

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

VIACOM INTERNATIONAL INC.,

Plaintiff,

v.

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

Defendants.

Case No. 23-cv-02736

COMPLAINT

Plaintiff Viacom International Inc. (“Viacom” or “Plaintiff”), by its undersigned counsel, 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 Plaintiff’s claims pursuant to the provisions of the Copyright Act 17 U.S.C. § 501, *et seq.*, 28 U.S.C. § 1338(a) and 28 U.S.C. § 1331.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 and this Court may exercise personal jurisdiction over Defendants because Defendants structure their business activities so as to target consumers in the United States (“U.S.”), including Illinois, through at least the fully interactive e-commerce stores operating under the aliases identified on 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 U.S. consumers; offering shipping to the U.S., including Illinois; accepting payment in U.S. dollars; and, on information and

belief, selling products using unauthorized copies of Plaintiff's federally registered copyrighted works (collectively, the "Unauthorized Products") to residents of Illinois. Each Defendant 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. Plaintiff filed this case to prevent e-commerce store operators who trade upon Plaintiff's reputation and goodwill from further selling and/or offering for sale Unauthorized Products. Defendants advertise, offer for sale, and/or sell Unauthorized Products to unknowing consumers through their Seller Aliases. E-commerce stores operating under the Seller Aliases share identifiers, such as design elements and similarities of the Unauthorized Products offered for sale, establishing that a logical relationship exists between them, and that Defendants' infringing operation arises out of the same transaction, occurrence, or series of transactions or occurrences. Defendants take advantage of a set of circumstances, including the anonymity and mass reach afforded by the Internet and the cover afforded by international borders, to violate Plaintiff's intellectual property rights with impunity. Defendants attempt to avoid liability by operating under one or more Seller Aliases to conceal their identities, locations, and the full scope and interworking of their operation. Plaintiff is forced to file this action to combat Defendants' infringement of its registered copyrighted works, as well as to protect consumers from purchasing Unauthorized Products over the internet. Plaintiff has been, and continues to be, irreparably damaged through infringement of its copyrighted works because of Defendants' actions and therefore seeks injunctive and monetary relief.

III. THE PARTIES

4. Viacom, a wholly owned subsidiary of Paramount Global, is a Delaware Corporation having its principal place of business at 1515 Broadway, New York, New York 10036 and is the owner of the copyrights asserted in this action.

5. Viacom is among the world's preeminent creators, producers, and distributors of multimedia entertainment including motion pictures, television series, web series, short form audiovisual works and other entertainment content. Viacom owns world-famous properties such as Dora the Explorer, SpongeBob SquarePants, and Teenage Mutant Ninja Turtles, among others. In addition to creating media content based on these properties that is distributed through linear cable television networks, streaming services, online and theatrical releases, Viacom offers a line of consumer products and services for each property including toys, clothing, food items, decorative items, wall stickers, personal care products, and experiences marketed towards fans of the properties.

6. Teenage Mutant Ninja Turtles ("TMNT") is one of Viacom's successful properties. Originally written as a comic book series by Kevin Eastman and Peter Laird in 1984, TMNT follows four anthropomorphic turtles who fight various forms of evil in New York City. Since the release of the first *Teenage Mutant Ninja Turtles* comic book, a mass of TMNT-related multimedia has been released, including five individual comic book series, five individual television series, six films (with a seventh set to release in 2023), and over fifty video games. The TMNT franchise has gained worldwide popularity through the release of these works. Plaintiff, through its licensees, markets and sells a variety of products emanating from TMNT, including video games; accessories like key chains; backpacks; face masks; cell phone covers; apparel including t-shirts and sweatshirts; household items such as water bottles, mugs, blankets, and pillows; costumes and

party supplies; and other collectibles such as plush toys, comics, and toys (collectively, “TMNT Products”).

