

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 24-24178-CIV-BECERRA**

TIFFANY (NJ) LLC,

Plaintiff,

vs.

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

Defendants. _____ /

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

Plaintiff, Tiffany (NJ) LLC (“Tiffany” 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, Tiffany submits the following Memorandum of Law.

I. INTRODUCTION

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

counterfeiting pursuant to 15 U.S.C. § 1117(c)¹ and an order transferring all funds currently restrained or held on account for Defendants by all financial institutions to Tiffany in partial satisfaction of any award of damages. Tiffany also requests the Court 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 (i) the cancellation, or at Tiffany's election, transfer of the e-commerce stores at issue to Tiffany, assignment of all rights, title and interest to the e-commerce stores to Tiffany, (ii) the permanent disablement, delisting or deindexing the websites' uniform resource locators ("URLs") and e-commerce stores from all search engines, (iii) the permanent removal of the listings and associated images of the goods bearing and/or using counterfeits and/or infringements of the Tiffany Marks used by Defendants from all Internet based e-commerce stores and the goods of each Defendant bearing one or more of the Tiffany Marks held by the marketplace platforms be surrendered to Tiffany, and (iv) permanent disablement and/or termination of Defendants' messaging application and/or service accounts, including e-mail addresses used by Defendants, in order to ensure the associated e-commerce stores may no longer be used as a means for selling goods bearing and/or using counterfeits and infringements of Tiffany's trademarks and infringing upon Tiffany's rights.

II. STATEMENT OF FACTS

A. Plaintiff's Rights.

Tiffany is a limited liability company organized under the laws of the State of Delaware with its principal place of business located at 15 Sylvan Way, Parsippany, New Jersey 07054. (See Am. Compl. ¶ 4 ECF No. [25], incorporated herein by reference.) Tiffany operates boutiques

¹ Tiffany is not requesting the Court award damages against Defendants jointly and severally, therefore, there is no possibility of inconsistent liability, and all Defendants in this case have defaulted on the same allegations.

throughout the world, including within this district. (*Id.*; see also Declaration of Annabelle Greseth in Support of Plaintiff’s *Ex Parte* Application for Entry of TRO [“Greseth Decl.”]² ¶¶ 5-6 ECF No. [6-1], incorporated herein by reference.) Tiffany is, in part, engaged in the business of manufacturing quality goods under multiple world-famous common law and federally registered trademarks. (Am. Compl. ¶¶ 4, 15; Greseth Decl. ¶¶ 4-5.)

Tiffany is the owner of all rights in and to the federally registered trademarks identified in Paragraph 4 of the Greseth Declaration (the “Tiffany Marks”), which are used in connection with the manufacture and distribution of a variety of high-quality goods. See United States Trademark Registrations of the Tiffany Marks at issue attached as Comp. Ex. 1 to the Am. Compl. ECF No. [25-1], incorporated herein by reference; see also Greseth Decl. ¶¶ 4-5.) The Tiffany Marks are symbols of Tiffany’s quality, reputation, and goodwill and have never been abandoned. (Greseth Decl. ¶¶ 6-7.) Moreover, Tiffany has expended substantial time, money, and other resources developing, advertising, and otherwise promoting its trademarks. (*Id.*) As such, the Tiffany Marks qualify as famous marks as the term is used in 15 U.S.C. § 1125(c)(1). Furthermore, Tiffany has extensively used, advertised, and promoted the Tiffany Marks in the United States in association with high-quality goods, and has carefully monitored and policed the use of the Tiffany Marks. (*Id.* at ¶¶ 5-7) As a result of Tiffany’s efforts, members of the consuming public readily identify products bearing the Tiffany Marks as being quality merchandise sponsored and approved by Tiffany. (*Id.*) Accordingly, the Tiffany Marks have achieved secondary meaning as identifiers of high-quality goods.

² Tiffany’s *Ex Parte* Application for Entry of Temporary Restraining Order, Preliminary Injunction, and Order Restraining Transfer of Assets (“Application for TRO”) together with supporting declarations and exhibits, ECF No. [6], are incorporated herein by reference.

