

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

EK, Inc.,)	
)	
Plaintiff,)	Civil Action No. 1:23-cv-1868
)	
v.)	
)	
The Entities and Individuals Identified in)	
Schedule A,)	
)	
Defendants.)	

COMPLAINT

Plaintiff, EK, Inc.,¹ (“EK” or “Plaintiff”), by and through its undersigned attorneys, for its Complaint against the Entities and Individuals identified in Schedule A (individually and collectively referred to as “Defendants”), herein allege:

NATURE OF THE ACTION

1. This is an action for copyright infringement pursuant to 17 U.S.C. § 501 against Defendants for unlawful use of Plaintiff’s copyrights in conjunction with unauthorized sales of infringing products.

2. Defendants are individuals and entities who trade on Plaintiff’s goodwill and sell and/or offer to sell unauthorized infringing products using Plaintiff’s copyrighted materials through various “storefronts” via online retail websites.

¹ As it is unknown when a ruling on Plaintiff’s Motion for Temporary Restraining Order will be entered and effectuated by third parties, Plaintiff’s name has temporarily been replaced with a pseudonym to prevent Defendants from obtaining advanced notice. Plaintiff’s corporate identity is disclosed on the sealed complaint which is filed under seal.

JURISDICTION AND VENUE

3. This Court has jurisdiction of Plaintiff's federal claims pursuant to 28 U.S.C. § 1331 and 1338(a).

4. Each Defendant runs a "storefront" accepting US Dollars through respective website platforms through which each Defendant specifically targets residents in this judicial district by offering to sell and, upon information and belief, shipping infringing products to residents within the Northern District of Illinois, by displaying infringing imagery in its product listings and using Plaintiff's registered copyrighted material in its product listings. Thus each Defendant is committing copyright infringement in this district.

5. Venue in the Northern District of Illinois is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events that give rise to the claim occur within this District, each Defendant has committed acts of infringement in and has significant contacts within this District, and each Defendant as delineated in Schedule A is displaying infringing imagery in its product listings targeted at this District and/or are using, selling, or offering to sell the infringing products in this District. In addition, on information and belief, each of the Defendants is a foreign entity or individual and "a defendant not resident in the United States may be sued in any judicial district . . ." 28 U.S.C. § 1391(c)(3).

PARTIES

Plaintiff

6. Plaintiff is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business in Scarsdale, NY 10583.

7. Plaintiff's product that is the subject of this Complaint was personally invented by Plaintiff's founder.

8. Plaintiff's products are distributed and sold to consumers throughout the United States, including in Illinois, through Plaintiff's official website, Amazon, and through a third-party retailer.

9. Plaintiff has offered its product on its website since approximately 2020.

10. Plaintiff owns the copyright registrations (disclosed in the accompanying Sealed Complaint) used in connection with products that are the subject of this lawsuit.

11. Plaintiff's copyrighted material are original works of authorship created and owned by Plaintiff.

12. The registrations for Plaintiff's copyrights are valid, subsisting, and in full force and effect.

13. In view of Plaintiff's efforts and the response of the marketplace to its products, Plaintiff's Copyrighted Material has become known throughout the United States, uniquely signifying to consumers that the products come from Plaintiff.

14. Because Plaintiff's products have become popular and the Copyrighted Material is recognized by consumers, Plaintiff's product has been subject to widespread infringement utilizing the Copyrighted Material both in advertisements for and on items of significantly lower quality. Similarly, because Plaintiff uses its Copyrighted Material in its legitimate advertisements and product listings for Plaintiff's genuine product, Defendants have also used the intellectual property in an effort to deceive consumers into believing the products offered are genuine. Plaintiff's investigation has revealed many online marketplace listings on platforms such as Alibaba, Aliexpress, Amazon, DHGate, eBay, Joom, JoyBuy, and Walmart, including listings posted by

Defendants, which offer for sale and, on information and belief, sell the infringing copies of Plaintiff's product utilizing Plaintiff's Copyrighted Material to consumers in Illinois and offer to ship those products to Illinois.

The Defendants

15. On information and belief, Defendants are individuals and business entities who conduct business in the United States, including within Illinois, through their operation of interactive, online marketplaces and/or websites which offer for sale unauthorized copies of Plaintiff's product bearing the Copyrighted Material and/or use the Copyrighted Material in advertising and selling non-genuine Plaintiff products.

16. On information and belief, based on similarities in the characteristics of some of the websites and counterfeit merchandise offered for sale, some of the Defendants are related or work together as part of a single enterprise to willfully make, distribute, offer for sale, and sell counterfeit products displaying Plaintiff's Copyrighted Materials, or a colorable imitation thereof.

17. At present, many of the Defendants can only be identified through their storefronts and other limited publicly available information. Plaintiff will voluntarily amend its Complaint if Defendants provide additional credible information regarding their identities.

DEFENDANTS' UNLAWFUL CONDUCT

18. Defendants intentionally deceive and mislead consumers by creating storefronts that appear as if they are authorized online retailers who offer Plaintiff's bona fide products. These websites commonly use the Copyrighted Material without Plaintiff's permission. The sites also include payment options via: (1) credit cards, such as Visa®, MasterCard®, Discover®, American Express®; (2) the platform's online payment service; or (3) through other means denominated in U.S. currency, such as Apple Pay®. The content of these sites is designed to make it difficult for

consumers to detect that the site does not belong to an authorized retailer or that the products being sold are products bearing unauthorized copies of the Copyrighted Material.

