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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

**HAND & NAIL HARMONY, INC., ET
AL.,**

Plaintiffs,

v.

**ABC NAIL AND SPA PRODUCTS, ET
AL.,**

Defendants.

**Case No.: SA CV 16-0969-DOC
(JEMx)**

**AMENDED ORDER GRANTING
PLAINITFFS' APPLICATION FOR
(A) TEMPORARY RESTRAINING
ORDER; (B) ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION; AND (C)
EXPEDITED DISCOVERY
[15]**

1 Before the Court is Plaintiffs Hand & Nail Harmony, Inc. (“Harmony”) and Nail
2 Alliance, LLC’s (“Nail Alliance”) (collectively, “Plaintiffs”) renewed Application for: (a) Entry
3 of Temporary Restraining Order; (b) An Order to Show Cause Re: Preliminary Injunction; and
4 (c) Expedited Discovery (“Renewed Application”) (Dkts. 15, 16).¹ Plaintiffs seek a temporary
5 restraining order (“TRO”) against Defendants ABC Nail and Spa Products (“ABC Nail”), Gel
6 Nail Supply (“Gel Nail”), Val USA Manufacturer, Inc. (a.k.a., Val Gel Polish Manufacture)
7 (“Val USA”), VIP Nail Products, Inc. (“VIP Nail”), V & V Beauty Supplies (“V & V Beauty”),
8 Xuan Thi Lam, Chau Thi Ngoc Le, Anh Q. Le, Iris Zhen, Felix Tseng, Cindy Trinh, Lindside
9 Pham, Bryan Tran, Hai T. Nguyen, and Bao Toan Le (collectively, “Defendants”).²

10 Having considered the Complaint (“Compl.”) (Dkt. 1), Renewed Application, as well as
11 the accompanying Memorandum of Points and Authorities, declarations, and exhibits,³ and all
12 other pleadings and proceedings of record before the Court, the Court GRANTS the Renewed
13 Application as set forth below.

14 I. Factual Background

15 Plaintiff Harmony manufactures, distributes, and sells high-quality, soak-off gel polishes
16 and other nail products, accessories, and preparations under the brand name GELISH. Compl.
17 ¶ 6. Through its qualified distributors, Harmony sells GELISH brand goods to boutiques and
18 salons in Southern California and throughout the world. *Id.* GELISH brand foundation, gel
19 polish, and top coat are sold in elegantly adorned and distinctive bottles. Declaration of
20 Garidawn Tingler (“Tingler Decl.”) (Dkt. 8) ¶ 9.

21 Plaintiff Nail Alliance owns and holds certain intellectual property rights used in
22 connection with GELISH goods, including federal trademarks for the GELISH brand. Compl.

24 ¹ The Court finds this matter appropriate for resolution without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

25 ² In response to Court’s conclusion Plaintiffs had not established personal jurisdiction over the out-of-state Defendants, *see*
26 Order Denying Original Application (Dkt. 14) at 7–9, Plaintiffs indicated that, at the time they filed the Renewed
27 Application, they were in the process of amending the Complaint “to support the exercise of personal jurisdiction over
28 defendants Nail Lounge LLC, Today Nail, Hollywood Beauty Supply, MT Beauty Supply, Nail Mark’s III, Inc., and A&A
Nail Supply, among others.” Renewed App. at 1 n.1. Given this outstanding jurisdictional issue, Plaintiffs’ Renewed
Application only seeks immediate relief against the Defendants listed above – ABC Nail, Gel Nail Supply, Val USA, VIP
Nail, V & V Beauty Supplies, Xuan Thi Lam, Chau Thi Ngoc Le, Anh Q. Le, Iris Zhen, Felix Tseng, Cindy Trinh, Lindside
Pham, Bryan Tran, Hai T. Nguyen, and Bao Toan Le.

³ The Court has considered the declarations and exhibits filed with the Original Application, including the Declaration of
Garidawn Tingler and the Declaration of Jim Phan (Dkts. 8, 9).

1 ¶¶ 7, 34–35. In particular, Nail Alliance owns the rights to United States Trademark
2 Registration Numbers 4,096,115 (GELISH standard character mark), 3,857,946 (GELISH
3 design plus words), as well as the unique three-dimensional configuration and scrollwork
4 pattern, which is protected by United States Trademark Registration Numbers 4,473,557 and
5 4,473,558 (collectively, “GELISH marks”). Tingler Decl. ¶ 5; *see* Compl. Exs. 1–2. Harmony
6 is the exclusive, worldwide licensee of Nail Alliance as it relates to the GELISH goods, marks,
7 and bottle. Tingler Decl. ¶ 5.

8 This case centers upon allegations that Defendants are “actively engaged in
9 manufacturing, distributing, selling, promoting, and/or attempting to pass off counterfeit
10 products and spurious imitations of Plaintiffs’ GELISH® brand nail products.” Compl. ¶ 5; *see*
11 *also id.* ¶¶ 48, 50–53. Plaintiffs contend Defendants’ counterfeit products are cheap, low-
12 quality masquerades that disparage Plaintiffs’ registered trademarks and inherently distinctive
13 trade dress. *Id.* ¶¶ 5, 55, 57. Plaintiffs allege Defendants’ counterfeiting activities originate
14 from Garden Grove, Westminster, and the City of Industry and that such activities have
15 “manifested [themselves] in cities and states across the nation,” including in Orlando, Florida;
16 Las Vegas, Nevada; Taylor, South Carolina; and Omaha, Nebraska. *Id.* ¶ 5.

