

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

COCOON INNOVATIONS, LLC,

Plaintiff,

v.

THE PARTNERSHIPS AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE "A",

Defendants.

Case No. 19-cv-07064

COMPLAINT

Plaintiff Cocoon Innovations, LLC ("Cocoon" 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 Cocoon’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 Cocoon’s federally registered trademarks to residents of Illinois. Each of the Defendants is committing tortious acts in Illinois, is engaging in interstate commerce, and has wrongfully caused Cocoon substantial injury in the State of Illinois.

II. INTRODUCTION

3. This action has been filed by Cocoon to combat Internet Store operators who trade upon Cocoon’s reputation and goodwill by selling and/or offering for sale unauthorized and unlicensed products, including bags, cases and organizers, using infringing and counterfeit versions of Cocoon’s federally registered trademarks (the “Counterfeit Cocoon Products”). The Defendants create the Defendant Internet Stores by the dozens and design them to appear to be selling genuine Cocoon products, while actually selling Counterfeit Cocoon Products to unknowing consumers. The Defendant Internet Stores share unique identifiers, such as design elements and similarities of the Counterfeit Cocoon 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. Cocoon is forced to file these

actions to combat Defendants' counterfeiting of its registered trademarks, as well as to protect unknowing consumers from purchasing Counterfeit Cocoon Products over the Internet. Cocoon 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

4. Cocoon is an internationally recognized leader in the development and manufacture of innovative bags and cases designed to store, carry, and protect electronic devices and accessories. Cocoon markets and sells backpacks, bags, organizers and cases specially adapted for holding or carrying portable electronic devices, including, but not limited to, the popular GRID-IT organizing system (collectively referred to as the "Cocoon Products"). Cocoon distributes its Cocoon Products through various channels, including through the official cocooninnovations.com website, through authorized distributors, and through various retailers throughout Illinois and the United States, including, but not limited to, large retail stores such as Office Depot, Target and Bed, Bath & Beyond.

5. Cocoon Products have become enormously popular, driven by Cocoon's arduous quality standards and innovative designs. Among the purchasing public, genuine Cocoon Products are instantly recognizable as such. In the United States and around the world, the Cocoon brand has come to symbolize high quality.

6. Cocoon incorporates a variety of distinctive marks in the design of its various Cocoon Products. As a result of its long-standing use, Cocoon owns common law trademark rights in its COCOON, GRID-IT and other trademarks. Cocoon has also registered its

trademarks with the United States Patent and Trademark Office. Cocoon Products typically include at least one of Cocoon's registered trademarks. Often several of Cocoon's marks are displayed on a single product. Cocoon uses its trademarks in connection with the marketing of its Cocoon Products, including the following federally registered marks, which are collectively referred to as the "COCOON Trademarks."

REGISTRATION NUMBER	REGISTERED TRADEMARK	REGISTRATION DATE	INTERNATIONAL CLASSES
5,264,792		August 15, 2017	For: bags and cases specially adapted for holding or carrying portable electronic devices, namely, laptop and notebook computers, MP3 players, mobile telephones, and personal digital assistants (PDAs); sleeves for laptop, notebook and tablet computers; backpacks, briefcases and messenger bags specifically adapted for holding or carrying portable electronic devices, namely, laptop and notebook computers in class 009.
4,055,140	COCOON	November 15, 2011	For: bags and cases specially adapted for holding or carrying portable electronic devices, namely, laptop and notebook computers, MP3 players, mobile telephones, and personal digital assistants (PDAs) in class 009.
3,768,919	GRID IT	March 30, 2010	For: arrays of resilient non-metal straps that may be arranged in prescribed angular orientations relative to each other to accommodate objects of different sizes, shapes and configurations in any one of a multiplicity of

REGISTRATION NUMBER	REGISTERED TRADEMARK	REGISTRATION DATE	INTERNATIONAL CLASSES
			different arrangements in class 022.
3,764,576	COCOON	March 23, 2010	For: bags and cases specially adapted for holding or carrying portable electronic devices, namely, laptop and notebook computers, MP3 players, global positioning system (GPS) tracking devices and personal digital assistants (PDAs) in class 009.

