

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

KAWADA CO., LTD.,) Docket No. 19 C 6838
)
Plaintiff,)
)
vs.)
)
THE INDIVIDUALS, CORPORATIONS,)
LIMITED LIABILITY COMPANIES,)
PARTNERSHIPS AND UNINCORPORATED)
ASSOCIATIONS IDENTIFIED ON)
SCHEDULE A HERETO,) Chicago, Illinois
) December 18, 2019
Defendants.) 9:57 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - MOTIONS
BEFORE THE HONORABLE JOHN Z. LEE

APPEARANCES:

For the Plaintiff: HUGHES, SOCOL, PIERS, RESNICK
& DYM, LTD.
BY: MR. WILLIAM B. KALBAC
Three First National Plaza
70 West Madison Street, Suite 4000
Chicago, Illinois 60602

For Intervenor
ContextLogic, Inc.
d/b/a Wish: SKADDEN, ARPS, SLATE, MEAGHER
& FLOM
BY: MR. PATRICK J. FITZGERALD
MR. WILLIAM E. RIDGWAY
155 North Wacker Dr, Suite 2700
Chicago, Illinois 60606

Court Reporter: MR. JOSEPH RICKHOFF
Official Court Reporter
219 S. Dearborn St., Suite 2128
Chicago, Illinois 60604
(312) 435-5562

* * * * *

PROCEEDINGS RECORDED BY
MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED BY COMPUTER

1 THE CLERK: Recall of Case 19 CV 6838, Kawada vs. The
2 Partnerships.

3 MR. KALBAC: Good morning, your Honor, Bill Kalbac on
4 of behalf of plaintiff.

5 MR. RIDGWAY: Good morning, your Honor, Bill Ridgway
6 and Pat Fitzgerald on behalf of intervenor Wish.

7 THE COURT: Good morning.

8 So, first of all, I understand that Kawada does not
9 object to ContextLogic or Wish's motion to intervene.

10 Is that correct?

11 MR. KALBAC: That is correct, your Honor.

12 THE COURT: So, I'll go ahead and grant that motion
13 as being unopposed.

14 Now, as I understand it, the plaintiff has proposed
15 certain revisions to the aspects of the proposed injunctive
16 order that would impact Wish on a going-forward basis. As I
17 understand it -- and I just want to make clear -- Wish has
18 already -- Wish at this point has taken down the infringing
19 products, right -- or the alleged infringing products?

20 MR. RIDGWAY: It has, your Honor.

21 THE COURT: And with regard to the funds related or
22 of the defendants in this case, at this point at least, are
23 you holding them?

24 MR. RIDGWAY: They have been held, yes.

25 THE COURT: Okay.

1 And, so, what I want to hear from Wish, then, is what
2 are you trying to accomplish here, and what are your concerns
3 with regard to the proposed injunctive relief order?

4 MR. RIDGWAY: Yes, your Honor.

5 So, Wish complies with the orders as they come in,
6 even if it believes they are not justified. So, that's the
7 reason why Wish, in this circumstance and in many others, will
8 comply with the orders as they're issued. That doesn't take
9 away from the fact that we don't believe, on the record and on
10 the presentation that they've provided, that a non-party could
11 be bound by this injunction whatsoever and, certainly, now
12 that -- it has been narrowed some, but certainly still, on a
13 full asset freeze for these merchant accounts, even though
14 only a very, very small portion of the allegedly infringing
15 products are associated with plaintiff's marks and sales
16 associated with plaintiff's marks.

17 And, so, what they're coming in and obtaining is --
18 you know, these are small business owners. They have multiple
19 different products. And plaintiff, when they went through and
20 took screenshots and presented those to the Court, they took
21 screenshots of an individual product, but not of all the other
22 products that are made available by those merchants. And,
23 frankly, there's a reason for that, though; and, that's
24 because the vast majority of these products are completely
25 unrelated and are not even allegedly infringing the

1 plaintiff's products.

2 And, so, they're seeking to freeze all of those funds
3 based only on a mere product listing. And in some cases,
4 there's no sales whatsoever associated with that product
5 listing. And, so, we think that that's vastly overbroad and
6 not justified by the law.

