

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

LEI TANG,

Plaintiff,

v.

THE INDIVIDUALS, PARTNERSHIPS AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE “A,”
Defendants,

Case No.: 0:23-cv-61976-WPD

Judge: William Dimitrouleas

Mag. Judge: Panayotta Augustin-Birch

**PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION
AND MEMORANDUM OF LAW**

Plaintiff Lei Tang (“Plaintiff” or “Tang”) seeks entry of a Preliminary Injunction pursuant to Fed.R.Civ.P. 65(a) against the Defendants No. 11-14, 17-24, 30-43¹ identified on Schedule A. The scope of the Preliminary Injunction is identical to the Temporary Restraining Order entered on November 2, 2023 (D.E. 12). In support thereof, Plaintiff submits the following Memorandum of Law.

MEMORANDUM OF LAW

I. BACKGROUND AND PROCEDURAL HISTORY

Plaintiff filed the instant civil action on October 17, 2023, to combat the willful and intentional infringement of Copyright Registration Nos. VA0002250612 and VA0002250627, which have effective registration dates of May 10 and 11, 2020, respectively. (D.E. 1, D.E. 7 ¶¶ 5, 7, 17). On November 1, 2023, in order to facilitate the investigation of its claims and the

¹ Defendants 27-30 were dismissed pursuant to this Court’s Order on November 14, 2023. (D.E. 19). The remaining Defendants have been excluded because the associated third party platforms have not yet confirmed implementation of the TRO or provided expedited discovery information necessary for service.

identity and location of Defendants, Plaintiff moved for an order permitting expedited discovery. (D.E. 10). The Court granted Plaintiff's motion on November 2, 2023 by sealed order. (D.E. 11).

On November 1, 2023, Plaintiff moved for a Temporary Restraining Order Including a Temporary Injunction and a Temporary Asset Restraint. (D.E. 8). This Court granted Plaintiff's motion for temporary restraining Order on November 2, 2023. (D.E. 12). On November 14, 2023, Plaintiff filed his *Ex Parte* Application to Extend Temporary Restraining Order. (D.E. 20). On the same day, this Court granted Plaintiff's motion for extension of a temporary restraining order. (D.E. 21). The Court granted an extension of the temporary restraining order up to fourteen days, expiring on November 30, 2023. *Id.*

II. ARGUMENT

a. A Preliminary Injunction Extending Relief Already Granted in the TRO Is Appropriate

Plaintiff respectfully requests that this Court convert the TRO to a preliminary injunction to prevent further unlawful conduct by Defendants. District courts have the power to issue injunctions and thus enjoin a defendant from transferring assets. *See generally, Pacific and Southern Co., Inc. v. Duncan*, 744 F.2d 1490 (1984) (holding that "copyright laws" explicitly provide discretion for injunctions to district courts). Given the illicit nature of intellectual property infringement, broad asset restraints preserve the availability of permanent relief by preserving all assets, even if they may not be directly traceable to the fraudulent activity subject to equitable relief. *See S.E.C. v. Lauer*, 445 F. Supp. 2d 1362, 1370 (S.D. Fla. 2006) (noting that there is no requirement for the restrained assets be traceable to the fraudulent activity underlying a lawsuit); *Kemp v. Peterson*, 940 F.2d 110, 113-14 (4th Cir. 1991) (holding that district court may restrain assets not specifically traced to illegal activity). Furthermore, given the illicit nature of copyright infringement, it is necessary to maintain the status quo of asset preservation. *See*

SEC v. ETS Payphones, 408 F.3d 727, 735 (11th Cir. 2005) (finding it proper to restrain all of the defendant's assets to preserve funds for disgorgement).

b. This Court Has Already Found that the Requirements for a Preliminary Injunction Have Been Satisfied

The standard for granting a TRO and the standard for granting a preliminary injunction are identical in this Circuit. *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225 (11th Cir. 2005). As a result, the requirements for entry of a preliminary injunction extending the TRO have been satisfied by virtue of this Court's entry of a TRO. However, this section will discuss why the four factors considered by a court in granting a TRO or a preliminary injunction are still applicable.

To prevail in federal court on a motion for a preliminary injunction on a copyright infringement claim, the movant must establish that: (1) it has a substantial likelihood of success on the merits of its copyright infringement claim; (2) a substantial threat exists that it will suffer irreparable injury if injunctive relief is denied; (3) the threatened injury to the movant outweighs the threatened harm the injunction may do to the opponent; and (4) granting a preliminary injunction will serve the public interest. *Suntrust Bank v. Houghton Mifflin Company*, 268 F.3d 1257, 1265 (11th Cir.2001).

“The basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies.” *Sampson v. Murray*, 415 U.S. 61, 88 (1974). In other words, “[t]he purpose of a temporary restraining order, like a preliminary injunction, is to protect against irreparable injury and preserve the status quo until the district court renders a meaningful decision on the merits.” *Schiavo ex rel. Schindler*, 403 F.3d at 1231 (internal citation omitted).

Lei Tang seeks a preliminary injunction under 17 U.S.C. § 501(a), which prohibits Defendants from violating the exclusive copyrights of a copyright owner as provided by sections

106 through 122 of the Copyright Act. 17 U.S.C. § 501. To establish a prima facie case of copyright infringement, Lei Tang must show: (1) ownership of a valid and existing copyright and (2) that the defendant copied the copyrighted material. *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 349, 111 S.Ct. 1282, 113 L.Ed.2d 358 (1991); *Original Appalachian Artworks, Inc. v. Toy Loft, Inc.*, 684 F.2d 821, 824 (11th Cir.1982).

