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PRELIMINARY STATEMENT

Plaintiff BMaddox Enterprises LLC (“BMaddox”) and Counterclaim Defendants BMaddox with Brandon Maddox (“Brandon”) (referred to collectively herein as “Maddox”), by and through its attorneys, Revision Legal, PLLC, ask this Court to sanction Defendants Milad Oskouie (“Oskouie”), Osko M Ltd (“Osko”), and Platinum Avenue Holdings Pty, Ltd (“Platinum”) as well as Counterclaim Plaintiffs Oskouie and Platinum (Milad, Osko, and Platinum are referred to herein collectively as “Defendants”) pursuant to Rule 11 of the Fed. R. Civ. P. for their wasteful, abusive filings as detailed below, Oskouie’s multiple knowing misrepresentations in those filings, and the frivolous legal arguments asserted by Defendants.

BMaddox would have preferred Defendants’ meaningful participation in a settlement conference, but, as described in the parties’ joint letter, Defendants would turn a settlement conference into one more waste of judicial resources on the path toward an inevitable final judgment on the merits of this case that Defendants insist on traversing. (Joint Letter August 4, 2017 at 2, ECF No. 38.) BMaddox does not file its motion lightly. It does so earnestly hoping that the twenty-one days provided in Fed. R. Civ. P. 11(c)(2) would allow Defendants and their counsel to review the existing record, information within Defendants’ possession, custody, or control, and the sixteen counterclaims asserted in the 248 paragraphs of bluster asserted against BMaddox and Brandon. Maddox details some of Defendants’ obvious misrepresentations and frivolous legal arguments below.

PROCEDURAL HISTORY

I. BMaddox’s Initial Filings

BMaddox obtained an order allowing it to initiate this case under seal on March 15, 2017. (Order to Seal File, ECF No. 5.) The Verified Complaint (“Complaint”) filed immediately thereafter contains many examples of Defendants’ direct, actual copying of BMaddox’s website,

including customer reviews appearing on *ffltrust.com* (the “Infringing Website”) that were copied from BMaddox’s website as evidenced by Defendants’ failure to remove references to Brandon from the reviews. (Compl. ¶ 84, ECF No. 6.) The Complaint also included an altered image of a Federal Firearms License showing that Defendants copied BMaddox’s Federal Firearms License, doctored it, but inadvertently left a reference to BMaddox in the footer. (Compl. ¶ 114, ECF No. 6.) In conjunction with its Complaint, BMaddox also sought a Temporary Restraining Order and detailed Defendants’ unlawful acts in a supporting memorandum. (Pl.’s Mem. in Supp. of TRO, ECF No. 23.) On March 29, 2017, BMaddox filed a supplemental memorandum detailing past communications between Brandon and Oskouie, BMaddox’s previous attempts to resolve this matter, and additional examples of Defendants’ unlawful actions, including the use of the alias “Jerome Kohlberg” to file a counter-notice under the Digital Millennium Copyright Act (“DMCA”) on behalf of Defendants from an address in Russia. (Pl.’s Suppl. Mem. in Supp. of TRO 4-9, Ex. 5, ECF Nos. 24, 24-5.)

II. First Hearing on Order to Show Cause

This Court granted BMaddox’s request for a temporary restraining order on May 30, 2017 and ordered Defendants to appear and show cause on June 6, 2017 at 3:00 p.m. ET. (TRO, ECF No. 15.) In the early morning on June 6, 2017, both BMaddox’s counsel and this Court received phone calls from an Australian attorney who indicated he represented Defendants but neither filed an appearance in this matter nor requested adjournment of the hearing scheduled for that day. (Order June 7, 2017, ECF No. 18.) Counsel for BMaddox has not heard from this attorney since despite his promise on the phone to send substantive materials within two business days, and Defendants failed to appear at the June 6, 2017 hearing. *Id.* The Court gave “Defendants one more opportunity to be heard” and ordered Defendants to appear and show

cause on June 29, 2017 why a preliminary injunction should not be granted in favor of BMaddox. *Id.*

III. Second Hearing on Order to Show Cause

Counsel for Plaintiff did not hear from Defendants or their representative and was not aware that Defendants had retained counsel until Defendants filed a twenty-nine page memorandum at 4:23 p.m. ET on June 28, 2017, the day before the scheduled hearing. (Defs.' Mem. in Opp'n to Prelim. Inj., ECF No. 25.) Defendants' Memorandum in Opposition to BMaddox's Application for a Preliminary Injunction is based entirely on citations to a declaration signed under penalty of perjury by Oskouie. (Def. Oskouie's First Decl., ECF No. 27.) Defendants attached sixteen exhibits to Oskouie's First Declaration and filed it at 4:54 p.m. ET the evening before the long-scheduled hearing. *Id.* Several baseless claims in these filings that were contradicted by the existing record compelled Counsel for BMaddox to spend the evening and better portion of the morning on June 29, 2017 reviewing Defendants' filings and preparing a four-page Reply. (Pl.'s Reply, ECF No. 28.) BMaddox's Reply highlighted a handful of the more glaring misrepresentations in Oskouie's First Declaration, which Reply BMaddox filed at 2:57 a.m. ET the morning of the hearing. *Id.* Seven hours later, immediately before the scheduled hearing began, counsel for BMaddox spoke to Defendants' counsel for the first time. At the hearing, counsel for all Parties expressed willingness to enter mediation in a good faith attempt to resolve all of the disputes between all parties. The Court's July 5, 2017 Order referred the matter to Magistrate Judge Pitman for continued discovery and settlement. (Order, ECF No. 29.)

