

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

OPULENT TREASURES, INC.,

Plaintiff,

v.

THE INDIVIDUALS, CORPORATIONS,
LIMITED LIABILITY COMPANIES,
PARTNERSHIPS, AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED ON SCHEDULE A HERETO,

Defendants.

Case No.: 23-cv-14142

**DEFENDANT YA YA CREATIONS, INC.'S UPDATE CONCERNING ITS
REQUEST FOR REIMBURSEMENT DUE TO ILLEGITIMATE *EX PARTE* MOTION
FOR TEMPORARY RESTRAINING ORDER**

Defendant Ya Ya Creations, Inc. (“Ya Ya”) respectfully submits the following update since filing its motion to dissolve or modify the Court’s temporary restraining order issued October 17, 2023 (the “TRO”):

1. **Background Information.** Plaintiff Opulent Treasures, Inc. (“Opulent”) secretly obtained an *ex parte* TRO against Ya Ya on October 17, 2023. Opulent obtained the TRO after failing to disclose to this Court that it was currently litigating the same claims in U.S. District Court for the Central District of California against Ya Ya. Ya Ya first learned of the TRO on November 3, 2023, when it discovered that its online sales accounts were frozen. The frozen sites accounted for the vast majority of Ya Ya’s sales and caused a major disruption to Ya Ya’s business.

2. Opulent should have never filed a secret complaint in this Court. Apparently, Opulent persuaded the Court to issue the freeze order without providing the Court with material

information, including that Opulent and Ya Ya have been litigating in other jurisdictions for years and are currently litigating the same issues in the U.S. District Court for the Central District of California.

3. Opulent's actions were a transparent attempt to gain a litigation advantage in the California cases to either leverage a settlement, force Ya Ya into a position where it could not even pay its lawyers to mount a defense, or force Ya Ya to file for bankruptcy.

4. **New Facts.** Ya Ya emailed Opulent on November 3, 2023 to request a copy of the TRO and the sealed exhibit to the Complaint pertaining to Ya Ya. In that email, Ya Ya stated:

As you are no doubt aware, the same trademarks and copyrights at issue in your complaint are already the subject of cases pending between Opulent and Ya Ya in the Central District of California (including Ya Ya's complaint for declaratory relief and intentional interference with prospective economic advantage regarding Opulent's takedown notices that was filed over a year ago).

Email from Marc Karish to Genesis Shin, and Madison Bower, dated November 3, 2023, attached as Exhibit J to the Marc Karish Declaration.

5. Ya Ya received no response to its November 3rd email. Instead, Opulent did not contact Ya Ya until November 6, 2023, after several emails concerning Ya Ya's motion to dissolve or modify the TRO. Ya Ya's decision to wait three days for any response further harmed Ya Ya while its accounts remained frozen without any legitimate basis.

6. When confronted, *Opulent dismissed its case against Ya Ya on November 6, 2023, but not in time to prevent damage to Ya Ya.* Without access to funds, Ya Ya was forced to apply for a \$1.78 million loan, which cost Ya Ya \$140,000 in interest and fees. Ya Ya was also forced to incur significant attorneys' fees to get the TRO lifted against Ya Ya's websites, reinstate its Stripe and Shopify accounts, and file the motion to dissolve and/or clarify the TRO.

7. Opulent only dismissed Ya Ya's websites from the TRO after being notified by Ya Ya that it was filing a motion to dissolve and seek reimbursement. In voluntarily dismissing Ya Ya's websites, Opulent tacitly admitted the TRO was improperly granted against Ya Ya's websites.

8. Despite Opulent's purported efforts to lift the freeze from Ya Ya's websites, Ya Ya's funds remained frozen until the late evening hours of Sunday, November 12th or the early morning hours of November 13th, a full week after Opulent's dismissal and almost two weeks after Ya Ya learned of the surprise TRO.

9. Fortunately, Ya Ya was able to mitigate its damages after its accounts were reinstated by canceling the loan and avoiding \$140,000 in fees and costs. Ya Ya, nevertheless, suffered approximately \$4,000 in lost interest on its sales revenue while waiting fourteen days until Ya Ya's accounts were released. Supplemental Su Declaration ¶s 7 and 8.

