

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

LIFE VAC LLC,

Plaintiff,

v.

THE INDIVIDUALS, CORPORATIONS,  
LIMITED LIABILITY COMPANIES,  
PARTNERSHIPS, AND UNINCORPORATED  
ASSOCIATIONS IDENTIFIED ON SCHEDULE  
A TO THE COMPLAINT,

Defendants.

Case No.: 23-cv-16233

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S *EX PARTE* MOTION FOR ENTRY  
OF A TEMPORARY RESTRAINING ORDER, INCLUDING A TEMPORARY  
INJUNCTION, A TEMPORARY TRANSFER OF THE DEFENDANT INTERNET  
STORES, A TEMPORARY ASSET RESTRAINT, EXPEDITED DISCOVERY, AND  
SERVICE OF PROCESS BY E-MAIL AND ELECTRONIC PUBLICATION**

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**I. INTRODUCTION AND SUMMARY OF ARGUMENT**

This application (the “Application”) arises from Defendants’<sup>1</sup> improper marketing and sale of counterfeit products online. Plaintiff Life Vac LLC (“Plaintiff”) markets airway clearance devices and related products (the “Life Vac Products”). Photographs of the Life Vac Products are the subject of Plaintiff’s copyrights listed in **Exhibit 1** hereto (the “LIFEVAC Copyrights”), including U.S. Copyright Office Registration Nos. VA 2-332-974, VAu 1-489-169, VAu 1-489-170, VA-2-335-339, VA 2-335-352, and VAu 1-495-820 as well as the LIFEVAC trademark, which is covered by U.S. Trademark Registration No. 6,735,265 (the “LIFEVAC Trademark”).

Defendants have trodden on Plaintiff’s intellectual property rights by promoting, advertising, marketing, distributing, offering for sale, and selling counterfeit versions of the Life Vac Products. This illicit conduct is being carried out through various online marketplace accounts listed in **Schedule A** to the Complaint (collectively, the “Defendant Internet Stores”). In short, Defendants run a counterfeiting operation with disregard for anything except generating profits.

Defendants, for their part, attempt to avoid liability by concealing both their identities and the full scope and interworking of their counterfeiting operation. Plaintiff has filed this action to combat Defendants’ infringement and counterfeiting of Plaintiff’s registered copyrights and trademark, as well as to protect unknowing consumers from purchasing counterfeit Life Vac Products over the internet. In that regard, Plaintiff seeks to enjoin Defendants’ ongoing unlawful activities, and Plaintiff respectfully requests that this Court issue *ex parte* relief, including:

- (1) a temporary restraining order against defendants (as described in **Schedule A** attached to the Complaint (“Defendants”), enjoining Defendants from the manufacture, importation, distribution, offering for sale, and sale of counterfeit products bearing, using, or infringing upon Plaintiff’s LIFEVAC Copyrights or LIFEVAC Trademark (the “Counterfeit Products”);
- (2) a temporary transfer of control over the Defendant Internet Stores as identified on **Schedule A** to the Complaint), to Plaintiff;
- (3) a temporary restraint of certain of Defendants’ assets, described below, to preserve Plaintiff’s right to an equitable accounting;

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<sup>1</sup> “Defendants” are described in Schedule A attached to the Complaint.

- (4) expedited discovery allowing Plaintiff to inspect and copy Defendant's records relating to the manufacture, distribution, offering for sale, and sale of Counterfeit Products, as well as of Defendants' financial accounts;
- (5) permission to effectuate service by electronic mail and electronic publication; and
- (6) ordering Defendants to show cause why a preliminary injunction should not issue on the return date of the Application.

In light of the covert nature of offshore counterfeiting activities being undertaken by Defendants and the vital need to establish an economic disincentive for counterfeiting, courts regularly issue orders awarding such relief.<sup>2</sup>

Plaintiff's well-pleaded allegations, which are supported by the Declarations submitted in connection with the Application, make clear that such relief is necessary and proper. First, Plaintiff has demonstrated a strong likelihood of success on the merits. Plaintiff is the owner of valid copyright registrations and trademark and is the distributor of genuine Life Vac Products. Defendants' use of Plaintiff's copyrights and trademark to sell Counterfeit Products has and continues to irreparably harm Plaintiff by diminishing Plaintiff's goodwill in its products, damaging Plaintiff's reputation, and causing consumer confusion. Monetary damages are inadequate to compensate Plaintiff for these harms. Defendants, by contrast, face no cognizable harm whatsoever if they are enjoined from continuing with their misconduct. This makes injunctive relief particularly appropriate in this matter.

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<sup>2</sup> See, e.g., *Zuru (Singapore) Pte., Ltd. et al v. The Individuals, Corporations, Limited Liability Companies, Partnerships, and Unincorporated Associations Identified on Schedule A Hereto*, No. 1:21-cv-02151, Document # 14 (N.D. Ill. May 5, 2021) (granting orders requested herein in similar case); *Zuru (Singapore) Pte., Ltd. et al v. The Individuals, Corporations, Limited Liability Companies, Partnerships, and Unincorporated Associations Identified on Schedule A Hereto*, No. 1:21-cv-02180, Document # 14 (N.D. Ill. April 27, 2021) (Pacold, J.) (same); see also *Chrome Hearts LLC v. Partnerships & Unincorporated Associations Identified on Schedule "A"*, No. 1:15-CV-03491, 2015 WL 5307609 (N.D. Ill. Sept. 9, 2015) (denying defendant's motion to intervene in same case as above); see also *In re Vuitton et Fils, S.A.*, 606 F.2d 1 (2d Cir. 1979) (holding that ex parte temporary restraining orders are indispensable to the commencement of an action when they are the sole method of preserving a state of affairs in which the court can provide effective final relief); *Cengage Learning, Inc. v. Doe 1*, 2018 WL 2244461 (S.D.N.Y. Jan. 17, 2018); *Kipling Apparel Corp. v. Rhys*, 2016 WL 8814345 (S.D.N.Y. Feb. 19, 2016); *Weili Fang and Chee Ray, LLC v. Hangzhou Jiayu Wenhua Chuanmei Youxian Gongsi*, 2021 WL 1249631 (S.D.N.Y. April 5, 2021).

Furthermore, issuance of an injunction is also in the public interest because it will prevent confusion among the public and prevent unknowing consumers from being deceived into purchasing Counterfeit Products. The public has a right to know what it is purchasing.

In addition, an order authorizing the transfer of the Defendant Internet Stores to Plaintiff's control is warranted pursuant to 17 U.S.C. §§ 502, 503 (providing for injunctive relief for copyright infringement; enjoining any use or exploitation by Defendants of their infringing work and that any of Defendants' infringing products be impounded and destroyed). Such relief will prevent the Defendants' continued use of online marketplaces to carry out acts of infringement.

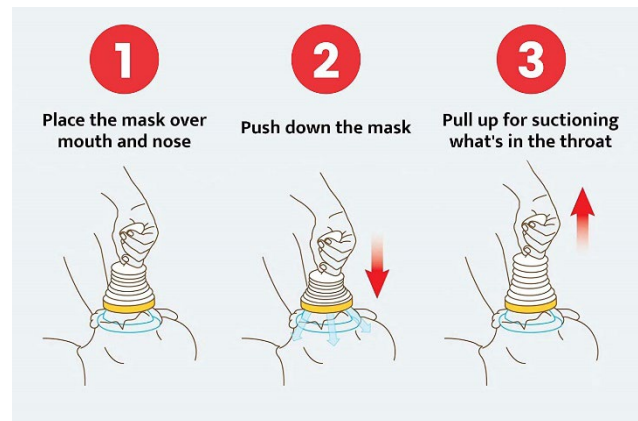
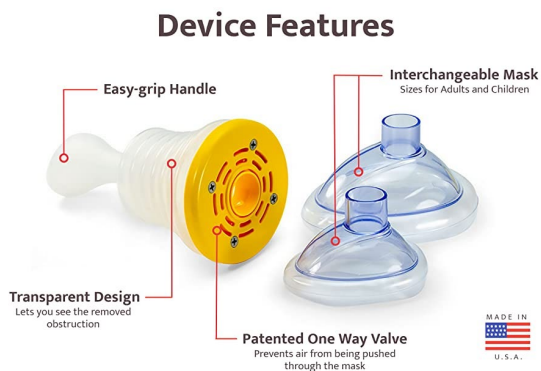
Moreover, under Federal Rule of Civil Procedure 65(d)(2)(C), this Court has the power to bind any third parties, such as online marketplace platforms and financial institutions, that are in active concert with Defendants or who aid and abet Defendants and are given actual notice of the order. Further, a prejudgment asset freeze is also proper since Plaintiff seeks an equitable remedy in the accounting of Defendants' profits pursuant to 15 U.S.C. § 504. Finally, an order authorizing service of process by e-mail and electronic publication is appropriate due to Defendants' intentional efforts to conceal their identities and covertly operate their business online. Serving Defendants electronically is the best—indeed, likely the only—method for notifying them of this action and providing them the opportunity to defend and present their objections.

Stated simply, the relief sought in this action is absolutely necessary to protect Plaintiff's legitimate interests in the LIFEVAC Copyrights, LIFEVAC Trademark, and Life Vac Products. Accordingly, Plaintiff respectfully requests entry of their proposed order in its entirety.

