

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

TOYOTA MOTOR SALES, U.S.A., INC.,

Plaintiff,

v.

THE PARTNERSHIPS and
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE "A",

Defendants.

Case No. 24-cv-09401

Judge Jeremy C. Daniel

Magistrate Judge Young B. Kim

Declaration of Justin R. Gaudio

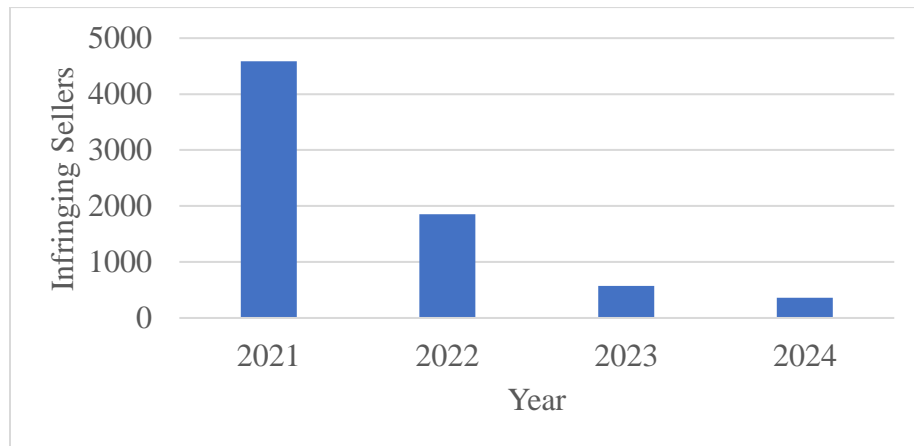
DECLARATION OF JUSTIN R. GAUDIO

I, Justin R. Gaudio, of the City of Chicago, in the State of Illinois, declare as follows:

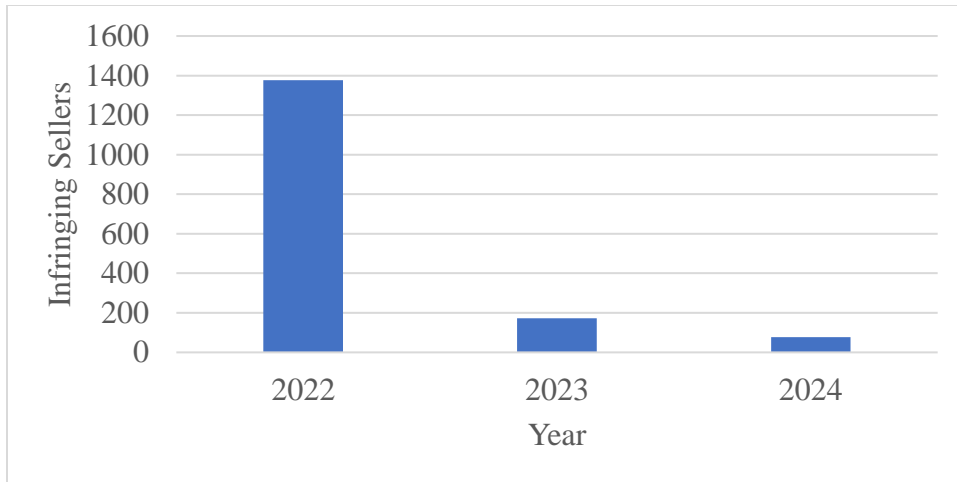
1. I am an attorney at law, duly admitted to practice before the Courts of the State of Illinois and the United States District Court for the Northern District of Illinois. I am one of the attorneys for Plaintiff Toyota Motor Sales, U.S.A., Inc. (“Toyota” or “Plaintiff”). Except as otherwise expressly stated to the contrary, I have personal knowledge of the following facts and, if called as a witness, I could and would competently testify as follows:
2. **Exhibit 1** attached hereto is a true and correct copy of the January 24, 2020 report titled *Combating Trafficking in Counterfeit and Pirated Goods* prepared by the U.S. Department of Homeland Security, Office of Strategy, Policy & Plans.
3. I used Lex Machina to search for cases filed by the firm Epstein Drangel, which files similar cases in the Southern District of New York, resulting in 356 cases between 2009 and 2020. I also used Lex Machina to search for cases filed by the Law Firm of Stephen M. Gaffigan, which files similar cases in the Southern District of Florida, resulting in 940 cases. **Exhibit 2** attached hereto are true and correct copies of these searches.
4. **Exhibit 3** attached hereto is a true and correct copy of the docket in *Too Faced Cosmetics, LLC v. Operators of KTKT Store, et al.*, No. 19-cv-07762 (N.D. Ill. Feb. 12, 2020) (Lefkow, J.) (docket entries 22, 27, 30) (finding joinder appropriate in factually similar case after supplemental briefing); *Gold’s Gym Licensing LLC v. Operators of dropshipping fast ship Store, et al.*, No. 19-cv-07446 (N.D. Ill. Jan.15, 2020) (Lefkow, J.) (docket entries 32, 38, 43) (same); *Otter Products, LLC, et al. v. James Chen, et al.*, No. 16-cv-06807 (N.D. Ill. Aug. 31, 2016) (Shadur, J.) (same). At the July 12, 2016 hearing, Judge Shadur requested Plaintiffs to submit a supplemental brief regarding joinder of defendants. After Plaintiffs filed their brief,

