

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

**GUANGZHOU LUCK COMMERCE
CO. LTD.,**

Plaintiff,

v.

**INDIVIDUALS, PARTNERSHIPS, AND
UNINCORPORATED ASSOCIATIONS
ON SCHEDULE “A,”**

Defendants.

Case No. 24cv7399

COMPLAINT

Plaintiff, Guangzhou Luck Commerce Co. Ltd. (“Plaintiff” or “Guangzhou”), by and through its counsel, hereby brings the present action against the partnerships and/or unincorporated associations identified on Schedule A, attached hereto (named, “Defendants”), and alleges as follows:

PARTIES

1. Plaintiff, Guangzhou Luck Commerce Co. Ltd., is a Chinese limited company with a principal place of business in Guangzhou, Guangdong, China.
2. On information and belief, Defendants, who operate internet stores through Walmart.com, are residents of China.

JURISDICTION AND VENUE

3. This Court has original subject matter jurisdiction 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. This Court has

jurisdiction over the claims in this action that arise under the laws of the State of Illinois pursuant to 28 U.S.C. § 1367(a) because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, as Defendants have committed the acts as described herein within this judicial district.

5. Upon information and belief, the Defendants are subject to this Court's specific and general jurisdiction due to at least their substantial business in the forum, this business includes: (i) at least a portion of the acts complained; (ii) regularly conducting or soliciting business, and/or deriving substantial revenue from goods and services provided to individuals in Illinois and in this Judicial District; and (iii) directly targeting consumers in the United States, including Illinois, through Internet stores operating under the Walmart.com seller accounts, including selling, offering for sale, and, shipping counterfeit goods, including specifically selling the counterfeit goods ordered on Plaintiff's behalf to a resident of the District. Each of the Defendants is committing tortious acts in Illinois, is engaging in interstate commerce, and has wrongfully caused substantial injury in the State of Illinois.

BACKGROUND

6. Plaintiff is the owner of United States trademark [REDACTED].
7. Plaintiff is the owner of United States [REDACTED].
8. The marks registration information is listed below (collectively "Plaintiff's Marks"): [REDACTED]
9. The registrations are valid, subsisting, and in full force and effect. A true and correct copy of the federal trademark registration certificates and assignment record for the marks are attached hereto as Exhibits A – B.

10. The [REDACTED]mark continuously in commerce since at least March of 2015, and the [REDACTED] mark continuously in commerce since at least January of 2017.

11. Plaintiff files this action to stop online counterfeiters from injuring Plaintiff's Marks' reputation and goodwill by selling and/or offering for sale products in connection with Plaintiff's Marks.

12. Plaintiff's Marks are distinctive and identify the merchandise as goods from the Plaintiff. The registrations for Plaintiff's Marks constitute *prima facie* evidence of validity pursuant to 15 U.S.C. § 1057 (b).

13. Defendants have created Walmart.com seller accounts and designed them to appear to be selling genuine products by Plaintiff, while selling counterfeit versions of Plaintiff Marks' products. They share several distinct and unique features such as usage of the trademarked names in the item listings, and product descriptions. This establishes a logical relationship between them suggesting that Defendants' illegal operations arise out of the same transaction, occurrence, or series of transactions or occurrences.

14. Defendants are entities and/or individuals who, upon information and belief, reside in the People's Republic of China or other foreign jurisdictions. Defendants conduct business throughout the United States, including within Illinois and in this Judicial District, through the operation of the fully interactive commercial websites and online marketplaces operating under the Walmart brand. Defendants target the United States, including Illinois, and has offered to sell and, on evidence, have sold and continue to sell counterfeit [REDACTED]products to consumers within the United States, including Illinois and in this Judicial District.

15. The success of the [REDACTED] brands has resulted in their counterfeiting. Plaintiff has identified various products on Walmart.com, including from the Defendants as presented, which were offered, and continue to be offered, for sale, and import. Defendants counterfeit [REDACTED] products and offer them to consumers in this Judicial District and throughout the United States.

16. Defendants have not been licensed or authorized to use the [REDACTED] trademarks, and Defendants are not authorized retailers of genuine [REDACTED] products.

17. In addition to operating under multiple fictitious names, Defendants in this case and defendants in other online counterfeiting cases use a variety of other methods to evade enforcement efforts including simply registering new online marketplace accounts once they receive notice of a lawsuit and operating multiple credit card merchant accounts to evade collection efforts by Plaintiff armed with enforceable judgments. Upon information and belief, Defendants maintain off-shore bank accounts and regularly move funds from their online money accounts to off-shore bank accounts outside the jurisdiction of this Court.

18. Defendants, without any authorization or license, have knowingly and willfully used and continue to use Plaintiff's Marks in connection with the advertisement, distribution, offering for sale, and sale of counterfeit [REDACTED] products into the United States and Illinois over the Internet.

19. Defendants sell counterfeit [REDACTED] products and branding in the United States and Illinois over the Internet on Walmart.com. The infringing products offered by Defendants vary in color and minor design flourishes, but are all using counterfeit [REDACTED] branding. Representative images of some of the infringing and counterfeit products are provided below:

[REDACTED]

20. Defendants sell counterfeit [REDACTED] products and branding in the United States and Illinois over the Internet on Walmart.com. The infringing products offered by Defendants vary in color and minor design flourishes, but are all using counterfeit [REDACTED] branding. Representative images of some of the infringing and counterfeit products are provided below:

[REDACTED]

21. Defendants' use of Plaintiff's Marks in connection with the advertising, distribution, offering for sale, and sale of counterfeit [REDACTED] products, including the sale of counterfeit [REDACTED] products into 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)

22. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 21.

