

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Nasdaq, Inc.,

Plaintiff,

v.

Twelve Data Pte. Ltd.,

Defendant.

Case No.: 1:24-cv-7296

Judge Manish S. Shah

**MEMORANDUM IN SUPPORT OF PLAINTIFF’S *EX PARTE* MOTION FOR ENTRY
OF A TEMPORARY RESTRAINING ORDER, INCLUDING A TEMPORARY
INJUNCTION, A TEMPORARY FREEZING OF THE DOMAIN NAME, A
TEMPORARY ASSET RESTRAINT, EXPEDITED DISCOVERY, AND SERVICE OF
PROCESS BY E-MAIL AND/OR ELECTRONIC PUBLICATION**

Plaintiff Nasdaq, Inc. (“Nasdaq”) submits this Memorandum in support of its *Ex Parte* Motion for Entry of a Temporary Restraining Order, including a temporary injunction, a temporary freezing of the twelvedata.com domain name, a temporary asset restraint, expedited discovery, and service of process by email and/or electronic publication (the “*Ex Parte* Motion”).

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MEMORANDUM OF LAW

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiff Nasdaq, Inc. (“Nasdaq”) brings this action to prevent ongoing theft by Defendant Twelve Data Pte. Ltd. (“Defendant”) of Nasdaq’s proprietary data feeds in violation of the Defend Trade Secrets Act (“DTSA”) (18 U.S.C. § 1831 *et seq*), the Computer Fraud and Abuse Act (“CFAA”) (18 U.S.C. § 1030 *et seq*), as well as violations of the Digital Millennium Copyright Act (“DMCA”) (17 U.S.C. § 1202), the Illinois Uniform Deceptive Trade Practices Act (815 ILCS 510/1 *et seq*), and tortious interference with prospective business advantage under Illinois law. The Court denied Nasdaq’s previous application for an *ex parte* TRO (Dkt. No. 9) for failing to “contain specific facts justifying proceeding without notice to defendant” in its declarations. The present renewed application for an *ex parte* TRO cures that deficiency.

Nasdaq is a multinational financial services corporation that operates equity and options exchanges and indices. Nasdaq also operates a market data business pursuant to which it sells and distributes historical and real-time market data, including data relating to securities or other financial instruments, markets, products, vehicles, indicators, and devices (together, “Nasdaq Data”). A significant aspect of Nasdaq’s business is selling access to its proprietary real-time market data feeds to retail and institutional investors as part of its Data and Listing Services business unit (“Real-Time Nasdaq Data”). These data feeds obtain value from being unavailable to the public except through purchase from Nasdaq under contracts that impose limits on the data’s re-publication. Until these data compilations become public, they are trade secrets as defined by the Defend Trade Secrets Act.

Defendant, as detailed in this memorandum and the attached declarations, is publishing Real-Time Nasdaq Data unlawfully acquired from Nasdaq without Nasdaq’s authorization. An investigation by Nasdaq tracked the timestamps and speed at which Defendant’s stock price data

updates, and demonstrated that the data updates faster than any publicly available source of data (such as customers who have purchased and are authorized to re-publish Nasdaq Data) would permit. Defendant then sells access to its unlawfully obtained Real-Time Nasdaq Data feeds at a fraction of the price of Nasdaq's authorized feeds, diverting Nasdaq customers and doing irreparable harm to Nasdaq's business reputation.

In addition to Defendant's theft of trade secrets, for which this Court can and should impose injunctive relief to prevent the ongoing theft of Nasdaq trade secrets, Defendant is also violating Section 1202 of the DMCA by removing copyright management information that all Nasdaq customers are required to affix to any publication of Real-Time Nasdaq Data feeds. All authorized distributors of Real-Time Nasdaq Data feeds are required to include next to those feeds prominent attribution messages identifying Nasdaq as the owner of the data provided. Defendant, in taking Nasdaq's data feeds, re-publishes them without those attribution messages in order to conceal their misappropriation of the data feeds.

Defendant, as demonstrated by the available evidence set forth in the previously filed declarations of Nicholas Carso (Dkt. No. 13-1) and Brian Beck (Dkt. No. 13-5), as well as the supplemental declaration of Nicholas Carso filed with this renewed motion, is a foreign company who sells its services to customers throughout the United States, but has no assets in the United States through which this Court would be able to enforce its judgment apart from its financial accounts and its domain name registrar. If Defendant obtains notice of this TRO before it goes into effect, Defendant will easily be able to move its financial accounts offshore and transfer its domain name to a foreign registrar, preventing Nasdaq from obtaining the equitable relief to which is entitled under the DTSA and DMCA. An *ex parte* TRO is therefore appropriate to maintain the status quo and ensure that Defendant cannot evade the jurisdiction of this Court by

moving all of its operations outside of the United States.

Defendant's ongoing unlawful activities should be restrained, and Plaintiff Nasdaq therefore respectfully requests that this Court issue an *ex parte* Temporary Restraining Order. Specifically, Nasdaq seeks an order: (1) temporarily restraining Defendant's continued publication of the Real-Time Nasdaq Data feeds; (2) temporarily restraining any of Defendant's assets that can be found to preserve Nasdaq's right to an equitable accounting (primarily Defendant's PayPal account), and (3) temporarily preventing the Defendant from transferring its domain name to any other registrar. Ancillary to and as part of the TRO, Nasdaq respectfully requests that this Court (4) authorize expedited discovery allowing Nasdaq to inspect and copy Defendant's records relating to the source of the unauthorized re-published Real-Time Nasdaq Data feeds, offering for sale, and sale of the unauthorized re-published Real-Time Nasdaq Data feeds; and (5) authorize service of process by electronic mail and/or electronic publication.

II. STATEMENT OF FACTS

A. Nasdaq's Business, Trade Secrets, and Copyrights

Nasdaq is a global technology company serving corporate clients, investment managers, banks, brokers, and exchange operators as they navigate and interact with the global capital markets and the broader financial system. Declaration of Nicholas Carso ("Carso Decl.") (Dkt. No. 11) at ¶ 2, Ex. 1 (Dkt. No. 11-1). Nasdaq divides its products and services in three business segments: Capital Access Platforms, Financial Technology, and Market Services. *Id.* at ¶ 3. Within the Capital Access Platforms segment is Nasdaq's Data & Listing Services business. *Id.* Nasdaq's Data business distributes historical and real-time market data to sell-side customers, the institutional investing community, retail online brokers, proprietary trading firms and other venues, as well as internet portals and data distributors. *Id.*

Real-Time Nasdaq Data derives significant value from being available in real-time—*i.e.*, updated typically every second, with the latest bids, asks, price, and volume of transactions occurring on Nasdaq’s markets. Carso Decl. (Dkt. No. 11) at ¶ 4. Real-Time Nasdaq Data is not accessible on the same timescales other than through Nasdaq’s data products. *Id.* Real-Time Nasdaq Data has significant commercial value and, as such, customers pay substantial sums for those data products in order to receive the real-time data as soon as possible after it comes into existence. *Id.* While Nasdaq now does not separate its Data & Listing Services revenue in its public filings, when Nasdaq last reported its revenue from its Market Data segment separately (in November 2022), Nasdaq reported approximate revenue from sales of Market Data of approximately \$400 million per year. *Id.* at ¶ 5, Ex. 2 (Dkt. No. 11-1).

Nasdaq ensures that only authorized customers of Nasdaq Data can receive its compilations of data in real-time through contractual restrictions as part of Nasdaq’s Global Data Agreement (“GDA”). Carso Decl. (Dkt. No. 11) at ¶ 6, Ex. 3 (Dkt. No. 11-1). All authorized customers of Nasdaq Data are required to sign the GDA. *Id.* at ¶ 6. Paragraph 4(b) of the GDA prohibits customers (referred to in the GDA as “Distributor”) from retransmitting or reprocessing any information obtained through the data feeds without Nasdaq’s express approval. *Id.*, Ex. 3 (Dkt. No. 11-1) at Terms & Conditions (“T&C”) p. 3. Paragraph 4(h) of the GDA requires Distributors to take security precautions to prevent unauthorized access to the data feeds, and requires them to notify Nasdaq in the event of any breach of security. *Id.* The GDA also requires Distributors to follow the U.S. Equities and Options Data Policies (“Data Policies”), which impose further stringent requirements and contractual limitations on how Distributors may access Nasdaq Data. *Id.*, Exs. 3-4 (Dkt. No. 11-1).

