

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

BOARD OF REGENTS OF THE
UNIVERSITY OF OKLAHOMA,

Case No. 22-cv-02627

Plaintiff,

v.

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

Defendants.

COMPLAINT

Plaintiff Board of Regents of the University of Oklahoma (hereinafter, the “OU Board of Regents” or “Plaintiff”), hereby brings the present action against the Partnerships and Unincorporated Associations identified on Schedule A attached hereto (collectively, the “Defendants”) and alleges as follows:

I. JURISDICTION AND VENUE

1. This Court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the Lanham Act, 15 U.S.C. § 1051, *et seq.*, 28 U.S.C. § 1338(a)-(b), and 28 U.S.C. § 1331.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, and this 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, e-commerce stores¹ operating under the seller aliases identified in Schedule A attached hereto (collectively, the “Seller Aliases”). Specifically, 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, accept payment in U.S. dollars and, on information and belief, have sold and continue to sell products using infringing and counterfeit versions of Plaintiff’s federally registered trademarks 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.

II. INTRODUCTION

3. This action has been filed by Plaintiff to combat e-commerce store operators who trade upon Plaintiff’s reputation and goodwill by offering for sale and/or selling unauthorized and unlicensed products using infringing and counterfeit versions of one or more Plaintiff’s federally registered trademarks (the “Counterfeit OU Products”).

4. Defendants create e-commerce stores operating under one or more Seller Aliases that are advertising, offering for sale and selling Counterfeit OU Products to unknowing consumers. E-commerce stores operating under the Seller Aliases share unique identifiers, establishing a logical relationship between them and demonstrating that Defendants’ counterfeiting operation arises out of the same transaction, occurrence, or series of transactions or occurrences. Defendants attempt to avoid and mitigate liability by operating under one or more Seller Aliases to conceal both their identities and the full scope and interworking of their counterfeiting operations. Plaintiff is forced to file this action to combat Defendants’

¹ The e-commerce store urls are listed on Schedule A hereto under the Online Marketplaces and Domain Names.

counterfeiting of the trademarks owned by Plaintiff, as well as to protect unknowing consumers from purchasing Counterfeit OU Products over the Internet. Plaintiff has been irreparably harmed and continues to be irreparably damaged through consumer confusion, dilution, and tarnishment of its valuable trademarks as a result of Defendants' actions and seeks injunctive and monetary relief.

III. THE PARTIES

The Board of Regents of the University of Oklahoma

5. Plaintiff OU Board of Regents is a constitutional state entity of the State of Oklahoma and created according to the Oklahoma State Constitution, having its principal place of business at 660 Parrington Oval, Norman, Oklahoma 73019-0390. The OU Board of Regents oversees many aspects of the management of the University of Oklahoma ("OU"), including management of trademark affairs.

6. OU, Oklahoma's flagship educational institution, was founded in 1890, and is one of the oldest public universities in the State of Oklahoma. OU offers a wide range of undergraduate, graduate and professional programs for its more than 30,000 students, and is consistently ranked as one of the top 50 public universities in the nation.

7. OU is home to one of the most storied intercollegiate athletics programs in the nation. The OU Sooners ("Sooners") boast 39 national championships in men's and women's sports, including 7 national football championships.

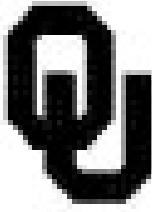
8. The OU Board of Regents is the owner of the famous and distinctive trademarks of OU and is responsible for protecting those trademarks. The OU Board of Regents commercially exploits, protects and enforces rights in the famous and distinctive trademarks, names, logos, symbols, emblems, uniform designs, uniform trade dress colors, and other

identifying indicia associated with OU (collectively, the “OU Trademarks”), including, but not limited to, those that are the subject of valid and subsisting trademark registrations on the Principal Register of the United States Patent and Trademark Office (“USPTO”) and those that the OU Board of Regents has adopted and used in commerce throughout the United States, including Illinois. The OU Board of Regents owns more than eighty (80) United States Federal Trademark Registrations in a variety of classes and for a variety of different goods and services, including, without limitation, many for apparel such as jerseys, shirts, hats, and other products in international class 25. Among the OU Trademarks are the word mark “SOONERS” (reg. no.

3,041,006) and the Interlocking OU Logo:  (reg. no. 3,035,551).

