

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

EPIC GAMES, INC.,

Plaintiff,

v.

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

Defendants.

Case No. 23-cv-14326

COMPLAINT

Plaintiff Epic Games, Inc. (“Epic” 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 Epic’s claims 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 because Defendants structure their business activities so as to target consumers in the United States, 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 United States consumers, offer shipping to the United States, including Illinois, accept payment in U.S. dollars and, on information

and belief, sell products using infringing and counterfeit versions of Epic's federally registered trademarks (collectively, the "Unauthorized Products") to residents of Illinois. Each of the Defendants is committing tortious acts in Illinois, is engaging in interstate commerce, and has wrongfully caused Epic substantial injury in the state of Illinois.

II. INTRODUCTION

3. Epic filed this case to prevent e-commerce store operators who trade upon Epic's reputation and goodwill from further selling and/or offering for sale Unauthorized Products. Defendants create e-commerce stores under one or more Seller Aliases and then advertise, offer for sale, and/or sell Unauthorized Products to unknowing consumers. 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' counterfeiting 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 Epic's intellectual property rights with impunity. Defendants attempt to avoid liability by operating under one or more Seller Aliases to conceal both their identities, locations, and the full scope and interworking of their counterfeiting operation. Epic is forced to file this action to combat Defendants' counterfeiting of its registered trademarks, as well as to protect consumers from purchasing Unauthorized Products over the Internet. Epic has been,

and continues to be, irreparably damaged through consumer confusion and dilution of its valuable trademarks because of Defendants' actions and therefore seeks injunctive and monetary relief.

III. THE PARTIES

4. Plaintiff, Epic Games, Inc., is a privately held American corporation having its principal place of business in North Carolina and is the owner of the trademarks asserted in this action. Epic, founded in 1991 by Tim Sweeney, is one of the world's leading interactive entertainment companies. Epic develops some of the most widely used 3D engine technology in the video game industry and operates some of the world's most popular video games.

5. Epic's 3D engine technology, known as Unreal Engine, is the lifeblood that powers the world's leading video games and has been implemented outside of the video game industry in areas such as television, film, architecture, automotive, manufacturing, and simulation. Through its Unreal Engine, online game store, and online services, Epic provides an end-to-end digital ecosystem for video game developers and creators to build, distribute, and operate games and other content. While Epic's contributions to the video game industry and 3D technology industry at large have been immeasurable, Epic is perhaps best known for operating one of the world's most popular video games – *Fortnite*.

6. *Fortnite* is an online video game that was originally released in 2017. *Fortnite*'s most popular game mode is Battle Royale. "In [*Fortnite*], battle royale means up to 100 players on a single map trying to be the last person or squad standing as the safe zones get smaller and smaller, forcing all remaining players together."¹ While *Fortnite* was not the only game which

¹ <https://www.nbcnews.com/tech/tech-news/what-fortnite-look-video-game-has-become-phenomenon-n887706>

offered this type of game mode, it had the unique feature of having players gather materials to use those materials to create structures. Players use “the building mechanics of the core game, so [they] can create platforms and walls to either get a better vantage point or hide from enemy fire. These structures aren’t impenetrable – you can’t just build four walls and a roof and call it a day.”² What resulted was one of the most fun and unique multiplayer game experiences ever, resulting in a level of pop culture ubiquity for *Fortnite* that few video games ever realize.³

7. Today, *Fortnite* features several additional game modes and players have created over 400 million accounts for *Fortnite* worldwide, with Epic hosting competitive events across various regions for players to participate in. *Fortnite* has also won numerous awards since its release, including: (1) the 2018 and 2019 Best Ongoing Game Award at The Game Awards, (2) the 2019 BAFTA Award for Best Evolving Game, (3) the 2019 Best Multiplayer/Competitive Game Award at the Webby Awards, and (4) the 2019 eSports Game of the Year at the Golden Joystick Awards.

