IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Shenzhen Aifasite Electronic Commerce Co., Ltd. Plaintiff, v. The Partnerships And Unincorporated Associations Identified On Schedule "A" Defendants.	Case No.: 0:23-cv-61018-RKA Judge: Roy K. Altman Mag. Judge: Patrick M. Hunt

[proposed] ORDER ON MOTION FOR ENTRY OF FINAL JUDGMENT BY DEFAULT

THIS CAUSE is before the Court upon Plaintiff Shenzhen Aifasite Electronic Commerce Co. Ltd.'s ("Aifasite" or "Plaintiff") Motion for Entry of Final Judgment by Default, [D.E. 119] ("Motion"), filed on May 13, 2024. A Clerk's Default was entered against Defendants listed in Schedule "A" to the Complaint as Defendant numbered (18), (38), (64) and (120) ("Defaulting Defendants" hereinafter). [D.E. 101, 108] Defendants failed to appear, answer, or otherwise plead to the Complaint, [D.E. 1], despite having been served. The Court has carefully considered the Motion, the record in this case, the applicable law, and is otherwise fully advised. For the following reasons, Plaintiff's Motion is granted.

I. INTRODUCTION

Plaintiff filed the instant civil action on May 31, 2023 in order to combat the willful and intentional counterfeiting and infringement of its federally registered Calsunbaby trademark, which is covered by U.S. Trademark Registration No. 5,565,547 ("Calsunbaby"). [D.E. 1 at ¶ 4]

The Complaint alleges that Defendants are selling, offering for sale and marketing counterfeit products using Plaintiff's Calsunbaby trademark registered with the United States Patent and Trademark Office (hereinafter, "USPTO"), Reg. No. 5,565,547 (hereinafter, "the Calsunbaby Mark" or "Mark"). Each of the Seller IDs identified on Schedule "A" to Plaintiff's Complaint ("Seller IDs") and Defaulting Defendants subject to this order sell, offer for sale, and market their counterfeit products on the e-commerce site Walmart.com and offer to ship within the Southern District of Florida. [D.E. 1 at ¶¶ 2, 4, 5], [D.E. 7]. In addition, Plaintiff has never assigned or licensed the Calsunbaby Mark to any of the Defendants in this matter. [D.E. 1 at ¶ 12], [D.E. 7 at ¶ 14].

Plaintiff further asserts that Defaulting Defendants' use of the Calsunbaby Mark in connection with the distribution, offering for sale, and sale of counterfeit products have caused irreparable damage through consumer confusion and erosion to Calsunbaby's goodwill. In its Motion, Plaintiff seeks the entry of default final judgment against Defaulting Defendants in an action alleging infringement of trademark and false designation of origin. Plaintiff further requests that the Court (1) enjoin Defendants' unlawful use of Plaintiff's registered trademark and (2) award Plaintiff damages. Plaintiff seeks statutory damages as a result of the inability to account for actual damages.

Pursuant to Federal Rule of Civil Procedure 55(b)(2), the Court is authorized to enter a final judgment of default against a party who has failed to plead in response to a complaint. "A

'defendant, by his default, admits the plaintiff's well-pleaded allegations of fact, is concluded on those facts by the judgment, and is barred from contesting on appeal the facts thus established.'" *Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F. 3d 1298, 1307 (11th Cir. 2009) (quoting *Nishimatsu Const. Co., Ltd. v. Houston Nat'l Bank*, 515 F. 2d 1200, 1206 (5th Cir. 1975)); *Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987). "Because a defendant is not held to admit facts that are not well pleaded or to admit conclusions of law, the Court must first determine whether there is a sufficient basis in the pleading for judgment to be entered." *Luxottica Group S.p.A. v. Individual, P'ship or Unincorporated Ass'n*, No. 17-cv-61471, 2017 WL 6949260, at *2 (S.D. Fla., J. Beth Bloom, Oct. 3, 2017); *see also Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987) ("[L]iability is well-pled in the complaint, and is therefore established by the entry of default . . . .").

If there are multiple defendants, the plaintiff must state in the motion for default final judgment that there are no allegations of joint and several liability, and set forth the basis why there is no possibility of inconsistent liability. Generally, if one defendant who is alleged to be jointly and severally liable with other defendants defaults, judgment should not be entered against that defendant until the matter is adjudicated against the remaining defendants. *See* 10A Charles Alan Wright and Arthur R. Miller, Federal Practice and Procedure § 2690 (3d ed. 1998) (citing *Frow v. De La Vega*, 82 U.S. 552, 554 (1872) ("[A] final decree on the merits against the defaulting defendant alone, pending the continuance of the cause, would be incongruous and illegal.")). "Even when defendants are similarly situated, but not jointly liable, judgment should not be entered against a defaulting defendant if the other defendant prevails on the merits." *Gulf Coast Fans, Inc. v. Midwest Elecs. Imp., Inc.*, 740 F.2d 1499, 1512 (11th Cir. 1984).

