IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BMADDOX ENTERPRISES LLC, Plaintiff, v. MILAD OSKOUIE, OSKO M LTD, and PLATINUM AVENUE HOLDINGS PTY, LTD, Defendants.	Case No. 17-cv-1889-RA-HBP
MILAD OSKOUIE and PLATINUM AVENUE HOLDINGS PTY, LTD, Counterclaim Plaintiffs, v. BMADDOX ENTERPRISES LLC and BRANDON MADDOX, Counterclaim Defendants.	

PLAINTIFF AND COUNTERCLAIM DEFENDANTS' BRIEF IN SUPPORT OF THE COURT'S CAREFULLY CALIBRATED TEMPORARY RESTRAINING ORDER

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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 stand by its well-reasoned decision to maintain the temporary restraining order issued on May 30, 2017, ECF No. 15, and affirmed in no uncertain terms as recently as this Court's August 9, 2017 order denying Defendants' ill-fated attempt to obtain a temporary restraining order. (Order, ECF No. 39.) The Defendants' lack of respect for these proceedings and the Court's time is illustrated by their frivolous motion for a temporary restraining order, which improperly cited and aggressively mischaracterized a good faith settlement offer from Plaintiff. Defendants wasted judicial resources and more of Plaintiff's resources with this frustratingly futile motion practice long before they moved to dissolve or modify the Court's carefully calibrated TRO.

The timeline of Defendants' various responses to this lawsuit speaks for itself. Defendant Oskouie ("Oskouie") received copies of the Court's May 30, 2017 Order within days of its issuance. Instead of properly addressing the matter, Defendants had an Australian attorney phone both the Court and Plaintiff's counsel in the early hours of the morning on which Defendants were to appear and show cause why an Order pursuant to Rules 64 and 65 of the Federal Rules of Civil Procedure and § 503 of the Copyright act should not be entered granting BMaddox a preliminary injunction as described in the Court's May 30, 2017 Order. (Order, ECF No. 15.) While the Court correctly refused to participate in substantive *ex parte* communications with this person, Plaintiff's counsel listened to him long enough to be promised written submissions within days. No written submissions or response of *any kind* were received until Defendants' June 28, 2017 memorandum in opposition to Plaintiff's application for a

preliminary injunction, which Defendants submitted less than twenty-four hours before the long-scheduled, second show cause hearing. (Defs.' Mem. in Opp'n to Pl.'s Appl. for a Prelim. Inj., ECF No. 25.)

Defendants' next submission to the Court, almost exactly one month later, was a Verified Answer flatly denying many allegations in the Complaint that were and are supported by incontrovertible evidence. (Defs.' Answer, ECF No. 32.) Plaintiff has devoted considerable space in its filings solely to pointing out Defendants' plainly false assertions of fact. (Pl.'s Reply to Defs.' Mem. in Opp'n to Pl.'s Appl. For Prelim. Inj. 1-3, ECF No. 28; Countercl. Defs.' Reply to Countercl. Pls.' Mem. in Supp. of TRO 1, 13, ECF No. 37; Pl.'s Reply to Defs.' Mot. to Dissolve TRO 1-8, ECF No. 50.) Defendants' July 25, 2017 Answer also included sixteen frivolous counterclaims haphazardly described in two hundred forty-eight conclusory paragraphs that failed to address the evidence of record while recklessly dribbling out arguments that were and are not only contradicted by the evidence of record but ironically accuse BMaddox of much of the same unlawful behavior that uncontested evidence shows Defendants' committed. *Id.* While BMaddox maintains that each of these sixteen counterclaims is frivolous, Counterclaim Plaintiffs barely maintained a pretense of attempting to assert the basic elements for some. For example, Counterclaim Plaintiffs' sixteenth cause of action states, with no reasonable support, that BMaddox and Brandon Maddox ("Brandon") "have used for purposes of advertising or trade, [Oskouie's] images, likeness and/or information . . . ." *Id.* ¶ 244.

