

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

**CASE NO.: 1:25-cv-21356-ALTMAN**

XYZ CORPORATION,

Plaintiff,

v.

THE INDIVIDUALS, CORPORATIONS,  
LIMITED LIABILITY COMPANIES,  
PARTNERSHIPS AND UNINCORPORATED  
ASSOCIATIONS IDENTIFIED IN  
SCHEDULE "A" HERETO,

Defendants.

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**PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT AGAINST THE  
IDENTIFIED SCHEDULE "A" DEFENDANTS**

Plaintiff XYZ Corporation. ("Plaintiff") hereby moves for this Entry of Default Judgment (the "Motion") pursuant to Federal Rule of Civil Procedure 55 ("Rule 55") against Defendant No. 2, Clothing and Home Décor, identified in Schedule "A" of the Complaint [Dkt. No. 1-1], (the "Defaulting Defendant"). Plaintiff's Motion is made and based upon this Memorandum of Law, the Declaration of William Brees in Support of Plaintiff's Motion for Default Judgment filed herewith (the "Brees Decl."), the papers and pleadings on file in this action, and any argument of counsel the Court may entertain. Plaintiff's Motion for entry of Default Judgment disposes of all remaining defendants to the instant case.

**I. INTRODUCTION**

On March 24, 2025, Plaintiff filed its Complaint in this action alleging, Trademark Infringement, Unfair Competition, and False Designation of Origin (Count I), and Trademark Infringement and Unfair Competition under Florida Common Law (Count II). On March 27, 2025, the Court authorized electronic service via email on the Schedule "A" Defendants in connection

with the Temporary Restraining Order ("TRO") [Dkt. No. 11]. On April 8, 2025, Plaintiff completed service on all named Defendants and filed a Return of Service on April 14, 2025 [Dkt. No. 17]. The deadline to respond to the Complaint and Jury Demand (the "Complaint") [Dkt. No.1] was April 29, 2025. Plaintiff has reached a settlement agreement with all the named Defendants, except the one Defaulting Defendant. As such, Plaintiff has filed Notices of Voluntary Dismissal [Dkt. Nos. 32, 33 and 37] dismissing all the named Defendants except the one Defaulting Defendant. Therefore, the Defaulting Defendant is the only remaining defendant in this case.

Pursuant to Federal Rule of Civil Procedure 12(a)(1)(A), the Defaulting Defendant had twenty-one (21) days to answer or otherwise respond to Plaintiff's Complaint in this action. As of the filing of this Motion, approximately forty-two days (42) have expired since electronic service was effectuated on the Schedule "A" Defendants, which includes the Defaulting Defendant that is the subject of Plaintiff's Motion. (Brees Decl. ¶ 3 and 7.) To date, the Defaulting Defendant has not answered or otherwise responded to Plaintiff's Complaint. ( Brees Decl. ¶ 8)

Pursuant to Rule 55(b)(2), Plaintiff now respectfully moves this Court for entry of a default judgment finding the Defaulting Defendant liable on all counts asserted in Plaintiff's Complaint. [Dkt. No. 1.] These asserted counts include claims for Trademark Infringement, Unfair Competition, and False Designation of Origin (Count I), and Trademark Infringement and Unfair Competition under Florida Common Law (Count II).

In connection with its asserted claims for relief, Plaintiff seeks an award of statutory damages pursuant to 17 U.S.C. § 1117(a)(1)-(2) against the Defaulting Defendant, which should be enhanced, for its willful infringement of Plaintiff's federally registered trademark "MODLILY", with U.S. Trademark Registration No. 5994759 ("Plaintiff's Mark"). Plaintiff additionally requests the Court issue a permanent injunction against the Defaulting Defendant. *See*

17 U.S.C. § 502(a). Furthermore, Plaintiff requests an award of attorneys' fees and costs for the Defaulting Defendant's willful infringement of Plaintiff's Mark pursuant to 15 U.S.C. § 1117(b). Alternatively, Plaintiff requests issuance of a permanent injunction and an award of its damages, together with prejudgment interest, for lost sales, loss of goodwill suffered by Plaintiff as a result of the acts of trademark infringement and unfair competition pursuant to the laws of the State of Florida.

## II. ARGUMENT

### A. **Jurisdiction and Venue Are Proper in This Court**

This Court has original subject matter jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1338(a)-(b). This action also alleges violations under Florida common law. This Court has supplemental jurisdiction of those claims under 28 U.S.C. § 1367(a). [Dkt. No. 1 at 7.] Venue is proper in this Court pursuant to 28 U.S.C. § 1391, and this Court may properly exercise personal jurisdiction over Defendants since each of the Defendants directly targets business activities toward consumers in Florida and causes harm to Plaintiff's business within this judicial district. [Dkt. No. 1 at 9].

In addition to the foregoing, the Court has determined that it can properly exercise specific personal jurisdiction over the Schedule "A" Defendants, which includes the Defaulting Defendant, in issuing the Temporary Restraining Order ("TRO") on March 27, 2025. [Dkt. No. 11]. Moreover, the Court additionally issued a Preliminary Injunction on April 28, 2025, further solidifying this determination. [Dkt. No. 30.] Accordingly, it is unquestionable that the Defaulting Defendant is subject to personal jurisdiction in this action.

**B. Plaintiff Has Met the Requirements for Entry of Default Under Rule 55(a)**

Pursuant to Rule 55(a), "when 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). Upon entry of default by the clerk, the well-pled factual allegations of a plaintiff's complaint, other than those related to damages, will be taken as true. *PetMed Express, Inc. v. Medpets.com*, 336 F. Supp. 2d 1213, 1217 (S.D. Fla. 2004) (citing *Buchanan v. Bowman*, 820 F.2d 359 (11th Cir. 1987)). Plaintiff's complaint, pleadings, and declarations filed in this case clearly demonstrate that default judgment pursuant to Rule 55 should be entered against the Defaulting Defendant.

Where there are multiple defendants, "plaintiff must state in a motion for default judgement that there are no allegations of joint and several liability and set forth the basis why there is no possibility of inconsistent liability." *Adidas AG v. Adidasjeremycottitalia.eu*, No. 13-cv-62712, 2014 WL 1122017, at \*2 (S.D. Fla. Aug. 14, 2014) (entering default judgement against all defendants even where plaintiff alleged joint and several liability, because all defendants defaulted). Here, Plaintiff makes no allegations of joint and several liability against the Defaulting Defendant, who is the only defendant remaining in this case. The Complaint alleges, and the evidences establishes, that the Defaulting Defendant sold or offered to sell Counterfeit Products. As explained more fully below, Plaintiff seeks statutory damages against the Defaulting Defendant for willful infringement. As a result, there is no risk of inconsistent liability.

**C. The Factual Allegations Establish Liability**

15 U.S.C. § 1114 provides liability for trademark infringement if, without the consent of the registrant, a defendant uses "in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark: which is likely to cause confusion, or to cause mistake, or to

deceive.” In order to prevail on its trademark infringement claim under Section 32 of the Lanham Act, a plaintiff must demonstrate: “(1) that it had prior rights to the mark at issue, and (2) that the defendant had adopted a mark or name that was the same, or confusingly similar to its 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, Plaintiff must prove that the named Defendants used in commerce, 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 Defendants with Plaintiff, or as to the origin, sponsorship, or approval, of Defendants’ goods by Plaintiff. 15 U.S.C. § 1125(a)(1). 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 (1992).