## **II. STATEMENT OF FACTS**

### **A. Plaintiff's Intellectual Property Protects Its Successful Life Vac Brand**

Plaintiff develops, designs, and creates high-quality utility products, including the original airway clearance device, the Life Vac Products. Declaration of Michael Plunkett, filed concurrently herewith ("Plunkett Decl."), ¶¶ 7-8. In 2014, Plaintiff launched the first Life Vac medical device. The commercial success of the Life Vac medical device inspired Plaintiff's team to develop an improved product in 2016. Plunkett Decl., ¶ 9.



Since their introduction, the Life Vac Products have been and are the subject of substantial and continuous marketing and promotion by Plaintiff in the industry and to consumers. For example, Plaintiff promotes Life Vac Products through its website (<https://lifevac.net>), and through online advertisement campaigns on, among other platforms, Facebook, Instagram, and Twitter. *Id.* at ¶ 12. Plaintiff has expended substantial time, money, and other resources in developing, advertising, and otherwise promoting the Life Vac Products. *Id.* at ¶ 14.

Plaintiff safeguards its brand and investment in the Life Vac Products by way of intellectual property protections. Plaintiff is the registered owner of the LIFEVAC Copyrights. Plunkett Decl. ¶ 5. Plaintiff is also the registered owner of the LIFEVAC Trademark, which have been continuously used and never abandoned. *Id.* at ¶ 6.

### **B. Defendants Are Counterfeiters of Life Vac Products**

The success of the Life Vac Products has resulted in significant counterfeiting of the same. *Id.* ¶ 15. Plaintiff has identified numerous Defendant Internet Stores that sell Counterfeit Products from foreign countries to consumers in this Judicial District. *Id.* ¶ 16.

Internet websites like the Defendant Internet Stores are estimated to receive tens of millions of visits per year and cost legitimate businesses billions in lost revenue annually. Declaration of Christopher Tom filed concurrently herewith (“Tom Decl.”), ¶ 3 and Ex. 1 thereto. According to intellectual-property-rights seizures-statistics reports issued by Homeland Security, the

manufacturer's suggested retail price of goods seized by the U.S. government in fiscal year 2020 was over \$1.3 billion. *Id.* ¶ 4 and Ex. 2. Internet websites like the Defendant Internet Stores are also estimated to contribute to tens of thousands of lost jobs for legitimate businesses and broader economic damages such as lost tax revenue every year. *Id.* ¶ 5 and Ex. 3.

1. Defendants Operate Legitimate-Looking Internet Stores

Defendants typically facilitate sales by designing the Defendant Internet Stores so that they appear to unknowing consumers to be authorized online retailers, outlet stores, or wholesalers selling genuine Life Vac Products. Plunkett Decl., ¶ 19. Many of the Defendant Internet Stores look sophisticated and accept payment in U.S. dollars via credit cards, Alipay, Western Union, Amazon.com (“Amazon”), and/or PayPal.com (“PayPal”). *Id.* The Defendant Internet Stores often include images and design elements that make it very difficult for consumers to distinguish such counterfeit sites from an authorized website. *Id.* Defendants further perpetuate the illusion of legitimacy by offering “live 24/7” customer service and using indicia of authenticity and security that consumers have come to associate with authorized retailers, including the McAfee® Security, VeriSign®, Visa®, MasterCard®, and PayPal® logos. *Id.* Plaintiff has not licensed or authorized Defendants to use the LIFEVAC Copyrights or LIFEVAC Trademark and none of the Defendants is an authorized retailer of genuine Life Vac Products. *Id.*

2. Defendants Illegitimately Optimize the Defendant Internet Stores for Search Engines

Defendants also commonly deceive unknowing consumers by using the LIFEVAC Trademark without authorization within the content, text, and/or meta tags of their websites in order to attract various search engines crawling the internet looking for websites relevant to consumer searches for Life Vac Products. *Id.*, ¶ 21. Additionally, Defendants typically use other unauthorized search engine optimization (“SEO”) tactics and social media spamming so that the listings for the Defendant Internet Stores show up at or near the top of relevant search results and misdirect consumers searching for genuine Life Vac Products. *Id.* Defendants often utilize similar illegitimate SEO tactics to propel new domain names to the top of search results after others are shut down. *Id.*



Lastly, Defendants also deceive unknowing consumers by using the LIFEVAC Copyrights or LIFEVAC Trademark without authorization within the product descriptions of their Defendant Internet Stores to attract customers. *Id.*

### 3. Defendants Conceal Their Identities

Defendants go to great lengths to conceal their identities and often use multiple fictitious names and addresses to register and operate their massive network of Defendant Internet Stores. *Id.* ¶ 23. For example, many of Defendants' names and physical addresses used to register the Defendant Internet Stores are incomplete, contain randomly typed letters, or fail to include cities or states. *Id.* Other Defendant Internet Stores use privacy services that conceal the owners' identity and contact information. *Id.* Defendants regularly create new websites and online marketplace accounts on various platforms using the identities listed in Schedule A to the Complaint, as well as other unknown fictitious names and addresses. *Id.* These are some of the many common tactics used by the Defendants to conceal their identities—and the full scope and interworking of their massive counterfeiting operation—to avoid being shut down. *Id.*

Even though Defendants operate under multiple fictitious names, there are numerous similarities among the Defendant Internet Stores. *Id.* ¶ 24. For example, many of the Defendant websites have virtually identical layouts, even though different aliases were used to register the respective domain names. *Id.* In addition, Counterfeit Products for sale in the Defendant Internet Stores bear similar irregularities and indicia of being counterfeit to one another, suggesting that the Counterfeit Products were manufactured by and come from a common source, suggesting that Defendants are interrelated. *Id.* The Defendant Internet Stores also include other notable common features, including use of the same accepted payment methods, check-out methods, meta data, illegitimate SEO tactics, user-defined variables, domain redirection, lack of contact information, identically or similarly priced hosting services, similar name servers, and the use of the same text and images. *Id.*

4. Defendants Evade Enforcement

In addition to operating under multiple fictitious names, Defendants in this case and defendants in other similar cases against online counterfeiters use a variety of other common tactics to evade enforcement efforts. *See id.* ¶ 26. For example, counterfeiters like Defendants will often register new domain names or online marketplace accounts under new aliases once they receive notice of a lawsuit. *See id.* Counterfeiters also often move website hosting to rogue servers located outside the United States once notice of a lawsuit is received. *Id.* Rogue servers are notorious for ignoring take-down demands sent by brand owners. *Id.* Counterfeiters also typically ship products in small quantities via international mail to minimize detection by U.S. Customs and Border Protection. *Id.*

Additionally, counterfeiters such as Defendants typically operate multiple credit card merchant accounts as well as Amazon and eBay.com (“eBay”) accounts behind layers of payment gateways so that they can continue operation in spite of Plaintiff’s enforcement efforts. *Id.* Further, Defendants typically maintain off-shore bank accounts and regularly move funds from their PayPal accounts to off-shore bank accounts outside the jurisdiction of this Court. *Id.*

Overall, Plaintiff’s well-pleaded allegations regarding registration patterns, similarities among the Defendant Internet Stores and the Counterfeit Products for sale thereon, and common tactics employed to evade enforcement establish a logical relationship among the Defendants suggesting that Defendants are an interrelated group of counterfeiters. Upon information and belief, Defendants are working in active concert to knowingly and willfully manufacture, import, distribute, offer for sale, and sell products in connection with counterfeit versions of the LIFEVAC Copyrights and the LIFEVAC Trademark in the same transaction, occurrence, or series of transactions or occurrences.

As indicated above, the tactics used by Defendants to conceal their identities and the full scope of their counterfeiting operation make it virtually impossible for Plaintiff to discover the true identities of the Defendants, the exact interworking of the Defendants’ counterfeiting network, and the relationship among Defendants. In the event that Defendants provide additional

credible information regarding their identities, Plaintiff 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 Plaintiff's reputation and the goodwill symbolized by the LIFEVAC Copyrights and LIFEVAC Trademark. *See id.* ¶¶ 29-34. To stop Defendants' sale of Counterfeit Products, Plaintiff respectfully requests that this Court issue a temporary restraining order ordering, among other things, the transfer of the Defendant Internet Stores to Plaintiff to redirect to a website providing notice of these proceedings and the freezing of Defendants' assets. Without the relief requested by Plaintiff's Application, Defendants' unlawful activity will continue unabated, and Plaintiff and consumers will suffer irreparable harm.

Rule 65(b) of the Federal Rules of Civil Procedure provides that the Court may issue an *ex parte* temporary restraining order 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 Defendants here fraudulently promote, advertise, offer to sell, and sell goods in connection with counterfeits of the LIFEVAC Copyrights and LIFEVAC Trademark via the Defendant Internet Stores. Defendants are creating a false association in the minds of consumers between the Defendants and Plaintiff by deceiving consumers into believing that the Counterfeit Products for sale on Defendants' websites are sponsored or endorsed by Plaintiff. The entry of a temporary restraining order is appropriate because it would immediately stop the Defendants from benefiting from their wrongful use of the LIFEVAC Copyrights and LIFEVAC Trademark and preserve the status quo until such time as a hearing can be held.

