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)

MEMORANDUM IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT and MOTION FOR PERMANENT INJUNCTION

Plaintiffs submit this Memorandum in Support of their Motion for Default Judgment pursuant to Fed. R. Civ. P. 55 (b)(2) seeking entry of Judgment against the defaulting Defendants ("Defendants") on all Counts of the Complaint.

I. INTRODUCTION

This memorandum is filed in support of the motion for default and motion for permanent injunction that the Plaintiffs filed seeking relief from the tireless efforts of the online copycats trying to destroy Plaintiffs' business.

Plaintiffs have filed a Motion with this Court under Fed. R. Civ. P. 55(b)(2) for a default judgment against Defendants for federal unfair competition (Count I); patent infringement (Count II); common law unfair competition (Count III); and common law trademark infringement (Count IV)[1] after Defendants established internet stores to offer to sell, and sold,

[1] There are only four counts though the Complaint names the fourth count as "V". Without waiving its claims under the Patent Act (Count II), the Plaintiffs are waiving monetary patent damages here and instead seeks damages

infringing and knock-off versions of Plaintiffs' ULTIMATE GROUND ANCHOR™ ground anchor on the Aliexpress.com, ebay.com, and wish.com online marketplaces.

The remaining Defendants in this lawsuit have all defaulted and failed to cooperate in discovery. The Defendants have been properly served pursuant to Fed. R. Civ. P. 4 and are aware of this action, but nevertheless chose not to respond. The Clerk has entered default. The Plaintiff also served discovery upon Defendants, including Requests for Admission, and no response to the discovery was received. Plaintiff filed a Motion with this Court under Fed. R. Civ. P. 55(b)(2) for a default judgment, in each case, against Defendants for $2,000,000.00 for their federal unfair competition.

There are no issues of fact remaining in these lawsuits, and a default judgment should be entered against each Defendant providing for permanent injunctive relief, a damage award of at least $2,000,000.00 against each individual Defendant, plus interest, a post-judgment asset restraining order, and an order authorizing the release and transfer of Defendants' assets, in whole or in part, awarded to Plaintiff. Courts in the Western District of Pennsylvania have previously entered a default judgment against each defendant in this amount or more using the exact method for calculating damages that is used here. *See, e.g., Doggie Dental, Inc. v Ahui, et al*., No. 19-cv-1627 (W.D. Pa., Sept. 27, 2021 (Hornak, CJ); *Osprey LLC v. Poolwhale, et al*., No. 20-cv-1253 (W.D. Pa. December 3, 2020) (Hardy, J); *Doggie Dental, Inc. v. Anywill*, et al., No. 19-cv-682 (W.D. Pa. August 14, 2020 (Hornak, CJ); and *Doggie Dental, Inc. v. Anywill, et al*., No. 19-cv-746 (W.D. Pa. August 14, 2020 (Hornak, CJ).

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under federal unfair competition (Count I) only. Damages for Count (III) and Count (IV) are encompassed in any damages awarded under 15 U.S.C. § 1117 (a) for Count I (federal unfair competition).

II. ARGUMENT

A. This Court has Jurisdiction to Enter Default Judgment Against Defendants

This Court has jurisdiction to grant Plaintiffs' motion and enter default judgment against Defendants because the Court has subject matter jurisdiction over this action as well as personal jurisdiction over the Defendants. This Court has subject matter jurisdiction over this action pursuant the Lanham Act and the Patent Act. 15 U.S.C. § 1125(a) and 28 U.S.C . § 1338. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over Plaintiffs' state law claims because those claims are so related to the federal claims that they form part of the same case or controversy. *See Complaint*, ¶ 10 - 11 [DE 2].

Personal jurisdiction may be established either by specific or general jurisdiction, but specific jurisdiction is appropriate in the instant case because of Defendants' contacts with the forum. *See* 42 P. A. Cons. Stat. § 5322. The factors to consider when establishing specific jurisdiction are: "(1) the extent to which defendant 'purposefully avail[ed]' itself of the privilege of conducting activities in the State; (2) whether the plaintiffs' claims arise out of those activities directed at the State; and (3) whether the exercise of personal jurisdiction would be constitutionally 'reasonable.'" *See IMO Industries, Inc. v. Kiekert AG*, 155 F.3d 254, 259 (3rd Cir.1998). Defendants satisfy each of the factors to establish specific personal jurisdiction. Venue is proper pursuant 28 U.S.C. § 1391 and 28 U.S.C. § 1400(b).

