

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

ATARI INTERACTIVE, INC.,

Plaintiff,

v.

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

Defendants.

Case No. 25-cv-01659

COMPLAINT

Plaintiff Atari Interactive, Inc. (“Plaintiff” or “Atari”) 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.

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

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

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/or funds from U.S. bank accounts and, on information and belief, have sold products using infringing and counterfeit versions of the federally registered trademarks owned by Plaintiff (collectively, the “Counterfeit Products”) 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.

II. INTRODUCTION

3. This action has been filed by Plaintiff to combat e-commerce store operators who trade upon Plaintiff’s reputation and goodwill by offering for sale and/or selling Counterfeit Products. Defendants create e-commerce stores operating under one or more Seller Aliases that are advertising, offering for sale, and selling Counterfeit 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 counterfeiting operation. Plaintiff is forced to file this action to combat Defendants’ counterfeiting of its registered trademarks, as well as to protect unknowing consumers from purchasing Counterfeit Products over the Internet. Plaintiff 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. Plaintiff Atari Interactive, Inc. is a Delaware corporation with its principal place of business in New York, New York.

5. Plaintiff is a perennial force in the video game and entertainment industry, responsible for developing the internationally recognized Atari brand and family of products and services (the “Atari® Brand”). From its launch in 1972 to the mid-1980s, Atari was one the largest producers of video gaming consoles in the world, with around 10 million units of the Atari 2600 home video game console being sold in the U.S. between 1977 and 1982.

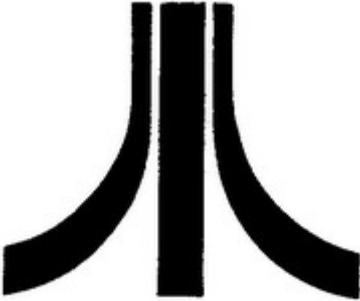

6. Atari has also produced, published, and distributed numerous Atari® Brand video games. All of these video games consist of or include large amounts of creative audiovisual material, stories, characters, and other matter that are wholly original to Atari. Atari has made, and continues to make, substantial investments in the design, development, testing, manufacturing, marketing and distribution of their Atari® Brand video games.



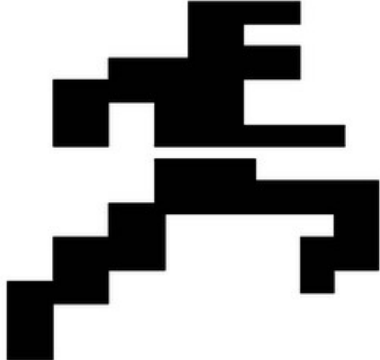
7. Atari has been responsible for the release of many iconic games, including Centipede, Asteroids, Pong, and Breakout. Where these games were once immensely popular as arcade games, their popularity has continued in the form of mobile games on users’ phones as well as platform games for the PlayStation and Xbox consoles.

8. In addition to its consoles and popular video games, a variety of Atari® Brand products are available, including clothing, water bottles, hats, and artwork (collectively, the “Atari® Brand Products”).

9. Plaintiff is the owner of the trademark rights in the ATARI trademark and other trademarks (collectively, the “ATARI Trademarks”) in the United States. The ATARI Trademarks

are registered with the United States Patent and Trademark Office. A non-exclusive list of the ATARI Trademarks is included below.

REGISTRATION NUMBER	TRADEMARK
1,050,153 1,221,509 1,280,537	ATARI
4,875,579 4,875,578	ATARI FIT
3,156,275	ATARI FLASHBACK
4,678,090	ATARI PLAY
6,486,640	ATARI VCS
1,049,118 1,221,508 1,280,536	
4,214,210	

5,619,236	
3,279,704	
3,286,089	

10. A non-exclusive list of the ATARI Trademarks associated with Atari® Brand video games is included below.

REGISTRATION NUMBER	TRADEMARK
6,765,025	ADVENTURE
1,496,900	AIRBORNE RANGER
6,883,020	ALIEN BRIGADE
6,884,872	AQUAVENTURE
3,367,673	ASTEROIDS
1,224,414	ASTEROIDS STAR PILOT
6,412,113	ASTEROIDS STAR PILOT
6,818,709	BASKETBRAWL
6,285,010	BEAT LEGEND