B. Defendants' Infringing Acts.

As alleged by Tiffany, admitted by default, and established by the evidence submitted herewith, Defendants operate and control the commercial Internet based e-commerce stores under their respective seller names set forth on Schedule "A" hereto (the "E-commerce Store Names"). As such, Defendants are the active, conscious, and dominant forces behind the promotion, advertisement, distribution, offering for sale, and sale of goods via the E-commerce Store Names bearing and/or using counterfeit and infringing trademarks that are exact copies of the Tiffany Marks (the "Counterfeit Goods"). (See Am. Compl. ¶¶ 7-14, 24-32, 41-45, 48-53, 56-58, 61-64; see also Greseth Decl. ¶¶ 9-13; Declaration of Stephen M. Gaffigan in Support of Plaintiff's Application for TRO ["Gaffigan Decl."] ¶¶ 2-3 ECF No. [6-2], incorporated herein by reference; Declaration of Kathleen Burns in Support of Plaintiff's Application for TRO ["Burns Decl."] ¶ 4 ECF No. [6-3], incorporated herein by reference; Declaration of Kathleen Burns in Support of Plaintiff's Notice of Identification of Additional Financial Account Used by Defendant Number 27 ["Burns Decl. in Support of Notice"] ¶ 5 ECF No. [29-1], incorporated herein by reference; see also relevant web page captures from Defendants' e-commerce stores operating under the E-commerce Store Names displaying the Tiffany branded items offered for sale ["Defendants' E-commerce Store Names"] attached as Comp. Ex. 1 to the Burns Decl. ECF Nos. [6-4] through [6-5], Comp. Ex. 1 to the Burns Decl. in Support of Notice ECF No. [29-2].)

Further, as admitted by Defendants through default, at all times relevant, Defendants have had full knowledge of Tiffany's ownership of the Tiffany Marks, including its exclusive right to use and license such intellectual property and the goodwill associated therewith. (Am. Compl. ¶ 29.) Defendants do not have, nor have they ever had, the right or authority to use the Tiffany Marks for any purpose. (Greseth Decl. ¶¶ 9, 12-13.) However, despite their known lack of authority to

do so, Defendants have engaged in the activity of promoting, and otherwise advertising, selling, offering for sale, and distributing their Counterfeit Goods via the E-commerce Store Names. (See Am. Compl. ¶¶ 7-14, 24-32, 41-45, 48-53, 56-58, 61-64; Greseth Decl. ¶¶ 9-13; Gaffigan Decl. ¶¶ 2-3; Burns Decl. ¶ 4; Burns Decl. in Support of Notice ¶ 5; see also Defendants' E-commerce Store Names.)

Tiffany's evidence, obtained as a result of its investigation of Defendants, clearly demonstrates Defendants are engaged in the fraudulent promotion, advertisement, distribution, offering for sale, and sale of goods bearing and/or using counterfeits of the Tiffany Marks. Tiffany's counsel retained Invisible Inc, a licensed private investigative firm, to investigate the promotion and sale of counterfeit and infringing Tiffany branded products by Defendants and to obtain the available payment account data for receipt of funds paid to Defendants for the sale of counterfeit Tiffany branded products. (Greseth Decl. ¶ 10; Gaffigan Decl. ¶ 2; Burns Decl. ¶ 3.) Invisible Inc accessed the Internet based e-commerce stores operating under the E-commerce Store Names, placed orders from each Defendant for the purchase of a product bearing and/or using, or suspected of bearing, counterfeits of, at least, one of the Tiffany Marks at issue in this action – and requested each product be shipped to an address in the Southern District of Florida. (Burns Decl. ¶ 4, nn.1-3 and Comp. Ex. 1 thereto.) Each order was processed entirely online, and following the submission of the orders, Invisible Inc received information for finalizing payment for the products ordered from Defendants to their respective financial account as identified on Schedule "A" hereto. (Burns Decl. ¶ 4, n.4; Gaffigan Decl. ¶ 5.) E-mail addresses and other means of electronic contact provided by Defendants are also identified on Schedule "A" hereto. (Burns Decl. ¶ 4, n.1; Gaffigan Decl. ¶ 3, n.3.) At the conclusion of the process, the detailed web page captures and images of the various Tiffany branded products offered for sale and ordered via

Defendants' E-commerce Store Names, together with photographs of some of the products received, were sent to Tiffany's representative, Annabelle Greseth, for inspection. (See Burns Decl. ¶ 4; Greseth Decl. ¶ 11; Gaffigan Decl. ¶ 2.)