8. Epic markets and sells a variety of products emanating from *Fortnite*, including apparel such as hoodies, onesies, t-shirts, and shorts; plush dolls; accessories like pins, keychains, stickers, phone cases, masks, and bags; and other merchandise bearing Epic’s trademarks (collectively, “Fortnite Products”). Fortnite Products have become enormously popular and even iconic, driven by Epic’s quality standards and innovative designs. Among the purchasing public, Fortnite Products are instantly recognizable as such. Fortnite Products are distributed and sold to consumers through retailers throughout the United States, including through authorized retailers in Illinois such as Target, Walmart, and Kohl’s, and through Epic’s official Amazon store <https://www.amazon.com/fortnite>.

² *Id.*

³ See <https://www.businessinsider.com/fortnite-most-influential-video-game-decade-2019-12>.

9. Epic has used the FORTNITE and EPIC GAMES trademarks, and other trademarks, for many years and has continuously sold products under its trademarks (collectively, “Fortnite Trademarks”). As a result of this long-standing use, strong common law trademark rights have amassed in the Fortnite Trademarks. Epic’s use of the marks has also built substantial goodwill in the Fortnite Trademarks. Fortnite Trademarks are famous marks and valuable assets of Epic. Fortnite Products typically include at least one of the Fortnite Trademarks.

10. The Fortnite Trademarks are registered with the United States Patent and Trademark Office and are included below.

Registration Number	Trademark	Registration Date	Goods and Services
5,595,766		Oct. 30, 2018	For: Video game software in class 009. For: Entertainment services, namely, providing on-line computer games; Entertainment services, namely, providing online video games in class 041.
5,789,901		Jun. 25, 2019	For: Stands for handheld digital electronic devices, namely, cell phones in class 009. For: Charms for key rings or key chains; Key chains; Pins being jewelry in class 014. For: Backpacks in class 018. For: Costumes for use in role-playing games; Halloween costumes; Halloween costumes and masks sold in connection therewith; Socks; Sweatshirts in class 025.

			For: Ornamental novelty pins; Wigs in class 026. For: Collectable toy figures; Halloween masks; Modeled plastic toy figurines; Play figures; Toy action figures and accessories therefor; Toy figures; Toy vehicles; Toy vehicles and accessories therefor; Toys, namely, children's dress-up accessories in class 028.
5,886,389		Oct. 15, 2019	For: Computer game instruction manuals and hint books; calendars and posters in class 016. For: Hats; Headwear; Hooded pullovers; Hooded sweat shirts; T-shirts in class 025. For: Toy action figures in class 028. For: Arranging and conducting live, interactive gaming tournaments featuring video games; organizing live fan meetings and conferences in which there is interactive gameplay between conference participants in the fields of gaming, video games, and e-sports; organizing live video game and e-sports competitions in class 041.
5,950,364		Dec. 31, 2019	For: Video game software in class 009. For: Entertainment services, namely, providing online video games in class 041.

6,341,978		May 04, 2021	For: Comic books in class 016. For: Providing a website featuring blogs and non-downloadable publications in the nature of articles in the field of gaming in class 041.
6,441,460		Aug. 03, 2021	For: Computer peripherals and accessories, namely, headsets; cell phone cases in class 009.
6,622,892		Jan. 18, 2022	For: Children's books; Collectible trading cards; Paper party bags; Paper party decorations; Picture books; Story books; Blank journals in class 016. For: Beverage glassware; Dishes; Lunch bags not of paper; Mugs; Plates in class 021. For: Tablecloths, not of paper in class 024. For: Beanies; Coats; Gloves; Jackets; Lounge pants; Loungewear; Outerwear, namely, coats, gloves, jackets, scarves; Pajamas; Robes; Scarves; Shorts; Sports jerseys; Sports shirts; Swimwear; Tops as clothing; Underwear in class 025. For: Decorative backpack charms in class 026. For: Balloons; Board games; Pinatas; Play sets for action figures; Plush toys; Toy guns; Toy stuffed animals; Toy weapons; Toy water guns in class 028.

