

JUDGE SCHINDLER

12 CIV 9338

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OMEGA SA,

Plaintiff,

v.

XIE ZHENMIN, *et al.*,

Defendants.

Civil Action No.:

Judge:

[PROPOSED] ORDER GRANTING
EX-PARTE TEMPORARY RESTRAINING ORDER

THIS CAUSE is before the Court on Plaintiff's *Ex Parte* Application For Entry of a Temporary Restraining Order and Preliminary Injunction (the "Application for TRO").

Plaintiff, Omega, SA ("Plaintiff" or "Omega"), moves, on an ex parte basis, for entry of a temporary restraining order, and, upon expiration of the temporary restraining order, a preliminary injunction against Defendants Xie Zhenmin and Zhenmin Xie (Watchesvogue.com), Shenzhen Lai Wode Technology Co., Ltd (Watchdear.com), John Doe 1 (Queenofwatches.com), is Shaped Design Co., Ltd. and Wang Junxi (Replicaup.com), Shanghai Jing Hao Machinery Co., Ltd. and Jinglei Wang (Watchmimic.com), Guangren Wang (Watchkind.com), John Doe 2 (Myfavomega.com), John Doe 3 (Omegaonlineoutlet.com), Qi Tang (Omegaonlineoutlet.biz), Bony Huny (Omegaonlineoutlet.net), John Doe 4 (Qualityreplica.biz), Meng Luo (Qualityreplica.info), Menge Luony (Qualityreplica.us), Paul Fiore (Bestreplicawatchesok.com), Mingqin Liu (Swisskiss.net), Zhu Yong (Sinohorloge.com),

Xie Jun (Saleswiss.com), Fan (Watchesyes.net), John Doe 5 (Replicavip.org), Li Guangping (Watchc.com), Guangzhou Shouai Trading Co., Ltd and Zhang Shungliang (Watchespay.net), Optical Automation Instrument Co., Ltd. and Zhan Lixiong (Replicabuy.net), Lai Shuang (Watch7750.com), Xiaojie Ma (Swissale.net), Li Yuanming (Replicafind.net), Weichengwang (Salesreplicas.com), Baoling Yang (Replicwalker.com), Intellectual Property Agency Ltd. and Jie Xu (Replicaprice.com), Zhi Technology Co., Ltd. and Yukun Cui (Watchesfull.com) and John Does 6-34 (“Defendants”), pursuant to 15 U.S.C. § 1116 and Fed. R. Civ. P. 65 for alleged violations of the Lanham Act, 15 U.S.C. §§ 1114, and 1125(a).



For reasons set forth herein, Plaintiff’s Application for a Temporary Restraining Order is GRANTED.

I. Factual Background

The Court bases this Temporary Restraining Order on the following facts from Plaintiff’s Complaint, Application for TRO, and supporting evidentiary submissions. Omega is a Swiss corporation with its principal place of business at 96 Rue Jakob Stampfli, CH-25009 Bienne, Switzerland. For over 150 years, Omega has manufactured and sold watches under, among others, the OMEGA and Ω marks.

Omega is, and at all times relevant hereto has been, the owner of all rights in and to the following federally registered trademarks:

Trademark	Registration No.	Registration Date	Class(es)/Goods
Ω OMEGA	25,036	May 23, 1894	IC 014: Watch movements and watch cases
OMEGA	566,370	November 4, 1952	IC 014: Watches and parts thereof

	734,891	July 14, 1962	IC 014: Timepieces and parts thereof
	3,757,932	March 9, 2010	IC 014: jewelry and precious stones; horological and chronometric instruments.
SEAMASTER	556,602	March 25, 1952	IC 014: Watches, watch parts and watch movements
SPEEDMASTER	672,487	January 13, 1959	IC 014: Watches and clocks
CONSTELLATION	1,223,349	January 11, 1983	IC 014: Watches and parts thereof
DE VILLE	1,309,929	December 18, 1984	IC 014: Watches, Wrist Watches, Portfolio Watches, Pendant Watches, and Miniature Clocks; and Parts Thereof
HOUR VISION	3,681,927	September 15, 2009	IC 014: Horological and chronometric instruments
PLANET OCEAN	3,085,659	April 25, 2006	IC 014: Watches and watch parts
BROAD ARROW	3,418,186	April 29, 2008	IC 014: Watches, watch straps, watch bracelets and parts thereof; chronometers, chronographs, watches made of precious metals, watches partly or entirely set with precious stones

(the “Omega Marks”). *See*, Ex. A to the Complaint (Omega’s trademark registrations).