Tiffany's representative, who is trained to identify the distinctions between genuine Tiffany branded merchandise and counterfeit copies of the same, reviewed and visually inspected the detailed web page captures reflecting the Tiffany branded products ordered by Invisible Inc, together with photographs of certain received goods, and determined the products were non-genuine, unauthorized versions of Tiffany's goods. (Greseth Decl. ¶¶ 10-13.)³

C. Procedural Background

On October 28, 2024, Tiffany filed its Complaint, ECF No. [1], and on November 27, 2024, its Amended Complaint for Damages and Injunctive Relief against Defendants, ECF No. [25]. On October 30, 2024, Tiffany filed its *Ex Parte* Application for Temporary Restraining Order, ECF No. [6]. On November 7, 2024, this Court entered a Sealed Order Granting *Ex Parte* Application for Entry of Temporary Restraining Order, ECF No. [9], and subsequently converted the temporary restraining order into a preliminary injunction on November 21, 2024, ECF No. [21].

The Temporary Restraining Order and Preliminary Injunction required, *inter alia*, PayPal, Inc. ("PayPal") and Stripe, Inc. ("Stripe"), and their related companies and affiliates to identify

³ Thereafter, Tiffany discovered Defendant Number 27 was continuing to accept payment for the sale of counterfeit Tiffany branded products through its E-commerce Store Name via an additional financial account (the "Additional Financial Account"). (See Burns Decl. in Support of Notice ¶ 5 and Comp. Ex. 1 thereto.) Invisible Inc continued its investigation and accessed the e-commerce store operating under Defendant Number 27's E-commerce Store Name, placed an order from Defendant for the purchase of a product bearing counterfeits and/or infringements of, at least, one of the Tiffany Marks at issue in this action, and requested the product be shipped to an address in the Southern District of Florida. (Id.) The order was processed entirely online and following the submission of the order, Invisible Inc finalized payment to Defendant Number 27's new PayPal account, also identified on Schedule "A" hereto. (Id.) Accordingly, Tiffany filed a Notice of Identification of Additional Financial Account identifying the same, ECF No. [29].

and restrain all funds in Defendants’ associated payment accounts, including all related financial accounts tied to, used by, or that transmit funds into, the respective Defendants’ financial accounts, and divert those funds to a holding account for the trust of the Court. Subsequently, Tiffany’s counsel received notice from the applicable financial institutions that they complied with the requirements of the Court’s Orders. (See Declaration of Stephen M. Gaffigan in Support of Motion for Entry of Default Final Judgment Against Defendants [“Gaffigan Decl. in Support of DFJ”] ¶ 3, filed herewith.)

On October 30, 2024, Tiffany filed its *Ex Parte* Motion for Order Authorizing Alternate Service of Process on Defendants pursuant to Federal Rule of Civil Procedure 4(f)(3) (“Motion for Alternate Service”), ECF No. [7],⁴ which the Court granted on November 7, 2024, ECF No. [10], authorizing Tiffany to serve the Summonses, Complaint, and all filings and discovery in this matter upon Defendants via electronic mail (“e-mail”) and via Plaintiff’s designated serving notice website by posting copies of the same on the Internet website appearing at the URL <http://servingnotice.com/TB29mE/index.html>. (See Gaffigan Decl. in Support of DFJ ¶ 5.) Pursuant to the Court’s Order Granting Motion for Alternate Service, Tiffany served Defendants with their respective Summons and a copy of the Amended Complaint via e-mail service and website posting on December 4-6, 2024 and December 11, 2024. (Id. at ¶ 6; see also ECF No. [26], Proof of Service on file with the Court.)

The time allowed for Defendants to respond to the Amended Complaint has expired. (See Gaffigan Decl. in Support of DFJ ¶ 7.) Defendants have not been granted any extension of time to respond, nor have they served or filed an Answer or other response. (Id. at ¶ 8.) To Tiffany’s knowledge, none of the Defendants are infants or incompetent persons, and, upon information and

⁴ Tiffany’s Motion for Alternate Service, and the supporting declarations and exhibits attached thereto, ECF No. [7], are incorporated herein by reference.

belief, the Servicemembers Civil Relief Act does not apply. (Id. at ¶ 9.) On January 2, 2025, Tiffany filed its Request for Clerk's Entry of Default as to Defendants, ECF No. [27], and the Clerk subsequently entered default against Defendants on January 3, 2025, for failure to plead or otherwise defend pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, ECF No. [28]. (Id. at ¶ 10.) Tiffany now moves the Court to grant Default Final Judgment against Defendants and submits this Motion for Entry of Default Final Judgment Against Defendants in compliance with the Court's Order regarding the same. (See ECF No. [8]).

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. Personal jurisdiction over Defendants and venue in this district are proper under 28 U.S.C. § 1391 as Defendants direct business activities toward consumers within this district and cause harm to Tiffany's business through various Internet based e-commerce stores operating under the E-commerce Store Names. (See Am. Compl. ¶¶ 1-3, 7, 11, 28.)

