

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

Guangdongsheng
uanmei Co., Ltd.,

Plaintiff,

v.

THE PARTNERSHIPS and UNIN-
CORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE “A”,

Defendants.

Case No. 25-CV-1716

Hon. Jeffrey I Cummings

Mag. Jeannice W. Appenteng

**MEMORANDUM IN SUPPORT OF PLAINTIFF’S *EX PARTE* MOTION FOR
ENTRY OF A TEMPORARY RESTRAINING ORDER,
A TEMPORARY ASSET RESTRAINT, EXPEDITED DISCOVERY AND
SERVICE OF PROCESS BY E-MAIL AND / OR ELECTRONIC PUBLICATION**

Plaintiff Guangdongsheng Shunhechuanmei Co., Ltd. (“Shunhechuanmei” or “Plaintiff”) submits this Memorandum in support of its *Ex Parte* Motion for Entry of a Temporary Restraining Order (“TRO”), a temporary asset restraint, expedited discovery and service of process by email and/or electronic publication (the “*Ex Parte* Motion”).

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiff Guangdongsheng Shunhechuanmei Co., Ltd. (“Shunhechuanmei” or “Plaintiff”) is requesting temporary *ex parte* relief based on an action for design patent infringement against the defendants identified on Schedule “A” to the Complaint (collectively, the “Defendants”). As alleged in Plaintiff’s Complaint, Defendants are offering for sale and selling the same unauthorized and unlicensed product, namely the metal nibbler drill attachments, that infringes Shunhechuanmei’s patented design (the “Infringing Products”) through at least the fully interactive, e-commerce stores operating under the seller aliases identified in Schedule A to the Complaint (the “Seller Aliases”).

Defendants have targeted sales to Illinois residents by setting up and operating e-commerce stores using one or more Seller Aliases through which Illinois residents can purchase Infringing Products. The e-commerce stores operating under the Seller Aliases share unique identifiers establishing a logical relationship between them. Further, Defendants attempt to avoid and mitigate liability by operating under one or more Seller Aliases to conceal both their identities and the full scope and interworking of their operation. Shunhechuanmei is forced to file this action to combat Defendants’ infringement of its patented design, as well as to protect unknowing consumers from purchasing Infringing Products over the Internet. Defendants’ ongoing unlawful activities should be restrained, and Plaintiff respectfully requests that this Court issue *ex parte* a Temporary Restraining Order.

II. STATEMENT OF FACTS

A. Shunhechuanmei Patented Design and Shunhechuanmei Product

Plaintiff Guangdongsheng Shunhechuanmei Co., Ltd. is a Chinese company having its principal place of business in the city of Foshanshi, Guangdong Province, China. See Declaration of Wei Gao (the “Gao Declaration”) at ¶ 3. Shunhechuanmei designs, manufactures and distributes machinery tool products, such as the metal nibbler drill attachments (collectively, the “Shunhechuanmei Products”). *Id.* at ¶ 5.

Shunhechuanmei Products are known for their distinctive patented designs. *Id.* at ¶ 7. These designs are broadly recognized by consumers. *Id.* Metal nibbler drill attachment tools styled after these designs are associated with the quality and innovation that the public has come to expect from Shunhechuanmei Products. *Id.* Shunhechuanmei uses these designs in connection with its Shunhechuanmei Products, including, but not limited to United States Patent No. D1,006,076 (the “Shunhechuanmei Design”). *Id.* Shunhechuanmei is the lawful assignee of all right, title, and interest in and to the Shunhechuanmei Design. *Id.* at ¶ 8.

B. Defendants’ Unlawful Activities

In recent years, Shunhechuanmei has identified numerous fully interactive e-commerce stores, including those operating under the Seller Aliases, which were offering for sale and/or selling the same Infringing Products to consumers in this Judicial District and throughout the United States. Dkt. No. 1, Complaint at ¶ 13. Shunhechuanmei’s well-pleaded allegations regarding registration patterns, similarities among the e-commerce stores operating under the Seller Aliases and the Infringing Products for sale thereon, and common tactics employed to evade enforcement efforts establish a logical relationship among the Defendants and that Defendants are interrelated. If Defendants provide

additional credible information regarding their identities, Shunhechuanmei will take appropriate steps to amend the Complaint.

