

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

MERCH TRAFFIC, LLC,

PLAINTIFF,

V.

THE PARTNERSHIPS AND UNINCORPORATED  
ASSOCIATIONS IDENTIFIED ON SCHEDULE A,

DEFENDANTS.

CASE No.: 24-cv-01269

JUDGE JOHN F. KNESS

MAGISTRATE JUDGE JEFFREY COLE

**PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS  
MOTION FOR ENTRY OF DEFAULT AND DEFAULT JUDGMENT  
AGAINST THE DEFENDANTS IDENTIFIED ON SCHEDULE A**

Plaintiff, Merch Traffic, LLC, (“Merch Traffic” or “Plaintiff”) submits this memorandum in support of its Motion for Entry of Default and Default Judgment under Fed. R. Civ. P. 55 against the Defendants identified on Amended Schedule A (“Defaulting Defendants”), using at least the online marketplace accounts identified therein (“Defendant Internet Stores”) based on Plaintiff’s action for Trademark Infringement and Counterfeiting (Count I), False Designation of Origin, Passing Off and Unfair Competition (Count II), Violation of Illinois Uniform Deceptive Trade Practices Act (Count III), and Copyright Infringement (Count IV).

Since the debut of the popular rock band, Sublime, products featuring the Sublime Trademarks and Copyrights<sup>1</sup> (hereinafter referred to as the “Sublime Products”) have enjoyed substantial success, fame, and widespread popularity, leading to significant infringement of the Sublime Trademarks (herein, “Sublime Trademarks”) and Copyrights (herein, “Sublime Copyrights”). This action was filed to combat online infringers who sell unauthorized, and/or counterfeit products by linking them to Plaintiff’s trademark and copyrighted materials (the “Counterfeit Products”). Merch Traffic filed this action on February 14, 2024, alleging, among other claims, federal trademark and copyright infringement, and seeks statutory damages and injunctive relief. Docket Entry [7]. On June 11, 2024, this Court granted Merch Traffic’s *Ex Parte* Motion for Entry of a Temporary Restraining Order (“TRO”) [23], and subsequently converted the TRO into a Preliminary Injunction on October 23, 2024. [40].

Pursuant to Federal Rule of Civil Procedure 55(a) and (b)(2), Merch Traffic now moves this Court for an Order entering default and default judgment finding that Defaulting Defendants are liable on all counts of Merch Traffic’s Complaint. [7] Fed. R. Civ. P. 55(a) and (b)(2). Merch Traffic further seeks an award of statutory damages against each of the Defaulting Defendants as

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<sup>1</sup> True and correct copies of Plaintiff’s Trademark and Copyright Registrations were respectively filed as Exhibits 1 and 2 to the Complaint.

authorized by 15 U.S.C. § 1117(c)(2) for willful trademark counterfeiting, and as authorized by 17 U.S.C. § 504(c)(2) for willful infringement of the Sublime Copyrights. Merch Traffic also seeks entry of a permanent injunction prohibiting Defaulting Defendants from selling unauthorized Sublime Products, using the Sublime Trademarks without authorization, and reproducing, distributing copies of, making derivative works of, or publicly displaying the Sublime Copyrights, and an Order that all assets in Defaulting Defendants' financial accounts, including those operated by e-commerce platforms and payment processors (collectively referred to herein as "Third-Party Providers"), as well as any newly discovered assets, be transferred to the Plaintiff. .

## **ARGUMENT**

### **I. JURISDICTION AND VENUE ARE PROPER IN THIS COURT**

This Court has original subject matter jurisdiction in this action pursuant to the provisions of the Lanham Act, 15 U.S.C. § 1051 *et seq.*, the Federal Copyright Act, 17 U.S.C. § 101, *et seq.*, 28 U.S.C. § 1338(a)-(b), and 28 U.S.C. § 1331. This Court has jurisdiction over the state law claims of Illinois pursuant to 28 U.S.C. § 1367(a), because it stems from the same case or controversy and derives from a common nucleus of operative facts, as the federal claims. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, and this Court has personal jurisdiction over Defaulting Defendants, who directly target business activities toward consumers in Illinois and cause harm to Plaintiff's business within this Judicial District. *See* Complaint, [7], at ¶¶ 1-3; *uBID, Inc. v. GoDaddy Grp., Inc.*, 623 F.3d 421, 423-24 (7<sup>th</sup> Cir. 2010).