9. A non-exclusive list of the famous and distinctive OU Trademarks owned by the OU Board of Regents, registered before the USPTO, and currently in use in commerce include the following:

Registration Number	Trademark	Goods and Services
1,378,171		For: clothing, namely, adult and children's jackets, shirts, t-shirts, sport shirts, sweat shirts, sweat pants, hats, caps, and visors in class 025.
3,093,031	BOOMER SOONER	For: clothing and sports clothing apparel and outerwear, namely t-shirts, shirts, sweaters, vests, sweat shirts, jackets, pants, sweatpants, shorts, hats, caps, visors and footwear in class 025.

3,035,551		For: clothing and sports clothing apparel and outerwear, namely, t-shirts, shirts, sweaters, vests, sweat shirts, jackets, pants, sweatpants, shorts, hats, caps, visors and footwear in class 025.
3,041,006	SOONERS	For: clothing and sports clothing apparel and outerwear, namely t-shirts, shirts, sweaters, vests, sweat shirts, jackets, pants, sweatpants, shorts, hats, caps, visors and footwear in class 025.
1,374,839	SOONERS	For: clothing, namely, adult and children's jackets, shirts, t-shirts, sport shirts, sweat shirts, sweat pants, hats, caps, visors in class 025.

The above U.S. registrations for the OU Trademarks are valid, subsisting, in full force and effect, and many are incontestable pursuant to 15 U.S.C. § 1065. True and correct copies of the Federal Trademark Registrations for the above OU Trademarks are attached hereto as **Exhibit 1**.

10. OU's intercollegiate football, baseball, and other athletic teams (collectively, the "OU Teams") and the OU Trademarks are widely known to and enormously popular with both sports fans and the general public. OU has promoted and advertised OU, the OU Teams and the OU Trademarks extensively for many years. The OU Trademarks are among the most renowned and immediately recognizable marks in college sports today. As a result of substantial advertising, promotion and media attention, and the OU Board of Regents' extensive licensing and sponsorship program for a wide variety of goods and services, OU Trademarks have acquired secondary meaning and represent significant goodwill of great value to OU and the OU Teams.

11. Millions of fans have attended OU sports games and related events, enjoyed television and radio broadcasts of OU games and related events, and purchased merchandise bearing OU Trademarks to identify with their favorite OU Teams. Millions visit <soonersports.com>, the official OU athletics website, which prominently displays the OU Trademarks.

12. A significant aspect of the OU Board of Regents' business and resulting revenues has been for many years, and continues to be, the merchandising and licensing of OU Trademarks. The OU Board of Regents, in conjunction with its licensing agent, the Collegiate Licensing Company, LLC ("CLC"), has entered into numerous licensing agreements in the United States and around the world, authorizing use of the OU Trademarks on a wide variety of products, including apparel, hats, jewelry, toys, furniture, pennants, and bags, among others (collectively, the "OU Products"). Retail sales revenue in 2017 of OU Products was in the tens of millions of dollars.

13. The OU Board of Regents, directly and through authorized licensees, has established and maintained high standards of quality for OU Products, and continues to maintain stringent quality control over licensees and other authorized users of OU Trademarks.

14. In supervising licensees, the OU Board of Regents provides licensees and licensed product manufacturers with specifications setting forth extensive details with respect to use of OU Trademarks, including typeface and typography, color renderings, official uniform scripts, graphic designs, materials, workmanship, and quality. All OU Products and designs are reviewed under these strict quality control procedures.

15. As a result of the extensive use of OU Trademarks, not only in connection with the OU's well-known sports games, exhibitions and services, but also in connection with a wide

variety of licensed merchandise promoted, sold and/or rendered in the United States and abroad, as well as widespread use in connection with a broad array of sponsorship activities spanning diverse industries, such trademarks have for many decades, and long prior to any use made by Defendants, functioned as unique identifiers and synonyms in the public mind for OU and the affiliated and related OU Teams. As a result, OU Trademarks are famous and possess significant goodwill of great value to OU, its affiliated and related OU Teams, and the OU Board of Regents.

The Defendants

16. Defendants are individuals and business entities of unknown makeup who own and/or operate one or more of the e-commerce stores under at least the Seller Aliases identified on Schedule A and/or other seller aliases not yet known to Plaintiff. On information and belief, Defendants reside and/or operate in the People's Republic of China or other foreign jurisdictions, or redistribute products from the same or similar sources in those locations. Defendants have the capacity to be sued pursuant to Federal Rule of Civil Procedure 17(b).

