

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

BUSHNELL INC.,

Plaintiff,

Civil Action No.: 1:21-cv-05562

v.

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

Defendants.

COMPLAINT

Plaintiff, BUSHNELL INC. ("BUSHNELL" or "Plaintiff"), hereby files this Complaint against the Partnerships and Unincorporated Associations identified on Schedule A attached hereto (collectively, "Defendants"), and for its Complaint hereby alleges as follows:

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 consumers in the United States, including Illinois, through at least the fully interactive commercial internet stores operating under the Defendant domain names and/or the online marketplace accounts identified in Schedule A attached hereto (collectively, the "Defendant

Aliases” or the “Defendant Online Stores”). Specifically, Defendants are reaching out to do business with Illinois residents by operating one or more commercial, interactive internet stores through which Illinois residents can purchase products bearing counterfeit versions of Plaintiff’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 bearing counterfeit versions of Plaintiff’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 Plaintiff substantial injury in the State of Illinois.

3. This Court has personal jurisdiction over each Defendant, in that each Defendant conducts significant business in Illinois and in this Judicial District, and the acts and events giving rise to this lawsuit of which each Defendant stands accused were undertaken in Illinois and in this Judicial District.

INTRODUCTION

4. This action has been filed by Plaintiff to combat online trademark and copyright infringers who trade upon Plaintiff’s reputation and goodwill by selling and/or offering for sale products in connection with Plaintiff’s BORESNAKE trademarks, which are covered by U.S. Trademark Registration Nos. 2,425,833; 2,197,160; 2,258,433; 5,476,345; 2,829,753; 5,481,861; 2,890,462; and 3,053,614 (collectively, the “BORESNAKE Trademarks”). The registrations are valid, subsisting, unrevoked and uncancelled. The registrations for the trademarks constitute prima facie evidence of validity and of Plaintiff’s exclusive right to use the trademarks pursuant to 15 U.S.C. § 1057(b). Genuine and authentic copies of the U.S. federal trademark registration certificates for the BORESNAKE Trademarks are attached as **Exhibit 1**.

5. In addition, Defendants are selling unauthorized products that are based on and derived from the copyrighted subject matter created by BUSHNELL INC., hereinafter referred to as the “HOPPE’S Work.” Plaintiff is the owner of Copyright Registration No. VA0002186151 (the “HOPPE’S Work”) attached hereto as **Exhibit 2**.

6. In 1909, Frank August Hoppe mixed nine chemicals and created the world’s most effective gun cleaner. As a well-trained young soldier, Frank knew that gun care went far beyond just a clean rifle, but actually helped to ensure his safety while on the front lines of battle. Since that time, Hoppe’s has emerged as the leading gun care company, having grown along-side hunters, shooters, and soldiers who depend on their firearms every day. Hoppe’s has remained the most trusted name in gun care by advancing and evolving technologies to meet those needs. From the ever popular and versatile No. 9 to the quick and easy BORESNAKE, Hoppe’s is a well-known and trusted brand for firearm cleaning and protection. Hoppe’s and BORESNAKE are part of the BUSHNELL family of brands.

7. In 1999, the BORESNAKE was released offering consumers an innovative product to quickly, safely, and effectively clean their firearms. The BORESNAKE allows firearm owners to scrub, brush, and swab their firearms in one pass with one item opposed to needing to use individual bore brushes and swabs.

8. Twenty-one years later, BUSHNELL is the global leader in firearm cleaning and protection equipment. The company employs hundreds and its product may be found in traditional brick-and-mortar retailers such as Bass Pro Shops, Cabela’s, and locally owned outdoor equipment stores across the country. BUSHNELL also has a growing online presence that includes many of its brick-and-mortar retailers as well as e-commerce giant Amazon.