17 Harmony has invested millions of dollars in promoting its GELISH goods, marks, and
18 bottles in the United States and throughout the world. Tingler Decl. ¶ 15. In particular,
19 Harmony has spent millions of dollars promoting GELISH brand goods at trade shows and over
20 the internet. *Id.* Harmony has developed and maintains a highly visited website
21 (www.nailharmony.com), and corporate pages on social media sites such as Facebook. *Id.* ¶ 16.
22 Harmony has also produced online advertisements, including a video that has been viewed by
23 more than 2.5 million visitors. *Id.*

24 The GELISH goods incorporate the ® symbol to notify others the mark “GELISH” is
25 subject to federal trademark registrations. *Id.* ¶ 14. The GELISH marks, trade dress, and bottle
26 are symbols of Harmony’s quality, reputation, and goodwill and have never been abandoned.
27 *Id.* Moreover, the GELISH marks are instantly recognizable and associated exclusively with
28 Plaintiffs in the United States and throughout the world by consumers. *Id.* Indeed, consumers

1 routinely ask for the products by name. *Id.* ¶ 4. Plaintiffs state GELISH is a famous mark in the
2 nail industry. *Id.* ¶ 17.

3 Harmony carefully monitors and polices the use of its intellectual property, including the
4 GELISH marks, both in the United States and around the world. *Id.* ¶¶ 18–20; *see also*
5 Supplemental Declaration of Garidawn Tingler (“Supp. Tingler Decl.”) (Dkt. 17) ¶ 6. The
6 “continuing and growing success of the GELISH brand has attracted numerous counterfeit,
7 knock-off, and other spurious products attempting to tradeoff the goodwill and reputation of
8 Harmony’s Products.” Tingler Decl. ¶ 19; Supp. Tingler Decl. ¶ 7. In this case, Harmony states
9 Defendants sell cheap, low-quality foundation and top coat that are mislabeled and sold as
10 GELISH brand foundation and top coat (the “counterfeit product”). *See* Tingler Decl. ¶ 24;
11 Declaration of Jim Phan (“Phan Decl.”) (Dkt. 9) ¶¶ 6–8, *Id.* Exs. 1–2. Defendants’ counterfeit
12 product is sold or offered for sale in bottles with nearly identical labels. *See* Tingler Decl. ¶ 11,
13 Fig. 2; Phan Decl. Exs. 3–6; Renewed App. at 5. Given the similarity between the genuine
14 GELISH goods and the counterfeit product, the unavoidable conclusion is that consumers
15 presented with the counterfeit product will be confused about its source.

16 The counterfeit product is of inferior quality. *See* Tingler Decl. ¶¶ 37–38; Supp. Tingler
17 Decl. ¶ 4. The counterfeit product originates from sources in China. *See* Supp. Tingler Decl.
18 ¶¶ 4, 7–10. The Chinese government does not follow or enforce the standards imposed on
19 companies in the United States. *See* Declaration of Sunil Sirdesai (“Sirdesai Decl.”) (Dkt. 18)
20 ¶¶ 4, 7. Defendants generally sell the products at steeply discounted prices. *See* Tingler Decl. ¶
21 29, Phan Decl. Exs. 1–2.

22 None of the Defendants are direct distributors of Harmony’s GELISH brand products,
23 and none of them have a license to use the mark GELISH to promote any product not
24 manufactured by Harmony. *See* Tingler Decl. ¶¶ 5–6.

25 In their Complaint, Plaintiffs allege the following claims: (1) trademark infringement
26 and counterfeiting in violation of 15 U.S.C. §§ 1114, 1116(d), *id.* ¶¶ 61–72; (2) false
27 designation of origin, false descriptions, unfair competition and dilution under 15 U.S.C.

1 § 1125, *id.* ¶¶ 73–88; and (3) unfair competition in violation of California Business &
2 Professions Code § 17200, *id.* ¶¶ 89–95.

3 **II. Procedural History**

4 Plaintiffs commenced this action on May 27, 2016. *See generally* Compl. Also on May
5 27, 2016, Plaintiffs filed their original *Ex Parte* Application for: (a) Entry of Temporary
6 Restraining Order and Seizure Order; (b) Order to Show Cause Re: Preliminary Injunction; (c)
7 A Substitute Custodian Order; and (d) An Order for Expedited Discovery (“Original
8 Application”) (Dkt. 7). On May 31, 2016, the Court denied without prejudice Plaintiffs’
9 Original Application (“Order Denying Original Application”) (Dkt. 14).