17. On information and belief, Defendants, either individually or jointly, operate one or more e-commerce stores under the Seller Aliases listed in Schedule A attached hereto. Tactics used by Defendants to conceal their identities and the full scope of their operations make it virtually impossible for Plaintiff to learn Defendants' true identities and the exact interworking of their counterfeit network. If Defendants provide additional credible information regarding their identities, Plaintiff will take appropriate steps to amend the Complaint.

IV. DEFENDANTS' UNLAWFUL CONDUCT

18. The fame of OU Trademarks and the success of Plaintiff's athletic brand and affiliated variety of products, including apparel, hats, jewelry, toys, furniture, pennants, and bags,

among others (collectively, the “Genuine OU Products”), has resulted in significant counterfeiting of OU Trademarks. Trademark Management LLC (“TML”) administers Coalition to Advance the Protection of Sports logos (“CAPS”) on behalf of its members, including CLC. CAPS has created an extensive anti-counterfeiting program, which includes regularly investigating suspicious e-commerce stores identified in proactive Internet sweeps and reported by a variety of informants in response to the significant counterfeiting of OU Trademarks. In recent years, CAPS, on behalf of its members, including CLC, has identified numerous fully interactive e-commerce stores on online marketplace platforms such as Amazon, eBay, AliExpress, Alibaba, Wish.com, and DHgate, including the e-commerce stores operating under the Seller Aliases. The Seller Aliases target consumers in this Judicial District and throughout the United States s. According to U.S. Customs and Border Protection (CBP), most counterfeit products now come through international mail and express courier services (as opposed to containers) due to increased sales from offshore online counterfeiters. *The Counterfeit Silk Road: Impact of Counterfeit Consumer Products Smuggled Into the United States* prepared for The Buy Safe America Coalition by John Dunham & Associates (**Exhibit 2**). The bulk of counterfeit products sent to the United States “come from China and its dependent territories,” accounting for over 90.6% of all cargo with intellectual property rights (IPR) violations. *Id.* Of the \$1.23 billion in total IPR violations intercepted, \$1.12 billion was from China. *Id.* Counterfeit and pirated products account for billions in economic losses, resulting in tens of thousands of lost jobs for legitimate businesses and broader economic losses, including lost tax revenue. *Id.* .

19. Counterfeitors “routinely use false or inaccurate names and addresses when registering with these Internet platforms,” that do not require sellers to verify their identities. **Exhibit 3**, Daniel C.K. Chow, *Alibaba, Amazon, and Counterfeiting in the Age of the Internet*,

40 Nw. J. INT'L L. & BUS. 157, 186 (2020); *see also* report on “Combating Trafficking in Counterfeit and Pirated Goods” prepared by the U.S. Department of Homeland Security’s Office of Strategy, Policy, and Plans (Jan. 24, 2020), attached as **Exhibit 4** and finding that on “at least some e-commerce platforms, little identifying information is necessary for a counterfeiter to begin selling” and recommending that “[s]ignificantly enhanced vetting of third-party sellers” is necessary. Counterfeitors hedge against the risk of being caught and having their websites taken down from an e-commerce platform by preemptively establishing multiple virtual store-fronts. **Exhibit 4** at p. 22. Since platforms generally do not require a seller on a third-party marketplace to identify the underlying business entity, counterfeitors can have many different profiles that can appear unrelated even though they are commonly owned and operated. **Exhibit 4** at p. 39. Further, “E-commerce platforms create bureaucratic or technical hurdles in helping brand owners to locate or identify sources of counterfeits and counterfeiters.” **Exhibit 3** at 186-187.

20. 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, accept payment in U.S. dollars and, on information and belief, have sold Counterfeit OU Products to residents of Illinois.

21. Defendants concurrently employ and benefit from substantially similar advertising and marketing strategies. For example, Defendants facilitate sales of Counterfeit OU Products by designing the e-commerce stores operating under the Seller Aliases so that they appear to unknowing consumers to be authorized online retailers, outlet stores, or wholesalers, including, in many instances, by copying the layouts, terms of service, legal notices and/or contact information found on the websites of Plaintiff’s authorized online retailers. E-commerce stores operating under the Seller Aliases appear sophisticated and accept payment in U.S. dollars

via credit cards, Alipay, Amazon Pay, and/or PayPal. E-commerce stores operating under the Seller Aliases often include content and images that make it very difficult for consumers to distinguish such stores from an authorized retailer. On information and belief, Plaintiff has not licensed or authorized Defendants to use any of the OU Trademarks, and none of the Defendants are authorized retailers of Genuine OU Products.