7 THE COURT: But my question, I guess, is: Why does
8 Wish have any skin in that game?

9 So, in other words, say that the defendants --
10 Defendant A defaults and there's a default judgment, and
11 Defendant A has indicated no desire to contest these
12 proceedings or to raise any issues with regard to its funds.
13 So, then I'm in a position where I have to order a default
14 judgment based upon those funds. At that point, would Wish
15 have standing to come in and say, Judge, that default judgment
16 is not valid because only a portion of those funds actually
17 infringe? I would say, no, Wish has no standing on that
18 basis.

19 So, at this point, what standing does Wish have to
20 raise the objections with regard to the scope of the -- or the
21 amount of funds that would be frozen for any given defendant?

22 MR. RIDGWAY: Well, I guess with respect to the
23 standing itself -- so, obviously, the order is compelling Wish
24 to take its customers' funds -- merchant accounts -- and
25 freeze them --

1 THE COURT: But let's talk about your particular
2 objection. And I'm not talking about the privity objections.
3 I'm talking about specifically assuming that I find that Rule
4 65 would cover Wish with regard to this injunction.

5 One of the primary objections Wish raised was that
6 the injunction is too broad because it covers lots of
7 unfringing products. But what gives Wish standing to make
8 that objection on behalf of what, presumably, are its
9 customers?

10 MR. RIDGWAY: Well, Wish provides a platform for
11 people to buy and sell things. And if accounts are being
12 frozen on large numbers -- these TROs are getting larger and
13 larger, and customer accounts are getting frozen down for lots
14 of products that are perfectly lawful -- then that does have a
15 detrimental impact on its platform if these orders are being
16 issued. And the overbreadth impacts the platform itself and
17 the sales.

18 THE COURT: But why don't your customers then come
19 into this court and -- why don't these defendants come into
20 court and argue that the scope of the injunctive relief is
21 overbroad?

22 MR. RIDGWAY: And the customers are free to -- they
23 also have a separate interest apart from those that are --
24 that Wish has in this case. Wish, though -- I think Wish
25 interests are genuine and apart from the customers themselves.

1 Wish provides a platform for people to buy and sell things,
2 and these overbroad injunctions do impact it.

3 So, I don't think it takes apart -- it takes away
4 from the fact that this has a significant impact on Wish's
5 business operations, the fact that a customer also would have
6 the right to come in and say that these are overbroad.

7 We've presented a declaration to show -- and I don't
8 think there's any real rebuttal of that -- that this is --
9 these injunctions are getting issued and asset freezes are
10 applying to individuals and merchants who have one product
11 listing for which there's no sales, and then all the other
12 sales activity is completely unrelated to this case. And, so,
13 freezing the funds and proceeds for these merchants on that
14 basis, we think, is not justified by the law.

15 THE COURT: Let me ask you this: So, say that the --
16 let's say that the injunction was limited in scope,
17 hypothetically speaking, to a customer. And, so, the
18 plaintiff wishes or requests an injunction against the
19 customer, prohibiting the customer from posting any of its
20 products on Wish. And assume that the defendant, like these
21 defendants here, have made no indication that they're going to
22 contest that case or those claims.

23 Then, under the law, I have to assume those facts to
24 be true as alleged by the plaintiff. I issue an injunction --
25 permanent injunction -- prohibiting the customers from listing

1 their -- all of their -- products on Wish.

2 Does Wish then have standing to come in and say,
3 Judge, Judge, you know what, you're prohibiting them from
4 doing legitimate business with us; and, so, we want to contest
5 the default judgment injunction that you issued against the
6 defendants, even though we aren't bound by them at all?

7 MR. RIDGWAY: Right. I don't know that we would be
8 in a position to challenge a judgment that restricted what the
9 defendants in this case can do. I think I agree with your
10 Honor on that point. The point is where the order is
11 compelling Wish to do something.

12 If, for example, in that scenario your order also
13 ordered Wish not to do business with these and Wish had an
14 independent obligation as a non-party to that order, then I do
15 think Wish would have grounds to both intervene and challenge
16 that finding.