10 Plaintiffs filed their Renewed Application on June 8, 2016, requesting the Court issue a
11 TRO, an order to show cause, and grant Plaintiffs’ request for expedited discovery. Although
12 Plaintiffs previously sought a TRO without notice, Plaintiffs have provided Defendants ABC
13 Nail, Gel Nail, Val USA, VIP Nail, V & V Beauty, Xuan Thi Lam, Chau Thi Ngoc Le, An Q.
14 Le, Iris Zhen, Felix Tseng, Cindy Trinh, Lindside Pham, Bryan Tran, Hai T. Nguyen, and Bao
15 Toan Le, against whom they seek a TRO, with notice of the Renewed Application. *See* Proof of
16 Service (Dkt. 21) at 1–3; Proof of Service (Dkt. 22) at 1–2; Proof of Service (Dkt. 24) at 1–2.
17 Despite receiving notice, as of the date of this Order, none of the Defendants have filed a
18 response or Opposition to the Renewed Application.

19 **III. Legal Standards**

20 **A. Temporary Restraining Order**

21 The standards for issuing a temporary restraining order (“TRO”) and a preliminary
22 injunction are “substantially identical.” *Stuhlbarg Int’l Sales Co. v. John D. Brushy & Co.*, 240
23 F.3d 832, 839 n.7 (9th Cir. 2001). A preliminary injunction is an “extraordinary remedy.”
24 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). As explained by the Ninth
25 Circuit in *Winter*, a plaintiff seeking preliminary injunctive relief “must establish that he is
26 likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of
27 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the
28 public interest.” *Am. Trucking Ass’n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir.

1 2009). Alternatively, “serious questions going to the merits and a hardship balance that tips
2 sharply toward the plaintiff can support issuance of an injunction, assuming the other two
3 elements of the *Winter* test are also met.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d
4 1127, 1132 (9th Cir. 2011) (internal quotations marks omitted). A “serious question” is one on
5 which the movant “has a fair chance of success on the merits.” *Sierra On-Line, Inc. v. Phoenix*
6 *Software, Inc.*, 739 F.2d 1415, 1421 (9th Cir. 1984).

7 **B. Bond Amount**

8 A TRO must be accompanied by payment of a bond “in such a sum as the court deems
9 proper, for the payment of such costs and damages as may be incurred or suffered by any party
10 who is found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). “Although
11 there is ‘no steadfast rule as to the amount of a bond as a result of the issuance of a preliminary
12 injunction,’ the Ninth Circuit ‘gives wide discretion to the issuance of preliminary injunction
13 bonds, holding that’ ‘[s]o long as a district court does not set such a high bond that it serves to
14 thwart citizen actions, it does not abuse its discretion.’” *SATA GmbH & Co. Kg v. Wenzhou*
15 *New Century Int’l, Ltd.*, No. CV 15-08157-BRO (EX), 2015 WL 6680807, at *11 (C.D. Cal.
16 Oct. 19, 2015) (quoting *Garrett v. City of Escondido*, 465 F. Supp. 2d. 1043, 1059 (S.D. Cal.
17 2006)).

18 **C. Expedited Discovery**

19 “Because the Parties could not have already conferred as required by Federal Rule of
20 Civil Procedure 26(f), Plaintiff[s] ‘may not seek discovery . . . except . . . when authorized by . .
21 . a court order.’” *SATA*, 2015 WL 6680807, at *11 (quoting Fed. R. Civ. P. 26(d)(1)). Courts
22 employ the “good cause” standard to determine whether expedited discovery is warranted. *Id.*
23 (citation omitted). Courts may consider the following factors when determining whether good
24 cause exists: “(1) whether a preliminary injunction is pending; (2) the breadth of the discovery
25 requests; (3) the purpose for requesting the expedited discovery; (4) the burden on the
26 defendants to comply with the requests; and (5) how far in advance of the typical discovery
27 process the request was made.” *Id.* (citation and internal quotation marks omitted).

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1 **IV. Discussion**

2 **A. Temporary Restraining Order**

3 After reviewing the Renewed Application and supporting documents, the Court finds a
4 TRO is warranted here.

5 **1. Likelihood of Success on the Merits**

6 Plaintiffs' Complaint alleges trademark infringement in violation of 15 U.S.C. § 1114
7 (also referred to as Section 32 of the Lanham Act). This section of the Lanham Act "provides
8 the registered owner of a trademark with an action against anyone who without consent uses a
9 'reproduction, counterfeit, copy, or colorable imitation' of the mark in such a way that 'is likely
10 to cause confusion or to cause mistake, or to deceive.'" *Enesco Corp. v. Price/Costco Inc.*, 146
11 F.3d 1083, 1085 (9th Cir. 1998) (quoting 15 U.S.C. § 1114(1)). To establish a trademark
12 infringement claim, the plaintiff "must establish that [the defendant] is using the mark
13 confusingly similar to a valid, protectable trademark of [the plaintiff's]." *Brookfield Commc'ns,*
14 *Inc. v. W. Coast Entm't Corp.*, 174 F.3d 1036, 1046 (9th Cir. 1999).

