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

InMode Ltd., and Invasix Inc.

Plaintiffs,

v.

DHGate Seller “abfl”, et al.

Defendants.

Case No. SACV 24-1803-MWF(ADSx)

**ORDER GRANTING MOTION
FOR A PRELIMINARY
INJUNCTION**

1 THIS CAUSE came before the Court upon Plaintiffs InMode Ltd. and
2 Invasix Inc.’s (“Plaintiffs” or “InMode”) Motion for a Preliminary Injunction
3 (“PI”) against Defendants. The Court held oral argument on Plaintiffs’ motion on
4 August 28, 2024. Having reviewed the papers and heard oral argument and
5 reviewed the evidence in support of or against the motion, the Court GRANTS
6 Plaintiffs’ motion for a preliminary injunction.

7 **I. BACKGROUND¹**

8 Plaintiffs are the registered owner and exclusive United States distributor of
9 Morpheus®-branded microneedling products used in aesthetic skin care. InMode
10 owns numerous trademarks used in connection with the manufacture and
11 distribution of InMode’s Morpheus® brand microneedling devices and needle
12 cartridge accessories (“Morpheus® Products”). Among these trademarks are
13 United States Registration Nos. 6182558 (MORPHEUS) and 6021401
14 (INMODE), (collectively the “InMode Trademarks”).

15 Defendants are individuals and/or business entities of unknown makeup
16 who are believed to use, or assist others in using, the Internet based e-commerce
17 stores on the e-commerce platform DHGate.com (“DHGate”) and are operating
18 under the seller identification names set forth in Exhibit 1 to the Complaint (the
19 “Seller IDs”).

20 Plaintiffs recently learned of Defendants’ sale of counterfeit versions of
21 InMode’s products. InMode then retained Brand Security Corporation (“Brand
22 Security”), a licensed private investigative firm, to investigate Defendants’
23 promotion and sale of counterfeit versions of InMode’s products on the e-
24 commerce platform DHGate. Brand Security accessed the e-commerce stores and
25 marketing and promotion sites operating under Defendants’ Seller IDs² and placed
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27 ¹ The facts herein are taken from Plaintiffs’ Complaint and Application for *Ex Parte* Relief.

28 ² A complete list of all 22 Defendants and their Seller IDs is found in Exhibit 1 attached to the Complaint.

1 orders from each Defendant for the purchase of various alleged counterfeit
2 Morpheus® Products. The products received from various Defendants were
3 shipped to Brand Security in this Judicial District. *See* Declaration of Mariela
4 Fernandez (“Fernandez Decl.”) at ¶ 9 and Exhibits 1-22 thereto.³

5 These orders were processed online, and following the submission of each
6 order, Brand Security finalized payment for the various purported Morpheus®
7 Products ordered from Defendants via Defendants’ respective payment accounts
8 on the DHGate platform. At the conclusion of the process, web page
9 screencaptures of the various purported Morpheus® Products offered for sale
10 and/or ordered via Defendants’ Seller IDs, together with photographs of many of
11 the products received, were sent to InMode’s representative for inspection. *See*
12 Declaration of Rafael Lickerman (“Lickerman Decl.”) at ¶ 25. InMode’s
13 representative, Mr. Lickerman reviewed and visually inspected web page screen
14 captures reflecting the purported Morpheus® Products identified and captured by
15 Brand Security, together with photographs of certain received goods, and
16 determined that the Defendants’ purported Morpheus® Products were not
17 authentic. *See id.*

18 On August 16, 2024, Plaintiffs filed, under seal, an *Ex Parte* Application
19 for Entry of Temporary Restraining Order (“TRO”), Restraint of Asset Transfer,
20 Motion for Expedited Discovery, and Motion for Alternative Service, which also
21 requested a PI against Defendants upon expiration of the TRO. *Id.*

22 On August 16, 2024, the Court granted Plaintiffs’ Application for TRO,
23 Restraint of Asset Transfer, Motion for Expedited Discovery, and Motion for
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26 ³ Certain Defendants use their Seller IDs in tandem with electronic communication to complete
27 their offer and sale of Morpheus®-branded products. Specifically, Defendants use private
28 messaging applications and/or services such as WhatsApp to electronically communicate with
potential consumers to complete their offer and sale of counterfeit products. Defendants’ relevant
contact information is listed on Exhibit 1 to the Complaint. *See, e.g.,* Fernandez Decl. at ¶¶ 57,
118, 161, 170, 202, 224.

1 Alternative Service. The Court allowed the Defendants and any party or non-
2 party served with the TRO to object to the restraints on or before August 26,
3 2024. No filing has been made with the Court by any party or non-party on or
4 before August 26, 2024.

