

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

DOPE ECOMMERCE LLC,
a Delaware Limited Liability Company,

Plaintiff,

Case No.: 24-cv-02384

v.

Hon. Joan B. Gottschall

THE PARTNERSHIPS and UNINCORPORATED
ASSOCIATIONS IDENTIFIED ON SCHEDULE
“A”,

Mag. Judge Jeannice W.
Appenteng

Defendants.

**MEMORANDUM IN SUPPORT OF PLAINTIFF’S *EX PARTE* MOTION FOR
ENTRY OF A TEMPORARY RESTRAINING ORDER, TEMPORARY ASSET
RESTRAINT, AND EXPEDITED DISCOVERY**

Plaintiff Dope Ecommerce LLC (“Plaintiff” or “Dopeskill”) submits this Memorandum in support of its *Ex Parte*¹ Motion for Entry of a Temporary Restraining Order (“TRO”), including a temporary asset restraint, and expedited discovery (the “*Ex Parte* Motion”).

I. INTRODUCTION

Plaintiff seeks *ex parte* relief to combat rampant online infringement of its trademark and copyright rights. As stated within Plaintiff’s Complaint, and supported through documentary evidence attached to the supporting declaration of this *Ex Parte* Motion, certain Defendants are promoting, offering to sell, and selling counterfeit products bearing of Plaintiff’s federally registered trademark and certain Defendants are offering for sale slavish copies of Plaintiff’s federally registered copyrights through the online marketplaces identified in the amende

¹ Plaintiff’s Motion is *ex parte* with respect to the Defendants, but Plaintiff will provide notice to Ali Express, Ant Financial Services Group, and Alibaba Group Holding Ltd. (collectively “AliExpress”), Rebubble, Inc. PayPal, Inc., Stripe, Inc., GoDaddy Operating Company, LLC, Printerval LLC, eBay, Inc., teeshirtpalace.com, and Etsy, Inc.

Schedule A [ECF No. 8] (hereafter “Schedule A”) (collectively the “Unauthorized Dopeskill Products”). Plaintiff meets the standard for granting such *ex parte* relief, as explained below.

II. STATEMENT OF FACTS

A. THE PLAINTIFF’S TRADEMARK AND COPYRIGHT RIGHTS


Dopeskill is an ecommerce company that operates an online store, <dopeskillbrand.com>, offering t-shirts, hoodies, and related apparel featuring unique street fashion designs to pair with popular sneakers. ECF 1, Compl. at ¶ 7. Dopeskill’s business model has been a wild success. Dopeskill has sold products including, t-shirts and sweatshirts, on its website throughout the United States and internationally via its online retail store services. *Id.* at ¶ 8. Dopeskill is a global business with online retail store services via a state-of-the-art website and marketing and advertising online across social media channels. *Id.* at ¶ 10. Dopeskill has taken significant steps to protect and register its trademark rights with the United States Patent and Trademark Office (“USPTO”) as follows:





Registration No.	Trademark	Registration Date	Goods/Services
6,532,338	DOPEKILL	October 19, 2021	IC 025: Clothing and apparel, namely, t-shirts, sweatshirts, and long sleeve shirts; Clothing and apparel, namely, tops as clothing, bottoms as clothing, headwear, and socks IC 035: Computerized online retail ordering services featuring clothing and apparel, namely, t-shirts, sweatshirts, and long sleeve shirts; Computerized online retail ordering services featuring clothing and apparel, namely, tops as clothing, bottoms as clothing, headwear, and socks





Id. at ¶ 11. Dopeskill has used the above mark (the “Dopeskill Mark”) continuously and exclusively on online retail store services and clothing and apparel since at least as early as September 3, 2020. *Id.* at ¶ 12. The registration for the Dopeskill mark constitutes *prima facie* evidence of its validity and of Plaintiff’s exclusive right to use the registered DOPESKILL mark in commerce, pursuant to 15 U.S.C. § 1057(b).




