**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

EVERYTOWN FOR GUN SAFETY ACTION FUND, INC.,	:	
	:	Civil Action No. 1:21-cv-8704
Plaintiff,	:	
v.	:	**PLAINTIFF'S APPLICATION FOR ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION, EXPEDITED DISCOVERY, AND ALTERNATIVE SERVICE**
DEFCAD, INC.; ODYSEE USER XYEEZYSZN; DEFCAD USER XYEEZYSZN; ODYSEE USER THEGATALOG-PRINTABLEMAGAZINES; THE GATALOG; DEFCAD USER FREEMAN1337; TWITTER USER XYEEZYSZN; PHILLIP ROYSTER.	:	
Defendants.	:	

Plaintiff Everytown For Gun Safety Action Fund, Inc. ("Everytown") by and through its attorneys respectfully moves this Court for an Order to Show Cause for a Preliminary Injunction, under Federal Rules of Civil Procedure 65(a) and the Lanham Act, a limited expedited discovery order in aid of uncovering personal identifying information for the Defendants, and an order granting alternative service because the Internet usernames identified in this case are able to operate semi-anonymously under given user names on Internet platforms without revealing their true identities (hereinafter "Application").

Immediate and expedited relief is necessary in this matter to stop Defendants from unlawfully distributing downloadable files for the manufacture of actual 3-D printed gun parts and accessories, where the files and/or the resulting gun parts and accessories bear the Everytown Marks (hereinafter "Infringing Products"). Defendants Infringing Products result in

actual completed firearms, firearm parts and accessories that display identical versions of Everytown's registered Everytown Marks without change or comment.

Defendants have already made the Infringing Products available to the general public in a bad faith effort to confuse ordinary consumers into believing the Defendants, their Infringing Products, and/or the 3-D printed gun parts and accessories that result from Defendants' Infringing Products are affiliated with, distributed by, or authorized by Everytown when they are not. Defendants' use and inclusion of Everytown's identical trademarks in connection with the Infringing Products, and the physical firearm parts and accessories they produce, is confusing, irreparably and immediately harmful to Everytown as it is contrary to Everytown's core mission relating to advocacy and action in the field of the prevention of gun violence, gun trafficking and illegal gun possession. Defendants unauthorized use deprives Everytown of the absolute right to control the quality of its non-profit goods, services, and branded advocacy offered and pursued under the Everytown Marks.

Everytown's Application for emergency relief is based on the Summonses and Complaint, the accompanying Declarations of Matthew McTighe ("McTighe Decl."), Delia Green ("Green Decl."), Erin Galloway ("Galloway Decl.") and Marcella Ballard ("Ballard Decl."), and exhibits thereto, and the Memorandum of Law in Support of Everytown's Application.

Per Local Rule 6.1(d), a prior application for this relief has not been made, and Everytown moves by this Application because of the paramount need to stop Defendants' infringement before it further irreparably damages Everytown's goodwill and the trust that Everytown has earned from gun violence survivors, volunteers, donors, students, elected officials, allies, and everyday Americans.

As described in the McTighe, Galloway, and Green Declarations, Defendants continue to infringe the Everytown Marks despite knowledge of Everytown's prior exclusive rights to the trademarks and continue to infringe the Everytown Marks by hiding behind online seller handles. Everytown has moved with expediency to assemble its Application to make this filing before it becomes impossible to un-ring the bell on Defendants' infringing actions.

Everytown makes this Application via order to show cause because it is currently unable to confirm Defendants' true identities, or addresses, and believes that Defendants' will ignore additional efforts from Everytown to protect its rights short of an order from this Court. A purported attorney submitted a counternotice to Everytown's online claims via Odysee.com in connection with the listings, but Everytown is unaware if said individual is authorized to represent the Defendant in connection with this matter, or is in fact authorized to act in this jurisdiction, among other uncertainties.[1] Everytown seeks to serve Defendants via email alternative service, and/or service via the online platforms through which they distribute their Infringing Products because as described in Everytown's Memorandum of Law, Everytown is currently unable to confirm the Defendants' true identities given that they operate behind online account handles.

Defendants' conduct, and the facts surrounding Everytown's Application, make immediate injunctive relief necessary and demonstrates that Everytown cannot afford to proceed on the typical motion time frame set forth in Local Civil Rule 6.1(b). A proposed order granting Everytown's Application for expedited discovery, alternative services, and an order to show

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[1] An individual who purports to be an attorney submitted a counternotice to Everytown's infringement notice submitted on www.odysee.com in connection with the Defendants' conduct, but the counternotice provided no information other than the individual's name. Searching the purported attorney's name in the New York State Unified Court System Attorney Online Search database yielded no attorney results. To date, Everytown is unaware if the individual represents the Defendants in this action. Ballard Decl. ¶¶ 9-10.

cause for why a preliminary injunction should not be entered is submitted simultaneously as

Exhibit A.

Dated: October 22, 2021   VENABLE LLP

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