19. All of the storefronts listed in this action and created by Defendants to sell copies of Plaintiff's merchandise use the Copyrighted Material on packaging and/or in product listings without authorization. Defendants use the Copyrighted Material in an effort to mislead consumers into believing the goods the Defendants sell via their various storefronts are legitimate goods because these images also appear on Plaintiff's official website and social media accounts.

20. Defendants, like many counterfeiters, operate under many different names on a variety of different websites and sales platforms to overwhelm the marketplace with a multitude of counterfeit products in order to evade detection by intellectual property owners. Upon information and belief, some of the Defendants operate under more than one alias so as to avoid identification. These sites conceal the actual persons and entities responsible for the websites and listings in favor of fictitious ones.

21. Additionally, sellers like Defendants commonly disable their marketplace storefronts and attempt to disappear as soon as they learn that they have been sued. They typically re-emerge under new online marketplace accounts with new fictitious names after a short period of time. Additionally, these actors often utilize multiple Paypal® accounts, credit card accounts, and payment gateways so that even if detection requires them to close down one account, there are others set up to take its place.

22. Sellers located abroad frequently maintain off-shore and foreign bank accounts. If detected, these sellers quickly move funds from their accounts denominated in U.S. currency, such as PayPal® accounts, to off-shore bank accounts outside the jurisdiction of this Court.

COUNT I
FEDERAL COPYRIGHT INFRINGEMENT
17 U.S.C. § 106 and 501

23. Plaintiff repeats and incorporates by reference the allegations contained in Paragraphs 1 through 22.

24. Plaintiff owns the copyright registrations attached hereto as Exhibit 1. The copyright registrations are valid and enforceable.

25. The Copyright Act provides in pertinent part that “[a]nyone who violates any of the exclusive rights of the copyright owner as provided by sections 106 through 122...is an infringer of the copyright...” 17 U.S.C. § 501.

26. Defendants have infringed and continue to infringe the Copyrighted Material by deliberately copying, reproducing, displaying, and/or creating derivative works of the Copyrighted Material on the Defendants’ product listings without Plaintiff’s authorization in violation of 17 U.S.C. §§ 106 and 501.

27. The Defendants’ conduct is blatant, wanton, and willful.

28. Such conduct as alleged herein has damaged Plaintiff in an amount to be determined at trial.

29. Defendants’ conduct has caused and will continue to cause Plaintiff irreparable harm for which there is no adequate remedy at law unless restrained.

30. Plaintiff is entitled to injunctive relief, actual damages, and to recover the profits that Defendants realize for such unauthorized conduct pursuant to 17 U.S.C. §§ 502 and 504.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. That Defendants, and each of them, and their respective agents, employees, servants, affiliates, and all persons acting for, with, or in concert with them be temporarily, preliminarily, and permanently enjoined and restrained from:

- a. reproducing, distributing copies of, making derivative works of, or publicly displaying the Copyrighted Material;
- b. engaging in any conduct which will cause, or is likely to cause, confusion, mistake, deception, or misunderstanding as to source, or confusion as to the affiliation, connection, association, origin, sponsorship, or approval of Defendants' business, services, website or other activities with Plaintiff;
- c. passing off or inducing or causing others to pass off any product under Plaintiff's intellectual property unless such product is genuine Plaintiff merchandise sold with Plaintiff's authorization;
- d. selling, disposing, destroying, transferring, or otherwise distributing any products bearing the Copyrighted Material by way of preexisting inventory or otherwise currently possessed or under the control of Defendants or any of Defendants' agents, whether to customers or to any third party.

2. That, upon Plaintiff's request, all in privity with Defendants and with notice of the injunction, including but not limited to any online marketplace platforms, such as Alibaba, Aliexpress, Amazon, eBay, Joom, JoyBuy, Wish, and Walmart, and vendors of sponsored search terms or online ad-word providers, financial services providers, including but not limited to credit card providers, banks, merchant account providers, third party payment processors, web hosts, domain registrars, domain registries, and Internet search engines, such as Google, Bing, and Yahoo shall:

- a. cease providing services used by Defendants, currently or in the future, to sell or offer for sale goods utilizing Plaintiff's Copyrighted Material;
 - b. cease displaying any advertisements in any form, connected or associated with Defendants in connection with the sale of infringing goods under Plaintiff's Copyrighted Material; and
 - c. disable all links to the marketplace accounts identified in Schedule A from displaying in search results, including from any search index.
3. That Defendants, and each of them, account to Plaintiff for their profits and any damages sustained by Plaintiff arising from their acts of infringement;
 4. That Plaintiff be awarded damages as well as Defendants' profits under 17 U.S.C. § 504(b);
 5. That Plaintiff be awarded reasonable attorneys' fees under 17 U.S.C. § 505.
 6. In the alternative, that Plaintiff be awarded statutory damages where applicable under 17 U.S.C. § 504(c).
 7. That the Defendants disgorge any profits earned by their tortious activities;
 8. That Plaintiff be awarded punitive damages;
 9. That Plaintiff be awarded pre-judgment interest as allowed by law;
 10. That Plaintiff be awarded the costs of this action;
 11. That Plaintiff be awarded its reasonable attorneys' fees incurred in connection with this action; and
 12. That Plaintiff be awarded such further legal and equitable relief as the Court deems proper.

Dated this 24th day of March, 2023.

Respectfully submitted,

Plaintiff EK, Inc.

/s/ Michelle Bolos

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