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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Optimistic Investments LLC, et al.,

10 Plaintiffs,

11 v.

12 Kangaroo Manufacturing Incorporated, et
13 al.,

14 Defendants.

No. CV-21-02212-PHX-MTL

ORDER

15 This case is about copyright disputes over products sold on Amazon.com
16 (“Amazon”). Defendant Justin Ligeri has filed over 200 Amazon complaints regarding
17 Plaintiffs’ use of copyrighted images and packagings of products which he claims he or
18 one of his entities own. Ligeri’s complaints have impaired Plaintiffs’ ability to sell on
19 Amazon. Plaintiffs assert that they own the copyrights in question, and move for a
20 temporary restraining order (“TRO”) requiring Ligeri to withdraw his prior complaints and
21 barring him from filing new ones. (Doc. 14.) The Court held a two-day evidentiary hearing.
22 For the following reasons, the Court grants the TRO and denies the request for an order to
23 show cause.

24 **I. BACKGROUND**

25 This case presents a gordian knot of facts twisted around a central question: who
26 owns the subject copyrights, and other intellectual property rights, for certain products sold
27 on Amazon. Plaintiffs Optimistic Investments, LLC (“Optimistic”), owned by Joshua
28 Tischer; OIG Brand Management, LLC (“OIG”), owned by John Burns; and Michael S.

1 Murphy have an extensive business and personal history with Defendants Kangaroo
2 Manufacturing, Inc. (“Kangaroo”) and its owner Justin Ligeri. Plaintiffs and Ligeri testified
3 that they have also conducted business through and with Ligeri’s other companies—
4 Cheyenne Brands Holdings, LLC (“Cheyenne”) and Kbrands, LLC (“Kbrands”)—and
5 with Tischer’s other company, Lightning Quick, LLC (“Lightning”). The Amazon seller
6 accounts FBA King, Toy-Time, Fun-Raiser, Over the Moon, Front Porch, Divine, and
7 Crazy Games have been used to sell the subject products on Amazon. (Admitted as
8 Plaintiffs’ Exhibit 18.). Finally, the parties testified that they have also done business with
9 the many subsidiaries of Lightning, Optimistic, Kangaroo, Cheyenne, and OIG.

10 The parties have entered into numerous agreements involving the intellectual
11 property rights at issue. On May 30, 2019, Kangaroo and Optimistic executed an
12 “Assignment and Reseller Agreement.”¹ (Admitted as Plaintiffs’ Exhibit 4.) Based on the
13 testimony at the hearing, this agreement was meant to resolve a gambling debt Ligeri owed
14 Tischer.² In it, Kangaroo conveyed trademarks and other intellectual property rights to
15 Optimistic. (*Id.*) Ligeri testified that he did not remember signing the document and that
16 he did not read the document. He also testified that he could have been under the influence
17 when the document was signed, and that the notary’s explanation when verifying that he
18 signed the document was inconsistent. Finally, Ligeri testified that business between the
19 parties was unchanged after the agreement was signed.

20 Certain intellectual property was later conveyed to Plaintiff Murphy in a “Settlement
21 Agreement and General Release” executed between Optimistic, Kangaroo, Murphy, and
22 Ligeri dated June 11, 2020. (Admitted as Plaintiffs’ Exhibit 7.) Murphy testified that this
23 agreement was intended to transfer Ultra-Glow Super Star trademarks and copyrights.
24 Murphy also explained at the evidentiary hearing he always believed that he owned the
25 copyrights to Ultra-Glow Super Stars. But he wanted to settle the issue, so he signed the
26 “Settlement Agreement and General Release.” Ligeri testified that the agreement was never

27
28 ¹ The Court notes that the signatures on the documents are not dated by either party, but
the notary later confirmed in writing that Ligeri signed the document on May 30, 2019.

² No witness gave precise details on the nature of the debt owed.

1 meant to assign copyrights and that the agreement was signed under duress. Ligeri testified
2 that he believed that Murphy never owned the copyrights and that, notwithstanding their
3 agreement, Ligeri is still the rightful owner of the copyrights.

4 The parties also entered into an “Asset Purchase Agreement” on July 1, 2019,
5 where, while still acting as the COO of Cheyenne, John Burns sold the FBA King seller
6 account and all of its intellectual property to Cheyenne for \$240,000. (Admitted as
7 Plaintiffs’ Exhibit 38.) Burns testified that this was done because Ligeri owed him money.
8 Ligeri testified that was not the case, and that Burns stole money from him. Later, Tischer,
9 through Lightning Quick, bought Cheyenne in October 2021 at a bankruptcy auction.
10 (Admitted as Plaintiffs’ Exhibit 1 at ¶¶ 25–26; Admitted as Plaintiffs’ Exhibit 14.) After
11 Tischer purchased Cheyenne, Burns told him that Cheyenne still owed money on the FBA
12 King “Asset Purchase Agreement.” After paying off the remaining balance on the
13 \$240,000, Tischer took control of the FBA Account.

14 Another of these agreements is a “Copyright Assignment and Transfer Agreement”
15 dated November 4, 2019. (Admitted as Plaintiffs’ Exhibit 15.) This agreement appears to
16 transfer ownership of copyrights from Kangaroo to Cheyenne for \$15,000. (*Id.*) Defendant
17 Ligeri testified that the document had been backdated and was actually drafted more than
18 one year after the date listed. He testified that he did not file or record the documents, and
19 that the \$15,000 was never transferred from Cheyenne to Kangaroo, because a lawyer
20 advised him that the transfer may constitute fraud.³ Plaintiffs’ counsel cross-examined
21 Ligeri and showed him bank records indicating that \$15,000 was transferred from
22 Cheyenne’s accounts to KBrands on November 4, 2019, but Ligeri answered that the
23 transfer was unrelated and that it was just a coincidence that there was a \$15,000 transfer
24 that day. (Admitted as Plaintiffs’ Exhibit 37.)