22. Many Defendants also deceive unknowing consumers by using one or more OU Trademarks without authorization within the content, text, and/or meta-tags of their e-commerce stores to attract various search engines crawling the Internet looking for websites relevant to consumer searches for Genuine OU Products. Other e-commerce stores operating under Seller Aliases omit using OU Trademarks in the item title to evade enforcement efforts while using strategic item titles and descriptions that will trigger their listings when consumers are searching for Genuine OU Products. On information and belief, those Defendants that do not use OU Trademarks in searchable text do so in an effort to avoid detection of their Counterfeit OU Products.

23. E-commerce store operators like Defendants commonly engage in fraudulent conduct when registering the Seller Aliases by providing false, misleading and/or incomplete information to e-commerce platforms to prevent one from learning their true identities and the scope of their e-commerce operation.

24. E-commerce store operators like Defendants regularly register or acquire new seller aliases for the purpose of offering for sale and selling Counterfeit OU Products. Such seller alias registration patterns are one of many common tactics used by e-commerce store operators like Defendants to conceal their identities, the full scope and interworking of their counterfeiting operation, and to avoid being shut down.

25. Even though Defendants operate under multiple fictitious aliases, the e-commerce stores operating under the Seller Aliases often share unique identifiers, such as templates with common design elements that intentionally omit any contact information or other information for identifying Defendants or other Seller Aliases they operate or use. E-commerce stores operating under the Seller Aliases include other notable common features such as use of the same registration patterns, accepted payment methods, check-out methods, keywords, advertising tactics, similarities in price and quantities, the same incorrect grammar and misspellings, and/or the use of the same text and images. Additionally, Counterfeit OU Products for sale by the Seller Aliases bear similar irregularities and indicia of being counterfeit to one another, suggesting that the Counterfeit OU Products were manufactured by and come from a common source and that Defendants are interrelated.

26. E-commerce store operators like Defendants are in constant communication with each other and regularly participate in QQ.com chat rooms and through websites such as sellerdefense.cn, kaidianyo.com and kuajingvs.com regarding tactics for operating multiple accounts, evading detection, pending litigation, and potential new lawsuits.

27. Counterfeitors such as Defendants typically operate under multiple seller aliases and payment accounts so that they can continue operation in spite of Plaintiff's enforcement. E-commerce store operators like Defendants maintain off-shore bank accounts and regularly move funds from their financial accounts to off-shore accounts outside the jurisdiction of this Court to avoid payment of any monetary judgment awarded to Plaintiff. Indeed, analysis of financial account transaction logs from previous similar cases indicates that off-shore counterfeitors regularly move funds from U.S.-based financial accounts to off-shore accounts outside the jurisdiction of this Court.

28. Defendants are working in active concert to knowingly and willfully manufacture, import, distribute, offer for sale, and sell Counterfeit OU Products in the same transaction, occurrence, or series of transactions or occurrences. Defendants, without any authorization or license from Plaintiff, have jointly and severally, knowingly and willfully used and continue to use one or more OU Trademarks in connection with the advertisement, distribution, offering for sale, and/or sale of the Counterfeit OU Products into the United States and Illinois over the Internet.

29. Defendants' unauthorized use of one or more OU Trademarks in connection with the advertising, distribution, offering for sale, and sale of Counterfeit OU Products, including into the United States, including Illinois, is likely to cause and has caused confusion, mistake, and deception by and among consumers and is irreparably harming Plaintiff.

COUNT I
TRADEMARK INFRINGEMENT AND COUNTERFEITING (15 U.S.C. § 1114)

30. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

31. This is a trademark infringement action against Defendants based on their unauthorized use in commerce of counterfeit or infringing imitations of one or more OU Trademarks in connection with the sale, offering for sale, distribution, and/or advertising of infringing goods. OU Trademarks are highly distinctive marks. Consumers have come to expect the highest quality from Genuine OU Products sold or marketed under OU Trademarks.

32. Defendants have sold, offered to sell, marketed, distributed and advertised, and are still selling, offering to sell, marketing, distributing and advertising products using counterfeit or infringing reproductions of one or more OU Trademarks without Plaintiff's permission or consent.

