

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

BIGWHEAT TECHNOLOGY LLC,

Plaintiff,

v.

**THE PARTNERSHIPS AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED IN SCHEDULE A,**

Defendants.

Civil Action No. 1:22-cv-44

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Bigwheat Technology LLC (“Bigwheat” or “Plaintiff”) files this original complaint for copyright infringement against the Partnerships and Unincorporated Associations identified in Schedule A attached hereto (collectively, “Defendants”) and alleges as follows:

THE PARTIES

1. Plaintiff Bigwheat is a Texas limited liability company with its principal place of business located at 2750 Holly Hall St, APT 906, Houston, TX 77054.

2. Defendants are individuals and business entities who, upon information and belief, reside in the People’s Republic of China or other foreign jurisdictions. Defendants conduct business throughout the United States, including within the State of Illinois and this Judicial District, through the operation of the fully interactive, commercial online Amazon marketplaces operating under the Defendant Internet Stores. Each Defendant targets the United States, including Illinois, and has offered to sell, and, on information and belief, has sold and continues to sell Infringing Goods to consumers within the United States, including the State of Illinois.

3. On information and belief, Defendants are an interrelated group of infringers working in active concert to willfully scan, copy, reproduce, distribute, publish, and/or otherwise use, unauthorized copies of copyrighted materials in the same transaction, occurrence, or series of transactions or occurrences. Tactics used by Defendants to conceal their identities and the full scope of their operation make it virtually impossible for Plaintiff to learn Defendants' true identities and the exact interworking of their network. In the event that Defendants provide additional credible information regarding their identities, Plaintiff will take appropriate steps to amend the Complaint.

4. Defendants go to great lengths to conceal their identities and often use multiple fictitious names and addresses to register and operate their network of Defendant Internet Stores. On information and belief, Defendants regularly create new online marketplace accounts on various platforms using the identities listed in **Schedule A** to the Complaint, 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 operation, and to avoid being shut down.

5. Even though Defendants operate under multiple fictitious names, there are numerous similarities among the Defendant Internet Stores. The Defendant Internet Stores include notable common features, including the same product images, accepted payment methods, check-out methods, meta data, illegitimate SEO tactics, lack of contact information, identically or similarly priced items and volume sales discounts, the same incorrect grammar and misspellings, similar hosting services, and the use of the same text and images, including content copied from Plaintiff's original product listings.

6. 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 online marketplace accounts under new aliases once they receive notice of a lawsuit. Infringers also typically ship products in small quantities via international mail to minimize detection by U.S. Customs and Border Protection.

7. 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, such as take down notices. On information and belief, Defendants maintain off-shore bank accounts and regularly move funds from their PayPal accounts or other financial 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 China-based bank accounts outside the jurisdiction of this Court.

8. Defendants, without any authorization or license from Plaintiff, have willfully scanned, copied, reproduced, distributed, published, and/or otherwise used copyrighted materials in violation of Bigwheat's copyright and continue to do so via the Defendant Internet Stores. Each Defendant Internet Store offers shipping to the United States, including Illinois, and, on information and belief, each Defendant has sold Infringing Products into the United States, including Illinois.

9. Defendants were previously notified by Plaintiff of their copyright infringement via numerous Amazon infringement reports. In this regard, Defendants' infringement of Bigwheat's copyrights was and is willful.

JURISDICTION AND VENUE

10. This is an action for copyright infringement under the United States Copyright Act of 1976, 17 U.S.C. §§ 101, *et seq.* This Court has original subject matter jurisdiction of the action under 28 U.S.C. §§ 1331 and 1338(a).

11. The Court may properly exercise personal jurisdiction over Defendants since each of the Defendants directly targets business activities toward consumers in the United States, including Illinois, through at least the fully interactive, commercial Internet stores operating under the Amazon Storefronts identified in **Schedule A** attached hereto (collectively, the “Amazon Storefronts”). Specifically, Defendants are reaching out to do business with Illinois residents by operating one or more commercial, interactive Amazon Storefronts through which Illinois residents can purchase products within the scope of Plaintiff’s patent. Each of the Defendants has targeted sales from Illinois residents by operating online stores that offer shipping to the United States, including Illinois, accept payment in U.S. dollars and, on information and belief, has sold products within the scope of Plaintiff’s patent to residents of Illinois. Each of the Defendants is committing tortious acts in Illinois, is engaging in interstate commerce, and has wrongfully caused Plaintiff substantial injury in the State of Illinois.