III. ARGUMENTS

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

In the absence of a TRO without notice, the Defendants can and likely will register new e-commerce stores under new aliases and move any assets to off-shore bank accounts outside the jurisdiction of this Court. See Declaration of Konrad Sherinian (the "Sherinian Declaration") at ¶¶ 5-12. Courts have recognized that civil actions against infringers present special challenges that justify proceeding on an *ex parte* basis. See *Columbia Pictures Indus., Inc. v. Jasso*, 927 F. Supp. 1075, 1077 (N.D. Ill. 1996) (observing that "proceedings against those who deliberately traffic in infringing merchandise are often useless if notice is given to the infringers"). As such, Shunhechuanmei respectfully requests that this Court issue the requested *ex parte* TRO.

This Court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the Patent Act, 35 U.S.C. § 1, *et seq.*, 28 U.S.C. §§ 1338(a)-(b), and 28 U.S.C. § 1331. Venue is proper pursuant to 28 U.S.C. § 1391. *In*

re *HTC*, 889 F.3d 1349, 1357 (Fed. Cir. 2018).

This Court may properly exercise personal jurisdiction over Defendants since Defendants directly target business activities toward consumers in the United States, including Illinois, through at least the fully interactive, e-commerce stores operating under the Seller Aliases. Specifically, Defendants have targeted sales to Illinois residents by setting up and operating e-commerce stores that target United States consumers using one or more Seller Aliases, offer shipping to the United States, including Illinois, accept payment in U.S. dollars and/or funds from U.S. bank accounts, and, on information and belief, have sold Infringing Products to residents of Illinois. See Complaint at ¶¶ 2, 15, 21. *NBA Properties, Inc. v. HANWJH*, 46 F.4th 614, 624-627 (7th Cir. 2022); see, e.g., *Christian Dior Couture, S.A. v. Lei Liu et al.*, 2015 U.S. Dist. LEXIS 158225, at *6 (N.D. Ill. Nov. 17, 2015) (personal jurisdiction proper over defendant offering to sell alleged infringing product to United States residents, including Illinois); *Ford Global Techs., LLC v. New World Int'l Inc.*, 2016 U.S. Dist. LEXIS 78384, at *9-13 (E.D. Mich. June 16, 2016) (finding personal jurisdiction over defendant who sold products infringing design patents on its website and on an eBay storefront). Each of the Defendants is committing tortious acts in Illinois, is engaging in interstate commerce, and has wrongfully caused Shunhechuanmei substantial injury in the State of Illinois.

A. Standard for Temporary Restraining Order and Preliminary Injunction

District Courts within this Circuit hold that the standard for granting a TRO and the standard for granting a preliminary injunction are identical. See, e.g. *Charter Nat'l Bank & Trust v. Charter One Fin., Inc.*, No. 1:01-cv-00905, 2001 WL 527404, at *1 (N.D.

III. May 15, 2001) (citation omitted). 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 *Ty, Inc. v. The Jones Group, Inc.*, 237 F.3d 891, 895 (7th Cir. 2001).

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. *Id.* (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 plaintiff is to succeed on the merits, the less the balance of harm needs to favor the plaintiff’s position. *Id.*

B. Shunhechuanmei Will Likely Succeed on the Merits

The United States Patent Act provides that “whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.” 35 U.S.C. § 271(a). In this case, Shunhechuanmei is the lawful assignee of all right, title and interest in and to the Shunhechuanmei Design. Gao Declaration at ¶ 8. Shunhechuanmei has submitted extensive documentation that Defendants make, use, offer for sale, sell, and/or import into the United States for subsequent sale

or use the same product, namely metal nibbler drill attachments, that infringes directly and/or indirectly the Shunhechuanmei Design. *Id.* at ¶ 9. The documentation submitted by Shunhechuanmei shows that an ordinary observer would believe that the Infringing Product was the same as the Shunhechuanmei Design. *Competitive Edge, Inc. v. Staples, Inc.*, 763 F. Supp. 2d 997, 1011 (N.D. Ill. 2010) (citing *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 672 (Fed. Cir. 2008)). Finally, Shunhechuanmei has not licensed or authorized any of the Defendants to use the Shunhechuanmei Design, and none of the Defendants are authorized retailers of genuine Shunhechuanmei Products. *Id.* at ¶ 11. Accordingly, Shunhechuanmei can establish a *prima facie* case of design patent infringement.

