

our infringement claims asserted against your clients, I can evaluate what, if anything, additional Plaintiff will agree to provide” Even though Defendants specifically asked for the sealed filings not accessible to the public. Exhibit 1. Plaintiff eventually sent sealed filings via 16 separate emails last Thursday. Plaintiff’s withholding of information is made in bad faith knowing that the Court scheduled the preliminary injunction on Monday morning, which left Defendants with 2 business days to review 31 files, many of which were filled with boilerplate languages.

Plaintiff also made misrepresentation to the Court when filing its civil cover sheet. On the civil cover sheet, Plaintiff stated that this case is related to 24-cv-1807. [Dkt. #2]. However, by Plaintiff’s own admission, this case is *not* related to 24-cv-1807. See Exhibit 1. Instead, this case is a refiled case of 24-cv-02910. Plaintiff failed to disclose this crucial information because Plaintiff dismissed the 24-cv-2910 case and refiled it as the current case as soon as that case was assigned to Judge Seeger. Plaintiff also admitted that the related 24-cv-02910 case has joinder issue. However, Defendants were unable to have access to the related dismissed case and Plaintiff refused to provide any sealed filings in the related case without reasonable explanation even though the Opposing Defendants have reason to believe that they were also the named defendants in the 2910 case. And the Opposing Defendants also have reason to believe that Plaintiff filed various similar cases in the past against the Opposing Defendants and did “judge shopping” just to obtain the most favorable results. When Plaintiff’s case was assigned to certain judges that Plaintiff disfavors, Plaintiff will quickly dismiss the entire case and refile it again. Plaintiff’s claim against the Opposing Defendants might have been barred due to multiple voluntary dismissal without prejudice. Since Plaintiff hid this prior history, refused to make disclosure to the Opposing Defendants and this Court, and because these prior filings were filed anonymously and under seal until this Court caught Plaintiff red-handed for not even disclosing

its real name in the sealed Complaint, the Opposing Defendants are prejudiced if the Court grants the extension of TRO.

Despite the Court's order made in the public hearing on May 20 that the case needs to proceed without seal anymore, see line 14 on page 10, Exhibit 2, and the despite the Court's unwillingness to extend the TRO, see line 10 on page 10, Exhibit 2, Plaintiff disregarded the Court's Order and continued to filed the *ex partes* Motion to Extend the TRO under seal when approximately 50 defendants filed appearance and had right to know what has been filed. Even though Plaintiff filed this instant motion to extend the TRO on the public docket, it did so when the Court ordered it to do so. [Dkt. 38].







2. No Personal Jurisdiction over the Opposing Defendants

Plaintiff fails to show that this Court has either general or specific personal jurisdiction over the Opposing Defendants.

General jurisdiction exists only if a defendant's affiliations with the state are so continuous and systematic as to render it essentially "at home" in the forum state. *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014). The place of incorporation and principal place of business for a corporation are paradigm bases for general jurisdiction. *Id.* at 137. It is undisputed that the Opposing Defendants are domiciled in China. Therefore, this Court does not have general personal jurisdiction over the Opposing Defendants.

"There are three essential requirements for the exercise of specific jurisdiction over an out-of-state defendant: First, the defendant's contacts with the forum state must show that it purposefully availed itself of the privilege of conducting business in the forum state or purposefully directed its activities at the state." *Curry v. Revolution Labs., LLC*, 949 F.3d 385, 388 (7th Cir. 2020). "Second, the plaintiff's alleged injury must have arisen out of the defendant's

forum-related activities.” *Id.* at 388. “And finally, any exercise of personal jurisdiction must comport with traditional notions of fair play and substantial justice.” *Id.* at 388. “Courts consistently have declined to fashion a special jurisdictional test for Internet-based cases.” *Id.* at 388. Plaintiff bears the burden of making a prima facie case for personal jurisdiction. *Id.* at 388. Here, Plaintiff fails to provide any prima facie evidence whatsoever supporting specific personal jurisdiction over the Opposing Defendants. All Plaintiff provided is images cropped from Defendants’ websites and an url next to the images. Dkt. 12-4. Exhibit 7. See example below:

Defendant No.	Seller's Name	Copyright ed Photo	Infringer's Photo	Link to Infringing Photo
5	Disimlarl Aihua.W			https://www.amazon.com/dp/B0BVHBDH3F/ref=mweb_up_am_fl_st_na_dr_up_sm_web https://www.amazon.com/Vintage-Gradient-Printed-Mid-Calf-Dresses/dp/B0BVH99VRS?th=1
6	ENOPINK			https://www.amazon.com/dp/B0CFPS23GC/ref=mweb_up_am_fl_st_na_dr_up_sm_web
7	FANDEE Fandee Branch Store			https://www.amazon.com/dp/B0CLG1BV1R/ref=mweb_up_am_fl_st_na_dr_up_sm_web

Page 2 of Exhibit 7, Dkt. 12-4

Plaintiff failed to explain how this allegedly infringing evidence can support specific personal jurisdiction over the Opposing Defendants. It does not show how the Opposing Defendants targeted Illinois. It shows no connection between the Opposing Defendants and this forum.

Federal Rule 4(k)(2) does not apply because even though the Opposing Defendants admitted that they had transacted with the United States as a whole, they nevertheless consent to the jurisdiction of Northern District of California.

3. No Likelihood of Success on the Merits

Plaintiff allegedly have copyrights for hundreds of photographs and alleged that all the Defendants infringed its purported copyrights. Plaintiff failed to provide any original deposits it submitted to the Copyright Office. The Opposing Defendants have reason to believe that Plaintiff's Copyrights are invalid because Plaintiff is not the author for at least some of the photographs. For example, Plaintiff has alleged that DOE 21 MsavigVice's listing identified with the ASIN B09K3QX99R infringed Plaintiff's Copyright VA0002379888. See Page 2 on Exhibit 2. [Dkt. #12-2]. However, DOE 21's image was published on November 5, 2021. Also see Exhibit 3.

Product details

Product Dimensions : 7.87 x 5.91 x 0.39 inches; 7.05 ounces

Department : Women

Date First Available : November 5, 2021

ASIN : B09K3QX99R

Best Sellers Rank: #1,716,420 in Clothing, Shoes & Jewelry (See Top 100 in Clothing, Shoes & Jewelry)
#23,886 in [Women's Casual Dresses](#)

Customer Reviews: 4.1 ★★★★★ ☆ ∨ 32 ratings

Portion of Exhibit 3 showing first available date of the product.

By Plaintiff's own admission, the VA0002379888 copyright was created in 2022. See Dkt. #18 Page 11. So DOE 21's allegedly infringing work not any predated Plaintiff's year of publication but also predates Plaintiff's year of creation of the copyright. Due to limited time constraint and Plaintiff's refusal to provide the full record of the copyrights, the Opposing Defendants cannot find more evidence rebutting validity of Plaintiff's other copyrights but this

strong evidence does suggest that Plaintiff's copyright is invalid at least for VA0002379888. Should this piece of information submitted to the Copyright Office, VA0002379888 would not be approved. The Opposing Defendants have reason to believe that Plaintiff conducted other equitable conduct when applying for copyrights for hundreds of photographs that do not belong to it.

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EXHIBIT 1: COPYRIGHT REGISTRATIONS

Registration Record Va0002379888

Rotita3-2022.[Group Registration Of Published Photographs.306
Photographs. 2022-01-04 To 2022-12-29]

Registration Number / Date:

VA0002379888 / 2023-11-12

Registration Class:

VA

Type Of Work:

Visual Material

Title:

**Rotita3-2022.[Group registration of published photographs.306
photographs. 2022-01-04 to 2022-12-29]**

Application Title:

Date Of Creation:

2022

Latest Transaction Date And Time:

2024-01-23T03:15:31













Copyright Claimant: Authorship On

Application: Rights And Permissions:

Record Id:


35971306




Assuming that these Copyrights are valid, Plaintiff still failed to show likelihood of merits on this case. The images below obtained from Exhibit 7 Dkt. # 12-4 show that many of the Opposing Defendants' images are nothing like Plaintiff's allegedly copyrighted images. Just to make it clear, Plaintiff alleged that it is the owner of several groups of photographs. Plaintiff never alleged that it copyrighted any patterns on the clothing.

















