

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

STUDIO PEYO S.A.,

Plaintiff,

v.

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

Defendants.

Case No. 21-cv-02546

COMPLAINT

Plaintiff Studio Peyo S.A. ("Studio Peyo" 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.*, the Copyright Act 17 U.S.C. § 501, *et seq.*, 28 U.S.C. § 1338(a)-(b) and 28 U.S.C. § 1331.

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 e-commerce stores¹ operating under the seller aliases identified in Schedule A attached hereto (the "Seller Aliases"). Specifically, Defendants have targeted sales to Illinois residents by setting up and operating e-commerce stores that target United States

¹ The e-commerce store urls are listed on Schedule A hereto under the Online Marketplaces.

consumers using one or more Seller Aliases, offer shipping to the United States, including Illinois, accept payment in U.S. dollars and, on information and belief, have sold products using infringing and counterfeit versions of Studio Peyo's federally registered trademarks for the word marks SMURF, THE SMURFS and SMURFETTE and character marks for the Plain Smurf



and Smurfette



characters and/or unauthorized copies of Studio Peyo's federally

registered copyrighted designs (collectively, the "Unauthorized Smurfs Products") to residents of Illinois. Each of the Defendants is committing tortious acts in Illinois, is engaging in interstate commerce, and has wrongfully caused Studio Peyo substantial injury in the State of Illinois.

II. INTRODUCTION

3. This action has been filed by Studio Peyo to combat e-commerce store operators who trade upon Studio Peyo's reputation and goodwill by selling and/or offering for Unauthorized Smurfs Products. Defendants create e-commerce stores operating under one or more Seller Aliases that are advertising, offering for sale, and selling Unauthorized Smurfs Products to unknowing consumers. E-commerce stores operating under the Seller Aliases share unique identifiers establishing a logical relationship between them and that Defendants' counterfeiting operation arises out of the same transaction, occurrence, or series of transactions or occurrences. Defendants attempt to avoid and mitigate liability by operating under one or more Seller Aliases to conceal both their identities and the full scope and interworking of their operation. Studio Peyo is forced to file this action to combat Defendants' counterfeiting of its registered trademarks and infringement of its registered copyrighted designs, as well as to protect unknowing consumers from purchasing Unauthorized Smurfs Products over the Internet. Studio Peyo has been, and continues to be, irreparably damaged through consumer confusion, dilution,

and tarnishment of its valuable trademarks and infringement of its copyrighted designs as a result of Defendants' actions and seeks injunctive and monetary relief.

III. THE PARTIES

Plaintiff

4. Plaintiff Studio Peyo S.A. ("Studio Peyo") is a corporation organized under the laws of Switzerland, having a place of business at Chemin Frank-Thomas 36, Genève, 1208 Switzerland. Studio Peyo is the successor to the creative works of Belgian artist and author Pierre Culliford (June 25, 1928 – December 24, 1992), known as Peyo, the creator of The Smurfs characters, comic strips, merchandise, etc. ("The Smurfs").





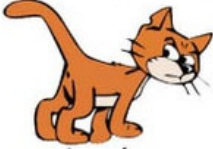
5. In 1946, Peyo created his first comic, "*Johan et Pirlouit*," set in medieval Europe. In a 1958 episode, Johan and his sidekick Pirlouit discover a village of strange blue dwarves called Schtroumpfs (later translated to "Smurfs" in Dutch and English). Right from the start, the Smurfs were characterized by their mushroom shaped village, confusing language, and a bearded leader whose hat and trousers are red rather than white: Le Grand Schtroumpf (Papa Smurf). The Smurfs were an instant success and were spun off as a separate comic. New characters followed, including the evil sorcerer Gargamel and his red cat Azrael, who would become the Smurfs' main nemeses. Other characters created by Peyo include arrogant Brainy Smurf, Clumsy Smurf, Jokey Smurf, narcissistic Vanity Smurf, super strong Hefty Smurf, hungry Greedy Smurf, Sleepy Smurf, awful musician Harmony Smurf, nihilistic Grouchy Smurf, Poetry Smurf, and of course the popular female character, Smurfette.

