

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

PIKE BRANDS LLC,

Plaintiff,

v.

TEEGEM, *et al.*,

Defendants.

Civil Action No. 22-cv-171

(Judge Colville)

MEMORANDUM IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT

Plaintiff submits this Memorandum in Support of its 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 lawsuit (as set forth in the caption above) that the Plaintiff brought seeking relief from the tireless efforts of the online copycats trying to destroy Plaintiff’s business. In this case, Defendants are sellers of infringing products on at least one of the online marketplaces operated by Amazon.com, eBay.com, Aliexpress.com, Walmart.com, and wish.com. Defendants engaged in patent infringement (Counts I - IV),¹ trade dress infringement and unfair competition (Count V), and common law unfair competition (Count VI).²

¹ Each count includes a claim of patent infringement for the individual patents in suit, which are, U.S. Design Patent No. RE48,520, U.S. Design Patent No. RE48,743, U.S. Design Patent No. RE48,531, and U.S. Design Patent No. 799,280.

² Plaintiff is waiving monetary damages for defendants’ unfair competition and trademark infringement for Counts V and VI and instead seeks combined damages for Counts I-IV (patent infringement) under 35 U.S. Code § 289. Each defendant has infringed a claim of at least one of the patents in suit.

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 against Defendants an award of \$2,000,000.00 for their patent infringement.

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 in disgorgement of admitted profits 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 a similar method for proving and 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)).

II. ARGUMENT

A. This Court has Jurisdiction to Enter Default Judgment Against the 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 to the Patent Act. 35 U.S.C. § 271.

Personal jurisdiction may be established either by specific or general jurisdiction, but specific jurisdiction is appropriate in this 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 Plaintiff's 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. Likewise, 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 Pennsylvania residents, and did in fact sell patent infringing products into 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 Declaration of Nate Jelovich* [ECF No. 8]. 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. *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* at 22-994, ¶ 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. Sept. 30, 2008). 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

The courts in this district have universally approved the joinder of online patent infringement defendants in one case. *See Aquapaw Brands LLC v. Tiktoks*, No. 21-cv-696 (W.D. Pa., Jul. 29, 2022) (Wiegand, J.) [ECF No. 56]; *Aquapaw Brands LLC v. Flopet*, No. 21-cv-988 (W.D. Pa., Jul. 29, 2022) (Wiegand, J.) [ECF No. 58]; *Aquapaw Brands LLC v. Yan-Peng*, No. 1784 (W.D. Pa., Jul. 29, 2022) (Wiegand, J.) [ECF No. 62]; *Aquapaw LLC v. Allnice*, No. 20-1954 (W.D. Pa., Jul. 29, 2022) (Wiegand, J.) [ECF No. 85]; *Doggie Dental, Inc. v. Cdooffice*, No. 21-cv-271 (W.D. Pa., Sept. 7, 2021) (Hornak, C.J.) [ECF No. 126].

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). There is no difference in the analysis under either Rule 20 or 35 U.S.C. § 299 of the Patent Act. *See* 157 Cong. Rec. S5429 (daily ed. Sept. 8, 2011) (statement of Sen. Kyl observing that Section 299 “effectively codifies current law as it has been applied everywhere outside of the Eastern District of Texas”). 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 decision on joinder 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 effect” 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].

Moreover, in the present case there is something more -- the admitted allegations of the Complaint (*i.e.*, cooperating, communicating, coordinating with a common goal of creating one illegal competing marketplace). These additional activities further establish the necessary commonality to join the defendants into one action under either Rule 20 or Section 299. Thus, the well-pled factual allegations of Plaintiff’s Complaint properly allege the elements for joinder and the Defendants are properly joined in this case.

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 after service.

2. Factual Allegations Establish Defaulting Defendants’ Liability

By failing to appear and defend against the Complaint, Defaulting 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). Plaintiff now moves this Court for a default judgment finding that Defaulting Defendants are liable on Plaintiff’s Complaint.

“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).

