

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

PUSHPEEL LLC,

Plaintiff,

v.

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

Defendants.

Case No. 24-cv-12545

COMPLAINT

Plaintiff Pushpeel LLC (“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 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 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 unauthorized copies of Plaintiff's federally registered copyrighted work to residents of Illinois. Each of the Defendants is committing tortious acts in Illinois, is engaging in interstate commerce, and has wrongfully caused Plaintiff substantial injury in the State of Illinois.

II. INTRODUCTION

3. This action has been filed by Plaintiff to combat e-commerce store operators who trade upon Plaintiff's reputation and goodwill by offering for sale and/or selling unauthorized and unlicensed products that are unauthorized copies of Plaintiff's federally registered copyrighted work (collectively, the "Unauthorized Pushpeel Products"). Defendants create e-commerce stores operating under one or more Seller Aliases that are advertising, offering for sale and selling Unauthorized Pushpeel Products to unknowing consumers. E-commerce stores operating under the Seller Aliases share unique identifiers, establishing a logical relationship between them and that Defendants' unlawful 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 operation. Plaintiff is forced to file this action to combat Defendants' infringement of its registered copyrighted work, as well as to protect unknowing consumers from purchasing Unauthorized Pushpeel Products over the Internet. Plaintiff has been and continues to be irreparably damaged through Defendants' infringement of its copyrighted work as a result of Defendants' actions and seeks injunctive and monetary relief.

III. THE PARTIES

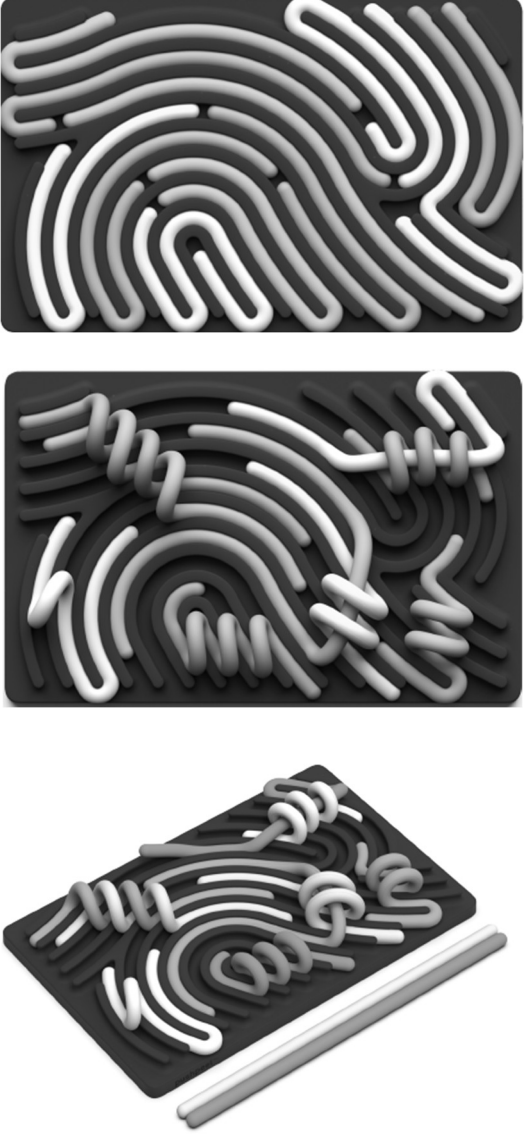
Plaintiff

4. Plaintiff Pushpeel LLC is a limited liability company with its principal place of business located in Albany, New York.


5. Long before Defendants' acts described herein, Plaintiff created a sensory activity board where a user pushes silicone strings into a grooved board to help improve bilateral coordination, visual motor skills, and finger dexterity (the "Pushpeel Products"). Pushpeel Products are thoughtfully designed and tested to provide a therapeutic, satisfying, and productive activity suitable for individuals across generations, from preschoolers to seniors, particularly for adults and children with ADHD and autism.


6. Pushpeel Products have become enormously popular, driven by the brand's arduous quality standards and innovative design. Among the purchasing public, genuine Pushpeel Products are instantly recognizable as such. The Pushpeel brand has become a global success that resonates with children worldwide, and Pushpeel Products are among the most recognizable in the world in the field of occupational therapy. Pushpeel Products are distributed and sold to consumers through retailers throughout the United States, including Illinois. Authorized retailers include Amazon and the "Fun & Function" online store for sensory play therapeutic toys, tools and games.