6. In 1961, a series of black-and-white animated cartoons were created around the characters and premiered on public television in Europe. Four years later, the cartoons were made into a television film. A decade later, a more ambitious animated feature film in color was

released: *La Flute à Six Schtroumpfs* (*The Smurfs and the Magic Flute*, 1976). It received good reviews in Europe and expanded the Smurfs’ popularity. In 1980, the Smurfs became the official mascots of the Belgian team during the Olympic Games in Moscow.

7. A significant international breakthrough occurred when Hollywood animation studio, Hanna-Barbera TV, produced a cartoon series, *The Smurfs*, that debuted in 1981 in the United States and abroad. The Smurfs quickly became a ratings hit in the United States, ran for nine seasons, and won Peyo an Emmy Award in 1982 for “Outstanding Achievement in Children's Entertainment.” The television cartoon series was broadcast internationally, making The Smurfs a global phenomenon, and catapulted the Smurfette character to fame. In 1989, a Smurfs theme park opened in Maizières-les-Metz, Lorraine, France. Studio Peyo collaborated with Sony Pictures Animation to make three feature length films, namely *The Smurfs* (2011), *The Smurfs 2* (2013) and *Smurfs: The Lost Village* (2017). This year, 2018, Studio Peyo is engaged in a worldwide celebration of the Smurfs 60th Anniversary!

8. Some of the characters and character names made famous by The Smurfs are:

				
Smurf	Smurfette	Papa Smurf	Gargamel	Azrael

9. In the 1980s, Studio Peyo greatly expanded its merchandising line for The Smurfs, which include figurines, dolls, toys, clothing, watches, comic books, magazines, and audio and DVD discs, among other goods (collectively, the “Smurfs Products”). The Smurfs Products are sold throughout the United States and in the State of Illinois through a variety of commercial channels, including well-known department stores such as J.C. Penney, third party


online retailers such as Amazon.com, and Studio Peyo's official website, smurf.com. The Smurfs Products have become enormously popular and even iconic, driven by Studio Peyo's creativity and arduous quality standards. Among the purchasing public, the Smurfs Products are instantly recognizable as such.


10. The Smurfs Products are branded with distinctive trademarks, including the word marks SMURF, THE SMURFS and SMURFETTE and character marks, including the Plain Smurf and Smurfette figures. These marks are recognized around the world and throughout the United States by consumers as signifying authentic and quality products. As a result of their long-standing use, Studio Peyo has developed and owns common law trademark rights in its marks. Further, Studio Peyo has registered its marks with the United States Patent and Trademark Office. Studio Peyo owns the following federal trademark registrations, which are collectively referred to as the "SMURFS Trademarks."


Registration Number	Trademark	Goods and Services
1,262,207	SMURF	For: Toy dolls, toy stuffed animals and toy figurines in class 028.
2,701,891	SMURF	For: Visual and audio-visual digital data carriers and dvd programs, children's animated programs, children's entertainment, educational and play-educational programs in class 009. Watches for children in class 014. Pens, printed paper labels; magazines and periodicals in the field of children's and collector's entertainment, comic books and cartoons; newsletters and newspapers in the field of children's and collector's entertainment, comic books and cartoons; notebooks; packaging materials, namely,