The GDA also addresses Nasdaq’s intellectual property rights in its data feeds. The GDA

provides that Distributors acknowledge Nasdaq's ownership in all intellectual property rights in Nasdaq Data. Carso Decl. (Dkt. No. 11), Ex. 3 at ¶ 4(i) (T&C p. 4). The GDA also imposes requirements that Distributors who are re-publishing any Nasdaq Data include source attribution messages in connection with any Nasdaq Data identifying the source of the data as Nasdaq. The GDA imposes this requirement by requiring Distributors who are re-publishing Nasdaq Data to display the data in accordance with the "Nasdaq Requirements," provided in a separate document. *Id.*, Ex. 3 (Dkt. No. 11-1) at ¶ 4(d)-(e) (T&C p. 3), Ex. 5 (Dkt. No. 11-1). Those Nasdaq Requirements require the Distributor to include prominent attribution messages identifying Nasdaq as the owner of the data provided such as "Real Time Nasdaq Last Sale data provided by Nasdaq." *Id.*, Ex. 5 (Dkt. No. 11-1) at 1. The purpose of the GDA's and Nasdaq Requirements' obligation for Distributors to affix these attribution messages is to identify Nasdaq as the owner of all intellectual property rights, including copyright, in the Nasdaq Data that is published.

B. Defendant's Unlawful Activities

Defendant is a company incorporated in Singapore that provides access to real-time financial data through its website, <https://twelvedata.com>. Carso Decl. (sealed version at Dkt. No. 13) at ¶ 11. Defendant's website states that it supports stock market data from all major US-based exchanges and their subsidiaries. *Id.* The website includes data for stocks traded on equity exchanges operated by Nasdaq; for example, the "twelvedata.com/stocks" website shows a page listing stock prices for Microsoft, PayPal, Facebook, Amazon, and Nvidia. *Id.*, Ex. 6 (Dkt. No. 13) at 8.

Nasdaq has conducted an investigation in which it purchased access to Defendant's product, and confirmed that Defendant is reporting Nasdaq Real-Time Data, faster than they

could do so if they obtained the data through available authorized Nasdaq Distributors. Carso Decl. (Dkt. No. 11) at ¶ 13. For example, one video attached to the Carso Declaration shows real-time updating of the stock price for ticker symbols AKTIA and BAVA comparing Defendant's service to an authorized Real-Time Nasdaq Data feed, showing that Defendant updates the AKTIA and BAVA stock prices at less than a second after the authorized real-time feed. *Id.* at ¶ 13, Ex. 7 (Dkt. No. 16). Another video compares Defendant's real-time feed for the ticker symbol SHBI to the real-time feeds for authorized distributors Yahoo Finance, E*Trade, Google Finance, Charles Schwab, and Fidelity, and shows that Defendant updates either faster or approximately at the same time as these authorized Distributors' Real-Time Nasdaq Data feeds. *Id.* at ¶ 14, Ex. 8 (Dkt. No. 16). On information and belief, Nasdaq is unaware of any way Defendant could obtain its real-time data feeds that update as fast or faster than authorized Distributor feeds without misappropriating Nasdaq Data. *Id.* at ¶¶ 13-14. Defendant is not an authorized Distributor of Nasdaq Data, however, and has never signed the GDA. *Id.* at ¶ 12.

Defendant also does not include any attribution message with its data feed. As can be seen in the video comparing Defendant to authorized Nasdaq Distributors, each of the authorized Distributors includes an attribution identifier near the SHBI symbol identifying the data as coming from Nasdaq, while the Defendant's feed does not. *Id.*, Ex. 8. But on information and belief, as discussed above, there is no way Defendant could report the stock price data for these Nasdaq stocks in real-time without copying Nasdaq's copyrighted data feeds. *Id.* at ¶ 12.

Defendant's misappropriation of Nasdaq's Data is damaging Nasdaq's relationships with its customers. Defendant's feed is significantly cheaper than purchasing the relevant data directly from Nasdaq. Carso Decl. (Dkt. No. 11) at ¶ 15. Several customers of Nasdaq Data have communicated with Nasdaq that they purchased Nasdaq Data from Defendant rather than Nasdaq

or Nasdaq's authorized Distributors because Defendant's price was lower. *Id.* at ¶ 15. Authorized Distributors of Nasdaq Data have also informed Nasdaq that they have lost customers to Defendant due to the price difference. *Id.* at ¶ 16. While Nasdaq knows it has lost customers to Defendant, and that its Distributors have lost customers to Defendant, Nasdaq has no way of knowing how many customers either Nasdaq or its Distributors have lost as a result of Defendant's activities. *Id.* at ¶ 17.

Nasdaq has attempted to determine how Defendant obtains its Real-Time Nasdaq Data feeds, through an inquiry directed through a third-party in 2023. Carso Decl. (sealed version at Dkt. No. 13) at ¶ 18, Ex. 9. That co-founder shared with Nasdaq an email exchange between himself and an "Alexander Axelrod" at Defendant. *Id.* Defendant did not provide any detail about where its data feed came from when asked by the third-party, responding: "We are working through other data vendors, which allow us to further redistribute data. This should not be an issue on your side." *Id.* Nasdaq subsequently attempted to find a record of "Alexander Axelrod," and found no evidence of the existence of an employee of Defendant by that name. *Id.* at ¶ 20. On information and belief, no such person exists. *Id.*

Nasdaq made another attempt to determine if Defendant had a legitimate source for its Nasdaq Data in April of 2024. A Nasdaq employee sent an email to the contact@twelvedata.com email address on April 22, 2024, informing Defendant that it had discovered Defendant's provision of Real-Time Nasdaq Data, but had no record of Defendant having a contract with Nasdaq to provide such data. Carso Decl. (sealed version at Dkt. No. 13) at ¶ 19, Ex. 10. "Mr. Axelrod" responded only by asking the Nasdaq employee to share the page on which she located the information. *Id.* The Nasdaq employee responded that based on Defendant's response, Nasdaq considered it a confirmation that Defendant did not have an

authorized provider or a contract with Nasdaq for the information. *Id.* Axelrod responded again and said that Defendant provides EOD (“end of day”) indices. *Id.*

Nasdaq has made additional investigations into Defendant’s physical presence. Each of Defendant’s directors are foreign citizens. Declaration of Brian J. Beck (“Beck Decl.”) (Dkt. No. 12, sealed version at Dkt. No. 13) at ¶ 3, Ex. 12 (Dkt. No. 13). Defendant’s homepage shows no apparent address or direct contact information. Carso Decl., Ex. 6 (Dkt. No. 13). Nasdaq has determined that Defendant uses a proxy registrar or its domain name, to avoid the tracing of its website to its company or any responsible individual. Beck Decl. (Dkt. No. 12) at ¶ 4, Ex. 13 (Dkt. No. 13). Defendant’s terms of service list a foreign address that corresponds to the home addresses of two of Defendant’s directors. Beck Decl. (Dkt. No. 12) at ¶ 8, Ex. 17 (Dkt. No. 13). A Google Maps search for that address reveals that it is not an office with any signage identifying Defendant, but appears to be a residential apartment. *Id.* at Ex. 18 (Dkt. No. 13). There is accordingly a strong likelihood that if Defendant is apprised of this action before a TRO is enforced to prevent transfer of financial and non-financial assets outside of the United States, Defendant will make those transfers to evade accountability before this Court. Supplemental Declaration of Nicholas Carso (“Carso Supp. Decl.”) at ¶¶ 4-5.