The Defendants have advertised, offered for sale, and/or sold, watches bearing what Plaintiff has determined to be counterfeits, of the Omega Marks. The Defendants are not now, nor have they ever been, authorized or licensed to use, reproduce, or make counterfeits of the Omega Marks (Decl. of C. Hurley at ¶10).

Between December 3, 2012 and the filing of its motion for a TRO, Omega through its agents and investigators have investigated suspected sales of counterfeit Omega watches by the Defendants. As part of its investigation, Omega accessed the Internet websites operating under the following domain names:

- | | |
|--|--|
| (1) http://www.watches-vogue.com | (16) http://www.sinohorloge.com |
| (2) http://www.watchdear.com | (17) http://www.salesswiss.com |
| (3) http://www.queenofwatches.com | (18) http://watchesyes.net |
| (4) http://www.replicaup.com | (19) http://replicavip.org |
| (5) http://www.watchmimic.com | (20) http://www.watchc.com |
| (6) http://www.watchkind.com | (21) http://www.watchespay.net |
| (7) http://www.myfavomega.com | (22) http://www.replicabuy.net |
| (8) http://www.omegaonlineoutlet.com | (23) http://www.watch7750.com |
| (9) http://www.omegaonlineoutlet.biz | (24) http://www.swissale.net |
| (10) http://www.omegaonlineoutlet.net | (25) http://www.replicafind.net |
| (11) http://www.qualityreplica.biz | (26) http://www.salesreplicas.com |
| (12) http://www.qualityreplica.info | (27) http://www.replicawalker.com |
| (13) http://www.qualityreplica.us | (28) http://replicaprice.com |
| (14) http://www.bestreplicawatchesok.com | (29) http://www.watchesfull.com |
| (15) http://www.swisskiss.net | |

(“Counterfeit Websites”).

As reflected in the images captured from the Counterfeit Websites, each site states that they are selling “Replica” OMEGA watches. L. Kennedy Decl. at Exs. 1-29.

Omega accessed each of the 29 counterfeit websites between November 27, 2012 and December 13, 2012. Images captured from each of the Counterfeit Websites, are attached to the Lauren Kennedy declaration submitted in support of Omega’s Motion for a temporary restraining order and preliminary injunction. L. Kennedy Decl. at Exs. 1-29 (“Counterfeit Website Screen Shots”). Colleen Hurley, the Omega Sales Operations Manager of Omega’s exclusive US Distributor, The Swatch Group (US), Inc. who is personally knowledgeable regarding the differences between genuine and counterfeit OMEGA watches, personally reviewed the images captured from the Counterfeit Websites, and determined that these websites were advertising and offering for sale counterfeit OMEGA watches.

II. Conclusions of Law

Plaintiff's declarations and other submissions in support of its Application for TRO support the following conclusions of law:

1. Plaintiff has a very strong probability of proving at trial that consumers are likely to be confused by the Defendants' advertisement, promotion, sale, offer for sale, and/or distribution of counterfeit OMEGA watches.

2. Because of the infringement of the Omega Marks, Plaintiff is likely to suffer immediate and irreparable injury if a temporary restraining order is not granted. It clearly appears from the following specific facts, as set forth in Plaintiff's Complaint, Plaintiff's Application for TRO, and accompanying declarations on file, that immediate and irreparable loss, damage, and injury will result to Plaintiff and to consumers before the Defendants can be heard in opposition unless Plaintiff's request for *ex parte* relief is granted:

a. The Defendants own or control Internet business operations which advertise, promote, offer for sale, and sell, counterfeit watches in violation of Plaintiff's rights;

b. There is good cause to believe that more counterfeit and infringing watches will appear in the marketplace; that consumers may be misled, confused, and disappointed by the quality of these products; and that Plaintiff may suffer loss of sales for its genuine products;

c. There is good cause to believe that if Plaintiff proceeds with normal advance notice to the Defendants on this Application for TRO, the Defendants can easily and quickly transfer the registrations for many of the Counterfeit Websites, or modify registration data and content, change hosts, and redirect traffic to other websites, thereby thwarting Plaintiff's ability to obtain meaningful relief;

d. The balance of potential harm to the Defendants in restraining their trade in

counterfeit watches if a temporary restraining order is issued is far outweighed by the potential harm to Plaintiff, its reputation and goodwill as a manufacturer of high quality watches if such relief is not issued; and

e. The public interest favors issuance of a temporary restraining order in order to protect Plaintiff's trademark interests and to protect the public from being defrauded by the palming off of counterfeit goods as genuine goods of the Plaintiff.