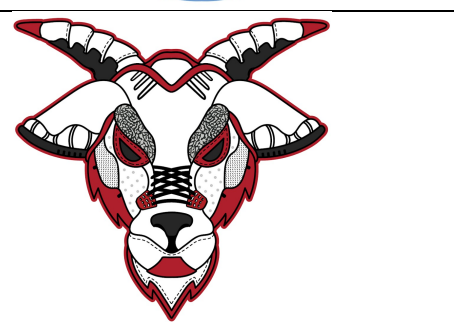
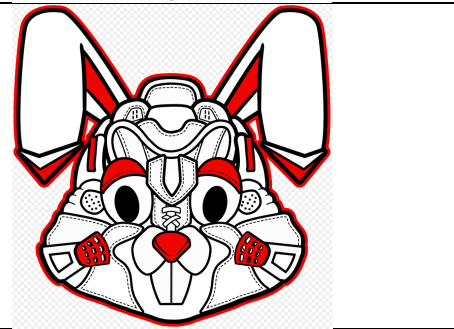
The DOPESKILL trademark has become known to signify to consumers that the genuine works associated therewith are of a high quality, fashionable, and created with dedication to detail. Nguyen Declaration at ¶ 5. The Dopeskill website and many of Dopeskill’s Copyrighted Works prominently display the DOPESKILL trademark (the “DOPESKILL Mark”), which is distinctive and registered with the United States Patent and Trademark Office. Nguyen Declaration at ¶ 6. Dopeskill’s registration for the DOPESKILL mark is valid, subsisting, and in full force and effect. Dopeskill includes the DOPESKILL Mark as a source indicator at the point of sale online, on the actual products, on the product listings, within the product listing titles and descriptions, and on the website banners. Nguyen Declaration at ¶ 7.

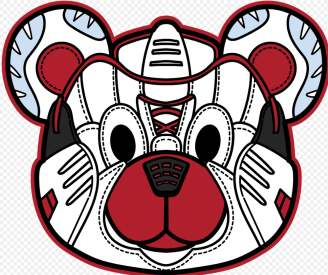




Plaintiff also owns several United States Copyright Registrations for its unique works of art that it makes available for sale on its website (“Dopeskill Copyrighted Works”):




Registration No.	Date	Title of Work	Image
Vau001437441	6/10/21	AJ11	



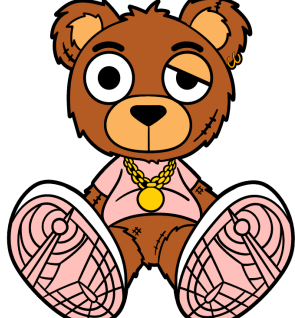


Vau001437441	6/10/21	AJ12	
Vau001437441	6/10/21	BH Bear	
Vau001437441	6/10/21	Leather Bear	
Vau001437441	6/10/21	Sneaker Bear	

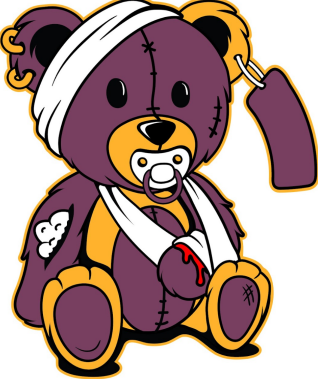



Vau001437441	6/10/21	Dope Bear	
VA0002258273	6/16/21	M.I.T.M.	
VAu001452223	10/15/21	Heartkers 13s	
VAu001452223	10/15/21	Love Sick	