IV. Defendants' Motion for a Temporary Restraining Order

On July 5, 2017, counsel for BMaddox emailed a list of fourteen settlement terms to initiate settlement discussions. (Reply to Countercl. Pls.' Mem. in Supp. of TRO Ex. 1, ECF No. 37-1.) This attempt to start a settlement dialogue contained a subject line reading "FRE 408 Settlement Offer – 17-cv-1889-RA-HP" and stated that it was valid until July 12, 2017. *Id.* In a July 13, 2017 email, counsel for Defendants again asserted that Defendants would not agree to any proposal that includes a monetary payment to BMaddox. Defendants made no counteroffer. Instead, Defendants filed a Verified Answer ("Answer") on July 25, 2017 that included counterclaims comprising two hundred forty-eight paragraphs and sixteen claims. (Defs.' Answer with Countercl. Pls.'s Countercls., ECF No. 32.)

That same day, Oskouie and Platinum (referred to together as "Counterclaim Plaintiffs") filed a Motion for a temporary restraining order and preliminary injunction rooted in their counterclaims for cybersquatting under 15 U.S.C. § 8131, cybersquatting under 15 U.S.C. § 1125(d), unfair competition, and invasion of privacy. (Countercl. Pls.' Mem. in Supp. of TRO 11-19, ECF No. 33.) In support of the Counterclaim Plaintiffs' application for a TRO, Counsel for Counterclaimants also submitted a declaration under penalty of perjury reciting only four of the fourteen terms from BMaddox's initial settlement offer as described in the July 5, 2017 email from BMaddox's counsel to Defendants' counsel. (Lin Decl. ¶ 2(a)-(d), ECF No. 35.) Counterclaim Plaintiffs relied on Lin's Declaration, which improperly cherry picked and twisted four terms from a comprehensive fourteen-term Rule 408 settlement offer, to paint BMaddox's good faith attempt to open settlement discussions as a "bad faith intent to profit" from two domains BMaddox offered as a showing of good faith and not because they have any monetary value. (Countercl. Pls.' Mem. in Supp. of Countercl. Pls.' TRO 13-17, ECF No. 33.) This

deliberate misconstruction of BMaddox's settlement offer was not objectively reasonable under any reading of the law and amounts to a frivolous legal argument.

Counterclaim Plaintiffs attempted to bolster their cybersquatting claims with another declaration from Defendant Oskouie in which Oskouie cobbles together unsupported conclusions, irrelevant information, and what may generously be described as misleading representations in an effort to build a bridge that would carry Counterclaim Plaintiffs to a still distant showing of secondary meaning in Oskouie's name, MILAD OSKOUIE. (Def. Oskouie's Second Decl., ECF No. 34.) This argument was frivolous.

The day after receiving Counterclaim Plaintiffs' filings, the Court issued a July 26, 2017 Order scheduling a conference to address the requested TRO and allowing BMaddox to submit responsive papers "if any, no later than July 27, 2017 at 5 p.m." (Order July 26, 2017, ECF No. 36.) While BMaddox was not required to file responsive papers, information obtained through third-party discovery, which has been within Defendants' possession, custody, or control since its creation, demonstrated that Defendant Oskouie had again lied to the Court. BMaddox again drafted a memorandum pointing out some of Defendant Oskouie's more egregious willful misrepresentations while briefly attempting to clarify the case law that Counterclaim Plaintiffs had wildly misconstrued. (Reply to Countercl. Pls.' Mem. in Supp. of TRO, ECF No. 37.)

At the July 28, 2017 hearing occasioned by Counterclaim Plaintiffs' application for a TRO, the Court denied Counterclaim Plaintiffs' Motion in its entirety. (Order August 9, 2017, ECF No. 39.) The Court asked counsel for all Parties to discuss the possibility of mediation and submit a joint letter stating whether the parties would agree to mediation and whether the parties would agree to combine the upcoming hearing on Plaintiff's requested preliminary injunction with a trial on the merits. After Defendant Oskouie again balked at any settlement involving a

monetary component and indicated he would likely be unable to attend any mediation in person, BMaddox determined that, although a meaningful settlement conference was preferable, Oskouie's absence and refusal to consider *any* monetary component undermined the purpose of the proposed settlement conference. (Joint Letter, ECF No. 38.) The matter was referred to Magistrate Judge Pitman for a pretrial conference and discovery. (Order August 9, 2017, ECF No. 40.)

V. BMaddox Sends Letter and Proposed Rule 11 Motion to Defendants

Frustrated with the many factual misrepresentations on the record and the frivolous legal arguments asserted by Counterclaim Plaintiffs over two hundred fifty-eight paragraphs and sixteen counterclaims, counsel for Plaintiff and Counterclaim Defendants sent an August 12, 2017 letter to counsel for Defendants and Counterclaim Plaintiffs noticing the intent to file a motion requesting sanctions if misrepresentations of fact and frivolous legal arguments were not addressed with supplemental filings within twenty-one days according to Rule 11 of the Fed. R. Civ. P. (Ex. 1.) This letter enclosed Plaintiff and Counterclaim Defendants' proposed motion. *Id.* After receipt of this letter, Defendants and Counterclaim Plaintiffs had until Tuesday, September 5, 2017 correct the record. They did not.

In light of the number of meritless counterclaims asserted against Maddox, Maddox sought consent from opposing counsel for a thirty-day extension of time to respond. When consent was not granted, Maddox filed an unconsented letter motion on August 14, 2017 requesting its first thirty-day extension of time to respond to the sixteen counterclaims. (Countercl. Defs.' Letter Mot. for Extension of Time to Answer Countercls., ECF No. 42.) After Counterclaim Defendants filed this letter motion, Counterclaim Plaintiffs filed a letter consenting to this extension. (Countercl. Pls.' Letter Mot. Consenting to Extension, ECF No. 43.) That

same day, the Court granted Counterclaim Defendants' motion for an extension giving them until September 14, 2017 to answer or otherwise respond to the sixteen counterclaims asserted by Counterclaim Plaintiffs. (Order August 14, 2017, ECF No. 44.)