Whether a defendant’s use of a plaintiff’s trademarks creates a likelihood of confusion between the plaintiff’s and the defendant’s products is also the determining factor in the analysis of unfair competition under the common law of Florida. *See Planetary Motion*, 261 F.3d at 1193 n.4 (“Courts may use an analysis of federal infringement claims as a ‘measuring stick’ in evaluating the merits of state law claims.”). Further, the test to determine trademark infringement liability under Florida common law is the same as the likelihood of consumer confusion test outlined in § 32(a) of the Lanham Act. *See PetMed Express, Inc.*, 336 F. Supp. 2d at 1217-18.

The well-pled factual allegations of Plaintiff’s Complaint properly allege the elements for each claim. Moreover, the factual allegations in Plaintiff’s Complaint, substantiated by the

evidence submitted, conclusively establish the Defaulting Defendant's liability under each claim asserted in the Complaint. Default Judgment pursuant to Rule 55 of the Fed. R. Civ. P. should be entered against the Defaulting Defendant.

**D. Plaintiff is Entitled to Entry of the Requested Default Judgment**

Rule 55(b)(2) of the Federal Rules of Civil Procedure generally provides for entry of a court-ordered default judgment against one or more defending parties that fail to appear, answer, and/or defend allegations asserted against them. Fed. R. Civ. P. 55(b)(2). A defaulting defendant is deemed to have admitted to a plaintiff's well-pled allegations of fact. *Tyco Fire & Sec. LLC v. Alcocer*, 218 F. App'x 860, 863 (11th Cir. 2007); *U.S. v. Kahn*, 164 Fed. Appx. 855, 858 (11th Cir. 2006) (district court may enter default judgment when the complaint contained sufficient well-pleaded allegations to state a claim for injunctive relief).

More than twenty-one (21) days have passed since the Defaulting Defendant was served, and no answer or other responsive pleading has been filed by any the Defaulting Defendant. Thus, default judgment is appropriate, and Plaintiff is entitled to entry of a default judgment pursuant to Rule 55(b)(2) against the Defaulting Defendant for trademark infringement, false designation of origin, and unfair competition as asserted in the Complaint. [Dkt. No. 1.]

Accordingly, Plaintiff is entitled to the following remedies through the issuance of a default judgment against the Defaulting Defendant: (1) an award of the Defaulting Defendant's profits resulting from its acts of infringement in order to redress Defendants' unjust enrichment and to deter its infringement of Plaintiff's Mark, pursuant to 15 U.S.C. § 1117(a)(1); (2) triples of any damages and increases of profits pursuant to 15 U.S.C. § 1117(b); (3) entry of a permanent injunction pursuant to 15 U.S.C. § 1116; and (4) an award of attorneys' fees and costs pursuant to 15 U.S.C. § 1117(b).

**1. A Permanent Injunction Against the Defaulting Defendant is Appropriate**

The Lanham Act authorizes a district court 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). “Injunctive relief is the remedy of choice for trademark and unfair competition cases, since there is no adequate remedy at law for the injury caused by a defendant’s continuing infringement.” *Burger King Corp. v. Agad*, 911 F. Supp. 1499, 1509-10 (S.D. Fla. 1995) (citing *Century 21 Real Estate Corp. v. Sandlin*, 846 F.2d 1175, 1180 (9th Cir. 1988)). Defaulting Defendant’s failure to respond or otherwise appear in this action makes it difficult for Plaintiff to prevent further infringement absent an injunction. See *Jackson v. Sturkie*, 255 F. Supp. 2d 1096, 1103 (N.D. Cal. 2003) (“defendant’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.”). Pursuant to 15 U.S.C. § 1116, this Court should permanently enjoin the Defaulting Defendant from continuing to infringe Plaintiff’s Mark.

Permanent injunctive relief is appropriate where a plaintiff demonstrates 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). As demonstrated in Plaintiff’s Motion, and based upon the issuance of the temporary restraining order and preliminary injunction entered in this matter, Plaintiff has carried its burden on each of the four factors, warranting permanent injunctive relief. Defaulting Defendant unlawfully used Plaintiff’s goodwill to make a profit, thus permanent injunctive relief is appropriate.

Defaulting Defendant’s actions merit permanent injunctive relief, not only to protect Plaintiff’s reputation, but also to protect consumers from being deceived as to the quality and

source of products bearing the MODLILY trademark. The facts alleged in Plaintiff's Complaint, substantiated by the evidence submitted, show that the Defaulting Defendant is continuously infringing Plaintiff's Mark by using MODLILY in the description of the Defaulting Defendant's goods to advertise, promote, and sell goods identical to Plaintiff's goods. (See Dkt. No. 1. ¶¶ 16-20.)

Plaintiff will suffer irreparable injury if Defaulting Defendant's infringing activities are not permanently enjoined. (Dkt. No. 1-3 ¶¶ 20-23.) A "sufficiently strong showing of likelihood of confusion . . . may by itself constitute a showing of a substantial threat of irreparable harm." *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998); see also *Levi Strauss & Co. v. Sunrise Int'l Trading Inc.*, 51 F.3d 982, 986 (11th Cir. 1995) ("There is no doubt that the continued sale of thousands of pairs of counterfeit jeans would damage LS & Co.'s business reputation and might decrease its legitimate sales."). Further, Plaintiff's Complaint alleges that Defendants' unlawful actions have caused Plaintiff irreparable injury, and will continue to do so if Defendants are not permanently enjoined. (Dkt. No. ¶¶ 38 and 41.) By failing to answer the Complaint, the Defaulting Defendant has defaulted upon Plaintiff's factual allegations in that respect.

Additionally, Plaintiff has no adequate remedy at law so long as the Defaulting Defendant continues to use Plaintiff's Mark in connection with the operation of its Internet based e-commerce store on the Walmart platform, because Plaintiff will have no control of the quality of what appears to be its products in the marketplace. An award of money damages alone will not cure the injury to Plaintiff's reputation and goodwill which will result if the Defaulting Defendant's infringing and counterfeiting activities are allowed to continue. Further, it can hardly be said that the Defaulting Defendant will face hardship in refraining from its willful infringement of Plaintiff's

Mark, whereas Plaintiff faces hardship from loss of sales and its inability to control its reputation. In reality, the Defaulting Defendant has no cognizable hardship, as it will just be prohibited from selling counterfeit goods, which is an illegal act to begin with. Finally, the public has an interest in the issuance of a permanent injunction against the Defaulting Defendant in order to prevent consumers from being misled by its products. See *Chanel, Inc. v. besumart.com*, 240 F. Supp. 3d 1283, 1291 (S.D. Fla. 2016) (“[A]n injunction to enjoin infringing behavior serves the public interest in protecting consumers from such behavior.” (alteration added) (citation omitted)); *BellSouth Adver. & and Publ’g. Corp. v. Real Color Pages, Inc.*, 792 F. Supp. 775, 785 (M.D. Fla. 1991) (holding “[i]n a trademark infringement or unfair competition case, a third party, the consuming public is present, and its interests are paramount.”). Ultimately, a permanent injunction will prevent consumer confusion and deception in the marketplace, and will protect Plaintiff’s property interest in its MODLILY trademark.