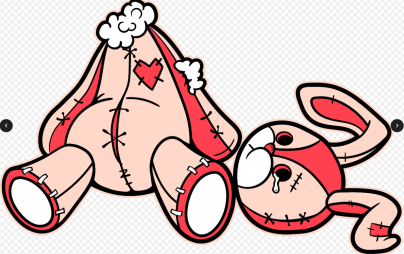
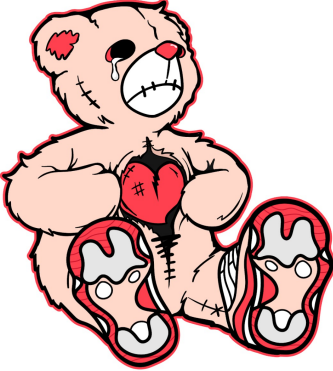
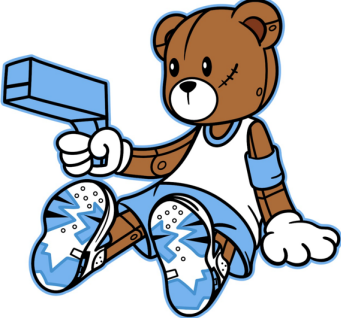
VAu001452223	10/15/21	Monk	
VAu001452223	10/15/21	Robo Bear	
VAu001452223	10/15/21	Sneaker Bull	
VAu001452223	10/15/21	Sneaker Goat	
VAu001452223	10/15/21	Sneaker Rabbit	


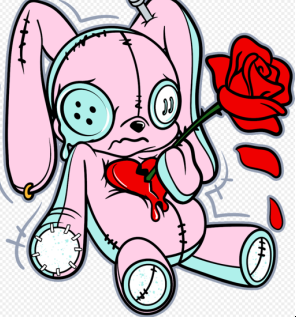


<p>VAu001452223</p>	<p>10/15/21</p>	<p>SNK Bear</p>	
<p>VAu001452223</p>	<p>10/15/21</p>	<p>Trapped</p>	
<p>Vau001452976</p>	<p>10/15/21</p>	<p>Bean</p>	
<p>Vau001452976</p>	<p>10/15/21</p>	<p>Broken Heart Bear</p>	
<p>Vau001452976</p>	<p>10/15/21</p>	<p>Broken Slime Heart</p>	





Vau001452976	10/15/21	Drip Heart	
Vau001452976	10/15/21	Heartkers 1s	
Vau001452976	10/15/21	Heartkers 3s	
Vau001452976	10/15/21	Heartkers 4s	
Vau001452976	10/15/21	Heartkers 5s	

Vau001452976	10/15/21	LoveLove	
Vau001452976	10/15/21	Heartkers 9s	
Vau001465682	3/25/22	Dope Bear 1	
Vau001465682	3/25/22	Greatest	
Vau001465682	3/25/22	Heart Sick	

<p>Vau001465682</p>	<p>3/25/22</p>	<p>Hurt Bear</p>	
<p>Vau001465682</p>	<p>3/25/22</p>	<p>Money Fly Icon</p>	
<p>Vau001465682</p>	<p>3/25/22</p>	<p>Sneakerhead Bear 1</p>	
<p>Vau001465682</p>	<p>3/25/22</p>	<p>Sneakerhead Bear 2</p>	

<p>Vau001475385</p>	<p>7/5/22</p>	<p>Drip Bear</p>	
<p>Vau001475385</p>	<p>7/5/22</p>	<p>Heart Break Bunny</p>	
<p>Vau001475385</p>	<p>7/5/22</p>	<p>Love Kills Bear</p>	
<p>Vau001475385</p>	<p>7/5/22</p>	<p>Money Is Our Motive</p>	

Vau001475385	7/5/22	Sad Bear	
Vau001475385	7/5/22	Sad Bunny	
Vau001475385	7/5/22	Sneakerhead Bear	
Vau001488115	11/21/22	Chillin Frog	

<p>Vau001488115</p>	<p>11/21/22</p>	<p>Dope Trippin</p>	
<p>Vau001488115</p>	<p>11/21/22</p>	<p>High Flyer</p>	
<p>Vau001488115</p>	<p>11/21/22</p>	<p>Resist</p>	
<p>Vau001488115</p>	<p>11/21/22</p>	<p>Too Many Feelings</p>	

Id. at ¶ 16. Among the exclusive rights granted to Plaintiff under the U.S. Copyright Act are the exclusive rights to reproduce, prepare derivative works of, distribute copies of, display, and import copies of the Dopeskill Copyrighted Works to the public.

