and all money, securities or other property or assets of Defendant (whether said assets are located in the U.S. or abroad)
Defendant's Financial Accounts	Any and all financial accounts associated with or utilized by Defendant or Defendant's User Accounts, Defendant's Website or Merchant Storefront(s) (whether said account is located in the U.S. or abroad)
Financial Institutions	PayPal Inc. ("PayPal" and/or "Venmo"), Payoneer Inc. ("Payoneer"), Amazon payment services (e.g., Amazon Pay), PingPong Global Solutions, Inc. ("PingPong") Airwallex (Hong Kong) Limited ("Airwallex"), TikTok Shop Payment services ("TikTok"), Meta Payments, Inc. ("MetaPay"), Alphabet, Inc. aka Google, LLC ("Google Pay"), Razorpay Software Private Limited, ("Razorpay"), Ayden N.V. ("Ayden"), and Stripe, Inc. ("Stripe")
Third Party Service	Any third party providing services in connection with

Providers	<p>Defendant's User Accounts, including online marketplace platforms, including, without limitation, Amazon, Internet Service Providers, website hosts and/or registrars such as Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) ("Alibaba Cloud"), social media platforms including Facebook, Instagram, TikTok and YouTube, as well as any and all as yet undiscovered online marketplace platforms and/or entities through which Defendant, its respective officers, employees, agents, servants and all persons in active concert or participation with Defendant manufactures, imports, exports, advertises, markets, promotes, distributes, makes, uses, offer for sales, sells and/or otherwise deals in Infringing Products which are hereinafter identified as a result of any order entered in this action, or otherwise</p>
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I. INTRODUCTION

Pursuant to and in accordance with the Federal Rules of Civil Procedure, Plaintiff submits this memorandum of law in support of its *ex parte* Application in light of Defendant's intentional and willful making, using, offering for sale, selling and/or importing in the United States for subsequent sale or use, unauthorized and unlicensed Infringing Products to unknowing consumers through its Merchant Storefront on Amazon.com and Defendant's Website.¹ Courts grant *ex parte* applications for relief in similar matters² and Plaintiff requests that the Court grant its Application.

Amazon is an online marketplace and e-commerce platform that allows manufacturers, wholesalers, and other third-party merchants, like Defendant, to advertise, distribute, offer for sale, sell and ship their wholesale and retail products originating from China³ directly to consumers worldwide and specifically to consumers residing in the U.S., including New York. (Sands Dec., ¶ 3). Defendant is located in China and/or Hong Kong but, upon information and belief, conducts its business in the U.S. and other countries by means of its User Accounts, Merchant Storefront on Amazon.com and Defendant's Website, as well as potentially yet undiscovered additional online marketplace platforms. (Sands Dec., ¶¶13-15). Through its Merchant Storefront on Amazon and Defendant's Website, Defendant exclusively offers for sale and/or sells Infringing Products, and targets, markets, distributes and ships such products to customers located in the U.S., including New York. (Sands Dec., ¶¶16-18). Third-party merchants, like Defendant, often use evasive tactics

¹ Where a defined term is referenced herein but not defined, it should be understood as it is defined in the Glossary.

² See *In re Vuitton et Fils, S.A.*, 606 F.2d 1 (2d Cir. 1979) (holding that *ex parte* temporary restraining orders are indispensable to the commencement of an action when they are the sole method of preserving a state of affairs in which the court can provide effective final relief); see also, e.g., *JLM Couture, Inc. v. Aimibridal, et al.*, No. 18-cv-1565-JMF, Dkt. 18 (S.D.N.Y. Feb. 21, 2018); *Ideavillage Products Corp. v. Dongguan Opete Yoga Wear Manufacturer Co., Ltd., et al.*, No. 17-cv-9099 (JMF), Dkt. 19 (S.D.N.Y. Nov. 27, 2017); *Gucci America, Inc., et al v. Alibaba Group Holding LTD, et al*, No. 1:15-cv-03784 (PKC) (S.D.N.Y. June 23, 2015); *AW Licensing, LLC v. Bao*, No. 15- CV-1373, 2015 U.S. Dist. LEXIS 177101, at *2-3 (S.D.N.Y. Apr. 1, 2015); *Klipsch Grp., Inc. v. Big Box Store Ltd.*, No. 1:12-cv-06283 (VSB), 2012 U.S. Dist. LEXIS 153137, at *3-4 (S.D.N.Y. Oct. 24, 2012).

³ See Juozas Kaziukenas, *Chinese Sellers Are Building Brands on Amazon*, MARKETPLACE PULSE (Dec. 6, 2018), <https://www.marketplacepulse.com/articles/chinese-sellers-are-building-brands-on-amazon>.

like aliases, false addresses and other incomplete identification information to conceal their identities and avoid detection. (Sands Dec., ¶10).

Without Plaintiff's authorization or consent, Defendant was and is manufacturing, making, using, importing, exporting, advertising, marketing, promoting, distributing, displaying, offering for sale and/or selling Infringing Products to consumers located in the U.S., including New York, through its Merchant Storefront on Amazon, via Defendant's Website and its User Accounts on various social media platforms. (Sands Dec., ¶¶16-19). Defendant's aforementioned actions have caused and will continue to cause irreparable harm to Plaintiff's goodwill and reputation. (Lotti Dec., ¶¶28-29).

Plaintiff's request for *ex parte* relief is particularly necessary because if Defendant receives notice of this Lawsuit, it is highly likely that it will transfer, conceal and/or destroy 1) the Infringing Products, 2) the means of making or obtaining such Infringing Products, 3) business records, and 4) any and all other evidence relating to their infringing activities. (Sands Dec., ¶¶10, 12). Moreover, it will likely hide or dispose of Defendant's Assets. *Id.* In light of the foregoing and considering that it typically takes noticed Financial Institutions and/or Third Party Service Providers a minimum of five (5) days to locate, attach and freeze Defendant's Assets and/or Defendant's Financial Accounts, Plaintiff respectfully requests that the Court order bifurcated service specifically allowing enough time for the Financial Institutions and/or Third Party Service Providers to comply with the TRO before ordering service on Defendant.

