

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

SNEAKER MATCH, LLC,
an Arizona Limited Liability Company,

Plaintiff,

Case No.: 1:21-cv-02003

v.

Honorable Matthew F. Kennelly

hare8tees.com, et al,

Magistrate Judge Sheila M. Finnegan

Defendants.

**PLAINTIFF’S MEMORANDUM IN SUPPORT OF ITS
MOTION FOR ENTRY OF DEFAULT AND DEFAULT JUDGMENT**

Plaintiff Sneaker Match, LLC (“Plaintiff” or “Sneaker Match”), by and through its attorneys Revision Legal, PLLC, submits the following memorandum in support of its Motion for Default and Default Judgment against the Defaulting Defendants identified in **Exhibit 1**¹ based on Plaintiff’s action for trademark infringement, counterfeiting, cybersquatting, and copyright infringement.

STATEMENT OF FACTS

Sneaker Match began in June of 2014 based on the unique business concept of selling t-shirts customized to coordinate with popular sneakers online via the www.sneakermatchtees.com website (“Sneaker Match Website”). The Sneaker Match business model has been a wild success. Sneaker Match has sold products including t-shirts, sweatshirts, hats, and recently, face masks, (collectively, the “Sneaker Match Products”) on its website throughout the United States and

¹ The Defaulting Defendants includes all Defendants originally named and the Additional Defendants identified and served, but does not include: sneakersgametees; superbvv; thepawspeople, kawarimmonoat, brendadelvall, labibaaastudio, phantomsonia, rosabellagiftshop, carolsdolls.xyz, yideri.com (the “Excluded Defendants”). Plaintiff expects to dismiss some of the Excluded Defendants and perfect service on the remaining Excluded Defendants in the near future.

internationally. Sneaker Match has grown based on its online presence and reputation. The Sneaker Match Website and Sneaker Match Products prominently display Sneaker Match’s federally registered trademarks SNEAKER MATCH, SNEAKER MATCH TEES, and/or



(collectively the “Sneaker Match Marks”). ECF No. 1 at ¶ 12.

Sneaker Match has also registered designs with the United States Copyright Office (the “Sneaker Match Copyrighted Designs”). *Id.* at ¶ 17. Among the rights granted to Sneaker Match under the U.S. Copyright Act are the exclusive rights to reproduce, prepare derivative works of, distribute copies of, display, and import copies of the Sneaker Match Copyrighted Designs.

Plaintiff filed this action on April 14, 2021 naming a group of defendants. ECF No. 1. On April 15, 2021, Plaintiff filed a sealed Schedule A. ECF No. 8. On April 30, 2021 Plaintiff filed a Motion for Electronic Service. ECF Nos. 11, 12, and 13. On May 10, 2021 this Court entered the sealed Temporary Restraining Order (“TRO”) and granted the Plaintiff’s motion regarding electronic service. ECF Nos. 16-17. On May 21, 2021 this Court granted Plaintiff’s Motion to Extend the TRO. ECF Nos. 18 and 19. On June 3, 2020, this Court granted Plaintiff’s Motion for a Preliminary Injunction. ECF Nos. 20 - 22. On July 15, 2021 and July 25, 2021, Plaintiff filed a series of return summonses, with the latest date for an answer being July 19, 2021. ECF Nos. 23-24 and 25.

Pursuant to Federal Rules of Civil Procedures 55(a) and (b)(2), Plaintiff now moves this Honorable Court for an Order entering Default and Default Judgment finding the Defaulting Defendants are liable on all counts of Plaintiff’s Amended Complaint. Plaintiff further seeks an award of statutory damages as authorized by 15 U.S.C. § 1117(c)(2) for willful trademark counterfeiting, statutory damages for violation of the Anticybersquatting Consumer Protection

Act pursuant to 15 U.S.C. § 1117(d), and statutory damages pursuant to 17 U.S.C. § 504 for infringement of Plaintiff's registered copyrights. Further, Plaintiff seeks an entry of a permanent injunction prohibiting the Defaulting Defendants from selling counterfeit Sneaker Match products, an Order that the domain names used by the Defaulting Defendants to sell counterfeit Sneaker Match products be permanently transferred to Plaintiff, and that all assets in the Defaulting Defendants' financial accounts, including those operating by PayPal, Inc. ("PayPal"), as well as newly discovered assets, be transferred to Plaintiff.

