

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**THE ESTATE OF MARILYN  
MONROE LLC,**

*Plaintiff,*

v.

**&+Happy, *et al.*,**

*Defendants.*

Civil Action No. 1:22-cv-859-MLB

**TEMPORARY RESTRAINING ORDER, ASSET FREEZE  
ORDER, AND ORDER TO SHOW CAUSE**

**INTRODUCTION**

**THIS CAUSE** has come before the Court on Plaintiff The Estate of Marilyn Monroe LLC's ("Plaintiff's") Motion for *Ex Parte* Temporary Restraining Order, Asset Freeze Order, and Order to Show Cause ("Motion for TRO") pursuant to Rule 65 of the Federal Rules of Civil Procedure, [28 U.S.C. § 1651\(a\)](#), [15 U.S.C. § 1116](#), [15 U.S.C. § 1114](#), and [15 U.S.C. § 1125\(a\)](#). As discussed below, Plaintiff has satisfied the requirements for the issuance of an *ex parte* temporary restraining order and the additional relief requested.

## I. APPLICABLE LEGAL STANDARDS

A court will issue a temporary restraining order where the requesting party demonstrates the following four factors: (1) it has a substantial likelihood of success on the merits; (2) the moving party will suffer irreparable injury if the order is not granted; (3) that the threatened injury to the plaintiff outweighs the harm the relief would inflict on the non-movant; and (4) entry of the order would serve the public interest. *Schiavo ex. rel Schindler v. Schiavo*, [403 F.3d 1223, 1225–26](#) (11<sup>th</sup> Cir. 2005) (per curiam); *Cathedral Art Metal Co. v. Divinity Boutique, LLC*, [2018 WL 566510](#) at \*4 (N.D. Ga. 2018)(applying four-part test and granting preliminary injunction in a Lanham Act case).

Courts may issue a temporary restraining order without notice to the adverse party where the facts in an affidavit demonstrate the moving party will suffer immediate and irreparable injury, loss, or damage before the adverse party can be heard in opposition, and the movant’s attorney certifies in writing the reasons why notice should not be required. [FED. R. CIV. P. 65\(b\)\(1\)](#). Where a defendant’s identity is known and notice can be feasibly given, the court may still grant an *ex parte* seizure order if providing notice to the defendant would render fruitless the further prosecution of the action. *AT&T Broadband v. Tech Communications, Inc.*, [381 F.3d 1309, 1319](#) (11<sup>th</sup> Cir. 2004). “The weight of

authority around the country appears to favor the granting of *ex parte* seizure orders in trademark counterfeiting cases, where fake versions of well-known brands are deliberately passed off to the public as the genuine article.” *Fimab-Finanziaria Maglificio Biellese Fratelli Fila S.p.A. v. Kitchen*, [548 F. Supp. 248, 249-50](#) (S.D. Fla. 1982) (citing numerous case). The justification for an *ex parte* seizure order is even more compelling where a significant amount of evidence pertaining to the counterfeiting activity is in electronic form, and therefore subject to quick, easy, and untraceable destruction by the Defendants. *Dell Inc. v. BelgiumDomains, LLC*, [2007 WL 6862341](#) at \*2 (S.D. Fla. 2007); *see also Chanel, Inc. v. Chanel255.ORG, et al.*, [2012 WL 12845630](#) at \*5 (S.D. Fla. 2012).

A request for permanent injunctive relief and disgorgement of the defendant’s profits from counterfeiting pursuant to [15 U.S.C. § 1117](#) as well as a request for an award of attorney’s fees are requests for relief in equity. Requests for equitable relief invoke the court’s inherent equitable powers to order preliminary injunctive relief, including an asset freeze, in order to assure the availability of permanent relief. *Levi Strauss & Co. v. Sunrise Intern. Trading Inc.*, [51 F.3d 982, 987](#) (11<sup>th</sup> Cir. 1995). Such asset freezes are particularly appropriate against sellers of counterfeit goods who are likely to hide their ill-gotten profits if

their assets are not seized. *Reebok Intern., Ltd. v. Marnatech Enterprises, Inc.*, [970 F.2d 552, 559](#) (9<sup>th</sup> Cir. 1992).