1. Default Judgment is Proper.

A court may order a default judgment pursuant to Fed. R. Civ. P. 55(b)(2) following the entry of default by the court clerk under Rule 55(a). See FED. R. CIV. P. 55. Upon entry of default by the clerk, the well-pled factual allegations of a plaintiff's complaint, other than those related to damages, will be taken as true. PetMed Express, Inc. v. Medpets.com, 336 F. Supp. 2d 1213, 1217 (S.D. Fla. 2004) (citing Buchanan v. Bowman, 820 F.2d 359 (11th Cir. 1987)). In this case, the Amended Complaint, pleadings, and declarations filed in support of Plaintiff'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, Tiffany must demonstrate “(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.” 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, Tiffany 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 Tiffany, or as to the origin, sponsorship, or approval, of Defendants' goods by Tiffany. 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).

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 test to determine trademark infringement liability under Florida common law is the same as the likelihood of consumer confusion test outlined in § 32(a) of the Lanham Act. See PetMed Express, Inc., 336 F. Supp. 2d at 1217-18.

The well-pled factual allegations of Tiffany’s Amended Complaint, including specifically those pled in Paragraphs 7-14, 24-32, 41-45, 48-53, 56-58, 61-64, properly allege the elements for each of the above claims. Moreover, the factual allegations in Tiffany’s Amended Complaint, substantiated by the evidence submitted herewith, conclusively establish Defendants’ liability under each of the claims asserted in the Amended Complaint. Accordingly, Default Judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure should be entered against Defendants.

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, “[i]njunctive 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 Tiffany to prevent further infringement absent an injunction. See 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.”) Pursuant to 15 U.S.C. § 1116, this Court should permanently enjoin Defendants from continuing to infringe any of Tiffany’s intellectual property rights, including the Tiffany 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). As demonstrated herein and based upon the issuance of the temporary restraining order and preliminary injunction entered in this matter, Tiffany has clearly carried its burden on each of the four factors, warranting permanent injunctive relief, because Defendants have unlawfully used Tiffany’s trademarks and associated goodwill to make a profit. Accordingly, permanent injunctive relief is appropriate.

Defendants’ actions merit permanent injunctive relief, not only to protect Tiffany’s reputation, but also to protect consumers from being deceived as to the quality and source of products bearing Tiffany’s trademarks. The facts alleged in Tiffany’s Amended Complaint, substantiated by the evidence submitted herewith, show Defendants are “continuously infringing and inducing others to infringe” the Tiffany 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 Tiffany Marks. (See Am. Compl. ¶ 42; see also Greseth Decl. ¶¶ 9-13; Burns Decl. ¶ 4; Burns Decl. in Support of Notice ¶ 5; see generally Defendants’ E-commerce Store Names.)

Tiffany is clearly suffering, and will continue to suffer, irreparable injury if Defendants’ infringing activities are not permanently enjoined. (Greseth Decl. ¶¶ 8, 24.) 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, Tiffany’s Amended Complaint alleges that Defendants’ unlawful actions have caused irreparable injury to Tiffany and will continue to do so if Defendants are not permanently enjoined. (Am. Compl. ¶¶ 31, 38, 46, 54, 59, 65.) Defendants have defaulted upon Tiffany’s factual allegations in that respect.

Additionally, Tiffany has no adequate remedy at law so long as Defendants continue to use the Tiffany trademarks in connection with the operation of the E-commerce Store Names because Tiffany will have no control of the quality of what appears to be its products in the marketplace. (See Am. Compl. ¶¶ 24-25, 43, 49, 58, 64.) An award of money damages alone will not cure the injury to Tiffany’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 Tiffany’s trademarks, whereas Tiffany 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) (“[A]n 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 “[i]n 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 Tiffany’s property interest in the Tiffany Marks, which are the touchstones of trademark law.

Furthermore, as admitted by Defendants through default, (i) the E-commerce Store Names, associated payment accounts, and any other alias e-commerce store or seller identification names used in connection with the sale of counterfeit and infringing goods bearing and/or using one of more of Tiffany’s trademarks are essential components of Defendants’ online activities; and (ii) the E-commerce Store Names themselves are one of the means by which Defendants further their counterfeiting and infringement schemes and cause harm to Tiffany. (See Am. Compl. ¶ 14.) Therefore, to effectuate the injunction as a practical matter, pursuant to the Court’s inherent authority and the All Writs Act, 28 U.S.C. § 1651(a), the E-commerce Store Names should be ordered transferred to Tiffany’s control by Defendants, their registrars, and/or registries. Further, Defendants, their agents or assigns, should be required to (i) assign all rights, title, and interest, to their E-commerce Store Names to Tiffany and (ii) instruct all search engines to permanently disable, delist or deindex websites’ uniform resource locators (“URLs”) and the e-commerce stores from all search engines, so they may no longer be used for illegal purposes. (Id. at ¶ 66(f)-(i).)

