

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 24-cv-22425

ANTSY LABS, LLC,

Plaintiff,

v.

THE INDIVIDUALS, CORPORATIONS, LIMITED
LIABILITY COMPANIES, PARTNERSHIPS, AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE A,

Defendants.

/

COMPLAINT

Plaintiff Antsy Labs, LLC (“Plaintiff” or “Antsy Labs”), hereby alleges as follows against the individuals, corporations, limited liability companies, partnerships, and unincorporated associations identified on Schedule A¹ (collectively, “Defendants”):

INTRODUCTION

1. This action has been filed by Plaintiff to combat online infringers who trade upon Plaintiff’s reputation and goodwill by selling and/or offering for sale products in connection with Plaintiff’s copyright, which is covered by U.S. Copyright Office Registration No. VA 2-136-244, being a registration for the toy apparatus itself (the “FIDGET CUBE Copyright”).

2. The FIDGET CUBE Copyright is valid, subsisting, and in full force and effect. A true and correct copy of the federal copyright registration certificate for the FIDGET CUBE Copyright is attached as **Exhibit 1**. The Defendants advertise, market, and/or sell their

¹ Plaintiff intends to file a motion to seal Schedule A.

unauthorized and illegal products embodying Plaintiff's copyright by reference to the same design as the Plaintiff's genuine products, which causes deception in the marketplace.

3. The Defendants create numerous fully interactive commercial internet stores operating under the Defendant Domain Names and/or the Online Marketplace Accounts identified in Schedule A (collectively, the "Defendant Internet Stores"). The Defendants design the Defendant Internet Stores to appear to be selling genuine FIDGET CUBE products, while selling inferior imitations of Plaintiff's products. The Defendant Internet Stores share unique identifiers, such as design elements and similarities of the infringing products offered for sale, establishing a logical relationship between them and suggesting that Defendants' illegal operations arise out of the same transaction, occurrence, or series of transactions or occurrences. Defendants attempt to avoid liability by going to great lengths to conceal both their identities and the full scope and interworking of their illegal operation. Plaintiff is forced to file this action to combat Defendants' infringement of Plaintiff's copyright, as well as to protect unknowing consumers from purchasing unauthorized FIDGET CUBE products over the Internet. Plaintiff has been and continues to be irreparably harmed by the unauthorized sale of unauthorized FIDGET CUBE products and seeks injunctive and monetary relief.

4. This Court has personal jurisdiction over each Defendant, in that each Defendant conducts significant business in Florida and in this Judicial District, and the acts and events giving rise to this lawsuit of which each Defendant stands accused were undertaken in Florida and in this Judicial District. In addition, each Defendant has offered to sell and ship infringing products into this Judicial District.

JURISDICTION AND VENUE

5. This Court has original subject matter jurisdiction over the copyright claim pursuant to the Copyright Laws of the United States, 17 U.S.C. § 101 et seq., 28 U.S.C. § 1338(a), and 28 U.S.C. § 1331.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, and this Court may properly exercise personal jurisdiction over Defendants, because each of the Defendants directly target consumers in the United States, including Florida, through at least Defendant Internet Stores. Specifically, Defendants are reaching out to do business with Florida residents by operating one or more commercial, interactive Internet Stores through which Florida residents can purchase unauthorized and illegal products embodying Plaintiff's copyright. Each of the Defendants has targeted sales from Florida residents by operating online stores that offer shipping to the United States, including Florida, accept payment in U.S. dollars, and, on information and belief, has sold unauthorized and illegal products embodying Plaintiff's federally registered copyright to residents of Florida. Each of the Defendants is committing tortious acts in Florida, is engaging in interstate commerce, and has wrongfully caused Plaintiff substantial injury in the State of Florida. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because Defendants have committed acts of copyright infringement in this Judicial District and a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

