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

JUANREN WU, Plaintiff, v. THE PARTNERSHIPS AND UNINCORPORATED ASSOCIATIONS IDENTIFIED ON SCHEDULE "A," Defendants.	Case No. 26-cv-03215 **Judge Jorge L. Alonso** **Magistrate Judge Heather K. McShain**

MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT PURSUANT TO FED. R. CIV. P. 55(a) AND MOTION FOR FINAL JUDGMENT PURSUANT TO FED. R. CIV. P. 55(b)

Plaintiff Juanren Wu ("Plaintiff") by and through its undersigned counsel, seeks entry of default and default judgment as to Certain Defendants identified on the Schedule A (the "Defaulting Defendants").

I. BACKGROUND AND PROCEDURAL HISTORY

1. On March 27, 2026, Plaintiff filed its Amended Complaint in the instant civil action, alleging design patent infringement (35 U.S.C. §271) against the Defaulting Defendant. [Doc. 7].

2. On May 28, 2026, Plaintiff served the Defaulting Defendant with the Amended Complaint. [Doc. 27]. The Defaulting Defendant's Answer was due on June 18, 2026. *Id*.

3. The time allowed for the Defaulting Defendants to respond to the Amended Complaint has expired.

4. By choosing not to participate in this case, the Defaulting Defendants have failed to produce any documents or information for: (1) identifying each and every domain name, online

marketplace account and/or financial account used by the Defaulting Defendants, including the owner and/or operator of each Online Marketplace; (2) showing costs, cost allocations, revenues, and profits of the Defaulting Defendants for the last five (5) years; or (3) relating to each and every purchase that the Defaulting Defendants have made relating to the Patented Design and/or the Infringing Products, records of steps taken by the Defaulting Defendants to determine whether such products were new or genuine, and investigation records regarding purchase of the Infringing Products, including the identity of the person(s) responsible for such investigation. *See* Declaration of William J. Hausman ("Hausman Dec.") at ¶8.

5. Limited information provided by Amazon for the Defaulting Defendants indicates that the Defaulting Defendants currently have $4,919.17 in their Amazon accounts. Exhibit 1. Additionally, the limited information provided by Amazon indicates that the known revenue generated by the Defaulting Defendants from the sale of the specific Infringing Products is up to at least $28,157.62 Exhibit 1. Plaintiff does not have any infringing sales information for other potential Infringing Products sold by the Defaulting Defendant.

6. Plaintiff is informed and believes that the Defaulting Defendants are not considered infants or incompetent persons. *See* Hausman Dec. at ¶10

7. Plaintiff is informed and believes that the Service Members Civil Relief Act does not apply. *Id*.

8. Plaintiff respectfully requests that an entry of default under Fed. R. Civ. P. 55(a) be entered, as well as an order of final judgment under Fed. R. Civ. P. 55(b). Plaintiff respectfully requests for the entry of a final judgment under Fed. R. Civ. P. 55(b) finding that the Defaulting Defendants are liable for infringement of Plaintiff's federally registered design patent, No. US-D1,049,230-S. Plaintiff further seeks an order that the greater amount between the revenue in the

Defaulting Defendants' Amazon accounts and the known infringing product revenue be awarded to Plaintiff. Plaintiff further seeks entry of a permanent injunction prohibiting the Defaulting Defendant from selling Infringing Products.

II. SUMMARY OF THE ARGUMENT

Jurisdiction and venue are proper in this court. Plaintiff has met the requirements for default and for an entry of final judgment. Plaintiff is entitled to an award of damages for willful design patent infringement. A high damages award is appropriate and just. A permanent injunction must be granted to prevent any further acts of design patent infringement by the Defaulting Defendants.

III. 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 Patent Act, 35 U.S.C. § 1, et seq., 28 U.S.C. § 1338(a), and 28 U.S.C. § 1331. [Doc. 7 at ¶1]. Venue is proper in this Court under 28 U.S.C. § 1391. *Id*. at ¶5-6. This Court may properly exercise personal jurisdiction over the Defaulting Defendants since the Defaulting Defendants directly targets business activities toward consumers in the United States, including Illinois, through at least the fully interactive, commercial Internet stores operating under the Defaulting Defendants. *Id*. at ¶2-3; *uBID, Inc. v. GoDaddy Grp., Inc.*, 623 F.3d 421, 423-24 (7th Cir. 2010) (without the benefit of an evidentiary hearing, the 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). Through the fully interactive commercial Defendant's Internet Stores, upon information and belief, Illinois residents can purchase products from the Defaulting Defendant that are sold and advertised in listings for sale utilizing Plaintiff's registered design patent without authorization.

