

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-cv-21058-ALTMAN

OMEGA SA,

Plaintiff,

v.

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

Defendants.

ORDER GRANTING MOTION FOR DEFAULT FINAL JUDGMENT

The Plaintiff has moved for entry of default final judgment. *See* Motion for Entry of Default Final Judgment [ECF No. 29]. The Plaintiff obtained a clerk’s entry of default as to all the Defendants listed in Schedule A, *see* Clerk’s Entry of Default [ECF No. 27], who’ve been properly served, *see* Proof of Service [ECF No. 20], but nevertheless haven’t answered or responded to the Amended Complaint [ECF No. 17], *see generally* Docket. After careful consideration of the Motion, the record in this case, and the applicable law, we **GRANT** the Motion as to all Defendants.

BACKGROUND

On this default judgment posture, we draw the facts of this case from the Plaintiff’s Amended Complaint, the Motion, and the various supporting evidentiary submissions and exhibits. Plaintiff Omega SA owns several marks that are “used in connection with the manufacture and distribution of high quality-goods” (collectively, the “Marks”).¹ *See* Am. Compl. ¶¶ 15; Mot. at 2–3. The Plaintiff

¹ Any defined term we use without defining in this Order has the meaning we’ve given it in our previous orders.

advertises and sells the Marks and products bearing the Marks over the Internet. Am. Compl. ¶¶ 20. The Marks are famous and have “achieved secondary meaning among consumers as identifiers of high-quality goods.” *Id.* ¶ 18. The Defendants have been deliberately advertising and selling over the Internet goods that copy (or incorporate exact or very similar copies of) the Marks. *See* Am. Compl. ¶¶ 21–32; *see also* Mot. at 3–6 (collecting citations). And the Defendants have done so even knowing that the Plaintiff owns the Marks and hasn’t given the Defendants permission to use them. Am. Compl. ¶¶ 26–27.

STANDARD

Under Federal Rule of Civil Procedure 55(b)(2), we may enter a final default judgment against any party who has failed to respond to the complaint. A defaulting defendant “admits the plaintiffs’ well-pleaded allegations of fact.” *Buchanan v. Bowman*, 820 F.2d 359, 361 (11th Cir. 1987). But “a defendant’s default does not in itself warrant the court entering a default judgment. There must be a sufficient [factual and legal] basis in the pleadings for the judgment entered.” *Nishimatsu Constr. Co., Ltd. v. Houston Nat’l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975); *see also Buchanan*, 820 F.2d at 361 (“[L]iability is well-pled in the complaint and is therefore established by the entry of default.”). “If the admitted facts are sufficient to establish liability, then the Court must ascertain the appropriate amount of damages.” *Malletier v. Individuals, Bus. Entities, or Unincorporated Assocs.*, 2024 WL 4372102, at *2 (S.D. Fla. Jan. 26, 2024) (Middlebrooks, J.) (citing *Nishimatsu Constr. Co.*, 515 F.2d at 1206). “Where all the essential evidence to determine damages is on the paper record, an evidentiary hearing on damages is not required.” *Ibid.* (citing *SEC v. Smyth*, 420 F.3d 1225, 1232 n.13 (11th Cir. 2005)).

ANALYSIS

I. Jurisdiction and Venue

We have subject-matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338. We have personal jurisdiction over the Defendants because they direct their infringement towards

consumers in this District and because that infringement impacts the Plaintiff's business here. For the same reasons, venue exists in this District.

II. Liability

The Plaintiff pleads four counts: *first*, trademark infringement under Lanham Act § 32, *see* Am. Compl. ¶¶ 37–43 (Count I); *second*, unfair competition (specifically false designation of origin)² under Lanham Act § 43(a), *see id.* ¶¶ 44–51 (Count II); *third*, Florida common-law unfair competition, *see id.* ¶¶ 52–56 (Count III); *fourth*, Florida common-law trademark infringement, *see id.* ¶¶ 57–62 (Count IV). It is entitled to default judgment on all four counts.

a. Lanham Act § 32 Trademark Infringement and Florida Common-Law Trademark Infringement

