

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 23-60728-CIV-SMITH**

GUCCI AMERICA, INC.,

Plaintiff,

vs.

AUTHENTICGUCCIBAGSOUTLETUSA.COM,  
*et al.*,

Defendants.

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**PLAINTIFF’S MOTION FOR ENTRY OF DEFAULT FINAL JUDGMENT  
AGAINST DEFENDANTS AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

Plaintiff, Gucci America, Inc. (“Gucci” or “Plaintiff”), by and through its undersigned counsel, hereby moves this Honorable Court for an entry of default final judgment against Defendants, the Individuals, Business Entities, and Unincorporated Associations identified on Schedule “A” hereto (collectively “Defendants”). In support thereof, Gucci submits the following Memorandum of Law.

**I. INTRODUCTION**

Gucci initiated this action against Defendants through the filing of its Complaint for trademark counterfeiting and infringement (Count I), false designation of origin (Count II), cybersquatting (Count III), common law unfair competition (Count IV), and common law trademark infringement (Count V). Defendants are in default, and the prerequisites for a default judgment have been met. As relief, Gucci seeks default judgment finding Defendants liable on all counts of Gucci’s Complaint. Gucci prays such judgment includes the entry of a permanent injunction and awards of statutory damages to Gucci for Defendants’ willful counterfeiting

pursuant to 15 U.S.C. § 1117(c)<sup>1</sup> and cybersquatting pursuant to 15 U.S.C. § 1117(d). Gucci also requests the Court to enter equitable relief pursuant to 15 U.S.C. § 1116, Fed. R. Civ. P. 65, The All Writs Act, 28 U.S.C. § 1651(a), and this Court’s inherent authority requiring to cancel, or at Gucci’s election, transfer the domain names at issue to Gucci, assign all rights, title and interest to the Subject Domain Names to Gucci, and permanently delist or deindex the Subject Domain Names from all search engines to ensure the associated websites may no longer be used as a means for selling goods bearing counterfeits and infringements of Gucci’s trademarks and infringing upon Gucci’s rights.<sup>2</sup>

## **II. STATEMENT OF FACTS**

### **A. Plaintiff’s Rights.**

Gucci is a corporation organized under the laws of the State of New York with its principal place of business in the United States located at 195 Broadway, 12th Floor, New York, New York 10007. (Compl. ¶ 4.) Gucci operates boutiques throughout the world and the United States, including within this district. (*Id.*; see also Declaration of Sydney Kipen in Support of Plaintiff’s Motion for Default Final Judgment [“Kipen Decl.”], ¶¶ 4-6, filed herewith.) Gucci is, in part, engaged in the business of manufacturing and distributing throughout the world, including within this district, a variety of high-quality goods under multiple world-famous common law and federally registered trademarks. (Compl. ¶¶ 4, 16; Kipen Decl. ¶¶ 5-6.)

Gucci is the owner of all rights in and to the federally registered trademarks identified in Paragraph 5 of the Kipen Declaration (the “Gucci Marks”), which are used in connection with

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<sup>1</sup> Plaintiff is not alleging joint and severable liability and are not requesting the Court award damages against Defendants jointly and severally, therefore, there is no possibility of inconsistent liability. Further, Plaintiff is moving for entry of Default Final Judgment against all Defendants, therefore, there is no possibility of inconsistent liability between Defendants.

<sup>2</sup> See Complaint [DE 1] at ¶ 81(f), (g), and (h).

the manufacture and distribution of a variety of high-quality goods in the categories identified therein. (Kipen Decl. ¶¶ 4-5; see also United States Trademark Registrations of the Gucci Marks at issue [the “Gucci Trademark Registrations”] attached as Composite Exhibit 1 to the Complaint [DE 1-2]). The Gucci Marks are symbols of Gucci’s quality, reputation, and goodwill and have never been abandoned. (Kipen Decl. ¶ 7.) Moreover, Gucci has expended substantial time, money, and other resources developing, advertising, and otherwise promoting its trademarks. (Id. ¶¶ 6-7.) As such, the Gucci Marks qualify as famous marks as the term is used in 15 U.S.C. § 1125(c)(1).

Furthermore, Gucci has extensively used, advertised, and promoted the Gucci Marks in the United States in interstate commerce in association with high quality goods, and has carefully monitored and policed the use of the Gucci Marks. (Kipen Decl. ¶¶ 5-7.) As a result of Gucci’s efforts, members of the consuming public readily identify products bearing the Gucci Marks as being quality merchandise sponsored and approved by Gucci. (Id. at ¶ 7.) Accordingly, the Gucci Marks have achieved secondary meaning as identifiers of high-quality goods.

#### **B. Defendants’ Infringing Acts.**

As alleged by Gucci, admitted by default, and established by the evidence submitted herewith, Defendants own, operate, or control the interactive commercial Internet websites and the supporting domain existing under their individual and/or business association names identified in Schedule “A” hereto (the “Subject Domain Names”). As such, Defendants are the active, conscious, and dominant forces behind the promotion, advertisement, distribution, offering for sale, and sale of goods using trademarks which are exact copies of the Gucci Marks (the “Counterfeit Goods”). (See Compl. ¶¶ 7-15, 25-28, 46-48; see also Kipen Decl. ¶¶ 9-11; Declaration of T. Raquel Wiborg-Rodriguez in Support of Plaintiff’s Motion for Order

Authorizing Alternate Service of Process [“Wiborg-Rodriguez Decl.”] ¶ 2, [DE 5-1], incorporated herein by reference; see generally, relevant web pages from Defendants’ interactive,<sup>3</sup> commercial Internet websites and supporting domain name operating under Subject Domain Names [“Defendants’ Websites”] attached as Composite Exhibit 2 to the Complaint [DE 1-3 through 1-4], incorporated herein by reference.)