III. ARGUMENT

Defendant’s purposeful, intentional, and unlawful conduct is causing and will continue to cause irreparable harm to Nasdaq’s data business and its authorized Distributors. To ensure that this Court retains the power to stop Defendant’s sale of misappropriated Nasdaq Data, Nasdaq respectfully requests that this Court issue a temporary restraining order freezing the status quo in place and preventing Defendant from transferring financial assets and its domain name out of the United States. Without the relief requested by Nasdaq’s instant motion, Defendant’s unlawful

activity will continue unabated without this Court having a practical ability to prevent it, and Nasdaq and its authorized Distributors will suffer irreparable harm.

Rule 65(b) of the Federal Rules of Civil Procedure provides that the Court may issue an *ex parte* temporary restraining order where immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition. Fed. R. Civ. P. 65(b). Defendant here has misappropriated and continues to misappropriate Real-Time Nasdaq Data feeds, which both constitute trade secrets during the time before the data becomes publicly available and are copyrighted works belonging to Nasdaq, and Defendant is republishing the data feeds without Nasdaq's required attribution messages which constitute copyright management information under 17 U.S.C. § 1202. The entry of a temporary restraining order is appropriate because it would preserve the status quo to allow this Court to retain the power to stop Defendant from benefiting from its wrongful use of the misappropriated Nasdaq Data until such time as a hearing can be held.

In the absence of a temporary restraining order without notice, Defendant can and likely will modify registration data and content, change hosts, redirect traffic to other websites in their control, and move any assets from U.S.-based accounts, including PayPal or similar accounts. Courts have recognized that civil actions against foreign infringers of intellectual property present special challenges that justify proceeding on an *ex parte* basis. *See Columbia Pictures Indus., Inc. v. Jasso*, 927 F. Supp. 1075, 1077 (N.D. Ill. 1996) (observing that “proceedings against those who deliberately traffic in infringing merchandise are often useless if notice is given to the infringers”). As such, Nasdaq respectfully requests that this Court issue the requested *ex parte* temporary restraining order. This Court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the DTSA (18 U.S.C. §§

1831 *et seq.*), the Computer Fraud and Abuse Act (18 U.S.C. §§ 1030 *et seq.*), the DMCA (17 U.S.C. § 1203), and 28 U.S.C. § 1331. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(c)(3).

A. This Court may exercise personal jurisdiction over Defendant.

This Court may properly exercise personal jurisdiction over Defendant because Defendant directly targets business activities toward consumers in the United States, including Illinois, by directly offering for sale services into this judicial district through at least Defendant's fully interactive website. Specifically, Defendant is reaching out to do business with Illinois residents by operating the Defendant website through which Illinois residents can purchase access to the misappropriated Real-Time Nasdaq Data feeds, from which Nasdaq's copyright management information ("CMI") has been removed. Defendant has targeted its sales to Illinois residents by offering access to the misappropriated Real-Time Nasdaq Data feeds throughout the United States including Illinois, and has offered to sell, and on information and belief, continues to sell, access to the misappropriated Real-Time Nasdaq Data feeds to consumers throughout the United States, including the State of Illinois. *See* Complaint at ¶ 5. Without the benefit of an evidentiary hearing, Nasdaq bears only the burden of making a prima facie case for personal jurisdiction; all of Nasdaq's asserted facts should be accepted as true and any factual determinations should be resolved in its favor. *See uBID, Inc. v. GoDaddy Group, Inc.*, 623 F.3d 421, 423 (7th Cir. 2010); *see also Purdue Research Found. V. Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 782 (7th Cir. 2003) ("In evaluating whether the prima facie standard has been satisfied, the plaintiff 'is entitled to the resolution in its favor of all disputes concerning relevant facts presented in the record.'").

Illinois's long-arm statute provides that a person submits to jurisdiction in Illinois by,

inter alia, (1) transacting any business within Illinois, and/or (2) committing a tortious act within Illinois. 735 ILCS 5/2-209(a)(1)-(2). Illinois courts regularly exercise personal jurisdiction over websites infringing intellectual property in connection with the offering for sale and selling of infringing and counterfeit merchandise to Illinois residents over the Internet. *See, e.g., NBA Properties, Inc. v. HANWJH*, 46 F.4th 614, 624 (7th Cir. 2022); *Monster Energy Co. v. Wensheng*, 136 F.Supp.3d 897, 904-905 (N.D. Ill. 2015). Through at least the fully interactive Defendant website, Defendant has targeted sales to Illinois residents by offering to sell, and on information and belief, having sold access to the misappropriated Real-Time Nasdaq Data feeds to residents of the United States, including Illinois. Defendant is committing tortious acts in Illinois and has wrongfully caused Nasdaq substantial injury in the State of Illinois, and so personal jurisdiction over Defendant is proper.

B. This Court should grant a TRO against Defendant restraining its unlawful activities and preserving the status quo.

District Courts within this Circuit hold that the standard for granting a temporary restraining order and the standard for granting a preliminary injunction are identical. *See, e.g., Charter Nat'l Bank & Trust v. Charter One Fin., Inc.*, No. 1:01-cv-00905, 2001 WL 527404, at *1 (N.D. Ill. May 15, 2001) (internal citation omitted). A party seeking to obtain a preliminary injunction or TRO must demonstrate: (1) that its case has some likelihood of success on the merits; (2) that no adequate remedy at law exists; and (3) that it will suffer irreparable harm if the injunction is not granted. *See Ty, Inc. v. The Jones Group, Inc.*, 237 F.3d 891, 895 (7th Cir. 2001).

If the Court is satisfied that these three conditions have been met, then it must consider the harm that the nonmoving party will suffer if preliminary relief is granted, balancing such harm against the irreparable harm the moving party will suffer if relief is denied. *Id.* Finally, the

Court must consider the potential effect on the public interest (non-parties) in denying or granting the injunction. *Id.* The Court then weighs all of these factors, “sitting as would a chancellor in equity,” when it decides whether to grant the injunction. *Id.* (quoting *Abbott Labs. v. Mead Johnson & Co.*, 971 F.2d 6, 11 (7th Cir. 1992)). This process involves engaging in what the Court has deemed “the sliding scale approach” – the more likely the Plaintiffs will succeed on the merits, the less the balance of harms need favor the Plaintiffs’ position. *Id.* The sliding scale approach is not mathematical in nature, rather “it is more properly characterized as subjective and intuitive, one which permits district courts to weigh the competing considerations and mold appropriate relief.” *Id.* at 895-896. The greater the movant’s likelihood of succeeding on the merits, the less the balancing of harms need be in his favor. *See Eli Lilly & Co. v. Natural Answers, Inc.*, 233 F.3d 456, 461 (7th Cir. 2000).

1. Nasdaq is likely to succeed on the merits of its DTSA claim.

To establish a violation of the DTSA, the plaintiff must prove that “(1) a trade secret existed; (2) it was misappropriated through improper acquisition, disclosure, or use, and (3) the misappropriation damaged the trade secret’s owner.” *Aon Risk Services Cos., Inc. v. Alliant Ins. Servs., Inc.*, 415 F.Supp.3d 843, 848 (N.D. Ill. 2019).

Nasdaq’s data feeds are trade secrets for the period of time between when they are created and when they are published by authorized distributors. The DTSA defines a “trade secret” as:

all forms and types of **financial, business**, scientific technical, economic, or engineering information, including patterns, plans, **compilations**, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if—

(A) the owner thereof has taken reasonable measures to keep such information secret; and

(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

18 U.S.C. § 1839(3) (emphasis added). The Real-Time Nasdaq Data feeds are compilations of financial and business information, and therefore fall within the categories of information that are considered trade secrets if they are kept secret and derive independent economic value from their secrecy. Importantly, even if the individual component parts of a compilation of data are in the public domain, the compilation can still be a trade secret in that it is “a combination of characteristics and components, each of which, by itself, is in the public domain, but the unified process design and operation of which in unique combination affords a competitive advantage and is a protectable trade secret.” *Computer Care v. Serv. Systems Enterprises, Inc.*, 982 F.2d 1063, 1074 (7th Cir. 1992).