First, Defendants purposefully availed themselves of the privilege of conducting business in Pennsylvania and this Judicial District. Defendants purposefully targeted

sales of Infringing Products to the Western District of Pennsylvania, offered to sell Infringing Products to Pennsylvania residents, and did in fact sell Infringing Products to entities in Pennsylvania. *See Complaint*, ¶ 11 [DE 2]. These actions are sufficient to establish jurisdiction over Defendants. 42 Pa. Cons. Stat. § 5322 (a). Second, Plaintiffs' claims arise directly from actions that occurred in this Judicial District. Plaintiffs purchased and/or visually inspected the listings for the Infringing Products to determine their authenticity and determined that the Defendants were wiling and able to ship the goods to Pennsylvania. *See Laplante Dec.* ¶ 2 [DE 8]. These unauthorized and unlicensed offer for sale and sales of Infringing Products in this Judicial district establish this Court's jurisdiction over Defendants. Lastly, this Court's exercise of specific personal jurisdiction over Defendants is "reasonable" under the constitution. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980).

The record in this case does not suggest that the burden of litigation in this District is extraordinary. Defendants offered to ship and sell their Infringing Products to any part of the United States. *See Complaint*, ¶ 11 [DE 2]. Pennsylvania and this Court have a valid interest in the resolution of the grievances of its citizens and businesses, particularly when they potentially involve issues of [Pennsylvania] law. *See Square D Co. v. Scott Elec. Co*., No. 06-459, 2008 WL 4462298, at *12 (W.D. PA September 30, 2008). Plaintiffs have a valid and substantial interest in having their legal rights recognized and vindicated. *Id*. Therefore, this Court's exercise of specific personal jurisdiction over Defendants is constitutionally reasonable.

B. Joinder of the Defendants is Appropriate

Joinder of the defendants is proper when plaintiffs seek relief "jointly, severally, or in the alternative with respect to arising out of the same transaction, occurrence or series of transactions or occurrences;" and "any question of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a)(2). Joinder is consistent with the strongly encouraged policy of "entertaining the broadest possible scope of action consistent with fairness to the parties." *See United Mine Workers of Am. v. Gibbs*, 383 U.S. 715. 724 (1966).

In a recent decision on joiner in an online counterfeiting case, the Northern District of Illinois found joinder was appropriate, stating:

> According to the Merriam-Webster dictionary, "transaction" generally involves a "reciprocal[] affect" or "exchange," whereas an "occurrence" is defined as something that simply "happens" or "appears." Unlike a "transaction," an "occurrence" is not necessarily the product of joint or coordinated action.
>
> The internet frequently produces occurrences that can be described as cooperative but not transactional or intentionally coordinated. Individual actions which alone may have minimal impact on society or the economy can have a substantial impact through aggregation that is only possible through the internet. Individuals on the internet can openly reach billions of people with a single click of a mouse, while at the same time hiding their identities, frustrating law enforcement. As a result, an "occurrence" of mass harm easily can be inflicted even if there is no express "transactional" coordination among the attackers.
>
> Rule 20's inclusion of the term "occurrence" should allow plaintiffs to join in a single case the defendants who participate in such unlawful occurrences, despite the lack of a "transactional link." The kind of harmful occurrences the internet enables — including mass foreign counterfeiting — were inconceivable when Rule 20 was drafted. But the Rule's inclusion of the term "occurrence" suggests that joinder is appropriate in cases alleging harm that is not strictly "transactional."

Bose Corp. v. The Partnerships and Unincorporated Associations Identified on Schedule "A", No. 19-cv-7467 (N.D. Ill. Feb. 19, 2020) (Durkin, J.) at 10-11 [DE 46]. For at least these reasons, the Defendants are properly joined in this case.

C. Plaintiffs are Entitled to a Default Judgment Against Defendants

1. The Clerk Properly Entered Default as to Defendants

The Clerk of this Court enters a default "[w]hen a party against whom judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise." Fed. R. Civ. P. 55(a). The Clerk entered default against Defendants because, as the docket reflects, the time for filing a responsive pleading expired.

2. Factual Allegations Establish Defaulting Defendants' Liability and Damages to Plaintiffs

By failing to appear, contact Plaintiffs, or otherwise defend against the Complaint, Defendants are deemed to have admitted every allegation therein, and the Court must only determine whether Plaintiffs' Complaint properly states a claim for relief. *See Hritz v. Woma Corp.*, 732 F.2d 1178, 1180 (3d Cir. 1984); *see also Pair Networks, Inc. v. Lim Cheng Soon*, 2013 WL 452565, *1 (W.D. Pa., February 6, 2013). Plaintiffs now move this Court for a default judgment finding that Defendants are liable on all counts of Plaintiffs' Complaint.