Further, as admitted by Defendants through default, at all times relevant, Defendants have had full knowledge of Gucci’s ownership of the Gucci Marks, including its exclusive right to use and license such intellectual property and the goodwill associated therewith. (Compl. ¶¶ 25, 27, 32.) Defendants do not have, nor have they ever had, the right or authority to use the Gucci Marks for any purpose. (See Kipen Decl. ¶ 9.) However, despite their known lack of authority to do so, Defendants are engaged in the activity of promoting and otherwise advertising, selling, offering for sale, and distributing their Counterfeit Goods via their Internet websites operating under the Subject Domain Names. (See Compl. ¶¶ 7-15, 25-28; see also Kipen Decl. ¶¶ 9-11.)

Gucci’s evidence, obtained as a result of its investigation of Defendants, clearly demonstrates that Defendants are engaged in the fraudulent promotion, advertisement, distribution, offering for sale, and sale of goods bearing counterfeits of the Gucci Marks. Gucci’s representative, Sydney Kipen, who has the ability to identify the distinctions between genuine

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<sup>3</sup> At least one Defendant uses its Subject Domain Name as a supporting domain name to direct traffic to its fully interactive commercial website operating under another Subject Domain Name, from which consumers can complete purchases. This supporting domain name automatically redirects and forwards to the Defendant’s fully interactive, commercial Internet website operating under its other Subject Domain Name upon clicking a product or link on the initial website. Accordingly, the web pages for the Subject Domain Name that operates as a redirecting website are included with the web pages to which the site redirects, as shown in Composite Exhibit “2” attached to the Complaint. Additionally, at least one Defendant does not have a shopping cart feature on its Subject Domain Name; rather, consumers are able to browse the listings of Gucci branded products online via the website, and ultimately allowing consumers to inquire and make direct purchases of the Gucci-branded products via electronic communication, including e-mail and/or private messaging services such as WhatsApp. (See Compl. ¶ 2 n. 1.)

Gucci merchandise and counterfeit copies of the same, reviewed and visually inspected Defendants' Websites, including images of various items bearing the Gucci Marks offered for sale by Defendants through the Internet websites operating under the Subject Domain Names, and determined the products offered for sale were non-genuine, unauthorized versions of Gucci's products. (Kipen Decl. ¶¶ 9-11 and Exhibit "1" thereto.)<sup>4</sup>

### **C. Procedural Background.**

On April 18, 2023, Gucci filed its Complaint for Injunctive Relief and Damages in this action against Defendants [DE 1]. On April 19, 2023, Gucci filed its Motion for Order Authorizing Alternate Service of Process on Defendants Pursuant to Federal Rule of Civil Procedure 4(f)(3) ("Motion for Alternate Service") [DE 5],<sup>5</sup> which the Court granted on December 19, 2023 [DE 7], authorizing Gucci to serve the Summonses, Complaint, and all filings in this matter upon Defendants via electronic mail ("e-mail") and by posting copies of the same on Gucci's Website. (See Declaration of T. Raquel Wiborg-Rodriguez in Support of Plaintiff's Motion for Default Final Judgement Against Defendants ["Wiborg-Rodriguez Decl. in Support of DFJ"] ¶ 3, filed herewith.)

Pursuant to the Court's Order Granting Motion for Alternate Service, Gucci served Defendants with their respective Summons and a copy of the Complaint via e-mail and via website posting on December 20, 2023. (Wiborg-Rodriguez Decl. in Support of FDJ ¶ 4; see also [DE 10], Proof of Service on file with the Court.)

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<sup>4</sup> Gucci prepared a chart for the convenience of the Court providing an example of the trademarks counterfeited and types of goods offered for sale by each Defendant, including citations to the evidence. (See Kipen Decl. ¶ 23 and Exhibit "1" attached thereto.)

<sup>5</sup> Gucci's Motion for Order Authorizing Alternate Service of Process, and the supporting declarations and exhibits attached thereto, [DE 5], are incorporated herein by reference.

The time allowed for Defendants to respond to the Complaint has expired. (Wiborg-Rodriguez Decl. in Support of DFJ ¶ 5.) Defendants have not been granted any extension of time to respond, nor have they served or filed an Answer or other response. (*Id.* at ¶ 6.) To Gucci's knowledge, Defendants are not infants or incompetent persons, and, upon information and belief, the Servicemembers' Civil Relief Act does not apply. (*Id.* at ¶ 7.) On February 15, 2024, Gucci filed its Request for Clerk's Entry of Default against Defendants [DE 11], and the Clerk subsequently entered default against each Defendant on February 16, 2024, for failure to appear, plead, or otherwise defend pursuant to Rule 55(a) of the Federal Rules of Civil Procedure [DE 12]. Gucci now moves the Court to grant Default Final Judgment against all Defendants and submits this Motion for Entry of Default Final Judgment in compliance with the Court's Order regarding the same [DE 13].

### **III. ARGUMENT**

#### **A. Default Judgment Should Be Entered Against Defendants.**

This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338. (Compl. ¶ 1.) Personal jurisdiction over Defendants and venue in this Judicial District are proper under 28 U.S.C. § 1391 as Defendants direct business activities toward consumers within this district and cause harm to Gucci's business within this district through the interactive Internet websites operating under the Subject Domain Names. (Compl. ¶¶ 2-3, 7, 12, 30.)