VI. Defendants' Motion to Dissolve the Existing TRO

Two days later, Defendants and Counterclaim Plaintiffs filed moved to dissolve or modify the TRO claiming *for the first time* that it was negatively impacting Defendant Oskouie's ability to pay for rent and groceries. (Defs.' Mot. to Dissolve TRO, ECF No. 47.) This motion was accompanied by Defendant Oskouie's third declaration, which contradicted what PayPal had told Plaintiff's counsel. (Def. Oskouie's Third Decl., ECF No. 48.) The memorandum in support of this motion again made knowing misrepresentations of fact before the Court. (Defs.' and Countercl. Pls.' Mem. in Supp. of Mot. to Dissolve TRO, ECF No. 49.) One such misrepresentation is that Defendants maintained separate PayPal accounts for *ffltrust.com* and *theunitutor.com* and only uses PayPal to process payments for *theunitutor.com*. (Def. Oskouie's Third Decl. ¶¶ 9, 10, ECF No. 48.) Both of these assertions were demonstrably false at the time they were made. There is a significant amount of evidence showing that Defendants repeatedly comingled funds and did not maintain separate accounts for each website. (Pls.' Reply to Defs.' Mot. to Dissolve TRO 2, ECF No. 50.) Furthermore, at the time of this statement, both *ffltrust.com* and *theunitutor.com* were accepting payments through a PayPal account listing *frankdelaney1950@gmail* as the contact. *Id.* at 4.

Recognizing the urgency of Defendants' requested relief, Plaintiff filed brief memorandum in opposition to the subject Motion to Dissolve to correct the misrepresentations made by Defendants. *Id.* In response, Defendants and Counterclaim Plaintiffs submitted a letter showing at least one PayPal account with a positive balance that was purportedly frozen. (Letter

in Supp. of Mot. to Dissolve TRO, ECF No. 51.) Plaintiff provided a brief reply, Letter in Opposition to Motion to Dissolve, ECF No. 52, Plaintiff's counsel also reached out to a representative at PayPal to reconcile the information previously provided by PayPal with the information asserted in Defendants' letter showing one frozen account with a positive balance. After PayPal reached out and provided new information to counsel for Plaintiff, Plaintiff expeditiously filed a supplemental document correcting the record. (Pls.' Suppl. Reply to Defs.' Mot. to Dissolve TRO, ECF No. 53.)

VII. Current Procedural Status

On August 23, 2017, the Parties filed a joint letter pursuant to the Court's August 8, 2017 Order stating that not all Parties consented to further proceedings before Magistrate Pitman. (Joint Letter, ECF No. 54.) Defendants' Motion to Dissolve the TRO that is firmly in place is pending. The next deadline for the Parties is Counterclaim Defendants' answer or response to the sixteen asserted counterclaims, which is currently due on or before September 14, 2017. The Initial Pretrial Conference follows on September 21, 2017. With this submission, Plaintiff hereby asks the Court to sanction Defendants for failing to correct blatant factual misrepresentations and for forcing Counterclaim Defendants to respond to frivolous legal arguments.

SUMMARY OF THE ARGUMENT

Defendants are inarguably responsible for at least: (1) one needless hearing occasioned by the deliberate interference of an Australian attorney; (2) unwarranted briefing in response to the objectively unreasonable memorandum opposing Plaintiff's application for a preliminary injunction and Defendant Oskouie's First Declaration as well a hearing based on Defendants' frivolous arguments; (3) a hearing and briefing occasioned by Counterclaim Plaintiffs' meritless application for a temporary restraining order; (4) additional briefing required by Defendant's

motion to dissolve the TRO already affirmed at least twice by the Court; and (5) the judicial resources necessary to narrow or entirely dismiss the two hundred forty-eight paragraph, sixteen count counterclaims, which include facially implausible claims such as monopolization in violation of the Sherman Act, 15 U.S.C. § 2, attempted monopolization in violation of the Sherman Act, 15 U.S.C. § 2, and intentional infliction of emotional distress. (Countercls. ¶¶ 208-225, 229-236, ECF No. 32.)

BMaddox herein collects information, much of which has been in the record, that highlights Oskouie's repeated lies to the Court. Defendants' Answer responds to considerable evidence demonstrating *actual copying* and indicating that Oskouie did steal or illicitly obtain, at least, BMaddox's customer list by making conclusory assertions contradicted by the weight of the record. These assertions include claims that BMaddox "falsified screenshots" and that "Defendants have no knowledge who 'Jerome Kohlberg' is, Oskouie has never gone by the name 'Jerome Kohlberg,'" and "[n]o evidence exists that Defendants authored any emails purported to be from 'Jerome Kohlberg.'" The many unrepentant lies Defendants have made to this Court under penalty of perjury make this one of the rare cases for which sanctions under Rule 11 of the Fed. R. Civ. P. are warranted. Defendants and now Counterclaim Plaintiffs have not only refused to meaningfully participate in settlement discussions, they have broadened the scope of this lawsuit with frivolous legal arguments based on declarations that are contradicted by evidence both on the record and evidence not on the record but known to all Parties. Defendants' willingness to casually waste judicial resources evince a startling disconnect with reality and a willingness to continue wasting judicial resources and BMaddox's money and goodwill unless sanctioned. This is also demonstrated by the fact that, one day after the Court denied Counterclaim Plaintiffs' motion for a TRO during a July 28, 2017 hearing, Defendants

sent an email blast to BMaddox's clients, including his mother-in-law, advertising prices that essentially give BMaddox's copyright protected works away for free. (Ex. 2.)

