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

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| Roadget Business Pte. Ltd., | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| | ) | |
| v. | ) | No. 24 C 115 |
| | ) | |
| | ) | |
| The Individuals, Corporations, Limited Liability Companies, Partnerships, and Unincorporated Associations Identified on Schedule A Hereto, | ) | |
| | ) | |
| Defendants. | ) | |

Memorandum Opinion and Order

In this suit, plaintiff alleges 17 defendants infringed several of its copyrights. I previously granted plaintiff an *ex parte* temporary restraining order ("TRO"), which includes an asset freeze. Several defendants ("Moving Defendants")[1] later appeared through counsel and moved to dissolve or modify the TRO, but I denied that motion. Moving Defendants now move for reconsideration of that denial and to dismiss the complaint and/or sever the Moving Defendants into separate cases.

[1] Moving Defendants include Defendant Nos. 1 (S H Baby), 6 (Free Loop), 7 (Be kind), 8 (Livi), 9 (Mi Fashion), 11 (Yeonhee women clothing), 13 (SYLP PLUS), 14 (SYLP), 16 (Dchen), and 17 (Huang Kangwei).

I.

As explained in my prior order, asset restraints are typically unavailable before judgment where a plaintiff seeks a money judgment. *See Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 331–33 (1999). But where, as here, a plaintiff seeks an equitable remedy like disgorgement, an asset freeze may be appropriate. *See Banister v. Firestone*, No. 17 C 8940, 2018 WL 4224444, at *9 (N.D. Ill. Sept. 5, 2018) ("[T]he Court can permissibly freeze assets to protect a plaintiff's equitable remedies." (citations omitted)). Even then, "the appropriate scope of prejudgment restraint must be limited only to what is reasonably necessary to secure the (future) equitable relief." *Deckers Outdoor Corp. v. P'ships & Unincorporated Ass'ns Identified on Schedule A*, No. 13 C 07621, 2013 WL 12314399, at *2 (N.D. Ill. Oct. 31, 2013). Thus, "if the amount of the profits is known, then the asset freeze should apply only to that specific amount, and no more." *Id.* "To exempt assets from an asset freeze, '[t]he burden is on the party seeking relief to present documentary proof that particular assets [are] not the proceeds of counterfeiting activities.'" *Monster Energy Co. v. Wensheng*, 136 F. Supp. 3d 897, 910 (N.D. Ill. 2015) (quoting *Luxottica USA LLC v. P'ships & Unincorporated Ass'ns Identified on Schedule "A"*, No. 14 C 9061, 2015 WL 3818622, at *5 (N.D. Ill. June 18, 2015)).

Moving Defendants previously requested that I limit the asset freeze to what they asserted were the profits from the accused products. Profits are calculated by subtracting costs from revenue. In support of their revenue estimates, they submitted a declaration by one of their attorneys stating that Temu (the platform on which defendants sold the allegedly infringing products) produced a spreadsheet identifying the revenues obtained from sales of accused products on the platform. As to costs, Moving Defendants supplied declarations from their own business representatives providing cost estimates associated with sales of accused products. I denied the motion, expressing concern primarily with the unreliability of the cost figures. *See* ECF 58.

It is this order that Moving Defendants wish me to reconsider under Rule 59(e). *Cf. Fin. Servs. Corp. of Midwest v. Weindruch*, 764 F.2d 197, 198 (7th Cir. 1985) (noting that "an order granting a preliminary injunction is a judgment within the meaning of" Rule 59(e)). "Courts may grant Rule 59(e) motions 'to alter or amend the judgment if the movant presents newly discovered evidence that was not available at the time'" of the proceeding. *Miller v. Safeco Ins. Co. of Am.*, 683 F.3d 805, 813 (7th Cir. 2012) (quoting *In re Prince*, 85 F.3d 314, 324 (7th Cir. 1996)).

Moving Defendants meet that standard here. First, they have come forward with more robust evidence regarding revenue, in the form of a custodial declaration produced by counsel for Temu

explaining--and attesting to the veracity of--the revenue data Moving Defendants submitted. *See* Casaceli Decl., ECF 62-1. This evidence comes directly from the platform from which the sales data originates, and it describes how the sales data was obtained, rendering it sufficiently reliable. Plaintiff offers no evidence in rebuttal, but complains that Moving Defendants could have submitted this evidence with their original motion. *See Miller*, 683 F.3d at 813 ("[Rule 59(e)] motions are not appropriately used to advance arguments or theories that could and should have been made before the district court rendered judgment or to present evidence that was available earlier." (citation and internal quotation marks omitted)). True enough, but evidence is not really "available" where a party did not have sufficient notice that it was necessary to achieve its preferred outcome. *See In re Prince*, 85 F.3d at 324 (evidence not previously "available" where "the parties did not have sufficient indication" it was required and thus "were not given an opportunity to collect evidence bearing on the question"). In "Schedule A" cases like this one, it is exceedingly rare for defendants to appear at all, much less to mount a vigorous challenge to the scope of a TRO. That leaves a relative dearth of precedent from which Moving Defendants could tailor their arguments. Combine that with the wide discretion district judges enjoy in fashioning TROs, *see Cassell v. Snyders*,

990 F.3d 539, 545 (7th Cir. 2021), and you have a recipe for uncertainty as to what evidence each particular judge will demand.[2]

Second, conditions have changed because the assets affected by the freeze have increased substantially. Moving Defendants point out that because the asset freeze applies to their accounts as a whole, and sales of the accused products have stopped since issuance of the TRO, the funds that have accumulated since then are from the sale of non-accused products. According to Moving Defendants' evidence from Temu, the amount frozen across all defendants' accounts as of February 1, 2024 was about $250,000, ballooning to over $1 million by the time Moving Defendants filed the present motion in mid-March. *Compare* Casaceli Decl. Exh. B, ECF 62-3 at 3 (identifying funds frozen per defendant as of February 1, 2024), *with id.* Exh. C, ECF 62-4 at 5 (same, as of March 13, 2024). Plaintiff does not dispute this. This evidence highlights the increasingly disproportionate harm inflicted by the asset freeze.

Third, Moving Defendants now request a modification of the TRO to the gross sales *revenue* obtained from the sale of each accused product, rather than the *profit*. That is important because

[2] There is also good reason to factor in the expedited, preliminary nature of the *ex parte* TRO's entry and Moving Defendants' initial challenge to it. It would be incongruous to hold a defendant in that position to the same standard as a party taking months to prepare a summary judgment brief.

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