##### **1. Default Judgment is Proper.**

Pursuant to Federal Rule of Civil Procedure 55(b)(2), the Court is authorized to enter a final judgment of default against a party who has failed to plead in response to a complaint. By such a default, all of Gucci's well-pled allegations in the Complaint are deemed admitted. See Buchanan v. Bowman, 820 F.2d 359 (11th Cir. 1987); PetMed Express, Inc. v. Medpets.com,

336 F. Supp. 2d 1213, 1217 (S.D. Fla. 2004). In this case, the Complaint, pleadings, and declaration filed in support of Gucci's Motion for Entry of Default Final Judgment clearly demonstrate that default judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure should be entered against Defendants.

## **2. Factual Allegations Establish Defendants' Liability.**

Title 15 U.S.C. § 1114 provides liability for trademark infringement if, without the consent of the registrant, a defendant uses "in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark: which is likely to cause confusion, or to cause mistake, or to deceive." In order to prevail on its trademark infringement claim under Section 32 of the Lanham Act, Gucci must demonstrate: (1) it had prior rights to the trademarks at issue; and (2) Defendants had adopted a mark or name that was the same, or confusingly similar to Gucci's trademark, such that consumers were likely to confuse the two. Planetary Motion, Inc. v. Techsplosion, Inc., 261 F.3d 1188, 1193 (11th Cir. 2001) (citing Lone Star Steakhouse & Saloon, Inc. v. Longhorn Steaks, Inc., 106 F.3d 355, 360 (11th Cir. 1997)).

To prevail on a claim of false designation of origin under Section 43(a) of the Lanham Act, Gucci must prove that Defendants used in commerce, in connection with any goods or services, any word, term, name, symbol or device, or any combination thereof, or any false designation of origin, which is likely to deceive as to the affiliation, connection, or association of Defendants with Gucci, or as to the origin, sponsorship, or approval, of Defendants' goods by Gucci. 15 U.S.C. § 1125(a)(1). As with trademark infringement claims, the test for liability for false designation of origin under Section 43(a) is also "whether the public is likely to be deceived or confused by the similarity of the marks at issue." Two Pesos, Inc. v. Taco Cabana, Inc., 505 U.S. 763, 780, 112 S.Ct. 2753, 2763 (1992).

Gucci's Complaint also sets forth a cause of action for cybersquatting against Defendant Numbers 1-12 pursuant to the Anticybersquatting Consumer Protection Act ("ACPA") 15 U.S.C. § 1125(d). To prevail under 15 U.S.C. § 1125(d), Gucci must demonstrate that "(1) its mark is distinctive or famous and entitled to protection; (2) the defendant's domain name is identical or confusingly similar to the plaintiff's mark; and (3) the defendant registered or used the domain name with a bad faith intent to profit." Bavaro Palace, S.A. v. Vacation Tours, Inc., 203 Fed. Appx. 252, 256, 2006 WL 2847233, at \*3 (11th Cir. 2006). See 15 U.S.C. § 1125(d).

Whether a defendant's use of a plaintiff's trademarks creates a likelihood of confusion between the plaintiff's and the defendant's products is also the determining factor in the analysis of unfair competition under the common law of Florida. See Planetary Motion, 261 F.3d at 1193 n.4 ("Courts may use an analysis of federal infringement claims as a 'measuring stick' in evaluating the merits of state law claims."). Further, the analysis of liability for Florida common law trademark infringement is also the same as the analysis of liability for trademark infringement under § 32(a) of the Lanham Act, evaluating whether there is a likelihood of confusion between the registered mark and the allegedly infringing mark. See PetMed Express, Inc., 336 F. Supp. 2d at 1217-18.

The well-pled factual allegations of Gucci's Complaint, including specifically those pled in Paragraphs 7-15, 25-39, 46-50, 53-58, 61-67, 71-73, and 76-79, properly allege the elements for each of the above claims. Moreover, the factual allegations in Gucci's Complaint, substantiated by the evidence submitted herewith, conclusively establish Defendants' liability under each claim asserted in the Complaint. Accordingly, Default Judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure should be entered against each Defendant.



## **B. Plaintiff's Requested Relief Should Be Granted.**

### **1. Entry of a Permanent Injunction is Appropriate.**

Pursuant to the Lanham Act, a district court is authorized to issue an injunction “according to the principles of equity and upon such terms as the court may deem reasonable,” to prevent violations of trademark law. 15 U.S.C. § 1116(a). Indeed, “injunctive relief is the remedy of choice for trademark and unfair competition cases, since there is no adequate remedy at law for the injury caused by a defendant’s continuing infringement.” Burger King Corp. v. Agad, 911 F. Supp. 1499, 1509-10 (S.D. Fla. 1995) (citing Century 21 Real Estate Corp. v. Sandlin, 846 F.2d 1175, 1180 (9th Cir. 1988)). Moreover, even in a default judgment setting, injunctive relief is available. See, e.g., PetMed Express, Inc., 336 F. Supp. 2d at 1222-23. Defendants’ failure to respond or otherwise appear in this action makes it difficult for Gucci to prevent further infringement absent an injunction. See Jackson v. Sturkie, 255 F. Supp. 2d 1096, 1103 (N.D. Cal. 2003) (“Defendant’s lack of participation in this litigation has given the court no assurance that defendant’s infringing activity will cease. Therefore, plaintiff is entitled to permanent injunctive relief.”) Pursuant to 15 U.S.C. § 1116, this Court should permanently enjoin Defendants from continuing to infringe any of Gucci’s intellectual property rights, including the Gucci Marks.

Permanent injunctive relief is appropriate where a plaintiff demonstrates (1) it has suffered irreparable injury; (2) there is no adequate remedy at law; (3) the balance of hardship favors an equitable remedy; and (4) an issuance of an injunction is in the public’s interest. eBay Inc., v. MercExchange, LLC, 547 U.S. 388, 392-93, 126 S. Ct. 1837, 164 L. Ed. 2d 641 (2006) (overruled on other grounds). As demonstrated herein and based upon the issuance of the temporary restraining order and preliminary injunction, Gucci has clearly carried its burden on each of the four factors. Accordingly, permanent injunctive relief is appropriate.

