

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 21-cv-22703-BLOOM/Otazo-Reyes

SAFETY NAILER LLC,

Plaintiff,

v.

THE INDIVIDUALS, PARTNERSHIPS,
AND UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE "A,"

Defendants.

ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION

THIS CAUSE is before the Court on Plaintiff's Motion for Preliminary Injunction, ECF No. [19], filed under 15 U.S.C. § 1116, Federal Rule of Civil Procedure 65, and The All Writs Act, 28 U.S.C. § 1651(a), by Plaintiff, SAFETY NAILER, LLC ("SNLLC"). The Court has considered the Motion, the record in the case, arguments raised at the hearing, and is otherwise fully advised.

On August 23, 2021 the Court entered a Temporary Restraining Order and an Order Restraining the Financial Accounts used by Defendants (the "TRO"), ECF No. [22]. The TRO set a hearing on the Plaintiff's Motion for Preliminary Injunction for September 1, 2021. Plaintiff moved twice, *see* ECF Nos. [23], [28], to extend the TRO which the Court granted. ECF Nos. [24], [30]. The hearing on the Motion for Preliminary Injunction was ultimately set for September 17, 2021.

Prior to the hearing on the Motion for Preliminary Injunction, Plaintiff filed Proofs of Service, ECF Nos. [35], [37] on the Defendants pursuant to the Court's Order Authorizing Alternate Service of Process. ECF No. [16]. The Plaintiff's proofs of service affirmed that the

Plaintiff served process on the Defendants identified on Schedule A by emailing those Defendants the text of the summons issued in this action and the link, <http://www.sriplaw.com/notice>, where the full text of the Complaint, exhibits thereto, Temporary Restraining Order, and the full text of all other documents filed in this action are available to view and download in compliance with this Court's Order on Alternate Service, with the exception of Defendants numbered 193, 194, 195, 196, 197, and 198.

At the hearing, the Court inquired whether service had been made on all Defendants, and the Plaintiff confirmed that service was made on all Defendants except the Defendants on Schedule A to the Complaint numbered (Doc. 1). Plaintiff requested that the TRO be extended as to those Defendants on which service had not yet been made. The Court found that good cause was not shown for the extension of the TRO on those Defendants and denied Plaintiff's *ore tenus* motion.

The Court heard argument from Plaintiff and reviewed the evidence presented to the Court on the Motion. Having considered the evidence and the arguments, the Court grants Plaintiff's Motion for Entry of a Preliminary Injunction in its entirety against the Defendants identified in Schedule A hereto, which does not include the Defendants numbered 193, 194, 195, 196, 197, and 198 on whom service has not been made, and the TRO is dissolved as to Defendants numbered 193, 194, 195, 196, 197, and 198.

The Court determines that it has personal jurisdiction over the Defendants identified on Schedule A hereto since the evidence presented on the motion shows that the Defendants (except those indicated above on whom service was not made) have been served with process pursuant to this Court's order authorizing alternative service. The Court also determines that the evidence supports a finding that these Defendants directly target their business activities toward consumers in the United States, including Florida, and specifically that the Defendants are reaching out to do

business with Florida residents by operating one or more commercial, interactive internet stores on internet marketplaces where Florida residents can purchase products bearing infringing and/or counterfeit trademarks belonging to the Plaintiff. The Court also determines that the Defendants are selling or offering to sell products to consumers in the U.S. using copyright protected product photographs belonging to Plaintiff and are offering to sell and selling products that infringe one or more U.S. patents belonging to Plaintiff.

This Court further determines that the temporary restraints previously granted in the TRO should remain in place through the pendency of this litigation and that issuing this Preliminary Injunction is warranted under Federal Rule of Civil Procedure 65. Evidence submitted in support of this Motion and in support of Plaintiff's previously granted Motion for a Temporary Restraining Order establishes that Plaintiff has a likelihood of success on the merits; that no remedy at law exists; and that plaintiff will suffer irreparable harm if the injunction is not granted.