“The analysis of liability for Florida common law trademark infringement is the same as under the Lanham Act[.]” *PetMed Express, Inc. v. MedPets.Com, Inc.*, 336 F. Supp. 2d 1213, 1218 (S.D. Fla. 2004) (Cohn, J.) (citing *Gift of Learning Found., Inc. v. TGC, Inc.*, 329 F.3d 792, 802 (11th Cir. 2003)), *partly abrogated for unrelated reasons*, *Tobinick v. Novella*, 884 F.3d 1110, 1117 (11th Cir. 2018). “Under § 32(a) of the Lanham Act, . . . liability for trademark infringement occurs when a person ‘use[s] 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.’” *PetMed Express, Inc.*, 336 F. Supp. 2d at 1217 (quoting 15 U.S.C. § 1114). “Thus, to prevail on a trademark infringement claim[,] a plaintiff must demonstrate that (1) its mark has priority, (2) defendant used its mark in commerce, and (3) defendant’s mark is likely to cause consumer confusion.” *Ibid.* (citing *Int’l Cosmetics Exch., Inc. v.*

² As we’ll explain, the specific terminology is immaterial. “Whether we call the violation infringement, unfair competition or false designation of origin, the test is identical[.]” *New W. Corp. v. NYM Co. of Cal., Inc.*, 595 F.2d 1194, 1201 (9th Cir. 1979); *see also Shenzhen Kinnwong Elec. Co., Ltd. v. Kukreja*, 2025 WL 1009008, at *29 (S.D. Fla. Apr. 4, 2025) (Altman, J.) (“At the end of the day, as with any unauthorized act listed in § 1125(a), [the plaintiff] must ‘present evidence as to the likelihood of confusion.’” (quoting *Lipscher v. LRP Publ’ns, Inc.*, 266 F.3d 1305, 1313 (11th Cir. 2001))).

Gapardis Health & Beauty, Inc., 303 F.3d 1242 (11th Cir. 2002) and *Frebling Enters., Inc. v. Int'l Select Grp., Inc.*, 192 F.3d 1330, 1335 (11th Cir. 1999)).

As set forth in the Amended Complaint, the Haller Declaration [ECF No. 6-1], and other supporting evidence and exhibits, the Plaintiff owns the Marks and devised them first, but the Defendants have nevertheless been advertising and selling goods that copy (or incorporate exact or very similar copies of) the Marks. They've been doing so on the Internet, just as the Plaintiff would. Obviously, because the goods copy or incorporate exact or very similar copies of the Marks, and because they're sold in the same way, those goods are confusingly similar to the Marks and are likely to cause consumer confusion. We therefore grant judgment for the Plaintiff on its trademark-infringement counts, Counts I and IV.

b. Lanham Act § 43 Unfair Competition and Florida Common-Law Unfair Competition

Like trademark infringement, unfair competition is also substantially the same under both the Lanham Act and Florida common-law. *Accord TGC, Inc.*, 320 F.3d at 802; *Kukreja*, 2025 WL 1009008, at *29. “Section 43(a) of the Lanham Act forbids unfair trade practices involving infringement of trade dress, service marks, or trademarks, even in the absence of federal trademark registration.” *Planetary Mot., Inc. v. Techsplosion, Inc.*, 261 F.3d 1188, 1193 (11th Cir. 2001) (citing *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768 (1992)). We apply it “broadly so as to effectuate its remedial purpose.” *Ibid.* “To prevail under this section, a claimant must show (1) that it had prior rights to the mark at issue and (2) that the defendant had adopted a mark or name that was the same, or confusingly similar to its mark, such that consumers were likely to confuse the two.” *Ibid.* (collecting cases). Similarly, “[t]o prevail on a Florida common law unfair competition claim, a plaintiff must prove that (1) the plaintiff is the prior user of the trade name or service mark, (2) the trade name or service mark is arbitrary or suggestive or has acquired secondary meaning, (3) the defendant is using a confusingly similar trade name or service mark to indicate or identify similar services rendered (or similar goods marketed) by

it in competition with plaintiff in the same trade area in which plaintiff has already established its trade name or service mark, and (4) as a result of the defendant's action or threatened action, consumer confusion as to the source or sponsorship of the defendant's goods or services is likely." *See, e.g., PetMed Express, Inc.*, 336 F. Supp. 2d at 1219 (citing *Am. United Life Ins. Co. v. Am. United Ins. Co.*, 731 F. Supp. 480, 486 (S.D. Fla. 1990) (King, J.)).