II. STATEMENT OF RELEVANT FACTS

The facts are contained in the factual declaration of Sahara Lotti and the summarizing attorney declaration of Ashly E. Sands, plus accompanying exhibits. *See also*, Complaint, Exs. A-D. In the interest of brevity, any factual discussion is contained in the legal analysis below.⁴

III. ARGUMENT

A. THIS COURT HAS PERSONAL JURISDICTION OVER DEFENDANT

Determining personal jurisdiction over a foreign defendant in a federal question case requires a two-step inquiry. First, courts must look to the law of the forum state to determine whether personal jurisdiction will lie. *Licci v. Lebanese Canadian Bank*, 732 F.3d 161, 168 (2d Cir. 2013) (citing *Best Van Lines, Inc. v. Walker*, 490 F.3d 239, 242 (2d Cir. 2007)). Second, if jurisdiction lies, the court then considers whether the district court's exercise of personal jurisdiction over a foreign defendant comports with due process protections established under the United States Constitution. *See id.*; *see also Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). As alleged herein, Defendant's unlawful infringing activities subject it to long-arm jurisdiction in New York under N.Y. C.P.L.R. § 302(a)(1).⁵ Furthermore, New York's exercise of jurisdiction over Defendant thereunder comports with due process.

1. Defendant is Subject to Personal Jurisdiction Under N.Y. C.P.L.R. § 302(a)(1)

Under § 302(a)(1), there are two requirements that must be met to establish personal jurisdiction: “(1) [t]he defendant must have transacted business within the state; and (2) the claim asserted must arise from that business activity.” *Licci*, 732 F.3d at 168 (quoting *Solé Resort, S.A. de C.V. v. Allure Resorts Mgmt., LLC*, 450 F.3d 100, 103 (2d Cir. 2006)). In applying the test for

⁴ Although Plaintiff acknowledges that it seeks multiple forms of relief, in the interest of brevity and with respect for the Individual Rules and Practices in Civil Cases of each District Judge in the Southern District of New York, Plaintiff respectfully submits this memorandum of law in support of its Application. Plaintiff will promptly provide supplemental briefing and/or oral argument on any issue should the Court request it.

⁵ Plaintiff respectfully submits that Defendants are also subject to jurisdiction under § 302(a)(3). *See Energy Brands Inc. v. Spiritual Brands, Inc.*, 571 F. Supp. 2d 458, 470 (S.D.N.Y. 2008). However, this alternative analysis is omitted for brevity. Plaintiff will provide supplemental briefing and/or oral argument on any issue upon the Court's request.

the “transacts business” prong of § 302(a)(1), “New York decisions ... tend to conflate the long-arm statutory and constitutional analyses by focusing on the constitutional standard,” ergo, “a defendant need not be physically present in New York to transact business there within the meaning of [this first prong],” so long as the defendant has engaged in “purposeful activity,” for example, “some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Chloe v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 169-71 (2d Cir. 2010) (quoting *Best Van Lines, Inc.*, 490 F.3d at 246-247) (internal quotation marks omitted). The second prong of § 302(a)(1) requires an “articulable nexus or substantial relationship between the business transaction and the claim asserted,” however, “a causal relationship between the business transaction and the claim asserted” is not required. *Gucci Am., Inc. v. Weixing Li*, 135 F. Supp. 3d 87, 93 (S.D.N.Y. 2015) (citations omitted) (internal citations omitted) (internal quotation marks omitted). Rather, it is sufficient that “the latter is not completely unmoored from the former.” *Id.*

In determining whether a party has “transacted business,” New York courts must look at the totality of the circumstances concerning the party’s interactions with, and activities within, the state. *Citigroup Inc. v. City Holding Co.*, 97 F. Supp. 2d 549, 565 (S.D.N.Y. 2000). Whether the exercise of personal jurisdiction is permissible in the context of Internet activity is “directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet.” *Id.* Courts in this Circuit have regularly conferred personal jurisdiction on a given defendant based on that defendant’s operation of a fully interactive website through which consumers can access the site from anywhere and purchase products, as is the case with Defendant’s Merchant Storefront on Amazon and Defendant’s Website and/or through Defendant’s various social media User Accounts, and allows for customers all over the world to

communicate with Defendant and view and purchase Infringing Products, as demonstrated by Epstein Drangel’s purchase of Infringing Products from Defendant. *See* Sands Dec., ¶18, Ex B; *see also Chloe*, 616 F.3d at 170.

Recently, in *American Girl, LLC v. Zembrka*, the Second Circuit exercised jurisdiction over a defendant that “purposefully availed itself of the privilege of conducting activities within New York and, thus, transacted business” by “accept[ing] orders with New York shipping addresses, sen[din]g confirmatory emails with New York shipping addresses containing commitments to ship to those New York addresses, and accept[ing] payments from a customer with a New York address.” *Am. Girl, LLC v. Zembrka*, 118 F.4th 271 (2d Cir. 2024). Despite the fact that the defendant cancelled the orders and refunded the customer, the Second Circuit held that the transaction itself was enough to satisfy Section 302(a)(1), ruling that “Section 302(a)(1) doesn’t require a completed sale. It only requires a transaction.” *Id.* This Circuit has exercised jurisdiction over defendants under § 302(a)(1) where such defendants regularly offer for sale and sell goods through online marketplaces, “even though Defendants do not control their [] ‘storefront’ or its interactivity to the same extent that they control their own highly interactive website.” *Lifeguard Licensing Corp. v. Ann Arbor T-Shirt Co., LLC*, No. 15 Civ. 8459 (LGS), 2016 U.S. Dist. LEXIS 89149 *7 (S.D.N.Y. July 8, 2016) (quoting *EnviroCare Techs., LLC v. Simanovsky*, No. 11-CV-3458(JS)(ETB), 2012 U.S. Dist. LEXIS 78088 *8 (E.D.N.Y. June 4, 2012)).⁶ Jurisdiction is proper “for internet sellers who use an internet storefront like Amazon,” when the Internet sellers are “commercial vendors who use it ‘as a means for establishing regular business with a remote forum.’” *Id.* at *8. In *Lifeguard Licensing Corp.*, Judge Schofield held that a “website that does more than provide information about a product and allows customers to purchase goods online, is