### **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 14, 2024, Merch Traffic filed its Complaint. [7]. The Defendants were properly

served on July 5, 2024. [30]. Despite having been properly served with process, the Defaulting Defendants have ignored these proceedings and failed to plead or otherwise defend this action. *See* Declaration of Alison Carter (“Carter Declaration”) at ¶ 2. Upon information and belief, the Defaulting Defendants are not active-duty members of the U.S. armed forces. *Id.* at ¶ 3. Twenty-one (21) days have passed since Defaulting Defendants were served, and no answer, or other responsive pleading, has been filed by any Defaulting Defendants identified on Schedule A to the Complaint. *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.

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. Trademark Infringement and Counterfeiting, and Violation of the Illinois Uniform Deceptive Trade Practices Act**

To properly plead a claim of trademark infringement and counterfeiting, pursuant to the Lanham Act, a plaintiff must allege that: (1) its mark is distinctive enough to be worthy of protection; (2) defendants are not authorized to use the mark; and, (3) defendant’s use of the mark causes a likelihood of confusion as to the origin or sponsorship of defendant’s products. *See Neopost Industrie B.V. v. PFE Int’l Inc.*, 403 F. Supp. 2d 669, 684 (N.D. Ill. 2005) (citing *Bliss Salon Day Spa v. Bliss World LLC*, 268 F.3d 494, 496-97 (7th Cir. 2001)). This is the same test

that is used for a false designation of origin claim under the Lanham Act and claims under the Illinois Uniform Deceptive Trade Practices Act. *Johnny Blastoff, Inc. v. Los Angeles Rams Football Co.*, 188 F. 3d 427, 436 (7th Cir. 1999).

Merch Traffic alleged in its Complaint that: (1) the Sublime Trademarks are distinctive; (2) Defaulting Defendants are not authorized to use the Sublime Trademarks; (3) Defaulting Defendants' use of the Sublime Trademarks causes a likelihood of confusion; and, (4) Defaulting Defendants have knowledge of Plaintiff's exclusive rights in and to the Sublime Trademarks. [7] at ¶¶ 5, 36-45. Since the Defaulting Defendants have failed to respond, or otherwise plead in this matter, the Court must accept the allegations contained in Plaintiff's Complaint as true. *See* Fed. R. Civ. P. 8(b)(6); *Am. Taxi Dispatch, Inc., v. Am. Metro Taxi & Limo Co.*, 582 F. Supp. 2d 999, 1004 (N.D. Ill. 2008). Accordingly, Plaintiff respectfully requests entry of judgment with respect to Count I for willful infringement and counterfeiting of the Sublime Trademarks, and willful violation of the Section 43 of the Lanham Act, 15 U.S.C. § 1125, against the Defaulting Defendants.

Defendants have engaged in acts violating Illinois law including, but not limited to: passing off their unauthorized products as those of Plaintiff; causing a likelihood of confusion and/or misunderstanding as to the source of Defaulting Defendants' goods and products; causing a likelihood of confusion and/or misunderstanding as to an affiliation, connection, or association with genuine Sublime Products; representing that Defaulting Defendants' Counterfeit Products have Plaintiff's approval and/or are authorized and authentic Sublime Products, when Defaulting Defendants' Counterfeit Products are not approved, authorized, and/or authentic; and, engaging in other conduct which creates a likelihood of confusion or misunderstanding of source among the public. [7] at ¶¶ 56-58. The foregoing acts of the Defaulting Defendants' constitute a willful violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510, *et seq.*

Accordingly, Plaintiff respectfully requests entry of judgment with respect to Count III for violation of Illinois Uniform Deceptive Trade Practices Act.

**B. False Designation of Origin**

A plaintiff bringing a false designation of origin claim under 15 U.S.C. § 1125(a) must show that: (1) the plaintiff has a protectable trademark; and, (2) a likelihood of confusion will exist as to the origin of Defendant's Products. *See Johnny Blastoff, Inc.*, 188 F. 3d at 436. This is the same test that is used for determining a trademark infringement claim under the Lanham Act. *See Neopost*, 403 F. Supp. 2d at 684.

Plaintiff alleged in its Complaint that Defaulting Defendants are using federally registered Sublime Trademarks, without authorization, on or in connection with Counterfeit Products. [7] at ¶¶ 47-54. Defaulting Defendants' use of Merch Traffic's Sublime Trademarks creates a likelihood of confusion, mistake, and deception among the general public as to the affiliation, connection, or association of the Counterfeit Products with Merch Traffic. *Id.* Furthermore, by using Sublime Trademarks on, or in connection with, the Counterfeit Products, Defaulting Defendants create a false designation of origin and a misleading representation of fact as to the sponsorship of the Counterfeit Products. *Id.* As a result, Plaintiff respectfully requests entry of judgment with respect to Count II, for willful false designation of origin, passing off, and unfair competition against the Defaulting Defendants.