7,056,786	BOUNTY BOB STRIKES BACK!
2,553,961	BREAKOUT
4,168,075	BREAKOUT BOOST
3,541,288	CANYON BOMBER
6,883,021	CAVERNS OF MARS
3,365,039	CENTIPEDE
1,289,146	
4,278,833	CIRCUS ATARI
5,830,240	CITYTOPIA
3,618,643	COMBAT
3,407,973	CRYSTAL CASTLES
6,813,670	DARK CHAMBERS
7,274,761	DRAKKHEN
6,767,845	FATAL RUN
7,328,029	FOOD FIGHT
6,257,567	FOOD TRUCK FRENZY
6,289,849	
1,264,368	GRAVITAR
4,037,222	HAUNTED HOUSE
5,107,367	HAUNTED HOUSE: CRYPTIC GRAVES
7,056,475	I, ROBOT
3,286,091	INTELLIVISION
6,767,723	LIBERATOR
3,977,387	MAJOR HAVOC
3,055,010	MILLIPEDE
7,056,785	MINER 2049ER
2,004,406	MISSILE COMMAND
6,653,952	NINJA GOLF
2,611,782	PONG
4,324,638	
6,412,239	PONG QUEST
3,250,472	REALSPORTS
4,092,734	SABOTEUR
6,322,496	SO MUCH MORE THAN VIDEO GAMES!
7,213,105	SOLARIS
6,767,724	SPACE DUEL
1,227,682	STAR RAIDERS
4,272,409	
3,977,391	SUBMARINE COMMANDER
1,241,326	SUPER BREAKOUT
3,364,305	
6,767,725	SWORDQUEST
6,472,586	TANK FURY

3,426,691	TEMPEST
1,218,227	WARLORDS
4,192,906	
3,364,278	YAR'S REVENGE

11. The above U.S. registrations for the ATARI Trademarks are valid, subsisting, in full force and effect, and many are incontestable pursuant to 15 U.S.C. § 1065. The registrations for the ATARI Trademarks constitute *prima facie* evidence of their validity and of the exclusive right to use the ATARI Trademarks pursuant to 15 U.S.C. § 1057(b). Incontestable status under 15 U.S.C. § 1065 provides that the registrations for the ATARI Trademarks are conclusive evidence of the validity of the ATARI Trademarks and of the registrations of the ATARI Trademarks, of ownership of the ATARI Trademarks, and of the exclusive right to use the ATARI Trademarks in commerce. 15 U.S.C. §§ 1115(b), 1065. True and correct copies of the United States Registration Certificates for the above-listed ATARI Trademarks are attached hereto as **Exhibit 1**.

12. The ATARI Trademarks are distinctive when applied to Atari® Brand Products, signifying to the purchaser that the products come from ATARI and are manufactured to Plaintiff's quality standards. Plaintiff ensures that products bearing the ATARI Trademarks are manufactured to the highest quality standards.

13. The ATARI Trademarks are famous marks as that term is used in 15 U.S.C. § 1125(c)(1) and have been continuously used and never abandoned. The innovative marketing and product designs of the Atari® Brand Products have enabled the Atari® Brand to achieve widespread recognition and fame. The widespread fame, outstanding reputation, and significant goodwill associated with the Atari® Brand have made the ATARI Trademarks valuable assets of Plaintiff.

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

15. Atari® Brand Products are distributed and sold to consumers directly through Plaintiff's website at atari.com, as well as through authorized retail channels throughout the United States, including through authorized retailers in Illinois.

The Defendants

16. 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 Plaintiff. 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).

17. 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 Plaintiff to discover Defendants' true identities and the exact interworking of their network. If Defendants provide additional credible information regarding their identities, Plaintiff will take appropriate steps to amend the Complaint.

IV. DEFENDANTS' UNLAWFUL CONDUCT

18. The success of the Atari® Brand has resulted in significant counterfeiting of the ATARI Trademarks. Consequently, Plaintiff 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, Plaintiff has identified many fully interactive, e-commerce stores offering Counterfeit Products on online marketplace platforms such as Amazon, eBay, AliExpress, Alibaba, Walmart, Wish.com, Etsy, DHgate, TikTok, and Temu, including the e-commerce stores operating under the Seller Aliases. The Seller Aliases target consumers in this Judicial District and throughout the United States. According to a U.S. Customs and Border Protection (CBP) Report, in 2021, CBP made over 27,000 seizures of goods with intellectual property rights (IPR) violations totaling over \$3.3 billion, an increase of \$2.0 billion from 2020.² Of the 27,000 in total IPR seizures, over 24,000 came through international mail and express courier services (as opposed to containers), most of which originated from China and Hong Kong.³

19. 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

² See *Intellectual Property Rights Seizure Statistics, Fiscal Year 2021*, U.S. Customs and Border Protection.

³ *Id.*

platforms.”⁴ Counterfeiters hedge against the risk of being caught and having their websites taken down from an e-commerce platform by preemptively establishing multiple virtual storefronts.⁵ Since platforms generally do not require a seller on a third-party marketplace to identify the underlying business entity, infringers can have many different profiles that can appear unrelated even though they are commonly owned and operated.⁶ Further, “E-commerce platforms create bureaucratic or technical hurdles in helping brand owners to locate or identify sources of counterfeits and counterfeiters.”⁷

20. 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/or funds from U.S. bank accounts and, on information and belief, have sold Counterfeit Products to residents of Illinois.

21. Defendants concurrently employ and benefit from substantially similar advertising and marketing strategies. For example, Defendants facilitate sales by designing the e-commerce stores (including product detail pages) 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 look sophisticated and accept payment in U.S. dollars and/or funds from U.S. bank accounts via credit cards, Alipay, Amazon Pay, and/or

⁴ See 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 (Jan. 24, 2020), 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.