Under Section 43(a) of the Lanham Act, Plaintiffs must prove that the Defendants used in commerce, 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 Defendants with Plaintiffs, or as to the origin, sponsorship, or approval, of the Defaulting Defendants' goods by Plaintiffs. 15 U.S.C. § 1125(a)(1). Here, there are three bases for the false designation of origin claim: the use of the Plaintiffs' trade dress, the use of Plaintiffs'

common law ULTIMATE GROUND ANCHOR trademark, and/or the use of Plaintiffs' photographs while marketing Defendants' knock-off products in a willful attempt to pass off the knock-off products as Plaintiffs' genuine products. 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). The common law of Pennsylvania follows the same test for unfair competition. *Mateson Chemical Corp. v. Vernon,* 2000 WL 680020, at *5 n. 7 (E.D. Pa. May 9, 2000). The test to determine trademark infringement under Pennsylvania common law is the same as the likelihood of consumer confusion under Section 32(a) of the Lanham Act. *See, e.g., Tillery v. Leonard & Sciolla LLP,* 521 F. Supp. 2d 346, 348 n.1 (E.D. Pa. 2007); s*ee also Fisons Horticulture, Inc. v. Vigoro Indus., Inc.,* 30 F.3d 466, 472 (3d Cir.1994). Section 271(a) of the Patent Act defines direct infringement as 'whoever without authority makes, uses, offers to sell, or sells any patented invention, within the U.S. or imports into the U.S. any patented invention during the term of the patent therefor, infringes the patent.' 35 U.S.C. § 271(a). *Grecia v. McDonald's Corp.*, 2018 U.S. App. LEXIS 5903, at *7-8 (Fed. Cir. Mar. 6, 2018).

The well-pled factual allegations of Plaintiffs' *Complaint* [DE 2], including specifically those in ¶¶ 41 – 66 properly allege the elements for each of the above claims for Counts I-IV in the Complaint. Moreover, the factual allegations in Plaintiffs' *Complaint* [DE 2], substantiated by the evidence submitted, conclusively establish the Defaulting Defendants' liability under each of the claims asserted in the *Complaint*.

In addition to the well pled factual allegations, admitted by default, and established by the

evidence, Defendants have also made certain admissions by failing to respond to the *Request for Admissions* served upon them. *See Malkin Dec.,*[2] ¶ 5. These deemed admissions include 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.

Accordingly, Default Judgment on liability pursuant to Rule 55 of the Federal Rules of Civil Procedure should be entered against each of the Defaulting Defendants.

[2] Refers *Declaration of Brian Samuel Malkin* submitted herewith.

3. Plaintiff is Entitled to Defendants' Profits under the Lanham Act

Under the Lanham Act, once liability is established, "…the plaintiff shall be entitled…subject to the principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action."[3] *See* 15 U.S.C. § 1117 (a). The court's determination of a damage award is based upon considerations of "equity, reason, and pragmatism." *World Entertainment, Inc. v. Brown, et al.*, No. 09-5365 (E.D. Pa., May 20, 2011), *slip op*. at 5 [ECF No. 64] (citations omitted).

In *Banjo Buddies, Inc. v. Renofsky*, 399 F. 3d 168, 175 (3d. Cir. 2005), the Third Circuit has set forth a five-factor test to determine when disgorgement of the defendant's profits is appropriate. These factors "include, but are not limited to (1) whether the defendant had the intent to confuse or deceive, (2) whether sales have been diverted, (3) the adequacy of other remedies, (4) any unreasonable delay by the plaintiff in asserting his rights, (5) the public interest in making misconduct unprofitable, and (6) whether it is a case of palming off." Based upon the facts as well plead by the Plaintiff and admitted by the Defendants' defaults, each of these factors weighs in favor of the disgorgement of the defendants' profits.

Section 35(a) of the Lanham Act provides that "[i] accessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claimed." 15 U.S.C. § 1117(a); *Banjo Buddies, Inc.*, 399 F. 3d at 176. The Supreme Court has made it clear that:

> [t]he burden is the infringer's to prove that his infringement had no cash value in sales made by him. If he does not do so, the profits made on the sales of goods bearing the infringing mark properly belong to the owner of the mark. There may well be a windfall to the trademark owner where it is impossible to isolate the

[3] Damages for Counts III (common law unfair competition) and IV (common law trademark infringement) are encompassed in any damages awarded under 15 U.S.C. § 1117(a) for Count I (federal unfair competition).

