

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

FENDI S.R.L.,

Plaintiff,

Civil Action No.: 1:24-cv-00907

v.

Judge Jeremy C. Daniel

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

Magistrate Judge Jeannice W. Appenteng

Defendants.

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF’S  
MOTION FOR ENTRY OF A PRELIMINARY INJUNCTION**

Plaintiff submits this Memorandum of Law in support of its Motion for Entry of a Preliminary Injunction.

## **MEMORANDUM OF LAW**

### **I. INTRODUCTION**

Plaintiff, FENDI S.R.L. (“FENDI” or “Plaintiff”), brings the present action against the Defendants identified on Schedule A (collectively, the “Defendants”) for federal trademark infringement and counterfeiting (Count I) and false designation of origin (Count II). As alleged in Plaintiff’s Complaint, the Defendants are promoting, advertising, distributing, offering for sale, and selling products infringing the FENDI Trademarks (the “Counterfeit/infringing FENDI Products”) through various fully interactive commercial Internet websites operating under at least the Defendant Online Marketplace Accounts listed in Schedule A (collectively, the “Defendant Internet Stores”).

### **II. STATEMENT OF FACTS**

On February 8, 2024, this Court granted FENDI’s Motion for a Temporary Restraining Order [22], (the “TRO”). The TRO authorized FENDI to provide notice of these proceedings and the preliminary injunction hearing to Defendants by electronically publishing a link to the Complaint, this Order, and other relevant documents on a website or by sending an e-mail with a link to said website to the e-mail addresses identified in Exhibit 2 to the Declaration of Nicolas Lambert and any e-mail addresses provided for Defendants by third parties that includes a link to said website. TRO at ¶ 7. Since and pursuant to entry of the TRO, dozens of Amazon, WISH, PayPal, and DHgate accounts associated with the Defendant Internet Stores have been frozen. *See* Declaration of Keith A. Vogt (hereinafter “Vogt Declaration”) at ¶ 2.

FENDI respectfully requests that this Court convert the TRO to a preliminary injunction against Defendants, so that they remain enjoined from the manufacture, importation, distribution, offering for sale, and sale of Counterfeit FENDI Products during the pendency of

this litigation. As part of the Preliminary Injunction, FENDI requests that Defendants' Amazon, WISH, PayPal, and DHgate accounts remain frozen until completion of these proceedings.

### **III. ARGUMENT**

#### **a) A Preliminary Injunction Extending Relief Already Granted in the TRO Is Appropriate**

FENDI respectfully requests that this Court convert the TRO to a preliminary injunction to prevent further unlawful conduct by Defendants. This Court, in addressing similar allegations of Internet-based counterfeiting, has also issued preliminary injunctions following a temporary restraining order. *See e.g., Toho Co., Ltd. v. The Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 23-cv-16235 (N.D. Ill. Dec. 12, 2023) and *Pink Floyd (1987) Limited v. The Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 23-cv-14528 (N.D. Ill. Oct. 19, 2023). *See* Exhibit 1 to Declaration of Keith A. Vogt (hereinafter "Vogt Declaration").

#### **i) This Court Has Already Found that the Requirements for a Preliminary Injunction Have Been Satisfied**

Since the standard for granting a TRO and the standard for granting a preliminary injunction are identical in this Circuit, the requirements for entry of a preliminary injunction extending the TRO have been satisfied. *See, e.g., Charter Nat'l Bank & Trust v. Charter One Fin., Inc.*, No. 1:01-cv-00905, 2001 WL 527404, \*1 (N.D. Ill. May 15, 2001) (citations omitted). A temporary restraining order or preliminary injunction may be issued upon a showing that: "(1) there is a reasonable likelihood that Plaintiff will succeed on the merits; (2) Plaintiff will suffer irreparable injury if the order is not granted because there is no adequate remedy at law; (3) the balance of hardships tips in Plaintiff's favor; and (4) the public interest will not be disserved by the injunction." *Columbia Pictures Indus., Inc. v. Jasso*, 927 F. Supp. 1075, 1076 (N.D. Ill.

