

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

TALISMAN DESIGNS LLC,

Plaintiff,

v.

YOOMIE, *et al.*,

Defendants.

Civil Action No. 21-cv-0121

Judge Schwab

MEMORANDUM IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT

Pursuant to Fed. R. Civ. P. 55(b)(2), Talisman Designs, LLC (“Plaintiff”), by counsel, submits this Memorandum in Support of its Motion for Default Judgment seeking entry of Judgment against the defaulting Defendants in this Action (hereinafter collectively referred to as “Defendants” or individually as “Defendant”) on all Counts of the Complaint¹, as no Defendant has answered or otherwise responded to the Complaint and has offered no bona fide defense.

I. INTRODUCTION

This memorandum is filed in support of Plaintiff’s lawsuit seeking relief from the tireless efforts of the online copycats trying to destroy Plaintiff’s business. Defendants are sellers of infringing products on at least one of the Amazon.com, eBay.com, wish.com and aliexpress.com online marketplaces. Defendants engaged in federal copyright infringement (Count I); federal trademark counterfeiting and infringement (Count II)²; and common law trademark infringement

¹ The Complaint begins with Count II (instead of Count I). For clarity, the counts will be identified as first count (I) (copyright infringement), second count (II) (federal trademark infringement and counterfeiting) and third count (III) (common law trademark infringement).

² Only against Defendants 15 and 43 who used Plaintiff’s U.S. Registered Trademark in commerce. *See Waymire Dec.* [DE 10].

(Count III), after Defendants unlawfully established internet stores to offer and sell infringing versions of Plaintiff's Bacon Bin[®] grease container, without authorization from, and to the detriment of, Plaintiff ("Infringing Product(s)")³.

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.

By their default, Defendants have conceded the truth of the allegations of the Complaint. By their failure to respond to Requests for Admission, Defendants have admitted the matters therein. There are no issues of fact remaining in this suit, and a default judgment should be entered against Defendants providing for permanent injunctive relief, damages for their infringement, a post-judgment asset restraining order, and an order authorizing the release and transfer of Defendants' assets to satisfy the damages, in whole or in part, awarded to Plaintiff.

II. ARGUMENT

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

This Court has jurisdiction to grant Plaintiff's 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 Copyright Act. 15 U.S.C. § 1121, 17 U.S.C. § 101, and 28 U.S.C. §§ 1331 and 1338. This Court has supplemental jurisdiction pursuant to 28 U.S.C. §

³ Hereinafter counterfeit products are also referred to as Infringing Products.

1367 over Plaintiff's 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. [ECF No. 2]

This Court has personal jurisdiction over the Defendants because of their substantial contacts with the Western District of Pennsylvania as well as directly targeting this Judicial District in their infringing and knock-off operations. Further, the Defendants sold products in this District, establishing personal jurisdiction over them. *See Id.*, ¶ 11; *Declaration of Katherine Waymire* (“*Waymire Dec.*”) [ECF No. 10] and Exhibits attached thereto. Venue is proper in the Court pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 1400(b), and this Court may properly exercise personal jurisdiction over Defendants since each of the Defendants directly targets business activities toward consumers in the United States, including Pennsylvania and this Judicial District, through at least the Online Marketplace Accounts/Internet Stores identified in Schedule “A” to the *Complaint* at 21-0121, ¶ 10. [ECF No. 2] Specifically, Defendants are seeking to do business with this Judicial District's residents by operating one or more commercial Defendant Internet Stores through which Pennsylvania residents can purchase products using infringing versions of Plaintiff's Product. Each of Defendants has targeted sales to Pennsylvania residents by operating online stores that offer shipping to the United States, including Pennsylvania and this Judicial District, and accept payment in U.S. dollars. Plaintiff confirmed that Defendants ship their Infringing Products to this Judicial District by purchasing goods from each of the Defendants' Internet Stores, which the Defendants shipped into this Judicial District. *Id.*

Personal jurisdiction may be established either by specific or general jurisdiction, but specific jurisdiction is appropriate in the instant case because of Defendants' contact 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.

