

No. 24A532

Supreme Court, U.S.  
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In the Supreme Court of the  
United States

MAHFOOZ AHMAD.

*Petitioner,*

v.

COLIN DAY, et al.,

*Respondents.*

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**REQUEST FOR INJUNCTIVE RELIEF**

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Address:

Sip & Scoop Ice Cream  
Mahfooz Ahmad  
590 Main St,  
Monroe, Connecticut,  
06468  
T: +1 (203) 445-1010  
Pro Se Petitioner

November 18, 2024

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TO HONORABLE SONIA SOTOMAYOR  
ASSOCIATE JUSTICE OF THE SUPREME COURT  
AND CIRCUIT JUSTICE FOR THE SECOND  
CIRCUIT:

I am saddened to hear that some of our people in clear ignorance are calling for you to step down. Whereas your rulings and opinions have deeply strengthened our nations justice system. As an American citizen I deeply appreciate your work. Thank you, Justice Sotomayor for granting U.S. Supreme Court Application number 24A380 on October 24, 2024, extending the time to file Writ of Certiorari until January 2, 2025.

As per 28 U.S. Code § 1651, I am presenting this request for preliminary or permanent injunction against the defendants iCIMS Inc and Vista Equity Partners to preliminary or to permanently stop them from further benefiting from the illegally copied software intellectual property, Jobtrail.

Dear Justice Sotomayor, the Proposed Second Amended Complaint (PSAC) filed in the district court clearly states legal and illegal actions of the Collective Defendants to fraudulently benefit from my software invention. The Collective Defendants actions violate plethora of State and Federal laws some of which are clearly documented in the Ahmad v. Day et al., legal matter.

This emergency relief request respectfully requests that the U.S. Supreme Court enjoins iCIMS Inc and its controlling firm Vista Equity Partners from commercially (and illegally) exploiting my software invention. Hence, it is requested that Court issue an order to halt iCIMS Inc from further operating its business in the United States as well as globally. As iCIMS Inc continues to market it services nationally and internationally further compounding on the irreparable harm.

Part of iCIMS Inc services is the illegally copied confidential intellectual property submitted by the Plaintiff for investment consideration. The offerings of iCIMS Inc bear a remarkable resemblance to the Plaintiff's proprietary and innovative intellectual property.

Jobtrail, minimum viable product (MVP) was reviewed by iCIMS Inc management that conducted a comprehensive review of the software invention thorough multiple meetings to gain confidential information. Later iCIMS Inc fraudulently claimed that it acquired startups software firms, Altru-video, Opening.io and Jibe Inc. However, the functions of these software's are nothing but copied work of the Petitioner's minimum viable product (MVP) of Jobtrail. Petitioner has demanded restitutions, but iCIMS Inc and Vista Equity Partners instead have engaged in false intellectual property lawsuit settlements. The Collective Defendants actions continue to cause irreparable harm to the Petitioner, as they reap the benefits of illicitly obtained intellectual property. The Petitioner unfortunately is left to suffer the consequences of Collective Defendants unethical behavior. The Collective Defendants illicitly misappropriated Jobtrail's, Minimum Viable Product (MVP) and unlawfully mimicked the software features and have been offering it as part of iCIMS Inc's portfolio of products. iCIMS and its partners have aggressively marketed the imitated product to Fortune 500 companies, falsely presenting it as one of its acquired startups. To further compound the wrongful actions, iCIMS Inc., unlawfully terminated Petitioner employment and retaliated by a fraudulent invention assignment agreement with assistance from NaviHealth Inc and Beacon Hill Staffing Group. Petitioner here is submitting the below five Exhibits along with this injunctive relief request.

**Exhibit (A):**

The Proposed Second Amended Complaint (PSAC).

**Exhibit (B):**

Memorandum of Law, this was filed along with the Proposed Amended Complaint.

**Exhibit (C):**

Supplement document, detailing the arguments for the Notice of Constitutional Question.

**Exhibit (D):**

Notice of Constitutional Question.

**Exhibit (E):**

Copy of the Memorandum of Law in support of the Preliminary Injunction motion filed in the district court.

## **PARTIES TO THE PROCEEDING**

Petitioner, Plaintiff-Appellant is Mahfooz Ahmad.

