

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

CREATIVE IMPACT INC.;)	
ZURU LLC;)	
ZURU INC.;)	
)	
Plaintiffs,)	Case No.: 1:18-cv-07531
)	
v.)	
)	
THE INDIVIDUALS, CORPORATIONS, LIMITED)	
LIABILITY COMPANIES, PARTNERSHIPS, AND)	
UNINCORPORATED ASSOCIATIONS)	
IDENTIFIED ON SCHEDULE A HERETO,)	
)	
Defendants.)	

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’
MOTION FOR ENTRY OF DEFAULT AND DEFAULT JUDGMENT**

Plaintiffs CREATIVE IMPACT INC., ZURU LLC, and ZURU INC. (collectively “Plaintiffs”) submit this Memorandum in support of their Motion for Entry of Default and Default Judgment (“Motion”).

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MEMORANDUM OF LAW

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiffs CREATIVE IMPACT INC., ZURU LLC, and ZURU INC. (collectively “Plaintiffs”) brought this action against the Defendants identified on Schedule A to the Complaint (collectively, the “Defendants”) for federal trademark infringement and counterfeiting (Count I), false designation of origin (Count II), and violation of the Illinois Uniform Deceptive Trade Practices Act (Count III). As alleged in the Complaint, Defendants are promoting, advertising, marketing, distributing, offering for sale, and selling counterfeit products in connection with Plaintiffs’ federally registered trademark (collectively, the “Counterfeit/Infringing Products”), through various fully interactive commercial Internet websites operating under at least the Defendant Domain Names and Online Marketplace Accounts listed in Schedule A to the Complaint (collectively, the “Defendant Internet Stores”). In short, Defendants run a counterfeiting operation with disregard for anything except generating profits.

On November 20, 2018, the Court granted and entered a Temporary Restraining Order (“TRO”) [14]. On November 30, 2018, the Court extended the TRO to December 18, 2018 [19]. On December 17, 2018, the Court further extended the TRO to January 1, 2019 [26]. On December 21, 2018, the Court granted and entered the Preliminary Injunction [30].

The TRO and Preliminary Injunction authorized Plaintiffs to provide notice of these proceedings to Defendants by electronically publishing a link to the Complaint, the TRO, the Preliminary Injunction, and other relevant documents on a website to which the Defendant Domain Names which are transferred to Plaintiffs’ control redirect or by sending an email to any email addresses provided for Defendants by third parties that includes a link to said website. Since and pursuant to entry of the TRO, the accounts associated with the Defendant Internet Stores have been

frozen. *See* Declaration of Nicholas A. Kurtz (hereinafter “Kurtz Decl.”) at ¶ 9.

Since the entry of the TRO, the Defendants have received notice of this case and the filings in this case via (1) notices from the three third-party payment processors for which the Defendants maintain accounts – AliPay, PayPal, and Wish (ContextLogic), (2) service via email from Plaintiffs’ counsel on January 4, 2019, and (3) publication on a website (<http://dbllawyers.website/?case=18-07531>) to which the Defendant Domain Names that have been transferred to Plaintiffs control now redirect. *See* Kurtz Decl. at ¶¶ 7, 10, 11.

Plaintiffs have voluntarily dismissed certain Defendants [*see* 22, 23, 27, 32, 33, 34, 35, 37, 38, 39]. The remaining Defendants have failed to plead or otherwise defend this action within the allotted time in violation of Federal Rule of Civil Procedure 12(a)(1)(A).