7. Viacom has also registered a multitude of works related to the TMNT franchise, and the characters embodied therein, with the U.S. Copyright Office (the “TMNT Copyrighted Works”). The registrations include, but are not limited to: “Teenage Mutant Ninja Turtles - 2012 Styleguide.” (U.S. Copyright Registration No. VAu001118386), issued by the Register of Copyrights on November 20, 2012; “Teenage Mutant Ninja Turtles - Property Universe Mythology Styleguide.” (U.S. Copyright Registration No. VAu001211984), issued by the Register of Copyrights on May 13, 2023; “Teenage Mutant Ninja Turtles: Turtle Power! Styleguide.” (U.S. Copyright Registration No. VAu001188358), issued by the Register of Copyrights on October 21, 2014; and “TMNT Total Turtle Takeover: 2015 Styleguide.” (U.S. Copyright Registration No. VAu001230628), issued by the Register of Copyrights on October 22, 2015. A true and correct copy of the records from the U.S. Copyright Office website for the TMNT Copyrighted Works is attached hereto as **Exhibit 1**.

8. Among the exclusive rights granted to Plaintiff under the U.S. Copyright Act are the exclusive rights to reproduce, prepare derivative works of, distribute copies of, and display the TMNT Copyrighted Works to the public.

9. Since first publication, the TMNT Copyrighted Works have been used on TMNT Products and are featured on Plaintiff’s and/or its licensees’ official websites.

10. Some of the characters and character names embodied in the TMNT Copyrighted Works include, but are not limited to, the following:¹

Leonardo	
Raphael	
Donatello	

¹ The table contains a non-exhaustive list of the characters embodied in the TMNT Copyrighted Works. This table is included only to provide examples of the characters found on the infringing products offered for sale or sold by Defendants. Regardless of any changes in their design, each of these characters, among others contained within Plaintiff's copyrighted works, have always maintained their distinctive qualities and unique elements of expression.

Michelangelo	
Splinter	
Shredder	
April O'Neil	

Krang	
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11. TMNT Products have become enormously popular and even iconic, driven by Plaintiff's quality standards and innovative designs. Viacom has invested substantial time, money, and effort in building up and developing consumer recognition, awareness, and goodwill in the TMNT products. The TMNT brand ("TMNT Brand") has become a global success and TMNT Products are among the most recognizable in the world. TMNT Products are distributed and sold to consumers through retailers throughout the U.S., including through authorized retailers in Illinois such as Target, Walmart, and Kohls, online retail websites such as <https://www.amazon.com/stores/Nickelodeon>, licensees' websites, as well as through the official Nickelodeon store, found at <https://store.nickelodeonuniverse.com/tmnt/c/110>.

12. Defendants are unknown individuals and business entities who own and/or operate one or more of the e-commerce stores under 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 primarily Asian countries or other foreign jurisdictions and redistribute products from the same or similar sources in those locations. Defendants have the capacity to be sued pursuant to Federal Rules of Civil Procedure 17(b).

13. On information and belief, Defendants, either individually or jointly, offer for sale and/or sell Unauthorized Products through 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 Plaintiffs to learn Defendants' true

identities and the exact interworking of their network. If Defendants provide additional credible information regarding their identities, Plaintiffs will take appropriate steps to amend the Complaint.

IV. DEFENDANT'S UNLAWFUL CONDUCT

14. The success and widespread popularity of the TMNT Brand and TMNT Products has resulted in significant infringement of the TMNT Copyrighted Works. Plaintiff has implemented a brand protection program by investigating suspicious websites and online marketplace listings identified in proactive Internet sweeps. Recently, Plaintiff has identified many fully interactive e-commerce stores offering Unauthorized Products on online marketplace platforms such as Alibaba Group Holding Ltd. (“Alibaba”), Amazon.com, Inc. (“Amazon”), eBay, Inc. (“eBay”), Etsy, Inc. (“Etsy”), Fruugo.com Limited (“Fruugo”), and Walmart, Inc. (“Walmart”), including the e-commerce stores operating under the Seller Aliases. The Seller Aliases target consumers in this Judicial District and throughout the U.S.

15. According to a report prepared for The Buy Safe America Coalition, most infringing products now come through international mail and express courier services because of increased sales from foreign online infringers. *The Counterfeit Silk Road: Impact of Counterfeit Consumer Products Smuggled Into the United States*, prepared by John Dunham & Associates (**Exhibit 2**).