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

Irreparable harm resulting from design patent infringement is demonstrated when “remedies available at law, such as monetary damages, are inadequate to compensate for [that] injury.” *Robert Bosch LLC v. Pylon Manufacturing Corp.*, 659 F.3d 1142, 1148 (Fed. Cir. 2011). At this stage, Shunhechuanmei only needs to show that irreparable harm is likely. *See, e.g., Luminara Worldwide, LLC v. Liown Elecs. Co. Ltd.*, 814 F.3d 1343, 1352 (Fed. Cir. 2016); *see also Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Here, Shunhechuanmei is likely to suffer two primary forms of irreparable harm: (1) loss of customers’ goodwill and (2) reputational harm. Gao Declaration at ¶¶ 18-23. Each of these harms, independently, constitutes irreparable harm and offers a basis on which preliminary relief should issue. *See, e.g., Aria Diagnostics, Inc. v. Sequenom, Inc.*, 726 F.3d 1296, 1304 (Fed. Cir. 2013) (“Under [the Court of Appeals for

the Federal Circuit's] precedent, price erosion, loss of goodwill, damage to reputation, and loss of business opportunities are all valid grounds for finding irreparable harm.") (internal quote and cites omitted).

Defendants' infringement erodes and devalues Shunhechuanmei's rights in the Shunhechuanmei Design, thereby risking injury to Shunhechuanmei's goodwill and reputation and interfering with Shunhechuanmei's ability to exploit the Shunhechuanmei Design. Gao Declaration at ¶¶ 18-23. Other courts have found similar allegations to be more than adequate. *See, e.g., 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 and design patents."); *see also Nike, Inc. v. Fujian Bestwinn Industry Co., Ltd.*, 166 F.Supp.3d 1177, 1178-79 (D. Nev. 2016) ("Absent an *ex parte* temporary restraining order and seizure order, Bestwinn's importation, sale, and/or offers to sell its Flyknit Design Infringements will result in immediate and irreparable injury to NIKE in the form of loss of control over its valuable intellectual property rights, loss of consumer goodwill, and interference with NIKE's ability to exploit the Flyknit Design Patents.").

Defendants' infringement of the Shunhechuanmei Design by sale of the Infringing Products is likely to cause consumer confusion with genuine Shunhechuanmei Products, resulting in harm to Shunhechuanmei's reputation and loss of customers' goodwill. Gao Declaration at ¶¶ 18-23. As established by the Federal Circuit: "[h]arm to reputation resulting from confusion between an inferior accused product and a patentee's superior

product is a type of harm that is often not fully compensable by money because the damages caused are speculative and difficult to measure.” *Reebok Int’l Ltd. v. J. Baker, Inc.*, 32 F.3d 1552, 1558 (Fed. Cir. 1994); *see also Tuf-Tite, Inc. v. Fed. Package Networks, Inc.*, No. 14-cv-2060, 2014 WL 6613116, at *8 (N.D. Ill. Nov. 21, 2014) (quoting and relying on *Reebok* in finding irreparable harm).

A causal nexus exists between Defendants’ infringement and each of the irreparable harms that Shunhechuanmei is suffering. *Apple Inc. v. Samsung Elecs. Co.*, 735 F.3d 1352, 1364 (Fed. Cir. 2013). Here, Defendants’ infringing use of the Shunhechuanmei Design in the Infringing Product is a substantial, if not the exclusive, reason for consumer demand of the Infringing Products. *See PCT Int’l Inc. v. Holland Elecs. LLC*, No. CV-12-01797-PHX-JAT, 2015 WL 5210628, at *23-24 (D. Ariz. Sept. 8, 2015), *aff’d*, No. 2016-1061, 2016 WL 4373941 (Fed. Cir. Aug. 16, 2016) (“The Federal Circuit has explained that when the products at issue are “relatively simple,” in the sense that they have a small number of features, the causal nexus requirement is easier to satisfy because the infringing feature has a large impact on demand for the products”).