Again, as set forth in the Amended Complaint, the Haller Declaration, and other supporting evidence and exhibits, the Plaintiff owns the Marks and devised them first, but the Defendants have nevertheless been advertising and selling goods that copy (or incorporate exact or very similar copies of) the Marks. And again, they've been doing so on the Internet, just as the Plaintiff would. Obviously, because those goods copy or incorporate exact or very similar copies of the Marks, and because they're sold in the same way, those goods are confusingly similar to the Marks and are likely to cause consumer confusion. Additionally, as pertinent to the common-law unfair competition claim, the Marks have achieved "secondary meaning." Mot. at 3; Am. Compl. ¶¶ 18. We therefore grant judgment for the Plaintiff on its unfair-competition counts, Counts II and III.

III. Remedies

a. Permanent Injunctive Relief

The Lanham Act authorizes us to issue a permanent injunction to prevent violations of trademark law. 15 U.S.C. § 1116(a). Permanent injunctive relief is available even in the default-judgment context. *PetMed Express, Inc.*, 336 F. Supp. 2d at 1222. It's appropriate where a plaintiff demonstrates that (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 (2006). We granted the preliminary injunction in this matter because, on our review of the record, all the factors weighed in favor of the Plaintiff. *See* Order Granting Motion for Preliminary Injunction [ECF No. 25] at 6. Nothing has

changed since then—if anything, the case for issuing an injunction has become stronger. *First*, by selling products that infringe the Marks, the Defendants have inflicted irreparable damage on the Plaintiff. *See McDonald’s Corp. v. Robertson*, 147 F.3d 1301, 1310 (11th Cir. 1998) (“[A] sufficiently strong showing of likelihood of confusion [caused by trademark infringement] may by itself constitute a showing of . . . [a] substantial threat of irreparable harm.”); *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 decrease its legitimate sales.”). *Second*, there’s no adequate remedy at law because the Defendants’ failure to respond or otherwise appear in this action makes it practically impossible for the Plaintiff to prevent further infringement absent an injunction. *Jackson v. Sturkie*, 255 F. Supp. 2d 1096, 1103 (N.D. Cal. 2003) (“[D]efendant’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.”). *Third*, the Defendants’ default has left us with absolutely no reason to conclude that whatever hardship they might face in having to comply with the law outweighs the thoroughly documented harm inflicted on the Plaintiff’s reputation and control over its own trademarks. *Fourth*, “an injunction to enjoin infringing behavior serves the public interest in protecting consumers from such behavior.” *Chanel, Inc. v. besumart.com*, 240 F. Supp. 3d 1283, 1291 (S.D. Fla. 2016) (Altonaga, J.).

Because the Plaintiff has carried its burden on each of the four factors, it is entitled to permanent injunctive relief.

b. Statutory Damages

i. Damages for Lanham Act Trademark Infringement (Count I)

The Lanham Act also authorizes us to award the Plaintiff statutory damages (at its request, and in lieu of actual damages) for the Defendants’ trademark infringement. *See* 15 U.S.C. § 1117(c). When we determine that the infringement is willful, we may impose statutory damages up to

“\$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as [we] consider just.” 15 U.S.C. § 1117(c)(2).

The Plaintiff request statutory damages. *See* Mot. at 15 (“Pursuant to 15 U.S.C. § 1117(c), Omega elects to recover an award of statutory damages as to Count I of the [Amended Complaint].”). As we explained above, we granted judgment for the Plaintiff on its Lanham Act infringement count because the Defendants are infringing the Plaintiff’s trademarks. The Plaintiff alleges that the Defendants’ infringement is willful, *see* Am. Compl. ¶ 28; even setting aside that we must accept that allegation as true, we’ve reviewed the entire record before us—all the filed documents, as well as the Defendants’ conspicuous absence and default—and see no basis on which we could conclude that the infringement *isn’t* willful. *Accord Arista Records, Inc. v. Beker Enters., Inc.*, 298 F. Supp. 2d 1310, 1313 (S.D. Fla. 2003) (Cohn, J.) (“[T]his Court may infer that Defendants willfully infringed Plaintiffs’ copyrights because of Defendants’ default.”). We therefore conclude that the Plaintiff is entitled to statutory damages up to \$2,000,000 per Defendant per counterfeit mark per type of good infringed.

