

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

BALA BANGLES, INC.,

PLAINTIFF,

V.

THE PARTNERSHIPS AND UNINCORPORATED
ASSOCIATIONS IDENTIFIED ON SCHEDULE A,

DEFENDANTS.

CASE No.: 23-CV-16721

JUDGE FRANKLIN U. VALDERRAMA

MAGISTRATE JUDGE KERI L. HOLLEB
HOTALING

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

Plaintiff, Bala Bangles, Inc., (“Bala” 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 the Amended Schedule A to the Amended Complaint, with the exception of certain defendants¹ (collectively, the “Defaulting Defendants”), based on Plaintiff’s action for Design Patent Infringement (Count I), Trademark Infringement and Counterfeiting (Count II), False Designation of Origin, Passing Off and Unfair Competition (Count III), Violation of Illinois Uniform Deceptive Trade Practices Act (Count IV), and Copyright Infringement (Count V).

Since the initial launch of the Bala brand, products featuring the Bala '167 Patent, Bala Trademarks, and the Bala Copyrights² (hereinafter referred to as the “Bala Products”) have enjoyed substantial success, which has led to significant infringement of the Bala '167 Patent, the Bala Trademarks, and the Bala Copyrights (collectively, hereinafter referred to as the “Bala Intellectual

¹ Bala’s Motion for Entry of Default and Default Judgment does not apply to the following Defendants: 175 Blueocean Furniture, 146 Lottsall, 179 Fragraty, 182 CarLen, 192 Hersance, 210 KinsZoo, 214 Romandaofficial, and 215 Lieberwell.

² True and correct copies of Plaintiff’s Design Patent, Trademark Registrations, and Copyright Registrations were respectively filed as Exhibits 1, 2, and 3 to the Amended Complaint.

Property”). This action was filed to combat online infringers who trade upon Plaintiff’s valuable Bala Intellectual Property by selling and/or offering for sale unauthorized and/or counterfeit products which infringe upon Plaintiff’s rights in its Bala Intellectual Property. Bala filed this action on December 18, 2023, alleging, among other claims, federal patent, trademark, and copyright infringement, and seeks statutory damages and injunctive relief. [8]. On December 27, 2023, this Court granted Bala’s *Ex Parte* Motion for Entry of a Temporary Restraining Order (“TRO”). [21]. The Court subsequently converted the TRO into a Preliminary Injunction on January 22, 2024. [33].

Pursuant to Federal Rule of Civil Procedure 55(a) and (b)(2), Bala now moves this Court for an Order entering default and default judgment finding that Defaulting Defendants are liable on all counts of Bala’s Amended Complaint. [8] Fed. R. Civ. P. 55(a) and (b)(2). Bala further seeks an award of monetary damages against Defaulting Defendants as authorized by 35 U.S.C. § 284 for infringement of the Bala Patent, as well as statutory damages against Defaulting Defendants as 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 copyright infringement. Bala also seeks entry of a permanent injunction prohibiting Defaulting Defendants from selling unauthorized Bala Products; making, using, selling, offering to sell, or importing the Bala '167 Patent without authorization; using the Bala Trademarks without authorization; and reproducing, distributing copies of, making derivative works of, or publicly displaying the Bala Copyrights without authorization; and an Order that all assets in Defaulting Defendants’ financial accounts, including those operated by e-commerce platforms and payment processors such as Alibaba Group Holding, Ltd. (“Alibaba”), AliExpress.com (“AliExpress”), Amazon, Inc. (“Amazon”), DHGate.com (“DHGate”), eBay, Inc. (“eBay”), Etsy.com (“Etsy”), Shein.com (“Shein”), WhaleCo, Inc. d/b/a Temu (“Temu”), Walmart, Inc. (“Walmart”), PayPal, Inc. (“PayPal”), Payoneer, Inc. (“Payoneer”), Stripe, Inc. (“Stripe”), Amazon Payments, Inc. (“Amazon Payments”), and Alipay US, Inc. (“Alipay”) (collectively, the “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 over the claims in this action pursuant to the provisions of the American Invents Act, 35 U.S.C. § 271 *et seq.*, 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 claims in this action that arise under the laws of the State of Illinois pursuant to 28 U.S.C. § 1367(a), because the state law claims are so related to the federal claims that they form part of the same case or controversy and derive from a common nucleus of operative facts. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, and personal jurisdiction is proper as Defaulting Defendants directly target business activities toward consumers in Illinois and cause harm to Plaintiff's business within this Judicial District. *See* Amended Complaint, [8], at ¶¶ 1-3; *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).

