

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

Shenzhen Qianhai Phoenix Networks Co., Ltd.,)		
)		
	Plaintiff,)	Case No. 1:20-cv-05233
))	
	v.)	Judge
))	
Amazon.com Services, LLC and Amazon.com, Inc.,))	Mag. Judge
))	
	Defendants.)	

Complaint

NOW COMES Shenzhen Qianhai Phoenix Networks Co., Ltd. (“Plaintiff”), by and through its counsel at AU LLC and hereby brings this action against Amazon.com Services, LLC and Amazon.com, Inc. (collectively, “Defendants”) and alleges as follows:

Introduction

1. This action is filed to combat Defendants’ trademark infringement and unfair trade practices against a boutique company producing surgical-type face masks under its own registered trademark HONRANE.

Parties

2. Plaintiff is a private company organized under the laws of China with an office and principal place of Rm 201, Bldg. A, No.1, 1st Qianwan Road, Qianhai Shengang Cooperation Zone, Shenzhen, China.
3. Defendant Amazon.com Services, LLC is a Delaware limited liability company that conducts business throughout the United States including within the State of Illinois and this Judicial District, through its retail sales operation on the Amazon.com marketplace. Defendant Amazon.com Services, LLC targets the United States, including Illinois and this Judicial District,

and has sold, and on information and belief, will continue to sell HONRANE branded face masks (“Infringing Products”) to consumers within the United States, including the State of Illinois and this Judicial District.

4. Defendant Amazon.com, Inc. is a Delaware Corporation that conducts business throughout the United States including within the State of Illinois and this Judicial District, through the operation of its ubiquitous Amazon.com marketplace. Defendant Amazon.com, Inc. targets the United States, including Illinois and this Judicial District, and has sold and/or shipped, and on information and belief, will continue to sell and/or ship the Infringing Products to consumers within the United States, including the State of Illinois and this Judicial District. Amazon.com, Inc. and Amazon.com Services LLC are united in interest and shall be referred to, individually and collectively, as “Defendants.”

Jurisdiction and Venue

5. This Court has original subject matter jurisdiction over the claims in this action pursuant to 15 U.S.C. § 1051, *et seq.*, and 28 U.S.C. §§ 1331, 1338(a)-(b).
6. This Court has jurisdiction over the claims herein arising under the laws of the State of Illinois pursuant to 28 U.S.C. § 1367(a), because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts.
7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, and this Court may properly exercise personal jurisdiction over Defendants because each Defendant directly targets its business activities toward consumers in Illinois and this Judicial District. Specifically, Defendants shipped at least one Infringing Product to residents of Illinois and on information and belief, have shipped numerous Infringing Products to this State and Judicial District. Further, Defendants operate a commercial, fully-interactive online marketplace through which residents of Illinois

and this Judicial District can purchase products being offered and sold under spurious versions of Plaintiff's trademark. Defendants have targeted sales from residents of Illinois and this Judicial District by selling the Infringing Product directly on its marketplace and offers shipping to addresses within Illinois and this Judicial District. Defendants have committed tortious acts in Illinois and this Judicial District, is engaging in interstate commerce, and has wrongfully caused Plaintiff substantial injury in the State of Illinois

Plaintiff's Business

8. Since 2017, Plaintiff has been engaged in the design, distribution, and sale of various personal care products (collectively, the "Plaintiff Products") on an international basis, including within the United States, under its registered trademark HONRANE (the "Mark"). The Plaintiff Products are popular on the market and its trademark is recognized by consumers.
9. Plaintiff has spent considerable resources growing and protecting its brand.
10. Plaintiff is the owner of all rights, title and interest in and to the Mark.
11. Plaintiff uses its Mark in connection with the marketing of its products and has obtained a U.S. trademark registration, as set forth below:

Reg. No.	Mark	Goods and Services
5,077,644	HONRANE	Condoms; Love dolls; Massage apparatus; Pessaries; Sex toys; Surgical instruments and apparatus; Vibromassage apparatus; Electric massage apparatus for household use. in IC 010

12. A true and correct copy of the U.S. trademark certificate covering the Mark and its 2017 to Plaintiff assignment is attached hereto as **Exhibit A**
13. Plaintiff has built substantial goodwill in and to the Mark which is a recognized and valuable asset of Plaintiff.
14. Plaintiff has continuously used the Mark in U.S. interstate commerce in connection with the sale, distribution, promotion, and advertising of genuine Plaintiff Products since as early as May 2017.

