

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

WHAM-O HOLDING, LTD. and
INTERSPORT CORP. d/b/a WHAM-O,

Plaintiffs,

v.

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

Defendants.

Civil Action No.: 1:22-cv-01352

Judge Edmond E. Chang

Magistrate Judge Heather K. McShain

PRELIMINARY INJUNCTION ORDER

THIS CAUSE being before the Court on Plaintiffs, WHAM-O HOLDING, LTD. and INTERSPORT CORP. d/b/a WHAM-O (“WHAM-O” or “Plaintiffs”), Motion for a Preliminary Injunction, and this Court having heard the evidence before it hereby GRANTS Plaintiffs’ Motion for Entry of a Preliminary Injunction in its entirety against the defendants identified in [Amended] Schedule A (collectively, the “Defendants”).

THIS COURT HEREBY FINDS that it has personal jurisdiction over the Defendants since the Defendants directly target their business activities toward consumers in the United States, including Illinois. In this case, Plaintiffs have presented screenshot evidence that each Defendant Internet store is reaching out to do business with Illinois residents by operating one or more commercial, interactive Internet stores through which Illinois residents can purchase products using counterfeit versions of Plaintiffs’ trademarks. *See* Docket No. 13 which includes screenshot evidence confirming that each Defendant Internet Store does stand ready, willing and able to ship its counterfeit goods to customers in Illinois bearing infringing and/or counterfeit versions of the FRISBEE Trademarks, U.S. Trademark Registration Nos. 4,046,202; 970,089 and 679,186 (The “FRISBEE Trademarks”).

THIS COURT FURTHER FINDS that injunctive relief previously granted in the Temporary Restraining Order (“TRO”) should remain in place through the pendency of this litigation and that issuing this Preliminary Injunction is warranted under Federal Rule of Civil Procedure 65. Evidence submitted in support of this Motion and in support of WHAM-O’s previously granted Motion for a Temporary Restraining Order establishes that WHAM-O has a likelihood of success on the merits; that no remedy at law exists; and that WHAM-O will suffer irreparable harm if the injunction is not granted.

Specifically, WHAM-O has proved a *prima facie* case of trademark infringement because (1) the FRISBEE Trademarks are distinctive marks and are registered with the U.S. Patent and Trademark Office on the Principal Register, (2) Defendants are not licensed or authorized to use the FRISBEE Trademarks, and (3) Defendants’ use of the FRISBEE Trademarks is causing a likelihood of confusion as to the origin or sponsorship of Defendants’ products with WHAM-O. Furthermore, Defendants’ continued and unauthorized use of the FRISBEE Trademarks irreparably harms WHAM-O through diminished goodwill and brand confidence, damage to WHAM-O’s reputation, loss of exclusivity, and loss of future sales. Monetary damages fail to address such damage and, therefore, WHAM-O has an inadequate remedy at law. Moreover, the public interest is served by entry of this Preliminary Injunction to dispel the public confusion created by Defendants’ actions. Accordingly, this Court orders that:

1. Defendants, their affiliates, officers, agents, employees, attorneys, and all persons acting for, with, by, through, under or in active concert with them be temporarily enjoined and restrained from:
 - a. using the FRISBEE Trademarks or any reproductions, counterfeit copies or colorable imitations thereof in any manner in connection with the distribution,

marketing, advertising, offering for sale, or sale of any product that is not a genuine FRISBEE product or not authorized by WHAM-O to be sold in connection with the FRISBEE Trademarks;

- b. passing off, inducing, or enabling others to sell or pass off any product as a genuine FRISBEE product or any other product produced by WHAM-O, that is not WHAM-O's or not produced under the authorization, control or supervision of WHAM-O and approved by WHAM-O for sale under the FRISBEE Trademarks;
- c. committing any acts calculated to cause consumers to believe that Defendants' products are those sold under the authorization, control or supervision of WHAM-O, or are sponsored by, approved by, or otherwise connected with FRISBEE;
- d. further infringing the FRISBEE Trademarks and damaging WHAM-O's goodwill;
- e. otherwise competing unfairly with WHAM-O in any manner;
- f. shipping, delivering, holding for sale, transferring or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner, products or inventory not manufactured by or for WHAM-O, nor authorized by WHAM-O to be sold or offered for sale, and which bear any of the FRISBEE Trademarks or any reproductions, counterfeit copies or colorable imitations thereof;
- g. using, linking to, transferring, selling, exercising control over, or otherwise owning the Defendant Internet Stores, or any other online marketplace account

that is being used to sell or is the means by which Defendants could continue to sell Counterfeit/Infringing FRISBEE products; and

- h. operating and/or hosting at the Defendant Internet Stores and any other online marketplace accounts registered or operated by Defendants that are involved with the distribution, marketing, advertising, offering for sale, or sale of any product bearing the FRISBEE Trademarks or any reproductions, counterfeit copies or colorable imitations thereof that is not a genuine FRISBEE product or not authorized by WHAM-O to be sold in connection with the FRISBEE Trademarks.
- 2. Those in privity with Defendants and with actual notice of this Order, including any online marketplaces such as, but not limited to, Alipay US, Inc. and its related companies and affiliates (“Alipay”), (collectively, "Marketplaces"), social media platforms, Facebook, YouTube, LinkedIn, Twitter, Internet search engines such as Google, Bing and Yahoo, shall within three (3) business days of receipt of this Order:
 - a. disable and cease providing services for any accounts through which Defendants engage in the sale of counterfeit and infringing goods using the FRISBEE Trademarks, including any accounts associated with the Defendants listed in [Amended] Schedule A;
 - b. disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of counterfeit and infringing goods using the FRISBEE Trademarks; and
 - c. take all steps necessary to prevent links to the Defendant Internet Stores identified in [Amended] Schedule A from displaying in search results,

including, but not limited to, removing links to the Defendant Internet Stores from any search index.