		<p>toy boxes; notepads and stationary; paper clips; paper and cardboard placecards; printed bags or paper; printed publications, namely, magazines, comic books in the field of cartoons and comic books; correspondence stickers in class 016.</p> <p>Non-metal key rings; plastic key rings; figurines and sculptures in plastic, resin and plaster in class 020.</p> <p>Socks and stockings; leisure clothing, namely, underwear, nightwear, t-shirts, shorts, sweaters in class 025.</p> <p>Musical and specking dolls and soft toys and accessories sold therewith; cast toy vehicles and accessories; miniature toy sets of cartoon characters; games and accessories for babies and pre-school children, namely plush toys, toy action figures, musical toys in class 028.</p> <p>Television entertainment in the nature of ongoing children’s animated programs in class 041.</p>
4,097,600	THE SMURFS	<p>For: Soaps; perfumery, essential oils, cosmetics, hair lotions, dentifrices in class 003.</p> <p>Optical apparatus and instruments, namely, optical frames, optical glasses and optical lenses; life-saving apparatus and instruments, namely, swim floats for safety purposes, inflatable floatation devices, and floatation vests; and teaching apparatus and instruments, namely, children’s educational software; pre-recorded magnetic data carriers featuring animated cartoons, pre-</p>

		<p>recorded recording discs featuring animated cartoons; pre-recorded audio, visual, and audiovisual magnetic and digital data carriers featuring music and animation and electronic game programs in class 009.</p> <p>Precious metals and their alloys and goods made of precious metals or coated therewith, namely, figurines, key rings; jewelry, precious stones; horological and chronometric instruments in class 014.</p> <p>Paper, cardboard and goods made from these materials, namely, posters, stickers and transfers, prints in the nature of photographs, photographs in class 016.</p> <p>Leather and imitation leather, goods made of these materials, namely, leather bags, school bags, handbags, messenger bags in class 018.</p> <p>Textiles and textile goods, namely, wall hangings of textile in class 024.</p> <p>Clothing, namely, blouses, shirts, socks, stockings, sleepwear, loungewear, underwear, headgear, namely, hats and caps; costumes for use in children's dress up play; Halloween costumes and masks sold in connection therewith in class 025.</p> <p>Games and toys, namely, dolls and accessories therefor, soft sculpture toys, toy action figures and accessories therefor; stuffed and plush toys, puppets, modeled plastic toy figurines, toy construction sets, balloons, board games in class 028.</p>
4,553,923	SMURFETTE	For: Stickers and transfers, coloring books;

		<p>books in the field of children's books, comics, cartoon strips in class 016.</p> <p>Handbags, cosmetic bags sold empty, wallets in class 018.</p> <p>Bed linen, bed sheets, bed blankets, bed covers, comforters, pillow cases, towels in class 024.</p> <p>Clothing, namely, blouses, shirts, dresses, scarves; costumes for use in children's dress up play; Halloween costumes and masks sold in connection therewith in class 025.</p> <p>Soft sculpture toys, toy action figures and accessories therefor; stuffed and plush toys, playsets for dolls, toy candy dispensers in class 028.</p>
<p>2,701,892</p>		<p>For: Watches for children in class 014.</p> <p>Paper and cardboard placards; posters of paper or cardboard in class 016.</p> <p>Non-metal key rings; plastic key rings; figurines and sculptures in plastic, resin and plaster; plastic cake decorations in class 20.</p> <p>Socks and stockings; leisure clothing, namely, underwear, nightwear, t-shirts, shorts, sweaters, shirts in class 025.</p> <p>Soft toys, miniature toy sets of cartoon characters; games and accessories for babies and pre-school children, namely, plush toys, toy action figures, musical toys in class 028.</p>