ARGUMENT

I. JURISDICTION AND VENUE AND PROPER IN THIS COURT

This Court has subject matter jurisdiction over the claims in this action pursuant to the Lanham Act, 15 U.S.C. § 1051, *et seq.*, the Copyright Act 17 U.S.C. § 501, *et seq.*, 28 U.S.C. §§ 1338(a)-(b), and 28 U.S.C. § 1331. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, and this Court may properly exercise personal jurisdiction over the Defaulting Defendants due to the Defaulting Defendants' intentional acts to target its infringing activities toward residents of this Judicial District. Specifically, the Defaulting Defendants have targeted sales to Illinois residents by setting up and operating e-commerce stores that target United States consumers using one or more aliases through which Illinois residents can purchase unauthorized Sneaker Match Products. *See* ECF No. 9 at ¶¶ 6, 26 - 28, 30, and 33-38. *Christian Dior Couture, S.A. v. Lei Liu et al.*, 2015 U.S. Dist. LEXIS 158225 at 6 (N.D. Ill. Nov. 17, 2015) (personal jurisdiction proper over defendants offering to sell alleged infringing product to United States residents, including Illinois; no actual sale required). Each of the Defaulting Defendants is committing tortious acts in Illinois, is engaging in interstate commerce, and has wrongfully caused Sneaker Match substantial injury in the State of Illinois.

II. ENTRY OF DEFAULT IS PROPER

“[W]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” Fed. R. Civ. P. 55(a). The Defaulting Defendants were served on June 2, 2021, June 4, 2021, June 7, 2021, and June 26, 2021. Exhibit 2, Osorio Declaration. The Defaulting Defendants have failed to plead or otherwise defend. Exhibit 2, Osorio Declaration. Upon information and belief, the Defaulting Defendants are not active-duty members of the U.S. armed forces. Exhibit 2, Osorio Declaration. As a result, entry of Default against the Defaulting Defendants is proper pursuant to Fed. R. Civ. P. 55(a).

III. ENTRY OF DEFAULT JUDGMENT IS PROPER

In cases not seeking a sum certain, Rule 55(b)(2) permits the Court to enter default judgment, which establishes that the Defaulting Defendants are liable to Plaintiff for the claims within Plaintiff’s complaint. *United States v Di Mucci*, 879 F.2d 1488, 1497 (7th Cir. 1989). Upon entry of default, all well-pleaded allegations of a complaint, other than those relating to damages, are taken as true. *E360 Insight v The Spamhaus Project*, 500 F. F.3d 594, 602 (7th Cir. 2007).

A. Trademark Infringement and Counterfeiting

A defendant is liable for trademark infringement and counterfeiting under the Lanham Act if it, “without the consent of the registrant, use[s] in commerce, any reproduction, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods ... which such use is likely to cause confusion, or to cause mistake, or to deceive.” 15 U.S.C. § 1114(1). Plaintiff’s Lanham Act claims involve the same elements. *See Packaging Supplies, Inc. v. Harley-Davidson, Inc.*, No. 08 C 400, 2011 WL 1811446, at *5 (N.D. Ill. May 12, 2011). A Lanham Act trademark infringement claim has two elements. *See* 15

U.S.C. § 1125(a). First, a plaintiff must show “that its mark is protected under the Lanham Act.” *Barbecue Marx, Inc. v. 551 Ogden, Inc.*, 235 F.3d 1041, 1043 (7th Cir. 2000). Second, plaintiff must show that the challenged mark is likely to cause confusion among consumers. *Id.*

Plaintiff alleged in its Complaint that it is exclusive owner of United States Trademark Registration Nos. 5010674 and 5784852 for the Sneaker Matcher Marks. ECF No. 6 at ¶ 12. These Registrations are prima facie evidence of Plaintiff’s valid ownership of the Sneaker Matcher Marks. 15 U.S.C. § 1115 (“Any registration...of a mark registered on the principal register shall be admissible in evidence and shall be prima facie evidence of the validity of the registered mark....”). Since the Defaulting Defendants failed to answer or otherwise defend, this Court must accept the allegation in Plaintiff’s Amended Complaint as true. Fed. R. Civ. P. 8(b)(6); *E360 Insight*, 500 F.3d at 602. As a result, Plaintiff has satisfied the first element of a trademark infringement claim.

Plaintiff also alleged that Defendants owned and operated ecommerce stores that improperly used Plaintiff’s Sneaker Matcher Marks, sold counterfeit products bearing Plaintiff’s Sneaker Matcher Marks, and that such activities was likely to cause confusion as to the source and origin of the relevant goods. ECF No. 6 at ¶¶ 25-40. Since the Defaulting Defendants failed to answer or otherwise defend, this Court must accept the allegation in Plaintiff’s Amended Complaint as true. Fed. R. Civ. P. 8(b)(6); *E360 Insight*, 500 F.3d at 602. As a result, Plaintiff has satisfied the second element of a trademark infringement claim.

