

THOITS LAW

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January 28, 2022

Via ECF Only

The Honorable Paul G. Gardephe
United States District Judge, Southern District of New York
40 Foley Square, Room 2204
New York, NY 10007

Re: *Roku, Inc. v. The Individuals, Corporations, et al.* Case No. 1:22-cv-00202-PGG

Dear Judge Gardephe:

We represent Plaintiff Roku Inc. in the above-referenced matter. On January 20, 2022, the Court entered an Order to Show Cause for Preliminary Injunction and Temporary Restraining Order (the "Order") granting Plaintiff's ex parte application for temporary restraints and scheduling a hearing for February 1, 2022 on Plaintiff's request for the issuance of a preliminary injunction. In the Order, the Court also set deadlines for Plaintiff to serve Defendants with the Summons, Complaint, and Order, and for Defendants to file opposing papers to Plaintiff's request.

Per the January 28, 2022 recommendation from Chambers to Plaintiff's counsel, we write to inform the Court that, consistent with the Order, Plaintiff has already served the Order and Complaint on Defendants and intends to serve the Summons on Defendants by February 1, 2022, as soon as it is available from the Clerk's Office. We also write to request respectfully:

1. A seven (7) day extension of Defendants' deadline to file opposing papers to Plaintiff's request for the issuance of a preliminary injunction, from January 28, 2022, to February 4, 2022;
2. A seven (7) day adjournment of the preliminary injunction hearing, from February 1, 2022, to February 8, 2022; and
3. An extension of the restraints imposed by the Order until the new hearing date pursuant to Rule 65(b)(2).

This will be the first extension and adjournment of these dates. No defendant opposes Plaintiff's request for the extensions and adjournment.

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Extension of Deadlines and Adjournment of Hearing Date

As noted in our initial application that lead to the Order, Defendants in this case are actively marketing and selling products that infringe upon Plaintiff's intellectual property rights. Defendants are made up of persons and entities that hide their true identities behind various usernames, through which they sell infringing products using online marketplace accounts on Amazon and Wish. As a result, and to protect Plaintiff's rights, the Court authorized service of the Summons, Complaint, and Order by electronic mail within five (5) days *after* the online marketplace accounts' compliance with the temporary asset restraint provisions of the Order. See Order, ¶¶ 5-7.

Delaying service until after the temporary asset restraint is in effect is critical to maintain the confidentiality of this proceeding until Defendants' accounts are frozen, thereby avoiding defendants' improper transfer and/or destruction of ill-gotten proceeds and other relevant information. Indeed, as detailed in our initial application, and as accepted by the Court in the Order, "if Defendants are given notice of the Application, they are likely to conceal, transfer, or otherwise dispose of their ill-gotten proceeds," and are also "likely to destroy, move, hide, or otherwise make inaccessible the records and documents relating to Defendants' manufacture, importing, advertising, distributing, offering for sale, and/or sale of the Counterfeit Products." See Order, pp. 3-4. At the same time, Plaintiff recognize that service of the Summons, Complaint, Order, and supporting papers is essential to ensuring that Defendants have access to the full record before the preliminary injunction hearing. In that regard, the Order also directed the third-party service providers to provide information concerning Defendants to Plaintiff, including contact information, to enable Plaintiff to effectuate service of the documents in this case. See e.g., Order, ¶ 4.

Plaintiff served Amazon and Wish with the Order on January 20, 2022—the same date the Court entered the Order. Once both Amazon and Wish produced the contact information for Defendants—on January 27, 2022—Plaintiff promptly served Defendants with the Order and Complaint via e-mail and by providing a link to a website where each Defendant can download copies of the documents, as authorized by the Order. See Order, ¶ 5. This service occurred one day before Defendants' January 28 deadline to file opposing papers. Consistent with the Order, Plaintiff intends to serve the Summons on Defendants by February 1, 2022, as soon as it is available from the Clerk's Office.

Thus, to ensure Defendants can review and respond to Plaintiff's filings in a timely manner, Plaintiff requests the Court extend Defendants' deadline to respond to the Order from January 28, 2022, to February 4, 2022, and adjourn the preliminary injunction hearing from February 1, 2022, to February 8, 2022.

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Extension of Temporary Restraint

The Temporary Restraining Order is currently set to expire on Thursday February, 3 2022. See Order, p. 9. If the temporary restraints dissolve before Plaintiff can be heard on its preliminary injunction application, there is a substantial risk (as detailed in the moving papers) that Defendants (who will by then be on notice of these proceedings) will hide their assets and other relevant information before preliminary restraints can be imposed.

We respectfully submit that the foregoing constitutes “good cause” under Rule 65(b)(2) to extend the temporary restraints for a short period of time. Thus, to ensure that the relief provided in the Order is not rendered moot, and to protect Plaintiff’s rights pending the return date of the Order, we respectfully request that the Court continue the relief set forth in the Order until after adjourned hearing date on Plaintiff’s preliminary injunction application.

Defendants will not be unduly prejudiced by this request. In the first instance, defendants have no right to engage in the infringing activity at issue. Moreover, we are requesting an adjournment of just one week, giving Defendants the ability to quickly seek relief if they are so entitled.

We would be happy to provide more information or to make ourselves available to discuss this matter further if necessary. We thank the Court for its time and attention to this matter.

Very truly yours,

THOITS LAW

/s/ Christopher Tom

Christopher Tom

Memo Endorsed: Plaintiff’s application is granted in part.

The preliminary injunction hearing currently scheduled for February 1, 2022 is adjourned to **February 8, 2022 at 11:45 a.m.**

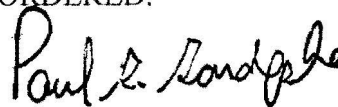
Defendants’ deadline to file opposing papers to Plaintiff’s request for a preliminary injunction is extended to **February 3, 2022.**

By that date, Defendants are directed to respond to Plaintiff’s request to extend the restraints imposed by the Court’s January 20, 2022 Order. (Dkt. No. 22)

Plaintiff is directed to respond to Defendants’ filings -- including Docket Number 25 -- by February 4, 2022.

Dated: January 31, 2022

SO ORDERED.



Paul G. Gardephe
United States District Judge