

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

BROADWAY PINE BRANDS LLC,

Plaintiff,

v.

TOY STORAGE WORLD (TSW), *et al.*,

Defendants.

Civil Action No. 21-1665

(Judge Ranjan)

MOTION FOR ENTRY OF DEFAULT JUDGMENT AND PERMANENT INJUNCTION

Plaintiff hereby moves for entry of a Default Judgment and Permanent Injunction pursuant to Federal Rule of Civil Procedure 55(b)(2) against the Defendants set forth on **Schedule A** hereto, all of whom are in default. The grounds for this Motion are set forth in the accompanying Memorandum in Support.¹

Plaintiff respectfully requests the following relief against Defendants: 1) the entry of a final judgment and permanent injunction by default in order to prevent Defendants from infringing Plaintiffs' intellectual property rights in the future; 2) award against each Defendant, severally and distinctly in the amount of \$900,000.00., plus post-judgment interest; 3) a post-judgment asset restraining order and 4) an order authorizing the release and transfer of Defendants' frozen assets to satisfy the damages awarded to Plaintiffs.

¹ While all the Defendants are infringing on Plaintiff's patent, Plaintiff alleged in its Complaint that only Defendant Nos. 3, 4, and 48 are infringing on Plaintiff's mark and thus counterfeiting as well. Since Defendant Nos. 3, 4, and 48 have been dismissed from this case, the Plaintiff is not pursuing judgment for Count II (Federal Trademark Infringement) and Count III (Common Law Trademark Infringement). Defendant is also waiving attorney's fees.

Plaintiff does not believe it is necessary for the Court to hold a hearing on this Motion, and the Motion may be decided on the papers.² Courts, including in the Western District, and this Court have entered default judgments based upon the papers and without holding a hearing. *See Broadway Pine Brands LLC v. Mustb Toy Store, et al*, No. 21-1736 [ECF No. 51] (W.D. Pa. November 23, 2022)(default judgment entered 7 days after motion filed); *Broadway Pine Brands v. Amtoy*, No. 22-cv-358 [ECF No. 42] (W.D. Pa. November 30, 2022)(same); *Broadway Pine Brands v. Cococity*, No. 22-510 [ECF No. 68] (W.D. Pa November 30, 2022)(same); *Osprey, LLC v. Alfie Pet*, No. 21-cv-790 [ECF No. 43] (W.D. Pa. July 28, 2022) (default judgment entered three days after motion filed); *Osprey, LLC v. Alladinbox*, No. 21-cv-1095 [ECF No. 39] (W.D. Pa. July 21, 2022) (default judgment entered one day after motion filed); *BBC Studios Distribution Ltd. v. The Partnerships and Unincorporated Associations Identified on Schedule “A”*, No. 22-cv-1441 (N.D. Ill. July 20, 2022) (default judgment entered one day after motion filed); *Airigan Solutions, LLC v. Belvia*, No. 20-cv-284 [ECF No. 35] (W.D. Pa. April 22, 2020) (default judgment entered one day after motion filed); *Apple Corps. Limited v. The Individuals, Partnerships and Unincorporated Associations Identified on Schedule “A”*, No. 19-cv-62853 (S.D. Fla. Feb. 13, 2020) (default judgment entered one day after motion filed); and *Chanel, Inc. v. The Individuals, Partnerships and Unincorporated Associations Identified on Schedule “A”*,

² It is respectfully submitted there is no reason to conduct a hearing on the Plaintiff’s request for damages since all of the evidence needed for an award of damages is already before the court. Courts have awarded damages post-default without an evidentiary hearing based upon affidavits like those submitted by the plaintiff in this case. *See Rios v. Loves*, No. 13-CV-1619 (E.D. Pa. 2015) (After a Court determines that judgment by default should be entered as to liability, the court must address the quantum of damages or other recovery to be awarded. The Court may determine the amount of damages by conducting a hearing or upon submission of affidavits.); *see also Jonestown Bank and Trust Co. v. Automated Teller Mach., Services, Inc.*, 2012 WL 6043624, *4 (M.D. Pa. 2012) (explaining that the Court may determine damages by asking parties to submit “affidavits and other materials from which the court can decide the issue.”) (citing 10 James Wm. Moore, et al., *Moore’s Federal Practice* § 55.32[2][c] (Matthew Bender ed. 2010)); *Frenkel v. Baker*, No. 13-5880, 2014 WL 5697449, at *12 (E.D. Pa. Nov. 4, 2014) (citing *Amresco Fin. Financial I L.P. v. Storti*, 2000 WL 284203, at *2 (E.D. Pa. Mar. 13, 2000)) (entry of default with an award of damages proper where award can be ascertained from figures in evidence and affidavits).

No. 19-cv-61416 (S.D. Fla. Aug, 12, 2019) (default judgment entered six days after motion filed).

An appropriate Proposed Judgment is filed herewith.

Respectfully submitted,

Dated: April 25, 2023

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