

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

ZIGGY ZIG DESIGNS, LLC,

PLAINTIFF,

v.

THE PARTNERSHIPS AND UNINCORPORATED  
ASSOCIATIONS IDENTIFIED ON SCHEDULE A,

DEFENDANTS.

CASE NO.: 1:24-cv-00908

JUDGE ANDREA R. WOOD

MAGISTRATE JUDGE MARIA VALDEZ

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

Plaintiff, Ziggy Zig Designs, LLC, (“ZZD” or “Plaintiff”) submits the following memorandum in support of its Motion for Entry of Default and Default Judgment under Fed. R. Civ. P. 55 against the Defendants identified on Schedule A (collectively, the “Defaulting Defendants”), based on Plaintiff’s action for Copyright Infringement (Count I).

This action was filed to combat online copyright infringers who trade upon Plaintiff’s valuable copyrights (herein, the “Gas Can Ornament Copyrights”) by selling and/or offering for sale unauthorized and/or counterfeit products derived therefrom (the “Infringing Products”). ZZD filed this action on February 1, 2024, alleging federal copyright infringement, and seeks statutory damages and injunctive relief. Docket Entry [7]. On March 27, 2024, this Court granted ZZD’s *Ex Parte* Motion for Entry of a Temporary Restraining Order (“TRO”) [23], and subsequently converted the TRO into a Preliminary Injunction on September 6, 2024. [111].

Pursuant to Federal Rule of Civil Procedure 55(a) and (b)(2), ZZD now moves this Court for an Order entering default and default judgment finding that Defaulting Defendants are liable

on all counts of ZZD's Complaint. Fed. R. Civ. P. 55(a) and (b)(2). ZZD further seeks an award of statutory damages against each of the Defaulting Defendants as authorized by 17 U.S.C. § 504(c)(2) for willful copyright infringement of the Gas Can Ornament Copyrights. ZZD also seeks entry of a permanent injunction prohibiting Defaulting Defendants from selling unauthorized authentic Gas Can Ornament products (the "Gas Can Ornament Products"), using the Gas Can Ornament Copyrights without authorization, and reproducing, distributing copies of, making derivative works of, or publicly displaying the Gas Can Ornament Copyrights, and an Order that all assets in Defaulting Defendants' financial accounts, including those operated by e-commerce platforms and payment processors such as AliExpress, Alibaba, Amazon, DHGate, eBay, Fruugo, Joybuy, Shein, Shopify, Temu, Walmart, Wish, PayPal, Payoneer, Stripe, and Alipay (collectively referred to herein as "Third-Party Providers"), as well as any newly discovered assets, be transferred to the Plaintiff in partial satisfaction of the damages award.

## **ARGUMENT**

### **I. 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 Federal Copyright Act, 17 U.S.C. § 101, *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. The Defaulting Defendants targeted sales from Illinois residents by operating websites and/or online marketplace accounts ("Defendant Internet Stores" or Seller Aliases") that offer shipping to the United States, including Illinois; and, on information and belief, have sold counterfeit and/or infringing products to residents within the United States, including Illinois. [7] at ¶ 21. As such, personal jurisdiction is proper as Defaulting Defendants are committing tortious acts, engaging in interstate commerce, and wrongfully causing Plaintiff substantial injury in the State of Illinois. *Polyblank Designs Limited v. The Partnerships and Unincorporated Associations Identified on Schedule "A"*, Case

No. 18-cv-5846 (N.D. Ill. Dec. 12, 2018). *See* Complaint, [7], at ¶¶ 1-3; *uBID, Inc. v. GoDaddy Grp., Inc.*, 623 F.3d 421, 423-24 (7<sup>th</sup> 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).

