

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

FITNESS ANYWHERE LLC,

Plaintiff,

v.

THE PARTNERSHIPS and
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE “A,”

Defendants.

Case No. 19-cv-06938

COMPLAINT

Plaintiff Fitness Anywhere LLC (“TRX” or “Plaintiff”) hereby brings the present action against the Partnerships and Unincorporated Associations identified on Schedule A attached hereto (collectively, “Defendants”) and alleges as follows:

I. JURISDICTION AND VENUE

1. This Court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the Lanham Act, 15 U.S.C. § 1051, *et seq.*, 28 U.S.C. § 1338(a)-(b) and 28 U.S.C. § 1331. This Court has jurisdiction over the claims in this action that arise under the laws of the State of Illinois pursuant to 28 U.S.C. § 1367(a), because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, and this Court may properly exercise personal jurisdiction over Defendants since each of the Defendants directly targets business activities toward consumers in the United States, including Illinois, through at least the fully interactive, commercial Internet stores operating under the Online Marketplace

Accounts identified in Schedule A attached hereto (collectively, the “Defendant Internet Stores”). Specifically, Defendants are reaching out to do business with Illinois residents by operating one or more commercial, interactive Defendant Internet Stores through which Illinois residents can purchase products using infringing and counterfeit versions of TRX’s trademarks. Each of the Defendants has targeted sales from Illinois residents by operating online stores that offer shipping to the United States, including Illinois, accept payment in U.S. dollars and, on information and belief, has sold products using infringing and counterfeit versions of TRX’s trademarks to residents of Illinois. Each of the Defendants is committing tortious acts in Illinois, is engaging in interstate commerce, and has wrongfully caused TRX substantial injury in the State of Illinois.

II. INTRODUCTION

3. This action has been filed by TRX to combat Internet Store operators who trade upon TRX’s reputation and goodwill by offering for sale and/or selling unauthorized and unlicensed products, including fitness equipment, using infringing and counterfeit versions of TRX’s federally registered trademarks (the “Counterfeit TRX Products”). Defendants create the Defendant Internet Stores by the hundreds and design them to appear to be selling genuine TRX products, while actually selling Counterfeit TRX Products to unknowing consumers. The Defendant Internet Stores share unique identifiers, such as design elements and similarities of the Counterfeit TRX Products offered for sale, establishing a logical relationship between them and suggesting that Defendants’ counterfeiting operation arises out of the same transaction, occurrence, or series of transactions or occurrences. Defendants attempt to avoid liability by going to great lengths to conceal both their identities and the full scope and interworking of their counterfeiting operation. TRX is forced to file this action to combat Defendants’ counterfeiting

of its registered trademarks, as well as to protect unknowing consumers from purchasing Counterfeit TRX Products over the Internet. TRX has been and continues to be irreparably damaged through consumer confusion, dilution, and tarnishment of its valuable trademarks as a result of Defendants' actions and seeks injunctive and monetary relief.

III. THE PARTIES

Plaintiff TRX

4. Plaintiff Fitness Anywhere LLC ("TRX") is a limited liability company organized under the laws of the State of Delaware with its principal place of business at 1660 Pacific Ave, San Francisco, CA 94109.

5. TRX is a leading provider of fitness-related technology, equipment, workout programs, and education courses. TRX is also the exclusive owner of the brand TRX®.

6. TRX designs, manufactures, and sells, among other things, resistance products, including various straps and ropes that are designed for body-weight resistance exercise (collectively, the "TRX Products"). TRX Products prominently display the internationally recognized, and federally registered TRX trademarks.


7. TRX Products have become enormously popular among professional athletes and recreational fitness enthusiasts alike, driven by the TRX brand's arduous quality standards and innovative designs. Thousands of people at all fitness levels now train with TRX – from everyday people who want to feel and look their best, to some of the world's most elite athletes. TRX Products are used routinely by all four branches of the military, and can be found in the locker rooms of Major League Baseball teams, National Football League football teams, UFC fighters, and Olympic-level cyclists, swimmers and runners. Among the purchasing public, genuine TRX Products are instantly recognizable as such. In the United States and around the

world, the TRX brand has come to symbolize high quality, and TRX Products are among the most recognizable pieces of fitness equipment in the world. TRX Products are distributed and sold to consumers only through authorized selling channels, including the official trxtraining.com website, the official TRX eBay and Amazon stores, TRX authorized web affiliates, TRX authorized distributors, the TRX Training Center in San Francisco, California, and at tradeshows and industry events.