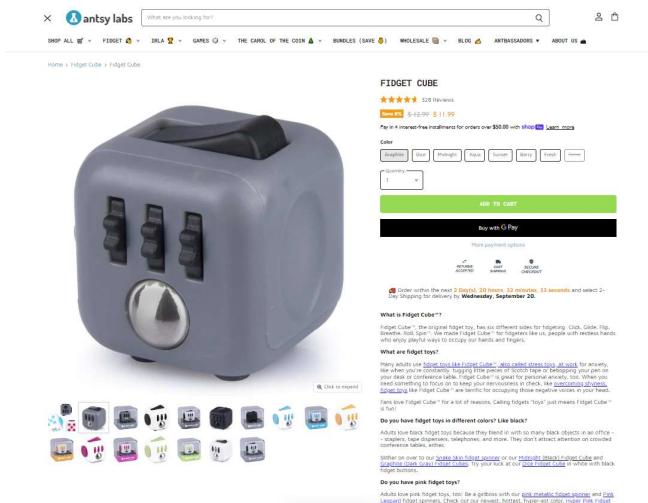
THE PLAINTIFF

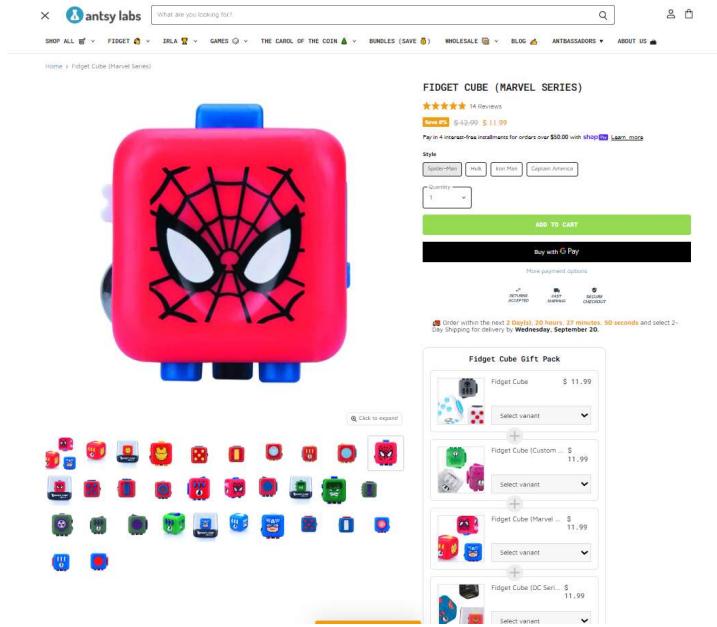
7. Plaintiff Antsy Labs is a limited liability company organized under the laws of Colorado with offices in Boulder, Colorado and is the owner of the FIDGET CUBE Copyright, with its federal registration attached as Exhibit 1.

8. In August 2016, Plaintiff Antsy Labs designed, caused to subsist in material form, and first published the original FIDGET CUBE product. The FIDGET CUBE product was originally published on the crowd-based funding platform “KickStarter” and instantly attracted substantial international media attention and success. In June 2017, Antsy Labs applied for the registration of the now federally registered FIDGET CUBE Copyright in respect of the copyright displaying the FIDGET CUBE product itself (the “FIDGET CUBE Product”). The effective date of the FIDGET CUBE Copyright registration is June 30, 2017. An exemplary unit of the FIDGET CUBE Product was deposited with the United States Copyright Office and remains available for inspection there. Below is an exemplary FIDGET CUBE Product:



9. From April 2017 to the present, Plaintiff Antsy Labs has been the official source of the genuine FIDGET CUBE Product in the United States, which include the following:





10. Plaintiff has expended substantial time, money, and other resources in developing, advertising, and otherwise promoting the FIDGET CUBE Products. As a result, the FIDGET CUBE Products are widely recognized and exclusively associated by consumers, the public, and the trade as being products sourced from Plaintiff.

11. Plaintiff own all rights, including without limitation, the rights to reproduce the copyrighted works in copies, to prepare derivative works based upon the copyrighted works, and to distribute copies of the copyrighted works to the public by sale or other transfer of ownership, or by rental, lease, or lending, in various copyrights for the FIDGET CUBE Product as either the owner and/or licensee of the FIDGET CUBE copyrights, including without limitation copyrights covered by the FIDGET CUBE Copyright registration, as set out above.

THE DEFENDANTS

12. Defendants are individuals and business entities who, upon information and belief, reside mainly in the People's Republic of China or other foreign jurisdictions. Defendants conduct business throughout the United States, including within Florida and in this Judicial District, through the operation of the fully interactive commercial websites and online marketplaces

operating under the Defendant Internet Stores. Each Defendant targets the United States, including Florida, and has offered to sell and, on information and belief, has sold and continues to sell infringing FIDGET CUBE Products to consumers within the United States, including Florida and in this Judicial District.