9. In the past, BUSHNELL was able to police its marks against identifiable infringers and counterfeiters. The rise of online retailing, coupled with the ability of e-commerce sites to hide their identities, has made it nearly impossible for policing actions to be undertaken. The company has availed itself of takedown procedures to remove infringing products, but these efforts have proved to be an unavailing game of whack-a-mole against the mass counterfeiting that is occurring over the internet. The aggregated effect of the mass counterfeiting that is taking place has overwhelmed Plaintiff and its ability to police its rights against the hundreds of anonymous defendants that are selling illegal counterfeits at prices substantially below an original product:

ORIGINAL

The screenshot shows the Hoppe's website interface. At the top left is the Hoppe's logo. Navigation links include "OUR PRODUCTS", "LEARN", "SUPPORT", and "DEALS". A search bar is located at the top right. Below the navigation is an orange banner with the text "Introducing Our Military VIP Program". The breadcrumb trail reads "Home / BoreSnakes / BoreSnake - Rifles". On the left is a vertical category menu with icons for various products. The main content area features a large image of a green and black BoreSnake rifle cleaning cable. To the right of the image is a product information panel. The panel includes the model name "BORESNAKE - RIFLES", a five-star rating, and a price of "\$9.33". Below the price is a description: "Hoppe's BoreSnake is the fastest bore cleaner on the planet." There is a "Select caliber" dropdown menu and a "Select Styles for Availability" section with a quantity selector set to "1" and an "ADD TO CART" button. A warning icon and text "WARNING for California Residents" are at the bottom of the panel.

AN EXAMPLE OF COUNTERFEIT

Home > All Categories > Fashion Accessories > Other Fashion Accessories > Product detail



Bore Snake Gun/Rifle Cleaning G01-G22 BoreSnake Cleaner F00233 SMA 196 U2

USD	\$7.32	\$7.3	\$6.48	\$6.19
	7 Pieces+	25 Pieces+	47 Pieces+	162 Pieces+

Sale Detail: **Buy it now, you will save extra \$2 when you apply below promotions**
🎁 New User Save \$2

Options:

Quantity: Pieces 99999 in Stock (Stock in: CN)

Shipping: **Free Shipping** to United States Via ePacket
Estimated delivery time: Apr. 21 and May. 13, ships out within 4 business days
 Logistics Delay Notification

Total cost: **\$494,995.05** Get coupon and you will save extra \$2

Buy it Now
Add to Cart
Add to Favorite

Seller Guarantee: Return Policy On-time Delivery in 30 Days

10. To be able to offer the counterfeit products at prices below the cost of an original, while still being able to turn a profit after absorbing the cost of manufacturing, advertising and shipping requires an economy of scale only achievable through a cooperative effort throughout the supply chain. As Homeland Security's recent report confirms, counterfeiters act in concert through coordinated supply chains and distribution networks to unfairly compete with legitimate brand owners while generating huge profits for the illegal counterfeiting network:

Historically, many counterfeits were distributed through swap meets and individual sellers located on street corners. **Today, counterfeits are being trafficked through vast e-commerce supply chains in concert with marketing, sales, and distribution networks.** The ability of e-commerce platforms to aggregate information and reduce transportation and search costs for consumers provides a big advantage over brick-and-mortar retailers. Because of this, sellers on digital platforms have consumer visibility well beyond the seller's natural geographical sales area.

...

The impact of counterfeit and pirated goods is broader than just unfair competition. Law enforcement officials have uncovered intricate links between the sale of counterfeit goods and transnational organized crime. **A study by the Better Business Bureau notes that the financial operations supporting counterfeit goods typically require central coordination,** making these activities attractive for organized crime, with groups such as the Mafia and the Japanese Yakuza

heavily involved. Criminal organizations use coerced and child labor to manufacture and sell counterfeit goods. In some cases, the proceeds from counterfeit sales may be supporting terrorism and dictatorships throughout the world.

...

Selling counterfeit and pirated goods through e-commerce is a highly profitable activity: production costs are low, millions of potential customers are available online, transactions are convenient, and listing on well-branded e-commerce platforms provides an air of legitimacy.

See Department of Homeland Security, *Combating Trafficking in Counterfeit and Pirated Goods*, Jan. 24, 2020, (<https://www.dhs.gov/publication/combating-trafficking-counterfeit-and-pirated-goods>), at 10, 19 (emphasis added) attached hereto as **Exhibit 3**.