**C. 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 Sublime Copyrights, including derivative works. [7] at ¶¶ 5, 60-69. The Sublime Copyrights are the subject of multiple valid copyright registrations. *Id.* Defaulting Defendants had access to the Sublime Copyrights through Plaintiff's normal business activities. *Id.* at ¶ 63. After accessing Plaintiff's

work, Defaulting Defendants wrongfully created counterfeit and infringing copies of the Sublime Copyrights without Plaintiff's consent and engaged in acts of widespread infringement. *Id.* Defaulting Defendants further infringed Merch Traffic's Sublime Copyrights by making, distributing, and/or causing to be made, derivative works, and by producing and distributing unauthorized reproductions without Merch Traffic's permission. *Id.* at ¶ 64. Each Defaulting Defendant, without the permission or consent of the Plaintiff, sold products which infringe upon Plaintiff's Copyrights. Each Defaulting Defendant has violated, among others, Plaintiff's exclusive rights of reproduction and distribution. The actions of the Defaulting Defendants constitute an infringement of Plaintiff's exclusive rights protected under the Copyright Act (17 U.S.C. §101 *et seq.*). *Id.* at ¶ 65.

### **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 35 of the Lanham Act, 15 U.S.C. § 1117, provides monetary remedies for trademark infringement, unfair competition, and willful trademark dilution. Subsection 1117(a) allows for the recovery of: a defendant's profits; any damages sustained by the plaintiff; costs of the action; and, the plaintiff's attorney fees. Subsection 1117(b) applies with respect to violations that involve the intentional use of a known counterfeit mark, and it requires the court to treble the profits or damages referenced in subsection 1117(a) and to award reasonable attorney fees "unless

the court finds extenuating circumstances.”

While recovery under subsections 1117(a) and (b) is focused on a plaintiff’s “actual damages,” subsection 1117(c) provides an alternative to proving actual damages with respect to violations that involve the use of a counterfeit mark. A “counterfeit mark” is defined at 15 U.S.C. § 1116(d)(1)(B)(i) as, in relevant part:

“a counterfeit of a mark that is registered on the principal register in the United States Patent and Trademark Office for such goods or services sold, offered for sale, or distributed and that is in use, whether or not the person against whom relief is sought knew such mark was so registered.”

Subsection 1117(c) allows a plaintiff to seek statutory damages instead of actual damages. The option to recover statutory damages was provided in light of Congress’ recognition that counterfeiters’ records are frequently “nonexistent, inadequate, or deceptively kept[,] . . . making proving actual damages in these cases extremely difficult if not impossible.” S. Rep. No. 104-177, at 10 (1995). The ability to elect statutory damages can provide a powerful incentive for a trademark holder to pursue infringement litigation that might otherwise not be undertaken because of the inability to obtain information to support recovery.

Pursuant to the statutory damages provision of the Lanham Act, 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, statutory damages may be awarded up to “\$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just.” 15 U.S.C. § 1117(c)(2).

The 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 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, this Report also 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. *Id.*

In recent years, counterfeiters evolved from a traditional brick-and-mortar distribution model to direct to 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.

## **B. Defaulting Defendants’ Counterfeiting Was 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).

<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).

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 Sublime Products. [7] at ¶ 24. 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 Merch Traffic's rights in its Sublime Trademarks, especially given Merch Traffic's extensive promotional efforts discussed in the Complaint. [7]. 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 for Trademark Counterfeiting is Appropriate and Just**

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 this section have analogized case law applying the statutory damage provision of the Copyright Act, 17 U.S.C. § 504(c). *See Lorillard Tobacco Co.*, 2004 U.S. Dist. LEXIS 22563, at \*10.

"The Seventh Circuit's standard for the award of statutory damages in copyright infringement cases is set forth in *Chi-Boy Music v. Charlie Club, Inc.*, 930 F.2d 1224, 1229 (7th

Cir. 1991).” *Luxottica Grup S.p.A., and Oakley, Inc., v. Zhiqiang, et. al.*, No. 16 C 7988, \*18 (N.D. Ill. Mar. 17, 2017). “Under *Chi-Boy*, district courts enjoy wide discretion in awarding fees and may consider various factors such as: (1) the difficulty or impossibility of proving actual damages, (2) the circumstances of the infringement, and (3) the efficacy of the damages as a deterrent to future copyright infringement. *Id.* (*internal quotations omitted*). Courts have also considered the 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. *Id.* (*citing Lorillard*, 2004 U.S. Dist. LEXIS 22563, 2004 WL 2534378, at \*6). “Ultimately, § 1117(c) looks to both compensatory considerations such as actual losses and trademark value, as well as punitive considerations such as deterrence of other infringers and redress of wrongful defense conduct.” *Id.*

In addition, courts in other jurisdictions, 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.”).

