

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

VIACOM INTERNATIONAL INC.,

Plaintiff,

v.

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

Defendants.

Case No. 23-cv-02733

COMPLAINT

Plaintiff Viacom International Inc. (“Viacom” or “Plaintiff”), by its undersigned counsel, hereby brings the present action against the Partnerships and Unincorporated Associations Identified on Schedule A attached hereto (collectively, “Defendants”) and alleges as follows:

I. JURISDICTION AND VENUE

1. This Court has original subject matter jurisdiction over Plaintiff’s claims pursuant to the provisions of the Lanham Act, 15 U.S.C. § 1051, *et seq.*, the Copyright Act 17 U.S.C. § 501, *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 exercise personal jurisdiction over Defendants because Defendants structure their business activities so as to target consumers in the United States (“U.S.”), including Illinois, through at least the fully interactive e-commerce stores operating under the aliases identified on Schedule A attached hereto (the “Seller Aliases”). Specifically, Defendants have targeted sales to Illinois residents by setting up and operating e-commerce stores that target U.S. consumers; offering shipping to the U.S., including Illinois; accepting payment in U.S. dollars; and, on information and

belief, selling products using infringing and counterfeit versions of Plaintiff's federally registered trademarks and unauthorized copies of Plaintiff's federally registered copyrighted works (collectively, the "Unauthorized Products") to residents of Illinois. Each Defendant 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. Plaintiff filed this case to prevent e-commerce store operators who trade upon Plaintiff's reputation and goodwill from further selling and/or offering for sale Unauthorized Products. Defendants advertise, offer for sale, and/or sell Unauthorized Products to unknowing consumers through their Seller Aliases. E-commerce stores operating under the Seller Aliases share identifiers, such as design elements and similarities of the Unauthorized Products offered for sale, establishing that a logical relationship exists between them, and that Defendants' infringing operation arises out of the same transaction, occurrence, or series of transactions or occurrences. Defendants take advantage of a set of circumstances, including the anonymity and mass reach afforded by the Internet and the cover afforded by international borders, to violate Plaintiff's intellectual property rights with impunity. Defendants attempt to avoid liability by operating under one or more Seller Aliases to conceal their identities, locations, and the full scope and interworking of their operation. Plaintiff is forced to file this action to combat Defendants' counterfeiting of its registered trademarks and infringement of its registered copyrighted works, as well as to protect consumers from purchasing Unauthorized Products over the internet. Plaintiff has been, and continues to be, irreparably damaged through consumer confusion and dilution of its valuable trademarks and infringement of its copyrighted works because of Defendants' actions and therefore seeks injunctive and monetary relief.

III. THE PARTIES

4. Viacom, a wholly owned subsidiary of Paramount Global, is a Delaware Corporation having its principal place of business at 1515 Broadway, New York, New York 10036 and is the owner of the trademarks and copyrights asserted in this action.

5. Viacom is among the world's preeminent creators, producers, and distributors of multimedia entertainment including motion pictures, television series, web series, short form audiovisual works and other entertainment content. Viacom owns world-famous properties such as Dora the Explorer, SpongeBob SquarePants, and Teenage Mutant Ninja Turtles, among others. In addition to creating media content based on these properties that is distributed through linear cable television networks, streaming services, online and theatrical releases, Viacom offers a line of consumer products and services for each property including toys, clothing, food items, decorative items, wall stickers, personal care products, and experiences marketed towards fans of the properties.

6. Teenage Mutant Ninja Turtles ("TMNT") is one of Viacom's successful properties. Originally written as a comic book series by Kevin Eastman and Peter Laird in 1984, TMNT follows four anthropomorphic turtles who fight various forms of evil in New York City. Since the release of the first *Teenage Mutant Ninja Turtles* comic book, a mass of TMNT-related multimedia has been released, including five individual comic book series, five individual television series, six films (with a seventh set to release in 2023), and over fifty video games. The TMNT franchise has gained worldwide popularity through the release of these works. Plaintiff, through its licensees, markets and sells a variety of products emanating from TMNT, including video games; accessories like key chains; backpacks; face masks; cell phone covers; apparel including t-shirts and sweatshirts; household items such as water bottles, mugs, blankets, and pillows; costumes and

party supplies; and other collectibles such as plush toys, comics, and toys (collectively, “TMNT Products”).

7. The TMNT and TEENAGE MUTANT NINJA TURTLES trademarks, and other trademarks (collectively, the “TMNT Trademarks”) and associated goodwill, have been used exclusively by Viacom and its licensees, since Viacom's acquisition in 2009, and have never been abandoned. Viacom’s TMNT Trademarks are, and have been, continuously used. As a result of this long-standing use, Plaintiff has acquired strong trademark rights and substantial goodwill in the TMNT Trademarks. The TMNT Trademarks are famous marks and valuable assets of Plaintiff.