B. THE DEFENDANTS' INFRINGING ACTIVITIES

Plaintiff's creative works and recognition within its industry has attracted bad actors to leech off its success. To combat rampant online infringement, Plaintiff has devoted time and energy to identify and document such infringement, including the Defendants identified at the amended Schedule A [ECF No. 8]. As stated in Plaintiff's Complaint, Defendants are offering for sale and selling Unauthorized Dopeskill Products into the United States, from overseas, including into this judicial district. Many of the Defendants list fictional business addresses in the United States. Plaintiff has attached, as **Exhibit 2** to the Nguyen Declaration, extensive screenshot evidence and purchase order history regarding Defendants' infringing activities.

III. LAW AND ARGUMENT

A. STANDARD OF REVIEW

Rule 65(b) permits the Court to grant an *ex parte* Temporary Restraining Order ("TRO") where 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). *Ex parte* temporary restraining orders serve an underlying purpose of preserving the status quo and preventing irreparable harm so long as is necessary to hold a hearing. *American Can Co. v. Mansukhani*, 742 F.2d 314, 323 (7th Cir. 1984). To obtain a temporary restraining order, the moving party must show: "(1) without the requested relief, he will suffer irreparable harm during the pendency of his action; (2) traditional legal remedies would be inadequate; and (3) he has some

likelihood of success on the merits.” *Mays v. Dart*, 453 F.Supp.3d 1074, 1087 (N.D. Ill. 2020). “If the movant satisfies these requirements, the court proceeds to the balancing analysis ‘to determine whether the balance of harms favors the moving party or whether the harm to other parties or the public sufficiently outweighs the movant’s interests.’” *Id.* (quoting *Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ.*, 858 F.3d 1034, 1044 (7th Cir. 2017)).

As will be demonstrated herein, Plaintiff satisfies the controlling test for granting the requested relief. And such relief is appropriate in this case because it will prevent the Defendants from prematurely learning of this action and taking steps to spoil evidence or otherwise move money connected to their infringing activities overseas. Furthermore, subject matter and personal jurisdiction over Defendants are appropriate in this matter, and Plaintiff will post a bond if required by the Court.

B. PLAINTIFF HAS MET THE REQUIRED SHOWING FOR ENTRY OF A TEMPORARY RESTRAINING ORDER

1. Plaintiff Has a High Likelihood of Success on the Merits

a. *Plaintiff Is Likely to Succeed on Its Claims for Trademark Infringement and Counterfeiting*

Liability for trademark infringement and counterfeiting under the Lanham Act is established when the defendants, “without the consent of the registrant, use[s] in commerce, any reproduction, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods ... which such use is likely to cause confusion, or to cause mistake, or to deceive.” 15 U.S.C. § 1114(1). Plaintiff’s Lanham Act claims involve all necessary elements to satisfy a finding that Defendants are liable for trademark infringement and counterfeiting. The plaintiff asserting a trademark infringement claim under the Lanham Act must demonstrate (i) the validity of its trademark and (ii) the infringement of

the same. *Platinum Home Mortg. Corp. v. Platinum Fin. Grp., Inc.*, 149 F.3d 722, 726 (7th Cir. 1998); *see also* 15 U.S.C. § 1125(a).

As to the first element, Plaintiff's DOPESKILL mark is distinctive and is registered with the United States Patent and Trademark Office. Nguyen Declaration at ¶ 6. The registration for the DOPESKILL mark constitutes *prima facie* evidence of its validity and of Plaintiff's exclusive right to the use of the DOPESKILL mark in commerce. 15 U.S.C. § 1057(b). Plaintiff has not licensed or authorized Defendants to use the DOPESKILL mark and none of the Defendants are authorized retailers of genuine Dopeskill Products. Nguyen Declaration at ¶ 11. Plaintiff satisfies the first element of its Lanham Act claim.