<p>4,097,601</p>		<p>For: Precious metals and their alloys and goods made of precious metals or coated therewith, namely, figurines, key rings; jewelry, precious stones; horological and chronometric instruments in class 014.</p> <p>Paper, cardboard and goods made from these materials, namely, posters, stickers and transfers, prints in the nature of photographs, photographs in class 016.</p> <p>Leather and imitation leather, goods made of these materials, namely, leather bags, school bags, handbags, messenger bags in class 18;</p> <p>Textiles and textile goods, namely, curtains, wall hangings of textile in class 024.</p> <p>Clothing, namely, blouses, shirts, pants, skirts, dresses, socks, stockings, sleepwear, loungewear, underwear; headgear, namely, hats and caps; costumes for use in children's dress up play; Halloween costumes and masks sold in connection therewith in class 025.</p> <p>Games and toys, namely, dolls and accessories therefor, soft sculpture toys, toy action figures and accessories therefor; stuffed and plush toys, puppets, modeled plastic toy figurines, toy construction sets, and balloons in class 028.</p>
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<p>4,680,381</p>		<p>For: Paper, cardboard and goods made from these materials, namely, posters, greeting cards, stickers and transfers, illustrations, books in the field of children's books, notepads in class 016.</p> <p>Leather and imitation leather, goods made of these materials, namely, tote bags in class 018.</p> <p>Textiles and textile goods, namely, comforters, pillow cases, towels in class 024.</p> <p>Clothing, namely, shirts, dresses in class 025.</p> <p>Games and toys, namely, puzzles in class 028.</p>
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11. The above U.S. registrations for the SMURFS Trademarks are valid, subsisting, in full force and effect, and Reg. No. 1,262,207 for SMURF is incontestable pursuant to 15 U.S.C. § 1065 for the goods “toy dolls, toy stuffed animals and toy figurines.” The SMURFS Trademarks have been used exclusively and continuously by Studio Peyo, some since at least as early as 1979, and have never been abandoned. The registrations for the SMURFS Trademarks constitute *prima facie* evidence of their validity and of Studio Peyo’s exclusive right to use the SMURFS Trademarks pursuant to 15 U.S.C. § 1057(b). Attached hereto as **Exhibit 1** are true and correct copies of the United States Registration Certificates for the above-listed SMURFS Trademarks.

12. The SMURFS Trademarks are distinctive when applied to the Smurfs Products, signifying to the purchaser that the products come from Studio Peyo and are manufactured to Studio Peyo’s quality standards. Whether Studio Peyo manufactures the products itself or

contracts with others to do so, Studio Peyo has ensured that products bearing the SMURFS Trademarks are manufactured to the highest quality standards.

13. The innovative marketing and product designs of the Smurfs Products have enabled the Smurfs brand to achieve widespread recognition and fame and have made the SMURFS Trademarks some of the most well-known marks in the toy and children's entertainment industries. The widespread fame, outstanding reputation, and significant goodwill associated with the Smurfs brand have made the SMURFS Trademarks valuable assets of Studio Peyo.

14. Studio Peyo has expended substantial time, money, and other resources in advertising and promoting the SMURFS Trademarks. In fact, Studio Peyo has expended millions of dollars in advertising, promoting and marketing featuring the SMURFS Trademarks. The Smurfs Products have also been the subject of extensive unsolicited publicity resulting from their high-quality, innovative designs. As a result, products bearing the SMURFS Trademarks are widely recognized and exclusively associated by consumers, the public, and the trade as being high-quality products sourced from Studio Peyo. The Smurfs Products have become the most popular of their kind in the U.S. and the world. The SMURFS Trademarks have achieved tremendous fame and recognition, which has only added to the inherent distinctiveness of the marks. *Id.* As such, the goodwill associated with the SMURFS Trademarks is of incalculable and inestimable value to Studio Peyo.

15. Genuine Smurfs Products are manufactured only by carefully vetted, approved and licensed manufactures, and are sold only through authorized retail channels. Studio Peyo's revenue comes exclusively through licensing. Genuine Smurfs Products are recognized by the public as being exclusively associated with the Smurfs brand.

16. Since at least as early as 1998, genuine Smurfs Products have been promoted and made available for sale at the official smurf.com website. The smurf.com website features proprietary content, images and designs exclusive to the Smurfs brand.