Defendants' actions merit permanent injunctive relief, not only to protect Gucci's reputation, but also to protect consumers from being deceived as to the quality and source of products bearing and/or using Gucci's trademarks. The facts alleged in Gucci's Complaint, substantiated by the evidence submitted herewith, shows Defendants are "continuously infringing and inducing others to infringe" the Gucci Marks by using them to advertise, promote, and sell goods bearing and/or using marks which are identical or altered to be identical to the Gucci Marks. (See Compl. ¶ 47; see generally Defendants' Subject Domain Names, attached as Comp. Ex. 2 to the Complaint.)

Gucci is clearly suffering, and will continue to suffer, irreparable injury if Defendants' infringing activities are not permanently enjoined. (See Kipen Decl. ¶ 22.) In trademark cases, "a sufficiently strong showing of likelihood of confusion ... may by itself constitute a showing of a substantial threat of irreparable harm." McDonald's Corp. v. Robertson, 147 F.3d 1301, 1306 (11th Cir.1998); see also Levi Strauss & Co. v. Sunrise Int'l Trading Inc., 51 F.3d 982, 986 (11th Cir.1995) ("There is no doubt that the continued sale of thousands of pairs of counterfeit jeans would damage LS & Co.'s business reputation and might decrease its legitimate sales.") In any event, Gucci's Complaint alleges that Defendants' unlawful actions have caused Gucci irreparable injury and will continue to do so if Defendants are not permanently enjoined. (See Compl. ¶¶ 43, 51, 59, 69, 74, 80.) Defendants have defaulted upon Gucci's factual allegations in that respect.

Additionally, Gucci has no adequate remedy at law so long as Defendants continue to operate the Internet websites under the Subject Domain Names, because Gucci will have no control of the quality of what appears to be its products in the marketplace. (Compl. ¶¶ 42, 49, 59, 68, 74, 80.) An award of monetary damages would not cure the injury to Gucci's reputation

and goodwill which will result if Defendants' infringing and counterfeiting actions are allowed to continue. Moreover, it can hardly be said that Defendants face hardship in refraining from their willful infringement of Gucci's trademarks, whereas Gucci faces hardship from loss of sales and its inability to control its reputation. In reality, Defendants have no cognizable hardship, as they will be prohibited from selling counterfeit goods, which is an illegal act to begin with. Finally, the public has an interest in the issuance of a permanent injunction against Defendants to prevent consumers from being misled by Defendants' products. See Chanel, Inc. v. besumart.com, 240 F. Supp. 3d 1283, 1291 (S.D. Fla. 2016) ("An injunction to enjoin infringing behavior serves the public interest in protecting consumers from such behavior." (alteration added) (citation omitted)); BellSouth Adver. & and Publ'g. Corp. v. Real Color Pages, Inc., 792 F. Supp. 775, 785 (M.D. Fla. 1991) (holding "in a trademark infringement or unfair competition case, a third party, the consuming public is present, and its interests are paramount.")). Ultimately, the permanent injunction will prevent consumer confusion and deception in the marketplace, and will protect Gucci's property interest in its Marks, which are the touchstones of trademark law.

Furthermore, as admitted by Defendants through default, (i) the Subject Domain Names are essential components of Defendants' counterfeiting and infringing activities; and (ii) the domain names themselves are one of the means by which Defendants further their counterfeiting and infringement scheme and cause harm to Gucci. (See Compl. ¶ 15.) Therefore, to effectuate the injunction as a practical matter, the Subject Domain Names owned, operated, and/or controlled by Defendants to engage in the business of promoting, advertising, offering for sale, and selling goods bearing counterfeits and infringements of the Gucci Marks, should be ordered transferred to Gucci's control by Defendants, their registrars, and/or registries. (Id. ¶ 81(f).) Further, Defendants,

their agents or assigns, should be required to (i) assign all rights, title, and interest, to their Subject Domain Names to Gucci, and (ii) instruct all search engines to permanently delist or deindex the Subject Domain Names. (Id. ¶ 81(g)-(h).) Absent the transfer of the Subject Domain Names or the assignment of all rights, title, and interest to the Subject Domain Names, and the delisting or deindexing of the Subject Domain Names from all search engines, Defendants will remain free to continue infringing Gucci's trademarks with impunity and will continue to benefit from the Internet traffic to those websites built through the unlawful use of the Gucci Marks.

The Court's powers of equity are sufficiently broad to compel measures necessary to enforce an injunction against infringement. See, e.g., Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 15, 91 S. Ct. 1267, 1276 (1971) ("Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for. . . the essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case."); United States v. Bausch & Lomb Optical Co., 321 U.S. 707, 724 (1944) ("Equity has power to eradicate the evils of a condemned scheme by prohibition of the use of admittedly valid parts of an invalid whole."). District courts are expressly authorized to order the transfer or surrender of domain names in an *in rem* action against a domain name. See 15 U.S.C. §§ 1125(d)(1)(C), (d)(2). However, the remedy is by no means limited to that context. See, e.g., Philip Morris USA v. Otamedia Ltd., 331 F. Supp. 2d 228, 230-31 (S.D.N.Y. 2004) (Yesmoke.com domain name transferred to plaintiff despite the fact that plaintiff did not own a trademark in the term "Yesmoke" and noting that 15 U.S.C. § 1125 "neither states nor implies that an *in rem* action against the domain name constitutes the exclusive remedy for a plaintiff aggrieved by trademark violations in cyberspace."); Ford Motor Co. v. Cross, 441 F. Supp. 2d 837, 853 (E.D. Mich. 2006) (defendants ordered to disclose all

other domain registrations held by them and to transfer registration of a particular domain name to plaintiff in part under authority of 15 U.S.C. § 1116(a)). This Court and others have not hesitated to order the transfer of domain names when faced with factual scenarios similar to the one herein.<sup>6</sup>

Defendants have created an Internet-based counterfeiting and infringement scheme and are profiting from their deliberate misappropriation of Gucci's rights. Accordingly, the Court should eliminate the means by which Defendants are conducting their unlawful activities by transferring the Subject Domain Names, assigning all rights, title, and interest to the Subject Domain Names to Gucci, and delisting or deindexing the Subject Domain Names from all search engines, so that these means may no longer be used as instrumentalities to further the sale of counterfeit goods.

