

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HONG KONG YU'EN E-COMMERCE CO.
LIMITED,

Plaintiff,

v.

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

Defendants.

Case No. 1:24-cv-12483-EEB-MDW

**Honorable Judge Elaine E. Bucklo
Magistrate M. David Weisman**

HEARING DATE: July 9, 2025
HEARING TIME: 9:45 AM CST

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR ENTRY
OF DEFAULT AND DEFAULT JUDGMENT AGAINST DEFENDANT NO. 12**

Plaintiff Hong Kong Yu'En E-Commerce Co. Ltd. ("Plaintiff") hereby submits this Memorandum of Law in support of its Motion for Entry of Default and Default Judgment (the "Motion") pursuant to Federal Rule of Civil Procedure 55 ("Rule 55") against Defendant No. 12 L-Peng JEGULV Storefront (the "Defaulting Defendant" or "Defendant"). Plaintiff's Motion is made and based upon this Memorandum of Law, the William Brees Declaration ("Brees Declaration"), 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 and Default Judgment disposes of the case.

I. INTRODUCTION

Plaintiff's request for entry of default is straightforward, the Court authorized electronic service of process on the Defendants via email along with issuing a Temporary Restraining Order (the "TRO") in this matter on December 26, 2024 [Dkt. No. 23]. Plaintiff effectuated service on Defendants and filed a Return of Service on January 6, 2025 [Dkt. No. 29]. As set forth in the

docket entry for the Return of Service, a response to Plaintiff's operative Complaint was due on or before January 27, 2025.

Pursuant to Federal Rule of Civil Procedure 12(a)(1)(A) ("Rule 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 one hundred fifty-four (154) days have expired since electronic service was effectuated on the Defendant. (Brees Decl. ¶ 4.) To date, the Defaulting Defendant has not answered or otherwise responded to Plaintiff's Complaint. (*Id.*) Accordingly, the Clerk of the Court is compelled to enter default pursuant to Rule 55(a) against the Defaulting Defendant.

Pursuant to Rule 55(b)(2), Plaintiff now also respectfully moves this Court for entry of a default judgment finding the Defaulting Defendant liable on all counts asserted in Plaintiff's First Amended Complaint. [Dkt. No. 27]. These asserted counts include claims for Trademark Infringement and Counterfeiting (Count I), and Unfair Competition (Count II), False Designation of Origin (Count III), and violation of the Illinois Uniform Deceptive Trade Practices Act (the "Uniform Deceptive Trade Practices Act") (Count IV).

In connection with its asserted claims for relief, Plaintiff seeks an award of statutory damages pursuant to 15 U.S.C. § 1117(c) against the Defaulting Defendant, which should be enhanced, for their willful infringement of the MODLILY Trademark, as shown in United States Registration Certificate, 5,994,759 (the "Brand Trademark"). Plaintiff additionally requests the Court issue a permanent injunction against the Defaulting Defendant. *See* 15 U.S.C. § 1116(d). Alternatively, Plaintiff requests issuance of a permanent injunction based on the Defaulting Defendant's willful violation of the Uniform Deceptive Trade Practices Act.

As alleged in the Complaint, the Defaulting Defendant has offered for sale and/or sold

products, including clothing and other merchandise, through the unauthorized use of the Brand Trademark (the “Counterfeit Products”) on the Amazon.com online sales platform (the “Platform”) to market and sell counterfeit products resembling Plaintiff’s authentic MODLILY brand products, thereby deceiving public consumers as to the quality, nature, and source of goods being purchased. [Dkt. No. 7-1 at ¶ 4]. Moreover, the Defaulting Defendant is alleged to be operating as part of a coordinated, sophisticated counterfeit product network that utilizes a common supply chain and manufacturing source to fulfill consumer orders for counterfeit MODLILY brand products. [Dkt. No. 7-1 at ¶¶ 4-5]. These circumstances clearly demonstrate the Defaulting Defendant has willfully and intentionally infringed Plaintiff’s Brand Trademark, thereby supporting the company’s request for enhanced statutory damages.