Respondents, Defendants-Appellees are Colin Day, Courtney Dutter, iCIMS Inc, Navi Health Inc, Beacon Hill Staffing Group, Vista Equity Partners.

Because no petitioner is a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.6

## STATEMENT OF PROCEEDINGS

*Ahmad v. Day et al*, No. 24-856 (2nd Cir.) (opinion issued on Aug. 05, 2024, “the appeal is dismissed because it “lacks an arguable basis either in law or in fact.””).

*Ahmad v. Day et al*, No. 23-920 (2nd Cir.) (opinion issued on Nov. 07, 2023, “lacks arguable basis”); (motion for reconsideration on medical grounds, denied on Dec. 07, 2023); (motion to reconsider, due to procedural errors denied as moot on Dec. 08, 2023).

*Ahmad v. Day et al*, 1:20-cv-04057 (S.D.N.Y) (opinion issued on Dec. 28, 2022, leave to amend granted in part and denied in part); (memorandum and order granting remaining defendants’ motion to dismiss and denying plaintiff’s motion for a preliminary injunction as moot issued on June. 06, 2023); (petition for reconsideration denied the next day).

*Ahmad v. Day et al*, No. 23-6337 (U.S. Supreme Court) (Petition Denied Feb 20, 2024) (Petition for Rehearing Denied March 25, 2024)

There are no additional proceedings in any court that are directly related to this case within the meaning of this Court’s Rule 14(b)(iii).

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## ARGUMENT

“[A]lthough a party is of course to be given a reasonable opportunity to respond to an opponent’s motion, the sufficiency of a complaint is a matter of law that the court is capable of determining based on its own reading of the pleading and knowledge of the law.” *McCall v. Pataki*, 232 F.3d 321, 322–23 (2d Cir. 2000). Courts in this Circuit routinely grant preliminary injunctions in cases involving the types of claims asserted here. It is a well-established principle in this Circuit that there is a precedent of granting preliminary injunctions in cases that pertain to the nature of the allegations presented in this lawsuit. See, e.g., *Fun-Damental Too, Ltd. v. Gemmy Indus. Corp.*, 111 F.3d 993, 1006 (2d Cir. 1997) (affirming grant of preliminary injunction where plaintiff’s trade dress is inherently distinctive and defendant’s copying created substantial likelihood of confusion); *Zino Davidoff SA v. CVS Corp.*, 571 F.3d 238, 240 (2d Cir. 2009) (affirming grant of preliminary injunction prohibiting defendant from offering goods infringing on plaintiff’s trademark); *Tactica Int’l, Inc. v. Atlantic Horizon Intern., Inc.*, 154 F.Supp.2d 586, 609 (S.D.N.Y. 2001) (enjoining defendants from infringing plaintiff’s mark to sell beauty products).

### **JOBTRAIL (MVP) AND TRADE SECRETS THEFT IS LIKELY TO BE SUCCESSFUL ON THE MERITS OF ITS CLAIMS.**

To succeed on a Lanham Act trademark infringement claim, plaintiff must demonstrate that (1) the trademark is valid and entitled to protection, and (2) defendant’s use of the trademark is likely to cause consumer confusion as to the origin, affiliation or association, or endorsement of defendant’s goods or services. *Christian Louboutin S.A. v. Yves Saint Laurent Am. Holdings, Inc.*, 696 F.3d 206, 216-17 (2d Cir. 2012). Plaintiff claims that iCIMS unauthorized copying of its novel software invention constitutes a

violation of the Digital Millennium Copyright Act (“DMCA”). Plaintiff also seeks a temporary restraining order enjoining iCIMS from further benefiting from Jobtrail invention. Plaintiff also seeks expedited discovery. The Court should expedite this motion and issue Preliminary Injunction or provide a limited time to iCIMS Defendants with an order instructing iCIMS to show cause why preliminary injunction should not be entered against it.