17. Studio Peyo has also registered numerous copyrighted designs (collectively, the “Smurfs Copyrighted Designs”) with the United States Copyright Office. The registrations include, but are not limited to: “The Smurfs and Their Woodland Friends” (U.S. Copyright Registration No. VA 139-920), issued by the Register of Copyrights on October 7, 1983; “The Smurf Story” (U.S. Copyright Registration No. VA 78-654), issued by the Register of Copyrights on July 9, 1981; “Smurf and Smurfette” (U.S. Copyright Registration No. VA 112-277), issued by the Register of Copyrights on November 4, 1982; “Smurfette” (U.S. Copyright Registration No. VA 76-267), issued by the Register of Copyrights on June 29, 1981; “Pointing Smurf” (U.S. Copyright Registration No. VA 47-118), issued by the Register of Copyrights on March 31, 1980; “Gargamel and Azrael” (U.S. Copyright Registration No. VA 112-279), issued by the Register of Copyrights on November 4, 1982; and “The Smurf Year-Round Coloring Book” (U.S. Copyright Registration No. VA 125-267), issued by the Register of Copyrights on April 26, 1983. A true and correct copy of the record from the U.S. Copyright Office website for the above-referenced Smurfs Copyrighted Designs is attached hereto as **Exhibit 2**.

18. Among the exclusive rights granted to Studio Peyo under the U.S. Copyright Act are the exclusive rights to reproduce, prepare derivative works of, distribute copies of, and display the Smurfs Copyrighted Designs to the public.

19. Smurfs Products typically include at least one of the SMURFS Trademarks and/or Smurfs Copyrighted Designs.

The Defendants

20. Defendants are individuals and business entities of unknown makeup who own and/or operate one or more of the e-commerce stores under at least the Seller Aliases identified on Schedule A and/or other seller aliases not yet known to Studio Peyo. On information and belief, Defendants reside and/or operate in the People's Republic of China or other foreign jurisdictions with lax trademark enforcement systems, or redistribute products from the same or similar sources in those locations. Defendants have the capacity to be sued pursuant to Federal Rule of Civil Procedure 17(b).

21. On information and belief, Defendants, either individually or jointly, operate one or more e-commerce stores under the Seller Aliases listed in Schedule A attached hereto. Tactics used by Defendants to conceal their identities and the full scope of their operation make it virtually impossible for Studio Peyo to learn Defendants' true identities and the exact interworking of their counterfeit network. If Defendants provide additional credible information regarding their identities, Studio Peyo will take appropriate steps to amend the Complaint.

IV. DEFENDANTS' UNLAWFUL CONDUCT

22. The success of the Smurfs brand has resulted in its significant counterfeiting. Consequently, Studio Peyo has a worldwide anti-counterfeiting program and regularly investigates suspicious e-commerce stores identified in proactive Internet sweeps and reported by consumers. In recent years, Studio Peyo has identified numerous fully interactive e-commerce stores, including those operating under the Seller Aliases, which were offering for sale and/or selling Unauthorized Smurfs Products to consumers in this Judicial District and throughout the United States. E-commerce sales, including through e-commerce stores like those of Defendants, have resulted in a sharp increase in the shipment of unauthorized products

into the United States. **Exhibit 3**, 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.

23. Third party service providers like those used by Defendants do not adequately subject new sellers to verification and confirmation of their identities, allowing counterfeiters to “routinely use false or inaccurate names and addresses when registering with these e-commerce platforms.” **Exhibit 4**, Daniel C.K. Chow, *Alibaba, Amazon, and Counterfeiting in the Age of the Internet*, 40 NW. J. INT’L L. & BUS. 157, 186 (2020); *see also* report on “Combating Trafficking in Counterfeit and Pirated Goods” prepared by the U.S. Department of Homeland Security’s Office of Strategy, Policy, and Plans (January 24, 2020) attached as **Exhibit 5** and finding that on “at least some e-commerce platforms, little identifying information is necessary for a counterfeiter to begin selling” and recommending that “[s]ignificantly enhanced vetting of third-party sellers” is necessary. Counterfeiters hedge against the risk of being caught and having their websites taken down from an e-commerce platform by preemptively establishing multiple virtual store-fronts. **Exhibit 5** at p. 22. Since platforms generally do not require a seller on a third-party marketplace to identify the underlying business entity, counterfeiters can have many different profiles that can appear unrelated even though they are commonly owned and operated. **Exhibit 5** at p. 39. Further, “E-commerce platforms create bureaucratic or technical

hurdles in helping brand owners to locate or identify sources of counterfeits and counterfeiters.”