⁶ *See also supra* fn. 4.

a ‘highly interactive website,’ which may provide a basis for personal jurisdiction under CPLR § 302(a).” *Id.* at *7. (citing *Chloe v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 170 (2d Cir. 2010) and *Grand v. Schwartz*, No. 15 Civ. 8779, 2016 U.S. Dist. LEXIS 61606 at *3 (S.D.N.Y. May 1, 2016) (holding that interactive commercial websites provides support for jurisdiction pursuant to CPLR § 302(a)(1))). Moreover, “[r]egularly offering and selling goods via an online marketplace such as Amazon.com can provide a basis for personal jurisdiction under CPLR § 302(a), even though Defendants do not control their Amazon.com ‘storefront’ or its interactivity to the same extent that they control their own highly interactive website.” *Id.* at *8. If a defendant

wishes to operate an interactive website accessible in New York, there is no inequity in subjecting [that defendant] to personal jurisdiction here. If [a defendant] does not want its website to subject it to personal jurisdiction here, it is free to set up a passive website that does not enable [that defendant] to transact business in New York.

Thomas Publ’g Co. v. Indus. Quick Search, 237 F. Supp. 2d 489, 492 (S.D.N.Y. 2002).⁷

Further, in *EnviroCare Techs.*, the court held that “if a website is interactive and allows a buyer in New York to submit an order online, courts typically find that the website operator is ‘transacting business’ in New York and is therefore subject to the court’s jurisdiction.” 2012 U.S. Dist. LEXIS 78088 at *9 (citing *Hsin Ten Enter. USA, Inc. v. Clark Enters.*, 138 F. Supp. 2d 449, 456 (S.D.N.Y. 2000) (“Generally, an interactive website supports a finding of personal jurisdiction over the defendant.”)) Similarly, in *Chloe*, *supra*, the Second Circuit found that while the single act of shipping an infringing product might be sufficient to subject him to the jurisdiction of a New York court, it did not need to delve into such an inquiry as the defendant “operated a highly

⁷ This Court has repeatedly found personal jurisdiction over defendants based in China who are operating Merchant Storefronts on online marketplace platforms, such as Alibaba, AliExpress, Wish and eBay. *See, e.g., Allstar Marketing Group, LLC v. activate2011store, et al.*, 19-cv-4204-KPF (S.D.N.Y. May 9, 2019); *Allstar Marketing Group, LLC v. Alice Wonder Household (Shanghai) Co., Ltd.*, 19-cv-4208-KPF (S.D.N.Y. May 9, 2019); *Allstar Marketing Group, LLC v. 545756338, et al.*, 19-cv-4209-KPF (S.D.N.Y. May 9, 2019); *Allstar Marketing Group, LLC v. Learns babyshop, et al.*, 19-cv-4211-KPF (S.D.N.Y. May 9, 2019).

interactive website offering [infringing products] for sale to New York consumers.” *Chloe*, 616 F.3d 158, 170.

In some circumstances, courts in the Second Circuit have found that “[t]he offering for sale of even one copy of an allegedly infringing item, even if no sale results, is sufficient to give personal jurisdiction over the alleged infringer under N.Y. CPLR § 302(a), subd. 1, 2 and 3.” *Cartier v. Seah LLC*, 598 F. Supp. 2d 422, 425 (S.D.N.Y. 2009). In *McGraw-Hill Global Educ. Holdings LLC v. Khan*, 323 F. Supp. 3d 488 (S.D.N.Y. 2018), this Court found personal jurisdiction where the defendant’s website was “interactive” and allowed a buyer to submit an order online. *McGraw-Hill* cited to *Audiovox Corp v. S. China Enter., Inc.*, 2012 U.S. Dist. LEXIS 104656 at *3 (S.D.N.Y. Jul. 26, 2012) for the proposition that “if a website is interactive and allows a buyer in New York to submit an order online, courts typically find that the website operator is ‘transacting business’ in New York and is therefore subject to the court’s jurisdiction.” *See also*, *Hsin Ten Enter.*, 138 F. Supp. 2d 449, 456 (“Generally, an interactive website supports a finding of personal jurisdiction over the defendant.”).

Here, Defendant operates an interactive Merchant Storefront on Amazon and Defendant’s Website as well as User Accounts on various social media platforms, allowing New York consumers to make inquiries to and communicate with Defendant, purchase Infringing Products, by and through Defendant’s Infringing Listings, and upon completion of a sale, ship goods to New York. The fact that Defendant has chosen to open its User Accounts for the purpose of selling Infringing Products through its Merchant Storefront and social media, as well as via Defendant’s Website alone supports a finding that Defendant has intentionally used Amazon, its social media User Accounts and Defendant’s Website “as a means for establishing regular business with a

remote forum.” *EnviroCare Techs., LLC*, 2012 U.S. Dist. LEXIS 78088 at *10 (quoting *Boschetto v. Hansing*, 539 F.3d 1011, 1019 (9th Cir. 2008)).

Epstein Drangel has confirmed via its test purchases made from Defendant’s Merchant Storefront on Amazon and via Defendant’s Website that Defendant does, in fact, ship to New York. Epstein Drangel completed a checkout page for an order of an Infringing Product from Defendant’s Merchant Storefront and Defendant’s Website and provided the New York Address as the shipping address, and Epstein Drangel received the Infringing Product from Defendant at the New York Address. (Sands Dec., ¶ 18, Ex. B).