1996). By virtue of this Court's entry of the TRO, it has already found that the above requirements have been satisfied.

**ii) The Equitable Relief Sought Remains Appropriate**

The Lanham Act authorizes courts to issue injunctive relief "according to principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the registrant of a mark ...." 15 U.S.C. § 1116(a).

FENDI requests conversion of the TRO to a preliminary injunction so that Defendants' accounts in U.S.-based financial institutions remain frozen. Since entry of the TRO, Plaintiff has obtained information, including the identification of dozens of foreign accounts, linked to the Defendant Internet Stores which were offering for sale and/or selling infringing FENDI Products. In the absence of a preliminary injunction, Defendants may attempt to move any assets from any accounts in U.S.-based financial institutions to an offshore account. Therefore, Defendants' assets should remain frozen for the remainder of the proceedings. The amount of damages to which FENDI is entitled as set forth in the Complaint far exceeds any amount contained in any of the Defendants' frozen Amazon, WISH, PayPal, and DHgate accounts. As such, an order continuing to freeze the Defendants' assets should be granted.

**IV. CONCLUSION**

In view of the foregoing, FENDI respectfully requests that this Court enter the preliminary injunction.

DATED: February 20, 2024

Respectfully submitted,

/s/ Keith A. Vogt

Keith A. Vogt (Bar No. 6207971)

Keith Vogt, Ltd.

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Chicago, Illinois 60604

Telephone: 312-971-6752

E-mail: keith@vogtip.com

***ATTORNEY FOR PLAINTIFF***

**CERTIFICATE OF SERVICE**

I hereby certify that on February 20, 2024, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, I will electronically publish the documents on a website and I will send an e-mail to the e-mail addresses identified and provided for Defendants by third parties that includes a link to said website.

/s/ Keith A. Vogt  
Keith A. Vogt

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

FENDI S.R.L.,

Plaintiff,

Civil Action No.: 1:24-cv-00907

v.

Judge Jeremy C. Daniel

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

Magistrate Judge Jeannice W. Appenteng

Defendants.

**DECLARATION OF KEITH A. VOGT**

I, Keith A. Vogt, declare as follows:

1. I am an attorney at law, duly admitted to practice before the Courts of the State of Illinois and the United States District Court for the Northern District of Illinois. I am one of the attorneys for Plaintiff. Except as otherwise expressly stated to the contrary, I have personal knowledge of the following facts and, if called as a witness, I could and would competently testify as follows:
2. Since and pursuant to entry of the TRO, Plaintiff has contacted third party platforms and payment processors such as Amazon, PayPal, DHgate, and WISH to restrain accounts associated with the Defendant Internet Stores.
3. Exhibit 1 attached hereto is a true and correct copy of unpublished decisions cited in the Plaintiff’s Memorandum.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 20, 2024.

/s/Keith A. Vogt

Keith A. Vogt

# Exhibit 1



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

TOHO CO., LTD.,

Plaintiff,

v.

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

Defendants.

Case No. 23-cv-16235

**Judge Robert W. Gettleman**

**Magistrate Judge Beth W. Jantz**

**PRELIMINARY INJUNCTION ORDER**

Plaintiff TOHO CO. LTD. (“TOHO” or “Plaintiff”) filed a Motion for Entry of a Preliminary Injunction against the against the fully interactive, e-commerce stores operating under the seller aliases identified in Schedule A to the Complaint and attached hereto (collectively, “Defendants”) and using at least the online marketplace accounts identified in Schedule A (the “Defendant Internet Stores”). After reviewing the Motion and the accompanying record, this Court GRANTS TOHO’s Motion as follows.

This Court finds TOHO has provided notice to Defendants in accordance with the Temporary Restraining Order entered November 28, 2023, [16] (“TRO”), and Federal Rule of Civil Procedure 65(a)(1).

