

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

PRL USA HOLDINGS, INC.,

Plaintiff,

v.

YONG PENG, et al.,

Defendants.

Case No. 19-cv-04835

Judge John Z. Lee

Magistrate Judge Maria Valdez

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S
MOTION FOR ENTRY OF A PRELIMINARY INJUNCTION**

Plaintiff PRL USA Holdings, Inc. (“Plaintiff”), a subsidiary of Ralph Lauren Corporation, (collectively, “Ralph Lauren”) submits this Memorandum of Law in support of its Motion for Entry of a Preliminary Injunction.

MEMORANDUM OF LAW

I. INTRODUCTION

Plaintiff PRL USA Holdings, Inc. (“Plaintiff”), a subsidiary of Ralph Lauren Corporation, (collectively, “Ralph Lauren”) brings the present action against the defendants identified on Schedule A to the Amended Complaint (collectively, the “Defendants”) for federal trademark infringement and counterfeiting (Count I), false designation of origin (Count II), and violation of the Illinois Uniform Deceptive Trade Practices Act (Count III). As alleged in Ralph Lauren’s Amended Complaint [11], the Defendants are advertising, distributing, offering for sale, and selling products using counterfeit versions of Ralph Lauren’s federally registered trademarks (the “Counterfeit Ralph Lauren Products”) through various fully interactive, commercial Internet stores operating under at least the Defendant Domain Names and Online Marketplace Accounts listed in Schedule A to the Amended Complaint (collectively, the “Defendant Internet Stores”).

II. STATEMENT OF FACTS

On July 25, 2019, this Court granted Ralph Lauren’s *Ex Parte* Motion for Entry of a Temporary Restraining Order (the “TRO”). [25]. The TRO authorized Ralph Lauren 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 Ralph Lauren’s control redirect, or by sending an e-mail to the e-mail addresses identified in Exhibits 2 and 3 to the Declaration of Derek Morales and any e-mail addresses provided for Defendants by third parties that includes a link to said website. [25] at ¶ 8. On August 8, 2019 this Court granted Ralph Lauren’s *Ex Parte* Motion to Extend the Temporary Restraining Order until August 22, 2019. [35]. Since and pursuant to entry of the TRO, dozens of financial accounts associated with the Defendant Internet Stores have been frozen. *See* Declaration of Justin R. Gaudio (hereinafter, “Gaudio Declaration”)

at ¶ 2. In addition, Ralph Lauren is in the process of requesting transfer of the Defendant Domain Names. *Id.*

Ralph Lauren 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 Ralph Lauren Products during the pendency of this litigation. As part of the Preliminary Injunction, Ralph Lauren requests that the Defendant Domain Names remain in Ralph Lauren's control and that Defendants' financial accounts remain frozen until completion of these proceedings.

III. ARGUMENT

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

Ralph Lauren 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 have also issued preliminary injunctions following a temporary restraining order. *See, e.g., Deckers Outdoor Corporation v. The Partnerships, et al.*, No. 15-cv-3249 (N.D. Ill. May 6, 2015) (unpublished).

i. This Court Has Already Found that the Requirements for a Preliminary Injunction Have Been Satisfied

Since the standard for granting a TRO and the standard for granting a preliminary injunction are identical in this Circuit, the requirements for entry of a preliminary injunction extending the TRO have been satisfied. *See, e.g., Charter Nat'l Bank & Trust v. Charter One Fin., Inc.*, 2001 WL 527404, at *1 (N.D. Ill. May 15, 2001) (citations omitted). A temporary restraining order or preliminary injunction may be issued upon a showing that: "(1) there is a reasonable likelihood that Plaintiff will succeed on the merits; (2) Plaintiff will suffer irreparable injury if the order is not granted because there is no adequate remedy at law; (3) the balance of hardships tips

in Plaintiff's favor; and (4) the public interest will not be disserved by the injunction." *Columbia Pictures Indus., Inc. v. Jasso*, 927 F. Supp. 1075, 1076 (N.D. Ill. 1996). By virtue of this Court's entry of the TRO, it has already found that the above requirements have been satisfied.

ii. 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*

Ralph Lauren seeks conversion of the TRO issued by this Court on July 25, 2019, allowing Ralph Lauren 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 Ralph Lauren Products and to provide notice to Defendants regarding these proceedings, Ralph Lauren respectfully requests that the injunctive relief already awarded be extended through the pendency of this case.

2. *The Asset Restraining Order Remains Appropriate*

Ralph Lauren 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, Inc. ("PayPal"), Wish.com and Alipay have provided Ralph Lauren with information, including the identification of dozens of financial accounts linked to the Defendant Internet Stores which were offering for sale and/or selling Counterfeit Ralph Lauren Products. In the absence of a preliminary injunction, Defendants may attempt to move any assets from any accounts in U.S.-based financial institutions to an offshore account. Therefore, Defendants' assets should remain frozen for the remainder of the proceedings.

The amount of damages to which Ralph Lauren is entitled, as set forth in the Amended Complaint, far exceeds any amount contained in any of the Defendants' frozen financial accounts. For example, Ralph Lauren's prayer for relief requests statutory damages of \$2 million from each Defendant. [11]. In addition, and as established in Ralph Lauren's TRO Memorandum [13], many federal courts, including the Northern District of Illinois, have granted orders preventing the fraudulent transfer of assets. *See, e.g., Lorillard Tobacco Co. v. Montrose Wholesale Candies & Sundries, Inc.*, 2005 WL 3115892 (N.D. Ill. Nov. 8, 2005). As such, an order continuing to freeze the Defendants' assets should be granted.

IV. CONCLUSION

In view of the foregoing, Ralph Lauren respectfully request that this Court enter the preliminary injunction.

Dated this 19th day of August 2019.

Respectfully submitted,

/s/ Justin R. Gaudio

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of August 2019, 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 Ralph Lauren's control now redirect, and I will send an e-mail to the e-mail addresses identified in Exhibits 2 and 3 to the Declaration of Derek Morales and any e-mail addresses provided for Defendants by third parties that includes a link to said website.

/s/ Justin R. Gaudio
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