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 (hereinafter referred to as the "Infringing Products") to residents within the United States, including Illinois. [8] at ¶ 21. 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).

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 December 18, 2023, Bala filed its Amended Complaint. [8]. Defendants were properly served on January 19, 2024. [30]. Despite having been properly served with process, Defaulting Defendants have ignored these proceedings and failed to plead or otherwise defend this action. *See* Declaration of Alison K. Carter (“Carter Decl.”) at ¶ 2. Upon information and belief, Defaulting Defendants are not active-duty members of the U.S. armed forces. *Id.* at ¶ 3. More than 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. *See* Fed. R. Civ. P. 12(a)(1)(A). Accordingly, Plaintiff asks for entry of default against 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. Defaulting Defendants are Liable for Patent Infringement

The American Invents Act provides that “whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.” 35 U.S.C. § 271(a).

Bala alleged in its Amended Complaint that it is the lawful owner and assignee of all right, title,

and interest in and to design patent US D888,167 S (herein, the “'167 Patent”). [8] at ¶ 5. Bala has also alleged that Defaulting Defendants make, use, offer to sell, sell, and/or import into the United States products that infringe upon the '167 Patent. [8] at ¶¶ 5, 35-40. Such Infringing Products sold by Defaulting Defendants infringe at least Claim 1 of the '167 Patent literally or under the doctrine of equivalents. Finally, Bala alleged that it has not licensed nor authorized any Defaulting Defendant to make, use, offer to sell, sell, and/or import into the United States any product based upon the '167 Patent and no Defaulting Defendant is an authorized retailer of the Bala Products. [8] at ¶ 30.

Accordingly, Plaintiff respectfully requests entry of judgment with respect to Count I for patent infringement of the Bala '167 Patent pursuant to 35 U.S.C. § 271 against Defaulting Defendants.

B. Defaulting Defendants are Liable for Trademark Infringement and Counterfeiting as well as False Designation of Origin, Passing Off and Unfair Competition

i. Trademark Infringement and Counterfeiting

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).

Bala alleged in its Amended Complaint that: (1) the Bala Trademarks are distinctive; (2) Defaulting Defendants are not authorized to use the Bala Trademarks; (3) Defaulting Defendants’ use of the Bala Trademarks causes a likelihood of confusion; and, (4) Defaulting Defendants have knowledge of Plaintiff’s exclusive rights in and to the Bala Trademarks. [8] at ¶¶ 6, 41-51. Since Defaulting

Defendants have failed to respond, or otherwise plead in this matter, the Court must accept the allegations contained in Plaintiff's Amended 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).

As such, Plaintiff respectfully requests entry of judgment with respect to Count II for willful infringement and counterfeiting of the Bala Trademarks, and willful violation of the Section 43 of the Lanham Act, 15 U.S.C. § 1125, against Defaulting Defendants.

ii. False Designation of Origin, Passing Off and Unfair Competition

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.

As previously demonstrated, Defaulting Defendants have infringed the Bala Trademark (*see supra*). By using Bala Trademarks on, or in connection with, the Infringing Products, Defaulting Defendants create a false designation of origin and a misleading representation of fact as to the sponsorship of the Infringing Products. *Id.* Therefore, Plaintiff respectfully requests entry of judgment with respect to Count III, for willful false designation of origin, passing off, and unfair competition against Defaulting Defendants.

iii. Defaulting Defendants are Liable for Violating the Illinois Uniform Deceptive Trade Practices Act

Similarly, Illinois courts resolve unfair competition and deceptive trade practices claims, "according to the principles set forth under the Lanham Act." *Spex, Inc. v. Joy of Spex, Inc.*, 847 F. Supp. 567, 579 (N.D. Ill. 1994). Since Bala has established federal trademark infringement against Defaulting Defendants (*see supra*), Bala has demonstrated that Defaulting Defendants' Infringing Products falsely

designate their origin under Illinois law.