17 So, we're not challenging the Court's ability to
18 issue orders with respect to the defendants themselves. It's
19 where it affects Wish, where these orders are naming Wish,
20 that's where we believe that there are interests that are
21 not -- or we have the ability to challenge those; and, then,
22 when challenged, we don't believe that they have the law
23 behind them to justify these orders.

24 THE COURT: I understand that Wish provides a
25 marketplace platform for sellers. What services does Wish

1 provide? How does Wish work to a potential seller?

2 MR. RIDGWAY: It's -- you know, provide a platform
3 for buyers and sellers to --

4 THE COURT: So, what sort of services does it
5 provide?

6 MR. RIDGWAY: Well, it provides -- I guess -- I'm
7 sorry --

8 THE COURT: I'm sorry.

9 So, if I'm a seller and I want to sell on Wish, okay,
10 does Wish provide me with a Web site to upload my wares? Like
11 what does Wish do?

12 MR. RIDGWAY: Right. It's not an individualized Web
13 site, but there's a merchant account can be created where a
14 person could sell their goods. And it provides a mechanism
15 for people to make payments on those goods, that gets routed
16 through Wish. So, it is a forum for people to buy and sell.

17 THE COURT: And does Wish retain those payments
18 before -- for some time before it gets transferred to the
19 seller, or is it basically a -- or does it not? Do the
20 payments just go right to the seller?

21 MR. RIDGWAY: The payments go to the merchant, and
22 then the merchant -- it's up to the merchant's discretion as
23 to how much money they may retain in their accounts.

24 But those payments are -- from a buyer is going to --
25 sorry. When I say "to the merchant," I say to a merchant

1 account held with Wish. And, then, a merchant can draw funds
2 from that merchant account at any time in order to pay
3 employees, to pay for product, anything that a -- you know,
4 the type of things a small business owner needs to pay for.
5 So, that's how it functions.

6 THE COURT: I see.

7 So, Wish, I guess, provides, then, in some respects
8 two primary types of functions. One is it provides the
9 selling platform, you know, whether it's like Amazon
10 third-party sellers or eBay or what have you. If you want to
11 sell, you go on and register, you put your wares on.

12 And, then, it provides kind of a payment processing
13 service akin to, say, a PayPal or something like that, where
14 it collects payment for the accounts created by an individual
15 defendant, and it's up to the defendant to figure out what it
16 wants to do with those monies?

17 MR. RIDGWAY: Correct.

18 THE COURT: And how does Wish make money?

19 MR. RIDGWAY: So, it does collect a portion on the
20 sales of products. That's the main that I'm aware of. The
21 further detail, I'm happy to provide more information on that.
22 So --

23 THE COURT: What about on the payment process side?
24 Does it retain a certain -- or does it charge the seller or
25 the purchaser -- does it take a particular percentage for the

1 payment processing function?

2 MR. RIDGWAY: Your Honor, I'm not familiar with
3 whether that's separate -- there's a separate fee associated
4 with the payment processing tool as opposed to just one based
5 on the combined services.

6 THE COURT: I see. Okay.

7 So, as I understand it, the revised -- the revisions
8 that plaintiff is suggesting or proposing with regard to Wish
9 is that you want Wish to hold on -- freeze the current funds
10 that it has --

11 MR. KALBAC: Correct.

12 THE COURT: -- with regard to these defendants?

13 Wish is free to do business with them on a going-
14 forward basis?

15 MR. KALBAC: That is correct, your Honor, yes.

16 THE COURT: All right.

17 And what about funds on a going-forward basis that go
18 into that account? Those would not be subject to the freeze;
19 is that correct?

20 MR. KALBAC: Yes, your Honor.

21 THE COURT: Okay.

22 And, then, with regard to whatever obligation Wish
23 may have had to kind of police these Web sites or take those
24 down, are you still insisting that they do that -- well,
25 they've already done that, but that that aspect of the order

1 remain in place at least for activity that took place up to
2 the time of the order?