## II. PLAINTIFF HAS MET THE REQUIREMENTS FOR ENTRY OF DEFAULT

Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, “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). On February 1, 2024, ZZD filed its Complaint. The Defendants were properly served on April 19, 2024. [30]. While four of the Defaulting Defendants purported to file Answers, none of those filings raise any substantive defenses to the Complaint nor do they follow the proper format for an Answer under the Federal Rules of Civil Procedure.<sup>1</sup> [32], [34], [35], [38]. Fed. R. Civ. P. 8(b). As such, Plaintiff requests that the Court strike those filings and allow Plaintiff to proceed with entry of default and move for default judgment against those defendants. Despite having been properly served with process, the remaining Defaulting Defendants have ignored these proceedings and failed to plead or otherwise defend this action. *Id.* Upon information and belief, the Defaulting Defendants are not active-duty members of the U.S. armed forces. *Id.* at ¶ 3. As twenty-one (21) days have passed since Defaulting Defendants were served the time for answering or otherwise responding to the Complaint has expired. *See* Fed. R. Civ. P. 12(a)(1)(A). Accordingly, Plaintiff asks for entry of default against the Defaulting Defendants, which is appropriate, and consistent with previous similar cases in front of this Court.

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<sup>1</sup> The purported Answers were filed by Defendants bitimaoyi, Zuskyzu, Zhinuo, and Artisan-heart.

Rule 55(b)(2) of the Federal Rules of Civil Procedure provides for a court-ordered default judgment. A default judgment 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).

#### **A. Copyright Infringement**

Plaintiff, at all relevant times, has been the holder of the pertinent exclusive rights infringed by Defaulting Defendants, as alleged in the Complaint, including but not limited to the Gas Can Ornament Copyrights, including derivative works. [7] at ¶ 35. The Gas Can Ornament Copyrights are the subject of valid copyright registrations. *Id.* at ¶ 34. Defaulting Defendants had access to the Gas Can Ornament Copyrights through Plaintiff's normal business activities. *Id.* at ¶ 37. After accessing Plaintiff's work, Defaulting Defendants wrongfully created counterfeit and infringing copies of the Gas Can Ornament Copyrights without Plaintiff's consent and engaged in acts of widespread infringement. *Id.* Defaulting Defendants further infringed ZZD's Gas Can Ornament Copyrights by making, distributing, and/or causing to be made, derivative works, and by producing and distributing unauthorized reproductions without ZZD's permission. *Id.* at ¶ 38. Each Defaulting Defendant, without the permission or consent of the Plaintiff, sold products which infringe upon Plaintiff's Copyrights. *Id.* at ¶ 39. Each Defaulting Defendant has violated Plaintiff's exclusive rights of reproduction and distribution. *Id.* The actions of the Defaulting Defendants constitute an infringement of Plaintiff's rights protected under the Copyright Act (17 U.S.C. §101 *et seq.*). *Id.*

### **III. PLAINTIFF IS ENTITLED TO MONETARY DAMAGES AND INJUNCTIVE RELIEF**

The award of statutory damages serves dual interests, in that it is remedial in nature, but also intended to protect an important public interest. Given the broader economic losses and harm to the job market caused by counterfeiting, coupled with the possible dangers to consumers who are intentionally misled into purchasing low quality, counterfeit products, over the Internet, the present circumstances warrant the award of statutory damages to both penalize Defaulting Defendants, as well as to deter future violations.

#### **A. Statutory Damages are Appropriate in this Case**

Section 504(a) of the Copyright Act provides that “an infringer of copyright is liable for . . . (2) statutory damages, as provided by subsection (c),” 17 U.S.C. § 504(a)(2). For unintentional infringement, 17 U.S.C. § 504(c) provides that “the copyright owner may . . . recover . . . an award of statutory damages for all infringements involved in the action, with respect to any one work . . . a sum of not less than \$750 or more than \$30,000 as the court considers just.” 17 U.S.C. § 504(c)(1). This is not unintentional infringement, however, and pursuant to 17 U.S.C. § 504(c)(2), the Court, upon a finding of willful infringement, may “increase the award of statutory damages to a sum of not more than \$150,000.” 17 U.S.C. § 504(c)(2). Here, the Defendants’ infringement was committed willfully. [7] at ¶¶ 30-31. Therefore, a statutory damages award of \$100,000 is appropriate and reasonable.