8. The TMNT Trademarks are registered with the U.S. Patent and Trademark Office.

The TMNT Trademarks are listed in the chart below:

Registration Number	Trademark	Registration Date	Goods and Services
1,465,387	TEENAGE MUTANT NINJA TURTLES	Nov. 17, 1987	For: Printed matter, namely comic books, game books, and drawing manuals in class 016.
1,469,195	TEENAGE MUTANT NINJA TURTLES	Dec. 15, 1987	For: Toy figures, sets of miniature figurines for game playing in class 028.
1,519,950	SHREDDER	Jan. 10, 1989	For: Toys, namely figures for game playing in class 028.
1,519,951	DONATELLO	Jan. 10, 1989	For: Toys, namely figures for game playing in class 028.

1,522,761	SPLINTER	Jan. 31, 1989	For: Toys, namely figures for game playing in class 028.
1,523,659	RAPHAEL	Feb. 07, 1989	For: Toys, namely figures for game playing in class 028.
1,523,660	LEONARDO	Feb. 07, 1989	For: Toys, namely figures for game playing in class 028.
1,542,711	APRIL O'NEIL	Jun. 06, 1989	For: Toys, namely figures for game playing in class 028.
2,743,053	MICHELANGELO	Jul 29, 2003	For: Toys, namely figures for game playing in class 028.
2,811,704	TURTLE POWER	Feb. 03, 2004	For: Clothing, namely, tops; T-shirts; sweatshirts; sweatpants; jogging suits; jumpsuits; sweaters; bathing suits; bathing trunks; wet suits; tights; leotards; body suits; boxer shorts, underwear; pants; skirts; pajamas; sleepwear; gloves; clothing belts; robes; socks; stockings; suspenders; raincoats; rainwear; outerwear jackets; coats; cyclists clothing, namely, shirts and shorts; pullovers; clothing wristbands; sweat-absorbent underclothing; footwear, namely, shoes; sneakers; gymnastic shoes; boots; sandals; slippers; foot muffs; overshoes; sport shoes; headgear, namely, clothing caps; skull caps; visors; hats; scarves; bandannas; ear muffs; ski hats; headbands; neckwarmers in class 025.

2,818,181	TEENAGE MUTANT NINJA TURTLES	Feb. 24, 2004	For: Traveling bags; namely, backpacks, wallets, umbrellas in class 018.
2,826,075	TEENAGE MUTANT NINJA TURTLES	Mar. 23, 2004	For: Printed matter and artist's materials; namely, bookmarks; children's books; audio cassette books; namely, a series of children's fiction books and cassette tapes packaged together; coloring books; a series of fictional children's books; corrugated record storage boxes; calendar cards; wall and desk calendars; trading cards; greeting cards; cards for Valentine's Day and Christmas; modeling clay sets, composed of clay, sculpting tools and instructions; play craft sets consisting of synthetic dough, molds, modeling knife, playmat and instructions; coloring sets with crayons, paper and numbered instructions; painting sets for children; paper doorknobs hangers; paper lunch bags; magazines relating to children's hobbies and play activities, fan magazines, comic books; memo boards; memo pads; novels; paper party hats; paper patterns for costumes; pencils; decorative pencil top ornaments; pencil drawing sets for children; posters; framed and unframed photographs; cardboard cut-out character stands for

			decoration; writing paper and envelope stationery; stencils; sticker decal sets; sticker albums; stickers; facial tissues; gift tags, theme notebooks, erasers, portfolios in class 016.
2,832,801	TEENAGE MUTANT NINJA TURTLES	Apr. 13, 2004	For: Metal key chains; metal boxes sold empty and metal tin cans sold empty in class 006.
2,843,654	TEENAGE MUTANT NINJA TURTLES	May 18, 2004	For: Clothing, footwear and headgear; namely, cloth aprons, bandanas, bathing suits, clothing belts, children's sleepwear; boxer shorts, clothing caps; Halloween costumes; children's footwear; gloves; hats; ski hats; headbands; outdoor jackets; jumpsuits; mittens; neckwarmers; children's pram suits; children's raincoats; robes; socks; stockings; suspenders; sweaters; sweatshirts; T-shirts; tops; underwear and visors in class 025.
2,860,969	TEENAGE MUTANT NINJA TURTLES	July 6, 2004	For: Toys and games; namely, balloons; plastic inflated balls; inflatable pounding bags; toy boxes, toy swim goggles; kites; Halloween costume masks; Christmas tree ornaments; elbow pads for athletic use; knee pads for athletic use; inflatable swimming rings; inflatable wading pools; ride-on toys; roller skates; play ground equipment, namely, sandboxes; playground slides; skateboards; snow skis and