15. Genuine Plaintiff Products have become popular, driven by Plaintiff's elevated quality standards and innovative designs. Genuine Plaintiff Products are recognizable among the consuming public and the Mark identifies, in the United States and around the world, high-quality personal care products offered by Plaintiff.
16. Genuine Plaintiff Products have been distributed, promoted and sold on Amazon through select licensed dealers. Plaintiff's sales of Plaintiff Products have been significant.
17. As a result of Plaintiff's longstanding use of its Mark in association with its high-quality products, extensive sales, and significant marketing activities, the Mark has achieved recognition among the consuming public and throughout U.S. interstate commerce.
18. The Mark is exclusive to Plaintiff and appears clearly on all Plaintiff Product packaging and related advertisements. Plaintiff has expended substantial time, money, and other resources to develop, advertise, promote, and protect the Mark. Accordingly, products bearing the Mark are widely recognized and exclusively associated by the consuming public and the industry as being high-quality personal products sourced from Plaintiff.
19. The Mark is distinctive when used in association with the sale of Plaintiff's products, signifying to the purchaser that the products come exclusively from Plaintiff and are made to Plaintiff's material specification.

The Problem of Counterfeit Masks

20. The coronavirus pandemic, in light of recommendations (if not outright orders) from federal, state, and local government officials, has resulted in the explosion in the demand and sales of surgical-type face masks.¹

¹ <https://www.nytimes.com/2020/02/06/business/coronavirus-face-masks.html>, last accessed September 3, 2020

21. Unfortunately, certain commercial enterprises has attempted to capitalize on the rush to obtain these products, and counterfeit surgical-type mask products have become a serious problem,² prompting official guidance from the U.S. Centers for Disease Control (CDC)³ and other private agencies.⁴
22. These counterfeit surgical-type masks are dangerous, insofar as they are being misrepresented as having characteristics of the genuine product for which they are being confused; instead, their provenance is questionable if not completely unknown, and thus whatever performance or functional purpose the user presumes them to have is in-fact unknown.

Defendant's Unlawful Conduct

23. Defendants frequently offered to sell surgical-type face masks under listings created by Plaintiff's authorized distributors on Amazon.com for the sale of HONRANE-branded surgical-type face masks. The practice, often called "tag-along," is a special mechanism on Amazon.com under which sellers tag along another's listing when the products offered are identical.
24. An example of Defendants' "tag along" listings for Plaintiff's Products using Plaintiff's Mark and Plaintiffs imagery are attached hereto as **Exhibit B**.
25. Amazon's tag-along practice occurred in an intermittent manner presumably to avoid detection.
26. Plaintiff observed multiple incidents of Amazon tagging along listings with HONRANE-branded face masks, and Plaintiff was able to conduct two (2) test purchases.
27. Each of the test purchases, which were made through Defendants' "tag along" listings using Plaintiff's Mark, revealed that the products in-fact sold and shipped by Defendants are not Plaintiff's products.

² <https://www.businessinsider.com/coronavirus-china-confiscated-over-31-million-counterfeit-face-masks-report-2020-2>

³ <https://www.cdc.gov/niosh/npptl/usernotices/counterfeitResp.html>, last accessed September 3, 2020

⁴ https://success.ada.org/~media/CPS/Files/COVID/ADA_TipsToAvoidCounterfeitMasks.pdf

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