7. Plaintiff has registered its copyrighted design under U.S. Copyright Registration No. VA 2-401-388, issued by the Register of Copyrights on June 17, 2024 (the "Pushpeel Copyrighted Work"). A true and correct copy of the U.S. federal copyright registration certificate for the Pushpeel Copyrighted Work is attached hereto as **Exhibit 1**. Images of the Pushpeel Copyrighted Work are displayed in the following chart.

U.S. Copyright Registration No.	Work Title and Issue Date	Image Deposit
VA 2-401-388	"Sensorial Activity Toy" June 17, 2024	 <p>The image deposit section contains three photographs of a sensorial activity toy. The top photograph shows a top-down view of a maze-like structure made of white, raised, interconnected lines on a dark surface. The middle photograph shows a similar maze structure, but with several of the lines knotted or looped back on themselves. The bottom photograph shows the toy from a perspective view, revealing its rectangular shape and a wooden stick lying horizontally next to it.</p>

U.S. Copyright Registration No.	Work Title and Issue Date	Image Deposit
		 The 'Image Deposit' column contains three separate photographs of a 3D maze sculpture. The sculpture is a dark, rectangular block with a complex, winding path of raised ridges. The path starts at the top left and winds through several loops and turns, ending at the bottom right. The top surface of the maze is a light color, possibly white or light gray, which contrasts with the dark base. The three images show the maze from different angles: the top image is a high-angle view from the top right, the middle image is a side-angle view from the top right, and the bottom image is a side-angle view from the bottom right. The maze is set against a plain, light-colored background.

U.S. Copyright Registration No.	Work Title and Issue Date	Image Deposit
		 <p>The image deposit section contains three photographs. The top photograph shows a dark grey, rectangular object with a complex, maze-like pattern of raised ridges and grooves, positioned next to two white, curved, elongated objects. The middle photograph shows the same dark grey object and white objects from a different angle. The bottom photograph shows a close-up of the dark grey object, highlighting its intricate maze-like structure.</p>

U.S. Copyright Registration No.	Work Title and Issue Date	Image Deposit
		

8. 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 Pushpeel Copyrighted Work to the public.

9. Since its first publication, the Pushpeel Copyrighted Work has been continuously used on the Pushpeel Products.

The Defendants

10. Defendants are individuals and business entities of unknown makeup who own and/or operate one or more of the e-commerce stores under at least the Seller Aliases identified on Schedule A and/or other seller aliases not yet known to Plaintiff. On information and belief, Defendants reside and/or operate in the People’s Republic of China or other foreign jurisdictions with lax intellectual property 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).

11. 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 Plaintiff to discover Defendants' true identities and the exact interworking of their network. If Defendants provide additional credible information regarding their identities, Plaintiff will take appropriate steps to amend the Complaint.

IV. DEFENDANTS' UNLAWFUL CONDUCT

12. The success of the Pushpeel Products and brand has resulted in significant copying of the Pushpeel Copyrighted Work. Consequently, Plaintiff regularly investigates suspicious e-commerce stores identified in proactive Internet sweeps and reported by consumers. In recent years, Plaintiff has identified many fully interactive, e-commerce stores offering Unauthorized Pushpeel Products on online marketplace platforms such as Amazon, eBay, AliExpress, Alibaba, Walmart, Wish.com, Etsy, DHgate, TikTok, and Temu, 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 2020.² 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.³

² See *Intellectual Property Rights Seizure Statistics, Fiscal Year 2021*, U.S. Customs and Border Protection.

³ *Id.*

13. 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.”⁴ Counterfeiters hedge against the risk of being caught and having their websites taken down from an e-commerce platform by preemptively establishing multiple virtual storefronts.⁵ 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.⁶ Further, “E-commerce platforms create bureaucratic or technical hurdles in helping brand owners to locate or identify sources of counterfeits and counterfeiters.”⁷

14. 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 Unauthorized Pushpeel Products to residents of Illinois.

15. 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 look sophisticated and accept payment in U.S. dollars and/or

⁴ See 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), 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.

⁵ *Id.* at p. 22.

⁶ *Id.* at p. 39.

⁷ Chow, *supra* note 3, at p. 186-87.

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. Plaintiff has not licensed or authorized Defendants to copy the Pushpeel Copyrighted Work, and none of the Defendants are authorized retailers of genuine Pushpeel Products.

16. 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.

17. E-commerce store operators like Defendants regularly register or acquire new seller aliases for the purpose of offering for sale and selling Unauthorized Pushpeel 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.

18. 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, Unauthorized Pushpeel Products for sale by the Seller Aliases bear similar irregularities and indicia of being

infringements to one another, suggesting that the Unauthorized Pushpeel Products were manufactured by and come from a common source and that Defendants are interrelated.