### **C. Damages as to Count I for Trademark Counterfeiting.**

In a case involving the use of counterfeit marks in connection with a sale, offering for sale, or distribution of goods, 15 U.S.C. § 1117(c) provides that a plaintiff may elect an award of

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<sup>6</sup> See e.g., adidas AG v. Individuals, No. 24-61222-Civ-Smith, 2024 U.S. Dist. LEXIS 200975 (S.D. Fla. Nov. 4, 2024, docketed Nov. 5, 2024) (ordering, *inter alia*, (i) transfer of domain names at issue as part of grant of permanent injunction, (ii) assignment of all rights, title, and interest to defendants' domain names used to promote, offer for sale, and/or sell goods bearing counterfeits and/or infringements of plaintiff's trademarks to plaintiff, and (iii) permanent disablement, de-indexing or delisting of defendants' domain names from internet search engines); Richemont Int'l SA v. Aaareplicawatch.Com, No. 23-62202-Civ-Smith, 2024 U.S. Dist. LEXIS 100749 (S.D. Fla. June 5, 2024, docketing June 6, 2024) (same); Chanel, Inc. v. 8creplicachanel.com, No. 19-61719-Civ-Smith, 2019 U.S. Dist. LEXIS 146369 (S.D. Fla. Aug. 28, 2019) (same). See also Abercrombie & Fitch Trading Co. v. Individuals, No. 24-24707-Civ-Ruiz, 2025 U.S. Dist. LEXIS 7025 (S.D. Fla. Jan. 13, 2025, docketed Jan. 14, 2025) (same); Chanel, Inc. v. Individuals, No. 24-61114-Civ-Dimitrouleas, 2024 U.S. Dist. LEXIS 194435 (S.D. Fla. Oct. 25, 2024) (same); Malletier v. Individuals, No. 23-62323-Civ-Cohn, 2024 U.S. Dist. LEXIS 49504 (S.D. Fla. March 20, 2024) (same); North Face Apparel Corp. v. Individuals, Bus. Entities & Unincorporated Ass'ns Identified on Schedule "A", No. 23-60653-Civ-Singhal, 2024 U.S. Dist. LEXIS 34396 (S.D. Fla. Feb. 27, 2024, docketed Feb. 28, 2024) (same); adidas AG v. Adidascampusireland.Com, No. 23-62196-Civ-Altman, 2024 U.S. Dist. LEXIS 11947 (S.D. Fla. Jan. 22, 2024) (same).

statutory damages at any time before final judgment is rendered in the sum of not less than one thousand dollars (\$1,000.00) nor more than two hundred thousand dollars (\$200,000.00) per counterfeit mark per type of good. 15 U.S.C. § 1117(c)(1). In addition, if the Court finds that Defendants' counterfeiting actions were willful, it may impose damages above the maximum limit up to two million dollars (\$2,000,000.00) per counterfeit mark per type of good. 15 U.S.C. § 1117(c)(2). Pursuant to 15 U.S.C. § 1117(c), Gucci elects to recover an award of statutory damages as to Count I of the Complaint.

The Court has wide discretion to set an amount of statutory damages. PetMed Express, Inc., 336 F. Supp. 2d at 1219 (citing Cable/Home Commc'n Corp. v. Network Prod., Inc., 902 F.2d 829, 852 (11th Cir. 1990)). Indeed, an award of statutory damages is an appropriate remedy, despite a plaintiff's inability to provide actual damages caused by a defendant's infringement. Ford Motor Co. v. Cross, 441 F. Supp. 2d 837, 852 (E.D. Mich. 2006) ("A successful plaintiff in a trademark infringement case is entitled to recover enhanced statutory damages even where its actual damages are nominal or non-existent."). Congress enacted a statutory damages remedy in trademark counterfeiting cases because evidence of a defendant's profits in such cases is almost impossible to ascertain. See, e.g., S. REP. NO. 104-177, pt. V(7) (1995) (discussing purposes of Lanham Act statutory damages); see also PetMed Express, Inc., 336 F. Supp. 2d at 1220 (statutory damages are "especially appropriate in default judgment cases due to infringer nondisclosure"). This case is no exception.

A defendant's intent can be of probative value for establishing willfulness, triggering an enhanced statutory award. PetMed Express, Inc., 336 F. Supp. 2d at 1220. A defendant is deemed to have acted willfully where "the infringer acted with actual knowledge or reckless disregard" to a plaintiff's intellectual property rights. See Arista Records, Inc. v. Beker Enter.,

Inc., 298 F. Supp. 2d 1310, 1312 (S.D. Fla. 2003). Willfulness may also be inferred from the defendant's default. See PetMed Express, Inc., 336 F. Supp. 2d at 1217 (upon default, well plead allegations taken as true). In either case, a defendant is deemed to have the requisite knowledge that its acts constitute an infringement.