5 On August 23, 2024, Plaintiffs served notice of the TRO on and sought
6 expedited discovery from non-party DHGate Group a/k/a Digital Trading Sci &
7 Tech (Beijing) Co. Ltd. DHGate Group responded to the Plaintiffs' request
8 confirming that DHGate had frozen the 22 Defendants' seller accounts as
9 ordered.

10 On August 23, 2024, Plaintiffs posted the requisite TRO bond with the
11 Clerk of the Court. Also on August 23rd, Plaintiffs served all Defendants via
12 alternate means as the Court authorized.⁴ On that same day Plaintiffs filed a
13 declaration certifying that service was made on Defendants and non-party
14 DHGate Group, and describing how service was conducted.

15 On August 26, 2024, all served Defendants were given an opportunity to
16 respond to the application for the PI and no response was made. On August 28,
17 2024, the Court held oral argument on Plaintiffs' motion to convert the TRO to a
18 preliminary injunction and the following findings are made.

19 II. LEGAL STANDARD

20 This Court has authority to grant a preliminary injunction under 15 U.S.C. §
21 1116(d), Fed. R. Civ. P. 65, The All Writs Act, 28 U.S.C. § 1651(a), and this
22 Court's inherent authority. To obtain a preliminary injunction in the Ninth Circuit,
23 a plaintiff may proceed under either of two tests. The first test assesses the
24 traditional factors: (1) the plaintiff will suffer an irreparable injury if injunctive

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27 ⁴ As noted in the certificate of service, Plaintiffs were unable to serve three defendants
28 (ytlighting, hitmantrade, and chuangke2018) because those defendants' Seller IDs and Store IDs
were inactive on DHGate platform as of August 23, 2024 and Plaintiffs had no other means to
contact those defendants. As DHGate has provided additional contact information for these
defendants, Plaintiffs shall serve those three defendants through the email addresses provided.

1 relief is not granted; (2) the plaintiff will probably prevail on the merits; (3) the
2 plaintiff shows the balance of equities favors granting the injunction; and (4) an
3 injunction serves the public interest. *See Stanley v. Univ. of S. Cal.*, 13 F.3d 1313,
4 1319 (9th Cir. 1994). Under the second test, a plaintiff may alternatively
5 demonstrate “either: (1) a likelihood of success on the merits and the possibility of
6 irreparable injury; or (2) that serious questions going to the merits were raised and
7 the balance of hardships tips sharply in its favor.” *Walczak v. EPL Prolong, Inc.*,
8 198 F.3d 725, 731 (9th Cir. 1999). These two options appear at opposite ends “of a
9 single continuum, rather than two separate tests.” *Id.* (quotations omitted).
10 Accordingly, if plaintiff shows a higher degree of hardship, the court will accept a
11 lower probability of success. *See id.*; *see also Int’l Jensen, Inc. v. Metrosound*
12 *U.S.A., Inc.*, 4 F.3d 819, 822 (9th Cir. 1993).

13 Under 15 U.S.C. § 1117(a), a plaintiff may recover the illegal profits that a
14 defendant gained through the sale of counterfeit products. District courts have the
15 power to impose an asset freeze in cases where equitable relief is sought and when
16 there is “a likelihood of dissipation of the claimed assets, or other inability to
17 recover monetary damages, if relief is not granted.” *Johnson v. Couturier*, 572 F.3d
18 1067, 1085 (9th Cir. 2009); *see also Conn. Gen. Life Ins. Co. v. New Images of*
19 *Beverly Hills*, 321 F.3d 878, 883 n.4 (9th Cir. 2003) (A “district court has authority
20 to issue asset-freezing injunction where equitable relief is sought, even though
21 substantial money damages are also claimed”) (citing *U.S. ex rel. Rahman v.*
22 *Oncology Assocs.*, 198 F.3d 489, 494-99 (4th Cir. 1999)).

23 III. ANALYSIS

24 InMode’s pleadings, sworn declarations and Memorandum of Law support the
25 following legal conclusions:

26 1. InMode Has a Substantial Likelihood of Success on the Merits.

27 InMode’s application supports that consumers are likely to be confused by
28 Defendants’ advertisement, promotion, sale, offer for sale, and/or distribution of

1 products bearing and/or using counterfeits, reproductions, and/or colorable
2 imitations of the InMode Trademarks, and that the products Defendants are selling
3 and promoting are unauthorized copy products that bear and/or use copies of the
4 InMode Trademarks.