8. TRX and its predecessors began using the TRX trademarks in 2004 and have continuously sold fitness equipment under the TRX and other trademarks (collectively, the “TRX Trademarks”). As a result of this long-standing use, strong common law trademark rights have amassed in the TRX Trademarks. TRX’s use of the marks has also built substantial goodwill in and to the TRX Trademarks. The TRX Trademarks are well-known marks and valuable assets of TRX. TRX Products typically include at least one of the registered TRX Trademarks.

9. Several of the TRX Trademarks are registered with the United States Patent and Trademark Office, a non-exclusive list of which is included below.

Registration Number	Trademark	Goods and Services
2,975,844	FITNESS ANYWHERE	For: Manually operated exercise equipment, and instructional material sold together therewith as a unit in class 028.
3,202,696	TRX	For: Manually operated multipurpose exercise, fitness, and sporting equipment, and instructional material sold together therewith as unit in class 028.
3,255,160	SUSPENSION TRAINING	For: Manually-operated exercise equipment in class 028.

3,328,634	MAKE YOUR BODY YOUR MACHINE	For: Manually operated multipurpose exercise equipment, and instructional material sold together therewith as a unit in class 028.
4,027,129	TRX FORCE	For: Manually-operated exercise equipment in class 028.
4,125,533	XMOUNT	For: Hardware mounting systems for use with exercise training equipment comprised of a steel plate, lag screws and anchors for attachment to walls, vertical studs and secure overhead beams in class 006.
4,187,178	RIP	For: Fitness and exercise equipment, namely, exercise bars for use in resistance training, cardiovascular training, and weight training in class 028.
4,731,160	TRX	For: Apparel, namely, hats and caps, t-shirts, hoodies, shorts, and socks in class 025.
4,741,049		For: Manually-operated exercise equipment, namely, extendible nylon strap-based trainer with two handles and fixed at a midpoint between the handles to a structure for allowing a user to use body weight to modulate the resistance felt during exercising with the trainer in class 028.
4,998,892	TRX	For: Apparel for use in conjunction with gym exercising and fitness classes, namely, long sleeve shirts, shirts, jersey's, mock turtle necks, jackets, skirts, athletic sleeves, hoods, vests, tank tops, baselayer tops, rainproof jackets, undershirts, yoga shirts, athletic uniforms, padded elbow compression sleeves,

		camouflage jackets, camouflage shirts, camouflage vests, padded shirts, moisture-wicking sports bras, moisture-wicking sports shirts, leggings, pants, padded pants, padded shorts, baselayer bottoms, boxer briefs, boxer shorts, underwear, briefs, jogging pants, camouflage pants, swimwear, yoga pants, capri pants, moisture-wicking sports pants, skorts, unitards, triathlon clothing, hats, headwear for winter and summer, wristbands, skull caps, gloves, mittens, visors, bandanas, beachwear, bikinis, camouflage gloves, sweatshirts in class 025.
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10. The above U.S. registrations for the TRX Trademarks are valid, subsisting, in full force and effect, and many are incontestable pursuant to 15 U.S.C. § 1065. The registrations for the TRX Trademarks have been used exclusively and continuously by TRX, and have never been abandoned. The registrations for the TRX Trademarks constitute *prima facie* evidence of their validity and of TRX’s exclusive right to use the TRX Trademarks pursuant to 15 U.S.C. § 1057 (b). True and correct copies of the United States Registration Certificates for the above-listed TRX Trademarks are attached hereto as **Exhibit 1**.

11. The TRX Trademarks are distinctive when applied to the TRX Products, signifying to the purchaser that the products come from TRX and are manufactured to TRX’s quality standards. Whether TRX manufactures the products itself or contracts with others to do so, TRX has ensured that products bearing the TRX Trademarks are manufactured to the highest quality standards.

12. The innovative marketing and product designs of the TRX Products have enabled the TRX brand to achieve widespread brand recognition and have made the TRX Trademarks some of the most well-known marks in the exercise and fitness industry. The outstanding reputation, and significant goodwill associated with the TRX brand have made the TRX Trademarks valuable assets of TRX.

13. TRX has expended substantial time, money, and other resources in advertising and promoting the TRX Trademarks. In fact, TRX has expended millions of dollars annually in advertising, promoting and marketing featuring the TRX Trademarks. TRX has also been the subject of extensive unsolicited publicity and has been featured in popular magazines including, but not limited to, *Shape*, *Men's Fitness*, *Self*, *Muscle & Fitness*, *GQ*, *Triathlete*, *Women's Health*, *Men's Health*, *Vogue*, and *Sports Illustrated*. TRX has also been featured on *ABC News*, *The Today Show*, and in newspapers such as *The New York Times* and *The Wall Street Journal*. As a result of this publicity, products bearing the TRX Trademarks are widely recognized and exclusively associated by consumers, the public, and the trade as being high-quality products sourced from TRX. TRX Products have become among the most popular of their kind in the U.S. and the world. The TRX Trademarks have achieved tremendous recognition which has only added to the inherent distinctiveness of the marks. As such, the goodwill associated with the TRX Trademarks is of incalculable and inestimable value to TRX.