With their sprawling counterclaims, Counterclaim Plaintiffs dramatically expanded the scope of an otherwise narrowly tailored lawsuit. They made the decision to force the Court and Counterclaim Defendants to consider sixteen unwieldy counterclaims almost two months *after* receiving notice of the Court's May 30, 2017 TRO. On the same day, Counterclaim Plaintiff's

also moved for their own temporary restraining order claiming that four of their counterclaims warranted such relief. (Countercl. Pls.' Mem. in Supp. of TRO, ECF No. 33.) Nowhere in their two hundred forty-eight paragraphs asserting sixteen counterclaims or the memorandum and declaration in support of their motion for a TRO did Counterclaim Plaintiffs assert that the Court's May 30, 2017 Order was vexatious. The Order certainly did not prevent them from forcing the Court to consider and Plaintiff to respond to several lengthy and disjointed filings.

Only after the Court correctly rebuffed Counterclaim Plaintiff's attempt to secure a TRO did Defendants move to dissolve or modify the Court's May 30, 2017 TRO. (Defs.' Mot. to Dissolve or Modify TRO, ECF No. 47.) They filed this motion roughly two months after receiving notice of the Court's May 30, 2017 TRO and only after forcing the Court and Plaintiff to address a multitude of meritless meanderings. The present motion to dissolve or modify the Court's May 30, 2017 TRO, affirmed in the Court's August 9, 2017 Order, ECF No. 39, is one more waste of judicial resources and is not supported by the record or the relevant case law.

ARGUMENT

I. Defendants' Motion to Dissolve or Modify the Court's TRO is Built on a Rickety Trellis of Misrepresentations and Questionable Assertions of Fact

BMaddox has, regrettably, wasted many pages pointing out Defendants' fiercely uncompromising misrepresentations of fact. In their arguments for dissolution or modification of the subject TRO, Defendants again make demonstrably false statements under penalty of perjury before the Court. In Oskouie's Third Declaration, Oskouie states that "Platinum used PayPal and Stripe to process customer payments for Platinum's Website, and maintained separate business accounts with each service for that purpose." (Def. Oskouie's Third Decl. ¶ 4, ECF No. 48.) That is a lie. BMaddox immediately filed a concise brief attaching evidence showing that Oskouie rivals Tolstoy in the number of fictional characters employed to obfuscate

the purposes of his accounts and comingle funds. (Pls.' Reply to Defs.' Mot. to Dissolve TRO Exs. 2 – 4, ECF Nos. 50-2, 50-3, 50-4.) As pointed out by Plaintiff in July, one of these fictional characters is Jerome Kohlberg, the same party who filed a DMCA counter-notification on behalf of Defendants. (Countercl. Defs.' Reply to Countercl. Pls.' Mem. in Supp. of TRO 1, ECF No. 37.) Oskouie insisted that he not only had no affiliation with Jerome Kohlberg, he declared under penalty of perjury that "[he has] no knowledge who 'Jerome Kohlberg' is, and [Oskouie has] never gone by the name 'Jerome Kohlberg,' and was never in Russia, nor used a computer located in Russia." (Def. Oskouie's First Decl. ¶ 33, ECF No. 27.) As recently as August 16, 2017, anyone with a computer and internet access could visit both *flltrust.com* and *theunitutor.com* and see that both facilitated payments using a PayPal account listing frankdelaney1950@gmail.com as the contact. (Pl.'s Reply to Defs.' Mot. to Dissolve TRO 3-4, ECF No. 50.) Other evidence submitted by Plaintiff shows that Defendants used email accounts such as trustffl@gmail.com in connection with *theunitutor.com*. (Pl.'s Reply to Defs.' Mot. to Dissolve TRO 3, ECF No. 50-4.)

II. Defendants Have Done Everything Possible to Hide Their Assets and Would Do Everything in Their Power to Frustrate a Judgment in this Case

In seeking a TRO in this case, Plaintiff has briefed the Court on the likelihood that Defendants would hide or move assets to frustrate any judgment against them. (Pl.'s Mem. in Supp. of TRO 25-27, ECF No. 23; Pl.'s Suppl. Mem. in Supp. of TRO 1-3, 6-14, ECF No. 24.) After receiving data from third party financial service providers, which was all known to Defendants, Plaintiff recently filed a brief reply again describing the risk of asset dissipation should the TRO be dissolved. (Pl.'s Reply to Defs.' Mot. to Dissolve TRO 1-8, ECF No. 50.) For the reasons described in Plaintiff's prior filings and those set forth below, the TRO is

essential to prevent Defendants from hiding their assets and attempting to frustrate any judgment from the Court.

As noted by Plaintiff before, the Southern District of New York has found a high likelihood of asset dissipation under similar facts and has appropriately frozen such assets to provide the plaintiffs in those cases with a remedy. *See Dama S.P.A. v. Does*, 2015 WL 10846737 (S.D.N.Y. 2015).