Additionally, all listings and associated images of goods bearing and/or using counterfeits and/or infringements of the Tiffany Marks via the E-commerce Store Names, identified on Schedule “A” hereto, and any other alias seller names being used and/or controlled by Defendants to promote, offer for sale, and/or sell goods bearing and/or using counterfeits and/or infringements of the Tiffany Marks, should be permanently removed by any Internet marketplace website operators and/or administrators. Moreover, the goods of each Defendant bearing and/or using one or more of the Tiffany Marks that are in the inventory, possession, custody or control of any of

Defendants and any Internet marketplace website operators and/or administrators should be surrendered to Tiffany. (Id. at ¶ 66(j)-(k).)

Furthermore, the E-commerce Store Names, private message accounts, usernames, e-commerce stores, social media accounts, and e-mail addresses used by Defendants in connection with their promotion, offering for sale, and/or sale of goods bearing and/or using counterfeits and/or infringements of the Tiffany Marks via the E-commerce Store Names should be permanently suspended and/or terminated by the Defendants and the applicable third-party service providers so that they may no longer be used to facilitate Defendants' counterfeiting activities. (Id. at ¶ 66(l)-(m).)

Absent the transfer of the E-commerce Store Names, the disabling, delisting or deindexing of the websites' uniform resource locators ("URLs") and e-commerce stores from all search engines, the removal of all listings and associated images of Tiffany-branded goods via the E-commerce Store Names, and suspension and/or termination of the messaging accounts, e-mail addresses, Defendants will remain free to continue infringing Tiffany's trademarks with impunity, will continue to benefit from the Internet traffic to those e-commerce stores built through the unlawful use of Tiffany's trademarks, and will continue to defraud the public by their illegal activities. Further, the surrender of the counterfeit merchandise bearing and/or using the Tiffany Marks from Internet marketplace and social media websites would permanently remove these counterfeit goods from the stream of commerce to further protect the public from being defrauded by Defendants' worthless items.

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 similar relief when faced with factual scenarios similar to the one herein.

Defendants have created an Internet-based counterfeiting and infringement scheme and are profiting from the deliberate misappropriation of Tiffany's rights. Accordingly, the Court should eliminate the means by which Defendants are conducting their unlawful activities to further prevent the use of these instrumentalities of infringement.⁵

⁵ See, e.g., Chanel, Inc. v. Individuals, No. 24-cv-22823-JB (S.D. Fla. Sep. 25, 2024) (Order requiring, *inter alia*, (i) transfer of E-commerce Store Names at issue as part of grant of permanent injunction, (ii) assignment of all rights, title, and interest to defendants' E-commerce Store 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 de-indexing or delisting of defendants' E-

2. Damages as to Count I for Trademark Counterfeiting and Infringement.

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 statutory damages at any time before final judgment is rendered in the sum of not less than \$1,000.00 or more than \$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 \$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), Tiffany elects to recover an award of statutory damages as to Count I of the Amended 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

commerce Store Names from internet search engines, (iv) remove all listings and associated images of goods bearing counterfeits and/or infringements of plaintiff's trademarks via defendants' e-commerce stores, and (v) permanent termination of e-mail addresses and/or messaging accounts used by defendants to facilitate their counterfeiting activities); Chanel, Inc. v. Individuals, No. 23-cv-62372-JB (S.D. Fla. Apr. 17, 2024) (same). See also Tiffany (NJ) LLC v. Individuals, No. 23-62371-CIV-ROSENBERG, 2024 U.S. Dist. LEXIS 29996 (S.D. Fla. Feb. 21, 2024) (same); Chanel, Inc. v. Individuals, No. 23-62201-CIV-RUIZ, 2024 U.S. Dist. LEXIS 21804 (S.D. Fla. Feb. 5, 2024, docketed Feb. 6, 2024) (same); Chanel, Inc. v. Individuals, No. 23-60565-CIV-SINGHAL, 2024 U.S. Dist. LEXIS 15576 (S.D. Fla. Jan. 29, 2024) (same); Chanel, Inc. v. Individuals, No. 22-62301-CIV-ALTONAGA, 2023 U.S. Dist. LEXIS 26605 (S.D. Fla. Feb. 16, 2023) (same); Richemont Int'l SA v. Individuals, No. 22-61033-CIV-MARTINEZ, 2022 U.S. Dist. LEXIS 190126 (S.D. Fla. Oct. 18, 2022) (same).

