

United States District Court  
for the  
Southern District of Florida

Abercrombie & Fitch Trading Co.,	)	
Plaintiff,	)	
	)	
v.	)	Case No. 17-61810-CIV-SCOLA
	)	
Abercrombiesirelands.com, and	)	
others, Defendants.	)	

**Order Granting Application For Entry Of Preliminary Injunction**

This matter is before the Court on the Plaintiff's Application for Entry of Preliminary Injunction (ECF No. 5) (the "Application for Preliminary Injunction") and upon the Preliminary Injunction Hearing held on October 13, 2017. The Court has carefully reviewed the Motion and the entire court file and is otherwise fully advised in the premises.

By the instant Application, Plaintiff Abercrombie & Fitch Trading Co. ("Plaintiff") moves for entry of a preliminary injunction against the Defendants, the Individuals, Partnerships and Unincorporated Associations identified on Schedule "A" hereto (collectively "Defendants"), pursuant to 15 U.S.C. § 1116 and Fed. R. Civ. P. 65, and The All Writs Act, 28 U.S.C. § 1651(a), for alleged violations of the Lanham Act, 15 U.S.C. §§ 1114, and 1125(a) and (d).

The Court convened a hearing on October 13, 2017, at which only counsel for the Plaintiff was present and available to present evidence supporting the Application for Preliminary Injunction. The Defendants have not responded to the Application for Preliminary Injunction, nor made any filing in this case, nor have the Defendants appeared in this matter either individually or through counsel. Because the Plaintiff has satisfied the requirements for the issuance of a preliminary injunction, the Court **grants** the Plaintiff's Application for Preliminary Injunction (**ECF No. 5**).

## 1. Factual Background<sup>1</sup>

The Plaintiff is the registered owner of the following trademarks on the Principal Register of the United States Patent and Trademark Office (collectively, the “Abercrombie Marks”):

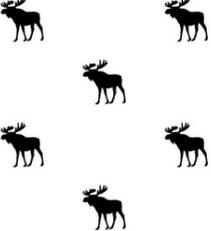
<b>Trademark</b>	<b>Registration Number</b>	<b>Registration Date</b>	<b>Class / Goods</b>
ABERCROMBIE & FITCH	0,951,410	January 23, 1973	IC 025 - men's and women's clothing and footwear-namely pants, shirts, skirts, jackets, coats, gloves, mittens, hats, underwear, shoes, belts, caps.
abercrombie	2,305,464	January 4, 2000	IC 025 - Clothing, namely, coats, jackets, knit shirts, woven shirts, t-shirts, shirts, underwear, pants, jeans, hats and shoes. IC 035 - Retail clothing store services
ABERCROMBIE & FITCH	2,500,146	October 23, 2001	IC 003 - personal care products, namely, perfume. IC 014 - jewelry, namely, necklaces and bracelets. IC 018 - handbags, tote bags and travel bags. IC 025 - clothing, namely, t-shirts, sweatshirts, sweatpants, jeans, sandals, visors, tank tops, swimwear, bikinis and camisoles.

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<sup>1</sup> The factual background is taken from the Plaintiff's Complaint, Application for Preliminary Injunction, and supporting evidentiary submissions.

A & F	2,530,664	January 15, 2002	<p>IC 025 - clothing, namely, hats, caps, shirts, t-shirts, tank tops, knit tops, woven tops, halter tops, sweatshirts, sweatpants, underwear, boxer shorts, pants, short pants, jeans, skirts, footwear, sweaters, vests, coats, jackets, scarves.</p> <p>IC 035 - retail personal care product and clothing store services and mail order catalog services featuring personal care products and clothing.</p>
HOLLISTER	2,774,426	October 21, 2003	<p>IC 025 - clothing, namely, shirts, t-shirts, tank-tops, knit tops, woven tops, sweatshirts, sweatpants, jogging pants, swimwear, boxer shorts, pants, short pants, jeans, dresses, skirts, belts, sweaters, vests, coats, jackets, sold exclusively in applicant's stores.</p> <p>IC 035 - retail store services featuring clothing and personal care products provided exclusively in applicant's stores.</p>
	3,212,644	February 27, 2007	<p>IC 025 - clothing, namely, polo shirts, sweaters, t-shirts, shirts, knit tops, woven tops, sweatshirts, sweatpants, pants, shorts, caps, hats, scarves, jackets, coats, sandals, flip flops, belts, tank tops, underwear, boxer shorts, swim suits, pajamas, sleepwear.</p>