**PLAINTIFF'S TRADEMARK IS VALID AND ENTITLED TO PROTECTION**

Despite facing relentless retaliation and harassment from iCIMS, the Plaintiff was unable to complete the trademark application registration process. The Defendant's supposed acquisition of *'Jibe Inc'* constitutes another clear duplication of Jobtrail's trademark and trade secrets. At the time, Jobtrail's trademark was undergoing review at the PTO. It is axiomatic that unregistered marks are entitled to protection under Section 43(a) of the Lanham Act. See *Silberstein v. Fox Entertainment Group, Inc.*, 424 F.Supp.2d 616, 632 (S.D.N.Y.2004) (noting that section 43(a) “creates a cause of action for infringement of unregistered [marks]”); 1 see also *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768 (1992) (“[It] is common ground that section 43(a) protects qualifying unregistered trademarks”).

It has been indicated that § 43(a) of the Lanham Act is remedial in nature and should be interpreted and applied broadly so as to effectuate its remedial purpose. See *Maternally Yours, Inc. v. Your Maternity Shop, Inc.*, 234 F.2d 538, 546 (2nd Cir. 1956) (Clark, J., concurring); *CBS, Inc. v. Springboard International Records*, 429 F.Supp. 563, 566 (S.D.N.Y. 1976). *Warner Bros., Inc. v. Gay Toys, Inc.*, 658 F.2d 76, 79 (2d Cir. 1981) “An unregistered mark is entitled to protection if it qualifies for registration.” *Courtenay Comms. Corp. v. Hall*, 334 F.3d 210, 217 (2d Cir. 2003); see also

*Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205, 210 (2000) (“[T]he general principles qualifying a mark for registration under § 2 of the Lanham Act [governing trademark registration] are for the most part applicable in determining whether an unregistered mark is entitled to protection under § 43(a).” (citation omitted)).

It is noteworthy that the examining attorney at the Patent and Trademark Office (PTO) expressed no objections to the uniqueness of Jobtrail's trademark. “The strength of a trademark in the marketplace and the degree of protection it is entitled to are categorized by the degree of the mark's distinctiveness in the following ascending order: generic, descriptive, suggestive, and arbitrary or fanciful.” *Gruner + Jahr USA Publishing v. Meredith Corp.*, 991 F.2d 1072, 1075 (2d Cir. 1993) (citing *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 9 (2d Cir. 1976)). A suggestive mark, in a creative manner, employs names that imply the characteristics of the product it represents. See *Winner Int'l LLC v. Omori Enters., Inc.*, 60 F.Supp.2d 62, 67 (E.D.N.Y. 1999). A suggestive mark “requires imagination, thought and perception to reach a conclusion as to the nature of the goods.” *Bristol-Myers Squibb Co. v. McNeil-P.P.C., Inc.*, 973 F.2d 1033, 1040 (2d Cir. 1992) (internal quotations and citation omitted); see also *Tactica Inter., Inc. v. Atlantic Horizon Intern., Inc.*, 154 F.Supp.2d 586, 599 (S.D.N.Y. 2001) (“Examples of suggestive marks include . . . CHEW'N CLEAN dentifrice . . . HANDI WIPES dusting cloths, and SPRAY'N'VAC aerosol rug cleaner.”) Here, the mark "Jobtrail" suggests a job-related information trail, but still requires the consumer to use their imagination to fully grasp the nature of the product. Marks that are suggestive are considered “inherently distinctive,” and are automatically entitled to protection under the Lanham Act. See *Two Pesos*, 505 U.S. at 768; see also *Lane Capital Mgmt., Inc. v. Lane Capital Mgmt., Inc.*,

192 F.3d 337, 344 (2d Cir. 1999) (“Fanciful, arbitrary, and suggestive marks are deemed inherently distinctive. Their intrinsic nature serves to identify a particular source of a product, so they will be automatically protected.”). Accordingly, Jobtrail is entitled to protection under the Lanham Act.

The deliberate duplication of Jobtrail's mark by the defendant, as ‘Jibe’ carried out in bad faith, is presumed to create confusion among consumers and has been demonstrated to have actually led to such confusion. To succeed in a trademark infringement lawsuit under the Lanham Act, a plaintiff must establish, besides the eligibility of their mark for protection, that “defendant’s use of a similar mark is likely to cause consumer confusion.” *Louis Vuitton Malletier v. Dooney & Bourke, Inc.*, 454 F.3d 108, 115 (2d Cir. 2006).

