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

Zhougui Hong,	)	
	)	
Plaintiff,	)	
	)	1:23-cv-16216
v.	)	
	)	Dist. Judge Sara L. Ellis
The Individuals, Partnerships, and Unincorporated Associations Identified on Schedule A,	)	
	)	Mag. Judge Sheila M. Finnegan
	)	
	)	
Defendants	)	

Plaintiff's Motion for Entry of Default and Default Judgment

NOW COMES Zhougui Hong ("Plaintiff"), by and through its undersigned counsel, and hereby moves for entry of default and default judgment against the remaining defendants in the case who are not exempted as described herein (collectively, the "Defaulting Defendants"), based on Plaintiff's action for trademark infringement.

I. Statement of Facts

Plaintiff specializes in the creation, manufacture, marketing and sale of consumer products, including, inter alia, fastening tape (collectively, the "Plaintiff Products"). [Dkt. 1 ¶ 9]. Plaintiff is the owner of all rights to the valid, federally registered trademark COINS (the "Plaintiff Mark"), and has used the Plaintiff Mark in connection with the sale, distribution, promotion, and advertising of genuine Plaintiff Products since 2016. [Dkt. 1 ¶ 10-12]. Plaintiff has invested substantial resources, time, money, and commercial efforts to establish the goodwill of Plaintiff's Products and the Plaintiff Mark. [Dkt. 1 ¶ 10]. Additional factual assertions regarding Plaintiff in the Complaint are incorporated herein. Id. at ¶¶ 13-20.

The Defaulting Defendants conduct business throughout the United States, including within the State of Illinois and this Judicial District, through the operation of the fully interactive, commercial online marketplaces operating under the online storefronts as identified in Schedule A (the "Defendant Online Stores"). Id. at ¶ 20. Each Defaulting Defendant targets the United States, including Illinois, and has offered to sell and, on information and belief, has sold and continues to sell unauthorized and unlicensed products using the registered Plaintiff Mark (the "Infringing Products") to consumers within the United States, including the State of Illinois and this Judicial District. Id. Additional factual assertions regarding Defaulting Defendants in the Complaint are incorporated herein. Id. at ¶¶ 22-39.

Plaintiff filed this action on July 12, 2023, alleging federal trademark infringement under 15 U.S.C. § 1114 (Count I), false designation of origin under 15 U.S.C. § 1125, and violations of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510 et seq. [Dkt. 1]. On November 30, 2023, this Court granted Plaintiff's *Ex Parte* Motion for Entry of a temporary Restraining Order (the "TRO") and subsequently converted the TRO [Dkt. 11] into a Preliminary Injunction [Dkt. 26] with respect to the Defaulting Defendants on December 21, 2023. [Dkt. 26]. Paragraph 6 of the TRO and Paragraph 7 of the Preliminary Injunction Order permitted Plaintiff to complete service of process to Defendants by electronically publishing a link to the relevant documentation on a website and sending an email to the email addresses provided for Defendants by third-parties. The Defaulting Defendants were properly served with process on December 13, 2023, [Dkt. 18], and none of the Defaulting Defendants have filed an answer or otherwise pled in this action. *See*, Declaration of Adam E. Urbanczyk (the "Urbanczyk Declaration") at ¶ 2.

Plaintiff now moves this Court for an Order entering default and default judgment finding that Defaulting Defendants are liable on all counts of Plaintiff's Complaint. Fed. R. Civ. P. 55(a), (b)(2). Plaintiff further seeks an award of statutory damages as authorized by 15 U.S.C. § 1117(c) of willful counterfeiting against each of the Defaulting Defendants for their violations of Plaintiff's registered trademark through products sold through each of the Defendant Online Stores. Plaintiff also seeks entry of a permanent injunction prohibiting Defaulting Defendants from using the Plaintiff Mark in connection with the sale of any product that is not authorized by Plaintiff to be sold in connection with the Plaintiff Mark.

II. Argument

a. Jurisdiction and venue are proper in this Court.

