

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

HAPPY HOUR THINKING LLC,

Plaintiff,

v.

ZEUS, *et al.*,

Defendants.

Civil Action No. 23-1293

(Judge Horan)

**DECLARATION OF BRIAN SAMUEL MALKIN
IN SUPPORT OF MOTION FOR ENTRY OF AMENDED DEFAULT JUDGMENT AND
PERMANENT INJUNCTION AGAINST DEFENDANTS IN APPENDIX “A”**

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 in the above-captioned case.

4. I make and submit this Declaration in support of Plaintiff’s Motion for Entry of Amended Default Judgment and Permanent Injunction (hereinafter “Motion for Amended Default Judgment”) against those Defendants in Appendix “A”.

5. Concurrent with service of the Summons and Complaint, Plaintiff served all of the Defendants, with Requests for Admissions, which included, *inter alia*, the following:

At all times relevant hereto, Plaintiff the common law trademark THE CORD WRAPPER™ and design:  cord wrapper (“Plaintiff’s Mark”).

At all times relevant hereto, Defendant knew that Plaintiff owned US Design Patent No. D913,776 S (“Plaintiff’s Patent”), and Defendant knew that Plaintiff had the exclusive right to use and license its intellectual property and the goodwill associated therewith.

At all times relevant hereto, Plaintiff was the owner of various published photographs, videos, artwork, creative text, and product instructions appearing on Plaintiff’s website talismandesigns.com (including, but not limited to, U.S. Copyright Reg. Nos. VA-0002-34-9904 for Photos of Plaintiff’s Product as used (“Plaintiff’s Works” or “Works”).

At all times relevant hereto, Plaintiff owned the common law trade dress rights for The Plaintiff’s Product and packaging (“Plaintiff’s Trade Dress” or “Trade Dress”) and Defendant knew that Plaintiffs had the exclusive right to use and license their 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 that are infringing at least one of Plaintiff’s Patent, Plaintiff’s Mark, Plaintiff’s Trade Dress, and 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 counterfeit and substandard copies of Plaintiff’s Product with English language packaging and instructions.

You willfully infringed on at least one claim of Plaintiff’s Patent.

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.

7. Negotiations with the Defendants in Appendix A ultimately failed to yield a settlement, no request for extension of time to answer or respond was made, and a clerk's entry of default was entered against each of them.

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 October, 2023, at Pittsburgh, Pennsylvania.

/s/Brian Samuel Malkin
Brian Samuel Malkin