7. The above U.S. registrations for the COCOON Trademarks are valid, subsisting, in full force and effect, and two are incontestable pursuant to 15 U.S.C. § 1065. The registrations for the COCOON Trademarks constitute *prima facie* evidence of their validity and of Cocoon's exclusive right to use the COCOON Trademarks pursuant to 15 U.S.C. § 1057(b). The COCOON Trademarks have been used exclusively and continuously by Cocoon and its predecessors in interest, some since at least as early as 2009, and have never been abandoned. Cocoon has devoted substantial resources to promoting the goodwill of the COCOON Trademarks. As a result, the COCOON Trademarks have become famous and serve to symbolize Cocoon and its reputation as an industry leader. True and correct copies of the United States Registration Certificates for the above-listed COCOON Trademarks are attached hereto as **Exhibit 1**.

8. The COCOON Trademarks are exclusive to Cocoon and appear clearly on Cocoon Products, as well as on the packaging and advertisements related to such products. Cocoon has expended substantial time, money, and other resources in developing, advertising, and otherwise promoting and protecting the COCOON Trademarks. As a result, products bearing the

COCOON Trademarks are widely recognized and exclusively associated by consumers, the public, and the trade as being high-quality products sourced from Cocoon. Cocoon Products have become some of the most popular bags, cases and organizers for electronic devices and accessories in the world, and have also been the subject of extensive unsolicited publicity resulting from their high-quality and innovative designs. Because of these and other factors, the Cocoon name and the COCOON Trademarks are famous throughout the United States.

9. The COCOON Trademarks are distinctive when applied to Cocoon Products, signifying to the purchaser that the products come from Cocoon and are manufactured to Cocoon's quality standards. Whether Cocoon manufactures the products itself, or licenses others to do so, Cocoon has ensured that products bearing its trademarks are manufactured to the highest quality standards. The COCOON Trademarks have achieved tremendous fame and recognition, which has only added to the inherent distinctiveness of the marks. As such, the goodwill associated with the COCOON Trademarks is of incalculable and inestimable value to Cocoon.

10. Since at least as early as 2009, Cocoon has operated a website promoting and selling genuine Cocoon Products at cocooinnovations.com. Sales of Cocoon Products via the cocooinnovations.com website represent a significant portion of Cocoon's business. The cocooinnovations.com website features proprietary content, images and designs exclusive to Cocoon.

11. Cocoon has expended substantial time, money, and other resources in developing, advertising and otherwise promoting the COCOON Trademarks. As a result, products bearing the COCOON Trademarks are widely recognized and exclusively associated by consumers, the public, and the trade as being high-quality products sourced from Cocoon. Cocoon is a multi-

million dollar operation, and Cocoon Products have become among the most popular of their kind in the world. The widespread fame, outstanding reputation, and significant goodwill associated with the Cocoon brand have made the COCOON Trademarks invaluable assets of Cocoon.

The Defendants

12. 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 Cocoon Products to consumers within the United States, including the State of Illinois.

13. 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 COCOON 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 Cocoon 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, Cocoon will take appropriate steps to amend the Complaint.

IV. DEFENDANTS' UNLAWFUL CONDUCT

14. The success of the Cocoon brand has resulted in its significant counterfeiting. Consequently, Cocoon 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, Cocoon has identified many online marketplace listings on platforms such as iOffer, eBay, AliExpress, Alibaba, Amazon, Wish.com and Dhgate, including the Defendant Internet Stores, which were offering for sale and selling Counterfeit Cocoon Products to consumers in this Judicial District and throughout the United States. Despite Cocoon's enforcement efforts, Defendants have persisted in creating the Defendant Internet Stores. E-commerce sales, including through Internet stores like those of 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.

