

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

CANVASFISH.COM, LLC,
a Montana Limited Liability Company,

Plaintiff,

Case No.: 1:21-cv-03676
Hon. Virginia M. Kendall

v.

JOHN DOES 1-XX,

Defendants.

**MEMORANDUM IN SUPPORT OF PLAINTIFF’S MOTION FOR ENTRY OF
PRELIMINARY INJUNCTION**

Plaintiff Canvasfish.com, LLC (“Canvasfish” or “Plaintiff”) submits this Memorandum in support of its Motion for Entry of a Preliminary Injunction (“Injunction”).

MEMORANDUM OF LAW

I. INTRODUCTION

Plaintiff Canvasfish.com, LLC (“Plaintiff” or “Canvasfish”) brings this action against defendants John Does identified via several aliases and associations on Schedule A to the Amended Complaint (collectively, the “Defendants”) for trademark infringement, counterfeiting, false designation of origin, and copyright infringement. As alleged in Canvasfish’s Complaint [ECF 01], Defendants are promoting, advertising, marketing, distributing, offering for sale, and selling products, including clothing and fashion accessories, using infringing and counterfeit versions of Canvasfish’s federally registered trademark, unauthorized copies of Canvasfish’s federally registered copyrighted designs, or both (collectively, the “Unauthorized Canvasfish Products”), through, at least, the fully interactive, e-commerce stores operating under several aliases, via online marketplaces, and at several domain names (collectively “Seller Aliases”).

II. STATEMENT OF FACTS

On August 10, 2021, this Court granted Canvasfish’s Motion for Entry of a Temporary Restraining Order (“TRO”). [20] The TRO authorized Canvasfish to provide notice of these proceedings to Defendants

by electronically publishing a link to the Amended Complaint, the TRO, and other documents on a website to which the domain names transferred to Plaintiff's control redirect, or by sending an email to the email addresses identified for Defendants provided by third parties. [21]. On August 26, 2021, this Court granted Canvasfish's Motion to Extend the TRO. [26].

Since the entry of the TRO, several financial accounts have been identified and frozen and several of the Defendants' domain names have been transferred to Plaintiff's control. Plaintiff is still in the process of requesting transfer of the domain names and closing of the Defendants' marketplace seller accounts. Furthermore, Plaintiff is waiting for full compliance with the expedited discovery requests as to third parties which will facilitate further identification of the Defendants.

Canvasfish 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 Unauthorized Canvasfish Products during the pendency of this litigation. As part of the Preliminary Injunction, Canvasfish requests that the Domain Names remain in Canvasfish's control and that Defendants' financial accounts remain frozen until completion of these proceedings. Canvasfish further requests that the Court Order the transfer of additional domain names, closing of the marketplace seller accounts, and the freezing of financial accounts found to be additional aliases of Defendants via further discovery. Canvasfish provides a slightly edited version of the TRO attached as Exhibit B – Proposed Preliminary Injunction Order with the foregoing clarification regarding subsequently discovered aliases of Defendants.

III. **ARGUMENT**

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

Canvasfish 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.*, No. 1:01-cv-00905, 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). The Copyright Act also authorizes courts to, “grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright.” 17 U.S.C. § 502(a).

1. *The Domain Name Transfer Order Remains Appropriate*

Canvasfish seeks a conversion of the TRO issued by this Court on August 10, 2021, allowing Canvasfish to retain control of the Domain Names until the completion of these

proceedings. To prevent the Defendants from further manufacture, importation, distribution, offering for sale, and sale of Unauthorized Canvasfish Products and to provide notice to Defendants regarding these proceedings, Canvasfish respectfully requests that the injunctive relief already awarded be extended through the pendency of this case. Canvasfish further requests that the Order make clear to third parties that Defendants' Domain Names may not have been included on Plaintiff's Schedule A – Defendants' Aliases but include all infringing domain names connected to Defendants' infringement scheme as identified by Plaintiff via further research and third-party discovery.

Finally, Canvasfish has encountered resistance to the TRO by third party service providers not located within the United States. As such, Canvasfish requests that the Preliminary Injunction Order include slightly edited language authorizing the top-level domain (TLD) Registry for the domain names to unlock, as necessary, and change the registrar of record for the domain names to a new registrar of Plaintiff's choosing who will then transfer the domain registration to Canvasfish.

2. The Asset Restraining Order Remains Appropriate

Canvasfish also requests conversion of the TRO to a preliminary injunction so that Defendants' accounts remain frozen. Since entry of the TRO, PayPal and Stripe have provided Plaintiff with information, including the identification of several financial accounts linked to the Seller Aliases which were offering for sale and/or selling Unauthorized Canvasfish Products. In the absence of a preliminary injunction, Defendants may attempt to transfer financial assets to off-shore accounts or other financial unidentified accounts or otherwise hide their assets. Therefore, Defendants' assets should remain frozen for the remainder of the proceedings.

The amount of damages to which Canvasfish is entitled as set forth in the Amended Complaint far exceeds any amount contained in any of the Defendants' frozen financial accounts.

In addition, and as established in Canvasfish's TRO Memorandum [16-18], 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.*, No. 1:03-cv-04844, 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 forgoing, Canvasfish respectfully requests that this Court enter the preliminary injunction.

Respectfully submitted,

Date: September 03, 2021

Canvasfish, LLC

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CERTIFICATE OF SERVICE

I hereby certify that on September 03, 2021, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, and on September 03, 2021, I will publish a copy of the foregoing to a website to which the domains now resolve and to which the Defendants have been directed via email.

Date: September 3, 2021

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