42	<p>Angerella Angerella Fashion</p>		 	<p>https://www.amazon.com/dp/B0CLNS5NQZ/ref=mweb_up_am_fl_st_na_ow_up_sm_web https://www.amazon.com/dp/B09KLYCQHD/ref=mweb_up_am_fl_st_na_ow_up_sm_web</p>
166	<p>Runwind Runwind Fashion Clothing</p>			<p>https://www.amazon.com/dp/B0C7K9QWCH/ref=mweb_up_am_fl_st_na_dr_up_sm_web</p>
23	<p>Nmoder</p>			<p>https://www.amazon.com/Nmoder-Womens-Bodycon-Cocktail-Dresses/dp/B0CCTHRWHS</p>
160	<p>Generic Glozeplus</p>			<p>https://www.amazon.com/dp/B09TZKFFGC/ref=mweb_up_am_fl_st_na_dr_up_sm_web</p>
32	<p>sexycherry</p>		 	<p>https://www.amazon.com/dp/B0BYYM52NZ/ref=mweb_up_am_fl_st_na_un_up_sm_web https://www.amazon.com/dp/B0BYYKZTXZ/ref=mweb_up_am_fl_st_na_un_up_sm_web</p>






	PaladMom		https://www.amazon.com/dp/B0C59DC9N3/ref=mweb_up_am_fl_st_na_dr_up_sm_web
162	LalaLin		https://www.amazon.com/dp/B0BTGTMRVK/ref=mweb_up_am_fl_st_na_dr_up_sm_web https://www.amazon.com/dp/B0BHXYBZLT/ref=mweb_up_am_fl_st_na_dr_up_sm_web

















A cursory review of other Defendants' allegedly infringing images also show that other Defendants are not using images similar to Plaintiff's images.










3	Bttup		https://www.amazon.com/dp/B0BRD73P86/ref=mweb_up_am_fl_st_na_dr_up_sm_web
6	ENOPINK		https://www.amazon.com/dp/B0CFPS23GC/ref=mweb_up_am_fl_st_na_dr_up_sm_web
10	Generic Girls' Club		https://www.amazon.com/dp/B0CH9Y5H1Y/ref=mweb_up_am_fl_st_na_dr_up_sm_web
12	Generic ZTY66		https://www.amazon.com/Athletic-Swimsuits-Swimsuit-Briefs-Printed/dp/B0BYSVK388

13	<p>Generic Jerem(7-16 Days Delivery)</p>			<p>https://www.amazon.com/Bathing-Waisted-Holiday-Sleeveless-Swimwear/dp/B0C6X9QQZY</p>
15	<p>hlysgo women clothes clearance sale</p>			<p>https://www.amazon.com/-/es/tankini-brasier-acolchado-control-abdomen/dp/B0C44RLBPY?th=1</p>
16	<p>HugeNice</p>			<p>https://www.amazon.com/dp/B0CQRPNKLD/ref=mweb_up_am_fl_st_na_dr_up_sm_web</p>
18	<p>LKPJJFRG LKPJJFRG 2024(7-12 day fast delivery)</p>			<p>https://www.amazon.com/Pockets-Bodycon-Swimsuit-Shoulder-Bathing/dp/B0C1BQ49VJ</p>
27	<p>PWFSS iuebc_NHF</p>			<p>https://www.amazon.com/PWFSS-One-Piece-Swimsuits-Swimwear-Two-Piece/dp/B0BTPB824T</p>
29	<p>SAEYZ Yuanzhouquxug ubaihuodian</p>			<p>https://www.amazon.com/Dresses-Womens-Contrast-Pleated-Hemline/dp/B0CHK83BP9</p>
63	<p>SweatyRocks</p>	 	 	<p>https://www.amazon.com/dp/B0CH9Y3GPQ/ref=mweb_up_am_fl_st_na_ow_up_sm_web https://www.amazon.com/SweatyRocks-Womens-Raglan-Sweatshirt-Pullover/dp/B0CHS2MKPT?source=ps-sl-shoppingads-lpcontext&ref=fplfs&psc=1&smid=A1VVKORG9334X4</p>