> The Court agrees that Plaintiff's concerns regarding the likelihood of dissipating assets merit the extraordinary remedy of *ex parte* relief and that there is a strong likelihood that advance notice of the motion would cause Defendants to drain their PayPal accounts, thereby depriving Plaintiff of the remedy it seeks. This is particularly true given Defendants history of shifting locations and corporate forms abroad.

Id. at *2. The court found that the risk of asset dissipation was particularly real "given Defendants history of shifting locations and corporate forms abroad." *Id.*

In this case, Defendants use at least two separate corporate entities, one of which Defendants continue to insist had no material involvement with *ffltrust.com* despite clear evidence that Defendants listed Osko M Ltd as the owner of the copyright for the material appearing on *ffltrust.com* and only removed that reference *after* Plaintiff pointed it out in one of its many filings attempting to correct the myriad lies made by Defendants. Oskouie has also moved from Australia to the United Kingdom, has listed a variety of addresses with his financial service providers, and has used at least eleven different names and email addresses with the same financial service providers. Since being haled into court, Defendants have doubled down on their attempted deceptions even under penalty of perjury. Defendants' behavior is strong evidence that they would immediately secret any assets out of the country and do their best to hide them in anticipation of a judgment in favor of BMaddox. No doubt Defendants' eagerness

to transfer the domain *theunitutor.com* and any funds possible out of the country is driven by their knowledge that they did commit the unlawful acts alleged by BMaddox in this case.

Along those lines, the Eastern District of New York has considered whether a defendant's sale of infringing goods was likely knowing and willing. *Moose Toys Pty Ltd. v. Thiftway Hylan Blvd. Drug Corp.*, 2015 WL 4772173, *4 (E.D.N.Y. 2015) (citing *Vuitton v. White*, 945 F.2d 569, 570 (2d Cir. 1991)). Here, the Court has already found that "Plaintiff is likely to succeed in showing that Defendants unlawfully and *willfully* copied, and displayed, and created derivative works from Plaintiff's works in violation of the Copyright Act of 1976 . . . ." (TRO 2 ¶ 1, ECF No. 15.) (emphasis added). The Court also found that "Plaintiff is likely to succeed in showing that Defendants *willfully* and *intentionally* filed fraudulent counter-notices to avoid having Plaintiff's copyright protected works removed from Defendants' infringing website in violation of the Digital Millennium Copyright Act . . . ." *Id.* ¶ 2 (emphasis added). The willful nature of Defendants' unlawful actions is punctuated by Oskouie's brazen, uncorrected lies to the Court. The willful, unrepentant nature of Defendants' actions demonstrates that the TRO is necessary to prevent Defendants from hiding assets to frustrate any judgment of the Court in Plaintiff's favor.

Courts considered whether an asset freeze is warranted have also look to, *inter alia*, the scope of the infringing activity alleged, the nature of the business engaged in the infringing activity, and whether the business has a fixed location or is a "fly-by-night" operation. *Moose Toys*, 2015 WL 4772173 at *4 (citing *Vuitton*, 945 F.2d at 570). Here, there is considerable evidence showing direct copying on the record. Defendants do not operate from a fixed location but rather use e-commerce websites, a byzantine system of accounts with numerous financial service providers, and regularly list incorrect or fraudulent identifying information when opening new accounts with financial service providers. Defendants copied BMaddox's website, stole its

proprietary client list, then sabotaged BMaddox's website to get a foothold in the industry by repeatedly contacting and confusing BMaddox's consumers with email blasts while BMaddox's e-commerce website, which supports Brandon's family, was out of commission. Defendants' actions are egregious and indicate that Defendants would not hesitate to hide assets or take any other action they could to frustrate a judgement from this Court in BMaddox's favor.

