

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

AIRIGAN SOLUTIONS, LLC,

Plaintiff,

v.

RAINBOW ISLAND STORE, *et al.*,

Defendants.

Civil Action No.

23-cv-1327

(Judge Stickman)

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

I, Brian Samuel Malkin, hereby affirm as follows:

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

2. I am an attorney with the law firm of Ference & Associates LLC, which is located at 409 Broad Street, Pittsburgh, Pennsylvania 15143.

3. I am an attorney for the Plaintiff Airigan Solutions, LLC (“Airigan” or “Plaintiff”) in the above-captioned case.

4. I make and submit this Declaration in support of Plaintiff’s Motion for Default Judgment and Permanent Injunction (hereinafter “Motion for Default Judgment”) against those Defendants for whom the Clerk has entered Default (the “Defendants”).

5. On August 4, 2023, Plaintiff served all of the Defendants, with Requests for Admission, which included, *inter alia*, the following:

At all times relevant hereto, Defendant knew that Plaintiff owned both U.S. Trademark Reg. No. 5,142,630 for the word mark “NEGG and U.S. Patent No. 9,968,211 entitled “PERSONAL EGG PEELER”, and 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 counterfeit goods 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 that are counterfeit and substandard copies of Plaintiff’s genuine NEGG® egg peeler.

You intentionally make, use, offer to sell, or import into the United States counterfeit and substandard copies of Plaintiff’s genuine NEGG® egg peeler with English language packaging and instructions.

There is no acceptable product that is an alternative to Plaintiff’s patented NEGG® egg peeler that does not infringe a claim of U.S. Patent No. 9,968,211 entitled “PERSONAL EGG PEELER”.

You willfully infringed of a claim of U.S. Patent No. 9,968,211 entitled “PERSONAL EGG PEELER”.

You made more than \$2,000,000.00 (United States Dollars) in profit on the sales of the counterfeit goods.

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

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

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

Executed this 12th day of September, 2023, at Pittsburgh, Pennsylvania.

/s/ Brian Samuel Malkin
Brian Samuel Malkin