15 The federal registration of a trademark with the U.S. Patent and Trademark Office
16 constitutes prima facie evidence of the validity of the registered mark and of the registrant's
17 exclusive right to use the mark on the goods and services specified in the registration. *See*
18 *Applied Info. Scis. Corp. v. eBay, Inc.*, 511 F.3d 966, 970 (9th Cir. 2007). Plaintiffs have
19 provided sufficient evidence to show they have a valid, protectable interest in the registered
20 marks at issue here. *See* Compl. Exs. 1–2.⁴ Thus, the Court must next examine whether
21 Defendants have used the GELISH marks in a way that is likely to cause confusion, or to
22 deceive.

23 "Courts generally consider eight factors in determining whether a likelihood of
24 confusion exists between products bearing and original trademark and allegedly infringing
25 products." *SATA*, 2015 WL 6680807, at *6.⁵ The eight factors are: "(1) strength of the mark; (2)

26 ⁴ The exhibits containing the trademark registrations were inadvertently omitted from the Complaint that appears in docket
27 entry number one. Plaintiffs filed a Notice of Errata Re: Exhibits to Complaint on June 10, 2016 ("Notice of Errata") (Dkt.
20) stating a conformed copy of the Complaint, stamped on May 26, 2016, properly included the exhibits. Nonetheless, to
28 ensure the Court received the exhibits, Plaintiffs attached them to the Notice of Errata. *See* Notice of Errata Exs. 1–2.

⁵ Plaintiffs state that, in cases involving counterfeit marks, it is unnecessary to utilize the eight-factor test because
"counterfeit marks are inherently confusing." Renewed App. at 9 (citing *Phillip Morris USA Inc. v. Shalabi*, 352 F. Supp. 2d

1 proximity of the goods; (3) similarity of the marks; (4) evidence of actual confusion; (5)
2 marketing channels used; (6) type of goods and the degree of care likely to be exercised by the
3 purchaser; (7) defendant's intent in selecting the mark; and (8) likelihood of expansion of the
4 product lines.” *Id.* (quoting *Rearden LLC v. Rearden Commerce, Inc.*, 683 F.3d 1990, 1209 (9th
5 Cir. 2012)) (internal quotation marks omitted). These factors “are intended as an adaptable
6 proxy for consumer confusion, not a rote checklist.” *Id.* (quoting *Network Automation, Inc. v.*
7 *Advanced Sys. Concepts, Inc.*, 638 F.3d 1137, 1145 (9th Cir. 2011)) (internal quotation marks
8 omitted). “[S]ome factors – such as the similarity of the marks and whether the two companies
9 are direct competitors – will always be important.” *Id.* (citation and internal quotation marks
10 omitted). Nevertheless, “it is often possible to reach a conclusion . . . after considering only a
11 subset of the factors.” *Id.* (citation and internal quotation marks omitted).

12 With respect to the first factor, Plaintiffs assert the GELISH marks are “classified
13 amongst the strongest marks because they are comprised of a fanciful, coined term.” Renewed
14 App. at 11. Further, Plaintiffs assert that, because of the extensive use by Harmony, consumers
15 see the GELISH marks as an indicator of source and quality. Based on the evidence in the
16 record, the Court finds this factor suggests a likelihood of confusion. *See Network Automation,*
17 *638 F.3d at 1149.*

18 The proximity of the goods – the second factor – depends on whether the goods are “(1)
19 complementary, (2) sold to the same class of purchasers, and (3) similar in use and function.”
20 *Id.* at 1150. Although Defendants’ counterfeit gel polish foundation and top coat are not of the
21 same quality as the genuine GELISH products, “the goods are complementary and have the
22 same use and function.” *SATA*, 2015 WL 6680807, at *7. The gel nail polishes are also sold to
23 the same class of purchasers. The Court also finds this factor suggests a likelihood of
24 confusion.

25 With respect to the third factor, “[t]he more similar the marks in terms of appearance,
26 sound, and meaning, the greater the likelihood of confusion.” *Brookfield*, 174 F.3d at 1054.
27 Here, Defendants’ counterfeit marks are almost identical to the GELISH marks – the script,

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1067, 1073 (C.D. Cal. 2004)). Nonetheless, out of an abundance of caution, the Court has performed the step-by-step
examination.

1 color, and placement of the marks on the bottles of nail polish is strikingly similar. *See* Phan
2 Decl. Exs. 1–6; Tingler Decl. ¶ 24. “In light of virtual identity of marks, if they were used with
3 identical products . . . likelihood of confusion would follow as a matter of course.” *Brookfield*,
4 174 F.3d at 1056 (citation omitted). This factor therefore strongly suggest a likelihood of
5 confusion.

6 Evidence of actual confusion is not necessary to finding a likelihood of confusion.
7 *SATA*, 2015 WL 6680807, at *7.⁶ “A likelihood of confusion “will be found whenever
8 consumers are likely to assume that a mark is associated with another source or sponsor
9 because of similarities between the two marks.” *Id.* (citation and internal quotation marks
10 omitted). Plaintiffs have received complaints about the poor quality of counterfeit GELISH
11 products. *See, e.g.*, Tingler Decl. ¶¶ 25–27, Supp. Tingler Decl. ¶ 15. However, it does not
12 appear these complaints – which show there are consumers who are unable to discern the
13 difference between actual GELISH products and counterfeit products – were about counterfeit
14 products sold or manufactured by Defendants. Thus, the Court finds this factor weighs slightly
15 against Plaintiffs.