11. The Defendant Aliases share unique identifiers, such as design elements and similarities of the unauthorized products offered for sale, establishing a logical relationship between them and suggesting that Defendants' illegal operations arise out of the same transaction, occurrence, or series of transactions or occurrences. Defendants use aliases to avoid liability by going to great lengths to conceal both their identities as well as the full scope and interworking of their illegal network. Despite deterrents such as takedowns and other measures, the use of aliases enables counterfeiters to stymie authorities:

The scale of counterfeit activity online is evidenced as well by the significant efforts e-commerce platforms themselves have had to undertake. A major e-commerce platform reports that its proactive efforts prevented over 1 million suspected bad actors from publishing a single product for sale through its platform and blocked over 3 billion suspected counterfeit listings from being published to their marketplace. Despite efforts such as these, private sector actions have not been sufficient to prevent the importation and sale of a wide variety and large volume of counterfeit and pirated goods to the American public.

...

A counterfeiter seeking to distribute fake products will typically set up one or more accounts on online third-party marketplaces. The ability to rapidly proliferate third-party online marketplaces greatly complicates enforcement efforts, especially for intellectual property rights holders. Rapid proliferation also allows counterfeiters to hop from one profile to the next even if the original site is taken down or blocked. On these sites, online counterfeiters can misrepresent products by posting pictures of authentic goods while simultaneously selling and shipping counterfeit versions.

...

Not only can counterfeiters set up their virtual storefronts quickly and easily, but they can also set up new virtual storefronts when their existing storefronts are shut down by either law enforcement or through voluntary initiatives set up by other stakeholders such as market platforms, advertisers, or payment processors.

Id. at 5, 11, 12.

12. eCommerce giant Alibaba has also made public its efforts to control counterfeiting on its platform. It formed a special task force that worked in conjunction with Chinese authorities for a boots-on-the-ground effort in China to stamp out counterfeiters. In describing the counterfeiting networks it uncovered, Alibaba expressed its frustration in dealing with “vendors, affiliated dealers and factories” that rely upon fictitious identities that enable counterfeiting rings to play whack-a-mole with authorities:

Fighting China's counterfeits in the online era

Xinhua | Updated: 2017-09-19 14:20



BEIJING - A secret team in Chinese e-commerce giant Alibaba has the task of pretending to be online consumers who test-buy purchases from the billion-plus products on its platforms.

Alibaba's Anti-Counterfeiting Special Task Force, formed last year, actively works with local law enforcement agencies, said Qin Seng.

"After we clean up online shops selling counterfeits, the counterfeiters usually change their identities and places of dispatch, using more covert means to continue selling online," Qin said.

The team uses big data to identify counterfeits and the vendors, affiliated dealers and factories suspected of producing or selling counterfeit items. They pass evidence to the public security, administration of commerce and industry, quality inspection, food and drug supervision and other law enforcement agencies. At the same time, they investigate the evidence in the field.

The team faces many risks in their offline probes.

"Most counterfeiting dens are hidden and well-organized. For example, we encountered a village producing counterfeits. The villagers installed cameras everywhere and when they saw outsiders entering, they became vigilant and even threatened us," Qin said.

See Xinhua, *Fighting China's Counterfeits in the Online Era*, China Daily (Sept. 19, 2017), available at www.chinadaily.com.cn/business/2017-09/19/content_32200290.htm (**Exhibit 4**).

13. Plaintiff has been and continues to be irreparably damaged through consumer confusion, dilution, loss of control over its reputation and good-will as well as the quality of goods bearing the BORESNAKE Trademarks. The rise of eCommerce as a method of supplying goods to the public exposes brand holders and creators that make significant investments in their products to significant harm from counterfeiters:

Counterfeiting is no longer confined to street-corners and flea markets. The problem has intensified to staggering levels, as shown by a recent Organisation for Economic Cooperation and Development (OECD) report, which details a 154 percent increase in counterfeits traded internationally — from \$200 billion in 2005 to \$509 billion in 2016. Similar information collected by the U.S. Department of Homeland Security (DHS) between 2000 and 2018 shows that seizures of infringing goods at U.S. borders have increased 10-fold, from 3,244 seizures per year to 33,810.

...

The rise in consumer use of third-party marketplaces significantly increases the risks and uncertainty for U.S. producers when creating new products. It is no longer enough for a small business to develop a product with significant local consumer demand and then use that revenue to grow the business regionally, nationally, and internationally with the brand protection efforts expanding in step. Instead, with the international scope of e-commerce platforms, once a small business exposes itself to the benefits of placing products online — which creates a geographic scope far greater than its more limited brand protection efforts can handle — it begins to face increased foreign infringement threat.