1. Plaintiff Meets the Requirements for Fed. R. Civ. P. 55(a) Entry of Default

On May 28, 2026, Plaintiff served the Amended Complaint on the Defaulting Defendants. [Doc. 27]. Plaintiff is informed and believes that the Defaulting Defendants are not considered infants or incompetent persons. *See* Hausman Dec. at ¶10. Plaintiff is informed and believes that the Service Members Civil Relief Act does not apply. *Id*. The time allowed for the Defaulting Defendants to respond to the Amended Complaint has expired. Neither Plaintiff nor the Court has granted the Defaulting Defendants an extension of time to respond to the Amended Complaint. The Defaulting Defendants have failed to answer or otherwise respond to the Amended Complaint and failed to serve a copy of an Answer or other response upon Plaintiff's attorney of record. This Court should enter default under 55(a).

2. Plaintiff Meets the Requirements for Fed. R. Civ. P. 55(b) Entry of Final Default Judgment

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 defendant is 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).

As noted above, Plaintiff served the Complaint on May 28, 2026. [Doc. 27]. The June 18, 2026 deadline for the Defaulting Defendants to file an Answer or otherwise respond to the Complaint has passed. *See* Fed. R. Civ. P. 12(a)(1)(A). Accordingly, default judgment is appropriate. Pursuant to 35 U.S.C. § 289, Plaintiff requests an award of the Defaulting Defendants’ profits resulting from the design patent infringement. Plaintiff also seeks entry of a permanent injunction prohibiting the Defaulting Defendants from making, using, offering, for sale, selling, and importing into the United States Infringing Products. As the Defaulting Defendants' available product revenue information is limited, Plaintiff requests that the greater amount between the funds in Defendants' Amazon accounts and the known infringing product revenue be awarded to Plaintiff.

The United States Patent 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 therefore, infringes the patent." 35 U.S.C. § 271(a). Plaintiff alleged in its Amended Complaint that it is the owner of all right, title, and interest in and to the Paint Pen Patent. [Doc. 7 at ¶6]. Plaintiff has also alleged that the Defaulting Defendants make, use, offer for sale, sell, and/or import into the United States for subsequent sale or use Infringing Products that infringe directly and/or indirectly the ornamental design claimed in the Paint Pen Patent. *Id*. at ¶¶30, 34. Exhibit 3 to the Declaration of Juanren Wu demonstrates that an ordinary observer would be deceived into thinking that the Infringing Products were the same as the design embodied in the Paint Pen Patent. [Doc. 11]; *see Competitive Edge, Inc. v. Staples, Inc.*, 763 F. Supp. 2d 997, 1011 (N.D. Ill. 2010) (citing *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665, 672 (Fed. Cir. 2008). Finally, Plaintiff has alleged that it has not licensed or authorized the Defaulting Defendants to use the Paint Pen Patented Design, and the Defaulting Defendants are not authorized retailers of genuine Plaintiff products. [Doc. 7 at ¶¶13, 29].

Since the Defaulting Defendants have failed to answer 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 requests entry of a judgment finding the Defaulting Defendants liable for design patent infringement.

B. Service of Process by E-mail was Proper in this Case

Fed. R. Civ. P. 4(f)(3) permits service "by other means not prohibited by international agreement, as the court orders." Fed. R. Civ. P. 4(f)(3). Article 1 of the Hague Convention states that "[t]his Convention shall not apply where the address of the person to be served with the document is not known." *Levi Strauss & Co. v. Zhejiang Weidu Garment Co.*, Case No. 16-cv-07824, 2017 WL 1075389 at *2-3 (N.D. Ill. Nov. 17, 2016); *Strabala v. Qiao Zhang*, 318 F.R.D. 81 n. 36 (N.D. Ill., Nov. 18, 2016) (citation omitted); *see also Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1017 (9th Cir. 2002) ("Without hesitation, we conclude that each alternative method of service of process ordered by the district court was constitutionally acceptable.").

