

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

ALLSEASON ENTERPRISES, LLC,

Plaintiff,

v.

MYKYTA MELNIK LLC, *et al.*,

Defendants.

Civil Action No. 24-cv-921

(Judge Colville)

**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 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").

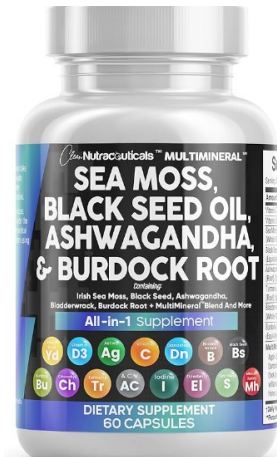
5. As of July 29, 2024, Plaintiff has served all of the Defendants, with Requests for Admissions, which included, *inter alia*, the following:

At all times relevant hereto, Plaintiffs owned the common law trademark CLEAN NUTRA™ and registered trademarks CLEAN NUTRA & design (U.S. Reg. No.

7031116):  and CLEAN NUTRACEUTICALS & design (U.S. Reg. No.

7031117):  (“Plaintiff’s Marks”) and Defendant knew that Plaintiffs had the exclusive right to use and license their intellectual property and the goodwill associated therewith.

At all times relevant hereto, Plaintiffs owned the common law trade dress rights comprising the organization, selection of the text, arrangement of the elements of the creative artwork and colors for the label, the differently colored spheres containing abbreviations for various vitamins, minerals, and supplements, the black tree shaped background and the distinctly proportioned text for Plaintiff’s Product, (the “Plaintiff’s Trade Dress”):



and Defendant knew that Plaintiffs had the exclusive right to use and license their intellectual property and the goodwill associated therewith.

At all times relevant hereto, Plaintiff owned U.S. Copyright Reg. Nos. TX 9-367-638, TX 9-388-519, TX 9-388-522, TX 9-388-523, TX 9-389-848, TX 9-389-849, TX 9-394-790 all with the title “Multimineral Sea Moss Black Seed” published on October 15, 2022. (“Plaintiff’s Works”).

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 copies of Plaintiff's Product.

You intentionally copied and/or infringed Plaintiff's intellectual property, in order to benefit from the Plaintiffs' fame, reputation, and goodwill to divert Plaintiffs' profits into your business.

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.

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 September 16, 2024, at Pittsburgh, Pennsylvania.

/s/Brian Samuel Malkin/

Brian Samuel Malkin