14. Genuine TRX Products are sold only through authorized retail channels and are recognized by the public as being exclusively associated with the TRX brand.

15. Since at least as early as 2004, genuine TRX Products have been promoted and sold at the official trxtraining.com website. Sales of TRX Products via the trxtraining.com

website are significant. The trxtraining.com website features proprietary content, images and designs exclusive to the TRX brand.

The Defendants

16. Defendants are individuals and business entities who, upon information and belief, reside in the People's Republic of China or other foreign jurisdictions. Defendants conduct business throughout the United States, including within the State of Illinois and this Judicial District, through the operation of the fully interactive, commercial online marketplaces operating under the Defendant Internet Stores. Each Defendant targets the United States, including Illinois, and has offered to sell, and, on information and belief, has sold and continues to sell Counterfeit TRX Products to consumers within the United States, including the State of Illinois.

17. On information and belief, Defendants are an interrelated group of counterfeiters working in active concert to knowingly and willfully manufacture, import, distribute, offer for sale, and sell products using infringing and counterfeit versions of the TRX Trademarks in the same transaction, occurrence, or series of transactions or occurrences. Tactics used by Defendants to conceal their identities and the full scope of their counterfeiting operation make it virtually impossible for TRX to learn Defendants' true identities and the exact interworking of their counterfeit network. In the event that Defendants provide additional credible information regarding their identities, TRX will take appropriate steps to amend the Complaint.

IV. DEFENDANTS' UNLAWFUL CONDUCT

18. The success of the TRX brand has resulted in its significant counterfeiting. Consequently, TRX has a worldwide anti-counterfeiting program and regularly investigates suspicious online marketplace listings identified in proactive Internet sweeps and reported by

consumers. In recent years, TRX has identified many online marketplace listings on platforms such as iOffer, eBay, AliExpress, Alibaba, Amazon, and Wish.com, including the Defendant Internet Stores, which were offering for sale and/or selling Counterfeit TRX Products to consumers in this Judicial District and throughout the United States. Despite TRX's enforcement efforts, Defendants have persisted in creating the Defendant Internet Stores. E-commerce sales, including those through Internet stores like Defendants, have resulted in a sharp increase in the shipment of unauthorized products into the United States. **Exhibit 2**, Excerpts from Fiscal Year 2018 U.S. Customs and Border Protection ("CBP") Intellectual Property Seizure Statistics Report. Over 90% of all CBP intellectual property seizures were smaller international mail and express shipments (as opposed to large shipping containers). *Id.* Over 85% of CBP seizures originated from mainland China and Hong Kong. *Id.* Counterfeit and pirated products account for billions in economic losses, resulting in tens of thousands of lost jobs for legitimate businesses and broader economic losses, including lost tax revenue.

19. Defendants facilitate sales by designing the Defendant Internet Stores so that they appear to unknowing consumers to be authorized online retailers, outlet stores, or wholesalers. Many of the Defendant Internet Stores appear sophisticated and accept payment in U.S. dollars via credit cards, Alipay, Amazon Pay, Western Union and/or PayPal. Defendant Internet Stores often include content and design elements that make it very difficult for consumers to distinguish such stores from an authorized retailer. Many Defendants further perpetuate the illusion of legitimacy by offering customer service and using indicia of authenticity and security that consumers have come to associate with authorized retailers, including the Visa®, MasterCard®, and/or PayPal® logos. TRX has not licensed or authorized Defendants to use any of the TRX Trademarks, and none of the Defendants are authorized retailers of genuine TRX Products.

20. Many Defendants also deceive unknowing consumers by using the TRX Trademarks without authorization within the content, text, and/or meta tags of their online marketplace listings in order to attract consumers searching for TRX Products. Additionally, upon information and belief, Defendants use other unauthorized search engine optimization (SEO) tactics and social media spamming so that the Defendant Internet Stores listings show up at or near the top of relevant search results and misdirect consumers searching for genuine TRX Products. Other Defendants only show the TRX Trademarks in product images while using strategic item titles and descriptions that will trigger their listings when consumers are searching for TRX Products.