Nevertheless, whether a defendant physically shipped Infringing Products into New York is not determinative of whether personal jurisdiction exists, as courts in this Circuit examine a given defendant’s online interactions with consumers in considering whether a particular defendant has transacted business in the forum state under § 302(a)(1). *See, Am. Girl, LLC*, 118 F.4th 271 (“Neither *Chloe* nor any of our other cases should be read as indicating that shipment is required to demonstrate a business transaction for § 302(a)(1) purposes.”); *see also, e.g., Rolex Watch, U.S.A., Inc. v. Pharel*, 2011 U.S. Dist. LEXIS 32249, at * 6 (E.D.N.Y. Mar. 11, 2011). Plaintiff and Epstein Drangel have viewed Defendant’s Infringing Products via its online User Accounts and Merchant Storefront. (Lotti Dec., ¶ 24; Sands Dec., ¶¶ 2, 13-14). Epstein Drangel purchased Infringing Products from Defendant’s Merchant Storefront and Defendant’s Website by providing the New York Address as the shipping address.⁸ (Sands Dec., ¶ 18, Ex. B). Thus, Defendant’s sophisticated commercial operations, specifically including its offering for sale and/or

⁸ Under case law of the Second Circuit, when analyzing personal jurisdiction in the Internet context, “traditional statutory and constitutional principles remain the touchstone of the inquiry”, and while a website’s interactivity, “may be useful” for analyzing personal jurisdiction ‘insofar as it helps to decide whether the defendant ‘transacts any business’ in New York,’” ... “it does not amount to a separate framework for analyzing internet-based jurisdiction.” *Best Van Lines, Inc.*, 490 F.3d at 252 (quoting *Best Van Lines, Inc. v. Walker*, No. 03 Civ. 6585 (GEL), 2004 U.S. Dist. LEXIS 7830, at *9 (S.D.N.Y. May 4, 2004) (internal citation omitted)).

selling of Infringing Products through its highly interactive Defendant's Website and Merchant Storefront on Amazon (which are both entirely dedicated to the sale of Infringing Products), Epstein Drangel's purchase of Infringing Products, along with Defendant's own representations on its Merchant Storefront on Amazon that it ships Infringing Products to the U.S., including New York, unequivocally establishes that Defendant conducts business within this District and the claims in this suit arise from Defendant's business dealings and transactions with consumers in New York.⁹ *Id.*

2. Exercising Personal Jurisdiction Over Defendant Comports with Due Process

Asserting personal jurisdiction over Defendant also comports with the Due Process Clause of the U.S. Constitution, as Defendant has "certain minimum contacts ... such that maintenance of th[is] suit does not offend 'traditional notions of fair play and substantial justice.'" *Calder v. Jones*, 465 U.S. 783, 788 (1984) (quoting *Milliken v. Meyer*, 311 U.S. 457 (1940)). Defendant intentionally directed activity towards the New York market, thereby purposefully availing itself of "the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (U.S. 1985); *Best Van Lines, Inc.*, 490 F.3d at 243; *see also* Sands Dec., ¶¶ 17-19, Ex. B.¹⁰ Moreover, "as a practical matter, the Due Process Clause permits the exercise of jurisdiction in a broader range of circumstances of N.Y. C.P.L.R. § 302, and a foreign defendant meeting the standards of § 302 will

⁹ Plaintiff respectfully submits that the Court has jurisdiction pursuant to Fed. R. Civ. P. 4(k)(2), which "provides for jurisdiction over a defendant if a claim arises under federal law, if the defendant is not subject to jurisdiction of the courts of general jurisdiction of any state, and if the exercise of jurisdiction is consistent with the Constitution and laws of the United States." *Lechner v. Marco-Domo Internationales Interieur GmbH*, No. 03 Civ. 5664 (JGK), 2005 U.S. Dist. LEXIS 4022, *8 (S.D.N.Y. Mar. 10, 2005).

¹⁰ In *Am. Girl*, the Second Circuit held that exercising jurisdiction over the defendant comported with due process as the defendant, "ran the risk of being haled into court by offering for sale allegedly counterfeit items for which New York customers could order and pay." *Am. Girl, LLC*, 118 F.4th 271. After balancing the interests at hand, the Court concluded that "New York has an exceptionally strong interest in protecting consumers and businesses in this state from the flow of counterfeit goods from abroad," which "trumps the potential inconvenience of requiring foreigners to litigate in the courts of this State." *Id.*

satisfy the due process standard.” *Energy Brands Inc. v. Spiritual Brands, Inc.*, 571 F. Supp. 2d 458, 469 (S.D.N.Y. 2008). Accordingly, Plaintiff respectfully submits that this Court has personal jurisdiction over Defendant in this action.

B. PLAINTIFF IS ENTITLED TO AN *EX PARTE* TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Here, an *ex parte* order is essential to prevent immediate and irreparable injury to Plaintiff. A temporary restraining order may be granted without written or oral notice to the opposing party or that party's counsel where “it clearly appears from the specific facts shown by affidavit . . . that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or that party’s attorney can be heard in opposition.” Fed. R. Civ. P. 65(b). Courts, including this Court, have granted injunctive relief for patent infringement in similar cases. *See, e.g., 3 Bees & Me Inc. v. Besportble*, 20-cv-5150 (LJL), 2020 U.S. Dist. LEXIS 137940 (S.D.N.Y. July 30, 2020); *Airigan Solutions, LLC v. Yiwu Lanhme Jewelry Co.*, 18-cv-6132-GHW, 2018 U.S. Dist. LEXIS 237933 (S.D.N.Y. Aug. 7, 2018); *Chrome Cherry, Ltd. v. P’ships & Unincorporated Ass’ns Identified on Schedule “A”*, 21-cv-05491, 2021 U.S. Dist. LEXIS 252339 (N.D. Ill. Oct. 20, 2021).