The Office of the U. S. Trade Representative issued findings which recognize in copyright law that reduced damages may be warranted to avoid impeding new creative works, *e.g.*, remixes – works created through changing and combining existing works to produce something new and creative – as part of a trend of user generated content.<sup>2</sup> *Id.* at 98. However, in cases of willful

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<sup>2</sup> The Office of the U. S. Trade Representative, Special 301, *Out-of-Cycle Review of Notorious Markets for 2015* (December 2015).

infringement, such as before this Court, the same report finds that high statutory damages are warranted since “[t]hese circumstances present the clearest need for deterrence and punishment.” *Id.* at 99. Moreover, regarding straight-out counterfeiting where impeding creativity is not a concern, the findings highlighted disturbing trends in the marketing and distribution of counterfeit goods online, with escalating levels of counterfeit sales online, including an increase in the services that support such operations. *Id.* With an estimated 15% increase in online sales of counterfeit goods last year, the economic toll of counterfeiting on governments, businesses, and consumers is disturbing.

In recent years, counterfeiters evolved from a traditional brick-and-mortar distribution model to direct consumer sales through the Internet. As such, counterfeiters can reach a much wider audience with little additional investment. Due to this reach, Courts have regularly imposed steeper penalties on those who sold counterfeit merchandise online compared to brick-and-mortar counterparts.<sup>3</sup> Accordingly, a significant consideration should be whether infringing sales were made over the Internet, with the rationale being that sales over the Internet increase the amount of an award because use of the Internet made the infringement widely available.

Additionally, the lack of information regarding Defaulting Defendants’ 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.*, 2008 U.S. Dist. LEXIS 31761, at \*11.

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<sup>3</sup> *See generally* INT’L TRADEMARK ASS’N, *Addressing the Sale of Counterfeits on the Internet* (2017), available at [https://www.inta.org/Advocacy/Documents/2018/Addressing\\_the\\_Sale\\_of\\_Counterfeits\\_on\\_the\\_Internet\\_021518.pdf](https://www.inta.org/Advocacy/Documents/2018/Addressing_the_Sale_of_Counterfeits_on_the_Internet_021518.pdf) (explaining international impact of Internet on counterfeit industry).

**B. Defaulting Defendants' Counterfeiting Was Willful**

As alleged in Plaintiff's Complaint, Defaulting Defendants facilitate sales by designing the Defendant Internet Stores so that they appear to unknowing consumers to be authorized online retailers, outlet stores, or wholesalers selling genuine Gas Can Ornament Products. [7] at ¶ 23. In doing so, Defaulting Defendants' counterfeiting was willful. "Willful infringement may be attributed 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.*, 2004 U.S. Dist. LEXIS 22563, at \*19-20. As such, knowledge need not be proven directly but can be inferred from a defendant's conduct. *Id.* In the instant case, Defaulting Defendants clearly had knowledge that their activities constituted infringement or at least a reckless disregard for ZZD's rights in its Gas Can Ornament Copyrights, especially given ZZD's extensive promotional efforts discussed in the Complaint. [7] at ¶¶ 15-19. Defendants also took great pains to hide their identities in an attempt to avoid being held accountable for their counterfeiting activities. Finally, this Court has deemed counterfeiting conduct to be willful when defendants default. *See Wham-O Holding, Ltd.*, No. 18-cv-05878 (N.D. Ill. Nov. 15, 2018); *Polyblank Designs*, No. 18-cv-5846 (N.D. Ill. Dec. 12, 2018).

**C. A High Statutory Damages Award is Appropriate and Just**

The Seventh Circuit's standard for awarding statutory damages for copyright infringement under 17 U.S.C § 504(c) is articulated in *Chi-Boy Music v. Charlie Club*, 930 F.2d 1224, 1229 (7th Cir. 1991). Under the *Chi-Boy* standard, a court awarding statutory damages is "not required to follow any rigid formula," but instead "enjoys wide discretion." *Id.* In computing the award amount, a 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.* 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.

