

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

CELINE SA.,

Plaintiff,

v.

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

Defendants.

Case No. 24-cv-09199

District Judge Lindsay C. Jenkins

Magistrate Judge Jeannice W. Appenteng

**MEMORANDUM IN SUPPORT OF PLAINTIFF’S
EX PARTE MOTION FOR ENTRY OF A TEMPORARY
RESTRAINING ORDER, INCLUDING A TEMPORARY INJUNCTION, A
TEMPORARY ASSET RESTRAINT, AND EXPEDITED DISCOVERY**

Plaintiff Celine SA (“Celine”) submits this Memorandum in support of its *Ex Parte* Motion for Entry of a Temporary Restraining Order (“TRO”), including a temporary injunction, a temporary asset restraint, and expedited discovery (the “*Ex Parte* Motion”).

I. INTRODUCTION

Celine requests temporary *ex parte* relief in this action for trademark infringement, counterfeiting, and false designation of origin against the defendants identified on Schedule “A” to the Complaint (collectively, the “Defendants”). As alleged in Celine’s Complaint, Defendants are promoting, advertising, marketing, distributing, offering for sale, and selling products, including handbags, purses, and other fashion accessories, using infringing and counterfeit versions of Celine’s federally registered trademarks, (collectively, the “Counterfeit Celine Products”), through at least the e-commerce stores operating under the seller aliases identified in Schedule A to the Complaint (collectively, the “Seller Aliases”).

Defendants run a sophisticated counterfeiting operation and have targeted sales to Illinois residents by setting up and operating e-commerce stores using one or more Seller Aliases through which Illinois residents can purchase Counterfeit Celine Products. The e-commerce stores operating under the Seller Aliases share unique identifiers, establishing a logical relationship between them. Further, 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. Celine is forced to file this action to combat Defendants' counterfeiting of its registered trademarks, as well as to protect unknowing consumers from purchasing Counterfeit Celine Products over the Internet. Defendants' ongoing unlawful activities should be restrained, and Celine respectfully requests that this Court issue an *ex parte* Temporary Restraining Order.

II. STATEMENT OF FACTS

A. Celine's Trademarks and Products

Celine is a world-famous luxury brand engaged in the business of styling and selling a diverse portfolio of ready-to-wear men's and women's apparel, fashion accessories, and leather goods (collectively, the "Celine Products") all of which prominently display its famous internationally recognized and federally registered trademarks. (Declaration of Nicolas Lambert ¶ 3, filed herewith.) Celine uses its trademarks in connection with the marketing of its Celine Products, which are collectively referred to as the "Celine Trademarks." (*Id.* ¶ 8.) True and correct copies of the United States registration certificates for the Celine Trademarks are attached to the Lambert Decl. as Exhibit 1. The registrations for the Celine Trademarks are valid, subsisting, in full force and effect, and many are incontestable pursuant to 15 U.S.C. § 1065. (*Id.* ¶ 7.) The registrations for the Celine Trademarks constitute *prima facie* evidence of their validity and of Celine's exclusive right to use the Celine Trademarks pursuant to 15 U.S.C. § 1057(b).

Celine Products have long been among the most famous and popular of their kind in the world and have been extensively promoted and advertised at great expense. (*Id.* ¶ 8.) Celine has expended millions of dollars annually in advertising, promoting and marketing featuring the Celine Trademarks. *Id.* The Celine Trademarks are distinctive when applied to the Celine Products, signifying to the purchaser that the products come from Celine and are manufactured to Celine's quality standards. (*Id.* ¶ 9.) The Celine Trademarks have achieved tremendous fame and recognition, which has only added to the distinctiveness of the marks. (*Id.*) As such, the goodwill associated with the Celine Trademarks is of incalculable and inestimable value to Celine. (*Id.*)

