

**IN THE UNITED STATES DISTRICT COURT
FOR THE 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.

Case No. 22-cv-02571

Judge Gary Feinerman

Magistrate Judge Jeffrey I. Cummings

PRELIMINARY INJUNCTION ORDER

Plaintiffs, WHAM-O HOLDING, LTD. and INTERSPORT CORP. d/b/a WHAM-O (“WHAM-O” or “Plaintiffs”) filed a Motion for Entry of a Preliminary Injunction against the against the fully interactive, e-commerce stores operating under the seller aliases identified in Schedule A to the Complaint and attached hereto (collectively, “Defendants”) and using at least the online marketplace accounts identified in Schedule A (the “Defendant Internet Stores”). After reviewing the Motion and the accompanying record, this Court GRANTS WHAM-O’s Motion as follows.

This Court finds WHAM-O has provided notice to Defendants in accordance with the Temporary Restraining Order entered May 23, 2022, [17] (“TRO”), and Federal Rule of Civil Procedure 65(a)(1).

This Court also finds, in the absence of adversarial presentation, that it has personal jurisdiction over Defendants because Defendants directly target their business activities toward consumers in the United States, including Illinois. Specifically, WHAM-O has

provided a basis to conclude that Defendants have targeted sales to Illinois residents by setting up and operating e-commerce stores that target United States consumers using one or more seller aliases, offer shipping to the United States, including Illinois, and have sold products using infringing and counterfeit versions of WHAM-O's federally registered trademarks, which are protected by U.S. Trademark Registration Nos. 2,496,140; and 4,003,453 (the "BOOGIE Trademarks") to residents of Illinois. In this case, WHAM-O has presented screenshot evidence that each Defendant e-commerce 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 the BOOGIE Trademarks. *See* Docket No. 12, which includes screenshot evidence confirming that each Defendant e-commerce store does stand ready, willing and able to ship its counterfeit goods to customers in Illinois bearing infringing and/or counterfeit versions of the BOOGIE Trademarks.

This Court also finds that the injunctive relief previously granted in the 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 Entry of a TRO establishes that WHAM-O has demonstrated 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 BOOGIE 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 any of the BOOGIE Trademarks, and (3) Defendants' use of the BOOGIE 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 BOOGIE 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 officers, agents, servants, employees, attorneys, and all persons acting for, with, by, through, under, or in active concert with them be preliminarily enjoined and restrained from:
 - a. using the BOOGIE Trademarks or any reproductions, counterfeit copies, or colorable imitations in any manner in connection with the distribution, marketing, advertising, offering for sale, or sale of any product that is not a genuine WHAM-O product or not authorized by WHAM-O to be sold in connection with the BOOGIE Trademarks;
 - b. passing off, inducing, or enabling others to sell or pass off any product as a genuine WHAM-O 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 BOOGIE 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 WHAM-O; and
 - d. manufacturing, 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 WHAM-O's trademarks, including the BOOGIE Trademarks, or any reproductions, counterfeit copies, or colorable imitations.
- 2. Defendants, within fourteen (14) days after receiving notice of this Order, shall serve upon Plaintiffs a written report under oath providing: (a) the identity and location, including contact information, their true name and physical address, and all associated email addresses, of Defendant; (b) the nature of Defendants' operations and all associates sales, methods of payment for services and financial information, including, without limitation, identifying information associated with the Internet Stores of Defendants, and Defendants' financial accounts, as well as providing a full accounting of Defendants' sales and listing history; and (c) the steps taken by Defendants to comply with paragraphs 1, (a)-(d) above
- 3. Defendants shall not transfer or dispose of any money or other of Defendants' assets in any of Defendants' financial accounts.
- 4. Upon WHAM-O's request, Defendants and any third party with actual notice of this Order who is providing services for any of Defendants, or in connection with any of

Defendants' Defendant Internet Stores, including, without limitation, any online marketplace platforms such as Amazon Payments, Inc. ("Amazon"), Alibaba Group Holding Ltd. ("Alibaba") and its related companies and affiliates; and Alipay US, INC. ("Alipay") and its related companies and affiliates (collectively, the "Third Party Providers"), shall, within five (5) business days after receipt of such notice, provide to WHAM-O expedited discovery, limited to copies of documents and records in such person's or entity's possession or control sufficient to determine:

- a. the identities and locations of Defendants, their officers, agents, servants, employees, attorneys, and any persons acting in active concert or participation with them, including all known contact information and all associated e-mail addresses;
- b. the nature of Defendants' operations and all associated sales, methods of payment for services, and financial information, including, without limitation, identifying information associated with the Defendant Internet Stores and Defendants' financial accounts, including Defendants' sales and listing history related to their respective Defendant Internet Stores; and
- c. any financial accounts owned or controlled by Defendants, including their officers, agents, servants, employees, attorneys, and any persons acting in active 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, Amazon, Alibaba and Alipay or other merchant account providers, payment


providers, third party processors, and credit card associations (e.g., MasterCard and VISA).