25 By June 30, 2020, Kangaroo was in Chapter 7 bankruptcy. (*See* Admitted as
26 Plaintiffs’ Exhibit 13.) In the federal bankruptcy proceeding, Kangaroo filed a document,
27 signed by Ligeri, stating that it did not own any intellectual property, and that all

28 ³ Defendants’ brief notes that Ligeri’s “personal bankruptcy was already pending.” (Doc.
24 at 10 n.3.) Thus, they conclude, such an attempt “would be legally void.” (*Id.*)

1 intellectual property Kangaroo once owned had been sold to Optimistic in March 2019 and
2 Jackson Hole, another entity Ligeri owned, in March 2020 for \$150,000 and \$50,000
3 respectively. (*Id.*) At the evidentiary hearing in this case, however, Ligeri testified that
4 although he signed it, there were problems with the document. First, the figures on the
5 forms were wrong. Second, he did not read the forms. And third, he did not know that the
6 forms were submitted by his attorney with the incorrect numbers. He attributed this to a
7 breakdown in communication between him and his attorney. As a result, he later fired his
8 attorney. The schedules were never amended to correct this false representation to the
9 bankruptcy court. Ligeri blamed his attorney for this error, and claims that he was a victim
10 of legal malpractice.

11 On April 5, 2021, Plaintiff Murphy and Defendant Ligeri signed an “Asset Purchase
12 Agreement” that transferred the Narwhal Novelties brand, Galaxy Brite brand, Lunar Phase
13 brand, and associated intellectual property from Cheyenne to Murphy. (Admitted as
14 Plaintiffs’ Exhibit 35.) Murphy testified at the hearing that the agreement was meant to
15 transfer copyrights from Ligeri and his company to Murphy. In contrast, Ligeri testified
16 that the agreement only transferred trademarks, since Kangaroo, not Cheyenne, owned the
17 copyrights.

18 In May of 2021, an “Amended Stipulated Permanent Injunction” was filed in an
19 Arizona State Court case involving Optimistic, Cheyenne, and Ligeri. (Admitted as
20 Plaintiffs’ Exhibit 11.) The injunction validated Optimistic’s claim of ownership of
21 intellectual property from the May 30, 2019, agreement. (*Id.* ¶ 1.) The listed intellectual
22 property in the injunction included trademarks, domain names, and universal product
23 codes, but not copyrights. (*Id.* at 8–16.)

24 Starting in December of 2021, after Ligeri re-acquired Kangaroo, Defendants and
25 their counsel began filing Amazon complaints claiming that Plaintiffs were selling products
26 on Amazon in violation of Defendants’ copyrights.⁴ (Doc. 14 at 3; Admitted as Plaintiffs’
27 Exhibit 1 at 9–10 ¶ 33; Admitted as Plaintiffs’ Exhibit 2 at 4–5 ¶¶ 15, 17; Admitted as

28 ⁴ During his bankruptcy, Ligeri lost control of Kangaroo. He was able to buy back the
company in December 2021.

1 Plaintiffs’ Exhibit 3 at 2 ¶ 5.) All in all, Ligeri has filed about 210 Amazon complaints to
2 date. Submitting an Amazon copyright complaint prompts Amazon to delist the challenged
3 products until the parties resolve the issue.

4 On December 27, 2021, Plaintiffs filed this action, seeking a declaratory judgment
5 regarding the ownership of copyright and trademark rights and monetary damages
6 stemming from Defendants’ violations of Plaintiffs’ copyright and trademark rights. (*See*
7 Doc. 1.) Plaintiffs also ask this Court to order Defendants to withdraw their pending
8 Amazon complaints and to enjoin Defendants from filing additional Amazon complaints.
9 (*See, e.g., id.* at ¶¶ 76–77.)

10 **II. LEGAL STANDARD**

11 The standard for issuing a temporary restraining order is the same as that for issuing
12 an injunction. *Immigrant Legal Res. Ctr. v. City of McFarland*, 472 F. Supp. 3d 779, 783
13 (E.D. Cal. 2020). “A preliminary injunction is an extraordinary remedy never awarded as
14 of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). For a court to issue
15 a preliminary injunction, a plaintiff ““must establish that he is likely to succeed on the
16 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that
17 the balance of equities tips in his favor, and that an injunction is in the public interest.””
18 *Am. Trucking Ass’ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009)
19 (quoting *Winter*, 555 U.S. at 20). In the Ninth Circuit, even ““if a plaintiff can only show
20 that there are ‘serious questions going to the merits’—a lesser showing than likelihood of
21 success on the merits—then a preliminary injunction may still issue if the ‘balance of
22 hardships tips *sharply* in the plaintiff’s favor,’ and the other two *Winter* factors are
23 satisfied.” *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013)
24 (quoting *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011)).