16 “Convergent marketing channels increase the likelihood of confusion.” *SATA*, 2015 WL
17 6680807, at *7 (citation and internal quotation marks omitted). It appears the markets are
18 convergent; Plaintiffs assert “Defendants are targeting consumers of GELISH brand products
19 with counterfeits.” Renewed App. at 12. Based on the evidence in the record, the Court finds
20 this factor suggests a likelihood of confusion. *See, e.g.*, Tingler Decl. ¶ 38; Supp. Tingler Decl.
21 ¶¶ 10, 13, 15.

22 With respect to the sixth factor – type of goods and degree of care – Plaintiffs note the
23 goods at issue here are relatively inexpensive items, which suggests consumers will generally
24 use a low degree of care and rely more on the brand name in purchasing the product. Renewed
25 App. at 12; *see E. & J. Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280, 1293 (9th Cir. 1992)
26 (“When goods are expensive, it is assumed that buyers will exercise greater care in their
27 purchasers.”). In addition, the nearly identical labels on the nail polish bottles “would likely

28 ⁶ Indeed, the importance of this factor “is diminished at the preliminary injunction stage of the proceedings.” *Network Automation*, 638 F.3d at 1151.

1 confuse even purchasers using a high degree of care.” *SATA*, 2015 WL 6680807, at *8. Based
2 on the foregoing, the Court finds this factor weighs in Plaintiffs’ favor.

3 “A defendant’s intent in selecting the mark seeks to determine whether the junior user
4 adopted its mark to capitalize on the senior user’s reputation and goodwill.” *Id.* (citation
5 omitted). “When the alleged infringer knowingly adopts a mark similar to another’s, reviewing
6 courts presume that the defendant can accomplish his purpose: that is, that the public will be
7 deceived.” *Id.* (citation and internal quotation marks omitted). Plaintiffs contend GELISH is a
8 famous mark in the nail industry. Tingler Decl. ¶ 17. Plaintiffs also emphasize consumers
9 recognize GELISH brand products by the bottles’ distinctive trademarks and trade dress, and
10 routinely ask for the products by name. Tingler Decl. ¶¶ 4, 14, 16. Harmony has also won
11 numerous awards. *Id.* ¶ 13. Further, as mentioned earlier, the labeling and marks on
12 Defendants’ products are nearly identical to the GELISH products. “Accordingly, the Court
13 finds Defendants must have knowingly adopted the mark.” *SATA*, 2015 WL 6680807, at *8.
14 This factor therefore weighs in Plaintiffs’ favor.

15 “Inasmuch as a trademark owner is afforded greater protection against competing goods,
16 a ‘strong possibility’ that either party may expand its business to compete with the other will
17 weigh in favor of finding that the present use is infringing.” *Id.* (quoting *AMF Inc. v. Sleekcraft*
18 *Boats*, 599 F.2d 341, 354 (9th Cir. 1979) *abrogated on other grounds by Mattel, Inc. v. Walking*
19 *Mountain Prods.*, 353 F.3d 792 (9th Cir. 2003) (internal quotation marks omitted)). Where
20 companies “already compete to as significant extent,” as is the case here, this factor is relatively
21 unimportant. *Id.* (quoting *Brookfield*, 174 F.3d at 1060). Accordingly, this factor is neutral.

22 On balance, the Court finds Plaintiff has established a likelihood of consumer confusion
23 based on the eight factors set forth above. The Court therefore finds Plaintiffs have established
24 a likelihood of success on the merits of their trademark infringement claim.

25 **2. Likelihood of Irreparable Harm**

26 In the Ninth Circuit, a plaintiff seeking a TRO in the trademark infringement context
27 must establish irreparable injury; in other words, irreparable injury is not presumed by the
28 Court upon a showing of a likelihood of success on the merits. *Herb Reed Enters., LLC v. Fla.*

1 *Entm't Mgmt., Inc.*, 736 F.3d 1239, 1249 (9th Cir. 2013). “Evidence of a loss of control over
2 business reputation and damage to goodwill” may be sufficient to show irreparable harm. *Id.*;
3 *see also Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 841 (9th Cir. 2001)
4 (“Evidence of threatened loss of prospective customers or goodwill certainly supports a finding
5 of the possibility of irreparable harm.”).

6 Here, Plaintiffs have provided sufficient evidence of irreparable harm. Plaintiffs claim
7 Defendants’ “proliferation of cheap, low-quality counterfeit products[] not only eviscerates
8 Plaintiffs’ ability to control its mark, but grossly impacts Plaintiffs’ reputation and goodwill.”
9 Renewed App. at 16. In support of this argument, Plaintiffs offer evidence GELISH products
10 “are known throughout the industry for their quality, durability, ease of use, consistency and
11 beauty,” Tingler Decl. ¶ 8, and note Harmony’s GELISH brand gel polish “has won numerous
12 awards,” *id.* ¶ 13.