This Court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the Lanham Act, 15 U.S.C. § 1051, *et seq.* and 28 U.S.C. §§ 1331, 1338(a)-(b). This Court has jurisdiction over the claims in this action under the laws of the State of Illinois pursuant to 28 U.S.C. § 1367(a), because the state law claims are so related to the federal claims that they form the same case or controversy and derive from a common nucleus of operative facts. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, and this Court may properly exercise personal jurisdiction over Defaulting Defendants since each of the Defendants directly target business activities toward consumers in Illinois and causes harm to Plaintiff's business with this Judicial District. *See*, [Dkt. 1 at ¶ 8]; uBID, Inc. v. GoDaddy Grp., Inc., 623 F.3d 421, 423-24 (7th Cir. 2010) ("without benefit of an evidentiary hearing, the plaintiff bears only the burden of making a prima facie case for personal jurisdiction" and all of plaintiff's asserted facts should be accepted as true and any factual determinations should be resolved in its favor).

Through at least the fully interactive, commercial online marketplaces accounts operating under the Defendant Online Stores, each of the Defaulting Defendants have targeted sales to Illinois residents by operating online storefronts which offer shipping to the United States, including within Illinois and this judicial district, offered to accept payment in U.S. dollars, and offered for sale and/or sold Infringing Product using the Plaintiff Mark to residents of Illinois. [Dkt. 1 at ¶ 8]. Personal jurisdiction exists over the Defaulting Defendants because they directly target their business activities toward consumers in the United States, including Illinois. Specifically, Defaulting

Defendants are reaching out to do business with Illinois residents by operating one or more commercial, interactive Defendant Online Stores through which Illinois residents can purchase Infringing Products being offered and sold under the Plaintiff Mark. uBID, Inc., 623 F.3d at 423-24; *See*, Monster Energy Co. v. Wensheng, 136 F. Supp. 3d 897, 907 (N.D. Ill. 2015); Deckers Outdoor Corp. v. Does 1-55, 2011 WL 4929036, at *3 (N.D. Ill. Oct. 14, 2011).

b. Plaintiff has met the requirements for entry of default.

Under Federal rules, "when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a). On November 24, 2023, Plaintiff filed its Complaint alleging federal trademark infringement under 15 U.S.C. § 1114 and related claims. [Dkt. 1]. The Defaulting Defendants were all served with process in accordance with the TRO on December 13, 2023 [Dkt. 23]. Despite having been served with process, none of the Defaulting Defendants have filed an answer or otherwise pled in this action. Urbanczyk Decl. at ¶ 2. Upon information and belief, the Defaulting Defendants are not active-duty members of the U.S. armed forces. Urbanczyk Decl. at ¶ 3. Accordingly, Plaintiff asks for entry of default against the Defaulting Defendants pursuant to Fed. R. Civ. P. 55(a).

c. Plaintiff has met the requirements for entry of default judgment.

Rule 55(b)(2) of the Federal Rules of Civil Procedure provides for a court-ordered default judgment. A default judgment establishes, as a matter of law, that the Defaulting Defendants are liable to Plaintiff on each cause of action alleged in the Complaint. Deckers Outdoor Corp., 2011 WL 4929036, at *2, *citing*, United States v. Di Mucci, 879 F.2d 1488, 1497 (7th Cir. 1989). When the Court determines that a defendant is in default, the factual allegations of the complaint are taken as true and may not be challenged, and the defendants are liable as a matter of law as to each cause of action alleged in the complaint. Black v. Lane, 22 F.3d 1395, 1399 (7th Cir. 1994).

As noted above, Plaintiff served the Complaint on the Defaulting Defendants on December 13, 2023 [Dkt. 23]. More than twenty-one (21) days have passed since each of the Defaulting Defendants was served, and no answer or other responsive pleading has been filed by any of the Defaulting Defendants as required under federal rules. Fed. R. Civ. P. 12(a)(1)(A)(i). Default judgment is therefore appropriate, and consistent with previous similar cases in front of this Court. Plaintiff requests an award of statutory damages as authorized by 15 U.S.C. § 1117(c)(2) for willful counterfeiting against each of the Defaulting Defendants for their infringing utilization of the Plaintiff Mark in connection with the sale of Infringing Products which are covered under the registration for the Plaintiff Mark, and listings therefor, sold through the Defendant Online Stores. Plaintiff also seeks entry of a permanent injunction prohibiting Defaulting Defendants from exercising any of the exclusive rights afforded to Plaintiff under 15 U.S.C § 1116.