			ski poles; snow sleds for recreational use; snow boards; action type target games; role-playing game toy play sets; miniature toy vehicles; bubble making activity toys; stuffed plush toys; miniature motorized toy vans; toy whistles; decorative wind socks; coin operated pinball games; coin operated arcade type video games; yo-yo's, basketball game set containing basketball hoop, net, and basketball, play shaving kits with play shaver, shave cream and brush; children's fishing kits, consisting of plastic box, plastic worms, hooks and string for fishing in class 028.
2,875,370	TEENAGE MUTANT NINJA TURTLES	Aug. 17, 2004	For: Sugar and confectionary, namely, bubble gum, fruit-flavored candy, gummy candies, candy, excluding chocolate candy, sucking candy; cookies; crackers; fruit ice bars; muffins; dried pasta; pizza; popped popcorn in class 030.
2,875,371	TEENAGE MUTANT NINJA TURTLES	Aug. 17, 2004	For: Textile goods; namely, bedsheets; bedspreads, table cloths not of paper; beach towels, towels, hand towels, washcloths in class 024.
2,882,475	TEENAGE MUTANT NINJA TURTLES	Sep. 7, 2004	For: Furniture, namely, beds, tables, chairs; pillows, goods of plastic, namely, drinking straws, mirrors and picture frames in class 020.

2,887,154	TEENAGE MUTANT NINJA TURTLES	Sep. 21, 2004	For: Household or kitchen utensils and containers; namely, plastic bottles sold empty; melamine bowls; plates and cups; hair brushes, hair combs; cookie cutters; lunch boxes; metal cooking pans; toothbrushes; toothbrush cases; meal trays; soap cases and soap dishes; wastebaskets in class 021.
2,921,165	TEENAGE MUTANT NINJA TURTLES	Jan. 25, 2005	For: Soaps and perfumery; namely, toilet soaps and liquid soaps for hands, face and body, deodorant soap; non-medicated lip balm; toilet soaps in the shape of crayons; bubble bath; foam toilet soap; hair shampoo in class 003.
2,971,494	TEENAGE MUTANT NINJA TURTLES	Jul. 19, 2005	For: Apparatus for recording transmission or reproduction of sound or images, namely, pre-recorded music audio tapes, sound recording discs, recording discs, compact discs, phonograph records; life saving apparatus, namely, life jackets; calculators; magnets, namely, decorative magnets; sunglasses; prerecorded video tapes featuring television programs; blank video cassette tapes; hand held viewers, three dimensional viewers; three dimensional viewer cards of exposed cartoon and movies images; hand held video cameras in class 009.








2,989,983	TEENAGE MUTANT NINJA TURTLES	Aug. 30, 2005	For: Bandages for skin wounds in class 005.
3,112,465	TMNT	Jul. 4, 2006	For: Video game software; video game programs; computer game programs in class 009.
3,237,389	TEENAGE MUTANT NINJA TURTLES	May 1, 2007	For: Clocks, alarm clocks, wall clocks and watches in class 014.
3,279,830	TMNT	Aug. 14, 2007	For: Video game software; video game software for use with handheld electronic devices (in Int'l Class 9); video game software for use with wireless electronic devices (in Int'l Class 9); video game programs; video game CD-ROMS; video game Digital Versatile Disc-ROMS; interactive multimedia computer games; computer game software; computer game programs; computer game CD-ROMS; computer game Digital Versatile Disc-ROMS; electronic game programs; electronic game CD-ROMS; electronic game Digital Versatile Disc-ROMS; cartridges and cassettes containing game programs for use with hand-held video game machine; game discs and circuit boards containing game programs for use with hand-held video game machine; downloadable electronic game software; downloadable computer game software and


			downloadable video game software; electronic games adapted for use with television; apparatus for recording transmission or reproduction of sound or images; namely, pre-recorded audio tapes, sound recording discs, recording discs, compact discs and phonograph records featuring animated and live action images or sounds; pre-recorded video tapes featuring television programs; blank video cassette tapes; apparatus and devices for viewing prints, slides and films, namely viewers; three dimensional viewer cards of exposed cartoon and movie images; magnets; sunglasses in class 009.
3,360,904	TMNT	Dec. 25, 2007	For: Textile goods, namely, bedsheets; bedspreads; table cloths not of paper; beach towels; towels; hand towels; washcloths in class 024.
3,360,905	TMNT	Dec. 25, 2007	For: Sugar and confectionary, namely, bubble gum; fruit-flavored candy; gummy candies; candy, excluding chocolate candy, sucking candy; cookies; crackers; fruit ice bars; muffins; dried pasta; pizza; popped popcorn in class 030.
3,360,906	TMNT	Dec. 25, 2007	For: Production, distribution, presentation and rental of motion pictures in class 041.