Procedurally, Rule 55(b)(2) provides for a court-ordered default judgment which establishes, as a matter of law, that defendants are liable to plaintiff on each cause of action alleged in the complaint. *United States v. Di Mucci*, 879 F.2d 1488, 1497 (7th Cir. 1989). When the Court determines that a defendant is in default, the factual allegations of the complaint are taken as true and may not be challenged, and the defendants are liable as a matter of law as to each cause of action alleged in the complaint. *Black v. Lane*, 22 F.3d 1395, 1399 (7th Cir. 1994). Plaintiff meets the requirements for entry of the requested default judgment under Rule 55(b)(2).

II. ARGUMENT

A. Jurisdiction And Venue Are Proper in This Court

This Court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the Lanham Act, 15 U.S.C. § 1051, et seq., 28 U.S.C. § 1338(a)-(b) and 28 U.S.C. § 1331. [Dkt. No. 27] Venue is proper in this Court pursuant to 28 U.S.C. § 1391, and this Court may properly exercise personal jurisdiction over Defendant since the Defendant directly target business activities toward consumers in Illinois and causes harm to Plaintiff’s business

within this judicial district. [*Id.*]; *see also uBID, Inc. v. GoDaddy Grp., Inc.*, 623 F.3d 421, 423-24 (7th Cir. 2010) (without benefit of an evidentiary hearing, plaintiff bears only the burden of making a *prima facie* case for personal jurisdiction; all of plaintiff's asserted facts should be accepted as true and any factual determinations should be resolved in its favor).

In addition to the foregoing, the Court has determined that it can properly exercise specific personal jurisdiction over the Defendant, in issuing the TRO on December 26, 2024 [Dkt. No. 23]. Moreover, the Court additionally issued a Preliminary Injunction on January 22, 2025, further solidifying this determination. [Dkt. No. 35]. 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). Plaintiff clearly meets these requirements.

On January 3, 2025, Plaintiff filed its First Amended Complaint in this action alleging, among other claims, Trademark Infringement and Counterfeiting (Count I), and Unfair Competition (Count II), False Designation of Origin (Count III), and violation of the Illinois Uniform Deceptive Trade Practices Act (the “Uniform Deceptive Trade Practices Act”) (Count IV) as asserted in the company’s Complaint. [Dkt. No. 27]. Defendant, which was properly served with the Complaint, TRO, all supporting documents via electronic service on January 6, 2025 [Dkt. No. 29]. Specifically, the Defaulting Defendant was required to answer or otherwise respond to the Complaint on or before January 27, 2025. [*Id.*] As such, the Defaulting Defendant had twenty-one (21) days to answer or otherwise respond to Plaintiff’s complaint pursuant to Rule 12(a)(1)(A).

As of the filing of this Motion, approximately one hundred fifty-four (154) days have expired since electronic service was effectuated on the Defendant, that is the subject of Plaintiff's Motion. (Brees Decl. ¶ 4.) To date, the Defaulting Defendant has not answered or otherwise responded to Plaintiff's Complaint. (*Id.*) Accordingly, the Clerk of the Court is compelled to enter default and default judgment pursuant to Rule 55 against the Defaulting Defendant.

C. 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 failure to appear, answer, and/or defend allegations asserted against them. Fed.R.Civ.P. 55(b)(2). A default judgment establishes, as a matter of law, that named, unresponsive, defendants are liable on each cause of action alleged against them in the complaint. *Di Mucci*, 879 F.2d at 1497. When a court determines that a defendant is in default, the factual allegations of the complaint are taken as true and may not be challenged, and the defendants are liable as a matter of law as to each cause of action alleged in the complaint upon entry of default judgment. *Black*, 22 F.3d at 1399.