B. Defendants' Unlawful Activities

The success of the Celine brand has resulted in its significant counterfeiting. (*Id.* ¶ 11.) Consequently, Celine has a worldwide anti-counterfeiting program and regularly investigates suspicious e-commerce stores identified in proactive Internet sweeps and reported by consumers. (*Id.*) In recent years, Celine has identified numerous fully interactive e-commerce stores, including those operating under the Seller Aliases, which were offering for sale and/or selling Counterfeit Celine Products to consumers in this District and throughout the United States. (*Id.*) Celine's well-pleaded allegations regarding registration patterns, similarities among the e-commerce stores operating under the Seller Aliases and the Counterfeit Celine Products for sale thereon, and common tactics employed to evade enforcement efforts establish a logical relationship suggesting that many of the Counterfeit Celine Products may be manufactured by and come from a common source and that Defendants are interrelated. (*Id.* ¶ 20.) If Defendants provide additional credible information regarding their identities, Celine intends to take appropriate steps to amend the Complaint.

III. ARGUMENT

Defendants' purposeful, intentional, and unlawful conduct is causing and will continue to cause irreparable harm to Celine's reputation and the goodwill symbolized by the Celine Trademarks. Rule 65(b) of the Federal Rules of Civil Procedure provides that the Court may issue an *ex parte* TRO where immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition. Fed. R. Civ. P. 65(b). The entry of a TRO is appropriate because it would immediately stop the Defendants from benefiting from their wrongful use of the Celine Trademarks and preserve the status quo until a hearing can be held.

In the absence of a TRO without notice, the Defendants can and likely will register new e-commerce stores under new aliases and move any assets to off-shore accounts outside the jurisdiction of this Court. (Declaration of John Haarlow, Jr. ¶¶ 5-7, filed herewith). Courts have recognized that civil actions against counterfeiters present special challenges that justify proceeding on an *ex parte* basis. *See Columbia Pictures Indus., Inc. v. Jasso*, 927 F. Supp. 1075, 1077 (N.D. Ill. 1996) (observing that "proceedings against those who deliberately traffic in infringing merchandise are often useless if notice is given to the infringers"). As such, Celine respectfully requests that this Court issue the requested *ex parte* TRO.

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 § 1331. Venue is proper pursuant to 28 U.S.C. § 1391.

This Court may properly exercise personal jurisdiction over Defendants since Defendants directly target business activities toward consumers in the United States, including Illinois, through at least the e-commerce stores operating under the Seller Aliases by offering shipping to the United States, including Illinois, accepting payment in United States dollars and, on information and

belief, selling Counterfeit Celine Products to residents of Illinois. (Complaint at ¶¶ 2, 20, 25.) *See, e.g., Christian Dior Couture, S.A. v. Lei Liu et al.*, 2015 U.S. Dist. LEXIS 158225, at *6 (N.D. Ill. Nov. 17, 2015) (personal jurisdiction proper over defendants offering to sell alleged infringing product to United States residents, including Illinois; no actual sale required). Each of the Defendants is committing tortious acts in Illinois, is engaging in interstate commerce, and has wrongfully caused Celine substantial injury in the State of Illinois.

A. Standard for Temporary Restraining Order and Preliminary Injunction

This Court holds that the standard for granting a TRO and the standard for granting a preliminary injunction are identical. *See, e.g. Charter Nat'l Bank & Trust v. Charter One Fin., Inc.*, No. 01-cv-00905, 2001 WL 527404, at *1 (N.D. Ill. May 15, 2001). A party seeking to obtain a preliminary injunction must demonstrate: (1) a likelihood of success on the merits; (2) that no adequate remedy at law exists; and (3) that it will suffer irreparable harm if the injunction is not granted. *See Ty, Inc. v. The Jones Group, Inc.*, 237 F.3d 891, 895 (7th Cir. 2001).

If the Court is satisfied that these three conditions are met, then it considers the harm that the nonmoving party will suffer if preliminary relief is granted, balancing such harm against the irreparable harm the moving party will suffer if relief is denied. *Id.* Finally, the Court considers the potential effect on the public interest (non-parties) in denying or granting the injunction. *Id.* In deciding whether to grant injunctive relief, the Court then weighs all of these factors, “sitting as would a chancellor in equity.” *Id.* (quoting *Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 11 (7th Cir. 1992)). This process involves engaging in what the Seventh Circuit has deemed “the sliding scale approach” – the more likely the plaintiff will succeed on the merits, the less the balance of harms need favor the plaintiff's position. *Ty, Inc.*, 237 F.3d at 895.