The Court concludes that Plaintiff has a strong probability of proving at trial that consumers are likely to be confused by defendants' advertisement, promotion, sale, offer for sale, or distribution of goods bearing counterfeits, reproductions, or colorable imitations of the products using the SAFETY NAILER Mark, U.S. Reg. No. 5,544,356 for "Hand tools, namely, clamps" in International Class 8 registered August 21, 2018; the Plaintiff's copyrighted photographs registered with the Register of Copyrights on May 25, 2021 and assigned the registration numbers VA 2-252-882 and VA 2-252-876; U.S. Patent No. US 8,806,983 (the '983 Patent).

The Court concludes that the products Defendants are selling and promoting for sale are copies of Plaintiff's products that bear copies of the SAFETY NAILER Mark, the Plaintiff's copyrighted photographs, and the '983 Patent, and that the infringement of the SAFETY NAILER

Mark, the Plaintiff's copyrighted photographs, and the '983 Patent, will likely cause Plaintiff to suffer immediate and irreparable injury if a preliminary injunction is not granted.

The potential harm to defendants in restraining their trade in counterfeit and infringing branded goods if a preliminary injunction is issued is far outweighed by the potential harm to Plaintiff, its reputation, and its goodwill as a manufacturer and distributor of quality products, if such relief is not issued. The public interest favors issuance of the temporary restraining order to protect Plaintiff's trademark interests and protect the public from being defrauded by palming off counterfeit goods as plaintiff's genuine goods.

Under 15 U.S.C. § 1117(a), Plaintiff may be entitled to recover, as an equitable remedy, the illegal profits gained through Defendants' distribution and sales of goods bearing counterfeits and infringements of plaintiff's trademarks. See *Levi Strauss & Co. v. Sunrise Int'l Trading Inc.*, 51 F.3d 982, 987 (11th Cir. 1995); *Reebok Int'l, Ltd. v. Marnatech Enters., Inc.*, 970 F.2d 552, 559 (9th Cir. 1992). The Copyright Act also permits the recovery of Defendants' profits. See 17 U.S.C. § 504. Furthermore, both the Copyright Act and the Patent Act permits the entry of an injunction to restrain violations of those acts, 17 U.S.C. § 502, 35 U.S.C. § 283, and the Copyright Act authorizes an order impounding infringing goods and articles. 17 U.S.C. §503.

Plaintiff has demonstrated that it is entitled to recover, as an equitable remedy, an injunction as a result of the infringement of Plaintiff's patent by Defendants, inasmuch as Plaintiff has demonstrated that Plaintiff has and will continue to suffer price erosion as a result of Defendants' infringement because defendants sell their products that infringe Plaintiff's intellectual property rights for much less than Plaintiff, Plaintiff has been forced to lower its prices as a result of the infringement, the Defendants continued infringement prevent and frustrate

plaintiff's ability to sell its authentic products, and Plaintiff has been unable to restore the higher price point before it was able to sell at prior to the infringements and counterfeiting by Defendants.

In light of the inherently deceptive nature of the counterfeiting business, and the likelihood that defendants have violated federal trademark laws, Plaintiff has good reason to believe Defendants will hide or transfer their ill-gotten assets beyond the jurisdiction of this Court unless the restraint of those assets ordered in the TRO is continued.

Accordingly, the Court, it is **ORDERED AND ADJUDGED** that the Motion, **ECF No. [19]**, is **GRANTED** and a preliminary injunction is entered as follows:

PRELIMINARY INJUNCTION

1. Each Defendant listed on Schedule A attached hereto, 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 during the pendency of this case:

a. From manufacturing, importing, advertising, promoting, offering to sell, selling, distributing, or transferring any products bearing the SAFETY NAILER Mark, or any confusingly similar trademarks, other than those actually manufactured or distributed by plaintiff; and

b. From secreting, concealing, destroying, selling off, transferring, or otherwise disposing of: (i) any products, not manufactured or distributed by plaintiff, bearing and/or using the SAFETY NAILER Mark, 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 and/or using the SAFETY NAILER Mark, or any confusingly similar trademarks; or (iii) any assets or other financial accounts subject

to this Order, including inventory assets, in the actual or constructive possession of, or owned, controlled, or held by, or subject to access by, any Defendant, including, but not limited to, any assets held by or on behalf of any Defendant;

c. From copying, displaying, distributing or creating derivative works of Plaintiff's copyrighted photographs; and

d. From making, using, selling, importing and/or offering to sell products that practice the '983 Patent.

