

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

BOARD OF REGENTS FOR OKLAHOMA
STATE UNIVERSITY,

Case No. 22-cv-05464

Plaintiff,

v.

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

Defendants.

COMPLAINT

Plaintiff Board of Regents for Oklahoma State University (hereinafter, the “OSU 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 OSU Products”).

4. Defendants create e-commerce stores operating under one or more Seller Aliases that are advertising, offering for sale and selling Counterfeit OSU 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 OSU 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 for Oklahoma State University

5. Plaintiff OSU Board of Regents is an institution organized and existing under the constitution and laws of the State of Oklahoma, including Okla. Const. art. 6, § 31a and 70 Okla. Stat. § 3412 (2014). The campus of Oklahoma State University ("OSU") has its principal place of business in Stillwater, Oklahoma 74078. The governing body of OSU is the OSU Board of Regents. The OSU Board of Regents oversees management of OSU, including management of its trademark affairs.

6. OSU, established as a land-grant university in 1890, is the flagship institution of the Oklahoma State University System. OSU offers a wide range of undergraduate, graduate and professional programs for its more than 35,000 students across its five campuses.

7. As a member of the Big 12 Conference, OSU competes in sixteen (16) Division I intercollegiate varsity sports. OSU has won fifty-two (52) NCAA National Championships, the most in the Big 12 Conference and ranking fourth nationwide. OSU is one of only three Big 12 schools to have made appearances in a New Year's Six Bowl game, the men's basketball Final Four, the College World Series, and the Women's College World Series since the inception of the league.

8. The OSU Board of Regents is the owner of the famous and distinctive trademarks of OSU and is responsible for protecting those trademarks. The OSU 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 OSU (collectively, the “OSU 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 and those that the OSU Board of Regents has adopted and used in commerce throughout the United States, including in Illinois. The OSU Board of Regents owns numerous 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, caps, and other products in international class 25. Among the OSU Trademarks are the word mark “OKLAHOMA STATE

UNIVERSITY” (reg. no. 3,192,894) and the OSU Logo:  (reg. no. 2,623,574).

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

Registration Number	Trademark	Goods and Services
3,192,894	OKLAHOMA STATE UNIVERSITY	For: Clothing, namely, t-shirts, sweatshirts, cooking aprons and caps in class 025. For: Education and entertainment services, namely providing course of instruction at the university level; educational research, arranging and conducting athletic events and tournaments, exhibitions, conferences, live performances and festivals in class 041.

3,801,872	O STATE	For: Clothing, namely, caps, footwear, hats, jackets, jerseys, shirts, shoes, shorts, sweat pants, sweat suits, sweaters, T-shirts, visors in class 025.
3,944,747	BEDLAM	For: Clothing and sports clothing, apparel and outerwear, namely, t-shirts, shirts, sweatshirts, shorts, hats, caps and visors in class 025. For: Entertainment services, namely, organizing collegiate sporting events; entertainment in the nature of collegiate football, men's and women's basketball, baseball, softball, soccer, wrestling, men's and women's tennis, men's and women's cross country, men's and women's golf, men's and women's indoor track and field, and men's and women's outdoor track and field events in class 041.
1,979,819		For: Clothing, namely athletic uniforms, caps, footwear, hats, jackets, jerseys, shirts, shoes, shorts, sweat pants, sweat shirts, sweat suits, sweaters, T-shirts, visors in class 025.
2,623,574		For: Clothing, namely, shirts and hats in class 025.
2,708,673		For: Hats in class 025.
1,602,422		For: Clothing, namely men's and women's shirts in class 025.

The above U.S. registrations for the OSU 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 OSU Trademarks are attached hereto as Exhibit 1.

10. OSU's intercollegiate football, baseball, and other athletic teams (collectively, the "OSU Teams") and the OSU Trademarks are widely known to and enormously popular with both sports fans and the general public. OSU has promoted and advertised OSU, the OSU Teams and the OSU Trademarks extensively for many years. The OSU 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 OSU Board of Regents' extensive licensing and sponsorship program for a wide variety of goods and services, OSU Trademarks have acquired secondary meaning and represent significant goodwill of great value to OSU and the OSU Teams.

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

12. A significant aspect of the OSU Board of Regents' business and resulting revenues has been for many years, and continues to be, the merchandising and licensing of OSU Trademarks. The OSU 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 OSU Trademarks on a wide variety of products, including apparel, hats, jewelry, toys, furniture, pennants, and bags, among others (collectively, the "OSU Products").

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

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

15. As a result of the extensive use of OSU Trademarks, not only in connection with the OSU'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 OSU and the affiliated and related OSU Teams. As a result, OSU Trademarks are famous and possess significant goodwill of great value to OSU, its affiliated and related OSU Teams, and the OSU 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 OSU 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 OSU Products"), has resulted in significant counterfeiting of OSU 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 OSU 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, Walmart, Etsy, 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 OSUs. 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, counterfeiters 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 OSU 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 OSU 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 OSU Trademarks, and none of the Defendants are authorized retailers of Genuine OSU Products.

22. Many Defendants also deceive unknowing consumers by using one or more OSU 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 OSU Products. Other e-commerce stores operating under Seller Aliases omit using OSU 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 OSU Products. On information and belief, those Defendants that do not use OSU Trademarks in searchable text do so in an effort to avoid detection of their Counterfeit OSU 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 OSU 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 OSU Products for sale by the Seller Aliases bear similar irregularities and indicia of being counterfeit to one another,

suggesting that the Counterfeit OSU 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 counterfeiters 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 OSU 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 OSU Trademarks in connection with the advertisement, distribution, offering for sale, and/or sale of the Counterfeit OSU Products into the United States and Illinois over the Internet.

29. Defendants' unauthorized use of one or more OSU Trademarks in connection with the advertising, distribution, offering for sale, and sale of Counterfeit OSU 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 OSU Trademarks in connection with the sale, offering for sale, distribution, and/or advertising of infringing goods. OSU Trademarks are highly distinctive marks. Consumers have come to expect the highest quality from Genuine OSU Products sold or marketed under OSU 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 OSU Trademarks without Plaintiff's permission or consent.

33. Plaintiff is the owner of the OSU Trademarks. The U.S. Registrations for OSU Trademarks (Exhibit 1) are in full force and effect. On information and belief, Defendants have knowledge of Plaintiff's rights in the OSU Trademarks and are willfully infringing and intentionally using counterfeits or infringements of one or more OSU Trademarks. Defendants' willful, intentional and unauthorized use of one or more OSU 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 OSU 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 OSU 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 OSU 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 OSU Products by Plaintiff.

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

40. Defendants' false designation of origin and misrepresentation of fact as to the origin and/or sponsorship of the Counterfeit OSU 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 OSU 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 OSU 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 OSU Product or is not authorized by Plaintiff to be sold in connection with OSU Trademarks;
 - b. passing off, inducing, or enabling others to sell or pass off any products as Genuine OSU 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 OSU Trademarks;
 - c. committing any acts calculated to cause consumers to believe that Defendants' Counterfeit OSU 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 OSU 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 OSU 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, Walmart, Etsy, 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 OSU 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 OSU 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 OSU 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 5th day of October 2022. Respectfully submitted,

/s/ Justin R. Gaudio

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