25 A mandatory injunction, unlike a prohibitory injunction, “orders a responsible party
26 to take action.” *Meghriq v. KFC W., Inc.*, 516 U.S. 479, 484 (1996) (internal quotation
27 marks omitted). This ““goes well beyond simply maintaining the status quo [p]endente lite
28 [and] is particularly disfavored.”” *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH &*

1 Co., 571 F.3d 873, 879 (9th Cir. 2009) (alterations in original) (quoting *Anderson v. United*
2 *States*, 612 F.2d 1112, 1114 (9th Cir. 1980)). “Mandatory injunctions, while subject to a
3 higher standard than prohibitory injunctions, are permissible when ‘extreme or very serious
4 damage will result’ that is not ‘capable of compensation in damages,’ and the merits of the
5 case are not ‘doubtful.’” *Hernandez v. Sessions*, 872 F.3d 976, 999 (9th Cir. 2017) (quoting
6 *Marlyn Nutraceuticals*, 571 F.3d at 879). And so, “‘mandatory preliminary relief’ is subject
7 to heightened scrutiny and should not be issued unless the facts and law clearly favor the
8 moving party.” *Dahl v. HEM Pharm. Corp.*, 7 F.3d 1399, 1403 (9th Cir. 1993) (quoting
9 *Anderson*, 612 F.2d at 1114).

10 **III. DISCUSSION**

11 **A. Serious Questions Going to the Merits**

12 Plaintiffs have the burden to show a substantial likelihood of success or serious
13 questions going to the merits of their case. “The first element of a copyright-infringement
14 claim is ‘ownership of a valid copyright.’” *Star Athletica, L.L.C. v. Varsity Brands, Inc.*,
15 --- U.S. ---, 137 S. Ct. 1002, 1008 (2017) (citing *Feist Publications, Inc. v. Rural Telephone*
16 *Service Co.*, 499 U.S. 340, 361 (1991)). “A valid copyright extends only to copyrightable
17 subject matter. The Copyright Act of 1976 defines copyrightable subject matter as ‘original
18 works of authorship fixed in any tangible medium of expression.’” *Id.* (internal citation
19 omitted) (quoting 17 U.S.C. § 102(a)). “Before pursuing an infringement claim in court,
20 however, a copyright claimant generally must comply with § 411(a)’s requirement that
21 ‘registration of the copyright claim has been made.’ Therefore, although an owner’s rights
22 exist apart from registration, registration is akin to an administrative exhaustion
23 requirement that the owner must satisfy before suing to enforce ownership rights.” *Fourth*
24 *Est. Pub. Benefit Corp. v. Wall-Street.com, LLC*, --- U.S. ---, 139 S. Ct. 881, 887 (2019)
25 (internal citations omitted).

26 The second element is “‘copying of constituent elements of the work that are
27 original.’” *Gray v. Hudson*, 28 F.4th 87, 96 (9th Cir. 2022) (emphasis omitted) (quoting
28 *Feist*, 499 U.S. at 361). To prove direct infringement, the Ninth Circuit requires a party to

1 “establish causation, which is commonly referred to as the volitional-conduct
2 requirement.” *VHT, Inc. v. Zillow Grp., Inc.*, 918 F.3d 723, 731 (9th Cir. 2019) (internal
3 quotation marks omitted). “[V]olition in this context does not really mean an act of willing
4 or choosing or an act of deciding;’ rather, ‘it simply stands for the unremarkable
5 proposition that proximate causation historically underlines copyright infringement
6 liability no less than other torts.’” *Id.* (quoting *Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d
7 657, 666 (9th Cir. 2017)). “Stated differently, ‘direct liability must be premised on conduct
8 that can reasonably be described as the direct cause of the infringement.’” *Id.* To prove
9 this, “a party . . . must provide some evidence showing the alleged infringer exercised
10 control other than by general operation of its website; selected any material for upload,
11 download, transmission, or storage; or instigated any copying, storage, or distribution of
12 its photos.” *Id.* (cleaned up).

13 The parties do not dispute that the images and packaging are copyrightable. They
14 do, however, dispute who owns the copyrights and whether there was copying.

15 Plaintiffs argue that Defendants are judicially estopped from arguing that they own
16 the copyrights because they made representations in bankruptcy court that all the
17 intellectual property Kangaroo owned had been assigned to other parties. (Doc. 32 at 2–3;
18 *see* Doc. 14 at 6–7.) Specifically, the schedules explained that Kangaroo had sold all of its
19 intellectual property to Optimistic Investors and Jackson Hole. (Admitted as Plaintiffs’
20 Exhibit 13.) They also argue that Lightning owns some of Kangaroo’s intellectual property
21 after buying Cheyenne for \$15,000. (Doc. 14 at 7.) Murphy argues that he created, and
22 therefore owns, the copyrights for Ultra-Glow Super Stars. (*Id.* at 8.) Plaintiffs further
23 argue that the intellectual property related to Ultra-Glow Super Stars “was among the
24 works that were assigned from Kangaroo Manufacturing to Cheyenne Brands in the
25 November 4, 2019” agreement. (*Id.*) Plaintiffs also note that Defendants have made
26 numerous complaints to Amazon about products for which there are no recorded
27 copyrights. (*Id.* at 4, 8–9.)

28 Plaintiffs also argue that no copying occurred because Amazon’s system

1 “automatically routes sellers of given products to existing images previously posted by
2 other sellers regarding those products.” (Doc. 14 at 6; *see* Doc. 32 at 9.) Thus, they have
3 not engaged in any misconduct because “Amazon adds all subsequently-registering sellers
4 to the existing Amazon webpage for that particular product which displays those
5 previously-posted photos or artwork.” (Doc. 14 at 10.) In Plaintiffs’ view, they play a
6 passive role in all of this, and “have done nothing to copy those works.” (Doc. 14 at 6, 11;
7 *see* Doc. 32 at 9.) Finally, even if Defendants are found to own the copyrights and
8 infringement occurred, Optimistic argues that it operated with an irrevocable implied
9 license to use Defendants’ copyrighted packaging. (Doc. 14 at 11.)