As to the second element, the infringement of a mark concerns whether the actions of a subsequent user of a substantially similar or identical mark causes a likelihood of confusion among consumers as to the source of those specific goods or services. *Platinum Home Mortg. Corp.*, 149 F.3d at 726. The Seventh Circuit has held that where "one produces counterfeit goods in an apparent attempt to capitalize upon the popularity of, and demand for, another's product, there is a presumption of a likelihood of confusion." *Microsoft Corp. v. Rechanik*, 249 F. App'x 476, 479 (7th Cir. 2007); *see also Entertainment One UK Ltd. v. 2012Shiliang*, 384 F.Supp.3d 941, 949 (N.D. Ill. 2019) ("a court presumes likelihood of confusion when a defendant has produced counterfeit goods in an attempt to capitalize on the popularity of another's product"). Therefore, the Court can presume a likelihood of confusion from Defendants' unlawful use of the DOPESKILL mark alone. The result is the same when considered in light of the Seventh Circuit's seven enumerated factors to determine whether a likelihood of consumer confusion exists, which include: (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. *AutoZone, Inc. v. Strick*, 543 F.3d 923, 929 (7th Cir. 2008). No one factor is dispositive, but the similarity of the marks, actual confusion, and the defendant's intent are "particularly important." *Id.*

Plaintiff has compiled and submitted extensive documentation showing that certain Defendants are selling Unauthorized Dopeskill Products that look similar, if not identical, to authentic Dopeskill Products and use infringing and counterfeit marks identical and confusingly similar to the DOPESKILL mark. Nguyen Declaration at ¶ 12. Both Plaintiff and Defendants advertise and sell their products to consumers via the Internet, targeting consumers looking for genuine Dopeskill Products. Nguyen Declaration at ¶¶ 13-14. Those consumers are diverse with varying degrees of sophistication, and they are likely to have difficulty distinguishing between genuine Dopeskill Products and Unauthorized Dopeskill Products. Nguyen Declaration at ¶ 19. Defendants appear to be intentionally attempting to induce consumers searching for genuine Dopeskill Products into purchasing Unauthorized Dopeskill Products bearing the DOPESKILL mark. Accordingly, Plaintiff is likely to establish a *prima facie* case of trademark infringement, trademark counterfeiting, and false designation of origin.

b. Plaintiff Is Likely to Succeed on Its Copyright Infringement Claim

The United States Copyright Act provides that "[a]nyone who violates any of the exclusive rights of the copyright owner ... is an infringer of the copyright." 17 U.S.C. § 501. Among these exclusive rights granted to Plaintiff under the Copyright Act are the exclusive rights to reproduce, prepare derivative works of, distribute copies of, and display the Dopeskill Copyrighted Works to the public. 17 U.S.C. § 106.

To establish a claim for copyright infringement, a plaintiff must show: "(1) ownership of

a valid copyright, and (2) copying of constituent elements of the work that are original.” *JCW Invs., Inc. v. Novelty, Inc.*, 482 F.3d 910, 914 (7th Cir. 2007) (internal citations omitted). Copying can be shown through direct evidence, or it can be inferred where a defendant had access to the copyrighted work and the accused work is substantially similar. *Spinmaster, Ltd. v. Overbreak LLC*, 404 F. Supp. 2d 1097, 1102 (N.D. Ill. 2005). To determine whether there is a substantial similarity that indicates infringement, Courts use the “ordinary observer” test which asks whether “an ordinary reasonable person would conclude that the defendant unlawfully appropriated protectable expression by taking material of substance and value.” *Id.* A work may be deemed infringing if it captures the “total concept and feel of the copyrighted work.” *Id.*