To properly plead a claim of trademark infringement and counterfeiting under the Lanham Act, a plaintiff must allege that: (i) its mark is distinctive enough to be worthy of protection; and (iii) defendant's unauthorized use of the mark causes a likelihood of confusion as to the origin or sponsorship of defendant's products. *See*, Barbecue Marx, Inc. v. 551 Ogden, Inc., 235 F.3d 1041, 1043 (7th Cir.2000), *citing*, Eli Lilly & Co. v. Natural Answers, Inc., 233 F.3d 456, 464 (7th Cir.2000). This is the same test that is used for a false designation of origin claim under the Lanham Act and claims under the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510, et seq. *See*, Johnny Blastoff, Inc. v. Los Angeles Rams Football Co., 188 F. 3d 427, 436 (7th Cir. 1999); Am. Broad. Co. v. Maljack Prods., Inc., 34 F. Supp. 2d 665, 681 (N.D. Ill. 1998); Deckers Outdoor Corp. v. Does 1-100, 2013 WL 169998, at *2 (N.D. Ill. Jan. 16, 2013). The registration of the Plaintiff Mark is *prima facie* evidence of its validity and the validity of its registration, Plaintiff's ownership of the Plaintiff Mark, Plaintiff's exclusive right to use the Plaintiff Mark in commerce on or in connection with Hook and loop fastening tape. 15 U.S.C. § 1057(b).

Plaintiff alleges in its Complaint that it is the exclusive owner of the federally registered Plaintiff Mark and that Defaulting Defendants have sold, offered to sell, marketed, distributed, and advertised, and are still selling, offering to sell, marketing, distributing, and advertising products using counterfeit reproductions of the Plaintiff Mark, that Defaulting Defendants have knowledge of Plaintiff's rights in the Plaintiff Mark, that Defaulting Defendants are not authorized to use the Plaintiff Mark for any reason, and that Defaulting Defendants' use of the Plaintiff Mark causes a likelihood of confusion. [Dkt. 1 ¶¶ 40-49].

Plaintiff also alleges in its Complaint that Defaulting Defendants are using the Plaintiff Mark on Infringing Products. Id., at ¶ 50-54. As such, this creates a likelihood of confusion, mistake, and deception among the general public as to the affiliation, connection, or association with Plaintiff or the origin, sponsorship, or approval of Defaulting Defendants' Infringing Products by Plaintiff. Id. Plaintiff further alleges in its Complaint that Defaulting Defendants have engaged in acts violating Illinois law including, but not limited to, passing off their Infringing Products as those of Plaintiff, causing a likelihood of confusion and/or misunderstanding as to the source of their goods, causing a likelihood of confusion and/or misunderstanding as to an affiliation, connection, or association with genuine Plaintiff Products, representing that their Infringing Products have Plaintiff's approval when they do not, and engaging in other conduct which creates a likelihood of confusion or misunderstanding among the public. Id., at ¶ 55-58.

Because the Defaulting Defendants have failed to answer or otherwise plead in this matter, the Court must accept the allegations contained in Plaintiff's Complaint as true. *See*, Fed. R. Civ. P. 8(b)(6); Am. Taxi Dispatch, Inc., v. Am. Metro Taxi & Limo Co., 582 F. Supp. 2d 999, 1004 (N.D. Ill. 2008). Accordingly, Plaintiff requests entry of judgment with respect to Counts I for willful copyright infringement against the Defaulting Defendants.

d. Plaintiff is entitled to monetary and injunctive relief.