Nasdaq takes reasonable measures to keep its data feeds secret from unauthorized users. Nasdaq requires all customers of its data feeds to sign its Global Data Agreement (“GDA”). Complaint at ¶ 14; Carso Decl. (Dkt. No. 11) at ¶ 6, Ex. 3 (Dkt. No. 11-1). The GDA includes a provision requiring customers (referred to in the GDA as “Distributor”) to “take reasonable security precautions to prevent unauthorized individuals or entities from gaining access to the information,” and to “comply with all reasonable security specifications or requirements of Nasdaq in order to prevent the information from being improperly used or accessed or from being improperly taken.” *Id.* Nasdaq also employs cybersecurity measures to protect its own computer systems from unauthorized access, including password protection for all relevant computers, requiring employees to sign confidentiality agreements prohibiting unauthorized access. Under the standard of 18 U.S.C. § 1839(3), Nasdaq has demonstrated that it employed reasonable measures to protect the data feeds from unauthorized access.

The Real-Time Nasdaq Data feeds also derive independent economic value from their secrecy. Nasdaq's 10-Q filing from November 2022, the last such filing at which Nasdaq's Market Data segment had its revenue reported separately from its other divisions, showed an annual revenue from Nasdaq's Market Data of about \$400 million. Carso Decl. (Dkt. No. 11) at ¶ 5. Apart from the reorganization of Nasdaq's business segments, Nasdaq's revenues from selling access to Nasdaq Data has not materially changed since November 2022. *Id.* Significantly, the information available in these data feeds becomes public when it is re-published by distributors who are authorized to do so and made available on public financial data websites such as Yahoo Finance. Carso Decl. (Dkt. No. 11) at ¶ 4. However, during the period of time before the data becomes public, customers find the real-time access to that data sufficiently valuable that they pay millions of dollars to Nasdaq for that real-time access. Carso Decl. (Dkt. No. 11) at ¶ 5. The Real-Time Nasdaq Data feeds therefore derive actual independent economic value from "not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information," because the fact that customers are willing to pay for these data feeds during the time they remain secret rather than waiting for the data to become public shows that they derive economic value from their secrecy. Because the Real-Time Nasdaq Data feeds are compilations of financial information that Nasdaq has taken reasonable measures to keep secret and that derive independent economic value from their secrecy, they are trade secrets under the DTSA. 18 U.S.C. § 1839(3).

Nasdaq is likely to prove that Defendant is misappropriating the Real-Time Nasdaq Data feeds. Defendant is not an authorized Distributor of the Real-Time Nasdaq Data feeds. Carso Decl. (Dkt. No. 11) at ¶ 12. Through Nasdaq's investigation, Nasdaq prepared a video showing

the speed of updating of the stock prices for three companies, Shore Bancshares Inc. (ticker symbol SHBI), Aktia Bank Abp (ticker symbol AKTIA), and Bavarian Nordic (ticker symbol BAVA). Carso Decl. (Dkt. No. 11) at ¶¶ 13-14, Exs. 7-8 (Dkt. No. 16). In the video for AKTIA and BAVA, the computer shows at the bottom the stock prices for AKTIA and BAVA as shown by Defendant's API, and above it an authorized Distributor's professional terminal application window with Nasdaq's own real-time data feed. Carso Decl., Ex. 7 (Dkt. No. 16). When the video begins, showing data taken on March 13, 2024, the last AKTIA stock sale price was \$9.48. *Id.* At 0:22 on the video, Nasdaq's real-time data feed shows a sale at \$9.47. In about a second, the Defendant's feed shows the AKTIA price dropping to \$9.47. *Id.* The speed at which the Defendant's feed updates the AKTIA ticker symbol could not be achieved without unauthorized access to Nasdaq's data feed, as Nasdaq's data feed is the only source of real-time trading data for the AKTIA symbol traded on the equity exchanges operated by Nasdaq. Carso Decl. (Dkt. No. 11) at ¶ 13. A similar instance can be seen for the BAVA ticker symbol, which updates from \$164.65 to \$164.50 on the Nasdaq data feed at 5:32 in the video, and then updates on the Defendant's feed less than a few seconds later. Carso Decl., Ex. 7 (Dkt. No. 16). Again, the speed at which the Defendant's feed updates would not be possible if Defendant were obtaining such information through publicly accessible stock data. Carso Decl. (Dkt. No. 11) at ¶ 13, Ex. 7 (Dkt. No. 16).

A second video compares the speed of Defendant's feed for ticker symbol SHBI with authorized Distributors Yahoo Finance, E*Trade, Google Finance, Charles Schwab, and Fidelity. Carso Decl., Ex. 8 (Dkt. No. 16). At the start of the video, each of the six windows show a share price of \$10.99 for SHBI. At timestamp 9:33 in the video, Defendant updates SHBI's share price to \$10.96, a few seconds after E*Trade shows the share price change to \$10.96, but seconds

before Yahoo Finance, Google Finance, Fidelity, and Charles Schwab show the price change. Carso Decl., Ex. 8 (Dkt. No. 16). A similar instance can be seen at 23:03, when Defendant updates the price of SHBI to \$11.00, and only after that do Yahoo Finance and the other publicly available authorized websites update to \$11.00. *Id.* As with the AKTIA symbol, real-time updating of the stock price for SHBI shares trading on Nasdaq's equity markets can only be obtained lawfully through Real-Time Nasdaq Data. Carso Decl. (Dkt. No. 11) at ¶ 14. These videos provide strong evidence that Defendant is misappropriating Nasdaq's data feeds, and demonstrate a likelihood on the merits of Nasdaq prevailing on the second element of trade secret misappropriation, that Defendant has misappropriated the trade secret at issue.

Finally, Nasdaq is likely to prevail on the merits of showing that it has been damaged by Defendant's misappropriation. Defendant sells access to its feeds for a substantially lower price than Nasdaq. Carso Decl. (Dkt. No. 11) at ¶ 15. Nasdaq has discovered that several customers have purchased real-time data from Defendant instead of from Nasdaq because those customers could obtain the data cheaper from Defendant. *Id.* at ¶ 16. Nasdaq has also been informed by its authorized Distributors that its Distributors have lost numerous customers to Defendant because Defendant is providing the data feeds at a lower price than Nasdaq's authorized Distributors. *Id.* at ¶ 17. This diversion of customers from both Nasdaq and Nasdaq's authorized Distributors does both direct and indirect economic harm to Nasdaq—direct harm in diverting direct customers sales away from Nasdaq, and indirect harm in damaging Nasdaq's relationships with its authorized Distributors who are unable to obtain the value they sought to obtain from lawfully purchasing access to Nasdaq's data feeds. *Id.* at ¶¶ 16-17. Because Nasdaq is likely to be able to demonstrate that its data feeds are trade secrets, that Defendant has misappropriated and is continuing to misappropriate the trade secrets, and that the misappropriation is causing damage

to Nasdaq, Nasdaq is likely to prevail on the merits of its DTSA claim.

2. Nasdaq is likely to succeed on the merits of its DMCA claim.

17 U.S.C. § 1202(b) states that “[n]o person shall, without the authority of the copyright owner or the law—

(1) intentionally remove or alter any copyright management information,

(2) distribute or import for distribution copyright management information knowing that the copyright management information has been removed or altered without authority of the copyright owner or the law, or

(3) distribute, import for distribution, or publicly perform works, copies of works, or phonorecords, knowing that copyright management information has been removed or altered without authority of the copyright owner or the law,

knowing, or, with respect to civil remedies under section 1203, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right under this title.

17 U.S.C. § 1203(a) permits any person injured by a violation of Section 1202 to bring a civil action in an appropriate United States district court for such violation, and 17 U.S.C. § 1203(b)(1) and (2) grant the Court the power to “grant temporary and permanent injunctions on such terms as it deems reasonable to prevent or restrain a violation,” and “order the impounding, on such terms as it deems reasonable, of any device or product that is in the custody or control of the alleged violator and that the court has reasonable cause to believe was involved in a violation.”