This Court also finds, in the absence of adversarial presentation, that it has personal jurisdiction over Defendants because Defendants directly target their business activities toward consumers in the United States, including Illinois. Specifically, TOHO has provided a basis to conclude that 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, and have sold products using infringing and counterfeit versions of TOHO's federally registered trademarks which are protected by U.S. Trademark Registration Nos. 4,183,291; 2,360,489; 2,211,328; 1,858,403; 2,134,696; 1,161,858; 1,163,122; 6,172,295; and 5,093,240 (the "GODZILLA Trademarks") to residents of Illinois. In this case, TOHO has presented screenshot evidence that each Defendant e-commerce store is reaching out to do business with Illinois residents by operating one or more commercial, interactive internet stores through which Illinois residents can purchase products using counterfeit versions of the GODZILLA Trademarks. *See* Docket No. [14], which includes screenshot evidence confirming that each Defendant e-commerce store does stand ready, willing and able to ship its counterfeit goods to customers in Illinois bearing infringing and/or counterfeit versions of the GODZILLA Trademarks.

This Court also finds that the injunctive relief previously granted in the TRO should remain in place through the pendency of this litigation and that issuing this Preliminary Injunction is warranted under Federal Rule of Civil Procedure 65. Evidence submitted in support of this Motion and in support of TOHO's previously granted Motion for Entry of a TRO establishes that TOHO has demonstrated a likelihood of success on the merits; that no remedy at law exists; and that TOHO will suffer irreparable harm if the injunction is not granted.

Specifically, TOHO has proved a *prima facie* case of trademark infringement because (1) the GODZILLA Trademarks are distinctive marks and are registered with the U.S. Patent and Trademark Office on the Principal Register, (2) Defendants are not licensed or authorized to use any of the GODZILLA Trademarks, and (3) Defendants' use of the GODZILLA Trademarks is causing a likelihood of confusion as to the origin or sponsorship of Defendants'

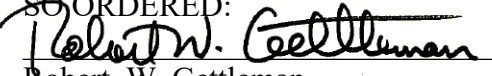
products with TOHO. Furthermore, Defendants' continued and unauthorized use of the GODZILLA Trademarks irreparably harms TOHO through diminished goodwill and brand confidence, damage to TOHO's reputation, loss of exclusivity, and loss of future sales. Monetary damages fail to address such damage and, therefore, TOHO has an inadequate remedy at law. Moreover, the public interest is served by entry of this Preliminary Injunction to dispel the public confusion created by Defendants' actions. Accordingly, this Court orders that:

1. Defendants, their officers, agents, servants, employees, attorneys, and all persons acting for, with, by, through, under, or in active concert with them be preliminarily enjoined and restrained from:
  - a. using the GODZILLA Trademarks or any reproductions, counterfeit copies, or colorable imitations in any manner in connection with the distribution, marketing, advertising, offering for sale, or sale of any product that is not a genuine TOHO product or not authorized by TOHO to be sold in connection with the GODZILLA Trademarks;
  - b. passing off, inducing, or enabling others to sell or pass off any product as a genuine TOHO product or any other product produced by TOHO, that is not TOHO's or not produced under the authorization, control, or supervision of TOHO and approved by TOHO for sale under the GODZILLA Trademarks;
  - c. committing any acts calculated to cause consumers to believe that Defendants' products are those sold under the authorization, control, or supervision of TOHO, or are sponsored by, approved by, or otherwise connected with TOHO; and