Awarding statutory damages is both remedial in nature and serves to protect an important public interest. Counterfeiting activity creates enormous economic loss[1] and puts consumers, particularly those purchasing online from unknown sellers, who are deceived into buying misidentified and low-quality counterfeit goods at risk. Thus, it is important to both penalize defendants and try to deter future violations. Plaintiff has expended substantial resources in growing and protecting the COINS trademark and brand. [Dkt. 1 ¶ 10, 16]. The success of the COINS brand has resulted in its significant counterfeiting, as evidenced by this very case. Plaintiff has built substantial commercial goodwill in and to the COINS trademark. Id.

i. Statutory damages are appropriate in this case.

Under the Lanham Act, a plaintiff in a case involving the use of a counterfeit mark may elect to receive "not less than $1,000 or more than $200,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just." 15 U.S.C. § 1117(c)(1). When the counterfeiting is found to be willful, the Lanham Act also provides for statutory damages of up to "$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just." 15 U.S.C. § 1117(c)(2). The lack of information regarding Defaulting Defendants' complete sales and profits makes statutory damages particularly appropriate for default cases like the instant case. Lorillard Tobacco Co. v. S & M Cent. Serv. Corp., No. 03 C 4986, 2004 WL 2534378, at *3 (N.D. Ill. Nov. 8, 2004), *citing*, S. Rep. No.177, 104th Cong. 1995. Likewise, Courts have recognized that statutory damages should be awarded without requiring an evidentiary hearing. *See*, Lorillard Tobacco Co. v. Montrose Wholesale Candies & Sundries, Inc., No. 03 C 4844, 2008 WL 1775512, at *2 (N.D. Ill. Apr. 17, 2008).

ii. Defaulting Defendants' infringement and piracy was willful.

[1] The National Bureau of Asian Research, The Report of the Commission on the Theft of American Intellectual Property, at 9, Pub. The Commission on the Theft of American Intellectual Property 2017, available at http://www.ipcommission.org/report/IP_Commission_Report_Update_2017.pdf

As alleged in Plaintiff's Complaint, Defaulting Defendants enabled and facilitated sales of the Infringing Products through at least the Defendant Online Stores, and the Court can infer the Defaulting Defendants' willfulness from this conduct. Lorillard Tobacco, 2004 WL 2534378, *7. At a minimum, Defaulting Defendants "showed a reckless disregard" for Plaintiff's rights in the federally-registered COINS trademark. Id., *quoting*, Microsoft Inc. v. Logical Choice Computers, Inc., No. 99 C 1300, 2001 WL 58950, at *11 (N.D. Ill. Jan. 22, 2001) (internal citations omitted). Further, this Court has deemed counterfeiting willful when defendants default. *See*, Burberry Limited, et al. v. The P'ships, et al., No. 14-cv-08220, Dkt. Nos. 44-45 (N.D. Ill. Dec. 11, 2014); Oakley, Inc. v. The P'ships, et al., No. 13-cv-02958 Dkt. Nos. 36-37 (N.D. Ill. June 17, 2013).

iii. A strong statutory damage award is appropriate and just.

A Court will determine a statutory damage award under the Lanham Act as it "considers just." 15 U.S.C. § 1117(c). Courts in this and other district have found further guidance for this determination by looking to the statutory damages provision of the U.S. Copyright Act, 17 U.S.C. § 504(c). *See*, Lorillard Tobacco, 2004 WL 2534378, at *10; Luxottica USA LLC v. The P'ships, et al., No. 14 C 9061, 2015 WL 3818622, at *2 (N.D. Ill. June 18, 2015); Sara Lee v. Bags of New York, Inc., 36 F. Supp. 2d 161, 166 (S.D.N.Y. 1999).

In the Seventh Circuit, a court when determining a statutory damage award for a copyright infringement claim will consider "the difficulty or impossibility of proving actual damages, the circumstances of the infringement, and the efficacy of the damages as a deterrent." Chi-Boy Music v. Charlie Club, 930 F.2d 1224, 1229 (7th Cir. 1991) (internal citations omitted). This Court is "not required to follow any rigid formula," but instead "enjoys wide discretion" in determining a statutory damage award. Id. Courts in this district have also considered the significant value of a plaintiff's brand and the efforts taken to protect, promote, and enhance that brand in determining the appropriate dollar figure for the award. Lorillard Tobacco, 2004 WL 2534378, at *16.

