

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 16-cv-61752-Dimitrouleas/Snow

VENUS FASHION, INC.,

Plaintiff,

vs.

CHANGCHUN CHENGJI TECHNOLOGY
CO., LTD.
AUKEY INTERNATIONAL LIMITED, and
AUKEY E-BUSINESS CO., LTD.,

Defendants.

**Order Granting Plaintiff's Application For Temporary Restraining
Order And Order Restraining Transfer Of Assets And Setting
Hearing On Application For Preliminary Injunction**

THIS MATTER is before the Court on Plaintiff's *Ex Parte* Application for Entry of Temporary Restraining Order, Preliminary Injunction and Order Restraining Transfer of Assets filed on July 21, 2016 (D.E. 5, the "Application"). The Court has carefully considered Plaintiff's Application, the applicable law, and is otherwise fully advised.

By the instant Application, Plaintiff, Venus Fashion, Inc. ("Venus"), moves *ex parte* pursuant to Federal Rule of Civil Procedure 65 and 15 U.S.C. § 1116 for a temporary restraining order and order restraining transfer of assets, and, upon expiration of the temporary restraining order for a preliminary injunction against Defendants for alleged violation of United States copyright laws of 17 U.S.C. §§ 106 and 501. For the reasons stated herein, this Court grants Plaintiff's application for entry of a Temporary Restraining Order and Order Restraining Transfer of Assets and grants Plaintiff's request for a hearing on Plaintiff's application for a Preliminary Injunction.

I. FACTUAL BACKGROUND¹

Venus is a designer and creator of women's clothing and swimwear. Venus creates photographic images of its fashion products (the "Images") to market and promote its products. Venus is the owner and/or exclusive licensee of all rights in and to U.S. Copyright registration numbers TX 0008060111 registered January 8, 2015, TX0008161774, registered February 23, 2016, and TXu 1-987-646, registered April 14, 2016, (the "Venus Copyrights"), which protect numerous original photographs Venus uses to advertise its genuine products.

Defendants, through their fully interactive website at www.vessos.com, are engaged in the fraudulent promotion, advertisement, distribution, sale, and offer for sale of goods by using photographs which infringe upon the Images protected by the Venus Copyrights (the "Infringing Photographs"). These goods tend to be of inferior quality and differ from what the customers believed that they were purchasing based upon Defendants' use of the Infringing Photographs. Defendants do not have, nor have they ever had, the right or authority to use the Images protected by the Venus Copyrights for any purpose. However, despite their known lack of authority to do so, Defendants are promoting and otherwise advertising, distributing, selling, and/or offering for sale at least its goods by misleadingly using the Infringing Photographs ("Defendants' Goods").

Plaintiff has presented specific facts and accompanying evidence, clearly showing that immediate and irreparable injury, loss, or damage will result to the Plaintiff in the absence of a court order.

¹ The factual background is taken from Plaintiff's Complaint, Application for Temporary Restraining Order, and supporting evidentiary submissions.

II. LEGAL STANDARD

Rule 65(b) of the Federal Rules of Civil Procedure provides, in part, that a temporary restraining order may be granted without written or oral notice to the opposing party or that party's counsel where "it clearly appears from the specific facts shown by affidavit . . . that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition." Fed. R. Civ. P. 65(b).

In order to obtain a preliminary injunctive relief, Plaintiff must establish that: (1) there is a likelihood that Plaintiff will succeed on the merits at the trial of this action; (2) Plaintiff will suffer irreparable injury if Defendants are not enjoined; (3) the injury to Plaintiff outweighs the threatened harm an injunction would cause to Defendants; and (4) the injunction would not disserve the public interest. *See Levi Strauss & Co. v. Sunrise Int'l Trading, Inc.*, 51 F.3d 982, 985 (11th Cir. 1995) (affirming entry of preliminary injunction and freezing of assets); *see also E. Remy Martin & Co., S.A. v. Shaw-Ross Int'l Imps., Inc.*, 756 F.2d 1525, 1530 (11th Cir. 1985). Additionally, a court may issue a temporary restraining order without notice to the adverse party or its attorney if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition [and] (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b)(1).