- d. 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 TOHO, nor authorized by TOHO to be sold or offered for sale, and which bear any of TOHO's trademarks, including the GODZILLA Trademarks, or any reproductions, counterfeit copies, or colorable imitations.
2. Defendants shall not transfer or dispose of any money or other of Defendants' assets in any of Defendants' financial accounts.
3. Upon TOHO's request, Defendants and any third party with actual notice of this Order who is providing services for any of Defendants, or in connection with any of Defendants' Defendant Internet Stores, including, without limitation, any online marketplace platforms such as ContextLogic, Inc. d/b/a Wish.com ("WISH") (collectively, the "Third Party Providers"), shall, within seven (7) calendar days after receipt of such notice, provide to TOHO expedited discovery, limited to copies of documents and records in such person's or entity's possession or control sufficient to determine:
  - a. the identities and locations of Defendants, their officers, agents, servants, employees, attorneys, and any persons acting in active concert or participation with them, including all known contact information and all associated e-mail addresses;
  - b. the nature of Defendants' operations and all associated sales, methods of payment for services, and financial information, including, without limitation, identifying information associated with the Defendant Internet Stores and Defendants'

- financial accounts, including Defendants' sales and listing history related to their respective Defendant Internet Stores; and
- c. any financial accounts owned or controlled by Defendants, including their officers, agents, servants, employees, attorneys, and any persons acting in active concert or participation with them, including such accounts residing with or under the control of any banks, savings and loan associations, payment processors or other financial institutions, including, without limitation, WISH, or other merchant account providers, payment providers, third party processors, and credit card associations (e.g., MasterCard and VISA).
4. Upon TOHO's request, those with notice of this Order, including the Third Party Providers as defined in Paragraph 3 shall within seven (7) calendar days after receipt of such notice, disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of counterfeit and infringing goods using the GODZILLA Trademarks.
  5. Any Third Party Providers, including WISH, shall, within seven (7) calendar days of receipt of this Order:
    - a. locate all accounts and funds connected to Defendants' seller aliases, including, but not limited to, any financial accounts connected to the information listed in Schedule A hereto, the e-mail addresses identified in Exhibit 2 to the Declaration of Koji Ueda, and any e-mail addresses provided for Defendants by third parties; and
    - b. restrain and enjoin any such accounts or funds from transferring or disposing of any money or other of Defendants' assets until further order by this Court.

6. TOHO may provide notice of the proceedings in this case to Defendants, including service of process pursuant to Fed. R. Civ. P. 4(f)(3), and any future motions, by electronically publishing a link to the Complaint, this Order, and other relevant documents on a website or by sending an e-mail with a link to said website to the e-mail addresses identified in Exhibit 2 to the Declaration of Koji Ueda and any e-mail addresses provided for Defendants by third parties. The Clerk of the Court is directed to issue a single original summons in the name of “36ahd and all other Defendants identified in the Complaint” that shall apply to all Defendants. The combination of providing notice via electronic publication or e-mail, along with any notice that Defendants receive from payment processors, shall constitute notice reasonably calculated under all circumstances to apprise Defendants of the pendency of the action and afford them the opportunity to present their objections.
7. Schedule A to the Complaint [2], Exhibit 2 to the Declaration of Koji Ueda [14], and the TRO [16] are unsealed.
8. Any Defendants that are subject to this Order may appear and move to dissolve or modify the Order as permitted by and in compliance with the Federal Rules of Civil Procedure and the Northern District of Illinois Local Rules. Any third party impacted by this Order may move for appropriate relief.
9. The Ten Thousand Dollar (\$10,000) bond posted by TOHO shall remain with the Court until a final disposition of this case or until this Preliminary Injunction is terminated.

SO ORDERED:  
  
Robert W. Gettleman  
United States District Judge

DATED: December 12, 2023

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

PINK FLOYD (1987) LIMITED,

Plaintiff,

v.

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

Defendants.

Case No. 23-cv-14528

**Judge Robert W. Gettleman**

**Magistrate Judge Young B. Kim**

**PRELIMINARY INJUNCTION ORDER**

Plaintiff PINK FLOYD (1987) LIMITED (“PFL”) filed a Motion for Entry of a Preliminary Injunction against the against the fully interactive, e-commerce stores operating under the seller aliases identified in Schedule A to the Complaint and attached hereto (collectively, “Defendants”) and using at least the online marketplace accounts identified in Schedule A (the “Defendant Internet Stores”). After reviewing the Motion and the accompanying record, this Court GRANTS PFL’s Motion as follows.

