

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

MICHELLE E. DESOUSA, et al.,

Plaintiffs,

v.

SMART726, *et al.*,

Defendants.

Civil Action No. 24-1653

(Judge Stickman)

**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 Plaintiff¹ 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”).

¹ The singular use of Plaintiff refers collectively to the Plaintiffs, Michelle E. DeSousa, Jose De Jesus DeSousa, and BraNovations, Inc.

5. On November 20, 2024, 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 U.S. Patent No. 8,152,591 entitled “GARMENT AND BRASSIERE ACCESSORY”, and certain photographs and artwork related to the promotion and packaging of Plaintiff’s Product (“Plaintiff’s Works”). 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 infringing copies of Plaintiff’s Product.

You intentionally make, use, offer to sell, or import into the United States copies of Plaintiffs’ Product with English language packaging and instructions.

There is no acceptable product that is an alternative to Plaintiff’s Product that does not infringe at least one claim of the Plaintiff’s Patent.

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

You used identical or substantially similar versions of Plaintiff’s Works to advertise and promote your patent infringing products.

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

You have sold more than 50,000 units of goods that infringe that infringe at least one claim of the Plaintiffs’ Patent.

You made at least \$20.00 profit on each infringing unit sold.

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 completed 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 on April 15, 2025.

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 Tuesday, April 29, 2025, at Pittsburgh, Pennsylvania.

/s/ Brian Samuel Malkin
Brian Samuel Malkin