

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

MICHAEL KORS, L.L.C.,)	
)	
Plaintiff,)	Case No. 14-cv-9903
)	
v.)	Judge Milton I. Shadur
)	
FENGYI ZHANG, et al.,)	Magistrate Judge Daniel G. Martin
)	
Defendants.)	
)	

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF, MICHAEL
KORS, LLC’S MOTION FOR ENTRY OF A PRELIMINARY INJUNCTION**

Plaintiff submits this Memorandum of Law in support of its Motion for Entry of a Preliminary Injunction.

MEMORANDUM OF LAW

I. INTRODUCTION

Plaintiff Michael Kors, L.L.C. (“Michael Kors”) brings the present action against Fengyi Zhang and the Partnerships and Unincorporated Associations identified on Amended Schedule A¹ (collectively, the “Defendants”) for federal trademark infringement and counterfeiting (Count I), false designation of origin (Count II), cybersquatting (Count III) and violation of the Illinois Uniform Deceptive Trade Practices Act (Count IV). As alleged in Michael Kors’ Amended Complaint, the Defendants are promoting, advertising, distributing, offering for sale, and selling products bearing counterfeits of Michael Kors’ MICHAEL KORS Trademarks (the “Counterfeit Michael Kors Products”) through various fully interactive commercial Internet websites operating under at least the Defendant Domain Names and Online Marketplace Accounts listed in Amended Schedule A (collectively, the “Defendant Internet Stores”). The facts in this case are substantially identical to *Lululemon Athletica Canada Inc., v. Gao Ming, et al.*, No. 1:14-cv-5478 (Hon. Shadur) (N.D. Ill. Aug. 7, 2014) (unpublished) (Docket No. 32) in which this Court entered a similar preliminary injunction and ultimately awarded \$2 million per defendant in statutory damages² (unpublished) (Docket No. 42).

II. STATEMENT OF FACTS

¹ Amended Schedule A reflects the voluntary dismissal of the Defendant Online Marketplace Accounts ceyhun.yildiz007 (line 40 of the Defendant Online Marketplace Accounts section of Schedule A), collectionsns (line 41 of the Defendant Online Marketplace Accounts section of Schedule A), and wise.shopping (line 44 of the Defendant Online Marketplace Accounts section of Schedule A) and the Defendant Domain Name principalcolour.co.uk (line 62 of the Defendant Domain Names section of Schedule A, associated with line 60 of the Defendant Domain Name Registrants section of Schedule A) on December 29, 2014 (Docket Entry 36) and the voluntary dismissal of the Defendant Domain Name selfridges-xmas.co.uk (line 8 of the Defendant Online Marketplace Accounts section of Schedule A to the Complaint, associated with line 15 of the Defendant Domain Name Registrants section of Schedule A) on December 29, 2014 (Docket Entry 37).

² Michael Kors has not yet determined the amount of damages that it will seek. Further, it will provide proper support for its damages request in its motion for default judgment in the event that Defendants default.

On December 12, 2014, this Court granted Michael Kors' Motion for a Temporary Restraining Order ("the TRO"), finding that Michael Kors had a strong likelihood of success on the merits, that Michael Kors was suffering irreparable harm, and that there was no adequate remedy at law. *See* Docket Entries 35 and 27. The TRO was subsequently extended on December 24, 2014. *See* Docket Entry 27. The TRO authorized Michael Kors to provide notice of these proceedings and the preliminary injunction hearing to Defendants by electronically publishing a link to the Amended Complaint, the TRO and other relevant documents on a website to which the Defendant Domain Names which are transferred to Michael Kors' control redirect (see website residing at <http://gbcinternetenforcement.net/14-9903>, hereinafter, the "Notice Website"), or by sending an e-mail to the e-mail addresses identified in Exhibits 7 and 8 to the Declaration of Erica J. Weiner that includes a link to the Notice Website. TRO at ¶ 10.