<p>3,370,779</p>	<p>TMNT</p>	<p>Jan. 15, 2008</p>	<p>For: Toys and games, namely, balloons; plastic inflated balls; sports balls; inflatable pounding bags; punching toys; inflatable toys; toy boxes; toy swim goggles; water squirting toys; kites; Halloween costume masks; Christmas tree ornaments; party favors in the nature of small toys; elbow pads for athletic use; knee pads for athletic use; inflatable swimming rings; inflatable wading pools; ride-on toys; roller skates; play ground equipment, namely, sandboxes; playground slides; skateboards; snow skis and ski poles; snow sleds for recreational use; snow boards; toy figures; toy action figures; action type target games; role-playing game toy play sets; playsets for use with toy action figures; miniature toy vehicles; miniature motorized toy vans; bubble making activity toys; stuffed plush toys; toy whistles; decorative wind socks; coin operated pinball games; coin operated arcade type video games; hand held unit for playing electronic games; yo-yo's; board games; puzzles; toy building blocks capable of interconnection; basketball game set containing basketball hoop, net, and basketball; play shaving kits with play shaver, shave cream and brush; children's</p>
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			fishing kits, consisting of plastic box, plastic worms, hooks and string for fishing in class 028.
3,532,640	TMNT	Nov. 11, 2008	For: Traveling bags; namely, backpacks, wallets, umbrellas in class 018.
3,532,641	TMNT	Nov. 11, 2008	For: Household or kitchen utensils and containers; namely, plastic bottles sold empty; melamine bowls; plates and cups; hair brushes, hair combs; cookie cutters; lunch boxes; metal cooking pans; toothbrushes; toothbrush cases; meal trays; soap cases and soap dishes; wastebaskets in class 021.
5,591,449	RISE OF THE TEENAGE MUTANT NINJA TURTLES	Oct. 23, 2018	For: Entertainment services in the nature of continuing program series, featuring live action, comedy and drama provided through cable television, broadcast television, internet, video-on-demand, and through other forms of transmission media; providing online information in the field of entertainment concerning television programs in class 041.
5,746,310	RISE OF THE TEENAGE MUTANT NINJA TURTLES	May 7, 2019	For: Toys and games, namely, toy figures, sets of miniature figures for game playing, board games, puzzles, balloons; plastic inflated balls; inflatable pounding bags; toy boxes, toy swim goggles; kites; halloween costume masks; Christmas tree ornaments; elbow pads for athletic use; knee pads for athletic use;

			<p>inflatable swimming rings; inflatable wading pools; ride-on toys; roller skates; play ground equipment, namely, sandboxes; playground slides; skateboards; snow skis and ski poles; snow sleds for recreational use; snow boards; action type target games; role-playing game toy play sets; miniature toy vehicles; bubble making activity toys; stuffed plush toys; miniature motorized toy vans; toy whistles; decorative wind socks; coin operated pinball games; coin operated arcade type video games; yo-yo's, basketball game set containing basketball hoop, net, and basketball, play shaving kits with play shaver, shave cream and brush; children's fishing kits, consisting of plastic box, plastic worms, hooks and string for fishing in class 028.</p>
5,746,311	<p>RISE OF THE TEENAGE MUTANT NINJA TURTLES</p>	May 7, 2019	<p>For: Clothing, footwear and headgear, namely, cloth aprons, bandanas, bathing suits, clothing belts, children's sleepwear; boxer shorts, clothing caps; halloween costumes; children's footwear; gloves; hats; ski hats; headbands; outdoor jackets; jumpsuits; mittens; neckwarmers; children's raincoats; robes; socks; stockings; suspenders; sweaters; sweatshirts; t-shirts; tops; underwear and visors in</p>

			class 025.
1,533,399		Apr. 4, 1989	For: Toys and games, namely toy figures, board games, and puzzles in class 028.
1,534,724		Apr. 11, 1989	For: Entertainment services, namely, a continuing television series of animated adventure shows in class 041.
1,535,255		Apr. 18, 1989	For: Paper goods and printed matter, namely toy catalogs and comic books in class 016.
1,535,416		Apr. 18, 1989	For: Clothing, namely knit shirts and pajamas in class 025.
1,571,013		Dec. 12, 1989	For: Fabrics, namely, sheets, pillow cases, bed spreads, comforters, blankets, pillow shams, draperies in class 024.
3,112,463		Jul. 4, 2006	For: Video game software; video game programs; computer game programs; electronic game programs in class 009.
3,112,464		Jul. 4, 2006	For: Video game software; video game programs; computer game programs; electronic game programs in class 009.

3,112,469		Jul. 4, 2006	For: Video game software; video game programs; computer game programs in class 009.

9. The U.S. registrations for the TMNT Trademarks are valid, subsisting, and in full force and effect, and some are incontestable pursuant to 15 U.S.C. § 1065. The registrations for the TMNT Trademarks constitute *prima facie* evidence of their validity and of Plaintiff’s exclusive right to use the TMNT Trademarks pursuant to 15 U.S.C. § 1057(b). True and correct copies of the U.S. Registration Certificates for the TMNT Trademarks are attached hereto as **Exhibit 1**.