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. [ECF No. 2] These actions are sufficient to establish jurisdiction over Defendants. 42 Pa. Cons. Stat. § 5322 (a).

Second, Plaintiff’s claims arise directly from actions that occurred in this Judicial District. Plaintiff purchased Infringing Products to determine their authenticity and had the Infringing Products shipped to Pennsylvania. *See Waymire Dec.* These unauthorized and unlicensed 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. Courts look at the burden on the defendant, the forum State’s interest in adjudicating the dispute, the plaintiff’s interest in obtaining convenient and effective relief, “the interstate judicial system’s interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies.” *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 products to any part of the United States. *See Complaint*, ¶ 11. [ECF No. 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). And Plaintiff has a valid and substantial interest in having its 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 Plaintiff seeks 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). A “series” of transactions or occurrences means some connection or nucleus of operative facts or law. *See Hanley v. First Inv'rs Corp.*, 151 F.R.D. 76 (E.D. Tex. 1993); *see also Dig. Sin, Inc. v. Does 1-176*, 279 F.R.D. 239 (S.D.N.Y. 2012).

The Defendants are properly joined in this case. Plaintiff alleged in the *Complaint* that Defendants were working in a conspiracy together: “Defendants have cooperated, communicated their plans with one another, shared information, and coordinated their efforts, all in order to create an illegal marketplace operating in parallel to the legitimate marketplace of Plaintiff's and the legally authorized resellers of Plaintiff's genuine goods.” *Complaint*, ¶ 10. [ECF No. 2] In the case of a default judgment, the well-pleaded allegations of a complaint are taken as true. *See*

Dundee Cement Co. v. Howard Pipe & Concrete Prods., Inc., 722 F.2d 1319, 1323 (7th Cir. 1983).

Had Defendants answered the Complaint, Plaintiff would have been entitled to discovery to prove the allegations recited in the Complaint, including that Defendants were properly joined here. But even without such discovery, there are numerous indications, also alleged in the Complaint, that defendants are working together. All of the Defendants operate Internet stores that offer for sale and sell Infringing Products. *See Complaint*, ¶ 11. [ECF No. 2] Defendants generally utilize the same or similar images of the infringing products in their listing offering for sale the Infringing Products. *Id.* The Defendants also advertise nearly identical infringing products on their store's websites, using identical language. *Id.* These facts, when considered as a whole, show that Defendants have engaged in a series of transactions with a connection of common operative facts that, Plaintiff submits, meet the joinder requirement of Rule 20.

Joinder of the Defendants is also proper because there are common questions of law with regard to Plaintiff's Complaint as it relates to each Defendant. Plaintiff filed this case alleging the same causes of action against all of the Defendants. Plaintiff contends that the same operative law, the Lanham Act, the Copyright Act, and Pennsylvania common law, applies to all of the Defendants. *See Complaint*, ¶¶ 31 – 82 [ECF No. 2]. The allegations against each Defendant are the same and require the same legal analysis. *See Id.* Each claim, now admitted by virtue of the Defendants' default, may be analyzed against all of the Defendants as a single unit. That is, no individual defendant is harmed by analyzing the Defendants as a whole.

C. Plaintiff is 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.

The facts, supported by uncontroverted declarations and the Complaint filed in this case, demonstrate that Defendants had both constructive and actual notice of this suit, yet failed to enter an appearance or otherwise defend this action. Therefore, the Clerk appropriately entered default against Defendants pursuant to Fed. R. Civ. P. 55.

2. Factual Allegations Establish Defaulting Defendants’ Liability

By failing to appear, contact Plaintiff, or otherwise defend against the Complaint, Defendants are deemed to have admitted every allegation therein, and the Court must only determine whether Plaintiff’s 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).

a. Liability for Copyright Infringement Against all Defendants

Liability for copyright infringement is established when the plaintiff demonstrates two elements: (1) ownership of a copyright and (2) copying by the defendant. *Dam Things From Denmark v. Russ Berrie & Co.*, 290 F.3d 548, 561 (3d Cir. 2002).