Exhibit 4 at 186-187.

24. Defendants have targeted sales to Illinois residents by setting up and operating e-commerce stores that target United States consumers using one or more Seller Aliases, offer shipping to the United States, including Illinois, accept payment in U.S. dollars and, on information and belief, have sold Unauthorized Smurfs Products to residents of Illinois.

25. Defendants concurrently employ and benefit from substantially similar advertising and marketing strategies. For example, Defendants facilitate sales by designing e-commerce stores operating under the Seller Aliases so that they appear to unknowing consumers to be authorized online retailers, outlet stores, or wholesalers. E-commerce stores operating under the Seller Aliases appear sophisticated and accept payment in U.S. dollars via credit cards, Alipay, Amazon Pay, Western Union and/or PayPal. E-commerce stores operating under the Seller Aliases often include content and images that make it very difficult for consumers to distinguish such stores from an authorized retailer. Studio Peyo has not licensed or authorized Defendants to use any of the SMURFS Trademarks or to copy or distribute the Smurfs Copyrighted Designs, and none of the Defendants are authorized retailers of genuine Smurfs Products.

26. Many Defendants also deceive unknowing consumers by using the SMURFS Trademarks without authorization within the content, text, and/or meta tags of their e-commerce stores in order to attract various search engines crawling the Internet looking for websites relevant to consumer searches for Smurfs Products. Other e-commerce stores operating under Seller Aliases omit using SMURFS Trademarks in the item title to evade enforcement efforts

while using strategic item titles and descriptions that will trigger their listings when consumers are searching for Smurfs Products.

27. On information and belief, Defendants have engaged in fraudulent conduct when registering the Seller Aliases by providing false, misleading and/or incomplete information to e-commerce platforms. On information and belief, certain Defendants have anonymously registered and maintained Seller Aliases to prevent discovery of their true identities and the scope of their e-commerce operation.

28. On information and belief, Defendants regularly register or acquire new seller aliases for the purpose of offering for sale and selling Unauthorized Smurfs Products. Such seller alias registration patterns are one of many common tactics used by the Defendants to conceal their identities and the full scope and interworking of their counterfeiting operation, and to avoid being shut down.

29. Even though Defendants operate under multiple fictitious aliases, the e-commerce stores operating under the Seller Aliases often share unique identifiers, such as templates with common design elements that intentionally omit any contact information or other information for identifying Defendants or other Seller Aliases they operate or use. E-commerce stores operating under the Seller Aliases include other notable common features, such as use of the same registration patterns, accepted payment methods, check-out methods, keywords, illegitimate search engine optimization (SEO), advertising tactics, similarities in prices and quantities, the same incorrect grammar and misspellings, and/or the use of the same text and images. Additionally, Unauthorized Smurfs Products for sale by the Seller Aliases bear similar irregularities and indicia of being counterfeit to one another, suggesting that the Unauthorized

Smurfs Products were manufactured by and come from a common source and that Defendants are interrelated.

30. On information and belief, Defendants are in constant communication with each other and regularly participate in QQ.com chat rooms and through websites such as sellerdefense.cn, kaidianyo.com and kuajingvs.com regarding tactics for operating multiple accounts, evading detection, pending litigation, and potential new lawsuits.

31. Counterfeiters such as Defendants typically operate under multiple seller aliases and payment accounts so that they can continue operation in spite of Studio Peyo's enforcement efforts. On information and belief, Defendants maintain off-shore bank accounts and regularly move funds from their financial accounts to off-shore accounts outside the jurisdiction of this Court to avoid payment of any monetary judgment awarded to Studio Peyo. Indeed, analysis of financial account transaction logs from previous similar cases indicates that off-shore counterfeiters regularly move funds from U.S.-based financial accounts to off-shore accounts outside the jurisdiction of this Court.