10. The TMNT Trademarks are exclusive to Plaintiff and are displayed extensively on TMNT Products and in marketing and promotional materials. The TMNT Trademarks are also distinctive when applied to TMNT Products, signifying to the purchaser that the products come from Plaintiff and are manufactured to Plaintiff’s quality standards.

11. The TMNT Trademarks are famous marks, as that term is used in 15 U.S.C. § 1125(c)(1), and have been continuously used and never abandoned. The innovative marketing and product designs of TMNT Products have enabled the Teenage Mutant Ninja Turtle brand (“TMNT Brand”) to achieve widespread recognition and fame and have made the TMNT Trademarks some of the most well-known marks in the entertainment and consumer products industries. The widespread fame, outstanding reputation, and significant goodwill associated with the TMNT Brand have made the TMNT Trademarks valuable assets of Plaintiff.

12. The TMNT Trademarks have been the subject of substantial and continuous marketing and promotion by Plaintiff. Plaintiff has and continues to market and promote the TMNT Products featuring the TMNT Trademarks in the entertainment industry and to consumers through traditional print media, authorized retailers, the official websites, social media sites, and point of sale material.

13. Plaintiff and its licensees have expended substantial time, money, and other resources in building up and developing consumer recognition, awareness and goodwill in the TMNT Trademarks for continuous use on the TMNT Products. Specifically, Plaintiff and its licensees have expended substantial resources in advertising, promoting, and marketing the TMNT Products featuring the TMNT Trademarks. As a result of Plaintiff's efforts, the quality of its TMNT Products, the promotional efforts for its products and designs, press and media coverage, and widespread marketing, TMNT Products bearing the TMNT Trademarks are widely recognized and exclusively associated by consumers as being high-quality products exclusively associated with and sourced from Plaintiff. The TMNT Trademarks have achieved tremendous fame and recognition, adding to the inherent distinctiveness of the marks. As such, the goodwill associated with the TMNT Trademarks is of immeasurable value to Plaintiff.


14. Viacom has also registered a multitude of works related to the TMNT franchise, and the characters embodied therein, with the U.S. Copyright Office (the "TMNT Copyrighted Works"). The registrations include, but are not limited to: "Teenage Mutant Ninja Turtles - 2012 Styleguide." (U.S. Copyright Registration No. VAu001118386), issued by the Register of Copyrights on November 20, 2012; "Teenage Mutant Ninja Turtles - Property Universe Mythology Styleguide." (U.S. Copyright Registration No. VAu001211984), issued by the Register of Copyrights on May 13, 2023; "Teenage Mutant Ninja Turtles: Turtle Power! Styleguide." (U.S.

Copyright Registration No. VAu001188358), issued by the Register of Copyrights on October 21, 2014; and “TMNT Total Turtle Takeover: 2015 Styleguide.” (U.S. Copyright Registration No. VAu001230628), issued by the Register of Copyrights on October 22, 2015. A true and correct copy of the records from the U.S. Copyright Office website for the TMNT Copyrighted Works is attached hereto as **Exhibit 2**.





15. Among the exclusive rights granted to Plaintiff under the U.S. Copyright Act are the exclusive rights to reproduce, prepare derivative works of, distribute copies of, and display the TMNT Copyrighted Works to the public.



16. Since first publication, the TMNT Copyrighted Works have been used on TMNT Products and are featured on Plaintiff’s and/or its licensees’ official websites.

17. Some of the characters and character names embodied in the TMNT Copyrighted Works include, but are not limited to, the following:¹

<p>Leonardo</p>	
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¹ The table contains a non-exhaustive list of the characters embodied in the TMNT Copyrighted Works. This table is included only to provide examples of the characters found on the infringing products offered for sale or sold by Defendants. Regardless of any changes in their design, each of these characters, among others contained within Plaintiff’s copyrighted works, have always maintained their distinctive qualities and unique elements of expression.

<p>Raphael</p>	
<p>Donatello</p>	
<p>Michelangelo</p>	
<p>Splinter</p>	

<p>Shredder</p>	 A 3D rendered character of Shredder, a dark, armored figure with a black cape and a mask, holding a sword.
<p>April O'Neil</p>	 A 3D rendered character of April O'Neil, a young woman with red hair, wearing a yellow shirt, blue jeans, and black boots.
<p>Krang</p>	 A 3D rendered character of Krang, a pink, alien-like creature with a large, bulbous head and multiple limbs.

18. TMNT Products have become enormously popular and even iconic, driven by Plaintiff's quality standards and innovative designs. Viacom has invested substantial time, money, and effort in building up and developing consumer recognition, awareness, and goodwill in the TMNT Products. The TMNT Brand has become a global success and TMNT Products are among the most recognizable in the world. TMNT Products are distributed and sold to consumers through retailers throughout the U.S., including through authorized retailers in Illinois such as Target, Walmart, and Kohls, online retail websites such as <https://www.amazon.com/stores/Nickelodeon>,

licensees' websites, as well as through the official Nickelodeon store, found at <https://store.nickelodeonuniverse.com/tmnt/c/110>.