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court, having reviewed the Plaintiff’s Motion for TRO, Memorandum, and supporting declarations and evidence, makes the following findings of facts and conclusions of law:

### A. Plaintiff’s Trademarks

1) Plaintiff owns all intellectual property, including all trademark rights, of Marilyn Monroe’s estate and is current owner of the global trademark portfolio of the late Marilyn Monroe.

2) Plaintiff has adopted, used and/or registered numerous trademarks in connection with various products, including the following, (“**Plaintiff’s Marks**”)

Mark	U.S. Federal Reg. Nos.
MARILYN MONROE	2985935
MARILYN MONROE	2223599
MARILYN MONROE	4419275
MARILYN MONROE	2180950
MARILYN MONROE	4743834
MARILYN	4040943
DIAMONDS ARE A GIRL’S BEST FRIEND	3269035

**B. Defendants' Advertising and Sale of Counterfeit and Infringing Works.**

- 3) Defendants are foreign distributors and resellers of a variety of goods.

Defendants advertise and sell their goods through online marketplaces such as Alibaba, AliExpress, DHGate, Amazon, Ebay, Joom, and/or Wish (**"Marketplaces"**).

4) Defendants offer to sell and offer to ship their goods to buyers located in the United States, including in this judicial district.

5) Defendants accept payment for their goods in U.S. Dollars through a variety of payment processors and financial institutions, including AliPay, DHPay, PayPal, and ContextLogic (**"Financial Institutions"**).

6) Each Defendant is advertising and offering for sale goods using or bearing counterfeit copies of at least one of Plaintiff's Marks, is using a counterfeit of at least one of Plaintiff's Marks in its listings for non-genuine copies of Plaintiff's goods, or is using a confusingly similar trademark to one of Plaintiff's Marks in the marketing and sale of its goods (**"Counterfeit Products"**) through its virtual storefront(s) on the Marketplaces.

7) Each Defendant has sold and shipped, and/or is willing to sell and ship, Counterfeit Products to customers in the United States, including in this judicial district.

8) Defendants are subject to the personal jurisdiction of this Court pursuant to Rule 4(k)(2) of the Federal Rules of Civil Procedure, and exercising jurisdiction over Defendants is consistent with the United States Constitution and its laws. Based on the facts set forth above, it is reasonable for Defendants to expect that they may be sued in the United States. *U.S. S.E.C. v. Carrillo*, 115 F.3d 1540, 1542-47 (11<sup>th</sup> Cir. 1997)(holding court had personal jurisdiction over foreign corporation where defendant placed ads for securities in two airlines' in-flight magazines, mailed offering materials directly to U.S. investors, and maintained U.S. bank accounts to receive payment from investors.); *Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339, 1355-58 (11<sup>th</sup> Cir. 2013)(affirming jurisdiction over non-resident who sold counterfeit products through fully-interactive website).

9) Plaintiff has never authorized any of the Defendants to use any of Plaintiff's Marks on or in the advertising, promotion, or sale of any goods in the United States.

10) Plaintiff has established that the Counterfeit Products offered for sale by Defendants are not genuine and that Defendants are using one or more of Plaintiff's Marks on or in connection with the advertising and promotion of their Counterfeit Products.

11) Plaintiff has established that it is substantially likely to succeed on the merits of its trademark infringement claims:

- a) Plaintiff owns valid federal trademark registrations for Plaintiff's Marks;
- b) The Counterfeit Products that Defendants are advertising and offering for sale are not genuine;
- c) Defendants are using spurious marks that are identical with, or substantially indistinguishable from, one or more of Plaintiff's Marks in commerce on or in connection with the advertising, offering for sale, and/or sale of the Counterfeit Products; and
- d) Defendants' use of Plaintiff's Marks on or in connection with the advertising and sale of Counterfeit Products is likely to cause consumer confusion, mistake, or deception as to the source or origin of the Counterfeit Products.