10 Defendants argue that the November 4, 2019, agreement does not transfer any
11 intellectual property because: it was not actually executed; it was originally drafted much
12 later than November of 2019 and then backdated; no property was ever transferred to
13 Cheyenne from Kangaroo; and the required \$15,000 payment was not made. (Doc. 24 at 9–
14 11.) Defendants assert that there is no implied license because their sale and Plaintiffs’
15 purchase of their product “does not grant any right to use copyrights.” (*Id.* at 11.)
16 Defendants also argue that Murphy’s claims to copyright ownership fail because Murphy
17 only came up with ideas and concepts, which are not copyrightable. (*Id.* at 11–12.)
18 Defendants maintain that Plaintiffs are the copyright infringers and therefore unlikely to
19 succeed on any of their claims.⁵ (*Id.*)

20 1. Judicial Estoppel

21 “Judicial estoppel is an equitable doctrine that precludes a party from gaining an
22 advantage by asserting one position, and then later seeking an advantage by taking a clearly
23 inconsistent position.” *Grondal v. United States*, 21 F.4th 1140, 1151 (9th Cir. 2021)
24 (quoting *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir. 2001)).
25 Judicial estoppel is “invoked by a court at its discretion” to “protect the integrity of the
26 judicial process.” *New Hampshire v. Maine*, 532 U.S. 742, 749–50 (2001) (internal

27 ⁵ In closing arguments, Defendants’ counsel argued that paragraph 14 of the June 11, 2020,
28 agreement is a California exclusive jurisdiction clause which should be controlling in this
case. Thus, they argued, any claims to the agreement should be dismissed for lack of
jurisdiction. This issue was not briefed and will not be considered at this time.

1 quotation marks and citations omitted).

2 Here, the Court “appl[ies] judicial estoppel ‘against the backdrop of the bankruptcy
3 system and the ends it seeks to achieve.’” *Reed v. City of Arlington*, 650 F.3d 571, 574 (5th
4 Cir. 2011) (citing *Browning Mfg. v. Mims (In re Coastal Plains, Inc.)*, 179 F.3d 197, 208
5 (5th Cir.1999)). “These ends are to ‘bring about an equitable distribution of the bankrupt’s
6 estate among creditors holding just demands,’ and to ‘grant a fresh start to the honest but
7 unfortunate debtor.’” *Id.* (internal citations omitted) (quoting *Kothe v. R.C. Taylor Trust*,
8 280 U.S. 224, 227 (1930); *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007)).
9 “Therefore, judicial estoppel must be applied in such a way as to deter dishonest debtors,
10 whose failure to fully and honestly disclose all their assets undermines the integrity of the
11 bankruptcy system, while protecting the rights of creditors to an equitable distribution of
12 the assets of the debtor’s estate.” *Id.*

13 The Ninth Circuit has set forth three factors that courts should consider when
14 deciding a judicial estoppel issue:

15
16 First, a party’s later position must be clearly inconsistent with
17 its earlier position. Second, courts regularly inquire whether
18 the party has succeeded in persuading a court to accept that
19 party’s earlier position, so that judicial acceptance of an
20 inconsistent position in a later proceeding would create the
21 perception that either the first or the second court was misled.
22 A third consideration is whether the party seeking to assert an
23 inconsistent position would derive an unfair advantage or
24 impose an unfair detriment on the opposing party if not
25 estopped.

26
27 *Harbor Breeze Corp. v. Newport Landing Sportfishing, Inc.*, 28 F.4th 35, 40 (9th Cir.
28 2022). Moreover, “[i]n enumerating these factors, [the Ninth Circuit] do[es] not establish
inflexible prerequisites or an exhaustive formula for determining the applicability of
judicial estoppel. Additional considerations may inform the doctrine’s application in
specific factual contexts.” *Id.*

Here, Plaintiffs’ arguments for applying judicial estoppel are strong—Ligeri did not

1 list any other intellectual property on Kangaroo's bankruptcy forms but now claims that
2 Kangaroo did in fact own intellectual property not listed, namely many of the copyright
3 rights now at issue. But Ligeri argues that he never read the forms, that he discussed the
4 issue with his attorney, and that he trusted his attorney to ensure the forms accurately
5 reflected the intellectual property that Kangaroo owned, which included copyrights.

6 When assessing the likelihood of success of these arguments, Ligeri's argument
7 assumes that legal malpractice occurred. Beyond his own testimony, there is no evidence
8 in the record supporting Ligeri's position. In the 2020 bankruptcy filing, he signed a
9 document clearly stating that Kangaroo owned no intellectual property. At the evidentiary
10 hearing, on the other hand, he testified that Kangaroo did have copyrights during the
11 bankruptcy proceeding. These positions are obviously inconsistent, and the first condition
12 is satisfied. The second condition is also clearly met, as the bankruptcy court accepted
13 Ligeri's filing and the trustee was not able to sell the rights to Kangaroo's intellectual
14 property when auctioning Kangaroo's property to satisfy its creditors. The third condition
15 is also met because Plaintiffs relied on Kangaroo's representation in bankruptcy when
16 determining that they owned the copyrights and could sell the subject products on Amazon.