Pursuant to paragraph 8 of the TRO, PayPal restrained dozens of PayPal accounts associated with the Defendant Internet Stores on December 23, 2014. *See* Declaration of Justin R. Gaudio (hereinafter, "Gaudio Declaration") at ¶ 2. In addition, on December 15, 2014, Michael Kors served the TRO on the domain name registries listed in paragraph 3 of the TRO requesting transfer of the Defendant Domain Names to a registrar of Michael Kors' selection and re-direction to the Notice Website. *Id.* The Notice Website includes, among other documents, copies of the filed Amended Complaint, the TRO, and the TRO Extension. *Id.* The domain name registries are working diligently to comply with this request. *Id.*

Michael Kors provided notice of this case and the TRO to all Defendants via e-mail on December 29, 2014. *Id.* at ¶ 3. This e-mail included a link to the Notice Website where Defendants can easily access the relevant court documents for this case. *Id.*

Michael Kors respectfully requests that this Court convert the TRO to a preliminary injunction against Defendants, so that they remain enjoined from the manufacture, importation, distribution, offering for sale, and sale of Counterfeit Michael Kors Products during the pendency of this litigation. As part of the Preliminary Injunction, Michael Kors requests that the Defendant Domain Names remain in Michael Kors' control and that Defendants' PayPal accounts remain frozen until completion of these proceedings.

III. ARGUMENT

a) A Preliminary Injunction Extending Relief Already Granted in the TRO Is Appropriate

Michael Kors respectfully requests that this Court convert the TRO to a preliminary injunction to prevent further unlawful conduct by Defendants. Courts addressing similar allegations of Internet-based counterfeiting, including this Court, have also issued preliminary injunctions following a temporary restraining order. *See, e.g., Deckers Outdoor Corporation v. Chen Chen, et al.*, No. 1:13-cv-519 (Hon. Shadur) (N.D. Ill. Mar. 13, 2013) (unpublished) (Docket No. 38); *Lululemon Athletica Canada Inc. v. Gao Ming, et al.*, No. 1:14-cv-5478 (Hon. Shadur) (N.D. Ill. Aug. 7, 2014) (unpublished) (Docket No. 32).

i) This Court Has Already Found that the Requirements for a Preliminary Injunction Have Been Satisfied by Entry of the TRO

District Courts within this Circuit hold that the standard for granting a TRO and the standard for granting a preliminary injunction are identical. *See, e.g. Charter Nat'l Bank & Trust v. Charter One Fin., Inc.*, No. 1:01-cv-00905, 2001 WL 527404, *1 (N.D. Ill. May 15, 2001) (citations omitted); *see also Ty, Inc. v. The Jones Group, Inc.*, 237 F.3d 891, 895 (7th Cir. 2001). Since this Court has already entered the TRO, the identical requirements for granting a preliminary injunction have been satisfied.

A party seeking to obtain a preliminary injunction must demonstrate: (1) that its case has some likelihood of success on the merits; (2) that no adequate remedy at law exists; and (3) that it will suffer irreparable harm if the injunction is not granted. *See Ty, Inc.*, 237 F.3d at 895. If the Court is satisfied that these three conditions have been met, then it must consider the harm that the nonmoving party will suffer if preliminary relief is granted, balancing such harm against the irreparable harm the moving party will suffer if relief is denied. *Id.* Finally, the Court must consider the potential effect on the public interest (non-parties) in denying or granting the injunction. *Id.* The Court then weighs all of these factors, “sitting as would a chancellor in equity,” when it decides whether to grant the injunction. *Id.* (quoting *Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 11 (7th Cir. 1992)). This process involves engaging in what the Seventh Circuit Court has deemed “the sliding scale approach” – the more likely the plaintiff will succeed on the merits, the less the balance of harms need favor the plaintiff’s position. *Id.* The sliding scale approach is not mathematical in nature, rather “it is more properly characterized as subjective and intuitive, one which permits district courts to weigh the competing considerations and mold appropriate relief.” *Id.* at 895-896. The greater the movant’s likelihood of succeeding on the merits, the less the balancing of harms need be in his favor. *See Eli Lilly & Co. v. Natural Answers, Inc.*, 233 F.3d 456, 461 (7th Cir. 2000).