Thus, in light of the foregoing, Defaulting Defendants willfully violated the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS § 510, *et seq.*

C. Defaulting Defendants are Liable for Copyright Infringement

To establish copyright infringement under 17 U.S.C. § 501, a plaintiff must prove two elements: (1) ownership of a valid copyright, and (2) copying of constituent elements of the work that are original. *JCW Investments, Inc. v. Novelty, Inc.*, 482 F.3d 910, 914 (7th Cir. 2007). *see also, S.O.S., Inc. v. Payday, Inc.*, 886 F.2d 1081, 1085 n. 3 (9th Cir.1989) (“The word ‘copying’ is shorthand for the infringing of any of the copyright owner's five exclusive rights. . . .”).

Plaintiff, at all relevant times, has been the exclusive rights holder of the Bala Copyrights, including their derivative works. [8] at ¶¶ 7, 65-75. The Bala Copyrights are the subject of multiple valid copyright registrations. *Id.* Plaintiff has alleged that Defaulting Defendants had access to the Bala Copyrights through Plaintiff's normal business activities, and Default Defendants were, at no point in time, authorized to copies of the Bala Copyrights. *Id.* at ¶¶ 8, 69, 70. Plaintiff has also alleged that, after accessing Plaintiff's work, Defaulting Defendants wrongfully created counterfeit and infringing copies of the Bala Copyrights without Plaintiff's consent and engaged in acts of widespread infringement. *Id.* Plaintiff additionally alleged that Defaulting Defendants further infringed Bala's Bala Copyrights by making, distributing, and/or causing to be made, derivative works, and by producing and distributing unauthorized reproductions without Bala's permission. *Id.* at ¶ 70. Defaulting Defendants, without the permission or consent of the Plaintiff, sold products which infringe upon Plaintiff's Copyrights. Defaulting Defendants have violated, among others, Plaintiff's exclusive rights of reproduction and distribution. *Id.*

Therefore, Defaulting Defendants' actions constitute willful infringement of Plaintiff's exclusive rights protected under the Copyright Act (17 U.S.C. §501 *et seq.*).

III. PLAINTIFF IS ENTITLED TO MONETARY DAMAGES AND INJUNCTIVE RELIEF

A. Bala is Entitled to Lost Profits in this Case for Defaulting Defendants' Patent Infringement

Pursuant to 35 U.S.C. § 284, “the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs” 35 U.S.C. § 284. Furthermore, “[i]n either event the court may increase the damages up to three times the amount found or assessed.” *Id.*

To obtain a lost profits recovery, the patent owner bears the burden of proving that, but for the infringement, the plaintiff would have made the sales for which lost profits are sought. *American Seating Co. v. USSC Group, Inc.*, 514 F.3d 1262, 1269 (Fed. Cir. 2008); *State Industries, Inc. v. Mor-Flo Indus., Inc.*, 883 F.2d 1573, 1577 (Fed. Cir. 1989), cert. denied, 493 U.S. 1022 (1990). Causation is proven using the four factors set forth in *Panduit Corp. v. Stahl Bros.*, namely, (1) demand for the patented product, (2) absence of acceptable non-infringing substitutes, (3) manufacturing and marketing capability to exploit the demand, and (4) the amount of the profit that would have been made. *Panduit Corp. v. Stahl Bros. Fibre Works, Inc.*, 575 F.2d 1152, 1156 (6th Cir. 1978).

In this case, Bala would have made a sale for each product sold by Defaulting Defendants since Defaulting Defendants employ deceptive tactics in making their online marketplaces look like authentic sources of the Bala Products. [18-1] at ¶¶ 16-18. There is significant demand for the Bala Products as evidenced by Bala’s success and Defaulting Defendants’ rampant counterfeiting. *Id.* at ¶ 14. Bala has spent considerable time, money, and effort to have its manufacturing capabilities match such a demand while delivering high quality standards. *Id.* at ¶ 13. There is a notable absence of acceptable non-infringing substitutes that relate to Plaintiff’s distinct design. While other wrist and ankle weights are on the market, Bala has spent considerable time, money, and effort to ensure consumers associate Bala’s distinct design with the Bala brand. *Id.* at ¶ 7. Finally, Bala would have made a sale of fifty-five dollars

(\$55.00) per unit sold by Defaulting Defendants based on the retail price of the Bala Products. *See* Carter Decl. at ¶ 6.