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 Preliminary Injunction shall immediately discontinue, until further Order of this Court, the use of the SAFETY NAILER Mark, or any confusingly similar trademarks, or the Plaintiff's copyrighted photographs, and the '983 Patent, on or in connection with all Internet based e-commerce stores owned and operated, or controlled by them, including the Internet based e-commerce stores operating under the Seller IDs. This order is limited to the Defendants' listings using the SAFETY NAILER Mark, or any confusingly similar trademarks, or the Plaintiff's copyrighted photographs, and the '983 Patent, on or in connection with all Internet based e-commerce stores owned and operated, or controlled by them, including the Internet based e-commerce stores operating under the Seller IDs, and does not apply to the Defendants' entire e-commerce stores.

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 Preliminary Injunction shall immediately discontinue, until further Order of this Court, the use of the SAFETY NAILER Mark, 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 that are visible to a computer user or serves to direct computer searches to Internet based e-commerce stores registered, owned, or operated by any Defendant, including the Internet based e-commerce stores operating under the Seller IDs.

4. Each Defendant shall not transfer ownership of the Seller IDs during the pendency of this action, or until further order of the Court.

5. Each Defendant shall continue to preserve copies of all computer files relating to the use of any of the Seller IDs and shall take all steps necessary to retrieve computer files relating to the use of the Seller IDs that may have been deleted before the entry of this Order.

6. Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to, Alibaba.com Hong Kong Limited, which operates the AliExpress.com platform ("AliExpress"), Zhejiang Ant Small and Micro Financial Services Group Co., Ltd. ("Ant Financial Services"), Alipay (China) Internet Technology Co. Ltd., Alipay.com Co., Ltd., and Alipay Singapore E-Commerce Private Limited (collectively, "Alipay"), Amazon Payments, Inc. ("Amazon"), Dunhuang Group which operates the DHgate.com and DHPay.com platforms, Camel FinTech Inc, ContextLogic, Inc., which operates the Wish.com website ("ContextLogic"), PayPal, Inc. ("PayPal"), eBay, Inc. ("eBay"), Payoneer, Inc. ("Payoneer"), NewEgg Commerce, Inc. ("NewEgg"), WorldFirst UK Limited ("WorldFirst"), or PingPong Global Solutions Inc. ("PingPong"), Joom, SIA (Latvia) ("Joom"), Stripe, Inc. and/or Stripe Payments Company ("Stripe") and their related companies and affiliates shall continue the restraints imposed under the TRO until further Order of this Court and,

to the extent not already done, (i) restrain the transfer of all funds, as opposed to ongoing account activity, held or received for their benefit or to be transferred into their respective financial accounts, and any other financial accounts tied thereto; (ii) divert those restrained funds to a holding account for the trust of the Court.; (iii) identify all financial accounts and/or sub-accounts, associated with the Internet based e-commerce stores operating under the Seller IDs, store numbers, infringing product numbers, and/or the e-mail addresses identified on Schedule "A" hereto, as well as any other accounts of the same customer(s); (iv) identify all other accounts which transfer funds into the same financial institution account(s) or any of the other financial accounts subject to this Order;

7. Upon receipt of notice of this Preliminary Injunction, Defendants and all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms receiving notice of this Order, including but not limited to, AliExpress, Ant Financial Services, Alipay, Amazon, Dunhuang Group which operates the DHgate.com and DHpay.com platforms, Camel FinTech Inc, ContextLogic, PayPal, eBay, Payoneer, NewEgg WorldFirst, PingPong, Joom, Stripe, and their related companies and affiliates, shall to the extent not already done, provide plaintiff's counsel with all data that details: (i) an accounting of the total funds restrained and identify the financial account(s) and sub-account(s) which the restrained funds are related to; (ii) the account transactions related to all funds transmitted into the financial account(s) and sub-account(s) which have been restrained; (iii) the historical sales for the defendants' listings that are alleged to infringe plaintiff's trademarks, copyrights and patent; and (iv) the true identities along with complete contact information including email addresses of all Defendants.