32. 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 Unauthorized Smurfs Products in the same transaction, occurrence, or series of transactions or occurrences. Defendants, without any authorization or license from Studio Peyo, have jointly and severally, knowingly and willfully used and continue to use the SMURFS Trademarks and/or the Smurfs Copyrighted Designs in connection with the advertisement, distribution, offering for sale, and sale of Unauthorized Smurfs Products into the United States and Illinois over the Internet.

33. Defendants' unauthorized use of the SMURFS Trademarks in connection with the advertising, distribution, offering for sale, and sale of Unauthorized Smurfs Products, including the sale of Unauthorized Smurfs 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 the Smurfs brand.

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

34. Studio Peyo hereby re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

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

36. 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 SMURFS Trademarks without Studio Peyo's permission.

37. Studio Peyo is the exclusive owner of the SMURFS Trademarks. Studio Peyo's United States Registrations for the SMURFS Trademarks (Exhibit 1) are in full force and effect. Upon information and belief, Defendants have knowledge of Studio Peyo's rights in the SMURFS Trademarks, and are willfully infringing and intentionally using counterfeits of the SMURFS Trademarks. Defendants' willful, intentional and unauthorized use of the SMURFS

Trademarks is likely to cause and is causing confusion, mistake, and deception as to the origin and quality of the Unauthorized Smurfs Products among the general public.

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

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

40. The injuries and damages sustained by Studio Peyo have been directly and proximately caused by Defendants' wrongful reproduction, use, advertisement, promotion, offering to sell, and sale of Unauthorized Smurfs Products.

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

41. Studio Peyo hereby re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

42. Defendants' promotion, marketing, offering for sale, and sale of Unauthorized Smurfs 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 Studio Peyo or the origin, sponsorship, or approval of Defendants' Unauthorized Smurfs Products by Studio Peyo.

43. By using the SMURFS Trademarks on the Unauthorized Smurfs Products, Defendants create a false designation of origin and a misleading representation of fact as to the origin and sponsorship of the Unauthorized Smurfs Products.

44. Defendants' false designation of origin and misrepresentation of fact as to the origin and/or sponsorship of the Unauthorized Smurfs 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.

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

**COUNT III
COPYRIGHT INFRINGEMENT OF UNITED STATES COPYRIGHT
REGISTRATIONS (17 U.S.C. §§ 106 AND 501)**

46. Studio Peyo hereby re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

47. Studio Peyo is the owner of valid and enforceable Smurfs Copyrighted Designs, which contain certain copyrightable subject matter under 17 U.S.C. §§ 101, *et seq.*

48. Studio Peyo has complied with the registration requirements of 17 U.S.C. § 411(a) for the Smurfs Copyrighted Designs and has obtained Copyright Registration Nos. VA 47-118, VA 76-267, VA 78-654, VA 112-277, VA 112-279, VA 125-267 and VA 139-920. Defendants do not have any ownership interest in the Smurfs Copyrighted Designs. Defendants had access to the Smurfs Copyrighted Designs via the internet.

49. Without authorization from Studio Peyo, or any right under the law, Defendants have deliberately copied, displayed, distributed, reproduced and/or made derivative works incorporating the Smurfs Copyrighted Designs on the e-commerce stores operating under the Seller Aliases and the corresponding Unauthorized Smurfs Products. Defendants' derivative works are virtually identical to and/or are substantially similar to the look and feel of the Smurfs Copyrighted Designs. Such conduct infringes and continues to infringe the Smurfs Copyrighted Designs in violation of 17 U.S.C. § 501(a) and 17 U.S.C. §§ 106(1)–(3), (5).

50. Defendants reap the benefits of the unauthorized copying and distribution of the Smurfs Copyrighted Designs in the form of revenue and other profits that are driven by the sale of Unauthorized Smurfs Products.

51. Defendants have unlawfully appropriated Studio Peyo's protectable expression by taking material of substance and value and creating Unauthorized Smurfs Products that capture the total concept and feel of the Smurfs Copyrighted Designs.

