

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 *Ex Parte* Temporary Restraining Order and Setting
Hearing**


This matter is before the Court on the Plaintiff's *Ex Parte* Application for Entry of Temporary Restraining Order and Preliminary Injunction (ECF No. 5) (the "Application for Temporary Restraining Order"). Plaintiff, Abercrombie & Fitch Trading Co. ("Plaintiff") moves *ex parte* for entry of a temporary restraining order 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 has carefully reviewed the Application for Temporary Restraining Order, the pertinent portions of the record, and is otherwise fully advised in the premises.


1. Factual Background¹


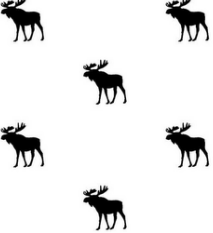
The Plaintiff is the registered owner of the following trademarks on the Principal Register of the United States Patent and Trademark Office (collectively, the "Abercrombie Marks"):

¹ The factual background is taken from Plaintiff's Complaint, Application for Temporary Restraining Order, and supporting evidentiary submissions.

Trademark	Registration Number	Registration Date	Class / Goods
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.

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 Temporary Restraining Order (“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 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.)

2. Legal Standard

To obtain a temporary restraining order, 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). Additionally, a court may only issue a temporary restraining order without notice to the adverse party or its attorney if:

- (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition [and]
- (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

FED. R. CIV. P. 65(b). *Ex parte* temporary restraining orders “should be restricted to serving their underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing and no longer.” *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cnty*, 415 U.S. 423, 439 (1974).

3. Analysis

The declarations the Plaintiff submitted in support of its Application for Temporary Restraining Order 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 temporary restraining order is not granted. It clearly appears from the following specific facts, as set forth in the Plaintiff's Complaint, Application for Temporary Restraining Order, and accompanying declarations on file, that immediate and irreparable loss, damage, and injury will result to the Plaintiff and to consumers before the Defendants can be heard in opposition unless the Plaintiff's request for *ex parte* relief is granted:

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;

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; and

3. There is good cause to believe that if the Plaintiff proceeds on notice to the Defendants of this Application for Temporary Restraining Order, the Defendants can easily and quickly transfer the registrations for many of the domain names at issue in this action, or modify registration data and content, change hosts, and redirect consumer traffic to other websites, thereby thwarting the Plaintiff's ability to obtain meaningful relief;

C. The balance of potential harm to the Defendants in restraining their trade in counterfeit and infringing branded products if a temporary restraining order 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 temporary restraining order 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 Temporary Restraining Order (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 temporarily restrained:

- 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 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 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 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 disclose to the Plaintiff the true identities and contact information of those registrants;

7. Upon entry of this Order, the Plaintiff shall provide a copy of the Order by email to the registrar of record for each of the Subject Domain Names. Upon receipt of the Order, the registrar of record for each of the Subject Domain Names shall immediately lock each of the Subject Domain Names; shall notify each registrant of record of the Order; and shall provide notice of the locking of the domain name to the registrant of record. After providing such notice to the registrars so the domain names may be locked, the Plaintiff shall also provide notice and a copy of this Order to the registrant for each Subject Domain Name via email to the email address provided as part of the domain registration data for each of the Subject Domain Names identified in the Application for Temporary Restraining Order. If an email address was not provided as part of the domain registration data for a Subject Domain Name, the Plaintiff shall provide notice and a copy of this Order to the operators of the Internet websites via an onsite email address or online submission form provided on the Internet websites operating under such Subject Domain Names. Forty-eight (48) hours after emailing this Order to the registrars of record and the registrants, the Plaintiff shall provide a copy of this Order to the registrars and the registries for the Subject Domain Names for the purposes described in Paragraph 8, below;

8. The domain name registrars for the Subject Domain Names shall immediately 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 Defendants;

9. Each Defendant shall 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;

10. This Order shall remain in effect until the date for the ruling on the Motion for Preliminary Injunction set forth below, or until such further dates as set by the Court or stipulated to by the parties;

11. 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;

12. 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 temporary restraining order;

13. Pursuant to 15 U.S.C. § 1116(d)(5)(D) and Fed. R. Civ. P. 65(c), the Plaintiff shall post a 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. The Plaintiff shall post the bond prior to requesting the registry to change the registrar of record for the Subject Domain Names;

14. A hearing is set before this Court in the United States Courthouse located at 400 North Miami Avenue, Miami, Florida, 33128, Courtroom 12-3, on **October 13, 2017, at 8:30 a.m.**, at which time the Defendants and/or any other affected persons may challenge the appropriateness of this Order and move to dissolve the same and at which time the Court will hear argument on the Plaintiff's requested preliminary injunction;

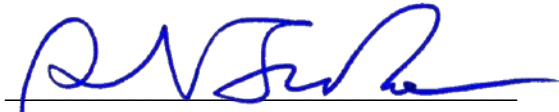
15. The Plaintiff shall serve a copy of the Complaint, the Application for Temporary Restraining Order, and this Order on each Defendant by e-mail as described above, and by posting a copy of the Complaint, the Application for Temporary Restraining Order, this Order, and all other pleadings and documents filed in this action on the website located at <http://servingnotice.com/Acxe70/index.html> within forty-eight (48) hours of control of the Subject Domain Names being changed to the Court via the New Registrar's holding account, and such notice so given shall be deemed good and sufficient service thereof. The Plaintiff shall continue to provide notice of these proceedings and copies of the documents on file in this matter to the

Defendants by regularly updating the website located at <http://servingnotice.com/Acxe70/index.html>, or by other means reasonably calculated to give notice which is permitted by the Court;

16. Any response or opposition to the Plaintiff's Motion for Preliminary Injunction must be filed and served on the Plaintiff's counsel by **October 10, 2017**, and filed with the Court, along with Proof of Service. The above dates may be revised upon stipulation by all parties and approval of this Court. The Defendants are hereby on notice that failure to appear at the hearing may result in the imposition of a preliminary injunction against them pursuant to 15 U.S.C. § 1116(d), Fed. R. Civ. P. 65, 28 U.S.C. § 1651(a), and this Court's inherent authority.

17. Upon entry of this Order, the Clerk is directed to **unseal** the Plaintiff's *Ex Parte* Application for Entry of Temporary Restraining Order (ECF No. 5) and related attachments.

Done and ordered at Miami, Florida, on September 20, 2017.



Robert N. Scola, Jr.

United States District Judge

SCHEDULE "A"
DEFENDANTS BY NUMBER AND SUBJECT DOMAIN NAME

Defendant Number	Subject Domain Name
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	bluegekkophoto.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