THE DEFENDANTS' UNLAWFUL CONDUCT

13. The success of the FIDGET CUBE has resulted in its infringement. Plaintiff has identified numerous domain names linked to fully interactive websites and marketplace listings on platforms such as Alibaba, AliExpress, Amazon, eBay, Etsy, Made-in-China, Shein, Temu, Walmart, and Wish, including the Defendant Internet Stores, which were offering for sale, selling, and importing infringing FIDGET CUBE Products to consumers in this Judicial District and throughout the United States.

14. Defendants have persisted in creating such online marketplaces and internet stroes, like the Defendant Internet Stores. In fact, such online marketplaces and stores are estimated to receive tens of millions of visits per year and to generate over \$135 billion in annual online sales. According to an intellectual property rights seizures statistics report issued by the United States Department of Homeland Security, the manufacturer's suggested retail price ("MSRP") of goods seized by the U.S. government in fiscal year 2021 was over \$3.3 billion. Websites like the Defendant Internet Stores are also estimated to contribute to tens of thousands of lost jobs for legitimate businesses and broader economic damages such as lost tax revenue every year.

15. On personal knowledge and belief, Defendants facilitate sales by designing the Defendant Internet Stores so that they appear to unknowing consumers to be authorized online retailers, outlet stores, or wholesalers selling genuine FIDGET CUBE Products. Many of the Defendant Internet Stores look sophisticated and accept payment in U.S. dollars via credit cards,

Western Union, and PayPal. Defendant Internet Stores often include images and design elements that make it very difficult for consumers to distinguish such infringing sites from an authorized website. Defendants further perpetuate the illusion of legitimacy by offering “live 24/7” customer service and using indicia of authenticity and security that consumers have come to associate with authorized retailers, including the McAfee® Security, VeriSign®, Visa®, MasterCard®, and PayPal® logos.

16. Plaintiff has not licensed or authorized Defendants to use the FIDGET CUBE Copyright, and none of the Defendants are authorized retailers of genuine FIDGET CUBE Products.

17. On personal knowledge and belief, Defendants use other unauthorized search engine optimization (“SEO”) tactics and social media spamming so that the Defendant Internet Stores listings show up at or near the top of relevant search results and misdirect consumers searching for genuine FIDGET CUBE Products. Further, Defendants utilize similar illegitimate SEO tactics to propel new domain names to the top of search results after others are shut down. As such, Plaintiff also seeks to disable Defendant Domain Names owned by Defendants that are the means by which the Defendants could continue to sell infringing FIDGET CUBE Products into this Judicial District.

18. On information and belief, Defendants go to great lengths to conceal their identities and often use multiple fictitious names and addresses to register and operate their massive network of Defendant Internet Stores. For example, it is common practice for infringers to register their domain names with incomplete information, randomly typed letters, or omitted cities or states, as Defendants here have done. And many Defendant Domain Names use privacy services that conceal the owners’ identity and contact information.

19. On personal knowledge and belief, Defendants regularly create new websites and Online Marketplace Accounts on various platforms using the identities listed in Schedule A, as well as other unknown fictitious names and addresses. Such Defendant Internet Store registration patterns are one of many common tactics used by the Defendants to conceal their identities, the full scope and interworking of their massive infringement operation, and to avoid being shut down.

20. On personal knowledge and belief, even though Defendants operate under multiple fictitious names, there are numerous similarities among the Defendant Internet Stores. For example, some of the Defendant websites have virtually identical layouts, even though different aliases were used to register the respective domain names. In addition, the infringing FIDGET CUBE Products for sale in the Defendant Internet Stores bear similarities and indicia of being related to one another, suggesting that the infringing FIDGET CUBE Products were manufactured by and come from a common source and that, upon information and belief, Defendants are interrelated. The Defendant Internet Stores also include other notable common features, including use of the same domain name registration patterns, unique shopping cart platforms, accepted payment methods, check-out methods, meta data, illegitimate SEO tactics, HTML user-defined variables, domain redirection, lack of contact information, identically or similarly priced items and volume sales discounts, similar hosting services, similar name servers, and the use of the same text and images.

21. In addition to operating under multiple fictitious names, Defendants in this case and defendants in other similar cases against online infringers use a variety of other common tactics to evade enforcement efforts. For example, infringers like Defendants will often register new domain

names or Online Marketplace Accounts under new aliases once they receive notice of a lawsuit.²

Infringers also often move website hosting to rogue servers located outside the United States once notice of a lawsuit is received. Rogue servers are notorious for ignoring take down demands sent by brand owners.³ Infringers also typically ship products in small quantities via international mail to minimize detection by U.S. Customs and Border Protection. A 2012 U.S. Customs and Border Protection report on seizure statistics indicated that the Internet has fueled “explosive growth” in the number of small packages of counterfeit goods shipped through the mail and express carriers.