The Defaulting Defendant has admitted by its default that the e-commerce store name, Clothing and Home Décor, the associated payment accounts, and the seller alias or identification name, Guangzhoushixinfudianzishangwuyouxiangongsi is used in connection with the sale of counterfeit and infringing goods by using of Plaintiff’s Mark in the description of the goods are essential components of the Defaulting Defendant’s online activities and are one of the means by which the Defaulting Defendant further its counterfeiting and infringement schemes and cause harm to Plaintiff. [Dkt. No. 1 ¶¶ 18-21.) Therefore, in order to effectuate the injunction as a practical matter pursuant to the Court’s inherent authority and the All Writs Act, 28 U.S.C. § 1651(a), all listings using Plaintiff’s Mark via the e-commerce store name, Clothing and Home Décor, and any other e-commerce store names being used and/or controlled by the Defaulting Defendant to promote, offer for sale, and/or sell goods bearing and/or using a counterfeits and/or

infringements of Plaintiff's Mark, should be permanently removed by Internet marketplace website operators and/or administrators.

Without removing the listings that use Plaintiff's Mark, the Defaulting Defendant will remain free to continue infringing Plaintiff's Mark with impunity, will continue to benefit from the Internet traffic to its e-commerce store built through the unlawful use of the MODLILY trademark, and will continue to defraud the public by its illegal activities. The Court's powers of equity can compel measures necessary to enforce an injunction against infringement. 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. . . the essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case."); *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.").

The Defaulting Defendant has participated in an Internet-based counterfeiting and infringement scheme and is profiting from the deliberate misappropriation of Plaintiff's rights. Unless the infringing online platform listings are permanently removed, the Defaulting Defendant will be free to continue to defraud the public with its illegal activities. Accordingly, the Court should eliminate the means by which the Defaulting Defendant conduct its unlawful activities to further prevent the use of these instrumentalities of infringement.

## ***2. Damages for Trademark Infringement***

In a case involving the use of counterfeit marks in connection with a sale, offering for sale, or distribution of goods, 15 U.S.C. § 1117(c) provides that a plaintiff may elect an award of statutory damages at any time before final judgment is rendered in the sum of not less than

\$1,000.00 nor more than \$200,000.00 per counterfeit mark per type of good. 15 U.S.C. § 1117(c)(1). In addition, if the Court finds that the Defaulting Defendant's counterfeiting actions were willful, it may impose damages above the maximum limit up to \$2,000,000.00 per mark per type of good. 15 U.S.C. § 1117(c)(2). Pursuant to 15 U.S.C. § 1117(c), Plaintiff elects to recover an award of statutory damages as to its claim for Trademark Infringement alleged in the Complaint.

This Court has wide discretion to set an amount of statutory damages. *PetMed Express, Inc.*, 336 F. Supp. 2d at 1219 (citing *Cable/Home Commc'n Corp. v. Network Prod., Inc.*, 902 F.2d 829, 852 (11th Cir. 1990)). An award of statutory damages is an appropriate remedy, despite a plaintiff's inability to provide actual damages caused by a defendant's infringement. *Ford Motor Co. v. Cross*, 441 F. Supp. 2d 837, 852 (E.D. Mich. 2006) (“[A] successful plaintiff in a trademark infringement case is entitled to recover enhanced statutory damages even where its actual damages are nominal or non-existent.”). Congress enacted the statutory damages remedy in trademark counterfeiting cases because evidence of a defendant's profits in such cases is almost impossible to ascertain. See, e.g., S. REP. NO. 104-177, pt. V(7) (1995) (discussing purposes of Lanham Act statutory damages). See also *PetMed Express, Inc.*, 336 F. Supp. 2d at 1220 (statutory damages are “especially appropriate in default judgment cases due to infringer nondisclosure”). The present action is no different.

A defendant's intent can be of probative value for establishing willfulness, triggering an enhanced statutory award. *PetMed Express, Inc.*, 336 F. Supp. 2d at 1220. A defendant is deemed to have acted willfully where “the infringer acted with actual knowledge or reckless disregard” to a plaintiff's intellectual property rights. See *Arista Records, Inc. v. Beker Enter., Inc.*, 298 F. Supp. 2d 1310, 1312 (S.D. Fla. 2003). Willfulness may also be inferred from the defendant's default. See *PetMed Express, Inc.*, 336 F. Supp. 2d at 1217 (upon default, well plead allegations taken as true).

In either case, a defendant is deemed to have the requisite knowledge that its acts constitute infringement.

Plaintiff's Mark is widely recognized as an identifier of high-quality women's clothing and fashion goods, and the fact that the Defaulting Defendant offered for sale and sold goods using a mark which is identical or altered to be identical to such a well-known mark shows its desire and purpose to trade upon Plaintiff's goodwill. In a case of clear-cut copying such as this, it is appropriate to infer that the Defaulting Defendant intended to cause confusion and benefit from Plaintiff's reputation to Plaintiff's detriment. See *PetMed Express, Inc.*, 336 F. Supp. 2d at 1220 (court infers intent to confuse consumers into believing affiliation from Defendants' use of such a mark that was confusingly similar). In this district, it has been held that when an alleged infringer adopts a mark "with the intent of obtaining benefit from the plaintiff's business reputation, 'this fact alone may be sufficient to justify the inference that there is confusing similarity.'" *Turner Greenberg Assocs.*, 320 F. Supp. 2d 1317, 1333 (S.D. Fla. 2004) (citing *Carnival Corp. v. Seascapes Casino Cruises, Inc.*, 74 F. Supp. 2d 1261, 1268 (S.D. Fla. 1999)).

The evidence submitted in this case clearly establishes the Defaulting Defendant intentionally copied Plaintiff's Mark for the purpose of deriving the benefit of Plaintiff's famous reputation. However, by failing to respond to the Complaint the Defaulting Defendant defaulted on Plaintiff's allegations of willfulness. [Dkt. No. 1 ¶¶ 16-21, 28-30, and 37-42.] See *Arista Records, Inc.*, 298 F. Supp. 2d at 1313 (finding a Court may infer willfulness from the defendants' default). This Court should award a significant amount of statutory damages under the Lanham Act to ensure the Defaulting Defendant does not continue its intentional and willful counterfeiting activities.

Based these considerations, Plaintiff requests the Court award statutory damages against the Defaulting Defendant. The evidence in this case demonstrates that the Defaulting Defendant promoted, distributed, advertised, offered for sale, and/or sold at least one type of good using Plaintiff's Mark. (Dkt. No. 1 ¶¶ 16-20; Dkt. No. 1-3. Pg. 2) In cases involving the same merits, issues, and requests for damages, this Court has found similar evidence of record sufficient to establish a defendant's infringement and enter a final default judgment and permanent injunction accordingly. See, e.g., *Fendi S.R.L. v. Individuals, P'ships, and Unincorporated Ass'ns Identified on Schedule "A"*, Case No. 20-CV-61724-RNS (S.D. Fla. Dec. 22, 2020, docketed Dec. 23, 2020). Based on the above, Plaintiff respectfully requests the Court award statutory damages in the amount of \$15,000.00 against the Defaulting Defendant for which Plaintiff has alleged a trademark claim in respect to the MODLILY Trademark.

