

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

Shenzhen Dejiayun Network
Technology Co., Ltd., a Chinese
Corporation

Case: 0:23-cv-62275-WPD

Judge: William Dimitrouleas

Plaintiff,

v.

The Partnerships And
Unincorporated Associations
Identified On Schedule “A”

Defendants.

**(proposed) ORDER ON MOTION FOR ENTRY OF FINAL JUDGMENT BY DEFAULT
AS TO DEFENDANT (NO. 21) LUKISUZY**

THIS CAUSE is before the Court upon Plaintiff Shenzhen Dejiayun’s (“Dejiayun” or “Plaintiff”) Motion for Entry of Final Judgment by Default (D.E. 47) (“Motion”), filed on March 20, 2024. A Clerk’s Default was entered against Defendant (No. 21) LUKISUZY listed in Schedule “A” (D.E. 8-2).¹ (“Defaulting Defendant”). (D.E. 40) Defaulting Defendant has failed to appear, answer, or otherwise plead to the Complaint, 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.

¹ On March 14, 2024, this Court entered Final Default Judgment and Permanent Injunction against Defendants No. 1-15, 17, 19, 22-25, 27-30, 32, 34-36, and 38-39. (D.E. 43, 44). See Schedule A, attached hereto. Exempted Defendants 16, 18, 20, 26, 31, 33, 37, 40, and 41 have appeared in this matter and have an Answer deadline of April 15, 2024. (*Id.*).

I. INTRODUCTION

Plaintiff filed the instant civil action on November 30, 2023 in order to combat the willful and intentional counterfeiting and infringement and false designation of origin by the Defendant marketing, offering for sale, and advertising with its federally registered BAGILAANOE trademark. (D.E. 1 at ¶ 3).

The Complaint alleges that Defendant is selling, offering for sale and marketing counterfeit products using Plaintiff's BAGILAANOE trademark registered with the United States Patent and Trademark Office (hereinafter, "USPTO"), Reg. No. 5,745,285 (hereinafter, "the BAGILAANOE Mark" or "Mark"). The Seller ID identified on Schedule "A" to Plaintiff's Complaint ("Seller IDs") and Defaulting Defendant subject to this order sell, offer for sale, and market its counterfeit products on the e-commerce site Walmart.com and offer to ship within the Southern District of Florida. (D.E. 1 at ¶¶ 4, 15, 16). In addition, Plaintiff has never assigned or licensed the BAGILAANOE Mark to the Defendant in this matter. (*Id.* at ¶ 12).

Plaintiff further asserts that Defaulting Defendant's use of the BAGILAANOE Mark in connection with the distribution, offering for sale, and sale of counterfeit products has caused irreparable damage through consumer confusion and erosion to BAGILAANOE's goodwill. In its Motion, Plaintiff seeks the entry of default final judgment against Defaulting Defendant in an action alleging infringement of trademark and false designation of origin. Plaintiff further requests that the Court (1) enjoin Defendant's unlawful use of Plaintiff's registered trademark and (2) award Plaintiff damages.

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 . . .”).

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).

Here, Plaintiff has stated in its Motion that there is no allegation of joint and several liability with respect to damages. The Defaulting Defendant has not appeared and has defaulted. Therefore, there is no possibility of inconsistent liability for the Defendant 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 Defendant.

II. FACTUAL BACKGROUND

Plaintiff is the owner of the federally registered BAGILAANOE trademark, which is covered by U.S. Trademark Registration No. 5,745,285. (D.E. 1 at ¶ 8; D.E. 8 at ¶ 3; D.E. 8-1). The BAGILAANOE Mark is valid and enforceable.

Defaulting Defendant, through the various Internet based e-commerce stores operating under the Seller ID identified on Schedule “A” hereto (“Seller ID”) created a marketplace listing on the e-commerce platform Walmart.com and offered for sale, promoted, advertised, distributed, and/or sale of goods bearing and/or using the BAGILAANOE Mark to consumers in this Judicial District and throughout the United States in a manner that violates Plaintiff’s exclusive trademark in the BAGILAANOE brand. (D.E. 1 at ¶ 11; D.E. 8 at ¶ 12-16; D.E. 8-3). Plaintiff has submitted sufficient evidence showing that Defaulting Defendant has offered for sale at least one counterfeit product. Defendant is not now, nor has it ever been, authorized or licensed to use, display, reproduce or distribute under the BAGILAANOE Mark. (*Id.*).

Plaintiff undertook an investigation that has established that Defaulting Defendant is using Walmart.com to sell from foreign countries such as China to consumers in the United States products which are not authentic BAGILAANOE products. Plaintiff accessed Defaulting Defendant’s Internet based e-commerce stores operating under its respective Seller ID name through Walmart.com. Upon accessing the e-commerce store, Plaintiff viewed product listings

offering for sale BAGILAANOE brand products, 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 the Defaulting Defendant store. Plaintiff personally analyzed Defendant's 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 products offered for sale, and concluded that the products infringed on the BAGILAANOE Mark.

III. ANALYSIS

A. Claims

To prevail on a claim of trademark infringement claim under Section 32 of the Lanham Act, a plaintiff must establish that: (1) the plaintiff had prior rights to the trademarks at issue, and (2) the defendants adopted a mark or name that was the same, or confusingly similar to Plaintiff's mark, such that consumers were likely to confuse the two. *Planetary Motion, Inc. v. Techsplosion, Inc.*, 261 F.3d 1188, 1193 (11th Cir. 2001) (citing *Lone Star Steakhouse & Saloon, Inc. v. Longhorn Steaks, Inc.*, 106 F.3d 355, 360 (11th Cir. 1997)).