**B. Celine Will Likely Succeed on the Merits of its
Trademark Infringement and False Designation of Origin Claims**

A defendant is liable for trademark infringement and counterfeiting under the Lanham Act if it, “without the consent of the registrant, use[s] in commerce, any reproduction, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods ... which such use is likely to cause confusion, or to cause mistake, or to deceive.” 15 U.S.C. § 1114(1). A Lanham Act trademark infringement claim has two elements. *See* 15 U.S.C. § 1125(a). First, a plaintiff must show “that its mark is protected under the Lanham Act.” *Barbecue Marx, Inc. v. 551 Ogden, Inc.*, 235 F.3d 1041, 1043 (7th Cir. 2000). Second, plaintiff must show that the challenged mark is likely to cause confusion among consumers. *Id.*

In this case, Celine’s Celine Trademarks are distinctive and are registered with the United States Patent and Trademark Office. (Lambert Decl. ¶ 7.) The registrations for the Celine Trademarks are valid, subsisting, in full force and effect, and many are incontestable pursuant to 15 U.S.C. § 1065. (*Id.*) The registrations for the Celine Trademarks constitute *prima facie* evidence of their validity and of Celine’s exclusive right to use the Celine Trademarks pursuant to 15 U.S.C. § 1057(b). Furthermore, Celine has not licensed or authorized Defendants to use any of the Celine Trademarks, and none of the Defendants are authorized retailers of genuine Celine Products. (Lambert Decl. ¶14.) Thus, Celine satisfies the first element of its Lanham Act claim.

The Seventh Circuit has held that where “one produces counterfeit goods in an apparent attempt to capitalize upon the popularity of, and demand for, another’s product, there is a presumption of a likelihood of confusion.” *Microsoft Corp. v. Rechanik*, 249 F. App’x 476, 479 (7th Cir. 2007). Accordingly, the Court can presume a likelihood of confusion from Defendant’s use of the Celine Trademarks. The result is the same when considered in light of the Seventh

Circuit's seven enumerated factors to determine whether there is a likelihood of confusion, which include: (1) similarity between the marks in appearance and suggestion; (2) similarity of the products/services; (3) area and manner of concurrent use; (4) degree of care likely to be exercised by consumers; (5) strength of complainant's mark; (6) actual confusion; and, (7) intent of the defendants to palm off their products as that of another. *AutoZone, Inc. v. Strick*, 543 F.3d 923, 929 (7th Cir. 2008). No one factor is dispositive, but the similarity of the marks, actual confusion, and the defendant's intent are "particularly important." *Id.*

Celine has submitted extensive documentation showing that Defendants are selling Counterfeit Celine Products that look similar to genuine Celine Products and use infringing and counterfeit marks identical to the Celine Trademarks. Both Celine and Defendants advertise and sell their products to consumers via the Internet, targeting consumers looking for genuine Celine Products. (Lambert Decl. ¶¶ 5, 11-15.) Those consumers are diverse with varying degrees of sophistication, and they are likely to have difficulty distinguishing genuine Celine Products from Counterfeit Celine Products. Indeed, it appears that Defendants are intentionally trying to induce consumers looking for genuine Celine Products to purchase Counterfeit Celine Products instead. In that regard, Defendants advertise Counterfeit Celine Products using the Celine Trademarks. (*Id.* ¶¶ 11-15.) Evidence of actual consumer confusion is not required to prove that a likelihood of confusion exists, particularly given the compelling evidence that Defendants are attempting to "palm off" their goods as genuine Celine products. *CAE, Inc. v. Clean Air Eng'g, Inc.*, 267 F.3d 660, 685 (7th Cir. 2001). Accordingly, Celine is likely to establish a *prima facie* case of trademark infringement, counterfeiting, and false designation of origin.