17 The Court pressed Plaintiffs' counsel about what would happen to the copyrights'
18 enforceability if Ligeri *did* own the rights, his lawyer committed malpractice, and he simply
19 made a filing mistake in bankruptcy court. For example, have Ligeri's rights simply
20 disappeared, do Plaintiffs' now own them, or have they slipped into the public domain?
21 Plaintiffs' counsel answered that Ligeri would own the rights, but he would be unable to
22 enforce them. The Court is not convinced that this is true in all circumstances, but finds the
23 argument that Ligeri would not be able to enforce his copyrights in this specific case
24 convincing. Given the record before the Court, it is highly improbable that Ligeri's tale of
25 legal malpractice is true. Ligeri has a spotty record of truthfulness, appears to have
26 considered a potentially fraudulent transfer during bankruptcy proceedings, and claims to
27 not read legal documents that he signed. The facts of this case spin a tangled web of
28 agreements and side deals between friends and business partners turned enemies. Both

1 sides claim to be in the right; however, with the evidence currently before it, the Court
2 finds Ligeri's characterization of the facts almost impossible to believe. In the context of
3 Plaintiffs' judicial estoppel argument, the Court finds that Plaintiffs have demonstrated that
4 there exists a substantial likelihood that they would succeed on the merits that they are the
5 rightful owners of the copyrights.

6 2. Optimistic's, Murphy's, and OIG's Ownership Arguments

7 In addition to their judicial estoppel argument, Optimistic, Murphy, and OIG raise
8 five additional arguments regarding the rightful ownership of the copyrights.

9 Plaintiffs' contention that there are no recorded copyrights for some of the products
10 where Amazon complaints have been filed, even if true, does not show they are likely to
11 succeed on the merits. Because copyrights must be registered before a party sues to enforce
12 those rights, Plaintiffs' argument would be a strong defense against Defendants'
13 counterclaims. But it does nothing to establish that they are the rightful owners of any
14 copyrights. Registration is not required for a party to own copyrights or file Amazon
15 complaints. Moreover, as Ligeri testified, Plaintiffs cannot claim that Ligeri has made false
16 representations to Amazon when filing copyright complaints, as Amazon does not require
17 proof of registration to file a valid complaint. Thus, Plaintiffs have not raised serious
18 questions going to the merits of the case on this issue.

19 Plaintiffs' implied license argument is similarly weak. Plaintiffs bought products
20 from Kangaroo and then sold them on Amazon. While they were buying products from
21 Kangaroo, Kangaroo allowed them to use their copyrighted images on Amazon and their
22 copyrighted product packaging. Clearly, when purchasing a product from a supplier, it does
23 not mean the buyer has also bought the buyer's copyrights. Any consumer who buys a new
24 copy of *Bambi* on Blu-Ray or *Disney Villainous* knows that he can resell that specific
25 product to whomever he pleases.⁶ But he also knows that the purchase of that one item
26 does not mean that he has the right to reproduce that movie or board game, and its
27 packaging, whenever he pleases. Moreover, it is obvious he that cannot sell this newly

28 ⁶ *Disney Villainous* is a trendy board game where players play as popular Disney movie
villains.

1 created, bootlegged product on the open market. Thus, Plaintiffs have not raised serious
2 questions going to the merits of the case regarding their implied license argument.

3 Plaintiffs' ownership claims based on the "Copyright Assignment and Transfer
4 Agreement" dated November 4, 2019, raise serious questions going to the merits of this
5 case. Cheyenne transferred \$15,000 to Kbrands on November 4, 2019. This would usually
6 be strong circumstantial evidence to support the argument that the intellectual property
7 transfer did happen. But Ligeri admitted that the Copyright Assignment and Transfer
8 Agreement was created with fraudulent intent, backdated to November 4, 2019, and never
9 actually executed. The Court finds it likely that Ligeri picked that date *because* there was
10 a bank record of a transaction for that exact amount on that date from Cheyenne to Kbrands.
11 Moreover, as Defendants point out in their brief, a transfer while his personal bankruptcy
12 was pending would be impossible. (Doc. 24 at 10 n.3.) However, Ligeri's testimony
13 demonstrated that he is not inclined to truthfulness, even before a court. Thus, this Court
14 finds that Plaintiffs' claims based on the "Copyright Assignment and Transfer Agreement"
15 dated November 4, 2019, raise serious questions going to the merits of this case, but do not
16 show a substantial likelihood of success on the merits.

17 The creation and design of the Ultra-Glow Super Stars packaging and pictures is
18 hotly contested. Murphy testified that Ligeri promised him the copyrights during a pitch
19 meeting for a workshop. At that workshop, Murphy came up with the first designs for the
20 design of the Ultra-Glow Super Stars packaging. Murphy also testified that the phrase
21 "[w]ho owns it? You own it," during the pitch meeting was a promise that he would own
22 the copyrights for his product. (Admitted as Plaintiffs' Exhibit 29.) But a closer look at the
23 transcript of the pitch meeting and Ligeri's testimony clarifies that such an interpretation
24 could be taking the phrase out of context. Read with just a little more context, the quote
25 becomes, "[w]ho owns it? You own it. It's your inventory." The argument that the
26 agreement was for ownership of inventory and not intellectual property is strengthened by
27 the fact that Ligeri's employees were the ones who fixed Murphy's idea in a tangible form.
28 Murphy argued that this could lead to co-authorship of the designs, but Ligeri testified that

1 his employees did all the work, that Murphy’s design was not really used when creating
2 the packaging, and that Ligeri’s employees took the photographs without input from
3 Murphy. On balance, this Court finds that Murphy has raised serious questions going to
4 the merits of this case, but has not shown a substantial likelihood of success regarding the
5 authorship of the Ultra-Glow Super Stars copyrights.