13 Plaintiffs also point to customer complaints expressing confusion and detailing the poor
14 quality of supposed GELISH products. *See* Tingler Decl. ¶ 25–17 (“On May 13, 2016, we
15 received a complaint from a nail technician who purchased 10 bottles of counterfeit GELISH
16 Foundation from MT Beauty Supply The nail technician attached videos to her complaint
17 demonstrating the cheap, low-quality nature of the counterfeit product which ruined her client’s
18 nails.”); *id.* ¶ 38 (“I have also received complaints from salons and distributors that are
19 confused about the source or origin of spurious GELISH goods purchased from counterfeiters
20”); Supp. Tingler Decl. ¶ 15 (“Harmony has received multiple reports of complaints from
21 confused consumers, nail technicians, and salon owners regarding the poor quality of the
22 counterfeit product, which they learned they were duped into purchasing. I followed up with
23 one salon owner in Beverly Hills on June 2, 2016, regarding complaints he received after
24 purchasing fake foundation off EBay at a deeply discounted price.”).

25 Plaintiffs also offer evidence concerning the poor and potentially harmful quality of the
26 counterfeit products. For example, Sunil Sirdesai (“Sirdesai”), the Technical Director
27 (Polymers) in Harmony’s Research & Development Department who is directly involved in the
28 development of Harmony’s new products, declares: “in my experience, counterfeit nail

1 products (a) do not duplicate the formulas of leading brands; (b) there are no assurances that
2 they are subject to the same quality controls.” Sirdesai Decl. ¶ 5. Sirdesai also states:

3 To cheaply manufacture a nail product that tries to mimic the performance
4 of a high-quality nail product, one or more “nasties” is normally included.
5 Even then, based on my experience, nail products from China do not
6 perform as well. For example, a typical foundation imported from China,
7 which based on my knowledge includes the subject counterfeit product,
8 may be brittle, can experience cracking within days of application, and will
9 normally last less than two weeks. In addition, soak-off times to remove the
10 imported foundation may be longer, and the removal process may be more
11 harsh, leading to damage to the nail bed.

12 *Id.* ¶ 7.

13 Furthermore, Plaintiffs offer evidence the counterfeiting activities threaten and are
14 already harming the business relationships with their distributors. Tingler, the Vice President of
15 Harmony, declares that in April of 2016, Harmony received complaints from authorized
16 distributors regarding the proliferation of counterfeit products harming their sales. Supp.
17 Tingler Decl. ¶ 13. For example, on June 3, 2016, “one of Harmony’s master distributors . . .
18 met with one of its sub-distributors . . . to discuss a decrease of \$70,000 in 2016 sales, mostly
19 occurring in the last two months. As a result of the meeting, [the master distributor] discovered
20 a large portion of the decrease in sales (reportedly more than 60% of the decrease) was being
21 attributed to the recent counterfeit activities.” *Id.* ¶ 13. Tingler contends the “widespread nature
22 of the subject counterfeiting activity is harming Harmony’s relationships with its distributors,
23 who are now competing against distributors of counterfeit product, which diminishes the value
24 of their distributorships, and encourages Plaintiffs’ network of distributors to carry and
25 distribute other branded products.” Tingler Decl. ¶ 38; *see also* Supp. Tingler Decl. ¶ 12.

26 Finally, Tingler declares Harmony has suffered an unexpected drop in sales of GELISH
27 foundation and top coat “evidencing not only lost sales due to the counterfeiting activity, but
28 also a corresponding amount of disappointed customers.” Tingler Decl. ¶ 39.

1 In light of the foregoing evidence, which shows a risk of harm to Plaintiffs' goodwill
2 and reputation, along with a threat to established business relationships and evidence of lost
3 sales, the Court finds Plaintiffs have demonstrated a likelihood of irreparable harm. *See OTR*
4 *Wheel Eng'g, Inc. v. W. Worldwide Servs., Inc.*, 602 Fed. Appx. 669, 672 (9th Cir. 2015);
5 *SATA*, 2015 WL 6680807, at *9.

6 **3. Balance of Hardships**

7 Plaintiffs also must show the balance of hardships weighs in favor of granting the TRO.
8 *SATA*, 2015 WL 6680807, at *9. “[W]here the only hardship that the defendant will suffer is
9 lost profits from an activity which has been shown likely to be infringing, such an argument in
10 defense merits little equitable consideration.” *Id.* (citation and internal quotation marks
11 omitted).

12 Plaintiffs argue that if their Renewed Application is granted, “[a]ny inconvenience to
13 Defendants will be merely economic, consisting of ill-gotten gains from the sales of counterfeit
14 products,” and that the potential for any other type of harm is ameliorated by the posting of a
15 bond by Plaintiffs. Renewed App. at 18–19. The Court agrees the balance of hardship weighs in
16 Plaintiffs' favor. Based on the record, it appears the only plausible hardship to Defendants if the
17 Court issues Plaintiffs' requested TRO “is lost profits from the sales of counterfeit and
18 infringing goods.” *SATA*, 2015 WL 6680807, at *9. Further, in light of the Court's finding
19 Plaintiffs are likely to succeed on the merits of their trademark infringement claim, this
20 hardship does not weigh strongly in Defendants' favor and “merits little equitable
21 considerable.” *Id.* (citation omitted).