3 MR. KALBAC: Yes, that's correct. We're just
4 basically asking for them to keep the status quo.

5 MR. RIDGWAY: Your Honor, if I may, one thing that
6 could be -- if your Honor is trying to think about a
7 compromise position, one thing that Wish could readily
8 administer if need be -- and, again, I'm not trying to waive
9 the position that we don't believe -- putting that aside,
10 there could be an order that's issued such that there is a
11 freeze for any sales associated with the products that have
12 been identified by the plaintiff in the amount of whatever --
13 up to the amount in the account, such that then the freeze is
14 tied to the actual -- you know, the claim that they could ever
15 have associated with the lost profits for that individual
16 sale.

17 And, so, there, you wouldn't be -- and in some ways,
18 it would actually be probably, we'd say, overall much more
19 effective in the sense that if someone actually did have, for
20 whatever reason, a large number of infringing sales, their
21 account would be much -- you know, that would have a much more
22 dramatic effect.

23 If you're talking about a merchant who had a foot
24 fault, who accidentally bought a product and didn't recognize
25 that this was associated with plaintiff's mark, and has a vast

1 array of other products and funds associated with those, that
2 will not have a significant impact on their operations. And
3 in many ways, that's the -- I think, in some ways, the purpose
4 of what we're trying to achieve here, which is to be
5 proportionate to the activity of the -- or the alleged
6 activity of the -- defendants in this case.

7 So, we do think there's a way to -- if your Honor's
8 looking for a compromise -- to administer something along
9 those lines.

10 THE COURT: And how would that be administered? How
11 would you go about making that determination? How would the
12 parties go about making that determination?

13 MR. RIDGWAY: So, we have records, and we provide
14 them in the discovery in these cases routinely. They have a
15 product listing ID. It's very easy for Wish to know the
16 number of sales associated with that product listing. That's
17 something that's kept track of and automated and can easily be
18 administered on a very quick basis.

19 And, so, they would have confirmation of the numbers
20 associated that are tied to those sales, and they would know
21 then how much was frozen associated with those sales. And
22 Wish then would be able to administer that sale on a more
23 limited restriction in that circumstance.

24 MR. KALBAC: Your Honor, the issue we have with that
25 is while the product may in this case be listed for sale as

1 Nanoblock, when -- there's cases where when it's then
2 recorded, it's not recorded as Nanoblock. It may be recorded
3 as some type of other toy for accounting purposes. So, it's
4 decreased the amount of sales on paper that they're having of
5 that.

6 So, I don't feel this would be an equitable solution
7 at all because I don't feel that the correct amount would be
8 restrained. I think the way --

9 THE COURT: You mean that there are examples where
10 the description that the seller provides -- registers it with
11 Wish -- doesn't reflect that it's a Nanoblock product?

12 MR. KALBAC: Yes, that would be correct. So, the
13 accounting would not be accurate.

14 I feel that the way things are right now -- where the
15 account is frozen, we can negotiate with the sellers for
16 proper release of their accounts or settlement -- is much more
17 equitable.

18 MR. RIDGWAY: Your Honor, if I may, I believe in this
19 circumstance, the order would be placed on Wish initially,
20 which would administer this. So, if there's some sort of
21 change that could happen after that point, it would be locked
22 down.

23 Now, what I -- I guess I'm wondering what he's trying
24 to suggest is, are there other potential product listings that
25 should be frozen? I think that's what they're trying to

1 suggest. And that's where we have concerns about the -- there
2 not being clarity in the order.

3 We believe they should say, here are the product
4 listings we believe allegedly infringe. Wish is not going to
5 come in and contest that. Again, that's not our issue. But
6 we will freeze all sales associated with those product
7 listings.

8 And to the extent that there were some previous
9 activity that they haven't alleged in the case and haven't
10 named, listings that are not identified in this case, we don't
11 believe there's a basis to freeze that and I don't think
12 there's a way to administer that.

13 THE COURT: I don't think that that's exactly what
14 they're saying. I think the concern is that when a seller
15 lists a Nanoblock product, on the picture it would say
16 Nanoblock.

17 It would say Nanoblock on the description,
18 presumably?

19 MR. KALBAC: Yes.

20 THE COURT: And, so, could you comb through the
21 descriptions to identify products that have Nanoblock in the
22 description?