...

Moreover, as costs to enter the online market have come down, such market entry is happening earlier and earlier in the product cycle, further enhancing risk. If a new product is a success, counterfeiters will attempt, often immediately, to outcompete the original seller with lower-cost counterfeit and pirated versions while avoiding the initial investment into research and design.

...

Counterfeiters have taken full advantage of the aura of authenticity and trust that online platforms provide. While e-commerce has supported the launch of thousands of legitimate businesses, their models have also enabled counterfeiters to easily establish attractive “store-fronts” to compete with legitimate businesses.

See *Combating Trafficking in Counterfeit and Pirated Goods*, Jan. 24, 2020, (**Exhibit 3**) at 4, 8, and 11.

14. Not only are the creators and brand holders harmed, but the public is also harmed as well:

The rapid growth of e-commerce has revolutionized the way goods are bought and sold, allowing for counterfeit and pirated goods to flood our borders and penetrate our communities and homes. Illicit goods trafficked to American consumers by e-commerce platforms and online third-party marketplaces threaten public health and safety, as well as national security. This illicit activity impacts American innovation and erodes the competitiveness of U.S. manufacturers and workers.

The President's historic memorandum provides a much warranted and long overdue call to action in the U.S. Government's fight against a massive form of illicit trade that is inflicting significant harm on American consumers and businesses. This illicit trade must be stopped in its tracks.

Id. at 3, 4. (Underlining in original).

15. Plaintiff's investigation shows that the telltale signs of an illegal counterfeiting ring are present in the instant action. For example, Schedule A shows the use of store names by the Defendant Online Stores that employ no normal business nomenclature and, instead, have the appearance of being made up, or if a company that appears to be legitimate is used, online research shows that there is no known address for the company. Thus, the Defendant Online Stores are using fake online storefronts designed to appear to be selling genuine Plaintiff products, while selling inferior imitations of Plaintiff's products. The Defendant Online Stores also share unique identifiers, such as design elements and similarities of the counterfeit products offered for sale, establishing a logical relationship between them and suggesting that Defendants' illegal operations arise 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 illegal counterfeiting operation. Plaintiff is forced to file this action to

combat Defendants' counterfeiting of Plaintiff's registered trademarks, as well as to protect unknowing consumers from purchasing unauthorized BORESNAKE products over the Internet.

16. This Court has personal jurisdiction over each Defendant, in that each Defendant conducts significant business in Illinois and in this Judicial District, and the acts and events giving rise to this lawsuit of which each Defendant stands accused were undertaken in Illinois and in this Judicial District. In addition, each defendant has offered to sell and ship infringing products into this Judicial District.

THE PLAINTIFF

17. Plaintiff, BUSHNELL INC., is a corporation that maintains its principal place of business at 9200 Cody, Overland Park, Kansas, 66214. Plaintiff is engaged in the business of manufacturing, distributing and retailing high-quality firearm care products such as the BORESNAKE line of firearm cleaning products comprising a brass weight, a bronze brush, a fabric swab and an integrated handle that allows users to clean their firearms in one pass, including consumers within the Northern District of Illinois District (collectively, the "Plaintiff Products") under the federally registered BORESNAKE Trademarks. Defendants' sales of Counterfeit Products in violation of Plaintiff's intellectual property rights are irreparably damaging Plaintiff.

18. Plaintiff's brand, symbolized by the BORESNAKE Trademarks, is a recognized symbol of high-quality firearm cleaning products. The BORESNAKE Trademarks are distinctive and identify the merchandise as goods from Plaintiff. The registrations for the BORESNAKE Trademarks constitute prima facie evidence of their validity and of Plaintiff's exclusive right to use the BORESNAKE Trademarks pursuant to 15 U.S.C. § 1057 (b).

19. The BORESNAKE Trademarks have been owned exclusively by BUSHNELL INC. and have never been abandoned. The BORESNAKE Trademarks are valid, subsisting, and

are in full force and effect. The registrations for the trademarks constitute *prima facie* evidence of validity and of Plaintiff's exclusive right to use the trademarks pursuant to 15 U.S.C. § 1057(b).