There is a wealth of evidence in the record showing Oskouie has repeatedly lied to the Court to support Defendants' frivolous legal arguments. Any action on the part of Defendants short of amended filings that are much narrower in scope and not based on willful misrepresentations should be sanctioned.

ARGUMENT

After suffering the foregoing, BMaddox notified Defendants of its intent to request sanctions under Rule 11 of the Fed. R. Civ. P. if Defendants did not take the opportunity to separate the wheat from the chaff scattered throughout Defendants' representations before the Court. Before filing this motion, Plaintiff asked Defendants' counsel to examine Defendants' rectitude before moving forward with Counterclaim Plaintiffs' sixteen frivolous claims.

"Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name" Fed. R. Civ. P. 11(a).

By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney . . . certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is not being presented for any improper purpose, such as to . . . cause unnecessary delay, or needlessly increase the cost of litigation; (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; (3) the *factual contentions have evidentiary support* or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) *the denials of factual contentions are warranted on the evidence* or, if specifically so identified, are reasonably based on belief or a lack of information."

Fed. R. Civ. P. 11(b) (emphasis added). “If, after notice and a reasonable opportunity to respond” a party obstinately maintains positions in violation of Fed. R. Civ. P. 11(b), “the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation.” Fed. R. Civ. P. 11(c). “Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.” *Id.*

“By presenting to the court a pleading, written motion, or other paper . . . an attorney . . . certifies that to the best of the person’s knowledge, information, and belief, ***formed after an inquiry reasonable under the circumstances*** . . . the factual contentions [therein] ***have evidentiary support***, or, if specifically so identified, will likely” be supported by evidence uncovered through discovery or a reasonable investigation. *Revellino & Byczek, LLP v. Port Auth. of New York & New Jersey (PANYNJ)*, 682 F. App’x 73 (2d Cir. 2017) (citing Fed. R. Civ. P. 11(b)(3)). Rule 11 “unambiguously states that a party who signs a pleading or other paper without first conducting a reasonable inquiry shall be sanctioned, and there is nothing in [Rule 11’s] full text that detracts from this plain meaning.” *Bus. Guides, Inc. v. Chromatic Commc’ns Enterprises, Inc.*, 498 U.S. 533, 533 (1991).

“For sanctions issued pursuant to a motion by opposing counsel, courts have long held that an attorney [may] be sanctioned for conduct that [is] objectively unreasonable.” *Id.*; *see also ATSI Communications, Inc. v. Shaar Fund, Ltd.*, 579 F.3d 143, 150 (2d Cir. 2009) (“[L]iability for Rule 11 violations ‘requires only a showing of objective unreasonableness on the part of the attorney or client signing the papers.’” (citation omitted)).

A legal claim is objectively unreasonable if, at the time a pleading or paper is signed, it is clear that there is absolutely no chance of success under existing precedent and there can be no

reasonable argument to extend, modify, or reverse the extant law. *Goldberger Co., LLC v. Uneeda Doll Co., Ltd.*, 2017 WL 3098110, *4 (S.D.N.Y. 2017) (citation omitted). When considering whether a claim is objectively unreasonable, the Second Circuit provides the following factors: (1) the amount of time available for investigation available to the signer; (2) whether a signer necessarily relied on his or her client for information; (3) whether the claim advanced was based on a plausible view of the law; or (4) whether a signer depended on forwarding counsel or another member of the bar. *Goldberger*, 2017 WL 3098110 at *5 (citing *Kamen v. AT&T*, 791 F.2d 1006, 1012 (2d Cir. 1986)).

In *Business Guides*, the Northern District of California, applying the standard of objective reasonableness, dismissed plaintiff's claims *and* imposed sanctions against it after the court determined that the plaintiff and its attorney had clearly violated Rule 11 by: (1) filing a meritless TRO application; and (2) failing to conduct a reasonable inquiry once put on notice of several inaccuracies. 498 U.S. at 538-39. The Ninth Circuit affirmed these two holdings relying on the "plain language of Rule 11, which 'draws no distinction between the state of mind of attorneys and parties.'" *Id.* (citing *Bus. Guides, Inc. v. Chromatic Commc'ns Enterprises, Inc.*, 892 F.2d 802, 811 (9th Cir. 1989)). Upon review, the Supreme Court was unequivocal, "[a] party who signs a pleading or other paper without first conducting a reasonable inquiry shall be sanctioned." *Id.* at 541.

The same standard is applied to attorneys. *Id.* at 931. "When parties and lawyers make false statements to their adversaries and to the court that generate costs, there is every reason for them to pay those costs." *Margo v. Weiss*, 213 F.3d 55, 62 (2d Cir. 2000) (citing *Watts v. Indiana*, 338 U.S. 49, 52 (1949) ("And there comes a point where this Court should not be ignorant as judges of what we know as men [and women]."). Echoing Justice Frankfurter's

plurality opinion in *Margo*, the Second Circuit, considering a plaintiff's counsel who submitted affidavits, delayed deposition errata sheets, and supplemental responses to interrogatories that contradicted plaintiff's earlier deposition testimony and interrogatory answers, wrote that "[f]or [the court] to say [it] believe[d such misrepresentations] would be to affect a level of naiveté about human affairs that is not required even of judges." 213 F.3d at 62.

In this case, a review of the record demonstrates that a reasonable inquiry would have and does immediately reveal the objective unreasonableness of the claims advanced by Counterclaim Plaintiffs as well as many significant factual inaccuracies in Oskouie's theory of the case.

