

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

XYZ CORPORATION,

PLAINTIFF,

v.

THE PARTNERSHIPS AND UNINCORPORATED
ASSOCIATIONS IDENTIFIED ON SCHEDULE A,

DEFENDANTS.

CIVIL ACTION No: 1:22-cv-04189

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF ITS *EX PARTE* MOTION
FOR LEAVE TO TEMPORARILY PROCEED UNDER A PSEUDONYM
AND TO FILE CERTAIN DOCUMENTS UNDER SEAL**

Plaintiff, XYZ Corporation (“Plaintiff”), through its undersigned counsel, submits this Memorandum in support of its *ex parte* Motion for Leave to Temporarily Proceed Under a Pseudonym and to File Certain Documents Under Seal (the “Motion”) in an action arising out of Sections 32 and 43(a) of the Lanham Act, 15 U.S.C. §§ 1114 and 1125(a); the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510, *et seq.*, and 17 U.S.C. § 501(a) of the Copyright Act.

I. INTRODUCTION

Through this Motion, Plaintiff requests two forms of temporary *ex parte* relief based on its claims of federal trademark infringement, trademark counterfeiting, false designation of origin, violation of the Illinois Uniform Deceptive Trade Practices Act, and copyright infringement.

First, Plaintiff moves *ex parte* for an order that it be allowed to proceed temporarily under a pseudonym, as publicly identifying the Plaintiff at this time will result in a frustration of the litigation process and will leave Plaintiff without remedy for its damages. As Plaintiff will demonstrate, exceptional circumstances exist which permit Plaintiff to proceed anonymously until

such time as the *ex parte* relief is effectuated, with Plaintiff disclosing its identity to the Defendants upon service of process.

Second, Plaintiff requests leave to file the following documents under seal: (1) the unredacted Complaint, which will identify and include additional allegations regarding Plaintiff and Defendants; Exhibit 1 to the Complaint, which consists of the Plaintiff's Trademarks; Exhibit 2 to the Complaint, which consists of the Plaintiff's Copyrights; Schedule A to the Complaint, which is a list of the Defendants by their online marketplace accounts (referred to as "Seller Aliases" or "Defendant Internet Stores") and e-commerce store URLs of the Defendant Internet Stores; (2) the Notice of Affiliated Entities Pursuant to Local Rule 3.2, (3) Report on the Filing or Determination of an Action Regarding a Patent or Trademark; and (4) Plaintiffs' *Ex Parte* Motion for Entry of a Temporary Restraining Order, including a Temporary Injunction, a Temporary Asset Restraint, and Expedited Discovery, and supporting memorandum, declarations, and exhibits, including screenshot printouts reflecting the e-commerce stores operating under the Seller Aliases.

Sealing this portion of the court file is necessary to prevent the Defendants from learning about this action prior to the entry of the temporary restraining order. If Defendants discovered this action prematurely, they would likely destroy material documentary evidence and conceal and/or transfer assets to foreign jurisdictions, which would obstruct the purpose of the underlying law and would interfere with this Court's authority to grant relief. *See* Declaration of Mir Ali ("Ali Declaration") submitted concurrently herewith at ¶¶ 17-20. As soon as the temporary restraining order has been served on the relevant Defendants and the requested actions are taken, Plaintiff will move to unseal these documents.

II. EXCEPTIONAL CIRCUMSTANCES EXIST


Unless Plaintiff is permitted to proceed temporarily under a pseudonym, Defendants will be able to determine which marks are at issue in the subject action, and with this knowledge, will be capable of circumventing detection and escaping enforcement of United States intellectual property laws.

The weight of online evidence available reveals that third parties customarily work in concert with accused counterfeiters in an effort to facilitate evasion of enforcement efforts. *See* Ali Declaration at ¶ 3. One such third-party is an online platform doing business as “Sellerdefense,” (<https://sellerdefense.cn/>) (last accessed April 17, 2022), a Chinese website that monitors counterfeit enforcement lawsuits in this Judicial District. *Id.* at ¶ 4. When Sellerdefense learns that a trademark holder has filed a lawsuit, it announces this activity on its website, posting the Complaint all other public pleadings, and the subject trademarks, and recommends that sellers immediately cease their counterfeiting activity, liquidate their associated financial accounts, and change the payment processors that they currently use to accept payments in their online marketplaces. *Id.* at ¶ 5. Please see below, and Exhibit C – Parts 1 and 2 to the Declaration of Chen Yingsheng (“Yingsheng Decl.”).