Plaintiff's requested damages amount as to the Defaulting Defendant is well within the permissible range prescribed under 15 U.S.C. § 1117(c)(2) and should be sufficient to deter the Defaulting Defendant and others from continuing to counterfeit or otherwise infringe Plaintiff's Mark, compensate Plaintiff, and punish the Defaulting Defendant, all stated goals of 15 U.S.C. § 1117(c). Joint Statement of Trademark Counterfeiting Legislation, H.R.J. Res. 648, 98th Cong., 2nd Sess., 130 Cong.Rec. H12076, H12083; *PetMed Express, Inc.*, 336 F. Supp. 2d at 1220-21 ("statutory damages under § 1117(c) are intended not just for compensation for losses, but also to deter wrongful conduct."). This Court and others have granted statutory damages under the Lanham Act using methodology similar to Plaintiff's request herein.<sup>1</sup>

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<sup>1</sup> See, e.g., *Yip, LLC v. Individuals*, U.S. Dist. LEXIS 124150, No. 21-61580-CIV-ALTMAN (S.D. Fla. July 18, 2022) (awarding Plaintiff \$1,000,000.00 against each Defendant based on at least one mark counterfeited and one type of good sold); *Chanel, Inc. v. Individuals*, Case No. 23-cv-62186-RKA (S.D. Fla. Feb. 7, 2024) (same); *Louis Vuitton Malletier v. Individuals*, No. 23-cv-60520-RKA (S.D. Fla. May 17, 2023) (same); *Specialized Bicycle Components, Inc. v. Individuals*, No.

### 3. Damages for False Designation of Origin.

The damages available under Section 35 of the Lanham Act are set forth in the Section of that Act entitled “Recovery for violation of rights,” and provides:

(a) Profits; damages and costs; attorney fees When a violation of any right of the registrant of a mark registered in the Patent and Trademark Office, a violation under section 1125(a) or (d) of this title, or a willful violation under section 1125(c) of this title, shall have been established in any civil action arising under this chapter, the plaintiff shall be entitled, subject to the provisions of sections 1111 and 1114 of this title, and subject to the principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action. The court shall assess such profits and damages or cause the same to be assessed under its direction. In assessing profits the plaintiff shall be required to prove defendant's sales only; defendant must prove all elements of cost or deduction claimed. In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. If the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case. Such sum in either of the above circumstances shall constitute compensation and not a penalty. The court in exceptional cases may award reasonable attorney fees to the prevailing party.

15 U.S.C. § 1117(a). As such, the Lanham Act provides that a plaintiff who prevails in a trademark infringement action “shall be entitled, subject to the provisions of sections 1111 and 1114 of this title, and subject to the principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action.” 15 U.S.C. § 1117(a).

“The Eleventh Circuit has made clear that in assessing damages under the Act the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount.” *Hard Candy, LLC v. Anastasia*

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23-cv-60252-RKA (S.D. Fla. Apr. 17, 2023) (same); *Goyard St-Honore v. Individuals*, No. 22-cv-61837-RKA (S.D. Fla. Feb. 22, 2023) (same). See also *Chanel, Inc. v. Individuals*, No. 22-61082-CIV-SINGHAL, 2022 U.S. Dist. LEXIS 184619 (S.D. Fla. Sept. 7, 2022) (same); *Tiffany (NJ) LLC v. Individuals*, No. 20-cv-60299-MOORE, 2020 U.S. Dist. LEXIS 143158 (S.D. Fla. June 26, 2020) (same).

*Beverly Hills, Inc.*, Case No. 16-cv-21203, 2018 WL 10322164, \*3 (S.D. Fla. Jan. 13, 2018). “Further, if the court finds that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for the sum the court finds to be just, according to the circumstances of the case.” *Id.* (citing *Slep-Tone Entertainment Corp., v. Johnson*, 518 F. App'x 815, 819 (11th Cir. 2013); 15 U.S.C. 1117(a)). “Thus, a district court has considerable discretion to award damages that are appropriate to the unique facts of the case and when the court concludes that an award of profits is ‘excessive,’ the Act expressly provides that it may award an amount of damages as it shall find to be just.” *Id.* “Finally, in *Burger King v. Mason*, 855 F. 2d 779 (11th Cir. 1988), the Eleventh Circuit stated, ‘... all monetary awards under Section 1117 are ‘subject to the principles of equity,’ [and] ... no hard and fast rules dictate the form or quantum of relief.’” *Id.* (citation omitted).

As such, Plaintiff respectfully suggests the Court award damages in the amount of \$15,000.00 against the Defaulting Defendant. Plaintiff’s suggested damage amount is well within the permissible range prescribed under 15 U.S.C. § 1117(a) and should be sufficient to deter the Defaulting Defendant and others from continuing to counterfeit or otherwise infringe Plaintiff’s Mark, compensate Plaintiff, and punish the Defaulting Defendant, all stated goals of 15 U.S.C. § 1117(a).

#### ***4. Damages for Common law Trademark Infringement and Common Law Unfair Competition***

Plaintiff’s Complaint also sets forth a cause of action for common law unfair competition and common law trademark infringement (Count II). As to Count II, the allowed scope of monetary damages is also encompassed in 15 U.S.C. § 1117(a). Accordingly, judgment on Count II should be limited to the amount awarded pursuant to Count I for federal trademark infringement and false designation of origin and entry of the requested equitable relief

### III. CONCLUSION

Based on the foregoing, Plaintiff respectfully requests entry of default judgment against the Defaulting Defendant pursuant to Rule 55. In granting its request, Plaintiff asks the Court to award the following: (1) an award of the Defaulting Defendant's profits resulting from its acts of infringement in order to redress Defendants' unjust enrichment and to deter its infringement of Plaintiff's Mark, pursuant to 15 U.S.C. § 1117(a)(1); (2) triples of any damages and increases of profits pursuant to 15 U.S.C. § 1117(b); (3) entry of a permanent injunction pursuant to 15 U.S.C. § 1116; and (4) an award of attorneys' fees and costs pursuant to 15 U.S.C. § 1117(b).

DATED: May 20, 2025

Respectfully Submitted,

By: /s/ William R. Brees

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*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of May 2025, I electronically filed the foregoing using the electronic case filing system. Notice of this filing is provided to unrepresented parties for whom contact information is listed below and provided via email and by posting the filing on a URL contained on our website <http://blointernetenforcement.com>, and a link to said website in the email provided by third-party, Walmart.

By: /s/ William R. Brees  
WILLIAM R. BREES (FL BAR NO. 98886)

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:25-cv-21356-ALTMAN

XYZ CORPORATION,

Plaintiff,

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THE INDIVIDUALS, CORPORATIONS,  
LIMITED LIABILITY COMPANIES,  
PARTNERSHIPS AND UNINCORPORATED  
ASSOCIATIONS IDENTIFIED IN  
SCHEDULE "A" HERETO,

Defendants.

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**DECLARATION OF WILLIAM R. BREES ES . IN SUPPORT OF  
PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT**

I, William R. Brees, Esq., of St. Petersburg, Florida, declare as follows:

1. I am an attorney duly licensed to practice before this Court, and I am counsel for Plaintiff, Hong Kong Yu'En E-Commerce Co. Limited ("Plaintiff") in the above-captioned matter. I make this Declaration, which is filed in support of Plaintiff's Motion for Entry of Default Judgment, and I could and would testify competently to the matters set forth herein.