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 Tiffany 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 Tiffany'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 Tiffany's reputation to Tiffany'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 Tiffany Marks for the purpose of deriving the benefit of Tiffany's world-famous reputation. In any event, Defendants defaulted on Tiffany's allegations of willfulness. (See Am. Compl. ¶ 31.) 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, Tiffany 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 Tiffany Marks. (See Declaration of Annabelle Greseth in Support of Motion for Entry of Default Final Judgment Against Defendants ["Greseth Decl. in Support of DFJ"] ¶ 5 and Ex. 1 attached thereto, filed herewith; Am. Compl. ¶¶ 15, 24-26, 41-42, Greseth Decl. ¶¶ 9-13; Burns Decl. ¶ 4; Burns Decl. in Support of Notice ¶ 5; see generally Defendants' E-commerce Store Names, reflecting samples of each Defendant promoting and offering for sale goods bearing counterfeits of, at least, one of the Tiffany Marks at issue in this action via its respective E-commerce Store Name.) And, as noted above, based upon the evidence Tiffany has presented, it is reasonable to infer each Defendant's infringement was willful. As such, a Statutory Damages Calculation Chart has been prepared, illustrating the statutory damages award calculated per Defendant. (See Greseth Decl. in Support of DFJ ¶ 5 and Ex. 1, attached thereto.) As reflected in the Statutory Damages Calculation Chart,

Tiffany calculated its requested statutory damages award of \$100,000.00 per trademark counterfeited per type of good offered for sale and/or sold per Defendant. (*Id.*) Tiffany then multiplied its requested statutory damages award of \$100,000.00 by the number of Tiffany Marks counterfeited and the number of different types of goods offered for sale and/or sold by each Defendant to Tiffany's investigator. (*Id.*) As further set forth in Exhibit "1" to the Declaration of Annabelle Greseth in Support of Plaintiff's Motion for Entry of Default Final Judgment, Tiffany is requesting a statutory damages award in the amount of \$100,000.00 per Tiffany Mark counterfeited per type of good offered for sale and/or sold against each Defendant as partial compensation to Tiffany and to deter Defendants and others from continuing to counterfeit Tiffany's trademarks. (*See* Greseth Decl. in Support of DFJ ¶¶ 5-6 and Ex. 1 thereto, the Statutory Damages Calculation Chart illustrating the method of calculating the statutory damages award per Defendant.)

Tiffany's requested damages amount as to each Defendant is well within the permissible range prescribed under 15 U.S.C. § 1117(c)(2) and should be sufficient to deter Defendants and others from continuing to counterfeit or otherwise infringe Tiffany's trademarks, compensate Tiffany, and punish Defendants, all stated goals of 15 U.S.C. § 1117(c). (*See* Greseth Decl. in Support of DFJ ¶ 6.) 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. 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 using methodology similar to Tiffany's request herein.⁶

⁶ *See, e.g., Chanel, Inc. v. Individuals*, No. 24-cv-22823-JB (S.D. Fla. Sep. 25, 2024) (awarding statutory damages of \$100,000.00 per trademark counterfeited per type of good offered for sale as to each of the defendants); Chanel, Inc. v. Individuals, No. 23-cv-62372-JB (S.D. Fla. Apr. 17,

3. Plaintiff's Damages as to Count II for False Designation of Origin, Count III for Common Law Unfair Competition, and Count IV for Common Law Trademark Infringement.

Tiffany's Amended 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), Florida's common law of unfair competition (Count III), and Florida's common law trademark infringement (Count IV). As to Counts II, III, and IV, the allowed scope of monetary damages is also encompassed in 15 U.S.C. § 1117(c). Accordingly, Tiffany submits that judgment on Counts II, III, and IV 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, Tiffany (NJ) LLC, 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.