To prevail on a claim of false designation of origin under Section 43(a) of the Lanham Act requires that a plaintiff demonstrate that a defendant used the trademark "in connection with any goods or services, any word, term, name, symbol or device, or any combination thereof, or any false designation of origin, which is likely to deceive as to the affiliation, connection, or association" of the defendant with the plaintiff, or as to the origin, sponsorship, or approval, of defendant's goods by plaintiff. 15 U.S.C. § 1125(a)(1). As with trademark infringement claims, the test for liability for false designation of origin under Section 43(a) is "whether the public is

likely to be deceived or confused by the similarity of the marks at issue.” *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 780, 112 S. Ct. 2753, 2763 (1992).

B. Liability

The factual allegations of Plaintiff’s Complaint sufficiently allege the elements for Plaintiff’s claims of trademark infringement and false designation of origin. (D.E. 1). Moreover, the factual allegations in Plaintiff’s Complaint have been substantiated by sworn declarations and other evidence and establish Defaulting Defendant’s liability for trademark infringement. Accordingly, entry of default judgment pursuant to Federal Rule of Civil Procedure 55(b) is appropriate.

C. Injunctive Relief

Pursuant to the Lanham Act, a district court is authorized to issue an injunction “according to the principles of equity and upon such terms as the court may deem reasonable,” to prevent violations of trademark law. 15 U.S.C. § 1116(a). Defaulting Defendant’s 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.”).

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 its burden on each of the four factors. Accordingly, permanent injunctive relief is appropriate.

Irreparable harm exists where, as here, the infringers' unauthorized use of Plaintiff's intellectual property causes confusion among consumers and damages the business's 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").

Plaintiff has no adequate remedy at law so long as Defaulting Defendant continues to operate the Seller IDs because Plaintiff cannot control the use of the BAGILAANOE Mark, the quality of the products, the customer service associated with the brand, or the goodwill of the Mark. An award of monetary damages alone will not cure the injury to Plaintiff's reputation and goodwill that will result if Defaulting Defendant's infringing actions are allowed to continue. Moreover, Plaintiff faces hardship from loss of sales and its inability to control its reputation in the marketplace. By contrast, Defaulting Defendant faces no hardship if it is prohibited from distributing counterfeit products, which are illegal acts.

Finally, the issuance of a permanent injunction in this case is within the public's interest where a permanent injunction will prevent further harm to Plaintiff and the goodwill of the BAGILAANOE Mark and protect consumers from being deceived or misled by Defaulting Defendant's unauthorized use of the BAGILAANOE Mark. *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 Defendant's 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.”).

Defaulting Defendant has 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 Defendant will be free to continue infringing Plaintiff’s intellectual property with impunity and will continue to defraud the public with its illegal activities. Therefore, the Court will enter a permanent injunction ordering all product listings and images displaying Plaintiff’s BAGILAANOE Mark to be permanently removed from Defaulting Defendant’s internet stores by the applicable internet marketplace platforms.

D. Damages for Trademark Infringement

Chapter 15, Section § 1117(a) of the United States Code, provides that a plaintiff may recover a defendant’s profits, any damages sustained by the plaintiff, and the costs of the action. Even where a plaintiff may not be able to provide actual damages as a result of a defendant’s infringement, an award of statutory damages is an appropriate remedy. 15 U.S.C. §1117(c); *see also PetMed Express, Inc. v. Medpets.com*, 336 F. Supp. 2d 1213, 1220 (S.D. Fla. 2004).

The allegations in the Complaint, which are taken as true, establish that Defaulting Defendant intentionally infringed Plaintiffs’ BAGILAANOE Mark for the purpose of offering for sale, marketing, and selling its products not authorized, endorsed or approved by Plaintiff. Plaintiff suggests the Court award \$200,000 for willful infringement. This award is within the statutory range for a willful violation, and is sufficient to compensate Plaintiff, punish the

Defaulting Defendant, and deter the Defaulting Defendant and others from continuing to infringe Plaintiff's trademark.

IV. CONCLUSION

Accordingly, it is ORDERED AND ADJUDGED as follows:

1. Plaintiff's Motion, (D.E. 47), is GRANTED with respect to Defendants numbered in Schedule "A" to the Complaint as (No. 21) LUKISUZY.
2. Final Default Judgment will be entered by separate order.

DONE AND ORDERED in Chambers at Ft. Lauderdale, Florida, on ___ day of _____, 2024.

WILLIAM DIMITROULEAS
UNITED STATES DISTRICT JUDGE

(Schedule A on following page)

SCHEDULE A

Def. No.	Platform	Store Name
1	Walmart	absuyy LLC
2	Walmart	Allatever
3	Walmart	BARBARIZAT
4	Walmart	Bnwani Store
5	Walmart	BTJXK STORE
6	Walmart	CFox Co.ltd
7	Walmart	Cryptic
8	Walmart	CSun Co.ltd
9	Walmart	DEITY
10	Walmart	EAGLE
11	Walmart	FS MALL
12	Walmart	Get rich
13	Walmart	Good friend store
14	Walmart	GUANG ZHOU SHI MA LONG JING MAO YOU XIAN Co.ltd
15	Walmart	Guyueyu Co.,ltd
16	Walmart	EXEMPTED
17	Walmart	HOMEDLES Co.Ltd
18	Walmart	EXEMPTED
19	Walmart	LBYUINBG
20	Walmart	EXEMPTED