**C. There Is No Adequate Remedy at Law, and Celine
Will Suffer Irreparable Harm in the Absence of Preliminary Relief**

The Seventh Circuit has “clearly and repeatedly held that damage to a trademark holder’s goodwill can constitute irreparable injury for which the trademark owner has no adequate legal remedy.” *Re/Max N. Cent., Inc. v. Cook*, 272 F.3d 424, 432 (7th Cir. 2001) (citing *Eli Lilly & Co. v. Natural Answers, Inc.*, 233 F.3d 456, 469 (7th Cir. 2000)). Irreparable injury “almost inevitably follows” when there is a high probability of confusion because such injury “may not be fully compensable in damages.” *Helene Curtis Industries, Inc. v. Church & Dwight Co.*, 560 F.2d 1325, 1332 (7th Cir. 1977) (citation omitted). “The most corrosive and irreparable harm attributable to trademark infringement is the inability of the victim to control the nature and quality of the defendants’ goods.” *Int’l Kennel Club of Chicago, Inc. v. Mighty Star, Inc.*, 846 F.2d 1079, 1092 (7th Cir. 1988). As such, monetary damages are likely to be inadequate compensation for such harm. *Ideal Indus., Inc. v. Gardner Bender, Inc.*, 612 F.2d 1018, 1026 (7th Cir. 1979).

Defendants’ unauthorized use of the Celine Trademarks has and continues to irreparably harm Celine through diminished goodwill and brand confidence, damage to Celine’s reputation, loss of exclusivity, and loss of future sales. (Lambert Decl. ¶¶ 21.) The extent of the harm to Celine’s reputation and goodwill and the possible diversion of customers due to loss in brand confidence are both irreparable and incalculable, thus warranting an immediate halt to Defendants’ infringing activities through injunctive relief. *See Promatek Industries, Ltd. v. Equitrac Corp.*, 300 F.3d 808, 813 (7th Cir. 2002) (finding that damage to plaintiff’s goodwill was irreparable harm for which plaintiff had no adequate remedy at law). Celine will suffer immediate and irreparable injury, loss, or damage if an *ex parte* Temporary Restraining Order is not issued in accordance with Federal Rule of Civil Procedure 65(b)(1). (Lambert Decl. ¶ 22).

D. The Balancing of Harms Tips in Celine’s Favor, and the Public Interest Is Served by Entry of the Injunction

If the Court is satisfied that Celine has demonstrated (1) a likelihood of success on the merits, (2) no adequate remedy at law, and (3) the threat of irreparable harm if preliminary relief is not granted, then it considers the harm Defendants will suffer if preliminary relief is granted, balancing such harm against the irreparable harm that Celine will suffer if relief is denied. *Ty, Inc.*, 237 F.3d at 895.

As willful infringers, Defendants are entitled to little equitable consideration. “When considering the balance of hardships between the parties in infringement cases, courts generally favor the trademark owner.” *Krause Int’l Inc. v. Reed Elsevier, Inc.*, 866 F. Supp. 585, 587-88 (D.D.C. 1994). This is because “[o]ne who adopts the mark of another for similar goods acts at his own peril since he has no claim to the profits or advantages thereby derived.” *Burger King Corp. v. Majeed*, 805 F. Supp. 994, 1006 (S.D. Fla. 1992) (internal quotation marks omitted). Therefore, the balance of harms “cannot favor a defendant whose injury results from the knowing infringement of the plaintiff’s trademark.” *Malarkey-Taylor Assocs., Inc. v. Cellular Telecomms. Indus. Ass’n*, 929 F. Supp. 473, 478 (D.D.C. 1996).

As Celine has demonstrated, Defendants have been profiting from the sale of Counterfeit Celine Products. Thus, the balance of equities tips decisively in Celine’s favor. The public is currently under the false impression that Defendants are operating their e-commerce stores with Celine’s approval and endorsement. In this case, the injury to the public is significant, and the injunctive relief that Celine seeks is specifically intended to remedy that injury by dispelling the public confusion created by Defendants’ actions. As such, equity requires that Defendants be ordered to cease their unlawful conduct.