The well-pled factual allegations of Plaintiff’s *Complaint* properly allege the elements for each of the above claims. Moreover, the factual allegations in Plaintiff’s *Complaint*,

substantiated by the evidence submitted, conclusively establish the 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 Admission* served upon them. *See Malkin Dec.*,⁴ ¶ 5. These deemed admissions include the following:

At all times relevant hereto, Plaintiff owned the U.S. Copyright Reg. No. VA-2-214-107 and U.S. Copyright Reg. No. VA-2-218-985 Defendant knew that Plaintiff had the exclusive right to use and license its intellectual property 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 infringing products under your Seller ID or Seller IDs.

At all times relevant hereto, you have been engaged in the fraudulent promotion, advertisement, distribution, offering for sale, and/or sale of goods using a listing that at least one of Plaintiff's Mark, or Plaintiff's Works, or substantially similar copies of Plaintiff's Works.

You intentionally make, use, offer to sell, or import into the United States infringing, knock-offs and/or counterfeit and substandard copies of Plaintiff's Product.

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

b. Liability for Trademark Counterfeiting and Infringement against Certain Defendants⁵

Title 15 U.S.C. § 1114 (Section 32 of the Lanham Act) provides liability for trademark

⁴ Refers to *Declaration of Brian Samuel Malkin* submitted herewith.

⁵ Only against Defendants 15 and 43 who used Plaintiff's U.S. Registered Trademark in commerce. *See Complaint*, Count II. Damages for common law trademark infringement are subsumed within the statutory damage remedy for federal trademark infringement and counterfeiting and are not sought here.

infringement if, without the consent of the registrant, a defendant uses “in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark which is likely to cause confusion, or to cause mistake, or to deceive.” In order to prevail on its trademark infringement claim, Plaintiff must establish that “(1) it has a valid mark that is entitled to protection under the Lanham Act; and that (2) the defendant used the mark, (3) in commerce, (4) in connection with the sale or advertising of goods or services, (5) without plaintiff’s consent” and (6) “that defendant’s use of the mark is likely to cause confusion as to the affiliation, connection, or association of defendant with plaintiff, or as to the origin, sponsorship, or approval of the defendant’s goods, services, or commercial activities by plaintiff.” *1-800 Contacts, Inc. v. WhenU.com*, 414 F.3d 400, 406-407 (2d Cir. 2005) (internal quotations omitted). 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); *see also Fisons Horticulture, Inc. v. Vigoro Indus., Inc.*, 30 F.3d 466, 472 (3d Cir.1994). Certain Defendants have admitted through their default they used Plaintiff’s registered mark BACON BIN[®] to sell Counterfeit Goods.

3. Defendants Admitted their Profits Which are Recoverable by Plaintiff as Damages for Copyright Infringement⁶

Since defaulting Defendants have chosen not to participate in these proceedings, Plaintiff has 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

⁶ Defendant Nos. 15 and 43 were also counterfeiting and are named in Count II of the *Complaint*. *See* n. 4, *supra*.

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. See 17 U.S. Code § 504 (b); *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.

By failing to respond to Plaintiff's Requests for Admissions and failing to answer the Plaintiff's Complaint, each defaulting Defendant has admitted that profits from the sale of the infringing products totals more than \$2,000,000. *Complaint*, ¶¶ 51-56; 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 \$2,000,000 from each defaulting Defendant based on the Defendants' failure to answer the complaint and failure to answer Plaintiff's Requests for Admission. Deemed admissions have previously been used to establish profits to be disgorged in cases against sellers on online marketplaces. *Talsiman Designs LLC v. Ladyvana US*, No. 22-994 (W.D. Pa. October 20, 2022) (Schwab, J), *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.).

4. Plaintiff is Entitled to Statutory Damages Under the Lanham Act as to Certain Defendants⁷

The Lanham Act provides that the Plaintiff may elect at any time to recover statutory damages "if the court finds that the use of the counterfeit mark was willful, not more than

⁷ The Defendant Nos. 15 and 43 were the only remaining defendants that were counterfeiting and are named in Count II of the *Complaint*.