As to the first element, a plaintiff may rely upon a copyright registration certificate to as “prima facie proof of the existence of a valid copyright.” 17 U.S.C. § 401(c). Plaintiff has established that he has applied for and received a certificate of copyright for two photography series. (D.E. 8-1, D.E. 8-2). Under the second element, Plaintiff must establish that Defendant copied original elements of the copyrighted works. *Leigh v. Warner Brothers, Inc.*, *1082212 F.3d 1210, 1214 (11th Cir.2000). Simple comparisons of the works displayed by the Schedule A Defendants show that they are identical or substantially similar copies of the Tang Works. (“Declaration of Lei Tang” at D.E. 7, “Evidence” at D.E. 7-4, “Side by Side Evidence” at D.E. 8-2). Below are examples which reflect the substantial similarities or identical nature of the infringement:

DEFENDANT’S INFRINGING IMAGE



PLAINTIFF’S REGISTERED IMAGE



The Defendant's image omitted the inlay close up of the diamond painting pen and the shadow below the pen, but otherwise is substantially similar, if not identical, in appearance. Significantly, the light reflections on the pen itself are identical. There is a long light reflection running down the center of the pen, as well as a small elliptical shape evidence light reflection near the wide end of the diamond painting pen. In addition, the color saturation and pattern on each pen are identical. Overall, it is apparent that the Defendant manipulated Plaintiff's registered image for purposes of using the image in a display and offer for sale yet the images are substantially similar, if not identical.

DEFENDANT'S INFRINGING IMAGE



PLAINTIFF'S REGISTERED IMAGE



Again, the Defendant's image omitted the inlay close up of the diamond painting pen and the shadow below the pen, but otherwise is substantially similar, if not identical, in appearance. Significantly, the light reflections on the pen itself are identical. There is a long light reflection running down the center of the pen, as well as a small elliptical shape running down the center of the pen near the tip and in the middle, which evidence light reflection. In addition, the color saturation and pattern on each pen are identical. Overall, it is apparent that the Defendant manipulated Plaintiff's registered image for purposes of using the image in a display and offer for sale yet the images are substantially similar, if not identical.

In light of this evidence, it is clear that Defendants copied Tang's registered copyright material. *See Playboy Enterprises, Inc. v. Starware Pub. Corp.* 900 F.Supp. 433, 436 (S.D.Fla.1995); *Epic Metals Corp. v. Condec, Inc.*, 867 F.Supp. 1009, 1012-13 (M.D.Fla.1994). The striking similarities between the Tang Works and the Defendants' works exclude any possibility of independent creation on the part of Defendants. *See Original Appalachian Artworks*, 684 F.2d at 829.

c. The Equitable Relief Sought Remains Appropriate

Courts throughout the Southern District of Florida and other sister districts regularly grant requests for similar injunctive relief as that requested by Plaintiff here. *See CBS, Inc. v. PrimeTime 24 Joint Venture*, 9 F.Supp.2d 1333, 1344-45 (S.D.Fla.1998) (irreparable harm shown where infringing conduct resulted in lost network and station revenue); *Firma Melodiya v. ZYX Music GmbH*, 882 F.Supp. 1306, 1315 (S.D.N.Y. 1995) (irreparable harm shown where sale of infringing product at discount rate would make plaintiffs ability to sell its own product at a higher price more difficult).

This Court has already found that Plaintiff has met the requirements for a Temporary Restraining Order by virtue of its prior orders implementing a TRO. Plaintiff respectfully relies upon its prior recitation of facts in his Complaint (D.E. 1), Motion for Temporary Restraining Order (D.E. 8) and Motion for Extension of Temporary Restraining Order (D.E. 20) to support the argument that immediate and irreparable injury, loss, or damage will result to the movant without the relief requested. By virtue of this Court's prior orders granting the temporary restraining order and extension of the temporary restraining order, this Court has already found that immediate and irreparable harm will be mitigated or prevented by asset restraint. Plaintiff respectfully submits that there has been no change in circumstances which would affect this Court's reconsideration of any immediate and irreparable injury, loss, or damage to movant

without the relief requested herein. In the absence of a preliminary injunction, Defendants will likely attempt to move any assets from any accounts in U.S.-based financial institutions to an offshore account, thus denying Plaintiff the equitable remedy of accounting for profits.

d. Plaintiff requests a hearing on the preliminary injunction as soon as permissible for this Court.

This district has held a hearing for a preliminary injunction as soon as one day after a request to do so. *Areal v. Fisher Island Investments*, Case No. 1:14-cv-20310 (S.D.Fla., Sept. 30, 2014, J. K. Michael Moore) (upholding the Bankruptcy Court's issuance of a Notice of Hearing on November 20, 2013 for a hearing to take place on November 21, 2013). Now that notice may be served, Plaintiff awaits the opportunity to proceed with moving forward in his suit.

III. CONCLUSION

In view of the foregoing, Plaintiff respectfully requests that this Court notice a hearing for the instant motion for preliminary injunction and enter the preliminary injunction in the form submitted herewith.

Respectfully submitted this 28th of November 2023,

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