Here, Plaintiff has stated in its Motion that there are no allegations of joint and several liability with respect to damages. The remaining Defendants in the case have not appeared and have defaulted. Therefore, there is no possibility of inconsistent liability between the Defendants and an adjudication may be entered. The Court thus finds there is a sufficient basis in the pleading for the default judgment to be entered with respect to the Defaulting Defendants.

II. FACTUAL BACKGROUND

Plaintiff is the owner of the federally registered Calsunbaby trademark, which is covered by U.S. Trademark Registration No. 5,565,547. [D.E. 1 at ¶ 3]; [D.E. 7 at ¶¶ 3, 5]; [D.E. 7-1]. The Calsunbaby Mark is valid and enforceable.

Defaulting Defendants, through the various Internet based e-commerce stores operating under each of the Seller IDs identified on Schedule "A" hereto ("Seller IDs") created marketplace listings on the e-commerce platform Walmart.com and offered for sale, promoted, advertised, distributed, and/or sale of goods bearing and/or using the Calsunbaby Mark to consumers in this Judicial District and throughout the United States in a manner that violates Plaintiff's exclusive trademark in the Calsunbaby brand. [D.E. 1 at ¶¶ 16, 28]; [D.E. 7 at ¶¶ 14-17]; [D.E. 7-3]. Plaintiff has submitted sufficient evidence showing each Defendant has offered for sale at least one counterfeit product. Defendants are not now, nor have they ever been, authorized or licensed to use, display, reproduce or distribute under the Calsunbaby Mark.

Plaintiff undertook an investigation that has established that defendants are using Walmart.com to sell from foreign countries such as China to consumers in the United States products which are not authentic Calsunbaby products. Plaintiff accessed defendants' Internet based e-commerce stores operating under their respective Seller ID names through Walmart.com. Upon accessing each of the e-commerce stores, Plaintiff viewed product listings offering for sale

Calsunbaby brand products, added products to the online shopping cart, proceeded to a point of checkout, and otherwise actively exchanged data with each e-commerce store. Plaintiff captured detailed web pages for each defendant store. Plaintiff personally analyzed Defendants' product listings posted via each of the Seller IDs by reviewing the e-commerce stores operating under each of the Seller IDs, or the detailed web page captures and images of the products offered for sale, and concluded that the products infringed on the Calsunbaby Mark.

III. ANALYSIS

A. Claims

To prevail on a claim of trademark infringement claim under Section 32 of the Lanham Act, a plaintiff must establish that: (1) the plaintiff had prior rights to the trademarks at issue, and (2) the defendants adopted a mark or name that was the same, or confusingly similar to Plaintiff's mark, such that consumers were likely to confuse the two. *Planetary Motion, Inc. v. Techsplosion, Inc*., 261 F.3d 1188, 1193 (11th Cir. 2001) (citing *Lone Star Steakhouse & Saloon, Inc. v. Longhorn Steaks, Inc*., 106 F.3d 355, 360 (11th Cir. 1997)).

To prevail on a claim of false designation of origin under Section 43(a) of the Lanham Act requires that a plaintiff demonstrate that a defendant used the trademark "in connection with any goods or services, any word, term, name, symbol or device, or any combination thereof, or any false designation of origin, which is likely to deceive as to the affiliation, connection, or association" of the defendant with the plaintiff, or as to the origin, sponsorship, or approval, of defendant's goods by plaintiff. 15 U.S.C. § 1125(a)(1). As with trademark infringement claims, the test for liability for false designation of origin under Section 43(a) is "whether the public is likely to be deceived or confused by the similarity of the marks at issue." *Two Pesos, Inc. v. Taco Cabana, Inc*., 505 U.S. 763, 780, 112 S. Ct. 2753, 2763 (1992).

B. Liability

The factual allegations of Plaintiff's Complaint sufficiently allege the elements for Plaintiff's claims of trademark infringement and false designation of origin. [D.E. 1]. Moreover, the factual allegations in Plaintiff's Complaint have been substantiated by sworn declarations and other evidence and establish Defendants' liability for trademark infringement. Accordingly, entry of default judgment pursuant to Federal Rule of Civil Procedure 55(b) is appropriate.

