

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

BLUDGEON RIFFOLA LTD.,

Plaintiff,

v.

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

Defendants.

Case No. 22-cv-06905

COMPLAINT

Plaintiff Bludgeon Riffola Ltd. (“Bludgeon Riffola” or “Plaintiff”) 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 Illinois residents by setting up and operating e-commerce stores that target United States

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

consumers using one or more Seller Aliases, offer shipping to the United States, including Illinois, accept payment in U.S. dollars and, on information and belief, have sold products using infringing and counterfeit versions of Plaintiff's federally registered trademarks 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 unauthorized and unlicensed products, including apparel and other merchandise, using infringing and counterfeit versions of Plaintiff's federally registered trademarks (the "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 Bludgeon Riffola Ltd. is a limited corporation having its principal place of business in the United Kingdom. Bludgeon Riffola is the company used by the English rock band Def Leppard. The band Def Leppard was formed in Sheffield in 1977. Def Leppard is one of the world's best-selling bands, having sold more than 100 million records worldwide. Def Leppard is one of only five rock bands with two original studio albums selling over 10 million copies in the United States.

5. Def Leppard has earned numerous accolades for its music, including induction into the Rock and Roll Hall of Fame in 2019 and inclusion in VH1's "100 Greatest Artists of All Time." Def Leppard also won Favorite Heavy Metal/Hard Rock Artist and Favorite Heavy Metal/Hard Rock Album at the 1989 American Music Awards. Moreover, several of Def Leppard's albums, including *Pyromania* and *Hysteria*, are certified Diamond by the RIAA and feature in *Rolling Stone's* list of the "500 Greatest Albums of All Time."

6. Def Leppard has also garnered substantial publicity due to its widespread fame and popularity, including a feature on one of the most popular episodes of VH1's *Behind the Music* and a biopic produced by VH1 in 2001, titled *Hysteria – The Def Leppard Story*. Def Leppard has also been featured in the *Guinness Book of World Records* for performing three concerts on three continents in one day (Tangiers, Morocco; Sheffield, England; and Vancouver, Canada).

7. While *Pyromania* is often credited as the catalyst for the 1980s pop-metal movement, Def Leppard retains an appeal that transcends both generation and genre, cementing

the band's role as enduring musical icons and creating consistent demand for Def Leppard branded products.

8. Products sold under the Def Leppard brand include apparel, accessories, and other merchandise, such as drinkware, posters, and photos.

9. Def Leppard branded products are distributed and sold to consumers throughout the United States, including in Illinois, through various affiliates and through the defleppard.com website and defleppardshop.com webstore.

10. Plaintiff incorporates a variety of distinctive marks in the design of its various Def Leppard products. As a result of its long-standing use, Plaintiff owns common law trademark rights in its trademarks. Plaintiff has also registered its trademarks with the United States Patent and Trademark Office. Def Leppard products often include at least one of Plaintiff's registered trademarks. Often several of Plaintiff's marks are displayed on a single Def Leppard product. Plaintiff uses its trademarks in connection with the marketing of the Def Leppard products, including the following marks which are collectively referred to as the "DEF LEPPARD Trademarks."

REGISTRATION NUMBER	REGISTERED TRADEMARK	INTERNATIONAL CLASSES
2,380,436	DEF LEPPARD	For: musical sound recordings; and pre-recorded phonograph records, compact discs, audio cassettes, and videotapes, all featuring music in class 009.
2,340,115	DEF LEPPARD	For: entertainment services in the nature of live musical performances in class 041.
3,167,116	DEF LEPPARD	For: posters, tour books, song books, sheet music, unmounted photographs, printed music books in class 016.

3,147,174	DEF LEPPARD	For: clothing, namely, t-shirts, sweatshirts, long sleeve t-shirts, baby doll shirts and tank tops in class 025.
3,000,421		For: musical sound recordings; pre-recorded phonograph records, compact discs, audio cassettes, videotapes, and DVDs, all featuring music in class 009.
3,000,420		For: posters, tour books, song books, sheet music, unmounted photographs, printed music books in class 016.
3,069,812		For: clothing, namely, t-shirts, sweatshirts, long sleeve t-shirts, baby doll shirts, and tank tops in class 025.
3,069,813		For: entertainment services in the nature of live musical performances; and entertainment services, namely providing prerecorded music, information in the field of music, licensed merchandise, and commentary and articles about music, all online via the internet in class 041.

11. The above U.S. registrations for the DEF LEPPARD Trademarks are valid, subsisting, in full force and effect, and all are incontestable pursuant to 15 U.S.C. § 1065. The DEF LEPPARD Trademarks have been used exclusively and continuously by Plaintiff for many years, and have never been abandoned. Since they are incontestable pursuant to 15 U.S.C. § 1065, the registrations for the DEF LEPPARD Trademarks constitute conclusive evidence of their validity and of Plaintiff's exclusive right to use the DEF LEPPARD Trademarks. Attached

hereto as **Exhibit 1** are true and correct copies of the United States Registration Certificates for the DEF LEPPARD Trademarks included in the above table.

12. The DEF LEPPARD Trademarks are exclusive to Plaintiff and are displayed extensively on Def Leppard products and in Plaintiff's marketing and promotional materials. The Def Leppard brand has been extensively promoted and advertised at great expense. In fact, over the years, Plaintiff, or third parties on Plaintiff's behalf, have expended millions of dollars annually in advertising, promoting and marketing featuring the DEF LEPPARD Trademarks, as well as significant time and other resources. As a result, products bearing the DEF LEPPARD Trademarks are widely recognized and exclusively associated by consumers, the public, and the trade as being products sourced from Def Leppard.