19. 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.

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

21. Defendants are working to knowingly and willfully import, distribute, offer for sale, and sell Unauthorized Pushpeel Products in the same transaction, occurrence, or series of transactions or occurrences. Defendants, without any authorization or license from Plaintiff, have knowingly and willfully used and continue to use the Pushpeel Copyrighted Work in connection with the advertisement, distribution, offering for sale, and sale of Unauthorized Pushpeel Products into the United States and Illinois over the Internet.

22. Defendants' copying and use of the Pushpeel Copyrighted Work in connection with the advertising, distribution, offering for sale, and sale of Unauthorized Pushpeel Products, including the sale of Unauthorized Pushpeel Products into the United States, including Illinois,

infringes and continues to infringe the Pushpeel Copyrighted Work and is irreparably harming Plaintiff.

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

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

24. The Pushpeel Copyrighted Work constitutes an original work and copyrightable subject matter pursuant to the Copyright Act, 17 U.S.C. §§ 101, *et seq.*

25. Plaintiff has complied with the registration requirements of 17 U.S.C. § 411(a) for the Pushpeel Copyrighted Work. The Pushpeel Copyrighted Work is protected by U.S. Copyright Registration No. VA 2-401-388, which was duly issued to Plaintiff by the United States Copyright Office. At all relevant times, Plaintiff has been and still is the owner of all rights, title, and interest in the Pushpeel Copyrighted Work, which has never been assigned, licensed, or otherwise transferred to Defendants.

26. The Pushpeel Copyrighted Work is published on the internet and available to Defendants online. As such, Defendants had access to the Pushpeel Copyrighted Work via the internet.

27. Without authorization from Plaintiff, or any right under the law, Defendants have deliberately copied, displayed, distributed, reproduced and/or made derivative works incorporating the Pushpeel Copyrighted Work on the Defendant Internet Stores and the corresponding Unauthorized Pushpeel Products. Defendants' derivative works are virtually identical to and/or are substantially similar to the look and feel of the Pushpeel Copyrighted

Work. Such conduct infringes and continues to infringe the Pushpeel Copyrighted Work in violation of 17 U.S.C. § 501(a) and 17 U.S.C. §§ 106(1)–(3), (5).

28. Defendants reap the benefits of the unauthorized copying and distribution of the Pushpeel Copyrighted Work in the form of revenue and other profits that are driven by the sale of Unauthorized Pushpeel Products.

29. The Defendants have unlawfully appropriated Plaintiff's protectable expression by taking material of substance and value and creating Unauthorized Pushpeel Products that capture the total concept and feel of the Pushpeel Copyrighted Work.

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

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

32. 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 Pushpeel Copyrighted Work.

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. reproducing, distributing copies of, making derivative works of, or publicly displaying the Pushpeel Copyrighted Work in any manner without the express authorization of Plaintiff;
 - b. passing off, inducing, or enabling others to sell or pass off any product as a genuine Pushpeel 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 Pushpeel Copyrighted Work;
 - c. committing any acts calculated to cause consumers to believe that Defendants' Unauthorized Pushpeel Products are those sold under the authorization, control, or supervision of Plaintiff, or are sponsored by, approved by, or otherwise connected with Plaintiff;
 - d. further infringing the Pushpeel Copyrighted Work and damaging Plaintiff's goodwill; and
 - e. manufacturing, shipping, delivering, holding for sale, transferring, or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner, products or inventory not manufactured by or for Plaintiff, nor authorized by Plaintiff to be sold or offered for sale, and which bear the Pushpeel Copyrighted Work;

- 2) Entry of an Order that, upon Plaintiff's request, those with notice of the injunction, including, without limitation, any online marketplace platforms such as eBay, AliExpress, Alibaba, Amazon, Walmart, Wish.com, Etsy, DHgate, TikTok, and Temu (collectively, the "Third Party Providers") shall disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of infringing goods which bear the Pushpeel Copyrighted Work;
- 3) As a direct and proximate result of Defendants' infringement of the Pushpeel Copyrighted Work, Plaintiff is entitled to damages as well as Defendants' profits, pursuant to 17 U.S.C. § 504(b);
- 4) 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);
- 5) Plaintiff is further entitled to recover its attorneys' fees and full costs for bringing this action pursuant to 17 U.S.C. § 505; and
- 6) Award any and all other relief that this Court deems just and proper.

Dated this 6th day of December 2024.

Respectfully submitted,

/s/ Justin R. Gaudio

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