

**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

**DECLARATION OF MICHAEL PLUNKETT**

I, Michael Plunkett, declare and state as follows:

1. This declaration is based upon my personal knowledge of the facts stated herein or on the business records that were made at the time or in the regular course of business. If called as a witness, I could and would testify to the statements made herein.

2. I make this declaration in support of Plaintiff's application for entry of an Order to Show Cause with temporary restraints, and other relief (the "Application").

3. I am the President for Plaintiff Life Vac LLC ("Life Vac" or "Plaintiff") and am knowledgeable about or have access to business records concerning key aspects of the brand protection operation of Plaintiff including, but not limited to, patents, trademarks, copyrights, other intellectual property, sales, on-line sales, advertising, marketing, media coverage, and associated international operations. I make this declaration from my matters within my own knowledge unless stated otherwise.

4. Life Vac LLC is a New York limited liability company with its principal place of

business in Nesconset, New York.

5. Plaintiff owns all right, title, and interest in and to the following copyright registrations (the “LIFEVAC Copyrights”), true and correct copies of the federal registration certificates for which are attached hereto as **Exhibit 1**:

<b>Copyright Reg. No.</b>	<b>Copyright</b>	<b>Registration Date</b>
VA 2-332-974	Easy As Place Push Pull Artwork	January 11, 2023
VAu 1-489-169	Lifevac Device Photos	January 11, 2023
VAu 1-489-170	Lifevac Device Color Artwork	January 11, 2023
VA 2-335-339	Lifevac Device Group Photos	January 12, 2023
VA 2-335-352	Lifevac Device Features Image	January 11, 2023
VAu 1-495-820	LifeVac Official Design	March 9, 2023

6. Plaintiff owns all right, title, and interest in and to the following trademarks (the “LIFEVAC Trademark”), true and correct copies of which are attached hereto as **Exhibit 2**, as well as a printout from the USPTO website evidencing Plaintiff as the owner thereof:

<b>U.S. TM Reg. No.</b>	<b>Trademark</b>	<b>Registration Date</b>
6735265	LIFEVAC	May 24, 2022

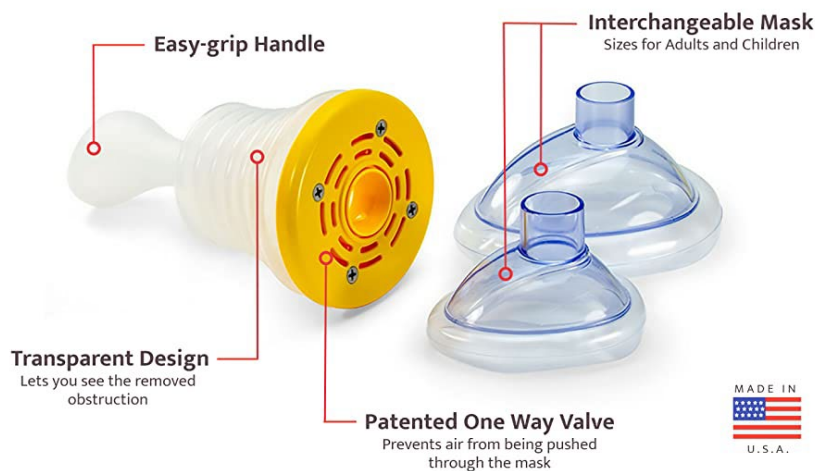
7. Life Vac LLC was formed in November 2013 with the goal of creating products that would prevent choking deaths.

8. In October 2014, Plaintiff launched the Life Vac, device, the original airway clearance device that is an FDA registered non-invasive class II device. The commercial success of the Life Vac device inspired my team to officially launch a website in 2015.

9. Plaintiff subsequently developed and launched a newly designed Life Vac device in 2016, shown below, which includes a signature yellow disc and maintained the same functionality. The Life Vac has earned bestseller status on third-party e-commerce platforms like Amazon and became a Prix Galien USA nominee for “Best Medical Technology” in 2022. The company was ranked as No. 443 on the Inc. 5000 of Inc. Magazine, the most prestigious of ranking

of the fastest growing private companies in America, where Facebook, Chobani, Under Armour, Microsoft and many other well-known names gained their first national exposure.