An *ex parte* temporary restraining order is particularly warranted in cases, such as the instant one, involving an offshore infringer who is engaging in unlawful and harmful activities over the Internet to avoid revealing its actual location and identity. (Sands Dec., ¶¶ 11-14, 23). Defendant, who, upon information and belief, is located in either China or Hong Kong and operates its business exclusively over the Internet, knowingly and willfully offers for sale and/or sells Infringing Products through its Merchant Storefront on Amazon, its social media User Accounts and via Defendant’s Website. (Lotti Dec., ¶¶ 24-26; Sands Dec., ¶¶ 2-3, 13-14, 18, Ex. A & B). The covert nature of Defendant and its infringing activities make any order other than an *ex parte*

temporary restraining order an exercise in futility. The immediate and irreparable harm to Plaintiff's business and reputation, as well as to the goodwill associated with the Lashify Patent, in denying its Application for an *ex parte* temporary restraining order greatly outweighs the harm to Defendant's interests in continuing to offer for sale and sell Infringing Products. (Lotti Dec., ¶ 28-29).

"To obtain a preliminary injunction, a plaintiff must establish: '(1) the likelihood of irreparable injury in the absence of such an injunction, and (2) either (a) likelihood of success on the merits or (b) sufficiently serious questions going to the merits to make them a fair ground for litigation plus a balance of hardships tipping decidedly' in its favor." *Louis Vuitton Malletier v. Burlington Coat Factory Warehouse Corp.*, 426 F.3d 532, 537 (2d Cir. 2005) (quoting *Federal Express Corp. v. Federal Espresso, Inc.*, 201 F.3d 168, 173 (2d Cir. 2000)). The "standards which govern consideration of an application for a temporary restraining order... are the same standards as those which govern a preliminary injunction." *Local 1814, Int'l Longshoremen's Ass'n v. N.Y. Shipping Ass'n, Inc.*, 965 F.2d 1224, 1228 (2d Cir. 1992). Plaintiff meets the standard for a preliminary injunction and the Court should enter a temporary restraining order.

1. Plaintiff is Likely to Prevail on Its Patent Act Claims

Likelihood of success on the merits of patent infringement claims requires a showing that the patent is being infringed and that it would survive any challenge to validity. *See Titan Tire Corp. v. Case New Holland, Inc.*, 566 F.3d 1372, 1376 (Fed. Cir. 2009). The United States Patent Act provides that "whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent." 35 U.S.C. § 271(a). Here, Lashify is the lawful owner of all right, title and interest in and to the Lashify Patent through assignment from the inventor, Sahara Lotti. (Lotti Dec., ¶ 12). "Each issued patent carries with it a presumption of

validity under 35 U.S.C. § 282.” *Tinnus Enters., LLC v. Telebrands Corp.*, 846 F.3d 1190, 1205 (Fed. Cir. 2017). Plaintiff has submitted extensive evidence, as attached to Exhibits A and C to the Sands Dec. that Defendant is making, using, offering for sale, importing and/or selling Infringing Products that infringe one or more claims of the Lashify Patent. Finally, Lashify has not licensed nor authorized Defendant to use the Lashify Patent nor is Defendant an authorized retailer or distributor of the Lashify System. (Lotti Decl., ¶ 27). Moreover, the presumption of validity attached to all issued patents controls and establishes a likelihood that the Lashify Patent will survive an invalidity challenge.¹¹

In sum, the detailed claim chart showing Defendant’s infringement of every element of the Lashify Patent, along with the presumption of validity of the Lashify Patent and the fact that the Lashify Patent was challenged in a previous proceeding and found to be valid, meets the required showing that Lashify has a high likelihood of succeeding on the merits of its patent infringement claim.

3. Plaintiff Will Suffer Irreparable Harm in the Absence of Injunctive Relief

While irreparable harm is not presumed in the context of patent infringement, Defendant’s infringing activities must be stopped immediately to prevent any further harm to Plaintiff. Not only does Plaintiff stand to suffer lost profits as a result of Defendant’s competing, substandard, Infringing Products that have eroded its market share, Defendant’s illicit activities destroy the inherent value of the Lashify System, impair Plaintiff’s reputation and goodwill associated therewith, and negatively affect Plaintiff’s relationships with its current customers as well as its ability to attract new customers. (Lotti Dec., ¶¶ 28-29).

¹¹ In addition, Lashify brought an action for patent infringement against Qingdao Lashbeauty Cosmetic Co., Ltd, d/b/a Worldbeauty (“Worldbeauty”), 6:22-cv-776 in the U.S. District Court for the Western District of Texas, and on August 23, 2024, a federal jury found that over 600 Worldbeauty products infringed the Lashify Patent. (Lotti Decl. at ¶ 22). The validity of the Lashify Patent was also challenged, and the Lashify Patent was also found to be valid.

“[T]o satisfy the irreparable harm factor in a patent infringement suit, a patentee must establish both of the following requirements: 1) that absent an injunction, it will suffer irreparable harm, and 2) that a sufficiently strong causal nexus relates the alleged harm to the alleged infringement.” *Apple Inc. v. Samsung Elecs. Co.*, 695 F.3d 1370, 1374 (Fed. Cir. 2012). In determining whether a plaintiff has been irreparably harmed, courts consider “loss of market share, brand name recognition, reputation as an innovator, and goodwill”. *Inventio AG v. Otis Elevator Co.*, 06-cv-5377 (CM), 2011 U.S. Dist. LEXIS 87215, at *2 (S.D.N.Y. Aug. 4, 2011); *see also Presidio Components, Inc. v. Am. Technical Ceramics Corp.*, 702 F.3d 1351, 1363 (Fed. Cir. 2012) (“Direct competition in the same market is certainly one factor suggesting strongly the potential for irreparable harm without enforcement of the right to exclude.”)