6,747,037		May 31, 2022	For: Traveling bags; School bags; Hand bags; Book bags; Messenger bags; Courier Bags; Waist bags; Wallets in class 018. For: Lunch boxes, lunch pails in class 021.
6,768,349		Jun. 21, 2022	For: Printed material, namely, series of fiction books and short stories featuring scenes and characters based on video games in class 016.
4,481,629	FORTNITE	Feb. 11, 2014	For: Video game software in class 009.
5,375,076	FORTNITE	Jan. 09, 2018	For: Entertainment services, namely, providing on-line computer games in class 041.
5,687,400	FORTNITE	Feb. 26, 2019	For: Hats; Headwear; Hooded pullovers; Hooded sweat shirts; T-shirts in class 025.
5,705,339	FORTNITE	Mar. 19, 2019	For: Toy action figures in class 028.
5,789,900	FORTNITE	Jun. 25, 2019	For: Stands for handheld digital electronic devices, namely, cell phones in class 009. For: Charms for key rings or key chains; Key chains; Pins being jewelry in class 014. For: Backpacks in class 018. For: Costumes for use in role-playing games; Halloween costumes; Halloween costumes and masks sold in connection therewith; Socks; Sweatshirts in class 025. For: Ornamental novelty pins; Wigs

			in class 026. For: Collectable toy figures; Halloween masks; Modeled plastic toy figurines; Play figures; Toy action figures and accessories therefor; Toy figures; Toy vehicles; Toy vehicles and accessories therefor; Toys, namely, children's dress-up accessories in class 028.
5,815,370	FORTNITE	Jul. 23, 2019	For: Blank journals in class 016. For: Beverage glassware; Dishes; Lunch bags not of paper; Mugs; Plates in class 021. For: Beanies; Lounge pants; Loungewear; Pajamas; Shorts; Tops as clothing; Underwear in class 025. For: Board games; Piñatas; Play sets for action figures; Plush toys; Toy guns; Toy stuffed animals; Toy weapons; Toy water guns in class 028.
5,858,465	FORTNITE	Sep. 10, 2019	For: Providing a website featuring non-downloadable publications in the nature of articles in the field of video gaming; arranging and conducting live, interactive gaming tournaments featuring video games; Entertainment services, namely, organizing live fan meetings and conferences in which there is interactive gameplay between conference participants in the fields of video games and e-sports; organizing live video game and e-sports competitions; Entertainment

			services, namely, providing online video games in class 041.
5,910,618	FORTNITE	Nov. 12, 2019	For: Children's books; Collectible trading cards; Paper Halloween decorations; Paper party bags; Paper party decorations; Paper place mats in class 016. For: Coats; Gloves; Jackets; Nightgowns; Outerwear, namely, coats, gloves, jackets, scarves; Swimwear in class 025.
6,094,645	FORTNITE	Jul. 07, 2020	For: Downloadable virtual goods, namely, computer software programs featuring in-game resources, tokens and virtual currency for use in video games and online virtual worlds; Downloadable software featuring virtual currency, namely, computer programs featuring in-game tokens and currency for use in online web and mobile video games in class 009. For: Non-magnetically encoded gift cards in class 016. For: Financial services, namely, providing online, non-downloadable virtual in-game currency for use by members of an online community via a global computer network in class 036. For: Provision of online, non-downloadable web and mobile video-game computer program featuring in-game virtual currency, tokens and currency in class 041.