Courts have awarded high amounts where a defendant's counterfeiting activities attracted wide market exposure through Internet offerings. *See*, Light v. Zhangyali, 2016 WL 4429758, at *4 (N.D. Ill. Aug. 22, 2016) (awarded $100,000 in statutory damage award where "Defendant advertises and sells its products worldwide through its online store"); Luxottica, at *2 (collecting awards from cases where counterfeiting took place online that found "substantial damages awards appropriate," ranging between $50,000 and $750,000 per mark); Coach, Inc. v. Ocean Point Gifts, 2010 WL 2521444, at *8 (D. N.J. June 14, 2010) (awarding $200,000 in statutory damages "due in part to the wide market exposure that the Internet can provide"); Burberry Ltd. & Burberry USA v. Designers Imports, Inc., 2010 WL 199906, at *10 (S.D.N.Y. Jan. 19, 2010) (amount based in part on "Defendant's ability to reach a vast customer base through internet advertising").

Courts have awarded significant statutory damages, including up to the maximum provided by law, to sufficiently deter internet-reseller defendants and others situated like them from engaging in further infringing conduct. *See*, *e.g.*, Oakley (awarding $2,000,000 in statutory damages per defendant); Phillip Morris USA Inc. v. Marlboro Express, 2005 WL 2076921, at *6 (E.D.N.Y. Aug. 26, 2005) (awarding $2,000,000 in statutory damages based in part on "the need for a substantial deterrent to future misconduct."); Kiesque, Incorporated v. The Partnerships et al., 18-cv-7761, Dkt. 56 at 4 (N.D. Ill. May 14, 2019) (entering a default judgement in the amount of $2 million.); Sands, Taylor & Wood v. Quaker Oats Co., 34 F.3d 1340, 1347 (7th Cir. 1994), *on reh'g in part*, 44 F.3d 579 (7th Cir. 1995) (noting that statutory damages under § 1117(c) are not merely remedial but serve an important public interest).

Given the Court's clear discretion in determining the appropriate amount of the statutory damages award within the statutory limits of 15 U.S.C. § 1117(c), in light of guidance provided under Lorillard Tobacco, 2004 WL 2534378, at *3-7, and consistent with previous determinations in similar in online counterfeiting cases in this district, Plaintiff respectfully requests the Court's entry of an award of $200,000.00 for the COINS trademark counterfeited by Defaulting Defendants. *See e.g.*, Den-Mat Holdings, LLC v. The Partnerships et al., 20-cv-06194, Dkt. 42 at 5 (N.D. Ill. Dec. 15, 2020) (entering a default judgement in the amount of $250,000); Benefit Cosmetics LLC, Besttomorrow Store, et al., 19-cv-02179, Dkt. 47 at 6 (N.D. Ill. June 5, 2019) (entering a default judgement in the amount of $200,000).

iv. Plaintiff is entitled to permanent injunctive relief.

Defaulting Defendants should be enjoined from infringing or otherwise violating the Plaintiff's trademark rights in the COINS trademark, including at least all injunctive relief previously awarded by this Court to the Plaintiff in the TRO. [Dkt. 14]. Plaintiff is entitled to injunctive relief so it can quickly take action against any new online marketplace accounts that are identified, found to be linked to the Defaulting Defendants, and selling Infringing Products. *See*, Oakley, Inc. v. The P'ships, et al., No. 13-cv-02958 Dkt. Nos. 36-37 (N.D. Ill. June 17, 2013) (J. Pallmeyer).

III. Conclusion

Plaintiff respectfully requests that the Court enter default and default judgment against each Defaulting Defendant, award statutory damages in the amount of two hundred thousand dollars ($200,000) per Defaulting Defendant pursuant to 15 U.S.C. § 1117(c)(2), and enter a permanent injunction order prohibiting Defaulting Defendants from selling Infringing Products.

Dated: February 1, 2024

Respectfully Submitted

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