2024, docketed Apr. 18, 2024) (same). See also Tiffany (NJ) LLC v. Individuals, No. 23-62371-CIV-ROSENBERG, 2024 U.S. Dist. LEXIS 29996 (S.D. Fla. Feb. 21, 2024) (awarding statutory damages of \$300,000.00 per trademark counterfeited per type of good offered for sale as to each of the defendants); Chanel, Inc. v. Individuals, No. 23-62201-CIV-RUIZ, 2024 U.S. Dist. LEXIS 21804 (S.D. Fla. Feb. 5, 2024, docketed Feb. 6, 2024) (awarding statutory damages of \$1,000,000.00 against each of the defendants based upon their use of at least one trademark on one type of good); Chanel, Inc. v. Individuals, No. 23-60565-CIV-SINGHAL, 2024 U.S. Dist. LEXIS 15576 (S.D. Fla. Jan. 29, 2024) (same); Chanel, Inc. v. Individuals, No. 22-62301-CIV-ALTONAGA, 2023 U.S. Dist. LEXIS 26605 (S.D. Fla. Feb. 16, 2023) (awarding statutory damages of \$120,000.00 per trademark counterfeited per type of good offered for sale as to each of the defendants); Richemont Int'l SA v. Individuals, No. 22-61033-CIV-MARTINEZ, 2022 U.S. Dist. LEXIS 190126 (S.D. Fla. Oct. 18, 2022) (awarding statutory damages of \$1,000,000.00 against each of the defendants based on at least two trademarks counterfeited and one type of good sold).

Dated: January 9, 2025.

Respectfully submitted,

STEPHEN M. GAFFIGAN, P.A.

By: **Stephen M. Gaffigan**

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Attorneys for Tiffany (NJ) LLC

SCHEDULE "A"
DEFENDANTS BY E-COMMERCE STORE NAME,
FINANCIAL ACCOUNT INFORMATION, AND MEANS OF CONTACT

Def. No.	Defendant / E-commerce Store Name	PayPal Payee	Merchant ID / Transaction Info	PayPal E-mail	Additional Means of Contact
1	ccfashionjewelry.com	深圳市朗克思照明有限公司	K9VDCP8BRGV C4	xxxy412308@gmail.com	cc@ccfashionjewelry.com info@ccfashionjewelry.com
2	blingblings.es	Blingblings	LL9GLNQEU6QNE		oliva.sunny.song@gmail.com service@blingblings.es
3	classport.shop	海口龙华辉宏峻百货店	ZTSS2YX9SQSV8		service@classport.shop Jessport@ruralshoes.com
4	cocoshoes.top	南宁市君朗日用百货有限公司	F96QJFSQVMF2J	17689611506@163.com	cocoshoes2011@gmail.com WhatsApp: +852 6432 9578
5	correctkickz.com			76398812@qq.com	correctkickz.cc@gmail.com WhatsApp: +852 5614 0114
6	eleger.co		56P3F7YRER8Q8 T6XZ4CPL3PDH8		support@eleger.co
7	eukick.com	海口美兰崇泊姆电子商务工作室	5X9H6C3YAEBXJ		service@runningpro.shop WhatsApp: +86 173 2700 2347
8	evelynsneaker.com			1013573859@qq.com	evasneaker@gmail.com WhatsApp: +86 181 0058 6611
9	fcmg-sales.com	莆田市湄洲湾北岸经济开发区忠门湄里啲啦服饰店(个体工商户)	KY7YKZAYKJ9ZS		zzy925520@gmail.com

9	saleluxurycn.com	莆田市湄洲湾北岸经济开发区忠门湄里啪啦服饰店(个体工商户)	KY7YKZAYKJ9ZS		zzy925520@gmail.com r4c.lhikdl3t@gmail.com
10	fossilry.cc		QH4F7KX2378GW	yangbing19988dkh@163.com	fossilry@ontlook.net
11	getreadys.org			wzb5556688@163.com	cocosneakers@outlook.com WhatsApp: +86 180 5957 6801
12	greenutilityltd.online		XJMYYY3S4XM8N		support@greenutilityltd.online
13	jewelrybuild.com	CHAI TZU - CHUN @jewelrybuild	97BNUPBPH42EL		aaabbbccc330626@gmail.com
14	Jinyi Shoes retail wholesale a.k.a. +8619359440554 a.k.a. 俊弟aj LJR版 (本地支持送货上门)			dgfswaf@163.com zwyppaypal@163.com	WhatsApp: +86 193 5944 0554
15	jwfancy.com		6CLPQVLVPRCKJ		support@jwfancy.com MANHSONLE@GMAIL.COM
16	kaideck.shop	Unlock your imagination	YW7CFDQUQRZ4L		SERVICE@KAIDECK.SHOP
17	kailin44088 a.k.a. luxury goods	苏 炽权 @6880887	T885RJF75US22	2687378995@qq.com	469011636@qq.com WhatsApp: +86 183 1280 1720
18	kickspk.com	Unlock your imagination	JU8DSXVDNNM96		SUPPORT@KICKSPK.COM support@kickssu.com
18	kickssu.org	Unlock your imagination	JU8DSXVDNNM96		SUPPORT@KICKSSU.ORG support@kickssu.com
19	kolobag.com	Online Shop	D74KA3BGHWNQE		info@spumall.com info@bxsale.com