			For: Provision of an online, non-downloadable computer program featuring in-game virtual currency, tokens and currency, for use in online web and mobile video games in class 042.
6,268,507	FORTNITE	Feb. 09, 2021	For: Picture books; Story books in class 016. For: Decorative backpack charms in class 026.
6,479,290	FORTNITE	Sep. 07, 2021	For: Computer peripherals and accessories, namely, headsets; cell phone cases in class 009.
6,486,550	FORTNITE	Sep. 14, 2021	For: Computer game instruction manuals and hint books; printed material, namely, series of fiction books and short stories featuring scenes and characters based on video games; comic books; calendars and posters in class 016. For: Developing customized web pages featuring user-defined computer game information; Providing customized on-line web pages and data feeds, featuring user-defined information, which includes blog posts, new media content, other on-line content, and on-line web links to other websites, and which excludes social networking services in class 042.
6,747,036	FORTNITE	May 31, 2022	For: Traveling bags; School bags; Hand bags; Book bags; Messenger bags; Courier Bags; Waist bags; Wallets in class 018. For: Lunch boxes, lunch pails in

			class 021.
5,595,762		Oct. 30, 2018	For: Video game software in class 009. For: Entertainment services, namely, providing on-line computer games; Entertainment services, namely, providing online video games in class 041.
5,712,421		Apr. 02, 2019	For: Computer software, namely, game engine software for video game development and operation; Computer software, namely, software development tools for the creation of computer-generated imagery and graphics for the production of video games; Video game software; Computer game programs; Computer game programs and computer game software; Computer programs and computer software for interactive games; Computer game and video game discs; Downloadable computer game software for portable media players; Downloadable computer game software for wireless mobile devices; Electronic game software for wireless devices; Downloadable computer game software for network communications apparatuses; Downloadable computer game software for multi-media smart phones; Downloadable software for use in video game development, film production, television production, video production, and 3D animations,

			simulations, and visualizations; Virtual reality game software; Virtual reality software for creating multimedia content; Computer software, namely, software development tools for the creation of computer-generated imagery and graphics for the production of virtual reality video games; Computer software, namely, software development tools for the creation of computer-generated imagery and graphics for the production of content for virtual worlds and 3D platforms; Computer software, namely, software development tools for the creation of computer-generated imagery and graphics for the production of motion pictures, television shows, videos, 3D animations, 3D simulations, 3D visualizations, virtual reality motion pictures, and virtual reality television shows; Augmented reality game software; Augmented reality software for use in mobile devices for integrating electronic data with real world environments for the purposes of entertainment; Augmented reality software for use in mobile devices for integrating electronic data with real world environments for the purposes of entertainment; Computer software, namely, software development tools for the creation of computer-generated imagery and graphics for use in architecture, product design, and manufacturing; Downloadable
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			software for the creation of fully immersive and interactive animations, simulations, and visualizations for use in architecture, product design, and manufacturing; Virtual reality software in the field of designing computer and video games in class 009. For: T-shirts and hats in class 025. For: Electronic commerce services, namely, providing on-line retail store services featuring computer software, games, and clothing in class 035. For: Providing online virtual reality games; Organization of computer game competitions; Arranging and conducting live, interactive gaming tournaments featuring video games; Entertainment services in the nature of organizing live social entertainment events, in particular fan gatherings and conferences in the field of games, video games and e-sports; Entertainment services, namely, providing on-line computer games, tips and strategies for computer games and news concerning computer games, provided by means of the Internet; Arranging, conducting and presenting video game competitions and contests; Multimedia publishing of games; Providing online augmented reality games; Providing on-line computer, video
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			and electronic games from a computer network in class 041. For: Computer software licensing in class 045.
5,712,420	EPIC GAMES	Apr. 02, 2019	For: Computer software, namely, game engine software for video game development and operation; Computer software, namely, software development tools for the creation of computer-generated imagery and graphics for the production of video games; Video game software; Computer game programs; Computer game programs and computer game software; Computer programs and computer software for interactive games; Computer game and video game discs; Downloadable computer game software for portable media players; Downloadable computer game software for wireless mobile devices; Electronic game software for wireless devices; Downloadable computer game software for network communications apparatuses; Downloadable computer game software for multi-media smart phones; Downloadable software for use in video game development, film production, television production, video production, and 3D animations, simulations, and visualizations; Virtual reality game software; Virtual reality software for creating multimedia content; Computer software, namely, software