(1) Likelihood of Success on the Merits

(a) Trademark Claims

Under the Lanham Act, a defendant is liable for federal trademark infringement and counterfeiting if the defendant “without the consent of the registrant ... use[s] in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services or in connection with

which such use is likely to cause confusion, or to cause mistake, or to deceive.” 15 U.S.C. § 1114(a). Section 43(a) of the Lanham Act further imposes liability upon a defendant who “on or in connection with any goods or services ... uses in commerce any ... false designation of origin, false or misleading description of fact, or false or misleading misrepresentation of fact, which is likely to cause confusion or to cause mistake, or to deceive as to the ... origin, sponsorship, or approval of his or her goods ... by another person.” 15 U.S.C. § 1125(a)(1). Under the UDTPA, a defendant is liable for, among other things: (1) passing off goods as those of another; (2) causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods; or (3) causing likelihood of confusion or misunderstanding as to affiliation, connection, or association with another. 815 ILCS § 510/2(a).

Michael Kors’ Lanham Act and UDTPA claims involve the same elements. *Morningware, Inc. v. Hearthware Home Prods., Inc.*, 673 F. Supp. 2d 630, 639 (N.D. Ill. 2009) (“Where a plaintiff’s factual allegations under the Illinois Uniform Deceptive Trade Practices Act also form the basis for plaintiff’s claims under the Lanham Act, the legal inquiry is the same under both statutes. Claims for unfair competition and deceptive business practices brought under Illinois statutes are to be resolved according to the principles set forth under the Lanham Act.”). Moreover, “the ultimate test is whether the public is likely to be deceived or confused by the similarity of the marks Whether we call the violation infringement, unfair competition or false designation of origin, the test is identical – is there a likelihood of confusion?” *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 780 (1992) (internal citations omitted).

To prove a *prima facie* case of trademark infringement, Michael Kors must show that: (1) the MICHAEL KORS Trademarks are distinctive enough to be worthy of protection; (2) Defendants are not authorized to use the MICHAEL KORS Trademarks; and (3) Defendants’ use

of the MICHAEL KORS Trademarks causes a likelihood of confusion as to the origin or sponsorship of Defendants' products. *See Neopost Industrie B.V. v. PFE Int'l Inc.*, 403 F. Supp. 2d 669, 684 (N.D. Ill. 2005) (citation omitted).

Regarding the first two elements, the MICHAEL KORS Trademarks are inherently distinctive and are registered with the United States Patent and Trademark Office on the Principal Register. The registrations for the MICHAEL KORS Trademarks constitute *prima facie* evidence of their validity and of Michael Kors' exclusive right to use the MICHAEL KORS Trademarks pursuant to 15 U.S.C. § 1057(b). The MICHAEL KORS Trademarks have been used exclusively and continuously by Michael Kors, some since at least as early as 1981, and have never been abandoned. *See* Docket Entry 12 at ¶ 13. Michael Kors has not licensed or authorized Defendants to use any of the MICHAEL KORS Trademarks, and none of the Defendants are authorized retailers of genuine Michael Kors Products. *Id.* at ¶ 21.

In determining whether a plaintiff satisfies the third element of a Lanham Act claim, that the challenged mark is likely to cause confusion among consumers, the Seventh Circuit has identified seven relevant factors: (1) similarity between the marks in appearance and suggestion; (2) similarity of the products; (3) area and manner of concurrent use; (4) degree of care likely to be exercised by consumers; (5) strength of complainant's mark; (6) actual confusion; and, (7) intent of the defendants to palm off their products as that of another. *Eli Lilly*, 233 F.3d at 461-462 (citation omitted). These factors are not a mechanical checklist, and "[t]he proper weight given to each of [the] factors will vary from case to case." *Dorr-Oliver, Inc. v. Fluid-Quip, Inc.*, 94 F.3d 376, 381 (7th Cir. 1996). At the same time, although no one factor is decisive, the similarity of the marks, the intent of the defendant, and evidence of actual confusion are the most

important considerations. *G. Heileman Brewing Co., Inc. v. Anheuser-Busch, Inc.*, 873 F.2d 985, 999 (7th Cir. 1989).