“Likelihood of confusion includes confusion of any kind, including confusion as to source, sponsorship, affiliation, connection, or identification.” *Guinness United Distillers & Vitners B.V. v. Anheuser-Busch, Inc.* 64 U.S.P.Q. 1039, 1041 (S.D.N.Y. 2002) (citing *McDonald’s Corp. v. McBagel’s, Inc.*, 649 F.Supp. 1268, 1273 (S.D.N.Y. 1986)). The evidence presented in this lawsuit conclusively demonstrates a significant probability of consumer confusion. As demonstrated by prior judicial rulings, the deliberate adoption of a similar mark with malicious intent, as evidenced by the defendant's copying of the trademark, establishes a presumption of likelihood of confusion as a matter of law. See *Paddington Corp. v. Attiki Importers & Distribs, Inc.*, 996 F.2d 577, 586-87 (2d Cir. 1993) (“Where a second-comer acts in bad faith and intentionally copies a trademark . . . a presumption arises that the copier has succeeded in causing confusion.”); *Louis Vuitton Malletier S.A. v. Sunny Merchandise Corp.*, 97 F.Supp.3d 485, 496-97 (S.D.N.Y. 2015) (holding that “[t]he evidence demonstrates that Sunny intentionally

attempted to appropriate the ubiquitous LOUIS VUITTON mark through the use of its confusingly similar LOUIS V and LOUIS VALENTIN marks . . . gives rise to a presumption in favor of a likelihood of confusion.”).

It is undeniably apparent that iCIMS' alleged acquisition of **Jibe**, accompanied by its utilization of the "**Jibe**" name in promotion, was a deliberate choice due to its striking similarity to the other reserved features of Jobtrail trademark and Minimum Viable Product developed through the Plaintiff's decade-long research efforts. Prior to the Plaintiff's unveiling of the proprietary Jobtrail MVP, Jibe had yet to achieve market exposure or recognition. In essence, iCIMS knowingly copied the Jobtrail mark in an attempt to profit from the Plaintiff's successful innovation. See *Am. Home Prods. Corp. v. Johnson Chem. Co.*, 589 F.2d 103, 107 (2d Cir. 1978) (“[O]ne who adopts the mark of another for similar goods acts at his own peril and any doubt concerning the similarity of the marks must be resolved against him.”) (internal citation omitted)).

These acts, as well as iCIMS's deliberate use of Jobtrail Minimal Viable Product (MVP) for its own and its use of its infringing mark even after receiving Plaintiff's cease and desist emails unquestionably constitute bad faith. See, e.g., *Simon & Schuster, Inc. v. Dove Audio, Inc.*, 970 F.Supp. 279, 299-300 (S.D.N.Y. 1997) (finding “intentional copying of plaintiff's marks in bad faith” in light of “evidence that Dove copied plaintiffs' mark . . . in order to capitalize on plaintiffs' success and the goodwill associated with plaintiffs' mark”); *Stuart v. Collins*, 489 F.Supp. 827, 832 (S.D.N.Y. 1980) (finding willful infringement where defendant continued to use plaintiff's mark after receiving a cease and desist letter “out of arrogance and confidence that he would not mount any significant legal attack”). Even if Plaintiff could not show actual confusion among consumers, a likelihood

of confusion would be presumed as a matter of law. See *N.Y. State Society of Cert. Public Accountants v. Eric Louis Assocs., Inc.*, 79 F.Supp.2d 331, 340 (S.D.N.Y. 1999) (where the trademark infringement is the result of intentional copying, “likelihood of confusion will be presumed as a matter of law”); *GTFM., Inc. v. Solid Clothing Inc.*, 215 F.Supp.2d 273, 297 (S.D.N.Y. 2002) (where similarities “are so strong that they could only have occurred through deliberate copying . . . a presumption arises that the copier has succeeded in causing confusion”); *Toys “R” Us Inc. v. Abir*, 45 U.S.P.Q.2d (BNA) 1944, 1947 (S.D.N.Y. 1997) (“likelihood of confusion presumed as a matter of law when defendant intentionally copies plaintiff’s trademark”). iCIMS’s unlawful conduct also constitutes trade dress infringement under New York law. Unless a preliminary or permanent injunction order is issued Petitioner will suffer irreparable harm.