19. Defendants are unknown individuals and business entities who own and/or operate one or more of the e-commerce stores under 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 primarily Asian countries or other foreign jurisdictions and redistribute products from the same or similar sources in those locations. Defendants have the capacity to be sued pursuant to Federal Rules of Civil Procedure 17(b).

20. On information and belief, Defendants, either individually or jointly, offer for sale and/or sell Unauthorized Products through 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 operation make it virtually impossible for Plaintiffs to learn Defendants' true identities and the exact interworking of their network. If Defendants provide additional credible information regarding their identities, Plaintiffs will take appropriate steps to amend the Complaint.

IV. DEFENDANT'S UNLAWFUL CONDUCT

21. The success and widespread popularity of the TMNT Brand and TMNT Products has resulted in significant counterfeiting of the TMNT Trademarks and infringement of the TMNT Copyrighted Works. Plaintiff has implemented a brand protection program by investigating suspicious websites and online marketplace listings identified in proactive Internet sweeps. Recently, Plaintiff has identified many fully interactive e-commerce stores offering Unauthorized Products on online marketplace platforms such as AliExpress.com ("AliExpress"), Alibaba Group Holding Ltd. ("Alibaba"), Amazon.com, Inc. ("Amazon"), DHgate.com ("DHgate"), eBay, Inc.

(“eBay”), ecrater.com (“eCRATER”), Etsy, Inc. (“Etsy”), Fruugo.com (“Fruugo”), Walmart, Inc. (“Walmart”) and Wish.com (“Wish”), including the e-commerce stores operating under the Seller Aliases. The Seller Aliases target consumers in this Judicial District and throughout the U.S.

22. According to a report prepared for The Buy Safe America Coalition, most infringing products now come through international mail and express courier services because of increased sales from foreign online infringers. *The Counterfeit Silk Road: Impact of Counterfeit Consumer Products Smuggled Into the United States*, prepared by John Dunham & Associates (**Exhibit 3**).

23. Because the infringing products do not enter normal retail distribution channels, the US economy lost an estimated 300,000 or more full-time jobs in the wholesale and retail sectors alone in 2020. *Id.* When accounting for lost jobs from suppliers that would serve these retail and wholesale establishments, and the lost jobs that would have been induced by employees re-spending their wages in the economy, the total economic impact resulting from the sale of infringing products was estimated to cost the U.S. economy over 650,000 full-time jobs that would have paid over \$33.6 billion in wages and benefits. *Id.* Additionally, it is estimated that the importation of infringing goods cost the U.S. government nearly \$7.2 billion in personal and business tax revenues in the same period. *Id.*

24. Furthermore, online marketplace platforms like those used by Defendants do not adequately subject new sellers to verification and confirmation of their identities, allowing infringers to “routinely use false or inaccurate names and addresses when registering with these e-commerce platforms.” **Exhibit 4**, 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 5**, and finding that on "at least some e-commerce platforms, little identifying information is necessary for a counterfeiter to begin selling" and that "[t]he ability to rapidly proliferate third-party online marketplaces greatly complicates enforcement efforts, especially for intellectual property rights holders". Infringers hedge against the risk of being caught and having their websites taken down from an e-commerce platform by establishing multiple virtual storefronts. **Exhibit 5** at p. 22. Since platforms generally do not require a seller on a third-party marketplace to identify the underlying business entity, infringers can have many different profiles that can appear unrelated even though they are commonly owned and operated. **Exhibit 5** at p. 39. Further, "[e]-commerce platforms create bureaucratic or technical hurdles in helping brand owners to locate or identify sources of [infringing products] and [infringers]." **Exhibit 4** at 186-187. Specifically, brand owners are forced to "suffer through a long and convoluted notice and takedown procedure only [for the infringer] to reappear under a new false name and address in short order". *Id.* at p. 161.

25. Defendants have targeted sales to Illinois residents by setting up and operating e-commerce stores that target U.S. consumers using one or more Seller Aliases; offering shipping to the U.S., including Illinois; accepting payment in U.S. dollars; and, on information and belief, selling and/or offering for sale Unauthorized Products to residents of Illinois.

26. Defendants concurrently employ and benefit from substantially similar advertising and marketing strategies. For example, Defendants facilitate sales 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. E-commerce stores operating under the Seller Aliases appear sophisticated and accept payment in U.S. dollars via numerous methods, including credit cards, Amazon Pay, and/or PayPal; they often include images and design elements

that make it difficult for consumers to distinguish these unauthorized sites of stores from an authorized website; they use indicia of authenticity and security that consumers have come to associate with authorized retailers including the PayPal®, Visa®, and MasterCard® logos. Plaintiff has not licensed or authorized Defendants to use any of the TMNT Trademarks and/or to copy or distribute the TMNT Copyrighted Works, and none of the Defendants are authorized retailers of TMNT Products.