			development tools for the creation of computer-generated imagery and graphics for the production of virtual reality video games; Computer software, namely, software development tools for the creation of computer-generated imagery and graphics for the production of content for virtual worlds and 3D platforms; Computer software, namely, software development tools for the creation of computer-generated imagery and graphics for the production of motion pictures, television shows, videos, 3D animations, 3D simulations, 3D visualizations, virtual reality motion pictures, and virtual reality television shows; Augmented reality game software; Augmented reality software for use in mobile devices for integrating electronic data with real world environments for the purposes of entertainment; Augmented reality software for use in mobile devices for integrating electronic data with real world environments for the purposes of entertainment; Computer software, namely, software development tools for the creation of computer-generated imagery and graphics for use in architecture, product design, and manufacturing; Downloadable software for the creation of fully immersive and interactive animations, simulations, and visualizations for use in architecture, product design, and
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			manufacturing; Virtual reality software in the field of designing computer and video games in class 009. For: T-shirts and hats in class 025. For: Electronic commerce services, namely, providing on-line retail store services featuring computer software, games, and clothing in class 035. For: Providing online virtual reality games; Organization of computer game competitions; Arranging and conducting live, interactive gaming tournaments featuring video games; Entertainment services in the nature of organizing live social entertainment events, in particular fan gatherings and conferences in the field of games, video games and e-sports; Entertainment services, namely, providing on-line computer games, tips and strategies for computer games and news concerning computer games, provided by means of the Internet; Arranging, conducting and presenting video game competitions and contests; Multimedia publishing of games; Providing online augmented reality games; Providing on-line computer, video and electronic games from a computer network in class 041. For: Computer software licensing in class 045.
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5,738,080	V-BUCKS	Apr. 30, 2019	For: Downloadable virtual goods, namely, computer software programs featuring in-game resources, tokens and virtual currency for use in video games and online virtual worlds; Downloadable software featuring virtual currency, namely, computer programs featuring in-game tokens and currency for use in online web and mobile video games in class 009. For: Financial services, namely, providing online, non-downloadable virtual in-game currency for use by members of an online community via a global computer network in class 036. For: Provision of a non-downloadable computer program featuring virtual currency, in-game tokens and currency, for use in online web and mobile video games in class 041.
6,041,489		Apr. 28, 2020	For: Plush toys in the shape of a llama in class 028.
6,145,353		Sep. 08, 2020	For: Toy action figures and accessories therefor sold together as a unit with a toy piñata in class 028.

5,978,313	LOOT LLAMA	Feb. 04, 2020	For: Downloadable virtual goods, namely, computer video game software featuring virtual objects containing items of use to players in a game, for use in online virtual worlds in class 009. For: Toy figures; plush toys; pinatas in class 028. For: Entertainment services, namely, providing on-line, non-downloadable, virtual objects containing items of use to players in a game, for use in virtual environments created for entertainment purposes in class 041.
5,875,285	VICTORY ROYALE	Oct. 01, 2019	For: Video game software in class 009. For: Entertainment services, namely, providing on-line computer games; Entertainment services, namely, providing online video games in class 041.
6,283,574	VICTORY ROYALE	Mar. 02, 2021	For: Hats; Headwear in class 025.
6,687,150	VICTORY ROYALE	Mar. 29, 2022	For: Hooded pullovers; Hooded sweat shirts; T-shirts in class 025.
6,647,226		Feb. 15, 2022	For: Downloadable software for engaging in social networking and interacting with online communities; downloadable software for accessing and streaming multimedia entertainment content; downloadable software for providing access to an online virtual environment in class 009.