\$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). Defendants purposefully infringe Plaintiff’s mark for profit. *See Complaint*, ¶¶ 46 - 53. The undisputed facts of this case show that Defendants’ actions must be willful use of a counterfeit mark under the meaning of the Lanham Act.⁸ Indeed, by their failure to respond, Defendants have admitted their infringement is willful. *Tiffany (NJ) Inc.v. Luban*, 282 F. Supp. 2d 123, 124 (S.D.N.Y. 2003) (infringement is deemed willful “[b]y virtue of the default”). Because Defendants willfully use Plaintiff’s mark to sell counterfeit goods, Plaintiff is entitled to statutory damages of \$2,000,000 per defendant.

Congress enacted the statutory damages remedy in trademark counterfeiting cases because evidence of a counterfeiter’s profits in such cases is almost impossible to ascertain since “records are frequently nonexistent, inadequate, or deceptively kept.” *See Gucci Am., Inc., v. Duty Free Apparel, Ltd.*, 315 F. Supp. 2d 511, 520 (S.D.N.Y. 2004); *see also Coach, Inc. v. Weng*, 2014 U.S. Dist. LEXIS 79005, at *41-42 (S.D.N.Y. June 7, 2014) (“Section 1117(c) of the Lanham Act was created to give victims of trademark infringement and unfair competition an avenue for recovering damages when a defendant hides, alters, or destroys business records.”). Given Defaulting Defendants’ propensities to conceal their identities, disappear and destroy or hide any evidence or records of their counterfeiting and infringing actions, and that to date, no Defaulting Defendants have appeared, answered or otherwise responded to the Complaint, Plaintiff cannot ascertain Defaulting Defendants’ actual profits. Simply put, this case presents the exact circumstances that Congress envisioned in its enactment of Section 1117(c).

⁸ Under the Lanham Act, it is not necessary a defendant knew a mark was registered for statutory damages to be awarded. *See* 15 U.S.C. ¶ 1116(d)(1)(B)(i).

In addition to admitting their infringement is willful, each Defendant has also admitted that it made “more than \$2,000,000.00 (United States Dollars) in profit on the sales of the counterfeit goods.” *Complaint* ¶ 56. In circumstances where no evidence of a defendant’s profit was available, courts have consistently awarded at least \$1 million dollars in statutory damages.⁹ Furthermore, courts have awarded high damage amounts where a defendant’s counterfeiting activities attracted wide market exposure through Internet traffic or advertisement. *See Coach, Inc. v. Ocean Point Gifts*, 2010 U.S. Dist. LEXIS 59003, *15-16 (D.N.J. Jun. 14, 2010) (high damage awards in counterfeit cases were “due in part to the wide market exposure that the Internet can provide”); *Burberry Ltd. v. Designers Imports, Inc.*, 2010 U.S. Dist LEXIS 3605, *28-29 (S.D.N.Y. Jan. 19, 2010) (damages amount based, in part, on “Defendant’s ability to reach a vast customer base through internet advertising”).

In the present case, an award of the maximum statutory damages of \$2 million dollars (also Defendant’s admitted minimum profit) is appropriate to serve the purposes of: (1) deterring the defendant and others situated like it from bringing into commerce counterfeit goods, (2) compensating the plaintiffs for damages caused by defendant’s infringement, and (3) punishing the defendant appropriately for its counterfeiting activities. Indeed, courts in this district have entered maximum statutory damages against Defendants in other online counterfeiting cases. *See Talsiman Designs LLC v. Ladyana US*, No. 22-994 (W.D. Pa. October 20, 2022) (Schwab, J); *Airigan Solutions, LLC v. Belvia*, No. 20-cv-284 (W.D. Pa., April 21, 2020) (Schwab, J.) (\$2 million in damages against each defendant), *Rapid Slicer LLC v. Art-House*, No. 19-411 (W.D.