Rule 4(f)(3) permits the court to order service by any means not prohibited by international agreement, as long as the method of service comports with constitutional notions of due process. *U.S. Commodity Futures Trading Comm'n v. Lake Shore Asset Mgmt. Ltd.,* 2008 WL 4299771 at *4 (N.D. Ill. Sept. 17, 2008). While the Seventh Circuit has held that service of process by e-mail to residents of China is prohibited by the Hague Convention, the Hague Convention is not applicable where the location of the defendant to be served is unknown. *Kangol LLC v. Hangzhou Chuanyue Silk Import & Export Co., Ltd*, 177 F.4th 793, 799 ("We begin our analysis with the threshold question of whether the Convention applies… Article 1 states that the [Hague] Convention… "shall not apply where the address of the person to be served with the document is not known."). Service of process by e-mail has been upheld where the Hague Convention was not applicable. *See, e.g.*, *Rio Props.*, 284 F.3d at 1015, n. 4 ("A federal court would be prohibited from issuing a Rule 4(f)(3) order in contravention of an international agreement, including the Hague

Convention referenced in Rule 4(f)(1). The parties agree, however, that the Hague Convention does not apply in this case because Costa Rica is not a signatory."); *Strabala*, 318 F.R.D. at 115 n. 36 (N.D. Ill. 2016) ("To begin with, because Strabala apparently did not know Defendants' correct physical addresses, the Hague Convention does not apply.") (citing *D.Light Design, Inc. v. Boxin Solar Co.*, 2015 WL 526835, at *2 (N.D. Cal. Feb. 6, 2015) ("[D]espite Plaintiffs' diligent effort to locate the addresses of Defendants, the physical addresses of Skone Lighting and Sailing Motor remain unknown. Because the physical addresses of these Defendants are unknown, the Hague Convention does not apply."); *Liberty Media Holdings, LLC. V. Sheng Gan*, 2012 WL 122862, at *3 (D. Colo. 2012) (holding that the Hague Convention does not apply to a defendant who lived in China and whose address was unknown)).

Article 1 of the Hague Convention states that the "convention shall not apply where the address of the person to be served with the document is not known." Hausman Dec. at ¶11. On information and belief Defendants are residents of a foreign country, however the precise location of Defendants is unknown. *Id*. Furthermore, because website operators can currently input any physical address, even if a physical address is available, it is not as reliable as an e-mail address for providing notice to Defendant. *Id*.; *Chenyan v. The P'ships, et al.*, Case No. 20-cv-00220 (N.D. Ill. Sept. 24, 2024) (Kness, J.) [Doc. 316] ("Plaintiff offers only early discovery from Wish.com that identifies the Individual Defendants as each being the "MERCHANT REAL NAME" for the Wish.com storefronts… But "MERCHANT REAL NAME" is not the same as actual ownership, and the documents proffered by Plaintiff do not purport to identify the actual owners but rather conveys only the information that Wish.com itself possessed (which may or may not be complete).") (unpublished). Investigation into the online marketplaces reveals that Defendants appear to have provided false physical address information to the Third Party Platforms in order to avoid full liability. Hausman Dec. at ¶12. For example, an internet search of many of Defendants' physical addresses yield only partial matches that contain address information that is inconsistent with the physical addresses provided to the Third Party Platforms by Defendants. *Id*. Searches of other Defendant addresses return multiple partial matches, all with address information inconsistent with the physical addresses provided to the Third Party Platforms by Defendants. *Id*. As such, Plaintiff is unaware of Defendants' physical address, and the Hague Convention is not applicable in this case. *Id*. at ¶13. Therefore, serving Defendants via email in this case was proper. *Strabala*, 318 F.R.D. at 115 n. 36. If the Court is not satisfied by Plaintiff's showing, Plaintiff respectfully requests that the Court allow Plaintiff additional time to further investigate Defendants' physical locations.

