

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

AFG MEDIA LTD,

*Plaintiff,*

v.

POPTREND-OFFICIAL, *et al,*

*Defendants.*

Civil Action No. 2:23-cv-1840

Hon. William S. Stickman IV

**MEMORANDUM OPINION**

WILLIAM S. STICKMAN IV, United States District Judge

Plaintiff, AFG Media Ltd (“AFG”) asks the Court to enter a preliminary injunction enjoining Defendants<sup>1</sup> from their unauthorized use of AFG’s copyrighted inflatable alien costume. (ECF No. 4). AFG asserts that by “promoting, selling, offering for sale and distributing knock-offs,” Defendants are infringing on AFG’s copyright. (ECF No. 6, p. 13). For the reasons explained below, the Court holds that AFG met its burden in demonstrating that it is entitled to preliminary injunctive relief.

**I. STANDARD OF REVIEW**

The grant or denial of a preliminary injunction is within the sound discretion of a district court. *See Reilly v. City of Harrisburg*, 858 F.3d 173, 178–79 (3d Cir. 2017) (“District courts have the freedom to fashion preliminary equitable relief so long as they do so by ‘exercising their sound discretion.’” (citation omitted)). The primary purpose of preliminary injunctive relief is

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<sup>1</sup> Remaining defendants in this case are Poptrend-Official; Camlinbo; Cubovie; Decalare; Easy-Fit; Goiden; Hacsoon Flagship Store; Hacsoon Shop; KOOY OFFICIAL STORE; Linkingus; MH ZONE, -SeeNew-; Stegosaurus; TGP US; Unilove; Xinruida-US; YEAHBEER store; Shenzhen Mojin Technology Co., LTD; DODYSNAS; Kilkwhell; Nightwill.; Suminiy.US (collectively, “Defendants”).

“maintenance of the status quo until a decision on the merits of a case is rendered.” *Acierno v. New Castle Cnty.*, 40 F.3d 645, 647 (3d Cir. 1994). The “status quo” refers to “the last, peaceable, noncontested status of the parties.” *Kos Pharm., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004).

“A preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 24 (2008). Rather, such relief “should be granted only in limited circumstances.” *Kos Pharms.*, 369 F.3d at 708 (citation omitted). A moving party “must establish entitlement to relief by clear evidence.” *Doe v. Boyertown Area Sch. Dist.*, 897 F.3d 518, 526 (3d Cir. 2018). Specifically, the movant must demonstrate:

(1) a likelihood of success on the merits; (2) that it will suffer irreparable harm if the injunction is denied; (3) that granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) that the public interest favors such relief.

*Kos Pharms.*, 369 F.3d at 708; *see also Winter*, 555 U.S. at 20. The first two factors are “the most critical,” and the moving party bears the burden of making the requisite showings. *Reilly*, 858 F.3d at 176, 179 (citations omitted). Once those “gateway factors” are met, a court should “consider[] the remaining two factors” and then “determine[] in its sound discretion if all four factors, taken together, balance in favor of granting the requested preliminary relief.” *Id.* at 179.

In reaching its decision on a request for injunctive relief, a district court sits as both the trier of fact and the arbiter of legal disputes. A court must, therefore, make “findings of fact and conclusions of law upon the granting or refusing of a preliminary injunction.” *Bradley v. Pittsburgh Bd. of Educ.*, 910 F.2d 1172, 1178 (3d Cir. 1990) (citing Fed. R. Civ. P. 52(a)(2)). This “mandatory” requirement of Federal Rule of Civil Procedure Rule 52(a)(2) must be met “even when there has been no evidentiary hearing on the motion.” *Id.* Nevertheless, at the preliminary injunction stage, “procedures [] are less formal and evidence [] is less complete than

in a trial on the merits.” *Kos Pharms.*, 369 F.3d at 718; *see also AT&T Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1427 (3d Cir. 1994) (“[T]he grant or denial of a preliminary injunction is almost always based on an abbreviated set of facts, requiring a delicate balancing [that] is the responsibility of the district judge.” (citations omitted)). Accordingly, a court “may rely on affidavits and hearsay materials which would not be admissible evidence.” *Kos Pharms.*, 369 F.3d at 718 (quoting in parenthetical *Levi Strauss & Co. v. Sunrise Int’l Trading, Inc.*, 51 F.3d 982, 985 (11th Cir. 1995)). But the weight given to such materials will “vary greatly depending on the facts and circumstances of a given case.” *Id.* at 719. A court is also tasked with assessing the credibility of witness testimony and may base the decision to grant or deny a preliminary injunction on credibility determinations. *See, e.g., Hudson Glob. Res. Holdings, Inc. v. Hill*, 2007 WL 1545678, at \*8 (W.D. Pa. May 25, 2007).

