

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

POPSOCKETS LLC,

Plaintiff,

v.

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

Defendants.

Case No. 24-cv-00693

COMPLAINT

Plaintiff PopSockets LLC (“PopSockets” or “Plaintiff”) 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 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 (the “Seller Aliases”). Specifically, Defendants have targeted sales to Illinois residents by setting up and operating e-commerce stores that target United States

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

consumers using one or more Seller Aliases, offer shipping to the United States, including Illinois, accept payment in U.S. dollars and/or funds from U.S. bank accounts, and, on information and belief, have sold products using infringing and counterfeit versions of PopSockets' 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 PopSockets substantial injury in the State of Illinois.

II. INTRODUCTION

3. This action has been filed by PopSockets to combat e-commerce store operators who trade upon PopSockets' reputation and goodwill by selling and/or offering for sale unauthorized and unlicensed products, including grips, stands and mounts for electronic mobile devices, using infringing and counterfeit versions of PopSockets' federally registered trademarks (the "Counterfeit PopSockets Products"). Defendants create e-commerce stores operating under one or more Seller Aliases that are advertising, offering for sale and selling Counterfeit PopSockets Products to unknowing consumers. E-commerce stores operating under the Seller Aliases share unique identifiers, establishing a logical relationship between them and 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 operation. PopSockets is forced to file this action to combat Defendants' counterfeiting of its registered trademarks, as well as to protect unknowing consumers from purchasing Counterfeit PopSockets Products over the Internet. PopSockets has been 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

Plaintiff

4. Plaintiff PopSockets LLC is a limited liability company organized and existing under the laws of the State of Colorado, having its principal place of business at 1426 Pearl Street, Suite 400, Boulder, CO 80302.

5. PopSockets designs, manufactures, and sells innovative lifestyle products. PopSockets' flagship product, the PopSockets grip-stand, was invented by philosophy professor David Barnett in 2012, with the first PopSockets grip-stand sold on PopSockets.com in 2014. Since then, PopSockets' sales have been growing exponentially: as of October 2020, PopSockets has sold more than 200 million PopSockets grip-stands.



6. The PopSockets POPGRIP grip-stand is a collapsible grip and stand that provides secure one-hand holding for any mobile device. Its companion product, the POPMOUNT phone mount, enables PopSockets users to place their mobile phones on their dashboards, bathroom mirrors, lockers and other surfaces for hands-free viewing. Customizable, re-positionable, and fun to pop, PopSockets grip-stands embody the company's mission to merge function with self-expression.

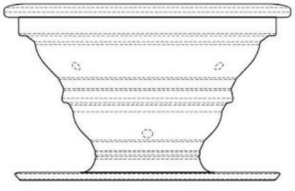
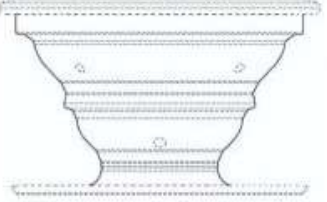
7. PopSockets won the WIRED "Fueling Innovation" contest sponsored by Mercedes-Benz in 2013. USA Today named PopSockets among "the coolest tech you have to see" at the Consumer Electronics Show (CES) in Las Vegas in 2015. The Wall Street Journal said that PopSockets products are the best compact smartphone support they have seen. In February 2016, PopSockets was the first recipient of the Fit For Real Life Seal Of Approval as

an ergonomically beneficial tool for mobile devices. In 2018, PopSockets LLC was listed as #2 on the Inc 5000 list of the fastest-growing companies in America and PopSockets Founder and CEO David Barnett was named the EY National Entrepreneur of The Year® 2018 Award in the Consumer Products and Retail category. PopSockets' products have been Featured on BuzzFeed, Vogue, Oprah, People, Bazaar, The Wallstreet Journal, Forbes, USAToday, NY Magazine, and more, with more than 15 billion unique impressions in the U.S. in 2020.

8. PopSockets products are distributed and sold to consumers throughout the United States, including in Illinois, through retailers such as Best Buy, Target, T-Mobile, Verizon, and other fine independent retail shops, and via the PopSockets.com website.

9. PopSockets incorporates a variety of distinctive marks in the design of its various PopSockets products. As a result of its long-standing use, PopSockets owns common law trademark rights in its trademarks. PopSockets has also registered its trademarks with the United States Patent and Trademark Office. PopSockets products typically include at least one of PopSockets' registered trademarks. Often several PopSockets marks are displayed on a single PopSockets product. PopSockets uses its trademarks in connection with the marketing of its PopSockets products, including the following marks which are collectively referred to as the "POPSOCKETS Trademarks."