Finally, because Defendants are individuals and businesses who, upon information and belief, reside in the People’s Republic of China or other foreign jurisdictions with no U.S. presence, any monetary judgement is likely uncollectable. *See Robert Bosch, LLC v. Pylon Mfg. Corp.*, 659 F.3d 1142, 1156 (Fed. Cir. 2011) (reversing denial of permanent injunction where the likely availability of monetary damages was in question, citing *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, No. 2:04-cv-0032, 2007 WL 869576, at *2 (E.D. Tex. Mar. 21, 2007) where “all three defendants are foreign cor-

porations and that there is little assurance that [plaintiff] could collect monetary damages”). Furthermore, other district courts have found that money damages were insufficient in similar cases involving foreign infringers. *E.g.*, *Aevoe Corp. v. AE Tech Co., Ltd.*, No. 2:12-cv-0053, 2012 WL 760692, at *5 (D. Nev. Mar. 7, 2012) (“[A] finding of irreparable harm was not clearly erroneous because it also found that since AE Tech is a foreign corporation, money damages would be insufficient.”); *Otter Prods.*, 2013 WL 5910882, at *2 (“because Anke has no presence in the United States, it may be difficult or impossible for Otterbox to enforce a monetary judgement against Anke”); *Bushnell, Inc. v. Brunton Co.*, 673 F.Supp.2d 1241, 1263 (D. Kan. 2009) (granting preliminary injunction; “the prospect of collecting money damages from a foreign defendant with few to no assets in the United States tips in favor of a finding of irreparable harm”); *Nike*, 166 F.Supp.3d, at 1179 (“[B]ecause Bestwinn has no presence in the United States, it may be difficult or impossible for NIKE to recover a money judgement against Bestwinn”).

For the reasons stated above, Shunhechuanmei 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). Gao Declaration at ¶ 23.

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

As noted above, if the Court is satisfied that Shunhechuanmei 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 Shunhechuanmei will suffer if relief is denied. *Ty, Inc.*, 237

F.3d at 895. As willful infringers, Defendants are entitled to little equitable consideration. This is because any harm to Defendants that could possibly result from a temporary restraining order is self-inflicted. Defendants took a calculated risk when they engaged in design patent infringement. Under such circumstances, courts refuse to assign any “harm” to the defendant because it assumed the risk. See *Celsis in Vitro, Inc. v. CellzDirect, Inc.*, 664 F.3d 922, 931 (Fed. Cir. 2012) (“the preliminary record suggests that LTC’s losses were the result of its own calculated risk in selling a product with knowledge of Celsis’ patent”).

As Shunhechuanmei has demonstrated, Defendants have been profiting from the sale of Infringing Products. Thus, the balance of equities tips decisively in Shunhechuanmei’s favor. The public is currently under the false impression that Shunhechuanmei has granted a license or permission to Defendants with respect to the Shunhechuanmei Design. In this case, the injury to the public is significant, and the injunctive relief that Shunhechuanmei seeks is specifically intended to remedy that injury by dispelling the public confusion created by Defendants’ actions. As such, equity requires that Defendants be ordered to cease their unlawful conduct.

IV. THE EQUITABLE RELIEF SOUGHT IS APPROPRIATE

The Patent Act authorizes courts to issue injunctive relief “in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable.” 35 U.S.C. § 283.

A. A Temporary Restraining Order Immediately Enjoining Defendants’ Unauthorized and Unlawful Use of the Shunhechuanmei Design Is Appropriate

Shunhechuanmei requests a temporary injunction requiring the Defendants to immediately cease making, using, offering for sale, selling, and importing any products not authorized by Shunhechuanmei and that include any reproduction, copy, or colorable imitation of the design claimed in the Shunhechuanmei Design. Such relief is necessary to stop the ongoing harm to Shunhechuanmei's control over its rights in the Shunhechuanmei Design, its reputation, and associated goodwill, as well as harm to consumers, and to prevent the Defendants from continuing to benefit from their unauthorized use of the Shunhechuanmei Design. The need for *ex parte* relief is magnified in today's global economy where infringers can operate anonymously over the Internet. Shunhechuanmei is currently unaware of the true identities and locations of the Defendants, as well as other e-commerce stores related to Defendants that are used to distribute Infringing Products. Many courts have authorized immediate injunctive relief in similar cases involving the sale of infringing products. See, e.g., *Nike, Inc. v. Fujian Bestwinn Industry Co., Ltd.*, 166 F.Supp.3d 1177, 1178-79 (D. Nev. 2016).