In the absence of a temporary restraining order without notice, the Defendants can and likely will modify registration data and content, change hosts, redirect traffic to other websites under their control, change to a new online store or platform, and move any assets from U.S.-based bank accounts, including PayPal accounts. Courts have recognized that civil actions against counterfeiters present special challenges that justify proceeding on an *ex parte* basis. *See, e.g., Square One*

*Entertainment Inc. v. The Partnerships and Unincorporated Associations Identified in Schedule "A" Defendants*, No. 20 C 5685, 2021 WL 1253450, at \*1 (N.D. Ill. Apr. 5, 2021) (Durkin, J) (“[D]istrict courts often agree, that it is necessary to restrain the defendants’ assets without notice in order to prevent them from removing their assets from the United States or otherwise hiding them.”); *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”). See also *Weili Fang and Chee Ray, LLC v. Hangzhou Jiayu Wenhua Chuanmei Youxian Gongsi*, No. 21-cv-00370, 2021 WL 1249631, at \*2 (S.D.N.Y. Apr. 5, 2021) (“If Defendants are given notice of Plaintiffs’ application, they are likely to hide, conceal, transfer or otherwise dispose of their ill-gotten proceeds from their sales of counterfeit and infringing products.”). As such, Plaintiff respectfully request that this Court issue the requested *ex parte* temporary restraining order.

This Court has original subject matter jurisdiction over the trademark infringement, copyright infringement, and false designation of origin claims in this action pursuant to the provisions of the Lanham Act, 15 U.S.C. § 1051 et seq., the Copyright Laws of the United States, 17 U.S.C. § 101 et seq., 28 U.S.C. §§ 1338(a)-(b), and 28 U.S.C. § 1331. This Court has jurisdiction over the unfair deceptive trade practices claim in this action that arises 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. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391, 1400.

**A. This Court May Exercise Personal Jurisdiction Over Defendants.**

This Court may properly exercise personal jurisdiction over Defendants, because Defendants directly target business activities toward consumers in the United States, including Illinois, by directly offering for sale products into this Judicial District as well as through at least the fully interactive, commercial Defendant Internet Stores. Specifically, Defendants are reaching out to do business with Illinois residents by operating one or more commercial, interactive Defendant Internet Stores through which Illinois residents can purchase products bearing

counterfeit versions of the LIVEVAC Trademark and/or LIVEVAC Copyrights. Each Defendant has targeted sales from Illinois residents by operating online stores that offer shipping to the United States, including Illinois, and has offered to sell, and on information and belief, has sold and continues to sell Counterfeit Life Vac Products to consumers within the United States, including the State of Illinois. *See* Complaint at ¶¶ 15-20, and 54. Without the benefit of an evidentiary hearing, Plaintiff bears only the burden of making a prima facie case for personal jurisdiction; all of Plaintiff's asserted facts should be accepted as true and any factual determinations should be resolved in their favor. *See uBID, Inc. v. GoDaddy Group, Inc.* 623 F.3d 421, 423 (7th Cir. 2010); *see also Purdue Research Found. v. Sanofi-Syhelabo, S.A.*, 338 F.3d 773, 782 (7th Cir. 2003) (“When determining whether a Plaintiff has met his burden, jurisdictional allegations pleaded in the complaint are accepted as true unless proved otherwise by defendants’ affidavits or exhibits.”).

The Northern District regularly exercises personal jurisdiction over websites using registered trademarks or copyrights without authorization in connection with the offering for sale and selling of infringing and counterfeit merchandise to Illinois residents over the Internet. 735 ILCS 5/2-209(a)(2). *See, e.g., Square One Entertainment Inc. v. The Partnerships and Unincorporated Associations Identified in Schedule "A" Defendants*, No. 20 C 5685, 2021 WL 1253450, at \*1; *ZURU (Singapore) Pte., Ltd et al v The Individuals, Corporations, Limited Liability Companies, Partnerships and Unincorporated Associations Identified on Schedule A Hereto*, No.: 1-21-CV-02180, Document # 14, (N.D. Ill. April 27, 2021) (granting orders requested herein in a similar case involving BUNCH O BALLOONS copyrighted works and trademark); *Monster Energy Company v. Wensheng*, 136 F.Supp.3d 897, 902-909 (N.D. Ill. 2015); *Creative Impact Inc. et al v. The 475 Individuals, Corporations, Limited Liability Companies, Partnerships, and Unincorporated Associations Identified on Schedule A Hereto*, No.:1:19-cv-05907, Document # 17 (N.D. Ill. Sept. 10, 2019) (granting *ex parte* temporary restraining order in similar case); *Creative Impact Inc. et al v. The Individuals, Corporations, Limited Liability Companies, Partnerships, and Unincorporated Associations Identified on Schedule A Hereto*, No. 1:18-cv-07531, Document #: 16 (N.D. Ill. Nov. 20, 2018) (Durkin, J.) (same). Through at least the fully

interactive commercial Internet website operating under the Defendant Internet Stores and the marketplace listings operated using the online marketplace accounts, each of the Defendants has targeted sales from Illinois residents by offering shipping to the United States, including Illinois, and, on information and belief, has sold or offered to sell Infringing and Counterfeit Life Vac Products to residents of the United States, including Illinois. *See NBA Properties, Incorporated, et al. v. Hanwjh*, No. 21-2909, 2022 WL 3367823, at \*7 (7th Cir. 2022) (finding personal jurisdiction over a China-based defendant when it “established an online store, using a third-party retailer, Amazon.com. Through this online store, it unequivocally asserted a willingness to ship goods to Illinois and established the capacity to do so. When an order was placed, it filled the order, intentionally shipping an infringing product to the customer’s designated Illinois address.”).

As detailed in the Complaint and in the Plunkett Decl., Plaintiff’s investigation into Defendants confirms that the Defendant Internet Stores allow for Counterfeit Products to be sold and shipped to addresses in this Judicial District. *See* Plunkett Decl., ¶ 16. In fact, Exhibit 3 to the Plunkett Decl. contains copies of screenshot evidence from each Defendant Internet Store reflecting the marketing and ability to order Counterfeit Products to the state of Illinois, and proof of orders actually placed and accepted by numerous Defendants to the Northern District 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. For that reason alone, this Court can exercise personal jurisdiction over each of the Defendants.

**B. Standard for Temporary Restraining Order and Preliminary Injunction.**

District Courts within this Circuit hold that the standard for granting a temporary restraining order and the standard for granting a preliminary injunction are identical. *See, e.g. USA-Halal Chamber of Com., Inc. v. Best Choice Meats, Inc.*, 402 F. Supp. 3d 427, 433 n.5 (N.D. Ill. 2019) (citing cases). A party seeking to obtain a preliminary injunction must demonstrate: (1) that its case has some 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 GEFT Outdoors, LLC v. City of Westfield*, 922 F.3d 357, 364 (7th Cir. 2019).

If the Court is satisfied that these three conditions have been met, then it must consider 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 must consider the potential effect on the public interest (non-parties) in denying or granting the injunction. *Id.* The Court then weighs all of these factors, “sitting as would a chancellor in equity,” when it decides whether to grant the injunction. *Ty, Inc. v. The Jones Group, Inc.*, 237 F.3d 891, 895 (7th Cir. 2001) (quoting *Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 11 (7th Cir. 1992)). This process involves engaging in what the court has deemed “the sliding scale approach”—the more likely the Plaintiffs will succeed on the merits, the less the balance of harms need favor the Plaintiffs’ position. *Id.* The sliding scale approach is not mathematical in nature, rather “it is more properly characterized as subjective and intuitive, one which permits district courts to weigh the competing considerations and mold appropriate relief.” *Id.* at 895-896. The greater the movant’s likelihood of succeeding on the merits, the less the balancing of harms need be in his favor. *See Eli Lilly & Co. v. Natural Answers, Inc.*, 233 F.3d 456, 461 (7th Cir. 2000).

**C. Plaintiff Will Likely Succeed on the Merits.**

1. Plaintiff Will Likely Succeed on Its Copyright Infringement Claim.

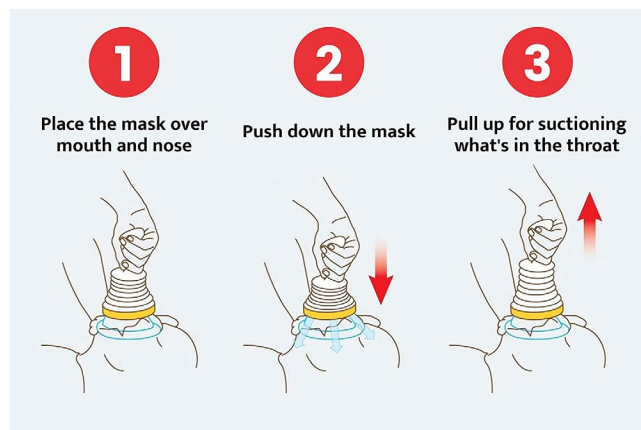
“To establish infringement, two elements must be proven: (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original.” *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361, 111 S. Ct. 1282, 1296, 113 L. Ed. 2d 358 (1991) *see also Peters v. West*, 692 F.3d 629, 632 (7th Cir. 2012). Here, Plaintiff is likely to succeed on the merits of its copyright infringement claim.

First, Plaintiff owns all exclusive rights in the copyrights for the images of Life Vac Products listed in Exhibit 1 hereto, including without limitation copyrights covered by U.S. Copyright Office Registration Nos. VA 2-332-974, VAu 1-489-169, VAu 1-489-170, VA-2-335-339, and VA 2-335-352. Plunkett Decl., ¶ 5; *see* 17 U.S.C. § 501(b) (stating legal or beneficial owner of an exclusive right under a copyright is entitled to institute an action for any infringement); *HyperQuest Inc. v. N’Site Solutions, Inc.*, 632 F.3d 377, 383 (7th Cir. 2011) (noting § 501(b)

provides that holder of an exclusive license to distribute a particular work can sue under the Copyright Act).