> profits which are attributable to the use of the infringing mark. But to hold otherwise would give the windfall to the wrongdoer.

WMS Gaming, Inc. v. WPC Prods. Ltd., 542 F.3d 601, 608 (7th Cir. 2008), *citing Mishawaka Rubber & Woolen Mfg. Co. v. S.S. Kresge Co.*, 316 U.S. 203, 206-07 (1942). *See Also Wesco Mfg. v. Tropical Attractions of Palm Beach, Inc.*, 833 F.2d 1484, 1488 (11th Cir. 1987) ("Although the exact amount of infringing sales cannot be determined from the [evidence], exactness is not required. [The defendant] is in the best position to ascertain exact sales and profits, and it bears the burden of doing so in an accounting."); *Id.* at 1487-88 ("A plaintiff need not demonstrate actual damage to obtain an accounting of an infringer's profits under Section 35 of the Lanham Act. It is enough that the plaintiff proves the infringer's sales. The burden then shifts to the defendant, which must prove its expenses and other deductions from gross sales." (citations omitted)).

In cases where defendants have failed to produce documents to characterize revenue, courts have entered a profits award for the entire revenue amount. *See WMS Gaming, Inc. v. WPC Prods. Ltd.*, 542 F.3d 601, 608 (7th Cir. Ill. 2008) ("[t]he burden was therefore on PartyGaming to show that certain portions of its revenues…were not obtained through its infringement of WMS's marks."); *Chloe v. Queen Bee of Beverly Hills*, 2009 U.S. Dist. LEXIS 84133, at *15-17 (S.D.N.Y. Jul. 16, 2009) (entering profits award for the entire revenue amount in trademark infringement case even though "records offer no guidance as to how much of this revenue stream related to [Plaintiff's] products [as opposed to other products not at issue in this case] or as to the costs incurred in acquiring and selling these products."). Under normal circumstances, it is the infringer who bears the burden of "offering a fair and acceptable formula for allocating a given portion of overhead to the particular infringing items in issue." *Deckers Outdoor Corp. v. ShoeScandal.com, Ltd. liability Co.*, No. CV 12-7382 ODW (SHx), 2013 U.S.

Dist. LEXIS 168545, at *12 (C.D. Cal. Nov. 25, 2013), citing *Sunbeam Prods., Inc. v. Wing Shing Prods. (BVI) Ltd.*, 311 B.R. 378, 401 (S.D.N.Y. 2004) *aff'd*, 153 F. App'x 703 (Fed. Cir. 2005). "But if the infringer has failed to produce any evidence … the Court must determine the costs to be subtracted from revenue based on the evidence it has to determine profits." *See Nike, Inc. v. Wal-Mart Stores, Inc.*, 138 F.3d 1437, 1447 (Fed. Cir. 1998).

Since defaulting Defendants have chosen not to participate in these proceedings, Plaintiffs have limited available information regarding defaulting Defendants' profits from the sale of infringing products. Defaulting Defendants have failed to appear in this matter and have not produced any documents or information: (1) characterizing each of the transactions in their financial accounts, (2) other accepted payment methods; or (3) other Internet stores that they may be operating. As such, defaulting Defendants have not met their burden to apportion gross receipts between infringing and non-infringing product sales, or to show any deductions. *WMS Gaming, Inc. v. WPC Prods. Ltd.*, 542 F.3d 601, 608 (7th Cir. 2008); *Nordock, Inc. v. Systems, Inc.*, 2017 U.S. Dist. LEXIS 192413, at * 7.

Defendants have made certain admissions as to damages by failing to respond to the *Request for Admission* served upon them. *See Malkin Dec.*, ¶ 5. These deemed admissions include the following:

> ***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.***

By failing to respond to Plaintiffs' Requests for Admissions, each defaulting Defendant has admitted that profits from the sale of the infringing products totals more than $2,000,000.