Michael Kors does not need to prove likelihood of confusion with evidence of actual confusion; instead, it merely needs to show *some* evidence of potential confusion. *See Libman Co. v. Vining Indus., Inc.*, 69 F.3d 1360, 1363 (7th Cir. 1995); *see also Sands, Taylor & Wood Co. v. Quaker Oats Co.*, 978 F.2d 947, 960 (7th Cir. 1992) (the Seventh Circuit has consistently found that “plaintiff need not show actual confusion in order to establish likelihood of confusion.”). In this case, actual confusion can be inferred because Defendants are selling counterfeit versions of Michael Kors Products that use the same MICHAEL KORS Trademarks. Because the goods look nearly identical, consumers will be confused and think that Defendants’ products are genuine MICHAEL KORS Products or are sponsored or endorsed by Michael Kors.

Michael Kors plainly satisfies the likelihood of confusion test. Defendants are intentionally using the MICHAEL KORS Trademarks to confuse and deceive the consuming public into thinking that Defendants’ Counterfeit Michael Kors Products are manufactured by or emanate from Michael Kors. Defendants use the MICHAEL KORS Trademarks in many of the Defendant Domain Names³, such as shop-michaelkorsonline.com, michaelkorssaleus.com, officialmichaelkorstore.us, all of which advertise, sell and offer to sell counterfeit MICHAEL KORS products. Michael Kors has also submitted extensive evidence showing that Defendants are selling Counterfeit MICHAEL KORS Products that look virtually identical in appearance to genuine MICHAEL KORS Products. *See* Docket Entries 28-32⁴. Further, the Defendant

³ In fact, over 170 Defendant Domain Names in Amended Schedule A include the words “michael kors” in the URL.

⁴ Michael Kors previously presented a flash drive containing screenshot printouts showing the active Defendant Internet Stores reviewed and WhoIs information for the Defendant Domain Names, Exhibits 7

Internet Stores advertise and sell Counterfeit MICHAEL KORS Products online, just as Michael Kors advertises and sells its genuine MICHAEL KORS Products online at michaelkors.com and through other authorized online retailers. Finally, Michael Kors consumers are a diverse group of people that are very likely to be confused. As such, the likelihood of confusion test is satisfied.

In addition to point-of-sale confusion about the source of products sold on the Defendant Internet Stores, the Seventh Circuit has recognized that the Lanham Act's protections also extend to post-sale confusion of potential customers. *CAE, Inc. v. Clean Air Eng'g, Inc.*, 267 F.3d 660, 683 (7th Cir. 2001). Post-sale confusion refers to a situation in which, for example, a potential customer sees a product bearing the infringing label and mistakenly attributes the product to the brand owner, thereby influencing his buying decision, either positively or negatively. *Id.* That association also constitutes infringement of Michael Kors' registered MICHAEL KORS Trademarks. Regarding the seventh and final factor, Defendants are purposefully attempting to benefit from and trade off of Michael Kors' goodwill and reputation. Therefore, the final factor regarding Defendants' intent also weighs heavily in Michael Kors' favor.

Taking the evidence as a whole, Michael Kors is likely to establish a *prima facie* case of trademark infringement and counterfeiting, false designation of origin under the Lanham Act, and violation of the UDTPA sufficient to support the entry of a preliminary injunction.

