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 SATA GmbH & Co. KG
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10 UNITED STATES DISTRICT COURT
 11 DISTRICT OF NEVADA

12 SATA GmbH & Co. KG, a German corporation,
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Plaintiff,
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v.
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16 Wenzhou T&E Industrial Co., Ltd., a foreign
 business organization, CMI Continental
 Marketing International Co., Ltd., a foreign
 17 business organization, and Kuani Gear Co. Ltd.,
 a foreign business organization,
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Defendants.
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Case No. 2:13-cv-02042

**ORDER GRANTING PLAINTIFF'S
 EMERGENCY EX PARTE MOTION
 FOR TEMPORARY RESTRAINING
 AND SEIZURE ORDER**

20 Plaintiff SATA GmbH & Co. KG ("SATA") has moved the Court *ex parte* for an
 21 Emergency Temporary Restraining Order, Seizure Order, and Preliminary Injunction, pursuant
 22 to Rule 65 of the Federal Rules of Civil Procedure, the Lanham Act (15 U.S.C. § 1116), the
 23 Patent Act (35 U.S.C. § 283), and Local Rule 7-5. SATA alleges that Defendants Wenzhou
 24 T&E Industrial Co., Ltd. ("Wenzhou"), CMI Continental Marketing International Co., Ltd.
 25 ("CMI"), and Kuani Gear Co. Ltd. ("Kuani"), are advertising, displaying and offering to sell
 26 products that violate SATA's U.S. trademarks and U.S. design patents. SATA further alleges
 27 that it discovered the infringing activity on November 5, 2013, when SATA representatives
 28 attended the Automobile Aftermarket Products Expo (the "AAPEX") trade show in Las Vegas,

1 Nevada, which is scheduled to end on November 7, 2013. SATA representatives allegedly
2 visited Defendants' booths and observed infringing products on display, advertised and being
3 offered for sale.

4 SATA seeks a temporary restraining order to enjoin the display, advertisement and offer
5 of sale of those products, as well as an order permitting SATA to seize infringing products as
6 well as related evidence of such infringing activity, including records of infringing product sales.

7 **FINDINGS AND CONCLUSIONS**

8 The Court, having duly considered SATA's First Amended Complaint, emergency
9 motion, and the declarations and exhibits submitted therewith, hereby makes the following
10 findings and conclusions:

11 1. An order other than an *ex parte* seizure order would not be adequate to achieve
12 the purposes of Section 32 of the Lanham Act (15 U.S.C. § 1114), because: (a) Wenzhou is a
13 China-based manufacturer of spray paint guns; (b) with the exception of its temporary presence
14 in Las Vegas, Nevada, during the annual AAPEX tradeshow from November 5 - 7, 2013,
15 Wenzhou does not have any known regular place of business or assets in the United States; and
16 (c) there is a significant risk that Wenzhou will remove from the any evidence of its
17 counterfeiting (including documents in paper and electronic form) if an *ex parte* seizure order is
18 not granted. Similarly, (a) CMI is a foreign-based manufacturer of spray paint guns in Taiwan;
19 (b) with the exception of its temporary presence in Las Vegas, Nevada, during the annual
20 AAPEX tradeshow from November 5 - 7, 2013, CMI does not have any known regular place of
21 business or assets in the United States; and (c) there is a significant risk that CMI will remove
22 from the any evidence of its counterfeiting (including documents in paper and electronic form) if
23 an *ex parte* seizure order is not granted. Further, (a) Kuani is a foreign-based manufacturer of
24 spray paint guns in Taiwan; (b) with the exception of its temporary presence in Las Vegas,
25 Nevada, during the annual AAPEX tradeshow from November 5 - 7, 2013, Kuani does not have
26 any known regular place of business or assets in the United States; and (c) there is a significant
27 risk that Kuani will remove from the any evidence of its counterfeiting (including documents in
28 paper and electronic form) if an *ex parte* seizure order is not granted.

1 2. SATA has not publicized its application for an *ex parte* temporary restraining and
2 seizure order. SATA only learned of the infringing products and infringing activity on the first
3 day of the AAPEX show.

4 3. SATA is likely to succeed on the merits of its trademark counterfeiting claim
5 under 15 U.S.C. §§ 1114 and 1116. SATA owns valid federal trademark registrations at U.S.
6 Trademark Registration No. 3,072,417, U.S. Trademark Registration No. 2,770,801, U.S.
7 Trademark Registration No. 2,774,593, and U.S. Trademark Registration No. 2,793,583 (the
8 “SATA Marks”).

9 Wenzhou is using counterfeits of the SATA Marks on counterfeit SATA products.
10 Wenzhou is using the SATA Marks in commerce, including in connection with displaying and
11 offering such products for sale in or to the United States, at least through the AAPEX trade
12 show.

13 CMI is using counterfeits of the SATA Marks on counterfeit SATA products. CMI is
14 using the SATA Marks in commerce, including in connection with displaying and offering such
15 products for sale in or to the United States, at least through the AAPEX trade show.

16 Furthermore, Kuani is using counterfeits of the SATA Marks on counterfeit SATA
17 products. Kuani is using the SATA Marks in commerce, including in connection with displaying
18 and offering such products for sale in or to the United States, at least through the AAPEX trade
19 show.