22. Further, infringers such as Defendants typically operate multiple credit card merchant accounts and PayPal accounts behind layers of payment gateways so that they can continue operation in spite of Plaintiff’s enforcement efforts.

23. On personal knowledge and belief, Defendants maintain off-shore bank accounts and regularly move funds from their PayPal accounts to off-shore bank accounts outside the jurisdiction of this Court. Indeed, analysis of PayPal transaction logs from previous similar cases indicates that offshore infringers regularly move funds from U.S.-based PayPal accounts to foreign-based bank accounts outside the jurisdiction of this Court.

24. Defendants, without any authorization or license from Plaintiff, have knowingly and willfully used and continue to use the FIDGET CUBE Copyright in connection with the

² <https://www.ice.gov/news/releases/buyers-beware-ice-hsi-and-cbp-boston-warn-consumers-about-counterfeit-goods-during> (noting counterfeiters are adept at “setting up online stores to lure the public into thinking they are purchasing legitimate good on legitimate websites”) (last visited June 24, 2024).

³ While discussed in the context of false pharma supply chains, rogue internet servers and sellers are a well-known tactic that have even been covered in congressional committee hearings. <https://www.govinfo.gov/content/pkg/CHRG-113hhrg88828/html/CHRG-113hhrg88828.htm> (last visited June 24, 2024).

advertisement, distribution, offering for sale, and sale of infringing FIDGET CUBE Products into the United States and Florida over the Internet. Each Defendant Internet Store offers shipping to the United States, including Florida and, on information and belief, each Defendant has offered to sell infringing FIDGET CUBE Products into the United States, including Florida (in this Judicial District).

25. Defendants' use of the FIDGET CUBE Copyright in connection with the advertising, distribution, offering for sale, and sale of infringing FIDGET CUBE Products, including the sale of infringing FIDGET CUBE Products into Florida, is likely to cause and has caused confusion, mistake, and deception by and among consumers and is irreparably harming Plaintiff.

26. Prior to and contemporaneous with their infringing actions alleged herein, Defendants had knowledge of Plaintiff's ownership of the FIDGET CUBE Copyright, of the fame and incalculable goodwill associated therewith and of the popularity and success of the FIDGET CUBE Products, and in bad faith proceeded to manufacture, market, develop, offer to be sold, and/or sell the Infringing Products.

27. Defendants have been engaging in the illegal infringing actions, as alleged herein, knowingly and intentionally, or with reckless disregard or willful blindness to Plaintiff's rights, or in bad faith, for the purpose of trading on the goodwill and reputation of Plaintiff and the FIDGET CUBE Products.

28. The proliferation of Defendants' poor quality imitations threatens to irreparably harm the goodwill Plaintiff has developed over the past several decades for its genuine FIDGET CUBE Products.

FIRST CAUSE OF ACTION
COPYRIGHT INFRINGEMENT (17 U.S.C. § 101, et seq.)