Here, as outlined in the claim chart, Defendant’s Infringing Products clearly and unambiguously infringe each and every element of at least one claim of the Lashify Patent and Defendant has been profiting from the sale of Infringing Products. (Sands Dec., ¶ 19, Ex. C). Further, the Infringing Products sold by Defendant and the Lashify System are interchangeable in that they are both DIY lash extensions that are made and used for under lash application. *Id.* As a result, irreparable harm to Lashify in the nature of price erosion, loss of customer goodwill (*e.g.*, due to quality and pricing), and loss of business opportunities results in permanent, irreparable harm. *Id.* *See Celsis in Vitro, Inc. v. CellzDirect, Inc.*, 664 F.3d 922, 930 (Fed. Cir. 2012). “Price erosion, loss of goodwill, damage to reputation, and loss of business opportunities are all valid grounds for finding irreparable harm.” citing *Abbott Labs. v. Sandoz, Inc.*, 544 F.3d 1341, 1362 (Fed.Cir.2008); *Sanofi–Synthelabo v. Apotex, Inc.*, 470 F.3d 1368, 1382–83 (Fed.Cir.2006).

Defendant has sold substandard Infringing Products that compete head-to-head for sales on Amazon with Lashify, and the Infringing Products are sold at a substantial price difference,

undercutting the Lashify system on price. (Lotti Dec., ¶ 28). Absent injunctive relief, Plaintiff will unquestionably suffer irreparable harm as Defendant's intentional and willful misconduct has resulted in lost profits to Lashify and has damaged the inherent value of the Lashify Patent, impaired Lashify's standing as an innovator and the brand's reputation for providing trendsetting, quality products as well as the goodwill associated therewith, thereby negatively affecting Lashify's relationships with current and potential customers (including both retail customers and end consumers) and eroding Lashify's market share by copying the Lashify System and making, using, offering for sale, selling or importing goods that infringe the Lashify Patent. (Lotti Dec., ¶ 29). Moreover, Defendant's infringing activities also damage brand confidence, which can result in a loss of future sales and market share to Lashify and take away Lashify's ability to control the nature and quality of the Infringing Products thus weakening Lashify's brand recognition and reputation. *Id.* ¶ 28. In addition, the inferior quality of the Infringing Products has and will result in increased skepticism in consumers presented with genuine Lashify Products undermining Lashify's reputation and goodwill. *Id.* Finally, Lashify Products are sold on various e-commerce websites thus Defendant's Infringing Products, also offered on, at minimum, Amazon, directly compete with the genuine Lashify Products. *Id.* ¶ 27. Thus, this factor weighs heavily in Plaintiff's favor.

4. The Balance of Hardships Favors Plaintiff

The balance of hardships unquestionably and overwhelmingly favors Plaintiff. Here, as described above, Plaintiff has suffered, and will continue to suffer, irreparable harm to its business, the value, goodwill and reputation built up in and associated with its Lashify System, and to its reputation as a result of Defendant's willful and knowing sales of substandard Infringing Products. The balance of hardships unquestionably and overwhelmingly favors Plaintiff. Here, as described above, Plaintiff has suffered, and will continue to suffer, irreparable harm to its business, the value,

goodwill and reputation built up in and associated with its Lashify System, and to its reputation as a result of Defendant's willful and knowing sales of substandard Infringing Products. (Lotti Dec., ¶¶ 28-29).

Any harm to Defendant would only be the loss of Defendant's ability to continue to offer its Infringing Products for sale, or, in other words, the loss of the benefit of being allowed to continue to unfairly profit from its illegal and infringing activities. "Indeed, to the extent defendants 'elect[] to build a business on products found to infringe[,] [they] cannot be heard to complain if an injunction against continuing infringement destroys the business so elected.'" *Broad. Music, Inc. v. Prana Hosp., Inc.*, 158 F. Supp. 3d 184, 196 (S.D.N.Y. 2016) (internal citation omitted). A patent's exclusionary right—designed to protect against these harms—is a "fundamental tenet of patent law." *Edwards Lifesciences AG v. CoreValve, Inc.*, 699 F.3d 1305, 1314 (Fed. Cir. 2012).

5. Enjoining Defendant from Infringing the Lashify Patent Will Serve the Public Interest

An injunction in these circumstances is in the public interest because it incentivizes inventors and innovators to continue developing new products and patenting inventions without the fear of an inability to enforce those patents or stop infringers. Public policy favors protection of rights secured by valid patents. *See Apple Inc. v. Samsung Elecs. Co.*, 809 F.3d 633, 647 (Fed. Cir. 2015) ("[T]he public interest nearly always weighs in favor of protecting property rights in the absence of countervailing factors, especially when the patentee practices his inventions."). Here, the public has an interest in being able to rely on the high quality of the Lashify System and to protect and incentivize companies like Lashify to continue innovating. Since Defendant has willfully and knowingly inserted substandard Infringing Products into the marketplace, the public would benefit from a temporary restraining order and preliminary injunction halting any further

sale and distribution of Infringing Products.

C. PLAINTIFF IS ENTITLED TO AN ORDER 1) PREVENTING THE FRAUDULENT TRANSFER OF ASSETS AND 2) FREEZING DEFENDANT'S WEBSITE, DEFENDANT'S USER ACCOUNTS AND MERCHANT STOREFRONT

1. Defendant's Assets Must be Frozen

Considering the nature of Defendant's infringing business, and Plaintiff's showing that it has a high likelihood of succeeding on the merits of its claims, Plaintiff's request for an asset freeze order granting Plaintiff information regarding the location of Defendant's Assets, the attachment of Defendant's Assets and an injunction preventing the transfer from or to Defendant's Financial Accounts by the Financial Institutions and Third-Party Service Providers is both necessary and appropriate and is within this Court's discretion to preserve Plaintiff's right to the relief sought in the Complaint. *See Animale Grp. Inc. v. Sunny's Perfume Inc.*, 256 F. App'x 707, 709 (5th Cir. 2007); *Levi Strauss & Co. v. Sunrise Int'l Trading Inc.*, 51 F.3d 982, 987 (11th Cir. 1995); *Reebok Int'l Ltd. v. Marnatech Enters., Inc.*, 970 F.2d 552, 559 (9th Cir. 1992).