More than twenty-one (21) days have passed since Defendant were served, and no answer or other responsive pleading has been filed by the Defaulting Defendant. *See* Fed. R. Civ. P. 12(a)(1)(A). 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 and Counterfeiting, Unfair Competition, False Designation of Origin, and violation of the Uniform Deceptive Trade Practice Act as asserted in the First Amended Complaint. [Dkt. No. 27 at 31-67.]

As argued below, Plaintiff is entitled to the following remedies through the issuance of a default judgment against the Defaulting Defendant: (1) an award of statutory damages pursuant to 15 U.S.C. § 1117(c)(1); (2) an award of enhanced statutory damages for willful infringement

pursuant to 15 U.S.C. § 1117(c)(2); (3) entry of a permanent injunction pursuant to 15 U.S.C. § 1116(d); and (4) alternatively, entry of a permanent injunction pursuant to 815 ILCS § 510/3.

D. Plaintiff is Entitled to the Relief Requested.

Through entry of default, Plaintiff has established that the Defaulting Defendant: (1) is liable for intentionally and willfully infringing the Brand Trademark; and (2) liable for Unfair Competition, (3) liable for False Designation of Origin, and (4) has willfully violated the Uniform Deceptive Trade Practices Act. As such, the only the following issues remain to be adjudicated through the Motion: (1) Plaintiff's entitlement to an award of statutory damages for infringement of the Brand Trademark; (2) the company's request that any statutory damage award be enhanced based on the Defaulting Defendant' willful trademark infringement; and (3) the company's right to issuance of a permanent injunction against the Defaulting Defendant. Plaintiff asserts that it is entitled to all relief requested through its Motion.

1. *Plaintiff is entitled to statutory damages under 15 U.S.C. § 1117(c).*

Turning first to the request for an award of statutory damages under 15 U.S.C. § 1117(c) against the Defaulting Defendant. Plaintiff is entitled to such relief for the Defaulting Defendant's infringement of the company's Brand Trademark, which it maintains was done willfully and intentionally. [Dkt. No. 7-1 at ¶ 21]

Pursuant to the statutory damages provision of the Lanham Act, 15 U.S.C. § 1117(c), 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). When the counterfeiting is found to be willful, 15 U.S.C. § 1117(c)(2) provides for 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). “[S]tatutory damages have been held to be appropriate on a motion for default judgment because the defaulting party has the information needed to prove actual damages.” *White v. Marshall*, 771 F.Supp.2d 952, 956 (E.D. Wis. 2011); *see also Wondie v. Mekuria*, 742 F.Supp.2d 118, 124-25 (D.D.C. 2010); *Lifted Research Grp., Inc. v. Behdad, Inc.*, 591 F.Supp.2d 3, 8 (D.D.C. 2008).

Although 15 U.S.C. § 1117(c) contains the dollar range for possible statutory damage awards, the only guidance provided by the statute for how to determine a damage award within the statutory dollar range is “as the court considers just.” 15 U.S.C. § 1117(c). Courts interpreting 15 U.S.C. § 1117(c) have analogized case law applying the statutory damage provision of the Copyright Act contained in 17 U.S.C. § 504(c). *See Lorillard Tobacco Co.*, 2004 U.S. Dist. LEXIS 22563, *10; *Sara Lee v. Bags of New York, Inc.*, 36 F. Supp. 2d 161, 166 (S.D.N.Y. 1999). In *Sara Lee*, 36 F. Supp. 2d at 170, the court awarded statutory damages in the amount of \$750,000 after estimating the defendants' ill-gotten gains and trebling them to "deter and punish a willful continuous course of infringements and defiance of the judicial process." The *Sara Lee* analysis included seven factors: (1) the profits made by the defendants; (2) the revenues lost by plaintiff; (3) the value of the mark; (4) the deterrent effect on others; (5) whether the conduct was innocent or willful; (6) whether a defendant has cooperated in providing records; and (7) the deterrent effect on the defendant.