21. Defendants go to great lengths to conceal their identities and often use multiple fictitious names and addresses to register and operate their network of Defendant Internet Stores. On information and belief, Defendants regularly create new online marketplace accounts on various platforms using the identities listed in Schedule A to the Complaint, as well as other unknown fictitious names and addresses. Such Defendant Internet Store registration patterns are one of many common tactics used by the Defendants to conceal their identities, the full scope and interworking of their counterfeiting operation, and to avoid being shut down.

22. Even though Defendants operate under multiple fictitious names, there are numerous similarities among the Defendant Internet Stores. For example, Counterfeit TRX Products for sale in the Defendant Internet Stores bear similar irregularities and indicia of being counterfeit to one another, suggesting that the Counterfeit TRX Products were manufactured by and come from a common source and that Defendants are interrelated. The Defendant Internet Stores also include other notable common features, including accepted payment methods, check-out methods, meta data, illegitimate SEO tactics, lack of contact information, identically or

similarly priced items and volume sales discounts, the same incorrect grammar and misspellings, similar hosting services, and the use of the same text and images.

23. In addition to operating under multiple fictitious names, Defendants in this case and defendants in other similar cases against online counterfeiters use a variety of other common tactics to evade enforcement efforts. For example, counterfeiters like Defendants will often register new online marketplace accounts under new aliases once they receive notice of a lawsuit. Counterfeiters also typically ship products in small quantities via international mail to minimize detection by U.S. Customs and Border Protection.

24. Further, counterfeiters such as Defendants typically operate multiple credit card merchant accounts and PayPal accounts behind layers of payment gateways so that they can continue operation in spite of TRX's enforcement efforts. On information and belief, Defendants maintain off-shore bank accounts and regularly move funds from their PayPal accounts or other financial accounts to off-shore bank accounts outside the jurisdiction of this Court. Indeed, analysis of PayPal transaction logs from previous similar cases indicates that off-shore counterfeiters regularly move funds from U.S.-based PayPal accounts to China-based bank accounts outside the jurisdiction of this Court.

25. Defendants, without any authorization or license from TRX, have knowingly and willfully used and continue to use the TRX Trademarks in connection with the advertisement, distribution, offering for sale, and sale of Counterfeit TRX Products into the United States and Illinois over the Internet. Each Defendant Internet Store offers shipping to the United States, including Illinois, and, on information and belief, each Defendant has sold Counterfeit TRX Products into the United States, including Illinois.

26. Defendants' unauthorized use of the TRX Trademarks in connection with the advertising, distribution, offering for sale, and sale of Counterfeit TRX Products, including the sale of Counterfeit TRX Products into the United States, including Illinois, is likely to cause and has caused confusion, mistake, and deception by and among consumers and is irreparably harming TRX.

COUNT I
TRADEMARK INFRINGEMENT AND COUNTERFEITING (15 U.S.C. § 1114)

27. TRX hereby re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 26.

28. This is a trademark infringement action against Defendants based on their unauthorized use in commerce of counterfeit imitations of the federally registered TRX Trademarks in connection with the sale, offering for sale, distribution, and/or advertising of infringing goods. The TRX Trademarks are highly distinctive marks. Consumers have come to expect the highest quality from TRX Products sold or marketed under the TRX Trademarks.

29. Defendants have sold, offered to sell, marketed, distributed, and advertised, and are still selling, offering to sell, marketing, distributing, and advertising products using counterfeit reproductions of the TRX Trademarks without TRX's permission.

30. TRX is the exclusive owner of the TRX Trademarks. TRX's United States Registrations for the TRX Trademarks (Exhibit 1) are in full force and effect. Upon information and belief, Defendants have knowledge of TRX's rights in the TRX Trademarks, and are willfully infringing and intentionally using counterfeits of the TRX Trademarks. Defendants' willful, intentional and unauthorized use of the TRX Trademarks is likely to cause and is causing confusion, mistake, and deception as to the origin and quality of the Counterfeit TRX Products among the general public.

31. Defendants' activities constitute willful trademark infringement and counterfeiting under Section 32 of the Lanham Act, 15 U.S.C. § 1114.

32. TRX has no adequate remedy at law, and if Defendants' actions are not enjoined, TRX will continue to suffer irreparable harm to its reputation and the goodwill of the TRX Trademarks.

33. The injuries and damages sustained by TRX have been directly and proximately caused by Defendants' wrongful reproduction, use, advertisement, promotion, offering to sell, and sale of Counterfeit TRX Products.

COUNT II
FALSE DESIGNATION OF ORIGIN (15 U.S.C. § 1125(a))

34. TRX hereby re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 33.

35. Defendants' promotion, marketing, offering for sale, and sale of Counterfeit TRX Products has created and is creating a likelihood of confusion, mistake, and deception among the general public as to the affiliation, connection, or association with TRX or the origin, sponsorship, or approval of Defendants' Counterfeit TRX Products by TRX.