6 Finally, at the evidentiary hearing, Ligeri testified that the copyright claims against
7 OIG’s KN95 mask listings were likely, if not certainly, unsubstantiated. His counsel argued
8 that damages to OIG were limited because the mask listing was only down for one day.
9 Regardless of the amount of damages, Ligeri and his counsel do not contest that the
10 Amazon complaints filed against OIG’s KN95 mask listings were not warranted. Thus, on
11 the KN95 mask issue, the Plaintiffs have clearly proved a substantial likelihood of success
12 on the merits.⁷

13 Thus, even setting aside the arguments for judicial estoppel, Plaintiffs have raised
14 serious questions going to the merits of their case.

15 **B. Balance of Hardships**

16 Once Plaintiffs have shown a substantial likelihood of success on the merits, then
17 they must “establish . . . that the balance of equities tips in [their] favor.” *Am. Trucking*
18 *Ass’ns, Inc.*, 559 F.3d at 1052 (quoting *Winter*, 555 U.S. at 20). If Plaintiffs have only
19 shown that there are serious questions going to the merits of this case, then they must
20 demonstrate that “the ‘balance of hardships tips *sharply* in [their] favor.” *Shell Offshore*
21 *Inc.*, 709 F.3d at 1291 (quoting *All. for the Wild Rockies*, 632 F.3d at 1135). When
22 balancing the hardship that each party would suffer, “courts ‘must balance the competing
23 claims of injury and must consider the effect on each party of the granting or withholding
24 of the requested relief.’” *Winter*, 555 U.S. at 24 (quoting *Amoco Prod. Co. v. Vill. of*
25 *Gambell*, 480 U.S. 531, 542 (1987)).

26 Plaintiffs argue that they will be financially ruined if a TRO is not put into place

27 ⁷ Ligeri testified that he believes “this is a war.” He went on to explain that he sees himself
28 as “the Allies” and that Plaintiffs as “Adolf Hitler.” Thus, the Court does not find this issue
moot for purposes of this TRO because Ligeri could easily refile Amazon complaints about
the KN95 masks.

1 because their businesses cannot survive Defendants’ barrage of Amazon complaints. (Doc.
2 14 at 13–14.) On the other hand, they argue, Defendants will suffer no harm if this Court
3 enters a TRO. (*Id.* at 14.) If a TRO is not put into place, Defendants argue that Plaintiffs’
4 only hardship would be “the cost of replacement photographs, artwork, and packaging.”
5 (Doc. 24 at 16; *see id.* at 16–17.) If a TRO prevented them from filing complaints with
6 Amazon, Defendants argue that they would be helpless to prevent counterfeiters from
7 destroying “the integrity of their online offerings,” suffering an effective invalidation of
8 their copyrights. (*Id.* at 16; *see id.* at 16–17.) Plaintiffs counter that Defendants’ Amazon
9 complaints “serve[] no purpose but revenge” because Defendants “cannot afford to acquire
10 and resell the goods which are the subject of his Amazon complaints.” (Doc. 34 at 11.) The
11 TRO, they reemphasize, would simply allow them to maintain their businesses and stop
12 Defendants’ vengeful tactics. (*Id.*)

13 The balance of hardships tips sharply in Plaintiffs’ favor. If a TRO is not put in
14 place, they will lose their businesses and their livelihoods. A TRO would also ruin the
15 livelihoods of their employees. Additionally, Defendants are seemingly insolvent. If a TRO
16 is not put in place and Plaintiffs are later determined to be the rightful copyright owners,
17 they will be unable to collect money damages from Defendants—a Pyrrhic victory. By
18 contrast, Plaintiffs are solvent. While it is true that Defendants will lose the ability to
19 protect their alleged copyrights from being used by Plaintiffs on Amazon, Defendants have
20 already filed counterclaims in this lawsuit.⁸ When the dust settles, if Defendants are
21 determined to be the rightful copyright owners, there is a legal structure in place to
22 adequately compensate them for their injuries. Allowing Plaintiffs to continue their
23 businesses after posting a bond will ensure that Defendants will be able to collect the
24 damages that they are owed if victorious in court. Therefore, if a TRO is filed, Defendants
25 would suffer almost no harm. But, if a TRO is not filed, Plaintiffs would suffer catastrophic
26 losses. Thus, the balance of hardships tips sharply in Plaintiffs’ favor.

27
28 ⁸ Defendants noted at the evidentiary hearing that they plan to file an amended
counterclaim. The Court does not yet know the anticipated new allegations or claims of the
amended counterclaim.

1 **C. Irreparable Injury**

2 “Irreparable harm is traditionally defined as harm for which there is no adequate
3 legal remedy, such as an award of damages.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d
4 1053, 1068 (9th Cir. 2014). The Ninth Circuit has held that “a district court has authority
5 to issue a preliminary injunction where the plaintiffs can establish that money damages will
6 be an inadequate remedy due to impending insolvency of the defendant or that defendant
7 has engaged in a pattern of secreting or dissipating assets to avoid judgment.” *In re Est. of*
8 *Ferdinand Marcos, Hum. Rts. Litig.*, 25 F.3d 1467, 1480 (9th Cir. 1994). This exception
9 is “restricted to only *extraordinary* cases in which equitable relief is not sought.” *Id.*

10 But the Ninth Circuit “ha[s] [also] long held that irreparable harm can be presumed
11 in a copyright infringement case upon a showing of a likelihood of success on the merits
12 by the copyright owner.” *Flexible Lifeline Sys., Inc. v. Precision Lift, Inc.*, 654 F.3d 989,
13 994 (9th Cir. 2011). Moreover, the Ninth Circuit also recognizes “that ‘[e]vidence of loss
14 of control over business reputation and damage to goodwill [can] constitute irreparable
15 harm,’ so long as there is concrete evidence in the record of those things.” *adidas Am., Inc.*
16 *v. Skechers USA, Inc.*, 890 F.3d 747, 756 (9th Cir. 2018) (quoting *Herb Reed Enterprises,*
17 *LLC v. Fla. Ent. Mgmt., Inc.*, 736 F.3d 1239, 1250 (9th Cir. 2013)).