I. Defendants' Initial Filings Are Riddled with Willful Factual Misrepresentations

Defendant Oskouie is a former attorney and sophisticated businessperson. (Defs.' Mem. in Opp'n to Prelim. Inj. 3, ECF No. 25; Def. Oskouie's First Decl. 3, ECF No. 3; Countercl. ¶¶ 13, 15, ECF No. 32; Countercl. Pls.' Mem. in Support of TRO 2, ECF No. 33; Def. Oskouie's Second Decl. ¶ 3, ECF No. 34.) Oskouie is keenly aware of his misrepresentations before the Court. Defendants began their exercise in endurance spoofing with their first memorandum, ECF No. 25, which, although signed by counsel for Defendants, meticulously cites to Oskouie's First Declaration, ECF No. 27. The two documents track each other closely, and counsel's heavy reliance on his client's declaration suggests that the claims made therein could not be and had not been verified.

While it is unclear when Defendants' counsel became involved, a reasonable inquiry into the case should have included review of the documents filed with the Court and provided to Oskouie multiple times. By the time Defendants' counsel filed the carefully written memorandum described above, such documents included the Complaint, Plaintiff's Memorandum in Support of Plaintiff's *Ex Parte* Application for a TRO, and Plaintiff's

Supplemental Memorandum in Support of its Application for a TRO. A reasonable review of these documents provides a good deal of evidence that directly contradicts many allegations in Defendants' initial memorandum and Oskouie's First Declaration, both of which deny the following:

- A. Defendants used doctored federal firearms licenses on *ffltrust.com* as demonstrated by the appearance of "BMADDOX ENTERPRISES LLC" in small print that Defendants had failed to remove. (Pl.'s Compl. ¶ 114, ECF No. 6.)
 1. Defendants continue to deny that "any . . . exhibit [other than the images on pages 15 and 16 of the Complaint] accurately depicts [*ffltrust.com*] as it existed from January 2016 until June 2017" (Defs.' Mem. in Opp'n to Prelim. Inj. 6, ECF No. 25; Def. Oskouie's First Decl. ¶ 18, ECF No. 27.)
- B. Defendants used barely edited copies of real customer reviews left on BMaddox's website on the Infringing Website as shown by references to "Brandon" that were left in the reviews. (Pl.'s Compl. ¶ 84, ECF No. 6.)
 1. Defendants flatly deny that "any . . . exhibit [other than the images on pages 15 and 16 of the Complaint] accurately depicts [*ffltrust.com*] as it existed from January 2016 until June 2017" (Defs.' Mem. in Opp'n to Prelim. Inj. 9, ECF No. 25; Def. Oskouie's First Decl. ¶ 18, ECF No. 27.)
- C. Defendant Osko M Ltd was, until recently, listed as the copyright owner at the bottom of webpages at *ffltrust.com* and was described again as an "NRA Business Partner." (Pl.'s Compl. ¶ 60(b), Ex. D, ECF No. 6.)

1. Defendants stated and maintain that Osko M Ltd “has no material involvement in the operation of” *ffltrust.com*. (Defs.’ Mem. in Opp’n to Prelim. Inj. 3, ECF No. 25; Def. Oskouie’s First Decl. ¶ 3, ECF No. 27.)

D. Defendants used federal firearms licenses on *ffltrust.com* that listed an address in Texas, Pl.’s Compl. ¶ 60(g) Ex. H, ECF No. 6, despite maintaining in emails to Payment Alliance that Defendants were not a U.S. company, did not have a U.S. bank account, and did not need to fill out a W9 form as requested because Defendants were a foreign company. (Pl.’s Suppl. Mem. in Supp. of TRO 6, Ex. 2, ECF No. 24-2.)

1. Defendants denied and continue to deny that “any . . . exhibit [other than the images on pages 15 and 16 of the Complaint] accurately depicts [*ffltrust.com*] as it existed from January 2016 until June 2017” (Defs.’ Mem. in Opp’n to Prelim. Inj. 9, ECF No. 25; Def. Oskouie’s First Decl. ¶ 18, ECF No. 27.)

E. Defendants used a stock photograph titled “Portrait of a businessman” to represent Defendants’ fictitious president. (Pl.’s Compl. ¶ 60(e), Ex. F, ECF No. 6; Pl.’s Suppl. Mem. in Support of TRO 13, Ex. 3, ECF No. 24, 24-3, 24-4.)

1. Defendants denied and continue to deny that “any . . . exhibit [other than the images on pages 15 and 16 of the Complaint] accurately depicts [*ffltrust.com*] as it existed from January 2016 until June 2017” (Defs.’ Mem. in Opp’n to Prelim. Inj. 9, ECF No. 25; Def. Oskouie’s First Decl. ¶ 18, ECF No. 27.)

F. Defendants used the fictitious name “Jerome Kohlberg” to file a counter-notice under the DMCA notice and takedown procedures. (Pl.’s Suppl. Mem. in Supp. of TRO 7, Ex.5, ECF No. 24-5.)

1. Defendants stated and maintain that they “have no knowledge who ‘Jerome Kohlberg’ is, Mr. Oskouie has never gone by the name ‘Jerome Kohlberg.’” (Defs.’ Mem. in Opp’n to Prelim. Inj. 8, ECF No. 25; Def. Oskouie’s First Decl. ¶ 33, ECF No. 27.)
2. Defendants continue to maintain that they do not have knowledge of “Jerome Kohlberg,” a party who filed a DMCA counter-notice on Defendants’ behalf, despite the revelation that Defendants had long before opened a PayPal account using “Jerome Kohlberg” while listing email addresses of info@ffltrust.com, miladosk@hotmail.com, and tajinder.singh1981@gmail.com as well as an Australian address on record for Oskouie. (Countercl. Defs.’ Reply to Countercl. Pls.’ Mem. in Supp. of Countercl. Pls.’ Application for a TRO 1, ECF No. 37; Pls.’ Reply to Defs.’ Mot. to Dissolve TRO 1, ECF No. 50.)