29. Plaintiff repeats and incorporates by reference its allegations contained in paragraphs 1–28 of this Complaint.

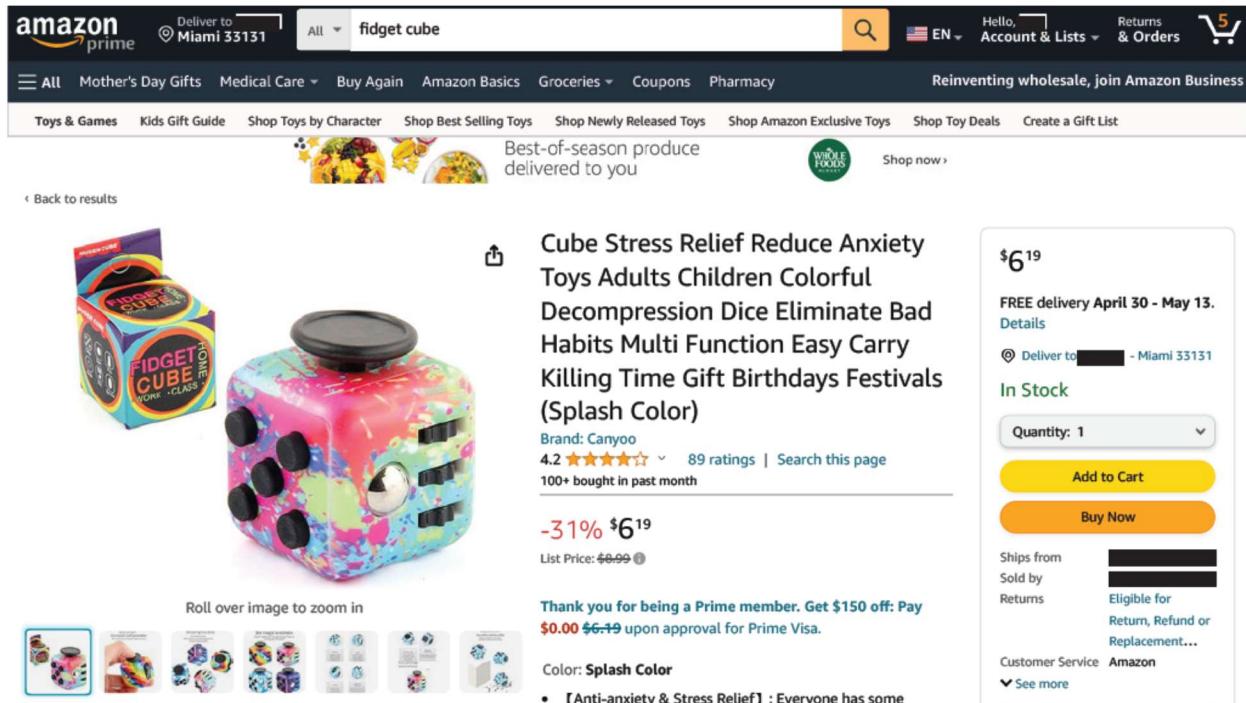
30. Plaintiff owns all exclusive rights, including without limitation the rights to reproduce the copyrighted work in copies, to prepare derivative works based upon the copyrighted work, and to distribute copies of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending, in various copyrights for the FIDGET CUBE Products as either the owner and/or licensee of the FIGDET CUBE copyrights, including without limitation copyrights covered by the FIDGET CUBE Copyright registration.

31. Defendants have sold, offered to sell, marketed, distributed, and advertised, and are still selling, offering to sell, marketing, distributing, and advertising products in connection with the FIDGET CUBE Copyright without Plaintiff's permission.

32. Defendants had access to the FIDGET CUBE Products incorporating Plaintiff's registered copyright before Defendants ever sold or offered to sell Infringing Products.

33. Upon information and belief, Defendants have directly copied Plaintiff's registered copyright for the FIDGET CUBE Products. Alternatively, Defendants' representations of Plaintiff's registered copyright for the FIDGET CUBE Products in the Defendant Internet Stores are strikingly similar, or at the very least substantially similar, to Plaintiff's copyrights for the FIDGET CUBE Products and constitute unauthorized copying, reproduction, distribution, creation of a derivative work, and/or public display of Plaintiff's copyrights for the FIDGET CUBE Products.

34. As just one example, Defendants deceive unknowing consumers by using the FIDGET CUBE copyrights without authorization within the product descriptions of their Defendant Online Store to attract customers as follows:



Infringing FIDGET CUBE sold on exemplary Defendant Online Store compared to



Genuine FIDGET CUBE that is the subject of the federally registered FIDGET CUBE Copyright Registration

35. Defendants' exploitation of Plaintiff's copyright for the FIDGET CUBE Products in the Defendant Internet Stores constitutes infringement of Plaintiff's FIDGET CUBE Copyright.

36. On information and belief, Defendants' infringing acts were willful, deliberate, and committed with prior notice and knowledge of Plaintiff's copyright. Each Defendant willfully, wantonly, and in conscious disregard and intentional indifference to the rights of Plaintiff made and distributed in the United States, including this Judicial District, caused to be made and distributed in the United States, including this Judicial District, and aided, abetted, contributed to, and participated in the unauthorized making and distribution of the infringing products via the Defendant Online Stores.

37. Each Defendant either knew, or should have reasonably known, that Plaintiff's FIDGET CUBE Products were protected by copyright and their representations infringed on Plaintiff's copyrights. Each Defendant continues to infringe upon Plaintiff's rights in and to the copyrighted work.

38. As a direct and proximate result of their wrongful conduct, Defendants have realized and continue to realize profits and other benefits rightfully belonging to Plaintiff. Accordingly, Plaintiff seeks an award of damages pursuant to 17 U.S.C. § 504.