B. Preventing the Fraudulent Transfer of Assets Is Appropriate

Shunhechuanmei requests an *ex parte* restraint of Defendants' assets so that Shunhechuanmei's right to an equitable accounting of Defendants' profits from sales of Infringing 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, upon information and belief, the Defendants in this case hold most of their assets in offshore accounts, making it easy to hide or dispose of assets, which will render an accounting by Shunhechuanmei meaningless.

Courts have the inherent authority to issue a prejudgment asset restraint when plaintiff's complaint seeks relief in equity. *Animale Grp. Inc. v. Sunny's Perfume Inc.*, 256 F. App'x 707, 709 (5th Cir. 2007). In addition, Shunhechuanmei has shown a strong likelihood of succeeding on the merits of its design patent infringement claim, so according to 35 U.S.C. § 289, Shunhechuanmei is entitled to recover "the extent of [Defendants'] total profit." Shunhechuanmei's Complaint seeks, among other relief, that Defendants account for and pay to Shunhechuanmei all profits realized by Defendants by reason of Defendants' unlawful acts. Therefore, this Court has the inherent equitable authority to grant Shunhechuanmei's request for a prejudgment asset freeze to preserve relief sought by Shunhechuanmei.

The Northern District of Illinois in *Lorillard Tobacco Co. v. Montrose Wholesale Candies* entered an asset restraining order in a trademark infringement case brought by a tobacco company against 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 recognized it was explicitly allowed to issue a restraint on assets for lawsuits seeking equitable relief. *Id.* (citing *Grupo Mexicano, de Desarrollo, S.A. v. Alliance Bond Fund*, 527 U.S. 308, 325 (1999)). Because the tobacco company sought a disgorgement of the storeowner's profits, an equitable remedy, the Court found that it had the authority to freeze the storeowner's assets. *Id.*

Shunhechuanmei 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, an asset restraint is proper.

C. Shunhechuanmei Is Entitled to Expedited Discovery

The United States Supreme Court has held that “federal courts have the power to order, at their discretion, the discovery of facts necessary to ascertain their competency to entertain the merits.” *Vance v. Rumsfeld*, No. 1:06-cv-06964, 2007 WL 4557812, at *6 (N.D. Ill. Dec. 21, 2007). (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S.Ct. 2380 (1978)). Courts have wide latitude in determining whether to grant a party’s request for discovery. *Id.* (citation omitted). 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).

Shunhechuanmei respectfully requests expedited discovery to discover bank and payment system accounts Defendants use for their sales operations. The expedited discovery requested in Shunhechuanmei’s Proposed TRO is 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. See, e.g., *Deckers Outdoor Corporation v. The Partnerships, et al.*, No. 15-cv-3249 (N.D. Ill. April 4, 2015) (unpublished). Shunhechuanmei’s seizure and asset restraint may have little meaningful effect without the requested relief. Accordingly, Shunhechuanmei respectfully requests that expedited discovery be granted.

D. Service of Process by E-mail and/or Electronic Publication Is War-ranted in this Case

Pursuant to Fed. R. Civ. P. 4(f)(3), Shunhechuanmei requests this Court’s author-ization to serve process by electronically publishing a link to the Complaint, the Tempo-rary Restraining Order, and other relevant documents on a website, and/or by sending an e-mail to the e-mail addresses identified in Exhibit 2 to the Gao Declaration and any e-

mail addresses provided for Defendants by third parties that includes a link to said website. Shunhechuanmei submits that providing notice via electronic publication and/or e-mail, along with any notice that Defendants receive from online marketplace 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, on information and belief: (1) have provided false names and physical address information in their registrations for the Defendants online marketplace accounts 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 online marketplace accounts 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, Shunhechuanmei will almost certainly be left without the ability to pursue a final judgment.