27. Many Defendants also deceive unknowing consumers by using the TMNT Trademarks without authorization within the content, text, and/or meta tags of their e-commerce stores, to attract and manipulate search engines into identifying the Seller Aliases as legitimate websites for TMNT Products. Other e-commerce stores operating under Seller Aliases omit using the TMNT 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 TMNT Products.

28. 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 discovery of their true identities and the scope of their e-commerce operation.

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

30. Even though Defendants operate under multiple fictitious aliases, the e-commerce stores operating under the Seller Aliases often share 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, Unauthorized Products for sale by the Seller Aliases bear similar irregularities and indicia of being unauthorized, suggesting that the Unauthorized Products were manufactured by and come from a common source and upon information and belief, that Defendants are interrelated.

31. Upon information and belief, e-commerce store operators like Defendants operate in a collective and organized manner, are in frequent communication with each other, and regularly monitor and 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.

32. Infringers, such as Defendants, typically operate under multiple seller aliases and payment accounts so that they can continue operation despite plaintiffs' enforcement. Upon information and belief, and as PayPal transaction logs in previous similar cases have shown, 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 plaintiffs.

33. Defendants are working in active concert to knowingly and willfully manufacture, import, distribute, offer for sale, and sell Unauthorized 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 the TMNT Trademarks and copies of the TMNT Copyrighted Works in connection with the advertisement, distribution, offering for sale, and sale of Unauthorized Products into the U.S. and Illinois over the Internet.

34. Defendants' unauthorized use of the TMNT Trademarks and/or TMNT Copyrighted Works in connection with the advertising, distribution, offering for sale, and sale of Unauthorized Products, including the sale of Unauthorized Products into the U.S., 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)

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

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

37. Defendants have sold, offered to sell, marketed, distributed, and advertised, and are still selling, offering to sell, marketing, distributing, and advertising products using counterfeit reproductions of the TMNT Trademarks without Plaintiff's permission.

38. Plaintiff's U.S. registrations for the TMNT Trademarks are in full force and effect. Upon information and belief, Defendants have knowledge of Plaintiff's rights in the TMNT Trademarks and are willfully infringing and intentionally using infringing and counterfeit versions of the TMNT Trademarks. Defendants' willful, intentional, and unauthorized use of the TMNT Trademarks is likely to cause, and is causing, confusion, mistake, and deception as to the origin and quality of the Unauthorized Products among the general public.

39. Defendants have manufactured, imported, exported, advertised, marketed, promoted, distributed, displayed, offered for sale, and/or sold the Unauthorized Products to the purchasing public in direct competition with Viacom and the TMNT Products, in or affecting interstate commerce, and/or have acted with reckless disregard of Plaintiff's rights in and to the TMNT Trademarks through their participation in such activities.

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

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 the TMNT Trademarks.

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

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

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

44. Defendants' promotion, marketing, offering for sale, and sale of Unauthorized 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 the origin, sponsorship, or approval of the Unauthorized Products by Plaintiff.

45. By using the TMNT Trademarks in connection with the offering for sale and/or sale of Unauthorized Products, Defendants create a false designation of origin and a misleading representation of fact as to the origin and sponsorship of the Unauthorized Products.

46. Defendants' false designation of origin and misrepresentation of fact as to the origin and/or sponsorship of the Unauthorized 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.

47. Plaintiff has no remedy at law and will continue to suffer irreparable harm to its reputation and the associated goodwill of the TMNT Brand if Defendants' actions are not enjoined.

COUNT III
COPYRIGHT INFRINGEMENT OF UNITED STATES COPYRIGHT
REGISTRATIONS (17 U.S.C. §§ 106 and 501)

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

49. The TMNT Copyrighted Works constitute original works and copyrightable subject matter pursuant to the Copyright Act, 17 U.S.C. § 101, *et seq.*

50. Plaintiff is the owner of the TMNT Copyrighted Works. The TMNT Copyrighted Works are protected by copyright registration numbers which were duly issued to Plaintiff by the

U.S Copyright Office. At all relevant times, Plaintiff has been, and still is, the owner of all rights, title, and interest in the TMNT Copyrighted Works, which have never been assigned, licensed, or otherwise transferred to Defendants. The TMNT Products include a copyright notice advising the general public that the TMNT Products are protected by the Copyright Laws of the U.S.