39. In addition to Plaintiff's actual damages, Plaintiff is entitled to receive the profits made by the Defendants from their wrongful acts, pursuant to 17 U.S.C. § 504(b). Each Defendant should be required to account for all gains, profits, and advantages derived by each Defendant from their acts of infringement.

40. In the alternative, Plaintiff is entitled to, and may elect to choose statutory damages pursuant to 17 U.S.C. § 504(c), which should be enhanced by 17 U.S.C. § 504(c)(2) because of Defendants' willful copyright infringement.

41. Plaintiff is entitled to, and may elect to choose, injunctive relief under 17 U.S.C. § 502, enjoining any use or exploitation by Defendants of their infringing work and for an order under 17 U.S.C. § 503 that any of Defendants' infringing products be impounded and destroyed.

42. Plaintiff seeks and is also entitled to recover reasonable attorneys' fees and costs of suit pursuant to 17 U.S.C. § 505.

43. Plaintiff has no adequate remedy at law, and, if Defendants' actions are not enjoined, Plaintiff will continue to suffer irreparable harm to its reputation and the goodwill of its well-known FIDGET CUBE

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants and each of them as follows:

1. That Defendants, their affiliates, officers, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through, under, or in active concert with them be temporarily, preliminarily, and permanently enjoined and restrained from:

a. using the FIDGET CUBE Copyright Registration or any reproductions, infringing 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 FIDGET CUBE Product or is not authorized by Plaintiff to be sold in connection with the FIDGET CUBE Copyright;

b. further infringing the FIDGET CUBE Copyright and damaging Plaintiff's goodwill;

c. 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 Plaintiff, nor authorized by Plaintiff to be sold or offered for sale, and which copy any Plaintiff copyright, including the FIDGET CUBE Copyright, or any reproductions, infringing copies, or colorable imitations thereof;

d. using, linking to, transferring, selling, exercising control over, or otherwise owning the Online Marketplace Accounts, the Defendant Domain Names, or any other domain name or Online Marketplace Account that is being used to sell or is the means by which Defendants could continue to sell infringing FIDGET CUBE products; and

e. operating and/or hosting websites at the Defendant Domain Names and any other domain names registered or operated by Defendants that are involved with the distribution, marketing, advertising, offering for sale, or sale of any product embodying the FIDGET CUBE Copyright or any reproduction, infringing copy, or colorable imitation thereof that is not a genuine FIDGET CUBE Product or not authorized by Plaintiff to be sold in connection with the FIDGET CUBE Copyright.

2. Entry of an Order that, at Plaintiff's choosing, the registrant of the Defendant Domain Names shall be changed from the current registrant to Plaintiff, and that the domain name registries for the Defendant Domain Names, including, but not limited to, VeriSign, Inc., Neustar, Inc., Afilias Limited, CentralNic, Nominet, and the Public Interest Registry, shall unlock and change the registrar of record for the Defendant Domain Names to a registrar of Plaintiff's selection, and that the domain name registrars take any steps necessary to transfer the Defendant Domain Names to a registrar of Plaintiff's selection; or that the same domain name registries shall disable the Defendant Domain Names and make them inactive and untransferable;

3. Entry of an Order that the Marketplace Platforms, including without limitation Alibaba, Aliexpress, Amazon, eBay, Etsy, Made-in-China, Shein, Temu, Walmart, and Wish, and

any other online marketplace account through which Defendants are selling Counterfeit Products:

- a. disable and cease providing services for any accounts through which Defendants engage in the sale of infringing FIDGET CUBE Products embodying the FIDGET CUBE Copyright, including any accounts associated with the Defendants listed on Schedule A;
- b. disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of infringing FIDGET CUBE Products embodying the FIDGET CUBE Copyright; and
- c. take all steps necessary to prevent links to the Defendant Internet Stores identified on Schedule A from displaying in search results, including, but not limited to, removing links to the Defendant Internet Stores from any search index.

4. That Defendants account for and pay to Plaintiff all profits realized by Defendants by reason of Defendants' unlawful acts herein alleged.

5. In the alternative, that Plaintiff be awarded statutory damages of not less than \$750 and not more than \$30,000 for each and every infringement of Plaintiff's copyright pursuant to 17 U.S.C. § 504(c), which should be enhanced to a sum of not more than \$150,000 by 17 U.S.C. § 504(c)(2) because of Defendants' willful copyright infringement;

6. That Plaintiff be awarded its reasonable attorneys' fees and costs; and
7. Award any and all other relief that this Court deems just and proper.

Dated: June 24, 2024

Respectfully submitted,

/s/ Nicole Fundora

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