12) Under 15 U.S.C. § 1116(a) (2020), Plaintiff is entitled to a rebuttable presumption of irreparable harm in cases where, as here, Plaintiff is seeking a temporary restraining order or a preliminary injunction and has demonstrated a likelihood of success on the merits. As held in the preceding paragraph, Plaintiff has made a demonstration of a likelihood of success on the merits and is, therefore,

automatically entitled to a presumption of irreparable harm, thereby satisfying the second factor of the temporary restraining order analysis.

13) Even in the absence of this rebuttable presumption, Plaintiff has shown that it is likely to suffer irreparable harm if an injunction does not issue. The Counterfeit Products are likely of inferior quality to Plaintiff's genuine goods, misleading consumers as to the true quality of Plaintiff's goods and causing consumer confusion, mistake, and deception all to the detriment of Plaintiff's goodwill. The continued sale of the Counterfeit Products threatens Plaintiff with the loss of control of its reputation and loss of the considerable goodwill it has established with customers. Moreover, Plaintiff has established that Counterfeit Products typically do not meet applicable product safety or labeling requirements. This is more than sufficient to establish a likelihood of irreparable harm. *Ferrellgas Partners, L.P.*, [143 Fed. Appx. 180, 190](#) (11<sup>th</sup> Cir. 2005); *Crossfit, Inc. v. Quinnie*, [232 F. Supp.3d 1295, 1316](#) (N.D. Ga. 2017)(“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.”).

14) It is likely that Plaintiff and consumers who purchase Defendants' Counterfeit Products will suffer immediate and irreparable loss, damage, or injury unless Plaintiff's request for *ex parte* relief is granted:



- a) It is likely that Defendants will continue to sell counterfeit and infringing goods through their virtual storefronts on the Marketplaces storefronts in the absence of the requested TRO;
- b) As a result, it is likely that consumers will continue to be misled, confused, and disappointed by the quality of these goods, thereby significantly and irreparably damaging Plaintiff's valuable goodwill; and
- c) Plaintiff will continue to suffer lost sales of genuine goods as the result of the lower-cost Counterfeit Products offered for sale by Defendants.

15) The balance of harms favors Plaintiff. If the TRO is denied, Defendants will be able to shut down their virtual storefronts on the Marketplaces, transfer their ill-gotten gains away from the Marketplaces, and otherwise take immediate steps to conceal their infringing conduct and prevent Plaintiff from obtaining meaningful relief. In contrast, if the Court grants the requested *ex parte* TRO, Defendants will be prohibited from continuing to advertise, offer for sale, and sell Counterfeit Products to consumers in the United States and may be required to disgorge their ill-gotten gains from the past sale of such Counterfeit Products, neither of which constitutes any substantial harm.

16) Plaintiff has further demonstrated that this TRO should be granted *ex parte* to avoid affording Defendants an opportunity to destroy relevant evidence, much of which is in electronic form. If Plaintiff provides Defendants notice of its Application for TRO, Defendants are likely to delete their existing virtual storefronts on the Marketplace, transfer any ill-gotten gains away from the Marketplaces, hide their identities, cover up evidence of their infringing activities, and shield their ill-gotten assets in a concerted effort to avoid liability and to prevent Plaintiff from achieving a meaningful recovery, including financial compensation and permanent injunctive relief. Foreign parties that sell Counterfeit Products often “disappear” when notified that their conduct is unlawful, only to set up a new online storefront under a new identity, with new financial accounts.

17) Granting Plaintiff an *ex parte* TRO will also be in the public’s interest. It will remove from the stream of commerce counterfeit and infringing goods that do not meet Plaintiff’s quality control requirements, thereby preventing further consumer harm, confusion, mistake, or deception.

18) Plaintiff has requested a permanent injunction and recovery of Defendants’ ill-gotten profits from their sale of Counterfeit Products pursuant to 15 U.S.C. § 1117(a).

19) By requesting equitable relief, Plaintiff has invoked this Court's inherent equitable powers to order preliminary relief, including an asset freeze, in order to assure the availability of permanent relief. *Levi Strauss & Co. v. Sunrise Intern. Trading Inc.*, 51 F.3d 982, 987 (11<sup>th</sup> Cir. 1995) (citing *Fed. Trade Comm'n v. U.S. Oil & Gas Corp.*, 748 F.2d 1431, 1433–34 (11<sup>th</sup> Cir. 1984)).