Plaintiffs submit the following memorandum in support of its Motion for Entry of Default and Default Judgment under Fed. R. Civ. P. 55 against the Defendants Identified in the First Amended Schedule A (collectively, the “Defaulting Defendants”). Pursuant to the Federal Rule of Civil Procedure, Plaintiffs now move this Court for an Order entering default and default judgment finding that Defaulting Defendants are liable on Counts I and II of Plaintiffs’ Complaint. Fed. R. Civ. P. 55(a) and (b)(2). Plaintiffs further seeks an award of statutory damages as authorized by 15 U.S.C. § 1117(c)(2) for willful trademark counterfeiting against each of the Defaulting Defendants for use of infringing and counterfeit BUNCH O BALLOONS Trademark in connection with products sold through each of the Defendant Internet Stores. Plaintiffs also seek entry of a permanent injunction prohibiting Defaulting Defendants from selling Counterfeit/Infringing Products, an Order that the domain names used by Defaulting Defendants to sell Counterfeit/Infringing Products be permanently transferred to Plaintiffs, and that all assets in Defaulting Defendants’ financial accounts operated by third parties, as well as any newly

discovered assets, be transferred to Plaintiffs.

II. RELEVANT FACTS AND PROCEEDINGS

Plaintiffs take pride in their products, which are emblematic of Plaintiffs' inspiration and mission to provide high quality. *See* Doc. 1 at ¶ 9. Since the initial launch of its original BUNCH O BALLOONS brand products, BUNCH O BALLOONS mark is and has been the subject of substantial and continuous marketing and promotion by Plaintiffs. *Id.* at ¶ 10. Plaintiffs have and continue to widely market and promote the BUNCH O BALLOONS mark in the industry and to consumers. *Id.* Plaintiffs' promotional efforts include — by way of example but not limitation — substantial print media, the BUNCH O BALLOONS website and social media sites, and point of sale materials. *Id.* Long before Defendants' acts described herein, Plaintiffs launched the BUNCH O BALLOONS brand products and obtained U.S. Trademark Registration No.: 4709630 for the BUNCH O BALLOONS (collectively, the "BUNCH O BALLOONS Trademark"). *See id.* at ¶ 3. The U.S. registration for the BUNCH O BALLOONS Trademark is valid, subsisting, and in full force and effect. *Id.*

On information and belief, Defaulting Defendants are an interrelated group of counterfeiters working in active concert to knowingly and willfully manufacture, import, distribute, offer for sale, and sell products bearing infringing and/or counterfeit versions of the BUNCH O BALLOONS Trademark (the "Counterfeit/Infringing Products") in the same transaction, occurrence, or series of transactions or occurrences. *See id.* at ¶ 16. Defaulting Defendants conduct business throughout the United States, including within the State of Illinois and this Judicial District, through the operation of the fully interactive commercial websites and online marketplaces operating under the Defaulting Defendant Domain Names and Defaulting Online Marketplace Accounts (collectively, the "Defaulting Defendant Internet Stores") identified

in First Amended Schedule A. *Id.* at ¶ 2. Each Defaulting Defendant targets the United States, including Illinois, and has offered to sell, and on information and belief, has sold and continues to sell Counterfeit/Infringing Products to consumers within the United States, including the State of Illinois. *Id.* Additional factual assertions applicable to Defaulting Defendants are found in the Complaint and are incorporated herein. *Id.* at ¶¶ 14-24.

Plaintiffs filed this action on November 14, 2018, alleging, among other claims, federal trademark infringement and seeks statutory damages and injunctive relief [1]. On November 20, 2018, this Court granted Plaintiffs' *Ex Parte* Motion for Entry of a Temporary Restraining Order (the "TRO") and subsequently converted the TRO into a Preliminary Injunction on December 21, 2018 [14, 16, 19, 26, 30].

The TRO and Preliminary Injunction permitted Plaintiffs to complete service of process to Defendants by electronic publication at the Defendant Domain Names which were transferred to Plaintiffs' control, or by sending an email to the email addresses identified by Plaintiffs and any email addresses provided for Defendants by third parties. [16 and 30 at ¶ 11]. The Defaulting Defendants identified in the First Amended Schedule A were properly served and have received notice of this case and the filings in this case via (1) notices from the three third-party payment processors for which the Defaulting Defendants maintain accounts – AliPay, PayPal, and Wish (ContextLogic), (2) service via email from Plaintiffs' counsel on January 4, 2019, and (3) publication on a website (<http://dbllawyers.website/?case=18-07531>) to which the Defaulting Defendant Domain Names that have been transferred to Plaintiffs control now redirect. *See* Kurtz Decl. at ¶¶ 7, 10, 11. None of the Defaulting Defendants has entered an appearance or otherwise defended this action. Kurtz Decl. at ¶ 14.