Since Defaulting Defendants have chosen not to participate in these proceedings, Bala has limited available information regarding Defaulting Defendants' profits from the sale of the Infringing Products. As such, Defaulting Defendants have failed to produce information which may have demonstrated expenses and costs that would have deducted from a profits calculation. *WMS Gaming, Inc. v. WPC Prods. Ltd.*, 542 F.3d 601, 608 (7th Cir. 2008). Without any additional information from Defaulting Defendants, the Court should award Bala the greater of the amount restrained or treble the reasonable royalty of two thousand and seven hundred and twenty-two dollars and fifty cents (\$2,722.50)³ per Defaulting Defendant, where the Infringing Product revenue is unknown. Carter Decl. at ¶ 6. Where the Infringing Product revenue is known, however, the Court should award Bala the greater of the known Infringing Product revenue or the amount restrained, but no less than treble the reasonable royalty of two thousand and seven hundred and twenty-two dollars and fifty cents (\$2,722.50) per Defaulting Defendant. *See* Exhibit 1; *see also, Oakley, Inc. v. The Partnerships, et al.*, No. 20-cv-02970 (N.D. Ill. Oct. 26, 2020) (unpublished) (Dkt. [61]); *Moose Labs LLC v. The Partnerships, et al.*, No. 22-cv-04227 (N.D. Ill. Dec. 5, 2022) (unpublished) (Dkt. [43]).

B. Statutory Damages are Also Appropriate in this Case for Defaulting Defendants' Willful Trademark and Copyright Infringement

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

³ According to the limited information provided by the Third-Party Providers, the Defendants have made 145,002 known sales into the United States to date, averaging at 495 units sold across the 293 named Defendants. At \$55 per unit, there is an average of \$27,225 in lost sales across the defendants. Plaintiff's 10% licensing royalty rate of these lost sales is \$2,722.50.

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.” Additionally, Subsection 1117(c) allows for the “award of statutory damages for any . . . use [of a counterfeit mark] in connection with the sale, offering for sale, or distribution of goods or services in the amount of (1) 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; or (2) if the court finds that the use of the counterfeit mark was willful, not more than \$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just.”

Similarly, 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).

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.⁴ *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

⁴ The Office of the U. S. Trade Representative, Special 301, *Out-of-Cycle Review of Notorious Markets for 2015* (December 2015).

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.⁵ 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. v. Montrose Wholesale Candies & Sundries, Inc.*, 2008 U.S. Dist. LEXIS 31761, at *6 (N.D. Ill. Apr. 17, 2008). As the Defendants' infringing activity was willful, and the true sales and profits obtained by the Defaulting Defendants is unknown, Plaintiff respectfully elects a statutory damages award for trademark infringement and copyright infringement.

C. A High Statutory Damages Award for Trademark and Copyright Infringement is Appropriate and Just

Although 15 U.S.C. § 1117(c) contains the dollar range for possible statutory damage awards,

⁵ See generally INT'L TRADEMARK ASS'N, *Addressing the Sale of Counterfeits on the Internet* (2017), available at [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).

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. v. S&M Cent. Serv. Corp.*, 2004 U.S. Dist. LEXIS 22563, at *10.

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 intellectual property, the efforts taken to protect, promote, and enhance that intellectual property, and whether the defendant’s activities attracted wide market exposure through Internet traffic or advertisement in determining the appropriate dollar figure for the award. *See Lorillard Tobacco Co. v. S&M Cent. Serv. Corp.*, 2004 U.S. Dist. LEXIS 22563, *16 (N.D. Ill. Nov. 5, 2004); *see also 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.”).