5 **2. InMode Will Suffer Irreparable Injury Absent Immediate**
6 **Injunctive Relief.**

7 InMode has put forth evidence that, through the operation of twenty-two
8 seller identities comprised of e-commerce stores and marketing materials,
9 Defendants are operating Internet businesses which advertise, promote, offer for
10 sale, and sell, products bearing and/or using counterfeit and infringing trademarks
11 in violation of InMode's rights. Accordingly, there is good cause to believe that
12 more counterfeit and infringing products bearing and/or using the InMode
13 Trademarks will appear in the marketplace; consumers may be misled, confused,
14 and disappointed by the quality of these products; InMode may suffer loss of sales
15 for its genuine products; and Defendants' counterfeit products create an unnatural
16 erosion of the legitimate marketplace.

17 **3. The Balance of Harms Favors InMode.**

18 InMode has put forth evidence that the harm to InMode—including damage
19 to its reputation—outweighs the potential harm of restricting Defendants' trade.
20 Defendants have no legitimate rights to sell counterfeit products, manufactured
21 outside of the U.S. without FDA approval.

22 **4. The Public Interest Favors Issuance of the Preliminary**
23 **Injunction.**

24 The evidence supplied by InMode supports that it is within the public
25 interest to protect InMode's trademarks. The public has an interest in preventing
26 against the sale of counterfeit products, particularly in this case, where Defendants'
27 counterfeit Morpheus® Products can be sold to unsuspecting third parties for use
28 in medical procedures.

1 **5. The Requested Asset Freeze Is Warranted.**

2 Under 15 U.S.C. § 1117(a), Plaintiffs may be entitled to recover, as an
3 equitable remedy, the illegal profits gained through Defendants’ distribution and
4 sales of products bearing and/or using counterfeits and infringements of the
5 InMode Trademarks. In light of the inherently deceptive nature of their
6 counterfeiting business, and Defendants’ apparent violation of the federal
7 trademark laws, there is good reason to believe Defendants will hide or transfer
8 assets beyond the jurisdiction of this Court unless those assets are restrained.

9 **IV. CONCLUSION**

10 Based on Plaintiffs’ Complaint, PI Motion, and evidentiary submissions, the
11 Court concludes that Plaintiffs have satisfied the four-part test for injunctive relief.
12 Accordingly, it is hereby ORDERED AND ADJUDGED that Plaintiffs’ PI Motion
13 is GRANTED. It is further ORDERED AND ADJUDGED as follows that:

14 1. Each Defendant, their officers, directors, employees, agents,
15 subsidiaries, distributors, and all persons in active concert or participation with
16 them having notice of this Order are hereby preliminarily restrained from:

17 a. Manufacturing, making, buying, purchasing, importing, shipping,
18 delivering, advertising, marketing, promoting, offering to sell, selling, or otherwise
19 distributing or disposing of, in any manner, any counterfeit or infringing products,
20 including but not limited to Morpheus® Products and any other products bearing
21 the MORPHEUS® and INMODE® Trademarks.

22 b. Manufacturing, making, buying, purchasing, importing, shipping,
23 delivering, advertising, marketing, promoting, offering to sell, selling, or otherwise
24 distributing or disposing of, in any manner, any purported InMode or Morpheus®
25 Products that are not actually produced, imported, or distributed under Plaintiffs’
26 control or supervision, or approved for sale in the United States by Plaintiffs in
27 connection with the MORPHEUS® and INMODE® Trademarks;

28 c. Committing acts calculated to cause purchasers to believe that

1 counterfeit or infringing Morpheus® Products originate with Plaintiffs when they
2 do not;

3 d. In any way infringing or damaging the MORPHEUS® and
4 INMODE® Trademarks or the value or goodwill associated therewith;

5 e. Attempting, causing, or assisting in any of the above-described acts,
6 including but not limited to enabling others in the above-described acts, or passing
7 on information to others to allow them to do so; and

8 f. Forming or causing to be formed any corporation or other entity that
9 engages in the above-described acts;

10 g. Secreting, concealing, destroying, selling off, transferring, or
11 otherwise disposing of: (i) any products, not manufactured or distributed by
12 Plaintiffs bearing and/or using the InMode Trademarks, or any confusingly similar
13 trademarks; or (ii) any evidence relating to the manufacture, importation, sale,
14 offer for sale, distribution, or transfer of any products bearing and/or using the
15 InMode Trademarks, or any confusingly similar trademarks.

16 2. Each Defendant, its officers, directors, employees, agents,
17 subsidiaries, distributors, and all persons in active concert or participation with any
18 Defendant having notice of this Order shall immediately discontinue the use of the
19 InMode Trademarks, or any confusingly similar trademarks within metatags or
20 other markers within website source code, from use on any webpage (including as
21 the title of any web page), from any advertising links to other websites, from search
22 engines' databases or cache memory, and any other form of use of such terms
23 which is visible to a computer user or serves to direct computer searches to Internet
24 based e-commerce stores, registered by, owned, or operated by each Defendant,
25 including the Internet based e-commerce stores operating under the Seller IDs.