IV. THE EQUITABLE RELIEF SOUGHT IS APPROPRIATE

The Lanham Act authorizes courts to issue injunctive relief “according to the 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). Here, the equitable relief sought by Celine is reasonable and appropriate under the circumstances.

A. An Order Immediately Enjoining Defendants’ Unauthorized and Unlawful Use of the Celine Trademarks Is Appropriate

Celine requests a temporary injunction requiring the Defendants to immediately cease all use of the Celine Trademarks, or substantially similar marks, on or in connection with all e-commerce stores operating under the Seller Aliases. Such relief is necessary to stop the ongoing harm to the Celine Trademarks and associated goodwill, as well as harm to consumers, and to prevent the Defendants from continuing to benefit from their unauthorized use of the Celine Trademarks. The need for *ex parte* relief is magnified by today’s global economy where counterfeiters can operate anonymously over the Internet. Celine is currently unaware of both the true identities and locations of the Defendants, as well as other e-commerce stores used by Defendants to distribute Counterfeit Celine Products. Many courts have authorized immediate injunctive relief in similar cases involving the unauthorized use of trademarks and counterfeiting. *See, e.g., Michael Kors, L.L.C. v. The Partnerships et al.*, No. 13-cv-8612 (N.D. Ill. Dec. 5, 2013) (unpublished) (order granting *ex parte* Motion for Temporary Restraining Order); *Oakley, Inc. v. Does 1-100*, No. 12-cv-9864 (N.D. Ill. Dec 14, 2012) (unpublished) (same).¹

B. Preventing the Fraudulent Transfer of Assets Is Appropriate

Celine requests an *ex parte* restraint of Defendants’ assets so that Celine’s right to an equitable accounting of Defendants’ profits from sales of Counterfeit Celine Products is not

¹ Unpublished Orders are attached to the Haarlow Declaration as Exhibit 4.

impaired. Issuing an *ex parte* restraint will ensure Defendants' compliance. If such a restraint is not granted in this case, Defendants may disregard their responsibilities and fraudulently transfer financial assets to overseas accounts before a restraint is ordered. Specifically, on information and belief, the Defendants in this case hold most of their assets in off-shore accounts, making it easy to hide or dispose of assets, which will render an accounting by Celine meaningless.

Courts have the inherent authority to issue a prejudgment asset restraint when plaintiff's complaint seeks relief in equity. *Animale Grp. Inc. v. Sunny's Perfume Inc.*, 256 F. App'x 707, 709 (5th Cir. 2007). In addition, Celine has shown a strong likelihood of succeeding on the merits of its trademark infringement and counterfeiting claim, so according to the Lanham Act, 15 U.S.C. § 1117(a)(1), Celine is entitled, "subject to the principles of equity, to recover . . . defendant's profits." Celine's Complaint seeks, among other relief, that Defendants account for and pay to Celine all profits realized by Defendants by reason of Defendants' unlawful acts. Therefore, this Court has the inherent equitable authority to grant Celine's request for a prejudgment asset freeze to preserve relief sought by Celine.

The Northern District of Illinois in *Lorillard Tobacco Co. v. Montrose Wholesale Candies* entered an asset restraining order in a trademark infringement case brought by a tobacco company against a defendant selling counterfeit cigarettes. 2005 WL 3115892, at *13 (N.D. Ill. Nov. 8, 2005). The Court recognized that it was explicitly allowed to issue a restraint on assets for lawsuits seeking equitable relief. *Id.* (citing *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund*, 527 U.S. 308, 325 (1999)). Because the tobacco company sought a disgorgement of the storeowner's profits, an equitable remedy, the Court found that it had the authority to freeze the storeowner's assets. *Lorillard*, 2005 WL 3115892, at *13. In addition, this Court regularly issues asset restraining orders for financial accounts in cases involving the sale of counterfeit products. *See*,

e.g., Michael Kors, No. 13-cv-8612 (N.D. Ill. Dec. 5, 2013) (unpublished) (order granting *ex parte* Motion for Temporary Restraining Order including the freezing of Defendants' financial accounts); *Oakley*, No. 12-cv-9864 (N.D. Ill. Dec 14. 2012) (unpublished) (same).