⁹ *See, e.g., Eye Safety Sys., Inc. v. The Partnerships and Unincorporated Ass’ns. Identified in Schedule “A”*, Case No. 18-cv-00034 [D.E. 42] (N.D. Ill. Mar. 1, 2018) (awarding \$1 million in statutory damages per defendant, entering permanent injunction, and ordering PayPal to transfer defendants’ funds to plaintiff as partial satisfaction of judgment); *Spin Master Ltd. v. The Unincorporated P’ships and Ass’ns. Identified in Schedule “A”*, Case No. 18-cv-01270 [D.E. 39] (N.D. Ill. Apr. 25, 2018) (same).

Pa., Jan. 9, 2020) (Horan, J.) (same), and *Airigan Solutions, LLC v. Abigail*, No. 19-cv-503 (W.D. Pa., Aug 13, 2019) (Fischer, J.) (same). 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. Worthbuyer*, 19-1283 (W.D. Pa., August 14, 2020) (Hornak, CJ). In short, in all anticounterfeiting cases in this district, the Court has awarded the maximum damages under the law.

5. Plaintiff is Entitled to a Combination of Damages for Copyright Infringement and Trademark Infringement as against Certain Defendants.

A Plaintiff may be awarded statutory damages under the Lanham Act in addition to disgorgement of a defendant's profits under the Copyright Act. As to Count I (Copyright Infringement), Plaintiff elects to seek disgorgement of admitted profits of \$2,000,000.00 against all the Defendants, individually and severally. As to Count II of the Complaint (Trademark Infringement and Counterfeiting), against Defendant Nos. 15 and 43, Plaintiff elects to seek additional statutory trademark damages of \$2,000,000.00, individually, and severally.¹⁰ Other courts have made such awards on default judgment motions, particularly where the defendant's infringement has been willful. *Starbucks Corporation v. Glass*, 2016 WL 6126255 (C.D. Cal. 2016) ("While a plaintiff must choose between recovering statutory damages and actual damages under either Lanham Act and the Copyright Act, nothing prohibits a plaintiff from seeking statutory damages under one act and actual damages under the other, or vice versa."), citing *Nintendo of Am., Inc. v. Dragon Pac. Int'l*, 40 F. 3d 1007, 1011 (9th Cir. 1994). Courts have also

¹⁰ The damages for common law trademark infringement are subsumed by the statutory trademark damages and thus Plaintiff is not seeking a monetary award for Count III (common law trademark infringement).

awarded statutory damages under both the Copyright and Lanham Acts. *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) and related cases; *Ontel Products Corporation v. Airbrushing Makeup Store*, 2017 WL 1969681 (S.D.N.Y. 2017) (due to defendants' willful counterfeiting, the court awarded statutory damages under the Copyright and Lanham Acts); *Yash Raj Films (USA), Inc. v. Sidhu*, 2010 WL 1032792 (E.D. Cal. 2010) (court awarded same as a deterrence).

6. Plaintiff is Entitled to Permanent Injunctive Relief

Plaintiff also seeks a permanent injunction enjoining Defendants from infringing or otherwise violating Plaintiff's rights in its product, including at least all injunctive relief previously awarded by this Court to Plaintiff in the temporary restraining order and preliminary injunction. *See Evony, LLC*, 2011 WL 1230405 at *7 ("In this case, Plaintiff have achieved "actual success on the merits" through the admission of liability arising from Defendant's default. Furthermore, the Verified Complaint establishes that Defendant unlawfully sells and distributes copyrighted and trademarked material of the Plaintiff's. Nothing in the facts before the Court indicates that Defendant has ceased this infringing activity; thus, a permanent injunction is warranted in this case on all claims of the Verified Complaint."). Plaintiff is also entitled to injunctive relief so they can take prompt action against any new online marketplace accounts or websites that are identified, found to be linking to Defendants, and selling infringing knock-off products. A plaintiff is entitled to a permanent injunction under the Lanham Act, the Copyright 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*, 2011 WL at *7.