## Device Features



10. From the date of the creation of the first Life Vac Products to the present, Plaintiff is and has been the official source of genuine Life Vac Products in the United States. Plaintiff sells Life Vac Products through Plaintiff's website, [www.lifevac.net](http://www.lifevac.net), and through online retailers including Amazon.

11. Plaintiff has obtained copyright registrations for images of its Life Vac Products, which are covered by at least 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. Exemplary images of the LifeVac have been deposited with the United States Copyright Office and remain available for inspection there.

12. Since at least 2022, the LIFEVAC Trademark is and has been the subject of substantial and continuous marketing and promotion by Plaintiff. Plaintiff has and continues to widely market and promote the LIFEVAC Trademark in the industry and to consumers. Plaintiff promotes Life Vac Products through its website (<https://lifevac.net/>). Plaintiff extensively

promotes Life Vac Products through advertisement on major national television shows such as Inside Edition, Newsmax, and Fox and Friends. Plaintiff's promotion of Life Vac Products also includes online advertisement campaigns on, among other platforms, Facebook, Instagram, and Twitter.

13. The LIFEVAC Trademark is distinctive and identifies the product as originating from Plaintiff. Plaintiff's typical practice is to tie its name to its marketing of Life Vac Products. For example, Life Vac Products sold on Amazon—including the above-depicted Life Vac product—all bear at least the trademark "LIFEVAC."

14. Plaintiff has expended substantial time, money, and other resources in developing, advertising, and otherwise promoting the Life Vac Products.

15. The success of the Life Vac Products has resulted in significant counterfeiting as well as a flood of infringing products in the market. Consequently, Plaintiff has implemented an anti-counterfeiting and infringement deterrent program and is investigating suspicious websites and online marketplace listings identified in proactive Internet sweeps as part of that program.

16. I supervise, and direct investigations related to Internet-based infringement for Plaintiff, including investigations related to the infringement of the LIFEVAC Copyrights and LIFEVAC Trademark. Our investigation shows that Defendants are making, using, offering for sale, selling, and/or importing into the United States for subsequent sale or use products, namely respiratory products, that infringe directly and/or indirectly the LIFEVAC Copyrights and/or the LIFEVAC Trademark (the "Infringing Products") on fully interactive e-commerce stores on marketplace platforms, including but not limited to Alibaba.com ("Alibaba"); AliExpress.com ("AliExpress"); Amazon.com ("Amazon"), eBay.com ("eBay"), and Wish.com ("Wish") (collectively, the "Marketplace Platforms"). I, or someone working under my direction, analyzed

each of the e-commerce stores operating under the seller aliases identified in Schedule A to the Complaint (collectively, the “Defendant Internet Stores”) and determined that Infringing Products were being offered for sale to residents of the United States, including residents of this Judicial District. This conclusion was reached through visual inspection of the products listed for sale on each e-commerce store, the price at which the Infringing Products were offered for sale, other features commonly associated with e-commerce stores selling infringing products, and because Plaintiff has not granted a license or any other form of permission to Defendants with respect to the LIFEVAC Copyrights or LIFEVAC Trademark. In addition, each e-commerce store offered shipping options to the United States, including Illinois. True and correct copies of screenshot printouts showing the active Defendant Internet Stores reviewed, as well as screenshot printouts confirming the ability to order and ship Infringing Products to Illinois, are attached as **Exhibit 3** hereto. We also confirmed that Defendants’ seller aliases identified in Schedule A to the Complaint are not associated with any registered business. Moreover, most Defendants fail to disclose accurate and complete contact information on the Marketplace Platforms.

17. Defendants and their websites do not conduct business with Plaintiff. Defendants do not have the right or authority to use the LIFEVAC Copyrights or LIFEVAC Trademark for any reason. Plaintiff has not licensed or authorized Defendants to use the LIFEVAC Copyrights or LIFEVAC Trademark. None of the Defendants are authorized retailers of genuine Life Vac Products.

18. Defendants have targeted sales to Illinois residents by setting up and operating e-commerce stores that target United States consumers using one or more Defendant Internet Stores, offer shipping to the United States, including Illinois, accept payment in U.S. dollars and, on information and belief, have sold Infringing Products to residents of Illinois.