5. Upon WHAM-O's request, those with notice of this Order, including the Third Party Providers as defined in Paragraph 4, shall within five (5) business days after receipt of such notice, disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of counterfeit and infringing goods using the BOOGIE Trademarks.
6. Any Third Party Providers, including Amazon, Alibaba and Alipay, shall, within five (5) business days of receipt of this Order:
 - a. locate all accounts and funds connected to Defendants' seller aliases, including, but not limited to, any financial accounts connected to the information listed in Schedule A hereto, the e-mail addresses identified in Exhibit 2 to the Declaration of Todd Richards, and any e-mail addresses provided for Defendants by third parties; and
 - b. restrain and enjoin any such accounts or funds from transferring or disposing of any money or other of Defendants' assets until further order by this Court.
7. WHAM-O may provide notice of the proceedings in this case to Defendants, including service of process pursuant to Fed. R. Civ. P. 4(f)(3), and any future motions, by electronically publishing a link to the Complaint, this Order, and other relevant documents on a website or by sending an e-mail with a link to said website to the e-mail addresses identified in Exhibit 2 to the Declaration of Todd Richards and any e-mail addresses provided for Defendants by third parties. The Clerk of the Court is directed to issue a single original summons in the name of "568beach and all other

Defendants identified in the Complaint” that shall apply to all Defendants. The combination of providing notice via electronic publication or e-mail, along with any notice that Defendants receive from 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. Plaintiffs’ Schedule A to the Complaint [2], Exhibit 2 to the Declaration of Todd Richards [12], and the TRO [17] are unsealed.
9. Any Defendants that are subject to this Order may appear and move to dissolve or modify the Order as permitted by and in compliance with the Federal Rules of Civil Procedure and the Northern District of Illinois Local Rules. Any third party impacted by this Order may move for appropriate relief.
10. The ten thousand dollar (\$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.

SO ORDERED:





Gary Feinerman
United States District Judge

Dated: 6/21/2022

Schedule A

No.	Defendants
1	568beach
2	7ILAEWEN
3	accessorieskits
4	Actaday
5	Alapaste
6	Asolvida
7	Auspicio
8	Autumn1
9	Baokting
10	beautiful benefit
11	Biubee
12	Booming Buy
13	Butterfles
14	Bywater Outdoor Products Ltd
15	Caiong
16	Canrulo
17	chimiandahui
18	colleagaby
19	completeness66
20	curiofriend
21	CY Online
22	Da fang supply chain trade
23	Demand07
24	DORAVIYA Sales
25	Energy day Moment
26	Ertingbafang
27	excuse
28	fangjiakuaileww
29	frothtec
30	GONEBIN
31	guihuashu
32	haitryyici
33	HenTuha
34	huangjiaxinss
35	HYKITDAY
36	Ibuywill
37	Interesty
38	kaikaistore
39	kaixinguonian
40	kinbor
41	Kind-hearted
42	Kingspin 【 7-15 Days Delivery】

43	Kulamala
44	lacrityon
45	LINGLINGMEI 5-12days delivery
46	Little frog
47	Lixuu
48	luggliship
49	Luonitasl
50	Mcbrtaswzw
51	MFitrsflyes
52	Moving Ship
53	newena
54	NiceJoy Store
55	Ourage
56	OVERMAL Direct
57	qingdaoyimeijukejiyouxiangongsi
58	qinshenghenmei
59	Ricoco
60	RMTECHUS
61	rotate
62	rumexeng
63	salaheiyouii
64	SEGKOPUOL
65	SHENGLIZHE
66	shenzhenshilonghuaqushangxusujiaozhipinchang
67	Showmore US
68	shuddering
69	Simatai Great Wall
70	siviar
71	squeay
72	Summer palace
73	syt
74	SZTIAN US
75	tangshibin-US
76	tianhaoyury
77	tirave
78	Tkingd
79	tolerantlly
80	Topwon
81	Untous
82	wangwangbaihuopu
83	WANHU
84	WEBEEDY US
85	Woopower®
86	Woowan Auce
87	Xiangfeng Electronics