The Gucci Marks are renowned worldwide as identifiers of high-quality merchandise, and the fact that Defendants offered for sale and sold goods using marks which are identical or altered to be identical to such strong marks shows their desire and purpose to trade upon Gucci's goodwill. Indeed, in a case of clear-cut copying such as this, it is appropriate to infer that Defendants intended to cause confusion and benefit from Gucci's reputation to Gucci's detriment. See PetMed Express, Inc., 336 F. Supp. 2d at 1220 (court infers intent to confuse consumers into believing affiliation from Defendants' use of such a mark that was confusingly similar). Moreover, in this district, it has been held that when an alleged infringer adopts a mark "with the intent of obtaining benefit from the plaintiff's business reputation, 'this fact alone may be sufficient to justify the inference that there is confusing similarity.'" Turner Greenberg Assocs., 320 F. Supp. 2d 1317, 1333 (S.D. Fla. 2004) (citing Carnival Corp. v. Seaescape Casino Cruises, Inc., 74 F. Supp. 2d 1261, 1268 (S.D. Fla. 1999)).

Here, the evidence clearly establishes Defendants intentionally copied the Gucci Marks for the purpose of deriving the benefit of Gucci's world-famous reputation. In any event, Defendants defaulted on Gucci's allegations of willfulness. (See Compl. ¶ 32.) See Arista Records, Inc. 298 F. Supp. 2d at 1313 (finding a Court may infer willfulness from the defendants' default). As such, this Court should award a significant amount of statutory damages under the Lanham Act to ensure Defendants do not continue their intentional and willful counterfeiting activities.

Based on the above considerations, Gucci respectfully requests the Court award statutory damages against each Defendant. The evidence in this case demonstrates that each Defendant promoted, distributed, advertised, offered for sale, and/or sold at least one (1) type of good bearing and/or using marks which were in fact a counterfeit of, at least one (1) of the Gucci Marks. (Compl. ¶¶ 16, 25-33, 46-48; see also Kipen Decl. ¶ 23 and Ex. 1 attached thereto, filed herewith; see generally Defendants' Internet websites, reflecting samples of each Defendant promoting and offering for sale goods bearing counterfeits of, at least, one of the Gucci Marks at issue in this action via its respective Subject Domain Name, attached as Comp. Ex. 2 to the Complaint.) And, as noted above, based upon the evidence Gucci has presented, it is reasonable to infer each Defendant's infringement was willful. As such, Gucci is requesting a statutory damage award of one million dollars (\$1,000,000.00) per mark, per type of good. (See Kipen Decl. ¶ 23.) As each Defendant used at least one counterfeit mark on one type of good, Gucci requests a statutory damage award in the amount of one million dollars (\$1,000,000.00) against each Defendant as partial compensation to Gucci and to deter Defendants and others from continuing to counterfeit Gucci's trademarks. (See id.)<sup>7</sup>

The suggested award falls well within the permissible statutory range under 15 U.S.C. § 1117(c)(2) and should be sufficient to deter Defendants and others from continuing to counterfeit or otherwise infringe Gucci's trademarks, compensate Gucci, and punish Defendants, all stated goals of 15 U.S.C. § 1117(c). Joint Statement of Trademark Counterfeiting Legislation, H.R.J. Res. 648, 98th Cong., 2nd Sess., 130 Cong.Rec. H12076, H12083; PetMed Express, Inc., 336 F.

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<sup>7</sup> Gucci has prepared a chart for the convenience of the Court providing an example of trademarks counterfeited and types of goods offered for sale and/or sold per Defendant, including citations to the evidence. (See Kipen Decl. ¶ 23 and Exhibit "1" attached thereto.) Although Gucci's evidence demonstrates that many Defendants have counterfeited multiple trademarks on multiple types of goods, Gucci is requesting a statutory damages award in the amount of \$1,000,000.00 against each Defendant based upon each Defendant's use of at least one counterfeit mark on one type of good. (Kipen Decl. ¶ 23.)



Supp. 2d at 1222 (“statutory damages under § 1117(c) are intended not just for compensation for losses, but also to punish and deter wrongful conduct.”). This Court and others have granted statutory damages under the Lanham Act similar to or greater than Gucci’s request herein.<sup>8</sup>

**D. Plaintiff’s Damages as to Count II for False Designation of Origin.**

Gucci’s Complaint also sets forth a cause of action for false designation of origin pursuant to § 43(a) of the Lanham Act (15 U.S.C. § 1125(a)) (Count II). As to Count II, the allowed scope of monetary damages is also encompassed in 15 U.S.C. § 1117(c). Accordingly, judgment on Count II should be limited to the amount awarded pursuant to Count I and entry of the requested equitable relief.

**E. Plaintiff’s Damages as to Count III for Cybersquatting.**

Gucci’s Complaint further sets forth a cause of action for cybersquatting pursuant to the Anticybersquatting Consumer Protection Act (“ACPA”), 15 U.S.C. §1125(d). As admitted by default, and established by the evidence submitted herewith, Defendant Numbers 1-12 (collectively the “Cybersquatting Defendants”) have acted with the bad faith intent to profit from the Gucci Marks and the goodwill associated with the Gucci Marks by registering their