(b) Cybersquatting

Michael Kors also sues Defendants for cybersquatting. Pursuant to the Anticybersquatting Consumer Protection Act of 1996 (ACPA), a person alleged to be a

and 8 (Docket Entries 28-32), respectively, to the Declaration of Erica J. Weiner (Docket Entry 12), on December 11, 2014.

cybersquatter is liable to the owner of a protected mark if that person: (i) has bad faith intent⁵ to profit from the mark; and (ii) registers, traffics in, or uses a domain name that ... is identical or confusingly similar to or dilutive of a mark that is “distinctive” or “famous.” 15 U.S.C. § 1125(d)(1)(A).

The MICHAEL KORS Trademarks are exclusive to Michael Kors, and are displayed extensively on Michael Kors Products and in Michael Kors’ marketing and promotional materials. *See* Docket Entry 12 at ¶ 14. The MICHAEL KORS Trademarks have become famous throughout the United States, as evidenced by the extensive unsolicited publicity resulting from their high-quality, innovative designs and renown as desired luxury items. *Id.* Defendants register, traffic in and use domain names that are identical or confusingly similar to Michael Kors’ distinctive and famous MICHAEL KORS Trademarks. As described above, numerous Defendant Domain Names incorporate the MICHAEL KORS Trademarks, and the Defendant Internet Stores often include copyright-protected content, images, and product descriptions without a license in order to sell Counterfeit MICHAEL KORS Products. *See* Docket Entries 28-32. These facts manifest bad faith intent to profit from the MICHAEL KORS Trademarks, and the Court should find that Michael Kors is likely to succeed on the merits of its ACPA claim.

ii) Irreparable Harm and Inadequate Remedy at Law

⁵ The ACPA identifies nine factors to consider in assessing bad faith intent, including: (1) the person’s intent to divert consumers from the mark owner’s online location to a site accessible under the domain name that could harm the goodwill represented by the mark; (2) the person’s provision of material and misleading false contact information when applying for the registration of the domain name; (3) the person’s registration or acquisition of multiple domain names which the person knows are identical or confusingly similar to marks of others; and (4) the extent to which the mark incorporated in the person’s domain name is not distinctive or famous. 15 U.S.C. § 1125(d)(1)(B)(i). A court is not limited to considering only the enumerated factors, and “the most important grounds for finding bad faith ‘are the unique circumstances of th[e] case.’” *Virtual Works, Inc. v. Volkswagen of America, Inc.*, 238 F.3d 264, 268 (4th Cir. 2001) (quoting *Sporty’s Farm L.L.C. v. Sportsman’s Mkt., Inc.*, 202 F.3d 489, 499 (2d Cir. 2000)).

The Seventh Circuit has “clearly and repeatedly held that damage to a trademark holder's goodwill can constitute irreparable injury for which the trademark owner has no adequate legal remedy.” *Re/Max N. Cent., Inc. v. Cook*, 272 F.3d 424, 432 (7th Cir. 2001) (citing *Eli Lilly & Co. v. Natural Answers, Inc.*, 233 F.3d 456, 469 (7th Cir. 2000)); *Meridian Mut. Ins. Co. v. Meridian Ins. Group, Inc.*, 128 F.3d 1111, 1114 (7th Cir. 1997); *Wesley–Jessen Division of Schering Corp. v. Bausch & Lomb Inc.*, 698 F.2d 862, 867 (7th Cir. 1983). Irreparable injury “almost inevitably follows” when there is a high probability of confusion because such injury “may not be fully compensable in damages.” *Helene Curtis Industries, Inc. v. Church & Dwight Co., Inc.*, 560 F.2d 1325, 1332 (7th Cir. 1977) (citation omitted). “The most corrosive and irreparable harm attributable to trademark infringement is the inability of the victim to control the nature and quality of the defendants’ goods.” *Int’l Kennel Club of Chicago, Inc. v. Mighty Star, Inc.*, 846 F.2d 1079, 1092 (7th Cir. 1988); *see also 4 Callmann on Unfair Competition, Trademarks and Monopolies* § 88.3(b) at 205 (3d ed. 1970). As such, monetary damages are likely to be inadequate compensation for such harm. *Ideal Indus., Inc. v. Gardner Bender, Inc.*, 612 F.2d 1018, 1026 (7th Cir. 1979).