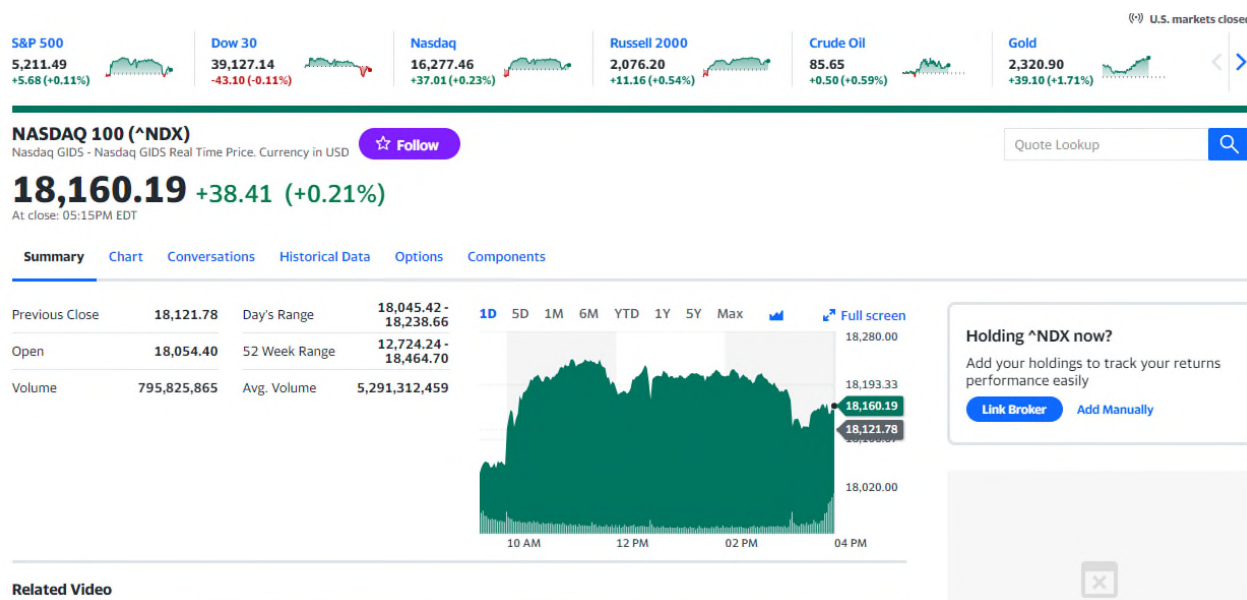
Nasdaq alleges, and is likely to prevail, on its claim that Defendant has violated 17 U.S.C. § 1202(b) by removing Nasdaq’s CMI from its data feeds, or distributing the misappropriated data feeds knowing that CMI has been removed, knowing or having reasonable grounds to know that it would induce, enable, facilitate, or conceal infringement of Nasdaq’s copyright in its data feeds.

First, Nasdaq owns the copyright in its data feeds. Nasdaq creates the electronic format of

its data feeds to efficiently compile and deliver compilations of data regarding market transactions. Carso Decl. (Dkt. No. 11) at ¶ 9. Under relevant Seventh Circuit precedent, a compilation of factual data that converts factual data into an organized stream of electronic data useful to customers is copyrightable because the compiler—Nasdaq, through its employees—made a contribution to “change the form of information and so make it more accessible, or [] change the organization and so make the data more understandable.” *Rockford Map Publishers, Inc. v. Directory Service Co. of Colorado, Inc.*, 768 F.2d 145, 149 (7th Cir. 1985); *see also Jewelers’ Circular Pub. Co. v. Keystone Pub. Co.*, 274 F. 932, 935 (S.D.N.Y. 1921) (a compilation of trade symbols is copyrightable); *Rand McNally & Co. v. Fleet Management Sys., Inc.*, 634 F. Supp. 604, 607 (N.D. Ill. 1986) (compilation of map data in the form of mileage guide is copyrightable). Because the data feeds are created by Nasdaq employees, Nasdaq is the author of the data feeds for purposes of the Copyright Act, and therefore is the owner. 17 U.S.C. § 201(b).

Second, Nasdaq requires that copyright management information be affixed to its data when published by all authorized Distributors. The DMCA defines “copyright management information” as “any of the following information conveyed in connection with copies [] of a work..., including in digital form ... : (2) The name of, and other identifying information about, the author of a work. (3) The name of, and other identifying information about, the copyright owner of the work, including the information set forth in a notice of copyright.” 17 U.S.C. § 1202(c)(2)-(3). The GDA, which all Distributors are required to sign, incorporates a document called the Nasdaq Requirements, and requires Distributors to follow the Nasdaq Requirements in displaying any Nasdaq Data. Carso Decl. (Dkt. No. 11) at ¶ 8, Ex. 3 (Dkt. No. 11-1). The Nasdaq Requirements in turn require all Distributors providing Nasdaq Data to include prominent

attribution messages identifying Nasdaq as the owner of the data being presented, such as “Real Time Nasdaq Last Sale data provided by Nasdaq” or “Source: Nasdaq Last Sale.” Carso Decl. (Dkt. No. 11) at ¶ 8, Ex. 5 (Dkt. No. 11-1). For example, authorized Distributor Yahoo Finance displays an attribution message immediately under the Nasdaq 100 ticker identifying its source as “Nasdaq GIDS – Nasdaq GIDS Real Time Price,” as shown below:



Beck Decl. (Dkt. No. 12), Ex. 11 (Dkt. No. 12-1). These attribution messages are information regarding the name of the author and copyright owner of the data feeds (Nasdaq), conveyed in connection with copies of the work, and are therefore CMI under 17 U.S.C. § 1202(c).

Defendant does not include any attribution messages on its feeds containing misappropriated Nasdaq Data (Carso Decl. (Dkt. No. 11) at Exs. 7-8 (Dkt. No. 16)), from which the Court may reasonably infer that Defendant intentionally either removed the attribution messages or distributed the data knowing that the attribution messages have been removed. Circumstantial evidence is sufficient to show a defendant’s intent for the purpose of showing a violation of Section 1202. *GC2 Inc. v. International Game Technology, IGT, Doubledown*

Interactive LLC, 391 F. Supp. 3d 828, 841-842 (N.D. Ill. 2019). Defendant purports to be an authoritative source of market data, so can be presumed to be familiar with other market data publications, all of which are required to provide attribution messages with Nasdaq Data. The fact that Defendant does not include Nasdaq's attribution messages with its data indicates that it either has removed the messages from a source that included the attribution messages (a violation of Section 1202(b)(1)), or is re-distributing the Nasdaq Data knowing that the attribution messages were already removed (a violation of Section 1202(b)(3)). The Court may also reasonably infer that Defendant has reason to know that the removal of the Nasdaq attribution will facilitate or conceal its infringement of Nasdaq's copyright by making it appear that Defendant has acquired the Nasdaq Data from a legitimate source, rather than copying it from Nasdaq without authorization. Nasdaq is therefore likely to prevail on the merits of its DMCA claim for unauthorized removal of CMI under 17 U.S.C. § 1202.

3. There is no adequate remedy at law, and Nasdaq will suffer irreparable harm in the absence of preliminary relief.

This Court has held that “there is a ‘presumption of irreparable harm to the plaintiff in cases of trade secret misappropriation.’” *Aon*, 415 F.Supp.3d at 851; *Inventus Power, Inc. v. Shenzhen Ace Battery Co., Ltd.*, No. 20-cv-3375, 2020 WL 3960451, at *13 (N.D. Ill. July 13, 2020). Beyond the presumption of irreparable harm in trade secret cases, this Court has held that diminution in value of a plaintiff's market position is an unquantifiable and therefore irreparable harm supporting entry of a TRO or preliminary injunction. *Aon*, 415 F.Supp.3d at 852; *see also Zou v. Entities and Individuals Identified in Annex A*, No. 23-cv-16600, 2024 WL 1013976, at *3 (N.D. Ill. Mar. 8, 2024).