20. Plaintiff has expended substantial time, money, and other resources in developing, advertising, and otherwise promoting the BORESNAKE Trademarks. More importantly, because Plaintiff's products are utilized for cleaning firearms, Plaintiff maintains strict quality control standards for all products featuring Plaintiff's BORESNAKE Trademarks. Plaintiff's authentic BORESNAKE products feature a unique design, instantly recognizable to consumers. Plaintiff has invested significant resources to market and promote the BORESNAKE products around the world. As a result, products bearing the BORESNAKE Trademarks are widely recognized and exclusively associated by consumers, the public, and the trade as being products sourced from Plaintiff.

THE DEFENDANTS

21. 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 Illinois and in this Judicial District, through the operation of the fully interactive commercial websites and online marketplaces operating under the Defendant Aliases. 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 BORESNAKE products to consumers within the United States, including Illinois and in this Judicial District.

THE DEFENDANTS' UNLAWFUL CONDUCT

22. The success of the BORESNAKE brand has resulted in its counterfeiting. Defendants conduct their illegal operations through fully interactive commercial websites hosted

on various e-commerce sites, such as, but not limited to, eBay, PayPal, WISH, Alibaba, AliExpress, DHgate, etc. (“Infringing Websites” or “Infringing Webstores”). Defendants’ Infringing Websites use templates with common design elements that intentionally omit any contact information or other information identifying Defendants. Each Defendant targets consumers in the United States, including the State of Illinois, and has offered to sell and, on information and belief, has sold and continues to sell counterfeit products that violate Plaintiff’s intellectual property rights (“Counterfeit Products”) to consumers within the United States, including the State of Illinois. Defendants have persisted in creating the Defendant Online Stores. Internet websites like the Defendant Online Stores are estimated to receive tens of millions of visits per year and to generate over \$135 billion in annual online sales. According to an intellectual property rights seizures statistics report issued by Homeland Security, the manufacturer’s suggested retail price (MSRP) of goods seized by the U.S. government in fiscal year 2018, had they been genuine, was nearly \$1.4 billion, up from \$1.2 billion in FY 2017. Internet websites like the Defendant Online Stores are also estimated to contribute to tens of thousands of lost jobs for legitimate businesses and broader economic damages such as lost tax revenue every year.

23. The Defendant Online Stores intentionally conceal their identities and the full scope of their counterfeiting operations in an effort to deter Plaintiff from learning Defendants’ true identities and the exact interworking of Defendants’ illegal counterfeiting operations. Through their operation of the Defendant Online Stores, Defendants are directly and personally contributing to, inducing and engaging in the sale of Counterfeit Products as alleged, often times as partners, co-conspirators and/or suppliers. Upon 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 Counterfeit Products.

24. Upon information and belief, at all times relevant hereto, the Defendants in this action have had full knowledge of Plaintiff's ownership of the BORESNAKE Trademarks and HOPPE'S Work, including its exclusive right to use and license such intellectual property and the goodwill associated therewith.

25. Defendants often go to great lengths to conceal their identities by often using multiple fictitious names and addresses to register and operate their massive network of Defendant Online Stores. Other Defendant domain names often use privacy services that conceal the owners' identity and contact information. Upon information and belief, Defendants regularly create new websites and 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 Online Store registration patterns are one of many common tactics used by the Defendants to conceal their identities, the full scope and interworking of their massive counterfeiting operation, and to avoid being shut down.

26. The counterfeit BORESNAKE products for sale in the Defendant Online Stores bear similarities and indicia of being related to one another, suggesting that the counterfeit BORESNAKE products were manufactured by and come from a common source and that, upon information and belief, Defendants are interrelated. The Defendant Online Stores also include other notable common features, including use of the same domain name registration patterns, unique shopping cart platforms, accepted payment methods, check-out methods, metadata, illegitimate SEO tactics, HTML user-defined variables, domain redirection, lack of contact information, identically or similarly priced items and volume sales discounts, similar hosting services, similar name servers, and the use of the same text and images.