With respect to the first element, Plaintiff is the owner of the relevant federally registered copyrights. ECF 1, Compl. at ¶ 16. As to the second element, certain Defendants are willfully and deliberately reproducing the Dopeskill Copyrighted Works in their entirety and are willfully and deliberately distributing copies of the Dopeskill Copyrighted Works to the public by sale. Defendants’ unauthorized copies are identical or substantially similar to the Dopeskill Copyrighted Works. See **Exhibit 2** to the Nguyen Declaration. This blatant and extensive copying by Defendants infringes upon Plaintiff’s exclusive rights granted under 17 U.S.C. § 106. As such, Plaintiff has proved it has a high likelihood of success on the merits for its copyright infringement claim.

2. There Is No Adequate Remedy at Law and Plaintiff Will Suffer Irreparable Harm in the Absence of Preliminary Relief

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)). “The most corrosive and irreparable harm attributable to trademark infringement is the inability of the victim to control the nature and quality of the defendant’ goods.” *American Taxi Dispatch, Inc. v. American Metro Taxi & Limo Co.*, 582 F.Supp.2d 999, 1005 (N.D. Ill. 2008) (quoting *Int’l Kennel Club of Chicago, Inc. v. Mighty Star, Inc.*, 846 F.2d 1079, 1092 (7th Cir. 1988)). Likewise, an injury to a copyright holder that is “not easily measurable in monetary terms, such as injury to reputation or goodwill, is often viewed as irreparable.” *EnVerve, Inc. v. Unger Meat Co.*, 779 F. Supp. 2d 840, 844 (N.D. Ill. 2011). 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).

Defendants’ use of the DOPESKILL mark on the Unauthorized Products has and continues to irreparably harm Plaintiff through diminished goodwill and brand confidence, damage to Plaintiff’s reputation, and loss of future sales. Nguyen Declaration at ¶ 19. Without recourse, Plaintiff is left powerless to fight back against rampant infringement of its intellectual property rights while watching Defendants copy his exact trademark and copyrighted works for profit. The extent of the harm to Plaintiff’s reputation and goodwill, and the probable diversion of customers due to loss in brand confidence and damage to SEO are both irreparable and incalculable, thus warranting an immediate halt to Defendants’ infringing activities through injunctive relief. Plaintiff will suffer immediate and continued irreparable injury, loss, or damage if an *ex parte* TRO is not issued in accordance with Federal Rule of Civil Procedure 65(b)(1). Nguyen Declaration at ¶ 20.

3. The Balancing of Harms Tips in Plaintiff's Favor and the Public Interest Is Served by Entry of the Injunction

Plaintiff has established that (1) a likelihood of success on the merits, (2) no adequate remedy at law, and (3) the threat of irreparable harm if preliminary relief is not granted. This Court must now consider the resulting harm Defendants will suffer if preliminary relief is granted, balancing such harm against the irreparable harm that Plaintiff will suffer if relief is denied. *Mays*, 453 F.Supp.3d at 1087. “When considering the balance of hardships between the parties in infringement cases, courts generally favor the trademark owner.” *Bulgari, S.p.A. v. Partnerships & Unincorporated Associations Identified On Schedule "A,"* No. 14-CV-4819, 2014 WL 3749132, at *6 (N.D. Ill. July 18, 2014), report and recommendation adopted sub nom. *Bulgari, S.p.A. v. Partnerships & Unincorporated Associations Identified on Schedule 'A,'* No. 14 CV 4819, 2014 WL 3765854 (N.D. Ill. July 29, 2014) citing *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 this own peril since he has no claim to the profits or advantages thereby derived.” *Id.* (citing *Burger King Corp. v. Majeed*, 805 F. Supp. 994, 1006 (S.D. Fla. 1992)). Therefore, the balance of harms “cannot favor a defendant whose injury results from the knowing infringement of the plaintiff's trademark.” *Id.* citing *Malarkey-Taylor Assocs., Inc. v. Cellular Telecomms. Indus. Ass'n*, 929 F. Supp. 473, 478 (D.D.C. 1996).