12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(c)(3), because the Defendants are believed to not be residents of the United States.

THE JOY CON COPYRIGHT

13. On October 15, 2021, Copyright Registration No. VA 2-271-376 issued pursuant to 37 C.F.R. § 202.4(i). The Copyright is for nine (9) photographs published June 24, 2020, collectively titled Joy Con (the “Joy Con Copyright”). *See Exhibit A*, the Copyright Certification.

14. The author of record of the Joy Con Copyright is Zhen Zhuo, a citizen of China domiciled in China. The Copyright claimant is Bigwheat Technology LLC of 2750 Holly Hall St, APT 906, Houston, TX 77054.

15. The transfer of the Joy Con Copyright from Zhuo to Bigwheat was by written agreement. Therefore, Bigwheat holds all rights and permissions in the Joy Con Copyright.

16. The copyrighted work consists of images of controller designs. *See* **Exhibit B**. True and correct copies of the copyrighted images of the Joy Con Copyright are attached as **Exhibit B**.

17. Plaintiff sells their own controllers that embody the Joy Con Copyright under. *See* <https://www.amazon.com/dp/B08B3VD9RG>, <https://www.amazon.com/dp/B08GPDBTPQ>, <https://www.amazon.com/dp/B089NN9MXR>.

COUNT I – DIRECT COPYRIGHT INFRINGEMENT

18. Plaintiff incorporates and realleges paragraphs 1 through 17 as if fully set forth herein.

19. Plaintiff further alleges that Defendants have infringed the Joy Con Copyright by scanning, copying, reproducing, distributing, publishing, and/or otherwise using unauthorized copies of the protected photographs within the meaning of 17 U.S.C § 101, *et seq.* Specifically, Defendants copy, reproduce, and distribute Nintendo Switch controllers that include unauthorized copies of the Joy Con Copyright via various Amazon storefronts. *See* **Exhibit C**, Copies of Infringing Amazon Listings.

20. Defendants have benefitted from their infringements of the protected photographs at the cost of Plaintiff suffering monetary damages, irreparable injury to its business, reputation, goodwill, and dilution of the marketplace.

21. As such, Plaintiff is entitled to injunctive relief, monetary damages, and all other relief as set for in the Copyright Act that the Court deems appropriate.

COUNT II – WILLFUL COPYRIGHT INFRINGEMENT

22. Plaintiff incorporates and realleges paragraphs 1 through 21 as if fully set forth herein.

23. Plaintiff further alleges that Defendants' copyright infringement of Count I has been willful under 17 U.S.C. § 504. Plaintiff has filed at least three (3) different copyright infringement reports against Defendants with Amazon, in an attempt to stop the continuous infringement. *See Exhibit D*, Copies of Amazon Infringement Reports.

24. Plaintiff filed the first report on November 18, 2021, the second on November 29, 2021, and the third on December 02, 2021. Therefore, Defendants have been on notice of Plaintiff's Joy Con Copyright since at least November 18, 2021 yet have continued to willfully infringe upon Plaintiff's rights.

25. Despite the numerous attempts by Plaintiff to stop Defendants from continuing to infringe, Defendants have ignored the blatant infringement in an attempt to continue to copy and distribute their infringing controllers.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests:

- A. Defendants be found liable for direct copyright infringement of the Joy Con Copyright;
- B. Defendants be enjoined from scanning, copying, reproducing, distributing, publishing, and/or otherwise using the Joy Con Copyrighted works;
- C. Defendants be ordered to pay statutory damages, including willful damages, pursuant to 17 U.S.C. § 504;

- D. Defendants be ordered to pay Plaintiff's attorney fees and costs, pursuant to 17 U.S.C. § 505;
- E. Defendants be ordered to pay pre-judgment and post-judgment interest on any damages awarded; and
- F. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff respectfully demands a trial by jury on all issues triable by jury.

Dated this 4th day of January, 2022.

Respectfully submitted,

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