

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

LEI TANG,

Plaintiff,

V.

THE INDIVIDUALS, PARTNERSHIPS AND  
UNINCORPORATED ASSOCIATIONS  
IDENTIFIED ON SCHEDULE "A,"

Defendants.

---

Case No.: 0:23-cv-61976-WPD

Judge: William Dimitrouleas

Mag. Judge: Panayotta Augustin-Birch

**[proposed] ORDER ON MOTION FOR ENTRY OF FINAL JUDGMENT BY DEFAULT**

1. THIS CAUSE is before the Court upon Plaintiff Lei Tang's ("Tang" or "Plaintiff") Motion for Entry of Final Judgment by Default, D.E. No. [59] ("Motion"), filed on January 16, 2024. A Clerk's Default was entered against Defendants listed in Schedule "A" to the Complaint as Defendant Nos. 1-12, 14-20, 22-26, 30-34, 36-38, 40-42, 44-49 (collectively, "Defaulting Defendants"). D.E. No. [57]. Defaulting Defendants failed to appear, answer, or otherwise plead to the Complaint, D.E. No. [1], despite having been served. The Court has carefully considered the Motion, the record in this case, the applicable law, and is otherwise fully advised. For the following reasons, Plaintiff's Motion is granted.

**I. INTRODUCTION**

2. Plaintiff sued Defendants for copyright infringement under the Copyright Act, 17 U.S.C. §§ 106, 501 and 504.

3. The Complaint alleges that Defendants are promoting, selling, offering for sale and distributing, without Plaintiff's permission, goods utilizing a series of product photographs covered by Plaintiff's U.S. federal copyright registration Nos. VA0002250612 and VA0002250627, (hereinafter, "the Tang Works") within the Southern District of Florida by operating the Defendants' Internet based e-commerce stores operating under each of the Seller IDs identified on Schedule "A" attached to Plaintiff's Complaint. ("Seller IDs").
4. Plaintiff further asserts that Defendants' use of the unauthorized and infringing copies of the Tang Works in connection with the advertising, distribution, offering for sale, and sale of the retail products depicted in the Tang Works have caused irreparable damage through consumer confusion, loss of control over creative content and garnishment of his valuable copyrights.
5. In his Motion, Plaintiff seeks the entry of default final judgment against Defendants in an action alleging infringement of copyright. Plaintiff further requests that the Court (1) enjoin Defendants' unlawful use of Plaintiff's copyrighted works and (2) award Plaintiff damages.
6. Pursuant to Federal Rule of Civil Procedure 55(b)(2), the Court is authorized to enter a final judgment of default against a party who has failed to plead in response to a complaint. "A 'defendant, by his default, admits the plaintiff's well-pleaded allegations of fact, is concluded on those facts by the judgment, and is barred from contesting on appeal the facts thus established.'" *Eagle Hosp. Physicians, LLC v. SRG Consulting, Inc.*, 561 F. 3d 1298, 1307 (11th Cir. 2009) (quoting *Nishimatsu Const. Co., Ltd. v. Houston Nat'l Bank*, 515 F. 2d 1200, 1206

(5th Cir. 1975)); *Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987). “Because a defendant is not held to admit facts that are not well pleaded or to admit conclusions of law, the Court must first determine whether there is a sufficient basis in the pleading for judgment to be entered.” *Luxottica Group S.p.A. v. Individual, P’ship or Unincorporated Ass’n*, No. 17-cv-61471, 2017 WL 6949260, at \*2 (S.D. Fla., J. Beth Bloom, Oct. 3, 2017); *see also Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987) (“[L]iability is well-pled in the complaint, and is therefore established by the entry of default . . .”).