Furthermore, Federal Rules of Civil Procedure 64 and 65 provide authority for preliminary injunctions and the freezing of assets, and the Lanham Act provides for an accounting and recovery of profits, costs, and damages. Fed. R. Civ. P. 64-65; 15 U.S.C. § 1117. Since Celine seeks recovery of Defendants' profits, an order permanently and continuously freezing the Defendants' assets is within the Court's authority and should be granted. *Lorillard*, 2005 WL 3115892, at *13. Moreover, under Federal Rule of Civil Procedure 65(d)(2)(C), this Court has the power to bind any third parties who are in active concert or participation with the Defendants that are given notice of the order to freeze assets of the Defendants. Fed. R. Civ. P. 65. Celine has shown a likelihood of success on the merits, an immediate and irreparable harm suffered as a result of Defendants' activities, and that, unless Defendants' assets are frozen, Defendants will likely hide or move their ill-gotten funds to off-shore accounts. Accordingly, an asset restraint is proper.

C. Celine Is Entitled to Expedited Discovery

The United States Supreme Court has held that "federal courts have the power to order, at their discretion, the discovery of facts necessary to ascertain their competency to entertain the merits." *Vance v. Rumsfeld*, No. 1:06-cv-06964, 2007 WL 4557812, at *6 (N.D. Ill. Dec. 21, 2007) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S.Ct. 2380 (1978)). Courts have wide latitude in determining whether to grant a party's request for discovery. *Vance*, 2007 WL 4557812, at *6. (citation omitted). Further, courts have broad power over discovery and may permit discovery in order to aid in the identification of unknown defendants. *See* Fed. R. Civ. P. 26(b)(2).

Celine requests expedited discovery to discover bank and payment system accounts Defendants use for their counterfeit sales operations. The expedited discovery requested in Celine's Proposed TRO is limited to what is essential to prevent further irreparable harm. Discovery of these financial accounts so that they can be frozen is necessary to ensure that these activities will be contained. *See, e.g., Michael Kors*, No. 13-cv-8612 (N.D. Ill. Dec. 5, 2013) (unpublished) (order granting ex parte Motion for Temporary Restraining Order including the freezing of Defendants' financial accounts); *Oakley*, No. 12-cv-9864 (N.D. Ill. Dec 14, 2012) (unpublished) (same). Celine's seizure and asset restraint may have little meaningful effect without the requested relief. Accordingly, Celine respectfully requests that expedited discovery be granted.

V. A BOND SHOULD SECURE THE INJUNCTIVE RELIEF

The posting of security upon issuance of a temporary restraining order or preliminary injunction is vested in the Court's sound discretion. *Rathmann Grp. v. Tanenbaum*, 889 F.2d 787, 789 (8th Cir. 1989). Because of the strong and unequivocal nature of Celine's evidence of counterfeiting, trademark infringement, and false designation of origin, Celine respectfully requests that this Court require Celine to post a bond of ten thousand U.S. dollars (\$10,000.00). *See, e.g., Michael Kors*, No. 13-cv-8612 (N.D. Ill. Dec. 5, 2013) (unpublished) (\$10,000 bond); *Oakley*, No. 12-cv-9864 (N.D. Ill. Dec 14, 2012) (unpublished) (same).

VI. CONCLUSION

Defendants' unlawful operations are irreparably harming Celine's business, its famous Celine brand, and consumers. Without entry of the requested relief, Defendants' sale of Counterfeit Celine Products will continue to lead prospective purchasers and others to believe that Defendants' Counterfeit Celine Products have been manufactured by or emanate from Celine, when in fact, they have not. Therefore, entry of an *ex parte* order is necessary. In view of the foregoing and

consistent with previous similar cases, Celine respectfully requests that this Court enter a Temporary Restraining Order in the form submitted herewith.

Dated October 11, 2024.

Respectfully submitted,

/s/ John Haarlow, Jr._____

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