Here, the harm to Nasdaq from both Defendant's misappropriation of trade secrets and violation of the DMCA is unquantifiable and therefore irreparable. While Nasdaq is aware of

some customers who have expressly communicated to Nasdaq that they chose to purchase a subscription to Defendant's service over Nasdaq's due to the price difference (Carso Decl. (Dkt. No. 11) at ¶ 16), Nasdaq has no way of knowing how many potential customers it has lost to Defendant's illegitimate undercutting on price. Nasdaq also has no way of knowing how many customers have potentially been induced to purchase Defendant's data service as a result of Defendant's removal of Nasdaq's attribution message, from which customers falsely believe that Defendant has acquired its Nasdaq Data lawfully. Carso Decl. (Dkt. No. 11) at ¶ 17; Carso Supp. Decl. at ¶ 6. This Court has found such unquantifiable damage to a plaintiff's market position to be irreparable, and should so again here. *Zou*, 2024 WL 1013976, at *3; *Antsy Labs, LLC v. Individuals, Corporations, Limited Liability Companies, Partnerships, and Unincorporated Associations Identified on Schedule A Hereto*, 21-cv-3289, 2022 WL 17176498, at *3 (N.D. Ill. Nov. 23, 2022) (discussing *Life Spine Inc. v. Aegis Spine, Inc.*, 8 F.4th 531, 546 (7th Cir. 2021)).

Further, an *ex parte* TRO specifically is necessary to freeze the status quo to ensure that this Court retains the power to prevent the ongoing irreparable harm to Nasdaq. The Defendant, though it directs activities to the United States and the Northern District of Illinois, and is therefore subject to jurisdiction in this Court, maintains minimal physical presence and has few assets in the United States to ensure enforcement of a judgment if Nasdaq prevails on the merits. This Court has recognized that foreign infringers of intellectual property frequently take deliberate action to evade asset restraints absent an *ex parte* TRO, frustrating intellectual property owners' abilities to obtain relief. *See, e.g.*, Declaration of Justin R. Gaudio filed in *Pit Viper, LLC v. Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 1:24-cv-391, Dkt. No. 16 at ¶¶ 7-10 (N.D. Ill. Jan. 18, 2024 (attached as Exhibit 19 to the Supplemental Declaration of Brian J. Beck ("Beck Supp. Decl."); Minute Entry in *Pit Viper*, No.

1:24-cv-391, Dkt. No. 23 (N.D. Ill. Jan. 19, 2024)) (Beck Supp. Decl., Ex. 20) (granting application for *ex parte* TRO on finding that “[t]he plaintiff’s written submissions establish that if defendants were informed of this proceeding before a TRO could issue, assets would likely be redirected, defeating plaintiff’s interest in identifying defendants, stopping the infringement, and obtaining an accounting.”) The same likelihood of Defendant, a foreign entity misappropriating Nasdaq data and infringing intellectual property, redirecting assets to defeat Nasdaq’s interest in stopping the misappropriation and infringement here and obtaining an accounting, exists here. *See supra* at 7-8; Carso Supp. Decl. at ¶¶ 4-5. Accordingly, *ex parte* relief is specifically necessary here to preserve the status quo and prevent the redirecting of Defendant’s assets outside of this Court’s practical ability to enforce a judgment.

4. The balancing of harms tips in Nasdaq’s favor.

After demonstrating that Nasdaq is likely to succeed on the merits of both its DTSA and DMCA claims, and that it has no adequate remedy at law and will suffer irreparable harm absent preliminary relief, the Court must next consider the harm that Defendant will suffer if preliminary relief is granted. In considering the balance of harms, the harm that is caused to a defendant by prohibiting the defendant from continuing to misappropriate trade secrets or commit acts of infringement is not considered, as that harm “would be a consequence of [its] own conduct.” *Inventus*, 2020 WL 3960451, at *14.

Here, the balance of harms tips sharply in Nasdaq’s favor. Whatever harm Defendant suffers is the result of its own willful misappropriation of Nasdaq’s trade secrets. A party’s strong showing of likelihood of success on the merits, as Nasdaq has done here, together with “the public’s interest in the ... protection of trade secrets and confidential information,” outweighs the risk of harm to a willfully misappropriating defendant. *Life Spine*, 8 F.4th at 546. Further, Nasdaq is seeking a TRO more limited than in similar cases; rather than seeking to have

Defendant's website immediately shut down in a way that could potentially damage Defendant, Nasdaq is seeking in its application for a TRO only a restriction on Defendant's transferring its assets away from its United States-based financial accounts, and on Defendant's transferring its domain name away from its United States-based registrar. Defendant will be allowed to continue providing non-infringing services to its customers while the TRO is in place, until the Court resolves the motion for preliminary injunction that Nasdaq will file, and that Defendant will receive notice of and have the opportunity to respond to. The Court should accordingly find that the balance of harms favors entry of a TRO.

5. Issuance of the TRO is in the public interest.

An injunction in these circumstances is in the public interest because it will stop Defendant from violating federal trade secret and copyright law, and will prevent continued consumer misunderstanding of market data sources. The public is currently under the false impression that Defendant is a legitimate competitor of Nasdaq in providing market data—that Defendant has acquired its data lawfully and has found a legitimate way to compete with Nasdaq on price. Carso Decl. (Dkt. No. 11) at ¶¶ 18-19. An injunction serves the public interest in protecting trade secrets. *See Life Spine*, 8 F. 4th at 546; *Medcor, Inc. v. Garcia*, No. 1:21-cv-2164, 2022 WL 124163, at *13 (N.D. Ill. Jan. 13, 2022). Further, no public interest will be harmed by an injunction. Customers seeking real-time market data will still be able to obtain them through legitimate sources, either from Nasdaq directly or from authorized Nasdaq Distributors. To the extent Defendant provides non-infringing services or services using data not misappropriated from Nasdaq, Defendant will continue to be able to do so while the TRO is in place. The Court should accordingly find that a TRO would be in the public interest and grant the TRO requested by Nasdaq.

C. The equitable relief Nasdaq seeks is appropriate.

The DTSA authorizes this Court to grant an injunction “to prevent any actual or threatened misappropriation” described in the statute so long as it does not prevent a person from entering into an employment relationship or otherwise conflict with an applicable state law prohibiting restraints on the practice of a lawful profession, neither of which exceptions apply here. 18 U.S.C. § 1836(b)(3). Similarly, the DMCA authorizes this Court to grant temporary and permanent injunctive relief so long as it does not impose a prior restraint on free speech, which again is an exception that does not apply here. 17 U.S.C. § 1203(b)(1). Further, Federal Rule of Civil Procedure 65(b) provides that a court may issue a temporary restraining order without notice where facts show that the movant will suffer immediate and irreparable injury, loss, or damage before the adverse party can be heard in opposition. Moreover, under Federal Rule of Civil Procedure 65(d)(2)(C), this Court has the power to bind any third parties, such as domain hosts and service providers, who are in active concert with the defendant or who aid and abet the defendant and are given actual notice of the order. Fed. R. Civ. P. 65. The facts in this case warrant such relief.

1. A TRO immediately enjoining Defendant’s unauthorized and unlawful publication of Nasdaq Data is appropriate.

Nasdaq requests a temporary injunction requiring Defendant to immediately cease all use of Nasdaq’s misappropriated data feeds. Such relief is necessary to stop the ongoing harm to Nasdaq’s business, as well as harm to its authorized Distributors and to the public interest, and to prevent Defendant from continuing to benefit from its unauthorized use of Nasdaq’s trade secret data feeds.