51. Upon information and belief, Defendants had access to the TMNT Copyrighted Works via the internet.

52. Without authorization from Plaintiff, or any right under the law, Defendants have deliberately copied, displayed, distributed, reproduced, and/or made derivative works incorporating the TMNT Copyrighted Works on e-commerce stores operating under the Seller Aliases and the corresponding Unauthorized Products. Defendants' derivative works are virtually identical to and/or are substantially similar to the look and feel of the TMNT Copyrighted Works. Such conduct infringes and continues to infringe the TMNT Copyrighted Works in violation of 17 U.S.C. § 501(a) and 17 U.S.C. §§ 106(1)–(3), (5).

53. Defendants reap the benefits of the unauthorized copying and distribution of the TMNT Copyrighted Works in the form of revenue and other profits that are driven by the sale of Unauthorized Products.

54. Defendants have unlawfully appropriated Plaintiff's protectable expression by taking material of substance and value and creating Unauthorized Products that capture the total concept and feel of the TMNT Copyrighted Works, including the distinctive characters embodied therein.

55. On information and belief, the Defendants' infringement has been willful, intentional, purposeful, and in disregard of and with indifference to Plaintiff's rights.

56. The Defendants, by their actions, have damaged Plaintiff in an amount to be determined at trial.

57. Defendants' conduct is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiff great and irreparable injury that cannot fully be compensated or measured in money. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a preliminary and permanent injunction prohibiting further infringement of the TMNT Copyrighted Works and ordering that each Defendant destroy all unauthorized and/or infringing copies and reproductions of Plaintiff's TMNT Copyrights.

PRAYER FOR RELIEF

WHEREFORE, Viacom 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 the TMNT Trademarks or any reproductions, counterfeit 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 TMNT Product or is not authorized by Plaintiff to be sold in connection with the TMNT Trademarks;
 - b. reproducing, distributing copies of, making derivative works of, or publicly displaying the TMNT Copyrighted Works in any manner without the express authorization of Plaintiff;
 - c. passing off, inducing, or enabling others to sell or pass off any products as TMNT Products or any other product produced by Plaintiff, that is not Plaintiff's or not produced under the authorization, control, or supervision of Plaintiff and approved

by Plaintiff for sale under the TMNT Trademarks and/or TMNT Copyrighted Works;

- d. committing any acts calculated to cause consumers to believe that Defendants' Unauthorized Products are those sold under the authorization, control, or supervision of Plaintiff, or are sponsored by, approved by, or otherwise connected with Plaintiff;
- e. further infringing the TMNT Trademarks and/or TMNT Copyrighted Works and damaging Plaintiff's goodwill; and
- f. 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 the TMNT Trademarks, or any reproductions, counterfeit copies or colorable imitations thereof and/or which bear the TMNT Copyrighted Works;
- g. using, linking to, transferring, selling, exercising control over, or otherwise owning the Seller Aliases, Defendant product listings, or any other domain name or online marketplace account that is being used to sell products or inventory not authorized by Plaintiff which bear the TMNT Trademarks or which are derived from Plaintiff's TMNT Copyrights; and
- h. operating and/or hosting websites at the Seller Aliases, and any other domain names registered to or operated by Defendants that are involved with the distribution, marketing, advertising, offering for sale, or sale of products or inventory not

authorized by Plaintiff which bear the TMNT Trademarks, or which are derived from Plaintiff's TMNT Copyrights;

- 2) Entry of an Order that, upon Plaintiff's request, those with notice of the injunction, including without limitation, any websites and/or online marketplace platforms such as AliExpress, Alibaba, Amazon, DHgate, eBay, eCRATER, Etsy, Fruugo, Walmart, and Wish, shall disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of counterfeit and infringing goods using the TMNT Trademarks and/or TMNT Copyrighted Works;
- 3) That Defendants account for and pay to Plaintiff all profits realized by Defendants' unlawful acts herein alleged, and that the amount of damages for infringement of the TMNT Trademarks be increased by a sum not exceeding three times the amount thereof as provided by 15 U.S.C. § 1117;
- 4) In the alternative, that Plaintiff be awarded \$2,000,000 in statutory damages for willful trademark counterfeiting pursuant to 15 U.S.C. § 1117(c)(2) for each and every use of the TMNT Trademarks;
- 5) As a direct and proximate result of Defendants' infringement of the TMNT Copyrighted Works, Plaintiff is entitled to damages as well as Defendants' profits, pursuant to 17 U.S.C. § 504(b);
- 6) Alternatively, and at Plaintiff's election prior to any final judgment being entered, Plaintiff is entitled to the maximum amount of statutory damages provided by law, \$150,000 per work infringed pursuant to 17 U.S.C. § 504(c), or for any other such amount as may be proper pursuant to 17 U.S.C. § 504(c);

- 7) Plaintiff is further entitled to recover its attorneys' fees and full costs for bringing this action pursuant to 17 U.S.C. § 505 and 17 U.S.C. § 1117(a); and
- 8) Award any and all other relief that this Court deems just and proper.

Dated this 1st day of May 2023.

Respectfully submitted,

/s/ Martin F. Trainor
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