18 Plaintiffs argue that without this TRO, they will be unable to sell their product and
19 will, within no time, go out of business. (Doc. 14 at 12; Doc. 32 at 9–11.) Because
20 Defendants are insolvent, Plaintiffs assert that they would be unable to collect money
21 damages. (*Id.*) Thus, they argue, a TRO is appropriate. (*Id.*) Defendants argue in response
22 that Plaintiffs have not shown that irreparable harm is likely. (*See* Doc. 24 at 13–15.) They
23 maintain that *In re Estate of Ferdinand Marcos*, 25 F.3d at 1480, prevents a finding of
24 irreparable harm because they are seeking equitable relief and there is nothing
25 extraordinary about the facts of this case. (*Id.*) Defendants also assert that Plaintiffs have
26 “vastly overstated their claimed harm absent an injunction” in this case because they will
27 only suffer money damages. (*Id.* at 15–16.)

28 There is a risk of irreparable harm here. The *In re Estate of Ferdinand Marcos* test

1 is a specific exception that applies when there is an insolvent party, but it can only be
2 applied when a party is only seeking monetary damages. Plaintiff’s claims fail the *In re*
3 *Estate of Ferdinand Marcos* test because they seek equitable relief and money damages.
4 Thus, although the Defendants’ alleged insolvency makes it difficult for the Plaintiffs’ to
5 expect they will be able to actually collect money damages in the future, it is irrelevant
6 when determining if there is irreparable harm.

7 But Plaintiffs have demonstrated a likelihood of success on the merits regarding
8 their claim for judicial estoppel. This triggers the presumption of irreparable harm found
9 in copyright infringement cases. The Court flatly disagrees with Defendants’ argument that
10 Plaintiffs have overstated the harm they would suffer without an injunction. *Supra* Section
11 III.B Thus, Defendants offer no argument to rebut the presumption of irreparable harm in
12 this case. Finding no reason to not apply the presumption, the Court finds that irreparable
13 harm may be presumed.

14 But even without the presumption, Plaintiffs have demonstrated that the loss of
15 goodwill towards their consumer bases on Amazon and their loss of control over their
16 products’ reputation is irreparable. All three Plaintiffs testified that taking down the pages
17 for different products on Amazon damages the products’ marketability in both the short
18 and long term, and possibly permanently. Average star rating reviews, special banners, and
19 high traffic metrics are lost, sometimes forever, when products are taken down from
20 Amazon for too long. Additionally, the perceived availability and reliability of those
21 products is tarnished when they are routinely appearing and disappearing from Amazon.
22 Thus, Plaintiffs have demonstrated a sufficient risk of irreparable harm to justify a TRO.

23 **D. Public Interest**

24 In contrast to the balance of hardships factor, which focuses on hardship facing the
25 parties, the public interest factor “addresses [the injunction’s] impact on non-parties.”
26 *Sammartano v. First Jud. Dist. Ct.*, 303 F.3d 959, 974 (9th Cir. 2002).

27 Plaintiffs argue that the public has an interest in unimpeded commerce on Amazon
28 and similar platforms. (Doc. 14 at 13–14.) Defendants respond that commerce is subject to

1 the law governing intellectual property rights, and the public has “a compelling interest in
2 protecting copyright owners’ rights,” and maintaining “the economic incentive . . . that
3 accompanies” copyrights. (Doc. 24 at 17; *see* Doc. 24 at 17.) This is particularly true, they
4 contend, because these interests are explicitly articulated in the U.S. Constitution. (*Id.* at
5 17.) Plaintiffs counter that the legal rights of the parties have not yet been determined and,
6 accordingly, these public interests, while important, are irrelevant at this juncture.
7 (Doc. 34 at 11.) In their view, a TRO would allow them to continue to work while
8 ownership of the disputed copyright rights is resolved. (*Id.*)

9 The Court finds that the public interest favors granting a TRO. Given the evidence
10 before the Court, the true owner of these copyrights is “a riddle wrapped in a mystery inside
11 an enigma.”⁹ Thus, Defendants’ claimed interest in protecting their copyrights from
12 counterfeiters is no more compelling than Plaintiffs’ claimed interest in using their
13 copyrights in the open market. The public, however, clearly has an interest in free-flowing
14 commerce unencumbered by vengeful and anti-competitive litigation. Ligeri testified that
15 “this is a war” with Plaintiffs over the disputed copyrights. Refusing to issue a TRO would
16 allow Ligeri’s scorched-earth tactics to continue. This would lead to an inhibited and less
17 competitive market, which would harm consumers.

18 Moreover, by now claiming that Kangaroo never sold its intellectual property,
19 Ligeri tacitly admits to defrauding a bankruptcy court and Kangaroo’s judgment creditors.
20 The public has a strong interest in encouraging parties to be candid in judicial proceedings.
21 There is also a strong public interest in the finality of court judgments and in maintaining
22 the integrity of, and the public’s confidence in, our court system. *See New Hampshire v.*
23 *Maine*, 532 U.S. 742, 749 (2001). Allowing a party to block a TRO by claiming it made
24 inaccurate representations in a bankruptcy proceeding would violate these interests and
25 injure the public’s trust in our court system.