In their Answer, Defendants again made clear their assertion that every representation of *ffltrust.com* aside from those on pages fifteen and sixteen of the Complaint is not accurate by denying every paragraph showing representations or citing exhibits showing representations of *ffltrust.com*. (Defs.’ Answer ¶¶ 67, 69, 71, 82, 83, 84, 112, 114, ECF No. 32.) Defendants’ Answer, Memorandum in Opposition to Plaintiff’s Application for a Preliminary Injunction, and Oskouie’s First Declaration repeatedly state that evidence taken from *ffltrust.com*, with the

exception of screenshots shown on two pages of the Complaint, are fabricated. A brief review of the record as it existed at the time Defendants made these repeated assertions shows them to be false. Even if Oskouie lied to Defendants' counsel, a reasonable investigation would have made Defendants' counsel aware of Oskouie's misrepresentations of material facts.

If Defendants' counsel failed to notice that Defendants' three initial filings all contained factual assertions directly contradicted by evidence on the record, or if Defendants' counsel gave Oskouie the benefit of the doubt, Defendants' counsel could not have failed to notice the evidence submitted hours after Defendants' first filing, which responded directly to it. (Pl.'s Reply to Defs.' Mem. in Opp'n, ECF No. 28.) Plaintiff's Reply attached new evidence, which was taken from *ffltrust.com* and other sources, such as a simple Google search, showing that, contrary to Defendants' assertions: (1) Osko M Ltd played a material role in *ffltrust.com*; (2) Defendants' used a stock photograph on *ffltrust.com* and identified the man pictured therein as the president of the company; (3) Defendants used doctored federal firearms licenses on *ffltrust.com*; (4) Defendants' featured several customer reviews stolen from Plaintiff's website that *still* referred to Brandon by name; (5) Defendants' Terms of Use for *ffltrust.com* required litigation in "Minnehaha County," which is located in South Dakota and identified in BMaddox's Terms of Use; (6) Defendants' entire sitemap is virtually identical to the sitemap for *ffl123.com*; and (7) Brandon's mother-in-law received Defendants' newsletter, sent from info@ffltrust.com despite having never signed up to receive it. Defendants' counsel did not have to conduct a reasonable investigation because BMaddox did it for him. (Pl.'s Reply to Defs. Mem. in Opp'n, ECF No. 28.) Defendants still maintain that: Osko M Ltd was not involved in the operation of *ffltrust.com*, they did not use a fake CEO on *ffltrust.com*, they did not use doctored federal firearms licenses claimed as their own on *ffltrust.com*, they did not steal consumer reviews from

BMaddox's website and present them as their own on *ffltrust.com*, they did not copy BMaddox's website, and they did not have access to BMaddox's trade secret consumer email list.

Making the assertions that appear in Defendants' initial two filings at the time they were filed was not objectively reasonable. Maintaining those positions despite growing evidence to the contrary is an abuse of the judicial system and a waste of judicial resources. Deciding to move forward with a motion for a temporary restraining order premised on four of the sixteen frivolous counterclaims asserted against Maddox further shows Defendants' cavalier approach to this case.

II. Counterclaim Plaintiff's Motion for a TRO Asserted Frivolous Legal Arguments Supported by Willful Misrepresentations of Fact

The four legal claims made in Counterclaim Plaintiffs' motion for a TRO are frivolous and based on willful misrepresentations of fact. Counterclaim Plaintiffs based their motion for a TRO their counterclaims for cybersquatting under 15 U.S.C. § 8131, cybersquatting under 15 U.S.C. § 1125(d), unfair competition, and invasion of privacy. (Countercl. Pls.' Mem. in Supp. of TRO 11-19, ECF No. 33.)

Counterclaim Plaintiffs' claims for cybersquatting are frivolous. To prevail under § 8131, a party must prove that the alleged cybersquatter: (1) registered the domain at issue; (2) consisting of the name of another living person; (3) without that person's consent; (4) with the specific intent to profit from such name by selling the domain for financial gain to that person or any third party. 15 U.S.C. § 8131(1)(A). Counterclaim Plaintiffs argued that four prongs from a comprehensive, fourteen term settlement offer that included transfer of the domains at issue *as a showing of good faith* were evidence of a specific intent to profit from selling the domains at issue. Counterclaim Plaintiffs willfully and aggressively misrepresented the circumstances of

Plaintiff's settlement offer, in violation of Rule 408 of the Federal Rules of Evidence, knowing that their claim was frivolous. (Pl.'s Reply to Countercl. Pls.' Mot. for TRO 2-9, ECF No. 37.)

Counterclaim Plaintiffs' second claim for cybersquatting is frivolous. Under 15 U.S.C. § 1125(d)(1)(A), Counterclaim Plaintiffs needed to show not only that BMaddox intended to profit in bad faith from the domains at issue, they also needed to demonstrate that MILAD OSKOUIE was a distinctive trademark at the time the domains at issue were registered. As described in Plaintiff's Reply, even the most generous interpretation of the evidence cited by Counterclaim Plaintiffs does not come anywhere near a showing that MILAD OSKOUIE has *ever* functioned as a distinctive trademark. *Id.* at 9-15. Counterclaim Plaintiffs were also entirely reliant upon their willful misconstruction of a Rule 408 communication in their attempt to show a bad faith intent to profit on BMaddox's part. Both cybersquatting claims are entirely frivolous. A cursory review of existing case law makes that clear. There is also no reasonable argument that the laws referenced above should be reversed, extended, or modified. Counterclaim Plaintiffs' assertion of these frivolous claims was a waste of judicial resources.