Malkin Dec., ¶ 5; See Fed. R. Civ. P. 36(a)(3). Because defaulting Defendants have not met their burden of apportioning gross sales or showing any deductions, the Court should award two million dollars ($2,000,000) from each defaulting Defendant based on the Defendants' failure to answer Plaintiff's Requests for Admission. Chief Judge Hornak in this Court has accepted deemed admissions to establish profits to be disgorged in cases against sellers on online marketplaces. *See Doggie Dental v. Ahui*, No. 19-1627 (W.D. Pa., September 27, 2021)(Hornak, CJ); *See Doggie Dental v. Anywill*, No. 19-cv-682 (W.D. Pa., August 14, 2020) (Hornak, CJ); *Doggie Dental v. Max_Buy*, 19-746 (W.D. Pa., August 14, 2020) (Hornak, CJ); *Doggie Dental v. Go Well*, 19-1282 (W.D. Pa., August 14, 2020) (Hornak, CJ); and *Doggie Dental v. Worthbuye*r, 19-1283 (W.D. Pa., August 14, 2020) (Hornak, CJ). This court is not the only court to have used deemed admissions in similar cases. See also, *Fitness Anywhere LLC v. The Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 19-cv-4155 (N.D. Ill., Sept. 26, 2019) (Lee, J.), and *LMVH Swiss Manufactures S.A. v. The Partnerships and Unincorporated Associations Identified on Schedule "A"*, No. 19-cv-4383 (N.D. Ill., Sept. 25, 2019) (Coleman, J.).

A deemed admission of two million dollars ($2,000,000) in profit to be disgorged is not objectively unreasonable. In similar cases in this District the court has awarded two million dollars ($2,000,000) in damages or more against each defendant. Such an award serves the public interest in making the misconduct unprofitable, deterring future willful violations, and achieving parity in damage awards in this District. *See Doggie Dental v. Anywill*, No. 19-cv-682 (W.D. Pa., August 14, 2020) (Hornak, CJ); *Doggie Dental v. Max_Buy*, 19-746 (W.D. Pa., August 14, 2020) (Hornak, CJ); *Doggie Dental v. Go Well*, 19-1282 (W.D. Pa., August 14, 2020) (Hornak, CJ); and *Doggie Dental v. Worthbuye*r, 19-1283 (W.D. Pa., August 14, 2020) (Hornak,

CJ). *See Airigan Solutions, LLC v. Belvia,* No. 20-cv-284 (W.D. Pa., April 21, 2020) (Schwab, J.) ($2 million in damages against each defendant) [DE 34]; *Airigan Solutions, LLC v. Abagail,* No. 19-cv-503 (W.D. Pa., Aug 13, 2019) (Fischer, J.) (same) [DE 52], *Rapid Slicer LLC v. Art-House*, No. 19-411 (W.D. Pa., Jan. 9, 2020) (Horan, J.) (same) [DE 44].[4]

4. Plaintiffs are Entitled to Permanent Injunctive Relief

In addition to the foregoing relief, Plaintiff seeks entry of a permanent injunction enjoining Defendants from infringing or otherwise violating Plaintiffs' rights in its ULTIMATE GROUND ANCHOR™, including at least all injunctive relief previously awarded to by this Court to Plaintiff in the temporary restraining order and preliminary injunction. *See Evony, LLC*, 2011 WL 1230405 at *7. Plaintiff is also entitled to injunctive relief so it can can prompt action against any new online marketplace acounts or websites that are identified, found to be linking to Defendants, and selling Infringing Product. A plaintiff is entitled to a permanent injunction under the Lanham Act, and Pennsylvania common law. 15 U.S.C. § 1116; and *B&B Microscopes v. Armogida*, 532 F. Supp. 2d 744, 760 (W.D. Pa. 2007) (*citing Brody's, Inc. v. Brody Bros., Inc*., 454 A.2d 605, 607 (Pa. Super. Ct.1982)). *See also Evony, LLC v. Holland,* No. 2:11-CV-00064, 2011 WL at 1230405,*7.

A permanent injunction, like the requested damages, would help deter other individuals or corporations from infringing Plaintiffs' valuable trademark and patent

[4] Courts in other districts have likewise made similar awards of statutory damages in cases involving sellers on online marketplaces. *See Juul Labs, Inc. v. The Unincorporated Associations Identified in Schedule A*, No. 18-cv-1287 (E.D. Va., April 5, 2019) ($2,000,000.00 in damages against each defendant per mark) [DE 64]; and *Michael Kors, L.L.C. v. The Partnerships and Unincorporated Associations Identified on Schedule "A"*, Case No. 15-cv-00124 (N.D. Ill. Mar. 25, 2015 and May 12, 2015) (same) [DE 44 and 61.]

rights. Additionally, entry of a permanent injunction against Defendants in this case will help expedite any future litigations between the defaulting Defendants and Plaintiff, if a case between the parties arises in the future. This equitable result would be in the interest of justice and provide Plaintiff with more flexibility to protect its intellectual property rights. As such, permanent injunctions are routinely entered by other Courts in similar counterfeiting cases. *See cases cited, infra*.