20) Defendants are likely to destroy evidence of their counterfeiting activities, such as evidence regarding their virtual storefronts and payment processing histories on the Marketplaces and other financial institutions, as well as hide and/or transfer any ill-gotten proceeds from the sale of Counterfeit Products outside of the jurisdiction of this Court, unless those assets are frozen or otherwise restrained.

In light of the foregoing, it is hereby **ORDERED AND ADJUDGED** that Plaintiff's Motion for *Ex Parte* Temporary Restraining Order, Asset Freeze Order, and Order to Show Cause is **GRANTED** as follows:

1) Each Defendant (as reflected on the attached Exhibit A), its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order is hereby ordered to temporarily:

- a) Cease or refrain from manufacturing, advertising, offering for sale, selling, distributing, destroying, selling off, transferring, or otherwise disposing of any Counterfeit Products;
- b) Cease or refrain from manufacturing, advertising, offering to sell, selling, reproducing, or distributing any goods bearing Plaintiff's Marks, or any confusingly similar trademarks, other than genuine products manufactured or distributed by Plaintiff or its authorized manufacturers and distributors; and
- c) Cease or refrain from destroying, selling off, transferring, or otherwise disposing of any documents, electronically stored information, or financial records or assets of any kind relating to the manufacture, importation, sale, offer for sale, distribution, or transfer of any Counterfeit Products;
- d) Cease or refrain from using Plaintiff's Marks, or any confusingly similar trademarks, on or in connection with any virtual storefront that any Defendant may own, operate, or control on any Marketplace;
- e) Cease or refrain from any and all use of Plaintiff's Marks, or any confusingly similar trademarks, as metatags, on any webpage

(including the title of any web page), in any advertising links to other websites, from search engines' databases or cache memory, or any other form of use of such terms that are visible to a computer user or serves to direct computer searches to virtual storefronts registered, owned, or operated by any Defendant on any Marketplace; and

f) Cease or refrain from altering, disabling, closing, or transferring ownership of any virtual storefront on any Marketplace during the pendency of this Action, or until further Order of the Court.

2) For the duration of this suit, each Defendant must preserve all documents and electronically stored information arising from or related to its sale, offering for sale, advertising, or promotion of Counterfeit Products through its virtual storefronts located on the Marketplaces.

3) All financial institutions, such as payment processors, banks, escrow services, money transmitters, or Marketplaces, including but not limited to: PayPal, Inc. ("PayPal"), Ant Financial Services Group d/b/a AliPay and AliPay US, Inc. ("AliPay"), DHPay Inc. ("DHPay"), Camel FinTech, Inc. ("Camel FinTech"), ContextLogic, Inc. ("ContextLogic"), or any other companies that engage or have engaged in the processing or transfer of money of or on behalf of any Defendants by virtue of their operation of virtual storefronts on any of

the Marketplaces (the “Financial Institutions”) who receive actual notice of this Order shall immediately attach and freeze all funds in any accounts owned, controlled or utilized by or associated with Defendants or otherwise prohibit the transfer of any funds out of any such accounts and divert any frozen funds and any additional funds that may be transferred into the accounts into a holding account at the Marketplace or the respective Financial Institution for the trust of the Court, with such frozen funds and/or holding accounts being held, maintained, and/or located exclusively within the United States.

4) Within seven (7) days of receiving actual notice of this Order, all Financial Institutions shall provide a report to Plaintiff for each Defendant having any account with the Financial Institution, the report to include, at a minimum, the following information:

- a) Legal name and email address of each Defendant;
- b) Current account balances and amount of funds attached, frozen, and being held in trust pursuant to this Order;
- c) Identity of all financial accounts linked to or associated with each Defendant’s account associated with the virtual storefronts on the Marketplaces, or from or to which funds have been transferred from the attached accounts, including the name of the financial

institution, account numbers, routing numbers, and other relevant data to allow Plaintiff to seek further application of this Order.