Therefore, Plaintiff requests entry of default judgment with respects to its First and Second Claims for Relief for trademark infringement pursuant to 15 U.S.C. § 1114(1) and 15 U.S.C. § 1125(a)(1)(A).

B. Cybersquatting

The Anticybersquatting Consumer Protection Act (“ACPA”) provides a remedy to victims of “cybersquatting,” which has been defined as “the bad faith registration of domain names with intent to profit from the goodwill associated with the trademarks of another.” *Svanaco, Inc. v. Brand*, 417 F. Supp. 3d 1042, 1054 (N.D. Ill. 2019) (Citing *Vulcan Golf, LLC v. Google, Inc.*, 726 F. Supp. 2d 911, 915 (N.D. Ill. 2010)). To establish a claim under the ACPA, a plaintiff must prove that “(1) it had a distinctive or famous mark at the time the domain name was registered, (2) the defendant registered, trafficked in, or used a domain name that is identical or confusingly similar to the plaintiff’s mark, and (3) the defendant had a bad faith intent to profit from that mark.” *Id.* at 1055.

Plaintiff alleged in its Complaint that it is exclusive owner of United States Trademark Registration Nos. 5010674 and 5784852 for the Sneaker Matcher Marks. ECF No. 6 at ¶ 12. These Registrations are prima facie evidence of Plaintiff’s valid ownership of the Sneaker Matcher Marks. 15 U.S.C. § 1115.

Certain of the Defaulting Defendants registered the domains listed below which Plaintiff alleged are identical or confusing similar to Plaintiff’s SNEAKER MATCH TEES and SNEAKER MATCH marks:

Domain	Registration Date	Defendant
<sneakersmatchtee.com>	May 11, 2020	sneakersmatchtee.com
<matchkickstees.com>	September 15, 2020	matchkickstees.com
<kicksmatchtee.com>	December 7, 2020	kicksmatchtee.com

ECF No. 6 at ¶¶ 38-40. And finally, Plaintiff alleged the registration and use of these domains was part of the common scheme to infringe Plaintiff’s marks and sell counterfeit goods. *Id.* Since

the Defendants failed to answer or otherwise defend, this Court must accept the allegation in Plaintiff's Amended Complaint as true. Fed. R. Civ. P. 8(b)(6); *E360 Insight*, 500 F.3d at 602. As a result, Plaintiff has satisfied the elements of an ACPA claim.

Therefore, Plaintiff requests entry of default judgment with respect to its Third Claim for Relief for violation of the ACPA pursuant to 15 U.S.C. 1125(d).

C. Copyright Infringement

The United States Copyright Act provides that “[a]nyone who violates any of the exclusive rights of the copyright owner ... is an infringer of the copyright.” 17 U.S.C. § 501. Among these rights granted to Plaintiff under the Copyright Act are the exclusive rights to reproduce, prepare derivative works of, distribute copies of, and display the Sneaker Match Copyrighted Designs to the public. 17 U.S.C. § 106.

To establish a claim for copyright infringement, a plaintiff must show: “(1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original.” *JCW Invs., Inc. v. Novelty, Inc.*, 482 F.3d 910, 914 (7th Cir. 2007) (internal citations omitted). Copying can be shown through direct evidence, or it can be inferred where a defendant had access to the copyrighted work and the accused work is substantially similar. *Spinmaster, Ltd. v. Overbreak LLC*, 404 F. Supp. 2d 1097, 1102 (N.D. Ill. 2005). To determine whether there is a substantial similarity that indicates infringement, Courts use the “ordinary observer” test which asks whether “an ordinary reasonable person would conclude that the defendant unlawfully appropriated protectable expression by taking material of substance and value.” *Id.* A work may be deemed infringing if it captures the “total concept and feel of the copyrighted work.” *Id.*

Plaintiff alleged in its Complaint that it is exclusive owner of Copyright Registrations VA0002200361, VA0002200728, VA0002222471, VA0002232119, VA0002221799,

VA0002226336, VA0002230668, VA0002221669, VA0002222472, and VA0002231696 (the “Sneaker Match Works”). ECF No. 9 at ¶ 17. Plaintiff also alleged that certain Defaulting Defendants (the “Copyright Defendants”) had access to and copied Plaintiff’s website product photos and the Sneaker Match Works in violation of Plaintiff’s 17 U.S.C. § 106 rights. ECF No. 9 at ¶¶ 41 – 53.