23. This is a trademark infringement action against Defendants based on their unauthorized use in commerce of counterfeit imitations of the registered [REDACTED] trademarks in connection with the sale, offering for sale, distribution, and/or advertising of infringing goods. [REDACTED] trademarks are distinctive, registered marks.

24. Defendants have sold, offered to sell, marketed, distributed, and advertised, and are still selling, offering to sell, marketing, distributing, and advertising products in connection with the [REDACTED] trademarks without Plaintiff's permission.

25. Plaintiff is the exclusive licensee of the [REDACTED] trademarks' enforcement rights. The United States Registration for the [REDACTED] trademarks are in full force and effect. Upon information and belief, Defendants have knowledge of Plaintiff's rights in the [REDACTED] trademarks and are willfully infringing and intentionally using counterfeits of the [REDACTED] trademarks. Defendants' willful, intentional and unauthorized use of the [REDACTED] trademarks is likely to cause and is causing confusion, mistake, and deception as to the origin of the counterfeit goods.

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

27. 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 associated with the [REDACTED] marks.

28. The injuries and damages sustained by Plaintiff have been directly and proximately caused by Defendants' wrongful reproduction, use, advertisement, promotion, offering to sell, and sale of counterfeit [REDACTED] products.

COUNT II

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

29. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 28.

30. Defendants' promotion, marketing, offering for sale, and sale of counterfeit [REDACTED] 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 Defendants' counterfeit [REDACTED] products.

31. By using Plaintiff's Marks in connection with the sale of counterfeit [REDACTED]products, Defendants create a false designation of origin and a misleading representation of facts as to the origin and sponsorship of the counterfeit [REDACTED] products.

32. Defendants' false designation of origin and misrepresentation of facts as to the origin and/or sponsorship of the counterfeit [REDACTED]products to the general public is a willful violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125.

33. 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 [REDACTED] brands.

COUNT III

VIOLATION OF ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES ACT (815

ILCS § 510, et seq.)

34. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 33.

35. Defendants have has engaged in acts violating Illinois law including, but not limited to, passing off their counterfeit [REDACTED] products as those of Plaintiff, causing a likelihood of confusion and/or misunderstanding as to the source of their goods, causing a likelihood of confusion and/or misunderstanding as to an affiliation, connection, or association with genuine [REDACTED]products, representing that their products have Plaintiff' approval when they do not, and engaging in other conduct which creates a likelihood of confusion or misunderstanding among the public.

36. The foregoing Defendants' acts constitute a willful violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510, et seq.

37. Plaintiff has no adequate remedy at law, and Defendants' conduct has caused Plaintiff to suffer damage to its reputation and goodwill. Unless enjoined by the Court, Plaintiff will suffer future irreparable harm as a direct result of Defendants' unlawful activities.

JURY DEMAND

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

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 the [REDACTED]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 [REDACTED]product or is not authorized by Plaintiff to be sold in connection with the [REDACTED]trademarks;
 - b. passing off, inducing, or enabling others to sell or pass off any product as a genuine [REDACTED]product 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 [REDACTED]trademarks;

- c. further infringing the [REDACTED] trademarks and damaging Plaintiff's goodwill;
- d. otherwise competing unfairly with Plaintiff in any manner;
- e. shipping, delivering, manufacturing, 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 Plaintiff trademark, including the [REDACTED] trademarks, or any reproductions, counterfeit copies, or colorable imitations thereof;
- f. using, linking to, transferring, selling, exercising control over, or otherwise owning the Online Marketplace Accounts or websites, or any other online marketplace account or website that is being used to sell or is the means by which Defendants could continue to sell counterfeit [REDACTED] products; and

2. That Defendants, within fourteen (14) days after service of judgment with notice of entry thereof upon them, be required to file with the Court and serve upon Plaintiff a written report under oath setting forth in detail the manner and form in which Defendants have complied with paragraph 1, a through f, above;

3. Entry of an Order that, upon Plaintiff's request, those in privity with Defendants and those with notice of the injunction, including any online marketplaces and any related Walmart.com entities, social media platforms, Facebook, YouTube, LinkedIn, Twitter, Internet search engines such as Google, Bing and Yahoo, web hosts for the Defendant Domain Names, and domain name registrars, shall:

- a. disable and cease providing services for any accounts through which Defendants engages in the sale of counterfeit [REDACTED] products using the [REDACTED] trademarks;
- b. disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of counterfeit [REDACTED] products using the [REDACTED] trademarks; and

4. That Defendants accounts for and pays to Plaintiff all profits realized by Defendants by reason of Defendants' unlawful acts herein alleged, and that the amount of damages for infringement of the [REDACTED] 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 pursuant to 15 U.S.C. § 1117(c)(2) of \$2,000,000 for each and every use of the [REDACTED] 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 August 16, 2024

Respectfully submitted,

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