8. The funds restrained by this Preliminary Injunction shall not be transferred or surrendered by any Defendant, financial institution, payment processor, bank, escrow service,

money transmitter, or marketplace website, including but not limited to, AliExpress, Ant Financial Services, Alipay, Amazon, Dunhuang Group which operates the DHgate.com and DHpay.com platforms, Camel FinTech Inc, ContextLogic, PayPal, eBay, Payoneer, NewEgg WorldFirst, PingPong, Joom, Stripe, and their related companies and affiliates for any purpose (other than pursuant to a chargeback made pursuant to their security interest in the funds) without the express authorization of this Court.

9. No Defendant whose funds are restrained by this Preliminary Injunction may transfer said funds in possession of any financial institution, payment processor, bank, escrow service, money transmitter, or marketplace website, including but not limited to, AliExpress, Ant Financial Services, Alipay, Amazon, Dunhuang Group which operates the DHgate.com and DHpay.com platforms, Camel FinTech Inc, ContextLogic, PayPal, eBay, Payoneer, NewEgg WorldFirst, PingPong, Joom, Stripe, and their related companies and affiliates restrained by this Order to any other financial institution, payment processor, bank, escrow service, money transmitter or marketplace website without the express authorization of this Court.

10. Any Defendant or financial institution account holder subject to this Preliminary Injunction may petition the Court to modify the asset restraint set out in this Order.

11. This Order shall apply only to the Seller IDs listed on Schedule A hereto, associated e-commerce stores and websites, and any other seller identification names, e-commerce stores, websites, or financial accounts which are being used by Defendants for the purpose of counterfeiting the SAFETY NAILER Mark and/or unfairly competing with Plaintiff and/or copying the Plaintiff's copyrighted photographs and/or infringing the Plaintiff's '983 Patent.

12. This Preliminary Injunction shall remain in effect during the pendency of this case and until further Order of the Court. Any Defendants that are subject to this Order may appear and

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move to dissolve or modify the Preliminary Injunction upon notice to Plaintiff pursuant to the Federal Rules of Civil Procedure and Local Rules of the Southern District of Florida.

BOND

13. The Court determines that the bond in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00) posted by Plaintiff as evidenced by the Notice of Filing Bond, ECF No. [33-], is sufficient and shall remain with the Court until a final disposition or until this Preliminary Injunction is dissolved or terminated.

DONE AND ORDERED in Chambers at Miami, Florida, on September 21, 2021.

A handwritten signature in black ink, appearing to be 'JB' with a long horizontal stroke extending to the right.

BETH BLOOM
UNITED STATES DISTRICT JUDGE

Copies to:

Counsel of Record

SCHEDULE A TO ORDER GRANTING PRELIMINARY INJUNCTION

Defendant #	Marketplace	DEFENDANTS
1	Alibaba	Guangzhou Bolingyu Trading Co., Ltd.
2	Alibaba	Dailymag Magnetic Technology (Ningbo) Limited
3	Alibaba	Ningbo Fuchuang Imp. & Exp. Co., Ltd.
4	Alibaba	Yiwu Nice Daily Necessities Co., Limited
5	Alibaba	Yiwu Sino E-Business Firm
6	Alibaba	Yueqing Shicheng Power Technology Co., Ltd.
7	Alibaba	Ningbo Z.K.L.S. Imp. & Exp. Co., Ltd.
8	Aliexpress	Sunny Always Online Store
9	Aliexpress	Buy it now shop 2013
10	Aliexpress	Fairy supermarket
11	Aliexpress	Arrowhunt Store
12	Aliexpress	QST EXPress-02
13	Aliexpress	Fashion Store A8
14	Aliexpress	WL_XY Store
15	Aliexpress	Spotless Store
16	Aliexpress	We All Like Shopping
17	Aliexpress	B-shine Store
18	Aliexpress	XINGWEIQIANG-09 Store
19	Aliexpress	TOOKIE Tool Store
20	Aliexpress	Bulk Purchase Store Store
21	Aliexpress	Silvercell Store
22	Aliexpress	Sixth house Store
23	Aliexpress	Howl's Moving Tools Store
24	Aliexpress	decoration and furnishing Store
25	Aliexpress	S-life Store
26	Aliexpress	Tools-decorating Store
27	Aliexpress	Litake Store
28	Aliexpress	WarmHome Store
29	Aliexpress	Niu Besting Store
30	Aliexpress	Practical house tools Store
31	Aliexpress	Welcome-to My Store
32	Aliexpress	1847 Blues Store
33	Aliexpress	Instrument Tech Store
34	Aliexpress	Brightness Store
35	Aliexpress	Fressia Tool Store Store
36	Aliexpress	Fighting!!!Fressia Tool Store Store
37	Aliexpress	Ali-house tools Store

Defendant #	Marketplace	DEFENDANTS
38	Aliexpress	HOMePetBall Store
39	Aliexpress	Drop Shipping To Worldwide Store
40	Aliexpress	ANCRV Store
41	Aliexpress	Dry Houseware Store
42	Aliexpress	LLD Tool Store
43	Aliexpress	Sunday House Store
44	Aliexpress	Come On Store
45	Aliexpress	Our Home 01 Store
46	Aliexpress	umogn Store
47	Aliexpress	YSTD Global Store
48	Aliexpress	Worldwide Chinese Arts Store emm Store
49	Aliexpress	Outbreaker77 Store
50	Aliexpress	Improvements Lights Store
51	Aliexpress	Pets World + A Store
52	Aliexpress	Hand Tool Box emm Store
53	Aliexpress	Tools Direct Store
54	Aliexpress	LLD Drop Shipping Store
55	Aliexpress	Pro Tools Direct Store
56	Aliexpress	Five Stars Metal Products Factory Store
57	Aliexpress	Guoao Measurement Store
58	Aliexpress	Michelle's Garden Decoration Store
59	Aliexpress	SunnyD Outdoor Store
60	Aliexpress	Shop4993329 Store
61	Aliexpress	DASF Global Store
62	Aliexpress	KK-Yellow Store
63	Aliexpress	LIROIODO Store
64	Aliexpress	Household Supplies Store
65	Aliexpress	I use Instrument tools Store
66	Aliexpress	Have Funny Store
67	Aliexpress	Industry Tool Accessories Store
68	Aliexpress	Maple Instrument&Tool Store
69	Aliexpress	Dropship House Accessories Store
70	Aliexpress	Department homes Store
71	Aliexpress	Kinging third Store
72	Aliexpress	Didida Store
73	Aliexpress	Tool & life Store
74	Aliexpress	OPDBN Painting Store
75	Aliexpress	100% tool Store

Defendant #	Marketplace	DEFENDANTS
76	Aliexpress	Hefei Home-Supply Store
77	Aliexpress	H-ome garden Store
78	Aliexpress	House Necessities Store
79	Aliexpress	Shop900236151 Store
80	Aliexpress	Ohhdeer Store
81	Aliexpress	Supermarket99 Store
82	Aliexpress	Evie Pets Store
83	Aliexpress	Beautifully decorated Store
84	Aliexpress	You And House Store
85	Aliexpress	COMI LIFE Store
86	Aliexpress	Shop910449007 Store
87	Aliexpress	Householdware Dropshipping Store
88	Aliexpress	Homehold quality life Store
89	Aliexpress	Better-Home-Life Store
90	Aliexpress	Sean's House Store
91	Aliexpress	Fun-Family Store
92	Aliexpress	Love-Life-Home Store
93	Aliexpress	Shop911224130 Store
94	Aliexpress	Warming-house Store
95	Aliexpress	LuxuryGaP Store
96	Aliexpress	Be_FlowHome Store
97	Aliexpress	Lovable Life Store
98	Aliexpress	Nine Life's Store
99	Aliexpress	LISM Life's Store
100	Aliexpress	Graceland Homey Store
101	Aliexpress	Leisurely Day Home-living Store
102	Aliexpress	Smarter Shopping Store
103	Aliexpress	Felici Lifestyle Store
104	Aliexpress	Joday Store
105	Aliexpress	W-Live Store
106	Aliexpress	Sahar House Store
107	Aliexpress	H-Life Dropshipping Store
108	Amazon	XiangYang Sunstor
109	Amazon	Faysida
110	Amazon	GESN
111	Amazon	DOYOU DO
112	Amazon	DianPaiShangMao
113	Amazon	BEISUOSI-TADIE