5) No funds restrained by this Order shall be transferred or surrendered by any Financial Institution or Marketplace for any purpose (other than pursuant to a chargeback made pursuant to their security interest in the funds) without the express authorization of the Court.

6) Upon receipt of notice of this Order, each Marketplace (including but not limited to Alibaba, AliExpress, DHGate, Amazon, Ebay, Joom, and Wish, as well as any other e-commerce platform hosting virtual storefronts for any Defendant) on which a Defendant maintains a virtual storefront or account is ordered to immediately:

- a) Provide to Plaintiff the name and email address of each Defendant having an account or store on the Marketplace;
- b) Freeze all funds held or received by the Marketplace for any Defendant's benefit; and
- c) Disable each Defendant's virtual storefronts on the Marketplaces and any accounts associated with each Defendant and cease providing any services to Defendants.

7) Plaintiff may notify the Marketplaces and Financial Institutions of this Order by electronic means, including by electronic mail.

8) Pursuant to this Court's discretion, Plaintiff shall not presently be required to post a bond or other security. *BellSouth Telecommunications, Inc. v. MCIMetro Access Transmission Servs., LLC*, [425 F.3d 964, 971](#) (11<sup>th</sup> Cir. 2005). However, any Defendant may appear and immediately challenge this portion of the Order by providing the Court with a reasonable estimation of its potential lost sales, along with supporting documentation sufficient to allow the Court to decide what an appropriate amount of surety would be. Plaintiff will then have one (1) week in which to file a response.

9) This Order shall remain in effect until the date for the hearing on Plaintiff's motion for an order to show cause why a preliminary injunction should not issue or until such further date as set by the Court or stipulated to by the parties.

10) This Order shall apply to Defendants, their associated virtual storefronts on the Marketplaces, and any other websites, domain names, seller identification names, e-commerce stores, or Financial Institution accounts which are being used by Defendants for the purpose of advertising, offering for sale, and



selling any Counterfeit Products at issue in this action and/or unfairly competing with Plaintiff.

11) Any Defendant or Financial Institution account holder may petition the Court to modify the asset restraint set out in this Order.

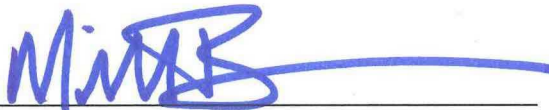
12) A hearing is set before this Court in the United States Courthouse located at 75 Ted Turner Drive SW, Atlanta, Georgia 30303, Courtroom 1906, on **March 16, 2022 at 10:00 a.m.**, at which time Defendants and/or any other affected persons may challenge the appropriateness of this Order and move to dissolve the same, and at which time the Court will hear argument on Plaintiff's requested preliminary injunction, and Defendants shall appear and show cause why said preliminary injunction should not issue. The Court has attached instructions for Defendants to access this proceeding remotely, should they wish to do so.

13) **SERVICE BY ALTERNATE MEANS:** After Plaintiff's counsel has received confirmation that the Financial Institutions and/or Marketplaces have restrained Defendants' funds as directed herein, Plaintiff shall serve copies of the Complaint, Motion for TRO, and this Order on each Defendant by electronic mail using email addresses provided by the Marketplaces, Financial Institutions, or Defendants themselves or by other electronic means reasonably calculated to provide notice to all Defendants.

14) Any response or opposition to Plaintiff's motion for preliminary injunction must be served on Plaintiff's counsel by **March 9, 2022** and filed with the Court, along with Proof of Service. Plaintiff shall file any reply memorandum prior to the hearing set for **March 16, 2022**. The above dates may be revised upon stipulation by all parties and approval of this Court. **Defendants are on notice that failure to appear at the hearing may result in the imposition of a preliminary injunction against them pursuant to 15 U.S.C. § 1116(d), Rule 65 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1651(a), and the Court's inherent authority.**

This Temporary Restraining Order expires within fourteen (14) days unless extended for good cause.