III. ARGUMENT

A. Jurisdiction and Venue are Proper in this Court.

This Court has original subject matter jurisdiction over the claims in this action pursuant to the provisions of the Lanham Act. 15 U.S.C. § 1051 et seq., 28 U.S.C. § 1338(a)-(b), 28 U.S.C. § 1331. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, and this Court may properly exercise personal jurisdiction over Defaulting Defendants because each of the Defaulting Defendants directly targets business activities toward consumers in Illinois and causes harm to Plaintiffs' business within this Judicial District. *See* Doc. 1, at ¶¶ 5, 14; *uBID, Inc. v. GoDaddy Grp., Inc.*, 623 F.3d 421, 423-24 (7th Cir. 2010) (stating that without benefit of an evidentiary hearing, plaintiff bears only the burden of making a prima facie case for personal jurisdiction; all of plaintiff's asserted facts should be accepted as true and any factual determinations should be resolved in its favor).

Through at least the fully interactive commercial Internet websites and online marketplace accounts operating under the Defaulting Defendant Internet Stores, each of the Defaulting Defendants has targeted sales from Illinois residents by operating websites and/or online marketplace accounts that offer shipping to the United States, including Illinois and, on information and belief, has sold Counterfeit/Infringing Products to residents within the United States, including Illinois. Doc. 1 at ¶ 14. Many of the websites look sophisticated and accept payment in U.S. Dollars via credit cards, Western Union and PayPal. *Id.* at ¶ 16. Further, Plaintiffs presented screenshot evidence that each Defaulting Defendant Internet Store is reaching out to do business with Illinois residents by operating one or more commercial, interactive Internet Stores through which Illinois residents can and do purchase products using counterfeit versions of Plaintiffs' Trademarks, which include screenshot evidence confirming that each Defaulting

Defendant Internet Store does stand ready, willing, and able to ship its counterfeit goods to customers in Illinois bearing infringing and/or counterfeit versions of the BUNCH O BALLOONS trademark. *See* Doc. 9-6 – 9-10.

As such, personal jurisdiction is proper since each of the Defaulting Defendants is committing tortious acts in Illinois, is engaging in interstate commerce and has wrongfully caused Plaintiffs substantial injury in the State of Illinois, and this Court, in addressing similar allegations of Internet-based counterfeiting, have confirmed. *See, e.g., Iron Maiden Holdings Ltd. v. Partnerships & Unincorporated Associations Identified on Schedule "A"*, No. 1:18-CV-1098, Document #: 42 (N.D. Ill. April 10, 2018) (Alonso, J.) (copy included in Declaration of Nicholas A. Kurtz).

B. Plaintiffs Have Met the Requirements for Entry of Default.

Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, “when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.” Fed. R. Civ. P. 55(a). On November 14, 2018, Plaintiffs filed the Complaint alleging, among other claims, federal trademark infringement and counterfeiting, 15 U.S.C. § 1114 (Count I) and false designation of origin, 15 U.S.C. § 1125(a) (Count II). Doc. 1. The Defaulting Defendants were properly served and received notice of this case and the filings in this case via (1) notices from the three third-party payment processors for which the Defendants maintain accounts – AliPay, PayPal, and Wish (ContextLogic), (2) service via email from Plaintiffs’ counsel on January 4, 2019, and (3) publication on a website (<http://dbllawyers.website/?case=18-07531>) to which the Defendant Domain Names that have been transferred to Plaintiffs control now redirect. *See* Kurtz Decl. at ¶¶ 7, 10, 11.