First, the Defaulting Defendant were provided with notice of these proceedings and, apparently, intentionally elected not to appear and defend. (Brees Decl. ¶ 7). As a result of the Defaulting Defendant's intentional decision not to appear and defend this action, Plaintiff has been deprived of a meaningful opportunity to assess the true nature of its actual damages. (*Id.*).

In addition, Plaintiff has also expended considerable capital in securing registration of the Brand Trademark and advertising its brand in the United States and in the State of Illinois. [Dkt. 32-3 ¶ 6.) This includes spending approximately \$8,000,000 to \$12,000,000 annually to advertise and promote its Modlily brand in the United States. (*Id.*)

Lastly, a significant consideration should be whether infringing sales were made over the Internet, the rationale being that sales over the Internet increase the amount of an award because use of the Internet made the infringement widely available. The lack of information regarding Defaulting Defendant's sales and profits makes statutory damages particularly appropriate for default cases like the instant case. *See Petmed Express, Inc. v. medpets.com, Inc.*, 336 F. Supp. 2d 1213, 1220 (S.D. Fla. 2004). 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, *11 (N.D. Ill. Apr. 17, 2008).)

2. Plaintiff is entitled to enhanced statutory damages.

Next, the circumstances of the Defaulting Defendant's infringement clearly support awarding an enhanced statutory damage award of, at least, treble damages against them. Simply put, the Defaulting Defendant's infringing conduct in this action is unquestionably willful, thereby justifying enhanced damages under 15 U.S.C. § 1117(e).

It is without question that the Defaulting Defendant have engaged in the intentional misappropriation and unauthorized use of the Brand Trademark. (Brees Decl. ¶¶ 8, 10-11.) "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. Moreover, the Defaulting Defendant has clearly been operating its online stores using the misappropriated Brand Trademark through a sophisticated counterfeit network utilizing a highly developed supply chain capable of supplying thousands of knockoff products featuring an array of Plaintiff's textile patterns and designs that could not otherwise be accomplished on an individual basis. (Brees Decl. ¶¶ 8, 10-11.)

Finally, District Courts have deemed counterfeiting willful when defendants default. *See Estee Lauder Cosmetics Ltd. & Make-up Art Cosmetics Inc. v. Ali-Beauties Store Store, et al.*, No. 1:19-cv-04579 (N.D. Ill. Sept. 12, 2019) (unpublished) (Dkt. No. 49); *Bose Corp. v. Amilineinc, et al.*, No. 1:19-cv-05347 (N.D. Ill. Oct. 9, 2019) (unpublished) (Dkt No. 44); *Eye Safety Systems, Inc. v. ICN7085, et al.*, No. 1:19-cv-06005 (N.D. Ill. Nov. 19, 2019) (unpublished) (Dkt No. 49); *Levi Strauss & Co. v. Acinth Girl Hy Store, et al.*, No. 1:19-cv-06200 (N.D. Ill. Nov. 19, 2019) (unpublished) (Dkt. No. 48).

In similar cases involving willful Internet-based counterfeiting, Courts in this district have awarded significant damages, including up to the maximum provided by law, to the plaintiff to serve the purposes of: (1) deterring the defendant and others situated like him from bringing into commerce counterfeit goods, (2) compensating the plaintiff for damages caused by defendant's infringement, and (3) punishing the defendant appropriately for his counterfeiting activities. *See, e.g., Burberry Limited, et al. v. The Partnerships And Unincorporated Associations Identified On Schedule "A"*, No. 1:14-cv-04824 (N.D. Ill. Sep. 25, 2014) (unpublished) (Docket No. 38) (awarding \$2,000,000 in statutory damages per defendant); *Calvin Klein Trademark Trust et al. v. Chen Xiao Dong, et al.*, No. 15-cv-2224 (N.D. Ill. May 12, 2015) (unpublished) (Docket No. 45) (awarding \$2,000,000 in statutory damages per defendant.)