2. On March 24, 2025, Plaintiff filed its Complaint and Jury Demand [Dkt. No. 1] against Defendants, the Individuals, Corporations, Limited Liability Companies, Partnerships and Unincorporated Associations identified on Schedule "A" [Dkt. No. 1-1] (collectively, "Defendants").

3. On April 8, 2025, Defendants were served with their respective Summons and copies of the Complaint via electronic mail ("e-mail") and via website posting pursuant to the Court's Order authorizing alternate service of process. (See Dkt. No. 17 Return of Service on file with the Court.)

4. The deadline to respond to the Complaint and Jury Demand (the “Complaint”) [Dkt. No.1] was April 29, 2025.

5. The Defendants have not been granted an extension of time to respond to the Complaint.

6. Clerk’s Entry of Default was entered on May 6, 2025. [Dkt. No. 35].

7. As of the filing of this Motion, approximately forty-two days (42) have expired since electronic service was effectuated on the Schedule "A"

8. Defendant No. 2 (the “Defaulting Defendant”) has failed to answer or otherwise respond to the Complaint, or serve a copy of the Answer or other response upon Plaintiff’s attorneys of record.

9. The Defaulting Defendant’s information is as follows:

No.	Seller’s Name	Seller ID
2	Guangzhoushixinfudianzishangwuyouxiangongsi <b>Clothing and Home D cor</b>	101186446

10. Servicemembers Civil Relief Act, 50 U.S.C. app. § 521(b):

- a. I am unable to determine whether the Defaulting Defendant is in military service because the Defaulting Defendant’s true identity is unknown.
- b. Defaulting Defendant is believed to be a person that is a citizen of the People’s Republic of China or a company that is organized under the laws of the People’s Republic of China.

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- c. The Defaulting Defendant's store information page on Walmart.com lists the following fictitious address as Defaulting Defendant's address:

TIANHE U  
zhujilu59haozhiyiAzuo3A08fang,  
Guangzhoushi, GD 510630, CN.

I declare under penalty of perjury under the laws of the United States of America the foregoing is true and correct.

Executed on May 20, 2025, in St. Petersburg, Florida.

Respectfully Submitted

By: /s/ William R. Brees  
WILLIAM R. BREES (FL BAR NO. 98886)

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:25-cv-21356-ALTMAN

XYZ CORPORATION,

Plaintiff,

v.

THE INDIVIDUALS, CORPORATIONS,  
LIMITED LIABILITY COMPANIES,  
PARTNERSHIPS AND UNINCORPORATED  
ASSOCIATIONS IDENTIFIED IN  
SCHEDULE "A" HERETO,

Defendants.

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**[PROPOSED] ORDER GRANTING MOTION FOR FINAL DEFAULT JUDGMENT**

**THIS CAUSE** is before the Court on Plaintiff's Motion for Entry of Final Default Judgment (the "Motion") [ECF No. 38]. The only remaining defendant in this case, Defendant No. 2 (Clothing and Home Décor), identified in Schedule "A" of the Complaint [ECF No. 1-1], (the "Defaulting Defendant") did not file a response to the Motion, and the time to do so has passed. Upon due consideration of the Motion, the declarations submitted in support thereof, the pertinent portions of the record, and the relevant legal authorities, it is hereby **ORDERED AND ADJUDGED** that Plaintiff's Motion, is **GRANTED** for the reasons stated herein. Pursuant to Rule 58 of the Federal Rules of Civil Procedure, a default final judgment will be entered by separate order.

## I. BACKGROUND

Plaintiff, XYZ Corporation (“Plaintiff”) is the owner of the MODLILY trademark, which is used in “connection with women's fashion and apparel products” (“Plaintiff’s Mark”). [ECF No. 1 ¶ 27]. Plaintiff claims that named defendants, including the Defaulting Defendant, are unlawfully using Plaintiff’s Mark “to promote, advertise, market, distribute, offer for sale, and sell knockoff products, including women’s clothing, merchandise, and related items, (the “Counterfeit Products”) through their marketplace accounts (the “Online Marketplaces”) maintained on the Walmart marketplace online sales platform (the “Platform”).” [ECF No. 5] at 1. Plaintiff contends that the defendants, including the Defaulting Defendant, have used Plaintiff’s Mark, without authorization, in “the descriptions of Counterfeit Products, meta tags, hyperlinks, and other digital assets to direct consumers to their Online Marketplaces under the auspices that they are selling authentic Brand products when they are not doing so.” [ECF No. 5 at 1-2].

Plaintiff filed its Complaint on March 24, 2025, against the named defendants in Schedule “A” on March 5, 2025, [ECF No. 1]. Specifically, Plaintiff seeks monetary and injunctive relief for trademark counterfeiting and infringement activities under the Lanham Act and common law. *See generally* [ECF Nos. 1, 5, and 38].

On March 25, 2025, Plaintiff filed its *Ex Parte* Motion for Temporary Restraining Order, Including a Temporary Injunction, a Temporary Asset Restraint, Expedited Discovery, and Service of Process by Email and/or Electronic Publication [ECF No. 5],

which the Court granted on March 28, 2025 [ECF No. 11]. The Order further authorized Plaintiff to serve Defendants with the Summonses, Complaint, and other relevant filings in this matter via e-mail and via website posting, by posting copies of the same on Plaintiff's designated serving notice website. *Id.* Plaintiff then served all Defendants via e-mail service and via website posting.

Thereafter, on April 17, 2025, the Court entered an Order granting Plaintiff's Motion for Preliminary Injunction [ECF No. 28]. In the Temporary Restraining Order, the Court ordered the Platform and their related companies and affiliates (each, a "Third Party," and collectively, the "Third Parties") to locate all accounts and funds connected to the Defendants' seller aliases, restrain, and enjoin any such accounts or funds from transferring or disposing of any money or other of the Defendants' assets until further order by this Court. [ECF No. 30 at 8].

On May 5, 2025, Plaintiff filed a Motion for Entry of Clerk's Default ECF No. 34]. A Clerk's Default was entered against all Defendants on May 6, 2025 [ECF No. 35]. Plaintiff thereafter filed the instant Motion for Final Default Judgment [ECF No. 38].

## **II. ANALYSIS**

The Court determines that it has personal jurisdiction over the Defaulting Defendant, as the evidence presented on the Motion shows that Defaulting Defendant has been served with process as authorized by the Court's Order [ECF No. 11]. The Court

also determines that the Defaulting Defendant directly targets its business activities toward consumers in the United States, including Florida, by setting up and operating e-commerce stores that target United States consumers by using one or more seller aliases, offer shipping to the United States, including to the State of Florida, and intentionally offering for sale the Counterfeit Products. *See* [ECF No. 11 at 2].

“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.” *Chanel, Inc. v. Sea Hero*, 234 F. Supp. 3d 1255, 1258 (S.D. Fla. 2016). However, “[a] defendant’s default does not in itself warrant the court entering a default judgment.” *Id.* (quoting *DIRECTV, Inc. v. Huynh*, 318 F. Supp. 2d 1122, 1127 (M.D. Ala. 2004)). Indeed, the Court’s decision whether to grant a motion for default is discretionary. *Id.* (citing *Nishimatsu Constr. Co., Ltd. v. Houston Nat’l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975)). A defendant is not held to admit conclusions of law or facts that are not well pled; accordingly, the Court must determine whether the complaint adequately states a claim upon which relief may be granted. *See id.* (citing *Nishimatsu*, 515 F.2d at 1206); *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...”).