“The purpose of the traditional preliminary injunction is to “preserve the status quo and the rights of the parties until a final judgment issues in the cause.” *City & Cty. of S.F. v. USCIS*, 944 F.3d 773, 789 (9th Cir. 2019) (citation omitted) (emphasis added). In other words, a traditional injunction, if granted, protects the moving party. This is evident from the fact that a traditional preliminary injunction, which may issue under Rule 65 of the Federal Rules of Civil Procedure, may issue if the movant establishes that “he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). It is incumbent on the movant to make “a clear showing that [it] is entitled to such relief, *City & Cty. of S.F.*, 944 F.3d at 789, which is consistent with the relief’s purpose.

On the other hand, an injunction under the All Writs Act preserves the integrity of the issuing court’s

“exercise of jurisdiction otherwise obtained.” *New York Tel. Co.*, 434 U.S. at 172. The only requirements in the statutory text are the first three elements described in Part III below: the preliminary relief be “[1] necessary or appropriate [2] in aid of their respective jurisdictions and [3] agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a). Since the purpose of the writ is to aid the court and not the parties, the movant’s likelihood of success and the other elements of a traditional preliminary injunction are irrelevant, and therefore satisfying such elements should not be required.” “For example, in *FTC v. Americans for Financial Reform*, 720 F. App’x 380, 383 (9th Cir. 2017), the Court explained that an All Writs Act injunction is not required to satisfy the “dictates” of a “standard preliminary injunction” because an All Writs Act injunction issued “under authority broader” than Rule 65. *See also Flores v. Barr*, 407 F. Supp. 3d 909, 930 (C.D. Cal. 2019) (“The Ninth Circuit does not appear to require courts to examine the traditional requirements for obtaining injunctive relief in order to issue such relief under the All Writs Act.”).” Quoting, brief of amici curiae law professors, in support of plaintiffs-appellees, Dimitri d. Portnoi O’melveny & Myers LLP. *AL OTRO LADO V. CHAD WOLF*, No. 19-56417 (9th Cir. 2019).

“Thus, while a party must “state a claim” to obtain a “traditional” injunction, there is no such requirement to obtain an All Writs Act injunction — it must simply point to some ongoing proceeding, or some past order or judgment, the integrity of which is being threatened by some action or behavior. The requirements for a traditional injunction do not apply to injunctions under the All Writs Act because the historical scope of a court’s traditional power to protect its jurisdiction, codified by the Act, is grounded in entirely separate concerns. *See United States v. New York Tel. Co.*, 434 U.S. 159, 174, 98 S.Ct. 364, 54 L.Ed.2d 376 (1977) (affirming grant of injunction



under the All Writs Act without regard to traditional four factors); *De Beers Consol. Mines, Ltd. v. United States*, 325 U.S. 212, 219, 65 S.Ct. 1130, 1573, 89 L.Ed. 1566 (1945) (stating, in reviewing a lower court's ruling concerning an injunction under the All Writs Act, that it is necessary to ascertain "what is the usage, and what are the principles of equity applicable in [this] case," without mentioning the traditional four injunction requirements); see also *Kelly v. Merrill Lynch, Pierce, Fenner Smith*, 985 F.2d 1067 (11th Cir. 1993) (affirming grant of injunction under the All Writs Act without regard to traditional four factors), *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1100-1 (11th Cir. 2004)". "Such writs may be directed toward not only the immediate parties to a proceeding, but to "persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implementation of a court order or the proper administration of justice, and encompasses even those who have not taken any affirmative action to hinder justice." *United States v. New York Tel. Co.*, 434 U.S. 159, 174, 98 S.Ct. 364, 54 L.Ed.2d 376 (1977) *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1100 (11th Cir. 2004)." Over here, request for injunctive relief is filed under the All Writs Act, unlike the previous request made in the district court which was filed under Rule 65 of the Federal Rules of Civil Procedure, hence it is humbly requested that the Honorable Court grants this request.

### CONCLUSION

The petitioner respectfully urges Justice Sotomayor to grant this relief. Without this relief Petitioner will continue to suffer the irreparable harm.

Thank you!

Respectfully submitted, /s/ Mahfooz Ahmad

MAHFOOZ AHMAD

November 18, 2024



**Additional material  
from this filing is  
available in the  
Clerk's Office.**