Despite having been served with process, the Defaulting Defendants have ignored these proceedings and failed to plead or otherwise defend this action. Kurtz Decl. at ¶ 14. Accordingly, Plaintiffs ask for entry of default against the Defaulting Defendants.

C. Plaintiffs Have Met the Requirements for Entry of Default Judgment.

Rule 55(b)(2) of the Federal Rules of Civil Procedure provides for a court-ordered default judgment. A default judgment establishes, as a matter of law, that defendants are liable to plaintiff on each cause of action alleged in the complaint. *United States v. Di Mucci*, 879 F.2d 1488, 1497 (7th Cir. 1989). When the Court determines that a defendant is in default, the factual allegations of the complaint are taken as true and may not be challenged, and the defendants are liable as a matter of law as to each cause of action alleged in the complaint. *Black v. Lane*, 22 F.3d 1395, 1399 (7th Cir. 1994).

Twenty-one (21) days have passed since Defaulting Defendants were served, and no answer or other responsive pleading has been filed by any of the Defaulting Defendants identified in the First Amended Schedule A. *See* Fed. R. Civ. P. 12(a)(1)(A). Accordingly, default judgment is appropriate and consistent with previous similar cases in front of this Court, Plaintiffs request an award of statutory damages as authorized by 15 U.S.C. § 1117(c)(2) for willful trademark infringement and counterfeiting against each of the Defaulting Defendants for use of infringing and counterfeit imitations of Plaintiffs' Trademark in connection with products sold through the Defaulting Defendant Internet Stores. Plaintiffs also seek entry of a permanent injunction prohibiting Defaulting Defendants from selling Counterfeit/Infringing Products, an order that domain names used by Defaulting Defendants to sell Counterfeit/Infringing Products be permanently transferred to Plaintiffs, and that all assets in Defaulting Defendants' financial accounts and any newly identified accounts be transferred to Plaintiffs.

1. Trademark Infringement and Counterfeiting

To properly plead a claim of trademark infringement and counterfeiting pursuant to the Lanham Act, a plaintiff must allege that (1) its mark is distinctive enough to be worthy of protection, (2) defendants are not authorized to use the mark; and (3) defendant's use of the mark causes a likelihood of confusion as to the origin or sponsorship of defendant's products. *See Neopost Industrie B.V. v. PFE Int'l Inc.*, 403 F. Supp. 2d 669, 684 (N.D. Ill. 2005) (citing *Bliss Salon Day Spa v. Bliss World LLC*, 268 F.3d 494, 496-97 (7th Cir. 2001)).

Plaintiffs alleged in the Complaint that the BUNCH O BALLOONS Trademark is highly distinctive, that Defaulting Defendants have knowledge of Plaintiffs' rights in the BUNCH O BALLOONS Trademark, that Defaulting Defendants are not authorized to use the BUNCH O BALLOONS Trademark, and that Defaulting Defendants' use of the BUNCH O BALLOONS Trademark causes a likelihood of confusion. *See* Doc. 1 at ¶¶ 25-31. Since the Defaulting Defendants have failed to respond or otherwise plead in this matter, the Court must accept the allegations contained in the Complaint as true. *See* Fed. R. Civ. P. 8(b)(6); *Am. Taxi Dispatch, Inc., v. Am. Metro Taxi & Limo Co.*, 582 F. Supp. 2d 999, 1004 (N.D. Ill. 2008). Accordingly, Plaintiffs request entry of judgment with respect to Count I for willful infringement and counterfeiting of the BUNCH O BALLOONS Trademark against the Defaulting Defendants.

2. False Designation of Origin

A plaintiff bringing a false designation of origin claim under 15 U.S.C. § 1125(a) must show that: (1) the plaintiff has a protectable trademark; and (2) a likelihood of confusion will exist as to the origin of plaintiff's products. *All Star Championship Racing, Inc. v. O'Reilly Auto. Stores, Inc.*, 2013 WL 1701871, *10 (C.D. Ill. Apr. 18, 2013) (citing *Johnny Blastoff, Inc. v. Los Angeles Rams Football Co.*, 188 F. 3d 427, 436 (7th Cir. 1999)). This is the same test that is used

for bringing a trademark infringement claim under the Lanham Act. *See Neopost*, 403 F. Supp. 2d at 684.