REGISTRATION NUMBER	REGISTERED TRADEMARK
4,572,125 5,486,563	POPSOCKETS
5,662,835	POP
5,204,637	
5,394,408	
5,783,395	POPTIVISM
5,757,738	POPMINIS

REGISTRATION NUMBER	REGISTERED TRADEMARK
5,757,735	POPGRIP
5,651,330	TWIST
6,556,908	AIRBAG
6,647,556	POPPUCK
6,005,169	
6,005,170	

10. The above U.S. registrations for the POPSOCKETS Trademarks are valid, subsisting, and in full force and effect. The POPSOCKETS Trademarks have been used exclusively and continuously by PopSockets and have never been abandoned. The registrations for the POPSOCKETS Trademarks constitute *prima facie* evidence of their validity and of PopSockets' exclusive right to use the POPSOCKETS Trademarks pursuant to 15 U.S.C. § 1057(b). Attached hereto as **Exhibit 1** are true and correct copies of the United States Registration Certificates for the POPSOCKETS Trademarks included in the above table.

11. The POPSOCKETS Trademarks are exclusive to PopSockets and are displayed extensively on PopSockets products and in PopSockets' marketing and promotional materials. The PopSockets brand has seen exponential growth in the last few years and has been extensively promoted and advertised at great expense. In fact, PopSockets has expended millions of dollars annually in advertising, promoting, and marketing featuring the POPSOCKETS Trademarks. PopSockets products have also been the subject of extensive unsolicited publicity resulting from their high quality and innovative design. Because of these

and other factors, the PopSockets name and the POPSOCKETS Trademarks have become well-known throughout the United States.

12. The POPSOCKETS Trademarks are distinctive when applied to the PopSockets products, signifying to the purchaser that the products come from PopSockets and are manufactured to PopSockets' quality standards. The innovative and often unconventional marketing and product design of the PopSockets products have enabled the PopSockets brand to achieve widespread recognition and fame and have made the POPSOCKETS Trademarks well-known. As such, the goodwill associated with the POPSOCKETS Trademarks is of incalculable and inestimable value to PopSockets.

13. PopSockets has operated an e-commerce website since 2014 where it promotes and sells genuine PopSockets products at PopSockets.com. Sales of PopSockets products via the PopSockets.com website represent a significant portion of PopSockets' business. The PopSockets.com website features proprietary content, images, and designs exclusive to PopSockets.

14. PopSockets has expended substantial time, money, and other resources in developing, advertising and otherwise promoting the POPSOCKETS Trademarks. As a result, products bearing the POPSOCKETS Trademarks are widely recognized and exclusively associated by consumers, the public, and the trade as being high-quality products sourced from PopSockets. PopSockets is a multi-million-dollar operation, and PopSockets products have become among the most popular of their kind in the world.

The Defendants

15. 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 PopSockets. Upon information and belief, Defendants reside and/or operate in the People's Republic of China or other foreign jurisdictions with lax trademark enforcement systems, 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).

16. 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 operation make it virtually impossible for PopSockets to discover Defendants' true identities and the exact interworking of their counterfeit network. If Defendants provide additional credible information regarding their identities, PopSockets will take appropriate steps to amend the Complaint.

IV. DEFENDANTS' UNLAWFUL CONDUCT

17. The success of the PopSockets brand has resulted in significant counterfeiting of the POPSOCKETS Trademarks. Consequently, PopSockets has a worldwide anti-counterfeiting program and regularly investigates suspicious e-commerce stores identified in proactive Internet sweeps and reported by consumers. In recent years, PopSockets has identified numerous fully interactive e-commerce stores offering Counterfeit PopSockets Products on online marketplace platforms such as eBay, AliExpress, Alibaba, Amazon, Wish.com, Walmart, Etsy, Temu, 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. According to a U.S. Customs and Border Protection (CBP) report, in 2021, CBP made over 27,000 seizures of goods with intellectual property rights (IPR) violations totaling over \$3.3 billion, an increase of \$2.0 billion from 2020. *Intellectual Property Rights*

Seizure Statistics, Fiscal Year 2021, U.S. Customs and Border Protection (**Exhibit 2**). Of the 27,000 in total IPR seizures, over 24,000 came through international mail and express courier services (as opposed to containers), most of which originated from China and Hong Kong. *Id.*

18. Third party service providers like those used by Defendants do not adequately subject new sellers to verification and confirmation of their identities, allowing counterfeiters to “routinely use false or inaccurate names and addresses when registering with these e-commerce platforms.” **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. Counterfeiters 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.

19. 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/or funds

from U.S. bank accounts, and, on information and belief, have sold Counterfeit PopSockets Products to residents of Illinois.

20. Defendants concurrently employ and benefit from substantially similar advertising and marketing strategies. For example, Defendants facilitate sales by designing 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 and/or funds from U.S. bank accounts 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. PopSockets has not licensed or authorized Defendants to use any of the POPSOCKETS Trademarks, and none of the Defendants are authorized retailers of genuine PopSockets products.