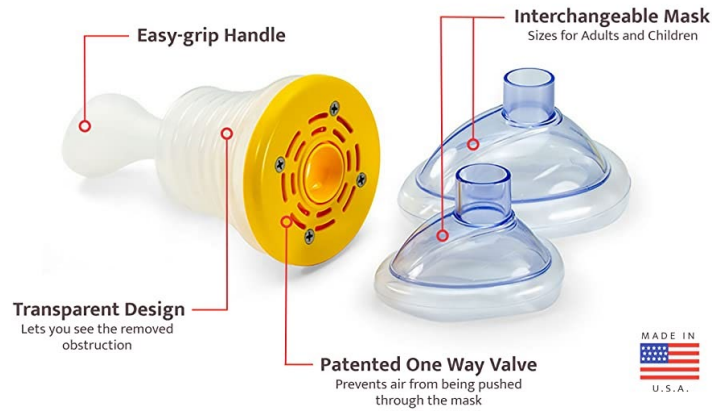
Second, Plaintiff has shown that Defendants have made unauthorized copies of Plaintiff's works. Specifically, Defendants also deceive unknowing consumers by using the LIFEVAC Copyrights without authorization within the product descriptions of their Defendant Internet Stores to attract customers. Plunkett Decl., ¶ 21. As a visual representation, Defendants have directly copied Plaintiff's copyrighted images for the Life Vac Products, or, alternatively, Defendants' representations of Plaintiff's copyrights for the Life Vac Products in the Defendant Internet Stores are strikingly similar, or at the very least substantially similar, to Plaintiff's copyrighted images for the Life Vac Products and constitute unauthorized copying, reproduction, distribution, creation of a derivative work, and/or public display of Plaintiff's copyrighted images for the Life Vac Products. As just one example, Defendants deceive unknowing consumers by using the LIFEVAC Copyrights without authorization within the product descriptions of their Defendant Online Store to attract customers as follows:

*Exemplary Images of Plaintiff's Registered LIFEVAC Copyrights*





## Device Features



### Compared to Exemplary Images from Defendants' Listings of Counterfeit Products

**Lifevac can save the life of someone with an airway obstruction**

The Choking Rescue Device is a non-powered, single patient, airway clearance device developed for resuscitating a victim with an airway obstruction when standard BLS protocol has been followed without success.

Health & Household > Health Care > First Aid > First Aid Kits

### Device Features

**Easy-grip Handle**

**Transparent Design**  
Lets you see the removed obstruction

**Patented One Way Valve**  
Prevents air from being pushed through the mask

**Interchangeable Mask**  
Sizes for Adults and Children

**2 Sets of Suffocation Prevention Emergency Rescue Tools, Suitable for Children and Adults Suffocation First aid Device, Portable Life-Saving Device (Size : Pure Yellow)**

Brand: PSY

**\$17.00**

Return **Save 20%** promo code: TELE20AB Terms

Get \$50 off instantly. Pay \$0.00 \$47.99 upon approval for Amazon Visa. No annual fee.

**Extra Savings** Save \$5 promo code: K2... 1 Applicable Promotion

**Brand** PSY

**Special Feature** Portable, Waterproof, Lightweight, Reus

**Included Components** Rescue Device

**About this item**

- [DEVICE FEATURES]** : Suction suffocation rescue device is a kind of lifesaving suction equipment in the case of airway obstruction emergency. It can effectively remove the throat and

**\$17.00**

\$10 delivery **June 26 - July 6**. Details

Deliver to John - River Forest 60305

**Only 10 left in stock - order soon**

Qty: 1

**Add to Cart**

**Buy Now**

Payment: Secure transaction  
Ships from: Fulfilling us  
Sold by: Fulfilling us  
Returns: Eligible for Return, Refund or Replacement within 30 days of receipt

**Add to List**

Have one to sell?  
**Sell on Amazon**

Complaint at ¶¶ 63-64.

Overall, it is clear that Defendants have copied Plaintiff's image copyrights without Plaintiff's consent.

2. Plaintiff Will Likely Succeed on Its Trademark Infringement and Counterfeiting Claim.

A defendant is liable for trademark infringement and counterfeiting under the Lanham Act if it, "without the consent of the registrant, uses 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[s] is likely to cause confusion, or to cause mistake, or to deceive." 15 U.S.C. § 1114(1) To prove a prima facie case of infringement, Plaintiff must show (1) the mark is distinctive enough to be worthy of protection; (2) Defendants are not authorized to use the trademark; and (3) Defendants' use of the trademark causes a likelihood of confusion as to the origin or sponsorship of Defendants' products. *See Neopost Industrie B.V. v. PFE Int'l Inc.*, 403 F. Supp. 2d 669, 684 (N.D. Ill. 2005) (citation omitted). Plaintiff satisfies all three requirements of the Lanham Act to successfully bring a trademark infringement and counterfeiting claim.

Regarding the first two elements, Plaintiff's LIFEVAC Trademark is inherently distinctive and is registered with the United States Patent and Trademark Office on the Principal Register. The LIFEVAC Trademark has been continuously used since at least 2022 and Plaintiff has and continues to widely market and promote the LIFEVAC Trademark in the industry and to consumers. Plunkett Decl., ¶ 12. The registration for the LIFEVAC Trademark is valid, subsisting, and in full force and effect. *See id.*, ¶ 6 and Ex. 2 attached thereto. The registration for the LIFEVAC Trademark constitutes prima facie evidence of their validity and of Plaintiff's exclusive right to use the LIFEVAC Trademark pursuant to 15 U.S.C. § 1057(b). Furthermore, Plaintiff has not licensed or authorized Defendants to use the LIFEVAC Trademark, and none of the Defendants is an authorized retailer of genuine Life Vac Products. *See Plunkett Decl.*, ¶ 17.

Plaintiff satisfies the third factor as well. Some courts, including in this District, do not undertake a factor-by-factor analysis under *Polaroid Corp. v. Polarad Electronics Corp.*, 287 F.2d

492, 495 (2d Cir. 1961), because counterfeits, by their very nature, cause confusion. *See Bulgari, S.P.A. v. Zou Xiaohong*, 2015 WL 6083202, at \*2 (N.D. Ill. Oct. 15, 2015) (“Moreover, counterfeit goods—those bearing a ‘spurious mark which is identical with, or substantially indistinguishable from, a registered mark’—are presumed to create a likelihood of confusion.”) (quoting 15 U.S.C. § 1127); *Topps Co., Inc. v. Gerrit J. Verburg Co.*, 41 U.S.P.Q.2d 1412, 1417 (S.D.N.Y. 1996) (“Where the marks are identical, and the goods are also identical and directly competitive, the decision can be made directly without a more formal and complete discussion of all of the Polaroid factors.”); *Polo Fashions, Inc. v. Craftex, Inc.*, 816 F.2d 145, 148 (4th Cir. 1987) (“Where, as here, 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.”).

In general, the Seventh Circuit has enumerated seven factors to determine whether there is a likelihood of confusion: (1) similarity between the marks in appearance and suggestion; (2) similarity of the products; (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. *Eli Lilly*, 233 F.3d at 461–62 (citation omitted). These factors are not a mechanical checklist, and “[t]he proper weight given to each of [the] factors will vary from case to case.” *Dorr-Oliver, Inc. v. Fluid-Quip, Inc.*, 94 F.3d 376, 381 (7th Cir. 1996). At the same time, although no one factor is decisive, the similarity of the marks, the intent of the defendant, and evidence of actual confusion are the most important considerations. *CAE, Inc. v. Clean Air Eng’g, Inc.*, 267 F.3d 660, 686 (7th Cir. 2001). In this case, Plaintiff plainly satisfies the likelihood of confusion test. The Defendants are selling Counterfeit Life Vac Products using counterfeit marks identical to or substantially indistinguishable from the LIFEVAC Trademark, and in respect of goods identical to the genuine Life Vac products. As such, the first and second likelihood of confusion factors weigh heavily in favor of Plaintiff.

Plaintiff also satisfies the third factor, namely, the area and manner of concurrent use. When considering the third factor, a court looks at “whether there is a relationship in use, promotion, distribution or sales between the goods or services of the parties.” *Id.* at 681. A court also looks to

whether the parties used the same channels of commerce, targeted the same general audience, and/or used similar marketing procedures. *Id.* Here, in respect of the majority of Defendants that Plaintiff alleges have committed trademark infringement, both Plaintiff and Defendants show the very same product using the LIFEVAC Trademark to the same consumers. *Compare generally* Complaint ¶ 63 *with* Plunkett Decl., Ex. 3. Thus, because Defendants target the same consumers as Plaintiff, this factor also weighs in favor of Plaintiff.

Regarding the fourth factor, degree of consumer care, potential consumers purchasing Life Vac Products are not restricted to a certain specialized, sophisticated group of people. Rather, the consumer base is a diverse group of people. “[W]hen a buyer class is mixed, the standard of care to be exercised by the reasonably prudent purchaser will be equal to that of the least sophisticated consumer in the class.” *Trans Union LLC v. Credit Research, Inc.*, 142 F. Supp. 2d 1029, 1043 (N.D. Ill. 2001) (citation omitted). As such, LIFEVAC brand consumers are very likely to be confused, so this factor favors Plaintiff.