To adequately state a claim, a complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Well-

pled factual allegations are deemed to have been admitted by the defaulting defendant. *Cotton v. Mass. Mut. Life Ins. Co.*, 402 F.3d 1267, 1278 (11th Cir. 2005) (citing *Nishimatsu*, 515 F.2d at 1206). Once liability is established, the Court must also assess forms of relief. *See Chanel, Inc. v. French*, No. 05-cv-61838, 2006 WL 3826780, at \*2 (S.D. Fla. Dec. 27, 2006). Remedies for trademark infringement include injunctive relief. *See Hard Candy, LLC v. Anastasia Beverly Hills, Inc.*, 921 F.3d 1343, 1353 (11th Cir. 2019).

**A. Plaintiff Has Sufficiently Pled its Claims.**

Plaintiff's Complaint includes four claims against the Defaulting Defendant. *See generally* [ECF No. 1]. Count I alleges trademark infringement pursuant to Section 32 of the Lanham Act, in violation of 15 U.S.C. § 1114, unfair competition, and false designation of origin pursuant to Section 43(a) of the Lanham Act, in violation of 15 U.S.C. § 1125(a). *Id.* at ¶¶ 22–33. Count II alleges Florida common law trademark infringement and unfair competition. *Id.* at ¶¶ 34–42. The Court analyzes whether Plaintiff has adequately stated each claim.

**1. Claims for Federal Trademark Infringement, False Designation of Origin, and Florida Common Law Trademark Infringement**

To prevail on its claim of trademark infringement in violation of 15 U.S.C. § 1114 in Count I, Plaintiff would have to “demonstrate ‘(1) that [it] had prior rights to the mark at issue and (2) that the defendant[s] had adopted a mark or name that was the same, or confusingly similar to its mark, such that consumers were likely to confuse the two.’”

*Fendi S.r.l. v. Bag*, No. 19-cv-61356, 2019 WL 4693677, at \*2 (S.D. Fla. Aug. 28, 2019) (quoting *Planetary Motion, Inc. v. Techsplosion, Inc.*, 261 F.3d 1188, 1193 (11th Cir. 2001)). As to Count II, “[t]he test for liability . . . under 15 U.S.C. section 1125(a) is the same as for a trademark counterfeiting and infringement claim— *i.e.*, whether the public is likely to be deceived or confused by the similarity of the marks at issue.” *Id.* at \*3.

As to Count II, “[t]he analysis of liability for Florida common law trademark enforcement is the same as the analysis of liability for trademark infringement under § 32(a) of the Lanham Act.” *Tiffany (NJ) LLC v. Benefitfortiffany.com*, No. 16-cv-60829, 2016 WL 8679081, at \*5 (S.D. Fla. Nov. 3, 2016), *report and recommendation adopted*, No. 16-cv-60829, 2016 WL 8678880 (S.D. Fla. Dec. 20, 2016) (citing *PetMed Express, Inc. v. MedPets.Com, Inc.*, 336 F. Supp. 2d 1213, 1217–18 (S.D. Fla. 2004)). For the reasons that follow, the Court finds that Plaintiff has pled sufficient facts to establish all three claims.

For the first element of a trademark infringement claim, Plaintiff has pled that it had prior rights to Plaintiff’s Mark. *See* [ECF No. 1 at ¶ 24]. The second element of trademark infringement (as well as false designation of origin) requires that Plaintiff allege that Defendants’ mark was so similar that it was likely to cause confusion or deception. In the Complaint, Plaintiff alleges that “Defendants’ use of a mark identical to Plaintiff’s Mark for goods identical, nearly identical, directly competing, and/or overlapping to Plaintiff’s Goods and Services is likely to cause confusion, or to cause

mistake, or to deceive as to the affiliation, connection, or association of Defendants with Plaintiff, or as to the origin, sponsorship, or approval of Defendants' goods, services, or commercial activities." *Id.* at ¶ 28. Further, Plaintiff has "used Plaintiff's Mark continuously and consistently for an extended period of time to identify, advertise, promote, and sell Plaintiff's Goods and Services, which has indelibly impressed on the minds of the consuming public the impression that Plaintiff's Mark identifies Plaintiff as the source of its women's fashion and apparel products." *Id.* at ¶ 36. Plaintiff's Mark, which Plaintiff alleges has indelibly impressed on the minds of the relevant consuming public that Plaintiff's Mark identifies Plaintiff as the source of Plaintiff's Goods and Services. *Id.* at ¶ 15. Further, Plaintiff alleges that Plaintiff has not licensed or authorized Defendants to use its MODLILY trademark, and none of the Defendants are authorized retailers of genuine MODLILY products. [ECF No. 5 at 8]. Defendants allegedly operate a highly sophisticated network whereby they offer the Counterfeit Products, of lesser quality and at a discounted price, by associating these inferior products with Plaintiff's Mark through the unauthorized use of the MODLILY trademark. *Id.* at 1. Thus, the Court finds that Plaintiff has adequately stated a cause of action as to Plaintiff's federal trademark infringement, false designation or origin, and Florida common law trademark infringement claims. *See Tiffany*, 2016 WL 8679081, at \*3.

## 2. Claims for Florida Common Law Unfair Competition

To prevail on a Florida common law unfair competition claim, a plaintiff must prove that:

(1) the plaintiff is the prior user of the mark; (2) the mark is arbitrary, suggestive, or has secondary meaning; (3) the defendant is using a confusingly similar mark to indicate similar goods marketed in competition with the plaintiff in the same trade area in which the plaintiff has already established its mark; and (4) because of the defendant's action, consumer confusion regarding the defendant's goods is likely.

*Tiffany*, 2016 WL 8679081, at \*5 (citing *PetMed Express, Inc.*, 336 F. Supp. 2d at 1219).

Plaintiff has adequately stated a claim for Florida common law unfair competition such that the Defaulting Defendant admits the allegations by default. First, Plaintiff has pled that its use of the Plaintiff's Mark predates the Defaulting Defendant's use. [ECF No. 1 at ¶ 24]. Second, Plaintiff has alleged that the Plaintiff's Mark is famous and has secondary meaning as an identifier of Plaintiff's goods. *Id.* at ¶ 36. As to the third and fourth elements, Plaintiff alleges that Defendants are each "engaged in the offering, distribution, sale, and advertising of counterfeit and infringing products using Plaintiff's Mark in the description of goods" "in the same geographic regions to the same class of purchasers and through the same trade channels and online marketplaces" as Plaintiff. *Id.* at ¶¶ 16, 20. Accordingly, Plaintiff has established liability for Defendants' unfair competition.

**B. Plaintiff Is Entitled to Relief.**

Given that Plaintiff has established Defendants' liability, as discussed above, the Court turns to the issue of the appropriate relief for each Count.