In this case, Plaintiff is the lawful owner of the Plaintiff’s Patents. Plaintiff has submitted extensive documentation showing that Defendants make, use, offer for sale, sell, and/or import in the United States for subsequent sale or use products that infringe directly on all of the Plaintiff’s Patents. *Odell Dec.*, **Composite Exhibit 1**; *Jelovich Dec.*, ¶¶ 23 – 25. In reviewing the

photographs and listings of the Defendants' products in Exhibit 1 and comparing them to the Plaintiff's design patents, it is demonstrated that the Defendants' products infringe on at least one of the Plaintiff's Patents. Thus, Plaintiff has handily proven its patent infringement claims. Furthermore, there is no challenge that Plaintiff's Products are marked in accordance with the Patent Act.

As to validity, "[e]ach issued patent carries with it a presumption of validity under 35 U.S.C. § 282." *Tinnus Enters., LLC v. Telebrands Corp.*, 846 F.3d 1190, 1205 (Fed. Cir. 2017). None of the defaulting defendants have challenged the validity of any of the patents in suit. Thus, the Plaintiff has proven by uncontroverted evidence its claim that each of the remaining defendants has infringed on each of the patents in suit.

The well-pled factual allegations of Plaintiff's Complaint, including specifically those in Paragraphs 48 - 76, 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 Defaulting Defendants' liability asserted in the Complaint.

In addition to the well pled factual allegations, admitted by default, and established by the evidence, Defendants have also made admissions by failing to respond to the *Requests for Admissions* served upon them concurrent with the service of the Complaint and Summons. 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 *Requests for Admissions* served upon them. *See Malkin Dec.*,³ ¶ 5. These deemed admissions include the following:

³ Refers to *Declaration of Brian Samuel Malkin* submitted herewith.

Plaintiff is the owner of U.S. Design Patent No. RE48,520 for TODDLER FORK.

Plaintiff is the owner of U.S. Design Patent No. RE48,743 for TODDLER FORK.

Plaintiff is the owner of U.S. Design Patent No. RE48,531 for TODDLER SPOON.

Plaintiff is the owner of U.S. Design Patent No. 799,280 for TODDLER SPOON.

You were on notice of the Plaintiff's Patents before you began manufacturing, offering for sale, selling, promoting, advertising, and otherwise distributing the Infringing Product.

You have intentionally infringed and continue to infringe at least one claim of the Plaintiff's Patents either directly or indirectly through acts of contributory infringement or inducement in violation of 35 U.S.C. § 271, by making, using, selling, importing and/or offering to sell Infringing Products.

At all times relevant hereto, Plaintiff have the manufacturing and marketing capability to meet the consumer demand for the Plaintiff's Products.

In the absence of your sales of infringing or counterfeit products, consumers would have purchased Plaintiff's Products.

Accordingly, Default Judgment pursuant to Rule 55 of the Federal Rules of Civil

Procedure should be entered against the Defaulting Defendants.

3. Plaintiff is Entitled to Defendants' Profits Under the Patent Act

Pursuant to 35 U.S. Code § 289, Plaintiff's damages for infringement of its design patents may be the Defendant's profits. 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, 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 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*, ¶ 47; 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 Plaintiff's Requests for Admission. Deemed admissions have previously been used to establish profits to be disgorged in cases against sellers on online marketplaces. *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 over 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. Ahui*, No. 19-cv-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. Worthbuyer*, 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) [ECF No. 34]; *Airigan Solutions, LLC v. Abigail*, No. 19-cv-503 (W.D. Pa., Aug 13, 2019) (Fischer, J.) (same) [ECF No. 52], *Rapid Slicer LLC v. Art-House*, No. 19-411 (W.D. Pa., Jan. 9, 2020) (Horan, J.) (same) [ECF No. 44].

In the present case, an award of 2,000,000.00 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 infringing goods, (2) compensating the plaintiff for

damages caused by defendant's infringement, and (3) punishing the defendant appropriately for its counterfeiting activities. Indeed, courts in this district have entered the damages sought in this case against Defendants in other online counterfeiting and patent infringement cases. *See Doggie Dental v. Ahui*, No. 19-cv-1627 (W.D. Pa., September 27, 2021 (Hornak, CJ), *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. 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.