22 On the other hand, Plaintiffs have invested substantial resources in developing the
23 goodwill and reputation associated with the GELISH Marks, as well as protecting its customers
24 from counterfeit products. *See* Tingler Decl. ¶¶ 15–20, 36; Supp. Tingler Decl. ¶ 6. Plaintiffs'
25 reputation and status in the market are put at risk by the actions of infringers and counterfeiters
26 seeking to unfairly benefit from the positive association consumers have with Plaintiffs'
27 products. *See* Tingler Decl. ¶ 37; Supp. Tingler Decl. ¶ 13–15. Accordingly, the Court finds the
28 balance of hardships weighs in favor of granting the TRO.

1 **4. Public Interest**

2 Finally, the Court must consider whether the requested TRO is in the public interest. “In
3 trademark cases, courts generally recognize the public as a ‘right not to be deceived or
4 confused.’” *SATA*, 2015 WL 6680807, at *9 (quoting *Moroccanoil, Inc. v. Moroccan Gold,*
5 *LLC*, 590 F. Supp. 2d 1271, 1282 (C.D. Cal. 2008)).

6 Plaintiffs have sufficiently demonstrated a TRO is in the public interest in this case.
7 Plaintiffs have shown they have poured significant resources into having the public associate
8 their products with their registered marks. *See* Tingler Decl. ¶¶16–20, 36. “By using
9 confusingly similar marks, Defendant[s] [are] depriving consumers of their ability to
10 distinguish among the goods of competing manufacturers.” *Moroccanoil*, 590 F. Supp. 2d at
11 1282. Given the public has the right not to be deceived or confused, “the public interest and
12 goals of the Lanham Act favor an injunction in this case.” *Id.*

13 Based on the foregoing, the Court GRANTS Plaintiffs’ Renewed Application for a TRO.

14 **B. Bond Amount**

15 In their Application, Plaintiffs “request that this Court dispense with any bond or impose
16 a minimal bond of less than a hundred dollars.” Renewed App. at 21. Plaintiffs assert “the
17 targeted merchandise is cheap, proven fakes,” and no undue harm can befall Defendants from
18 the TRO. *Id.* Even if it is unlikely future proceedings will prove the injunction issued
19 wrongfully, the Court is unconvinced a \$100 bond is sufficient. Instead, having considered the
20 record, the Court finds a \$5,000.00 bond is sufficient “to protect [Defendants] from loss in the
21 event that future proceedings prove that the injunction issued wrongfully.” *SATA*, 2015 WL
22 6680807, at *9 (quoting *Edgar v. MITE Corp.*, 457 U.S. 624, 649 (1982)) (internal quotation
23 marks omitted). Accordingly, Plaintiffs shall post a bond of \$2,000.00 pursuant to Rule 65(c).

24 **C. Expedited Discovery**

25 Plaintiffs argue there is good cause to expedite discovery in this case, “so as to aid and
26 enable Plaintiffs to present this Court with a full record regarding both the nature and scope of
27 the counterfeiting activity, including the involvement of each named defendant and other
28 persons and entities conspiring to counterfeit GELISH brand goods.” Renewed App. at 24.

1 Plaintiffs state such discovery will assist the merits of the case at the preliminary injunction
2 hearing. Further, without expedited discovery, it is possible Plaintiffs will suffer a denial of
3 evidence and information necessary for their case because evidence may be secreted,
4 concealed, destroyed, sold off, or otherwise disposed of. *See* Tingler Decl. ¶ 33; Phan Decl. ¶ 4.
5 Based on the foregoing, the Court finds Plaintiffs purposes for requesting the expedited
6 discovery demonstrate the requisite good cause with respect to the Defendants specifically
7 listed above.⁷

8 **V. Disposition**

9 The Court hereby GRANTS Plaintiffs' Renewed Application as set forth below.

10 **A. Temporary Restraining Order**

11 IT IS HEREBY ORDERED that Defendants ABC Nail, Gel Nail, Val USA, VIP Nail,
12 V & V Beauty, Xuan Thi Lam, Chau Thi Ngoc Le, Anh Q. Le, Iris Zhen, Felix Tseng, Cindy
13 Trinh, Lindsie Pham, Bryan Tran, Hai T. Nguyen, and Bao Toan Le; their respective officers,
14 directors, employees, agents, subsidiaries, and distributors; and all persons in active concert or
15 participation with Defendants who receive actual notice of this Order are immediately
16 restrained and enjoined:

- 17 1. From directly or indirectly manufacturing, purchasing, importing, advertising,
18 promoting, offering to sell, selling, distributing, transferring, concealing, or
19 otherwise disposing of any products bearing any of the GELISH marks, the trade
20 dress associated with the GELISH goods or the design of the GELISH bottle,
21 above, or any confusingly similar mark or bottle, other than those actually
22 manufactured or distributed by Plaintiffs;

23
24
25 ⁷ As stated in the Court's Order Denying the Original Application, "Plaintiffs have not established the Court has personal
26 jurisdiction over [Defendants Nail Lounge LLC ("Nail Lounge"), Nail Today, Hollywood Beauty, A&A Nail, MT Beauty,
27 and Nail Mark]." Order Denying Original Application at 8. Based on the record before it, the Court is unclear as to whether
28 Plaintiffs are specifically requesting jurisdictional discovery as to the "non-California Defendants." If Plaintiffs are seeking to
conduct jurisdictional discovery, they have not specified on what basis they are making such a request. *See Boschetto v.*
Hansing, 539 F.3d 1011, 1020 (9th Cir. 2008) ("The district court's refusal to provide [jurisdictional discovery], 'will not be
reversed except upon the clearest showing that denial of discovery results in actual and substantial prejudice to the
complaining litigant. Discovery may be appropriately granted where pertinent facts bearing on the question of jurisdiction are
controverted or where a more satisfaction of the fact is necessary.") (citation and internal quotation marks omitted).