HOLLISTER	3,310,650	October 16, 2007	IC 025 - belts; blouses; boxer shorts; camisoles; caps; coats; footwear; halter tops; hats; jackets; jeans; knit shirts; loungewear; pants; sandals; scarves; shirts; shoes; shorts; skirts; sweat pants; sweat shirts; sweat shorts; sweaters; swim wear; t-shirts; tank tops; underpants; undershirts; underwear.
ABERCROMBIE	3,484,799	August 12, 2008	IC 025 - coats; jackets; knit shirts; shirts; t-shirts; underwear; pants; jeans; hats; shoes.
HCO	3,529,071	November 4, 2008	IC 025 - clothing, namely, boxer shorts, caps, coats, hats, jackets, knit shirts, knit tops, loungewear, pants, shirts, slacks, sweat pants, sweat shirts, t-shirts and underwear. IC 035 - retail store services and on-line retail services featuring clothing.
	3,745,497	February 2, 2010	IC 025 – clothing, namely, blouses, boxer shorts, camisoles, caps, coats, dresses, footwear, hats, jackets, jeans, knit shirts, knit tops, loungewear, pajamas, pants, scarves, shirts, shorts, skirts, sleepwear, sweat pants, sweat shirts, sweaters, swim wear, t-shirts, tank tops, undershirts, underwear and vests, all sold exclusively through applicant’s Hollister stores and Hollister website.

<p>FITCH</p>	<p>3,827,154</p>	<p>August 3, 2010</p>	<p>IC 025 – Belts; Bottoms; Coats; Dresses; Footwear; Gloves; Headwear; Jackets; Leggings; Scarves; Sleepwear; Swimwear; Tops; Undergarments</p>
	<p>3,964,371</p>	<p>May 24, 2011</p>	<p>IC 025 - Clothing, namely, polo shirts, blouses, sweaters, t-shirts, knit shirts, knit tops, sweatshirts, sweatpants, sweat suits, pants, jogging suits, jeans, shorts, skirts, caps, hats, scarves, jackets, coats, sandals, flip flops, socks, belts, tank tops, underwear, boxer shorts, swim suits, pajamas, sleepwear and thongs</p> <p>IC 035 - Retail store services and on-line retail store services featuring clothing, footwear, accessories, fragrances and jewelry</p>
	<p>4,302,910</p>	<p>March 12, 2013</p>	<p>IC 025 - Bottoms; Sleepwear; Undergarments; Swimwear</p>

The Abercrombie Marks are used in connection with the manufacture and distribution of high quality goods in the categories identified above. (See Declaration of Seth Wood in Support of Plaintiff’s Application for Preliminary Injunction (“Wood Decl.”) ¶ 4, ECF No. 5-1.)

The Defendants, through the fully interactive, commercial Internet websites operating under the domain names identified on Schedule “A” hereto (collectively, the “Subject Domain Names”), have advertised, promoted, offered for sale, or sold goods bearing what the Plaintiff has determined to be

counterfeits, infringements, reproductions or colorable imitations of the Abercrombie Marks. (See Wood Decl. ¶¶ 9-12; see also relevant web pages from Defendants' Internet websites operating under the Subject Domain Names attached as Composite Exhibit 2 to the Compl.)

Although each Defendant may not copy and infringe each of the Plaintiff's trademarks for each category of goods protected, the Plaintiff has submitted sufficient evidence showing each Defendant has infringed, at least, one or more of the trademarks at issue. (See Wood Decl. ¶¶ 10-12.) The Defendants are not now, nor have they ever been, authorized or licensed to use, reproduce, or make counterfeits, reproductions, or colorable imitations of the Abercrombie Marks. (See Wood Decl. ¶¶ 9-10, 12.)

The Plaintiff's representative reviewed and visually inspected the items bearing the Abercrombie Marks offered for sale through the Defendants' Internet websites operating under the Subject Domain Names and determined the products offered for sale were non-genuine, unauthorized versions of the Plaintiff's products. (See *id.* at ¶¶ 10-12.)