Defendants are offering for sale and selling the Unauthorized Dopeskill Products for a profit. The equities weigh heavily in Plaintiff's favor. Such relief also protects the public from unknowingly purchasing inferior and unauthorized versions of genuine Dopeskill products, which prevents public injury. Accordingly, the balancing of harms weighs heavily in favor of Plaintiff.

4. Plaintiff Is Entitled to Appropriate and Immediate Injunctive Relief

a. *Temporary Restraining Order Immediately Enjoining Defendants' Illegal Use of the DOPESKILL Mark and Dopeskill Copyrighted Works Is Appropriate*

The Lanham Act authorizes courts to issue injunctive relief “according to the 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). Furthermore, Plaintiff has demonstrated that it is likely to prevail on its claims for trademark infringement, counterfeiting, and copyright infringement, that there is an absence of adequate remedy at law, that Plaintiff will suffer irreparable harm absent injunctive relief, and that the balancing of harms weighs heavily in favor of Plaintiff due to the rampant unauthorized infringement by Defendants.

Therefore, Plaintiff requests a temporary injunction requiring Defendants, in connection with the online marketplaces and Seller Alias on Schedule A, to: (i) cease use of the DOPESKILL mark (or substantially similar marks) and (ii) cease copying, display and/or distribution of the Dopeskill Copyrighted Works. Such relief is necessary to stop the ongoing harm to Plaintiff and the DOPESKILL mark and its associated goodwill, as well as harm to consumers, and to prevent the Defendants from continuing to benefit from their unauthorized use of the DOPESKILL mark and/or copying and distribution of the Dopeskill Copyrighted Works, which is rampant through various online marketplaces.

b. *Preventing the Fraudulent Transfer of Assets Is Appropriate*

Plaintiff requests an *ex parte* restraint of Defendants’ assets to ensure an equitable accounting of Defendants’ profits from sales of Unauthorized Dopeskill Products. Issuing an *ex parte* restraint will ensure Defendants’ compliance. If such a restraint is not granted in this case, Defendants will likely disregard their responsibilities and fraudulently transfer financial assets to overseas accounts before a restraint is ordered. Specifically, on information and belief, the

Defendants in this case are residents of China, Vietnam, or other foreign countries and hold most of their assets in offshore accounts, making it easy to hide or dispose of assets, which will render an accounting by Plaintiff meaningless.

Courts have the inherent authority to issue a prejudgment asset restraint when plaintiff's complaint seeks relief in equity. *CSC Holdings, Inc. v. Redisi*, 309 F.3d 988, 996 (7th Cir. 2002) (holding that restraint on assets is proper where a suit seeks equitable relief); *see also Lorillard Tobacco Co. v. Montrose Wholesale Candies*, 2005 WL 3115892, at *13 (N.D. Ill. Nov. 8, 2005) (finding asset restraint permissible in a counterfeiting action under the Lanham Act). Further, the Lanham Act provides for equitable relief. 15 U.S.C. § 1117(a)(1) "subject to the principles of equity, to recover . . . defendant's profits." Similarly, Plaintiff has shown a strong likelihood of succeeding on the merits of its copyright infringement claim, and therefore is entitled to recover ". . . any profits of the infringer that are attributable to the infringement." Plaintiff's complaint seeks, among other relief, that Defendants provide a full accounting and pay to Plaintiff all profits realized by Defendants by reason of Defendants' unlawful acts. Therefore, this Court has the inherent equitable authority to grant Plaintiff's request for a prejudgment asset freeze to preserve relief sought by Plaintiff.