Judge Shadur permitted the case to continue with e-commerce store operators using 107 seller aliases joined.

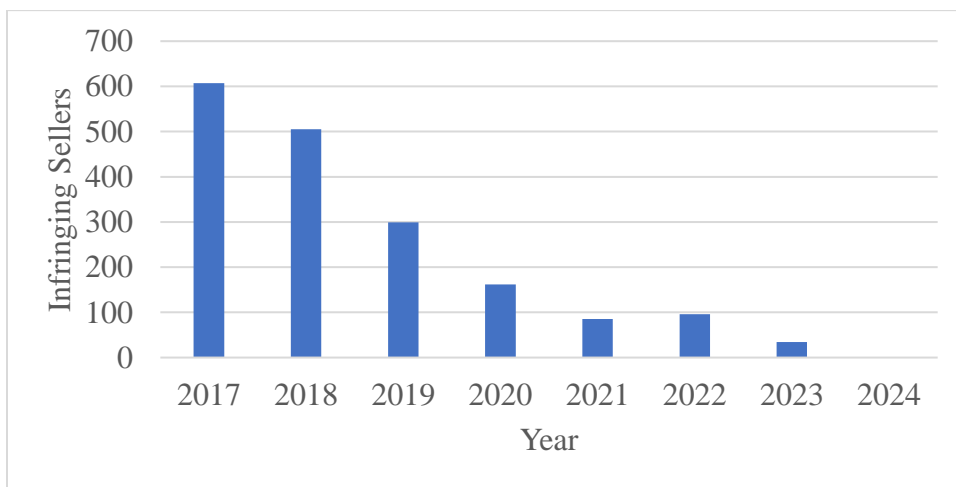
- I was counsel for SanDisk LLC in the case *SanDisk LLC v. tinabeet, et al.*, No. 18-cv-08335 (N.D. Ill. Mar. 8, 2019). This Court required SanDisk to file a supplemental memorandum explaining why the defendants were properly joined. SanDisk filed a Second Amended Complaint naming two defendants and severed the other defendants into a different case. The Court found that joinder of two defendants was proper only “because of the date/time stamp within minutes of each other and the almost identical (except 1 digit) return-address labels.” **Exhibit 4** attached hereto is a true and correct copy of the Court’s order in *SanDisk LLC v. tinabeet, et al.*, No. 18-cv-08335 (N.D. Ill. Mar. 8, 2019). The defendant’s product listings had date/time stamps showing the listings were updated within minutes of each other. However, the two defendants ended up not being related and were represented by separate counsel. Additionally, one of the defendants operated another seller alias that was severed into a different case.
- A well-known entertainment brand has seen an 88% decrease over the last three years from 4,589 infringing sellers in 2021 to just 570 infringing sellers in 2023. This trend is continuing and only 362 infringing sellers have been discovered in 2024 so far.



7. A well-known fashion and entertainment producer that we represent in similar cases has seen a decrease from 1,376 infringing sellers in 2022 to a mere 77 infringing sellers so far in 2024. This producer only filed seven cases between 2022 and 2024 and still experienced a 94% decrease in infringing sellers. This example highlights that the effectiveness of these actions can be achieved with a few cases.



8. A well-known fashion brand that we represent in similar cases has seen a decrease in infringing sellers from 607 in 2017 to zero in 2024 to date. This shows that, in some instances, the effectiveness of these actions before this Court deters infringing sellers altogether and eliminates the need for a brand to file these actions.