**1. Plaintiff is Entitled to a Permanent Injunction Against Defendants.**

Pursuant to the Lanham Act, a court may 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." *Tiffany*, 2016 WL 8679081, at \*5 (quoting 15 U.S.C. § 1116(a)). To obtain a permanent injunction pursuant to 15 U.S.C. § 1116, a plaintiff must demonstrate that:

(1) it has suffered an irreparable injury; (2) remedies at law, such as monetary damages, are inadequate to compensate for that injury; (3) considering the balance of hardship between plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

*Id.* (citing *eBay, Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006)). For trademark and unfair competition cases, "[i]njunctive relief is the remedy of choice . . . since there is no adequate remedy at law for the injury caused by a defendant's continuing infringement." *Id.* at \*6 (quoting *Burger King Corp. v. Agad*, 911 F. Supp. 1499, 1509- 10 (S.D. Fla. 1995)).

The Court finds that Plaintiff has met its burden to demonstrate that it is entitled to a permanent injunction against the Defaulting Defendant. First, Plaintiff has established that it has suffered and will continue to suffer irreparable injury because the

counterfeit goods that are promoted, advertised, and offered for sale by Defendants are nearly identical to Plaintiff's genuine goods utilizing Plaintiff's Mark such that consumers may confuse Defendants' counterfeit goods for Plaintiff's genuine goods. *See* [ECF No. 1 at ¶¶ 18-19, 21, 28, 38]. Indeed, in trademark cases, "a sufficiently strong showing of likelihood of confusion . . . may by itself constitute a showing of a substantial threat of irreparable harm." *Tiffany*, 2016 WL 8679081, at \*6 (alteration in original) (quoting *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998)). Second, Plaintiff has no adequate remedy at law if the Defaulting Defendant continues its infringing activities because Plaintiff has no control over the quality of goods that are easily confused with theirs, and monetary damages alone will not cure any harm to Plaintiff's reputation. [ECF No. 5 at 11]. Third, the balance of hardships favors Plaintiff due to its inability to control its reputation in the marketplace. *See Chanel, Inc. v. J.M.C. Wholesale, Inc.*, No. 12-cv- 21919, 2013 WL 12247802, at \*4 (S.D. Fla. Apr. 22, 2013); [ECF No. 5 at 11-12]. By contrast, the Defaulting Defendant faces no hardship if they are prohibited from the infringement of Plaintiff's trademark, which is an illegal act. *See id.*; *see also Tiffany*, 2016 WL 8679081, at \*6. Finally, it is in the public interest to issue "a permanent injunction against Defendants to prevent consumers from being misled by Defendants' products." *Atmos Nation, LLC v. Pana Depot, Inc.*, No. 14-cv-62620, 2015 WL 11198010, at \*3 (S.D. Fla. Apr. 8, 2015).

In sum, Plaintiff has demonstrated that it is entitled to injunctive relief as against the Defaulting Defendant.

## **2. Plaintiff is Entitled to Statutory Damages.**

In addition to injunction relief, Plaintiff also seeks statutory damages as to its claim for trademark infringement pursuant to 15 U.S.C. § 1117(c). The Court addresses the grounds for damages below.

### **a. Damages as to Count I<sup>1</sup>**

In trademark counterfeiting matters, the Lanham Act provides “that a plaintiff may elect an award of statutory damages at any time before final judgment is rendered in the sum of not less than \$1,000.00 nor more than \$200,000.00 per counterfeit mark per type of good.” *Louis Vuitton Malletier v. aaimitationbags.com*, No. 18-cv-62354, 2019 WL 2008910, at \*5 (S.D. Fla. Mar. 29, 2019) (citing 15 U.S.C. § 1117(c)(1)). Moreover, where a court “finds Defendants’ counterfeiting actions were willful, it may impose damages above the maximum limit up to \$2,000,000.00 per mark per type of good. *Id.* (citing 15 U.S.C. § 1117(c)(2)). Such damages are particularly appropriate in the default judgment context, given the difficulty of ascertaining the defendants’ profits because the defendants have neither responded to complaints or motions nor participated in

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<sup>1</sup> In the Motion, Plaintiff submits that judgment should be “limited to the amount awarded pursuant to Count I for federal trademark infringement and false designation of origin and entry of the requested equitable relief.” [ECF. No. 38 at 15]

discovery. See *Tiffany*, 2016 WL 8679081, at \*7 (citing *Tiffany (NJ) LLC v. Dongping*, No. 10-cv-61214, 2010 WL 4450451, at \*6 (S.D. Fla. Oct. 29, 2010)); *Rolex Watch U.S.A., Inc. v. Lynch*, No. 12-cv-00542, 2013 WL 2897939, at \*6 (M.D. Fla. June 12, 2013); *Nike, Inc. v. Lydner*, No. 07-cv-01654, 2008 WL 4426633, at \*4 (M.D. Fla. Sept. 25, 2008)). The Court has wide discretion in determining the appropriate amount of statutory damages, and statutory damages may be properly awarded even where a plaintiff is unable to prove actual damages due to defendants' infringement. *Louis Vuitton Malletier*, 2019 WL 2008910, at \*5. Further, statutory damages in this context are "intended not just for compensation for losses, but also to deter wrongful conduct." *PetMed Express, Inc.*, 336 F.Supp.2d at 1220–21.

Here, Plaintiff has alleged that each Defendant promoted, distributed, advertised, offered for sale, and/or sold at least one type of good bearing and/or using a counterfeit of Plaintiff's Mark. See [ECF No. 38 at ¶ 13]. Plaintiff has also alleged that "the Defaulting Defendant offered for sale and sold goods using a mark which is identical or altered to be identical to such a well-known mark shows its desire and purpose to trade upon Plaintiff's goodwill." *Id.* at ¶ 12. Accordingly, the Defaulting Defendant has "defaulted on Plaintiff's allegations of willfulness," and courts may infer willfulness where defendants default. *Louis Vuitton Malletier*, 2019 WL 2008910, at \*5 (citing *Arista Records*,

*Inc. v. Beker Enters., Inc.*, 298 F. Supp. 2d 1310, 1313 (S.D. Fla. 2003); *PetMed Express, Inc.*, 336 F.Supp.2d at 1217).

Based on Plaintiff's well-pled allegations, the Court is permitted "to award up to \$ 2,000,000.00 per infringing mark on each type of good as statutory damages" to ensure the Defaulting Defendant does not continue its intentional and willful counterfeiting activities. *Louis Vuitton Malletier*, 2019 WL 2008910, at \*5. Here, Plaintiff requests the Court to award statutory damages in the amount of \$15,000.00 against the Defaulting Defendant. [ECF No. 38 at 13,15]. Accordingly, given the available evidence and the goal of deterrence, the Court finds, in its discretion, that an award of \$15,000.00 against the Defaulting Defendant, which is within the range of statutory damages available, is just, as it "should be sufficient to deter Defendants and others from continuing to counterfeit or otherwise infringe Plaintiff's trademark, compensate Plaintiff, and punish Defendants — all stated goals of 15 U.S.C. section 1117(c)." See e.g., *Chanel, Inc.*, 2023 WL 2540439; at \*6 (quoting *Louis Vuitton Malletier*, 2019 WL 2008910, at \*6) (recommending that Plaintiff's request for an award of statutory damages in the amount of \$100,000.00 against each Defendant for trademark infringement be granted); *Chanel, Inc., v. Individuals*, No. 24-cv-22823-JB, 2024 WL 5267144, at \*5 (S.D. Fla. Sept. 25, 2024) (awarding statutory damages of \$100,000.00 per trademark counterfeited, per type of good offered against each Defendant). Thus, the Court will award award statutory damages in the amount of

\$15,000.00 against the Defaulting Defendant

**III. CONCLUSION**

For the foregoing reasons, Plaintiff is entitled to the entry of final default judgment. Accordingly, it is hereby **ORDERED AND ADJUDGED** that Plaintiff's Motion for Default Final Judgment, ECF No. 38, is **GRANTED**. Default final judgment and a permanent injunction will be entered by separate order.