5. Plaintiff Requests That This Court Order the Transfer to It of Remaining Assets in Defaulting Defendants' Accounts

Plaintiff requested a temporary restraining order and preliminary injunction, *inter alia*, to prevent Defendants from transfering the funds held in their Third Party Service Provider(s) and Financial Institution(s) accounts beyond this Court's jurisdiction. [DE 4] This Court granted the temporary restraining order and preliminary injunction, preventing Defendants from accessing the funds in their Third Party Service Provider(s) and Financial Institution(s) accounts. [DE 13, 30] This Court found that Plaintiffs had established a likelihood of success on the merits and irreparable harm in the absence of a temporary restraining order and preliminary injunction. *See Id.*

Plaintiff now requests that this Court order the Third Party Service Provider(s) and Financial Institution(s) to transfer to Plaintiffs the assets currently held in the defaulting Defendants' Third Party Service Provider(s) and Financial Institution(s) accounts in partial payment of any award of damages. In the absence of such an Order, it is likely that Plaintiffs will be left without any effective means by which to collect from Defendants any monetary judgment entered by this Court. As explained, previously, Defendants and any assets they won, other than those held in their respective Third Party

Service Provider(s) and Financial Institution(s) accounts, are presumably located in China. There is no bilateral treaty or mulitlateral convention in force between the United States and any other country on reciprocal recognition and enforcement of judgments. Moreover, as explained in some detail previously, Defendants are involved in illegal counterfeiting operations and go to great lengths to conceal their identities and whereabouts. As a result, even in the unlikely event that Plaintiffs could enforce a U.S. judgment in the Chinese courts, it will be virtually impossible to locate Defendants or any assets they may hold in order to satisfy any monetary damages awarded in this case.

Such orders are routinely entered by Courts in this district to satisfy monetary judgment awards in similar counterfeiting cases. *See Doggie Dental v. Ahui*, No. 19-1627 (W.D. Pa., September 27, 2021)(Hornak, CJ); *See Doggie Dental v. Anywill*, No. 19-cv-682 (W.D. Pa., August 14, 2020) (Hornak, CJ); *Doggie Dental v. Max_Buy*, 19-746 (W.D. Pa., August 14, 2020) (Hornak, CJ); *Doggie Dental v. Go Well*, 19-1282 (W.D. Pa., August 14, 2020) (Hornak, CJ); and *Doggie Dental v. Worthbuye*r, 19-1283 (W.D. Pa., August 14, 2020) (Hornak, CJ). *See Airigan Solutions, LLC v. Belvia,* No. 20-cv-284 (W.D. Pa., April 21, 2020) (Schwab, J.) ($2 million in damages against each defendant) [DE 34]; *Airigan Solutions, LLC v. Belvia,* No. 20-cv-284 (W.D. Pa., April 21, 2020) (Schwab, J.) [DE 34]; *Rapid Slicer LLC v. Art-House*, No. 19-411 (W.D. Pa., Jan. 9, 2020) (Horan, J.) [DE 44]; and *Airigan Solutions, LLC v. Abagail,* No. 19-cv-503 (W.D. Pa., Aug 13, 2019) (Fischer, J.) [DE 52]. *See also Eye Safety Sys., Inc. v. The Partnerships and Unicorporated Ass'ns. Identified in Schedule "A"*, Case No. 18-cv-00034 (N.D. Ill. Mar. 1, 2018) (ordering PayPal to transfer defendants' funds to plaintiffs as partial satisfaction of judgment) [DE 41]; *Yeti Coolers, LLC v. Taneil George*, Case No. 17-cv-62215 [DE 46] (S.D. Fl. Mar. 29, 2018) (same).

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their Motion for Default Judgment; enter judgment against Defendants for federal unfair competition (Count I); federal patent infringement (Count II); common law unfair competition (Count III); and common law trademark infringement (Count IV); permanently enjoin Defendants; award the disgorgement of profits under the Lanham Act; award Plaintiffs pre-judgment interest on the above damage awards; and grant such further relief as this Court deems appropriate. Plaintiffs additionally requests that this Court order the Third Party Service Provider(s) and Financial Institution(s) to transfer Defendants' assets held by the Third Party Service Provider(s) and Financial Institution(s) to Plaintiffs in partial payment of any default judgment entered against Defendants.

Respectfully submitted,

Dated: January 18, 2022

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