13. The DEF LEPPARD Trademarks are distinctive when applied to the Def Leppard products, signifying to the purchaser that the products come from Def Leppard and are manufactured to Plaintiff's quality standards. The DEF LEPPARD Trademarks have achieved tremendous fame and recognition, which has only added to the inherent distinctiveness of the marks. As such, the goodwill associated with the DEF LEPPARD Trademarks is of incalculable and inestimable value to Plaintiff.

14. For many years, Plaintiff has operated an e-commerce website where it promotes and sells genuine Def Leppard products linked to defleppard.com at defleppardshop.com, including apparel and other tour and retail merchandise. The defleppard.com website and defleppardshop.com webstore feature proprietary content, images and designs exclusive to Plaintiff.

15. Plaintiff's innovative marketing and product designs, combined with the immense popularity of Def Leppard, have made the DEF LEPPARD Trademarks famous marks. The

widespread fame, outstanding reputation, and significant goodwill associated with the Def Leppard brand have made the DEF LEPPARD Trademarks invaluable assets of Plaintiff.

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 learn Defendants' true identities and the exact interworking of their counterfeit 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 Def Leppard brand has resulted in significant counterfeiting of Def Leppard's trademarks. In recent years, Def Leppard has identified many fully interactive, e-commerce stores offering counterfeit Def Leppard Products on online marketplace platforms such as Amazon, eBay, AliExpress, Alibaba, Wish.com, Walmart, Etsy, and DHgate, 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 U.S. Customs and

Border Protection, most counterfeit products now come through international mail and express courier services (as opposed to containers) due to increased sales from offshore online counterfeiters. *The Counterfeit Silk Road: Impact of Counterfeit Consumer Products Smuggled Into the United States* prepared for The Buy Safe America Coalition by John Dunham & Associates (**Exhibit 2**). The bulk of counterfeit products sent to the United States “come from China and its dependent territories,” accounting for over 90.6% of all cargo with intellectual property rights (“IPR”) violations. *Id.* Of the \$1.23 billion in total IPR violations intercepted, \$1.12 billion was from China. *Id.* Counterfeit and pirated products account for billions in economic losses, resulting in tens of thousands of lost jobs for legitimate businesses and broader economic losses, including lost tax revenue. *Id.*

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 platforms.” **Exhibit 3**, 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), attached as **Exhibit 4**, and finding that on “at least some e-commerce platforms, little identifying information is necessary for a counterfeiter to being selling” and recommending that “[s]ignificantly enhanced vetting of third-party sellers” is necessary. 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. **Exhibit 4** at p. 22. Since platforms generally do not require a seller on a third-party marketplace to identify the underlying business entity, counterfeiters can have

many different profiles that can appear unrelated even though they are commonly owned and operated. **Exhibit 4** at p. 39. Further, “E-commerce platforms create bureaucratic or technical hurdles in helping brand owners to locate or identify sources of counterfeits and counterfeiters.” **Exhibit 3** at 186–87.

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, 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 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 appear sophisticated and accept payment in U.S. dollars via credit cards, Alipay, Amazon Pay, and/or 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 DEF LEPPARD Trademarks, and none of the Defendants are authorized retailers of genuine Def Leppard products.

22. Many Defendants also deceive unknowing consumers by using the DEF LEPPARD 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 e-commerce stores relevant to consumer searches for Def Leppard products. Other e-commerce stores operating under Seller Aliases omit using the DEF LEPPARD 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 Def Leppard 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, kaidianyo.com 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. Defendants are working in active concert to knowingly and willfully manufacture, 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 jointly and severally, knowingly and willfully used and continue to use the DEF LEPPARD 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 DEF LEPPARD 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 DEF LEPPARD Trademarks in connection with the sale, offering for sale, distribution, and/or advertising of infringing goods. The DEF LEPPARD Trademarks are highly distinctive marks. Consumers have come to expect the highest quality from products sold or marketed under the DEF LEPPARD 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 DEF LEPPARD Trademarks without Plaintiff's permission.

33. Plaintiff is the exclusive owner of the DEF LEPPARD Trademarks. Plaintiff's United States Registrations for the DEF LEPPARD Trademarks (**Exhibit 1**) are in full force and effect. On information and belief, Defendants have knowledge of Plaintiff's rights in the DEF LEPPARD Trademarks, and are willfully infringing and intentionally using counterfeits of the DEF LEPPARD Trademarks. Defendants' willful, intentional and unauthorized use of the DEF LEPPARD 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 its well-known DEF LEPPARD 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 Def Leppard or the origin, sponsorship, or approval of Defendants' Counterfeit Products by Def Leppard.

39. By using the DEF LEPPARD Trademarks in connection with the sale of 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 its Def Leppard 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 DEF LEPPARD 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 Def Leppard product or is not authorized by Plaintiff to be sold in connection with the DEF LEPPARD Trademarks;
 - b. passing off, inducing, or enabling others to sell or pass off any product as a genuine Def Leppard 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 DEF LEPPARD 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 Def Leppard;
 - d. further infringing the DEF LEPPARD 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 DEF LEPPARD Trademarks, or any reproductions, counterfeit copies or colorable imitations thereof;
- 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, Wish.com, Walmart, Etsy, 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 DEF LEPPARD 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 DEF LEPPARD 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 DEF LEPPARD Trademarks;
 - 5) That Plaintiff be awarded its reasonable attorneys' fees and costs; and
 - 6) Award any and all other relief that this Court deems just and proper.

Dated this 8th day of December 2022.

Respectfully submitted,

/s/ Justin R. Gaudio

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