In summary, 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 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 the plaintiff due to defendant’s counterfeiting; (6) the value of the plaintiff’s trademark; (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 have been repeated violations of trademark laws by the defendant. *See Chi-Boy Music*, 920 F. 2d at 1229; *See also Lorillard Tobacco Co.*, 2004 U.S. Dist. LEXIS 22563, \*16; *see also, Sands, Taylor & Wood v. Quaker Oats Co.*, 34 F.3d 1340, 1347 (7th Cir. 1994); *see also, Luxottica Grup S.p.A., and Oakley, Inc., v. Zhiqiang, et. al.*, No. 16 C 7988 (N.D. Ill. Mar. 17, 2017); *see also, Coach, Inc. v. Ocean Point Gifts*, 2010 U.S. Dist. LEXIS 59003, \*15-16 (D.N.J. Jun. 14, 2010); and *see also, Phillip Morris USA Inc. v. Marlboro Express*, 2005 U.S. Dist. LEXIS 40359, at \*28 (E.D.N.Y. Aug. 26, 2005).

In the present case, Plaintiff is able to show that a high statutory damages award is proper and warranted under these factors. First, Plaintiff cannot prove their actual damages without Defaulting Defendants disclosing actual sales amount in relation to the Counterfeit Products, as they alone control the relevant business records. In actions like these, Defaulting Defendants are aware of the severity of their actions and avoid appearing to conceal these records. Any damage calculation based on the Defaulting Defendants' sales figures would be insufficient, as it wouldn't account for irreparable harm to the Plaintiff, such as loss of control over intellectual property, reputation, and brand equity. The Plaintiff should not be punished for its inability to effectively calculate damages, nor should it be forced to do so without Defaulting Defendants' participation.

Second, the counterfeit activity in this case involves Defaulting Defendants' unauthorized use of Plaintiff's intellectual property. There are 92 Defendants in the present case, with 74 Defendants having at least one instance of infringement, and the remaining 20 Defendants having two to 48 instances of unique infringements. Plaintiff has never authorized these Defaulting Defendants to use their IP yet the Defaulting Defendants are intentionally manufacturing and importing counterfeit, and likely dangerous products, and selling them to unsuspecting consumers in the U.S.

Third, deterring counterfeiting Defaulting Defendants and similar situated sellers is crucial

as counterfeiting is a rapidly expanding, multi-billion-dollar industry which has significant ramifications, as mentioned *supra*. Imposing substantial damages is necessary to reflect the severity of the activity and to deter future misconduct. As stated in *Sands, Taylor & Wood v. Quaker Oats Co.*, the remedy imposed must ensure that the guilty party does not repeat the infringing conduct. 34 F.3d 1340, 1348 (7th Cir. 1994). Similarly, 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).

Fourth, calculating the expenses saved and the profits reaped by the Defaulting Defendants from selling infringing products is difficult without participation from the Defaulting Defendants. Plaintiff was able to obtain limited sales records for some Defendants. Of the 77 Defaulting Defendants, the known sales for 34 Defendants are 77,924 units, averaging 2292 per Defendant. These 34 Defendants sold \$1,464,473.30 worth of Counterfeit Products, averaging \$43,072.74 per Defendant. Plaintiff estimates that the revenue obtained for all 77 Defaulting Defendants will be much higher than the ones shown above. While Plaintiff does not have access to the expenses saved and the profits reaped by the Defaulting Defendants from sales of Counterfeit Products, it can be presumed that Defendants are being unjustly enriched by using cheap, low-quality methods to manufacture counterfeit goods and selling those products at higher price points using the Plaintiff’s name and brand recognition. Fifth, it is difficult, if not impossible, to determine lost revenue without the business records of the Defaulting Defendants. Plaintiff could not obtain sales records for 49% of the Defendants in this case. Even if Plaintiff were to obtain sales records for majority of Defendants, this information only includes data related to the listings Plaintiff provided in evidence and not a full record of Defaulting Defendants’ business activities related to the

Plaintiff's brand. Also, it does not take into account revenue hits from future business losses such as those resulting from client diversion and distrust, and loss of licensee relationships, among others.