27. 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 domain names or online marketplace accounts under new aliases once they receive notice of a lawsuit. Counterfeiters also often move website hosting to rogue servers located outside the United States once notice of a lawsuit is received. Rogue servers are notorious for ignoring takedown demands sent by brand owners. Counterfeiters also typically ship products in small quantities via international mail to minimize detection by U.S. Customs and Border Protection. The Department of Homeland Security (DHS) in January 2020 issued a report on “Combating Trafficking in Counterfeit and Pirated Goods.” The report notes that, although e-commerce has supported the launch of thousands of legitimate businesses, e-commerce platforms, third-party marketplaces, and their supporting intermediaries have also served as powerful stimulants for the trafficking of counterfeit and pirated goods. Selling counterfeit and pirated goods through e-commerce platforms and related online third-party marketplaces can be a highly profitable venture. For counterfeiters, production costs are low, millions of potential customers are available online, transactions are convenient, and listing goods on well-known platforms provides an air of legitimacy. Moreover, when sellers of illicit goods are in another country, they are exposed to relatively little risk of criminal prosecution or civil liability under current law enforcement and regulatory practices. USTR agrees that actions should be taken to protect American consumers and businesses against the harm and losses inflicted by counterfeiters.

28. Further, counterfeiters such as Defendants, typically operate multiple credit card merchant accounts and third-party accounts, such as but not limited to, PayPal, Inc. ("PayPal") accounts, behind layers of payment gateways so that they can continue operation in spite of Plaintiff's

enforcement efforts. Upon information and belief, Defendants maintain off-shore bank accounts and regularly move funds from their PayPal accounts to off-shore bank accounts outside the jurisdiction of this Court. Indeed, analysis of PayPal transaction logs from previous similar cases indicates that offshore counterfeiters regularly move funds from U.S.-based PayPal accounts to China-based bank accounts outside the jurisdiction of this Court.

29. Upon information and belief, Defendants also deceive unknowing consumers by using the BORESNAKE Trademarks and HOPPE'S Work without authorization within the content, text, and/or meta tags of their websites to attract various search engines crawling the Internet looking for websites relevant to consumer searches for BORESNAKE products. Additionally, upon information and belief, Defendants use other unauthorized search engine optimization (SEO) tactics and social media spamming so that the Defendant Aliases listings show up at or near the top of relevant search results and misdirect consumers searching for genuine BORESNAKE products. Further, Defendants utilize similar illegitimate SEO tactics to propel new domain names to the top of search results after others are shut down.

30. Defendants' use of the BORESNAKE Trademarks on or in connection with the advertising, marketing, distribution, offering for sale and sale of the Counterfeit Products is likely to cause and has caused confusion, mistake and deception by and among consumers and is irreparably harming Plaintiff. Defendants have manufactured, imported, distributed, offered for sale and sold Counterfeit Products using the BORESNAKE Trademarks and continue to do so.

31. Defendants, without authorization or license from Plaintiff, knowingly and willfully used and continue to use the BORESNAKE Trademarks and HOPPE'S Work in connection with the advertisement, offer for sale and sale of the Counterfeit Products, through, inter alia, the Internet. The Counterfeit Products are not genuine BORESNAKE Products. The

Plaintiff did not manufacture, inspect or package the Counterfeit Products and did not approve the Counterfeit Products for sale or distribution. The Defendant Online Stores offer shipping to the United States, including Illinois, and, on information and belief, each Defendant has sold Counterfeit Products into the United States, including Illinois.

32. Defendants also deceive unknowing consumers by using the BORESNAKE Trademarks without authorization within the content, text, and/or meta tags of the listings on Infringing Webstores in order to attract various search engines crawling the internet looking for websites relevant to consumer searches for BORESNAKE Products and in consumer product searches within the Webstores.

33. Upon information and belief, Defendants will continue to register or acquire listings for the purpose of selling Counterfeit Goods that infringe upon the BORESNAKE Trademarks unless preliminarily and permanently enjoined.

34. Defendants' use of the BORESNAKE Trademarks in connection with the advertising, distribution, offering for sale, and sale of counterfeit BORESNAKE products, including the sale of counterfeit BORESNAKE products into Illinois, is likely to cause and has caused confusion, mistake, and deception by and among consumers and is irreparably harming Plaintiff.

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

35. Plaintiff repeats and incorporates by reference herein its allegations contained in the above paragraphs of this Complaint.

36. This is a trademark infringement action against Defendants based on their unauthorized use in commerce of counterfeit imitations of the registered BORESNAKE

Trademarks in connection with the sale, offering for sale, distribution, and/or advertising of infringing goods. The BORESNAKE Trademarks are highly distinctive. Consumers have come to expect the highest quality from Plaintiff's products provided under the BORESNAKE Trademarks.