Therefore, as Plaintiff has shown a likelihood of success on the merits, an immediate and irreparable harm suffered as a result of Defendants' activities, and that, unless Defendants' assets are frozen, Defendants will likely hide or move their ill-gotten funds to offshore bank accounts beyond the reach of this jurisdiction. Accordingly, an asset restraint is proper.

c. Plaintiff Is Entitled to Expedited Discovery

Courts have broad power over discovery and may permit discovery regarding the identification of unknown defendants, Fed. R. Civ. P. 26(b)(2), provided the plaintiff has made a

prima facie case for the need for expedited discovery. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. O'Connor*, 194 F.R.D. 618, 623 (N.D. Ill. 2000). Plaintiff respectfully requests expedited discovery to discover Defendants' banking and financial information that power their counterfeit operations and the underlying identities. Plaintiff's proposed TRO order is tailored to this goal. This discovery is necessary to protect the meaning and effect of this TRO and prevent future irreparable harm.

C. THIS COURT HAS SUBJECT MATTER AND PERSONAL JURISDICTION OVER THE DEFENDANTS

This Court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the Lanham Act, 15 U.S.C. § 1051, *et seq.*; the Copyright Act, 17 U.S.C. § 501, *et seq.*; 28 U.S.C. §§ 1338(a)-(b); and 28 U.S.C. § 1331. Venue is proper pursuant to 28 U.S.C. § 1391.

Defendants directed activities at the forum state and the cause of action relates to those activities. *Burger King v Rudzewicz*, 471 U.S. 462, 472 (1985). This Court specifically found that offering products for sale into Illinois, including selecting an Illinois address for shipment, is sufficient to purposefully avail itself of doing business in Illinois. *Tommy Hilfiger Licensing LLC v The P'Ships*, No. 20-cv-7477 (N.D. March 24, 2021), Dkt. 46. Further, in *Curry v Revolution Labs., LLC*, 949 F.3d 385, 399 (7th. Cir. 2020), the Seventh Circuit determined that personal jurisdiction was proper as to online stores where (i) the sales were exclusive through online means, (ii) the vendor's website required the customer to select a shipping address, (iii) Illinois is among the "ship-to" options from which the customer must choose. The Court stated: "Revolution's own actions in establishing these commercial contacts with Illinois fairly can be described as purposeful. Preparing to engage in commercial activity, Revolution created an interactive website and explicitly provided that Illinois residents could purchase its products through that website."

Id. In other words, “[t]here is no per se requirement that the defendant especially target the forum in its business activity; it is sufficient that the defendant reasonably could foresee that its product would be sold in the forum.” *Id.* The same is true here as the Defendants operate online stores that permit users to select a shipping address in Illinois, purposefully availing themselves of the benefits of this judicial district and establishing personal jurisdiction.

D. A BOND SHOULD SECURE THE INJUNCTIVE RELIEF

The posting of security upon issuance of a temporary restraining order or preliminary injunction is vested in the Court’s sound discretion. *Rathmann Grp. v. Tanenbaum*, 889 F.2d 787, 789 (8th Cir. 1989). Because of the strong and unequivocal nature of Plaintiff’s evidence of counterfeiting, trademark infringement, and copyright infringement, Plaintiff respectfully requests that this Court require Plaintiff to post a bond of no more than ten thousand U.S. dollars (\$10,000.00).

IV. CONCLUSION AND RELIEF REQUESTED

Plaintiff is forced to turn this Court to combat the rampant infringement of its registered trademarks and copyrights. Without this relief, Plaintiff will sit idly by while counterfeiters profit from its energy, skill, and dedication. And the public will continue to be harmed by being tricked into purchasing knock-off versions of genuine Plaintiff products. An *ex parte* order is warranted under these facts and circumstances. Plaintiff respectfully requests that this Court enter a Temporary Restraining Order in a form approved by this Court.

WHEREFORE, Plaintiff respectfully requests this honorable Court enter a Temporary Restraining Order consistent with the proposed order submitted to the Court contemporaneously with the filing of this Motion.

Respectfully submitted,

Date: April 2, 2024

/s/ Eric Misterovich
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CERTIFICATE OF SERVICE

The undersigned certifies that on the date below the foregoing was served on counsel of record via the Court's ECF system.

Date: April 2, 2024

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