23 MR. RIDGWAY: I think we -- that's something that
24 could be done. The problem is that there's sometimes -- I
25 guess I'm confused because typically how this works is they

1 identify -- the product listings are like -- are URLs.
2 They're specified to the product. That's the easiest way to
3 administer it because then it's very specific. They go
4 through and identify the products that are -- allegedly
5 infringe. They provide those URLs to us and we -- they could
6 -- and those are removed and could be -- and assets associated
7 with those could be frozen.

8 We don't believe -- and I think that's -- I guess I'm
9 confused because we had walked way from that requirement of
10 the TRO where Wish is under the obligation to then search
11 through and search through other items and make decisions
12 about their trademark, which we think would be problematic and
13 difficult to administer. We believe plaintiff has the
14 obligation to identify the specific product listings, and then
15 we will administer them accordingly.

16 THE COURT: So, what do we do about cases or
17 defendants that -- and I don't know whether such defendants
18 exist -- where, you know, 80 percent of what they sell on Wish
19 is not Nanoblock items but other items, whether valid or not?
20 How do we deal with that sort of situation?

21 MR. KALBAC: In that situation, the defendants can
22 present us that evidence themselves and we can negotiate a
23 settlement from there.

24 THE COURT: Well, but the -- with regard to obtaining
25 a preliminary injunction, though, it's incumbent upon -- the

1 burden is on the plaintiff to try to propose a scope of
2 injunctive relief that is appropriate to the case, right?

3 MR. KALBAC: Yes.

4 THE COURT: And, so, if a defendant -- hypothetically
5 speaking, let's say a defendant sells a hundred products at a
6 particular time and two are Nanoblocks. What you would like
7 the Court to do is still enjoin a hundred percent of their
8 account, despite the fact -- well, that's what you would ask
9 the Court to do. And, then, your feeling is that defendants
10 can come and negotiate with you to decrease that amount to the
11 two percent that is appropriate?

12 MR. KALBAC: Yes.

13 And we're also proposing that the freeze on the
14 account just happen -- whatever amounts are in the account at
15 the time that the temporary restraining order is entered,
16 those amounts would be frozen. Anything above that that
17 defendants would earn could still stay in their account to
18 use.

19 So, it wouldn't -- so, there -- I feel it's a fair
20 compromise because defendants then could present us with their
21 sales figures, negotiate lower settlement amounts; but, their
22 account would still be open for them to use and their business
23 would not be crippled.

24 THE COURT: All right.

25 So, the underlying problem, of course, with all of

1 this is that these defendants don't appear, right?

2 MR. RIDGWAY: Infrequently.

3 THE COURT: And, so, in some ways, Wish is here -- in
4 some ways -- as a surrogate, to try to argue for these
5 defendants.

6 MR. KALBAC: Your Honor, if I may, defendants, while
7 they may not appear in court, I have correspondence. I have
8 probably about a hundred e-mails from various defendants and
9 defendants' attorneys every day who represent these sellers.
10 So, they do not appear in court, but they are present. And we
11 do negotiate settlements frequently with them.

12 MR. RIDGWAY: Your Honor, just -- your Honor's hypo,
13 though, is actually the facts of this case in many of these.
14 97 percent of the sales associated with these defendants is
15 unrelated to anything related to plaintiff's marks. And 40
16 percent of these defendants have zero sales of the products
17 that have been identified.

18 So, when you put an asset freeze on all of their --
19 all of the assets associated with that account, these are --
20 some of these are very large sellers. And, so, you're
21 depriving the marketplace of all -- while they maybe still
22 operate, the reality is when you freeze the funds of a small
23 business, that grinds their operations to a halt. And, so --

24 THE COURT: But, again, isn't the solution that the
25 defendants contact plaintiff's counsel or come into court and

1 contest the preliminary injunction that the plaintiff is
2 seeking?

3 MR. RIDGWAY: That's one mechanism. But functionally
4 what's happening, your Honor, is when you get an asset freeze
5 that's completely disproportionate to what is actually at
6 issue, then they're able to negotiate within that setting.
7 So, the reality is what's happening is that they're
8 negotiating with -- where their business is coming to a
9 standstill in a situation in which, you know, we're at a time
10 where everyone's looking to get back to their operation.