C. Plaintiff is Entitled to the Defaulting Defendant's Profits, but not Less Than $250, Pursuant to 35 U.S.C. § 289.

In the case of design patent infringement, a patentee may recover the total profits made by a defendant under 35 U.S.C. § 289. Section 289 provides that "[w]hoever during the term of a patent for a design, without license of the owner, (1) applies the patented design, or any colorable imitation thereof, to any article of manufacture for the purpose of sale, or (2) sells or exposes for sale any article of manufacture to which such design or colorable imitation has been applied shall be liable to the owner to the extent of his total profit, but not less than $250." 25 U.S.C. § 289.

Determining an award under Section 289 involves two steps: "First, identify the 'article of manufacture' to which the infringed design has been applied. Second, calculate the infringer's total profit made on that article of manufacture." *Samsung Elecs. Co. v. Apple, Inc.*, 137 S. Ct. 429, 434 (2016). The plaintiff has the initial burden to show the article of manufacture and the defendant's total profit on that article. *Nordock, Inc. v. Systems, Inc.*, Case No. 11-cv-00118, 2017 WL 5633114, at *3 (E.D. Wisc. Nov. 21, 2017). However, if the defendant believes that the article of manufacture is different, it has the burden to produce evidence showing the article of manufacture. *Id*. The defendant also has the burden to produce evidence as to any deductions from the total profit identified by plaintiff. *Id*. The Seventh Circuit has made it clear that:

> The burden is the infringer's to prove that his infringement had no cash value in sales made by him. If he does not do so, the profits made on sales of goods bearing the infringing mark properly belong to the owner of the mark. There may well be a windfall to the trade-mark owner where it is impossible to isolate the profits which are attributable to the use of the infringing mark. But to hold otherwise would give the windfall to the wrongdoer.

WMS Gaming, Inc. v. WPC Prods. Ltd., 542 F.3d 601, 608 (7th Cir. 2008) (citing *Mishawaka Rubber & Woolen Mfg. Co. v. S.S. Kresge Co.*, 316 U.S. 203, 206-07, 62 S. Ct. 1022, 86 L. Ed. 1381, 1942 Dec. Comm'r Pat. 767 (1942)). "Although § 289 does not explicitly impose any burden on the defendant, this shift in the burden of production is consistent with the disgorgement of profits in other contexts." *Nordock*, 2017 WL 5633114, at *3. "[Patent holders] are entitled to an award best approximating their actual loss, and the infringers must bear the burden of uncertainty." *In re Mahurkar Double Lumen Hemodialysis Catheter Patent Litigation*, 831 F. Supp. 1354, 1388 (N.D. Ill. 1993) (citations omitted).

In cases where defendants have failed to produce documents to characterize revenue, courts have entered a profits award for the entire revenue amount. *See Bergstrom v. Sears, Roebuck and Co.*, 496 F. Supp. 476, 497 (D. Minn. 1980) ("The burden of establishing the nature and amount of these costs, as well as their relationship to the infringing product, is on the defendants."); *see also WMS Gaming*, 542 F.3d at 608 ("The burden was therefore on PartyGaming to show that certain portions of its revenues… were not obtained through its infringement of WMS's marks."); *Chole v. Queen Bee of Beverly Hills*, Case No. 06-cv-03140, 2009 U.S. Dist. LEXIS 84133, at *15-17 (S.D.N.Y. Jul. 16, 2009) (entering profits award for the entire revenue amount in a trademark infringement case even though "records offer no guidance as to how much of this revenue stream related to [Plaintiff's] products [as opposed to other products not at issue in this case] or as to the costs incurred in acquiring and selling these products"). Under normal circumstances, it is the infringer who bears the burden of "offering a fair and acceptable formula for allocating a given portion of overhead to the particular infringing items in issue." *Deckers Outdoor Corp. v. ShoeScandal.com, Ltd. liability Co.*, Case No. 12-cv-07382, 2013 WL 6185203, at * (C.D. Cal. Nov. 25, 2013) (quoting *Sunbeam Prods., Inc. v. Wing Shing Prods. (BVI) Ltd.*, 311 B.R. 378, 401 (S.D.N.Y. 2004) aff'd, 153 F. App'x 703 (Fed. Cir. 2005)). "But if the infringer has failed to produce any evidence… the Court must determine the costs to be subtracted from revenue based on the evidence it has to determine profits." *See Nike, Inc. v. Wal-Mart Stores, Inc.*, 138 F.3d 1437, 1447 (Fed. Cir. 1998).