20	koolmaker.com	Stripe Payment	SNOWTO.STO* KOOLMAKER Transaction Date: July 22, 2024 Posted Date: July 23, 2024 Category: Merchandise & inventory		support@koolmaker.com 6F7C571E6DC541409 6967A6AD47644EE.P ROTECT@WITHHEL DFORPRIVACY.COM
21	kw-store.top		8ERX395NJJ3G G	eryuedeqing@outlook.com	uuwa556@gmail.com WhatsApp: +85253194272
22	lalsoft.com a.k.a. fspbo.shop a.k.a. kegegegghh.shop		ZDW2EA7MN2 YQC		contacts@lalsoft.com BELKAABSOLUTLY MAN4@GMAIL.COM
			ZK22QSWY4NR 4W		
23	luxere.top	BAGS LUXE @BAGSLUXE	GRWX9K4VBM GZN		piyi2020@gmail.com info@luxere.top
24	maikesneakers111.com			ZhangJinYu202424 @163.com	zhusen19780926@gmail.com Annareps2023@gmail.com zhusen780926@gmail.com WhatsApp: +86 138 6099 5961
25	matoyli.com		AVT9DA643UD UU		support@matoyli.com AB28F948E2C64911B 30DB106DA340C57.P ROTECT@WITHHEL DFORPRIVACY.COM
25	testegrila.com		AVT9DA643UD UU		support@testegrila.com Contact@sample.com Support@sample.com contact@yourstore.com
26	monicasneaker.im			choice409@126.com	monicasneaker@gmail.com WhatsApp: +86 183 9600 1806
27	niosneaker.com	Wear your personality, a	AJARX6JZSMY RN		niosneaker@gmail.com

		new summer style			stockxhouse@gmail.com
		厦门葡萄柚网络科技有限公司 @Putau	Z29UC6FJG2W WA	alexuping913@gmail.com	
28	obosneaker.com	盖州顺百商贸有限公司	T7SE9R8HVVF QA	15659915689@163.com	onebyonemalls@gmail.com
29	oldsnkrs.shop	光远 赵		jjligimvgj92@hotmail.com	onlykickz0706@gmail.com Godky@163.com WhatsApp: +86 186 4960 5584
30	persting.live	GREEN E-2FOUR PRIVATE LIMITED	LHL3Z7HRGBA GA		csservice@splendorxalive.com customer@visible-online.com
31	poposhoes.top	Guangzhou Share Clothing Co.,Ltd	XSEJ6A4ZWB4 M8		liu31004@gmail.com info@poposhoes.top
32	sneakershop.ww	伟岚 钱 @WEILANQIAN	CSJWGLWPXJP 2G	519097741@qq.com	WhatsApp: +86 159 8011 9208
33	sneakerssport789			qiuxia96@163.com	WhatsApp: +44 7473 486405
34	snkrsclub.cc		G475D5VGJX3U 4		SUPPORT@SNKRSLUB.CC support@snkrsclub.com snkrsclub-alan@outlook.com PWP-CE5127C33DCB144E78D80A5022CD7CC7@PRIVACYGUARDIAN.ORG WhatsApp: +86 153 3001 0786
35	topfactory2166			topfactory2166@outlook.com	WhatsApp: +86 166 2166 1166
36	usasiha.shop	Unlock your imagination	662WL4LGHA7 ME		SERVICE@USASIHA.SHOP

37	worlsoccer.com	上海斗彩信息科技有限公司	DLHY3FPQP3Q3N	aidfen@hotmail.com	hello@worlsoccer.com support@worlsoccer.com 8377557@gmail.com
38	xsir.product a.k.a. welcome to xsir			zhuchuanzheng203 @outlook.com	WhatsApp: +86 181 5940 2993
39	zzmoonz.com a.k.a. zzmoonz.shop	zzmoonzshop @gmail.com	P72UBQDS26Y6 U		zzmoonzshop@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 9, 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: <http://servingnotice.com/TB29mE/index.html>.

Stephen M. Gaffigan

Stephen M. Gaffigan