19. Defendants concurrently employ and benefit from substantially similar advertising and marketing strategies. For example, Defendants facilitate sales by designing the Defendant Internet Stores so that they appear to unknowing consumers to be authorized online retailers, outlet stores, or wholesalers. The Defendant Internet Stores look sophisticated and accept payment in U.S. dollars via credit cards, Alipay, Amazon Pay, Western Union and/or PayPal. The Defendant Internet Stores often include content, images, and design elements that make it very difficult for consumers to distinguish such stores from an authorized retailer. 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. Plaintiff has not licensed or authorized Defendants to use the LIFEVAC Copyrights or the LIFEVAC Trademark, and none of the Defendants are authorized retailers of genuine Life Vac Products.

20. On information and belief, Defendants have engaged in fraudulent conduct when registering the Defendant Internet Stores by providing false, misleading and/or incomplete information to e-commerce platforms. On information and belief, certain Defendants have anonymously registered and maintained Defendant Internet Stores to prevent discovery of their true identities and the scope of their e-commerce operation.

21. On information and belief, Defendants also typically deceive unknowing consumers by using the LIFEVAC Copyrights and/or the LIFEVAC Trademark without authorization within the content of their web sites (including by advertising the Infringing Products and embodying the LIFEVAC Copyrights and/or the LIFEVAC Trademark) in order to attract various search engines crawling the Internet looking for websites relevant to consumer searches for the Life Vac Products. Additionally, Defendants typically use other unauthorized search engine

optimization (“SEO”) tactics and social media spamming so that the Defendant Internet Stores listings show up at or near the top of relevant search results and misdirect consumers searching for genuine Life Vac Products. Further, Defendants typically utilize similar illegitimate SEO tactics to propel new domain names to the top of search results after others are shut down.

22. On information and belief, Defendants regularly register or acquire new e-commerce stores and/or seller aliases for the purpose of offering for sale and selling Infringing Products. Such e-commerce store and seller alias registration patterns are one of many common tactics used by the Defendants to conceal their identities and the full scope and interworking of their operation, and to avoid being shut down.

23. On information and belief, 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. For example, many of Defendants’ names and physical addresses used to register the Defendant Domain Names are incomplete, contain randomly typed letters, or fail to include cities or states. Other Defendant Domain Names use privacy services that conceal the owners’ identity and contact information. 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. Such Defendant Internet Store registration patterns are one of many common tactics used by the Defendants to conceal their identities, the full scope and interworking of their massive counterfeiting operation, and to avoid being shut down.

24. Even though Defendants operate under multiple fictitious aliases, the Defendant Internet Stores often share unique identifiers, such as templates with common design elements that intentionally omit any contact information or other information for identifying Defendants or other

Defendant Internet Stores they operate or use. For example, many of the Defendant websites have virtually identical layouts, even though different aliases were used to register the respective domain names. The Defendant Internet Stores include other notable common features, such as use of the same domain name registration patterns, shopping cart platforms, accepted payment methods, check-out methods, meta data, keywords, user-defined variables, domain redirection, similar name serves, lack of contact information, illegitimate search engine optimization (SEO), advertising tactics, similarities in price and quantities, the same incorrect grammar and misspellings, and/or the use of the same text and images. Additionally, Infringing Products for sale by the Defendant Internet Stores bear similar irregularities and indicia of being unauthorized to one another, suggesting that the Infringing Products were manufactured by and come from one or more common sources and that Defendants are interrelated.

25. On information and belief, Defendants are in constant communication with each other and regularly participate in QQ.com chat rooms and through websites such as sellerdefense.cn, kaidianyo.com and kuajingvs.com regarding tactics for operating multiple accounts, evading detection, pending litigation, and potential new lawsuits.

26. Infringers such as Defendants typically operate under multiple e-commerce stores, seller aliases, and payment accounts so that they can continue operation in spite of Plaintiff's enforcement efforts. Counterfeiters and infringers also often move website hosting to rogue servers located outside the United States once notice of a lawsuit is received. Rogue servers are notorious for ignoring take down demands sent by brand owners. Counterfeiters and infringers also typically ship products in small quantities via international mail to minimize detection by U.S. Customs and Border Protection. Based on my experience in supervising the investigation of counterfeit products, including the instant investigation, counterfeiters such as Defendants typically operate multiple



credit card merchant accounts as well as Marketplace Platform accounts behind layers of payment gateways so that they can continue operation in spite of Plaintiff's enforcement efforts. Further, Defendants typically maintain off-shore bank accounts and regularly move funds from their financial accounts to off-shore bank accounts outside the jurisdiction of this Court to avoid payment of any monetary judgment awarded to Plaintiff.