Counterclaim Plaintiffs' next asserted claim, for unfair competition, is similarly deficient. Again, they asserted that MILAD OSKOUIE was a valuable trademark that BMaddox had used to divert customers and thereby profit. This claim is so frivolous that Counterclaim Plaintiffs did not even attempt to articulate how BMaddox was liable for unfair competition except for a single, confusing sentence:

Here, the Counterdefendants used the MILAD OSKOUIE™ Mark, as well as Mr. Oskouie's personal name, for commercial gain by diverting customers to themselves and to the detriment of Counterclaimants in the form of lost dealings and lost profits.

(Countercl. Pls.' Mot. for TRO 17, ECF No. 33.) This claim is frivolous.

The next claim asserted by Counterclaim Plaintiffs in their motion for a TRO involved an invasion of privacy. The “private” information complained of by Counterclaim Plaintiffs was made public by Oskouie. The cases cited in support of this claim were entirely off-point. (Pl.’s Reply to Countercl. Pls.’ Mot. for TRO 18, ECF No. 37.) This claim is also frivolous.

Finally, the claim of defamation asserted by Counterclaim Plaintiffs is frivolous. The Court has already found that BMaddox has a high likelihood of success on the merits of its copyright infringement claim. Moreover, evidence in the record strongly suggests that Oskouie gained illicit access to BMaddox’s confidential email contact list and cloned BMaddox’s website. Oskouie has offered no reason as to how Brandon’s mother-in-law receives the email blasts sent out by Oskouie for *ffltrust.com*. ISP addresses used to access BMaddox’s private online accounts from Australia, in the neighborhood where Oskouie then lived, have also been used to access Oskouie’s many financial service providers. Since truth is an absolute defense to libel, and Oskouie has not even bothered to address the evidence piled against the Defendants, this claim is frivolous. Under well-established precedent in the United States, Defendants may not cry foul when their reputations are sullied by a truthful recounting of their actions. This is evident after even a cursory review of the relevant case law and, as of July 27, 2017, the current docket. (Reply to Countercl. Pls.’ Mem. in Support of TRO 18-19, ECF No. 37.) Any claim that BMaddox or Brandon are liable for libel because they truthfully described their ordeal with Defendants or said something Defendants found offensive is not objectively reasonable and should be removed from any filing submitted to the Court. Moreover, Defendants must do more than contradict the evidence of record by repeatedly stating that BMaddox’s allegations, which are supported by the record, are not true. Even if the Court determines that a claim for defamation is not frivolous on its face, the claim becomes frivolous after considering another

small example of Oskouie's aggressive, arrogant actions. (Brandon Decl. September 7, 2017.) Even if the Court is sympathetic to Counterclaim Plaintiffs' defamation claim, a claim that it has multiplied into several other ill-fitting counterclaims, Oskouie's relentless harassment of Brandon and his family through, among other things, filing fraudulent accusations against Brandon with the FBI is entirely unacceptable and egregious behavior. While limited in its application, the doctrine of unclean hands may be applied when "a plaintiff otherwise entitled to relief has acted so improperly with respect to the controversy at bar that the public interest in punishing the plaintiff outweighs the need to prevent defendant's tortious conduct." *Playboy Enterprises, Inc. v. Chuckleberry Pub., Inc.*, 486 F.Supp. 414, 435 (S.D.N.Y. 1980). Here, any allegedly defamatory statements made by Brandon pale in comparison to Oskouie's harassment of Brandon and his family. Considering that Oskouie's harassment of Brandon and his family has been ongoing for quite some time, Brandon's allegedly defamatory statements are quite measured.

By submitting these frivolous legal claims in their motion for a TRO, Counterclaim Plaintiffs wasted significant judicial resources, abused the litigation process, and continued to harass BMaddox.

III. The Other Counterclaims are Also Frivolous and an Abuse of the Judicial System

First, Counterclaim Plaintiffs allege an ill-defined false advertising claim under 15 U.S.C. § 1125(a)(1)(B). Counterclaim Plaintiffs state that Counterclaim Defendants' "publication of false and misleading statement about Platinum and Platinum's services is likely to deceive consumers as to the nature and quality of Platinum and Platinum's services." (Countercls. ¶ 174, ECF No. 32.) To establish a false advertising claim under this section of the Lanham Act, a party must prove that: (1) the defendant has made a false or misleading statement; (2) the false

or misleading statement has actually deceived or has the capacity to deceive a substantial portion of the intended audience; (3) the deception is material in that it is likely to influence purchasing decisions; and (5) the plaintiff has been injured as a result of the misrepresentation, either by direct diversion of sales or by a lessening of goodwill associated with its products. *Merck Eprova AG v. Brookstone Pharmaceuticals, LLC*, 920 F.Supp.2d 404, 416 (S.D.N.Y. 2013). Counterclaim Plaintiffs attempt to shoehorn their perceived defamation claims into yet another Lanham Act claim here, but they do not adequately allege that any claimed deception was material and likely to influence purchasing decisions. Furthermore, as discussed above, the evidence of record strongly supports the allegedly deceptive statements made by BMaddox. For these reasons, this claim is frivolous.