11 So, I don't think we should -- at least we don't
12 believe we should get an overbroad order and then let people
13 just negotiate off of that -- off of an overbroad order -- in
14 the midst of an asset freeze. We think that the appropriate
15 mechanism is to focus on what the rules justify for when an
16 order is appropriate in scope. And that does, again, have a
17 genuine material impact on Wish, as well.

18 MR. KALBAC: And this is not grinding their business
19 down to a halt, your Honor. They would still be able to
20 proceed as normal. It would simply freeze the amounts at the
21 time of the entry of the temporary restraining order.

22 Oftentimes these defendants regularly sweep funds out
23 of their account into different accounts. That's why we can
24 only restrain the PayPal accounts. For example, any payments
25 made through credit card, we have no ability to freeze those

1 accounts. So, this is just a small slice of their business.
2 I would -- a small tip of the iceberg. In fact, most payments
3 are probably made through credit card.

4 THE COURT: Okay.

5 Anything to add?

6 MR. RIDGWAY: Your Honor, I guess the one final point
7 is we are asking -- you know, in this situation, the plaintiff
8 is asking the Court to draw on the Court's equitable powers.
9 And we do think that using, you know, the two percent or the
10 one percent of allegedly infringing conduct to freeze over 98,
11 90 percent of a merchant's account is not an appropriate
12 use -- doesn't draw upon the Court's equitable powers in a way
13 that's appropriate. This is extraordinary relief, and it
14 should be narrowly tailored. So, we do think that also should
15 be a factor here.

16 THE COURT: Okay. Thank you.

17 So, ContextLogic, Inc., doing business as Wish.com,
18 has moved to intervene in Kawada Company, Limited's trademark
19 infringement suit against individuals and entities identified
20 in Schedule A of CM/ECF No. 41. Kawada has responded that it
21 doesn't object to the motion to intervene. And, so, as I
22 noted, the motion to intervene as unopposed is granted.

23 So, the intervenor, ContextLogic, which I will refer
24 to as Wish, objects to certain aspects of Kawada's proposed
25 preliminary injunction order.

1 First, ContextLogic contends that because Wish has a
2 procedure by which plaintiff could have requested that Wish
3 take down the infringing product listings, the TRO was
4 improvidently issued and a preliminary injunction should not
5 issue as requested by the plaintiff. Utilizing such
6 procedures is not a prerequisite, given that nowadays
7 infringers have become increasingly sophisticated and brazen.
8 For example, at the first hint of a potential lawsuit,
9 infringers withdraw an account's infringing product listings,
10 move funds associated with the withdrawn account to offshore
11 banks outside the jurisdiction of the United States, and
12 relist the infringing products under new accounts with funds
13 generated by sales of counterfeit goods. This practice
14 irreparably harms trademark owners and leaves them with no
15 effective recourse. These types of cases, in particular,
16 involving offshore sellers require trademark owners to tip off
17 infringers -- requiring trademark owners to tip off infringers
18 would frustrate the purposes of federal trademark infringement
19 and counterfeit laws.

20 Second, Wish argues that it should not be bound by a
21 preliminary injunction because it has not actively aided and
22 abetted the defendant sellers listed in Schedule A to violate
23 an existing injunction and is also not in privity with these
24 defendants.

25 Rule 65(d) (2), however, provides that an injunction

1 may bind not only the parties to the case, but their officers,
2 agents, servants, employees, and attorneys.

3 Here, Wish has a contractual relationship with
4 defendants to provide a functioning marketplace where
5 defendants' counterfeit wares can be sold to residents of this
6 district. Wish also has agreed to process payments for these
7 defendants and maintain certain funds for their benefit.
8 Accordingly, the Court finds that it is an agent of the
9 defendants for the purposes of Rule 65. See example United
10 States vs. Mercy Regional Health Systems, Limited, 2008
11 Westlaw 695918, Southern District of Illinois, March 13, 2008,
12 stating, "It is clearly within the Court's power to restrain
13 defendants' brokers, employees and agents. Of course, it
14 would be improvident for a financial institution to permit or
15 restrain defendant from accessing accounts it holds in his or
16 her name."

