

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GORGE DESIGN GROUP, LLC, *et al*,

Plaintiffs,

v.

ACCESSMALL, *et al.*,

Defendants.

Civil Action No. 19-1454

(Judge Stickman)

**DECLARATION OF BRIAN SAMUEL MALKIN
IN SUPPORT OF MOTION FOR ENTRY OF
DEFAULT JUDGMENT AND PERMANENT INJUNCTION**

I, Brian Samuel Malkin, hereby affirm as follows:

1. I am over eighteen (18) years of age and not a party to this action. I have never been convicted of a felony or any criminal offense involving moral turpitude, and I am fully competent to attest to the matters stated herein. I have personal knowledge of every statement made in this Certificate of Service and such statements are true and correct.

2. I am an attorney with the law firm of Ference & Associates LLC, which is located at 490 Broad Street, Pittsburgh, Pennsylvania 15143.

3. I am an attorney for the Plaintiffs in the above-captioned case.

4. I make and submit this Declaration in support of Plaintiffs' Motion for Default Judgment and Permanent Injunction (hereinafter "Motion for Default Judgment") against those Defendants for whom the Clerk has entered Default (the "Defendants").

5. As of November 25, 2019, Plaintiff served all of the Defendants, with Requests for Admission, which included, *inter alia*, the following:

At all times relevant hereto, Plaintiffs are the owners of various published photographs, videos, artwork, creative text and product instructions appearing on kickstarter.com and orangescrew.com. (“Plaintiffs’ Works”), which are shown in Complaint Exhibit 1 and Complaint Exhibit 2, respectively.

At all times relevant hereto, Defendant knew that Plaintiffs owned the common law trademark ULTIMATE GROUND ANCHOR™ (Plaintiffs’ Mark).

At all times relevant hereto, Plaintiffs’ combined intellectual property ownership includes U.S. Patent No. 7309198 for “Re-useable threaded tie downs” (“the Plaintiffs’ Patent”).

At all times relevant hereto, Defendant knew that Plaintiffs had the exclusive right to use and license its intellectual property (including the Plaintiffs’ Patent, Plaintiffs’ Mark and Plaintiffs’ Works) and the goodwill associated therewith.

Despite having the knowledge that you had no license or legal authority to do so, you engaged in the activity of promoting and otherwise advertising, selling, offering for sale, and/or distributing counterfeit goods under your Seller ID or Seller IDs through your online store as identified in Schedule “A” of the Complaint on one or more online marketplace platforms.

At all times relevant hereto, you have been engaged in the fraudulent promotion, advertisement, distribution, offering for sale, and/or sale of goods that are infringing and/or substandard copies of Plaintiffs’ genuine goods.

You intentionally make, use, offer to sell, or import into the United States goods that infringe on Plaintiffs’ Marks, Plaintiffs’ Works and/or one or more claims of Plaintiffs’ Patent with English language packaging and instructions.

You made more than \$2,000,000.00 (United States Dollars) in profit on the sales of the infringing and/or unfairly competing goods.

You have sold more than 150,000 units of goods that unfairly compete, and/or infringe on Plaintiffs’ Mark, and/or infringe on Plaintiff’s Works, and/or infringe on at least one claim of Plaintiffs’ Patent.

Not one of the Defendants has responded to the Requests for Admission. Thus, each Request for Admission is deemed admitted.

7. I am informed and believe that none of the Defendants are infants or incompetent persons, and upon information and belief, the Servicemembers Civil Relief Act does not apply.

I declare under the penalty of perjury laws of the United States of America that to the best of my knowledge the foregoing is true and correct.

Executed this 18th day of January, 2022, at Pittsburgh, Pennsylvania.

/s/ Brian Samuel Malkin
Brian Samuel Malkin

CERTIFICATE OF SERVICE

I hereby certify that on February ___, 2020, the foregoing document is being filed via the Case Management/Electronic Case Filing (CM/ECF) system; I also certify that on the same day, a true copy of the foregoing is being served in accordance with the Order Authorizing Alternate Service.

/s/ Brian Samuel Malkin
Brian Samuel Malkin