7. If there are multiple defendants, the plaintiff must state in the motion for default final judgment that there are no allegations of joint and several liability, and set forth the basis why there is no possibility of inconsistent liability. Generally, if one defendant who is alleged to be jointly and severally liable with other defendants defaults, judgment should not be entered against that defendant until the matter is adjudicated against the remaining defendants. *See* 10A Charles Alan Wright and Arthur R. Miller, *Federal Practice and Procedure* § 2690 (3d ed. 1998) (citing *Frow v. De La Vega*, 82 U.S. 552, 554 (1872) (“[A] final decree on the merits against the defaulting defendant alone, pending the continuance of the cause, would be incongruous and illegal.”)). “Even when defendants are similarly situated, but not jointly liable, judgment should not be entered against a defaulting defendant if the other defendant prevails on the merits.” *Gulf Coast Fans, Inc. v. Midwest Elecs. Imp., Inc.*, 740 F.2d 1499, 1512 (11th Cir. 1984).
8. Here, Plaintiff has stated in its Motion that there are no allegations of joint and several liability with respect to damages. The remaining Defendants in the case

have not appeared and have defaulted. Therefore, there is no possibility of inconsistent liability between the Defendants and an adjudication may be entered. The Court thus finds there is a sufficient basis in the pleading for the default judgment to be entered with respect to the Defaulting Defendants.

## **II. FACTUAL BACKGROUND<sup>1</sup>**

9. Plaintiff is the registered owner of a series of product photographs covered by U.S. federal copyright registration Nos. VA0002250612 and VA0002250627 (“the Tang Works”). The Tang Works are valid and enforceable.
10. Defendants, through the various Internet based e-commerce stores operating under each of the Seller IDs identified on Schedule “A” hereto (“Seller IDs”) created marketplace listings on platforms such as Amazon, including the Defendant Internet Stores, which were offering, marketing, soliciting, and advertising to consumers in this Judicial District and throughout the United States in a manner that violates Plaintiff’s exclusive copyright in the Tang Works. Plaintiff has submitted sufficient evidence showing each Defendant has infringed at least one or more of the Tang Works. Defendants are not now, nor have they ever been, authorized or licensed to use, display, reproduce or distribute the Tang Works.
11. Plaintiff undertook an investigation that has established that defendants are using various web stores on platforms such as AliExpress, Amazon, Ebay, Joom, Wish, DHGate and Walmart to sell from foreign countries such as China to consumers in the United States items that are not authorized or approved by Plaintiff by

---

<sup>1</sup> The factual background is taken from Plaintiff’s Complaint, D.E. [1], Plaintiff’s Motion for Entry of Final Default Judgment, D.E. [59], and supporting evidentiary submissions.

utilizing the Tang Works without Plaintiff's permission. Plaintiff accessed defendants' Internet based e-commerce stores operating under their respective Seller ID names through AliExpress, Amazon, Ebay, Joom, Wish, DHGate and Walmart. Upon accessing each of the e-commerce stores, Plaintiff viewed product listings displaying the Tang Works, added products to the online shopping cart, proceeded to a point of checkout, and otherwise actively exchanged data with each e-commerce store. Plaintiff captured detailed web pages for each defendant store. Plaintiff personally analyzed Defendants' product listings posted via each of the Seller IDs by reviewing the e-commerce stores operating under each of the Seller IDs, or the detailed web page captures and images of the Tang Works, and concluded that the use of the Tang Works was infringing.

### **III. ANALYSIS**

#### **A. Claims**

12. To prevail on a claim of direct infringement of copyright pursuant to the Copyright Act, 17 U.S.C. §§ 106, Plaintiff must prove two elements: "(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original." *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 349 (1991)

#### **B. Liability**

13. The factual allegations of Plaintiff's Complaint sufficiently allege the elements for Plaintiff's claim of direct copyright infringement. D.E. [1]. Moreover, the factual allegations in Plaintiff's Complaint have been substantiated by sworn declarations and other evidence and establish Defendants' liability for copyright

infringement. Accordingly, entry of default judgment pursuant to Federal Rule of Civil Procedure 55(b) is appropriate.