On September 18, 2017, the Plaintiff filed its Complaint (ECF No. 1) against the Defendants for trademark counterfeiting and infringement, false designation of origin, cybersquatting, common law unfair competition, and common law trademark infringement. On September 19, 2017, the Plaintiff filed its *Ex Parte* Application for Entry of Temporary Restraining Order and Preliminary Injunction (ECF No. 5). On September 20, 2017, the Court issued an Order Granting *Ex Parte* Temporary Restraining Order (ECF No. 7, entered on docket September 22, 2017) and temporarily restrained the Defendants from infringing the Plaintiff's Marks at issue. Pursuant to the Court's September 20, 2017 Order, the Plaintiff provided the Defendants with notice and copies of the Court's September 20, 2017 Order and Plaintiff's *Ex Parte* Application for Entry of a Temporary Restraining Order and Preliminary Injunction via electronic mail ("e-mail") to each Defendant's corresponding e-mail address(es) and via publication. Thereafter, Certificates of Service were filed confirming service on the Defendants (ECF Nos. 11-12).

## **2. Legal Standard**

To obtain a preliminary injunction, a party must demonstrate "(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that the entry of the relief would serve the public interest." *Schiavo ex. rel Schindler v. Schiavo*, 403 F.3d 1223, 1225-26 (11th Cir. 2005) (per curiam); see also *Levi Strauss &*

*Co. v. Sunrise Int'l. Trading Inc.*, 51 F. 3d 982, 985 (11th Cir. 1995) (applying the test to a preliminary injunction in a Lanham Act case).

### **3. Analysis**

The declarations the Plaintiff submitted in support of its Application for Preliminary Injunction support the following conclusions of law:

A. The Plaintiff has a very strong probability of proving at trial that consumers are likely to be confused by the Defendants' advertisement, promotion, sale, offer for sale, or distribution of products bearing counterfeits, reproductions, or colorable imitations of the Abercrombie Marks, and that the products the Defendants are selling and promoting are copies of the Plaintiff's products that bear copies of the Abercrombie Marks.

B. Because of the infringement of the Abercrombie Marks, the Plaintiff is likely to suffer immediate and irreparable injury if a preliminary injunction is not granted. It clearly appears from the following specific facts, as set forth in the Plaintiff's Complaint, Application for Preliminary Injunction, and accompanying declarations on file, that immediate and irreparable loss, damage, and injury will result to the Plaintiff and to consumers because it is more likely true than not that:

1. The Defendants own or control Internet websites, domain names, or businesses which advertise, promote, offer for sale, or sell products bearing counterfeit and infringing trademarks in violation of the Plaintiff's rights; and

2. There is good cause to believe that more counterfeit and infringing products bearing the Plaintiff's trademarks will appear in the marketplace; that consumers are likely to be misled, confused, and disappointed by the quality of these products; and that the Plaintiff may suffer loss of sales for its genuine products.

C. The balance of potential harm to the Defendants in restraining their trade in counterfeit and infringing branded products if a preliminary injunction is issued is far outweighed by the potential harm to the Plaintiff, its reputation, and its goodwill as a manufacturer and distributor of quality products if such relief is not issued.

D. The public interest favors issuance of the preliminary injunction to protect the Plaintiff's trademark interests and protect the public from being defrauded by the palming off of counterfeit products as the Plaintiff's genuine products.

### **4. Conclusion**

For the foregoing reasons, it is **ordered and adjudged** that the Plaintiff's

Application for Preliminary Injunction (ECF No. 5) is hereby **granted** as follows:

1. Each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order are hereby restrained and enjoined until further Order of this Court:

- a. From manufacturing, importing, advertising, promoting, offering to sell, selling, distributing, or transferring any products bearing the Abercrombie Marks, or any confusingly similar trademarks, other than those actually manufactured or distributed by the Plaintiff; and
- b. From secreting, concealing, destroying, selling off, transferring, or otherwise disposing of: (i) any products, not manufactured or distributed by the Plaintiff, bearing the Abercrombie Marks, or any confusingly similar trademarks; or (ii) any evidence relating to the manufacture, importation, sale, offer for sale, distribution, or transfer of any products bearing the Abercrombie Marks, or any confusingly similar trademarks.

2. Each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order shall immediately discontinue, until further Order of this Court, the use of the Abercrombie Marks or any confusingly similar trademarks, on or in connection with all Internet websites, domain names, or businesses owned and operated, or controlled by them including the Internet websites operating under the Subject Domain Names;

3. Each Defendant, its officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with any Defendant having notice of this Order shall immediately discontinue, until further Order of this Court, the use of the Abercrombie Marks, or any confusingly similar trademarks within domain name extensions, metatags or other markers within website source code, from use on any webpage (including as the title of any web page), from any advertising links to other websites, from search engines' databases or cache memory, and any other form of use of such terms which is visible to a computer user or serves to direct computer searches to websites registered by, owned, or operated by each Defendant, including the Internet websites operating under the Subject Domain Names;