Since the Defaulting Defendants failed to answer or otherwise defend, this Court must accept the allegation in Plaintiff’s Amended Complaint as true. Fed. R. Civ. P. 8(b)(6); *E360 Insight*, 500 F.3d at 602. As a result, Plaintiff has satisfied the elements of a copyright infringement claim. Therefore, Plaintiff requests entry of default judgment with respects to its Fourth Claim for Relief for copyright infringement in violation of 17 U.S.C. § 504.

IV. PLAINTIFF IS ENTITLED TO DAMAGES

A. Plaintiff is Entitled to Injunctive Relief for Common Law Trademark Infringement

Pursuant to 15 U.S.C. § 1117(a), Plaintiff may recover the Defaulting Defendants’ profits, Plaintiff’s damages, and the costs of this action for the infringement of Plaintiff’s common law marks under 15 U.S.C. § 1125(a). Plaintiff is also entitled to injunctive relief pursuant to 15 U.S.C. § 1116(a). Given the facts and circumstances of this case, Plaintiff elects to receive injunctive relief only as to its First Claim for Relief and to receive statutory damages under its Second, Third, and Fourth Claims for Relief.

B. Plaintiff is Entitled to Statutory Damages for Trademark Infringement and Counterfeiting

A plaintiff in a case involving the use of a counterfeit mark may elect to receive “not less than \$1,000 or more than \$200,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just.” 15 U.S.C. § 1117(c)(1). For willful

counterfeiting, the Court may award statutory damages of up to “\$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just.” 15 U.S.C. § 1117(c)(2). The lack of information regarding Defaulting Defendants’ sales and profits makes statutory damages particularly appropriate for default cases like the instant case. *Lorillard Tobacco Co.*, 2004 U.S. Dist. LEXIS 22563, at *9 (N.D. Ill. 2004) citing *Louis Vuitton v Velt*, 211 F. Supp 2d 567, 583 (E.D. Pa 2002) (citing S.Rep. No.177, 104th Cong. 1995). Likewise, Courts have recognized that statutory damages should be awarded without requiring an evidentiary hearing. See *Lorillard Tobacco Co. v. Montrose Wholesale Candies & Sundries, Inc.*, 2008 U.S. Dist. LEXIS 31761, at *11 (N.D. Ill. Apr. 17, 2008).

“Willful infringement may be attributed to the defendant’s actions where he had knowledge that his conduct constituted infringement or where he showed a reckless disregard for the owner’s rights.” *Lorillard Tobacco Co. v. S & M Cent. Serv. Corp.*, 2004 LEXIS 22563, *19-20 (N.D. Ill. Feb. 25, 2005). As such, knowledge need not be proven directly, but can be inferred from a defendant’s conduct. *Id.* at 20. In this case, Plaintiff has alleged that the Defaulting Defendants operated under a common scheme of ownership and control to create numerous online retail stores under false names and payment accounts to sell clothing products under a false designation of origin. ECF No. 6 at ¶ 18-24. That this scheme operated on popular ecommerce platforms, uploaded stolen images to those stores, and advertised counterfeit products through social media outlets. *Id.* at 29. Defendants advertising these infringing and counterfeit goods while selling low quality goods or shipping nothing at all. *Id.* at ¶ 29. Many of these stores posted wholesale copies of Plaintiff’s listings, even copying newly released products. *Id.* at 30. In fact, these listings often included exact copies of Plaintiff’s product descriptions and images. Other times, Defendants made slight alternations to the copy, trademarks, or other aspects of the listings,

but nothing sufficient to mitigate against confusion. And Defendants' listing often contains links back to Plaintiff's own website, illustrating Defendants' wholesale copying. *Id.* at ¶¶ 31, 43.

The Lanham Act permits this Court to award statutory damages "as the court considers just." 15 U.S.C. § 1117(c). Courts compare statutory damages under the Lanham Act to those available under 17 U.S.C. § 504(c) of the Copyright Act. Under the Copyright Act, the Court "enjoys wide discretion" to award statutory damages. *F.E.L. Publications v Catholic Bishop of Chicago*, 754 F.2d 216, 219 (7th Cir. 1985). And when the infringement is willful, the statutory award may be designed to penalize the infringer and to deter future violations. *Illinois Bell Tel. Co v Haines & Co*, 905 F.2d 1081, 1089 (7th Cir. 1990).