TEMPORARY RESTRAINING ORDER

Upon review of Plaintiff's Complaint, Application for TRO, and supporting evidentiary submissions, it is hereby **ORDERED** that Plaintiff's Application for TRO is **GRANTED**, according to the terms set forth below:

1. The Defendants, their officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with the Defendants having notice of this Temporary Restraining Order are hereby temporarily restrained:

a. From manufacturing, importing, advertising, promoting, offering to sell, selling, distributing, or transferring any products bearing the Omega Marks, or any confusingly similar trademarks, other than those actually manufactured or distributed by Plaintiff; and

b. From secreting, concealing, destroying, selling off, transferring, or otherwise disposing of: (i) any products, not manufactured or distributed by Plaintiff, bearing the Omega Marks, or any confusingly similar trademarks; or (ii) any evidence relating to the

manufacture, importation, sale, offer for sale, distribution, or transfer of any products bearing the Omega Marks, or any confusingly similar trademarks.

2. The Defendants, their officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with the Defendants having notice of this Temporary Restraining Order shall immediately discontinue the use of the Omega Marks or any confusingly similar trademarks, on or in connection with all Internet websites owned and operated, or controlled by them including the Counterfeit Websites;

3. The Defendants, their officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with the Defendants having notice of this Temporary Restraining Order shall immediately discontinue use of the Omega Marks, or any confusingly similar trademarks within domain name extensions, metatags or other markers within website source code, on any webpage (including as the title of any web page), any advertising links to other websites, from search engines' databases or cache memory, and any other form of use of such terms which is visible to a computer user or serves to direct computer searches to websites registered by, owned, or operated by the Defendants, including the Counterfeit Websites;

4. The Defendants shall not transfer ownership of the Counterfeit Websites or the domain names for such sites, during the pendency of this Action, or until further Order of the Court;

5. The top-level domain (TLD) Registries for the Counterfeit Websites' domain names (including Verisign and Neustar), within five (5) days of receipt of this Temporary

Restraining Order shall change the registrar of record for the Counterfeit Website domain names to the registrar, GoDaddy.com, Inc., and place same in Account No. **58252161** ("Holding Account"). Upon the change of the registrar of record for the Counterfeit Website domains to the Holding Account, GoDaddy.com, Inc. will hold access to the domain names in trust for the Court during the pendency of this action. GoDaddy.com, Inc. is currently the registrar of the websites watchmimic.com and replicwalker.com. GoDaddy.com, Inc. shall transfer watchmimic.com and replicwalker.com to Account No. **58252161**. Additionally, GoDaddy.com, Inc. shall immediately update the Domain Name System ("DNS") data it maintains for the Counterfeit Website domain names, which link the domain names to the IP addresses where their associated websites are hosted, to **ns1.softlayer.com** and **ns2.softlayer.com**, which will cause the domain names to resolve to a website where a copy of the Complaint, Summonses, Temporary Restraining Order, and all other documents on file in this action are displayed. Alternatively, GoDaddy.com, Inc. may institute a domain name forwarding which will automatically redirect any visitor to the Counterfeit Website domains to the following Uniform Resource Locator ("URL") <http://www.notice-lawsuit.com> whereon copies of the Complaint, Summonses, Temporary Restraining Order, and all other documents on file in this action are displayed. After GoDaddy.com, Inc. has effected this change, the Counterfeit Website domains shall be placed on Lock status, preventing the modification or deletion of the domains by the registrar or the Defendants;

6. The Defendants shall preserve copies of all their computer files relating to the use of any of the Counterfeit Websites and the domain names for such Counterfeit Websites and shall take all steps necessary to retrieve computer files relating to the use of the Counterfeit

Websites and domain names, and that may have been deleted before the entry of this Temporary Restraining Order;

7. In accordance with 15 U.S.C. § 1116(a) and this Court's inherent equitable power to issue provisional remedies ancillary to its authority to provide final equitable relief, Defendants and their officers, employees and agents ~~and any persons in active concert or participation with them, and any banks, savings and loan associations, payment processors, or other financial institutions, including without limitation,~~ The Bank of China Limited, BOC Credit Card (International) Limited, PayPal, Inc. Visa, MasterCard, American Express, Discover Card and/or Western Union, ~~or other merchant account providers, payment providers, or third-party processors for any Defendants, any of Defendants' operations, Defendants Counterfeit Websites or for any other website owned or controlled by Defendants, who receive actual notice of this Order shall immediately locate all accounts connected to Defendants or Defendants' Counterfeit Websites and that such accounts be temporarily restrained and enjoined from transferring or disposing of any money or other of Defendants' assets, not allowing such funds to be transferred or withdrawn, and not allowing any refunds, charge-backs, or other diminutions to be made from such accounts pending further order from this Court.~~ Upon two (2) business day's written notice to the Court and Plaintiff's counsel, any Defendant may, upon proper showing, appear and move for the dissolution or modification of the provisions of this Order concerning the restriction upon transfer of Defendants' assets;