			For: Providing an online community forum for users to share and stream information, audio, video, real-time news, entertainment content, and related information, to form virtual communities, and to engage in social networking; audio, text and video broadcasting services over the internet or other communications networks in class 038. For: Entertainment services, namely, providing virtual environments in which users can interact for recreational, leisure, or entertainment purposes; entertainment services, namely, providing an online environment featuring streaming of entertainment content and live streaming of entertainment events; entertainment services in the nature of organizing, arranging, and hosting virtual performances and social entertainment events in class 041. For: Computer services, namely, hosting an on-line multimedia virtual environment in which users can interact for recreational, leisure, educational, and entertainment purposes in class 042. For: Online social networking services; online social networking services accessible by means of downloadable mobile applications
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			in class 045.
6,647,225	PARTY ROYALE	Feb. 15, 2022	For: Downloadable software for engaging in social networking and interacting with online communities; downloadable software for accessing and streaming multimedia entertainment content; downloadable software for providing access to an online virtual environment in class 009. For: Providing an online community forum for users to share and stream information, audio, video, real-time news, entertainment content, and related information, to form virtual communities, and to engage in social networking; audio, text and video broadcasting services over the internet or other communications networks in class 038. For: Entertainment services, namely, providing virtual environments in which users can interact for recreational, leisure, or entertainment purposes; entertainment services, namely, providing an online environment featuring streaming of entertainment content and live streaming of entertainment events; entertainment services in the nature of organizing, arranging, and hosting virtual performances and social entertainment events in class 041.

			For: Computer services, namely, hosting an on-line multimedia virtual environment in which users can interact for recreational, leisure, educational, and entertainment purposes in class 042. For: Online social networking services; online social networking services accessible by means of downloadable mobile applications in class 045.
5,928,911	DURRR BURGER	Dec. 03, 2019	For: Halloween masks; Plush toys in class 028.
6,044,169	DURRR BURGER	Apr. 28, 2020	For: Toy guns; Toy stuffed animals; Toy weapons in class 028.

11. The above U.S. registrations for the Fortnite Trademarks are valid, subsisting, and in full force and effect, and Registration No. 4,481,629 is incontestable pursuant to 15 U.S.C. § 1065. The registrations for the Fortnite Trademarks constitute *prima facie* evidence of their validity and of Epic's exclusive right to use the Fortnite Trademarks pursuant to 15 U.S.C. § 1057(b). True and correct copies of the United States Registration Certificates for the Fortnite Trademarks are attached hereto as **Exhibit 1**.

12. The Fortnite Trademarks are exclusive to Epic and are displayed extensively on Fortnite Products and in marketing and promotional materials. The Fortnite Trademarks are also distinctive when applied to Fortnite Products, signifying to the purchaser that the products come from Epic, or its licensees, and are manufactured to Epic's quality standards. Whether Epic

manufactures the products itself or contracts with others to do so, Epic has ensured that products bearing the Fortnite Trademarks are manufactured to the highest quality standards.

13. The Fortnite Trademarks are famous marks, as that term is used in 15 U.S.C. § 1125(c)(1), and have been continuously used and never abandoned. The success of *Fortnite*, in addition to the marketing of Fortnite Products, has enabled the Fortnite brand (“Fortnite Brand”) to achieve widespread recognition and fame and has made the Fortnite Trademarks some of the most well-known marks in the video game, entertainment, and merchandising industries. The widespread fame, outstanding reputation, and significant goodwill associated with the Fortnite Brand have made the Fortnite Trademarks valuable assets of Epic.

14. Products bearing the Fortnite Trademarks have been the subject of substantial and continuous marketing and promotion. Epic has marketed and promoted, and continues to market and promote, the Fortnite Trademarks in the industry and to consumers through traditional print media, authorized retailers, social media sites, point of sale material, and its own Amazon store found at <https://www.amazon.com/fortnite>.

15. Epic has expended substantial time, money, and other resources advertising, promoting, and marketing Fortnite Products. Fortnite Products have also been the subject of extensive unsolicited publicity due to the longstanding success of the Fortnite Brand. As a result, products bearing the Fortnite Trademarks are widely recognized and exclusively associated by consumers as being high-quality products sourced from Epic or Epic’s licensees. The Fortnite Trademarks have achieved tremendous fame and recognition, adding to the inherent distinctiveness of the marks. As such, the goodwill associated with the Fortnite Trademarks is of immeasurable value to Epic.