As a result, Plaintiff requests an award of \$500,000 per infringement of its registered marks, as detailed in **Exhibit 1**. Plaintiff contends this amount, which is 25% of the maximum statutory damages permitted by law, is easily justified under the circumstances.

C. Plaintiff is Entitled to Statutory Damages for Cybersquatting

15 U.S.C. § 1125(d) permits the Plaintiff to elect, at any time before final judgment, to recover statutory damages of not more than \$100,000 per domain name, as the Court considers just for violations of the ACPA. 15 U.S.C. § 1117(d). The determination of what is "just" under the circumstances is largely similar to the analysis regarding statutory damages for counterfeiting, also available under 15 U.S.C. § 1117. As a result, Plaintiff elects to recover statutory damages and seeks an award of \$100,000 per infringing domain name as detailed on **Exhibit 1**.

D. Plaintiff is Entitled to Statutory Damages for Copyright Infringement

Pursuant to 17 U.S.C. § 504(b), Plaintiff may elect, at any time before final judgment is rendered, to recover statutory damages instead of actual damages. And pursuant to 17 U.S.C. §

504(c)(2), the Copyright Act permits an award of \$150,000 in statutory damages for willful infringement.

The standard to award statutory damages under the Copyright Act is found in *Chi-Boy Music v Charlie Club*, 930 F.2d 1224, 1229 (7th Cir. 1991). Under the *Chi-Boy* framework, the court is “not required to follow any rigid formula but instead enjoys wide discretion” in awarding statutory damages. *Id.* The court may consider factors such as “the difficulty or impossibility of proving actual damages, the circumstances of the infringement, and the efficacy of the damages as a deterrent.” *Id.* Furthermore, statutory damages may be necessary to “penalize the infringer and deter future violations” when the infringement was willful. *Id.* at 1230. Again, Plaintiff’s analysis above has addressed the fact that Defendants engaged in a common scheme to perpetuate widespread illegal behavior against Plaintiff’s rights. As a result, Plaintiff elects to recover statutory damages and seeks an award of \$150,000 per work infringed as detailed in **Exhibit 1**.

V. PLAINTIFF IS ENTITLED TO PERMANENT INJUNCTIVE RELIEF

Finally, Plaintiff is entitled to entry of a permanent injunction enjoining the Defaulting Defendants from infringing its trademark and copyright rights, including at least all injunctive relief previously awarded by this Court in the Preliminary Injunction. Plaintiff is also entitled to injunctive relief in order to enforce its rights against any new websites found to be linked or otherwise associated with the Defaulting Defendants selling counterfeit Sneaker Match Products.

CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Honorable Court enter Default and Default Judgment against each Defaulting Defendant and award damages, as detailed on **Exhibit 1**: (i) award statutory damages in the amount of \$500,000 against each Defaulting Defendant in

respect to each infringement and counterfeiting of Plaintiff's registered trademark rights pursuant to 15 U.S.C. § 1114 (Second Claim for Relief); (ii) award statutory damages in the amount of \$100,000 in respect to each cybersquatting violation pursuant to 15 U.S.C. § 1125(d) (Third Claim for Relief); (iii) award statutory damages in the amount of \$150,000 in respect to each copyright infringement pursuant to 17 U.S.C. § 504 (Fourth Claim for Relief); and (iv) award permanent injunctive relief transferring the domain names used by the Defaulting Defendants to Plaintiff and transferring all assets in Defaulting Defendants' financial accounts, including those operated by PayPal, to Plaintiff. Plaintiff requests this Court enter the Proposed Order submitted herewith.

Respectfully submitted,

Date: July 25, 2021

/s/ Amanda Osorio
Revision Legal, PLLC
444 Cass St., Suite D
Traverse City, MI 49684
Phone: (231) 714-0100
Fax: (231) 714-0200
amanda@revisionlegal.com

Attorneys for Plaintiff Sneaker Match, LLC

Certificate of Service

I hereby certify that on the date below I electronically filed the foregoing Memorandum in Support of Motion for Default and Default Judgment with the Clerk of the Court for the United States District Court for the Northern District of Illinois, Eastern Division, by using the CM/ECF system. I will electronically publish the documents on a website to which the Domain Names have been transferred to Plaintiff's control now redirects and to which the non-Domain Defendants were directed for service via email.

Respectfully submitted,

Date: July 25, 2021

/s/ Amanda Osorio
Revision Legal, PLLC
444 Cass St., Suite D
Traverse City, MI 49684
Phone: (231) 714-0100
Fax: (231) 714-0200
amanda@revisionlegal.com

Attorneys for Plaintiff Sneaker Match, LLC