20 4. SATA is also likely to succeed on the merits of its patent infringement claim.
21 SATA owns design patents USD 459,432 S1 and USD 459,433 S1 (the “SATA Patents”).
22 Wenzhou is offering products for sale at the AAPEX trade show that infringe SATA’s design
23 patents based on the ordinary observer test. Additionally, CMI is offering products for sale at the
24 AAPEX trade show that infringe SATA’s design patents based on the ordinary observer test.
25 Further, Kuani is offering products for sale at the AAPEX trade show that infringe SATA’s
26 design patents based on the ordinary observer test.

27 5. Absent an *ex parte* temporary restraining order and a seizure order, Defendants’
28 promotion, offers for sale, and/or sale of its counterfeit and infringing products will result in

1 Vegas, Nevada;

2 b. Manufacturing, using, selling, offering to sell, or importing into the United States,
3 paint spray guns embodying designs that are the same as or substantially similar to the designs
4 claimed in U.S. Patent Nos. D459,432 S1 and D459,433 S1, including, without limitation, by
5 offering to sell or selling such products at the AAPEX trade show in Las Vegas, Nevada; and

6 c. Transferring, moving, destroying, or otherwise disposing of: (i) any of the
7 accused products identified or encompassed in Paragraphs a. and b. above; or (ii) any evidence
8 of Defendants' illegal activities, including, without limitation, any documents in any form or
9 format and any portable media or device (such as CDs, DVDs, Flash Drives, cell phones, PDAs,
10 hard disk drives, laptop computers, memory cards, etc.), relating to any use or infringement of
11 the SATA Marks or any use or infringement of the SATA Design Patents, except pursuant to the
12 below Seizure Order (collectively, "Evidence").

13 **IT IS HEREBY FURTHER ORDERED**, that upon two (2) business days' written
14 notice to the Court and SATA's counsel, or as otherwise permitted by leave of Court, any
15 Defendant may, upon proper showing, appear and move for the dissolution or modification of the
16 provisions of this Order.

17 **SEIZURE ORDER**

18 **IT IS HEREBY ORDERED** that Evidence (as defined above but for clarity including
19 laptops and media that electronically stores documents and any products bearing the SATA
20 marks) shall be seized by the United States Marshals Service assisted by one or more attorneys
21 or representatives of SATA, at the respective booths rented or occupied by Wenzhou, CMI and
22 Kuani at the AAPEX trade show as soon as practicable during the period of November 6 through
23 7, 2013. The United States Marshals Service may use all reasonable force in conducting the
24 seizure and may open doors, locks, boxes, brief cases, and containers of any type or nature to
25 locate and identify Evidence to be seized. Attorneys and other representatives of SATA shall
26 accompany the United States Marshals Service during the seizure to identify the Evidence to be
27 seized. SATA's counsel shall itemize and take possession of the seized Evidence, provide a
28 copy of the inventory to the United States Marshals Service assisting with the seizure, and file

1 the inventory with the Court. In addition, SATA's counsel may record the contents of Wenzhou,
2 CMI and Kuani's respective booths and Evidence by photographic, audio, and/or videographic
3 means during the seizure action. The United States Marshals Service shall not retain custody of
4 seized Evidence but shall ensure that they are placed in the custody of SATA's counsel. SATA
5 agrees to indemnify the United States Marshals Service who may assist with the seizure and hold
6 it/them harmless from any suit, claim, cause of action, damage, loss, or injury arising from the
7 execution of the seizure described in this Order.

8 **IT IS HEREBY FURTHER ORDERED** that Wenzhou, CMI and Kuani shall provide
9 any passwords necessary to access any electronically stored documents or electronic devices;

10 **IT IS HEREBY FURTHER ORDERED**, that the Summons, First Amended
11 Complaint, Plaintiff's Emergency *Ex Parte* Motion for Temporary Restraining and Seizure Order
12 and for Preliminary Injunction, the Declaration of Dr. Ewald Schmon, and this Order must be
13 served upon Wenzhou, CMI and Kuani, if found, at the time of the seizure, and by other means
14 reasonably calculated to give Wenzhou, CMI and Kuani reasonable notice of this action, which
15 shall include via email and Federal Express to the email and physical addresses provided by
16 Defendants on their respective business cards, attached as Exs. C, J and L to the Declaration of
17 Dr. Ewald Schmon.

18 **IT IS HEREBY FURTHER ORDERED**, that SATA shall deposit with the Clerk of the
19 Court the amount of \$ 15,000.00 to serve as sufficient security for the payment of any
20 damages Wenzhou, CMI and Kuani may be entitled to recover as a result of a wrongful seizure
21 or a wrongful attempted seizure. To the extent Wenzhou, CMI or Kuani believes that additional
22 security is necessary pursuant to Rule 65(c) of the Federal Rules of Civil Procedure, Wenzhou,
23 CMI or Kuani shall so move the Court and shall provide notice to SATA's counsel of such
24 motion on or before November __, 2013.

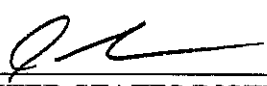
25 **IT IS HEREBY FURTHER ORDERED**, that a preliminary injunction hearing is set for
26 November 20, 2013, at 8:30 a.m./p.m., in Courtroom 6C
27 _____, before Andrew P. Gordon, U.S. District Judge.

28 Wenzhou, CMI and Kuani shall file and serve any opposition to SATA's motion for a

1 preliminary injunction on or before November 15, 2013, at NOON.

2 SATA shall file and serve any reply in support of their motion for a preliminary
3 injunction on or before November 19, 2013, at NOON.

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UNITED STATES DISTRICT JUDGE

Entered this 6th day of NOVEMBER, 2013 at: 3:30 PM