

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

SHILONG CAI,

Plaintiff,

v.

LIN QIUGUI D/B/A ESTMY STORE,

Defendant.

Case No. 1:22-cv-04530

Honorable Robert W. Gettleman

**DEFENDANT’S OPPOSITION TO PLAINTIFF’S
MOTION FOR PRELIMINARY INJUNCTION**

Defendant, Qiugui Lin and ESTMY Store (“Defendant”), through the undersigned counsel, opposes Plaintiff’s Motion for Preliminary Injunction. Plaintiff has failed to demonstrate entitlement to the extraordinary relief sought. For the reasons set forth herein, Plaintiff’s motion should be denied.

I. BACKGROUND

Plaintiff Shilong Cai (“Plaintiff”) bring this action against Defendant asserting direct copyright infringement and willful copyright infringement [Dkt. No. 1]. On or around August 26, 2022, this Court issued a temporary restraining order. [Dkt. No. 5]. On or around August 26, 2022, due to the temporary restraining order, Defendant’s Amazon listings were forcefully taken down, including but not limited to ASINs B09BZ3W948, B09DD1VS1R, B09BYX62N4, B09BZ79RDG, B0B6GYH495, and B0B7RRF3DN. On September 7, 2022, the TRO was extended an additional fourteen days, through and including September 23, 2022. [Dkt. Nos. 9-11]. On September 23, 2022, Plaintiff filed an Amended Complaint and did not seek an extension of the TRO. [Dkt. No. 16]. The TRO expired on September 23, 2022. This has substantially interfered with Defendant’s businesses and caused Defendant significant loss. On October 7, 2022, Plaintiff filed a revised motion for preliminary injunction adding additional restrictions for another alleged copyright. [Dkt. No. 23]. On October 11, 2022, Defendant filed an answer, affirmative defense, and counterclaims.

II. STATEMENT OF FACTS

Qiugui Lin is an individual who operates online Amazon marketplaces under the ESTMY Store. Qiugui Lin is the registered owner of the Christmas Tree Grid LQG Copyright (“Original Tree Copyright” or “Defendant’s Work”), covered by U.S. Copyright Registration No. VA0002292450. Qiugui Lin was granted the Christmas Tree Grid LQG Copyright with an Effective Date of Registration on October 14, 2021.

Shilong Cai is an individual residing in Hangzhou, People’s Republic of China. Shilong Cai is the registered owner of the Merry Christmas-13 Copyright (“Colored Tree

Copyright” or “Plaintiff’s Work” or “Plaintiff’s Derivative Work”), covered by U.S. Copyright Registration No. VA0002279356. Shilong Cai was granted the Merry Christmas-13 Copyright with an Effective Date of Registration on November 11, 2021.

III. ARGUMENTS

For a court to grant a preliminary injunction, a plaintiff must show “(1) a reasonable likelihood of success on the merits; (2) irreparable harm if an injunction is not granted; (3) a balance of hardships tipping in its favor; and (4) the injunction's favorable impact on the public interest.” *Amphenol T&M Antennas, Inc. v. Centurion Int'l, Inc.*, No. 00 C 4298, 2001 U.S. Dist. LEXIS 20874, at *2 (N.D. Ill. Dec. 14, 2001).

This Court should deny Plaintiff’s motion for preliminary injunction because Plaintiff fails to establish a reasonable likelihood of success on copyright infringement and state law deceptive trade practice. Moreover, Plaintiff’s motion should be denied because Plaintiff will not suffer any irreparable harm and Defendant’s irreparable harm from a preliminary injunction outweighs any potential harm to Plaintiff.

IV. Plaintiff does not show a likelihood of success on the merits.

A. Copyright Infringement.

Plaintiff fails to show a likelihood of success on the merits for copyright infringement and thus, is not entitled to a preliminary injunction. In order to establish copyright infringement or a likelihood of success on the merits, a plaintiff must prove: “(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original.” *Feist Publ'ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991).

1. Plaintiff does not have a valid copyright.

Plaintiff's motion for preliminary injunction should be denied because Plaintiff does not have a valid copyright and therefore cannot establish a likelihood of success on the merits. Although Plaintiff submitted a Merry Christmas-13 Copyright Registration (VA0002279356) which constitutes prima facie evidence of a valid copyright, Plaintiff's Colored Tree Copyright is not a valid copyright because it is an unlawful, infringing use of Defendant's Original Tree Copyright, and it is not original.

a) Plaintiff's Copyright is an unlawful, infringing use of Defendant's Original Tree Copyright.

Plaintiff's Colored Tree Copyright is not a valid copyright because it is an unlawful, infringing use of Defendant's Original Tree Copyright. According to 17 USC §106, "the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:...(2) to prepare derivative works based upon the copyrighted work."

In *Midway Mfg. Co. v. Artic Int'l, Inc.*, the court states,"if the latter work does incorporate sufficient portions of the pre-existing work it has infringed the right to prepare derivative works. By forbidding a third person from creating a work based on a pre-existing copyrighted work, the author is assured that he will reap the profits from his artistic contribution in accordance with the policies of the Act." No. 80 C 5863, 1981 U.S. Dist. LEXIS 16881, at *24-25 (N.D. Ill. June 2, 1981)(Discussing 2 *Nimmer on Copyright* §8.09(A)).

Here, on March 12, 2020, Defendant created and filed a Copyright Application (See **Exhibit A**) for the original work seen below:



Image 1: Defendant's Work.

Defendant was granted a Copyright in the work pictured above, with an Effective Date of Registration on October 14, 2021. (See **Exhibit B**). Thereafter, Plaintiff filed and was granted a Copyright with an Effective Date of Registration on November 11, 2021. (See **Exhibit C**). Plaintiff's Work is pictured below:



Image 2: Plaintiff's Work.

Plaintiff argues that Defendant's Original Tree Copyright was fraudulent and/or

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