Courts in this district have also considered the significant value of a plaintiff's brand and the efforts taken to protect, promote and enhance that brand in determining the appropriate dollar figure for the award. *Lorillard Tobacco Co.*, 2004 U.S. Dist. LEXIS 22563, *16. Given the Court's clear discretion in determining the appropriate amount of the statutory damages award within the statutory limits of 15 U.S.C. § 1117(c), Plaintiff respectfully request the Court's entry of an award of one hundred thousand dollars (\$100,000).

Additionally, the remedy imposed under the statute must provide a sufficient deterrent effect to ensure that the guilty party will not engage in further infringing conduct. *Sands, Taylor & Wood v. Quaker Oats Co.*, 34 F.3d 1340, 1348 (7th Cir. 1994). For example, in *Phillip Morris USA Inc. v. Marlboro Express*, the Court stated that due to "the size of the potential profit given the quantities of [counterfeit goods] involved, and the need for a substantial deterrent to future misconduct by defendants and other counterfeit traffickers ... plaintiff is entitled to the maximum statutory award under 15 U.S.C. § 1117(c)(2)." 2005 U.S. Dist. LEXIS 40359, *28 (E.D.N.Y. Aug. 26, 2005).

Finally, in determining an appropriate damage award, this Court should be guided by the *Lorillard* case and consider the "significant value of [the Plaintiff] brand and the efforts taken to protect, promote and enhance that brand." *Lorillard Tobacco Co.*, 2004 U.S. Dist. LEXIS 22563, *16. Thus, Plaintiff's request for statutory damages award of one hundred thousand dollars (\$100,000) should be given favorable consideration in view of Plaintiff's effort to protect, promote and enhance the Modlily brand.

3. *Plaintiff is entitled to a permanent injunction.*

Next, Plaintiff is entitled to entry of a permanent injunction against the Defaulting Defendant. This request is justified under either 15 U.S.C. § 1116 or, alternatively, under the

Uniform Deceptive Practices Act pursuant to 815 ILCS § 510/3.

First, the Court has already determined that Plaintiff is entitled to preliminary injunctive relief in this action, which includes issuance against the Defaulting Defendant. [Dkt. No. 35.] Nothing has occurred since entry of the preliminary injunction that would alter or prohibit entry of a permanent injunction against the non-appearing Defaulting Defendant. In short, the compelling fact presented to the Court that justified entry of preliminary injunctive relief stand unchallenged by the Defaulting Defendant. As such, Plaintiff's right to permanent injunctive relief under 15 U.S.C. § 1116 or, alternatively, under the Uniform Deceptive Practices Act pursuant to 815 ILCS § 510/3, is uncontested and supported by the substantial evidentiary record previously provided to the Court when preliminary injunctive relief was issued. Accordingly, Plaintiff is entitled to issuance of permanent injunctive relief against the Defaulting Defendant.

III. CONCLUSION

Based on the foregoing, Plaintiff respectfully request entry of default and default judgment against the Defaulting Defendant pursuant to Rule 55. In granting its request, Plaintiff asks the Court to award the following: (1) statutory damages of \$100,000.00 per Defaulting Defendant per infringed Trademark based on their willful infringement pursuant to 15 U.S.C. § 1117(c); (2) issuance of a permanent injunction against the Defaulting Defendant pursuant to 15 U.S.C. § 1116 or, alternatively, under the Uniform Deceptive Practices Act pursuant to 815 ILCS § 510/3; and (3) such other relief as the Court deems just and proper.

DATED: July 1, 2025

Respectfully submitted,

By: /s/ Joseph W. Droter

Joseph W. Droter (IL Bar No. 6329630)

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of July 2025, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Illinois, Eastern Division, using the electronic case filing system. Notice of this filing is provided to unrepresented parties for whom contact information is listed below and has been 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, Amazon.

By: /s/ Joseph W. Droter
JOSEPH W. DROTER (IL BAR NO. 6329630)

NO.	SELLER'S NAME	SELLER'S CONTACT
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