4. Plaintiff is Entitled to Permanent Injunctive Relief

In addition to the foregoing relief, Plaintiff seeks entry of a permanent injunction enjoining Defaulting Defendants from infringing or otherwise violating Plaintiff's rights patented baby utensils, including at least all injunctive relief previously awarded to by this Court to Plaintiff in the temporary restraining order and preliminary injunction. 35 U.S.C. § 283 and Federal Rule of Civil Procedure 65. Plaintiff is also entitled to injunctive relief so it can take prompt action against any new online marketplace accounts or websites that are identified, found to be linking to Defendants, and selling Infringing Product. The injunctive relief ordering storefronts selling infringing products taken down ensures that "zombie" sales (sales of infringing products from prior restrained storefronts) cannot take place using that storefront's

electronic communications and processing in the future. The Court has approved such relief in prior cases. *See See Doggie Dental v. Ahui*, No. 19-cv-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. Worthbuyer*, 19-1283 (W.D. Pa., August 14, 2020) (Hornak, CJ).

A permanent injunction, like the disgorgement of admitted profit, would help deter other individuals or corporations from infringing Plaintiff's valuable patent rights. Additionally, entry of a permanent injunction against Defendants in these cases 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 Doggie Dental v. Ahui*, No. 19-cv-1627 (W.D. Pa., September 27, 2021 (Hornak, CJ); *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); *Airigan Solutions, LLC v. Belvia*, No. 20-cv-284 (W.D. Pa., April 21, 2020) (Schwab, J.) [ECF No. 34]; *Rapid Slicer LLC v. Art-House*, No. 19-411 (W.D. Pa., Jan. 9, 2020) (Horan, J.) [ECF No. 44]; and *Airigan Solutions, LLC v. Abigail*, No. 19-cv-503 (W.D. Pa., Aug 13, 2019) (Fischer, J.) [ECF No. 52].

A permanent injunction, like the damages under the Patent Act, would help deter other individuals or corporations from infringing Plaintiff's patenet 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 transferring the funds held in their accounts beyond this Court's jurisdiction. This Court granted the temporary restraining order and preliminary injunction, preventing Defendants from accessing the funds in their accounts. [ECF Nos. 15 and 29]. 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 assets currently held in the defaulting Defendants' accounts be transferred to Plaintiff 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 own, other than those held in their respective 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 this Court to satisfy monetary judgment awards in similar counterfeiting cases. *See Doggie Dental v. Ahui*, 19-1627 (September 27, 2021)(Hornak, CJ); *Airigan Solutions, LLC v. Belvia*, No. 20-cv-284 (W.D. Pa., April 21, 2020) (Schwab, J.); *Rapid Slicer LLC v. Art-House*, No. 19-411 (W.D. Pa., Jan. 9, 2020) (Horan, J.); and *Airigan Solutions, LLC v. Abigail*, No. 19-cv-503 (W.D. Pa., Aug 13, 2019) (Fischer, J.); *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).

III. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant its Motion; enter judgment against Defendants for patent infringement (Counts I - IV), trade dress infringement and unfair competition (Count V), and common law unfair competition (Count VI); permanently enjoin Defendants; award the disgorgement of profits in accordance with the Patent Act, 35 U.S.C. § 289; enter a permanent injunction order prohibiting Defendants from selling

/

/

/

Infringing Products and transferring all assets in Defendants' financial accounts to Plaintiff in partial payment of the default judgment.

Dated: November 3, 2022

Respectfully submitted,

/s/ Stanley D. Ference III

Stanley D. Ference III

Pa. ID No. 59899

courts@ferencelaw.com

Brian Samuel Malkin

Pa. ID No. 70448

bmalkin@ferencelaw.com

FERENCE & ASSOCIATES LLC

409 Broad Street

Pittsburgh, Pennsylvania 15143

(412) 741-8400 – Telephone

(412) 741-9292 – Facsimile

Attorneys for Plaintiff