C. Injunctive Relief

Pursuant to the Lanham Act, a district court is authorized to issue an injunction "according to the principles of equity and upon such terms as the court may deem reasonable," to prevent violations of trademark law. 15 U.S.C. § 1116(a). Defendants' failure to respond or otherwise appear in this action makes it difficult for Plaintiff to prevent further infringement absent an injunction. *Jackson v. Sturkie*, 255 F. Supp. 2d 1096, 1103 (N.D. Cal. 2003) ("[D]efendant's lack of participation in this litigation has given the court no assurance that defendant's infringing activity will cease. Therefore, plaintiff is entitled to permanent injunctive relief.").

Permanent injunctive relief is appropriate where a plaintiff demonstrates that (1) it has suffered irreparable injury; (2) there is no adequate remedy at law; (3) the balance of hardship favors an equitable remedy; and (4) an issuance of an injunction is in the public's interest. *eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388, 392-93 (2006). Plaintiff has carried his burden on each of the four factors. Accordingly, permanent injunctive relief is appropriate.

Irreparable harm exists where, as here, the infringers' unauthorized use of Plaintiff's intellectual property causes confusion among consumers and damages the business's reputation and brand confidence. *Kevin Harrington Enterprises, Inc. v. Bear Wolf, Inc.*, No. 98-cv-1039,

1998 WL 35154990 (S.D. Fla., J. Ursula Ungaro, 1998) ("likelihood of irreparable harm shown where infringement leaves plaintiff without the ability to control its own reputation").

Plaintiff has no adequate remedy at law so long as Defaulting Defendants continue to operate the Seller IDs because Plaintiff cannot control the use of the Calsunbaby Mark, the quality of the products, the customer service associated with the brand, or the goodwill of the Mark. An award of monetary damages alone will not cure the injury to Plaintiff's reputation and goodwill that will result if Defaulting Defendants' infringing actions are allowed to continue. Moreover, Plaintiff faces hardship from loss of sales and its inability to control its reputation in the marketplace. By contrast, Defaulting Defendants face no hardship if they are prohibited from distributing counterfeit products, which are illegal acts.

Finally, the issuance of a permanent injunction in this case is within the public's interest where a permanent injunction will prevent further harm to Plaintiff and the goodwill of the Calsunbaby Mark and protect consumers from being deceived or misled by Defaulting Defendants' unauthorized use of the Calsunbaby Mark. *See Nike, Inc. v. Leslie*, No. 85-cv-960, 1985 WL 5251, at *1 (M.D. Fla., J. William Castagna, June 24, 1985) ("[A]n injunction to enjoin infringing behavior serves the public interest in protecting consumers from such behavior."). The Court's broad equity powers allow it to fashion injunctive relief necessary to stop Defendants' infringing activities. *See, e.g.*, *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971) ("Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for . . . (t)he essence of equity jurisdiction has been the power of the Chancellor to do equity and to mold each decree to the necessities of the particular case." (citation and internal quotation marks omitted)); *United States v. Bausch & Lomb Optical*

Co., 321 U.S. 707, 724 (1944) ("Equity has power to eradicate the evils of a condemned scheme by prohibition of the use of admittedly valid parts of an invalid whole.").

Defaulting Defendants have created an Internet-based infringement scheme in which they are profiting from their deliberate misappropriation of Plaintiff's rights. Unless the listings and images are permanently removed, Defaulting Defendants will be free to continue infringing Plaintiff's intellectual property with impunity and will continue to defraud the public with their illegal activities. Therefore, the Court will enter a permanent injunction ordering all product listings and images displaying Plaintiff's Calsunbaby Mark to be permanently removed from Defaulting Defendants' internet stores by the applicable internet marketplace platforms.

D. Damages for Trademark Infringement

Chapter 15, Section § 1117(a) of the United States Code, provides that a plaintiff may recover a defendant's profits, any damages sustained by the plaintiff, and the costs of the action. Even where a plaintiff may not be able to provide actual damages as a result of a defendant's infringement, an award of statutory damages is an appropriate remedy. 15 U.S.C. §1117(c); *see also PetMed Express, Inc. v. Medpets.com*, 336 F. Supp. 2d 1213, 1220 (S.D. Fla. 2004).

The allegations in the Complaint, which are taken as true, establish that Defaulting Defendants intentionally infringed Plaintiffs' Calsunbaby Mark for the purpose of offering for sale, marketing, and selling their products not authorized, endorsed or approved by Plaintiff. Plaintiff suggests the Court award $200,000 for willful infringement. This award is within the statutory range for a willful violation, and is sufficient to compensate Plaintiff, punish the Defaulting Defendants, and deter the Defaulting Defendants and others from continuing to infringe Plaintiff's trademark.

IV. CONCLUSION

Accordingly, it is ORDERED AND ADJUDGED as follows:

1. Plaintiff's Motion [D.E. 119], is GRANTED with respect to Defendants numbered in Schedule "A" to the Complaint as (18), (38), (64) and (120).