A permanent injunction, like the damages under the Lanham Act and the Copyright Act, would help deter other individuals or corporations from infringing Plaintiff's valuable trademark and copyright 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.*

7. 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 transferring the funds held in their Third Party Service Provider(s) and Financial Institution(s) accounts beyond this Court's jurisdiction. 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. [ECF No. 7, 23] This Court found that Plaintiff 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 Plaintiff 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 Plaintiff 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 multilateral 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 Plaintiff 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 other Courts to satisfy monetary judgment awards in similar counterfeiting cases. This Court has entered such transfer orders in each of the cases related to the present one. *See, e.g., Talsiman Designs LLC v. Ladyana US*, No. 22-994 (W.D. Pa. October 20, 2022) (Schwab, J); *Doggie Dental, Inc. v. Anywill*, No. 19-682 [Doc. No. 91] (W.D. Pa. Aug. 14, 2020) and related cases (ordering Financial Institutions to transfer defendants' funds to plaintiffs as partial satisfaction of judgment); and *Airigan Solutions, LLC v. Belvia*, No. 20-cv-284 [Doc. No. 34] (W.D. Pa. April 21, 2020) and related cases (same). *See also Eye Safety Sys., Inc. v. The Partnerships and Unincorporated Ass'ns. Identified in Schedule "A"*, Case No. 18-cv-00034 [D.E. 41] (N.D. Ill. Mar. 1, 2018); *Spin Master Ltd. v. The Unincorporated P'ships and Ass'ns. Identified in Schedule "A"*, Case No. 18-cv-01270 [D.E. 39] (N.D. Ill. Apr. 25, 2018) (same); *Levi Strauss & Co. v. The Unincorporated P'ships and Ass'ns. Identified in Schedule "A"*, Case No. 17-cv-04561 [D.E. 33] (N.D. Ill. Aug. 1, 2017) (same); *Yeti Coolers, LLC v. Taneil George*, Case No. 17-cv-62215 [D.E. 46] (S.D. Fl. Mar. 29, 2018) (same); *Mycoskie, LLC v. csmlong188*, Case No. 17-cv-60782 [D.E. 43] (S.D. Fl. Jul. 21,

2017) (same); *Fendi Adele, S.R.L. v. alma Hernandez*, Case No. 17-cv-62379 [D.E. 37] (S.D. Fl. Jan. 28, 2018) (same); *Burberry Ltd. v. The Partnerships and Unicorporated Ass'ns. Identified in Schedule "A"*, Case No. 17-cv-03255 [D.E. 37] (N.D. Ill. June 7, 2017) (same); *Louis Vutton Mallietier, S.A. v. Andrew Henry*, Case No. 17-cv-61034 [D.E. 40] (S.D. Fl. Aug. 22, 2017) (same); *Cartier Int'l A.G. v. Anotoky*, Case No. 17-cv-60831 [D.E. 38] (S.D. Fl. Jul. 6, 2017) (same); *Lacoste Alligator S.A. v. 6666 store*, Case No. 17-cv-60046 [D.E. 49] (S.D. Fl. Jun. 28, 2017) (same); *Gucci Am., Inc. v. 8710 t-shirt shop*, Case No. 16-cv-63002 [D.E. 58] (S.D. Fl. Mar. 27, 2017) (same).

III. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant its Motion for Default Judgment; enter judgment against all the Defendants for federal copyright infringement (Count I); against Defendant Nos. 15 and 43 for trademark counterfeiting and infringement pursuant to § 32 of the Lanham Act (Count II) and common law trademark infringement (Count III); permanently enjoin Defendants; award Plaintiff pre-judgment interest and post-judgment interest on the above damages awards; and grant such further relief as this Court deems appropriate.

Plaintiff 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 Plaintiff in partial payment of any default judgment entered against Defendants.

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Respectfully submitted,

Dated: November 7, 2022

/s/ Stanley D. Ference III
Stanley D. Ference III (Pa. ID No. 59899)
Brian Samuel Malkin (Pa. ID No. 70448)

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