4/14/22, 12:07 PM Canon Canon was found by GBC agent, and related products were quickly removed from the shelves! - SellerDefense

案件列表 品牌库 案件代理

律所资料 商标注册 常见问题 其他

 SellerDefense

Canon is represented by GBC in case discovery, sellers to take the infringing products off the shelves quickly!

front page / Uncategorized / Canon...

Post Views: 338

Case Parameters:

Date Action Filed: 2022/04/12
Case No.: 22-cv-1889
Plaintiff's Brand: Canon
Brand Owner: CANON KABUSHIKI KAISHA
Law Firm: GBC
Place of Action: Illinois, USA

Brand Introduction:


Canon is a leading Japanese multinational corporation specializing in imaging and information products. After years of unremitting efforts since its establishment in 1937, Canon has undergone globalization and expanded its business to various fields. Canon's product lines are distributed in three major areas: personal products, office equipment and industrial equipment. Its main products include cameras and lenses, digital cameras, printers, copiers, fax machines, scanners, broadcasting equipment, medical equipment, semiconductor production equipment, etc.

Official website: <https://www.usa.canon.com/>

Figure 1. <https://sellerdefense.cn/canon-0413/> (See Exhibit C – Part 1 to the Yingsheng

Decl.)

4/14/22, 10:42 AM Keith's new case, another band's brand rights protection, has not been frozen yet, the sellers hurry up and take it off -- SellerDef...

 SellerDefense

案件列表 品牌库 案件代理

律所资料 商标注册 常见问题 其他

Keith law firm's new case - another case involving brand rights protection of a band, use of the brand has not been frozen yet, sellers are advised to take it off the shelves quickly!

front page / Uncategorized / Keith...

Post Views: 504

Today, SellerDefense discovered a new case involving brand rights protection of the American band Cheap Trick. With the many recent cases involving rights protection of bands, sellers should pay attention to avoiding pitfalls.

Case Parameters:

Date Action Filed: 2022/03/29
Case No.: 22-cv-1621
Plaintiff's Brand: Cheap Trick Band
Brand Owner: Cheap Trick Merchandising, Inc.
Law Firm: Keith
Place of Action: Illinois, USA


Brand Introduction:

Cheap Trick is a band led by guitarist Rick Nielsen, whose styles include power-pop and arena rock, and had had an influence on non-mainstream and heavy metal bands in the 1980s and 1990s.

Official website: <https://www.cheaptrick.com/>

Figure 2. <https://sellerdefense.cn/cheap-trick-0331/> (See Exhibit C – Part 2 to the Yingsheng Decl.)

4/14/22, 11:48 AM GBC acts as agent for two new brands in a row, and withdraws from the shelves before it freezes! – SellerDefense

 案件列表 品牌库 案件代理

律所资料 商标注册 常见问题 其他

GBC is representing a new brand and has discovered two cases in a row, sellers are advised to quickly take the infringing products off the shelves and cash out before their sales are frozen!

Post Views: 1,428

Recently, various major law firms in the United States represented new brands in case discovery. As an established law firm, GBC would naturally not be idle. Today, GBC has just represented the new brand TELFAR Menswear and discovered two cases in a row. The cases have just occurred, and freezing has not started. Sellers engaged in the sales of these infringing products are advised to take them off the shelves and cash out promptly!

Case Parameters:

Date Action Filed: 2021/12/13
Case No.: 22-cv-6839, 6842
Plaintiff's Brand: TELFAR Menswear
Brand Owner: TELFAR, LLC
Law Firm: GBC

Brand Introduction:

TELFAR is a brand of fashionable menswear created by Telfar Clemens, an international celebrity. Telfar Clemens was born in New York in 1985 and grew up in Liberia. His line sculptures are unique in the fashion world and define the brand as neither conceptual nor comprehensible, but as extremist.