16. Because the infringing products do not enter normal retail distribution channels, the US economy lost an estimated 300,000 or more full-time jobs in the wholesale and retail sectors alone in 2020. *Id.* When accounting for lost jobs from suppliers that would serve these retail and wholesale establishments, and the lost jobs that would have been induced by employees re-spending their wages in the economy, the total economic impact resulting from the sale of

infringing products was estimated to cost the U.S. economy over 650,000 full-time jobs that would have paid over \$33.6 billion in wages and benefits. *Id.* Additionally, it is estimated that the importation of infringing goods cost the U.S. government nearly \$7.2 billion in personal and business tax revenues in the same period. *Id.*

17. Furthermore, online marketplace platforms like those used by Defendants do not adequately subject new sellers to verification and confirmation of their identities, allowing infringers 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 [an infringer] to begin selling” and that “[t]he ability to rapidly proliferate third-party online marketplaces greatly complicates enforcement efforts, especially for intellectual property rights holders”. Infringers hedge against the risk of being caught and having their websites taken down from an e-commerce platform by 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, infringers 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 [infringing products] and [infringers].” **Exhibit 3** at 186-187. Specifically, brand owners are forced to “suffer through a long and convoluted notice and takedown procedure only [for the infringer] to reappear under a new false name and address in short order”. *Id.* at p. 161.

18. Defendants have targeted sales to Illinois residents by setting up and operating e-commerce stores that target U.S. consumers using one or more Seller Aliases; offering shipping to the U.S., including Illinois; accepting payment in U.S. dollars; and, on information and belief, selling and/or offering for sale Unauthorized Products to residents of Illinois.

19. 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 numerous methods, including credit cards, Amazon Pay, and/or PayPal; they often include images and design elements that make it difficult for consumers to distinguish these unauthorized sites of stores from an authorized website; they use indicia of authenticity and security that consumers have come to associate with authorized retailers including the PayPal®, Visa®, and MasterCard® logos. Plaintiff has not licensed or authorized Defendants to copy or distribute the TMNT Copyrighted Works, and none of the Defendants are authorized retailers of TMNT Products.

20. 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.

21. E-commerce store operators like Defendants regularly register or acquire new seller aliases for the purpose of offering for sale and selling Unauthorized 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 operation, and to avoid being shut down.

22. Even though Defendants operate under multiple fictitious aliases, the e-commerce stores operating under the Seller Aliases often share 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, Unauthorized Products for sale by the Seller Aliases bear similar irregularities and indicia of being unauthorized, suggesting that the Unauthorized Products were manufactured by and come from a common source and upon information and belief, that Defendants are interrelated.

23. Upon information and belief, e-commerce store operators like Defendants operate in a collective and organized manner, are in frequent communication with each other, and regularly monitor and 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.

24. Infringers, such as Defendants, typically operate under multiple seller aliases and payment accounts so that they can continue operation despite plaintiffs' enforcement. Upon information and belief, and as PayPal transaction logs in previous similar cases have shown, 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 plaintiffs.

25. Defendants are working in active concert to knowingly and willfully manufacture, import, distribute, offer for sale, and sell Unauthorized 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 unauthorized copies of the TMNT Copyrighted Works in connection with the advertisement, distribution, offering for sale, and sale of Unauthorized Products into the U.S. and Illinois over the Internet.

26. Defendants' unauthorized copying and use of the TMNT Copyrighted Works in connection with the advertising, distribution, offering for sale, and sale of Unauthorized Products, including the sale of Unauthorized Products into the U.S., including Illinois, infringes and continues to infringe the TMNT Copyrighted Works and is irreparably harming Plaintiff.

COUNT I
COPYRIGHT INFRINGEMENT OF UNITED STATES COPYRIGHT
REGISTRATIONS (17 U.S.C. §§ 106 and 501)

27. Plaintiff hereby re-alleges and incorporates by reference the allegations set forth in the preceding paragraphs.

28. The TMNT Copyrighted Works constitute original works and copyrightable subject matter pursuant to the Copyright Act, 17 U.S.C. § 101, *et seq.*

29. Plaintiff is the owner of the TMNT Copyrighted Works. The TMNT Copyrighted Works are protected by copyright registration numbers which were duly issued to Plaintiff by the U.S Copyright Office. At all relevant times, Plaintiff has been, and still is, the owner of all rights, title, and interest in the TMNT Copyrighted Works, which have never been assigned, licensed, or

otherwise transferred to Defendants. The TMNT Products include a copyright notice advising the general public that the TMNT Products are protected by the Copyright Laws of the U.S.