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<sup>8</sup> See, e.g., adidas AG v. Individuals, No. 24-61222-Civ-Smith, 2024 U.S. Dist. LEXIS 200975 (S.D. Fla. Nov. 4, 2024, docketed Nov. 5, 2024) (awarding Plaintiff \$1,000,000.00 against each Defendant based on at least one mark counterfeited on one type of good); Richemont Int’l SA v. Aareplicawatch.Com, No. 23-62202-Civ-Smith, 2024 U.S. Dist. LEXIS 100749 (S.D. Fla. June 5, 2024, docketing June 6, 2024) (same); Chanel, Inc. v. 8creplicachanel.com, No. 19-61719-Civ-Smith, 2019 U.S. Dist. LEXIS 146369 (S.D. Fla. Aug. 28, 2019) (same). See also Abercrombie & Fitch Trading Co. v. Individuals, No. 24-24707-Civ-Ruiz, 2025 U.S. Dist. LEXIS 7025 (S.D. Fla. Jan. 13, 2025, docketed Jan. 14, 2025) (same); Chanel, Inc. v. Individuals, No. 24-61114-Civ-Dimitrouleas, 2024 U.S. Dist. LEXIS 194435 (S.D. Fla. Oct. 25, 2024) (same); Malletier v. Individuals, No. 23-62323-Civ-Cohn, 2024 U.S. Dist. LEXIS 49504 (S.D. Fla. March 20, 2024) (same); North Face Apparel Corp. v. Individuals, Bus. Entities & Unincorporated Ass’ns Identified on Schedule “A”, No. 23-60653-Civ-Singhal, 2024 U.S. Dist. LEXIS 34396 (S.D. Fla. Feb. 27, 2024, docketed Feb. 28, 2024) (same); adidas AG v. Adidascampusireland.Com, No. 23-62196-Civ-Altman, 2024 U.S. Dist. LEXIS 11947 (S.D. Fla. Jan. 22, 2024) (same).

corresponding Subject Domain Names identified on Schedule “B” hereto, (collectively, the “Cybersquatted Subject Domain Names”), which are identical, confusingly similar to, or dilutive of at least one of the Gucci Marks. (Compl. ¶¶ 34-39, 61-66.) The Cybersquatted Subject Domain Names incorporate at least one of Gucci’s trademarks in their entirety surrounded by descriptive or generic terms, rendering the domain name nearly identical to at least one of Gucci’s trademarks. Even minor variations to a plaintiff’s mark in a domain name can be confusingly similar. See Victoria’s Cyber Secret Ltd. P’ship v. V Secret Catalogue, Inc., 161 F. Supp. 2d 1339, 1351 (S.D. Fla. 2001) (“taking of an identical copy of another’s famous and distinctive trademark for use as a domain name creates a presumption of confusion among Internet users as a matter of law.”); DaimlerChrysler v. The Net Inc., 388 F.3d 201, 205-06 (6th Cir. 2004) (“Courts generally have held that a domain name that incorporates a trademark is ‘confusingly similar to’ that mark if ‘consumers might think that [the domain name] is used, approved, or permitted’ by the mark holder.”). Furthermore, it is indisputable that the Gucci Marks are famous and distinctive. Gucci’s genuine goods are among the best-selling high-quality products in the world, and the Gucci Marks enjoy widespread recognition and are prominent in the minds of the consuming public. (Kipen Decl. ¶¶ 6-7.)

As to the issue of bad faith, the ACPA lists nine factors for courts to consider in determining whether a domain name has been registered or used in “bad faith” with an intent to profit from a mark in registering or using the mark in a domain name. See 15 U.S.C. § 1125(d)(1)(B)(i); Taverna Opa Trademark Corp., 2010 WL 1838384, at \*2. The nine factors are not meant to be exclusive, and the Court may consider the context of the matter in making a determination of bad faith. See Victoria’s Cyber Secret Ltd. P’ship, 161 F. Supp. 2d at 1347. An

examination of the relevant bad faith factors compels the conclusion that Defendants' registration and use of the Cybersquatted Subject Domain Names violates 15 U.S.C. § 1125(d).

The first and third factors, § 1125(d)(1)(B)(I) and (III), are clearly present since the Cybersquatting Defendants have no rights in the Gucci Marks, and the Cybersquatting Defendants have never used the Gucci Marks in connection with a bona fide offering of goods or services. Additionally, the fourth, fifth, and ninth factors, § 1125(d)(1)(B)(IV), (V) and (IX), weigh in Gucci's favor. As discussed above, the Cybersquatting Defendants have clearly intentionally incorporated at least one of the Gucci Marks in their domain names to divert consumers looking for Gucci's Internet website to their own Internet website for commercial gain. Such consumers are likely to be confused as to the source and sponsorship of the Cybersquatting Defendants' Internet websites and mistakenly believe the websites are endorsed by and/or affiliated with Gucci. Clearly, the Cybersquatting Defendants' registration of the Cybersquatted Subject Domain Names, to promote and/or offer for sale counterfeit and infringing Gucci branded goods, knowing the domain names are identical or confusingly similar to at least one of Gucci's indisputably famous and distinctive marks ensures a likelihood of confusion among consumers. See House Judiciary Committee Report on H.R. 3028, H.R. Rep. No. 106-412 p. 13 (October 25, 1999) ("The more distinctive or famous a mark has become, the more likely the owner of that mark is deserving of the relief available under this act.").

Upon a finding of liability, the ACPA expressly empowers the Court to "order the forfeiture or cancellation of the domain name or the transfer of the domain name to the owner of the mark." 15 U.S.C. § 1125(d)(1)(c); Victoria's Cyber Secret Ltd. P'ship, 161 F. Supp. 2d at 1356. Accordingly, Gucci is entitled to the transfer and ownership of the Cybersquatted Subject Domain Names because they are confusingly similar to the Gucci Marks. See id. at 663.