52. On information and belief, Defendants' infringement has been willful, intentional, and purposeful, and in disregard of and with indifference to Studio Peyo's rights.

53. Defendants, by their actions, have damaged Studio Peyo in an amount to be determined at trial.

54. Defendants' conduct is causing, and unless enjoined and restrained by this Court will continue to cause, Studio Peyo great and irreparable injury that cannot fully be compensated or measured in money. Studio Peyo has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Studio Peyo is entitled to a preliminary and permanent injunction prohibiting further infringement of the Smurfs Copyrighted Designs.

PRAYER FOR RELIEF

WHEREFORE, Studio Peyo 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 SMURFS 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 Smurfs

Product or is not authorized by Studio Peyo to be sold in connection with the SMURFS Trademarks;

- b. reproducing, distributing copies of, making derivative works of, or publicly displaying the Smurfs Copyrighted Designs in any manner without the express authorization of Studio Peyo;
- c. passing off, inducing, or enabling others to sell or pass off any product as a genuine Smurfs Product or any other product produced by Studio Peyo, that is not Studio Peyo's or not produced under the authorization, control, or supervision of Studio Peyo and approved by Studio Peyo for sale under the SMURFS Trademarks and/or the Smurfs Copyrighted Designs;
- d. committing any acts calculated to cause consumers to believe that Defendants' Unauthorized Smurfs Products are those sold under the authorization, control or supervision of Studio Peyo, or are sponsored by, approved by, or otherwise connected with Studio Peyo;
- e. further infringing the SMURFS Trademarks and/or the Smurfs Copyrighted Designs and damaging Studio Peyo's goodwill; and
- f. 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 Studio Peyo, nor authorized by Studio Peyo to be sold or offered for sale, and which bear any of Studio Peyo's trademarks, including the SMURFS Trademarks, or any reproductions, counterfeit copies or colorable imitations thereof, and/or which bear the Smurfs Copyrighted Designs;

- 2) Entry of an Order that, upon Studio Peyo's request, those with notice of the injunction, including, without limitation, any online marketplace platforms such as eBay, AliExpress, Alibaba, Amazon, Wish.com, and Dhgate (collectively, the "Third Party Providers") shall disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of counterfeit and infringing goods using the SMURFS Trademarks and/or which bear the Smurfs Copyrighted Designs;
- 3) That Defendants account for and pay to Studio Peyo all profits realized by Defendants by reason of Defendants' unlawful acts herein alleged, and that the amount of damages for infringement of the SMURFS 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 Studio Peyo 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 SMURFS Trademarks;
- 5) As a direct and proximate result of Defendants' infringement of the Smurfs Copyrighted Designs, Studio Peyo is entitled to damages as well as Defendants' profits, pursuant to 17 U.S.C. § 504(b);
- 6) Alternatively, and at Studio Peyo's election prior to any final judgment being entered, Studio Peyo is entitled to the maximum amount of statutory damages provided by law, \$150,000 per work infringed pursuant to 17 U.S.C. § 504(c), or for any other such amount as may be proper pursuant to 17 U.S.C. § 504(c);
- 7) Studio Peyo is further entitled to recover its attorneys' fees and full costs for bringing this action pursuant to 17 U.S.C § 505 and 17 U.S.C. § 1117(a); and
- 8) Award any and all other relief that this Court deems just and proper.

Dated this 11th day of May 2021.

Respectfully submitted,

/s/ Justin R. Gaudio

Amy C. Ziegler

Justin R. Gaudio

RiKaleigh Johnson

Isaku Begert

Greer, Burns & Crain, Ltd.

300 South Wacker Drive, Suite 2500

Chicago, Illinois 60606

312.360.0080

312.360.9315 (facsimile)

aziegler@gbc.law

jgaudio@gbc.law

rjohnson@gbc.law

ibegert@gbc.law

Counsel for Plaintiff Studio Peyo S.A.