Next, Counterclaim Plaintiff's assert tortious interference with contractual relations and prospective contractual relations. Leaving aside the fact that the evidence of record strongly indicates that Oskouie illicitly obtained BMaddox's confidential email contact list and continues to use it to this day, Counterclaim Plaintiffs have not come close to adequately pleading this claim. They are required to allege: (1) a valid contract between themselves and a third party for a specific term; (2) BMaddox's knowledge of that contract; (3) BMaddox's intentional procuring of a breach of that contract; and (4) damages. *Riddell Sports Inc. v. Brooks*, 872 F.Supp. 73, 77 (S.D.N.Y. 1995). Counterclaim Plaintiffs use the word "contracts" four times in their counterclaims. The three relevant appearances are made in conclusory allegations as follows:

Counterclaimants had existing contracts with its customers and hosting providers and reasonably expected that its contractual relationships with its customers and hosting providers would continue into the future.

(Countercls. ¶ 183, ECF No. 32.)

Counterdefendants knew of Counterclaimants' contracts.

Id. at 184.

By the wrongful conduct described above, Counterdefendants intentionally and improperly interfered with Counterclaimants' contracts with its customers and hosting providers and did so with the intent and purpose of damaging Counterclaimants' business.

Id. at 185. These summary allegations do not reasonably state a claim for tortious interference with a contractual relation. This claim is also frivolous.

Next, Counterclaim Plaintiffs assert a claim under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030(g). Counterclaim Plaintiffs offer no support for these naked allegations aside from the claim that BMaddox issued a DMCA takedown notice to one of their hosts and that one of their websites was briefly the target of a mild distributed denial of service campaign. The Exhibit A attached to the Counterclaims only shows Brandon exploring his options and perhaps our of his depth. What is much *more* troubling about Exhibit A is Counterclaim Plaintiffs' claim to have received these screenshots of private messages of which Oskouie was not a participant from an anonymous source. (Countercls. ¶ 66, ECF No. 32.)

Next, Counterclaim Plaintiffs request a "declaration of invalidity of copyright," and in so doing misstates the law of copyright. It is well established that "[a]n original expression of facts is copyrightable, even where the facts themselves are not." *Arica Institute, Inc. v. Palmer*, 970 F.2d 1067, 1075 (2d Cir. 1992). "[A] sufficiently creative sequence will merit copyright protection." *Id.* BMaddox's website is not a telephone book. It is a complex array of information expressed and organized through careful curation and creation by Brandon. Counterclaim Plaintiffs' request that the Court declare a copyright for BMaddox's well put together website *as well as* the educational material drafted by Brandon is frivolous.

For their next request, Counterclaim Plaintiffs ask the Court to issue a declaratory judgment of non-infringement. In light of the many instances of actual copying shown in the present record, this counterclaim is frivolous.

Similarly, Counterclaim Plaintiff's claim for violation of § 512(f) of the Copyright Act is frivolous because the great weight of the evidence shows actual copying of Plaintiff's website and other works by Defendants.

Counterclaim Plaintiffs then assert claims under the Sherman Act, namely, monopolization in violation of § 2 and attempted monopolization in violation of § 2. Courts generally require a party asserting attempted monopolization to prove: (1) the defendants engaged in predatory or anticompetitive conduct; (2) with specific intent to monopolize; and (3) a dangerous probability of achieving monopoly power. *Spectrum Sports, Inc. v. McQuillan*, 506 U.S. 447, 447 (1993). There is *no* credible claim made by Counterclaim Plaintiffs that Counterclaim Defendants have any ability to achieve any type of monopoly power. These claims are frivolous.

Continuing to Counterclaim Plaintiffs' trespass to chattels claim, it is unclear what allegations were made to support it. Counterclaim Plaintiffs appear to be suggesting either that a DMCA takedown notice issued by Counterclaim Defendants is a trespass to chattels *or* that the distributed denial of service episode that briefly limited Counterclaim Plaintiff's use of one website amounts to a trespass to chattels. This claim is frivolous.

Next, Counterclaim Plaintiff's assert a claim for intentional infliction of emotional distress. For this claim to stand, Counterclaim Plaintiffs must allege conduct on the part of Counterclaim Defendants that is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in

a civilized society.” *Kovich v. Manhattan Life Ins. Co.*, 640 F.Supp. 134, 136 (S.D.N.Y. 1986). “The conduct must be intentionally directed at the plaintiff and lack any reasonable justification.” *Id.* (citation omitted). “New York Courts have been very strict in applying these principles.” *Id.* (citation omitted). Counterclaim Plaintiffs do not allege any conduct approaching this standard. This claim too is frivolous.

Counterclaim Plaintiffs next assert a claim for invasion of privacy under South Dakota State law. While South Dakota does recognize claims for invasion of privacy, *Truxes v. Kenco Enterprises, Inc.*, 119 N.W.2d 914 (S.D. 1963), Counterclaim Plaintiffs had no reasonable expectation of privacy in information that Counterclaim Plaintiffs made public. This claim is also frivolous.

Finally, Counterclaim Plaintiffs assert a violation of New York Civil Rights Law §§ 50-51. It is unclear how any alleged use of Oskouie’s likeness could have been for advertising or trade purposes as required by these sections of the New York Civil Rights Law. This claim is frivolous.

CONCLUSION

The quantity of Counterclaim Plaintiffs’ frivolous counterclaims in addition to their willingness to continuously assert lies before the Court demonstrates that they will not stop wasting judicial resources unless sanctioned. Defendants/Counterclaim Plaintiffs have repeatedly brought meritless arguments before the Court. They will continue to do so unless sanctioned. While Rule 11 sanctions are typically used as a deterrent, BMaddox respectfully requests that any sanctions awarded in the Court’s discretion be used to make it whole in light of the costs incurred responding to Defendants many frivolous legal arguments. BMaddox asks that this Court also narrow the scope of this litigation by dismissing the frivolous counterclaims asserted by Counterclaim Plaintiffs.