2. Final Default Judgment will be entered by separate order.

DONE AND ORDERED in Chambers at Ft. Lauderdale, Florida, on ___ day of May, 2024.

_____

Roy K. Altman
United States District Judge

[Schedule A on following page]

Def No.	Store Name
1	EXEMPTED
2	EXEMPTED
3	EXEMPTED
4	EXEMPTED
5	EXEMPTED
6	BelonRro
7	EXEMPTED
8	Best Choice
9	EXEMPTED
10	EXEMPTED
11	Bnwani Store
12	Brocade
13	Brocade Co. Ltd
14	BUKANG LLC
15	CEHONMS
16	EXEMPTED
17	EXEMPTED
18	Chloenoel
19	Cimiva
20	EXEMPTED
21	EXEMPTED
22	EXEMPTED
23	CXHDZ
24	EXEMPTED
25	EXEMPTED
26	EXEMPTED

27	Diantic Co., Ltd.
28	EXEMPTED
29	DOLL GTUVT
30	Doyoudo
31	EAGLE
32	EXEMPTED
33	EXEMPTED
34	EXEMPTED
35	Fengniao Store Ts
36	EXEMPTED
37	EXEMPTED
38	Galaxy
39	Gchagohay
40	Gomyhom
41	EXEMPTED
42	GQING Co.Itd
43	GQY Time lag
44	EXEMPTED
45	EXEMPTED
46	Guang Zhou Rui Tao Ke Ji You Xian Gong Si
47	guangzhougongyuanminmaoyiyouxiangongsi
48	EXEMPTED
49	GuangZhouXiaoYuWangLuo YouXianGongSi
50	GZSHY
51	Haijiaerte
52	Haikou Tiegan Fanda E-commerce Co., Ltd
53	haomeijiajiankangkeji

54	EXEMPTED
55	EXEMPTED
56	Hejing
57	EXEMPTED
58	EXEMPTED
59	Home Supply Co.,Ltd
60	Hunankeyuanzhinengkejiyouxiangongsi
61	EXEMPTED
62	HXZH
63	ikayaa
64	Interesting Shop Co.,Ltd
65	EXEMPTED
66	EXEMPTED
67	EXEMPTED
68	jinhuashilongmandeqidianzishangwuyouxiangongsi
69	Jinyiyuan Technology Inc
70	EXEMPTED
71	EXEMPTED
72	Jocelyn LLC
73	EXEMPTED
74	EXEMPTED
75	EXEMPTED
76	EXEMPTED
77	EXEMPTED
78	EXEMPTED
79	LA FOREOREUSE DE POINTE
80	Lannger
81	Larylus

82	EXEMPTED
83	EXEMPTED
84	LIANYAO
85	EXEMPTED
86	LUNE
87	EXEMPTED
88	EXEMPTED
89	LWCARE
90	EXEMPTED
91	Maple leaves
92	Melorance
93	Micaloco
94	Modern Edition Store
95	EXEMPTED
96	EXEMPTED
97	EXEMPTED
98	EXEMPTED
99	ONLENY
100	EXEMPTED
101	Ostrich
102	EXEMPTED
103	EXEMPTED
104	POETIC SENTIMENT
105	EXEMPTED
106	EXEMPTED
107	EXEMPTED
108	EXEMPTED
109	EXEMPTED
110	RICCE

111	RR Co.ltd
112	EXEMPTED
113	EXEMPTED
114	EXEMPTED
115	shen zhen shi fang ji ke ji you xian gong si
116	shen zhen shi xiao mei sen shi pin you xian gong si
117	EXEMPTED
118	Shenzhenshi bairanjiadianzishangwu youxiangongsi
119	shenzhenshidashengyongyumaoyiyouxiangongsi
120	shenzhenshiyouhuiyoumeimaoyiyouxiangongsi
121	Shuoguohui
122	SICHUANRUIHONGJIAYE KEJI
123	EXEMPTED
124	EXEMPTED
125	EXEMPTED
126	T.S.CO
127	Tiger
128	EXEMPTED
129	EXEMPTED
130	Typk LLC
131	EXEMPTED
132	Un Poco Loco
133	Unique Toys Inc
134	Uteam

135	Wanchen
136	Wannabuy
137	EXEMPTED
138	EXEMPTED
139	EXEMPTED
140	XIEOO
141	YANWU Co.Ltd
142	yiwushixiaohuamingqishuomaoyiyouxiangongsi
143	yiwushixugetiyuyongpinyouxiangongsi
144	EXEMPTED
145	EXEMPTED
146	YWGX
147	ZIXIN Co.ltd