82	Generic Leehonn			https://www.amazon.com/Sporty-Strappy-Swimsuit-Bikinis-Athletic/dp/B0C3G5MHLZ?th=1
85	KINTAN daidaoshiwei			https://www.amazon.com/KINTAN-Womens-T-Shirt-Button-Detail/dp/B0CBJF71BR
87	MOJICK			https://www.amazon.com/dp/B0CMCQCD9C/ref=mweb_up_am_fl_st_na_dr_up_sm_web
88	PEIMENG Frosred - 【 7-20 Days Delivery】			https://www.amazon.com/PEIMENG-Strappy-Swimsuit-Bikinis-Athletic/dp/B0BYNYCPCH
99	Dademeo Anruioo			https://www.amazon.com/dp/B0CJT1P7DT/ref=mweb_up_am_fl_st_na_dr_up_sm_web?th=1
107	Generic aokeshenfy			https://www.amazon.com/Womens-Swimsuit-Split-Bikini-Colored/dp/B0C2VR18BT
108	Generic Lightning Deals of Today-- Yantihe			https://www.amazon.com/Dresses-Cruise-Women-Ladies-Elegant/dp/B0BZWFZKNT?th=1
109	Generic Febecool			https://www.amazon.com/-/zh_TW/summer-dresses-for-women/dp/B0BWN9R28D?th=1

99	Dademeo Anruioo			https://www.amazon.com/dp/B0CJT1P7DT/ref=mweb_up_am_fl_st_na_dr_up_sm_web?th=1
112	IbuduSexy			https://www.amazon.com/dp/B0CBDLLNS2/ref=mweb_up_am_fl_st_na_dr_up_sm_web
113	Jesaisque Jesaisque(Deals Of The Day Sale Clearance)			https://www.amazon.com/dp/B0BZS89CLS/ref=mweb_up_am_fl_st_na_tp_up_sm_web
118	Mensch Mensch →5-15 Days Delivery→			https://www.amazon.com/dp/B0CLQWV3BN/ref=mweb_up_am_fl_st_na_ow_up_sm_web?th=1
120	SNKSDGM LUOGENLI			https://www.amazon.com/dp/B0BQJ5RSN4/ref=mweb_up_am_fl_st_na_un_up_sm_web?th=1
121	SoeHir			https://www.amazon.com/dp/B0CL9TKR8B/ref=mweb_up_am_fl_st_na_ow_up_sm_web?th=1
122	Xiloccer Xiloccer(7-20 Days Delivery)			https://www.amazon.com/dp/B09M81D1VY/ref=mweb_up_am_fl_st_na_un_up_sm_web?th=1
124	LoVnely			https://www.amazon.com/dp/B083Q1K9DP/ref=mweb_up_am_fl_st_na_tp_up_sm_web

127	SDOHIG SDOHIG lightning deals of today prime			https://www.amazon.com/dp/B0CSSBRSLC/ref=mweb_up_am_fl_st_na_dr_up_sm_web
128	SSBSQ lvliangshilishiqu sutifuzhuangdian			https://www.amazon.com/dp/B09YQ755N2/ref=mweb_up_am_fl_st_na_dr_up_sm_web
129	BNisBM			https://www.amazon.com/dp/B0CQM7KM8S/ref=mweb_up_am_fl_st_na_un_up_sm_web
132	Greensen Theatly			https://www.amazon.com/dp/B0CP74623X/ref=mweb_up_am_fl_st_na_tp_up_sm_web https://www.amazon.com/dp/B0CPFXSSXS/ref=mweb_up_am_fl_st_na_tp_up_sm_web
139	ZOCAVIA NANFENGKEJI			https://www.amazon.com/dp/B0CRKSY6YM/ref=mweb_up_am_fl_st_na_tp_up_sm_web
140	ISABUFEI.		 	https://www.amazon.com/Bridesmaid-Dresses-Wedding-Evening-Sleeveless/dp/B09C5VNGZ2 https://www.amazon.com/dp/B09C5VR1VT/ref=mweb_up_am_fl_st_na_dr_up_sm_web?th=1
145	PROMLINK		 	https://www.amazon.com/PROMLINK-Sequin-Bridesmaid-Mermaid-Evening/dp/B07HG4T87K https://www.amazon.ca/PROMLINK-Sequin-Bridesmaid-Mermaid-Evening/dp/B081DHY2FB