21. Many Defendants also deceive unknowing consumers by using the POPSOCKETS 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 PopSockets Products. Other e-commerce stores operating under the Seller Aliases omit using POPSOCKETS 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 PopSockets Products.

22. 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.

23. E-commerce store operators like Defendants regularly register or acquire new seller aliases for the purpose of offering for sale and selling Counterfeit PopSockets 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 counterfeiting operation, and to avoid being shut down.

24. 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 PopSockets Products for sale by the Seller Aliases bear similar irregularities and indicia of being counterfeit to one another, suggesting that the Counterfeit PopSockets Products were manufactured by and come from a common source and that Defendants are interrelated.

25. 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 and kuajingvs.com regarding tactics for operating multiple accounts, evading detection, pending litigation, and potential new lawsuits.

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

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

28. Defendants' unauthorized use of the POPSOCKETS Trademarks in connection with the advertising, distribution, offering for sale, and sale of Counterfeit PopSockets Products, including the sale of Counterfeit PopSockets Products 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 PopSockets.

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

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

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

31. 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 POPSOCKETS Trademarks without PopSockets' permission.

32. PopSockets is the exclusive owner of the POPSOCKETS Trademarks. PopSockets' United States Registrations for the POPSOCKETS Trademarks (Exhibit 1) are in full force and effect. Upon information and belief, Defendants have knowledge of PopSockets' rights in the POPSOCKETS Trademarks and are willfully infringing and intentionally using counterfeits of the POPSOCKETS Trademarks. Defendants' willful, intentional, and unauthorized use of the POPSOCKETS Trademarks is likely to cause and is causing confusion, mistake, and deception as to the origin and quality of the Counterfeit PopSockets Products among the general public.

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

34. PopSockets has no adequate remedy at law, and if Defendants' actions are not enjoined, PopSockets will continue to suffer irreparable harm to its reputation and the goodwill of its well-known POPSOCKETS Trademarks.

35. The injuries and damages sustained by PopSockets have been directly and proximately caused by Defendants' wrongful reproduction, use, advertisement, promotion, offering to sell, and sale of Counterfeit PopSockets Products.

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

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

37. Defendants' promotion, marketing, offering for sale, and sale of Counterfeit PopSockets 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 PopSockets or the origin, sponsorship, or approval of Defendants' Counterfeit PopSockets Products by PopSockets. By using the POPSOCKETS Trademarks on the Counterfeit PopSockets Products, Defendants create a false designation of origin and a misleading representation of fact as to the origin and sponsorship of the Counterfeit PopSockets Products.

38. Defendants' false designation of origin and misrepresentation of fact as to the origin and/or sponsorship of the Counterfeit PopSockets 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.

39. PopSockets has no adequate remedy at law and, if Defendants' actions are not enjoined, PopSockets will continue to suffer irreparable harm to its reputation and the goodwill of its PopSockets brand.

PRAYER FOR RELIEF

WHEREFORE, PopSockets 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 POPSOCKETS 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 genuine PopSockets product or is not authorized by PopSockets to be sold in connection with the POPSOCKETS Trademarks;
 - b. passing off, inducing, or enabling others to sell or pass off any product as a genuine PopSockets product or any other product produced by PopSockets, that is not PopSockets' or not produced under the authorization, control, or supervision of PopSockets and approved by PopSockets for sale under the POPSOCKETS Trademarks;
 - c. committing any acts calculated to cause consumers to believe that Defendants' Counterfeit PopSockets Products are those sold under the authorization, control or supervision of PopSockets, or are sponsored by, approved by, or otherwise connected with PopSockets;
 - d. further infringing the POPSOCKETS Trademarks and damaging PopSockets' 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 PopSockets, nor authorized by PopSockets to be sold or offered for sale, and which bear any of PopSockets'

- trademarks, including the POPSOCKETS Trademarks, or any reproductions, counterfeit copies or colorable imitations thereof;
- 2) Entry of an Order that, upon PopSockets' request, those with notice of the injunction, including, without limitation, any online marketplace platforms such as eBay, AliExpress, Alibaba, Amazon, Wish.com, Walmart, Etsy, Temu, 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 the POPSOCKETS Trademarks;
 - 3) That Defendants account for and pay to PopSockets all profits realized by Defendants by reason of Defendants' unlawful acts herein alleged, and that the amount of damages for infringement of the POPSOCKETS 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 PopSockets 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 the POPSOCKETS Trademarks;
 - 5) That PopSockets be awarded its reasonable attorneys' fees and costs; and
 - 6) Award any and all other relief that this Court deems just and proper.

Dated this 26th day of January 2024.

Respectfully submitted,

/s/ Justin R. Gaudio

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