- 1 2. From secreting, concealing, destroying, selling off, transferring, or otherwise
2 disposing of: (i) any products, not manufactured or distributed by Plaintiffs,
3 bearing any of the GELISH marks, or any confusingly similar marks, trade dress
4 or bottle design; or (ii) any evidence relating to the manufacture, purchasing,
5 acquisition, importation, advertising, promotion, distribution, inventory, shipping,
6 handling, sale, offer for sale, disposal or transfer of any products bearing any
7 GELISH mark or any confusingly similar mark or bottle design, including but not
8 limited to counterfeit GELISH brand foundation and top coat; and
9 3. From knowingly instructing, aiding or abetting any other person or business
10 entity in engaging in any of the activities referred to in subparagraphs (1) through
11 (2) above.

12 IT IS FURTHER ORDERED that Defendants ABC Nail, Gel Nail, Val USA, VIP Nail,
13 V & V Beauty, Xuan Thi Lam, Chau Thi Ngoc Le, Anh Q. Le, Iris Zhen, Felix Tseng, Cindy
14 Trinh, Lindsie Pham, Bryan Tran, Hai T. Nguyen, and Bao Toan Le; their respective officers,
15 directors, employees, agents, subsidiaries, and distributors; and all persons in active concert or
16 participation with Defendants who receive actual notice of this Order shall immediately:

- 17 1. Provide or otherwise turn over to Plaintiffs, within five (5) days of service of this
18 Order, all counterfeit GELISH brand products, and all documents, including
19 electronic records, related to the promotion, acquisition, inventory, sales, returns,
20 shipping, handling and disposal in the last year of all GELISH products, including
21 all counterfeit GELISH products, in their possession, custody or control.

22 Unless extended by the Court, this Temporary Restraining Order shall expire in fourteen
23 (14) days after its issuance; however, unless Plaintiffs show good cause as to why it should not
24 be extended and/or a preliminary injunction should not issue, at the preliminary injunction
25 hearing, the Court may convert said order into a Preliminary Injunction and it may thereby
26 remain in full force and effect pending trial.

1 **B. Bond to Be Posted**

2 IT IS FURTHER ORDERED that prior to the execution of this Order, Plaintiffs shall
3 post a bond in the amount of five thousand dollars (\$5,000.00), as payment of damages to
4 which Defendants may be entitled, and shall file proof of the bond. Any issue as to the
5 adequacy of the bond must be raised at the hearing on July 13, 2016 at 8:30 a.m.

6 **C. Order to Show Cause Why A Preliminary Injunction Should Not Issue and**
7 **Order of Service**

8 IT IS FURTHER ORDERED that upon the Complaint herein and Order to Show Cause
9 Why a Preliminary Injunction Should Not Issue, Defendants ABC Nail, Gel Nail, Val USA,
10 VIP Nail, V & V Beauty, Xuan Thi Lam, Chau Thi Ngoc Le, Anh Q. Le, Iris Zhen, Felix
11 Tseng, Cindy Trinh, Lindside Pham, Bryan Tran, Hai T. Nguyen, and Bao Toan Le are to
12 appear before this Court on **July 13, 2016 at 8:30 a.m.**, or at such other time that this Court
13 deems appropriate, to show cause, if there be any, why an Order for a Preliminary Injunction
14 should not be granted, pursuant to Federal Rule of Civil Procedural 65(a), on the same grounds
15 and providing the same aforementioned relief to prohibit further violations of the Act and why
16 the other relief should not be granted pending trial on the merits of this action.

17 Service or delivery of copies of this Order and the papers in support thereof on
18 Defendants or their attorney shall be given within two (2) business days of this Order and, as so
19 given, shall be deemed good and sufficient service thereof.

20 Opposing papers, if any, shall be filed with the Court and served by hand on Plaintiffs'
21 counsel at least five (5) days prior to the hearing set for **July 13, 2016 at 8:30 a.m.** Plaintiffs
22 shall file and personally serve any Reply Memorandum at least two (2) days prior to the hearing
23 set for **July 13, 2016 at 8:30 a.m.** The above dates may be revised upon stipulation by all
24 parties to a continuance or upon agreement to maintain the status quo.

25 Defendants are hereby on notice that failure to appear at the show cause hearing may
26 result in the imposition of a preliminary injunction against them pursuant to 15 U.S.C. § 1116(d)
27 and Federal Rule of Civil Procedure 65.
28