Despite providing false physical addresses, the registrants of the Seller Aliases must generally provide an accurate e-mail address so that their marketplaces may communicate with them regarding issues related to the purchase, transfer, and maintenance of the various accounts. Likewise, online marketplace account operators accepting PayPal, or similar accounts, must provide a valid email address to customers for completing payment. Moreover, it is necessary for merchants, such as the registrants of the Seller

Aliases, 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.

Fed. R. Civ. P. 4(f)(3) allows this Court to authorize service of process by any means not prohibited by international agreement as the Court directs. *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.*

Similarly, several Courts, including the Northern District of Illinois, have held that alternate forms of service pursuant to Rule 4(f)(3), 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.” *Id.* at 1018; See, e.g., *Bad Vibes Forever, LLC v. The Partnerships and Unincorporated Associations Identified on Schedule “A”*, No. 22-cv-00937 (N.D. Ill. Feb. 24, 2022); *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).

Shunhechuanmei submits that allowing service solely by e-mail and/or 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 Seller Aliases 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 1007, 1014-15 (9th Cir. 2002). 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 Shunhechuanmei to serve the defendants via electronic publication and/or e-mail. See *Strabala v. Zhang*, 318 F.R.D. 81, 115 (N.D. Ill. 2016); see also *Hangzhou Chic Intelligent Technology Co.; and Unicorn Global, Inc., v. The Partnerships and Unincorporated Associations Identified on Schedule A*, 20-cv-04806 (N.D. Ill. April 1, 2021) (finding Hague Convention service is optional under Fed. R. Civ. P. 4).

Additionally, Shunhechuanmei is unable to determine the exact physical whereabouts or identities of the registrants of the Defendant online marketplace accounts due to their provision of false and incomplete street addresses. Shunhechuanmei, however, has good cause to suspect the registrants of the respective Defendant online marketplace accounts are all 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”). Sherinian Declaration at ¶ 13. The Hague Convention does not preclude service by email, and the declarations to the Hague Convention filed by China do not appear to expressly prohibit email service. *Id.* 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.” *Id.* at ¶ 14. As such, United States District Courts, including in this District, routinely permit alternative service of process notwithstanding the applicability of the Hague Convention. See e.g., *In re Potash Antitrust Litig.*, 667 F. Supp. 2d 907, 930 (N.D. Ill. 2009) (“Plaintiffs are not required to first attempt service through the Hague Convention.”); see also *In re LDK Solar Secs. Litig.*, 2008 WL 2415186,*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); *Popular Enters., LLC v. Webcom Media Group, Inc.*, 225 F.R.D. 560, 562 (E.D. Tenn. 2004) (recognizing that, while “communication via e-mail and over the internet is comparatively new, such communication has been zealously embraced within the business community”). In addition, the law of the People’s Republic of China does not appear to prohibit electronic service of process. Sherinian Declaration at ¶¶ 13-15. The proposed Temporary Restraining Order provides for issuance of single original summons¹ in the name of “The Partnerships and all other Defendants identified in the Complaint” that shall apply to all Defendants in accordance with Fed. R. Civ. P. 4(b). As such, Shunhechuanmei 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 TRO or preliminary injunction is vested in the Court’s sound discretion. *Rathmann Grp. v. Tanenbaum*, 889 F.2d 787, 789 (8th

¹ 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) (emphasis added).

Cir. 1989). Because of the strong and unequivocal nature of Shunhechuanmei's evidence of design patent infringement, Shunhechuanmei respectfully requests that this Court require Shunhechuanmei to post a bond of no more than thirty-four thousand U.S. dollars (\$34,000.00). See, e.g., *Deckers Outdoor Corporation v. The Partnerships, et al.*, No. 15-cv-3249 (N.D. Ill. April 4, 2015) (unpublished) (\$10,000 bond).

VI. CONCLUSION

Defendants' operations are irreparably harming Shunhechuanmei's business, its well-known brand, and consumers. Without entry of the requested relief, Defendants' infringement of the Shunhechuanmei Design in connection with the making, using, offering to sell, selling, or importing of the Infringing Products will continue to irreparably harm Shunhechuanmei. Therefore, entry of an *ex parte* order is necessary. In view of the foregoing, Shunhechuanmei respectfully requests that this Court enter a Temporary Restraining Order in the form submitted herewith.

GUANGDONGSHENG SHUNHECHUANMEI
CO., LTD.

Date: February 20, 2025

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