## II. PROCEDURAL AND FACTUAL BACKGROUND

On October 24, 2023, AFG filed a complaint (“Complaint”) and an *ex parte* motion for (1) a temporary restraining order; (2) an order restraining assets and merchant storefronts; (3) an order to show cause why a preliminary injunction should not issue; and (4) an order authorizing expedited discovery. (ECF Nos. 2, 4). On the same day, the Court held a telephonic motion hearing pertaining to the *ex parte* temporary restraining order (“TRO”). (ECF No. 19). The Court granted the TRO and scheduled a videoconference injunction hearing for November 6, 2023. (ECF Nos. 20, 22). AFG then filed a motion for preliminary injunction on October 31, 2023. (ECF No. 28). On November 3, 2023, AFG filed another *ex parte* motion seeking to extend the TRO, continue the show cause hearing, and modify the schedule. (ECF No. 29).

The Court, finding that good cause existed for AFG’s requests, granted its motion and presided over the rescheduled preliminary injunction hearing on December 7, 2023 (the

“Hearing”). (ECF Nos. 30, 77). At the Hearing, counsel for Defendants Poptrend-Official, Decalare, Easy-Fit, Hacosoon Flagship Store, Hacosoon Shop, Stegosaurus, YEAHBEER Store (collectively, “Toloco Defendants”), and Camlinbo argued against the imposition of a preliminary injunction. The parties chose not to expand the evidentiary record by presenting evidence or witnesses. (ECF No. 90, pp. 5, 15–16, 25–26). After the Hearing, however, Toloco Defendants sought leave, which the Court granted, to file additional declarations. (ECF Nos. 79, 80).

AFG, a United Kingdom private limited company, designs and sells costumes worldwide under the registered trademark MORPH<sup>®</sup>. (ECF No. 2, ¶¶ 1, 14–15, 26). The costume at issue is “a whimsical alien body, face, and profile with dayglow green coloring, and jet black eyes, nose and mouth, hosting a human with black top, royal blue pants, and white sneakers with black laces” (the “Alien Costume” or “Costume”). (*Id.* ¶ 4). The Alien Costume “gives the viewer the impression that a person is being carried around by an alien.” (*Id.* ¶ 26). AFG asserts that it has a registered United States copyright protecting the 2-D sculptural aspect of the Costume. (*Id.* ¶ 8); (ECF No. 2-6). The Certificate of Registration (“Certificate”) issued by the United States Copyright Office details that the Alien Costume was completed in 2016 and first published on August 2, 2017. (ECF No. 2-6, p. 1). The Copyright Office granted certification to AFG on September 16, 2020. (*Id.*).

Defendants are individuals and/or business entities engaged in e-commerce that “target their business activities toward consumers throughout the United States” through online marketplaces such as Amazon, eBay, Joybuy, Temu, Wish, Walmart, and AliExpress. (ECF No. 2, ¶ 18). Toloco Defendants “are independently owned Chinese entities that operate seven Amazon.com storefronts,” and each storefront is located in China. (ECF No. 58, p. 12).

Camlinbo “is an Amazon stores [sic] operated by a Chinese individual Lin Hui Lv.” (ECF No. 62, p. 2). AFG alleges that Defendants are engaging in activities that infringe on its copyright, specifically “promoting, selling, offering for sale and distributing goods bearing and/or using confusingly similar imitations of the [Alien Costume], or substantially similar copies of [the Alien Costume], while marketing Infringing Products in a willful attempt to pass off their knock-off products as genuine versions of [the Costume].” (ECF No. 2, ¶ 33).

In Toloco Defendants’ submitted declarations, each seller’s legal representative states when their Alien Costumes were first offered for sale on their respective Amazon storefronts.<sup>2</sup> (ECF No. 58-1, pp. 3–4); (ECF No. 58-2, p. 3); (ECF No. 58-4, p. 4); (ECF No. 58-5, p. 4); (ECF No. 58-6, p. 3); (ECF No. 58-7, pp. 3–4). The first available dates vary from the earliest being March 15, 2019, to October 2, 2023, as the latest. (ECF No. 58-6, p. 3); (ECF No. 58-7, p. 4). Each of the Toloco Defendants claim that they independently created their Costume in 2018 after referring to “various designs,” notably two inflatable costumes seen in YouTube videos. (ECF No. 58-1, pp. 8–10); (ECF No. 58-2, pp. 7–9); (ECF No. 58-3, pp. 7–9); (ECF No. 58-4, p. 6); (ECF No. 58-5, pp. 7–8); (ECF No. 58-6, p. 6); (ECF No. 58-7, p. 7). Additionally, Toloco Defendants cite Easy-Fit’s introduction of inflatable costumes featuring foot fins as another source of their independent inspiration. (ECF No. 58, p. 26).

Beginning on October 16, 2023, AFG’s counsel investigated Defendants’ allegedly infringing activity by purchasing the Costume from their Amazon and Walmart storefronts. (ECF Nos. 13, 13-1, 13-2, 13-3, 13-4, 13-5, 13-6, 13-7, 13-8, 13-9). AFG submits that the majority of these Alien Costumes had a first available date between September and October

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<sup>2</sup> Neither Stegosaurus nor Camlinbo provide a first available date for the Alien Costumes sold on their respective Amazon storefronts. (See generally ECF Nos. 58-3, 62-1).

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