Official website: <https://shop.telfar.net/>

Figure 3. <https://sellerdefense.cn/telfar-1224/> (See Exhibit C – Part 5 to the Yingsheng

Decl.)

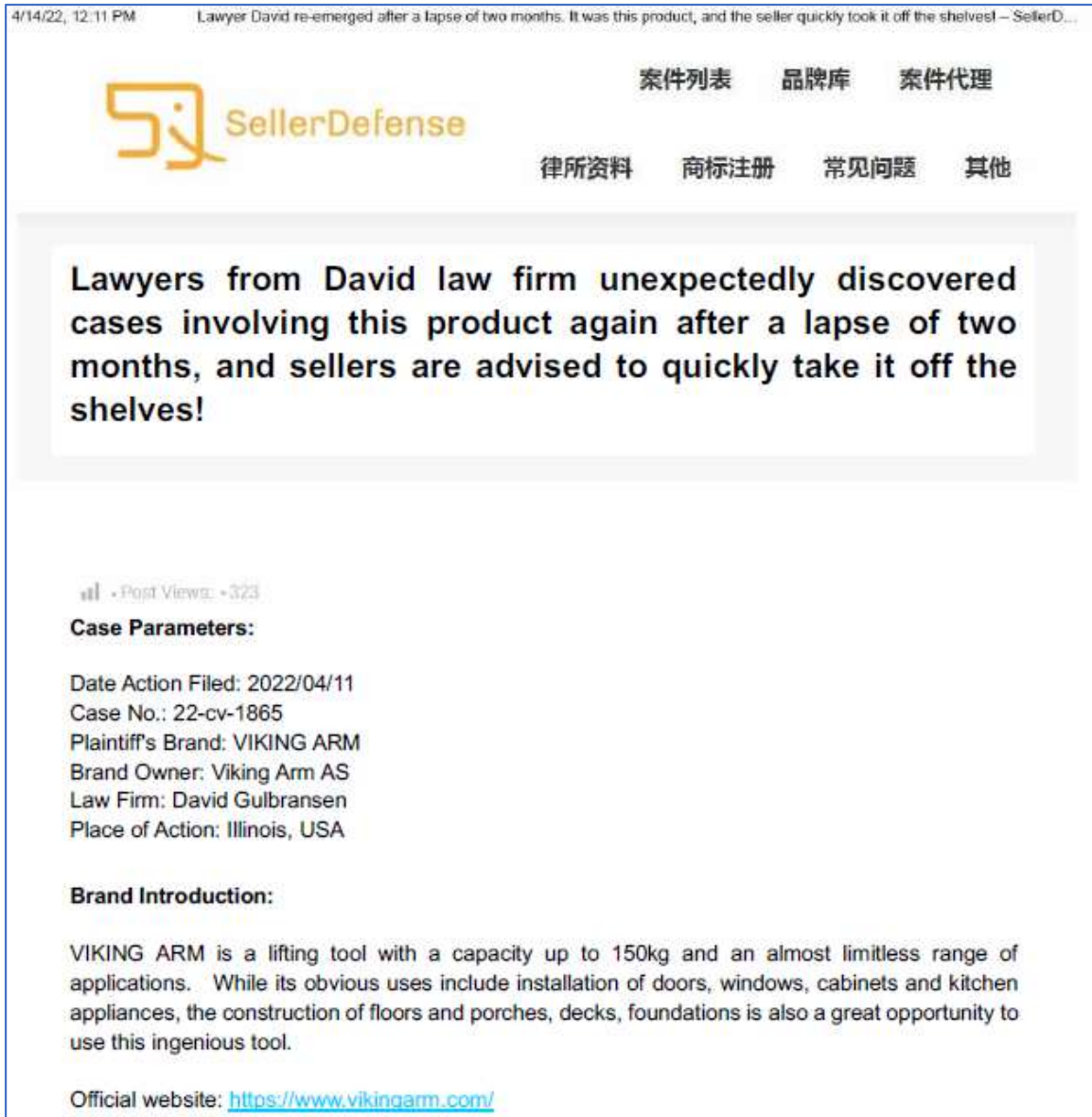



Figure 4. <https://sellerdefense.cn/viking-arm-0412/> (See Exhibit C – Part 7 to the Yingsheng Decl.)