8. Discovery may begin immediately by Plaintiff by providing actual notice, pursuant to subpoena or otherwise, of this Order to any of the following: (1) Defendants, their agents or employees, and any persons acting in concert or participation with them; (2) any banks, payment processors or other financial institutions including without limitation, The Bank of

China Limited, BOC Credit Card (International) Limited, PayPal, Inc. Visa, MasterCard, American Express, Discover Card or Western Union or other merchant account providers, payment providers, third party processors, credit card associations which process or receive payments or hold assets on Defendants' behalf; and (3) any third party service providers, including ISPs, back-end service providers, web designers, sponsored search engine or ad-word providers, shippers, domain name registrars, domain name registries, host providers or online third-party sellers who have provided services for Defendants;

9. Any third party providing services in connection with any Defendant and/or any Counterfeit Website, including ISP's, back-end service providers, web designers, sponsored search engine or ad-word providers, banks, merchant account providers including The Bank of China Limited, BOC Credit Card (International) Limited, PayPal, Inc. Visa, MasterCard, American Express, Discover Card or Western Union, third party processors and other payment processing services, shippers, domain name registrars, domain name registries, host providers, WHOIS privacy services, and online third-party selling platforms (collectively "Third Party Providers") shall within ten (10) days after receipt of such notice, provide copies of all documents and records in such person or entity's possession or control relating to:

- a. The identities and addresses of Defendants ~~and any person acting in concert or participating with them,~~ and the locations of Defendants' operations, including identifying information associated with Defendants' Counterfeit Websites and financial accounts;
- b. Defendants' Counterfeit Websites;
- c. Any domain name registered by Defendants;
- d. Any financial accounts owned or controlled by Defendants, including such accounts residing with or under the control of any banks, payment processors or other financial

institutions, including The Bank of China Limited, BOC Credit Card (International) Limited, PayPal, Inc. Visa, MasterCard, American Express, Discover Card or Western Union or other merchant account providers, payment providers, third party processors, credit card associations (e.g., MasterCard and Visa);

10. This Temporary Restraining Order shall remain in effect until the date for the hearing on the Motion for Preliminary Injunction set forth below, or until such further dates as set by the Court or stipulated to by the parties;

This Order is for Cause

11. This Temporary Restraining Order shall apply to the Counterfeit Websites and their respective domain names and any other domain names properly brought to the Court's attention and verified by sworn affidavit which verifies such new domain names are being used by Defendants for the purpose of counterfeiting the Omega Marks at issue in this action and/or unfairly competing with Omega in connection with search engine results pages;

BOND TO BE POSTED

12. Pursuant to 15 U.S.C. § 1116(d)(5)(D), Plaintiff shall post a bond (or other acceptable security) in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00), as payment of damages to which Defendants may be entitled for a wrongful injunction or restraint. Plaintiff shall post the bond/security prior to requesting the registries change to the registrar of record for the Counterfeit Website domain names to a holding account with GoDaddy.com, Inc., and prior to freezing any financial accounts;

by December 28, 2012

PRELIMINARY INJUNCTION

13. A hearing is set before this Court in the United States Courthouse located at 500 Pearl Street, New York, New York 10007, Courtroom 15C, on January 10, 2013, at 2:30 pm or at such other time that this Court deems appropriate, on Plaintiff's Motion for a Preliminary Injunction restraining the Defendants, their officers, directors, employees, agents, subsidiaries, distributors, and all persons in active concert or participation with the Defendants from engaging in the activities that are subject of the above Temporary Restraining Order.