30. Upon information and belief, Defendants had access to the TMNT Copyrighted Works via the internet.

31. Without authorization from Plaintiff, or any right under the law, Defendants have deliberately copied, displayed, distributed, reproduced, and/or made derivative works incorporating the TMNT Copyrighted Works on e-commerce stores operating under the Seller Aliases and the corresponding Unauthorized Products. Defendants' derivative works are virtually identical to and/or are substantially similar to the look and feel of the TMNT Copyrighted Works. Such conduct infringes and continues to infringe the TMNT Copyrighted Works in violation of 17 U.S.C. § 501(a) and 17 U.S.C. §§ 106(1)–(3), (5).

32. Defendants reap the benefits of the unauthorized copying and distribution of the TMNT Copyrighted Works in the form of revenue and other profits that are driven by the sale of Unauthorized Products.

33. Defendants have unlawfully appropriated Plaintiff's protectable expression by taking material of substance and value and creating Unauthorized Products that capture the total concept and feel of the TMNT Copyrighted Works, including the distinctive characters embodied therein.

34. On information and belief, the Defendants' infringement has been willful, intentional, purposeful, and in disregard of and with indifference to Plaintiff's rights.

35. The Defendants, by their actions, have damaged Plaintiff in an amount to be determined at trial.

36. Defendants' conduct is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiff great and irreparable injury that cannot fully be compensated or measured in money. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to a preliminary and permanent injunction prohibiting further infringement of the TMNT Copyrighted Works and ordering that each Defendant destroy all unauthorized and/or infringing copies and reproductions of Plaintiff's TMNT Copyrights.

PRAYER FOR RELIEF

WHEREFORE, Viacom 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. reproducing, distributing copies of, making derivative works of, or publicly displaying the TMNT Copyrighted Works in any manner without the express authorization of Plaintiff;
- b. passing off, inducing, or enabling others to sell or pass off any products as TMNT Products 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 bearing the TMNT Copyrighted Works;
- c. committing any acts calculated to cause consumers to believe that Defendants' Unauthorized Products are those sold under the authorization, control, or supervision of Plaintiff, or are sponsored by, approved by, or otherwise connected with Plaintiff;

- d. further infringing the TMNT Copyrighted Works 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 the TMNT Copyrighted Works;
 - f. using, linking to, transferring, selling, exercising control over, or otherwise owning the Seller Aliases, Defendant product listings, or any other domain name or online marketplace account that is being used to sell products or inventory not authorized by Plaintiff which bear the TMNT Copyrights or which are derived from the TMNT Copyrights; and
 - g. operating and/or hosting websites at the Seller Aliases, and any other domain names registered to or operated by Defendants that are involved with the distribution, marketing, advertising, offering for sale, or sale of products or inventory not authorized by Plaintiff which bear the TMNT Copyrights, or which are derived from the TMNT Copyrights;
- 2) Entry of an Order that, upon Plaintiff's request, those with notice of the injunction, including without limitation, any websites and/or online marketplace platforms such as AliExpress, Alibaba, Amazon, DHgate, eBay, eCRATER, Etsy, Fruugo, Walmart, and Wish, shall disable and cease displaying any advertisements used by or associated with Defendants in connection with the sale of infringing goods which bear the TMNT Copyrighted Works;

- 3) As a direct and proximate result of Defendants' infringement of the TMNT Copyrighted Works, Plaintiff is entitled to damages as well as Defendants' profits, pursuant to 17 U.S.C. § 504(b);
- 4) Alternatively, and at Plaintiff's election prior to any final judgment being entered, Plaintiff is entitled to the maximum amount of statutory damages provided by law, \$150,000 per work infringed pursuant to 17 U.S.C. § 504(c), or for any other such amount as may be proper pursuant to 17 U.S.C. § 504(c);
- 5) Plaintiff is further entitled to recover its attorneys' fees and full costs for bringing this action pursuant to 17 U.S.C. § 505 and 17 U.S.C. § 1117(a); and
- 6) Award any and all other relief that this Court deems just and proper.

Dated this 1st day of May 2023.

Respectfully submitted,

/s/ Martin F. Trainor
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