⁵ *Id.* at p. 22.

⁶ *Id.* at p. 39.

⁷ Chow, *supra* note 3, at p. 186-87.

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. Plaintiff has not licensed or authorized Defendants to use any of the ATARI Trademarks and none of the Defendants are authorized retailers of Atari® Brand Products.

22. Many Defendants also deceive unknowing consumers by using the ATARI Trademarks without authorization within the content, text, and/or meta tags of their e-commerce stores to attract various search engines crawling the Internet looking for websites relevant to consumer searches for Atari® Brand Products. Other e-commerce stores operating under the Seller Aliases omit using the ATARI 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 Atari® Brand Products.

23. E-commerce store operators like Defendants commonly engage in fraudulent conduct when registering the Seller Aliases by providing false, misleading, and/or incomplete information to e-commerce platforms to prevent discovery of their true identities and the scope of their e-commerce operation.

24. E-commerce store operators like Defendants regularly register or acquire new seller aliases for the purpose of offering for sale and selling Counterfeit Products. Such seller alias registration patterns are one of many common tactics used by e-commerce store operators like Defendants to conceal their identities and the full scope and interworking of their counterfeiting operation, and to avoid being shut down.

25. 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, advertising tactics, similarities in price and quantities, the same incorrect grammar and misspellings, and/or the use of the same text and images. Additionally, Counterfeit Products for sale by the Seller Aliases bear similar irregularities and indicia of being counterfeit to one another, suggesting that the Counterfeit Products were manufactured by and come from a common source and that Defendants are interrelated.

26. E-commerce store operators like Defendants are in constant communication with each other and regularly participate in QQ.com chat rooms and through websites such as sellerdefense.cn and kuajingvs.com regarding tactics for operating multiple accounts, evading detection, pending litigation, and potential new lawsuits.

27. Counterfeiters such as Defendants typically operate under multiple seller aliases and payment accounts so that they can continue operation in spite of Plaintiff's enforcement. E-commerce store operators like 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 Plaintiff. 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.

28. Upon information and belief, Defendants are working to knowingly and willfully, import, distribute, offer for sale, and sell Counterfeit Products in the same transaction, occurrence, or series of transactions or occurrences. Defendants, without any authorization or license from

Plaintiff, have knowingly and willfully used and continue to use the ATARI Trademarks in connection with the advertisement, distribution, offering for sale, and sale of Counterfeit Products into the United States and Illinois over the Internet.

29. Defendants' unauthorized use of the ATARI Trademarks in connection with the advertising, distribution, offering for sale, and sale of Counterfeit Products, including the sale of Counterfeit 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 Plaintiff.

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

30. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

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

32. 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 ATARI Trademarks without Plaintiff's permission.

33. Plaintiff is the owner of the ATARI Trademarks. The United States Registrations for the ATARI Trademarks (**Exhibit 1**) are in full force and effect. On information and belief, Defendants have knowledge of Plaintiff's rights in the ATARI Trademarks and are willfully infringing and intentionally using counterfeit versions of the ATARI Trademarks. Defendants'

willful, intentional, and unauthorized use of the ATARI Trademarks is likely to cause and is causing confusion, mistake, and deception as to the origin and quality of the Counterfeit Products among the general public.

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

35. 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 the ATARI Trademarks.

36. 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 Products.

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

37. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

38. Defendants' promotion, marketing, offering for sale, and sale of Counterfeit 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 Products by Plaintiff.

39. By using the ATARI Trademarks in connection with the Counterfeit Products, Defendants create a false designation of origin and a misleading representation of fact as to the origin and sponsorship of the Counterfeit Products.

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

41. 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 the Atari® Brand.

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 ATARI 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 Atari® Product or is not authorized by Plaintiff to be sold in connection with the ATARI Trademarks;
 - b. passing off, inducing, or enabling others to sell or pass off any product as a genuine Atari® 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 ATARI Trademarks;
 - c. committing any acts calculated to cause consumers to believe that Defendants' Counterfeit 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 ATARI Trademarks and damaging Plaintiff'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 Plaintiff, nor authorized by Plaintiff to be sold or offered for sale, and which bear any of Plaintiff's trademarks, including the ATARI Trademarks;
- 2) Entry of an Order that, upon Plaintiff's request, those with notice of the injunction, including, without limitation, any online marketplace platforms such as eBay, AliExpress, Alibaba, Amazon, Walmart, Wish.com, Etsy, Temu, TikTok, 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 ATARI Trademarks;
- 3) 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 ATARI 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 Plaintiff 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 ATARI Trademarks;
- 5) Plaintiff is further entitled to recover its attorneys' fees and full costs for bringing this action pursuant to 15 U.S.C. § 1117(a); and
- 6) Award any and all other relief that this Court deems just and proper.

Dated this 18th day of February 2025.

Respectfully submitted,

/s/ Justin R. Gaudio

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