4. Each Defendant shall not transfer ownership of the Subject Domain Names during the pendency of this Action, or until further order of the Court;

5. The domain name registrars for the Subject Domain Names are directed, to the extent not already done, to transfer to the Plaintiff's counsel, for deposit with this Court, domain name certificates for the Subject Domain Names;

6. Upon the Plaintiff's request, the privacy protection service for any of the Subject Domain Names for which the registrant uses such privacy protection service to conceal the registrant's identity and contact information are ordered, to the extent not already done, to disclose to the Plaintiff the true identities and contact information of those registrants;

7. The domain name registrars for the Subject Domain Names shall immediately, to the extent not already done, assist in changing the registrar of record for the Subject Domain Names, to a holding account with a registrar of the Plaintiff's choosing (the "New Registrar"), excepting any such domain names which such registrars have been notified in writing by the Plaintiff have been or will be dismissed from this action, or as to which the Plaintiff has withdrawn its request to immediately transfer such domain names. To the extent the registrars do not assist in changing the registrars of record for the domains under their respective control within one (1) business day of receipt of this Order, the top-level domain (TLD) registries for the Subject Domain Names or their administrators, including backend registry operators or administrators, within five (5) business days of receipt of this Order shall change, or assist in changing, the registrar of record for the Subject Domain Names to a holding account with the New Registrar, excepting any such domain names which such registries have been notified in writing by the Plaintiff have been or will be dismissed from this action or as to which the Plaintiff has withdrawn its request to immediately transfer such domain names. Upon the change of the registrar of record for the Subject Domain Names, the New Registrar will maintain access to the Subject Domain Names in trust for the Court during the pendency of this action. Additionally, the New Registrar shall immediately institute a temporary 302 domain name redirection which will automatically redirect any visitor to the Subject Domain Names to the following Uniform Resource Locator ("URL") <http://servingnotice.com/Acxe70/index.html> whereon copies of the Complaint, this Order, and all other documents on file in this action shall be displayed. Alternatively, the New Registrar may update the

Domain Name System (“DNS”) data it maintains for the Subject Domain Names, which link the domain names to the IP addresses where their associated websites are hosted, to NS1.MEDIATEMPLE.NET and NS2.MEDIATEMPLE.NET, which will cause the domain names to resolve to the website where copies of the Complaint, this Order, and all other documents on file in this action shall be displayed. After the New Registrar has effected this change, the Subject Domain Names shall be placed on lock status, preventing the modification or deletion of the domains by the New Registrar or the Defendants;

8. Each Defendant shall continue to preserve copies of all computer files relating to the use of any of the Subject Domain Names and shall take all steps necessary to retrieve computer files relating to the use of the Subject Domain Names that may have been deleted before the entry of this Order;

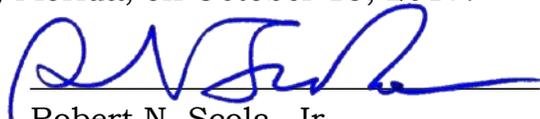
9. This Order shall apply to the Subject Domain Names, associated websites, and any other domain names and websites properly brought to the Court’s attention and verified by sworn affidavit that such new domain names are being used by the Defendants for the purpose of counterfeiting the Abercrombie Marks or unfairly competing with the Plaintiff on the World Wide Web;

10. As a matter of law, this Order shall no longer apply to any Defendant or associated domain name dismissed from this action or as to which the Plaintiff has withdrawn its request for a preliminary injunction;

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

12. This preliminary injunction shall remain in effect during the pendency of this action, or until further Order of this Court.

**Done and ordered** at Miami, Florida, on October 13, 2017.



Robert N. Scola, Jr.

United States District Judge

**SCHEDULE "A"**  
**DEFENDANTS BY NUMBER AND SUBJECT DOMAIN NAME**

<b>Defendant Number</b>	<b>Subject Domain Name</b>
1	abercrombiesirelands.com
1	thebielbymill.co.uk
2	adampiccin.com
2	circledoc.com
2	foreverflowerz.com
2	saralandas.com
3	adayatthebeachat42.com
3	centurionfellowship.com
3	enjoyrrhh.com
3	gus-myers.com
3	infocabello.com
3	josehermo.com
3	kensmusclecars.com
4	anolivedaily.com
4	biofincamontefrio.com
4	chabadgash.com
4	csv2sql.com
4	gelisimaikido.com
4	missallyb.com
4	pustasarim.com
4	unbiased-audio.com
4	bluegekkphoto.com
5	balesavenue.com
5	collegeparksunoco.com
5	judyclarkeflowers.com
6	baseballwhiz.com
6	renewal-coupons.com
6	adam2inc.com
7	bearrubmassage.com
7	laroyaholding.com
7	morrisvillefirst.com
7	swedwell.com
7	wildkatphoto.com
8	beinghuman yoga.com