Moreover, while Section 504(c) dictates the boundaries for statutory damages awards, it does not provide guidance on what factors a court should consider when determining an award within those boundaries. Along with the *Chi-Boy* standard, courts primarily consider the following factors when formulating a statutory damages award: (1) the plaintiff's difficulty (or impossibility) in proving their actual damages; (2) the circumstances of the counterfeit activity; (3) deterrence of both defendant and other similarly situated sellers; (4) expenses saved and the profits reaped by the defendant from selling illegitimate products; (5) the revenues lost by plaintiff due to defendant's counterfeiting; (6) the value of plaintiff's copyright; (7) the willfulness of the defendant's conduct; (8) the defendant's cooperation in court proceedings, including whether or not the defendant appears; (9) whether the counterfeiting activity took place online; and, (10) whether there are repeated violations of copyright laws by the defendant.

In addition, courts have awarded high damage amounts where a defendant's counterfeiting activities attracted wide market exposure through Internet traffic or advertisement. See *Coach, Inc. v. Ocean Point Gifts*, 2010 U.S. Dist. LEXIS 59003, \*15-16 (D.N.J. Jun. 14, 2010) (high damage awards in counterfeit cases were "due in part to the wide market exposure that the Internet can provide"); *Burberry Ltd. v. Designers Imports, Inc.*, 2010 U.S. Dist. LEXIS 3605, \*28-29 (S.D.N.Y. Jan. 19, 2010) (damages amount based, in part, on "Defendant's ability to reach a vast customer base through internet advertising.").

Furthermore, 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, at \*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 Gas Can Ornament] brand and the efforts taken to protect, promote and enhance that brand.” *Lorillard Tobacco Co.*, 2004 U.S. Dist. LEXIS 22563, at \*16. The copyrighted works of ZZD were produced and created at a considerable expense, and ZZD has expended significant resources and time promoting and marketing the Gas Can Ornament Products, which feature the Gas Can Ornament Copyrights. [7] at ¶¶ 15-19.

In similar cases involving willful copyright infringement, courts have awarded significant damages, including up to the maximum provided by law. See *Monster Energy Company v. Chen Wensheng, et al.*; No. 1:15-cv-4166 (N.D. Ill. Jul. 27, 2015) (unpublished) (Docket No. [85]) (awarding \$50,000 in statutory damages per defendant for willful copyright infringement); *Monster Energy Company v. Xianda Lin, et al.*; No. 1:16-cv-0622 (N.D. Ill. Mar. 14, 2016) (unpublished) (Docket No. [51]) (awarding \$150,000 in statutory damages per defendant for willful copyright infringement). Thus, ZZD’s request for a statutory damages award in the amount of one hundred thousand dollars (\$100,000) per Defaulting Defendant for willful copyright infringement of the Gas Can Ornament Copyrights is appropriate.

#### **D. Plaintiff is Entitled to Permanent Injunctive Relief**

In addition to the foregoing relief requested, Plaintiff respectfully requests entry of a permanent injunction enjoining Defaulting Defendants from infringing or otherwise violating ZZD’s registered intellectual property rights in and to the Gas Can Ornament Copyrights, including at least all injunctive relief previously awarded by this Court to ZZD in the TRO and Preliminary Injunction. Injunctive relief should also be granted so that the Plaintiff may quickly

take action against any new websites and online marketplace accounts that are identified, found to be linked to Defaulting Defendants, and which are selling unauthorized Gas Can Ornament Products.

#### IV. CONCLUSION

ZZD respectfully requests that the Court: enter default and grant default judgment against each Defaulting Defendant; award statutory damages in the amount of one hundred thousand dollars (\$100,000) per Defaulting Defendant for willful copyright infringement, pursuant to 17 U.S.C. § 504(c); enter a permanent injunction order, prohibiting Defaulting Defendants from selling Counterfeit Products, using the Gas Can Ornament Copyrights without authorization, and reproducing, distributing copies of, making derivative works of, or publicly displaying the Gas Can Ornament Copyrights; and, enter an order directing any Third-Party Providers, third-party online marketplaces, and payment processors in privity with the Defaulting Defendants to transfer all assets in Defaulting Defendants' financial accounts to Plaintiff.

Dated: October 3, 2024

Respectfully submitted,

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