Under 35 U.S.C.S. § 284, courts shall award a claimant damages that are adequate to compensate for patent infringement. 35 U.S.C.S. § 284. Under the statute, "damages adequate to compensate" means "full compensation for 'any damages' [the patent owner] suffered as a result of the infringement." *Gen. Motors Corp. v. Devex Corp.*, 461 U.S. 648, 654-55 (1983). The statutory measure of damages is the difference between the patent owner's pecuniary condition after the infringement, and what its condition would have been if the infringement had not occurred. *Mentor Graphics v. EVE-USA*, 851 F.3d 1275, 1284 (Fed. Cir. 2017). This Court, and others, have also found it necessary and appropriate to restrain defendants' assets in the context of design patent infringement cases in similar cases. *See, e.g., Airigan Solutions, LLC v. Yiwu Lanhome Jewelry Co.*, 18-cv-6132 (GHW), 2018 U.S. Dist. LEXIS 237993 (S.D.N.Y. Aug. 7,

2018); *Chrome Cherry, Ltd.*, 2021 U.S. Dist. LEXIS 252339; *Wearable Shoe Tree, LLC v. Individuals*, 1:23-cv-24461-PCH-EGT, 2023 U.S. Dist. LEXIS 234582 (S.D. Fl. Dec. 4, 2023).

An asset freeze in the instant matter is unquestionably warranted because Defendant, who is a foreign individual and/or entity based in China or Hong Kong, is manufacturing, importing, exporting, advertising, marketing, promoting, distributing, displaying, making, using, offering for sale and/or selling Infringing Products to U.S. consumers solely via the Internet, and accepting payment for such Infringing Products in U.S. Dollars through Financial Institutions, thereby causing irreparable harm to Plaintiff in the form of lost sales, loss of goodwill and loss of control of its reputation with retailers and consumers, and can, and most certainly have the incentive to, transfer and hide its ill-gotten funds if its assets are not frozen. *See* Lotti Dec., ¶¶ 28-29; *see also Dama S.P.A. v. Doe*, No. 15-cv-4528 (VM), 2015 U.S. Dist. LEXIS 178076, at *4-6 (S.D.N.Y. June 12, 2015).¹² Therefore, Plaintiff respectfully submits that this Court should exercise its inherent equitable power and freeze Defendant's Assets and Defendant's Financial Accounts for the purpose of preserving Defendant's funds and ensuring that a meaningful accounting of their profits can be made.¹³

2. Defendant's Website, User Accounts and Merchant Storefront Must be Frozen

A temporary restraining order which, in part, restrains the Third Party Service Providers from providing services to Defendant's Website, User Accounts and Merchant Storefront is warranted and necessary because the continued offering for sale and/or sale of the Infringing Products by Defendant on Defendant's Website, Merchant Storefront and via Defendant's User Accounts on various social media platforms. *Airigan Solutions, LLC*, 2018 U.S. Dist. LEXIS

¹² *See also supra* fn. 2.

¹³ Upon the entering of an asset freeze, Plaintiff also requests that the Court Order Defendant and/or the Financial Institutions and/or the Third-Party Service Providers to immediately identify Defendant's Assets and Defendant's Financial Accounts and the respective current account or fund balances of the same.

237993; *Chrome Cherry, Ltd.*, 2021 U.S. Dist. LEXIS 252339; *Belstaff Group SA v. Doe*, 15-CV-2242 (PKC)(MHD), 2015 WL 1085250, at *2-3 (S.D.N.Y. June 18, 2015) (in a counterfeiting case, this Court restrained, *inter alia*, the defendants' websites, Internet advertising and social media accounts); *Lindsey Adelman Studio, LLC v. Zora Lighting Co.*, 19-cv-4715 (NRB), 2019 U.S. Dist. LEXIS 225454 (S.D.N.Y. June 18, 2019) (preliminary injunction order restraining, *inter alia*, the defendants' websites, advertising via social media platforms and directing removal of any content posted by the defendants which would violate the preliminary injunction order).

D. PLAINTIFF IS ENTITLED TO AN ORDER AUTHORIZING BIFURCATED AND ALTERNATIVE SERVICE OF PROCESS BY ELECTRONIC MEANS

Plaintiff respectfully requests that this Court issue an order granting it permission to serve Defendant via the following combination of electronic methods: 1) registered electronic mail, 2) Federal Express ("FedEx") and 3) website publication. For service by registered electronic mail, Plaintiff proposes using Outlook.com as well as Rmail (www.rmail.com), an online service that confirms valid proof of authorship, content, and delivery of an email, as well as the official time and date that the email was sent and received. (Sands Dec., ¶ 27). Along with service via email, Plaintiff respectfully requests that the Court, in its discretion, permit service via website publication.¹⁴

Plaintiff submits that its requested methods of alternative service are warranted herein based, not only in statutory authority, but also the practical facts and circumstances surrounding this case. Foreign infringers, like Defendant, have been known to use aliases, false addresses and other incomplete identification information to shield their true identities, and in fact, Defendant displays an address located in Hong Kong on Defendant's Website and an address located in China

¹⁴ Publication on a website has been deemed appropriate service under Fed. R. Civ. P (4)(3) "so long as the proposed publication is 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *National Association for Stock Car Auto Racing, Inc. v. Does*, 584 F. Supp. 2d 824, 826 (W.D.N.C. 2008) (quoting *Mullane*, 339 U.S. at 315-16).

on Defendant's Merchant Storefront. It is, however, imperative for Defendant to have a current and operational e-mail address to operate its User Accounts, Merchant Storefront, Defendant's Website and conduct its business. (Sands Dec., ¶ 26).