26
27
28 ⁹ “[S]tatement made by Winston Churchill about the Soviet Union in October 1939 after
the signing of the Nazi-Soviet Pact and the beginning of World War II.” *See A riddle
wrapped in a mystery inside an enigma -- Churchill*, LIBRARY OF CONGRESS,
<https://www.loc.gov/item/2016683579/> (last visited Apr. 21, 2022).

1 **E. Mandatory Injunction**

2 A mandatory injunction ““goes well beyond simply maintaining the status quo
3 [p]endente lite [and] is particularly disfavored.”” *Marlyn Nutraceuticals, Inc.*, 571 F.3d at
4 879 (quoting *Anderson*, 612 F.2d at 1114). Whether the “status quo pendente lite” is
5 Plaintiffs’ products off of Amazon or their products on Amazon is up for debate. Thus,
6 whether Plaintiffs have even requested a mandatory injunction is not settled. Regardless,
7 the Plaintiffs here have met their burden for a mandatory injunction. The merits of this case
8 are not doubtful and the facts and law clearly favor the Plaintiffs thanks to their judicial
9 estoppel argument which demonstrates a substantial likelihood of success on the merits.
10 And, as this Court has already determined, extreme or very serious damage which cannot
11 be compensated with money damages will result if a TRO is not put in place. *Supra* Section
12 III.B–C.

13 **F. Bond**

14 Under Federal Rule of Civil Procedure 65(c), a court may issue a TRO “only if the
15 movant gives security in an amount that the court considers proper to pay the costs and
16 damages sustained by any party found to have been wrongfully enjoined or restrained.”
17 This language appears mandatory, but “Rule 65(c) invests the district court ‘with discretion
18 as to the amount of security required, *if any*.’” *Johnson v. Couturier*, 572 F.3d 1067, 1086
19 (9th Cir. 2009) (quoting *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003)). And
20 so, “[t]he district court may dispense with the filing of a bond when it concludes there is
21 no realistic likelihood of harm to the defendant from enjoining his or her conduct.”” *Id.*
22 Here, there is a nonzero chance that Defendants will prevail and be named the rightful
23 owners of the copyrights in question. They will have been harmed by the Court’s
24 injunction. Defendants request a bond of at least \$170,000. The Court will require a bond
25 in the amount of \$170,000.

26 **G. Duration of TRO**

27 A TRO issued without notice may not exceed 14 days. Fed. R. Civ. P. 65(b)(2). For
28 good cause, however, the duration of a TRO issued without notice may be extended for an

1 additional 14 days once. *Id.* “When a temporary restraining order is issued with notice and
2 after a hearing, however, the 14-day limit for such orders issued without notice does not
3 apply.” *Pac. Kidney & Hypertension, LLC v. Kassakian*, 156 F. Supp. 3d 1219, 1223 n.1
4 (D. Or. 2016). Thus, the Court has discretion, in entering a TRO with notice, over the
5 appropriate duration. “Nevertheless, absent consent of the parties, ‘[a] court may not extend
6 a ‘TRO’ indefinitely, even upon notice and a hearing.’” *Id.* (quoting *Horn Abbot Ltd. v.*
7 *Sarsaparilla Ltd.*, 601 F.Supp. 360, 368 n.12 (N.D.Ill.1984)). Accordingly, this TRO shall
8 extend for 31 days.

9 **H. Order to Show Cause**

10 Plaintiffs have also requested that this Court issue an order to show cause why a
11 preliminary injunction should not be issued. (Doc. 14.) The burden of demonstrating that
12 a preliminary injunction is necessary falls on the party seeking the injunction, not the party
13 whom the injunction would restrict. *See supra* Section II. Thus, the Court will not issue an
14 order to show cause why a preliminary injunction should not be issued, but this is without
15 prejudice to later filing a motion for preliminary injunction.

16 **IV. CONCLUSION**

17 Accordingly,

18 **IT IS ORDERED granting in part and denying in part** the Application for
19 Issuance of Temporary Restraining Order With Notice And Request for Issuance of an
20 Order to Show Cause Why a Preliminary Injunction Should not be Issued (Doc. 14).

21 **IT IS FURTHER ORDERED** that Defendants, their agents, attorneys, companies,
22 and assigns are prohibited from filing Amazon copyright complaints regarding any of the
23 products at issue in this case for 31 days from the date of this Order. (Admitted as Plaintiffs’
24 Exhibit 18; Admitted as Defendants’ Exhibit 107.)

25 **IT IS FURTHER ORDERED** that Defendants, their agents, attorneys, companies,
26 and assigns shall withdraw all Amazon copyright complaints regarding any of the products
27 at issue in this case for 31 days from the date of this Order. (Admitted as Plaintiffs’ Exhibit
28 18; Admitted as Defendants’ Exhibit 107.)

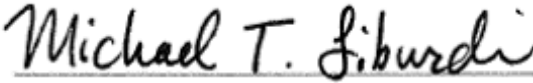
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IT IS FURTHER ORDERED that Plaintiffs shall post bond at \$170,000.

IT IS FURTHER ORDERED that the Court will not issue an Order to Show Cause Why a Preliminary Injunction Should not be Issued, but this does not preclude Plaintiffs from filing a motion for preliminary injunction.

IT IS FINALLY ORDERED that Plaintiffs’ deadline to file a motion for preliminary injunction shall be **April 28, 2022**. Defendants shall have until **May 5, 2022**, to respond. Plaintiffs shall have until **May 9, 2022** to file their reply. Hearing on the motion for preliminary injunction is set for **May 10, 2022**, at 8:30 AM in Courtroom 504 401 West Washington Street, Phoenix, AZ 85003 before Judge Michael T Liburdi.

Dated this 22nd day of April, 2022.



Michael T. Liburdi
United States District Judge