36. By using the TRX Trademarks on the Counterfeit TRX Products, Defendants create a false designation of origin and a misleading representation of fact as to the origin and sponsorship of the Counterfeit TRX Products.

37. Defendants' false designation of origin and misrepresentation of fact as to the origin and/or sponsorship of the Counterfeit TRX Products to the general public involves the use of counterfeit marks and is a willful violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125.

38. TRX has no adequate remedy at law and, if Defendants' actions are not enjoined, TRX will continue to suffer irreparable harm to its reputation and the goodwill of its TRX brand.

COUNT III
VIOLATION OF ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES ACT
(815 ILCS § 510, *et seq.*)

39. TRX hereby re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 38.

40. Defendants have engaged in acts violating Illinois law including, but not limited to, passing off their Counterfeit TRX Products as those of TRX, causing a likelihood of confusion and/or misunderstanding as to the source of their goods, causing a likelihood of confusion and/or misunderstanding as to an affiliation, connection, or association with genuine TRX Products, representing that their products have TRX's approval when they do not, and engaging in other conduct which creates a likelihood of confusion or misunderstanding among the public.

41. The foregoing Defendants' acts constitute a willful violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510, *et seq.*

42. TRX has no adequate remedy at law, and Defendants' conduct has caused TRX to suffer damage to its reputation and goodwill. Unless enjoined by the Court, TRX will suffer future irreparable harm as a direct result of Defendants' unlawful activities.

PRAYER FOR RELIEF

WHEREFORE, TRX prays for judgment against Defendants as follows:

1) That Defendants, their affiliates, officers, agents, servants, employees, attorneys, confederates, and all persons acting for, with, by, through, under or in active concert with them be temporarily, preliminarily, and permanently enjoined and restrained from:

- a. using the TRX Trademarks or any reproductions, counterfeit copies or colorable imitations thereof in any manner in connection with the distribution, marketing, advertising, offering for sale, or sale of any product that is not a genuine TRX Product or is not authorized by TRX to be sold in connection with the TRX Trademarks;
 - b. passing off, inducing, or enabling others to sell or pass off any product as a genuine TRX Product or any other product produced by TRX, that is not TRX's or not produced under the authorization, control, or supervision of TRX and approved by TRX for sale under the TRX Trademarks;
 - c. committing any acts calculated to cause consumers to believe that Defendants' Counterfeit TRX Products are those sold under the authorization, control or supervision of TRX, or are sponsored by, approved by, or otherwise connected with TRX;
 - d. further infringing the TRX Trademarks and damaging TRX's goodwill; and
 - e. manufacturing, shipping, delivering, holding for sale, transferring or otherwise moving, storing, distributing, returning, or otherwise disposing of, in any manner, products or inventory not manufactured by or for TRX, nor authorized by TRX to be sold or offered for sale, and which bear any of TRX's trademarks, including the TRX Trademarks, or any reproductions, counterfeit copies or colorable imitations thereof;
- 2) Entry of an Order that, upon TRX's request, those in privity with Defendants and those with notice of the injunction, including without limitation, any online marketplace platforms such as iOffer, eBay, AliExpress, Alibaba, Amazon, Wish.com and Dhgate, sponsored search engine or ad-word providers, credit cards, banks, merchant account providers, third party

processors and other payment processing service providers, and Internet search engines such as Google, Bing and Yahoo (collectively, the “Third Party Providers”) shall:

- a. disable and cease providing services being used by Defendants, currently or in the future, to engage in the sale of goods using the TRX Trademarks;
 - b. disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of counterfeit and infringing goods using the TRX Trademarks; and
 - c. take all steps necessary to prevent links to the Defendant Internet Stores identified on Schedule A from displaying in search results, including, but not limited to, removing links to the Defendant Internet Stores from any search index;
- 3) That Defendants account for and pay to TRX all profits realized by Defendants by reason of Defendants’ unlawful acts herein alleged, and that the amount of damages for infringement of the TRX Trademarks be increased by a sum not exceeding three times the amount thereof as provided by 15 U.S.C. § 1117;
 - 4) In the alternative, that TRX be awarded statutory damages for willful trademark counterfeiting pursuant to 15 U.S.C. § 1117(c)(2) of \$2,000,000 for each and every use of the TRX Trademarks;
 - 5) That TRX be awarded its reasonable attorneys’ fees and costs; and
 - 6) Award any and all other relief that this Court deems just and proper.

Dated this 22nd day of October 2019.

Respectfully submitted,

/s/ Justin R. Gaudio

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