Due to their long-standing use and wide acceptance by the public, the LIFEVAC Trademark has become famous and associated with high quality Life Vac Products. The LIFEVAC Trademark is distinctive when applied to the Life Vac Products. The mark signifies to consumers that the products come from Plaintiff and are manufactured to the highest quality standards, which have been recognized through prestigious industry awards and business rankings. Plunkett Decl., ¶ 9. Thus, the fifth factor, the strength of the marks, also weighs heavily in favor of Plaintiff.

As for the sixth factor, Plaintiff does not need to prove likelihood of confusion with evidence of actual confusion; instead, it merely needs to show **some** evidence of potential confusion. *See Libman Co. v. Vining Indus., Inc.*, 69 F.3d 1360, 1363 (7th Cir.1995); *see also Sands, Taylor & Wood Co. v. Quaker Oats Co.*, 978 F.2d 947, 960 (7th Cir. 1992) (the Seventh Circuit has consistently found that “Plaintiffs need not show actual confusion in order to establish likelihood of confusion.”). In this case, actual confusion can be inferred because Defendants are selling counterfeit Life Vac Products in connection with the LIFEVAC Trademark. *See Bulgari*, 2015 WL 6083202, at \*2. Because the goods are similar and have identical and similar uses, consumers will

be confused and think that Defendants' products are genuine Life Vac Products or are sponsored or endorsed by Plaintiff. This factor weighs in favor of Plaintiff.

Regarding the seventh and final factor, Defendants are intentionally using the LIFEVAC Trademark to confuse and deceive the consuming public into thinking that Defendants' Counterfeit Life Vac Products are manufactured by or emanate from Plaintiff. Defendants are purposefully attempting to benefit and trade off Plaintiff's goodwill and reputation. Therefore, the final factor regarding Defendants' intent also weighs heavily in Plaintiff's favor.

In sum, each of the seven likelihood of confusion factors weighs heavily in favor of Plaintiff, and, therefore, Plaintiff has proved that it has a reasonable likelihood of success on the merits for its trademark infringement and counterfeiting claim.

3. Plaintiff Is Likely to Succeed on Its False Designation of Origin Claim.

A plaintiff bringing a false designation of origin claim under 15 U.S.C. § 1125(a) must show that: (1) the plaintiff has a protectable trademark; and (2) a likelihood of confusion will exist as to the origin of the plaintiff's products. *All Star Championship Racing, Inc. v. O'Reilly Auto. Stores, Inc.*, 940 F. Supp. 2d 850, 865 (C.D. Ill. 2013) (citing *Johnny Blastoff, Inc. v. Los Angeles Rams Football Co.*, 188 F. 3d 427, 436 (7th Cir. 1999)). This is the same test that is used for determining whether trademark infringement has occurred under the Lanham Act. *See Neopost*, 403 F. Supp. 2d at 684–85. Because the LIFEVAC Trademark is a registered mark, and Plaintiff has established a likelihood of success on the merits of its trademark infringement and counterfeiting claim against Defendants, as shown above, a likelihood of success on the merits for Plaintiff's false designation of origin claim is also established.

4. Plaintiff Is Likely to Succeed on Its Illinois Uniform Deceptive Trade Practices Act Claim.

In Illinois, courts resolve unfair competition and deceptive trade practices claims "according to the principles set forth under the Lanham Act." *Spex, Inc. v. Joy of Spex, Inc.*, 847 F. Supp. 567, 579 (N.D. Ill. 1994). Illinois courts look to federal case law and apply the same analysis to state infringement claims. *Id.* (citation omitted). The determination as to whether there

is a likelihood of confusion is similar under both the Lanham Act and the Illinois Uniform Deceptive Trade Practices Act. *See Ent. One UK Ltd. v. 2012Shiliang*, 384 F. Supp. 3d 941, 952 (N.D. Ill. 2019).

Because Plaintiff has established a likelihood of success on the merits of its trademark infringement and counterfeiting, false designation of origin, and copyright infringement claims, and against Defendants, as shown above, and the standard is the same under Illinois law, Plaintiff has established a likelihood of success on the merits for its Illinois Uniform Deceptive Trade Practices Act claim.

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

Irreparable harm warranting the issuance of a temporary restraining order exists when a defendant infringes either a copyright or a trademark. Here, because Defendants have made unauthorized use of both the LIFEVAC Copyrights and LIFEVAC Trademark, Plaintiff has been irreparably harmed and will continue to be so harmed unless the Court enjoins Defendants' infringement.

“The Seventh Circuit has ‘repeatedly held that damage to a trademark holder's goodwill can constitute irreparable injury for which the trademark owner has no adequate legal remedy.’” *USA-Halal Chamber of Com., Inc. v. Best Choice Meats, Inc.*, 402 F. Supp. 3d 427, 437 (N.D. Ill. 2019) (quoting *Re/Max N. Cent., Inc. v. Cook*, 272 F.3d 424 (7th Cir. 2001)).

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., Inc.*, 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); *see also, Otter Prods. V. Anke Group Indus. Ltd.*, 2:13-cv-00029, 2013 WL 5910882, at \*2 (D. Nev. Jan. 8, 2013) (explaining that absent the requested TRO, plaintiff were likely to suffer “irreparable injury . . . in the form of (a) loss of

control over its intellectual property rights; (b) loss of consumer goodwill; and (c) interference with [plaintiff's] ability to exploit the OTTERBOX trademarks [...]."); *see also* 4 *Callmann on Unfair Competition, Trademarks and Monopolies* § 88.3(b) at 205 (3d ed. 1970). 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).

While loss of goodwill is “more commonly associated with trademark cases, [ ] it is applicable to copyright as well.” *Ty, Inc. v. GMA Accessories, Inc.*, 132 F.3d 1167, 1173 (7th Cir. 1997). Thus, damage to a copyright holder’s goodwill “is unquantifiable and therefore irreparable.” *Spinmaster, Ltd. v. Overbreak LLC*, 404 F. Supp. 2d 1097, 1111 (N.D. Ill. 2005); *see also Jefferson v. Johnson Publishing, Inc.*, 1992 WL 318615, at \*2 (N.D. Ill. Oct. 28, 1992) (“The Seventh Circuit and other courts have held that ‘the most corrosive irreparable harm’ attributable to copyright infringement is the victim’s inability to control the nature and quality of the infringer’s goods.”) (citing cases). 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); *see also USA-Halal Chamber of Com., Inc. v. Best Choice Meats, Inc.*, 402 F. Supp. 3d 427, 437 (N.D. Ill. 2019) (quoting *Re/Max N. Cent., Inc. v. Cook*, 272 F.3d 424, 432 (7th Cir. 2001) (“The Seventh Circuit has ‘repeatedly held that damage to a trademark holder's goodwill can constitute irreparable injury for which the trademark owner has no adequate legal remedy.’”); 17 U.S.C. §§ 502, 503 (providing for injunctive relief for copyright infringement; enjoining any use or exploitation by Defendants of their infringing work and that any of Defendants’ infringing products be impounded and destroyed). A plaintiff with a copyright infringement claim “has the right to protect their reputation as well as their sales from infringers.” *Spinmaster*, 404 F. Supp. 2d at 1111.

Defendants’ unauthorized use of the LIFEVAC Copyrights and LIFEVAC Trademark, along with their substantial efforts to mislead and confuse consumers, have and continue to irreparably harm Plaintiff through diminished goodwill and brand confidence, reputational damage, loss of exclusivity, and loss of future sales. *See* Plunkett Decl., ¶¶ 29-33. The extent of the harm to Plaintiff’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 plaintiffs' goodwill was irreparable harm for which plaintiffs had no adequate remedy at law); *Gateway Eastern Railway Co. v. Terminal Railroad Assoc. of St. Louis*, 35 F.3d 1134, 1140 (7th Cir. 1994) ("[S]howing injury to goodwill can constitute irreparable harm that is not compensable by an award of money damages."). Plaintiff 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). *See Plunkett Decl.*, ¶ 34. As such, Plaintiff should be granted preliminary relief.

**E. The Balancing of Equities Tips in Plaintiff's Favor.**

As noted above, if the Court is satisfied that Plaintiff 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 must next consider the harm that Defendants will suffer if preliminary relief is granted, balancing such harm against the irreparable harm Plaintiff will suffer if relief is denied. *Ty, Inc.*, 237 F.3d at 895.

"As willful infringers, Defendants are entitled to little equitable consideration." *Bulgari, S.p.A. v. Partnerships & Unincorporated Associations Identified On Schedule "A"*, 2014 WL 3749132, at \*6 (N.D. Ill. July 18, 2014). "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 marks 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 Plaintiffs' trademark." *Malarkey-Taylor Assocs., Inc. v. Cellular Telecomms. Indus. Ass'n*, 929 F. Supp. 473, 478 (D.D.C. 1996).



