UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 23-60409-CIV-SINGHAL

OMEGA SA,

Plaintiff,

v.

THE INDIVIDUALS, BUSINESS ENTITIES AND UNINCORPORATED ASSOCIATIONS IDENTIFIED ON SCHEDULE "A,"

Defendants.
_____/

ORDER GRANTING MOTION FOR FINAL DEFAULT JUDGMENT

THIS CAUSE is before the Court on Plaintiff's Motion for Entry of Final Default Judgment against Defendants ("Default Judgment Motion") (DE [33]). For the reasons discussed below, the Court grants Plaintiff's Default Judgment Motion.

"Rule 55 of the Federal Rules of Civil Procedure establishes a two-step process for obtaining a default judgment. First, when a defendant fails to plead or otherwise defend the lawsuit, the Clerk of Court must enter a clerk's default against the defendant. Second, when the requirements for a clerk-entered default judgment cannot be met under Rule 55(b)(1), the plaintiff must apply to the court for a default judgment under Rule 55(b)(2)." *Cleveland v. JH Portfolio Debt Equities, LLC*, 2020 WL 8167356, at *2 (S.D. Ala. Nov. 23, 2020), *report and recommendation adopted,* 2021 WL 136287 (S.D. Ala. Jan. 13, 2021).

A "defendant's default alone does not warrant the entry of a default judgment." *Id.* (citing *Nishimatsu Constr. Co. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir.

1975) ("[A] default is not treated as an absolute confession by the defendant of his liability and of the plaintiff's right to recover.")). "Rather, a court must ensure there is a sufficient basis in the pleadings for the judgment to be entered." *Id.* "Entry of default judgment is only warranted when there is a sufficient basis in the pleadings for the judgment entered." *Surtain v. Hamlin Terrace Foundation*, 789 F.3d 1239, 1245 (11th Cir. 2015). (quotation omitted). The Eleventh Circuit has stated that a default judgment may only be entered where the Complaint is sufficient to withstand a motion to dismiss. *Id.* ("Conceptually, then, a motion for default judgment is like a reverse motion to dismiss for failure to state a claim.").

On May 22, 2023, the Clerk entered a default against Defendants ("Clerk's Entry of Default") (DE [31]) for failure to respond to the Amended Complaint or otherwise appear in this action. On June 26, 2023, Plaintiff filed the Default Judgment Motion (DE [33]). Defendants subsequently failed to move to set aside the Clerk's Entry of Default or otherwise respond to the Default Judgment Motion.

The well-pleaded allegations of the Amended Complaint are admitted by virtue of Defendants' default. The Court finds that Plaintiff's Amended Complaint (DE [19]) adequately states a claim for federal trademark counterfeiting and infringement, false designation of origin, common law unfair competition, and common law trademark infringement, pursuant to 15 U.S.C. §§ 1114, 1116, and 1125(a), The All Writs Act, 28 U.S.C. § 1651(a), and Florida's common law. Default judgment against the defaulting Defendants is, therefore, appropriate.

Accordingly, it is hereby

ORDERED AND ADJUDGED that Plaintiff's Default Judgment Motion (DE [33]) is **GRANTED**. In accordance with Federal Rule of Civil Procedure 58, final judgment for Plaintiff will be entered separately.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 27th day of June 2023.

RAAG SINGHAL
UNITED STATES DISTRICT JUDGE

Copies furnished to counsel of record via CM/ECF