By applying these various factors, 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) (Dkt. [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) (Dkt. [51]) (awarding \$150,000 in statutory damages per defendant for willful copyright infringement).

In this case, determining actual damages is extremely difficult if not impossible due to the irreparable harm caused by Defaulting Defendants' infringement. In particular, as Plaintiff has previously established, Defaulting Defendants' unauthorized use and counterfeiting of the Bala Products results in Plaintiff losing its ability to control the marketing, quality, and exclusive control of the Bala Intellectual Property as well as the undervaluing of the Bala Intellectual Property by creating the impression that infringement may be undertaken with impunity, neither of which can be properly calculated. *See* [17] at p. 9-12; *see also* [18-1] at ¶¶ 24-29.

Regarding the circumstances of the infringement, Plaintiff reasserts that Defaulting Defendants' infringement was willful and blatant. Defaulting Defendants used the Bala Trademark; made, used, sold, offered to sell, and/or imported products that infringed the Bala '167 Patent; and reproduced and distributed the Bala Copyrights and publicly displayed their unlawful reproductions quite prominently in promotion of their Infringing Products. *See Id.*

As for the efficacy of damages as a deterrent, other courts have held that "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)." *Phillip Morris USA Inc. v. Marlboro Express*, 2005 U.S. Dist. LEXIS 40359, at *28 (E.D.N.Y. Aug. 26, 2005).

Further, the Bala Intellectual Property was produced and created at a considerable expense, and Bala has expended significant resources and time protecting, promoting, and marketing the Bala Products. [8] at ¶ 19.

Finally, regarding Defaulting Defendants' market exposure, Plaintiff notes that Defaulting Defendants' infringement was rampant, selling over sixty-seven thousand (67,000) Infringing Products

across nine online marketplaces that Plaintiff has learned of in this suit alone. Defaulting Defendants clearly had knowledge that their activities constituted infringement or at least a reckless disregard for Bala's rights in the Bala Intellectual Property.

Therefore, in view of the foregoing factors, Bala's request for a statutory damages award in the amount of one hundred thousand dollars (\$100,000) per Defaulting Defendant for willful trademark infringement and one hundred and fifty thousand dollars (\$150,000) per Defaulting Defendant for willful copyright infringement is appropriate.

D. Plaintiff is Further 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 Bala's registered intellectual property rights in and to the Bala '167 Patent, the Bala Trademarks, and the Bala Copyrights including at least all injunctive relief previously awarded by this Court to Bala 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 Bala Products.

IV. CONCLUSION

Bala respectfully requests that the Court: enter default and grant default judgment against each Defaulting Defendant; award damages in the amount of the known Infringing Product revenue or the amount restrained—whichever is greater—but no less than treble the reasonable royalty of two thousand seven hundred and twenty-two dollars and fifty cents (\$2,722.50), or eight thousand one hundred and sixty-seven dollars and fifty cents (\$8,167.50) per Defaulting Defendant for infringing the Bala '167 Patent, pursuant to 35 U.S.C. § 284; award statutory damages in the amount of one hundred thousand dollars (\$100,000) per Defaulting Defendant that has willfully infringed the Bala Trademarks, pursuant to 15 U.S.C. § 1117(c); award one hundred and fifty thousand dollars (\$150,000) per Defaulting

Defendant that has willfully infringed the Bala Copyrights, pursuant to 17 U.S.C. § 504(c); enter a permanent injunction order, prohibiting Defaulting Defendants from selling the Infringing Products, making, using, selling, offering to sell, or importing the Bala '167 Patent without authorization; using the Bala Trademarks without authorization; and reproducing, distributing copies of, making derivative works of, or publicly displaying the Bala Copyrights without authorization; and, enter an order directing any third-party online marketplaces and payment processors in privity with Defaulting Defendants to transfer all assets in Defaulting Defendants' financial accounts to Plaintiff in accordance with the above damages awards.

Dated: April 8, 2025

Respectfully submitted,

/s/ John J. Mariane

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 8, 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 Defendants have been directed pursuant to the Service of Process; and emailed to all email addresses identified or provided for Defendants by Defendants or third-parties, which includes a link to said website.

/s/ John J. Mariane
John J. Mariane