10. **New Precedent.** Another court in this district decided a strikingly similar case to this matter last week. In *Bestway Inflatable & Material Corp. v. The Individuals, Corporations, Limited Liability Companies, Partnerships, and Unincorporated Associations Identified on Schedule A Hereto*, 1-23-cv-02286 (ND Ill., Nov. 8, 2023) (Hon. Thomas M. Durkin), the court ordered the plaintiff to reimburse a defendant for the costs the defendant incurred from the plaintiff's improperly obtained TRO. There, the plaintiff obtained a TRO and apparently notified Amazon of the TRO. As a result, Amazon placed a hold on the defendant's accounts. *Id.* at p. 1. The plaintiff voluntarily dismissed the defendant twenty days later. *Id.* The plaintiff claimed it instructed Amazon to release the defendant's accounts that day, but the accounts remained frozen until at least twenty days later. *Id.* at p. 3.

11. The court rejected each one of the plaintiff's attempts to evade liability for reimbursing the defendant for its damages, attorneys' fees, and costs from the account freeze. As the court explained, by dismissing its case rather than addressing the defendant's substantive arguments, "[p]laintiff conceded the facts relevant to a determination under Rule 65(c) that [defendant] was wrongfully enjoined." *Id.* at p. 3.

12. The plaintiff also tried to blame Amazon for keeping the accounts frozen, arguing that, after it purportedly informed Amazon of the dismissal, "[p]laintiff has no control over actions taken or not taken by Amazon." *Id.* at p. 4. The court also rejected that argument, finding that "this argument ignores the fact that the original cause of the restrictions on defendant's products was the temporary restraining order plaintiff caused to be entered." *Id.*

13. As the court held, "[p]laintiff has a responsibility to return [d]efendant[] to the status quo upon the injunction being lifted. Plaintiff cannot close its eyes to ongoing effects of the TRO. Plaintiff brought the lawsuit, caused entry of a TRO, and has a responsibility to remedy its effect once it is no longer in place." *Id.* at pp. 4-5. The court then ordered the plaintiff to pay the defendant \$62,711.00 – the amount the defendant lost as a result of its accounts and products being frozen by Amazon. *Id.* at p. 5.

14. As in *Bestway Inflatable*, Oplent is obligated to return Ya Ya to the status quo now that the Ya Ya websites have been dismissed from this case. Oplent tacitly admitted the TRO was improperly granted against Ya Ya when it agreed to voluntarily dismiss Ya Ya's websites from this case. As a result of the TRO, Ya Ya was forced obtain a loan in the amount of \$1.78 million to keep its business afloat. This loan had the potential to cost Ya Ya \$140,000 in interest and fees. Su Declaration ¶ 7; Supplemental Su Declaration ¶ 5. And Ya Ya has

incurred significant attorneys' fees to take all necessary actions to unfreeze its online e-commerce accounts.

15. Opulent should reimburse Ya Ya for all of its attorneys' fees incurred in bringing its emergency motion to lift the TRO and in preparing and filing the present update. "[A]warding attorney" fees is appropriate and necessary to deter future misconduct by parties and their counsel in the future." *Xped LLC v. The Entities Listed on Exhibit 1*, 21 CV 6237, at *40 (N.D. Ill. Sep. 6, 2023). "[A]warding attorney's fees" is especially "critical for deterrence due to the *ex parte* nature of the TRO proceedings and the fast pace of the preliminary injunction proceedings." *Id.* "If plaintiffs or their attorneys commit fraud on the Court or misrepresent the facts to obtain preliminary injunctive relief, it will be difficult to detect and sanction misconduct without the participation of attorneys on the other side." *Id.* Ultimately, it is "necessary to incentivize defendants to" bring this type of misconduct to the Court's attention on an expedited basis. *Id.* "Awarding attorney's fees provides this incentive because it makes fighting rather than giving up a more financially viable choice." *Id.*

WHEREFORE, Ya Ya respectfully prays that the Court issue an order that requires Opulent to pay Ya Ya \$4,000 for lost interest on its detained funds and its attorneys' fees and all other costs incurred to return Ya Ya to the status quo before Opulent improperly obtained the TRO against Ya Ya, plus any other relief the Court deems just and equitable.

Respectfully submitted,

November 16, 2023

/s/ Bradley C. Graveline
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on November 16, 2023, he caused a true and correct copy of the foregoing document to be filed electronically with the Clerk of the Court and served on all counsel of record.

Respectfully submitted,

/s/ Bradley C. Graveline

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