37. Defendants have sold, offered to sell, marketed, distributed, and advertised, and are still selling, offering to sell, marketing, distributing, and advertising products in connection with the BORESNAKE Trademarks without Plaintiff's permission.

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

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

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

41. The injuries and damages sustained by Plaintiff have been directly and proximately caused by Defendants' wrongful reproduction, use, advertisement, promotion, offering to sell, and sale of counterfeit BORESNAKE products.

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

42. Plaintiff repeats and incorporates by reference herein its allegations contained in the above paragraphs of this Complaint.

43. Defendants' promotion, marketing, offering for sale, and sale of counterfeit BORESNAKE 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 Plaintiff or the origin, sponsorship, or approval of Defendants' counterfeit BORESNAKE products by Plaintiff.

44. By using the BORESNAKE Trademarks in connection with the sale of counterfeit BORESNAKE products, Defendants create a false designation of origin and a misleading representation of fact as to the origin and sponsorship of the counterfeit BORESNAKE products.

45. Defendants' false designation of origin and misrepresentation of fact as to the origin and/or sponsorship of the counterfeit BORESNAKE products to the general public is a willful violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125.

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

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

47. Plaintiff repeats and incorporates by reference herein its allegations contained in the above paragraphs of this Complaint.

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

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

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

**COUNT IV
COPYRIGHT INFRINGEMENT 17 U.S.C. § 501(a)**

51. Plaintiff repleads and incorporates by reference each and every allegation set forth in the preceding paragraphs as if fully set forth herein.

52. Plaintiff's copyright has significant value and has been produced and created at considerable expense.

53. Plaintiff, at all relevant times, has been the holder of the pertinent exclusive rights infringed by Defendants, as alleged hereunder, including but not limited to the copyrighted HOPPE'S Work, including derivative works. The HOPPE'S Work is the subject of valid copyright registration. (**Exhibit 2**).

54. Upon information and belief, Defendants had access to the copyrighted work through Plaintiff's normal business activities. After accessing the HOPPE'S Work, Defendants wrongfully created copies of the copyrighted work without Plaintiff's consent and engaged in acts of widespread infringement.

55. Plaintiff is informed and believes and thereon alleges that Defendants further infringed Plaintiff's copyright by making or causing to be made derivative works by producing and distributing reproductions without Plaintiff's permission.

56. Each Defendant, without the permission or consent of the Plaintiff, has and continues to sell online infringing derivative works of the copyright. Each Defendant has violated Plaintiff's exclusive rights of reproduction and distribution. Each Defendant's actions constitute an infringement of Plaintiff's exclusive rights protected under the Copyright Act (17 U.S.C. § 101 et seq.).

57. Further, as a direct result of the acts of copyright infringement, Defendants have obtained direct and indirect profits they would not otherwise have realized but for their infringement of the copyrighted HOPPE'S Work. Plaintiff is entitled to disgorgement of Defendant's profits directly and indirectly attributable to their infringement of the HOPPE'S Work.

58. The foregoing acts of infringement constitute a collective enterprise of shared, overlapping facts and have been willful, intentional, and in disregard of and with indifference to the rights of the Plaintiff.

59. As a result of each Defendant's infringement of Plaintiff's exclusive rights under copyright, Plaintiff is entitled to relief pursuant to 17 U.S.C. § 504.

60. The conduct of each Defendant is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiff great and irreparable injury that cannot fully be compensated or measured in money. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502 and 503, Plaintiff is entitled to injunctive relief prohibiting each Defendant from further infringing Plaintiff's copyright and ordering that each Defendant destroy all unauthorized copies. Defendants' copies, plates, and other embodiment of the copyrighted work from which copies can

be reproduced should be impounded and forfeited to Plaintiff as instruments of infringement, and all infringing copies created by Defendants should be impounded and forfeited to Plaintiff, under 17 U.S.C. § 503.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff 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 BORESNAKE Trademarks and HOPPE'S Work 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 BORESNAKE product or is not authorized by Plaintiff to be sold in connection with the BORESNAKE Trademarks and HOPPE'S Work;
- b. passing off, inducing, or enabling others to sell or pass off any product as a genuine BORESNAKE product or any other product produced by Plaintiff that is not Plaintiff's or not produced under the authorization, control, or supervision of Plaintiff and approved by Plaintiff for sale under the BORESNAKE Trademarks and HOPPE'S Work;
- c. committing any acts calculated to cause consumers to believe that Defendants' counterfeit BORESNAKE products are those sold under the authorization, control, or supervision of Plaintiff, or are sponsored by, approved by, or otherwise connected with Plaintiff;