Plaintiffs alleged in the Complaint that Defaulting Defendants are using the federally registered BUNCH O BALLOONS Trademark without authorization on the Counterfeit/Infringing Products. This creates a likelihood of confusion, mistake, and deception among the general public as to the affiliation, connection, or association with Plaintiffs or the origin, sponsorship, or approval of Defaulting Defendants' Counterfeit/Infringing Products by Plaintiffs. *See* Doc. 1 at ¶¶ 32-36. Furthermore, by using the BUNCH O BALLOONS Trademark on the Counterfeit/Infringing Products, Defaulting Defendants create a false designation of origin and a misleading representation of fact as to the origin and sponsorship of the Counterfeit Counterfeit/Infringing Products. *See id.* As a result, Plaintiffs request entry of judgment with respect to Count II for willful false designation of origin against the Defaulting Defendants.

D. Plaintiffs are Entitled to Monetary Damages and Injunctive Relief.

The awarding of statutory damages serves dual interests in that it is remedial in nature but also intended to protect an important public interest. Given the broader economic losses and harm to the job market caused by counterfeiting, coupled with the possible dangers to consumers who are tricked into purchasing low quality, counterfeit products over the Internet, it is important to both penalize defendants and try to deter future violations.

Plaintiffs advertise throughout the world and spends considerable resources marketing and protecting its trademark and associated products. Plaintiffs' promotional efforts include website and social media sites.

1. Statutory Damages are Appropriate in this Case.

Pursuant to the statutory damages provision of the Lanham Act, 15 U.S.C. § 1117(c), a plaintiff in a case involving the use of a counterfeit mark may elect to receive “not less than \$1,000 or more than \$200,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just.” 15 U.S.C. § 1117(c)(1). When the counterfeiting is found to be willful, 15 U.S.C. § 1117(c)(2) provides for statutory damages of up to “\$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just.” 15 U.S.C. § 1117(c)(2).

Although 15 U.S.C. § 1117(c) contains the dollar range for possible statutory damage awards, the only guidance provided by the statute for how to determine a damage award within the statutory dollar range is “as the court considers just.” 15 U.S.C. § 1117(c). Courts interpreting 15 U.S.C. § 1117(c) have analogized case law applying the statutory damage provision of the Copyright Act contained in 17 U.S.C. § 504(c). *See Sara Lee v. Bags of New York, Inc.*, 36 F. Supp. 2d 161, 166 (S.D.N.Y. 1999). In *Sara Lee*, 36 F. Supp. 2d at 170, the court awarded statutory damages in the amount of \$750,000 after estimating the defendants' ill-gotten gains and trebling them to “deter and punish a willful continuous course of infringements and defiance of the judicial process.” The *Sara Lee* analysis included seven factors: (1) the profits made by the defendants; (2) the revenues lost by plaintiff; (3) the value of the mark; (4) the deterrent effect on others; (5) whether the conduct was innocent or willful; (6) whether a defendant has cooperated in providing records; and (7) the deterrent effect on the defendant. *See also Luxottica USA LLC v. The Partnerships & Unincorporated Associations Identified On Schedule "A"*, No. 14 C 9061, 2015 WL 3818622, at *2 (N.D. Ill. June 18, 2015).

The lack of information regarding Defaulting Defendants' sales and profits makes statutory

damages particularly appropriate for default cases like the instant case. *See Petmed Express, Inc. v. medpets.com, Inc.*, 336 F. Supp. 2d 1213, 1220 (S.D. Fla. 2004). Likewise, Courts have recognized that statutory damages should be awarded without requiring an evidentiary hearing. *See Lorillard Tobacco Co. v. Montrose Wholesale Candies & Sundries, Inc.*, No. 03 C 4844, 2008 WL 1775512, at *2 (N.D. Ill. Apr. 17, 2008).