9. **Exhibit 5** attached hereto is a true and correct copy of Jon Emont, *Amazon's Heavy Recruitment of Chinese Sellers Puts Consumers at Risk*, Wall St. J. 1-2 (Nov. 11, 2019).
10. **Exhibit 6** attached hereto is a true and correct copy of Xinhua, *Fighting China's counterfeits in the online era*, Chinadaily.com.
11. **Exhibit 7** attached hereto is a true and correct copy of excerpts from Fiscal Year 2021 U.S. Customs and Border Protection ("CBP") Intellectual Property Seizure Statistics Report.
12. On websites like sellerdefense.cn, and dozens of other similar websites, buyer aliases used by my firm's investigators are listed, as well as our firm's pending cases. Products that my firm's investigators are searching for are also listed before a case is even filed. These websites post articles to provide sellers with other tactics for identifying my firm's investigators' orders, such as identifying test purchases that were placed by a rights owner's investigators, deleting or modifying the infringing listings, and moving funds out of their platform accounts. Attached hereto as **Exhibit 8** are examples of these websites and articles.
13. Plaintiff's cases, including this Case, are frequently tracked on such websites. These websites provide sellers with an early warning to act before any injunctive relief is in place. Attached hereto as **Exhibit 9** are examples of these articles.
14. Information about this Case and lawsuits like it are also regularly posted on China-based social media platforms, forums like zhihu.com, and even video streaming platforms like bilibili.com and douyin.com. As shown below, a video was made warning sellers and providing information about this Case soon after the case was filed.¹

¹ The full video is available at https://www.bilibili.com/video/BV1ts2AYjECa/?spm_id_from=333.788.videopod.sections.



15. In my experience over the last ten (10) years, I have encountered examples of high level, observable market trends showing how e-commerce counterfeiters have evolved in a coordinated fashion in response to Plaintiff's and other brands' enforcement efforts. The following are specific examples of trends I have encountered while representing other brands.
16. When Estée Lauder Cosmetics Ltd. and Make-Up Art Cosmetics Inc. filed a case against ecommerce counterfeiters in 2016, many counterfeiters used their MAC trademarks in their product listings. In response to these enforcement efforts, the counterfeiters stopped using the MAC trademarks in their product listing images. Instead, a generic product is shown in the listing, and a product bearing a counterfeit version of the MAC trademarks is shipped to the consumer. Examples are shown in the figures below.



17. In 2017, counterfeit wall mount brackets bearing the BOSE trademarks were a common item sold by e-commerce counterfeiters. Following Bose Corporation’s enforcement efforts, the number of counterfeit wall mount brackets bearing the BOSE trademarks offered for sale sharply dwindled.

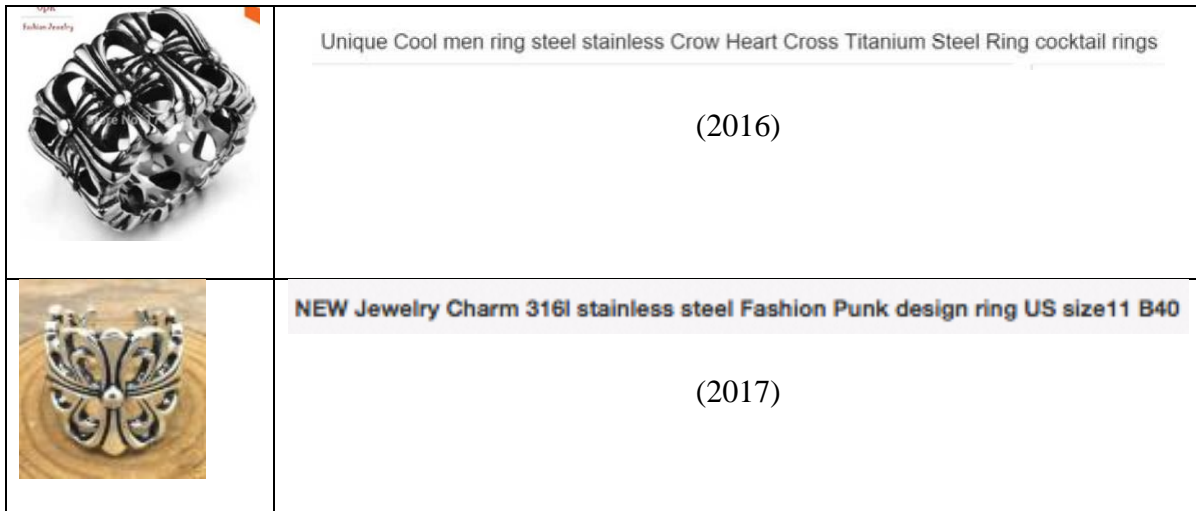
18. “Goat skull rings” bearing counterfeits of the CHROME HEARTS trademarks were a commonly counterfeited item. Following Chrome Hearts’ enforcement efforts, the “goat skull rings” essentially disappeared from the marketplace platforms eBay.com, Aliexpress.com, and Wish.com. However, when Chrome Hearts’ investigators expanded their scope to include listings on Amazon.com, they found numerous “goat skull rings.”