Defendants' argument that they have not comingled funds generated from *theunitutor.com* and *ffltrust.com* is a non-starter. As discussed above, the claim is demonstrably false. Even were it truthful, which it is certainly not, "[d]istrict courts have the 'authority to freeze those assets which could [be] used to satisfy an equitable award of profits.'" *N. Face Apparel Corp. v. TC Fashions, Inc.*, 2006 WL 838993, *3 (S.D.N.Y. 2006) (quoting *Levi Strauss & Co. v. Sunrise Int'l Trading Inc.*, 51 F.3d 982, 987 (11th Cir. 1995) (citation omitted)). The purpose of freezing assets in situations created by infringers such as the Defendants is preserving "security for plaintiff's future recovery on an accounting" of the infringer's profits. *N. Face*, 2006 WL 838993 at *3. Here, BMaddox has posted a ten thousand dollar ($10,000) bond in good faith to protect Defendants' interests. Defendants have offered nothing but meritless motion practice to BMaddox. After disrupting one hearing, moving for a frivolous TRO, and refusing to enter any reasonable settlement discussions, all of which prolonged the litigation of this case and added to BMaddox's costs, Defendants cannot credibly argue that the TRO freezing some of the assets that BMaddox *has been able to find* is unduly burdensome.

Oskouie's utter lack of credibility further underscores the need to keep what assets BMaddox has been able to track down frozen. The Second Circuit has recognized that a party who shows "blatant disregard for court orders and the obligation to testify truthfully under oath" is likely to secrete assets or otherwise attempt to avoid a judgment against them. *In re Feit &*

Drexler, Inc., 760 F.2d 406, 411 (2d Cir. 1985). "[E]ven where the ultimate relief sought is money damages, federal courts have found preliminary injunctions appropriate where it has been shown that the defendant 'intended to frustrate any judgment on the merits' by 'transfer[ring assets] out of the jurisdiction." *Id.* at 416 (citations omitted). Looking at the totality of the circumstances in this case, Defendants have painted themselves into a corner by lying to the Court, prolonging the litigation with frivolous arguments and other disruptive acts, and have admitted that they do not have a US bank account. The *only* asset that BMaddox has located belonging to Defendants that is located in the US is the domain *theunitutor.com*. If Defendants are given any chance to hide their assets, they will do it without thinking twice.

"It is well settled that the granting of a temporary injunction, pending final hearing, is within the sound discretion of the trial court; and . . . [such] an order . . . will not be disturbed unless contrary to some rule of equity, or the result of improvidence exercise of judicial discretion." *Deckert v. Indep. Shares Corp.*, 311 U.S. 282, 290 (1940). The Court's TRO freezing Defendants' assets is well warranted in this case and necessary to preserve BMaddox's ability to recover should the Court find in its favor. Defendants' argue that "Plaintiff's request for a prejudgment attachment of assets is premised solely on the ground that Defendants reside in foreign countries" and use their imaginations to extrapolate from that incorrect summary of BMaddox's arguments that "[Plaintiff's] blatant xenophobia is insufficient, alone, to support such an extraordinary remedy." (Defs.' Mem. in Opp'n to Pl.'s Appl. for a Prelim. Inj. 28, ECF No. 25.) BMaddox's concern with Defendants foreign residency is not xenophobic, it is one of the factors courts in the Southern District of New York look to when determining if an asset freeze is necessary to prevent a defendant from working to frustrate the judgment of the court.

Defendants have repeatedly pushed a determination on the merits of this case further and further away. Their argument that the Plaintiff is xenophobic is, unfortunately, consistent with Defendants' litigation strategy, namely, meritless motion practice and a refusal to accept or address evidence on the record that directly contradicts their theory of the case. Defendants are finally realizing that callously ruining an innocent party's business has consequences. BMaddox wants nothing more than to get to the merits of this case. Only Defendants' ridiculous antics have prevented that from happening expeditiously.

CONCLUSION

BMaddox has wanted nothing but a speedy resolution of this matter on the merits of the case. Brandon posted a ten thousand dollar ($10,000) bond so that BMaddox could have his day in court. Every single delay in this case was caused by Defendants. The Court has already determined that BMaddox has a high likelihood of success on the merits of this case. Defendants' submission of a "budget" for Oskouie's living expenses with the claim that his choice to ruing BMaddox's e-commerce business to enrich himself is now "having a serious negative impact on Defendants' (especially the individual defendant's) ability to function on a day-to-day basis" is absurd. (Defs.' Mem. in Supp. of Mot. to Dissolve TRO 4-5, ECF No. 49.) If Oskouie can demonstrate real financial hardship by laying bare his financial situation, nothing is preventing him from asking for a protective order. To date, Oskouie has offered one screenshot of one PayPal balance. Defendants are not credible and are finally realizing that they may face consequences for their actions. A thief who complains after abusing his right to a fair trial does not deserve to be coddled.