146	TUTUESR		https://www.amazon.com/TUTUESTHER-Swimsuits-Slimming-Swimdress-Boysshorts/dp/B07Q1ZF415
148	Disimlarl Hui.X		https://www.amazon.com/Womens-Sleeve-T-Shirt-Casual-Oversize/dp/B0C6THK2HZ
150	Glkaend Glkaend Shop		https://www.amazon.com/dp/B0CRB77QJR/ref=mweb_up_am_fl_st_na_op_up_sm_web?th=1
151	KnoInt TraSuts		https://www.amazon.com/dp/B0C5RC8PV9/ref=mweb_up_am_fl_st_na_dr_up_sm_web
153	SheKiss		https://www.amazon.com/dp/B0C7PQZ5CD/ref=mweb_up_am_fl_st_na_pt_up_sm_web
155	5665 XUNRYAN		https://www.amazon.com/5665-Swimsuit-Waisted-Swimwear-Beachwear/dp/B09S39YY25?th=1
156	ANDBXH Meet at Home		https://www.amazon.com/ANDBXH-Swimsuits-Athletic-Tankini-Swimwear/dp/B0C3HJ81KF
160	Generic Glozeplus		https://www.amazon.com/dp/B09TZKFFGC/ref=mweb_up_am_fl_st_na_dr_up_sm_web
169	SHOPESSA		https://www.amazon.ca/Floral-Bathing-Gradient-Bottoms-Swimsuits/dp/B09V2GQRFZ

Accounting for the Opposing Defendants, out of 175 Defendants, 50 Defendants' images are nothing like the ones provided by Plaintiff. Plaintiff filed this Complaint and took advantage of the system in bad faith, obtained the TRO wrongfully against 175 innocent sellers who are most likely competitors that sells similar dresses to Plaintiff.

4. Misjoinder of Defendants

For similar reasons, this case should be denied for misjoinder because many of the Defendants do not even use images similar to Plaintiff's copyrighted images. In a recent case Judge Blakey denied entry of TRO because some of the allegedly infringing products do not even appear to include Plaintiff's trademark. See Exhibit 4.

5. Failure to State a Claim

The underlying Complaint is also defective. To establish copyright infringement, two elements must be proven: (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original. *Design Basics, LLC v. Signature Constr., Inc.*, 994 F.3d 879, 882 (7th Cir. 2021). "Absent copying there can be no infringement of copyright." *Kolody v. Simon Mktg.*, 97 CV 0190, 1998 U.S. Dist. LEXIS 14229, at *1 (N.D. Ill. Sep. 2, 1998). The copying element may be inferred where: (i) the defendant had access to the copyrighted work; *and* (ii) the accused work is substantially similar to the copyrighted work. *Id.* at *1 (emphasis added). Plaintiff failed to allege that Defendants had access to the copyrighted work.

Upon further review of Plaintiff's Complaint, it shows that Plaintiff is suing Defendants for infringing 3-D artwork embodied in Plaintiff's brand product line, Rotita. [Dkt. # 35 ¶ 1] (emphasis added). Plaintiff alleged that it copyrighted 3-D artwork multiple times throughout the Complaint. [Dkt. # 35 ¶¶ 2, 7, 17, 40] while by Plaintiff's own admission, these copyrights are for photographs. [Dkt. # 35-1]. Unless Plaintiff has copyrighted hologram of images, Plaintiff's

evidence of copyright registrations in its Exhibit 2 does not support its claim against Defendants for infringement of 3-D artworks.

6. Overbroad Asset Freezing Order with Insufficient Bond Posted

Plaintiff wrongfully obtained the TRO and posted merely \$5,000 bond against 175 internet competitors, during a busy season of a year where dresses are sold. The Opposing Defendants have been frozen over \$1.5 million dollars and this amount is increasing every day, majority of the funds have nothing to do with the alleged infringing products. The Opposing Defendants suffered irreparable harm when many of the listings that have nothing to do with the images are also taken down from Amazon. The Opposing Defendants also have no access to the funds to maintain their daily operations. By wrongfully obtaining the TRO, Plaintiff has already achieved its goal of shutting down competitors' business. By posting only \$5,000, the Opposing Defendants have no adequate remedy to seek damages for this wrongfully entered TRO.

CONCLUSION

In view of the foregoing, the Opposing Defendants respectfully request the Court to deny Plaintiff's request for extension of TRO and dismiss the Complaint. Alternatively, if the Court grants the extension of TRO, the Opposing Defendants respectfully request the Court to require Plaintiff to post \$1.5 millions bond or an amount that the Court deems proper.

Date: May 22, 2024

Respectfully submitted,

/s/ Shengmao Mu

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