3. Defendants and any third party with actual notice of this Order who is providing services for any of the Defendants, or in connection with any of Defendants' Internet Stores or other websites operated by Defendants, including, without limitation, any online marketplace platforms such as Marketplaces, advertisers, Facebook, Internet Service Providers ("ISP"), web hosts, back-end service providers, web designers, sponsored search engine or ad-word providers, banks, merchant account providers, including, but not limited to, Alipay, Western Union, third party processors and other payment processing service providers, shippers, and online marketplace registrars (collectively, the "Third Party Providers") shall, within three (3) business days after receipt of such notice, provide to WHAM-O expedited discovery, including copies of all documents and records in such person's or entity's possession or control relating to:
 - a. the identities and locations of Defendants, their agents, servants, employees, confederates, attorneys, and any persons acting in concert or participation with them, including all known contact information;
 - b. the nature of Defendants' operations and all associated sales and financial information, including, without limitation, identifying information associated with the Defendant Internet Stores, and Defendants' financial accounts, as well as providing a full accounting of Defendants' sales and listing history related to their respective Defendant Internet Stores;
 - c. Defendants' websites and/or any Defendant Internet Stores;
 - d. the Defendant Internet Stores registered by Defendants; and

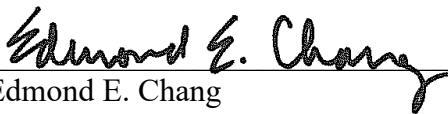
- e. any financial accounts owned or controlled by Defendants, including their agents, servants, employees, confederates, attorneys, and any persons acting in concert or participation with them, including such accounts residing with or under the control of any banks, savings and loan associations, payment processors or other financial institutions, including, without limitation, Alipay, Western Union, or other merchant account providers, payment providers, third party processors, and credit card associations (e.g., MasterCard and VISA).
- 4. Defendants and any persons in active concert or participation with them who have actual notice of this Order shall be temporarily restrained and enjoined from transferring or disposing of any money or other of Defendants' assets until further ordered by this Court.
- 5. Alipay shall, within three (3) business days of receipt of this Order, for any Defendant or any of Defendant Internet Stores or websites:
 - a. locate all accounts and funds connected to Defendants, Defendant Internet Stores, including, but not limited to, any Alipay accounts connected to the information listed in [Amended] Schedule A hereto or the email addresses identified in Exhibit 2 to the Declaration of Todd Richards; and
 - b. restrain and enjoin any such accounts or funds that are non-U.S. foreign based from transferring or disposing of any money or other of Defendants' assets until further ordered by this Court.
- 6. Any banks, savings and loan associations, payment processors, or other financial institutions, for any Defendant or any of Defendant Internet Stores, shall within three (3) business days of receipt of this Order:

- a. locate all accounts and funds connected to Defendants, or Defendant Internet Stores, including, but not limited to, any accounts connected to the information listed in [Amended] Schedule A hereto or the email addresses identified in Exhibit 2 to the Declaration of Todd Richards; and
 - b. restrain and enjoin such accounts from receiving, transferring or disposing of any money or other of Defendants' assets until further ordered by this Court.
7. WHAM-O may provide notice of these proceedings to Defendants, including notice of the preliminary injunction hearing and service of process pursuant to Fed.R.Civ.P. 4(f)(3), by (i) electronically publishing a link to the Complaint, this Order and other relevant documents on a website, and (ii) by sending an e-mail to the e-mail addresses identified in Exhibit 2 to the Declaration of Exhibit 2 to the Declaration of Todd Richards and any e-mail addresses provided for Defendants by third parties that includes a link to said website. The Clerk of Court is directed to issue a single original summons in the name of "COOYOMOO HOUPU SuperPet Life Store and all other Defendants identified in Complaint" that shall apply to all Defendants. The combination of providing notice via electronic publication and e-mail, along with any notice that Defendants receive from Marketplaces and payment processors, shall constitute notice reasonably calculated under all circumstances to apprise Defendants of the pendency of the action and afford them the opportunity to present their objections.
8. Any Defendants that are subject to this Order may appear and move to dissolve or modify the Order on three days' notice to WHAM-O or on shorter notice as set by this Court.
9. The Clerk is directed to unseal any previously sealed documents in this matter, namely (1)

Plaintiffs' [Amended] Schedule A attached to the Complaint [8], which includes a list of the Defendant Online Marketplace Accounts; (2) screenshot printouts showing the active Defendant Internet Stores [13] (Exhibit 2 to the Declaration of Todd Richards), and the Temporary Restraining Order [16].

10. The \$10,000 bond posted by WHAM-O shall remain with the Court until a Final disposition of this case or until this Preliminary Injunction is terminated.

Dated: 04/01/2022



Edmond E. Chang
U.S. District Court Judge

[AMENDED] SCHEDULE A

No.	Defendants
1	COOYOMOO HOUPU SuperPet Life Store
2	COOYOMOO Life-Home Store
3	COOYOMOO Store