33. Plaintiff is the owner of the OU Trademarks. The U.S. Registrations for OU Trademarks (**Exhibit 1**) are in full force and effect. On information and belief, Defendants have knowledge of Plaintiff's rights in the OU Trademarks and are willfully infringing and intentionally using counterfeits or infringements of one or more OU Trademarks. Defendants' willful, intentional and unauthorized use of one or more OU Trademarks is likely to cause and is causing confusion, mistake, and deception as to the origin and quality of the counterfeit or infringing goods among the general public.

34. Defendants' activities constitute willful trademark infringement and counterfeiting under Section 32 of the Lanham Act, 15 U.S.C. § 1114.

35. 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 OU Trademarks.

36. The injuries and damages sustained by Plaintiff have been directly and/or proximately caused by Defendants' wrongful reproduction, use, advertisement, promotion, offering to sell, and/or sale of the Counterfeit OU Products.

COUNT II
FALSE DESIGNATION OF ORIGIN (15 U.S.C. § 1125(a))

37. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

38. Defendants' promotion, marketing, offering for sale, and/or sale of the Counterfeit OU Products has created and is creating a likelihood of confusion, mistake, and deception among the general public as to the affiliation, connection, or association with Plaintiff, or as to the origin, sponsorship, or approval of Defendants' Counterfeit OU Products by Plaintiff.

39. By using one or more OU Trademarks on the Counterfeit OU Products, Defendants create a false designation of origin and a misleading representation of fact as to the origin and sponsorship of the Counterfeit OU Products.

40. Defendants' false designation of origin and misrepresentation of fact as to the origin and/or sponsorship of the Counterfeit OU Products to the general public involves the use of counterfeit marks and is a willful violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125.

41. 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 Plaintiff and its OU Trademarks.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants 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 any OU Trademarks or any reproductions, counterfeit copies, or colorable imitations thereof in any manner in connection with the distribution, promotion, marketing, advertising, offering for sale, or sale of any product that is not a Genuine OU Product or is not authorized by Plaintiff to be sold in connection with OU Trademarks;
 - b. passing off, inducing, or enabling others to sell or pass off any products as Genuine OU Products or any other products produced by Plaintiff that are not Plaintiff's, or

not produced under the authorization, control, or supervision of Plaintiff and approved by Plaintiff for sale under OU Trademarks;

- c. committing any acts calculated to cause consumers to believe that Defendants' Counterfeit OU Products are those sold under the authorization, control, or supervision of Plaintiff, or are sponsored by, approved by, or otherwise connected with Plaintiff;
- d. further infringing OU Trademarks and damaging Plaintiff's goodwill; and
- e. 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 Plaintiff, nor authorized by Plaintiff to be sold or offered for sale, and which bear any of Plaintiff's trademarks, including the OU Trademarks, or any reproductions, counterfeit copies, or colorable imitations thereof;

2) Entry of an Order that, at Plaintiff's choosing, the registrant of the Domain Names shall be changed from the current registrant to Plaintiff, and that the domain name registries for the 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 Domain Names to a registrar of Plaintiff's selection, and that the domain name registrars, including, but not limited to, GoDaddy Operating Company, LLC ("GoDaddy"), Name.com, PDR LTD. d/b/a PublicDomainRegistry.com ("PDR"), and Namecheap Inc. ("Namecheap"), shall take any steps necessary to transfer the Domain Names to a registrar account of Plaintiff's selection; or that the same domain name registries shall disable the Domain Names and make them inactive and untransferable;

- 3) Entry of an Order that, upon Plaintiff's request, those with notice of the injunction, including, without limitation, any online marketplace platforms such as eBay, AliExpress, Alibaba, Amazon, Wish.com, and Dhgate (collectively, the "Third Party Providers") shall disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of counterfeit and infringing goods using OU Trademarks;
- 4) That Defendants account for and pay to Plaintiff all profits realized by Defendants by reason of Defendants' unlawful acts herein alleged and that the amount of damages for infringement of OU Trademarks be increased by a sum not exceeding three times the amount thereof as provided by 15 U.S.C. § 1117;
- 5) In the alternative, that Plaintiff be awarded statutory damages for willful trademark counterfeiting pursuant to 15 U.S.C. § 1117(c)(2) of \$2,000,000 for each and every use of OU Trademarks;
- 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 this 18th day of May 2022.

Respectfully submitted,

/s/ Justin R. Gaudio

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