For example, the articles pictured in the above screenshots (Figures 1, 2, 3, and 4), regarding the disclosure of the Plaintiff's name in four other cases, have between 440 and 1,430 views, as of April 18, 2022, and caution sellers to remove their products and funds from associated accounts as soon as possible. Ali Declaration at ¶ 13.

In another article posted on the SellerDefense website, which also has upwards of 1,603 views, a screenshot of the chat group that sellers are involved in can be seen, as the SellerDefense website provides links to over 10 “WeChat” or “QQ” groups, all of which have reached their maximum capacity. *Id.* at ¶ 14, and Yingsheng Decl., Exhibit C – Part 7. *See* Figure 5.



QQ 1 group: 295380184 (full)
QQ 2 group: 672085077 (full)
QQ 3 group: 866864037 (full)
QQ 6 group: 613979161 (full)
QQ 8 group: 781447834 (full)
QQ 10 group: 812058032 (full)
QQ 12 group: 852478737 (full)
QQ 15 group: 789733094 (full)
QQ16 group: 721813793 (full)
QQ18 group: 623673784
WeChat: dearzhi2019
WeChat public account: SellerDefense

Figure 5. <https://sellerdefense.cn/viking-arm-0412/> (Last Accessed: April 14, 2022)¹

III. ARGUMENT

Federal Rule of Civil Procedure 10(a) requires that “[e]very pleading” must “name all the parties[.]” However, it has been well-established that a party may seek an exception to the general requirement of identified parties in filed court documents by filing a motion to proceed under a pseudonym. While the Federal Rules of Civil Procedure do not specifically authorize the use of a pseudonym by litigants, it has been established in the applicable case law that a party may proceed in litigation anonymously where “exceptional circumstances” outweigh the public policy in favor

¹ Another website that works to assist counterfeit sellers describes its services as “a cross-border e-commerce information aggregation platform for sellers, and ... the most content-rich information platform in China's cross-border e-commerce field, providing sellers with the most comprehensive and real-time industry dynamics...” This website also monitors activity in this District, and posts any relevant information, alerting counterfeit sellers to the name and identity of Plaintiffs. *See e.g.* <https://www.amz123.com/thread-921106.htm> (Last Accessed: July 25, 2022). (Ali Declaration ¶ 16.).

of identified parties and any prejudice to the opposing party that would result from anonymity. *Doe v. Village of Deerfield*, 819 F.3d 372, 377 (7th Cir. 2016). Concluding that exceptional circumstances exist warranting such an exception, courts have recently permitted plaintiffs in similar trademark and copyright infringement actions to proceed anonymously for a limited period of time in both this District² and in other Districts.³ To proceed anonymously, “a party must demonstrate ‘exceptional circumstances’ that outweigh both the public policy in favor of identified parties and the prejudice to the opposing party that would result from anonymity.” *Id.* at 372 (citation omitted). The Seventh Circuit has held that it is within the District Court’s discretion to determine whether the circumstances of a particular case justify a departure from the general rule that parties must be identified by name. *Doe v. Blue Cross & Blue Shield United of Wisconsin*, 112 F.3d 869, 872 (7th Cir. 1997). The Court has found circumstances justifying the use of anonymous

² See *XYZ Corporation v. The Partnerships and Unincorporated Associations Identified on Schedule A*; NDIL, Case No. 1:21-cv-01233 (Apr. 6, 2021) (“Plaintiff’s motion [Dkt 5] for leave to file under seal and proceed anonymously is granted in light of the asset-restraint goal.”); *XYZ Corporation v. The Partnerships and Unincorporated Associations Identified on Schedule A*; NDIL, Case No. 1:21-cv-02322 (May 2, 2021) [Dkt 8] (“Plaintiff’s motion for leave to proceed anonymously is granted, exceptional circumstances having been shown.”); *XYZ Corporation v. The Partnerships and Unincorporated Associations Identified on Schedule A*; NDIL, Case No. 1:21-cv-01290 (March 11, 2021) [Dkt 15]; *XYZ Corporation v. The Partnerships and Unincorporated Associations Identified on Schedule A*; NDIL, Case No. 1:20-cv-07258 (March 21, 2021) [Dkt 16]; *XYZ Corporation v. The Partnerships and Unincorporated Associations Identified on Schedule A*; NDIL, Case No. 1:21-CV-06135 [Dkt 16]; *XYZ Corporation v. The Partnerships and Unincorporated Associations Identified on Schedule A*; NDIL, Case No. 1:22-cv-01478 (March 24, 2022) [Dkt 14].