Where the evidence shows that a defendant “has knowingly engaged in infringing activities as a regular feature of its business,” the effect of an injunction on a defendant’s business is given little equitable consideration. *ISC-Bunker Ramo Corp. v. Altech, Inc.*, 765 F. Supp. 1310, 1332 (N.D. Ill. 1990); *Horn Abbot Ltd. v. Sarsaparilla Ltd.*, 601 F. Supp. 360 (N.D. Ill. 1984) (to consider a “blatant” copyright infringer’s argument “that an injunction will put them out of business, is to pervert the meaning of the balance of hardships test”). If a “defendant appears to be a brazen infringer,” a defendant should receive little equitable consideration from the Court. *American Greetings Corp. v. Kleinfab Corp.*, 400 F. Supp. 228, 234 (S.D.N.Y. 1975); *see also Bulgari, S.p.A.*, 2014 WL 3749132, at \*6 (“As willful infringers, Defendants are entitled to little equitable consideration”). In that regard, where the evidence shows that a defendant has knowingly engaged in infringing activities, it follows that [the defendant] is not legally harmed by the fact that it cannot continue” such misconduct, “even if this ultimately puts [the defendant] out of business. *WPIX, Inc. v. ivi, Inc.*, 765 F. Supp. 2d 594, 621 (S.D.N.Y. 2011), *aff’d*, 691 F.3d at 287. Indeed, “[i]t is axiomatic that an infringer of copyright cannot complain about the loss of ability to offer its infringing product. *WPIX, Inc.*, 691 F.3d at 287 (citation omitted).

As Plaintiff has demonstrated, Defendants have been profiting from the sale of Counterfeit Life Vac Products. Thus, the balance of equities tips decisively in Plaintiff’s favor. As such, equity requires that Defendants be ordered to cease their unlawful conduct.

**F. Issuance of the Injunction Is in the Public Interest.**

An injunction in these circumstances because “it will preserve the integrity of the copyright laws, which embody an important national policy of encouraging creativity.” *ISC-Bunker Ramo Corp. v. Altech, Inc.*, 765 F. Supp. 1310, 1332 (N.D. Ill. 1990). Likewise, “the public plainly has an interest in preventing people from copying for commercial use the entire contents of a copyrighted work.” *Horn Abbot*, 601 F. Supp. at 369; *Jefferson v. Johnson Pub., Inc.*, 1992 WL 318615, at \*2 (N.D. Ill. Oct. 28, 1992 (“The public interest would certainly be disserved if defendants were permitted to continue to knowingly infringe Plaintiff’s [copy]rights.”)),

An injunction further serves the public interest in this case because it will prevent consumer confusion and stop Defendants from violating federal trademark law. The public is currently under the false impression that Defendants are operating their Defendant Internet Stores with Plaintiff's approval and endorsement. An injunction serves the public interest in this case "because enforcement of the trademark laws prevents consumer confusion." *Eli Lilly*, 233 F.3d at 469.

Federal courts have long held that "the trademark laws . . . are concerned not alone with the protection of a property right existing in an individual, but also with the protection of the public from fraud and deceit." *Stahly, Inc. v. M.H. Jacobs Co.*, 183 F.2d 914, 917 (7th Cir. 1950) (citations omitted). The public interest is further served by protecting "the synonymous right of a trademark owner to control his product's reputation." *James Burrough Ltd. v. Sign of the Beefeater, Inc.*, 540 F.2d 266, 274 (7th Cir. 1976); *see also Shashi, Inc. v. Ramada Worldwide, Inc.*, No. 7:05-cv-00016-JGW-mfu, 2005 WL 552593, at \*4 (W.D. Va. Mar. 1, 2005) ("It is in the best interest of the public for the court to defend the integrity of the intellectual property system and to prevent consumer confusion."); *New York City Triathlon, LLC v. NYC Triathlon Club, Inc.*, 704 F. Supp. 2d 305, 344 (S.D.N.Y. 2010) ("[T]he public has an interest in not being deceived – in being assured that the mark it associates with a product is not attached to goods of unknown origin and quality.").

In this case, the injury to the public is significant, and the injunctive relief that Plaintiff seeks is specifically intended to remedy that injury by dispelling the public confusion created by Defendants' actions. The public has the right not to be confused and defrauded as to the source of the goods and services offered by Defendants, or as to the identity of the owner of copyrights used in connection with those goods and services. Unless Defendants' unauthorized use of the LIFEVAC Copyrights and LIFEVAC Trademark is enjoined, the public will continue to be confused and misled by Defendants' conduct.

For these reasons, it is respectfully submitted that granting Plaintiff's Motion for Entry of a Temporary Restraining Order is in the public interest.

**IV. THE EQUITABLE RELIEF SOUGHT IS APPROPRIATE.**

In addition to this Court's inherent authority to issue injunctive relief, 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); *see also* 17 U.S.C. §§ 502, 503 (providing for injunctive relief for copyright infringement; enjoining any use or exploitation by Defendants of their infringing work and that any of Defendants' infringing products be impounded and destroyed).

Furthermore, Rule 65(b) of the Federal Rules of Civil Procedure provides that a court may issue a temporary restraining order without notice where facts show that the movant will suffer immediate and irreparable injury, loss, or damage before the adverse party can be heard in opposition. Moreover, under Federal Rule of Civil Procedure 65(d)(2)(C), this Court has the power to bind any third parties, such as domain name registries and financial institutions, who are in active concert with the Defendants or who aid and abet Defendants and are given actual notice of the order. Fed. R. Civ. P. 65. The facts in this case warrant such relief.

**A. A Temporary Restraining Order Immediately Enjoining Defendants' Unlawful Use of Plaintiff's Intellectual Property Is Appropriate.**

Plaintiff requests a temporary injunction requiring the Defendants to immediately cease all use of either the LIFEVAC Copyrights or LIFEVAC Trademark on or in connection with all Defendant Internet Stores. Such relief is necessary to stop the ongoing harm to LIFEVAC Copyrights and LIFEVAC Trademark and associated goodwill, as well as harm to consumers, and to prevent the Defendants from continuing to benefit from their unauthorized use of the LIFEVAC Copyrights and LIFEVAC Trademark.

The need for *ex parte* relief is magnified in today's global economy where counterfeiters can operate over the Internet in an anonymous fashion. Plaintiff is currently unaware of both the true identities and locations of the Defendants, as well as other Defendant Internet Stores used to distribute Counterfeit Life Vac Products.

Many courts have authorized immediate injunctive relief in similar cases involving the unauthorized of intellectual property rights and counterfeiting. *See, e.g., ZURU*, No.: 1-21-CV-02180, Document # 14 (granting orders requested herein in a similar case involving Plaintiffs' BUNCH O BALLOONS Copyright Works and Trademark); *see also Square One Entertainment Inc. v. The Partnerships and Unincorporated Associations Identified in Schedule "A" Defendants*, No. 20 C 5685, 2021 WL 1253450, at \*1 (Durkin, J.); *Creative Impact*, No.:1:19-cv-05907, Document #: 17; *Creative Impact*, No. 1:18-cv-07531, Document #: 16 (Durkin, J.); *Kraft Food Holdings, Inc. v. Helm*, 205 F. Supp. 2d 942, 956 (N.D. Ill. 2002) (granting preliminary injunction requiring defendant to "immediately" remove all references to versions of Plaintiffs' mark, including removing all references "from metatags, metanames or any other keywords on his websites"); *Ford Motor Co. v. Lapertosa*, 126 F. Supp. 2d 463 (E.D. Mich. 2001) (enjoining Defendant from "using in any way the Internet domain name 'fordrecalls.com'").

**B. Transferring the Defendant Domain Names to Plaintiff's Control Is Appropriate.**

As a part of the Temporary Restraining Order, Plaintiff also seeks temporary transfer of the Defendant Domain Names to Plaintiff's control in order to disable the counterfeit websites and electronically publish notice of this case to Defendants. Defendants involved in domain name litigation easily can, and often will, change the ownership of a domain name or continue operating the website while the case is pending. Accordingly, to preserve the status quo and ensure the possibility of eventual effective relief, courts in intellectual property infringement cases involving domain names regularly grant the relief requested herein. *See, e.g., Deckers Outdoor Corp. v. Partnerships & Unincorporated Associations*, 2013 WL 1337616, at \*9 (N.D. Ill. Mar. 27, 2013) ("This Court agrees with the several other courts in this district . . . . Absent a transfer of domain names to the Plaintiff, the Defendants in this case may be able to evade the Court's restraining order by changing ownership of the domain name and continuing to operate their online marketplaces while this case is pending."); *ZURU*, No.: 1-21-CV-02180, Document # 14 (granting requested domain name transfer in a similar case involving Plaintiffs' BUNCH O BALLOONS

Copyright Works and Trademark); *See also, e.g., Board of Directors of Sapphire Bay Condos. W. v. Simpson*, 129 F. App'x 711 (3d Cir. 2005) (affirming District Court's granting of the preliminary injunction ordering defendant to "cancel his registration of the domain name and refrain from using the name, or any derivative thereof, for any Web site under his ownership or substantial control"); *Philip Morris U.S.A., Inc. v. Otamedia Ltd.*, 331 F. Supp. 2d 228, 246 (S.D.N.Y. 2004) (granting order transferring ownership of Defendant's Internet domain names to Plaintiff); *Ford Motor Co.*, 126 F. Supp. 2d at 466 (granting Plaintiff's preliminary injunction because, among other things, "Defendant's misappropriation of the goodwill [Plaintiff] has developed in the mark by registering the [infringing] Internet domain name . . . significantly tarnishes [Plaintiff's] reputation").

As such, Plaintiff respectfully requests that, as part of the Temporary Restraining Order, the Court require the relevant registries and/or registrars for the Defendant Domain Names to transfer the Defendant Domain Names to Plaintiff.