Defendants’ unauthorized use of the MICHAEL KORS Trademarks has and continues to irreparably harm Michael Kors through diminished goodwill and brand confidence, damage to Michael Kors’ reputation, loss in exclusivity, and loss of future sales. Monetary damages cannot adequately compensate Michael Kors for ongoing infringement because monetary damages fail to address the loss of control of and damage to Michael Kors’ reputation and goodwill. Docket Entry 12 at ¶ 27. Furthermore, monetary damages are difficult, if not impossible, to ascertain due to the inability to calculate measurable damage in dollars and cents caused to Michael Kors’ reputation and goodwill by acts of infringement. *Id.*

Michael Kors' goodwill and reputation are irreparably damaged when the MICHAEL KORS Trademarks are used on goods not authorized, produced or manufactured by Michael Kors. *Id.* at ¶ 28. Moreover, brand confidence is damaged, which can result in a loss of future sales and market share. *Id.* The extent of harm to Michael Kors' reputation and goodwill and the possible diversion of customers due to loss in brand confidence are largely unquantifiable. *Id.* Michael Kors is further irreparably harmed by the unauthorized use of the MICHAEL KORS Trademarks because counterfeiters take away Michael Kors' ability to control the nature and quality of the Counterfeit MICHAEL KORS Products. *Id.* at ¶ 29. Loss of quality control over goods bearing the MICHAEL KORS Trademarks and, in turn, loss of control over Michael Kors' reputation, is neither calculable nor precisely compensable. *Id.*

The sale of Counterfeit Michael Kors Products is likely causing and will continue to cause consumer confusion, which weakens Michael Kors' brand recognition and reputation. *Id.* at ¶ 30. Consumers who mistakenly believe that the Counterfeit Michael Kors Products they have purchased originated from Michael Kors will come to believe that Michael Kors offers low-quality products. *Id.* Inferior quality products will result in increased skepticism and hesitance in consumers presented with genuine Michael Kors Products, resulting in a loss or undermining of Michael Kors' reputation and goodwill. *Id.* Indeed, there is damage to Michael Kors' reputation and goodwill even if a consumer knows that the goods he or she is purchasing are counterfeit. *Id.* Prospective consumers who see inferior Counterfeit Michael Kors Products worn by others may mistakenly believe such goods to be genuine and may consequently develop a poor impression of Michael Kors and the MICHAEL KORS Trademarks. *Id.* Such post-sale confusion results in damage to Michael Kors' reputation and correlates to a loss of unquantifiable future sales. *Id.*

Michael Kors is further irreparably damaged due to a loss in exclusivity. *Id.* at ¶ 31. Genuine Michael Kors Products are meant to be exclusive. *Id.* Michael Kors' extensive marketing and innovative designs are aimed at growing and sustaining sales. *Id.* The MICHAEL KORS Trademarks are distinctive and signify to consumers that the products originate from Michael Kors and are manufactured to Michael Kors' high quality standards. *Id.* When counterfeiters use the MICHAEL KORS Trademarks on goods without Michael Kors' authorization, the exclusivity of the Michael Kors Products, as well as Michael Kors' reputation, are damaged and eroded, resulting in a loss of unquantifiable future sales. *Id.* The extent of the harm to Michael Kors' reputation and goodwill and the possible diversion of customers due to loss in brand confidence are both irreparable and incalculable, thus warranting conversion of the TRO issued by this Court on December 12, 2014 to a preliminary injunction.

iii) Balancing the Harms and Public Interest

As willful infringers, Defendants are entitled to little equitable consideration. "When considering the balance of hardships between the parties in infringement cases, courts generally favor the trademark owner." *Krause Int'l Inc. v. Reed Elsevier, Inc.*, 866 F. Supp. 585, 587-88 (D.D.C. 1994). This is because "[o]ne who adopts the mark of another for similar goods acts at his own peril since he has no claim to the profits or advantages thereby derived." *Burger King Corp. v. Majeed*, 805 F. Supp. 994, 1006 (S.D. Fla. 1992) (internal quotation marks omitted). Therefore, the balance of harms "cannot favor a defendant whose injury results from the knowing infringement of the plaintiff's trademark." *Malarkey-Taylor Assocs., Inc. v. Cellular Telecomms. Indus. Ass'n*, 929 F. Supp. 473, 478 (D.D.C. 1996).