8	chockyhendreth.com
8	m-crecruitment.com
9	bestpricefashionbrands.com
10	blanquinegra.com
10	kate-mara.us
11	bonaire-beaches.com
11	bprocs.com
11	cantbuytomorrow.com
11	prestamix.com
12	bonoparroquial.com
12	dylanandandy.com
12	humbleliquorstore.com
13	byronrice.com
14	cavudining.com
14	funny-hobby.com
14	hobbysport.com
15	cftc-citroen-suc.com
15	cottageindustriesonline.com
15	melitopolcity.com
15	reinertleprince.com
15	transports-abrial.com
16	championsgatewaygroup.com
16	firstgleammarketing.com
17	chironcoleweddings.com
17	clip2be.com
17	sustainableimaging.com
18	christmassongstories.com
18	errachidia10km.com
18	forodeoportunidades.com
18	latiendadejesus.com
18	pykemessenger.com
19	clickerhappiness.com
19	cmi-eu.com
19	coleccionlcde.com
19	crossfityorkme.com
19	jackparchman.com
19	thegymonbowen.com
19	wsidigitalpro.com

20	clothes-outletstore.com
21	clubhotelmontreal.com
21	dancestarmickey.com
21	dietproteica.com
21	ogeditor.com
21	sabongnow.com
21	viveksp.com
21	palawanelnido.com
22	coreenecollinshair.com
22	seanreyesmusic.com
22	tanzmentalcoach.com
23	crossfitpoole.com
24	dieta-acai-berry.com
24	johnnysbarmercer.com
24	vukovar-info.com
24	maloneswrecker.com
25	dietmoinhanh.com
25	ecoandlogicesco.com
25	freinmoteur.com
26	edison83.com
26	edsoncanoe.com
26	happyfantickets.com
26	fanretsu.com
26	juegosdepapalouie.com
26	nodame-music.com
26	pawnmartonline.com
26	hangitwright.com
26	sherylyeagerart.com
26	joannalovesfashion.com
26	ktatkd.com
26	libertyesa.com
26	thefloodcleanupteams.com
26	hotelchennaipalace.com
26	poljoprivredanovoselo.com
27	elevationcoaches.com
27	lubbockrealtyonline.com
27	top20videospain.com
28	epplastics.com

29	fisherblogs.com
30	footywallpapershd.com
31	freekhoj.com
32	frenchammer.com
32	heightsshowcase.com
32	start-upvisa.com
33	goldfacedbetty.com
33	mt-enkayaks.com
33	ziandoball.com
33	a1windowsservice.com
33	gtc-engraveit.com
34	green-and-thrifty.com
35	insidejokeshow.com
35	thequiltingbookclub.com
36	jumpforjoytahoe.com
36	malerbetrieb-droese.com
36	sayerkaucuk.com
36	waterbypuritii.com
37	kinvarabeautystudio.com
37	magicna-zivaograda.com
37	morii-mokei.com
37	30aniversarioivomec.com
38	lowpricesfashion.com
39	modeetcompagnie.com
39	primal-parenting.com
40	mylovelydresser.com
41	pascal-bejeannin.com
42	procyonsystem.com
42	travelkolanta.com
42	xtraingresos.com
43	rudymontaine.com
44	ssd-test.com
45	theottimo.com
45	tillthelastroom.com
46	trade999.top
47	unimogilev.com
48	villagedeliandgrill.com
49	accringtonroaddental.co.uk

50	boardgamebeastro.com
51	buscamosafrancisco.com
52	capturedwanderlust.com
53	cervezasmayos.com
54	egarri.com
55	fotodued.com
56	freedomyoga4all.com
57	grogreenhouses.com
58	longoservices.com
59	metatea.co.uk
60	nerakhoon.com
61	pellerinstubular.com
62	pictural.co.uk
63	planetainformativo.com
64	revista-temas.com
65	signguysrc.com
66	sweets2you.co.uk
67	tompowersmusic.com
68	toursbyq.com
69	travaux-publics-47.com
70	hollister-bercrombiefitch.fr