The need for *ex parte* relief is magnified in today’s global economy where hackers and infringers can operate over the Internet in an anonymous fashion. Defendant’s corporate

registration indicates that it is registered to do business in Singapore, and that its directors are individuals named Yury Sokolov, Ng Cheng Wei, and Muhammad Hairul Bin Shahron. Beck Decl. (Dkt. No. 12), Ex. 12. Singapore records for Defendant identify Sokolov as a Russian national. *Id.* As a result, absent *ex parte* relief, Defendant and its directors would be able to evade this Court's process and remove any of Defendant's property from United States territorial jurisdiction, preventing Nasdaq from obtaining the injunctive relief it is entitled to under federal law. Indeed, Nasdaq's previous inquiries into the source of Defendant's data resulted in emails from an employee of Defendant purportedly named Alexander Axelrod, which appears to be a pseudonym for a person with no online presence. Carso Decl. (Dkt. No. 11) at ¶¶ 18-20.

This Court has frequently authorized immediate and *ex parte* injunctive relief in similar cases involving the unauthorized use of trademark(s), counterfeiting, and other intellectual property by foreign actors who would flee the Court's power if given notice. *See, e.g., Skechers U.S.A., Inc. II v. The Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 23-cv-01644 (N.D. Ill. Mar. 21, 2023) and *Wham-O Holding, Ltd. and InterSport Corp. d/b/a WHAM-O v. The Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 23-cv-04675 (N.D. Ill. Aug. 9, 2023). The same principle that this Court has applied to impose *ex parte* injunctive relief against foreign trademark counterfeiters applies here to warrant *ex parte* injunctive relief against a foreign party who has willfully misappropriated Nasdaq's trade secrets by stealing Nasdaq's data feeds, and who has minimal physical presence and thus may easily evade this Court's practical ability to enforce its orders unless restrained on an *ex parte* basis. *See* Carso Supp. Decl. at ¶¶ 4-5; Beck Supp. Decl., Exs. 19-20.

2. Preventing the transferring the Defendant's domain name away from its current registrar is appropriate.

As part of the TRO, Nasdaq also seeks temporary prohibition on the transfer of

Defendant's domain name from its current United States-based registrar. By analogy to trademark litigation, Defendants involved in domain name litigation easily can, and often will, change the ownership of a domain name or continue operating the website while the case is pending. Accordingly, to preserve the status quo and ensure the possibility of eventual effective relief, courts in trademark cases involving domain names regularly grant as a form of relief the temporary transfer of a domain name. *See, e.g., Deckers Outdoor Corporation v. The Partnerships, et al.*, No. 15-cv-3249 (N.D. Ill. Apr. 4, 2015) (unpublished). Here, Nasdaq seeks only the less extraordinary relief of a freezing of Defendant's domain name during the pendency of the TRO, to preserve Nasdaq's ability to obtain relief without damaging Defendant until Defendant has had an opportunity to be heard in response to the motion for preliminary injunction Nasdaq will proceed to file.

Here, freezing of Defendant's domain name is especially warranted because it is one of Defendant's only known connections to the United States, and thus one of the only ways the Court may effectively enforce a TRO against Defendant. Defendant's WHOIS domain information indicates that it is registered through Domains By Proxy, LLC, a company located in Tempe, Arizona, and registered by GoDaddy.com, LLC, an American company. Beck Decl. (Dkt. No. 12), Ex. 13 (Dkt. No. 13). It is therefore appropriate for the Court to require, as part of the TRO, that the relevant registry and registrar for the Defendant's domain name retain control over Defendant's domain name and prevent its transfer until this Court has had the opportunity to address the merits of this case.

3. Preventing the fraudulent transfer of assets is appropriate.

Nasdaq requests an *ex parte* restraint of Defendant's assets so that Nasdaq's right to an equitable accounting of Defendant's profits from sales of the misappropriated Nasdaq trade secrets. Issuing an *ex parte* restraint will ensure Defendant's compliance. If such a restraint is not

granted in this case, Defendant may disregard its responsibilities and fraudulently transfer financial assets to overseas accounts before a restraint is ordered. Specifically, upon information and belief, Defendant holds most of its assets overseas, likely in Singapore or Russia, making it easy to hide or dispose of assets, which will render an accounting by Nasdaq meaningless. However, Defendant uses PayPal, a United States company, for its payment processing, allowing this Court to effectively enforce an asset restraint through PayPal. Beck Decl. (Dkt. No. 12), Ex. 14 (Dkt. No. 13).

Courts have the inherent authority to issue a prejudgment asset restraint when the plaintiff's complaint seeks relief in equity. *Animale Grp. Inc. v. Sunny's Perfume Inc.*, 256 F. App'x 707, 709 (5th Cir. 2007); *Levi Strauss & Co. v. Sunrise Int'l Trading Inc.*, 51 F.3d 982, 987 (11th Cir. 1995); *Reebok Int'l Ltd. v. Marnatech Enters., Inc.*, 970 F.2d 552, 559 (9th Cir. 1992). In addition, Nasdaq has shown a strong likelihood of succeeding on the merits of both their DTSA and DMCA claims, and under both statutes, Nasdaq is entitled to recover Defendant's profits both from its misappropriation of trade secrets and its violation of the DMCA. 18 U.S.C. § 1836(b)(3)(B)(i)(II) (authorizing damages for unjust enrichment caused by misappropriation of trade secrets); 17 U.S.C. § 1203(c)(2) (authorizing recovery of any profits of the violator attributable to the violation and not taken into account in computing the actual damages). Therefore, this Court has the inherent equitable authority to grant Nasdaq's request for a prejudgment asset freeze to preserve the relief sought by Nasdaq.

Nasdaq has shown a likelihood of success on the merits, an immediate and irreparable harm suffered as a result of Defendant's activities, and that, unless Defendant's assets are frozen, Defendant will likely hide or move its ill-gotten funds from its PayPal account to offshore bank accounts. Accordingly, the granting of an injunction preventing the transfer of Defendants' assets

from PayPal is proper.

4. Nasdaq is entitled to expedited discovery.

The Supreme Court has held that “federal courts have the power to order, at their discretion, the discovery of facts necessary to ascertain their competency to entertain the merits.” *Vance v. Rumsfeld*, No. 1:06-cv-06964, 2007 WL 4557812, at *6 (N.D. Ill. Dec. 21, 2007) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S. Ct. 2380 (1978)). A district court has wide latitude in determining whether to grant a party’s request for discovery. *Id.* (citation omitted). Furthermore, courts have broad power over discovery and may permit discovery in order to aid in the identification of unknown defendants. *See* Fed. R. Civ. P. 26(b)(2); *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980).

As described above, Defendant is using third-party payment processor PayPal, which helps to increase its anonymity by interposing a third party between the consumer and Defendant. Without being able to discover Defendant’s bank and payment system accounts, any asset restraint would be of limited value because Nasdaq would not know the entities upon whom to serve the order.

Nasdaq respectfully requests expedited discovery to discover bank and payments system accounts Defendant uses for its sales operations by which it profits from its misappropriation of trade secrets and concealment of its infringement of Nasdaq’s copyrights. The discovery requested on an expedited basis in Nasdaq’s Proposed Temporary Restraining Order has been limited to include only what is essential to prevent further irreparable harm. Discovery of these financial accounts so that they can be frozen is necessary to ensure that these activities will be contained.

Under Federal Rule of Civil Procedure 65(d)(2)(C), this Court has the power to bind any third party who is in active concert with Defendant that is given notice of the order to provide

expedited discovery in this action. Fed. R. Civ. P. 65(d)(2)(C). Nasdaq's counsel is aware that PayPal, in previous trademark counterfeiting lawsuits, has worked with trademark owners and is not aware of any reason that Defendant or PayPal cannot comply with these expedited discovery requests without undue burden. Further, the relevant third party (PayPal) has in fact complied with similar requests in previous trademark counterfeiting cases. More importantly, as Defendant has engaged in deceptive practices in hiding its identity and accounts, Nasdaq's seizure and asset restraint in the Temporary Restraining Order may have little meaningful effect without the requested relief. Accordingly, Nasdaq respectfully requests that expedited discovery be granted.