19. I represented plaintiffs in *Volkswagen AG, et al. v. DXZ Official Store, et al.*, No. 18-cv-06611 (N.D. Ill. Dec. 13, 2018), which was against online counterfeiters offering for sale “ghost” light projectors, who were prominently using the registered AUDI word mark and/or logo in the product listings. After this case specifically directed to “ghost” light projectors, e-

commerce counterfeiters stopped using the registered AUDI word mark and/or logo in the product listing, instead obscuring with “LOGO.” Examples are shown in the figures below:



20. Counterfeiters previously used the keywords “Crow Hearts” in product titles for counterfeit Chrome Hearts products, but do not anymore. Below are examples of listings from 2016 and 2017:



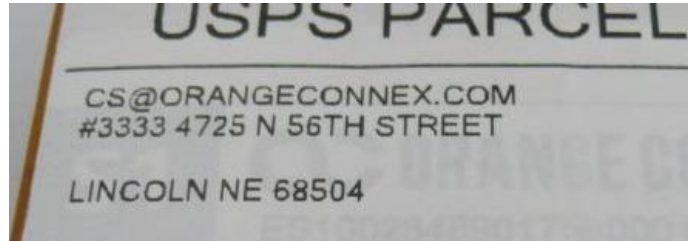
21. The keywords “spring ring” previously led to results showing many rings bearing counterfeit BVLGARI trademarks. Now, a search for the keywords “spring ring” shows results for rings

that do not bear counterfeit BVLGARI trademarks, but are otherwise visually identical to genuine BVLGARI rings.

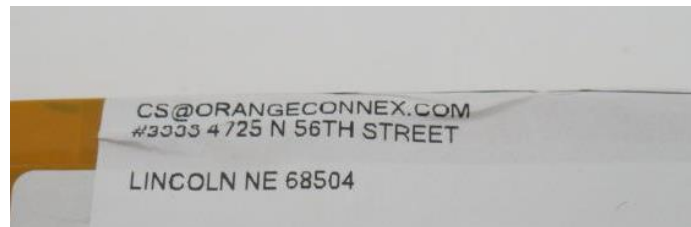
22. The keywords “round bow” flats previously led to results for shoes bearing the TORY BURCH trademarks, but do not anymore.
23. In my experience over the last ten (10) years, I have encountered dozens of situations where defendants operate multiple seller aliases that lack narrow, specific identifiers, but are commonly owned by a single defendant.
24. In my experience handling thousands of settlement negotiations with sellers like Defendants, often several of the seller aliases are owned or operated by the same individual or entity. For example, in the last three years, over fifty percent of seller aliases on eBay have been commonly owned by one individual or entity. In fact, there have been numerous instances where over a dozen seller aliases were owned or operated by the same individual or entity. It is not uncommon for dozens of the stores to be commonly owned by purportedly one owner. In a previous case handled by my firm (*Toyota Motor Sales, U.S.A., Inc. v. The P’Ships, et al.*, No. 22-cv-03956 (N.D. Ill. July 29, 2022)), the owner of over forty different seller aliases contacted our office seeking a settlement. Attached hereto as **Exhibit 10** is a true and correct copy of the satisfaction of judgment filed in case No. 22-cv-03956 representing that settlement.
25. I, or someone acting under my direction, have reviewed the storefronts and product listings for the Seller Aliases.
26. In this case, Defendants exhibit the same pattern of high-level market coordination. Here, many of the products received from Defendants have an identical return address, indicating that the products originate from the same source, or are distributed through similar channels. Below are some examples:



(Def. No. 28) [17-1] at 107



(Def. No. 30) [17-1] at 128



(Def. No. 31) [17-1] at 137



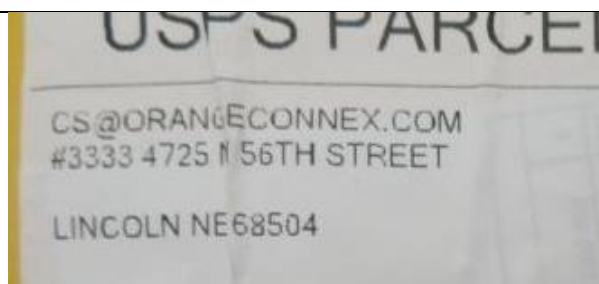
(Def. No. 32) [17-1] at 146



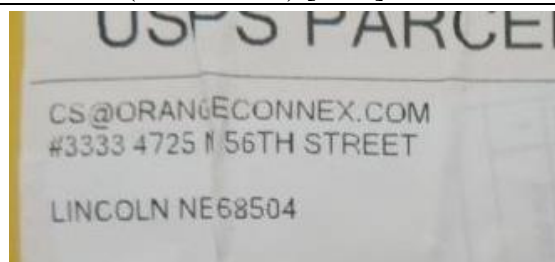
(Def. No. 34) [17-1] at 166



(Def. No. 41) [17-2] at 22



(Def. No. 43) [17-2] at 42



(Def. No. 42) [17-2] at 32

27. Other Defendants use similar advertising and marketing strategies and the same tactics to avoid detection and liability. Below are some examples:

Back to home page Business & Industrial Industrial Automation & Mo... PLCs & HMIs PLO Processors

1PC NEW FOR LANSLOTT 89465-48180
Front and rear oxygen sensor #LM#HL

100% positive Seller's other items Contact seller

US \$78.21
or Best Offer

Condition: New

Quantity: 1 More than 10 available

Buy it Now

Add to cart

Make offer

(Def. No. 57) [17-2] at 162

Back to home page Business & Industrial Industrial Automation & Mo... PLCs & HMIs PLO Processors

1PC NEW FOR MINGLO 89465-B1160
Front oxygen sensor #LM #F

96.2% positive Seller's other items Contact seller

US \$75.00
or Best Offer

Condition: New

Quantity: 1 10 available

Buy it Now

Add to cart

Make offer

Add to watchlist

(Def. No. 31) [17-1] at 134

UPTO 7% See all eligible items and terms

1PCS New FOR AMATI 89467-50020
front oxygen sensor

100% positive Seller's other items Contact seller

Condition: New

Sale ends in: 2d 4h

Quantity: 1 10 available

US \$112.92
or Best Offer

Was ~~US\$124.42~~ (7% off) Price details

No interest if paid in full in 6 mo on \$99+ with PayPal Credit*

Buy it Now

Add to cart

Make offer

Add to watchlist

to sell? Sell now

(Def. No. 62) [17-3] at 1

Back to home page Business & Industrial Industrial Automation & Mo... PLCs & HMIs PLO Processors Share Add to Watchlist

SAVE UP TO 7% WHEN YOU BUY MORE

IPC NEW Front oxygen sensor 89467-60010 #P

99.3% positive Seller's other items Contact seller

US \$95.00/ea or Best Offer

Condition: New

Quantity: 1 8 available · 2 sold

Bulk savings:

Buy 1	Buy 2	Buy 3
\$95.00/ea	\$90.25/ea	\$89.30/ea

4 or more for \$88.35/ea

Buy It Now

(Def. No. 64) [17-3] at 17

Shop by category Search for anything All Categories Search Advanced

Back to home page Business & Industrial Industrial Automation & Mo... Other Automation Equipment Share Add to Watchlist

IPC NEW Front and Rear Oxygen Sensor 89467-02020 #E5 -show original title

100% positive Seller's other items Contact seller

EUR 85.52 Approximately US \$93.41 or Best Offer

Condition: New

Buy It Now

Add to cart

Make offer

Add to watchlist

(Def. No. 85) [17-4] at 1

Back to home page Business & Industrial Industrial Automation & Mo... PLCs & HMIs PLO Processors Share Add to Watchlist

IPCs New FOR Front and rear oxygen sensor 89467-02020

100% positive Seller's other items Contact seller

US \$82.00 or Best Offer

Condition: New

Quantity: 1 5 available

Buy It Now

Add to cart

Make offer

(Def. No. 90) [17-4] at 50

28. **Exhibit 11** attached hereto are true and correct copies of unpublished authorities or authorities that are only published on an electronic database cited in Plaintiff's Supplemental Memorandum in Response to [23].

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this the 25th day of October 2024 at Chicago, Illinois.

/s/ Justin R. Gaudio

Justin R. Gaudio

Counsel for Plaintiff Toyota Motor Sales, U.S.A., Inc.