88	xiaochengzii
89	xiqingus1906
90	XU POPO
91	Y-CLOUD
92	YAWEICCY
93	YiAchieve
94	yingmande7
95	Ysiuefos 【 7-15 Days Delivery】
96	zhengyejie
97	太原市晋源区美农果品经销部
98	 HJALing- HOT SALES 
99	Blue Sea Plastic Products Co., Ltd.
100	Dongguan Bestfun Toys Co., Ltd.
101	Freesea Outdoor Products (shandong) Co., Ltd.
102	Guangzhou Pangao Inflatable Co., Ltd.
103	Guangzhou Stoke Outdoor Products Co., Ltd.
104	Haining Wanshun New Material Technology Co., Ltd.
105	Haining Zhemao Trading Co., Ltd.
106	Hangzhou Kudo Outdoors Inc.
107	Hebei Hongmeng Times Import And Export Co., Ltd.
108	Hebei Rongyida Trading Co., Ltd.
109	Hebei Zeyong Technology Co., Ltd.
110	Hefei Smartmak Industrial Co., Ltd.
111	Henan Junwen Trading Co., Ltd.
112	Henan Windo Industry Co., Ltd.
113	Huizhou FY Plastic Products Co., Ltd.
114	Huizhou Winmax Sport Ltd.
115	Jiaxing D&c Outdoor Product Co., Ltd.
116	Jiaxing EBM Import & Export Co., Ltd.
117	Jiaxing Hemi Outdoor Product Co., Ltd.
118	Jvisi (fujian) Environmental Protection Equipment Co., Ltd.
119	Linhai Shx Leisure Products Co., Ltd.
120	Lynkfun Leisure Products Co., Ltd.
121	Nantong Galaxy Sports And Technology Co., Ltd.
122	Ningbo AGS Imp. & Exp. Co., Ltd.
123	Ningbo Beyoung Sporting Goods Co., Ltd.
124	Ningbo Choice Development Co., Ltd.
125	Ningbo Jiangbei Sun-Star Sports&Gifts Factory
126	Ningbo Osia Stationery & Sports Goods Industrial Co., Ltd.
127	Ningbo Oulu Tourist Articles Co., Ltd.
128	Qingdao Rongsheng Sports Goods Co., Ltd.
129	Rongcheng Rv Days Outdoor Products Co., Ltd.

130	Sabo Sports Technology (nanjing) Co., Ltd.
131	Shanghai Ausbroad Trading Co., Ltd.
132	Shantou Rong Yuan Toys Co.,ltd.
133	Shenzhen Qiongye Innovation Technology Co., Ltd.
134	Shenzhen Shengye Cultural Goods Co., Ltd.
135	Sunshine Inflatable Toys Co., Ltd.
136	Super Industrial (Dongguan) Co., Ltd.
137	Suzhou Hongyixing Intelligent Technology Co., Ltd.
138	Suzhou Leon Technology Co., Ltd.
139	Tianjin Fayean Technology Co., Ltd.
140	Topko Product Group Ltd
141	Weihai Chengxiang Sports Requisites Co., Ltd.
142	Weihai Hiwobang Yacht Co., Ltd.
143	Weihai Luoshang Trade Co., Ltd.
144	Weihai Scirocco Sports Equipment Co., Ltd.
145	Weihai Shenhe Sports Equipment Co., Ltd.
146	Weihai Skatinger Outdoor Co., Ltd.
147	Weihai Sunshine Yacht Co., Ltd.
148	Weihai Win Innovate Outdoor Supplies Co., Ltd.
149	Xingtai Dashuai Trading Co., Ltd.
150	Xingtai Yunyang Trading Co., Ltd.
151	Yancheng Goldscoop International Trade Co., Ltd.
152	Yantai Colorful International Trade Co., Ltd.
153	Yiwu City Haiyi New Material Science And Technology Ltd.
154	Yiwu Hongyi E-Commerce Firm
155	Yiwu Yaoku Trading Co., Ltd.
156	Zhejiang AMP Globe Import & Export Co., Ltd.
157	Zhejiang Hynawin E-Commerce Co.,ltd.
158	Zhejiang Rongman Security Technology Co., Ltd.
159	Zhoushan Deco Import& Export Co., Ltd.