### **C. Injunctive Relief**

14. The Copyright Act provides that courts "may" grant injunctive relief "on such terms as it may deem reasonable to prevent or restrain infringement of a copyright." 17 U. S. C. § 502(a). Injunctive relief is available in a default judgment setting. *See e.g., PetMed Express, Inc. v. MedPets.Com, Inc.*, 336 F. Supp. 2d 1213, 1223 (S.D. Fla. 2004) Defendants' failure to respond or otherwise appear in this action makes it difficult for Plaintiff to prevent further infringement absent an injunction. *Jackson v. Sturkie*, 255 F. Supp. 2d 1096, 1103 (N.D. Cal. 2003) ("[D]efendant's lack of participation in this litigation has given the court no assurance that defendant's infringing activity will cease. Therefore, plaintiff is entitled to permanent injunctive relief.").
15. Permanent injunctive relief is appropriate where a plaintiff demonstrates that (1) it has suffered irreparable injury; (2) there is no adequate remedy at law; (3) the balance of hardship favors an equitable remedy; and (4) an issuance of an injunction is in the public's interest. *eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388, 392-93 (2006). Plaintiff has carried his burden on each of the four factors. Accordingly, permanent injunctive relief is appropriate.
16. First, "[i]n copyright cases, irreparable harm is presumed on a showing of a reasonable likelihood of success on the merits." *Arista Records, Inc. v. Beker Enterprises, Inc.*, 298 F.Supp.2d 1310, 1314 (S.D. Fla. 2003) (citing *Micro Star v. Formgen, Inc.*, 154 F.3d 1107, 1109 (9th Cir. 1998)); *Affordable Aerial*

*Photography, Inc. v. Palm Beach Real Estate, Inc.*, 20-cv-81307, at \*1 (S.D. Fla., J. Roy Altmann, July 6, 2021) Further, irreparable harm exists where, as here, the infringers' unauthorized use of Plaintiff's intellectual property causes confusion among consumers and damages business reputation and brand confidence. *Kevin Harrington Enterprises, Inc. v. Bear Wolf, Inc.*, No. 98-cv-1039, 1998 WL 35154990 (S.D. Fla., J. Ursula Ungaro, 1998) ("likelihood of irreparable harm shown where infringement leaves plaintiff without the ability to control its own reputation").

17. Plaintiff has no adequate remedy at law so long as Defendants continue to operate the Seller IDs because Plaintiff cannot control the quality of products sold utilizing the Tang Works or the manner in which the Tang Works are displayed. An award of monetary damages alone will not cure the injury to Plaintiff's reputation and goodwill that will result if Defendants' infringing actions are allowed to continue. Moreover, Plaintiff faces hardship from loss of sales and his inability to control his reputation in the marketplace. By contrast, Defendants face no hardship if they are prohibited from the infringement of Plaintiff's copyright protected Tang Works, which are illegal acts.
18. Finally, the public interest supports the issuance of a permanent injunction against Defendants to prevent consumers from being misled by Defendants' unauthorized sale of products utilizing the Tang Works. *See Nike, Inc. v. Leslie*, No. 85-cv-960, 1985 WL 5251, at \*1 (M.D. Fla., J. William Castagna, June 24, 1985) ("[A]n injunction to enjoin infringing behavior serves the public interest in protecting consumers from such behavior."). The Court's broad equity powers allow it to

fashion injunctive relief necessary to stop Defendants' infringing activities. *See, e.g., Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971) ("Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for . . . (t)he essence of equity jurisdiction has been the power of the Chancellor to do equity and to mold each decree to the necessities of the particular case." (citation and internal quotation marks omitted)); *United States v. Bausch & Lomb Optical Co.*, 321 U.S. 707, 724 (1944) ("Equity has power to eradicate the evils of a condemned scheme by prohibition of the use of admittedly valid parts of an invalid whole.").

19. Defendants have created an Internet-based infringement scheme in which they are profiting from their deliberate misappropriation of Plaintiff's rights. Unless the listings and images are permanently removed, defaulting Defendants will be free to continue infringing Plaintiff's intellectual property with impunity and will continue to defraud the public with their illegal activities. Therefore, the Court will enter a permanent injunction ordering all product listings and images displaying Plaintiff's Tang Works to be permanently removed from Defendants' internet stores by the applicable internet marketplace platforms.