Additionally, Gucci may elect at any time before final judgment to recover actual damages or statutory damages of not less than one thousand dollars (\$1,000.00) and not more than one hundred thousand dollars (\$100,000.00) per domain name, as the court considers just. 15 U.S.C. § 1117(d). Gucci elects statutory damages and submits that in view of the Cybersquatting Defendants' intentional, wrongful behavior, an award in the amount of one hundred thousand dollars (\$10,000.00) against each of the Cybersquatting Defendants for each of their respective Cybersquatted Subject Domain Names, as outlined on Schedule "B" hereto, would be just. See Taverna Opa Trademark Corp., 2010 WL 1838384, at \*3 (awarding \$10,000.00 in statutory damages for the infringing domain name at issue); Richemont Int'l SA v. Aaareplicawatch.Com, No. 23-62202-Civ-Smith, 2024 U.S. Dist. LEXIS 100749 (S.D. Fla. June 5, 2024, docketing June 6, 2024) (awarding \$100,000.00 in statutory damages for each infringing domain name at issue).

**F. Plaintiff's Damages as to Count IV for Common Law Unfair Competition and Count V for Common Law Trademark Infringement.**

Gucci's Complaint also sets forth a cause of action under Florida's common law of unfair competition (Count IV) and Florida's common law trademark infringement (Count V). Gucci submits that judgment on Counts IV and V should also be limited to the amount awarded pursuant to Count I and entry of the requested equitable relief.

**IV. CONCLUSION**

For the foregoing reasons, Plaintiff, Gucci America, Inc., respectfully requests the Court enter default final judgment and a permanent injunction against Defendants in the form of the proposed Default Final Judgment and Permanent Injunction filed herewith.

Dated: February 5, 2025

Respectfully submitted,

STEPHEN M. GAFFIGAN, P.A.

By: **T. Raquel Wiborg-Rodriguez**

Stephen M. Gaffigan (Fla. Bar No. 025844)

Virgilio Gigante (Fla. Bar No. 082635)

T. Raquel Wiborg-Rodriguez (Fla. Bar. No. 103372)

401 East Las Olas Blvd., Suite 130-453

Ft. Lauderdale, Florida 33301

Telephone: (954) 767-4819

E-mail: [Stephen@smgpa.cloud](mailto:Stephen@smgpa.cloud)

E-mail: [Leo@smgpa.cloud](mailto:Leo@smgpa.cloud)

E-mail: [Raquel@smgpa.cloud](mailto:Raquel@smgpa.cloud)

Attorneys for Plaintiff, GUCCI AMERICA, INC.

**SCHEDULE "A"**  
**DEFENDANTS BY NUMBER AND SUBJECT DOMAIN NAMES**

<b>Def. No.</b>	<b>Defendant / Subject Domain Name</b>
1	authenticguccibagsoutletusa.com
2	cheapguccibags.shop
3	cheapguccibelts.shop
4	cheapguccihandbags.shop
4	cheapguccionline.shop
4	cheapguccioutlet.shop
4	guccibagsoutlet.shop
4	guccibagsoutletshop.com
5	guccibagoutletusa.com
6	guccifactoryoutlet.com
7	guccifakeshop.com
8	gucciknirps.shop
9	gucciofficialoutlets.com
10	guccireplica.ru
11	gucciselling.com
12	gucciverkauf.com
13	aabbfashion.com
14	annaonline.store
15	atelier-elegant.net
16	brandshoefactory.com
17	designbags.us
18	designergunews.ru
19	dolabuy.ru
20	elegantnicely.com
21	fashionreps.me
22	fast-world-leather.com
23	finerlabels.net
24	fortok.ru
25	highstreetporter.com
26	hypetrndz.com
27	joyrep.ru
27	vincystore.com
28	kickbulk.co
29	lakshory.shop
30	luxurydeal.cc
31	mydevalie.com
32	mywikibag.com
33	ourfashion.net
34	perfectkick.org
35	replicagods.com
36	topbagsclub.com

<b>Def. No.</b>	<b>Defendant / Subject Domain Name</b>
37	uaafactory.co

**SCHEDULE “B”**  
**CYBERSQUATTING DEFENDANTS BY NUMBER AND**  
**CYBERSQUATTED SUBJECT DOMAIN NAME, AND DAMAGES REQUEST**

<b>Defendant Number</b>	<b>Cybersquatting Defendant</b>	<b>Cybersquatted Subject Domain Name(s)</b>	<b>Requested Statutory Damage Award</b>
1	authenticguccibagsoutletusa.com	authenticguccibagsoutletusa.com	\$10,000.00
2	cheapguccibags.shop	cheapguccibags.shop	\$10,000.00
3	cheapguccibelts.shop	cheapguccibelts.shop	\$10,000.00
4	cheapguccihandbags.shop cheapguccionline.shop cheapguccioutlet.shop guccibagsoutlet.shop guccibagsoutletshop.com	cheapguccihandbags.shop cheapguccionline.shop cheapguccioutlet.shop guccibagsoutlet.shop guccibagsoutletshop.com	\$50,000.00
5	guccibagoutletusa.com	guccibagoutletusa.com	\$10,000.00
6	guccifactoryoutlet.com	guccifactoryoutlet.com	\$10,000.00
7	guccifakeshop.com	guccifakeshop.com	\$10,000.00
8	gucciknirps.shop	gucciknirps.shop	\$10,000.00
9	gucciofficialoutlets.com	gucciofficialoutlets.com	\$10,000.00
10	guccireplica.ru	guccireplica.ru	\$10,000.00
11	gucciselling.com	gucciselling.com	\$10,000.00
12	gucciverkauf.com	gucciverkauf.com	\$10,000.00



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 5, 2025, a true copy of the foregoing was served upon Defendants via e-mail to the e-mail addresses at which Defendants were served and via website posting by posting copies of the same on the Court authorized serving notice website located at the URL: <https://servingnotice.com/G29ap/index.html>.

**T. Raquel Wiborg-Rodriguez**  
T. Raquel Wiborg-Rodriguez