Here, Plaintiff claims "[t]he ornamental design for a paint pen tip, as shown and described." [Doc. 7-1]. In the case of a design for a single-component product, such as the Paint Pen Patented Design, the "product is the article of manufacture to which the design has been applied." *Samsung*, 137 S. Ct. at 367. As such, the relevant article of manufacture is the Infringing Product sold by the Defaulting Defendant.

Since the Defaulting Defendants have chosen not to participate in these proceedings, Plaintiff has limited available information regarding the Defaulting Defendants' profits from the sale of Infringing Products. The Defaulting Defendants have failed to appear in this matter and has not produced any documents or information: (1) characterizing each of the transactions in their financial accounts; (2) the nature and amount of costs, if any, as well as their relationship to the Infringing Products; or (3) other Internet stores that they may be operating and other financial accounts that they accept payment for sale of Infringing Products. As such, the Defaulting Defendants have not met their burden to apportion gross receipts between infringing and non-infringing product sales, or to show any deductions. *WMS Gaming*, 542 F.3d at 601; *Nordock*, 2017 WL 5633114, at *3.

Since the Defaulting Defendants have not met their burden of apportioning gross sales or showing any deductions, the Court should award at least the amount in the Defaulting Defendants' Amazon accounts, since the full extent of infringing product revenue is unknown. *See* 35 U.S.C. § 289; *Oakley, Inc. v. The P'ships, et al.*, Case No. 20-cv-02970 (N.D. Ill. Oct. 26, 2020) [Doc. 61] ("Although the information about defendants' profits and revenues is sparse and there is the possibility that the restrained funds were generated by non-infringing sales, the court concludes that plaintiff's efforts provide the best available measure of profits."); *Mosse Labs LLC v. The P'ships, et al.*, Case No. 22-cv-04227 (N.D. Ill. Dec. 5, 2022) [Doc. 43] ("Accordingly, and because no defendant has appeared to rebut the presumption that the contents of defendants' financial accounts are profits from infringing activity, plaintiff's request for damages is granted.") The limited information provided by Amazon for the Defaulting Defendants indicates that the amount currently in the Defaulting Defendants' known financial accounts is $4,919.17. Exhibit 1. However, the limited Infringing Product revenue information available to Plaintiff only includes revenue figures for a single product having a unique product identification number for each Defendant. Because the Defaulting Defendants have failed to participate in the proceedings, Plaintiff is unable to obtain complete information regarding additional e-commerce stores owned by the Defaulting Defendants and additional products sold by the Defaulting Defendants that infringe on the Paint Pen Patent. Further, Plaintiff is unable to obtain information regarding what portion of the amount currently contained in the Defaulting Defendants' accounts are proceeds from the sale of Infringing Products.

D. Plaintiff is Entitled to Permanent Injunctive Relief

In addition to the foregoing relief, Plaintiff respectfully requests entry of a permanent injunction enjoining the Defaulting Defendants from infringing or otherwise violating Plaintiff's rights in the Paint Pen Patent. Plaintiff is also entitled to injunctive relief so it can quickly take action against any new e-commerce stores that are identified, found to be linked to the Defaulting Defendants, and selling Infringing Products. *See, e.g., Tuf-Tite, Inc. v. Fed. Package Networks, Inc.*, Case No. 14-cv-02060, 2014 WL 6613116, at *8 (N.D. Ill. Nov. 21, 2014); *Scholle Corp. v. Rapak LLC*, 35 F. Supp. 3d 1005, 1009 (N.D. Ill. 2014); *Nike, Inc. v. Fujian Bestwinn Industry Co., Ltd.*, 166 F. Supp. 3d 1177, 1178-79 (D. Nev. 2016).

IV. CONCLUSION

Plaintiff respectfully requests that the Court enter default judgment against the Defaulting Defendants and award the greater amount between the amount contained in the Defaulting Defendants' Amazon accounts and the known infringing product revenue, but no less than $250, be awarded to Plaintiff. Furthermore, Plaintiff respectfully requests that the Court enter a permanent injunction order prohibiting the Defaulting Defendants from selling Infringing Products.

Respectfully Submitted this 20th of August, 2026.

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