This Court finds PFL has provided notice to Defendants in accordance with the Temporary Restraining Order entered October 6, 2023, [17] (“TRO”), and Federal Rule of Civil Procedure 65(a)(1).

This Court also finds, in the absence of adversarial presentation, that it has personal jurisdiction over Defendants because Defendants directly target their business activities toward consumers in the United States, including Illinois. Specifically, PFL has provided a basis to conclude that 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, and have sold products using infringing and counterfeit versions of PFL's federally registered trademarks, which are covered by U.S. Trademark Registration Nos. 2,194,702; 3,247,700; 4,236,037; 5,521,572; 6,514,317; 5,435,348; 6,784,353; and 6,862,397 (the "PINK FLOYD Trademarks") to residents of Illinois. In this case, PFL has presented screenshot evidence that each Defendant e-commerce store is reaching out to do business with Illinois residents by operating one or more commercial, interactive internet stores through which Illinois residents can purchase products using counterfeit versions of the PINK FLOYD Trademarks. *See* Docket No. [15], which includes screenshot evidence confirming that each Defendant e-commerce store does stand ready, willing and able to ship its counterfeit goods to customers in Illinois bearing infringing and/or counterfeit versions of the PINK FLOYD Trademarks.

This Court also finds that the injunctive relief previously granted in the TRO should remain in place through the pendency of this litigation and that issuing this Preliminary Injunction is warranted under Federal Rule of Civil Procedure 65. Evidence submitted in support of this Motion and in support of PFL's previously granted Motion for Entry of a TRO establishes that PFL has demonstrated a likelihood of success on the merits; that no remedy at law exists; and that PFL will suffer irreparable harm if the injunction is not granted.

Specifically, PFL has proved a *prima facie* case of trademark infringement because (1) the PINK FLOYD Trademarks are distinctive marks and are registered with the U.S. Patent and Trademark Office on the Principal Register, (2) Defendants are not licensed or authorized to use any of the PINK FLOYD Trademarks, and (3) Defendants' use of the PINK FLOYD Trademarks is causing a likelihood of confusion as to the origin or sponsorship of Defendants' products with PFL. Furthermore, Defendants' continued and unauthorized use of the PINK



FLOYD Trademarks irreparably harms PFL through diminished goodwill and brand confidence, damage to PFL's reputation, loss of exclusivity, and loss of future sales. Monetary damages fail to address such damage and, therefore, PFL has an inadequate remedy at law. Moreover, the public interest is served by entry of this Preliminary Injunction to dispel the public confusion created by Defendants' actions. Accordingly, this Court orders that:

1. Defendants, their officers, agents, servants, employees, attorneys, and all persons acting for, with, by, through, under, or in active concert with them be preliminarily enjoined and restrained from:
  - a. using the PINK FLOYD Trademarks or any reproductions, counterfeit copies, or colorable imitations in any manner in connection with the distribution, marketing, advertising, offering for sale, or sale of any product that is not a genuine PFL product or not authorized by PFL to be sold in connection with the PINK FLOYD Trademarks;
  - b. passing off, inducing, or enabling others to sell or pass off any product as a genuine PFL product or any other product produced by PFL, that is not PFL's or not produced under the authorization, control, or supervision of PFL and approved by PFL for sale under the PINK FLOYD Trademarks;
  - c. committing any acts calculated to cause consumers to believe that Defendants' products are those sold under the authorization, control, or supervision of PFL, or are sponsored by, approved by, or otherwise connected with PFL; and
  - d. 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 PFL, nor authorized by PFL to be sold or offered for sale, and which bear any of PFL's trademarks, including the

PINK FLOYD Trademarks, or any reproductions, counterfeit copies, or colorable imitations.