**DONE AND ORDERED** in Miami, Florida this \_\_\_\_ day of \_\_\_\_\_, 2025.

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**HONORABLE ROY K. ALTMAN**  
**UNITED STATES DISTRICT JUDGE**

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:25-cv-21356-ALTMAN

XYZ CORPORATION,

Plaintiff,

v.

THE INDIVIDUALS, CORPORATIONS,  
LIMITED LIABILITY COMPANIES,  
PARTNERSHIPS AND UNINCORPORATED  
ASSOCIATIONS IDENTIFIED IN  
SCHEDULE "A" HERETO,

Defendants.

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**[Proposed] FINAL DEFAULT JUDGMENT AND PERMANENT INJUNCTION**

**THIS CAUSE** comes before the Court on the Plaintiff's Motion for Entry of Final Default Judgment (the "Motion"). For the reasons set forth in the Order Granting Plaintiff's Motion for Default Judgment, [Dkt. No. \_\_], this Court now enters this separate final judgment pursuant to Federal Rule of Civil Procedure 58(a). Pursuant to Federal Rule of Civil Procedure 58(a), the Court hereby **ENTERS THIS SEPARATE FINAL JUDGMENT**. Accordingly, it is **ORDERED and ADJUDGED** that Final Default Judgment is hereby entered in favor of the Plaintiff, XYZ Corporation ("Plaintiff"), and against Defendant No. 2, Clothing and Home Décor, identified in Schedule "A" of the Complaint [Dkt. No. 1-1], (the "Defaulting Defendant") as follows:

1. **Permanent Injunctive Relief**

The Defaulting Defendant, its officers, directors, agents, representatives, subsidiaries, distributors, servants, employees and attorneys, and all persons in active concert or participation therewith are hereby permanently restrained and enjoined from:

- a. manufacturing or causing to be manufactured, importing, advertising, or promoting, distributing, selling or offering to sell counterfeit and infringing goods bearing and/or using Plaintiff's trademark, or any confusingly similar trademark, identified in Paragraph 2 of the Complaint (the "Plaintiff's Mark");
- b. using Plaintiff's Mark in connection with the sale of any unauthorized goods;
- c. using any logo, and/or layout which may be calculated to falsely advertise the services or products of the Defaulting Defendant as being sponsored by, authorized by, endorsed by, or in any way associated with Plaintiff;
- d. falsely representing themselves as being connected with Plaintiff, through sponsorship or association;
- e. engaging in any act which is likely to falsely cause members of the trade and/or of the purchasing public to believe any goods or services of the Defaulting Defendant are in any way endorsed by, approved by, and/or associated with Plaintiff;

- f. using any reproduction, counterfeit, copy, or colorable imitation of Plaintiff's Mark in connection with the publicity, promotion, sale, or advertising of any goods sold by Defendants;
- g. affixing, applying, annexing or using in connection with the sale of any goods, a false description or representation, including words or other symbols tending to falsely describe or represent goods offered for sale or sold by the Defaulting Defendant as being those of Plaintiff or in any way endorsed by Plaintiff;
- h. otherwise unfairly competing with Plaintiff in connection with Plaintiff's Mark;
- i. using Plaintiff's Mark or any confusingly similar trademark, on e-commerce marketplaces, metatags or other markers within website source code, from use on any webpage (including as the title of any web page), from any advertising links to other websites, from search engines' databases or cache memory, and from any other form of use of such terms which are visible to a computer user or serves to direct computer searches to Internet based e-commerce stores, seller identities or domain names registered by, owned, or operated by Defendants; and
- j. effecting assignments or transfers, forming new entities or associations or utilizing any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth above.

**2. Additional Equitable Relief:**

Upon the Plaintiff's request, the Internet marketplace website operators and/or administrators for the Internet based e-commerce stores operating under the seller identification names identified on Schedule "A" hereto (the "Seller IDs"), including but not limited to AliExpress, Alipay, Dhgate, Dhpay, Joom, Wish, Wishpay, Walmart, Amazon, Amazon Pay, eBay, Etsy, and/or Taobao, shall permanently remove any and all listings and associated images of goods bearing counterfeits and/or infringements of Plaintiff's Marks via the e-commerce stores operating under the Seller IDs, and any other listings and images of goods bearing counterfeits and/or infringements of Plaintiff's Mark associated with the same sellers or linked to any other alias seller identification names or e-commerce stores being used and/or controlled by the Defaulting Defendant to promote, offer for sale and/or sell goods bearing counterfeits and/or infringements of Plaintiff's Mark.

**3. Statutory Damages in Favor of Plaintiff Pursuant to 15 U.S.C. 1117(c):**

Award the Plaintiff damages of \$15,000.00 against the Defaulting Defendant, for which let execution issue, based upon the Court's finding that the Defaulting Defendant infringed Plaintiff's Mark on one type of good. The Court considered both the willfulness of the Defaulting Defendant's conduct and the deterrent value of the award imposed, and the awarded amount falls within the permissible statutory range under 15 U.S.C. § 1117(c).

4. **Disposition of Retained Funds**

All funds currently restrained or held on account for the Defaulting Defendant by all financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to Walmart and their related companies and affiliates are to be immediately (within five (5) business days), transferred by the previously referred to financial institution, payment processors, banks, escrow services, money transmitters, or marketplace platforms and by the Defaulting Defendant, to the Plaintiff and/or the Plaintiff's counsel in partial satisfaction of the monetary judgment entered herein against the Defaulting Defendant. All financial institutions, payment processors, banks, escrow services, money transmitters, or marketplace platforms, including but not limited to Walmart, and their related companies and affiliates, shall provide to the Plaintiff at the time the funds are released, a breakdown reflecting the (i) total funds restrained in this matter for the Defaulting Defendant; (ii) the total chargebacks, refunds, and/or transaction reversals deducted from the Defaulting Defendant's funds restrained prior to release; and (iii) the total funds released for Defaulting Defendant to Plaintiff.

5. **Interest**

Interest from the date this action was filed shall accrue at the legal rate pursuant to 28 U.S.C. § 1961.

6. **Bond**

The Clerk is DIRECTED to RELEASE to Plaintiff the bond posted in this case in the amount of \$5,000.00.

7. **Jurisdiction**

The Court retains jurisdiction to enforce this Judgment and permanent injunction.

8. **Closure of Case**

The Clerk is DIRECTED to CLOSE this case and DENY all pending motions as MOOT.

DONE AND ORDERED in Miami, Florida this \_\_\_\_ day of \_\_\_\_\_, 2025.

HONORABLE ROY K. ALTMAN  
UNITED STATES DISTRICT JUDGE