#### **D. Damages for Copyright Infringement**

20. Under 17 U.S.C. § 504, Plaintiff is entitled to recover either the actual damages suffered as a result of the infringement plus Defendants' additional profits, or statutory damages. Actual damages are "often measured by the revenue that the plaintiff lost as a result of the infringement, which includes lost sales, lost opportunities to license, or diminution in the value of the copyright." *Lorentz v.*



*Sunshine Health Prods.*, No. 09-cv-61529, at \*12 (S.D. Fla., J. Federico Moreno, Sep. 7, 2010). However, here Defendants who have not appeared control all the necessary information for a calculation of relief under § 504(b). As a result, Plaintiff cannot calculate an amount recoverable pursuant to 17 U.S.C. § 504(b). Instead, Plaintiff seeks an award of statutory damages for Defendants' willful infringement of plaintiff's copyrighted works under 17 U.S.C. § 504(c).

21. The allegations in the Complaint, which are taken as true, establish that Defaulting Defendants intentionally infringed Plaintiffs' Tang Works for the purpose of advertising, marketing, and selling their products not authorized, endorsed or approved by Plaintiff. Plaintiff suggests the Court award the highest award per Work for willful infringement, \$150,000. This award is within the statutory range for a willful violation, and is sufficient to compensate Plaintiff, punish the Defaulting Defendants, and deter the Defaulting Defendants and others from continuing to infringe Plaintiffs' copyrights.

#### **IV. CONCLUSION**

22. Accordingly, it is ORDERED AND ADJUDGED that Plaintiff's Motion, [D.E. No. 59], is GRANTED with respect to Defendants numbered in Schedule "A" to the Complaint as 1-12, 14-20, 22-26, 30-34, 36-38, 40-42, 44-49.

ii. Final Default Judgment will be entered by separate order.

**DONE AND ORDERED** in Chambers at Ft. Lauderdale, Florida, \_\_\_ day of \_\_\_\_\_, 2024.

---

**WILLIAM DIMITROULEAS**  
**UNITED STATES DISTRICT JUDGE**

**SCHEDULE A**

1	Alibaba	Dongguan Qiaoji Technology Co., Ltd.
2	Alibaba	Shenzhen Egirl Trading Co., Ltd.
3	Alibaba	Shenzhen Meijing Industry Company Limited
4	Alibaba	Shenzhen Meijing Industry Company
5	Alibaba	Tianjin FY Trading Co., Ltd.
6	Alibaba	Yiwu Lucai Trading Co., Ltd.
7	Alibaba	Yiwu Oyue Imp. & Exp. Co., Ltd.
8	Alibaba	Yiwu Qinwen Import & Export Co., ltd.
9	Alibaba	Yiwu Vancy Arts And Crafts Co., Ltd.
10	AliExpress	GHJKKSAR Store
11	Amazon	HeHeXuan
12	Amazon	Mr. Shang's boutique
13	Amazon	EXEMPTED
14	Amazon	Yixinchao Shop
15	DHgate	denimbi Store
16	DHgate	derricky Store
17	ebay	hbjxthree
18	ebay	jiaojia-99
19	ebay	jiaoq-92
20	ebay	mudrwman
21	ebay	EXEMPTED
22	ebay	yew.fashion20
23	ebay	zuanqian1
24	ebay	zyyltd_17
25	etsy	EXEMPTED
26	etsy	EXEMPTED
27	Individual	EXEMPTED
28	Individual	EXEMPTED
29	Individual	EXEMPTED
30	Walmart	AURORA TRADE INC
31	Walmart	Grand Birches Inc
32	Walmart	Hortus Supellectilem INC
33	Walmart	Htpoil Holding Trade Co., Ltd

34	Walmart	Iaobao Limited
35	Walmart	EXEMPTED
36	Walmart	KENBI FURNITURE
37	walmart	Martin Company LLC
38	Walmart	MOUSAVI INC
39	Walmart	EXEMPTED
40	Walmart	Shenzhenshi Yizhuanglong Maoyi Youxiangongsi
41	Walmart	Specialty Shop
42	Walmart	stay real Shop
43	walmart	EXEMPTED
44	Wish	Abless
45	Wish	Cangrejos Number One Fetis
46	Wish	Christmas Decoration
47	Wish	Cker
48	Wish	FIYO Diamond Painting Art
49	Wish	Grandi Brick King