27. On information and belief, Defendants are an interrelated group of infringers working in active concert to knowingly and willfully make, use, offer for sale, sell, and/or import into the United States for subsequent sale or use Infringing Products in the same transaction, occurrence, or series of transactions or occurrences. Defendants, without any authorization or license from Plaintiff, have jointly and severally, knowingly and willfully made, used, offered for sale, sold, and/or imported into the United States for subsequent resale or use products that infringe directly and/or indirectly the LIFEVAC Copyrights and/or the LIFEVAC Trademark. Each Defendant Internet Store offers shipping to the United States, including Illinois, and, on information and belief, each Defendant has sold Infringing Products into the United States and Illinois over the Internet.

28. In my experience with similar defendants in other matters, defendants like the Defendants in this case regularly rely on and use the e-mail addresses that the Defendants provide to the Marketplace Platforms 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 the Marketplace Platforms is often times 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.

29. Monetary damages cannot adequately compensate Plaintiff for ongoing

infringement because monetary damages fail to address the damage to Plaintiff's control over its rights in the LIFEVAC Copyrights or the LIFEVAC Trademark, its reputation, associated goodwill, and ability to exploit the LIFEVAC Copyrights or the LIFEVAC Trademark. Furthermore, monetary damages are difficult, if not impossible, to ascertain due to the inability to calculate measurable damage in dollars and cents caused by acts of infringement to Plaintiff's control over its rights in the LIFEVAC Copyrights or the LIFEVAC Trademark, its reputation, the goodwill associated therewith, and ability to exploit the LIFEVAC Copyrights or the LIFEVAC Trademark.

30. Plaintiff's goodwill and reputation are irreparably damaged by the making, using, offering for sale, selling, or importing of goods that infringe the LIFEVAC Copyrights or the LIFEVAC Trademark. Moreover, consumer brand confidence is damaged, which can result in a loss of future sales and market share. The extent of harm to Plaintiff's reputation and goodwill and the possible diversion of customers due to loss in brand confidence are largely unquantifiable.

31. Plaintiff is further irreparably harmed by the unauthorized making, using, offering for sale, selling, or importing of goods that infringe the LIFEVAC Copyrights or the LIFEVAC Trademark because infringers take away Plaintiff's ability to control the nature and quality of the Infringing Products. Loss of quality control over goods made, used, offered for sale, sold, or imported featuring the LIFEVAC Copyrights or the LIFEVAC Trademark and, in turn, loss of control over Plaintiff's reputation is neither calculable nor precisely compensable.

32. The making, using, offering for sale, selling, or importing of goods featuring the LIFEVAC Copyrights or the LIFEVAC Trademark that are not authorized, produced, or manufactured by Plaintiff is likely causing and will continue to cause consumer confusion, which weakens Plaintiff's brand recognition and reputation. Consumers who mistakenly believe that the

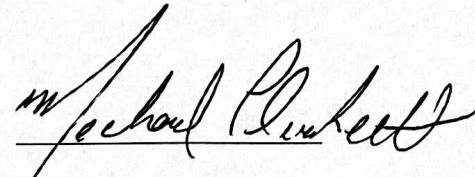
Infringing Products they have purchased originated from Plaintiff will come to believe that Plaintiff offers low-quality products. Inferior quality products will result in increased skepticism and hesitance in consumers presented with genuine Life Vac Products, resulting in a loss or undermining of Plaintiff's reputation and goodwill. Infringing Products can also be extremely dangerous and present alarming safety hazards.

33. Plaintiff is further irreparably damaged due to a loss of exclusivity. Plaintiff's Life Vac Products are meant to be exclusive. Plaintiff's extensive marketing efforts and innovative designs are aimed at growing and sustaining sales of the Life Vac Products. The LIFEVAC Copyrights and the LIFEVAC Trademark signify to consumers that the Life Vac Products originate from Plaintiff and are manufactured to high quality standards. When counterfeiters make, use, offer for sale, sell, or import goods using the LIFEVAC Copyrights or the LIFEVAC Trademark without Plaintiff's authorization, the exclusivity of the Life Vac Products and Plaintiff's reputation are damaged and eroded, resulting in a loss of unquantifiable future sales.

34. 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).

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct.

Executed on 16, 2023 in November

  
Michael Plunkett