16. Fortnite Products are sold only by Epic or through authorized licensees and are recognized by the public as being exclusively associated with the Fortnite Brand.

17. 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 Epic. 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).

18. 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 Epic to learn Defendants' true identities and the exact interworking of their counterfeit network. If Defendants provide additional credible information regarding their identities, Epic will take appropriate steps to amend the Complaint.

IV. DEFENDANTS' UNLAWFUL CONDUCT

19. The success of *Fortnite* has resulted in significant counterfeiting of the Fortnite Trademarks. Because of this, Epic has implemented an anti-counterfeiting program that involves investigating suspicious websites and online marketplace listings identified in proactive Internet sweeps. Recently, Epic has identified many fully interactive e-commerce stores offering Unauthorized Products on online marketplace platforms such as AliExpress.com ("AliExpress"), Alibaba Group Holding Limited ("Alibaba"), Amazon.com, Inc. ("Amazon"), Dhgate.com ("DHgate"), and Focus Technology Co., Ltd. ("MadeInChina"), 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 a report prepared for The Buy Safe America Coalition, 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 by John Dunham & Associates (**Exhibit 2**).

20. Because counterfeit products sold by offshore online counterfeiters 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 counterfeit products was estimated to cost the United States 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 counterfeit goods costs the United States government nearly \$7.2 billion in personal and business tax revenues in the same period. *Id.*

21. Online marketplace platforms 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 begin

selling” and that “[t]he ability to rapidly proliferate third-party online marketplaces greatly complicates enforcement efforts, especially for intellectual property rights holders.” Counterfeiters 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, 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 186-187. Specifically, brand owners are forced to “suffer through a long and convoluted notice and takedown procedure only [for the counterfeit seller] to reappear under a new false name and address in short order.” *Id.* at p. 161.

22. 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, sell Unauthorized Products to residents of Illinois.

23. Defendants concurrently employ and benefit from 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 in multiple ways, including 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

their stores from an authorized retailer. Epic has not licensed or authorized Defendants to use the Fortnite Trademarks, and none of the Defendants are authorized retailers of Fortnite Products.

24. Many Defendants also deceive unknowing consumers by using the Fortnite Trademarks within the content, text, and/or meta tags of their e-commerce stores to attract consumers using search engines to find websites relevant to Fortnite Products. Other e-commerce stores operating under the Seller Aliases omit using the Fortnite 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 Fortnite Products.

25. 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.

26. 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 counterfeiting operation, and to avoid being shut down.

27. 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 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 common features, such as 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 counterfeit to one another, suggesting that the Unauthorized Products were manufactured by and come from a common source and that Defendants are interrelated.

28. E-commerce store operators like Defendants communicate with each other through QQ.com chat rooms and utilize websites, like sellerdefense.cn, that provide tactics for operating multiple online marketplace accounts and evading detection by brand owners. Websites like sellerdefense.cn also tip off e-commerce store operators, like Defendants, of new intellectual property infringement lawsuits filed by brand owners, such as Plaintiff, and recommend that e-commerce operators cease their infringing activity, liquidate their associated financial accounts, and change the payment processors that they currently use to accept payments in their online stores.

29. Counterfeiters such as Defendants typically operate under multiple seller aliases and payment accounts so that they can continue operation despite Epic's enforcement. E-commerce store operators like Defendants maintain off-shore bank accounts and regularly move funds from their financial accounts to offshore accounts outside the jurisdiction of this Court to avoid payment of any monetary judgment awarded to Plaintiff.

30. 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 Epic have, jointly and severally, knowingly and willfully used and continue to use the Fortnite Trademarks in connection with the advertisement, distribution, offering for sale, and sale of Unauthorized Products into the United States and Illinois over the Internet.