Defendant #	Marketplace	DEFENDANTS
114	DHgate	Yaritsi
115	DHgate	Baixiangguo
116	eBay	5073283
117	eBay	1st.ing
118	eBay	1st.vzu
119	eBay	ababhuxin
120	eBay	abala.coco
121	eBay	add2urcart
122	eBay	bamboola
123	eBay	bhee2se8cake
124	eBay	blackyelailin
125	eBay	celinlkeoder
126	eBay	clicli64
127	eBay	colorb-56
128	eBay	darialingling
129	eBay	dr3ag8on
130	eBay	elrtronn
131	eBay	fanghuang1996
132	eBay	finger-klh
133	eBay	futuresok
134	eBay	gelivable.2u
135	eBay	goodexpectation
136	eBay	gracefulvara
137	eBay	haisea007
138	eBay	handymen26
139	eBay	hea1985
140	eBay	huxinwhao
141	eBay	huzenyo
142	eBay	jewelryzhang888
143	eBay	joltio895
144	eBay	kangkanghao
145	eBay	kexinxinren
146	eBay	kiwi4fruit0
147	eBay	lakesaw
148	eBay	laptopallfor87
149	eBay	leihuyoumechenger
150	eBay	lemontress
151	eBay	lerenet

Defendant #	Marketplace	DEFENDANTS
152	eBay	liansmile
153	eBay	lilybeibei
154	eBay	linyuanwenh
155	eBay	lucky.shop_7
156	eBay	lzhlds2010_6
157	eBay	magzyyd98
158	eBay	makimingyu
159	eBay	mu2ff7in
160	eBay	nau34ghty
161	eBay	newmcx2016-8
162	eBay	newstarupup
163	eBay	newzqz88_6
164	eBay	oneshot77-7
165	eBay	pandaserveyou
166	eBay	qujidu
167	eBay	relaxtree
168	eBay	ruzhenan
169	eBay	sadleft
170	eBay	sgostore
171	eBay	shanghai.box
172	eBay	shanghai.vzu
173	eBay	shenyang86y
174	eBay	smarrashop
175	eBay	sunstarfford
176	eBay	supermarket8882016
177	eBay	tainanme
178	eBay	taoyoumehgfd
179	eBay	tdcq888
180	eBay	thatkey
181	eBay	thsix1666
182	eBay	tictac88
183	eBay	time.ing
184	eBay	topkoo
185	eBay	uxpftiv320
186	eBay	wxfeng20168
187	eBay	xinqinggengyun
188	eBay	yumuzhang
189	Joom	ouyeda

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Defendant #	Marketplace	DEFENDANTS
190	Joom	Tasteful
191	Joom	Childfourteen
192	Joom	Top tool
199	Wish	AOA Vivian
200	Wish	A_tree
201	Wish	Anemone
202	Wish	A Lot of Love
203	Wish	Mr Giraffe
204	Wish	Candy fantasy
205	Wish	Mutual affinity Classical instruments
206	Wish	glasses of water
207	Wish	get together
208	Wish	Sown stitch
209	Wish	wudongshanlaile
210	Wish	nianqingnianweio
211	Wish	all tool home
212	Wish	fener2580
213	Wish	zhengrenshuo666
214	Wish	MR.OWEN
215	Wish	ning peng ze
216	Wish	JunChang Store