17 As it currently stands, Wish states it has already
18 removed the infringing listings at issue and has provided
19 plaintiff with the requested information regarding the Wish
20 defendant sellers and the accounts associated with the
21 infringing listings. Wish objects to the remaining
22 requirement that it freeze the funds held for the benefit of
23 defendants on two grounds.

24 First, Wish posits that only a portion of the funds
25 that have been frozen are associated with the sales of

1 infringing items. However, this is an issue in dispute
2 between the alleged infringing sellers, who are the defendants
3 in this case, and the plaintiff. The defendants have been
4 served and may come to court and make their case. It is
5 difficult for the Court to see how Wish would have standing to
6 dispute plaintiff's claims or how Wish would be injured in the
7 event that defendants chose not to defend against plaintiff's
8 allegations and rather elect to default on plaintiff's claims
9 here. The Court finds that Wish lacks standing to interject
10 itself into the merits of plaintiff's Lanham Act claims
11 against the defendants.

12 Second, Wish suggests it may be injured because the
13 injunctive relief plaintiff seeks would prohibit it from
14 conducting legitimate business with the defendants. But the
15 Court finds that this concern is adequately addressed in
16 plaintiff's proposed amendment to the proposed preliminary
17 injunction.

18 The proposed revised preliminary injunction orders
19 that any third-party providers, including PayPal, Alipay,
20 Wish, DhGate, and Amazon Pay, shall, within five business days
21 of receipt of the order for any defendant or any of the
22 defendants' online merchandise accounts or Web sites, restrain
23 and enjoin any such accounts or funds that are not U.S. based
24 from transferring or disposing of any money or other of
25 defendants' assets associated with sales from product listings

1 identified on Schedule A until further ordered by this Court.

2 Kawada thus represents that funds above and beyond
3 the particular amounts already frozen that are associated from
4 the product listings identified in Schedule A are not
5 restrained under the revised preliminary injunction order, and
6 that Wish would be allowed to continue its relationship with
7 the defendant sellers so long as sellers themselves are not
8 violating the injunction.

9 Accordingly, for these reasons, Wish's opposition to
10 the preliminary injunction that's proposed as amended by the
11 plaintiff is denied by the Court.

12 In the end, this case provides -- is one of a
13 category of cases where typically the defendants who are
14 alleged to infringe on the trademarks of the manufacturer who
15 are from abroad and operate via different sorts of Web sites
16 and payment accounts do not come to court to contest the
17 preliminary injunctions. Often cases, those defendants also
18 elect, for one reason or another, to default on these cases
19 rather than contesting the motions that are brought by the
20 plaintiff or the claims that are brought by the plaintiff.

21 The plaintiffs are then put in a rather difficult
22 situation because, on the one hand, the trademark law requires
23 them to enforce their trademarks vigorously so that it, as a
24 matter of law, is not found to abandon its trademarks. And
25 yet when faced with sellers who operate from abroad who in

1 many instances just close down one Web site, open another
2 account under different names and provide unreliable --
3 oftentimes unreliable -- contact information, it puts
4 plaintiff in a very difficult position in this case.

5 The solution is not for marketplace providers or
6 payment processors like Wish or PayPal to come into court to
7 defend the interests of the defendants. The solution is that
8 if the defendants disagree with either the scope of the
9 injunction or the merits of the claims, defendants themselves
10 come in and defend against those actions here in court. They
11 leave themselves open to the jurisdiction of this Court by
12 selling their wares into this district. The Court has
13 jurisdiction over them. They should come and defend their
14 interests.

15 I understand the concern that Wish has and why Wish
16 is here. I don't mean to discount them. But given the claims
17 in this case and the facts of this case, the way defendants
18 typically operate in cases like this, the plaintiff's
19 obligation to enforce its trademarks, and the ample
20 opportunity that defendants have to come in and contest these
21 claims and these allegations, they're the ones that should
22 make these arguments before the Court and not Wish.

23 So, as I said, on those bases, the objection is
24 denied.

25 Thank you.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. KALBAC: Thank you.

MR. RIDGWAY: Thank you.

MR. FITZGERALD: Thank you, your Honor.

* * * * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Joseph Rickhoff
Official Court Reporter

December 19, 2019