³ See *XYZ Corporation v. The Partnerships and Unincorporated Associations Identified on Schedule A*; SDIL, Case No. 0:21-cv-61267 (June 22, 2021) [Dkt 6] (Finding “that there is no threat of fundamental unfairness to Defendants in allowing Plaintiff to temporarily proceed under a pseudonym. To the contrary, it is Plaintiff that potentially suffers economic harm and damage to its reputation by allowing Defendants—whose personal identities are essentially unknown—to become aware of Plaintiff’s identity early enough to allow them to destroy online evidence or evade prosecution.”).

names where, as here, a plaintiff is “a likely target of retaliation” by people who would learn its identity from court filings. *See Doe v. City of Chicago*, 360 F.3d 667, 669 (7th Cir. 2004).

In determining whether to permit a party to proceed by anonymous name, courts apply a balancing test, weighing “the possible prejudice to the opposing party from concealment” against “the harm to the plaintiff” from the disclosure of his or her identity. *Id.* Where the court determines that the harm to the Plaintiff by having its identity disclosed to the public outweighs the likely harm from concealment of such identity, the court may permit the Plaintiff to proceed under a pseudonym. *Id.* Here, as demonstrated above, the applicable balancing test analysis weighs in favor of allowing Plaintiff to proceed temporarily by an anonymous name.

In this case, permitting Plaintiff to proceed anonymously for a brief period of time will not harm the public interest, nor will Defendants be prejudiced if the Court allows the Plaintiff to proceed anonymously. Plaintiff is not seeking to conceal its identity from the Defendants indefinitely. Rather, Plaintiff seeks only to proceed anonymously on a transitory basis and intends to make its identity public after the Defendants have been served with the complaint and temporary restraining order. *See Does v. City of Indianapolis, Ind.*, No. 1:06-CV-865-RLY-WTL, 2006 WL 2289187, at *3 (S.D. Ind. Aug. 7, 2006) (granting Plaintiffs’ motion to proceed anonymously, noting “Plaintiffs request, understandably, that Defendants be precluded from disclosing their names publicly. Thus, Defendants will not be prejudiced by allowing Plaintiffs to proceed by anonymous names.”).

Here, exceptional circumstances equally warrant authorizing Plaintiff to proceed under a pseudonym. Based on Plaintiff’s counsel’s analysis of filings in other similar trademark anti-counterfeiting cases filed in this District, if Plaintiff’s identity is known, Defendants will immediately undertake actions designed to frustrate Plaintiff’s efforts to prosecute this lawsuit and

collect any judgment entered against the Defendants. Ali Declaration at ¶ 17. Specifically, such actions will likely include, but are not limited to, Defendants: (a) obstructing access to their websites in the United States so that trademark holders are unable to view the Defendants online postings and, therefore, unable to gather critical evidence; (b) shutting down their Defendant internet stores and opening up new online marketplaces with new registration and account information in order to elude the action; and (c) transferring assets from their financial accounts, terminating those accounts, and opening new financial accounts in order to escape asset restraints, leaving Plaintiff without recourse. *Id.* at ¶¶ 18-20.

IV. CONCLUSION

For the reasons stated above, Plaintiff respectfully requests that it be permitted to: (1) temporarily proceed in this matter under a pseudonym, at least until such time as the *ex parte* relief may be effectuated, including the suspension of the Defendant internet stores and restraint of the associated financial accounts, in order to minimize the risk of Defendants attempting to evade Plaintiff's anti-counterfeiting efforts and (2) to file certain documents under seal.

Dated: August 10, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document was electronically-filed on August 10, 2022, with the Clerk of the Court using the CM/ECF system.

/s/ Mir Y. Ali