As Michael Kors has demonstrated, Defendants have been profiting from the sale of Counterfeit Michael Kors Products. Thus, the balance of equities tips decisively in Michael

Kors' favor. An injunction in these circumstances is in the public interest because it will prevent consumer confusion and stop Defendants from violating federal trademark law. The public is currently under the false impression that Defendants are operating their Defendant Internet Stores with Michael Kors' approval and endorsement. An injunction serves the public interest in this case "because enforcement of the trademark laws prevents consumer confusion." *Eli Lilly*, 233 F.3d at 469. In this case, the injury to the public is significant, and the injunctive relief that Michael Kors seeks is specifically intended to remedy that injury by dispelling the public confusion created by Defendants' actions.

iv) The Equitable Relief Sought Remains Appropriate

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

(1) The Domain Name Transfer Order Remains Appropriate

Michael Kors seeks a conversion of the TRO issued by this Court on December 12, 2014, allowing Michael Kors to retain control of the Defendant Domain Names until the completion of these proceedings. To prevent the Defendants from further manufacture, importation, distribution, offering for sale, and sale of Counterfeit Michael Kors Products and to provide notice to Defendants regarding these proceedings, Michael Kors respectfully requests that the injunctive relief already awarded be extended through the pendency of this case.

(2) The Asset Restraining Order Remains Appropriate

Michael Kors also requests conversion of the TRO to a preliminary injunction so that Defendants' accounts in U.S.-based financial institutions remain frozen. Since entry of the TRO, PayPal has provided Plaintiff with information, including the identification of dozens of PayPal accounts linked to the Defendant Internet Stores which were offering for sale and/or selling

Counterfeit Michael Kors Products. In the absence of a preliminary injunction, Defendants may attempt to move any assets from any accounts in U.S.-based financial institutions, including PayPal accounts, to an offshore account. Therefore, Defendants' assets should remain frozen for the remainder of the proceedings.

The amount of damages to which Michael Kors is entitled as set forth in the Amended Complaint far exceeds any amount contained in any of the Defendants' frozen PayPal accounts. For example, Michael Kors' prayer for relief requests statutory damages of up to \$2 million from each Defendant. In addition, and as established in Michael Kors' TRO Memorandum, many federal courts, including this Court, have granted orders preventing the fraudulent transfer of assets. *See, e.g., Deckers Outdoor Corporation v. Chen Chen, et al.*, No. 1:13-cv-519 (Hon. Shadur) (N.D. Ill. Mar. 13, 2013) (unpublished) (Docket No. 38); *Lululemon Athletica Canada Inc. v. Gao Ming, et al.*, No. 1:14-cv-5478 (Hon. Shadur) (N.D. Ill. Aug. 7, 2014) (unpublished) (Docket No. 32); *Lorillard Tobacco Co. v. Montrose Wholesale Candies & Sundries, Inc.*, No. 1:03-cv-04844, 2005 WL 3115892 (N.D. Ill. Nov. 8, 2005); *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). As such, an order continuing to freeze the Defendants' assets should be granted.

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of December 2014, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, I will electronically publish the documents on a website to which the Defendant Domain Names that have been transferred to Michael Kors' control now redirect, and I will send an e-mail to the e-mail addresses identified in Exhibits 7 and 8 to the Declaration of Erica J. Weiner that includes a link to said website.

/s/ Justin R. Gaudio

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