26 3. Defendants shall not transfer ownership of the Seller IDs during the
27 pendency of this Action, or until further Order of the Court.

28 4. Each Defendant shall preserve copies of all computer files relating to

1 the use of any of the Seller IDs and shall take all steps necessary to retrieve
2 computer files relating to the use of the Seller IDs that may have been deleted
3 before the entry of this Order.

4 5. Plaintiffs shall serve a copy of this Order upon Defendants and non-
5 parties by alternative means, for good cause shown. Plaintiffs intend to serve
6 Defendants and non-parties via available email and messaging system application
7 (such as WhatsApp), as well as the DHGate messaging portal associated with each
8 individual Defendant as listed in Exhibit 1 attached to the Complaint.

9 6. Upon receipt of notice of this Order, Defendants and all financial
10 institutions, payment processors, banks, escrow services, money transmitters, or
11 marketplace platforms, including but not limited to payment processors associated
12 with DHGate or any of its affiliates, and their related companies and affiliates,
13 shall (i) immediately identify and restrain all funds in all financial accounts and/or
14 sub-accounts associated with the Internet based e-commerce stores, operating
15 under the Seller IDs, the store URLs, store numbers, and/or the e-mail addresses
16 identified in Exhibit 1 to the Complaint, as well as any other accounts of the same
17 customer(s); (ii) identify all other accounts which transfer funds into the same
18 financial institution account(s) or any of the other financial accounts subject to this
19 Order; (iii) restrain the transfer of all funds, as opposed to ongoing account activity,
20 held or received for their benefit or to be transferred into their respective financial
21 accounts, and any other financial accounts tied thereto; and (iv) immediately
22 divert those restrained funds to a holding account for the trust of the Court.

23 7. The PI shall remain in effect until the Court orders otherwise.

24 8. This PI shall apply to the Seller IDs and any other seller identification
25 names, e-commerce stores, private messaging accounts, domain names and
26 websites, or financial accounts which are being used by Defendants for the purpose
27 of manufacturing, distributing, offering for sale and/or selling counterfeit
28 Morpheus® Products containing infringing versions of the InMode Trademarks at

1 issue in this action and/or unfairly competing with Plaintiffs.

2 9. Any Defendant or financial institution account holder subject to this
3 PI may petition the Court to modify the asset restraint set out herein.

4 10. The PI shall no longer apply to any Defendant or associated Seller ID
5 dismissed from this action or as to which Plaintiffs have withdrawn its request for
6 a PI.

7 11. Pursuant to 15 U.S.C. § 1116(d)(5)(D) and Fed. R. Civ. P. 65(c),
8 Plaintiffs posted bond in the amount of Ten Thousand Dollars and Zero Cents
9 (\$10,000.00), as payment of damages to which Defendants may be entitled for a
10 wrongful injunction or restraint, during the pendency of this action, or until further
11 Order of the Court;

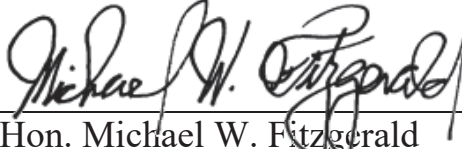
12 12. The Court converts the bond Plaintiffs previously posted for the TRO
13 into a PI bond that provides security for this Order. In the Court's discretion, the
14 bond may be subject to increase should an application be made in the interest of
15 justice.

16 13. Plaintiffs shall serve copies of this Order, on each Defendant by
17 e-mail via their corresponding e-mail address, or on each Defendant via the
18 e-mail/online contact form or other means of electronic contact provided on the
19 Internet based e-commerce stores operating under the respective Seller IDs, or by
20 providing a copy of this Order by e-mail to the marketplace platform, social media
21 website, or image hosting website for each of the Seller IDs so that the marketplace
22 platform, social media website, or image hosting website in turn, notifies each
23 Defendant of the Order, or by other means reasonably calculated to give notice
24 which is permitted by the Court.

25 14. The Court further dissolves the Order sealing this action and instructs
26 the Clerk of the Court to make all prior filings available to the public. The Court
27 further instructs the parties to proceed with future filings publicly, unless specific
28 pleadings require sealing, which should be sought separately.

1 15. To the extent that any named Defendant should attempt to avoid the
2 obligations of this Order by changing its Seller ID while continuing to operate
3 under the same Store ID or using the same corporate account, this Order shall apply
4 with full force and effect to any new Seller ID used by any of the named
5 Defendants to distribute and offer for sale counterfeit Morpheus® Products
6 unlawfully using infringing versions of the InMode Trademarks.

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9 DONE AND ORDERED, this 3rd day of September 2024.

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12 _____
13 Hon. Michael W. Fitzgerald

14 UNITED STATES DISTRICT JUDGE

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16 cc: All counsel of record
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