2. Defendants shall not transfer or dispose of any money or other of Defendants' assets in any of Defendants' financial accounts.
3. Upon PFL's request, Defendants and any third party with actual notice of this Order who is providing services for any of Defendants, or in connection with any of Defendants' Defendant Internet Stores, including, without limitation, any online marketplace platforms such as Printerval Trading, JSC ("Printerval") (collectively, the "Third Party Providers"), shall, within seven (7) calendar days after receipt of such notice, provide to PFL expedited discovery, limited to copies of documents and records in such person's or entity's possession or control sufficient to determine:
  - a. the identities and locations of Defendants, their officers, agents, servants, employees, attorneys, and any persons acting in active concert or participation with them, including all known contact information and all associated e-mail addresses;
  - b. the nature of Defendants' operations and all associated sales, methods of payment for services, and financial information, including, without limitation, identifying information associated with the Defendant Internet Stores and Defendants' financial accounts, including Defendants' sales and listing history related to their respective Defendant Internet Stores; and
  - c. any financial accounts owned or controlled by Defendants, including their officers, agents, servants, employees, attorneys, and any persons acting in active concert or participation with them, including such accounts residing with or under the control of any banks, savings and loan associations, payment processors or other financial

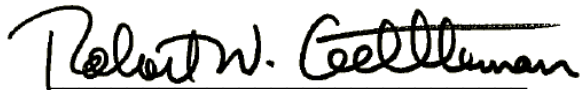
institutions, including, without limitation, Printerval, or other merchant account providers, payment providers, third party processors, and credit card associations (e.g., MasterCard and VISA).

4. Upon PFL's request, those with notice of this Order, including the Third Party Providers as defined in Paragraph 3, shall within Seven (7) calendar days after receipt of such notice, disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of counterfeit and infringing goods using the PFL Trademarks.
5. Any Third Party Providers, including Printerval, shall, within seven (7) calendar days of receipt of this Order:
  - a. locate all accounts and funds connected to Defendants' seller aliases, including, but not limited to, any financial accounts connected to the information listed in Schedule A hereto, the e-mail addresses identified in Exhibit 2 to the Declaration of Thomas Schlegel, and any e-mail addresses provided for Defendants by third parties; and
  - b. restrain and enjoin any such accounts or funds from transferring or disposing of any money or other of Defendants' assets until further order by this Court.
6. PFL may provide notice of the proceedings in this case to Defendants, including service of process pursuant to Fed. R. Civ. P. 4(f)(3), and any future motions, by electronically publishing a link to the Complaint, this Order, and other relevant documents on a website or by sending an e-mail with a link to said website to the e-mail addresses identified in Exhibit 2 to the Declaration of Thomas Schlegel and any e-mail addresses provided for Defendants by third parties. The Clerk of the Court is directed to issue a single original summons in the name of "Cudahy and all other Defendants identified in

the Complaint” that shall apply to all Defendants. The combination of providing notice via electronic publication or e-mail, along with any notice that Defendants receive from payment processors, shall constitute notice reasonably calculated under all circumstances to apprise Defendants of the pendency of the action and afford them the opportunity to present their objections.

7. Plaintiff’s Schedule A to the Complaint [2], Exhibit 2 to the Declaration of Thomas Schlegel [15], and the TRO [17] are unsealed.
8. Any Defendants that are subject to this Order may appear and move to dissolve or modify the Order as permitted by and in compliance with the Federal Rules of Civil Procedure and the Northern District of Illinois Local Rules. Any third party impacted by this Order may move for appropriate relief.
9. The Ten Thousand Dollar (\$10,000) bond posted by PFL shall remain with the Court until a final disposition of this case or until this Preliminary Injunction is terminated.

SO ORDERED:

  
Robert W. Gettleman  
United States District Judge

Dated: October 19, 2023