**C. Preventing the Fraudulent Transfer of Assets Is Appropriate.**

Plaintiff requests an *ex parte* restraint of Defendants' assets so that Plaintiff's right to an equitable accounting of Defendants' profits from sales of Counterfeit Life Vac Products is not 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, it appears that the Defendants in this case hold most of their assets in foreign countries, making it easy to hide or dispose of assets, which will render an accounting by Plaintiff meaningless.

Courts have the inherent authority to issue a prejudgment asset restraint when plaintiffs' complaint seeks relief in equity. *CSC Holdings, Inc. v. Redisi*, 309 F.3d 988 (7th Cir. 2002) ("since the assets in question . . . were the profits of the [defendants] made by unlawfully stealing [the plaintiffs'] services, the freeze was appropriate and may remain in place pending final disposition of this case."); accord 5 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 30:40 (4th ed. 2013); *see also Cengage Learning*, 2018 WL 2244461 (the Court recognized that it was explicitly allowed to issue a restraint on assets for lawsuits seeking equitable relief (citing

*Grupo Mexicano*, 527 U.S. at 324–26. Because the plaintiffs sought an accounting of the defendants’ profits, an equitable remedy, the Court found that it had the authority to freeze the defendants’ assets. *Id.*); *Animale Grp. Inc. v. Sunny’s Perfume Inc.*, 256 F. App’x 707, 709 (5th Cir. 2007); *Levi Strauss & Co. v. Sunrise Int’l Trading Inc.*, 51 F.3d 982, 987 (11th Cir. 1995); *Reebok Int’l Ltd. v. Marnatech Enters., Inc.*, 970 F.2d 552, 559 (9th Cir. 1992).

In addition, Plaintiff 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) Plaintiff is entitled, “subject to the principles of equity, to recover . . . defendant’s profits.” Plaintiff’s Complaint seeks, among other relief, that Defendants account for and pay to Plaintiff all profits realized by Defendants by reason of Defendants’ unlawful acts. *See Johnson & Johnson v. Advanced Inventory Mgmt., Inc.*, 2020 WL 8262230, at \*1 (N.D. Ill. Oct. 19, 2020) (“The Court has authority to freeze assets to preserve an equitable accounting of profits to counterfeiting victims under 15 U.S.C. § 1117(a).”). Therefore, this Court has the inherent equitable authority to grant Plaintiff’s request for a prejudgment asset freeze to preserve the relief sought by Plaintiff. The Northern District of Illinois previously entered an asset restraining order in a trademark infringement case brought by a tobacco company against owners of a store selling counterfeit cigarettes. *Lorillard Tobacco Co. v. Montrose Wholesale Candies*, 2005 WL 3115892, at \*13 (N.D. Ill. Nov. 8, 2005). The Court, citing *Grupo Mexicano de Desarrollo, S.A. v. Aliance Bond Fund*, 527 U.S. 308 (1999), recognized that it was explicitly allowed to issue a restraint on assets for lawsuits seeking equitable relief. *Id.* (citing *Grupo Mexicano*, 527 U.S. at 325 (citing *Deckert v. Independence Shares Corp.*, 311 U.S. 282 (1940)). 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. *Id.*

Plaintiff has also shown a strong likelihood of succeeding on the merits of copyright infringement claim, so under the Copyright Act, Plaintiff is “entitled to recover the actual damages suffered . . . as a result of the infringement, and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages.” 17 U.S.C. §

504(b). Plaintiff's Complaint seeks, among other relief, that Defendants account for and pay to Plaintiff all profits realized by Defendants by reason of Defendants' unlawful acts. *See Microsoft Corp. v. 9038-3746 Quebec, Inc.*, No. 06CV0892, 2007 WL 3232465, at \*1 (N.D. Ohio, Nov. 1, 2007) (granting temporary restraining order freezing certain business assets "pursuant to Federal Rule of Civil Procedure 65, the Court's general equitable power, and the Court's statutory authority to order disgorgement of profits pursuant to . . . 17 U.S.C. § 504(b)"). Therefore, this Court has the inherent equitable authority to grant Plaintiff's request for a prejudgment asset freeze to preserve the relief sought by Plaintiff.

Plaintiff 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 offshore bank accounts. Accordingly, the granting of an injunction preventing the transfer of Defendants' assets is proper.

**D. Plaintiff Is Entitled to Expedited Discovery.**

The 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) (citing *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S. Ct. 2380 (1978)). A district court has wide latitude in determining whether to grant a party's request for discovery. *Hay v. Indiana State Bd. of Tax Comm'rs*, 312 F.3d 876, 882 (7th Cir. 2002).

Furthermore, 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); *Rodriguez v. Plymouth Ambulance Serv.*, 577 F.3d 816, 832 (7th Cir. 2009). As described above, Defendants are using third-party payment processors such as Visa, PayPal, AliPay, Wish, Payoneer and Western Union, which helps to increase their anonymity by interposing a third party between the consumer and Defendants. Without being able to discover Defendants' bank and payment system accounts, any asset restraint would be of limited value because Plaintiff would not know the entities upon whom to serve the order.

Plaintiff respectfully requests expedited discovery to discover bank and payment-system accounts Defendants use for their counterfeit sales operations. The discovery requested on an expedited basis in Plaintiff's Proposed Temporary Restraining Order has been limited to include only 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.

Under Federal Rule of Civil Procedure 65(d)(2)(C), this Court has the power to bind any third party who is in active concert with the Defendants that is given notice of the order to provide expedited discovery in this action. Fed. R. Civ. P. 65 (d)(2)(C). As Defendants have engaged in many deceptive practices in hiding their identities and accounts, Plaintiff's seizure and asset restraint in the Temporary Restraining Order may have little meaningful effect without the requested relief. Accordingly, Plaintiff respectfully requests that expedited discovery be granted.

**E. Service of Process by E-mail and Electronic Publication Is Warranted in this Case.**

Pursuant to Federal Rule of Civil Procedure 4(f)(3), Plaintiff requests authorization to serve process by e-mail and by electronically publishing a link to the Complaint, the Temporary Restraining Order, and other relevant documents on a website to which the Defendant Internet Stores will be transferred (the "Link"). Plaintiff submits that providing notice via electronic publication and e-mail, along with any notice that Defendants receive from the online marketplace providers and payment processors, is reasonably calculated under all circumstances to apprise Defendants of the pendency of the action and afford them the opportunity to present their objections.

Electronic service is appropriate and necessary in this case because the Defendants: (1) have provided false names and physical address information in their registrations for the Defendant Domain Names in order to conceal their locations and avoid liability for their unlawful conduct; and (2) rely primarily on electronic communications to communicate with their registrars and customers, demonstrating the reliability of this method of communication by which the registrants of the Defendant Domain Names may be apprised of the pendency of this action.



Authorizing service of process solely via e-mail and/or electronic publication will benefit all parties and the Court by ensuring that Defendants receive prompt notice of this action, thus allowing this action to move forward expeditiously. Absent the ability to serve Defendants in this manner, Plaintiff will almost certainly be left without the ability to pursue a final judgment.

According to Section 4.1 of the Registrar Accreditation Agreement established by the Internet Corporation for Assigned Names and Numbers (“ICANN”), an individual or entity that registers a domain name is required to “provide to ICANN and publish on its website its accurate contact details including a valid email and mailing address.” *See* Tom Decl., ¶ 6. Contrary to applicable ICANN regulations, it is common practice for counterfeiters to register their domain names with incomplete information, randomly typed letters, or omitted cities or states, in order to avoid full liability. And indeed, many of Defendants’ names and physical addresses used to register the Defendant Domain Names are incomplete, contain randomly typed letters, fail to include cities or states, or use privacy services that conceal this information. *See* Plunkett Decl., ¶ 23. Similarities between the Defendant Internet Stores also suggest that many of the aliases used to register the Defendant Domain Names are used by the same individual or entity. *Id.* ¶ 24.

Despite providing false physical addresses, the registrants of the Defendant Domain Names must generally provide an accurate e-mail address so that their registrars may communicate with them regarding issues related to the purchase, transfer, and maintenance of the various accounts. Likewise, online marketplace account operators accepting PayPal, for example, must provide a valid e-mail address to customers for completing payment. Moreover, it is necessary for merchants, such as the registrants of the Defendant Domain Names, who operate entirely online, to visit their Internet Store to ensure it is functioning and to communicate with customers electronically. As such, it is far more likely that Defendants can be served electronically than through traditional service of process methods.

Federal Rule of Civil Procedure 4(f)(3) allows this Court to authorize service of process by any means not prohibited by international agreement as the Court directs. *See Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002). The Ninth Circuit in *Rio Properties*

held, “without hesitation,” that e-mail service of an online business defendant “was constitutionally acceptable.” *Id.* at 1017. The Court reached this conclusion, in part, because the defendant conducted its business over the Internet, used e-mail regularly in its business, and encouraged parties to contact it via e-mail. *Id.*

Likewise, in Plaintiff’s experience with similar defendants in other matters, Defendants are almost certain to regularly rely on and use the e-mail addresses that the Defendants provide to Alibaba, AliExpress, Amazon, eBay, and Wish and other third-party payment processors in order to communicate concerning monies received through the Defendant Internet Stores. Thus, obtaining such e-mail addresses from Alibaba, AliExpress, Amazon, eBay, and Wish is often the fastest and most direct way to get into contact with individuals and entities like the Defendants that are engaged in the sale of counterfeit products. *See Plunkett Decl.*, ¶ 28. Indeed, Defendants appear to rely primarily on electronic communications to communicate with their customers, demonstrating the reliability of this method of communication by which the Defendants may be apprised of the pendency of this action. Authorizing service of process solely via e-mail and/or electronic publication will benefit all parties and the Court by ensuring that Defendants receive prompt notice of this action, thus allowing this action to move forward expeditiously.