**SO ORDERED** this 2nd day of March, 2022.

  
\_\_\_\_\_  
MICHAEL L. BROWN  
UNITED STATES DISTRICT JUDGE

**EXHIBIT A**  
**LIST OF ALL NAMED DEFENDANTS SUBJECT TO ORDER**

&+Happy  
ADEMIL  
Andrew Hani  
Art in Colour  
Artstone  
Baruisi  
Beautiful&sister  
bei jing ying huo wei lai Technology Co., Ltd.  
beiebite  
binzhouhaozhushoushangmaoyouxiangongsi  
Blue Surf Art  
chaoliuxiangbao  
CLZ Little Love  
dongjiaozhongxibaihuodian  
Donpee  
Elvirace Global Trading  
extendsx  
fanrug  
FastDelivery113  
FJQ1  
frthnbny-US  
FUOUKU  
Future expectation  
gaoqoangdian  
GCOCL  
Great mountain  
Gwendolyn Nguyen  
HanaKin  
Hazelce  
Hekeying  
High Quality Strictly  
HNFX  
HongDaDianQiMenShiBu  
huifeishangdian  
Indimization

JIANKUN SAI  
jinanqiaozhiyikuajingdianzishangwuyouxianzerengonG  
jinjiangshimeilingdingcaiyunbaihuoshangdian  
JKeorgevipsto  
Juipniss  
juzhiqing  
JZGG  
KADS NAILART STORE  
Karen Max Homeware Store  
Kemi'  
LANCE Shop  
LDD Anime Decor  
LEALIN  
Li. Firm  
lianchengxianyingshuyibaihuodian  
Lighting Fixture Direct  
Like the air  
Lingso  
LuxuryANS  
Madge Department Store  
mamrug  
Mersi Store  
Microkrypton  
MUXIUWANJIA  
mzcurse  
NAJIAXIAODIAN  
NaMair  
NATALIA STICKERS  
NDSWKR  
NingXiangShiJiaXuBaiHuoDian  
NingXiangShiShanHengBaiHuoDian  
Nvkormo  
ONE ALL  
Osmei  
Pingdingshanshixinhuaquhangluwenbaihuodian  
pingdingshanzimengshangmaoyouxiangongsi  
pinghaizhou  
Powerwolf2008

Prithu Devitri  
PYQFA  
QCMceom  
Qiaona  
QiSheng Store  
Qmyckv  
Quanzhoujunlongzhuangshiyouxiangongsi  
Range Trading Limited  
RaonSion  
ROMALOVOKS  
RoyalGrandUK  
ru pe  
ruimingly  
RuiYanWuJinShangDian  
RUOSHUMAOYI  
SARLA  
SEZER Amz Store  
SOOXU  
SunmileX  
TBRZTR  
TengFengDeDianPu  
TOOBIT  
Top seller 6  
TSCSHOP  
Wan Da  
wanghongyanbeimei  
Wangjinbao  
WANGQiang  
WANZHANXING  
WeiFangXiaoFuNiShangMaoYouXianGongSi  
weixuanbaohuo  
xiangchengshikunshaoshangmaoyouxianzerengongsi  
xihuaxianchiyingxianglongyalihezuoting  
xingde  
xinliangyuanshangmaoyouxian  
xinluoquchangyuanbaihuoshanghang  
xionghuanshangmao  
XJX Decorative Signs

XMxD  
XR Decorate Shop  
yanchengjingrunmaoyiyouxiangongsi  
yanggeshop  
YBHUIYUAN  
YGY Arts  
YI HUI XUAN  
yinchengzhubaoshoushi  
YNGBAOBAO  
yongyongyaoyao  
Yotaup  
YSAISM  
YUCHENWD  
YUNBA  
Yunsir  
yydss  
Zhangyukun  
zhaoxishangmaohang  
ZhouKouDeChaoShangMaoYouXianGongSi  
Zhouludedian  
Zuoyoo

Connection Instructions: Meeting ID: 161 146 8956. Passcode: 364591.

Telephone Number: 646-828-7666. You must follow the instructions of the Court for remote proceedings available [here](#). The procedure for filing documentary exhibits admitted during the proceeding is available [here](#).

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