2. Defaulting Defendants' Counterfeiting was Willful.

As alleged in Plaintiffs' Complaint, Defaulting Defendants facilitate sales by designing the Defaulting Defendant Internet Stores so that they appear to unknowing consumers to be authorized online retailers, outlet stores, or wholesalers selling genuine products. Do. 1 at ¶ 16. Pursuant to 15 U.S.C. § 1117(e), a counterfeiting violation is presumed willful "for purposes of determining relief if the violator ... knowingly provided ... materially false contact information to a domain name registrar..." 15 U.S.C. § 1117(e). Many of the Defaulting Defendants' names and physical addresses used to register the Defaulting Defendant Domain Names are incomplete, contain randomly typed letters, or fail to include cities or states. Doc. 1 at ¶ 19. Thus, willfulness is presumed in the instant case under 15 U.S.C. § 1117(e).

Even without the statutory presumption, it is clear that Defaulting Defendants' counterfeiting was willful. "Willful infringement may be attributed to the defendant's actions where he had knowledge that his conduct constituted infringement or where he showed a reckless disregard for the owner's rights." *Luxottica Group S.p.A. v. Chen*, 2017 WL 836228, at *2 (N.D. Ill. Mar. 2, 2017). Knowledge need not be proven directly but can be inferred from a defendant's conduct. *Id.* In awarding statutory damages, the Court is "not required to follow any rigid formula," but instead "enjoys wide discretion." *Chi-Boy Music v. Charlie Club*, 930 F.2d 1224, 1229 (7th Cir. 1991). The Court may consider "various factors," including "the difficulty or impossibility of

proving actual damages, the circumstances of the infringement, and the efficacy of the damages as a deterrent to future copyright infringement.” *Id.* (internal quotation marks and citation omitted).

Here, Defaulting Defendants clearly had knowledge that their activities constituted infringement or at least a reckless disregard for Plaintiffs’ rights in the BUNCH O BALLOONS Trademark, especially given Plaintiffs’ extensive promotional efforts discussed above. After all, the Defaulting Defendants were taking great pains to conceal their identities to try to avoid being held accountable for their counterfeiting activities. *See* Doc. 1 at ¶ 19.

Finally, District Courts have deemed counterfeiting willful when defendants default. *See, e.g., Iron Maiden Holdings Ltd. v. Partnerships & Unincorporated Associations Identified on Schedule "A"*, No. 1:18-CV-1098, Document #: 42 (N.D. Ill. April 10, 2018) (Alonso, J.) (copy included in Declaration of Nicholas A. Kurtz).

3. A High Statutory Damages Award Is Appropriate and Just.

The Seventh Circuit's standard for awarding statutory damages for copyright infringement under 17 U.S.C. § 504(c) is articulated in *Chi-Boy Music v. Charlie Club*, 930 F.2d at 1229. Under the *Chi-Boy* standard, a court awarding statutory damages is “not required to follow any rigid formula,” but instead “enjoys wide discretion.” *Id.* In computing the award amount, a court may consider factors such as “the difficulty or impossibility of proving actual damages, the circumstances of the infringement, and the efficacy of the damages as a deterrent.” *Id.* Courts in this district have also considered the significant value of a plaintiff’s brand and the efforts taken to protect, promote and enhance that brand in determining the appropriate dollar figure for the award. *Lorillard Tobacco Co. v. Montrose Wholesale Candies & Sundries, Inc.*, No. 03 C 4844, 2008 WL 1775512, at *2 fn. 3 (N.D. Ill. Apr. 17, 2008).

In addition, courts have awarded high damage amounts where a defendant's counterfeiting activities attracted wide market exposure through Internet traffic or advertisement. *See Coach, Inc. v. Ocean Point Gifts*, No. CIV.A.09-4215 JBS, 2010 WL 2521444, at *6 (D.N.J. June 14, 2010) (high damage awards in counterfeit cases were "due in part to the wide market exposure that the Internet can provide").