Notably, a number of courts, including in this District, have held that alternative forms of service pursuant to Rule 4, including e-mail service, are appropriate and may be the only means of effecting service of process “when faced with an international e-business scofflaw.” *Rio*, 284 F.3d at 1018; *see e.g., Fairly Odd Treasures, LLC v. Partnerships & Unincorporated Associations Identified on Schedule “A”*, 2020 WL 8093511, at \*1 (N.D. Ill. Oct. 28, 2020) (“Service of process by e-mail has been upheld in circumstances similar to those here.”) (quoting *Strabala v. Zhang*, 318 F.R.D. 81 (N.D. Ill. 2016)); *MacLean-Fogg Co. v. Ningbo Fastlink Equip. Co., Ltd.*, No. 1:08-cv-02593, 2008 WL 5100414, \*2 (N.D. Ill. Dec. 1, 2008) (holding e-mail and facsimile service appropriate); *NBA Properties, Inc. v. Partnerships and Unincorporated Associations Identified in Schedule “A”*, No. 20-cv-07543, 549 F.Supp.3d 790, 797 (N.D. Ill. 2021) permitting service by email and noting that “speedy method of service . . . was justified to ensure, among other reasons,

that the funds gained by the allegedly infringing conduct would be recoverable.”); *Cengage Learning*, 2018 WL 2244461, at \*5 (finding email service appropriate under Rule 4(f)(3) in copyright and trademark infringement case); *Kipling Apparel Corp.*, 2016 WL 8814345, at 3 (ordering email service pursuant to Rule 4 in trademark counterfeiting case); *Chrome Cherry Ltd. v. The Partnership, et al.*, 21-cv-05491, 2021 WL 6752296, at \*2 (granting electronic service of process against foreign defendants, including located in China, in design patent infringement case, holding “[e]lectronic service of process does not violate any treaty and is consistent with due process, because it effectively communicates the pendency of this action to Defendants.”); *Popular Enters., LLC v. Webcom Media Group, Inc.*, 225 F.R.D. 560, 563 (E.D. Tenn. 2004) (quoting *Rio*, 284 F.3d at 1018) (allowing e-mail service); see also *Juniper Networks, Inc. v. Bahattab*, No. 1:07-cv-01771-PLF-AK, 2008 WL 250584, \*1-2, (D.D.C. Jan. 30, 2008) (citing *Rio*, 284 F.3d at 1017-1018; other citations omitted) (holding that “in certain circumstances . . . service of process via electronic mail . . . is appropriate and may be authorized by the Court under Rule 4(f)(3) of the Federal Rules of Civil Procedure”).

Plaintiff submits that allowing service solely by e-mail and electronic publication in the present case is appropriate and comports with constitutional notions of due process, particularly given the decision by the registrants of the Defendant Domain Names to conduct their Internet-based activities anonymously.

Furthermore, Rule 4 does not require that a party attempt service of process by other methods enumerated in Rule 4(f) before petitioning the court for alternative relief under Rule 4(f)(3). *Rio Props. v. Rio Intern. Interlink*, 284 F.3d at 1014-15. As the *Rio Properties* court explained, Rule 4(f) does not create a hierarchy of preferred methods of service of process. *Id.* at 1014. To the contrary, the plain language of the Rule requires only that service be directed by the court and not be prohibited by international agreement. There are no other limitations or requirements. *Id.* Alternative service under Rule 4(f)(3) is neither a “last resort” nor “extraordinary relief,” but is rather one means among several by which an international defendant may be served.

*Id.* As such, this Court may allow Plaintiff to serve the Defendants via electronic publication and/or e-mail.

Additionally, Plaintiff is unable to determine the exact physical whereabouts or identities of the registrants of the Defendant Domain Names due to their provision of false and incomplete street addresses. Plaintiff, however, has good cause to suspect the registrants of the respective Defendant Domain Names are mainly residents of China. The United States and the People's Republic of China are both signatories to the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil and Commercial Matters (the "Hague Convention"). *See* Tom Decl., ¶ 7. The Hague Convention does not preclude service by e-mail, and the declarations to the Hague Convention filed by China do not appear to expressly prohibit e-mail service. *Id.*; *see also Hangzhou Chic Intelligent Technology Co. v. The Partnerships and Unincorporated Associations Identified on Schedule A*, 2021 WL 1222783, at \*3 (N.D. Ill. Apr. 1, 2021) ("For these reasons, the Court finds it is inappropriate to interpret China's objections to postal service under the Hague Convention as encompassing service by email."). Additionally, according to Article 1 of The Hague Convention, the "convention shall not apply where the address of the person to be served with the document is not known." Tom Decl., ¶ 7 & Ex. 5.

As such, federal courts, including in this District, routinely permit alternative service of process notwithstanding the applicability of the Hague Convention. *See Hangzhou Chic*, 2021 WL 1222783, at \*4 ("[T]he Court finds that China has not 'objected' to email service, and the Court's order of email service pursuant to Rule 4 was appropriate."); *see also In re LDK Solar Secs. Litig.*, 2008 WL 2415186, at \*2 (N.D. Cal. Jun. 12, 2008) (authorizing alternative means of service on Chinese defendants without first attempting "potentially fruitless" service through the Hague Convention's Chinese Central Authority); *Nanya Tech. Corp. v. Fujitsu Ltd.*, No. 1:06-cv-00025, 2007 WL 269087, at \*6 (D. Guam Jan. 26, 2007) (Hague Convention, to which Japan is a signatory, did not prohibit e-mail service upon Japanese defendant); *Popular Enters., LLC*, 225 F.R.D. at 562 (recognizing that, while "communication via e-mail and over the internet is comparatively new, such communication has been zealously embraced within the business

community”). *But see Luxottica Grp. S.p.A. v. Partnerships & Unincorporated Associations Identified on Schedule "A"*, No. 18 CV 2188, 2019 WL 2248541 (N.D. Ill. May 24, 2019), reconsideration denied in part, No. 18 CV 2188, 2019 WL 2357011 (N.D. Ill. June 4, 2019)

In addition, the law of the People’s Republic of China does not appear to prohibit electronic service of process. *See Tom Decl.*, ¶ 8 & Ex. 6. The proposed Temporary Restraining Order provides for issuance of a single original summons<sup>3</sup> in the name of “THE INDIVIDUALS, CORPORATIONS, LIMITED LIABILITY COMPANIES, PARTNERSHIPS, AND UNINCORPORATED ASSOCIATIONS IDENTIFIED ON SCHEDULE A HERETO” that shall apply to all Defendants in accordance with Federal Rule of Civil Procedure 4(b). As such, Plaintiff respectfully requests this Court’s permission to serve Defendants via e-mail and/or electronic publication.

**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); *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 421 (4th Cir. 1999); Fed. R. Civ. P. 65 (c). Because of the strong and unequivocal nature of Plaintiff’s evidence of counterfeiting, infringement, and unfair competition, Plaintiff respectfully requests that this Court require Plaintiff to post a bond of no more than Five Thousand U.S. Dollars (\$5,000.00). Plaintiff submits that a bond in such amount is fair and reasonable under the circumstances. In fact, such a bond amount is consistent with the bond amounts required by courts in similar cases. *See, e.g., Zuru (Singapore) Pte., Ltd., et al v. The Individuals, Corporations, Limited Liability Companies, Partnerships, and Unincorporated Associations Identified on Schedule A Hereto*, No. 1:21-cv-02151, Document #: 14 (N.D. Ill. May 5, 2021) (\$5,000.00 bond); *Kipling Apparel Corp.*

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<sup>3</sup> The Advisory Committee Notes to the 1993 Amendment to Rule 4(b) states, “If there are multiple defendants, the Plaintiffs may secure issuance of a summons for each defendant, or may serve copies of a single original bearing the names of multiple defendants if the addressee of the summons is effectively identified.” Fed. R. Civ. P. 4(b) advisory committee notes (1993).

*v. Rhys*, No. 16-cv-990, 2016 WL 8814345, at \*3 (S.D.N.Y. Feb. 19, 2016) (\$5,000 bond); *Cengage Learning, Inc. v. Doe I*, No. 18-cv-403, 2018 WL 2244461, \*6 (S.D.N.Y. Jan. 17, 2018) (\$2,500 bond).

**VI. CONCLUSION**

Plaintiff's business, its Life Vac brand, and consumers are being irreparably harmed. Without entry of the requested relief, the sale of Counterfeit Products will continue to lead prospective purchasers and others to believe that Defendants' products have been manufactured by or emanate from Plaintiff. Therefore, entry of an *ex parte* order is necessary to protect Plaintiff's copyright and trademark rights, to prevent further harm to Plaintiff and the consuming public, and to preserve the status quo. In view of the foregoing and consistent with previous similar cases, Plaintiff respectfully requests that this Court enter a Temporary Restraining Order in the form submitted herewith and set a status hearing before the expiration of the Temporary Restraining Order at which hearing Plaintiff intends to present a motion for preliminary injunction.

Dated: November 27, 2023

Respectfully submitted,

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