31. Defendants' unauthorized use of the Fortnite Trademarks in connection with the advertising, distribution, offering for sale, and sale of Unauthorized Products, including the sale of Unauthorized 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 Epic.

COUNT I
TRADEMARK INFRINGEMENT AND COUNTERFEITING (15 U.S.C. § 1114)

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

33. This is a trademark infringement action against Defendants based on their unauthorized use in commerce of counterfeit imitations of the Fortnite Trademarks in connection with the sale, offering for sale, distribution, and/or advertising of infringing goods. The Fortnite Trademarks are highly distinctive marks. Consumers have come to expect the highest quality from Fortnite Products offered, sold, or marketed under the Fortnite Trademarks.

34. 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 Fortnite Trademarks without Epic's permission.

35. Epic owns the Fortnite Trademarks. Epic's United States registrations for the Fortnite Trademarks are in full force and effect. Upon information and belief, Defendants have knowledge of Epic's rights in the Fortnite Trademarks and are willfully infringing and intentionally using infringing and counterfeit versions of the Fortnite Trademarks. Defendants' willful, intentional, and unauthorized use of the Fortnite Trademarks is likely to cause, and is causing, confusion, mistake, and deception as to the origin and quality of the Unauthorized Products among the general public.

36. Defendants' activities constitute willful trademark infringement and counterfeiting under Section 32 of the Lanham Act, 15 U.S.C. § 1114.

37. Epic has no adequate remedy at law, and if Defendants' actions are not enjoined, Epic will continue to suffer irreparable harm to its reputation and the goodwill of the Fortnite Trademarks.

38. The injuries and damages sustained by Epic have been directly and proximately caused by Defendants' wrongful reproduction, use of advertisement, promotion, offering to sell, and/or sale of Unauthorized Products.

COUNT II
FALSE DESIGNATION OF ORIGIN (15 U.S.C. § 1125(a))

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

40. Defendants' promotion, marketing, offering for sale, and sale of Unauthorized 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 Epic or the origin, sponsorship, or approval of Defendants' Unauthorized Products by Epic.

41. By using the Fortnite Trademarks in connection with the offering for sale and/or sale of Unauthorized Products, Defendants create a false designation of origin and a misleading representation of fact as to the origin and sponsorship of the Unauthorized Products.

42. Defendants' false designation of origin and misrepresentation of fact as to the origin and/or sponsorship of the Unauthorized 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.

43. Epic has no remedy at law and will continue to suffer irreparable harm to its reputation and the associated goodwill of the Fortnite Brand if Defendants' actions are not enjoined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Epic Games, Inc., 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 Fortnite 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 Fortnite Product or is not authorized by Epic to be sold in connection with the Fortnite Trademarks;
- b. passing off, inducing, or enabling others to sell or pass off any product as a Fortnite Product or any other product produced by Epic, that is not Epic's or not produced under the authorization, control, or supervision of Epic and approved by Epic for sale under the Fortnite Trademarks;
- c. committing any acts calculated to cause consumers to believe that Defendants' Unauthorized Products are those sold under the authorization, control, or supervision of Epic, or are sponsored by, approved by, or otherwise connected with Epic;
- d. further infringing the Fortnite Trademarks and damaging Epic'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 Epic, nor authorized by Epic to be sold or offered for sale, and which bear the Fortnite Trademarks;

- 2) Entry of an Order that, upon Epic's request, those with notice of the injunction, including without limitation, any websites and/or online marketplace platforms such as AliExpress, Alibaba, Amazon, DHgate, and MadeInChina 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 Fortnite Trademarks;
- 3) That Defendants account for and pay to Epic all profits realized by Defendants by reason of Defendants' unlawful acts herein alleged, and that the amount of damages for infringement of the Fortnite 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 Epic 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 Fortnite Trademarks;
- 5) That Epic be awarded its attorney's fees and full costs; and
- 6) Award any and all other relief that this Court deems just and proper.

Dated this 29th day of September 2023.

Respectfully submitted,

/s/ Martin F. Trainor

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