- d. further infringing the BORESNAKE Trademarks and HOPPE'S Work and damaging Plaintiff's goodwill;
 - e. otherwise competing unfairly with Plaintiff in any manner;
 - f. 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 Plaintiff, nor authorized by Plaintiff to be sold or offered for sale, and which bear any Plaintiff trademarks, including the BORESNAKE Trademarks or which are derived from Plaintiff's HOPPE'S Work, or any reproductions, counterfeit copies, or colorable imitations thereof;
 - g. using, linking to, transferring, selling, exercising control over, or otherwise owning the online marketplace accounts, the Defendant domain names, or any other domain name or online marketplace account that is being used to sell or is the means by which Defendants could continue to sell counterfeit BORESNAKE products; and
 - h. operating and/or hosting websites at the Defendant domain names and any other domain names registered or operated by Defendants that are involved with the distribution, marketing, advertising, offering for sale, or sale of any product bearing the BORESNAKE Trademarks or any reproduction, counterfeit copy or colorable imitation thereof that is not a genuine BORESNAKE product or not authorized by Plaintiff to be sold in connection with the BORESNAKE Trademarks or which are derived from Plaintiff's HOPPE'S Work in the BORESNAKE Products; and
- 2) That Defendants, within fourteen (14) days after service of judgment with notice of entry thereof upon them, be required to file with the Court and serve upon Plaintiff a written report under

oath setting forth in detail the manner and form in which Defendants have complied with paragraph 1, a through h, above;

3) Entry of an Order that, upon Plaintiff's request, those in privity with Defendants and those with notice of the injunction, including any online marketplaces such as, but not limited to, eBay, ContextLogic, DHgate, and Alibaba Group Holding Ltd., Alipay.com Co., Ltd. and any related Alibaba, AliExpress entities (collectively, "Alibaba"), social media platforms, Facebook, YouTube, LinkedIn, Twitter, Internet search engines such as Google, Bing and Yahoo, web hosts for the Defendant domain names, and domain name registrars, shall:

- a. disable and cease providing services for any accounts through which Defendants engage in the sale of counterfeit BORESNAKE products using the BORESNAKE Trademarks or which are derived from the Plaintiff's HOPPE'S Work, including any accounts associated with the Defendants listed on Schedule A;
- b. disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of counterfeit BORESNAKE products using the BORESNAKE Trademarks or which are derived from Plaintiff's copyright in the HOPPE'S Work; and
- c. take all steps necessary to prevent links to the Defendant Online Stores identified on Schedule A from displaying in search results, including, but not limited to, removing links to the Defendant Online Stores from any search index.

5) That Defendants account for and pay to Plaintiff all profits realized by Defendants by reason of Defendants' unlawful acts herein alleged, and that the amount of damages for infringement of the BORESNAKE Trademarks be increased by a sum not exceeding three times the amount thereof as provided by 15 U.S.C. § 1117;

6) In the alternative, that Plaintiff be awarded statutory damages pursuant to 15 U.S.C. § 1117(c)(2) of \$2,000,000 for each and every use of the BORESNAKE Trademarks;

7) For Judgment in favor of Plaintiff against Defendants that they have: a) willfully infringed Plaintiff's rights in its federally registered copyright pursuant to 17 U.S.C. § 501; and b) otherwise injured the business reputation and business of Plaintiff by Defendants' acts and conduct set forth in this Complaint;

8) For Judgment in favor of Plaintiff against Defendants for actual damages or statutory damages pursuant to 17 U.S.C. § 504, at the election of Plaintiff, in an amount to be determined at trial;

9) That Plaintiff be awarded its reasonable attorneys' fees and costs; and

10) Award any and all other relief that this Court deems just and proper.

DATED: October 20, 2021

Respectfully submitted,

/s/ Keith A. Vogt

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