Sixth, the value of the Sublime brand is unquantifiable but it reaches well into the millions of dollars. Given, Merch Traffic's significant investment in promoting and protecting its intellectual property, this Court should be guided by the *Lorillard* case and consider the "significant value of the brand and the efforts taken to protect, promote and enhance that brand." *Lorillard Tobacco Co.*, 2004 U.S. Dist. LEXIS 22563, at \*16. Seventh, Defaulting Defendants' willful conduct is clear – the Defaulting Defendants were aware of the success and value of the Plaintiff's IP and voluntarily and knowingly took advantage of Plaintiff's property. Eighth, as stated previously, Defaulting Defendants' have not appeared to defend nor are participating in this action, which is likely a strategic decision to evade consequences for their counterfeit activity thereby increasing the need for the damages award to have a deterrent effect. Ninth, the counterfeiting activity took place online. This court should be guided by the *Coach, Inc* case and award high damage awards "due in part to the wide market exposure that the Internet can provide" *See Coach, Inc. v. Ocean Point Gifts*, 2010 U.S. Dist. LEXIS 59003, \*15-16 (D.N.J. Jun. 14, 2010). In similar cases involving willful Internet-based counterfeiting, courts in this district have awarded significant damages of \$2,000,000, per defendant. *See, e.g., Burberry Limited, et al. v. The Partnerships, et al*, No. 1:14-cv-08220 (N.D. Ill. Dec. 11, 2014) (unpublished) (Docket Nos. [44, 45]); *Oakley, Inc. v. The Partnerships, et al.*, No. 1:13-cv-02958 (N.D. Ill. June 17, 2013) (unpublished) (Docket Nos. [36, 37]).

As nine out of ten factors generally considered by Courts show a clear need for high statutory damages award, Plaintiff respectfully requests this Court's entry of an award of one hundred thousand dollars (\$100,000) per Defaulting Defendant for Count I of willful trademark

infringement and counterfeiting.

**D. Merch Traffic is Entitled to Statutory Damages for Copyright Infringement**

Pursuant to the statutory damages provision of the Copyright Act, 17 U.S.C. § 504(c), a plaintiff in a case involving copyright infringement may elect to receive statutory damages of “not less than \$750 or more than \$30,000 as the court considers just.” 17 U.S.C. § 504(c)(1). When the copyright infringement is found to be willful, 17 U.S.C. § 504(c)(2) provides for statutory damages “to a sum of not more than \$150,000.” 17 U.S.C. § 504(c)(2).

As mentioned above, 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*, 930 F.2d 1224. Further, in the Seventh Circuit, infringing conduct is willful where the defendant knows the conduct constitutes infringement or where a reckless disregard of the copyright owner’s rights is shown. *See Wildlife Express Corp. v. Carol Wright Sales, Inc.*, 18 F.3d 502, 511 (7th Cir. 1994). As such, knowledge need not be proven directly, but can be inferred from a defendant’s conduct. *In re Aimster Copyright Litigation*, 334 F.3d 643, 650 (7th Cir. 2003) (Finding that “[w]illful blindness is knowledge, in copyright law.”).

In this case, Defaulting Defendants clearly had knowledge that their activities constituted infringement, or at least a reckless disregard for Merch Traffic’s rights in the Sublime Copyrights. Additionally, 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, Merch Traffic’s request for a statutory damages award in

the amount of one hundred thousand dollars (\$100,000) per Defaulting Defendant is proper.

**E. 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 Merch Traffic's registered intellectual property rights in and to the Sublime Trademarks and Copyrights, including at least all injunctive relief previously awarded by this Court to Merch Traffic 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 sell unauthorized Sublime Products.

**IV. CONCLUSION**

Merch Traffic 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 trademark counterfeiting, pursuant to 15 U.S.C. § 1117(c); award 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 Sublime Trademarks and/or Copyrights without authorization, and reproducing, distributing copies of, making derivative works of, or publicly displaying the Sublime Copyrights; and, enter an order directing any Third Party Providers to transfer all assets in Defaulting Defendants' financial accounts to Plaintiff.



Dated: April 15, 2025

Respectfully submitted,

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***ATTORNEYS FOR PLAINTIFF***

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on April 15, 2025, a true and correct copy of the above and foregoing document was: electronically filed, with the Clerk of the Court using the CM/ECF system; electronically published on a website to which the Defendants have been directed pursuant to the Service of Process; and emailed to all email addresses identified or provided for Defendants by the Defendants or third-parties, which includes a link to said website.

/s/ Gouthami V. Tufts  
Gouthami V. Tufts