In similar cases involving willful Internet-based counterfeiting, this Court has awarded significant damages, including up to the maximum provided by law, to the plaintiff to serve the purposes of: (1) deterring the defendant and others situated like him from bringing into commerce counterfeit goods, (2) compensating the plaintiff for damages caused by defendant's infringement, and (3) punishing the defendant appropriately for his counterfeiting activities. *See, e.g., Iron Maiden Holdings Ltd. v. Partnerships & Unincorporated Associations Identified on Schedule "A"*, No. 1:18-CV-1098, Document #: 42 (N.D. Ill. April 10, 2018) (Alonso, J.) (copy included in Declaration of Nicholas A. Kurtz) (awarding statutory damages of \$1,000,000 for willful use of counterfeit IRON MAIDEN Trademarks).

Additionally, the remedy imposed under the statute must provide a sufficient deterrent effect to ensure that the guilty party will not engage in further infringing conduct. *Sands, Taylor & Wood v. Quaker Oats Co.*, 34 F.3d 1340, 1348 (7th Cir. 1994). For example, in *Phillip Morris USA Inc. v. Marlboro Express*, the Court stated that due to "the size of the potential profit given the quantities of [counterfeit goods] involved, and the need for a substantial deterrent to future misconduct by defendants and other counterfeit traffickers ... plaintiff is entitled to the maximum statutory award under 15 U.S.C. § 1117(c)(2)." *Phillip Morris USA Inc. v. Marlboro Express*, No. CV-03-1161 (CPS), 2005 WL 2076921, at *6 (E.D.N.Y. Aug. 26, 2005).

Given the Court's clear discretion in determining the appropriate amount of the statutory damages award within the statutory limits of 15 U.S.C. § 1117(c), Plaintiffs respectfully requests the Court's entry of an award of two million dollars (\$2,000,000) per Defaulting Defendant.

4. Plaintiffs are Entitled to Injunctive Relief.

In addition to the foregoing relief, Plaintiffs respectfully requests entry of a permanent injunction enjoining Defaulting Defendants from infringing or otherwise violating Plaintiffs' registered trademark rights in the BUNCH O BALLOONS Trademark, including at least all injunctive relief previously awarded by this Court to Plaintiffs in the TRO and Preliminary Injunction. Plaintiffs are also entitled to injunctive relief so it can quickly take action against any new websites and online marketplace accounts that are identified, found to be linked to Defaulting Defendants, and selling Counterfeit/Infringing Products. *See, e.g., Iron Maiden Holdings Ltd. v. Partnerships & Unincorporated Associations Identified on Schedule "A"*, No. 1:18-CV-1098, Document #: 42 (N.D. Ill. April 10, 2018) (Alonso, J.) (copy included in Declaration of Nicholas A. Kurtz).

IV. CONCLUSION

In view of the foregoing, Plaintiff respectfully requests that the Court enter default and default judgment against each Defaulting Defendant, award statutory damages in the amount of two million dollars (\$2,000,000) per Defaulting Defendant pursuant to 15 U.S.C. § 1117(c) and enter a permanent injunction order prohibiting Defaulting Defendants from selling Counterfeit/Infringing Products, permanently transferring the domain names used by Defaulting Defendants to sell Counterfeit/Infringing Products to Plaintiffs, and transferring all assets in Defaulting Defendants' financial accounts to Plaintiffs.

Dated: February 22, 2019

Respectfully submitted,
DUNLAP BENNETT & LUDWIG, PLLC
By: /s/ Nicholas A. Kurtz

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CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system on February 22, 2019.

I, the undersigned attorney, certify that I sent an email to all email addresses provided for Defendants by third parties for Defendants in default and included Plaintiffs' papers and a link to the website (<http://dbllawyers.website/?case=18-07531>) to which the Defendant Domain Names that have been transferred to Plaintiffs' control now redirect on February 22, 2019.

/s/ Nicholas A. Kurtz

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