5. Service of process by e-mail and/or electronic publication is warranted in this case.

Pursuant to Federal Rule of Civil Procedure 4(f)(3), Nasdaq requests this Court's authorization to serve process by electronically publishing a link to the Complaint, the Temporary Restraining Order, and other relevant documents on a website, or by sending an e-mail to the following email addresses: contact@twelvedata.com and aaxelrod@twelvedata.com. Nasdaq submits that providing notice via electronic publication and/or e-mail, along with any notice that Defendant receives from its domain name registrar and payment processor, is reasonably calculated under all circumstances to apprise Defendant of the pendency of the action and afford them the opportunity to present their objections.

Electronic service is appropriate and necessary in this case because Defendant, on information and belief: (1) has provided false names and physical address information in its online presence in order to conceal their locations and avoid liability for their unlawful conduct (Carso Decl. (Dkt. No. 11), Exs. 9-10 (Dkt. No. 13); Beck Decl. (Dkt. No. 12), Exs. 17-18 (Dkt. No. 13); and (2) relies primarily on electronic communications to communicate with its registrars and customers, demonstrating the reliability of this method of communication by which

Defendant may be apprised of the pendency of this action. Authorizing service of process solely via e-mail and/or electronic publication will benefit all parties and the Court by ensuring that Defendant receives prompt notice of this action, thus allowing this action to move forward expeditiously. Absent the ability to serve Defendant in this manner, Plaintiffs will almost certainly be left without the ability to pursue a final judgment.

In order to transact business with PayPal, Defendant must generally provide an accurate e-mail address to customers for completing payment. Moreover, it is necessary for companies such as Defendant, who operate entirely online, to visit their internet store to ensure it is functioning and to communicate with customers electronically. The email correspondence between Nasdaq and Defendant showing that Defendant receives email at its contact@twelvedata.com and aaxelrod@twelvedata.com email addresses, and responds to email sent to those addresses, demonstrates that those email addresses are reliable ways to deliver notice to Defendant. Carso Decl. (Dkt. No. 11), Exs. 9-10 (Dkt. No. 13). As such, it is far more likely that Defendants can be served electronically than through traditional service of process methods.

Federal Rule of Civil Procedure 4(f)(3) allows this Court to authorize service of process by any means not prohibited by international agreement as the Court directs. *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002). The Ninth Circuit in *Rio Properties* held, “without hesitation,” that e-mail service of an online business defendant “was constitutionally acceptable.” *Id.* at 1017. The Court reached this conclusion, in part, because the defendant conducted its business over the Internet, used e-mail regularly in its business, and encouraged parties to contact it via e-mail. *Id.*

Similarly, a number of courts, including within the Northern District of Illinois, have held

that alternate forms of service pursuant to Rule 4(f)(3), including e-mail service, are appropriate and may be the only means of effecting service of process “when faced with an international e-business scofflaw.” *Id.* at 1018; see also, *MacLean-Fogg Co. v. Ningbo Fastlink Equip. Co., Ltd.*, No. 1:08-cv-02593, 2008 WL 5100414, at *2 (N.D. Ill. Dec. 1, 2008) (holding e-mail and facsimile service appropriate); *Popular Enters., LLC v. Webcom Media Group, Inc.*, 225 F.R.D. 560, 563 (E.D. Tenn. 2004) (quoting *Rio*, 284 F.3d at 1018) (allowing e-mail service); see also *Juniper Networks, Inc. v. Bahattab*, No. 1:07-cv-01771-PLF-AK, 2008 WL 250584, *1-2, (D.D.C. Jan. 30, 2008) (citing *Rio*, 284 F.3d at 1017-1018) (other citations omitted) (holding that “in certain circumstances ... service of process via electronic mail ... is appropriate and may be authorized by the Court under Rule 4(f)(3) of the Federal Rules of Civil Procedure”).

Nasdaq submits that allowing service solely by e-mail and/or electronic publication in the present case is appropriate and comports with constitutional notions of due process, particularly given the decision by Defendant to conduct its Internet-based activities anonymously. Defendant’s website provides no physical address to contact. Carso Decl. (Dkt. No. 11), Ex. 6 (Dkt. No. 13).

Furthermore, Rule 4 does not require that a party attempt service of process by other methods enumerated in Rule 4(f) before petitioning the court for alternative relief under Rule 4(f)(3). *Rio Props. v. Rio Intern. Interlink*, 284 F.3d 1007, 1014-15 (9th Cir. 2002). As the *Rio Properties* court explained, Rule 4(f) does not create a hierarchy of preferred methods of service of process. *Id.* at 1014. To the contrary, the plain language of the Rule requires only that service be directed by the court and not be prohibited by international agreement. There are no other limitations or requirements. *Id.* Alternative service under Rule 4(f)(3) is neither a “last resort” nor “extraordinary relief,” but is rather one means among several by which an international

defendant may be served. *Id.* As such, this Court may allow Nasdaq to serve Twelve Data via electronic publication and/or e-mail. See *Monco v. Zoltek Corp.*, 2018 WL 3190817, at *4 (N.D. Ill. Apr. 24, 2018); *Strabala v. Zhang*, 318 F.R.D. 81, 115 (N.D. Ill. 2016); see also *Unicorn Global, Inc., v. The Partnerships and Unincorporated Associations Identified on Schedule A*, 20-cv-04806 (N.D. Ill. April 1, 2021) (finding Hague Convention service is optional under Federal Rule of Civil Procedure 4.).

Additionally, Defendant is registered to do business as a Singapore company. Beck Decl. (Dkt. No. 12), Ex. 12 (Dkt. No. 13). The United States and Singapore are both signatories to the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil and Commercial Matters (the “Hague Convention”). Beck Decl. (Dkt. No. 12), Ex. 15 (Dkt. No. 13). The Hague Convention does not preclude service by email, and the declarations to the Hague Convention filed by Singapore do not appear to expressly prohibit email service. *Id.* In addition, the law of Singapore does not appear to prohibit electronic service of process. Beck Decl. (Dkt. No. 12), Ex. 16 (Dkt. No. 13). As such, Nasdaq respectfully requests this Court’s permission to serve Defendant via e-mail and/or electronic publication.

D. The appropriate bond amount is \$10,000.

The posting of security upon issuance of a temporary restraining order or preliminary injunction is vested in the Court’s sound discretion. *Rathmann Grp. v. Tanenbaum*, 889 F.2d 787, 789 (8th Cir. 1989); *Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 421 (4th Cir. 1999); Fed. R. Civ. P. 65(c). Because of the strong and unequivocal nature of Nasdaq’s evidence of trade secret misappropriation and violation of the DMCA, Nasdaq respectfully requests that this Court require Nasdaq to post a bond of no more than Ten Thousand U.S. Dollars (\$10,000.00). See, e.g., *Monster Energy Co. v. Chen Wensheng*, 136 F. Supp. 3d 897,

910-11 (N.D. Ill. 2015).

IV. CONCLUSION

Nasdaq's data business is being irreparably harmed by Defendant's continued misappropriation of Nasdaq's data feeds. Without entry of the requested relief, the continued sale of Nasdaq's misappropriated trade secrets and concealment of infringement of Nasdaq's copyrighted data feeds will continue to damage Nasdaq's market position and its relationships with existing and potential customers. Without entry specifically of *ex parte* relief preserving the status quo, Defendant is likely to transfer its financial assets and domain name out of the United States, preventing Nasdaq from obtaining the relief to which it is entitled after this Court resolves this case on the merits. Therefore, entry of an *ex parte* order is necessary to protect Nasdaq's rights in its trade secrets and copyrights, to prevent further harm to Nasdaq, its customers, and the investing public, and to preserve the status quo. In view of the foregoing and consistent with similar cases involving injunctive relief in the context of trademark counterfeiting and copyright infringement, Nasdaq respectfully requests that this Court enter a Temporary Restraining Order in the form submitted herewith and set a status hearing before the expiration of the Temporary Restraining Order at which hearing Nasdaq intends to present a motion for preliminary injunction.

August 29, 2024.

Respectfully submitted,

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