III. ANALYSIS

Plaintiff's Complaint, Plaintiff's Application, and accompanying declarations submitted by Plaintiff in support of Plaintiff's Application support the following conclusions of law:

1. Plaintiff has a strong probability of proving at trial that Plaintiff owns valid copyrights in the Images; and Defendants directly infringe the Venus Copyrights by copying the

Images and/or making derivative works of the Images and then displaying and distributing the same on the www.vessos.com website;

2. Because of the infringement of the Venus Copyrights, Plaintiff is likely to suffer immediate and irreparable injury if a temporary restraining order is not granted. It appears from the following facts that immediate irreparable loss, damage, and injury will result to Plaintiff and consumers. There is good cause to believe that:

A. Defendants will continue the uncontrolled display and distribution of the Infringing Photographs on the website owned and/or controlled by Defendants and diminish Plaintiff's ability to control and enforce its copyrights;

B. consumers are likely to be injured, misled, confused, and disappointed by the quality of the products associated with the Infringing Photographs;

C. Plaintiff will likely suffer loss of sales for its genuine products and an unnatural erosion of the legitimate marketplace in which it operates;

D. the value of Plaintiff's copyrights will diminish; and

E. customers will suffer injury.

3. The balance of potential harm to Defendants in restraining use of the Infringing Photographs if the Temporary Restraining Order is entered is far outweighed by the potential harm to Plaintiff, its reputation, and its goodwill as a designer and creator of quality women's fashion and swimwear products, if such relief is not issued;

4. The public interest favors entry of the Temporary Restraining Order to protect the Venus Copyrights and protect the public from being defrauded and misled by the use of Infringing Photographs; and

5. Plaintiff has shown that immediate and irreparable injury will result to Plaintiff if the *ex parte* temporary restraining order is not issued and the *ex parte* relief is necessary to maintain the *status quo*.

IV. CONCLUSION

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED:

(1) Plaintiff's request for a temporary restraining order immediately enjoining Defendants' unauthorized and illegal use of the Venus Images is GRANTED. Defendants shall immediately cease all use of Venus's copyrighted Images and any derivative works.

(2) Plaintiff's request for a temporary restraining order immediately enjoining Defendants from transferring the www.vessos.com domain name to other parties is GRANTED. Defendants are enjoined from transferring the www.vessos.com domain name to other parties.

(3) Plaintiff's request for an order that Defendants and the domain name registrar, GoDaddy.com, shall temporarily disable the [vessos.com](http://www.vessos.com) website used by Defendants is GRANTED. The Defendants and their registrar for the [vessos.com](http://www.vessos.com) domain name (GoDaddy.com) shall set the [vessos.com](http://www.vessos.com) website to automatically redirect to a website created by Venus appearing at the Uniform Resource Locator ("URL") <http://Venuscopyrightenforcement.com/Vessos/>, whereon a copy of all subsequent pleadings, documents, and orders issued in this action will be displayed by Plaintiff.

(4) Plaintiff's request for an order preventing the transfer of Defendants' assets is GRANTED. Defendants and the operators of Defendants' accounts are enjoined from moving or transferring Defendants' assets. The operators of Defendants' accounts shall freeze Defendants' accounts until further Order of this Court.

(5) Pursuant to 15 U.S.C. § 1116(d)(5)(D) and Fed. R. Civ. P. 65(c), Plaintiff shall post a bond in the amount of \$10,000.00, as payment of damages to which Defendants may be

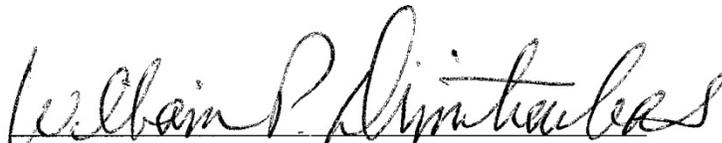
entitled for a wrongful injunction or restraint, during the pendency of this action, or until further Order of the Court. In the Court's discretion, the bond may be subject to increase should the amount of the funds seized exceed \$10,000.00.

(6) Plaintiff's request for a hearing on Plaintiff's application for Preliminary Injunction before the expiration of the Temporary Restraining Order is **GRANTED**. A hearing on Plaintiff's application for Preliminary Injunction is scheduled for **August 12, 2016 at 1:15 p.m.** in Courtroom 205B at the U.S. Courthouse, 299 E. Broward Boulevard, Fort Lauderdale, Florida.

(7) Any **response or opposition** to Plaintiff's Motion for Preliminary Injunction must be filed and served on Plaintiff's counsel by August 8, 2016, and filed with the Court, along with Proof of Service. Plaintiff shall file any **Reply Memorandum** on or before August 11, 2016. The above dates may be revised upon stipulation by all parties and approval of this Court.

(8) **Defendants are hereby notified that if they do not timely respond to Plaintiff's Motion for Preliminary Injunction and do not appear at the scheduled hearing, the Court may enter a preliminary injunction against them by default.**

DONE AND ORDERED in Chambers at Ft. Lauderdale, Broward County, Florida, this 22nd day of July, 2016.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:
Counsel of Record