Any response or opposition to Plaintiff's Motion for Preliminary Injunction must be filed and served on Plaintiff's counsel at least four business days prior to the hearing set for January 7 at 4:30 pm 2013. Plaintiff shall file any Reply Memorandum ~~at least two~~ business days prior to the by January 9 at 4:30 pm 2013 hearing. The above dates may be revised upon stipulation by all parties and approval of this Court. The Defendants are hereby on notice that failure to appear at the hearing may result in the imposition of a preliminary injunction against them pursuant to 15 U.S.C. § 1116(d) and Fed. R. Civ. P. 65;

SERVICE BY ELECTRONIC MEANS

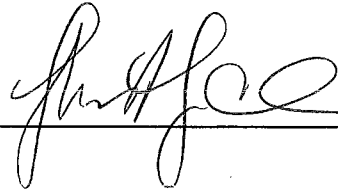
14. Plaintiff's request to effectuate service of process by electronic means is GRANTED. Plaintiff shall serve copies of the Complaint, Application for TRO and this Temporary Restraining Order and all other pleadings and documents on file in this action on all the Defendants by email, to the email addresses listed in Appendix A to this Order, and by posting copies of all court filings and this Temporary Restraining Order on the website located at <http://www.notice-lawsuit.com> within forty-eight (48) hours of receiving notice that control of the Counterfeit Website domain names being changed to a GoDaddy.com, Inc. Holding Account,

and such notice so given shall be deemed good and sufficient service thereof. Plaintiff shall continue to provide notice of these proceedings and copies of the documents on file in this matter to the Defendants by serving such materials by email and by regularly updating the website located at <http://www.notice-lawsuit.com> or by other means reasonably calculated to give notice which is permitted by the Court.

CASE FILE SEALED

15. This action shall remain sealed by the Court until the date for the preliminary injunction hearing set forth above, at which time the Clerk shall remove the seal.

IT IS SO ORDERED.



Dated: Dec. 21, 2012

APPENDIX A

Defendant	Domain Name	Email Addresses
1.	http://www.watches-vogue.com	admin@watches-vogue.com service@watches-vogue.com yangb0593@gmail.com
2.	http://www.watchdear.com	admin@watchdear.com service@watch-dear.com yangliufang89@gmail.com
3.	http://www.queenofwatches.com	qu4676923903401@domainidshield.com qu4676923903402@domainidshield.com qu4676923392003@domainidshield.com qu4676923392004@domainidshield.com queenofwatches@gmail.com
4.	http://www.replicaup.com	admin@replicaup.com service@replicaup.com yangliufang78@gmail.com yangb0593@gmail.com
5.	http://www.watchmimic.com	admin@watchmimic.com service@watchmimic.com yangliufang78@gmail.com yangb0593@gmail.com
6.	http://www.watchkind.com	admin@watchkind.com service@watchkind.com yangliufang78@gmail.com yangb0593@gmail.com
7.	http://www.myfavomega.com/	contact@privacyprotect.org service@myfavomega.com
8.	http://www.omegaonlineoutlet.com	contact@privacyprotect.org salewatchesstore@gmail.com
9.	http://www.omegaonlineoutlet.biz	parigmat@gmail.com salewatchesstore@gmail.com
10.	http://www.omegaonlineoutlet.net	bhu38@yahoo.com salewatchesstore@gmail.com
11.	http://www.qualityreplica.biz	contact@privacyprotect.org service@wr48.raybangood.com
12.	http://www.qualityreplica.info	luomeng96@yahoo.com service@wr48.raybangood.com
13.	http://www.qualityreplica.us	luomeng96@yahoo.com service@wr48.raybangood.com
14.	http://www.bestreplicawatchesok.com/	marvakjq@hotmail.com
15.	http://www.swisskiss.net/	admin@swisskiss.net
16.	http://www.sinohorloge.com/	sinohorloge@163.com

17.	http://www.salesswiss.com/	zhengpinsale@163.com service@swissale.net
18.	http://watchesyes.net/	pong2987@126.com watchesyes@126.com
19.	http://replicavip.org/	contact@privacyprotect.org
20.	http://www.watchc.com/	swisseta@qq.com
21.	http://www.watchespay.net/	zhangxian108@163.com service@watchespay.net
22.	http://www.replicabuy.net/	admin@replicabuy.net service@replicabuy.net
23.	http://www.watch7750.com/	hongfeida2008@163.com domain@abcde.com sales@watch7750.com
24.	http://www.swissale.net	admin@swissale.net service@swissale.net
25.	http://www.replicafind.net/	admin@replicafind.net service@replicafind.net
26.	http://www.salesreplicas.com/	salesreplicas@yeah.net
27.	http://www.replicawalker.com/	ebuysoooooo@21cn.com bigexporters@gmail.com
28.	http://replicaprice.com/	admin@replicaprice.com nameshoufeng@163.com replicaprice2011@gmail.com zhilinyang135@gmail.com service@replicasold.com yangliufang67@gmail.com
29.	http://www.watchesfull.com	admin@watchesfull.com