15. 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 look sophisticated and accept payment in U.S. dollars via credit cards, Alipay, Amazon Pay, Western Union, and/or PayPal. The Defendant Internet Stores often include content and design elements that make it very difficult for consumers to distinguish

such counterfeit sites and Internet 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. Cocoon has not licensed or authorized Defendants to use any of the COCOON Trademarks, and none of the Defendants are authorized retailers of genuine Cocoon Products.

16. Many Defendants also deceive unknowing consumers by using the COCOON Trademarks without authorization within the content, text, and/or meta tags of their online marketplace listings in order to attract consumers searching for genuine Cocoon 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 Cocoon Products. Other Defendants only show the COCOON Trademarks in product images, while using strategic item titles and descriptions that will trigger their listings when consumers are searching for genuine Cocoon Products.

17. 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.

18. Even though Defendants operate under multiple fictitious names, there are numerous similarities among the Defendant Internet Stores. For example, Counterfeit Cocoon Products for sale in the Defendant Internet Stores bear similar irregularities and indicia of being counterfeit to one another, suggesting that the Counterfeit Cocoon 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, and the use of the same text and images.

19. 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.

20. 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 Cocoon'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.

21. Defendants, without any authorization or license from Cocoon, have knowingly and willfully used and continue to use the COCOON Trademarks in connection with the advertisement, distribution, offering for sale, and sale of Counterfeit Cocoon 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 Cocoon Products into the United States, including Illinois.

22. Defendants' unauthorized use of the COCOON Trademarks in connection with the advertising, distribution, offering for sale, and sale of Counterfeit Cocoon Products, including the sale of Counterfeit Cocoon 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 Cocoon.

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

23. Cocoon hereby re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 22.

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

25. 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 COCOON Trademarks without Cocoon's permission.

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

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

28. Cocoon has no adequate remedy at law, and if Defendants' actions are not enjoined, Cocoon will continue to suffer irreparable harm to its reputation and the goodwill of its well-known COCOON Trademarks.

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

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

30. Cocoon hereby re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 29.

31. Defendants' promotion, marketing, offering for sale, and sale of Counterfeit Cocoon 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 Cocoon or the origin, sponsorship, or approval of Defendants' Counterfeit Cocoon Products by Cocoon.

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

33. Defendants' false designation of origin and misrepresentation of fact as to the origin and/or sponsorship of the Counterfeit Cocoon 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.

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

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

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

36. Defendants have engaged in acts violating Illinois law including, but not limited to, passing off their Counterfeit Cocoon Products as those of Cocoon; 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 Cocoon Products; representing that their Counterfeit Cocoon Products have Cocoon's approval when they do not; and engaging in other conduct which creates a likelihood of confusion or misunderstanding among the public.

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

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

PRAYER FOR RELIEF

WHEREFORE, Cocoon 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 COCOON 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 Cocoon Product or is not authorized by Cocoon to be sold in connection with the COCOON Trademarks;
 - b. passing off, inducing, or enabling others to sell or pass off any product as a genuine Cocoon Product or any other product produced by Cocoon, that is not Cocoon's or not produced under the authorization, control, or supervision of Cocoon and approved by Cocoon for sale under the COCOON Trademarks;
 - c. committing any acts calculated to cause consumers to believe that Defendants' Counterfeit Cocoon Products are those sold under the authorization, control or supervision of Cocoon, or are sponsored by, approved by, or otherwise connected with Cocoon;
 - d. further infringing the COCOON Trademarks and damaging Cocoon'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 Cocoon, nor authorized by Cocoon to be sold or offered for sale, and which bear any of Cocoon's trademarks, including the COCOON Trademarks, or any reproductions, counterfeit copies or colorable imitations thereof;
- 2) Entry of an Order that, upon Cocoon'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 COCOON 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 COCOON 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 Cocoon all profits realized by Defendants by reason of Defendants' unlawful acts herein alleged, and that the amount of damages for

infringement of the COCOON 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 Cocoon 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 COCOON Trademarks;
- 5) That Cocoon 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 28th day of October 2019.

Respectfully submitted,

/s/ Justin R. Gaudio

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