1. Service via FedEx is Permissible

Plaintiff acknowledges that both the U.S. and Hong Kong are signatories to the Hague Convention. "[I]n cases governed by the Hague Service Convention, service by mail is permissible if two conditions are met: first, the receiving state has not objected to service by mail; and second, service by mail is authorized under otherwise applicable law." *Water Splash, Inc. v. Menon*, 137 S. Ct. 1504, 1513 (2017). Both conditions are met here. First, Article 10 of the Hague Convention allows for service of process through alternative means such as postal channels. *See* Hague Convention on Service Abroad of Judicial and Extrajudicial Documents art. 10 ("Provided the State of destination does not object, the present Convention shall not interfere with – (a) the freedom to send judicial documents, by postal channels, directly to persons abroad..."). Hong Kong does not oppose Article 10(A)¹⁵, thus, it does not object to service of judicial documents by postal channels. *In re Coudert Bros. LLP*, 2017 U.S. Dist. LEXIS 71435, at *12 (S.D.N.Y. May 10, 2017) ("Hong Kong has not objected to Article 10(a), nor do the service rules in Hong Kong prohibit service via mail...Accordingly, Rule 4(f)(2)(C)(ii) could serve as the basis for service via mail in this circumstance.").

This Court has held that service of a summons and complaint to a defendants' business address in Hong Kong via FedEx with a "direct signature required" comports with Fed. R. Civ. P. 4(h)(2) and Fed. R. Civ. P. 4(f)(2)(C)(ii) (an individual may be served in a foreign country "if there is no internationally agreed means, or if an international agreement allows but does not specify

¹⁵ *See*, <https://www.hcch.net/en/states/authorities/details3/?aid=393> (last visited Sept. 24, 2024).

other means,” by “using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt”). *See, Ckr Law Llp v. Anderson Invs. Int’l*, 525 F. Supp. 3d 518 (S.D.N.Y. 2021) (authorizing service via FedEx on a Hong Kong petitioner at its registered office); *Evriholder Prods. LLC v. Simply LBS Co.*, No. 17-CV-4329, 2020 U.S. Dist. LEXIS 71936, at *3 (S.D.N.Y. Apr. 21, 2020) (finding service proper where Clerk of Court sent summons and complaint to defendant’s business in Hong Kong via FedEx); *see also Polargrid LLC v. Videsh Sanchar Nigam Ltd.*, 2006 U.S. Dist. LEXIS 17531, at *2 (S.D.N.Y. Apr. 7, 2006) (service via FedEx complies with Fed. R. Civ. P. 4(f)(2)(C)(ii)’s “mail” requirement).

2. Service by FedEx Comports with Due Process

Service on Defendant by FedEx also comports with due process, as it is “reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 309 (1950). Here, Defendant displays the Hong Kong address on the terms and conditions page of Defendant’s Website. (Sands Dec., ¶ 22). Accordingly, Plaintiff respectfully submits that service by email by FedEx is the most effective means to ensure Defendants are reasonably apprised of this action. Plaintiff also proposes serving Defendant via an email address to be provided by Amazon in order to provide immediate notice of this action and Plaintiff’s Application to Defendant.

E. PLAINTIFF IS ENTITLED TO AN ORDER AUTHORIZING EXPEDITED DISCOVERY

Additionally, Plaintiff respectfully requests that the Court order expedited discovery from Defendant, Financial Institutions and Third Party Service Providers regarding the scope and extent of Defendant’s infringing activities, as well as Defendant’s account details and other information relating to Defendant’s Financial Accounts, Assets and/or any and all User Accounts and/or Financial Accounts with the Third Party Service Providers, including, without limitation any and

all websites, any and all User Accounts and any and all Merchant Storefronts, including, without limitation, those owned and operated, directly or indirectly, by the Third Party Service Providers and the Financial Institutions.

Generally, a party may not seek discovery prior to a Rule 26(f) conference unless authorized by a court order. Fed. R. Civ. P. 26(d)(1). In the past, Courts in this District have often applied a four-factor test to determine when expedited discovery may be granted,¹⁶ but now apply a more flexible “good cause” test to examine “the discovery request . . . on the entirety of the record to date and the *reasonableness* of the request in light of all the surrounding circumstances.” *Ayyash v. Bank Al-Madina*, 233 F.R.D. 325, 326 (S.D.N.Y. 2005) (internal citation omitted). Regardless of which test, Plaintiff has established that it is entitled to the expedited discovery requested for good cause shown. *See id.* at 327.

F. PLAINTIFF’S REQUEST FOR A SECURITY BOND IN THE AMOUNT OF \$5,000 IS ADEQUATE

In determining the amount of the bond that a moving party must post, this Court is “vested with wide discretion.” *Doctor’s Assocs., Inc. v. Stuart*, 85 F.3d 975, 985 (2d Cir. 1996). Plaintiff respectfully submits the provision of security in the amount of \$5,000 is sufficient. *Rovio Entertainment Ltd. and Rovio Animation OY v. Best Baby and Kid Store, et al.*, No. 17-cv-4884-KPF (S.D.N.Y. June 28, 2017).¹⁷

IV. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that its Application be granted *ex parte* in its entirety.

¹⁶ *See Advanced Portfolio Techs., Inc. v. Advanced Portfolio Techs., Ltd.*, No. 94 Civ. 5620 (JFK), 1994 U.S. Dist. LEXIS 18457, at *7 (S.D.N.Y. Dec. 28, 1994).

¹⁷ Moreover, this Court has gone as far as to hold that no security bond is necessary in similar circumstances. *See Mattel, Inc. v. 86755, et al.*, No. 18-cv-8825-RJS-JSR (S.D.N.Y. Oct. 4, 2018) (The Hon. Richard J. Sullivan held that no security bond was necessary because “it strikes me almost as fairly arbitrary.”)

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Respectfully submitted,

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