But exactly how much should we award in damages? Because the evidence before us indicates that each Defendant willfully infringed at least one of the Plaintiff’s marks with respect to at least one type of good, *see* Declaration of Antoine Haller in Support of Plaintiff’s Motion for Entry of Default Final Judgment [ECF No. 29-1] ¶ 7, the Plaintiff seeks an award of \$1,000,000 per Defendant, *see* Mot. at 17 (“Omega requests a statutory damages award in the amount of \$1,000,000.00 against each Defendant as partial compensation to Omega and to deter the Defendants and others from continuing to counterfeit Omega’s trademarks.”). In construing other statutory damages provisions closely analogous to the one in the Lanham Act, the Eleventh Circuit has explained that we have very “broad discretion” to select an award “within [the] set limits” of the “statutory yardstick,” “considering[ing] both the willfullness [sic] of the defendant’s conduct and the deterrent value of the sanction imposed.” *Cable/Home Commc’n Corp. v. Network Prods., Inc.*, 902 F.2d 829, 852 (11th Cir. 1990) (collecting cases);

compare 17 U.S.C. § 504(c) (“[A]n infringer of copyright is liable for either the copyright owner’s actual damages . . . ; or statutory damages[.] . . . [T]he copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements,” and “[i]n a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may increase the award of statutory damages[.]”), and 47 U.S.C. §§ 605(e)(3)(C)(i)–(ii) (“Damages awarded by any court under this section [of the Communications Act] shall be computed, at the election of the aggrieved party, . . . [either as] actual damages . . . ; or . . . statutory damages[.]” and “in any case in which the court finds that the violation was committed willfully . . . the court in its discretion may increase the award of damages, whether actual or statutory[.]”), *with* 15 U.S.C. § 1117(c) (“In a case involving the use of a counterfeit mark . . . the plaintiff may elect, at any time before final judgment is rendered . . . to recover, instead of actual damages . . . an award of statutory damages,” and “if the court finds that the use of the counterfeit mark was willful [it may increase the award to] not more than \$2,000,000 per counterfeit mark per type of goods of services sold . . . as the court considers just[.]”). Other courts in our District have drawn the same comparisons. *E.g.*, *Malletier*, 2024 WL 4372102, at *5; *see also Louis Vuitton Malletier and Oakley, Inc. v. Veit*, 211 F. Supp. 2d 567, 583 (E.D. Pa. 2002) (“In the absence of clear guidelines for setting a statutory damage award, courts have tended to use their wide discretion to compensate plaintiffs, as well as to deter and punish defendants, often borrowing from factors developed in fixing a statutory damage award for copyright infringement.”) (collecting cases).

Noting that the Defendants willfully infringed and that other courts in our District have approved the deterrent effect of awards of \$1,000,000, we agree with the Plaintiff that an award of \$1,000,000 per Defendant in this case is appropriate and just. *Accord, e.g., Chanel, Inc. v. E8bag.ru*, 2017 WL 6947460, at *6 (S.D. Fla. June 12, 2017) (Bloom, J.) (“Based on the above considerations, Plaintiff

suggests the Court award statutory damages of \$1,000,000.00 against Defendant. The award should be sufficient to deter Defendant and others from continuing to counterfeit or otherwise infringe Plaintiff's trademarks, compensate Plaintiff, and punish Defendant, all stated goals of 15 U.S.C. § 1117(c)."); *see also YIP, LLC v. Individuals Identified on Sched. "A"*, 2022 WL 3566883, at *7 (S.D. Fla. June 10, 2022) (Hunt, Mag. J.) (collecting cases in which we awarded \$1,000,000 in statutory damages per Defendant), *report and recommendation adopted*, 2022 WL 2712540 (S.D. Fla. July 13, 2022) (Altman, J.); Mot. at 18 n.7 (collecting cases). It's not lost on us that \$1,000,000 per Defendant is an eyebrow-raising figure—potentially greater than each Defendant's ill-gotten gains—but it's within the “statutory yardstick,” and, after due deliberation, we conclude that an award in that sum serves the dual statutory purposes of compensation *and* deterrence.

ii. Damages for All Other Infringement and Unfair Competition (Counts II–IV)

According to the Plaintiff, “the allowed scope of monetary damages” for its other claims “is also encompassed in 15 U.S.C. § 1117(c),” so “judgment on [its other claims] should be limited to the amount awarded pursuant to Count I and entry of the requested [permanent injunction].” Mot. at 18-19. We agree, and won't award the Plaintiff any damages for these claims.

* * *

After careful consideration, we hereby **ORDER and ADJUDGE** as follows:

1. The Plaintiff's Motion for Default Final Judgment [ECF No. 29] is **GRANTED**.
2. The Court will separately enter a Default Final Judgment.
3. This case shall remain **CLOSED**.

DONE AND ORDERED in the Southern District of Florida on _____, 2025.

ROY K. ALTMAN
UNITED STATES DISTRICT JUDGE

cc: counsel of record